

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)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 4170

John Doe 194,)
)
Plaintiff,)

v.)

The Bishop of Charleston, a)
Corporation Sole; Robert)
Gugliemone, The Bishop Of)
Charleston, in his official capacity;)
Rev. Monsignor Martin Laughlin,)
former Administrator of the)
Diocese of Charleston, in his)
official capacity; Robert J. Baker,)
former Bishop of Charleston, in his)
official capacity;)
Lawrence E. Richter, Jr.,)
David K. Haller, and)
Richter and Haller, LLC.)
)
Defendants.)

Negligence; Gross Negligence
Fraudulent Concealment
Civil Conspiracy
Professional Negligence
Breach of Fiduciary Duty
Injunctive Relief
UTPA

Jury Trial Requested

FILED
2013 JUL 17 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. John Doe 194 is an adult citizen and resident of Minnesota who, as a child lived in the Charleston area and as a child participated in activities sponsored by the Defendant Diocese of Charleston and was sexually abused by Frederick Hopwood, a priest of the Diocese of Charleston.
2. The pseudonym John Doe 194 is used for the Plaintiff due to the sexual abuse injury, which is the subject of this complaint.

3. The Bishop of Charleston, a Corporation Sole, is the formal title of the various entities comprising the Catholic Church throughout South Carolina, including in Charleston County, known generally as the Diocese of Charleston. It is referred to in this complaint as the Diocese. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. The acts associated with the abuse of the Plaintiff and the negligent supervision of Hopwood took place in part in Charleston County, where decisions were made about Hopwood's assignments and the degree of supervision he required, which as applied by the Diocese Defendants was generally inadequate.

4. On information and belief, Frederick Hopwood entered a plea of guilty to charges of sexual misconduct with minors. No effort was made to locate the victims of Frederick Hopwood, including the Plaintiff.

5. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County, South Carolina but doing business in Charleston County. He is sued individually in his official capacity. He is a party necessary for complete relief.

6. All persons working for the Diocese, anywhere in South Carolina, are subordinate to the Bishop of Charleston.

7. Prior to the tenure of Bishop Guglielmone, from October 2007, to March 2009, no person held the title of Bishop of Charleston. Under the rules by which the Diocese of Charleston is governed, the Diocese of Charleston was administered by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina who, during his tenure as administrator, did business in Greenville County. Msgr. Laughlin is sued in his official capacity.

8. Prior to the tenure of Administrator Laughlin, from July 1999 to August 2007, the Bishop of Charleston was Robert J. Baker, presently a resident of, and citizen of, Alabama. During his tenure, he did business in, and resided in, Charleston County. He is sued in his official capacity.

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

10. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney, and in that capacity engaged in “trade” or “commerce” within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically solicited, through advertising placed in the Post and Courier newspaper, participation by members of the public into a 2006 class action that was not at that time disclosed to be a collusive class action settlement, but which was in fact a collusive settlement.

11. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney, and in that capacity engaged in “trade” or “commerce” within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically solicited, through advertising placed in the Post and Courier newspaper, participation by members of the public into a 2006 class action that was not at that time disclosed to be a collusive class action settlement, but which was in fact a collusive settlement.

12. Richter & Haller, LLC, at all times pertinent to this complaint, had its principal place of business in Charleston county, did business in South Carolina, and in that capacity engaged

in “trade” or “commerce” within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, Richter & Haller, LLC did business in Charleston County, and specifically solicited, through advertising placed in the Post and Courier newspaper, participation by members of the public into a 2006 class action that was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

13. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as the “Richter defendants” unless otherwise particularly specified.

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

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

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

17. The Diocese defendants are already aware of the identity of John Doe 194, as they have already rejected his request for assistance with the effects of his abuse. Other defendants will be informed of the identity of the Plaintiff upon their agreement to reciprocate in providing information in discovery, upon their agreement to maintain the Plaintiff’s identity as confidential as to the public record, and upon their actual performance of participating in reciprocal discovery as opposed to just promising reciprocal discovery without actually providing discovery.

18. The Plaintiff fits the definition used in a collusive 2006 class settlement in that he was born on or before August 30, 1980, and as a minor, was sexually abused by an agent or employee of the Diocese of Charleston. The Plaintiff has not previously made a claim that was adjudicated, resolved, or released.

19. John Doe 194 was situated similarly to other individuals ostensibly within that

definition of a class first pled by the Richter defendants in 2005, settled by the Richter defendants as a class in 2006, and certified as a class in 2007 by a South Carolina court as part of a class action involving individuals who were sexually abused by persons employed by the Bishop of Charleston. That class action was collusive. In addition, because he lived outside of South Carolina the Plaintiff received no notice of the class action, thus the Plaintiff had no opportunity to be heard or participate in the litigation, either in person or through counsel, or to opt out of the class action and thereby preserve his own claim.

20. Defendant Haller, on behalf of the Richter Defendants, has admitted that the members of the class who live out of state, received no Due Process in the 2006 class action. No effort was made to give the Plaintiff notice.

21. In the 2006 class action settlement the Richter defendants colluded with the Diocese defendants so as to abandon the interests of those persons within the class definition and to protect the Diocese defendants by the collusive class action.

22. In 2005 a class action was first alleged by the Richter defendants on behalf of persons sexually abused by persons affiliated with the Diocese of Charleston.

23. In April, 2006, the Richter defendants filed suit in Jasper County for an adult sexual abuse victim who had repressed the memories of his childhood abuse. That suit was filed against a Diocese other than the Diocese of Charleston, and against a Bishop other than the Bishop of Charleston. By their own account, class counsel were extensively affiliated with the Diocese of Charleston.

24. At no time was the class informed of the extensive affiliation of class counsel with the Diocese of Charleston.

25. The class action settlement with the Bishop of Charleston was arrived at during a

mediation held in June, 2006, in which the Richter defendants participated on behalf of class members. In this complaint, the class action settlement achieved in 2006 from the 2005 class action is referred to as “the 2005 class action.”

26. At the time of the 2006 mediated settlement agreement, the Richter Defendants were aware that some sexual abuse victims lived outside of South Carolina.

27. The 2006 mediated settlement agreement was approved by a Dorchester County judge who presided over the class action proceedings during 2006 to 2013. By 2009 the class members had been identified and an arbitration had determined awards to various class members. By March, 2008 those awards had been paid.

28. By order of the South Carolina Supreme Court issued March 19, 2009, the 2005 class action was ordered to be concluded in six months, or by September 19, 2009.

29. The trial court overseeing the class action ignored the March 19, 2009 order of the South Carolina Supreme Court, and took no action by September 19, 2009 to review the distributions to class members or to make a post-award review of class counsel’s fee.

30. The Dorchester County trial judge who oversaw the class action had extensive social and professional ties with class counsel.

31. At no time were those extensive social and professional ties disclosed to the class.

32. In 2012, class counsel, acting on behalf of no class member from the 2005 class action, as all class member claims had been resolved, but acting instead on behalf of himself and the Richter defendants, filed a pleading in the closed Dorchester County class action case.

33. On January 24, 2013, the Dorchester County trial judge who had presided over the class action signed an order which stated, in its entirety, “I hereby recuse myself from hearing any further matter on the above-captioned case.” The caption on that order was the first of the

cases which comprised the class action.

34. The Dorchester County trial court who presided over the class action had been asked to recuse herself by a motion in 2008. That motion was denied. She recused herself in 2013.

35. All defendants colluded in the 2005 class action so as to permit the Diocese defendants, starting in 2009 and continuing into 2013, to maintain the position that the class action precluded any and all claims for abuse, and the Diocese defendants have refused the Plaintiff any relief for his sexual abuse.

36. The defendants cooperated among themselves in the 2006 class action to prevent the Plaintiff from either participating in the class action or being able to remove himself from the class action by opting out. Being within the putative definition of the 2005 class action as the Defendants agreed to define the class of sexual abuse victims, the Plaintiff ostensibly was formerly represented by, until he was abandoned by, the Richter defendants, who served as class counsel.

37. Alternatively, and at minimum, the Richter defendants assumed fiduciary duties as to the Plaintiff by defining the class, with the knowing cooperation of the Diocese defendants, so as to ostensibly include the Plaintiff, and by making in that class definition no exception for any person who resided in Minnesota and who was sexually abused by a priest of the Diocese of Charleston.

38. Each Defendant was aware that persons within the class definition of the 2005 class action might reside out of state. Class counsel elected to cooperate to serve the objectives of the Diocese defendants at the expense of the class members they represented, and did so by making no allowance for out of state class members in the class action definition, or in the notice given to the class, or in the orders they sought from the Dorchester County trial court

that oversaw the class action. These actions were taken to cause the Plaintiff special harm in the form of precluding him from making any claim against the Diocese, particularly any claim outside the class action. The representation of the Plaintiff by the Richter defendants in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

39. This action is not alleged as a class action. It involves as a Plaintiff a person who was, until he was abandoned by his class counsel, the Richter defendants, a putative member of (a) a class as alleged in a state court class action, (b) a class settlement agreed to among defendants, and (c) a class approved by a state court.

40. But for the Richter defendants having breached the duties each of them owed to the Plaintiff by abandoning the Plaintiff in the class action, which was done in agreement with and full complicity with the other Defendants, the Plaintiff would have been protected from any preclusive effect of the 2005 class action and the 2006 class action settlement.

Nature of Wrongdoing

41. As a child, the Plaintiff was exposed to Frederick Hopwood through his participation in events sponsored by the Diocese of Charleston and was sexually abused by Frederick Hopwood.

42. Hopwood was known to have a sexual interest in young boys and had a long history of sexually molesting young boys to which he had access because Hopwood was a priest.

43. The Diocese Defendants knew, or should have known, that Frederick Hopwood was dangerous to children, and that the Plaintiff was sexually abused as a child by Frederick Hopwood.

44. This Complaint sets out various causes of action built around four different levels of

disregard for others, and corruption.

- a. First, the disregard by the Diocese Defendants in operating a system which actively disregarded and concealed the risks to children and families for sexual assault of children by their priests and other employees, and which then actively, and fraudulently, concealed the abuse that had happened and concealed the dangers to children the Diocese Defendants solicited into danger.
- b. Second, corruption and collusion by lawyers to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy, in exchange for a legal fee to class counsel, relief for the Diocese defendants in the form of a layer of what was hoped, by those corrupt lawyers, would be protection for the Diocese from civil lawsuits almost certain to keep coming over that abuse and the fraudulent concealment of abuse by the Diocese defendants.
- c. Third, the corruption of particular lawyers who in serving as class counsel assumed a duty to act for sexual abuse victims, including the Plaintiff, but who then acted in a professionally negligent way, willfully and wantonly abandoning their client so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese Defendants in exchange for their cooperation in trying to both limit relief to victims and protect the Diocese Defendants from future cases, and from claims by this Plaintiff and other sexual abuse victims. The danger to the Diocese Defendants of future cases was that future cases might be brought by lawyers actually adverse to the Diocese Defendants, as opposed to the lawyers who were affiliated with the Diocese defendants and entered into the collusive class agreement with them.

- d. Fourth, overt misrepresentations of fact by the lawyers and Diocese Defendants, to the court which approved the 2006 class action settlement, and fraudulent concealment of that misrepresentation, continuing to the present.

45. Class action counsel were so confident in their ability to manipulate the state court judge they and counsel for the Diocese had selected and maneuvered the class cases before, and in gaining the cooperation of the supposedly adverse Diocese Defendants, that the Richter defendants submitted blatantly false and inflated time records to justify their large fee without objection to those false and inflated time records by the Diocese Defendants. In exchange for class counsel's cooperation to disadvantage all members of the class from making any claim other than through the 2006 class settlement, which capped victim recovery to an acceptable limit, it was later discovered that the Diocese Defendants

- a. agreed to take no position on whether the class should be certified,
- b. agreed not to mention that any of the time records submitted by the Richter defendants were false,
- c. agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee,
- d. agreed to make no objection to an unethical fixed fee for class counsel while class counsel simultaneously obtained only variable compensation for class members,
- e. agreed to make no objection to the fee being awarded before any member of the class member was even identified, and before any class member claimant had submitted a claim or was paid,
- f. agreed to other procedural manipulations, as set forth below, which violated

South Carolina rules of court and South Carolina law, and

g. agreed to seek no post-award fairness hearing under SCRCP 23.

46. In turn, the Richter Defendants agreed to assist the Diocese Defendants in overtly misrepresenting to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement, and once the court relied on that representation the Richter defendants enabled the Diocese Defendants to ignore the representations that had been made. Alternatively, if class counsel claims he was did not participate in the overt misrepresentations to the court by the Diocese Defendants, class counsel's representation of the class fell below the applicable standard of care in that class counsel failed to secure by order those concessions supposedly made by the Diocese defendants. Class counsel failed to secure those concessions by written order even though class counsel was fully aware the Diocese Defendants are untrustworthy and would comply only with orders it could be compelled to honor.

47. Class counsel either was complicit in the misconduct of the Diocese Defendants or was negligent in being outmaneuvered by the Diocese Defendants.

48. The duplicity by the Diocese defendants was disclosed to this Plaintiff only in 2012, when the class action was asserted to preclude him from any relief even though he had been given no notice of the class action at the time of the class action.

49. Of the four levels of wrongdoing alleged, the causes of action which apply hinge, in part, on whether or not the Plaintiff is regarded as being bound by the *res judicata* effect of the collusive class action to which the Diocese was party. As alleged more fully below, Plaintiff ostensibly falls within a class defined in that action, but all of the Defendants were aware that in adopting that class definition without exclusions for persons who lived out of state and were

to be by design given no notice, that claims by such persons might be compromised.

Defendants colluded so as to attempt to make any recovery by the Plaintiff impossible. All Defendants cooperated together to better protect the Diocese by the way the class was defined, as well as the manner in which notice was given, and the Defendants cooperated so as to actively mislead the court in seeking approval for the limited notice that was proposed with the false promise by the Diocese, known to the Richter defendants to have been false when made by the Diocese and acquiesced in by the Richter defendants, that within the minimal relief offered within the class action the Diocese would protect the interests of persons such as the Plaintiff who received no notice and who later made claims.

50. Until 2012 the Plaintiff had no information about a class action or that the Defendants had cooperated to make false promises to the class action court or that the Plaintiff's interest had been compromised by a collusive class action.

51. Until May 19, 2009, when the South Carolina Supreme Court ordered that the proceedings in the 2005 class action be concluded by September 19, 2009, the Richter defendants were charged with correcting the known deficiencies in the class definition and the class action notice. The Richter defendants took no steps to correct either deficiency. Had they done so it would have interfered with their collusion with the Diocese that was intended to protect the Diocese and to obtain for the Richter defendants the fixed fee they had arranged to obtain, at the expense of their client class members and the putative members of the class.

52. By 2012 the Richter defendants had been sued a number of times by persons whose claims for sexual abuse were compromised by their professional work as lawyers, and to protect their own interests they filed a motion on behalf of a class that no longer exists, and ostensibly on behalf of clients adverse to them, to seek for themselves protections from the

Dorchester County trial court overseeing the class action. After the Dorchester County trial court received that motion, the trial judge recused herself.

53. Before another Dorchester County judge at a hearing held April 12, 2013, the Richter defendants admitted that abuse victims, such as this Plaintiff, who lived out of South Carolina got in the class action no Due Process from the notice given in the class action.

54. In that hearing, class counsel stated, on the record at page 32 of the transcript, that persons living out of the area of the limited notice given in the class action, “never got their due process rights of notice and an opportunity to be heard.”

55. Similarly, until September 19, 2009, the date the South Carolina Supreme Court ordered that the proceedings in the 2005 class action be concluded, the Diocese Defendants were aware that various persons within the class had received no notice, but did nothing to clarify overt misrepresentations by the Diocese Defendants to the court overseeing the class action about how the Diocese would treat absent members of the class who received no notice.

56. The Diocese Defendants each knew, or should have known, about the Plaintiff and his abuse by Frederick Hopwood. When Hopwood was convicted of sexual abuse the Diocese Defendants should have, but did not, make an effort to locate other victims of Hopwood.

57. Until 2012, the Plaintiff was unaware of

- a. any class settlement by the Diocese Defendants,
- b. that the Diocese Defendants claimed to have waived charitable immunity for any person in the class definition,
- c. that the Diocese Defendants claimed to have waived the statute of limitations for any person in the class definition.

58. Plaintiff was unaware of any of those things because, by agreement of all Defendants,

the Plaintiff got no notice of any of those things, and had no opportunity to preserve his claim by opting out of the 2005 class action.

59. In its order approving the class action, the state court appeared to have provided for absent members of the class, such as the Plaintiff. However, beginning in 2009 the Diocese Defendants began to contend, successfully, that the court's order of July 31, 2007 does not mean what it says, and starting in 2009 the Diocese Defendants began to argue that none of them has a duty to any absent class member who is within the class definition but who received no notice of the class settlement or the various waivers of defenses by the Diocese Defendants. In doing so the Diocese Defendants perpetuate the fraud the Diocese Defendants intended to achieve in 2007 through the class action, and either through cooperation with the Richter defendants or through outmaneuvering the Richter Defendants, to limit recovery for persons known to have been sexually abused by persons affiliated with the Diocese Defendants.

60. Plaintiff is an absent member of a class who, by either design among Defendants, or by conduct by class counsel that fell below the standard of care, received no notice of the class action and had no opportunity to opt out of the collusive class action. As such, Plaintiff should not be bound by any *res judicata* effect of the class action because the procedure used did not adequately insure the protection of his interests. The Plaintiff's representation in the class action by the Richter defendants was inadequate, and fell below the applicable standard of care as set forth more fully below. Any of those grounds is a sufficient basis to relieve the Plaintiff of the *res judicata* effect of the class action.

61. If the Diocese agrees, or the court finds, that the Plaintiff is not precluded, by the class action, from bringing claims against the Diocese Defendants, either because the class action court's rulings leave room for persons not receiving notice, or due to inadequate representation

by class counsel, or because the Defendants in the class action were aware that not all class members would get notice of the class proceedings and the class action orders preserve the Plaintiff's Due Process rights and his claims, then the causes of action against the Richter Defendants alone, other than the Conspiracy cause of action, are irrelevant. However, if the court finds that the Plaintiff is precluded for any reason from pursuing his claims against the Diocese Defendants, including the *res judicata* effect of the class action, charitable immunity (which the Diocese Defendants waived for those within the class definition), or by the statute of limitations (which the Diocese Defendants waived for those within the class definition), then causes of action against the Diocese Defendants alone, other than the Conspiracy cause of action, are irrelevant, and claims are properly made against those who conspired against the Plaintiff, and against the Richter Defendants for failing to properly represent the Plaintiff in the representation of the Plaintiff that the Richter Defendants undertook.

62. In March, 2009, the South Carolina Supreme Court ordered that all proceedings in the class action be concluded by September 19, 2009. In 2013 the South Carolina Supreme Court was informed that the class action had never been formally closed, that the Dorchester County trial judge had recused herself from further proceedings, and on April 30, 2013, the S.C. Supreme Court assigned the class action to another circuit judge to "hear and dispose of any remaining matters."

63. In this action, no review is sought of the decisions of the state court in approving the insufficient notice given to the class. No changes are sought as to the orders affecting the class action. As to the class action this action seeks only an interpretation as to the preclusive effect of the class action as applied to the Plaintiff.

**For a First Cause of Action:
Negligence and Gross Negligence by Diocese Defendants**

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

65. The defendant Bishop of Charleston employed Frederick Hopwood as a priest.

66. In his capacity as priest, Frederick Hopwood was placed by the Diocese Defendants in a position of trust and confidence, and had access to the Plaintiff and other children. In that capacity, Frederick Hopwood sexually molested the Plaintiff and many other children.

67. Prior to the Plaintiff being molested, the Diocese Defendants became aware that Frederick Hopwood was dangerous to children. After knowing he was dangerous, the Diocese Defendants moved Frederick Hopwood from place to place within South Carolina, and thereby facilitated his access to young people whom he could sexually molest. The Plaintiff was molested after Hopwood was known to be dangerous to children.

68. Alternatively, the Diocese Defendants operated various schools, activities, and churches that were intended to, and did, attract children and families, including the Plaintiff and his family. The Diocese Defendants encouraged people, including Plaintiff and his father, to use their facilities, and to attend the various activities and functions offered on the premises of the Diocese. In making that invitation, the Diocese Defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers, and from known dangers such as Frederick Hopwood, by representing to the public, and to the Plaintiff, nothing to the contrary. The Diocese Defendants particularly owed a duty to the Plaintiff, who was a minor, and his father, who were charged with looking after his interests, a greater degree of care because as a child the Plaintiff relied on the Diocese Defendants for his safety within the Diocese, was unable to fully appreciate risks and danger and protect himself from Frederick Hopwood. The Diocese Defendants falsely represented to its invitees, and their parents or

guardians, including the Plaintiff, that its facilities and its priests were safe, and that persons would be protected from harm when using its facilities and when interacting with its personnel.

69. The Diocese defendants negligently supervised Frederick Hopwood. The Bishop of Charleston was grossly negligent in supervising Frederick Hopwood. Moving Hopwood without proper warning to children and parents was grossly negligent. As a proximate result of the negligence and gross negligence by the Diocese defendants, Plaintiff was sexually abused by Frederick Hopwood.

70. The Diocese defendants were negligent in failing to warn the Plaintiff or his father about Frederick Hopwood. The Bishop of Charleston performed that duty in a grossly negligent manner.

71. The Diocese Defendants knew, or should have known, that Frederick Hopwood was a pedophile. Despite that knowledge, the Diocese Defendants made no effort, or no competent effort, to ascertain how many children Frederick Hopwood had molested, and no effort, or no competent effort, to locate victims of Frederick Hopwood. If the Diocese Defendants did make such an effort, those Defendants assumed the duty but performed it negligently. The predecessors of Robert Baker and Rev. Monsignor Laughlin performed that duty in a grossly negligent manner.

72. The Diocese Defendants' failure to do so was negligent, and grossly negligent on behalf of the presiding Bishop from the time of the Plaintiff's abuse to the present, including the gross negligence by Bishop Guglielmone, Bishop Baker, Rev. Monsignor Laughlin, and the Bishops who preceded them.

73. As a result of the negligence and gross negligence by the Diocese Defendants in failing to either prevent abuse or identify abuse victims by its agent or employee Frederick Hopwood,

the problems for the Plaintiff were first caused, and then exacerbated, by the delay of the Diocese Defendants in rectifying the abuse by Hopwood.

74. As set forth more fully below, the Diocese Defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese Defendants, among other things, accounts for the delay in this action being brought against the Diocese Defendants. The most recent act of fraudulent concealment by the Diocese defendants as to the Plaintiff was in 2012, discovered by the plaintiff only in 2012. This action is brought within three years of that most recent act of fraudulent concealment, and fraudulent conduct, by the Diocese defendants, and within three years of its discovery by the Plaintiff.

75. The Plaintiff is entitled to actual and punitive damages as a result of the negligence of the Diocese Defendants, and gross negligence of Bishops Guglielmone and Baker, and Administrator Rev. Monsignor Laughlin, in failing to perform a proper review for Hopwood's victims, or in performing that duty in a negligent manner.

**For a Second Cause of Action:
Fraudulent Concealment by Diocese Defendants**

76. Allegations above are incorporated into this cause of action as if fully set forth.

77. The Diocese Defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children.

78. The Diocese Defendants each had a duty to discover and to disclose to Plaintiff or his parents their knowledge that Frederick Hopwood was known to have a sexual interest in children. That duty arises from

- a. the preexisting fiduciary relationship between the Plaintiff and the Diocese Defendants, which relationship the Diocese Defendants solicited;
- b. from the father of the Plaintiff having expressly reposed his trust and confidence in the Diocese Defendants so as to entrust putting the Plaintiff into the presence of Frederick Hopwood, which placed the Plaintiff in a vulnerable position with respect to Frederick Hopwood. That position of trust and confidence was implicit from those circumstances of Plaintiff being entrusted to the presence of Frederick Hopwood, as well as from the nature of the dealings between the Plaintiff, his father, and the Diocese Defendants, who promoted to the Plaintiff's father that he should leave the Plaintiff in the presence of Frederick Hopwood,
- c. from the essential nature of the Diocese Defendants and their inducement to the Plaintiff's father to have the Plaintiff participate in activities with Frederick Hopwood as being beneficial to the Plaintiff, or at least not harmful to him,
- d. from the secrecy provisions in the Code of Canon Law and the 1962 document titled "Instruction," which charges the Diocese Defendants to discover, but then to maintain secrecy about, "other persons solicited" by any person such as Frederick Hopwood, who commits the "unspeakable crime" of sexually abusing a child, and
- e. by the undertaking which the Diocese Defendants assumed, negligently (and in the case of the individuals included in the designation of the "Diocese Defendants," grossly negligently), during 2005 - 2012, to locate victims such as the Plaintiff.

79. The Plaintiff was sexually abused by Frederick Hopwood after 1962.

80. Concerning each of (a) the undisclosed dangers Frederick Hopwood represented to the Plaintiff, and (b) assisting to repair the damage done to the Plaintiff by Frederick Hopwood, the Diocese Defendants were obligated to the Plaintiff to engage with him, or his father on his behalf, in perfect good faith and with full disclosure.

81. Instead of full disclosure, the Diocese Defendants have operated with secrecy and concealment of all aspects regarding sexual abuse by their agents and employees, including Frederick Hopwood. In its own operations, the Diocese required secrecy and concealment, and it has enlisted its agents and employees to further conceal its knowledge of abuse so as to limit its exposure for the Diocese defendants being held responsible for sexual abuse of children.

82. Specifically, the Diocese Defendants created a culture of secrecy that caused the Diocese to make no inquiry for victims of Hopwood after it was known that Hopwood had sexually abused children.

83. This complaint concerns actions and inactions by the Diocese Defendants within the course and scope of their role within South Carolina by each of the Diocese Defendants which violated South Carolina law and resulted in the sexual abuse of the Plaintiff. The allegations do not involve religious belief, and in this Complaint the court is not called upon to involve itself in, or to interpret, religious beliefs of the Catholic Church or any of the Defendants but to assess their actions and inactions against the requirements of South Carolina law.

84. The actions and inactions of the Defendants are governed, in part, by the administrative practices required by the internal operating procedures of the Diocese Defendants.

85. Administrative practices adopted by the Diocese Defendants under the Code of Canon law established a practice of secrecy as to sexual abuse. All references to the Code of Canon law refer to the Code of Canon law approved in 1983.

86. The Diocese Defendants operated with an archive.

87. The archive is required by Canon 486 of the Code of Canon law.

88. The archive is, in part, accessible only by the Bishop of Charleston and chancellor of the Diocese of Charleston.

89. Having an archive with limited access is required by Canon 487.

90. Documents in that limited access archive may not be removed from the archive except for a brief time, and only by permission of either the Bishop of Charleston or the moderator of the curia.

91. That restriction on documents within the limited access archive is required by Canon 488.

92. Canon 489 requires that the Diocese of Charleston was also to create for administrative purposes a Secret Archive.

93. In that Secret Archive Canon 489 requires that “documents are to be kept secret” and “protected most securely.”

94. Canon 489, Section 2 states: “Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained.”

95. The administrative practices for secrecy required by the Code of Canon law and the “Instruction,” alleged below, are arbitrarily adopted administrative practices and are separate

and apart from the religious practices protected by the First Amendment of the United States Constitution. Review of those provisions is sought only to the extent those provisions govern action of the Diocese Defendants.

96. Only the Bishop of Charleston is to have the key to the secret archive, and documents are not to be removed from the archive, a restriction required by Canon 490.

97. The Bishop of Charleston was authorized to include in the secret archive any matter which can be regarded as scandalous.

98. The administrative practices of the Diocese of Charleston is to consider topics of sexual abuse to be scandalous, hence secretive.

99. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Frederick Hopwood's sexual abuse of the Plaintiff and other children, were regarded as scandalous, and were maintained in the Secret Archive.

100. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Frederick Hopwood's sexual abuse of children including Plaintiff when the Plaintiff was a child, because those matters were regarded as scandalous, were maintained in the Secret Archive and were destroyed as called for by the Code of Canon law in the routine administrative practice by the Diocese Defendants to destroy evidence of known criminal activity.

101. The Diocese Defendants operate under the authority of the Holy See, which is based in Rome, Italy.

102. In 1962 the Diocese defendants expanded on the administrative secrecy required concerning sexual abuse. The Holy See published an "Instruction" which applied to the Diocese Defendants.

103. By its terms, at p. 1, the “Instruction” was to be stored in the Secret Archive. In the “Instruction,” matters involving priests who “solicit or provoke” (“Instruction,” p. 1 ¶ 1) a penitent “toward impure and obscene matters” (“Instruction,” p. 1 ¶ 1), is deemed “a secret of the Holy Office” (“Instruction,” p. 3 ¶ 11), “under the penalty of excommunication” (“Instruction,” p. 3 ¶ 11). The accused, the accusers, and any witnesses are to be given “The oath of keeping the secret.” (“Instruction,” p. 4 ¶ 12. See also, “Instruction,” p. 5 ¶ 23 and “Instruction,” p. 6 ¶ 28).

104. These are administrative practices related to actions and inactions of secrecy, not provisions about beliefs protected by the First Amendment.

105. Plaintiff fits within the meaning of “penitent” referred to in the “Instruction.”

106. The 1962 “Instruction” states that “the worst crime” is “any perpetrated by a cleric or attempt [sic] with a person of his own sex.” “Instruction,” p. 15, ¶ 71. “The worst crime” is also defined as “any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex.” “Instruction,” p. 16, ¶ 73.

107. Nothing about the Catholic faith requires that children be sexually abused or that sexual abuse of children be concealed.

108. Frederick Hopwood and the Plaintiff are each male. The conduct by Frederick Hopwood towards the Plaintiff qualified under the 1962 “Instruction” as “the worst crime.”

109. Among other things, the 1962 Instruction directs the Diocese Defendants to assume the duty of locating “other persons solicited by the same confessor” (“Instruction,” p. 7 ¶ 29). In this instance, the “Instruction” calls for the Diocese Defendants to act so as to locate other persons solicited by Frederick Hopwood for sexual contact. The “Instruction” at p. 9 ¶ 37 also refers to an “Instruction of the Holy Office, February 20, 1867,” in directing the

manner of interrogation for persons with information about solicitations or those solicited for sexual contact.

110. The Diocese Defendants assumed the administrative duty to locate Hopwood's victims as defined in the 1962 "Instruction," but the Diocese Defendants performed that duty in a grossly negligent manner. The Diocese Defendants failed to locate the Plaintiff, failed to locate many other Hopwood abuse victims, and made no competent inquiry to locate them. The Diocese Defendants purposefully avoided making the type of inquiry that would have elicited discovering the Plaintiff.

111. The 1962 "Instruction" was approved as an administrative practice by the "Most Holy Father John XXIII" on March 16, 1962, according to page 16 of the 1962 "Instruction." It applied to the Diocese Defendants.

112. In the Appendix to the 1962 "Instruction" are set out the terms of the secrecy to be observed for matters such as the sexual abuse of the Plaintiff. In essence, the oath provides for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained "under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good," unless expressly approved "by the Supreme Pontiff," according to page 17 of the 1962 "Instruction." By this means the administrative practice of secrecy is encouraged, but even backed by excommunication, the secrecy provisions of the administrative practices are arbitrarily adopted administrative practices with no doctrinal significance to protected First Amendment activities.

- a. "Whatever type of pretext" overtly endorses lying to civil authority, even lying under oath, to this or any other civil tribunal. No qualification is made in the

1962 “Instruction” for complying with civil authority, and any interpretation otherwise is void as contrary to the law of South Carolina and against public policy.

113. Unless the Pope himself has specifically approved otherwise, administrative secrecy was and is to be maintained not only by the Plaintiff, but also by every member of the Diocese Defendants, and by even witnesses to sexual abuse. That administrative secrecy is to be made despite any law, court order, or oath which would otherwise require disclosure of sexual abuse. Under the 1962 “Instruction,” the highest obligation, higher than any law, oath, or court order, is to maintain the administrative practice of secrecy for the benefit of the Diocese Defendants, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has specifically instructed otherwise, the Diocese Defendants can all be expected to be obedient to the administrative secrecy called for in the 1962 “Instruction,” to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse. The Diocese Defendants have, to date, done so.

114. The call for secrecy in the administrative practices derived from the 1962 “Instruction” and the Code of Canon law constitutes spoliation of evidence, as well as fraudulent concealment. Among the spoliation was evidence related to Frederick Hopwood’s known sexual interest in children, and the sexual abuse of the Plaintiff.

115. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the Diocese Defendants as to Frederick Hopwood’s sexual abuse of the Plaintiff. Consistent with that obligation of secrecy, the Diocese Defendants made no effort to either prevent sexual abuse of the Plaintiff, or to ascertain that the Plaintiff was a victim of the abuse by Frederick Hopwood.

116. In 2006 the Diocese Defendants sought a new level of deception and manipulation to limit the damage to the Diocese Defendants from its taking responsibility for its history of sexual abuse, and to as much as possible to conceal, limit, and minimize the extent of abuse, so as to minimize its financial accountability for its history of abuse and concealment. The Diocese Defendants engaged with other Defendants to conspire to evade accountability, as set forth below, and to try to prevent the Plaintiff from making any claim. The acts of civil conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the sexual abuse.

117. The conspiracy cause of action concerns the Plaintiff's deliberate exclusion from the class, and preventing the Plaintiff from being able to protect his claim, so hinges on the proper interpretation of the orders in the class action, and whether the actions of the Richter defendants constituted merely greed, fraud, and self-interest, as opposed to professional negligence, in excluding from the class action, by design, the Plaintiff and many others who were within the class definition. If there was professional negligence, then the acts of professional negligence predominate, and the damages from the exclusion are properly paid by the Richter defendants. If the actions do not rise to professional negligence, and the Richter defendants and Diocese Defendants were merely corrupt, then the damages for the exclusion are properly shared among all Defendants for their conspiratorial actions in excluding the Plaintiff by design. And if the Plaintiff is not precluded from his claims against the Diocese Defendants by the *res judicata* effect of the class action, and the Richter defendants were

merely corrupt, then the Plaintiff requires no relief for the professional negligence by the Richter defendants, and can seek relief against the Diocese Defendants.

118. This cause of action presumes that the Plaintiff is not precluded in making this claim by the 2005 collusive class action involving the Diocese Defendants, and can make his claim for

- a. lack of Due Process in those proceedings as to this Plaintiff,
- b. lack of competent representation so as to not bind this Plaintiff to the class action,
- c. the collusive nature of the class settlement, or
- d. because by their terms the class action orders do not apply to the Plaintiff.

119. To date the terms of the class action order have been interpreted to not apply to the Plaintiff or to any other abuse victim who resides out of state, meaning the Plaintiff would be excluded from relief and barred from making a claim.

120. The Plaintiff is entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese Defendants in actively maintaining secrecy and thus failing to perform a proper review for Hopwood's victims, including the Plaintiff, or in performing that duty in a negligent manner.

**For a Third Cause of Action:
Civil Conspiracy by All Defendants**

121. Allegations above, other than claims for relief above, are incorporated into this cause of action as if fully stated. This cause of action presumes the class action order is interpreted to bind the Plaintiff to its *res judicata* effect, despite insufficient Due Process from the collusive class action which was designed by all Defendants to limit the Plaintiff's ability

to state his claim, so this cause of action presumes the Plaintiff is properly precluded from bringing claims against the Diocese Defendants related to sexual abuse, and also presumes that class counsel was corrupt only to a degree insufficient to constitute professional negligence.

122. Defendants have conspired with others to injure the Plaintiff, and by those actions have caused special damage to the Plaintiff.

123. As set forth below in detail, the Defendants have acted in concert in numerous ways, which reflect the joint assent with minds to injure the Plaintiff, and Defendants have taken overt acts to pursue the common design to injure the plaintiff.

124. Some actions that have been taken have been legal; other actions were legal but violated professional standards in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the Plaintiff by making sure he and other putative class members could neither participate in the state court class action nor opt out of it, and by those means could be prevented from bringing his own action.

125. In exchange for an amount of money deemed sufficient by corrupt lawyers as a fee, the lawyers who purported to represent the Plaintiff, the Richter defendants, agreed to act against the Plaintiff's interests, and collaborated with the Diocese defendants to work against the Plaintiff's interest and in the interest of the Diocese Defendants.

126. Class counsel had, but did not disclose to the class, connection and allegiances to the Diocese defendants.

127. This cause of action presumes that class counsel was not merely professionally negligent, and outmaneuvered by the Diocese Defendants, but actively collaborated with the Diocese Defendants.

128. Specifically, in exchange for an amount of money as a fee deemed to be sufficient, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, the lawyers who purported to represent the Plaintiff, the Richer defendants, agreed to abandon the Plaintiff, and to define the class so as to include him, despite proposing notice to the class that was known to be insufficient to actually provide notice to the Plaintiff. The Richter defendants defined the class action classes so as to ostensibly include the Plaintiff, purported to secure benefits for the Plaintiff but then failed (a) to secure those benefits by written order, and (b) failed to give notice calculated to reach the Plaintiff, and instead gave notice that could not possibly reach the Plaintiff. This cause of action presumes that those acts were not professionally negligent actions but conscious undertakings by the Richter defendants to disadvantage the Plaintiff from making a claim against the Diocese, so as to not jeopardize the fee for themselves that the Richter defendants made the highest priority of the 2006 class action settlement.

129. By purporting to undertake his representation in how the class was defined, but making no provision for the Plaintiff, the Richter defendants breached a duty to the Plaintiff that the Richter defendants assumed, either through the attorney-client relationship or through the fiduciary duty South Carolina law imposes on any counsel who elects to bring a complaint that alleges a class action, and the fiduciary duty South Carolina law imposes on any counsel who elects to define a class so as to include the Plaintiff.

130. The Richter defendants have publicly denied undertaking any duty to absent members of the classes they defined, reflecting either their degree of professional ignorance of the obligations of class counsel or their intention to align with the interests of the Diocese, or both. This cause of action assumes not the professional negligence of the Richter defendants

but the intention of the Richter defendants to align themselves with the interest of the Diocese Defendants as the *quid pro quo* for the Diocese Defendants collaborating by silence on their fee as class counsel.

131. The Richter defendants elected to abandon their putative class member clients who lived outside of South Carolina so as to prevent the Plaintiff, and others similarly situated, from being able to make claims against the Diocese Defendants. As the class allegations acknowledged, the number of victims of priest sexual abuse “may exceed the hundreds,” an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36, filed in Charleston County, and in the identical John Doe #53 Complaint redundantly filed in Dorchester County as case 06-CP-18-1636 for the purpose of judge-shopping.

132. If “too many” of those hundreds of victims participated in the class action, including the Plaintiff, the Richter defendants would jeopardize the large fee the Diocese Defendants had agreed to enable them to get, and if the 2006 class settlement was jeopardized the Diocese Defendants might not get the ostensible protection from future suits it was colluding with the Richter defendants to obtain at the lowest possible cost. Consequently, defining the class so as to ostensibly include the Plaintiff without securing any benefit for him was either professional negligence or intentional conduct by the Richter defendants to defeat the Plaintiff’s ability to make a claim against the Diocese. As noted, this cause of action presumes that the Richter defendants were not professionally negligent but intentionally acted with the Diocese Defendants to limit the Plaintiff’s ability to claim against the Diocese Defendants, with whom the Richter defendants shared an illicit interest in defeating the Plaintiff’s potential claims.

133. For the Richter defendants, both their class counsel fee, and the interests of the Diocese Defendants, were more important to them than were the interests of their absent putative class member clients such as the Plaintiff.

134. In exchange for the Richter defendants abandoning the Plaintiff and all of their other putative class member clients who lived out of state, the Diocese defendants agreed with the Richter defendants to

- a. maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCP 23,
- b. agreed to take no position on class certification,
- c. agreed to make only the weakest possible argument about the fee sought by the Richter defendants,
- d. agreed to remain silent about the overtly fraudulent time records which the Richter defendants used to support their fee request,
- e. agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while simultaneously establishing a variable, common fund recovery for the class,
- f. agreed to have that fixed fee paid to class counsel before any class member had been identified and before any class member's claim was known, and
- g. agreed to maneuver, in violation of SCRCP 23 and other professional standards, the class action away from those Charleston County judges that might exert independent scrutiny of the class action, to a state court judge in Dorchester County known to have extensive social and professional ties to the Richter

defendants, in the aspiration and expectation that a more pliable oversight would be received for the class settlement from that judge.

135. In the 2006 class settlement the Diocese Defendants undertook a duty to the classes as identified, which included the Plaintiff, to identify abuse victims, such as the Plaintiff. To get approval of the class settlement, the Diocese Defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement away from independent judges in Charleston County to a judge in Dorchester County who was hand-picked by the Richter defendants because of the expectation that judge would apply a more pliable oversight of the class action.

136. In circumventing the requirement in SCRCP 23 to get approval for a class settlement in Charleston County, and in judge-shopping to pick their desired Dorchester County judge, the Defendants violated judicial norms and rules as well as professional standards.

137. The Diocese Defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which Dorchester County complaint duplicated, word for word, an existing Charleston County complaint alleging a class, resulting in the identical class action case pending simultaneously in circuit court in both Charleston County and Dorchester County.

138. As the Dorchester County version of the class action had already been settled before filing through the 2006 class settlement, the Dorchester County filing was done as the means of judge-shopping for the desired Dorchester County judge.

139. The Diocese Defendants also agreed to remain silent about the duplicative class action so as to enable the Richter defendants to submit false information to the Dorchester County court.

Details of the Civil Conspiracy Among Defendants

140. In 2003, the Richter defendants were associated by one or more lawyers to assist in representing a victim of sexual abuse in a claim to be asserted against, *inter alia*, The Diocese Defendants.

141. The Richter defendants represented at least one victim of sexual abuse from the time they were associated throughout the remainder of 2003 and all of 2004.

142. In May 2005, the Richter defendants filed for an individual abuse victim an action in the Charleston County Court of Common Pleas styled *John Doe #66 v. The Bishop of Charleston, et al.*, 05-CP-10-2053. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

143. That John Doe 66 complaint made no class action allegations.

144. In August 2005, the Richter defendants filed another individual action in the Charleston County Court of Common Pleas, styled *John Doe #66A v. The Bishop of Charleston, et al.*, 05-CP-10-3293. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

145. The John Doe 66A complaint made no class action allegations.

146. In October 2005, the Richter defendants met personally with then-Bishop Baker.

147. As a result of that meeting, in December, 2005, the Richter defendants filed a class action complaint in the Charleston County Court of Common Pleas, styled *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al.*, 05-CP-10-4193. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

148. In February 2009 the Diocese Defendants published to the public through their press spokesman that the Charleston County John Doe 53 complaint was one of three individual cases filed in Charleston, as opposed to it being a complaint which alleged a class action. The representation that it was an individual suit was a lie by the Diocese Defendants in furtherance of the routine and consistent practice by the Diocese Defendants to engage in fraudulent concealment of sexual abuse matters, and to further the agreement among defendants to cause harm to the Plaintiff.

149. Rule 23(d)(1) SCRCPP requires “as soon as practicable, after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.”

150. From December 2005 until June 2006, neither the Richter defendants, as class counsel, nor the Diocese Defendants, as a defendant in a case alleging a class, made any effort to seek class certification for the class alleged in the December class action complaint in Charleston County.

151. In that time period of December 2005 to June 2006, the public records show there were no motion hearings held in any of the three cases mentioned above. When the

Charleston County court twice attempted to schedule pending motions, and sent out hearing notices, the Defendants collaborated to ask that the motions be continued rather than heard.

152. In June 2006, the Defendants met in a mediation conference. At that time, no class action had been certified, and no case then pending alleged a class for spouses or parents of sexual abuse victims.

153. At that mediation conference, which took place over two days, the Defendants purported to settle all claims of all class members in two classes, as the classes were defined by the 2006 class settlement agreement of the parties.

154. Ostensibly included in the classes as defined in the mediation was the Plaintiff. By defining the classes so as to ostensibly include the Plaintiff, and by purporting to settle his claim, the Richter defendants assumed professional obligations to him, including fiduciary duties towards him, and created a constructive attorney-client relationship, if not an actual attorney-client relationship, with the Plaintiff.

155. The agreement reached in that mediation is attachment A to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to SCRCF 10(c). By its terms the 2006 class settlement agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 05-CP-10-2053, 05-CP-10-3293, and the case alleging a class action, 05-CP-10-4913. The settlement purports to include the Plaintiff through the class definitions making no exception for his residing in Minnesota. Each Defendant intended to include the Plaintiff in the class definition.

156. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 class settlement reached during a mediation of the Charleston cases.

157. In January, 2007 the typewritten version of the 2006 class settlement agreement was approved by The Holy See.

158. The 2006 class settlement agreement was funded by approval of The Holy See.

159. As reflected in the attached handwritten version of the 2006 class settlement agreement, the Defendants agreed that the individual plaintiffs in the pending actions filed in Charleston County and the purported class representative from the Charleston case which alleged a class, would split \$460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese Defendants would pay only \$460,000 to resolve the pending Charleston cases, which were the only cases then pending.

160. Claims of absent class members were proposed to be resolved on terms materially different than the terms received by the purported class representative or representatives. Instead of a cash payment the same, or similar to, what the purported class representative or representatives were to receive, absent class members were to be required to first relinquish their right to bring suit and, then and only then, submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive from the pre-defined maximum amount available for all such claims and each such claim, minus the additional fee for class counsel. Class members had to relinquish all rights for review to qualify for the arbitration, which was binding arbitration. Only the persons included in the 2006 agreement knew in advance what amount they would receive for a settlement.

161. As alleged below, not fewer than seven devices were chosen by overt agreement among the Defendants to further the conspiracy against this Plaintiff, along with other absent putative members of the classes, from being included in any recovery for the class, to limit the

class recovery from being “too much,” and to prevent this Plaintiff from later being able to make a claim for his childhood sexual abuse.

162. If the 2006 class settlement included “too many” claimants, under the 2006 class settlement agreement the Diocese Defendants would be entitled to withdraw from the agreement. Class counsel would jeopardize his class counsel fee if there were “too many” claimants and the Diocese Defendants withdrew.

163. The Diocese Defendants wanted the 2006 class settlement agreement to be approved so they could later argue, as they in fact have argued, and have argued specifically as to this Plaintiff, that no other sexual abuse claims for sexual abuse prior to 2006 could be made against the Diocese Defendants if those claims were brought after the 2006 class settlement approval.

164. The Diocese Defendants knew that the 2006 class settlement agreement had been negotiated and reached with an “adverse” attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar claim against a different Diocese for another client. The Richter defendants wanted to assure themselves of a large fee in the class action without jeopardizing that fee by getting too many class claimants against class counsel Richter’s own Diocese and these Diocese Defendants. So all Defendants conspired to create methods to be able to limit the number of class members who could make claims under the 2006 class settlement agreement, to limit the amount those class member claimants would recover, and to protect the Diocese Defendants from any future claims, for those childhood abuse victims prior to the conclusion of the 2006 class action settlement.

165. The 2006 class settlement agreement among Defendants established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge-Shopping to Pick the Judge

166. The first technique used by the Defendants to limit the class recovery was for the Defendants to agree to maneuver the 2006 class settlement agreement from the Charleston class action to be presided over not by any judge in Charleston County, where the putative class case was filed and the class case settlement was reached, but to “shop” for a judge they selected to make those determinations. An independent judge in Charleston County was not desired to make those determinations. A judge more likely to unwittingly overlook breach of court rules and fraudulent filings was desired.

167. Instead of complying with SCRCP 23, and submitting the attached 2006 class action settlement to a judge in Charleston County for approval under SCRCP 23, the Defendants agreed to cooperate so as to have the Richter defendants file, and the Diocese Defendants accept service of, newly filed class action cases in Dorchester County that were already settled before being filed.

168. The Richter defendants filed on August 15, 2006 in Dorchester County cases 06-CP-18-1310 and 06-CP-18-1311.

169. After those two cases were filed, on October 6, 2006, the settled Charleston class action case, *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al.*, 05-CP-10-4193, was redundantly re-filed in Dorchester County, with the same caption

(other than the changed county name from “Charleston” to “Dorchester” and the case number being a case number for Dorchester County, 06-CP-18-1636).

170. The allegations of the John Doe 53 class complaint in Dorchester County were identical to the John Doe 53 class complaint in Charleston County.

171. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending and already settled Charleston class action, to attempt to place all of the settled Charleston cases within the scope of the duplicate cases in Dorchester County, and as the means to avoid independent judges in Charleston County and to shop for the desired judge in Dorchester County.

172. This procedural maneuver agreed to among the Defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose, when it was used in 2006.

173. Filing duplicative class actions to have the same case pending simultaneously in two different venues is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court (by all Defendants) and to the Plaintiff (by the Richter Defendants). The Plaintiff was ostensibly included among the duplicative Dorchester complaints through the class definition used in each of those complaints.

174. 2006 class action filings in Dorchester County, the Plaintiff was deprived of Due Process through the conduct of the Defendants.

175. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending, and all were included within the 2006 class settlement agreement.

176. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, and service of that case was accepted, the John Doe 53 class action was, by agreement among the Defendants, simultaneously pending in two separate counties.

177. Dorchester County was chosen by agreement of the Defendants so as to “judge shop” for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a more pliable, and less demanding, oversight of any questionable elements of the class action, including class certification, class notice, attorneys fees, any pre-award fairness hearing, and any post-award fairness hearing. The shopped-for judge was expected to unwittingly tolerate factual misrepresentations and fraudulent filings by the Defendants, an expectation that was rewarded when fraudulent filings were made, by agreement among the Defendants, and the pliable, shopped-for judge took no action concerning those fraudulent filings, either before the fraudulent nature of those filings was explicitly disclosed or after the fraudulent nature of those filings was explicitly disclosed.

178. The Defendants all agreed with this strategy of seeking a pliable state court judge, and consented to the “judge shopping” so as to avoid having to submit the class allegations, and proposed class action settlement, for approval by any judge in Charleston County. The Defendants feared completely objective judicial oversight by any of the judges in Charleston County.

179. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the shopped-for judge designate the cases as complex, and assign the cases to the shopped-for judge, as requested by all Defendants. That designation was improper under the rules at the time, as set forth in more detail below, as Defendants joined together to misrepresent facts to the shopped-for judge in order to obtain complex case designation.

180. Alternatively, the shopped-for judge was informed of the false representations of fact when the request for complex case status was made, and the shopped-for judge agreed to permit the false representations of fact. This Complaint presumes the shopped-for judge was misled by Defendants rather than actively participating in misconduct of Defendants.

181. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the 2006 class settlement. If the same request had been made and granted in Charleston, only a single judge would have presided over all aspects of the settlement. But the Defendants feared that any Charleston judge might require complex case designation to actually meet the criteria of the pertinent Supreme Court order that governed complex case designation, and the Defendants feared that any Charleston judge would exert independent oversight of the 2006 class settlement. The Defendants each sought to avoid truly independent judicial oversight.

182. Other than to shop for a particular judge, there was no legitimate reason to redundantly file Charleston case 2005-CP-10-4913 as Dorchester case 2006-CP-18-1636.

183. As soon as the shopped-for judge assigned the Dorchester actions to herself, the Defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

184. No motion was filed in Charleston to approve the 2006 class settlement reached in the Charleston cases. All Defendants consented to not filing such a motion.

185. SCRCP 23 was not complied with in the pending Charleston County cases as to the 2006 class settlement reached in the Charleston class action. All Defendants consented to not complying with SCRCP 23 in Charleston County, and all Defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge in Dorchester County.

186. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases. Nor was any notice given to the Charleston County judge that the parties to the Charleston County cases sought a voluntary dismissal without prejudice of any case that alleged a class.

Conspiracy Technique Two: Using Complex Case designation Improperly.

187. In October 2006, the Defendants sought complex case designation of the Dorchester County class action cases.

188. At that time, the Charleston cases were still pending.

189. The July 26, 2006 order of the South Carolina Supreme Court, which at that time enabled complex case designation, approved of a particular form for use with motions to seek complex case designation. Among other things, that approved form required the Defendants to represent that certain facts applied to the action for which complex case status was sought. The form states, with emphasis added:

We certify that we have made a good faith effort to settle this case and ***thus far have been unable to do so***. We realize that if this case should be settled after being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before this date.

190. At that time, the Charleston cases were still pending, and a class settlement had been reached in those cases which, if approved, would resolve all cases.

191. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases.

192. By agreement among the Defendants, no notice was given to the Administrative judge for Charleston County at that time, Judge Jefferson, that when the Defendants sought a voluntary dismissal without prejudice of the pending Charleston County cases that one of those cases alleged a class of plaintiffs.

193. Defendants falsely represented to the shopped-for judge in Dorchester County that no settlement had been reached at the time the Defendants sought complex case designation. Alternatively, the Defendants disclosed to the shopped-for judge that they fraudulently sought complex case designation, under a false representation of facts, and the shopped-for judge agreed to overlook the false application. As a second alternative, Defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status. This Complaint presumes that the shopped-for judge in Dorchester County was unwittingly misled by the Defendants.

194. Complex case status was approved, despite a settlement having been reached before the first Dorchester County case had been filed.

Conspiracy Technique Three: Agreeing to remain silent about an unethical attorney's fee for class counsel.

195. The 2006 class action settlement reached in the Charleston class action cases included simultaneous negotiation of a common fund, and variable, recovery for the class and a fixed fee amount for class counsel, with the fee to class counsel be paid prior to the claims period, from the common fund recovery, and to take priority over recovery to the class member claims.

196. As set forth in the affidavit of Michael Virzi, attachment B to this complaint and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese Defendants to agree to it, and to raise no objection to it. At no time was the proposed fee disclosed to the Plaintiff, and the Plaintiff at no time consented to the Richter defendants negotiating such a settlement, or such a fee.

197. At page 13, paragraph 6B, in the typed version of the 2006 class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure set forth in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

198. The Defendants agreed among themselves that the Richter Defendants would not disclose, and the Diocese Defendants would remain silent about, the fee provision being unethical.

199. Representation of the Plaintiff by the Richter defendants in proposing an unethical fee was inadequate, and did not comply with applicable professional standards. Alternatively, that representation breached a fiduciary duty to the Plaintiff that South Carolina law imposes on any attorney who files a complaint that alleges a class action.

200. The fee provision in the class settlement assured the Diocese of getting maximum protection from the *res judicata* effect of the class action settlement within the financial limits the Diocese Defendants and the Holy See were willing to pay, in exchange for an unethical fixed fee for the Richter defendants, paid before the number of class members was known, paid

before any class member could make a claim, and paid before any class member could be or would be paid.

201. The Richter defendants sacrificed the interests of absent putative class members, such as the Plaintiff, in exchange for the fixed fee they negotiated for themselves. The Diocese Defendants agreed to maintain silence as to that class counsel fee as the price of obtaining the illicit cooperation of the Richter defendants in structuring the 2006 class settlement resolution to provide only a fraction of the relief the Richter defendants would agree to accept in a case against a Diocese other than Richter's own Diocese, the Diocese of Charleston.

Conspiracy Technique Four: Disclosing to the Class neither the Settlement terms for the Class Representatives nor the Settlement for Persons who Opted Out of the Class

202. The fourth technique to conspire against the Plaintiff was to make no disclosure to him, or other class members, of either the superior settlement terms agreed to by the Diocese Defendants with the individuals who were the class representatives, or the superior settlement terms reached with the individuals who opted out of the 2006 class settlement.

203. The Defendants have all taken the position that the agreement with those persons who opted out of the class action was part of the class action. As part of the class action, the Defendants should have informed class members of those terms as an option to the class recovery.

204. Neither the class representatives nor the opt-out abuse victims had to submit their claims to binding arbitration. Their claims were given specific dollar amounts prior to their having to relinquish their right to maintain their respective claim. Each knew precisely what their recovery would be before consenting to resolve his or her claim.

205. In addition, the terms for the opt-out abuse victims exceeded the low bar of recovery the Richter defendants agreed to set for class member recoveries, later known to have

been set low to further protect Richter's own Diocese, the Diocese of Charleston. The opt-out victims received more than was received by any comparable abuse victim who participated in the 2006 class settlement.

206. The shopped-for judge approved a fee to the Richter Defendants of \$2.5 million, which was the fee for all counsel involved in the class action complaint.

207. The Richter Defendants charged the class more than \$2.5 million, even though the shopped-for judge had approved only \$2.5 million.

208. In addition to the fee approved by the Court, the Richter defendants charged class members who participated in the 2006 class settlement an additional fee to go through the arbitration mechanism of the 2006 class settlement. The court approved fixed fee of \$2.5 million was not disclosed to participating class members, was not reviewed by the shopped-for judge as part of the pre-award fairness hearing, and was not reviewed in any post-award fairness hearing because no post-award fairness hearing to date has been held.

209. Either the shopped-for judge was unaware that a post-award fairness hearing was proper or the shopped-for judge agreed to not have any post-award fairness hearing so as to not jeopardize class counsel's fee recovery in the 2006 class settlement. This complaint presumes the shopped-for judge was unwittingly maneuvered by the Defendants into having no post-award fairness hearing.

210. No notice was given to any class member, including the Plaintiff, about the terms of the settlement for persons who opted-out of the 2006 class settlements. Had the Plaintiff been given notice of the terms available for the class, and the terms negotiated by the opt-out abuse victims, and the terms applicable to the class representatives, he could have exercised a choice to receive one or the other recoveries, attempted to influence those recoveries, or to opt out and

preserve his claim against the Diocese Defendants. The Plaintiff was abandoned by his attorneys, the Richter defendants, with the collaboration of the Diocese Defendants.

Alternatively, the fiduciary duties South Carolina law imposed on the Richter Defendants when they elected to allege a class in a complaint whose definition included the Plaintiff were breached by Defendants agreeing to define the class so as to ostensibly include the Plaintiff, but then give only notice that could not possibly reach the Plaintiff. As alleged below, the abandonment by the Plaintiff was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the Plaintiff, or was a breach of the fiduciary duty imposed by South Carolina law on the Richter Defendants and assumed by the Richter defendants towards the Plaintiff. In this cause of action those duties were consciously abandoned in cooperation with the Diocese Defendants so as to not interfere (from class counsel's perspective) with the fee class counsel obtained, and so as to not interfere (from the perspective of the Diocese Defendants) with the protection the 2006 class settlement enabled them to assert.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Limit Total Recovery for Victims and to Depress the Value of Victim Claims

211. In the "General Terms of Settlement" agreed to in the 2006 class settlement of the Charleston class action case, there are seven essential terms of the settlement agreement.

212. The first general term in the 2006 class settlement was that there would be two classes for the settlement. "Actual victims of Diocese abuse," and "Spousal &/or parent claims deriving from victims abused."

213. The second general term in the 2006 class settlement was to provide a \$12 million settlement fund without risk to the Diocese that the fund would under any circumstances be exceeded. The effect of that provision, when combined with the notice to only the in-state

victims, was to compromise the interests of sexual abuse victims. By avoiding “too many” victims, the Diocese was unable to withdraw from the settlement, but the operation of the 2006 class settlement operated to protect the Diocese Defendants by either eliminating, or depressing, any other recovery for any other potential claimant, such as the Plaintiff.

214. The third general term in the 2006 class settlement was “Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims.”

215. The fourth term in the 2006 class settlement was that the court would be asked to approve a fixed fee for class counsel “between \$950,000 & \$2.5 million.”

216. The fifth general term in the 2006 class settlement was to establish that four individuals would allocate among themselves \$460,000.

217. The sixth general term in the 2006 class settlement was that the four individuals would be paid whether or not the court approved a class settlement.

218. The seventh general term in the 2006 class settlement was that the seven terms are an offer from the Diocese and “shall be acted upon with reasonable promptness” by the four individuals who would allocate \$460,000 among them.

219. The four individuals referred to in the 2006 class settlement agreement accepted the offer from the Diocese, and allocated among themselves \$460,000. None of those individuals received more than \$160,000. It is not yet known what portion was allocated to a legal fee for class counsel.

220. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class. Their claims were resolved upon acceptance, in 2006.

221. On information and belief, those four individuals accepted that offer shortly after the June 14, 2006 mediation. At least one of them had accepted it by June 16, 2006.

222. The two classes preliminarily certified in an order signed January 19, 2007, excluded persons who have “previously had any similar claim adjudicated, resolved, or released.”

223. After June, 2006, those individuals who purportedly represented the classes in the 2006 class settlement, whose claims had been “resolved” in 2006, did not in 2007 qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006 or after class approval in 2007.

224. Nevertheless, by cooperation and agreement among the Defendants those individuals were falsely designated as class representatives in subsequent Dorchester County cases, falsely put forth in the Dorchester County cases as class representatives, and falsely approved as class representatives even though they did not meet the definition of the class.

225. In addition to not meeting the class definition, the class representatives received a different settlement than did class members, and excluded themselves from the arbitration process later articulated for the class members. In doing so they were guided by the Richter Defendants as class counsel.

226. In the handwritten version of the 2006 class settlement, when the parties reserved details for later specificity (“Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims”), those details were reserved so the Defendants could work backwards from the settlement fund, minus class counsel’s fixed fee, to enable adjustments to be made to the notice to the class and the recovery to the class members, so the recovery to class members would not be “too much.” Neither the fee for the Richter Defendants nor the finality desired by the Diocese Defendants would be

jeopardized by having “too many” sexual abuse victims making claims under the 2006 class settlement agreement.

227. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of class members, because the highest priority of the Richter Defendants, ahead of the interests of their clients or ostensible class members such as the Plaintiff, was to preserve class counsel’s fixed fee and to get payment of class counsel’s fixed fee. That is why the fee to class counsel is fixed, that is why the fixed fee to class counsel takes priority over the recoveries of the class members who participate in making claims under the 2006 class settlement agreement, and that is why class counsel insisted on being paid his fee before any class member had even been identified.

228. The highest priority of the Diocese Defendants, after their willingness to pay class counsel’s fixed fee and to collude with class counsel to remain silent as to the unethical aspects of the fee, was to either exclude persons such as Plaintiff, or to try to limit as best they could the possibility of any future recovery to persons such as Plaintiff, so that within the relatively modest limits of the class settlement fund proposed (which resolved sexual abuse claims for a fraction of the cost of similar claims by the same counsel against a Diocese other than class counsel’s own Diocese, the Diocese of Charleston), the Diocese could get the class approved then later argue a *res judicata* benefit from the amount paid for the 2006 class settlement without having to pay meaningful relief to all persons who had been sexually abused. That is among the reasons that the Diocese Defendants were prepared to remain silent about class counsel’s fee being fixed but the recovery to the class to be variable, and why all Defendants proposed to the shopped-for judge a notice designed to not inform all persons within the class definitions of the settlement.

229. The Diocese Defendants knew, or should have known, that the history of systematic administrative practices of deceit and deception about sexual abuse practiced by the Diocese Defendants exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

230. The Diocese Defendants knew that juries in Charleston County had placed a high value on the intangible nature of sexual abuse claims.

231. To try to limit future sexual abuse claims, the Diocese Defendants elected to consent to the 2006 class settlement, hoping that settlement would define a class so as to alter enable them to argue to exclude the Plaintiff by means of *res judicata*. In that manner the Diocese Defendants could achieve a possible protection for the Diocese at a fraction of the cost of a proper settlement with all sexual abuse victims. The Diocese Defendants realized they could capitalize on the close ties the Richter Defendants had to the Diocese Defendants, and the willingness of the Richter defendants to sacrifice, for a fee, the interests of this Plaintiff, and to enabled the Diocese Defendants to try to minimize recoveries to all sexual abuse victims yet still get a class settlement approved.

232. All Defendants needed to avoid meaningful court oversight of the 2006 class settlement to achieve their collective goals of limiting the interests of absent members of the class, so all Defendants agreed to “judge shop” to avoid oversight by any Charleston judge, and to obtain a unwittingly lax oversight by the shopped-for judge they desired.

233. When the Defendants realized that “too many” victims, such as the Plaintiff, might come forward, either within in the class action or later in time outside of the class action, they changed, by agreement, the notice to the class proposed to the shopped-for judge, to limit how

many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint.

234. The Defendants also agreed to misrepresent to the shopped-for judge, but to not submit in written form, a proposal to address persons, such as the Plaintiff, who were absent members of the class because they got no notice of the 2006 class settlement. The Defendants collectively represented to the shopped-for judge that relief would be offered to the Plaintiff and others, when in fact the Defendants had no intention of providing relief to the Plaintiff or others.

235. Because the Richter Defendants had no intention of providing relief to the Plaintiff or others, the Richter Defendants failed to secure in any written order those supposed benefits for class members who got no notice.

236. Because the Diocese Defendants had no intention of providing relief to the Plaintiff or others, the Diocese Defendants refused to treat the Plaintiff as each represented to the shopped-for judge the absent class members who got no notice would be treated.

237. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the Plaintiff. All Defendants took deliberate action to permit victims to be identified by the Diocese Defendants, rather than insisting on giving meaningful notice to putative class members. Doing so was also negligence by the Defendants, but this cause of action presumes that the conduct was intentional, and was done so as to exclude the possibility of this Plaintiff being able to make a claim for his childhood sexual abuse.

238. Paying class counsel his fixed fee before any notice to the class, before any class claimant had been identified, and before any claims by class members had been submitted, was

another way of limiting the recovery to the class and of suppressing the value of any later claims that could be brought against the Diocese Defendants.

239. By design of all Defendants, the class had no opportunity for input or comment on the proposed fixed fee, to be paid ahead of all class claims, as the fixed fee was approved without notice to the class and before the class members were known.

240. No Defendants disclosed that the Richter defendants were submitting fraudulent information to the shopped-for judge, or that the Diocese Defendants were colluding by agreeing to overlook the fraudulent information submitted by the Richter defendants to the shopped-for judge to support the fee class counsel claimed. No Defendant disclosed that the Diocese Defendants were colluding to make no mention of those various fraudulent time entries by the Richter defendants. Nor had any of the Defendants disclosed to the class that they had colluded so as to agree to request no post-award fairness hearing.

241. To date, no Defendant has requested a post-award fairness hearing for the 2006 class settlement.

242. Structuring the arbitration into a matrix of categories, with recovery limits in each category based on physical touch rather than the extent of psychological injury caused, was another way to limit the recovery to the class, and to lower to value of any claim for sexual abuse against the Richter Defendants' own Diocese.

243. The Defendants agreed to propose giving no notice nationwide, or even outside the immediate area of South Carolina, so as to try to eliminate abuse victims such as the Plaintiff, and then set the categories and recovery limits on the class members in the arbitration, and set the binding nature of the arbitration; all as means calculated to harm the Plaintiff by excluding him from making any recovery.

244. The Defendants all calculated that the shopped-for judge would be an unwitting participant in defeating claims by persons such as the Plaintiff, and would approve the mechanisms to do so that were sought by the colluding Defendants.

245. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter Defendants would be paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese Defendants to abandon clients such as the Plaintiff, impair the Plaintiff's ability to make his claim in the future, and to generally depress the recoveries to sexual abuse victims, to serve the interests of the Diocese defendants. Alternatively, the Richter Defendants were out maneuvered by the Diocese Defendants.

246. The Richter Defendants colluded to serve the interests of the Diocese Defendants. Alternatively, the Richter Defendants were out maneuvered by the Diocese Defendants.

247. The Richter Defendants abandoned absent class members such as the Plaintiff, by making no provision for the Plaintiff and by failing to obtain in any written order the relief the Richter Defendants claimed on the record to have achieved for absent class members such as the Plaintiff.

248. All other Defendants cooperated with that abandonment by class counsel of the Plaintiff.

249. Unless the orders which approved the class settlement mean what they say, specifically in the July 30, 2007 order at page 4, where the court appears to have accommodated absent class members such as the Plaintiff by ruling, "any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement," so in other words unless the Plaintiff is not precluded from

bringing his claims against the Diocese Defendants, the 2006 class settlement through its notice and arbitration structure caused damage to the Plaintiff. Unless the Plaintiff is not bound by the *res judicata* effect of the class action, he has been specially harmed by the conspiracy engaged in by the Defendants.

Conspiracy Technique Six: Providing False Information to the unwitting Court

250. The sixth technique used to cause special harm to the Plaintiff was that the Defendants cooperated in filing false information with the unwitting shopped-for Dorchester County judge. When false information was filed by one Defendant, all other Defendants acquiesced, despite knowing the filing was false. Even after the information was identified as false, no action was taken to protect the Plaintiff, unless the class action order means that persons who received no notice are not barred by *res judicata*.

251. As noted above, the Dorchester County class action complaint in case 2006-CP-18-1636 was falsely filed in that before it was filed the case had already been settled in Charleston as case 2005-CP-10-4913 through the 2006 class settlement. The identical case, re-filed in Dorchester County, was collusive, and was filed in Dorchester County only to avoid oversight by any Charleston judge and pursuant to the Defendants' agreed upon plan to shop for a particular Dorchester County judge.

252. As noted above, the claim that class representatives in Dorchester County met the definition of the class and could serve as adequate representatives were each false, and known by all Defendants to be false when made in any of the Dorchester County class complaints.

253. Patently false information about the procedural history of the class action was included by the Richter defendants in the Motion to Certify Classes and for Preliminary Approval of Class Settlement, and acquiesced in by other Defendants.

254. Patently false information has also been given to the Charleston County Court and to the public by the Diocese Defendants.

255. All Defendants cooperated in providing incomplete information to the Court in Charleston County so as to facilitate dismissal without prejudice of the Charleston class action.

256. By agreement of all Defendants, SCRCF 23 was not complied with in dismissing the Charleston class action. Plaintiff was given no notice of the dismissal, or about the Charleston class settlement, or about the settlement provided those who opted out of the class settlement. Nor was notice of the Charleston county class action case dismissal given to any other ostensible class member.

257. False information was filed in Dorchester County about the class representatives and their adequacy as class representatives. All Defendants acquiesced in that false information to the court.

258. False information was filed in Dorchester County in support of the fixed fee sought by the Richter defendants. The Diocese Defendants made no mention of the false information filed in support of the fixed fee, because the fixed fee for the Richter defendants, and the modest variable relief for the class, was the *quid pro quo* for the Diocese Defendants getting the benefit they have claimed entitles the Diocese Defendants to *res judicata* protection of the class settlement, and was the means by which the Defendants conspired to try to eliminate claims by persons such as the Plaintiff from making any claim against the Diocese.

259. Among the false information filed to support the fixed fee for the Richter defendants was false information about procedural history, false mathematical calculations, false representations to mask the cooperation among Defendants, false time records by the Richter defendants (including individual lawyers billing in a single day compilations of 30, 40, 51.5,

60, 80, and even 92 hours; and billings for multiple “February 30” days), false statements of costs incurred by class counsel, false statements of the recovery to the class, and false information about the counsel for persons who had opted out of the class settlement.

260. The Diocese Defendants agreed to remain silent as to these false statements, except where they overtly participated in them.

261. If the *res judicata* effect of the class action bars the Plaintiff from making claims against the Diocese Defendants, or the Plaintiff is barred from those claims by the charitable immunity defense (otherwise waived as to persons in the class definition), or the Plaintiff is barred from those claims by the statute of limitations (waived as to persons in the class definition), or the Plaintiff’s claims against the Diocese are barred for any other reason, then duties to him in the class action were breached by the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy of the Defendants.

Conspiracy Technique Seven: Obtaining no written order for absent class members who got no notice.

262. The seventh technique used in the conspiracy among Defendants to cause special harm to the Plaintiff was to include the Plaintiff in the class definition, claim on the record to have protected the Plaintiff, but then fail to follow up with seek a written order to secure representations made on the record to the shopped-for judge about relief supposedly available to absent members of the class members who got no notice. This cause of action assumes those failures by the Richter defendants were intentional, not merely professionally negligent, to protect the Diocese Defendants from future claims in exchange for class counsel’s fixed fee.

263. By agreement of all defendants, the class definition did not exclude the Plaintiff.

264. Unless the order approving the class settlement means what it says and this Plaintiff is not bound by the *res judicata* effect of the class settlement, the Defendants have conspired so as to cause special damage to the Plaintiff.

265. The Richter defendants abandoned the Plaintiff as a putative member of the class in agreeing to change the notice requested from the shopped-for judge to provide no notice to the Plaintiff. Either the Plaintiff was a client of the Richter Defendants, or the law of South Carolina imposed on the Richter defendants a fiduciary duty to the Plaintiff when they chose to plead a class action which included him, and the Richter defendants assumed a duty to the Plaintiff when it negotiated a class settlement which included the Plaintiff in the class definition negotiated with the Diocese Defendants.

266. The Richter Defendants originally proposed notice that might reach the Plaintiff.

267. All Defendants then agreed among themselves to modify that proposed notice and conspired together to submit for court approval by the shopped-for judge a proposed notice that was calculated to omit absent members of the class such as the Plaintiff, and all persons situated similarly to the Plaintiff.

268. Class counsel Defendant Haller, on behalf of the Richter Defendants, has admitted that all persons, such as the Plaintiff, who resided outside the zone of the limited notice given in the class action did not receive Due Process in the class action. Referring to those persons such as the Plaintiff for whom no notice was given, class counsel Haller stated, “they never got their due process rights of notice and an opportunity to be heard.”

269. Class counsel Haller was among the Richter Defendants who were obligated in the class action to protect the due process rights of the Plaintiff, among others.

270. Class counsel Haller's remarks acknowledge and admit that class counsel failed to protect the Due Process rights of the Plaintiff, among others, a breach of the standard of care.

271. It was the obligation of the Richter Defendants to assure that class members, such as the Plaintiff, received Due Process in the class action.

272. The Diocese has contended, and continues to contend, that the 2006 class settlement agreement bars the Plaintiff from being able to make any claim due to the *res judicata* effect of the class action, without having to compensate him for Hopwood's sexual abuse.

273. The Diocese has made the same contention as to other absent members of the class.

274. The Diocese defendants conspired with the Richter defendants in failing to submit for court approval by the shopped-for judge any order which provided relief or exclusion for absent members of the class who got no notice. This cause of action presumes that failure was calculated to prevent the Plaintiff, and all persons situated similarly to him, from having any recovery against the Diocese Defendants. Other causes of action presume that class counsel was simply professionally negligent, and was out-maneuvered by the Diocese Defendants.

275. No effort was made to protect absent members of the class, such as the Plaintiff, either by how the class was defined, by the notice given to the class, or by any order which embodied how persons who got no notice would be treated. Notice was known to be insufficient for the persons within the class definition, and the Defendants all claimed on the record to the shopped-for judge that relief would be provided, for the Plaintiff and others, who got no notice. Those representations were false, and were embodied in no written order.

276. If the Plaintiff is are barred from making claims against the Diocese by the *res judicata* effect of the class action, or by charitable immunity (which was waived as to those within the class definition), or by the statute of limitations (which was waived as to those

within the class definition), or for any other reasons, then duties to the Plaintiff in the class action were breached by the civil conspiracy among the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy among the Defendants.

277. As an overt act taken in furtherance of the common plan among the Defendants to reduce the number of class claimants, the parties failed to embody in any order in the class action any protections for the Plaintiff, and others similarly situated. That failure has operated to eliminate claims by the Plaintiff, among others, by enabling the argument that all absent class members were barred by *res judicata*. The conduct by all Defendants demonstrate that the representation of the class by class counsel was inadequate, but this cause of action presumes not just that class counsel was professionally negligent but consciously abandoned the Plaintiff so as to not jeopardize class counsel's fixed fee and so as to protect his own Diocese from the greater relief that even class counsel himself insisted on, in another case, from a Diocese other than his own.

278. The defendants conspired specifically to defeat the interests of persons such as the Plaintiff, to cause him special harm by giving him not even a chance at notice of the class action, or the ability to opt out, or the ability to protect his claims from the prohibitions of the class action.

279. The injury to the Plaintiff from the conspiracy engaged in by the Defendants harmed the Plaintiff in a manner different from other causes of action. The Plaintiff was improperly excluded from the class action, but unique to the conspiracy cause of action are the damages from the Plaintiff being unable to influence the corrupt course of the class action, and its corrupt features, because he was unable to participate in the class action or opt out of the class action. Plaintiff was deprived of the opportunity to influence the class suit, and to try to assist

himself and other abuse victims from not being limited to the corrupted procedures and manipulations of the class suit. Among other things, the Plaintiff was unable to participate to influence the modest recoveries permitted in the class action, including the miniscule recovery allocated for parent and spousal claims because they were not brought for the class using the common law “loss of services” cause of action. The conduct of the Defendants was, by agreement, designed to limit recoveries of subsequent sexual abuse victims making claims against the Diocese Defendants.

280. As a proximate cause of the actions of the Defendants as alleged above, the Plaintiff was damaged, and is entitled to actual and punitive damages from the Defendants as a result.

**For a Fourth Cause of Action:
Professional Negligence by the Richter Defendants**

281. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated. This cause of action presumes both that the Plaintiff is precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making his claims against the Diocese, and that the Richter defendants did not intentionally cooperate with the Diocese Defendants to exclude the Plaintiff but were merely professionally negligent in excluding the Plaintiff from relief.

282. The Richter Defendants claimed no prior experience in handling a class action.

283. The Richter Defendants had no prior experience in handling a class action.

284. The Richter Defendants were unaware, and have affirmatively denied, that South Carolina law imposes fiduciary duties to absent members of a class on any lawyer who files a complaint which alleges a class. South Carolina law imposes such a duty.

285. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCP 10(c), is a copy of an affidavit of Michael Virzi specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants. The original of this affidavit has been filed with a court in another, similar, case.

286. As reflected in the 2006 Charleston class action settlement that is Attachment A to this complaint, the proposed group whose claims were settled on June 14, 2006, in the Charleston class action mediation was a class specified as “actual victims of Diocese abuse.”

287. Plaintiff was a putative member of that class as it was defined in the proposed settlement.

288. When the 2006 class settlement agreement was formally typed and formally approved by the Richter defendants, the Vatican, and the Diocese Defendants, the illicit agreement by Defendants on “judge shopping” had been accomplished, and the 2006 class settlement arrived at in the mediation of Charleston cases was now claimed to be a proposed settlement of all prior cases, both the Charleston cases listed in the 2006 class settlement and the Dorchester County class actions.

289. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the Plaintiff.

290. The Richter defendants assumed a duty to the Plaintiff in each of the filings in (a) the Charleston case which alleged a class action, (b) in that June 14, 2006 class settlement agreement of the Charleston case which alleged a class action, and (c) in its October 6, 2006 Dorchester County filings alleging a class action defined so as to include the Plaintiff.

291. The October 2006 Motion by class counsel was styled, “Motion to Certify Classes and For Preliminary Approval of Class Settlement.” That motion proposed nationwide notice of the class settlement.

292. The January, 2007 Motion by class counsel was also styled, “Motion to Certify Classes and For Preliminary Approval of Class Settlement.” That revised motion removed the proposed nationwide notice of the class settlement that had been made in the motion of October, 2006.

293. On the record before the shopped-for judge in Dorchester County, at a hearing held July 13, 2007, the Diocese Defendants agreed that relief would be provided for absent members of the class who got no notice of the class settlement. Those representations were false, but this cause of action presumes the Richter Defendants were not intentionally falsifying that representation but were professionally negligent in failing to seek a written order to secure the representations made on the record.

294. On January 19, 2007, the proposed class definitions that included persons such as the Plaintiff, who lived outside of South Carolina, with notice proposed to be given only in a geographically limited area, none of which would be given in the state in which the Plaintiff resided, was approved without objection from the Diocese Defendants.

295. In their Charleston and Dorchester County class action cases against the Diocese Defendants, the Richter defendants assumed the obligation of representing the interests of absent putative class members including the Plaintiff, and by operation of South Carolina law fiduciary obligations to the Plaintiff were imposed on the Richter Defendants. The Richter Defendants breached those obligations to the Plaintiff. In abandoning the Plaintiff, the Richter defendants performed in a professionally negligent manner the duty they had assumed, and the

duties which South Carolina law imposed, to absent putative class members such as the Plaintiff.

296. The Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiff. Among other things, when they abandoned the Plaintiff and acted so as to harm his interest, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the Plaintiff reasonably informed, failed to provide him with information with respect to obtaining his informed consent, failed to consult with him about the means for accomplishing his objectives, represented him without his consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal, as set forth in the affidavit of Michael Virzi.

297. No provision of any type, at any point, was made in the orders of the shopped-for judge overseeing the class action to protect absent putative class members who in 2006 had no recollection of their childhood sexual abuse.

298. The Richter Defendants abandoned their absent putative class member clients, such as the Plaintiff, by failing to secure in a written order the provisions which supposedly gave the Plaintiff mild protection in the form of the modest recovery of the class action.

299. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the Court, by failing to secure in any written order protection for the Plaintiff's interest, by failing to give notice reasonably calculated to reach the Plaintiff.

300. The Plaintiff was abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action or after the class action and jeopardize

the fixed fee the Richter Defendants had negotiated for themselves, at the expense of the class members, that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun.

301. Having “too many” claimants also was believed to not be in the interest of the Diocese Defendants, and because of class counsel’s conflicts of interest, which were not disclosed to the class, the Richter defendants were actually acting to protect the interests of the Diocese Defendants more than the interests of putative class members such as the Plaintiff.

302. As a result of his attorneys, the Richter defendants, abandoning the Plaintiff, he had no opportunity to participate in the class action, or to opt-out of the class and pursue either the more favorable terms available to those other persons who opted out or pursue his claim independently. The acts and omissions of the Richter defendants have caused damage to the Plaintiff, assuming the Plaintiff is prevented from his claims against the Diocese for any reason. A barrier was created to the Plaintiff’s claims that would not have existed but for the negligent conduct of the Richter defendants.

303. Plaintiff is entitled to actual and punitive damages as a result of the professionally negligent representation they received from the Richter defendants.

**For a Fifth Cause of Action:
Breach of Fiduciary Duty by the Richter Defendants**

304. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated. This cause of action presumes both that the Plaintiff is precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making his claims against the Diocese, and the Richter Defendants did not

intentionally exclude the Plaintiff but were merely professionally negligent in excluding the Plaintiff from having a preserved claim.

305. The Richter defendants agreed to define the classes in the class actions so as to have no geographical limit on the classes.

306. All Defendants agreed on how the classes were defined.

307. In choosing to define the classes so as to include the Plaintiff, the Richter defendants each assumed, and South Carolina law imposed, fiduciary obligations from the Richter Defendants to the Plaintiff, who was an absent putative member of one of the classes they defined.

308. As an alternative to the Fourth Cause of action for professional negligence, the Richter defendants breached the fiduciary duty each assumed as to the Plaintiff as an absent member of their respective putative class.

309. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the Plaintiff by:

- a. failing to give him notice of the 2006 class settlement,
- b. failing to secure for him even the modest relief of the class action,
- c. failing to preserve his ability to make his claim independent of the modest relief obtained by the Richter defendants for sexual abuse victims, and
- d. agreeing to a structure which worked to significantly depress the value of claims against the Diocese Defendants, to which class counsel had extensive loyalties and entanglements which were not disclosed to the class.

310. The state court judge overseeing the class action was shopped-for by all Defendants.

311. The state court judge was not asked to preserve in any written order any rights for absent members of the class who got no notice of the 2006 class settlement.

312. The Richter Defendants assumed the duty to protect the Plaintiff but then failed to do so. The Richter defendants were negligent in failing to do so, and were out maneuvered by the Diocese Defendants, who had made representations on the record but then succeeded in keeping those representations from being embodied in any court order.

313. Once the Richter Defendants were paid their court-approved fee, they were ineffectual in securing the rights of the Plaintiff to preserve his ability to make a claim.

314. The Richter defendants in its 2005 Charleston class action filing, and in the 2006 class settlement agreement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the Plaintiff, and those duties were imposed by South Carolina law upon the Richter Defendants.

315. On January 19, 2007, the class definitions that included the Plaintiff was approved without objection from the Diocese defendants.

316. The Richter defendants contend that they had no obligations to absent class members, indicating conclusively their lack of understanding of the obligations undertaken by class counsel and imposed on class counsel by South Carolina law.

317. The Richter defendants each breached their fiduciary duties to the Plaintiff, and as a result, the Plaintiff has been refused any compensation by the Diocese Defendants, who have used the 2006 class settlement as a shield. The Richter defendants were negligent in failing to protect the Plaintiff's interest.

318. Having "too many" claimants also was believed by the Richter defendants to not be in the interest of the Diocese Defendants, and to protect their own interest in their fixed fee the

Richter defendants had to also act to protect the interests of the Diocese more than the interests of the Plaintiff. The Richter defendants have close and longstanding ties and involvement with the Diocese Defendants. Those involvements were never disclosed to the class, or to the Plaintiff. To promote the interests of the Diocese Defendants in trying to later enable the Diocese defendants to argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote ahead of the interests of the Plaintiff their own interest in their fixed fee, the Richter defendants failed to secure in any written orders any protections for absent members of the class such as the Plaintiff, even though the class compensation was among the lowest-known compensation for sexual abuse victims.

319. As a result of the Richter defendants abandoning the interests of the Plaintiff, and breaching the fiduciary duties the Richter defendants owed to him, the Plaintiff has been damaged by having his claims against the Diocese Defendants interfered with, and a barrier created to those claims that would not have existed but for the negligent conduct of the Richter Defendants.

320. Plaintiff is entitled to actual and punitive damages as a result of the fiduciary duties to them that were breached by the Richter defendants.

**For a Sixth Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty by Diocese Defendants**

321. Allegations above are incorporated into this cause of action as if fully stated. This cause of action presumes the Plaintiff is unable, for any reason, to make his claim for childhood sexual abuse against the Diocese.

322. The Diocese Defendants aided and abetted the breach of fiduciary duty by the Richter defendants.

323. In pleading a class action the Richter defendants assumed, and South Carolina law imposed, a fiduciary duty to the Plaintiff of which the Diocese was aware.

324. In the conduct to “shop for” the Dorchester County judge, to define the class, and to limit notice, as alleged above, the Diocese Defendants participated with the Richter defendants in limiting the ability of the Plaintiff to make his claim against the Diocese for childhood sexual abuse.

325. The Diocese Defendants joined with the Richter defendants in making representations on the record to the shopped-for judge that supposedly protected the interest of the Plaintiff into either his being able to bring his claim at a later time or in being able to participate, at minimum, in the intentionally depressed recovery available to class members in the 2006 class settlement. The Defendants then failed to secure those representations in any written order, enabling the Diocese Defendants to deny the representations, and act as if those representations had never been made.

326. The Diocese Defendants knowingly participated in the breach of the fiduciary duty owed to the Plaintiff by the Richter defendants.

327. The Plaintiff has been damaged by the aiding and abetting by the Diocese Defendants and is entitled to actual and punitive damages as a result.

**For a Seventh Cause of Action
Unfair and Deceptive Trade Practices by the Richter Defendants**

328. Allegations of paragraphs above are incorporated into this cause of action as if fully stated. This cause of action presumes the Plaintiff is precluded, for any reason, from maintaining his claims against the Diocese Defendants.

329. The Richter Defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law.

330. In practicing law in Charleston County the Richter Defendants each engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Richter Defendants advertised and offered for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina. In electing to bring a class action complaint for sexual abuse victims of the agents and employees of the Diocese Defendants, the Richter Defendants specifically offered a service to the people of South Carolina, and purported to alter the legal rights of the public as to that sexual abuse, including the Plaintiff's rights.

331. In making that invitation, the Richter Defendants assumed the duty to ensure that its offer of services did not disadvantage the Plaintiff, and assumed the duty that its services would be free of unfair and deceptive trade practices.

332. In 2006 the Richter Defendants entered into a class settlement agreement with the Diocese for victims of sexual abuse by agents and employees of the Diocese Defendants. The 2006 class settlement was ostensibly to address the known history of priests and other employees who sexually abused minors, but as effectuated by the Richter Defendants, the primary purpose of that class action was to enrich the Richter Defendants at the expense of sexual abuse victims and, through unfair and deceptive trade practices, to protect not his clients but the Diocese Defendants from future claims for sexual abuse by absent class members.

333. Unfair and deceptive trade practices were pursued in furtherance of the class action, as alleged above, including false representations to the court, violations of professional standards, judge-shopping, collusive conduct, abuse of court rules and procedures, and actions which violate professional standards, as pleaded with specificity above.

334. The public interest was affected by the 2006 class settlement because the offering was made to the public, the advertising was made to the public, members of the public were invited

to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved by the court predicated on false representations made to the unwitting Court about how the person such as the Plaintiff who got no notice would be accommodated.

335. Among the false statements made at the time by the Defendants was Bishop Baker's public statement that the proposed class resolution was "for those individuals who were abused within the Diocese of Charleston by clergy or laity over a number of decades." At the time that claim was made, all Defendants were aware that the 2006 class settlement proposed relief about which only persons in and around South Carolina were to be informed, and that no provision had been made for persons, such as the Plaintiff, who resided out of state. In its public statements, acquiesced in by the Richter defendants, the Diocese Defendants overtly misrepresented the reach of the proposed 2006 class settlement. No party disclosed that in fact the 2006 class settlement agreement was designed, as its first priority, to obtain a fee for class counsel, with all relief to clients secondary to that fee, and that the 2006 class settlement agreement was designed so as to omit and preclude relief to many persons who had been sexually abused, and was designed to provide among the worst recoveries for sexual abuse victims in any case nationwide, and was designed by class counsel to protect the Diocese Defendants from future claims.

336. A circuit court judge to oversee and approve the class settlement was "shopped for" and selected by the Richter Defendants, with collaboration of the Diocese defendants. The Richter defendants did not want any Charleston County judge to preside over the 2006 class settlement agreement, out of concern that the judge might be fully independent.

337. The Diocese Defendants were negligent in assessing the damage done by sexual abuse by their employees and the number of persons affected by that abuse. Alternatively, the Diocese Defendants knew the number of victims would far exceed the numbers it reported to the court as its expectations for number of victims, and consciously misrepresented that number to the court and to the public.

338. The Diocese Defendants were aware that the Richter Defendants were willing to recover only modest relief for victims in exchange for a substantial fixed fee that took priority over the recoveries to the victims.

339. The Richter Defendants had extensive and life-long ties to the Diocese Defendants, and was known to the Diocese Defendants to be willing to compromise the interests of the absent class members, including the Plaintiff, in exchange for a fixed fee payment.

340. With the cooperation of the Diocese Defendants, the Richter Defendants conceived of a plan to commit a fraud on the Court and the public by representing to the Court and the public, falsely, a rationale upon which the Court could approve a class settlement defined with no geographic limits, while giving only geographically limited notice to the class and in affirmatively misrepresenting to the Court the relief which would be available to persons such as the Plaintiff, who got no notice. As long as their fee was paid, and paid first, before any class member had received notice and before any class member had made a claim, the Richter Defendants were expected to by the Diocese defendants, and were in fact willing, to abandon the interests of absent class members and instead to accommodate the interest of the Diocese Defendants at the expense of the absent members of the class the Richter Defendants represented.

341. All Defendants collaborated to submit false information to the unwitting shopped-for Dorchester County trial court, and no Defendant objected when any of the false information was submitted by any of them or by their experts. Part of the collaborative agreement among the Defendants was to remain silent while false information was submitted.

342. To gain court approval of the class settlement from the shopped-for judge without disclosing his actual intention to compromise the interest of the absent class members such as the Plaintiff, the Richter Defendants made overtly false representations of fact to the court. Among those false representations was that there was an “understanding” among all Defendants in this action “as to what would happen” to any person within the class definition who “shows up” (as put by the Diocese Defendants) outside of the class notice procedure. That “understanding” communicated to the Court was never placed in any written order by the shopped-for judge and no such “understanding” exists that the Diocese Defendants agree to. Nor is there any way to enforce the claimed “understanding” because it is not embodied in any order.

343. It was falsely represented to the shopped-for judge overseeing the 2006 class settlement that if “someone pops back up who should have gotten notice who didn’t get notice,” the Diocese represented, with the Richter defendants:

I think we [the Diocese and class counsel] have an understanding as to what would happen to those particular folks, which would really be our problem, and I think that what we’ve discussed allows us to proceed with the agreement we’ve signed on January 12th [2007]. And then if that person shows up then we [the Diocese] would have to deal with that.

344. That representation by the Diocese Defendants to the Court appears on page 3 of a transcript dated July 13, 2007. The representation was either false when made, and known to have been false when made, or it was at that time true but is contained in no written orders of

the court, so is unenforceable. The Richter defendants, who were acting in the interests of the Diocese Defendants rather than the Plaintiff, intended the representation to be unenforceable or would have secured the representation by an order. The representation was made in a hearing in the class action proceedings for which no notice had been given to any of the other parties who were known by their prior appearances to be interested in the class proceeding. Only in 2009 was the transcript disclosed in the course of other litigation over the collusive class action proceedings.

345. In that same transcript of July 13, 2007, the Diocese Defendants represented to the Court, falsely, that there were only five sexual abuse victims they had not located. That representation was false, and was known to have been false when made. It was acquiesced in by the Richter Defendants. In fact, the Richter Defendants were aware, and had alleged, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves.

346. To get approval that protected the Diocese from, among other things, the Plaintiff's sexual abuse claim, the Defendants falsely represented to the Court, on page 14 of the same transcript, that when an absent class member did not get notice, and later identified himself or herself, "we've got to find anybody else who has kind of, lack of a better word, comes out of the woodwork."

347. The Richter defendants, on pages 16 - 17 of that same transcript, summarized to the shopped-for judge, falsely, that the supposed position of the Diocese as "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 Defendants, but were entirely false. When the Plaintiff communicated with the Diocese, the Plaintiff's request for compensation was rejected, as the Richter Defendants knew or should have known in 2007 would occur after the class action was concluded, which is among the reasons why the Richter Defendants submitted to the shopped-for judge who oversaw the 2006 class settlement no written orders to embody the "understanding."

348. Nor did the Richter Defendants disclose that the representations were false when the shopped-for judge observed, as to the Diocese, 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."

349. The Richter Defendants intended on July 13, 2007, to create the false impression with the Court that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend relief to that victim. In making the false representation that they made no effort to embody in any court order, the Richter Defendants were operating not in the interest of the Plaintiff and other absent members of the class, but in the interest of the Diocese Defendants. The Richter Defendants intended that the shopped-for judge would rely on the statement, and the court did rely on the statement. However, the court did not embody the understanding in its order, and the Diocese Defendants refuse to comply with the "understanding." That representation by the Richter defendants was false when made, and was known to have been false when made.

350. As to this Plaintiff, the Defendants concealed until 2012 the falsity of the representations to the shopped-for judge. The true position of the Diocese has been, starting in 2009, to deprive other sexual abuse victims of any relief, using the class action suit as the

rationale for doing so. That fraudulent concealment by the Diocese became known to the Plaintiff only in 2012.

351. The shopped-for judge who oversaw the 2006 class action settlement relied on the statements by the Richter Defendants, and silence by the Diocese, to extend in the court's order of July 30, 2007 approving the class settlement, at page four, this statement:

The Diocese has further stated that it understands that **any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement.** Further the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

Emphasis added. While one might expect that the order's language would reflect the conduct of the Diocese Defendants or what a court would enforce, in fact the shopped-for judge reflected only what the Diocese has "stated," which has proven to date to be an unenforceable order, as the Richter Defendants intended in 2007.

352. Along with the Richter Defendants, the Diocese Defendants intended that the shopped-for judge overseeing the 2006 class settlement would rely on their collective statements, silences, and conduct to form the impression recorded in the court's 2007 order, even though the impression was false and neither the Richter Defendants nor the Diocese Defendants had any intention, in 2007 or since, of honoring the assurances given to the shopped-for judge overseeing the 2006 class settlement.

353. When this Plaintiff in 2012 informed the Diocese of Hopwood's abuse, the Diocese (as the Richter defendants intended in 2007), refused to honor the assurances given to the trial court by the Richter Defendants, and which the Court noted in its July 30, 2007 order at page 4 without actually ordering. Instead, the Diocese asserted the defenses it had waived for class

members, claimed as to this Plaintiff the *res judicata* effect of the class action which the Diocese Defendants had disclaimed, and acted exactly contrary to the assurances to the Court by the Richter Defendants, and contrary to the public statement by then Bishop Robert Baker in January, 2007, that the Diocese intended a just resolution for every person who had been abused within the Diocese of Charleston.

354. The false statements by the Richter Defendants, and the irregular conduct in the course of the class action by the Richter Defendants, and the Richter Defendants acting in the interest of the Diocese Defendants rather than in the interests of the absent members of the class, constitute unfair and deceptive trade practices which have damaged the Plaintiff.

355. The Richter Defendants made their false representations to the shopped-for judge overseeing the 2006 class settlement for the purpose of gaining that unwitting court's approval of a class settlement with only limited notice to the class and with no protections for absent members of the class. When the 2007 order mentioned the "understanding" but appeared not to have ordered it, the Richter Defendants did nothing to seek modification of the order.

356. The Richter Defendants committed fraud on the Court, on the public, on this Plaintiff, and on all sexual abuse victims of the Diocese Defendants who were born before August 30, 1980, the definition used in the 2006 class settlement, who were given no notice of the class action, and whose relief was limited by the class action. In doing so the Richter Defendants also engaged in unfair and deceptive acts and practices in violation of South Carolina law, which have disadvantaged the Plaintiff. In doing so the Richter Defendants were acting in the interests of the Diocese Defendants, not in the interests of the absent Plaintiff whose interests they purported to represent.

357. All of the conduct by the Richter Defendants, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the 2007 representations made to the Court by the Richter Defendants and acquiesced in by the Diocese Defendants. Multiple sexual abuse victims born prior to August 30, 1980, each of whom received no notice of the class action, have since been refused relief by the Diocese when they made a claim for relief.

358. The disregard by the Richter Defendants for absent members of the class, the misconduct throughout the class action, and the disingenuous representations by the Richter Defendants to the unwitting judge who had been hand-picked by the Defendants to oversee the 2006 class settlement agreement are unfair and deceptive acts or practices that affected the relief awarded in the class action, and affected the Plaintiff by disabling his claim against the Diocese for his childhood sexual abuse.

359. The conduct by the Richter defendants is part of an intentional effort to mislead the Court, and to act against the interests of the absent members of the class and instead to act in the interest of the Diocese Defendants, with whom the Richter Defendants are entwined.

360. The Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Richter Defendants. Specifically, the Plaintiff was unable to obtain the relief promised by the Richter Defendants, was unable to preserve his claim after he was abandoned by the Richter Defendants, and due to the misconduct of the Richter Defendants, to date has been unable to maintain his claim against the Diocese. As a result the Plaintiff is entitled to recover actual damages, trebled as provided by law, for the unfair and deceptive trade practices of the Richter Defendants, with costs and disbursements and attorneys fees as provided by statute.

361. The secretive and disingenuous conduct by the Richter Defendants, and the misconduct displayed during the class action, is offensive to public policy, is immoral, unethical, and oppressive. The Richter Defendants made a calculated business decision to advance ahead of their class member clients' interests, and ahead of the interests of the absent members of the class, first the Richter Defendants' own financial interests, then the interests of the Diocese Defendants.

362. The Richter Defendants collaborated with the Diocese Defendants to design a compensation program for sexual abuse victims which specifically, and intentionally, excluded many victims, reduced the financial recovery for victims, depressed the financial recovery for other victims, and cut off the ability of absent members of the class to make claims. Each of those goals by the Richter Defendants was illicit, and was an unfair and deceptive trade practice for an action which purported to bring a benefit to a class. For those reasons the Richter Defendants collaborated with the Diocese Defendants to "shop" for an unwitting hand-picked Dorchester County judge to oversee the 2006 class settlement so as to avoid independent scrutiny of the 2006 class settlement that a Charleston County judge would impose. The Richter Defendants engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the Plaintiff.

363. The Richter Defendants took no appeal from the July 30, 2007 order, and sought no modification of that order, or for any subsequent order of the unwitting shopped-for judge who oversaw the 2006 class settlement.

364. The Richter Defendants are bound by the July 30, 2007 order in the class action, and by the representations made to the court to obtain that order. Those terms abandon the absent class members such as the Plaintiff.

365. As intended by the Richter Defendants in 2007 as the *quid pro quo* for their fee, when the Diocese was contacted in 2012 by the Plaintiff, who had received no notice of the class action, the Diocese refused him relief and asserted against victims who did not get notice, exactly as the Richter defendants had assured the shopped-for judge they would not, the *res judicata* effect of the class settlement, as well as the defenses it had waived on the record for persons within the class definition. As was known by the Richter Defendants in 2007 both at the time of the July 13, 2007 hearing, and subsequently, in a hearing held August 9, 2007 (for which other persons who had appeared in the class action also did not receive notice) when starting at p. 57 of the transcript the Diocese asked for clarification, the Diocese Defendants had no intention of including other victims who “for whatever reason” received no notice, and would undertake no relief for victims the Diocese Defendants were not compelled to undertake.

366. The Richter Defendants intended the collusive class action to terminate liability by the Diocese for abuse victims, to limit overall compensation paid to abuse victims, and to do so at a fraction of the recovery a truly adversarial counsel might have demanded. The Richter Defendants acted in the interest of themselves and the Diocese, ahead of its ostensible clients, such as the Plaintiff.

367. The unfair and deceptive acts and practices of the Richter Defendants have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese Defendants have repeatedly refused

relief (as intended by the Richter Defendants) for multiple persons who have come forward having not gotten notice of the collusive 2006 class settlement. The practices engaged in by the Richter Defendants, violating professional standards and court rules, violating legal ethics, making misrepresentations to the court, and (in collaboration with the Diocese Defendants) making misrepresentations to the public were all done to advance the Richter Defendants' own interests.

368. The Richter Defendants calculated that their personal and professional connections to the unwitting shopped-for judge would permit false and fraudulent practices before the shopped-for judge without eliciting inquiry. In that regard, the Richter Defendants were correct, as even after evidence of the false practices were laid before the shopped-for judge no inquiry was made, and no post-award fairness hearing was held.

369. The Plaintiff is neither politically connected nor a personal friend of any powerful person, and has no choice but to rely on the theoretical interest that a judge is supposed to have as to misrepresentations to the court, and on the prohibitions of the Unfair Trade Practices Act.

370. The false and deceptive practices of the Richter Defendants will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The corrupt practices of the Richter Defendants in compromising the interests of absent members of the class they purported to represent has been actually repeated, as well as has the potential for repetition, in the form of the sexual abuse victims who got no notice of the 2006 class settlement and who have requested, and been denied, relief, as the Richter Defendants intended and enabled the Diocese Defendants to do.

371. The Richter Defendants should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating,

altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to the conduct of the Charleston or Dorchester County cases in which any of the Diocese Defendants were supposedly adverse parties.

372. The 2006 collusive class settlement was achieved without a single motion having been argued, and without a single court ruling on any aspect of any of the Charleston cases then pending at the time of the 2006 class settlement. The parties had successfully sought to have the Charleston court continue each hearing the Charleston court proposed to engage on the supposed issues of the case. That settlement was collusive, and placed the interests of the Richter Defendants ahead of the interests of those who became class members and ahead of absent members of the class.

373. The Richter Defendants violated the UTPA willfully, in that each of them knew or should have known that their conduct was a violation of S.C. Code § 39-5-20, and they purported to obtain relief for the Plaintiff that in fact they did not obtain in any written order.

374. The Plaintiff has suffered an ascertainable loss of money as a result of the unfair or deceptive methods by the Richter Defendants. The Plaintiff ought to have been entitled to either (a) the relief the Richter defendants maintained, falsely, to the court in 2007 would be available to the Plaintiff, or (b) should be able to maintain his own action against the Diocese Defendants. The Plaintiff's relief should not be restricted to the low maximum amount the Richter Defendants used to protect the Diocese. Conduct by the Richter Defendants was willful, and each of the Richter Defendants knew, or should have known, that his conduct was unfair and deceptive.

375. The plaintiff is entitled to treble damages as a result of the conduct of the Richter Defendants in the conduct of the 2006 class settlement which affected the Plaintiff's interests, as well as to actual and punitive damages, costs and attorneys fees, and such other and further relief as the court deems just and proper.

Demand for Jury Trial

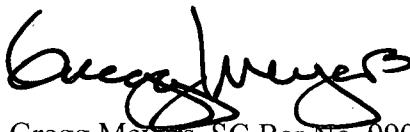
376. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

- 377. Actual damages to be awarded to the Plaintiff by the finder of fact against the various defendants, trebled as authorized by law for the appropriate cause of action,
- 378. Costs and disbursements of this action,
- 379. Attorneys fees as authorized by law,
- 380. Punitive damages as authorized by law, and for
- 381. Injunctive relief to enjoin the Diocese Defendants from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice "for whatever reason," and for
- 382. Such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

John Doe #66)

v.)

The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-2053)

John Doe #66A .)

v.)

The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-3293)

John Doe #53)

v.)

The bishop of Charleston, a Corporation Sole, and)
The Bishop of the Diocese of Charleston, in his)
official capacity)
CASE NO.: 2005-CP-10-4913)IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

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

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

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

By: _____
(Print Name)

Its: _____

Dated: _____

By: _____
(Print Name)

Its: _____

Dated: _____

EXHIBIT " 4 "

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to create Settlement Class, subject to Court approval of:

Ⓐ ACTUAL VICTIMS OF DOMESTIC ABUSE

Ⓑ SPOUSAL &/or Parent claims deriving from victims abused

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

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

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

Attachment A - 000002

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

5. Mr. T Redacted * shall be paid _____

Mr. S Redacted * shall be paid _____

Mr. N Redacted * shall be paid _____

Mr. M Redacted * shall be paid _____

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

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

~~* Class of actions & proceeds~~

Attachment - 000003

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

James Deshy, Attorney

ON BEHALF OF DEFENDANTS

Attorney in and under authority of the
Successor of Christman

June 14, 2006

Attachment A - 000004

AFFIDAVIT

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 the plaintiff, Jane Doe 12, (hereinafter “Plaintiff”) to support her Complaint against defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, (hereinafter “Defendants”) for professional negligence.

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

- A. I am a lawyer licensed to practice law in South Carolina, and my practice focuses exclusively on matters of legal malpractice and legal ethics;
- B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar's Professional Responsibility and Ethics Advisory Committees, and I served a three-year term as Chair of the Ethics Advisory Committee;
- C. I have authored three published articles, numerous Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice;
- D. I am a frequent CLE speaker and law school guest lecturer on the topics of lawyer malpractice and ethics, and I am one of six instructors for the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program; and
- E. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case.

My opinion is based on review of the following documents:

- A. Complaint captioned Jane Doe 12 v. The Bishop of Charleston, a Corporation Sole; Robert Gugliemone, The Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Laughlin; former Administrator

of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC, Case No. 12-CP-10-____ (blank line in original);

- B. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
- C. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
- D. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
- E. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;
- F. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-____ (blank line in original);
- G. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
- H. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
- I. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
- J. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;
- K. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

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- L. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636, and exhibits attached thereto including:
 - i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;
 - ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;
 - iii. Affidavit of Angela Pittard, with attached timesheets;
 - iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and
 - v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.
- M. 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;
- N. Transcript of July 13, 2007, hearing before Judge Goodstein.
- O. Order Approving Settlement, dated July 30, 2007, and filed July 30, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636

3. These factual and legal materials are of the type reasonably relied upon by experts in the field of legal malpractice in forming their opinions.

4. Based on my experience, education, training, knowledge of the standard of care for lawyers, and on my review of the above-listed documents, it is my opinion that Defendants engaged in negligent acts and omissions in their representation of the Plaintiff including the following:

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5. It appears from the above-referenced documents that Defendants represented a class of persons of which Plaintiff was a member. Whether an unnamed class member becomes a client upon the filing of a class action or upon certification of the class is a much-debated issue; however, class certification is generally regarded as creating an attorney-client relationship if one did not already exist. Furthermore, prior to class certification, class counsel owes fiduciary duties to unnamed class members upon the filing of a class action, regardless of whether breach of those duties is regarded as malpractice or professional negligence. Defendants owed to Plaintiff and other unknown class members the same duties surrounding the allegations in this case that they owed to the named plaintiffs in the class action. Those duties included competent, diligent, and loyal pursuit of Plaintiff's interests in the litigation against the Diocese and related defendants, and reasonable communication starting with notice by publication.

6. It appears Defendants failed to protect Plaintiff's interest in the class action in several ways. Statements by Richter at the July 13, 2007, hearing indicated that any class member that did not receive notice (a group that includes Plaintiff) would be entitled to bring claims after the claims period and that the Diocese would waive all defenses to such later claims. Other discussions at that hearing involved the same waiver and late-claim entitlement issues specifically with respect to several individual class members who had contacted the Diocese previously regarding allegations of abuse. The July 30, 2007, order preserves the late-claim rights of (i.e., requires the Diocese to waive defenses as to) only those individuals that had previously contacted the Diocese, not of other class members who are entitled to notice but did not receive it, such as Plaintiff. In a June 15, 2011, order Judge Harrington ruled that the July 13, 2007, hearing colloquy and the July 30, 2007, order referred only to the individuals who had previously come forward with abuse claims but not received actual notice, and not to the broader

group of class members, like Plaintiff, who lived outside the area of notice by publication. Regardless of whether Defendants intended at the July 13 hearing to address this broader group or only the individuals who had come forward already, Defendants failed to protect the interests of the broader group, of which Plaintiff is a member, either by not addressing their rights at the hearing or by addressing them at the hearing but making no effort to secure their rights in a final order. Defendants then acted directly adverse to Plaintiff and this group when Defendant Haller filed a motion in 2012 to enforce the class-action settlement, purportedly on behalf of Plaintiff and others whom Haller knew to be represented by other counsel. Haller took a position in the motion that is adverse to Plaintiff and others outside the notice zone and advantageous to Defendants.

6. It appears that Defendants engaged in additional acts and omissions that were both disadvantageous to Plaintiff and advantageous to Defendants themselves, including consenting to the dismissal of the Charleston County cases without client consent in furtherance of Defendants' efforts to obtain a favorable order regarding their fees, which fees themselves were unethical in several ways, including that they sought and received a fixed fee simultaneously with a common-fund recovery pool available to claimants, and that they were based on blatantly false attorney time records. Defendants also reduced the extent of notice to class members to the exclusion of nearly the entire country outside of South Carolina, despite identifying (and ultimately obtaining certification of) a nationwide class, and authorized the claims arbitrator to adjust awards so that the total claims would not exceed the remainder of the pool after payment of Defendants' \$2.5 million fee. Because a significant increase in the number of claimants responding to notice could jeopardize Defendants' fees, this reduction in notice favored Defendants' own interests to the detriment of all class members, but particularly Plaintiff

and other class members outside the notice zone of South Carolina and neighboring cities. Defendants thus not only favored their own interests above their clients', including Plaintiff's, but also provided the Diocese with an argument in its defense against subsequent claims by class members outside the notice zone, including Plaintiff, sacrificing their clients' rights in favor of the opposing party. Defendants also agreed to reduce their clients' recovery but not their own fees, if the claims exceeded the pool, and agree to possibly reducing the claimants' pool by \$100,000, which would be contributed toward a settlement between the Diocese and several opted-out class members, all to the detriment of the class members including Plaintiff, and to the financial benefit of Defendants themselves. Haller's 2012 motion to enforce the settlement now attempts to force Plaintiff and other class members outside the notice zone to be bound by the bad deal Defendants struck on their behalf in 2007.

7. It further appears that Defendants engaged in a broad scheme to generally obtain results favorable to the Diocese, with whom Defendant Richter had a life-long affiliation and for whom Richter continued to perform official services during the pendency of the class action, without the knowledge or consent of his clients. The scheme appears to have included:

- A. forum shopping, requiring Defendants to consent to the dismissal of the Charleston County cases, which they did without the knowledge or consent of their clients and to the detriment of their clients, including Plaintiff;
- B. misrepresenting to the Dorchester County court that the action had not been settled when it had, in order to obtain a favorable forum and complex case designation; and
- C. failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review, and further sacrificing clients'

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opportunity for post-claim review by providing in the settlement agreement that the arbitrator shall have sole discretion in awards, not subject to objection, review, appeal, or suit and that, by participating in the claims process, claimants expressly waive the right to appeal.

8. 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.

9. It further appears that the amount of Defendants' fee was improper and unreasonable in amount, timing, and source. The payment structure favored Defendants' own interest above those of their clients, including Plaintiff. 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;

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- 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";

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- 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, including Plaintiff, without taking appropriate steps to deal with the conflict of interests created thereby.

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7. As a result, it is my opinion that Defendants' conduct fell below the degree of skill, knowledge and judgment usually possessed and exercised by members of the legal profession in South Carolina, and that they breached duties of competence, diligence, communication, and loyalty to Plaintiff.

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

Further affiant sayeth naught.

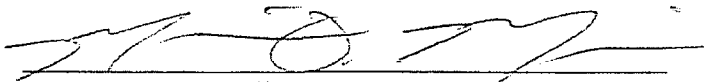


Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me

This 31st day of July, 2012



Notary Public

My Commission Expires : _____ My Commission Expires October 18, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-10- 5486

John Doe 245 and Father Doe 245,

Plaintiffs,

v.

The Bishop of Charleston, a
Corporation Sole; Robert
Gugliemone, The Bishop Of
Charleston, in his official capacity;
Rev. Monsignor Martin Laughlin,
former Administrator of the
Diocese of Charleston, in his
official capacity; Robert J. Baker,
former Bishop of Charleston, in his
official capacity;
Lawrence E. Richter, Jr.,
David K. Haller, and
Richter and Haller, LLC.

Defendants.

Negligence; Gross Negligence
Fraudulent Concealment
Civil Conspiracy
Professional Negligence
Breach of Fiduciary Duty
Injunctive Relief
UTPA

Jury Trial Requested

FILED
2015 OCT 12 AM 9:33
JULIE J. ARMSTRONG
CLERK OF COURT

Complaint

For their complaint, the Plaintiffs allege:

Parties and Jurisdiction

1. John Doe 245 is an adult citizen and resident of a state other than South Carolina who was born in 1977. As a child he was sexually abused by Justin Goodwin, a priest employed by the Diocese of Charleston, at Divine Redeemer in Hanahan, South Carolina. For that reason this action is filed using a pseudonym.

2. Father Doe 245 is the natural parent of John Doe 245.

3. The defendants are aware of the identity of these individuals.

4. These Plaintiffs are the same as those who on April 13, 2009 filed an action in the federal court for the District of South Carolina. After considerable deliberation, by order of September 30, 2015, the United States District Court dismissed that action without prejudice, claiming the federal court lacked jurisdiction. No discovery was permitted in the six year interim. In reaching that decision, the federal court gave no consideration to the decision of the South Carolina Supreme Court in *Doe v. Bishop*, 754 S.E.2d 494 (S.C. 2014).

5. The Bishop of Charleston, a Corporation Sole, is the formal title of the various entities comprising the Catholic Church throughout South Carolina known generally as the Diocese of Charleston. It is referred to in this complaint as the Diocese.

6. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. Decisions made about the assignments for Justin Goodwin were made in Charleston County.

7. The acts associated with the abuse of the Plaintiffs and the negligent supervision of Goodwin took place in part in Berkeley County, and in part in Charleston County. Charleston County is where decisions were made about Goodwin's assignments and the degree of supervision he required, which as applied by the Diocese defendants was grossly negligent.

8. This action would be appropriately consolidated with existing cases assigned to Judge Nicholson, and a motion to consolidate accompanies this complaint.

9. Goodwin was arrested in 1994 and charged with sexual abuse of four boys, for which he was sentenced under an *Alford* plea. He died in 1995. After Goodwin's conviction, no effort was made by the Diocese to locate other victims of Goodwin until the events alleged in this complaint, when completely inadequate efforts were taken by design to give no notice to these Plaintiffs.

10. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued individually in his official capacity. He is a party necessary for complete relief.

11. All persons working for the Diocese, anywhere in South Carolina, are subordinate to the Bishop of Charleston, who under the procedures of the Diocese holds all executive, legislative, and judicial power within the Diocese.

12. Prior to the tenure of Bishop Gugliemone, from October 2007, to March 2009, no person held the title of Bishop of Charleston. Under the rules and procedures by which the Diocese of Charleston governs itself, the Diocese of Charleston was administered by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina who, during his tenure as administrator, did business in Charleston County. Msgr. Laughlin is sued in his official capacity.

13. Prior to the tenure of Administrator Laughlin, from July 1999 to August 2007, the Bishop of Charleston was Robert J. Baker, presently a resident of, and citizen of, Alabama. During his tenure, he did business in Charleston County. He is sued in his official capacity.

14. In this complaint, the Diocese, the Bishop defendants, and the Administrator are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

15. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney. In that capacity he engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what

was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

16. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney. In that capacity he engaged in “trade” or “commerce” within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

17. Richter & Haller, LLC, at all times pertinent to this complaint, had its principal place of business in Charleston county, did business in South Carolina, and in that capacity engaged in “trade” or “commerce” within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, Richter & Haller, LLC did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

18. In each instance, the print media advertising was chosen with the specific and collusive intention to provide no chance of giving notice to these Plaintiffs.

19. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to collectively as the “Richter defendants” unless otherwise particularly specified.

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

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

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

Nature of Wrongdoing

23. The Plaintiffs each fit a definition used in a collusive 2006 class settlement.

24. John Doe 245 was born on or before August 30, 1980, and as a minor, was sexually abused by an agent or employee of the Diocese of Charleston. Father Doe 245 is the parent of John Doe 245. Neither Plaintiff has previously made a claim that was adjudicated, resolved, or released.

25. The Plaintiffs were situated similarly to other individuals ostensibly within the class definitions chosen by the Richter defendants when the Richter defendants (a) pled a class action in 2005, (b) settled that class action in 2006, and (c) sought, and obtained, class certification in 2007 by a South Carolina court as part of that class action. The classes defined in that action involved individuals who were sexually abused by persons employed by the Bishop of Charleston and parents of such person.

26. In pleading that class the Richter defendants assumed fiduciary duties to the Plaintiffs.

27. That class action settlement was collusive, and the Plaintiffs were harmed by that collusion.

28. The Richter defendants have represented to the circuit court that their motivation to collude with the Diocese defendants was to accommodate the Bishop of Charleston, their supposed adversary, who (they claim) requested that the Richter defendants change the class notice from nationwide notice to only South Carolina notice, while retaining a class definition with no geographic restriction on class membership.

29. According to the Richter defendants, they elected to accommodate the request of their supposed adversary, even though doing so was simultaneously collusive with the Diocese defendants and breached their professional obligations to their clients and these Plaintiffs.

30. In 2006 class counsel reached a class settlement for two defined classes of victims, which included the Plaintiffs.

31. A class was later re-alleged in post-settlement pleadings filed in 2006, which allegations also included the Plaintiffs in the way the class was defined.

32. The Richter defendants were class counsel in that class action.

33. The Richter defendants acknowledged that they represented absent members of the class, such as the Plaintiffs, in the March 9, 2007 initial fairness hearing. In the transcript of that hearing at page 53, Defendant Richter stated:

we represent the interests of persons who might be here today, may not be here today, may not have made a claim yet, a class, punitive [sic, probably intended to be putative] class or actual class, punitive [sic] initially, now an actual class.

34. The Richter defendants overtly acknowledged their fiduciary obligations to the Plaintiffs as absent members of the class the Richter defendants chose to define, a duty they had also assumed by operation of law when they (a) pleaded a class defined so as to include the Plaintiffs, and then (b) when the Richter defendants chose to reach a settlement with a class defined so as to include the Plaintiffs.

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

a Plaintiffs 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.

36. By operation of law, any benefits from the class action are held by class counsel, the Richter defendants, in trust for the class.

37. The Richter defendants chose to define the class so as to include these Plaintiffs in that the class definition, which definition included no geographic limit.

38. Each of the Plaintiffs presently resides outside of South Carolina, and did so during the time the class action was pending.

39. Each of the Plaintiffs is within the definition of the pertinent class used in the underlying class action.

40. During the class action at issue, the Richter defendants claimed no prior class action experience.

41. As a matter of law under *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003), the class definitions chosen by the Richter defendants which included the Plaintiffs was “a strategy choice.”

42. By operation of SCRCP 23(d)(1), the Richter defendants are bound by that strategy choice and “have to live with [it] since a decision on the merits was made” by the circuit court when it approved the class. *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003).

43. After the class settlement, in October, 2006, the Richter defendants proposed a nationwide program of notice for class members. That notice program, had it been proposed or used by the class action, would have provided a chance for the Plaintiffs to have received notice of the class action.

44. Before that motion could be heard, on January 17, 2007, the Richter defendants modified the proposed notice program through an amended motion for class certification, proposing a notice program that eliminated notice in the nationwide publication *USAToday* and

restricting notice to only the area immediately around South Carolina, and omitting to publish notice in the Charlotte Observer for the portions of South Carolina around Charlotte.

45. The change of notice is what the Richter defendants claim was a collusive accommodation to their “adversary,” the Bishop.

46. The Richter defendants failed to disclose to the class their lifelong ties to the Bishop.

47. Two days after the amended motion for class certification was filed by the Richter defendants, the court issued an order giving preliminary approval to the class action and its settlement, and entered these terms for notice for newspaper publication of the class settlement:

Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun, The State*; *The Augusta Chronicle*; *the Rock Hill Herald*; *Beaufort Gazette*; *Greenville News*[:] *Spartanburg Herald*; *Orangeburg Times-Democrat*; *Florence Morning News* and the *Aiken Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period.

48. The class notice program for the class settlement was to be funded, and was funded, by the pool of funds set aside by the Diocese for the class settlement.

49. The proposed class settlement agreement of January 17, 2007 states, “All costs associated with the management of the class shall be paid from the settlement fund.”

50. The Order of July 30, 2007, which approved the class settlement, states, at page 12:

Class counsel proposes a notice of the [claims period] in a form comparable to that attached hereto as Exhibit A, and I approve this notice. Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun, The State*; *The Augusta Chronicle*; *the Rock Hill Herald*; *Beaufort Gazette*; *Greenville News*[:] *Spartanburg Herald*; *Orangeburg Times-Democrat*; *Florence Morning News* and the *Aiken Standard*. Publication of the notice shall be at least once a week for three (3) consecutive weeks during the notice period.

That Order also states, at page 15:

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

51. 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.”

52. At a hearing held on April 10, 2014 in related actions, counsel for Defendants Richter and the firm of Richter and Haller represented to the Court (on page 9 of the hearing transcript) that the notice program for the class action “was not intended to reach beyond the borders of South Carolina.”

53. Under the modified notice program chosen for the class settlement, the Plaintiffs, each of whom resides out of state, were intended by the Richter Defendants, as an accommodation to the Diocese defendants, to receive no notice of the class action.

54. The object of the collusive agreement between the Richter defendants and Diocese defendants was to exclude the Plaintiffs from the class action resolution.

55. The reason the Richter defendants modified the class settlement notice program so as to intentionally omit these Plaintiffs has been publicly explained by class counsel as something they chose to do to accommodate their supposed adversary, the Bishop of Charleston. At page 42 of the April, 2014 hearing transcript, it was represented to the Court that the Richter defendants modified the original nationwide program of notice for the class because, “the Bishop said, no, that’s too expensive.” The entire representation to the court on behalf of class counsel was, “[O]ur testimony will be that we proposed that [nationwide notice] to the Bishop

and that the Bishop said, no, that's too expensive. So from our point of view, the Bishop bought the degree of *res judicata* he was willing to pay for.”

56. No provision was made by the Richter defendants to see that the orders in the class action excluded these Plaintiffs from the *res judicata* effect of the class action, or to see that these Plaintiffs preserved either the benefits of the class or the benefits of the defenses that were waived in the class action by the Bishop of Charleston for the benefit of other members of the class.

57. The Richter defendants requested of the state court no such provisions despite their obligations to these Plaintiffs as members of the class they chose to define.

58. In April, 2013, class counsel agreed in another hearing, held before Judge Dickson, that persons such as these Plaintiffs who lived out of state “never had their due process rights to come in and be heard. And they never got their due process rights of notice and an opportunity to be heard.” That representation to the court appears at p. 32 of the Transcript of a hearing held April 12, 2013.

59. As the Richter defendants intended, neither of these Plaintiffs had an opportunity to be heard or participate in the litigation, either in person or through counsel, or an opportunity to opt out of the class action and thereby preserve his own claim.

60. In the 2006 class action settlement the Richter defendants colluded with the Diocese defendants so as to abandon the interests of those persons, such as the Plaintiffs, who were within the class definition and to protect the Diocese defendants by the collusive class action.

61. In 2005 a class action was first alleged by the Richter defendants on behalf of persons sexually abused by persons affiliated with the Diocese of Charleston.

62. By their own account, the Richter defendants were extensively affiliated with the

Diocese of Charleston. Those extensive affiliations were never disclosed to the class.

63. The class action settlement with the Bishop of Charleston was arrived at during a mediation held in June, 2006, in which the Richter defendants participated on behalf of class members. In this complaint, the class action settlement achieved in 2006 from the 2005 class action is referred to as “the 2005 class action.”

64. The 2006 mediated settlement agreement was approved by the Dorchester County judge who presided over the class action proceedings. By 2009 the class members had been identified and an arbitration had determined awards to various class members. By 2009 those awards had been paid.

65. By order of the South Carolina Supreme Court issued March 19, 2009, the 2005 class action was ordered to be concluded in six months, or by September 19, 2009.

66. The trial court overseeing the class action ignored the March 19, 2009 order of the South Carolina Supreme Court, and took no action by September 19, 2009 to review the distributions to class members or to make any post-award review of class counsel’s fee.

67. In 2012, Defendant Haller, acting on behalf of no client from the 2005 class action, as all client claims had been resolved, but acting instead on behalf of himself and the Richter defendants, filed a pleading in the Dorchester County class action case.

68. On January 24, 2013, the Dorchester County trial judge who had presided over the class action signed an order which stated, in its entirety, “I hereby recuse myself from hearing any further matter on the above-captioned case.” The caption on that order was the first of the cases which comprised the class action.

69. Judge Goodstein had been asked to recuse herself by a motion in 2008. She recused herself in 2013. The 2013 order makes no reference to the 2008 motion. No other motion to

recuse had been made.

70. All defendants colluded in the 2005 class action so as to permit the Diocese defendants, starting in 2009 and continuing into 2013, to maintain that the class action precluded any and all claims for abuse.

71. At no point did the Richter defendants seek, for class members who reside out of state, either orders clarifying their relief or orders clarifying their protections from the *res judicata* effect of the class action. The Richter defendants were aware that class members who resided out of state had received no notice, and no Due Process, in the class action. The Richter defendants sought no such relief because it was part of their collusive plan with the Diocese defendants to not do so, so as to restrict the number of persons who could make a claim against the Diocese defendants.

72. The Richter defendants conducted the class action intending to prevent the Plaintiffs from either participating in the class action or being able to remove themselves from the class action by opting out. Being within the putative definition of the 2005 class action as the Defendants agreed to define the class of sexual abuse victims, the Plaintiffs ostensibly were formerly represented by, until they were abandoned by, the Richter defendants, who served as class counsel.

73. Alternatively, and at minimum, the Richter defendants assumed fiduciary duties as to the Plaintiffs by defining the classes, with the knowing cooperation of the Diocese defendants, so as to ostensibly include each Plaintiffs.

74. The Richter colluded with the Diocese defendants to cause each of the Plaintiffs special harm in the form of precluding each of them from making any claim against the Diocese. The professional representation of the Plaintiffs by the Richter defendants in the class

action was inadequate, and failed to meet the standard of care applicable to a South Carolina attorney handling a class action case.

75. This action is not alleged as a class action. It involves as Plaintiffs persons who were, until abandoned by class counsel, the Richter defendants, putative members of (a) a class as alleged in a state court class action, (b) a class settlement agreed to among defendants, and (c) a class approved by a state court.

76. But for the Richter defendants having breached the duties each of them owed to the Plaintiffs in the class action by abandoning them in the class action, an abandonment done in agreement with, and in full complicity with, the other Defendants, the Plaintiffs would each have been protected from any preclusive effect of the 2005 class action and the 2006 class action settlement.

77. The Diocese defendants knew, or should have known, that Justin Goodwin was dangerous to children.

78. The Diocese defendants operated so as to actively disregard and conceal the risks to children and families for sexual assault of children by their priests and other employees, including Goodwin, and then actively, and fraudulently, concealed the abuses that had happened and concealed the dangers to children the Diocese defendants solicited into danger.

79. The Richter defendants made themselves part of that duplicitous method of operation by the Diocese. The Richter defendants had life long ties to the Diocese defendants that were not disclosed to the class. The Richter defendants were and are corrupt, and colluded so as to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy, in exchange for a legal fee for themselves, relief not for their clients the Plaintiffs but for their adversary the Diocese defendants in the form of a layer of what was hoped, by those corrupt

lawyers, would be protection for the Diocese from civil lawsuits almost certain to keep coming over their history of sexual abuse and the fraudulent concealment of abuse by the Diocese defendants.

80. The Richter defendants assumed a duty to act for sexual abuse victims, including the Plaintiffs, but then the Richter defendants acted in a professionally negligent way, willfully and wantonly abandoning their clients so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese defendants in exchange for their cooperation in trying to both limit relief to victims and protect the Diocese defendants from future cases, and specifically from claims by these Plaintiffs and other sexual abuse victims. The danger to the Diocese defendants of future cases was that future cases might be brought by lawyers actually adverse to the Diocese defendants, as opposed to the lawyers willing to collude with the Diocese.

81. The Defendants made overt misrepresentations of fact to the court which approved the 2006 class action settlement, and fraudulent concealment of those misrepresentations continue to the present.

82. The Richter defendants were so confident of their ability to manipulate the state court judge they and counsel for the Diocese had selected and maneuvered the class cases before, and so confident of eliciting no objection from the supposedly adverse Diocese defendants, that the Richter defendants (a) submitted blatantly false and inflated time records to justify their large fee, and (b) collected more fee than was authorized by the court's orders, all without objection from the Diocese defendants.

83. In exchange for the Richter defendants' cooperation to disadvantage members of the class from making claims against the Diocese, the Diocese defendants (a) agreed to take no

position on whether the class should be certified, (b) agreed not to mention that any of the time records submitted by the Richter defendants were false, (c) agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee, (d) agreed to make no objection to an unethical fixed fee for class counsel while class counsel simultaneously obtained only variable compensation for class members that was subordinate to that fee, (e) agreed to make no objection to the fee being awarded before any member of the class member was even identified, and before any class member claimant had submitted a claim or was paid, (f) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law, (g) agreed to make no objection when the Richter defendants took more fee than was authorized by court order, and (h) agreed to seek no post-award fairness hearing under SCRCP 23.

84. In turn, the Richter Defendants agreed to assist the Diocese defendants in overtly misrepresenting to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement. Once the court relied on that representation the Richter defendants enabled the Diocese defendants to ignore the representations that had been made. Alternatively, if class counsel claims he was did not participate in the overt misrepresentations to the court by the Diocese defendants, class counsel's representation of the class fell below the applicable standard of care in that class counsel failed to secure by order those concessions supposedly made by the Diocese defendants. Class counsel failed to secure those concessions by written order even though class counsel was fully aware the Diocese defendants are untrustworthy and would comply only with orders it could be compelled to honor.

85. Class counsel either was complicit in the misconduct of the Diocese defendants or was

negligent in being outmaneuvered and hoodwinked by the Diocese defendants.

86. Of the four levels of wrongdoing alleged, the causes of action which apply hinge, in part, on whether or not the Plaintiffs are regarded as being bound by the *res judicata* effect of the collusive class action to which the Diocese was party. As alleged more fully below, Plaintiffs ostensibly fall within a class defined in that action. Defendants colluded so as to attempt to make any recovery by the Plaintiffs impossible, by giving them no notice.

87. All Defendants cooperated together to better protect the Diocese by the way the class was defined, as well as the manner in which notice was given, and the Defendants cooperated so as to actively mislead the court in seeking approval for the limited notice that was proposed with the false promise by the Diocese, known to have been false by the Richter defendants or acquiesced in by the Richter defendants, that the Diocese would protect the interests of persons such as the Plaintiffs who received no notice and who later made claims.

88. Until 2009 the Plaintiffs had no information that the Defendants had cooperated to make false promises to the class action court or that the Plaintiffs' interest had been compromised by a collusive class action.

89. The Richter defendants were charged with correcting the known deficiencies in the class definition and the class action notice. The Richter defendants took no steps to correct either deficiency. Had they done so it would have interfered with their collusion with the Diocese that was intended to protect the Diocese and to obtain for the Richter defendants the fixed fee they had arranged to obtain, at the expense of their client class members and the putative members of the class.

90. Similarly, the Diocese defendants were aware that various persons within the class had received no notice, but did nothing to clarify overt misrepresentations by the Diocese

defendants to the court overseeing the class action about how the Diocese would treat absent members of the class who received no notice.

91. Until 2009, the Plaintiffs were unaware of (a) any class settlement by the Diocese defendants, (b) that the Diocese defendants claimed to have waived charitable immunity for any person in the class definition, (c) that the Diocese defendants claimed to have waived the statute of limitations for any person in the class definition. Plaintiffs were unaware of any of those things because, by agreement of all Defendants, Plaintiffs got no notice of any of those things, and had no opportunity to preserve their claims by opting out of the 2005 class action.

92. In its order approving the class action, the state court might have provided for absent members of the class, such as the Plaintiffs, and the Richter defendants were obligated to see that the court do so. The Richter defendants failed to do so.

93. Plaintiffs are each an absent member of a class who, by design among Defendants, received no notice of the class action and had no opportunity to join or to opt out of the collusive class action. As such, Plaintiffs should not be bound by any *res judicata* effect of the class action because the procedure used did not adequately insure the protection of his interests, and because their representation by the Richter defendants was inadequate, and fell below the applicable standard of care. Either of those grounds is a sufficient basis to relieve the Plaintiffs of the *res judicata* effect of the class action.

94. If the Diocese agrees, or the court finds, that the Plaintiffs are not precluded by the class action from bringing claims against the Diocese defendants, then the damage caused by the admitted inadequacies of the Richter defendants who, for a fee, abandoned their clients, and conspired against the Plaintiffs through the class action, may be mitigated through their claims against the Diocese defendants. However, if the court finds that the Plaintiffs are precluded for

any reason from pursuing claims against the Diocese defendants, including the *res judicata* effect of the class action, charitable immunity (which the Diocese defendants waived for those within the class definition), or by the statute of limitations (which the Diocese defendants waived for those within the class definition), or because an insufficient recovery fails to fully mitigate the admitted misconduct by the Richter defendants, then the claims against the Richter defendants should be liquidated, and claims for punitive damages are properly made against those who conspired against the Plaintiffs, as well as against the Richter defendants who failed to properly represent the Plaintiffs in the representation of the Plaintiffs that the Richter defendants undertook.

95. In this action, no review is sought of the decisions of the state court in approving the insufficient notice given to the class. No change is sought as to the class action. This action seeks an interpretation as to the preclusive effect of the class action as applied to the Plaintiffs.

**For a First Cause of Action:
Negligence and Gross Negligence by Diocese defendants**

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

97. The defendant Bishop of Charleston employed Justin Goodwin as a priest.

98. In his capacity as priest, Justin Goodwin was placed by the Diocese defendants in a position of trust and confidence, and had access to John Doe 245 and other children. In that capacity, Justin Goodwin sexually molested the Plaintiffs and many other children.

99. Prior to the Plaintiffs being molested, the Diocese defendants became aware that Justin Goodwin was dangerous to children. After knowing he was dangerous, the Diocese defendants moved Justin Goodwin from place to place within South Carolina, and thereby facilitated his

access to young people whom he could sexually molest. John Doe 245 was molested after Goodwin was known to be dangerous to children.

100. Father Doe 245 has an injury from the molestation of his child.

101. Alternatively, the Diocese defendants operated various schools, activities, and churches that were intended to, and did, attract children and families. The Diocese defendants encouraged people, including John Doe 245 and Father Doe 245, to use their facilities, and to attend the various activities and functions offered on its premises. In making that invitation, the Diocese defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers, and from known dangers such as Justin Goodwin, by representing to the public, and to the Plaintiffs, nothing to the contrary. The Diocese defendants particularly owed a duty to John Doe 245, who was a minor, and owed a duty to his Parents, including Father Doe 245, who were charged with looking after the interests of John Doe 245.

102. As a child John Doe 245 relied on the Diocese defendants for his safety within the Diocese, was unable to fully appreciate risks and danger and protect himself from Justin Goodwin. The Diocese defendants falsely represented to its invitees, and their parents or guardians, including the Plaintiffs Father Doe 245, that its facilities and its priests were safe, and that persons would be would be protected from harm when using its facilities and when interacting with its personnel.

103. After he was moved to Divine Redeemer, S.C., Justin Goodwin molested the Plaintiffs.

104. The Diocese defendants negligently supervised Justin Goodwin. The Bishop of Charleston was grossly negligent in supervising Justin Goodwin. Moving Goodwin without proper warning to children and parents was grossly negligent. As a proximate result of the

negligence and gross negligence by the Diocese defendants, Plaintiffs was sexually abused by Justin Goodwin.

105. The Diocese defendants were negligent in failing to warn the Plaintiffs about Justin Goodwin. The Bishop of Charleston performed that duty in a grossly negligent manner.

106. The Diocese defendants knew, or should have known, that Justin Goodwin was a pedophile. Despite that knowledge, the Diocese defendants made no effort, or no competent effort, to ascertain how many children Justin Goodwin had molested, and no effort, or no competent effort, to locate victims of Justin Goodwin. If the Diocese defendants made such an effort, those defendants assumed the duty but performed it negligently. The predecessors of Robert Baker and Rev. Monsignor Laughlin performed that duty in a grossly negligent manner.

107. The Diocese defendants' failure to do so was negligent, and grossly negligent on behalf of the presiding Bishop from the time of the Plaintiffs' abuse to the present, including the gross negligence by Bishop Guglielmone, Bishop Baker, Rev. Monsignor Laughlin, and the Bishops who preceded them.

108. As a result of the negligence and gross negligence by the Diocese defendants in failing to either prevent abuse or identify abuse victims by its agent or employee Justin Goodwin, the problems for John Doe 245 were first caused, and then exacerbated, by the delay of the Diocese defendants in rectifying the abuse by Goodwin.

109. As set forth more fully below, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants,

among other things, accounts for the delay in this action being brought against the Diocese defendants.

110. This action was first filed in 2009 in federal court, and at that time was brought within three years of that most recent act of fraudulent concealment, and fraudulent conduct, by the Diocese defendants, and within three years of its discovery by the Plaintiffs.

111. The Plaintiffs are entitled to actual and punitive damages as a result of the negligence of the Diocese defendants, and gross negligence of Bishops Guglielmone and Baker, and Administrator Rev. Monsignor Laughlin, in failing to perform a proper review for Goodwin's victims, or in performing that duty in a negligent manner.

**For a Second Cause of Action:
Fraudulent Concealment by Diocese defendants**

112. Allegations above are incorporated into this cause of action as if fully set forth.

113. The Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children.

114. The Diocese defendants each had a duty to discover and to disclose to John Doe 245 or his parents their knowledge that Justin Goodwin was known to have a sexual interest in children. That duty arises from (a) the preexisting fiduciary relationship between the Plaintiffs and the Diocese defendants, which relationship the Diocese defendants solicited; (b) from Father Doe 245 having expressly reposed his trust and confidence in the Diocese defendants so as to place John Doe 245 into the presence of Justin Goodwin, which placed both Plaintiffs in a vulnerable position with Justin Goodwin. That position of trust and confidence was implicit from those circumstances of John Doe 245 being entrusted to the presence of Justin Goodwin, as well as from the nature of the dealings between the John Doe 245, his

parents, and the Diocese defendants, who promoted to Father Doe 245 that he should leave John Doe 245 in the presence of Justin Goodwin, (c) from the essential nature of the Diocese defendants and their inducement to Father Doe 245 to have John Doe 245 participate in activities with Justin Goodwin as being beneficial to John Doe 245, or at least not harmful to him, (d) from the secrecy provisions in the Code of Canon Law and other operating documents of the Diocese, which charge the Diocese defendants to discover, but then to maintain secrecy about, “other persons solicited” by any person such as Justin Goodwin, who commits the “unspeakable crime” of sexually abusing a child, and (e) by the undertaking which the Diocese defendants assumed, negligently (and in the case of the individuals included in the designation of the “Diocese defendants,” grossly negligently), during 2005 - 2010, to locate victims such as the Plaintiffs.

115. John Doe 245 was born in 1977, so necessarily was sexually abused by Justin Goodwin after 1962.

116. Concerning each of (a) the undisclosed dangers Justin Goodwin represented to the Plaintiffs, and (b) repairing the damage done to the Plaintiffs by Justin Goodwin, the Diocese defendants were obligated to the Plaintiffs to engage with each of them in perfect good faith and with full disclosure.

117. Instead of full disclosure, the Diocese defendants have operated with secrecy and concealment of all aspects regarding sexual abuse by their agents and employees, including Justin Goodwin. In its own operations, the Diocese required secrecy and concealment, and it has enlisted its agents and employees to further conceal its knowledge of abuse so as to limit its exposure for the Diocese defendants being held responsible for sexual abuse of children.

118. Specifically, the Diocese defendants created a culture of secrecy about all matters of sexual abuse.

119. Administrative practices adopted by the Diocese defendants under their published internal procedures, the Code of Canon Law, established a practice of secrecy as to sexual abuse. All references to the administrative provisions of the Code of Canon law refer to the Code of Canon law approved in 1983.

120. The Diocese defendants established an archive (required by Canon 486), accessible (per Canon 487) only by the Bishop of Charleston and chancellor of the Diocese of Charleston. Documents may not be removed from the archive except for a brief time, and only by permission of either the Bishop of Charleston or the moderator of the curia (Canon 488). Canon 489 requires that the Diocese of Charleston also create for administrative purposes a Secret Archive. In that Secret Archive Canon 489 requires that “documents are to be kept secret” and “protected most securely.” Canon 489, Section 2 states: “Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained.”

121. The administrative practices for secrecy required by the Code of Canon law and the “Instruction,” alleged below, are arbitrarily adopted administrative practices and are separate and apart from the religious practices protected by the First Amendment of the United States Constitution. No Bishop is at liberty to alter the administrative practices required by the Code of Canon Law.

122. Only the Bishop of Charleston is to have the key to the secret archive, and documents are not to be removed from the archive (Canon 490). The Bishop of Charleston

was authorized to include in the secret archive any matter which can be regarded as scandalous.

123. The administrative practices of the Diocese of Charleston is to consider topics of sexual abuse to be scandalous, hence secretive.

124. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Justin Goodwin's sexual abuse of the Plaintiffs and other children, were regarded as scandalous, and were maintained in the Secret Archive.

125. Matters related to agents and employees of the Diocese of Charleston sexually abusing children, including Justin Goodwin's sexual abuse of children including Plaintiffs when he was a child, because they were regarded as scandalous, were maintained in the Secret Archive and were destroyed as called for by the Code of Canon Law in the routine administrative practice by the Diocese defendants to destroy evidence of known criminal activity.

126. In 1962 the Diocese defendants expanded on the administrative secrecy required concerning sexual abuse, publishing an "Instruction" which was to be stored in the Secret Archive. (Required by the "Instruction," at page 1). In the "Instruction," matters involving priests who "solicit or provoke" ("Instruction," p. 1 ¶ 1) a penitent "toward impure and obscene matters" ("Instruction," p. 1 ¶ 1), "which is also silence" ("Instruction," ¶ 11) and deemed "a secret of the Holy Office" ("Instruction," p. 3 ¶ 11), "under the penalty of excommunication" ("Instruction," p. 3 ¶ 11). These are administrative practices related to secrecy, not to practices protected by the First Amendment. The accused, the accusers, and any witnesses are to be given "The oath of keeping the secret." ("Instruction," p. 4 ¶ 12. See also, "Instruction," p. 5 ¶ 23 and "Instruction," p. 6 ¶ 28).

127. Plaintiffs John Doe 245 fits within the meaning of “penitent” referred to in the “Instruction.”

128. The 1962 “Instruction” states that “the worst crime” is “any perpetrated by a cleric or attempt [sic] with a person of his own sex.” “Instruction,” p. 15, ¶ 71. “The worst crime” is also defined as “any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex.” “Instruction,” p. 16, ¶ 73. These provisions are analogous to civil and criminal law statutes which regulate conduct, not to practices included within the First Amendment protections for religious observance.

129. Nothing about the Catholic faith requires that children be sexually abused or that the sexual abuse of children be concealed.

130. Justin Goodwin was, and the John Doe 245 is, male. The conduct by Justin Goodwin towards John Doe 245 qualified under the 1962 “Instruction” as “the worst crime.”

131. Among other things, the 1962 Instruction directs the Diocese defendants to assume the duty of locating “other persons solicited by the same confessor” (“Instruction,” p. 7 ¶ 29). In this instance, the “Instruction” calls for the Diocese defendants to locate other persons solicited by Justin Goodwin for sexual contact. The “Instruction” at p. 9 ¶ 37 also refers to an “Instruction of the Holy Office, February 20, 1867,” in directing the manner of interrogation for persons with information about solicitations or those solicited for sexual contact.

132. The Diocese defendants assumed the administrative duty to locate victims as defined in the 1962 “Instruction,” but the Diocese defendants performed that duty in a grossly negligent manner. The Diocese defendants failed to locate the Plaintiffs, failed to locate many other abuse victims of Goodwin and other priests, and made no competent inquiry to locate

them. The Diocese defendants purposefully avoided making the type of inquiry that would have elicited discovery of the Plaintiffs.

133. The 1962 “Instruction” was approved as an administrative practice by the “Most Holy Father John XXIII” on March 16, 1962, according to page 16 of the 1962 “Instruction.”

134. In the Appendix to the 1962 “Instruction” are set out the terms of the secrecy to be observed for matters such as the sexual abuse of the Plaintiffs. In essence, the oath provides for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained “under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good,” unless expressly approved “by the Supreme Pontiff,” according to page 17 of the 1962 “Instruction.” By this means the administrative practice of secrecy is encouraged, but even when backed by excommunication, the secrecy provisions of the administrative practices are arbitrarily adopted administrative practices with no doctrinal significance to protected First Amendment activities.

135. “Whatever type of pretext” overtly endorses lying to civil authority, even lying under oath, to this or any other civil tribunal. No qualification is made in the 1962 “Instruction” for complying with civil authority, and any interpretation otherwise is void as contrary to the law of South Carolina.

136. Unless the Pope himself has specifically approved otherwise, administrative secrecy was and is to be maintained not only by the Plaintiffs, but also by every member of the Diocese defendants, and even by witnesses to sexual abuse. That administrative secrecy is to be made despite any law, court order, or oath which would otherwise require disclosure of sexual abuse. Under the 1962 “Instruction,” the highest obligation, higher than any law, oath,

or court order, is to maintain the administrative practice of secrecy for the benefit of the Diocese defendants, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has specifically instructed otherwise, the Diocese defendants can all be expected to be obedient to the administrative secrecy called for in the 1962 “Instruction,” to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse. The Diocese defendants have, to date, done so.

137. Matters of sexual abuse of children by clergy and members of religious orders are protected by what is called “the pontifical secret.”

138. That secrecy is imposed by Article 25 of a 2001 publication by Pope John Paul II, and by Article 30 of its 2010 revision by Pope Benedict XVI, which impose the pontifical secret on all allegations and proceedings relating to child sexual abuse by clerics. The pontifical secret is the church's highest form of secrecy. Like the secret of the confessional, it is permanent silence.

139. When the Diocese defendants maintained secrecy about sexual abuse of children they were fully complying with the secrecy imposed on each Bishop by the administrative practices of the church.

140. In 2002 the Holy See granted a dispensation to allow reporting to the police where the civil law in the United States required it. That dispensation was applied to the rest of the world in 2010. Where not compelled by civil law, the pontifical secret still applies as, for example, in Italy, where the Pope is Bishop of Rome. The Italian Bishops Conference, of which the Pope is the primate, announced in 2014 that Italian bishops would not report to police sexual crimes against children because Italian civil law under the 1929 Lateran Treaty did not require them to do so.

141. In January, 2014, the United Nations Committee on the Rights of the Child requested the Holy See abolish the pontifical secret over allegations of child sexual abuse by clergy and impose mandatory reporting. In May, 2014, the United Nations Committee against Torture requested the same thing. In September, 2014, the Vatican rejected those requests, claiming that mandatory reporting would interfere with the sovereignty of independent nations, as if reporting was prohibited by civil law. No country prohibits reporting child sexual abuse by priests. It is prohibited only by arbitrary administrative practice of the Diocese defendants, in keeping with administrative rules imposed by the Holy See.

142. The call for secrecy in the administrative practices derived from these internal and arbitrary administrative practices constitutes, under South Carolina law, spoliation of evidence, as well as fraudulent concealment. Among the spoliation was evidence related to Justin Goodwin's known sexual interest in children, and the sexual abuse of the Plaintiffs.

143. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the Diocese defendants as to Justin Goodwin's sexual abuse of John Doe 245. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent sexual abuse of John Doe 245, or to ascertain that John Doe 245 was a victim of abuse by Justin Goodwin.

144. In 2006 the Diocese defendants sought a new level of deception and manipulation to limit the damage to the Diocese defendants from its taking responsibility for its history of sexual abuse, and to as much as possible to conceal, limit, and minimize the extent of abuse, so as to minimize its financial accountability for its history of abuse and concealment. The Diocese defendants engaged with other Defendants to conspire to evade accountability, as set forth below, and to try to prevent the Plaintiffs from making any claim.

The acts of civil conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the sexual abuse. The conspiracy cause of action concerns the Plaintiffs being deliberately excluded from the class, and the Plaintiffs being able to protect their claims, so hinges on interpreting the *res judicata* effect of the orders in the class action.

145. The Richter defendants have admitted their professional negligence in deliberately excluding from the class action, by design, and by request of their supposed adversary, the Plaintiffs and many others who were within the class definition. Actual damages from that professional negligence may be mitigated to some extent if a claim can be made for actual damages against the Diocese. Punitive damages against the Richter defendants for that misconduct cannot be mitigated by any of the claims against the Diocese defendants.

146. This cause of action presumes that the Plaintiffs is not precluded in making this claim by the 2005 collusive class action involving the Diocese defendants, and can make his claim for (a) lack of Due Process in those proceedings, (b) lack of competent representation sufficient to bind this Plaintiffs, (c) the collusive nature of the class settlement, or (d) because by their terms the class action orders do not apply to the Plaintiffs.

147. The Plaintiffs is entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese defendants in actively maintaining secrecy and thus failing to perform a proper review for Goodwin's victims, including the Plaintiffs, or in performing that duty in a negligent manner. To the extent the Plaintiffs' actual damages from the Richter defendants are mitigated by any recovery against the Diocese defendants, that

credit is properly applied. No punitive damages against the Richter defendants are properly mitigated as a result of any punitive damages assessed against the Diocese defendants.

**For a Third Cause of Action:
Civil Conspiracy by All Defendants**

148. Allegations above, other than claims for relief above, are incorporated into this cause of action as if fully stated.

149. This cause of action presumes the class action order is interpreted to bind the Plaintiffs to its *res judicata* effect, despite insufficient Due Process from the collusive class action which was designed by all Defendants to limit each Plaintiffs' ability to state his claim, so this cause of action presumes the Plaintiffs are properly precluded from bringing claims against the Diocese defendants related to sexual abuse.

150. Defendants have conspired to injure the Plaintiffs, and by those actions have caused special damage to the Plaintiffs.

151. As set forth below in detail, the Defendants have acted in concert in numerous ways, which reflect the joint assent with minds to injure the Plaintiffs, and Defendants have taken overt acts to pursue the common design to injure the Plaintiffs.

152. Some actions that have been taken have been legal; other actions were legal but violated professional standards set forth in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the Plaintiffs by making sure they (and other putative class members who lived out of state) could neither participate in the state court class action nor opt out of it, and by those means could be prevented from bringing their own action.

153. In exchange for a sufficient amount of money directed to corrupt lawyers as a fee, the lawyers who purported to and did represent the Plaintiffs, the Richter defendants, agreed to act against the Plaintiffs' interests, and collaborated against the Plaintiffs' interest and in the interest of their supposed adversary, the Diocese defendants, to whom class counsel had connection and allegiances not disclosed to the class. This cause of action presumes that class counsel was not merely professionally negligent, and outmaneuvered by the Diocese defendants, but actively collaborated with the Diocese defendants.

154. Specifically, in exchange for a sufficient amount of money as a fee, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, the lawyers who purported to represent the Plaintiffs, the Richter defendants, agreed to abandon the Plaintiffs, and to define the class so as to include the Plaintiffs, but then provide them no notice. Additionally, the Richter defendants purported to secure benefits for the Plaintiffs but then failed to secure those benefits by written order. This cause of action presumes that those acts were not professionally negligent actions but conscious undertakings by the Richter defendants to disadvantage the Plaintiffs from making a claim against the Diocese, so as to not jeopardize the fee the Richter defendants made as the highest priority of the 2006 class action settlement.

155. By purporting to undertake their representation in how the classes were defined, but then make no provision for the Plaintiffs, the Richter defendants breached a duty to the Plaintiffs that the Richter defendants assumed, either through the attorney-client relationship or through the fiduciary duty assumed by class counsel when he elects to bring a class action and defines one or more classes so as to include the Plaintiffs.

156. The Richter defendants have publicly denied undertaking any duty to absent members of the classes they defined, reflecting either their degree of professional ignorance of the obligations of class counsel or their intention to align with the interests of the Diocese, or both. This cause of action assumes not the professional negligence of the Richter defendants but the intention of the Richter defendants to align themselves with the interest of the Diocese defendants as the *quid pro quo* for the Diocese defendants collaborating by silence on their fee as class counsel.

157. The Richter defendants elected to abandon their putative class member clients so as to prevent the Plaintiffs, and others similarly situated, from being able to make claims against the Diocese defendants. As the class allegations acknowledged, the number of victims of priest sexual abuse “may exceed the hundreds,” an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36, filed in Charleston County, and in the identical John Doe #53 Complaint redundantly filed in Dorchester County as case 06-CP-18-1636.

158. If “too many” of those hundreds of victims participated in the class action, including the Plaintiffs, the Richter defendants would jeopardize the large fee the Diocese defendants had agreed to enable them to get, and if the 2006 class settlement was jeopardized the Diocese defendants might not get the ostensible protection from future suits it was colluding with the Richter defendants to obtain at the lowest possible cost. All Defendants had an economic interest in colluding against the Plaintiffs.

159. Consequently, defining the class so as to ostensibly include the Plaintiffs without securing any benefit for the Plaintiffs was either professional negligence or intentional conduct by the Richter defendants to defeat the Plaintiffs’ ability to make a claim against the Diocese. As noted, this cause of action presumes that the Richter defendants were not merely

professionally negligent but intentionally acted with the Diocese defendants to limit the Plaintiffs' ability to claim against the Diocese defendants, with whom the Richter defendants shared an illicit economic interest in defeating the Plaintiffs' potential claims.

160. For the Richter defendants, both their class counsel fee, and the interests of the Diocese defendants, were more important to them than were the interests of their absent putative class member clients such as the Plaintiffs.

161. In exchange for the Richter defendants abandoning the Plaintiffs and all of their other out of state putative class member clients, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCF 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCF 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which the Richter defendants used to support their fee request, (e) agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while simultaneously establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to class counsel before any class member had been identified and before any class member's claim was known, (g) agreed to make no objection when the Richter defendants took more fee than was authorized by court order, and (h) agreed to maneuver, in violation of SCRCF 23 and other professional standards, the class action away from those Charleston County judges that might exert independent scrutiny of the class action, to a state court judge in Dorchester County known to have extensive social and professional ties to the

Richter defendants, in the aspiration and expectation that from that judge they would receive a more pliable oversight for the class settlement.

162. In the 2006 class settlement the Diocese defendants undertook a duty to the classes as identified, including the Plaintiffs, to identify abuse victims. To get approval of the class settlement, the Diocese defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County. In circumventing the requirement in SCRCP 23 to get approval for a class settlement in Charleston County, and in judge-shopping to pick their desired Dorchester County judge, the Defendants violated judicial norms and rules as well as professional standards.

163. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which Dorchester County complaint duplicated, word for word, an existing Charleston County complaint alleging a class, resulting in the identical class action case, for the same client, pending simultaneously in circuit court in both Charleston County and Dorchester County.

164. As the Dorchester County version of the class action had already been settled before filing through the 2006 class settlement, the Dorchester County filing was done as the means of judge-shopping for the desired Dorchester County judge.

165. The Diocese defendants also agreed to remain silent about the duplicative class action so as to enable the Richter defendants to submit false information to the Dorchester County court.

Details of the Civil Conspiracy Among Defendants

166. In 2003, the Richter defendants were associated by one or more lawyers to assist in representing a victim of sexual abuse in a claim to be asserted against, *inter alia*, The Diocese defendants.

167. The Richter defendants represented at least one victim of sexual abuse from the time they were associated throughout the remainder of 2003 and all of 2004.

168. In May 2005, the Richter defendants filed for an individual abuse victim an action in the Charleston County Court of Common Pleas styled *John Doe #66 v. The Bishop of Charleston, et al., 05-CP-10-2053*. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

169. That complaint for John Doe 66 made no class action allegations.

170. In August 2005, the Richter defendants filed another individual action in the Charleston County Court of Common Pleas, styled *John Doe #66A v. The Bishop of Charleston, et al., 05-CP-10-3293*. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

171. The complaint for John Doe 66A made no class action allegations.

172. In October 2005, the Richter defendants met personally with then-Bishop Baker.

173. As a result of that meeting, in December, 2005, the Richter defendants filed a class action complaint in the Charleston County Court of Common Pleas, styled *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 05-CP-10-4193*. No

complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

174. In February 2009 the Diocese defendants published to the public through their press spokesman that the Charleston County John Doe 53 complaint was one of three individual cases filed in Charleston, as opposed to it being a complaint which alleged a class action. The representation that it was an individual suit was a lie by the Diocese defendants in furtherance of the routine and consistent practice by the Diocese defendants to engage in fraudulent concealment of sexual abuse matters, and to further the agreement among defendants to cause harm to the Plaintiffs.

175. Rule 23(d)(1) SCRCF requires “as soon as practicable, after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.”

176. From December 2005 until June 2006, neither the Richter defendants, as class counsel, nor the Diocese defendants, as a defendant in a case alleging a class, made any effort to seek class certification for the class alleged in the December class action complaint in Charleston County. In that time the public records show there were no motion hearings held in any of the three cases mentioned above. When the Charleston County court attempted to schedule pending motions, and sent out hearing notices, the Defendants collaborated to ask that the motions be continued rather than heard.

177. In June 2006, the Defendants met in a mediation conference. At that time, no class action had been certified, and no class was alleged for spouses or parents of sexual abuse victims.

178. At that mediation conference, which took place over two days, the Defendants purported to settle all claims of all class members in two classes, as the classes were defined by the 2006 class settlement agreement of the parties.

179. Ostensibly included in the classes as defined in the mediation were the Plaintiffs. By defining the classes so as to ostensibly include the Plaintiffs, and by purporting to settle his claim, the Richter defendants assumed professional obligations to him, including fiduciary duties towards him, and created a constructive attorney-client relationship, if not an actual attorney-client relationship, with each of the Plaintiffs.

180. The agreement reached in that mediation is attachment A to this complaint, redacted as to client identities. The version used is the version filed April 13, 2009 accompanying the complaint filed in the federal court. Its terms are incorporated into this complaint pursuant to SCRCP 10(c). By its terms the 2006 class settlement agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 05-CP-10-2053, 05-CP-10-3293, and the case alleging a class action, 05-CP-10-4913. The settlement purports to include the Plaintiffs through the class definitions. The Defendants intended to include the Plaintiffs in the class definition.

181. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 class settlement reached during a mediation of the Charleston cases.

182. The typewritten version of the 2006 class settlement agreement was approved by The Holy See in January 2007.

183. The 2006 class settlement agreement was funded by approval of The Holy See.

184. As reflected in the attached handwritten version of the 2006 class settlement agreement, the Defendants agreed that the individual Plaintiffs in the pending actions filed in

Charleston County, and the purported class representative from the Charleston case which alleged a class, would split \$460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese defendants would pay only \$460,000 to resolve the pending Charleston cases, which were the only cases then pending.

185. Claims of absent class members were proposed to be resolved on terms materially different than the terms which the purported class representative or representatives received. Instead of a cash payment the same, or similar to, what the purported class representative or representatives were to receive, absent class members were to be required to first relinquish their right to bring suit and then, and only then, could they submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive from the defined maximum amount available for all such claims, minus an illicit fee charged by class counsel. Class members had to relinquish all rights for review to qualify for the arbitration, which was binding arbitration. Class representatives did not.

186. As alleged below, not fewer than seven devices were chosen by overt agreement among the Defendants to further the conspiracy against this Plaintiffs, along with other absent putative members of the classes, from being included in any recovery for the class, to limit the class recovery from being “too much,” and to prevent these Plaintiffs from later being able to make a claim for the childhood sexual abuse of John Doe 245.

187. If the 2006 class settlement included “too many” claimants, under the 2006 class settlement agreement the Diocese defendants would be entitled to withdraw from the agreement. Class counsel would jeopardize his class counsel fee if there were “too many” claimants and the Diocese defendants withdrew. The Diocese defendants wanted the 2006 class settlement agreement to be approved so they could later argue, as they in fact have

argued, that no other sexual abuse claims for sexual abuse prior to 2006 could be made against the Diocese defendants if brought after the 2006 class settlement approval.

188. The Diocese defendants knew that the 2006 class settlement agreement had been negotiated and reached with an “adverse” attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar claim against a different Diocese. The Richter defendants wanted to assure themselves of a large fee in the class action without jeopardizing that fee by getting too many class claimants against class counsel Richter’s own Diocese.

189. All Defendants conspired to create methods to be able to limit the number of class members who would make claims under the 2006 class settlement agreement, to limit the amount those class member claimants could recover, and to protect the Diocese defendants from any future claims. Doing so established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge-Shopping to Pick the Judge

190. The first technique used by the Defendants to limit the class recovery was for the Defendants to agree to maneuver the 2006 class settlement agreement from the Charleston class action to be presided over not by any judge in Charleston County, where the putative class case was filed and where the class case settlement was reached, but to “shop” for a judge they selected to make class settlement determinations. An independent judge in Charleston County was not desired to make those determinations. A judge more likely to overlook court rules and accept fraudulent filings was desired.

191. Instead of complying with SCRCP 23, and submitting the attached 2006 class action settlement to a judge in Charleston County for approval under SCRCP 23, the

Defendants agreed to cooperate so as to have the Richter defendants file, and the Diocese defendants accept service of, newly filed class action cases in Dorchester County. The Richter defendants filed on August 15, 2006 in Dorchester County cases 06-CP-18-1310 and 06-CP-18-1311. After those two cases were filed the Charleston class action case, *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al.*, 05-CP-10-4193, was redundantly re-filed in Dorchester County on October 6, 2006, with the same caption (other than the changed county name from “Charleston” to “Dorchester” and the case being assigned the different case number for Dorchester County of 06-CP-18-1636), and with the identical allegations. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending and already filed, and already settled, Charleston class action, to attempt to place all of the settled Charleston cases within the scope of the duplicate cases in Dorchester County, and as the means to avoid independent judges in Charleston County and to shop for the desired judge in Dorchester County.

192. This procedural maneuver agreed to among the Defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose when it was used in 2006.

193. Filing duplicative class actions to have the same case pending simultaneously in two different venues, particularly after the first venue’s filing is settled, is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court and to the Plaintiffs, ostensibly included in each of the duplicative complaints through the

class definition used in each of those complaints. The Plaintiffs were deprived of Due Process through the conduct of the Defendants.

194. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending, and all were included within the 2006 class settlement agreement.

195. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the John Doe 53 class action was, by agreement among the Defendants, simultaneously pending in two separate counties, for the same client, same class representative, and same class.

196. Dorchester County was chosen by agreement of the Defendants so as to “judge shop” for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a pliable oversight of any questionable elements of the class action, including class certification, class notice, attorneys fees, any pre-award fairness hearing, and any post-award fairness hearing. The shopped-for judge was expected to tolerate factual misrepresentations and fraudulent filings by the Defendants, an expectation that was rewarded when fraudulent filings were made, by agreement among the Defendants, and the pliable, shopped-for judge took no action concerning those fraudulent filings, either before the fraudulent nature of those filings was explicitly disclosed or after the fraudulent nature of those filings was explicitly disclosed.

197. The defendants had found a judge willing to look the other way when presented with misconduct by class counsel.

198. The Defendants all agreed with this strategy of seeking a pliable state court judge, and consented to the “judge shopping” so as to avoid having to submit the class

allegations, and proposed class action settlement, for approval by any judge in Charleston County. The Defendants feared completely objective judicial oversight by any of the judges in Charleston County.

199. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the shopped-for judge designate the cases as complex, and assign the cases to the shopped-for judge. That designation was improper under the rules applicable at the time, as set forth in more detail below, as Defendants joined together to misrepresent facts to the shopped-for judge in order to obtain complex case designation. Alternatively, the shopped-for judge was informed of the false representations of fact when the request for complex case status was made, and the shopped-for judge agreed to look the other way to permit the false representations of fact.

200. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the 2006 class settlement. If the request had been legitimate, and the same request had been made and granted in Charleston, only a single judge would have presided over all aspects of the settlement. But the Defendants feared that any Charleston judge would exert independent oversight of the 2006 class settlement, and Defendants sought to avoid independent oversight.

201. Other than to shop for a particular judge, there was no legitimate reason to redundantly file case 2005-CP-10-4913 as case 2006-CP-18-1636.

202. As soon as the shopped-for judge assigned the Dorchester actions to herself, the Defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

203. No motion was filed in Charleston to approve the 2006 class settlement reached in the Charleston cases. All Defendants consented to not filing such a motion.

204. SCRCP 23 was not complied with as to the 2006 class settlement reached in the Charleston class action. All Defendants consented to not complying with SCRCP 23 in Charleston County, and all Defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge in Dorchester County.

205. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases. Nor was any notice given to the Charleston County judge that the parties sought a voluntary dismissal without prejudice of any case that alleged a class.

Conspiracy Technique Two: Using Complex Case designation Improperly.

206. In October 2006, the Defendants sought complex case designation of the Dorchester County class action cases.

207. At that time, the Charleston cases were still pending.

208. The July 26, 2006 order of the South Carolina Supreme Court, which at that time enabled complex case designation, approved a particular form for use with motions to seek complex case designation. Among other things, that motion required the Defendants in this case to cooperate to represent to the shopped-for judge that certain facts applied to the action for which complex case status was sought. The form states, with emphasis added:

We certify that we have made a good faith effort to settle this case and ***thus far have been unable to do so.*** We realize that if this case should be settled after being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before this date.

209. At that time, the Charleston cases were still pending, and a class settlement had been reached in those cases which, if approved, would resolve all cases. The emphasis added to the portion quoted above is the false portion represented to the shopped-for judge.

210. By agreement among the Defendants, and despite the provisions of SCRCF 23, no notice was given to class members of the dismissal of the Charleston class cases.

211. By agreement among the Defendants, no notice was given to the Administrative judge for Charleston County, judge Jefferson, that when the Defendants sought a voluntary dismissal without prejudice of the pending Charleston County cases that one of those cases alleged a class.

212. Defendants falsely represented to the shopped-for judge in Dorchester County that no settlement had been reached at the time the Defendants sought complex case designation. Alternatively, the Defendants disclosed to the shopped-for judge that they fraudulently sought complex case designation, under a false representation of facts, and the shopped-for judge agreed to overlook the false application. As a second alternative, Defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status.

213. Complex case status was approved, despite a settlement having been reached before the first Dorchester County case had been filed.

Conspiracy Technique Three: Agreeing to an unethical attorney's fee for class counsel.

214. The 2006 class action settlement reached in the Charleston class action cases included simultaneous negotiation of a common fund, and variable, recovery for the class and a fixed fee amount for class counsel, with the fee to class counsel be paid prior to the claims period, and to take priority over recovery to the class member claims.

215. As set forth in the affidavit of Michael Virzi, attachment B to this complaint from the federal court filing on April 13, 2009, and incorporated pursuant to SCRCF 10(c), it was unethical for the Richter defendants to simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese defendants to agree to it. Plaintiffs at no time consented to the Richter defendants negotiating such a settlement, and it was not disclosed to them.

216. At page 13, paragraph 6B, in the typed version of the 2006 class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure set forth in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

217. Representation of the Plaintiffs by the Richter defendants in proposing an unethical fee was inadequate, and did not comply with applicable professional standards. Alternatively, that representation breached a fiduciary duty to the Plaintiffs.

218. The fee provision in the class settlement assured the Diocese of getting maximum protection from the *res judicata* effect of the class action settlement within the financial limits the Diocese defendants and the Holy See were willing to pay, in exchange for an unethical fixed fee for the Richter defendants, paid before the number of class members was known, paid before any class member could make a claim, and paid before any class member could be or would be paid.

219. The Richter defendants sacrificed the interests of absent putative class members, such as the Plaintiffs, in exchange for the fixed fee they negotiated for themselves. The Diocese defendants agreed to that class counsel fee as the price of obtaining the illicit cooperation of the Richter defendants in structuring the 2006 class settlement resolution that provided only a

fraction of the relief the Richter defendants would agree to accept in a case against a Diocese other than Richter's own Diocese, the Diocese defendants.

Conspiracy Technique Four: Disclosing to the Class neither the Settlement terms for the Class Representatives nor the Settlement for Persons who Opted Out of the Class

220. The fourth technique to conspire against the Plaintiffs was to make no disclosure to them, or other class members, of either the superior settlement terms agreed to by the Diocese defendants with the individuals who were the class representatives, or the superior settlement terms reached with the individuals who opted out of the class settlement.

221. The Defendants have all taken the position that the agreement with those persons who opted out of the class action was part of the class action. As part of the class action, the Defendants should have informed class members of those terms as an option to the class recovery.

222. Neither the class representatives nor the opt-out abuse victims had to submit their claims to binding arbitration. Their claims were given specific dollar amounts prior to their having to relinquish their right to maintain their respective claim. Each knew precisely what their recovery would be before consenting to resolve his or her claim.

223. In addition, the terms for the opt-out abuse victims exceeded the low bar of recovery the Richter defendants agreed to set for class member recoveries, to further protect Richter's own Diocese. The opt-out victims received more than was received by any comparable abuse victim who stayed in to participate in the 2006 class settlement.

224. In addition to the fee approved by the Court, the Richter defendants charged class members who participated in the 2006 class settlement an additional fee to go through the arbitration mechanism of the 2006 class settlement. That additional fee was not authorized by any court order, and it exceeded the fee approved by the shopped-for judge. The court

approved fixed fee was not disclosed to participating class members, was not reviewed by the shopped-for judge as part of the pre-award fairness hearing, and was not reviewed in any post-award fairness hearing because no post-award fairness hearing has been held. The shopped-for judge agreed to not have any post-award fairness hearing so as to not jeopardize class counsel's fee recovery in the 2006 class settlement.

225. No notice was given to any class member, including the Plaintiffs, about the terms of the opt-out settlements. Had the been given notice of the terms available for the class, and the terms negotiated by the opt-out abuse victims, and the terms applicable to the class representatives, he could have exercised a choice to receive one or the other recoveries or to opt out and preserve his claim against the Diocese defendants. The Plaintiffs were abandoned by their attorneys, the Richter defendants, with the collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed by class counsel to the Plaintiffs, by the Richter defendants agreeing to define the class so as to ostensibly include the Plaintiffs, were breached when they provided no notice to the Plaintiffs of the better terms obtained by others.

226. As alleged below, the abandonment by the Plaintiffs was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the Plaintiffs, or was a breach of the fiduciary duty assumed by the Richter defendants towards the Plaintiffs. In this cause of action those duties are alleged to have been were consciously abandoned, as the Richter Defendants have represented, in cooperation with the Diocese defendants so as to not interfere (from class counsel's perspective) with the fee class counsel obtained, and so as to not interfere (from the perspective of the Diocese defendants) with the protection the 2006 class settlement enabled them to assert.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Create A Means of Limiting Total Recovery for Compensating Victims

227. In the “General Terms of Settlement” agreed to in the 2006 class settlement of the Charleston class action case, there are seven essential terms of the settlement agreement.

228. The first general term in the 2006 class settlement was that there would be two classes for the settlement. “Actual victims of Diocese abuse,” and “Spousal &/or parent claims deriving from victims abused.”

229. The second general term in the 2006 class settlement was to provide a \$12 million settlement fund without risk that the fund would under any circumstances be exceeded. The effect of that provision was to compromise the interests of sexual abuse victims, to prevent the Diocese from being unable to withdraw from the settlement, and to protect the Diocese defendants by depressing or eliminating any other recovery for any other potential claimant, such as the Plaintiffs.

230. The third general term in the 2006 class settlement was “Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims.”

231. The fourth term in the 2006 class settlement was that the court would be asked to approve a fixed fee for class counsel “between \$950,000 & \$2.5 million.”

232. The fifth general term in the 2006 class settlement was to establish that four individuals would allocate among themselves \$460,000.

233. The sixth general term in the 2006 class settlement was that the four individuals would be paid whether or not the court approved a class settlement.

234. The seventh general term in the 2006 class settlement was that the seven terms are an offer from the Diocese and “shall be acted upon with reasonable promptness” by the four individuals who would allocate \$460,000 among them.

235. The four individuals referred to in the 2006 class settlement agreement accepted the offer from the Diocese, and allocated among themselves \$460,000. None of those individuals received more than \$160,000. It is not yet known what portion was allocated to legal fee for class counsel.

236. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class. Their claims were resolved upon acceptance, in 2006.

237. On information and belief, those four individuals accepted that offer shortly after the June 14, 2006 mediation. At least one of them had accepted it by June 16, 2006.

238. The two classes preliminarily certified in an order signed January 19, 2007, excluded persons who have “previously had any similar claim adjudicated, resolved, or released.”

239. The Diocese defendants paid the \$460,000 portion of the settlement on November 20, 2006.

240. The individuals who purportedly represented the classes in the 2006 class settlement, whose claims had been “resolved” in 2006, did not in 2007 qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nor could they qualify as class representatives when the class was approved in 2007. Nevertheless, by cooperation and agreement among the Defendants they were falsely designated as class representatives in subsequent Dorchester County cases, falsely put forth as class

representatives, and approved as class representatives even though they did not meet the definition of the class.

241. In addition to not meeting the class definition, the class representatives received a different settlement than did class members, and excluded themselves from the arbitration process later articulated for the class members. In doing so they were guided by the Richter defendants as class counsel.

242. In the handwritten version of the 2006 class settlement, when the parties reserved details for later specificity (“Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims”), those details were reserved so the Defendants could work backwards from the settlement fund, minus class counsel’s fixed fee, to enable adjustments to be made to the notice to the class and the recovery to the class members, so the recovery to class members would not be “too much.” Neither the fee for the Richter defendants nor the finality desired by the Diocese defendants would be jeopardized by having “too many” sexual abuse victims served by the 2006 class settlement agreement.

243. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of the class, because the highest priority of the Richter defendants, ahead of the interests of their clients or ostensible class members such as the Plaintiffs, was to preserve class counsel’s fixed fee and to get payment of class counsel’s fixed fee. The second priority of the Richter defendants was to charge more than the court approved fee. That is why the fee is fixed, and why the fixed fee takes priority over the recoveries of the class members who participate in making claims under the 2006

class settlement agreement, and why the Richter defendants charged class members an additional, and unauthorized, fee.

244. The highest priority of the Diocese defendants, after their willingness to pay class counsel's fixed fee, and make no objection to class counsel charging a greater fee than was approved by the Court, was to either exclude persons such as Plaintiffs, or to try to limit as best they could the possibility of any future recovery to persons such as Plaintiffs, so that within the relatively modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims by the same counsel against another Diocese, the Diocese could argue a *res judicata* benefit from the 2006 class settlement without having to pay meaningful relief to class members, but paying a sufficient amount so as to get the class approved. That is among the reasons that all Defendants wanted class counsel's fee to be fixed but the recovery to the class to be variable, for notice to be designed to not inform all persons within the class definitions of the settlement itself.

245. The Diocese defendants knew, or should have known, that the systematic administrative practices of deceit and deception about sexual abuse practiced by the Diocese defendants exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

246. The Diocese defendants knew that juries in Charleston County had placed a high value on the intangible nature of sexual abuse claims.

247. To try to limit future sexual abuse claims, the Diocese defendants elected to consent to the 2006 class settlement, hoping that settlement would define a class so as to enable the Diocese defendants to argue to exclude the Plaintiffs by means of *res judicata*. In that manner

the Diocese defendants could achieve a possible protection for the Diocese at a fraction of the cost of a proper settlement with all sexual abuse victims. The Diocese defendants realized they could capitalize on the close ties to the Diocese defendants of the Richter defendants, and the willingness of the Richter defendants to sacrifice, for a fee, the interests of these and other Plaintiffs, and enabled the Diocese defendants to try to minimize recoveries to all sexual abuse victims, yet still get a class approved.

248. All Defendants needed to avoid meaningful court oversight of the 2006 class settlement to achieve their collective goals of limiting the interests of absent members of the class, so all Defendants agreed to “judge shop” to avoid oversight by any Charleston judge, and to obtain a lax oversight by the shopped-for judge they desired.

249. When the Defendants realized that “too many” victims, such as the Plaintiffs, might come forward, either within in the class action or later in time outside of the class action, they changed, by agreement, the notice to the class proposed to the shopped-for judge, to limit how many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint. Each of those additional terms was developed by consent of the Defendants.

250. The Defendants also agreed to misrepresent to the shopped-for judge, but to not submit in written form, a proposal to address persons, such as the Plaintiffs, who were absent members of the class because they got no notice. The Defendants represented to the shopped-for judge that relief would be offered to the Plaintiffs and others, when in fact the Defendants had no intention of providing relief to the Plaintiffs or others.

251. Nor did the Richter defendants undertake to secure in written orders those assurance from the Diocese.

252. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the Plaintiffs. All Defendants took deliberate action to permit victims to be identified by the Diocese defendants, rather than insisting on giving meaningful notice to putative class members. Doing so was also negligence by the Defendants, but this cause of action presumes that the conduct was intentional, so as to exclude the possibility of these Plaintiffs being able to make a claim for the childhood sexual abuse of John Doe 245.

253. Paying class counsel his fixed fee before any notice to the class, before any class claimant had been identified, and before any claims had been submitted, was another way of limiting the recovery to the class.

254. By design of all Defendants, the class had no opportunity for input or comment on the proposed fixed fee, to be paid ahead of all class claims, as the fixed fee was approved without notice to the class and before the class members were known.

255. Nor were class members advised, when they were charged an additional fee not authorized by any court order, that the Richter defendants had already been paid the fee approved by the court. All such funds should be restored, but all Defendants collaborated to avoid there being a post-award fairness hearing.

256. No Defendants disclosed that the Richter defendants were submitting fraudulent information to the shopped-for judge, or that the Diocese defendants had agreed to overlook the fraudulent information submitted by the Richter defendants to the shopped-for judge to support the fee class counsel claimed. No Defendant disclosed that the Diocese defendants had agreed to make no mention of those various fraudulent time entries by the Richter defendants.

Nor had any of the Defendants disclosed that they had agreed they would request no post-award fairness hearing.

257. Structuring the arbitration into a matrix of categories, with recovery limits in each category based on physical touch rather than the psychological injury caused, was another way to limit the recovery to the class.

258. The Defendants agreed to propose giving no notice nationwide, or even outside the immediate area of South Carolina, so as to try to eliminate abuse victims such as the Plaintiffs. Defendants set the categories and recovery limits on the class members in the arbitration, and set the binding nature of the arbitration, as means calculated to enable the Richter defendants to charge an unauthorized fee in the arbitration.

259. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter defendants would be paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese defendants to abandon clients such as the Plaintiffs, impair the Plaintiffs' ability to make future possible claims, to generally depress the recoveries to sexual abuse victims, to serve the interests of the Diocese defendants, and to enable the Richer defendants to charge class members additional and unauthorized fees.

260. The Richter defendants abandoned absent class members such as the Plaintiffs, by making no provision for the Plaintiffs and by failing to obtain in a written order the relief the Richter defendants claimed to have achieved for absent class members such as the Plaintiffs. All other Defendants cooperated with that abandonment by class counsel.

Conspiracy Technique Six: Providing False Information to the Court

261. The sixth technique used to cause special harm to the Plaintiffs was Defendants cooperated in filing with the court false information. When false information was filed by one Defendant, all other Defendants acquiesced, despite knowing the filing was false. Even after the information was identified as false, no action was taken to protect the Plaintiffs.

262. As noted above, the Dorchester County class action complaint in case 2006-CP-18-1636 was falsely filed in that before it was filed the case had already been settled in Charleston as case 2005-CP-10-4913 through the 2006 class settlement. The identical case as re-filed in Dorchester County was collusive, and was filed in Dorchester County only to avoid oversight by any Charleston judge and pursuant to the defendants' agreed upon plan to shop for a particular Dorchester County judge.

263. As noted above, the claim that class representatives in Dorchester County met the definition of the class and could serve as adequate class representatives were each false, and known by all Defendants to be false when made in any of the Dorchester County class complaints.

264. Patently false information about the procedural history of the class action was included by the Richter defendants in the Motion to Certify Classes and for Preliminary Approval of Class Settlement, and acquiesced in by other Defendants.

265. Patently false information has also been given to the Charleston County Court and to the public by the Diocese defendants.

266. All Defendants cooperated in providing incomplete information to the Court in Charleston County so as to facilitate dismissal without prejudice of the Charleston class action.

267. By agreement of all Defendants, SCRCP 23 was not complied with in dismissing the Charleston class action. Plaintiffs were given no notice of the dismissal, or about the Charleston class settlement, or about the settlement provided those who opted out of the class settlement. Nor was notice of the Charleston county class action case dismissal given to any other actual or ostensible class member.

268. False information was filed in Dorchester County about the class representatives and their adequacy as class representatives. All Defendants acquiesced in that false information to the court.

269. False information was filed in Dorchester County in support of the fixed fee sought by the Richter defendants. The Diocese defendants made no mention of the false information filed in support of the fixed fee, because the fixed fee for the Richter defendants, and the modest variable relief for the class, was the *quid pro quo* for the Diocese defendants getting the benefit they have claimed entitles the Diocese defendants to *res judicata* protection of the class settlement, and was the means by which the Defendants conspired to try to eliminating claims by persons such as the Plaintiffs from being able to make any claim against the Diocese.

270. Among the false information filed to support the fixed fee for the Richter defendants was false information about procedural history, false mathematical calculations, false representations to mask the cooperation among Defendants, false time records by the Richter defendants (including individual lawyers billing in a single day compilations of 30, 40, 51.5, 60, 80, and even 92 hours; and billings for activities performed on multiple “February 30” days), false statements of costs incurred by class counsel, false statements of the recovery to the class, and false information about the counsel for persons who had opted out of the class settlement.

271. The Diocese defendants agreed to remain silent as to these false statements, except where they overtly participated in them.

272. If the Plaintiffs are barred from claims against the Diocese defendants by the *res judicata* effect of the class action, or the charitable immunity defense waived as to persons in the class definition, or the statute of limitations waived as to persons in the class definition, or for any other reason, then duties to them in the class action were breached by the Defendants, and special harm has been caused to the Plaintiffs by the conspiracy of the Defendants.

Conspiracy Technique Seven: Obtaining no written order for absent class members who got no notice.

273. The seventh technique used in the conspiracy among Defendants to cause special harm to the Plaintiffs was to obtain no written order to secure representations made on the record to the shopped-for judge about relief supposedly available to absent members of the class who got no notice.

274. All Defendants in 2006 were conscious that choosing to define the classes so as to include these Plaintiffs served the interests of the Diocese at the expense of persons such as the Plaintiffs.

275. The Richter defendants abandoned the Plaintiffs as putative members of the class in agreeing to provide them no notice.

276. The Diocese defendants conspired with the Richter defendants to submit for court approval by the shopped-for judge the 2006 class settlement agreement that was calculated to omit absent members of the class such as the Plaintiffs, and all persons situated similarly to them. The Diocese has contended that the 2006 class settlement agreement bars the Plaintiffs from being able to make any claim due to the *res judicata* effect of the class action, without having to compensate for Justin Goodwin's sexual abuse.

277. The Diocese defendants conspired with the Richter defendants in failing to submit for court approval by the shopped-for judge any order which provided that the absent members of the class could obtain relief consistent with the 2006 class settlement agreement. That failure was calculated to prevent the Plaintiffs, and all persons situated similarly to him, from having any recovery against the Diocese defendants.

278. No effort was made to protect absent members of the class, such as the Plaintiffs, by how the class was defined or any order which comprehensively embodied how persons who got no notice would be treated. Notice was known to be insufficient for the persons within the class definition, and the Defendants all claimed on the record to the shopped-for judge that relief would be provided for the Plaintiffs and others. Those representations were false, and were not embodied in any written order.

279. If the Plaintiffs is are barred from claims against the Diocese by the *res judicata* effect of the class action, or by charitable immunity (which was waived as to those within the class definition), or by the statute of limitations (which was waived as to those within the class definition), or for any other reasons, then duties to the Plaintiffs in the class action were breached by the civil conspiracy among the Defendants, and special harm has been caused to the Plaintiffs by the acts of conspiracy among the Defendants.

280. The parties failed to embody in any order in the class action any protections for the Plaintiffs as an overt act taken in furtherance of the common plan to reduce the number of claimants by eliminating persons such as the Plaintiffs from being able to make a claim, while retaining the argument that all absent class members were barred by *res judicata*. The conduct by all Defendants demonstrate that the representation of the class by class counsel was inadequate, but this cause of action presumes not just that class counsel was professionally

negligent but consciously abandoned the Plaintiffs so as to not jeopardize class counsel's fixed fee, and so as to protect his own Diocese from the greater relief that even class counsel himself insisted on from a Diocese other than his own. The defendants conspired specifically to defeat the interests of persons such as the Plaintiffs, to cause him special harm by giving him not even a chance at notice of the class action, or the ability to opt out, or the ability to protect his claims from the prohibitions of the class action.

281. The injury to the Plaintiffs from the conspiracy engaged in by the defendants harmed the Plaintiffs in a manner different from other causes of action. The Plaintiffs were improperly excluded from the class action, but unique to the conspiracy cause of action are the damages from the Plaintiffs being unable to influence the corrupt course of the class action, and its corrupt features, because each was unable to participate in the class action or opt out of the class action. Plaintiffs were deprived of the opportunity to influence the class suit, and to try to assist themselves and other abuse victims from not being limited to the corrupted procedures and manipulations of the class suit. Among other things, the Plaintiffs were unable to participate to influence the miniscule recovery allocated for parent and spousal claims because in the class action those claims were not brought using the common law "loss of services" cause of action. However, if the Plaintiffs are not deemed precluded from stating claims against the Diocese for any reason, including the class suit, charitable immunity or the statute of limitations, then the conspiracy by the Diocese defendants to defeat his claims was ineffectual, and this cause of action will be abandoned in favor of the other causes of action against the Diocese.

282. As a proximate cause of the actions of the Defendants as alleged above, the Plaintiffs were damaged, and are entitled to actual and punitive damages from the Defendants as a result.

**For a Fourth Cause of Action:
Professional Negligence by the Richter Defendants**

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

284. This cause of action presumes both that the Plaintiffs are precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making claims against the Diocese, or if they could make claims they were unable to fully mitigate the actual damages caused by the professional negligence of the Richter defendants.

285. The punitive damages Plaintiffs should be entitled to from the Richter defendants are not mitigated by any claims or recovery against the Diocese defendants.

286. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCP 10(c), is a copy of an affidavit of Michael Virzi specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants. The version of this affidavit is a copy of that filed with the 2009 federal complaint.

287. As reflected in the 2006 Charleston class action settlement that is Attachment A to this complaint, the proposed group whose claims were settled on June 14, 2006, in the Charleston class action mediation was a class specified as “actual victims of Diocese abuse.”

288. Plaintiff John Doe 245 was a putative member of that class as it was defined in the proposed settlement.

289. When the 2006 class settlement agreement was formally typed and formally approved by the Richter defendants, the Vatican, and the Diocese defendants, the illicit agreement by

Defendants on “judge shopping” had been accomplished, and the 2006 class settlement agreement reached in the mediation of Charleston cases was now claimed to be a proposed settlement of all prior cases, both the Charleston cases listed in the 2006 class settlement and the post-settlement Dorchester County class actions.

290. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the Plaintiffs.

291. The Richter defendants assumed a duty to the Plaintiffs in each of the filings in (a) the Charleston case which alleged a class action, (b) in that June 14, 2006 class settlement agreement of the Charleston case which alleged a class action, and (c) in its October 6, 2006 Dorchester County filings alleging a class action defined so as to include the Plaintiffs.

292. On the record to the shopped-for judge the Defendants agreed that relief would be provided for absent members of the class who got no notice of the class settlement. Those representations were false. The Richter Defendants were professionally negligent in failing to provide a written order to secure the representations made on the record.

293. On January 19, 2007, the proposed class definitions that included the Plaintiffs were approved without objection from the Diocese defendants.

294. In their Charleston and Dorchester County class action cases against the Diocese defendants, the Richter defendants assumed the obligation of representing the interests of absent putative class members including the Plaintiffs. In abandoning the Plaintiffs, the Richter defendants performed in a professionally negligent manner the duty they had assumed to absent putative class members such as the Plaintiffs.

295. The Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiffs. Among other things, when they abandoned the Plaintiffs and

acted so as to harm their interests, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the Plaintiffs reasonably informed, failed to provide them with information with respect to obtaining their informed consent, failed to consult with them about the means for accomplishing their objectives, represented them without their consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal, as set forth in the affidavit of Michael Virzi.

296. No provision of any type, at any point, was made in the orders of the shopped-for judge overseeing the class action to protect absent putative class members who in 2006 had received no notice of the class action.

297. Any court approval of the 2006 class settlement was deficient in terms of protecting the Plaintiffs because the court overseeing the class action had been shopped-for by the Defendants, and had been given, by agreement of the Defendants, fraudulent information on which to base decisions.

298. The Richter Defendants abandoned their absent putative class member clients such as the Plaintiffs by failing to secure in a written order the provisions which supposedly gave them mild protection in the form of the modest recovery of the class action.

299. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the court, and failing to protect the Plaintiffs' interest in the written orders.

300. The Plaintiffs were abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action, or after the class action, and jeopardize the fixed fee the Richter defendants had negotiated for themselves at the expense of the class

members, that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun.

301. Having “too many” claimants also was believed to not be in the interest of the Diocese defendants, and because of class counsel’s conflicts of interest, which were not disclosed to the class, the Richter defendants were actually acting to protect the interests of the Diocese defendants more than the interests of putative class members such as the Plaintiffs.

302. As a result of his attorneys, the Richter defendants, abandoning the Plaintiffs, he had no opportunity to participate in the class action, or to opt-out of the class and pursue either the more favorable terms available to those other persons who opted out, or pursue his claim independently. The acts and omissions of the Richter defendants have caused damage to the Plaintiffs, assuming the Plaintiffs are prevented for any reason from fully mitigating the actual damage caused by the Richter defendants through their claims against the Diocese.

303. Plaintiffs are entitled to actual and punitive damages as a result of the professionally negligent representation they received from the Richter defendants.

**For a Fifth Cause of Action:
Breach of Fiduciary Duty by the Richter Defendants**

304. Allegations above, other than the allegations of intentional conduct by the Richter defendants, are incorporated into this cause of action as if fully stated. This cause of action presumes both that the Plaintiffs are precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making his claims against the Diocese and fully mitigating through those claims the actual damages caused by the Richter defendants.

305. The Richter defendants chose to agree to define the classes in the class actions so as to have no geographical limit on the classes.

306. All Defendants agreed on how the classes were defined.

307. In choosing to define the classes so as to include the Plaintiffs, the Richter defendants each assumed fiduciary obligations to the Plaintiffs, who were each absent putative members of one of the classes they defined.

308. As an alternative to the Fourth Cause of action for professional negligence, the Richter defendants breached the fiduciary duty each assumed as to the Plaintiffs as absent members of their respective putative class.

309. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the Plaintiffs by failing to secure for them even the modest relief of the class action, or to preserve his ability to make his claim independent of the modest relief obtained by the Richter defendants for sexual abuse victims.

310. The state court judge overseeing the class action was shopped-for by all Defendants.

311. The state court judge was not asked to preserve in any written order any rights for absent members of the class who received no notice, or to protect the rights of those persons.

312. The Richter defendants claimed to protect the Plaintiffs but then failed to do so. The Richter defendants were negligent in failing to do so, and were out-maneuvered by the Diocese defendants, who had made representations on the record but then succeeded in keeping those representations from being embodied in any court order.

313. Once the Richter defendants were paid their court-approved fee, they were ineffectual in securing the rights of the Plaintiffs to preserve their ability to make a claim.

314. The Richter defendants in each of its 2005 Charleston class action filing, and in the 2006 class settlement agreement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the Plaintiffs.

315. On January 19, 2007, the class definitions that included the Plaintiffs were approved without objection from the Diocese defendants.

316. The Richter defendants contend that they had no obligations to absent class members, indicating conclusively their lack of understanding of the obligations undertaken by class counsel as a matter of law when class allegations are made.

317. The Richter defendants each breached their fiduciary duties to the Plaintiffs, and as a result, the Plaintiffs have been refused any compensation by the Diocese defendants, who have used the 2006 class settlement as a shield. The Richter defendants were negligent in failing to protect the Plaintiffs' interests.

318. Having "too many" claimants also was believed by the Richter defendants to not be in the interest of the Diocese defendants, and to protect their own interest in their fixed fee the Richter defendants had to also act to protect the interests of the Diocese more than the interests of the Plaintiffs. The Richter defendants have close and longstanding ties and involvement with the Diocese defendants. Those involvements were never disclosed to the class, or to the Plaintiffs. To promote the interests of the Diocese defendants in trying to later enable the Diocese defendants to argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote ahead of the interests of the Plaintiffs their own interest in their fixed fee, the Richter defendants failed to secure in any written orders any protections for absent members of the class such as the Plaintiffs, even though the class compensation was among the lowest-known victim compensation.

319. As a result of the Richter defendants abandoning the interests of the Plaintiffs, and breaching the fiduciary duties the Richter defendants owed to each of them, the Plaintiffs have been damaged by having his claims against the Diocese defendants interfered with, and a barrier created to those claims that would not have existed but for the negligent conduct of the Richter defendants.

320. Plaintiffs are each entitled to actual and punitive damages as a result of the fiduciary duties to them that were breached by the Richter defendants.

**For a Sixth Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty by Diocese defendants**

321. Allegations above are incorporated into this cause of action as if fully stated. This cause of action presumes the Plaintiffs are unable, for any reason, to either make claims for childhood sexual abuse against the Diocese, or to fully mitigate the actual damages each has from the Richter defendants through claims against the Diocese defendants.

322. The Diocese defendants aided and abetted the breach of fiduciary duty by the Richter defendants.

323. In pleading a class action the Richter defendants assumed a fiduciary duty to the Plaintiffs.

324. In the conduct to “shop for” the Dorchester County judge, to define the class, and to limit notice, as alleged above, the Diocese defendants participated with the Richter defendants in limiting the ability of the Plaintiffs to make their own claim against the Diocese for childhood sexual abuse.

325. The Diocese defendants joined with the Richter defendants in making representations on the record to the shopped-for judge that supposedly protected the interest of the Plaintiffs into either each being able to bring his claim at a later time or being able to

331. In making that invitation, the Richter defendants assumed the duty to ensure that its offer of services did not disadvantage the Plaintiffs, and assumed the duty that its services would be free of unfair and deceptive trade practices.

332. In 2006 the Richter defendants entered into a class settlement agreement with the Diocese for victims of sexual abuse by agents and employees of the Diocese defendants. The class settlement was ostensibly to address the known history of priests and other employees who sexually abused minors, but as effectuated by the Richter defendants, the primary purpose of that class action was to enrich the Richter defendants at the expense of sexual abuse victims and, through unfair and deceptive trade practices, to protect not his clients but the Diocese defendants from (a) future claims for sexual abuse, and (b) to depress the value of sexual abuse claims against the Diocese defendants.

333. Unfair and deceptive trade practices were pursued in furtherance of the class action, as alleged above, including false representations to the court, violations of professional standards, judge-shopping, collusive conduct, abuse of court rules and procedures, and actions which violate professional standards, as pleaded with specificity above.

334. The public interest was affected by the 2006 class settlement because the offering was made to the public, the advertising was made to the public, members of the public were invited to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved by the Court predicated on either false representations made to the Court about how the person such as the Plaintiffs would be accommodated, or through a shopped-for judge who was aware that the representations being made were false.

335. Among the false statements made at the time by the Defendants was Bishop Baker's public statement that the proposed class resolution was "for those individuals who were abused

within the Diocese of Charleston by clergy or laity over a number of decades.” At the time that claim was made, all Defendants were aware that the 2006 class settlement proposed relief about which only persons in and around South Carolina were to be informed, and that no provision had been made for persons, such as the Plaintiffs, who got no notice of the class. In its public statements, acquiesced in by the Richter defendants, the Diocese defendants overtly misrepresented the reach of the proposed 2006 class settlement. No party disclosed that in fact the 2006 class settlement agreement was designed, as its first priority, to obtain a fee for class counsel, with all other relief to clients secondary to that fee, and that the 2006 class settlement agreement was designed so as to omit relief to many persons who had been sexually abused, and was designed to provide among the worst recovery for sexual abuse victims in any case nationwide, was designed to depress the value of sexual abuse claims against class counsel’s own Diocese, and was designed by class counsel to protect the Diocese defendants from future claims, and to inhibit the Plaintiffs from being able to make any claim.

336. A circuit court judge to approve the class settlement was “shopped for” and selected by the Richter defendants, with collaboration of the Diocese defendants. The Richter defendants did not want any Charleston County judge to preside over the 2006 class settlement agreement, out of concern that the judge might be fully independent.

337. The Diocese defendants were negligent in assessing the damage done by sexual abuse by their employees and the number of persons affected by that abuse. Alternatively, the Diocese knew the number of victims would far exceed the numbers it reported to the court as its expectations for number of victims, and consciously misrepresented that number to the court and to the public.

338. The Diocese defendants were aware that the Richter defendants were willing to recover only modest relief for victims in exchange for a substantial fixed fee that took priority over the recoveries to the victims.

339. The Richter defendants had extensive and life-long ties to the Diocese defendants, and was known to the Diocese defendants to be willing to compromise the interests of the absent class members, including the Plaintiffs, in exchange for a fixed fee payment.

340. With the cooperation of the Diocese defendants, the Richter defendants conceived of a plan to commit a fraud on the Court and the public by representing to the court and the public, falsely, a rationale upon which the court could approve a class settlement defined with no geographic limits, and with no protections for persons who in 2006 had repressed memories of abuse, while giving only geographically limited notice to the class and in affirmatively misrepresenting to the court the relief which would be available to the Plaintiffs. As long as their fee was paid, and paid first, before any class member had received notice and before any class member had made a claim, and as long as the Richter defendants were able to take from the class without objection from the Diocese defendants unauthorized additional fees, the Richter defendants were expected by the Diocese defendants to be willing, and were in fact willing, to abandon the interests of the absent class members the Richter defendants represented. Instead, the Richter defendants accommodated the interest of the Diocese defendants at the expense of the absent members of the class they represented.

341. All Defendants collaborated to submit false information to the Court, and no Defendant objected when any of the false information was submitted by any of them or by their experts. Part of the collaborative agreement among the Defendants was to remain silent while false information was submitted.

342. To gain court approval of the class settlement from the shopped-for judge without disclosing his actual intention to compromise the interest of the absent class members such as the Plaintiffs, the Richter defendants made overtly false representations of fact to the court. Among those false representations was that there was an “understanding” among all Defendants in this action “as to what would happen” to any person within the class definition who “shows up” (as put by the Diocese defendants) outside of the class notice procedure. That “understanding” communicated to the Court was never placed in any written order by the shopped-for judge and, of course, there is no such “understanding” that the Diocese defendants agree to, nor is there any way to enforce the “understanding.” It was falsely represented to the shopped-for judge overseeing the 2006 class settlement that if “someone pops back up who should have gotten notice who didn’t get notice,” the Diocese represented, with the Richter defendants:

I think we [the Diocese and class counsel] have an understanding as to what would happen to those particular folks, which would really be our problem, and I think that what we’ve discussed allows us to proceed with the agreement we’ve signed on January 12th [2007]. And then if that person shows up then we [the Diocese] would have to deal with that.

343. That representation to the Court appears on page 3 of a transcript dated July 13, 2007. The representation is false, and is contained in no written orders of the court, so is unenforceable, as the Richter defendants, who were acting in the interests of the Diocese defendants, intended it would be. The representation was made in a hearing in the class action proceedings for which no other interested parties were given notice. Only in 2009 was the transcript disclosed in the course of other litigation over the collusive class action proceedings.

344. In that same transcript, the Diocese defendants represented to the Court, falsely, that there were only five sexual abuse victims they had not located. That representation was false, and was known to have been false when made. It was acquiesced in by the Richter defendants.

345. In fact, the Richter defendants were aware, and had alleged, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves. The Richter defendants were also aware that some abuse victims repressed memories of their childhood sexual abuse and in 2006 could reasonably be expected not to recall childhood abuse.

346. To get approval that protected the Diocese from, among other things, the Plaintiffs' sexual abuse claim, the Richter defendants falsely represented to the Court that when an absent class member did not get notice, and later identified himself or herself, the Richter defendants and the Diocese defendants assured the court, on page 14 of the same transcript, "we've got to find anybody else who has kind of, lack of a better word, comes out of the woodwork."

347. The Richter defendants, on pages 16 - 17 of that same transcript, summarized to the shopped-for judge, falsely, that the supposed position of the Diocese as "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 entirely false.

348. When the Plaintiffs communicated with the Diocese, the Plaintiffs' request for compensation was rejected, as the Richter defendants intended in 2007 would occur after the class action was concluded. Which is why the Richter defendants submitted to the shopped-for

judge who oversaw the 2006 class settlement no written orders to embody the supposed “understanding.”

349. Nor did the Richter defendants disclose that the representations were false when the shopped-for judge observed, as to the Diocese, 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.”

350. The Richter defendants intended on July 13, 2007, to create the false impression with the Court that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend relief to that victim. In making the false representation that they made no effort to embody in any court order, the Richter defendants were operating in the interest of the Diocese defendants, not in the interest of absent members of the class. The Richter defendants intended that the shopped-for judge would rely on the statement, and the Court did rely on the statement. However, the Court did not embody the understanding in its order, the Richter defendants made no request that the court do so, and the Diocese defendants refuse to comply with the “understanding.” That representation by the Richter defendants was false when made, and was known to have been false when made.

351. As to these Plaintiffs, the Diocese concealed the falsity of class counsel’s representations to the shopped-for judge. The true position of the Diocese has been, starting in 2009, to deprive other sexual abuse victims of any relief, using the class action suit as the rationale for doing so. That fraudulent concealment by the Diocese became known to the Plaintiffs only in 2009.

352. The shopped-for judge who oversaw the 2006 class action settlement relied on the statements by the Richter defendants, and silence by the Diocese, to extend in the court's order of July 30, 2007 approving the class settlement, at page four, this statement:

The Diocese has further stated that it understands that **any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement.** Further the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

Emphasis added. While one might expect that the order's language would reflect the conduct of the Diocese defendants or what a court would enforce, in fact the shopped-for judge reflecting only what the Diocese has "stated" has proven to be an unenforceable order, as the Richter defendants intended in 2007.

353. Along with the Richter defendants, the Diocese defendants intended that the shopped-for judge overseeing the 2006 class settlement would rely on their collective statements, silences and conduct, to form the impression recorded in the court's 2007 order, even though the impression was false and neither the Richter defendants nor the Diocese had any intention, in 2007 or since, of honoring the assurances given to the shopped-for judge overseeing the 2006 class settlement.

354. When these Plaintiffs in 2009 informed the Diocese of John Doe 245's abuse, the Diocese (as the Richter defendants intended in 2007), refused to honor the assurances given to the trial court by the Richter defendants, and which the Court noted in its July 30, 2007 order at page 4 without actually ordering. Instead, the Diocese asserted the defenses it had waived for class members, claimed as to these Plaintiffs the *res judicata* effect of the class action which the Diocese defendants had disclaimed, and acted exactly contrary to the assurances to the

Court by the Richter defendants, and the public statement by then Bishop Robert Baker in January, 2007, that the Diocese intended a just resolution for every person who had been abused within the Diocese of Charleston.

355. The false statements by the Richter defendants, and the irregular conduct in the course of the class action by the Richter defendants, and the Richter defendants acting in the interest of the Diocese defendants rather than in the interests of the absent members of the class, constitute unfair and deceptive trade practices which have damaged the Plaintiffs.

356. The Richter defendants made their false representations to the shopped-for judge overseeing the 2006 class settlement for the purpose of gaining that court's approval of a class settlement with only limited notice to the class and with no protections for absent members of the class. When the 2007 order mentioned the "understanding" but appeared not to have ordered it, the Richter defendants did nothing to seek modification of the order.

357. The Richter defendants committed fraud on the Court, on the public, on these Plaintiffs, and on all sexual abuse victims born before August 30, 1980, the definition used in the 2006 class settlement. In doing so the Richter defendants also engaged in unfair and deceptive acts and practices in violation of South Carolina law, which have disadvantaged the Plaintiffs. In doing so the Richter defendants were acting in the interests of the Diocese defendants, not in the interests of the Plaintiffs they purported to represent.

358. All of the conduct by the Richter defendants, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the 2007 representations made to the Court by the Richter defendants and acquiesced in by the Diocese defendants. Multiple sexual abuse victims born prior to August 30, 1980, each of whom received no notice of the class action,

many of whom had not recalled their abuse by the 2009 conclusion of the class action or the earlier deadline of the class claims procedure, have since been refused relief by the Diocese when they made a claim for relief.

359. The disregard by the Richter defendants for absent members of the class, the misconduct throughout the class action, and the disingenuous representations by the Richter defendants to the shopped-for judge who had been hand-picked to oversee the 2006 class settlement agreement are unfair and deceptive acts or practices that affected the relief awarded in the class action, and affected the Plaintiffs by disabling their claim against the Diocese for the childhood sexual abuse of John Doe 245.

360. The conduct by the Richter defendants is part of an intentional effort to mislead the Court, and to act against the interests of the absent members of the class and instead to act in the interest of the Diocese defendants, with whom the Richter defendants are entwined.

361. The Plaintiffs have suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Richter defendants. Specifically, the Plaintiffs were unable to obtain the relief promised by the Richter defendants, were unable to preserve their claim after each was abandoned by the Richter defendants, and due to the misconduct of the Richter defendants, to date has been unable to maintain his claim against the Diocese. As a result the Plaintiffs is entitled to recover actual damages, trebled as provided by law, for the unfair and deceptive trade practices of the Richter defendants, with costs and disbursements and attorneys fees as provided by statute.

362. The secretive and disingenuous conduct by the Richter defendants, and the misconduct displayed during the class action, is offensive to public policy, and is immoral, unethical, and oppressive. The Richter defendants made a calculated business decision to

advance ahead of their class member clients' interests, and the interests of the absent members of the class, first the Richter defendants' own financial interests, then the interests of the Diocese defendants.

363. The Richter defendants collaborated with the Diocese defendants to design a compensation program for sexual abuse victims which specifically, and intentionally, excluded many victims, reduced the financial recovery for victims, depressed the financial recovery for other victims, and cut off the ability of absent members of the class to make claims. Each of those goals by the Richter defendants was illicit, and was an unfair and deceptive trade practice for an action which purported to bring a benefit to a class. For those reasons the Richter defendants collaborated with the Diocese defendants to "shop" for a hand-picked judge to oversee the 2006 class settlement so as to avoid independent scrutiny of the 2006 class settlement. The Richter defendants engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the Plaintiffs.

364. The Richter defendants took no appeal from the July 30, 2007 order, and sought no modification of that order, or for any subsequent order of the shopped-for judge who oversaw the 2006 class settlement.

365. The Richter defendants are bound by the July 30, 2007 order in the class action, and by the representations made to the court to obtain that order. Those terms abandon the absent class members such as the Plaintiffs.

366. As intended by the Richter defendants in 2007 as the *quid pro quo* for their fee, when the Diocese was contacted by the Plaintiffs, who had received no notice of the class action, the

Diocese refused them relief and asserted defenses against victims who did not get notice, exactly as the Richter defendants had assured the shopped-for judge they would not. The Diocese asserted the *res judicata* effect of the class settlement, as well as the defenses it had waived on the record for persons within the class definition. As was known by the Richter defendants at the time, the Diocese had no intention of including other victims who “for whatever reason” received no notice, and would undertake no relief for victims the Diocese defendants were not compelled to undertake.

367. The Richter defendants intended the collusive class action to terminate liability of the Diocese, to limit overall compensation paid to abuse victims, and to do so at a fraction of the recovery that a truly adversarial counsel might have demanded. The Richter defendants acted in the interest of themselves and the Diocese, ahead of its ostensible clients, such as the Plaintiffs.

368. The unfair and deceptive acts and practices of the Richter defendants have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese defendants have repeatedly refused (as intended by the Richter defendants) relief for multiple persons who have come forward having not gotten notice of the collusive 2006 class settlement. The practices engaged in by the Richter defendants violated professional standards and court rules, violated legal ethics, made misrepresentations to the Court, and (in collaboration with the Diocese defendants) making misrepresentations to the public, were all done to advance the Richter defendants’ own interests.

369. The Richter defendants calculated that their personal and professional connections to the shopped-for judge would permit false and fraudulent practices before the shopped-for judge

without eliciting inquiry. In that regard, the Richter defendants were correct, as even after evidence of the false practices were laid before the shopped-for judge no inquiry was made.

370. The Richter defendants further calculated that their political status as persons who formerly held political office and with political connections to the South Carolina Supreme Court and the court's mechanisms for enforcing professional standards of conduct would cause even the South Carolina Supreme Court to look away from the false and fraudulent practices before the shopped-for judge without eliciting inquiry. In that regard, it is not yet known if the Richter defendants will prove correct.

371. The Plaintiffs are neither politically connected nor a personal friend of any powerful person, and has no choice but to rely on the theoretical interest that a judge is supposed to have as to misrepresentations to the court, and on the prohibitions of the Unfair Trade Practices Act.

372. The false and deceptive practices of the Richter defendants will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The corrupt practices of the Richter defendants in compromising the interests of absent members of the class they purported to represent has been actually repeated, as well as has the potential for repetition, in the form of the sexual abuse victims who got no notice of the 2006 class settlement and who have requested, and been denied, relief, as the Richter defendants intended.

373. The Richter defendants should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to the conduct of the Charleston or

Demand for Jury Trial

378. Plaintiffs demand a trial by jury.

Relief Sought

Wherefore, Plaintiffs seeks relief in the form of:

379. Actual damages to be awarded to the Plaintiffs by the finder of fact against the various defendants, trebled as authorized by law for the appropriate cause of action,

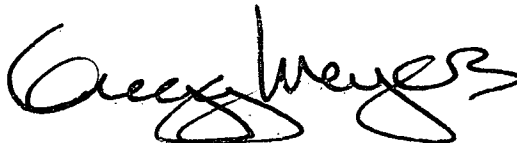
380. Costs and disbursements of this action,

381. Attorneys fees as authorized by law,

382. Punitive damages as authorized by law, and for

383. Injunctive relief to enjoin the Diocese defendants from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice “for whatever reason,” and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

Gregg Meyers, SC Bar No. 9908
Jeff Anderson & Associates, P.A.
366 Jackson Street
St. Paul MN 55101
651-227-9990
Gregg@andersonadvocates.com

Attorneys for the Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe #66

v.

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

CASE NO.: 2005-CP-10-2053

John Doe #66A .

v.

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

CASE NO.: 2005-CP-10-3293

John Doe #53

v.

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

CASE NO.: 2005-CP-10-4913

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

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

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

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

By: _____
(Print Name)

Its: _____

Dated: _____

By: _____
(Print Name)

Its: _____

Dated: _____

EXHIBIT " 4 "

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to create settlement class, subject to Court approval of:
 - Ⓐ ACTUAL VICTIMS OF DISCRETE ABUSE
 - Ⓑ SPOUSAL &/or Parent claims deriving from victims abused
2. Class Settlement Fund will be for \$12,000,000 FUNDED AS FOLLOWS:
 - Ⓐ \$3,000,000 by Letter of Credit, subject to Bank's willingness to issue. With a further obligation to procure additional Letter of Credit with \$7,000,000 limits once the \$5,000,000 Letter of Credit has been drawn down to \$1,000,000.
3. DETAILS of claims process in settlement class action shall be developed & include a payment matrix based on nature & severity of claims.

P.07/09

AUG-18-2006 16:30

Attachment A

(D)

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

5. Mr. T ^{*} [REDACTED] shall be paid _____

Mr. S ^{*} [REDACTED] shall be paid _____

Mr. N ^{*} [REDACTED] shall be paid _____

Mr. M ^{*} [REDACTED] shall be paid _____

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

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

~~to be paid to the individuals~~

(3)

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

James DeLoe, Attorney

ON BEHALF OF DEFENDANTS

Attorney in and with authority of the
Successor of Charleston

June 14, 2006

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;

- 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"

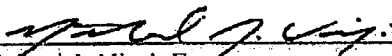
had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

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.

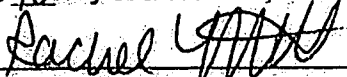
12. The opinions in this affidavit are given to a reasonable degree of certainty and are specifically based on the documents listed above. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

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 : _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2016-CP-10- 1632

John Doe 297,

Plaintiff,

v.

The Bishop of Charleston, a
Corporation Sole; Robert
Gugliemone, The Bishop Of
Charleston, in his official capacity;
Rev. Monsignor Martin Laughlin,
former Administrator of the
Diocese of Charleston, in his
official capacity; Robert J. Baker,
former Bishop of Charleston, in his
official capacity;
Lawrence E. Richter, Jr.,
David K. Haller, and
Richter and Haller, LLC.

Defendants.

Negligence; Gross Negligence
Fraudulent Concealment
Civil Conspiracy
Professional Negligence
Breach of Fiduciary Duty
Injunctive Relief
UTPA

Jury Trial Requested

FILED
2016 MAR 31 AM 11:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. John Doe 297 is an adult citizen and resident presently residing in South Carolina but who resided in North Carolina from 1998 to 2014. He was born in 1964. As a child in the first grade he was sexually abused by two priests, each employed by the Diocese of Charleston. One priest the Plaintiff recalls only as "Jimmy," the other was Martin Bangert. Martin Bangert is referred to in this Complaint as the offending priest, or offending priest 1. The priest identified only by first name is referred to as offending priest 2. Collectively they are referred to as the

offending priests.

2. Martin Bangert, offending priest 1, was assigned to St. Anthony in Greenville, South Carolina from 1970 or 1971 to 1976. The assignment of offending priest 2 is not known for lack of a full name, although each was associated with St. Anthony in Greenville, S.C.

3. Because this action concerns childhood sexual abuse, this action is filed using a pseudonym.

4. The identity of the plaintiff will be provided to the defendants upon their agreement in writing to maintain his identity as confidential as to the public record. If the defendants refuse in writing to maintain the plaintiff's identity as confidential as to the public record, his identity will be disclosed to the defendants upon court order after motion for leave to proceed by pseudonym.

5. The Bishop of Charleston, a Corporation Sole, is the formal title of the various entities comprising the Catholic Church throughout South Carolina known generally as the Diocese of Charleston. It is referred to in this complaint as the Diocese or the Diocese of Charleston.

6. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. Decisions made about the assignments for each of its priests, and these offending priests, were made in Charleston County.

7. The acts associated with the abuse of the Plaintiff and the negligent supervision of the offending priests took place in Charleston County. Charleston County is where decisions were made about the offending priests' assignments and the degree of supervision the offending priests required, which as applied by the Diocese defendants was grossly negligent.

8. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued individually in his official capacity. He is a party necessary for complete relief.

9. All persons working for the Diocese, anywhere in South Carolina, are subordinate to the Bishop of Charleston, who under the internal procedures of the Diocese holds all executive, legislative, and judicial power within the Diocese.

10. Prior to the tenure of Bishop Guglielmone, from October 2007, to March 2009, no person held the title of Bishop of Charleston. Under the internal rules and procedures by which the Diocese of Charleston governs itself, the Diocese of Charleston was administered by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina who, during his tenure as administrator, did business in Charleston County. Msgr. Laughlin is sued in his official capacity.

11. Prior to the tenure of Administrator Laughlin, from July 1999 to August 2007, the Bishop of Charleston was Robert J. Baker, presently a resident of, and citizen of, Alabama. During his tenure, he did business in Charleston County. He is sued in his official capacity.

12. In this complaint, the Diocese, the Bishop defendants, and the Administrator are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

13. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney. In that capacity he engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

14. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney. In that capacity he engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, he did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

15. Richter & Haller, LLC, at all times pertinent to this complaint, had its principal place of business in Charleston county, did business in South Carolina, and in that capacity engaged in "trade" or "commerce" within the meaning of S.C. Code § 39-5-10 et seq. As part of the events set forth in this complaint, Richter & Haller, LLC did business in Charleston County, and specifically elicited, through advertising placed in certain South Carolina print media, participation by members of the public into what was not at that time disclosed to be a collusive 2006 class action settlement, but which was in fact a collusive settlement.

16. In each instance, the print media advertising was chosen with the specific and collusive intention to provide no chance of giving notice to this Plaintiff, who resided outside of South Carolina during the period of time in which the class action was pending.

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

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

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

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

Nature of Wrongdoing

21. The Plaintiff fits a class definition used in a collusive 2006 class settlement in that he was born on or before August 30, 1980, and as a minor was sexually abused by an agent or employee of the Diocese of Charleston. The Plaintiff has not previously made a claim that was adjudicated, resolved, or released.

22. The Plaintiff was situated similarly to other individuals ostensibly within the class definitions chosen by the Richter defendants when the Richter defendants (a) pled a class action in 2005, (b) settled that class action in 2006, and (c) sought, and obtained, class certification in 2007 by a South Carolina court as part of that class action. The classes defined in that action included a class of individuals who were sexually abused by persons employed by the Bishop of Charleston.

23. The Plaintiff has brought this action against the Diocese defendants under authority of S.C. Code § 15-3-555, in that the action has been brought within three years of his discovery of the causal relationship between the injury and the sexual abuse. Against the Richter Defendants, the action has been brought within three years of learning that the Richter Defendants had undertaken to represent the Plaintiff in a class action case without giving him proper notice, and without disclosing to him a conflict of interest by which they acted so as to compromise his interests.

24. In pleading that class action, as a matter of law the Richter defendants assumed fiduciary duties to the Plaintiff, of which the Richter defendants were apparently unaware as they have denied such duties were assumed.

25. The Richter defendants then settled that class suit with a class settlement. That class action settlement was collusive, and the Plaintiff was harmed by that collusion.

26. The Richter defendants have represented to the circuit court that their motivation to collude with the Diocese defendants as to the scope of notice was to accommodate the Bishop of Charleston, their supposed adversary, who (they claim) requested that the Richter defendants change the class notice from nationwide notice to only South Carolina notice, while retaining a class definition with included the Plaintiff in that it had no geographic restriction on class membership.

27. According to the Richter defendants, they elected to accommodate the request of their supposed adversary, even though doing so was collusive with the Diocese defendants and breached their professional and fiduciary obligations to their clients and this Plaintiff.

28. In 2006 class counsel reached a class settlement for two defined classes of victims, one of which included the Plaintiff.

29. A class was later re-alleged in post-settlement pleadings filed in 2006, which allegations also included the Plaintiff in the way the class was defined.

30. The Richter defendants were class counsel in that class action.

31. The Richter defendants acknowledged that they represented absent members of the class, such as the Plaintiff, in the March 9, 2007 initial fairness hearing. In the transcript of that hearing at page 53, Defendant Richter stated:

we represent the interests of persons who might be here today, may not be here today, may not have made a claim yet, a class, punitive [sic, probably intended to be putative] class or actual class, punitive [sic] initially, now an actual class.

32. The Richter defendants overtly acknowledged their fiduciary obligations to the absent members (such as the Plaintiff) of the class the Richter defendants chose to define, a duty the Richter Defendants had (apparently unwittingly) also assumed by operation of law when they (a) pleaded a class defined so as to include the Plaintiff, and then (b) when the Richter

defendants chose to reach a class settlement with a class defined so as to include the Plaintiff.

33. As stated in *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984)

(internal citations omitted):

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

34. By operation of law, any benefits from the class action are held by class counsel, the Richter defendants, in trust for the class. Those benefits held in trust should be used to benefit the Plaintiff.

35. The Richter defendants chose to define the class so as to include the Plaintiff in that the class definition, which definition included no geographic limit.

36. The Plaintiff presently resides in South Carolina, but during the time the class action was pending the Plaintiff resided out of South Carolina.

37. During the class action at issue, the Richter defendants claimed no prior class counsel experience.

38. As a matter of law under *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003), the class definitions chosen by the Richter defendants which included the Plaintiff was “a strategy choice” they elected, the implications of which presented duties they voluntarily assumed.

39. By operation of SCRCP 23(d)(1), the Richter defendants are bound by that strategy choice and “have to live with [it] since a decision on the merits was made” by the circuit court when it approved the class. *Tilley v. Pacesetter Corp.*, 585 S.E.2d 292, 302 (S.C. 2003).

40. After the class settlement, in October, 2006, the Richter defendants proposed a nationwide program of notice for class members. That notice program, had it been used by the class action, would have provided a chance for the Plaintiff to have received notice of the class action.

41. Before that motion could be heard, on January 17, 2007, the Richter defendants modified the proposed notice program through an amended motion for class certification. The Richter defendants admit the modification was done at the request of, or to accommodate, their supposed adversary, the Bishop of Charleston. By proposing a notice program that eliminated notice in the nationwide publication *USAToday*, and by restricting notice to only the area immediately around South Carolina, and omitting to publish notice in the Charlotte Observer for the portions of South Carolina around Charlotte and other North Carolina publications, the Richter Defendants by their own admission disadvantaged the absent members of their class so as to accommodate their adversary.

42. The accommodation by the Richter Defendants is both professional negligence to the absent members of the class and reflects the collusion with the Diocese defendants.

43. The change of notice is what the Richter defendants themselves claim was a collusive accommodation to their “adversary,” the Bishop.

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

45. Two days after the amended motion for class certification was filed by the Richter defendants, the court issued an order giving preliminary approval to the class action and its settlement, and entered these terms for notice for newspaper publication of the class settlement:

Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun, The State*; *The Augusta Chronicle*; *the Rock Hill Herald*; *Beaufort Gazette*; *Greenville News*[:]; *Spartanburg Herald*; *Orangeburg Times-Democrat*; *Florence Morning News* and the *Aiken Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period.

46. The class notice program for the class settlement was to be funded, and was funded, by the pool of funds set aside by the Diocese for the class settlement.

47. The proposed class settlement agreement of January 17, 2007 states, "All costs associated with the management of the class shall be paid from the settlement fund."

48. The Order of July 30, 2007, which approved the class settlement, states, at page 12:

Class counsel proposes a notice of the [claims period] in a form comparable to that attached hereto as Exhibit A, and I approve this notice. Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun, The State*; *The Augusta Chronicle*; *the Rock Hill Herald*; *Beaufort Gazette*; *Greenville News*[:]; *Spartanburg Herald*; *Orangeburg Times-Democrat*; *Florence Morning News* and the *Aiken Standard*. Publication of the notice shall be at least once a week for three (3) consecutive weeks during the notice period.

That Order also states, at page 15:

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

49. 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.”

50. At a hearing held on April 10, 2014 in related actions, counsel for Defendants Richter and the firm of Richter and Haller represented to the Court (on page 9 of the hearing transcript) that the notice program for the class action “was not intended to reach beyond the borders of South Carolina.”

51. Under the modified notice program chosen for the class settlement, the Plaintiff, who then resided out of state, was intended by the Richter Defendants, as an accommodation to the Diocese defendants, to receive no notice of the class action.

52. The object of the collusive agreement between the Richter defendants and Diocese defendants was to exclude the Plaintiff from the class action resolution and, simultaneously, to protect the interest of the Diocese defendants by barring future claims by sexual abuse victims.

53. The reason the Richter defendants modified the class settlement notice program so as to intentionally omit this Plaintiff and other Plaintiff has been publicly explained by class counsel as something they chose to do to accommodate their supposed adversary, the Bishop of Charleston. At page 42 of the April, 2014 hearing transcript, it was represented to the Court that the Richter defendants modified the original nationwide program of notice for the class because, “the Bishop said, no, that’s too expensive.” The Richter Defendants claim to have accommodated that objection by their supposed adversary. The entire representation made to the court on behalf of class counsel on April 24, 2014, was, “[O]ur testimony will be that we proposed that [nationwide notice] to the Bishop and that the Bishop said, no, that’s too

expensive. So from our point of view, the Bishop bought the degree of *res judicata* he was willing to pay for.”

54. No provision was made by the Richter defendants to see that the orders in the class action excluded the Plaintiff from the *res judicata* effect of the class action, or to see that the Plaintiff preserved either the benefits of the class or the benefits of the defenses that were waived in the class action by the Bishop of Charleston for the benefit of other members of the class.

55. The Richter defendants requested of the state court no such provisions despite their obligations to the Plaintiff as a member of the class they chose to define.

56. In April, 2013, class counsel agreed in another hearing, held before Judge Dickson, that persons such as the Plaintiff who lived out of state “never had their due process rights to come in and be heard. And they never got their due process rights of notice and an opportunity to be heard.” That representation to the court appears at p. 32 of the Transcript of a hearing held April 12, 2013.

57. As the Richter defendants intended, and have admitted, the Plaintiff had no opportunity to be heard or participate in the litigation, either in person or through counsel, or an opportunity to opt out of the class action and thereby preserve his own claim.

58. In the 2006 class action settlement the Richter defendants colluded with the Diocese defendants so as to abandon the interests of those persons, such as the Plaintiff, who were within the class definition, and to protect the Diocese defendants by the collusive class action.

59. In 2005 a class action was first alleged by the Richter defendants on behalf of persons sexually abused by persons affiliated with the Diocese of Charleston.

60. By their own account, the Richter defendants were extensively affiliated with the

Diocese of Charleston. Those extensive affiliations were never disclosed to the class.

61. The class action settlement with the Bishop of Charleston was arrived at during a mediation held in June, 2006, in which the Richter defendants participated on behalf of class members. In this complaint, the class action settlement achieved in 2006 from the 2005 class action is referred to as “the 2005 class action.”

62. The 2006 mediated settlement agreement was approved by the Dorchester County judge who presided over the class action proceedings. By 2009 the class members had been identified and an arbitration had determined awards to various class members. By 2009 those awards had been paid.

63. By order of the South Carolina Supreme Court issued March 19, 2009, the 2005 class action was ordered to be concluded in six months, or by September 19, 2009.

64. The trial court overseeing the class action ignored the March 19, 2009 order of the South Carolina Supreme Court, and took no action by September 19, 2009 to review the distributions to class members or to make any post-award review of class counsel’s fee.

65. In 2012, Defendant Haller, acting on behalf of no client from the 2005 class action, as all client claims had been resolved, but acting instead on behalf of himself and the Richter defendants, filed a pleading in the Dorchester County class action case.

66. On January 24, 2013, the Dorchester County trial judge who had presided over the class action, Judge Goodstein, signed an order which stated, in its entirety, “I hereby recuse myself from hearing any further matter on the above-captioned case.” The caption on that order was the first of the cases which comprised the 2005 class action.

67. Judge Goodstein had been asked to recuse herself by a motion in 2008. She recused herself in 2013. The 2013 order makes no reference to the 2008 motion. No other motion to

recuse had been made.

68. All defendants colluded in the 2005 class action so as to permit the Diocese defendants, starting in 2009 and continuing into 2013, to maintain that the class action precluded any and all claims for abuse.

69. At no point did the Richter defendants seek, for class members who reside out of state, either orders clarifying the relief available to absent class members or orders clarifying that out of state persons had protections from the *res judicata* effect of the class action. The Richter defendants were aware that class members who resided out of state had received no notice, and no Due Process, in the class action. The Richter defendants had modified the notice program to assure that out of state class members would receive no notice. The Richter defendants sought to give no notice to absent class members because it was part of their collusive plan with the Diocese defendants to not do so, so as to restrict the number of persons who could make a claim against the Diocese defendants and to protect the Richter defendants' own interest in the fee they had arranged for themselves.

70. The Richter defendants conducted the class action intending to prevent the Plaintiff and other persons similarly situated from either participating in the class action or being able to remove themselves from the class action by opting out. Being within the putative definition of the 2005 class action as the Richter defendants proposed for the class definition, and the definition the Diocese defendants agreed to use to define the class of sexual abuse victims, the Plaintiff ostensibly was formerly represented by, until he and his interests were abandoned by, the Richter defendants, who served as class counsel.

71. Alternatively, and at minimum, the Richter defendants assumed fiduciary duties as to the Plaintiff by defining the classes to include the Plaintiff, did so with the knowing

cooperation of the Diocese defendants, all defendants intending to ostensibly include the Plaintiff then deprive him of relief and bar him from making his own claim.

72. The Richter defendants colluded with the Diocese defendants to cause the Plaintiff special harm in the form of precluding him from making any claim against the Diocese. The professional representation of the Plaintiff by the Richter defendants in the class action was inadequate, and failed to meet the standard of care applicable to a South Carolina attorney handling a class action.

73. This action is not alleged as a class action. It involves as Plaintiff a person who was, until he was abandoned by class counsel, the Richter defendants, a putative member of (a) a class as alleged in a state court class action, (b) a class settlement agreed to among defendants, and (c) a class approved by a state court.

74. But for the Richter defendants having breached the duties each of them owed to the Plaintiff in the class action by abandoning him in the class action, an abandonment done in agreement with, and in full complicity with, the other Defendants, the Plaintiff would have been protected from any preclusive effect of the 2005 class action and the 2006 class action settlement.

75. The Diocese defendants knew, or should have known, that the offending priests who abused the Plaintiff were dangerous to children, and were not being sufficiently supervised so as to prevent them from using the premises of the Diocese to abuse the Plaintiff.

76. The Diocese defendants operated so as to actively disregard and conceal the risks to children and families for sexual assault of children by their priests and other employees, including these offending priests, and then actively, and fraudulently, concealed the abuses that had happened and concealed the dangers to children the Diocese defendants solicited into

danger.

77. The Richter defendants made themselves part of that duplicitous method of operation by the Diocese. The Richter defendants had life long ties to the Diocese defendants that were not disclosed to the class. The Richter defendants were and are corrupt, and colluded so as to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy, in exchange for a legal fee for themselves, relief not for their clients such as the Plaintiff but for their adversary the Diocese defendants in the form of a layer of legal protection that was hoped, by those corrupt lawyers, would protect the Diocese from civil lawsuits almost certain to keep coming over their history of sexual abuse and the fraudulent concealment of abuse by the Diocese defendants.

78. The Richter defendants assumed a duty to act for sexual abuse victims, including the Plaintiff, but then the Richter defendants acted in a professionally negligent way, willfully and wantonly abandoning their clients so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese defendants in exchange for their cooperation in trying to both limit relief to victims and protect the Diocese defendants from future cases, and specifically from claims by absent class members such as the Plaintiff. The danger to the Diocese defendants of future cases was that future cases might be brought by lawyers actually adverse to the Diocese defendants, as opposed to claims brought by lawyers with life-long ties to the Diocese who were willing to collude with the Diocese.

79. The Defendants made overt misrepresentations of fact to the court which approved the 2006 class action settlement, and fraudulent concealment of those misrepresentations continue to the present.

80. The Richter defendants were so confident of their ability to manipulate the state court

judge they and counsel for the Diocese had selected and maneuvered the class cases before, and so confident of eliciting no objection from the supposedly adverse Diocese defendants, that the Richter defendants (a) submitted blatantly false and inflated time records to justify their large fee, and (b) collected more fee than was authorized by the court's orders, all without objection from the Diocese defendants. The Richter Defendants at no time disclosed to the class or to the class representatives that they were taking more fee than even the court had authorized.

81. In exchange for the Richter defendants' cooperation to disadvantage absent members of the class from making claims against the Diocese, the Diocese defendants (a) agreed to take no position on whether the class should be certified, (b) agreed not to mention that any of the time records submitted by the Richter defendants were false, (c) agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee, (d) agreed to make no objection to an unethical fixed fee for class counsel while class counsel simultaneously obtained only variable compensation for class members, and that the compensation for class members was subordinated to that fee, (e) agreed to make no objection to the fee being awarded before any member of the class member was even identified, and before any class member claimant had submitted a claim or was paid, (f) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law, (g) agreed to make no objection when the Richter defendants took more fee than was authorized by court order, and (h) agreed to seek no post-award fairness hearing under SCRCP 23.

82. A post-award fairness hearing has never been held in the 2005 class action. The unauthorized fee taken by the Richter Defendants has never been examined by a court.

83. In turn, the Richter Defendants agreed to assist the Diocese defendants in overtly misrepresenting to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement. Once the court relied on that misrepresentation, the Richter defendants enabled the Diocese defendants to ignore the representations that had been made by obtaining no court orders which reflected any protections for persons who got no notice. Alternatively, if class counsel claims he did not participate in the overt misrepresentations to the court by the Diocese defendants, class counsel's representation of the class fell below the applicable standard of care in that class counsel failed to secure by order those concessions supposedly made by the Diocese defendants.

84. Class counsel failed to secure those concessions by written order even though class counsel was fully aware the Diocese defendants are untrustworthy and would comply only with orders it could be compelled to honor.

85. Class counsel either was complicit in the misconduct of the Diocese defendants or was negligent in being outmaneuvered and hoodwinked by the Diocese defendants, which performance fell below the standard of care applicable to the Richter defendants.

86. Of the four levels of wrongdoing alleged, the causes of action which apply hinge, in part, on whether or not the Plaintiff is regarded as being bound by the *res judicata* effect of the collusive class action to which the Diocese was party and can recover not less than the relief provided for class members in the class action. As alleged more fully below, Plaintiff ostensibly falls within a class defined in that action. Defendants colluded so as to attempt to make any recovery by the Plaintiff impossible, by giving him no notice.

87. All Defendants cooperated together to better protect the Diocese by the way the class was defined, as well as the manner in which notice was given, and the Defendants cooperated

so as to actively mislead the court in seeking approval for the limited notice that was proposed with the false promise by the Diocese, known to have been false by the Richter defendants or acquiesced in by the Richter defendants, that the Diocese would protect the interests of persons such as the Plaintiff who received no notice and who later made claims.

88. Until 2016 the Plaintiff had no information that the Defendants had cooperated to make false promises to the class action court or that the Plaintiff's interest had been compromised by a collusive class action.

89. The Richter defendants were charged with correcting the known deficiencies in the class definition and the class action notice. The Richter defendants took no steps to correct either deficiency. Had they done so it would have interfered with their collusion with the Diocese that was intended to protect the Diocese and to obtain for the Richter defendants the fixed fee they had arranged to obtain, at the expense of their client class members and the putative members of the class.

90. Similarly, the Diocese defendants were aware that various absent members of the class had received no notice, but the Diocese defendants did nothing to clarify overt misrepresentations by the Diocese defendants to the court overseeing the class action about how the Diocese would treat absent members of the class who received no notice.

91. Until 2016, the Plaintiff was unaware of (a) any class settlement by the Diocese defendants, (b) that the Diocese defendants claimed to have waived charitable immunity for any person in the class definition, (c) that the Diocese defendants claimed to have waived the statute of limitations for any person in the class definition. The Plaintiff was unaware of any of those things because, by agreement of all Defendants, the Plaintiff got no notice of any of those things, and had no opportunity to preserve his claims by opting out of the 2005 class action.

92. In its order approving the class action, the state court might have provided for absent members of the class, such as the Plaintiff, had the Richter defendants ask that the court do so.

93. The Richter defendants were obligated to see that the court did so.

94. The Richter defendants failed to do so.

95. Plaintiff is an absent member of a class who, by design among Defendants, received no notice of the class action and had no opportunity to join or to opt out of the collusive class action. The Plaintiff's representation by the Richter defendants was inadequate. As such, the Plaintiff should not be bound by any *res judicata* effect of the class action because the procedure used did not adequately insure the protection of his interests, and because their representation by the Richter defendants was inadequate, and fell below the applicable standard of care. Either of those grounds is a sufficient basis to relieve the Plaintiff of the *res judicata* effect of the class action.

96. If the Diocese agrees, or the court finds, that the Plaintiff are not precluded by the class action from bringing claims against the Diocese defendants, and the Plaintiff recovers not less than the recovery possible in the class action, then the damage caused by the admitted inadequacies of the Richter defendants who, for a fee, abandoned their clients, and conspired against the Plaintiff through the class action, may be mitigated in part through their claims against the Diocese defendants. However, if that mitigation is incomplete, or the court finds that the Plaintiff is precluded for any reason from pursuing claims against the Diocese defendants, including the *res judicata* effect of the class action, charitable immunity (which the Diocese defendants waived for those within the class definition), or by the statute of limitations (which the Diocese defendants waived for those within the class definition), or because an insufficient recovery fails to fully mitigate the admitted misconduct by the Richter defendants,

then the claims against the Richter defendants should be liquidated, and claims for punitive damages are properly made against those who conspired against the Plaintiff, as well as against the Richter defendants who failed to properly represent the Plaintiff in the representation of the Plaintiff that the Richter defendants undertook.

97. In this action, no review is sought of the decisions of the state court in approving the insufficient notice given to the class. No change is sought as to the class action, although the judge now assigned to the ten year old class action should conduct a post-award fairness hearing as to the fee taken by the Richter defendants.

98. This action seeks only an interpretation as to the preclusive effect of the class action as applied to the Plaintiff.

**For a First Cause of Action:
Negligence and Gross Negligence by Diocese defendants**

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

100. The defendant Bishop of Charleston employed the offending priests and assigned them to a position of power and authority within the Diocese, at St. Anthony in Greenville. Because of that power and authority, the offending priests had access to and authority over the Plaintiff.

101. In their capacity as priests, the offending priests were placed by the Diocese defendants in a position of trust and confidence, and had access to and authority over John Doe 297 and other children. In that capacity, the offending priests sexually molested the Plaintiff and many other children.

102. When molested the Plaintiff was in the first grade.

103. Only within three years of this filing has the Plaintiff understood (a) the causal relationship between his injury and the sexual abuse, (b) that the Defendants colluded so as to

deprive him of any recovery, and (c) that the Richter defendants injured him by legal malpractice and unfair and deceptive trade practices.

104. Prior to the Plaintiff being molested, the Diocese defendants became aware that the offending priests were dangerous to children or that their supervision of the premises at St. Anthony was insufficient to protect children from priests with a sexual interest in children.

105. Alternatively, the Diocese defendants operated various schools, activities, and churches that were intended to, and did, attract children and families. The Diocese defendants encouraged people, including the Plaintiff and his family, to use its facilities, and to attend the various activities and functions offered on its premises. In making that invitation, the Diocese defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers, and from known dangers such as the offending priests. The Diocese defendants represented to the public, and to the Plaintiff, nothing to the contrary. The Diocese defendants particularly owed a duty to the Plaintiff, who was a minor, and owed a duty to his parents, who were charged with looking after the Plaintiff's interests.

106. As a child the Plaintiff and his family relied on the Diocese defendants for his safety within the Diocese. The Plaintiff was unable to fully appreciate risks and danger and protect himself from the offending priests. The Diocese defendants falsely represented to its invitees, and their parents or guardians, including the Plaintiff, that its facilities and its priests were safe, and that persons would be would be protected from harm when using its facilities and when interacting with its personnel.

107. The Diocese defendants assigned the offending priests to St. Anthony from (in the case of Bangert) 1971 to 1976, and placed each of them in a position of authority in that

assignment. Offending priest 2 was at St. Anthony to molest the Plaintiff in the Plaintiff's first grade year, which included portions of 1971.

108. The Diocese defendants negligently supervised the offending priests. The Bishop of Charleston was grossly negligent in doing so. Moving the offending priests, and placing them in a position of authority, without proper warning to children and parents was grossly negligent. Supervising them and the premises insufficiently to keep priests from molesting children was grossly negligent. As a proximate result of the negligence and gross negligence by the Diocese defendants, the Plaintiff was sexually abused by the offending priests.

109. The Diocese defendants were negligent in failing to warn the Plaintiff about the offending priests or the dangers of the location at St. Anthony. The Bishop of Charleston performed that duty in a grossly negligent manner.

110. The Diocese defendants knew, or should have known, that the offending priests had a sexual interest in children or that priests needed supervision sufficient to prevent them from molesting children if the priest had such an attraction. Some priests were known to have such an attraction. Despite that knowledge, the Diocese defendants made no effort, or no competent effort, to ascertain how many children the offending priests had molested, and no effort, or no competent effort, to locate victims of the offending priests. If the Diocese defendants made such an effort, those defendants assumed the duty but performed it negligently.

111. The Diocese defendants' failure to do so was negligent, and grossly negligent on behalf of the presiding Bishop from the time of the Plaintiff's abuse to the present, including

the gross negligence by Bishop Guglielmone, Bishop Baker, Rev. Monsignor Laughlin, and the Bishops who preceded them.

112. As a result of the negligence and gross negligence by the Diocese defendants in failing to either prevent abuse or identify abuse victims by its agent or employee the offending priests, the problems for the Plaintiff were first caused, and then exacerbated, by the delay of the Diocese defendants in rectifying the abuse by the offending priests.

113. As set forth more fully below, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants, among other things, accounts for the delay in this action being brought against the Diocese defendants.

114. The Plaintiff is entitled to actual and punitive damages as a result of the negligence of the Diocese defendants, and gross negligence of Bishops Guglielmone and Baker, and Administrator Rev. Monsignor Laughlin, in failing to perform a proper review for Goodwin's victims, or in performing that duty in a negligent manner, and for the collusive conduct with the Richter defendants.

**For a Second Cause of Action:
Fraudulent Concealment by Diocese defendants**

115. Allegations above are incorporated into this cause of action as if fully set forth.

116. The Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children.

117. The Diocese defendants each had a duty to discover and to disclose to the Plaintiff or his parents their knowledge that the offending priests were known to have a sexual

interest in children, and that some priests had such an interest and needed supervision to prevent them from abusing children. That duty arises from (a) the preexisting fiduciary relationship between the Plaintiff and the Diocese defendants, which relationship the Diocese defendants solicited; (b) from the Plaintiff's parents having reposed their trust and confidence in the Diocese defendants so as to place the Plaintiff into the presence of the offending priests, which placed the Plaintiff in a vulnerable position with the offending priests, and (c) from the Diocese defendants empowering the offending priests with authority over the Plaintiff and the premises at St. Anthony in which the offending priests had authority over the Plaintiff. That position of trust and confidence by the parents was implicit from those circumstances of the Plaintiff being entrusted to the presence of the offending priests, as well as from the nature of the dealings between the Plaintiff, his parents, and the Diocese defendants, who promoted that the Plaintiff should be left with the offending priests. In addition, from (d) the essential nature of the Diocese defendants and their inducement to the parents to have the Plaintiff participate in activities with the offending priests as being beneficial to the Plaintiff, or at least not harmful to him, (e) from the secrecy provisions in the internal operating procedures of the Diocese, which establish a practice of the Diocese defendants to discover, but then to maintain secrecy about, "other persons solicited" by any person such as the offending priests, who committed the "unspeakable crime" of sexually abusing a child, and (f) by the undertaking which the Diocese defendants assumed, negligently (and in the case of the individuals included in the designation of the "Diocese defendants," grossly negligently), during 2005 - 2009, to locate victims such as the Plaintiff.

118. Concerning each of (a) the undisclosed dangers the offending priests represented to the Plaintiff, and (b) repairing the damage done to the Plaintiff by the sexual

abuse, the Diocese defendants were obligated to the Plaintiff to engage with each of them in perfect good faith and with full disclosure.

119. Instead of full disclosure, the Diocese defendants have operated with secrecy and concealment of all aspects regarding sexual abuse by their agents and employees, including the offending priests. In its own operations, the Diocese required secrecy and concealment, and it has enlisted its agents and employees to further conceal its knowledge of abuse so as to limit its exposure for the Diocese defendants being held responsible for sexual abuse of children.

120. Specifically, the Diocese defendants created a culture of secrecy about all matters of sexual abuse and administrative practices to maintain that secrecy as to sexual abuse.

121. The administrative practices of the Diocese of Charleston consider topics of sexual abuse to be scandalous, hence secretive. These administrative practices relate to secrecy of information, not to matters of religious practice protected by the First Amendment.

122. Nothing about the Catholic faith requires that children be sexually abused or that the sexual abuse of children by agents or employees of Diocese of Charleston be concealed.

123. The Diocese defendants assumed the administrative duty to locate victims as defined in procedures created in 1962 (known as the "Instruction,"), and applicable in each year since 1962. The Diocese defendants performed that duty in a grossly negligent manner. The Diocese defendants failed to locate the Plaintiff, failed to locate many other abuse victims of priests, and made no competent inquiry to locate them. The Diocese defendants

purposefully avoided making the type of inquiry that would have elicited discovery of the Plaintiff.

124. The administrative practices of secrecy are arbitrarily adopted administrative practices with no doctrinal significance to protected First Amendment religious activities. Those practices were further extended in other publications in 2001 and 2010.

125. When the Diocese defendants maintained secrecy about sexual abuse of children they were fully complying with the secrecy imposed by the internal administrative operating practices of the church.

126. When independent bodies requested the Holy See alter its internal administrative rules requiring secrecy and require mandatory reporting of child sexual abuse (e.g., the United Nations Committee on the Rights of the Child in January 2014; and the United Nations Committee against Torture in May, 2014), those requests were rejected on the theory that mandatory reporting interfered with the Holy See's sovereignty. The Holy See regards secrecy about childhood sexual abuse by priests as essential.

127. The administrative practice of secrecy about childhood sexual abuse by priests constitutes spoliation of evidence, as well as fraudulent concealment. Among the spoliation was evidence related to the offending priests' sexual interest in children, and the sexual abuse of the Plaintiff.

128. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent the Plaintiff's sexual abuse, or to ascertain that he had been a victim of abuse by the offending priests.

129. In 2006 the Diocese defendants sought a new level of deception and manipulation to limit the damage to the Diocese defendants from its history of sexual abuse, to

limit its financial accountability for its history of sexual abuse and concealment. The Diocese defendants engaged with other Defendants to conspire to evade accountability, as set forth below, and to try to prevent the Plaintiff from making any claim. The acts of civil conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the Plaintiff's sexual abuse. The conspiracy cause of action concerns the Plaintiff being deliberately excluded from the class, and the Plaintiff being prevented from protecting his claim, so the conspiracy cause of action hinges on interpreting the *res judicata* effect of the orders in the class action.

130. The Richter defendants have admitted that they deliberately excluded from the class action, by design, and by request of their supposed adversary, the Plaintiff and many others who were within the class definition but who resided out of South Carolina. Actual damages from that professional negligence may be mitigated to some extent if a claim can be made for actual damages against the Diocese. Punitive damages against the Richter defendants for that misconduct cannot be mitigated by any of the claims against the Diocese defendants.

131. This cause of action presumes that the Plaintiff is not precluded in making this claim by the 2005 collusive class action involving the Diocese defendants, and can make his claim for (a) lack of Due Process in those proceedings, (b) lack of competent representation sufficient to enable this Plaintiff to avoid the *res judicata* effect of a class action, (c) the collusive nature of the class settlement, or (d) because by their terms the class action orders do not apply to the Plaintiff.

132. The Plaintiff is entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese defendants in actively maintaining secrecy and thus failing to perform a proper review for the victims of the offending priests, including the Plaintiff, or in performing that duty in a negligent manner. To the extent the Plaintiff's actual damages from the Richter defendants are mitigated by any recovery against the Diocese defendants, that credit is properly applied. No punitive damages against the Richter defendants are properly mitigated as a result of any punitive damages assessed against the Diocese defendants.

**For a Third Cause of Action:
Civil Conspiracy by All Defendants**

133. Allegations above, other than claims for relief above, are incorporated into this cause of action as if fully stated.

134. This cause of action presumes the class action order is interpreted to bind the Plaintiff to its *res judicata* effect, despite insufficient Due Process from the collusive class action which was designed by all Defendants to limit the Plaintiff's ability to state his claim. This cause of action presumes the Plaintiff is properly precluded from bringing claims against the Diocese defendants related to sexual abuse.

135. Defendants have conspired to injure the Plaintiff, and by those actions have caused special damage to the Plaintiff in the form of precluding him from (a) the opportunity to elect whether to influence the class action terms by stating objections, (b) the opportunity to opt out of the class action and negotiate separate settlement terms, (c) opt out and state his own claim, and (d) participate in the class settlement. The special damage is the lost opportunity to influence the class action terms or participate in the class action.

136. As set forth below in detail, the Defendants have acted in concert in numerous ways, which reflect the joint assent with minds to injure the Plaintiff, and Defendants have taken overt acts to pursue the common design to injure the Plaintiff.

137. Some actions that have been taken have been legal; other actions were legal but violated professional standards set forth in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the Plaintiff by making sure they (and other putative class members who lived out of state) could neither participate in the state court class action (including objecting to its terms so as to influence those terms) nor opt out of it, and by that deprived opportunity could be argued as being unable to bring his own action.

138. In exchange for a sufficient amount of money directed to corrupt lawyers as a fee, the lawyers who purported to and did represent the class which included the Plaintiff, the Richter defendants, agreed to act against the Plaintiff's interests, and collaborated against the Plaintiff's interest, and act instead in the interest of their supposed adversary the Diocese defendants, to whom class counsel had connection and allegiances not disclosed to the class. This cause of action presumes that class counsel was not merely professionally negligent, and outmaneuvered by the Diocese defendants, but actively collaborated with the Diocese defendants.

139. Specifically, in exchange for a sufficient amount of money as a fee, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, the lawyers who purported to represent the Plaintiff, the Richer defendants, agreed to abandon the Plaintiff, and to define the class so as to include the Plaintiff, but then provide the Plaintiff with no notice by which the Plaintiff would get the opportunity to influence the class action by

objections and have the option of participating in the class action. Additionally, the Richter defendants purported to secure benefits for the Plaintiff but then failed to secure those benefits by written order.

140. This cause of action presumes that those acts were not professionally negligent actions but conscious undertakings by the Richter defendants to disadvantage the Plaintiff from making a claim against the Diocese, so as to not jeopardize the fee the Richter defendants made as the highest priority of the 2006 class action settlement once the terms of that class settlement were agreed upon with the Diocese defendants.

141. By purporting to undertake their representation in how the classes were defined, but then make no provision for the Plaintiff, the Richter defendants breached a duty to the Plaintiff that the Richter defendants assumed, either through the attorney-client relationship or through the fiduciary duty assumed by class counsel when he elected to bring a class action and then chose to define one or more classes so as to include the Plaintiff.

142. The Richter defendants have publicly denied undertaking any duty to absent members of the classes they defined, reflecting either their ignorance of the obligations assumed as a matter of law when a class action is alleged, or reflecting their intention to align with the interests of the Diocese, or both. This cause of action assumes not the professional negligence of the Richter defendants but the intention of the Richter defendants to align themselves with the interest of the Diocese defendants as the *quid pro quo* for the Diocese defendants collaborating by silence on their fee as class counsel.

143. The class allegations stated by the Richter defendants in alleging the class acknowledged that the number of victims of priest sexual abuse “may exceed the hundreds,” an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36, filed in Charleston

County, and in the identical John Doe #53 Complaint redundantly filed in Dorchester County as case 06-CP-18-1636.

144. If “too many” of those hundreds of victims participated in the class action, including the Plaintiff, the Richter defendants would jeopardize court approval for the large fee the Diocese defendants had agreed to enable them to get. Correspondingly, if the 2006 class settlement was jeopardized the Diocese defendants might not get the ostensible protection from future suits it was colluding with the Richter defendants to obtain at the lowest possible cost.

145. All Defendants had an economic interest in colluding against the Plaintiff.

146. Consequently, defining the class so as to ostensibly include the Plaintiff without either giving him notice or securing any benefit for the Plaintiff was either professional negligence or intentional conduct by the Richter defendants to defeat the Plaintiff’s ability to make a claim against the Diocese. As noted, this cause of action presumes that the Richter defendants were not merely professionally negligent but intentionally acted with the Diocese defendants to limit the Plaintiff’s ability to claim against the Diocese defendants, with whom the Richter defendants shared an illicit economic interest in defeating the Plaintiff’s potential claims.

147. For the Richter defendants, both their class counsel fee, and the interests of the Diocese defendants, were more important to them than were the interests of their absent putative class member clients such as the Plaintiff.

148. In exchange for the Richter defendants abandoning the Plaintiff and all of their other out of state putative class member clients, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might independently scrutinize the

proposed class action settlement under SCRCP 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which the Richter defendants used to support their fee request, (e) agreed to an unethical (for class counsel) settlement which established a fixed fee amount for class counsel while simultaneously establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to class counsel before any class member had been identified and before any class member's claim was known (so the fee could not be effectively evaluated before it was paid), (g) agreed to make no objection when the Richter defendants took more fee than was authorized by court order, and (h) agreed to maneuver, in violation of SCRCP 23 and other professional standards, the class action away from those Charleston County judges that might exert independent scrutiny of the class action to a state court judge in Dorchester County known to have extensive social and professional ties to the Richter defendants, in the aspiration and expectation that from that judge they would receive a less independent and more pliable oversight for the class settlement.

149. In the 2006 class settlement the Diocese defendants undertook a duty to the classes as identified, including the Plaintiff, to identify abuse victims. To get approval of the class settlement, the Diocese defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval of the class settlement, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County. In circumventing the requirement in SCRCP 23 to get approval for a class settlement in Charleston County, and in judge-shopping to pick their desired Dorchester

County judge, all of the Defendants violated judicial norms and rules as well as professional standards.

150. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which Dorchester County complaint duplicated, word for word, an existing Charleston County complaint alleging a class, resulting in the identical class action case, for the same client and purported class representative, then pending in the circuit court in both Charleston County and Dorchester County.

151. Before it was filed, the Dorchester County version of the already pending Charleston class action had already been settled through the 2006 class settlement. The Dorchester County filing was done as the means of judge-shopping for the desired Dorchester County judge.

152. The Diocese defendants agreed to remain silent about the duplicative class action so as to enable the Richter defendants to submit false information to the Dorchester County court.

Details of the Civil Conspiracy Among Defendants

153. In 2003, the Richter defendants were associated by one or more lawyers to assist in representing a victim of sexual abuse in a claim to be asserted against, *inter alia*, The Diocese defendants.

154. The Richter defendants represented at least one victim of sexual abuse from the time they were associated throughout the events alleged in this Complaint.

155. In May 2005, the Richter defendants filed for an individual abuse victim an action in the Charleston County Court of Common Pleas styled *John Doe #66 v. The Bishop of*

Charleston, et al., 2005-CP-10-2053. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

156. That complaint for John Doe 66 made no class action allegations.

157. In August 2005, the Richter defendants filed another individual action in the Charleston County Court of Common Pleas, styled *John Doe #66A v. The Bishop of Charleston, et al., 2005-CP-10-3293*. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

158. The complaint for John Doe 66A made no class action allegations.

159. In October 2005, the Richter defendants met personally with then-Bishop Baker.

160. As a result of that meeting, in December, 2005, the Richter defendants filed a class action complaint in the Charleston County Court of Common Pleas, styled *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 2005-CP-10-4193*. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

161. In February 2009 the Diocese defendants published to the public through their press spokesman that the Charleston County John Doe 53 complaint was one of three individual cases filed in Charleston, as opposed to it being a complaint which alleged a class action. The representation that it was an individual suit was a lie by the Diocese defendants in furtherance of the routine and consistent practice by the Diocese defendants to engage in fraudulent concealment of the extent of sexual abuse by its agents and employees, and to further the agreement among Defendants to cause harm to the Plaintiff.

162. Rule 23(d)(1) SCRCF requires “as soon as practicable, after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.”

163. From the December, 2005 Complaint until June, 2006, neither the Richter defendants, as putative class counsel, nor the Diocese defendants, as a defendant in a case alleging a class, made any effort to seek class certification for the class alleged in the December class action complaint in Charleston County. In that time the public records show there were no motion hearings held in any of the three cases mentioned above. When the Charleston County court attempted to schedule pending motions, and sent out hearing notices, the Defendants collaborated each time to ask that the motions be continued rather than heard.

164. In June 2006, the Defendants met in a mediation conference. At that time, no class had been certified, and no class was alleged for spouses or parents of sexual abuse victims.

165. At that mediation conference, which took place over two days, the Defendants purported to settle all claims of all class members in two classes, as the classes were defined by the 2006 class settlement agreement of the parties.

166. Ostensibly included in the classes as defined in the mediation was the Plaintiff. By defining one of the classes so as to ostensibly include the Plaintiff, and by purporting to settle his claim, the Richter defendants assumed professional obligations to him, including fiduciary duties towards him, and created a constructive attorney-client relationship, if not an actual attorney-client relationship.

167. The agreement reached in that mediation is attachment A to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to

SCRCP 10(c). By its terms the 2006 class settlement agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 2005-CP-10-2053, 2005-CP-10-3293, and the case alleging a class action, 2005-CP-10-4913. The settlement purports to include the Plaintiff through the class definitions. The Defendants intended to include the Plaintiff in the class definition.

168. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 class settlement reached during a mediation of the Charleston cases.

169. The typewritten version of the 2006 class settlement agreement was approved by The Holy See in January 2007. That approval was required because the Diocese Defendants proposed to “alienate the patrimony” of the Diocese in an amount potentially greater than \$10 million, \$10 million being the limit of the Bishop’s authority under the internal administrative practices of the Diocese.

170. The 2006 class settlement agreement was funded after approval of The Holy See.

171. As reflected in the attached handwritten version of the 2006 class settlement agreement, Attachment A, the Defendants agreed that the individual Plaintiffs in the pending actions filed in Charleston County, including the purported class representative from the Charleston case which alleged a class, would split \$460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese defendants would pay only \$460,000 to resolve the pending Charleston cases, which were the only cases then pending.

172. Claims of absent class members were proposed to be resolved on terms materially different than the terms which the purported class representative or representatives

received. Instead of a cash payment the same, or similar to, what the purported class representative or representatives were to receive, absent class members were to be required to first relinquish their right to bring suit and then, and only then, could they submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive from the defined maximum amount available for all such claims, minus an illicit extra fee charged by class counsel. Class members had to relinquish all rights for review to qualify for the arbitration, which was binding arbitration. Class representatives did not.

173. As alleged below, not fewer than seven devices were chosen by overt agreement among the Defendants to further the conspiracy against this Plaintiff, and other absent putative members of the classes, from being included in any recovery for the class, to limit the class recovery from being “too much,” and to impede this Plaintiff from later being able to make a claim for the childhood sexual abuse of John Doe 245.

174. If the 2006 class settlement included “too many” claimants, under the 2006 class settlement agreement the Diocese defendants would be entitled to withdraw from the agreement. Class counsel would jeopardize his class counsel fee if there were “too many” claimants and the Diocese defendants withdrew, or if there were “too many” claimants and his fee agreement was not approved. The Diocese defendants wanted the 2006 class settlement agreement to be approved so they could later argue, as they in fact have argued, that no other sexual abuse claims for sexual abuse prior to 2006 could be made against the Diocese defendants if brought after the 2006 class settlement approval.

175. The Diocese defendants knew that the 2006 class settlement agreement had been negotiated and reached with an “adverse” attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar

claim against a different Diocese. The Richter defendants wanted to assure themselves of a large fee in the class action without jeopardizing that fee by getting too many class claimants against class counsel Richter's own Diocese, or risking that fee might be reviewed by an independent judge.

176. All Defendants conspired to create methods to be able to limit the number of class members who would make claims under the 2006 class settlement agreement, to limit the amount those class member claimants could recover, and to protect the Diocese defendants from any future claims. Doing so established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge-Shopping to Pick the Judge

177. The first technique used by the Defendants to limit the class recovery was for the Defendants to agree to maneuver the 2006 class settlement agreement reached in the Charleston class action to be presided over not by any judge in Charleston County, where the putative class case was filed and where the class case settlement was reached, but to "shop" for a judge they selected to make class settlement determinations. An independent judge in Charleston County was not desired to make those determinations. A judge more likely to overlook court rules and accept fraudulent filings was desired.

178. Instead of complying with SCRCP 23, and submitting the attached 2006 class action settlement to a judge in Charleston County for approval under SCRCP 23, the Defendants agreed to cooperate so as to have the Richter defendants file, and the Diocese defendants accept service of, newly filed class action cases in Dorchester County. The Richter defendants filed on August 15, 2006 in Dorchester County cases 2006-CP-18-1310 and 06-CP-18-1311. After those two cases were filed the Charleston class action case, *John Doe #53*

individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 2005-CP-10-4193, was redundantly re-filed in Dorchester County on October 6, 2006, with the same caption (other than the changed county name from “Charleston” to “Dorchester” and the case being assigned the different case number for Dorchester County of 2006-CP-18-1636), and with the identical allegations. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending, and already filed, and already settled, Charleston class action, to attempt to place all of the settled Charleston cases within the scope of the duplicate cases in Dorchester County, and as the means to avoid independent judges in Charleston County and to shop for the desired judge in Dorchester County.

179. This procedural maneuver agreed to among the Defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose when it was used in 2006.

180. Filing duplicative class actions to have the same case pending simultaneously in two different venues, particularly after the first venue’s filing is settled, is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court and to the Plaintiff, ostensibly included in each of the duplicative complaints through the class definition used in each of those complaints. The Plaintiff was deprived of Due Process through the conduct of the Defendants.

181. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending, and all were included within the 2006 class settlement agreement.

182. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the John Doe 53 class action was, by agreement among the Defendants, simultaneously pending in two separate counties, for the same client, same class representative, and same class.

183. Dorchester County was chosen by agreement of the Defendants so as to “judge shop” for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a pliable oversight of any questionable elements of the class action, including class certification, class notice, attorneys fees, any pre-award fairness hearing, and any post-award fairness hearing. The shopped-for judge was expected to tolerate factual misrepresentations and fraudulent filings by the Defendants, an expectation that was rewarded when fraudulent filings were made, by agreement among the Defendants, and the pliable, shopped-for judge took no action concerning those fraudulent filings, either before the fraudulent nature of those filings was explicitly disclosed or after the fraudulent nature of those filings was explicitly disclosed.

184. The defendants had found a judge willing to look the other way when presented with misconduct by class counsel.

185. The Defendants all agreed with this strategy of seeking a pliable state court judge, and consented to the “judge shopping” so as to avoid having to submit the class allegations, and proposed class action settlement, for approval by any judge in Charleston

County. The Defendants feared completely objective judicial oversight by any of the judges in Charleston County.

186. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the shopped-for judge designate the cases as complex, and assign the cases to the shopped-for judge. That designation was improper under the rules applicable at the time, as set forth in more detail below, as Defendants joined together to misrepresent facts to the shopped-for judge in order to obtain complex case designation. Alternatively, the shopped-for judge was informed of the false representations of fact when the request for complex case status was made, and the shopped-for judge agreed to look the other way to permit the false representations of fact.

187. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the 2006 class settlement. If the request had been legitimate, and the same request had been made and granted in Charleston, only a single judge would have presided over all aspects of the settlement. But the Defendants feared that any Charleston judge would exert independent oversight of the 2006 class settlement, and Defendants sought to avoid independent oversight.

188. Other than to shop for a particular judge, there was no legitimate reason to redundantly file case 2005-CP-10-4913 from Charleston County as case 2006-CP-18-1636 in Dorchester County.

189. As soon as the shopped-for judge assigned the Dorchester actions to herself, the Defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

190. No motion was filed in Charleston to approve the 2006 class settlement reached in the Charleston cases. All Defendants consented to not filing such a motion.

191. SCRCP 23 was not complied with as to the 2006 class settlement reached in the Charleston class action. All Defendants consented to not complying with SCRCP 23 in Charleston County, and all Defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge in Dorchester County.

192. By agreement among the Defendants, no notice was given to class members of the dismissal of the Charleston class cases. Nor was any notice given to the Charleston County judge that the parties were seeking a voluntary dismissal without prejudice of a case that alleged a class, or that the parties did so because a class settlement had been reached.

Conspiracy Technique Two: Using Complex Case Designation Improperly.

193. In October 2006, the Defendants sought complex case designation of the Dorchester County class action cases.

194. At that time, the Charleston cases were still pending, including the duplicative class action filings.

195. The July 26, 2006 order of the South Carolina Supreme Court, which at that time enabled complex case designation, approved a particular form for use with motions to seek complex case designation. Among other things, that motion required the Defendants in this case to cooperate to represent to the shopped-for judge that certain facts applied to the action for which complex case status was sought. The form states, with emphasis added:

We certify that we have made a good faith effort to settle this case and ***thus far have been unable to do so***. We realize that if this case should be settled after being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before this date.

196. At that time, the Charleston cases were still pending, and a class settlement had been reached in those cases which, if approved, would resolve all cases. The emphasis added to the portion quoted above is the false portion represented to the shopped-for judge.

197. By agreement among the Defendants, and despite the provisions of SCRCP 23, no notice was given to class members of the dismissal of the Charleston class cases.

198. By agreement among the Defendants, no notice was given to the Administrative judge for Charleston County, at that time Judge Jefferson, that when the Defendants sought a voluntary dismissal without prejudice of the pending Charleston County cases that one of those cases alleged a class.

199. Defendants falsely represented to the shopped-for judge in Dorchester County that no settlement had been reached at the time the Defendants sought complex case designation. Alternatively, the Defendants disclosed to the shopped-for judge that they fraudulently sought complex case designation, under a false representation of facts, and the shopped-for judge agreed to overlook the false application. As a second alternative, Defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status.

200. Complex case status was approved, despite a settlement having been reached before the first Dorchester County case had been filed.

Conspiracy Technique Three: Agreeing to an Unethical Attorney Fee for Class Counsel.

201. The 2006 class action settlement reached in the Charleston class action cases included simultaneous negotiation of a common fund, and variable, recovery for the class and a fixed fee amount for class counsel, with the fee to class counsel be paid prior to the claims period, and to take priority over recovery to the class member claims.

202. As set forth in the affidavit of Michael Virzi, attachment B to this complaint, and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese defendants to agree to it. Plaintiff at no time consented to the Richter defendants negotiating such a settlement, and it was not disclosed to him until 2016.

203. At page 13, paragraph 6B, in the typed version of the 2006 class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure set forth in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

204. Representation of the Plaintiff by the Richter defendants in proposing an unethical fee was inadequate, and did not comply with applicable professional standards. Alternatively, that representation breached a fiduciary duty to the Plaintiff.

205. The fee provision in the class settlement assured the Diocese of getting maximum protection from the *res judicata* effect of the class action settlement within the financial limits the Diocese defendants was willing to pay, and were approved by the Holy See to pay, in exchange for an unethical fixed fee for the Richter defendants, paid before the number of class members was known, paid before any class member could make a claim, and paid before any class member could be or would be paid, each of which made it more difficult to evaluate the fee before it was paid, and then all parties agreed to seek no post-award fairness hearing.

206. The Richter defendants sacrificed the interests of absent putative class members, such as the Plaintiff, and (after class approval) of absent class members, in exchange for the fixed fee they negotiated for themselves. The Diocese defendants agreed to that class counsel fee as

the price of obtaining the illicit cooperation of the Richter defendants in structuring the 2006 class settlement resolution that provided only a fraction of the relief the Richter defendants would agree to accept in a case against a Diocese other than Richter's own Diocese, the Diocese defendants.

Conspiracy Technique Four: Disclosing to the Class Neither the Settlement Terms for the Class Representatives nor the Settlement for Persons who Opted Out of the Class

207. The fourth technique to conspire against the Plaintiff was to make no disclosure to him, or other class members (known or absent), of either the superior settlement terms agreed to by the Diocese defendants with the individuals who were the class representatives, or the superior settlement terms reached with the individuals who in 2007 opted out of the class settlement.

208. The Defendants have all taken the position that the agreement with those persons who opted out of the class action was part of the class action. As part of the class action, the Defendants should have informed class members of those terms as an option to the class recovery.

209. Neither the class representatives nor the opt-out abuse victims had to submit their claims to binding arbitration. Their claims were given specific dollar amounts prior to their having to relinquish their right to maintain their respective claim. Each knew precisely what their recovery would be before consenting to resolve his or her claim.

210. In addition, the terms for the opt-out abuse victims exceeded the low bar of recovery the Richter defendants agreed to set for class member recoveries, to further protect Richter's own Diocese. The opt-out victims received more than was received by any comparable abuse victim who stayed in to participate in the 2006 class settlement.

211. In addition to the fee approved by the Court, the Richter defendants charged class members who participated in the 2006 class settlement an additional fee, not approved by the court, to go through the arbitration mechanism of the 2006 class settlement. That additional fee was not authorized by any court order, and it exceeded the fee approved by the shopped-for judge.

212. When class members were informed that they were to pay a fee for going through the class settlement arbitration process, they were not told that the court had already approved a fixed fee for class counsel. Nor was the additional fee approved by the shopped-for judge as part of the pre-award fairness hearing, and of course by agreement of all parties in the class action there has been, to date, no post-award fairness hearing. The shopped-for judge agreed to not have any post-award fairness hearing so as to not jeopardize class counsel's fee recovery in light of the actual payments to class members made from the class settlement. Class counsel then used that there would be no post-award fairness hearing to charge an unauthorized fee.

213. No notice was given to any class member, including the Plaintiff, about the terms of the opt-out settlements. Had the been given notice of the terms available for the class, and the terms negotiated by the opt-out abuse victims, and the terms applicable to the class representatives, the Plaintiff could have exercised a choice to state objections to the terms for the class, could have elected to receive one or the other recoveries for the class or the persons who opted-out in 2007, or could have elected to preserve his claim against the Diocese defendants. The Plaintiff was abandoned by his attorneys, the Richter defendants, with the collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed by class counsel to the Plaintiff, by the Richter defendants agreeing to define the class so as to

ostensibly include the Plaintiff, were breached when they provided no notice to the Plaintiff of the better terms obtained by others who opted out.

214. As alleged below, the abandonment by the Plaintiff was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the Plaintiff, or was a breach of the fiduciary duty assumed by the Richter defendants towards the Plaintiff. In this cause of action those duties are alleged to have been consciously abandoned, not negligently ignored, as the Richter Defendants have represented, in cooperation with the Diocese defendants so as to not interfere (from class counsel's perspective) with the fee class counsel obtained, and so as to not interfere (from the perspective of the Diocese defendants) with the *res judicata* protection the 2006 class settlement enabled them to assert. The damages for the conspiracy claim are that lost opportunity for this Plaintiff.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Create a Means of Limiting Total Recovery for Compensating Victims

215. In the "General Terms of Settlement" agreed to in the 2006 class settlement of the Charleston class action case, there are seven essential terms of the settlement agreement.

216. The first general term in the 2006 class settlement was that there would be two classes for the settlement. "Actual victims of Diocese abuse," and "Spousal &/or parent claims deriving from victims abused."

217. The second general term in the 2006 class settlement was to provide a \$12 million settlement fund without risk that the fund would under any circumstances be exceeded. The effect of that provision was to compromise the interests of sexual abuse victims, to prevent the Diocese from being unable to withdraw from the settlement by keeping the recovery from exceeding \$12 million (the point above which the Diocese could withdraw), and to protect the

Diocese defendants by depressing or eliminating any other recovery for any other potential claimant, such as the Plaintiff.

218. The third general term in the 2006 class settlement was “Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims.” This provision enabled a modest cap placed on all abuse claims.

219. The fourth term in the 2006 class settlement was that the court would be asked to approve a fixed fee for class counsel “between \$950,000 & \$2.5 million.”

220. The fifth general term in the 2006 class settlement was to establish that four individuals would allocate among themselves \$460,000.

221. The sixth general term in the 2006 class settlement was that the four individuals would be paid whether or not the court approved a class settlement.

222. The seventh general term in the 2006 class settlement was that the seven terms took the form of an offer from the Diocese and “shall be acted upon with reasonable promptness” by the four individuals who would allocate \$460,000 among them.

223. The four individuals referred to in the 2006 class settlement agreement accepted the offer from the Diocese, and allocated among themselves \$460,000 to settle their claims whether or not a class was approved. None of those individuals received more than \$160,000. It is not yet known what portion, if any, was allocated to legal fee for class counsel.

224. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class. Their claims were resolved upon acceptance, in 2006.

225. On information and belief, those four individuals accepted that offer shortly after the June 14, 2006 mediation. Documents reflect that at least one of them had accepted it by June 16, 2006.

226. The two classes preliminarily certified in an order signed January 19, 2007, excluded persons who have “previously had any similar claim adjudicated, resolved, or released.”

227. The Diocese defendants paid the \$460,000 portion of the settlement on November 20, 2006.

228. The individuals who purportedly represented the classes in the 2006 class settlement, whose claims had been “resolved” in 2006, did not in 2007 qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nor could they qualify as class representatives when the class was approved in 2007. Nevertheless, by cooperation and agrément among the Defendants they were falsely designated as class representatives in subsequent Dorchester County cases, falsely put forth as class representatives, and approved as class representatives even though they did not meet the definition to be included in the class.

229. In addition to not meeting the class definition, the class representatives received a different settlement than did class members, and excluded themselves from the arbitration process later articulated for the class members. In doing so they were guided by the Richter defendants as class counsel.

230. In the handwritten version of the 2006 class settlement, when the parties reserved details for later specificity (“Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims”), those details were reserved so the Defendants could work backwards from the settlement fund, minus class

counsel's fixed fee, to enable adjustments to be made to the notice to the class and the recovery to the class members, so the recovery to class members would not be "too much." Neither the fee for the Richter defendants nor the finality desired by the Diocese defendants would be jeopardized by having "too many" sexual abuse victims served by the 2006 class settlement agreement.

231. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of the class, because the highest priority of the Richter defendants, ahead of the interests of their clients or ostensible class members such as the Plaintiff, was to preserve class counsel's fixed fee and to get payment of class counsel's fixed fee. The second priority of the Richter defendants, after getting approval and immediate payment of their court approved fee, was to charge more than the court approved fee. (Each of those priorities being more important than the interests of the class members or absent class members). That is why the attorney fee is fixed, and why the fixed fee takes priority over the recoveries of the class members who resolved their claims under the 2006 class settlement agreement, and why the Richter defendants charged class members an additional, and unauthorized, fee.

232. The highest priority of the Diocese defendants, after their willingness to pay class counsel's unethical fixed fee, and make no objection to class counsel charging a fee greater than was approved by the court, was to either exclude persons such as Plaintiff, or to try to limit as best they could the possibility of any future recovery to persons such as Plaintiff, so that within the relatively modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims by the same counsel against another Diocese, the Diocese could argue a *res judicata* benefit from the 2006 class settlement without having to

pay meaningful relief to class members, but paying a sufficient amount so as to get the class approved. That is among the reasons that all Defendants wanted class counsel's fee to be fixed but the recovery to the class to be variable, and for notice to be designed to not inform all persons within the class definitions of the settlement itself.

233. The Diocese defendants knew, or should have known, that the systematic administrative practices of deceit and deception about sexual abuse practiced by the Diocese defendants exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

234. The Diocese defendants knew that juries in Charleston County had placed a high value on the intangible nature of sexual abuse claims.

235. To try to limit future sexual abuse claims, the Diocese defendants elected to consent to the 2006 class settlement, hoping that settlement would define a class so as to enable the Diocese defendants to give no notice to the Plaintiff then to argue to exclude by *res judicata* any later claim made by the Plaintiff. In that manner the Diocese defendants could achieve a possible protection for the Diocese at a fraction of the cost of a proper settlement with all sexual abuse victims. The Diocese defendants realized they could capitalize on the close ties to the Diocese defendants of the Richter defendants, and the willingness of the Richter defendants to sacrifice, for a fee, the interests of these and other Plaintiff, and enabled the Diocese defendants to try to minimize recoveries to all sexual abuse victims, yet still get a class approved.

236. All Defendants needed to avoid meaningful court oversight of the 2006 class settlement to achieve their collective goals of limiting the interests of absent members of the

class, so all Defendants agreed to “judge shop” to avoid oversight by any Charleston judge, and to obtain a lax oversight by the shopped-for judge they desired.

237. When the Defendants realized that “too many” victims, such as the Plaintiff, might come forward, either within in the class action or later in time outside of the class action, they changed, by agreement, the notice to the class proposed to the shopped-for judge, to limit how many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement at Attachment A to this complaint. Each of those additional terms was developed by consent of the Defendants.

238. The Defendants also agreed to misrepresent to the shopped-for judge, but to not submit in written form, a proposal to address persons, such as the Plaintiff, who were absent members of the class. The Defendants represented on the record to the shopped-for judge that relief would be offered to the Plaintiff and other absent members who got no notice, when in fact the Defendants had no intention of providing relief to the Plaintiff or other absent class members.

239. Nor did the Richter defendants undertake to secure in written orders those assurance from the Diocese.

240. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the Plaintiff. All Defendants took deliberate action to permit victims to be identified by the Diocese defendants, rather than insisting on giving meaningful notice to putative class members. Doing so was also negligence by the Defendants, but this cause of action presumes that the conduct was intentional, so as to exclude the possibility of the Plaintiff being able to make a claim for his childhood sexual abuse.

241. Paying class counsel his fixed fee before any notice to the class, before any class claimant had been identified, and before any claims had been submitted, was another way of limiting the recovery to the class.

242. By design of all Defendants, the class had no opportunity for input or comment on the proposed fixed fee, to be paid ahead of all class claims, as the fixed fee was approved without notice to the class and before the class members were known.

243. Nor were class members advised, when they were charged an additional fee not authorized by any court order, that the Richter defendants had already been paid the fee approved by the court. All Defendants collaborated to avoid there being a post-award fairness hearing, and continue to so collaborate.

244. No Defendants disclosed that the Richter defendants were submitting fraudulent information to the shopped-for judge, or that the Diocese defendants had agreed to overlook the fraudulent information submitted by the Richter defendants to the shopped-for judge, to support the fee class counsel claimed. No Defendant disclosed that the Diocese defendants had agreed to make no mention of those various fraudulent time entries by the Richter defendants. Nor had any of the Defendants disclosed that they had agreed they would request no post-award fairness hearing.

245. Structuring the arbitration into a matrix of categories, with recovery limits in each category based on physical touch rather than the psychological injury caused, was another way to limit the recovery to the class.

246. The Defendants agreed to propose giving no notice nationwide, or even notice outside the immediate area of South Carolina, and did so in order to eliminate abuse victims such as the Plaintiff. Defendants set the categories and recovery limits on the class members in the

arbitration, and set the binding nature of the arbitration, as means calculated to enable the Richter defendants to charge an unauthorized fee in the arbitration.

247. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter defendants would be paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese defendants to abandon clients such as the Plaintiff, impair the Plaintiff's ability to make any claim, to generally depress the recoveries to sexual abuse victims, to serve the interests of the Diocese defendants, and to enable the Richter defendants to charge class members additional and unauthorized fees.

248. The Richter defendants abandoned absent class members such as the Plaintiff, by making no provision for the Plaintiff and by failing to obtain in a written order the relief the Richter defendants claimed to have achieved for absent class members such as the Plaintiff. All other Defendants cooperated with that abandonment by class counsel.

Conspiracy Technique Six: Providing False Information to the Court

249. The sixth technique used to cause special harm to the Plaintiff was Defendants cooperated in filing with the court false information. When false information was filed by one Defendant, all other Defendants acquiesced, despite knowing the filing was false. Even after the information was identified as false, no action was taken to protect the Plaintiff.

250. As noted above, the Dorchester County class action complaint in case 2006-CP-18-1636 was falsely filed in that before it was filed the case had already been settled in Charleston as case 2005-CP-10-4913 through the 2006 class settlement. The identical case as re-filed in Dorchester County was collusive, and was filed in Dorchester County only to avoid oversight

by any Charleston judge and pursuant to the defendants' agreed upon plan to shop for a particular Dorchester County judge.

251. As noted above, the claim that class representatives in Dorchester County met the definition of the class and could serve as adequate class representatives were each false, and known by all Defendants to be false when made in any of the Dorchester County class complaints.

252. Patently false information about the procedural history of the class action was included by the Richter defendants in the Motion to Certify Classes and for Preliminary Approval of Class Settlement, and acquiesced in by other Defendants.

253. Patently false information has also been given to the Charleston County Court and to the public by the Diocese defendants.

254. All Defendants cooperated in providing incomplete information to the Court in Charleston County so as to facilitate dismissal without prejudice of the Charleston class action.

255. By agreement of all Defendants, SCRCF 23 was not complied with in dismissing the Charleston class action. Plaintiff was given no notice of the dismissal, or about the Charleston class settlement, or about the settlement provided those who opted out of the class settlement. Nor was notice of the Charleston County class action case dismissal given to any other actual or ostensible or absent class member.

256. False information was filed in Dorchester County about the class representatives and their adequacy as class representatives. All Defendants acquiesced in that false information to the court.

257. False information was filed in Dorchester County in support of the fixed fee sought by the Richter defendants. The Diocese defendants made no mention of the false information

filed in support of the fixed fee, because the fixed fee for the Richter defendants, and the modest variable relief for the class, was the *quid pro quo* for the Diocese defendants getting the benefit they have claimed entitles the Diocese defendants to *res judicata* protection of the class settlement, and was the means by which the Defendants conspired to try to eliminating claims by persons such as the Plaintiff from being able to make any claim against the Diocese.

258. Among the false information filed to support the fixed fee for the Richter defendants was false information about procedural history, false mathematical calculations, false representations to mask the cooperation among Defendants, false time records by the Richter defendants (including individual lawyers billing in a single day compilations of 30, 40, 51.5, 60, 80, and even 92 hours; and billings for activities performed on multiple “February 30” days), false statements of costs incurred by class counsel, false statements of the recovery to the class, and false information about the counsel for persons who had opted out of the class settlement.

259. The Diocese defendants agreed to remain silent as to these false statements, except where they overtly participated in them.

260. Whether or not the Plaintiff is barred from claims against the Diocese defendants by the *res judicata* effect of the class action, or the charitable immunity defense waived as to persons in the class definition, or the statute of limitations waived as to persons in the class definition, or for any other reason, duties to him in the class action were breached by the Defendants, and special harm has been caused to the Plaintiff by the conspiracy of the Defendants because he lost the opportunities to either influence the terms of the class action, opt out of it, or participate in it.

Conspiracy Technique Seven: Obtaining no Written Order for Absent Class Members Who Got No Notice.

261. The seventh technique used in the conspiracy among Defendants to cause special harm to the Plaintiff was to obtain no written order to secure representations made on the record to the shopped-for judge about relief supposedly available to absent members of the class who got no notice.

262. All Defendants in 2006 were conscious that choosing to define the classes so as to include these Plaintiff served the interests of the Diocese at the expense of persons such as the Plaintiff.

263. The Richter defendants abandoned the Plaintiff as a putative member of the class in agreeing to provide him no notice and then by providing him no notice.

264. The Diocese defendants conspired with the Richter defendants to submit for court approval by the shopped-for judge the 2006 class settlement agreement that was calculated to omit absent members of the class such as the Plaintiff, and all persons situated similarly. The Diocese has contended that the 2006 class settlement agreement bars the Plaintiff from being able to make any claim due to the *res judicata* effect of the class action, without having to compensate for his sexual abuse.

265. The Diocese defendants conspired with the Richter defendants in failing to submit for court approval by the shopped-for judge any order which provided that the absent members of the class could obtain relief consistent with the 2006 class settlement agreement. That failure was calculated to prevent the Plaintiff, and all persons situated similarly to him, from having any recovery against the Diocese defendants.

266. No effort was made to protect absent members of the class, such as the Plaintiff, by how the class was defined or any order which comprehensively embodied how persons who

got no notice would be treated. Notice was known to be insufficient for the persons within the class definition, and the Defendants all claimed on the record to the shopped-for judge that relief would be provided for the Plaintiff and other absent members. Those representations were false, and were not embodied in any written order.

267. Duties to the Plaintiff in the class action were breached by the civil conspiracy among the Defendants, and special harm has been caused to the Plaintiff by the acts of conspiracy among the Defendants.

268. The parties failed to embody in any order in the class action any protections for the Plaintiff as an overt act taken in furtherance of the common plan to reduce the number of claimants by eliminating persons such as the Plaintiff from being able to make a claim, while retaining the argument that all absent class members were barred by *res judicata*. The conduct by all Defendants demonstrate that the representation of the class by class counsel was inadequate, but this cause of action presumes not just that class counsel was professionally negligent but that the Richter defendants consciously abandoned the Plaintiff so as to not jeopardize class counsel's fixed fee, and so as to protect his own Diocese from the greater relief that even class counsel himself insisted on from a Diocese other than his own. The defendants conspired specifically to defeat the interests of persons such as the Plaintiff, to cause him special harm by giving him not even a chance at notice of the class action, or the ability to opt out, or the ability to protect his claim from the prohibitions of the class action.

269. The injury to the Plaintiff from the conspiracy engaged in by the defendants harmed the Plaintiff in a manner different from other causes of action. The Plaintiff was improperly excluded from the class action, but unique to the conspiracy cause of action are the damages from the Plaintiff being unable to influence the corrupt course of the class action, and its

corrupt features, because he was unable to participate in the class action or opt out of the class action. Plaintiff was deprived of the opportunity to influence the class suit, and to try to assist himself and other abuse victims from not being limited to the corrupted procedures and manipulations of the class suit. Among other things, the Plaintiff was unable to participate to influence the miniscule recovery allocated for parent and spousal claims because in the class action those claims were not brought using the common law “loss of services” cause of action.

270. As a proximate cause of the actions of the Defendants as alleged above, the Plaintiff was damaged, and is entitled to actual and punitive damages from the Defendants as a result.

**For a Fourth Cause of Action:
Professional Negligence by the Richter Defendants**

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

272. This cause of action presumes both that the Plaintiff is precluded, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making claims against the Diocese, or if he could make a claim he was unable to fully mitigate the actual damages caused by the professional negligence of the Richter defendants.

273. The punitive damages Plaintiff should be entitled to from the Richter defendants are not mitigated by any claims or recovery against the Diocese defendants.

274. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCP 10(c), is a copy of an affidavit of Michael Virzi specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants.

275. As reflected in the 2006 Charleston class action settlement that is Attachment A to this complaint, the proposed group whose claims were settled on June 14, 2006, in the Charleston class action mediation was a class specified as “actual victims of Diocese abuse.”

276. Plaintiff was a putative member of that class as it was defined in the proposed settlement.

277. When the 2006 class settlement agreement was formally typed and formally approved by the Richter defendants, the Holy See, and the Diocese defendants, the illicit agreement by Defendants on “judge shopping” had been accomplished, and the 2006 class settlement agreement reached in the mediation of Charleston cases was now claimed to be a proposed settlement of all prior cases, both the Charleston cases listed in the 2006 class settlement and the post-settlement Dorchester County class actions.

278. On October 6, 2006, the Richter defendants filed proposed formal class definitions that included the Plaintiff.

279. The Richter defendants assumed a duty to the Plaintiff in each of the filings in (a) the Charleston case which alleged a class action, (b) in that June 14, 2006 class settlement agreement of the Charleston case which alleged a class action, and (c) in its October 6, 2006 Dorchester County filings alleging a class action defined so as to include the Plaintiff.

280. On the record to the shopped-for judge the Defendants agreed that relief would be provided for absent members of the class who got no notice of the class settlement. Those representations were false. The Richter Defendants were professionally negligent in failing to provide a written order to secure the representations made on the record.

281. On January 19, 2007, the proposed class definitions that included the Plaintiff was approved without objection from the Diocese defendants.

282. In their Charleston and Dorchester County class action cases against the Diocese defendants, the Richter defendants assumed the obligation of representing the interests of absent putative class members including the Plaintiff. In abandoning the Plaintiff, the Richter defendants performed in a professionally negligent manner the duty they had assumed to absent putative class members such as the Plaintiff.

283. The Richter defendants engaged in negligent acts and omissions in their representation of the Plaintiff. Among other things, when they abandoned the Plaintiff and acted so as to harm his interests, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the Plaintiff reasonably informed, failed to provide him with information with respect to obtaining his informed consent, failed to consult with him about the means for accomplishing his objectives, represented him without his consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal, as set forth in the affidavit of Michael Virzi at Attachment B.

284. No provision of any type, at any point, was made in the orders of the shopped-for judge overseeing the class action to protect absent putative class members who received no notice of the class action.

285. Any court approval of the 2006 class settlement was deficient in terms of protecting the Plaintiff because the court overseeing the class action had been shopped-for by the Defendants, and had been given, by agreement of the Defendants, fraudulent information on which to base decisions.

286. The Richter Defendants abandoned their absent putative class member clients such as the Plaintiff by failing to secure in a written order the provisions which supposedly gave him mild protection in the form of the modest recovery of the class action.

287. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the court, and failing to protect the Plaintiff's interest in the written orders.

288. The Plaintiff was abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action, or after the class action, and jeopardize the fixed fee the Richter defendants had negotiated for themselves at the expense of the class members, that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun.

289. Having "too many" claimants also was believed to not be in the interest of the Diocese defendants, and because of class counsel's conflicts of interest, which were not disclosed to the class, the Richter defendants were actually acting to protect the interests of the Diocese defendants and himself more than the interests of putative class members such as the Plaintiff.

290. As a result of his attorneys, the Richter defendants, abandoning the Plaintiff, he had no opportunity to participate in the class action, to influence the class action, or to opt-out of the class and pursue either the more favorable terms available to those other persons who opted out, or pursue his claim independently. The acts and omissions of the Richter defendants have caused damage to the Plaintiff.

291. Plaintiff is entitled to actual and punitive damages as a result of the professionally negligent representation they received from the Richter defendants.

**For a Fifth Cause of Action:
Breach of Fiduciary Duty by the Richter Defendants**

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

293. The Richter defendants chose to allege a class action and undertook to define the classes in the class actions so as to have no geographical limit on the classes.

294. All Defendants agreed on how the classes were defined.

295. In choosing to define the classes so as to include the Plaintiff, the Richter defendants each assumed fiduciary obligations to the Plaintiff, who was a putative member of one of the classes the Defendants elected to define.

296. As an alternative to the Fourth Cause of action for professional negligence, the Richter defendants breached the fiduciary duty each assumed as to the Plaintiff as an absent member of their respective putative class.

297. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the Plaintiff by failing to secure for him even the modest relief of the class action, or to preserve his ability to make his claim independent of the modest relief obtained by the Richter defendants for sexual abuse victims.

298. The state court judge overseeing the class action was shopped-for by all Defendants.

299. The state court judge was not asked to preserve in any written order any rights for absent members of the class who received no notice, or to protect the rights of those persons.

300. The Richter defendants claimed to protect the Plaintiff but then failed to do so. The Richter defendants were negligent in failing to do so, and were out-maneuvered by the Diocese

defendants, who had made representations on the record but then succeeded in keeping those representations from being embodied in any court order.

301. Once the Richter defendants were paid their court-approved fee, they were ineffectual in securing the rights of the Plaintiff to preserve his claim.

302. The Richter defendants in each of its 2005 Charleston class action filing, the 2006 class settlement agreement, and in the October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the Plaintiff.

303. On January 19, 2007, the class definitions that included the Plaintiff were approved without objection from the Diocese defendants.

304. The Richter defendants contend that they had no obligations to absent class members, indicating conclusively their lack of understanding of the obligations undertaken as a matter of law when class allegations are made.

305. The Richter defendants each breached their fiduciary duties to the Plaintiff, and as a result, the Plaintiff has been refused any compensation by the Diocese defendants, who have used the 2006 class settlement as a shield. The Richter defendants were negligent in failing to protect the Plaintiff's interests.

306. Having "too many" claimants also was not in the interest of the Richter defendants or the Diocese defendants, so the Richter defendants protected their own interest in their fee and the interests of the Diocese above the interests of the Plaintiff. The Richter defendants have close and longstanding ties and involvement with the Diocese defendants. Those involvements were never disclosed to the class, or to the Plaintiff. To promote the interests of the Diocese defendants in trying to later enable the Diocese defendants to argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote

ahead of the interests of the Plaintiff their own interest in their fixed fee, the Richter defendants failed to secure in any written orders any protections for absent members of the class such as the Plaintiff, even though the class compensation was among the lowest-known victim compensation proposals.

307. As a result of the Richter defendants abandoning the interests of the Plaintiff, and breaching the fiduciary duties the Richter defendants owed to him, the Plaintiff has been damaged by having his claims against the Diocese defendants interfered with, and a barrier created to those claims that would not have existed but for the negligent conduct of the Richter defendants.

308. Plaintiff is entitled to actual and punitive damages as a result of the fiduciary duties to him that were breached by the Richter defendants.

**For a Sixth Cause of Action:
Aiding and Abetting Breach of Fiduciary Duty by Diocese Defendants**

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

310. The Diocese defendants aided and abetted the breach of fiduciary duty by the Richter defendants.

311. In pleading a class action the Richter defendants assumed a fiduciary duty to the Plaintiff.

312. In the conduct to “shop for” the Dorchester County judge, to define the class, and to give the Plaintiff no notice, as alleged above, the Diocese defendants participated with the Richter defendants in limiting the ability of the Plaintiff to make his own claim against the Diocese for childhood sexual abuse.

313. The Diocese defendants joined with the Richter defendants in making representations on the record to the shopped-for judge that supposedly protected the interest of

the Plaintiff as to either each being able to bring his claim at a later time or being able to participate, at minimum, in the intentionally depressed recovery available to class members in the 2006 class settlement. The Defendants then failed to secure those representations in any written order, enabling the Diocese defendants to deny the representations, and act as if those representations had never been made.

314. The Diocese defendants knowingly participated in the breach of the fiduciary duty owed to the Plaintiff by the Richter defendants.

315. The Plaintiff has been damaged by the aiding and abetting by the Diocese defendants and is entitled to actual and punitive damages as a result.

**For a Seventh Cause of Action
Unfair and Deceptive Trade Practices by the Richter Defendants**

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

317. The Richter defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law.

318. In practicing law in Charleston County the Richter defendants each engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Richter defendants advertised and offered for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina. In electing to bring a class action complaint for sexual abuse victims of the agents and employees of the Diocese defendants, the Richter defendants specifically offered a service to the people of South Carolina, and purported to alter the legal rights of the public as to that sexual abuse, including the Plaintiff's rights.

319. In making that invitation, the Richter defendants assumed the duty to ensure that its offer of services did not disadvantage the Plaintiff, and assumed the duty that its services would be free of unfair and deceptive trade practices.

320. In 2006 the Richter defendants entered into a class settlement agreement with the Diocese for victims of sexual abuse by agents and employees of the Diocese defendants. The class settlement was ostensibly to address the known history of priests and other employees who sexually abused minors, but as effectuated by the Richter defendants, the primary purpose of that class action was to enrich the Richter defendants at the expense of sexual abuse victims and, through unfair and deceptive trade practices, to protect not his clients but the Diocese defendants from (a) future claims for sexual abuse, and (b) to depress the value of sexual abuse claims against the Diocese defendants.

321. Unfair and deceptive trade practices were pursued in furtherance of the class action, as alleged above, including false representations to the court, violations of professional standards, judge-shopping, collusive conduct, abuse of court rules and procedures, and actions which violate professional standards, as pleaded with specificity above.

322. The public interest was affected by the 2006 class settlement because the offering was made to the public, the advertising was made to the public, members of the public (other than those who lived out of state) were invited to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved by the Court predicated on either false representations made to the Court about how the person such as the Plaintiff would be accommodated, or through a shopped-for judge who was aware that the representations being made were false.

323. Among the false statements made at the time by the Defendants was Bishop Baker's public statement that the proposed class resolution was "for those individuals who were abused within the Diocese of Charleston by clergy or laity over a number of decades." At the time that claim was made, all Defendants were aware that the 2006 class settlement proposed relief about which only persons in and around South Carolina were to be informed, and that no provision had been made for persons, such as the Plaintiff, who lived out of state and by design got no notice of the class.

324. In its public statements, acquiesced in by the Richter defendants, the Diocese defendants overtly misrepresented the reach of the proposed 2006 class settlement. No party disclosed that in fact the 2006 class settlement agreement was designed, as its first priority, to obtain a fee for class counsel, with all other relief to clients secondary to that fee, and that the 2006 class settlement agreement was designed so as to omit relief to many persons who had been sexually abused, and was designed to provide among the worst recovery for sexual abuse victims in any case nationwide, was designed to depress the value of sexual abuse claims against class counsel's own Diocese, and was designed by class counsel to protect the Diocese defendants from future claims, and to inhibit the Plaintiff from being able to make any claim.

325. A circuit court judge to approve the class settlement was "shopped for" and selected by the Richter defendants, with collaboration of the Diocese defendants. The Richter defendants did not want any Charleston County judge to preside over the 2006 class settlement agreement, out of concern that the judge might be fully independent.

326. The Diocese defendants were negligent in assessing the damage done by sexual abuse by their employees and the number of persons affected by that abuse. Alternatively, the Diocese knew the number of victims would far exceed the numbers it reported to the court as

its expectations for number of victims, and consciously misrepresented that number to the court and to the public.

327. The Diocese defendants were aware that the Richter defendants were willing to recover only modest relief for victims in exchange for a substantial fixed fee that took priority over the recoveries to the victims.

328. The Richter defendants had extensive and life-long ties to the Diocese defendants, and was/known to the Diocese defendants to be willing to compromise the interests of the absent class members, including the Plaintiff, in exchange for a fixed fee payment.

329. With the cooperation of the Diocese defendants, the Richter defendants conceived of a plan to commit a fraud on the Court and the public by representing to the court and the public, falsely, a rationale upon which the court could approve a class settlement defined with no geographic limits, and with no protections for persons who in 2006 had repressed memories of abuse, while giving only geographically limited notice to the class and in affirmatively misrepresenting to the court the relief which would be available to the Plaintiff. As long as their fee was paid, and paid first, before any class member had received notice and before any class member had made a claim, and as long as the Richter defendants were able to take from the class without objection from the Diocese defendants unauthorized additional fees, the Richter defendants were expected by the Diocese defendants to be willing, and were in fact willing, to abandon the interests of the absent class members the Richter defendants represented. Instead, the Richter defendants accommodated the interest of the Diocese defendants at the expense of the absent members of the class they represented.

330. All Defendants collaborated to submit false information to the Court, and no Defendant objected when any of the false information was submitted by any of them or by

their experts. Part of the collaborative agreement among the Defendants was to remain silent while false information was submitted.

331. To gain court approval of the class settlement from the shopped-for judge without disclosing his actual intention to compromise the interest of the absent class members such as the Plaintiff, the Richter defendants made overtly false representations of fact to the court. Among those false representations was that there was an “understanding” among all Defendants in this action “as to what would happen” to any person within the class definition who “shows up” (as put by the Diocese defendants) outside of the class notice procedure. That “understanding” communicated to the Court was never placed in any written order by the shopped-for judge and, of course, there is no such “understanding” that the Diocese defendants agree to, nor is there any way to enforce the “understanding.” It was falsely represented to the shopped-for judge overseeing the 2006 class settlement that if “someone pops back up who should have gotten notice who didn’t get notice,” the Diocese represented, with the Richter defendants:

I think we [the Diocese and class counsel] have an understanding as to what would happen to those particular folks, which would really be our problem, and I think that what we’ve discussed allows us to proceed with the agreement we’ve signed on January 12th [2007]. And then if that person shows up then we [the Diocese] would have to deal with that.

332. That representation to the Court appears on page 3 of a transcript dated July 13, 2007. The representation is false, and is contained in no written orders of the court, so is unenforceable, as the Richter defendants, who were acting in the interests of the Diocese defendants and themselves, intended it would be. The representation was made in a hearing in the class action proceedings for which no other interested parties were given notice, even those who had already made an appearance and stated objections to the class action settlement. Only

in 2009 was the transcript disclosed in the course of other litigation over the collusive class action proceedings.

333. In that same transcript, the Diocese defendants represented to the Court, falsely, that there were only five sexual abuse victims they had not located. That representation was false, and was known to have been false when made. It was acquiesced in by the Richter defendants.

334. In fact, the Richter defendants were aware, and had alleged, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves. The Richter defendants were also aware that some abuse victims repressed memories of their childhood sexual abuse and in 2006 could reasonably be expected not to recall childhood abuse within the timetable of the class action claims period.

335. To get approval that protected the Diocese from absent class member claims, including the Plaintiff's sexual abuse claim, the Richter defendants falsely represented to the Court that when an absent class member did not get notice, and later identified himself or herself, the Richter defendants and the Diocese defendants assured the court, on page 14 of the same transcript, "we've got to find anybody else who has kind of, lack of a better word, comes out of the woodwork."

336. The Richter defendants, on pages 16 - 17 of that same transcript, summarized to the shopped-for judge, falsely, that the supposed position of the Diocese as "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 entirely false.

337. The Richter defendants submitted to the shopped-for judge who oversaw the 2006 class settlement no written orders to embody the supposed “understanding.”

338. Nor did the Richter defendants disclose that the representations were false when the shopped-for judge observed, as to the Diocese, 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.” Nor did the Richter defendants submit any proposed orders to embody that representation.

339. The Richter defendants intended on July 13, 2007, to create the false impression with the Court that if a victim within the class definition came forward after the class claims period was concluded, that the Diocese would extend relief to that victim. In making the false representation that they made no effort to embody in any court order, the Richter defendants were operating in the interest of themselves and the Diocese defendants, not in the interest of absent members of the class. The Richter defendants intended that the shopped-for judge would rely on the statement, and the Court did rely on the statement. However, the Court did not embody the understanding in its order, the Richter defendants made no request that the court do so, and the Diocese defendants refuse to comply with the “understanding.” That representation by the Richter defendants was false when made, and was known to have been false when made.

340. The Diocese concealed the falsity of class counsel’s representations to the shopped-for judge. The true position of the Diocese has been, starting in 2009, to deprive other sexual abuse victims of any relief, using the class action suit as the rationale for doing so. That fraudulent concealment by the Diocese became known to the Plaintiff only in 2016.

341. The shopped-for judge who oversaw the 2006 class action settlement relied on the statements by the Richter defendants, and silence by the Diocese, to extend in the court's order of July 30, 2007 approving the class settlement, at page four, this statement:

The Diocese has further stated that it understands that **any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement.** Further the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

Emphasis added. While one might expect that the order's language would reflect the conduct of the Diocese defendants or what a court would enforce, in fact the shopped-for judge reflecting only what the Diocese has "stated" has proven to be an unenforceable order, as the Richter defendants intended in 2007 when they made no effort to seek an order to that effect.

342. Along with the Richter defendants, the Diocese defendants intended that the shopped-for judge overseeing the 2006 class settlement would rely on their collective statements, silences and conduct, to form the impression recorded in the court's 2007 order, even though the impression was false and neither the Richter defendants nor the Diocese had any intention, in 2007 or since, of honoring the assurances given to the shopped-for judge overseeing the 2006 class settlement.

343. The Diocese defendants, as intended by the Richter defendants in 2007, refused to honor the assurances given to the trial court by the Richter defendants, and which the Court noted in its July 30, 2007 order at page 4 without actually ordering. Instead, the Diocese continues to assert the defenses it had waived for class members, and has claimed the *res judicata* effect of the class action which the Diocese defendants had disclaimed, and have acted exactly contrary to the assurances to the Court by the Richter defendants, and the public

statement by then Bishop Robert Baker in January, 2007, that the Diocese intended a just resolution for every person who had been abused within the Diocese of Charleston.

344. The false statements by the Richter defendants, and the irregular conduct in the course of the class action by the Richter defendants, and the Richter defendants acting in the interest of themselves and the Diocese defendants rather than in the interests of the absent members of the class, constitute unfair and deceptive trade practices which have damaged the Plaintiff.

345. The Richter defendants made their false representations to the shopped-for judge overseeing the 2006 class settlement for the purpose of gaining that court's approval of a class settlement with only limited notice to the class and with no protections for absent members of the class. When the 2007 order mentioned the "understanding" but did not order it, the Richter defendants did nothing to seek modification of the order or to appeal the order.

346. The Richter defendants committed fraud on the Court, on the public, on this Plaintiff, and on all sexual abuse victims born before August 30, 1980, the definition used in the 2006 class settlement. The Richter defendants also engaged in unfair and deceptive acts and practices in violation of South Carolina law, which have disadvantaged the Plaintiff. In doing so the Richter defendants were acting in the interests of themselves and the Diocese defendants, not in the interests of the Plaintiff they purported to represent.

347. All of the conduct by the Richter defendants, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the 2007 representations made to the Court by the Richter defendants and acquiesced in by the Diocese defendants. Multiple sexual abuse victims born prior to August 30, 1980, each of whom received no notice of the class action, as

class counsel intended, many of whom had not recalled their abuse by the 2009 conclusion of the class action or the earlier deadline of the class claims procedure, have since been refused relief by the Diocese when they made a claim for relief.

348. The disregard by the Richter defendants for absent members of the class, the misconduct throughout the class action, and the disingenuous representations by the Richter defendants to the shopped-for judge who had been hand-picked to oversee the 2006 class settlement agreement are unfair and deceptive acts or practices that affected the relief awarded in the class action, and affected the Plaintiff by disabling their claim against the Diocese for the childhood sexual abuse of the Plaintiff.

349. The conduct by the Richter defendants is part of an intentional effort to mislead the Court, and to act against the interests of the absent members of the class and instead to act in the interest of themselves and the Diocese defendants, with whom the Richter defendants are entwined.

350. The Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Richter defendants. Specifically, the Plaintiff was unable to obtain the relief promised by the Richter defendants, was unable to preserve his claim after he was abandoned by the Richter defendants, and due to the misconduct of the Richter defendants, to date has been unable to maintain his claim against the Diocese. As a result the Plaintiff is entitled to recover actual damages, trebled as provided by law, for the unfair and deceptive trade practices of the Richter defendants, with costs and disbursements and attorneys fees as provided by statute.

351. The secretive and disingenuous conduct by the Richter defendants, and the misconduct displayed during the class action, is offensive to public policy, and is immoral,

unethical, and oppressive. The Richter defendants made a calculated business decision to advance ahead of their class member clients' interests, and the interests of the absent members of the class, first the Richter defendants' own financial interests, then the interests of the Diocese defendants.

352. The Richter defendants collaborated with the Diocese defendants to design a compensation program for sexual abuse victims which specifically, and intentionally, excluded many victims, reduced the financial recovery for victims, depressed the financial recovery for other victims, and cut off the ability of absent members of the class to make claims. Each of those goals by the Richter defendants was illicit, and was an unfair and deceptive trade practice for an action which purported to bring a benefit to a class. For those reasons the Richter defendants collaborated with the Diocese defendants to "shop" for a hand-picked judge to oversee the 2006 class settlement so as to avoid independent scrutiny of the 2006 class settlement. The Richter defendants engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the Plaintiff.

353. The Richter defendants also deceived their own class member clients in not disclosing the court-awarded fee or that they charged class member clients additional fees not awarded by the court.

354. The Richter defendants took no appeal from the July 30, 2007 order, and sought no modification of that order, or for any subsequent order of the shopped-for judge who oversaw the 2006 class settlement.

355. The Richter defendants are bound by the July 30, 2007 order in the class action, and by the misrepresentations made to the court to obtain that order. Those terms abandon the absent class members such as the Plaintiff.

356. The Richter defendants intended the collusive class action to terminate liability of the Diocese, to limit overall compensation paid to abuse victims, and to do so at a fraction of the recovery that a truly adversarial counsel might have demanded, including the Richter defendants when litigating against a Diocese other than Richter's own. The Richter defendants acted in the interest of themselves and the Diocese, ahead of their ostensible clients and absent class members, such as the Plaintiff.

357. The unfair and deceptive acts and practices of the Richter defendants have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese defendants have repeatedly refused (as intended by the Richter defendants) relief for multiple persons who have come forward having not gotten notice of the collusive 2006 class settlement. The practices engaged in by the Richter defendants violated professional standards and court rules, violated legal ethics, made misrepresentations to the Court, and (in collaboration with the Diocese defendants) making misrepresentations to the public, were all done to advance the Richter defendants' own interests.

358. The Richter defendants calculated that their personal and professional connections to the shopped-for judge would permit false and fraudulent practices before the shopped-for judge without eliciting inquiry. In that regard, the Richter defendants were correct, as even after evidence of the false practices were laid before the shopped-for judge, no inquiry was made.

359. The Richter defendants further calculated that their political status as persons who formerly held political office and with political connections to the South Carolina Supreme Court and the court's mechanisms for enforcing professional standards of conduct would cause even the South Carolina Supreme Court to look away from the false and fraudulent practices before the shopped-for judge without eliciting inquiry. In that regard, it is not yet known if the Richter defendants will prove correct.

360. The Plaintiff is neither politically connected nor a personal friend of any powerful person, and has no choice but to rely on the theoretical interest that a judge is supposed to have as to misrepresentations to the court, and on the prohibitions of the Unfair Trade Practices Act.

361. The false and deceptive practices of the Richter defendants will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The corrupt practices of the Richter defendants in compromising the interests of absent members of the class they purported to represent has been actually repeated, as well as has the potential for repetition, in the form of the sexual abuse victims who got no notice of the 2006 class settlement and who have requested, and been denied, relief, as the Richter defendants intended.

362. The Richter defendants should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to the conduct of the Charleston or Dorchester County cases in which any of the Diocese defendants were supposedly adverse parties.

363. The 2006 collusive class settlement was achieved without a single motion having been argued, and without a single court ruling on any aspect of any of the Charleston cases then pending at the time of the 2006 class settlement. The parties had successfully sought to have the court continue each hearing the court proposed to engage on the supposed issues of the case. That settlement was collusive, and placed the interests of the Richter defendants ahead of the interests of those who became class members and ahead of absent members of the class.

364. The Richter defendants violated the UTPA willfully, in that each of them knew or should have known that their conduct was a violation of S.C. Code § 39-5-20, and they purported to obtain relief for the Plaintiff that in fact they did not obtain in any written order.

365. The Plaintiff has suffered an ascertainable loss of money as a result of the unfair or deceptive methods by the Richter defendants. The Plaintiff ought to have been entitled to either (a) the relief the Richter defendants maintained, falsely, to the court in 2007 would be available to the Plaintiff, or (b) should be able to maintain his own action against the Diocese defendants, or (c) his own actions against the Richter defendants. Conduct by the Richter defendants was willful, and each of the Richter defendants knew, or should have known, that his conduct was unfair and deceptive.

366. The Plaintiff is entitled to treble damages as a result of the conduct of the Richter defendants in the conduct of the 2006 class settlement which affected the Plaintiff's interests, as well as to actual and punitive damages, costs and attorneys fees, and such other and further relief as the court deems just and proper.

Demand for Jury Trial

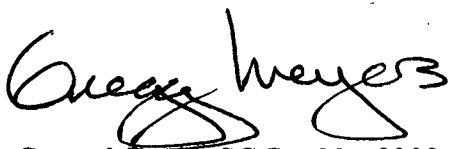
367. Plaintiff demands a trial by jury.

Relief Sought

Wherefore, Plaintiff seeks relief in the form of:

- 368. Actual damages to be awarded to the Plaintiff by the finder of fact against the various defendants, trebled as authorized by law for the appropriate cause of action,
- 369. Costs and disbursements of this action,
- 370. Attorneys fees as authorized by law,
- 371. Punitive damages as authorized by law, and for
- 372. Injunctive relief to enjoin the Diocese defendants from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice "for whatever reason," and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

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JD 305,)
Plaintiff,)
versus)
)
LAWRENCE E. RICHTER, JR.,)
DAVID K. HALLER ET AL.,)
Defendants.)

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL

25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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EXAMINATIONS

(None)

EXHIBITS

(None Marked)

1 PROCEEDINGS

2 THE COURT: We are here on several cases. We have
3 2018-CP-10-5802. We have 2019-CP-10-5892. And we have 2022
4 case, 2022-CP-10-04031. We're here on those matters, by
5 order of the Supreme Court. And what I'd like is the parties
6 to start with -- to introduce themselves, and who they
7 represent, and then we'll speak a little bit informally about
8 the status, and then we'll get to the motions. Yes, sir?

9 MR. MEYERS: Morning, your Honor.

10 THE COURT: Good morning.

11 MR. MEYERS: My name is Gregg Myers. I represent the
12 plaintiffs in all three cases.

13 THE COURT: Yes, sir.

14 MR. BRUNER: Good morning, your Honor. Ben Bruner of
15 Bruner Powell, Columbia, on behalf of Larry Richter, and the
16 former firm of Richter & Haller, LLC.

17 MR. CUTTINO: Good morning, your Honor. John Cuttino
18 of Gallivan, White & Boyd, in Columbia. I represent the
19 Defendant, David Haller, in all three cases. Mr. Haller is
20 also here with me today. My apologies to the Court and
21 everybody involved. I was the latest one here today. I was
22 the only late one, but I do apologize for (crosstalk).

23 THE COURT: Don't worry about that. That's part of
24 Charleston, I think.

25 MR. SAMMATARO: Good morning, your Honor.

1 THE COURT: Good morning.

2 MR. SAMMATARO: Sam Sammataro of Turner Padget. I was
3 the second (inaudible), and I apologize as well. I'm here on
4 behalf of my law partner. We represent the Bishop of
5 Charleston in its official capacity, and its individual
6 capacity, I believe. It's been (inaudible) a little
7 different a long the way.

8 THE COURT: All right. And we're here -- all right.
9 So we got everybody accounted for. Certainly, don't worry
10 about being late. Like I said, part of Charleston, and
11 getting on interstate around here is always tough, so that's
12 no issue at all. I know you all -- the party's been living
13 this for decades, it looks like. So this is -- I know
14 there's a lot of information. Mr. Bruner did provide a --
15 the Court with a -- some documents. Unfortunately,
16 Greenville County locked me out of those, so I couldn't get
17 to them, but I could get them on my phone. And we do have
18 them here.

19 Charleston is not locked beside of them, so we can
20 reference them if we need to, but we have a nice notebook
21 that is full of most of the material. So hopefully we can
22 review that. But if there is something that comes up, we
23 looked this morning, and Charleston will allow us to get to
24 it. Court administration in Greenville County don't play
25 nice with each other sometimes, and they'll -- they'll lock

1 you out of different things.

2 Obviously, we're dealing with the attorneys in this
3 case, and the professional negligence cases, filed by the
4 order of Supreme Court. The diocese, and -- and -- and those
5 issues will be handled by another judge at some point, I
6 assume, but we'll be handling the professional negligence.

7 My understanding of what I've looked at, the only thing
8 -- and, Mr. Meyers, you -- you probably count out this, I
9 think we have Judge Taylor's order has been appealed, but
10 everything else has been handled; is that correct, sir?

11 MR. MEYERS: Yes, your Honor.

12 THE COURT: Thank you.

13 MR. MEYERS: I mean, there's basically five motions
14 before the Court this morning, as I see the three of them are
15 kind of discovery related and probably fall pretty easily.
16 The two main ones are my plaintiffs fit into two boxes.
17 Three of them are -- from a legal point of view, for this
18 purpose, are pretty identical, and the other two are class
19 (inaudible). So the motion is -- so it's -- really fit in
20 those two boxes as I see it, although Mr. Trumento's
21 (phonetic) is slightly different posture, but not much. From
22 what the Court has in front of it, I think it's those two
23 boxes, sort of the main event today.

24 THE COURT: All right -- all right. Do you -- any
25 other parties need to add anything at this point? Kind of

1 where we are as far as the status is concerned?

2 MR. BRUNER: As far as the status, that there are a
3 number of pending motions. I -- frankly, your Honor, we --
4 we came prepared to argue the professional negligence
5 motions. There were separate motions filed by Mr. Haller's
6 attorney, and by me --

7 THE COURT: Right.

8 MR. BRUNER: -- on behalf of the lawyer defendants, as
9 we call them. I'm not sure how you want to handle the
10 discovery motions, and I don't know they're -- I knew of two,
11 I'm not sure I know of all the discovery motions.

12 THE COURT: Well, I know there's one by interrogatories
13 as well.

14 MR. BRUNER: I've seen that one.

15 THE COURT: There's one -- there's one -- then there is
16 another one on discovery is (inaudible)?

17 THE CLERK: It's for protection from discovery.

18 THE COURT: Yeah, protection from discovery. That's
19 what I was thinking.

20 MR. BRUNER: We've got -- we've got a motion for
21 protected order, and -- and I did see a motion to increase
22 the number of interrogatories. Not received any
23 interrogatories in that case.

24 THE COURT: Right.

25 MR. BRUNER: I don't know if it'd be proper for your

1 Honor to entertain a motion before there's an issue that's
2 right for a decision.

3 THE COURT: And we may deal with the motions to dismiss
4 first, and then we could -- and kind of see how those fall
5 first, and then we can go from there. What I'd like to do is
6 handle the 2018 and 2019 motions first, and then switch to
7 the 2022. They're a little -- this -- this as Mr. Meyers
8 points a little -- some differences in that one that from
9 both sides. I know that from reading your memos, there --
10 there's some -- some issues there that are a little
11 different. One sticks out for sure. So let's -- if you'd
12 like to, we can go ahead and -- unless anybody's got to add
13 anything else as far as the status. Yes, sir?

14 MR. CUTTINO: I -- I do, your Honor. John Cuttino, for
15 Mr. Haller. Let me explain my situation to you and --

16 THE COURT: Yes, sir.

17 MR. CUTTINO: -- how the situation. Two things you
18 should know. This -- these cases have been going on for so
19 long that Mr. Haller's original professional negligence
20 appointed attorney retired from practicing law. So I
21 inherited this, and all that came with it a couple of years
22 ago.

23 For that reason, Mr. Bruner, who had been in it from
24 the beginning, most will be the -- the primary historian in
25 -- in advising the Court about the path of things because in

1 many of these instances, I was physically not present. So if
2 he does most of the talking, which he probably will do on
3 some of these things, that is the reason why.

4 The second reason is the Court should infer nothing
5 from the fact that Mr. Richter and Mr. Haller have separate
6 counsel. They have separate -- separate professional
7 negligence of -- you know, insurers, or policies, or
8 whatever. Richter & Haller has since dissolved. So they are
9 aligned. We are joined in these motions to dismiss, and for
10 nothing from the fact that -- that Mr. Haller and Mr. Richter
11 have several counsel.

12 THE COURT: All right.

13 MR. CUTTINO: So thank you, sir.

14 THE COURT: And, Bishop, I don't -- you'd be adding
15 anything in the arguments today, or you just here to listen?

16 MR. SAMMATARO: I'm here to listen (inaudible).

17 THE COURT: That's what I was -- that's what I was
18 thinking. I just want to make sure.

19 MR. SAMMATARO: Thank you.

20 THE COURT: All right. Okay. All right. Mr. Meyers,
21 you ready? Your -- anything else you need to add before we
22 get started with our motions?

23 MR. MEYERS: Yes, it's their motion, your Honor.

24 THE COURT: Yes, sir.

25 MR. MEYERS: I'd be glad to respond.

1 THE COURT: All right. Yes, sir. I'd be happy to hear
2 from you.

3 MR. BRUNER: Thank you, your Honor. So as we've
4 mentioned, we've got various motions to dismiss in these
5 three cases. My understanding based on the complaint -- of
6 course, we are here on 12(b)(6), your Honor. Based on the
7 complaints, the allegations in them, and -- and the things
8 that they've referenced and incorporate, we know that
9 Mr. Trumento, John Doe 304, those are the 2018/19 cases, and
10 I believe John Doe 305 falls in this category two. They are
11 absent class members who alleged that class counsel diluted
12 with the diocese defendants and shop for judges, and -- and
13 performed other unlawful acts as part of the underlying class
14 action set.

15 Now, those absent class members -- I mean, they were
16 not named as class members in the captions of those cases,
17 say that now they have no claim against the diocese as a
18 result. These are the exact same theory that were advanced
19 on behalf of 10 prior plaintiffs in the eight prior lawsuits
20 that were filed from 2010 to -- I believe, 2016. We've got
21 the civil actions of the different reporters who provided to
22 your Honor, but there were eight prior lawsuits.

23 In those lawsuits, Mr. Meyers, representing those
24 plaintiffs, argued that under the case of Premium Investment
25 v. Green, when class counsel filed these class actions, by

1 operation of law fiduciary duties arose that -- that class
2 counsel owed these absent class members. I implore, your
3 Honor, to read in detail the August 11, 2017 order granting
4 summary judgment to the lawyer defendants. It is a great
5 explanation in reasoning of what the rule is, and why the
6 theory based on Premium Investment v. Green, does not carry
7 the doubt.

8 What Judge Nicholson held when faced with these exact
9 same theories is the absent class members were not clients.
10 And -- and he even discussed Premium Investment v. Green, the
11 case that involved constructive class certification and
12 importantly, Premium Investment was decided before the Court
13 adopted Rule 23. These cases did not involve common law
14 certification or constructive certification. The underlying
15 class actions in these cases were filed, and administered,
16 and approved pursuant to Rule 23. Okay. With Judge
17 Goodstein's ample oversight.

18 We have transcripts of these hearings. This was not
19 done behind closed doors in the conference room. The
20 transcripts of these hearings we've provided many of the
21 transcripts to your Honor, and -- and I want your Honor to
22 read those to see the work that Judge Goodstein put into this
23 -- this settlement and approving it and ensuring it was fair.

24 During our supplemental brief and some of the other
25 briefing, your Honor, we've gone into detail about how much

1 work went into the underlying class action so that you can
2 see the context against which these legal malpractice claims
3 have been alleged. In truth, Mr. Meyers was present and
4 objected to the settlement in 2007. He appeared at the March
5 2007 fairness hearing, and argued objections.

6 When Judge Goodstein approved the settlement on July
7 30, 2007, he then filed a motion to alter, or amend, and
8 filed additional objections to her order. And since that
9 time, it apparently has been his life's mission to continue
10 objecting to this settlement and attacking class counsel.
11 There were motions filed in 2008. Judge Goodstein continued
12 on the case. She rejected all these theories of unlawful
13 fees and billing more than 24 hours in a day. She reviewed
14 all of the affidavits and supporting information in 2007 and
15 through last counsel's fee.

16 Here we are, 18 years later, still arguing about the
17 merit of her decision on behalf of new plaintiffs. One filed
18 every year or so, that has prolonged this litigation. With
19 regard to these remaining three of Mr. Trumento, John Doe
20 304, and Jane doe 304, and John Doe 305, they are in no
21 different position taking the allegations in their complaint
22 in the light most favorable to them. Then were the prior
23 absent class member plaintiffs.

24 Mr. Meyers will argue that instead of -- instead of
25 articulating this duty as being imposed by law, arising under

1 operational law, he would say, "Well, no, now I'm alleging
2 it's been assumed by class counsel." That is the distinction
3 without a difference. The basis for that allegation is the
4 exact same. The basis is class counsel filed these
5 complaints, and under Premium Investment, he alleges class
6 counsel assumed fiduciary obligations to absent class
7 members.

8 Judge Nicholson rejected that in his well-reasoned
9 decision. And I will note that on appeal in a per curiam
10 decision, the Court of Appeals rejected the arguments to --
11 to overturn Judge Nicholson's order. In particular -- in
12 particular, the Court of Appeals affirmed that order based on
13 the lack of a proximate cause. That's important for this
14 reason. With these absent class members, they claim that as
15 a result of the settlement and the reduced notice, or the
16 colluded reduced notice as he alleges, that as a result of
17 that they'd been denied the ability to make a claim.

18 The reality of that is we have court orders from
19 multiple judges that say after conducting a limited
20 collateral review based on one of the many prior appellate
21 decisions in this litigation. In particular, I believe,
22 Judge Nicholson concluded that those plaintiffs were not
23 bound by the class settlement. As a result, they had a right
24 to present their claims.

25 Consequently, they could not establish any proximate

1 cause between any alleged negligent acts of the lawyer
2 defendants and the damages they claim to (inaudible). That
3 same argument applies to these plaintiffs -- these absent
4 class member plaintiffs here. There was no assumed duty.
5 And -- and frankly, your Honor, I don't know how under Rule
6 23, if an attorney-client relationship is established by
7 court -- by court order, certifying the class, determining
8 there's adequate representation and appointing class counsel,
9 I don't know how a lawyer is able to assume a duty to an
10 absent class member. I don't think legally it is possible
11 class actions administered under Rule 23. I -- I don't know
12 any authority that says in the class context that's
13 available.

14 So the only distinction he makes is now by instead of
15 saying by operation of law, the duties has been assumed.
16 There's no difference as a practical matter because the
17 factual allegations are the exact same. For that reason,
18 your Honor, we would argue that these complaints -- these
19 professional negligence claims against the lawyer defendants
20 should be dismissed for the same reason Judge Nicholson held
21 they should be dismissed, and the Court of Appeals as a firm.

22 In addition, we have an issue with the expert after
23 that Title 15, chapter 36, section 100 requires an expert
24 affidavit for a professional negligence. That is the general
25 assembly is required, and it is to prevent frivolous claims.

1 And that statute must be fileable. That requires an
2 affidavit of an expert that opines as to at least one
3 negligence act, and the factual basis for it has -- has to
4 have specificity.

5 We do not believe the affidavits that have been in any
6 of the cases that have been filed in support of these
7 complaints meet that statute. There's a general statement by
8 Mr. Bergey who filed all the affidavits in all the prior
9 cases, that -- that the conduct fell below the standard of
10 care. That is a conclusory statement, and affidavits do not
11 conclude -- do not include the factual specificity required
12 by the statute.

13 Secondly, on the expert affidavit, with regard to Jane
14 Doe 304, the statute permits a party who in good faith
15 believes that the statute of limitations is about to run on
16 her claim, to file the complaint and to file the expert
17 affidavit later. Provided however, the statute requires that
18 the plaintiff allege -- this language that's in the statute,
19 the plaintiff must allege that there was not enough time to
20 prepare an expert affidavit.

21 Jane Doe 304 apparently attempted to invoke this safe
22 harbor provision and buy more time. She filed her complaint
23 without an expert affidavit, that her complain alleges an
24 expert affidavit will be eventually filed later pursuant to
25 the statute. What she does not do, is allege that an expert

1 affidavit could not be prepared in time. She does not allege
2 that. She has never alleged that. Therefore, she failed to
3 meet the requirements of the statute to buy more time.

4 I don't think she could truthfully allege that, your
5 Honor, given the history in the prior eight cases that were
6 filed for which Mr. Bergey had already pair affidavits.
7 I don't think she could truthfully say "No expert affidavit
8 could be prepared." Whether she could or could not is
9 immaterial because she did not. Therefore, failure to comply
10 with that statute is fatal -- it's absolutely fatal. Statute
11 means something. The general assembly believed it meant
12 something when they enacted it. And the rules of statutory
13 interpretation require this court to follow. That's Jane Doe
14 304.

15 John Doe 305 also has a statute -- has an expert
16 affidavit issued for the similar reasons. The McDonald's,
17 your Honor, that -- that I've rested -- cited before the lack
18 of specificity. In addition, with John Doe 305 and
19 McDonald's, they didn't even prepare a new affidavit when
20 they filed their 2022 complaint. They simply recycled a
21 prior affidavit. They recycled the prior affidavit that they
22 filed in 2020, two years earlier, with an original petition
23 for the Supreme Court asking the Court to take up these
24 serious allegations of judge shopping and collusion fraud.

25 THE COURT: That one you wanted to talk about personal

1 jurisdiction, I believe in 305 and McDonald's?

2 MR. BRUNER: 304 -- 304 -- 305, McDonald yes, Judge.

3 THE COURT: Is that --?

4 MR. BRUNER: We're getting service too.

5 THE COURT: Yes, that's --

6 MR. BRUNER: There's a service issue also.

7 THE COURT: Yes. That's -- that's what I -- you led
8 off with -- in the '22 complaint.

9 MR. BRUNER: '22 complaint. Right.

10 THE COURT: Right. Go ahead.

11 MR. BRUNER: That's correct. Two -- two of these cases
12 were -- I'm not sure if you're familiar with snap removal in
13 district courts.

14 THE COURT: Right.

15 MR. BRUNER: Two of snap removal.

16 THE COURT: Right.

17 MR. BRUNER: How the diocese, district court, they went
18 up and they came back.

19 THE COURT: Came back, right.

20 MR. BRUNER: With the affidavit -- the expert affidavit
21 that was filed in support of John Doe 305 and the McDonald's
22 complaint, that is a 2020 affidavit filed with the petition
23 that was submitted to the Supreme Court two years prior. Why
24 they didn't file their complaint in 2020, and why they waited
25 two more years? I do not know, but they waited. And when

1 they filed their 2022 complaint, they did not have an expert
2 affidavit prepared with that complaint. And that, your
3 Honor, fails to meet the statute.

4 The statute -- and -- and we've had prior cases in this
5 same litigation. We've challenged statute -- we've
6 challenged affidavits that have been recycled from
7 Mr. Bergey. With the statute -- the intent of the statute,
8 and what it requires is that to avoid a frivolous claim is if
9 you're going to sue a professional, you prepare this
10 complaint, then you get a -- you get an affidavit with that
11 complaint. That's absolutely the intent of it. It's not get
12 one affidavit, and then you can use that to file however many
13 different actions you want, and however many courts you want.
14 Therefore, we believe that McDonald's and John Doe 305 failed
15 to meet the expert affidavit requirement, and the negligence
16 claims should be thrown out on that basis.

17 You mentioned service. With Jane Doe 304, she alleges
18 that she learned about -- she -- she alleges -- she actually
19 discovered the claims she was asserting two years, in 364
20 days prior. Right. She says it's November 11th, she files
21 on November 10th of -- nearly the 30. Under the rule, she
22 has to serve in order for that action to commence, she has to
23 serve it either within the statute, which she did not do, or
24 serve the summons and complaint within 120 days. This one
25 went up to district court, it came back down. There was no

1 service, and there certainly was not any service within 120
2 days. Therefore, that basis -- that procedural basis, her
3 claim should be thrown out.

4 With John Doe 305 and the McDonald's, I believe that
5 case was removed to it came back down and then I received an
6 email from plaintiff's counsel intimating the default
7 proceedings may be an order, and asking if I would accept the
8 service. The -- the two, I believe, are mutually exclusive.
9 Why? Why do I need to accept service? But you're also
10 entitled to default proceeding. So I take a look at the
11 issue, and I realize my client had never been served. They
12 admit they never served.

13 Now, it's always been my understanding the law requires
14 a summons. It's always been my understanding that a summons
15 and complaint must be filed and served to a party. It's also
16 been my understanding that the summons is the way that the
17 Court obtains personal jurisdiction of a party. There has
18 never been any summons served. I raised this issue years
19 ago. All of these issues now have been raised years ago,
20 your Honor.

21 Expert affidavit issue hadn't been resolved. There's
22 been nothing to remedy the service issue. There's been no --
23 no attempt to later serve, and therefore, the complaint
24 should be dismissed for failure to serve. Absolutely. Now,
25 Mr. Meyers will argue that the proceedings in district court

1 amount to a voluntary appearance, which then confers first
2 personal jurisdiction. And I ask you this: When did the
3 state court get personal jurisdiction over the lawyer
4 defendants? Because this case wasn't before the state court.
5 Jurisdiction state court was -- I reckon it was suspended
6 during the removal period before it was remanded.

7 I'm not aware of anything that was done while the case
8 was before the state court to establish personal jurisdiction
9 to overcome the failure to serve summons on my clients.
10 Statute limitations. I'm going to shift to McDonald's now,
11 your Honor. So there's -- there's an argument. Mr. Meyers
12 mentioned two different categories of -- of plaintiffs, and I
13 believe what he's referring to are the Doe plaintiffs and
14 Mr. Trumento who were absent class members alleging that they
15 were left out of a class, and therefore should recover in
16 professional negligence class.

17 Second category, I believe the McDonald's fit into.
18 The McDonald's were present at the March 2007 fairness
19 hearing. My understanding, they were there. Mr. Meyers was
20 there too. They participated in the class settlement after
21 Judge Goodstein approved it. And then following the
22 objections Mr. Meyers filed, approved it again. Following
23 that, there was an arbitration process of the claim.

24 The McDonald's fall into what's called "The consortium
25 class of the parents and spouses," and they were able to

1 recover \$20,000. What the McDonald's alleged is they
2 discovered sometime in 2019 they had been charged a fee. The
3 crux of their complaint is they were unlawfully charged a
4 fee. Now, the allegation in the complaint, even viewing in
5 light most favorable to the McDonald's still does not
6 overcome the problem they have with the statute of
7 limitations. And here's why. While the Court -- pursuant to
8 Rule 12(b)(6), is required to view the factual allegations in
9 the complaint and inferences there from in the light most
10 favorable to the plaintiffs, the Court is not required to
11 accept as true conclusions of the law. It's not required to
12 accept that at all.

13 And the McDonald's allegation is that when they
14 participated in 2008, when they got their check and took it
15 to the bank and deposited it, and it was for less than
16 \$20,000, they should recover for that loss. The problem with
17 their allegations is the law does not allow a party to sit on
18 its rights. Purpose of a statute of limitations it's
19 finality, and under the discovery rule, the three-year
20 statute of limitations for legal malpractice claims begins to
21 run on the date. A reasonable person with the exercise of
22 reasonable diligence knew, or should have known if some right
23 has been violated.

24 So does that begin in 2019 when they consult with
25 Mr. Meyers, did they finally appreciate a full-blown theory

1 of recovery? No. In fact, the loss is the contrary. It
2 does not begin -- the -- the statute of limitations does not
3 begin when the plaintiffs develop a full-blown theory of
4 recovery. It begins when they knew or should have known some
5 right has been violated.

6 Now, your Honor, even accepting these allegations in
7 the light most favorable to the plaintiffs, did they not
8 know, or at a minimum have constructed knowledge that when
9 they received a check for less than \$20,000 in 2008, some
10 right had been violated? There is no way, even during the
11 allegations (inaudible).

12 The statute began to run in 2008, it expired in 2011.
13 They cannot make an end-run circumvent the intent of the
14 statute of limitations by disclaiming knowledge of the
15 full-blown theory of recovery until 11 years later. That is
16 directly contrary to the entire purpose of the statute of
17 limitations.

18 In addition, the -- the federal file served means that
19 their claim is now out of time. Your Honor, there's been
20 some -- there's been some reference in the Miranda opposing
21 these motions to Jane Doe v. Bishop, order from the Supreme
22 Court in 2014. There's been some suggestion that the Supreme
23 Court in that case directed the litigation of these cases.
24 That, in fact, is not true. That appeal is one of many I'd
25 say more than a handful, as you can see from the different

1 files and case numbers. There are many, many, many appeals
2 that have involved different issues before the Court. In
3 that case, the Supreme Court in the case where -- far as I
4 understand it's different Doe plaintiffs only against the
5 diocese, the abuse claim, your Honor.

6 And the question was whether those Doe plaintiffs were
7 bound by the settlement. And what the Court said was,
8 "Circuit court should conduct a limited collateral review."
9 Following that order in 2014, Judge Nicholson did that with
10 regard to the eight prior absent class member plaintiffs,
11 though they were not bound, therefore no proximate cause.
12 We're asking your Honor to do the same thing here for these
13 Doe plaintiffs, and for the reasons stated, dismiss the
14 claims that McDonald's had alleged to. Thank you, your
15 Honor.

16 THE COURT: Mr. Cuttino?

17 MR. CUTTINO: Yes, sir. Two things. May it please the
18 Court? Number one: Issue the affidavits. I can just say
19 anecdotally, I do a lot of professional malpractice defense.
20 These affidavits are not just in the nature of a good idea.
21 They are a requirement. Frequently it happens, a pro se
22 plaintiff will bring a professional negligence case without
23 an affidavit, we'll object. The Court typically gives -- you
24 know, 30, 45 days to that pro se person to get an expert
25 affidavit to meet the requirements. Sometimes they do,

1 sometimes they don't, or sometimes they hire their own
2 lawyer.

3 So it -- it is always a threshold thing, and it is
4 meaningful on a lot of different levels. But it -- in my
5 experience, it is enforced in these cases. These cases --
6 you know, seven, eight years old, these motions to dismiss
7 were made long ago on this ground identifying the affidavit
8 issued. And there's never been any effort to repair them, or
9 to bring them to the statutory standard. There have been no
10 supplementation of the affidavits that I'm aware of. It just
11 is what it was on the first day, followed still, and not
12 meeting the statutory requirements still. So it -- it is a
13 meaningful thing, and I would ask the Court to look at it
14 that way.

15 The second thing is this, these motions to dismiss
16 based on the affidavit and other grounds, take place in a
17 context. And part of that context is that Mr. Haller and
18 Mr. Richter have both had these cases, which we believe to be
19 unfounded on multiple grounds, hanging over their heads since
20 2018, 2019, 2022. They are professional people.

21 In the case of Mr. Haller, he's still engaged in the
22 practice of law. He still has to report this when he applies
23 for professional negligence insurance. It has a real-world
24 impact on a professional to be sued like this. That is one
25 reason why this -- in my opinion, this affidavit requirement

1 even exists. It is to make sure that when you bring an
2 action basically accusing a professional of not living up to
3 his or her professional standards, that it has merit, it has
4 tangible merit to it as affidavit to -- by another qualified
5 professional. That is not here yet. They are still --
6 Mr. Haller and Mr. Richter both still are under the weight of
7 this pending case, which can't seem to go anywhere. And it's
8 been a long time.

9 And I think Mr. Haller and Mr. Richter both deserve to
10 have a disposition of this. They deserve it long while ago.
11 Thank goodness we are now in front of a -- of a judge that is
12 empowered to do something with it. And -- and we would make
13 that argument very sincerely. It -- it has a real-life
14 impact on these professionals. And for that reason, and the
15 things that Mr. Bruner has articulately set forth, we ask
16 that the motions to dismiss be granted after all this time.
17 Thank you, sir.

18 THE COURT: Thank you. All right.

19 MR. BRUNER: I beg the Court's indulgence at this time.

20 THE COURT: Sure.

21 MR. BRUNER: I did fail to address res judicata. The
22 McDonald's complaint has some other cause of action,
23 declaratory judgment. We briefed those. I don't want to try
24 the Court's patience. I'm -- I'm happy to rely on our
25 briefings on res judicata, but I want to make sure that the

1 Court is not under the impression we're abandoning, or
2 dispensing with those arguments. We -- we do believe, at a
3 minimum, that Judge Taylor's order for the McDonald's address
4 these issues. And if not raised your (inaudible) certainly
5 collateral stop.

6 THE COURT: A declaratory judgment argument, are you
7 standing with that argument too?

8 MR. BRUNER: Yes, your Honor. We -- we -- we do not
9 believe especially if you -- if the Court reads the questions
10 that the plaintiffs are asking the Court to answer, they are
11 advisory opinions. "Is it okay for parties to ignore a
12 Supreme Court order?" Things along those lines. The
13 declaratory relief they seek is not necessarily a declaration
14 of the rights of the parties proper under the act, but rather
15 more advisory opinions, and frankly, inflammatory. It's --
16 it's just another means in (inaudible) that Mr. Meyers found
17 to inject inflammatory questions and issues in these
18 proceedings.

19 THE COURT: Right.

20 MR. BRUNER: Thank you.

21 THE COURT: All right. We're going to switch sides
22 now. Mr. Meyers? Yes, sir.

23 MR. MEYERS: Thank you.

24 THE COURT: Yes, sir.

25 MR. MEYERS: Let me look backwards here from where

1 Mr. Burner has left. And we also agreed all the questions
2 pretty extensively in the three different cases, and
3 submitted a number of materials to the Court, particularly in
4 the Trumento 304 filings. They were filed jointly. So they
5 appear in each case. The -- the heart of this, though, is
6 strange proceeding in this class act, and the McDonald's
7 simple art as they participate.

8 I had no connection with them in (inaudible) seven when
9 I was indeed stating of justice class action. Judge in
10 Dorchester County. But they've come to me since because they
11 found out things about their own lawyer that they hadn't been
12 told conflicts with the lawyer -- the way the lawyer had been
13 already paid a two and a half million dollar fee before
14 charging them, but there was no order authorizing them to be
15 charged by class members. In fact, the language to the
16 (inaudible) to the contrary.

17 So those things, the breach of duty of their actual
18 counsel, that exactly in a case called True v. Monteith,
19 which we have cited. Where somebody had a conflict of
20 interest represented a woman on a commercial lease.
21 Something like 19 years later, the woman discovered that they
22 had that conflict, they didn't disclose. And the Supreme
23 Court said, "Oh yeah, if you just found out you have this
24 conflict, you can bring your professional negligence claim."
25 So we contend there is no statute of limitations issue as to

1 the McDonald's.

2 Let me touch on the declaratory relief so I don't
3 forget about it. We contend that all the questions posed are
4 appropriate once the -- a jury has ruled, for the Court to
5 take up the conduct of the lawyers in this case. But -- you
6 know, I -- I really am intrigued to know how you ignore the
7 Supreme Court of South Carolina. Just ignore them. And this
8 case has a lot of very strange features in it. We have laid
9 that history out where it was a class action started in
10 Charleston, settle in Charleston, and they were like, "Well,
11 we don't want Charleston Judge reviewing this. Let's get my
12 friend in Dorchester County."

13 So they cooperate to move the case to Dorchester
14 County. We've laid all this out. And look, class actions
15 are an unusual animal in the law. And we believe ignoring
16 cases that were decided before the Rules of Civil Procedure
17 to effect has no difference, because it doesn't change the
18 law. Rule 23 still requires you to do certain things. They
19 didn't do those things in Charleston when they should have.
20 And they -- they had no explanation other than the judge
21 shopping, except that it was judge shopping. They -- they
22 just refused to talk about it. But there's absolutely no
23 reason to be moving the case once you've got it settled.
24 Rule 23 says "You got to get the Court approve." They didn't
25 do that. They wanted to change the judge who would review

1 it.

2 Now, the problem for the clients that these lawyers
3 thought, "Well, we're getting the two and a half million
4 dollar fee, but we want more." So they billed the class,
5 they estimated to be about \$900,000, but they weren't
6 entitled to bill them. Fees and costs that were supposed to
7 be accommodated by the Court's award. And we are desirous of
8 getting the details of that. We know they charged the
9 McDonald's because we have a settlement stated, but we don't
10 know how they charged all the other class members. We assume
11 they charged everybody.

12 Now, that issue could be addressed conceivable in the
13 appeal that's going up now from the class action. And, of
14 course, this is wildly separated in time because they ignored
15 the Supreme Court's order in 2009 to close the class. They
16 just pretended that didn't happen. So the lawyers involved,
17 the judge involved if she knew about it, nobody decided to
18 follow the Supreme Court's order, and we discovered this
19 outstanding motion by one of the class representatives. So
20 we brought it.

21 So there -- there's a tremendous amount of highly
22 questionable actions by the lawyers. Nothing wrong with
23 bringing a class action, but -- you know, you ought to put
24 the clients first, not yourself. We have laid out how they
25 changed the class action settlement before they submitted it

1 to the judge they wanted in Dorchester, to put the lawyer's
2 fee first.

3 So it's the highest priority of the class action, and
4 all of the clients need to adjust their recoveries, should
5 there be too many people, and then they reach this agreement
6 to not give any notice to people outside the state. So as to
7 declaratory relief, we think all of those questions are
8 appropriate to take up once we have a jury ruling. Not
9 outside of the jury.

10 Touched on True v. Monteith as to the actual conflicts
11 that the lawyer did not disclose to their clients the actual
12 class members. Now, the absent class members, if I
13 understood Mr. Bruner correctly, is argument this morning is,
14 "Well, you don't have any duty (inaudible) class members."
15 And this thrusts the Court into a little bit of the esoteria
16 of class actions.

17 But what Premium Investment case say and Green case say
18 is that "The moment you plead a class action, you and your
19 class representative take on fiduciary duties to be absent
20 members of the class." This is a strange concept in the law
21 because these people don't know that you've brought a class
22 action. They may not hear about it, but you have gone into
23 court and filed a pleading that says there's a bunch of
24 people affected by this behavior. That certainly is the case
25 with the diocese, and the sexual abuse in the diocese, but

1 you have to pay attention to the people that don't even know
2 the case is going on.

3 And that is where the blind spot is with these lawyers.
4 They appear to have been unaware that they had those
5 fiduciary duties just from pleading, but then they got the
6 class defined so they take on a more pointed obligation to
7 the class as defined. This is what Judge Nicholson didn't
8 talk. He decided he could ignore the two appellate
9 decisions, Green and Premium Investment, and just focus on
10 one paragraph in one of the complaints in Dorchester County.

11 So the weakness of Judge Nicholson's theory if the
12 Court adopts it and -- you throw me out, but the weakness of
13 Judge Nicholson's theory is that he didn't work with what the
14 -- how the class was defined, how it was approved by the
15 Court. He just worked with one allegation claim that
16 referred to South Carolina, and he thought, "Well, that
17 doesn't necessarily mean everybody in South Carolina. It
18 means you don't -- you -- you don't have an obligation of
19 people who live out of state."

20 Now, here's the real problem, so it's theory. That is
21 that in 2013, in response to a motion from class counsel,
22 Judge Dixon, in Dorchester County, determined that the class
23 action, in fact included people from out of state. That
24 order is now the law of the case, and it only became the law
25 of the case, I think, last year because of the appeal, there

1 was no crossing. So we have a law of the case finding that
2 the class included out-of-state residence.

3 So for the Court to now adopt Judge Nicholson's
4 rationale, and determine that nobody out of state was
5 actually included in the class, would fly against the law of
6 the case in class action in addition to Rule 23, in addition
7 to Premium Investments, in addition to Green.

8 So we think there are ample reasons not to follow
9 negligence determination, which again, was not on the merits.
10 The only thing that touched on the merits was the Supreme
11 Court's order in 2014, saying, "If you could prove you didn't
12 get notice, or that you weren't adequately represented, you
13 got a claim against class counsel."

14 When we started all these cases, we didn't know a lot
15 of what we now know. One thing we didn't know was that the
16 Supreme Court would interpret the orders of the class action
17 to exclude people who didn't get original notice. All right.
18 Now, this is significant because what we now have is an
19 interpretation from the Supreme Court. So when I brought the
20 first case is I thought, "Well, look, if you're not bound and
21 you can still make the claim against the diocese, you haven't
22 been harm. Even if the lawyers treated you (inaudible) if
23 the lawyers didn't do their job right, you can still make the
24 claim against the diocese."

25 And if you look at the orders in the class action,

1 maybe this paragraph here gives you that right. Supreme
2 Court said, "No, it doesn't." But now we have a problem
3 where the class counsels your right for part of the class,
4 totally excluded everybody who lived out state by changing
5 the notice provision from nationwide notice to state-only
6 notice. And according to them, did it because the diocese
7 asked them, and because they changed the settlement to give
8 both the diocese and class counsel an interest in having
9 report, Rule 23 calls from receivable funds.

10 We think they put their own interests ahead. We
11 completely disagree that Mr. Bergey's affidavits are not
12 appropriate, that each one was done for this specific case.
13 Jane Doe 304's affidavit was provided. About five weeks
14 after the case was filed, it was removed. The federal court
15 filed it November 10, 2019, it was removed at the federal
16 court eight days later by the diocese. Mr. Bergey's
17 affidavit is dated December 19th. We've got the 30 days of
18 removal the affidavit was filed, it was made for her case.
19 And so, we contend it's timely under any formulation.

20 The service issue for the recent case is made
21 unnecessary because they made a voluntary appearance. First
22 in federal court, then in state court. The state court's
23 jurisdiction doesn't stop. If the case gets removed to
24 federal court, federal court's got it. They showed up in
25 federal court, filed a motion to dismiss. So it was no

1 longer necessary for me to serve. I made a voluntary
2 appearance. Then the federal court remanded them, the state
3 court. Giving jurisdiction back to the state court. I don't
4 need a separate basis of jurisdiction in the state court.
5 Once they've appeared in the action in the federal court, we
6 think the service issue and the expert affidavit --

7 THE COURT: Is there authority on that?

8 MR. MEYERS: Sorry?

9 THE COURT: You got any authority on that?

10 MR. MEYERS: Yeah, I've cited that I -- and quoted my
11 case, in my memorandum that I submitted just recently, your
12 Honor. A case directly on point where voluntary appearance
13 makes unnecessary. It's right in Rule 4.

14 THE COURT: Right. But there's also in the
15 annotations, there's Nathan case that talks about that
16 specifically, that talks about, "The parties should be able
17 to raise an objection to personal jurisdiction without
18 simultaneously waiving it under Rule 4 by making an
19 appearance." That's why I was -- that's -- that's why I'm --

20 MR. MEYERS: Right. And here's -- let me put a finer
21 point on this.

22 THE COURT: Okay.

23 MR. MEYERS: It didn't go into court, in federal court
24 or in state court saying there's no jurisdiction. In other
25 words, it wasn't a special appearance for the purpose of

1 challenging jurisdiction. It was a motion made on the merits
2 to dismiss the case. So you have made up the service
3 unnecessary by that means.

4 THE COURT: Okay.

5 MR. MEYERS: The -- the Supreme Court's decision in
6 2014 is what really sets up the claims against the lawyers
7 because they clarified that as they read the class action
8 orders, they did not reach, people did not get notice. Now,
9 this is exactly what they told the judge in Dorchester
10 County, that people didn't get notice, but they show up
11 later. Diocese has agreed to provide the same relief.
12 However, there's no written order that includes them. So
13 everybody out of state has two problems.

14 First: Make any claim against the diocese, they have to
15 be able to show they weren't bound by class action, which
16 requires them to show they didn't get due process. It
17 appears that out-of-state people can make that showing.
18 We've satisfied other judges in the past about it, but what
19 killed some of these cases was the Supreme Court saying,
20 "Well, then you can make the claim against the diocese.
21 There's no proximate cause in it."

22 What we now know is that the Court interprets the
23 orders of the class action to say "You don't get the relief
24 of the class action, and here's the damage to you and to the
25 absent class members. You now don't get the waiver of

1 defense to your claim against the diocese. You got that
2 benefit in class action to limitations charitable immunity."
3 These are considerable defenses the diocese has. So if I can
4 make a claim against the diocese now -- which is questionable
5 for each of my 304, and 305, and Trumento plaintiffs, I may
6 encounter a defense that is fatal to my claim.

7 When we get in the weeds on those claims, we'll know
8 that -- but they -- I now have to confront those defenses
9 only because the lawyers chose not to give them notice when
10 they wanted to make sure they got paid first, and in full,
11 and changed the class settlement to provide that for
12 themselves. So the assumed duty, duty imposed by law
13 question is kind of a red herring in this case, the lawyers
14 acknowledged on the record that they assumed the duty to have
15 some class members.

16 I did not plead that in the earliest cases because you
17 have to ignore a couple of Supreme Court cases that impose
18 that as a matter of law. But those have been ignored and --
19 by Judge Nicholson in Court of Appeals. So in these cases, I
20 put it both ways, and we think that it manages that question.
21 So the extraordinarily strained court proceedings in the
22 class action that began, if not before the class settlement
23 was reached in Charleston in 2006.

24 Certainly after when they decided to move the case,
25 when they decided to change the settlement, when they made

1 all these decisions to disadvantage the absence of class
2 members, and we think there's a legitimate problem. We think
3 they are serious problems. The Supreme Court hasn't fixed
4 them so far, didn't want to take this case to its original
5 jurisdiction. Okay, fine. But we get to start down here.
6 Mr. Bergey's affidavit was original Supreme Court. The
7 reason why we can't use the same affidavit, you heard, it's
8 for the same clients that he drafted.

9 So we believe the motion to dismiss should not be
10 granted. We've extensively briefed the factual issues and
11 the legal issues in both 304 Trumento, and the joint filing,
12 and have reiterated in the McDonald's cases in the 305 case
13 report, "Some of the nuances of class action work," which --
14 you know, I grant you are strange, and if you haven't done
15 class actions before, it's a little hard to appreciate the
16 fiduciary duties. You have to absent people that you don't
17 know and they don't know you. That's the fundamental place
18 where the lawyers fell down as to absent class members.

19 As to the actual class members that fell down by not
20 telling them everything they should have told them. As in
21 True v. Monteith, where the lawyers didn't disclose the
22 conflict. They didn't disclose conflict, they didn't
23 disclose prior payment by the Court. They didn't disclose
24 the terms of the order, which did not even authorize them to
25 charge these clients or the other class members. And yes,

1 that issue may be taken up in the appeal on the class action,
2 but it hasn't been so far. It's just an issue submitted. So
3 there's no final determination to decides any of this as a
4 matter breaks due to power.

5 Now, I do intend if any client comes to me who got
6 their rights infringed by a class action with all the sexual
7 abuse work I've done, I certainly will keep bringing these
8 cases until somebody tells me on the merits "It's okay to do
9 this." And then I'm looking forward to the article. I'm
10 going to write from South Carolina Lawyer Magazine about how
11 to manipulate a class action. So far I don't have that rule.
12 Nobody has addressed the merits yet. And if the Court grants
13 the motions to dismiss, I will certainly take its deal. It
14 has nothing to do with being in class counsel. It's clients
15 who are injured. They don't seem to get that.

16 They saw this as a moneymaking opportunity. They moved
17 the case to their friend, the judge, to get the biggest fee.
18 They made their fee the highest priority. I mean, it's
19 really pretty unseemly to think about, but that's the reason
20 these cases -- I keep bringing them until someone -- this is
21 the merits and it tells me, "No, this is okay." Some lawyers
22 (inaudible).

23 I think it's an abomination myself, but that's just me.
24 And -- you know, I think (inaudible) serve interest of your
25 clients, not the interest of yourself. I'm glad to rest on

1 the memorandum we've submitted, your Honor, but includes the
2 2022 memo, and 304 Trumento, and the 2024 update where the
3 law of case issue. I lay it out on the class action,
4 including out of state. That's where Judge Nicholson's
5 ruling fell down, but I couldn't get it addressed on
6 (inaudible).

7 THE COURT: All right.

8 MR. MEYERS: That's the --

9 THE COURT: All right. I'm -- I'm on -- let him
10 respond, and then I'm going to come back to you, though. All
11 right. Yes, sir.

12 MR. BRUNER: Thank you, your Honor. A few points to
13 respond to here. Please bear with me. We'll go in first
14 chronological order. One of -- one of the arguments that
15 Mr. Meyers made towards the end of his time here, is that
16 these plaintiffs now must face defenses that will waive by
17 the diocese as part of the settlement, and they should get
18 the (inaudible) of those. And to that, I ask you: How can
19 they prove proximate cause if -- if -- if they are now in the
20 same position they were, had the class action never been
21 brought off? How have they been damaged by any act or
22 omission of the lawyer defendants? Number one. And
23 specifically he's talking about the statute of limitations
24 defense and the charitable immunity defense, which not
25 necessarily waived, but the -- the diocese agreed as part of

1 this settlement to fund a \$12 million settlement, and then
2 allow these sex abuse victims to participate in a -- in a non
3 adversarial proceeding with an arbitrator -- a third-party
4 arbitrator, not the lawyer defendants, the third-party
5 arbitrator who's well respected, determining the claims, the
6 value of each claim, and yet another third-party escrow agent
7 -- I met him this morning (inaudible) people, but another
8 third party escrow agent managing the money, and everything
9 was administered pursuant to the class action course order
10 with -- with some of the funds being left out.

11 So see how these -- these plaintiffs who say, "Well,
12 now I have to face the defenses," which they would've had to
13 face anyway, had they asserted the claims back in 2006 or
14 2007, and not in 2020. How there's any damage there.
15 Secondly, there's a recent order from the Supreme Court that
16 goes directly to these plaintiffs challenges to the
17 charitable immunity defense.

18 There's a recent court that -- that says, "Chair the --
19 defense charitable immunity does not apply to intentional
20 torts." So that defense is off the board retirement. What
21 is interesting to me is that in the eight prior cases on
22 behalf of the 10 prior plaintiffs, there were, in fact,
23 claims brought against the diocese to hold them accountable
24 for the abuse. In these last three cases that they've been
25 -- they've been strategically filed to prolong the litigation

1 so he can react to files -- to decisions in the first series
2 of cases. And he's constantly adjusted.

3 And in these last three cases, these plaintiffs haven't
4 even tried to assert a claim against diocese for the abuse.
5 Why they have not done that, it's their decision, your Honor,
6 but they cannot just proclaim they have no claim against the
7 diocese. And it'd be so. That, in fact, would be contriving
8 professional negative claim against the lawyer defendants.

9 You heard about the notice plan and then it was only in
10 state and then it was negotiated and class counsel in the
11 diocese colluded about the notice plan. All this was
12 litigated previously and exhaustively briefed in the prior
13 cases, and the appeals, and the petitions, and response to
14 the Supreme Court for the class action court when Judge
15 Taylor got ahold of it. And the truth is, the notice plan
16 was not limited to just South Carolina. It included the
17 Augusta Chronicle. And the truth is, the class action judge
18 signed off on this, and she added publication that was not in
19 the motion. She did her job.

20 And ever since, Mr. Meyers has been trying to skewer
21 her and class counsel court. These are continued objections.
22 These are just endless continued objections to a class action
23 settlement. You just heard him say that it's not ending. If
24 he gets another client, the door -- at some point, your
25 Honor, it has to end. And at some point, if these continue,

1 there will be a motion for sanctions under the civil -- civil
2 privilege proceeding sanctions act at some point.

3 To read his briefs and his -- and his complaints, you
4 would think that they have wanted every step of them. They
5 have not. They have not. No court has bought these
6 allegations of judge shopping and all the craziness that you
7 read in the complaints. It has to end sometime. We're
8 asking you to end it now. These lawyers have dealt with it.
9 The parties have dealt with it long enough.

10 You heard about Judge Dixon's order, and how it's the
11 law of the case now. Now, an order in that case can be a law
12 of the case here. I'm not certain of. Last I checked the
13 law of the case document applied to the same civil action.
14 What he's talking about is an order that Judge Dixon issued
15 determining whether certain individuals were members of the
16 class. What he fails to recognize, your Honor, is the -- is
17 that, that does not get him over the hump here.

18 The Supreme Court's order, the opinion in 2014 that he
19 keeps harping on and keeps harping on, asked the circuit
20 court to conduct a limited collateral review, not to see if
21 individuals are members of the class, but to see if they're
22 bound by the settle. In the limited collateral reviews that
23 have been conducted previously by prior learned judges in
24 this litigation have held that the plaintiffs were not bound.
25 The same goes for these absent class members. McDonald's of

1 course, participated. They signed their documents, they got
2 their check. The exact same thing happens here. So he can
3 argue Judge Dixon's order all he wants, but it has nothing to
4 do with issues before this court.

5 The duty -- if you listen to what plaintiff's counsel
6 was arguing, the duty he says arises was based on having
7 filed the complaint. The class action complaints. He said
8 that gave rise to the duty. That is the exact same argument
9 that was made before. Now he calls it "An assumed duty."
10 There's no difference. It's the exact same factual basis for
11 that duty arising, and whether a duty exists, your Honor, as
12 a matter of law for the Court to decide. You can take the
13 facts alleged in this complaint, view them in the light most
14 favorable to the plaintiffs, and you can certainly find that
15 no fiduciary duty arose matter of the law. And that's using
16 the exact same reasoning as Judge Nicholson adopted in his
17 August 11, 2017 order.

18 Oh, I love this one. We've heard this one a lot, your
19 Honor. We've heard a couple times this morning, we've heard
20 it for the past 15 years. I've been working on these cases
21 my entire legal career. This is -- that's how long it was.
22 Fortunately, I'm only 45 years old, so I hope I have some
23 more time left if there are more cases brought. Because I do
24 think they need to be well defended. And I do think
25 allegations like the parties ignored Supreme Court's order

1 need to be addressed.

2 The truth, your Honor -- truth, your Honor, is past
3 counsel would have you believe that the diocese and -- and
4 class counsel got together and decided, "Well, let's just do
5 nothing, and we'll get away with it." That's what they'll
6 have you believe. What, in fact, happened was on March 19th,
7 Supreme Court entered an order in response to a petition in
8 their original jurisdiction, which had a proposed complaint
9 attached to it, a whole bunch of these exhibits that you've
10 seen filed in these cases, asking Supreme Court to look into
11 these horrible and fraudulent acts by these lawful class
12 counsel lawyers that charged excessive fees and committed
13 fraud, and colluded in the class action.

14 Supreme Court declined to accept that case in the
15 original jurisdiction, and in that order, directed that the
16 matter be concluded. Right? That was March 23rd. I'm
17 sorry, that was March 19th. Four days later -- now, at the
18 time, there were some pending matters in the -- in the class
19 action court. So now we're fighting a two-front battle here.
20 The original petition, the Supreme Court, and motions pending
21 in the class action court. Four days after the Supreme Court
22 order, Judge Goodstein entered an order relating to the
23 pending matters in the -- the class action court. And I've
24 got it -- I'm sure I've -- I've shared it in file. Your
25 Honor, it's the March 23rd order -- March 23, 2009 order of

1 Judge Goodstein.

2 That disposed of the pending issues. Following that
3 order, I believe, there was an appeal, but why should there
4 be an order in this litigation that's not appealed on record?
5 Following that order, there was an appeal. Point -- point is
6 for the argument to be made in this courtroom in good faith,
7 the parties and the Court ignore the Supreme Court's order is
8 absolutely false. Four days after that order, Judge
9 Goodstein entered an order, and that concluded all the
10 pending issues in the class action court until later when
11 these legal malpractice cases started being filed year after
12 year after year, and there was a decision to inject those in
13 class action. There was no ignoring Supreme Court's orders.
14 There is no basis for that allegation.

15 You heard about first argument Mr. Meyers made was
16 about the McDonald's being charged an unauthorized fee, and
17 they didn't know about the attorney's fees. Well, they were
18 in the courtroom during the fairness hearing, and the fee was
19 discussed then, I believe, the transcript can bear that out.
20 They knew they were charged the fee when they got the check,
21 but more important on the issue of res judicata and
22 collateral stop.

23 This exact argument was made in front of Judge Taylor.
24 Plaintiff's counsel has admitted that the appeal in that case
25 could impact this issue, which is all but a concession that

1 the issue was decided. You can only appeal a final order,
2 your Honor, unless there's an interlocutory appeal granted.
3 But this is not an interlocutory, but there's -- the Judge
4 Taylor's order is a final decision, which is under appeal,
5 and admittedly by plaintiff's counsel involves this same
6 issue. Mr. Meyers argued before Judge Taylor, and we have
7 the transcript of that, we can provide. He argued before
8 Judge Taylor that this fee was not authorized, they never
9 should have charged the fee in arbitration phase.

10 THE COURT: I thought he was saying today that it was a
11 -- that they didn't know about the alleged collusion, is what
12 the issue was, is that he didn't -- they know about the --
13 they did not know at the time of the fee that they took that
14 -- that they paid, that the parties had -- had -- had a
15 relationship with the -- the church that I --

16 MR. BRUNER: Oh, conflict of interest.

17 THE COURT: Yeah. Those things.

18 MR. BRUNER: Yeah.

19 THE COURT: I thought that was what his point was
20 today. Now, I don't know it --

21 MR. BRUNER: It is still -- they were charged the fee,
22 the -- the disclosures and -- and some of that was disclosed
23 on -- on the record in the (crosstalk).

24 THE COURT: And I think he said they were -- that they
25 -- they got -- they got their paperwork. They had the

1 paperwork. I think he had -- he's received copies of it, I
2 think is what he said, or he had copies of the paperwork.
3 But his argument was that the statute of limitations was told
4 because they did not know about these issues, and conflicts
5 with the church conflict.

6 MR. BRUNER: Yeah.

7 THE COURT: I think that's where you're talking about
8 today.

9 MR. BRUNER: And -- and -- and whether and whether that
10 is a -- a conflict that must be disclosed.

11 THE COURT: If that is a conflict?

12 MR. BRUNER: If it is a conflict.

13 THE COURT: Okay.

14 MR. BRUNER: I -- I understand the argument. Fact is
15 they were there, and they heard the arguments at the fairness
16 hearing, they were charged a fee. But -- but on the
17 unauthorized fee, I want to focus on that.

18 THE COURT: Okay.

19 MR. BRUNER: See if there's nobody authorized this fee.
20 If you read the transcript of the fairness hearing, the --
21 the whole basis -- the framework of this settlement because
22 of the nature of the claims involved in it, and in order to
23 obtain a recovery this large and fund a settlement, that
24 would avoid the need for these abuse victims to one-by-one go
25 through the adversarial process, reliving all the abuse and

1 detail by detail proving their claims. Because of that,
2 there was an arbitration phase for the damages. Not all of
3 them suffered the same category, the same types of abuse, but
4 there were different categories of recovery under the matrix
5 that was established. Okay?

6 The -- the contemplation during the fairness hearing,
7 and during the -- the settlement negotiations, and during the
8 approval of the settlement, was that during the arbitration
9 phase, participants in the arbitration could hire lawyers or
10 proceed pro se. That is directly discussed on the record
11 during the fairness hearing.

12 Judge Goodstein knew that these victims could hire
13 their own lawyers who could charge fees during the
14 arbitration and damage (inaudible). Judge Taylor decided
15 this issue. He heard this argument and he decided this issue
16 and his orders on appeal that can't re-litigate it here now.
17 Those are my points, your Honor. I'm happy to answer any
18 questions you may have.

19 THE COURT: How about the personal jurisdiction
20 argument that Mr. Meyers makes?

21 MR. BRUNER: If -- if he can show me some authority
22 that the state court gets jurisdiction while the federal
23 court has jurisdiction, last I check, those are two separate
24 courts, your Honor. And last I check, the law required
25 service of summons. We -- we never voluntarily appeared in

1 this action except to file the motion to dismiss after he
2 told me in an email that default proceedings may be in order.

3 And -- and if he's got authority for that, we -- we can
4 brief that issue further, if you'd like us to, but I remember
5 when I was the young lawyer and drafted a complaint, my dad
6 called me on speaker phone, and saying, "Does the law still
7 require summons?" Those words ring in my ear and I think
8 that's still the case today.

9 THE COURT: All right. Sir, you want to --

10 MR. SAMMATARO: Yes, sir.

11 THE COURT: -- you want to address the affidavit issue?

12 MR. SAMMATARO: Yes, sir. Just briefly. One thing
13 that comes to mind as I hear plaintiffs' counsel argue is
14 that this case is replete with innuendo. It is hard to
15 listen to Mr. Meyers' argument without coming to the
16 conclusion that he believes that all of the judges and
17 lawyers -- and there are a lot of them who have been involved
18 in this nearly 20 years or more process, are just all wrong,
19 or corrupt, or both.

20 He won't use the word "corrupt," but that's where the
21 innuendo comes in. He -- his -- his -- he's got theory.
22 He's not short on theories, they are unsupported (inaudible),
23 but they are designed to move the Court to suspect that
24 something has gone on after a class was -- class settlement
25 was approved 18 years ago -- really proved twice with

1 substantial investigation.

2 And the heart of the argument is that of all the
3 people, judges, lawyers, the person who really gets it, and
4 who's really right is Mr. Meyers. And I think there's a low
5 likelihood that in fact the innuendo is the very thing that
6 these affidavits are required to extinguish. Because you
7 cannot just come into court and accuse a professional of
8 misconduct, stealing -- you know, let's just call it what it
9 is. Those -- those are the things he will not say, but he is
10 teasing here, but clearly without a professional standard.
11 That is -- this is the kind of talk that the affidavit is
12 designed to prevent, particularly against a professional
13 person.

14 His reputation at the end of the day is what they have.
15 We are trading in innuendo today. The affidavits have never
16 been updated. They have never been changed. They just kind
17 of are what they are because that's the only thing they can
18 ever be because the rest of it would require an expert to
19 just engage in innuendo.

20 And for all of those reasons, the -- the -- the -- the
21 motions to dismiss should be granted. We -- we are talking
22 today about the same thing, and Mr. Meyers led with the
23 innuendo. That is, he believes the most appealing part. All
24 this irregularity, all this judge shopping all this -- you
25 know, he doesn't use the corruption word, but that's what

1 he's saying. And that he's the only one who -- who is
2 attuned to it. And that's just not true. It's a
3 (inaudible). These motions to dismiss should be granted. We
4 ask respectfully that the Court do so.

5 THE COURT: All right. All right. Mr. Meyers, give
6 you final words, sir.

7 MR. MEYERS: Thanks, your Honor, very briefly.

8 THE COURT: Yes, sir.

9 MR. MEYERS: Mr. (inaudible) has affidavits in each
10 case. Mr. (inaudible) teaches at the law school, used to
11 work for ODC. He's laid out the breaches, sexual abuse by
12 class counsel. The order Judge Taylor issued in 2024 didn't
13 say there's no merit to any of these extensions. He said, "I
14 can't get into that." I don't know where -- what authority I
15 would (inaudible) to look at whether the class counsel
16 complied with Judge Goodstein's orders.

17 Now, that seems kind of bonkers to me, but that was his
18 decision. I -- I can't review it. That's what's up on view.
19 Can't be reviewed or not. And maybe the Court will get into
20 it. Maybe they won't. Maybe they'll say he has authority to
21 remand it, and he'll look at it, but until that gets decided
22 on the merits that McDonald's, I think, have a legitimate
23 complaint.

24 The 2023 order by Judge Goodstein, four days after the
25 Supreme Court, told them to close the class action had

1 nothing to do with closing the class action. It had to do
2 with whether my people who had opted out were entitled to
3 interest when diocese didn't pay them. Right? So the
4 Supreme Court said in March, as we heard, you heard March
5 19th, "Close it in six months. If you need more time, you
6 got to come back to us for more time." That's what the
7 orders say. They ignored them. They just didn't do anything
8 about it. They let the case sit there and sit there and sit
9 there. No final order. Nobody competed. I don't know why
10 they did that. Maybe they've got a great explanation, but I
11 haven't been able to (inaudible) the lawyers to find out.

12 Judge Dixon's law of the case order has nothing to do
13 with it. That's not the law of the case in this case, it's
14 the law of the case in the class action. And it says, now
15 the law of the case, the class action includes out-of-state
16 residence. People are within the definition even if they
17 live in North Carolina, or Florida, or Pennsylvania, which is
18 the state of the three plains here.

19 And you are bound in the class if you get notice of the
20 very thing the class counsel changed their original proposal,
21 final proposal prove. And, of course, in fairness to Judge
22 Goodstein, she had been told that if people didn't get notice
23 and they came forward later, they would get the same deed.
24 So -- you know, talk about a way to make a judge not have to
25 worry about notice. That is a great way to do it. The

1 claims in this case about the diocese are that they aided and
2 abetted the breach of fiduciary duty, and the problems that
3 the plaintiffs have is getting at the diocese in light of now
4 having to confront those defenses are pretty insurmountable.
5 There is no intentional tort that is alleged here. It's
6 professional negligence that's alleged.

7 So the recent decision, the charitable immunity does
8 not reach intentional torts, have nothing to do with the
9 lawyers because they're not sued for intentional torts, nor
10 are they covered by charitable immunity. So that's a
11 complete smoke screen as far as I can tell.

12 The proximate cause question Mr. Bruner says, "Well, if
13 you just have to confront the defense as you were going at."
14 Front anyway, you haven't been harmed, you accept if you'd
15 been given notice and you participated in class, you didn't
16 have to confront those. So the class counsels in this
17 regard, selling themselves short, they actually achieved
18 something in the class action by getting those defenses weigh
19 getting compensation for people. It just -- if they kept
20 their fingers out of the till, they wouldn't have a problem
21 now. But they weren't getting enough as far as they were
22 concerned with the fee they asked for, based on incredibly
23 fraudulent time records that have many days in excess of 24
24 hours.

25 No one has touched that issue yet. And it's not that

1 that issue by itself harms any of these plaintiffs, didn't
2 harm the McDonald's, that they got the fee. It's that they
3 didn't tell the McDonald's there you got, nor did they tell
4 them, "We don't actually have any authority to bill you for
5 what we're now billing you." Can't tell your -- tell your
6 client nothing, and then engage in actions you're cannot
7 actually author us to do it.

8 So that -- those are our points. But listen, Judge,
9 this is a very complicated record. These are pretty
10 complicated civil procedure issues turning on very unusual
11 questions of class action practice. There's not a whole lot
12 of guidance in South Carolina cases about class actions. And
13 so, it is fair question, but it's a lot for the Court to
14 study, which I appreciate. And class actions is a weird area
15 of law.

16 Court concept is when you plead one, both by law and by
17 assumed duty, taking on duties to people that you don't know
18 about, they don't know about you, satisfying that obligation
19 is extremely -- requires a lot of attention. And here, the
20 lawyers fail to give that full attention, and in fact harm
21 their out of state. (Inaudible) who in the class they chose
22 to follow. That's the essence of it as far as I'm concerned.
23 Thank you, your Honor.

24 THE COURT: Thank you very much. Thank you all for
25 your arguments. I would like some additional briefing on the

1 -- on the service issue. And I think you both have --

2 MR. MEYERS: Did your Honor mean the jurisdiction of
3 the federal jurisdiction --

4 THE COURT: Yes -- yes. I'd like some additional
5 information on that. Obviously, that could be dispositive in
6 -- in many ways. So I would like to -- I'd like some
7 additional briefing on that for sure. On the circuit.

8 MR. MEYERS: When would you like that?

9 THE COURT: I'm thinking. How about -- 10 days okay?
10 15? You don't -- don't cut yourself and move. This thing's
11 been going a while. We don't have to do it tomorrow. So
12 what do you -- I'll let -- I'll hear from the parties, so...

13 MR. BRUNER: I think 10 should do it.

14 THE COURT: Enough?

15 MR. BRUNER: We -- we ought to be able have 10 days.

16 THE COURT: Okay, 10 days. Just send that in 10 days,
17 and I'll take these -- these matters under advisement. I
18 believe the order of the Supreme Court pointing me to this
19 case has been accomplished at this point. We have had a
20 status conference. We have heard the motions. I'll need to
21 rule on those, and then we'll see where we are from there.
22 Thank you all for being here. I appreciate your time.

23 MR. MEYERS: And, your Honor?

24 THE COURT: Yes, sir.

25 MR. MEYERS: There are these three smaller second tier

1 things that have to do with discovery.

2 THE COURT: Yes, sir.

3 MR. MEYERS: And one is not even a motion, but it's the
4 Supreme Court saying to me I should submit to you question of
5 whether I can do discovery from the diocese about claims
6 against class counsel. I need some basic information about
7 the precinct. And Mr. -- my friend, Mr. Duke says, "I know
8 we're held in the base." And I told him today I would think
9 about it and it may be that it makes sense for us to give the
10 Court time on this, and once the Court has ruled if the
11 motions are not granted, then we can take this -- these
12 matters up from the Court at that time.

13 THE COURT: Yes, sir. I think that's the best way to
14 do it. Let (inaudible).

15 MR. MEYERS: (Inaudible), if motions are not granted
16 and protective order issue will fall away, then they'll agree
17 the discovery and -- and maybe Mr. Burner and I can talk
18 about the extra interrogatories I want us (inaudible).

19 THE COURT: All right.

20 MR. MEYERS: So I thought I couldn't serve them until I
21 got permission to serve them.

22 THE COURT: Well, I think --

23 MR. MEYERS: (Crosstalk) about 50.

24 THE COURT: I think we need to -- I think we need to --
25 to deal with these issues first, and let's see where we are.

1 And like I said, there is a lot to unpack. I think we've --
2 we've gotten into it pretty heavy in a short amount of time
3 from my perspective. Like I said, I know you all have been
4 living it for significant portions of -- of your legal
5 career. So we'll -- we'll try keep that in mind. But I will
6 -- I'm looking at all the materials I -- I and getting up to
7 speed. Hopefully, we can get this issue worked out, and with
8 Greenville County, and -- and so we have the transcripts and
9 so forth necessary.

10 And we can see them, like I said, we can see them on
11 our phone or we're just not there. But it seems kind of
12 ridiculous that I can't see them sitting at my desk. But
13 anyway, but thank you all for being here. I appreciate it.
14 You have a safe trip back home. Thank you very much.

15 MR. MEYERS: (Inaudible) the attention?

16 THE COURT: Yes, sir. Thank you. All right.

17 MR. BRUNER: With the Court's permission, I -- I may
18 look back in that folder and make sure all these transcripts
19 are, in fact, uploaded, if that's okay with plaintiff's
20 counsel.

21 THE COURT: As long as you're copying him on
22 (inaudible) same.

23 MR. BRUNER: It's the same link to send everything.

24 THE COURT: All right. That's fine. I have no -- no
25 issue with that.

1 MR. BRUNER: It's just having one repository for all
2 the different actions and things. It's --

3 MR. MEYERS: Judge, do you want the transcript as a
4 prelude to our sufficiency on the jurisdiction?

5 MR. BRUNER: I think this is two separate --

6 THE COURT: Hey, I don't need -- no, just give me the
7 -- all the information on the jurisdiction -- on jurisdiction
8 surface issues.

9 MR. MEYERS: Right.

10 THE COURT: All right. All right.

11 MR. MEYERS: Thank you, your Honor.

12 MR. BRUNER: Thank you, sir.

13 THE COURT: Thank you. All right. Thank you. We're
14 off the record.

15 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED.)

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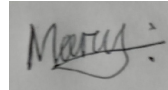
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CERTIFICATE OF TRANSCRIBER

I, MARY RAGSDALE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court of Charleston County, South Carolina, on October 7, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 20, 2025.

A handwritten signature in dark ink, appearing to read "Mary Ragsdale", is written over a light gray rectangular background.

MARY RAGSDALE

Transcriber

COPY

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

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

-versus-

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

B E F O R E:

The Honorable Diane S. Goodstein

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

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Matthew Creech, Esquire
Marvin Infinger, Esquire
Lionel Lofton, Esquire
Jack Sinclair, Esquire
Glenn Churchill, Esquire

COURT'S EXHIBIT(S):

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

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(March 9, 2007.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT: Okay.

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

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

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

20 THE COURT: Right.

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

25 As far as we know, it's

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

4 MR. BILBRO: No problem.

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

7 And the second, Your Honor --

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

12 MR. SHAHID: Yes, ma'am.

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

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

25 THE COURT: Very well. So the language

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1 as proposed is acceptable?

2 MR. BILBRO: It is acceptable.

3 THE COURT: Very well.

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

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

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

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

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

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

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

25 Now, next issue.

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

11 THE COURT: All right.

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

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

21 MR. RICHTER: Paragraph 1, Your Honor.

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

23 Page 2.

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

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

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

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

23 MR. RICHTER: That's right.

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

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

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

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

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

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

17 THE COURT: Okay. Yes.

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

20 Can you answer that for the Court?

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

25 THE COURT: Okay. Very well. All

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

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

4 THE COURT: Okay.

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

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

11 MR. BILBRO: No.

12 MR. CREECH: No, Your Honor.

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

17 MR. MEYERS: I will hold off --

18 THE COURT: Okay.

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

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

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

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

3 MR. RICHTER: Thank you.

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

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

10 THE COURT: Okay.

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

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

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

20 THE COURT: Yes.

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

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

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

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

16 THE COURT: Okay.

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

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

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

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

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

15 THE COURT: Okay.

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

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

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

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

17 THE COURT: Okay. All right.

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

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

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

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

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

8 MR. RICHTER: It does, Your Honor.

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

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

15 MR. CREECH: We're satisfied.

16 THE COURT: You're satisfied?

17 MR. CREECH: Yes, ma'am.

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

20 And, Mr. Bilbro?

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

25 MR. RICHTER: Your Honor, excuse me for

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

6 THE COURT: Okay.

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

25 THE COURT: Hold on one second for me

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

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

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

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

22 THE COURT: Okay.

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

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1 fairness of the class are.

2 THE COURT: Okay. Okay. All right.

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

5 MR. BILBRO: Yes, ma'am.

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

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

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

17 MR. BILBRO: Thank you.

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

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

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1 MR. MEYERS: Yes, Your Honor.

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

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

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

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

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

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

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

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

12 MR. MEYERS: Right.

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

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

19 THE COURT: Sure.

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

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

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1 MR. MEYERS: And no one has.

2 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 MEMBER OF THE PRESS: Thank you.

9 THE COURT: Not a problem at all.

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

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

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

19 THE COURT: Absolutely.

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

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

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

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

6 THE COURT: Great.

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

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

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

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

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

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

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

24 MS. DeMARCO: Judge?

25 THE COURT: With all that where are

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1 they?

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

8 THE COURT: What does that mean?

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

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

15 MS. DeMARCO: Thank you, Judge.

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

20 Mr. Meyers.

21 MR. MEYERS: Thank you, Your Honor.

22 THE COURT: Absolutely.

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

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

3 THE COURT: All right.

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

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

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

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

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

19 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 THE COURT: Yes.

16 MR. MEYERS: And so under this
17 settlement you could be molested as a student
18 at a parochial school, but if the pedophile
19 was astute enough to wait until you were 18,
20 the diocese has no responsibility.

21 Now, if it said minor or parochial
22 school student, that issue also would be
23 addressed. And it is a nuance that I have
24 come to appreciate from other cases where --
25 and surely the diocese doesn't intend to say,

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1 as no school intends to say, that once our
2 students reach age 18 they are fair game for
3 any teacher who wants to be sexually involved
4 with them, surely that is not a position they
5 want to espouse.

6 The -- let me turn now to the last
7 two points. The -- and let me make number
8 four first. The second point is the value
9 escribed to the consortium claims. I have
10 stated in my objection that we know that that
11 is completely disproportionate to what a jury
12 has done in Charleston County with such a
13 claim and that it seems very inappropriate to
14 be so restricting to a consortium claim and
15 the arbitrator does not have the discretion,
16 even though he has discretion within the
17 guidelines, does not have discretion the way
18 this is written to go outside the guidelines.
19 And so no consortium claim could ever be
20 valued at above that amount.

21 I have presently both persons
22 abused as minors and parents of persons
23 abused as minors who could be in the
24 settlement turning on this issue because the
25 parents surely will respond if they feel

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1 their children are being addressed. And that
2 goes to the point I was talking about
3 earlier, whether those children could be in
4 probably will determine whether parents are
5 in. But parents will have to defend their
6 own children. And my experience has been the
7 parents defend their own children pretty
8 vigorously and will probably be as aggressive
9 as they feel like they perhaps should be.
10 And there's not much risk if the only upside
11 for them is a number that is so
12 disproportionate to what a jury has done.

13 We have stated no objection to
14 having parents recover less than the minors
15 who were actually touched, but because of the
16 same rationale that underlies my objection to
17 the matrix itself and what it turns on, we
18 have been very concerned about the number
19 chosen, the fairness and adequacy of the
20 number chosen for the consortium claims. And
21 again, this does not require the diocese to
22 pay any more money, it simply allocates
23 within the claimants differently the moneys
24 awarded.

25 THE COURT: Let me ask this question of

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1 you, Mr. Meyers, just to be sure that I
2 understand the issue. The issue is twofold.
3 Number one, you have concerns about the
4 potential limitation on -- on those
5 individuals who may have been beyond the age
6 of majority still in parochial school when
7 the age of majority went from 21 to 18 in
8 1975 and that -- I have a concern about that.

9 MR. MEYERS: It's actually independent
10 of the issue of the age. Because if 21 was
11 the age of the majority, you're out of
12 school. But once the age of majority after
13 '75 dropped to 18 you get into this small --

14 THE COURT: Right.

15 MR. MEYERS: -- ambiguity period. And
16 if it said minor or parochial school student,
17 it would address that.

18 THE COURT: All right. And that was a
19 concern. And then, of course, you expressed
20 a concern regarding the value allowable under
21 the settlement to the consortium claim.

22 MR. MEYERS: Right, that entire class.

23 THE COURT: And, of course, your concern
24 that there may be those who have litigated
25 issues in the past, been unsuccessful as a

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1 result of the statute of limitations and
2 would be excluded because they -- because
3 they are those who have been involved in
4 litigation and not been successful.

5 MR. MEYERS: Right. And again, I think
6 we distinguish between res judicata which
7 certainly would bar, but this is a
8 settlement, and a settlement to be fair and
9 adequate since the settlement is predicated
10 on extending beyond, I think there is a
11 fairness issue about limiting only those
12 people who have previously brought suit.

13 THE COURT: Yes. And so this is, of
14 course, this is a settlement, this is not
15 anything imposed by the Court and, of course,
16 this is a fairness hearing. And do you
17 maintain that because of these issues that
18 the settlement as proposed is not fair? That
19 would be, I guess, my first question.

20 And but I probably want to ask --
21 that's maybe my second question. And my
22 first question is, have you addressed those
23 issues to proposed class counsel as well as
24 to the diocese? Because I think that this
25 hearing is one to determine the fairness as

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1 proposed, because this is settlement and the
2 proposals as I have heard them from you are
3 different, they contain different language.
4 And as you've indicated, perhaps from the
5 perspective of the diocese, they wouldn't be
6 paying any more money potentially. It is
7 different than what is proposed.

8 And so my first question, I guess,
9 is have you addressed your requests with the
10 class, proposed class counsel and the
11 diocese?

12 MR. MEYERS: I have only very slightly.

13 THE COURT: Okay.

14 MR. MEYERS: I sent them, of course,
15 what my objection was.

16 THE COURT: Sure.

17 MR. MEYERS: And talked very overtly
18 with class counsel yesterday and have talked
19 with diocese counsel, but only this morning.

20 THE COURT: Sure.

21 MR. MEYERS: So, and I intend to
22 continue those discussions after today's
23 hearing.

24 THE COURT: Okay.

25 MR. MEYERS: What I would say, though,

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1 is that what I'm trying to do is stay within
2 Rule 23.

3 THE COURT: Yes.

4 MR. MEYERS: And to talk about whether
5 we are fair -- it's not so much an issue of
6 fairness, it's more an issue of adequacy.

7 THE COURT: Okay.

8 MR. MEYERS: Because Rule 23 talks about
9 the interests of the persons on whose behalf
10 the claim was brought. And if the claim is
11 brought on behalf of anybody who hasn't
12 previously sued, then my concerns can be
13 swept off the table.

14 THE COURT: And your position is under
15 Rule 23 that the Court can change the terms
16 of the settlement, or simply disallow the
17 settlement?

18 MR. MEYERS: No. The Court has
19 authority under Rule 23 to change the terms.
20 And the parties I guess could say, well, then
21 we don't like it, I'm not going to do it, but
22 in terms of passing muster with the Court, I
23 think the Court has some fair amount of
24 latitude under Rule 23.

25 THE COURT: No question but the Court

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1 can clearly say based on everything that the
2 Court has heard; not going -- don't think
3 it's fair.

4 MR. MEYERS: What you would really be
5 saying is I don't think it's fair this way,
6 it would be fair that way.

7 THE COURT: I understand. I understand.
8 All right. I think that -- I want to be
9 sure, because I may have cut you off.

10 MR. MEYERS: I got one more.

11 THE COURT: Okay.

12 MR. MEYERS: We had devoted the most
13 time in our objection to the matrix being
14 proposed.

15 THE COURT: Yes.

16 MR. MEYERS: Because the matrix is
17 predicated on touch. We need a touch for the
18 violation, but the problem we have with the
19 matrix is that it uses the touch as the
20 categorization method. So this is not an
21 objection so much to the values in the
22 matrix, it is that the criterion by which you
23 move from one category to another has to do
24 with the extent of touch.

25 But the psychological damage from

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1 these cases, as the order expresses this is
2 about psychological damage, is not a function
3 of touch, it is a function of betrayal, it is
4 a function of trust being broken, but it --
5 it's a subtle point in some respects because
6 a touch is necessary for there to be a claim.
7 But to use the extent of touch as the
8 criterion by which the arbiter must choose
9 one value or another, seems to be
10 disassociated and unfairly and inadequately
11 disassociated from the nature of the injury.

12 It's not lasting physical injury
13 from the touch that plagues people's lives,
14 it is the incredible turmoil created in them
15 on a psychological basis because of the
16 betrayals. And our concern was that the
17 categories should not be segregated based on
18 touch, they can stay as they are, but be
19 disconnected from the criterion used to move
20 from one to another.

21 I'm completely comfortable with
22 using the upper limit and the lower limit and
23 giving the arbiter discretion, but not
24 restricting the arbiter as he's presently
25 restricted from using the criterion that are

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1 being proposed. And I think that is also a
2 nuance that the Court, again, could have a
3 say-so about and again does not require the
4 diocese necessarily to commit any further
5 funds to it.

6 Those are my -- those are the
7 objections that we stated and those are the
8 concerns that we have.

9 THE COURT: All right. In other words,
10 just to be sure that I understand, and it
11 would be your position that once touch is
12 established as the criteria, then the guiding
13 factor would be the psychological effect?

14 MR. MEYERS: Right. How it has
15 reverberated through someone's life, what
16 problems have they had. Very typical have
17 problems with authority figures, substance
18 abuse problems, problems with intimacy and
19 problems with family relations.

20 THE COURT: And then the arbitrator
21 once -- once the touch has been --

22 MR. MEYERS: It's merely the starting
23 point, right.

24 THE COURT: -- shown, then the range
25 would be less limited.

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1 MR. MEYERS: And the arbiter could even
2 use the extent of touch as one criterion, but
3 not the sole criterion to separate out from
4 one category to another, that was what our
5 concern was.

6 THE COURT: Okay.

7 MR. MEYERS: It's not irrelevant, but it
8 is not the only factor. And right now the
9 way it's structured that is the only factor
10 that moves you from one category to another.
11 And similarly, Your Honor, with that
12 consortium issue could also be folded into
13 this same aspect. In other words, there's
14 two ways to go at the limitations now in the
15 consortium claim. One is to adjust the
16 dollar amount, another is to simply put the
17 parents into the same matrix and to say you
18 as a parent might also be able to demonstrate
19 an enormous dislocation in your life.

20 Many parents don't even understand
21 why their children spend time in jail
22 repeatedly, continue to have substance abuse
23 problems, and parents turn themselves inside
24 out. And there's so many times in my
25 experience with these cases where the "ah-ha"

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1 moment doesn't occur until they finally
2 understand their child was molested as a
3 child, then many things make sense and things
4 can again for the first time be effectively
5 dealt with.

6 THE COURT: Okay.

7 MR. MEYERS: And I think there's -- it's
8 hard to imagine as a parent, for any parent
9 to imagine that as a parent that would not be
10 distressing to know what happened to your
11 child, which creates under South Carolina law
12 an injury in you as a parent. And I think
13 the cases have recognized that pretty well.
14 I've actually -- I'm arguing that issue again
15 up in the Supreme Court in May. But right
16 now the law is very clear that exists. It is
17 cognizable, independently cognizable as
18 Mr. Richter alluded to earlier. Thank you so
19 much.

20 THE COURT: Thank you so much. Thank
21 you so much. And you can just, if you want
22 to, you're welcome to just stay with us here
23 if you will.

24 MR. MEYERS: Glad to.

25 THE COURT: Thank you. Yes, sir.

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1 MR. RICHTER: May it please the Court.
2 Your Honor, I'll try to run quickly through
3 in order Mr. Meyers's objections and
4 comments. I need to clarify for the record,
5 however, one matter before I do that.

6 THE COURT: All right.

7 MR. RICHTER: Mr. Meyers filed his
8 objections on behalf of certain people.
9 Clearly those were not named and we
10 understand that we're all seeking to preserve
11 identity as fully as we can. We represent
12 the interests of many people in a class, so
13 both the diocese and us inquired of
14 Mr. Meyers as to those individuals thereby
15 meeting our obligations about fictitious
16 people, fraudulent claims. And I'm not
17 suggesting any of that, but -- and he, of
18 course, cooperated fully by sending us a
19 letter listing out all of those people.

20 I just need to put in the record
21 here now, if you would allow me, just a
22 statement from Mr. Meyers, if he will,
23 verifying that the people he's appearing for
24 are the people that he sent -- he gave us a
25 John Doe plus the identity of the individuals

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1 in the letter and we would just like him to
2 say those are the people I'm appearing for
3 and not somebody else.

4 THE COURT: And the letter went to both
5 sides, to the diocese as well as --

6 MR. SHAHID: When we received the
7 objections, Your Honor, it was difficult
8 to -- I understand who the John Does are, had
9 an idea, but for clarity I wrote Mr. Meyers a
10 letter asking him to provide me with the
11 actual names and I told him I would keep that
12 in confidence. He complied with my request,
13 and so I was able to then clarify what
14 individuals fit into these John Does and have
15 a better idea now that he's spoken. Some of
16 the other identities I didn't recognize.

17 So we have the names and we have --
18 some of the names, as I understand them, are
19 parents or spouses I think of the actual
20 claimant which helps us identify them as well
21 too.

22 MR. RICHTER: We made a similar request
23 then and Mr. Meyers said just tell Peter to
24 send, or maybe he told Peter to send the
25 letter to us, maybe he sent a us a copy of

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1 the letter he sent to Peter, but he
2 immediately accommodated our need to know as
3 well. We're just simply trying to make the
4 record clear that that's who he appears for
5 and not somebody else.

6 THE COURT: I'm with you completely.

7 MR. RICHTER: We're not seeking to put
8 the name in the record.

9 MR. MEYERS: Here's what I did. When I
10 got notice there was class resolution, I went
11 through every abuse-related case I had ever
12 been in. It's a pretty long list. But
13 anybody who had contact with the diocese
14 agent or employee I marked that person,
15 pulled out the name and then framed my
16 objections using that mix.

17 Now, some of these are persons I
18 represented some years ago, and in one
19 instance I sent a letter saying here's what's
20 going on, I think you need to know about it.
21 It came back to me because the person's
22 moved.

23 So these are individuals who I've
24 previously represented or their parents and
25 that's the list that I'm using. They're all

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1 real people. I have presumed parents for
2 people when I -- like that individual who the
3 letter came back from, haven't spoken to them
4 yet. His parents could be deceased, so there
5 is not more than those people, there is --
6 and I've made note of that one individual, he
7 was not on my list, but I added him to the
8 letter saying I haven't heard back from him.
9 So that is, indeed, on whose behalf I stated
10 my objections.

11 THE COURT: And when you transmitted
12 those names to counsel, was it your
13 understanding that the transmission of those
14 names was done in a protected fashion?

15 MR. MEYERS: Yeah, it was. Both the
16 expressed assurance by Mr. Shahid and by
17 Mr. Haller. And it certainly fits with the
18 Court's order to date ascribing
19 confidentiality to everyone who is
20 participating in the process.

21 THE COURT: I would certainly,
22 gentlemen, entertain an order, consent order
23 from the three of you to that effect since
24 that was your agreement.

25 MR. RICHTER: Here we have a problem

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1 greater than that, Your Honor.

2 THE COURT: All right.

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

10 THE COURT: Yes.

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

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

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1 broaden the class beyond, as I'll argue in a
2 moment, what the law provides for, for people
3 he doesn't even represent. He's got no
4 standing to be in here. Worse than that, if
5 they've opted out, he doesn't have a right to
6 say anything anymore, unless he's intervened
7 under Rule 24. He hasn't tried to do that.

8 Most compellingly, I'm not going to
9 sit idly by, I'm not accusing him of any ill
10 motive at all, I can't as an officer of the
11 Court or as counsel for a member of this
12 class, I'm here arguing for the rights of a
13 long list of people and in the face of that
14 list saying so and so, a certain John Doe
15 whose name is provided D, and then naming
16 John Doe E as being John Doe D's father whose
17 name I do not yet know. I do know it. I
18 went to church with the family. He's dead.
19 I object to that.

20 I don't think anybody ought to
21 represent to this Court or any court they
22 represent -- I don't think you can represent
23 to the Court that you represent somebody if
24 you don't. There are requirements about
25 taking on a representation.

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1 So among the objections we're going
2 to have in a moment to his substantive
3 points, is that he doesn't have any client.
4 So that's why I said we got to know who he
5 represents. And he says the people. I
6 think, he hasn't said it yet, he either
7 represents or doesn't represent. Who is live
8 on this list that he represents, I guess is
9 what we're asking.

10 And let me -- and I'm being candid
11 with the Court, people on this list have
12 called me and asked me to represent them in
13 this matter.

14 THE COURT: All right. Again, which
15 underscores my comment to you earlier that I
16 will entertain an order protecting the names
17 of those individuals, because obviously those
18 names would not be protected under the
19 attorney/client privilege or under work
20 product. So they're out there. And what
21 concerns me is that the names, no doubt in
22 good faith, were provided pursuant to request
23 of counsel and without the Court's order to
24 protect those names.

25 MR. RICHTER: Yes, ma'am.

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1 THE COURT: There is no protection
2 either on the work product or under
3 attorney/client to protect those names and
4 they've now been communicated, okay?

5 So irrespective, in order to do
6 what I think counsel intended to do, was to
7 have the benefit of the information, and no
8 doubt Mr. Meyers hasn't intended to harm
9 anyone. I would say by communicating that
10 pursuant to your request there needs to be a
11 court order in place, okay? That's the first
12 issue.

13 The second issue is the -- the
14 potentiality of -- of Mr. Meyers's argument.
15 And he tells me that these are individuals
16 that he has in the past represented,
17 particularly those whose litigation came no
18 doubt to his mind an early demise and that
19 he's contacted those individuals and no doubt
20 one or more have said please proceed in this
21 regard.

22 MR. MEYERS: And there are only two
23 cases.

24 THE COURT: You know, one of the
25 benefits of having practiced law in this

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1 courthouse for about 15 years and being a
2 judge for about nine, I know my trains.. I
3 know my trains. Okay. I'm sorry, go ahead.

4 MR. MEYERS: In only two instances, if I
5 remember the list right, was there a prior
6 claim that was taken all the way to the
7 litigation. In another instance it was a
8 letter to Mr. Shahid and no litigation
9 followed.

10 But what I'm actually trying to do
11 today is increase the number of clients in
12 Mr. Richter's class. The invitation in the
13 Court's order was to state objections to the
14 fairness and the adequacy of the proposed
15 settlement. And some of these people have
16 explicitly called in, said here's my concern.
17 Many of them I have encouraged to call
18 Mr. Richter. So I'm not in competition with
19 Mr. Richter.

20 MR. RICHTER: That's not the issue.

21 MR. MEYERS: And I don't want him to
22 feel like I am.

23 THE COURT: That's -- that's not a
24 matter that concerns me in the least. The
25 question has been who are you here

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1 representing. There have been a number of
2 people that you have given -- in your attempt
3 to be candid, my question to you is are you
4 here representing one person?

5 MR. MEYERS: Yes.

6 THE COURT: Very well. That's enough.
7 Enough said on that issue. All right. At a
8 later time those issues can be clarified.

9 MR. RICHTER: Sure.

10 THE COURT: My concern today is now
11 satisfied. Okay.

12 MR. RICHTER: Thank you. And now if I
13 can have a merits argument, please.

14 THE COURT: Yes.

15 MR. RICHTER: If you don't mind I'll
16 stay here, Your Honor.

17 THE COURT: Sure.

18 MR. RICHTER: I'm going to ask
19 Mr. Haller to hand out a brief that we have
20 containing authorities about this point, hand
21 it up to your clerk and a copy for the Court.
22 And while he's doing that -- I'm a stickler
23 for accuracy, Your Honor, as best I can
24 accomplish it. And while we didn't come here
25 to fight back and forth today certainly

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1 between the diocese and the class, I've got
2 to correct what Mr. -- it would be an
3 injustice to the victims in this case if I
4 didn't correct the statement that Mr. Meyers
5 made in the beginning of his presentation
6 when he said that the diocese took the
7 initiative to do what has been done here and
8 expand the availability of claims well
9 outside the statute of limitations.

10 I want to say publicly that the
11 diocese did nothing of its own initiative.
12 The diocese was brought here kicking and
13 screaming. And you'll hear more about that
14 perhaps depending upon certain positions the
15 diocese takes.

16 Now, that having been said, I want
17 to further clarify, Mr. Meyers made reference
18 to the Doe case which dealt with the statute
19 of limitations. And what he said was that
20 the Doe case said nobody could proceed except
21 now under that statute of limitations and
22 that authority. What the Doe case didn't do,
23 is it didn't take away any defenses to the
24 statute of limitations. There are defenses
25 to the statute of limitations. For example,

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1 fraudulent concealment is a defense to the
2 statute of limitations. There are others.

3 It's the burden of effective
4 counsel to defeat the statute of limitations
5 or to raise a substantial obstacle for those
6 seeking to assert a statute of limitations
7 building in for them the fear that they may,
8 in fact, not prevail on that argument. We
9 don't come here to self-aggrandize, but I
10 must now say to you because of the argument
11 that was made earlier, we did that and that's
12 why this class exists in part, in large part.
13 There are other issues that helped us --
14 other positions that we took that helped us
15 get around the statute of limitations.

16 Every issue in this case was hotly
17 contested. Professor Freeman has submitted
18 an affidavit having reviewed everything.
19 That's one of the things he says in his
20 affidavit. You have before you the
21 arbitrator, who had been the mediator in this
22 case in a multi-day mediation. If anybody
23 can attest to the tenacity with which the
24 issues were propounded and defended in this
25 case, I know cocounsel will join me, opposing

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1 counsel will join me in making that
2 representation, certainly the independent
3 mediator, now arbitrator, will also, I'm
4 certain, substantiate those comments.

5 So Doe didn't take away any defense
6 to the statute of limitations and we don't
7 seek to, obviously, in this class.

8 As to the issue about minor, 18
9 versus 21, all the class definition says is
10 while a minor. Nobody's rights are taken
11 from them. Any right any client Mr. Meyers
12 may have who fell into the category of being
13 over 18 but under 21 at any particular time,
14 that right, if that person has a right, is
15 not taken away. That person can litigate
16 from here to kingdom come outside this class.
17 Mr. Meyers has done that in many instances.
18 So nobody's rights are taken away at all.
19 Many people will enjoy the benefit, however,
20 of us having gotten over the statute of
21 limitations issues, and if they were abused
22 as minors we have agreed, after hard
23 negotiations with the diocese, that that's
24 who makes up this class.

25 Adding these other people would

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1 have an effect, we believe, outside the law,
2 but it may also have a very large effect on
3 what is -- what individual claimants could
4 then recover in the matter. So I do think --
5 I'm not arguing that, I'm just saying that's
6 a consideration, that it's appropriate for
7 Your Honor to take.

8 As to lifting the cap on the
9 consortium claim, Mr. Meyers makes reference
10 to a very large verdict that he obtained
11 against, if I recall, Porter Gaud school and
12 several individuals, maybe only two
13 individuals or their estates. And I am
14 familiar as he, I believe, noted in his
15 submission to the Court, we are -- we, too,
16 represented people in the Porter Gaud
17 litigation.

18 So I'm familiar with how that went
19 down and I'm not at liberty to offer specific
20 numbers, but this argument having been raised
21 by counsel, I feel that I am compelled to
22 note that obtaining a very large verdict and
23 collecting, I would guess, less than
24 2 percent of that verdict is very different
25 from obtaining a certain recovery for all the

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1 people who are going to appear in this -- in
2 this class. And I believe that's what
3 happened as to that, quote, very large
4 verdict.

5 We say in our brief, only half
6 tongue and cheek, the jury verdict in that
7 case may be quite useful for placement on a
8 wall, but it doesn't have much utility of
9 putting money in the bank. This does.

10 Now, as to the matrix objection,
11 Mr. Meyers says that there's something wrong
12 with the degree of sexual abuse claim
13 triggering where you are placed in a matrix.
14 So that the Court can be clear or anybody
15 else who is involved in these arguments can
16 be clear, a distinction has been made if an
17 offender patted someone on the posterior
18 through clothing, that person may consider
19 that a sexual touching and may make a claim
20 herein. Quite different from fellatio,
21 digital penetration, a plethora of other
22 matters, some over some period of time. So
23 there is a range of injuries.

24 South Carolina in Harvey is it, in
25 The Harvey case cited in our memorandum,

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1 particularly page 8 and 9, clearly recognizes
2 that the nature of a sexual offense in the
3 realm of torts, the nature of a sexual
4 offense, is so intrusive as to impugn intent.
5 So even the touching, as I described earlier
6 on the fanny, the single slap, qualifies and
7 is a trigger mechanism, but clearly degrees
8 are recognized.

9 And the most concrete and current
10 example I can give you is from the diocese of
11 Covington, Kentucky. And I'm not sure that's
12 the proper name of that diocese. Is that
13 correct? Covington, Kentucky, I believe is
14 the correct name, Mr. Geoly tells me, in
15 which, you know, we -- and again, this is --
16 we don't claim to be any more or better than
17 what we are, but we worked pretty hard on
18 this matter, we've been opposed pretty hard
19 by able counsel on the other side, and at the
20 end of the day we've all tried to make sort
21 of the best that we can make of this.

22 And on our behalf and behalf of
23 those potential class members we've been
24 working for, we looked at every settlement in
25 the United States of America. I'm sure

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1 that -- Mr. Geoly is from Chicago and this is
2 what he does, has been doing, sadly, across
3 the nation for the last little while, so I'm
4 sure he has done at least and Mr. Shahid
5 probably, too, all the same things.

6 In Covington, Kentucky, a matrix is
7 adopted, an Exhibit A is captioned "Sexual
8 Abuse Categories and Ranges of Award." Then
9 even in more detail than we do, it starts
10 with individual remarks about a minor's
11 genitals, breasts, buttocks, etcetera,
12 etcetera. Starts at a \$5,000 level down
13 here. My point is it's a matrix and it goes
14 the whole way up and it is tied squarely to
15 the degree of the activity perpetrated upon
16 that -- the various victims.

17 So it is very clear and very fair,
18 I might add, precedent that exists about this
19 approach. We didn't just dream this up.

20 So all of that having been said, it
21 would be great if all lawyers who try cases
22 and don't prevail -- I say this as a
23 lawyer -- could come back and get another
24 chance to make your claim again. The law
25 won't stand that, reason won't stand that.

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1 Now, I understand that there can be
2 reasons why a settlement is defective or
3 someone can seek to set it aside or
4 consideration can fail, various things. I
5 certainly recognize all of that. And we
6 don't seek to restrict anybody's rights about
7 filing their claim and saying whatever facts
8 may exist however they cut.

9 But the idea of saving everybody's
10 rights who have already been to the bar of
11 justice and didn't prevail, either from
12 letting time run, for example, by striking
13 cases pursuant to a rule that requires within
14 a year you can put it back and missing that
15 time frame in perhaps two cases, just as an
16 example I offer that, to not propounding the
17 arguments and not making the points and
18 issues that we have so vigorously pursued in
19 this case which have succeeded in bringing a
20 very recalcitrant, proud diocese to heel in
21 this case to the extent of getting rid of the
22 statute of limitations, charitable immunity
23 cases.

24 We've heard from one person who is
25 52 years old. You could be 114 and have been

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1 abused when you were six years old and under
2 this class, if you haven't adjudicated that,
3 you can be heard. That's the best we can do.
4 And frankly, we've been adversaries the whole
5 way, still are adversaries, the truth is the
6 truth, that's probably the best they can do
7 as well.

8 So that's our argument, Your Honor,
9 our legal positions. If you can give counsel
10 a copy. Our legal positions, the authorities
11 that support those arguments are all set
12 forth in this brief. Thank you for hearing
13 me.

14 THE COURT: Thank you.

15 Mr. Shahid, Mr. Geoly.

16 MR. SHAHID: Thank you, Judge.

17 THE COURT: Yeah.

18 MR. SHAHID: Your Honor, I want to say
19 that from the outset that the one thing
20 that's been a theme which is a fact of this
21 case is that the Diocese of Charleston is a
22 charitable, religious organization and that
23 while we may have come in here as adversaries
24 with class counsel, the mere fact of the
25 matter is that we have reached an agreement

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1 and it's not court imposed, it's an agreement
2 between the parties.

3 And it may have been a hard road to
4 get there, it may have been that we fought
5 back and forth over a period of time, but the
6 bottom line and what -- is that everybody
7 take recognition of this is an agreement. In
8 litigation courts encourage agreements,
9 courts like to see us reach an agreement and
10 that is what we have done. And that's, I
11 think, a credit to everybody at these tables
12 this morning, this afternoon.

13 We are a church. And in response
14 to some of the comments made by Mr. Meyers
15 about people who have litigated and sort of
16 lost out, over the past ten years we have
17 addressed claimants who have come forth
18 either with or without counsel and we have
19 looked at the defenses that have been made
20 available to us. And first charitable
21 immunity has been a complete bar, statute of
22 limitations have been a complete bar, lack of
23 notice by that person, propensity has been a
24 bar.

25 But we have attempted to address

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1 those claims in the way that looks at the
2 nature of the abuse, the extent of the abuse,
3 the actor involved in the abuse, the victim,
4 the victim's family, the whole set of
5 circumstances and factors. And we have
6 settled these cases knowing the pitfalls of
7 litigation as it applies to the diocese and
8 as it may apply to the victim.

9 I say that so that the Court and
10 the public is aware that this agreement was
11 reached with that type of backdrop. And
12 we've settled cases, maybe not because a
13 person could legally proceed with that, they
14 may have been barred by the statute of
15 limitations or charitable immunity, but
16 several cases of being pastoral.

17 The issues that Mr. Meyers has
18 brought up I think applies to two particular
19 folks whose claims may now not be eligible to
20 be a member of this class. And that's sort
21 of the gamble, unfortunately, that we take as
22 lawyers when we initiate a claim and we're
23 not successful with it.

24 Nothing prevents the diocese from
25 addressing Mr. Meyers's particular claims now

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1 outside of the class. Nothing prevents us
2 from addressing that now in the pastoral
3 approach. I'm not saying we will do it or
4 offer more money, but we have other ways of
5 addressing those concerns outside the strict
6 definitions of this class.

7 There has to be boundaries, there
8 have been borders, there have to be
9 deadlines, there have to be clear definition
10 of minor and filing a claim and things of
11 that nature. The one particular case that
12 Mr. Meyers referenced involved a minor. He
13 brought that to my attention several years
14 ago; we have addressed that. No other claim
15 was brought forth at the time because of some
16 discussions that we had.

17 That particular case the definition
18 of minor has got to be, as Mr. Richter said,
19 it's nothing taken away from that person, but
20 we cannot expand it beyond what the law
21 allows us or disallows us to do. Mr. Richter
22 used the Covington approach as to the
23 specifics as to the amount of money contained
24 in the matrix.

25 THE COURT: But before you move on, let

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1 me ask this question of you, Mr. Shahid,
2 because I sense you're moving to a different
3 topic. Am I given to understand that the --
4 that this litigation was, as argued by
5 counsel, that this was an adversarial process
6 and contested in this instance or more of the
7 pastoral nature?

8 MR. SHAHID: Judge, it was a
9 combination. They brought a lawsuit and we
10 were adversaries. We got to mediation and
11 the mediator, God bless him, got us together
12 and deserves all the credit in the land for
13 getting us to this point. And it took that
14 process to go through it.

15 THE COURT: Okay.

16 MR. SHAHID: So it was adversarial.

17 THE COURT: Okay. I was going to note
18 for the record that I had the occasion to
19 speak to you, Mr. Shahid, and to Mr. Richter,
20 with Mr. Geoly also on the line and
21 Mr. Haller, and I was just going to reflect I
22 noticed a certain heat from your responses.

23 MR. SHAHID: You're being very kind in
24 saying it that way, Judge.

25 THE COURT: You know, and we were only

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1 talking about do we meet on a Tuesday or
2 Thursday. So it wasn't like it was
3 substantive and difficult, so I just wanted
4 to be sure that I had not caught you all on a
5 bad day.

6 MR. SHAHID: No. I think that it's sort
7 of just been this very odd relationship, I
8 guess, when we clearly are adversaries but we
9 clearly were generating and sort of pedaling
10 in the same direction and the direction was
11 to get to this agreement.

12 THE COURT: That's not unusual when --
13 that is not unusual certainly based on my
14 experience, because at some point if you're
15 going to try to craft a settlement in a class
16 action that -- and they are all complicated,
17 even the simplest ones are complicated, there
18 has to be cooperation to just get through the
19 process to come up with a process.

20 So I just -- my only interest was
21 to be sure that I understood that the --
22 certainly until there reached -- there
23 reached the point where there was some
24 discussion of settlement, that it was
25 adversarial. Because one of the concerns,

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1 obviously, particularly in the class action
2 realm is -- is that resolution in class
3 actions are not borne out of the adversarial
4 process.

5 MR. SHAHID: Right.

6 THE COURT: And I just wanted to be sure
7 that I was clear about that, because
8 certainly my participation in it certainly --
9 certainly appeared that it was adversarial, I
10 mean, particularly there were some occasions
11 where, you know, Mr. Geoly, you know, had to
12 not separate the two of you, I don't mean to
13 use that strong of language, but he had to
14 come in to sort of be the voice of reason, if
15 you will.

16 MR. RICHTER: Your Honor, not to
17 interrupt my friend.

18 THE COURT: Yes.

19 MR. RICHTER: But to the extent I know
20 he will join me in this, I mentioned to you
21 earlier that the mediator, now arbitrator, is
22 present in the courtroom.

23 THE COURT: Okay.

24 MR. RICHTER: We certainly have no -- if
25 you just want some independent verification

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1 for the record about the adversarial nature
2 of these proceedings, you can sure get it
3 there.

4 THE COURT: Okay. Thank you.

5 MR. SHAHID: But I see that just sort of
6 the spirit that, you know, it's -- in
7 Covington, and I've talked to the lawyer who
8 addressed in Covington, I mean, that was --
9 that literally was something shoved down
10 their throat. A court, a judge said this is
11 what you're going to do against your
12 opposition. Well, we didn't -- we mediated
13 it, we got an agreement, and that's, I think,
14 the point I just want the public to
15 understand is we've reached a consensus, be
16 that as it may.

17 Your Honor, as to the matrix issue
18 and Mr. Richter addressed this with how he
19 looked at the Covington matrix. Mr. Geoly
20 has more of a national exposure to these
21 types of cases and has been involved in other
22 jurisdictions and we're certainly aware of
23 what other jurisdictions have done in
24 resolving these cases.

25 And we have, unfortunately, a

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1 history of comparing how these kind of cases
2 have settled and been resolved based upon
3 what's outlined in the matrix. And
4 unfortunately you've got to create something
5 of a box as to the nature and extent of as,
6 Mr. Meyers said, a touch. Because that's the
7 initial part. You've got to have that
8 activity or the intent of that activity to
9 get you to the starting block.

10 What we have done is on page 9 of
11 the agreement, paragraph -- subparagraph O,
12 we provide for -- the agreement, I should
13 say, provides for that, that at any time a
14 claimant can have a psychological assessment
15 by Dr. Wade and that assessment at the
16 claimant's choice can be presented to the
17 arbitrator.

18 Now, what that does is it gives the
19 arbitrator a clear document to help him look
20 at the nature and extent of the injuries by
21 the claimant that takes in consideration
22 something more than just the touch part, that
23 takes in consideration concerns that
24 Mr. Meyers brought up, such as position of
25 trust, the extent over a period of time of

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1 the injury, how it affects that person, that
2 person's family, holding a job, substance
3 abuse problems, marriage problems,
4 relationship problems, all those things,
5 those intangibles that we, as lawyers, have
6 to deal with from time to time in resolving
7 personal injury cases.

8 And in this context gives the
9 arbitrator not just a clear black and white
10 as there's a touch, but it also gives the
11 arbitrator opportunity to then evaluate,
12 based on Dr. Wade's report, how much this has
13 affected that particular claimant. So we
14 haven't not ignored and we're not trying to
15 be mechanical with this, I think we were
16 attempting to use experience, what other
17 dioceses have used, what we have seen
18 nationally and what we have seen in our own
19 diocese where these cases kind of fit.

20 And that's why the range is
21 somewhat, I think, generous and I think
22 appropriate, for the way we came up to this
23 conclusion or this agreement.

24 THE COURT: Of course there is a
25 counseling component to the settlement.

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1 MR. SHAHID: Exactly.

2 THE COURT: And it's -- it's -- it has a.
3 limitation, but it certainly is included.

4 MR. SHAHID: Right. Thank you, Judge.

5 THE COURT: All right. Let me see.

6 MR. GEOLY: Your Honor, may we make one
7 additional comment?

8 THE COURT: Yes.

9 MR. GEOLY: And I think Mr. Richter may
10 have addressed this as well. But Mr. Meyers
11 did raise the issue of the age of the victim
12 in the parochial school setting. And I think
13 that it's just important to state that the
14 purpose here was to deal with child sexual
15 abuse claims. That's not to say those are
16 the only torts that any agent of the diocese
17 will ever commit, unfortunately, and to the
18 extent there are other claims that are not
19 child sexual abuse related, well, we're here
20 and available to talk to whomever wants to
21 come forward.

22 But you have to define a class
23 somehow. And wherever you draw the line,
24 there will be people who are just there
25 beyond where you drew the line. They're that

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1 much older or it happened that much later or
2 they were that much younger or it's this
3 slightly different kind of tort, or however
4 you draw the line you are including and
5 excluding, it just goes with the territory.

6 The idea was to address a very
7 broad concept, but one that could at least be
8 defined, and that was child sexual abuse
9 claims. So while there may be people who are
10 over 18 in a school setting, if under the law
11 at the time they were not minors, they're not
12 included in the class, and that is by intent.
13 And it's not to be arbitrary, it's to be
14 clear.

15 THE COURT: Okay. All right. And just
16 for the record, since the mediator now
17 arbitrator is here, if you'd come on forward,
18 come in front of the bar so that -- there we
19 go. And do you -- both counsel have made
20 reference to the mediation as being a
21 mediation which, I gather, would have
22 depicted certainly in your presence, as both
23 have indicated, that this settlement was one
24 borne out of an adversarial procedure?

25 MR. INFINGER: Your Honor, Marvin

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1 Infinger for the record.

2 THE COURT: Yes.

3 MR. INFINGER: And I can attest that the
4 advocacy was absolutely wonderful, if not
5 overly vigorous at times by both sides.
6 Absolutely no question but that there were
7 very strong legal positions taken, factual
8 positions taken, and it was very, very much
9 adversarial.

10 THE COURT: Okay. Very well. And
11 you're very bold to remain.

12 MR. INFINGER: Well, didn't get beat up,
13 didn't have to separate Mr. Shahid and
14 Mr. Richter luckily.

15 THE COURT: Very well. All right.

16 All right. Mr. Meyers, I'm going
17 to turn to you for response.

18 MR. MEYERS: Thank you, Your Honor.
19 There's really -- just on the personal side
20 there's a few just incorrect statements in
21 Mr. Richter's pleading which I don't think
22 relate to anything having to do with that,
23 it's really attacks he made about me
24 personally which I set aside in past cases
25 and things like that.

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1 I think the main issue is whether
2 the Court is really satisfied with the
3 fairness and adequacy and I think that's
4 almost completely driven by the Court's
5 conception of who is trying to be addressed.

6 The language from Rule 23, the
7 persons who are to be addressed by the
8 litigation I think is the exact language of
9 the statute. The interests of the person on
10 whose behalf the action is brought. And if
11 that is conceived of as children who are in
12 the diocese system as students, whether
13 they're 18 or 17 and 350 days, I think that
14 drives the first issue that we were talking
15 about where that line is drawn.

16 Certainly you have to draw the
17 line, but on whose behalf is the litigation
18 brought, I think is the lens through which I
19 would encourage the Court to look at that.
20 And I think that helps to clarify some of the
21 issues.

22 The issue of the matrix, I
23 appreciate that it's often used. I just
24 think it is a very bad fit for what is really
25 going on in these cases and that's why I

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1 encourage the Court to create a better
2 template that I think more adequately creates
3 both the fluidity for the arbitrator and
4 the -- plugs into the real mechanisms of what
5 is going on.

6 THE COURT: And part of your concern is
7 that -- the example is used as the pat on the
8 bottom, and for whatever reason for this
9 person the pat on the bottom could be an
10 overwhelmingly -- for whatever reason, for
11 that individual, could be an overwhelmingly
12 damaging event psychologically. And your
13 concern is -- is placing the matrix on the
14 physicalness rather than the psychological
15 basis.

16 MR. MEYERS: Right.

17 THE COURT: Do I understand your
18 argument?

19 MR. MEYERS: Exactly. And again we
20 don't object to it being a factor, the
21 physical touch being a factor, but once you
22 cross the starting line it shouldn't be
23 arbitrarily limited by the nature of the
24 touch.

25 THE COURT: Very well.

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1 MR. MEYERS: Thanks, Your Honor.

2 THE COURT: Thank you so much.

3 And all right, Mr. Bilbro.

4 MR. BILBRO: First of all, Your Honor, I
5 would like to --

6 THE COURT: Hold on so they -- because
7 I've restricted our folks from the press.
8 Come on forward and now begin.

9 MR. BILBRO: Okay. My name is Walter
10 Bilbro. I represent two claimants. I was
11 concerned about the fairness. I, like
12 Mr. Gregg Meyers, was concerned about the
13 matrix not taking in what I thought was very
14 serious psychological factors which I put in
15 my objection to how they were setting up the
16 class and so forth.

17 The other thing I was concerned
18 about, Your Honor, and I've maybe refined a
19 little more after listening to him today, was
20 if you look at page 5 of the agreement,
21 specifically the first full paragraph.

22 THE COURT: Okay.

23 MR. BILBRO: It says, The criteria for
24 the arbitrator to determine the amount of the
25 award for sexual abuse claims shall include,

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1 among other things, the type of abuse, its
2 duration and the extent of injuries suffered
3 by the claimant.

4 I believe, Your Honor, because
5 since there are ongoing injuries, ongoing
6 psychological problems I thought there should
7 be inserted to make it more clear after the
8 word injuries and damages, because there are
9 things like loss of income, and used the word
10 suffered, suffered is past tense, so I think
11 we leave it suffered by the claimant and in
12 the future. So there's no question when the
13 arbitrator's actually considering this, that
14 it is anticipated.

15 And in talking with them earlier
16 this morning, and it is anticipated, but I
17 think -- and I don't want to criticize the
18 artfulness or inartfulness of the drafting, I
19 do think that it does need to be a little
20 more specific because it is ambiguity in that
21 particular sentence.

22 The next sentence in which it says,
23 The award for a claim for a loss of
24 consortium, it should be \$20,000 for each.
25 Based on my understanding, it sounds like

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1 based for each living parent of a claimant.

2 I may be mistaken, but that's what I

3 understood.

4 MR. SHAHID: Yes, that's correct.

5 MR. GEOLY: Yes, that's correct.

6 MR. BILBRO: Number two, And \$20,000 for

7 the spouse of a claimant. I don't know if

8 that means a former spouse?

9 MR. GEOLY: No.

10 MR. BILBRO: A present spouse?

11 MR. GEOLY: Yes.

12 MR. BILBRO: Can we say present spouse?

13 I think we just need to be a little clearer.

14 Other than that, I'm satisfied with the

15 agreement.

16 THE COURT: Okay. Very well. Thank you

17 so much. All right.

18 All right. And does that prompt

19 anything, the discussion? If so, come on

20 forward and let's put that on the record.

21 MR. CREECH: Thank you, Your Honor.

22 THE COURT: Just again identify yourself

23 for the record.

24 MR. CREECH: Matthew Creech here for

25 Johnny Parker.

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1 THE COURT: Yes.

2 MR. CREECH: Having listened, I think
3 that our concerns still have been basically
4 met. Mr. Parker filed a lawsuit 17 months
5 ago, which has been vigorously prosecuted,
6 defended as well, and our only concern is
7 that we are allowed to opt out and continue
8 our claim separate from this action. So
9 we're satisfied.

10 THE COURT: Very well. Thank you all
11 for that, because I certainly would not have
12 wanted that to be unclear, so, as so often
13 lawyers help the court immensely, and that
14 certainly is an example of that, because it
15 certainly does need to be crystal clear that
16 this class is intended to be opt out, so I am
17 grateful for that for sure.

18 All right. Now, it is
19 twelve o'clock and we've been at it for quite
20 sometime. We're going to take a break
21 because, as I understand, our remaining issue
22 has to do with fees and expenses. And we'll
23 take -- I think we'll probably take about 15
24 minutes and then hopefully we'll be able to
25 conclude that by one o'clock. So we'll take

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1 about a -- take a break for about 15 minutes.
2 Thank you all. And that's the official clock
3 in the back of the courtroom in case anyone
4 is interested.

5 (Recess, from 12:00 p.m. to 12:20 p.m.)

6 THE COURT: Okay. Great. All right.
7 Now on to the issue of expenses, fees and
8 costs.

9 MR. RICHTER: Your Honor, we have
10 submitted to the Court and to the opposing
11 counsel a pretty -- I think a pretty broad
12 and comprehensive petition. I would like --
13 we certainly rely on the petition including
14 specifically the affidavits, most
15 specifically even, the expert affidavit found
16 at Tab 5 and all the attachments to that
17 affidavit and to this.

18 I think what I'd like to do that
19 would be most beneficial, most efficient and
20 least likely to lead us into a conflict among
21 counsel here, is I'd like to just summarize
22 some of the statements that are made in this
23 affidavit. I don't want to read this
24 affidavit to you, but I think that having
25 done that we can say -- all of us who are

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1 counsel and have joined in this petition, we
2 can say that we rely on that, adopt those
3 statements and positions, they've all been
4 supplemented by our own affidavits and we can
5 give you as much showing or answer as much
6 inquiry as the Court desires.

7 But let me begin, and I'll do this
8 very briefly, by referring to page 2 of the
9 affidavit of John Freeman. John Freeman is a
10 very well renowned and well qualified expert
11 in certain fields. He is a graduate of the
12 University of Notre Dame Law School and
13 practiced broadly and has taught at the
14 University of South Carolina Law School for
15 some 34 years now where he's received
16 numerous awards and been widely published.
17 He is the consensus, class, corporate, issue
18 and ethics expert in the state of South
19 Carolina and has been, I think from the first
20 day I met him which was those 30 some years
21 ago.

22 We asked him to express an opinion
23 in this matter as an expert opinion based on
24 his training, his teaching status, his
25 practice status and the fact that he has

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1 independently handled these kinds of claims
2 on a fairly -- in a fairly broad-based
3 manner. In addition, he has been called upon
4 by courts throughout the state and recognized
5 as an expert in these very kinds of issues.
6 So for those reasons we've asked Professor
7 Freeman to submit this affidavit.

8 He indicates what his assignment is
9 as being to express an opinion as to the
10 reasonableness of the settlement's
11 substantive terms and the reasonableness of
12 the fee award sought by class counsel. He
13 goes on to say that the fee petition is
14 restricted in its amount, and I'm going to
15 use round number 20 percent, it doesn't come
16 out precisely to that round number of
17 20 percent of the -- of the class. And as
18 you see in the agreement, there have been
19 ranges that have been put forth within the
20 agreement between .95 and 2.5, low and high
21 end.

22 Now, I don't mean to imply from our
23 standpoint by that nor I'm sure does the
24 diocese mean to imply by its standpoint, we
25 think our services are frankly worth

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1 substantially more than that. I'm sure
2 the -- I shouldn't say I'm sure, I hope they
3 don't think our services are worth a lot less
4 than what the low end is, but that was a
5 very, very difficult part of the
6 negotiations. And, again, Mr. Infinger
7 oversaw of those.

8 He recommends, Professor Freeman,
9 that the approval of the settlement and the
10 grant of the petition in its entirety, which
11 is the 2.5 petition. Now, he says in
12 supporting his opinion that this is a very
13 difficult case and that the facts extend back
14 in time, Professor Freeman says 30 years. We
15 are now learning that they extend back about
16 50 years and so it's even more than what we
17 thought it was going to be.

18 He further goes on to say that the
19 issues pertaining to statutes of limitations,
20 charitable immunity, lack of notice to the
21 defendants, negligence issues, were hotly
22 contested and that everyone recognized the
23 difficulty of the legal issues first, but
24 then difficulties of proof in proving large
25 damage numbers for injuries that are almost

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1 entirely psychological as we have been made
2 to see them thus far at least.

3 He says, quote, the effort of class
4 counsel was very substantial. Strong and
5 aggressive lawyering from defense counsel on
6 behalf of an esteemed and important entity
7 charged with serious wrongdoing is what class
8 counsel met. And I represent to you that
9 that is 100 percent accurate. The potential
10 for being a harrowing, profoundly unpleasant
11 experience for many people on both sides is
12 what this litigation, that was its etiology.

13 He says that in his opinion this
14 particular case is a class disposition case,
15 is a case that is ideal for class
16 disposition. He says the defendants need
17 that just as clearly as the plaintiffs need
18 it, because defendants need closure and
19 closure's in the best interest, he says, of
20 the parties and he notes the community. And
21 none of us have argued that to you, but
22 frankly this is more than -- more than a
23 lawsuit and will impact the community at
24 large and in hopefully a very positive way.

25 He says the case is ideal for a

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1 generous fee award because it was a difficult
2 case. He says, and I offer this again not on
3 a self-aggrandizing way, he says staffed by
4 excellent, experienced, tenacious lawyers on
5 both sides.

6 There is, he says, in the diocese
7 settlement an implicit apology for the wrongs
8 and errors that have been endured by the
9 plaintiff class. The result in this case
10 should and will send a message forward in
11 time to others who might be attempted to
12 engage in similar abusive behavior. He calls
13 that a laudable result and he specifically
14 calls it a laudable result compared with the
15 terms reached in similar cases.

16 He has researched fully through our
17 file, he says in his affidavit, and has
18 independently researched and actually
19 attaches as an exhibit to his -- Exhibit 2, I
20 believe B, to his affidavit, a printout
21 which -- from a certain website which tracks
22 these matters nationwide. So he has had the
23 comparative analysis ability independently of
24 just us and our files.

25 He says the cases against the

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1 diocese are not easy in light of the defenses
2 available which have been used successfully
3 in the past. Any parent with a consortium
4 claim will have a far easier time recovering
5 under the settlement than outside it. I echo
6 those sentiments. The same is true for
7 spouses. As for victims, Professor Freeman
8 says, the diocese is barred from using its
9 biggest defensive weapons, particularly the
10 statute of limitations defense. This
11 enhances substantially the ability of these
12 claimants to recover.

13 He then specifically at page 5 of
14 his affidavit begins an analysis of the fee
15 award factors which have been established
16 under South Carolina law. He specifically
17 addresses the six factors laid out in Jackson
18 v. Speed. And let me -- for the sake of the
19 record, let me say that those factors are the
20 nature, extent and difficulty of the case,
21 the time necessarily devoted to the case, the
22 professional standing of counsel, the
23 contingency of compensation, the beneficial
24 results obtained and customary legal fees for
25 similar services.

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1 We have -- the lawyers who have
2 done this work on the class side of the case
3 have submitted independently affidavits and
4 documentation to the Court as part of this
5 petition setting forth our own professional
6 standing and experience and a detailed
7 listing of time expenditures, which honestly
8 by -- and I'm sure counsel for the diocese
9 would join me in saying this, would not -- in
10 and of themselves are not of sufficient
11 measure because of what really was involved
12 here.

13 We spent -- I'm digressing now, I
14 said I wasn't going to do that, but we spent
15 endless hours conceptualizing this claim. We
16 had some individual plaintiffs and we were
17 trying to figure the away to get them to the
18 end, but also the concept of serving the
19 bigger need, and frankly the strategical
20 value of that kind of an exposure to our
21 adversary, the diocese.

22 And again, I'm not
23 self-aggrandizing, but I can't avoid saying
24 this has never been done before. This is a
25 fight they've never had to face before. And

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1 it was executed, we believe, in the most high
2 quality manner and it was heated at times and
3 it was difficult at times, but on all sides,
4 all of the positions taken were honorably and
5 reasonably taken and were just fought
6 through. And again, I'm sure that counsel
7 for the diocese will echo that sentiment,
8 albeit they've been in an adversary position
9 throughout this thing.

10 Back to Professor Freeman. He says
11 that he agrees with class counsel that the
12 amount sought would be a fair and reasonable
13 fee when the totality of the six factors is
14 considered. He then turns his attention to
15 each specific factor of the South Carolina
16 Supreme Court six-factor test. And he says
17 that based on his own knowledge he has no
18 hesitation in saying that class counsel's
19 industry, ingenuity and determination in
20 prosecuting this case has been exemplary.
21 The team of class counsel has consistently
22 fought well against a very powerful and
23 resourceful adversary. I believe that few,
24 if any other counsel in South Carolina or
25 anywhere else, would have had the combination

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1 of drive, expertise, resources and creativity
2 to achieve the result they did under the
3 uniquely difficult circumstances presented by
4 this case. The first, therefore, South
5 Carolina fee award factor strongly supports a
6 substantial fee award says Professor Freeman.

7 We submitted to him our entire
8 files. Those time records showed the
9 expenditure of at least 3,500 hours in the
10 handling of the case and the processing. And
11 that includes nothing going forward, this is
12 actual time recorded. And as Your Honor must
13 remember from practice days, what gets
14 recorded and what you lose in your car is --
15 is two different things or at your home or
16 wherever you are.

17 Significantly Professor Freeman
18 says his review shows no padding of time or
19 unnecessary duplication. You have to be
20 careful when you have multiple lawyers not to
21 duplicate each other's efforts and we tried
22 to be very diligent about that. He goes on
23 to say there's a reason why so many hours
24 have been spent on the case. The diocese
25 chose to require class counsel to fight for

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1 every inch of turf, which it had a perfect
2 right to do. By dogged persistence and
3 dedication, class counsel demonstrated the
4 ability to protect class members and secure a
5 substantial award.

6 When I corrected Mr. Meyers this
7 morning I was not shooting at the diocese, I
8 was simply trying to say that it was a fight
9 and it was a fight honorably conducted, but
10 it was a first-rate fight.

11 He goes on to say that the class
12 has had the benefit of truly outstanding
13 advocacy, that there was no need for
14 on-the-job training. This is a considerable
15 factor in the sense that if the lawyer goes
16 in and has to learn the ropes, time is
17 expended and really wasted in that process.

18 I, myself, am an AB rated
19 Martindale Hubble lawyer, which Your Honor
20 knows is the highest rating available to
21 members of the bar. My firm is so rated and
22 I'm sorry I don't know offhand the ratings of
23 other counsel, but I do know Mr. Lofton, he's
24 been in it so long, enjoys the same status I
25 do. But the point of it was there was no

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1 ramp-up time when we hit the ground. We hit
2 the ground with in my case, experience from
3 1971, 36 years of experience now. Wow.

4 At any rate, he says there was no
5 need for on-the-job training and he goes on
6 to say that the outstanding reputation for
7 integrity and professionalism of class
8 counsel leads him to have full confidence in
9 the records, the recordkeeping, the
10 pleadings, the documentation, all those
11 items.

12 He then cites the contingency of
13 compensation and, of course, we went into
14 this matter fully willing to expend however
15 many hours it took, being obligated to expend
16 however many hours it took and we had to
17 front the cost as well and, of course, there
18 was no certainty whatsoever that we'd ever
19 recover one dollar.

20 So one of the significant
21 considerable factors is the contingency of
22 compensation which means you might lose, and
23 if you lose you might be back asking for a
24 second bite at the apple which our law
25 doesn't allow.

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1 In any event, he goes on then to
2 praise us undertaking the action on a
3 contingency basis, getting no money for it in
4 other words.

5 THE COURT: Sure.

6 MR. RICHTER: Then he turns to the
7 beneficial result obtained and says that this
8 is one of the largest common fund recoveries
9 in South Carolina history. He says that the
10 plaintiffs' case was prepared with all the
11 care needed for class counsel to do a
12 first-rate job. This case has been marked
13 from the start by careful determination,
14 dogged preparation and obviously a very good
15 final result.

16 I would like to parenthetically
17 note for Your Honor that we -- yesterday we
18 were looking for something and we Googled not
19 ourselves, but we Googled some things about
20 class settlement in this case and this case.
21 I had no idea how broadly this was reported.
22 We were reported all over the United States
23 of America and in the *Harold Tribune*
24 internationally. What other national
25 publications, I don't know.

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1 I offered that point to say you
2 heard three people come in this morning with
3 some kind of either objection, criticism or
4 suggestion in some of these cases. Your
5 Honor will have to pass on what motivates
6 people to do that, but you heard three. And
7 my point is that we've been -- we've had to
8 advertise now publicly on six separate weekly
9 occasions throughout South Carolina and we've
10 been in every newspaper -- anybody in the
11 country could have read about this who can
12 read a newspaper and apparently so around the
13 world. And what you heard this morning was
14 all that anybody had to offer about how
15 something might be better or how something
16 could be tweaked.

17 And we're not -- there's no pride
18 in authorship, we want to get it as best we
19 can all get it. Again, I know I speak for
20 these fellows as well when I say that. But I
21 think it's extraordinary. I embarrassed, I
22 sound like I'm blowing our own horns, I don't
23 mean that, but it is extraordinary that no
24 more suggestion or criticism could be
25 generated than that having had the exposure

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1 this case has had.

2 And, of course, in the communities
3 legal, victim, advocate and other related
4 communities, nobody, and that's, of course,
5 where you are most likely to hear from
6 somebody, those people broadly are interested
7 in it and intimately familiar, as sending
8 someone in from another state just two days
9 ago to have some kind of press conference in
10 front of the diocese building.

11 He then addresses -- in closing
12 that analysis he says that we have given the
13 clients an outstanding result. He then
14 addresses customary legal fees for similar
15 services. There are few ways that courts
16 address that issue and seek to -- seek to
17 reach a fair fee arrangement. One of them,
18 of course, is a straight hourly calculation,
19 one of them is a load star analysis, a kicker
20 for the benefit of if I can use another word.
21 Others are flat fees, contingency fees.

22 This case we took on as a
23 contingency fee because that's the kind of --
24 generally the kind of fee mechanism that
25 injured parties need because nobody who is a

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1 claimant here had the ability, of course, to
2 finance this thing.

3 We've spent, I think, 100 some
4 thousand dollars so far. We've submitted the
5 petition, it's in the petition, if you could
6 pull the exact numbers out, please. And as
7 you know we're going to have to publish
8 further, because we're not through meeting
9 the requirements that you're fixing to set in
10 that regard, I believe.

11 So at least half of that again will
12 be -- will be spent. First round of
13 publication was 50, in round numbers \$50,000..
14 It's a little more than that, I believe.

15 So he analyzed, Professor Freeman
16 analyzed all those things and even discounted
17 an hourly basis analysis. And long story
18 short, at the end of it recommends that what
19 we have requested; and again I use the figure
20 20 percent in round number -- as a round
21 number, it's 20 point something, but it's
22 not -- you know, it's not 21 or it's not 19,
23 he suggests that that is a more than fair fee
24 because the typical fee arrangement, and then
25 he cites all the cases in which the South

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1 Carolina Supreme Court has acknowledged this,
2 the typical contingent fee arrangement is
3 from 33 1/3 to 50 percent depending upon all
4 other six factors that we went through
5 before. I said something incorrect. I said
6 \$100,000. It's \$85,259.50 as of
7 February 14th, not including anything
8 perspective.

9 THE COURT: Uh-huh.

10 MR. RICHTER: Now, that's what Professor
11 Freeman has said.

12 This -- all of us have submitted
13 our own affidavits. And in a general
14 description without necessity of you hearing
15 from everybody, we have all talked about our
16 own experience base, where we've come from,
17 what we've done at the law and our abilities
18 to handle this kind of litigation and then
19 our abilities proving themselves and
20 obtaining what frankly is -- must be
21 described as an extraordinary result.

22 Having done that, although I think
23 mine is the only affidavit that says this, I
24 am not the only person affected in the way
25 that I'm about to mention. But one of the

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1 considerations that courts typically make is
2 about unpopularity of a cause or difficulty
3 as it's sometimes referred to, difficulty of
4 a cause.

5 I'm a Roman Catholic and I have --
6 my family is all Catholic and we have been
7 very active in the Catholic church here.
8 I've served in numbers of capacities and done
9 numbers of things for the diocese. I
10 received 12 years of parochial school
11 education here in Charleston. I've known
12 great men who were priests, great men who
13 have given their entire lives to the service
14 of their fellow man and their church, their
15 God.

16 I am sickened that a few perverts
17 have besmirched the good name of my religion
18 and I am sickened that the administration of
19 my church and my diocese have handled this
20 heretofore in what I believe is the poorest
21 possible way.

22 So I went to see the bishop and had
23 this conversation and said this is difficult
24 for me, but I have thought all of this
25 through and have decided for myself that I

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1 just must stand for what I believe to be
2 right, I've always done that and I am against
3 child abuse period. I would fight anybody
4 today over child abuse period. So I, not
5 threatening the bishop, but having an open
6 exchange with him, told him very frankly I'm
7 going to the mat on this case and it is going
8 to be very vigorously pursued and so we did.

9 I simply offer that to say to you
10 that Jack Sinclair and Glenn Churchill having
11 made references, for example, in their
12 affidavits submitted to you to similar
13 difficulties, but we have again as my friends
14 here can tell you, I've had the finger of my
15 pastor, my confessor, a vicar general of this
16 diocese shaken in my face about what I was
17 doing.

18 So while that doesn't require legal
19 expertise to be treated that way, I do think
20 it is fair that we at least comment that this
21 is not the typical intersectional wreck case
22 where there are no emotions involved on any
23 side. And we have been scrupulous in
24 checking our emotions to advocate and
25 accomplish the rights of the persons who we

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1 represent in this matter.

2 So to the extent that that's
3 considerable, we urge it upon Your Honor.
4 All counsel who have worked with us are here.
5 David Haller, Lionel Lofton, Jack Sinclair
6 and Glenn Churchill are all available to Your
7 Honor should you desire anything from them.
8 I can tell you that I have caucused with all
9 of them and they join me in these comments,
10 they join me in this submission. As you can
11 see from the reading from it, the submission,
12 I don't know how big this is, it must be a
13 couple hundred pages at least. But we are
14 all available to the Court for anything that
15 you may want from us.

16 We request the award of 2.5 and do
17 that calling to your attention that that
18 would equate to right at 20 percent of the
19 pool recovered. And normally in these cases
20 we would have charged 40 percent for any
21 individual claimant.

22 THE COURT: I think Professor Freeman
23 refers to 17 percent.

24 MR. RICHTER: Yeah, and it's a little
25 higher than that. I'm sorry to use a round

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1 number, but it is a little higher than that.

2 THE COURT: Okay. Okay. All right.

3 One of the things that I want to be -- and I
4 just want to have it articulated and now is
5 as good a time as any. This class, this
6 class, as I understand it, is a class of
7 people who are no longer minors by the
8 chronology of the class, but at the time of
9 the events would have been children. Would
10 have been minors. And the period of time
11 covered by this class is the period of time
12 for which the statute of limitations argument
13 existed.

14 MR. RICHTER: Existed and would -- in my
15 view would be fatal almost certainly and was
16 fatal as you've heard here today in so many
17 cases where someone actually brought on some
18 different theory or something else, I don't
19 know what, but brought these claims and
20 didn't succeed.

21 THE COURT: All right. And I think it's
22 important to note that this is not --
23 these -- that the terminating date for this
24 class is 1980 and before.

25 MR. RICHTER: Any person born before

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1 August the 30th of 1980 who was abused as a
2 minor can come forward, irrespective of the
3 statute of limitations, irrespective of the
4 fact that South Carolina didn't allow suits
5 against charitable institutions, irrespective
6 of any other defense that could be propounded
7 against them, and no defense can be
8 propounded against them and they will
9 certainly recover.

10 Where they fit in the scheme, how
11 much they will recover, I don't -- I don't
12 know the individual cases at this time
13 because the claims period hasn't even begun
14 yet. But, yes, all of those people are
15 covered. Nobody's rights are taken from
16 them. Not one person loses one right that
17 any person has today. Anybody can, A, not
18 take part in this by opting out; or B, be
19 outside of what the definition of the class
20 is and pursue whatever claims that they wish
21 to pursue. That's what this class is and
22 that's what we fought over.

23 That is a substantial
24 accomplishment to get -- I've never seen
25 anybody admit that from a particular date to

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1 the beginning of time we give up all defenses,
2 and all persons who may have a claim can come
3 forward and we can't even defend against the
4 claim, except in cases of where if someone
5 propounded a fraudulent claim we have a
6 screening process to guard against that kind
7 of thing.

8 THE COURT: Of course.

9 MR. RICHTER: So that -- so, yes, ma'am,
10 you do read right the terms and breadth and
11 purpose of the class. That is the recovery
12 purpose of the class. The intangible
13 purposes of the class are what Professor
14 Freeman made reference to.

15 THE COURT: Yes.

16 MR. RICHTER: The diocese has been
17 brought forth and cannot and does not try --
18 does not seek to or try to avoid the apology
19 that goes with this kind of formation of this
20 kind of class giving this kind of
21 compensation. I wish it was a lot more. We
22 tried to do perhaps amateurish demographic
23 work to figure how many Catholics in South
24 Carolina over these various years. It used
25 to be very small. All my growing up life it

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1 was, you know, maybe 1 percent.

2 But we went around the country and
3 took groups of claimants from various places,
4 Covington, Boston, Dallas, Forth Worth, all
5 around and tried to do projections. And we
6 looked at demographics information, how many
7 Catholics were there, what period of time,
8 etcetera. I don't know of anybody that had
9 the breadth of claim time and ability that
10 this group had. Jim Geoly can tell you,
11 because he sees it daily on a national basis
12 whether anybody has broader rights, but I
13 don't know of any and I would be surprised if
14 they do.

15 So that's what we sought to
16 accomplish. And we fought over it and the
17 diocese does not try to say -- I mean, they
18 can say what they want to, but they don't
19 come up here and say we're not apologizing,
20 Judge. That has been accomplished in this
21 payment. They have to -- you have ordered
22 that today they deposit with you in
23 guaranteed funds \$12 million, five and seven.
24 And we have -- when we get to that at the end
25 of all of this we have, I should tell you,

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1 the escrow agent who is a CPA, forensic CPA
2 actually here in South Carolina present in
3 the courtroom to address anything you need
4 about that as well.

5 But that's our petition. And we
6 urge it upon you. And do you want me to
7 bring anyone else up here now, Your Honor?

8 THE COURT: I don't want to keep anyone
9 from speaking, certainly not. Counsel, I
10 have affidavits and I'm happy to hear from
11 whomever. There are a number of --

12 MR. RICHTER: I don't think it's
13 necessary for anybody to speak. Again, we've
14 caucused about this and we've been authorized
15 to make these comments for them. Thank you
16 very much.

17 THE COURT: Very well. Mr. Geoly.

18 MR. GEOLY: It's nice to be up here.
19 I'd like to say a word about the spirit in
20 which I'm standing before you right now.
21 Because this is our response to the class
22 counsel's fee petition, we have certain
23 objections we'd like to lodge with you and
24 for the record.

25 THE COURT: Certainly.

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1 MR. GEOLY: But I think it's important
2 to say and to echo Mr. Richter's comments
3 that both sides in this case worked extremely
4 hard and there were ups and there were downs,
5 but diligence was not lacking. The counsel
6 on both sides fought hard over the issues,
7 fought in good faith over the issues.

8 The fact that you have a range of
9 attorneys' fees agreed to in the settlement
10 agreement rather than a number that
11 represents attorneys' fees that were agreed
12 to, I think bespeaks the kind of advocacy and
13 certain adversarial practices that went on in
14 this case.

15 Class counsel have requested that
16 you award as fees the complete total maximum
17 number allowed in that range. And I think
18 that before I get to the number I would like
19 to give you kind of a -- a window on our
20 perception of this.

21 THE COURT: Uh-huh.

22 MR. GEOLY: We come to the table as a
23 charitable organization. The assets at stake
24 in this settlement are charitable assets.
25 They're donated and the proceeds are donated

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1 assets. The structure of the settlement is
2 such that while there is a \$12 million,
3 potential \$12 million fund available in two
4 funds, five and seven, it is not necessarily
5 the case that \$12 million will be spent. It
6 really depends on how many people come
7 forward and what the claims process results
8 in.

9 And so it's fair to say that the
10 level of the attorneys' fees awarded is an
11 expense to the diocese. It's not coming from
12 money that's already necessarily been given
13 up, it is money we will spend. And if it
14 isn't spent on attorneys' fees, then we won't
15 be spending it, or at least it will be
16 available for the larger fund that will be
17 available for claims satisfaction.

18 And that's why we care so much,
19 because we certainly are not here to try to
20 in any way cast aspersions on class counsels'
21 work or the efforts they've made in this
22 case, nor to take issue with their statements
23 about the challenges they faced and the legal
24 challenges that they faced.

25 One point I'd like to make that is

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1 I think reflected in the petition already,
2 but I want to -- I want to just make sure
3 it's clear, is that our settlement agreement
4 makes clear that the maximum attorneys' fee
5 award --

6 THE COURT: I'm looking for that part of
7 the --

8 MR. GEOLY: Well, it's quoted in the fee
9 petition, it's on page 1 of the fee petition,
10 it's paragraph 5 of the settlement agreement.

11 THE COURT: All right. I'm in the
12 agreement, so let me go there. Okay. Go
13 ahead.

14 MR. GEOLY: Maximum attorney' fees
15 award, no more than \$2.5 million. This is to
16 represent, and going to the first sentence of
17 the section, substantial efforts of
18 plaintiffs' counsel, quote, past and future.
19 I just want to be clear that whatever fee
20 award Your Honor makes, that is the fee award
21 for this case. There are no future
22 attorneys' fees awarded as the claims
23 administration process goes forward. The
24 maximum exposure to the diocese for
25 attorneys' fees here is \$2.5 million.

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1 That was hard bargained on both
2 ends, on the low end and on the high end, and
3 we at least deserve the benefit of that
4 bargain. I don't think there should be a
5 back door, I don't think there is one, I just
6 want to make clear that that's our
7 understanding.

8 THE COURT: Let me be clear. Based on
9 my reading while Mr. Richter was arguing, I
10 want to be sure, as I understand it, there
11 can be a contractual arrangement with each
12 claimant for fees for the work done on each
13 individual claim, but that amount is to be
14 approved by the arbitrator with an
15 appreciation for the amounts awarded for
16 class counsel.

17 Now, that would -- what I'm
18 speaking of would not entail an arrangement,
19 a fee request from the diocese, but would be
20 a matter of contract between class counsel
21 and the individual claimants.

22 MR. GEOLY: That's my understanding,
23 too.

24 THE COURT: Okay.

25 MR. GEOLY: In that instance it's really

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1 the claimant who is providing the funding --

2 THE COURT: Yes. Yes.

3 MR. GEOLY: -- even though the funding
4 is coming out of the claimant's award.

5 THE COURT: I just wanted to be clear on
6 that.

7 MR. GEOLY: Yes, Your Honor, that's my
8 understanding as well.

9 THE COURT: Okay.

10 MR. GEOLY: Let me turn to our
11 objections. We think that the Court in the
12 first instance in addition to the factors
13 raised by Mr. Richter, should look at the
14 bargain that's been struck. And I think that
15 the range of 950,000 to 2.5 million suggests
16 to the Court that a fair outcome would not
17 necessarily be either extreme in that range,
18 that that obviously was as far as the parties
19 got in their bargaining, and we were hoping
20 that the Court would do the rest of the work
21 for us because we wanted the settlement to
22 happen and didn't want it to break up over an
23 attorney fee award.

24 And this is really a plea to the
25 Court's equitable instincts, I suppose.

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1 THE COURT: Sure.

2 MR. GEOLY: In saying that, you know,
3 this is diocesan, these are charitable funds
4 that should be respected. That's not in any
5 way to take away from the work Mr. Richter
6 and his colleagues have done.

7 You have heard a lot about opting
8 out today. There appear to be a significant
9 number of people who will opt out of this
10 settlement. In that sense they are not being
11 served by class counsel, the diocese will
12 still face those claims, and to the extent
13 those were not anticipated at the time the
14 fee negotiations were made, that is a greater
15 exposure to the diocese. And I'm going to
16 say it like this and it's not going to sound
17 good when it come out of my mouth, but I
18 don't mean it quite the way it sounds. Less
19 of an accomplishment by class counsel, in the
20 sense those folks are not represented by
21 class counsel and are not the receivers of
22 the benefit of this bargain.

23 THE COURT: Uh-huh.

24 MR. GEOLY: In terms of the work that
25 was performed, I believe Mr. Richter's

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1 petition states that 3,500 hours have been
2 expended. He's made a request for a \$500 an
3 hour fee. I think I come out with
4 \$1.75 million if he got every penny of that.
5 We have purposely not -- we have chosen to
6 purposely not quibble with Mr. Richter's and
7 his colleagues' time sheets. That's not the
8 spirit of today's proceeding. And again, we
9 are not at all contesting it. He's done a
10 lot of work.

11 We think that \$500 an hour is a bit
12 steep for the prevailing rates in the
13 Charleston area. We're not trying to nickle
14 and dime him. It's a matter, again, of you
15 using your equitable instincts in deciding
16 what would be fair. That combined with the
17 fact that even if you multiply the fee -- the
18 rate times the hours, you come out with a
19 number below \$2 million we think should weigh
20 on your decision.

21 Going forward nobody knows how many
22 people will come forward to this class, but
23 as much as we could estimate what we would be
24 facing in this claims administration process,
25 I don't think either side is anticipating a

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1 flood of claimants. We're not looking at
2 hundreds of claimants. The amount of work
3 expected to be done in the future, while it
4 will be substantial in the sense of being
5 important, may not be massive in the sense of
6 volume. And I don't think that should be --
7 play a huge role in the fee award. I think
8 the accomplishment of achieving the
9 settlement is a major accomplishment and I
10 think that is really more where the focus is.

11 Indeed, the claims administration
12 process is very user friendly. The claimants
13 are encouraged to participate in it and once
14 they do they receive -- it's almost
15 self-executing. The lack of any adversarial
16 component I think significantly decreases the
17 amount of work either counsel have to do once
18 the claim process goes forward.

19 I guess I want to close with -- by
20 returning to the accomplishment that we've
21 made here. Mr. Richter spoke about it to
22 some extent. This is a very good day for the
23 victims who are represented in this case and
24 for the diocese. And it's a very good day
25 not just because important legal hurdles were

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1 overcome, it's a good day because both sides
2 have an interest in a -- really a
3 reconciliation over this issue.

4 To the extent the legal papers
5 create any ambiguity, I think it is very
6 important to say that not just the diocese,
7 but the Catholic church as its faced this
8 issue deeply and sincerely apologizes for the
9 wrongs that have occurred in the past. We
10 are not shy about that.

11 THE COURT: Well, Mr. Geoly, to that end
12 I suppose I was a little bit surprised that
13 with the objection that there was no
14 objection from the diocese, because as you
15 know from my review of these documents early
16 on I've been quite surprised that the
17 diocese, that the bishop and the bishop's
18 individuals were willing to meet with these
19 folks for purposes, as I understand it, of
20 apologizing one on one.

21 MR. GEOLY: It's absolutely true. The
22 bishop stands ready to meet with victims.
23 And the settlement agreement, as you know,
24 specifically provides for the ability of
25 people who have been through this claim

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1 process to come forward and address the
2 Sexual Abuse Advisory Board -- I hope I have
3 that name right -- the Sexual Abuse Advisory
4 Board, which has the official function of
5 forming diocesan policy on the issue
6 rendering advice to the bishop. That's not
7 to replace direct contact with the bishop,
8 but it's actually the formal way one could
9 have an impact on the issue that's been
10 important to both sides.

11 It's a moment, I think it's an
12 opportunity today to really turn a corner.
13 And I don't want to parrot Mr. Richter's
14 words, I don't want to pat ourselves on the
15 back, but I do think that what Mr. Meyers
16 said is true, that we deserve some credit for
17 doing something that is unique, that is
18 creative and that reaches out beyond the law
19 to people who need help.

20 Now, Mr. Richter thinks we came
21 kicking and screaming, maybe that's true,
22 maybe that's advocacy, maybe that's the
23 nature of adversarial process. What's
24 important is that both sides eventually were
25 able to put that aside and are here today.

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1 You know, in response to this fee
2 petition, I think we're really on an issue
3 here of administration. And I don't want it
4 to be taken as in any way sour grapes about
5 the process of casting aspersions on counsel.
6 What's important, though, is that just
7 because we got here doesn't necessarily mean
8 that every last penny that could possibly
9 have been awarded, ought to be awarded.
10 We're asking you to use your equitable
11 instincts and your good judgment about value.
12 And there's value on both sides here and I
13 think that's what we're asking you to
14 consider.

15 THE COURT: Thank you so much.

16 MR. RICHTER: Your Honor, may I briefly
17 respond?

18 THE COURT: Of course.

19 MR. RICHTER: Just a couple of things
20 briefly concerning Mr. Geoly's argument in
21 opposition to the petition for fee approval.
22 I need to clarify. I don't mean to imply
23 that load star, as I referenced before, is
24 the accepted South Carolina method. I
25 simply -- I think I said it is a method that

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1 has been utilized in making these
2 determinations. I don't mean to imply that
3 South Carolina has promulgated a load star.

4 Secondly, Mr. Geoly indicated that
5 all these opt out people that he referred to,
6 not so many that you heard from, at least
7 thus far, were not anticipated. Not
8 anticipated. That's what he said.

9 Now, we submitted to you a petition
10 clarifying certain language. We talked about
11 this earlier.

12 THE COURT: Yes.

13 MR. RICHTER: I want to call to your
14 attention, as you will have it before Your
15 Honor, that the signatures of class counsel
16 and counsel for the defendants, the diocese,
17 are affixed jointly to this petition. And
18 I'll call your attention to the bottom of
19 page first, page 1, which in the whereas
20 clauses, the second, third whereas clause,
21 says, Whereas, the parties have determined
22 that the agreement requires clarification in
23 certain particulars in order to fully
24 effectuate the original intention of the
25 parties.

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1 There is no doubt about what the
2 intention of the parties is, and they have
3 affixed their name to a document writing and
4 handing to Your Honor that that was our
5 original intention. So the idea that we
6 didn't intend opt out people is -- his memory
7 just lapsed, I suppose.

8 MR. GEOLY: Your Honor, very briefly may
9 I --

10 THE COURT: Just a moment. Yeah, I'll
11 hear you in just a moment. Let him finish.

12 MR. RICHTER: I failed to mention to you
13 some things earlier because I -- I'm not here
14 to have a fight with how recalcitrant, how
15 recalcitrant the diocese was about coming to
16 this or what we accomplished. I think, Your
17 Honor, because of your personal legal breadth
18 of experience and certainly your experience
19 in the breadth of matters you have presided
20 over on this court, I think Your Honor is
21 fully familiar, at least with what it is that
22 we've accomplished. It's impossible to tell
23 you everything that -- every step that went
24 into this -- into the process of
25 accomplishing these things, although I do

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1 have a time line for my own reference and I
2 note that it -- and I can do this in
3 painstaking detail, I don't seek to, but I do
4 want to remind Your Honor as to what we've
5 accomplished and how hard it was.

6 On June the 14th, on the second day
7 of a mediation of 2006, June the 14th, 2006
8 we agreed with the diocese, wrote an
9 agreement, signed our names to it as did --
10 under the good auspices of Mr. Infinger, that
11 day agreed to many things, including setting
12 a very narrow time frame in which the diocese
13 was going to --

14 THE COURT: I'm smiling at you because
15 I'm well aware of this, because this is how I
16 know that there has been great advocacy in
17 this case because I have heard -- yes, I've
18 heard your upset about this many times, yes.

19 MR. RICHTER: The point is it was
20 represented to us the diocese was going
21 Monday to the bank, they could get letters of
22 credit with no problem, that there was a very
23 short fuse, therefore, for funding this
24 thing. That was in June, June 14th of 2006.

25 Today the diocese has not put up

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1 one dollar and you have ordered ultimately
2 that no later than today they got to post
3 \$12 million in guaranteed funds. We're going
4 to get to that as soon as we finish this, but
5 I give you a preview. I don't think they
6 have it, I don't think they have guaranteed
7 funds, although you're going to see and read
8 perhaps about the 36 or \$46 million of
9 unencumbered, unrestricted funds held by the
10 diocese. That's the next issue. That's not
11 this issue.

12 I want to just though make a couple
13 of comments about the breadth of what we
14 accomplished. We have -- we had input on
15 board representation, Mr. Geoly was telling
16 you about one of the diocesan boards.

17 THE COURT: Yes.

18 MR. RICHTER: We had input into that,
19 both of makeup and function. That's an
20 extraordinarily important aspect of this
21 case.

22 THE COURT: Just so our record is clear
23 and my consideration is accurate, you are
24 talking about -- I was just looking again at
25 the different bodies. There's the -- there

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1 are a couple of groups. Here it is. It's
2 under the section of the agreement called
3 Pastoral Outreach and Protection of Children
4 by the Diocese, there's discussion about
5 comprehensive policies. The reports of all
6 accusations to the solicitor, victim,
7 assistant minister.

8 MR. RICHTER: That's right.

9 THE COURT: Sexual Abuse Advisory Board.

10 MR. RICHTER: That's correct.

11 THE COURT: Presentation by class
12 representatives or members to the Sexual
13 Abuse Advisory Board.

14 MR. RICHTER: That's correct. There's
15 not a dollar sign attached to any one of
16 those. That's not what this is about, but it
17 is an accomplishment helping to shape the
18 functioning of this diocese and the treatment
19 of the faithful who have been abused at the
20 hands, or who may in the future have been,
21 and hopefully we now avoid abuse at the hands
22 of agents, representatives and particularly
23 religious representatives of this diocese.

24 That -- all of that further
25 projects itself as follows: The diocese has

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1 reported to us 28 known abusers since 1950 in
2 their secret records. Twenty-six of whom
3 were priests, two were non priests. That's
4 what they reported to us. Nine priests in
5 South Carolina have been found or pled guilty
6 in these matters and not one day of jail time
7 to one of those perpetrators has been imposed
8 as a sentence. I think that is now over. I
9 think this case bespeaks the end of that kind
10 of treatment for sexual predators in our
11 state.

12 But we tried to do even more in
13 fairness. In fairness, it's not fair for me,
14 I suppose, to say give us the highest range
15 of this fee without saying to you but we
16 really didn't recover the highest things that
17 we wanted, didn't accomplish the highest
18 things that we wanted, like to have more
19 money for the claimants for one. We got
20 \$12 million, that's all. We'd like -- but we
21 did a lot of things that you now need to know
22 about.

23 We subpoenaed the records of what
24 is called the secret archives of the diocese
25 and that's where is locked up all of the

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1 information that would lay bare priest abuse
2 in South Carolina and other matters. Our
3 focus was that.

4 We subpoenaed from two parishes,
5 only two parishes in this state and only back
6 to 1950, all records of gambling operations,
7 illegal lotteries, raffles, drawings --

8 MR. SHAHID: Your Honor, I have an
9 objection to this. Excuse me for a second,
10 Mr. Richter. The purpose of this phase of
11 this hearing is to -- for the Court to
12 determine the award of the fees that
13 Mr. Richter and class counsel's entitled to
14 have. He made a presentation that we replied
15 to. The issue that he's trying to raise I
16 think has gone outside the boundaries of
17 where we are with this fee arrangement.

18 Whether or not there are such thing
19 as a secret archives and whether or not he's
20 subpoenaed records about gambling and stuff,
21 he's -- his work that he has done has been
22 addressed in his affidavit and he went
23 through painstakingly what he did with
24 Professor Freeman's affidavit. That's all
25 been addressed already. This is unnecessary.

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1 And there's no benefit to the Court as to
2 this line of argument that he's now trying to
3 present.

4 We have agreed that he has spent
5 3,500 hours plus and we have agreed that he
6 has expenses of close to \$90,000 on this
7 stuff. We have not gone back and nitpicked
8 those things intentionally because we've come
9 here in good faith to just address the
10 Court's latitude between one range or
11 another.

12 And that's sort of where we are
13 right now. And where else we're going in to
14 this arena that he's seeking to go into, I
15 think is inappropriate.

16 MR. RICHTER: May I respond to that,
17 Your Honor?

18 THE COURT: Sure.

19 MR. RICHTER: All of what you have now
20 learned, because this is what made opposing
21 counsel stand up and try to shut me up,
22 you've now learned the beginnings of how this
23 settlement got accomplished. The last thing
24 the diocese wants us to do is see the inside
25 of the secret archives. And that's why he

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1 now stood up.

2 MR. SHAHID: Judge, that is absolutely
3 not true. And I take exception to that
4 comment.

5 MR. RICHTER: Well, fine, it's easy. If
6 you just let me go on for 30 seconds I can
7 lay it to rest. Because I hereby --

8 THE COURT: Hold on. There's an
9 objection. I got to rule on it.

10 MR. RICHTER: I'm sorry.

11 THE COURT: So the nature of the
12 objection, Mr. Shahid, is that Mr. Richter's
13 comment is unresponsive to the argument?

14 MR. SHAHID: His initial -- he stood up.

15 THE COURT: Yes.

16 MR. SHAHID: And presented his petition.

17 THE COURT: Right.

18 MR. SHAHID: His affidavits, and he went
19 through all that.

20 THE COURT: Yes. Right.

21 MR. SHAHID: We presented a very limited
22 response.

23 THE COURT: Yes.

24 MR. SHAHID: His reply to that response
25 should be restricted to our response.

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1 THE COURT: Yes.

2 MR. SHAHID: And he's gone beyond that.

3 THE COURT: Yes. The response, as I
4 understood it, was really twofold. Number
5 one, there was a concern expressed by
6 Mr. Geoly regarding the folks who were here
7 that the diocese had concern, and I certainly
8 don't think it's unreasonable that there were
9 now cases that there would be an opt out
10 provision for which the diocese really didn't
11 contemplate perhaps, and here they were and
12 there was some concern about that. And the
13 argument was please be mindful of that as you
14 determine these fees.

15 MR. SHAHID: Yes, ma'am.

16 THE COURT: And also please be mindful
17 of the fact that what we are dealing with is
18 that we are dealing with a charitable
19 organization and these are funds which are
20 voluntarily given and these are charity
21 donations that are made by individuals, and
22 please be mindful of that as well as -- as --
23 as you make -- as you make that
24 determination.

25 I gather that the response, I

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1 gather, is to the argument of please be
2 mindful that these are -- these are
3 charitable funds that are given and I gather
4 that this argument is made to offset that
5 argument of the -- that this is no more than
6 taking of charitable funds.

7 MR. RICHTER: I was not allowed to
8 finish the point yet about charity, but
9 you're exactly right. And as I say, I can
10 close that circle in a minute or two minutes
11 so that you'll understand.

12 THE COURT: I think perhaps some limited
13 comment to be made --

14 MR. RICHTER: Thank you.

15 THE COURT: -- obviously.

16 MR. RICHTER: Thank you, Your Honor.

17 THE COURT: And then I have a couple of
18 questions.

19 MR. RICHTER: I made reference to the
20 secret archives and that's what got us off to
21 where we are now. Mr. Shahid has said if
22 they do exist or if they don't exist. I
23 represent to the Court as an officer of this
24 Court they exist. But as to charity, this is
25 the second of the killer issues that other

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1 cases have been -- and again I'm not
2 self-aggrandizing, please -- that other cases
3 have been lost on because other lawyers or
4 teams of lawyers have not known how or had
5 the vigor or the wherewithal, the acumen to
6 conceive and then execute on issues such as
7 charity. They did argue it's a charity.
8 Very sympathetic. Very sympathetic.

9 Among the issues we approached as
10 to charity are the following: We subpoenaed
11 the records from only two parishes, they
12 resisted this of course, only two parishes
13 seeking all of the records from 1950 forward
14 concerning lotteries, raffles, drawings,
15 bingos, all of which qualifies -- and I know
16 something about this because I learned it in
17 the video poker litigation which we
18 handled -- all of which qualifies as illegal
19 gambling operations.

20 We can show, we could have shown
21 had we -- had these people not come to the
22 table, that the diocese, I went to 12 years
23 of Catholic schools on bingos and raffles in
24 a large part, I'm not touchy about that, I
25 don't have thin skin about that, I understand.

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1 how churches raise money. The fact is those
2 are illegal gambling operations as a matter
3 of law. Not canon law, South Carolina law.
4 They're illegal gambling operations.

5 So we subpoenaed the records of
6 those illegal gambling operations from only
7 two parishes. Had they not come to the
8 table, had they not paid up, we would have
9 subpoenaed those from every diocese in the
10 state from 1950 forward. And I think, and we
11 told the bishop and everybody else who runs
12 the diocese or shakes their finger in my face
13 in that capacity, told them that we believe
14 that was going to jeopardize the 501(c)(3)
15 status of this charity, because under our
16 system of laws charities can't engage in
17 patterns of illegal gambling.

18 Now, I represent -- I don't
19 represent the diocese, I represent a class of
20 counsel seeking to recover. We have done
21 that when nobody else could. Part of it is
22 for that reason. But all of this forthcoming
23 good natured, good hardiness, public spirit,
24 reconciliation and healing and apology that
25 these fellows are now standing up telling you

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1 is on the side of the diocese, and all of
2 this -- these issues that they find offensive
3 and objected to and sought legal protection
4 from the Court about, are easily answered.

5 I did this not in a formal forum
6 like this, but I do it now as public record.
7 I call on the Bishop of the Diocese of
8 Charleston to release the names of all known
9 perpetrators. I call on the Bishop to
10 release their locations so that our children
11 in South Carolina and their parents can know
12 they don't live next door to them or get
13 taught by them. I call on the Bishop to
14 release all the reports mandated by statute,
15 all the reports made to law enforcement,
16 prosecutors or child protection agencies
17 concerning abuse by priests in the diocese on
18 minors. We don't have to argue about it.
19 Those aren't in.

20 Those things aren't in this
21 settlement agreement, so in seeking a fee
22 from you we've asked for the top of the
23 range, but I must tell you we didn't
24 accomplish everything that we would like to
25 have accomplished. We would like to have

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1 accomplished that. Not just for the members
2 of the class, but we'd like to have
3 accomplished that for the people.

4 Now, I have in my hand 53
5 plaintiffs who have contacted us since
6 advertising has begun. Mr. Meyers made
7 reference to many more. The stories that
8 these claimants have to tell are
9 extraordinary and are important here not for
10 purpose -- not for purposes of any --
11 striking any blows on the diocese or
12 embarrassing anyone or for any other purpose
13 than that which we now address. An opposed
14 fee petition. Because you're entitled to
15 know what we have been dealing with in this
16 litigation.

17 This was not removing a speck from
18 an eyelid. This was heart surgery. You're
19 entitled to know that because they've chosen
20 to oppose this fee, this cooperative and
21 healing-oriented group.

22 I'm going to -- there was a child
23 in this courtroom. Take that child out,
24 please.

25 THE COURT: Whoa. Stop. Just hold on a

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1 second. Wait, I'm sorry. Hold on one
2 second. If you're going to exclude somebody,
3 you got to address that to me.

4 MR. RICHTER: I'm sorry. I apologize.

5 THE COURT: I know you're worked up, but
6 you got to address that to the Court.

7 MR. RICHTER: I apologize.

8 THE COURT: Do you intend to go into an
9 area that you maintain it would not be
10 appropriate for a child?

11 MR. RICHTER: I do.

12 THE COURT: All right. Very well..

13 MR. RICHTER: I apologize.

14 THE COURT: And, you know, I don't know
15 what it is. Normally and typically I don't
16 allow children in the courtroom, because
17 typically what goes on in the courtroom are
18 those topics that I certainly don't want
19 little ones to hear, but she's -- I noticed
20 her and she has absolutely been just so
21 perfect and it's also an educational place,
22 so if -- but based upon what I am told,
23 perhaps you would want to consider that. All
24 right. Very well.

25 MR. RICHTER: And I apologize for

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1 usurping your function.

2 THE COURT: Now, stop. Whoa. Whoa.
3 Okay. Well, hold on right where we are.
4 Now, it is my understanding that the argument
5 to this point has to do with the request for
6 fee; is that right?

7 MR. RICHTER: That is correct. And it
8 will not get away from that.

9 THE COURT: All right. Okay. Well, let
10 me hold -- hold on at that point. Because
11 two things really are in my mind. Number
12 one, I certainly want to give the diocese an
13 opportunity to address the very strong
14 argument regarding the subpoenas and I want
15 to hear from you, I want you to be able to be
16 heard on that.

17 Having -- so that's number one. I
18 certainly want you to have an opportunity to
19 be heard on that. Secondly, it is very -- it
20 is very clear to me, it is very clear to the
21 Court, and I'll say this at this juncture, it
22 is very clear to the Court that no matter the
23 defendant, when there is a defense such as
24 the statute of limitations which is one of
25 the strongest defenses available to any

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1 defendant under the law and there -- that
2 defense is yielded in a settlement such as
3 this, it's clear to me that there has been a
4 great amount of advocacy that has been
5 ongoing.

6 I think and would say that once
7 it's established that there was advocacy,
8 then -- then it's very clear that there's
9 been a substantial amount of advocacy. And
10 there are those class actions, and I don't
11 speak it in terms of South Carolina because
12 I'm not aware of it occurring in South
13 Carolina, but I am aware that there's been
14 some concern on a nationwide basis that there
15 can be concern about a class action being
16 created, being created because what the
17 defendants get out of a class action is they
18 get res judicata which brings to closure many
19 of the issues. And oft times that's all a
20 defendant gets out of a class action..

21 And I wanted to be satisfied,
22 although -- although I must again say that I
23 was pretty satisfied before we came in here
24 today that this was not one of those kinds of
25 class actions based on my interaction.

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1 I say that because you are Catholic
2 and you put that on the record. That you
3 went to parochial schools, you are Catholic,
4 although you are ably assisted by your law
5 partner who is not Catholic and I'm aware of
6 that as well.

7 So having -- having said that, in
8 terms of the issue of what legally has been
9 accomplished in terms of the advocacy of
10 this, I'm satisfied --

11 MR. RICHTER: Thank you.

12 THE COURT: -- with regards to that.

13 MR. RICHTER: I understand.

14 THE COURT: Having said that, and the
15 reason for that is, is I'm probably less
16 concerned about when you talk about the
17 subpoenas and the like. That's good strong
18 advocacy. And when a case doesn't come to
19 conclusion, then you take the snapshot at
20 that moment. And I don't want to disserve
21 our system of justice either, because when
22 cases are resolved, they are resolved for any
23 number of reasons. Some of it is because of
24 good strong advocacy, some of them is -- for
25 as many reasons as there are litigants and

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1 lawyers.

2 I am satisfied and I think that my
3 concern was to establish that there was good
4 and substantial advocacy and of that I'm
5 satisfied.

6 I'm also aware of where
7 contributions come from. They come from --
8 they begin with the contributions of
9 individuals. There can be appropriate
10 investments made and the like. I'm well
11 aware of that, so I don't know that we add
12 anything to that. So I don't know -- I don't
13 know in terms of an argument over the fee
14 issue that I am -- that I need any more along
15 those lines.

16 Now, is everyone clear about that
17 much? And certainly again I certainly want
18 to hear from Mr. Geoly with regards to -- to
19 the arguments that you've made because I know
20 he wants to address those.

21 MR. GEOLY: Only briefly, Your Honor. I
22 have very little to say.

23 THE COURT: Huh?

24 MR. GEOLY: I have very little to say.

25 THE COURT: Absolutely. And then I

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1 don't want to keep you from telling me what
2 you need, but I was hoping that would be --

3 MR. RICHTER: That goes a long way.

4 THE COURT: That would be a guidance.

5 Now, when you all finish though,
6 then you have --

7 MR. RICHTER: Then it's on you.

8 THE COURT: Then I have an issue, so....

9 MR. RICHTER: I will -- I will refrain
10 from what I was -- this file folder and go
11 back to what I think you will find to be --
12 and this will only be a couple of minutes, go
13 back to what you, I believe, will find to be
14 extraordinarily brief.

15 Please, Your Honor, understand that
16 I am now faced with the prospect of a record
17 I must make here because this is now a
18 controverted issue. The fee petition is now
19 contested by the diocese and should there
20 ever be any appellate remedy sought by
21 anybody in this matter, I have to be
22 concerned about the record I make here or I
23 don't -- I would have given up what I had not
24 put in the record.

25 THE COURT: How so?

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1 MR. RICHTER: Well, I can only -- I can
2 only --

3 THE COURT: This is a settlement.

4 MR. RICHTER: I'm sorry?

5 THE COURT: It's a settlement. It's a
6 settlement.

7 MR. RICHTER: Well, it is a settlement
8 but Your Honor has to rule on an issue that
9 is a controverted issue. The settlement only
10 set parameters. Your Honor's going to have
11 to rule on within those parameters if they're
12 not satisfied about that.

13 THE COURT: If I stay within the --

14 MR. RICHTER: If I stay within, it's
15 probably not appealable.

16 THE COURT: If I stay within the
17 parameters it's your position that --

18 MR. RICHTER: No. No, it's not.

19 THE COURT: I thought maybe you got
20 yourself a little worked up.

21 MR. RICHTER: Okay. But I would still
22 like to, because you've heard comments here,
23 that you can't understand what this -- you
24 can't in considering these matters understand
25 what this is about if I let comments stand

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1 like Mr. Shahid saying secret archives, if
2 there are secret archives. Not that
3 that's --

4 THE COURT: And I'm only smiling
5 because, again, if anyone had any question
6 that this is the result of anything other
7 than advocacy just, yes, that you would be
8 Exhibit A.

9 MR. RICHTER: Well, I'll quit with this,
10 but I would like you, please, to hear me just
11 as to this last issue.

12 THE COURT: All right. Yes, sir. Of
13 course.

14 MR. RICHTER: So that you can again
15 understand how they got to the table and how
16 they got to the process of agreeing to
17 this -- to this resolution for these dollars.
18 And it will lay to rest whether or not,
19 incidentally, there are secret archives.

20 Among the things that we utilized
21 in this litigation -- and this is filed in
22 the record, so I'm only telling you something
23 that's in the records of the court -- among
24 the things that we used is a document which
25 is titled "An Instruction," and it says

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1 "Instruction on the Manner of Proceedings in
2 Cases of solicitation." This document bears
3 the date 1962 and it is a document
4 promulgated, I'm sorry, embarrassed and
5 ashamed to say by the Holy See, Rome, the
6 head of the Catholic church.

7 This document requires secrecy.
8 That was one of the positions that we took.
9 They challenged that position and said, Oh,
10 it only applies to the confessional where we
11 even had a legal privilege. I just want to
12 make a few references to this so you can
13 understand how we got to where we are.

14 This text is to be diligently
15 stored in the secret archives of the Curia as
16 is -- as strictly confidential. What does it
17 deal with? The crime of solicitation, that's
18 what it was -- I read you the title a moment
19 ago. Takes place when a priest tempts a
20 penitent, whoever that person may be, either,
21 either that's disjunctive, either in the act
22 of sacramental confession, that's one place
23 it can happen, whether before the act of
24 confession, or immediately afterwards, it
25 could happen after confession, it's a little

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1 bit now outside the privilege of the
2 priest/penitent, isn't it? Whether on the
3 occasion of a confession or the pretext of a
4 confession, whether even outside the times
5 for confession. And it goes on and on and
6 on.

7 At our mediation this was pretty
8 heatedly exchanged. We engaged -- among our
9 costs, we incurred the cost for a canon law
10 expert from another part of the country.
11 That's the beginning of this very multipage
12 document.

13 And it goes on to say that the one
14 denouncing, which means in this language
15 accusing the priest, should be presented an
16 oath of observing the secret, threatening
17 him, I'm quoting, threatening him if there is
18 need with an excommunication. That's being
19 thrown out of your faith. That's the person
20 making the complaint.

21 It goes on to say, if you want to
22 know the attitude of the church about people
23 reporting, and I hope we have changed this
24 attitude is the reason I'm arguing this to
25 you right now, that there are certain areas

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1 that the inquiry must then, the diocese
2 inquiry must delve into, and the third of
3 those is other persons, whether other persons
4 have been solicited by the same priest. Now
5 I'm quoting, whether any of them, as not
6 rarely happens, have been persuaded to make
7 the denunciation accusation by those
8 denouncing.

9 What that says is we assume that
10 people who accuse priests of molesting them,
11 go out and try to get other people to say
12 that the priest did it to them too. That's
13 disgraceful.

14 It goes on to say, as often as in
15 the prudent judgment of the ordinary, the
16 governance, I'll call it of the diocese, it
17 seems necessary, for various reasons, as to a
18 soliciting or offending priest, sexually
19 offending priest, there should be added a
20 prescription for a prohibition of remaining
21 in a certain place. That translates move
22 them someplace else. If any priest condemned
23 of the crime of solicitation, sexual
24 misbehavior, should transfer his residence to
25 another territory, so they anticipate that

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1 the priests will be moved around. This was
2 1962 this came down.

3 Goes on to say that all of these
4 official communications, it lays out a
5 process for how to adjudicate these matters,
6 shall be made under the secret of the Holy
7 Office. In other words, don't let the
8 faithful know who the abusing priest is. I'm
9 embarrassed by that and ashamed by it and
10 disgusted by it. And I hope that this
11 church, my church, will be better in the
12 future for me standing here right now and
13 doing what I'm doing. At least I think it
14 shouldn't oppose a fee for a lawyer who
15 accomplishes what we've accomplished in this
16 matter.

17 There should be read to the
18 denouncing person, let's say the child who
19 went and got abused by the priest and then
20 told, there should be read to the denouncing
21 person everything which was given in writing,
22 statements concerning the matter that the
23 diocese has now looked into, and having given
24 an account, having said to him, don't forget
25 you took an oath, having given an account of

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1 his taking an oath to observe the secret, he
2 should be dismissed. So before we send him
3 out of the room we remind him that he took an
4 oath and that he can be excommunicated if he
5 tells about this. So he can't go to civil
6 authorities, I guess is what this says.

7 Now, you want to know why these
8 people have damages? Because this is how the
9 church in this diocese and all the other
10 dioceses heretofore has been treating these
11 matters. It's dark ages. And hopefully they
12 have now been brought to light.

13 I can go on with this. This is a
14 multipage document. But I close by reminding
15 you that this text is to be diligently stored
16 in the secret archives from Rome.

17 THE COURT: The document will now be
18 made the Court's Exhibit.

19 MR. RICHTER: Thank you. I have written
20 on this and I'll hand up, if it's okay, a
21 clean one. Thank you.

22 THE COURT: All right.

23 MR. RICHTER: And it is attached to the
24 complaint in this matter.

25 THE COURT: Very well. I'm a little bit

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1 concerned about -- Mr. Geoly, come on and
2 make your comments and then at that point we
3 very well may take a short lunch break.

4 MR. GEOLY: Your Honor, if all
5 Mr. Richter was saying is that he believes
6 he's accomplished something in this case, and
7 that is the reason he took us through the
8 document known as "Crimen Sollicitationis,"
9 I'm not sure why we had to hear that. I
10 don't think anything in my comments or my
11 objections to the fee petition in any way
12 implied that class counsel did not do work,
13 did not work hard, did not accomplish
14 anything here, did not adequately or well
15 represent their clients or that there was any
16 lack of advocacy on either side.

17 I think what I pointed to was that
18 there was a range agreed to and directed the
19 Court to what I felt was an equitable
20 approach to that range.

21 That is not implying that class
22 counsel don't deserve a fee. It's implying
23 that the Court simply be judicious in what
24 the fee should be within an agreed range.

25 As to the document, unfortunately

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1 Mr. Richter felt the need to go through that
2 detail and now I've got to take your time to
3 at least respond to some of it.

4 As you know because there's a
5 settlement in this case, nothing about this
6 document has been adjudicated in this case,
7 including Mr. Richter's, I guess, canonical
8 expertise about what the document means.
9 Now, I'm sure he thinks he has a canon law
10 expert who will say what he thinks that
11 expert should say. Let he tell you the Roman
12 Catholic Church also thinks it knows what its
13 own canonical document means.

14 That document is not, and never was
15 intended to be, a prohibition on anyone
16 coming forward with any claim against anyone
17 in the secular world. That document is a
18 canonical document dealing with a canon law
19 process internal to the church for dealing
20 with priests who misuse the sacrament of
21 confession and the moments and circumstances
22 surrounding before, after, around or related
23 to confession. Confession itself being under
24 a canonical seal, all proceedings to
25 discipline priests for a violation of the.

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1 seal of confession themselves require oaths
2 of secrecy. It is a parallel universe and it
3 has absolutely no threat of excommunication
4 or any other sanction to any member of the
5 laity who has a criminal accusation to make
6 against a priest in any context.

7 Now, of course a priest would not
8 be free to reveal in public anything that
9 occurred in the confessional. He would face
10 a sanction. But the layperson is free to
11 reveal what occurs in their own confession in
12 some other context. But if you want the
13 church to discipline the priest, if you want
14 a canonical sanction for a canonical process,
15 then the rules of confession have to be
16 observed. That is why that structure was
17 created. That is at least how I understand
18 the document. That is at least how the
19 canonists who we've consulted with understand
20 the document.

21 The next thing is that document did
22 not come from the Diocese of Charleston. We
23 have searched and have not been able to
24 locate it anywhere in the diocese's files.
25 We have no record of the diocese ever

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1 receiving it, and certainly of the diocese
2 ever following it. Certainly the diocese
3 would observe all the rules related to the
4 seal of confession under any circumstances.
5 That just does not happen to be a document
6 anywhere in our files.

7 With regard to secret archives:
8 Canon law is a very colorful body of language
9 and uses descriptive and colorful phrases and
10 it has been extremely useful to plaintiffs'
11 counsel around the country to refer to and
12 repeat the phrase "secret archives" because
13 the word "secret" implies something sinister.
14 But in American business parlance that is
15 nothing more than confidential records and
16 they are no more confidential than they would
17 otherwise be than if we didn't call them
18 secret archives.

19 If they happen to contain mental
20 health records, they may well be protected
21 from disclosure. If they happen not to
22 contain privileged material that the law
23 recognizes, then they are not protected from
24 disclosure. That has always been at least
25 our approach and this diocese's approach.

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1 Whether a confidential file cabinet
2 is called secret archives or not, is entitled
3 to no special melodrama, I guess is the
4 point. And the fact that counsel issued a
5 bunch of subpoenas in this case is neither
6 entitled to any special melodrama. He's a
7 diligent lawyer and he issues a lot of
8 subpoenas. He issued subpoenas or threatened
9 to for today as well. That's fine. I don't
10 think that any way detracts from the work
11 he's done and I don't think it in any way
12 adds to the work he's done.

13 Your Honor has already observed
14 that both sides worked very hard here. No
15 one is contesting that. So, I mean, it's
16 wonderful that he issued subpoenas and that
17 he was getting ready to litigate his case.
18 More credit to him. But I'm not sure where
19 it cuts on the fee petition.

20 The opt outs. I was either not
21 clear or counsel misrepresented what I said
22 or he understood me but I just didn't make it
23 clear, so let me make it clear now. I was
24 not saying we were not aware that nobody
25 could opt out of the settlement. It's true

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1 we signed a motion that says that the true
2 meaning of this agreement was always to
3 recognize opt outs.

4 My point was we did not know how
5 many people would opt out. We didn't know
6 the scope or the magnitude of that. It
7 appears there are more than we anticipated.
8 Yes, we anticipated that some people would
9 have the right to opt out here.

10 I think it is an accomplishment of
11 both sides that the pastoral mission of the
12 church has been joined with the compensatory
13 aim of litigation in this case. And I don't
14 want to take anything away from anyone's
15 accomplishment, because pastoral aims are
16 served by this settlement.

17 But I do want to be clear that
18 every pastoral item in that settlement
19 agreement, except Item E, presentation to the
20 Sexual Abuse Advisory Board, reflects what
21 the diocese was already doing before this
22 litigation was instituted. Those are our
23 policies. But it is important that those are
24 major concerns and people need to know why
25 there wasn't a need to compel us to do those

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1 things. Well, we've documented that we were
2 already doing them. And having satisfied
3 that obligation, we reflected that in a
4 settlement agreement.

5 That doesn't take anything away
6 from Mr. Richter's fee. I simply want it
7 clear on the record that we did not have to
8 be dragged kicking and screaming to have a
9 Sexual Abuse Advisory Board, to have
10 policies, to have a victim assistance
11 minister, those are things we were previously
12 doing.

13 Finally, it's true that Mr. Richter
14 was going to argue that the diocese was not
15 properly a charity and, therefore, not
16 entitled to charitable immunity. The two
17 sides were getting ready to litigate that
18 issue and the case moved on into settlement
19 mode so it did not get resolved. I'm
20 disappointed that he felt the need to make
21 accusations and assert his side of that case
22 before you today when what was in front of
23 you was the issue of his fee petition. He
24 did. I'm just going to tell you the diocese
25 has its side of the story. We believe we

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1 would have prevailed on the issue; I believe
2 Mr. Richter believes he would have prevailed
3 on issue. That's not why we're here. We're
4 not here to fight about that. We settled
5 this case. That's all I have to say. Thank
6 you, Your Honor.

7 THE COURT: Very well. All right.
8 We're going to take -- I think there are some
9 additional issues and we're going to take a
10 lunch break and I will see everyone back here
11 at 2:30. I know that's short, but we do need
12 to conclude today. 2:30.

13 MR. RICHTER: Thank you, Your Honor.

14 THE COURT: And that document needs to
15 be made an exhibit.

16 And, Robin, bring it to me.

17 (Lunch recess taken from 1:49 p.m. to 2:39
18 p.m.)

19 (Marked for purposes of the record was
20 Court's Exhibit 1, Crimen Sollicitationis.)

21 THE COURT: Thank you all so much. And
22 please be seated. All right. Tell me what
23 now remains issue wise.

24 MR. RICHTER: Your Honor, the only issue
25 that I'm aware of that remains is that you

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1 had previously issued an order in this
2 matter, and among the things you addressed
3 was the issue about the diocese posting the
4 money. And you required that as of today
5 they had to post the money by guaranteed
6 funds. So I assume they're going to walk up
7 here and do that and we'll be out of here and
8 that's the last thing I think we need to do.

9 THE COURT: Okay. Great. All right.
10 Where are we?

11 MR. GEOLY: Your Honor, what the diocese
12 has done is segregate two specific funds that
13 are in existence now. One is a money market
14 fund in which the \$5 million obligation under
15 the settlement agreement is satisfied. The
16 balance in the account is less than
17 \$5 million because of certain advances on the
18 settlement that have been made, but it
19 complies with the \$5 million obligation.
20 That is the \$5 million fund.

21 The \$7 million obligation is
22 addressed with a fund that has a 50/50 split
23 of corporate and treasury bonds valued as of
24 the February statement at \$9 million.

25 As the Court has probably heard

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1 directly or indirectly, the diocese is in the
2 process of procuring a letter of credit to
3 fulfill the \$7 million guarantee obligation,
4 but since that was not prepared and issued in
5 time for today, this fund which is in
6 existence is.

7 And the idea would be, obviously
8 with notice to the Court and approval, that
9 at such time as the letter of credit is
10 actually issued by the bank we would simply
11 swap the letter of credit for this particular
12 account. But in the meantime, the account is
13 fully ready to be tendered as the guarantee
14 for the \$7 million obligation.

15 I am a little bit unclear about the
16 procedure, so I'll just say it out loud and
17 make sure that we all know what we're
18 supposed to do. My understanding is that
19 after you've considered everything from
20 today, at some point today or some other day
21 you're going to issue a final order
22 encompassing all of this. And that upon
23 receipt of that order we will be executing
24 papers to vest control over these accounts in
25 the escrow agent who is, I think, here today.

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1 And I just -- that's my understanding of what
2 we were supposed to do.

3 I do know from the chief financial
4 officer of the diocese that he's already done
5 the homework of what papers those need to be,
6 they're not complicated, and can be done on,
7 you know, less than 24 hours' notice. So
8 upon -- my understanding is upon receipt of
9 the order we're prepared to simply vest
10 complete control over these funds in the
11 escrow agent. That's where we are.

12 THE COURT: I understand. Now, just let
13 me see if I'm clear. There is a money market
14 fund of \$5 million, but it's something less
15 than \$5 million.

16 MR. GEOLY: Let me give you the exact
17 balance, I don't mean to be vague. As of the
18 February 28th, 2007 statement the money
19 market has \$4,544,000 in it leaving off the
20 change, the loose change, \$44,000 of which I
21 believe is interest that's been earned in the
22 account. There was a previous advance of
23 some of the settlement funds made, that's the
24 only reason this is less than \$5 million, but
25 both sides agree that this fund satisfies the

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1 \$5 million obligation. That this amount
2 satisfies the \$5 million obligation.

3 THE COURT: I understand. And what do
4 you propose to do with the money market fund?

5 MR. GEOLY: We propose to sign a paper
6 directing the institution holding the funds
7 changing control over the account.

8 THE COURT: Okay.

9 MR. GEOLY: And vesting control in this
10 money market account in the escrow agent who
11 would then be governed by the settlement
12 agreement in terms of how he could, would
13 have access to the money.

14 THE COURT: Okay. And that is the
15 moneys to satisfy the \$5 million part of the
16 settlement. Very well. And what I think
17 you're telling me, Mr. Geoly, is that the
18 diocese would propose to keep that money
19 unaffected other than it would continue to
20 earn interest, I gather, until such time as
21 assuming that the agreement is -- there's a
22 final order entered regarding the agreement,
23 at that point it would be then turned over to
24 the escrow agent.

25 MR. GEOLY: Upon receipt of your order,

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1 right. We would not propose giving the money
2 over because we haven't yet received the
3 settlement.

4 THE COURT: Right. Right, exactly.

5 MR. GEOLY: But with your order, this
6 settlement is effective and I think that is
7 simultaneously our obligation to tender the
8 funds.

9 THE COURT: Right. Exactly. I'm afraid
10 I'm not being clear because it's really a
11 two-step process.

12 MR. GEOLY: Sure.

13 THE COURT: One of the concerns, as I
14 have understood it from counsel, is that the
15 diocese was to obligate, set aside funds.

16 MR. GEOLY: Correct.

17 THE COURT: And then there's been some
18 concern because as you all have gone through
19 this process that hadn't occurred.

20 MR. GEOLY: Correct.

21 THE COURT: And I agree with you
22 completely, you wouldn't relinquish control
23 until such time as the settlement is --
24 becomes a court order. All right. But just
25 so I'm clear, the money market fund that

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1 you've just mentioned satisfies that element
2 of having the funds obligated in the event
3 that the settlement is approved.

4 MR. GEOLY: Correct.

5 THE COURT: Okay.

6 MR. GEOLY: And they are the actual
7 funds that will be handed over, or control of
8 which will be handed over to the escrow
9 agent.

10 THE COURT: Got it. And the second
11 prong would be the \$7 million fund, what
12 you're saying is actually going to be funded
13 with a \$9 million --

14 MR. GEOLY: Account.

15 THE COURT: -- account.

16 MR. GEOLY: Yes.

17 THE COURT: And that it would be the
18 intention, however, of the diocese to
19 substitute the irrevocable line of credit
20 letter for that \$9 million fund and that the
21 control of that would be relinquished also to
22 the escrow agent.

23 MR. GEOLY: Right. We're not going to
24 ask anybody to wait. Upon receipt of your
25 order immediate control of the fund will be

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1 relinquished.

2 THE COURT: Okay.

3 MR. GEOLY: But the swapping would occur
4 later when the letter of credit is actually
5 issued.

6 THE COURT: Sure. I understand.

7 MR. GEOLY: That's what we wish to do.

8 THE COURT: I understand. And at this
9 point what you're doing to satisfy that
10 concern that the money be obligated, you have
11 two items. Number one, the money market
12 5 million which is actually 4,544,000, right?

13 MR. GEOLY: Yes.

14 THE COURT: And then the second fund
15 that you were referring to that actually has
16 about \$9 million in it.

17 MR. GEOLY: Your Honor, as of
18 February 28th, 2007 the balance is 9,000,653
19 and change.

20 THE COURT: All right. And have you
21 identified those accounts and numbers and all
22 to the plaintiffs?

23 MR. GEOLY: We're happy to do that, Your
24 Honor. We have one concern which I don't
25 think will be a problem for anyone. Simply

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1 for the financial privacy of the diocese,
2 we'd like to provide the account numbers and
3 the institutions to counsel confidentially.

4 THE COURT: Sure.

5 MR. GEOLY: And I don't think that as
6 long as they're satisfied that these accounts
7 exist, I think that should be sufficient.

8 THE COURT: I have no problem with that
9 at all --

10 MR. GEOLY: Thank you.

11 THE COURT: -- to maintain the
12 confidentiality at this point at all.

13 MR. GEOLY: Thank you.

14 THE COURT: I certainly do not. All
15 right. Thank you. Let me hear from --

16 MR. GEOLY: Your Honor.

17 THE COURT: Yeah, sure.

18 MR. GEOLY: I have a housekeeping matter.
19 and it's my own -- I should have clarified
20 this earlier before we took the break, but I
21 just wanted to understand something and God
22 knows I don't want to reopen a closed issue.

23 You had asked Mr. Richter to put
24 into the record the "Crimes Solicitationis"
25 document.

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