

The State of South Carolina In The Court of Appeals

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

Appeal 2026-000191

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

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SC Court of Appeals

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

v.

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

AND

Jane Doe 304, Appellant,

v.

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

AND

Robert Chimento, Appellant,

v.

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

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

**Record on Appeal
Volume Eight of Eight**

Index to Volume Eight

Transcripts (Continued)

Transcripts in the Class Action (Continued)

a.	March 9, 2007	Transcript of Hearing before Judge Goodstein Part 2	p. 3321
b.	July 13, 2007	Transcript of Hearing before Judge Goodstein	p. 3341
c.	August 9, 2007	Transcript of Hearing before Judge Goodstein	p. 3374
d.	January 29, 2009	Transcript of Hearing before Judge Goodstein	p. 3434

Transcripts in Related Litigation

April 10, 2014	Transcript of Hearing before Judge Nicholson	p. 3578
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Charges

There are no charges.

Exhibits

Exhibits in the Three Cases on Appeal

Affidavits of Service in 2019-CP-10-5892 (Jane Doe 304)	p. 3629
Emails between counsel in 2022-CP-10-4031 (305-McDonald)	p. 3631

Exhibits Related to the Class Action

July 26, 2006	S.C. Supreme Court Administrative Order 2006-07-26-01	p. 3636
March 10, 2008	Letter from class counsel to Judge Goodstein with 2008 accounting	p. 3638

July 22, 2008	Affidavit of Marvin Infinger	p. 3646
February 28, 2009	Supplemental Affidavit of John Freeman	p. 3651
April 15, 2009	Letter from Counsel for the Diocese to Judge Goodstein with proposed consent order of dismissal	p. 3653
June 22, 2016	Letter from Counsel for Richter et al. to clerk with order Appointing Judge Nicholson	p. 3656
November 16, 2022	Letter from Counsel for the plaintiffs to Judge Taylor about November 23 status conference	p. 3659
<u>Certificate by Appellant</u>		p. 3662
End of Volume Eight		p. 3663

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

1 THE COURT: Yes.

2 MR. GEOLY: As you probably know, it is
3 attached to the complaint that was filed,
4 it's in the pleadings this case, so it's
5 there. But I wasn't understanding the
6 capacity in which you were taking it into the
7 record.

8 THE COURT: Thank you. Thank you.

9 MR. GEOLY: If it's admitted in
10 evidence, then we do have an objection. If
11 it's in because you wanted to see the
12 document that he was referring to, and it is
13 in the pleadings already, then we don't have
14 an objection. So I just -- I just want to
15 know so I know whether to make an objection
16 for the record.

17 THE COURT: Make the objection for the
18 record.

19 MR. GEOLY: My objection for the record
20 is that the document lacks authentication and
21 is hearsay. Thank you, Your Honor.

22 THE COURT: Thank you. Very well.

23 Anything further from class counsel.
24 at this point regarding --

25 MR. RICHTER: This issue?

March 9, 2007

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

1 THE COURT: Yes, the funds.

2 MR. RICHTER: Yes, ma'am. Your order,
3 Your Honor, specifically required that
4 guaranteed funds be posted. There's a good
5 reason for that, of course, and there's a
6 good reason to get it out of the diocese and
7 in to the escrow agent, because if tomorrow
8 afternoon somebody came in and attached all
9 the assets of the diocese for whatever
10 reason, then this class wouldn't be funded,
11 although it was supposed to have been many
12 months ago.

13 Our concern is we'd like to read
14 the guarantee. They haven't told us who's
15 guaranteeing these funds and what the
16 guarantee is. Now, I know a little something
17 about corporate bonds. T bills are one
18 thing, corporate bonds are a very different
19 issue.

20 Secondly, we -- I don't think these
21 are IOLTA funds. We have looked at that, and
22 I just want to make sure they have looked at
23 that issue and that none of us are doing
24 something that we're not allowed to do about
25 how we classify these funds. I just offer

March 9, 2007

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

1 that for everybody's benefit.

2 And then the last thing, the last
3 thing is depending upon what you're going to
4 do, we obviously have been going back and
5 forth and meeting about all this, we didn't
6 just come in here today cold. And last
7 evening they told us, afternoon late they
8 told us about these two funds. Previously
9 the chief financial officer told us he was
10 only posting \$5 million today, wasn't
11 obligated to post any more than that. But in
12 any event.... And they said we're getting a
13 letter of credit, but it will be a seven- to
14 14-day delay.

15 Now, we met with you for four hours
16 on our initial meeting, all counsel, and
17 these counsel represented to you, as they had
18 consistently represented to us, that the bank
19 was a holdup, that the bank couldn't get --
20 they needed one more thing, they needed one
21 more thing, they needed one more thing. I
22 don't know if you remember this way back in
23 October or so.

24 We were skeptical of that because
25 we had been hearing that since June. I have

March 9, 2007

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

1 subpoenaed Ms. Creed Jennings who is the
2 bank --

3 THE COURT: B of A, Bank of America.

4 MR. RICHTER: B of A, yeah, the B of A
5 representative of this client account, client
6 transactions. I've also subpoenaed her file
7 records concerning requests by the diocese
8 for the issuance of letter of credit since
9 June the 14th of 2006 for the reason that
10 we're now being asked -- they're saying to
11 you, without saying it, your order doesn't
12 mean a thing to us, we're the diocese, and
13 although you said we got to have guaranteed
14 funds, we're not going to do it still today.
15 We're going to give you something else that's
16 not guaranteed.

17 In addition to that, I'm concerned
18 about the representations that have been
19 made, and by brief inquiry of this witness we
20 believe that it will be shown to this Court
21 when a request for the letters of credit
22 which would have solved this problem was
23 made. So that's the reason that she is here
24 and we'd like to hear from her in that
25 regard. And she may say day one. If she

March 9, 2007

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

1 says day one, I understand, may be all the
2 bank's fault.

3 THE COURT: Okay.

4 MR. GEOLY: Your Honor, I object to
5 this. For one thing, it's utterly
6 irrelevant. You scheduled this hearing for
7 today. We're here today. We're supposed to
8 have money. We have the money. What is the
9 point of this?

10 Number two, the settlement
11 agreement says simply that the funds shall be
12 guaranteed by the issuing bank to be
13 available. Well, they're in the account. If
14 they want to receive assurance from our bank
15 that the funds are really in the account, we
16 have no objection to that. We've been
17 providing the assurances, we have the bank
18 statements, we'll provide them again. I
19 don't see the point of calling our banker to
20 the stand to delve into when we contacted
21 them and what we said to them going back to
22 June of 2006. That's not what's before you.

23 MR. RICHTER: We can't get the funds
24 from the bank. If tomorrow we needed the
25 funds, we'd have to now go deal with some

March 9, 2007

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

1 corporate issuer of some bond. I don't know
2 anything about the restrictions on calling
3 that bond, I don't know anything about a
4 penalty for any of those things. And they're
5 not guaranteed as funds.

6 What he's saying to you is, we're
7 willing to represent to you that we've got
8 some bonds. One set of government, one set
9 of private corporate. Don't know anything
10 about the litigation that these corporations
11 are in, their final viability at any point in
12 time. But I do know that the diocese has
13 either 36 or \$46 million of unrestricted
14 funds, which I assume unrestricted funds
15 means they can place with this Court and
16 satisfy this obligation.

17 And I do know that since June of
18 last year, I believe, the diocese hasn't
19 asked for a letter of credit until very
20 recently, and I do know that we don't have
21 the letters of credit still today, which we
22 could then -- not us, but the escrow agent
23 could call and the bank must honor upon
24 our -- I'm saying our, not literally our.

25 THE COURT: Right.

March 9, 2007

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

1 MR. GEOLY: Your Honor, first of all the
2 settlement agreement says letters of credit
3 of other pools of funds. It anticipates
4 specifically we may not ever use a letter of
5 credit. That was in our discretion.

6 Number two, the \$5 million
7 obligation is sitting in a money market
8 account as cash money available to spend
9 tomorrow on the fee that counsel has so
10 vigorously argued for.

11 Number three, there isn't a dime of
12 the settlement pool that can be spent
13 tomorrow on claim satisfaction. As you know,
14 there's a 120-day period before people can
15 even -- even close the claims process.

16 If more assurances are needed -- I
17 mean, my understanding is that with an
18 instruction from the escrow agent the bond
19 fund -- it's a fund of bonds is liquidated,
20 and the money's made available. If counsel
21 needs more assurance on how that's done or
22 what the actual terms are, we're happy to
23 provide that to him. The real point is we
24 had a \$5 million and a \$7 million obligation,
25 we've met them. And what he wants to do is

March 9, 2007

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

1 now go back and dredge up whether he thinks
2 we were keeping our word since June and
3 trying to find out if somebody told him that
4 we were trying to get money from the bank
5 when he thinks we really weren't.

6 None of that is at issue before you
7 today. Are we here meeting our obligations?
8 We are. You have an agreement to finalize
9 and to consider. I don't -- I don't see why
10 calling our banker to the stand over what
11 occurred in June is relevant to your task
12 here.

13 THE COURT: Okay. And here's just --
14 just so that I'm real clear about what has
15 occurred, the money, you're telling me that
16 the two funds exist, that those -- that
17 the -- those funds will remain, that the --

18 MR. GEOLY: Upon your order we will sign
19 the funds over to the escrow agent.

20 THE COURT: Okay. And that the -- and
21 that there may be a substitution for the
22 letter of credit for the \$9 million fund.

23 MR. GEOLY: Correct.

24 THE COURT: Okay. Very well. Now,
25 counsel, I want to talk to you because I'm

March 9, 2007

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

1 happy to get your position on where I think I
2 am at this juncture because it causes me
3 grave concern.

4 There are two pieces of information
5 that I now have that concern me. And in all
6 candor in the settlement, in my settlement
7 conference with counsel and, of course, both
8 of you were there, both of these -- all four
9 of you lawyers were here. Mr. Lofton wasn't
10 present, but outside Mr. Lofton the four of
11 you were present and we met and went through
12 the settlement proposal and talked about the
13 settlement. But today there are two new
14 pieces of information and those two pieces of
15 information cause me great concern. Great
16 concern.

17 The first, of course, is what has
18 been marked as Court's Exhibit Number 1. And
19 that -- this document causes me great concern
20 which is why, Mr. Geoly, I wanted you to put
21 any objections to the document that you felt
22 compelled to place on the record.

23 And secondly I am concerned with
24 counsel's representation that there is -- not
25 representation, let me call it argument, that

March 9, 2007

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

1 there is a difference between the number of
2 priests who have engaged in sexual assault or
3 abuse and the real number. And that the real
4 number may be somewhere hidden or undisclosed
5 or secret.

6 That, of course, would be a
7 violation of the criminal laws of the State
8 of South Carolina, both in the form of
9 obstruction of justice as well as any
10 underlying crimes which may or may not have
11 been committed against children of this
12 state. That now predominates in my mind.

13 I have so informed our solicitor
14 David Pascoe. And I contacted David Pascoe
15 because you are in the First Judicial
16 Circuit..

17 I will order Solicitor Pascoe to
18 undertake an investigation. I will share
19 with him what has now been marked as the
20 Court's Exhibit Number 1, because the Court
21 has an obligation where there is information
22 that comes directly to the Court that there
23 have been crimes that have been committed
24 that the Court take appropriate action. I
25 have, and will, order Solicitor Pascoe to do

March 9, 2007

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

1 that. That must happen before I can approve .
2 the settlement for this reason: Because if
3 it is true that which has been argued that
4 there are children who have been abused and
5 been undisclosed, and their only remedy is to
6 receive newspaper publication and then to
7 come forward, that is insufficient in my mind
8 because those would be names that would be
9 known and they are entitled to more attention
10 than that.

11 So, that is where we are at this
12 point. I'm happy to hear from counsel, but
13 in my mind that is where we are. I must have
14 assurances that there are no known crimes
15 that have been committed against children,
16 now adults, that have been undisclosed to law
17 enforcement before I can go forward any
18 further with regards to the settlement.

19 I'll hear first from plaintiffs'
20 counsel.

21 MR. RICHTER: Thank you, Your Honor.
22 The -- I'm sorry that you had to undertake
23 the actions that you've had to undertake, but
24 I am most appreciative of your public sense
25 of concern, particularly for those who as

March 9, 2007

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

1 children don't have the wherewithal otherwise
2 internally or certainly by their standing in
3 line to proceed on their own. It is my
4 sincere hope that the diocese has not -- has
5 not covered up the abuse of any child.

6 If -- and I know there's a lot of
7 money at stake here -- this proceeding today
8 and this lawsuit keeps one further child from
9 being abused, or uncovers any coverup
10 whatsoever by this diocese, then the money
11 pales in comparison of importance.

12 So while we don't want to delay,
13 and I understand it, I think the good news is
14 that the diocese is the repository of that
15 information and can make it, I hope, readily
16 available to the solicitor.

17 We have had many contacts from
18 people during the duration of this litigation
19 and particularly during this advertising
20 period. And while we certainly agree to keep
21 everything confidential, we -- that is
22 information at least for matching purposes or
23 scope of remedy available to these people
24 that we would like to know in processing
25 claims for the class as well. Thank you.

March 9, 2007

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

1 MR. GEOLY: Your Honor, first of all my
2 understanding has been and is that it has
3 been the policy of the diocese for some time
4 to report every allegation it receives
5 directly to the solicitor and to encourage
6 anyone who comes forward to go to the
7 solicitor.

8 We are not aware, and I've just
9 conferred with Mr. Shahid, of any known
10 claims against the diocese involving child
11 sexual abuse that have not been reported to
12 the solicitor. We will, of course, cooperate
13 fully with any inquiry from the solicitor.

14 But I am trying to understand what
15 has -- the source of the concern that there
16 are undisclosed claims. You know, the
17 diocese has, especially of late, had to
18 inventory all the claims back to 1950 and
19 make a report of them. That's the number
20 that's been shared in the public. And my
21 understanding is that they've all been
22 reported.

23 Again, we're happy to go through
24 this step. If there's a delay in
25 implementing the settlement, then so be it,

March 9, 2007

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

1 but if there's something I could address that
2 was sort of the cause of the concern, I would
3 be happy to address it I guess is what I'm
4 trying to say.

5 THE COURT: Absolutely. And I
6 appreciate that so much, Mr. Geoly, which is
7 another reason why I am not pressing any more
8 with regards to the funding. Because there
9 is a delay, and I don't want the diocese at
10 this point, I'm very comfortable with the
11 diocese not relinquishing control at this
12 moment to the trustee.--

13 MR. GEOLY: Okay.

14 THE COURT: -- for that reason. I'm
15 very comfortable with it where it is. You
16 know, and obligation of the judiciary is such
17 that when you hear things, even in the
18 context of a civil matter that may be
19 applicable to the criminal law, it is
20 incumbent upon that judge to stop and to be
21 sure that -- to be sure that those -- that
22 those matters are satisfied in terms of the
23 criminal law. That is all that this -- that
24 this is. This is not a finding.

25 MR. GEOLY: Fair enough.

March 9, 2007.

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

1 THE COURT: This is no more than we must.
2 proceed appropriately.

3 MR. GEOLY: Very good.

4 THE COURT: That would be the -- that
5 would be the appropriate first step. It
6 is -- it would be a wonderful thing and a
7 wonderful thing if this step is very short.
8 If everyone is satisfied, if law enforcement
9 is satisfied that these matters are of no
10 concern and that communicates back, then
11 we'll be able to go forward.

12 MR. GEOLY: We'll cooperate fully with
13 the solicitor, Your Honor.

14 THE COURT: And please understand at no
15 point did I intend to communicate otherwise,
16 because I absolutely believe that to be true.

17 MR. GEOLY: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. GEOLY: Mr. Shahid I think has one.

20 THE COURT: Sure.

21 MR. SHAHID: As a matter of procedure --

22 THE COURT: Yes.

23 MR. SHAHID: -- do we reconvene? How do
24 we initiate the process? How do we get back
25 to you? What is your intent on where we go

March 9, 2007

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

1 from here?

2 THE COURT: There are a couple of
3 scenarios that could occur. Now, I will
4 articulate these and neither one of these
5 will happen because I articulate them, it
6 will be something that I cannot even think of
7 that will occur.

8 One thing that could occur is that
9 there will be an investigation by the
10 solicitor. The solicitor could say, you know
11 what, I'm satisfied these matters have been
12 heard, there are -- you know, there are no
13 new concerns, proceed onward, at which point
14 I don't need any further argument at all.

15 MR. SHAHID: Okay.

16 THE COURT: I don't need any further
17 argument because I have all the information
18 that I need to make my decision if nothing
19 else changes from this moment. And I would
20 issue my decision. That would be the first
21 thing.

22 The second thing that could occur,
23 and please, as I articulate this I do this by
24 example only because you have asked. I have
25 no information whatsoever that this would

March 9, 2007

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

1 occur, so please don't think that I have --
2 that I have any feeling about this because I
3 don't. But let's say that 100 new cases of
4 abuse surfaced that were to that moment
5 unknown. Well, obviously, obviously at that
6 point I'm going to need to know that. I'm
7 going to need to hear from you, both sides.

8 MR. SHAHID: Sure.

9 THE COURT: How do you feel about that?
10 What, if any, effect on these proceedings, on
11 this settlement does that have? It would be
12 impossible for you to know or for me to know
13 how or what that effect might be. But again,
14 please understand I have no feeling
15 whatsoever about that occurring, I really
16 don't. I just know that this is the
17 appropriate thing to do.

18 MR. SHAHID: Okay.

19 THE COURT: Having said, again, those
20 two scenarios, neither one of those will
21 probably happen, it will probably be
22 something that none of us have anticipated.

23 It would be my intention that --
24 that our solicitor would communicate with
25 both of you and anyone else that they need

March 9, 2007

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

1 to, and I think clearly the place to begin is
2 with you and I have told him that I will give
3 to him this document. He may want a
4 transcript of these proceedings, and beyond
5 that he will do what he does. Maybe he will
6 keep it, maybe it goes to the attorney
7 general, but it will go to someone other
8 than -- other than the Court, obviously, at
9 this point and then we will -- once that
10 has -- once that process is either concluded
11 or come to some other juncture, then we may
12 need to get together and let me hear from you
13 at that point, but at this juncture I think
14 it's very difficult to know what is the next
15 step.

16 MR. SHAHID: Okay.

17 THE COURT: And it very well may be that
18 it is clear and I'll go forward and make my
19 decision.

20 MR. SHAHID: Okay. Thank you, Judge.

21 THE COURT: Thank all so much. Anything
22 further?

23 MR. RICHTER: Nothing from plaintiffs.

24 MR. SHAHID: Nothing from us..

25 THE COURT: I want to thank all of you

March 9, 2007

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

1 for being here today and for your patience as.
2 I have gone through these matters to learn
3 about these issues. I know it has been long.
4 I hope nobody's blood sugar plummeted
5 dramatically, but thank you all for the time
6 you have given me, counsel, today and your
7 explanation and we will -- I suppose the best
8 thing to say is we will be in touch. Thank
9 you so much.

10 MR. SHAHID: Thank you, Judge.

11 THE COURT: We'll be convened with these
12 proceedings today.

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March 9, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter
and First Judicial Circuit Court Reporter, certify
that the preceding pages are a true and correct
transcript of the proceedings had at the aforesaid
time and place.

I certify that the same was reduced to
typewritten form from my original stenograph notes
by computer-aided transcription.

I further certify that I am not of counsel or
kin to any of the parties to this cause of action,
nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand
this the 16th day of March 2007.

S/

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

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

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

THE COURT: Good.

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

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

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

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

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

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

1
2

ahead, shoot. What?
MR. SHAHID: Judge, I sent by fax a

July 13 2007.txt
letter to you yesterday.

THE COURT: Right, yeah.

MR. SHAHID: And I copied Mr. Richter, Mr. Haller, the other class counsel attorneys simply to announce the progress we have been making regarding this case.

THE COURT: wonderful.

MR. SHAHID: One was resolving this issue in a motion. In my conversation with Mr. Pascoe in the courtroom today.

THE COURT: Yes.

MR. SHAHID: It was my understanding he was either going to chat with you, provide you with an interim report as to where he stood. And Mr. Haller and I have been on the phone I think about every day this week, one of the things.

The main concern was the diocese's position on this creation of a subclass and we've had very frank discussions with class counsel about that and we just don't think in, all due respect to what --

THE COURT: That it's necessary.

3

MR. SHAHID: It's necessary. And we quite frankly think the diocese, quite frankly, thinks that it is going to create more of a problem than what the Court is trying to avoid happening.

THE COURT: Okay.

MR. SHAHID: And what we're trying to do
Page 2

8 is take care of those victims to make sure
9 that they are included in the class and they
10 get notice of the class and try to stop
11 whatever potential loophole they may be -- if
12 something strange happens, I guess in which
13 someone pops back up who should have gotten
14 notice who didn't get notice.

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

25 THE COURT: Let me ask you this

4

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

5 MR. SHAHID: Right.

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

July 13 2007.txt
12 pursuant to notice already knew about. I'm
13 talking about sum total of 40 individuals
14 that the diocese was aware of had made at
15 some point through going through old records
16 pursuant to -- really to working with
17 solicitor Pascoe's request, that there were
18 some 40 individuals who were identified as
19 being individuals that were potentially or
20 were sexually abused by priests, by
21 individuals from the diocese and that
22 pursuant to our status conferences I wanted
23 obviously the solicitor have all the
24 information that you have had and I think
25 you've shared that with the solicitor.

5

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

16 with regards to the other 20 while
Page 4

July 13 2007.txt

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

6

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

Page 5

July 13 2007.txt
21 record whatever you need to. My concern was,
22 I wanted to be able to go forward on those
23 people that have already gone forward that
24 everybody sort of knows about.
25 MR. SHAHID: Right.

7

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

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

1 they seemed to want to go forward.

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

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

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

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

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

5 THE COURT: Yes.

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

8 THE COURT: Right.

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

20 THE COURT: Okay.

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

10

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

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

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

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

22 THE COURT: Okay.

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

25 THE COURT: Okay. Okay.

11

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

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

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

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

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

12

1 directly aware of this action.

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

11 MR. SHAHID: Right.

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

17 informed.

18 MR. SHAHID: Right.

19 THE COURT: And that was his interest.

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

13

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

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

17 MR. SHAHID: Right.

18 THE COURT: Yeah.

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

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

14

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

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

12 MR. SHAHID: Thank you.

13 THE COURT: Yes.

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

20 THE COURT: Yes, for the civil matter.

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

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

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

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

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

3 man hold the position that he holds.
4 Now, that having been said, I think
5 that what Mr. Shahid has said to you, and I
6 know that we have written you, both
7 Mr. Shahid and us we have indicated as class
8 counsel in our letter that the subclass idea
9 was a thing that was acceptable to us. We
10 are satisfied and we really have worked very
11 hard.

12 THE COURT: I know you have.

13 MR. RICHTER: Very much together on this
14 thing.

15 THE COURT: I know you have.

16 MR. RICHTER: We really think that it's
17 not necessary because of what the diocese has
18 come to. And what the diocese has come to is
19 that if anybody has been missed or if there
20 is anybody who responds as a result of these
21 who have been identified to, the diocese
22 waives all the same defenses that they have
23 given up in this class settlement, consents
24 to the same method of compensation, consents
25 to the same early disposition of that claim

17

1 by a same arbitration method, the whole nine
2 yards.

3 THE COURT: Wow.

4 MR. RICHTER: And we have put those
5 terms in the letters that we have both
6 submitted to Your Honor -- both sides
7 submitted to Your Honor yesterday and, of

8 course, they'll be submitted to you in a
9 formal way assuming that Your Honor is now
10 comfortable with that. But we are completely
11 now comfortable with that. So that's said.

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

16 THE COURT: Four.

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

18

1 just want to make a final record here.

2 THE COURT: Sure.

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

July 13 2007.txt
12 my statement in that regard.
13 Stephen Smith is twice a retiree,
14 he's a full bird colonel retiree on the
15 military side and he's a 30-year SLED, South
16 Carolina Law Enforcement Division retiree on
17 the law enforcement side having done, I
18 think, 25 years of narcotics including
19 undercover work for many years and five
20 years -- his last five years as the deputy
21 director of SLED, I'm not sure which exactly
22 five years, I can't say that, but he finished
23 his career as a deputy director of SLED and
24 is now retired. He has taught all over the
25 country and the world, including teaching in

19

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

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

8 THE COURT: Okay.

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

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

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

20

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

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

July 13 2007.txt
21 in Arkansas, so that we have reported all of
22 that back to the diocese for them now to take
23 the next most appropriate action. Similar
24 accounts for all of these.
25 Number two again in the Georgetown

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

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

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

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

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

9 MR. RICHTER: Yeah, okay.

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

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

16 THE COURT: Got it.

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

21 THE COURT: Okay. Great.

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

1 THE COURT: Great.

2 MR. RICHTER: And then there is a person

July 13 2007.txt

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

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

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

24

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

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

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

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

25

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

10 THE COURT: Absolutely, I agree.

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

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those people.

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

26

1

MR. SHAHID: Well, good.

2

THE COURT: Yeah.

3

MR. SHAHID: Just a little caveat.

4

THE COURT: Uh-huh.

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7

8

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

9

10

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

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12

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

THE COURT: Okay.
Page 22

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

21 THE COURT: Yeah.

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

27

1 our largely -- or appearance today.

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

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

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

28

1 helping to accomplish that and the diocese
2 for helping to accomplish the same thing.
3 And I think with that we have covered the
4 water front, haven't we, Peter?

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

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

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

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

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

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

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

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

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

6 MR. RICHTER: Thank you.

7 THE COURT: Boy that is fantastic,
Page 26

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

15 MR. RICHTER: Thank you.

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

22 MR. RICHTER: Thank you.

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

32

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

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

July 13 2007.txt
12 these lawyers and I know that it comes from
13 probably perhaps a change in the -- perhaps a
14 change in the theory and, but you're right,
15 there's been a real need, Mr. Shahid, for
16 transparency and I've watched it. I've
17 watched it. You know, and Mr. Richter is
18 about as aggressive a lawyer as there is.
19 There are those that say he practices law
20 like the Texas chainsaw massacre, he takes no
21 prisoners, and even in the most gentle status
22 conferences he's been ready to, you know,
23 take you and Mr. ((Geoly out most every time.
24 And you all have been most patient. And
25 particularly I've watched Mr. ((Geoly also,

33

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

6 MR. SHAHID: Thank you.

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

12 MR. SHAHID: Thank you, Judge.

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

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

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

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

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

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

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

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

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

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

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

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

18 THE COURT: Not at all.

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

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

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

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

14 MR. PASCOE: Thank you.

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

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1 gracious and kind to inform me of it, I think
2 it's extraordinary and I will look for orders
3 when I return from vacation. I will be in
4 St. George the week of the 23rd, for your
5 information. I'm looking for orders from you
6 that week. The week after that, I think the
7 next week I'm actually in St. George, if not

8 St. George, Orangeburg. I'm either in
9 St. George or Orangeburg for the three weeks
10 after this coming week for -- after my
11 vacation and would like your orders from you
12 just as soon as they're ready.

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

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

17 MR. SHAHID: Thanks, Judge.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER) 2006-CP-18-1310
 2006-CP-18-1311
 2006-CP-18-1636

JOHN DOE 53, JOHN DOE 66,)
JOHN DOE 66A, JOHN DOE 67,)
JANE DOE 1 AND JANE DOE 2 AND)
RACHEL ROE INDIVIDUALLY AND)
AS REPRESENTATIVES OF A CLASS)
OF PEOPLE SIMILARLY SITUATED,)

PLAINTIFFS,)

VS.)

TRANSCRIPT OF RECORD

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

DEFENDANT.)

AUGUST 9, 2007

ORANGEBURG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

A P P E A R A N C E S:

DAVID K. HALLER, ESQUIRE
V. LYNN LOFTON, ESQUIRE
LAWRENCE E. RICHTER, JR., ESQUIRE
WILLIAM H. WARING, III, ESQUIRE
ATTORNEYS FOR THE PLAINTIFFS

RICHARD S. DUKES, JR., ESQUIRE
JAMES C. GEOLY, ESQUIRE
A. PETER SHAHID, JR., ESQUIRE
ATTORNEYS FOR THE DEFENDANTS

ELIZABETH B. HARRIS, CVR
CIRCUIT COURT REPORTER

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
ARGUMENT BY MR. SHAHID	18
RESPONSE BY MR. RICHTER	32
RESPONSE BY MR. GEOLY	42
FURTHER ARGUMENT BY MR. SHAHID	43
ORDER OF THE COURT	46
CERTIFICATE PAGE	61

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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NO EXHIBITS INTRODUCED.

1 THE COURT: Let me tell you one other document I need
2 because I believe there were some notes made after the
3 mediation in June of '06, the mediation from June the 13th
4 and 14th. Weren't there notes of agreement made on June
5 14th?

6 MR. RICHTER: There were, Your Honor.

7 THE COURT: Handwritten.

8 MR. RICHTER: And I don't think any of us anticipated
9 that would be needed today, but we don't -- I don't think
10 we have any disagreement. We can tell you what those notes
11 were. I think we're all in agreement about what they were.
12 Certainly Mr. Infinger has been here previously and spoke
13 to the Court.

14 Your Honor, I believe I'm correct in stating the fact,
15 I think in October after the initial June mediated
16 settlement, you ruled that whatever was in that agreement
17 was going to be superseded by your order because we were
18 giving you terms that were different in payment than we had
19 actually written in that agreement. And we all in open
20 court, I think, all agreed to -- Mr. Geoly's indicating
21 agreement with my summary. We all agreed to that in open
22 court. And I don't know that you issued a written order,
23 but certainly you made it the oral order, and that was all
24 the case -- and we all agreed to it.

25 MR. SHAHID: Judge, I'll do one more better than that.

1 The January 12th agreement, page 1, bottom of page 1:

2 This agreement represents the formal settlement and
3 arbitration agreement, in quotations, formalizing the
4 agreement agreed between the representatives of the
5 diocese and supersedes all other agreements and/or
6 writings previously executed by the parties.

7 So, that written agreement, I think, merged or took a
8 backseat to the January 12th order.

9 THE COURT: Okay. Now, yesterday when we talked, I
10 told you all that if you could come to an agreement
11 regarding the order in which these matters would be heard,
12 that I would consider hearing them outside of the order in
13 which the motions in the matters had been filed. And I
14 would just simply ask, and I'll start with plaintiffs'
15 counsel, whether or not such an agreement has been reached.

16 MR. RICHTER: It has not, Your Honor.

17 THE COURT: All right, you concur with that, Mr.
18 Shahid?

19 MR. SHAHID: Yes, ma'am.

20 THE COURT: All right. Well, then we will go
21 chronologically, and chronologically ---

22 MR. RICHTER: Your Honor, before you do, could I put
23 something in the record, please?

24 THE COURT: Okay.

25 MR. RICHTER: Because properly I'm sure the bar and

1 the Supreme Court itself is very particular now about these
2 kinds of matters.

3 THE COURT: Yes.

4 MR. RICHTER: I know that throughout, we all know that
5 throughout this litigation, Your Honor internally walled
6 off Mr. Will Waring, who was then your clerk, from having
7 any substantial contact with us. None of us had, I'm
8 confident -- I know from our side, and I'm confident in
9 saying that from their side I'm sure it's true, too. None
10 of us had any such contact Mr. Waring. Our only contacts
11 with him were we may have gotten a call saying you're
12 scheduled for a hearing at 3:00 on next Tuesday or
13 whatever.

14 But I want to make clear now Mr. Waring is now in
15 private practice and engaged by my firm. He is an active,
16 desires to be an active participant in all the litigation
17 that my firm is involved in. And I want the record to be
18 clear for his benefit, for my benefit, for your benefit,
19 for theirs, for everybody's benefit, that he was clearly
20 walled off when he existed in your employ, and that he is
21 under no disability in now appearing as counsel in this
22 matter. If anyone has any different recollection or
23 opinion about that, please let me ask it be stated.

24 THE COURT: All right, Ms. Lofton is here. She is
25 certainly a plaintiff's counsel also and not in your law

1 firm. I gather you are comfortable with Mr. Waring. We'll
2 start with plaintiffs' side, Ms. Lofton.

3 MS. LOFTON: Yes, Your Honor.

4 THE COURT: Okay, very well. Mr. Shahid, it's up to
5 you all and you and Mr. Geoly completely. He was walled
6 off from the litigation when he was with me, and I want you
7 all completely, one hundred percent comfortable, and he
8 will vacate the courtroom if you have even a moment's worth
9 of concern.

10 (DEFENSE COUNSELORS CONFER.)

11 MR. SHAHID: Judge, as I, just so I'm clear on the
12 record with all of this.

13 THE COURT: Certainly.

14 MR. SHAHID: As I understand it, he was your law clerk
15 until the fall or August of 2006?

16 THE COURT: No. He was my law clerk, and he began in
17 August of 2006, was my law clerk until about a month ago
18 when he left my employ.

19 MR. SHAHID: Okay.

20 THE COURT: And at the point in time when he began to
21 look for employment and had interviewed, whoever he
22 interviewed with as he was going through that process, as
23 he began to interview with those folks, he got walled off
24 from that, the litigation, once he was seeking employment.
25 And particularly once he had decided to take the employment.

1 with Mr. Richter's law firm. He was walled off on all
2 their litigation, and I think this is all I've got
3 involving that particular law firm.

4 And, quite frankly, quite frankly it became a bit of a
5 difficulty, yes, because the more he interviewed, the less
6 law clerk I had.

7 MR. SHAHID: As I recall this, Judge, and I'm just
8 going back several months now.

9 THE COURT: Sure, sure.

10 MR. SHAHID: To make sure that we're all -- this is
11 brought up. There was some controversy, I guess, or
12 advocacy that started probably after October 2006, and
13 those things got worked out in January of '07.

14 THE COURT: Right, right.

15 MR. SHAHID: That's when the agreement got, the
16 agreement got signed on January 12th of '07. So, I'm
17 trying to put this in context that we're all clear on the
18 record as to when his active participation for employment
19 seeking started.

20 THE COURT: Sure, sure.

21 MR. SHAHID: And I'm just -- and that would help for
22 the record, I think, if we got all that.

23 THE COURT: I don't remember; in all candor, I don't
24 remember. I do know obviously I want to say by January I
25 don't think he was -- I really don't remember. I really

1 don't remember, in all candor. I don't remember him being
2 in and around this litigation.

3 I do remember having -- when you all, I remember when
4 you all came to me and wanted me to review the agreement
5 and the documents, Mr. Geoly, that was the marathon three
6 and a half, four-hour meeting. He did not participate in
7 that.

8 MR. GEOLY: No. That was in October of '06.

9 THE COURT: That was in October of '06?

10 MR. RICHTER: And we can document that, Your Honor, by
11 how far the chicken went.

12 THE COURT: Exactly. Exactly.

13 MR. RICHTER: I very clearly remember that.

14 MR. GEOLY: I will agree to that.

15 THE COURT: And I don't remember him, I don't remember
16 him -- I remember him not being involved in that. Am I
17 right with that?

18 MR. SHAHID: He was not involved in the October '06
19 conference we had in your chambers.

20 THE COURT: And I don't remember. I know he wasn't
21 involved in the January. I say I know he wasn't. I mean
22 I'm confident that he wasn't.

23 MR. SHAHID: Judge, I ---

24 THE COURT: Well, that's, wait a minute now.

25 MR. SHAHID: That's not true, Judge.

1 THE COURT: That's not true. No, because I -- no,
2 because I remember, I remember, actually remember having
3 conversations with him because he didn't understand the
4 procedure, and he didn't understand. I do remember he was
5 there because he did not understand how we could spend
6 three and a half hours on a document and it wasn't
7 approved, in all candor. And I do remember he was
8 nonplused about that and having that discussion with him:
9 Judge, what in the world just happened.

10 MR. RICHTER: Your Honor, maybe I can make this easier
11 for all of us. I called this to your attention because
12 there is actually a rule about this, but what the rule says
13 is that if your clerk has substantial involvement with a
14 case. Now, that substantial involvement I think is used as
15 a term of art. It doesn't mean asking you a question about
16 it, how a thing happens, which may happen in any case. It
17 says is substantially involved with a particular case.

18 In that instance, if that had happened, we'd have to
19 wall him off. But by you walling him ahead of that, which
20 is also provided for, it precludes the, quote, substantial
21 involvement in the case. I don't know of any legal issue
22 anywhere in our many, many visits with you and appearances
23 before you that Mr. Waring was ever involved in at all.
24 And if I'm wrong, I certainly stand corrected, but he's
25 sitting right here, and he can represent that to you as

1 well.

2 THE COURT: I don't know that he was and I don't think
3 that he was, but I don't want these folks uncomfortable.

4 MR. SHAHID: Judge, I'm just trying to reconstruct.

5 THE COURT: Yes, absolutely.

6 MR. SHAHID: And I'm just making sure the record's
7 clear so we're all protected.

8 THE COURT: But after, yes, after -- I was trying to
9 think. After January, the issues -- because when we met in
10 January, that was the hearing. That was the hearing, of
11 course, on the issue of fairness, and certainly you all
12 were singing on the same sheet of music ---

13 MR. SHAHID: In March.

14 THE COURT: Well, in January.

15 MR. SHAHID: In January, in March.

16 THE COURT: Early in the hearing, early in the
17 hearing.

18 MR. SHAHID: That's right. That's correct.

19 THE COURT: Early in the hearing, and then the only
20 reason it didn't go forward at that point obviously *sua*
21 *sponte* from the Court.

22 MR. SHAHID: And the only conflict or controversy or
23 adversarial role I think we really had was sometime in late
24 December or early January. I think it was more of late
25 December, like the 5th or the 15th of December. It sort of

1 sticks in my mind and that's -- I just don't remember what
2 role he had in some of the walling off process at that
3 time. There was a motion filed by the -- to compel or
4 something along those lines, and -- because there was an
5 issue getting the funding all together. And that was -- I
6 remember being there, Mr. Richter, Mr. Haller, myself, my
7 law clerk, and it was around Christmas time and we all --
8 and you set out specific parameters on dates on which
9 certain things had to be done. And I'm saying this. I
10 just don't remember his participation, and I'm asking that
11 out loud.

12 THE COURT: I appreciate you doing it, Mr. Shahid, in
13 all candor.

14 MR. SHAHID: And I'm just, and I just...

15 THE COURT: I don't remember.

16 MR. SHAHID: I don't remember.

17 THE COURT: I don't know. Did he have any ---

18 MR. SHAHID: I don't remember him being there in
19 December.

20 THE COURT: I don't know if he did or not. I don't
21 remember him having any participation in it or not.

22 MR. RICHTER: Well, let me suggest that if anybody
23 wants to know whether Will Waring has been substantially
24 involved in this case as your clerk, he was so
25 substantially involved that nobody remembered.

1 THE COURT: That's kind of embarrassing for him, isn't
2 it?

3 MR. RICHTER: It's almost a self-answering situation.

4 THE COURT: We have a brand new clerk that's watching
5 this, going this poor clerk wasn't remembered. What a
6 horrible thing.

7 MR. SHAHID: The reason I say that, that is my only
8 ---

9 THE COURT: I don't remember. Y'all help me if you
10 remember. I don't remember him being involved in it.

11 MR. SHAHID: My contact with him was simply he called
12 to say the judge wants to see you on this date, and I don't
13 remember him in the courtroom on the hearing in December,
14 and that's why I'm asking because that's the only time I
15 would recall anything of an adversarial relationship that
16 we may have had between plaintiffs' counsel and defense
17 counsel, and that's it. That's all I recall. Otherwise,
18 it was mainly ---

19 THE COURT: Yes, I don't remember.

20 MR. RICHTER: Your Honor, could Mr. Waring make a
21 representation to you?

22 THE COURT: Yes, absolutely.

23 MR. WARING: Your Honor, the only involvement I ever
24 had with the case was, at that time or at any other time,
25 was that I was actually scheduling some kind of hearing or

1 status conference for you on behalf of all the parties.
2 And I think I spoke to Mr. Shahid first, and then I spoke
3 to Mr. Richter, and then to Mr. Shahid again. So, I was
4 trying to coordinate a date for you to meet with them.

5 (MR. RICHTER AND MR. WARING CONFER.)

6 MR. WARING: No, there was nothing substantive about
7 it at all. That's all I did.

8 Now, I was in attendance at the March 9th fairness
9 hearing. I was in attendance at that hearing, if you
10 recall, and then after that, that was it. That was
11 completely it.

12 THE COURT: That's the one where you were wondering
13 how could this have been worked out, and yet it blew up.

14 MR. WARING: That, yes. I had no knowledge of
15 anything that went on between any of the parties before
16 that March 9th hearing.

17 THE COURT: And again, y'all ---

18 MR. SHAHID: That's fine.

19 THE COURT: --- remember more about it than I do.

20 MR. SHAHID: Which is okay and as I said, I was just
21 trying to go through for the sake of trying ---

22 THE COURT: Sure.

23 MR. SHAHID: So we could just reconstruct.

24 THE COURT: I do remember, I absolutely, though, I
25 remember feeling very strongly that at the point in time

1 when Mr. Waring began to interview that, you know, when you
2 learn things in your background when you practice law and
3 you remember things, I just remember real strongly going
4 whoa, you've got to be Chinese walled. And even at that
5 point, I don't even remember wanting him to make phone
6 calls back and forth scheduling things. I think my
7 secretary and other people did that because I didn't want
8 him to do that.

9 MR. RICHTER: We primarily, I can tell you we
10 primarily dealt with Stephanie, Stephanie I think was her
11 name.

12 THE COURT: Yes, yes, exactly because I didn't want
13 him to, I just didn't want him to have any interaction at
14 all with the case or with you guys at that point, either
15 side, because it doesn't look wonderful at that point.

16 MR. RICHTER: If it makes everybody feel any better,
17 he hasn't shown any knowledge of the case to me so far.

18 THE COURT: So, in any event, but again, Mr. Shahid,
19 please know your comfort is most important.

20 MR. SHAHID: No, Judge, and really, my exercise with
21 you then was just to reconstruct to make sure the record
22 was clear. My recollection was only that one possible time
23 that he was there in December, and if he said he wasn't
24 there, he wasn't there. And that's the only time I would
25 think of that, besides when I mentioned about the telephone

1 calls. So, we're comfortable.

2 THE COURT: Okay, and if that changes, please let me
3 know.

4 MR. SHAHID: I will. Okay.

5 THE COURT: If at any point, please, please let me
6 know.

7 MR. RICHTER: Thank you, Your Honor.

8 MR. SHAHID: While I'm standing, Judge.

9 THE COURT: Yes.

10 MR. SHAHID: At our phone status conference yesterday.

11 THE COURT: Yes.

12 MR. SHAHID: You did, you did say that you would
13 reserve the right, and you have obviously, to reshuffle the
14 decks as I asked you concerning how these motions would be
15 heard because there is importance on the order of these
16 motions being brought to your attention besides the order
17 that they were filed by chronological date as opposed to
18 the implications that these orders may have on this rule to
19 show cause.

20 THE COURT: I don't think so. Let me tell you why I
21 don't. What concerned me about that is that I'll first
22 hear from the rule to show cause. But what's real
23 important to me in the context of the rule is when you all
24 saw language -- I'm concerned about that, but I think
25 that's a part of it, in all candor, part of the rule to

1 show cause because one of the concerns that you have is
2 that you all say that you all thought the order was
3 presented to the Court before it was presented to you guys,
4 and you know that is not appropriate under our rules. So,
5 I'm kind of keyed on that; I'm concerned about that. I'm
6 concerned that I would have received the order faster than
7 you all have because that's not the rule. The rule is that
8 you must receive it at the same time or earlier, and that
9 concerns me.

10 But along that same line, I'm concerned that days
11 would have gone passed and I didn't hear from you all that
12 the language wasn't language with which you were
13 comfortable. And I'll just put this out there for
14 everyone's edification. If this was a case that was more
15 in the normal course where there's very little interaction
16 with the Court, I would feel probably one way.

17 But I'm very concerned at the way this comes to me and
18 how it is at this juncture when this is a case that I have
19 had as much interaction with lawyers as ever in any case
20 that I have been involved in in ten years. And in all
21 candor, I'm a little bit nonplused to say the least by it,
22 nonplused. And in all candor, I don't know how we're here.
23 I don't know how we're here, and I am very concerned that
24 we are here.

25 I know that, and these are just my general

1 observations, there have been times in this litigation that
2 I felt like I was talking with both sides all the time
3 about everything. And the funding of this settlement has
4 been one of those issues that I feel like plaintiffs have
5 been screaming about. And I have been saying, you know,
6 quit. Stop accusing the defendants of not acting in good
7 faith to fund this settlement because I'm not going there
8 with you at this point. They have separated the funds.
9 I'll order that they separate these funds, and stop already
10 with the grouching, the grouching about the failure to fund
11 the settlement. And I feel as though I have kept that at
12 bay to allow both sides to work on the terms of the
13 settlement.

14 So, I am concerned, based on everything that I have
15 seen to this date, that there has been a change of position
16 on behalf of the defendant. And, quite frankly, I don't
17 understand it. I don't understand. I mean, I almost --
18 well, I'm going to allow you all to certainly argue. But
19 both sides please be mindful: I do not come to this case
20 anew. I have been mired in this case now for how many
21 months? When did y'all first -- October? Is that first
22 when you, October?

23 MR. RICHTER: The fall at least, yes.

24 THE COURT: A lot, a whole lot. I am not a stranger
25 to this case, and do not treat me like one, and I do not

1 understand why we are where we are. I almost want to turn
2 to the defense for that.

3 MR. SHAHID: But, Your Honor, if I, I may be able to
4 short circuit all of that.

5 THE COURT: Okay.

6 MR. SHAHID: And explain.

7 THE COURT: Okay.

8 MR. SHAHID: Because I get a sense that the Court's
9 frustrated with us.

10 THE COURT: Very. I am very frustrated.

11 MR. SHAHID: And if I could be candid with the Court?

12 THE COURT: Sure.

13 MR. SHAHID: I mean, I think that's unfair to us to
14 have that kind of frustration because when you boil all
15 this out, the motions we've filed and the rule to show
16 cause that they filed, it comes down to a single question
17 that just needs to be resolved that will take care of
18 everything, okay, I think. In my humble opinion, I think
19 it will take care of everything.

20 The question is this. In the event there is an appeal
21 to your order, and I think that's a pretty good chance
22 that's going to happen because Mr. Myers has filed his
23 motion to alter or amend yesterday.

24 THE COURT: Okay.

25 MR. SHAHID: And in the event the Court of Appeals or

1 three of the five Supreme Court justices says Mr. Myers is
2 correct and your order is wrong and kicks out the order,
3 and in the event that we have funded 5 million dollars or 7
4 million dollars, if we have to tap into the 7 million
5 dollars, and in the event we have paid out in advance 2.6
6 million dollars in attorneys' fees and costs and the order
7 is gone, the order is reversed, the question I have, the
8 question the diocese has is what do we do with the 2.6
9 that's already been paid out or any funds that have been
10 paid out? Because all we need to do is address the issue
11 as to what happens in that event. How do we protect those
12 funds?

13 That's the question. I mean, that's really the
14 question. And because if the money is going out, that's
15 sort of like the toothpaste going out of the tube. How do
16 you put the money back in? And so the question is how to
17 protect those funds as we've paid those out to the escrow
18 agent, and we paid those out to plaintiffs' counsel. How
19 do we get that money back in the event, and it may be a one
20 percent probability, it may be a five percent probability.

21 But the bottom line is he's going, I promise -- I know
22 he's -- I'm pretty sure he's going to appeal because he's
23 filed his motion to alter or amend. In the event that
24 happens, how do we protect that money? That's really the
25 bottom-line question of why we're here.

1 THE COURT: Okay, let me ask, let me explore that with
2 you. As I recall the objection, and please help me if I
3 recall it incorrectly. But as I recall the objection, the
4 objection was as to the definition of the class because the
5 class excluded people that he had represented for which *res*
6 *judicata* had been granted. It was not an objection to set
7 aside the settlement. It was an objection on the basis
8 that his former clients had been excluded and the exclusion
9 being based on *res judicata* because there were cases for
10 which there had already been adjudication. And this class,
11 by its very definition, excluded that. It didn't include
12 people for whom the diocese had already had litigation and
13 those matters had been resolved.

14 So, as I see that, as I see your concern, it seems to
15 me that in the event, and there's a definite number of
16 those individuals because he mentioned the number and I
17 don't remember the number, but I don't remember it being
18 any extraordinary number of people. I want to say
19 twenties, perhaps fifties. I don't remember the number,
20 but it was not hundreds; it was a hundred, substantially
21 under a hundred. But that in the event there would be an
22 appeal, based upon counsel, what both sides have told him
23 about the health of this class financially, I don't think
24 that's a realistic problem. I just don't, and given that
25 it causes the numbers to be increased -- does anyone

1 remember the number that he argued for? I don't remember.

2 MR. RICHTER: He represented to you it was fifteen. I
3 challenged that number because some of the people he had
4 named in a letter to us I represent. One of these we think
5 is dead, and I asked that Your Honor at that time require
6 him to state the names and place into the record in a
7 protective way the names. And then Your Honor did not do
8 that but asked Mr. Myers do you represent at least one
9 person, and he said yes. He has now -- I'm going off into
10 argument. Fifteen.

11 THE COURT: So, that certainly is my thought. I, in
12 all candor, in all candor, given our discussions as you all
13 talked about the numbers, and again I heard an awful lot of
14 agreement with all of you about these numbers and the
15 financial health of this class, okay? I mean, in all
16 candor, okay.

17 You all, the diocese, again I'm nonplused because the
18 diocese in our discussion has been remarkable in its
19 willingness to even be inclusive of people that we don't
20 think exist realistically but theoretically could, and the
21 church has been -- I've never seen a defendant do it in all
22 candor, Mr. Shahid. The diocese has been willing to say if
23 these people exist, we will not call the statute of
24 limitations on them. We will include them in the class no
25 matter when they arise. So, given the perspective that I

1 have had, I frankly haven't seen it as, I don't see it as
2 an issue.

3 MR. SHAHID: And, Judge, you know, the odd thing of
4 all this.

5 THE COURT: Yes.

6 MR. SHAHID: And you've asked this several times.

7 THE COURT: Yes.

8 MR. SHAHID: Because you wanted to make sure there was
9 enough controversy between the two of us, and there has
10 been.

11 THE COURT: Oh, yes, and I've heard that, too.

12 MR. SHAHID: I know that, but in spite of that
13 controversy, we all have pulled in the direction, I think,
14 of making sure the January 12th agreement got approved by
15 this Court, and that's our -- I mean, that has not changed.
16 That position by the diocese has not changed, and we've
17 tried to address every hurdle. And I've met with Mr.
18 Myers, as I told the Court I was going to do.

19 THE COURT: Yes.

20 MR. SHAHID: I sat down with Mr. Myers.

21 THE COURT: You thought he was going to withdraw the
22 objection, with all candor.

23 MR. SHAHID: I wrote him a letter saying this is to
24 confirm my understanding that we've reached an agreement on
25 everything, how long I thought the agreement was. And then

1 I get a demand back from him of 1.46, 1.46 million dollars.
2 And so the whole -- and so understand that how this, this
3 is developing, Judge.

4 And so it concerns me that you think the diocese has
5 not done what it's supposed to do, which is just, it's not,
6 that's not the issue. The issue is I, I, the diocese, have
7 got to deal now with this objector, okay, who is raising
8 questions. And I can't argue the validity of his
9 arguments. I'm not in a position to do that because when
10 an appeal is brought, you know, like I said, two, two on
11 the Court of Appeals, three on the Supreme Court can agree
12 with him. And if that happens, my question is just protect
13 us to a point so that in the event and how far reaching
14 that may be, in the event an appeal is taken and in the
15 event an appeal is successful, how do we put the toothpaste
16 back in the tube? That's all we're asking for. How do we
17 protect the diocese payment out, the 2.6 million? That's,
18 that's it.

19 I mean, that really has been the heart of this because
20 we are ready, willing and able. We dedicated all the staff
21 necessary to fund this thing.

22 THE COURT: Now, you said 2.6. Tell me what money
23 specifically you're talking about, the 2.6.

24 MR. SHAHID: Right, the initial pool was 5 million
25 dollars.

1 THE COURT: Right, I know that.

2 MR. SHAHID: We -- so, the payment is really 4.5
3 million.

4 THE COURT: Right.

5 MR. SHAHID: That could be done in a sneeze; it could
6 be done in a sneeze to give the escrow agent that money.
7 And we've -- that's why we made the motion to deposit the
8 money with the Court because we're -- here it is. We're
9 not worried about that. Here's the, here's the money to
10 the escrow agent or to the Court, all right, as the Court
11 directs us to do. Whatever the order tells us to do or
12 whatever this agreement says, we're here. We can do it.
13 That's not the issue. The question is if Mr. Myers is
14 successful on appeal and we have paid out the 2.6 million
15 for attorneys' fees and costs and the order is reversed,
16 that money is gone.

17 Now, what I'm saying is this. At some point in time
18 Greg Myers or whoever, let's say Greg Myers who I know he's
19 filed the motion to alter or amend, is his motion to alter
20 or amend is denied by the Court, okay? Or you make some
21 changes to it, but still he's not satisfied and he then
22 appeals. He's got thirty days from that date to appeal.
23 Now, he may not be in a position to appeal. He may have
24 waived, and I've had this discussion with Mr. Richter. He
25 may have waived his ability or excluded himself to have

1 standing to appeal. I don't know that for certain, but
2 that's a pretty good argument.

3 But assuming that he does have standing to appeal,
4 okay, and he does appeal, then he's going to either appear
5 before you or the Court of Appeals and petition that order
6 be stayed. At that point, there's going to be conditions
7 placed on his ability to appeal or to stay, stay the
8 matter. At that point, whatever conditions they might be,
9 like a bond, for instance, he may not be able to meet those
10 conditions. He goes away. That's it. But if he does meet
11 all those conditions, if he does appeal and it runs the
12 gauntlet of a full appeal and that order is reversed, the
13 money that's been paid out already is money that should not
14 have been paid out because an order that granted the money
15 being paid out is no longer around. And the money that was
16 paid out on attorneys' fees, they're not entitled to
17 receive.

18 THE COURT: Well, the problem with that is that you
19 have to, under our law, you have to raise an issue in order
20 for there -- you've got to raise it in order for it to be
21 raised on appeal with very few exceptions.

22 MR. SHAHID: Right.

23 THE COURT: His objection had to do with the identity
24 of the class excluding fifteen people.

25 MR. SHAHID: Right.

1 THE COURT: Okay?

2 MR. SHAHID: I'm with you on that.

3 THE COURT: So, are you saying you believe if he is
4 successful on appeal, that the Court of Appeals would
5 endeavor to either decertify the class or set the
6 settlement completely aside? What do you think the remedy
7 -- what remedy are you concerned about?

8 MR. SHAHID: Well, what I'm talking about is this
9 motion to alter or amend. He attacks the payment of the
10 attorneys' fees, the advancement of attorneys' fees. He
11 addresses the payment of the funds to the -- to certain
12 claimants as too low in certain circumstances.

13 MR. DUKES: Judge, have you seen the motion to alter
14 or ---

15 THE COURT: It's not been served on me.

16 MR. SHAHID: Do you want it? But that's what -- he's
17 raised all those ---

18 THE COURT: I don't know.

19 MR. SHAHID: I mean, he has raised those issues in his
20 motion to alter or amend. I mean, that's what is -- that's
21 what's in ---

22 MR. GEOLY: The disadvantage, Your Honor ---

23 MR. RICHTER: I object. It's not before the Court.

24 THE COURT: It's not.

25 MR. DUKES: I understand, Your Honor.

1 THE COURT: I don't want you to serve it on me.

2 MR. DUKES: Okay.

3 MR. SHAHID: At some point in time, Judge, you're
4 going to have to review the motion to alter or amend, and
5 you're going to have make an issue of ruling on the ---

6 THE COURT: If he serves it properly under the rules.

7 MR. SHAHID: I know. He's got to serve it on you.

8 THE COURT: Yes, he does.

9 MR. SHAHID: I know.

10 THE COURT: That's why I didn't want y'all to do it.

11 MR. SHAHID: We won't do it, okay.

12 MR. RICHTER: They'll no doubt go back and call Mr.
13 Myers.

14 MR. SHAHID: I'm not going to do anything along those
15 lines. I mean, my conversation with him was, you know,
16 because he filed or he sent to me objections to the
17 proposed order. I asked him about how that all came about.
18 And, you know, then he told me he was working on a motion
19 to alter or amend. That's why I mentioned that to you
20 yesterday. I asked had that come to your attention because
21 it -- and after I hung up with you, he walks in the door.
22 I'm not going, you know, I'm not going to tell somebody
23 what to do, what not to do. That's not my job.

24 But at some point in time -- he knows what the rules
25 are. If he does all this stuff and you, then you have to

1 issue an order addressing those issues raised in there,
2 then if he doesn't have standing, if he's kicked out,
3 that's, that's the one thing we don't have to worry about.
4 But if he does create an ability for him to appeal and he
5 does appeal and it is reversed, where are we? And that's,
6 that's the cold question. That's the bottom-line question
7 because I don't, I don't think -- I mean, in my humble
8 opinion in going through all this, I don't think he's got a
9 snowball's chance of being successful. That's my opinion,
10 but I'm not up there in Columbia making that decision.

11 You know, I wish -- you know, if I was -- I know how
12 I'd rule on it, but it's not me to do that. It's not you
13 and it's not Mr. Richter and it's not plaintiffs' counsel
14 to do that. Those folks up there, I don't know what
15 they're going to do. But in the event there's 2.6 million
16 that is gone, and that's all we're asking for is to address
17 it so that we can proceed with this in an orderly fashion
18 to protect the 2.6 million that's advanced out. That's all
19 we're asking to do.

20 If I could say just one more thing, Judge, just so
21 that everybody's clear? When I met with Mr. Myers, we made
22 concessions to him to allow him to have people come that we
23 had by all legal right to tell him to go away, take a hike
24 because it is in the diocese's best interest that his
25 objections go away. And I tried to do that. I tried to

1 accommodate his objections. I tried to accommodate him on
2 folks who were not entitled to any more counseling, to give
3 some folks counseling. People who had -- who, by the way
4 the definition was formed, to let them back in because they
5 could argue it's a technicality how they were excluded but
6 to let those people back in. He had questions about
7 certain people, and I said I don't have any objection to
8 these people, this list that he presented.

9 It's in the diocese's best interest that Mr. Myers'
10 objections be resolved and taken care of, and I tried to do
11 that, and I thought it had been resolved. And, you know, I
12 don't want him to raise an appeal; I don't want him to file
13 his motion to alter or amend. That doesn't help us one
14 bit, but I just know that that is a wild card out that has
15 got to be addressed.

16 THE COURT: Is he here today, Mr. Myers?

17 MR. RICHTER: To our knowledge, no.

18 MR. SHAHID: I did not tell him about the hearing,
19 Judge.

20 THE COURT: There's something, there's a
21 communications technique called reflective listening, so
22 I'm going to reflect, try to reflect what I am hearing.
23 Let's see where we are.

24 What I am hearing is that the defendants still would
25 like nothing better than to go forward and fund this

1 settlement and proceed with these claims. But the
2 concerns, the primary concerns really don't have anything
3 to do with the plaintiffs at this point, the plaintiff
4 class. But where the defendants have found themselves at
5 this point is that they have found themselves in a position
6 where, pursuant to the terms of the agreement, they have
7 come to the Court preliminarily and in final hearing to say
8 to the Court we believe this agreement is fair. We are
9 asking the Court together to review and find it fair.
10 Plaintiffs' counsel for the class believes it's fair;
11 defense thinks it's fair.

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

23 MR. SHAHID: That's a very good summary, Judge.

24 THE COURT: Okay. I'm not so sure that the rule to
25 show cause has been filed against the correct party. How

1 about that? This is what I would like to have happen
2 interimly. I would still like to have, I would like to
3 have the class funded, and that is all. I would like to be
4 in a position that I know that my defendants are serious
5 about going forward with this settlement, and then no more.

6 And then, counsel, I am very concerned about a
7 litigant, an objector who's been overruled and to my
8 knowledge there's been nothing served on me, alter and
9 amend disturbing this settlement, attempting, based on what
10 you're telling me, disturbing this settlement. I am
11 concerned sufficiently that I want to hear from that
12 person. Entitled to file a motion to alter and amend,
13 serve it on the Court and have it argued. Entitled to
14 appeal but not entitled, I don't believe, perhaps to some
15 of the conduct that has occurred, and I am concerned about
16 it. I am concerned about it.

17 Let me say, because I think the record needs to
18 reflect, to conclude where I think we are. Plaintiffs and
19 defendant have come to court repeatedly together to say
20 there are people who are hurting. There are people in
21 pain, and we understand your concern about the solicitor
22 and the solicitor's involvement. But, Judge, there are
23 people in pain, and we have to proceed to the settlement
24 because now we have opened these wounds anew, and we have
25 to proceed. That came from both of you. Came from the

1 defendants, also.

2 I've not heard from the plaintiff, and doesn't seem
3 quite right when one normally -- this is begun by the
4 plaintiff. Mr. Richter, do you understand my concern? My
5 concern is that I'm feeling a little bit like Alice in
6 Wonderland, in all candor.

7 MR. RICHTER: I understand your concern, and as I said
8 at our last appearance before you, thank you again for your
9 accessibility. You made a comment at the beginning about
10 how much you've been accessible and how much you've been
11 involved. Nobody could -- possibly involved in this
12 litigation could possibly say that the Court has not been
13 accessible.

14 And I hear what you're saying, and I do understand
15 what you're saying. And I see the color on your face,
16 which from this side of the bench is apparent and your
17 pallor which exists, because I think I understand not only
18 what is going on not only through your brain but through
19 your heart as you address this matter.

20 But there is another whole characterization of this
21 than what you've heard, and I would like to have the right
22 to make that characterization before you ultimately decide
23 what you want to do. So, if you would allow me to do that?

24 THE COURT: Sure.

25 MR. RICHTER: Thank you. This not about Greg Myers.

1 Another day will be about Greg Myers. This is about money
2 in large part and a lot of wringing of hands to keep from
3 being held to the responsibility of being separated from
4 money.

5 Greg Myers, Mr. Shahid represented to you, went to him
6 and said he wanted 1.46 million dollars and he'd go away.
7 We have all represented to you what we think about the
8 number of claimants, the size of the class, how much money
9 there was going to be to go around, and there's aplenty.
10 All of us, none of us have guaranteed that to you because
11 we can't, but we all think we're right and have a pretty
12 good handle on that. If these people wanted to solve this
13 properly, they would escrow 1.46 million dollars of money
14 and deal with Mr. Myers. They didn't suggest that because
15 that involves parting with money, and they don't want to
16 part with money. So, here's what I have to say, Your
17 Honor, and please indulge me.

18 On June the 12th and 13th or 14th of 2006, a
19 settlement was reached, a mediation of this matter. I
20 think that was a Thursday or a Friday. I don't remember
21 which day. Jim knows because he had to fly back to
22 Chicago. We left with the representation from the diocese
23 that on Monday, they were going to the bank -- happens to
24 be the Bank of America -- to get the letters of credit to
25 fund this matter June the 12th of 2006. It didn't happen.

1 They had signed, of course, a mediation agreement to that
2 effect.

3 Not until January the 12th -- I started complaining,
4 as you know, in the fall. On January the 12th of 2007, for
5 the first time the diocese deigned to put its name on the
6 settlement and arbitration agreement. So, from June to
7 January, they wouldn't even sign the agreement. That's why
8 I started complaining, if you remember.

9 We had multiple status conferences before Your Honor.
10 Now, March we had hearings before you. On March the 9th,
11 we had a big hearing before Your Honor. That was five
12 months ago today. Among the things that I argued about at
13 these various appearances before you was that I said to you
14 I think there's an obligation on opposing counsel under the
15 canons of ethics to be candid with the tribunal because it
16 kept saying it's not so. They're not going to do what
17 they're telling you they're going to do because I had some
18 experience about it since June. I'd met with the bishop
19 the October before. That's not part of this record, but
20 that's what happened and they were there. Mr. Shahid was
21 there.

22 So, we had a hearing. March the 9th was a significant
23 hearing. How significant? Five months ago today was when
24 it was. So significant that in that hearing, see if Your
25 Honor may remember this, please, Mr. Geoly stood up and

1 said -- because I was complaining about them not putting up
2 the money. They would not part with the money. Mr. Geoly
3 said we will part with the money, we will fund it the day
4 the order is signed. It's in the record. Now, that's the
5 representation of counsel to the tribunal.

6 There was never in any of these meetings that we had
7 over all the months that I've now been referring to, never,
8 ever one time a mention of an escrow agreement. Everything
9 else was mentioned. We said who the escrow agent was going
10 to be, what his duties were going to be, how he was going
11 to handle the funds. Everything else was mentioned over
12 and over and over again all in good faith representations,
13 according to these defendants, good faith representations
14 that they were going to do these things. And this was
15 hunky dory. Everything was fine, and I kept saying I don't
16 believe them. They don't honor their word, and you kept
17 saying calm down. They tell me they're going to do it;
18 they're going to do it. So, I sat down. Then the next
19 time I came back ---

20 THE COURT: You notice he didn't say calm.

21 MR. RICHTER: Well, I don't mean to seem animated
22 about this except to the extent that I think you know I'm
23 against this kind of thing. I'm against the sexual abuse
24 of children by priests, number one. I'm against not being
25 candid with the tribunal. I'm against saying things to you

1 that are not true. I'm against them saying oh, the only
2 problem is, well, what about if Richter gets his attorneys'
3 fees and they get their costs back, then things go away. I
4 mean, these arguments are ludicrous. Instead of saying,
5 well, we'll just escrow 1.46 million dollars and Myers will
6 be satisfied. That's what he demanded and then we'll have
7 to pay some other day. And there's more than enough money
8 in the fund, of course, to do that. But on March 9th, Mr.
9 Geoly said we'll pay money the day the order is signed or
10 similar words.

11 We have now learned that when all these meetings were
12 going on and all these representations were being made to
13 you, whose name ultimately had to be put on, in good faith
14 a signature was being induced out of you, a judicial act.
15 We now learn that Elaine Fowler was hired in May of 2007
16 two months before your July 13th hearing at which you
17 approved or made your final order and instructed us to
18 draft it into written form. Two months before that, they
19 had hired somebody to write a lot of other terms, but they
20 didn't tell you that; they didn't tell me that. They
21 secreted that from the litigants, from the victims who have
22 been waiting patiently and painfully.

23 And most importantly, they induced Your Honor to act,
24 and I don't care that it's Your Honor. I mean, I don't
25 mean this that way, but Your Honor, any honor. They

1 induced the Court, this institution to act in the face of
2 the knowledge that they had no intention of adhering to
3 what they were asking you to do and representing to you
4 that they would honor and do. They hired two months before
5 that a lawyer to alter those terms and didn't disclose it.
6 I think that's horrible; I think that's reprehensible. I
7 think it's bad faith, and it ought to be dealt with. And
8 you -- fortunately in our -- it's in her affidavit. She,
9 of course, admits she was hired in May two months before.
10 And yesterday on the telephone she said to you I was hired
11 in May two months before.

12 Mr. Geoly said the diocese is going to pay; Mr. Shahid
13 said the diocese is going to pay. Ms. Fowler, when I
14 finally on the 23rd got this document altering the terms of
15 your order, she said the diocese was going to pay. They
16 told Mr. Maybank, who is here subpoenaed as a witness from
17 Smith Barney, they told him they were going to pay. They
18 set forth the mechanism for paying. Poor Mr. Maybank was
19 put square in the middle trying to be honorable, and he was
20 about the whole thing clearly embarrassed. Ms. Fowler was
21 clearly embarrassed in her telephone conversations with me
22 because they told her. She wrote me an e-mail at night
23 that says tomorrow morning, tomorrow morning. They just
24 told me tomorrow morning. Told me John Barker's going to
25 fax his signature over; it's going to be done tomorrow

1 morning. Every, every conversation I had with Elaine
2 Fowler I said I hope you're right, but it is not true. It
3 will not happen.

4 Mr. Maybank will testify if we go forward with
5 evidence today that in every conversation I had with him in
6 which he in the best of faith, best of faith represented
7 that it was all going to happen because the diocese had
8 told him that, and he had talked with the diocesan
9 officials in the best of faith. And in the best of effort
10 to help everybody get to the ending, Mr. Maybank made those
11 representations to me, and in every conversation I had with
12 him, I said it's not true. They won't do it. They're
13 saying something that is not true; they won't honor their
14 word.

15 And, sure enough, I sat in Mr. Maybank's office with
16 Ellie Thomas, the escrow agent, like bumps on a log
17 waiting. Tried to get somebody on the phone representing
18 the diocese, finally to have Elaine Fowler to call us back
19 and say we're not going to do it, and that's what got us to
20 here.

21 Now, we negotiated this settlement. These cases first
22 came to Jack Sinclair's office I believe in 2002. I don't
23 have the dates in front of me. I know we opened our file
24 in 2003 because I can tell by our case number. These
25 people have been led around and have been hanging around

1 and have been misled since that time struggling to get
2 justice.

3 Ellie Thomas is the appointed escrow agent. He's a
4 forensic certified public accountant here. I think he's
5 testified or appeared before Your Honor in the past. He's
6 appeared before many courts. His wife's mother died right
7 when everybody was saying tomorrow, tomorrow, tomorrow. He
8 left his wife alone at the funeral to come to the backdoor
9 of my office to sign the document that Mr. Maybank again in
10 the best of faith said they needed to effectuate the money
11 which was coming the first thing the next morning from the
12 diocese. He did that with his three year-old child in the
13 backseat, and he signed that document and then went back to
14 the funeral home. The next day was the funeral for his
15 wife's mother.

16 After the funeral, the family went to Mr. Thomas's
17 house, as I did. I was a lector at the funeral. After the
18 funeral, the family, the bereaved gathered and Mr. Thomas
19 again left his wife and family and two young children and
20 all of his in-laws to go with me to Mr. Maybank's office
21 because he had to be there at this particular time frame to
22 execute the documents that Mr. Maybank had been instructed
23 by the diocese were going to be necessary to have this
24 happen.

25 We went and sat in Mr. Maybank's office and sat and

1 sat. All the way down, I tried to get Peter Shahid on the
2 phone. Couldn't do it. He was on the phone. Ultimately,
3 I tried from the office. Couldn't get him. Ultimately, I
4 asked Mr. Maybank to try. He had better luck, if I recall
5 this correctly, and got through, but Mr. Shahid said you're
6 going to get a call in just a little while from Elaine
7 Fowler. Take it. That's all.

8 We're sitting, waiting in the Smith Barney office --
9 and he's here to verify all this -- bumps on a log because
10 of the representations of the defendants, the diocese of
11 Charleston, the Catholic Church of South Carolina whose
12 word we ought to be able to rely on. And, of course, Ms.
13 Fowler ultimately told us that we're not going to do it.
14 They're not. Not we. They're not going to do it. She
15 said, you know, we'll tomorrow make another arrangement. I
16 said Ms. Fowler, I have an order that says they've got to
17 do it. They don't have any choice about doing it. They
18 induced the judge to sign this order saying you've got to
19 do it upon the issuance of the order, which was the 30th of
20 July.

21 I'm saying this to tell you that more people's lives
22 have been touched. I haven't even mentioned the victims.
23 More people's lives have been touched by this in an Alice
24 in Wonderland way as Your Honor alluded a while ago.

25 I settled a case on June the 12th of 2006. I must say

1 to you as to what position we take about this matter, and I
2 take no pleasure in saying this. I'm embarrassed and
3 ashamed of the activities of the diocese. I've got to tell
4 you, Your Honor, in candor that the diocese's word is no
5 good; the defendant's word is no good. Their written
6 agreement is no good. The sexual abuse of the boys by
7 priests of the diocese is no good. The refusal to report
8 the sexual abuse of children, which you've come to be
9 familiar with in this litigation, even though that
10 reporting is required by South Carolina law is no good.
11 The transfer of known sex offenders to different places
12 where they can victimize new children is no good. The
13 wide-spread effort to cover up these activities is no good.
14 The failure to be candid with this tribunal, mandated, the
15 failure to do that is no good. The refusal to abide by the
16 terms of the very agreement and order that the defendants
17 themselves induced this Court to sign is no good.

18 Now, all of this besmirches our judicial process.
19 It's more than just this case. It's nothing but money, but
20 it besmirches our judicial process. It compromises the
21 rights and the remedies of child victims of priests' sexual
22 abuse, and it at least delays justice. That, in turn,
23 denies justice, and that's got to be stopped. So, it's
24 nothing but money.

25 These people could not have read the controlling case

1 law authority about the validity of Mr. Myers' objections.
2 They wouldn't be here today except that these are people
3 who have come before you in the past and said we're going
4 to fund it on the day you issue your order. They have no
5 intention to do it. That's our prediction.

6 MR. GEOLY: Your Honor, I have a brief comment.

7 THE COURT: Yes.

8 MR. GEOLY: I consider it almost a matter of personal
9 privilege.

10 THE COURT: Yes.

11 MR. GEOLY: Since Mr. Richter did purport to quote me.

12 THE COURT: Yes.

13 MR. GEOLY: At which point Mr. Shahid will continue.

14 THE COURT: All right.

15 MR. GEOLY: I have never represented to a tribunal
16 anything that is untrue, and I have not represented
17 anything to this tribunal anything that is untrue. And the
18 diocese has moved for leave to tender these funds to the
19 Court. We are not trying to withhold the funds; we are not
20 trying to avoid our responsibilities. The point of that
21 comment at the previous hearing, and I don't have the
22 benefit of the transcript in front of me. It doesn't even
23 matter because I understand the point of the quote was to
24 say the funds are available, the funds are secured, the
25 funds are ready to be used upon the Court's order.

1 However, that in no way addressed the technical legal
2 question of finality of this Court's order, which I think
3 is the issue Mr. Shahid had raised with you before.

4 The final order, if you pay on a final order,
5 obviously it's not appealable anymore. The thirty days has
6 run. The order is final and enforceable and there is no
7 risk. If you pay before an order is final and the order is
8 reversed, what happens to your payment? That was a
9 legitimate legal question that was raised.

10 The diocese tendered the final -- has made a motion to
11 tender these funds to the Court. We are not trying to
12 grasp and hold and retain monies that were promised in this
13 agreement. We want the benefit of our bargain in this
14 agreement and so does that class, and we're trying to
15 effectuate that. And I, and I do object to any inference
16 that I in any way made a misrepresentation to this Court.

17 MR. SHAHID: Judge?

18 THE COURT: Yes.

19 MR. SHAHID: I can't sit silent when another member of
20 the bar impugns my character or my reputation, and I take
21 great exception to Mr. Richter making that type of
22 accusation against me.

23 I will state for the Court that Mr. Barker and I,
24 following the June mediation session, did in fact meet with
25 representatives of the bank to start this process of

1 funding these claims. I will say that. I said that a
2 hundred times. I'll say it a thousand times. We did, in
3 fact, meet with the bank to get this process rolling. We
4 did, the diocese did hire Turner Padgett to help us make
5 sure we were following the letter of the law, spirit of the
6 order, the letter of the order to make sure that this
7 finding was going to be taken, taken care of properly and
8 one hundred percent.

9 The escrow agreement that Mr. Richter has raised was
10 not to modify, change, alter, in any way supersede the
11 order of this Court. We offered it as a way to make sure
12 that all parties were protected on how the money was
13 disbursed. And, in fact, Judge, as I understand it, the
14 parties have looked this agreement over. They have at
15 points agreed to terms of this escrow agreement, think it
16 was a good idea. I talked with Mr. Thomas, and to my
17 knowledge the escrow agreement, if we execute it or not, is
18 not the critical part of what we're here for about. But it
19 would be a good thing to have to be prudent on how these
20 monies will be disbursed.

21 To say that we've not, that I've not, that Mr. Geoly
22 or anyone else who's represented the diocese is not a
23 person of their word, I take extreme personal offense. I
24 have represented to this Court with all due candor my
25 position, my client's position, and I hope the Court will

1 take judicial notice of that. Just because we don't agree
2 with their position or their suggestion of how to handle
3 Mr. Myers, we're now the bad guys on this thing. We tried
4 to deal with Mr. Myers the best way we know how to
5 accommodate his objections and to bring him into the party,
6 and now we're chastised because we won't do the
7 recommendation that he has presented to the -- or presented
8 to Your Honor.

9 We're trying to get this thing agreed upon, to get it
10 resolved, to get it taken care of, to be finalized with it.
11 As somebody said to you earlier, to close the barn door on
12 this thing, and that's what we want to do, just close the
13 barn door on this thing and be done with it. The Court's
14 suggestion or the Court's order to just do nothing else so
15 we can move on, that, as I said earlier, that could be
16 done. That will be done. And if anything else just far as
17 a catchall, the other matters, I think it's an appropriate
18 remedy for what we're seeking to do this afternoon.

19 THE COURT: Well, let's go back. Let me tell you what
20 the controlling document is in this case, and that is the
21 12th day of January 2007 document. That's the agreement
22 and that must be the agreement that controls your actions.
23 It seems -- I've not seen an escrow agreement, and I did
24 not recall an additional escrow agreement being referenced
25 in the settlement and arbitration agreement signed January

1 the 12th. I just don't remember it.

2 MR. SHAHID: You're right. It's not there.

3 THE COURT: Okay.

4 MR. RICHTER: Not only is it not there, it has never
5 been referenced to this Court and never to us until the
6 23rd day of July.

7 THE COURT: And it doesn't matter. This is the
8 operative document. So, there can be no escrow agreement
9 that can interfere with the settlement documents; it just
10 can't be. This agreement has been approved by the Court.
11 So, tell me.

12 ORDER OF THE COURT:

13 All right, this is what I want to do. I want the
14 settlement funded; I want the settlement funded without
15 further ado. And having said that, the amount, as I
16 understand it, is the four and a half million. I want it
17 funded, not the ---

18 MR. RICHTER: In round numbers, that is correct.

19 THE COURT: That's right, and you all have been very
20 precise with that number because there's been some that's
21 been paid.

22 MR. SHAHID: That's right.

23 THE COURT: But the remainder of the funds, and of
24 course it's way too late today, but I want it funded
25 tomorrow. What's tomorrow, Friday? Tomorrow.

1 Next week, this is what I want, and it's very specific
2 insofar as I believe. With an eye towards the arbitration
3 and the settlement agreement, I want briefs regarding what
4 is the effect of an appeal from an objection on the
5 underlying class. Not an objection by class member, not an
6 objection by a defendant, but someone outside the class. I
7 think I know the answer, but I want it researched because
8 in order for -- and you all research this for me, but I
9 think that in order for someone to be successful to set
10 aside the class, they've got to be someone who would be
11 included within the class in order to object to the
12 fairness of the class. In other words, this is someone
13 objecting to the class definition and the remedies provided
14 in the class who is not a member of the class, of the
15 class's own definitions.

16 MR. GEOLY: Just a clarifying question, Your Honor.

17 THE COURT: Sure.

18 MR. GEOLY: Whether he's right or he's wrong, at least
19 my understanding is that Mr. Myers purports to represent at
20 least one, I think what he's saying is at least one person
21 who he claims is, would be, could be a member of the class.
22 So, in terms of Your Honor resolving questions here, should
23 the legal question you're asking us be so limited, or
24 should we try to help you on even if he has somebody who
25 purports to be a member of the class?

1 THE COURT: Yes.

2 MR. GEOLY: Then what?

3 THE COURT: Thank you, Mr. Geoly.

4 MR. DUKES: And his, Mr. Myers' motion ---

5 THE COURT: Don't publish that to me, please.

6 MR. GEOLY: That's why I phrased it ---

7 MR. DUKES: It references the ---

8 MR. GEOLY: --- the way I do.

9 THE COURT: Because let me be clear. I am where I am.

10 MR. GEOLY: Right.

11 THE COURT: This job, it is complicated enough what I
12 do than for lawyers to start talking about pleadings that
13 are not pleadings to me.

14 MR. GEOLY: Right, so I say if we frame your legal
15 question a little more broadly, that way you're covered.

16 THE COURT: I would, yes. I want you to go back to
17 what it was that he raised at the hearing. He cannot tell
18 me now something other than he told me at the underlying
19 hearing: that is, at the time the objection was raised.
20 I'm not interested if he wants to expand it or change it or
21 dress it up at all. He is bound by what he raised to the
22 Court at the point where the Court's order allowed him to
23 raise the objection. And I have no idea because remember
24 I've not been served with anything. So, your concern has
25 to do with the objection that was raised. I'm only

1 interested in the objection as it was raised at ---

2 MR. GEOLY: To the extent he's purporting to represent
3 somebody.

4 THE COURT: If he did it on that occasion, certainly.
5 If he does it now, it comes too late.

6 MR. RICHTER: Just so that everyone can feel a little
7 better about this, these persons may, may, person or
8 persons may have been putative members of a class. There
9 were not named parties, the plaintiffs, although they may
10 be a putative member at the time that we were dealing with
11 them.

12 THE COURT: Okay.

13 MR. RICHTER: There is authority about this, and the
14 bright line distinction as we read the cases is that there
15 is an opt-out provision. If you recall at the time Mr.
16 Myers objected that there -- or somebody objected that
17 there was no opt-out provision, which we made a mistake,
18 all counsel here present today just made a mistake on. We
19 said that at the time.

20 THE COURT: Yes.

21 MR. RICHTER: And so of course there's an opt-out, and
22 what that means, of course, is that that putative member's
23 rights are then not bound by anything that we agreed to in
24 the settlement of this case because they have the opt-out
25 and can litigate the next day if that's what they so

1 desire.

2 THE COURT: If they are included, but he also alleges
3 that those who are not included in the class definition
4 ought be included in the class definition. But there's
5 nothing to keep them from doing whatever they wish to do in
6 terms of beginning a new litigation.

7 MR. RICHTER: I don't want to run afoul of the Court's
8 order, and I don't want to stop you from you finishing
9 making it, but I do want you to know there's another whole
10 side to this we may be out 2.6 million dollars. In finding
11 that our attorneys' fees are appropriate at the amount that
12 you set, that means that we've earned that amount. That
13 means we've done something; we've expended that amount of
14 time or legal talent or whatever it is. So, in the sense
15 you could say class counsel is out that amount today that
16 they don't want to be out. Certainly as to hard costs,
17 that's long since gone. And today, notices started running
18 around the state on borrowed money that we had to borrow
19 because it's very expensive, as I think we've told Your
20 Honor, to publish those things today because I can't get my
21 hands on the attorneys' fees or the costs that you've
22 ordered that we have access to.

23 And so I don't -- when they put the money in the
24 Court, as I understand it, your order is still your order.
25 Whatever the terms of that are still the terms of that

1 order. Are you saying that you're going to impose some
2 further delay on us to get what you've ordered we could
3 have? I mean, if that's the case, we will have lost all
4 these legal arguments today without them ever winning any
5 of the legal arguments of today.

6 The legal interest rate is twelve and a half percent,
7 judgement interest rate is twelve and a half percent. In
8 ten days, that equates to \$9,300 or so. I don't know how
9 much is it per day. Mr. Thomas came to testify \$890 per
10 day in interest is what -- is we're being cost now in this
11 process. And, you know, it's been a long time. We haven't
12 -- as I said earlier, it's been a long time coming.

13 MR. GEOLY: Your Honor, I don't think we've suggested
14 that counsel hasn't worked for his fees. We're beyond that
15 argument at this point. Your order's not a final order.
16 I've never heard of interest accruing on an order or a
17 judgment for money that's not a final judgement. I think
18 what Your Honor was suggesting to us is that we have a
19 practical question here and a procedural one, and you want
20 law on what the impact of it is. And our only objection
21 here, and that's why we're tendering money to the Court.
22 We're not to retain it for ourselves and ourselves keep the
23 interest on it. We're just saying that there is a problem
24 here and what is the -- how should the money be managed so
25 that -- because the difference is that if your order were

1 overturned on appeal, the fact is we wouldn't owe the
2 money.

3 THE COURT: Let me tell you what my concern is about
4 that because that does a good job in underscoring that for
5 me. If there is case law that exists that the Court is
6 obligated to stay a settlement in a class action when there
7 is an objection raised and an appeal had absent terms
8 within the settlement itself, that is what I'm interested
9 in knowing, you see?

10 MR. RICHTER: I understand.

11 THE COURT: Yes.

12 MR. RICHTER: To our knowledge, it doesn't exist.
13 We've researched that.

14 THE COURT: Well, I don't know that because I've not
15 researched it. I want you to research it because you all
16 have a stinging interest, both, to do that for me. Be
17 mindful and be aware if the law does not require me to do
18 that as a matter of course, the terms of your settlement
19 are set insofar as I am concerned. And if the law does not
20 require me to place such a savings on it, I will not alter
21 the terms of the settlement. That's why the reason is
22 important to me. That is the reason for the pause at this
23 juncture as I learn that information. But if the law does
24 not require me to stop the imposition of this settlement
25 without the terms within the settlement itself, I will not

1 do that, and ---

2 MR. GEOLY: So, until Your Honor receives briefing.

3 THE COURT: Yes.

4 MR. GEOLY: The money will be very promptly paid into
5 escrow.

6 THE COURT: No.

7 MR. GEOLY: But -- or to the Court?

8 THE COURT: Yes. The money's paid into escrow
9 tomorrow.

10 MR. GEOLY: And held.

11 THE COURT: Yes.

12 MR. GEOLY: Until you've had a chance to review the
13 law?

14 THE COURT: Indeed, indeed, and I would like -- this
15 is a very exquisite issue, and there's absolutely no reason
16 why I could not have, and I'm not looking for anything -- I
17 just want the information and however you all -- if you
18 would be so kind as to get that to me, I see no reason why
19 I ought not be able to receive it on Wednesday because
20 there is an awful lot of money at stake. And I feel
21 compelled to get it done and at least get my decisions
22 concluded.

23 I'd like to have the memorandum by Wednesday at 5. I
24 will be in Horry County, but you all don't have to track me
25 down to the Horry County courthouse. If you get it to St.

1 George, fax it, my administrative assistant can fax it to
2 me or email it to me.

3 But that's the reason I feel compelled to answer that
4 question. If you all -- if it must be a term of the
5 settlement documents in order for there to be a stay, then
6 so be it. Otherwise, otherwise, there could be a very
7 difficult result for all class-action settlements. And
8 that is that irrespective of the quality or the merit of an
9 issue, class actions could be stayed even without
10 appropriate standards being met.

11 I don't mean to say that's what's ongoing here, but
12 I'm concerned. I'm concerned, Mr. Shahid, when you had the
13 kind of conversation that you had. I'm very concerned
14 about that.

15 All right, great, by Wednesday, and I would
16 appreciate, along with the memorandum, proposed orders.
17 Please, remember please, counselor, you must send whatever
18 you send me at least as quickly, if not quicker, to your
19 opposing counsel. So, please be mindful of that.

20 MR. RICHTER: Your Honor, we have two people here who
21 are under subpoena.

22 THE COURT: Oh, my.

23 MR. RICHTER: And Mr. Maybank, John Maybank is ---

24 THE COURT: Who was stuck in traffic for hours.

25 MR. RICHTER: That's true. Mr. Thomas, Ellie Thomas

1 who stepped out for a moment, is the other. Mr. Maybank
2 could not have been more accommodating to us throughout
3 this transaction, and we have tried to equally accommodate
4 him through issues of service and that sort of thing.

5 If it is all right with everybody and if Your Honor
6 would so require, rather than us in the event that you need
7 to reconvene, rather than us resubpoenaing him and making
8 him come back, I'm prepared to just extend that subpoena,
9 and same thing with Mr. Thomas. And if anybody objects to
10 it ---

11 THE COURT: Well, I'm less concerned about Mr. Thomas
12 because he's the escrow agent. He's in this thing. Mr.
13 Maybank is just, he's just at work.

14 MR. RICHTER: He's the keeper of the key.

15 THE COURT: He's just at work and he gets caught up in
16 it, so I'm very concerned about Mr. Maybank. You know, is
17 it all right? Can we agree, everyone, that if Mr.
18 Maybank's testimony is needed, that we'll try to do that by
19 phone or something much more convenient? I mean, I know he
20 loves being in Orangeburg and loves coming up I-26 forever,
21 but if we could agree to do that, I'd certainly want to.
22 In other words, my court reporter is usually ---

23 MR. RICHTER: Or he may be able to -- we may be able
24 to draft an affidavit for him.

25 THE COURT: Something like that.

1 MR. SHAHID: That's fine.

2 MR. GEOLY: Your Honor, we either, we either got
3 distracted or we just didn't pay close enough attention.

4 THE COURT: Let me short circuit. Mr. Maybank is here
5 under a ---

6 MR. GEOLY: No, on this I understand, but I'm jumping
7 backwards to something that you said just before.

8 THE COURT: You're good to go. We're going to take
9 care of you so that if we need you again, we're going to
10 make it easy.

11 MR. MAYBANK: Thank you.

12 THE COURT: Which one is Mr. Maybank?

13 MR. MAYBANK: Me.

14 THE COURT: I should have been looking at you.

15 MR. GEOLY: That's his boss with him.

16 THE COURT: Thank y'all so much. We sure will try to
17 make it easy, guys. Thank you.

18 MR. GEOLY: Did you ask us for a proposed order today?

19 THE COURT: No, not today. Just, yes, when you send
20 me your research, send me a little proposed order, too.

21 MR. GEOLY: With the research?

22 THE COURT: Yes.

23 MR. GEOLY: With the memo?

24 THE COURT: Yes, yes, yes, yes, and to each other
25 quick, same speed or quicker. And I'm going to resolve

1 this, I'm going to resolve it no later than next Friday.

2 Enough, enough.

3 MR. SHAHID: Judge, we're going to put the money into
4 escrow agreed upon tomorrow, and there's just sort of --
5 nothing else happens with that money until some time after
6 Wednesday and we send you this brief?

7 THE COURT: The money will just percolate.

8 MR. SHAHID: Just percolate?

9 THE COURT: It will be percolating.

10 MR. SHAHID: That's right.

11 THE COURT: Okay. Very well, thank you all so much.

12 MR. GEOLY: I have one more question.

13 THE COURT: Yes.

14 MR. GEOLY: And I hate to open up a new issue, but I
15 don't think that there's any disagreement between the
16 parties on it, so it hopefully won't cost us much time. In
17 -- and I realize in a sense you're going to revisit the
18 order you entered on July 30th by virtue of the briefs that
19 are coming.

20 THE COURT: Yes.

21 MR. GEOLY: There is language concerning members of
22 the class who are entitled to actual notice of the
23 settlement agreement and of the class action and of the
24 whole process. And a window is left open for such people
25 if they don't receive actual notice. It turns out that

1 this relatively small group of people who've been
2 identified don't actually get notice, they, in fact, are
3 not barred and that was something that the diocese had
4 agreed to.

5 There was -- we saw some ambiguity in the language and
6 I just, I wanted, I guess I wanted to clarify with the
7 Court that that was the intent. You weren't opening up
8 future litigation to those who were not on the list of
9 those entitled to notice of the settlement.

10 THE COURT: Not at all.

11 MR. GEOLY: Thank you.

12 THE COURT: Not at all. Thank you. I'm glad you did
13 that, and let the record reflect that that is limited to
14 those people that, despite all of the efforts that the
15 diocese has given and class counsel's investigator and
16 class counsel, despite all those efforts, that there are
17 these people that are really -- don't leave me -- that we
18 learn of in the process that they have agreed to do that.

19 Basically the solicitor -- I hate to use the term, but
20 the solicitor discovers. But let me say this and let me
21 tell you of this conversation, everything that I know of
22 this conversation, and I will do no more than that and ask
23 both sides to learn of this on your own.

24 I received a telephone call yesterday from Carolyn
25 Ayers, who is the civil court coordinator for Dorchester

1 County for our clerk's office. Her name is Caroline Ayers.
2 Ms. Ayers has received a letter, a letter sent to the clerk
3 of court. Not a telephone conversation but a letter. And
4 this letter says that this individual is someone who would
5 fall within the class. May I say no more than that? I
6 don't know why. They are articulating some sort of abuse.
7 They say that the diocese knows specifically of them, and
8 that they have attempted repeatedly to contact class
9 counsel, and that no one will talk to this person.

10 I thought it was just best to raise it with you all
11 because that's, if I may, a little counterintuitive. My
12 experience in this case that no one, that forty-five people
13 from both sides wouldn't have been talking to this person,
14 okay? So, I share that with you for your continuing --
15 check it out.

16 MR. GEOLY: Okay. Your Honor, should that person be
17 referred to Marvin Infinger once the matter is final?

18 THE COURT: I think you guys ---

19 MR. GEOLY: We'll just get the letter.

20 THE COURT: I think you guys get the letter, and I am
21 satisfied ---

22 MR. GEOLY: Very good, Your Honor.

23 THE COURT: --- that what needs to happen is going to
24 happen with it, okay? I just wanted you all to know that
25 that, in all candor, that that had happened because I was,

1 to use my favorite word today, I was a little nonplused
2 that that had happened in this case.

3 All right, guys, I'll look for something Wednesday
4 from y'all. Y'all look for something no later than Friday
5 from me, okay? Thank you guys so much.

6 Now, who's going to give me the happy phone call
7 tomorrow that the settlement has been signed and -- both of
8 you? Okay, what time? No later than 4.

9 MR. SHAHID: I'm supposed be in Aiken on the James
10 Brown matter. I'll figure out how to get that word to you.

11 MR. DUKES: Judge, if Peter can't, Richard Dukes, I
12 will call you.

13 THE COURT: That will be great. That would be great.
14 Y'all just on the phone and give me a call. Everybody's
15 got my cell. All right, thank you so much.

16 --- END OF TRANSCRIPT OF RECORD ---

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER) 2006-CP-18-1310, 1311, and 1636

JOHN DOE #53, JOHN DOE 66,)
JOHN DOE 66A, JOHN DOE 67,)
JANE DOE 1 AND JANE DOE 2, AND)
RACHEL ROE, INDIVIDUALLY AND AS)
REPRESENTATIVE OF A CLASS OF)
PEOPLE SIMILARLY SITUATED,)

PLAINTIFFS,)

VS.)

TRANSCRIPT OF RECORD

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

DEFENDANTS.)

JANUARY 29, 2009
ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

A P P E A R A N C E S:

A. PETER SHAHID, JR., ESQ.
ERIN GROEBER, ESQ.
JAMES G. GEOLY, ESQ.
LAWRENCE E. RICHTER, JR., ESQ.
DAVID HALLER, ESQ.
GREGG MEYERS, ESQ.
DAVID FLOWERS, ESQ.

BONNIE H. KELLY
CIRCUIT COURT REPORTER

I N D E X

	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
1		
2		
3	MOTION TO RECUSE/MR. MEYERS	7
4	RULING BY THE COURT	11
5	MOTION TO DISMISS/MR. MEYERS	11
6	RULING BY THE COURT	31
7	MOTION TO ENFORCE SETTLEMENT/MR. SHAHID	36
8	RESPONSE/MR. MEYERS	73
9	RESPONSE/MR. GEOLY	86
10	RULING OF THE COURT	136
11	AMICUS CURIAE MOTION/MR. FLOWERS	104
12	RULING BY THE COURT	112
13	CERTIFICATE PAGE	144

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID</u>
C-1	EMAIL DOCUMENT		127
C-2	COPY OF TRANSCRIPT		127
C-3	RELEASE DOCUMENT - 2 PAGES		135

1 THE COURT: Now, we now move on to the *Doe vs. Bishop*
2 *of Charleston and the Diocese*. And we have three motions
3 today: There is a Motion to Recuse; there is a Motion to
4 Enforce Settlement; and then there is a request for an
5 *amicus*.

6 MR. SHAHID: Judge, there's actually one more motion.

7 THE COURT: All right.

8 MR. SHAHID: There was a motion -- with the Motion to
9 Enforce Settlement, Motion to Deposit Funds.

10 THE COURT: Right. I -- I really considered those --
11 one came first and the other one came -- Mr. Shahid, I
12 really considered those to be one and the same.

13 MR. SHAHID: Yes, ma'am.

14 THE COURT: But I do understand that that is a request
15 for relief. I certainly do.

16 Yes, sir, Mr. Meyers?

17 MR. MEYERS: Good morning, Your Honor. There is also
18 a Motion to Dismiss on behalf of my client.

19 THE COURT: That is right. Motion to Dismiss. You
20 are right. Thank you very much.

21 Now, I received an e-mail from Mr. Meyers and we
22 really can ---

23 (Sotto voce discussion between
24 the law clerk and the Court.)

25 THE COURT: I think it was from Mr. Meyers; wasn't it?

1 And Mr. Meyers opined of an order that I think you
2 thought made sense. And there are really two -- two ways
3 to go about this. One, of course, is to just go
4 chronologically, and -- and one is to follow in order of
5 them.

6 And it just seems to me that probably the most
7 appropriate way to probably begin, Mr. Meyers, would be
8 with the Motion to Recuse.

9 And suffice it to say, even prior to yesterday, I'd
10 had an opportunity to review the motions, supporting
11 documentation. And I was fortunate to have yesterday,
12 because we concluded the work that we were doing in Calhoun
13 County. And I was able to devote yesterday to going back
14 over your briefs and your filings in -- in this matter. So
15 with regards to the motions, I have been over the
16 information. It's fairly crisp.

17 MR. MEYERS: If I -- if I could just note, Your Honor,
18 I also, in response to what I got from Mr. Shahid on Monday
19 ---

20 THE COURT: Uh-huh.

21 MR. MEYERS: --- this morning, a few extra documents
22 and another memorandum.

23 THE COURT: I certainly don't have them. So you want
24 to pass those?

25 MR. MEYERS: I'm -- I've got another copy with me.

1 THE COURT: Okay. Good.

2 MR. MEYERS: I'm glad to hand you --

3 THE COURT: All right. I'll take the -- be happy to
4 take the time and review those.

5 (Mr. Meyers hands documents up to the bailiff.)

6 MR. MEYERS: Thanks, Your Honor.

7 (The Court reviews documents.)

8 (Sotto voce discussion between Mr. Meyers
9 and Erin Groeber, Esquire.)

10 (Sotto voce discussion between
11 Mr. Richter and Mr. Haller.)

12 (Sotto voce discussion between
13 Mr. Geoly and Mr. Meyers.)

14 THE COURT: All right. I have reviewed the additional
15 documents and "Reply" is what's on the top sheet filed
16 today by Mr. Meyers. And did you get this to everybody
17 else?

18 MR. MEYERS: Yes.

19 THE COURT: Okay.

20 MR. MEYERS: I note, Your Honor, on mine, the clerk's
21 office in the copy stamp hadn't changed the date. So I
22 don't know what -- they stamped it in two different
23 machines -- the original was stamped in on the first
24 machine, then they gave me this copy? The copy says it was
25 filed yesterday, but it was only filed this morning.

1 THE COURT: I -- I don't know.

2 MR. MEYERS: So, I don't know what they -- I -- I just
3 don't want there to be any confusion about that. I think
4 it's insignificant, but I want to make that clear, since I
5 don't know what the original says, but I know the copy says
6 ---

7 THE COURT: I don't know; I don't know.

8 MR. GEOLY: We received our copies this morning when
9 we arrived at court, Your Honor.

10 THE COURT: Okay. Thank you, Mr. Geoly. Great.
11 Thank you.

12 All right. I think the first motion, I believe, is
13 yours, Mr. Meyers; is it not?

14 MR. MEYERS: Yes, Your Honor. My concern has just
15 been to make sure my clients get a level playing field.
16 And I have always enjoyed being in Your Honor's court, but
17 I -- I'm real -- I'm a little uncertain about my status in
18 Your Honor's court at the moment.

19 I know there was some investigation done on me. I
20 don't know where that stands. I'm not really asking about
21 that. I'm not -- I'm not asking for anything on the record
22 in terms of that, but it's never been clarified for me what
23 that was about.

24 I thought I was pretty clear back in March and in
25 written filings, that all I was doing was providing notice

1 of everyone I knew about. But I wasn't claiming to
2 represent all those people.

3 THE COURT: Sure. Mr. Meyers, I want to call your
4 attention to a telephone conversation that you were on.
5 Mr. Shahid was on it; Mr. Richter was on it; and you were
6 on it. And with the -- at that point in time, just for
7 your information, I had been working with the solicitor's
8 office and working with these lawyers. And there came to
9 be some concern about the John Doe A, John Doe B, John Doe
10 C, etc.

11 And I first remember a reference being made in passing
12 at a hearing. I don't -- I remember you were there,
13 because I remember the interchange between you and -- and -
14 - and Mr. Richter in that interchange. And there was a
15 comment made, as I recall, about your representation of
16 these individuals and they were people denoted by alphabet.

17 And I had alphabets with the plaintiff; I had
18 alphabets that I was dealing with through the Diocese as
19 they went through their archives. And in that telephone
20 conversation, I said, "Mr. Meyers, just give me the
21 information. I will keep it and I will examine the
22 information. Just to be sure you got one client that
23 you're raise in this." Okay?

24 MR. MEYERS: Correct. Yeah. That was the March
25 hearing.

1 THE COURT: Sure.

2 MR. MEYERS: As I recall.

3 THE COURT: And in all candor, your explanations, some
4 of them -- most of them certainly were not the typical
5 representation, where a person retains a lawyer to
6 represent him in an instant case. And in that phone call,
7 I asked you for that -- that basic information; you were
8 kind enough to get it to me; and I issued the order asking
9 for the assistance, to be sure that your representation of
10 those clients was appropriate.

11 I was looking for one and only one, because it was my
12 position that if you had one, you were good to go in terms
13 of making objections. And in fact, I retained that
14 individual.

15 I think you are now aware that there were issues --
16 there were other issues raised by that individual; and I
17 stopped and would not allow any further inquiry, Mr.
18 Meyers, for the simple reason that my inquiry was very
19 limited. It was limited to be sure that there was no
20 question but that you had one; because my position was if
21 you had one and one in the alphabet, you were good to go.

22 And let me reiterate to you so there's no question:
23 Although there were other issues raised, I stopped that
24 inquiry. And the reason why, Mr. Meyers, was my -- my
25 inquiry was very limited. And I wasn't going to let it be

1 extended because of that, because it was very limited.

2 The order that I issued, of course, gave you 10 days,
3 gave everybody 10 days to object. But apparently, this has
4 been a source of great angst for you. That was the
5 beginning and the end of it. Okay?

6 So that's the -- that's it. I don't -- I cannot even
7 imagine how it's been even any more than that, because I
8 was very clear in the telephone conversation that I had
9 with all counsel present. So be that -- now -- now, if
10 you'll proceed. So that that is what that is, and I think
11 you're aware of that, based on other forums.

12 Yes, sir. You may proceed.

13 MR. MEYERS: Well, in terms of the -- the grounds,
14 Your Honor, I tried to set them out in ---

15 THE COURT: Sure.

16 MR. MEYERS: --- pretty good detail in my ---

17 THE COURT: You did.

18 MR. MEYERS: --- written document.

19 THE COURT: And again, I believe that there's another
20 forum that's dealt with -- with those matters.

21 MR. MEYERS: Right. And it's not my intention to
22 belabor those matters, but that has been my concern, that
23 if I had got an adverse ruling, I'd have to be able to
24 justify to my clients that ---

25 THE COURT: Uh-huh.

1 MR. MEYERS: --- indeed we had a level playing field.

2 THE COURT: Sure.

3 MR. MEYERS: And given the course of the way things
4 went, it -- it raised those concerns --

5 THE COURT: Sure.

6 MR. MEYERS: -- in my mind.

7 THE COURT: Sure.

8 MR. MEYERS: And it seemed to me, my clients were not
9 treated in the same way as other people who were in the
10 same situation. So I had those concerns.

11 THE COURT: Sure.

12 MR. MEYERS: I -- I felt obligated to raise them; I
13 have raised them.

14 THE COURT: Very well.

15 MR. MEYERS: I submitted my memorandum and I'll be
16 glad to stand on that.

17 THE COURT: Very well. All right. And I will
18 respectfully deny your Motion to Recuse. And -- and I just
19 put on the record that again, those issues have been dealt
20 with in a different forum, and I am satisfied and hope -- I
21 -- I am satisfied that they have been laid to rest.

22 All right, sir. Now we move on to the jurisdictional
23 issue.

24 MR. MEYERS: Right. My clients, Your Honor, opted out
25 of this case. We had a private settlement agreement. We

1 opted out, our constitutional right to do so. The Diocese
2 has not fulfilled the settlement agreement; they have not
3 paid it.

4 So in an effort to enforce that agreement, I applied
5 general legal principles, as Rule 41.1 says I'm to do. And
6 I filed a breach of contract case in Charleston County.

7 The Diocese, from the beginning, has tried to make me
8 come back here where my clients are opted out, where we
9 have a separate agreement, where if it's part of the class
10 action, I think raises incredible complexities for notice
11 to absent members of the class about different agreements
12 they might have gotten.

13 And I keep trying to make the class action simpler now
14 that I'm out of it, rather than more complicated; and I
15 believe the Diocese is trying to make it more complicated.
16 I think that if the Diocese is correct that my private
17 agreement is part of the class action, a whole series of
18 complications arise from whether absent members of the
19 class were informed about that private agreement. If,
20 however, it's a private agreement, then there's no
21 obligation to inform members of the class about it.

22 So if it's outside the class action, which I believe
23 it is, and using Rule 41.1 -- which is what governs the
24 settlement -- general legal principles apply. It seems to
25 me not only appropriate, but the right thing to do for me

1 to file where the agreement was negotiated, entered,
2 breached, and where the Diocese resides.

3 THE COURT: Mr. Meyers, what about 43(k)?

4 MR. MEYERS: 43(k) says private settlement agreements
5 are governed by Rule 41.1. That's what it says. So when
6 the Diocese brought the agreement here, that makes sense
7 for the Diocese to do, because the Diocese is party to the
8 case, and it wants to note for the Court that my Rule 59
9 objections are resolved and there's not going to be any
10 appeal involving the class; then the agreement says I will
11 opt out. And of course, the Court had already deemed my --
12 11 of my 12 clients to be out of the case in July. But
13 that Rule 59 motion had that order not yet final. So that
14 order is final.

15 Rule 43, though, actually doesn't apply. What it says
16 is if you have a private settlement agreement, that's Rule
17 41.1. And under Rule 41.1, general legal principles apply,
18 unless you're trying to invoke the Court's imprimatur on an
19 issue of secrecy, which we are not trying to do.

20 THE COURT: Yes, sir. I think Rule 43(k) also says
21 that there are ways to present agreements to the Court, to
22 remove them from -- from only being enforceable by virtue
23 of -- of a contract action. And that you can have the
24 Court -- you can place your agreement on the record, and
25 therefore have the ability to have the Court enforce the

1 settlement.

2 And that way -- I mean, typically and normally what
3 happens with Rule 43(k) is -- and it normally happens in a
4 wreck case, in an automobile accident case where
5 litigation's been filed; lawyers are able to settle the
6 case; letters go back and forth; the release arrives; and
7 for whatever reason, the plaintiff does not want to sign
8 the release. Check has arrived.

9 And oft times, lawyers will come back to the Court to
10 enforce the settlement. No question but that they sent the
11 letters; no question but that they had a meeting of the
12 minds. And they're looking for the Court to have the
13 plaintiff sign the release.

14 In that instance, the Court can't do that. The reason
15 the Court can't do that is because it is no more than an
16 agreement; a contract. It wasn't placed on the record
17 before the Court; wasn't published in open court; wasn't a
18 part of a consent order setting forth the terms of the
19 settlement.

20 What makes this one potentially different is because
21 there was a pending Motion to Alter and Amend, and in
22 resolution of -- of the Motion to Alter and Amend, as well
23 as, I gather, any potential concerns that the parties had
24 about appeals, there was an agreement that was entered
25 into; moneys agreed to be paid. And to be sure that the

1 parties -- both sides -- your clients, as -- as well as --
2 as class counsel, as well as the Diocese, opted to publish
3 that to the Court and an order signed.

4 And so far as the Court is concerned, it was -- it was
5 positive because it resolved, by Court order, the Motion to
6 Alter and Amend. And it was important to the Court to have
7 that resolved and resolved in the form of an order.

8 And obviously, the -- those -- your -- your clients
9 would not have done that, walked away from their ability to
10 -- to argue the Motion to Alter and Amend, and if -- if
11 needed, their appellate rights, without the settlement.

12 MR. MEYERS: Correct.

13 THE COURT: So 43(k), tell me why under 43(k) -- and -
14 - and as I also -- let me just say, as I also understand
15 it, as a part of the settlement, your clients were to opt
16 out, and -- and in the documents yesterday, I had not seen
17 -- the -- the documents that had been signed by each of
18 your clients that talk about your opting out. You know,
19 you have -- you're not going to participate in the class
20 settlement; you're going to participate in your settlement,
21 or -- you know, I think somebody had penciled in ---

22 MR. MEYERS: I had.

23 THE COURT: It looked like your handwriting -- you
24 know, about the two options that they had, that this was --
25 this -- this contained their rights as -- as a result.

1 MR. MEYERS: Correct. We would "enforce it outside
2 the class" is the language ---

3 THE COURT: Yeah. Absolutely. So while I certainly
4 understand your argument completely in terms of they --
5 they absolutely are not a part of the class; their rights
6 have not been adjudicated by the class; they opted out of
7 the class. In addition to that, though, your clients and
8 their lawyer was entitled to certain moneys.

9 And so under 43(k), those -- those -- that agreement
10 was reduced to a court order, and of course, the court
11 order incorporates the letter that I think you all -- I
12 think everybody signed.

13 Tell me why -- under 43(k), at least insofar as the
14 parties to the agreement, why then can that agreement not
15 be enforced by the Court?

16 MR. MEYERS: 43(k) ---

17 THE COURT: Uh-huh.

18 MR. MEYERS: --- certainly would entitle the Diocese
19 to enforce my relinquishment of Rule 59, because ---

20 THE COURT: Uh-huh.

21 MR. MEYERS: --- if I tried a notice of appeal after
22 that agreement ---

23 THE COURT: Uh-huh.

24 MR. MEYERS: --- the Court could say, "You can't do
25 that; I've got an agreement right here."

1 In terms of the underlying resolution, though, that's
2 ---

3 THE COURT: Actually, I don't think -- that's an
4 interesting -- now my -- my mind is right back there where
5 you are.

6 Actually, I think they'd have to raise that to the
7 Supreme Court, because I wouldn't have jurisdiction.

8 MR. MEYERS: But -- but that would be the basis of it.
9 The basis would be ---

10 THE COURT: That's right.

11 MR. MEYERS: --- there was ---

12 THE COURT: Right. But it wouldn't be me; it would be
13 the Supreme Court.

14 MR. MEYERS: Right. Because at that point, I at least
15 have the argument that the July 30th order that excludes my
16 clients --

17 THE COURT: Uh-huh.

18 MR. MEYERS: -- is not final. Once I relinquish, that
19 order becomes final.

20 THE COURT: Which order?

21 MR. MEYERS: The July 30th order that excluded my
22 clients from even having standing to raise objection.

23 THE COURT: Okay. That's the order that there was a
24 Motion to Alter and Amend.

25 MR. MEYERS: Right.

1 THE COURT: Okay. I'm with you.

2 MR. MEYERS: Once -- once my Motion to Alter or Amend
3 is resolved, then the -- the only contention I have in the
4 case at that point is I was improperly excluded. I should
5 -- I should have not only standing, I should have at least
6 the ability to state a claim should my clients choose to
7 opt in or be in.

8 And what the Court had done is said not only are my
9 clients -- not only do they lack standing, they can't even
10 make an objection. To make even an objection, they would
11 have had to petition to intervene. And that finding of the
12 Court is the law of this case.

13 THE COURT: Okay.

14 MR. MEYERS: The only way ---

15 THE COURT: Sure.

16 MR. MEYERS: --- for my clients to assert the
17 jurisdiction of this Court, under this Court's order, is
18 for them to petition to intervene and become part of the
19 case.

20 THE COURT: Except for the fact that through your
21 actions as their agent, they submitted themselves to the
22 jurisdiction of the Court under 43(k).

23 MR. MEYERS: To the extent of resolving a Rule 59 ---

24 THE COURT: Right.

25 MR. MEYERS: --- motion, and then the agreement ---

1 THE COURT: Now -- well ---

2 MR. MEYERS: --- which the Court ---

3 THE COURT: --- yeah ---

4 MR. MEYERS: --- also enforces ---

5 THE COURT: --- just the agreement ---

6 MR. MEYERS: --- is they will opt out, and there is
7 constitutional significance to someone opting out. It
8 means we are out. The Diocese wants to bring us back in,
9 saying, "Well, you came into court to opt out; so you must
10 be in."

11 THE COURT: No.

12 MR. MEYERS: It is -- it is -- yes. That is what the
13 Diocese contends.

14 THE COURT: I gotcha.

15 MR. MEYERS: By -- by coming to court ---

16 THE COURT: What they want to do is they just want the
17 benefit of their bargain. They just want to -- as I
18 understand it.

19 Now, let me say this to you. I think that there are
20 other issues and this -- I'm going to give you a simplistic
21 -- as we -- you know, as we have this interchange, because
22 I'm still pondering, where -- where are we? January of
23 '09? And I'm wondering, "How come you don't have your
24 money?" I mean --

25 MR. MEYERS: Well, because the reasons change ---

1 THE COURT: I -- we -- we going to get there. I mean,
2 I think we'll get there, and -- and I would have thought,
3 without question, that -- and -- and now, as of yesterday,
4 and -- and some, I think, perhaps this morning even, I've
5 seen some of the letters -- Meyers on -- doing your Cuba
6 Gooding imitation, "Show me the money."

7 And I think it looks like about May -- the first week
8 in May -- you'd about had it, looks to me like. I mean
9 March, because, I mean, you're saying, "You told me in
10 January, uh-huh, uh-huh." And there would be no question
11 in my mind but that at that point, you could have come back
12 to the Court and done your Cuba Gooding imitation and said,
13 "Show me the money."

14 Because I believe that your clients would have been
15 able to come to this Court, not as members of the class,
16 but to enforce their agreement: "We agreed to opt out; and
17 we agreed that we would forego our Rule 59 motion and any
18 Appellate rights in exchange for our money."

19 And so what you are telling me is that those poor
20 people would not have been allowed to come back to this
21 Court and say, "Where's our money?"

22 MR. MEYERS: We would have had our new Court's order;
23 we would have had to petition to intervene. Had I filed
24 that in March, we'd be hearing that this morning.

25 THE COURT: Oh, no, Mr. Meyers.

1 MR. MEYER: Well, that's the way the -- that's the way
2 the record has been in this case.

3 THE COURT: No.

4 MR. MEYERS: And what I did not want ---

5 THE COURT: Yeah.

6 MR. MEYERS: What became clear to me on March 3rd --
7 when Mr. Shahid wrote me and I received it on March 5th --
8 was that the Diocese had changed its position. It was now
9 articulating a series of new conditions that had to be
10 satisfied. And it was clear to me I wasn't going to get
11 paid anytime soon. Turns out I was right.

12 I made it very clear up through August 15th, I had
13 authority to accept simply the principle amount with no
14 consideration of consequential injury. But what I could
15 not do for my clients was abandon the pretty significant
16 consequential injury that has accrued to them.

17 And I have one third party beneficiary in my agreement
18 with the Diocese who -- who has no ability to participate
19 in this case, none at all. He's excluded by definition.
20 To admit him to this case ---

21 THE COURT: That is "B." That's ---

22 MR. MEYERS: John Doe B.

23 THE COURT: Well, see -- but John Doe B -- see, my --
24 my concern about John Doe B is John Doe B is a stranger to
25 the litigation and ---

1 MR. MEYERS: Yes.

2 THE COURT: --- completely a stranger to the
3 litigation, because I went -- I went back and -- and
4 studied the -- your original objections. And then as you
5 carried that forward, even to the Rule 59 motion, there is
6 no John Doe B.

7 MR. MEYERS: He's not part of it. So he's not ---

8 THE COURT: Has never been part of it.

9 MR. MEYERS: He has no Rule 43 right ---

10 THE COURT: 43(k).

11 MR. MEYERS: --- to assign ---

12 THE COURT: Okay.

13 MR. MEYERS: 43(k). I'm sorry. He has no right at
14 all.

15 (Passing train is heard in the background.)

16 THE COURT: Norfolk/Southern got to do their thing.
17 We got one more. So "Mayberry." Now, go ahead.

18 I agree with you. I agree with you on John Doe B.

19 MR. MEYERS: He can't even petition to intervene in
20 this case. He -- he would have to file a completely new
21 complaint. And there's no jurisdictional connection that
22 he's got, or any of my people have, frankly, with
23 Dorchester County.

24 So it's a strange posture. But Rule 43(k) says,
25 "Private settlement agreements are governed by Rule 41.1."

1 And Rule 41.1 says, "This rule doesn't apply unless you're
2 trying to invoke the Court's imprimatur on secrecy, and
3 what applies instead are general legal principles."

4 So I think, even under the rule, even if this wasn't a
5 class action, but the -- but the ultimate significant
6 overlay is this was a class action and my people, as part
7 of this agreement, not only have been excluded by the
8 Court, but also agreed formally to opt out.

9 Once the formal opt-out happened, if not before -- and
10 I think it was before -- the moment the -- the July 30th
11 order became final as to my people, which was when this
12 agreement was reached, then the only way for us to get in
13 would be to overcome the opt-out. We would have to
14 demonstrate why our opt-out should be somehow modified or
15 conditioned.

16 But once you're out, you're out. And I am just like
17 everybody else on the street, except I have this private
18 agreement with the Diocese, which they, to this day, refuse
19 to honor. So just in terms of the Diocese seeking the
20 equity of the Court, I think they come with very unclean
21 hands.

22 But in terms of opting out, a class action is
23 different than any other kind of case. And it's different
24 in this respect in two different dimensions.

25 THE COURT: Uh-huh.

1 MR. MEYERS: Not only have my people opted out, and so
2 to enforce, we have to find a jurisdictional basis. And
3 under the Court's rule, I have a petition to intervene for
4 11, and the 12th client just has no ability to do anything.

5 But under the -- the flip side is that if my agreement
6 is part of the class action, then absent class members
7 probably have to be told about it. And that no notice was
8 given to absent class members about any of this -- don't
9 have to go through arbitration; you get a set amount;
10 nothing's at risk -- I mean, there are different elements
11 here. And there is no reason to complicate the class
12 action with that.

13 THE COURT: I -- I ---

14 MR. MEYERS: It's the benefit of opting out for my ---

15 THE COURT: You didn't opt out. See, here -- here's -
16 - you -- you keep saying that. The opting out happened two
17 ways.

18 Number one, I think you argued that these folks were
19 going to opt out. But they couldn't have opted out at that
20 point, because the claims process hadn't begun, so they
21 couldn't opt out.

22 MR. MEYERS: Even more fundamentally, the claimants in
23 this case had not specified whether it was an opt-in or an
24 opt-out class. They were silent about that.

25 And my pleading says, "That's not been clarified.

1 Once it's clarified, I reserve the right to make that
2 decision. If I have to make the decision now, I'm opting
3 out."

4 So then the clarification was brought --

5 THE COURT: It very well may be. I think you said ---

6 MR. MEYERS: My clients ---

7 THE COURT: Uh-huh. --- said they intended to opt out,
8 but they had not at that point.

9 But here's the thing: Your clients, your clients
10 opted out in consideration of the settlement which was put
11 on the record, in this case pursuant to, I believe, 43(k).

12 And so your clients couldn't be put in the position of
13 having agreed, because at the point in time when they opt -
14 - opted out, there wasn't even a claims process at that
15 point. It had not been put into effect. So your clients,
16 in consideration of their settlement, part of the
17 consideration was that they would opt out.

18 Now, I just -- you know, I feel like I'm arguing with
19 you to say your clients -- your clients gave up a lot in
20 this settlement. And you're saying that it was of no
21 moment and they aren't entitled to enforce?

22 MR. MEYERS: I'm saying it's of tremendous
23 significance. It's -- the Diocese says that doesn't
24 matter. Just because you opt out -- in fact, when you opt
25 out, you've opted in. When you opt out, you commit

1 yourself to ---

2 THE COURT: No.

3 MR. MEYERS: --- the perpetual jurisdiction of the
4 Dorchester County Court. That's the Diocese's position.

5 THE COURT: No, sir. No, sir. That's not all -- you
6 -- you've got it all as one thing, and it's not one thing.

7 MR. MEYERS: Well, the Diocese's position is that ---

8 THE COURT: Okay.

9 MR. MEYERS: --- we come into court.

10 THE COURT: All right.

11 MR. MEYERS: And if you come into court, even if you
12 come into court to opt out, you're somehow still in. And I
13 think as a matter of class action in Rule 23 that simply --
14 not only does it -- is not consistent with Rule 23 and the
15 due process implications of opting out, I think it also
16 creates incredible complications for the class. And I
17 think that is just not on the radar screen anywhere, and I
18 think it should be.

19 But in any event, my clients -- whether they had a
20 right to come back to this Court and petition to intervene
21 or whatever the mechanism would be ---

22 THE COURT: No.

23 MR. MEYERS: --- or even if you could just walked
24 right in --

25 THE COURT: They didn't have to petition to intervene.

1 Your clients -- I -- I absolutely -- I'm absolutely clear,
2 your clients, to this moment, to this very moment, have
3 every right to come to this Court and to petition to
4 enforce that settlement.

5 MR. MEYERS: Well, I ---

6 THE COURT: And if in fact, the Diocese or anyone has
7 violated the order, to have that party ordered held in
8 contempt ---

9 MR. MEYERS: But ---

10 THE COURT: --- for violating the terms of that order.

11 That settlement is a court order under 43(k). And I -
12 - you know, in my mind, without question, because
13 otherwise, 43(k) means nothing.

14 And -- and the Court was concerned about that
15 settlement. The Court was concerned about that settlement
16 in this regard: I had a pending 59 motion that was pending
17 and a very serious motion; I had individuals who, by
18 agreement, were agreeing for money to opt out and to give
19 up their rights to a class action settlement. You know,
20 just let alone the dollars.

21 This is, you know, this is Dorchester County. This
22 isn't like Charleston County. We don't get those big old
23 dollar amounts like that up here.

24 So you know there was certainly some concern about
25 committing that -- all of those -- all of those terms. It

1 was important, and it certainly was important in terms of
2 the -- of the management of this case.

3 I don't believe that by -- by complying with the terms
4 of the settlement, that your clients -- and what I mean by
5 that, by complying with the terms of the settlement and
6 opting out -- and I've seen those documents. I mean, they
7 signed those documents. So they opted out. That was
8 consideration for their -- for that settlement.

9 MR. MEYERS: Of course.

10 THE COURT: Which at that point is a -- is -- is
11 clearly a court order, and -- and enforceable by the Court.
12 And you know, they had -- they had an open door -- have --
13 had and have an open door to the Court for redress.

14 And I don't think they've -- I -- I mean, what a --
15 what a repugnant place in the law to put your clients. I
16 mean, they -- here they -- here they give up these rights
17 from -- there's a court order and yet they can't come back
18 and avail themselves of that which they have done that has
19 been approved by the Court and reduced to a court order.
20 They cannot avail themselves to that ---

21 MR. MEYERS: Well, my position ---

22 THE COURT: --- to that rapid remedy?

23 MR. MEYERS: --- my position has not been that they
24 might not have had alternative ways to seek enforcement.

25 THE COURT: Sure. Sure. Yeah. Yeah.

1 MR. MEYERS: So but what I would have done is try to
2 comply with the July 30th order and petition to intervene,
3 and I knew I couldn't do that on behalf of my third party
4 beneficiary client. So I took -- I went through the front
5 -- what seemed to me the front door. Straight up.

6 We did all this in Charleston. You reside in
7 Charleston. You have -- I have a private agreement with
8 you, which under Rule 43 is governed by 41, which says it's
9 governed by general legal principles. You breached the
10 contract. I'm going to have consequential damages unless
11 you come through fairly soon, and they continue to breach
12 the contract.

13 So I -- I don't think that there was exclusive
14 jurisdiction by any means. That's certainly not part of
15 the agreement. And I took what I thought was the fastest
16 route; and the Diocese has turned handstands to make sure
17 nobody touches this except Your Honor.

18 THE COURT: Yeah. Well, I -- you know -- and the
19 reason, I gather they -- well, I don't know. I don't know
20 why they did that. And I don't know what's going on in
21 Charleston. You know, and I've seen -- probably in
22 preparation for today's hearing, I've seen some of the
23 pleadings and I've glanced at them.

24 And interestingly enough, interest -- interestingly
25 enough, as I understand the -- the position that you have

1 taken to this point, you for -- for your own tactical
2 reasons, have chosen to treat the agreement not as a court
3 order, but as a contract. And -- and that really -- that
4 lies in Charleston at this point. That -- that isn't here.

5 And I certainly -- I mean, what I have jurisdiction
6 over, obviously -- obviously is the class settlement, the
7 class action, and -- and also the settlement.

8 And jurisdictionally speaking, why do I have
9 jurisdiction over the settlement? Simply because your
10 client submitted to the jurisdiction of this Court for
11 purposes of that settlement under 43(k).

12 MR. MEYERS: Which requires them to opt out.

13 THE COURT: Exactly. Exactly. They're not in the
14 settlement. They are not in this settlement.

15 MR. MEYERS: Correct. They're also not in this case.

16 THE COURT: Yeah. They are.

17 MR. MEYERS: Well, I understand the Court's position
18 and ---

19 THE COURT: They are. That's -- that would -- that's
20 the ruling. They must be. They must be, because --
21 because -- because at the point in time when -- probably at
22 the point in time when the objections were filed and they -
23 - they submitted to the personal jurisdiction of the Court,
24 probably at that point.

25 But that's not the real issue before us. The issue

1 before us has to do with that order that approved the
2 settlement; and unquestionably in my mind, they submitted
3 to the personal jurisdiction of this Court for that
4 settlement.

5 I am not dealing with a breach of contract action. I
6 don't know -- and let me -- let me just expound on that a
7 little bit farther. Because it's your position because of
8 delay on behalf of the Diocese that other things have
9 happened.

10 MR. MEYERS: Correct.

11 THE COURT: Well, you know, Mr. Meyers, you're right.
12 I mean, that -- if those are additional and that's -- that
13 very well may be a whole other situation. And -- but --
14 but the Court's concern here is the class action and that
15 settlement. I mean, that's just part of this -- part of
16 this litigation in my mind.

17 Long story short, I do believe there is jurisdiction
18 and I would deny respectfully your Motion to Dismiss,
19 noting your exception thereto.

20 MR. MEYERS: All right. Well ---

21 THE COURT: Okay.

22 MR. MEYERS: --- I think I've made it very clear that
23 the Diocese continues to refuse to pay. So if -- if indeed
24 that order applies to ---

25 THE COURT: Uh-huh.

1 MR. MEYERS: --- the Diocese ---

2 THE COURT: Sure.

3 MR. MEYERS: --- I would request of the Court to not
4 only compel today the Diocese to pay the money --

5 THE COURT: Yeah.

6 MR. MEYERS: -- which they admit they owe, but to also
7 provide for the interest allowed by law on money that
8 should have been paid, by my calculation, on February 14th,
9 if not sometime fairly soon after.

10 And to compel them to actually do it, because they
11 have refused to do it. And I got one set of reasons in
12 March; I got silence until August. I got a new reason in
13 August: "We can't pay you because we have a Motion for
14 Sanctions against you."

15 And I said, "Keep your motion for sanctions; you will
16 not waiver. Pay the money; keep your motion for
17 sanctions." They still won't do it.

18 So this is the Diocese. They do have to be "dragged,
19 kicking and screaming," as Mr. Richter once said. He's
20 right. And they simply won't do it.

21 And here's how crazy it's got to. On August 5th,
22 before they told me they had filed their motions in July
23 25th in this Court for sanctions to enforce the settlement,
24 I wrote to them not knowing they had filed these motions.
25 And I said, "Look, guys, I've got authority until August

1 15th. Just pay the money. The Charleston case goes away,
2 everything gets resolved." They won't do it.

3 Instead, they're trying to make me accept the money
4 I'm demanding, and they won't pay it. It is "Alice in
5 Wonderland" that I can't get them to honor what you're now
6 concluding is your order.

7 THE COURT: Uh-huh.

8 MR. MEYERS: So your order was not put into effect.
9 So actually, they owe me pre-judgment interest from August
10 31st, the date the Court entered the order. Since the
11 Diocese breached it, I would argue pre-judgment interest
12 should run from there. But it certainly should run from --
13 under the terms of the agreement, when the arbitrations
14 were done. And the Diocese still refuses to pay.

15 So I am --

16 THE COURT: Now, under your argument as you are making
17 it, I'm -- I'm -- you know, I -- the remedies available to
18 the Court, I think, under the circumstances, are varied,
19 but I think it would be post-judgment, not even pre-
20 judgment. It wouldn't be eight and three-quarters or
21 whatever it is as of January, which is much lower, but it
22 would be the higher rate, I think.

23 MR. MEYERS: Well, actually, you're correct, and I
24 appreciate ---

25 THE COURT: Yeah.

1 MR. MEYERS: --- the Court calling my ---

2 THE COURT: I mean, don't you think it would be?

3 MR. MEYERS: --- attention to it.

4 THE COURT: I mean, don't you think it would be?

5 MR. MEYERS: Well, under the Diocese's argument -- I
6 mean, I thought I had to demonstrate that they had a
7 contract that they had breached.

8 Under the Diocese's argument that this is an order of
9 the Court, then they've been under a Court order to pay the
10 money on the terms of the agreement, which they have failed
11 to do. So I think you're right; I think post-judgment
12 interest would apply.

13 Now, they want to sanction me for seeking to make them
14 pay. And I guess I'll have an opportunity to address that,
15 but it seems to me that is exactly my job, try to make them
16 pay. In a class action where you have this strange opt-out
17 situation, it certainly was not bad faith that I pursued
18 them in Charleston under a breach of contract theory.

19 They're arguing I should have done worse to them,
20 bring them in here under the Court's order and get post-
21 judgment interest. So I accept the Diocese's position that
22 they owe me post-judgment interest, or the Court's
23 interpretation, rather.

24 THE COURT: No. I said I -- I'm just -- I think what
25 you're telling me ---

1 MR. MEYERS: --- back to that order.

2 THE COURT: Yeah. I'm not agreeing with you or
3 disagreeing with you at this point, because I haven't heard
4 from them. But I think what you would be asking for would
5 be post-judgment, not pre-judgment. I just -- I just know
6 that.

7 MR. MEYERS: I -- I think you're correct. And I think
8 the Diocese -- under their theory, that's been their
9 obligation, to comply with the Court's order --

10 THE COURT: Uh-huh. Yes.

11 MR. MEYERS: -- which they have not done.

12 THE COURT: See, and that's what they've got. They've
13 got one of those motions, too, to -- to pay the money.

14 MR. MEYERS: -- in which their own filing says they
15 owe.

16 THE COURT: Absolutely. All right. Well, let me tell
17 you what we're going to do. All right. Now, I've dealt
18 with those two motions. I'm going to deal with -- when we
19 return -- the Motion to Enforce Settlement. Right? And
20 then I'll deal with the *amicus* at -- at the conclusion of
21 that.

22 But we're going to take a -- we're going to take a
23 very short break. Please, everybody, help yourself to
24 coffee, if you would like and -- and whatnot.

25 Now, is anybody here on anything other than this --

1 this case, Diocese? Everybody else is --

2 Very well. Thank you all so much. We aren't going to
3 take long. We're going to take maybe 7 to 10 -- maybe 10 -
4 - we'll take a comfort break of 10 minutes. Thank you all.

5 And when we get back, I want to hear from -- from the
6 Diocese and their motion.

7 (Off the record at 11:25 a.m.)

8 (Back on the record at 11:40 a.m.)

9 THE COURT: All right. Now, we are now onto the
10 Diocese motion.

11 MR. SHAHID: Thank you, Judge.

12 THE COURT: Yes.

13 MR. SHAHID: Your Honor, a little history, if -- if I
14 may. Be necessary to put everything in the right
15 perspective ---

16 THE COURT: Sure.

17 MR. SHAHID: --- if I can do this.

18 Back on March of 2007, Mr. Meyers forwarded a letter
19 to me identifying people whom he represented under names of
20 -- the letters John Doe "A" through "O." And that was
21 dated March, 2007 -- March 1, 2007. That is tab 3 of the
22 document we filed with this Court on -- on Monday. On
23 March 9th --

24 THE COURT: Wait a minute, now.

25 MR. SHAHID: Okay.

1 THE COURT: Let me get -- let me get -- all right.

2 Tab -- all right. I'm at tab 3. Okay.

3 MR. SHAHID: All right.

4 THE COURT: All right. Yes.

5 MR. SHAHID: On March 1, 2007, he's identified folks
6 whom he represents to me. And I redacted the -- their true
7 names and just kept it John Doe -- John Doe and Jane Doe
8 identity.

9 THE COURT: Okay.

10 MR. SHAHID: As the Court has already alluded to, we
11 appeared before you on March 9th for that fairness hearing
12 to address the adoption of the September 12th, 2007 class
13 action settlement agreement. And as the Court has -- has
14 mentioned, on that date in time, Mr. Meyers stood up at --
15 at the Court's inquiry, "Do you represent at least one
16 party?" And he said, "I do."

17 Objections were then presented to the Court. And then
18 following -- at the conclusion of the March 9th hearing,
19 things sort of unraveled a little bit, I guess -- for lack
20 of a better way of saying it -- and the solicitor became
21 involved in doing an investigation. And so things were
22 delayed as to the resolution of the approval of the
23 settlement agreement until July 30th, 2007.

24 And as the Court has made reference to, after July
25 30th, 2007, there was a hearing before you in Orangeburg on

1 August 9th, 2007. That hearing addressed motions filed by
2 class counsel and motions filed by defendant. Also filed,
3 but not present at that hearing, was a motion that Mr.
4 Meyers filed -- a Motion to Alter or Amend the July 30,
5 2000 order.

6 So there was a flurry of activity between March 9th
7 and the July 30th order; a flurry of activity from July
8 30th to the hearing in Orangeburg in August; until on
9 August 30th, 2007, a document is signed by Mr. Richter as
10 class counsel, myself as representative of the Diocese, and
11 Mr. Meyers on behalf of the folks that he has identified on
12 the March 1, 2007, with the exception of one individual.
13 That would be John Doe B.

14 Attached, Judge, to the Motion to the -- Enforce the
15 Agreement filed with this Court on July 25th, 2008, the
16 document, which is the settlement agreement of August 30th,
17 2007. If -- if I may just read into the record that
18 agreement. It has been attached to several documents,
19 filed in conjunction with these proceedings, but I think it
20 may be important to read this out loud so that the
21 particulars of this are -- are clear.

22 THE COURT: All right. Now, what tab? What tab?

23 MR. SHAHID: Judge, this is my July 25th filed Motion
24 to Enforce.

25 THE COURT: Okay. Hold on.

1 MR. SHAHID: It is attachment A.

2 (Sotto voce discussion between Mr. Shahid and Ms. Groeber.)

3 MR. SHAHID: And then it's actually -- I believe, tab
4 9 -- there's a big thick document, Judge.

5 THE COURT: Okay. Yes, it is.

6 MR. SHAHID: So reading from tab 9, it is first the
7 order of the Court, which is entered on August 30th, 2007.
8 And then -- which is not included in that tab -- is the --
9 the actual letter. So I'll just go ahead and read the
10 letter to the -- to the Court.

11 THE COURT: Okay.

12 MR. SHAHID: And it -- and it's dated -- on my
13 stationery, it's dated August 30, 2007. And the caption of
14 the letter reads as follows (as read): "Re: John Doe No.
15 53, John Doe No. 66, John Doe 66A, John Doe 67, Jane Doe
16 No. 1, Jane Doe No. 2; and Rachael Roe, individually and as
17 a representative of a class of people similarly situated,
18 versus the Bishop of Charleston, a Corporation Sole; and
19 the Bishop of Charleston -- the Bishop of the Diocese of
20 Charleston, in his official Capacity."

21 There are three case numbers associated with this
22 caption. They are: Case No. 2006-CP-18-1310, 2006-CP-18-
23 1311, and 2006-CP-18-1636; which is the same caption number
24 that this -- that the Court used in -- in issuing this
25 order of July 30, 2007. So it was clear we were dealing

1 with the same order of July 30, 2007, dealing with the same
2 action that class counsel filed with this Court in 2006.

3 And the letter is very simple. It says -- it's
4 addressed to Mr. Richter as class counsel and to Mr. Meyers
5 as the representative of the following individuals.

6 Is the Court still searching for that document? I'm
7 sorry. I have an additional copy, if the Court wants to
8 see my additional copy.

9 THE COURT: I've got it right here.

10 MR. SHAHID: Judge, the letter says as follows (as
11 read): "Dear Larry and Gregg, this is to confirm that the
12 Diocese will offer one million -- 375 million dollars to
13 settle claims of the 11 individuals represented by Gregg
14 Meyers. Those individuals, who have been identified in
15 previous correspondence are" -- that's why I made reference
16 to ---

17 THE COURT: Uh-huh.

18 MR. SHAHID: --- March 1st letter -- "John Doe C, John
19 Doe D, Jane Doe G, John Doe H, Jane Doe I, John Doe J, John
20 Doe K, and the mother of John Doe J, John Doe L, John Doe
21 M, Jane Doe M."

22 So we're clear of who ---

23 THE COURT: Uh-huh.

24 MR. SHAHID: --- who we -- we were addressing; which
25 is also the same people that were -- what were claimed to

1 be from the March 1 letter, and they were part of the folks
2 who filed as objectors and filed the motion to alter or
3 amend on his -- that he filed on their behalf.

4 (As read) "The -- the payments are for personal
5 injuries as defined in the IRS code, and are independent of
6 the claims -- class claims process. These claimants will
7 opt out of the class claims process and will execute
8 releases." Which is important. So their obligation is to
9 not only opt out, but they are to execute releases.

10 (As read) "The claimants retain the right to meet with
11 residing Bishop or the Apostolic Administrator, as they so
12 desire."

13 And at that time, we were given notice ---

14 THE COURT: Uh-huh.

15 MR. SHAHID: -- that Bishop Baker had been reassigned
16 to Birmingham, and so the -- the Apostolic Administrator
17 would be Monsignor Laughlin. So the -- the offer was then
18 to meet if they so desire.

19 (As read) "This offer was made on the condition that
20 all of the objections, including any and all appealed
21 rights to the pending class settlement by any of Mr.
22 Meyers' clients, be withdrawn, and waived with prejudice."

23 So it was clear that Mr. Meyers had to do something,
24 or his clients had to do something, to make sure that any
25 objections to the September 12th, 2007 agreement were --

1 were going to go away, including any right he may have to
2 appeal.

3 He certified in the second letter, second sentence (as
4 read): "Mr. Meyers has certified he is unaware of any
5 other potential or actual objector, and does not represent
6 any other person who has an objection to the January 12,
7 2007 settlement agreement and the July 30, 2007 order. Any
8 other claimant represented by Mr. Meyers and not referenced
9 above will present their claim through the claim -- class
10 claim process."

11 The second contingency is the next paragraph (as
12 read): "This offer is also contingent on the receipt by
13 the Diocese of \$100,000 from Mr. Richter and/or his
14 clients."

15 And the benefit of the bargain comes up next (as
16 read): "All parties and objectors agree to with -- to
17 withdraw all pending motions filed with prejudice,
18 including" -- and these are the things that were -- part of
19 which were addressed at the March hearing in -- in
20 Orangeburg -- "class counsels' motion for sanctions, and
21 will dismiss the rule to show cause; the objector's" -- is
22 Mr. Meyers -- "Motion to Alter or Amend; the defendant's --
23 which is my client's -- Motion to Alter or Amend; Motion to
24 Stay Execution; Motion to Deposit Funds with the Court; and
25 Motion to Dismiss or Vacate the Rule to Show Cause.

1 "This offer, if and when accepted as acknowledged by
2 counsels' signature below, is intended to pave the way for
3 the final approval of the class action settlement, and to
4 eliminate any and all objections or appeals."

5 So inherent in this agreement, and the core
6 disagreement was to -- to resolve any other dangling
7 participles, any other objections, any appeal, anybody who
8 had a complaint about this claims process of the July -- of
9 the January 12, 2007 settlement agreement, your order of
10 July 30, 2007, to go forward. It was the core of the
11 agreement.

12 THE COURT: In other words, it was an agreement
13 affecting the proceedings in an action.

14 MR. SHAHID: It was -- exactly. Because the
15 proceedings were gummed up -- for lack of a better word --
16 by all kind of contingents. Mr. Richter, Mr. Haller were
17 mad at us; we were mad at him. Mr. Meyers had filed his
18 objections to alter or amend. It was -- it was in a state
19 of flux, and I think I'm being kind when I say it was in a
20 state of flux.

21 I think there was a lot of argument going on and a lot
22 of finger-pointing and a lot of other bad stuff going on.
23 So this was to have peace and to allow the claims -- claims
24 process to proceed.

25 The next paragraph and final paragraph is this (as

1 read): "The 1.375 million will be paid from the surplus
2 funds, if any, after, after the claims process had been
3 completed."

4 And the surplus funds -- what we're referring to is
5 that part of the agreement of January 12, 2007 -- was that
6 the Diocese had an obligation to fund \$12,000,000 with Mr.
7 Thomas, the escrow agent.

8 (As read) "In the event there were insufficient or no
9 funds remaining from the 12 million, the Diocese is still
10 obligated to pay the 1.375 million, as stated above."

11 So what's important is we were on the hook for 1.375,
12 hoping to get some money back from the 12 million. If we
13 don't get money back from the 12 million, we're still on
14 the hook.

15 And I need to state this, Judge, and maybe I'll say
16 this 10 times: The Diocese has never stated, has never
17 once -- by innuendo or suggestion -- claimed it does not
18 owe the 1.375 million. We owe the money. There is no
19 dispute about that. And any representation to the -- to
20 the contrary is just not accurate.

21 The final sentence, which I think is very important,
22 very short sentence says (as read): "Payment is expected
23 sometime after January 1, 2008."

24 There was no definite deadline on this payment. It is
25 -- it is to be paid after the claims process has been

1 completed.

2 Now, the September 12th agreement --

3 THE COURT: What year now?

4 MR. SHAHID: I'm sorry. January 12th, which is tab A
5 -- tab 1.

6 THE COURT: Okay.

7 MR. SHAHID: Mr. Geoly was correcting me.

8 On page 14 -- and it actually begins on page 13 --
9 paragraph 6 provides this detail of the payment of -- of
10 claims. And it goes through Mr. Thomas' obligations, how
11 he's going to be compensated, etc., etc.

12 On page 14, paragraph "C" (as read): "After all
13 necessary disbursements, any remaining letters of credit,
14 and/or funds will be returned to the defendant and/or
15 letters of credit will be canceled."

16 So this elaborate -- and it wasn't very elaborate, it
17 was really quite simple -- that the claims process began
18 after July 30th, when all the notices went out -- I'm
19 sorry. After actually August, perhaps. But --

20 THE COURT: Uh-huh.

21 MR. SHAHID: -- claimant forms were sent in,
22 objections that we may have had to some of the claimants
23 were -- were exchanged between class counsel and myself.
24 We met several times to address some of the claims.

25 And in February of 2008, Mr. Infinger began a term

1 addressing the -- the claims -- the claims themselves. And
2 as I recall, on the first day of the term, any remaining
3 objections that we had were held on that particular day.
4 He addressed those objections.

5 Then after that, we were excused, that is, the Diocese
6 was excused; then Mr. Richter and Mr. Haller and any other
7 -- any other lawyer who were independent of Mr. Richter and
8 Mr. Haller, presented their claimants forward. And Mr.
9 Infinger heard those; and he went through the process --
10 the claims process as contemplated and dictated by the
11 January 12, 2007 agreement.

12 A series of letters, which are part of all these
13 times, were exchanged between Mr. Meyers and myself,
14 wanting the money. And I wrote back to him and said, "We
15 will pay you the money, but certain things have to happen.
16 The claims process, as contemplated by the August 30th,
17 2007 order, has got to be completed. And we are obligated
18 to pay you, but we have to get the money back, if any, from
19 the 12 million."

20 We got the money back on April the 15th. Mr. Thomas
21 did an accounting and hand-delivered to me a check for
22 \$1,716,323.90.

23 COURT REPORTER: Ninety cents?

24 MR. SHAHID: Ninety cents.

25 Mr. Richter delivered a check to me in the amount of

1 \$100,000 on April the 28th, 2008.

2 As of this court hearing, I have received zero
3 releases from Mr. Meyers. Not one has been tendered to me.
4 So the releases, as I mentioned on page 1 of the August 30,
5 2007 letter, have not been tendered, have not been
6 delivered to my office. There's no releases.

7 Now, this agreement was reduced to writing. It
8 spelled out terms; it affected a proceeding, because we
9 were in the midst of this controversy. It provided
10 obligations by certain parties: the Diocese, Mr. Richter,
11 Mr. Meyers. It was submitted to the Court for approval,
12 and the Court put a stamp of approval. You signed the
13 order adopting the agreement, filed it, and it was public
14 record.

15 And that order has never been appealed, objected to,
16 or anything. It is the order of this Court, and I stand
17 before the Court asking you to enforce that agreement.

18 Now, clearly, clearly John Doe B is not a participant,
19 is not involved. His name is not mentioned in this
20 agreement. He has got zero standing. So Mr. Meyers'
21 complaint that -- how he would have to come back into court
22 to enforce this agreement would not apply to John Doe B is
23 accurate, because John Doe B was never part of this
24 agreement.

25 And in other correspondence between Mr. Meyers and

1 myself, we said Mr. John Doe B's claim has already been
2 adjudicated. He's already been -- his case has already
3 been settled. He's already gotten money. We're not
4 including him, because he's not part of the August 30th
5 agreement.

6 And whatever private side-deal these folks may have
7 who are named in this letter with John Doe B -- they want
8 to give him part of their money and pro rata it, God bless
9 them. That's -- that's their side-deal.

10 We didn't agree to it. The Diocese had nothing to
11 agree with it. Mr. Richter didn't agree to it. That's not
12 part of this August 30th, 2007 letter. He's outside of the
13 window. He's outside of the picture. He's not included in
14 any way of all this.

15 So the obligations of the Diocese are to fulfill this
16 -- the terms of this agreement. The benefit of the bargain
17 that we received from this was we could move forward with
18 an agreement we had reached with class counsel, and that
19 Mr. Meyers' objections and the clients that he claimed he
20 represented would -- would go away. Their claims that they
21 have with drove -- withdraw all of their objections. It's
22 over.

23 The only thing we have to worry for is let's go
24 through the claims process. If there's not enough money
25 returned back to us to satisfy the 1.37, we have to go to

1 another source and get that money, but we're still
2 obligated to that money.

3 And as the Court has suggested to Mr. Meyers, you
4 ought -- your avenue -- if you thought we had done
5 something wrong; that there was a misinterpretation or we
6 were -- that the Diocese is just dead wrong on what I've
7 stated to the Court, and you think you're entitled to your
8 money sometime prior to the claims process having been
9 completed; if you think that you're entitled to your money
10 on a specific date or a specific time; or something the
11 Diocese has not done, your remedy is to do what the Diocese
12 did on July 25th, that is to file a motion to enforce the
13 agreement. Because if we were in violation of the order,
14 then we are -- we are -- we're to come before you to answer
15 to those violations, if we have done something incorrectly.

16 THE COURT: And let me ask this question: On -- in
17 April, is there a communication from the Diocese to Mr.
18 Meyers that you -- you have the money and you're awaiting
19 the releases?

20 MR. SHAHID: Judge, give me one second.

21 THE COURT: Sure.

22 MR. SHAHID: I think there's a letter April the 4th,
23 and let me just double-check that.

24 THE COURT: Sure. Sure. Take your time.

25 MR. SHAHID: Judge, I think that -- no. I -- and I'll

1 back up and say that on April the 4th, I did send him a
2 letter. And in that letter, I explained to him that we had
3 -- not withholding the money. We understand our
4 obligation, that we owe you the money.

5 And I think it -- for a lack of a better way of saying
6 -- that we were going to -- we are waiting for the claims
7 process to be completed. I did not send him a letter. I
8 don't think I can find -- and I'm pretty sure I didn't send
9 that letter after April the 28th.

10 Because what had happened at that point is that the
11 lawsuit was filed on -- on March the 7th, and then the
12 Diocese filed a motion for change of venue of the
13 Charleston County case to have the -- the venue heard here.
14 And that was heard on June 24th by Judge Few, who, in
15 denying the motion, stayed everything and he gave us an
16 opportunity to file what -- whatever he thought would be
17 appropriate that we needed to file here.

18 And that's why we filed a motion to deposit the money
19 and we filed a motion to enforce this agreement, so that
20 the agreement could be enforced.

21 Plainly, Judge, the problem is this: Mr. Meyers has
22 filed a complaint in the Court of Common Pleas in
23 Charleston County, asking for relief above and beyond the
24 August 30th agreement. He's asked for attorneys' fees,
25 asked for consequential damages, and he's thrown in as a

1 plaintiff John Doe B, who the -- the Diocese has no
2 contractual relationship with, no contractual obligations
3 to, is not part of this August 30th agreement.

4 And so what I'm asking the Court to do is very simple.
5 It's sort of consistent, I think, with what you said in
6 your July 30, 2007 order, "You can't have it both ways."

7 You -- you can't sue us and add a party and add --
8 seek more damages, and then expect us to pay you above and
9 beyond that, when this party, John Doe B, is not in a
10 relationship with the Diocese of any contract.

11 Whatever he's got on a side-deal with these other
12 plaintiffs, these other parties that are mentioned in the
13 August 30th letter, that's between them. And he has no
14 standing, we have no obligation to him. That's just
15 between the two of them.

16 We're ready to deposit the money, Judge, with the
17 Clerk of Court and ask Mr. Meyers' clients to dismiss their
18 July -- I'm sorry -- their March, 2008 complaints against
19 the Diocese for the breach of contract, to issue the
20 releases. And when that's done, the Court can then enter
21 its order, that the money has been deposited with the Clerk
22 -- we'll be asking that we do deposit the 1.375 million to
23 the Court -- then that money can then be released to them
24 once the releases have been signed, and the -- the
25 complaint can be dismissed in Charleston County.

1 But we're asking for -- back on August 30th -- to
2 proceed so that these victims can get their money, and we
3 thought we had it resolved. Then the claims process
4 proceeded with -- pretty much in a very smooth manner. And
5 we're ready -- and I will say it again, the Diocese has
6 never represented or stated that it does not owe this
7 money. It owes the money. But the mechanism to pay that
8 is gummed up because of the lawsuit now filed in -- in
9 Charleston County.

10 THE COURT: Let me ask this question. Again,
11 reflective listening. Because this is -- this is what I'm
12 hearing and -- but this is what I think -- let me just tell
13 you what I think I'm hearing.

14 There was a letter written March the 3rd that
15 reiterates the Diocese's understanding of its obligation to
16 pay the money. And in that letter, it talks about
17 receiving the money back from the Richter firm; the --
18 having the final accounting; the claims process being
19 concluded. And -- and then you -- you say, "I'm ready to -
20 - and we're going to pay the money as soon as these things
21 have occurred." And that's a March the 3rd letter.

22 Now -- and -- and then it says -- is a letter April
23 the 10th from Mr. Meyers, and it says, "Thank you for your
24 self-serving letter of April the 4th," and -- and I don't
25 have an April the 4th letter.

1 And I don't know that it's important, but does the
2 April the 4th letter talk about -- does the -- your April
3 the 4th letter give Mr. Meyers an update of -- of where the
4 claims process might be?

5 What is in that letter? Because it is most
6 unsatisfactory to Mr. Meyers, just reading his -- his
7 letter of April the 10th.

8 MR. SHAHID: Judge, it is -- it is a two-page letter.
9 I'll be glad to turn it up to the Court.

10 THE COURT: Okay. Sure.

11 MR. SHAHID: The Court should really have ---

12 THE COURT: Sure.

13 MR. SHAHID: I can read it, but I thought it would
14 have more effect if you ---

15 THE COURT: Has everybody got this letter? Everybody
16 got the April 10th letter?

17 MR. SHAHID: It's addressed to Mr. Meyers.

18 MR. RICHTER: No, Your Honor. It could be copied.

19 THE COURT: Sure. You want a copy of it? Yeah.
20 We'll get you one.

21 THE BAILIFF: How many copies would you want?

22 COURT REPORTER: I'd like one.

23 THE COURT: Who? Who would like one? Raise your
24 hand. Mr. Meyers. All right. Three.

25 And I'm going to look at that letter. But I gather

1 once the litigation in Charleston got underway, I gather
2 the complexion of the case changed.

3 MR. SHAHID: Yes, ma'am.

4 THE COURT: And -- and at any point in time, Mr.
5 Shahid, either in argument or in any other communication,
6 was -- was Mr. Meyers told, you know, "We're there now. I
7 got the money and we're finished with the claims process."

8 Was -- I mean, because we're -- here we are, of
9 course, in January of '09, and I'm looking for when Mr.
10 Meyers would have learned of the -- of the -- of the --
11 that you were prepared to receive releases, pay money.

12 Because in Mr. Meyers' argument, he says that he wrote
13 a letter in August of '08 that said, "I'm losing my -- my
14 window of opportunity to be able to accept money on behalf
15 of my clients and move forward."

16 And -- and I guess, sort of as a subparagraph to that
17 is: Did you understand in August that he was including
18 John Doe B?

19 MR. SHAHID: No. No, ma'am.

20 THE COURT: Okay.

21 MR. SHAHID: He -- in August -- the August 30th letter
22 did not include John Doe B. It was -- and prior to that
23 letter --

24 MR. RICHTER: Thank you, sir.

25 (The Bailiff hands Mr. Richter a letter.)

1 BAILIFF: You're welcome.

2 MR. SHAHID: -- there was another letter I sent to him
3 that expressly addressed John Doe B, and that letter is
4 part of tab 4. It was a letter dated July 30 -- I'm sorry
5 -- July 23rd, 2007. And if I could answer one of your
6 questions, Judge, that --

7 (To Ms. Groeber) I lost my -- I need that back. I'm
8 sorry.

9 (Sotto voce discussion between
10 Mr. Shahid and Ms. Groeber.)

11 MR. SHAHID: If I may -- okay. In -- in my letter to
12 him -- I don't have a copy of this, Judge -- of April 17th,
13 I -- I state to him that I am dismayed with the contents of
14 his April 12th, 2008 letter. (As read) "Without responding
15 paragraph by paragraph to your letter, I disagree with your
16 factual characterization and legal reasoning. I present to
17 you this opportunity to retract the negative comments and
18 unsupported allegations you have published about me, my
19 client, fellow members of the Bar, and the judiciary.

20 "I want to reemphasize to you as plainly as possible
21 the Diocese of Charleston did not and has not reneged on
22 its obligation pursuant to the August 30th, 2007 agreement
23 and subsequent order.

24 "The Diocese has always represented to you it intended
25 to honor the agreement. Indeed, I hereby restate that

1 until you filed the March 6th, 2008 -- the civil complaint,
2 the Diocese fully intended to perform its obligations,
3 specifically, to pay your clients the aggregate sum of
4 \$1,375,000.

5 "The Diocese has not previously sent you those funds
6 because pursuant to the terms of the agreement, in the
7 letter of August 30th, 2007, the Diocese's obligations to
8 pay those sums had not yet matured.

9 "The Diocese is now unable to pay those funds because
10 your clients filed a civil complaint on the same subject,
11 adding an unmerited party. And your clients are seeking
12 damages beyond one million 375.

13 "It is my sincere hope that you will voluntarily
14 dismiss this lawsuit so that we can engage in a good faith
15 discussion about how and when to finally exchange the three
16 point -- the 1.375 and the releases executed by your
17 clients."

18 So I'm asking him, get rid of -- we can't pay you
19 because you filed a lawsuit. Get rid of the lawsuit.
20 Let's sit down and let's exchange the releases and pay the
21 money.

22 THE COURT: And when is that letter?

23 MR. SHAHID: April 17th. And to this date, I don't
24 have any releases.

25 THE COURT: Now -- and you said -- I don't have a

1 copy?

2 Oh. In other words, you just have one April 7th --
3 you just have one April 17th letter. But I can copy it.

4 MR. SHAHID: Yeah.

5 THE COURT: Oh. Okay. Who would like copies of April
6 17th? All right. Four.

7 (Sotto voce discussion between
8 Mr. Shahid and Ms. Groeber.)

9 MR. SHAHID: And Judge, while we're waiting for that,
10 I think one thing I need to bring to the Court's attention,
11 Mr. Meyers was also making inquiry to Mr. Infinger and to
12 Mr. Haller about "When I'm going to get my money?"

13 So he wrote a letter to Mr. Infinger on February 27th,
14 2008; to Mr. Haller on February 29th, 2008. I can bring
15 those to you as well.

16 He -- I only tell you this because he had the means,
17 the ability to inquire on his own, which in fact he did do
18 as to "What's going on?"

19 So we weren't hiding a ball from him. We weren't
20 withholding anything from him. We were trying to get this
21 thing resolved. And at that point, we were involved in a
22 lawsuit on a breach of contract with this John Doe B fellow
23 as one of the main parties to this whole thing.

24 So I think we've done the right thing to try to get it
25 back here to get them to dismiss the complaint; to get rid

1 of John Doe B so we can pay the money; get the releases
2 from them that they owe us; and we're willing to put the
3 money in -- to the Clerk.

4 THE COURT: Okay.

5 (Bailiff hands out copies of letters.)

6 (Sotto voce discussion between

7 Mr. Richter and Mr. Haller.)

8 (Sotto voce discussion between

9 Mr. Shahid and Mr. Geoly.)

10 THE COURT: I got your position. And so what --
11 here's what you want. You want --

12 MR. SHAHID: The Diocese.

13 THE COURT: --- defendants, defendants. What they are
14 desiring at this point is they would like to pay the 1.375
15 into Court; and have the Court, I gather, order that the
16 releases be forwarded and the exchange be made such that at
17 the time -- so that both sides are protected.

18 At the time that the John Does, beginning with the
19 letter "C" -- not "B," but "C" -- when those releases are
20 obtained and reviewed and approved by the defendants as
21 being whatever -- an appropriate release, then the money
22 would be then released to the -- to the -- to Mr. Meyers to
23 distribute.

24 And I just note from a letter I just -- just this --
25 as we're waiting for the copy, I just read that Mr. Meyers

1 has a comment to you that what they do with the money, how
2 they distribute it is -- is of no moment for you; and you
3 would agree with that as long as you get the releases.

4 MR. SHAHID: Right.

5 THE COURT: Because your position is, I gather, you
6 have a release from "B" already?

7 MR. SHAHID: This -- B --

8 THE COURT: From the past.

9 MR. SHAHID: -- he shouldn't be involved in this,
10 because -- in fact ---

11 THE COURT: I -- I understand, but you have -- in
12 other words, obviously, John Doe B is a stranger to this
13 litigation as well. But I just note that, you know, I was
14 sort of curious about "B." But apparently that's -- that's
15 not for me, that's not for you; that's for Mr. Meyers and
16 his folks.

17 MR. SHAHID: That's right.

18 THE COURT: But -- and you're not looking for anything
19 from -- from John Doe B, either. You're looking for your
20 release from John Doe C, etc., through the alphabet. And
21 normally -- as this transaction normally would occur, the
22 money would be held by Mr. Meyers in his escrow account
23 until the releases were then signed and then forwarded to
24 you and then the money could be disbursed.

25 But what you're asking that the Court do is to deposit

1 the money and not release the money until such time as the
2 releases have been received, and I gather, approved by the
3 -- the defendants.

4 MR. SHAHID: And ---

5 THE COURT: And if a -- then if a hearing would need
6 to be held because there was a dispute about that, so be
7 it.

8 MR. SHAHID: And -- and Judge, one other thing I think
9 needs to happen now, I think they need to make the option
10 of either if they want to pursue the lawsuit in Charleston
11 County, pursue the lawsuit in Charleston County and don't
12 get the money; or dismiss the lawsuit in Charleston County
13 to get the money.

14 Now, I don't understand how -- and that's the essence
15 of my letter to him is: How can we pay you now that you've
16 sued us, have included this actual person in it, and asking
17 for more money on the same letter?

18 So the inquiry is we still have to contend with -- and
19 I -- and I know the Court has said that that complaint is
20 not of the Court's concern -- only to the extent that it's
21 our concern that there is this complaint seeking to enforce
22 an agreement that needs to be enforced here, not there, and
23 we have to now deal with this other party.

24 So by paying the money, we still have to -- we still
25 have to fight a lawsuit which is contemplated that there be

1 no dispute.

2 So the other thing I'm asking the Court, in addition
3 to what you've said, is to give them the option. Either
4 pursue us here to enforce the agreement, and by doing that,
5 dismiss the complaint; or option B, don't pursue the money
6 here and sue us and maybe you get more money and maybe John
7 Doe B gets some more money; and all that other stuff that
8 you're asking for takes place.

9 THE COURT: Two things -- two things, and I'm going to
10 ask you to address the second point.

11 First of all, this is not an agreement. It started
12 out as an agreement; it is a court order. Okay? It's a
13 court order. All right. Now, so that's the first -- let
14 me -- let me reiterate that: This is a court order. It is
15 a court order that affected these proceedings, particularly
16 for Mr. Meyers. It ended their ability to participate. It
17 is a court order. All right.

18 Now, secondly, it is -- it is Mr. Meyers' position, as
19 I understand it, and he'll correct me, I'm sure, if -- if I
20 don't articulate this precisely. But as I understand it,
21 it is his position that by virtue of the actions of the
22 defendants in this case, and the way that they have
23 proceeded in complying or not complying with this court
24 order -- he says "the agreement," but I'll couch it in
25 terms of "this court order" -- that there have been new and

1 different damages, unique, that have arisen as a result of
2 the conduct of the Diocese in -- in resolving this matter,
3 complying with this order. And as a result, there are new
4 and different damages that have arisen; and that those are
5 also contained within the litigation in Charleston, and
6 properly so.

7 Can you address -- now, I know that there -- I know
8 that there -- there are clearly allegations of breach of
9 contract. But as a result of the breach of contract which
10 he alleges, which I would -- I would couch it in terms of
11 violations of the court order -- that as a result of that,
12 there are new and different damages that have arisen as a
13 result of that.

14 And -- and he really -- as I understand his argument,
15 he raises that as an independent and new action of the
16 plaintiffs in the case in Charleston.

17 MR. SHAHID: He has alleged that ---

18 THE COURT: Yes.

19 MR. SHAHID: --- in his complaint.

20 THE COURT: Yes.

21 MR. SHAHID: He's certainly done that in ---

22 THE COURT: Yes.

23 MR. SHAHID: --- in his original complaint and the
24 second amended complaint.

25 THE COURT: Right.

1 MR. SHAHID: Mr. Geoly wanted to say something to me,
2 Judge. If I can possibly ---

3 THE COURT: Sure. Go ahead. Go ahead.

4 (Sotto voce discussion between Mr. Shahid and Mr. Geoly.)

5 MR. SHAHID: Judge, I -- I agree with what you're
6 saying. In his -- in his complaint in Charleston County,
7 he's said, "I have a special person who's been aggrieved,
8 and that special person and other folks have been
9 aggrieved. And they're entitled to more money." That's
10 his -- his complaint.

11 But the essence of the complaint is the August 30,
12 2007 letter agreement as incorporated and made a part of a
13 court order, which I believe 100 percent it is a court
14 order. And certain parties have certain things they are
15 obligated to do under that court order, which we're subject
16 -- and that's why we're here to you.

17 So if there's been -- if we -- if we violated -- the
18 Diocese violated the court order, then the argument would
19 be, I would suspect, then how -- what has the Diocese done
20 to violate the court order, if it has; and are there
21 consequences to violating the court order that include John
22 Doe B and these other claimants?

23 I mean, the same thing -- you're seeking to enforce an
24 order by filing a breach of contract action in Charleston
25 County. That's what he's done. And we're seeking to

1 enforce the order here. And so if there's any -- any
2 collateral damage, I -- for lack of a better way of saying
3 it -- that is before you, to address; because the
4 interpretation of the order is before you.

5 Jim ---

6 MR. GEOLY: Your Honor ---

7 MR. SHAHID: --- can't sit still any longer.

8 MR. GEOLY: I can't. Can I make a distinction, Your
9 Honor?

10 THE COURT: Certainly.

11 MR. GEOLY: Just to -- there's one element here that I
12 think, from the beginning, has added a little bit of
13 confusion and maybe I'm stating the obvious, but ---

14 THE COURT: (To the court reporter) This is Mr. Geoly?
15 Okay.

16 MR. GEOLY: Thank you, Your Honor. There's John Doe
17 B, and then there's the issue of the remaining or the other
18 Gregg Meyers' clients who are suing in Charleston. And
19 when we lump them all together while we're speaking, it can
20 get a little confusing.

21 So I think it's fair to say that at least when we're
22 talking about John Does C through whatever, what Mr. Meyers
23 has really sued about is the alleged violation of your
24 order. And those persons who are subject to that order,
25 our contention has been, belong here in front of you. And

1 if they think that they've been damaged in some way because
2 of the violation of your order, then they should come to
3 you. And whether it's a rule to show cause or some other
4 mechanism, ask you for relief because of all the bad things
5 that have happened to them because we didn't follow your
6 order.

7 And I think all of that would be properly before you,
8 at least jurisdictionally. John Doe C ---

9 THE COURT: And he's done that now.

10 MR. GEOLY: Pardon?

11 THE COURT: He's -- he has done that. He did that
12 orally today.

13 MR. GEOLY: He -- yes. But I didn't hear him giving
14 up his Charleston case either.

15 THE COURT: Uh-uh.

16 MR. GEOLY: So I think ---

17 THE COURT: He hasn't.

18 MR. GEOLY: --- I think he -- he took a very opportune
19 ---

20 THE COURT: Uh-huh.

21 MR. GEOLY: --- position with you when you were
22 exploring options with him.

23 But either way, if he did do that, the parties are in
24 agreement, at least jurisdictionally, that element of the -
25 - that -- that portion of the question is -- is clearly

1 before you. We are talking about your order, and -- and
2 the consequences of following it or not following it.

3 And -- and the substantive dispute, really at the core
4 of all of it, is was the Diocese right or wrong in -- in
5 saying when it believed the money was due? In the
6 beginning, at least that was the beginning of this
7 argument.

8 John Doe B gets more complicated, because he's sort of
9 this derivative claim of a sort. He -- he has some side-
10 agreement with the other claimants. He's making a third-
11 party-beneficiary claim in Charleston. He never was before
12 you; he's not before you; he's not before you now.

13 And I don't think we're saying -- that in adjudicating
14 your order and the consequences of following it or
15 violating it, I don't think we're saying to you that you
16 are adjudicating John Doe B's rights one way or the other.

17 THE COURT: That's right. You are not.

18 MR. GEOLY: We're not asking you to do that. And
19 we're not saying John Doe B's here in front of you, either,
20 in any way. I'm not sure, and we haven't thought through,
21 what happens if you resolve everything that's on the table
22 here and fashion some order that, in essence, enforces this
23 settlement agreement/order, as to the people who are before
24 you. Where does that leave John Doe B and his Charleston
25 lawsuit ---

1 THE COURT: Oh, I'm absolutely certain that you all
2 filed a -- a response that was Accord in Satisfaction,
3 Motion to Dismiss, and etc. I bet -- I bet that you all
4 filed any number of things so that you could in ---

5 MR. GEOLY: We didn't address that.

6 THE COURT: I'm -- I'm going to hear you. And I'm
7 uncomfortable with you being there, because you don't have
8 a table to write on. We got a table right here, Mr.
9 Meyers. How you writing?

10 MR. MEYERS: I'm glad to do it either way. I've got a
11 pad.

12 THE COURT: As long as you're all right; you are
13 welcome to come right here. Okay.

14 MR. GEOLY: And so we just address that separately.

15 THE COURT: He's not -- I'm -- you know, I hate to --
16 if -- if -- if John Doe is -- B is here present, I
17 apologize to you, Mr. John Doe B. But Mr. John Doe B is
18 not part of this litigation.

19 MR. GEOLY: Correct.

20 THE COURT: I'm -- I'm not ---

21 MR. GEOLY: And -- and we're just ---

22 THE COURT: --- you know ---

23 MR. GEOLY: --- being real careful that -- so when
24 we're speaking about ---

25 THE COURT: I'm not concerned about John Doe B, you

1 know. Mr. Meyers has got him and has filed a matter, I
2 gather, on his behalf in Charleston and so be it.

3 MR. GEOLY: It stands ---

4 THE COURT: I mean, he's certainly entitled to that.

5 MR. GEOLY: --- it stands and falls on its own. And
6 whatever implications or consequences of any order this
7 Court enters will speak for themselves. I mean, that ---

8 THE COURT: That's right.

9 MR. GEOLY: --- that order will speak for itself, and
10 whatever legal effect it has will get determined.

11 So if we -- if we can make that distinction, then I
12 think we can speak properly of saying: John Does C through
13 the end are here; they're -- they're --- they're subject to
14 your order; your order incorporates by reference a
15 settlement; the terms of the settlement are at issue.

16 Did we or did we not violate it? And we've obviously
17 contended that we did not violate it. And to this date, we
18 don't have releases, but we want to disgorge the money,
19 because at this point, we give up. We give up trying to
20 arrange an exchange of releases with the other side.

21 It was attempted on more than one occasion. It didn't
22 occur. Don't know why it didn't occur, but it didn't
23 occur. And -- and now here we are. And -- and I think
24 when you resolve that question, you've resolved the matter.

25 THE COURT: Okay.

1 MR. GEOLY: Thank you.

2 THE COURT: Mr. Meyers.

3 MR. MEYERS: Thank you very much, Your Honor. I'm
4 dying to respond.

5 THE COURT: Okay.

6 MR. MEYERS: But if you have a question, I'm glad to
7 hear it.

8 THE COURT: No.

9 MR. MEYERS: Want me up there?

10 THE COURT: Yeah. Absolutely. I'm -- I'm
11 uncomfortable that you don't have a place to put your
12 papers. And they're growing -- they're growing
13 exponentially.

14 MR. RICHTER: We'll share our table, as well, Your
15 Honor.

16 THE COURT: He's fine where he is.

17 MR. MEYERS: You want to ask me, or do you want me to
18 go?

19 THE COURT: Let me see. Wait a minute now. Let me
20 tell you -- let me tell you what is -- I don't see as being
21 an issue, and you don't need to -- you don't need to
22 concern yourself. John Doe B is -- and I gather John Doe B
23 has filed something in Charleston. John Doe B can do
24 whatever he wishes in Charleston. That is not for my
25 consideration.

1 It's clear that John Doe B did not make an appearance
2 here; he's not part of the settlement. John Doe B --
3 assuming -- and -- and I gather John Doe B has filed
4 something in Charleston. John Doe B is entitled to file
5 whatever. You know what I'm saying. That's not for me to
6 -- in my mind, to -- I'm going to leave him completely out
7 of it.

8 MR. MEYERS: I understand.

9 THE COURT: Okay. With regards -- here -- here's what
10 I'm interested in. Let me just sort of ask you to -- this
11 -- this is what I'm interested in. Really -- really two
12 issue, and -- and then maybe other ones, but primarily
13 these two.

14 First of all -- first of all, I see what was going on
15 in terms of the -- in terms of the correspondent --
16 January, March, April. You tell me in August that you
17 communicated, and I might want you to direct me to -- to
18 that letter.

19 MR. MEYERS: It's what I filed today.

20 THE COURT: Okay. Hold on one second. Let -- because
21 I want you -- because I'm afraid I'll get -- I'll ---

22 MR. MEYERS: Sorry.

23 THE COURT: --- forget what I want to say to you.

24 And I'm interested in that. So -- so I'm interested
25 in that.

1 And I'm interested in your communications back that
2 said, "I've got my releases signed; I have them and I'm
3 ready to tender them to you, but I'm not giving them to you
4 until I've got money in hand."

5 I don't think it's reasonable for any lawyer, on
6 behalf of his clients, to any more -- if you've got a
7 release, that you've got them and you have them in hand and
8 you tender them, but you would tender them through you and
9 you would hold them. I think -- and -- and I think you
10 argue -- I just caught a paragraph -- that you said, "Why
11 in the world would I -- why would I give you a release
12 without the money? That would be malpractice."

13 And -- and I tend to think you might be onto something
14 the; because why would a lawyer -- I can understand why a
15 lawyer would get them and have them signed and have them in
16 his or her possession. But I certainly understand why a
17 lawyer would not then transmit, because then you're
18 needlessly creating problems, potentially. And -- and it
19 could happen unintentionally. But it could certainly
20 happen where those would get filed.

21 So -- so I'm -- I guess I'm interested in that, and
22 then -- but -- but I want you to hold for me just at this -
23 - I'm -- I'm really interested in those things first. And
24 you might certainly want to address some other things, but
25 I want you to hold those separate for me. And then we

1 might get into what -- what, if any -- what, if any,
2 damages, because I think we've -- we've talked about that.

3 Well, maybe there's a third area. As I understand --
4 and again, I hadn't read the litigation. But as I
5 understand the position of these plaintiffs, "C" forward;
6 because those are the plaintiffs that I'm interested in --
7 not "B," but "C" -- the ones -- the ones that are involved
8 here -- their allegations of additional damage. Okay?

9 And I guess I would want to hear you -- I guess, on
10 first blush, my -- my -- my initial thought, Mr. Meyers, in
11 all candor, is if these folks suffered as a result of the
12 delay and it's determined that that money should have been
13 paid and that -- and that the Diocese violated the order,
14 what I really want to say is why couldn't they either bring
15 it -- bring it as a part of a Rule to Show Cause, or why
16 couldn't they file it separately in Charleston? I guess
17 that's what comes to mind.

18 So -- and you were going to agree with me, so let's
19 just leave that. In other words, it would be your position
20 that it -- they could either ask for damages as a -- in
21 response to a Rule to Show Cause, or they could sue
22 separately on it in Charleston.

23 MR. MEYERS: Right. That's what I was trying to do.

24 THE COURT: Okay. Now, so --

25 MR. MEYERS: The releases.

1 THE COURT: The releases and notice. I mean, why -- I
2 -- it was pretty clear what happens between January and
3 April.

4 MR. MEYERS: I -- I left Mr. Shahid completely alone
5 until some time in February. I probably touched base with
6 him in January to say, "Where are you on the claims
7 process?" Because what was described when we ---

8 THE COURT: Uh-huh.

9 MR. MEYERS: --- reached the agreement was, "We really
10 would prefer -- we, the Diocese, would really prefer to
11 know whether we were going to have money left over from the
12 class or not. So would you please let us get through the
13 claims process in the sense of the arbitrations?"

14 I said, "Fine."

15 Middle of February, Mr. Shahid's office sent me a
16 letter saying, "Here's the schedule for the arbitrations,"
17 which was to conclude February 13th. So starting February
18 14th, I checked with him. And -- and ---

19 THE COURT: How did it go?

20 MR. MEYERS: --- and listen, I had one guy on the
21 verge of serious problems, which is the reason I had any
22 urgency to my inquiries. But he tells me -- we talked -- I
23 called him once a day.

24 THE COURT: You, Gregg Meyers, called ---

25 MR. MEYERS: Mr. Shahid's office.

1 THE COURT: --- Mr. Shahid's office once a day to say
2 ---

3 MR. MEYERS: And many times, I would be able to talk
4 to him, but -- but on February 21st, he said, "You will be
5 paid February 26th." I passed all that on to my people.

6 And then the next -- and then my phone calls aren't
7 taken, and then -- and they're not returned. And then I
8 get the letter of March 3rd, which says there are these
9 things that have to happen.

10 So I -- now I see there's a change in position. He's
11 arguing preconditions. I wrote him back. I said those
12 were conditional on the offer, not on the performance. Our
13 agreement says it's unrelated to the claims process. But
14 all that's fine.

15 THE COURT: Now, that's ---

16 MR. MEYERS: I find -- I find out ---

17 THE COURT: --- let me -- let me be sure I understand
18 exactly what you're talking about. You're -- that's in a
19 March 3rd letter.

20 MR. MEYERS: That's his March 3rd letter.

21 THE COURT: Okay. Hold on, because I know I got that
22 right here.

23 MR. MEYERS: That's what prompted the lawsuit.

24 THE COURT: Uh-huh. Okay. Hold on.

25 MR. MEYERS: Because what I see the Diocese ---

1 THE COURT: Here it is.

2 MR. MEYERS: --- doing now is saying, "We're changing
3 what we meant by "the claims process" on you. It's not
4 that we need to know the value of what we're going to pay
5 out in the arbitration. We actually have to get the money
6 back. We need a final accounting. We need to get a
7 payment from Mr. Richter. None of which was the conditions
8 as they were described.

9 What they described to us is, "He's agreed to pay the
10 money. That's good enough for us. We just need to know
11 what the awards are going to be to know if we have to get
12 more money or not."

13 THE COURT: All right. Now, hold on, because let me
14 get back to the order, just -- just so I -- I know y'all
15 got this in your -- etched in your minds. But let me get
16 to -- get back to the order real quick. Here it is. Okay.

17 (Sotto voce discussion between
18 Mr. Shahid and Mr. Geoly.)

19 THE COURT: Okay. Now, let me ask you this question.
20 I'm looking back at the letter. Have you -- have you got
21 the letter, too?

22 MR. MEYERS: I do.

23 THE COURT: Okay. And tell me what you anticipated
24 this meant.

25 MR. MEYERS: Once they valued the class claims that

1 were made and understood how much was left over from the 12
2 million, they would be able to initiate the payments to me.

3 THE COURT: Because it -- here's what it says. It
4 says (as read): "The 1.375 million will be paid from the
5 surplus funds, if any, after the claims process has been
6 completed. In the event there are insufficient or no funds
7 remaining from the 12 million pool of funds, the Diocese is
8 still obligated to pay the 1.375 million, as stated above."

9 And I know -- I -- because you -- it says (as read):
10 "Payment is expected sometime after January the 1st, 2008."
11 Well, when any client sees that and -- understandably, they
12 want January 2nd -- has arrived.

13 MR. MEYERS: Well, but I explained to my people that
14 wasn't a firm deadline, and we had to wait for the claim --
15 the arbitrations to be done, and not that I'm -- for them
16 to expect nothing until sometime in February.

17 THE COURT: Okay. And when you say "the arbitrations
18 to be done," that -- that to you is part of the claims
19 process?

20 MR. MEYERS: Right.

21 THE COURT: Okay.

22 MR. MEYERS: The way -- the way this paragraph was
23 explained to me by Mr. Shahid was, "We need to know the
24 value placed on the claims by Mr. Infinger."

25 THE COURT: Uh-huh.

1 MR. MEYERS: "And then we can pay, because" ---

2 THE COURT: Uh-huh.

3 MR. MEYERS: --- "then we will know if we're going to
4 have money left over or not."

5 THE COURT: Uh-huh. Okay. Okay.

6 MR. MEYERS: Now, on March 3rd, he says it doesn't
7 mean that; it means something else.

8 THE COURT: Now, what did you understand that it meant
9 something else? Tell me that. Tell me what -- what you
10 understood on March the 3rd. You said it meant something -
11 --

12 MR. MEYERS: Right.

13 THE COURT: --- else.

14 MR. MEYERS: His letter to me ---

15 THE COURT: Tell me that.

16 MR. MEYERS: --- says ---

17 THE COURT: Uh-huh.

18 MR. MEYERS: --- there are these conditions.

19 THE COURT: Uh-huh.

20 MR. MEYERS: "We have to -- Mr. Infinger and Mr.
21 Thomas have to agree on a final disbursement. The Diocese
22 has to receive a full accounting report." This is his
23 letter of March 3rd.

24 THE COURT: Yeah.

25 MR. MEYERS: "And the Diocese has to have collected

1 the money from Mr. Richter."

2 THE COURT: Okay. Well, now, that's in the letter.

3 MR. MEYERS: Well, the letter says the offer is
4 contingent on him agreeing ---

5 THE COURT: Uh-huh.

6 MR. MEYERS: --- to that.

7 THE COURT: Uh-huh. Uh-huh. Uh-huh.

8 MR. MEYERS: He agreed. So I -- I didn't feel like
9 that was a contingency that was legitimate at all.

10 THE COURT: I understand what you're saying.

11 MR. MEYERS: Nor did I feel like it was legitimate to
12 impose the "we have to get the money back" requirement on
13 me, but --

14 THE COURT: You thought the contingency was satisfied
15 at the time that Mr. Richter signed the letter.

16 MR. MEYERS: As to him, yes.

17 THE COURT: Uh-huh.

18 MR. MEYERS: As to the ---

19 THE COURT: Uh-huh. Uh-huh.

20 MR. MEYERS: --- claimants and the arbitration -- the
21 claims process ---

22 THE COURT: Uh-huh.

23 MR. MEYERS: --- that contingency was satisfied ---

24 THE COURT: Uh-huh.

25 MR. MEYERS: --- when Mr. Infinger hears everybody and

1 makes an award.

2 THE COURT: Right. I'm just talking about the
3 \$100,000. In other words ---

4 MR. MEYERS: Right. That was done ---

5 THE COURT: --- based upon your understanding, you
6 would have thought that after the order was entered that
7 Mr. Shahid, at that point, could have said, "Send me
8 \$100,000; I want to hold it in escrow."

9 MR. MEYERS: Right. But what the letter says ---

10 THE COURT: Uh-huh.

11 MR. MEYERS: --- is "the offer is contingent on that."

12 THE COURT: Uh-huh. I'm with you.

13 MR. MEYERS: And -- and once he agreed to that, they -
14 -- they ---

15 THE COURT: I -- I got it.

16 MR. MEYERS: --- the contingency was on the offer and
17 not on the performance.

18 THE COURT: Uh-huh.

19 MR. MEYERS: So I thought that wasn't even an issue.

20 THE COURT: Uh-huh. Uh-huh.

21 MR. MEYERS: And I thought the Diocese was now trying
22 to erect it as an issue.

23 THE COURT: Uh-huh. I understand.

24 MR. MEYERS: So I felt like the landscape was pretty
25 clear to me. I wasn't going to get a good faith

1 compliance. I had been told I'd be paid February 26th; my
2 phone calls stopped being returned.

3 I was even trying to work around their new
4 interpretation by getting consent of everybody involved in
5 the claims process -- being Mr. Thomas, class counsel -- to
6 say, "Look, the Diocese is telling me now that they have to
7 have all this stuff formally wrapped up. Will you consent
8 to a disbursement to me?" But --

9 THE COURT: And that's the letters that came in March
10 and April.

11 MR. MEYERS: Well, in -- in early March. I was trying
12 ---

13 THE COURT: Yeah. Yeah. Yeah.

14 MR. MEYERS: Then in April, unbeknownst to me, the
15 Diocese gets back -- they get the \$100,000 ---

16 THE COURT: Uh-huh. Yes.

17 MR. MEYERS: --- payment, and they get the money back
18 in the middle of April, on April 15th; which I find out for
19 the first time, October 1, 2008, when Mr. Shahid writes
20 Your Honor and gives an update on what's happening.

21 Now, here's what fascinates me about this. This is
22 two months after I've written him and said, "Let's use
23 Marvin Infinger as an intermediary. I don't trust you at
24 all, so you pay the money to Marvin. And when he tells me
25 he's got the money in his escrow account ---

1 THE COURT: Yes.

2 MR. MEYERS: --- I will give him releases. And when
3 you've gotten the releases, he will give me the money."

4 THE COURT: Where is that letter?

5 MR. MEYERS: What I filed this morning, August 5th,
6 2008.

7 THE COURT: Hold on, because I've got to find that
8 stack. All right. This August the 5th letter.

9 MR. MEYERS: Here.

10 THE COURT: I got it. I got it right here.

11 MR. MEYERS: I've got it right here.

12 THE COURT: No. Gosh, if you give it to me, you won't
13 have one. Hold on. All right. Wait a minute now. Is it
14 the back or the front?

15 MR. MEYERS: It's kind of in the middle.

16 THE COURT: Oh. All right. August the 5th? And you
17 write -- you write it to ---

18 MR. MEYERS: Mr. Geoly.

19 THE COURT: --- Jim Geoly. Okay.

20 MR. MEYERS: With whom I've always gotten along well.

21 THE COURT: Uh-huh. Uh-huh.

22 (The Court reviews the letter.)

23 THE COURT: Got it.

24 MR. MEYERS: Two days later ---

25 THE COURT: Wait a minute. I need a "sticky." I'm

1 sorry. Go ahead. I'm listening to you, I just ---

2 MR. MEYERS: Two days later, the Diocese serves me
3 with the motions they filed July 25th in this court, trying
4 to enforce the settlement.

5 THE COURT: Okay.

6 MR. MEYERS: Here I am, trying to get them to pay the
7 principal amount using Mr. Infinger as an intermediary,
8 which Mr. Infinger had told me he was agreeable to --

9 THE COURT: Uh-huh.

10 MR. MEYERS: -- and they won't do it.

11 Now, the next week, I was in court in Charleston, once
12 again, trying to get them to -- trying to get Judge Houston
13 to order them to do what they had agreed to do. And Mr.
14 Shahid says, "We'd love to comply. We would like to settle
15 the case. We're ready to move forward, but we've got these
16 motions pending in Dorchester County that need to be
17 addressed that simply deal with motions for sanctions."

18 And I say to him, "Keep your motion for sanctions if
19 you want to, but pay my clients their money."

20 THE COURT: And did Mr. Geoly or Mr. Shahid say to you
21 --

22 MR. MEYERS: I got no response to that letter.

23 THE COURT: Okay.

24 MR. MEYERS: Now, Mr. Shahid had written me April 4th,
25 as he's indicated, saying to me, "If you will dismiss your

1 case with prejudice in Charleston, we can talk about
2 resolving everything."

3 That's what his letter says. If I dismiss with
4 prejudice, then he'll talk to me about it.

5 And I wrote him back, saying, "I think you're asking
6 me to commit malpractice. If I dismiss with prejudice, you
7 can successfully defend, saying you don't have to pay me.
8 But, you know, I'll give you releases if you give me a
9 payment through some mechanism."

10 But I don't know until October that the conditions
11 have all been satisfied back in April. He doesn't ever
12 tell me that.

13 Later -- not long ago, he says, "You know, you've
14 never tendered releases." And I'm thinking, my agreement
15 says, "I will give you releases if you pay me."

16 So I wrote him back and I said, "You're right. I
17 haven't offered you releases, because you haven't paid me.
18 You haven't tendered payment. But I'll tell you what --
19 nor have you ever given me releases that you want me to
20 have signed. But I'll tell you what, I'll get releases.

21 And I'm holding in my office releases from every one
22 of my people. Now, I'm not going to give them to Mr.
23 Shahid or anyone else, until I know for sure they have
24 parted ---

25 THE COURT: We ---

1 MR. MEYERS: --- with the money.

2 THE COURT: Yeah. Well, we talked about that. No one
3 would do that. Yeah. No one would do that.

4 MR. MEYERS: And -- and I've been trying for months to
5 resolve simply by getting them to comply with what I
6 thought was the agreement, and what they say is a court
7 order.

8 So I have -- I've been unusually frustrated by the
9 course of these events. And I've never seen anything like
10 it in the 30 years that I have practiced law, and -- and I
11 have not known what to make of it.

12 But if indeed this was a court order, it's certainly
13 not been complied with. If it was a settlement, it's not
14 been complied with. But my people have been willing to
15 perform the entire time.

16 And I've certainly acknowledged they have to exchange
17 releases to get the money, but no releases have been
18 tendered to me. But I now have releases that I've drafted,
19 and -- and I'm ready to perform.

20 I -- I do have three clients who've had consequential
21 injury. Most of them are working; most of them have been
22 able to wait. Have been annoyed to wait, but they've been
23 able to wait. One client spent about four months in prison
24 longer than he had to. He could have qualified for an
25 early-release program, if he'd been able to afford his own

1 apartment. This money would have put him in that posture.

2 THE COURT: Ummm.

3 MR. MEYERS: One client had to borrow money at really
4 punishing interest rates, which damage accrues -- he --
5 he's borrowed it in small increments. I have all the
6 paperwork, and that damage continues to accrue. And we can
7 -- we can still cut it off, if we can get ---

8 THE COURT: Uh-huh. Uh-huh.

9 MR. MEYERS: --- the Diocese to perform.

10 The third client's John Doe B, who is in bankruptcy as
11 a result of ---

12 THE COURT: Uh-huh.

13 MR. MEYERS: --- the Diocese's failure to perform. So
14 -- and I know he's not on the radar screen here at the
15 moment.

16 But those -- and I've written to the Diocese about
17 this. You know, I've given them a thumbnail on what the
18 significance was to their delay. And I've not known how to
19 unlock this, because I feel like they keep saying to me,
20 "You've added this unmerited party." And I keep saying,
21 "He's a third-party beneficiary. He's not part of the
22 agreement.

23 I have not known what to do. I've tried to enlist Mr.
24 Infinger; I've tried to enlist Mr. Geoly. I -- I can't get
25 the Diocese to agree to make payment.

1 THE COURT: Uh-huh. Okay. I got it. I got it. Got
2 it.

3 Mr. Geoly.

4 MR. GEOLY: Your Honor, if I could address at least
5 some of that.

6 THE COURT: Sure. Of course.

7 (To Mr. Meyers) And you can ---

8 MR. GEOLY: The Diocese ---

9 THE COURT: --- you can grab a chair.

10 MR. GEOLY: --- had its own good faith understanding
11 of when this payment was due. The payment was requested,
12 at first, long before it was actually due. Whatever Mr.
13 Meyers thinks he understands about when that due date was,
14 the actual agreement -- the one attached to your court
15 order -- talks about Mr. Richter's contribution that the --
16 this offer is contingent on the receipt by the Diocese of
17 \$100,000, not on Mr. Richter's promise to pay \$100,000.

18 And as the -- as the Court pointed out, the 1.375
19 million will be paid from the surplus fund, if any, after
20 the claims process has been completed. In the event there
21 are no -- there are insufficient or no funds remaining from
22 the 12 million pool of funds, the Diocese is still
23 obligated to pay. Clearly ---

24 THE COURT: (To Mr. Flowers) Yes, sir. Could you take
25 your seat? You -- it's distracting. I'm trying to listen

1 to -- to him. I'll give you -- if you need to consult with
2 him, I'll give him -- y'all time to do that. That's very
3 distracting.

4 (To Mr. Geoly) I'm sorry. Go ahead.

5 MR. GEOLY: Clearly, the written word -- the one
6 signed by Mr. Meyers, the one adopted by the Court as an
7 order -- states that we are talking about the actual
8 receipt by the Diocese of funds before any obligation to
9 make a payment on this settlement would become ripe.
10 That's our interpretation.

11 If we're wrong about that interpretation, at least --
12 and certainly you could understand, I think -- that's it's
13 a good faith interpretation, because it appears to be the
14 plain meaning of the written words. And I don't think
15 we're in the weaker position relying on the written words
16 of Your Honor's order. So that's the state of affairs
17 through at least mid/late April of -- of 2008.

18 Before -- before the claims process was complete,
19 which includes the tendering back to the Diocese of those
20 excess funds, Mr. Meyers filed his Charleston lawsuit,
21 putting into question the very agreement and obligation to
22 pay that was at issue in this order, rather than come to
23 the Court to enforce the order if he thought we were
24 delaying complying with that; and calling into question
25 whether we were or were not protected and released from

1 obligations by the payment of that money.

2 He, in a sense, made it impossible for us to simply
3 give him 1.375 million dollars by filing his lawsuit,
4 because that would not discharge the lawsuit automatically.
5 And yet, from our point of view at the time the lawsuit was
6 filed, these funds were not due yet anyway.

7 We encouraged him to come back to you if he thought he
8 had a problem with the agreement and the order. He pursued
9 his lawsuit.

10 With all of this pending, I certainly did my best to
11 try to find some way to just make it all go away, because
12 that seemed to be the obvious thing to do. We owed 1.375
13 million. Sooner or later, the question of when it was
14 really due was going to be moot, because even from our
15 point of view, it was going to be due. Why can't we just
16 give you the money and everything goes away?

17 That is a conversation I had repeatedly with Mr.
18 Flowers, and I -- and I have a perfectly good working
19 relationship with both of these gentlemen. We have no
20 problems speaking about the issues that are at issue here.
21 And I really think all we were trying to do was set up the
22 kind of exchange that Mr. Meyers described, that he wrote
23 to me about on -- on the occasion he -- he showed you the
24 letter of.

25 Mr. Flowers and I had numerous conversations about

1 that. We contemplated and tried to involve Mr. Infinger in
2 it, for the very reasons that have been discussed, so many
3 times, that I probably can't separate them all in my memory
4 as individual occurrences.

5 But I can tell you this: On one occasion, the idea
6 was the Diocese will tender its money; Mr. Meyers will
7 tender the releases and simultaneously dismiss his
8 Charleston lawsuit, because it will all have been resolved.
9 And no, we wouldn't expect him to dismiss the lawsuit
10 before he knew Mr. Infinger had the money. But once that
11 had occurred, this could all happen in one day. The idea
12 was to have it happen all at the same time.

13 And at the last minute -- maybe it was the day before,
14 maybe it was two days before -- we're informed that well,
15 no, Mr. Meyers doesn't have his releases, because he's had
16 trouble contacting his clients. And they haven't signed
17 them all, or none of them have been signed; or some of them
18 have been signed, but not all of them have been signed.

19 And so this was put off. It couldn't happen. Why
20 can't the Diocese just go forward and trust us? We'll get
21 you the releases. Isn't that enough? We're telling you
22 we're getting them.

23 No, it's not enough. We actually need releases to go
24 with the tender of the money. Why? Because you filed a
25 lawsuit, and we really need to see that this is all

1 resolved at once. These releases are not just releases
2 under Your Honor's order. But as releases, they also
3 provide some protection from this lawsuit that is pending
4 in Charleston, because they are releasing these people's
5 claims against the Diocese. We needed to know that they
6 really existed before the money was tendered. This went
7 around the block quite a few times.

8 Finally, in exasperation, the Diocese said, "You know
9 what? We know we owe this money and we don't want to stand
10 between -- we don't want to be the obstacle to this money
11 being paid. But we're kind of placed in an impossible
12 position, and to this day, we still don't have releases."

13 I understand from Mr. Meyers today that he now has
14 releases. That's wonderful. We -- we can put them all on
15 the table. Our chief financial officer, I believe, is
16 here. In a very short period of time, we can have the
17 check and get this done; because to this day, we know we
18 owe the money.

19 But this is the first day ever Mr. Meyers has said he
20 has signed releases to us. He has letters writing --
21 written that say he will get them. Even the one written to
22 me in August, '08, says he will get them. But he's never
23 tendered any.

24 So the Diocese made a motion to deposit the funds
25 here, and let the Court decide whether he really had

1 releases or not. And in a sense, let the chips on the
2 Charleston case fall. Because we figured if these are
3 valid releases, they'll afford us protection in -- in
4 Charleston as well. And we'll deal with that on our own.
5 That's our burden. We'll have to just go do that. But in
6 July of '08, we -- we gave up and made the motion to
7 deposit the funds here.

8 After the filing of that motion, I get this August
9 letter from Mr. Meyers about he wants to go back and do the
10 same arrangement we were trying to work out with Mr.
11 Infinger earlier. I want to say it was June, but that's
12 from memory.

13 Now that we've already made this motion to deposit the
14 funds in court, he says that he hadn't received the motion
15 at the time he wrote that letter. I have no reason to
16 doubt that. These really may be things that -- that
17 crossed in the mail. That's fine. But that's how we got
18 here.

19 What has not happened here, at any point in time, is
20 any form of calculated delay by the Diocese in paying the
21 money that it has always understood that it owed.

22 What has happened is, at first, the money wasn't due
23 yet. And then, a legal condition was created that made it
24 -- that changed the deal, that made it impossible to just
25 pay the money. Because now, these people who were supposed

1 to be releasing us aren't releasing us. They're not
2 tendering releases, and they're suing us on the very same
3 matter in Charleston. You can't settle a matter and pursue
4 it at the same time. That was the quandary we were put in.

5 This is not an attempt to delay paying the money; this
6 is an attempt to get the benefit of the bargain, which was:
7 It all goes away when we pay the money. Which we're still
8 here trying to do, which is why we filed a motion to
9 enforce the order, which is really all we're asking of you,
10 to -- to make that happen.

11 THE COURT: Okay. Got it.

12 MR. GEOLY: Thank you.

13 THE COURT: Absolutely.

14 MR. MEYERS: Can I say one more thing? I do have
15 releases. Because the Diocese wouldn't send me a release,
16 I wrote it. So I will predict to you, with a high degree
17 of confidence, that the next argument is going to be, "We
18 don't like your release." And I will be unable to get my
19 money.

20 THE COURT: I know there's a release. There's --
21 there is a release that is a part -- it just happens to be
22 contained in the ---

23 MR. MEYERS: --- in the class.

24 THE COURT: --- in the class.

25 MR. MEYERS: Right.

1 THE COURT: But I -- you know --

2 MR. MEYERS: But what I want to say is ---

3 THE COURT: Uh-huh.

4 MR. MEYERS: --- I would certainly recommend to my
5 clients --

6 THE COURT: Okay.

7 MR. MEYERS: -- that since the Diocese unquestionably
8 received on April 28th the last contingency, by their own
9 account -- on April 28th of this year -- last year, they
10 received from Mr. Richter the payment, which was by their
11 own account, in their March letter, the last contingency.
12 They have the money back from the class.

13 THE COURT: Uh-huh. Right.

14 MR. MEYERS: They knew exactly what the disbursements
15 were they had to pay.

16 I would certainly recommend to my clients that
17 everything get resolved as to John Doe C forward, if they
18 will make that payment and the Court awards post-judgment
19 interest from that day. That's 1.375 million, it's about
20 165,000 a year, at 12 percent. I don't know what the right
21 amount would be, but I would certainly make the
22 recommendation.

23 I have to go back to my clients to get complete
24 authority, because my authority expired August 15th, and I
25 -- all I do is annoy them by asking my hypothetical. But

1 if there's money actually tendered or court ordered, and
2 the Diocese actually makes the payment, I would certainly
3 make that recommendation to my people. I suspect they'll
4 follow my recommendation, but I have to go through ---

5 THE COURT: Let me ask you this question, Mr. Meyers:
6 Do you have a copy, either electronically or happen to have
7 one with you today in your file, and -- one of the
8 releases? I'm not talking about a signed one.

9 MR. MEYERS: I have ---

10 THE COURT: Do you have the language?

11 MR. MEYERS: --- in my laptop in the car, which
12 probably has the release --

13 THE COURT: Has got that on it? Here's what I'm going
14 to ask you to do for me, if you don't mind, because it
15 would be helpful. And I certainly wouldn't ask you to --
16 to transfer at this moment a release that has a signature
17 on it. But if you could transfer the language, I would --
18 I would very much like to -- I'd like to proceed as far as
19 we could, just in terms of the -- the enforcement of the
20 settlement.

21 MR. MEYERS: I will say I did not use as the model for
22 the release the one in the class action; I used a release
23 that I've often used. Because -- just because it didn't
24 occur to me to use that one. I did ask the Diocese to give
25 me one so I could look at it --

1 THE COURT: Sure.

2 MR. MEYERS: -- which they wouldn't do.

3 THE COURT: I understand. But I'd like -- in other
4 words, rather than having to reconvene, I'd -- I'd very
5 much like to do that, because you could probably ---

6 MR. MEYERS: I can ---

7 THE COURT: Just as a hint, when we leave here today,
8 1.375 million is going to be moving. Okay? Don't know
9 where it's going to be moving, but it's going to be moving.
10 Okay.

11 MR. MEYERS: Well, it's agreeable to me if it moves to
12 Mr. Infinger's escrow account.

13 THE COURT: I -- I don't know where -- I -- I don't --
14 I'm not sure where I'm going to move it at this moment.
15 But if you could do that, I would very much --

16 MR. MEYERS: I can do that.

17 THE COURT: -- very much like to be able to handle
18 that issue.

19 MR. MEYERS: It would seem worst case, if I could -- I
20 don't know if I can print, but I can certainly e-mail from
21 somewhere in the courthouse to the courthouse, to transfer
22 the text of ---

23 THE COURT: You can -- if you e-mail it -- if you can
24 e-mail it to my law clerk, he can print it. How about
25 that?

1 MR. MEYERS: But I have to get it from my laptop.

2 THE COURT: I know, that's in the car.

3 MR. MEYERS: But I can print it ---

4 THE COURT: I know. Well -- and let me tell you, it's
5 -- let me sort of tell you where we are at this moment.

6 And I -- I'm trying to think. I have a -- folks have got
7 to get lunch, and I have a two o'clock and -- and the
8 gentleman is -- is actually coming from death row at
9 Leiber. So he's -- I -- I like to go ahead and bring those
10 folks in and deal with what I need to deal with, and -- and
11 let them go about their business.

12 So I know I'm going to need to take a break when he
13 gets here. And I'm very mindful that I have the other
14 motion that is pending. So, why don't we do this? Why
15 don't I just shift gears for just a moment and handle the
16 *amicus* motion.

17 Then we'll take a break and you can go get it then.
18 And you can e-mail it and we can get copies. Y'all can
19 take a look. And I know I'm -- I know I'm keeping the
20 plaintiff's counsel here, but it's -- it's fairly
21 remarkable that the -- that, you know, obviously the
22 action, at least at this moment, is between the -- it has
23 to do with the settlement. And y'all -- the \$100,000 is
24 gone.

25 And I know I'm keeping y'all from probably doing

1 things y'all want to be doing. So I'll leave it to you, if
2 you want to remain or not remain.

3 MR. RICHTER: Well, you -- you're kind to consider us
4 in that way, Your Honor. We have not been asked to speak,
5 so we haven't -- haven't spoken. The -- the fight really
6 has been between ---

7 THE COURT: It really has been.

8 MR. RICHTER: I -- I do think that we, perhaps, can be
9 of some assistance to the Court, if you would like -- like
10 for me to do that.

11 THE COURT: Sure. I think -- I think what I -- I'm
12 trying to think. Yeah. And it has -- yes. I -- I'm
13 listening. And then I'll go to the *amicus*.

14 MR. RICHTER: Well, as -- as Your Honor knows -- well
15 ---

16 THE COURT: (To the court reporter) And this -- this
17 is Mr. Richter.

18 MR. RICHTER: --- I -- I believe that no sane or -- or
19 honest person -- sane and honest person could possibly
20 perceive that the matter between the class that Mr. Haller
21 and I represent -- or represented -- and the Diocese was
22 anything other than contentious. At least on -- well, I
23 had -- how contentious? I caused a Rule to Show Cause to
24 be issued by this Court against the Bishop of the Diocese
25 of Charleston. And that resulted -- in part resulted in

1 the hearing in Orangeburg.

2 But some have perceived it that way, so I -- I don't
3 speak on behalf of the Diocese, and I don't speak on behalf
4 of Mr. Meyers' side of this matter.

5 I am a signatory, however, to the very agreement by
6 letter which has formed the actual core of this
7 controversy. And we are significantly involved to the
8 extent that all plaintiffs' counsel contributed a total sum
9 of \$100,000 to get rid of certain counsel and certain
10 issues in the class case.

11 Now, today I hear things that concern me a good bit.
12 We are clearly \$100,000-worth invested in the controversy
13 that has presented itself as being only between these two
14 sides -- Mr. Meyers' side and the Diocese's side -- today.

15 But in looking -- and I just call this to the Court's
16 and everybody's attention, so that it can run through
17 everybody's mind. If it makes any difference, everybody
18 can decide that; if it doesn't make any difference,
19 everybody can decide that.

20 Certainly, the time for making a claim in this class
21 has long ago gone. That process has long ago ended in the
22 case. Now, Mr. Meyers -- or somebody has -- Mr. Meyers has
23 included in his submission today -- I think this is today's
24 submission -- several -- copies of several opt-out forms.

25 But the language on -- this is a court-approved form

1 this Court issued, and all it would say is, "If you want
2 out of this class, you have to execute this form." We had
3 a hearing about that.

4 But apparently, what I heard today was that Mr. Meyers
5 unilaterally caused that form to be ended. So if that opt-
6 out was ineffective, clearly the time for these people to
7 make a claim in the class has long since gone. And if they
8 hadn't opted out properly, I think their claim under this
9 agreement is -- is likewise gone. But that's -- I'm only
10 interested in \$100,000 worth of that argument.

11 Number 2, from what I heard these people say -- and I
12 was there -- in listening to Mr. Meyer's characterization
13 of this matter, it is absolutely clear to me that there was
14 no meeting of the minds amongst the people that entered
15 into this agreement.

16 I say that because there could be no doubt but that it
17 was abundantly clear that the Diocese had to pay Mr.
18 Meyers' clients -- 11 of them, I believe -- from the funds,
19 if there were funds left over after all the distributions
20 to the class. There is absolutely no doubt about that.
21 Those were the terms of the agreement.

22 Clearly, if you look at the dates, nobody asked me to
23 -- to give our \$100,000 contribution to the Diocese so it
24 could make that payment until after that had happened. Mr.
25 Thomas gave his refund check to the Diocese, whatever it

1 was. Somebody then notified me that had happened. We then
2 sent our -- our check. But there is no misunderstanding --
3 was no misunderstanding about that whatsoever.

4 Third, our \$100,000 has been tied up, which we haven't
5 had the interest-use of since April of last -- of last
6 year. And it seems to me that Mr. Meyers filed a suit on
7 March the 6th or 10th of 2007, prior to the time that the
8 Diocese was obligated to make the payment, because the
9 claims period had not wound up. That process had not wound
10 up by that time.

11 The last thing that the Court should know is that Mr.
12 Flowers sat with us and took part in all of these
13 negotiations. There's no doubt about everybody knowing 100
14 percent what happened, happened in Mr. Infinger's office.

15 So to the extent that helps the Court, I offer it. To
16 the extent it doesn't, please disregard it. And thank you
17 for hearing us.

18 THE COURT: Thank you very much. All right.

19 All right. Now, I'm going to shift to our last
20 motion, and that is the petition to appear as an *amicus*
21 *curiae*.

22 And before I do that, Mr. -- Mr. Meyers, I gotta ask
23 you one more question of you. And -- and I know you're
24 going to have to refer to probably some of your paperwork.
25 But on Exhibit -- on today's submittal, on Exhibit 6, and I

1 -- have you got -- you've got it right there.

2 Okay. Exhibit -- look -- look on Exhibit 6 for me.

3 Let's see. Can you tell me which John Doe -- letter-wise -
4 - that person is? Obviously, I don't want to know their
5 identity, just their letter.

6 MR. MEYERS: Which one?

7 THE COURT: The one that's on 6 -- Exhibit 6. Oh,
8 it's Exhibit -- wait a minute. Here we go. Here we go.

9 MR. MEYERS: The -- are you referring to the
10 attachments ---

11 THE COURT: Yeah, exactly.

12 MR. MEYERS: --- that is -- Exhibit 6 in one of my
13 attachments?

14 THE COURT: Exactly.

15 MR. MEYERS: I am pretty sure --

16 THE COURT: Now, just the letter now; just the letter.

17 MR. MEYERS: I have to consult my list to know.

18 THE COURT: I know you do.

19 MR. MEYERS: I have to correlate those.

20 THE COURT: And that's somewhere else.

21 MR. MEYERS: I probably can get that off my laptop.

22 THE COURT: Can I ask you this question? Do you --
23 this is the one of the alphabet from "C" ---

24 MR. MEYERS: Yes.

25 THE COURT: -- forward? Okay. That -- that's

1 probably going to be plenty enough. That's probably going
2 to be plenty enough.

3 MR. MEYERS: I bet I can figure it out, actually, from
4 the affidavit that's attached.

5 THE COURT: Well, I kind of wondered if you did "A, B,
6 C, D." You may have done it that way, you know? So it
7 would be A, B, C, D, E, F, maybe? That might be ---

8 MR. MEYERS: I'm pretty sure it was John Doe D.

9 THE COURT: "D"? Okay.

10 MR. MEYERS: Pretty sure.

11 THE COURT: Great. That works.

12 MR. SHAHID: Judge, I'm sorry? John Doe ---

13 THE COURT: John Doe D.

14 MR. MEYERS: "D" as in "dog."

15 THE COURT: Dog. "D." That's plenty good. That's --
16 but you know that it's one of them. Otherwise, why -- why
17 would you have attached it? Okay. I got it. Okay.
18 Great. That's -- that's plenty of sufficient --

19 All right. Now -- now I'm going to shift to the
20 *amicus*. All right. Mr. Flowers?

21 MR. RICHTER: Judge, let me ask a last question about
22 what you've done thus far before you start into the new
23 matter? I just -- I'm not sure I wrote it down right. Are
24 the releases signed in Mr. Meyers' office now? Is that
25 where -- is that where we are on that issue?

1 THE COURT: He -- here's where, as I understand it.
2 There are releases that have been signed by Mr. Meyers.
3 And what Mr. Meyers did is -- is he -- he used ---

4 MR. RICHTER: By Mr. Meyers. I mean ---

5 THE COURT: Yeah. He used releases that he has that
6 he typically uses in his practice. He has them; they are
7 signed.

8 And of course, he articulated a concern that once the
9 -- you know, that once that counsel for the defendants see
10 the releases, they may or may not be acceptable. And in
11 all candor, he used what is his typical and normal release,
12 rather than what's in the class settlement. And there
13 wasn't any reason, I mean, there wasn't ---

14 MR. RICHTER: Oh, I'm not challenging.

15 THE COURT: --- any agreement to -- you know, to use
16 that one.

17 MR. RICHTER: I -- I just didn't understand whether
18 his clients ---

19 THE COURT: So.

20 MR. RICHTER: --- had signed all of those.

21 THE COURT: Yep. He has them.

22 MR. RICHTER: That's really all I'm asking. Thank
23 you.

24 THE COURT: He does have them. He has them in his
25 office, and he thinks that he has the language on his

1 laptop. And he's going to be kind enough to -- to send
2 that to my law clerk; I'm going to print it; and then I'm
3 going to ask the defendants to look at that language. So,
4 if we can move that process ahead a little bit more, it
5 just gets these folks closer to getting some money. Which
6 is -- I -- I think everybody has an interest in that.

7 Okay. Great.

8 Yes, Mr. Flowers.

9 MR. FLOWERS: Thank you, Your Honor.

10 THE COURT: Uh-huh.

11 MR. FLOWERS: I didn't mean to annoy the Court earlier
12 when I approached.

13 THE COURT: Well, it -- you know, it is because when
14 you ---

15 MR. FLOWERS: I didn't mean to distract you.

16 THE COURT: --- people -- and -- and ---

17 MR. FLOWERS: I apologize to the Court for that.

18 THE COURT: Okay. Yes, sir.

19 MR. FLOWERS: Your Honor, I have filed the petition to
20 appear as *amicus curiae* on behalf of the South Carolina
21 Victims Assistance Network --

22 THE COURT: Uh-huh.

23 MR. FLOWERS: -- which is an organization I've done
24 amicus work for in the past. I've done work for them a
25 number of years now.

1 THE COURT: Yes, sir.

2 MR. FLOWERS: They engaged me to file this petition to
3 bring to the Court's attention, and hopefully shed some
4 light on, the numerous ethical and legal breaches that have
5 occurred in this litigation.

6 I've set them forth in the petition; I won't belabor
7 them. But I will point out to the Court that with the
8 Court's ruling today -- if -- if the Court rules today,
9 that the agreement is part of this litigation, it raises a
10 new issue; and that is whether the class members -- absent
11 class members -- need to be notified about this agreement
12 with Mr. Meyer and my -- Mr. Meyers' and my clients, so
13 that they can come in if there is going to be a final
14 fairness hearing held in this litigation -- which I think
15 there should be -- they should be notified about the terms
16 of that agreement so they could come in and complain or
17 question as to why they didn't get the same agreement; and
18 why their class counsel agreed to pay \$100,000, either out
19 of his own pocket or their pockets; and they've not had an
20 opportunity to be heard on that, as well as a number of
21 other issues they haven't had an opportunity to be heard
22 on.

23 THE COURT: Okay. Now, you -- you just made a
24 comment. You said, "Mr. Meyers' and my clients."

25 MR. FLOWERS: Yes, ma'am.

1 THE COURT: Is -- is that what you said?

2 MR. FLOWERS: Yes, ma'am.

3 THE COURT: Uh-huh. Okay. All right. Now, let's
4 talk about the law a little bit with *amicus*.

5 MR. FLOWERS: And I got -- I got to grab that ---

6 THE COURT: And obviously, all of these issues could
7 have been raised at the time of the objection to the class
8 settlement. They were not raised. And in South Carolina
9 law, we know that we have an appellate rule that addresses
10 *amicus*. And --

11 (Sotto voce discussion between
12 the Court and the law clerk.)

13 THE COURT: -- and it's Rule 213 of the South Carolina
14 Rules of Appellate Procedure. But that's not what you are
15 asking to do, is it?

16 MR. FLOWERS: I'm asking to appear as an *amicus* in the
17 trial court, Your Honor.

18 THE COURT: Uh-huh.

19 MR. FLOWERS: And there is authority for that in a
20 case called "*Cook vs. South Carolina Department of Highways*
21 *and Public Transportation*" ---

22 THE COURT: Yes, sir.

23 MR. FLOWERS: --- a Supreme Court case. The citation
24 is 420 SE 2nd 847. I've got a copy ---

25 THE COURT: I'm very familiar with that case.

1 MR. FLOWERS: And in that case, the Supreme Court said
2 it was within the trial court's discretion to entertain
3 *amicus* petitions.

4 THE COURT: And interestingly enough, the Court talks
5 in that case -- in the *Cook* case -- it refers to the
6 Court's consideration of the *amicus* in that case. And it
7 says two things which I think are interesting.

8 The first thing that it -- that it does not do is it
9 does not refer to the Appellate Rule.

10 The second interesting language is, is it considers it
11 to be -- what the Court says is that it's an evidentiary
12 matter. And whether or not to admit evidence is within the
13 trial court's discretion. It refers to the admission of
14 the *amicus* as an evidentiary admission, which I thought was
15 interesting.

16 And then finally, the Court notes -- the Supreme Court
17 notes in passing that it's apparent that the trial court
18 gave no consideration at all to the *amicus*. And then it
19 basically -- the Court in no way addresses it beyond that.
20 You agree with that?

21 MR. FLOWERS: Yes, ma'am.

22 THE COURT: And that is the only case where *amicus*, at
23 the trial level, is mentioned in the trial court in South
24 Carolina, right?

25 MR. FLOWERS: That's the only one I could find, Your

1 Honor.

2 THE COURT: Well, there is one at the Federal Court
3 level. I'm sure you are familiar with that. Involves the
4 United States government, and the United States said --
5 moved to be able to participate in an *amicus* fashion or to
6 intervene.

7 And the Federal Court in that case -- and I'll get
8 that site for you in just a moment -- opined that because
9 the United States sought by its action to affect the
10 underlying litigation, that it was appropriate that the
11 United States be added as an intervener; and in fact,
12 designated as a party plaintiff.

13 And there's a good discussion in that case about the
14 role that is played by one filing an *amicus*. And -- and I
15 thought that was interesting, too. Because there are
16 certainly some rules relating to *amicus*, and -- and I'm
17 just setting them forward.

18 And this is from a law review article (as read): "The
19 function of an *amicus curiae* is to call the Court's
20 attention to law or fact circumstances. An *amicus curiae*'s
21 principal or usual function is to aid the Court on
22 questions of law. But whatever the matter with reference
23 the *amicus curiae* undertakes to inform the court, he or she
24 should act in good faith, make full disclosure on the
25 point, suppress nothing with intent to deceive the Court.

1 "Traditionally, an *amicus curiae* was a neutral
2 provider of information, although as the law has developed,
3 those with a partisan interest now may participate."

4 Now, it says (as read): "*Amicus curiae* are drawn from
5 the ranks of persons who care about the legal principles
6 that apply in the suit, but who do not have the right to
7 appear in the suit."

8 And they need -- and it goes on to say that (as read):
9 "A private individual seeking to file an *Amicus Appellate*
10 brief does not need to be impartial, but may have an
11 interest."

12 It goes on to say (as read): "An *amicus curiae* has no
13 control over the litigation, and no right to institute any
14 proceedings in it. An *amicus curiae* ordinarily cannot file
15 pleadings or motions in the cause, but is restricted to
16 suggestions relative to matters appearing on the record, or
17 to matters of practice.

18 "An *amicus curiae* is not vested with the management of
19 the case" -- which was important in the Federal case.
20 Can't appeal it. Not bound by the judgment.

21 And then it goes on to say that (as read): "When
22 *amicus* status is granted, the named party should always
23 remain in control with the *amicus* merely responding to the
24 issues presented by the parties. Although an *amicus* may
25 provide supplementary assistance to existing counsel, an

1 *amicus curiae* cannot assume management of the action as
2 counsel, because it cannot be in control of the litigation.

3 "An *amicus* cannot initiate, create, extend, or enlarge
4 issues, including constitutional issues. Courts will not
5 consider issues raised by *amici curiae* that -- which were
6 not raised by the parties. Relief beyond that which is
7 sought by the parties cannot be requested by *amicus curiae*.
8 Instead, an *amicus curiae* must take the case as he or she"
9 -- in your instance, I think you would say "or it" --
10 "finds it, with the issues made by the parties.

11 "Motion practice by -- by *amici curiae* is not
12 permitted."

13 I just note that certainly there is affirmative relief
14 requested in your petition. In other words, I -- I really
15 just note that given the definitions of *amicus curiae* that
16 I have been able to find, they certainly seem quite
17 different from what you propose, Mr. Flowers.

18 MR. FLOWERS: What I propose, or what my client
19 proposes, Your Honor, is at the beginning of the addendum
20 [phonetic] clause to further develop and to point out
21 serious problems with this litigation including: false
22 information given to the Court; misleading the Court; a
23 number of other issues that the parties themselves not only
24 haven't pointed out to the Court, but they actively
25 concealed. And somebody needs to shed some light on it and

1 the parties obviously aren't going to do that.

2 SCVAN is not intending to take over this litigation,
3 to get in control of this litigation. They are merely
4 wishing to shed light on the activities of the parties that
5 are already before this Court. That's the intent of the
6 *amicus* petition.

7 THE COURT: I have read your petition. I have read
8 the case -- the one case under state law that mentions
9 *amicus curiae* at the trial level. I've read the Appellate
10 Court rule, and I have researched both the Federal decision
11 that I mentioned to you, as well as a number of other
12 articles and information.

13 And I must tell you, Mr. Flowers, I do not find that
14 your petition, in any regard, meets what is contemplated by
15 the other -- by the *amicus* matters -- by the *amicus*
16 definition from what I have been able to ascertain.

17 It seems to me that you are attempting, in some form
18 or fashion perhaps to intervene, and you couched it in
19 terms of a petition to appear as an *amicus* rather than a
20 motion to intervene. And our law is clear, at least
21 insofar as the Federal Court decision talks about and
22 discusses that they are very much different, the
23 intervention and the *amicus*.

24 And it seems to me that minimally you are attempting
25 to -- to intervene, although that's not what you have

1 asked. You've asked -- this is couched as a petition to
2 appear as an *amicus*.

3 MR. FLOWERS: Your Honor, so the record's clear, we're
4 not attempting to intervene. We're not attempting to get
5 party status.

6 THE COURT: And you -- and you don't say that. You --
7 I'm just telling you ---

8 MR. FLOWERS: We don't think we have standing ---

9 THE COURT: Uh-huh.

10 MR. FLOWERS: --- to -- to intervene, or to be a party
11 in the class action. What we're asking to do is perform in
12 an advisory role, which an *amicus* does, to the Court about
13 the various matters that are laid out in the petition.

14 THE COURT: Okay. All right. Very well. I'm going
15 to respectfully deny your motion to appear as an *amicus*.
16 Now ---

17 MR. FLOWERS: Can I say one more thing, Your Honor? I
18 understand the Court's ruling.

19 THE COURT: Thank you.

20 MR. FLOWERS: I'm not arguing with the Court. But
21 just so the record's clear, you mentioned that the stuff
22 that's in the petition could have been raised at the
23 fairness hearing. There are matters in the petition that
24 occurred after the fairness hearing ---

25 THE COURT: Okay.

1 MR. FLOWERS: --- so they could not have been raised
2 at ---

3 THE COURT: Okay.

4 MR. FLOWERS: --- the fairness hearing.

5 THE COURT: Very well. All right. Now -- and -- and
6 -- before Mr. Flowers leaves, a couple of things that --
7 that I want to talk about and I feel compelled to put on
8 the record.

9 The first thing is, Mr. Flowers, I have concerns about
10 your petition to appear as an *amicus curiae* when it appears
11 that you represent certain individuals who are parties to
12 the settlement to the -- that we're here about today. And
13 I am concerned about that, and I'm going to put that on the
14 record. I need say no more, but I am expressing to you a
15 concern.

16 MR. FLOWERS: May I respond to it, Your Honor?

17 THE COURT: I'm -- if you wish.

18 MR. FLOWERS: When -- when I was engaged by the South
19 Carolina Victims Assistance Network, I was asked to do a --
20 a specific and discreet thing for them. Whether I was
21 representing other parties or not who were in this
22 settlement is not relevant as long as there's no conflict;
23 and even if there is a conflict, as long as it is disclosed
24 and they give waivers to any potential conflict.

25 Now, I take the position there is no conflict, because

1 the people that Mr. Meyers and I represent in the
2 settlement are not fighting about the class action case any
3 more. They opted out; they are gone. SCVAN wants to bring
4 to the Court's attention all the problems with the
5 settlement.

6 So there is no conflict. And even if there was, it's
7 one that could be waived. And I will represent to the
8 Court as an officer of the Court, I have made full
9 disclosure to everybody involved in this process that I
10 represent as to what the dual role that I might be put in
11 the position of doing. And -- and everyone gave complete
12 waivers as to any problems that anyone may raise at any
13 point in the future about it.

14 THE COURT: I -- I make no findings in that regard,
15 other than to tell you, Mr. Flowers, that it's clear to me
16 that you represent other individuals in the -- in this
17 litigation, and I just simply wanted the record to reflect
18 my concern.

19 Secondly, I'm going to make an e-mail part of the
20 record that I received from you, Mr. Flowers, because I'm
21 very concerned that -- about the content of the e-mail.

22 It is an e-mail, says (as read): "From: David
23 df60@charter.net; Subject: Re: Doe vs. Diocese Case,
24 Potential Hearing Date."

25 And --

1 (Sotto voce conversation between
2 the Court and the law clerk.)

3 THE COURT: I'm going to make that a part of the
4 record. And in it, Mr. Flowers, you make certain
5 allegations regarding the Court's lack of willingness to
6 schedule your -- these matters.

7 And I simply wanted to put on the record that the
8 final motion -- of course, we've had -- I think, we've had
9 one that's been filed very recently. But the bulk of these
10 motions were filed, I think, September 25th and
11 thereabouts.

12 And I had a status conference on October the 2nd, and
13 I wanted to be sure that that was the date, and -- and --
14 and asked for and received today the -- the transcript.

15 And on that occasion, I met with counsel to try to
16 schedule the -- this motion hearing as soon as possible,
17 and gathered everyone rather than trying to do that by e-
18 mail so that we could expedite, I had hoped.

19 On that occasion, because I have my typical duties --
20 which is court -- and I brought my schedule in case anyone
21 wondered what that has been. And -- but I did want the
22 record to reflect that as I attempted to schedule the
23 hearing, I thought I hit most every Friday when -- because
24 I'm in court. And tried to address our next chambers week,
25 which was Thanksgiving week. And then moved into the last

1 two weeks of the year, and was told the following: Mr.
2 Flowers, you could not be available for October the 17th;
3 Mr. Meyers could not be present on October the 24th, or
4 December the 25th through January the 2nd; that Mr. Richter
5 could not be available October the 9th and 10th, or
6 November the 16th through the 21st; and Mr. Shahid was
7 doing the "Gobble-Wobble" race on November the 24th or the
8 25th, which obviously was the week of Thanksgiving, our
9 next chambers week.

10 Between October the 2nd -- which I think comes just
11 days after the last motion, the one filed on September
12 25th. I don't know when I got it; it was filed on the
13 25th. I probably received it some time after that.

14 I then sought and hoped to hear again -- tried to hear
15 the matter during the -- our chambers period at the end of
16 the year. Counsel was not available. I then asked about
17 the first of the year, and was told that you couldn't hear
18 it on January the 8th or February the 2nd and 3rd.

19 And then I was given everyone else's difficulties over
20 the period, to include, I think, one -- a couple of the
21 lawyers just sent me the calendar and said, "You figure out
22 when we're going to be available."

23 And I -- my office spent an awful lot of time trying
24 to get the date. This is the first day since October the
25 2nd that we were all available. And I certainly have made

1 myself available. And needless to say that this matter has
2 been more difficult to get scheduled, quite frankly, than a
3 non-jury capital case that I have tried since October the
4 2nd. So I'm going to make my transcript of the status
5 conference part of the record as well as your e-mail.

6 Also in the e-mail -- the other portion of this e-mail
7 that concerned me was -- I am concerned that some of your
8 statements could be considered to be *ex parte*, an *ex parte*
9 argument in favor of your petition for *amicus*. And as an
10 officer of the Court, disingenuous, because your comment is
11 -- and I would note, I even offered to hear it on the day
12 of October the 2nd, and counsel simply hadn't received it
13 in time and wasn't prepared, which was certainly
14 reasonable.

15 It says (as read): "If the Court should find time in
16 the next two months to hear my petition, which is only
17 opposed by an utterly frivolous argument by the Diocese, I
18 would seek that it not be heard only on January the 8th and
19 February the 2nd and 3rd."

20 That was the comment that I -- I was concerned was
21 argument on the motion itself, which is not correct, as you
22 and I just -- and I interchanged. It's not an utterly
23 frivolous argument. It is not a clear area in South
24 Carolina law in any event, which concerns me that that
25 argument, albeit *ex parte*, could be considered to be

1 disingenuous on your part as an officer of the Court,
2 because it wouldn't be an utterly frivolous argument.

3 MR. FLOWERS: Your Honor, in their ---

4 THE COURT: Let me finish, please.

5 MR. FLOWERS: I'm sorry.

6 THE COURT: And then I'm -- I certainly want you to
7 respond, sir.

8 I put all these matters on the record because --
9 really for two reasons.

10 Number one, I was -- I was -- I try so hard,
11 particularly when I'm the Chief Administrative Judge and
12 have many, many administrative tasks. And I was the Chief
13 Administrative Judge for the 1st Judicial Circuit up to
14 January the 1st; did have pending a capital case, which I
15 did try.

16 Also, unfortunately, I had some other issues that came
17 up that were unanticipated, didn't interfere with this
18 matter at all.

19 But I certainly do try very much to -- to be
20 responsive to counsel, and so when I am accused of the
21 kinds of things that I was accused of in your e-mail, I
22 guess what comes to mind first of all is sadness, I
23 suppose.

24 Secondly, the oath of civility that I -- I presume you
25 took when -- when the Bar was required to take it some

1 years ago. And I -- I want to hear from you, but what I
2 really want to do is just to put you on notice, Mr.
3 Flowers, that your conduct was not appropriate. Okay?

4 MR. FLOWERS: Thank you, Your Honor.

5 THE COURT: Uh-huh.

6 MR. FLOWERS: I -- I will say that I stand by the
7 words. They are truthful statements. The record is clear.
8 What I said in there was that whenever the parties to this
9 action wanted something heard in a hurry, they got heard in
10 a hurry. My petition's been pending since June of last
11 year. It's taken now, I guess, seven months to have it
12 heard.

13 When you did -- you said you attempted to schedule the
14 hearing for these motions towards the end of the year, you
15 attempted to schedule it during the time that you were
16 already advised that Mr. Meyers was not available and would
17 be out of the state.

18 When I say it was utterly frivolous, the Diocese
19 argued in their response to my petition that there was no
20 rule and no statute and no case authority in South Carolina
21 that allows ex -- that allows *amicus curiae* petitions in
22 the trial court. That is a false statement.

23 The *Cook* case is a South Carolina Supreme Court that
24 allows *amicus* petitions in the trial court. And -- and
25 Your Honor has not addressed that with them, that they have

1 said something to the Court that is not true. Now, I will
2 take the Court's admonition, but I stand by the words that
3 are in that e-mail.

4 THE COURT: Thank you for your -- for your
5 acknowledging the admonition, Mr. Flowers. I appreciate
6 that very much.

7 Now, again, I'm going to just attach these as
8 exhibits, the e-mail as well as the transcript. And
9 there's a flurry of -- of e-mails that went back and forth
10 from -- from my law clerk --

11 (To the bailiff) You need to pass that to Bonnie.

12 -- where I at least attempted to get this matter
13 scheduled as quickly as I possibly could. And clearly, Mr.
14 Flowers, I was trying to schedule this matter when I had
15 time at the end of the year, and to -- and to include the
16 first of the year, obviously, the first of January. And no
17 one was able to comply with my request to have this matter
18 heard until today, January the 29th, despite many attempts.

19 You know -- and there is obviously a great difference
20 between trying to schedule a matter between two law firms,
21 obviously, and multiple law firms, as -- as we've had to do
22 here today.

23 All right. Now, we're going to take a break. And if
24 you would be so kind as to do that, we will immediately get
25 it printed. I know y'all got to get some lunch. Don't

1 leave me.

2 And I want y'all to take a look at it. And then what
3 I think I'll do is -- I've got to -- we got to get a little
4 bit of lunch here, and then I -- I've got a -- Mr. Alesky.
5 I've got to -- to deal with him and get right back to you.
6 And I've got the rest of the afternoon earmarked.

7 MR. MEYERS: I have been able to confirm that John Doe
8 D is correct.

9 THE COURT: Wonderful. Thank you so much.

10 MR. FLOWERS: Your Honor, could I ask the Court a
11 question? It doesn't have anything to do with what we were
12 just talking about; it has to do with John Doe B.

13 I think I understand what the Court was talking about
14 earlier when you said John Doe B has nothing to do with
15 this Court, that's Charleston.

16 As we indicated to you at -- at the last -- at the
17 status conference in October ---

18 THE COURT: Mr. Flowers, tell me why you are asking me
19 this question in what capacity.

20 MR. FLOWERS: Because we want to go forward on the
21 case ---

22 THE COURT: Who is "we"?

23 MR. FLOWERS: --- in Charleston.

24 THE COURT: Who is "we"?

25 MR. FLOWERS: We, me and Mr. Meyers, on behalf of John

1 Doe B --

2 THE COURT: Okay. You represent John Doe B in
3 Charleston?

4 MR. FLOWERS: Yes, ma'am.

5 THE COURT: Okay.

6 MR. FLOWERS: Yes, ma'am. A stay has been entered in
7 that case, pending your resolution of the motions before
8 you today.

9 THE COURT: Okay.

10 MR. FLOWERS: But as I understand the -- the colloquy
11 today --

12 THE COURT: Yes.

13 MR. FLOWERS: -- they are taking the position ---

14 THE COURT: Who's "they"?

15 MR. FLOWERS: --- that John Doe B ---

16 THE COURT: You're talking about the Diocese ---

17 MR. FLOWERS: --- the Diocese. I'm sorry.

18 The Diocese agrees that John Doe B is not impacted by
19 this proceeding today, and that the case can go forward
20 with respect to John Doe B. And therefore, what I am
21 asking you, for clarification, is can we go forward with
22 discovery in that case? Do you have any opposition to
23 that?

24 And there's a motion hearing scheduled for next month.
25 They've gotten the motions continued before based on this

1 stay, but if John Doe B is not part of this proceeding,
2 then -- then we would like you to clarify that so that we
3 can go forward with that case in Charleston.

4 THE COURT: How could he ---

5 MR. FLOWERS: That's all ---

6 THE COURT: --- how could John Doe B be a part of this
7 matter?

8 MR. FLOWERS: I'm -- I'm agreeing with that, Your
9 Honor. But they've taken the position that because they
10 filed a motion to enforce a settlement, nothing can happen
11 in Charleston, because they argued that with Judge Few.
12 Judge Few said, "I'm staying it until the motions here are
13 heard."

14 What I -- what I'm trying to get clarification on is
15 regardless of what you do today with John Doe C through the
16 rest, that you are not leaving a stay in place with respect
17 to John Doe B proceeding in Charleston in any way.

18 THE COURT: Let me -- let me -- let me be clear: I am
19 Judge Goodstein; I am not Judge Few. Judge Few issued
20 Judge Few's order. I am not familiar with Judge Few's
21 order. You cannot take anything that I say or do as in any
22 way interpreting Judge Few's order, because I've not seen
23 it; or commenting on Judge Few's order, which I have not
24 seen, I have not reviewed.

25 And I certainly would take no action to affect his

1 order one way -- in any way. You cannot take anything that
2 I say here today as affecting anything to do with Judge
3 Few's order. I hope I am clear.

4 My -- my comment about John Doe B is simply that I
5 have looked at the class settlement; I have looked at the
6 objections; I have looked at my order; I have looked at the
7 letter, which are the subject of these matters. I do not
8 see John Doe B mentioned anywhere, and it has been -- the -
9 the reality in this lawsuit that each letter John Doe or
10 Jane Doe signifies consistently a particular human being.

11 John Doe B -- I don't know John Doe B. John Doe B has
12 not been in this litigation so far as I am aware. I think
13 I looked for confirmation; got that from Mr. Meyers and got
14 that from the Diocese.

15 If you take my words in any way, shape, or form that I
16 am doing anything with regards to Judge Few's order, you do
17 that in error.

18 MR. FLOWERS: And I don't intend to do that, Your
19 Honor, and that's why I was asking the question. Because
20 what we anticipate is the Diocese is going to say next
21 month, "Judge in Charleston, you can't hear this case,
22 because Judge Goodstein has jurisdiction over this case;
23 because Judge Few stayed that case until you can hear these
24 motions."

25 Didn't have anything to do with John Doe B. And all

1 I'm trying to do is head off at the pass their attempt to
2 further delay the case in Charleston with respect to John
3 Doe B. That's all I'm asking. I'm just trying to make
4 sure, on the record ---

5 THE COURT: You cannot do that with me. I am not
6 going to give you an opinion about what happens to the
7 litigation in Charleston. I'm not going to -- I'm -- I --
8 I'm not going to opine. I do not know anything about the
9 litigation in Charleston.

10 All but -- what you all have, for whatever reason, I
11 think, today there's some information. It may be --
12 certainly it's been mentioned that there's litigation in
13 Charleston. I am aware that there's litigation in
14 Charleston, but I have not delved into it. I have not read
15 Judge Few's order.

16 And so I want to be very careful that I just handle
17 this case. I got plenty of cases. I got plenty other
18 parties and plenty other litigation to handle.

19 And I do not want you, Mr. Flowers, going to any judge
20 anywhere and say, "Judge Goodstein said whatever --
21 whatever; and therefore, Judge Goodstein said that the stay
22 in Charleston is no longer in effect." Because I'm not
23 doing that. Okay?

24 MR. FLOWERS: Yes, ma'am.

25 THE COURT: Thank you, Mr. Flowers.

1 MR. GEOLY: Your Honor.

2 THE COURT: I hope that's clear.

3 MR. GEOLY: I hate to prolong; I know we're waiting
4 for a break.

5 THE COURT: Better hold on, Mr. Flowers. Better --
6 whoa. Don't go far.

7 MR. GEOLY: No. But there was a characterization of
8 what the Diocese said. I'm not going to go through this
9 whole thing. I -- I don't think it's appropriate to argue
10 in front of you about what we might or might not argue in
11 some Charleston case that you're not handling.

12 I do want to say that the Diocese made comments to you
13 today that we agree that jurisdictionally John Doe B is not
14 before you, nor are his claims. And that is agreed. I
15 think that's consistent with what you just said. I think
16 that's consistent with what Mr. Flowers just said.

17 But we reserve all of our rights to argue anything we
18 feel we need to argue in front of a Charleston judge in a
19 case that is not before you. And I will leave it at that.

20 THE COURT: Mr. Geoly, I'm -- let me reiterate what I
21 just told Mr. Flowers. Y'all can't take anything I say
22 here today as having any kind of effect on anybody's stay,
23 anybody's order. It is what it -- I'm -- I'm ---

24 MR. GEOLY: Understood.

25 THE COURT: --- I'm right here in Dorchester County.

1 I got this case. I just would like to conclude this case,
2 if that's possible.

3 MR. GEOLY: Understood, Your Honor.

4 THE COURT: And in the appropriate way.

5 MR. GEOLY: And we're certainly not asking you to
6 construe another Judge's order.

7 THE COURT: Thank you. Thank you so much.

8 All right. Y'all go get some lunch, and I -- I hate
9 to do this to you. I know y'all have taken all day, but
10 I'm going to be ready just as soon as I am finished with --
11 - with my two o'clock. My folks got to get something to
12 eat, so it's probably going to be closer to three.

13 MR. RICHTER: We're excused.

14 THE COURT: Oh, absolutely. Absolutely.

15 (Marked as Courts Exhibit 1, e-mail)

16 (Marked Courts Exhibit 2, copy of transcript.)

17 <Off the record at 1:55 p.m.>

18 <Back on the record at 4:57 p.m.>

19 THE COURT: All right. Thank you all so much. You --
20 you all have been at it all day long, and it's now five
21 minutes after five. And -- and y'all have just been
22 valiant, and I'm so appreciative of all the work y'all have
23 done today. And you've helped me so much, and I just want
24 to tell you thanks so much.

25 Mr. Meyers, you started with a document after lunch,

1 and now it's a new document. Tell me the story.

2 MR. MEYERS: It's -- it's just been added to.

3 THE COURT: Great.

4 MR. MEYERS: Not much. What I had was not so terribly
5 objectionable, so we were just able to massage it. We do
6 need the Court to indicate one thing. Because the
7 defendants -- we don't have an agreement on the sum they
8 will pay.

9 THE COURT: Okay.

10 MR. MEYERS: And I went back to the Court's order,
11 which says that there's no more restrictions on any
12 settlement funds that should be paid, that as August 31,
13 2007. I still ---

14 THE COURT: Now, when the -- show me what you're
15 talking about. Let me get it before me, now, because y'all
16 are going to leave me with some homework.

17 MR. MEYERS: The order that the Diocese claims this --
18 my agreement became.

19 THE COURT: Oh, that one. Hold on now. Let me get
20 that one, because I had it all day. Hold on one second.
21 Let me get that. All right. Hold on.

22 (Sotto voce discussion between
23 the Court and the law clerk.)

24 THE COURT: I got the order. No, I don't. No, I
25 don't. I got the order. Okay. Now, go ahead.

1 MR. MEYERS: We -- we have agreed on both the language
2 of a proposed release and on a method of payment.

3 THE COURT: Okay.

4 MR. MEYERS: What we do not have agreement on is an
5 amount to be paid. Now, this order says that (as read):
6 "There is no more restrictions or impediments to the
7 disbursement of any funds."

8 Now, the --

9 THE COURT: And that's in the --

10 MR. MEYERS: This is the order that -- that says my
11 letter of agreement with the Diocese is now an order of
12 this Court. It's the August 31, 2007 order.

13 THE COURT: All right. Now, all right.

14 MR. MEYERS: You -- you incorporated the agreement --

15 THE COURT: Uh-huh. Yes.

16 MR. MEYERS: -- you said it's an order; no more
17 restrictions. So I ---

18 THE COURT: I'm so sorry. I want to look at the exact
19 -- I'm so sorry. Tell me where that language is.

20 MR. MEYERS: It's on -- it's the bottom paragraph on
21 the first page. It's a three-page order.

22 THE COURT: Uh-huh. This is page 1.

23 MR. MEYERS: (As read) "Further, it is ordered" ---

24 THE COURT: There it is. (As read) "Further, it is
25 ordered that as to any" ---

1 MR. MEYERS: --- "any" ---

2 THE COURT: Uh-huh.

3 MR. MEYERS: --- "any restriction or impediments in
4 the disbursement of any such funds heretofore imposed" ---

5 THE COURT: "By this Court" ---

6 MR. MEYERS: --- "by the Court are lifted, removed,
7 and extinguished."

8 All right. Now, so there is -- there is an argument
9 that at that point, I should have been paid. But it seemed
10 to me that even under the Diocese's calculation, they
11 should have paid me once all of their -- as they
12 interpreted the agreement, their pre-conditions were met.
13 That's the April 28th date.

14 Pre-judgment interest that applies to this order is 12
15 -- post-judgment interest that applies to this order is
16 12.25 percent. I looked that up at lunchtime as well. And
17 the calculation from April 28th, we contend should obligate
18 the Diocese to pay an additional \$127,827.91.

19 THE COURT: I'm sorry. Say again. 128 --

20 MR. MEYERS: 127 --

21 THE COURT: Seven.

22 MR. MEYERS: -- 827 --

23 THE COURT: Okay.

24 MR. MEYERS: -- point 91.

25 The per diem amount is \$461.47, using 12.25 percent on

1 the principal amount due. If we ran it from the date of
2 this order, it would be \$239,041.46, but I'm prepared to
3 recommend that my clients get this resolved if they'll pay
4 the interest from at least April 28th.

5 THE COURT: All right. Now, tell me what you all
6 discussed in terms of the -- you said the "mode" of
7 payment, method of payment?

8 MR. MEYERS: Right. A -- a cashier's check will be
9 delivered made out to Gregg Meyers' IOLTA account. It will
10 be delivered to Marvin Infinger. Now, Marvin, of course,
11 doesn't know about this, but he had previously expressed to
12 me willingness to do this.

13 He will hold it until I have provided him with the
14 releases. He will convey the releases to the Diocese. At
15 that point, I will be entitled to the proceeds.

16 THE COURT: Tell me what you mean when you say, "He
17 will hold it."

18 MR. MEYERS: Mr. Infinger will retain the cashier's
19 check.

20 THE COURT: Just the -- I mean, in other words, he
21 will take a check, say, and put it into his safety deposit
22 box.

23 MR. MEYERS: Right. I would prefer that he be
24 authorized to place it into his trust account, and
25 preferably into an interest-bearing trust account.

1 THE COURT: Well, here's -- here's -- let me tell you
2 what concern -- for me. Because -- because I -- I --
3 obviously, I've been thinking about these issues also.

4 Obviously, if someone just maintains possession of a
5 cashier's check is -- as disconcerting as that is, and I --
6 I think that's -- that's very disconcerting.

7 MR. MEYERS: Well, I intend to -- to endorse the check
8 and have Mr. Infinger deposit the check.

9 THE COURT: Well, here's what concerns me with that.
10 In whatever account the moneys might be deposited -- and I
11 agree with you completely it needs to be in an interest-
12 bearing account. But it must be an account that is secured
13 by US Government Treasury, preferably treasury bills,
14 because you -- we cannot just -- I mean, I hate to say
15 that, but I -- the times and -- and let me just say it. In
16 times where the economy was in much, much better shape,
17 even in those times, the moneys -- and there were large
18 sums -- they had to be deposited with the backup of -- of
19 government securities. In other words, I don't think FDIC
20 is going to get it.

21 MR. MEYERS: Uh-huh.

22 THE COURT: See what -- do you see what I'm saying?

23 MR. MEYERS: Yes.

24 THE COURT: It's only \$200,000. So my concern is that
25 -- I think it is prudent to put it in -- in an account --

1 it is prudent to put it in an interest-bearing account.
2 But I think I would be interested in having it in a -- an
3 account that is secured by some sort of treasury
4 collateral, or -- or some sort of collateral.

5 MR. FLOWERS: Your Honor, if I may?

6 THE COURT: Yeah.

7 MR. FLOWERS: If -- if I may.

8 THE COURT: Yeah.

9 MR. FLOWERS: I actually was educated a couple of
10 weeks ago in another matter --

11 THE COURT: Great.

12 MR. FLOWERS: -- about this very issue.

13 THE COURT: Oh, good.

14 MR. FLOWERS: It's my understanding, I think it was a
15 -- a change to the Patriot Act, where the FDIC now insures
16 every amount in an interest-bearing business account.
17 There is no cap anymore on an interest-bearing -- it's a
18 temporary piece of legislation, that I think goes through
19 the end of --

20 THE COURT: End of the year.

21 MR. FLOWERS: -- '09.

22 THE COURT: Yeah. End of '09.

23 MR. FLOWERS: But there is no cap on what the FDIC
24 insures on an interest-bearing business account now.

25 THE COURT: Oh.

1 MR. FLOWERS: It's no longer \$100,000.

2 THE COURT: Well, I knew it was 200,000; it knew it
3 had gone up to 200,000, but I didn't realize it was
4 unlimited.

5 MR. FLOWERS: There is no cap anymore, is my
6 understanding. I can't make that representation that
7 that's actually what the law is, but that's what I was told
8 by my banker.

9 THE COURT: Makes it a lot easier, doesn't it? Boy,
10 that makes it a lot easier.

11 MR. FLOWERS: I have an interest-bearing IOLTA
12 account. I have. And I certainly would be willing for me
13 to hold the funds, knowing that I can't disburse until all
14 the releases are exchanged and Mr. Geoly has told me
15 everything's fine. But I want this money earning interest
16 for however long it takes the mechanics to be done.

17 THE COURT: I -- I'm with you completely.

18 MR. FLOWERS: Okay.

19 THE COURT: Now, let me say this. Let me -- first
20 things first. Now, you all have agreed on the language of
21 a release; is that right?

22 MR. MEYERS: Yes.

23 THE COURT: Could we please make the release the
24 Court's exhibit? And we'll use mine.

25 (To the court reporter) You got it? Thank you.

1 All right. Here it is. Gosh, I hate to take yours
2 and I've got this one. You got it?

3 COURT REPORTER: This will be Court's 3, Your Honor.

4 THE COURT: Court's 3? Great.

5 (Marked Court's Exhibit No. 3, release document.)

6 THE COURT: And everybody agrees -- everyone is happy,
7 copacetic with this full and complete release?

8 You okay with it, Mr. Meyers?

9 MR. MEYERS: We are, Your Honor.

10 THE COURT: Mr. Geoly? Mr. Shahid? Y'all good?

11 MR. GEOLY: Yes, ma'am.

12 THE COURT: Okay. Great. All right. Well, that's
13 done.

14 MR. GEOLY: Your Honor, Mr. Meyers addressed the
15 question of what the amount owed should be. Is now the
16 time to respond to that, or did you have other business you
17 wanted to address first?

18 THE COURT: I'll hear from you briefly.

19 MR. GEOLY: Okay.

20 THE COURT: I mean, I kind of -- you know, I've heard
21 a lot of issues. I sort of have an opinion about that, but
22 go right ahead.

23 MR. GEOLY: Fair enough. The only comment I've got is
24 that to try to -- what it ties back to is when did the
25 Diocese owe the money, and did the Diocese fail to pay the

1 money at some point that it was owed.

2 To try to begin with August, 2007 is a contrivance,
3 because the letter agreement attached to your order is
4 really clear about -- at -- at a minimum, the claims
5 process hadn't been completed before any kind of due date
6 would obtain. So it's kind of a non-serious date to be
7 thinking about.

8 The only real issue is once the last payment from Mr.
9 Richter was received in April, 2008 ---

10 THE COURT: That was the April 28th.

11 MR. GEOLY: Right. Was there some point after that
12 when the Diocese should have turned over this money, but
13 didn't? Or as the Diocese has contended, did the money not
14 become due because it never received releases tendered to
15 it and because of the lawsuit that Mr. Client -- Mr. Meyers
16 clients filed?

17 Whatever you think about those things, the Diocese
18 attempted to cut off any such exposure by making a motion
19 in July, '08, to tender the funds to the Court.

20 So that was the point I wanted to make. Our
21 contention is that we've never been late or overdue, right
22 up to this minute. But whatever one thinks, we certainly
23 made an attempt to tender the funds in July of '08.

24 THE COURT: Thank you. Here's what I want to do. I -
25 - because it is going to take me a little bit of time to

1 craft an order, and I know -- and I want -- you know, I --
2 I want to -- to take a step forward. I think you all have
3 taken a great step forward in getting the language of the
4 release, and I appreciate that very much.

5 Tomorrow, I'm going to ask that -- tomorrow; you all
6 tell me if there's a problem with tomorrow, because
7 Monday's fine, too -- to place the -- the original sum, 12
8 -- help me --

9 MR. SHAHID: One million ---

10 MR. MEYERS: Three seventy-five.

11 THE COURT: -- 135 -- million 375. I want that sum,
12 because I know that sum is -- is -- is -- is appropriate,
13 and maybe more. But I want to give some thought, and I
14 want to look -- I want to look back through these
15 documents. And I really want to -- I want to take a little
16 bit of time to think about it.

17 But I do want that money so that everyone can be
18 assured that it's -- it's poised and ready to be
19 distributed.

20 I know, Mr. Meyers, that you're going to then proceed
21 to -- because it's going to take you some time to -- to
22 have your folks come back in and sign.

23 And in all candor, I say tomorrow or Monday, because I
24 got to make that phone call myself, and just to find --
25 that's fantastic. And then in that event it will be

1 whatever financial institution -- probably whatever -- I
2 would think the larger banks are probably the ones that the
3 -- the Diocese is dealing with, and we'll figure that out.

4 And we may just -- I may get representative plaintiff
5 -- excuse me -- Mr. Meyers -- representative -- you, Mr.
6 Meyers, and somebody -- probably Mr. Shahid or Mr. Geoly --
7 and we'll talk about what bank. But -- and we may do it
8 through the Clerk's office and let the Clerk do it. We'll
9 talk about the mechanics of it.

10 But I do want to be sure that the money is protected,
11 particularly -- and -- and you know, the economy is -- is -
12 - is -- it's not as healthy as it has been, certainly in my
13 lifetime. So I want to be assured that it's protected as
14 much as I can do that. We're going to do that tomorrow or
15 Monday, and that way, that's done.

16 I'm in Common Pleas here next week. And it will be my
17 intention to get my work done over the week -- over the
18 weekend/first of the week; and get you all an order next
19 week, so you'll understand what -- what the final sum will
20 be.

21 And if you get those 11 releases done before I finish
22 my order, please don't -- y'all just get me on a phone
23 call. Because I see no reason why that sum -- even if
24 there's additional to come, I see no reason why that sum
25 ought not be done, ought not be distributed. See what I'm

1 saying?

2 MR. MEYERS: Your Honor, I -- I have people well out
3 of state ---

4 THE COURT: Okay.

5 MR. MEYERS: --- so it does take a few days to turn
6 things around.

7 THE COURT: All right. Okay.

8 MR. MEYERS: But -- but I agree ---

9 THE COURT: I figured it was all at the office.

10 MR. MEYERS: I'll be trying to do it as quickly as I
11 can.

12 THE COURT: Okay.

13 MR. MEYERS: What's important to me on the payment
14 side is that it be done in a way that the Diocese no longer
15 controls the funds.

16 THE COURT: Exactly. Exactly.

17 MR. MEYERS: I find the Court to control it or some
18 neutral ---

19 THE COURT: I know. And I got that. I got that. I
20 got that, Mr. Meyers. And that's the reason I'm saying ---

21 MR. MEYERS: Thank you.

22 THE COURT: --- tomorrow or Monday, that's going to
23 happen. So that you can know that it's -- it's -- it's --
24 the control is under the Court, under the Clerk of Court.
25 Ultimately, under the Court, because even if it's with the

1 Clerk of Court, they're not going to do anything without an
2 order.

3 But -- but you are where you need to be, I think, in
4 terms of your clients feeling like it's in a -- they're
5 different this afternoon, perhaps, than they were yesterday
6 afternoon. So --

7 MR. MEYERS: Right. And I really want to be able to
8 recommend strongly to them that they in fact execute the
9 release. And so it --

10 THE COURT: Absolutely. Absolutely.

11 MR. MEYERS: -- it'll be helpful to know what the
12 order ---

13 THE COURT: I -- I understand. I would urge you to go
14 ahead and do the releases. We can do the first part.

15 MR. MEYERS: I will. I'll hold ---

16 THE COURT: Just in -- I mean, if they get them all
17 back in on Tuesday, my goodness. And it's going to take me
18 until Friday or whatever. I'd just -- I would feel better
19 about that.

20 But anyway, that's -- that'll be the game plan now. I
21 -- what I will do is I'm going to endeavor tomorrow -- I
22 can't do it now because it's 5:20 -- tomorrow morning to --
23 to -- to find that out, and I gather everybody is going to
24 be around their office? Yes, yes, and more yes.

25 MR. SHAHID: I will be in Aiken most of the day

1 tomorrow, Judge.

2 THE COURT: Okay. Okay. All right. Why don't we do
3 this? Let me tell you what I have. I have a -- I have a
4 meeting about a courthouse -- we're sort of at a critical
5 stage with the courthouse -- in the morning. I have a bond
6 hearing at one o'clock, and after that I should be fine.
7 So can we -- can we say at two o'clock tomorrow, can you be
8 near a phone -- cell phone?

9 MR. SHAHID: Tomorrow should be a short day. It's
10 going to be the James Brown estate case.

11 THE COURT: Oh, okay.

12 MR. SHAHID: But it may ---

13 THE COURT: Oh. If you're -- listen, if you're with a
14 judge at two o'clock, they're not going to be interested in
15 me, because they got you.

16 MR. SHAHID: They have me.

17 THE COURT: All right.

18 MR. SHAHID: But Judge, I may be free. I mean, it may
19 -- we start at ten o'clock and we may be done by -- by noon
20 or one. But I don't want to promise you I'm free when I'm
21 not free.

22 THE COURT: Oh, I understand that.

23 MR. SHAHID: I can certainly call into ---

24 THE COURT: That'd be great. And just let somebody in
25 my office know what -- what your status -- and call Mr.

1 Meyers and just let him know what your status is going to
2 be at two. And then y'all just call me.

3 MR. MEYERS: What number should we call, Your Honor?

4 THE COURT: Well, my hearing's at one -- two -- I
5 would call (843)832-0332. And I'll be in the office at two
6 tomorrow for sure.

7 MR. MEYERS: At 2:00 p.m.?

8 THE COURT: Uh-huh. Yeah. For sure. For sure. And
9 then we'll -- and then what I'll do is we'll be doing some
10 -- please, don't -- you know, feel free to please call,
11 yourselves, financial institutions in the morning. Please
12 do. Please. I -- I welcome your help in that regard.
13 Because I -- you know, I would like -- I'd like for this --
14 the money to be protected and go off without a hitch.

15 All right. Thank you all so much. Does that now
16 conclude -- one other thing I wanted to ask. Once -- once
17 this part of it, of course, is -- is completed, then I will
18 be looking from the plaintiff and the defendant for a
19 motion to dismiss. I just share that with you, because I
20 don't know when I'll see you again. Okay?

21 In other words, once -- once we've distributed this
22 money, I would think there would be a final accounting
23 that'll -- a final, final, final accounting that will be
24 filed with the Court. And then an order for -- consent
25 order for dismissal.

1 MR. SHAHID: And you -- you mean either something from
2 class counsel or myself?

3 THE COURT: Both of you, I would think, in a consent
4 order.

5 Great. Thank you all so much.

6 MR. GEOLY: Thank you, Your Honor.

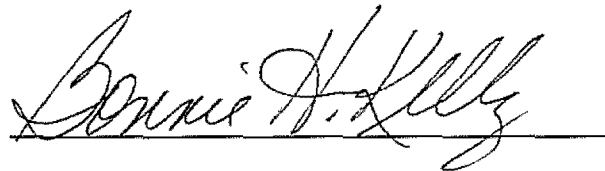
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8 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE 29TH OF JANUARY, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

A handwritten signature in cursive script, reading "Bonnie H. Kelly", is written over a horizontal line.

BONNIE H. KELLY

COLUMBIA, SOUTH CAROLINA

MARCH 14TH, 2009

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2013-CP-10-04175

FATHER DOE 194,

PLAINTIFF,

VS.

BISHOP OF CHARLESTON, ET AL.,

DEFENDANTS.

MOTIONS HEARING

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Friday, April 10, 2014, Commencing at 9:15 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
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INDEX TO PROCEEDINGS

PAGE

PROCEEDINGS

4

CERTIFICATE OF COURT REPORTER

51

- - - - -

EXHIBITS

[None]

MIA PERRON, CVR-CM-M

-3-

PROCEEDINGS

THE COURT: Father Doe 194 versus Bishop of
Charleston. Who's here on that?

MR. BRUNER: Yes, Your Honor. I'm Jim Bruner
from Columbia. I represent the defendant, Lawrence
Richter, and the firm Richter and Haller.

This is Mr. Hal Frampton, with the McNair Firm
here in Charleston, and he represents Mr. Richter's
former partner, David Haller.

MR. MEYERS: My name is Gregg Meyers, Your
Honor. I represent the plaintiffs.

THE COURT: Okay.

MR. SHAHID: Good morning, Judge. Peter Shahid.
I represent the Diocese of Charleston, the Bishop of
Charleston, and the corporation, so that all of the
Diocese and defendants named in the complaint.

THE COURT: You've been representing them a long
time, haven't you?

MR. SHAHID: Yes, sir, I have. You've seen us
before.

THE COURT: Let me see. It's a motion to
dismiss and disqualify counsel by the defendant -- by
both defendants, or all three --

MR. BRUNER: Your Honor, I originally filed a
motion to dismiss in this case and a companion case.

1 THE COURT: Yeah. There's two of them on here.

2 MR. BRUNER: Yes, sir. One -- I think it's 170
3 -- 4175 and 41 --

4 THE COURT: One motion to amend and a motion to
5 dismiss.

6 MR. BRUNER: I filed the same motion in each
7 case. One is the abuse victim, the alleged abuse
8 victim, and the other is his father.

9 THE COURT: Right.

10 MR. BRUNER: I filed an amended motion. And the
11 gist of the amended motion was I still want to dismiss
12 the complaint against the lawyer-defendants.

13 I have removed my alternative claim to
14 disqualify counsel.

15 THE COURT: Okay. So that's gone?

16 MR. BRUNER: That's gone.

17 THE COURT: All right. So we're --

18 MR. FRAMPTON: Your Honor, we did the same thing
19 on behalf of Mr. Haller.

20 THE COURT: Okay.

21 MR. MEYERS: Your Honor, Mr. Shahid and I this
22 morning provided to the Court what we have filed with
23 the clerk: some response memoranda to Mr. Bruner's
24 motion.

25 THE COURT: Okay. Did y'all file a memoranda?

1 MR. BRUNER: It's in my motion. My motion is my
2 memoranda.

3 THE COURT: All right.

4 MR. BRUNER: If you have my amended motion, it
5 states everything.

6 THE COURT: I got the amended motion.

7 MR. BRUNER: Yes, sir.

8 THE COURT: So your amended motion is your
9 memoranda?

10 MR. BRUNER: Yes, sir.

11 THE COURT: All right. I'll be glad to hear
12 you.

13 MR. BRUNER: Thank you, Your Honor.

14 As Your Honor has stated, these --

15 THE COURT: Hold it. Just one second.

16 MR. BRUNER: Yes, sir.

17 THE COURT: On the other motion, I'm just going
18 to do a form order saying it was withdrawn.

19 MR. BRUNER: That's fine.

20 THE COURT: Okay?

21 MR. BRUNER: Yes, sir.

22 THE COURT: So we can get it off the books, so
23 to speak.

24 MR. BRUNER: Yes, sir.

25 THE COURT: And we're going to hear the two

1 amended motions; is that correct?

2 MR. BRUNER: That's correct.

3 THE COURT: I'll do a short order withdrawing
4 those other non-amended motions.

5 Okay. Be glad to hear you.

6 MR. BRUNER: Your Honor, this is -- and
7 particularly case 176, Joe Doe 194, is a claim by an
8 alleged victim of sexual abuse at the hands of an
9 employee of the Diocese of Charleston.

10 This is one of a number of cases Mr. Meyers has
11 brought on behalf of alleged victims of sexual abuse
12 against the lawyer-defendants, Mr. Richter and Mr.
13 Haller, as well as various I call them the Diocese and
14 defendants. It's the Bishop of Charleston and the
15 Diocese of Charleston and others he chose to name.

16 I think it's important to remember that at its
17 core, this is a claim for sexual abuse at the hands of
18 employees of the Diocese. And because of that, there
19 is no allegation that the lawyers did anything or had
20 any part in the sexual abuse itself.

21 What the lawyers did was they brought a class
22 action on behalf of victims of sexual abuse against
23 these various named defendants and they reached a
24 successful resolution and settlement of that claim in
25 a class action context. The class action settlement

1 was approved by Judge Goodstein and has been entered
2 in --

3 THE COURT: I thought there was a -- wasn't
4 there a lawyer from Spartanburg, or somewhere,
5 involved in that case? Or was that a different case?

6 MR. BRUNER: It must have been a different case.
7 I don't recall a lawyer from Spartanburg.

8 MR. SHAHID: It was a -- the prior matter you
9 had would be -- that was out of Greenville.

10 THE COURT: Yeah. Okay. Yeah.

11 All right. Go ahead.

12 MR. BRUNER: He had a different claim than the
13 one that's here.

14 And at the risk of over-simplifying what is a
15 fairly complex allegation, here's how I read his
16 complaint in this case and other cases. He says
17 basically if anything in the class action bars me, as
18 a victim, from pursuing my claim against the Diocese,
19 then I am suing the lawyers and the Diocese for
20 conspiring and cooking up something to harm me.

21 It is important to remember that in this case,
22 John Doe 194 alleges himself to be a non resident of
23 South Carolina. Because of that, he says he did not
24 get notice of the class action settlement and,
25 therefore, it all took place without his knowledge and

1 without him having a fourth amendment right to due
2 process.

3 Frankly, I agree with him. The publication of
4 the class action was not intended to reach beyond the
5 borders of South Carolina. In matter of fact, in a
6 recent Supreme Court case actually dealing with four
7 resident alleged victims of abuse, the South Carolina
8 Supreme Court said before the trial court can
9 determine whether or not a complaint should be
10 dismissed, it must conduct a limited collateral review
11 of the underlying class action to determine if the
12 plaintiff's due process rights were protected.

13 They were doing that in response to a ruling by
14 Judge Harrington here in Charleston, on these four
15 cases with residents, and she granted motions to
16 dismiss saying the class action settlement barred the
17 residents' claim. The Supreme Court said, no, you've
18 got to do this limited collateral review before you
19 can make that decision, and sent them back to Judge
20 Harrington. In our situation --

21 THE COURT: What happened there?

22 MR. BRUNER: They are back and they are under
23 her consideration for a limited collateral review.

24 THE COURT: Well, tell me, if you would, what
25 does collateral review mean?

1 MR. BRUNER: It means --

2 THE COURT: I mean, what are they referring to
3 as a collateral review? Are you doing a De Novo
4 hearing or --

5 MR. BRUNER: No, sir.

6 THE COURT: -- or what are you -- I haven't read
7 the case. What does that term mean or --

8 MR. BRUNER: Well, what it means --

9 THE COURT: -- or what does that term entail?

10 MR. BRUNER: What it entails is, as they
11 explained it in that case, was that they were basing
12 it on an earlier case called Hospitality Management
13 that dealt with the issue of whether an out of
14 claim -- out-of-state nationwide class action
15 settlement bound a resident of South Carolina.

16 What they said was, what you do is you look at
17 the class action settlement and you look at the
18 publication notice and the rights that were afforded
19 to give notice of the settlement to non, let's say,
20 punitive plaintiffs, the people who were not actually
21 named in the suit.

22 So how do you tell all these people you purport
23 to bind with this settlement that it's going on and
24 that it will affect their rights. That is what they
25 said. You've got to look at what was designed, as far

1 as due process and notice, and then you look at what
2 was implemented. You don't go underneath that. You
3 do a limited review of what was done with the class
4 action settlement. Now --

5 THE COURT: Have you got -- is that case in your
6 brief?

7 MR. BRUNER: Yes, sir. It's another Doe vs.
8 Bishop of Charleston case.

9 THE COURT: Okay. All right.

10 MR. BRUNER: So Judge Harrington has not
11 conducted her limited collateral review of these
12 resident South Carolina plaintiffs' cases.

13 In our situation, however --

14 THE COURT: And this is an out-of-state claim in
15 this case.

16 MR. BRUNER: This is a non resident --

17 THE COURT: It's non resident. Okay.

18 MR. BRUNER: And in an earlier case, a 2010 -- I
19 think the case is 5520, on motion by the Bishop to bar
20 the plaintiffs' claim by reason of res judicata from
21 the class-action settlement, Judge Young conducted a
22 limited collateral review. I've attached his order to
23 my amended motion. He says, I have conducted a
24 limited collateral review. And he says what he did.
25 And he says, after doing that, I conclude that this

1 prior class action settlement does not bar the non
2 residents' claim -- right to make a claim against the
3 Bishop. So he's concluded that.

4 I think -- and I don't know -- but plaintiff's
5 lawyer will disagree with me that that conclusion is,
6 in effect, binding and resolves that issue as to all
7 suits he has brought by non resident claims.

8 There has been a limited collateral review. It
9 has been determined that these non resident plaintiffs
10 can sue the Bishop of Charleston for alleged sexual
11 abuse by employees.

12 Now, because that is so --

13 THE COURT: Well, let me back up --

14 MR. BRUNER: Yes, sir.

15 THE COURT: -- and ask you a question.

16 When that was before Judge Young, why weren't
17 all of these cases resolved at that time, or at least
18 consolidated for purposes of that motion? They
19 weren't pending, or what was going on?

20 MR. BRUNER: That's a good question. They
21 weren't pending.

22 The motion to dismiss was actually made I think
23 in the first case he filed in Charleston Circuit
24 Court.

25 THE COURT: Has that issue been -- has Judge

1 Young's order been appealed?

2 MR. BRUNER: It was appealed.

3 THE COURT: So it's under appeal.

4 MR. BRUNER: And then the Court of Appeals
5 dismissed it as being interlocutory.

6 THE COURT: Okay.

7 MR. BRUNER: I think that's correct, guys. I
8 wasn't --

9 THE COURT: All right. So right now, that's the
10 law in those cases.

11 MR. BRUNER: That's correct.

12 THE COURT: Okay. All right.

13 MR. BRUNER: So these other cases --

14 THE COURT: So now you're saying I should follow
15 Judge Young's order?

16 MR. BRUNER: No, I'm not.

17 THE COURT: Pardon?

18 MR. BRUNER: No, sir.

19 I am telling you you should take judicial notice
20 that there has been a limited collateral review and
21 that it has, in fact, been determined that a claim by
22 the non resident victim of sexual abuse is not barred
23 by the class action settlement.

24 THE COURT: Right.

25 MR. BRUNER: That's all.

1 THE COURT: Okay.

2 MR. BRUNER: That having been determined, then
3 according to the very pleadings in the complaint it
4 has been determined that this plaintiff can make his
5 claim against the Bishop of Charleston. He has pled
6 generally in this complaint that he has been abused
7 and he wants compensation from the Bishop of
8 Charleston. And then he's also pled -- however, if I
9 cannot make my claim against the Bishop because of
10 this class action settlement, then I'm suing the
11 Bishop and all these lawyers for concluding and
12 conspiring to cause me harm and not give me notice of
13 this class action settlement.

14 Since, in fact, nothing that happened in the
15 class action settlement has any effect whatsoever on
16 this plaintiff's rights to sue the Bishop, it is -- as
17 to this plaintiff, it is as if the class action never
18 happened. Whatever rights he had, absent -- whatever
19 he had in the class action, whatever rights he had, he
20 still has.

21 Moreover, the Supreme Court said in the recent
22 Doe case that the statute of limitations may not bar
23 this plaintiff's or those plaintiffs' -- resident
24 plaintiffs' claims because one of the allegations is
25 negligent supervision. And they pointed out, they --

1 in a claim for negligent supervision, if you conceal
2 the conduct, the misconduct, then that can toll the
3 statute of limitations against the employer. And they
4 said there was evidence in the case that had been
5 proffered that there was an instruction from the
6 Vatican to keep everything quiet. And they said if
7 that's shown, then the statute of limitation may well
8 not be a bar to these plaintiffs' claims. That was in
9 the recent Supreme Court order.

10 So my point is simply this. It has been
11 determined that the class action settlement that the
12 lawyer-defendants crafted and worked hard to achieve
13 does not bar and does not affect in any way the
14 plaintiff's claim, his right to sue the Bishop in this
15 case. That being so, the plaintiff has no claims that
16 he can assert. Even by his own complaint, he says if
17 the Diocese agrees or the Court finds that the
18 plaintiff is not precluded by the class action from
19 bringing claim against the Diocese defendants, then
20 the causes of action against the Richter defendants
21 alone -- he says other than conspiracy -- are
22 irrelevant.

23 That means by his own complaint that the causes
24 of action for professional negligence, breach of
25 fiduciary duty, and unfair trade practices should not

1 be maintained. They ought to be dismissed. By his
2 own complaint, taken as true, since he can sue the
3 Bishop, these things go out the door. For civil
4 conspiracy --

5 THE COURT: Let me ask you this question --

6 MR. BRUNER: Yes, sir.

7 THE COURT: -- primarily about Judge Young's
8 order.

9 MR. BRUNER: Yes, sir.

10 THE COURT: Let's just assume that the Supreme
11 Court -- or the Court of Appeals says it's
12 interlocutory, which we can't hear at this time, and
13 they move forward against the suit with the Diocese
14 and there goes the appeal.

15 And the -- were the lawyers sued in that case?

16 MR. BRUNER: Yes, they were.

17 THE COURT: All right. Let's assume for
18 purposes of my question that at that time the Court of
19 Appeals reverses Judge Young and said, no, the class
20 is protected, then why shouldn't he come back and be
21 able to litigate the issue with the attorneys since --
22 at that point in time? Or could he? If you
23 understand what I'm asking you.

24 MR. BRUNER: I think what you're asking me is if
25 the appeal had played out --

1 THE COURT: Right.

2 MR. BRUNER: -- and they had reversed --

3 THE COURT: Right.

4 MR. BRUNER: -- Judge Young's --

5 THE COURT: Right.

6 MR. BRUNER: -- limited collateral review. Then
7 my point to you would be, yes, I think so, in that
8 case.

9 What I would invite you to do --

10 THE COURT: Well, procedurally, how would they
11 do that since the lawyers are already out of the case?
12 I assume -- I haven't read Judge Young's order, but I
13 assume he dismissed the attorneys?

14 MR. BRUNER: No.

15 THE COURT: He did not?

16 MR. BRUNER: This is what he did. He said --

17 THE COURT: Okay.

18 MR. BRUNER: He said that the class action
19 settlement did not bar the victim's right to bring a
20 claim.

21 THE COURT: Right. Against the Diocese.

22 MR. BRUNER: Then he said he analyzed the
23 victim's claim and he said --

24 THE COURT: Diocese. Excuse me.

25 MR. BRUNER: -- I think the victim's claim

1 against the Diocese is barred by reason of the statute
2 of limitations.

3 THE COURT: All right.

4 MR. BRUNER: So you've got a situation where the
5 class action didn't bar him. He can bring the claim
6 but he says the statute of limitations --

7 THE COURT: Had applied and they can't bring it.
8 So now the suit is still pending against the
9 attorneys; is that correct?

10 MR. BRUNER: And then what he said in that case
11 was, I think that the civil conspiracy states enough
12 to maintain a claim for it to go forward. Okay?

13 What has changed since that time is that the
14 Supreme Court has said the statute of limitations, as
15 Judge Young analyzed it --

16 THE COURT: Right.

17 MR. BRUNER: -- Judge, probably doesn't bar the
18 claim.

19 THE COURT: Right. I understand.

20 MR. BRUNER: So they --

21 THE COURT: So they could proceed against the
22 Diocese in that specific case, is what you're telling
23 me.

24 MR. BRUNER: That's right.

25 THE COURT: Okay. So my question is,

1 ultimately, if that issue is appealed -- in other
2 words, Mr. Meyers represents the people in that case.
3 Let's say Mr. Meyers -- at the end of the trial, he
4 appeals Judge Young's order, which he can do, and the
5 Supreme Court says, no, Judge Young was wrong, they
6 could proceed against the Diocese, what does that do
7 with the claim against the attorneys that Judge Young
8 has just said you could proceed on the conspiracy
9 issue, the other claims against the attorneys?

10 MR. BRUNER: Well, it's remanded for retrial.
11 You know, I think -- it's just reversed. That's the
12 way it is.

13 On the other hand, because there was no
14 dismissal of a party --

15 THE COURT: Right.

16 MR. BRUNER: -- in the case Judge Young heard,
17 there really wasn't a ripe issue for him.

18 What we've got is a situation, then, if your
19 analysis is correct. And you, as the presiding judge
20 in this case, would need to have a limited collateral
21 review, make the same decision that Judge Young made,
22 and then determine, okay, I think the lawyers ought to
23 be dismissed. That would put the case in a posture
24 where it would be appealed. And if it would be --

25 THE COURT: And he could -- Mr. Meyers could

1 appeal it at that time.

2 MR. BRUNER: Mr. Meyers could appeal it and we
3 could get an answer.

4 What we are finding is that it's leaving
5 everything in a posture where he's pleading
6 alternatively. We know he can pursue the Bishop. And
7 there's absolutely no reason on this earth why these
8 lawyers ought to have to go to trial in front of a
9 jury on a sexual abuse case against the Diocese when
10 they didn't do anything.

11 It's a legal -- it is really, I think, not a
12 factual issue for a jury. It's a legal issue for the
13 Court to determine, in the first place, whether or not
14 they can sue the Bishop. If they can sue the Bishop,
15 then the lawyers are out. And if he doesn't like that
16 result, he can appeal it and get it reversed. Plain
17 and simple.

18 But the lawyers -- there's no logical reason for
19 the lawyers to be in a courtroom with the Bishop in a
20 sexual abuse trial.

21 By all means, we sue the Bishop. We want
22 victims of sexual abuse to have their day in court and
23 to have an opportunity to make a recovery and get
24 their rightful award. So we don't begrudge them that.
25 We wish them well. But if they can do that, they have

1 no claim whatsoever against us. They have no claim
2 for conspiracy, because the only actions we took were
3 in the context of the class action. And Judge Young
4 has determined that with respect to non residents,
5 class action does not impact them.

6 So I invite you to look at Judge Young's order.
7 He says exactly what he did to conduct a limited
8 collateral review. I think you can either say, I
9 agree with him and I agree with his approach, or you
10 can say, I want to do one in this case, or you can
11 say, by reviewing this, I consider that I have
12 conducted a limited collateral review in this case and
13 I do not find that the class action bars the
14 plaintiff's claim. We don't think it does. We don't
15 think we intended for it to bar a non resident claim.

16 That being so, nothing we possibly could have
17 done -- and if you believe all of the diatribe in the
18 eighty pages of complaint that he writes about us, if
19 you believe every word of it, not a thing we did, even
20 if you believe it, harmed the plaintiff because he is
21 absolutely not impacted by the class action settlement
22 that we reached in the underlying case.

23 THE COURT: Okay.

24 MR. BRUNER: Thank you.

25 MR. SHAHID: Good morning.

1 THE COURT: Yes, sir.

2 MR. SHAHID: Judge, what I have done for you is
3 I have presented a response to the motion to dismiss.
4 I've included in there certain attachments. I've
5 included the actual settlement agreement that was
6 entered into back in January of 2007. I've included
7 the orders by Judge Goodstein. There were two orders.
8 One was in July of 2007; an amended order,
9 supplemental order, in August of 2007.

10 I've also attached, Judge, for your review, a
11 motion that was filed by Mr. Haller, past counsel,
12 filed in Dorchester County about a year or so ago.
13 There's a motion under Rule 43 to enforce. That
14 hearing was held in front of Judge Dixon and he issued
15 an order in late November of 2013 denying the motion
16 to dismiss.

17 If the Court is of a mind to dismiss the lawyers
18 in this case, I just want the record to be kind of
19 clear because it has an impact upon -- whatever impact
20 it may have against the Diocese. In 2011 --

21 THE COURT: Well, let me back up and ask you a
22 question. You were involved in the settlement
23 process?

24 MR. SHAHID: Yes, sir.

25 THE COURT: What's your opinion as to the out-

1 of-state plaintiffs?

2 MR. BRUNER: And that's what I was getting ready
3 to answer, Judge.

4 The lawyer-defendants in this case, who we
5 collectively call the Richter Defendants, Mr. Richter,
6 Mr. Haller and the law firm, they took on the
7 responsibility of drafting and approving the
8 settlement agreement. So they represented the class,
9 and so they took on the complete responsibility of
10 having to -- of going to Judge Goodstein, going to
11 Dorchester County, drafting the document. We've
12 reviewed it, we've made edits to the draft, but they
13 took on that responsibility of having it approved. So
14 the in-state, out-of-state, falls squarely on their
15 shoulder. They represented the class. We did not.
16 The Diocese's obligation are the terms of the
17 agreement, which is fund the money.

18 Judge, this --

19 THE COURT: But you had an obligation to look at
20 your clients' liability issues.

21 MR. SHAHID: That's correct.

22 THE COURT: And you -- I assume you approved
23 what they were doing.

24 MR. SHAHID: That's correct. And the terms --

25 THE COURT: So I don't think you can dump it all

1 on the lawyers now. Okay?

2 MR. SHAHID: No. And I'm not trying to throw
3 any under the bus.

4 But I think that the context of all this is our
5 responsibility -- was to protect the Diocese under the
6 terms of the agreement.

7 THE COURT: Well, so my question: were you
8 protecting the Diocese South Carolina residents, or
9 South Carolina residents and non residents, or was
10 that issue ever even discussed?

11 MR. SHAHID: That issue was resolved I think by
12 Judge Dixon's order, which he says a copy of it is
13 attached for your review, that the issue of residency
14 is not a preclusion; in-state and out-of-state
15 residents were corralled, for lack of a better word,
16 for the purposes of this case. And that's Judge
17 Dixon's ruling.

18 So our position has always been that this class
19 action settlement agreement addressed all claims
20 against the Diocese, that they met the very narrow
21 definition if you're a class member. Residency was
22 not a prohibitive factor. If you were in state or out
23 of state, it did not prohibit, because the Diocese of
24 Charleston is restricted by its geographical
25 boundaries within the State of South Carolina.

1 THE COURT: Well, was there any advertisement --
2 I assume the advertisement was limited to just South
3 Carolina?

4 MR. SHAHID: There were some --

5 THE COURT: Was there any out-of-state
6 publication?

7 MR. SHAHID: Yes, sir, there were. Because we
8 were counting the boundaries, I think there was the
9 Augusta Chronicle and the Charlotte Observer.

10 THE COURT: Okay.

11 MR. SHAHID: In addition, the class action
12 received national exposure. There were articles that
13 were published all over about the class action, all
14 the way throughout the country. So there was no
15 official notice that was published nationally. It was
16 published on the border states and --

17 THE COURT: Well, was there any television
18 advertisements?

19 MR. SHAHID: That television advertisement --

20 THE COURT: You see them all the time on
21 television.

22 MR. SHAHID: There was not television
23 advertisement. There was just television --

24 THE COURT: Pardon?

25 MR. SHAHID: There was not television

1 advertisement, no, sir, but there was television
2 coverage about it. I'm not sure how far that went.

3 THE COURT: News media coverage.

4 MR. SHAHID: News media coverage. That's
5 correct.

6 Judge, there are a couple of things to bring to
7 the Court's attention. And clearly the order of Judge
8 Young references this business about a limited
9 collateral review. But it's important to note that --
10 and Mr. Bruner brought this up. It's important to
11 note that even with the judge's statement of a limited
12 collateral review, that was done based upon the
13 pleadings at the time. There was no presentation.
14 There was no affidavits submitted. There was no
15 evidentiary evidence presented to the Court. It was
16 done on a motion to dismiss that I brought as to the
17 effect that the class action had, including Mr.
18 Meyers' clients --

19 THE COURT: To what extent do you think the --
20 was it the Court of Appeals or the Supreme Court?

21 MR. SHAHID: The Supreme Court --

22 THE COURT: -- the Supreme Court -- to what
23 extent do you think they mean a collateral review
24 should extend? Affidavits, testimony, de novo type
25 hearing, or just looking procedurally with the

1 pleadings? What do you think?

2 MR. SHAHID: I think it had to be --

3 THE COURT: I mean, that's why I asked the
4 question of Mr. Bruner earlier.

5 MR. SHAHID: I think that it shifts the burden
6 on the plaintiffs to make a showing that the notice
7 was inadequate. So the burden is on --

8 THE COURT: You think it shifts the burden to
9 the plaintiff?

10 MR. SHAHID: To the plaintiff to show that the
11 notice was inadequate. And I think it's going to be
12 fact-specific to some limited degree. There may be
13 certain factors --

14 THE COURT: So you think there needs to be some
15 limited de novo testimony?

16 MR. SHAHID: Some limited novo testimony.

17 And, also, Judge, this is important to know,
18 what the Supreme Court said. And Mr. Bruner attached
19 it as Exhibit 3 to his motion. In the order -- in the
20 opinions by the Supreme Court, it made this holding.
21 Specifically before absent class members can be finely
22 bound by the resolution of the class action suit, they
23 are entitled to a limited review of the issues whether
24 sufficient notice was given to punitive class members
25 and whether class members had adequate representation.

1 So the two elements that they're entitled to
2 demonstrate: number one, that notice was inadequate,
3 and, number two, that they had adequate
4 representation. Now, that's --

5 THE COURT: Why do you think that's a shift to
6 the plaintiff? I mean, it's your -- it's the
7 defendant's motion to dismiss. I'm not sure I agree
8 with your analysis about shifting that burden to the
9 plaintiff. I mean, it's your motion. It was your
10 class action. It was your order. I mean, it seems
11 like the burden should be on you to show the Court
12 that it was proper or also included non residents.

13 MR. SHAHID: Because I think the way they worded
14 this says they --

15 THE COURT: Mr. Meyers, what's your position on
16 that?

17 I mean, I don't mean to interrupt you.

18 But, I mean, while it's fresh on my mind, what's
19 your -- and I haven't read the opinion. Okay?

20 MR. MEYERS: Understood, Your Honor.

21 And, really, because we're in the specialized
22 world of class actions --

23 THE COURT: Right.

24 MR. MEYERS: -- there are statually, in my view,
25 two dimensions to it. The first dimension is the

1 limited collateral review. And that is just whether
2 somebody who fits the definition is barred, can they
3 bring a later claim. What Judge Young said is if you
4 didn't even try to give notice out of state, then you
5 can't bar out-of-state people.

6 Once you get past that and you can make your
7 claim. If the Supreme Court says they can make a
8 claim, then the other issues that I think Mr. Shahid
9 is touching on are actually not part of the collateral
10 review. That's part of making the substantive claim
11 in the case on the merits.

12 THE COURT: Well, I mean, you said Judge Young
13 said they didn't make an effort. He says they
14 advertised in Augusta and Charlotte. I mean, both of
15 those are out of state.

16 MR. MEYERS: Well, they didn't advertise in
17 Charlotte, actually. They advertised in --

18 THE COURT: Oh. They did not?

19 MR. BRUNER: They advertised in eleven
20 newspapers, most of which were in South Carolina.

21 THE COURT: In other words, my question: how
22 can I make a collateral review of whether it was
23 proper or not without taking some affidavits or
24 testimony or something, is my question.

25 MR. MEYERS: Yeah. And I --

1 THE COURT: Because I don't know what happened.
2 And it's -- you can't glean that from just looking at
3 pleadings and the file.

4 MR. MEYERS: And we are here on a motion to
5 dismiss, so the Court must take everything in the
6 complaint as true.

7 THE COURT: Right.

8 MR. MEYERS: And I set out in great detail, the
9 record shows in the class action, about what they did
10 and didn't do starting with they first proposed to
11 give nationwide notice and then they changed that.

12 THE COURT: All right. I appreciate it.
13 I didn't mean to interrupt you. Go ahead.

14 MR. SHAHID: No, sir.

15 THE COURT: I just -- I'm trying to decide in my
16 mind what I should be doing to make this collateral
17 review, if I should make a collateral review.

18 MR. SHAHID: And I don't think at this point, in
19 this juncture, Judge, that you have the ability to
20 make a collateral review on that issue. And I think
21 that was the issue that we tried, on behalf of the
22 Diocese, to appeal and we got kicked out of the Court
23 of Appeals and kicked out of the Supreme Court --

24 THE COURT: Right.

25 MR. SHAHID: -- because that issue, as Judge

1 Young framed it, could have an impact on other Courts
2 taking judicial notice of his decision.

3 What I think was curious, as I was trying to
4 point out, was two things in Judge Young's order.
5 Number one, he didn't receive any type of evidentiary
6 information, documents, at -- to making that
7 determination. It was basically on the -- on the
8 pleadings. And, second, as pointed out, he left the
9 civil conspiracy in, which we all scratch our head
10 about as to how he made that determination. So even
11 with this limited collateral review, he kept that
12 cause of action viable.

13 In this opinion that the Supreme Court issued in
14 January, it involved a lawsuit that Mr. Meyers brought
15 naming -- we consolidated it to four plaintiffs that
16 were involved in that, dealing with the same priest.
17 That lawsuit did not include any of the lawyer-
18 defendants. So the Supreme Court, in making its
19 decision, in heading up its opinion, included this
20 language about that the class -- that the absent class
21 members, the punitive absent class member, who did not
22 participate in the claims process, before that person
23 is barred has an opportunity to bring a limited
24 collateral review as to both the notice part and to
25 the adequacy of his representation.

1 So the Court seemed to send a message to us
2 because there are I think, by my last count, ten
3 cases. One is in federal court and then the rest are
4 here in state court in Charleston County. Some of
5 these cases do not involve lawyer-defendants, but the
6 majority of them do. So the Court is sending a
7 message that, you know, before you dismiss this, I
8 think that a trial court, when it comes to that
9 particular point in time that motion is being made,
10 collateral review has got to accomplish both things.

11 So Mr. Bruner may be completely correct. But I
12 think that the motion is premature at this time until
13 we do a limited collateral review on both issues as to
14 the matter of notice and as to the matter of legal
15 representation.

16 So I think we're kind of stuck at this juncture
17 and we may have to do some discovery and some
18 presentation, some type of limited evidence, to
19 address that particular issue because the Court is
20 very clear that that plaintiff has an opportunity to
21 attack the agreement on both those grounds.

22 THE COURT: Okay. Thank you so very much.

23 Mr. Meyers?

24 MR. MEYERS: Mr. Bruner expressed a very
25 legitimate concern that at the risk of over-

1 simplifying things. This is a very complicated
2 landscape. About three weeks ago, we approached -- we
3 were in front of Judge Harrington and we said, Judge,
4 you know, we -- nobody minds here if you approach the
5 administrative judge and get all these cases assigned
6 as a complex matter so that we're always in front of
7 the same judge. Because this is a very hard landscape
8 to --

9 THE COURT: I mean, you could wind up with a
10 half a dozen different viewpoints.

11 MR. MEYERS: Right. And we're starting to get a
12 little bit of fraying like that already.

13 THE COURT: Right.

14 MR. MEYERS: But in this proceeding today, Your
15 Honor does not need to make any collateral review
16 because it's undisputed that the people who live out
17 of state didn't get due process. Mr. Bruner confirmed
18 it today. Mr. Haller says that in his last action
19 last year. They don't dispute that, that if you were
20 out of state they didn't even try and give you notice.

21 I think they weren't appreciating at the time
22 that they were defining the class without any
23 geographic limit but then they only gave notice around
24 South Carolina. You know, they gave notice in the
25 Augusta paper because it covers part of South

1 Carolina. They didn't do the same thing in the
2 Charlotte Observer. They didn't give notice in
3 Charlotte except through the Rock Hill Herald. So
4 most of the people --

5 THE COURT: That's close to Charlotte.

6 MR. MEYERS: It's close to Charlotte, but --

7 THE COURT: I doubt if everybody --

8 MR. MEYERS: -- it doesn't have near the --

9 THE COURT: -- in Charlotte reads the Rock Hill
10 paper.

11 MR. MEYERS: Yeah. And I --

12 THE COURT: Probably the other way around: Rock
13 Hill --

14 MR. MEYERS: I think so.

15 THE COURT: -- reads the Charlotte paper,
16 Charlotte Observer.

17 MR. MEYERS: And those people that brought the
18 case that went to the Supreme Court all live around
19 Charlotte and none of them knew a thing about it.

20 But for purposes -- Mr. Bruner's point this
21 morning is, Judge, there is no dispute these people
22 didn't get due process, so they can sue the Diocese,
23 so therefore you can't sue the lawyers.

24 THE COURT: I understand. But the Diocese's
25 position is different from that --

1 MR. MEYERS: I agree --

2 THE COURT: -- and they're involved in this,
3 also. Okay?

4 MR. MEYERS: And I don't agree with Mr. Bruner,
5 because these are fair questions but they are way
6 premature. My clients have a right to recover against
7 somebody. Either they should be able to recover
8 against the Diocese -- and the Supreme Court has said
9 we can proceed against the Diocese. But that's far
10 different than we get a recovery against the Diocese.

11 THE COURT: Right.

12 MR. MEYERS: And it seems to me this motion
13 needs to be denied because the question about how this
14 shakes out is after the verdict is when we confront
15 all these things. When the jury decides whether or
16 not the Diocese has a good defense on the merits or
17 these lawyers prevented my client from the benefits
18 they could have gotten had they given them notice,
19 that's the point at which -- my people are only trying
20 to get one recovery. Well, we don't know who it comes
21 from. And only once we try the case and get a jury
22 reaction to the different causes of action do we know
23 how that breaks out.

24 THE COURT: So you think you need -- you think
25 you want to go -- I assume -- I know the answer to

1 this, but I'll ask you anyhow. You want to proceed
2 against everybody at one time with the same jury, same
3 trial?

4 MR. MEYERS: Yes, because the only cause -- for
5 most of the causes of action, it's either one or the
6 other. But on the conspiracy claim -- there was an
7 enormous amount of funny business in this class
8 action.

9 THE COURT: A lot of what? I'm sorry.

10 MR. MEYERS: Funny business.

11 THE COURT: Funny business?

12 MR. MEYERS: Yes. And it's laid out in the
13 complaint.

14 But the conspiracy cause of action is one where
15 the jury could actually return a verdict against each
16 defendant.

17 So my position is that Mr. Bruner's point is
18 premature on a motion to dismiss. He's got to wait
19 until after the verdict for us to figure out, once the
20 jury makes a decision, if there is a claim against the
21 Diocese, or a claim against the lawyers, or a claim
22 against both, under the conspiracy cause of action, or
23 a claim against nobody and they return a defense
24 verdict. But you can't decide it on a motion to
25 dismiss because you've got to take everything and

1 believe that it's true.

2 There's no dispute that due process does not
3 preclude these out-of-state people from bringing this
4 case. It's only a question -- Mr. Bruner is trying to
5 accelerate the question of this either/or position.
6 But all I'm trying to do is state -- I'm asking for
7 just one recovery. You just have to clarify for me is
8 it the lawyers who've precluded my people from suing
9 the Diocese and recovering against the Diocese or can
10 I recover against the Diocese.

11 If I can recover against the Diocese, I can't
12 fault the lawyers for getting in their way from
13 recovering against the Diocese. But if I don't
14 recover against the Diocese, it's the lawyers who are
15 obligated to my people because of the way they defined
16 the class. They had fiduciary duties to my people.
17 They were clients of -- my people were clients of
18 theirs and they gave them no chance to participate.
19 And that's the fundamental problem that has given rise
20 to all these cases.

21 I think the motion to dismiss is premature and
22 should properly be denied.

23 THE COURT: Was Judge Young's order based on
24 summary judgment or based on --

25 MR. MEYERS: It was based on the pleadings --

1 THE COURT: On a 12(b) motion?

2 MR. SHAHID: Yeah. Motion to dismiss --

3 MR. BRUNER: Yeah. Motion to dismiss.

4 MR. SHAHID: -- Judge.

5 THE COURT: Pardon?

6 MR. SHAHID: It was a motion to dismiss.

7 THE COURT: Okay.

8 MR. MEYERS: And all he was doing was saying are
9 these people precluded -- does this case has to stop
10 because of the preclusive effect -- the res judicata
11 effect of the class action or not. And he said if you
12 were out of state, you can go forward.

13 THE COURT: Now, Judge Harrington's order was at
14 what stage?

15 MR. MEYERS: Also a motion to dismiss. And the
16 Supreme Court said, no, even if you're in-state, you
17 can state a claim if you can later show either this or
18 that.

19 THE COURT: All right. Thank you, Mr. Meyers.
20 I'm sorry. Anything else?

21 MR. MEYERS: That's essentially it, Your Honor.
22 And I submitted a brief memorandum about this.

23 THE COURT: Okay. Thank you, Mr. Meyers.

24 MR. BRUNER: Nothing he said is persuasive that
25 this motion is premature. I've been in these cases

1 for five years. He keeps bringing them. We have
2 developments. We have Supreme Court cases come out.
3 We have Judge Young's order. So we have things coming
4 together that make this kind of ruling very right. In
5 effect, what he's telling you now is, I have --

6 THE COURT: Let me --

7 MR. BRUNER: My clients have the right --

8 THE COURT: -- let me say this. Okay?

9 MR. BRUNER: Yes, sir.

10 THE COURT: Go ahead with your argument.

11 MR. BRUNER: He's telling you, my clients have a
12 right to recover. That's not so. That's not the law
13 and that's not what he has pled. What he has pled is,
14 my clients have a right to make a claim against the
15 Bishop. And what I'm trying to represent to you is
16 Judge Young has looked at it and --

17 THE COURT: I understand.

18 MR. BRUNER: -- not just on the pleadings.

19 THE COURT: And going to let him proceed against
20 the Bishop.

21 MR. BRUNER: That's correct.

22 THE COURT: I understand. After the Supreme
23 Court said the statute of limitations didn't apply. I
24 understand.

25 I'm just going to have to read all of this.

1 Okay? I mean -- I don't mean -- I should have read it
2 before, but I didn't. I didn't know it was coming up.
3 Y'all dumped it on me. I've got a lot of reading to
4 do.

5 And one -- off the record, please.

6 [Off the record momentarily]

7 THE COURT: Go back on the record.

8 MR. BRUNER: I do not disagree with Your Honor.
9 I think that I made the same argument in front of
10 Judge Harrington. And when I argued that to her,
11 Mr. Meyers said, but, Judge you don't need to make
12 a -- to have a limited collateral review of the non
13 resident cases, Judge Young has already done that.
14 And I said, well, by golly, he's right. So that's
15 what I'm telling you. He made the argument that it
16 had already been conducted. I think it has.

17 I call your attention to page 3 of Judge -- let
18 me make sure I'm -- excuse me -- page 4 of Exhibit 4.
19 At the top of which he says, I conducted a limited
20 collateral review. He tells you what he did. He did
21 not just have the pleadings in the case. He had a
22 stack of documents from the class action that thick.
23 You're welcome to look at the file he was given before
24 he made that decision. But what he went on was that
25 the lawyers had originally proposed to the Court in

1 the class action to advertise in the USA Today.

2 THE COURT: Well, let me say this. And I may be
3 wrong. But my gut reaction to collateral review, the
4 Court can do what they want to do. They can take
5 testimony, affidavits or whatever. Now, that's just
6 my opinion. I think that coming from the Supreme
7 Court leaves it sort of wide open on what you're going
8 to do in conducting a collateral review.

9 MR. BRUNER: I think you might change your mind
10 if you read the Hospitality Management case --

11 THE COURT: I may be. I may be. But I said
12 that's my gut reaction. I think that's sort of --

13 MR. BRUNER: -- Supreme Court. Because what
14 they wanted to avoid was --

15 THE COURT: -- that's sort of throwing it in my
16 lap saying --

17 MR. BRUNER: Sure.

18 THE COURT: -- do a collateral review, do it
19 however you want to do it. But I may be wrong.

20 MR. BRUNER: But I think you can read
21 Hospitality Management and the recent Supreme Court
22 case.

23 THE COURT: I will. And I may --

24 MR. BRUNER: You might come away with a
25 different feeling.

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

3 MR. BRUNER: But I call --

4 THE COURT: -- changing my mind.

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

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

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

14 THE COURT: You're trying --

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

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

19 MR. BRUNER: Yes, sir.

20 THE COURT: Okay.

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

1 this out --

2 [Off the record momentarily]

3 MR. BRUNER: I think you are correct, Judge
4 Nicholson. I think that there has to be a
5 determination. And if the determination is what Judge
6 Young found, unlimited collateral review, that's fine
7 and we don't disagree with that.

8 I also want to respond to what Mr. Meyers said
9 about a lot of funny business going on in the class
10 action. Even if you believe all of that trash he
11 wrote in the complaint about my clients --

12 THE COURT: Well --

13 MR. BRUNER: -- it makes no difference.

14 THE COURT: -- under the 12(b) motion, I've got
15 to accept it as true.

16 MR. BRUNER: No. But if you also accept he's
17 pleading in the alternative and if he can make his
18 claim against the Bishop, all of this is irrelevant.

19 THE COURT: I understand.

20 MR. BRUNER: I'm asking you to accept that, as
21 well.

22 THE COURT: I understand. You want to dump it
23 on them and get out, get out from under the bus. I
24 understand.

25 MR. BRUNER: All I'm saying is all of that makes

1 no difference because he can pursue a claim --

2 THE COURT: See, Mr. Meyers is in the cat-bird
3 seat. He's got two defendants arguing with each
4 other. He's just got to sit back and decide which one
5 is going to pay the money.

6 MR. BRUNER: I think he's in a seat. I'm not
7 sure the cat-bird --

8 THE COURT: Cat-bird seat? Okay. All right.

9 MR. BRUNER: But what I'm trying to tell you, he
10 has -- standing here today, he has said you should
11 dismiss all the other claims against the professionals
12 except for conspiracy because, he said, there was
13 funny business.

14 I agree with him. But I'm telling you, in
15 addition --

16 THE COURT: Well, was there funny business?

17 MR. BRUNER: No, sir, there was not.

18 THE COURT: Okay.

19 MR. BRUNER: But I'm telling you, in addition he
20 cannot state conspiracy because everything that took
21 place in his allegations was within the context of the
22 class action.

23 THE COURT: Judge Young said he could state
24 conspiracy.

25 MR. BRUNER: Well, I disagreed with that then

1 and I disagree with it now.

2 THE COURT: I was just saying, you've been
3 telling me to accept part of Young's order but not all
4 of it.

5 MR. BRUNER: That is exactly right.

6 THE COURT: Okay. I understand.

7 MR. BRUNER: And I don't argue that.

8 THE COURT: Okay. You like part of it but you
9 don't like the other part.

10 MR. BRUNER: He was a genius in his first five
11 pages --

12 THE COURT: Okay. I understand. Thank you.
13 Yes, sir?

14 MR. SHAHID: I just want to make a couple of
15 points pretty clear, Judge, as to what was just
16 referenced.

17 Mr. Meyers' plaintiffs in -- as a pre-court case
18 had the opportunity to present this collateral review
19 to determine if the settlement agreement approved by
20 Judge Goodstein bars them or not. So the stage that
21 we're in -- and I think we kind of glossed over this
22 too quickly. Their claim is still alive but there's
23 another hurdle that needs to be determined. And I
24 disagree with the Court. I don't think it's just the
25 way that Judge Young did it. I think it's going to be

MIA PERRON, CVR-CM-M

-45-

1 fact-specific as to residency, non residencies, and
2 other issues that may come up factually as to whether
3 or not they've overcome that hurdle as to the
4 preclusive effect of the settlement -- the class
5 action settlement agreement.

6 So the Diocese still has the class action -- the
7 Supreme Court opinion is very clear about this. They
8 left open the opportunity for the class action to
9 still be a bar to the -- to class members.

10 THE COURT: Well, let me ask you this, then,
11 along those same lines. I know that's your position,
12 and it may be the proper position, I don't know. But
13 under the Rules, under the 12(b), I'm limited to just
14 what's in the pleadings.

15 MR. SHAHID: Correct.

16 THE COURT: Okay? You're wanting to go outside
17 the pleadings.

18 Now, whether the Supreme Court gives the Court
19 the right to do it on the collateral issue with Judge
20 Harrington and these other cases -- and I'm sure that
21 case is going to apply to all these cases, or not, and
22 go outside on a 12(b), or whether the Court ought to
23 back off and say, okay, people, go through discovery,
24 that's ninety days, come back to me and then we'll do
25 a -- convert it to a -- in other words, convert the

1 12(b) to summary judgment and give y'all an
2 opportunity to do some discovery.

3 I don't know the answer to that. Okay?

4 MR. SHAHID: And I agree --

5 THE COURT: But that concerns me on procedurally
6 how to proceed.

7 MR. SHAHID: And I think the problem is going to
8 be this. If we adopt Judge -- if we try to appeal
9 Judge Young's order, we solve this --

10 THE COURT: Well, you can appeal it down at --
11 at some point down the road. You'll get your
12 opportunity, assuming that he gets a verdict.

13 MR. SHAHID: Right.

14 But now we've got a Supreme Court case that has
15 taken Judge Young's order -- and if you read it side
16 by side, the Supreme Court's order is different than
17 Judge Young's order. And that right now seems to be
18 the controlling authority that we're operating under.

19 So I just think the Court is going to be
20 cognizant that the claim that Mr. Meyers's clients
21 have against the Diocese still need to --

22 THE COURT: Basically, you're just telling me
23 the issue is whether the out-of-state people were
24 excluded is still open.

25 MR. SHAHID: Is still open.

1 THE COURT: I understand.

2 MR. SHAHID: Maybe narrowly. Maybe narrow, but
3 still open.

4 THE COURT: I understand. But it's still open.
5 And these two parties disagree with you. And for
6 their clients, I understand why. I understand what
7 you're saying. I don't know. You may be right. I
8 don't know. I've got to read the opinion. I've got
9 to do some reading, some studying, and some talking
10 and we'll find out. Okay?

11 MR. SHAHID: The other point I was going to
12 make, Judge, is that when we were last in front of
13 Judge Harrington, we were discussing this issue about
14 -- and Judge Harrington was going to talk with Judge
15 McDaniel [phonetic] about it. So there was some -- we
16 did have some discussion about these cases all coming
17 in one --

18 THE COURT: We're going to have some more
19 discussion. Okay? I promise you that. Okay? Thank
20 you y'all so very much.

21 MR. MEYERS: If I may just make one point, Your
22 Honor.

23 THE COURT: Yes, sir.

24 MR. MEYERS: I think Your Honor is right about
25 the flexibility the Court has in collateral review.

1 And I think you'll find in the Hospitality Management
2 case and the Supreme Court opinion from January of
3 these cases, were in-state people. That what the
4 court observes about Hospitality Management is it's
5 one thing if you've got an in-state proceeding that's
6 all South Carolina based. It's another thing if
7 you've got a Hospitality Management, like they had, an
8 out-of-state decision, where you've also got the
9 constitutional questions of full faith and credit. So
10 all --

11 THE COURT: Let me go off the record for a
12 second.

13 [Off the record momentarily]

14 MR. MEYERS: And if we could go back on the
15 record, Your Honor.

16 THE COURT: Go back on the record.

17 MR. MEYERS: And it seems to me that the one
18 caution I would urge on the Court as I have thought
19 about these cases is there's different issues for the
20 in-state people and the out-of-state.

21 THE COURT: Right. I understand. I think
22 you've got a dual --

23 MR. MEYERS: But --

24 THE COURT: -- you've got to deal with it on a
25 dual basis, in-state and out-of-state.

1 MR. MEYERS: And there are many interconnecting
2 issues in both arenas of the cases.

3 THE COURT: Okay.

4 [HEARING CONCLUDES AT 11:48 A.M.]
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing before the Honorable J.C. Nicholson, Jr., on Friday, April 10, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 2nd day of July, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-51-

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2019-CP-10-5892

Plaintiff:

JANE DOE 304

vs.

Defendant:

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

For:

Gregg Meyers, Esq.
217 Lucas St
Unit F-1
Mt. Pleasant, SC 29464Received by PROCESS SERVICE, INC. to be served on **LAWRENCE E RICHTER, JR, 622 JOHNNIE DODDS BLVD., MT PLEASANT, SC 29464.**I, Bob Clair, being duly sworn, depose and say that on the **6th day of March, 2020** at 11:25 am, I:**PERSONALLY** served by delivering a true copy of the **AMENDED SUMMONS; SECOND AMENDED COMPLAINT; AFFIDAVIT OF MICHAEL J VIRZI** to: **LAWRENCE E RICHTER, JR** at the address of: **622 JOHNNIE DODDS BLVD., MT PLEASANT, SC 29464.****Description** of Person Served: Age: 73, Sex: M, Race/Skin Color: White, Height: 6'0", Weight: 240, Hair: Grey, Glasses: N

I am over eighteen and have no interest in the above action.



Bob Clair
 Process Server

Subscribed and Sworn to before me on the 6th day of March, 2020 by the affiant who is personally known to me.



 NOTARY PUBLIC



 PRINTED SIGNATURE
PROCESS SERVICE, INC.
P.O. Box 20097
Charleston, SC 29413
(843) 577-2355

Our Job Serial Number: LEX-2020000587

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Commission Expires:

3-26-29

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2019-CP-10-5892

Plaintiff:

JANE DOE 304

vs.

Defendant:

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

For:

Gregg Meyers, Esq.

217 Lucas St

Unit F-1

Mt. Pleasant, SC 29464

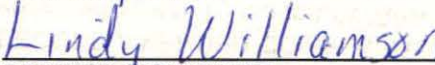
Received by PROCESS SERVICE, INC. to be served on **RICHTER AND HALLER, LLC, 622 JOHNNIE DODDS BLVD., MT PLEASANT, SC 29464.**I, Bob Clair, being duly sworn, depose and say that on the **6th day of March, 2020** at 11:25 am, I:SERVED the within named CORPORATION by delivering a true copy of the **AMENDED SUMMONS; SECOND AMENDED COMPLAINT; AFFIDAVIT OF MICHAEL J VIRZI** with the date and hour of service endorsed hereon by me to **LAWRENCE E RICHTER,, REGISTERED AGENT for RICHTER AND HALLER, LLC at 622 JOHNNIE DODDS BLVD., MT PLEASANT, SC 29464****Description** of Person Served: Age: 73, Sex: M, Race/Skin Color: White, Height: 6'0", Weight: 240, Hair: Grey, Glasses: N

I am over eighteen and have no interest in the above action.

Subscribed and Sworn to before me on the 6th day of March, 2020 by the affiant who is personally known to me.



NOTARY PUBLIC



PRINTED SIGNATURE

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Commission Expires:

3-26-29
Bob Clair
Process ServerPROCESS SERVICE, INC.
P.O. Box 20097
Charleston, SC 29413
(843) 577-2355

Our Job Serial Number: LEX-2020000586

Ben Bruner

From: G Meyers <attygm@gmail.com>
Sent: Wednesday, August 30, 2023 11:38 PM
To: Ben Bruner; Chelsea Clark; jcuttino@gwblawfirm.com
Cc: Rich Dukes
Subject: 22-CP10-4031, Doe 305 et al v. Richter et al.
Attachments: 2022-08-30 - Summons and Complaint.pdf

Counsel:

Judge Gergel remanded this case to Circuit Court on June 12. Mr. Dukes has a motion to dismiss pending which was filed shortly after the remand.

No other party has made a responsive pleading, but all parties made an appearance in federal court in response to the removal motion.

A motion for default may be in order as to those parties who have made no responsive pleading to the Summons and Complaint.

If by email sent to me not later than September 4 you will acknowledge on behalf of each of your clients acceptance of the attached originally filed summons and complaint, I am glad to extend to October 4 your time to file a responsive pleading.

Mr. Dukes, of course, has made a responsive pleading so has no obligation to respond further at this time.

My present mailing address is 114 4th Ave NW, Byron MN 55920. That will be my mailing address for the foreseeable future.

Gregg Meyers
Attorney At Law

843-324-1589
attygm@gmail.com

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The Information contained in this communication is confidential, is subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the addressee. It is the property of Gregg Meyers. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify me immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

From: [Ben Bruner](#)
To: [G Meyers](#)
Cc: [Chelsea Clark](#); jcuttino@gwblawfirm.com; [Rich Dukes](#)
Subject: RE: 22-CP10-4031, Doe 305 et al v. Richter et al.
Date: Friday, September 1, 2023 7:54:46 PM

Gregg:

I have had a chance to dig into this, and here is what I see. The summons and complaint were never served on the lawyer defendants. After the case was removed to federal court, we filed a motion to remand and a motion to dismiss.

If it is in fact your position that now, after the case has been remanded to state court, the lawyer defendants are in default, then I ask you to provide me the date you believe their time to respond began to run. That should be easy enough to provide in short order.

Respectfully, it is our position that if, as you contend, the filings in federal court are now of no moment, then the failure to serve the summons means the circuit court has no personal jurisdiction over the lawyer defendants. Moreover, the failure to serve the summons and complaint either within the three-year statute of limitations (which has expired according to the allegations in the complaint) or within 120 days of the date of filing as required by Rule 3, SCRCP, and by statute means the action has not been "commenced" with regard to the lawyer defendants.

Based upon the issue you raise and the threat of default proceedings, we filed a motion to dismiss today that raises the failure to serve the summons as well as other issues raised in the motion filed in the District Court.

Because the summons was never served, I did not receive any email from the clerk, so I'm not sure what email you're referring to.

With regard to a scheduling order, I have no problem accommodating Rich's plans this Fall. However, I'm not sure I can commit to anything until the motions to dismiss are heard.

I look forward to hearing from you.

Sincerely,

Ben



Benjamin C. Bruner

BRUNER POWELL
BRUNER POWELL WALL & MULLINS, LLC

P.O. Box 61110

Columbia, SC 29260-1110

(P) 803.252.7693

www.BrunerPowell.com

From: G Meyers <attygm@gmail.com>

Sent: Thursday, August 31, 2023 9:39 AM

To: Ben Bruner <bbruner@brunerpowell.com>

Cc: Chelsea Clark <cclark@brunerpowell.com>; jcuttino@gwblawfirm.com; Rich Dukes <RDukes@turnerpadget.com>

Subject: Re: 22-CP10-4031, Doe 305 et al v. Richter et al.

Ben:

Thank you for your email.

I don't see an amended complaint filed in the federal stage of the case, so I think the original remains the operative, and the only, complaint.

I am sure you have seen the clerk's email this morning, just after yours, placing the case on the trial roster. So we perhaps ought to agree on a scheduling order, given the time in which we were in the federal court. I expect to serve discovery shortly.

The cases assigned to Judge Cole seem destined to go slowly, "expeditiously" having perhaps become a term of art defined in a way that is new to me. So I am reluctant to consent to consolidating these cases into that scheduling black hole, but a reasonable scheduling order would be agreeable.

Gregg Meyers
Attorney At Law

843-324-1589

attygm@gmail.com

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On Thu, Aug 31, 2023 at 6:10 AM Ben Bruner <bbruner@brunerpowell.com> wrote:

Gregg,

I was under the impression a response had been filed but I'll double check. If memory serves there was an amended complaint filed in the District Court. Which pleading is the operative one? I want to make sure we're on the same page about that.

Do you have any issue consolidating tires case with the other two pending before the Circuit Court?

Thanks,

Ben

Benjamin C. Bruner

P.O. Box 61110
Columbia, SC 29260-1110
(P) 803.252.7693
www.BrunerPowell.com

<!--[if !supportLineBreakNewLine]-->
<!--[endif]-->

On Aug 30, 2023, at 11:39 PM, G Meyers <attygm@gmail.com> wrote:

Counsel:

Judge Gergel remanded this case to Circuit Court on June 12. Mr. Dukes has a motion to dismiss pending which was filed shortly after the remand.

No other party has made a responsive pleading, but all parties made an appearance in federal court in response to the removal motion.

A motion for default may be in order as to those parties who have made no responsive pleading to the Summons and Complaint.

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My present mailing address is 114 4th Ave NW, Byron MN 55920. That will be my mailing address for the foreseeable

future.

Gregg Meyers
Attorney At Law

843-324-1589
attygm@gmail.com

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<2022-08-30 - Summons and Complaint.pdf>

The Supreme Court of South Carolina

ADMINISTRATIVE ORDER

Pursuant to the provisions of S.C. CONST. Art. V, §4,

IT IS ORDERED that the following procedures shall be followed in the management and disposition of all complex common pleas cases now pending or hereafter filed in each circuit:

On the Chief Administrative Judge's own motion or on motion of counsel on an **approved form**, a copy of which is attached and made a part of this order, made after the filing of the original complaint, the Chief Administrative Judge can designate a case as complex, establish a date prior to which the case will not be called for trial and assign the case to a judge assigned to the circuit or an adjoining circuit who will be given exclusive jurisdiction to handle that case from beginning to end.

The motion may be granted on the information contained in the motion or the Chief Administrative Judge may require a hearing to determine whether the case justifies special handling.

If the motion is granted, the case will not be called for trial prior to the date designated in the order. The Chief Administrative Judge will assign the case to a judge assigned to the circuit or an adjoining circuit and all pretrial motions and other matters pertaining to that case will be under the exclusive jurisdiction of the judge assigned to the case. When appropriate, the case should be given a date certain for trial with the trial of the case also handled by the assigned judge.

If the Chief Administrative Judge believes that the case is not so complex as to require the assignment of a specific judge to handle the case from beginning to end, the Chief Administrative Judge can partially grant the motion by providing a date in his or her order before which the case cannot be called to trial. This will allow counsel adequate time to prepare the case for trial without the necessity of having to attend roster meetings and justify a continuance. Continuances beyond the date established in the scheduling order should not be requested or granted by the Chief Administrative Judge without exceptional circumstances being shown. Once the continuance has expired, the case will be handled in the same manner as all other normal

cases.

If the Chief Administrative Judge does not believe that the case is complex or requires additional time for preparation, the motion will be denied and the case will be placed on the trial roster and handled in the same manner as all other normal cases.

If the motion is granted and a specific judge is assigned to handle the case from beginning to end, copies of the motion and order granting the motion will be provided by the clerk of court to counsel of record and the judge assigned to the case.

This Order shall be effective immediately and shall remain in effect until rescinded or modified by future Order of the Chief Justice. All previous Orders regarding procedures to be followed in the management and disposition of complex common pleas cases are hereby rescinded.

s/Jean Hoefer Toal
Jean Hoefer Toal
Chief Justice

July 26, 2006
Columbia, South Carolina

03/10/2008 14:07 FAX

Does 2 and 4 2010-CP-10-5520 01132

EXHIBIT E

THE RICHTER FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW
 622 JOHNNIE DODDS BOULEVARD
 POST OFFICE DRAWER 1089
 MT. PLEASANT, SOUTH CAROLINA 29465

LAWRENCE E. RICHTER, JR.
 ALICE ANNE RICHTER
 WILLIAM H. WARING, III
 HARPER L. TODD*

TELEPHONE (843) 849-6000

FACSIMILE (843) 881-1400

* (Admitted only in GA)

March 10, 2008

VIA U.S. MAIL

The Honorable Diane S. Goodstein
 Post Office Box 234
 St. George, SC 29477

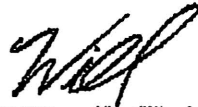
Re: *Doe, et al. v. The Bishop of Charleston, et al.*
 2006-CP-18-1310
 2006-CP-18-1311
 2006-CP-18-1636

Dear Judge Goodstein:

Pursuant to paragraph 6(A) of the Settlement and Arbitration Agreement executed January 12, 2007, and approved by your Order dated July 30, 2007, I have attached a copy of the final accounting of disbursements submitted by W. Ellison Thomas, CPA. Pursuant to the same, Mr. Thomas has submitted these documents to class counsel, counsel for the Diocese, and to the arbitrator, Marvin D. Infinger.

Thank you very much for your consideration. As always, I remain

Very truly yours,



William H. Waring, III

Enclosure

cc: Albert P. Shahid, Jr., Esquire [via facsimile - 722-1119]
 Marvin D. Infinger, Esquire [via facsimile - 722-2266]
 David K. Haller, Esquire [via facsimile - 577-7288]
 W. Ellison Thomas, CPA [via facsimile - 881-9008]

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007****March 7, 2008**

<u>Category</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
Class Counsel - Fees				
Richter & Haller, LLC	9/4/2007	Wire	\$ 2,500,000.00	Court Order
Class Counsel - Expenses				
Richter & Haller, LLC	9/4/2007	Wire	\$ 100,991.36	Court Order
The Richter Firm, LLC	1/8/2008	1002	\$ 8,245.15	Partial - Control No. 6
The Richter Firm, LLC	2/10/2008	1009	\$ 835.70	Control No. 5
The Richter Firm, LLC	2/10/2008	1010	\$ 2,052.71	Partial - Control No. 6
The Richter Firm, LLC	2/27/2008	1144	\$ 598.20	Control No. 47
Arbitrator				
Marvin Infinger, Esq.	2/27/2008	1139	\$ 29,541.69	Control No. 40
Marvin Infinger, Esq.	3/7/2008	1153	\$ 2,450.00	Control No. 51
Counseling				
Dr. L. Randolph Waide	1/24/2008	1005	\$ 10,425.00	8 - 12, 14 - 19, 21 - 23
Dr. L. Randolph Waide	2/10/2008	1012	\$ 5,250.00	Control No.s 24 - 30
Dr. L. Randolph Waide	2/20/2008	1135	\$ 1,875.00	Control No.s 32,33,34
Dr. L. Randolph Waide	2/27/2008	1137	\$ 1,875.00	Control Nos. 35 -38
Escrow Agent				
W. Ellison Thomas, CPA	1/8/2008	1003	\$ 2,635.00	Partial - Control No. 7
W. Ellison Thomas, CPA	1/8/2008	1004	\$ 5,657.50	Control No. 20
W. Ellison Thomas, CPA	2/10/2008	1011	\$ 2,555.22	Partial - Control No. 7
W. Ellison Thomas, CPA	2/10/2008	1019	\$ 2,247.50	Control No. 31
W. Ellison Thomas, CPA	3/7/2008	1154	\$ 8,544.44	Control No. 52
Other				
Desa Ballard, Esq.	11/27/2007	1001	\$ 2,966.93	Control No. 1
Bank Fees	1/31/2008		\$ 10.00	Wire Fee
Process Service, Inc.	2/10/2008	1006	\$ 75.00	Control No. 2
Conferencecall.com	2/10/2008	1007	\$ 35.88	Control No. 3
Palmetto Investigative, Inc.	2/10/2008	1008	\$ 1,549.00	Control No. 4
Conferencecall.com	2/27/2008	1138	\$ 14.42	Control No. 39
Clark & Associates, Inc.	2/27/2008	1140	\$ 3,228.50	Control No. 43
Process Service, Inc.	2/27/2008	1141	\$ 170.00	Control No. 44
Dr. John Roberts, MD	2/27/2007	1142	\$ 85.00	Control No. 45
Dr. Sally M. duffy Ph.D.	2/27/2008	1143	\$ 400.00	Control No. 46
Dr. Cathy Mintzer	2/27/2008	1145	\$ 500.00	Control No. 48
David K. Haller, Esq.	2/27/2008	1146	\$ 225.58	Control No. 49
Judy Kramer	3/6/2008	1147	\$ 63.20	Control No. 50
Total Non Claimant			<u>\$ 2,695,100.76</u>	

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007**

March 7, 2008

<u>Claimant</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
John Doe 53	.	.	\$ 150,000.00	Settlement Agreement
John Doe 56	.	.	\$ 100,000.00	Settlement Agreement
John Doe 56A	.	.	\$ 100,000.00	Settlement Agreement
John Doe 57	.	.	\$ 100,000.00	Settlement Agreement
Jane Doe A	10/23/2007	1	\$ 30,000.00	Settlement Agreement
Jane Doe B	10/23/2007	2	\$ 30,000.00	Settlement Agreement
Rachel Roe	10/23/2007	3	\$ 30,000.00	Settlement Agreement
The Richter Firm, LLC for DOE 58	2/15/2008	1014	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 59	2/15/2008	1015	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 60	2/15/2008	1016	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 61	2/15/2008	1017	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 62	2/15/2008	1018	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 63	2/15/2008	1019	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 64	2/15/2008	1020	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 65	2/15/2008	1021	\$ 10,000.00	Arbitration Order
The Richter Firm, LLC for DOE 66	2/15/2008	1022	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 67	2/15/2008	1023	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 68	2/15/2008	1024	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 69	2/15/2008	1025	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 70	2/15/2008	1026	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 71	2/15/2008	1027	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 72	2/15/2008	1028	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 73	2/15/2008	1029	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 74	2/15/2008	1030	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 75	2/15/2008	1031	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 76	2/15/2008	1032	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 77	2/15/2008	1033	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 78	2/15/2008	1034	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 79	2/15/2008	1035	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 80	2/15/2008	1036	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 81	2/15/2008	1037	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 82	2/15/2008	1038	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 83	2/15/2008	1039	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 84	2/15/2008	1040	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 85	2/15/2008	1041	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 86	2/15/2008	1042	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 87	2/15/2008	1043	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 88	2/15/2008	1044	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 89	2/15/2008	1045	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 90	2/15/2008	1046	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 91	2/15/2008	1047	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 92	2/15/2008	1048	\$ 20,000.00	Arbitration Order

* Escrow Agent did not pay these amounts. Paid by Diocese prior to Escrow Agent receiving funds.

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
 SETTLEMENT & ARBITRATION AGREEMENT
 DATED JANUARY 12, 2007**

March 7, 2008

<u>Claimant</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
The Richter Firm, LLC for DOE	2/15/2008	1049	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1050	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1051	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1052	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1053	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1054	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1055	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1056	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1057	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1058	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1059	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1060	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1061	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1062	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1063	\$ 10,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1064	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1065	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1066	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1067	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1068	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1069	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1070	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1071	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1072	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1073	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1074	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1075	\$ 20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1076	\$ 20,000.00	Arbitration Order
Walter S. Ameika for DOE	2/15/2008	1077	\$ 20,000.00	Arbitration Order
Bart, Unger & McIntosh, LLC for DOE	2/15/2008	1078	\$ 20,000.00	Arbitration Order
Arthur E. White, Jr. for DOE	2/15/2008	1079	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1080	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1081	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1082	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1083	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1084	\$ 55,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1085	\$ 40,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1086	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1087	\$ 125,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1088	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1089	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1090	\$ 40,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1091	\$ 60,000.00	Arbitration Order

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
 SETTLEMENT & ARBITRATION AGREEMENT
 DATED JANUARY 12, 2007**

March 7, 2008

006/009
 ELECTRONICALLY FILED - 2023 Sep 01 4:49 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004031

<u>Claimant</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
The Richter Firm, LLC for DOE	2/15/2008	1092	\$ 200,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1093	\$ 60,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1094	\$ 55,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1095	\$ 150,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1096	\$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1097	\$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1098	\$ 125,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1099	\$ 150,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1100	\$ 200,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1101	\$ 75,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1102	\$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1103	\$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1104	\$ 200,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1105	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1106	\$ 75,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1107	\$ 70,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1108	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1109	\$ 150,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1110	\$ 100,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1111	\$ 125,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/15/2008	1112	\$ 125,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1113	\$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1114	\$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1115	\$ 200,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1116	\$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1117	\$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1118	\$ 150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE	2/15/2008	1119	\$ 70,000.00	Arbitration Order
Barr, Unger & McIntosh, LLC for DOE	2/15/2008	1120	\$ 200,000.00	Arbitration Order
Pro Se - Doe	2/15/2008	1121	\$ 200,000.00	Arbitration Order
Pro Se - Doe	2/15/2008	1128	\$ 315.00	Control No. 43
Pro Se - Doe	2/15/2008	1129	\$ 59,685.00	Arbitration Order
Pro Se - Doe	2/15/2008	1123	\$ 20,000.00	Arbitration Order
Pro Se - Doe	2/15/2008	1124	\$ 20,000.00	Arbitration Order
Pro Se - Doe	2/15/2008	1125	\$ 20,000.00	Arbitration Order
Pro Se - Doe	2/15/2008	1130	\$ 195.00	Control No. 42
Pro Se - Doe	2/15/2008	1131	\$ 149,805.00	Arbitration Order
The Richter Firm, LLC for DOE	2/20/2008	1134	\$ 20,000.00	Arbitration Order
The Richter Firm, LLC for DOE	2/27/2008	1136	\$ 175,000.00	Arbitration Order
The Richter Firm, LLC for DOE	3/6/2008	1151	\$ 40,193.87	Arbitration Order
David K. Haller, Esq. Escrow for DOE	3/6/2008	1152	\$ 159,806.13	Arbitration Order

03/10/2008 17:32 FAX 8437221119

SHAHID LAW OFFICE

Does 2 and 4 2010-CP-10-5520 01237

03/10/2008 14:07 FAX

007/009
007/009

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007**

March 7, 2008

<u>Claimant</u>	<u>Date</u>	<u>Check #</u>	<u>Amount</u>	<u>Description</u>
The Richter Firm, LLC for DOE 419	3/8/2008	1149	\$ 40,143.24	Arbitration Order
David K. Heller, Esq. Escrow for DOE 419	3/8/2008	1150	\$ 159,856.76	Arbitration Order
Pro Se - Doe 650	3/6/2008	1148	\$ 20,000.00	Arbitration Order
Total Claimant			<u>\$ 7,815,000.00</u>	

03/10/2008 14:07 FAX

Does 2 and 4 2010-CP-10-5520 01238

**JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007**

March 7, 2008

Total Non Claimant	\$ 2,895,100.76
Total Settlement	\$ 12,000,000.00 (\$ 5 M & \$ 7 M)
Available for Claimants	\$ 9,304,899.24
Total Claimant	\$ 7,615,000.00
Amount Over (does not include interest income)	\$ 1,689,899.24

Cash Proof

Initial Pool of Funds	\$ 5,000,000.00
Second Pool of Funds	\$ 7,000,000.00
Spent to Date	\$ 10,310,100.76
Net	\$ 1,689,899.24
Add: Interest Income	
8/30/2007	\$ 398.43
10/31/2007	\$ 4,365.10
11/30/2007	\$ 3,428.21
12/31/2007	\$ 3,289.91
1/31/2008	\$ 3,114.12
2/29/2008	\$ 11,828.89
3/31/2008	\$ -
Cash in Bank	\$ 1,716,323.90

Arbitrator Awards Paid to date

\$ 7,065,000.00

3/7/08 - I approve this accounting of class
settlement funds.
W. Ellis Thomas

Page 6 of 6

03/10/2008 14:08 FAX

Does 2 and 4 2010-CP-10-5520 01239

3/7/2008
09:00**John Doe Class Action Settlement Account**
General Ledger - Period Ending 3/07/08Company: JOH
Page: 1

<u>Date</u>	<u>Mt</u>	<u>Reference</u>	<u>Account</u>	<u>Description</u>	<u>Current</u>	<u>Year-to-Date</u>
Beginning Balance			1000	Cash in Bank - BKSC		2,147,381.54*
3/6/08	3	1147	1000	Judy Kramer	-63.20	
3/6/08	3	1148	1000	Pro Se 650	-20,000.00	
3/6/08	3	1149	1000	The Richter Firm, LLC	-40,143.24	
3/6/08	3	1150	1000	David K. Haller, Esq.	-159,856.76	
3/6/08	3	1151	1000	The Richter Firm, LLC	-40,193.87	
3/6/08	3	1152	1000	David K. Haller, Esq.	-159,806.13	
3/7/08	3	1153	1000	Haynsworth Sinkler Boyd	-2,450.00	
3/7/08	3	1154	1000	W. Ellison Thomas, CPA	-8,544.44	
				Ending Balance =	-431,057.64*	1,716,323.90**

8 Transactions

ELECTRONICALLY FILED - 2023 Sep 01 4:49 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004031

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

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

Plaintiffs,

vs.

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

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS FOR
THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1636

AFFIDAVIT OF MARVIN D. INFINGER

PERSONALLY APPEARED before me Marvin D. Infinger who, first being duly sworn,
deposes and says:

1. He is a member of Haynsworth Sinkler Boyd, P.A. and has been associated with said firm or its predecessors since October 1978.
2. He has been licensed to practice law in South Carolina since November, 1977.
3. He was asked to provide this affidavit by both Lawrence E. Richter, Jr., Esquire and Albert P. Shahid, Jr., Esquire, who on information and belief are the subjects of attorney grievance complaints filed by Gregg E. Meyers, Esquire.
4. Although he has not seen the grievance complaints filed, the undersigned has seen and reviewed an affidavit dated June 18, 2008 by Mr. Meyers, as well as a "Petition to Appear as

Amicus Curiae” by David Flowers on behalf of the South Carolina Victims’ Assistance Network. The date of Flowers’ petition is June 19, 2008.

5. The affidavit and petition contain some matters as to which the undersigned has no personal knowledge (such as the suggestion Mr. Meyers was inappropriately investigated on order of the Court). However, the undersigned participated in the settlement and arbitration process, dealing with the disposition of claims against the Catholic Diocese of Charleston (“the Diocese”), first as a mediator and then, after Court approval of the class action settlement, as arbitrator of the class claims.

6. The undersigned’s first involvement centered around mediation of the claims of certain alleged victims and the mediation of a class action which either had been instituted or was about to be instituted versus the Diocese.

7. The mediation took place over a full two days in June of 2006, and resulted in the mediation settlement agreement attached hereto as **Exhibit 1**. The attached **Exhibit 2** is a copy of my handwritten rendition of the offer of agreement before acceptance by the individual plaintiffs.

8. The mediation was extremely contentious and the efficacy of many of the class claims were hotly disputed on grounds of statute of limitations (particularly after Doe v. Crooks, 364 S.C. 349, 613 S.E. 2d 536 (2005)), whether or not parental consortium claims even exist under the laws of this State, among other issues. Having said this, the Diocese was aware of the verdict received by a parent of a former Porter Gaud student abuse victim in the Court of Commons Pleas, in the nine figure range, just as Plaintiffs’ counsel were aware of these legal issues as potential bars to their claims.

9. Thereafter, the undersigned received calls from both parties asking for assistance in issues surrounding the initial funding of the settlement fund for the proposed class action settlement. As I understood it, a big problem with the funding issue was that as a matter of church law the Pope or His delegatee was required to approve same. This created a huge atmospheric problem and I recall on several occasions counsel for the class suggesting that the settlement was "off."

10. Ultimately, a hearing on the propriety of the class settlement was held and I attended it. Objections were received by the Court both from Gregg Meyers on behalf of certain alleged victims and, if my memory serves me, by Walter Bilbro representing one or more claimants. Also, there were several brothers there who were outside the class definitions proposed, who expressed their displeasure with the state of affairs.

11. During the hearing there was exhibited a degree of acrimony by counsel for the class leveled at counsel for the Diocese which I found unbecoming. However, the consequence of the outbursts was that the presiding judge ordered a solicitor's investigation of the Diocese to determine whether any criminal conduct was committed by the Diocese. I have no personal knowledge of the result of the investigation, but assume the Diocese was cleared.

12. My recollection is that the class settlement was approved by the court, but Gregg Meyers had preserved objections to it on behalf of clients he represented individually.

13. Because the Diocese and the classes had reached an approved settlement after a hard fought series of efforts, some of which I was personally involved in as mediator, they wished to remove this final roadblock (the preserved objections) from preventing its execution.

14. I was then requested by counsel for the Diocese, counsel for the class, and counsel for the individual claimants with objections through their counsel, Gregg Meyers and David

Flowers, to mediate a settlement with Meyers' and Flowers' clients and a settlement was reached on these claims, but the funds were not to be paid until after conclusion of the class arbitration awards process.

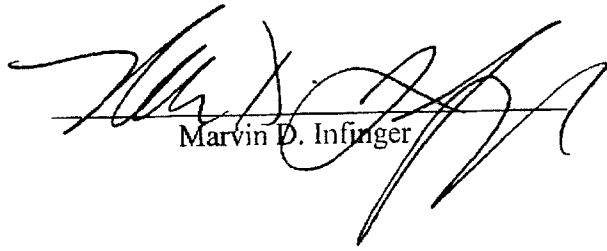
15. The settlement of the objectors' claims was the first and only time that I witnessed a true concurrence of positions between the Diocese and the Class, and this concurrence of positions was required so that their respective clients could execute the settlement they had worked so hard to obtain for the benefit of their respective clients.

16. Thereafter, in February of this year, I arbitrated the claims of the individuals who had come into the classes created by the settlement. There continued to be contention between the parties. For example, before the arbitration began, class counsel raised the issue that as to certain claimants, the Diocese had failed to timely object to the efficacy of the claims and thereby waived said objections. I ruled the Diocese had not waived the objections. Also, on the first day of the arbitration, I heard objections by the Diocese to the efficacy of the number of claims, some of which I sustained.

17. In my dealings with the parties and their counsel I witnessed strong advocacy, from time to time strong emotions and, at times, the prospect that the settlement would not materialize because of same. It is hard to imagine a harder fought negotiation than what I observed and there was never in my experience any "collusion" between counsel for the parties.

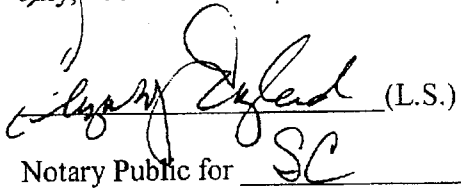
FURTHER DEPONENT SAYETH NOT.

[SIGNATURE ON FOLLOWING PAGE]


Marvin D. Infinger

Sworn to and subscribed

before me this 22 day of
July, 2008.

 (L.S.)
Notary Public for SC

My Commission expires: 8/16/2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
JOHN DOE #53, et al.,	)	Case Nos. 06-CP-18-1310, 1311, 1636
	)	
Plaintiffs,	)	SUPPLEMENTAL
	)	AFFIDAVIT OF JOHN P. FREEMAN
vs.	)	IN SUPPORT OF CLASS ACTION
	)	SETTLEMENT APPROVAL AND
THE BISHOP OF CHARLESTON,	)	CLASS COUNSEL'S FEE PETITION
A CORPORATION SOLE, et al.,	)	TO CORRECT ERROR IN PRIOR
	)	AFFIDAVIT
Defendants.	)	
	)	

PERSONALLY APPEARED before me John P. Freeman who deposes and states:

1. It has come to my attention that I made an error in my affidavit previously filed in these matters regarding legal fees. Paragraph 6 of that affidavit contains an incorrect interpretation by me of the settlement agreement. I stated that fees would be paid outside the common fund, rather than from it. I was in error. The impact on my affidavit's findings and conclusions, however, is immaterial. A \$2.5 million fee paid from a \$12 million common fund represents a fee of less than 21 percent of the common fund (\$2.5 million/\$12 million). My affidavit incorrectly envisioned a \$2.5 million fee paid in addition to a \$12 million common fund, representing a fee of slightly more than 17 percent of the total sum promised (\$2.5 million/\$14.5 million).

2. The calculation error is small; it has no impact on my opinions as expressed in the affidavit. As I stated in my first affidavit, the Supreme Court has held that in class actions generally, "fees ordinarily 'range from 20 percent to 30 percent of the common fund created.'" *Condon v. State*, 354 S.C. 634, 644, n.8 583 S.E.2d 430, 435 n.8 (2003) (citing and relying on *Paul, Johnson, Alston*

& Hunt v. Gaulty, 886 F.2d 268, 272 (9th Cir.1989)). The fee awarded in this case is within the normal range mentioned by the Supreme Court, and at the lower end of the scale.

3. I continue to adhere to views expressed in my affidavit that the settlement in the Diocese case was fair, reasonable and adequate and that the fee petition was meritorious.

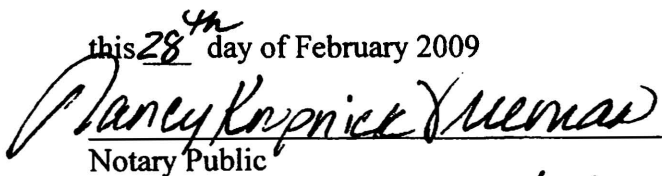
4. Further affiant sayeth not.



John P. Freeman

SWORN TO AND SUBSCRIBED BEFORE ME

this ^{4th} ~~28~~ day of February 2009



Notary Public

My Commission Expires: 7/7/2018

SC Diocese Documents 002509
SHAHID LAW OFFICE, LLC

A. PETER SHAHID, JR.
89 BROAD STREET
CHARLESTON, SOUTH CAROLINA 29401

OFFICE: (843) 853-4500
FAX: (843) 722-1119
SHAHIDLO@BELLSOUTH.NET

April 15, 2009

The Honorable Diane S. Goodstein
First Judicial Circuit
101 Ridge Street
St. George, SC 29477

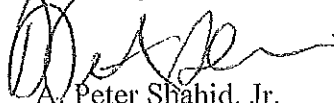
RE: John Doe #53 et al v. The Diocese of Charleston
Case No.: 06-CP-18-1310, 1311 & 1636

Dear Judge Goodstein:

Please find enclosed a Consent Order of Dismissal with Prejudice executed by Mr. Richter and myself in regard to the above captioned matter. If this Order meets with your approval I would appreciate your signing and forwarding it the Clerk's office to be filed. I am also enclosing five copies and a self-addressed stamped envelope.

Thank you for your kind attention to this matter.

Sincerely,


A. Peter Shahid, Jr.
General Counsel

Enclosure: as stated above

cc: Mr. Lawrence E. Richter, Jr., Esq.

000016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 06-CP-18-1310
	)	CASE NO. 06-CP-18-1311
	)	CASE NO. 06-CP-18-1636
JOHN DOE #53, JOHN DOE #66,	)	
JOHN DOE #66A, JOHN DOE #67,	)	
JANE DOE #1 JANE DOE #2,	)	
AND RACHEL ROE, individually,	)	
and as representative of a class	)	
of people similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CONSENT ORDER OF
	)	DISMISSAL WITH PREJUDICE
THE BISHOP OF CHARLESTON,	)	
A CORPORATION SOLE, AND	)	
THE BISHOP OF THE DIOCESE OF	)	
CHARLESTON, IN HIS OFFICIAL	)	
CAPACITY,	)	
	)	
Defendants.	)	
	)	

WHEREAS, the parties, by and through their undersigned counsel have notified the Court that all respective duties, obligations, and responsibilities pursuant to the Settlement and Arbitration Agreement ("Agreement") executed by the parties on January 12, 2007, and approved by subsequent Order of the Court dated July 30, 2007 have been fulfilled and completed. Furthermore, all respective duties, obligations, and responsibilities pursuant to subsequent orders issued by the Court regarding matters pending in this case dated August 31, 2007, February 3, 2009 and February 12, 2009 ("Orders"), have been fulfilled and completed; and

WHEREAS, the parties, by and through their undersigned counsel, having fulfilled and completed all respective duties, obligations, and responsibilities pursuant to said Agreement and Orders, hereby agree to the dismissal WITH PREJUDICE all alleged causes of action in the

000017

above-referenced matters, pursuant to Rule 41(a)(1)(B), SCRCP;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

That pursuant to Rule 41(a)(1)(B), SCRCP, all alleged causes of action in the above-referenced matters are DISMISSED, WITH PREJUDICE.

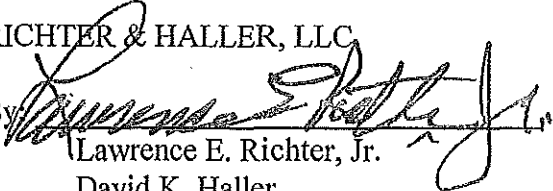
AND IT IS SO ORDERED!

The Honorable Diane S. Goodstein
Presiding Judge

This ____ day of _____, 2009
_____, South Carolina

WE CONSENT:

RICHTER & HALLER, LLC

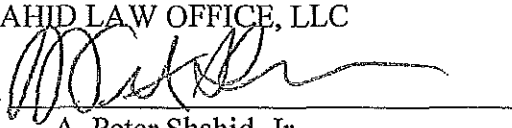
By: 

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

PLAINTIFFS' CLASS COUNSEL

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: 

A. Peter Shahid, Jr.
89 Broad Street
Charleston, SC 29401
(843) 853-4500

ATTORNEY FOR DEFENDANTS

000018

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

FAX 803-254-5719

WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.*
WARREN C. POWELL, JR., P.A.**
HENRY P. WALL
E. WADE MULLINS III, P.A.
BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III
BRYAN M.J. TRIPLETT

* Of Counsel

** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@BRUNERPOWELL.COM

June 22, 2016

VIA U.S. MAIL

The Honorable Cheryl L. Graham
Dorchester County Clerk of Court
5200 E. Jim Bilton Boulevard
St. George, SC 29477

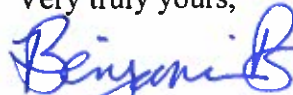
Re: *John Doe 53, et al. v. The Bishop of Charleston, et. al.*
C/A Nos.: 2006-CP-18-01310 and 1311
Our File No. 3-716-134.200

Dear Mrs. Graham:

We recently received notice that Allen Sires filed a Motion for a Post-Award Fairness Hearing in the above-referenced cases on May 11, 2016. This morning, I learned that Mr. Sires has contacted your office requesting that the Motion be scheduled for a hearing. For scheduling purposes, I am forwarding you a copy of the Order the Supreme Court issued on June 12, 2015 assigning these cases to Judge Nicholson.

With my kindest regards, I am

Very truly yours,


Benjamin C. Bruner

BCB/gh
Enclosure

cc: The Honorable J.C. Nicholson, Jr.
A. Peter Shahid, Jr., Esq.
Susan Taylor Wall, Esq.
Gregg Meyers, Esq.
(w/encl.)

The Supreme Court of South Carolina

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

v.

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

Plaintiffs,

Defendants.

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

ORDER

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

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


Jean Hofer Toal
Chief Justice

June 12, 2015
Columbia, South Carolina

Gregg Meyers
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November 16, 2022

Via email to: htaylorsc@sccourts.org

Hon. Heath P. Taylor

Re: 2006 class action settlement, 2006-CP-18-1310, -1311, -1646
2016 *pro se* motion for post-award fairness hearing
2022 motions to intervene and for post-award fairness hearing

Dear Judge Taylor:

Your Honor has been assigned this never-closed class action and has requested an in-chambers meeting at 11 a.m. on November 23.

Given the history of this class settlement, which seems (and is alleged to have been) collusive, we prefer all proceedings to be on the record, but we will of course appear as requested by the court. From our perspective the case has had many irregularities.

The purpose of this letter is to give the court a summary of what is before the court, from the perspective of two class members who I now represent.

Two motions are pending, one a *pro se* motion from a class representative alleging, among other things, improper conduct by class counsel. That motion has been pending since 2016. The other motions were filed in August 2022 by the McDonalds, class members whom counsel now represents.

Conflicts exist between class members and class counsel.

Some discovery should be permitted before the motions are heard, to include a proper accounting of all funds actually paid to class counsel by each class claimant. Those funds have never been disclosed to either the court or the class. Class counsel's actual performance in implementing the class settlement has never been fully disclosed or reviewed.

Also before any post-award fairness hearing, notice should be given to each class claimant, and that notice should at minimum detail at least some of the present allegations which have never been disclosed to class members, including:

- (a) class counsel's conflicts of interest as to the Diocese, of which he was not only a life-long member but an official, functioning for the Diocese even during the class action. Also, according to class counsel's own account, because his Bishop requested it, class counsel agreed to eliminate the notice to out-of-state class members that was originally proposed,

- (b) the fees class counsel charged class members which no order authorized and which have not been disclosed to the court,
- (c) the fee the court ordered be paid before any class member had even been identified, let alone compensated, which fee class counsel did not disclose before charging class members additional, unauthorized fees,
- (d) that the parties had disclosed to neither the court nor to the class that a contingency fee payment had been made to class counsel in 2006, paying class counsel for nearly 100% of the time class counsel then submitted in 2007 to support the court awarded fee,
- (e) that class counsel and/or class representatives used class funds to fund settlement terms for class objectors,
- (f) that the settlement terms for class objectors were better than the terms for class members, never disclosed to class members,
- (g) that after choosing the judge who would review and approve the class settlement the parties agreed to elevate class counsel's fee interest above class member recovery and agreed that any residual class funds would revert to the Diocese, and
- (h) that the parties misrepresented to the judge they had chosen that any absent member of the class would receive the benefits of the class action even if an absent member had not received notice, a representation that was not true.

This is a minimum list of issues about which the class should be given notice before any post-award fairness hearing is held, so each class member can decide whether to participate in the hearing.

In March, 2009 the South Carolina Supreme Court ordered this class action be concluded by September 2009. That order was ignored by the parties and the circuit judge the parties had chosen. We contend that was done so as to avoid direct appellate review.

In 2014 the South Carolina Supreme Court decided *Doe v. Bishop*, 754 S.E.2d 494, 501 (S.C. 2014), concerning issues raised by absent members of this class action. The court held:

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

Despite that holding, the depositions of class counsel have not been permitted to date. Those depositions are vital to any post-award fairness hearing.

The proceedings of this class action are, mildly stated, a mess. Sexual abuse victims continue to be affected. To date, those trying to point out what Justice Kittredge, in the 2013 oral argument in *Doe v. Bishop* described as "serious allegations," have been unable to have the merits of those "serious allegations" addressed. The proceedings before your Honor might be the first to reach the merits.

Sincerely,



Gregg Meyers

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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

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.

Certificate of Counsel

I certify that the Record on Appeal contains all material proposed to be included by any of the

parties and not any other material.

s/ Gregg Meyers

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843-324-1589

Attorney for Appellants

August 24, 2026