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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2011-199886

John Doe, Jane Doe 1, Jane Doe 2 and Jane Doe 3, Appellants,

v.

The Bishop of Charleston, A Corporation Sole, and The Bishop of The Diocese of Charleston, in His Official Capacity, Respondents.

RESPONDENTS' PETITION FOR REHEARING

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PETITION FOR REHEARING

On January 8, 2014, this Court issued its Opinion affirming in part, reversing in part, and remanding the circuit court Order of Judge Kristi Lea Harrington dismissing the Plaintiff's Compliant. John Doe, et al. v. The Bishop of Charleston, a Corporation Sole, et al. , Op. No. 27345 (S.C.Sup.Ct. filed January 8, 2014). Pursuant to Rule 221(a), SCACR, Respondents respectfully requests a rehearing of the Court's decision

dismissing the Appellant's Compliant. Respondents respectfully submit that a rehearing is warranted for the following reasons.

In these actions, this Court has held that because an "employer's knowledge of an employee's dangerousness is an element of the tort of negligent supervision," Defendants' alleged "secrecy and concealment" concerning such knowledge "could, if proven, toll the statute of limitations" on Plaintiffs' claims arising from their allegations of child sexual abuse. *Slip op.* at 8. The holding reached by this Court was never argued to the trial court and therefore never preserved for review. Even if the issues had been preserved for appeal, this Court's ruling departs from established precedent and effectively abolishes the statute of limitations for many claims of negligent supervision and other torts. Respondents accordingly petition this Court for rehearing pursuant to Rule 221, SCACR.

A. Petitioners' Argument Was Not Preserved for Appeal

"In order to preserve an issue for appellate review, a party must both raise that issue to the trial court and obtain a ruling." *Foster v. Foster*, 393 S.C. 95, 99, 711 S.E.2d 878, 880 (2011). Petitioners' argument accepted by this Court was advanced for the first time on appeal. In the trial Court, Petitioners' entire argument in opposition to Respondents' assertion of the statute of limitations was as follows:

> **Statute of limitations.** The Diocese contends in its motion that the statute of limitations applies to the plaintiff's claims, Motion at 3, but makes no reference to the 2007 orders and proceedings in which the Diocese made public, on-the-record statements in which it assumed duties to members of the class "who did not get notice for whatever reason." As alleged in the second amended complaint in paragraph 9, and as set forth in the July 13, 2007 transcript, the Diocese has waived its charitable immunity and limitations defenses for all persons sexually abused prior to 2001. On the face of the pleadings, it is not possible to grant a motion to dismiss on limitations grounds. The UTPA ground became ripe only in

> 2009, when the Diocese refused relief. This suit has been brought within three years of the Diocese refusing to honor the 2007 order.

R. 259-60, Defs.' Opp'n to Pending Motions and Motion for Partial Summary Judgment. Paragraph 9 of each plaintiff's complaint asserts that "the Diocese explicitly waived . . . all statute of limitations defenses," *see* R. 98, Second Amended Compl. of John Doe, and paragraph 26 of each complaint asserts that the allegation of fraudulent concealment is "independent of the [alleged] . . . waiver . . . of statute of limitations." R. 101, Second Amended Compl. of John Doe. Although Petitioners objected to Respondents' Motion for Dismissal, their failure to object on the basis of the discovery rule or doctrine of fraudulent concealment forfeits these arguments on appeal. *State v. Smith*, 337 S.C. 27, 34, 522 S.E.2d 598, 601 (1999) (holding, although petitioner raised objection in trial court, "[s]ince he did not object at trial on the same grounds as raised on appeal, the issue is not preserved for review"); *see State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal.").

Even after the trial court granted Respondents' motion to dismiss based on the statute of limitations, Petitioners still failed to seek relief based on the discovery rule or fraudulent concealment. R. 329, Pls.' Motion to Alter or Amend [O]rder of June 15, 2011. Because Petitioners at no point asserted to the trial court the discovery rule or doctrine of fraudulent concealment as applied by this Court, those arguments were waived. *See Pikaart v. A & A Taxi, Inc.*, 393 S.C. 312, 324, 713 S.E.2d 267, 273 (2011) (holding "any error was not preserved" where "there is no indication in the record that Appellants ever presented . . . [their] argument to the circuit court to allow it the opportunity to amend its ruling"); *see also Atl. Coast Builders & Contractors, LLC v.*

Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[W]e are not precluded from finding an issue unpreserved even when the parties themselves do not argue error preservation to us. In fact, a rule which would permit such an 'appeal by consent' is contrary to the very core of our preservation requirement . . . ."). "If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call." *State v. Stone*, 376 S.C. 32, 36, 655 S.E.2d 487, 489 (2007) "An appellate court may not, of course, reverse for any reason appearing in the record. The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421-22, 526 S.E.2d 716, 724 (2000).

As discussed below, the trial court's ruling was in accord with binding precedent of the Appellate Court, *Brown v. Pearson*, 326 S.C. 409, 483 S.E.2d 477 (S.C. Ct. App. 1997). It was therefore incumbent on Petitioners to move for leave to argue against precedent pursuant to Rule 217, SCACR, and they did not. *See Rutland v. S. Carolina Dep't of Transp.*, 400 S.C. 209, 217 n.4, 734 S.E.2d 142, 146 (2012) (argument for overturning of Appellate Court precedent was not preserved where appellant failed to file petition under Rule 217).

B. The Statute of Limitations Has Expired on Plaintiffs' Claims

The discovery rule delays accrual only until "facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party **might** exist. **The statute of limitations begins to run from this point and not when advice of counsel is sought**

or a full-blown theory of recovery developed." *Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005) (emphasis in original).

An alleged victim of sexual abuse has notice both that "some right of his has been invaded" and "that some claim against another party might exist." *Id.*; *see Doe v. R.D.*, 308 S.C. 139, 141, 417 S.E.2d 541, 542 (1992). This Court has nevertheless now held that, although a sexual abuse victim knows that a right of his has been invaded, and knows of his claim against the abuser, the statute of limitations on a claim against the abuser's employer will not run unless the plaintiff knows (or reasonably should know) that the employer had prior notice of the abuser's dangerousness.

Respondents concede that negligent supervision is an "independent cause of action," but not that it is "separate from the sexual abuse itself." *Slip op.* at *8. Intentional harm committed by an employee is the first element of a negligent supervision claim. *See id.* (citing *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116-17, 420 S.E.2d 495, 496 (1992)). Although this Court's decision delays the running of the statute of limitations until a plaintiff also knows of facts to support the third element of negligent supervision,[1] which depends on notice of an employee's dangerousness, the statute of limitations does not await development of "a full-blown theory of recovery," based on a specific tort and support for all of its elements. *Epstein*, 363 S.C. at 376; *see Tanyel v. Osborne*, 312 S.C. 473, 475, 441 S.E.2d 329, 331 (S.C. Ct. App. 1994) ("The

[1] In some cases, a plaintiff may attempt to satisfy the third element of a negligent supervision claim *without* any evidence that the defendant had prior notice of an employee's unfitness. *E.g., Doe ex rel. Roe v. Orangeburg Cnty. Sch. Dist. No. 2*, 335 S.C. 556, 557, 518 S.E.2d 259 (1999) (reviewing evidentiary issues relating to claim "for negligent supervision alleging that the teacher who was supposed to be supervising the special education students . . . had left the students unsupervised in the gymnasium, thereby allowing the assault to occur").

Constructive notice to the plaintiff of the second element of negligent supervision under South Carolina law, that "the employer knows or has reason to know he has the ability to control the employee," will typically be satisfied simply by awareness of the employer-employee relationship itself.

statute of limitations began to run when [the plaintiff] witnessed the events causing his loss, thereby putting him on notice he might have a potential claim against another person, not when he later discovered evidence to support his claim."). The threshold for accrual is that the plaintiff be on constructive notice of a "possible claim," *Epstein*, 363 S.C. at 376, 610 S.E.2d at 818, or "potential claim," *id.* at n.8, i.e., that "some claim against another party **might** exist." *Id.* at 376, 610 S.E.2d at 818.

The Appellate Court decision of *Brown v. Pearson* is directly on point. 326 S.C. 409, 418, 483 S.E.2d 477, 482 (S.C. Ct. App. 1997). The plaintiffs sued "the South Carolina Conference of the United Methodist Church and its district superintendent, John C. Pearson, for claims arising out of alleged sexual harassment and abuse perpetrated by a pastor." *Id.* at 413, 483 S.E.2d at 479. "As a result of discovery, Appellants learned ministers in the Conference knew Brunson had previously acted inappropriately toward women while ministering at another church but 'swept it under the rug.'" *Id.* at 416, 483 S.E.2d at 481. Appealing the trial court's grant of summary judgment for the defendants, the plaintiffs argued that "the limitations period for the negligent hiring and supervision claims did not begin to run when they knew they were injured but began when they knew the Conference and Pearson had injured them." *Id.* at 418, 483 S.E.2d at 482. The Appellate Court rejected this argument on the basis that "even though Appellants did not know the exact nature of the wrong at that time, they knew their rights had been invaded." *Id.*

The result in *Brown v. Pearson* follows from this Court's own precedents. In *Snell v. Columbia Gun Exchange, Inc.*, the plaintiff sued for injuries resulting from the

accidental discharge of a pistol purchased from the defendant. 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). This Court held that

> [w]here . . . a pistol accidentally and unexplainably discharges causing injury, the injured party . . . is thereby placed on notice that a defect in the weapon is possible. From that point on, reasonable diligence is required to determine if a cause of action may exist. Six years is ample time to discover any such cause, and failure to do so within the statutory period bars recovery in the absence of other legally recognized disabilities.

Id. at 303, 278 S.E.2d at 335. The accidental discharge of a firearm does not establish all elements of a claim against the seller, but the "facts and circumstances of [such] an *injury* . . . put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party *might* exist." *Id.* at 302, 278 S.E.2d at 335 (emphasis added).

In *Wiggins v. Edwards*, this Court rejected the argument that "the statute . . . began to run" on Plaintiff's claim based on a three-car accident "at the time she was actually able to investigate her case, discover a cause of action existed, and determine who or what caused her injury." 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994). Because the plaintiff "should have been aware of a *potential* claim on the date of the accident . . . the statute of limitations began to run at that time." *Id.* at 129, 442 S.E.2d at 170 (emphasis added).

It is equally clear that a person sexually abused by a priest, once he reaches the age of majority, is on notice of a *potential* claim against the Church, even where he lacks direct evidence of the Church's own negligence. *See Brown*, 326 S.C. at 418, 483 S.E.2d at 482; *see also, e.g., Doe v. Archdiocese of Cincinnati*, 849 N.E.2d 268, 274 (Ohio 2006) ("In this case, at the time the injury occurred, Doe knew he was injured, knew the perpetrator, and knew the employer of the perpetrator. Therefore, he was on notice to

investigate possible tortious conduct of the archbishop and the archdiocese."); *Zumpano v. Quinn*, 849 N.E.2d 926, 930 (N.Y. 2006) ("Plaintiffs possessed timely knowledge of the actual misconduct and the relationship between the priests and their respective dioceses to make inquiry and ascertain relevant facts prior to the running of the statute of limitations."); *Colosimo v. Roman Catholic Bishop of Salt Lake City*, 156 P.3d 806, 811 (Utah 2007) (knowledge of relationship between defendants and abusive priest "was sufficient to trigger a duty to inquire into potential claims against the institutional defendants"); *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 771 (D.C. 1998) (holding that "a plaintiff can be charged with inquiry notice of his claims even if he is not actually aware of each essential element of his cause of action" and that sexual abuse victims were on inquiry notice of claims against the Archdiocese at the time they reached age 18); *Doe v. Catholic Bishop for Diocese of Memphis*, 306 S.W.3d 712, 731 (Tenn. Ct. App. 2008) (holding that "plaintiff Doe, in the exercise of reasonable diligence, would have learned in 1987 about his right of action against the Diocese for negligent supervision and retention"); *Kelly v. Marcantonio*, 187 F.3d 192, 201 (1st Cir. 1999) ("In this case, as soon as plaintiff-appellants became aware of the alleged abuse, they should also have been aware that the hierarchy defendants, as the priests' 'employers,' were potentially liable for that abuse." (applying Rhode Island law)); *Sandoval v. Archdiocese of Denver*, 8 P.3d 598, 605 (Colo. Ct. App. 2000) ("[P]laintiff knew, or with the exercise of reasonable diligence should have known, of any likelihood that defendants' hiring and supervision of the teacher contributed to the harmful circumstances of her assault."); *Mark K. v. Roman Catholic Archbishop*, 67 Cal. App. 4th 603, 612 (1998) ("Plaintiff knew that Llanos was a priest of the church, thereby obligating plaintiff to determine, as

with any employer whose employee has injured a third party, whether the church shouldered some responsibility for the misconduct of its priest."); *Doe v. Archdiocese of Washington*, 689 A.2d 634, 645 (Md. App. 1997) ("[A]ppellant had inquiry notice of his potential claims against the Archdiocese, as the priests' employer. Therefore, for the same reasons that the claims against the priests are untimely, his claims against the Archdiocese must fail."); *Meehan v. Archdiocese of Philadelphia*, 870 A.2d 912, 921 (Pa. Super. Ct. 2005) ("It is undisputed that the plaintiffs were aware that the Archdiocese employed their abusers and that the abuses all occurred on church property. These facts alone were sufficient to put the plaintiffs on notice that there was a possibility that the Archdiocese had been negligent.").

The application of the discovery rule by the Appellate Court and the vast majority of other courts is supported by both legal and practical considerations. Under South Carolina law, as in other jurisdictions, the statute of limitations begins to run before a plaintiff identifies a specific cause of action—or a particular defendant. "[T]he date when a plaintiff learns of a potential new defendant has absolutely no bearing on the timing of the statute of limitations." *Cline v. J.E. Faulkner Homes, Inc.*, 359 S.C. 367, 371, 597 S.E.2d 27, 29 (S.C. Ct. App. 2004) (holding that discovery rule did not save claim against potential co-defendant learned in discovery to be independent contractor); *accord McClain v. Jarrard*, 354 S.C. 218, 220, 580 S.E.2d 763, 764 (S.C. Ct. App. 2003) ("[W]e find no case extending a similar latitude to allow adding additional defendants after the statute of limitations has run where the plaintiff clearly knew of his injury."). As this Court held in *Wiggins*:

> The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another

> alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury.

314 S.C. at 128, 442 S.E.2d at 170 (quoting *Tollison v. B & J Machinery Co., Inc.*, 812 F. Supp. 618, 620 (D.S.C.1993))[2]; *see Doe v. Archdiocese of Washington*, 689 A.2d at 644 ("[K]nowledge of the identity of a particular defendant is not a necessary element to trigger the running of the statute of limitations." (quoting *Conaway v. State*, 600 A.2d 1133 (Md. App. 1992)). In cases not involving alleged sexual abuse, the discovery rule likewise generally starts the statute of limitations against an employer at the same time it begins to run against a known tortfeasor. *E.g.*, *Pulli v. Ustin*, 24 A.3d 421, 425 (Pa. Super. Ct. 2011) ("Since there is no doubt that Husband was immediately aware of his injury, and that he was injured because of a third party, the trial court did not err in determining that the discovery rule did not toll the statute of limitations [for claim against automobile driver's employer]."); *Rieth-Riley Const. Co., Inc. v. Gibson*, 923 N.E.2d 472, 476-77 (Ind. Ct. App. 2010) (holding, in case against employer of other driver in claim based on car accident, "we decline to extend the discovery rule to apply to cases like this one where the indeterminate fact is not the existence of an injury, but rather the identity of a tortfeasor. We find that we are not alone in our decision." (citing various cases)).

Only in unusual circumstances will a plaintiff be aware, in advance of litigation, of an employer's prior notice of an employee's unfitness; for all other cases, this Court's ruling will effectively abolish the statute of limitations. There would be no time limit for

[2] The significance of the date of the injury for accrual of claims based on child sexual abuse was reaffirmed by the Legislature's enactment, in 2001, of Section 15-3-555: "An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later." Petitioners' claims are also time-barred under this statute.

a claim against a school based on a teacher's injury to a child, for example, where the plaintiff was unaware that the teacher had previously been reprimanded for using corporal punishment. The statute of limitations would never start running on a claim against a retailer whose employee attacked a customer, if the retailer had notice of the employee's violent temper. Similarly, the parents of a child who starts a destructive fire could not assert the statute of limitations against a claim that they had negligently entrusted matches to their child, if they had ever previously caught the child playing with matches. Under this Court's ruling, the plaintiffs in these scenarios would not be subject to the statute of limitations, so long as they remained ignorant of one part of one element of their negligent supervision or entrustment claims.

For any case where liability depends on the foreseeability of harm to the defendant—potentially *any* tort claim—the statute of limitations will be tolled indefinitely. This consequence is not limited to negligent supervision or negligent entrustment claims, notwithstanding plaintiffs' obvious knowledge of their injury and of a potential defendant. For instance, a grocery store's liability for a customer's slip-and-fall claim hinges on notice of a dangerous condition: "[O]ne seeking recovery for injuries sustained in a fall caused by a foreign substance on a storekeeper's floor must establish that the storekeeper had actual or constructive notice that the substance was on the floor." *Simmons v. Winn-Dixie Greenville, Inc.*, 318 S.C. 310, 311-12, 457 S.E.2d 608, 609 (1995); *see also Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 331, 673 S.E.2d 801, 803 (2009) (liability of possessor of land depends on whether "possessor should anticipate the harm"). Under this Court's reasoning, if a grocery store manager knew the substance was on the floor, but never reveals this notice fact to the plaintiff, the statute of

limitations never runs. If the grocery store security camera footage shows that a grocery store employee saw the dangerous condition but failed to clean it up, the statute of limitations would be tolled unless the store shared this video with the plaintiff. The plaintiff's allegations that the grocery store "engaged in a systematic practice of secrecy and concealment of their knowledge" of the dangerous condition, *slip op.* at 8, would be substantiated absent affirmative disclosure by the store of this notice evidence. All this, even though the plaintiff knows that he slipped and fell in the grocery store, and therefore that "some claim against [the grocery store] **might** exist." *Epstein*, 363 S.C. at 376, 610 S.E.2d at 818.

Indeed, the Court's decision does not mention a plaintiff's duty of due diligence to gain the benefit of the discovery rule, and the plaintiffs' complaints offer no explanation for why these lawsuits were not filed sooner.[3] *See Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 330, 534 S.E.2d 672, 677 (2000) (citing, *inter alia*, *Brown v. Pearson* for its application of "the discovery rule's requirement of reasonable diligence"); *S. Carolina Farm Bureau Mut. Ins. Co. v. Kelly*, 345 S.C. 232, 237, 547 S.E.2d 871, 874 (Ct. App. 2001) ("To claim the protection of the discovery rule, the injured party must have been reasonably diligent in discovering whether a cause of action existed."). To the extent Petitioners claim the delay in the filing of these actions is excused by the doctrine of fraudulent concealment, what they allege has been "concealed" is, in essence, an admission of liability by Respondents. "A wrongdoer is

[3] *Cf. Austin v. Conway Hosp., Inc.*, 292 S.C. 334, 339, 356 S.E.2d 153, 156 (S.C. Ct. App. 1987) ("[Plaintiff] obviously knew some claim might exist at the time she consulted the lawyer. The record does not reflect that anything of significance occurred between the time she observed these events and the time she consulted the lawyer. She therefore must have known some claim might exist at the time she observed these events. The statute of limitations began to run from this point, not when she consulted the lawyer or developed a theory of recovery . . . .").

not legally obliged to make a public confession, or to alert people who may have claims against it, to get the benefit of a statute of limitations." *Zumpano*, 849 N.E.2d at 930 (2006).

> Plaintiff asserts that, as his fiduciary, the church had an obligation to disclose the 1973 and 1974 accusations against Father Llanos and breached that duty by failing to come forward with this information. The assertion begs the question. The wrongful conduct alleged against the church was its inaction in the face of the accusations against Father Llanos. Thus, what the church failed to disclose was merely evidence that the wrong had been committed. *If plaintiff's approach were to prevail, then any time a tortfeasor failed to disclose evidence that would demonstrate its liability in tort, the statute of limitations would be tolled under the doctrine of concealment.* Regardless of whether the issue is characterized as fraud by concealment or equitable estoppel, this is not the law.

Mark K., 67 Cal. App. 4th at 613.

There is not an abundance of South Carolina caselaw concerning fraudulent concealment as a basis to toll the statute of limitations. *See* "What constitutes concealment which will prevent running of statute of limitations," 173 A.L.R. 576 (citing only one South Carolina decision). What is clear is that the doctrine does not extend the statute of limitations any more than the discovery rule: "Fraudulent concealment of a cause of action generally tolls the statute of limitations until the cause of action is discovered or might have been discovered by the exercise of diligence." 54 C.J.S. Limitations of Actions § 138; *see Cevenini*, 707 A.2d at 774 ("[I]t is a well established defense to a claim of fraudulent concealment that the plaintiff knew, or by the exercise of due diligence could have known, that he may have had a cause of action." (internal ellipses and quotation marks omitted)).

"Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction." *Lawson v. Citizens & S. Nat. Bank of S. C.*, 259 S.C. 477, 481-82, 193 S.E.2d 124, 126 (1972). The "duty to disclose" in *Strong v. University of South Carolina School of Medicine*, referenced in this Court's opinion, "flows from the patient-physician relationship." 316 S.C. 189, 192, 447 S.E.2d 850, 852 (1994). Petitioners have claimed a "special relationship" with Respondents, apparently confusing this basis for a duty to warn with the fiduciary relationship that may support a duty to disclose. *See Rogers v. S. Carolina Dep't of Parole & Cmty. Corr.*, 320 S.C. 253, 256, 464 S.E.2d 330, 332 (1995) (duty to warn); *Anthony v. Padmar, Inc.*, 320 S.C. 436, 448, 465 S.E.2d 745, 752 (S.C. Ct. App. 1995) (fiduciary's duty to disclose material information). Respondents deny the existence of a fiduciary relationship, but Petitioners have failed to plead any facts that reflect such a relationship, either at the time of the alleged tortious conduct or during the decades following that would be necessary to support their claim of later fraudulent concealment. *See Strong*, 316 S.C. at 191-92, 447 S.E.2d at 852 ("When the physician-patient relationship ends, the duty to disclose, which is the basis of fraudulent concealment claim, ceases to exist absent extenuating circumstances . . . ."). Even assuming that Respondents have engaged in acts of "secrecy" in derogation of a duty to disclose, this in no way deprived Petitioners of notice of their potential claims.

C. CONCLUSION

For these reasons, Respondents respectfully request that this Honorable Court:

(A) Grant this Motion;

(B) Vacate its Order of January 8, 2014;

(C) Enter an Order affirming the trial court's dismissal of Plaintiffs' actions on the basis of the statute of limitations; and

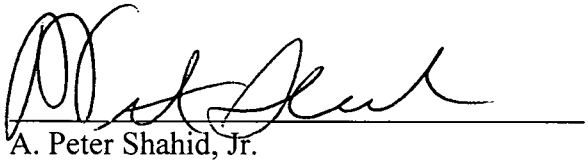
(D) Grant such other and further relief as may be just and proper.

Without waiving the argument that Petitioners' tolling argument, having not been presented to the trial court, was not preserved for appeal, Respondents respectfully request, in the alternative, that this Court afford the parties an opportunity to fully brief and argue the statute of limitations issues raised in this Court's ruling.

Respectfully submitted,

The Bishop of Charleston, A Corporation Sole, and The Bishop of The Diocese of Charleston, in His Official Capacity

By their attorneys:



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The Bishop of Charleston, A Corporation Sole, and The Bishop of The Diocese of Charleston, in His Official Capacity, Respondents.

CERTIFICATE OF SERVICE OF
RESPONDENTS' PETITION FOR REHEARING

I HEREBY CERTIFY that a true and correct copy of the Respondent's Petition for Rehearing has been served via U.S. Mail this 22nd day of January 2014 to: **Gregg E. Meyers, Esquire** 366 Jackson St., St. Paul, MN 55101

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