

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger M. Young, Circuit Court Judge

---

Appeal No.: 2011-196768A

---

**RECEIVED**

FEB - 9 2012

**S.C. Supreme Court**

John Doe 2 and Jane Doe 4.....Respondents,

v.

The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of Charleston,  
in his official capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of  
Charleston, in his official capacity; Robert J. Barker, former Bishop of Charleston, in his official  
capacity,.....Appellants.

---

**APPENDIX**

---

A. Peter Shahid, Jr.  
89 Broad Street  
Charleston, South Carolina 29401  
(843) 853-4500  
Attorney for the Petitioners

Other Counsel of Record:

James L. Bruner, Esq.  
Bruner, Powell, Robbins, Wall & Mullins, L.L.C.  
Suite 200  
1735 St. Julian Place  
PO Box 61110  
Columbia, SC 29204

Susan T. Wall, Esq.  
McNair Law Firm, P.A.  
Post Office Box 1431  
Charleston, SC 29402

Gregg Meyers, Esq.  
Jeff Anderson and Associates, Inc.  
1 Poston Road, Ste. 110  
Charleston, SC 29407.

## INDEX

|                                                                     |     |
|---------------------------------------------------------------------|-----|
| Summons and Complaint.....                                          | 1   |
| Petitioners' Motion to Dismiss.....                                 | 78  |
| Memorandum in Support of Petitioners' Motion to Dismiss.....        | 85  |
| Order Granting in Part and Denying in Part Motion to Dismiss.....   | 180 |
| Petitioners' Motion to Reconsider.....                              | 192 |
| Order Denying Motion to Reconsider.....                             | 221 |
| Notice of Appeal.....                                               | 223 |
| Respondents' Motion to Dismiss Appeal.....                          | 225 |
| Petitioners' Return and Opposition to Motion to Dismiss Appeal..... | 231 |
| Order Granting Motion to Dismiss Appeal.....                        | 284 |
| Petitioners' Petition for Re-Hearing.....                           | 286 |
| Order Denying Petition for Re-Hearing.....                          | 294 |

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe 2 and Jane Doe 4,

Plaintiff(s)

vs.

The Bishop of Charleston a Corporation Sole,  
et al.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010- CP - 10 - 5520

Submitted By: Gregg Meyers  
Address: 1 Poston Road Suite 110 Charleston SC 29407

SC Bar #9908  
Telephone # 843-556-025  
Email: attygm@gmail.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

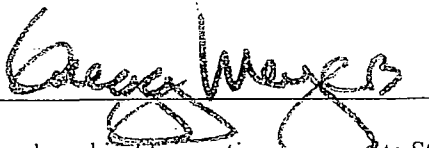
\*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                              |                                                |                                                |                                                       |                                        |                                                         |                                      |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|------------------------------------------------|------------------------------------------------|-------------------------------------------------------|----------------------------------------|---------------------------------------------------------|--------------------------------------|--|
| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199)                                                                                                                                                                                                | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br><input checked="" type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)                                                                          | <b>Torts - Personal Injury</b><br><input type="checkbox"/> Assault/Slander/Libel (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399) | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)                                                                                                                                                                                                                  |                                              |                                                |                                                |                                                       |                                        |                                                         |                                      |  |
| <b>Inmate Petitions</b><br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Sexual Predator (510)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)                                                                                                                                                                                                                                                    | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Other (799) | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstatement Driver's License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture (840)<br><input type="checkbox"/> Other (899)                                                                                                          | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Administrative Law Judge (980)<br><input type="checkbox"/> Public Service Commission (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |                                              |                                                |                                                |                                                       |                                        |                                                         |                                      |  |
| <b>Special/Complex /Other</b><br><table border="0"><tr><td><input type="checkbox"/> Environmental (600)</td><td><input type="checkbox"/> Pharmaceuticals (630)</td></tr><tr><td><input type="checkbox"/> Automobile Arb. (610)</td><td><input type="checkbox"/> Unfair Trade Practices (640)</td></tr><tr><td><input type="checkbox"/> Medical (620)</td><td><input type="checkbox"/> Out-of State Depositions (650)</td></tr><tr><td><input type="checkbox"/> Other (699)</td><td></td></tr></table> |                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Pharmaceuticals (630) | <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Unfair Trade Practices (640) | <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Out-of State Depositions (650) | <input type="checkbox"/> Other (699) |  |
| <input type="checkbox"/> Environmental (600)                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <input type="checkbox"/> Pharmaceuticals (630)                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                              |                                                |                                                |                                                       |                                        |                                                         |                                      |  |
| <input type="checkbox"/> Automobile Arb. (610)                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <input type="checkbox"/> Unfair Trade Practices (640)                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                              |                                                |                                                |                                                       |                                        |                                                         |                                      |  |
| <input type="checkbox"/> Medical (620)                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <input type="checkbox"/> Out-of State Depositions (650)                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                              |                                                |                                                |                                                       |                                        |                                                         |                                      |  |
| <input type="checkbox"/> Other (699)                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                              |                                                |                                                |                                                       |                                        |                                                         |                                      |  |

Submitting Party Signature:



Date:

7-8-10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 10-CP-10-5520

John Doe 2, and Jane Doe 4, )  
 )  
Plaintiffs, )

v. )

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

Negligence; Gross Negligence  
Fraudulent Concealment  
Civil Conspiracy  
Professional Negligence  
Breach of Fiduciary Duty  
Judicial Estoppel  
Unfair and Deceptive Trade Practices

Jury Trial Requested

FILED  
2010 JUL -9 PM 2:11  
JULIE J. ARMS, CLERK OF COURT  
BY

### Summons

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action. A copy of the complaint is served upon you with this summons.

Your answer to the complaint is to be served upon the attorney for the plaintiff at Post Office Box 1297, Charleston SC 29402.

According to the South Carolina Rules of Civil Procedure, which govern litigation, you are required to appear and defend yourself in this action by making and serving an answer to this complaint within thirty (30) days after the complaint is served

upon you. The thirty days begin to run from the date after this summons and complaint are served upon you; the date the service is made is excluded.

If within that time you fail to appear and defend as you are required to do by the Rules of Civil Procedure, the plaintiff in this action shall apply to the Court for the relief demanded in this Complaint and judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

Gregg Meyers  
1 Poston Road Suite 110  
Charleston SC 29407

Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 10-CP-10-5520

John Doe 2, and Jane Doe 4, )

Plaintiffs, )

v. )

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

Defendants. )

Negligence; Gross Negligence  
Fraudulent Concealment  
Civil Conspiracy  
Professional Negligence  
Breach of Fiduciary Duty  
Judicial Estoppel  
Unfair and Deceptive Trade Practices

Jury Trial Requested

FILED  
2010 JUL -9 PM 2:11  
JULIE J. ARMSTRONG  
CLERK OF COURT  
SC

### Complaint

For their complaint, the plaintiffs allege:

#### Parties and Jurisdiction

1. Plaintiffs are adult citizens and residents of a state other than South Carolina.

Each was sexually molested as a child by a priest of the Diocese of Charleston, James W. McCarthy, when James McCarthy was assigned to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971.

2. Pseudonyms are used for the plaintiffs due to the sexual abuse injury, which is the subject of this complaint. The defendants will be informed of the identity of the plaintiffs

upon their agreement to reciprocate in discovery and to maintain plaintiffs' identities as confidential in the public record.

3. James W. McCarthy was assigned by the defendants to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971. During his time at St. William, defendants knew, or should have known, that James McCarthy was sexually abusive to children.

4. The Bishop of Charleston, a Corporation Sole, is the entity that governs the activities of the various entities comprising the Catholic Church throughout South Carolina. It is referred to in this complaint as the Diocese. The Diocese does business in Charleston County, owns property in Charleston County, and has its headquarters in Charleston County. The Diocese operated St. William Parish, a Catholic Church in Ward, S.C., and although the acts associated with the abuse of the plaintiffs took place in and around Ward, S.C., in Saluda County, the acts of negligence and recklessness by others with the Diocese, in exposing the plaintiffs to the risk presented by James McCarthy, occurred in Charleston County. As a result, venue is proper in either Charleston County or Saluda County.

5. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County, South Carolina. He is sued in his official capacity, and is a party necessary for complete relief. All persons working for the Diocese are subordinate to the Bishop.

6. Prior to Bishop Guglielmone, from October 2007, to March 2009, the Diocese had no Bishop, and was administered under the Code of Canon Law by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina.

7. Prior to Administrator Laughlin, from July 1999 to August 2007, the Bishop was Robert J. Baker, presently a resident of, and citizen of, Alabama.

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

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

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

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

12. John Doe 2 and Jane Doe 4 were each similarly situated as other individuals ostensibly within the definition of a class certified by a South Carolina court as part of a class action. However, by agreement among the defendants, the plaintiffs received no notice of the class action, thus had no opportunity to be heard or participate in the litigation, either in person or through counsel. By agreement among defendants, notice given in the class action was designed to be insufficient as to the plaintiffs, so as to permit the Diocese to later argue that the class action precluded any and all claims for abuse, by preventing the plaintiffs from either participating in the class action or being able to remove themselves from the class action by opting out. In being within the putative definition of the class as the defendants agreed to define the class, the plaintiffs, along with other members of that class who resided outside of South Carolina, ostensibly were formerly represented by, until in 2007 they was abandoned by, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC. Alternatively, and at minimum, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC assumed duties as to the plaintiffs by defining the class so as to ostensibly

include them. The defendants conspired against the plaintiffs to cause them special harm in the form of the effort to preclude them from making claims. The representation they were given in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

13. This action is not alleged as a class action. It involves as plaintiffs two persons who were, until they were each abandoned by their counsel, the Richter defendants, putative members of (a) a class as alleged in a state court class action, (b) a class settlement agreed to among defendants, and (c) a class approved by a state court. But for the Richter defendants having breached their duties to plaintiffs by abandoning the plaintiffs, in agreement with and full complicity with the other defendants, the class action would ostensibly have included the plaintiffs. A number of other individuals have made similar allegations of having been excluded by design from the class action, and this complaint may be amended to state a class action.

14. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

15. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

16. Richter & Haller, LLC did business in Charleston County, South Carolina at all times pertinent to this complaint, and had its principal place of business in Charleston County.

17. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to as the "Richter defendants," as noted above in paragraph 13.

### **Nature of Wrongdoing**

18. This complaint sets out various causes of action built around four different levels of disregard for others and corruption. First, the disregard by the Diocese defendants in operating a system which actively disregarded the risks to children and families for sexual assault of children by their priests and other employees, and which then actively, and fraudulently, concealed the abuse that happened and the dangers to children it solicited into danger. Second, corruption and collusion by lawyers to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy for the Catholic Church a layer of what was hoped would be protection from civil lawsuits almost certain to keep coming over that abuse and the fraudulent concealment of abuse by the Diocese. Third, the corruption of particular lawyers who assumed a duty to act for sexual abuse victims, including the plaintiffs, but who then acted in a professionally negligent way, willfully and wantonly abandoning their clients so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese in exchange for their cooperation in trying to protect the Church from future cases, and from claims by these plaintiffs and other sexual abuse victims. The danger to the Diocese of future cases was that future cases might be brought by lawyers actually adverse to the Diocese, as opposed to the lawyers who entered into the collusive class agreement with them. Fourth, overt misrepresentations of fact by the Diocese defendants to the court, which approved the class action settlement.

19. So confident were the corrupt lawyers in their ability to manipulate the state court judge they had selected and maneuvered the cases before, and so confident were the corrupt lawyers in gaining the cooperation of the Diocese defendants and their supposed

adversary lawyers, that the corrupt lawyers, the Richter defendants, calculated they could submit even blatantly false and inflated time records to justify their large fee, and that no objection to them would be raised by the Diocese defendants. In exchange for their cooperation, the Diocese (a) agreed to take no position on whether the class should be certified, (b) agreed not to mention any of the false time records submitted by the Richter defendants, (c) agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee, (d) agreed to make no objection to an unethical fixed fee for class counsel while, simultaneously, compensation to the class of victims was variable, (e) agreed to make no objection to the fee being awarded before to any class member claimant was identified, and before any class member claimant was paid, and (f) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law. In turn, the Diocese defendants overtly misrepresented to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement, and once the court relied on that representation the Diocese defendants ignored that they made the representation.

20. Of the four levels of wrongdoing alleged, the causes of action which apply hinge, in part, on whether or not the plaintiffs are regarded as being bound by the *res judicata* effect of the class action to which the Diocese was party. As alleged more fully below, plaintiffs ostensibly fall within a class defined in that action, but the notice given to the classes, by design, was changed by all defendants so as to exclude notice to the plaintiffs. As a practical matter, notice was revised so it would go only to a subset of the approved classes; those class members living in and immediately adjacent to South Carolina. The

change to the extent of the proposed notice was noted to the state court but ignored when notice was approved. All defendants cooperated together to better protect the Diocese by asking for only notice that would be insufficient to notify all members of the class.

21. The state court which approved the class may have provided for absent members of the class, but the Diocese contends the order does not mean what it says, and now argues it has no duty to absent members of the class that received no notice of the class settlement, to perpetuate the fraud the Diocese defendants intended to achieve through the class action and by cooperating with the Richter defendants.

22. Plaintiffs are absent members of a class who, by design among defendants, received no notice of the class action. As such, plaintiffs should not be bound by any *res judicata* effect of the class action because the procedure used did not adequately insure the protection of their interests, because their representation by the Richter defendants was inadequate and fell below the applicable standard of care, and because the state court order appears to contemplate the insufficient notice by holding that the plaintiffs is not properly bound by any *res judicata* effect, as set forth more fully below.

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

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

24. In this action, no review is sought of the decisions of the state court in approving the insufficient notice given to the class. No change is sought as to the class action. An interpretation is sought as to the preclusive effect of the class action as applied to the plaintiffs.

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

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

26. The defendant Diocese employed James McCarthy as a priest.

27. In his capacity as priest, James McCarthy was placed by the Diocese defendants in a position of trust and confidence, and had access to the plaintiffs and other children. In that capacity, James McCarthy sexually molested the plaintiffs and other children.

28. Prior to plaintiffs being molested, the Diocese defendants became aware that James McCarthy was dangerous to children. The Diocese defendants moved James McCarthy from place to place within the Diocese, and thereby facilitated his access to young people whom he could molest.

29. Alternatively, the Diocese defendants operated various schools, activities, and churches that were intended to attract children and families. The Diocese defendants encouraged people, including plaintiffs, to use their facilities, and to attend the various activities and functions offered on its premises. In making that invitation, the Diocese defendants assumed the duty to ensure that its premises were safe from reasonably

foreseeable dangers, by representing nothing to the contrary to the public. The Diocese defendants particularly owed a duty to the plaintiffs, who were minors, and their parents, a greater degree of care because as children the plaintiffs were unable to fully appreciate risks and danger. The Diocese defendants represented to its invitees and their parents or guardians, including the plaintiffs, that its facilities and its priests were safe, and that persons would be would be protected form harm when using its facilities and when interacting with its personnel.

30. After he was moved to Ward, S.C., James McCarthy molested the plaintiffs.

31. The Diocese defendants negligently supervised James McCarthy. The Bishop was grossly negligent in supervising James McCarthy. Moving him without proper warning to children and their parents was grossly negligent. As a proximate result of the negligence and gross negligence by the Diocese defendants, plaintiffs were sexually abused by James McCarthy.

32. The Diocese defendants were negligent in failing to warn the plaintiffs or their parents about James McCarthy. The Bishop performed that duty in a grossly negligent manner.

33. The Diocese defendants knew or should have known that James McCarthy was a pedophile. Despite that knowledge, the Diocese defendants, including Bishop Guglielmone, Bishop Baker, and Rev. Monsignor Laughlin, made no effort, or no competent effort, to ascertain how many children James McCarthy had molested, and no effort, or no competent effort, to locate victims of James McCarthy. If the Diocese did make such an effort, it assumed the duty but performed it negligently. Robert Baker and Rev. Monsignor Laughlin performed that duty in a grossly negligent manner.

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

35. As a result of the negligence and gross negligence by the Diocese defendants in failing to either prevent abuse or identify abuse victims by its agent or employee James McCarthy, the problems for the plaintiffs were first caused, and then exacerbated by the delay.

36. As set forth more fully below, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants, among other things, accounts for the delay in this action being brought against the Diocese defendants. The most recent act of fraudulent concealment by the Diocese defendants was in 2009. This action is brought within three years of that most recent act of concealment and fraudulent conduct by the Diocese defendants.

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

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

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

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

40. The Diocese defendants had a duty to discover and to disclose to plaintiffs or their parents their knowledge that James McCarthy had a sexual interest in children. That duty arises from (a) the preexisting fiduciary relationship between the plaintiffs and the Diocese defendants, which relationship the Diocese solicited; (b) from the parents of the plaintiffs having expressly reposed a trust and confidence in the Diocese defendants so as to entrust the plaintiffs to James McCarthy, which placed the plaintiffs in a vulnerable position with James McCarthy. That position of trust and confidence was implicit from those circumstances of plaintiffs being entrusted to James McCarthy, as well as from the nature of the dealings between the plaintiffs, their parents, and the Diocese defendants, who promoted that the plaintiffs' parents should leave the plaintiffs in the care and custody of James McCarthy, (c) from the essential nature of the Diocese defendants and their inducement to the plaintiffs' parent to have the plaintiffs participate in activities with James McCarthy as being beneficial to the plaintiffs, or at least not harmful to them, (d) from the secrecy provisions in the Code of Canon Law and the 1962 document titled "Instruction," which charges the Diocese to discover, but then to maintain secrecy about, "other persons solicited" by any person such as James McCarthy, who commits the "unspeakable crime" of sexually abusing a child, and (e) by the undertaking which the Diocese defendants assumed, negligently (and in the case of the individuals included in the Diocese defendants designation, grossly negligently), during 2005 - 2010, to locate victims such as the plaintiffs.

41. The plaintiffs were sexually abused by James McCarthy after 1962.

42. Concerning each of (a) the undisclosed dangers James McCarthy represented to the plaintiffs, and (b) assisting to repair the damage done to the plaintiffs by James McCarthy, the Diocese defendants were obligated to the plaintiffs to engage with them or their parents on their behalf in perfect good faith and with full disclosure.

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

44. Specifically, the Diocese defendants created, as embodied in the Code of Canon law, which required it, an archive (Canon 486), accessible only by the Bishop and chancellor (Canon 487). Documents may not be removed from the archive except for a brief time, and only by permission of either the Bishop or the moderator of the curia (Canon 488). Canon 489 requires that a Secret Archive also be created. In it “documents are to be kept secret” and “protected most securely.” Canon 489, Section 2 states: “Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained.” Only the Bishop is to have the key to the secret archive, and documents are not to be removed from the archive (Canon 490). The bishop is authorized to include in the secret archive any matter which can be regarded as scandalous.

45. Matters related to agents and employees of the Diocese sexually abusing children, including James McCarthy's sexual abuse of children including plaintiffs when they were children, were regarded as scandalous, and were maintained in the Secret Archive.

46. In 1962 the Diocese defendants expanded on the secrecy required concerning sexual abuse, publishing an "Instruction" which was to be stored in the Secret Archive. Instruction, page 1. In the instruction, matters involving priests who "solicit or provoke" (p. 1 ¶ 1) a penitent "toward impure and obscene matters" (p. 1 ¶ 1), "which is also silence" (¶ 11) and deemed "a secret of the Holy Office" (p. 3 ¶ 11), "under the penalty of excommunication" (p. 3 ¶ 11). The accused, the accusers, and any witnesses are to be given "The oath of keeping the secret." (p. 4 ¶ 12. See also, p. 5 ¶ 23 and p. 6 ¶ 28).

47. Plaintiffs each fit within the "penitent" referred to in the Instruction.

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

49. James McCarthy was, and John Doe 2 is, male. Jane Doe 4 is female. Thus, the conduct by James McCarthy to the plaintiff John Doe 2 qualifies under the 1962 Instruction as "the worst crime."

50. Among other things, the 1962 Instruction directs the Diocese defendants to assume the duty of locating "other persons solicited by the same confessor" (p. 7 ¶ 29), in this instance, other persons solicited by James McCarthy. The Instruction at p. 9 ¶ 37 also refers to an "Instruction of the Holy Office, February 20, 1867," in directing the

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

51. The Diocese defendants assumed the duty to locate victims ascribed to it by the 1962 Instruction, but performed that duty in a grossly negligent manner. The Diocese defendants failed to locate either plaintiff, failed to locate many other abuse victims, and made no competent inquiry to locate them. The Diocese defendants purposefully avoided making the type of inquiry that would have elicited discovery of the plaintiffs.

52. The 1962 Instruction was approved by the “Most Holy Father John XXIII” on March 16, 1962, according to page 16 of the 1962 Instruction.

53. In the Appendix to the 1962 Instruction are set out the terms of the secrecy to be observed for matters such as the sexual abuse of the plaintiffs. In essence, the oath provides for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained “under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good,” unless expressly approved “by the Supreme Pontiff,” according to page 17 of the 1962 Instruction.

54. “Whatever type of pretext” overtly endorses lying to civil authority, even lying under oath, to this or any other civil tribunal. No qualification is made in the 1962 Instruction for complying with civil authority.

55. Unless the Pope himself has specifically approved otherwise, secrecy was, until this complaint, to have been maintained not only by the plaintiffs, but also by every member of the Diocese defendants, and by even witnesses to sexual abuse. That secrecy is to be made despite any law, court order, or oath to which would otherwise require

disclosure. Under the 1962 Instruction, the highest obligation, higher than any law, oath, or court order, is to maintain secrecy for the benefit of the Diocese, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has specifically instructed otherwise, the Diocese defendants can all be expected to be obedient to the 1962 Instruction, to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse. The Diocese defendants have, to date, done so.

56. The call for secrecy in the 1962 Instruction and in the Code of Canon law constitutes spoliation of evidence, as well as fraudulent concealment.

57. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the defendants as to James McCarthy's sexual abuse of the plaintiffs. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent sexual abuse of the plaintiffs, or to ascertain that the plaintiffs were victims of the abuse by James McCarthy.

58. As courts began to require the Diocese, despite its commitment to secrecy and deception, to be accountable for sexual abuse, the Diocese had to reach a new level of deception and manipulation to limit the damage to the Diocese from its having to take responsibility for its history of sexual abuse, and to as much as possible to conceal, limit, and minimize the extent of abuse, so as to minimize its financial accountability for its history of abuse and concealment. The Diocese engaged with other defendants to conspire to do so, as set forth below. The acts of conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages

from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the sexual abuse. The conspiracy cause of action concerns deliberate exclusion from the class, so hinges on the proper interpretation of the orders in the class action, and whether the actions of the Richter defendants constituted merely greed, fraud, and self-interest, as opposed to professional negligence, in excluding from the class action, by design, the plaintiffs and many others who were within the class definition. If there was professional negligence, then the acts of professional negligence predominate, and the damages from the exclusion are properly paid by the Richter defendants. If the actions do not rise to professional negligence, and the Richter defendants and Diocese defendants were merely corrupt, then the damages for the exclusion are properly shared among all defendants for their conspiratorial actions in excluding the plaintiffs by design. And if the plaintiffs are not precluded from their claims against the Diocese by the *res judicata* effect of the class action, and the Richter defendants were merely corrupt, then the plaintiffs require no relief for either professional negligence or conspiracy.

59. This cause of action presumes that the plaintiffs are not precluded in making this claim by any prior litigation brought against the Diocese, for lack of due process in those proceedings, lack of competent representation sufficient to bind these plaintiffs, the collusive nature of the class settlement, or because the terms of the class action order do not apply to them.

60. The plaintiffs are entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese defendants in actively maintaining secrecy and

thus failing to perform a proper review for McCarthy's victims, including the plaintiffs, or in performing that duty in a negligent manner.

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

61. Allegations above, other than ¶ 57, are incorporated as if fully stated. This cause of action presumes the class action order is interpreted to bind the plaintiffs to its *res judicata* effect, despite insufficient due process and for which (by design) they got no notice, so presumes the plaintiffs are properly precluded from bringing claims against the Diocese related to sexual abuse, and presumes that class counsel was corrupt only to a degree insufficient to constitute professional negligence.

62. Defendants have conspired with others to injure the plaintiffs, and those actions have caused special damage to the plaintiffs.

63. The defendants have acted in numerous ways, which reflect the joint assent with minds of other persons to injure the plaintiffs, and have taken overt acts to pursue the common design to injure the plaintiffs.

64. Some actions that have been taken have been legal; other actions were legal but violated professional standards in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the plaintiffs by making sure they and all other out of state putative class members could not participate in the state court class action and could be prevented from bringing their own action. In exchange for a sufficient amount of money directed to corrupt lawyers as a fee, the plaintiffs' one-time lawyers, the Richter defendants, agreed to act against the plaintiffs'

interests, and to collaborate instead to act against the plaintiffs' interest and in the interest of the Diocese.

65. Specifically, in exchange for a sufficient amount of money as a fee, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, plaintiffs' one-time lawyers, the Richter defendants, agreed to abandon the plaintiffs, quietly dropping their request to give nationwide notice to class members such as them, even though they had defined class action classes so as to ostensibly include them and had proposed nationwide notice. The notice designed not to reach the class as defined, and designed to exclude the plaintiffs, breached a duty to the plaintiffs assumed by the Richter defendants, either from an attorney-client relationship or a fiduciary duty assumed when bringing the class action and defining it as they chose to do.

66. The Richter defendants elected to abandon their out of state putative class member clients, and dropped their request for nationwide notice to their out of state class members, so as to prevent the plaintiffs, and others similarly situated, from finding out about the class action and from making claims against the class fund. In the class allegations, joinder was said to be impracticable because the number of victims of priest sexual abuse "may exceed the hundreds," an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36 and in the identical John Doe #53 Complaint redundantly filed in 06-CP-18-1636.

67. If "too many" of those hundreds of victims participated in the class action, the Richter defendants would jeopardize the large fee the Diocese had agreed to enable them to get, and the Diocese might not get the ostensible protection from future suits it was colluding to try to obtain at the lowest possible cost.

68. For the Richter defendants, both their fee, and the interests of the Diocese, were more important than the interests of their absent putative class member clients.

69. In exchange for the Richter defendants abandoning the plaintiffs and all of their other putative class member clients living outside of South Carolina, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCPP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCPP 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which used to support the fee request by the Richter defendants, (e) agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to counsel before any class member's claim was known or the class was even identified, (g) acquiesced in the unethical conduct of abandoning all out of state class members by agreeing to give them no notice of the class resolution, and (h) agreed to maneuver, in violation of SCRCPP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the class action, to a state court judge known to have extensive social and professional ties to the Richter defendants, in the aspiration that a more pliable oversight would be received for the class settlement.

70. The Diocese defendants undertook a duty to the plaintiffs to identify abuse victims such as plaintiffs and negotiated, in June, 2006, a class resolution to what was

referred to as “spousal &/or parent claims deriving from victims abused,” in the Charleston Mediated Settlement agreement at ¶ 1. At that time no class of “spousal &/or parent claims” had been certified or even alleged. To get approval of the class settlement, the Diocese defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County. In disobeying SCRCP 23 in Charleston County, and in judge-shopping in Dorchester County, the defendants violated judicial norms and rules. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which duplicated an existing Charleston County complaint alleging a class, resulting in the identical case pending simultaneously in circuit court in both Charleston County and Dorchester County. That was done as the means of judge shopping. The Diocese defendants also agreed to remain silent so as to enable the Richter defendants to submit false information to the court.

### **Details of the Conspiracy**

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

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

73. In May 2005, the Richter defendants filed for an individual abuse victim an action in the Charleston County Court of Common Pleas styled *John Doe #66 v. The*

*Bishop of Charleston, et al., 05-CP-10-2053.* No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

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

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

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

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

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

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

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

81. From December 2005 until June 2006, the Richter defendants made no effort to seek class certification for the class they had alleged in the December class action complaint in Charleston County, nor did any other defendants. In that time the public records show there were no motion hearings held, in any of the three cases mentioned above. When the Charleston County court attempted to schedule pending motions, and sent out hearing notices, the parties collaborated to ask that the motions be continued rather than heard.

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

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

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

85. The agreement reached in that mediation is attached to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to SCRCP 10(c). By its terms the agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 05-CP-10-2053, 05-CP-10-3293, and the case alleging a class action, 05-CP-10-4913. The settlement purports to include the plaintiffs.

86. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 mediation of the Charleston cases.

87. The typewritten document was approved by The Vatican in January 2007.

88. The settlement of the agreement was funded by approval of The Vatican.

89. As reflected in the attached handwritten agreement, the defendants agreed that the individual plaintiffs and the purported class representative would split \$460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese would pay only \$460,000.

90. Claims of absent class members were proposed to be resolved on terms materially different than the terms which the purported class representative or representatives received. Instead of a cash payment the same, or similar to, what the purported class representatives were to receive, absent class members were to be required to submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive. Class members had to relinquish all rights for review to qualify for the arbitration.

91. As alleged below, not fewer than seven devices were chosen by overt agreement of the defendants to further the conspiracy against plaintiffs, and other absent putative members of the classes, from being included in any recovery for the class, and to limit the

class recovery from being “too much.” If the classes included “too many” claimants, the Diocese would be entitled to withdraw from the agreement. The Diocese defendants wanted the class settlement approved so they could later argue, as they in fact have argued, that no other sexual abuse claims which arose prior to the class approval could be made against the Diocese. The Diocese defendants knew that the class settlement had been negotiated with an “adverse” attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar claim against a different Diocese. The Richter defendants wanted to assure themselves of a large fee without jeopardizing that fee by getting too great a recovery for abuse victims against defendant Richter’s own Diocese. So all defendants conspired to create methods to be able to limit the number of class members who could make claims and to limit the amount class members would recover. Doing so established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

#### **Conspiracy Technique One: Judge Shopping to Pick the Judge**

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

93. Instead of complying with SCRCP 23, and submitting the attached 2006 Charleston class action settlement for approval to a judge in Charleston County, the defendants agreed to cooperate so as to have the Richter defendants file, and the Diocese defendants accept service of, newly filed class action cases in Dorchester County, filed August 15, 2006 (06-CP-18-1310 and 06-CP-18-1311), and then the Charleston class action case, *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al.*, 05-CP-10-4193, was redundantly re-filed in Dorchester County on October 6, 2006, with the same caption (other than the changed county name and case number 06-CP-18-1636), and with the identical allegations. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending and already settled Charleston class action, to attempt to place all of the settled Charleston cases within the scope of the duplicate cases in Dorchester County, and as the means to shop for the desired judge.

94. This procedural maneuver agreed to among the defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose.

95. Filing duplicative class actions to have the same case pending simultaneously in two different venues is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court and to the plaintiffs, ostensibly included in each of those duplicative complaints.

96. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending.

97. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the John Doe 53 class action was, by agreement of the defendants, simultaneously pending in two separate counties.

98. Dorchester County was chosen by agreement of the defendants so as to “judge shop” for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a pliable oversight of any questionable elements of the class action, including class certification, class notice, attorneys fees, and fairness hearings. The judge was expected to tolerate fraudulent filings by the defendants, an expectation that was rewarded when fraudulent filings were made, by agreement of the defendants, and the court took no action concerning those fraudulent filings.

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

100. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the judge they shopped for designate the cases as complex and assign them to that same judge. That designation was improper under the rules at the time, as set forth in more detail below.

101. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the class settlement, as would have been the case if the same request had been made in Charleston. But any Charleston judge would likely exert independent oversight of the class resolution, and defendants sought to avoid independent oversight.

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

103. As soon as the handpicked judge assigned the Dorchester actions to herself, the defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

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

105. SCRCF 23 was not complied with as to the class settlement reached in the Charleston class action. All defendants consented to not complying with SCRCF 23 in Charleston County, and all defendants consented to seeking SCRCF 23 oversight only from the shopped-for judge.

106. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

**Conspiracy Technique Two: Using Complex Case designation Improperly.**

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

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

109. The July 26, 2006 order of the South Carolina Supreme Court enabling complex case designation approved a particular form for use with complex case motions. Among other things, that motion required counsel to represent certain facts applied to the action for which complex case status was sought. The form states:

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

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

111. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

112. Defendants falsely represented to the shopped-for judge that no settlement had been reached. Alternatively, defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status.

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

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

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

115. As set forth in the affidavit of Michael Virzi, attached to this complaint and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to

simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese defendants to agree to it. Plaintiffs at no time consented to the Richter defendants negotiating such a settlement.

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

117. Representation of the plaintiffs by the Richter defendants in proposing an unethical fee was inadequate. Alternatively, that representation breached a fiduciary duty to the plaintiffs.

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

119. The Richter defendants sacrificed the interests of absent putative class members, such as plaintiffs, in exchange for the fixed fee they negotiated for themselves. The Diocese defendants agreed to it as the price of obtaining the cooperation of the Richter defendants in structuring a class resolution that provided only a fraction of the relief the Richter defendants would accept in a case against a Diocese other than Richter's own Diocese.

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

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

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

122. Neither the class representatives nor the opt-out abuse victims had to submit their claims to binding arbitration. Their claims were given specific dollar amounts. Each knew precisely what their recovery would be before consenting to resolve their claim.

123. In addition, the terms for the opt-out abuse victims exceeded the low bar the Richter defendants agreed to set for class member recoveries, and the opt-out victims received more than was received by any comparable abuse victim who stayed in the class settlement. In addition to the fee approved by the Court, the Richter defendants charged class members an additional fee to go through the arbitration. The court approved fixed fee was not disclosed to class members, was not reviewed by the shopped-for judge as part of the pre-award fairness hearing, and was not reviewed in any post-award fairness hearing,

124. No notice was given to any class member, including the plaintiffs, about the terms of the opt-out settlements. Had the plaintiffs been given notice of the terms negotiated by the opt-out abuse victims or the class representatives, they might have exercised a choice to receive one or the other recovery. The plaintiffs were abandoned by their attorneys, the Richter defendants, with the collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed to the plaintiffs, by defendants agreeing to define the class so as to ostensibly include the plaintiffs, were breached by all defendants in this action when they agreed to notice designed not to reach the plaintiffs. As alleged below, the abandonment by the plaintiffs was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the plaintiffs. In the alternative, it was a breach of the fiduciary duty assumed by the Richter defendants towards the plaintiffs. That duty was implicitly assumed by other defendants as well, in ostensibly defining the classes as they were defined by agreement of all defendants, when notice was designed not to reach those within the definition.

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

125. In the “General Terms of Settlement” agreed to in the 2006 mediation of the Charleston class action case on June 14, 2006, there are seven essential terms of the settlement agreement.

126. The first general term is that there will be two classes for the settlement. “Actual victims of Diocese abuse,” and “Spousal &/or parent claims deriving from victims abused.”

127. The second general term was to provide a means of having a \$12 million settlement fund.

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

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

130. The fifth general term was to establish that four individuals would allocate among themselves \$460,000.

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

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

133. The four individual accepted the offer, and allocated among themselves \$460,000. None of those individuals received more than \$160,000. It is not yet known what portion was allocated to legal fee for class counsel.

134. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class.

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

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

137. After June, 2006, those individuals who represented the class, whose claims had been “resolved,” did not qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nevertheless, they were falsely designated as class representatives in subsequent Dorchester County case, falsely put forth as class representatives, and approved as class representatives even though they did not meet the definition of the class.

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

139. In the June 14, 2006 settlement, when the parties reserved details for later specificity (“Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims,”) those details were reserved so the defendants could work backwards from the settlement fund, minus class counsel’s fixed fee, to enable adjustments to be made to the notice given to the class, and to the methods of relief given to the class members so the recovery to victims would not be “too much.” The fee for the Richter defendants could not be jeopardized by having “too many” sexual abuse victims served by the class settlement.

140. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of the class, because the highest priority of the Richter defendants, ahead of the interests of their clients or ostensible class members such as the plaintiffs, was to preserve class counsel’s fixed fee. That is why the fee is fixed, and why it takes priority over the recoveries of the clients in

the class. The highest priority of other defendants, after their willingness to pay class counsel's fixed fee, was to either exclude persons such as plaintiffs, or to limit recovery to persons such as plaintiffs, so that within the modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims against another Diocese, the Diocese could argue a *res judicata* benefit from the class settlement without having to pay meaningful relief class members, but paying a sufficient amount so as to get the class approved. That is among the reasons that all defendants wanted class counsel's fee to be fixed but the recovery to the class to be variable, and for notice to be designed to not inform all persons within the class definitions of the settlement itself.

141. The Diocese defendants knew or should have known that the history of systematic deceit and deception about sexual abuse required by the Vatican and Code of Canon Law, and which the Diocese defendants had in fact implemented, specifically mandated by the Vatican since at least 1962, exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

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

143. To try to limit future sexual abuse claims, the Diocese defendants elected to consent to a class settlement, hoping it would exclude enough victims so as to produce a desired *res judicata* effect at a fraction of the cost of a proper settlement with all victims. The Diocese defendants realized the close ties of the Richter defendants to the Diocese, and their willingness to sacrifice the interests of their clients for a fee, enabled the Diocese to try to minimize recoveries to the class members yet still get a class approved.

144. All defendants needed to avoid meaningful court oversight of the class action to limit the interests of absent members of the class, so all defendants agreed to “judge shop” to avoid oversight by any Charleston judge, and to obtain a lax oversight by the judge they desired to have.

145. When the defendants realized that “too many” victims, such as plaintiffs, might come forward in the class action, they changed, by agreement, what they would propose to the shopped-for judge for the notice to give the class, to limit how many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint.

146. Failing to give notice outside South Carolina, other than immediately adjacent to South Carolina, was one means of eliminating claimants such as plaintiffs. No defendants objected to limit the notice to South Carolina.

147. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the plaintiffs. All defendants were negligent in permitting victims to be identified by the Diocese defendants, rather than insisting on giving meaningful notice to putative class members.

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

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

150. No defendants disclosed that the Diocese had agreed to overlook the fraudulent information submitted to the shopped-for judge to support the fee claimed, and had agreed to make no mention of those various fraudulent time entries. Nor had the defendants disclosed that they had agreed they would request no post-award fairness hearing.

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

152. The defendants agreed to propose giving no notice nationwide, or even outside the immediate area of South Carolina, so as to try to eliminate abuse victims such as plaintiffs, then set the categories and recovery limits on the class members in the arbitration, and set the binding nature of the arbitration, all as means calculated to harm the plaintiffs by excluding them from the class recovery and to try to preclude them from any later claim, and to limit recoveries to class members so as to not exceed the amount the Diocese was willing to pay.

153. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter defendants were paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese to abandon clients such as the plaintiffs, and to limit recoveries to other clients, in the interest of the Diocese defendants.

154. The Richter defendants abandoned absent class members such as plaintiffs, who reside outside of South Carolina, and gave no meaningful notice to those class members that their rights had been adversely impacted when they changed their position on notice

to the class from nationwide notice to a notice limited to publications in and around South Carolina. All other defendants cooperated with that abandonment. Unless the order approving the class settlement means what it says when the court appeared to have accommodated the limited notice by ruling, at page four, “any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement,” and the plaintiffs are not precluded from their claims, the notice and arbitration structure caused damage to the plaintiffs. Unless the plaintiffs are not bound by the *res judicata* effect of the class action, they have been specially harmed by the conspiracy engaged in by the defendants.

#### **Conspiracy Technique Six: Providing False Information to the Court**

155. The sixth technique used to cause special harm to the plaintiffs was defendants cooperated in filing with the court false information. When false information was filed by one defendant, all other defendants acquiesced, despite knowing it was false. Even after the information was identified as false, no action was taken to protect the plaintiffs, unless the order means that persons who received no notice are not barred by *res judicata*.

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

157. As noted above, the claim that class representatives in Dorchester County met the definition of the class and could serve as adequate representatives were each false,

and known by the defendants to be false when made in any of the Dorchester County class complaints.

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

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

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

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

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

163. False information was filed in Dorchester County in support of the fixed fee sought by the Richter defendants. The Diocese defendants made no mention of the false information filed in support of the fixed fee, because the fixed fee for the Richter defendants, and the modest variable relief for the class, was the *quid pro quo* for the Diocese defendants getting the benefit they have claimed entitles the Diocese defendants

to *res judicata* protection of the class settlement, and was the means by which the defendants conspired to try to eliminating claims by persons such as the plaintiffs.

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

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

166. If the plaintiffs are barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reasons, then duties to them in the class action were breached by the defendants, and special harm has been caused to the plaintiffs by the acts of conspiracy of the defendants.

#### **Conspiracy Technique Seven: Limiting Notice to only publications in and around South Carolina**

167. The seventh technique used in the conspiracy among defendants to cause special harm to the plaintiffs was to agree to limit notice to only publications in and around South Carolina, resulting in notice to only those putative class members who reside in and immediately adjacent to South Carolina. The notice given was deficient in that it was designed not to provide notice to those within the definition of the class action. By agreement of all defendants, the notice was calculated to be ineffective to reach putative

absent class members. Unless the order approving the class settlement means what it says and plaintiffs are not bound by the res judicata effect of the class settlement, the defendants have conspired so as to cause special damage to the plaintiffs.

168. The Diocese defendants are well aware, from its own dealings with abuse victims that many victims reside out of South Carolina. All defendants were conscious in choosing limited notice, that doing so served the interests of the Diocese at the expense of persons such as the plaintiffs.

169. By motion filed in Dorchester County in October 2006, the Richter defendants proposed giving nationwide notice of the class action through advertising about the settlement in a newspaper with national coverage.

170. In January 2007, the Richter defendants revised their request for notice to the Dorchester County court, and the Diocese defendants acquiesced in that revision, to limit notice to only publications in newspapers with circulation in or near South Carolina. The request to provide notice through a newspaper with national circulation was abandoned.

171. The Richter defendants abandoned the plaintiffs as putative members of the class in agreeing to notice calculated not to reach them. Alternatively, the Richter defendants breached the fiduciary duties they had assumed as to the plaintiffs in defining the classes so as to ostensibly include them, then revising the notice so as to provide no notice to them and all other absent members of the class who resided outside of the area immediately adjacent to South Carolina.

172. The Diocese defendants conspired with the Richter defendants to submit for court approval notice to the class that was calculated to omit absent members of the class such as the plaintiffs, and all persons situated similarly to them. The agreement was to

bar the plaintiffs from being able to make claims by the *res judicata* effect of the ostensible class action without having to compensate them for sexual abuse.

173. No effort was made to protect absent members of the class, such as the plaintiffs, by providing notice beyond the immediate area around South Carolina. If the plaintiffs are barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reasons, then duties to them in the class action were breached by the defendants, and special harm has been caused to the plaintiffs by the acts of conspiracy of the defendants.

174. The Diocese defendants made no objection to lack of nationwide notice. They made no objection as an overt act taken in furtherance of the common plan to reduce the number of claimants by eliminating persons such as the plaintiffs from being able to make a claim, while retaining the argument that all absent class members were barred by *res judicata*. The reduced notice agreed upon by all defendants demonstrates that the representation of the class was inadequate, and that the defendants conspired specifically to defeat the interests of persons such as the plaintiffs, to cause them special harm by giving them not even a chance at notice of the class action.

175. The injury to the plaintiffs from the conspiracy engaged in by the defendants harmed the plaintiffs in a manner different from other causes of action. Plaintiffs were improperly excluded from the class action, but unique to the conspiracy cause of action are the damages from the plaintiffs being unable to influence the corrupt course of the class action, and its corrupt features by lack of participation. Plaintiffs were deprived of the opportunity to influence the class suit, and to try to assist themselves and other abuse victims from not being limited to the corrupted procedures and manipulations of the class

suit. Among other things, the plaintiffs were unable to participate to influence the miniscule recovery allocated for parent and spousal claims because they were not brought for the class using the common law “loss of services” cause of action. However, if the plaintiffs are not deemed precluded from stating their claims against the Diocese for any reasons, including the class suit, charitable immunity or the statute of limitations, then the conspiracy by the defendants to defeat their claims was ineffectual, and this cause of action will be dismissed.

176. As a proximate cause of the actions of the defendants as alleged above, the plaintiffs were damaged, and are entitled to actual and punitive damages from the defendants as a result.

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

177. Allegations of paragraphs 1-18 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiffs are precluded, by any reason, including the class action, charitable immunity, or the statute of limitations, from making claims against the Diocese.

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

179. As reflected in the 2006 Charleston class action settlement that is Attachment A to this complaint, the proposed group whose claims were settled on June 14, 2006, in the

Charleston class action mediation was a class specified as “actual victims of Diocese abuse.”

180. Plaintiffs were putative members of that class as it was defined in the proposed settlement.

181. When the June 14, 2006 Charleston class mediation agreement was formally typed and formally approved by the Richter defendants, the Vatican, and the Diocese defendants, the illicit agreement by defendants on “judge shopping” had been accomplished, and the Charleston class settlement was now claimed to be a proposed settlement of both a Charleston class case and Dorchester County class actions.

182. On October 6, 2006, the Richter defendants filed proposed class definitions that included plaintiffs, and proposed a means of notice by publications with nationwide distribution to give notice to the class. That proposed notice might have given notice to the plaintiffs, enabling them to either participate or to opt out.

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

184. On January 18, 2007, the Richter defendants abandoned giving notice to the plaintiffs about the class settlement that purported to include them. Their proposal for notice was revised to include only publications in and immediately around South Carolina, even though the class was not defined with geographic limitations.

185. On January 19, 2007, the proposed class definitions that included the plaintiffs were approved without objection from the Diocese defendants.

186. In their Charleston and Dorchester County class action cases against the Diocese defendants, the Richter defendants assumed the obligation of representing the interests of absent putative class members including the plaintiffs. In abandoning the plaintiffs, the Richter defendants performed in a professionally negligent manner the duty they had assumed to absent putative class members such as the plaintiffs.

187. The Richter defendants engaged in negligent acts and omissions in their representation of the plaintiffs. Among other things, when they abandoned the plaintiffs, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the plaintiffs reasonably informed, failed to provide them with information with respect to obtaining their informed consent, failed to consult with them about the means for accomplishing their objectives, represented them without their consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal.

188. No notice of any type, at any point, was given to absent putative class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina, such as the plaintiffs. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiffs, or even to all in-state victims.

189. Any court approval of the notice was deficient in terms of protecting the plaintiffs because the court overseeing the class action had been shopped for by the defendants, and had been given, by agreement of the defendants, fraudulent information on which to base decisions.

190. The Richter defendants abandoned their absent putative class member clients such as the plaintiffs by agreeing to change the proposed notice to notice calculated not to reach the plaintiffs, and calculated not to reach all putative class members situated similarly to the plaintiffs.

191. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the court.

192. The plaintiffs were abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action and jeopardize the fixed fee the Richter defendants had negotiated for themselves at the expense of the class members, that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun.

193. Having "too many" claimants also was believed to not be in the interest of the Diocese, and because of his conflicts of interest, which were not disclosed to the class, the Richter defendants were actually acting to protect the interests of the Diocese more than the interests of putative class members such as the plaintiffs.

194. As a result of their attorneys, the Richter defendants, abandoning the plaintiffs, no notice was given to them of the class action, and they had no opportunity to participate in either the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out. The acts and omissions of the Richter defendants have caused damage to the plaintiffs, assuming the plaintiffs are prevented from their claims against the Diocese for any reason.

195. Plaintiffs were each entitled to actual and punitive damages as a result of the professionally negligent representation they received from the Richter defendants.

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

196. Allegations of paragraphs 1-17 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiffs are precluded from making claims against the Diocese, for any reason, including the class action, charitable immunity, or the statute of limitations.

197. The Richter defendants chose to propose defining the classes in the class actions so as to have no geographical limit on the classes.

198. All defendants agreed on how the classes were defined.

199. In choosing to define the classes so as to include the plaintiffs, the Richter defendants each assumed fiduciary obligations to each of the plaintiffs, who were absent putative members of the classes they defined.

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

201. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the plaintiffs by requesting geographically limited notice of the class action and settlement, as opposed to the nationwide notice they initially proposed.

202. The state court judge overseeing the class action was shopped for by all defendants.

203. The state court judge was not asked to give notice to all class members, only a subset of class members that excluded the plaintiffs.

204. The Richter defendants originally proposed nationwide notice, but then abandoned the proposal. The lack of nationwide notice was observed in the record of the

class action, but even after that limitation was noted, the Richter defendants did not request it.

205. On October 6, 2006, the Richter defendants filed proposed class definitions that included the plaintiffs, and proposed a means of nationwide notice to the class that might have given notice to the plaintiffs.

206. The Richter defendants in its Charleston class action filing, and in the June 14, 2006 settlement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the plaintiffs.

207. On January 18, 2007, the Richter defendants abandoned giving to the plaintiffs notice about the class settlement that ostensibly included them.

208. On January 19, 2007, the class definitions that included the plaintiffs were approved without objection from the Diocese defendants.

209. No meaningful notice, at any point, was given to class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiffs, or even to all in-state victims.

210. The Richter defendants contend that mention of a class action or a class action settlement in a news media outlet is sufficient due process “notice” of a class action or class action settlement within the meaning of SCRCF 23. Mention of a class action or class action settlement in a news media outlet is not notice of a class action or class action settlement within the meaning of SCRCF 23.

211. The Richter defendants each breached their fiduciary duties to the plaintiffs so they would not participate in making a claim against the fund established for the class

action settlement. If notice had been given nationwide, as originally proposed, “too many” claimants might have come forward in the class action, which would have jeopardized the fixed fee the Richter defendants had negotiated for themselves at the expense of their clients.

212. The Richter defendants arranged to have their fixed fee paid before notice to the class and before the claims process.

213. The Richter defendants arranged to have their fixed fee paid before membership in the class was known.

214. The Richter defendants arranged to have their fixed fee paid before distribution to the class was known.

215. The Richter defendants arranged to have their fixed fee paid before class members had an opportunity to object to or comment on the fixed fee and its priority over class member recovery.

216. Having “too many” claimants also was believed by the Richter defendants to not be in the interest of the Diocese, and to protect their own interest in their fixed fee the Richter defendants had to also act to protect the interests of the Diocese more than the interests of the plaintiffs. The Richter defendants have close and longstanding ties and involvement with the Diocese defendants. Those involvements were never disclosed to the class. To promote the interests of the Diocese in trying to later argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote ahead of the interests of the plaintiffs their own interest in their fixed fee, the Richter defendants agreed to change the proposed notice to the class from notice in

publications with nationwide distribution, and also agreed to accept for the class compensation that ranked among the lowest known victim compensation.

217. As a result of the Richter defendants abandoning the interests of the plaintiffs, and breaching the fiduciary duties owed to them, the plaintiffs had no opportunity to participate in the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out, or to make a claim against the Diocese for sexual abuse. The acts and omissions of the Richter defendants have caused damage to the plaintiffs.

218. Plaintiffs are each entitled to actual and punitive damages as a result of the fiduciary duties to them that were breached by the Richter defendants.

**For a Sixth Cause of Action:  
Judicial Estoppel and Unfair and Deceptive Trade  
Practices by the Diocese Defendants**

219. Allegations of paragraphs 1-17 above are incorporated into this cause of action as if fully stated.

220. The Diocese defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law.

221. The Diocese defendants operate an organization engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Diocese defendants advertise and offer for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina. They operate churches and schools, and activities, which cater to families.

222. The Diocese defendants encouraged people, including plaintiffs, to use their facilities, and to attend the various activities and functions offered on its premises. In

making that invitation, the Diocese defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers. The Diocese defendants particularly owed a duty to the plaintiffs, who were minors, and their parents, a greater degree of care because as children the plaintiffs were unable to fully appreciate risks and danger. The Diocese defendants represented to its invitees and their parents or guardians, including the plaintiffs, that its facilities and its priests were safe, and that persons would be would be protected form harm when using its facilities and when interacting with its personnel.

223. For years the Diocese defendants have been aware that certain in its operations, certain of its employees have sexually abused minors.

224. As part of a business decision to address that history of sexual abuse, in 2006 the Diocese elected to adopt a class settlement to address its known history of priests and other employees sexually abusing minors.

225. The Diocese promoted that decision as a responsible action by the Diocese defendants.

226. Part of that settlement was to advertise the offer by the Diocese to distribute both services (in the form of counseling) and property (in the form of compensation) to sexual abuse victims.

227. Advertising was done by the Diocese in, among other publications, newspapers of general circulation in Charleston (*Post and Courier*), Myrtle Beach (*Sun*), Columbia (*The State*), Augusta (*Chronicle*), Rock Hill (*Herald*), Beaufort (*Gazette*), Greenville (*News*), Spartanburg (*Herald*), Orangeburg (*Times-Democrat*), Florence (*Morning News*),

and Aiken (*Standard*). Living outside of South Carolina, plaintiffs saw none of those notices, as was designed by the defendants.

228. In that advertising, tangible property was proposed to be exchanged by the Diocese, and services provided in part for the intangible injury created by acts of sexual abuse.

229. The public interest was affected by the proposed class settlement because the offering was made to the public, the advertising was made to the public, members of the public were invited to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved predicated on the false representation made to the Court about how the Diocese would conduct itself.

230. A circuit court judge to approve the class settlement was “shopped for” and selected by the Diocese defendants, in conspiracy and collaboration with the Richter defendants. The Diocese defendants did not want any Charleston County judge, out of concern that the judge might be fully independent.

231. The Diocese defendants were negligent in assessing the damage done by sexual abuse by their employees and the number of persons affected by that abuse.

Alternatively, the Diocese knew the number of victims would far exceed the numbers it reported to the court as its expectations for number of victims, and consciously misrepresented that number to the court.

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

233. The Diocese defendants were aware that the Richter defendants had extensive and life-long ties to the Diocese, and would be willing to compromise the interests of the absent class members in exchange for a fixed fee payment.

234. The Diocese defendants conceived a plan to commit a fraud on the Court by representing to the court, falsely, a rationale upon which the court could approve a class settlement defined with no geographic limits, while giving notice to the class in a geographically limited way. As long as their fee was paid, the Richter defendants were expected by the Diocese defendants to be willing to accommodate the interest of the Diocese, even at the expense of the absent members of the class they represented.

235. All defendants collaborated to submit false information to the Court, and no defendant objected to any of the false information submitted by any of them. Part of their agreement was to remain silent while false information was submitted.

236. To gain court approval of the class settlement the Diocese made overt misrepresentations of fact to the Court that was falsely represented to reflect an “understanding” among all defendants “as to what would happen” to any person within the class definition who “shows up” (as put by the Diocese defendants) outside of the class notice procedure. The “understanding” communicated to the Court was to address if “someone pops back up who should have gotten notice who didn’t get notice.” The understanding communicated to the Court by the Diocese was:

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

237. That representation to the Court appears on page 3 of a transcript dated July 13, 2007.

238. In that same transcript, the Diocese defendants represented to the Court, falsely, that there were only five sexual abuse victims they had not located. That representation was false, and was known to have been false when made. In fact, the Diocese was aware, or should have been aware, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves.

239. To avoid nationwide notice, the Diocese falsely represented to the Court that when an absent class member did not get notice, and later identified himself or herself, the Diocese assured the court, on page 14 of the same transcript, “we’ve got to find anybody else who has kind of, lack of a better word, comes out of the woodwork.”

240. The Diocese defendants made no disagreement when, on pages 16 - 17 of that same transcript, class counsel summarizes the position of the Diocese as “what the Diocese has come to is that if anybody is missed . . . the diocese waives all the same defenses that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards.” Those terms were supposedly submitted by letter by the Diocese.

241. Nor did the Diocese defendants state any disagreement when the Court observed, as to the Diocese, on page 25 of that same transcript, “what they [the Diocese] say is if you come forward in the future we will treat you just the same as we have treated these individuals and the relief is available for you.”

242. The Diocese intended, on July 13, 2007, to create the false impression with the court that if a victim within the class definition came forward in the future, that the Diocese would extend relief to that victim. The Diocese created by impression by its statements and its silence in light of statements by others. The Diocese intended that impression to be relied on, and it was relied on. That impression was false, and was known to be false when made.

243. The Court relied on the statements and silence by the Diocese to extend in the July 30, 2007 order approving the class settlement, at page four, this statement:

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

Emphasis added.

244. The Diocese defendants intended that the Court rely on their statements, silence, and conduct to form that impression, even though the impression was false and the Diocese had no intention of honoring the assurances given to the Court.

245. When additional victims came forward, including these plaintiffs, the Diocese refused to honor its representations to the Court, and which the Court placed in its July 30, 2007 order at page 4. Instead, the Diocese asserted the defenses it had waived, claimed the *res judicata* effect it had disclaimed, and acted exactly contrary to its assurances to the Court.

246. The Diocese defendants made their false representations to the Court for the purpose of gaining Court approval of a class settlement with only limited notice to the

class. By contending (falsely) that it would both waive its defenses and provide compensation to class members who had received no notice, the Diocese committed fraud on the Court, on the public, on the plaintiffs, and on all sexual abuse victims born before August 30, 1980. When those representations were made the Diocese had no intention of honoring the representations.

247. The Diocese amply demonstrated that its assurances to the Court were false when, despite those assurances, the Diocese refused to perform on its assurances or on the Court's order when sexually abused persons born prior to August 30, 1980, including the plaintiffs, received no notice of the class and later requested relief.

248. The Diocese has taken inconsistent positions as to different persons included in the same class definition. Those inconsistent positions also affect the public interest.

249. All of the conduct by the Diocese, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the representations made to the Court. Multiple sexual abuse victims born prior to August 30, 1980, received no notice of the class action and have since been refused relief by the Diocese.

250. The proceedings in which those inconsistent positions were taken by the Diocese are related to this action in that each involved one or more members of the class as defined by agreement of the Diocese, who received no notice of the class settlement and for whom the Diocese promised to provide relief.

251. The Diocese was successful in maintaining its disingenuous misrepresentations to the Court, got relief from the Court based on those disingenuous representations, and

as a result of taking that position the Diocese received the benefit of class approval from the Circuit Court.

252. The inconsistency by the Diocese is part of an intentional effort to mislead the Court.

253. The two positions by the Diocese are in fact inconsistent, and as a result the Diocese is estopped from taking a different position as to the plaintiffs from the position it asserted to the Dorchester County court in the class action.

254. Plaintiffs have suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Diocese, and is entitled to recover actual damages as a result of the wrongful conduct of the Diocese, trebled as provided by law, with costs and attorneys fees as provided by statute.

255. The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese made a calculated business decision to invest some funds and engage in a public relations exercise, in an effort to procure positive publicity for itself without having to compensate all of its sexual abuse victims, and to attempt to seal off its liability for the full extent of its sexual abuse victims.

256. The Diocese invested funds to design a compensation program for victims which specifically excluded many victims. The Diocese engaged in collusion with other defendants to do so, as alleged above, and engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the plaintiffs.

257. The Diocese defendants took no appeal from the July 30, 2007 order.

258. The Diocese defendants are bound by the July 30, 2007 order in the class action.

259. When the Diocese was contacted on behalf of the plaintiffs, having received no notice of the class action, the plaintiffs were refused relief. Instead, the Diocese has asserted against victims who did not get notice, exactly as they promised they would not, the *res judicata* effect of the class settlement, as well as the defenses it waived on the record, and has done so even as to victims for whom the Diocese did not even attempt to provide notice.

260. The representation made by the Diocese to the Circuit Court was false when made by the Diocese, and was knowingly false when made by the Diocese. The Diocese had no intention of including other victims who received no notice “for whatever reason.” Despite its representations, the Diocese defendants intend to use the collusive class action cases to attempt to terminate liability of the Diocese, to do so at a fraction of the recovery a truly adversarial counsel might demand on these facts.

261. The Diocese defendants made their misrepresentations with the intention of convincing the Circuit Court to approve a collusive class settlement, even though the Diocese had no intention of honoring its assurances to the Circuit Court. The intention by the Diocese to mislead the Circuit Court succeeded, and the settlement was approved.

262. The unfair and deceptive acts and practices of the Diocese have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese has refused multiple persons who came forward having not gotten notice of the class action. The practices engaged in by the Diocese, of misrepresentations to the court and the public through its court

statements as well as its statements to the press, are extensions of longstanding practices of deceit and deception by the Diocese. Maintaining secret archives of files, practicing “mental reservation” to support and justify lying (even while under oath), using diplomatic immunity to conceal documents, mandating that persons with knowledge of abuse conceal that knowledge, are all techniques used by the Diocese to maintain deception. Overtly misrepresenting to a Court, and to the public, its intentions, are extensions of techniques the Diocese has used for years.

263. The false and deceptive practices of the Diocese will continue absent some deterrence and accountability in the form of liability and damages as well as injunctive prohibitions. The corrupt practices of the Diocese have been actually repeated, as well as having had the potential for repetition. The Diocese has engaged in misrepresentations of material fact.

264. The Diocese should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to past sexual abuse.

265. The Diocese violated the UTPA willfully, in that it knew or should have known that its conduct was a violation of S.C. Code § 39-5-20.

266. The plaintiffs suffered an ascertainable loss of money as a result of the unfair or deceptive methods by the Diocese in posturing for the Court as if it would respond to additional victims who got no notice, but then refusing relief when victims who got no notice actually contacted the Diocese; posturing for the Court that it waived defenses for victims who got no notice but then asserting those same defenses when additional victims

actually came forward. Conduct by the Diocese was willful, and the Diocese knew or should have known that its conduct was unfair and deceptive.

267. The plaintiffs are entitled to treble damages as a result of the conduct of the Diocese, as well as actual and punitive damages, costs and attorneys fees, and such other and further relief as the court deems just and proper.

### **Demand for Jury Trial**

268. Plaintiffs demand a trial by jury.

### **Relief Sought**

Wherefore, Plaintiffs seeks relief in the form of:

269. Actual damages to be awarded to the plaintiffs by the finder of fact against the various defendants, trebled as authorized by law for the appropriate cause of action,

270. Costs and disbursements of this action,

271. Attorneys fees as authorized by law,

272. Punitive damages as authorized by law, and for

273. Injunctive relief to enjoin the Diocese defendants from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice "for whatever reason," and for

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

Gregg Meyers  
1 Poston Road Suite 110

Charleston SC 29407  
843-556-1025  
[attygm@gmail.com](mailto:attygm@gmail.com)

Attorney for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe #66

v.

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

CASE NO.: 2005-CP-10-2053

John Doe #66A

v.

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

CASE NO.: 2005-CP-10-3293

John Doe #53

v.

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

CASE NO.: 2005-CP-10-4913

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

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

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

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

By: \_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

EXHIBIT " 4 "

EXH. #1

### General Terms of Settlement:

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

③ ACTUAL VICTIMS OF DOMESTIC ABUSE

④ SPOUSAL +/or Parent claims deriving from victims abused

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

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

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

(17)

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

5. Mr. T [Redacted] shall be paid \_\_\_\_\_

Mr. S [Redacted] shall be paid \_\_\_\_\_

Mr. N [Redacted] shall be paid \_\_\_\_\_

Mr. M [Redacted] shall be paid \_\_\_\_\_

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

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

~~Class of Plaintiffs~~

(3)

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

James Deely, Attorney

ON BEHALF OF DEFENDANTS

Attorney in and with authority of the  
Successor of Charleston

June 14, 2006

STATE OF SOUTH CAROLINA )

COUNTY OF COUNTY OF RICHLAND )

**AFFIDAVIT**

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

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

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

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

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

- A. Complaint in the Original Jurisdiction of the Supreme Court, John Doe et al. v. Lawrence E. Richter, Jr., et al.;
- B. Affidavit of Gregg Meyers, dated June 18, 2008, and filed June 18, 2008, in John Doe C, et al. v. The Diocese of Charleston, et al., Case No. 08-CP-10-1274, and attachments including:
  - i. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

- ii. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
  - iii. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;
  - iv. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;
  - v. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;
  - vi. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913; and
  - vii. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in John Doe 53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;
- C. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;
- D. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-\_\_\_\_ (blank line in original);
- E. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;
- F. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636; and

G. Plaintiff's Petition for An Award of Attorneys Fees and Litigation Costs, dated February 14, 2007, and filed February 14, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636, and exhibits attached thereto including:

- i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;
- ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;
- iii. Affidavit of Angela Pittard, with attached timesheets;
- iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and
- v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

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

5. Based on my experience, education, training, and knowledge of the standard of care for lawyers and on my review of the above-listed documents and my discussions with Plaintiffs' counsel, it is my opinion that, Lawrence E. Richter, Jr., Esquire, David K. Haller, Esquire, and Richter & Haller, LLC, (hereinafter "Defendants") engaged in negligent acts and omissions in their representation of Plaintiffs including the following:

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

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

6. In particular, it appears from the above-referenced documents that Defendants failed to inform clients of Richter's extensive personal relationship with an adverse party, the Diocese of Charleston, and Richter's continuing work on behalf of the Diocese during litigation in which Defendants' clients were adverse to the Diocese. It is apparent from Richter's own affidavit (identified in paragraph 3.F.ii above) that he has a lifelong, extensive personal relationship with the Diocese and many of its current and former constituents, in addition to being a constituent himself and continuing to perform official functions during the pendency of the client matter. This presents a conflict of interests, requiring Defendants to disclose the nature

and extent of the relationship to the clients, along with the risks of the representation and the reasonably available alternatives. Defendants apparently did not do so.

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

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

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

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

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

9. It further appears that Defendants engaged in acts and omissions that would be potentially advantageous to the class representative clients and disadvantageous to the non-class-representative clients, including agreeing to subject some clients to a damages matrix and claim scrutiny to which class representatives were not subjected, settling the claims of the class representatives prior to class certification and court approval of the class settlement, and expressly agreeing to settlement terms for the class representatives regardless of court approval of the class settlement. Thus Defendants failed to adequately communicate with clients, failed to remain diligent and loyal to clients, and failed to obtain informed consent to a conflict of interests.

10. It further appears that Defendants sought an improper and unreasonable fee from the settlement pool and a payment structure that favored Defendants' own interest above those of their clients. Defendants' fee petition, affidavits and billing records overstate work performed and misrepresent the nature of the case. Defendants describe the case as hotly contested and aggressive, and the defense formidable and substantial, depicting a time-intensive case requiring the highest skills of the most competent counsel; yet the documents indicate contrary circumstances: little discovery (some paper requests from class counsel but no evidence of responses received nor of requests received from opposing counsel), no depositions, few motions, and after mediation no client disputes, few hearings, and no animosity or contention except on the issue of Defendants' collection of their fee. Defendants' billing records show 3385.5 total hours spent by lawyers and staff at Richter & Haller; however many of the time entries are clearly false in that they are nonsensical and/or impossible, including:

- A. each and every entry on all 68 pages of billing records is a round, even-hour increment or an entry of ".5" hours;
- B. countless round-number or .5-hour time entries at "12:00:00 AM"—including multiple tasks by the same person at the same time—while other entries indicate exact times;
- C. a 10-hour time entry for "Oversight and Review" by "LER" on the 30<sup>th</sup> day of each month for 3 and a half years, including the same 10-hour time entry for "Oversight and Review" by "LER" just nine days after the first activity in the case in July 2003;
- D. a 2-hour time entry for "Bookkeeping" on the 30<sup>th</sup> day of each month;

- E. a 3-hour time entry for "Photocopying / Monthly" at irregular intervals but always exactly 3 hours, including one such entry when no other work had been performed in the previous month;
- F. three 5-hour time entries (one each for "DKH," "LER," and "Clerk") for "Legal Research" on the 30<sup>th</sup> day of each month, including January 30, 2007, within 2 days of the end of the case (and after which no further time is recorded except 7 hours of faxing by "Staff" and 14 hours of emailing by "DKH" & "LER" over the next 2 days);
- G. time entries on days that do not exist: February 30, 2004, and February 30, 2005;
- H. a 16-month period, from September 2003 through December 2004, when only 5.5 hours of specific work is entered, yet 426 hours is entered in the same repeated, identical, rote entries of "Oversight and Review," "Bookkeeping," "Legal Research," and "Photocopying / Monthly" described hereinabove;
- I. 3 .5-hour time entries for drafting 3 Certificates of Service at the same time on the same day (this set of entries occurs multiple times);
- J. 12 *consecutive* 1-hour time entries by "LER" for work on 12 different documents, all at specific times beginning at "07:38:38 AM" on "10/26/06" but extending consecutively over a period of approximately 1 hour and 49 minutes ending at "09:27:30 AM," with many 1-hour entries within less than a minute of each other;

- K. numerous sets of entries similar to the 12 described in the immediately preceding subparagraph (J), such as 3 consecutive 1-hour time entries by "LER" for work on 2 documents, all at specific times beginning at "03:54:19 PM" but extending consecutively over a period of 1 minute and 13 seconds;
- L. entries of exactly 20 hours for drafting each discovery document;
- M. multiple instances of more than one 20-hour time entry for the same person ("DKH") on the same day;
- N. 27.5 hours (in 55 increments of .5 each, all at "12:00:00 AM") in one day by "DKH" for emailing to "David K. Haller";
- O. 60 hours (10 by "LER" and 50 by "DKH") for amending complaints that ultimately contained very little amendment, including one which apparently changed only the county in the caption and the date at the end;
- P. multiple instances of one person ("DKH" in some instances, "LER" in others) of billing more than 24 hours in a day;
- Q. 568.5 hours of entries appended to the end of the (otherwise chronological) timesheets, for dates ranging from 2004 through 2007, 500 hours of which is in whole multiples of 10 and expressed in date ranges rather than in dates and times, including 3 130-hour single entries by "DKH" for one- and two-week time periods in June and October 2006; and
- R. one of the above-referenced 130-hour single entries by "DKH" for the eight-day time period of October 4-11, 2006, during which period "DKH"

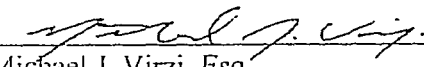
had already billed 51.5 hours one day and 20 the next, totaling 201.5 hours in 8 days (including weekends) for an *average* of more than 25 hours per day.

Defendants stated to the court that the above entries were "by far conservative" estimates of time actually spent on the specific services indicated, and the above list is not exhaustive of the nonsensical and impossible entries. Thus Defendants appear to have made false statements to a tribunal in support of a fixed fee that was unreasonable and put Defendants in a position potentially adverse to their own clients without taking appropriate steps to deal with the conflict of interests created thereby.

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

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

FURTHER AFFIANT SAYETH NOT.

  
Michael J. Virzi, Esq.

State of South Carolina  
County of Richland

Sworn and subscribed before me  
This 10<sup>th</sup> day of December, 2008.

  
\_\_\_\_\_  
Notary Public      My Commission Expires July 25, 2013  
My Commission Expires : \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
JOHN DOE 2 and JANE DOE 4 )  
[ ] Plaintiff )

v. )

THE BISHOP OF CHARLESTON, A )  
CORPORATION SOLE, *et al* )  
(Diocesan Defendants) )  
[ ] Defendant )

IN THE COURT OF COMMON PLEAS  
CASE NO: 10- CP - 10 - 5520

MOTION INFORMATION FORM AND  
COVER SHEET

CHECK BOX ABOVE INDICATING SUBMITTING PARTY

Name, SC Bar No. and Address of Defendants' attorney

A. Peter Shahid, Jr.  
89 Broad Street, Charleston SC 29401

Name, SC Bar No. and Address of Plaintiff's attorney

Gregg Meyers  
1 Poston Road, Suite 100 Charleston SC 29407

Telephone: 853-4500

Fax: 722-1119

E-Mail: shahidlo@bellsouth.net

Other:

Telephone: 843-556-1025

Fax:

E-mail: attygm@gmail.com

Other:

Attach separate sheet for additional parties (i.e. guardians, etc.)

[x] MOTION HEARING REQUESTED (attach written motion and complete Sections I, II, and III)

[ ] FORM MOTION, NO HEARING REQUESTED (complete Sections I and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Est. Time Needed: 60 min Court Reporter Needed: Y/N Court Interpreter Needed: Y/N Type: \_\_\_\_\_

Conflict Dates: \_\_\_\_\_

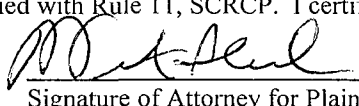
SECTION II: Motion Type

[ ] Written motion attached

[ ] Form motion

**COPY OF THIS REQUEST MUST BE SENT TO OPPOSING ATTORNEY PRIOR TO MAILING TO THE SCHEDULING CLERK BY REQUESTING ATTORNEY. OPPOSING ATTORNEY MUST RESPOND IMMEDIATELY TO REQUESTING ATTORNEY IF THE ESTIMATED TIME REQUESTED IS INADEQUATE SO THAT THE PROPER AMOUNT OF TIME CAN BE REQUESTED AND OF CONFLICT DATES.**

I hereby certify that I have complied with Rule 11, SCRPC. I certify that this case is not 270 days old or it has been restored by order of the court.

  
Signature of Attorney for Plaintiff/Defendant

8-16-10  
Date submitted

SECTION III: Motion Fee

[ ] PAID - AMOUNT: \_\_\_\_\_

[ ] EXEMPT: [ ] RTSC (child and spousal support) [ ] State Agency v. Indigent Party

[ ] Domestic Abuse or Abuse or Neglect [ ] Motion for Stay in Bankruptcy

[ ] Indigent Status [ ] Motion for Publication

[ ] Proposed order submitted at request of court; or, reduced to writing from motion made in open court per judge's instruction

Name of Court Reporter: \_\_\_\_\_

[ ] Other: \_\_\_\_\_

JUDGE'S SECTION

[ ] Motion fee to be paid upon filing of the attached order. JUDGE: \_\_\_\_\_

[ ] Other: CODE: \_\_\_\_\_ DATE: \_\_\_\_\_

CLERK'S VERIFICATION

Collected by: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Print Name

[ ] MOTION FEE COLLECTED: \_\_\_\_\_

[ ] CONTESTED - AMOUNT DUE: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
JOHN DOE 2 and JANE DOE4, )  
Plaintiff, )  
vs. )  
THE BISHOP OF CHARLESTON, A )  
CORPORATION SOLE, ROBERT )  
GUGLIELMONE, THE BISHOP OF THE )  
DIOCESE OF CHARLESTON, IN HIS )  
OFFICIAL CAPACITY, REV. )  
MONSIGNOR MARTIN LAUGHLIN, )  
FORMER ADMINISTRATOR OF THE )  
DIOCESE OF CHARLESTON, IN HIS )  
OFFICIAL CAPACITY; ROBERT J. )  
BAKER, FORMER BISHOP OF )  
CHARLESTON, IN HIS OFFICIAL )  
CAPACITY; )  
LAWRENCE E. RICHTER, JR., )  
DAVID K. HALLER, AND )  
RICHTER AND HALLER, LLC. )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE No. 10-CP-10-5520

FILED  
2010 AUG 18 PM 4:43  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

DEFENDANTS MOTION TO DISMISS  
PURSUANT TO RULE 12 (b) (6)

( The Bishop of Charleston, A Corporation  
Sole; Robert Guglielmone, the Bishop of  
the Diocese of Charleston, in his Official  
Capacity; Rev. Monsignor Martin  
Laughlin, Former Administrator of the  
Diocese of Charleston; Robert J. Baker,  
Former Bishop of Charleston; in his  
Official Capacity.- *Diocesan Defendants*)

TO: THE PLAINTIFF, ABOVE NAMED, BY AND THROUGH HIS ATTORNEY,  
GREGG MEYERS, 1 POSTON ROAD, SUITE 100, CHARLESTON, SC

YOU WILL PLEASE TAKE NOTICE that the Defendants, The Bishop of Charleston, a  
Corporation Sole; Robert Guglielmone, The Bishop of Charleston, in his Official Capacity; Rev.  
Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his Official  
Capacity; Robert J. Baker, former Bishop of Charleston, in his Official Capacity; hereinafter  
referred to as "Diocesan Defendants", hereby moves the Presiding Judge of the Charleston  
County Court of Common Pleas on the tenth day of service hereof, or as soon as the matter may  
be heard, for an Order dismissing the Plaintiffs' Complaint with prejudice.

The Defendants preliminarily object to answering the Plaintiffs' Complaint in any form because the Plaintiffs have failed to disclose their identity to the Defendants. The Defendants cannot adequately defend the Complaint without knowing the identity of the Plaintiffs. Notwithstanding this objection, the Diocesan Defendants move this Court to dismiss the Plaintiffs' claims on the following grounds, pursuant to the South Carolina Rules of Civil Procedure, Rule 12(b)(6).

Res Judicata and Collateral Estoppel

On January 12, 2007 the Diocese Defendants entered into a Class Action Settlement Agreement to settle the claims of a class of individuals who alleged they were sexually abused as minors by personnel of the Diocese of Charleston. The Dorchester County Court of Common Pleas issued an Order in Case Numbers 2006-CP-18-1310, 1311, 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 v. The Diocese of Charleston, A Corporation Sole, and the Bishop of the Diocese of Charleston in His Official Capacity of a Class of People Similarly Situated. The Settlement Agreement created two classes of putative claimants: All individuals born on or before August 30, 1980 who claim to have been sexually abused as minors by Diocese of Charleston personnel ("primary class"); and those claimants' spouses and parents ("consortium class"). Judge Diane Goodstein approved the Settlement Agreement by Orders dated July 30, 2007 and August 31, 2007.

The approved classes were "opt-out" classes, that is, if an individual satisfied the criteria of either class, he/she was automatically a class member, bound to the terms of the Settlement Agreement. An individual must have affirmatively "opted-out" by filing a Notice of Opt Out to

preserve his rights to pursue an independent claim against the Defendants. Failure to opt-out or to file a claim in accordance with the process outlined in the Settlement Agreement would serve as a bar to future claims.

Based on the face of the Plaintiffs' Complaint, the Plaintiffs in the current case are absent class members in the Dorchester County Class Action, and did not file a claim for either class. The Plaintiffs' did not "opt-out" of the Class Settlement as referenced by the allegations asserted in Paragraph 12 of the Complaint.

The Party-Defendants named in the above referenced Dorchester County Class Action are the same Defendants in the current case. All issues arising out of claims of childhood sexual abuse by Diocese of Charleston personnel were previously litigated in this case. Fair and adequate notice was provided for the March 9, 2007 Fairness Hearing (at which Plaintiff's counsel appeared) and for participation in the Class Settlement, and the Plaintiff had a full and fair opportunity to litigate the issues raised in his current Complaint. Valid and final orders were entered on the merits by Judge Goodstein on July 30, 2007 and August 31, 2007.

While the Plaintiffs challenges the provisions of those Orders, they are barred by *res judicata* from re-litigating claims of sexual abuse and any other claims regarding the Class Settlement which could have been raised in the 2006 Dorchester County litigation. The Plaintiffs are barred by collateral estoppel from having this Court review the sufficiency of another court's orders on the same, previously litigated, subject.

#### Statute of Limitations

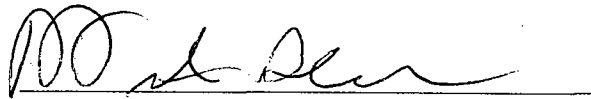
The Plaintiffs' claims arise out of allegations of childhood sexual abuse which allegedly occurred between 1965 and 1971. These claims are subject to the limitations period found in

South Carolina Code of Laws Sections 15-3-555 (for actions arising after 2001) and 15-3-535 (for action arising prior to 2001). Pursuant to the facts alleged in the Complaint, the Plaintiff would have been born at the latest in 1965. The Plaintiffs failed to bring this action within the limitations periods prescribed by either of the above statutes. The Plaintiffs do not assert they were unaware of the alleged sexual abuse for any reason such as dissociative amnesia (i.e., repressed memory) which would have prevented him from timely filing a claim.

For these reasons and those stated above, this Court should dismiss the Plaintiffs' action in its entirety *with prejudice*. The Defendants reserve the right to supplement this Motion with further memorandum and documents, as necessary.

Respectfully Submitted,

SHAHID LAW OFFICE, LLC



A. Peter Shahid, Jr.  
89 Broad Street  
Charleston, SC 29401  
843-853-4500

ATTORNEY FOR  
THE DIOCESAN DEFENDANTS

August 16, 2010  
Charleston, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
JOHN DOE 2 and JANE DOE4, )  
Plaintiff, )  
vs. )  
THE BISHOP OF CHARLESTON, A )  
CORPORATION SOLE, ROBERT )  
GUGLIELMONE, THE BISHOP OF THE )  
DIOCESE OF CHARLESTON, IN HIS )  
OFFICIAL CAPACITY, REV. )  
MONSIGNOR MARTIN LAUGHLIN, )  
FORMER ADMINISTRATOR OF THE )  
DIOCESE OF CHARLESTON, IN HIS )  
OFFICIAL CAPACITY; ROBERT J. )  
BAKER, FORMER BISHOP OF )  
CHARLESTON, IN HIS OFFICIAL )  
CAPACITY; )  
LAWRENCE E. RICHTER, JR., )  
DAVID K. HALLER, AND )  
RICHTER AND HALLER, LLC. )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE No. 10-CP-10-5520

**CERTIFICATE OF SERVICE**

FILED  
2010 AUG 18 PM 4:42  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

This is to certify, in the above captioned matter, that the undersigned has mailed a copy of the **Diocesan Defendant's Motion To Dismiss**, (*Diocesan Defendants* -The Bishop of Charleston, A Corporation Sole; Robert Guglielmone, the Bishop of the Diocese of Charleston, in his Official Capacity; Rev. Monsignor Martin Laughlin, Former Administrator of the Diocese of Charleston; Robert J. Baker, Former Bishop of Charleston; in his Official Capacity); by depositing same in the United States Mail, with sufficient United States Postage thereon, on the 16<sup>th</sup> day of August, 2010, to the following counsel of record:

**CERTIFICATE OF SERVICE**

**Diocesan Defendant's Motion For Plaintiffs to Disclose Their Identity,**

Gregg Meyers  
**Attorney for the Plaintiffs**  
One Poston Road Suite 100  
Post Office Box 1297  
Charleston, SC 29604

AND

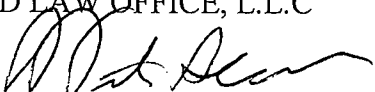
James L. Bruner  
**Attorney for Lawrence E. Richter and  
Richter & Haller, LLC**  
P.O. Box 61110  
Columbia, SC 29260

AND

Susan Taylor Wall  
**Attorney for David K. Haller**  
Parker, Poe, Adams & Bernstein  
200 Meeting St., Suite 301

SHAHID LAW OFFICE, L.L.C

By:

  
A. Peter Shahid, Jr.

Attorney for the Diocesan Defendants

Dated: August 16, 2010  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
JOHN DOE 2 and JANE DOE4, )  
Plaintiff, )  
vs. )

THE BISHOP OF CHARLESTON, A )  
CORPORATION SOLE, ROBERT )  
GUGLIELMONE, THE BISHOP OF THE )  
DIOCESE OF CHARLESTON, IN HIS )  
OFFICIAL CAPACITY, REV. )  
MONSIGNOR MARTIN LAUGHLIN, )  
FORMER ADMINISTRATOR OF THE )  
DIOCESE OF CHARLESTON, IN HIS )  
OFFICIAL CAPACITY; ROBERT J. )  
BAKER, FORMER BISHOP OF )  
CHARLESTON, IN HIS OFFICIAL )  
CAPACITY; )  
LAWRENCE E. RICHTER, JR., )  
DAVID K. HALLER, AND )  
RICHTER AND HALLER, LLC. )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE No. 10-CP-10-5520

FILED  
MAR 30 AM 9:51  
JULIE J. ARMSTRONG  
CLERK OF COURT

**DIOCESE DEFENDANTS'**  
**MEMORANDUM IN SUPPORT OF**  
**MOTION TO DISMISS**

The Bishop of Charleston, A Corporation Sole; Robert Guglielmone, the Bishop of the Diocese of Charleston, in his Official Capacity; Rev. Monsignor Martin Laughlin, Former Administrator of the Diocese of Charleston; Robert J. Baker, Former Bishop of Charleston; in his Official Capacity.- *Diocese Defendants*)

The Defendants in the case are identified as The Bishop of Charleston, a Corporate Sole; The Bishop of the Diocese of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, Former Administrator of the Diocese of Charleston, in his official capacity; and Robert J. Baker, former Bishop of Charleston in his official capacity, hereinafter referred to as "Diocese Defendants". The gravamen of the various causes of action contained in the Complaint are allegations of child sexual abuse which are claimed to have occurred between 1965-1971, by Fr. James McCarthy, a priest of the Diocese Defendants while he was assigned to St. William

Church in Ward, South Carolina. The alleged perpetrator is deceased. The identity of the Plaintiffs have not been made known to the Diocese Defendants, however from the Complaint the Plaintiffs are adults who allege they were sexually abused as children by an agent of the Diocese.

The Diocese Defendants have filed a Motion to reveal the Plaintiffs' identity, a Motion for a Protective Order and Motion to Dismiss the Complaint. The Defendants submit to the Court this Memorandum in support of their Motion to Dismiss the Complaint. It is the contention of the Diocese Defendants that all of the claims in the above case are barred by the Doctrine of *res judicata*, collateral estoppel and the Statute of Limitations. A previous Class Action filed in Dorchester County and approved by the Circuit Court encompassed and extinguished all of the current Plaintiffs claims. Even without the *res judicata* and collateral estoppel effect of the previous litigation, the Plaintiffs' claims fall outside the Statute of Limitations and they offer no valid reason toll the limitations period, as their claims are barred for not being timely filed.

### **Background**

On January 12, 2007 the Diocese Defendants entered into a Class Action Settlement Agreement with a class of people, through Class Counsel, who claim to have been sexually abused as children by personnel of the Diocese of Charleston, and those claimants' parents and spouses. Several complaints were filed in the Dorchester County Court of Common Pleas in the following actions: 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 v. The Diocese of Charleston, A Corporation Sole, and the Bishop of the Diocese of

Charleston in His Official Capacity; Case Numbers 2006-CP-18-1310, 1311, and 1636.

The Class Action Settlement Agreement, hereinafter referred to as the “Agreement”, was submitted to Judge Diane Goodstein for class certification and approval. A copy of the January 12, 2007 Agreement is attached hereto and incorporated herein as “**Exhibit A**”. On January 23, 2007 the Court granted preliminary approval to the Class and ordered publication notice through at least ten South Carolina newspapers, as well as notice in the Catholic Miscellany, the Diocese Defendants periodic newspaper. A copy of the Order giving preliminary approval is attached as “**Exhibit C**”. Notice of the settlement was reported in national and international news outlets beyond those ordered by the Court. A copy of the Addendum to Settlement and Arbitration Agreement was filed on March, 1 2007. The addendum is attached as “**Exhibit B**”. On July 30, 2007 the Dorchester County Court entered an Order Approving Settlement Agreement, and entered a supplemental Order on August 31, 2007. A copy of the July 30, 2007 Order is attached as “**Exhibit D**”.

The Agreement and Addendum provided two distinct class members defined as follows: “All individuals born on or before August 30, 1980, who as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter “ the Primary Class”), and “the spouses and parents of all individuals born on or before August 30, 1980 who as minors were sexually abused at any time by agents or employees of the Diocese of Charleston who suffered a loss of the abused individual’s consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the “Consortium Cass”). . The term “sexually abused” or “sexually abuse” is defined in footnote #2 of the Agreement as

follows: “.....as used throughout this agreement and in the class definitions, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee.” The Addendum to Settlement and Arbitration Agreement was filed in Dorchester County on March 1, 2007. The purpose of the Addendum is to clarify “certain particulars in order to fully effectuate the original intentions of the parties”. As referenced in the Addendum, an additional paragraph, 3(x) was added to the agreement, clarifying this as an “opt out” Class:

Any person who satisfies the definition of either class is a member of that class to the fullest extent allowed by law unless they opt out of either class. Any individual who believes he or she is or may be a member of either of the plaintiff classes but does not wish to participate in the settlement for any reason may “opt-out” of this settlement and/or the classes by completing the court approved “opt-out” form and transmitting it to Class Counsel. Given the sensitive nature of the claims here which have or may be alleged, the parties agree that they will jointly request that the court have Class Counsel serve as the initial repository of the “opt-out” forms. At the close of the time in which the forms can be completed, Class Counsel shall send a copy of the forms to Counsel for the Diocese, and then file the original forms with the Dorchester County Clerk of Court under seal. (**Exhibit B**, p2.)

As noted above, Judge Goodstein issued an Order providing preliminary approval on January 23, 2007. Furthermore, following a fairness hearing on March 9, 2007, and subsequent hearings, Judge Goodstein approved the Agreement by Court Order filed July 31, 2007. This Order provided for the mechanism in processing all Class claims. This procedure included the public notice of the court’s approval of the Agreement, the manner in which claims were to be received, reviewed and resolved. The Order specified the class was an “opt-out” class, specifically providing that any individual who met the definition of either Primary or Consortium class was automatically deemed a class member, unless that individual affirmatively “opted-out” of the Class. As the court noted in addressing the objections a to class definition, the

agreement provided the class to be an “opt out” class. In the 2007 Order which provided the mechanism in processing all claims, the Court stated: “Those who do fit in the class and do not care for the definition of the class as defined may opt-out of the class and proceed on their own..” (**Exhibit D**, p.6).

A supplemental order was issued by Judge Goodstein on August 31, 2007 addressing among other issues the challenges raised by the current Plaintiffs’ counsel, including the award of \$1.375 Million to his clients outside the class action process. This Order also clarified the inclusion of class members who possessed a valid claim, who previously notified the Diocese Defendants of their allegation, and who should have received actual notice of this class action litigation. A copy of the August 31, 2007 order is attached hereto and incorporated herein as “**Exhibit E**”. The Class Action claims process proceeded throughout 2007 and 2008. The time to submit a claim form or a Notice of Opt-Out expired on December 6, 2007. An arbitrator received and reviewed claims and distributed awards through February, 2008.

The allegations in the above captioned Complaint clearly identifies the Plaintiffs John Doe 2 and Jane Doe 4 as individuals who are Primary Class members, as they allege to have been sexually abused as minors by a priest of the Diocese of Charleston. The Plaintiffs clearly failed to participate in the claims process and failed to affirmatively “opt-out” of the class.

#### **Legal Standard**

Based solely on the facts alleged in the pleadings before the Court, and considering those facts in the light most favorable to the Plaintiffs, the current Complaint fails to state a cause of action against the Diocese Defendants for which relief can be granted. As re-stated in Hambrick v. GMAC Mortgage Corp. 370 S.C. 118, 121-22, 634 S.E.2d 5, 7 (Ct. App., 2006), the legal

standard in deciding a defendant's motion to dismiss rests on the facts plead in the complaint. Stated in other terms, the Plaintiffs are bound to those allegations raised in their respective pleadings. Whatever are the particular circumstances attributable to support the Plaintiffs' cause of action are subject to this Court's scrutiny. Those facts are then subject to analysis as to whether they have satisfied the court's inquiry that there exists a sustainable basis that relief may be granted.

The circuit court may dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." The circuit court "must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint. . . . All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." Hambrick, at 121-22, (Ct. App., 2006) (internal citation omitted).

#### **A. The Doctrine of Res Judicata**

##### **i. Res Judicata Effect in Class Action Litigation**

The Plaintiffs' claims are barred by the Doctrine of *res judicata*, which applies to the putative class members, both absent and actual, in this class action litigation in the same manner it applies to litigants in non-class actions. The Doctrine of *res judicata* is an absolute bar to a subsequent complaint or cause of action in which the merits of that complaint were previously adjudicated in a final decision, the identity of the parties of the previous litigation are identical to the subsequent one, and the merits of the successor action were included in the preceding one. "*Res judicata* requires proof of three elements: 1) a final, valid judgment was entered on the merits of the first suit; 2) the parties to both suits are the same; and 3) the subsequent action

involves matters properly included in the first action.” Judy v. Judy 383 S.C. 1,8, 677 S.E.2d 213, 217 (Ct. App., 2009), citing Plott v. Justin Ent. 374 S.C. 504, 511, 649 S.E.2d 92, 95 (Ct. App., 2007). “For purposes of *res judicata*, ‘cause of action’ is not the form of action in which a claim is asserted, but rather the cause for action, meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon.” 383 S.C. 1,9, 677 S.E.2d 213, 218 (Ct. App., 2009), quoting Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 35, 513 S.E.2d 106, 109 (1999).

Under the Doctrine of *res judicata*, “a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action.” Treadaway v. Smith, 325 S.C. 367, 377, 479 S.E.2d 849, 855 (Ct. App., 1996) (internal citations omitted).

In the current case, all three elements of the Doctrine of *res judicata* are present and therefore bar any recovery by the Plaintiffs. First, a final valid judgement has been entered on the merits of this case. The Plaintiffs’ claims of sexual abuse and loss of consortium are identical to the claims of the Dorchester County Court approved class action. The Plaintiffs’ allegation they were minors at the time of the abuse by an employee or agent of the Diocese Defendant meet the definition of “sexual abuse” as contained in the Agreement. The Plaintiffs, John Doe 2 and Jane Doe 4 assert that as minors they were sexually abused by an agent of the Diocese Defendants-that is a priest who was assigned to their parish. These Plaintiffs were born on or before August 30, 1980, as evidenced in their Complaint that the abuse occurred within the time frame of 1965 and 1971. As such they are by definition members of the Primary Class.

The Complaint fails to allege that the Plaintiffs are not members of the Primary Class.

The Plaintiffs do not contend that they processed their individual claims through the court approved class action mechanism. The Plaintiffs fail to allege that any of them opted-out of the class. Further, the effect of the final orders of that proceeding is the same as if the claims were litigated in a non-class action. “A judgment in favor of the plaintiff class extinguishes their claim, which merges into the judgment granting relief.” Cooper v. Federal Reserve Bank of Richmond, 467 U.S. 867, 874, 104 S.Ct. 2795, 2798 (1984). In this case, the Dorchester County Court of Common Pleas entered a final, valid judgment on the merits of a class of plaintiffs’ claims of sexual abuse. The Court’s Orders of July 30, 2007 and August 31, 2007 approved a Settlement Agreement which incorporated the claims of a class of injured parties, of with these Plaintiffs were members. Thus, the first elements of the Doctrine of *res judicata* has been met, as a valid Order on the merits has been entered.

Second, the current Plaintiffs’ status as class members, albeit absent class members, satisfies the requirement of identity of parties. “There is of course no dispute that under elementary principle of prior adjudication a judgment in a properly entertained class action is binding on class members in any subsequent litigation.” Id.

On the face of their Complaint, the Plaintiffs admit they were absent class members in the Dorchester County Class Action, in that they fit the definition of the classes, but did not participate in the claims process. The named Defendants in the Class Action are the same Defendants as the current action, namely the Diocese of Charleston and the Bishop of Charleston. The other Defendants are the agents or former agents of the Diocese. Bishop Barker signed the agreement and Msgr. Laughlin was his successor Administrator. Therefore, as the current Plaintiffs are part of a class which had their claims adjudicated against the Diocese

Defendants, the identity of parties requirement is met.

Third, issues raised in the current action were or could have been raised in the prior Class Action litigation. The Plaintiffs' current claims center on allegations of child sexual abuse which is alleged to have occurred over 40 years ago. The Defendants litigated all claims of past sexual abuse in the Dorchester Class Action, culminating in the January 12, 2007 Settlement Agreement and Addendum. The definition of the class provided a specific framework of which a particular type of legal action was included for complete resolution. First the action is restricted to an injury attributable to sexual abuse, as previously defined. Second, the claimant had to be a minor at the time of the injury. Third, that the injured person was born no later than August 30, 1980. Fourth, that the claim had not been previously resolved. Fifth, that the abuse occurred by an agent of the Diocese Defendants. Therefore the third element of the Doctrine of *res judicata* has been satisfied.

The Defendants request this Court to take judicial notice of the issuance of a circuit court's ruling on the issue of whether a class member from the Dorchester County Class Action is precluded from instituting a claim. In case number 09-CP-10-7751 a claimant who was a class member and a class action participant subsequently filed an action against the Diocese, Class Counsel and Diocesan Counsel for additional recovery. Attached to this Memorandum and incorporated herein, as **Exhibit F** is an Order dated September 8, 2010. The Plaintiff in the above case was an actual class member, in that he participated in the claims process and received an award. The principals of *res judicata* and collateral estoppel are the same in that case as in the current one. In Case number 09-CP-10-7751 case, the Court dismissed all claims against the Diocese of Charleston holding:

all three elements of *res judicata* are present within the contents of the Plaintiff's Complaint. First, the Dorchester county Court of Common Pleas entered a final, valid judgment on the merits of the Plaintiff's claims of sexual abuse. The court's Orders of July 30, 2007 and August 30, 2007 approved a Settlement Agreement which incorporated the claims of a class of plaintiffs, of which the current plaintiff was a member. . . . Second, the Plaintiffs status as a class member in the previously adjudicated class action satisfies the requirement for identity of parties. . . . Third, the issues raise in the current action were, or could have been, properly included in the first action. (**Exhibit F**, pp, 4-5.)

Therefore, *this Court* has already ruled in a valid final order that a class member is precluded by *res judicata* from bringing an additional action against these same Defendants. The specific issue of *res judicata* has already been decided by this Court in favor of these Defendants, therefore the issue is barred by collateral estoppel.

**B. Plaintiffs' Assertion that *Res Judicata* is Suspended as to Their Claims**

1.

In the Plaintiffs' Complaint they contend the Doctrine of *res judicata* does not bar their claims because (a) "The procedure used did not adequately insure the protection of their interests," (b) "[Plaintiffs'] representation by the Richter defendants was inadequate and fell below the applicable standard of care,." and (c) "because the state court order appears to contemplate the insufficient notice by holding that the plaintiffs is not properly bound by any *res judicata* effect" Compl., Para. 22.

The Plaintiffs' allegation that the 2007 Orders in the class action preclude the Diocese from asserting the defense of *res judicata* are unmerited. In the course of the March 2007 fairness hearing, Class Counsel introduced a document which has been commonly referred to as the "1962 Instruction." As a consequence of the production of this document, Judge Goodstein directed that the Diocese Defendants undergo an examination of their files to identify the names of individuals who may have announced to the Diocese that they were victims of sexual abuse

by one of their agents. The Diocese Defendants were then charged with the responsibility of locating those victims and providing them with actual notice of the Class Action Agreement, and the method they were to proceed in pursuit of their claim.

The Diocese Defendants reported to Judge Goodsetin the results of their examination, including the success of locating those victims and providing them with actual notice of the Class Action Agreement. To satisfy the Court's concern that known victims who previously presented their claims would miss the opportunity in participating in the class action process and would by definition be barred from pursuing their claim outside the class action as a result of the application of the Doctrine of *res judicata*, the Diocese Defendants agreed that it would not seek to bar those claim on two conditions. The first of these conditions was that the Diocese Defendants had prior actual knowledge of the victim and their claim and the claim was not resolved. The second condition was that the Diocese Defendants, in spite of their prior actual knowledge, failed to notify that particular victim of the class action process.

Plaintiffs attempt to circumvent these two conditions and avoid the application of the Doctrine of *res judicata* in citing the July 30, 2007 Order Approving Settlement as follows:

The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement. Further, the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.  
(Exhibit D, p. 4.)

In citing this portion of the Order, the Plaintiffs ignore the context of the cited paragraph and further clarification and definition of the Court's reference to those "who should have had

notice.” First, the above paragraph was written in the context of a discussion of “how best to... protect the interests of both the absent class members and the *Diocese’s right to have the conclusive effect of a class action.*” The Order continues in this discussion with the following: “...the Diocese undertook on its own to notify the potential members of the class *known to it.*”

**Exhibit C**, page 4. The Plaintiffs’ limited reference of the Order as binding authority to relieve them of the prohibitive effect of *res judicata* ignores the context and the plain language of the Order which limits the discussion to those individuals actually known to the Diocese at the time of the Order.

Second, for the exact reason the Plaintiffs now raise, at a hearing on August 9, 2007 Counsel for the Diocese Defendants requested the Court to clarify its previous July 30, 2007 Order regarding those who “should have had notice.” The following dialogue is an excerpt of the transcript of record from a hearing conducted on August 9, 2007 before Judge Goodstein and Mr. Jim Geoly, one of the attorneys representing the Diocese Defendants:

**Mr. Geoly:** There is language concerning members of the class who are entitled to actual notice of the settlement agreement and of the class action and of the whole process. And a window is left open for such people if they don’t receive actual notice. It turns out that this *relatively small group of people* who’ve been identified don’t actually get notice, they, in fact are not barred and that was something that the diocese had agreed to. There was— we saw some ambiguity in the language and I just, I wanted, I guess I wanted to clarify with the Court that that was the intent. *You weren’t opening up future litigation to those who were not on the list of those entitled to notice of the settlement.*

**Judge Goodstein:** No, not at all.

**Mr. Geoly:** Thank you.

**Judge Goodstein:** Not at all. Thank you. I’m glad you did that, and let the record reflect that that is limited to those people that, despite all of the efforts that the

diocese has given and class counsel's investigator and class counsel, despite all those efforts, that there are these people that really-- don't leave me-- that we learn of in the process that they have agreed to do that. Transcript of August 9, 2007 Hearing, 57-58 (emphasis added), attached as **Exhibit G**.

The Court then filed an additional Order dated August 31, 2007 in which it clarified the "relatively small group of people" who would be entitled to actual notice, and whose potential future claim would not be barred by the *res judicata* effect of the litigation.

Furthermore, in the Court's Order of July 30, 2007 approving the Class settlement, the Court made reference to the existence of individuals who, according to the Diocese, (1) were potential class members; (2) came forward to the Diocese at some time in the past with their allegations of child sexual abuse; (3) never resolved their potential claims; and (4) were entitled to receive *actual notice* of the proposed class settlement pursuant to the agreement of the parties and earlier instructions from this Court (hereinafter referred to as "Actual Notice Class Members"). The Defendants have asked the Court to clarify how the settlement process will treat Actual Notice Class Members. Accordingly, the Order clarifies, and, where in conflict, supersedes the Court's Order of July 30, 2007. (**Exhibit E**).

The Order created a specific sub-class of potential class members who are now categorized as Actual Notice Class Members. This designation clarifies the issue raised by Diocese Defendant's attorney at the August 9, 2007 hearing, that the *only* group who is entitled to come forward without the *res judicata* effect of the Class Action Settlement Agreement are those individuals who satisfy the above enumerated criteria and are within the umbrella of this new sub-class. The Order further distinguishes this group from the larger class in the following provision:

Actual Notice Class Members who present their claims more than 120 days after they receive actual notice of the settlement shall be barred from participation in the settlement process and *shall be*

*treated like any other class member who has failed to timely present a claim* to the class settlement fund. *Id* (emphasis added).

Plaintiffs allege that the July 2007 Order suspends the *res judicata* and collateral estoppel effect of the Class Action litigation for *any* person who falls within the definition of the class. While the Plaintiffs acknowledge the restricted membership of the Actual Notice sub-group, and admit they do not qualify for that group, since they never previously presented a claim to the Diocese, they however contend the *res judicata* effect of the litigation is suspended not only for the Actual Notice Class Members, but all absent class members.

This rationale is clearly erroneous and ignores the clear language and intent of the Court in addressing this narrow issue. The Diocese Defendants were careful to highlight the potential ambiguity of the Court's language in the July 2007 Order. The Plaintiffs cite the July 2007 Order's flaw, in order to avoid the *res judicata* and collateral estoppel effect prohibiting absent class members, who did not fall into the Actual Notice sub-group, from pursuing a claim. The Plaintiffs' interpretation would render the creation and definition of the Actual Notice sub-group meaningless, and in essence strip the fabric of any protection afforded the Diocese Defendants in the Class Action Settlement Agreement. If the *res judicata* effect of the class litigation was suspended for all absent class members, the identification of those who had previously presented their claims and are therefore now entitled to *actual notice* would be unnecessary. No potential claimant could ever be prejudiced by *res judicata*, therefore, there would be no need for the Court to carve out this small group of potential claimants to protect them from the application of the Doctrine of *res judicata*.

The Plaintiffs' rationale of the July 30, 2007 and August 31, 2007 Orders is further

illogical because it would give the Diocese no motivation whatsoever to participate in a class action settlement as it would afford no protection against future claims. The Plaintiffs would have this Court believe there is no *res judicata* effect whatsoever from the previous litigation, which would offer the Defendants no protection against future claims by absent class members, creating an indefinitely opened claims period.

Our Supreme Court has listed “the significant interests in efficiency and finality” as benefits of class action litigation. Hospitality Management Associates v. Shell Oil Co. 356 S.C. 644, 659, 591 S.E.2d 611, 619 (2004). Furthermore, Judge Goodsetin’s Order seeks to “protect the interests of both the absent class members and the **Diocese’s right to have the conclusive effect of a class action.**” (**Exhibit D**, p.4, emphasis added). The Plaintiffs’ reading of the Dorchester County Class Action Orders promotes neither efficiency nor finality and conflicts with the basic nature of a class action.

The Plaintiffs’ assertion that the Diocese waived defenses of *res judicata* for future litigation is without merit and not supported by a plain reading of the Class Action orders. Neither the Diocese nor the Dorchester County Court waived the *res judicata* effect of the class action litigation at any point. Absent class members are subject to the same legal effect of *res judicata* as in a non-class action. The issues presented in the current case have already been litigated to a final, valid order in the Dorchester County Class Action, between the same parties. The Plaintiffs’ Complaint should be dismissed based on the Doctrine of *res judicata*.

## II. Collateral Estoppel

Similar to the Doctrine of *res judicata*, collateral estoppel precludes a party from re-litigating issues actually adjudicated in a prior action. Unlike *res judicata*, while the identity of the parties do not have to be the same in the prior action, the adjudicated issue must be related. “Collateral estoppel, or issue preclusion, prohibits a court from adjudicating an issue that was ‘actually litigated and determined by a valid and final judgment in a prior suit.’ Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suit are the same.” Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217, quoting Zurcher v. Bilton, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008). Black’s Law Dictionary defines collateral estoppel as, “an affirmative defense barring a party from relitigating an issue determined against that party in an earlier action, *even if the second action differs significantly from the first one.*” Black’s Law Dictionary 108 (2d pocket ed. 2001) (emphasis added).

In the alternative to the Defendants’ *res judicata* defense, the elements of collateral estoppel are met and should preclude the current claim. The Plaintiffs’ allegations of sexual abuse by Diocesan personnel were actually litigated in Dorchester County. The Plaintiffs’ Complaint centers on the fact that they did not receive notice of the Class Action. The issue of notice was fully and Completely litigated in the Class Action in Dorchester County, and the tangential issues of the Class Action were all litigated in Dorchester County, resulting in a final valid judgment on the merits.

Further, this Court has also decided the very issue of collateral estoppel. As noted above, this Court has previously addressed the application of the effect of collateral estoppel of a claim decided in 2010:

In spite of the label the Plaintiff has placed on this Fourth and Fifth

Causes of Action (collusion and outrage), the allegations in the Complaint relate to the Plaintiff's claim that he was previously abused while a minor by the diocese Defendants' agent and that abuse entitles him to certain recovery for damages. In other words, his capacity to sue rests on the harm he may have suffered from any act(s) by Diocesan personnel. . . . Thus, the elements of collateral estoppel are met and preclude the current claim. (**Exhibit F**, p. 7).

Regarding the other allegations of fraud and collusion which the Plaintiffs allege allow them to bring their claim, this Court also determined collateral estoppel is a bar to a subsequent claim:

The Plaintiff complains that the Class Action Settlement Agreement was obtained by a fraud perpetrated against the court system and other victims. Any attack on the integrity of this agreement was resolved by the Plaintiff's own assertions that the court in Dorchester County received the Agreement for review, conducted a fairness hearing, received and resolved objections and subsequently issued a ruling adopting the Agreement, placing in motion the claims process, and finally permitting those situated similarly to the Plaintiff to avail themselves of the benefit of submitting a claim. The issue of fairness of the Settlement and Arbitration Agreement was actually litigated and adjudicated before Judge Goodstein, resulting in a final order on the merits of the settlement. The fact that the Plaintiff has repackaged his claims under the banner of new causes of action does not overcome the hurdle that his claims of sexual abuse and collusion were actually litigated in the previous case." (**Exhibit F**, pp., 7-8).

Collateral estoppel bars a litigant from seeking review of one court's ruling on a specific issue in another court, or by another judge. In the current case the Plaintiffs are asking this Court to review the Dorchester County Court's Orders in the Class Action, and ultimately, find the decision on the notice requirement to be found insufficient for lack of due process. Further, *this Court* has already ruled on the same issues of *res judicata* and collateral estoppel in a similar case in which the same issues were raised against the same Defendants. The very definition of issue preclusion is met in this case, with a ruling from the same court in favor of

these same Defendants. For these reasons, applying the principles of collateral estoppel, the Plaintiffs' claims are barred in that the plaintiffs are estopped from instituting their Complaint.

### III. Statute of Limitations and Fraudulent Concealment

#### A. Statute of Limitations

In addition to the above defenses of *res judicata* and collateral estoppel, the Plaintiffs fail to state a claim for which relief can be granted because their claims fall outside the applicable Statute of Limitations. The Plaintiffs' claims arise out of allegations of childhood sexual abuse which allegedly occurred between 1965 and 1971. These claims are subject to the limitations period found in S.C. Code §15-3-535, for actions arising prior to 2001, and § 15-3-555, for actions arising after 2001.

The facts plead in the Complaint allege Plaintiffs John Doe 2 and Jane Doe 4 would have been born at the latest in 1965. Consequently the Plaintiffs would have turned 18 in 1983. Under § 15-3-535 the Plaintiffs would have had three years from the date of discovery of the tort to bring his or her claim. These Plaintiffs do not claim they were unaware of the alleged tort at the time it happened, between 1965 and 1971, or at any time after 1971. Giving each Plaintiff the benefit of the age of majority, three years after turning 18 in 1983, the statute would have been tolled until 1986, and three years after turning 21 would be 1989. None of these claims were brought by 1989.

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996); Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001), cert. denied. In Dean, the Supreme Court stated:

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the “exercise of reasonable diligence” to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial. *Id.* at 363, 364, 468 S.E.2d at 647 (emphasis in original) (citations omitted); Young v. South Carolina Dep’t of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999) (stating the statute of limitations runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct).

Applying the tolling effect provided by § 15-3-555, each Plaintiff would be able to bring his or her claim within six years of turning 21 years old. Construing the facts alleged in the Complaint in the light most favorable to the Plaintiffs, each Plaintiff would have turned 21 no later than 1986. Therefore, at the *very latest* their claims were barred by the limitations period in 1992. The Plaintiffs fail to allege they were unaware of the sexual abuse allegedly committed against them, or unable to discover the causal relationship between any injuries and the alleged sexual abuse.

**B. Fraudulent Concealment is not a Defense Against the Statute of Limitations**

The Plaintiffs allege as a cause of action “Fraudulent Concealment,” Compl., Para. 38-60. In order to succeed on a claim of fraudulent concealment, a plaintiff must plead facts indicating an “inducement for delay” in filing the lawsuit. Hedgepath v. American Telephone & Telegraph Co., 559 S.E.2d. 327, 338 (Ct. App. 2001). The claim of fraudulent concealment fails to bar the

application the of statute of limitations because the Plaintiffs allege a personal injury was committed against them. A defendant cannot fraudulently conceal a personal injury which the Plaintiff is aware of from the time of the injury. The Plaintiffs do not meet the requirement of a fraudulent concealment defense or claim, in that they cannot and do not allege they were unaware of their injuries or their alleged perpetrator. They do not allege any defect in memory or any other reason why they are unaware of their own personal injury. They do not allege that the Diocese Defendants ever made a misrepresentation that caused them a delay in the filing of their lawsuit. Absent such allegations, the Plaintiffs cannot maintain a claim of fraudulent concealment in tolling the statute of limitations or avoiding the application of the Doctrine of *res judicata*. In order to be successful in avoiding the application of the Statute of Limitations on this theory that the Diocese Defendants are or had engaged in acts constituting “fraudulent concealment,” the Plaintiffs are burdened with alleging and establishing the following:

[A] defendant is estopped from benefitting from the statute of limitations as a defense because the defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. The conduct may be either an express representation that the claim will be settled without litigation or actions suggesting that a lawsuit is unnecessary. To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped . . . the party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts.” Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 638, 682 S.E.2d 1, 4 (Ct. App., 2009) (internal citations omitted).

Additionally, the claims in the Plaintiffs’ fraudulent concealment cause of action are

rooted in a document dated from 1962 entitled “The Instruction.”<sup>1</sup> The Plaintiffs claim the Vatican instructed a certain degree of secrecy to all local dioceses (including the current Defendant) in this document, the execution of which led to the concealment which is the core of the Plaintiffs Complaint. Compl., Para. 40-58. This aspect of the Fraudulent Concealment cause of action is barred by the Doctrine of *res judicata*, in that this theory has already been litigated in the Dorchester Class Action. Although these Plaintiffs repackage their claim as one for fraudulent concealment, our courts have stated, “for purposes of *res judicata*, ‘cause of action’ is not the form of action in which a claim is asserted, but rather the cause for action, meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon.” Judy, 383 S.C. at 9, 677 S.E.2d at 218 (Ct. App., 2009), quoting Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 35, 513 S.E.2d 106, 109 (1999). The underlying crux of the Plaintiffs’ Complaint for fraudulent concealment, which allegedly gives them a right to a remedy, is that the Defendants concealed certain information at the direction of this 1962 document.

Not only was this claim litigated and resolved in the Class Action settlement, but Judge Goodstein specifically ordered a criminal investigation relating to the “Instruction” and examined the Instruction to ensure it would not impact the ability to give class notice. Exhibit D, pp 3-5. The basis, or the underlying facts combined with the law, for the current Plaintiffs’ cause of

---

<sup>1</sup>This document was published in 1962. The Plaintiffs do not attribute possession or authorship of this document to the current Defendants. The Plaintiffs did not obtain this document from the Defendants and offer no evidence that this document was ever in possession or use by these Defendants.

action for fraudulent concealment was actually litigated to a full and final order between these same parties in another action.

#### IV. Unfair and Deceptive Trade Practices

The Plaintiffs Complaint seeks damages alleging the Diocese violated the South Carolina Unfair and Deceptive Trade Practices Act (UTPA). The Complaint, however fails to allege facts necessary to sustain an action under the UTPA.

South Carolina's UTPA prohibits '[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce....' S.C.Code Ann. § 39-5-20 (1985). Trade or commerce is defined as 'the advertising, offering for sale, sale or distribution of any services and any property ... and any other ... thing of value....' S.C.Code Ann. § 39-5-10(b) (1985). [Appellant's] acts here are not the 'conduct of trade or commerce' within the meaning of the UTPA." Foggie v. CSX Transportation, Inc., 313 S.C. 98, 104, 431 S.E.2d 587, 591 (1993).

In Foggie the Appellant, CSX, removed and refused to re-install a railroad crossing on the Respondent's property. The Respondent sued CSX for unfair and deceptive trade practices. The trial court submitted the UTPA claim to the jury and the Supreme Court found there was no evidence of unfair or deceptive trade practices which would warrant submitting the issue to the jury. The Supreme Court found "CSX's *acts here* are not the 'conduct of trade or commerce' within the meaning of the UTPA." Id (emphasis added). The Supreme Court limited its analysis of conduct of trade or commerce to the specific acts alleged in the Complaint, namely, removing a railroad crossing. The Court did *not* expand its analysis to the general nature of the Respondent or other conduct in which it is involved which might be considered trade or commerce. The Defendants are the local Catholic Church. It engages in the free exercise of religion, and is an institution which mission is to carry out the teachings of the Gospel. Those actors who may have

engaged in acts of sexual abuse were outside the scope of the mission of the Church. The Defendants are not engaged in trade or commerce, but in religious practices not considered within the scope of the UTPA.

In the current case the acts alleged by the Plaintiffs which are the basis of their prayer for recovery are acts of sexual abuse. The Plaintiffs allege the Defendants are subject to a claim under the UTPA because, among other reasons, they “operate churches and school, and activities, which cater to families,” (Compl. Para. 221). The Plaintiffs’ allegations of conduct of trade or commerce reflect a misunderstanding of the Court’s analysis of the UTPA. The Court requires that the specific acts alleged, or the “acts here” are those of trade or commerce, not the general or unrelated conduct of the defendant that might or might not qualify as trade or commerce. The acts that form the basis of the Plaintiffs’ Complaint are allegations of sexual abuse, *not* acts of trade or commerce.

Further, even in the event that this Court looks beyond the specific acts alleged by the Plaintiffs to determine whether the Plaintiffs allege facts necessary to maintain an action under the UTPA, the other acts of commerce or trade alleged by the Plaintiffs do not rise to the level of commerce or trade contemplated by the UTPA.

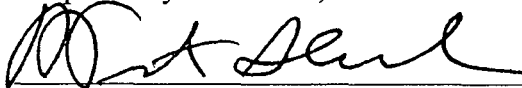
Foggie further emphasizes the portion of the UTPA which requires the “advertising, offering for sale, sale or distribution of any services and any property ... and any other... *thing of value*” (emphasis added). The offering of services related to association, entertainment and pastoral activities in a church setting are not a “thing of value.” One cannot place a monetary value on pastoral activities involved in a religious organization. The remainder of the conduct

alleged in the Plaintiffs' Complaint are rambling allegations of collusion in the Dorchester Class Action. These allegations have nothing to do with the Plaintiffs' actual causes of actions. These allegations are an attempt to distract the Court from the factual and legal requirements of the Plaintiffs' claims, but do not actually relate to the heart of the claims. In the context of a UTPA claim, the Defendants' settling of a previous law suit cannot be considered trade or commerce subject to a liability under UTPA claim, or no defendant would ever settle a claim against it, only to open itself up to further liability. The settling of a legal claim is not trade or commerce under the definitions in the UTPA.

### **Conclusion**

For the above stated reasons, Plaintiffs John Doe 2, and Jane Doe 4 fail to state any claims for which relief can be granted, pursuant to Rule 12(b)(6), SCRPC. The Doctrine of *res judicata* and the application of collateral estoppel mounts an insurmountable hurdle which these Plaintiffs cannot overcome. Further, the statute of limitations bars all claims by these two Plaintiffs. The claim of fraudulent concealment is inapplicable in this instance. Finally, the Plaintiffs fail to state facts necessary to sustain a claim under the UTPA as they do not allege any trade or commerce as the basis for their injuries. For these reasons the Defendants respectfully move this Court to dismiss Plaintiffs' Complaint, with prejudice.

Respectfully Submitted,



Shahid Law Office, LLC

A. Peter Shahid, Jr.

89 Broad Street

Charleston, SC 29401

843-853-4500

March 29, 2011  
Charleston, SC

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

STATE OF SOUTH CAROLINA )

COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 06-CP-18-1636

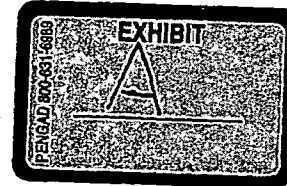
John Doe #53, John Doe 66, John Doe 66A, )  
John Doe 67, Jane Doe 1 and Jane Doe 2 )  
and Rachel Roe individually and )  
as representatives of classes of people )  
similarly situated, )

Plaintiffs, )

vs. )

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

Defendants. )



**SETTLEMENT AND ARBITRATION  
AGREEMENT**

This Settlement and Arbitration Agreement (hereinafter "the Agreement") is made this 12<sup>th</sup> day of January, 2007, by and between the John Doe #53, John Doe 66, John Doe 66A, John Doe 67, individually and as representatives of a class of other persons similarly situated as victims of sex abuse allegedly committed by agents or employees of the defendants in this action, and/or Jane Doe 1, Jane Doe 2, and Rachel Roe, individually and as representatives of parents or spouses who have suffered a loss of consortium as a result of sexual abuse upon John Doe #53, John Doe 66, John Doe 66A, and John 67 or members of their class, and The Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity (hereinafter "the Diocese"). This Agreement may be signed in counterparts. This Agreement represents the formal "Settlement and

RJB

1

Arbitration Agreement" formalizing the agreement reached between the Representatives<sup>1</sup> and the Diocese and supersedes all other agreements and/or writings previously executed by the parties. This Agreement is intended to effectuate the complete and total settlement of civil actions captioned above as well as 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913, and all other claims which were alleged or may have been alleged by the Representatives and the individuals who they represent in their capacity as class representatives. It is further understood that this Agreement must be submitted to a court of competent jurisdiction for approval and that certain provisions survive this agreement even if other provisions are not approved.

WHEREFORE, for and in consideration of the promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **FORMATION OF CLASSES.** Plaintiffs shall move in a timely manner for the creation of plaintiff classes against the defendants as follows:

- A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused<sup>2</sup> at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")
- B. The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

---

<sup>1</sup> The class representatives will be referred to throughout this Agreement as "the Representatives."

<sup>2</sup> "Sexual abuse," as used throughout this agreement and in the class definitions, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

RIB

2 RER

The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement fund, pursuant to the terms and conditions set forth in this agreement and the order approving class certification. The individuals in either class shall hereinafter be referred to as "Claimants."

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

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

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

+RSB

3

RER

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

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

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

\*RJB

4



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

\$150,000.00

\$200,000.00

Loss of consortium (Parent or Spouse)

\$20,000.00

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

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

RUB

5

RER

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

RJB

6 

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

+RJB 7 

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

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

+RUB

8

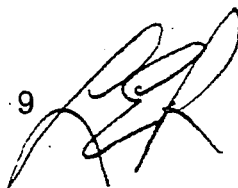


permitted to make argument. The Arbitrator may, in his sole discretion, schedule such hearing on the same day as, and immediately prior to, the Arbitration of the Claimant's claim for damages, or at some other time in advance of such Arbitration. The Arbitrator shall be the sole determiner of the Claimant's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

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

+ ROB

9

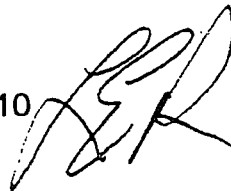


hearing shall be no longer than two (2) hours. At Claimant's arbitration hearing, the Claimant must appear unless he or she is a minor, incompetent, serving in the military (or merchant marine), deceased or otherwise unavailable for medical, psychological, or other substantial reasons. The Claimant and/or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

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

+ RUB

10



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

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

RJB

11 ER

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

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

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

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

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

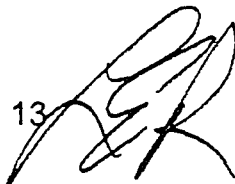
RUB 12 

and future), their substantial accomplishments in effectuating the settlement, and the work past and future and their role as class counsel, the parties agree to submit to the court the determination of the amount of attorneys fees which shall be paid to the plaintiffs' class counsel by the Diocese. However, it is specifically agreed that in no event shall such counsel receive fees of neither less than \$950,000.00 nor more than \$2.5 million to be paid to such counsel by the Diocese from the fund referred to in paragraph 3, above, all as determined by the court. Such payment shall be made to Richter & Haller, LLC on behalf of itself no later than ten (10) days after award by the court. The award of attorneys fees as set forth above in this paragraph specifically contingent upon the Court approval of this class certification and settlement agreement.

6. **PAYMENT OF CLAIMS.**

- A. W. Ellison Thomas, CPA shall serve as an independent escrow agent for the payment of all sums due from the settlement fund. The escrow agent shall be provided unrestricted access to the settlement funds obtained in compliance with this agreement and will make all payments directly against the fund as set out in this agreement, order of the court, or any award made by the Arbitrator to the individual or entity to be paid. The escrow agent will be compensated at an hourly rate approved by the court and will be from the settlement fund. The escrow agent shall provide an accounting of his disbursements at the conclusion of the claims process to Class Counsel, the Diocese, and the court.
- B. No later than thirty (30) days after the final Arbitration award is issued, the escrow agent and the Arbitrator will confer and agree that the total amount of all awards after the payment of all costs and fees, does not exceed the amounts provided for in paragraph 3(a). In the event that the total due exceeds the amounts provided for in paragraph 3(a), then each award shall be reduced on a *pro rata* of the net settlement fund. This revised award list shall be provided

+ ROB

13 

to Class Counsel and the Diocese, if necessary.

- C. Once the Arbitrator and escrow agent determine the final amount of each award, the escrow agent shall disburse the award from the settlement funds within fifteen (15) days of the final determination of the awards. The awards are to be paid to the Claimant directly or through his or her counsel. After all necessary disbursements any remaining letters of credit and/or funds will be returned to the defendants and/or letters of credit will be cancelled.
- D. Any party may bring perceived errors in an award based on an interpretation of this Agreement to the attention of the Arbitrator with notice to the other party. However, the Arbitrator's decision on any such question is final. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

7. **PASTORAL OUTREACH AND PROTECTION OF CHILDREN BY THE DIOCESE.**

The parties understand and acknowledge that the Diocese has done or will do the following:

- a. Comprehensive Policies. For the protection of children and the care of sexual abuse survivors, the Diocese has adopted a set of comprehensive policies called "The Policy of the Diocese of Charleston Concerning Allegations of Sexual Misconduct Or Abuse Of A Minor By Church Personnel" (the "Policies"). The Policies set forth the Diocese's unmitigated condemnation of child sexual abuse and its commitment to work to prevent sexual abuse, deal responsibly with accusations, and reach out with pastoral care for victims. The Policies are reviewed and updated every two years.
- b. Reports Of All Accusations To Solicitor. Pursuant to the Policies, the Diocese reports all accusations of child sexual abuse it receives to the Solicitor of the county in which the

RIB

14



accusation arises or, where applicable, to law enforcement authorities in other states, and cooperates fully with all criminal investigations and prosecutions.

- c. Victim Assistance Minister. Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. The VAM coordinates the Diocese's pastoral response to those who come forward, and works with victims to facilitate the healing process. Where appropriate, the VAM also assists victims in obtaining and paying for psychotherapy, on a confidential basis.
- d. Sexual Abuse Advisory Board. Pursuant to the Policies, the Diocese has established, among other things, a Sexual Abuse Advisory Board (the "Board"). Although the Bishop of the Diocese has the ultimate decision-making responsibility in cases presented to the Diocese, the Board has the responsibility to advise the Bishop in particular cases. The Board also assists the Bishop in the review of the Policies that occurs every two years, and makes recommendations to the Bishop concerning any proposed revisions to the Policies. The Board consists of at least five (5) members, of whom four (4) are independent lay people who are not priests or employees of the Diocese.
- e. Presentation By Class Representatives or Members To The Sexual Abuse Advisory Board. The Diocese welcomes the suggestions of the Class Representatives (or members) regarding the provisions and implementation of the Policies. The Diocese therefore agrees to permit the Class Representatives to make a presentation to the Board in advance and/or as part of the next two regularly scheduled two year policy reviews so that the views of the Representatives can be heard and considered as the Diocese undertakes such review.

RUB



8. **RELEASE.** When the Claimant submits his claim form, he or she shall execute the Release attached as Exhibit 1 and deliver that Release to Class Counsel. Class Counsel shall hold the Release in escrow until the award is delivered and payment is made, as provided herein. If payment is not made by Diocese pursuant to the Agreement, these copies are null and void and will be destroyed. The Diocese will provide a release to each Claimant as set out on Exhibit 2 through Class Counsel upon receipt of the Claim Form for the review under paragraphs 3(l), (m), and (n).

9. **DISMISSAL OF ACTIONS.** The actions pending against the Diocese shall be dismissed with prejudice pursuant to the terms and conditions set by the court in its order on class certification.

10. **MISCELLANEOUS PROVISIONS.** This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement may be modified, amended or supplemented to effectuate the intent of the parties under such terms and conditions set by the court approving this Agreement. It is acknowledged that each party has participated in the drafting of this Agreement, and that any claimed ambiguity should not be construed for or against any Party. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. Any dispute concerning this Agreement which arises after this Agreement is approved by the court shall be resolved by the Arbitrator. The decision of the Arbitrator regarding any such dispute is final and binding. The terms and conditions of this Agreement shall be binding and inure to the benefit of each of the Parties, their counsel and respective successors, heirs and assigns. It is further understood and agreed by Claimant that this Agreement is not to be construed as an admission of liability upon the part of any of the released parties, but rather as a good faith settlement of disputed claims. The Claimant states and warrants that he or she is the sole owner of the claims involved, and that such

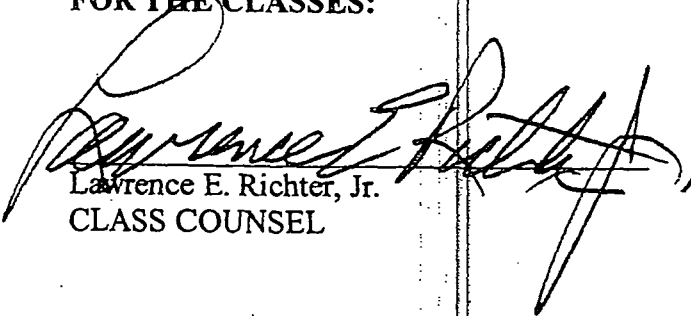
RJB

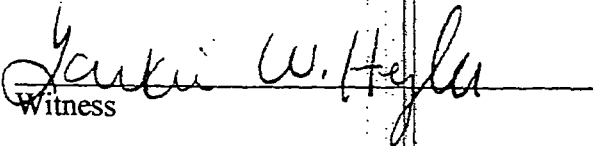


claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

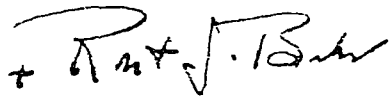
Executed this 12<sup>th</sup> day of January, 2007.

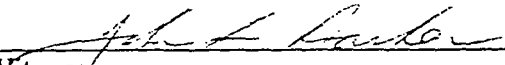
**FOR THE CLASSES:**

  
Lawrence E. Richter, Jr.  
CLASS COUNSEL

  
Witness

**FOR THE DEFENDANTS:**

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

  
Witness

## EXHIBIT 1

### CLAIMANT'S GENERAL RELEASE

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

+ RJB

18



or persons or entities employed by or affiliated with the Diocese, the Released Parties covered by this Release shall also include any other persons or entities whether or not they are employed by or affiliated with the Diocese. This release does not apply to persons or entities who are not persons or entities employed by or affiliated with the Diocese with respect to any claims arising from or related to an act or acts of abuse that have not formed, or could not form, the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese.

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as of the \_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.

\_\_\_\_\_  
Print Claimant's Name

\_\_\_\_\_  
Claimant's Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

RUB

19



## EXHIBIT 2

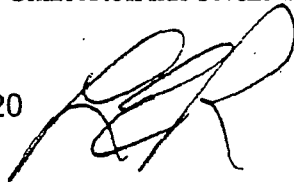
### DIOCESE LIMITED RELEASE

The Roman Catholic Bishop of Charleston and the Bishop of Charleston in his official capacity, a Corporation Sole ("Diocese"), for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby forever remises, releases and forever discharges \_\_\_\_\_ ("the Claimant") and Claimant's heirs, attorneys (including their law firms, agents, servants, or employees), executors, predecessors, parents, successors, agents, servants, employees, and assigns of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities which were or could have properly been raised in any form or fashion arising from the incidents alleged by Claimant in his claim submitted pursuant to the Order Approving Class Certification and Settlement Agreement (date to be inserted) in cases numbers 06-CP-18-1310 and 06-CP-18-1311, Claimant's participation in the class process set out in said Order, including any assertions of the Bishop arising from the validity or fraudulent nature of any claim, and/or any defense or claim which was or may have been raised by the Bishop in defense to the Claim or any suit which was or could have been filed against the Bishop but for the Claimant's participation in the claims process set out in the Order referenced herein, whether such claims are now known or unknown. It is the intention of the parties that the Diocese is fully and finally releasing the Claimant from any liability asserted by it against him or her arising from the Claimants assertion of sexual abuse.

IN WITNESS WHEREOF, the Bishop of Charleston has set his hand and seal to this Release

RJB

20



as of the date written below.

The Bishop of Charleston, a Corporation Sole

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_ Witnessed by: \_\_\_\_\_

+ RUB

21

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

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

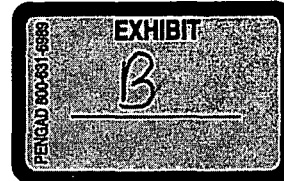
Plaintiffs, )

vs. )

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

Defendants. )

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



RECORDED  
11-11-11 1:00  
CLERK OF COURT  
DORCHESTER COUNTY

**ADDENDUM TO SETTLEMENT  
AND ARBITRATION AGREEMENT**

WHEREAS on January 12, 2007, the parties to this matter agreed to a settlement as specifically set out in the document entitled Settlement and Arbitration Agreement (hereinafter "the Agreement"); and

WHEREAS Paragraph 10 of the Agreement provides, *inter alia*, "To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement may be modified, amended or supplemented to effectuate the intent of the parties under such terms and conditions set by the court approving this Agreement;" and

WHEREAS the parties have determined that the Agreement requires clarification in certain particulars in order to fully effectuate the original intentions of the parties; and

WHEREAS the parties believe that no party or other individual will be prejudiced in any way by these clarifications which, in some cases, may provide potential class members greater and not lesser rights.

THEREFORE for and in consideration of the mutual covenants contained herein and as stated in the Agreement dated January 12, 2007, which is specifically incorporated by reference, the parties agree to amend and supplement the Agreement to further their original intentions as follows:

1. Clarifying the original intention of the "Consortium Class" so that the class is defined as follows:

The spouses and parents of all individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Consortium Class.")

2. A sentence is added at the end of paragraph 3( c) as follows: "It is the intention of the parties that the Arbitrator be given discretion in using the above stated guidelines to award damages based on the circumstances of each individual Claimant."
3. Paragraph 3(e) is amended so as to read: "Any primary class or consortium class claimant whose claim has been otherwise adjudicated, settled, or resolved, is barred from filing a claim or collecting any funds of this class."
4. A new Paragraph 3(w) is added which provides as follows:

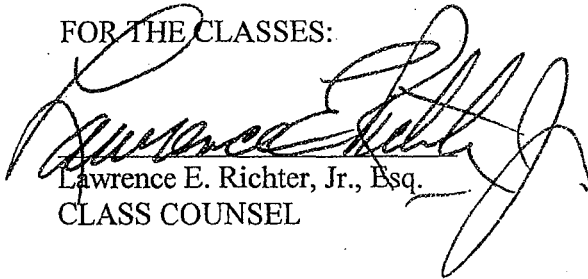
Any person who satisfies the definition of either class is a member of that class to the fullest extent allowed by law unless they opt out of either class. Any individual who believes he or she is or may be a member of either of the plaintiff classes but does not wish to participate in the settlement for any reason may "opt-out" of this settlement and/or the classes by completing the court approved "opt-out" form and transmitting it to Class Counsel. Given the sensitive nature of the claims here which have or may be alleged, the parties agree that they will jointly request that the court have Class Counsel serve as the initial repository of the "opt-

out" forms. At the close of the time in which the forms can be completed, Class Counsel shall send a copy of the forms to Counsel for the Diocese, and then file the original forms with the Dorchester County Clerk of Court under seal.

The Opt-out Form is attached hereto as Exhibit D to the Agreement.

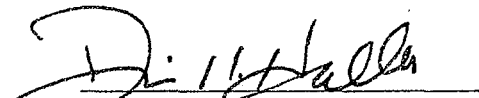
Executed this 27<sup>th</sup> day of February, 2007

FOR THE CLASSES:

  
Lawrence E. Richter, Jr., Esq.  
CLASS COUNSEL

FOR THE DEFENDANTS:

  
A. Peter Shahid, Esq., General Counsel for  
THE BISHOP OF CHARLESTON, IN HIS  
OFFICIAL CAPACITY AND FOR THE BISHOP OF  
CHARLESTON, A CORPORATE SOLE

  
Witness

  
Witness

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

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

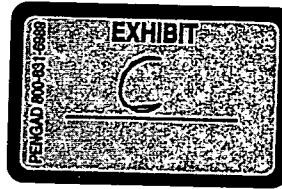
John Doe #53, John Doe 66, John Doe 66A, )  
John Doe 67, Jane Doe 1 Jane Doe 2, )  
and Rachel Roe individually and )  
as representatives of classes of people )  
similarly situated, )

Plaintiffs, )

vs. )

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

Defendants. )



CERTIFIED COPY  
2007 JAN 23 AM 9:39  
Clerk of Court  
DORCHESTER COUNTY

ORDER CERTIFYING CLASSES  
AND GIVING PRELIMINARY  
APPROVAL TO SETTLEMENT

THIS MATTER is before the court on motion by the plaintiffs for certification of two classes and for approval of a settlement reached between the class representatives and the defendants. After a review of the full record before the court and the law applicable to the issues hereto, the motion to certify the requested classes is GRANTED and the proposed settlement agreement is preliminarily approved, subject to the objection period and Fairness Hearing as set out in this order.

### FINDINGS OF FACT

Plaintiffs John Doe #53, John Doe 66, John Doe 66A, and John Doe 67<sup>1</sup> are individuals who, as minors, were sexually abused by priests assigned to the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole, and The Bishop of

<sup>1</sup> Hereinafter all of the plaintiffs will be referred to as "Representatives."

Charleston, in his official capacity (hereinafter "the Diocese"), are the designated governing entities for the Roman Catholic Church in South Carolina. The Corporation Sole was chartered by the General Assembly in the 1880s and its reach is statewide. John Doe #53 claims to have been abused by Father Lawrence Sheedy while John Doe was a minor living at the Charleston orphanage operated by the Diocese. John Does 66, 66A, and 67 were students at Nativity School who were abused by Father James Nyhan while Nyhan was assigned there. Jane Doe 1 is the wife of John Doe #53 and Rachel Roe is his mother. Jane Doe 2 is the wife of John Doe 66A. Each of the proposed class representatives were abused in their minority and brought this action beyond the one year statute of limitations for those reaching majority.

Over the past several decades a number of priests or other agents of the Diocese have been accused, investigated, criminally charged, and/or criminally convicted of sexual activities on minors. Based on information provided by the Diocese of Charleston to the Representatives, between 1950 and 2006, the total numbers of Diocese personnel who are alleged to have committed one or more acts of sexual misconduct on a minor are 28. Of these, 26 were clerical and the remainder non-clerical. The total number of claimed victims during this time period is 50. Some of these victims have brought claims against the Diocese. In almost all of them, the Diocese has asserted the statute of limitations, charitable immunity, and lack of notice/negligence, among other things, in defense of the claims. Additionally, a common issue in cases involving sexual abuse claims is the calculation of damages for mostly psychological damages. Each of the representatives have had the defenses and issues raised here asserted in their own claims. This action is almost identical to actions brought in other states in which the plaintiffs

have alleged sexual abuse upon them by priests and the failure of the Catholic Church in that area to adequately act in response.

Counsel for the representatives has extensive experience in complex plaintiffs' litigation, including potential class actions and cases in which sexual abuse of the plaintiff is the basis for the underlying claim.<sup>2</sup>

## ISSUES

1. Should the plaintiffs' request for certification of classes be granted pursuant to SCRCF Rule 23?
2. Is the Settlement Agreement reached between the parties in the best interests of the class such that it should be preliminarily approved?

## LAW/ANALYSIS

### A. Certification of the Classes

SCRCF Rule 23 provides that a case may be certified as a class action where the proposed class satisfies the following criteria:

1. the class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties will fairly and adequately protect the interests of the class; and
5. In cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Plaintiffs have requested that the following classes be certified:

---

<sup>2</sup> The Diocese, while denying the seminal allegations of the complaint, took no legal or factual position on the motion for class certification.

- A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused<sup>3</sup> at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")
- B. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

I find that certification of these class is appropriate.

**1. Numerosity/ Impracticability of Joinder.**

The first element, commonly referred to as 'numerosity,' requires that the court balance the number of potential members of the class and the ability to join each of the individuals in one suit. There is no definitive standard as to what number is sufficient to be numerous. *Haywood v. Barnes*, 109 F.R.D. 568 (E.D.N.C. 1986). Courts have certified classes where the number has been as small as 14 members. *Manning v. Princeton Consumer Discount Co.*, 390 F.Supp. 320 (ED Pa 1975)(cited by *Middleton v. Sunstar Acceptance Corp.*, 98-CP-07-1131 (SC Court of Common Pleas, Jan. 13, 2000). Further, the exact number does not have to be known. Wright, Miller, & Kane Federal Practice and Procedure (2d) § 1762. The record before the court must reasonably infer numerosity. *Id.* Determining whether numerosity exists requires a liberal interpretation of the rule. *Id.* The key is not simply the number of potential class members, but also the practicability of joining all in one action.

---

<sup>3</sup>"Sexual abuse," for these purposes, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

The record before me shows four representatives of the Primary Class and three of the Consortium Class. There have been no less than 28 priests or agents of the Diocese who have been accused, investigated, charged, and/or convicted of sexual abuse crimes on minors. However, the total number is likely to be higher because of the nature of the allegations and many of these priests have had multiple victims. As the representatives have shown, it is difficult for claimants to face up to sexual abuse. This is more true where the abuse has been accomplished by a person such as a priest, who is held by high esteem by the victim.

Further, the Diocese operates statewide and, hence, the breadth of individual claims is particularly great. The size of the Diocese's reach also weighs on the ability of individuals to be joined in the case. In addition, this court may easily take judicial notice that Catholic Dioceses around the country have been taking on the issue of priest sexual abuse in the litigation forum over the last several years. The problem of sexual abuse by priests has been in the forefront of national news which is indicative of the potential number of claimants here.

As to the Consortium Class, because members of the class are the spouses and parents of those who have actually suffered abuse, the number of members for that class is likely to be larger than in the Primary Class. It is not difficult for this court, then, to reasonably infer that the number of potential class members is such that the joinder of all is impractical. Hence, this first prong is met.

## **2. Commonality/Typicality**

The second and third prongs of Rule 23 are generally considered to be identical and are most often analyzed together. Commonality is the requirement that common question of

law or fact predominate over other questions in the case. "In fact, a single common issue will suffice if it is important enough." *McGann v. Mungo*, 287 S.C. 561, 340 S.E.2d 154 (Ct.App. 1986). Typicality requires that the claims or defenses of the class be identical. SCRCF Rule 23(a)(3). I find that the claims of the class are common and typical to each of the members.

The key issues of the case, as set out in the complaints, include the responsibility of the Diocese to monitor its agents, its knowledge of their conduct, the acts taken by the Diocese in the face of the knowledge, the type of damage (namely psychological), the applicability of the statute of limitations and defenses thereto, and the applicability of the affirmative defense of charitable immunity. Each of these issues must be addressed in the case of each individual class member in order for a resolution of the matter. Accordingly, the claims of each class member are common and typical to one another.

### **3. Adequacy of Representation**

The fourth prong of Rule 23 is the adequacy of representation. There are two parts to this prong: (1) the plaintiffs' attorney must be qualified, experienced, and generally able to conduct the proposed litigation; (2) the plaintiffs must not have interests antagonistic to those of the class. The plaintiffs here meet these criteria.

First, the record reflects that class counsel is "qualified, experienced, and generally able to conduct the proposed litigation." It is presumed that plaintiffs' counsel is qualified unless the defense shows inadequacy of representation. *McGlothlin v. Connors*, 142 F.R.D. 626 (W.V.A. 1992). The record before me shows that plaintiffs' counsel has a history of being involved in numerous complex pieces of litigation and class actions and with great success. The reputation of class counsel is known to the court and, given

their past history and their work in this matter heretofore, I have no question in finding them qualified.

Second, the class representatives' interests are not antagonistic to those of the rest of the class. The representatives have resolved their claims and agreed to be bound by the resolution in the face of whether this court approved class certification or not and the Diocese agreed to pay them regardless of whether the class was approved or not. They have nothing more to gain from the case. Accordingly, the representatives are not in an antagonistic position to the rest of the class.

#### **4. \$100 requirement.**

Last, SCRCF Rule 23(a)(5) requires that the amount in controversy exceed \$100 for each member of the class. In order for the amount in controversy prong to be met, the plaintiffs must show that the amount to be gained in the suit exceeds \$100 per class member. *Gardner v. Newson Chevrolet-Buick, Inc.*, SC 328, 404 S.E.2d 200 (1991). The claim for the class here is the medical bills, pain, suffering, psychological injury, and loss of consortium as a result of the Diocese's acts or omissions. These damages clearly seek a gain in excess of \$100 per class member. I find that the amount in controversy element is satisfied.

For the reasons set for above, the elements of SCRCF Rule 23 are met for the classes sought to be certified and, accordingly, I grant the motion to certify the classes herein.

#### **B. Preliminary Approval of the Settlement**

The parties have presented a Settlement Agreement for preliminary approval by the court pursuant to SCRCF Rule 23. At this point, the court conducts a two-step process:

1) a review of the settlement to determine whether it is within the realm of approval; and  
2) instructions on providing notice to the class for purposes of objection with Notice of a Fairness Hearing for purposes of final approval of the settlement. *Clark v. Experian Information Solutions*, WL 2566433 (D.S.C. 2004).

I have given a full review of the Settlement Agreement with counsel for both parties and I believe that the settlement is fair, reasonable, and adequate in providing necessary funding for the class and a confidential means of asserting and prosecuting a claim which encourages individuals to make the same, among other things.

I order a Fairness Hearing be held March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina. The parties are required to follow the following procedure to effectuate final approval of the settlement.

**A. Notice.** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun*; *The State*; *The Augusta Chronicle*; *The Rock Hill Herald*; *Beaufort Gazette*; *Greenville News* *Spartanburg Herald*; *Orangeburg Times-Democrat*; *Florence Morning News* and the *Aiken Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names, addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

B. **Objection.** Any potential Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same on Class Counsel prior to February 22, 2007. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

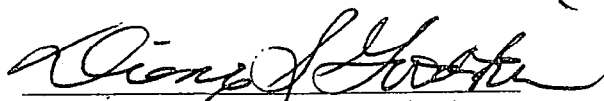
C. **Prayer for Attorneys Fees.** The Court will also consider at this hearing an award of attorneys' fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys' fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement.

Therefore, it is ordered that the plaintiffs' motion for class certification is GRANTED; and

IT IS FURTHER ORDERED that the Settlement Agreement reached between the parties is preliminarily approved by this court; and

IT IS FURTHER ORDERED that a Fairness Hearing for final approval of the hearing be held before me on March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina subject to the notice and other terms and conditions contained herein.

AND IT IS SO ORDERED!!!

  
The Honorable Diane S. Goodstein  
Presiding Judge

This 19 day of January, 2007

At Summerville South Carolina

# Legal Notice

## Notice of Proposed Settlement of Class Action

*John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity*

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

Plaintiffs John Doe #53, John Doe 66, John Doe 66A John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated brought these claims on behalf of themselves and others who with claims of sexual abuse in keeping with the class definitions, by agents or employees of the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole and The Bishop of the Diocese of Charleston, in his official capacity have denied any liability or wrongdoing in response to the claims that were made against them and have asserted various defenses in response to the claims.

The court of common pleas for Dorchester County has certified the classes on whose behalf the claims have been asserted. Those classes are:

1. All individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Primary Class")
2. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

The Class Representatives have reached a settlement on behalf of the classes, and, after a review of the terms of a Settlement Agreement entered into by the Class Representatives and the defendants, the court has preliminarily approved the terms of the settlement as being in the best interest of the classes. The court's preliminary approval is subject to final approval or disapproval after a Fairness Hearing to be held as described below. Copies of the Settlement Agreement may be obtained by a Class member or their counsel at this time by making written request of Class Counsel sent to the address for Class Counsel set forth at the end of this Notice.



The Settlement Agreement resolving this matter will not be effective unless and until the court makes a final determination as to its fairness and that the settlement is a fair, reasonable, and adequate compromise of the aggregate claims of the plaintiff classes as a whole.

In order to assist the Court in making this decision, the Court will hold a Fairness Hearing on March 9, 2007, commencing at 10:00 a.m. at the Dorchester County Courthouse in St. George, South Carolina. The court will also consider at this hearing an award of attorneys fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement. Any Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same no later than February 22, 2007. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

The proposed settlement includes a claims process to be utilized for qualifying Class members to prove the validity of any claim and have their damages measured for payment from the Settlement Fund. The Class Representatives will also request the approval of the claims process provided for in the Settlement Agreement and for an order providing for a date on which the claims process begins and ends.

CLASS COUNSEL:

Lawrence E. Richter, Jr.

David K. Haller

RICHTER & HALLER, LLC

622 Johnnie Dodds Blvd.

Post Office Drawer 1089

Mt. Pleasant, SC 29465

(843) 849-6000

[diocesessettlement@richterfirm.com](mailto:diocesessettlement@richterfirm.com)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

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

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

Plaintiffs, )

vs. )

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

Defendants. )



CERTIFIED COPY  
2007 JUL 30 AM 11:32  
Charles H. [Signature]  
CLERK OF COURT  
DORCHESTER COUNTY

### ORDER APPROVING SETTLEMENT

THIS MATTER was before the Court for a Fairness Hearing on a proposed class settlement, for an award of attorneys fees and litigation costs, and for approval of certain forms and documents relative to notice to the class and claims process. The Court had preliminarily approved the settlement by order dated January 12, 2007. For the reasons set forth herein, I find the Settlement and Arbitration Agreement to be fair and reasonable as to the Primary Class as a whole, and I approve the same. This Order further addresses the claims procedure, attorney fees and litigation costs.

### FACTUAL BACKGROUND/PROCEDURAL HISTORY

#### 1. Notice to Class Members

The Fairness Hearing was noticed by publication in 11 newspapers of general circulation in all parts of the state; potential class members known to the parties were given actual notice by

mail. In addition, the Court takes notice that there was substantial media coverage of the proposed settlement in advance of the Fairness Hearing.

Three objections were filed as of the time of the hearing. The Class Representatives and the Defendants submitted an agreed upon addendum to the settlement which contained an opt-out procedure and restated the parties' intentions as to the meaning of certain terms contained in the agreement. The Court held a full hearing on all of the objections and on the petition for attorney fees.

During the hearing, the Court, *sua sponte*, directed David Pascoe, Solicitor for the First Judicial Circuit, to conduct an investigation into a document entitled, "INSTRUCTION" which plaintiffs' claim was the basis for how sexual abuse allegations were to be handled by the Diocese. In the course of that investigation, Solicitor Pascoe directed the Diocese to review all of its files to determine the names of any individual who alleged that he or she had been sexually abused as a minor to ensure that the names of those individuals had been turned over to law enforcement as required by statute and to ensure that the individuals received actual notice of these proceedings.

In order to protect the confidentiality of individuals who claim abuse and who had informed the Diocese of their claim, the Diocese undertook the responsibility of providing actual notice of the class action and settlement terms to all individuals who might fit within the primary class of the pendency of this action. The Diocese represented that there were 20 such individuals, 16 of whom it located. As to the remaining four, I directed the Diocese to provide those names to class counsel who then assisted in attempting to locate these last four individuals. Plaintiffs provided the Court the affidavit of Steven A. Smith who stated that he identified two individuals who might be those being sought, but that, in his opinion, all reasonable efforts had

been used to locate the individuals and that they could not be found with the limited information in possession of the Diocese.<sup>1</sup>

Those individuals who received notice were asked to contact the Court in short order. No objections were received.

## **2. Investigation by Solicitor David Pascoe**

As mentioned above, the Court directed David Pascoe, First Circuit Solicitor, to investigate into certain matters, in particular, a document entitled "INSTRUCTION," concerning the manner in which sexual abuse allegations were to be handled. On July 13, 2007, at hearing was held at the Dorchester County Courthouse, St. George, South Carolina, where Solicitor Pascoe reported that his investigation included the Diocese review of its files and conversations with the General Counsel. During the July 13<sup>th</sup> hearing, Solicitor Pascoe stated that he made contact with the South Carolina Attorney General and the United States Attorney for the District of South Carolina concerning the INSTRUCTION. The report from the United States Attorney's Office was that a similar investigation had been conducted by the United States Attorney in Massachusetts and that no criminal charges were ever brought as a result of it.

At the July 13<sup>th</sup> hearing, Solicitor Pascoe reported that his investigation continues; however, he reported no reason that the civil action should not proceed.

## **ORDER**

### **1. Notice to All Members of the Class**

The "INSTRUCTION" raised concerns with the Court that some individuals did not or would not receive proper notice of the class settlement in order to object to or participate in the settlement proposed for the class. The parties and the Court considered several options on how

---

<sup>1</sup>One of the remaining two was reported to the Diocese by a victim who has indicated that he has no specific knowledge that the individual was actually abused.

best to address this concern and to protect the interests of both the absent class members and the Diocese's right to have the conclusive effect of a class action.

As stated above, the Diocese undertook on its own to notify the potential members of the class known to it. Normally, this burden would fall on the plaintiffs. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156 (1974). Nevertheless, because of the nature of the allegations, the Diocese believed that it would be more appropriate for it to undertake this responsibility in order to ensure the confidentiality of those who have come forward to it. See Rule 23, SCRCP (giving the Court the authority to establish how notice may be sent).

The Diocese has represented to the Court that 20 individuals who may be class members were identified by it in a search of its files. Sixteen of these were located, and as to the other four, I find, based on Mr. Smith's affidavit, that reasonable efforts were used to locate those individuals and that their present whereabouts are unknown. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156 (1974). The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement. Further, the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

Class Counsel has stated to the Court that it believes the representations and stipulation of the Diocese for potential absent class members is in the best interest of the absent class members and has asked the Court to approve the settlement with the Diocese's representation and stipulation as a condition of the approval.

Based upon the representations of the Diocese, its stipulation as stated herein, and Class Counsel's conditional consent, I believe that the concerns which the "INSTRUCTION" raised have been satisfied as to the civil action. As to any criminal conduct which may exist, I trust that the appropriate prosecutors take the proper course of action.

## **2. Objections to the Settlement**

At the time of the hearing, three objections were filed. Subsequently, two of the objectors have withdrawn their objections. Matthew Creech, on behalf of attorney Johnny Parker, withdrew an objection on behalf of his client on the record at the March 9, 2007 Fairness Hearing on this matter at the Dorchester County Courthouse, St. George, South Carolina, and Walter Bilbro withdrew an objection on behalf of his client via document filed with the Dorchester County Clerk of Court on June 6, 2007. Therefore, the Court is left to rule only on the objections filed by John Does A through N. For the reasons set forth below, the objections are overruled.

### **A. Standing of John Does A through N**

As an initial matter, plaintiffs challenge the ability of John Does A through N to make any claim as to the fairness or reasonableness of class structure or settlement because their objection asserts that they "conditionally opt-out" of the settlement. Plaintiffs argue that since these individuals are not parties to the litigation, they do not have standing to object to the definition of the class. The Fourth Circuit has addressed this issue in *Gould v. Alleco, Inc., et al.*, 883 F.2d 281 (4<sup>th</sup> Cir. 1989) *cert. denied* 493 U.S. 1058. In essence, the Court held that an individual who believes that his or her rights will be impacted by any stage of an action, prior to settlement, must seek a timely intervention into the action under Rule 24.

This identical reasoning has been adopted by the South Carolina Supreme Court. In *Ex Parte Condon*, the Supreme Court of South Carolina was confronted by the state Attorney General's attempt to challenge an award of attorneys fees arising from a class action lawsuit. 354 S.C. 634, 583 S.E.2d 430 (2003). Our Supreme Court adopted the analysis that the manner in which individuals who wish to assert their rights in a case is to move to intervene pursuant to SCRCP Rule 24 and, if they failed to take that action, they have no standing. *Id.* at 640, 433.

The Court finds this reasoning to John Doe A through N's "conditional opt-out" persuasive. The objectors cannot have it both way. Since it appears they intend to opt-out, I hold they do not have standing to raise these objections. Nevertheless, even if they did, I find their objections are without merit, and I will address those in course below.

#### B. Objections to class definitions

John Does A through N claim insufficiencies in the class definitions. The objection states that those individuals who do not fit into the definitions seek amendment of the definitions to fit them. As the above cases state, it is axiomatic that only those who are parties to the litigation may participate in it. The creation of a class makes those class members parties to the litigation. Those who do not fall within the definitions are not parties to the case. *Gould, supra*. Accordingly, unless those individuals have filed a timely motion to intervene to participate in the class drafting, they maintain their rights to proceed against the same defendants for the creations of a different class to include themselves and others similarly situated if they can meet Rule 23 requirements. Hence, none of their legal rights have been impaired and they are free to proceed on their own. *Id.* Those who do fit in the class and do not care for the definition of the class as defined may opt-out of the class and proceed on their own.

Nevertheless, the definitions as approved by the Court meet both the spirit of the issues joined in the litigation and the settled tort law of South Carolina.

The first objection is based on a reading by the objectors of the Consortium Class definition to exclude those parents or spouses whose child or spouse's individual claim had been adjudicated, settled, or otherwise resolved. For many reasons, this would have been a legitimate exclusion, not the least of which would have been the propriety of dealing with all claims at the same time.<sup>2</sup> However, when the class definition is read in the light in which the settling parties and the Court intended when the settlement was approved preliminarily, the objection is satisfied. The parties have submitted an addendum to the Court which stipulates that the definition is intended in the broader reading. This was the original intent of the settling parties, and any other reading must be attributed to draftsmanship.

The next ground for objection is that the classes exclude those whose claims have been adjudicated, settled, or otherwise resolved. The objectors would have the class definition rewritten so that those whose claims were unsuccessfully prosecuted under failed legal theories can be revived. However, to do so would have the traditional basis of tort rules, not to mention due process, turned upside down. *See generally In Re: "Agent Orange" Product Liability Litigation*, 611 F.Supp. 1396 (1985)(holding that traditional tort principles should be used in class action settlements involving traditional tort claims). Clearly the law allows a party only 'one bite of the apple' in litigation. "A final judgment on the merits in a prior action will preclude the parties and their privies under the doctrine of *res judicata* in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action."

---

<sup>2</sup>Recall that all claims under both classes are those which facially by definition have passed the applicable statute of limitations. Issues of proof and damages may arise in the delay between resolution of the two claims, notwithstanding their independent character.

*Price v. Georgetown*, 297 S.C. 185, 375 S.E.2d 355 (Ct. App. 1988). See also *Nunnery v. Brantley Construction Co., Inc.*, 289 S.C. 205, 345 S.E.2d 740 (Ct. App. 1986)(dismissal with prejudice has *res judicata* effect). South Carolina has also taken the same approach with cases which have been settled by the parties where there is the exchange of compensation for a release, absent some mistake not previously contemplated by the parties. *Smothers v. Richland Mem. Hosp.*, 326 S.C. 566, 493 S.E.2d 107 (Ct. App. 1997).<sup>3</sup> Hence, any prior claims that have been adjudicated or settled are barred by law.<sup>4</sup> Allowing those individuals to have another bite would be manifestly unfair to those class members who have not had their claims adjudicated and to the Defendants who have been discharged in one form or another from liability to that individual.

The objection next states that certain of the John Does are, “apparently excluded from the settlement because John Doe D previously wrote to the Diocese about the minor’s molestation and the Diocese refused to accept responsibility.” I see no such exclusion in the class definitions or settlement and this objection is overruled as being without merit.

Last, the suggested amendment requests that the Consortium Class definition have the phrase “and who suffered a loss of the abused individual’s consortium” removed from it. This phrase essentially requires some damage proximately caused. This qualification simply complies with recognized tort law and should easily be met by most members of the class. Any parent or spouse who makes any statement or showing of any loss is eligible as a consortium class member and for recovery. For example, a spouse who must pick up a child from school so her husband,

---

<sup>3</sup>Any claim such as mistake of fact is too individualized to be dealt with in this class action, though may be the basis for some other suit.

<sup>4</sup>John Doe L brought an action through objector’s counsel which was dismissed by consent order which stated, “John Doe v. The Diocese of Charleston and the Bishop of the Diocese of Charleston in his official capacity, No. 04-CP-10-3653, is properly dismissed with prejudice as a result of the Supreme Court decision in *Doe v. Crooks*.” Order of the Hon. J. C. Nicholson dated April 19, 2006. Apparently, this objection is intended to reverse counsel’s consent to the dismissal of this claim with prejudice.

the regular driver, can attend a psychiatric session has suffered some loss of consortium. A parent whose son had to go to a special summer camp because of bad behavior has lost the child's consortium. The objection is overruled.

C. Objection as to Matrix

Next, John Does A through N object to the claim distribution matrix on the basis that the type of abuse is "arbitrary" since the Courts have held that sexual abuse is "inherently injurious." In support of their contention, the objectors rely heavily on *Manufacturer and Merchants Mutual Ins. Co., Harvey*, 330 S.C. 152, 493 S.E.2d 22 (Ct. App. 1998). *Harvey* is an insurance declaratory judgment action based on an egregious set of facts involving grandparents abusing their grandchildren. Plaintiffs assert that the case does not stand for the propositions relied on by them and, instead, shows why the matrix developed by the settling parties is a fair and reasonable course. I agree with the plaintiffs

The *Harvey* Court was called upon to determine whether the act of sexual abuse on a child could be negligent for purpose of requiring the Harveys' homeowners carrier to defend and indemnify them. In holding the duties did not exist within the fact pattern *sub judice*, the Court found that sexual abuse requires intent. In so holding, the Court of Appeals stated, "We conclude that the effect of sexual abuse is so integral to the act that the intent to do the act is interchangeable with the intent to cause the resulting injury." *Harvey* at 161, 227. It went on to say that as of that opinion, 41 other states had reached the conclusion that "the intent to perform the act of molestation is sufficient to infer the intent to harm the child." *Id.* at FT 1.

The *Harvey* ruling is instructive on why the matrix based on the degree and type of abuse is sensible, fair and legally effective manner for the handling of individual claims. The *Harvey*

Court's analysis that "the effect of the sexual abuse is so integral to the act ... [in] caus[ing] the resulting injury," is an easy basis for upholding the degree of abuse matrix. *Harvey* recognizes that as the act worsens in degree, so does the harm. Correspondingly here, the use of the type of injury matrix found in the settlement will adequately place claimants into the proper place for a fair determination of the value of the claim.

Basing the claim value on the individual psychological damage alone would be difficult, if not impossible, to do. Psychological damages almost always have a degree of variance and uncertainty, not all of which can be tied directly to the acts of the agent or employee of the Diocese. South Carolina law recognizes the difficulty in proving emotional distress by requiring that it be accompanied by physical manifestations before it can be compensated, unless the conduct was intentional. *Ford v. Hudson*, 276 S.C. 157, 276 S.E.2d 761 (1981)(recognizing the tort of intentional infliction of emotional distress as the only cause where compensation for emotional distress requires a showing of physical manifestations).<sup>5</sup> Accordingly, the use of psychological damages alone as an assessment is a far less equitable means of compensating the claims of all of the victims for the severity of the individual injuries each has suffered. I am comfortable that the matrix presented by the settling parties is a fair and reasonable method of adjudicating claims. I overrule this objection.

#### D. Compensation of Consortium Claims

Last, the John Doe A through N objectors state that the amount accorded for consortium damages is "out of all proportion" with the manner in which they claim juries handle such

---

<sup>5</sup>While it is clear that the individual priests or agents inflicted intentional harm, it does not necessarily follow that the Diocese, as their employer, would have the same type of liability in Court under South Carolina law. It is proper for the Court to consider the plaintiffs' ability to prove elements of a case in approving a settlement. See *In Re: Agent Orange Products Liability Litigation*, 818 F.2d 145, 174 (2<sup>nd</sup> Cir. 1987)

claims. In support of this contention, the objectors rely on the jury verdict in *Glover v. Port-Gaud School*, a Charleston County case in which a large jury verdict was rendered. Plaintiffs assert that the amount provided in the settlement for consortium claims is proportionate when considering the state of the law of consortium and the overall value of the claims. I agree.

Notwithstanding the *Glover* jury verdict, which never made it through the appellate process, there has been no change in the law as it was at that time: "As the South Carolina Supreme Court has made clear, a spouse is the only party who may bring a loss of consortium claim under S.C. Code § 15-75-20." *Kirkland v. Sam's East, Inc.*, 411 F.Supp. 2d 639 (2005). See also *Hughey v. Ausborn*, 249 S.C. 470, 154 S.E.2d 839 (1967); *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996). The law simply does not recognize a right of action of a parent to recover for the loss of consortium of a child. In my view, whether the *Glover* verdict would have survived an appeal is very doubtful.

Furthermore, the spousal claims, while directly recognized at law, are claims which have challenging damages issues. By definition, here the husbands or wives of the consortium claimants were sexually abused as children, hence, before they married the claimant. As a result, the claimant married his or her spouse in the condition in which they assert as a loss of creating consortium. And, of course, most if not all of these claims are well beyond the statute of limitations, which would serve as a complete bar to these claims. Last, any claimant who believes their individual claims will successfully exceed the damages amount provided for in the class claims structure has the right to opt-out and proceed on their own. I overrule this objection.

### **3. Approval of Settlement**

Based on the arguments of all counsel at the Fairness Hearing and my own review of the terms and conditions of the settlement agreement, I believe that the settlement is fair, reasonable,

and adequate in providing necessary funding for the class and a confidential means of asserting and prosecuting a claim, all of which should enable and encourage individuals to come forward and make the same. Accordingly, I enter judgment approving the settlement.

I direct that all provisions of the Settlement Agreement take effect upon the execution of this order. The claims period should run for a period of 120 days (or the end of the first business day thereafter) beginning on the 10<sup>th</sup> day after the execution of this order and the date of the close of the claims filing period must be published. Within ten (10) days of this Order, Class Counsel is to begin publication of notice that the claims period is open and that individuals have a right to opt-out of the settlement if they so choose. Class Counsel proposes a notice of the same in a form comparable to that attached hereto as Exhibit A, and I approve this notice. Class Counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun*; *The State*; *The Augusta Chronicle*; *The Rock Hill Herald*; *Beaufort Gazette*; *Greenville News* *Spartanburg Herald*; *Orangeburg Times-Democrat*; *Florence Morning News* and the *Aiken Standard*. Publication of the notice shall be at least once a week for three (3) consecutive weeks during the notice period.

Class counsel and counsel for the Diocese are to provide the claims packet to any individual who has requested the same.

**4. Forms for notice to the primary class and for use during the primary class claims process**

The parties have proposed certain forms to be used in claims processing. The forms are attached hereto as Exhibits B through H. Class counsel proposes that these forms be provided to all individuals who are known to them to be interested in the class and to post these forms, for

availability, on the internet. The Court has reviewed the forms and believes them to be appropriate for use in the case and I approve the same.

#### **5. Attorneys fees**

In the Settlement and Arbitration Agreement, the parties agreed that the Court should, exercising its discretion, set attorney fees for class counsel in a range of no less than \$950,000.00 and no more than \$2.5 million. Defense counsel argued for the lower end of the fee range and asked the Court to take into consideration the charitable nature of the Diocese and that it settled the case rather than requiring a trial. Class Counsel requested the Court award them a fee of \$2.5 million. In support of their petition for an award of attorneys' fees, class counsel submitted a substantial record which included an affidavit from each attorney involved in the case, a statement of hours from each law firm the total of which exceeded 3,720 hours<sup>6</sup>, and an affidavit from Professor John Freeman regarding the reasonableness of the fee request and the beneficial public impact of the settlement. Class Counsel has worked on the case for 4 years; it has proceeded in Court for 2 years, with settlement negotiations lasting more than 15 months. The Court took its own notice of the arms-length advocacy of counsel for their respective clients in the case. The case was brought to a mediated resolution and it heard from the mediator, Marvin Infinger, regarding the negotiations between counsel.

"In determining a reasonable attorneys' fee, the Court should consider the following six factors: 1) the nature, extent, and difficulty of the case; 2) the time necessarily devoted to the case; 3) the professional standing of counsel; 4) the contingency of representation; 5) the

---

<sup>6</sup> Although additional information was not submitted for work performed by Class Counsel after the March 9<sup>th</sup> Fairness Hearing, the Court notes that two status conferences were held in person, three were held by telephone, and one additional hearing was held which would provide additional hours.

beneficial results obtained; and 6) the customary legal fees for similar services.” *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998).

The Court’s review of the record before it, argument of counsel, and my own observations of the case compel me to award class counsel an attorneys’ fee in the amount of \$2.5 million dollars. In rendering this decision, I find that the matter before me is monumental in both its scope and result. Class Counsel have successfully obtained the creation of two classes of individuals, one consisting of individuals who have been sexually abused by Diocese employees and another consisting of parents and spouses of those individuals. But for the settlement, the claims of the individuals in the classes might already be barred by significant legal defenses, including the statute of limitations and charitable immunity. Class counsel has been able to succeed in this case where other lawyers, in identical cases, have failed; and, they accomplished these tasks against a respected and powerful adversary, the Catholic Diocese of Charleston.

The matter has taken four years to prosecute, and, at this point, the conclusion of the settlement has already consumed a year and a half. Counsel has provided the Court conservative proof of more than 3,700 hours of time spent prior to the Fairness Hearing, with additional time expended, and to be expended, on the case since that time and in carrying out the terms of the settlement. All of the counsel in this case are known to the Court to have had exemplary legal and professional success and this fact has not been contested.

Given the significant legal hurdles, such as the statute of limitations and charitable immunity, which were being asserted by the defendants, that fee arrangement is not out of proportion. Class Counsel’s prayer for a fee award of \$2.5 million is 20.8% of the gross settlement. This figure is on the lower range of acceptable fees found by the Supreme Court. *See Ex parte Condon, Littlejohn v. State*, 354 S.C. 634, 644, 583 S.E.2d 430, 435 (2003)(finding

that a contingency of between 20 and 30 percent of recovery was reasonable in a class action matter).

For the reasons above, I award Class Counsel \$2.5 million as attorneys' fees in this matter which shall be paid as set forth in the Settlement and Arbitration Agreement within ten days of the entry of this Order.

**6. Costs**

Prior to the March 9, 2007, hearing class counsel presented bills for costs in the amount of \$85,259.50 and requested reimbursement of these expenditures per the Settlement Agreement. In addition, they have requested reimbursement of an additional \$15,731.86 incurred since the March 9, 2007 hearing. These expenditures have not been challenged and my review determines them to be routine for this type of litigation and I approve the same for reimbursement.

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

**7. Funding of Settlement Proceeds**

Pursuant to paragraph 3(a) of the Settlement Agreement, the Diocese shall fund the initial \$4,540,000.00 upon the execution of this order.<sup>7</sup>

**THEREFORE, IT IS ORDERED** that the Settlement and Arbitration Agreement dated January 12, 2007 be approved as a final settlement between the parties and that the terms and conditions of the Settlement Agreement become an order of this Court, and that the claims

---

<sup>7</sup> The Diocese previously paid \$460,000.00 to the class representatives for the settlement of their claims.

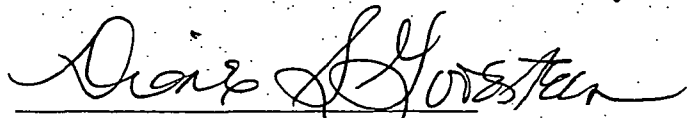
process for the members of the classes begin within 10 days of the date of this order with notice to the class as set out above; and

**IT IS FURTHER ORDERED** that the forms proposed by the parties and attached hereto as Exhibits A through H be approved for use in the claims process; and

**IT IS FURTHER ORDERED** that class counsel be awarded the sum of \$2.5 million as attorneys' fees in this matter and that the escrow agent be authorized to pay the same pursuant to the terms of the Settlement Agreement; and

**IT IS FURTHER ORDERED** that the escrow agent be authorized to pay Class Counsel the sum of \$100,991.36 in litigation costs and to further make direct distributions for publication of notices required under this order as directed by the Settlement Agreement.

**AND IT IS SO ORDERED!!!**

  
The Honorable Diane S. Goodstein  
Presiding Judge

This 30 day of July, 2007  
At Orangeburg, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310  
CASE No. 06-CP-18-1311  
CASE No. 06-CP-18-1636

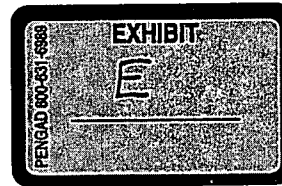
John Doe #53, John Doe 66, John Doe 66A, )  
John Doe 67, Jane Doe 1 and Jane Doe 2 )  
and Rachel Roe individually and )  
as representatives of a class of people )  
similarly situated, )

**ORDER OF THE COURT**

v. )

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

Defendants. )



CERTIFIED COPY  
2007 AUG 31 PM 5:03  
Clerk of Court  
DORCHESTER COUNTY

The Court having been advised, as evidenced by the writing attached hereto as Exhibit A, that all pending motions, objections, rules to show cause, and any such related matters amongst the parties in this class action proceeding have been resolved with prejudice, and that all appeal rights of all "objectors" are waived, *AND to this extent it is acknowledged and approved* said agreement is hereby approved and made the Order of this Court.

**AND IT IS SO ORDERED!**

Further, it is ordered that, as to any settlement funds in this matter, any restriction or impediment to the disbursement of any such funds heretofore imposed by this Court are lifted, removed, and extinguished. This class settlement shall immediately proceed as provided for in the Settlement and Arbitration Agreement entered into on January 15, 2007 and that certain Order of this Court in this matter dated July 30, 2007.

**AND IT IS SO ORDERED!**

Furthermore, in the Court's Order of July 30, 2007 approving the Class settlement, the Court made reference to the existence of individuals who, according to the Diocese, (1) were potential class members; (2) came forward to the Diocese at some time in the past with their allegations of child sexual abuse; (3) never resolved their potential claims; and (4) were entitled to receive *actual notice* of the proposed class settlement pursuant to the agreement of the parties and earlier instructions from this Court (hereinafter referred to as "Actual Notice Class Members"). The Defendants have asked the Court to clarify how the settlement process will treat the Actual Notice Class Members. Accordingly, this Order clarifies and, where in conflict, supersedes the Court's Order of July 30, 2007.

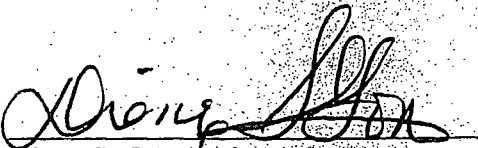
Actual Notice Class Members shall have 120 days from receipt of actual notice of the class settlement to present their claims to an Arbitrator in the same manner as provided for in the Settlement and Arbitration Agreement. Actual Notice Class Members who present their claims more than 120 days after they receive actual notice of the settlement shall be barred from participation in the settlement process and shall be treated like any other class member who has failed to timely present a claim to the class settlement fund. Both the Arbitrator's fees and the claimant's recovery (if any) shall be paid by the Diocese, and not by the class settlement fund, because the settlement fund may already have been subject to a final accounting by the time such claims are processed.

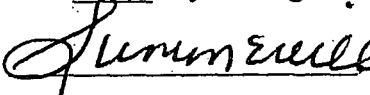
**AND IT IS SO ORDERED!**

Furthermore, the Court has appointed Desa Ballard, Esq. as a non-testifying consultant in evaluating and addressing the issues before the Court in this matter, as all counsel was made aware of in a August 29, 2007 Order. Payment for Ms. Ballard's services shall be made from the

2-2013

Class settlement fund within ten (10) days after the settlement funds are released from the Court's supervision.

  
Diane S. Goodstein  
Presiding Judge

This 31 day of August 2007  
 South Carolina

# EXHIBIT A

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

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

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

August 30, 2007

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

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

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

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

Dear Larry and Gregg:

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

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

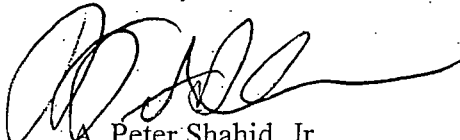
rights to the pending class action settlement by any of Mr. Meyer's clients be withdrawn, and waived with prejudice. Mr. Meyers has certified he is unaware of any other potential or actual objectors, and does not represent any other person who has an objection to the January 12, 2007 Settlement Agreement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

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

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

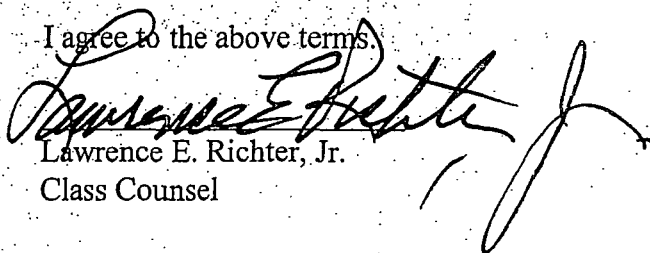
The \$1.375 million will be paid from the surplus funds, if any, after the claims process has been completed. In the event there are insufficient or no funds remaining from the \$12 million pool of funds, the Diocese is still obligated to pay the \$1.375 million as stated above. Payment is expected sometime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

Sincerely,



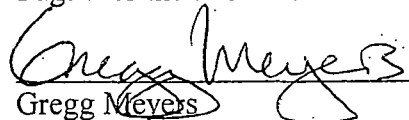
A. Peter Shahid, Jr.

I agree to the above terms.



Lawrence E. Richter, Jr.  
Class Counsel

I agree to the above terms.

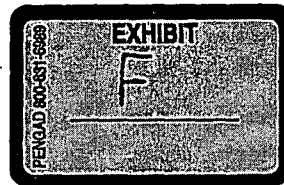


Gregg Meyers

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
John Doe, individually and on behalf of all )  
persons who are similarly situation, )  
Plaintiffs, )  
v. )  
Lawrence E. Richter, Jr., David K. Haller, )  
Richter & Haller, LLC, Peter Shahid, Jr., )  
Shahid Law Office, LLC, Robert Baker, )  
The Bishop of Charleston, A Corporation )  
Sole, and The Bishop of the Diocese of )  
Charleston, )  
Defendants )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2009-CP-10-7751

ORDER DISMISSING DIOCESE  
DEFENDANTS



2010 SEP -8 AM 9:35  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

This matter came before the Court by motion of the following above named Defendants, Robert Baker, the Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston, collectively hereinafter referred to as "Diocese Defendants" for the Court to dismiss the Complaint against the Diocese Defendants, pursuant to South Carolina Rules of Civil Procedure, Rule 12(b)(6).

### Background

The Plaintiff filed his Complaint against the above named Defendants alleging five causes of action. The First, Second and Third Causes of Action name the Defendants, Lawrence E. Richter, Jr (Richter), David K. Haller (Haller) and Richter & Haller, LLC. These three causes of action allege negligence, gross negligence and breach of fiduciary duty. The Fourth and Fifth Causes of Action allege civil conspiracy and outrage against Richter, Haller and Richter & Haller, LLC, Peter Shahid, Jr., The Shahid Law Office, LLC and The Diocese Defendants.

The gravamen of this Complaint is a Class Action Settlement Agreement entered on January 12, 2007 between the Diocese Defendants and the Richter, Haller and Richter & Haller, LLC Defendants. This agreement created two classes of putative claimants who could file a claim against the Diocese Defendants through an arbitration claims determination process. The first class are those individuals who alleged to have been sexually abused as minors by personnel of the Diocese of Charleston ("primary class"), and the second class are the spouses and parents of the primary class member ("consortium class"). The creation of these classes and the process for the resolution of class members' claims were addressed in the January 12, 2007 Agreement, which was presented to the Dorchester Court of Common Pleas for final approval. In response to the request for approval of the Agreement Judge Diane S. Goodstein conducted a fairness hearing on March 9, 2007, and by Orders dated July 30, 2007 and August 31, 2007 granted final approval of the Settlement Agreement.

 The Diocese Defendants in this current action are the same Party-Defendants in the Dorchester County Class Action. Included in the terms of the Settlement Agreement was an explicit provision in which each participant agreed to waive any and all rights to appeal his/her designation in the class and his/her monetary award determined by the class claims arbitrator. In furtherance of this waiver, each participant executed a General Release of all liability arising out of claims of sexual abuse against the Diocese Defendants

On the face of the Complaint the Plaintiff admits he was an actual primary class member in the above referenced Class Action Settlement, participated in the arbitration/claims process and received a damages award. For the foregoing reasons, the Plaintiff's Complaint against Robert Baker, The Bishop of Charleston, A Corporation Sole, and the Bishop of the Diocese of

Charleston is dismissed, with prejudice.

### Legal Standard

The Court finds in accordance with SCRCP, 12(b)(6), that based solely on the facts alleged in the pleadings before the Court, and considering those facts in the light most favorable to the Plaintiff, the current Complaint fails to state a cause of action against the Diocese Defendants for which relief can be granted. "The circuit court may dismiss a claim when the defendant demonstrates the plaintiff's 'failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court" . . . "The motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case." "All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." Hambrick v. GMAC Mortgage Corp. 370 S.C. 118, 121-22, 634 S.E.2d 5, 7 (Ct. App., 2006) (internal citations omitted).

### Res Judicata

The Plaintiff's request for relief as contained in the Complaint is barred by the doctrine of *res judicata*. "*Res judicata* requires proof of three elements: 1) a final, valid judgment was entered on the merits of the first suit; 2) the parties to both suits are the same; and 3) the subsequent action involves matters properly included in the first action." Judy v. Judy 383 S.C. 1, 8, 677 S.E.2d 213, 217 (Ct. App., 2009), citing Plott v. Justin Ent. 374 S.C. 504, 511, 649 S.E.2d 92, 95 (Ct. App., 2007). "For purposes of *res judicata*, 'cause of action' is not the form of action in which a claim is asserted, but rather the cause for action, meaning the underlying

facts combined with the law giving the party a right to a remedy of one form or another based thereon.” 383 S.C. 1, 9, 677 S.E.2d 213, 218 (Ct. App., 2009), quoting Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 35, 513 S.E.2d 106, 109 (1999).

The Plaintiff presented a claim for damages as a class action participant pursuant to the terms of the 2007 Class Action Settlement Agreement. This Agreement involved the Diocese Defendants who agreed to pay a sum of money for damages resulting upon the Plaintiff (and others similarly situated), presenting a *bona fide* claim that he was sexually abused as a minor by a Diocese Defendant agent. The nature of the claim was a personal injury, committed by an agent of the same Party-Defendants in this Complaint. The identity of the two parties is identical, and the base of recovery the same. Under the doctrine of *res judicata*, “a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action.” Treadaway v. Smith, 325 S.C. 367, 377, 479 S.E.2d 849, 855 (Ct. App., 1996) (internal citation omitted).

All three elements of *res judicata* are present within the contents of the Plaintiff's Complaint. First, the Dorchester County Court of Common Pleas entered a final, valid judgment on the merits of the Plaintiff's claims of sexual abuse. The court's Orders of July 30, 2007 and August 31, 2007 approved a Settlement Agreement which incorporated the claims of a class of plaintiffs, of which the current plaintiff was a member. These Orders addressed the “fairness” of the Class Settlement Agreement and all issues relating to the Arbitration process. The Plaintiff did not appeal this Order. The Final Orders further provided clear instructions to those class members who wished to “opt-out” of the Settlement. The Plaintiff did not “opt-out,” but

voluntarily participated in the arbitration process. All issues of fairness were properly adjudicated to a final, valid order in the class action litigation.

Second, the Plaintiff's status as a class member in the previously adjudicated class action satisfies the requirement for identity of parties. "There is of course no dispute that under elementary principles of prior adjudication a judgment in a properly entertained class action is binding on class members in any subsequent litigation." Cooper v. Federal Reserve Bank of Richmond, 467 U.S. 867, 874, 104 S.Ct. 2794, 2798 (1984). "A judgment in favor of the plaintiff class extinguishes their claim, which merges into the judgment granting relief." Id. In the current case, the Plaintiff was an actual class member in the Dorchester County Class Action, who presented a claim, participated in the arbitration process, was granted an award of damages, accepted the award and executed a General Release and Waiver of Right to Appeal. (See Compl. ¶¶1,2, 215-228). Furthermore, the named Defendants in the Class Action are the Diocese Defendants in this action.

Third, the issues raised in the current action were, or could have been, properly included in the first action. At the heart of the Plaintiff's current Complaint is an allegation that the Class Action Settlement was unfair. All issues of fairness and all issues regarding the arbitration process were previously litigated and adjudicated in the Dorchester County litigation. This Plaintiff was afforded the opportunity to challenge any aspect of the Class Action Settlement Agreement, and he elected not to. Only after the Plaintiff voluntarily participated in the claims and arbitration process did he contend that it was unfair.

A review of the Complaint as it pertains to the Diocese Defendants reveals that the accusations raised against them simply attempt to attack the Defendants for a claimed intent to

reinstate an accused priest to ministry ( Compl. ¶ 14) and a meeting with Mr. Richter and Mr. Haller (Compl. ¶ 116) during the course of the Class Action litigation. The Plaintiff in his Complaint dissects the process in which the January 2007 Agreement was reached, beginning with paragraph 63, and culminating through paragraph 213. A fair summary of the allegations contained in these paragraphs of the Complaint reflects a collateral attack on the manner and means of reaching the Agreement and obtaining court approval. Even if any or all of these accusations were true, the Plaintiff is barred from recovery. He seeks to assail the process of this class action resolution, an option he waived by failing to challenge the Agreement in 2007, by filing a claim, by accepting the monetary award and by executing a waiver and release. His participation as a party precludes his effort to undo a final adjudication over the same dispute. Any issues of fairness should have been raised before the Dorchester County Court of Common Pleas at the time the Settlement Agreement was approved. All three elements of *res judicata* are met in the current case, and admitted on the face of the Plaintiff's Complaint.



### Collateral Estoppel

The Plaintiff is also collaterally estopped from obtaining any relief. Similar to the doctrine of *res judicata*, collateral estoppel precludes a party from re-litigating issues actually adjudicated in a prior action. The Court recognizes the long standing premise that unlike *res judicata*, the parties do not have to be the same in the prior action but the adjudicated issue must be the same. "Collateral estoppel, or issue preclusion, prohibits a court from adjudicating an issue that was 'actually litigated and determined by a valid and final judgment in a prior suit.' Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suit are the same." Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217, quoting Zurcher v.

Bilton, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008).

In the Complaint, the Plaintiff seeks damages on the basis that he was sexually abused by an agent of the Diocese Defendants, that the award he received in the class claims process was erroneous and that the Agreement which was the vehicle for the claims process was the product of collusion and thus unfair. (Compl ¶1 and 229).

In spite of the label the Plaintiff has placed on his Fourth and Fifth Causes of Action (collusion and outrage), the allegations in the Complaint relate to the Plaintiff's claim that he was previously abused while a minor by the Diocese Defendants' agent and that abuse entitles him to certain recovery for damages. In other words, his capacity to sue rests on the harm he may have suffered from any act(s) by Diocesan personnel. The Plaintiff has previously sought and obtained recovery for that injury. He voluntarily took part in the class claims process which addressed his allegation of harm. Thus, the elements of collateral estoppel are met and preclude the current claim.



The Plaintiff complains that the Class Action Settlement Agreement was obtained by a fraud perpetrated against the court system and other victims. Any attack on the integrity of this agreement was resolved by the Plaintiff's own assertions that the court in Dorchester County received the Agreement for review, conducted a fairness hearing, received and resolved objections and subsequently issued a ruling adopting the Agreement, placing in motion the claims process, and finally permitting those situated similarly to the Plaintiff to avail themselves of the benefit of submitting a claim. The issue of fairness of the Settlement and Arbitration Agreement was actually litigated and adjudicated before Judge Goodstein, resulting in a final order on the merits of the settlement. The fact that the Plaintiff has repackaged his claims under

the banner of new causes of action does not overcome the hurdle that his claims of sexual abuse and collusion were actually litigated in the previous case. Collateral estoppel serves as bar against a disgruntled claimant raising a prior issue submitted for consideration and resolved. The Plaintiff is not permitted to seek a review of an issue already litigated. As the prior decisions of this Court have held issue preclusion bars an end-run appeal.

The Plaintiff had an opportunity to raise any issues relating to the Settlement Agreement and should have raised those issues with the reviewing court. That he is unsatisfied with the amount of his award compared to others' does not negate the fact that his claim was fully and finally litigated in another court.

#### **Arbitration and Award and Waiver**

Finally, the Complaint is dismissed because this Court finds that the Plaintiff executed a valid and proper waiver and release. As part of the Class Claims process approved by Judge Goodstein, the Plaintiff filed a claim and participated in arbitration to resolve that claim and consequently received an award of damages. This aforementioned activity precludes the Plaintiff from asserting his claims against the Diocese Defendants. "Where the parties agree to submit a claim to arbitration and the claim is properly adjudicated by the arbitrators, the prosecution of the claim on a different theory is barred. . . . to conclude otherwise would be to sanction a double recovery and would defeat the object of arbitration, which is to avoid litigation." Save Charleston Foundation v. Murray, 286 S.C. 170, 177, 333 S.E.2d 60, 64 (Ct. App., 1985).

In Save Charleston Foundation, the parties litigated claims for anticipatory breach of contract and breach of contract. The arbitration agreement specifically dismissed those claims with prejudice, and attempted to preserve a claim for fraud by dismissing it without prejudice.

7

Despite this attempt to preserve the fraud claim, the Court of Appeals held that the plaintiffs “having obtained through arbitration a recovery on its claim against [defendants], can no longer sue [defendants] for fraud, notwithstanding the Foundation’s attempt to preserve its fraud cause of action by agreeing to its dismissal without prejudice.” The Court further held, “a party cannot agree to submit a claim to arbitration, receive a final and conclusive arbitration award, and then relitigate the claim employing a different theory of recovery.” *Id.*

The Plaintiff concedes in his Complaint that he participated in the Class Claims process, submitted himself to arbitration and accepted an award of damages from the arbitrator. In the current case, the Arbitration Agreement in which the Plaintiff voluntarily participated states no fewer than seven times that the arbitrator’s decision is final, and participants waive any and all rights to appeal. The claims process resulted in an award to compensate the Plaintiff for his alleged damages. The Plaintiff’s dissatisfaction with his arbitration award does not allow him a second recovery.

 Additionally, the Plaintiff affirmatively executed two additional, independent documents which forever bar the current action; a Voluntary Waiver of Appeal and General Release as to the Diocese Defendants. The Plaintiff waived all rights to claims against the Diocese Defendants.

The General Release states the claimant:

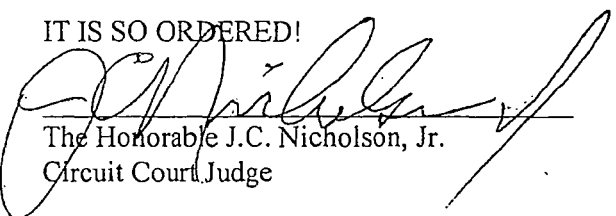
for an in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledges, hereby remises, releases and forever discharges the Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity (“the Diocese”) . . . of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liability whatsoever of every name and nature, whether in LAW, in EQUITY, or otherwise which the Claimant ever had, now has, or which Claimant or

Claimant's successors hereinafter can, shall, or may have by reason of any matter, cause of thing whatsoever from the beginning of the world to the date of this Release, and whether such claims are now known or unknown, including without limiting the generality of the foregoing, any and all claims made or that might have been made in any pending claim or suit.

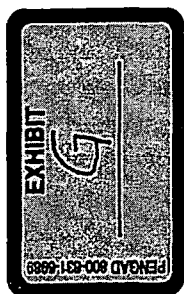
This Plaintiff has waived any and all rights to any claims against the Diocese Defendants whether the claim was known or unknown by participating in the arbitration agreement, and by the terms of the General Release. The Plaintiff submitted no argument that the execution of these documents were not a knowingly, intelligent and voluntary exercise.

For the reasons stated above, I find that the Plaintiff has failed to state a claim for which relief may be granted as to his causes of action against the Diocese Defendants. The Diocese Defendants' motion to dismiss is hereby **GRANTED** as to the Plaintiff's causes of action for Civil Conspiracy and Outrage. Therefore, the Complaint against the Defendants, Robert Baker, the Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston, is **DISMISSED**, with prejudice.

IT IS SO ORDERED!

  
The Honorable J.C. Nicholson, Jr.  
Circuit Court Judge

9/7, 2010  
Charleston, South Carolina



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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHN DOE 2 and JANE DOE4,

Plaintiff,

vs.

THE BISHOP OF CHARLESTON, A  
CORPORATION SOLE, ROBERT  
GUGLIELMONE, THE BISHOP OF THE  
DIOCESE OF CHARLESTON, IN HIS  
OFFICIAL CAPACITY, REV.  
MONSIGNOR MARTIN LAUGHLIN,  
FORMER ADMINISTRATOR OF THE  
DIOCESE OF CHARLESTON, IN HIS  
OFFICIAL CAPACITY; ROBERT J.  
BAKER, FORMER BISHOP OF  
CHARLESTON, IN HIS OFFICIAL  
CAPACITY;  
LAWRENCE E. RICHTER, JR.,  
DAVID K. HALLER, AND  
RICHTER AND HALLER, LLC.

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE No. 10-CP-10-5520

COPY

### CERTIFICATE OF SERVICE

The Bishop of Charleston, A Corporation  
Sole; Robert Guglielmone, the Bishop of  
the Diocese of Charleston, in his Official  
Capacity; Rev. Monsignor Martin  
Laughlin, Former Administrator of the  
Diocese of Charleston; Robert J. Baker,  
Former Bishop of Charleston; in his  
Official Capacity.- *Diocese Defendants*)

I hereby certify that I have served a copy of the **Diocese Defendants' Memorandum in Support of Motion to Dismiss** in the above captioned case via hand delivery, on this 30<sup>th</sup> day of March, 2011, to Susan Taylor Wall, Esq., at the address listed below:

Susan Taylor Wall, Esq.  
200 Meeting Street, Ste. 301  
Charleston, SC 29403

SHAHID LAW OFFICE, L.L.C

By:



Emmanuel Ferguson

Legal Assistant to A. Peter Shahid, Jr.

Dated: March 30, 2011  
Charleston, SC

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHN DOE 2 and JANE DOE4;

Plaintiff,

vs.

THE BISHOP OF CHARLESTON, A  
CORPORATION SOLE, ROBERT  
GUGLIELMONE, THE BISHOP OF THE  
DIOCESE OF CHARLESTON, IN HIS  
OFFICIAL CAPACITY, REV.  
MONSIGNOR MARTIN LAUGHLIN,  
FORMER ADMINISTRATOR OF THE  
DIOCESE OF CHARLESTON, IN HIS  
OFFICIAL CAPACITY; ROBERT J.  
BAKER, FORMER BISHOP OF  
CHARLESTON, IN HIS OFFICIAL  
CAPACITY;  
LAWRENCE E. RICHTER, JR.,  
DAVID K. HALLER, AND  
RICHTER AND HALLER, LLC.

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE No. 10-CP-10-5520

COPY

**CERTIFICATE OF SERVICE**

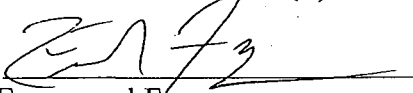
The Bishop of Charleston, A Corporation  
Sole; Robert Guglielmon, the Bishop of  
the Diocese of Charleston, in his Official  
Capacity; Rev. Monsignor Martin  
Laughlin, Former Administrator of the  
Diocese of Charleston; Robert J. Baker,  
Former Bishop of Charleston; in his  
Official Capacity.- *Diocese Defendants*)

I hereby certify that I have served a copy of the **Diocese Defendants' Memorandum in Support of Motion to Dismiss** in the above captioned case via hand delivery, on this 30<sup>th</sup> day of March, 2011, to Gerg Meyers, Esq., at the address listed below:

Mr. Gregg Meyers, Esq.  
1 Poston Road, Ste. 110  
Charleston, SC 29407

SHAHID LAW OFFICE, L.L.C

By:

  
Emmanuel Ferguson

Legal Assistant to A. Peter Shahid, Jr.

Dated: March 30, 2011  
Charleston, SC

# FORM 4

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-5520

John Doe 2 and Jane Doe 4

v

The Bishop of Charleston et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit) ☐ Rule 43(k), SCRPC (Settled); ☐ Other ☐

☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other  
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

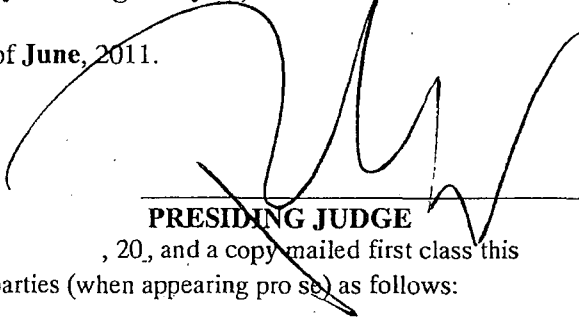
**IT IS ORDERED AND ADJUDGED:**

☐ See attached order. (Formal order to follow)  
☒ Statement of Judgment by the Court:

Defendants Lawrence E. Rickter, Jr. and Richter & Haller, LLC's Motion for a Protective Order from court appearances in these matters for the period of May 9 through May 23, 2011 is **DISMISSED** as moot.

Dated at Charleston, South Carolina, this 17th day of June, 2011.

272

  
\_\_\_\_\_  
PRESIDING JUDGE

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and a copy mailed first class this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE No.: 10-CP-10-5520

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

THE BISHOP OF CHARLESTON, a  
Corporation Sole; ROBERT GUGLIEMONE,  
THE BISHOP OF CHARLESTON, in his  
Official Capacity, REV. MONSIGNOR  
MARTIN LAUGHLIN, former  
Administrator of the Diocese of Charleston,  
in his Official Capacity; ROBERT J. BAKER,  
former Bishop of Charleston, in his Official  
Capacity; LAWRENCE E. RICHTER, JR.,  
DAVID K. HALLER, and RICHTER AND  
HALLER, LLC.,

Defendants.

FILED  
2011 JUN 27 PM 12:30  
JULIE J. ARISTRONG  
CLERK OF COURT

**ORDER DENYING IN PART AND GRANTING IN PART  
DEFENDANTS' MOTION TO DISMISS**

Plaintiffs' Attorney: Gregg Meyers  
Defendants' Attorney: A. Peter Shahid, Jr., for Diocese of Charleston  
Susan Taylor Wall, for David Haller  
James L. Bruner, for Lawrence E. Richter, Jr. and  
Richter and Haller, LLC  
Date of Hearing: March 31, 2011

**INTRODUCTION**

This lawsuit was filed on July 9, 2010, and alleges a number of alternative wrong-doings by the various Defendants. Each of the Defendants responded by filing motions to dismiss which this Court heard on March 31, 2011. For the following reasons, this Court finds the motions must be denied in part and granted in part.

B

### ***Res Judicata* and the Class Action Settlement**

The Plaintiffs' first cause of action alleges the Diocese knew or should have known that one of its priests was a pedophile who molested the Plaintiffs, and as a result, the Diocese was negligent and grossly negligent in supervising this priest. They also allege the Diocese was negligent and grossly negligent in failing to warn the Plaintiffs or their parents about this pedophile priest. They further allege the Diocese Defendants maintained a decades-long policy and practice of engaging in fraudulent concealment when their agents and employees were known to sexually abuse children.

The Diocese asks the Court to dismiss the negligence and gross negligence cause of action because it is barred by the doctrine of *res judicata*, collateral estoppel and the statute of limitations.

The *res judicata* argument arises out of a class action lawsuit filed in Dorchester County that was approved by Circuit Court Judge Diane Goodstein. The Defendants argue that the negligence and gross negligence claims of the Plaintiffs were encompassed in that class action lawsuit and are therefore barred as a matter of law. The factual background is extensively laid out in detail in the Complaint.

However, by way of background for this preliminary issue, it should be pointed out that the Plaintiffs alternatively allege the Diocese Defendants and the Attorney Defendants, after reaching a settlement, colluded to dismiss a class action lawsuit that had been filed in Charleston County, and re-filed the same class action lawsuit in Dorchester County in order to seek a more favorable settlement approval by a circuit court judge who was a long-time friend of Defendant Richter. Procedurally, the Plaintiffs want to be able to bring their negligence and gross negligence claims against the Diocese Defendants; however, if they are barred because of the *res*

*judicata* effect of the Dorchester County Class Action settlement (or any of the defenses the Diocese Defendants waived by agreeing to the Dorchester County Class Action settlement), then they seek to sue the Diocese Defendants and the Attorney Defendants for civil conspiracy, and the Attorney Defendants for various causes of actions they allege flow from the actions of the Attorney Defendants in their role as class action counsel.

Since all of the Defendants have raised the defense of *res judicata* as a bar to the various causes of actions brought in the current lawsuit, this Court must address this issue first.

This Court must give collateral recognition of the Dorchester County Class Action settlement if it can be shown that the Plaintiffs were afforded due process in that action; i.e., they were given reasonable notice of the class action settlement and class counsel adequately represented them. The South Carolina Supreme Court has held that it is appropriate for a court to conduct a limited collateral review of another court's class action settlement for the sole purpose of determining if procedural due process requirements were met as it pertains to the party seeking review. This limited review looks at two factors: (1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied. Hospitality Management Associates, Inc. v. Shell Oil Company, 356 S.C. 644, 591 S.E.2d 611 (2004).

Fundamentally, due process requires that absent class members be given notice. Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812, 105 S.Ct. 2965 (1985). The standard for notice is that it must be "the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Shutts, 472 U.S. at 812, 105 S.Ct. 2965 (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15, 70 S.Ct. 652 (1950)).

I have conducted a limited collateral review of the procedures used by the circuit court in the Dorchester County Class action and find the procedures were not designed to ensure notice to any potential class members living outside of the state of South Carolina who were not otherwise given actual notice of the class action and settlement.<sup>1</sup> The Plaintiffs allege that they live outside the state of South Carolina and they did not receive actual notice of the settlement under the guidelines set forth in the settlement order. The newspaper notices of the class action were only published in South Carolina newspapers (with the exception of the Augusta daily newspaper which is immediately adjacent to South Carolina and is distributed in an area of South Carolina not otherwise serviced by a daily newspaper). The Defendants had originally proposed national publication of the settlement in the *USA Today* newspaper to Judge Goodstein; however, they specifically withdrew their request to have this notice published outside of South Carolina in a publication of national distribution. This is clearly evidence that the class action was not designed to be a national settlement, but rather was a settlement intended to bind only South Carolina residents who did not otherwise receive actual notice. I find, therefore, that the constructive notice of the Dorchester County Class Action settlement attempted by the in-state newspaper publications was not reasonably calculated, under all the circumstances, to apprise these out-of-state Plaintiffs of the pendency of the action and afford them an opportunity to present their objections.

The Plaintiffs also argues that the following language from Judge Goodstein's order of July 30, 2007 should estop the Diocese Defendants from raising the *res judicata*; to wit:

The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement. Further, the Diocese has stipulated before me in open Court and on the record that any person who comes forward as a later date and can show

---

<sup>1</sup> Nothing herein should be considered as adjudicating the issue of whether in-state class members received adequate notice.

that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

At first glance, this language certainly seems to support the Plaintiffs' position.

However, at a hearing on August 9, 2007, Judge Goodstein was asked to clarify her intent of this language, and as a result she issued an Order on August 31, 2007 in which she stated that language was only intended to apply to potential class members who had *actually* contacted the Diocese at some point in the past with allegations of child sexual abuse and were therefore entitled to receive *actual notice* of the proposed class settlement. Therefore, I find the language in the July 27<sup>th</sup> Order would not have the estoppel effect advanced by the Plaintiffs.

Nevertheless, this does not affect this Court's finding that the class notice was not intended to reach non-South Carolina residents who had not otherwise received actual notice of the settlement.

Due process rights preclude any claimant who did not receive notice of the class action from being bound by any judgment rendered in it. See Hoiengs v. County of Adams, 245 Neb. 877, 516 N.W.2d 223 (1994). Therefore, the Court finds the Plaintiffs are not bound by the judgment of the Dorchester County Class Action and are free to pursue their claims of negligence and gross negligence, subject to the findings below.

#### **Statute of Limitations and Negligence/Gross Negligence Causes of Action**

Having found the Plaintiffs are not bound by the Dorchester County Class Action, the Diocese Defendants move to dismiss the negligence and gross negligence causes of action on the grounds the claims fall outside the applicable statute of limitations.

The Plaintiffs claims arise out of allegations of childhood sexual abuse that allegedly occurred between 1965 and 1971. Therefore, these claims are subject to the limitations period

found in S.C. Code § 15-3-535 for actions arising prior to 2001, and S.C. Code § 15-3-555 for actions arising after 2001.

The facts plead in the Complaint allege Plaintiffs John Doe 2 and Jane Doe 4 would have been born at the latest in 1965. Consequently, the Plaintiffs would have turned 18 in 1983. Under § 15-3-535, the Plaintiffs would have had three years from the date of discovery of the tort to bring his or her claim. These Plaintiffs do not claim they were unaware of the alleged tort at the time it happened, between 1965 and 1971, or at any time after 1971. Giving each Plaintiff the benefit of the age of majority, three years after turning 18 in 1983, the statute would have been tolled until 1986, and three years after turning 21 would be 1989. None of these claims were brought by 1989.

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996); Bayle v. S.C. Dept of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App.2001), cert. denied. In Dean, the Supreme Court stated:

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the "exercise of reasonable diligence" to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial. Id. at 363, 364, 468 S.E.2d at 647 (emphasis in original) (citations omitted); Young v. South Carolina Dept. of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App.1999) (stating the statute of limitations runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct).

Applying the tolling effect provided by § 15-3-555, each Plaintiff would be able to bring his or her claim within six years of turning 21 years old. Construing the facts alleged in the

Complaint in the light most favorable to the Plaintiffs, each Plaintiff would have turned 21 no later than 1986. Therefore, at the very latest their claims were barred by the limitations period in 1992. The Plaintiffs fail to allege they were unaware of the sexual abuse allegedly committed against them, or unable to discover the causal relationship between any injuries and the alleged sexual abuse.

The Plaintiffs argue the Diocese Defendants should be bound by their waiver of statute of limitations defenses in the Dorchester County Class Action. That waiver was only for class members and this Court has found the Plaintiffs are not bound by that class action. Therefore, the Plaintiffs cannot avail themselves of a waiver which only applies to a class action they wish to avoid.

The Plaintiffs further argue fraudulent concealment should bar the Diocese Defendants from raising the statute of limitations defense. The claims in the Plaintiffs' fraudulent concealment cause of action and defense are rooted in a document dated from 1962 entitled "The Instruction." The Plaintiffs claim the Vatican instructed a certain degree of secrecy to all local dioceses (including the current Diocese Defendant) in this document, the execution of which led to the concealment that is the core of the Plaintiffs' Complaint. The underlying crux of the Plaintiffs' Complaint for fraudulent concealment, which allegedly gives them a right to a remedy, is that the Diocese Defendants concealed certain information at the direction of this 1962 document.

In order to succeed on a claim of fraudulent concealment, a plaintiff must plead facts indicating an "inducement for delay" in filing the lawsuit. Hedgepath v. American Telephone & Telegraph Co., 559 S.E.2d. 327, 338 (Ct. App. 2001). In order to successfully avoid the application of the statute of limitations on this theory that the Diocese Defendants are or had engaged in acts constituting "fraudulent concealment," the Plaintiffs must allege and establish the

following:

[A] defendant is estopped from benefitting from the statute of limitations as a defense because the defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. The conduct may be either an express representation that the claim will be settled without litigation or actions suggesting that a lawsuit is unnecessary. To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped the party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts. Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 638, 682 S.E.2d 1,4 (Ct. App., 2009) (internal citations omitted).

The claim of fraudulent concealment fails to bar the application of the statute of limitations in this case because the Plaintiffs do not allege how the Diocese Defendants actions with regards to "The Instruction" caused the Plaintiffs to be unaware of the personal injuries they allege they suffered or of the name the alleged perpetrator. They do not allege any defect in memory or any other reason why they are unaware of their own personal injury. They do not allege that the Diocese Defendants ever made a misrepresentation or took any action that caused them to delay the filing of their lawsuit. Absent such allegations, the Plaintiffs cannot maintain a claim of fraudulent concealment in tolling the statute of limitations.<sup>2</sup>

Therefore, the Court finds the Plaintiffs' negligence and gross negligence claims are barred by the applicable statute of limitations and the Diocese Defendants motion to dismiss those causes of action must be granted.

#### **UNFAIR TRADE PRACTICES ACT CLAIM**

The Plaintiffs bring claims for damages alleging the Diocese violated the South Carolina Unfair and Deceptive Trade Practices Act, but fail to allege facts necessary to sustain an action under the UTPA. South Carolina's UTPA prohibits "[u]nfair methods of competition and unfair

---

<sup>2</sup> For the same reasons, the cause of action for fraudulent concealment must fail and is hereby dismissed.

or deceptive acts or practices in the conduct of any trade or commerce....” S.C. Code Ann. §39-5-20 (1985). Trade or commerce is defined as “the advertising, offering for sale, sale or distribution of any services and any property ... and any other ... thing of value....” S.C. Code Ann. § 39-5-10(b) (1985). See also Foggie v. CSX Transp., Inc., 313 S.C. 98, 24, 431 S.E.2d 587, 591 (1993).

In the current case, the acts alleged by the Plaintiffs for recovery are acts of sexual abuse. The Plaintiffs allege the Defendants are subject to a claim under the UTPA because, among other reasons, they “operate schools, for which tuition is charged,” and “they provide services to the public and advertise services to the public.” Our Supreme Court requires that the specific acts alleged are those of trade or commerce, not the general or unrelated conduct of a defendant that might or might not qualify as trade or commerce. The acts that form the basis of the Plaintiffs’ Complaints are allegations of sexual abuse, *not* acts of trade or commerce.

### **CIVIL CONSPIRACY AND ALL DEFENDANTS**

The Plaintiffs allege a multi-faceted civil conspiracy cause of action that the Defendants all conspired to commit fraud upon the court by settling the case filed in Charleston County and re-filing it in Dorchester County in anticipation of getting favorable rulings on class certification, settlement terms, and approval of attorneys’ fees. I have reviewed the voluminous allegations set forth in support of this cause of action and find it meets the requirements of pleading a valid cause of action for civil conspiracy, in particular the requirement of alleging special damages insofar as the allegations complain the Defendants proposed class membership to include the Plaintiffs, then specifically requested the Court drop nationwide publication notice. The net result was that the Plaintiffs did not have the opportunity to participate in the class settlement nor exercise their right to opt-out, and as a result they are now unable to participate in the class action settlement, while at the same time are precluded from pursuing their negligence and gross negligence claims against the Diocese Defendants because of the running of the applicable

statute of limitations, which was waived by the Diocese in the Dorchester County Class Action with regards to participating class members. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore the Defendants' motion to dismiss this cause of action must be denied.

### **PROFESSIONAL NEGLIGENCE AND BREACH OF FIDUCIARY DUTY**

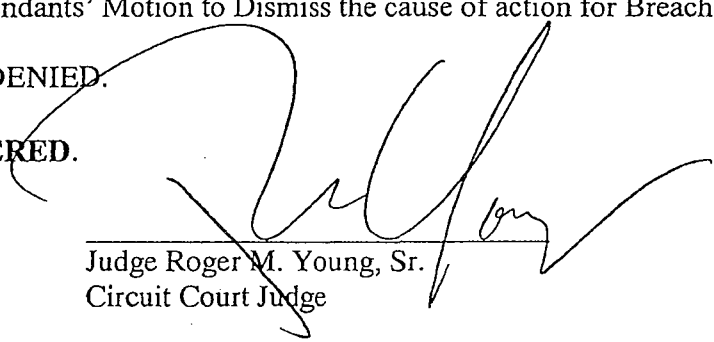
The Plaintiffs allege professional negligence and breach of fiduciary duty causes of action against the Attorney Defendants based upon the aforementioned facts set forth with great particularity in their Complaint. I have reviewed the voluminous allegations set forth in support of these causes of action and find they meet the requirements of pleading a valid cause of action for both. The particular duties owed and alleged to have been breach are supported by an affidavit of an expert as required by law. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore, the Attorney Defendants' motion to dismiss these causes of action must be denied.

### **THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:**

1. That the all of the Defendants' Motions to Dismiss on the grounds of *res judicata* are  
DENIED; and,
2. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross  
negligence because the actions are barred by the applicable statute of limitations is  
GRANTED; and
3. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross  
negligence because the actions are barred by the applicable statute of limitations is  
GRANTED; and

4. That the Diocese Defendants' Motion to Dismiss the cause of action for fraudulent concealment because the actions are barred by the applicable statute of limitations is GRANTED; and
5. That the Diocese Defendants' Motion to Dismiss the cause of action for Unfair Trade Practices Act is GRANTED; and
6. That all of the Defendants' Motions to Dismiss the cause of action for Civil Conspiracy is DENIED; and
7. That the Attorney Defendants' Motion to Dismiss the cause of action for Professional Negligence is DENIED; and
8. That the Attorney Defendants' Motion to Dismiss the cause of action for Breach of Fiduciary Duty is DENIED.

**AND IT IS SO ORDERED.**



\_\_\_\_\_  
Judge Roger M. Young, Sr.  
Circuit Court Judge

Charleston, South Carolina  
June 17, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHN DOE 2 and JANE DOE 4

☐ Plaintiff

v.

The Bishop Of Charleston, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.  
2010-CP-10-5520

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney:

A. Peter Shahid, Jr., Bar No. 5030

Address:

89 Broad Street

Charleston, SC 29401

phone: 843-853-4500 fax: 843-722-1119

e-mail: shahidlo@bellsouth.net other:

Defendant's Attorney:

Gregg Meyers, Bar No.

Address:

1 Poston Road

Charleston, sc 20407

phone: (843) 720-8714 fax: (843) 720-8704

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Motion to Reconsider, Alter, or Amend or Relief From Judgment

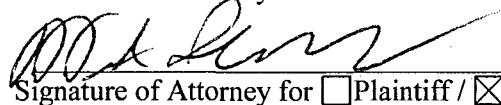
Estimated Time Needed: Court Reporter Needed: ☒ YES / ☐ NO

**SECTION II: Motion/Order Type**

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

7-1-11

Date submitted

**SECTION III: Motion Fee**

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

**JUDGE'S SECTION**

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_

Date Filed: \_\_\_\_\_

☐ MOTION FEE COLLECTED: \_\_\_\_\_

☐ CONTESTED - AMOUNT DUE: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
JOHN DOE 2 and JANE DOE4, )  
Plaintiff, )  
vs. )  
THE BISHOP OF CHARLESTON, A )  
CORPORATION SOLE, ROBERT )  
DIOCESE OF CHARLESTON, IN HIS )  
OFFICIAL CAPACITY, REV. )  
MONSIGNOR MARTIN LAUGHLIN, )  
FORMER ADMINISTRATOR OF THE )  
DIOCESE OF CHARLESTON, IN HIS )  
OFFICIAL CAPACITY; ROBERT J. )  
BAKER, FORMER BISHOP OF )  
CHARLESTON, IN HIS OFFICIAL )  
CAPACITY; )  
LAWRENCE E. RICHTER, JR., )  
DAVID K. HALLER, AND )  
RICHTER AND HALLER, LLC. )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE No. 10-CP-10-5520

DIOCESE DEFENDANTS'  
MOTION TO RECONSIDER, ALTER, OR  
AMEND PURSUANT TO RULE 59, OR  
IN THE ALTERNATIVE RELIEF FROM  
JUDGEMENT PURSUANT TO RULE 60,  
RE: THE ORDER OF JUDGE ROGER  
YOUNG FILED JUNE 27, 2011

The Bishop of Charleston, A Corporation  
Sole; Robert Guglielmone, the Bishop of  
the Diocese of Charleston, in his Official  
Capacity; Rev. Monsignor Martin  
Laughlin, Former Administrator of the  
Diocese of Charleston; Robert J. Baker,  
Former Bishop of Charleston; in his  
Official Capacity.- *Diocese Defendants*)

**TO: GREGG MEYERS, ESQ., ATTORNEY FOR THE ABOVE NAMED PLAINTIFFS:**

YOU WILL PLEASE TAKE NOTICE that the Defendants, The Bishop of Charleston, a  
Corporate Sole; The Bishop of the Diocese of Charleston, in his official capacity; Rev.  
Monsignor Martin Laughlin, Former Administrator of the Diocese of Charleston, in his official  
capacity; and Robert J. Baker, former Bishop of Charleston in his official capacity, hereinafter  
referred to as "Diocese Defendants", will move before the Presiding Judge for the Court of  
Common Pleas, Charleston County, 100 Broad Street, Charleston, South Carolina 29401, as soon

as the matter may be heard, for an Order altering or amending this Court's Order of June 27, 2011, pursuant to South Carolina Rules of Civil Procedure 59, or in the alternative, granting relief from such Order pursuant to South Carolina Rules of Civil Procedure 60 for the following reasons:

On March 31, 2011, a hearing was held in Charleston County before the Honorable Judge Robert Young on the Diocese Defendants' Motion to reveal the Plaintiffs' identity, Motion for a Protective Order, and Motion to Dismiss the Complaint. The Motion to Dismiss the Complaint asserted the relief sought in the Complaint was barred based on the application of the Doctrine of *res judicata*, collateral estoppel, and the statute of limitations. The Plaintiffs' causes of action included Negligence, Gross Negligence, Fraudulent Concealment, and Civil Conspiracy. The Court granted the Motion to Dismiss the Complaint based on the Statute of Limitations, but denied the Defendants' Motion to Dismiss the Complaint based on the application of *res judicata* and collateral estoppel. In particular, the above referenced Order granted the Diocese Defendant's Motions to Dismiss the claims of Negligence and Gross Negligence based on the Plaintiff's failure to timely file the Complaint before they were barred by the applicable Statute of Limitations. The Court also granted the Diocese Defendants' Motion to Dismiss the Cause of Action of Unfair and Deceptive Trade Practices, as the Defendant's conduct did not qualify as trade or commerce, as well as the Cause of Action alleging Fraudulent Concealment based on the Plaintiff's failure to establish the elements of the claim.

The Defendants' Motion to Dismiss the Complaint under the Doctrine of *Res Judicata* and Collateral Estoppel was based on a Class Action Settlement Agreement entered on January 12, 2007. The Agreement was approved and adopted by Court Order on July 30, 2007. This

Court conducted a collateral review of the notice procedures included in the Class Settlement Agreement. The Court found that the Plaintiffs' claims were not barred by the Doctrine of *Res Judicata* because the Agreement Ordered only statewide, and not national notice. The Court did not dismiss the Plaintiffs' claim of Civil Conspiracy.

In denying the dispositive application of the Doctrine of *Res Judicata* and Collateral Estoppel of the July 2007 Order, the Court, conducted a substantive review of the Order and found that the notice procedures stripped the Class Action Settlement Agreement of its conclusive effect in subsequent litigation. This Order is in direct conflict with an Order issued by the Honorable Judge Kristi L. Harrington on June 15, 2011 regarding the same issue. The June 15, 2011 Order is attached herein and incorporated into this Motion as "Exhibit A." In the Order Issued by Judge Harrington, the Court applied the Doctrine of *Res Judicata* and Collateral Estoppel to dismiss a nearly identical Complaint.

The gravamen of the various causes of action contained in the Plaintiffs' Complaint contained allegations of child sexual abuse which were claimed to have occurred between 1965-1971, by Fr. James McCarthy, a priest of the Diocese Defendants while he was assigned to St. William Church in Ward, South Carolina. On January 12, 2007 the Diocese Defendants entered into a Class Action Settlement Agreement with a class of people, through Class Counsel, who claim to have been sexually abused as children by personnel of the Diocese of Charleston, and those claimants' parents and spouses.

The Class Action Settlement Agreement, hereinafter referred to as the "Agreement", was submitted to Judge Goodstein for class certification and approval. A copy of the January 12, 2007 Agreement was attached to the Diocese Defendants' Memorandum in Support of the

Defendant's Motion to Dismiss as "Exhibit A". On January 23, 2007 the Court granted preliminary approval to the Class and ordered publication notice through at least eleven newspapers that service South Carolina, as well as notice in the Catholic Miscellany, the Diocese Defendants' periodic newspaper. A copy of the Order giving preliminary approval was attached to the Diocese Defendants' Memorandum in Support of the Defendant's Motion to Dismiss as "Exhibit C". A copy of the Addendum to Settlement and Arbitration Agreement was filed on March, 1 2007. The addendum was attached to the Diocese Defendants' Memorandum in Support of the Defendant's Motion to Dismiss as "Exhibit B". On July 30, 2007 the Dorchester County Court entered an Order Approving Settlement Agreement, and entered a supplemental Order on August 31, 2007. A copy of the July 30, 2007 Order was attached to the Diocese Defendants' Memorandum in Support of the Defendant's Motion to Dismiss as "Exhibit D".

Consistent with the terms of the January 23, 2007 Order, notice of the Agreement and opportunity to file objections were published in South Carolina newspapers statewide. Also, notices were delivered by certified mail to known persons who may have been putative class members. Further, a fairness hearing was held on March 9, 2007 to hear objections to the Agreement. The July 30, 2007 Order found the notice forms to be appropriate and were approved for use in the Class Action ("Exhibit D," p.13).

Here, neither party, including the Plaintiffs, came before the Court seeking review of the Order, in particular objecting to the notice procedures. In fact, Plaintiffs' counsel came before the Court at the March 31, 2011 hearing on the Motion to Dismiss seeking to enforce the July 2007 Order. While this was not expressed to the court, the Court should take notice that the newspapers' account of the settlement was published not just nationwide but also posted on

internet sources, which also provided worldwide coverage.

### **I. Limited Collateral Review of Notice Procedures**

In the July 2007 Order, Judge Goodstein found that the notice requirement was adequate to certify the Class, as well as approve the Class Action Settlement Agreement. Although the South Carolina Supreme Court has held that it is appropriate for a court to conduct a *limited* (emphasis added) collateral review of another court's class action settlement, such review is for the sole purpose of determining if procedural due process requirements were met as it pertains to the party seeking review. This limited review includes only two factors: (1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied. Hospitality Mgmt. Assocs. v. Shell Oil Co., 356 S.C. 644 (2004)(citing Fine v. America Online, 743 N.E.2d 421, at 422). "As for collateral review, due process does not afford any 'second-guessing of those determinations'." Hospitality Mgmt. Assocs. v. Shell Oil Co., 356 S.C. 644, 660, (2004)(citing Epstein III, 179 F.3d 641 at 648). Instead, what this limited review entails is "an examination of procedural due process *and nothing more*." Id. at 660 (citing Fine v. America Online, 743 N.E.2d at 421)(emphasis added). It would seem to be a waste of judicial resources to require reviewing courts to conduct an extensive substantive review when one has already been undertaken in a sister state. Id. at 660 (citing Fine v. America Online, 743 N.E.2d at 421)(emphasis added). To allow substantive collateral attacks would be counterintuitive to [the] procedural relief that a class-action suit is intended to afford our judicial system nationwide." Id. at 660 (citing Fine v. America Online, 743 N.E.2d at 421)(emphasis added). The decision of the South Carolina Supreme Court has decided the issue of collateral review with respect to class action litigation as follows:

We hold that in a case such as this one, only a limited collateral review is appropriate. It would run counter to the class action goals of efficiency and finality to allow successive reviews of issues that were, in fact, fully and fairly litigated in the rendering court. Moreover, second-guessing the fully litigated decisions of our sister courts would violate the spirit of full faith and credit. *See Fine v. America Online*, 743 N.E.2d at 421. Therefore, we concur with the Ninth Circuit's view and find due process requires that an absent class member's rights are protected by the adoption and utilization of appropriate procedures by the certifying court; thereafter, the merits of the certifying court's determinations are subject to direct appellate review. As for collateral review, however, due process does not afford any "second-guessing of those determinations." *Epstein III*, 179 F.3d 641 at 648. Instead, what this limited review entails is "an examination of procedural due process and nothing more." *Fine v. America Online*, 743 N.E.2d at 421. More specifically, we must determine: (1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied. *Id.* at 422. Hospitality Mgmt. Assocs. v. Shell Oil Co., 356 S.C. 644 (2004).

Here, the Court goes beyond its function of ensuring the proper due process safeguards have been followed, and instead conducted a *sua sponte* substantive review of another Court's findings regarding the Class Action notice procedures, in excess of its authority as set forth in Hospitality Mgmt, and in violation of the Doctrine of Collateral Estoppel. Black's Law Dictionary defines collateral estoppel as, "an affirmative defense barring a party from relitigating an issue determined against that party in an earlier action, *even if the second action differs significantly from the first one.*" Black's Law Dictionary 108 (2d pocket ed. 2001) (emphasis added). "Collateral estoppel, or issue preclusion, prohibits a court from adjudicating an issue that was 'actually litigated and determined by a valid and final judgment in a prior suit.' Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suit are the same." Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217, quoting Zurcher v. Bilton, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008).

The Doctrine of *res judicata* is an absolute bar to a subsequent complaint or cause of action in which the merits of that complaint were previously adjudicated in a final decision, the identity of the parties of the previous litigation are identical to the subsequent one, and the merits of the successor action were included in the preceding one. “*Res judicata* requires proof of three elements: 1) a final, valid judgment was entered on the merits of the first suit; 2) the parties to both suits are the same; and 3) the subsequent action involves matters properly included in the first action.” Judy v. Judy 383 S.C. 1,8, 677 S.E.2d 213, 217 (Ct. App., 2009), citing Plott v. Justin Ent. 374 S.C. 504, 511, 649 S.E.2d 92, 95 (Ct. App., 2007).

Here, the issue of the adequacy of notice was given preliminary approval by Judge Goodstein on January 23, 2007, (Exhibit “C”) and final approval on July 30, 2007 (Exhibit “D”). Collateral estoppel serves as a bar against a claimant raising a prior issue submitted for consideration and resolved, and the Plaintiffs are not permitted to seek a review of an issue already litigated and decided. It is not the purpose of the Court, under its limited collateral review power, to assess whether the notice comported with the minimum due process requirements. The Court’s function, in its limited power, is to ensure the approved notice process was implemented and followed.

In concluding that nationwide notice was required to apply the Doctrine of *Res Judicata*, the Court overstepped its boundaries of limited review and instead served as an appellate court overriding the Dorchester County Court’s July 2007 Order.

## **II. Statewide Notice**

The Trial Court erred in finding that a collateral review of the notice procedures includes a substantive review of its adequacy. The Defendant’s submit that the statewide notice

procedures Ordered by Judge Goodstein met the minimum due process notice requirements. The standard for notice is that it must be "the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812, 86 L. Ed. 2d 628, 105 S. Ct. 2965 (1985)(quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15, 94 L. Ed. 865, 70 S. Ct. 652 (1950)). Rule 23(d) of the South Carolina Rules of Civil Procedure provides that the Court "may order that notice be given in such a manner as it may direct of a proposed settlement, [...] or any other proceeding in the action including notice to the absent persons that they may come in and present claims and defenses if they so desire". The language of Rule 23 grants the issuing court deference to determine the extent notice must be given to meet the minimum due process requirements for notice. The Diocese of Charleston is a Corporation Sole that operates in South Carolina, with all of its agents, employees, and real property located within the geographic boundaries of South Carolina. It does not conduct any of its activity outside of the State. The injuries alleged in the Complaint were alleged to have occurred within the State of South Carolina. (Pl. Compl. ¶ 30). There is no authority based on codified, nor common law that requires nationwide notification where the alleged injury occurred within the State. The Plaintiff's Complaint identifies the Diocese Defendant as an entity that governs the activities of the various entities comprising the Catholic Church throughout *South Carolina*." (Pl. Compl. ¶ 4)(emphasis added). On January 23, 2007 the Court granted preliminary approval to the Class and ordered notice by publication through at least eleven newspapers that service South Carolina, as well as notice in the Catholic Miscellany, the Diocese Defendants periodic newspaper. In addition, the January 23, 2007 Order required the

Diocese Defendants to provide the names, addresses, and telephone numbers of a persons known to the Diocese who may fit within the definition of a class member. Additionally, class counsel was ordered to deliver by certified mail actual notice to any individual who may fit within the confines of the class. These notice procedures were deemed sufficient by the Dorchester County Court by its Order on January 23, 2007.

### **III. The June 27, 2011 Order's Effect on the Settlement Agreement**

Our Supreme Court has listed “the significant interests in efficiency and finality” as benefits of class action litigation. Hospitality Management Associates v. Shell Oil Co. 356 S.C. 644, 659, 591 S.E.2d 611, 619 (2004). Judge Goodsetin’s Order seeks to “protect the interests of both the absent class members and the *Diocese’s right to have the conclusive effect of a class action.*” (Exhibit D, p.4)(emphasis added). The June 27, 2011 Order conflicts with the nature of a class action in that it diminishes the conclusive effect of the settlement agreement for which Class Counsel, as well as the Diocese Defendant’s bargained. In addition, the Settlement Agreement provides that the Agreement is a, “voluntary settlement agreement and that either the Diocese or the Representatives may interpose an objection to any of the court’s rulings on the settlement agreement or claims process and may withdraw from this settlement if its terms are materially altered by the court (Exhibit A, p.3). To ensure that the Class Action Settlement would provide finality, Judge Goodstein’s January 2007 Order required a fairness hearing to be held were the parties had an opportunity to object to the Agreement in any respect. There were no objections to the notice procedures at any point during the fairness haring. Here, the June 27, 2011 Order destroys the conclusive effect of the Settlement Agreement, and creates a material alteration that effectively places both parties at the beginning stages of litigation. The Diocese Defendants have

already paid out the claims relating to the class action, and it would not be feasible to recover those funds from the class. Further, and as Judge Young's Order shows, the Diocese had waived viable defenses in order to effectuate the Settlement Agreement. The Class Action Settlement Agreement was intended to bring finality to a complex and potentially lengthy civil action. The June 27, 2011 Order unjustly reopened an issue that was brought to a close by another court.

### CONCLUSION

For the above stated reasons the Defendants respectfully move this Court to grant the Diocese Defendant's Motion to Reconsider, Alter, or Amend, or in the Alternative, Relief From Judgement the June 27, 2011 Order Denying in Part and Granting in Part Defendants' Motion to Dismiss.

Respectfully Submitted,



A. Peter Shahid, Jr.  
Shahid Law Office  
89 Broad Street  
Charleston, SC 29401  
843-853-4500

ATTORNEY FOR THE DEFENDANTS

July 7, 2011  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

JOHN DOE, JANE DOE 1,  
JANE DOE 2, JANE DOE 3,

Plaintiff,

vs.

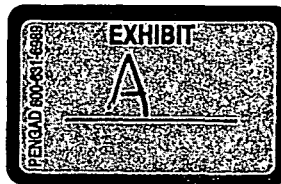
THE BISHOP OF CHARLESTON,  
A CORPORATION SOLE, AND  
THE BISHOP OF THE DIOCESE  
OF CHARLESTON, IN HIS  
OFFICIAL CAPACITY,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 09-CP-10-6694,  
09-CP-10-8054,  
09-CP-10-8055,  
09-CP-10-8056

ORDER DISMISSING DIOCESE  
DEFENDANTS



FILED  
2011 JUN 15 AM 10:12  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

This matter came before the Court on March 4, 2011 on Defendant's Motion to dismiss and Plaintiff's Motion for Partial Summary Judgment. After hearing arguments of counsel and reviewing the pleadings and memoranda, this Court finds that all of the claims in the four above cases are barred by the Doctrine of *Res Judicata*, collateral estoppel, and the Statute of Limitations.

The above captioned cases reference four separately filed, yet related cases.<sup>1</sup> The gravamen of the various causes of action contained in each Complaint are allegations of child sexual abuse which is claimed to have occurred between 1965-1971, by Fr. James McCarthy, a priest of the Diocese Defendants while he was assigned to St. William Church in Ward, South Carolina. The alleged perpetrator is deceased.

<sup>1</sup> The Court hereby consolidates these cases under case number 2009-CP-10-06694.

HLH  
6/10/11

On January 12, 2007, the above named Defendants, collectively hereinafter referred to as "Diocese Defendants," entered into a Class Action Settlement Agreement with a class of people, through Class Counsel, who claim to have been sexually abused as children by personnel of the Diocese of Charleston, and those claimants' parents and spouses. Several complaints were filed in the Dorchester County Court of Common Pleas in the following actions: 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 v. The Diocese of Charleston, A Corporation Sole, and the Bishop of the Diocese of Charleston in His Official Capacity; Case Numbers 2006-CP-18-1310, 1311, and 1636.

The Class Action Settlement Agreement, hereinafter referred to as the "Agreement," was submitted to Judge Diane Goodstein for class certification and approval. On January 23, 2007, the Court gave preliminary approval to the Class and ordered publication notice through ten South Carolina newspapers, and the Diocese Defendants' periodic newspaper, the Catholic Miscellany. Publication was satisfied through this order. On July 30, 2007, the Court entered an Order Approving Settlement Agreement. A supplemental Order was issued on August 31, 2007, addressing other issues as described below.

The Agreement provided two distinct class members defined as follows: "All individuals born on or before August 30, 1980, who as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released (Hereinafter "the Primary Class"), and "The spouses and parents of all individuals born on or before August 30, 1980 who, as minors, were sexually abused at any

Page 2 of 17  
6/10/11

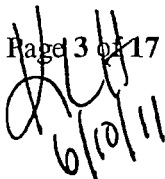
time by agents or employees of the Diocese of Charleston who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released (Hereinafter the "Consortium Class"), pursuant to the "Addendum to Settlement and Arbitration Agreement" filed on March 1, 2007. The term "sexually abused" or "sexual abuse" is defined in footnote #2 of the Agreement as follows: "...as used throughout this agreement and in the class definitions, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee."

The July 30, 2007, Order declared the class was an "opt-out" class, specifically providing that any individual who met the definition of either the Primary or Consortium class was automatically deemed a class member, unless that individual affirmatively "opted-out" of the Class. The Defendants presented at the March 4, 2011 hearing the "Addendum to Settlement and Arbitration Agreement," filed in Dorchester County on March 3, 2007. This document defines the class as "opt out" and clarifies the definition of the consortium class as follows:

Any person who satisfies the definition of either class is a member of that class to the fullest extent allowed by law unless they opt out of either class. Any individual who believes he or she is or may be a member of either of the plaintiff classes but does not wish to participate in the settlement for any reason may opt out of this settlement and/or the classes by completing the court approved opt out form and transmitting it to Class Counsel. Given the sensitive nature of the claims here which have or may be alleged, the parties agree that they will jointly request that the court have Class Counsel serve as the initial repository of the opt out forms. At the close of the time in which the forms can be completed, Class Counsel shall send a copy of the forms to Counsel for the Diocese, and then file the original forms with the Dorchester County Clerk of Court under seal.

The Order provided for the mechanism in processing all class claims. This procedure included the public notice of the court's approval of the Agreement and the manner in which claims were to be received, reviewed and resolved.

Page 3 of 17

  
6/10/11

The Order issued by Judge Goodstein on August 31, 2007, clarified the inclusion of class members who possessed an otherwise valid claim, who previously had notified the Diocese Defendants of their allegation, and who should have received actual notice of this class action litigation. The Class Action claims process proceeded throughout 2007 and 2008. The time to submit a claim form or a Notice of Opt-Out expired on December 6, 2007. An arbitrator heard claims and distributed awards through February 2008.

### **Motion to Dismiss**

The legal standard in deciding a defendant's motion to dismiss rests on the facts plead in the complaint. Hambrick v. GMAC Mortgage Corp., 370 S.C. 118, 121-22, 634 S.E.2d 5, 7 (Ct. App. 2006). Stated in other terms, the Plaintiffs are bound to those allegations raised in their respective pleadings. "The circuit court may dismiss a claim when the defendant demonstrates the plaintiff's failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Id. The circuit court "must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint. Id. All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." Id.

This Court finds that the Plaintiffs in the four complaints at issue meet the definition of individuals who are class members in of either the Primary Class or the Consortium Class and who failed to participate in the claims process, and who failed to affirmatively opt-out of the class. John Doe, Jane Doe 2, and Jane Doe 3 are members of the Primary Class as they allege to have been sexually abused as minors by a priest of the Diocese of Charleston. Jane Doe 1 is a member of the Consortium Class, as she claims to be the parent of children who were sexually abused as minors

by a priest of the Diocese.

**I. Res Judicata**

The Plaintiffs' claims are barred by the doctrine of *Res Judicata*, which applies to the putative class members, both absent and actual, in this class action litigation in the same manner it applies to litigants in non-class actions. The doctrine of *Res Judicata* is an absolute bar to a subsequent complaint or cause of action in which the merits of that complaint were previously adjudicated in a final decision, the identity of the parties of the previous litigation are identical to the subsequent one, and the merits of the successor action were included in the preceding one. "*Res judicata* requires proof of three elements: 1) a final, valid judgment was entered on the merits of the first suit; 2) the parties to both suits are the same; and 3) the subsequent action involves matters properly included in the first action." Judy v. Judy, 383 S.C. 1, 8, 677 S.E.2d 213, 217 (Ct. App. 2009) (citing Plott v. Justin Ent., 374 S.C. 504, 511, 649 S.E.2d 92, 95 (Ct. App., 2007)).

Under the Doctrine of *Res Judicata*, "a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action." Treadaway v. Smith, 325 S.C. 367, 377, 479 S.E.2d 849, 855 (Ct. App. 1996) (internal citations omitted).

The Defendants have shown that all three elements of the Doctrine of *Res Judicata* apply to the four complaints. First, the Dorchester County Court of Common Pleas issued a final order on July 30, 2007, and an additional Order on August 31, 2007, which addressed the merits of the four Complaints. The Plaintiffs' claims of sexual abuse are identical to the claims contained within the Dorchester County Court approved class action. The Plaintiffs, John Doe, Jane Doe 2 and Jane

Doe 3 assert that as minors they were sexually abused by an agent, a priest who was assigned to a parish of the Diocese Defendants. These Plaintiffs were born on or before August 30, 1980, as evidenced in their complaints that the abuse occurred within the time frame of 1965 and 1971. As such, John Doe, Jane Doe 2, and Jane Doe 3 are by definition members of the Primary Class. Plaintiff Jane Doe 1, the mother of John Doe, Jane Doe 2 and Jane Doe 3, is a member of the Consortium Class. The Complaints fail to allege that the Plaintiffs are not members of either class, or that they processed their individual claims through the class action mechanism, or they opted-out of the class. The effect of the final orders of that proceeding is the same as if the claims were litigated in a non-class action.

In this case, the Dorchester County Court of Common Pleas entered a final, valid judgment on the merits of a class of plaintiffs' claims of sexual abuse. The Court's Orders of July 30, 2007, and August 31, 2007, approved a Settlement Agreement which incorporated the claims of a class of injured parties, of which these Plaintiffs were members. "A judgment in favor of the plaintiff class extinguishes their claim, which merges into the judgment granting relief." Cooper v. Federal Reserve Bank of Richmond, 467 U.S. 867, 874 (1984).

The second element of *Res Judicata*, identity of the parties, is satisfied in the current Plaintiffs' status as class members, albeit absent class members. On the face of their Complaints, the Plaintiffs admit they were absent class members in the Dorchester County Class Action, and that they fit the definition of the classes, but did not participate in the claims process. The named Defendants in the Class Action are the same Defendants as the current action, namely the Diocese of Charleston and the Bishop of Charleston. The Settlement Agreement identified the Class of persons included in the Agreement as "victims of sex abuse allegedly committed by agents or employees of the defendants in this action... and parents or spouses who have suffered a loss of

consortium as a result of sexual abuse.” The Defendants in this action are the same as in the Class Action Settlement Agreement. Therefore, as the current Plaintiffs are part of a class which had their claims adjudicated against the Diocese Defendants, the identity of parties requirement is met.

The third element of *Res Judicata* is also satisfied: Issues raised in the current action were, or could have been, raised in the Class Action. The Plaintiffs’ current claims center on allegations of child sexual abuse which is alleged to have occurred over forty years ago. The Defendants litigated all claims of past sexual abuse in the Dorchester Class Action, culminating in the January 12, 2007, Settlement Agreement. The definition of the class provided a specific framework of which type of legal actions were included for resolution. The action is restricted to an injury attributable to sexual abuse, as previously defined, the claimant had to be a minor at the time of the injury, that the injured person was born no later than August 30, 1980, and that the claim had not been previously resolved. The issues raised in the current complaints are all attributable to alleged sexual abuse, which was raised and litigated in the Class Action.

In addition to the previously discussed elements of *Res Judicata*, this Court takes judicial notice of the issuance of a circuit court’s ruling on the issue of whether a class member from the Dorchester County Class Action is precluded from instituting a claim. In case number 09-CP-10-7751, John Doe, individually and on behalf of all persons who are similarly situated v. Lawrence E. Richter, Jr., David K. Haller, Richter & Haller, LLC, Peter Shahid, Jr., Shahid Law Office, LLC, Robert Baker, The Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston, a claimant who was a class member and a class action participant subsequently filed an action against the Diocese, Class Counsel and Diocesan Counsel for additional recovery. The Plaintiff in that case was an actual class member, participating in the claims process and receiving an arbitration award. The principals of *res judicata* and collateral

Page 7 of 17

6/10/11

estoppel are the same in that case as in the current one. In the 09-CP-10-7751 case, the Court dismissed all claims against the Diocese of Charleston holding:

[A]ll three elements of *res judicata* are present within the contents of the Plaintiff's Complaint. First, the Dorchester County Court of Common Pleas entered a final, valid judgment on the merits of the Plaintiff's claims of sexual abuse. The court's Orders of July 30, 2007, and August 30, 2007 approved a Settlement Agreement which incorporated the claims of a class of plaintiffs, of which the current plaintiff was a member. . . . Second, the Plaintiffs status as a class member in the previously adjudicated class action satisfies the requirement for identity of parties. . . . Third, the issues raise in the current action were, or could have been, properly included in the first action.

There is a valid final order that a class member is precluded by *res judicata* from bringing an additional action against these same Defendants. While the Plaintiffs allege that the July and August 2007 Orders in the class action preclude the Diocese from asserting the defense of *res judicata*, the Court finds that argument is without merit. A review of the factual history of the July 30, 2007 Order and the August, 31 2007 Order, indicates the Dorchester Court was concerned that known victims who previously presented claims which have not been completely resolved would miss the opportunity to participate in the class action process and would, by definition, be barred from pursuing their claim outside the class action as a result of the application of the doctrine of *res judicata*. In response to this concern, the Diocese Defendants agreed that it would not seek to bar those claim on two conditions. The first of these conditions was that the Diocese Defendants had prior actual knowledge of the victim and the claim was not resolved. The second condition was that the Diocese Defendants, in spite of their prior actual knowledge, failed to notify the victim of the class action process.

The Plaintiffs attempt to circumvent these two conditions and avoid the application of the Doctrine of *Res Judicata* in citing the July 30, 2007 Order Approving Settlement as follows:

The Diocese has further stated that it understands that any person who should

Page 8 of 17

*[Signature]*  
6/10/11

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

In citing this portion of the Order, the Plaintiffs ignore the context of the cited paragraph and further clarification and definition of the Court's reference to those "who should have had notice." First, the above paragraph was written in the context of a discussion of "how best to . . . protect the interests of both the absent class members and the *Diocese's right to have the conclusive effect of a class action.*" The Order continues in this discussion with the following: "...the Diocese undertook on its own to notify the potential members of the class *known to it.*" The Plaintiffs' limited reference of the Order as binding authority to relieve them of the prohibitive effect of *res judicata* ignores the context and the plain language of the Order which limits the discussion to those individuals actually known to the Diocese at the time of the Order.

Second, this courts finds that at a hearing on August 9, 2007, Counsel for the Diocese Defendants requested the Court to clarify its previous July 30, 2007 Order regarding those who "should have had notice."

The Court then filed an Order dated August 31, 2007, which clarified the "relatively small group of people" who would be entitled to actual notice, and whose potential future claim would not be barred by the *res judicata* effect of the litigation:

Furthermore, in the Court's Order of July 30, 2007, approving the Class settlement, the Court made reference to the existence of individuals who, according to the Diocese, (1) were potential class members; (2) came forward to the Diocese at some time in the past with their allegations of child sexual abuse; (3) never resolved their potential claims; and (4) were entitled to receive *actual notice* of the proposed class settlement pursuant to the agreement of the parties

Page 9 of 17

*[Handwritten signature]*  
6/10/11

and earlier instructions from this Court (hereinafter referred to as "Actual Notice Class Members"). The Defendants have asked the Court to clarify how the settlement process will treat Actual Notice Class Members. Accordingly, the Order clarifies, and, where in conflict, supersedes the Court's Order of July 30, 2007.

The August 31, 2007 Order created a specific sub-class of potential class members who were categorized as Actual Notice Class Members. This designation clarified the issue raised by Diocese Defendant's attorney at the August 9, 2007 hearing, that the *only* group who is entitled to come forward without the *res judicata* effect of the Class Action Settlement Agreement are those individuals who satisfy the above enumerated criteria and are within the umbrella of this new sub-class. The Order further distinguishes this group from the larger class in the following provision:

Actual Notice Class Members who present their claims more than 120 days after they receive actual notice of the settlement shall be barred from participation in the settlement process and ***shall be treated like any other class member who has failed to timely present a claim*** to the class settlement fund. (emphasis added).

The Plaintiffs allege that the July 2007 Order suspends the *res judicata* and collateral estoppel effect of the Class Action litigation for *any* person who falls within the definition of the class. While the Plaintiffs acknowledge the restricted membership of the Actual Notice sub-group and admit they do not qualify for that group since they never previously presented a claim to the Diocese, they contend the *Res Judicata* effect of the litigation is suspended not only for the Actual Notice Class Members, but all absent class members.

This rationale is clearly erroneous and ignores the clear language and intent of the Court in addressing this narrow issue. The Diocese Defendants were careful to address any possibility of ambiguity of the Court's language in the July 2007 Order. The Plaintiffs' interpretation would render the creation and definition of the Actual Notice sub-group meaningless, and in essence strip

the fabric of any protection afforded the Diocese Defendants in the Class Action Settlement Agreement. If the *res judicata* effect of the class litigation was suspended for all absent class members, the identification of those who had previously presented their claims and are therefore now entitled to *actual notice* would be unnecessary. No potential claimant could ever be prejudiced by *res judicata*; therefore, there would be no need for the Court to carve out this small group of potential claimants to protect them from the application of the Doctrine of *res judicata*.

The Plaintiffs' rationale of the July 30, 2007 and August 31, 2007 Orders is further illogical because it would give the Diocese no motivation to participate in a class action settlement as it would afford no protection against future claims. The Plaintiffs would have this Court believe there is no *res judicata* effect from the previous litigation which would offer the Defendants no protection against future claims by absent class members, creating an indefinitely opened claims period. Our Supreme Court has listed "the significant interests in efficiency and finality" as benefits of class action litigation. Hospitality Management Associates v. Shell Oil Co., 356 S.C. 644, 659, 591 S.E.2d 611, 619 (2004). Furthermore, Judge Goodstein's Order seeks to "protect the interests of both the absent class members and the **Diocese's right to have the conclusive effect of a class action.**" (emphasis added). The Plaintiffs' reading of the Dorchester County Class Action Orders promotes neither efficiency nor finality and conflicts with the basic nature of a class action.

Absent class members are subject to the same legal effect of *res judicata* as in a non-class action. The issues presented in the current case have already been litigated to a final, valid order in the Dorchester County Class Action between the same parties. The Plaintiffs' assertion that the Diocese waived defenses of *res judicata* for future litigation is without merit and not supported by

*[Handwritten signature]*  
6/10/11

a plain reading of the Class Action orders. The Diocese Defendants did not waive the *Res Judicata* effect of the class action litigation at any point.

## II. Collateral Estoppel

Similar to the doctrine of *res judicata*, collateral estoppel precludes a party from re-litigating issues actually adjudicated in a prior action. Unlike *res judicata*, while the identity of the parties do not have to be the same in the prior action, the adjudicated issue must be related. "Collateral estoppel, or issue preclusion, prohibits a court from adjudicating an issue that was 'actually litigated and determined by a valid and final judgment in a prior suit.' Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suit are the same." *Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217, quoting *Zurcher v. Bilton*, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008). The Diocese Defendants have demonstrated the elements of collateral estoppel are met and preclude the current claim. The Plaintiffs' allegations of sexual abuse by Diocesan personnel were actually litigated in Dorchester County, and the issue of *res judicata* has already been decided by this court in favor of the Defendants.

The Plaintiffs' current Complaints center on the fact that they did not receive notice of the Class Action. The issue of notice and the other tangential issues of the Class Action were all litigated in Dorchester County, resulting in a final valid judgment on the merits.

Further, this Court has also decided the very issue of collateral estoppel as noted in the order issued in case number 2009-CP-10-7751, cited previously:

In spite of the label the Plaintiff has placed on this Fourth and Fifth Causes of Action (collusion and outrage), the allegations in the Complaint relate to the Plaintiff's claim that he was previously abused while a minor by the diocese Defendants' agent and that abuse entitles him to certain recovery for

*[Handwritten signature]*  
6/10/11

damages. In other words, his capacity to sue rests on the harm he may have suffered from any act(s) by Diocesan personnel. . . . Thus, the elements of collateral estoppel are met and preclude the current claim:

The very definition of issue preclusion is met in this case, with a ruling from the same court in favor of these same Defendants.

### III. Statute of Limitations and Fraudulent Concealment

In addition to the above defenses of *res judicata* and collateral estoppel, all four of the Plaintiffs fail to state a claim for which relief can be granted because their claims fall well outside the applicable statute of limitations. The Plaintiffs' claims arise out of allegations of childhood sexual abuse which allegedly occurred between 1965 and 1971.<sup>2</sup> These claims are subject to the limitations period found in S.C. Code §15-3-535 for actions arising prior to 2001, and § 15-3-555 for actions arising after 2001. Section 15-3-535 applies to these four complaints. In Doe v. Crooks, 364 SC 349, 352, 613 S.E.2d. 536, 538 (2005), the Supreme Court of South Carolina stated, "Ordinarily, a new statute of limitations applies retroactively. However, it cannot operate to revive an action for which the limitations period has already expired."

The facts plead in the Complaint allege Plaintiffs John Doe, Jane Doe 2 and Jane Doe 3 would have been born at the latest in 1965. At the very latest, any or all of the Plaintiffs would have turned 18 in 1983. Under § 15-3-535, a Plaintiff would have three years from the date of discovery of the tort to bring his or her claim. These Plaintiffs do not claim they were unaware of the alleged tort at the time it happened, between 1965 and 1971, or at any time after 1971. Giving each Plaintiff the benefit of the age of majority, three years after turning 18 in 1983 would be 1986,

---

<sup>2</sup>John Doe, Jane Doe 2 and Jane Doe 3 raise claims of childhood sexual abuse. Jane Doe 1 alleges her children were sexually abused.

and three years after turning 21 would be 1989. None of these claims were brought by 1989. Under section 15-3-535, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 682 S.E.2d. 1 (Ct. App. 2009). The Plaintiffs in the complaint do not allege any reason for not bringing their claims within the required time frame. The Court in Kelly makes clear that: "Statue of Limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." Id. at 4 (citing Moates v. Bobb, 332 S.C. 172, 470 S.E.2d. 402 (Ct. App. 1996), and Hooper v. Ebenezer Senior Serv. & Rehab. Ctr., 377 S.C. 217, 659 S.E.2d 213 (Ct. App. 2008)). As such, the four complaints are barred by the application of the Statute of Limitations, set forth in Section 15-3-535.

The Plaintiffs allege as a cause of action "Fraudulent Concealment" and assert that a practice of fraudulent concealment bars the Diocese from asserting the application of any Statute of Limitation defenses. In order to succeed on a claim of fraudulent concealment, a plaintiff must plead facts indicating an "inducement for delay" in filing the lawsuit. Hedgepath v. American Telephone & Telegraph Co., 559 S.E.2d. 327, 338 (Ct. App. 2001). The claim of fraudulent concealment fails to bar the application the of statute of limitations because the Plaintiffs (John Doe, Jane Doe 2 and Jane Doe 3) allege a personal injury was committed against them (or Jane Doe 1's children). A defendant cannot fraudulently conceal a personal injury of which the Plaintiff is aware from the time of the injury. The Plaintiffs' Complaints do not meet the requirement of the application of fraudulent concealment in defeating the applicable Statute of Limitations. They do not allege they were unaware of their injuries or their alleged perpetrator.

They do not allege any defect in memory or any other reason why they are unaware of their own personal injury. They do not allege that the Diocese Defendants ever made a misrepresentation that caused them to delay in the filing of their lawsuit. Absent such allegations, the Plaintiffs cannot maintain a claim of fraudulent concealment in tolling the statute of limitations or avoiding the application of the doctrine of *res judicata*. Kelly, 383 S.C. 626, 638, 682 S.E.2d 1, 4 (Ct. App., 2009) (internal citations omitted).

In addition, the Plaintiffs' fraudulent concealment cause of action is rooted in a document dated from 1962 entitled "The Instruction." The Plaintiffs claim the Vatican instructed a certain degree of secrecy to all local dioceses (including the current Defendant) in this document and the execution of this document led to the concealment of which the Plaintiffs now complain. The underlying crux of the Plaintiffs' Complaints for fraudulent concealment, which allegedly gives them a right to a remedy, is that the Defendants concealed certain information at the direction of this 1962 document.

This claim was litigated and resolved in the Class Action Settlement Order issued by Judge Goodstein, specifically ordering a criminal investigation relating to the "Instruction." The examination of the Instruction was to ensure it would not impact the ability to give class notice.

#### IV. Unfair and Deceptive Trade Practices

The Plaintiffs bring claims for damages alleging the Diocese violated the South Carolina Unfair and Deceptive Trade Practices Act, but fail to allege facts necessary to sustain an action under the UTPA. South Carolina's UTPA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce...." S.C. Code Ann. §39-5-20

(1985). Trade or commerce is defined as “the advertising, offering for sale, sale or distribution of any services and any property ... and any other ... thing of value....” S.C.Code Ann. § 39-5-10(b) (1985). See also Foggie v. CSX Transp., Inc., 313 S.C. 98, 24, 431 S.E.2d 587, 591 (1993).

In the current case, the acts alleged by the Plaintiffs for recovery are acts of sexual abuse. The Plaintiffs allege the Defendants are subject to a claim under the UTPA because, among other reasons, they “operate schools, for which tuition is charged,” (09-CP-10-6694 2d Am. Compl.), and “they provide services to the public and advertise services to the public.” The Plaintiffs’ allegations of conduct of trade or commerce reflect a misunderstanding of the Supreme Court’s analysis of the UTPA. The Court requires that the specific acts alleged are those of trade or commerce, not the general or unrelated conduct of the defendant that might or might not qualify as trade or commerce. The acts that form the basis of the Plaintiffs’ Complaints are allegations of sexual abuse, *not* acts of trade or commerce.

Foggie further emphasizes the portion of the UTPA which requires the “advertising, offering for sale, sale or distribution of any services and any property ... and any other... *thing of value*” (emphasis added). The offering of “services related to association, entertainment and pastoral activities” (6694 Second Amended Compl., Para. 55) in a church setting are not a “thing of value.” One cannot place a monetary value on pastoral activities involved in a religious organization. The remainder of the conduct alleged in the Plaintiffs’ Complaints are allegations of collusion in the Dorchester Class Action. These allegations have nothing to do with the Plaintiffs’ actual causes of action. As noted previously, the gravamen of the Plaintiffs’ claims are rooted in the accusation of being sexually abused. In the context of a UTPA claim, the Defendants’ settling of a previous law suit cannot be considered trade or commerce subject to a

Page 16 of 17

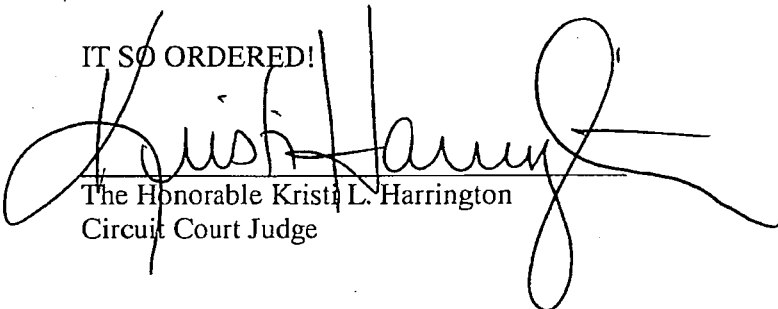
*[Handwritten signature]*  
6/10/11

liability under UTPA claim, as no defendant would ever settle a claim against it, only to open itself up to further liability. The settling of a legal claim is not trade or commerce under the definitions in the UTPA.

### **Conclusion**

For the reasons stated above, I find that the Plaintiffs have failed to state a claim for which relief may be granted as to the causes of action against the Diocese Defendants. The Diocese Defendant's motion to dismiss is hereby **GRANTED** as to the Plaintiffs' causes of action for Negligence, Gross Negligence, Reckless Intentional Tort Fraudulent Concealment, and Unfair and Deceptive Trade Practices. The Plaintiffs' motion for Partial Summary Judgment is therefore **DENIED**. The Complaint against the Defendants The Bishop of Charleston, a Corporate Sole, and The Bishop of the Diocese of Charleston, in his official capacity, is **DISMISSED** with prejudice.

IT SO ORDERED!

  
The Honorable Kristi L. Harrington  
Circuit Court Judge

  
June 10, 2011  
Charleston, SC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
JOHN DOE 2 and JANE DOE4, )  
 )  
Plaintiff, )  
 )  
vs. )  
THE BISHOP OF CHARLESTON, A )  
CORPORATION SOLE, ROBERT )  
DIOCESE OF CHARLESTON, IN HIS )  
OFFICIAL CAPACITY, REV. )  
MONSIGNOR MARTIN LAUGHLIN, )  
FORMER ADMINISTRATOR OF THE )  
DIOCESE OF CHARLESTON, IN HIS )  
OFFICIAL CAPACITY; ROBERT J. )  
BAKER, FORMER BISHOP OF )  
CHARLESTON, IN HIS OFFICIAL )  
CAPACITY; )  
LAWRENCE E. RICHTER, JR., )  
DAVID K. HALLER, AND )  
RICHTER AND HALLER, LLC. )  
 )  
Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE No. 10-CP-10-5520

**CERTIFICATE OF SERVICE**

The Bishop of Charleston, A Corporation Sole; Robert Guglielmone, the Bishop of the Diocese of Charleston, in his Official Capacity; Rev. Monsignor Martin Laughlin, Former Administrator of the Diocese of Charleston; Robert J. Baker, Former Bishop of Charleston; in his Official Capacity.- *Diocese Defendants*)

This is to certify that I have mailed a copy of the Motion Information and Cover Sheet and **Diocese Defendants' Motion to Reconsider, Alter, or Amend Pursuant to Rule 59, or in the Alternative Relief From Judgment Pursuant to Rule 60, RE: The Order of Judge Young filed June, 27, 2011 and Diocese Defendants' Notice of Motion and Motion For A Protective Order** in the above captioned matter by depositing same in the United States Mail, with sufficient United States Postage thereon, on the 1<sup>st</sup> day of July 2011, to the following

counsel of record: Susan Taylor Wall  
Attorney for David K. Haller  
Parker, Poe, Adams & Bernstein  
200 Meeting St., Suite 301  
Charleston, SC 29401

Gregg Meyers  
Attorney for The Plaintiffs  
1 Poston Road, Ste. 110  
Charleston, SC 29407

James Brunner  
Attorney for Lawrence Richter  
1735 St. Julian Place Suite 200  
PO Box 61110  
Columbia, SC 29204

SHAHID LAW OFFICE, L.L.C

By:   
Emmanuel Ferguson

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE No.: 10-CP-10-5520

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

THE BISHOP OF CHARLESTON, a  
Corporation Sole; ROBERT GUGLIEMONE,  
THE BISHOP OF CHARLESTON, in his  
Official Capacity, REV. MONSIGNOR  
MARTIN LAUGHLIN, former  
Administrator of the Diocese of Charleston,  
in his Official Capacity; ROBERT J. BAKER,  
former Bishop of Charleston, in his Official  
Capacity; LAWRENCE E. RICHTER, JR.,  
DAVID K. HALLER, and RICHTER AND  
HALLER, LLC.,

Defendants.

**ORDER DENYING DIOCESE  
DEFENDANTS' MOTIONS TO  
RECONSIDER, ALTER, OR AMEND OR  
IN THE ALTERNATIVE RELIEF FROM  
JUDGMENT PURSUANT TO RULE 60  
AND MOTION FOR A PROTECTIVE  
ORDER PURSUANT TO SCRPC 26(C)**

FILED  
2011 JUL 13 AM 11:46  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

This matter came before this Court upon Diocese Defendants' Motion To Reconsider, Alter, Or Amend or In The Alternative Relief From Judgment Pursuant To Rule 60 from this Court's Order dated June 27, 2011, and Motion for a Protective Order Staying All Discovery until the prior motion is heard.

#### STANDARD OF REVIEW

Power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment. Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992). A Rule 59(e) motion is not only the proper vehicle to request a court to alter or amend a judgment, but also to seek reconsideration of issues and arguments previously presented. Elam v. South Carolina Dept. of Transp., 361 S.E.2d 772 (S.C. 2004). It is well established that a Rule 59(e) motion can be

successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Zinkand v. Brown, 478 F.3d 634 (4th Cir. 2007).

Relief from an order or judgment is granted for good cause shown under Rule 60(b) of the South Carolina Rules of Civil Procedure. Grounds for relief include mistake, inadvertence, surprise, or excusable neglect; misrepresentation or other misconduct of the plaintiff; or void judgment. In determining whether relief should be granted, the court considers the promptness with which relief is sought, reasonable explanations for failing to act promptly, the existence of a meritorious defense, and prejudice to the other parties if relief is granted. S.C. R. Civ. P. 60(b); Micronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001).

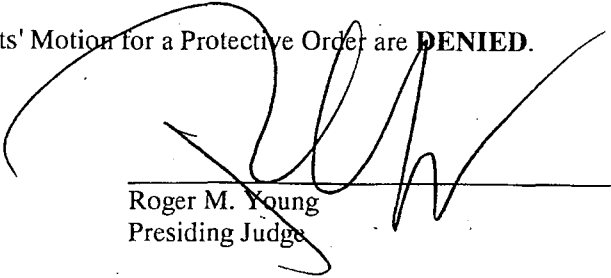
I have thoroughly considered the Defendants' Motion, supporting and opposing material and arguments, and based on same deny Diocese Defendants' Motion To Reconsider, Alter, Or Amend or In The Alternative Relief From Judgment Pursuant To Rule 60 from this Court's Order dated June 27, 2011. Having ruled on the prior Motion, I find that discovery should proceed and therefore, deny Defendants' Motion for a Protective Order.

IT IS THEREFORE ORDERED that Diocese Defendants' Motion To Reconsider, Alter, Or Amend or In The Alternative Relief From Judgment Pursuant To Rule 60 from this Court's Order dated June 27, 2011 and Defendants' Motion for a Protective Order are **DENIED**.

AND IT IS SO ORDERED.

7/12, 2011

Charleston, South Carolina.

  
\_\_\_\_\_  
Roger M. Young  
Presiding Judge

**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

---

Case No. 2010-CP-10-5520

---

**RECEIVED**

AUG 09 2011

**SC Court of Appeals**

John Doe 2 and Jane Doe 4,

Respondent,

v.

The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of the Diocese of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, Former Administrator of the Diocese of Charleston; Robert J. Baker, former Bishop of Charleston; in his official capacity,

Appellant.

---

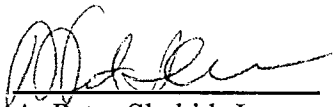
**NOTICE OF APPEAL**

---

The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity, appeal the Order Denying in Part and Granting in Part the Appellant's Motion to dismiss, of the Honorable Roger M. Young, dated June 27, 2011; Appellant's received written Notice of Entry of this Order on June 30, 2011; and the Order Denying the Appellants' Motion to Reconsider, Alter or Amend or in the Alternative Relief from Judgment pursuant to Rule 60 and Motion for Protective Order Pursuant to SCRCP 26 (c), of the Honorable Roger M.

Young, dated July 12, 2011. The Appellants' received written notice of this Order on July 19, 2011

August 5, 2011



A. Peter Shahid, Jr.  
89 Broad Street  
Charleston, South Carolina 29401  
843-853-4500  
Attorney for Appellant

Other Counsel of Record:

Gregg E. Meyers, Esq.  
1 Poston Road, Ste. 110  
Charleston, SC 29407  
(843) 720-8714  
Attorney for Respondent

Susan Taylor Wall, Esq.  
Parker, Poe, Adams, and Bernstein, LLP  
200 Meeting Street, Suite 301  
Charleston, SC 29401  
(843) 727-2640  
Attorney for Defendant David K. Haller

James L. Bruner, Esq.  
Bruner, Powell, Robbins, Wall & Mullins, L.L.C.  
Suite 200  
1735 St. Julian Place  
PO Box 61110  
Columbia, SC 29204  
(803) 252-7693  
Attorney for Defendants Lawrence E. Richter and Richter & Haller, L.L.C

# The State of South Carolina In The Court of Appeals

---

Appeal from Charleston County  
Roger Young, Circuit Judge

---

Case No. 2010-CP-10-5520

---

John Doe 2 and Jane Doe 4,

Respondents

v.

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

Appellants

---

## Motion to Dismiss Appeal

---

Respondents move the Court, pursuant to S.C. Code § 14-3-330, SCACR 201(a), and SCACR 240, to dismiss this appeal as interlocutory. The appellate court lacks jurisdiction to hear the appeal.

This case alleges substantial collusive misconduct by counsel in a class action, giving rise to claims of civil conspiracy and professional malpractice. A detailed complaint, drawn from well-documented sources, contends that lawyers colluded to compromise the rights of absent

class members. Among other things, by consent class counsel withdrew the initial request to give notice to the absent class members who reside out of state, and also by consent, gave false information to a Circuit Court.

On July 13, 2011, Circuit Judge Roger Young granted in part and denied in part the motions to dismiss. The Court denied the motions to dismiss the civil conspiracy claims and professional negligence claims. The order denying the motions to dismiss is not a final order, but merely an interlocutory order that requires the defendants to address the claims on the merits. The Court of Appeals lacks jurisdiction to hear an appeal from an interlocutory order.

The allegations when proven may result in disciplinary action as to one or more lawyers, assuming the ethical obligations of counsel are regarded seriously. For that reason the appellants are each intent on avoiding any discovery, and for two years have refused all discovery. The current appeal from an order which merely denies motions to dismiss furthers the collective effort by appellants to delay discovery.

Appellate jurisdiction is established by S.C. Code § 14-3-330 and SCACR 201(a). “An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable.” *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (citations omitted). Ordinarily, a final judgment must be obtained. *Id.*

An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.

*Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

“Any intermediate judgment, order or decree in a law case involving the merits” may be appealed. S.C.Code Ann. § 14-3-330 (1976). The phrase “involving the merits” means the order “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.” *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993).

*Tucker v. Honda of S.C. Mfr Inc.*, 354 S.C. 574, 576, 582 S.E.2d 405, 406 (2003) (denying appeal from an order permitting a deposition to resume).

As to the defendants, Judge Young's order does nothing to "finally determine some substantial matter forming the whole or a part of some cause of action or defense," as *Tucker* requires to support appellate jurisdiction. Many cases, as recently as 2011, have held that an order denying a motion to dismiss is not appealable. E.g., *Brown v. County of Berkeley*, 622 S.E.2d 533, 538 (S.C. 2011) (denial of motions to dismiss not appealable as interlocutory, not involving the merits nor affecting a substantial right of the parties); *Woodard v. Westvaco*, 319 460 S.E.2d 392 (1995) (order denying a motion to dismiss not appealable because not a final determination); *McLendon v. South Carolina Department of Highways and Public Transportation*, 443 S.E.2d 539, 540 (1994 S.C.) (denial of motion to dismiss does not establish the law of the case so is not appealable as a final order); *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 426 S.E.2d 777, 780 (S.C. 1993) (denial of motion to dismiss not appealable because litigants have "not arrived at the end of the road."). This appeal has been noticed solely for purposes of delay.

## Conclusion

An order denying a motion to dismiss is interlocutory and is not appealable. The appellate court lacks jurisdiction of this appeal, and the appeal must be dismissed.

Respectfully submitted,

Jeff Anderson & Associates, PA

A handwritten signature in cursive script, appearing to read "Gregg Meyers".

Gregg Meyers  
1 Poston Road, Suite 110  
Charleston, SC 29407  
843-556-1025

# The State of South Carolina In The Court of Appeals

---

Appeal from Charleston County  
Roger Young, Circuit Judge

---

Case No. 2010-CP-10-5520

---

John Doe 2 and Jane Doe 4,

Respondents

v.

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

Appellants

---

## Proof of Service

---

I hereby certify that I have served the enclosed

## Motion To Dismiss Appeal

by causing a copy of the document to be placed in the United States mails, first-class postage  
pre-paid, addressed to:

Susan Taylor Wall  
Parker Poe Adams & Bernstein LLP  
200 Meeting Street Suite 301  
Charleston SC 29401

Warren C. Powell  
Bruner, Powell, Robins, Wall & Mullins  
PO Box 61110  
Columbia SC 29260-1110

Peter Shahid  
89 Broad Street  
Charleston SC 29401

Done August 19, 2011

Jeff Anderson and Associates, P.A.

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

Gregg Meyers  
1 Poston Road Suite 110  
Charleston SC 29407  
556-1025, 556-1055 facsimile  
Gregg@Andersonadvocates.com

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

RECEIVED

SEP 01 2011

SC Court of Appeals

Case No. 2010-CP-10-5520

John Doe 2 and Jane Doe 4,

Respondent,

v.

The Bishop of Charleston, a Corporation Sole; Robert  
Guglielmone, The Bishop of the Diocese of Charleston,  
in his official capacity; Rev. Monsignor Martin  
Laughlin, Former Administrator of the Diocese of  
Charleston; Robert J. Baker, former Bishop of  
Charleston; in his official capacity,

Appellant.

RETURN IN OPPOSITION TO MOTION TO DISMISS APPEAL

The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of  
Charleston, in his official capacity, Rev. Monsignor Martin Laughlin, former Administrator of the  
Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his  
official capacity (collectively, "Diocesan Appellants"), respectfully submit this Return in  
Opposition to Motion to Dismiss Appeal, dated August 19, 2011, filed by the Respondents. The

Diocesan Appellants respectfully show this Court as follows:

The Appellants timely filed its Notice of Appeal, on August 5, 2011, of Order Denying in Part and Granting in Part Defendants Motion to Dismiss issued by Circuit Court Judge Roger Young filed June 27, 2011<sup>1</sup>. Direct Appeal of the above Order is based on S.C. Code of Laws § 14-3-330 (1976, as Amended). Respondents seek to dismiss the appeal on the basis that the Order issued by Judge Young is interlocutory. A brief chronology of relevant events is cited below. This Appeal is not of an interlocutory Order and is ripe for review, as it involves a substantial right, and was rendered the merits of the case.

On July 13, 2011 Circuit Judge Roger Young issued an Order which granted in part and denied in part the Appellants' Motion to Dismiss the Complaint. The Respondents' Complaint included the following causes of action: Negligence, Gross Negligence, Fraudulent Concealment, and Civil Conspiracy. The Appellants' Motion to Dismiss the Complaint was based on the application of the Doctrine of *res judicata* and Collateral Estoppel resulting from the Class Action Settlement Agreement entered on January 23, 2007<sup>2</sup> and adopted by Court Order on July 30, 2007<sup>3</sup>. The Appellants motion was also based that the relief sought was also barred by the state of limitations.

On March 31, 2011, a hearing was held in Charleston County before the Judge Roger Young on the Diocesan Appellants' Motion to reveal the Respondents' Identity, Motion for a Protective Order, and Motion to Dismiss the Complaint. The Court granted the Motion to Dismiss the Complaint based on the Statute of Limitations, but denied the Appellants' Motion to Dismiss

---

<sup>1</sup> A copy of the Order Granting in Part and Dismissing in Part the Motion to Dismiss is attached as "Exhibit A."

<sup>2</sup> A copy of the Class Action Settlement Agreement entered on January 23, 2007 is attached as "Exhibit B."

the Complaint based on the application of *res judicata* and collateral estoppel. The Court dismissed all of the other applicable causes of action naming the Appellants. The Court however, did not dismiss the Respondents' claim of Civil Conspiracy. In preserving the claim against the Appellants of civil conspiracy, Judge Young reasoned the Complaint, "[met] the requirements of pleading a valid cause of action for civil conspiracy, in particular the requirement of alleging special damages insofar as the allegations complain the [Appellants] proposed class membership to include the Plaintiffs, then specifically requested the Court drop nationwide publication notice".

**A. The Appellate Court has Jurisdiction to Review the Circuit Court's Order Under S.C. Code Ann. § 14-4-330(1).**

S.C. Code Ann. § 14-3-330 (1976) states, in pertinent part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any *intermediate judgment*, order or decree in a law case *involving the merits* (emphasis added) in actions commenced in the court of common pleas [...] (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action S.C. Code Ann. § 14-3-330 (1976).

"Any intermediate judgment, order or decree in a law case involving the merits' may be appealed[...] The phrase 'involving the merits' means the order 'must finally determine some substantial matter forming the whole or a part of some *cause of action or defense*' (emphasis added)." Tucker v. Honda of S.C. Mfr. Inc., 354 S.C. 574, 576, 582 S.E.2d 405, 406 (2003), *citing* Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993). The narrow construction of the statute requires this Court to focus on the *effect of the Order, not the*

---

3 A copy of the July 30, 2007 Court Order adopting the agreement is attached as "Exhibit C."

*label given to the motion or the Order denying it.* See Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297 (S.C. Ct. App. 2011); Wetzel v. Woodside Dev., Ltd. P'ship, 364 S.C. 589 (S.C. 2005).

“Our courts have previously looked beyond the labels on motions and orders to discern their actual effect for purposes of appealability”. Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297 (S.C. Ct. App. 2011)(citing Wetzel v. Woodside Dev. Ltd. P'ship, 364 S.C. 589, 592, 615 S.E.2d 437, 438 (2005)).

Here, the Order issued by Judge Young involved the merits as it finally determined the Appellants' application of *res judicata* and collateral estoppels to bar the relief sought by the Respondents. Judge Young ruled that the affirmative defences of *res judicata* and collateral estoppel were not available for the Appellants to use as a defense. The Order issued by Judge Young states, “Therefore, the Court finds the Plaintiffs are not bound by the judgment of the Dorechester County Class Action and are free to pursue their claims of negligence and gross negligence...” (Order Denying in Part and Granting in Part Defendants' Motion to Dismiss, page 5). Judge Young's Order prohibits the Diocesan Appellants from pursuing the application of *res judicata* and collateral estoppel during the course of trial as an absolute defense, potentially precluding future review at the conclusion of a trial.

The South Carolina Supreme Court has held that it is appropriate for a court to conduct a *limited* collateral review of another court's class action settlement, however such review is for the sole purpose of determining if *procedural* due process requirements were met as it pertains to the party seeking review. Hospitality Mgmt. Assocs. v. Shell Oil Co., 356 S.C. 644 (2004)(citing Fine v. America Online, 743 N.E.2d 421, at 422)(emphasis added). This limited review includes only two factors: (1) whether there were safeguards in place to guarantee sufficient notice and adequate

representation; and (2) whether such safeguards were, in fact, applied. *Id.* “As for collateral review, due process does not afford any ‘second-guessing of those determinations’.” *Id.* at 660. (citing *Epstein III*, 179 F.3d 641 at 648). Instead, what this limited review entails is “an examination of procedural due process *and nothing more*.” *Id.* at 660 (citing *Fine v. America Online*, 743 N.E.2d at 421)(emphasis added). It would seem to be a waste of judicial resources to require reviewing courts to conduct an extensive substantive review when one has already been undertaken in a sister state. *Id.* at 660. To allow substantive collateral attacks would be counterintuitive to [the] procedural relief that a class-action suit is intended to afford our judicial system nationwide.” *Id.* at 660.

Judge Goodstein, in approving the Class Action Settlement Agreement, determined that the notice requirement was adequate to certify the Class. She approved the Class Action Settlement Agreement in her July 2007 Order. By Judge Young conducting a collateral review of Judge Goodstein’s July 2007 Order, and specifically finding that the statewide notice procedures were inadequate, he erroneously determined a substantial matter forming the whole or a part of the Diocesan Appellant’s defense.

In denying the dispositive application of the Doctrine of Res Judicata and Collateral Estoppel of the July 2007 Order, the Circuit Court conducted a substantive review of another Circuit Court’s Order, and stripped the Class Action Settlement Agreement of its conclusive effect in subsequent litigation. Despite the fact that the Appellants challenge the Circuit Court’s authority to conduct a *sua sponte* substantive review of Judge Godstein’s July 2007 Order, the Court’s erroneous ruling “determined some substantial matter forming the whole or part of some cause of action defense.” The Circuit Court issued an Order based on a *substantive*, rather than a

*procedural* review of Judge Goodstein's July 2007 Order, thus making the lower Court's Order ripe for immediate Appeal under section 14-3-330(1).

**B. The Appellate Court has Jurisdiction to Review the Circuit Court's Order Under S.C. Code Ann. § 14-4-330(2)(c).**

Section 14-3-30(2)(c) authorizes this Court to review on appeal "(2) An order affecting a substantial right made in an action when such order... (c) strikes out an answer or any part thereof or any pleading in any action." S.C. Code Ann. § 14-3-330(2)(c). "An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial." Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 304, 705 S.E.2d. 475, 479 (S.C. Ct. App. 2011). The narrow construction of the statute requires this Court to focus on the *effect of the Order, not the label given to the motion or the Order denying it*. See Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297 (S.C. Ct. App. 2011); Wetzel v. Woodside Dev., Ltd. P'ship, 364 S.C. 589 (S.C. 2005)(emphasis added). "Our courts have previously *looked beyond the labels on motions and orders to discern their actual effect for purposes of appealability*". Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297 (S.C. Ct. App. 2011)(citing Wetzel v. Woodside Dev. Ltd. P'ship, 364 S.C. 589, 592, 615 S.E.2d 437, 438 (2005))(emphasis added).

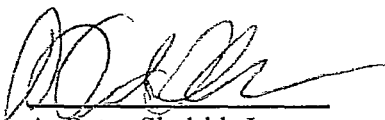
Here the Order issued by Judge Young specifically found that *res judicata* and collateral estoppel did not apply to the Plaintiffs, thus striking two of the Diocesan Appellants' defenses. The "actual effect" of Judge Young's Order was that it erroneously ruled on a viable defense of the Diocesan Appellants before the theory could be fully developed by discovery, and encroached on

the substantial right to rely on an order of the court issued in 2007. At the very least, the Order effectively striking the Diocesan Respondents' defense was premature in that the ruling, in regard to this particular matter, barred the application of *res judicata* and collateral estoppel before the issue could be fully developed by the parties.

### CONCLUSION

The Order issued by Judge Young is immediately appealable under S.C. Code § 14-4-330. The Order issued by Judge Young involved the merits, as it finally determined the Appellants' application of *res judicata* and collateral estoppel to bar the relief sought by the Respondents. The reasoning behind Judge Young's decision was based on the assumption of facts that contravenes a previous court order, as well as South Carolina Case Law. Further, the Order erroneously ruled on a viable defense of the Diocesan Appellants before the theory could be fully developed by discovery. Finally, the ruling encroached on the substantial right to rely on an order of the court. For the reasons above, the Diocesan Appellants respectfully request this Court deny Respondents' Motion to Dismiss the Appeal.

Respectfully Submitted,



A. Peter Shahid, Jr.  
89 Broad Street  
Charleston, South Carolina 29401  
843-853-4500  
Attorney for Appellant

August 31, 2011

Other Counsel of Record:

Gregg E. Meyers, Esq.  
1 Poston Road, Ste. 110  
Charleston, SC 29407  
(843) 720-8714  
Attorney for Respondent

Susan Taylor Wall, Esq.  
Parker, Poe, Adams, and Bernstein, LLP  
200 Meeting Street, Suite 301  
Charleston, SC 29401  
(843) 727-2640  
Attorney for Appellant David K. Haller

James L. Bruner, Esq.  
Bruner, Powell, Robbins, Wall & Mullins, L.L.C.  
Suite 200  
1735 St. Julian Place  
PO Box 61110  
Columbia, SC 29204  
(803) 252-7693  
Attorney for Appellants Lawrence E. Richter and Richter & Haller, L.L.C

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE No.: 10-CP-10-5520

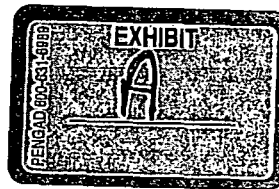
JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

THE BISHOP OF CHARLESTON, a  
Corporation Sole; ROBERT GUGLIEMONE,  
THE BISHOP OF CHARLESTON, in his  
Official Capacity, REV. MONSIGNOR  
MARTIN LAUGHLIN, former  
Administrator of the Diocese of Charleston,  
in his Official Capacity; ROBERT J. BAKER,  
former Bishop of Charleston, in his Official  
Capacity; LAWRENCE E. RICHTER, JR.,  
DAVID K. HALLER, and RICHTER AND  
HALLER, LLC.,

Defendants.



FILED  
2011 JUN 27 PM 12:30  
JULIE J. ARMSTRONG  
CLERK OF COURT

**ORDER DENYING IN PART AND GRANTING IN PART  
DEFENDANTS' MOTION TO DISMISS**

|                       |                                                                                                                                                                        |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Plaintiffs' Attorney: | Gregg Meyers                                                                                                                                                           |
| Defendants' Attorney: | A. Peter Shahid, Jr., for Diocese of Charleston<br>Susan Taylor Wall, for David Haller<br>James L. Bruner, for Lawrence E. Richter, Jr. and<br>Richter and Haller, LLC |
| Date of Hearing:      | March 31, 2011                                                                                                                                                         |

**INTRODUCTION**

This lawsuit was filed on July 9, 2010, and alleges a number of alternative wrong-doings by the various Defendants. Each of the Defendants responded by filing motions to dismiss which this Court heard on March 31, 2011. For the following reasons, this Court finds the motions must be denied in part and granted in part.

### ***Res Judicata and the Class Action Settlement***

The Plaintiffs' first cause of action alleges the Diocese knew or should have known that one of its priests was a pedophile who molested the Plaintiffs, and as a result, the Diocese was negligent and grossly negligent in supervising this priest. They also allege the Diocese was negligent and grossly negligent in failing to warn the Plaintiffs or their parents about this pedophile priest. They further allege the Diocese Defendants maintained a decades-long policy and practice of engaging in fraudulent concealment when their agents and employees were known to sexually abuse children.

The Diocese asks the Court to dismiss the negligence and gross negligence cause of action because it is barred by the doctrine of *res judicata*, collateral estoppel and the statute of limitations.

The *res judicata* argument arises out of a class action lawsuit filed in Dorchester County that was approved by Circuit Court Judge Diane Goodstein. The Defendants argue that the negligence and gross negligence claims of the Plaintiffs were encompassed in that class action lawsuit and are therefore barred as a matter of law. The factual background is extensively laid out in detail in the Complaint.

However, by way of background for this preliminary issue, it should be pointed out that the Plaintiffs alternatively allege the Diocese Defendants and the Attorney Defendants, after reaching a settlement, colluded to dismiss a class action lawsuit that had been filed in Charleston County, and re-filed the same class action lawsuit in Dorchester County in order to seek a more favorable settlement approval by a circuit court judge who was a long-time friend of Defendant Richter. Procedurally, the Plaintiffs want to be able to bring their negligence and gross negligence claims against the Diocese Defendants; however, if they are barred because of the *res*

R<sub>2</sub>

*judicata* effect of the Dorchester County Class Action settlement (or any of the defenses the Diocese Defendants waived by agreeing to the Dorchester County Class Action settlement), then they seek to sue the Diocese Defendants and the Attorney Defendants for civil conspiracy, and the Attorney Defendants for various causes of actions they allege flow from the actions of the Attorney Defendants in their role as class action counsel.

Since all of the Defendants have raised the defense of *res judicata* as a bar to the various causes of actions brought in the current lawsuit, this Court must address this issue first.

This Court must give collateral recognition of the Dorchester County Class Action settlement if it can be shown that the Plaintiffs were afforded due process in that action; i.e., they were given reasonable notice of the class action settlement and class counsel adequately represented them. The South Carolina Supreme Court has held that it is appropriate for a court to conduct a limited collateral review of another court's class action settlement for the sole purpose of determining if procedural due process requirements were met as it pertains to the party seeking review. This limited review looks at two factors: (1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied. Hospitality Management Associates, Inc. v. Shell Oil Company, 356 S.C. 644, 591 S.E.2d 611 (2004).

Fundamentally, due process requires that absent class members be given notice. Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812, 105 S.Ct. 2965 (1985). The standard for notice is that it must be "the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Shutts, 472 U.S. at 812, 105 S.Ct. 2965 (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15, 70 S.Ct. 652 (1950)).

I have conducted a limited collateral review of the procedures used by the circuit court in the Dorchester County Class action and find the procedures were not designed to ensure notice to any potential class members living outside of the state of South Carolina who were not otherwise given actual notice of the class action and settlement.<sup>1</sup> The Plaintiffs allege that they live outside the state of South Carolina and they did not receive actual notice of the settlement under the guidelines set forth in the settlement order. The newspaper notices of the class action were only published in South Carolina newspapers (with the exception of the Augusta daily newspaper which is immediately adjacent to South Carolina and is distributed in an area of South Carolina not otherwise serviced by a daily newspaper). The Defendants had originally proposed national publication of the settlement in the *USA Today* newspaper to Judge Goodstein; however, they specifically withdrew their request to have this notice published outside of South Carolina in a publication of national distribution. This is clearly evidence that the class action was not designed to be a national settlement, but rather was a settlement intended to bind only South Carolina residents who did not otherwise receive actual notice. I find, therefore, that the constructive notice of the Dorchester County Class Action settlement attempted by the in-state newspaper publications was not reasonably calculated, under all the circumstances, to apprise these out-of-state Plaintiffs of the pendency of the action and afford them an opportunity to present their objections.

The Plaintiffs also argues that the following language from Judge Goodstein's order of July 30, 2007 should estop the Diocese Defendants from raising the *res judicata*; to wit:

The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement. Further, the Diocese has stipulated before me in open Court and on the record that any person who comes forward as a later date and can show

---

<sup>1</sup> Nothing herein should be considered as adjudicating the issue of whether in-state class members received adequate notice.

that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

At first glance, this language certainly seems to support the Plaintiffs' position.

However, at a hearing on August 9, 2007, Judge Goodstein was asked to clarify her intent of this language, and as a result she issued an Order on August 31, 2007 in which she stated that language was only intended to apply to potential class members who *had actually* contacted the Diocese at some point in the past with allegations of child sexual abuse and were therefore entitled to receive *actual notice* of the proposed class settlement. Therefore, I find the language in the July 27<sup>th</sup> Order would not have the estoppel effect advanced by the Plaintiffs.

Nevertheless, this does not affect this Court's finding that the class notice was not intended to reach non-South Carolina residents who had not otherwise received actual notice of the settlement.

Due process rights preclude any claimant who did not receive notice of the class action from being bound by any judgment rendered in it. See Hoiengs v. County of Adams, 245 Neb. 877, 516 N.W.2d 223 (1994). Therefore, the Court finds the Plaintiffs are not bound by the judgment of the Dorchester County Class Action and are free to pursue their claims of negligence and gross negligence, subject to the findings below.

#### **Statute of Limitations and Negligence/Gross Negligence Causes of Action**

Having found the Plaintiffs are not bound by the Dorchester County Class Action, the Diocese Defendants move to dismiss the negligence and gross negligence causes of action on the grounds the claims fall outside the applicable statute of limitations.

The Plaintiffs claims arise out of allegations of childhood sexual abuse that allegedly occurred between 1965 and 1971. Therefore, these claims are subject to the limitations period

found in S.C. Code § 15-3-535 for actions arising prior to 2001, and S.C. Code § 15-3-555 for actions arising after 2001.

The facts plead in the Complaint allege Plaintiffs John Doe 2 and Jane Doe 4 would have been born at the latest in 1965. Consequently, the Plaintiffs would have turned 18 in 1983. Under § 15-3-535, the Plaintiffs would have had three years from the date of discovery of the tort to bring his or her claim. These Plaintiffs do not claim they were unaware of the alleged tort at the time it happened, between 1965 and 1971, or at any time after 1971. Giving each Plaintiff the benefit of the age of majority, three years after turning 18 in 1983, the statute would have been tolled until 1986, and three years after turning 21 would be 1989. None of these claims were brought by 1989.

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996); Bayle v. S.C. Dept of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App.2001), cert. denied. In Dean, the Supreme Court stated:

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the "exercise of reasonable diligence" to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial. Id. at 363, 364, 468 S.E.2d at 647 (emphasis in original) (citations omitted); Young v. South Carolina Dept. of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App.1999) (stating the statute of limitations runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct).

Applying the tolling effect provided by § 15-3-555, each Plaintiff would be able to bring his or her claim within six years of turning 21 years old. Construing the facts alleged in the

Complaint in the light most favorable to the Plaintiffs, each Plaintiff would have turned 21 no later than 1986. Therefore, at the very latest their claims were barred by the limitations period in 1992. The Plaintiffs fail to allege they were unaware of the sexual abuse allegedly committed against them, or unable to discover the causal relationship between any injuries and the alleged sexual abuse.

The Plaintiffs argue the Diocese Defendants should be bound by their waiver of statute of limitations defenses in the Dorchester County Class Action. That waiver was only for class members and this Court has found the Plaintiffs are not bound by that class action. Therefore, the Plaintiffs cannot avail themselves of a waiver which only applies to a class action they wish to avoid.

The Plaintiffs further argue fraudulent concealment should bar the Diocese Defendants from raising the statute of limitations defense. The claims in the Plaintiffs' fraudulent concealment cause of action and defense are rooted in a document dated from 1962 entitled "The Instruction." The Plaintiffs claim the Vatican instructed a certain degree of secrecy to all local dioceses (including the current Diocese Defendant) in this document, the execution of which led to the concealment that is the core of the Plaintiffs' Complaint. The underlying crux of the Plaintiffs' Complaint for fraudulent concealment, which allegedly gives them a right to a remedy, is that the Diocese Defendants concealed certain information at the direction of this 1962 document.

In order to succeed on a claim of fraudulent concealment, a plaintiff must plead facts indicating an "inducement for delay" in filing the lawsuit. Hedgepath v. American Telephone & Telegraph Co., 559 S.E.2d. 327, 338 (Ct. App. 2001). In order to successfully avoid the application of the statute of limitations on this theory that the Diocese Defendants are or had engaged in acts constituting "fraudulent concealment," the Plaintiffs must allege and establish the

following:

[A] defendant is estopped from benefitting from the statute of limitations as a defense because the defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. The conduct may be either an express representation that the claim will be settled without litigation or actions suggesting that a lawsuit is unnecessary. To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped the party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts. Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 638, 682 S.E.2d 1,4 (Ct. App., 2009) (internal citations omitted).

The claim of fraudulent concealment fails to bar the application of the statute of limitations in this case because the Plaintiffs do not allege how the Diocese Defendants actions with regards to "The Instruction" caused the Plaintiffs to be unaware of the personal injuries they allege they suffered or of the name the alleged perpetrator. They do not allege any defect in memory or any other reason why they are unaware of their own personal injury. They do not allege that the Diocese Defendants ever made a misrepresentation or took any action that caused them to delay the filing of their lawsuit. Absent such allegations, the Plaintiffs cannot maintain a claim of fraudulent concealment in tolling the statute of limitations.<sup>2</sup>

Therefore, the Court finds the Plaintiffs' negligence and gross negligence claims are barred by the applicable statute of limitations and the Diocese Defendants motion to dismiss those causes of action must be granted.

#### **UNFAIR TRADE PRACTICES ACT CLAIM**

The Plaintiffs bring claims for damages alleging the Diocese violated the South Carolina Unfair and Deceptive Trade Practices Act, but fail to allege facts necessary to sustain an action under the UTPA. South Carolina's UTPA prohibits "[u]nfair methods of competition and unfair

---

<sup>2</sup> For the same reasons, the cause of action for fraudulent concealment must fail and is hereby dismissed.

or deceptive acts or practices in the conduct of any trade or commerce....” S.C. Code Ann. §39-5-20 (1985). Trade or commerce is defined as “the advertising, offering for sale, sale or distribution of any services and any property ... and any other ... thing of value....” S.C. Code Ann. § 39-5-10(b) (1985). See also Foggie v. CSX Transp., Inc., 313 S.C. 98, 24, 431 S.E.2d 587, 591 (1993).

In the current case, the acts alleged by the Plaintiffs for recovery are acts of sexual abuse. The Plaintiffs allege the Defendants are subject to a claim under the UTPA because, among other reasons, they “operate schools, for which tuition is charged,” and “they provide services to the public and advertise services to the public.” Our Supreme Court requires that the specific acts alleged are those of trade or commerce, not the general or unrelated conduct of a defendant that might or might not qualify as trade or commerce. The acts that form the basis of the Plaintiffs’ Complaints are allegations of sexual abuse, *not* acts of trade or commerce.

#### **CIVIL CONSPIRACY AND ALL DEFENDANTS**

The Plaintiffs allege a multi-faceted civil conspiracy cause of action that the Defendants all conspired to commit fraud upon the court by settling the case filed in Charleston County and re-filing it in Dorchester County in anticipation of getting favorable rulings on class certification, settlement terms, and approval of attorneys’ fees. I have reviewed the voluminous allegations set forth in support of this cause of action and find it meets the requirements of pleading a valid cause of action for civil conspiracy, in particular the requirement of alleging special damages insofar as the allegations complain the Defendants proposed class membership to include the Plaintiffs, then specifically requested the Court drop nationwide publication notice. The net result was that the Plaintiffs did not have the opportunity to participate in the class settlement nor exercise their right to opt-out, and as a result they are now unable to participate in the class action settlement, while at the same time are precluded from pursuing their negligence and gross negligence claims against the Diocese Defendants because of the running of the applicable

statute of limitations, which was waived by the Diocese in the Dorchester County Class Action with regards to participating class members. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore the Defendants' motion to dismiss this cause of action must be denied.

**PROFESSIONAL NEGLIGENCE AND BREACH OF FIDUCIARY DUTY**

The Plaintiffs allege professional negligence and breach of fiduciary duty causes of action against the Attorney Defendants based upon the aforementioned facts set forth with great particularity in their Complaint. I have reviewed the voluminous allegations set forth in support of these causes of action and find they meet the requirements of pleading a valid cause of action for both. The particular duties owed and alleged to have been breach are supported by an affidavit of an expert as required by law. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore, the Attorney Defendants' motion to dismiss these causes of action must be denied.

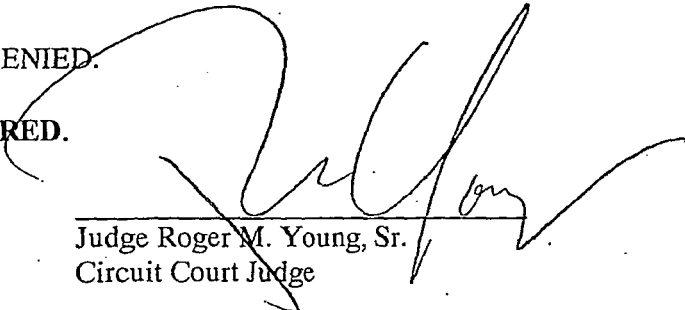
**THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:**

1. That the all of the Defendants' Motions to Dismiss on the grounds of *res judicata* are  
DENIED; and,
2. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross  
negligence because the actions are barred by the applicable statute of limitations is  
GRANTED; and
3. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross  
negligence because the actions are barred by the applicable statute of limitations is  
GRANTED; and



4. That the Diocese Defendants' Motion to Dismiss the cause of action for fraudulent concealment because the actions are barred by the applicable statute of limitations is GRANTED; and
5. That the Diocese Defendants' Motion to Dismiss the cause of action for Unfair Trade Practices Act is GRANTED; and
6. That all of the Defendants' Motions to Dismiss the cause of action for Civil Conspiracy is DENIED; and
7. That the Attorney Defendants' Motion to Dismiss the cause of action for Professional Negligence is DENIED; and
8. That the Attorney Defendants' Motion to Dismiss the cause of action for Breach of Fiduciary Duty is DENIED.

**AND IT IS SO ORDERED.**



Judge Roger M. Young, Sr.  
Circuit Court Judge

Charleston, South Carolina  
June 17, 2011

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

STATE OF SOUTH CAROLINA )

COUNTY OF DORCHESTER )

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

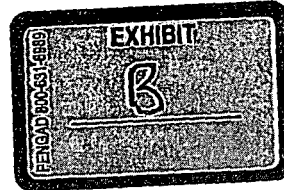
John Doe #53, John Doe 66, John Doe 66A, )  
John Doe 67, Jane Doe 1 and Jane Doe 2 )  
and Rachel Roe individually and )  
as representatives of classes of people )  
similarly situated, )

Plaintiffs, )

vs. )

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

Defendants. )



**SETTLEMENT AND ARBITRATION  
AGREEMENT**

This Settlement and Arbitration Agreement (hereinafter "the Agreement") is made this 12<sup>th</sup> day of January, 2007, by and between the John Doe #53, John Doe 66, John Doe 66A, John Doe 67, individually and as representatives of a class of other persons similarly situated as victims of sex abuse allegedly committed by agents or employees of the defendants in this action, and/or Jane Doe 1, Jane Doe 2, and Rachel Roe, individually and as representatives of parents or spouses who have suffered a loss of consortium as a result of sexual abuse upon John Doe #53, John Doe 66, John Doe 66A, and John 67 or members of their class, and The Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity (hereinafter "the Diocese"). This Agreement may be signed in counterparts. This Agreement represents the formal "Settlement and

RJB

A large, stylized handwritten signature in black ink, appearing to be "RJB" or similar.

Arbitration Agreement" formalizing the agreement reached between the Representatives<sup>1</sup> and the Diocese and supersedes all other agreements and/or writings previously executed by the parties. This Agreement is intended to effectuate the complete and total settlement of civil actions captioned above as well as 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913, and all other claims which were alleged or may have been alleged by the Representatives and the individuals who they represent in their capacity as class representatives. It is further understood that this Agreement must be submitted to a court of competent jurisdiction for approval and that certain provisions survive this agreement even if other provisions are not approved.

WHEREFORE, for and in consideration of the promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **FORMATION OF CLASSES.** Plaintiffs shall move in a timely manner for the creation of plaintiff classes against the defendants as follows:
  - A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused<sup>2</sup> at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")
  - B. The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

---

<sup>1</sup> The class representatives will be referred to throughout this Agreement as "the Representatives."

<sup>2</sup> "Sexual abuse," as used throughout this agreement and in the class definitions, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

RJB

<sup>2</sup> RER

The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement fund, pursuant to the terms and conditions set forth in this agreement and the order approving class certification. The individuals in either class shall hereinafter be referred to as "Claimants."

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

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

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

+ RJB 3 RER

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

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

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

RJB

4 RER

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

\$150,000.00

\$200,000.00

Loss of consortium (Parent or Spouse)

\$20,000.00

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

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

RUB

5

RER

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

RJB

6 RER

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

+RdB 7 

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

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

+RUB

8



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

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

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

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

+ RUB

10



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

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

RJB

11 

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

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

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

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

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

RUB 12 

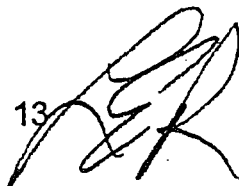
and future), their substantial accomplishments in effectuating the settlement, and the work past and future and their role as class counsel, the parties agree to submit to the court the determination of the amount of attorneys fees which shall be paid to the plaintiffs' class counsel by the Diocese. However, it is specifically agreed that in no event shall such counsel receive fees of neither less than \$950,000.00 nor more than \$2.5 million to be paid to such counsel by the Diocese from the fund referred to in paragraph 3, above, all as determined by the court. Such payment shall be made to Richter & Haller, LLC on behalf of itself no later than ten (10) days after award by the court. The award of attorneys fees as set forth above in this paragraph specifically contingent upon the Court approval of this class certification and settlement agreement.

6. **PAYMENT OF CLAIMS.**

- A. W. Ellison Thomas, CPA shall serve as an independent escrow agent for the payment of all sums due from the settlement fund. The escrow agent shall be provided unrestricted access to the settlement funds obtained in compliance with this agreement and will make all payments directly against the fund as set out in this agreement, order of the court, or any award made by the Arbitrator to the individual or entity to be paid. The escrow agent will be compensated at an hourly rate approved by the court and will be from the settlement fund. The escrow agent shall provide an accounting of his disbursements at the conclusion of the claims process to Class Counsel, the Diocese, and the court.
- B. No later than thirty (30) days after the final Arbitration award is issued, the escrow agent and the Arbitrator will confer and agree that the total amount of all awards after the payment of all costs and fees, does not exceed the amounts provided for in paragraph 3(a). In the event that the total due exceeds the amounts provided for in paragraph 3(a), then each award shall be reduced on a *pro rata* of the net settlement fund. This revised award list shall be provided

+ ROB

13



to Class Counsel and the Diocese, if necessary.

- C. Once the Arbitrator and escrow agent determine the final amount of each award, the escrow agent shall disburse the award from the settlement funds within fifteen (15) days of the final determination of the awards. The awards are to be paid to the Claimant directly or through his or her counsel. After all necessary disbursements any remaining letters of credit and/or funds will be returned to the defendants and/or letters of credit will be cancelled.
- D. Any party may bring perceived errors in an award based on an interpretation of this Agreement to the attention of the Arbitrator with notice to the other party. However, the Arbitrator's decision on any such question is final. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

7. **PASTORAL OUTREACH AND PROTECTION OF CHILDREN BY THE DIOCESE.**

The parties understand and acknowledge that the Diocese has done or will do the following:

- a. Comprehensive Policies. For the protection of children and the care of sexual abuse survivors, the Diocese has adopted a set of comprehensive policies called "The Policy of the Diocese of Charleston Concerning Allegations of Sexual Misconduct Or Abuse Of A Minor By Church Personnel" (the "Policies"). The Policies set forth the Diocese's unmitigated condemnation of child sexual abuse and its commitment to work to prevent sexual abuse, deal responsibly with accusations, and reach out with pastoral care for victims. The Policies are reviewed and updated every two years.
- b. Reports Of All Accusations To Solicitor. Pursuant to the Policies, the Diocese reports all accusations of child sexual abuse it receives to the Solicitor of the county in which the

RIB

14 

accusation arises or, where applicable, to law enforcement authorities in other states, and cooperates fully with all criminal investigations and prosecutions.

- c. Victim Assistance Minister. Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. The VAM coordinates the Diocese's pastoral response to those who come forward, and works with victims to facilitate the healing process. Where appropriate, the VAM also assists victims in obtaining and paying for psychotherapy, on a confidential basis.
- d. Sexual Abuse Advisory Board. Pursuant to the Policies, the Diocese has established, among other things, a Sexual Abuse Advisory Board (the "Board"). Although the Bishop of the Diocese has the ultimate decision-making responsibility in cases presented to the Diocese, the Board has the responsibility to advise the Bishop in particular cases. The Board also assists the Bishop in the review of the Policies that occurs every two years, and makes recommendations to the Bishop concerning any proposed revisions to the Policies. The Board consists of at least five (5) members, of whom four (4) are independent lay people who are not priests or employees of the Diocese.
- e. Presentation By Class Representatives or Members To The Sexual Abuse Advisory Board. The Diocese welcomes the suggestions of the Class Representatives (or members) regarding the provisions and implementation of the Policies. The Diocese therefore agrees to permit the Class Representatives to make a presentation to the Board in advance and/or as part of the next two regularly scheduled two year policy reviews so that the views of the Representatives can be heard and considered as the Diocese undertakes such review.

RJB



8. **RELEASE.** When the Claimant submits his claim form, he or she shall execute the Release attached as Exhibit 1 and deliver that Release to Class Counsel. Class Counsel shall hold the Release in escrow until the award is delivered and payment is made, as provided herein. If payment is not made by Diocese pursuant to the Agreement, these copies are null and void and will be destroyed. The Diocese will provide a release to each Claimant as set out on Exhibit 2 through Class Counsel upon receipt of the Claim Form for the review under paragraphs 3(l), (m), and (n).
9. **DISMISSAL OF ACTIONS.** The actions pending against the Diocese shall be dismissed with prejudice pursuant to the terms and conditions set by the court in its order on class certification.
10. **MISCELLANEOUS PROVISIONS.** This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement may be modified, amended or supplemented to effectuate the intent of the parties under such terms and conditions set by the court approving this Agreement. It is acknowledged that each party has participated in the drafting of this Agreement, and that any claimed ambiguity should not be construed for or against any Party. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. Any dispute concerning this Agreement which arises after this Agreement is approved by the court shall be resolved by the Arbitrator. The decision of the Arbitrator regarding any such dispute is final and binding. The terms and conditions of this Agreement shall be binding and inure to the benefit of each of the Parties, their counsel and respective successors, heirs and assigns. It is further understood and agreed by Claimant that this Agreement is not to be construed as an admission of liability upon the part of any of the released parties, but rather as a good faith settlement of disputed claims. The Claimant states and warrants that he or she is the sole owner of the claims involved, and that such

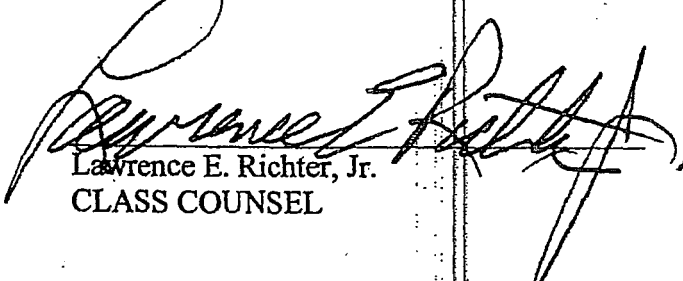
RJB

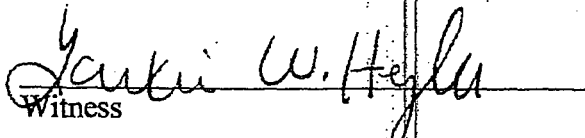


claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

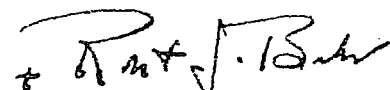
Executed this 12<sup>th</sup> day of January, 2007.

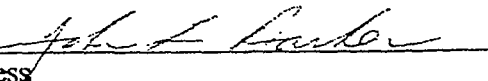
FOR THE CLASSES:

  
Lawrence E. Richter, Jr.  
CLASS COUNSEL

  
Witness

FOR THE DEFENDANTS:

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

  
Witness

## EXHIBIT 1

### CLAIMANT'S GENERAL RELEASE

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

+ RJB



or persons or entities employed by or affiliated with the Diocese, the Released Parties covered by this Release shall also include any other persons or entities whether or not they are employed by or affiliated with the Diocese. This release does not apply to persons or entities who are not persons or entities employed by or affiliated with the Diocese with respect to any claims arising from or related to an act or acts of abuse that have not formed, or could not form, the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese.

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Print Claimant's Name

\_\_\_\_\_  
Claimant's Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

*RUB*

19



## EXHIBIT 2

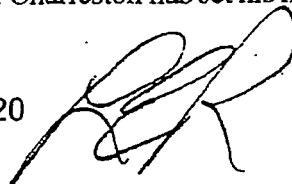
### DIOCESE LIMITED RELEASE

The Roman Catholic Bishop of Charleston and the Bishop of Charleston in his official capacity, a Corporation Sole ("Diocese"), for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby forever remises, releases and forever discharges \_\_\_\_\_ ("the Claimant") and Claimant's heirs, attorneys (including their law firms, agents, servants, or employees), executors, predecessors, parents, successors, agents, servants, employees, and assigns of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities which were or could have properly been raised in any form or fashion arising from the incidents alleged by Claimant in his claim submitted pursuant to the Order Approving Class Certification and Settlement Agreement (date to be inserted) in cases numbers 06-CP-18-1310 and 06-CP-18-1311, Claimant's participation in the class process set out in said Order, including any assertions of the Bishop arising from the validity or fraudulent nature of any claim, and/or any defense or claim which was or may have been raised by the Bishop in defense to the Claim or any suit which was or could have been filed against the Bishop but for the Claimant's participation in the claims process set out in the Order referenced herein; whether such claims are now known or unknown. It is the intention of the parties that the Diocese is fully and finally releasing the Claimant from any liability asserted by it against him or her arising from the Claimants assertion of sexual abuse.

IN WITNESS WHEREOF, the Bishop of Charleston has set his hand and seal to this Release

+ RJB

20



as of the date written below.

The Bishop of Charleston, a Corporation Sole

By: \_\_\_\_\_

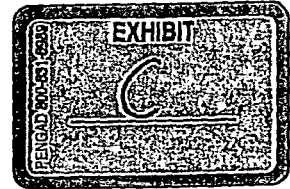
Its: \_\_\_\_\_

Date: \_\_\_\_\_ Witnessed by: \_\_\_\_\_

+ RUB

21

A large, stylized handwritten signature in black ink, appearing to be the initials 'RUB' with a flourish.



FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

JUDGMENT IN A CIVIL CASE  
2006CP1801310, 1311 and 1636

JOHN DOE, ET AL

BISHOP OF CHARLESTON ET AL

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

- ( ) JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND A VERDICT RENDERED.
- ( ) DECISION BY THE COURT. THIS ACTION CAME TO TRIAL OR HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION RENDERED.
- ( ) ACTION DISMISSED (CHECK REASON): ( ) RULE 12b, SCRPC; ( ) RULE 41a SCRPC (VOL NONSUIT); ( ) RULE 43k, SCRPC (SETTLED) ( ) OTHER
- ( ) ACTION STRICKEN (CHECK REASON): ( ) RULE 40(j) SCRPC; ( ) BANKRUPTCY ( ) BINDING ARBITRATION, SUBJECT TO RIGHT TO RESTORE TO CONFIRM VACATE OR MODIFY ARBITRATION AWARD; ( ) OTHER \_\_\_\_\_

IT IS ORDERED AND ADJUDGED: (X) See Attached order; ( ) Statement of Judgment by the court. *Order Certifying Classes*

DATED AT ST. GEORGE, S.C. THIS 23ND DAY OF JANUARY, 2007.

*Cheryl Graham*  
CHERYL GRAHAM  
CLERK OF COURT

THIS JUDGMENT WAS ENTERED ON THE 23<sup>rd</sup> DAY OF Jan, 2007  
AND A COPY WAS MAILED FIRST CLASS THIS 23<sup>rd</sup> DAY OF Jan,  
2007 TO ATTORNEY OF RECORD OR TO PARTIES WHEN APPEARING PRO SE  
AS FOLLOWS:

David Haller

A. Peter Shahid

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

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

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

Plaintiffs, )

vs. )

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

Defendants. )

ORDER CERTIFYING CLASSES  
AND GIVING PRELIMINARY  
APPROVAL TO SETTLEMENT

CERTIFIED COPY  
2001 JAN 23 AM 9:39  
Clerk of Court  
DORCHESTER COUNTY

THIS MATTER is before the court on motion by the plaintiffs for certification of two classes and for approval of a settlement reached between the class representatives and the defendants. After a review of the full record before the court and the law applicable to the issues hereto, the motion to certify the requested classes is GRANTED and the proposed settlement agreement is preliminarily approved, subject to the objection period and Fairness Hearing as set out in this order.

#### FINDINGS OF FACT

Plaintiffs John Doe #53, John Doe 66, John Doe 66A, and John Doe 67<sup>1</sup> are individuals who, as minors, were sexually abused by priests assigned to the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole, and The Bishop of

<sup>1</sup> Hereinafter all of the plaintiffs will be referred to as "Representatives."

Charleston, in his official capacity (hereinafter "the Diocese"), are the designated governing entities for the Roman Catholic Church in South Carolina. The Corporation Sole was chartered by the General Assembly in the 1880s and its reach is statewide. John Doe #53 claims to have been abused by Father Lawrence Sheedy while John Doe was a minor living at the Charleston orphanage operated by the Diocese. John Does 66, 66A, and 67 were students at Nativity School who were abused by Father James Nyhan while Nyhan was assigned there. Jane Doe 1 is the wife of John Doe #53 and Rachel Roe is his mother. Jane Doe 2 is the wife of John Doe 66A. Each of the proposed class representatives were abused in their minority and brought this action beyond the one year statute of limitations for those reaching majority.

Over the past several decades a number of priests or other agents of the Diocese have been accused, investigated, criminally charged, and/or criminally convicted of sexual activities on minors. Based on information provided by the Diocese of Charleston to the Representatives, between 1950 and 2006, the total numbers of Diocese personnel who are alleged to have committed one or more acts of sexual misconduct on a minor are 28. Of these, 26 were clerical and the remainder non-clerical. The total number of claimed victims during this time period is 50. Some of these victims have brought claims against the Diocese. In almost all of them, the Diocese has asserted the statute of limitations, charitable immunity, and lack of notice/negligence, among other things, in defense of the claims. Additionally, a common issue in cases involving sexual abuse claims is the calculation of damages for mostly psychological damages. Each of the representatives have had the defenses and issues raised here asserted in their own claims. This action is almost identical to actions brought in other states in which the plaintiffs

have alleged sexual abuse upon them by priests and the failure of the Catholic Church in that area to adequately act in response.

Counsel for the representatives has extensive experience in complex plaintiffs' litigation, including potential class actions and cases in which sexual abuse of the plaintiff is the basis for the underlying claim.<sup>2</sup>

## ISSUES

1. Should the plaintiffs' request for certification of classes be granted pursuant to SCRCP Rule 23?
2. Is the Settlement Agreement reached between the parties in the best interests of the class such that it should be preliminarily approved?

## LAW/ANALYSIS

### A. Certification of the Classes

SCRCP Rule 23 provides that a case may be certified as a class action where the proposed class satisfies the following criteria:

1. the class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties will fairly and adequately protect the interests of the class; and
5. In cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Plaintiffs have requested that the following classes be certified:

---

<sup>2</sup> The Diocese, while denying the seminal allegations of the complaint, took no legal or factual position on the motion for class certification.

- A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused<sup>3</sup> at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")
- B. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

I find that certification of these class is appropriate.

**1. Numerosity/ Impracticability of Joinder.**

The first element, commonly referred to as 'numerosity,' requires that the court balance the number of potential members of the class and the ability to join each of the individuals in one suit. There is no definitive standard as to what number is sufficient to be numerous. *Haywood v. Barnes*, 109 F.R.D. 568 (E.D.N.C. 1986). Courts have certified classes where the number has been as small as 14 members. *Manning v. Princeton Consumer Discount Co.*, 390 F.Supp. 320 (ED Pa 1975)(cited by *Middleton v. Sunstar Acceptance Corp.*, 98-CP-07-1131 (SC Court of Common Pleas, Jan. 13, 2000). Further, the exact number does not have to be known. Wright, Miller, & Kane Federal Practice and Procedure (2d) § 1762. The record before the court must reasonably infer numerosity. *Id.* Determining whether numerosity exists requires a liberal interpretation of the rule. *Id.* The key is not simply the number of potential class members, but also the practicability of joining all in one action.

---

<sup>3</sup>"Sexual abuse," for these purposes, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

The record before me shows four representatives of the Primary Class and three of the Consortium Class. There have been no less than 28 priests or agents of the Diocese who have been accused, investigated, charged, and/or convicted of sexual abuse crimes on minors. However, the total number is likely to be higher because of the nature of the allegations and many of these priests have had multiple victims. As the representatives have shown, it is difficult for claimants to face up to sexual abuse. This is more true where the abuse has been accomplished by a person such as a priest, who is held by high esteem by the victim.

Further, the Diocese operates statewide and, hence, the breadth of individual claims is particularly great. The size of the Diocese's reach also weighs on the ability of individuals to be joined in the case. In addition, this court may easily take judicial notice that Catholic Dioceses around the country have been taking on the issue of priest sexual abuse in the litigation forum over the last several years. The problem of sexual abuse by priests has been in the forefront of national news which is indicative of the potential number of claimants here.

As to the Consortium Class, because members of the class are the spouses and parents of those who have actually suffered abuse, the number of members for that class is likely to be larger than in the Primary Class. It is not difficult for this court, then, to reasonably infer that the number of potential class members is such that the joinder of all is impractical. Hence, this first prong is met.

## **2. Commonality/Typicality**

The second and third prongs of Rule 23 are generally considered to be identical and are most often analyzed together. Commonality is the requirement that common question of

law or fact predominate over other questions in the case. "In fact, a single common issue will suffice if it is important enough." *McGann v. Mungo*, 287 S.C. 561, 340 S.E.2d 154 (Ct.App. 1986). Typicality requires that the claims or defenses of the class be identical. SCRCF Rule 23(a)(3). I find that the claims of the class are common and typical to each of the members.

The key issues of the case, as set out in the complaints, include the responsibility of the Diocese to monitor its agents, its knowledge of their conduct, the acts taken by the Diocese in the face of the knowledge, the type of damage (namely psychological), the applicability of the statute of limitations and defenses thereto, and the applicability of the affirmative defense of charitable immunity. Each of these issues must be addressed in the case of each individual class member in order for a resolution of the matter. Accordingly, the claims of each class member are common and typical to one another.

### **3. Adequacy of Representation**

The fourth prong of Rule 23 is the adequacy of representation. There are two parts to this prong: (1) the plaintiffs' attorney must be qualified, experienced, and generally able to conduct the proposed litigation; (2) the plaintiffs must not have interests antagonistic to those of the class. The plaintiffs here meet these criteria.

First, the record reflects that class counsel is "qualified, experienced, and generally able to conduct the proposed litigation." It is presumed that plaintiffs' counsel is qualified unless the defense shows inadequacy of representation. *McGlothlin v. Connors*, 142 F.R.D. 626 (W.V.A. 1992). The record before me shows that plaintiffs' counsel has a history of being involved in numerous complex pieces of litigation and class actions and with great success. The reputation of class counsel is known to the court and, given

their past history and their work in this matter heretofore, I have no question in finding them qualified.

Second, the class representatives' interests are not antagonistic to those of the rest of the class. The representatives have resolved their claims and agreed to be bound by the resolution in the face of whether this court approved class certification or not and the Diocese agreed to pay them regardless of whether the class was approved or not. They have nothing more to gain from the case. Accordingly, the representatives are not in an antagonistic position to the rest of the class.

#### **4. \$100 requirement.**

Last, SCRCF Rule 23(a)(5) requires that the amount in controversy exceed \$100 for each member of the class. In order for the amount in controversy prong to be met, the plaintiffs must show that the amount to be gained in the suit exceeds \$100 per class member. *Gardner v. Newson Chevrolet-Buick, Inc.*, SC 328, 404 S.E.2d 200 (1991). The claim for the class here is the medical bills, pain, suffering, psychological injury, and loss of consortium as a result of the Diocese's acts or omissions. These damages clearly seek a gain in excess of \$100 per class member. I find that the amount in controversy element is satisfied.

For the reasons set for above, the elements of SCRCF Rule 23 are met for the classes sought to be certified and, accordingly, I grant the motion to certify the classes herein.

#### **B. Preliminary Approval of the Settlement**

The parties have presented a Settlement Agreement for preliminary approval by the court pursuant to SCRCF Rule 23. At this point, the court conducts a two-step process:

1) a review of the settlement to determine whether it is within the realm of approval; and  
2) instructions on providing notice to the class for purposes of objection with Notice of a Fairness Hearing for purposes of final approval of the settlement. *Clark v. Experian Information Solutions*, WL 2566433 (D.S.C. 2004).

I have given a full review of the Settlement Agreement with counsel for both parties and I believe that the settlement is fair, reasonable, and adequate in providing necessary funding for the class and a confidential means of asserting and prosecuting a claim which encourages individuals to make the same, among other things.

I order a Fairness Hearing be held March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina. The parties are required to follow the following procedure to effectuate final approval of the settlement.

**A. Notice.** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun*, *The State*, *The Augusta Chronicle*, *The Rock Hill Herald*, *Beaufort Gazette*, *Greenville News*, *Spartanburg Herald*, *Orangeburg Times-Democrat*, *Florence Morning News* and the *Aiken Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names, addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

B. **Objection.** Any potential Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same on Class Counsel prior to February 22, 2007. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

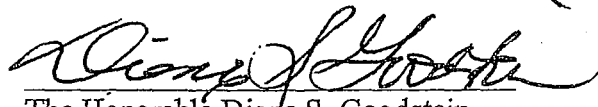
C. **Prayer for Attorneys Fees.** The Court will also consider at this hearing an award of attorneys' fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys' fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement.

Therefore, it is ordered that the plaintiffs' motion for class certification is GRANTED; and

IT IS FURTHER ORDERED that the Settlement Agreement reached between the parties is preliminarily approved by this court; and

IT IS FURTHER ORDERED that a Fairness Hearing for final approval of the hearing be held before me on March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina subject to the notice and other terms and conditions contained herein.

AND IT IS SO ORDERED!!!

  
The Honorable Diane S. Goodstein  
Presiding Judge

This 19 day of January, 2007

At Summerville South Carolina

## Legal Notice

### Notice of Proposed Settlement of Class Action

*John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity*

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

Plaintiffs John Doe #53, John Doe 66, John Doe 66A John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated brought these claims on behalf of themselves and others who with claims of sexual abuse in keeping with the class definitions, by agents or employees of the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole and The Bishop of the Diocese of Charleston, in his official capacity have denied any liability or wrongdoing in response to the claims that were made against them and have asserted various defenses in response to the claims.

The court of common pleas for Dorchester County has certified the classes on whose behalf the claims have been asserted. Those classes are:

1. All individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Primary Class")
2. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

The Class Representatives have reached a settlement on behalf of the classes, and, after a review of the terms of a Settlement Agreement entered into by the Class Representatives and the defendants, the court has preliminarily approved the terms of the settlement as being in the best interest of the classes. The court's preliminary approval is subject to final approval or disapproval after a Fairness Hearing to be held as described below. Copies of the Settlement Agreement may be obtained by a Class member or their counsel at this time by making written request of Class Counsel sent to the address for Class Counsel set forth at the end of this Notice.



The Settlement Agreement resolving this matter will not be effective unless and until the court makes a final determination as to its fairness and that the settlement is a fair, reasonable, and adequate compromise of the aggregate claims of the plaintiff classes as a whole.

In order to assist the Court in making this decision, the Court will hold a Fairness Hearing on March 9, 2007, commencing at 10:00 a.m. at the Dorchester County Courthouse in St. George, South Carolina. The court will also consider at this hearing an award of attorneys fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement. Any Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same no later than February 22, 2007. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

The proposed settlement includes a claims process to be utilized for qualifying Class members to prove the validity of any claim and have their damages measured for payment from the Settlement Fund. The Class Representatives will also request the approval of the claims process provided for in the Settlement Agreement and for an order providing for a date on which the claims process begins and ends.

CLASS COUNSEL:

Lawrence E. Richter, Jr.

David K. Haller

RICHTER & HALLER, LLC

622 Johnnie Dodds Blvd.

Post Office Drawer 1089

Mt. Pleasant, SC 29465

(843) 849-6000

[diocesessettlement@richterfirm.com](mailto:diocesessettlement@richterfirm.com)

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2010-CP-10-5520

RECEIVED

SEP 01 2011

SC Court of Appeals

JOHN DOE 2 AND JANE DOE 4, .....Respondent

vs.

THE BISHOP OF CHARLESTON, A CORPORATION SOLE, ROBERT  
GUGLEILMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL  
CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER  
ADMINISTRATOR FOR THE DIOCESE OF CHARLESTON,  
ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON;  
IN HIS OFFICIAL CAPACITY, .....Appellant

PROOF OF SERVICE

I certify that I have served Appellant's NOTICE OF APPEAL on Susan Taylor Wall,  
Esq., Attorney for David Haller, Esq., Defendant in the above referenced case by mailing a copy  
via First Class Mail, this 31 day of August 2011, addressed as follows:

Susan Taylor Wall, Esq.  
Parker, Poe, Adams and Bernstein, L.L.P  
Attorney for Defendant David K. Haller, Esq.  
200 Meeting Street, Suite 301  
Charleston, SC 29401

Gregg E. Meyers, Esq.  
Attorney for Respondent  
1 Poston Road, Ste. 110  
Charleston, SC 29407

James L. Bruner, Esq.  
Bruner, Powell, Robbins, Wall & Mullins, L.L.C.  
Attorney for Defendants Lawrence E. Richter, Esq.  
and Richter and Haller, L.L.C.  
PO Box 61110  
Columbia, SC 29204

  
A. Peter Shahid, Jr.  
South Carolina Bar No. 5030  
89 Broad Street  
Charleston, South Carolina 29401  
843.853.4500  
Attorney for Appellant

August 31, 2011

# The South Carolina Court of Appeals

John Doe 2 and Jane Doe 4,

Respondents,

v.

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

Defendants,

Of Whom The Bishop of Charleston, a  
Corporation Sole; Robert Gugliemone,  
The Bishop of Charleston, in his  
Official Capacity; Rev. Monsignor  
Martin Laughlin, former Administrator  
of the Diocese of Charleston; Robert J.  
Baker, former Bishop of Charleston, in  
his Official Capacity, are the

Appellants.

The Honorable Roger M. Young  
Charleston County  
Trial Court Case No. 2010-CP-10-5520

---

## ORDER

---

Respondents have filed a motion to dismiss Appellants' appeal from an order of the circuit court denying in part their motion to dismiss. In their return to Respondents' motion, Appellants contend the circuit court's order is immediately appealable because it effectively

struck their defense of res judicata/collateral estoppel. In addition, Appellants contend the circuit court's order is immediately appealable because it involves the merits.

After careful review of the order and the parties' filings, we dismiss Appellants' appeal. Section 14-3-330 of the South Carolina Code (1976 & Supp. 2010) governs appellate jurisdiction and provides in relevant part that an appeal may be made from an "intermediate judgment . . . involving the merits" and from "[a]n order affecting a substantial right . . . when such order . . . strikes out an answer or any part thereof or any pleading in any action." See also Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006) (holding the right of appeal arises from and is controlled by statutory law). As explained in McLendon v. South Carolina Department of Highways and Public Transportation, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994), "the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings." Accordingly, the denial of a motion to dismiss does not finally determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings. Based on the foregoing, we dismiss this appeal.

IT IS SO ORDERED.

15 3 We J.

Columbia, South Carolina

cc: Henry W. Frampton, IV, Esq.  
Gregg Meyers, Esq.  
James L. Bruner, Esq.  
A. Peter Shahid, Jr. Esq.

FILED  
11/7/11

IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Appeal 2011 196768

Case Number 2010-CP-10-5520

**RECEIVED**

NOV 21 2011

**SC Court of Appeals**

John Doe 2 and Jane Doe 4.....Respondents,

v.

The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Barker, former Bishop of Charleston, in his official capacity,.....Appellants.

**PETITION FOR REHEARING**

The Bishop of Charleston, a Corporation Sole; Robert Guglielmone, The Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity, respectfully petition this Court, pursuant to South Carolina Appellate Court Rule 221(a) for a rehearing on the Respondents' Motion to Dismiss Appeal, granted by this Court by Order filed November 7, 2011. The bases for this Petition follow.

**INTRODUCTION**

Appellants timely filed its Notice of Appeal of the Order issued by Judge Roger Young

from the Charleston County Circuit Court Denying in Part and Granting in Part the Appellants' Motions to Dismiss the Respondents' complaint. After the Appellant's filed their Notice of Appeal the Respondents filed a Motion to Dismiss the Appeal. This Court issued its Order dismissing the Appeal citing McLendon v. South Carolina Department of Highways and Public Transportation, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994) for the proposition that a motion to dismiss may be raised at a different stage of the proceedings and thus does not strike a substantial right.

The Court's ruling is misplaced and this Appeal should be re-instated for the reasons cited herein. The Court has mis construed the effect of Judge Young's order. The Court has interpreted the denial of Judge Young's order of the denial of an asserted defense, wherein Judge's Young has failed to properly apply not just a defense as commonly construed by this Court, but a substantial and legally recognized right. The basis of the Motion to Dismiss raised by the Respondents' is more than a defense such as a bar to relief available by the interpretation of the statute of limitations or charitable immunity. The issue on appeal is the mis-application of the dispositive effect in the application of the Doctrine of *res judicata* and collateral estoppel. The Respondent's complaint seeks relief from these Appellants for injuries suffered as a result of allegations of sexual misconduct which occurred sometime between 1965-1971. Their claim was previously adjudicated in a Class Action Settlement Agreement entered into by the Appellants in 2007 and approved by the Dorchester County Circuit Court. The Class Action included the Respondents as putative class members.

The Motion to Dismiss was based on the preclusive effect of the application of the Doctrine of *res judicata* and collateral estoppel. The Circuit Court's Order denied the Appellants' their total and complete defense of *res judicata* on the basis that the Class Action

Order did not provide nationwide notice. While the Court did dismiss several of the Respondents' causes of actions on the ground they were time barred (statue of limitations), the Court Order maintained the Respondents' cause of action for Civil Conspiracy against the Appellants. This ruling effectively struck a substantive defense of the Appellants, conducts a far-reaching collateral attack on the Dorchester County Court Order.

The June 27, 2011 Order is appealable under S.C. Code Section 14-3-330(1), as an "intermediate judgment...in a law case involving the merits," and Section 14-3-330(2), as "an order affecting a substantial right made in an action when such order . . . (c) strikes out an answer or any part thereof or any pleading in any action." "The phrase 'involving the merits' means the order 'must finally determine some substantial matter forming the whole or a part of some cause of action or defense.'" Tucker v. Honda of S.C. Mfr. Inc. 354 S.C. 574, 576, 582 S.E.2d 405, 406 (2003).

In the current case, the language of the June 27, 2011 Order strikes out the core of the Appellants' reliance of finality of a class action settlement agreement in which they participated and paid funds to those claimants who met the definition of class members. Thus the effect of Judge Young's order obliterated the Appellants defense and reliance of the Doctrine *res judicata* which absolutely ends this litigation. The June 27, 2011 Order states "the Court finds the Plaintiffs are not bound by the judgment of the Dorchester County Class Action and are free to pursue their claims of negligence and gross negligence, subject to the finding below." June 27, 2011 Order, 5. The Order further states the Civil Conspiracy claims "are not precluded because of collateral estoppel or *res judicata*." *Id.* at 10. The circuit court's order thus precludes the Appellants from asserting *res judicata* or collateral estoppel as affirmative defenses, striking out the Appellants' substantive defenses afforded by previously litigated issues raised in the

Dorchester County Class Action by deciding that the Dorchester Court committed error in not providing for nationwide notice of the class action proceedings. These defenses can not be raised unless the Respondents are successful at trial, at which instance the Appellants will appeal and then raise this issue, only at that time.

The Order granting the Respondent's motion to dismiss the appeal incorrectly assumes that this is a defense which can be raised at the trial level. It can not. The illogical result is then the case will proceed with unnecessary waste of judicial time. The merits of this defense are result determinative. The rights asserted by the Appellants are substantial and if the Court permits the appeal to proceed the merits of the Respondents' causes of action will be properly addressed. In other words, the appropriate forum to determine the conclusive effect of the Class Action Settlement Agreement is not by a circuit court judge collaterally attacking such order, but by an appellate court rendering a review either affirming or denying the lower court's final order. Simply stated, Judge Young does not have the authority nor jurisdictional jurisprudence in reversing another circuit court order.

That is, the principles of limited collateral review of a previous class action, as described in Hospitality Management Assocs. v. Shell Oil Co. 356 S.C. 644, 591 S.E.2d 611, (2004) are so narrow, that a reviewing court's error in overstepping the reach of the collateral review required by the Supreme Court should be immediately appealable to preserve the goals of a class action. In the current case, proceeding through a lengthy trial would run counter to the goals of finality and efficiency of a class action, where appellate review of Judge Young's order would protect the nature of a class action. Class action litigation, and ultimately the review of that litigation by another court is immediately appealable.

The Dorchester County order(s) approving the Class Action Settlement Agreement found

the notice contemplated for the Class Action was fundamentally fair. The issue of state-wide versus nation-wide notice was specifically considered and ruled upon by the Dorchester County Judge. Circuit Court Judge Young 's June 27, 2011 Order undertakes a far-reaching, and impermissible, collateral review and attack on the Dorchester County Order of July 30, 2007. The South Carolina Supreme Court has ruled the role of a review in this circumstance is extremely limited. In Hospitality Management Assocs. v. Shell Oil Co., the Court specifically found in favor of "the significant interests of efficiency and finality," 356 S.C. 644, 659, 591 S.E.2d 611, 619 (2004), of a class action, which call for an extremely limited collateral review.

Simply put, the absent class members' due process right to adequate representation is protected not by collateral review, but by the certifying court initially, and thereafter by appeal within the state system and by direct review in the United States Supreme Court. Due process requires that an absent class member's right to adequate representation be protected by the adoption of the appropriate procedures by the certifying court and by the courts that review its determinations; due process does not require collateral second-guessing of those determinations and that review. 356 S.C. 644, 655, 591 S.E.2d 611, 617 (2004), citing Epstein v. MCA, Inc., 179 F.3d 641, 648 (9<sup>th</sup> Cir., 1999).

The June 27, 2011 Order, which is the subject of this appeal, reaches far beyond the limited review contemplated by Hospitality Management. The June 27, 2011 Order ruled on the merits of state-wide versus nation-wide notice in the Class Action, and makes a *sua sponte* finding that a condition was lacking in Judge Goodstein's Order. Judge Young's Order effectively finds Judge Goodstein's judgment defective to bind the class of individuals it intended to bind with a substantively different notice-requirement. This is precisely the type of broad review of the *merits* considered and rejected by the Supreme Court. See Hospitality Mgmt., 356 S.C. 644, 660, 591 S.E.2d 611, 619 (due process does not afford any second-guessing of the trial court's determinations). The June 27, 2011 Order goes far beyond the mere

collateral review of procedural due process allowed by the Supreme Court, and the effect ultimately strikes the Appellants' right to rely on the protections afforded by *res judicata*, having already litigated this issue in Dorchester County. Allowing the current case to proceed under the trial court's mistaken review of another court's judgment in a class action would run counter to the significant interests of efficiency and finality espoused by our Supreme Court.

The Appellants request this Court to note that this identical issue of the *res judicata* effect of the Class Action on absent class members was previously ruled upon by the Charleston County Court of Common Pleas, in an Order by Judge Kristi Harrington, filed June 15, 2011. Judge Harrington's Order applied the *res judicata* effect of Judge Goodstein's July 30, 2007 Order and determined the absent class members are bound by the Dorchester County Class Action, thus precluded those claimants from pursuing any further action against the current Appellants. Judge Harrington's Order does not differentiate between plaintiffs who are South Carolina residents and plaintiffs who are out-of-state residents.

Judge Harrington's judgment is currently pending in the Court of Appeals (Appeal 2011 199886). The current Appellants are Respondents in the Appeal of Judge Harrington's Order. The issues of *res judicata* and the Class Action are the same. The effects of Judge Harrington's and Judge Young's Orders contradict each other, and guidance from the Appellate bench is needed for the sake of clarity, judicial economy and the proper role of a reviewing court as it relates to class action litigation.

Finally, the Appellants assert that the matter of notice was not raised by the Respondents and thus the ruling of the June 27, 2011 Order not applying the effect of *res judicata* and collateral estoppel are baseless. Judge Young stated: "that the class notice was not intended to reach non-South Carolina residents who had not otherwise received actual notice of the

settlement. . . . Therefore the Court finds the Plaintiffs are not bound by the judgment of the Dorchester County Class Action.” June 27, 2011 Order at 5. The June 27 Order makes a substantive judgment on the issue of notice, a judgment which is not only a collateral attack on another court’s Order, but considers an issue which was *expressly disclaimed* as an issue by Respondents. During oral arguments before Judge Young on March 31, 2011, the Respondents’ counsel, engaged in the following dialogue with the Court:

**THE COURT:** Well, have you, in Dorchester County, where that order [July 30, 2007 Order] is in effect, tried to become part of that settlement?

**MR. MEYERS:** Class action is over. The Supreme Court shut it down. Nothing was happening with it, and the Supreme Court said you got to end this by September of 2009. Nothing else happened. It’s over. So these people came forward after all that was done and contacted me. Now, there’s been some discussion that I was present at the fairness hearing. I wasn’t representing these people. These people didn’t know anything about it. So what I knew about it doesn’t impute to them.

**THE COURT:** It would if you represented them at the time, but you didn’t represent them at the time.

**MR. MEYERS:** Right, I did not, and these people are all out of state. *We are not attacking the notice given in the class action. We’re not challenging it.* We’re not trying to disturb the class action. It’s over and done .

By Respondents’ own admission, they did not seek the Charleston County Court to engage in a collateral review of the adequacy of the notice given in the Dorchester County Class Action. Instead, the Respondents rested on a theory that they were not bound by *res judicata* or collateral estoppel because of what they contend are the Appellants’ waivers in the Class Action. This theory was found meritless by the Court, on page 5 of the June 27, 2011 Order, stating, “Therefore, I find the language in the July 27<sup>th</sup> [sic] Order would not have the estoppel effect advanced by the Plaintiffs.” However, the Court goes on to find “Nevertheless, this does not

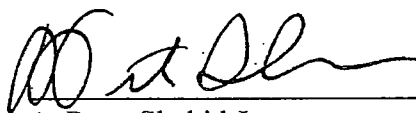
affect this Court's finding that the class notice was not intended to reach non-South Carolina residents who had not otherwise received actual notice of the settlement." While the Court denied the theory actually advanced by the Respondents, it went on to conduct a *sua sponte* collateral review of an issue expressly disclaimed by the Respondents.

The effect of this review is the Appellants' affirmative defenses of *res judicata* and collateral estoppel are essentially struck, and confusion at the trial level because this far-reaching review conflicts with Judge Harrington's ruling from the same court, where the issue of *res judicata* was actually raised.

### **CONCLUSION**

For the foregoing reasons, the Appellants respectfully request this Court to rehear the Respondents' Motion to Dismiss Appeal, deny the Motion to Dismiss Appeal, and allow the appeal of Judge Young's June 27, 2011 Order to proceed.

**Respectfully Submitted**



A. Peter Shahid Jr.  
Shahid Law Office, L.L.C.  
89 Broad Street  
Charleston, SC 29401  
(843) 853-4500

ATTORNEY FOR THE APPELLANTS

Dated: November 20, 2011

Charleston, South Carolina

# The South Carolina Court of Appeals

John Doe 2 and Jane Doe 4,

Respondents,

v.

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

Defendants,

Of Whom The Bishop of Charleston, a  
Corporation Sole; Robert Gugliemone,  
The Bishop of Charleston, in his  
Official Capacity; Rev. Monsignor  
Martin Laughlin, former Administrator  
of the Diocese of Charleston; Robert J.  
Baker, former Bishop of Charleston, in  
his Official Capacity, are the

Appellants.

The Honorable Roger M. Young  
Charleston County  
Trial Court Case No. 2010-CP-10-5520

## ORDER

Appellants petition this Court to rehear the dismissal of their appeal. After careful consideration, we are unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

BY AVB  
JULIE J. ARMSTRONG  
CLERK OF COURT

2012 JAN 13 PM 4:29

FILED

IT IS SO ORDERED.

Paul G. Short, Jr.

H. Bruner J.

John O. Hunter J.

Columbia, South Carolina

cc: Henry W. Frampton, IV, Esq.  
Gregg Meyers, Esq.  
James L. Bruner, Esq.  
A. Peter Shahid, Jr. Esq.

**FILED**  
1-12-12