

The Supreme Court of South Carolina

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

v

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

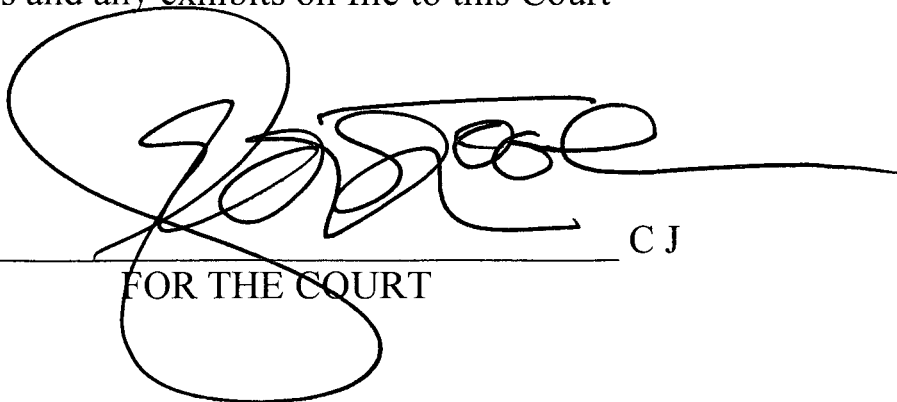
Appellate Case No 2011-199886

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this
appeal is hereby certified for review by the South Carolina Supreme Court

Upon receipt of this order, the Court of Appeals is hereby directed to forward
the case file, all records and briefs and any exhibits on file to this Court

IT IS SO ORDERED



C J

FOR THE COURT

Columbia, South Carolina

August 30, 2012

cc

Gregg E Meyers

Albert P Shahid, Jr

The Honorable Jenny Kitchings

1

2

3

4

5

6

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8

A PETER SHAHID JR

SHAHID LAW OFFICE, LLC
89 BROAD STREET
CHARLESTON SOUTH CAROLINA 29401

OFFICE (843) 853 4500
FAX (843) 722 1119
SHAHIDLO@BELLSOUTH.NET

July 13, 2012

Tanya Gee
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

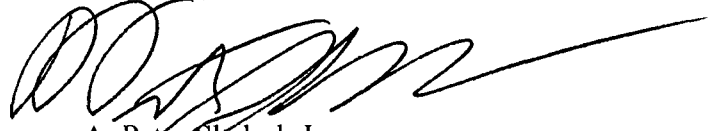
RECEIVED
JUL 16 2012
SC Court of Appeals

Re Appeal in Doe v Diocese of Charleston, et al
Cases No 09-CP-10-6694, -8054, 8055, -8056
(Charleston County, Hon Kristi L Harrington)
Tracking Number 2011199886

Dear Ms Gee

Responding to the Clerk's letter of July 9, 2012, enclosed please find a Certificate of Counsel as to the final briefs. The Certificate was inadvertently omitted when the Final Briefs were submitted.

Sincerely,



A. Peter Shahid, Jr.

APS/kg
Enclosures
cc Gregg Meyers, Esquire

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

July 12, 2012

Tanya Gee
Clerk of Court, SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Re Appeal in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)
Tracking number 2011199886

Dear Ms Gee

Responding to the Clerk's letter of July 9, enclosed please find a Certificate of Counsel as
to the final briefs The Certificate was inadvertently omitted when the final briefs were
submitted

Sincerely



Gregg Meyers

Enclosures

Certificate of Counsel

c Mr Shahid, Attorney for Respondent

RECEIVED
JUL 16 2012
SC Court of Appeals



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
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TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

July 09, 2012

Mr Albert P Shahid, Jr
89 Broad St
Charleston SC 29401

Re Doe, J & J 1,2,3 v Bp of Charleston
Appellate Case No 2011-199886

Dear Counsel

Upon reviewing your respondents' final brief, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter

- The document is not accompanied by the required certificate of counsel

Very truly yours,

V Claire Allen, Deputy

CLERK

cc Gregg E Meyers



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
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TELEPHONE (803) 734 1890
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www.sccourts.org

July 09, 2012

Mr Gregg E Meyers
1 Poston Rd , Ste 110
Charleston SC 29407

Re Doe, J & J 1,2,3 v Bp of Charleston
Appellate Case No 2011-199886

Dear Counsel

Upon reviewing your appellants' final brief, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter

- The document is not accompanied by the required certificate of counsel

Very truly yours,

V Claire Allen, Deputy
CLERK

cc Albert P Shahid, Jr



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
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TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

July 09, 2012

Mr Gregg E Meyers
1 Poston Rd , Ste 110
Charleston SC 29407

Re Doe, J & J 1,2,3 v Bp of Charleston
Appellate Case No 2011-199886

Dear Counsel

Upon reviewing your appellant's final reply brief, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter

- The document is not accompanied by the required certificate of counsel

Very truly yours,

V Claire Allen, Deputy

CLERK

cc Albert P Shahid, Jr



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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www.sccourts.org

July 09, 2012

Mr Gregg E Meyers
1 Poston Rd , Ste 110
Charleston SC 29407

Re Doe, J & J 1,2,3 v Bp of Charleston
Appellate Case No 2011-199886

Dear Counsel

The following order has been endorsed on your motion to amend designation in the above matter

"Granted

FOR THE COURT

By s/ V CLAIR ALLEN
DEPUTY CLERK

July 09, 2012 "

Please be advised we have received the record on appeal, appellants' final brief, appellants' final reply brief and the respondents' final brief

Very truly yours,

V Claire Allen, Deputy
CLERK

cc Albert P Shahid, Jr

A PETER SHAHID JR

SHAHID LAW OFFICE, LLC
89 BROAD STREET
CHARLESTON SOUTH CAROLINA 29401

OFFICE (843) 853 4500
FAX (843) 722 1119
SHAHIDLO@BELLSOUTH.NET

May 15, 2012

The Honorable Tonya Gee
Clerk of Court
Court of Appeals
P O Box 11629
Columbia, SC 29211

RECEIVED
MAY 16 2012
SC Court of Appeals

RE Respondent's Final Brief
Consolidated Case No 2009-CP-10-6694
Appeal No 199886

Dear Ms Gee

In reference to the above styled matter, enclosed herewith you will please find the Original and fifteen copies of the Respondent's Final Brief, and the Original Proof of Service for the Final Brief, and a postage paid return envelope

Please return to me the filed -stamped copies of the Respondent's Final Brief in the enclosed envelope

If you should have any questions or concerns please do not hesitate to contact my office

Sincerely,



A Peter Shahid, Jr

APS/mrw

Enclosure as stated

cc Greg Meyers, Attorney for the Appellants

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

April 25, 2012

Hon Tanya Gee
Clerk of Court
Court of Appeals
PO Box 11629
Columbia, SC 29211

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)
Tracking number 2011199886

Dear Ms Gee

Enclosed please find for filing in this appeal 15 copies of the Record on Appeal, the
original, unbound record, 15 copies of the Final Brief of Appellants and one unbound original,
and 15 of a Final Reply Brief and one unbound original

Also enclosed is a proof of service for each

Thank you

Sincerely



Gregg Meyers
Jeff Anderson & Associates, P A

Enclosure

15 copies + 1 Record o Appeal
15 Copies + 1 Final Brief of Appellants
15 copies + 1 Final Reply Brief
Proofs of service

c Mr Shahid, Attorney for Respondent, w encl

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694
(Consolidating Cases 09-CP-10-6694, -8054, -8055, and -8056)

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Motion to Amend Designation

Jeff Anderson & Associates, P A
Gregg Meyers
1 Poston Road Suite 110
Charleston, S C 29407
843-556-1025

Attorney for Appellants

RECEIVED

APR 30 2012

SC Court of Appeals

Appellants move to amend the Designation of Matter to include a document referred to in the Appellant's brief but inadvertently left from the designation Appellant's Rule 59 motion is referred to in the briefs but was not listed Permission to include the referred to pleading is sought

Conclusion

Appellants respectfully request the Court grant leave for the Record on Appeal to include Appellant's Rule 59 motion

Respectfully submitted,



Jeff Anderson & Associates, P A

Gregg Meyers

1 Poston Road, Suite 110

Charleston, South Carolina 29407

843-556-1025

Attorneys for Appellants

GRANTED
JOHN GANNON FEW CJ
FOR THE COURT

By V. Claire Allen
(Clerk) (Deputy Clerk)

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Proof of Service

I certify that I have served a copy of the Motion to Amend Designation by placing a copy
of the document in the United States mail, first-class postage pre-paid, addressed to

Peter Shahid
89 Broad Street
Charleston SC 29401, and to

Done April 26, 2012



Jeff Anderson & Associates, P A
Gregg Meyers
1 Poston Road Suite 110
Charleston SC 29407

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APR 30 2012

SC Court of Appeals

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

April 26, 2012

Tanya Gee
Clerk of Court, SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Re Appeal in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)
Tracking number 2011199886

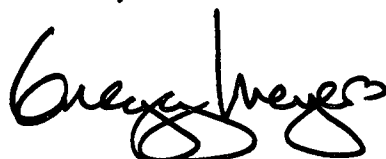
Dear Ms Gee

Enclosed please find an original and seven copies of a Motion to Amend the Designation
in this appeal The original and six are for the Court The seventh I would appreciate your
returning to me in the envelope enclosed for that purpose

Also enclosed is a Proof of Service for the Motion, and a \$25 filing fee

Please file the motion with the Court and return to me one file-stamped copy Thank you

Sincerely



Gregg Meyers
Jeff Anderson & Associates, P A

Enclosures

Motion
Seven copies of Motion
Proof of Service
\$25 filing fee

c Mr Shahid, Attorney for Respondent

RECEIVED
APR 30 2012

SC Court of Appeals

64229

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

May 14 2012

Tanya Gee
Clerk of Court SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Re Appeal in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)
Tracking number 2011199886

Dear Ms Gee

Enclosed please find a check for a \$25 filing fee, which I inadvertently omitted when
submitting recently a Motion to Amend the Designation in this appeal

My apologies for not including it with the motion

Sincerely



Gregg Meyers
Jeff Anderson & Associates, P A

Enclosures

Previously omitted \$25 filing fee

c Mr Shahid, Attorney for Respondent

RECEIVED
MAY 16 2012
SC Court of Appeals



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA SOUTH CAROLINA 9211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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FAX (803) 734 1839
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April 24, 2012

Gregg Meyers, Esquire
Jeff Anderson & Assoc , P A
1 Poston Road, Ste 110
Charleston, SC 29407

Re Doe, J & J 1,2,3 v Bp of Charleston
2011199886

Dear Counsel

We have received the Amended Designation of Matter to be Included in the Record regarding the above case. If you wish this Court to accept the Amended Designation of Matter, you must file a request in the form of a motion.

Very truly yours,

V Claire Allen, Deputy
CLERK

JAK/laf

cc Peter Shahid, Esquire

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694
(Consolidating cases 09-CP-10-6694, -8054, -8055 and -8056)

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Appellants' Amended Designation of Matter
to be Included in the Record

Appellants designate the following matter to be included in the Record on Appeal

- 1 Second Amended Complaint in 09-CP-10-6694, with attachment
- 2 Second Amended Complaint in 09-CP-10-8054, without attachment
- 3 Second Amended Complaint in 09-CP-10-8055, without attachment
- 4 Second Amended Complaint in 09-CP-10-8056, without attachment
- 5 Amended Motion to Dismiss in 09-CP-10-6694, as representative of the motions applicable in each case
- 6 Opposition to Motions with Attachments A – G, filed January, 2011, as representative

- of the opposition filed in each case Attachments include the class action orders of July 30, 2007 and August 31, 2007
- 7 Rule 59 motion as representative of each case
 - 8 Class Action order of Jan 19, 2007
 - 9 Transcript of 8-9-07 hearing in class action
 - 10 Transcript of 7-13-07 hearing in class action
 - 11 Class action order of July 13, 2007
 - 12 Order of June 15, 2011 dismissing actions -6694, -8054, -8055, and -8056
 - 13 Order denying Rule 59 motions

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

Gregg Meyers
Jeff Anderson & Associates, P A
1 Poston Road, Suite 110
Charleston SC 29407
843-556-1025
attvgm@gmail.com

The State of South Carolina In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694
(Consolidating cases 09-CP-10-6694, -8054, -8055, and -8056)

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Proof of Service

I hereby affirm that on April 21, 2012, I served upon counsel for the
defendant/respondent the

Amended Designation and Certificate

by causing the documents to be placed in the United States mails, first-class postage pre-
paid wrapper, properly addressed to

Peter Shahid
89 Broad Street
Charleston SC 29401



Gregg Meyers
Jeff Anderson & Associates, P A
1 Poston Road, Suite 110
Charleston, South Carolina 29407
843-556-1025
Attorney for Appellants

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Certificate

Counsel for the Appellants certifies pursuant to SCACR 209(c) that the Amended Designation contains no matter which is irrelevant to the appeal



Gregg Meyers
Jeff Anderson & Associates, P A
1 Poston Road, Suite 110
Charleston SC 29407
843-556-1025, attygm@gmail.com
Counsel for Appellants

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APR 24 2012
SC Court of Appeals

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

April 21, 2012

Hon Tanya Gee
Clerk of Court
Court of Appeals
PO Box 11629
Columbia, SC 29211

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)
Tracking number 2011199886

Dear Ms Gee

Enclosed please find for filing in this appeal an amended Designation of Matter, the
Certificate for the amended Designation, and a Proof of Service for the amended Designation
Each is enclosed, each with an extra copy and a return envelope for returning a file-stamped
copy to my office

Thank you

Sincerely



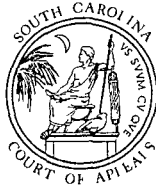
Gregg Meyers
Jeff Anderson & Associates, P A

Enclosure

Amended Designation of Matter
Proof of Service for Amended Designation and Certificate
Certificate for Amended Designation

c Mr Shahid, Attorney for Respondent, w encl

SC Court of Appeals
APR 24 2012
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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29 01
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April 19, 2012

Gregg Meyers, Esquire
Jeff Anderson & Assoc , P A
1 Poston Road, Ste 110
Charleston, SC 29407

Re Doe, J & J 1,2,3 v Bp of Charleston
2011199886

Dear Counsel

Enclosed is a copy of an Order of the Court regarding your Motion in the above case

You must serve the Record on Appeal on the opposing parties and file the proof of service with this Court no later than May 21, 2012

Very truly yours,

Jenny A Kitchings
CLERK

JAK/laf

cc Peter Shahid, Esquire

The South Carolina Court of Appeals

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

v

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

The Honorable Kristi Lea Harrington
Charleston County
Trial Court Case No 2009-CP-10-06694
2009-CP-10-08054
2009-CP-10-08055
2009-CP-10-08056

ORDER

Appellants have filed a Motion to Settle the Record on Appeal. This Court requested a return from Respondents on February 6, 2012, and March 5, 2012. Because no return has been filed by Respondents, and because Respondents have failed to serve and file a Designation of Matter to be included in the Record on Appeal pursuant to Rule 209, SCACR, the Record on Appeal shall consist only of the matters designated by Appellants.

IT IS SO ORDERED

Columbia, South Carolina

cc Gregg Meyers, Esquire
Peter Shahid, Esquire



FILED

4-9-12 UAP



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

March 5, 2012

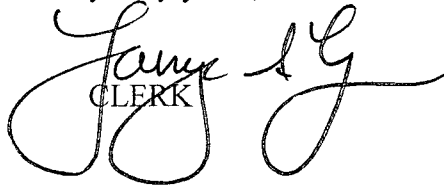
Peter Shahid, Esquire
Dhahid Law Office, LLC
89 Broad Street
Charleston, SC 29401

Re Doe, J & J 1,2,3 v Bp of Charleston
2011199886

Dear Counsel

Please respond to the Court's letter of February 6, 2012, within ten (10) days. Otherwise the appellants' motion will be submitted to the Court without any input from the respondents.

Very truly yours,


CLERK

TAG/laf

cc Gregg Meyers, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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WWW.SCCOURTS.ORG

February 6, 2012

Gregg Meyers, Esquire
Jeff Anderson & Assoc., P.A.
1 Poston Road, Ste 110
Charleston, SC 29407

Re Doe, J. & J. 1,2,3 v. Bp of Charleston
2011199886

Dear Counsel:

This will acknowledge receipt of your Motion to Settle the Record on Appeal in the above entitled matter.

By copy of this letter, opposing counsel is requested to file an original and six (6) copies of a return to this motion no later than February 16, 2012, pursuant to Rule 240(e). Upon receipt of the return, the matter will be taken under consideration and you will be notified as soon as action has been taken.

The time limits for perfecting the appeal will be held in abeyance pending the Court's decision.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc Peter Shahid, Esquire

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694
(Consolidating Cases 09-CP 10-6694, -8054, -8055, and -8056)

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Motion to Settle The Record on Appeal

Jeff Anderson & Associates, P A
Gregg Meyers
1 Poston Road Suite 110
Charleston, S C 29407
843-556-1025

Attorney for Appellants

RECEIVED
JAN 05 2012
SC Court of Appeals

Appellants move to settle the Record on Appeal, to require the Respondent to Designate Matter to be Included In the Record, and to resolve whether a transcript of proceedings below is required for the Record on Appeal

Consultation to avoid this motion was attempted

Attachment A to this motion is the Designation submitted by Appellants That Designation does not call for the transcript of the March 4, 2011 motions hearing in the trial court because Respondents made no response when counsel for Appellants suggested the transcript was not necessary

Respondents submitted no Designation with the Respondent's brief Although the March 4, 2011 hearing transcript has been ordered, it has not yet been received Respondents make no reference to the hearing transcript in the Respondent's Brief The Respondent's brief mentions, on page 3, only that a hearing was held A transcript is not needed to establish that a hearing was held, since the fact of a hearing is not disputed And by omitting from Respondent's Brief any reference to the hearing other than the fact of the hearing, Respondents appear to agree that no transcript is necessary for purposes of the appeal, as set forth in SCACR 207(a)(1)

Upon receiving Respondent's Brief, Appellants requested a Designation from Respondents None has been provided SCACR 209 requires a party submit a Designation at the same time a party serves his initial brief

Unnecessary ambiguity surrounds this Record on Appeal Respondents should be ordered to submit a Designation which conforms with SCACR 209, and Respondents should either agree that the transcript of proceedings of March 4 is not necessary for this appeal, or be ordered to clarify how that transcript is required for this appeal since no portion of the transcript

is mentioned in the Respondent's Brief

Appellants seek to avoid unnecessary length and expense of the Record on Appeal, and apparently need the Court's assistance to help clarify what should be simple matters

Conclusion

Appellants respectfully request the Court order Respondents to submit a Designation and either consent to exclude the transcript of the hearing of March 4, 2011, or show cause why that transcript is necessary to this appeal in light of the Respondent's Brief

Respectfully submitted,

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

Jeff Anderson & Associates, P A

Gregg Meyers

1 Poston Road, Suite 110

Charleston, South Carolina 29407

843-556-1025

Attorneys for Appellants

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Appellants' Designation of Matter
to be Included in the Record

Appellants designate the following matter to be included in the Record on Appeal

- 1 Amended Complaint in 09-CP-10-6694, filed December 30, 2009, with attachments
- 2 Amended Complaint in 09-CP-10-8054, filed December 30, 2009, with attachments
- 3 Amended Complaint in 09-CP-10-8055, filed December 30, 2009, with attachment
- 4 Amended Complaint in 09-CP-10-8056, filed December 30, 2009, with attachment
- 5 Amended Motion to Dismiss in 09-CP-10-6694, as representative of the motions applicable in each case
- 6 Opposition to Motions with Attachments A – G, filed January, 2011, as representative of the opposition filed in each case Attachments include the class action orders of of the opposition filed in each case Attachments include the class action orders of

July 30, 2007 and August 31, 2007

7 Class Action order of Jan 19, 2007 order at p 3 n 2,

8 Transcript of 8-9-07 hearing

9 Transcript of 7-13-07 hearing

10 Class action order of July 13, 2007

11 Order of June 15, 2011 dismissing actions

12 Order denying Rule 59 motions



Gregg Meyers
Jeff Anderson & Associates, P A
1 Poston Road, Suite 110
Charleston SC 29407
843-556 1025
attygm@gmail.com

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Proof of Service

I certify that I have served a copy of the Motion to Settle The Record by placing a copy
of the document in the United States mail, first-class postage pre-paid, addressed to

Peter Shahid
89 Broad Street
Charleston SC 29401, and to

James Geoly
Burke Warren & Mackay
330 North Wabash Avenue 2200
Chicago IL 60611-3793

Done December 29, 2011



Jeff Anderson & Associates, P A
Gregg Meyers
1 Poston Road Suite 110
Charleston SC 29407

RECEIVED
JAN 05 2012
SC Court of Appeals

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

December 29, 2011

Tanya Gee
Clerk of Court, SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Re Appeal in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)
Tracking number 2011199886

Dear Ms Gee

Enclosed please find an original and seven copies of a Motion to Settle the Record in this
appeal The original and six are for the Court The seventh I would appreciate your returning to
me in the envelope enclosed for that purpose

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Gregg Meyers
Jeff Anderson & Associates, P A

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c Mr Shahid, Attorney for Respondent

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The South Carolina Court of Appeals

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December 1, 2011

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Peter Shahid, Esquire
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Charleston, SC 29401

Re Doe, J & J 1,2 3 v Bp of Charleston
2011199886

Dear Counsel

We have received the Appellant's Initial Reply Brief in the above case. Please be advised that all lower court case numbers should appear on the cover of the brief.

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1205 Pendleton Street, Columbia, S C 29201. Thank you for your attention to this.

If you have any questions, please do not hesitate to contact this office.

Very truly yours

V. Claire Allen, Deputy
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The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

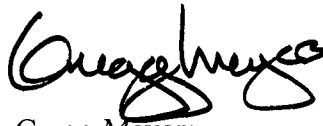
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Peter Shahid
89 Broad Street
Charleston SC 29401, and to

James Geoly
Burke Warren & Mackay
330 North Wabash Avenue 2200
Chicago IL 60611-3793

Done November 17, 2011



Gregg Meyers
1 Poston Road Suite 110
Charleston SC 29407

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SC Court of Appeals

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

November 17, 2011

Hon Tanya Gee
Clerk of Court
Court of Appeals
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Columbia, SC 29211

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)
Tracking number 2011199886

Dear Ms Gee

Enclosed please find

an original of a Reply Brief of Appellants
a copy of that Reply Brief,
an original Proof of Service for the Reply Brief, and
a postage paid return envelope

Please return to me a file-stamped copy of the Reply Brief in the enclosed envelope

Thank you very much

Sincerely



Gregg Meyers
Jeff Anderson & Associates, P A

c Mr Shahid, Attorney for Respondent

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SC Court of Appeals

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694
(Consolidating Cases 09-CP-10-6694, -8054, -8055, and -8056)

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Reply Brief of Appellants

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843-556-1025

Attorney for Appellants

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Reply Argument

In Reply, Appellants make only these points

1 **The underlying class action was collusive, and respondents misstate the record in contending otherwise** “On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below *Williams v Chesterfield Lumber Co* 267 S C 607, 230 S E 2d 447 (1976)” *Lanham v Blue Cross & Blue Shield of S C Inc* , 563 S E 2d 331, 333 (S C 2002) Rather than comply with that standard, Respondents purport to recite the “Facts of the Case,” Brief at 3, which ignores that standard

Respondents attempt to shut their eyes tightly to the collusive conduct, pretending (Brief at 4) that (a) the class action resolution was reached only in 2007, not in the 2006 mediation, (b) none of the 2006 events occurred, (c) none of the Charleston cases ever existed, (d) no judge-shopping was done for purposes of class oversight and approval, and (e) the Charleston class action was not “cloned” so the class settlement could be kept away from Charleston County judges to be transplanted to Dorchester County As the record reflects, not a single motion was decided in the Charleston cases prior to the mediated settlement agreement

Short of colluding counsel all voluntarily surrendering their licenses to practice law, the strongest indicator of collusion is Respondent’s studied pretense As is proper, there is no good way to acknowledge that a collusive class action has been perpetrated But on this record, the allegations of collusion must be taken as true

2 **Appellants had no counsel in the class action, as they had no notice of the class action** At page 6, Respondents contend that objections were raised in the class action proceedings “by the Appellants counsel ” This is factually incorrect Appellants had no notice of the class action, and had no representation in the class action No counsel who appeared in the class action represented Appellants What Respondents mean is that present counsel for Appellants appeared, *for other clients*, and stated objections to the class action

3 **The determinative issue is whether a collusive class action is entitled to preclusive effect** Assuming, as the record reflects and as we must for purposes of this appeal, that the class action was collusive, the trial court erred by making no analysis of the due process properly afforded a collusive class action

For three reasons the underlying class action is not properly afforded preclusive effect First, the orders in the underlying action provide that lack of notice limited the preclusive effect of the primary class, and Appellants are not within the actual notice subclass

Second, facts exist in this record which reflect that the Diocese waived the defenses it now seeks to impose “if anybody has been missed the diocese waives all the same defenses that they have given up in this class settlement [charitable immunity and statute of limitation], 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 ” July 13, 2007 hearing at pages 3 and 14 (of 33) A detailed analysis of the class action orders is set forth in the Appellants’ Initial Brief and is not repeated here Suffice it to say that a defense that is waived cannot properly be asserted, and the trial court erred in ignoring those allegations and the factual basis for them

Third, under *Hospitality Management Association Inc v Shell Oil Co* , 591 S E 2d 611, 619 (S C 2004), a limited review of a class action is appropriate to make sure it contained proper Due Process protections (1) safeguards in place to guarantee sufficient notice and adequate representation, and (2) whether such safeguards were, in fact, applied *Hospitality Management Association Inc v Shell Oil Co* , 591 S E 2d 611, 619 (S C 2004)

Where substantial evidence is alleged and presented which indicates the class action was collusive, and those allegations must be accepted as true, no class action can be conclusively presumed to have afforded Due Process

Respondents found a class counsel who could be bought He could be bought because, in addition to being corruptible for the right sum, class counsel was also personally involved with, and sympathetic to, the Respondent Diocese After purchasing class counsel, Respondents published one set of talking points to the Court and the community while laying the groundwork to assert an entirely different standard outside of the class action By purchasing class counsel, and then making completely disingenuous representations to the court, the Respondents evaded meaningful oversight of the class action settlement, purchasing for a low price an argument for preclusive effect

As alleged in paragraph 50 of the Second Amended Complaint, Respondents elected to cooperate with class counsel with “life-long ties to the Diocese” and who held positions within the Diocese (§ 50a), avoided arguing any motions in the class action (§ 50b), agreed to an unethical fee for class counsel (§50c), agree that unethical fee would take priority over recovery for individuals abused (§50d), and would be paid before any class member was identified (§50e) Recovery for class members was limited to a small fraction of relief sought by class counsel

against a Diocese not his own (§50f) Counsel circumvented SCRC 23 (§50g), and evaded Charleston County judges for oversight of a settlement reached in a Charleston County class action (§50h) Blatant judge-shopping was done to find a judge who would not scrutinize too closely the class resolution of her class counsel friend (§50i) A series of apparently unethical maneuvers were used to perform the judge-shopping (§50 j – m) False information was, by consent, submitted to the court (§50 m - n) To avoid “too many” victims, all counsel agreed to define the class broadly but give notice narrowly, to deliberately minimize participation in the class action and recovery to the class members (§50 o – t) Agree to no post-award fairness hearing or review of class counsel’s fee after the distribution was known (§50 u – v) Agreed to no final accounting, even after ordered by the South Carolina Supreme Court to conclude the class action (§50 w - y)

On this record capable Due Process protections in the class action cannot be presumed, and cannot be shown Only an expansive interpretation of the class action orders solves the considerable Due Process problems otherwise created by the bizarre and unethical conduct of the class action No court can properly presume that Due Process safeguards existed in the class action on a record, which must presume that collusion occurred

Appellants are entitled to a review of the Due Process protections in the class action That has not been afforded Appellants, and on this record cannot be presumed Absent members of a class are entitled to due process before their interests are precluded *Hansberry v Lee*, 311 U S 32, ___, 61 S Ct 115, 118 (1940) (“there has been a failure of due process only in those cases where it cannot be said that the procedure adopted, fairly insures the protection of the interests of absent parties who are to be bound by it”) An absent class member is entitled to

“limited review” to assure that procedural due process was met *Hospitality Management Association Inc v Shell Oil Co* , 591 S E 2d 611, 619 (S C 2004)

Class action orders which mean what they say solve the considerable Due Process problems of the collusive class settlement

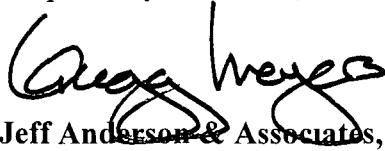
Conversely, if the collusive class action features sharp practices which are acceptable, then the mechanisms for how to hand pick the judge to oversee a class action settlement, how to secure an unethical fee, and how to work against the class one purports to represent should all be broadcast widely and approved so all member members of the bar benefit from a vastly new interpretation of SCRCP 23

Where lawyers affirmatively represent to the Court that where ***“someone pops back up who should have gotten notice who didn’t get notice,”*** and “if that person shows up then we would have to deal with it” (Page 14, of 33 of the July 13, 2007 *ex parte* hearing), and the Bishop client makes expansive public comments which surrender finality for complete fairness for victims, the court’s orders are properly read expansively The Diocese would be held to exactly the standard it sought, and apparently attended, and from which it took no appeal Only such a standard affords Due Process from a collusive class action which was collusive so as to limit recovery to class members

Conclusion

The trial court's order should be reversed, and the actions reinstated. If they are not, then fraudulent techniques for judge-shopping and manipulating class actions should be publicized and lauded as new creations under SCRPC 23.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", written over the printed name.

Jeff Anderson & Associates, P A

Gregg Meyers

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Charleston, South Carolina 29407

843-556-1025

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

Hon Kristi L Harrington, Circuit Court Judge

Consolidated Case No 2009-CP-10-6694

John Doe, Jane Doe 1, Jane Doe 2, and Jane Doe 4,

Appellants

vs

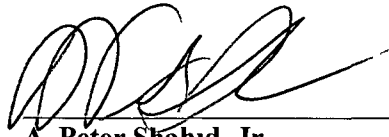
**The Bishop of Charleston, A Corporation Sole, and the Bishop of the Diocese of Charleston,
in his official capacity,**

Respondents

PROOF OF SERVICE

I certify pursuant to SCACR 208(a) (1) that I have served one copy of the **Respondents Initial Brief** by placing a copy of the document in the United States mail, first-class postage pre-paid, addressed to

**Gregg E Meyers, Esq
1 Poston Road, Ste 110
Charleston, SC 29407
Attorney for Respondent**


**A Peter Shahid, Jr
South Carolina Bar No 5030
89 Broad Street
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843 853 4500**

Done November 7, 2011

Attorney for Appellant

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A PETER SHAHID JR

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November 7, 2011

The Honorable Tonya Gee
Clerk of Court
Court of Appeals
P O Box 11629
Columbia, SC 29211

RE Respondent's Initial Brief
Consolidated Case No 2009-CP-10-6694
Appeal No 199886

Dear Ms Gee

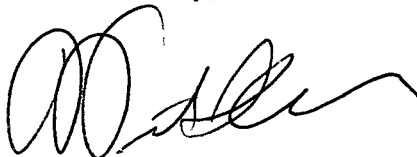
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If you should have any questions or concerns please do not hesitate to contact my office

Sincerely,



A Peter Shahid, Jr

APS/mrw

Enclosure as stated

cc Greg Meyers, Attorney for the Appellants

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case Nos 2009-CP-10-6694

John Doe Jane Doe , Jane Doe 2, and
Jane Doe 3

Appellants,

v

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

Respondents

RESPONDENTS', THE DIOCESE OF CHARLESTON, A CORPORATION SOLE, AND THE
BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY,
INITIAL BRIEF

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SC Court of Appeals

A. Peter Shahid Jr
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Attorney for Respondents, Diocese of
Charleston and the Bishop of Charleston, A
Corporation Sole

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STATEMENT OF ISSUES ON APPEAL

- 1 Did the trial judge commit error in deciding that the relief alleged in the Plaintiffs complaints were barred based on the application of the Doctrine of Res Judicata and collateral estoppel?
- 2 Did the trial judge commit error in deciding that the relief alleged in the Plaintiffs complaints were time barred on the basis that the complaints were not filed within the statutory required time period?

STATEMENT OF THE CASE

A Procedural History

The Plaintiff-Appellant, John Doe, Case Number 2009-CP-10-6694, filed his Summons and Complaint on October 23, 2009, his Amended Summons and Complaint on December 30, 2009, and Second Amended Summons and Complaint on March 22, 2010

The Plaintiffs-Appellants, Jane Doe 1, Case Number 2009-CP-10-8054, Jane Doe 2, Case Number 2009-CP-10-8055 and Jane Doe 3, Case Number 2009-CP-10-8056, filed their Summons and Complaint on December 29, 2009, their Amended Summons and Complaint on December 30, 2009, and their Second Summons and Complaint on March 22, 2010

The Defendants-Respondents, in Case Numbers 2009-CP-10-6694, 2009-CP-10-8054, 2009-CP-10-8055, and 2009-CP-10-8056 filed their Motion to Dismiss, Motion for Protective Order on February 4, 2010, and its Motion to Reveal the Identity of the Plaintiffs and Amended Motion to Dismiss on March 5, 2010

A hearing was scheduled and heard before the Honorable Kristi Lea Harrington on March 4, 2011 on the Defendants-Respondents Motion for Protective Order, Motion to Reveal the Identity of the Plaintiffs and Motion to Dismiss. The parties agreed to consolidate all four cases. The Court issued its Order, filed on June 15, 2011, granting the Defendants-Respondents Motion to Dismiss all of the Plaintiffs-Appellants causes of action. The Plaintiffs-Appellants filed their Motion to Alter or Amend on June 28, 2011. Their Motion was denied on July 29, 2011. Thereafter the Appellants filed their Notice of Intent to Appeal.

B Facts of the Case

The four separately filed complaints were consolidated by the trial court. The Plaintiff in Case number 09-CP-10-6694 is identified under the pseudonym as "John Doe". He is an adult male who claims he was a victim of childhood sexual abuse. Likewise in case number 09-CP-10-8055, the Plaintiff is identified as "Jane Doe 2", and in case number 09-CP-10-8056, the Plaintiff is identified as "Jane Doe 3". Both Plaintiffs are adult females, who claim they were victims of childhood sexual abuse. Finally, in case number 09-CP-10-8054, the Plaintiff is identified as "Jane Doe" an adult female who claims her children were sexually abused as minors. Consequently, then the gravamen of the various causes of action contained in each Complaint are allegations of child sexual abuse. The complaints allege that a Catholic priest abused John Doe, Jane Doe 2 and Jane Doe 3 as minors. The Respondents are the Bishop of Charleston, a Corporate Sole, and The Bishop of the Diocese of Charleston, in his official capacity.

The allegations contained in these complaints state that Fr. James McCarthy was a Catholic priest assigned to St. Williams parish located in Ward, South Carolina between 1965-1971 (Pr. 1 & 3 Second Amended Complaint). Further, that Fr. McCarthy was assigned by the

Respondents to St Williams Church (Pr 3 Second Amended Complaint) and that the Respondents “were reckless in exposing children to the danger of sexual abuse” (Pr 7, second Amended Complaint)

Those introductory allegations were incorporated by the Appellants in their respective complaints and served as the foundation for the several causes of actions listed therein as follows First Cause of Action Negligence, Recklessness, and Intentional Misconduct, Second Cause of Action Fraudulent Concealment, and Third Cause of Action Unfair and Deceptive Trade Practices

Prior to the filing of these four complaints the Respondents entered into a Class Action Settlement Agreement on January 12, 2007 The Agreement was executed by the then Bishop of Charleston, Robert J Baker The Agreement was executed by attorney Lawrence E Richter, Jr Mr Richter filed several complaints 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 Those complaints contain allegations against the same defendants as the Respondents in this case Those Plaintiffs also allege to have been sexually abused as children by personnel of the Diocese of Charleston, including those claimants’ parent(s) and spouse(s)

The Agreement was submitted to First Circuit Court Judge Diane Goodstein for class certification and approval Judge Goodstein entered an order on January 23, 2007 providing preliminary approval of the Class The order provided for notice of the class and set in motion

the procedures for final approval through publication in ten South Carolina newspapers, as well as notice in the Catholic Miscellany, the Respondents' periodic statewide newspaper. Reports of the settlement were published in national and international news outlets. Following a fairness hearing on March 9, 2007 and subsequent other hearings, Judge Goodstein entered an order on July 30, 2007 approving the Settlement Agreement. A supplemental Order was issued on August 31, 2007.

The January 12, 2007 Agreement which was approved on July 30, 2007 included two distinct class members, a primary class of those who claimed they were abused as minors and a secondary class or loss of consortium class. The primary class was defined as "All individuals born on or before August 30, 1980, who as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released (Hereinafter "the Primary Class"), and "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 term "sexually abused" or "sexually abuse" was 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 court order approving the agreement, specifically the identity of the two distinct classes, also outlined the mechanism for class members processing their respective claims. As stated above the order directed the public notice of the court's approval of the Agreement. Furthermore, the order set forth the methodology in which claims were to be received, reviewed

and resolved. The two classes were “opt-out” classes. A critical element of the Agreement and the order approving the Agreement specified that any individual who met the definition of either primary or consortium class was automatically deemed a class member. Thus, a putative class member of either class was bound by the terms of the class action in the resolution of their sex abuse claim against the Respondents unless that individual affirmatively “opted-out” of the Class. In the time frame between the March 9, 2007 fairness hearing and the July 30, 2007 order providing final approval of the class action agreement, the Court directed the Respondents, among other things, to review their records of all claims previously presented to the Respondents and to provide direct or actual notice to those individuals of the existence of the class action agreement in order to afford them the opportunity to submit a claim through the process approved by the Court.

An agreement addressing objections raised by the Appellants’ counsel were resolved as contained in a supplemental order signed by Judge Goodstein on August 31, 2007. The Respondents agreed to pay \$1.375 Million to those objectors raised by the Appellants’ counsel which funds were not to be processed through the class action mechanism. Importantly, the order also addressed a perceived ambiguity of potential claimants who otherwise meet either the primary or consortium class definition, but who had previously notified the Respondents of their particular claim and who should have received actual notice of this class action litigation, but did not.

Commencing after the issuance of the August 31, 2007 order the above described class action claims process proceeded. The time for a putative member of either the defined primary or consortium class member to submit a claim form or to present their notice of “opt-out” expired.

on December 6, 2007 Claims were prepared and submitted before the designated arbitrator
The arbitrator distributed awards through the approved process in February, 2008

The Appellants John Doe, Jane Doe 2 and Jane 3 are individuals who satisfy the criteria of a primary class member as individuals, that is they allege that they were abused as minors by the Respondents' agents Jane Doe 1 is an individual who satisfies the criteria of a consortium class member, as the mother of individuals who as minors were abused by the Respondents agents All four of the Appellants failed to present a claim and thus did not participate in the claims process and who failed to have affirmatively "opt-out" of the class

ARGUMENT

I The class action settlement agreement bars the Appellants from any relief sought against the Respondents in their respective complaints The agreement approved by the Dorchester County court and the subsequent orders issued therein invoke the effect of the Doctrine of Res Judicata and collateral estoppel

The three causes of action contained in each complaint include the basis premises that the Respondents's agent sexually abused a minor who was born prior to August 1980 The Appellants fit the definition as a putative class member of the Primary or Consortium Class in the 2007 agreement The Appellants did not participate in submitting a claim as required in the 2007 agreement

After the Appellants filed their respective complaints the Respondents filed its motion to Dismiss these four complaints on the basis that the Plaintiffs were barred by the Doctrine of *Res Judicata* from re-litigating claims of sexual abuse by Diocese of Charleston personnel against the Respondents and estopped from having this Court collaterally review the previous litigation, that is, the Class Action Settlement agreement and the issuing orders approving the agreement. The Motion(s) also asserted that The Plaintiffs' claims were subject to the limitations period mandated in Sections 15-3-555 and 15-3-555, South Carolina Code of Laws, (1976 as amended). The complaints each alleged that the dates of abuse were between 1962-1965 and as such the Plaintiffs failed to bring their action within the limitations periods prescribed by either of the above statutes. Finally as to the Plaintiffs' allegations that the acts of child sexual abuse and allegations of collusion surrounding the entry of a Class Action Settlement Agreement were the basis of the third cause of action, unfair trade practices, should be dismissed pursuant to Rule 12(b)(6), SCRCF.

Since the motions to dismiss are based solely on the facts alleged in the pleadings before the trial court, the court must then consider those facts in the light most favorable to the Plaintiffs. 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). Conversely, the Appellants are bound to the allegations raised in their respective pleadings. Consequently the basis of the Respondents' motions to dismiss the Appellants' complaint are entitled to be examined by the reviewing court of those elementary facts plead in their respective complaints.

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)

The Appellants, John Doe 1, Jane Doe 2, Jane Doe 3 allege in each of their complaints they were sexually abused by an agent of the Respondents, and Jane Doe 1 claims that her children were sexually abused by a agent of the Respondents as well (Par 1, Second amended Complaint) The complaints contain the allegation that each of the Appellants were born prior to 1980 (Pr 10 Seconded Amended Complaint), and finally that they did not participate in the class action claims process because they did not receive notice of the class action (Pr 11, Seconded Amended Complaint) Thus as putative class members the Appellants failed to participate in the Class Action claims process and consequently they are not entitled to any relief as sought by the allegations contained in their complaints

The Class Action Settlement Agreement, the Order providing preliminary and final approval of the agreement are a final resolution consisting of the same parties with the same merits culminating in a final resolution of their issues 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)

The trial court correctly applied these elements to the Appellants’s claims in determining they were barred by the doctrine of *res judicata*. This doctrine applies to the putative class members, both absent and actual, in the class action litigation in the same manner it applies to litigants in non-class actions. “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)

The trial Court determined that all three elements of the doctrine of *res judicata* existed in the Appellants’ Complaint. The Appellants’ claims of sexual abuse and loss of consortium are identical to the claims of the 2007 Dorchester County Court approved class action. The allegation John Doe , Jane Doe 2 and Jane Doe 3 were minors at the time of the abuse satisfy the definition of “sexual abuse” as contained in the Agreement. Furthermore, John Doe, Jane Doe 2 and Jane Doe 3 assert they were sexually abused by an agent of the Respondent who was a priest assigned to the parish of which they and their family were members. These Appellants

were born on or before August 30, 1980, and they claim the abuse occurred within the time frame of 1965 and 1971. As such they are by definition members of the Primary Class. Furthermore, Jane Doe 1 as the mother of John Doe, Jane Doe 2 and Jane Doe 3 is a member of the Consortium Class.

The Appellants do not contest they are not members of either class, they do not contend that they processed their individual claims through the court approved class action mechanism, and finally they do not assert that any of them opted-out of the class. The Appellants simply inaccurately allege that the Respondents waived the defenses of Charitable Immunity, and statute of limitations and that they are members of a special class definition in which the doctrine of res judicata does not apply to them. (Pars 9 and 11, Second Amended Complaint)

Regardless of these statements, 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 which these Appellants were members. In addition, the July 30, 2007 Final Order clearly addressed the notification requirements, finding they were satisfied, and addressed the issues of absent class members.

The Appellants' status as putative absent class members, satisfies the requirement for 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 Complaints, the Appellants 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 Likewise the Respondents are the same party-defendants in the Dorchester County Class Action as the same party-defendants identified by the Appellants Consequently, the element of the identity of parties requirement it has been satisfied

The Appellants contend in the Second Amended Complaint, pages 9 and 11 that the Respondent waived the defendants of Charitable Immunity statute of limitations Further that they are not barred by the effect of the Doctrine of *res judicata* because (a) “the order in that litigation provides for those who received no notice of that litigation ‘for whatever reason,’ to be not bound by that litigation Plaintiff received no notice of that litigation,” and (b) “that litigation was collusive ” (Para 51 -52, Second Amended Complaint)

In the course of the March 2007 fairness hearing Judge Goodstein directed that the Respondents 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 Respondents were then charged with the responsibility of locating those victims and providing them with actual notice of the Class Action Agreement

The Respondents reported to Judge Goodstein the results of their examination, in locating those victims and in 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 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* the Respondents agreed that it would not seek to bar those claim on two conditions The first of these conditions is that the Respondents had prior actual knowledge of the victim and their claim and the claim was not resolved The second condition was that the Respondents, in spite of their prior actual knowledge, failed to notify the victim of the class action process

The contents of the July 30, 2007 Order Approving Settlement applicable to these issues provides

The Diocese has further stated that it understands that any person who should have had notice, (emphasis added) 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 (July 30, 2007 Order)

This paragraph should be reviewed 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* ” (Order July 30, 2007) The contents of the Order is binding authority of the prohibitive effect of *res judicata*

The Court filed an additional Order dated August 31, 2007 which contains the following provision

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 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 Order created a specific sub-class of potential class members who were then categorized as ‘Actual Notice Class Members’ This designation clarifies 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 lower Court addressed this issue at the May 2011 and in issuing her Order, Judge Harrington ruled “The Plaintiff’s 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 lower Court also ruled that the Appellants claim was barred by 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 The Diocese Defendants have demonstrated that 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 and the Plaintiffs’ issue of *res judicata* has already been decided on by this Court in favor of the Defendants 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 ”

The lower County properly applied the element of collateral estoppel as a second basis to dismiss the Appellants complaint Collateral estoppel bars a litigant from seeking review of one court’s ruling on a specific issue in another court, or by another judge The very definition of issue preclusion is met in this case

II The lower Court carefully determined the Appellants complaint are barred In addition to the above defenses of *res judicata* and collateral estoppel, the Plaintiffs all 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 These claims are subject to the limitations period found in S C Code §15-3-535, and § 15-3-555, for actions arising after 2001 The lower Court in reviewing the Appellants’ Complaint decided “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, and three years after turning 21 would be 1989 None of these claims were brought by 1989 ”

The Court correctly ruled relief sought by the Appellants are time barred The Appellants attempt to circumvent the application of the statute of limitations again asserting this defense was waived by the Representatives The lower Court had ruled that no such waiver existed The plain fact is that the Appellants failed to bring this action with in the time frame required by the statute See Doe v Crooks, 364 S C 349, 613 S E 2d 536

Further, The Appellants allege in their third Cause of Action “Fraudulent Concealment,” “estopps the Diocese from asserting any statute of limitation defense was waived ”

In order to succeed on a claim of fraudulent concealment, the Appellant 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 Court addressed this issue stating that “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 does not meet the requirement of a fraudulent concealment in defeating the Applicable Statute of Limitation ” (Order Pg 14-15)

In order to be successful in avoiding the application of the statute of limitations on this

theory that the Respondents are or had engaged in acts constituting “fraudulent concealment,” the Appellants would be 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)

The Appellants contend the Court erred in not sufficiently addressing the claim of collusion they raise in their complaint. This is not accurate.

Judge Harrington stated on Page 12 of her Order that the Appellants were collaterally estopped from raising this issue of Notice and other attacks of the Class Action Agreement in stating “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” (Order P 12)

Further, in addressing the dismissal of the unfair trade practices, the Appellants third Cause of Action, the Court ruled on the issue of collusion “The remainder of the conduct alleged in the Plaintiff’s complaint are allegations of collusion in the Dorchester Class Action. These allegations have nothing to do with the Plaintiff’s actual Causes of Action. As noted previously, the gravamen of the Plaintiff’s claims are rooted in the accusation of being sexually abused” (Order Page 16)

In support of this allegation they contend the Respondents engaged in collusive activity (Paragraph 65-104, Second Amended Complaint) The details of their allegations include such frivolous statements as judge shopping, withholding information from a tribunal, fraudulent attorney billing and other issues related to the claims by the Appellants Assuming these allegations have any basis, the lower Court dismissed those claims because the Appellants failed to satisfy the basic elements under 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)

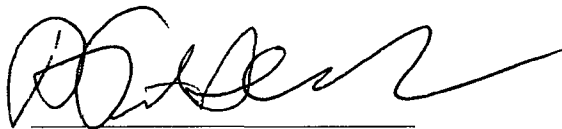
In Foggie the Appellant, CSX, removed and refused to re-install a railroad crossing on the Respondent's property The Respondent sued CSX for unfair and deceptive trade practices The trial court submitted the UTPA claim to the jury and the Supreme Court found there was no evidence of unfair or deceptive 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

Conclusion

The lower court properly ruled that the Appellants' complaints are to be dismissed. The Doctrine of res judicata and collateral estoppel bars any relief sought by the Appellants. Their claims were litigated as a result of the Court order in the Class Action in Dorchester County. Further, the Appellants' claims are time barred by failing to file a Complaint within the statutory requirements. The Appellants are not forgiven for this delay by asserting their claims are protected by claims of collusion and other conduct of the Respondents.

The Order of Judge Harrington should be affirmed, dismissing the Appellants' complaints.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'A. Peter Shahid, Jr.', written over a horizontal line.

A. Peter Shahid, Jr.
Shahid Law Office, LLC
89 Broad Street
Charleston, SC 29401
843-853-4500
Attorney for the Respondents



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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November 7, 2011

Gregg Meyers, Esquire
Jeff Anerson & Assoc , P A
1 Poston Road, Ste 110
Charleston, SC 29407

Re Doe, J & J 1,2,3 v Bp of Charleston

Dear Counsel

The following Order has been endorsed on your Motion to Order the Transcript Out of Time in the above entitled case on appeal

"Granted

John Cannon Few C J
For the Court

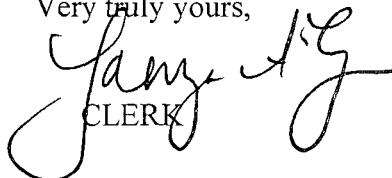
By s/ Tanya A Gee
Clerk

November 07, 2011 "

We have received a copy of your request for the transcript in the above matter. However, this request did not include an agreement regarding payment for the transcript and you must notify the Office of Court Administration as required in Rule 207 of the South Carolina Appellate Court Rules. Please provide proof that the payment arrangements have been made and that you served this request on the Office of Court Administration within ten (10) days of the date of this letter.

Please notify the court when the transcripts have been received. Copies of all correspondence regarding the transcript must be provided to the Court and all parties.

Very truly yours,


CLERK

TAG/laf
cc Peter Shahid, Esquire

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694
(Consolidating cases 09-CP-10-6694, -8054, -8055, and -8056)

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Motion to Order Transcript Out of Time

Appellants move the Court pursuant to SCACR 240 to permit the transcript of the
lower court motion argument to be ordered out of time

Ground for the motion is that on September 5, 2011, counsel for appellants Noticed
the Appeal in his action In two letters of the same date, attached to this motion as Exhibit
A, Appellants' counsel expressed (to the Court and to Mr Shahid) that in his view no
transcript was needed for the appeal As it happened, both appellants and respondents
submitted memoranda to the trial court, and the argument below drew on those
memoranda

The September 5, 2011 transmittal letters were each sent to counsel for

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SC Court of Appeals

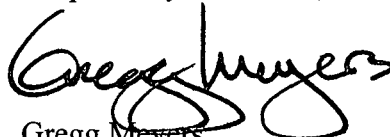
Respondents No response was received expressing any difference of opinion as to the transcript, so there was no indication to Appellants' counsel that Respondent desired a transcript

SCACR 207(a)(1) calls for the transcript to be ordered within ten days of the notice Having tried to make plain Appellants' view that no transcript was needed, and having heard no contrary view from counsel for Respondents about the need for a transcript, no transcript was ordered

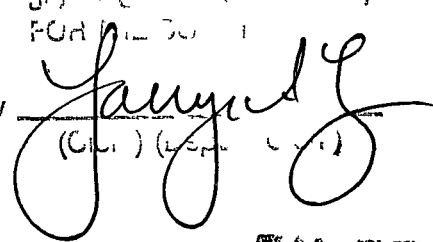
On October 18, in response to another inquiry to Respondent's counsel, which was in turn prompted by the Clerk of Court's inquiry about the transcript status, Respondent's counsel for the first time expressed interest in having a transcript Consequently, a transcript was ordered the same day (Exhibit B), and this motion has been submitted promptly to address what would otherwise have been included within the routine parameters of SCACR 207

We request the Court permit Respondent's late identification of preference for a transcript, and to allow for late filing of the transcript request, Exhibit B to this Motion We believe the omission by Respondents was inadvertent

Respectfully submitted,



Gregg Meyers
Counsel for Appellants

GRANTED
JUL 10 2011
FOR THE COURT
By 
(Clerk) (Court Clerk)

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SC Court of Appeals



JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

September 5, 2011

Peter Shahid
89 Broad Street
Charleston SC 29401

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)

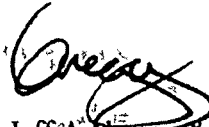
Dear Peter

Enclosed for filing is a notice of appeal and related documents in the cases captioned
above

I do not believe a transcript of the proceedings below are necessary to the appeal, so have
not ordered a transcript from the court reporter

Best personal regards

Sincerely



Jeff Anderson & Associates, P A
Gregg Meyers

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

September 5, 2011

Hon. Tanya Gee
Clerk of Court
Court of Appeals
PO Box 11629
Columbia, SC 29211

Re Appeal of order in Doe v Diocese of Charleston et al,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon. Kristi
L Harrington)

Dear Ms. Gee,

Enclosed for filing is a notice of appeal in the case captioned above

Also enclosed are the following

- 1 Proof of service on counsel for the respondent of the notice of appeal,
- 2 A copy of the orders from which appeal is taken, and
- 3 A filing fee of \$100, and
- 4 A copy of the letter to the clerk of the lower court filing the notice of appeal

I do not believe a transcript of the proceedings below are necessary to the appeal, so have not ordered a transcript from the court reporter

Please file this notice with the Court. Thank you very much

Sincerely



Jeff Anderson & Associates, P.A.
Gregg Meyers

c Mr. Shahid, Attorney for Respondents

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SC Court of Appeals

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

Reply to Charleston Office

October 18, 2011

Heather Gayle Burns
161 Barnhill Drive
Ladson, SC 29456-4114

Re March 4, 2011 hearing transcript in Appeal 2011 199886,
Consolidated Case No 09-CP-10-6694 (Consolidating under that case number
Cases 09-CP-10-6694, -8054, -8055, and -8056), John Doe, Jane Doe 1, Jane Doe
2, and Jane Doe 3 v The Bishop of Charleston, A Corporation Sole, and
the Bishop of the Diocese of Charleston, in his official capacity

Dear Heather

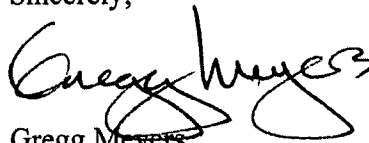
I was told today for the first time that Peter Shahid, on behalf of the Bishop, would like to have a copy of the transcript of hearing we had before Judge Harrington on March 4, 2011, in Charleston County in these four consolidated cases

I had suggested we did not need the transcript for the appeal and until today thought Mr Shahid agreed with that assessment. Since he does not, I am happy to order the transcript from you.

It is not a terribly long transcript. I am hoping you can place it in line for it to be produced.

Thank you very much

Sincerely,



Gregg Meyers

c Mr Shahid

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694
(Consolidating cases 09-CP-10-6694, -8054, -8055, and -8056)

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Proof of Service

I hereby affirm that on October 19, 2011, I served upon counsel for the
defendant/respondent a copy of the

Motion to Order Transcript Out of Time

by causing a copy of the document to be placed in the United States mails, first-class
postage pre-paid wrapper, properly addressed to

Peter Shahid
89 Broad Street
Charleston SC 29401

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OCT 24 2011
SC Court of Appeals



Gregg Meyers
Jeff Anderson & Associates, P A
1 Poston Road, Suite 110
Charleston, South Carolina 29407
843/556-1025

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

October 19, 2011

V Claire Allen
Deputy Clerk of Court
Court of Appeals
PO Box 11629
Columbia, SC 29211

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)
Tracking number 2011199886

Dear Ms Allen

You wrote to me on October 13 asking about the transcript in this action I then wrote to
Mr Shahid asking if his view, and he now tells me he prefers a transcript

Enclosed please find an original and seven copies of a Motion to Order Transcript Out of
Time, as you had directed The original and six are for the Court The seventh I would
appreciate your returning to me in the envelope enclosed for that purpose

Also enclosed is a Proof of Service for the Motion, and a \$25 filing fee

Please file the motion with the Court and return to me one file-stamped copy Thank you

Sincerely



Gregg Meyers
Jeff Anderson & Associates, P A

Enclosures

Motion to Order Transcript Out of Time
Seven copies of Motion
Proof of Service
\$25 filing fee

c Mr Shahid, Attorney for Respondent

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OCT 24 2011

SC Court of Appeals

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

October 17, 2011

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OCT 19 2011

Re Appeal of order in Doe v Diocese of Charleston et al
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)
Tracking number 2011199886

Dear Ms Allen

You wrote to me on October 13 asking about the transcript in this action It has not been ordered because I am unaware that any party feels it needs to be ordered

However, in order to fully accommodate the Court's need for clarification, I have asked Mr Shahid to give me his impression of that question so we can make the matter explicit with the Court of Appeals

I will either file a motion by your deadline or confirm in writing by the same deadline that neither party feels the transcript is needed

Sincerely



Gregg Meyers
Jeff Anderson & Associates, P A

c Mr Shahid, Attorney for Respondent



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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October 13, 2011

Gregg Meyers, Esquire
Jeff Anerson & Assoc , P A
1 Poston Road, Ste 110
Charleston, SC 29407

Re Doe, J & J 1,2,3 v Bp of Charleston
2011199886

Dear Counsel

We have received your Appellant's Initial Brief and Designation of Matter in the above case. However, according to Rule 207(a)(1) of the South Carolina Appellate Court Rules, the appellant must order a transcript of the entire proceedings below unless the parties otherwise agree in writing.

You must file a Motion to Order the Transcript Out of Time within ten (10) days of this letter, or your appeal may be dismissed.

Furthermore, all lower court case numbers should appear on the cover of the briefs and record. Any future filings from any party must include all lower court case numbers.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf
cc Peter Shahid, Esquire

The State of South Carolina
In The Court of Appeals

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OCT 12 2011

SC Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Appellants' Designation of Matter
to be Included in the Record

Appellants designate the following matter to be included in the Record on Appeal

- 1 Amended Complaint in 09-CP-10-6694, filed December 30, 2009, with attachments
- 2 Amended Complaint in 09-CP-10-8054, filed December 30, 2009, with attachments
- 3 Amended Complaint in 09-CP-10-8055, filed December 30, 2009, with attachment
- 4 Amended Complaint in 09-CP-10-8056, filed December 30, 2009, with attachment
- 5 Amended Motion to Dismiss in 09-CP-10-6694, as representative of the motions applicable in each case
- 6 Opposition to Motions with Attachments A – G, filed January, 2011, as representative of the opposition filed in each case Attachments include the class action orders of

July 30, 2007 and August 31, 2007

7 Class Action order of Jan 19, 2007 order at p 3 n 2,

8 Transcript of 8-9-07 hearing

9 Transcript of 7-13-07 hearing

10 Class action order of July 13, 2007

11 Order of June 15, 2011 dismissing actions

12 Order denying Rule 59 motions

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

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The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

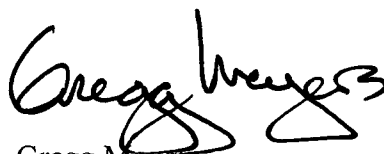
v

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

Respondents

Certificate

Counsel for the Appellants certifies pursuant to SCACR 209(c) that the Designation
contains no matter which is irrelevant to the appeal



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OCT 12 2011
SC Court of Appeals

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

October 6, 2011

Hon Tanya Gee
Clerk of Court
Court of Appeals
PO Box 11629
Columbia, SC 29211

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OCT 12 2011

SC Court of Appeals

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)
Tracking number 2011199886

Dear Ms Gee

In my mailing yesterday I believe I omitted the Designation of Matter, the Certificate for the Designation, and a Proof of Service for the Designation for this appeal Each is enclosed, each with an extra copy and a return envelope for returning a file-stamped copy to my office

Thank you

Sincerely



Gregg Meyers
Jeff Anderson & Associates, P A

Enclosure

Designation of Matter
Proof of Service for Designation and Certificate
Certificate for Designation

c Mr Shahid, Attorney for Respondent, w encl

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694

RECEIVED

OCT 12 2011

SC Court of Appeals

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Proof of Service

I certify pursuant to SCACR 208(a)(1) that I have served one copy of the Initial Brief by
placing a copy of the document in the United States mail, first-class postage pre-paid,
addressed to

Peter Shahid
89 Broad Street
Charleston SC 29401, and to

James Geoly
Burke Warren & Mackay
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Chicago IL 60611-3793

Done October 5, 2011



Gregg Meyers
1 Poston Road Suite 110
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JEFF ANDERSON & ASSOCIATES, PA
Reaching Across Time for Justice

October 5, 2011

Hon Tanya Gee
Clerk of Court
Court of Appeals
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OCT 12 2011

SC Court of Appeals

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
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Tracking number 2011199886

Dear Ms Gee

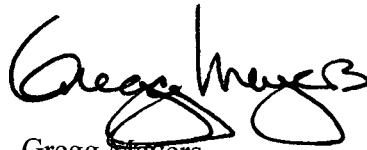
Enclosed please find

an original of an Initial Brief of Appellants
a copy of that Initial Brief,
an original Proof of Service for the Initial Brief, and
a postage paid return envelope

Please return to me a file-stamped copy of the Initial Brief in the enclosed envelope

Thank you very much

Sincerely



Gregg Meyers
Jeff Anderson & Associates, P A

c Mr Shahid, Attorney for Respondent

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Appeal 2011 199886

Consolidated Case No 09-CP-10-6694

RECEIVED
OCT 12 2011
SC Court of Appeals

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Initial Brief of Appellants

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Statement of Issues on Appeal

- 1 Did the trial court err in applying to Appellants a sub-class definition appellants did not satisfy?
- 2 Did the trial court err in ignoring class action orders, which exempted Appellants from preclusive effects of a class action?
- 3 Did the trial court err in applying the statute of limitations when Respondents had waived the defense, and when the complaint alleged fraudulent concealment by Respondents?
- 4 Did the trial court err in disregarding that the class action was collusive?

Standard of Review

An abuse of discretion occurs if the court's ruling is controlled by an error of law or if the ruling is based upon findings of fact that are without evidentiary support *Sharps v Sharps* _342 S C 71, 79, 535 S E 2d 913, 917 (2000)

“On a motion asserting the defense numbered (6) to dismiss for failure of the pleadings to state facts sufficient to constitute a cause of action, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56 ” SCRCP 12(b)

Appellate courts review a grant of summary judgment under the same standard applied by the circuit court no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, with the record, and all inferences which can be reasonably drawn from the record, are viewed in the light most favorable to the nonmoving party *Lanham v Blue Cross & Blue Shield of S C Inc* , 563 S E 2d 331, 333 (S C 2002)

Statement of the Case

This appeal is from an order terminating four consolidated cases (June 15, 2011 order at p 1 n 1), by granting a motion to dismiss that had been converted to a motion for summary judgment when the trial court utilized matter outside the pleadings (e g , July 15, 2011 order at 9) The appeal raises novel issues about (a) applying the statute of limitations when the statute of limitations had been waived, and (b) the novel issue of what preclusive effect does a collusive class action have

The 2011 order appealed from is from an action filed in Charleston County The court that issued the order appealed from is referred to in this appeal as the trial court The trial court was presented with 2007 orders arising from a collusive class action issued in Dorchester County The class action orders are referred to as coming from the class action court

Viewed in the light most favorable to Appellants, the record reflects that in 2006, a mediation in three pending Charleston cases, one of which alleged a class action, produced a class settlement with the Respondent Diocese of Charleston for clergy sexual abuse claims Amended Complaint ¶¶ 50(b), 50(g), and 50(h), Motion Opposition at Att G (the then-pending Charleston case numbers are listed on page 1 of the attached Exhibit) As extensively detailed in the Amended Complaint and materials submitted to the trial court, the class settlement was collusive Amended Complaint ¶ 50

The broad contours of the collusive 2006 class settlement were outlined in a handwritten memorandum signed by counsel for the Diocese as an offer to the class representative, which was accepted Amended Complaint ¶ 50(h), Motion Opposition Attachment G (2006 mediated class settlement)

The collusive class settlement defined two groups within what was called the “primary class” (July 30, 2007 order at pp 1, 2, and 12) (1) persons abused by employees or agents of the Diocese (the “victim class”), and (2) parents or spouses of the persons abused (the “consortium” class) July 30, 2007 order, Motion Opposition at Att G At the time of the 2006 settlement there was pending no class action complaint alleging a “consortium class ” As part of the settlement the Diocese waived charitable immunity and statute of limitations defenses for the class E g , July 30, 2007 class action order at pp 4, 7 n 2, and 14, July 13, 2007 hearing transcript at pp 3, 12 and 14 (of 33) The July 13, 2007 hearing transcript is attached to the Second Amended Complaint, and incorporated into the allegations

SCRCP 23(c) states, “A class action shall not dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs ” Despite that rule, the collusive class settlement was not submitted to the Charleston circuit court for approval under SCRCP 23(c), even though the only cases then pending were in Charleston County Second Amended Complaint ¶ 50(i) It was agreed among colluding counsel to not inform the Charleston County Court that a class settlement had been reached Second Amended Complaint ¶¶ 50(g) and 50(l) Instead, the class settlement was submitted for approval in Dorchester County, where no case was pending when the class settlement was reached Motion Opposition at Attachment D, Second Amended Complaint at ¶ 50(i)

To avoid any Charleston County judge overseeing the class settlement, Second Amended Complaint at ¶¶ 50(h) and 50(l), the lawyers all agreed to start new cases in Dorchester County, and began doing so in August, 2006, two months after the settlement First filed in Dorchester

County was a “consortium class” complaint, 2006-CP-18-1310. The same day a “victim class” complaint was filed, 2006-CP-18-1311. Each case fell within the terms of the collusive class settlement, so they were cases already settled before they were filed. E.g., Second Amended Complaint ¶ 50(j), Motion Opposition at Att. B (order approving settlement).

Class counsel also duplicated in Dorchester County the Charleston class action filing. The word “Charleston” in 2005-CP-10-4093 was changed to “Dorchester” and the identical class action complaint was re-filed as 2006-CP-18-1636. Second Amended Complaint ¶ 50(j). 2005-CP-10-4093 was still pending in Charleston County when 2006-CP-18-1636 was filed. John Doe 53 had pending in two counties, at the same time, identical class actions in which he claimed to be class representative, as did the plaintiff in 2006-CP-18-1311 (John Doe 67), the “victim class” filing in Dorchester County. This was true even though each case was already part of the collusive class settlement. Second Amended Complaint ¶ 50(j).

Faced with an identical class complaint from two different counties on behalf of John Doe 53, and the John Doe 67 filings, the Diocese filed no motions to dismiss because of a prior pending action under SCRCP 12(b)(8). Instead, as part of the collusion in the class action, the Diocese accepted service. Second Amended Complaint at ¶ 50(j).

The reason colluding counsel sought to avoid Charleston County and seek Dorchester County was to judge-shop so that class approval and oversight would be by a Circuit Judge with long-standing ties to class counsel. Second Amended Complaint at ¶ 50(i).

By consent of colluding counsel, the Dorchester County judge was asked to, and the same day granted, complex case designation for the Dorchester County cases. See, Second Amended Complaint ¶ 50(k1) and ¶ 50(k2), Motions Opposition at Attachment B (order approving class

settlement) At the time, the South Carolina Supreme Court's standing order of July 26, 2006, governing complex case designation, required counsel to certify in their motion "that we have made a good faith effort to settle this case and thus far have been unable to do so " July 26, 2006 Order at p 2 ¶ 2 Colluding counsel could not have truthfully requested complex case designation for these already-settled cases A motion was immediately made in Dorchester County to certify the class and approve the settlement Second Amended Complaint ¶ 50(q), Motion Opposition at Att D (2006 Motion to Certify Classes and Approve Settlement) No such motion had at any time been made in the Charleston cases That motion sought approval for nationwide notice for the class Second Amended Complaint ¶ 50(q), Motion Opposition Att D at p 3

By consent of colluding counsel, a letter was sent to the administrative judge of Charleston County asking to dismiss the three pending cases without prejudice No mention was made that each case had been resolved by a class settlement Second Amended Complaint ¶ 50(h) The 2006 handwritten mediation agreement, was typed into a formal settlement agreement, and in January 2007 an amended motion in Dorchester County asked the class action court to approve the class and the class settlement The amended motion dropped any request for nationwide notice to the class Second Amended Complaint ¶ 50(q), Motion Opposition Att E at p 3

The Diocese "took no legal or factual position on the motion for class certification" (Class Action order of Jan 19, 2007 order at p 3 n 2, Second Amended Complaint ¶ 50(m) Settlement without class approval was \$460,000 (Motion Opposition Att G (2006 mediated agreement) Settlement with class approval could be as much as \$12 million (Id at ¶ 6, Second

Amended Complaint ¶ 50(m) The \$11.54 million potential difference did not elicit a position from the Diocese

The Diocese also agreed to remain silent about (a) class counsel negotiating a fixed fee for himself while negotiating a variable recovery for the class, Second Amended Complaint ¶¶ 50(c) and 50(d), Motion Opposition Att. G ¶ 4), (b) class counsel being paid prior to the class claims period even having begun, Second Amended Complaint ¶¶ 50(e) and 50(o), (c) class counsel's false, duplicative and fraudulent time and records in class counsel's application for costs and fees, Second Amended Complaint ¶ 50(n), (d) class counsel's false expense records Second Amended Complaint ¶ 50(a) and July 30, 2007 order at p. 15), (e) no post-award fairness hearing or review of class counsel's ultimate fee of 51% of all sums disbursed, Second Amended Complaint at ¶¶ 50(u), 50(v)), and (e) no final accounting of the class distribution, Second Amended Complaint ¶¶ 50(w) and 50(x)

In exchange for these financial concessions to class counsel the Diocese got (a) only in-state notice, not nationwide notice, Second Amended Complaint ¶ 50(q), which necessarily reduced the number of class members making claims, (b) variable, and extraordinarily modest, limits to class member recovery to assure it stayed within the amounts the Diocese was prepared to pay, Second Amended Complaint ¶¶ 50(r) and 50(s), (c) agreement for the Diocese to examine its own files to identify sexual abuse victims, Second Amended Complaint ¶ 50(t), and (d) the argument on display on this appeal (contrary to the "stipulated" relief for absent class members) that every other claim would be barred despite notice having been only in-state

By his own account, class counsel had life-long ties to the Diocese and held positions within the Diocese. Second Amended Complaint ¶ 50(b). During the class action, class counsel

also had pending a sexual abuse case against a Diocese other than his own. Class counsel was prepared to accept for those of his clients claiming against his own Diocese, “a small fraction of what class counsel would agree to accept” when litigating the same issues against a Diocese other than his own. Second Amended Complaint ¶ 50(f)

The order of July 30, 2007, approving the class and the settlement provides, on page 4 a “stipulation as a condition of approval ”

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*

Emphases added. This stipulation reflected the public commitment by both then-Bishop Baker, who articulated in, e.g., a January 2007 press release (Motion Opposition Att F), to provide relief for all victims, and comments on the record by counsel for the Diocese to provide for relief of absent class members even outside the class structure. July 30, 2007 order at p. 4. As noted, the class action settlement for the primary class was approved conditioned on that stipulation for absent class members. July 30, 2007 order at p. 4.

The stipulation by the Diocese and class counsel would turn out to be disingenuous, as reflected by the motion to dismiss in these consolidated actions.

In a later order of August 31, 2007, the class action court articulated a sub-class to govern approximately 20 sexual abuse victims the Diocese already knew about from its own files but could not locate. The sub-class was referred to as the “Actual Notice Class Members.” The definition of that sub-class, at page 2 of the order is (italics in original)

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 point 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 claimants 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

No other sub-class was created for any other persons Appellants were found to have fit the groups in the primary class June 15, 2011 order at pp 4 and 6 Appellants had each alleged they did not receive notice E g , Second Amended Complaint in -6694 at ¶ 11 Despite the class action order stipulation that persons who "did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement," the Appellants were denied relief by the Diocese and, after these complaints were filed, the trial court dismissed the complaints, determining that the claims were barred by *res judicata*, collateral estoppel, and the statute of limitations June 15, 2011 Order at 1 The trial court interpreted the August 31, 2007 as restricting the July 30, 2007 order, and applied to Appellants the limitations imposed on only the subclass by the August 31, 2007 class action order The trial court construed the plain language of the class action orders to mean the exact opposite of what the two 2007 orders

appear to state, and to do so relied on a colloquy not embodied in any written order in the class action to do so June 15, 2011 order at 10 The trial court also necessarily concluded that the collusion in the class action did not matter in any respect

After a motion under SCRCP 59(e) was denied, this appeal followed

Argument

- 1 **The trial court erred in applying to Appellants a sub-class definition Appellants did not satisfy**
- 2 **The trial court erred in ignoring written orders which exempted Appellants from preclusive effects of a class action**

A **The trial court erred in applying *res judicata*** The trial court recognized that Appellants were within the definition of the groups in the primary class approved in the July 30, 2007 class action order, rather than the sub-class established in the August 31, 2007 class action order E g , June 15, 2011 order at 6 (finding Appellants in the primary class) Despite that recognition, the trial court applied to Appellants' claims the limitations imposed on the sub-class, rather than the expansive provisions that property protected Appellants' claims

The trial court rested its conclusion on a colloquy from an *ex parte* hearing¹ held August 9, 2007 in the class action In that colloquy, one of the lawyers for the Diocese inquired of the class action court if the court intended the explicit provisions of the July 30, 2007 order to have “opened up future litigation to those who were *not on the list* of those entitled to notice of the

¹ As indicated on page 29 of that transcript, no notice of the hearing was given to other counsel who had appeared in the class action Even after counsel for other parties had appeared in the March 2007 fairness hearing, only the colluding parties were given notice of the hearings of July 13, 2007 and August 9, 2007

settlement ” Emphasis added Either this is an inquiry by the Diocese about the “list” of those in the sub-class or the inquiry reflects that the Diocese interpreted the July 30, 2007 order consistently with the representations made publicly by Bishop Baker in his January, 2007 press release, consistently with the representations made on the record by counsel for the Diocese in the July 13, 2007 hearing, consistently with the protections class counsel says in the July 13, 2007 he believed he had achieved, and consistently with the claims by Appellants — that the intention of the Diocese was to reach every victim, even those who were not reached within the class action structure because they received no notice The Diocese now contends that it recognized that the July 30, 2007 class action order contained an expansive commitment to all victims which the class action court wrote into the July 30, 2007 order as a “condition of the approval” for the class settlement, July 30, 2007 order at p 4, and sought to limit that expansive commitment However, none of the orders issued by the class action court do so

In that July 13, 2007 *ex parte* hearing, before the order that approved the class action settlement, the class action court discussed with counsel establishing the actual notice class On page 12 (of 33, using the numbers in the footer), counsel for the Diocese related to the Court, to get class approval

Judge, I view that responsibility [to provide relief] as ongoing, and so that we got to find the other four [referring to the people the Diocese already knew about from their own files, the “Actual Notice Class”] ***and we’ve got to find anybody else who has kind of, lack of a better word, comes out of the woodwork***

Comments by Mr Shahid, emphasis added “And we’ve got to find anybody else” is not limited to only the people the Diocese already knew about It is **in addition to** “the other four” from among the people “on the list” in what would become the “actual notice” sub-class It cannot have been a reference to any list of the primary class members, because as of July 13, 2007 there

was no order approving the settlement and there had been no notice period started in which primary class members could make claims. No “list” of primary class members was yet possible as of July 13, 2007. The “list” could refer only to the Actual Notice sub-class, and the “and anybody else” necessarily refers to others outside of the class action structure.

At p. 3 (of 33) of the same July 13, 2007 hearing, Counsel for the Diocese also contemplates addressing claims in the situation where *“someone pops back up who should have gotten notice who didn’t get notice,”* that “if that person shows up then we would have to deal with it.” This is reinforced at page 14 (of 33) of the July 13, 2007 *ex parte* hearing, when class counsel, without objection from counsel for the Diocese, relates that “if anybody has been missed the diocese waives all the same defenses that they have given up in this class settlement [charitable immunity and statute of limitation], 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.” July 13, 2007 hearing at pages 3 and 14 (of 33).

Counsel for the Diocese consented, by making no objection, to that characterization by class counsel of either its waiver of defenses or the Diocese providing relief for persons who received no notice. The open-ended commitment by the Diocese (limited, of course, only by the persons victimized) was embodied in the July 30, 2007 order as a condition for approving the class settlement. This made sense, since the class action was collusive, and (among other things) the Diocese was giving notice only within South Carolina for a class defined without geographic limit. In other words, the class action court had to have known with certainty that many persons within the class definition were not going to receive notice, and the open-ended offer by the Diocese solved what would otherwise have been a significant Due Process issue with the

proposed class settlement

When the July 30, 2007 order included the open-ended commitment by the Diocese, at the August 9, 2007 *ex parte* hearing, within the ten days permitted to do so by SCRCP 59(e), counsel for the Diocese attempted an oral motion to modify that open-ended commitment by asking if the class action court intended that result for persons other than the actual notice sub-class “You weren’t opening up future litigation to those who were not on the list of those entitled to notice of the settlement,” to which the class action court responds, “Not at all ”

August 9, 2007 hearing at 58

The oral response by the class action court may have been what the Diocese wanted to hear, and what is argued by the Diocese now, but as the written orders show, it actually reflected the class action court directing its attention to only the sub-class. When the August 31, 2007 class action order was filed, the order contained restrictions only on claims of the sub-class, and placed no restrictions on the open-ended claims authorized for the primary class. Further, the August 31, 2007 order defined the sub-class in a way that excluded Appellants, and all other primary class members, so does not apply to them. In short, the colloquy of July 13, 2007 did not accomplish what the Diocese now claims, and the trial court erred in relying on colloquy not embodied in any written order.

No written order modified the open parameters applicable to the primary class, or the open-ended commitment by the Diocese to the primary class that the July 30, 2007 order states was a condition for the class settlement approval, and which was stated publicly by the Bishop was the intention of the Diocese.

It does not matter whether the class action court realized while deliberating after the

August 2007 *ex parte* hearing that the question by counsel for the Diocese was an effort to retreat from its explicit, on-the-record commitments in the July 2007 *ex parte* hearing, or whether the class action court understood counsel to be making a point about the sub-class and responded by imposing in the August 31, 2007 order a post-notice time limitation of 120 days on the claims of the sub-class. The August 31, 2007 order states, at p. 2, “The Defendants have asked the Court to clarify how the settlement process will treat the Actual Notice Class members.” What matters is what the class action court actually ordered. The order filed August 31, 2007 contained limits only to the claims process for the sub-class once those members received notice. The August 31, 2007 order contains no limitations for the primary class. The August 31, 2007 order explicitly stated that it superseded the July 30, 2007 order only “where in conflict” with the July 30, 2007 order. In other words, its terms do not affect the rulings as to the primary class because it relates to only members of the sub-class.

The Diocese did nothing to appeal or modify the August 31, 2007 order after its effort to modify the July 30, 2007 order limited only claims by the sub-class. If the Diocese intended to obtain limits on claims of primary class members who got no notice “for whatever reason,” it would have undertaken such steps. No doubt the Diocese failed to do so because it counted on its collusion of the class action as sufficient protection. The trial court erred in rewarding the Diocese for colluding in the class action to try to minimize and defeat as many claims as possible through its coordination with corruptible class counsel. The collusion alleged in the complaint is all based on the documented record, and all of it on this appeal must be accepted as true.

Whatever the class action court’s comment meant in its *ex parte* discussion, when the written order is filed it is that written order that controls. A trial court colloquy, even one which

contains an oral ruling, is not the judgment of the court until it is written and entered on the record SCRCP 58, *Ford v State Ethics Comm'n* 545 S E 2d 821, 823 (S C 2001) (“Until written and entered, the trial judge retains discretion to change his mind and amend his oral ruling accordingly The written order is the trial judge's final order and as such constitutes the final judgment of the court ” Citation omitted), *Owens v Magill*, 419 S E 2d 786 (S C 1992) (written rulings can conflict with oral ruling), *Case v Case*, 134 S E 2d 394, 396 (S C 1964) (even an oral ruling in favor of one party is neither final nor binding until reduced to writing, signed, and recorded) *Accord, Badeaux v Davis*, 522 S E 2d 835, 839 (S C App 1999) (“a judge is not bound by a prior oral ruling and may issue a written order which is in conflict with the oral ruling ”), *Doe v Doe* 478 S E 2d 854, 859 (S C App 1996) (“Judgments are not final until written and entered ”), *First Union National Bank v Hitman Inc* , 411 S E 2d 681, 682 (S C App 1991), affirmed, 418 S E 2d 545 (S C 1992), *Bayne v Bass*, 394 S E 2d 726 (S C App 1990) (divorce decree not final until written and recorded)

In short, the trial court erred in relying on class action colloquy not embodied in any class action order The class action court’s August 31, 2007 order reflects it understood the Diocese to be asking for limits on the sub-class claims, as that is what the August 31, 2007 order addressed

The trial court’s error is more plainly displayed in its extended rationale on pages 10 - 11 of the June 15, 2011 order, where the trial court explains that the Appellants’ position “would render the creation and definition of the Actual Notice sub-group meaningless” (page 10) and “there would be no need for the [class action] Court to carve out this small group of potential claimants [in the Actual Notice sub-class] to protect them from the application of the Doctrine of *res judicata* ” (page 11) Neither is the case, and neither conclusion is warranted by review of

this record. The order creating the Actual Notice sub-class doesn't "protect" that class from *res judicata*, it **applies** those limits to that sub-class. In other words, the class action court accommodated the Diocese to create some time frame for *ending* Actual Notice class member claims, not to extend them. The class action court could easily have extended the same conception to the primary class, but chose not to. The class action court could easily have declined to create a sub-class, could easily have defined the sub-class differently, or could easily have applied its August 31, 2007 order to both the sub-class and the primary class. It did none of those, and the trial court erred in applying the 2007 orders as if the class action court had done any of them.

Nothing in the 2007 orders restricts the open-ended commitment the Diocese sought, publicly and on the record, as a condition of getting approval for the class action settlement with the known defective notice, and there is nothing inequitable in recognizing the Diocese has received exactly that to which it had stipulated, what class counsel claims to have obtained for class members, and what the class action court used as a condition for approving the class settlement — that claims for class members who did not get notice "for whatever reason" are not barred by *res judicata* and may be presented without restriction of either the defense of the statute of limitations or the defense of charitable immunity — exactly as the Diocese stipulated.

Finally, as argued below, the trial court erred in excluding from any consideration the extensive facts alleged as to collusion in the class action.

B The Court erred in applying collateral estoppel Because the trial court erred in construing the class action orders, the trial court erred in applying collateral estoppel. The

estoppel binds the Diocese, not Appellants

The trial court order recognized, June 15, 2011 order at p 5, that there are only two pertinent class action orders the order from July 30, 2007 and the order from August 31, 2007. As set forth above, those orders explicitly relieve the Appellants of any *res judicata* effect of the class action. As argued below, neither can collateral estoppel properly apply to Appellants, particularly when collusion in the class action existed.

The trial court elected to construe the “context” of the colloquy about the sub-class, June 15, 2011 order at 9, in a manner inconsistent with those orders, and inconsistent with the record, and chose to interpret the facts underlying that discussion in the light most favorable to the Diocese rather than in the light most favorable to Appellants. The trial court erroneously interpreted those orders, June 15, 2011 order at 10, as meaning “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.” In fact, the August 31, 2007 order imposes a 120 day time limits on the sub-class once a member of the sub-class has received notice, whereas the July 30, 2007 order relieves a class member (and all sub-class members until the August 31, 2007 order was filed) from *res judicata* and collateral estoppel only if that person has not received notice. In either case, once a person has notice, then action must be taken. For the sub-class, action must be taken within 120 days. For a primary class member, no time limit is given. Presumably a three year limit for tort claims, running first from the time of notice, would apply, and should the Diocese reject the claim, a different time limit would also apply from the time of any wrongful rejection.

The commitment of the Diocese made both publicly by the Bishop, and on the record to the Court by Diocese counsel, expanded the traditional finality which a class action ordinarily would enjoy. If traditional limitations were contemplated, none of the July 13, 2007 discussion would have applied. The Diocese was not obligated to make the stipulation to go outside the usual parameters of the class structure to provide relief. The Bishop was not obligated to make his public commitments to provide relief to every victim of abuse. It was described by counsel for the Diocese as an “ongoing” responsibility, not a responsibility confined to the class action. July 13, 2007 hearing at p. 12 (of 33). The class action court explicitly cited the stipulation by the Diocese to exceed conventional class action finality as a condition of approving the class action settlement. And note: had the Diocese not been disingenuous in the Bishop’s comments or in its stipulation, it would have obtained a type of finality for scope of relief, if not finality of claims. First, its commitments are limited to only persons sexually abused. Second, its collusive class action might not have been discovered in 2008, and had the collusion remained unknown, it might have limited the recovery for a class member who got no notice “for whatever reason,” to the collusive relief provided the class. That result would have ended all litigation and led to a series of informal resolutions that that eventually would reach every victim after finally getting notice.

In July, 2007, when it made its stipulation on the record, the class notice the Diocese was trying to get approved was a notice the Diocese (and class counsel, and the court) knew with certainty would be insufficient to reach all class members, and was less than the notice originally proposed by class counsel. As set forth in the Second Amended Complaint ¶ 50(q), and attachments to the July 30, 2007 order, (filed as Attachment B to the Motion Opposition, the

class definition approved by the court has no geographic limits for the class members. Pertinent to this case, the class of victims the Diocese was seeking to have approved was a class that met these criteria (See Motion Opposition Attachment B at page 20)

Born on or before August 30, 1980,
Was sexually abused as a minor,
By an agent or employee of the Diocese of Charleston, and
Had not previously had a similar claim fully heard by a court or settled

No geographic limitation applies to the class definition. If you were abused as a minor, you fit the class definition no matter where you live.

As alleged in paragraph 50(q) of the Second Amended Complaint, consistent with a class definition that applies nationwide, class counsel had originally proposed nationwide notice to the class through notice in *USAToday*. That proposal was made in an October, 2006 motion for class approval (Motion Opposition Attachment D at p. 3). In January, 2007, class counsel and the Diocese elected to modify that broad notice to propose notice only within the state, necessarily agreeing to a plan to vastly under-inform the class. Compare Motion Opposition Attachment E at p. 3 (2007 proposal for only in-state notice) with Motion Opposition Attachment D at page 5 (2006 proposal for in-state and national notice). In 2007, the parties in the class action colluded to remove *USAToday* as a source of notice to the class and give only notice within the state.

The Appellants seek to require the Diocese to comply with the July 31, 2007 order it sought and obtained. Given the assurance by the Diocese, publicly through a press release, and reiterated by its on-the-record comments to the Court, that it would provide relief to class members who got not notice — a deficiency which the Diocese, class counsel, and the class action court each knew with certainty would occur — it made sense for the class action court to approve the proposed settlement with the limited notice. Given the certainty that many would

get no notice, when the Diocese stipulated that it would provide relief outside the class action, it solved the Due Process problem otherwise presented by the limited notice that was definitely going to be insufficient to reach the class

In the June 15, 2011 order at p 10 the trial court reasoned that the class action order couldn't mean what it says about claims for persons who did not receive notice "for whatever reason" because the August 31, 2007 order provides that sub-class members who miss the 120 day window after notice, whenever that notice occurs, "shall be treated like any other class member who has failed to timely present a claim " June 15, 2011 order at 10 The trial court seems not to have realized that the limitation on primary class member claims — when primary claims are excluded — applies to primary class members who have received notice, not for those who have not received notice If a primary class member got notice and failed to present a timely claim it would be barred, just as if a sub-class member got notice and failed to timely present a claim it is barred As the 2007 orders stand, neither primary nor sub-class claims are barred if the claimant has received no notice, and both are barred if after notice no action is taken If the orders mean what they say, each of the primary class and the sub-class is treated in a comparable manner As read by the trial court, only the sub-class enjoys the benefit of later claims, hardly an equitable result when the Diocese stipulated to relief "if anybody has been missed " July 13, 2007 hearing at 14 (of 33)

What is at issue in this action is that portion of the July 30, 2007 order which applies to class members who have *not* received notice "for whatever reason," exactly as promised by the Diocese

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***

Emphases added As the Diocese now argues it, and as erroneously construed by the trial court, these were representations to the Court the Diocese apparently intended to be disingenuous only, for public relations purposes, not to be considered an actual commitment by the Diocese to provide relief to all abuse victims The Diocese apparently intended to say one thing, in court and in public, during the collusive class action while it planned to do another after the class action ended

However, when the class action court relied on the representations as a condition of approving the class settlement in the July 30, 2007 order with its open-ended relief provision, and then restricted only sub-class claims in the August 31, 2007 order, it was incumbent on the Diocese to either appeal or file a motion under SCRCP 59 when the August 31, 2007 order aligned the sub-class with the “no notice” provision applicable to the primary class Somehow the trial court finds a restriction where none exists, to limit the primary class whether notice was or was not received Having sought no relief from the open-ended July 30, 2007 order, the Diocese cannot now claim it is not bound by it The class action court explicitly restricted the *res judicata* effects of the class action from applying to those who “did not receive notice for whatever reason,” and recognized that the Diocese had “stipulated before me in open Court and on the record” it would provide relief to “any person who comes forward at a later date and can show that he or she should have received notice but did not ” July 30, 2007 order at 4 This provision explicitly authorized claims by absent members of the primary class who received no

notice, and the trial court erred in protecting the Diocese from its own stipulation. Particularly where the Diocese was attempting by collusion in the class action to say one thing in 2007 and do another in 2011.

While it is not necessary to reach this ground, the trial court has also erred in its order at pages 12 and 13 by construing collateral estoppel for Appellants as being on the same footing as Judge Nicholson's decision in 09-CP-10-7751, where the plaintiffs each participated in the class and signed releases. None of those things occurred as to Appellants, none is claimed, and the trial court erred as a matter of law in treating Appellants as if they had done either participated in the class action or signed releases. The same facts do not apply, and imposing those facts on Appellants is contrary to the record in this action. The Due Process considerations are considerably different, as discussed below.

3 The trial court erred in applying the statute of limitations when Respondents had waived the defense and when the complaint alleged fraudulent concealment by the Respondents

As explicitly stated in the July 13, 2007 hearing transcript at 14, and as alleged in the Second Amended Complaint at ¶ 9, the Respondents waived defenses of charitable immunity and statute of limitations for every person within the class and sub-class definitions. The class settlement agreement necessarily failed to assert the defenses, but facts exist, and were cited to the Court, to show that the Diocese overtly agreed to waive its defenses. The July 13, 2007 hearing transcript which reflected the waivers was attached to the Second Amended Complaint and incorporated into its provisions. Second Amended Complaint ¶¶ 9, 47 and 93 (incorporating the July 13, 2007 transcript).

These materials allege, and on this Record the allegations must be accepted as true,

waiver by the Diocese of the limitations defense “Agreements, in general, are interpreted according to the terms the parties have used, and the terms are to be taken and understood in their plain, ordinary, and popular sense” *Stanley v Atlantic Title Insurance Company*, 661 S E 2d 62, 67 (S C 2008) (finding letter waived statute of limitations defense) The trial court erred in applying the statute of limitations to Appellants’ claims when facts of that defense having been waived are alleged Accepting those facts in the light most favorable to Appellants cannot be the basis for dismissing the Appellants’ claims

While it is unnecessary to reach this ground, given the waiver issue, but independent of the waiver issue, the trial court also erred in its fraudulent concealment analysis July 15, 2011 order at pp 13 – 15 The trial court analyzed the fraudulent concealment issue from the perspective of a claim against the individual priest or other Diocesan agent or employee who inflicted a personal injury by the intentional misconduct of sexual abuse The trial court reasoned, June 15, 2011 order at 14, that “A defendant cannot fraudulently conceal a personal injury of which the Plaintiff is aware from the time of injury ” But the Appellants’ claims are against the Diocese, not the individual perpetrators, for liability facts *about the Diocese*, concealed by the Diocese and not known to the Appellants

The second amended complaint alleges reckless and negligent conduct by the Diocese (§9), in that the Diocese knew or had reason to know (§§ 15 and 20) that the offending priest had a sexual interest in children, and the Defendants negligently supervised the priest’s access to children (§ 17) When that sexual interest was displayed, the Defendants made no effort to locate victims, such as Appellants, or was grossly negligent in doing so (§§ 20 to 22) The Defendants are alleged to have failed to warn the Appellants (§ 19)

It is also alleged, and must be accepted as true, that Defendants have fraudulently concealed their knowledge of “when their agents and employees sexually abuse children ” (¶ 23) Appellants did not know, due to that concealment, what the Defendants knew about the priest This concealment disguises the knowledge and liability of the Defendants, for abuse the Diocese knew or should have known would occur Appellants were told nothing about the Defendants having advance knowledge of the offending priest, yet inducing their participation in events which exposed them to the danger of the priest E g , ¶ 27

The Defendants are alleged (¶¶ 25 to 51) to have a long history of secreting from Appellants and all others what the Defendants knew about the abuse, and to have maintained on one hand a special relationship with Appellants, but on the other hand who have maintained a structure of record keeping which is designed to conceal what the Defendants knew of the sexual abuse by the offending priest, as well as to conceal that the Defendants could have, but did, nothing to warn or otherwise protect Appellants Id Defendants are required to maintain a “secret archive” of files (¶ 31) When the priest’s sexual interest in children became known, the Defendants kept record of it secret, in those archives (¶ 32) Defendants are alleged to have also maintained secrecy by moving documents to places where they would enjoy diplomatic immunity (¶ 33) In 1962 Defendants articulated mandatory requirements for secrecy (¶¶ 34 – 44), and failed to locate victims of the priest, an assumed duty (¶ 39) Finally, Defendants are alleged to have colluded with class counsel (¶¶ 44 – 51) to manipulate the class action to pay modest recovery to some victims while evading entirely any responsibility to many other victims, using a class counsel the Defendants calculated would, for a fee, be complicit with drastically limiting recovery for claims by persons against class counsel’s own Diocese, ¶ 50(f),

and enabling the Diocese to argue all other claims were barred

Liability of the intentional tortfeasor, knowable at the time of injury, is different from liability of Defendants, who are alleged to have concealed the known dangers when Defendants “solicited into danger” the Appellants ¶ 7 See also ¶ 8 (“children at risk were regarded as expendable” so the organization could appear pastoral)

All of the concealment is alleged to account “for the delay in this action being brought against the Diocese defendants ” ¶ 23

Being injured by a priest does not necessarily tell anyone that his employers, Diocese and Bishop, knew, before the priest abused a child, that the priest posed that danger to the child Nor does it disclose that the employer Diocese and Bishop were content to conceal that knowledge and expose the child to that risk It is not a new concept that one must have reason to know that there might be a claim against another party before a claim accrues E g , *Grillo v Speedrite Products Inc* , 532 S E 2d 1, 3 (S C App 2000) (“the statute of limitations accrues at the time of the negligence or when the facts and circumstances would put a person of common knowledge on notice that there might be a claim against another party ”) Accord, *True v Monteith*, 489 S E 2d 615, 616 (S C 1997) (claim approved after 19 year delay due to concealed conflict of interest by counsel)

On each ground, the trial court erred in dismissing the complaints

4 The trial court erred in disregarding that the class action was collusive

Collusion in a class action is against public policy, and ought to be a matter of considerable policy concern Of course, if collusion is acceptable then the considerable steps of

collusion alleged in this complaint, Second Amended Complaint ¶ 50 (a) to ¶ 50 (y), can all be ignored

The trial court apparently viewed the collusion in the class action as literally unremarkable, as it merited exactly zero comment or analysis in the orders. Perhaps it is just to be expected that such things will occur as judge-shopping, evading SCRCP 23, duplicating actions, false time records, buying class counsel's cooperation in working for the Diocese and against the interests of the class and against the interests of absent members of the class, permitting class counsel to negotiate a fixed fee for himself while simultaneously negotiating a variable, and very low, recovery for the class members, and providing misinformation to the class action court, all to defeat participation by as many absent class members as possible. Perhaps class counsel claiming, July 13, 2007 hearing at 14 (of 33) that considerable benefits had been obtained for absent members of the class when in fact, if the Diocese is correct and the trial court is upheld, class counsel (and the class action court) was either colluding with the Diocese to make a knowingly false claim, or was completely out maneuvered and deceived by counsel for the Diocese, and that none of those benefits had been secured to absent members of the class.

We contend that the collusion is properly a subject of considerable concern to the court. Absent members of a class are entitled to due process before their interests are precluded. *Hansberry v Lee*, 311 U S 32, ___, 61 S Ct 115, 118 (1940) ("there has been a failure of due process only in those cases where it cannot be said that the procedure adopted, fairly insures the protection of the interests of absent parties who are to be bound by it"). An absent class member is entitled to "limited review" to assure that procedural due process was met, *Hospitality Management Association Inc v Shell Oil Co*, 591 S E 2d 611, 619 (S C 2004), with a focus on

whether sufficient notice and adequate representation were in fact in place *Hospitality Management Association Inc v Shell Oil Co* , 591 S E 2d 611, 619 (S C 2004) This does not collaterally attack the class action orders, it only ascertains if it accords with Due Process to impose the class action on the Appellants

Having chosen to interpret the class action orders so as to preclude Appellants' claims, the trial court erred in making no review of the collusion If the class action orders mean what they say, and primary class members who received no notice can make claims, as the July 30, 2007 order plainly seems to state, then the Due Process problems are resolved because Appellants are not precluded However, to preclude Appellants' claims requires grappling with the facts of the collusion, and that cannot properly be done on a motion to dismiss If the collusion is presumed, as on this record it must be, then the trial court must be reversed "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 *Hospitality Management Association Inc v Shell Oil Co* , 591 S E 2d 611, 619 (S C 2004) On this record, which must presume the collusion, such safeguards were NOT in fact applied

If the practices alleged in ¶ 50(a) to ¶ 50(y) of the Second Amended Complaint are all acceptable, and the collusion is determined to have in fact protected absent members of the class, then all the Appellate Court need do is laud the creativity of lawyers who created the fraudulent mechanisms for hand-picking the judge desired to oversee the class action settlement, so those fraudulent mechanisms are available to all members of the bench and bar as part of SCRC P 23 We contend that ignoring these practices is error, and a proper examination of the collusion

should factor into the analysis of both the preclusive effect to the class action and the professional conduct of counsel in the class action. In not making that review, the trial court erred. Nothing about that review disturbs the orders in the class action. They remain as they are. What is affected is the equities of how those orders are applied to persons who never got notice, did not get it because collusion by class counsel and the Defendants created an agreement designed not to notify many class members. The Diocese appeared to solve that problem by stipulating to provide relief to persons who failed to receive notice "for whatever reason," but that stipulation has been erased by the trial court, and poses an enormous Due Process problem that should not bind Appellants.

Conclusion

The trial court's order should be reversed, and the actions reinstated. Alternatively, fraudulent techniques for judge-shopping and manipulating class actions should be publicized and lauded as new creations under SCRCP 23.

Respectfully submitted,

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

Jeff Anderson & Associates, P A

Gregg Meyers

1 Poston Road Suite 110

Charleston, South Carolina 29407

843-556-1025

JULIE J ARMSTRONG
CLERK OF COURT C P & G S
100 BROAD STREET SUITE 108
CHARLESTON SC 29401 2258
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www3 charlestoncounty.org

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GREGG E MEYERS
ATTORNEY AT LAW
1 POSTON RD STE 110
CHARLESTON SC 29407-3457

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Plntff's mot to alter/amend order of 6/15/11 is denied

CASE NO 2009CP1008055

Jane 2 Doe VS Diocese Of Charleston The (no Longer Involved) , defendant, et al

This judgment was entered on the 29th day of July, 2011 and a copy mailed first class on Friday August 05, 2011, to all counsel of record and/or all parties entitled to receive notice

You may view and download this document at [www3 charlestoncounty.org](http://www3.charlestoncounty.org)

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**Gregg E Meyers
Attorney At Law
1 Poston Road Suite 110
Charleston SC 29407**

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCF

Order/Plntff's mot to alter or amend order of 6/15/11

CASE NO 2009CP1008054

Jane I Doe VS Diocese Of Charleston The (no Longer Involved) , defendant, et al

This judgment was entered on the 29th day of July, 2011, and a copy mailed first class on Friday August 05, 2011, to all counsel of record and/or all parties entitled to receive notice

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Gregg E Meyers
Attorney At Law
1 Poston Road Suite 110
Charleston SC 29407

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SC Court of Appeals

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Plntff's mot to alter/amend order of 6/15/11 is denied

CASE NO 2009CP1008056

Jane 3 Doe VS Diocese Of Charleston The (no Longer Involved) , defendant, et al

This judgment was entered on the 29th day of July, 2011, and a copy mailed first class on Friday, August 05, 2011, to all counsel of record and/or all parties entitled to receive notice

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Gregg E Meyers
Attorney At Law
1 Poston Road Suite 110
Charleston SC 29407

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Plntff's mot to alter/amend order of 6/15/2011 denied

CASE NO 2009CP1006694

John Doe VS Diocese Of Charleston The (no Longer Involved) , defendant, et al

This judgment was entered on the 29th day of July, 2011, and a copy mailed first class on Friday, August 05, 2011, to all counsel of record and/or all parties entitled to receive notice

You may view and download this document at [www3 charlestoncounty.org](http://www3.charlestoncounty.org)

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

October 2, 2011

Hon Tanya Gee
Clerk of Court
Court of Appeals
PO Box 11629
Columbia, SC 29211

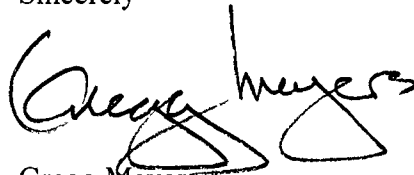
Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)
Tracking number 2011199886

Dear Ms Gee

I received recently your September 28 letter which claimed no order on appeal was
presented with the Notice of Appeal

Enclosed for filing is another copy of the Notice of Appeal documents, which included as
Attachments A and B the orders on appeal

Sincerely



Gregg Meyers
Jeff Anderson & Associates, P A

c Mr Shahid, Attorney for Respondent
without attachment

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OCT 05 2011
SC Court of Appeals

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

September 5, 2011

Hon Tanya Gee
Clerk of Court
Court of Appeals
PO Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)

Dear Ms Gee

Enclosed for filing is a notice of appeal in the case captioned above

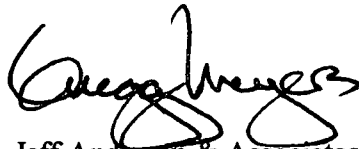
Also enclosed are the following

- 1 Proof of service on counsel for the respondent of the notice of appeal,
- 2 A copy of the orders from which appeal is taken, and
- 3 A filing fee of \$100, and
- 4 A copy of the letter to the clerk of the lower court filing the notice of appeal

I do not believe a transcript of the proceedings below are necessary to the appeal, so have not ordered a transcript from the court reporter

Please file this notice with the Court Thank you very much

Sincerely



Jeff Anderson & Associates, P A
Gregg Meyers

c Mr Shahid, Attorney for Respondent

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

September 5, 2011

Hon Julie A Armstrong
Clerk of Court
Charleston County Circuit Court
100 Broad Street
Charleston SC 29401

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)

Dear Julie

Enclosed for filing is a notice of appeal in the cases captioned above Judge Harrington
issued one order applicable to each of these cases, but there are four cases in your files

Also enclosed are the following

- 1 A copy of the proof of service on counsel for the respondent of the notice
of appeal,
- 2 A copy of the orders from which appeal is taken, and
- 3 A copy of the letter to the Clerk of the Court of Appeals

Please file this notice with the Court Thank you very much, and best personal regards

Sincerely



Jeff Anderson & Associates, P A
Gregg Meyers

c Mr Shahid, Attorney for Respondent

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

September 5, 2011

Peter Shahid
89 Broad Street
Charleston SC 29401

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)

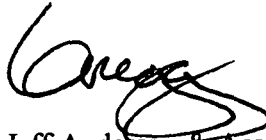
Dear Peter

Enclosed for filing is a notice of appeal and related documents in the cases captioned
above

I do not believe a transcript of the proceedings below are necessary to the appeal, so have
not ordered a transcript from the court reporter

Best personal regards

Sincerely



Jeff Anderson & Associates, P A
Gregg Meyers

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Case Nos 09-CP-10-6694
 09-CP-10-8054
 09-CP-10-8055
 09-CP-10-8056

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Notice of Appeal

In these combined actions, Plaintiffs John Doe (in 09-CP-10-6694), Jane Doe 1 (in 09-CP-10-8054), Jane Doe 2 (in 09-CP-10-8055), and Jane Doe 3 (in 09-CP-10-8056), hereby appeal an order of the Honorable Kristi L Harrington, dismissing these actions. Notice of the order applicable to each case was received June 23, 2011, and a motion for each action pursuant to SCRCP 59(e) was filed June 28, 2011. That combined motion was denied pursuant to notice of an order mailed to counsel on Friday, August 5, 2011, received by counsel August 8, 2011. A copy of the order is attached.

Respectfully submitted,



Jeff Anderson & Associates, P A

Gregg Meyers

1 Poston Road, Suite 110

Charleston, SC 29407

843-556-1025, 556-1055 facsimile

Other counsel of Record

Peter Shahid
89 Broad Street
Charleston SC 29401

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Case Nos 09-CP-10-6694
 09-CP-10-8054
 09-CP-10-8055
 09-CP-10-8056

RECEIVED
OCT 05 2011
SC Court of Appeals

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Proof of Service

I hereby affirm that I have served upon counsel for the defendant/respondent a copy of

Notice of Appeal, with attachments

by causing a copy of the document to be placed in the United States mails, first-class postage
pre-paid wrapper, properly addressed to

Peter Shahid
89 Broad Street
Charleston SC 29401

Done September 5, 2011



Jeff Anderson & Associates, P A
Gregg Meyers
1 Poston Road, Suite 110
Charleston, South Carolina 29407
843/556-1025

Attachment A

Order Filed June 15, 2011

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 JUL 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 ¹ 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

¹ The Court hereby consolidates these cases under case number 2009-CP 10 06694

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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.

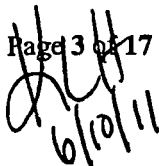
The Agreement provided two distinct class members defined as follows: "All individuals born on or before August 30, 1980, who as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released (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

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.


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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.


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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

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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

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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

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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 Plaintiff's status as a class member in the previously adjudicated class action satisfies the requirement for identity of parties. Third, the issues raised 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 claims 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

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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 court 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.

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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

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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

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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

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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 1971² 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,

²John 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

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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

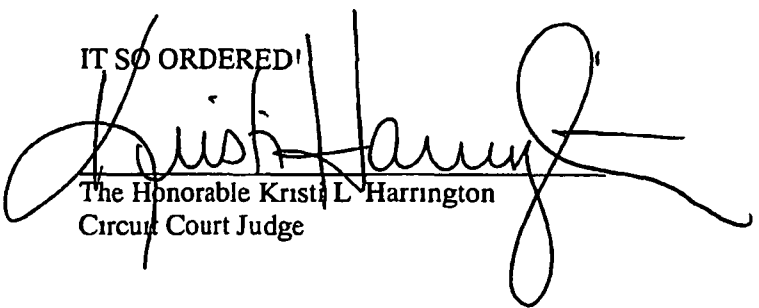
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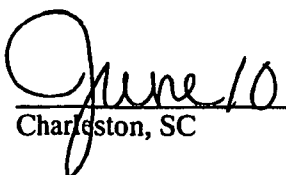
liability under UTPA claim, as no defendant would ever settle a claim against it, only to open itself up to further liability. The settling of a legal claim is not trade or commerce under the definitions in the UTPA.

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

, 2011
Charleston, SC

Attachment B

Notices of Order Filed August 5, 2011



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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September 28 2011

Gregg Meyers, Esquire
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1 Poston Road, Ste 110
Charleston, SC 29407

Re Doe, J & J 1,2,3 v Bp of Charleston
2011199886

Dear Counsel

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Upon review, it has come to the Court's attention that the copy of the court order received by counsel on August 5, 2011 and being challenged on appeal was not filed. Please provide a copy of the court order within ten days of the date of this letter.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address 1205 Pendleton Street, Columbia, S C 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also please advise the Court in writing upon receipt of the transcript.

NOTE If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases

- 1) any final judgment from the circuit court which includes a sentence of death,
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,


Tanya A. Gee
CLERK

TAG/laf

cc Peter Shahid, Esquire



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA SOUTH CAROLINA 29711
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29701
TELEPHONE (803) 734 1890
FAX (803) 7 4 1839
www.sccourts.org

September 28, 2011

Gregg Meyers, Esquire
Jeff Anderson & Assoc , P A
1 Poston Road, Ste 110
Charleston, SC 29407

Re Doe, J & J 1,2,3 v Bp of Charleston
2011199886

Dear Counsel

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/laf
cc Peter Shahid, Esquire

The Supreme Court of South Carolina

RE Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S C 1, 630 S E 2d 464 (2006), Davis v Jennings, 304 S C 502, 405 S E 2d 601 (1991). Therefore, with some few exceptions,¹ documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts:

Parties shall not include, or will partially redact where inclusion is necessary, the following personal data identifiers from documents filed with an appellate court 2:

1 Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.

2 Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only the minor's first name and first initial of the last name (i.e., John S.) should be used.

3 Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

4 Home Addresses. If a home address must be included, only the city and state should be used.

Parties wishing to file documents containing the personal data identifiers listed above may file unredacted documents under seal together with redacted versions for the public file. The sealed unredacted documents shall be filed in a separate Appendix and the bottom of each page of the Appendix shall be marked "Sealed." No order of the appellate court will be required to file this sealed Appendix. The number of copies of the Appendix to be served and filed shall be the same as that required for the brief, record on appeal, motion or other filing that includes the redacted documents.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend the caption to redact the identifier. This should be done contemporaneously with the filing of the notice of appeal or the commencement of the case with the appellate court. Without a motion to the appellate court, the caption of a juvenile delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e., In the Interest of John S., a Juvenile).

A party seeking to seal material beyond those personal identifiers listed above, must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, *supra*, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed; the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED

s/Jean H. Toal C J

s/James E. Moore J

s/John H. Waller, Jr. J

s/E. C. Burnett, III J

s/Costa M. Pleicones J

Columbia, South Carolina

August 13, 2007

¹ See, e.g., Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR; Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR; Rule 402(n) SCACR; and Rule 403(l) SCACR.

² This restriction shall not apply when this information is required or requested by the appellate court. For example, the application for admission to practice law under Rule 402 SCACR requires many of these personal identifiers to be disclosed.

PM 9-6-11
Pos 9-5-11

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

RECEIVED
SEP 08 2011
SC Court of Appeals

Case Nos 09-CP-10-6694
 09-CP-10-8054
 09-CP-10-8055
 09-CP-10-8056

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Notice of Appeal

In these combined actions, Plaintiffs John Doe (in 09-CP-10-6694), Jane Doe 1 (in 09-CP-10-8054), Jane Doe 2 (in 09-CP-10-8055), and Jane Doe 3 (in 09-CP-10-8056), hereby appeal an order of the Honorable Kristi L Harrington, dismissing these actions. Notice of the order applicable to each case was received June 23, 2011, and a motion for each action pursuant to SCRCP 59(e) was filed June 28, 2011. That combined motion was denied pursuant to notice of an order mailed to counsel on Friday, August 5, 2011, received by counsel August 8, 2011. A copy of the order is attached.

Respectfully submitted,



Jeff Anderson & Associates, P A

Gregg Meyers

1 Poston Road, Suite 110

Charleston, SC 29407

843-556-1025, 556-1055 facsimile



Other counsel of Record

Peter Shahid
89 Broad Street
Charleston SC 29401

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon Kristi L Harrington, Circuit Court Judge

Case Nos 09-CP-10-6694
 09-CP-10-8054
 09-CP-10-8055
 09-CP-10-8056

RECEIVED
SEP 08 2011
SC Court of Appeals

John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3,

Appellants

v

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

Respondents

Proof of Service

I hereby affirm that I have served upon counsel for the defendant/respondent a copy of

Notice of Appeal, with attachments

by causing a copy of the document to be placed in the United States mails, first-class postage
pre-paid wrapper, properly addressed to

Peter Shahid
89 Broad Street
Charleston SC 29401

Done September 5, 2011



Jeff Anderson & Associates, P A
Gregg Meyers
1 Poston Road, Suite 110
Charleston, South Carolina 29407
843/556-1025

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

September 5, 2011

Peter Shahid
89 Broad Street
Charleston SC 29401

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)

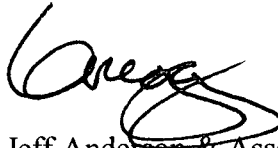
Dear Peter

Enclosed for filing is a notice of appeal and related documents in the cases captioned
above

I do not believe a transcript of the proceedings below are necessary to the appeal, so have
not ordered a transcript from the court reporter

Best personal regards

Sincerely



Jeff Anderson & Associates, P A
Gregg Meyers

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

September 5, 2011

Hon Tanya Gee
Clerk of Court
Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
SEP 08 2011
SC Court of Appeals

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)

Dear Ms Gee

Enclosed for filing is a notice of appeal in the case captioned above

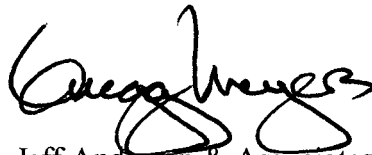
Also enclosed are the following

- 1 Proof of service on counsel for the respondent of the notice of appeal,
- 2 A copy of the orders from which appeal is taken, and
- 3 A filing fee of \$100, and
- 4 A copy of the letter to the clerk of the lower court filing the notice of appeal

I do not believe a transcript of the proceedings below are necessary to the appeal, so have not ordered a transcript from the court reporter

Please file this notice with the Court Thank you very much

Sincerely



Jeff Anderson & Associates, P A
Gregg Meyers

c Mr Shahid, Attorney for Respondent

JEFF ANDERSON & ASSOCIATES, PA

Reaching Across Time for Justice

September 5, 2011

Hon Julie A Armstrong
Clerk of Court
Charleston County Circuit Court
100 Broad Street
Charleston SC 29401

Re Appeal of order in Doe v Diocese of Charleston et al ,
Cases No 09-CP-10-6694, -8054, -8055, -8056 (Charleston County, Hon Kristi
L Harrington)

Dear Julie

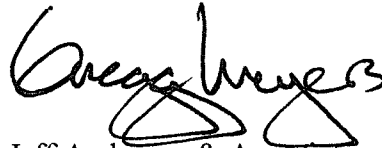
Enclosed for filing is a notice of appeal in the cases captioned above Judge Harrington
issued one order applicable to each of these cases, but there are four cases in your files

Also enclosed are the following

- 1 A copy of the proof of service on counsel for the respondent of the notice
of appeal,
- 2 A copy of the orders from which appeal is taken, and
- 3 A copy of the letter to the Clerk of the Court of Appeals

Please file this notice with the Court Thank you very much, and best personal regards

Sincerely



Jeff Anderson & Associates, P A
Gregg Meyers

c Mr Shahid, Attorney for Respondent

FCM

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Jeff Anderson & Associates PA
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TANYA GEE
CLERK OF COURT SOUTH CAROLINA COURT OF APPEALS
PO BOX 11629
COLUMBIA SC 29211 1629



Attachment A

Order Filed June 15, 2011

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 JUL 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 ¹ 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

¹ 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

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.

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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

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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 Plaintiff's status as a class member in the previously adjudicated class action satisfies the requirement for identity of parties. Third, the issues raised 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 claims 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

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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 court 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.

RCA
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

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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

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

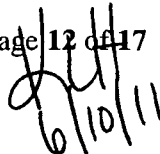
II Collateral Estoppel

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



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 ² 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,

²John Doe, Jane Doe 2 and Jane Doe 3 raise claims of childhood sexual abuse Jane Doe 1 alleges her children were sexually abused

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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 "Statute 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 of the 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.

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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

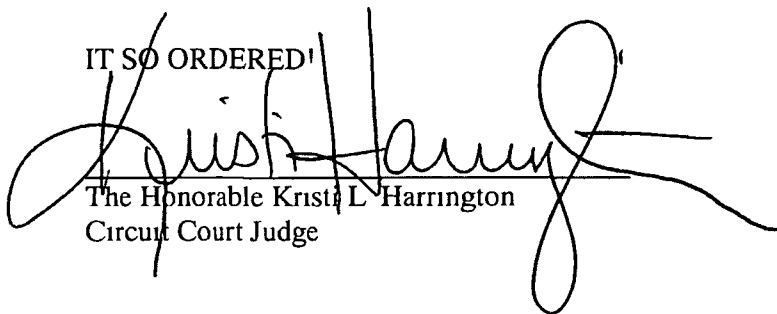
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liability under UTPA claim, as no defendant would ever settle a claim against it, only to open itself up to further liability. The settling of a legal claim is not trade or commerce under the definitions in the UTPA.

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.

June 10, 2011
Charleston, SC

IT SO ORDERED:

The Honorable Krista L. Harrington
Circuit Court Judge

Attachment B

Notices of Order Filed August 5, 2011

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NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Plntff's mot to alter/amend order of 6/15/11 is denied

CASE NO 2009CP1008055

Jane 2 Doe VS Diocese Of Charleston The (no Longer Involved) , defendant, et al

This judgment was entered on the 29th day of July, 2011 and a copy mailed first class on Friday August 05, 2011, to all counsel of record and/or all parties entitled to receive notice

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NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Plntff's mot to alter or amend order of 6/15/11

CASE NO 2009CP1008054

Jane I Doe VS Diocese Of Charleston The (no Longer Involved) , defendant, et al

This judgment was entered on the 29th day of July, 2011, and a copy mailed first class on Friday August 05 2011, to all counsel of record and/or all parties entitled to receive notice

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NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Plntff's mot to alter/amend order of 6/15/11 is denied

CASE NO 2009CP1008056

Jane 3 Doe VS Diocese Of Charleston The (no Longer Involved) , defendant, et al

This judgment was entered on the 29th day of July 2011, and a copy mailed first class on Friday August 05, 2011, to all counsel of record and/or all parties entitled to receive notice

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NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Plntff's mot to alter/amend order of 6/15/2011 denied

CASE NO 2009CP1006694

John Doe VS Diocese Of Charleston The (no Longer Involved) , defendant, et al

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