

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

Record on Appeal

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STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No 06-CP-18-1310
CASE No 06-CP-18-1311
CASE No 06-CP-18-1636

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

Plaintiffs,)

vs)

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

Defendants)

ORDER CERTIFYING CLASSES
AND GIVING PRELIMINARY
APPROVAL TO SETTLEMENT

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

FINDINGS OF FACT

Plaintiffs John Doe #53, John Doe 66, John Doe 66A, and John Doe 67¹ are individuals who, as minors, were sexually abused by priests assigned to the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole and The Bishop of

¹ Hereinafter all of the plaintiffs will be referred to as "Representatives."

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

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

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

Counsel for the representatives has extensive experience in complex plaintiffs' litigation, including potential class actions and cases in which sexual abuse of the plaintiff is the basis for the underlying claim²

ISSUES

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

LAW/ANALYSIS

A Certification of the Classes

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

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

Plaintiffs have requested that the following classes be certified

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

- A All individuals born on or before August 30, 1980 who, as minors, were sexually abused³ at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released (Hereinafter "the Primary Class")
- B The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released (Hereinafter the "Consortium Class")

I find that certification of these class is appropriate

1 **Numerosity/ Impracticability of Joinder**

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

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

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

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

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

2 Commonality/Typicality

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

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

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

3 Adequacy of Representation

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

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

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

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

4 \$100 requirement

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

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

B Preliminary Approval of the Settlement

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

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

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

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

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

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

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

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

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

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

AND IT IS SO ORDERED!!!


The Honorable Diane S. Goodstein
Presiding Judge

This 19 day of January, 2007

At Summerville South Carolina

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

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No 06-CP-18-1310
CASE No 06-CP-18-1311
CASE No 06-CP-18-1636

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

Plaintiffs,)

vs)

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

Defendants)

SETTLEMENT AND ARBITRATION
AGREEMENT

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

1

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Arbitration Agreement" formalizing the agreement reached between the Representatives¹ and the Diocese and supersedes all other agreements and/or writings previously executed by the parties. This Agreement is intended to effectuate the complete and total settlement of civil actions captioned above as well as 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913, and all other claims which were alleged or may have been alleged by the Representatives and the individuals who they represent in their capacity as class representatives. It is further understood that this Agreement must be submitted to a court of competent jurisdiction for approval and that certain provisions survive this agreement even if other provisions are not approved.

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

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

- A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused² at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released (Hereinafter "the Primary Class")
- B. The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released (Hereinafter the "Consortium Class")

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

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

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

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

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

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



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

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

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

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

\$150,000 00

\$200,000 00

Loss of consortium (Parent or Spouse)

\$20,000 00

The criteria for the Arbitrator to determine the amount of the award for a sexual abuse claim shall include, among other things, the type of abuse, its duration and the extent of injuries suffered by the Claimant. In cases in which the claim is for loss of consortium, the award shall be \$20,000 00 for each parent of the Claimant, and \$20,000 00 for the spouse of the Claimant. The Arbitrator shall not consider any liability issues, including, but not limited to, defenses such as lack of negligence or notice, statute of limitations, and charitable immunity. The award issued by the Arbitrator shall be left to the sole discretion of the Arbitrator and shall not be subject to objection, review, appeal or suit brought by any Claimant or the Diocese.

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

*RJB
RJR

f The identity of all Claimants shall be kept strictly confidential except that the Diocese's counsel and those associated with the Diocese necessary for the performance of the terms of this agreement, the Arbitrator, Class Counsel and their staffs may have such access necessary to effectuate this Agreement and the court's orders on the same. Counsel before the court should take appropriate steps to ensure that access is provided to staff on an "as needed" basis. Any individual who has access to the actual name of any Claimant shall sign a court approved confidentiality and restraining agreement prohibiting the disclosure of the name of any Claimant. The name of the Claimant, his or her social security number, and the amount of his or her award will be provided to the escrow agent for purposes of distributing the award at the conclusion of the claims process.

g Subject to approval of the court, any person wishing to make a claim must do so within 120 days of the initial notice of final approval of the settlement in a form approved by the court. The form may be obtained from Class Counsel by contacting it as provided in the court approved notice and should include at least the following information:

- 1 The name, date of birth, social security number, preferred address, telephone number, and email address of contact for the Claimant and, if the claim is made in a representative capacity, the name of the representative and the ward and the nature of the relationship,
- 2 Name of the abuser, location at which the abuse occurred, the time period during which the abuse occurred, and relation of the victim to the abuser, [i.e. priest/altar boy, coach/ basketball player]
- 3 A brief statement sufficient to advise the parties of the nature of the claim and the acts complained of;

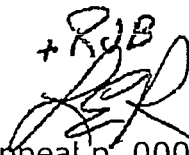
+ RJB
RJR

- 4 A brief summary of any claimed injury or damages,
- 5 Name of parents, whether they are living or deceased,
- 6 Name of spouse (if any),
- 7 The form must be signed and dated, and
- 8 Any other information or documents Claimant deems necessary for a determination of his or her claim. Documentary evidence may be supplemented as provided for herein

h Class Counsel shall assign an anonymous name and/or numbering system to each claim made. Thereafter, the claim must be referred to by its claim number. The name of the claimant and the claim number will be provided to the Diocese lawyers and to the Arbitrator pursuant to the confidentiality provisions established herein.

1 Class Counsel will transmit the Claim Form only to counsel for the Diocese for its review pursuant to paragraphs 3(l), (m) and (n). At the conclusion of the claim review by the Diocese, Class Counsel shall transmit the Diocese's response to the Claimant. The Claimant will have fifteen (15) days to make any response or take any action Claimant deems necessary and provide the same to Class Counsel who will transmit it to the Diocese. If the Claimant has elected to obtain psychological testing and use it in support of his or her claim, Claimant should provide it to Class Counsel promptly upon receipt. Thereafter, Class Counsel will submit the entire claim package to the Arbitrator and request a hearing.

j The Arbitrator shall schedule the Claimant's Arbitration within 90 days of submission of the claim to him. The arbitration shall be conducted pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., unless the Act conflicts with this Agreement or the court's order(s) in this matter, in which case the Agreement and order(s)

7 + RJB


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

k While the class has Class Counsel, the parties acknowledge that the Claimant may have an attorney of his or her own choice for any part of the claims process. If an attorney is selected by the Claimant, all information concerning the claim or claims process shall be sent to the attorney for the Claimant.

l Upon receipt of any Claim Form from any Claimant, Class Counsel shall forward the claim form to Counsel for the Diocese. Counsel for the Diocese shall have thirty (30) days from receipt of the claim to review the claim to verify the accuracy of the information presented and to determine the Diocese's position on whether the Claimant is a member of one of the plaintiff classes and whether the claim is *bona fide*. If the Diocese acknowledges that the Claimant is a member of a plaintiff class and that the claim is *bona fide*, the proceedings before the Arbitrator shall be to determine the damages suffered by the Claimant within the parameters of paragraph 3(d).

m If the Diocese objects to the claim, the Diocese shall submit an original and a copy of a written objection to Class Counsel stating why the Claimant is not properly a member of one of the plaintiff classes and/or why the claim is not *bona fide*, and attaching (to the original and the copy) any documents or other supporting evidence which the Diocese wishes to tender (such as a death certificate showing that the alleged perpetrator could not have committed the acts complained of at the time and place alleged). Class Counsel shall transmit a copy of the Diocese's objection and exhibits to the Claimant or the Claimant's attorney.

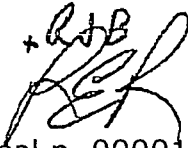
n If the Diocese makes a timely objection to the claim, the Arbitrator shall rule on the Diocese's objection after a hearing at which Counsel for the Diocese and Claimant (and/or Claimant's counsel if the Claimant elects to be represented) and/or Class Counsel shall be

8 + RJB


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

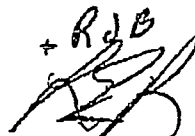
- o Upon submission of the claim, Class Counsel will notify the Claimant that he or she has the opportunity to have a psychological assessment and counseling by Dr. L. Randolph Waid. The Claimant may make this election at the time of his or her claim being filed. The Diocese agrees to pay Dr. Waid, on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

- p At the Claimant's hearing, a presentation shall be made by or on behalf of the Claimant concerning his or her damages suffered as a result of the alleged abuse. Each arbitration



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

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

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

r After the Arbitrator has rendered his decision, but not before, the Claimant may be invited to meet one on one with the Bishop of Charleston or his designee for religious, spiritual, and pastoral support. No Claimant is obligated to meet with the Bishop or his designee.

s Any materials of whatever nature submitted by Claimant or on his behalf to the Arbitrator, in connection with the arbitration process which is in any way related to the arbitration awards issued by the Arbitrator shall be returned to the Claimant or his or her counsel by the Arbitrator with the award. The Arbitrator shall not reveal the evidence or written arguments presented during the course of the arbitration hearing to anyone other than those present in the Arbitration or Class Counsel.

t The Arbitrator shall issue a written award in conformance with the requirements of paragraph 3(d) no later than twenty (20) days after the close of the Arbitration hearing to and deliver same to Class Counsel, counsel for the Diocese, and Claimant and/or Claimant's counsel. Anyone connected with the claims process in any fashion is bound to maintain the confidentiality of each individual Claimant.

u All costs associated with the management of the class shall be paid from the settlement fund. The fees and costs described herein include those incurred by the Arbitrator, Class Counsel, the escrow agent, Dr. Waid and any other fees and costs approved by the court.

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RJR

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

4 SETTLEMENT OF REPRESENTATIVE'S AND POINT CLAIMANT'S CLAIMS In

consideration of the work, effort, time, stress, psychological pain, damages, liability proof, embarrassment, family turmoil and other issues relevant, the class representatives and/or point plaintiffs shall receive settlement funds as follows:

John Doe #53	\$160,000 00
John Doe 66	\$100,000 00
John Doe 66 A	\$100,000 00
John Doe 67	\$100,000 00
Jane Doe A	\$30,000 00
Jane Doe B	\$30,000 00
Rachel Roe	\$30,000 00

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

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

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

6 PAYMENT OF CLAIMS

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

to Class Counsel and the Diocese, if necessary

C Once the Arbitrator and escrow agent determine the final amount of each award, the escrow agent shall disburse the award from the settlement funds within fifteen (15) days of the final determination of the awards. The awards are to be paid to the Claimant directly or through his or her counsel. After all necessary disbursements any remaining letters of credit and/or funds will be returned to the defendants and/or letters of credit will be cancelled.

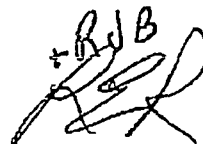
D Any party may bring perceived errors in an award based on an interpretation of this Agreement to the attention of the Arbitrator with notice to the other party. However, the Arbitrator's decision on any such question is final. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

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

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

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

b Reports Of All Accusations To Solicitor Pursuant to the Policies, the Diocese reports all accusations of child sexual abuse it receives to the Solicitor of the county in which the



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

- c Victim Assistance Minister Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. The VAM coordinates the Diocese's pastoral response to those who come forward, and works with victims to facilitate the healing process. Where appropriate, the VAM also assists victims in obtaining and paying for psychotherapy, on a confidential basis.

- d Sexual Abuse Advisory Board Pursuant to the Policies, the Diocese has established, among other things, a Sexual Abuse Advisory Board (the "Board"). Although the Bishop of the Diocese has the ultimate decision-making responsibility in cases presented to the Diocese, the Board has the responsibility to advise the Bishop in particular cases. The Board also assists the Bishop in the review of the Policies that occurs every two years, and makes recommendations to the Bishop concerning any proposed revisions to the Policies. The Board consists of at least five (5) members, of whom four (4) are independent lay people who are not priests or employees of the Diocese.

- e Presentation By Class Representatives or Members To The Sexual Abuse Advisory Board The Diocese welcomes the suggestions of the Class Representatives (or members) regarding the provisions and implementation of the Policies. The Diocese therefore agrees to permit the Class Representatives to make a presentation to the Board in advance and/or as part of the next two regularly scheduled two year policy reviews so that the views of the Representatives can be heard and considered as the Diocese undertakes such review.

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RE

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

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

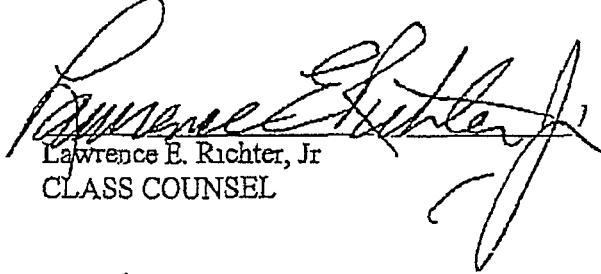
10 MISCELLANEOUS PROVISIONS This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement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

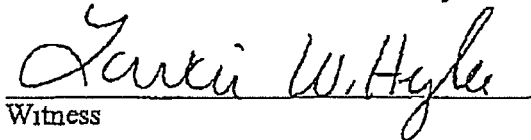
RJB
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claims have not been assigned, encumbered, or transferred Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender

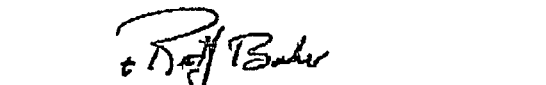
Executed this 12 day of January, 2007

FOR THE CLASSES


Lawrence E. Richter, Jr.
CLASS COUNSEL


Witness

FOR THE DEFENDANTS


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

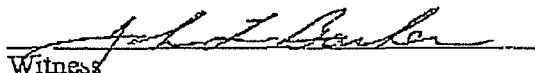

Witness

EXHIBIT 1

CLAIMANT'S GENERAL RELEASE

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

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

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as of the ____ day of _____, 200__

Print Claimant's Name

Claimant's Signature

Witness

Witness

EXHIBIT 2

DIOCESE LIMITED RELEASE

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

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

+ RJB


Rx Date/Time JUL-09-2003(WED) 19 09
01/30/07 TUE 13 02 FAX 843 881 1400

843 881 1400
RICHTER AND HALLER LLC

P 032
032

as of the date written below

The Bishop of Charleston, a Corporation Sole

By _____

Its _____

Date _____ Witnessed by _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE No 06-CP-18-1310
		CASE No 06-CP-18-1311
		CASE No 06-CP-18-1636

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

Plaintiffs,)

vs)

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

Defendants)

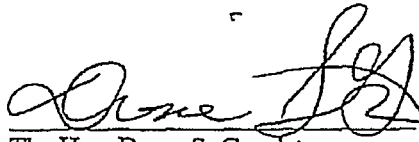
ORDER RELATING TO WAIVER
 DISCLOSURES BY COURT

FILED
 2007 JUL 13 AM 1:38
 CHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

At my direction, counsel for the plaintiffs informed the Diocese that it represented a co-party in a restored action in which the second party is a company in which undersigned's husband has a controlling interest. Further, one of plaintiffs' counsel serves on the Charleston County Aviation Authority and the undersigned's husband is the attorney for the Authority. Additionally, plaintiffs' counsel and the undersigned's families have a long social history which is known to defense counsel. I have given the Diocese an opportunity to discuss these matters before proceeding. These matters were made known to the Diocese by writings dated October 6, 2006 and June 4, 2007 from plaintiffs' counsel to defense counsel.

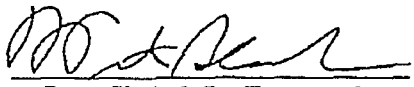
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After full disclosure to defense counsel of the foregoing facts of any potential conflict which may exist, the Diocese has elected to waive all conflicts and proceed with me as the designated trial judge

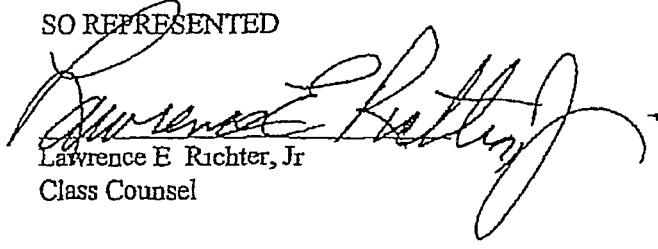

The Hon. Diane S. Goodstein
Presiding Judge

This 13 day of July, 2007
At Myrtle Beach, South Carolina

I CONCUR.


A Peter Shahid, Jr., Esquire, General Counsel
The Bishop of Charleston, a Corporation
Sole, and The Bishop of the Diocese of
Charleston, in his official capacity

SO REPRESENTED


Lawrence E. Richter, Jr.
Class Counsel

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

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

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

Plaintiffs,

vs

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

Defendants

ORDER APPROVING SETTLEMENT

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

FACTUAL BACKGROUND/PROCEDURAL HISTORY

1 Notice to Class Members

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

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

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

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

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

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

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

2 Investigation by Solicitor David Pascoe

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

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

ORDER

1 Notice to All Members of the Class

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

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

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

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

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

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

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

2 Objections to the Settlement

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

A Standing of John Does A through N

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

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

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

B. Objections to class definitions

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

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

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

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

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

Price v Georgetown, 297 S C 185, 375 S E 2d 355 (Ct. App 1988) *See also Nunnery v Brantley Construction Co Inc*, 289 S C 205, 345 S E 2d 740 (Ct App, 1986)(dismissal with prejudice has *res judicata* effect) South Carolina has also taken the same approach with cases which have been settled by the parties where there is the exchange of compensation for a release, absent some mistake not previously contemplated by the parties *Smothers v Richland Mem Hosp*, 326 S C 566, 493 S E 2d 107 (Ct App 1997)³ Hence, any prior claims that have been adjudicated or settled are barred by law⁴ Allowing those individuals to have another bite would be manifestly unfair to those class members who have not had their claims adjudicated and to the Defendants who have been discharged in one form or another from liability to that individual

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

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

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

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

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

C Objection as to Matrix

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

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

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

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

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

D. Compensation of Consortium Claims

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

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

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

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

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

3 Approval of Settlement

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

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

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

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

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

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

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

5 Attorneys fees

In the Settlement and Arbitration Agreement, the parties agreed that the Court should, exercising its discretion, set attorney fees for class counsel in a range of no less than \$950,000 00 and no more than \$2 5 million. Defense counsel argued for the lower end of the fee range and asked the Court to take into consideration the charitable nature of the Diocese and that it settled the case rather than requiring a trial. Class Counsel requested the Court award them a fee of \$2 5 million. In support of their petition for an award of attorneys' fees, class counsel submitted a substantial record which included an affidavit from each attorney involved in the case, a statement of hours from each law firm the total of which exceeded 3,720 hours⁶, and an affidavit from Professor John Freeman regarding the reasonableness of the fee request and the beneficial public impact of the settlement. Class Counsel has worked on the case for 4 years, it has proceeded in Court for 2 years, with settlement negotiations lasting more than 15 months. The Court took its own notice of the arms-length advocacy of counsel for their respective clients in the case. The case was brought to a mediated resolution and it heard from the mediator, Marvin Infinger, regarding the negotiations between counsel.

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

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

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

The Court’s review of the record before it, argument of counsel, and my own observations of the case compel me to award class counsel an attorneys’ fee in the amount of \$2 5 million dollars. In rendering this decision, I find that the matter before me is monumental in both its scope and result. Class Counsel have successfully obtained the creation of two classes of individuals, one consisting of individuals who have been sexually abused by Diocese employees and another consisting of parents and spouses of those individuals. But for the settlement, the claims of the individuals in the classes might already be barred by significant legal defenses, including the statute of limitations and charitable immunity. Class counsel has been able to succeed in this case where other lawyers, in identical cases, have failed, and, they accomplished these tasks against a respected and powerful adversary, the Catholic Diocese of Charleston.

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

Given the significant legal hurdles, such as the statute of limitations and charitable immunity, which were being asserted by the defendants, that fee arrangement is not out of proportion. Class Counsel’s prayer for a fee award of \$2 5 million is 20 8% of the gross settlement. This figure is on the lower range of acceptable fees found by the Supreme Court. *See Ex parte Condon Littlejohn v State*, 354 S C 634, 644, 583 S E 2d 430, 435 (2003)(finding

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

For the reasons above, I award Class Counsel \$2 5 million as attorneys' fees in this matter which shall be paid as set forth in the Settlement and Arbitration Agreement within ten days of the entry of this Order

6 Costs

Prior to the March 9, 2007, hearing class counsel presented bills for costs in the amount of \$85,259 50 and requested reimbursement of these expenditures per the Settlement Agreement. In addition, they have requested reimbursement of an additional \$15,731 86 incurred since the March 9, 2007 hearing. These expenditures have not been challenged and my review determines them to be routine for this type of litigation and I approve the same for reimbursement.

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

7 Funding of Settlement Proceeds

Pursuant to paragraph 3(a) of the Settlement Agreement, the Diocese shall fund the initial \$4,540,000 00 upon the execution of this order.⁷

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

⁷ The Diocese previously paid \$460 000 00 to the class representatives for the settlement of their claims

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

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

IT IS FURTHER ORDERED that class counsel be awarded the sum of \$2 5 million as attorneys' fees in this matter and that the escrow agent be authorized to pay the same pursuant to the terms of the Settlement Agreement, and

IT IS FURTHER ORDERED that the escrow agent be authorized to pay Class Counsel the sum of \$100,991 36 in litigation costs and to further make direct distributions for publication of notices required under this order as directed by the Settlement Agreement

AND IT IS SO ORDERED'''


The Honorable Diane S. Goodstem
Presiding Judge

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

**Order on Matters Heard March 9
Exhibit A**

**IMPORTANT LEGAL NOTICE
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS NOTICE**

John Doe #53 et al v Diocese of Charleston, et al Class Action Settlement

This action applies to 1) any person born on or before August 30, 1980, 2) who as a minor, was sexually abused, 3) at any time by agents or employees of the Diocese of Charleston, 4) or the parent or spouse of any such minor, 5) who have not previously had any similar claim adjudicated, resolved, or released

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT, (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS, AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS

SUMMARY OF YOUR RIGHTS AND CHOICES

<u>You May</u>		<u>Deadline</u>
STAY IN THE CLASS and possibly receive money from the Settlement	Stay in the Class To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.	Postmarked or received by [Date to be Inserted]
EXCLUDE YOURSELF	Get out of the class You do not have to remain a member of the class or participate in the Settlement To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted By Opting-out of the Settlement, you will not receive any benefits from the Settlement If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.	Postmarked or received by [Date to be Inserted]

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they may receive determined by an arbitrator The arbitrator has complete discretion within the parameters set by the Settlement Agreement to determine the amount of money you receive In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse, and the like Claims will be generally classified into one of 4 groups based on the severity of the injury sustained Members of the Consortium Class with *bona fide* claims will receive \$20,000 00 Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

**IF YOU DO NOT FILE A CLAIM TIMELY OR YOU DO NOT OPT-OUT OF THE CLASS,
YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED AS TO MATTERS
COVERED BY THE CLASS ACTION**

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL
Richter & Haller, LLC,
622 Johnnie Dodds Blvd , Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 diocesettlement@richterfirm.com
www.richterfirm.com

ALL FORMS MUST BE EITHER POSTMARKED BY THE U S POSTAL SERVICE OR RECEIVE
BY CLASS COUNSEL ON OR BEFORE [Date to be Inserted]

**Order on Matters Heard March 9
Exhibit B**

John Doe #53 v Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 1

**READ THIS DOCUMENT CAREFULLY AS
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS DOCUMENT.**

WHO IS ELIGIBLE TO PARTICIPATE IN THIS SETTLEMENT

You may participate in this settlement if

- 1 You were born on or before August 30, 1980,
- 2 who, as a minor,
- 3 were sexually abused,
- 4 by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina), and
- 5 you have not previously had a similar claim fully heard by a court or settled

You may also participate in this settlement if you are

- 1 The spouse OR parent of
- 2 individuals born on or before August 30, 1998,
- 3 were sexually abused as a minor;
- 4 by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina),
- 5 and you have suffered the loss of the individual's services, society and companionship, and
- 6 have not previously had a similar claim fully heard by a court or settled

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

At the end of this case, all legal rights of the individuals who fit into one of the above classes and who do not "opt-out" of the classes and settlement will be impacted by this settlement. In deciding how to proceed, you may contact Class Counsel or an attorney of your own choosing.

IF YOU ARE A MEMBER OF THE CLASS AND YOU DO NOT FILE A CLAIM WITHIN THE TIME PROVIDED OR YOU DO NOT OPT-OUT OF THE CLASS, YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS COVERED BY THIS CLASS ACTION

John Doe #53 v Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 2

SUMMARY OF YOUR RIGHTS AND CHOICES

You May

Deadline

STAY IN THE CLASS

and possibly receive

money from the

Settlement

Stay in the Class

To possibly receive money under
the Settlement, you must complete
and return the Claim Form by the
deadline noted

Postmarked or received

by [Date to be inserted]

EXCLUDE YOURSELF

Get out of the class

Postmarked or received

You do not have to remain a member
of the class or participate in the Settlement To be excluded from the Settlement you must complete and return
the Opt-out Form by the deadline noted
By Opting-out of the Settlement you will
not receive any benefits from the Settlement If you fail to file the Opt-out Form
by the deadline, you will be considered
a member of the class

[Date to be inserted]

HOW THE CLAIMS PROCESS WORKS

What follows is a basic summary of the claims process To receive a full copy of the Settlement and Arbitration Agreement and its Addendum, contact Class Counsel, Richter & Haller, LLC, at 843-849-6000 or email disocesettlement@richterfirm.com

John Doe #53 v Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 3

The classes are designed to include all individuals whose claims would normally be barred as a matter of law as a result of the statute of limitations. Whether the statute of limitations has lapsed on your claim is an individual determination which you should investigate with an attorney. However, even if for some reason your statute has not expired, you may still participate in the process if you meet all other requirements.

Those individuals who wish to participate in the claims process must submit a claims form to the office of Class Counsel. **The Claims Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

Those individuals who DO NOT WISH to participate in the claims process must submit an opt-out form to the office of Class Counsel. **The Opt-Out Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

All of the claims proceedings are confidential. Your claim will be given a fictitious name once it is received. No one who files a claim will have their name publicly disclosed. You will not have to appear in court.

All claims of members of one of the classes which are *bona fide* will receive some settlement funds. A *bona fide* claim is one in which there is some likelihood that the event(s) did occur with the Diocesan agent or employee (including priest) at the location and time period when the claimant alleges. If there is a dispute over whether a claim is *bona fide*, you will have a chance to prove your claim.

Once a claim is found to be *bona fide* it will be submitted to an arbitrator for a binding and final determination of damages. You do not have to pay for the arbitration. You will be able to present whatever evidence you wish in support of your injuries. You will not be questioned by a lawyer or other representative of the Diocese at the hearing on damages.

The arbitrator has sole and final determination on the amount of money you will receive. **By participating in this settlement process you agree to abide by whatever decision the arbitrator makes and waive any rights of appeal you may have.** The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse you sustained, the amount of time it went on and the extent of the injuries you have suffered. Claims will be generally classified into the following groups for a determination of the amount of money you will receive:

- 1 Limited inappropriate touching on the victim: an amount between \$10,000.00 and \$18,500.00
- 2 Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts: an amount between \$20,000.00 and \$55,000.00

John Doe #53 v Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 4

- 3 Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex (either on the victim or by the victim on the perpetrator) or other aggravated circumstances. an amount between \$60,000.00 and \$125,000.00
- 4 Egregious acts, such as sodomy, any act accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage. an amount between \$150,000.00 and \$200,000.00
- 5 Members of the consortium class will receive \$20,000.00 for consortium damages

In addition, you have the right to have a **free psychological examination** and two other free psychological sessions with a psychologist in Charleston. You may use this information in support of your claim. The report will not be provided to the Diocese and will be confidential.

Once the claim is *bona fide*, the Diocese is unable to provide any defenses to your claims, including the statute of limitations, immunity, or that it did not know of the events. However, once you have completed the claims process, all rights you may have against the Diocese arising from sexual abuse on you by an agent or employee of the Diocese will be gone.

**IF YOU DO NOT FILE A CLAIM TIMELY AND DO NOT OPT-OUT, YOUR RIGHTS
AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS
ARISING FROM THE CLASS**

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL

Richter & Haller, LLC,

622 Johnnie Dodds Blvd , Post Office Box 1089

Mt. Pleasant, SC 29465

Telephone to 843-849-6000 Email to diocesettlement@richterfirm.com

Claims and Opt-out forms may also be obtained from
www.richterfirm.com

**Order on Matters Heard March 9
Exhibit C**

John Doe #53, et al v The Bishop of Charleston

CLAIM FORM FOR PRIMARY CLASS MEMBERS

This form is to be used by, 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 "

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity

First, Middle and Last Name of Claimant _____

Date of Birth _____ Social Security Number _____

Mailing Address _____

Home Telephone Number _____ Work Telephone Number _____

Cellphone Number _____ Email Address _____

For claims made on behalf of someone else

Name of Representative Making the Claim _____

Relationship of Representative to Claimant _____

Nature of the Representative Capacity _____

Full name of parents _____

Are either or both of your parents living or deceased? If so, state which one _____

Name of spouse (if any) _____

Name of the abuser (if you claim multiple abuses use a separate claims form)

Location(s) at which the abuse occurred _____

Dates/ Time period during which the abuse occurred _____

What was your relationship to the abuser; [i e priest/altar boy, coach/ basketball player] _____

John Doe #53 et al v The Bishop of Charleston
CLAIM FORM FOR PRIMARY CLASS MEMBERS

Briefly state the details of the incident(s) of abuse complained of. You will have an opportunity to expand upon this at a later date. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

Briefly state any claimed injury or damages. You may attach any information relevant to damages you claim to this form. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

You are able to have a *free* session of psychological assessment and two other counseling *free* sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process.

_____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge.

Claimant

Date

MAIL THIS FORM TO
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd ,
Post Office Box 1089, Mt Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN [Date to be inserted] IN ORDER FOR IT TO BE BINDING. IF NOT, YOU WILL BE INCLUDED IN THE CLASS

Order on Matters Heard March 9
Exhibit D

John Doe #53, et al v The Bishop of Charleston

CLAIM FORM FOR CONSORTIUM CLASS MEMBERS

This form is to be used by, "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."

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity

First, Middle and Last Name of Claimant. _____

Date of Birth _____ Social Security Number _____

Mailing Address _____

Home Telephone Number _____ Work Telephone Number _____

Cellphone Number _____ Email Address _____

For each individual for whom you claim some relationship has been damaged, please provide the information below

<u>Name</u>	<u>Address</u>	<u>Date of Birth</u>	<u>Relationship to You</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

John Doe #53, et al v The Bishop of Charleston
CLAIM FORM FOR CONSORTIUM CLASS MEMBERS

For each individual above, please state, 1) the location(s) at which the abuse occurred, 2) dates/ time period during which the abuse occurred, and 3) the relationship of the individual to the abuser, [i.e. priest/altar boy, coach/ basketball player]

Please state the date or time period on which you learned of the alleged abuse described above

Briefly state ways in which you believe you have lost the use of each of the above individual's services, society, and companionship

You are able to have a *free* session of psychological assessment and two other counseling *free* sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process

_____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge

Claimant

Date

MAIL THIS FORM TO
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd ,
Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN [Date to be inserted] IN ORDER FOR IT TO BE BINDING IF NOT, YOU WILL BE INCLUDED IN THE CLASS

Order on Matters Heard March 9
Exhibit E

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

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

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

Plaintiffs,)

vs)

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

Defendants)
_____)

**DECLARATION OF OPT-OUT FROM
CLASS SETTLEMENT**

I do not wish to participate in, and hereby opt-out of, the class action settlement in the above case, and I reserve any and all rights which I may have against the defendants to this action. I understand that by submitting this form, I will be unable to receive any benefits from the settlement agreement after the claims period has expired and that if I wish to proceed at all, I will have to proceed in court with all issues subject to litigation.

Full Printed Name _____ Signature _____

Address _____

City, State, Zip Code _____

Date of Birth _____

MAIL THIS FORM TO

**Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
Post Office Box 1089, Mt. Pleasant, SC 29465**

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN [Date to be inserted] IN ORDER FOR IT TO BE BINDING. OTHERWISE, YOU WILL BE INCLUDED IN THE CLASS AND YOUR RIGHT MAY BE FOREVER BARRED

**Order on Matters Heard March 9
Exhibit F**

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

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

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

)
) Plaintiffs,)
)

)
) vs)
)

VOLUNTARY WAIVER OF APPEAL

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

) Defendants)
)
)

I, _____ a claimant in the above matter, understand and agree
that by participating in the class settlement process for this case approved by the court I am
expressly waiving any and all rights of appeal of any and all decisions of the arbitrator appointed in
this matter, including decisions made on whether I am a member of one of the classes, whether my
claim is *bona fide*, and as to any injuries I sustained and damages I am to receive

Before making this decision I have asked all questions I have regarding the settlement, the
claims process, and my legal rights I have had the opportunity to discuss this matter with an
attorney of my own choosing

Claimant

Date

Witness

Date

**Order on Matters Heard March 9
Exhibit G**

CLAIMANT'S GENERAL RELEASE

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

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

Witness

**Order on Matters Heard March 9
Exhibit H**

IMPORTANT LEGAL NOTICE
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS NOTICE OF CLASS ACTION SETTLEMENT

John Doe #53, et al v Diocese of Charleston, et al

This action applies to 1) any person born before August 30, 1980, 2) who as a minor was sexually abused, 3) by an agent or employee of the Diocese of Charleston, 4) and whose individual claim has not been previously settled or otherwise resolved

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT, (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS, AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS

SUMMARY OF YOUR RIGHTS AND CHOICES

You May

STAY IN THE CLASS
and possibly receive
money from the
Settlement

Stay in the Class.

To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.

Deadline

**Postmarked or received by
[Date to be inserted]**

EXCLUDE YOURSELF

Get out of the class

You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.

**Postmarked or received by
[Date to be inserted]**

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they will receive determined by an arbitrator. The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse. Claims will be generally classified into one of four groups based on the severity of the injury sustained. Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

For a more detailed summary of your Rights, the Claims Process and your Obligations if you wish to participate click [here](#)

Orange Form Summary of Rights, Claims Process, and Obligations

ANY PERSON FITTING INTO EITHER CLASS DEFINITION WHO FAILS TO EITHER FILE A CLAIM FORM OR OPT-OUT BY THE COURT IMPOSED DEADLINE MAY HAVE THEIR RIGHTS AGAINST THE DIOCESE OF CHARLESTON FULLY BARRED BY LAW

CLAIMS FORMS AND IMPORTANT DOCUMENTS

You may download all forms and documents from this website. Please read this portion carefully to ensure that your claim is properly filed. Please call class counsel if you have any question whatsoever.

Members of the Primary Class

You may be a member of the Primary Class if you were born before August 30, 1980 and, as a minor, were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**

Blue Form Claim Form for Primary Class Members

AND

Green Form Voluntary Waiver of Appeal

AND

White Form. Claimant's Release

Members of the Consortium Class

You may be a member of the Consortium Class if you are/were the spouse and/or parent of an individual(s) who as minors were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**

Blue Form Claim Form for Consortium Class Members

AND

Green Form Voluntary Waiver of Appeal

AND

White Form Claimant's Release

The Claimant's Release Form will be held by Class Counsel until you have received a check from the settlement fund. At that time, it will be provided to the Diocese of Charleston. If for some reason you do not receive a check from the settlement fund, it will be returned to you.

If you want to exclude yourself

If do not wish to participate in the class action and settlement process and wish to proceed on your own, then you must complete and return or have postmarked by **[Date to be inserted]**

Pink Form Opt-out Form

PLEASE NOTE

1. No one but the arbitrator selected under the Settlement and Arbitration Agreement can say with finality whether you are a member of either class,
2. Nothing on any form or on this website should be considered legal advice. If you have any questions about your rights or responsibilities, you should discuss the matter with counsel of your own choosing.

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL

**Richter & Haller, LLC, 622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 (Telephone) * 843-881-1400 (Fax) * Diocesettlement@richterfirm.com**

www.richterfirm.com

ALL FORMS MUST BE EITHER POSTMARKED BY THE U S POSTAL SERVICE OR RECEIVED
BY CLASS COUNSEL ON OR BEFORE **[Date to be inserted]**

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER)

CASE No 06-CP-18-1310

CASE No 06-CP-18-1311

CASE No 06-CP-18-1636

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

v)

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

Defendants)

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

AND IT IS SO ORDERED'

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

AND IT IS SO ORDERED'

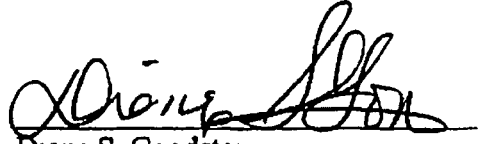
Furthermore, in the Court's Order of July 30, 2007 approving the Class settlement, the Court made reference to the existence of individuals who, according to the Diocese, (1) were potential class members, (2) came forward to the Diocese at some time in the past with their allegations of child sexual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

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

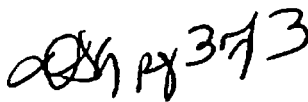
AND IT IS SO ORDERED'

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

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


Diane S. Goodstein
Presiding Judge

This 31 day of August 2007
Sumner South Carolina



The Supreme Court of South Carolina

John Doe, individually and on
behalf of all persons who are
similarly situated, Plaintiff,

v

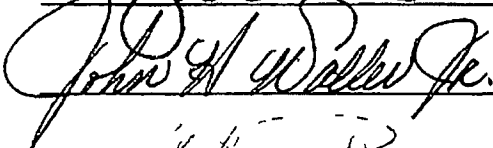
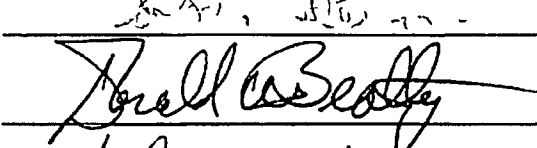
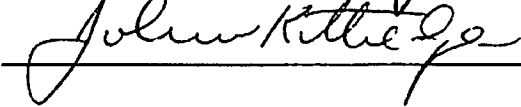
Lawrence E Richter, Jr , David
K Haller, Richter & Haller,
LLC, Peter Shahid, Jr , Shahid
Law Office, LLC, Robert
Baker, The Bishop of
Charleston, a Corporation Sole,
and The Bishop of the Diocese
of Charleston, Defendants

ORDER

Plaintiff has filed a complaint and a petition asking this Court to
accept the complaint in our original jurisdiction Defendants have filed
returns to the petition The petition is denied

However, we are concerned by the delay that filings such as the
one at hand have caused in finally resolving the underlying matters pending
in Dorchester County Accordingly, we hereby direct that the underlying
matters be concluded within six months of the date of this order No
extension shall be granted absent prior permission by this Court

IT IS SO ORDERED


C J

J

J

J

Columbia, South Carolina

March 19, 2009

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

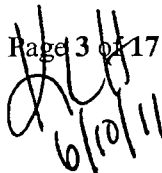
time by agents or employees of the Diocese of Charleston who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released (Hereinafter the "Consortium Class"), pursuant to the "Addendum to Settlement 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.



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

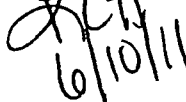
[Handwritten signature]
6/10/11

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.

Page 9 of 17

RCA
6/10/11

Record On Appeal p 000086

and earlier instructions from this Court (hereinafter referred to as "Actual Notice Class Members") The Defendants have asked the Court to clarify how the settlement process will treat Actual Notice Class Members Accordingly, the Order clarifies, and, where in conflict, supersedes the Court's Order of July 30, 2007

The August 31, 2007 Order created a specific sub class of potential class members who were categorized as Actual Notice Class Members This designation clarified the issue raised by Diocese Defendant's attorney at the August 9, 2007 hearing, that the *only* group who is entitled to come forward without the *res judicata* effect of the Class Action Settlement Agreement are those individuals who satisfy the above enumerated criteria and are within the umbrella of this new sub class The Order further distinguishes this group from the larger class in the following provision

Actual Notice Class Members who present their claims more than 120 days after they receive actual notice of the settlement shall be barred from participation in the settlement process and ***shall be treated like any other class member who has failed to timely present a claim*** to the class settlement fund (emphasis added)

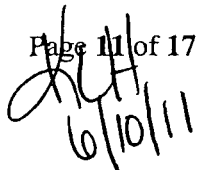
The Plaintiffs allege that the July 2007 Order suspends the *res judicata* and collateral estoppel effect of the Class Action litigation for *any* person who falls within the definition of the class While the Plaintiffs acknowledge the restricted membership of the Actual Notice sub-group and admit they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

This rationale is clearly erroneous and ignores the clear language and intent of the Court in addressing this narrow issue The Diocese Defendants were careful to address any possibility of ambiguity of the Court's language in the July 2007 Order The Plaintiffs' interpretation would render the creation and definition of the Actual Notice sub-group meaningless, and in essence strip

the fabric of any protection afforded the Diocese Defendants in the Class Action Settlement Agreement. If the *res judicata* effect of the class litigation was suspended for all absent class members, the identification of those who had previously presented their claims and are therefore now entitled to *actual notice* would be unnecessary. No potential claimant could ever be prejudiced by *res judicata*, therefore, there would be no need for the Court to carve out this small group of potential claimants to protect them from the application of the Doctrine of *res judicata*.

The Plaintiffs' rationale of the July 30, 2007 and August 31, 2007 Orders is further illogical because it would give the Diocese no motivation to participate in a class action settlement as it would afford no protection against future claims. The Plaintiffs would have this Court believe there is no *res judicata* effect from the previous litigation which would offer the Defendants no protection against future claims by absent class members, creating an indefinitely opened claims period. Our Supreme Court has listed "the significant interests in efficiency and finality" as benefits of class action litigation. Hospitality Management Associates v. Shell Oil Co., 356 S.C. 644, 659, 591 S.E.2d 611, 619 (2004). Furthermore, Judge Goodstein's Order seeks to "protect the interests of both the absent class members and the **Diocese's right to have the conclusive effect of a class action**" (emphasis added). The Plaintiffs' reading of the Dorchester County Class Action Orders promotes neither efficiency nor finality and conflicts with the basic nature of a class action.

Absent class members are subject to the same legal effect of *res judicata* as in a non class action. The issues presented in the current case have already been litigated to a final, valid order in the Dorchester County Class Action between the same parties. The Plaintiffs' assertion that the Diocese waived defenses of *res judicata* for future litigation is without merit and not supported by



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

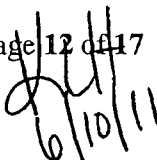
Similar to the doctrine of *res judicata*, collateral estoppel precludes a party from re-litigating issues actually adjudicated in a prior action Unlike *res judicata*, while the identity of the parties do not have to be the same in the prior action, the adjudicated issue must be related “Collateral 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

Page 12 of 17



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

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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

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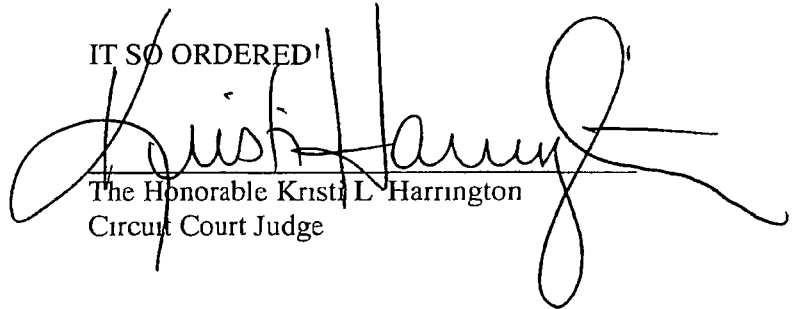
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liability under UTPA claim, as no defendant would ever settle a claim against it, only to open itself up to further liability. The settling of a legal claim is not trade or commerce under the definitions in the UTPA.

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

STATE OF SOUTH CAROLINA

FORM 4

JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEASCase No 2009-CP-10 6694
2009-CP-10 8054
2009 CP-10 8055
2009-CP-10 8056

John Doe

versus

The Bishop of Charleston, et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ **DECISION BY COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b), SCRCP ☐ Rule 41(a) SCRCP (Vol. nonsuit)
☐ Rule 43(k), SCRCP (Settled) ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j) SCRCP, ☐ Bankruptcy ☐ Binding Arbitration
subject to right to restore to confirm vacate or modify arbitration award, ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed ☐ Reversed ☐ Remanded, ☐ Other _____
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE LOWER COURT, TRIBUNAL
ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED

- ☐ See attached order (Formal order to follow)
☒ Statement of Judgment by the Court

2011 JUL 29 PM 4:12
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff's Motion to Alter or Amend Order of June 15, 2011 is respectfully Denied

Dated at Charleston South Carolina this 20th day of July, 2011

PRESIDING JUDGE

SCCA SCRCP Form 4 Revised 6/2008

Clerk of Court
Julie J. Armstrong

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO 09-CP-10-6694

John Doe,)
)
Plaintiff,)

v)

The Bishop of Charleston, a)
Corporation Sole, and)
The Bishop Of The Diocese of)
Charleston, in his official Capacity,)
)
Defendants)

Negligence, Recklessness
Intentional Tort
Fraudulent Concealment
Unfair and Deceptive Trade Practices
Jury Trial Requested

Second Amended Complaint

For his complaint, the plaintiff alleges

Parties and Jurisdiction

1 Plaintiff is a citizen and resident of South Carolina Presently an adult, as a child he was sexually molested as children by a priest of the Diocese of Charleston, Fr James W McCarthy, when Jams McCarthy was assigned to Saint William in Ward, S C during the approximate time period of 1965 to his departure in 1971

2 A pseudonym is used for the plaintiff due to the sexual abuse injury which is the subject of this complaint The defendants will be informed of the identities of the plaintiff

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

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JULIE J ARMSTRONG
CLERK OF COURT

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

5 The Bishop of The Diocese of Charleston, is the formal head of the Diocese. Presently the Bishop is the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued in his official capacity, and is a party necessary for complete relief. He is referred to in this complaint as the Bishop. All persons working for the Diocese are subordinate to the Bishop. In this complaint, the Diocese and the Bishop defendants are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

6 The Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County.

Nature of Wrongdoing

7 Prior to 1965, the Diocese defendants were either reckless or acted intentionally in actively disregarding the risks to children and families for sexual assault of children by

their priests and other employees, and then actively, and fraudulently, concealing the abuse that happened, and the dangers to children the Diocese and its priests solicited into danger

8 The Diocese defendants were reckless in exposing children to the danger of sexual abuse, or did so intentionally in that the interest of the children at risk were regarded as expendable, in order to promote the interests of priests and the Diocese in appearing to be a more pastoral organization then it was in fact

9 Charitable immunity does not apply to intentional or reckless conduct such as is alleged in this complaint, and in any event, in 2007 the Diocese explicitly waived all charitable immunity, and explicitly all statute of limitations defenses, for persons sexually abused prior to 2001

10 Plaintiff was sexually abused prior to 2001

11 Plaintiff received no notice of the class action case the Diocese agreed to accept for abuse victims and under the terms of that class action, and by agreement of the Diocese in that action, Plaintiff is not barred by the *res judicata* effect of that class action that would otherwise apply

**For a First Cause of Action
Negligence, Recklessness, and Intentional Misconduct**

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

13 The defendant Diocese employed James McCarthy as a priest

14 In his capacity as priest, James McCarthy was placed by the defendants in a position of trust and confidence, and had access to the plaintiff and other children In that capacity, James McCarthy sexually molested multiple children, including the plaintiff

15 Prior to John Doe being molested, the defendants became aware that James McCarthy was dangerous to children. The defendants placed James McCarthy so as to facilitate his access to children whom he could molest. Those decisions by Diocese personnel working on behalf of the Bishop were made or approved in Charleston County.

16 After he was moved by the defendants to Ward, South Carolina, James McCarthy molested the plaintiff.

17 The Diocese, Bishop, and its other officials negligently supervised James McCarthy. The Bishop was grossly negligent in supervising James McCarthy in not limiting his access to children or providing protective supervision over him.

18 As a proximate result of the negligence and gross negligence by the Diocese defendants, the Plaintiff's children were each sexually abused by James McCarthy.

19 The Diocese defendants were negligent in failing to warn the plaintiff or his parents about James McCarthy. The Bishop performed that duty in a grossly negligent manner.

20 Although knowing that James McCarthy was a pedophile, or having reason to know, the Diocese and Bishop, including the Bishops prior to the current Bishop, made no effort, or no competent effort, to ascertain how many children James McCarthy had molested, and no effort, or no competent effort, to locate victims of James McCarthy. If the Diocese did make such an effort, as it claims to have done, it assumed the duty but performed it in a negligent manner, relying only on prior reports by abuse victims instead of undertaking an affirmative effort to ascertain victims of James McCarthy. The duty undertaken by the defendants was performed in a grossly negligent manner, if it was not

intentionally performed in a manner designed to be ineffective so as to enable the Diocese to claim it had made an effort

21 The defendants' failure to ascertain James McCarthy's victims was negligent, and grossly negligent, if not intentional, on behalf of the presiding Bishop from the time of the plaintiff's abuse to the present

22 As a result of the defendants' negligence, gross negligence, or intentional deception in failing to either prevent plaintiff's children from being abused or identifying the plaintiff's children as a victim of abuse by James McCarthy, a Diocese agent or employee, the plaintiff had impairments to the services of her children which were then exacerbated over time. The conduct of the defendants delayed the plaintiff's discovery that her children had all been molested by James McCarthy, delayed her treatment and treatment for her children, and exacerbated all problems stemming from the plaintiff's children having been sexually abused

23 As set forth more fully below in the second cause of action, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants, among other things, accounts for the delay in this action being brought against the Diocese defendants

24 The plaintiffs are entitled to actual and punitive damages as a result of the negligence of the Diocese defendants, and gross negligence of the various presiding Bishops, in failing to perform a proper review for McCarthy's victims, or in performing that duty in a grossly inadequate or intentionally inadequate manner

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

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

26 The Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children. That practice, independent of the intentional and knowing waiver by the Diocese of the defenses of statute of limitations and charitable immunity, estops the Diocese from asserting any statute of limitations defenses as to the plaintiff or her children.

27 The Diocese defendants had a duty to discover, and to disclose, to plaintiff and to her children, their knowledge that James McCarthy had a sexual interest in children. That duty arises from (a) the preexisting fiduciary relationship between the plaintiff and the Diocese defendants, which relationship the Diocese solicited, (b) from plaintiff's having expressly reposed on behalf of her minor children, a trust and confidence in the Diocese defendants with regard to their son participating in events which would place them alone and in a vulnerable position with James McCarthy, the position of trust and confidence being implicit from those circumstances, from the nature of the dealings between the plaintiff and the Diocese defendants, and from their relative positions towards each other in light of the superior knowledge about James McCarthy possessed by the Diocese, (c) from the essential nature of the Diocese defendants and their inducement to Plaintiff and his parents that having his son participate in the activities of the Diocese would be beneficial to him, not harmful to him, (d) from the secrecy

provisions in the Code of Canon Law and the 1962 document titled "Instruction," which charges the Diocese to discover, but maintain secrecy about, "other persons solicited" by any person such as James McCarthy who committed the "unspeakable crime" of sexually abusing a child, and (e) by the undertaking which the Diocese defendants assumed, negligently (and in the case of the individuals included in the Diocese defendants designation, grossly negligently or intentionally poorly), in 2005 - 2007 to locate victims such as the plaintiff

28 Plaintiff was sexually abused by James McCarthy after 1962, in that James McCarthy was not assigned to Ward, S C until 1965

29 Concerning each of (a) the dangers James McCarthy represented to Plaintiff, and (b) assisting to repair the damage done by James McCarthy, the Diocese defendants were obligated to Plaintiff and his parents to engage with each of them in perfect good faith and with full disclosure, without regard to any particular intention of the parties The relationship the Diocese solicited and assumed as to the plaintiff was inherently fiduciary

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

31 Specifically, the Diocese defendants created, as embodied in the Code of Canon law which required it an archive (Canon 486), accessible only by the Bishop and chancellor (Canon 487) Documents may not be removed from the archive except for a

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

32 Matters related to agents and employees of the Diocese sexually abusing children, including James McCarthy’s sexual abuse of children including the plaintiff, were regarded as scandalous, and were maintained in the secret archive

33 Another technique used by the Diocese to maintain secrecy about abuse matters or any other matter the Diocese wished to keep secret was to move the documents to other locations, including moving document to Rome, where diplomatic immunity could be claimed

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

35 The plaintiff fits within the ‘ penitent’ referred to in the Instruction

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

37 James McCarthy was, and the plaintiff is, male Thus, the conduct by James McCarthy towards the plaintiff qualifies under the Instruction as “the worst crime ”

38 Among other things, the instruction directs that the Diocese defendants were to assume the duty of locating “other persons solicited by the same confessor” (p 7 ¶ 29) in this instance, other persons solicited by James McCarthy See also, Instruction, p 9 ¶ 37

39 When that duty was assumed by the Diocese defendants, it was performed in a grossly negligent manner The Diocese defendants failed to locate the plaintiff or any of James McCarthy’s other victims, of which there are many

40 The “Instruction” was approved by the “Most Holy Father John XXIII” in 1962 P 16

41 In its Appendix, the Instruction sets out the terms of the secrecy to be observed for matters such as the sexual abuse of John Doe 1 In essence, the oath provides for absolute secrecy, under pain of excommunication Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained “under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good, ’ unless expressly approved “by the Supreme Pontiff ” P 17

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

43 Unless the Pope himself approves otherwise, secrecy is to be maintained not only by the Catholic plaintiffs such as the plaintiff, but by every member of the Diocese defendants, and by even witnesses to sexual abuse including the plaintiff. That secrecy is to be made despite any law, court order, or oath to which would otherwise require disclosure. Under the Instruction, the highest obligation, higher than any law, oath, or court order, is to maintain secrecy for the benefit of the Diocese, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has instructed otherwise, the Diocese defendants can all be expected to be obedient to the Instruction, and to overtly misrepresent any facts related to sexual abuse. The Diocese defendants have, to date, done so.

44 Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the defendants as to James McCarthy’s sexual abuse of the plaintiff. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent sexual abuse of the plaintiff, or to ascertain that the plaintiff was a victim of the abuse by James McCarthy.

45 As courts began to require the Diocese despite its commitment to secrecy and deception, to be accountable for sexual abuse, the Diocese had to reach a new level of deception and manipulation to limit the damage to the Diocese from its having to take responsibility for its history of sexual abuse, and to as much as possible conceal the extent of abuse, and to limit as much as possible its responsibility for that abuse.

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

47 In addition, and as an independent alternative, as a result of its practice of secrecy, as well as from its explicit waivers, the Diocese is precluded from asserting the statute of limitations as to the plaintiff

48 The Plaintiff is not precluded from making this claim by any prior litigation brought against the Diocese, because the order in that litigation provides for those who received no notice of it "for whatever reason," and plaintiff received no notice of that litigation

49 The Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese, because 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

50 Alternatively, the Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese because that litigation was collusive The Diocese calculated it could use the class action to pay modest compensation to a limited number of victims, then try to exclude all others by *res judicata* The Diocese colluded to

- (a) cooperate with class counsel who had life-long ties to the Diocese and who held positions within the Diocese,
- (b) twice continue hearings in Charleston County for three pending cases,

one of which was a class action, so as to keep the Charleston County Circuit Court from deciding dispositive motions or ruling on class status pursuant to SCRCP 23(c),

- (c) agreed to a fixed fee for class counsel simultaneously negotiating the recovery for the class,
- (d) agreed to class counsel's fee taking priority over the recovery for the class,
- (e) agreed to class counsel being paid prior to the class being known or the first class claimant had even an opportunity to file a claim,
- (f) agreed to limits on class member recovery for a small fraction of what class counsel would agree to accept when litigating against a Diocese other than his own,
- (g) agreed not to disclose to the Charleston County Circuit Court that a class action settlement was in fact reached in the class action pending in Charleston County during a June, 2006 mediation
- (h) agreed to not submit the June, 2006 mediated class settlement to the Charleston County Circuit Court even though the class action settled by that agreement was pending in that court, and no other case was then pending
- (i) agreed to a plan to move class certification and class settlement oversight from the Charleston County Circuit Court in which the pending class action had been settled, to Dorchester County, where no case was then

pending, so as to judge-shop for a Circuit Court judge with long social and professional ties to class counsel,

- (j) agreed to accept service of three collusively-filed class actions in Dorchester County, one of which was identical, word-for-word and typo-for-typo, to the already-settled class action pending in Charleston County, making that class action case pending in two counties simultaneously,
- (k1) agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, apparently giving that judge only limited information, and certain false information, about the pending Charleston County class action and the collusion among counsel, so as to gain her (apparently unwitting, initial) assistance in depriving the Charleston County court of jurisdiction to review under SCRCF 23(c) the class status of, or the June, 2006 class settlement for, case 05-CP-10-4913
- (k2) Alternatively, the Diocese agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, fully disclosing that a Charleston County class action, 05-CP-10-4913, was pending and that a proposed class settlement had been reached in June, 2006, and seeking the Dorchester County court's active cooperation in depriving the Charleston County court of the jurisdiction to review under SCRCF 23(c) the class status of, and the June, 2006 proposed class settlement for, case 05-CP-10-4913
- (l) agreed to circumvent SCRCF 23 being applied by any Charleston County judge to the class settlement reached in the class action pending in

Charleston County, by agreeing to not inform that Court that a class settlement had been reached when asking for the Charleston cases to be dismissed,

- (m) agreed to take no position on class certification, even though the Diocese would be obligated to a settlement of \$460,000 without class certification but for far more with class certification,
- (n) agreed to remain silent about class counsel's false, duplicative, and fraudulent time and billing records in class counsel's application for costs and fees,
- (o) agreed to class counsel being paid in fact prior to the class claims period even beginning,
- (p) agreed to oppose all objections raised by third parties to the class settlement,
- (q) convinced class counsel to abandon his request to the court for nationwide notice and to change his request for only geographically limited notice,
- (r) agreed to arbitration of class members claims, to assure that the Diocese would not pay to victims more than the limits the Diocese was willing to accept,
- (s) agreed to inform the mediator about the financial limits the Diocese was willing to accept so the arbitrator would not exceed those sums in its awards to class members,
- (t) convinced class counsel to acquiesce in letting the Diocese examine its own files for sexual abuse victims, even though the Diocese was alleged to

have a history of deliberately secreted information about abuse, and the search by the Diocese was only for persons who had already identified themselves as abuse victims, not for all victims

- (u) agreed to request no post-award fairness hearing in the class action,
- (v) agreed to request no review of class counsel's actual fee, even though it appears class counsel might have recovered as much as 51% of all sums paid by the Diocese,
- (w) agreed to request of the Dorchester County court no final accounting or final order prior to the September 19, 2009 deadline imposed by the SC Supreme Court for the Dorchester County court to conclude the class action,
- (x) agreed to request no final accounting, and
- (y) agreed to take no appeal from any orders of the Dorchester County court affecting the class settlement

51 Plaintiff presumes that in 2006 and 2007 the Dorchester County Circuit Court was not given complete information about the status of 05-CP-10-4913 and the proposed class settlement, and by the time accurate information was given to the Court, in 2008, it was so far into the class process that even though the Court had authority to modify orders in the class action "at any time" under SCRC23, the Court elected to take no further action in the class action case

**For a Third Cause of Action
Unfair and Deceptive Trade Practices**

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

53 The Diocese defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law. The Diocese contends its participation in engaging in unfair and deceptive acts or practices is not sufficiently specified by its conduct in the allegations prior to this paragraph, so to accommodate the Diocese, we set forth a short and plain statement of allegations in greater specificity about those various engagements in trade or commerce as defined in South Carolina law.

54 Defendants engage in trade or commerce in that they provide services to the public and advertise services to the public. Providing any services constitutes commerce within the meaning of the UTPA. Commerce in that regard is not confined to conventional consumer transactions.

55 Defendants offer, and advertise, services related to association, entertainment, and pastoral activities. Defendants operate schools for which tuition is charged. For many years, including time periods pertinent to this complaint, the defendants were supported and maintained by, among other things, gambling revenues, and advertised its gambling activities to the public.

56 Defendants' activities encompass the entire State of South Carolina, and defendants assign and oversee personnel throughout the state for the services it provides throughout the state.

57 Starting not later than 1998, defendants began to accommodate various claims that among the personnel engaged in its operations with the public were a number of persons who had a sexual interest in children. On their own volition under the Code of Canon Law, and operating through instruction from the Vatican, the defendants organized efforts over time to maintain as much secrecy as possible about the pedophiles.

it employed, and elected as a strategy to maintain as much secrecy as was possible about those pedophiles

58 The defendants organized internally to absorb and deflect victims of its pedophiles, and to resist, as much as possible, taking any responsibility for its pedophiles

59 One method eventually adopted by defendants was to offer, and advertise its offer, of counseling services for victims of its pedophiles. The defendants sought to maintain control of victims by making slight compensation for sexual abuse victims, and to contain information about pedophiles, while gathering information from abuse victims

60 To minimize risks to themselves, the defendants established a person to be responsible for responding to sexual abuse victims of the pedophiles maintained by the defendants. Information was gathered by that person and used to maintain information on pedophiles and their victims, and to minimize the risk of litigation. This was a calculated business strategy by the defendants to protect the organization from all but minimal accountability for its pedophiles

61 Defendants also collaborated with the Vatican to receive reimbursements for all or some of payments made for victim compensation, collaborating across international borders as well as across state lines to do so

62 In 2006, the defendants collaborated on a new strategy to minimize its responsibility for the pedophiles it had permitted for decades to sexually abuse children. Working with a member of the Diocese, the defendants adopted a strategy of collusive litigation to advertise for, and gain limited participation in, a claims process that was hoped would, for a price, purchase the ability for defendants to compensate some victims minimally, enabling the defendants to avoid paying any significant compensation, in

exchange for being able then to deny all compensation to any other victims who might seek greater accountability

63 In 2006, the defendants calculated they could use a collusive class action to pay modest compensation to a limited number of victims to secure the smallest amount of compensation possible. To pursue that improper objective, defendants made, even to the court, false promises and assurances to gain the court's approval of the class action mechanism, and then used the collusive class action to try to exclude, by *res judicata*, all other victims. Through this means defendants purchased, for the price of modest recoveries to a group of victims known to be incomplete, the ability to avoid significant recovery to any victim, and avoid outright any recovery at all to many other victims about which the defendants knew or should have known.

64 Defendants cooperated and colluded in this objective with class counsel who had life-long ties to the Diocese and who held positions within the Diocese. He agreed to not disclose to the class his connections to defendants.

65 Defendants collaborated with class counsel to twice continue hearings in Charleston County for three pending cases, one of which alleged a class action, so as to keep the Charleston County Circuit Court from deciding dispositive motions or ruling on class status pursuant to SCRCP 23(c). Defendants and class counsel sought to avoid any independent judge, preferring instead to present their collusive class action only to a judge they had hand-picked. The defendants and class counsel counted on their hand-picked judge not scrutinizing too closely their collusive actions, including false information given to the court, even when the collusion and false information was plainly exposed for the judge to review. And as defendants expected, the hand-picked judge

refused to make any inquiry into any of the collusive conduct, any of the judge-shopping by which that judge was picked, any of the unethical fee provisions, or any of the false or fraudulent information given to that judge. Defendants refused to request, and the hand-picked judge refused to order, any post-award fairness review for the class action, so as to avoid having to confront the collusive and fraudulent conduct of the class action.

66 Defendants agreed to a fixed fee for class counsel while class counsel simultaneously negotiated a variable recovery for the class, enabling defendants to succeed in pitting class counsel's personal interest against, and ahead of, the interests of his class member clients. Defendants calculated correctly that class counsel would promote his own interests ahead of the class members he represented.

67 To facilitate class counsel putting his own interests ahead of the class he represented, defendants agreed to enable class counsel's fixed fee to take priority over the variable recovery for the class, an unethical conflict of interest.

68 Defendants agreed to class counsel being paid prior to the class being known or before the first class claimant had even an opportunity to file a claim.

69 Defendants negotiated to 'buy off' class counsel so as to get, in exchange, limits on class member recovery that were a small fraction of what class counsel would agree to accept when litigating against a Diocese other than his own in a comparable sexual abuse claim. Specifically, by buying off class counsel for a fixed fee that had priority over class member recovery, defendants obtained in exchange a limit of \$200,000 for any class member. By contrast, when class counsel settled a comparable individual case for sexual abuse, also filed in South Carolina but against the Diocese of Savannah, not defendants, class counsel recovered over \$4 million for a single client, counsel for these defendants.

also representing the Diocese of Savannah, so these defendants were well aware of the progress of that litigation. By defendants colluding with that class counsel to work against the class of victims in the South Carolina class action, the defendants avoided having to pay anything close to comparable value for the class of victims, lowered the bar for recovery to all victims, and created a mechanism the defendants later tried to use to bar all other victims.

70 Defendants agreed with class counsel not to disclose to the Charleston County Circuit Court that a class action settlement was in fact reached during a June, 2006 mediation in the class action pending in Charleston County.

71 Defendants agreed with class counsel to ignore the mandatory requirements of SCRCP 23, and agreed with class counsel not submit the June, 2006 mediated class settlement to the Charleston County Circuit Court for approval, even though the class action settled by that agreement was pending in that court, and no other class action case was then pending.

72 Defendants agreed with class counsel to a plan to move the questions of class certification and class settlement oversight from the Charleston County Circuit Court, in which the pending class action had been settled, to Dorchester County, where no case was then pending, so as to judge-shop for a particular Circuit Court judge with long social and professional ties to class counsel.

73 Defendants agreed to accept service of three collusive class actions filed in Dorchester County, one of which was identical, word-for-word and typo-for-typo, to the already-settled class action pending in Charleston County, making the identical class action case pending in two counties simultaneously.

74 Defendants' agreement to accept service was part of the plan with class counsel to ignore the case pending in Charleston, make it quietly go away, and use the hand-picked, shopped-for judge to approve the class mechanism only in Dorchester County, avoiding any class approval questions in Charleston County

75 Defendants agreed with class counsel to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, apparently giving that judge only limited information, some of which was false information, about the pending Charleston County class action and the collusion among counsel, so as to gain the judge's unwitting initial assistance in depriving the Charleston County court of jurisdiction to review under SCRCP 23(c) the class status of, or the June, 2006 class settlement for, case 05-CP-10-4913. Alternatively, defendants began communications with the judge in Dorchester County with long social and professional ties to class counsel, making full disclosure that (a) a Charleston County class action, number 05-CP-10-4913, was pending, (b) a proposed class settlement had been reached in that action in June, 2006, and (c) the defendants sought the Dorchester County court's active cooperation in depriving the Charleston County court of the jurisdiction to review under SCRCP 23(c) the class status of, and the June, 2006 proposed class settlement for, case 05-CP-10-4913.

76 Defendants agreed to circumvent SCRCP 23 being applied by any Charleston County judge to the class settlement reached in mediation of case 05-CP-10-4913, the class action pending in Charleston County, and defendants agreed to not inform the Charleston County Circuit Court that a class settlement had been reached when defendants agreed to ask for that and two other Charleston cases to be dismissed

77 Defendants agreed with class counsel to take no position on class certification in the Dorchester County collusive class cases, even though the Diocese would be obligated to a settlement of \$460,000 without class certification but more than \$8 million with class certification. The defendants knew that even spending \$8 million was a bargain price for effectuating its plan for low compensation to abuse victims in exchange for a protection defendants would later argue barred all compensation for any other victims.

78 Defendants agreed to remain silent about class counsel's false, duplicative, and fraudulent time and billing records that were used to support class counsel's application for costs and fees. Among other things, defendants agreed to be silent when class counsel billed time on February 30 in different years, and when class counsel billed individual time of more than 24 hours per day on numerous occasions, including a day in which class counsel to have worked more than 40, 50, 70 and 90 hours in a single day. The silence by defendants for class counsel's grotesque billing records was among the *quid pro quo* for enabling defendants to obtain the benefits of the collusive class action.

79 Defendants also agreed not to report class counsel's egregious billing conduct to the Office of Disciplinary counsel. The silence by defendants for class counsel's grotesque billing records was among the *quid pro quo* for enabling defendants to obtain the benefits of the collusive class action.

80 Defendants agreed to class counsel being paid prior to the class claims period even beginning.

81 Defendants agreed to oppose, with class counsel, all objections to the class settlement raised by third parties to the class settlement.

82 Defendants succeeded in getting class counsel to abandon his request to the Dorchester County court for nationwide notice to the class, and to change that request for only geographically limited notice, limited only to South Carolina advertising sources

83 Defendants agreed to arbitration of class members claims, to assure that the Diocese would not pay to victims more than the limits the Diocese was willing to accept. Claims could be adjusted, if need be, to enable compensation to victims to be adjusted so as to keep overall compensation within the limits desired by the Diocese and the Vatican

84 Defendants agreed to inform the mediator about the financial limits the Diocese and the Vatican were willing to accept so the arbitrator would not exceed those sums in its awards to class members, and if needed, could adjust the awards to maintain those limits

85 Defendants got class counsel to acquiesce in letting the Diocese examine its own files to discover sexual abuse victims, even though class counsel claimed the Diocese had, and the Diocese in fact had, a history of deliberately secreting information about abuse, and the search by the Diocese was disingenuous in that it was a search not for all victims but only for persons who had already identified themselves as abuse victims

86 Defendants agreed to request no post-award fairness hearing in the Dorchester County class action, even though further proceedings were ordered by the South Carolina Supreme Court

87 Defendants agreed to request, through a fairness hearing or otherwise, review of class counsel's actual fee as a percentage of the common fund for the class, even though it appears class counsel recovered as much as 51% of all sums paid by the defendants

That silence by defendants was part of the *qui pro quo* for the benefits to defendants of the collusive class action

88 Defendants agreed to request of the Dorchester County court no final accounting or final order prior to the September 19, 2009 deadline the South Carolina Supreme Court imposed on the Dorchester County court to conclude the class action That silence by defendants was part of the *qui pro quo* for the benefits to defendants of the collusive class action

89 Defendants requested no final accounting of the class action

90 Defendants agreed to take no appeal from any orders of the Dorchester County court affecting the class settlement

91 In 2006 and 2007 the defendants agreed to withhold from the Dorchester County Circuit Court the complete information about the status of case 05-CP-10-4913 and the proposed class settlement, and by the time accurate information was given to the Court, in 2008, by others, it was so far into the class process that even though the Dorchester County Court had authority to modify orders in the class action “at any time” under SCRC23, the hand-picked Dorchester County judge elected to take no further action in the class action case, and the defendants agreed to make no request that the Court take any action, and refused all requests that the Dorchester County Court take further action

92 The Diocese defendants stated publicly, and to the Court, that the Diocese waived its defenses for persons abused prior to August 31, 1980, yet then refused to do so when such persons came forward The representation was made by the defendants on the record in an *ex parte* proceeding (ex parte as to other parties who had responded to the court’s invitation for objections to the proposed class action)

93 A true and accurate transcript of proceedings in the class action of July 13, 2007, in which the defendants made their false representations to the Dorchester County Circuit Court, are attached to this complaint and incorporated into these allegations pursuant to SCRCP 10(c). Using the page numbers of the attachment, on page 1 of 33 the defendants sought to avoid having a record made of the proceedings. Defendants' false statements appear on throughout this transcript, but essentially on page 22 of 33, at lines 17 to 25 and then to line 1.

94 For all of these reasons, it is alleged that defendants have engaged in trade and commerce within the meaning of S.C. Code 39-5-10(b), and used false and deceptive trade practices during those actions of trade or commerce. Defendants have operated, advertised, and distributed services, property, and things of value, so as to directly and indirectly affect the people of South Carolina.

95 Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Diocese, and is entitled to recover actual damages as a result of the wrongful conduct of the Diocese.

96 The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese engaged in a public relations exercise, in an effort to procure positive publicity, at a certain cost to itself, without having to compensate all of its abuse victims. It designed the compensation specifically to exclude certain victims. The Diocese engaged in collusion and overt misrepresentation in order to achieve its objective to deceive the public, the court, and those persons sexually abused prior to August 31, 1980, and the parents and spouses of those persons.

97 The unfair and deceptive acts and practices of the Diocese have an impact upon the public interest, and has not only the potential for repetition, it has been repeated The practices engaged in by the Diocese of misrepresentations to the court and the public through its court statements and its statements to the press are extensions of longstanding practices of deceit and deception by the Diocese Maintaining secret archives of files, practicing “mental reservation” to support and justify lying (even while under oath) using diplomatic immunity to conceal documents, and mandating that persons conceal abuse are all techniques used by the Diocese to maintain deception Overtly misrepresenting to a Court and the public are extensions of practices the Diocese has engaged in for years

98 The false and deceptive practices of the Diocese will continue absent some deterrence in the form of liability and damages as well as injunctive prohibitions The corrupt practices of the Diocese have been repeated as well as having had the potential for repetition The Diocese engages in misrepresentations of material fact

99 The Diocese has intentionally misrepresented even geographic origin and history in presenting information about abuse victims to the court and the public

100 The Diocese should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material in its possession, custody, or control

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

102 The plaintiff suffered an ascertainable loss of money as a result of the use
or employment by the Diocese of the unfair or deceptive methods in articulating one
standard that the Diocese claimed applied to abuse victims prior to 1980, but then ~~for the~~ *ben*
~~state court but then~~ refusing to comply with that standard, ~~when~~

103 The plaintiff is entitled to treble damages as a result of the conduct of the
Diocese, as well as actual and punitive damages, and such other and further relief as the
court deems just and proper

Demand for Jury Trial

104 Plaintiffs demand a trial by jury

Relief Sought

Wherefore, Plaintiff seeks relief in the form of

105 Actual and punitive damages to be awarded to the plaintiffs by the finder
of fact against the various defendants, trebled as authorized by law,

106 Costs and disbursements of this action,

107 Attorneys fees as authorized by law, and

108 Such other and further relief as the Court deems just and proper

Respectfully submitted,



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Attorney for Plaintiff

1

2

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

7

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

10

THE COURT Good

11

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

13

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

15

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

17

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

20

MR SHAHID We don t need to be on the
record do you think?

22

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

1

ahead shoot what?

2

MR SHAHID Judge I sent by fax a

3 July 13 2007 txt
4 letter to you yesterday
5 THE COURT Right yeah
6 MR SHAHID And I copied Mr Richter
7 Mr Haller, the other class counsel attorneys
8 simply to announce the progress we have been
9 making regarding this case
10 THE COURT wonderful
11 MR SHAHID One was resolving this
12 issue in a motion In my conversation with
13 Mr Pascoe in the courtroom today
14 THE COURT Yes
15 MR SHAHID It was my understanding he
16 was either going to chat with you provide
17 you with an interim report as to where he
18 stood And Mr Haller and I have been on the
19 phone I think about every day this week, one
20 of the things
21 The main concern was the diocese s
22 position on this creation of a subclass and
23 we ve had very frank discussions with class
24 counsel about that and we just don t think
25 in, all due respect to what --
 THE COURT That it s necessary

3

1 MR SHAHID It s necessary And we
2 quite frankly think the diocese quite
3 frankly thinks that it is going to create
4 more of a problem than what the Court is
5 trying to avoid happening
6 THE COURT okay
7 MR SHAHID And what we re trying to do
 Page 2

July 13 2007 txt

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

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

25 THE COURT Let me ask you this

4

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

5 MR. SHAHID Right

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

Page 3

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

5

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

16 with regards to the other 20 while
Page 4

July 13 2007 txt

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

6

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

Page 5

Attachment Transcript of ex parte conference page 000005 of 000033

Record On Appeal p 000127

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

7

1 THE COURT But I m not of a mind to
2 force the solicitor our solicitor has number
3 one gone outside his judicial circuit and I
4 think done a lion s job of really going into
5 Charleston I think the diocese has done so
6 far a wonderful job of cooperating He s had
7 to contact the attorney general, U S
8 attorney s office he's dealt with this --
9 sort of this document that s been floating
10 around out there, he s made contacts with the
11 United States attorney's office with -- he s
12 reached out to the United States attorney s
13 office in Massachusetts he s talked to not
14 only plain old garden variety lay lawyers
15 but those with more familiarity as I
16 understand it with the ((occracy okracy and
17 to try to ascertain what the words mean and
18 done research worked with the attorney
19 general s office to do the same
20 And my concern was was that I did
21 not -- A I didn t want the solicitor who is
22 obviously working incredibly diligently I
23 didn t want him disturbed I wanted him to
24 continue doing what he was doing but I didn't
25 want to hold these other folks up because
 Page 6

1 they seemed to want to go forward
2 I wanted to fashion a way because
3 it didn't seem fair to me that when we
4 identify actual people, individuals who ought
5 to be included in the class it didn't quite
6 seem fair to me to just say, listen, either
7 come forward based on publication or you
8 don't because these people already have come
9 forward at some point in their lives And it
10 just didn't seem fair to me to exclude those
11 folks that ought to have more individual
12 notice That was the reason that I thought
13 maybe the solution was to come up with some
14 sort of, if you will, additional class or
15 subsection or that we could sort of hold
16 something for those folks and yet go forward
17 on the other ones We certainly have done
18 that in other class actions that I've been
19 involved in so I know that the procedure
20 exists so that was my concern in short
21 So I want you to put on the record
22 for me please Mr Shahid, about the 40 and
23 that breakdown
24 MR SHAHID well it was actually
25 through the file review the Court alluded to

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

3 July 13 2007 txt
4 down to 20 folks who had -- we believe had
5 come forward
6 THE COURT Yes
7 MR. SHAHID Either directly or through
8 a third source
9 THE COURT Right
10 MR. SHAHID And that source could have
11 been through either a parent or a person
12 saying I believe John Doe or Jane Doe may
13 have been abused as well. We located
14 initially 15 we thought were good addresses
15 solid addresses. Of those 20 the Court
16 ordered us through a protective order to turn
17 over five names to class counsel for them to
18 use the sources they had. In the interim we
19 located another name. The number actually was
20 reduced from five to four.
21 THE COURT Okay
22 MR. SHAHID So I received from
23 Mr. Haller actually e-mail yesterday as to
24 his efforts from his investigator regarding
25 I think two of the four I do not recall
 And so we will follow up on that. So the 20

10

1 is down to four names and some of those
2 names as I recall are the result of not
3 exactly a direct claim but through a second
4 or third source.
5 There was a list of folks that we
6 have that we were concerned that were not
7 reported to law enforcement authorities and
 Page 8

July 13 2007 txt

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

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

22 THE COURT Okay.

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

25 THE COURT Okay. Okay.

11

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

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

Page 9

July 13 2007 txt
12 MR SHAHID Yes we can do that
13 THE COURT Great I thought there were
14 40 individuals we began some discussions
15 about I thought there were 40 No?
16 MR SHAHID The number was at one point
17 45 I think and we had split it the 45 into
18 two categories, one was not being reported to
19 law enforcement authorities and another crowd
20 being the ones who had not had their case
21 adjudicated and may or may not have been
22 reported to the authorities And there was
23 some overlay in that because some cases in
24 which the name was reported to law
25 enforcement authorities but had not been made

12

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

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

Page 10

July 13 2007 txt

17 informed

18 MR SHAHID Right

19 THE COURT And that was his interest

20 Of course his investigation is not -- his

21 investigation is his investigation and I am

22 so grateful to the diocese for the

23 cooperation that they've given him, but his

24 investigation belongs to him in doing what he

25 needs to do But in the event that he

13

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

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

17 MR SHAHID Right

18 THE COURT Yeah

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

Page 11

Attachment Transcript of ex parte conference page 000011 of 000033

Record On Appeal p 000133

July 13 2007 txt
21 THE COURT Done that
22 MR SHAHID -- done that to the best of
23 our ability
24 THE COURT Yeah, great
25 MR SHAHID I will say that we --

14

1 Judge I view that responsibility as ongoing
2 and so that we got to find the other four and
3 we've got to find anybody else who has kind
4 of, lack of a better word comes out of the
5 woodwork
6 THE COURT Absolutely And I know the
7 record ought to reflect that I have on a
8 weekly basis been apprised of the efforts and
9 I think that they have been reasonable and
10 more than reasonable those efforts based on
11 what I know
12 MR SHAHID Thank you
13 THE COURT Yes
14 MR RICHTER Your Honor I think that
15 you -- if we make doubly clear what
16 Mr Shahid went through I think you'll feel
17 very comfortable about where we are which I
18 think is -- the end is where we are or
19 virtually at the end
20 THE COURT Yes for the civil matter
21 MR RICHTER Yes, ma'am Let me
22 preface my remarks however by saying that
23 and I certainly don't do this in any
24 patronizing way to anybody I genuinely mean
25 this, and I know my co-counsel joins me in
Page 12

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

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

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

16

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

3 July 13 2007 txt
man hold the position that he holds
4 Now, that having been said, I think
5 that what Mr. Shahid has said to you and I
6 know that we have written you both
7 Mr. Shahid and us we have indicated as class
8 counsel in our letter that the subclass idea
9 was a thing that was acceptable to us. We
10 are satisfied and we really have worked very
11 hard.
12 THE COURT: I know you have
13 MR. RICHTER: Very much together on this
14 thing.
15 THE COURT: I know you have
16 MR. RICHTER: We really think that it's
17 not necessary because of what the diocese has
18 come to. And what the diocese has come to is
19 that if anybody has been missed or if there
20 is anybody who responds as a result of these
21 who have been identified to, the diocese
22 waives all the same defenses that they have
23 given up in this class settlement, consents
24 to the same method of compensation, consents
25 to the same early disposition of that claim.

17

1 by a same arbitration method, the whole nine
2 yards.
3 THE COURT: Wow.
4 MR. RICHTER: And we have put those
5 terms in the letters that we have both
6 submitted to Your Honor -- both sides
7 submitted to Your Honor yesterday and of
 Page 14

July 13 2007 txt

8 course, they'll be submitted to you in a
9 formal way assuming that Your Honor is now
10 comfortable th that But e are completely,
11 now comfortable with that So that s said
12 Next as to -- we were initially
13 given five names as I think Your Honor knows
14 Secondly, as Mr Shahid told you that was
15 reduced --

16 THE COURT Four

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

18

1 just want to make a final record here

2 THE COURT Sure

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

Page 15

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

19

1 Russia He is as I say, a true expert
2 He has followed on Mr. Brucetti's
3 efforts as to these four persons four names
4 that we have been supplied and I'm -- if you
5 would allow I'd like to hand up his affidavit
6 and CV and I'll work from a copy of this
7 thing May I hand this up to you, please?
8 THE COURT Okay
9 MR. RICHTER The affidavit simply
10 states what I have just said who he is and
11 how he got to this The crux of the
12 affidavit is in paragraphs four five and
13 six six -- in four he simply says he used
14 recognized methods We're a little hammered
15 in the sense that we don't have name rank
16 serial number middle name father and
 Page 16

July 13 2007 txt

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

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

20

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

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

Page 17

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

21

1 area we identified, had someone identified by
2 close proximity in age and he found a person
3 in close proximity and age and with a Social
4 Security number which was a South Carolina
5 security -- Social Security and which person
6 had a Georgetown address we think that's on
7 the money then That person found has been
8 given again, the next step under the plan
9 that Your Honor laid out at our last time
10 before you, that goes back to the diocese
11 C, there were 269 entries
12 nationwide with the first and last name of
13 that individual and 631 entries with the last
14 name of that individual However none gave
15 him sufficient confidence to raise his
16 comfort level at all He s informed that --
17 Mr Smith represents to you in this affidavit
18 that he has been informed the victim C may
19 not, in fact be an actual victim This
20 person did not come forward to the diocese
21 and declare himself a victim rather another
22 person according to the diocese files had
23 this person s name mentioned in that alleged
24 victim s files As I understand it -- did
25 Mr Shahid or Mr Smith make contact with
Page 18

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

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

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

9 MR. RICHTER Yeah okay.

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

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

16 THE COURT Got it.

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

21 THE COURT Okay Great.

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

1 THE COURT Great.

2 MR. RICHTER And then there is a person

3 July 13 2007 txt
4 who has a common name here in South Carolina
5 at least he had 79 entries Mr Smith found
6 for that name in South Carolina a
7 significant number of which were in and
8 around the lowcountry However we were
9 not -- we don't know where that person may
10 live, so that is the worst of the findings so
11 far

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

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

24

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

Page 20

July 13 2007 txt

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

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

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

25

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

10 THE COURT Absolutely I agree

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

Page 21

12 July 13 2007 txt
13 those people
14 THE COURT There is nothing more that
15 the diocese could possibly do that I am aware
16 of I mean at the point in time when the
17 diocese obligates itself to do as it has been
18 described, there is nothing more that they
19 can possibly do insofar as I can even
20 imagine Mr. Shahid truly I mean what
21 they say is if you come forward in the future
22 we will treat you just the same as we have
23 treated these individuals and the relief is
24 available for you I know of nothing more
25 that could be done So I certainly would
 approve that

26

1 MR. SHAHID Well good
2 THE COURT Yeah
3 MR. SHAHID Just a little caveat
4 THE COURT Uh-huh
5 MR. SHAHID My meeting with Mr. Myers
6 hopefully, and I'm confident that it will
7 but until the rubber hits the road kind of
8 test
9 THE COURT If it doesn't I'm prepared
10 to rule
11 MR. SHAHID I'm confident that we've
12 chatted and we just got to iron out those
13 little problems to iron out and so hopefully
14 by Wednesday or sometime next week we'll have
15 one minor or Mr. Myers saying that's done
16 THE COURT Okay
 Page 22

July 13 2007 txt

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

21 THE COURT Yeah

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

27

1 our largely -- or appearance today

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

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

Page 23

Attachment Transcript of ex parte conference page 000023 of 000033

Record On Appeal p 000145

July 13 2007 txt
21 but for the public s benefit as well that
22 practice now has been recognized and modified
23 appropriately so that we don t find ourselves
24 back here before you ten years down the line
25 And so again I want to thank Mr Pascoe for

28

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

Page 24

1 let the solicitor or sheriff or whatever
2 agency needs to make that call, make that
3 call with hopefully that person's
4 participation and involvement in that
5 so hopefully that is the absolute
6 last t that needs to be crossed and the
7 last o that needs to be dotted with all of
8 this and that's what we're trying to get to
9 I think we just want complete healing and if
10 this accommodates that healing we hope that
11 it will that it will take that And so
12 we're here I think all on a common goal to
13 get that magic signature on a magic order
14 THE COURT Absolutely A couple of
15 things I would say and I think what I want to
16 do is I want to direct to the civil and then
17 to the other part Solicitor Pascoe's
18 participation First of all the civil
19 matter I will await to see what Mr Myers
20 position is but again I am prepared to rule
21 in the event that that doesn't happen and but
22 I would ask for a proposed order from
23 plaintiffs counsel about that in the event
24 that that is needed And I'm delighted that
25 he is satisfied that's always a better place

30

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

3 July 13 2007 txt
4 about that so that s the first thing And I
5 look for an order in that regard
6 Secondly with regards to the
7 attorneys' fees and of course I had the
8 opportunity to review Professor Freeman s
9 extensive affidavit about that and of
10 course, I know him and know him well and have
11 had the opportunity to know him when I
12 practiced law as well as to know him since
13 I've been on the bench and found that along
14 with the other affidavits, but his probably
15 primarily to be most informative
16 Aside from that, my own experience
17 in class actions has also been helpful but
18 also also reality is when you have an
19 opportunity to sit where I get to sit and
20 watch lawyers on both sides, but I m going to
21 speak for the moment to the plaintiffs
22 lawyers it's like you just want to stand up
23 and cheer because it s what makes me really
24 love lawyers And I mean that because
25 lawyers particularly these lawvers just go
 wading into places that lots of -- no one

31

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

6 MR RICHTER Thank you

7 THE COURT Boy that is fantastic
 Page 26

July 13 2007 txt

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

15 MR RICHTER Thank you

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

22 MR RICHTER Thank you

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

32

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

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

Page 27

Attachment Transcript of ex parte conference page 000027 of 000033

Record On Appeal p 000149

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

33

1 just hear the angst and keep moving forward
2 even when you would be gritting your teeth
3 And so the diocese has been very very
4 committed to this process being a healing one
5 and I got it
6 MR. SHAHID Thank you
7 THE COURT Irrespective of where they
8 may have been in the past ain't no question
9 in this process they have been very
10 interested in the healing part of the process
11 so I thank you for that
12 MR. SHAHID Thank you Judge
13 THE COURT And applaud those efforts I
14 truly do And Mr. Brucetti goodness knows
15 all the work you've been there as well
16 so Now that's the civil matter

Page 28

July 13 2007 txt

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

34

1 exist okay, statutorily
2 But it transcends that it
3 transcends that because the reality is that
4 there are individuals against whom crimes
5 have been committed and the information lies
6 with the diocese and the solicitor is charged
7 with the responsibility to enforce the law
8 so on a portion of it may be reporting but
9 on a portion of it -- it's not about
10 reporting but the information that crimes
11 have been committed lies with the diocese
12 And I certainly have sensed the diocese has
13 been forthcoming with that information
14 Having said that my solicitor is
15 charged with the responsibility to transcend
16 that you know I think I think and I don't
17 demean in any regard or I have no interest in
18 demeaning the Church and its position in our
19 society and the ancient nature of it
20 However there is a little bit of an element

Page 29

Attachment Transcript of ex parte conference page 000029 of 000033

Record On Appeal p 000151

July 13 2007 txt
21 that I have to be mindful of that I have to
22 look to my solicitor to obtain whatever
23 information is appropriate to determine
24 whether or not the solicitor has the
25 information of all the victims To some

35

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

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

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

Page 30

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

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

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

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

18 THE COURT Not at all

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

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

July 13 2007 txt
3 in the big city of St Matthews to answer my
4 questions and he did that on 12 hours
5 notice So it s been an honor and a pleasure
6 to work with these lawyers Thank you Your
7 Honor

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

14 MR PASCOE Thank you

15 THE COURT All right I will look -- I
16 am on vacation next week and I see -- unless
17 you all see of I see of no reason for us to
18 continue meeting like this I am prepared, I
19 am ready to sign orders And again in the
20 event that Mr Myers withdraws, that s fine
21 I look for an order to reflect that In the
22 event he doesn t I m looking for a proposed
23 order Otherwise I m looking for an order of
24 attorneys fees I approve the settlement I
25 shared that with you You all were so

38

1 gracious and kind to inform me of it I think
2 it s extraordinary and I will look for orders
3 when I return from vacation I will be in
4 St George the week of the 23rd, for your
5 information I m looking for orders from you
6 that week The week after that I think the
7 next week I m actually in St George if not
Page 32

July 13 2007 txt

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

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

15 THE COURT Thank you Thank you all so
16 much

17 MR SHAHID Thanks Judge
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO 09-CP-10-8054
Jane Doe 1,	)	
	)	
Plaintiff,	)	
	)	
v	)	Negligence, Recklessness
	)	Intentional Tort
The Bishop of Charleston, a	)	Fraudulent Concealment
Corporation Sole, and	)	Unfair and Deceptive Trade Practices
The Bishop Of The Diocese of	)	
Charleston, in his official Capacity,	)	Jury Trial Requested
	)	
Defendants	)	

Second Amended Complaint

For her complaint, the plaintiff alleges

Parties and Jurisdiction

1 Plaintiff is a citizen and resident of South Carolina All of her children were sexually molested as children by a priest of the Diocese of Charleston, James W McCarthy, when James McCarthy was assigned to Saint William in Ward, S C during the approximate time period of 1965 to his departure in 1971

2 A pseudonym is used for the plaintiff due to the sexual abuse injury which is the subject of this complaint The defendants will be informed of the identity of the plaintiff

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

4 The Bishop of Charleston, a Corporation Sole, is the corporate entity that governs

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

5 The Bishop of The Diocese of Charleston, is the formal head of the Diocese. Presently the Bishop is the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued in his official capacity, and is a party necessary for complete relief. He is referred to in this complaint as the Bishop. All persons working for the Diocese are subordinate to the Bishop. In this complaint, the Diocese and the Bishop defendants are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

6 The Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County.

Nature of Wrongdoing

7 Prior to 1965, the Diocese defendants were either reckless or acted intentionally in actively disregarding the risks to children and families for sexual assault of children by their priests and other employees, and then actively, and fraudulently, concealing the

abuse that happened, and the dangers to children the Diocese and its priests solicited into danger

8 The Diocese defendants were reckless in exposing children to the danger of sexual abuse, or did so intentionally in that the interest of the children at risk were regarded as expendable, in order to promote the interests of priests and the Diocese in appearing to be a more pastoral organization then it was in fact

9 Charitable immunity does not apply to intentional or reckless conduct such as is alleged in this complaint, and in any event, in 2007 the Diocese explicitly waived all charitable immunity, and explicitly all statute of limitations defenses, for persons sexually abused by its priests prior to 2001, their parents and spouses

10 Plaintiff was born prior to 1980, as were her children

11 Plaintiff received no notice of the class action case the Diocese agreed to accept for abuse victims, and under the explicit terms of the order which approved the class action, and by agreement of the Diocese in that action, Plaintiff is not barred by the *res judicata* effect of that class action that would otherwise apply In addition, the Diocese has waived the defenses of charitable immunity and state of limitations as to class of persons which was defined so as to include the plaintiff, among others

**For a First Cause of Action
Negligence, Recklessness, and Intentional Misconduct**

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

13 The defendant Diocese employed James McCarthy as a priest

14 In his capacity as priest, James McCarthy was placed by the defendants in a position of trust and confidence, and had access to the plaintiff and her children In that

capacity, James McCarthy sexually molested multiple children, including those of the plaintiff

15 Prior to plaintiff's children being molested, the defendants became aware that James McCarthy was dangerous to children. The defendants ignored that danger, and placed James McCarthy so as to facilitate his access to children whom he could molest. Those decisions by Diocese personnel working on behalf of the Bishop were made or approved in Charleston County.

16 After he was moved by the defendants to Ward, South Carolina, James McCarthy molested the plaintiff's children.

17 The Diocese, Bishop, and its other officials negligently supervised James McCarthy. The Bishop was grossly negligent in supervising James McCarthy in not limiting his access to children or providing protective supervision over him.

18 As a proximate result of the negligence and gross negligence by the Diocese defendants, the Plaintiff's children were sexually abused by James McCarthy.

19 The Diocese defendants were negligent in failing to warn the plaintiff about James McCarthy. The Bishop performed that duty in a grossly negligent manner.

20 Although knowing that James McCarthy was a pedophile, or having reason to know, the Diocese and Bishop, including the Bishops prior to the current Bishop, made no effort, or no competent effort, to ascertain how many children James McCarthy had molested, and no effort, or not competent effort, to locate victims of James McCarthy. If the Diocese did make such an effort, as it has claimed that it did, it assumed the duty but performed it in a negligent manner, relying only on prior reports by abuse victims instead of undertaking an affirmative effort to ascertain victims of James McCarthy. The duty

undertaken by the defendants was performed in a grossly negligent manner, if it was not intentionally performed in a manner designed to be ineffective but done only to enable the Diocese to claim it had made an effort

21 The defendants' failure to do so was negligent, and grossly negligent if not intentional on behalf of the presiding Bishop from the time the plaintiff's children were abused to the present

22 As a result of the defendants' negligence, gross negligence or intentional deception in failing to either prevent plaintiff's children from being abused or identifying the plaintiff's children as a victim of abuse by James McCarthy, a Diocese agent or employee, the plaintiff had impairments to the services of her children which were then exacerbated over time. The conduct of the defendants delayed the plaintiff's discovery that her children had all been molested by James McCarthy, delayed her treatment and treatment for her children, and exacerbated all problems stemming from the plaintiff's children having been sexually abused

23 As set forth more fully below in the second cause of action, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants, among other things, accounts for the delay in this action being brought against the Diocese defendants

24 The plaintiff is entitled to actual and punitive damages as a result of the negligence of the Diocese defendants, and gross negligence of the various presiding

Bishops, in failing to perform a proper review for James McCarthy's victims, or in performing that duty in a grossly inadequate, or intentionally inadequate, manner

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

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

26 The Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children That practice, independent of its intentional and knowing waiver, estopps the Diocese from asserting any statute of limitations defenses as to the plaintiff, and forms an independent basis of relief for the plaintiff

27 The Diocese defendants had a duty to discover, and to disclose, to plaintiff and to each of her children, their knowledge that James McCarthy had a sexual interest in children That duty arises from

- (a) the preexisting fiduciary relationship between the plaintiff and the Diocese defendants, which relationship the Diocese solicited,
- (b) from plaintiff having expressly reposed, on behalf of her minor children, a trust and confidence in the Diocese defendants with regard to her children participating in events which would place each of them alone and in a vulnerable position with James McCarthy, the position of trust and confidence being implicit from those circumstances, from the nature of the dealings between the plaintiff and the Diocese defendants, and from their relative positions towards each other in light of the superior knowledge about James McCarthy possessed by the Diocese,

(c) from the essential nature of the Diocese defendants and their inducement to Plaintiff that having her children participate in the activities of the Diocese would be beneficial to them, not harmful to them,

(d) from a practice of secrecy, perhaps stemming from the secrecy provisions in the Code of Canon Law, both 1917 and 1983 versions of that Code, and the 1962 document titled "Instruction," which charges the Diocese to discover, but maintain secrecy about, "other persons solicited" by any person such as James McCarthy who committed the "unspeakable crime" of sexually abusing a child, and

(e) by the undertaking which the Diocese defendants assumed negligently (and in the case of the individuals included in the Diocese defendants designation, grossly negligently, or intentionally, poorly), in 2005 - 2007 to locate victims such as the plaintiff

28 Plaintiff's children were sexually abused by James McCarthy after 1962, in that James McCarthy was not assigned to Ward, S C until 1965

29 Concerning each of (a) the dangers James McCarthy represented to Plaintiff's children and (b) assisting to repair the damage done by James McCarthy the Diocese defendants were obligated to Plaintiff and her children to engage with each of them in perfect good faith and with full disclosure, without regard to any particular intention of the parties The relationship the Diocese solicited and assumed as to the plaintiff was inherently fiduciary in that the Diocese purports to be concerned with the best interests of those it solicits as parishioners

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

31 Specifically, the Diocese defendants created, as embodied in the Code of Canon law which required it, an archive (Canon 486 in 1983 Code, Canon 375 in 1917 Code), accessible only by the Bishop and chancellor (Canon 487 in 1983 Code, Canon 375 in 1917 Code). Documents may not be removed from the archive except for a brief time, and only by permission of either the Bishop or the moderator of the curia (Canon 488 in 1983 Code, Canons 378-379 in 1917 Code). Canon 489 (1983 Code) requires that a Secret Archive also be created (Canon 379 in the 1917 Code). In it “documents are to be kept secret” and “protected most securely.” Canon 489 (1983 Code), Section 2 states “Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, *are to be destroyed*. A brief summary of what occurred along with the text of the definitive sentence is to be retained.” Emphasis added. Similar provisions are in Canon 379 of the 1917 Code (E.g., the Canon states, ‘promptly once a year, documents in criminal cases *are to be burned* in morals cases.’”) Emphasis added. Only the Bishop is to have the key to the secret archive, and documents are not to be removed from the archive (Canon 490, 1983 Code, Canon 379, 1917 Code). The bishop is authorized to include in the secret archive any matter which can be regarded as scandalous.

32 Matters related to agents and employees of the Diocese sexually abusing children, including James McCarthy's sexual abuse of children, including the children of the plaintiff, were regarded as scandalous, and were maintained in the secret archive. As such, those documents would have been intentionally destroyed as called for in either version of the Code.

33 Another technique used by the Diocese to maintain secrecy about sexual abuse matters, or any other matter the Diocese wished to keep secret, was to move the document (or person) to other locations, including moving a document to Rome, where diplomatic immunity could be claimed and production resisted.

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

35 The plaintiff and her children each fit within the "penitent" referred to in the Instruction.

36 The Instruction states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." P. 15, ¶ 71. Plaintiff's abused children are both male and female.

37 The Instruction also defined as “any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex ” P 16, ¶ 73

38 The conduct by James McCarthy towards the plaintiff’s male children qualifies under the Instruction as “the worst crime ”

39 Among other things, the “Instruction” directs that the Diocese defendants were to assume the duty of locating “other persons solicited by the same confessor” (p 7 ¶ 29), in this instance, other persons solicited by James McCarthy See also, Instruction, p 9 ¶ 37

40 When that duty was assumed by the Diocese defendants, it was performed in a grossly negligent manner The Diocese defendants failed to locate the plaintiff, any of plaintiff’s children

41 The “Instruction” states it was approved by the “Most Holy Father John XXIII” in 1962 P 16

42 In its Appendix, the “Instruction” sets out the terms of the secrecy to be observed for matters such as the sexual abuse of plaintiff’s children In essence, the secrecy oath provides for absolute secrecy, under pain of excommunication Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained “under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good,” unless expressly approved “by the Supreme Pontiff ” P 17

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

44 Unless the Pope himself approves otherwise, the “Instruction” directs that secrecy is to be maintained not only by the Catholic plaintiffs such as the plaintiff, but by every member of the Diocese defendants, and by even witnesses to sexual abuse such as the plaintiff’s children. That secrecy is to be made despite any law, court order, or oath to which would otherwise require disclosure. Under the “Instruction,” the highest obligation, higher than any law, oath, or court order, is to maintain secrecy for the benefit of the Diocese, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has instructed otherwise, the Diocese defendants can all be expected to be obedient to the “Instruction,” and to overtly conceal or misrepresent any facts related to sexual abuse. The Diocese defendants have, to date, done so.

45 Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the defendants as to James McCarthy’s sexual abuse of the plaintiff’s children. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent sexual abuse of the plaintiff, or to ascertain that the plaintiff was a victim of the abuse by James McCarthy.

46 As courts began to require the Diocese, despite its commitment to secrecy and deception, to be accountable for sexual abuse, the Diocese had to reach a new level of deception and manipulation to limit the damage to the Diocese from its having to take responsibility for its history of sexual abuse, and to as much as possible conceal the extent of abuse, and to limit as much as possible its responsibility for that abuse.

47 The plaintiff is entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese defendants in actively maintaining secrecy and

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

48 In addition, and as an independent alternative, as a result of its practice of secrecy, as well as from its explicit waivers, the Diocese is precluded from asserting the statute of limitations, or charitable immunity, as to the plaintiff, and the plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the services of the plaintiffs' children

49 In addition, as an a second independent alternative, the Diocese voluntarily waived defenses of statute of limitations and charitable immunity as to a class of persons born prior to August 31, 1980 who were themselves or whose children were sexually abused by priests or others associated with the Diocese, a class which includes the plaintiff, and by that explicit waiver the Diocese is precluded as a matter of law from asserting the statute of limitations, or charitable immunity, as to the plaintiff, and the plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the services of the plaintiffs' children

50 In addition, as an a third independent alternative, the Diocese voluntarily waived defenses of statute of limitations and charitable immunity as to a class of persons born prior to August 31, 1980 who were themselves or whose children were sexually abused by priests or others associated with the Diocese, a class which includes the plaintiff, and by that explicit waiver the Diocese may be precluded by the finder of fact from asserting the statute of limitations, or charitable immunity, as to the plaintiff, and the plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the services of the plaintiffs' children

51 The Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese, because 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

52 Alternatively, the Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese because that litigation was collusive The Diocese calculated it could use the class action to pay modest compensation to a limited number of victims, then try to exclude all others by *res judicata* The Diocese colluded to

- (a) cooperate with class counsel who had life-long ties to the Diocese and who held positions within the Diocese,
- (b) twice continue hearings in Charleston County for three pending cases, one of which was a class action, so as to keep the Charleston County Circuit Court from deciding dispositive motions or ruling on class status pursuant to SCRCP 23(c),
- (c) agreed to a fixed fee for class counsel simultaneously negotiating the recovery for the class,
- (d) agreed to class counsel’s fee taking priority over the recovery for the class,
- (e) agreed to class counsel being paid prior to the class being known or the first class claimant had even an opportunity to file a claim,

- (f) agreed to limits on class member recovery for a small fraction of what class counsel would agree to accept when litigating against a Diocese other than his own,
- (g) agreed not to disclose to the Charleston County Circuit Court that a class action settlement was in fact reached in the class action pending in Charleston County during a June, 2006 mediation
- (h) agreed to not submit the June, 2006 mediated class settlement to the Charleston County Circuit Court even though the class action settled by that agreement was pending in that court, and no other case was then pending
- (i) agreed to a plan to move class certification and class settlement oversight from the Charleston County Circuit Court in which the pending class action had been settled, to Dorchester County, where no case was then pending, so as to judge-shop for a Circuit Court judge with long social and professional ties to class counsel,
- (j) agreed to accept service of three collusively-filed class actions in Dorchester County, one of which was identical, word-for-word and typo-for-typo, to the already-settled class action pending in Charleston County, making that class action case pending in two counties simultaneously,
- (k1) agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, apparently giving that judge only limited information, and certain false information, about the pending Charleston County class action and the collusion among counsel,

so as to gain her (apparently unwitting, initial) assistance in depriving the Charleston County court of jurisdiction to review under SCRCF 23(c) the class status of, or the June, 2006 class settlement for, case 05-CP-10-4913

- (k2) Alternatively, the Diocese agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, fully disclosing that a Charleston County class action, 05-CP-10-4913, was pending and that a proposed class settlement had been reached in June, 2006, and seeking the Dorchester County court's active cooperation in depriving the Charleston County court of the jurisdiction to review under SCRCF 23(c) the class status of, and the June, 2006 proposed class settlement for, case 05-CP-10-4913
- (l) agreed to circumvent SCRCF 23 being applied by any Charleston County judge to the class settlement reached in the class action pending in Charleston County, by agreeing to not inform that Court that a class settlement had been reached when asking for the Charleston cases to be dismissed,
- (m) agreed to take no position on class certification, even though the Diocese would be obligated to a settlement of \$460,000 without class certification but for far more with class certification,
- (n) agreed to remain silent about class counsel's false, duplicative, and fraudulent time and billing records in class counsel's application for costs and fees,

- (o) agreed to class counsel being paid in fact prior to the class claims period even beginning,
- (p) agreed to oppose all objections raised by third parties to the class settlement,
- (q) convinced class counsel to abandon his request to the court for nationwide notice and to change his request for only geographically limited notice
- (r) agreed to arbitration of class members claims, to assure that the Diocese would not pay to victims more than the limits the Diocese was willing to accept
- (s) agreed to inform the mediator about the financial limits the Diocese was willing to accept so the arbitrator would not exceed those sums in its awards to class members,
- (t) convinced class counsel to acquiesce in letting the Diocese examine its own files for sexual abuse victims, even though the Diocese was alleged to have a history of deliberately secreted information about abuse, and the search by the Diocese was only for persons who had already identified themselves as abuse victims, not for all victims
- (u) agreed to request no post-award fairness hearing in the class action,
- (v) agreed to request no review of class counsel's actual fee, even though it appears class counsel might have recovered as much as 51% of all sums paid by the Diocese,
- (w) agreed to request of the Dorchester County court no final accounting or final order prior to the September 19 2009 deadline imposed by the SC

Supreme Court for the Dorchester County court to conclude the class action,

- (x) agreed to request no final accounting, and
- (y) agreed to take no appeal from any orders of the Dorchester County court affecting the class settlement

53 Plaintiff presumes that in 2006 and 2007 the Dorchester County Circuit Court was not given complete information about the status of 05-CP-10-4913 and the proposed class settlement, and by the time accurate information was given to the Court, in 2008, it was so far into the class process that even though the Court had authority to modify orders in the class action “at any time” under SCRC23, the Court elected to take no further action in the class action case

54 As a result of the concealments by the Diocese, and its collusion in the class action, the Diocese is unable to properly assert any statute of limitations defense as to the plaintiff. Also as a result, the plaintiff was injured, and is entitled to actual and punitive damages in an amount to be determined by the finder of fact

**For a Third Cause of Action
Unfair and Deceptive Trade Practices**

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

56 The Diocese defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law. The Diocese contends its participation in engaging in unfair and deceptive acts or practices is not sufficiently specified in the allegations prior to this paragraph, so to accommodate the Diocese, we

set forth a short and plain statement of allegations in greater specificity about those various engagements in trade or commerce as defined in South Carolina law

57 Defendants engage in trade or commerce in that they provide services to the public and advertise services to the public. Providing any services constitutes commerce within the meaning of the UTPA. Commerce in that regard is not confined to conventional consumer transactions.

58 Defendants offer, and advertise, services related to association, entertainment, and pastoral activities. Defendants operate schools, for which tuition is charged. For many years, including time periods pertinent to this complaint, the defendants were supported and maintained by, among other things, gambling revenues, and advertised its gambling activities to the public.

59 Defendants' activities encompass the entire State of South Carolina, and defendants assign and oversee personnel throughout the state for the services it provides throughout the state.

60 Starting not later than 1998, defendants began to accommodate various claims that among the personnel engaged in its operations with the public were a number of persons who had a sexual interest in children. On their own volition under the Code of Canon Law, and operating through instruction from the Vatican, the defendants organized efforts over time to maintain as much secrecy as possible about the pedophiles it employed and elected as a strategy to maintain as much secrecy as was possible about those pedophiles.

61 The defendants organized internally to absorb and deflect victims of its pedophiles, and to resist, as much as possible, taking any responsibility for its pedophiles.

62 One method eventually adopted by defendants was to offer, and advertise its offer, of counseling services for victims of its pedophiles. The defendants sought to maintain control of victims by making slight compensation for sexual abuse victims, and to contain information about pedophiles, while gathering information from abuse victims.

63 To minimize risks to themselves, the defendants established a person to be responsible for responding to sexual abuse victims of the pedophiles maintained by the defendants. Information was gathered by that person and used to maintain information on pedophiles and their victims, and to minimize the risk of litigation. This was a calculated business strategy by the defendants to protect the organization from all but minimal accountability for its pedophiles.

64 Defendants also collaborated with the Vatican to receive reimbursements for all or some of payments made for victim compensation, collaborating across international borders as well as across state lines to do so.

65 In 2006, the defendants collaborated on a new strategy to minimize its responsibility for the pedophiles it had permitted for decades to sexually abuse children. Working with a member of the Diocese, the defendants adopted a strategy of collusive litigation to advertise for, and gain limited participation in, a claims process that was hoped would, for a price, purchase the ability for defendants to compensate some victims minimally, enabling the defendants to avoid paying any significant compensation, in exchange for being able then to deny all compensation to any other victims who might seek greater accountability.

66 In 2006, the defendants calculated they could collude to present a class action to pay modest compensation to a limited number of victims to secure the smallest amount of

compensation possible for all victims. To pursue that improper objective, defendants made, even to the court, false promises and assurances to gain the court's approval of the class action mechanism, and then used the collusive class action to try to exclude, by *res judicata*, all other victims. Through these means, defendants purchased, for the price of modest recoveries to a group of victims known to be incomplete, the ability to avoid significant recovery to any victim, and avoid outright any recovery at all to many other victims about which the defendants knew or should have known.

67 Defendants cooperated and colluded in this objective with class counsel who had life-long ties to the Diocese and who held positions within the Diocese. He agreed to not disclose to the class his connections to defendants.

68 Defendants collaborated with class counsel to twice continue hearings in Charleston County for three pending cases, one of which alleged a class action, so as to keep the Charleston County Circuit Court from deciding dispositive motions or ruling on class status pursuant to SCRCP 23(c). Defendants and class counsel sought to avoid any independent judge, preferring instead to present their collusive class action only to a judge they had hand-picked, who they calculated would accept information, even if false, and would refuse to explore allegations of false information. The defendants and class counsel counted on their hand-picked judge not scrutinizing too closely their collusive actions, including false information given to the court, even when the collusion and false information was plainly exposed for the judge to review. And as defendants expected, the hand-picked judge refused to make any inquiry into any of the collusive conduct, any of the judge-shopping by which that judge was picked, any of the unethical fee provisions, or any of the false or fraudulent information given to that judge. Defendants

refused to request, and the hand-picked judge refused to order any post-award fairness review for the class action, so as to avoid having to confront the collusive and fraudulent conduct of the class action

69 Defendants agreed to a fixed fee for class counsel while class counsel simultaneously negotiated a variable recovery for the class, enabling defendants to succeed in pitting class counsel's personal interest against, and ahead of, the interests of his class member clients Defendants calculated correctly that class counsel would promote his own interests ahead of the class members he represented

70 To facilitate class counsel putting his own interests ahead of the class he represented, defendants agreed to enable class counsel's fixed fee to take priority over the variable recovery for the class, an unethical conflict of interest

71 Defendants agreed to class counsel being paid prior to the class being known or before the first class claimant had even an opportunity to file a claim

72 Defendants negotiated to "buy off" class counsel so as to get, in exchange, limits on class member recovery that were a small fraction of what class counsel would agree to accept when litigating against a Diocese other than his own in a comparable sexual abuse claim Specifically, by buying off class counsel for a fixed fee that had priority over class member recovery, defendants obtained in exchange a limit of \$200,000 for any class member By contrast, when class counsel settled a comparable individual case for sexual abuse, also filed in South Carolina but against the Diocese of Savannah, not defendants, class counsel recovered over \$4 million for a single client, counsel for these defendants also representing the Diocese of Savannah, so these defendants were well aware of the progress of that litigation By defendants colluding with that class counsel to work

against the class of victims in the South Carolina class action, the defendants avoided having to pay anything close to comparable value for the class of victims, lowered the bar for recovery to all victims, and created a mechanism the defendants later tried to use to bar all other victims

73 Defendants agreed with class counsel not to disclose to the Charleston County Circuit Court that a class action settlement was in fact reached during a June, 2006 mediation in the class action pending in Charleston County

74 Defendants agreed with class counsel to ignore the mandatory requirements of SCRCP 23, and agreed with class counsel not submit the June, 2006 mediated class settlement to the Charleston County Circuit Court for approval, even though the class action settled by that agreement was pending in that court, and no other class action case was then pending

75 Defendants agreed with class counsel to a plan to move the questions of class certification and class settlement oversight from the Charleston County Circuit Court, in which the pending class action had been settled, to Dorchester County, where no case was then pending, so as to judge-shop for a particular Circuit Court judge with long social and professional ties to class counsel

76 Defendants agreed to accept service of three collusive class actions filed in Dorchester County, one of which was identical, word-for-word and typo-for-typo, to the already-settled class action pending in Charleston County, making the identical class action case pending in two counties simultaneously

77 Defendants' agreement to accept service was part of the plan with class counsel to ignore the case pending in Charleston, make it quietly go away, and use the hand-

picked, shopped-for judge to approve the class mechanism only in Dorchester County, avoiding any class approval questions in Charleston County

78 Defendants agreed with class counsel to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, apparently giving that judge only limited information, and at times false information, about the pending Charleston County class action and the collusion among counsel, so as to gain the judge's assistance in depriving the Charleston County court of jurisdiction to review under SCRCF 23(c) the class status of, or the June, 2006 class settlement for, case 05-CP-10-4913. Alternatively, defendants began communications with the judge in Dorchester County with long social and professional ties to class counsel, making full disclosure that (a) a Charleston County class action, number 05-CP-10 4913, was pending, (b) a proposed class settlement had been reached in that action in June, 2006, and (c) the defendants sought the Dorchester County court's active cooperation in depriving the Charleston County court of the jurisdiction to review under SCRCF 23(c) the class status of, and the June, 2006 proposed class settlement for, case 05-CP-10-4913

79 Defendants agreed to circumvent SCRCF 23 being applied by any Charleston County judge to the class settlement reached in mediation of case 05-CP-10-4913, the class action pending in Charleston County, and defendants agreed to not inform the Charleston County Circuit Court that a class settlement had been reached when defendants agreed to ask for that and two other Charleston cases to be dismissed

80 Defendants agreed with class counsel to take no position on class certification in the Dorchester County collusive class cases, even though the Diocese would be obligated to a settlement of \$460,000 without class certification but more than \$8 million with class

certification. The defendants knew that even spending \$8 million was a bargain price for effectuating its plan for low compensation to abuse victims in exchange for a protection defendants would later argue barred all compensation for any other victims.

81 Defendants agreed to remain silent about class counsel's false, duplicative, and fraudulent time and billing records that were used to support class counsel's application for costs and fees. Among other things, defendants agreed to be silent when class counsel billed time on February 30 in different years, and when class counsel billed individual time of more than 24 hours per day on numerous occasions, including a day in which class counsel to have worked more than 40, 50, 70 and 90 hours in a single day. The silence by defendants for class counsel's grotesque billing records was among the *quid pro quo* for enabling defendants to obtain the benefits of the collusive class action.

82 Defendants also agreed not to report class counsel's egregious billing conduct to the Office of Disciplinary counsel. The silence by defendants for class counsel's grotesque billing records was among the *quid pro quo* for enabling defendants to obtain the benefits of the collusive class action.

83 Defendants agreed to class counsel being paid prior to the class claims period even beginning.

84 Defendants agreed to oppose, with class counsel, all objections to the class settlement raised by third parties to the class settlement.

85 Defendants succeeded in getting class counsel to abandon his request to the Dorchester County court for nationwide notice to the class, and to change that request for only geographically limited notice, limited only to South Carolina advertising sources.

86 Defendants agreed to arbitration of class members' claims, to assure that the Diocese would not pay to victims more than the limits the Diocese was willing to accept. Claims could be adjusted, if need be, to enable compensation to victims to be adjusted so as to keep overall compensation within the limits desired by the Diocese and the Vatican.

87 Defendants agreed to inform the mediator about the financial limits the Diocese and the Vatican were willing to accept so the arbitrator would not exceed those sums in its awards to class members, and if needed, could adjust the awards to maintain those limits.

88 Defendants got class counsel to acquiesce in letting the Diocese examine its own files to discover sexual abuse victims, even though class counsel claimed the Diocese had, and the Diocese in fact had, a history of deliberately secreting information about abuse, and the search by the Diocese was disingenuous in that it was a search not for all victims but only for persons who had already identified themselves as abuse victims.

89 Defendants agreed to request no post-award fairness hearing in the Dorchester County class action, even though further proceedings were ordered by the South Carolina Supreme Court.

90 Defendants agreed to request, through a fairness hearing or otherwise, review of class counsel's actual fee as a percentage of the common fund for the class, even though it appears class counsel recovered as much as 51% of all sums paid by the defendants. That silence by defendants was part of the *qui pro quo* for the benefits to defendants of the collusive class action.

91 Defendants agreed to request of the Dorchester County court no final accounting or final order prior to the September 19, 2009 deadline the South Carolina Supreme Court

imposed on the Dorchester County court to conclude the class action. That silence by defendants was part of the *qui pro quo* for the benefits to defendants of the collusive class action.

92 Defendants requested no final accounting of the class action.

93 Defendants agreed to take no appeal from any orders of the Dorchester County court affecting the class settlement.

94 In 2006 and 2007 the defendants agreed to withhold from the Dorchester County Circuit Court the complete information about the status of case 05-CP-10-4913 and the proposed class settlement, and then to provide false information to the court. By the time accurate information was given to the Court, in 2008, by others, it was so far into the class process that even though the Dorchester County Court had authority to modify orders in the class action “at any time” under SCRC23, the hand-picked Dorchester County judge elected to take no further action in the class action case, and the defendants agreed to make no request that the Court take any action, and refused all requests that the Dorchester County Court take further action.

95 The Diocese defendants stated publicly, and to the Court, that the Diocese waived its defenses for persons abused prior to August 31, 1980, yet then refused to do so when such persons came forward. The representation was made by the defendants on the record in an *ex parte* proceeding (ex parte as to other parties who had responded to the court’s invitation for objections to the proposed class action).

96 A true and accurate transcript of proceedings in the class action of July 13, 2007 is attached to this complaint. Its text is incorporated into these allegations pursuant to SCRC23 10(c).

97 In the attached transcript, defendants made false representations to the Dorchester County Circuit Court. Using the page numbers of the attachment, on page 1 of 33 the defendants sought to avoid having a record made of the proceedings. Defendants' false statements appear on throughout this transcript, but particularly on page 22 of 33, at lines 17 to 25 and then on to line 1 on that page defendants misrepresented to the court their intention to address other victims who failed to get notice of the class action. The court relied on the false statements by defendants, and was unaware that defendants were engaged in false and collusive conduct with class counsel.

98 For all of these reasons, it is alleged that defendants have engaged in trade and commerce within the meaning of S.C. Code 39-5-10(b), and used false and deceptive trade practices during those actions of trade or commerce. Defendants have operated, advertised, and distributed services, property, and things of value, so as to directly and indirectly affect the people of South Carolina.

99 Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous and untruthful conduct of the Diocese, and is entitled to recover actual damages as a result of the wrongful conduct of the Diocese.

100 The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese engaged in a public relations exercise, in an effort to procure positive publicity, at a certain cost to itself, without having to compensate all of its abuse victims. It designed the compensation specifically to exclude certain victims. The Diocese engaged in collusion and overt misrepresentation in order to achieve its objective to deceive the public, the court, and

those persons sexually abused prior to August 31, 1980, and the parents and spouses of those persons

101 The unfair and deceptive acts and practices of the Diocese have an impact upon the public interest, and has not only the potential for repetition, it has been repeated. The practices engaged in by the Diocese of misrepresentations to the court and the public through its court statements and its statements to the press are extensions of longstanding practices of deceit and deception by the Diocese. Maintaining secret archives of files, practicing “mental reservation” to support and justify lying (even while under oath), using diplomatic immunity to conceal documents, and mandating that persons conceal abuse are all techniques used by the Diocese to maintain deception. Overtly misrepresenting to a Court and the public are extensions of practices the Diocese has engaged in for years.

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

103 The Diocese has intentionally misrepresented even geographic origin and history in presenting information about abuse victims to the court and the public.

104 The Diocese should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material in its possession, custody, or control.

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

106 The plaintiff suffered an ascertainable loss of money as a result of the use
or employment by the Diocese of the unfair or deceptive methods in articulating one
standard that the Diocese claimed applied to abuse victims prior to 1980, but then, after
approval by the state court relying on that representation, the defendants refused to
comply with that standard when other victims came forward

107 The plaintiff is entitled to treble damages as a result of the conduct of the
Diocese, as well as actual and punitive damages, and such other and further relief as the
court deems just and proper

Demand for Jury Trial

108 Plaintiffs demand a trial by jury

Relief Sought

Wherefore, Plaintiff seeks relief in the form of

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

110 Injunctive relief as requested in this complaint,

111 Costs and disbursements of this action

112 Attorneys fees as authorized by law,

113 Punitive damages as authorized by law, and for

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

Respectfully submitted,

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

Gregg Meyers
PO Box 1297
Charleston SC 29402
843-720-8714
attygm@gmail.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO 09-CP-10-8055

Jane Doe 2,)
Plaintiff,)

v)

The Bishop of Charleston, a)
Corporation Sole, and)
The Bishop Of The Diocese of)
Charleston, in his official Capacity,)
Defendants)

Negligence, Recklessness
Intentional Tort
Fraudulent Concealment
Unfair and Deceptive Trade Practices
Jury Trial Requested

B : _____

JULIE J ARMSTRONG
CLERK OF COURT

2011 APR 22 AM 11:45

FILED

Second Amended Complaint

For her complaint, the plaintiff alleges

Parties and Jurisdiction

1 Plaintiff is a citizen and resident of South Carolina As a child she was sexually molested by a priest of the Diocese of Charleston, James W McCarthy, when James McCarthy was assigned to Saint William in Ward, S C during the approximate time period of 1965 to his departure in 1971

2 A pseudonym is used for the plaintiff due to the sexual abuse injury which is the subject of this complaint The defendants will be informed of the identity of the plaintiff

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

4 The Bishop of Charleston, a Corporation Sole is the corporate entity that governs

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

5 The Bishop of The Diocese of Charleston is the formal head of the Diocese. Presently the Bishop is the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued in his official capacity, and is a party necessary for complete relief. He is referred to in this complaint as the Bishop. All persons working for the Diocese are subordinate to the Bishop. In this complaint, the Diocese and the Bishop defendants are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

6 The Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County.

Nature of Wrongdoing

7 Prior to 1965, the Diocese defendants were either reckless or acted intentionally in actively disregarding the risks to children and families for sexual assault of children by their priests and other employees, and then actively, and fraudulently, concealing the

abuse that happened, and the dangers to children the Diocese and its priests solicited into danger

8 The Diocese defendants were reckless in exposing children to the danger of sexual abuse, or did so intentionally in that the interest of the children at risk were regarded as expendable, in order to promote the interests of priests and the Diocese in appearing to be a more pastoral organization then it was in fact

9 Charitable immunity does not apply to intentional or reckless conduct such as is alleged in this complaint, and in any event, in 2007 the Diocese explicitly waived all charitable immunity, and explicitly all statute of limitations defenses for persons sexually abused by its priests prior to 2001, their parents and spouses

10 Plaintiff was born prior to 1980, as were her children

11 Plaintiff received no notice of the class action case the Diocese agreed to accept for abuse victims, and under the explicit terms of the order which approved the class action, and by agreement of the Diocese in that action, Plaintiff is not barred by the *res judicata* effect of that class action that would otherwise apply In addition, the Diocese has waived the defenses of charitable immunity and state of limitations as to class of persons which was defined so as to include the plaintiff, among others

**For a First Cause of Action
Negligence, Recklessness, and Intentional Misconduct**

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

13 The defendant Diocese employed James McCarthy as a priest

14 In his capacity as priest, James McCarthy was placed by the defendants in a position of trust and confidence, and had access to the plaintiff and her children In that

capacity, James McCarthy sexually molested multiple children, including those of the plaintiff

15 Prior to plaintiff's children being molested, the defendants became aware that James McCarthy was dangerous to children. The defendants ignored that danger, and placed James McCarthy so as to facilitate his access to children whom he could molest. Those decisions by Diocese personnel working on behalf of the Bishop were made or approved in Charleston County.

16 After he was moved by the defendants to Ward, South Carolina, James McCarthy molested the plaintiff's children.

17 The Diocese, Bishop, and its other officials negligently supervised James McCarthy. The Bishop was grossly negligent in supervising James McCarthy in not limiting his access to children or providing protective supervision over him.

18 As a proximate result of the negligence and gross negligence by the Diocese defendants, the Plaintiff's children were sexually abused by James McCarthy.

19 The Diocese defendants were negligent in failing to warn the plaintiff about James McCarthy. The Bishop performed that duty in a grossly negligent manner.

20 Although knowing that James McCarthy was a pedophile, or having reason to know, the Diocese and Bishop, including the Bishops prior to the current Bishop, made no effort, or no competent effort, to ascertain how many children James McCarthy had molested, and no effort, or not competent effort, to locate victims of James McCarthy. If the Diocese did make such an effort, as it has claimed that it did, it assumed the duty but performed it in a negligent manner, relying only on prior reports by abuse victims instead of undertaking an affirmative effort to ascertain victims of James McCarthy. The duty

undertaken by the defendants was performed in a grossly negligent manner, if it was not intentionally performed in a manner designed to be ineffective but done only to enable the Diocese to claim it had made an effort

21 The defendants' failure to do so was negligent, and grossly negligent if not intentional on behalf of the presiding Bishop from the time the plaintiff's children were abused to the present

22 As a result of the defendants' negligence, gross negligence, or intentional deception in failing to either prevent plaintiff's children from being abused or identifying the plaintiff's children as a victim of abuse by James McCarthy, a Diocese agent or employee, the plaintiff had impairments to the services of her children which were then exacerbated over time. The conduct of the defendants delayed the plaintiff's discovery that her children had all been molested by James McCarthy, delayed her treatment and treatment for her children, and exacerbated all problems stemming from the plaintiff's children having been sexually abused

23 As set forth more fully below in the second cause of action, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants, among other things, accounts for the delay in this action being brought against the Diocese defendants

24 The plaintiff is entitled to actual and punitive damages as a result of the negligence of the Diocese defendants, and gross negligence of the various presiding

Bishops, in failing to perform a proper review for James McCarthy's victims, or in performing that duty in a grossly inadequate, or intentionally inadequate, manner

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

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

26 The Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children That practice, independent of its intentional and knowing waiver, estopps the Diocese from asserting any statute of limitations defenses as to the plaintiff, and forms an independent basis of relief for the plaintiff

27 The Diocese defendants had a duty to discover, and to disclose, to plaintiff and to each of her children, their knowledge that James McCarthy had a sexual interest in children That duty arises from

- (a) the preexisting fiduciary relationship between the plaintiff and the Diocese defendants, which relationship the Diocese solicited,
- (b) from plaintiff having expressly reposed, on behalf of her minor children, a trust and confidence in the Diocese defendants with regard to her children participating in events which would place each of them alone and in a vulnerable position with James McCarthy, the position of trust and confidence being implicit from those circumstances, from the nature of the dealings between the plaintiff and the Diocese defendants, and from their relative positions towards each other in light of the superior knowledge about James McCarthy possessed by the Diocese,

(c) from the essential nature of the Diocese defendants and their inducement to Plaintiff that having her children participate in the activities of the Diocese would be beneficial to them, not harmful to them,

(d) from a practice of secrecy, perhaps stemming from the secrecy provisions in the Code of Canon Law, both 1917 and 1983 versions of that Code, and the 1962 document titled "Instruction," which charges the Diocese to discover, but maintain secrecy about, "other persons solicited" by any person such as James McCarthy who committed the "unspeakable crime" of sexually abusing a child, and

(e) by the undertaking which the Diocese defendants assumed, negligently (and in the case of the individuals included in the Diocese defendants designation, grossly negligently, or intentionally, poorly), in 2005 - 2007 to locate victims such as the plaintiff

28 Plaintiff's children were sexually abused by James McCarthy after 1962, in that James McCarthy was not assigned to Ward, S C until 1965

29 Concerning each of (a) the dangers James McCarthy represented to Plaintiff's children, and (b) assisting to repair the damage done by James McCarthy, the Diocese defendants were obligated to Plaintiff and her children to engage with each of them in perfect good faith and with full disclosure, without regard to any particular intention of the parties The relationship the Diocese solicited and assumed as to the plaintiff was inherently fiduciary in that the Diocese purports to be concerned with the best interests of those it solicits as parishioners

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

31 Specifically, the Diocese defendants created, as embodied in the Code of Canon law which required it, an archive (Canon 486 in 1983 Code, Canon 375 in 1917 Code), accessible only by the Bishop and chancellor (Canon 487 in 1983 Code, Canon 375 in 1917 Code). Documents may not be removed from the archive except for a brief time, and only by permission of either the Bishop or the moderator of the curia (Canon 488 in 1983 Code, Canons 378-379 in 1917 Code). Canon 489 (1983 Code) requires that a Secret Archive also be created (Canon 379 in the 1917 Code). In it “documents are to be kept secret” and “protected most securely.” Canon 489 (1983 Code), Section 2 states “Each year documents of criminal cases in matters of morals in which the accused parties have died or ten years have elapsed from the condemnatory sentence, *are to be destroyed*. A brief summary of what occurred along with the text of the definitive sentence is to be retained.” Emphasis added. Similar provisions are in Canon 379 of the 1917 Code (E.g., the Canon states, “promptly once a year, documents in criminal cases *are to be burned* in morals cases.”) Emphasis added. Only the Bishop is to have the key to the secret archive, and documents are not to be removed from the archive (Canon 490, 1983 Code, Canon 379, 1917 Code). The bishop is authorized to include in the secret archive any matter which can be regarded as scandalous.

32 Matters related to agents and employees of the Diocese sexually abusing children, including James McCarthy's sexual abuse of children, including the children of the plaintiff, were regarded as scandalous, and were maintained in the secret archive. As such, those documents would have been intentionally destroyed as called for in either version of the Code.

33 Another technique used by the Diocese to maintain secrecy about sexual abuse matters, or any other matter the Diocese wished to keep secret, was to move the document (or person) to other locations, including moving a document to Rome, where diplomatic immunity could be claimed and production resisted.

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

35 The plaintiff and her children each fit within the "penitent" referred to in the Instruction.

36 The Instruction states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." P. 15, ¶ 71. Plaintiff's abused children are both male and female.

37 The Instruction also defined as “any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex ” P 16, ¶ 73

38 The conduct by James McCarthy towards the plaintiff’s male children qualifies under the Instruction as “the worst crime ”

39 Among other things, the “Instruction” directs that the Diocese defendants were to assume the duty of locating “other persons solicited by the same confessor” (p 7 ¶ 29), in this instance, other persons solicited by James McCarthy See also, Instruction, p 9 ¶ 37

40 When that duty was assumed by the Diocese defendants, it was performed in a grossly negligent manner The Diocese defendants failed to locate the plaintiff, any of plaintiff’s children

41 The “Instruction” states it was approved by the “Most Holy Father John XXIII” in 1962 P 16

42 In its Appendix, the “Instruction” sets out the terms of the secrecy to be observed for matters such as the sexual abuse of plaintiff’s children In essence, the secrecy oath provides for absolute secrecy, under pain of excommunication Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained “under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good,” unless expressly approved “by the Supreme Pontiff ” P 17

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

44 Unless the Pope himself approves otherwise, the “Instruction” directs that secrecy is to be maintained not only by the Catholic plaintiffs such as the plaintiff, but by every member of the Diocese defendants, and by even witnesses to sexual abuse such as the plaintiff’s children. That secrecy is to be made despite any law, court order, or oath to which would otherwise require disclosure. Under the “Instruction,” the highest obligation, higher than any law, oath, or court order, is to maintain secrecy for the benefit of the Diocese, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has instructed otherwise, the Diocese defendants can all be expected to be obedient to the “Instruction,” and to overtly conceal or misrepresent any facts related to sexual abuse. The Diocese defendants have, to date, done so.

45 Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the defendants as to James McCarthy’s sexual abuse of the plaintiff’s children. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent sexual abuse of the plaintiff, or to ascertain that the plaintiff was a victim of the abuse by James McCarthy.

46 As courts began to require the Diocese, despite its commitment to secrecy and deception, to be accountable for sexual abuse, the Diocese had to reach a new level of deception and manipulation to limit the damage to the Diocese from its having to take responsibility for its history of sexual abuse, and to as much as possible conceal the extent of abuse, and to limit as much as possible its responsibility for that abuse.

47 The plaintiff is entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese defendants in actively maintaining secrecy and

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

48 In addition, and as an independent alternative, as a result of its practice of secrecy, as well as from its explicit waivers, the Diocese is precluded from asserting the statute of limitations, or charitable immunity, as to the plaintiff, and the plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the services of the plaintiffs' children

49 In addition, as an a second independent alternative, the Diocese voluntarily waived defenses of statute of limitations and charitable immunity as to a class of persons born prior to August 31, 1980 who were themselves or whose children were sexually abused by priests or others associated with the Diocese, a class which includes the plaintiff, and by that explicit waiver the Diocese is precluded as a matter of law from asserting the statute of limitations, or charitable immunity, as to the plaintiff, and the plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the services of the plaintiffs' children

50 In addition, as an a third independent alternative, the Diocese voluntarily waived defenses of statute of limitations and charitable immunity as to a class of persons born prior to August 31, 1980 who were themselves or whose children were sexually abused by priests or others associated with the Diocese, a class which includes the plaintiff, and by that explicit waiver the Diocese may be precluded by the finder of fact from asserting the statute of limitations, or charitable immunity, as to the plaintiff, and the plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the services of the plaintiffs' children

51 The Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese, because 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

52 Alternatively, the Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese because that litigation was collusive The Diocese calculated it could use the class action to pay modest compensation to a limited number of victims, then try to exclude all others by *res judicata* The Diocese colluded to

- (a) cooperate with class counsel who had life-long ties to the Diocese and who held positions within the Diocese,
- (b) twice continue hearings in Charleston County for three pending cases, one of which was a class action, so as to keep the Charleston County Circuit Court from deciding dispositive motions or ruling on class status pursuant to SCRCP 23(c),
- (c) agreed to a fixed fee for class counsel simultaneously negotiating the recovery for the class,
- (d) agreed to class counsel’s fee taking priority over the recovery for the class,
- (e) agreed to class counsel being paid prior to the class being known or the first class claimant had even an opportunity to file a claim,

- (f) agreed to limits on class member recovery for a small fraction of what class counsel would agree to accept when litigating against a Diocese other than his own,
- (g) agreed not to disclose to the Charleston County Circuit Court that a class action settlement was in fact reached in the class action pending in Charleston County during a June, 2006 mediation
- (h) agreed to not submit the June, 2006 mediated class settlement to the Charleston County Circuit Court even though the class action settled by that agreement was pending in that court, and no other case was then pending
- (i) agreed to a plan to move class certification and class settlement oversight from the Charleston County Circuit Court in which the pending class action had been settled, to Dorchester County, where no case was then pending, so as to judge-shop for a Circuit Court judge with long social and professional ties to class counsel,
- (j) agreed to accept service of three collusively-filed class actions in Dorchester County, one of which was identical, word-for-word and typo-for-typo, to the already-settled class action pending in Charleston County, making that class action case pending in two counties simultaneously,
- (k1) agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, apparently giving that judge only limited information, and certain false information, about the pending Charleston County class action and the collusion among counsel,

so as to gain her (apparently unwitting, initial) assistance in depriving the Charleston County court of jurisdiction to review under SCRCP 23(c) the class status of, or the June, 2006 class settlement for, case 05-CP-10-4913

- (k2) Alternatively, the Diocese agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, fully disclosing that a Charleston County class action, 05-CP-10-4913, was pending and that a proposed class settlement had been reached in June, 2006, and seeking the Dorchester County court's active cooperation in depriving the Charleston County court of the jurisdiction to review under SCRCP 23(c) the class status of, and the June, 2006 proposed class settlement for, case 05-CP-10-4913
- (l) agreed to circumvent SCRCP 23 being applied by any Charleston County judge to the class settlement reached in the class action pending in Charleston County, by agreeing to not inform that Court that a class settlement had been reached when asking for the Charleston cases to be dismissed,
- (m) agreed to take no position on class certification, even though the Diocese would be obligated to a settlement of \$460,000 without class certification but for far more with class certification,
- (n) agreed to remain silent about class counsel's false, duplicative, and fraudulent time and billing records in class counsel's application for costs and fees,

- (o) agreed to class counsel being paid in fact prior to the class claims period even beginning,
- (p) agreed to oppose all objections raised by third parties to the class settlement,
- (q) convinced class counsel to abandon his request to the court for nationwide notice and to change his request for only geographically limited notice,
- (r) agreed to arbitration of class members claims, to assure that the Diocese would not pay to victims more than the limits the Diocese was willing to accept,
- (s) agreed to inform the mediator about the financial limits the Diocese was willing to accept so the arbitrator would not exceed those sums in its awards to class members,
- (t) convinced class counsel to acquiesce in letting the Diocese examine its own files for sexual abuse victims, even though the Diocese was alleged to have a history of deliberately secreted information about abuse, and the search by the Diocese was only for persons who had already identified themselves as abuse victims, not for all victims
- (u) agreed to request no post-award fairness hearing in the class action,
- (v) agreed to request no review of class counsel's actual fee, even though it appears class counsel might have recovered as much as 51% of all sums paid by the Diocese,
- (w) agreed to request of the Dorchester County court no final accounting or final order prior to the September 19, 2009 deadline imposed by the SC

Supreme Court for the Dorchester County court to conclude the class action,

- (x) agreed to request no final accounting, and
- (y) agreed to take no appeal from any orders of the Dorchester County court affecting the class settlement

53 Plaintiff presumes that in 2006 and 2007 the Dorchester County Circuit Court was not given complete information about the status of 05-CP-10-4913 and the proposed class settlement, and by the time accurate information was given to the Court, in 2008, it was so far into the class process that even though the Court had authority to modify orders in the class action “at any time” under SCRC23, the Court elected to take no further action in the class action case

54 As a result of the concealments by the Diocese, and its collusion in the class action, the Diocese is unable to properly assert any statute of limitations defense as to the plaintiff. Also as a result, the plaintiff was injured, and is entitled to actual and punitive damages in an amount to be determined by the finder of fact

**For a Third Cause of Action
Unfair and Deceptive Trade Practices**

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

56 The Diocese defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law. The Diocese contends its participation in engaging in unfair and deceptive acts or practices is not sufficiently specified in the allegations prior to this paragraph, so to accommodate the Diocese, we

set forth a short and plain statement of allegations in greater specificity about those various engagements in trade or commerce as defined in South Carolina law

57 Defendants engage in trade or commerce in that they provide services to the public and advertise services to the public. Providing any services constitutes commerce within the meaning of the UTPA. Commerce in that regard is not confined to conventional consumer transactions.

58 Defendants offer, and advertise, services related to association, entertainment, and pastoral activities. Defendants operate schools, for which tuition is charged. For many years, including time periods pertinent to this complaint, the defendants were supported and maintained by, among other things, gambling revenues, and advertised its gambling activities to the public.

59 Defendants' activities encompass the entire State of South Carolina, and defendants assign and oversee personnel throughout the state for the services it provides throughout the state.

60 Starting not later than 1998, defendants began to accommodate various claims that among the personnel engaged in its operations with the public were a number of persons who had a sexual interest in children. On their own volition under the Code of Canon Law, and operating through instruction from the Vatican, the defendants organized efforts over time to maintain as much secrecy as possible about the pedophiles it employed, and elected as a strategy to maintain as much secrecy as was possible about those pedophiles.

61 The defendants organized internally to absorb and deflect victims of its pedophiles, and to resist, as much as possible, taking any responsibility for its pedophiles.

62 One method eventually adopted by defendants was to offer, and advertise its offer, of counseling services for victims of its pedophiles. The defendants sought to maintain control of victims by making slight compensation for sexual abuse victims, and to contain information about pedophiles, while gathering information from abuse victims.

63 To minimize risks to themselves, the defendants established a person to be responsible for responding to sexual abuse victims of the pedophiles maintained by the defendants. Information was gathered by that person and used to maintain information on pedophiles and their victims, and to minimize the risk of litigation. This was a calculated business strategy by the defendants to protect the organization from all but minimal accountability for its pedophiles.

64 Defendants also collaborated with the Vatican to receive reimbursements for all or some of payments made for victim compensation, collaborating across international borders as well as across state lines to do so.

65 In 2006, the defendants collaborated on a new strategy to minimize its responsibility for the pedophiles it had permitted for decades to sexually abuse children. Working with a member of the Diocese, the defendants adopted a strategy of collusive litigation to advertise for, and gain limited participation in, a claims process that was hoped would, for a price, purchase the ability for defendants to compensate some victims minimally, enabling the defendants to avoid paying any significant compensation in exchange for being able then to deny all compensation to any other victims who might seek greater accountability.

66 In 2006, the defendants calculated they could collude to present a class action to pay modest compensation to a limited number of victims to secure the smallest amount of

compensation possible for all victims. To pursue that improper objective, defendants made, even to the court, false promises and assurances to gain the court's approval of the class action mechanism, and then used the collusive class action to try to exclude, by *res judicata*, all other victims. Through these means, defendants purchased, for the price of modest recoveries to a group of victims known to be incomplete, the ability to avoid significant recovery to any victim, and avoid outright any recovery at all to many other victims about which the defendants knew or should have known.

67 Defendants cooperated and colluded in this objective with class counsel who had life-long ties to the Diocese and who held positions within the Diocese. He agreed to not disclose to the class his connections to defendants.

68 Defendants collaborated with class counsel to twice continue hearings in Charleston County for three pending cases, one of which alleged a class action, so as to keep the Charleston County Circuit Court from deciding dispositive motions or ruling on class status pursuant to SCRPC 23(c). Defendants and class counsel sought to avoid any independent judge, preferring instead to present their collusive class action only to a judge they had hand-picked, who they calculated would accept information, even if false, and would refuse to explore allegations of false information. The defendants and class counsel counted on their hand-picked judge not scrutinizing too closely their collusive actions including false information given to the court, even when the collusion and false information was plainly exposed for the judge to review. And as defendants expected, the hand-picked judge refused to make any inquiry into any of the collusive conduct, any of the judge-shopping by which that judge was picked, any of the unethical fee provisions, or any of the false or fraudulent information given to that judge. Defendants

refused to request, and the hand-picked judge refused to order, any post-award fairness review for the class action, so as to avoid having to confront the collusive and fraudulent conduct of the class action

69 Defendants agreed to a fixed fee for class counsel while class counsel simultaneously negotiated a variable recovery for the class, enabling defendants to succeed in pitting class counsel's personal interest against, and ahead of, the interests of his class member clients Defendants calculated correctly that class counsel would promote his own interests ahead of the class members he represented

70 To facilitate class counsel putting his own interests ahead of the class he represented, defendants agreed to enable class counsel's fixed fee to take priority over the variable recovery for the class, an unethical conflict of interest

71 Defendants agreed to class counsel being paid prior to the class being known or before the first class claimant had even an opportunity to file a claim

72 Defendants negotiated to "buy off" class counsel so as to get, in exchange, limits on class member recovery that were a small fraction of what class counsel would agree to accept when litigating against a Diocese other than his own in a comparable sexual abuse claim Specifically, by buying off class counsel for a fixed fee that had priority over class member recovery, defendants obtained in exchange a limit of \$200,000 for any class member By contrast, when class counsel settled a comparable individual case for sexual abuse, also filed in South Carolina but against the Diocese of Savannah, not defendants, class counsel recovered over \$4 million for a single client, counsel for these defendants also representing the Diocese of Savannah, so these defendants were well aware of the progress of that litigation By defendants colluding with that class counsel to work

against the class of victims in the South Carolina class action, the defendants avoided having to pay anything close to comparable value for the class of victims, lowered the bar for recovery to all victims, and created a mechanism the defendants later tried to use to bar all other victims

73 Defendants agreed with class counsel not to disclose to the Charleston County Circuit Court that a class action settlement was in fact reached during a June, 2006 mediation in the class action pending in Charleston County

74 Defendants agreed with class counsel to ignore the mandatory requirements of SCRCP 23, and agreed with class counsel not submit the June, 2006 mediated class settlement to the Charleston County Circuit Court for approval, even though the class action settled by that agreement was pending in that court, and no other class action case was then pending

75 Defendants agreed with class counsel to a plan to move the questions of class certification and class settlement oversight from the Charleston County Circuit Court, in which the pending class action had been settled, to Dorchester County, where no case was then pending, so as to judge-shop for a particular Circuit Court judge with long social and professional ties to class counsel

76 Defendants agreed to accept service of three collusive class actions filed in Dorchester County, one of which was identical, word-for-word and typo-for-typo, to the already-settled class action pending in Charleston County, making the identical class action case pending in two counties simultaneously

77 Defendants' agreement to accept service was part of the plan with class counsel to ignore the case pending in Charleston, make it quietly go away, and use the hand-

picked, shopped-for judge to approve the class mechanism only in Dorchester County, avoiding any class approval questions in Charleston County

78 Defendants agreed with class counsel to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, apparently giving that judge only limited information, and at times false information, about the pending Charleston County class action and the collusion among counsel, so as to gain the judge's assistance in depriving the Charleston County court of jurisdiction to review under SCRCP 23(c) the class status of, or the June, 2006 class settlement for, case 05-CP-10-4913. Alternatively, defendants began communications with the judge in Dorchester County with long social and professional ties to class counsel, making full disclosure that (a) a Charleston County class action, number 05-CP-10-4913, was pending, (b) a proposed class settlement had been reached in that action in June, 2006, and (c) the defendants sought the Dorchester County court's active cooperation in depriving the Charleston County court of the jurisdiction to review under SCRCP 23(c) the class status of, and the June, 2006 proposed class settlement for, case 05-CP-10-4913.

79 Defendants agreed to circumvent SCRCP 23 being applied by any Charleston County judge to the class settlement reached in mediation of case 05-CP-10-4913, the class action pending in Charleston County, and defendants agreed to not inform the Charleston County Circuit Court that a class settlement had been reached when defendants agreed to ask for that and two other Charleston cases to be dismissed.

80 Defendants agreed with class counsel to take no position on class certification in the Dorchester County collusive class cases, even though the Diocese would be obligated to a settlement of \$460,000 without class certification but more than \$8 million with class

certification. The defendants knew that even spending \$8 million was a bargain price for effectuating its plan for low compensation to abuse victims in exchange for a protection defendants would later argue barred all compensation for any other victims.

81 Defendants agreed to remain silent about class counsel's false, duplicative, and fraudulent time and billing records that were used to support class counsel's application for costs and fees. Among other things, defendants agreed to be silent when class counsel billed time on February 30 in different years, and when class counsel billed individual time of more than 24 hours per day on numerous occasions, including a day in which class counsel to have worked more than 40, 50, 70 and 90 hours in a single day. The silence by defendants for class counsel's grotesque billing records was among the *quid pro quo* for enabling defendants to obtain the benefits of the collusive class action.

82 Defendants also agreed not to report class counsel's egregious billing conduct to the Office of Disciplinary counsel. The silence by defendants for class counsel's grotesque billing records was among the *quid pro quo* for enabling defendants to obtain the benefits of the collusive class action.

83 Defendants agreed to class counsel being paid prior to the class claims period even beginning.

84 Defendants agreed to oppose, with class counsel, all objections to the class settlement raised by third parties to the class settlement.

85 Defendants succeeded in getting class counsel to abandon his request to the Dorchester County court for nationwide notice to the class, and to change that request for only geographically limited notice, limited only to South Carolina advertising sources.

86 Defendants agreed to arbitration of class members' claims, to assure that the Diocese would not pay to victims more than the limits the Diocese was willing to accept. Claims could be adjusted, if need be, to enable compensation to victims to be adjusted so as to keep overall compensation within the limits desired by the Diocese and the Vatican.

87 Defendants agreed to inform the mediator about the financial limits the Diocese and the Vatican were willing to accept so the arbitrator would not exceed those sums in its awards to class members, and if needed, could adjust the awards to maintain those limits.

88 Defendants got class counsel to acquiesce in letting the Diocese examine its own files to discover sexual abuse victims, even though class counsel claimed the Diocese had, and the Diocese in fact had, a history of deliberately secreting information about abuse, and the search by the Diocese was disingenuous in that it was a search not for all victims but only for persons who had already identified themselves as abuse victims.

89 Defendants agreed to request no post-award fairness hearing in the Dorchester County class action, even though further proceedings were ordered by the South Carolina Supreme Court.

90 Defendants agreed to request, through a fairness hearing or otherwise, review of class counsel's actual fee as a percentage of the common fund for the class, even though it appears class counsel recovered as much as 51% of all sums paid by the defendants. That silence by defendants was part of the *qui pro quo* for the benefits to defendants of the collusive class action.

91 Defendants agreed to request of the Dorchester County court no final accounting or final order prior to the September 19, 2009 deadline the South Carolina Supreme Court

imposed on the Dorchester County court to conclude the class action. That silence by defendants was part of the *qui pro quo* for the benefits to defendants of the collusive class action.

92 Defendants requested no final accounting of the class action.

93 Defendants agreed to take no appeal from any orders of the Dorchester County court affecting the class settlement.

94 In 2006 and 2007 the defendants agreed to withhold from the Dorchester County Circuit Court the complete information about the status of case 05-CP-10-4913 and the proposed class settlement, and then to provide false information to the court. By the time accurate information was given to the Court, in 2008, by others, it was so far into the class process that even though the Dorchester County Court had authority to modify orders in the class action “at any time” under SCRC23, the hand-picked Dorchester County judge elected to take no further action in the class action case, and the defendants agreed to make no request that the Court take any action, and refused all requests that the Dorchester County Court take further action.

95 The Diocese defendants stated publicly, and to the Court, that the Diocese waived its defenses for persons abused prior to August 31, 1980, yet then refused to do so when such persons came forward. The representation was made by the defendants on the record in an *ex parte* proceeding (ex parte as to other parties who had responded to the court’s invitation for objections to the proposed class action).

96 A true and accurate transcript of proceedings in the class action of July 13, 2007 is attached to this complaint. Its text is incorporated into these allegations pursuant to SCRC23 10(c).

97 In the attached transcript, defendants made false representations to the Dorchester County Circuit Court. Using the page numbers of the attachment, on page 1 of 33 the defendants sought to avoid having a record made of the proceedings. Defendants' false statements appear on throughout this transcript, but particularly on page 22 of 33, at lines 17 to 25 and then on to line 1 on that page defendants misrepresented to the court their intention to address other victims who failed to get notice of the class action. The court relied on the false statements by defendants, and was unaware that defendants were engaged in false and collusive conduct with class counsel.

98 For all of these reasons, it is alleged that defendants have engaged in trade and commerce within the meaning of S.C. Code 39-5-10(b) and used false and deceptive trade practices during those actions of trade or commerce. Defendants have operated, advertised, and distributed services, property, and things of value, so as to directly and indirectly affect the people of South Carolina.

99 Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Diocese, and is entitled to recover actual damages as a result of the wrongful conduct of the Diocese.

100 The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese engaged in a public relations exercise, in an effort to procure positive publicity, at a certain cost to itself, without having to compensate all of its abuse victims. It designed the compensation specifically to exclude certain victims. The Diocese engaged in collusion and overt misrepresentation in order to achieve its objective to deceive the public, the court, and

those persons sexually abused prior to August 31, 1980, and the parents and spouses of those persons

101 The unfair and deceptive acts and practices of the Diocese have an impact upon the public interest, and has not only the potential for repetition, it has been repeated. The practices engaged in by the Diocese of misrepresentations to the court and the public through its court statements and its statements to the press are extensions of longstanding practices of deceit and deception by the Diocese. Maintaining secret archives of files, practicing “mental reservation” to support and justify lying (even while under oath), using diplomatic immunity to conceal documents, and mandating that persons conceal abuse are all techniques used by the Diocese to maintain deception. Overtly misrepresenting to a Court and the public are extensions of practices the Diocese has engaged in for years.

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

103 The Diocese has intentionally misrepresented even geographic origin and history in presenting information about abuse victims to the court and the public.

104 The Diocese should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material in its possession, custody, or control.

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

106 The plaintiff suffered an ascertainable loss of money as a result of the use or employment by the Diocese of the unfair or deceptive methods in articulating one standard that the Diocese claimed applied to abuse victims prior to 1980, but then, after approval by the state court relying on that representation, the defendants refused to comply with that standard when other victims came forward

107 The plaintiff is entitled to treble damages as a result of the conduct of the Diocese, as well as actual and punitive damages, and such other and further relief as the court deems just and proper

Demand for Jury Trial

108 Plaintiffs demand a trial by jury

Relief Sought

Wherefore, Plaintiff seeks relief in the form of

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

110 Injunctive relief as requested in this complaint,

111 Costs and disbursements of this action,

112 Attorneys fees as authorized by law,

113 Punitive damages as authorized by law, and for

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers". The signature is stylized with a large, looping "G" and a long, sweeping "M" that extends to the right.

Gregg Meyers
PO Box 1297
Charleston SC 29402
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attygm@gmail.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA	()	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO 09-CP-10-8056
Jane Doe 3,	)	
	)	
Plaintiff,	)	
	)	
v	)	Negligence, Recklessness
	)	Intentional Tort
The Bishop of Charleston, a	)	Fraudulent Concealment
Corporation Sole, and	)	Unfair and Deceptive Trade Practices
The Bishop Of The Diocese of	)	
Charleston, in his official Capacity,	)	Jury Trial Requested
	)	
Defendants	)	

Amended Complaint

For her complaint, the plaintiff alleges

Parties and Jurisdiction

1 Plaintiff is a citizen and resident of South Carolina As a child she was sexually molested by a priest of the Diocese of Charleston, James W McCarthy, when James McCarthy was assigned to Saint William in Ward, S C during the approximate time period of 1965 to his departure in 1971

2 A pseudonym is used for the plaintiff due to the sexual abuse injury which is the subject of this complaint The defendants will be informed of the identity of the plaintiff

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

4 The Bishop of Charleston, a Corporation Sole, is the corporate entity that governs

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JULIE J ARISTOTENG
CLERK OF COURT

FILED

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

5 The Bishop of The Diocese of Charleston is the formal head of the Diocese. Presently the Bishop is the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County. He is sued in his official capacity, and is a party necessary for complete relief. He is referred to in this complaint as the Bishop. All persons working for the Diocese are subordinate to the Bishop. In this complaint, the Diocese and the Bishop defendants are collectively referred to as the "Diocese defendants" unless they are otherwise specifically referred to.

6 The Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County.

Nature of Wrongdoing

7 Prior to 1965, the Diocese defendants were either reckless or acted intentionally in actively disregarding the risks to children and families for sexual assault of children by their priests and other employees, and then actively, and fraudulently, concealing the

abuse that happened, and the dangers to children the Diocese and its priests solicited into danger

8 The Diocese defendants were reckless in exposing children to the danger of sexual abuse, or did so intentionally in that the interest of the children at risk were regarded as expendable, in order to promote the interests of priests and the Diocese in appearing to be a more pastoral organization then it was in fact

9 Charitable immunity does not apply to intentional or reckless conduct such as is alleged in this complaint, and in any event, in 2007 the Diocese explicitly waived all charitable immunity, and explicitly all statute of limitations defenses, for persons sexually abused by its priests prior to 2001, their parents and spouses

10 Plaintiff was born prior to 1980, as were her children

11 Plaintiff received no notice of the class action case the Diocese agreed to accept for abuse victims, and under the explicit terms of the order which approved the class action, and by agreement of the Diocese in that action, Plaintiff is not barred by the *res judicata* effect of that class action that would otherwise apply In addition, the Diocese has waived the defenses of charitable immunity and state of limitations as to class of persons which was defined so as to include the plaintiff, among others

**For a First Cause of Action
Negligence, Recklessness, and Intentional Misconduct**

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

13 The defendant Diocese employed James McCarthy as a priest

14 In his capacity as priest, James McCarthy was placed by the defendants in a position of trust and confidence, and had access to the plaintiff and her children In that

capacity, James McCarthy sexually molested multiple children, including those of the plaintiff

15 Prior to plaintiff's children being molested, the defendants became aware that James McCarthy was dangerous to children. The defendants ignored that danger, and placed James McCarthy so as to facilitate his access to children whom he could molest. Those decisions by Diocese personnel working on behalf of the Bishop were made or approved in Charleston County.

16 After he was moved by the defendants to Ward, South Carolina, James McCarthy molested the plaintiff's children.

17 The Diocese, Bishop, and its other officials negligently supervised James McCarthy. The Bishop was grossly negligent in supervising James McCarthy in not limiting his access to children or providing protective supervision over him.

18 As a proximate result of the negligence and gross negligence by the Diocese defendants, the Plaintiff's children were sexually abused by James McCarthy.

19 The Diocese defendants were negligent in failing to warn the plaintiff about James McCarthy. The Bishop performed that duty in a grossly negligent manner.

20 Although knowing that James McCarthy was a pedophile, or having reason to know, the Diocese and Bishop, including the Bishops prior to the current Bishop, made no effort, or no competent effort, to ascertain how many children James McCarthy had molested, and no effort, or not competent effort, to locate victims of James McCarthy. If the Diocese did make such an effort, as it has claimed that it did, it assumed the duty but performed it in a negligent manner, relying only on prior reports by abuse victims instead of undertaking an affirmative effort to ascertain victims of James McCarthy. The duty

undertaken by the defendants was performed in a grossly negligent manner, if it was not intentionally performed in a manner designed to be ineffective but done only to enable the Diocese to claim it had made an effort

21 The defendants' failure to do so was negligent, and grossly negligent if not intentional on behalf of the presiding Bishop from the time the plaintiff's children were abused to the present

22 As a result of the defendants' negligence, gross negligence, or intentional deception in failing to either prevent plaintiff's children from being abused or identifying the plaintiff's children as a victim of abuse by James McCarthy, a Diocese agent or employee, the plaintiff had impairments to the services of her children which were then exacerbated over time. The conduct of the defendants delayed the plaintiff's discovery that her children had all been molested by James McCarthy, delayed her treatment and treatment for her children, and exacerbated all problems stemming from the plaintiff's children having been sexually abused.

23 As set forth more fully below in the second cause of action, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants, among other things, accounts for the delay in this action being brought against the Diocese defendants.

24 The plaintiff is entitled to actual and punitive damages as a result of the negligence of the Diocese defendants, and gross negligence of the various presiding

Bishops, in failing to perform a proper review for James McCarthy's victims, or in performing that duty in a grossly inadequate, or intentionally inadequate, manner

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

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

26 The Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children That practice, independent of its intentional and knowing waiver, estopps the Diocese from asserting any statute of limitations defenses as to the plaintiff, and forms an independent basis of relief for the plaintiff

27 The Diocese defendants had a duty to discover, and to disclose, to plaintiff and to each of her children, their knowledge that James McCarthy had a sexual interest in children That duty arises from

- (a) the preexisting fiduciary relationship between the plaintiff and the Diocese defendants, which relationship the Diocese solicited,
- (b) from plaintiff having expressly reposed, on behalf of her minor children, a trust and confidence in the Diocese defendants with regard to her children participating in events which would place each of them alone and in a vulnerable position with James McCarthy, the position of trust and confidence being implicit from those circumstances, from the nature of the dealings between the plaintiff and the Diocese defendants, and from their relative positions towards each other in light of the superior knowledge about James McCarthy possessed by the Diocese,

(c) from the essential nature of the Diocese defendants and their inducement to Plaintiff that having her children participate in the activities of the Diocese would be beneficial to them, not harmful to them,

(d) from a practice of secrecy, perhaps stemming from the secrecy provisions in the Code of Canon Law, both 1917 and 1983 versions of that Code, and the 1962 document titled "Instruction," which charges the Diocese to discover but maintain secrecy about, "other persons solicited" by any person such as James McCarthy who committed the "unspeakable crime" of sexually abusing a child, and

(e) by the undertaking which the Diocese defendants assumed, negligently (and in the case of the individuals included in the Diocese defendants designation, grossly negligently, or intentionally, poorly), in 2005 - 2007 to locate victims such as the plaintiff

28 Plaintiff's children were sexually abused by James McCarthy after 1962, in that James McCarthy was not assigned to Ward, S C until 1965

29 Concerning each of (a) the dangers James McCarthy represented to Plaintiff's children, and (b) assisting to repair the damage done by James McCarthy, the Diocese defendants were obligated to Plaintiff and her children to engage with each of them in perfect good faith and with full disclosure, without regard to any particular intention of the parties. The relationship the Diocese solicited and assumed as to the plaintiff was inherently fiduciary in that the Diocese purports to be concerned with the best interests of those it solicits as parishioners

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

31 Specifically, the Diocese defendants created, as embodied in the Code of Canon law which required it, an archive (Canon 486 in 1983 Code, Canon 375 in 1917 Code), accessible only by the Bishop and chancellor (Canon 487 in 1983 Code, Canon 375 in 1917 Code). Documents may not be removed from the archive except for a brief time, and only by permission of either the Bishop or the moderator of the curia (Canon 488 in 1983 Code, Canons 378-379 in 1917 Code). Canon 489 (1983 Code) requires that a Secret Archive also be created (Canon 379 in the 1917 Code). In it “documents are to be kept secret” and “protected most securely.” Canon 489 (1983 Code), Section 2 states “Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, *are to be destroyed*. A brief summary of what occurred along with the text of the definitive sentence is to be retained.” Emphasis added. Similar provisions are in Canon 379 of the 1917 Code (E.g., the Canon states, “promptly once a year, documents in criminal cases *are to be burned* in morals cases.”) Emphasis added. Only the Bishop is to have the key to the secret archive, and documents are not to be removed from the archive (Canon 490, 1983 Code, Canon 379, 1917 Code). The bishop is authorized to include in the secret archive any matter which can be regarded as scandalous.

32 Matters related to agents and employees of the Diocese sexually abusing children, including James McCarthy's sexual abuse of children, including the children of the plaintiff, were regarded as scandalous, and were maintained in the secret archive. As such, those documents would have been intentionally destroyed as called for in either version of the Code.

33 Another technique used by the Diocese to maintain secrecy about sexual abuse matters, or any other matter the Diocese wished to keep secret, was to move the document (or person) to other locations, including moving a document to Rome, where diplomatic immunity could be claimed and production resisted.

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

35 The plaintiff and her children each fit within the "penitent" referred to in the Instruction.

36 The Instruction states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." P. 15, ¶ 71. Plaintiff's abused children are both male and female.

37 The Instruction also defined as “any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex ” P 16, ¶ 73

38 The conduct by James McCarthy towards the plaintiff’s male children qualifies under the Instruction as “the worst crime ”

39 Among other things, the “Instruction” directs that the Diocese defendants were to assume the duty of locating “other persons solicited by the same confessor” (p 7 ¶ 29), in this instance, other persons solicited by James McCarthy See also, Instruction, p 9 ¶ 37

40 When that duty was assumed by the Diocese defendants, it was performed in a grossly negligent manner The Diocese defendants failed to locate the plaintiff, any of plaintiff’s children

41 The “Instruction” states it was approved by the “Most Holy Father John XXIII” in 1962 P 16

42 In its Appendix, the “Instruction” sets out the terms of the secrecy to be observed for matters such as the sexual abuse of plaintiff’s children In essence, the secrecy oath provides for absolute secrecy, under pain of excommunication Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained ‘ under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good,” unless expressly approved “by the Supreme Pontiff ” P 17

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

44 Unless the Pope himself approves otherwise, the “Instruction” directs that secrecy is to be maintained not only by the Catholic plaintiffs such as the plaintiff, but by every member of the Diocese defendants, and by even witnesses to sexual abuse such as the plaintiff’s children. That secrecy is to be made despite any law, court order, or oath to which would otherwise require disclosure. Under the “Instruction,” the highest obligation, higher than any law, oath, or court order, is to maintain secrecy for the benefit of the Diocese, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has instructed otherwise, the Diocese defendants can all be expected to be obedient to the “Instruction,” and to overtly conceal or misrepresent any facts related to sexual abuse. The Diocese defendants have, to date, done so.

45 Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the defendants as to James McCarthy’s sexual abuse of the plaintiff’s children. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent sexual abuse of the plaintiff, or to ascertain that the plaintiff was a victim of the abuse by James McCarthy.

46 As courts began to require the Diocese, despite its commitment to secrecy and deception, to be accountable for sexual abuse, the Diocese had to reach a new level of deception and manipulation to limit the damage to the Diocese from its having to take responsibility for its history of sexual abuse, and to as much as possible conceal the extent of abuse, and to limit as much as possible its responsibility for that abuse.

47 The plaintiff is entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese defendants in actively maintaining secrecy and

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

48 In addition, and as an independent alternative, as a result of its practice of secrecy, as well as from its explicit waivers, the Diocese is precluded from asserting the statute of limitations, or charitable immunity, as to the plaintiff, and the plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the services of the plaintiffs' children

49 In addition, as an a second independent alternative, the Diocese voluntarily waived defenses of statute of limitations and charitable immunity as to a class of persons born prior to August 31, 1980 who were themselves or whose children were sexually abused by priests or others associated with the Diocese, a class which includes the plaintiff, and by that explicit waiver the Diocese is precluded as a matter of law from asserting the statute of limitations, or charitable immunity, as to the plaintiff, and the plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the services of the plaintiffs' children

50 In addition, as an a third independent alternative, the Diocese voluntarily waived defenses of statute of limitations and charitable immunity as to a class of persons born prior to August 31, 1980 who were themselves or whose children were sexually abused by priests or others associated with the Diocese, a class which includes the plaintiff, and by that explicit waiver the Diocese may be precluded by the finder of fact from asserting the statute of limitations, or charitable immunity, as to the plaintiff, and the plaintiff is entitled to actual and punitive damages as a result of the intentional or negligent practices of the Diocese which affected the services of the plaintiffs' children

51 The Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese, because 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

52 Alternatively, the Plaintiff is not precluded from making this claim by the prior class action litigation brought against the Diocese because that litigation was collusive The Diocese calculated it could use the class action to pay modest compensation to a limited number of victims, then try to exclude all others by *res judicata* The Diocese colluded to

- (a) cooperate with class counsel who had life-long ties to the Diocese and who held positions within the Diocese,
- (b) twice continue hearings in Charleston County for three pending cases, one of which was a class action, so as to keep the Charleston County Circuit Court from deciding dispositive motions or ruling on class status pursuant to SCRCF 23(c),
- (c) agreed to a fixed fee for class counsel simultaneously negotiating the recovery for the class,
- (d) agreed to class counsel’s fee taking priority over the recovery for the class,
- (e) agreed to class counsel being paid prior to the class being known or the first class claimant had even an opportunity to file a claim,

- (f) agreed to limits on class member recovery for a small fraction of what class counsel would agree to accept when litigating against a Diocese other than his own,
- (g) agreed not to disclose to the Charleston County Circuit Court that a class action settlement was in fact reached in the class action pending in Charleston County during a June, 2006 mediation
- (h) agreed to not submit the June, 2006 mediated class settlement to the Charleston County Circuit Court even though the class action settled by that agreement was pending in that court, and no other case was then pending
- (i) agreed to a plan to move class certification and class settlement oversight from the Charleston County Circuit Court in which the pending class action had been settled, to Dorchester County, where no case was then pending, so as to judge-shop for a Circuit Court judge with long social and professional ties to class counsel,
- (j) agreed to accept service of three collusively-filed class actions in Dorchester County, one of which was identical, word-for-word and typo-for-typo, to the already-settled class action pending in Charleston County, making that class action case pending in two counties simultaneously
- (k1) agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, apparently giving that judge only limited information, and certain false information, about the pending Charleston County class action and the collusion among counsel,

so as to gain her (apparently unwitting, initial) assistance in depriving the Charleston County court of jurisdiction to review under SCRCF 23(c) the class status of, or the June, 2006 class settlement for, case 05-CP-10-4913

- (k2) Alternatively, the Diocese agreed to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, fully disclosing that a Charleston County class action, 05-CP-10-4913, was pending and that a proposed class settlement had been reached in June, 2006, and seeking the Dorchester County court's active cooperation in depriving the Charleston County court of the jurisdiction to review under SCRCF 23(c) the class status of, and the June, 2006 proposed class settlement for, case 05-CP-10-4913
- (l) agreed to circumvent SCRCF 23 being applied by any Charleston County judge to the class settlement reached in the class action pending in Charleston County, by agreeing to not inform that Court that a class settlement had been reached when asking for the Charleston cases to be dismissed,
- (m) agreed to take no position on class certification, even though the Diocese would be obligated to a settlement of \$460,000 without class certification but for far more with class certification,
- (n) agreed to remain silent about class counsel's false, duplicative, and fraudulent time and billing records in class counsel's application for costs and fees,

- (o) agreed to class counsel being paid in fact prior to the class claims period even beginning,
- (p) agreed to oppose all objections raised by third parties to the class settlement,
- (q) convinced class counsel to abandon his request to the court for nationwide notice and to change his request for only geographically limited notice,
- (r) agreed to arbitration of class members claims, to assure that the Diocese would not pay to victims more than the limits the Diocese was willing to accept,
- (s) agreed to inform the mediator about the financial limits the Diocese was willing to accept so the arbitrator would not exceed those sums in its awards to class members,
- (t) convinced class counsel to acquiesce in letting the Diocese examine its own files for sexual abuse victims, even though the Diocese was alleged to have a history of deliberately secreted information about abuse, and the search by the Diocese was only for persons who had already identified themselves as abuse victims, not for all victims
- (u) agreed to request no post-award fairness hearing in the class action,
- (v) agreed to request no review of class counsel's actual fee, even though it appears class counsel might have recovered as much as 51% of all sums paid by the Diocese,
- (w) agreed to request of the Dorchester County court no final accounting or final order prior to the September 19, 2009 deadline imposed by the SC

Supreme Court for the Dorchester County court to conclude the class action,

- (x) agreed to request no final accounting, and
- (y) agreed to take no appeal from any orders of the Dorchester County court affecting the class settlement

53 Plaintiff presumes that in 2006 and 2007 the Dorchester County Circuit Court was not given complete information about the status of 05-CP-10-4913 and the proposed class settlement, and by the time accurate information was given to the Court in 2008, it was so far into the class process that even though the Court had authority to modify orders in the class action “at any time” under SCRC23, the Court elected to take no further action in the class action case

54 As a result of the concealments by the Diocese, and its collusion in the class action the Diocese is unable to properly assert any statute of limitations defense as to the plaintiff Also as a result, the plaintiff was injured, and is entitled to actual and punitive damages in a amount to be determined by the finder of fact

**For a Third Cause of Action
Unfair and Deceptive Trade Practices**

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

56 The Diocese defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law The Diocese contends its participation in engaging in unfair and deceptive acts or practices is not sufficiently specified in the allegations prior to this paragraph, so to accommodate the Diocese, we

set forth a short and plain statement of allegations in greater specificity about those various engagements in trade or commerce as defined in South Carolina law

57 Defendants engage in trade or commerce in that they provide services to the public and advertise services to the public. Providing any services constitutes commerce within the meaning of the UTPA. Commerce in that regard is not confined to conventional consumer transactions.

58 Defendants offer, and advertise, services related to association, entertainment, and pastoral activities. Defendants operate schools, for which tuition is charged. For many years, including time periods pertinent to this complaint, the defendants were supported and maintained by, among other things, gambling revenues, and advertised its gambling activities to the public.

59 Defendants' activities encompass the entire State of South Carolina, and defendants assign and oversee personnel throughout the state for the services it provides throughout the state.

60 Starting not later than 1998, defendants began to accommodate various claims that among the personnel engaged in its operations with the public were a number of persons who had a sexual interest in children. On their own volition under the Code of Canon Law, and operating through instruction from the Vatican, the defendants organized efforts over time to maintain as much secrecy as possible about the pedophiles it employed, and elected as a strategy to maintain as much secrecy as was possible about those pedophiles.

61 The defendants organized internally to absorb and deflect victims of its pedophiles, and to resist, as much as possible, taking any responsibility for its pedophiles.

62 One method eventually adopted by defendants was to offer, and advertise its offer, of counseling services for victims of its pedophiles. The defendants sought to maintain control of victims by making slight compensation for sexual abuse victims, and to contain information about pedophiles, while gathering information from abuse victims.

63 To minimize risks to themselves, the defendants established a person to be responsible for responding to sexual abuse victims of the pedophiles maintained by the defendants. Information was gathered by that person and used to maintain information on pedophiles and their victims, and to minimize the risk of litigation. This was a calculated business strategy by the defendants to protect the organization from all but minimal accountability for its pedophiles.

64 Defendants also collaborated with the Vatican to receive reimbursements for all or some of payments made for victim compensation, collaborating across international borders as well as across state lines to do so.

65 In 2006, the defendants collaborated on a new strategy to minimize its responsibility for the pedophiles it had permitted for decades to sexually abuse children. Working with a member of the Diocese, the defendants adopted a strategy of collusive litigation to advertise for, and gain limited participation in, a claims process that was hoped would, for a price, purchase the ability for defendants to compensate some victims minimally, enabling the defendants to avoid paying any significant compensation, in exchange for being able then to deny all compensation to any other victims who might seek greater accountability.

66 In 2006, the defendants calculated they could collude to present a class action to pay modest compensation to a limited number of victims to secure the smallest amount of

compensation possible for all victims. To pursue that improper objective, defendants made, even to the court, false promises and assurances to gain the court's approval of the class action mechanism, and then used the collusive class action to try to exclude, by *res judicata*, all other victims. Through these means, defendants purchased, for the price of modest recoveries to a group of victims known to be incomplete, the ability to avoid significant recovery to any victim, and avoid outright any recovery at all to many other victims about which the defendants knew or should have known.

67 Defendants cooperated and colluded in this objective with class counsel who had life-long ties to the Diocese and who held positions within the Diocese. He agreed to not disclose to the class his connections to defendants.

68 Defendants collaborated with class counsel to twice continue hearings in Charleston County for three pending cases, one of which alleged a class action, so as to keep the Charleston County Circuit Court from deciding dispositive motions or ruling on class status pursuant to SCRPC 23(c). Defendants and class counsel sought to avoid any independent judge, preferring instead to present their collusive class action only to a judge they had hand-picked, who they calculated would accept information, even if false, and would refuse to explore allegations of false information. The defendants and class counsel counted on their hand-picked judge not scrutinizing too closely their collusive actions, including false information given to the court, even when the collusion and false information was plainly exposed for the judge to review. And as defendants expected, the hand-picked judge refused to make any inquiry into any of the collusive conduct, any of the judge-shopping by which that judge was picked, any of the unethical fee provisions, or any of the false or fraudulent information given to that judge. Defendants

refused to request, and the hand-picked judge refused to order, any post-award fairness review for the class action, so as to avoid having to confront the collusive and fraudulent conduct of the class action

69 Defendants agreed to a fixed fee for class counsel while class counsel simultaneously negotiated a variable recovery for the class, enabling defendants to succeed in pitting class counsel's personal interest against, and ahead of, the interests of his class member clients. Defendants calculated correctly that class counsel would promote his own interests ahead of the class members he represented

70 To facilitate class counsel putting his own interests ahead of the class he represented, defendants agreed to enable class counsel's fixed fee to take priority over the variable recovery for the class, an unethical conflict of interest

71 Defendants agreed to class counsel being paid prior to the class being known or before the first class claimant had even an opportunity to file a claim

72 Defendants negotiated to "buy off" class counsel so as to get, in exchange, limits on class member recovery that were a small fraction of what class counsel would agree to accept when litigating against a Diocese other than his own in a comparable sexual abuse claim. Specifically, by buying off class counsel for a fixed fee that had priority over class member recovery, defendants obtained in exchange a limit of \$200,000 for any class member. By contrast, when class counsel settled a comparable individual case for sexual abuse, also filed in South Carolina but against the Diocese of Savannah, not defendants, class counsel recovered over \$4 million for a single client, counsel for these defendants also representing the Diocese of Savannah, so these defendants were well aware of the progress of that litigation. By defendants colluding with that class counsel to work

against the class of victims in the South Carolina class action, the defendants avoided having to pay anything close to comparable value for the class of victims, lowered the bar for recovery to all victims, and created a mechanism the defendants later tried to use to bar all other victims

73 Defendants agreed with class counsel not to disclose to the Charleston County Circuit Court that a class action settlement was in fact reached during a June, 2006 mediation in the class action pending in Charleston County

74 Defendants agreed with class counsel to ignore the mandatory requirements of SCRCP 23, and agreed with class counsel not submit the June, 2006 mediated class settlement to the Charleston County Circuit Court for approval, even though the class action settled by that agreement was pending in that court, and no other class action case was then pending

75 Defendants agreed with class counsel to a plan to move the questions of class certification and class settlement oversight from the Charleston County Circuit Court, in which the pending class action had been settled, to Dorchester County where no case was then pending, so as to judge-shop for a particular Circuit Court judge with long social and professional ties to class counsel

76 Defendants agreed to accept service of three collusive class actions filed in Dorchester County, one of which was identical, word-for-word and typo-for-typo, to the already-settled class action pending in Charleston County, making the identical class action case pending in two counties simultaneously

77 Defendants' agreement to accept service was part of the plan with class counsel to ignore the case pending in Charleston, make it quietly go away, and use the hand-

picked, shopped-for judge to approve the class mechanism only in Dorchester County, avoiding any class approval questions in Charleston County

78 Defendants agreed with class counsel to begin communications with a judge in Dorchester County with long social and professional ties to class counsel, apparently giving that judge only limited information, and at times false information, about the pending Charleston County class action and the collusion among counsel, so as to gain the judge's assistance in depriving the Charleston County court of jurisdiction to review under SCRCP 23(c) the class status of, or the June, 2006 class settlement for, case 05-CP-10-4913. Alternatively, defendants began communications with the judge in Dorchester County with long social and professional ties to class counsel, making full disclosure that (a) a Charleston County class action, number 05-CP-10-4913, was pending, (b) a proposed class settlement had been reached in that action in June, 2006, and (c) the defendants sought the Dorchester County court's active cooperation in depriving the Charleston County court of the jurisdiction to review under SCRCP 23(c) the class status of, and the June, 2006 proposed class settlement for, case 05-CP-10-4913

79 Defendants agreed to circumvent SCRCP 23 being applied by any Charleston County judge to the class settlement reached in mediation of case 05-CP-10-4913, the class action pending in Charleston County, and defendants agreed to not inform the Charleston County Circuit Court that a class settlement had been reached when defendants agreed to ask for that and two other Charleston cases to be dismissed

80 Defendants agreed with class counsel to take no position on class certification in the Dorchester County collusive class cases, even though the Diocese would be obligated to a settlement of \$460,000 without class certification but more than \$8 million with class

certification. The defendants knew that even spending \$8 million was a bargain price for effectuating its plan for low compensation to abuse victims in exchange for a protection defendants would later argue barred all compensation for any other victims.

81 Defendants agreed to remain silent about class counsel's false, duplicative, and fraudulent time and billing records that were used to support class counsel's application for costs and fees. Among other things, defendants agreed to be silent when class counsel billed time on February 30 in different years, and when class counsel billed individual time of more than 24 hours per day on numerous occasions, including a day in which class counsel to have worked more than 40, 50, 70 and 90 hours in a single day. The silence by defendants for class counsel's grotesque billing records was among the *quid pro quo* for enabling defendants to obtain the benefits of the collusive class action.

82 Defendants also agreed not to report class counsel's egregious billing conduct to the Office of Disciplinary counsel. The silence by defendants for class counsel's grotesque billing records was among the *quid pro quo* for enabling defendants to obtain the benefits of the collusive class action.

83 Defendants agreed to class counsel being paid prior to the class claims period even beginning.

84 Defendants agreed to oppose, with class counsel, all objections to the class settlement raised by third parties to the class settlement.

85 Defendants succeeded in getting class counsel to abandon his request to the Dorchester County court for nationwide notice to the class, and to change that request for only geographically limited notice, limited only to South Carolina advertising sources.

86 Defendants agreed to arbitration of class members' claims, to assure that the Diocese would not pay to victims more than the limits the Diocese was willing to accept. Claims could be adjusted, if need be, to enable compensation to victims to be adjusted so as to keep overall compensation within the limits desired by the Diocese and the Vatican.

87 Defendants agreed to inform the mediator about the financial limits the Diocese and the Vatican were willing to accept so the arbitrator would not exceed those sums in its awards to class members, and if needed, could adjust the awards to maintain those limits.

88 Defendants got class counsel to acquiesce in letting the Diocese examine its own files to discover sexual abuse victims, even though class counsel claimed the Diocese had, and the Diocese in fact had, a history of deliberately secreting information about abuse, and the search by the Diocese was disingenuous in that it was a search not for all victims but only for persons who had already identified themselves as abuse victims.

89 Defendants agreed to request no post-award fairness hearing in the Dorchester County class action, even though further proceedings were ordered by the South Carolina Supreme Court.

90 Defendants agreed to request, through a fairness hearing or otherwise, review of class counsel's actual fee as a percentage of the common fund for the class, even though it appears class counsel recovered as much as 51% of all sums paid by the defendants. That silence by defendants was part of the *qui pro quo* for the benefits to defendants of the collusive class action.

91 Defendants agreed to request of the Dorchester County court no final accounting or final order prior to the September 19, 2009 deadline the South Carolina Supreme Court

imposed on the Dorchester County court to conclude the class action. That silence by defendants was part of the *qui pro quo* for the benefits to defendants of the collusive class action.

92 Defendants requested no final accounting of the class action.

93 Defendants agreed to take no appeal from any orders of the Dorchester County court affecting the class settlement.

94 In 2006 and 2007 the defendants agreed to withhold from the Dorchester County Circuit Court the complete information about the status of case 05-CP-10-4913 and the proposed class settlement, and then to provide false information to the court. By the time accurate information was given to the Court, in 2008, by others, it was so far into the class process that even though the Dorchester County Court had authority to modify orders in the class action “at any time” under SCRC23, the hand-picked Dorchester County judge elected to take no further action in the class action case, and the defendants agreed to make no request that the Court take any action, and refused all requests that the Dorchester County Court take further action.

95 The Diocese defendants stated publicly, and to the Court, that the Diocese waived its defenses for persons abused prior to August 31, 1980, yet then refused to do so when such persons came forward. The representation was made by the defendants on the record in an *ex parte* proceeding (ex parte as to other parties who had responded to the court’s invitation for objections to the proposed class action).

96 A true and accurate transcript of proceedings in the class action of July 13, 2007 is attached to this complaint. Its text is incorporated into these allegations pursuant to SCRC 10(c).

97 In the attached transcript, defendants made false representations to the Dorchester County Circuit Court. Using the page numbers of the attachment, on page 1 of 33 the defendants sought to avoid having a record made of the proceedings. Defendants' false statements appear on throughout this transcript, but particularly on page 22 of 33, at lines 17 to 25 and then on to line 1 on that page defendants misrepresented to the court their intention to address other victims who failed to get notice of the class action. The court relied on the false statements by defendants, and was unaware that defendants were engaged in false and collusive conduct with class counsel.

98 For all of these reasons, it is alleged that defendants have engaged in trade and commerce within the meaning of S.C. Code 39-5-10(b), and used false and deceptive trade practices during those actions of trade or commerce. Defendants have operated, advertised, and distributed services, property, and things of value, so as to directly and indirectly affect the people of South Carolina.

99 Plaintiff has suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Diocese, and is entitled to recover actual damages as a result of the wrongful conduct of the Diocese.

100 The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese engaged in a public relations exercise, in an effort to procure positive publicity, at a certain cost to itself, without having to compensate all of its abuse victims. It designed the compensation specifically to exclude certain victims. The Diocese engaged in collusion and overt misrepresentation in order to achieve its objective to deceive the public, the court, and

those persons sexually abused prior to August 31, 1980, and the parents and spouses of those persons

101 The unfair and deceptive acts and practices of the Diocese have an impact upon the public interest, and has not only the potential for repetition, it has been repeated. The practices engaged in by the Diocese of misrepresentations to the court and the public through its court statements and its statements to the press are extensions of longstanding practices of deceit and deception by the Diocese. Maintaining secret archives of files, practicing “mental reservation” to support and justify lying (even while under oath), using diplomatic immunity to conceal documents, and mandating that persons conceal abuse are all techniques used by the Diocese to maintain deception. Overtly misrepresenting to a Court and the public are extensions of practices the Diocese has engaged in for years.

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

103 The Diocese has intentionally misrepresented even geographic origin and history in presenting information about abuse victims to the court and the public.

104 The Diocese should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any documentary material in its possession, custody, or control.

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

106 The plaintiff suffered an ascertainable loss of money as a result of the use or employment by the Diocese of the unfair or deceptive methods in articulating one standard that the Diocese claimed applied to abuse victims prior to 1980, but then, after approval by the state court relying on that representation, the defendants refused to comply with that standard when other victims came forward

107 The plaintiff is entitled to treble damages as a result of the conduct of the Diocese, as well as actual and punitive damages, and such other and further relief as the court deems just and proper

Demand for Jury Trial

108 Plaintiffs demand a trial by jury

Relief Sought

Wherefore, Plaintiff seeks relief in the form of

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

110 Injunctive relief as requested in this complaint,

111 Costs and disbursements of this action,

112 Attorneys fees as authorized by law,

113 Punitive damages as authorized by law, and for

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers". The signature is stylized with a large, looping initial "G" and a long, sweeping horizontal stroke at the end.

Gregg Meyers
PO Box 1297
Charleston SC 29402
843-720-8714
attygm@gmail.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
JOHN DOE,)
)
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

AMENDED MOTION TO DISMISS
PURSUANT TO RULE 12(B)(6) AND
RULE 12(B)(8)

FILED
2010 MAR -5 AM 10:09
JULIE J ARMSTRONG
CLERK OF COURT

TO THE PLAINTIFF, ABOVE NAMED, BY AND THROUGH HIS ATTORNEY,
GREGG MEYERS, 39 BROAD STREET, CHARLESTON, SC

YOU WILL PLEASE TAKE NOTICE that the Defendants, above named, will move the
Presiding Judge of the Charleston County Court of Common Pleas on the tenth day of service
hereof, or as soon as the matter may be heard, for an Order dismissing the Plaintiff's Amended
Complaint in its entirety and dismissing this action, with prejudice

The Defendants preliminarily object to answering the Plaintiff's Complaint in any form
because the Plaintiff has failed to disclose his identity to the Defendants. The Defendants cannot
adequately defend the Complaint without knowing the identity of the Plaintiff. Notwithstanding
this objection, the Defendants move this Court to dismiss the Plaintiff's claims on the following
grounds, pursuant to Rules 12(b)(6) and 12(b)(8), South Carolina Rules of Civil Procedure

I 12(b)(6)

A Res Judicata and Collateral Estoppel

On January 12, 2007 the Defendants entered into a Class Action Settlement Agreement to settle the claims of a class of people who alleged they were sexually abused as minors by personnel of the Diocese of Charleston, the above named Defendants See 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 v The Diocese of Charleston, A Corporation Sole, and the Bishop of the Diocese of Charleston in His Official Capacity of a Class of People Similarly Situated, Case Numbers 2006-CP-18-1310, 1311, 1636 (Dorchester County Court of Common Pleas) The Settlement Agreement addressed the claims of two classes of individuals All individuals born on or before August 30, 1980 who claim to have been sexually abused as minors by Diocese of Charleston personnel (“primary class’), and those individuals’ spouses and parents (“consortium class”) A Fairness Hearing was held before the Honorable Diane S Goodstein, on March 9, 2007 and Judge Goodstein approved the Settlement Agreement by Orders dated July 30, 2007 and August 31, 2007 The approved classes were “opt out” classes, that is, if an individual satisfied the criteria of either class, he was automatically a class member, bound to the law of the case and the terms of the Settlement Agreement An individual must have affirmatively “opted-out” by filing a Notice of Opt Out to preserve his rights to pursue an independent claim against the Defendants

Based on the face of the Plaintiff’s Amended complaint, the Plaintiff in the current case was an absent class member in the Dorchester County Class Action, and did not file a claim for either class Without being afforded the knowledge of the Plaintiff’s identity, one can deduce from the face of the Complaint that the Plaintiff did not “opt-out” of the Class Settlement The Defendants to the Dorchester County Class Action are the same Defendants in the current case

All issues arising out of claims of childhood sexual abuse by Diocese of Charleston personnel were previously litigated in the Class Action. Fair and adequate notice was provided for the March 9, 2007 Fairness Hearing (at which Plaintiff's counsel appeared) and for participation in the Class Settlement, and the Plaintiff had a full and fair opportunity to litigate the issues raised in his current Complaint. A valid, final order was entered on the merits by Judge Goodstein on July 30, 2007 and August 31, 2007. The current Plaintiff challenges the provisions of those Orders. He is barred by *res judicata* from re-litigating claims of sexual abuse and any other claims regarding the Class Settlement which he could have raise in the 2006 Dorchester County litigation. He is barred by collateral estoppel from having this Court review the sufficiency of another court's orders on the same, previously litigated, subject.

B Statute of Limitations

The Plaintiff's 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 §§ 15-3-555 (for actions arising after 2001) and 15-3-535 (for action arising prior to 2001). Pursuant to the facts alleged in the Complaint, the Plaintiff would have been born at the latest in 1965. The Plaintiff failed to bring his action within the limitations periods prescribed by either of the above statutes. The Plaintiff does not assert he was unaware of the alleged sexual abuse for any reason such as dissociative amnesia (i.e., repressed memory) which would have prevented him from timely filing a claim.

C Unfair and Deceptive Trade Practices Claim

The Plaintiff claims the Defendants violated provisions of the Unfair and Deceptive Trade Practices Act (UTPA), S C Code § 39-15-10 *et seq*. The Amended Complaint baldly

states “The Diocese defendants engaged in unfair and deceptive acts of practices in the conduct of commerce in violation of South Carolina law ” (Am Compl ¶ 53) However, the Amended Complaint fails to allege that the Defendants were actually involved in a specific “trade” or “commerce,” an essential element to determine whether a Plaintiff can even bring a claim under the UTPA (see Foggie v CSX Transportation, Inc 313 S C 98, 431 S E 2d 587 (1993)) The Plaintiff’s allegations of child sexual abuse and his misplaced allegations of collusion surrounding a Class Action Settlement Agreement which addressed individuals’ claims of sexual abuse fail to allege the necessary elements of a claim under the UTPA Therefore, the Plaintiff’s claims under the UTPA should be dismissed pursuant to 12(b)(6), SCRPC

II Rule 12(b)(8) Another Action is Pending Between These Parties

In the alternative to dismissing the Plaintiff’s Complaint pursuant to Rule 12(b)(6), SCRPC, the Defendants move this Court to dismiss the Plaintiff’s Complaint pursuant to Rule 12(b)(8), SCRPC The above referenced Class Action (John Doe #53 et al v The Diocese of Charleston, et al), is pending in the Dorchester County Court of Common Pleas A final Order of dismissal has not yet been entered, and Judge Diane Goodstein retains exclusive jurisdiction of the case pursuant to an Order dated October 10, 2006 The current Plaintiff is a member of the plaintiff class in the Dorchester County case and is challenging the merits of the Orders issued by Judge Goodstein in that case The Defendants in both cases are identical Therefore, this Court should dismiss the current action and allow the Plaintiff’s claims to be brought before the proper court, where an action on the same issues is already pending

For these reasons and those stated above, this Court should dismiss the Plaintiff’s action

in its entirety *with prejudice* The Defendants reserve the right to supplement this Motion with further memorandum and documents, as necessary

Respectfully Submitted,



Shahid Law Office, LLC

A Peter Shahid, Jr

Erin G Groeber

89 Broad Street

Charleston, SC 29401

843-853-4500

March 5, 2010
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO 09-CP-10-6694
John Doe,	)	
	)	
	)	
Plaintiff,	)	
	)	
v	)	
	)	
The Bishop of Charleston, a	)	
Corporation Sole, and	)	
The Bishop Of The Diocese of	)	
Charleston, in his official Capacity,	)	
	)	
Defendants	)	
	)	

**Opposition to Pending Motions and
Motion for Partial Summary Judgment**

Plaintiff opposes each of the three pending motions on the grounds set forth below, and moves for partial summary judgment on liability based on the filings of the Diocese and the documents attached to this memorandum

Motion for Stay This motion will be effectively moot once the motion to dismiss is ruled upon. The Diocese has enjoyed its stay by virtue of filing the motion, and reaching the trial roster with all motions still pending. Once the Motion to Dismiss is denied, as it should be, the stay should be denied as moot.

Motion to Disclose Identity This motion also will be effectively moot once the motion to dismiss is ruled upon. As plaintiff's counsel has made clear from the beginning, once the Diocese is willing to make discovery reciprocal, plaintiff's identity will be disclosed. The Diocese wanted plaintiff to give discovery without being willing

to give it

Motion to Dismiss The motion to dismiss is opposed

12(b)(6) grounds The motion in the 12(b)(6) section argues two grounds for dismissal First, under SCRCP 12(b)(6), that the second amended complaint¹ is “barred by *res judicata*” (motion at 3) because the claims could have been raised in an earlier class-action resolution for certain sexual abuse victims Second, that the plaintiff is “barred by collateral estoppel from having this Court review the sufficiency of another court’s orders on the same, previously litigated, subject ” Motion at 3

The class action orders which are argued to bar the plaintiff’s claim are the orders of July 30, 2007 and August 31, 2007, each of which is attached to this opposition as Attachments B (July 30, 2007 order) and C (August 31 order) At the outset we make clear that no attack on those orders is made in this litigation This is addressed further below, but we are seeking to hold the Diocese to those orders, not to attack them or ask the court to review their sufficiency

Attachment A to this response is the order of the South Carolina Supreme Court of March 19, 2009, directing that the class action “be concluded within six months of the date of this order ” (As with each of the attachments, the pertinent portion of the order is marked) The Supreme Court directed the trial court to conclude the class action by September 19, 2009 We attach that order to address the suggestion by the Diocese in

¹ A motion to dismiss is not a “responsive pleading” within the meaning of SCRCP 15(a), *Bowers v Robinson*, 429 S E 2d 799, 800 (S C 1993) (“The motion to dismiss did not alter the time allowed to the plaintiff to amend his complaint as a matter of right”), so plaintiff’s second amended complaint, filed March 22, 2010, governs the motion

the 12(b)(8) portion of its motion (motion at pp 4 - 5) that the class action remains an open case. It is closed, as the Diocese itself observes in its motion to dismiss at p 3, where it contends that “A valid, final order” was entered by Judge Goodstein.

After the Supreme Court’s directive, the circuit court elected to conduct no further proceedings in the class action. And neither the Diocese nor class counsel appear to have requested that any further proceeding be held. Only the Supreme Court could have granted an extension of its deadline, and none appears to have been granted. The class action is not any longer a pending action, by operation of that Supreme Court order. The trial court’s orders of 2007 are the law of the case, and bind the Diocese.²

***Res judicata* and collateral estoppel are each inapplicable to the plaintiff, but each applies to the Diocese.** The plain language of the 2007 orders in the class action explicitly preserve the plaintiff’s claim against both *res judicata* and collateral estoppel objections. The August, 2007 order is inapplicable to this plaintiff, as he does not satisfy the terms of the sub-class set forth in that order as the “Actual Notice Class Members.” Plaintiff has alleged he received no actual notice of the class action (Second Amended Complaint at ¶ 11), and the pleadings do not indicate plaintiff met the criteria established at page 2 of the August 2007 order as one who “came forward to the Diocese at some time in the past.” Attachment C at 2. Nor will the facts once developed

However, the facts alleged, and conceded by the Diocese, indicate that the July

² The substantial irregularities in the conduct of the class action, laid out in the second amended complaint, suggest that none of the lawyers involved had ever before handled a class action. In addition to the obvious inexperience of the lawyers was added some untoward conduct, both collusive and unethical. We set those issues aside for purposes of this motion opposition and motion for partial summary judgment.

2007 order, Attachment B, applies, and explicitly makes *res judicata* inapplicable to the plaintiff's claim. That exception for the benefit of the plaintiff binds the Diocese. The order provides

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***

Bold italic emphases added. Attachment A, July 2007 Order, at 4. The "open Court and on the record" proceeding referred to in the order, at which these affirmative duties were set forth and undertaken by the Diocese through its on-the-record comments to the Court, took place July 13, 2007. The transcript of that hearing, such as it exists, is attached to the second amended complaint in this action, having been produced by class counsel as an exhibit for a pending appeal from certain orders the class action court issued as to persons who had opted out of the class.

From the July 13, 2007 transcript, the pertinent comments are by Mr. Shahid (counsel for the Diocese) at page 3 of the attachment, where the Diocese 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," and at page 14 of the attachment, where class counsel (Mr. Richter), without objection from Mr. Shahid, relates that "if anybody has been missed the diocese waives all the same defenses that they have given up in this class settlement, consents to the same method of compensation, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the

whole nine yards ” As the Circuit Court rightfully observed following that unopposed recitation, “Wow ”

As remarkable as those comments were when made by counsel in open court on July 13, 2007, the comments were nothing more than his client had itself embraced publicly In January, 2007, the Bishop of the Diocese, then Robert Baker, issued a press release, Attachment F to this memorandum, also setting forth an expansive commitment to “just resolution for those individuals who were abused within the Diocese of Charleston by clergy or laity over a number of decades ” According to the Bishop’s public statement, the intention was to reach “any individual who has suffered the scourge of childhood abuse,” (Att F, p 1), and address “any instance” of abuse Id Counsel’s July 13 comments committing the Diocese to relief for every victim, including those who “did not get notice for whatever reason,” were consistent with the public comments of his client, affirmatively issued to the press So when adopted by Judge Goodstein it is no wonder that the Diocese took no appeal from that portion of the order

In its July 30, 2007 order, just 17 days after counsel’s commitment in open court, the Court wasn’t making up the affirmative obligation set out and embraced by the Diocese

Unfortunately, as set out in the complaint in this action, the Diocese did not keep its word, as set forth in the July 13, 2007 transcript and embodied in the Court’s July 30, 2007 order Sadly, there is nothing unusual about that When this plaintiff, and others who did not get notice, came forward, instead of honoring its commitment to the plaintiff, as expressed to the Court and the public, the Diocese argues that it has no obligation to them, despite having assured the class action court to the contrary, and having made no

objection to the Court's July 30, 2007 order

The second amended complaint sets forth a number of collusive and ethically questionable practices which infused the class action. Reports about those practices are pending in the Office of Disciplinary Counsel and may also be addressed in a presently pending appeal to the South Carolina Supreme Court (set for argument February 3) from orders the class action court issued concerning persons who opted out of the class. Without regard to the allegations of collusion and unethical conduct, note that in 2007, to even get the class action approved, there was good reason for the Diocese to open its commitment to abuse victims as reflected in the July 13, 2007 transcript, and the July 30, 2007 order.

The class notice the Diocese was trying to get the trial court to approve was a notice the Diocese (and class counsel, and the court) knew would be insufficient to reach all victims, and was less than the notice originally proposed by class counsel. As set forth in the attachments to the July 30 order adopted by the trial court (Attachment B), 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 the court to approve was a class that met these criteria (See 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.

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 (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 omitting notice to any class member outside of South Carolina Compare Attachment E at p 3 (proposing only in-state notice) with Attachment D at page 5 (proposing in-state and national notice) In the second filing, the revised motion for approval, *USAToday* is omitted as a source of notice to the class Only statewide newspapers are listed for including notice

This is pointed out not as a criticism of the July 30, 2007 order approving geographically limited notice for a class that was defined without geographic limits No attack is made on that order To the contrary, the plaintiff embraces that order, because that order protects this claim We seek to compel the Diocese to comply with the 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 treat latecomers who did not get notice, such as this plaintiff, exactly as it treated class members, it made sense for Judge Goodstein to approve the class, recognizing that the *res judicata* effect of the class would not apply to those who got no notice The notice had been trimmed in a way that was expected to leave some persons without proper notice, a Due Process problem solved by the court's accommodation of a mechanism for accommodating those who did not get notice

In his public statement issued January 21, 2007, Attachment F to this memorandum, Bishop Baker, then Bishop of the Diocese, made very clear that the Diocese intended to reach every single one of the "individuals affected and those around them " Attachment F at 1 In the July 13, 2007 hearing, counsel for the Diocese was

saying nothing different than what his client was publicly proclaiming, and no objection or appeal was made when Judge Goodstein approved the class but limited its *res judicata* effect for those who, as put in the July 30, 2007 order at page 4 “did not receive notice for whatever reason ” The plaintiff seeks to require the Diocese to respond to the commitment it made, and comply with the order it sought and obtained

In now suggesting otherwise, and moving to dismiss the complaint, the Diocese necessarily will have to argue two things First, that the plain language of the order does not mean what it says, and second, that class counsel committed legal malpractice by taking on the representation of all victims but providing notice of a means of relief to only some Even if none of the lawyers had any class action experience, as seems to have been the case, the Diocese has not contended either that it objected to Judge Goodstein’s 2007 order or that class counsel committed malpractice in explicitly terminating relief for some class members ³

Having sought no relief from Judge Goodstein’s open-ended 2007 order, the Diocese cannot now claim it is not bound by it Judge Goodstein 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

The *res judicata* and estoppel effects of the July 30, 2007 order don’t run to the

³ Because the Diocese now chooses to contradict the plain language of the July 30, 2007 order, in another forum counsel has brought these claims in the alternative — either class counsel committed legal malpractice, or the Diocese has exactly the liability it described and was ordered to provide The Diocese has made no claim of malpractice by class counsel, but would have to explain why the notice

plaintiff They run to the Diocese Given that the Diocese admits those orders apply, the plain language of the July 30, 2007 order prohibits the Diocese from now seeking to limit or to deny the plaintiff's claim Since the Diocese concedes that the July 30, 2007 order applies, the plaintiff is entitled to summary judgment on the base liability of the Diocese to afford the same relief as was provided to the class, and plaintiff moves for partial summary judgment under SCRCP 56 on the obligation of the Diocese to provide the plaintiff with at least the relief it agreed to in the class action That leaves open for this litigation whether the Diocese has created additional liability for itself under the UTPA by its conduct in seeking to evade the duties to the plaintiff it assumed in 2007 and breached in 2009, and providing relief only through litigation

Based on the factual position taken in the submissions by the Diocese that the July 30, 2007 order applies to the plaintiff, and based on plain language of that order and the attachments to this memorandum, the plaintiff moves for partial summary judgment on the liability of the Diocese to afford the plaintiff, at minimum, the relief provided to the class

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

pleadings, it is not possible to grant a motion to dismiss on limitations grounds. The UTPA ground became ripe only in 2009, when the Diocese refused relief. This suit has been brought within three years of the Diocese refusing to honor the 2007 order.

UTPA. The Diocese claims, Motion at pp. 3 – 4, that the UTPA allegations of the Amended Complaint are deficient, citing *Foggie v. CSX Transportation, Inc.*, 431 S.E.2d 587 (S.C. 1993). Since a Second Amended Complaint has been filed, this ground of dismissal is not even any longer applicable. However, the Second Amended Complaint sets forth in considerable detail the conduct that *Foggie* recognizes as required under S.C. Code § 39-5-10 as within the expansive statutory definition of what constitutes “commerce.” For example, advertising for services is explicitly included in the definition. S.C. Code 39-5-10, *Foggie v. CSX Transportation, Inc.*, 431 S.E.2d 587, 591 (S.C. 1993). As set out in the attachments to the July 30, 2007 order, and as alleged in the present complaint, the Diocese undertook a series of advertisements to publicize, among other things, the service or resolving past sexual abuse allegations. At Attachment F, the Bishop issued a press statement to recognize and embrace the obligation of the Diocese to provide the service of a “just resolution for those individuals who were abused within the Diocese.” In paragraph 54 the present complaint alleges that the Diocese “provide services to the public and advertise services to the public.” In paragraph 55 those services are alleged to relate to “association, entertainment, and pastoral activities,” including schools, a history of gambling-based entertainments as a way to raise revenues, and advertising related to gambling activities, counseling services (§ 59), collaborations with the Vatican over abuse matters (§ 61), and collusive litigation

with a Diocesan “insider” to “buy off” a lawyer to provide only minimal compensation to sexual abuse victims (§§ 62 - 103) The face of the second amended complaint provides more than sufficient allegations of advertised services to support “commerce” under the UTPA, and the motion in this regard must be denied

Prior pending action, SCRPC 12(b)(8) Despite the undisputed timetable set by the South Carolina Supreme Court to terminate the class action not later than September 19, 2009, the Diocese has moved to dismiss this action, claiming the class action is still “pending in the Dorchester County Court of Common Pleas ” Motion at 4 Although on page 3 of its motion the Diocese calls the 2007 order of Judge Goodstein “a valid, final order,” on page 4 the Diocese claims no final order has been entered

As set forth in the second amended complaint starting at paragraph 65, the Diocese is alleged to have engaged in a series of improprieties in the class action, including collusive actions to judge-shop so that class approval and oversight would not be done in Charleston County, where the class case was filed when the class settlement was reached (Attachment G to this memorandum is the 2006 mediated class settlement, reached when all pending cases were three cases pending in Charleston County, one of which alleged a class) The Diocese has many reasons for wanting all matters touching on sexual abuse victims to be considered only by the Dorchester County judge it hand-picked for the task, and to avoid any Charleston County judges that might provide independent oversight, apparently believing that the Diocese enjoys an advantage in having all matters heard only in Dorchester County, before its judge of choice But the order of the Supreme Court clearly sets forth that only the South Carolina Supreme Court

could have relieved the Circuit Court of the September 19 2009 deadline to conclude the class action The Circuit Court no longer has jurisdiction to issue any orders in the class action

The Diocese also misconstrues the plaintiff's claim, which makes no challenge to the merits of any orders of Judge Goodstein in the class action Those orders protect the plaintiff, and form the basis of the waivers by the Diocese of defenses it might otherwise assert If the Diocese would comply with the plain language of those orders the plaintiff would obtain relief

Conclusion

The motion to dismiss should be denied, and partial summary judgment on liability should be granted to the plaintiff to the extent of relief afforded the class members

Respectfully submitted

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

Gregg Meyers
1 Poston Road Suite 110
Charleston SC 29407

The Supreme Court of South Carolina

John Doe, individually and on
behalf of all persons who are
similarly situated, Plaintiff,

v

Lawrence E Richter, Jr , David
K Haller, Richter & Haller,
LLC, Peter Shahid, Jr , Shahid
Law Office, LLC, Robert
Baker, The Bishop of
Charleston, a Corporation Sole,
and The Bishop of the Diocese
of Charleston, Defendants

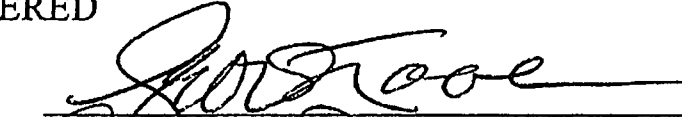
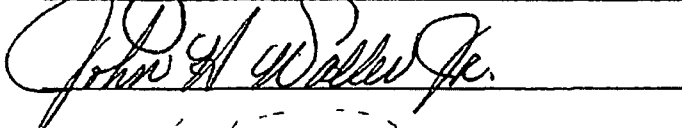
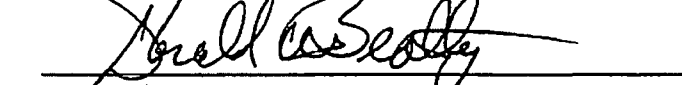
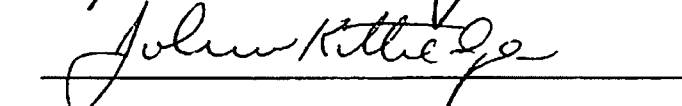
ORDER

Plaintiff has filed a complaint and a petition asking this Court to
accept the complaint in our original jurisdiction Defendants have filed
returns to the petition The petition is denied

However, we are concerned by the delay that filings such as the
one at hand have caused in finally resolving the underlying matters pending

in Dorchester County Accordingly, we hereby direct that the underlying
matters be concluded within six months of the date of this order No
extension shall be granted absent prior permission by this Court

IT IS SO ORDERED

 C J
 J
 J
 J
 J

Columbia, South Carolina

March 19, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

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

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

Plaintiffs,)

vs)

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

Defendants)

ORDER APPROVING SETTLEMENT

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

FACTUAL BACKGROUND/PROCEDURAL HISTORY

1 Notice to Class Members

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

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

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

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

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

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

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

2 Investigation by Solicitor David Pascoe

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

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

ORDER

1 Notice to All Members of the Class

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

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

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

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

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

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

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

2 Objections to the Settlement

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

A Standing of John Does A through N

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

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

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

B. Objections to class definitions

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

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

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

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

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

Price v Georgetown, 297 S C 185, 375 S E 2d 355 (Ct. App 1988) *See also Nunnery v Brantley Construction Co Inc*, 289 S C 205, 345 S E 2d 740 (Ct. App, 1986)(dismissal with prejudice has *res judicata* effect) South Carolina has also taken the same approach with cases which have been settled by the parties where there is the exchange of compensation for a release, absent some mistake not previously contemplated by the parties *Smothers v Richland Mem Hosp*, 326 S C 566, 493 S E 2d 107 (Ct App 1997)³ Hence, any prior claims that have been adjudicated or settled are barred by law⁴ Allowing those individuals to have another bite would be manifestly unfair to those class members who have not had their claims adjudicated and to the Defendants who have been discharged in one form or another from liability to that individual

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

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

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

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

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

C Objection as to Matrix

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

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

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

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

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

D Compensation of Consortium Claims

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

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

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

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

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

3 Approval of Settlement

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

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

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

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

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

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

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

5 Attorneys fees

In the Settlement and Arbitration Agreement, the parties agreed that the Court should, exercising its discretion, set attorney fees for class counsel in a range of no less than \$950,000 00 and no more than \$2 5 million. Defense counsel argued for the lower end of the fee range and asked the Court to take into consideration the charitable nature of the Diocese and that it settled the case rather than requiring a trial. Class Counsel requested the Court award them a fee of \$2 5 million. In support of their petition for an award of attorneys' fees, class counsel submitted a substantial record which included an affidavit from each attorney involved in the case, a statement of hours from each law firm the total of which exceeded 3,720 hours⁶, and an affidavit from Professor John Freeman regarding the reasonableness of the fee request and the beneficial public impact of the settlement. Class Counsel has worked on the case for 4 years, it has proceeded in Court for 2 years, with settlement negotiations lasting more than 15 months. The Court took its own notice of the arms-length advocacy of counsel for their respective clients in the case. The case was brought to a mediated resolution and it heard from the mediator, Marvin Infinger, regarding the negotiations between counsel.

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

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

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

The Court’s review of the record before it, argument of counsel, and my own observations of the case compel me to award class counsel an attorneys’ fee in the amount of \$2 5 million dollars. In rendering this decision, I find that the matter before me is monumental in both its scope and result. Class Counsel have successfully obtained the creation of two classes of individuals, one consisting of individuals who have been sexually abused by Diocese employees and another consisting of parents and spouses of those individuals. But for the settlement, the claims of the individuals in the classes might already be barred by significant legal defenses, including the statute of limitations and charitable immunity. Class counsel has been able to succeed in this case where other lawyers, in identical cases, have failed, and, they accomplished these tasks against a respected and powerful adversary, the Catholic Diocese of Charleston.

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

Given the significant legal hurdles, such as the statute of limitations and charitable immunity, which were being asserted by the defendants, that fee arrangement is not out of proportion. Class Counsel’s prayer for a fee award of \$2 5 million is 20 8% of the gross settlement. This figure is on the lower range of acceptable fees found by the Supreme Court. *See Ex parte Condon, Littlejohn v State*, 354 S C 634, 644, 583 S E 2d 430, 435 (2003)(finding

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

For the reasons above, I award Class Counsel \$2 5 million as attorneys' fees in this matter which shall be paid as set forth in the Settlement and Arbitration Agreement within ten days of the entry of this Order

6 Costs

Prior to the March 9, 2007, hearing class counsel presented bills for costs in the amount of \$85,259 50 and requested reimbursement of these expenditures per the Settlement Agreement. In addition, they have requested reimbursement of an additional \$15,731 86 incurred since the March 9, 2007 hearing. These expenditures have not been challenged and my review determines them to be routine for this type of litigation and I approve the same for reimbursement.

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

7 Funding of Settlement Proceeds

Pursuant to paragraph 3(a) of the Settlement Agreement, the Diocese shall fund the initial \$4,540,000 00 upon the execution of this order.⁷

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

⁷ The Diocese previously paid \$460 000 00 to the class representatives for the settlement of their claims

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

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

IT IS FURTHER ORDERED that class counsel be awarded the sum of \$2 5 million as attorneys' fees in this matter and that the escrow agent be authorized to pay the same pursuant to the terms of the Settlement Agreement, and

IT IS FURTHER ORDERED that the escrow agent be authorized to pay Class Counsel the sum of \$100,991 36 in litigation costs and to further make direct distributions for publication of notices required under this order as directed by the Settlement Agreement

AND IT IS SO ORDERED'''


The Honorable Diane S. Goodstem
Presiding Judge

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

Order on Matters Heard March 9

Exhibit A

**IMPORTANT LEGAL NOTICE
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS NOTICE**

John Doe #53 et al v Diocese of Charleston, et al Class Action Settlement

This action applies to 1) any person born on or before August 30, 1980, 2) who as a minor, was sexually abused, 3) at any time by agents or employees of the Diocese of Charleston, 4) or the parent or spouse of any such minor, 5) who have not previously had any similar claim adjudicated, resolved, or released

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT, (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS, AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS

SUMMARY OF YOUR RIGHTS AND CHOICES

<u>You May</u>		<u>Deadline</u>
<u>STAY IN THE CLASS</u> and possibly receive money from the Settlement	Stay in the Class To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.	Postmarked or received by [Date to be Inserted]
EXCLUDE YOURSELF	Get out of the class You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.	Postmarked or received by [Date to be Inserted]

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they may receive determined by an arbitrator. The arbitrator has complete discretion within the parameters set by the Settlement Agreement to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse, and the like. Claims will be generally classified into one of 4 groups based on the severity of the injury sustained. Members of the Consortium Class with *bona fide* claims will receive \$20,000.00. Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

IF YOU DO NOT FILE A CLAIM TIMELY OR YOU DO NOT OPT-OUT OF THE CLASS, YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED AS TO MATTERS COVERED BY THE CLASS ACTION

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL
Richter & Haller, LLC,
622 Johnnie Dodds Blvd, Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 diocesessettlement@richterfirm.com
www.richterfirm.com

ALL FORMS MUST BE EITHER POSTMARKED BY THE U S POSTAL SERVICE OR RECEIVE BY CLASS COUNSEL ON OR BEFORE [Date to be Inserted]

Order on Matters Heard March 9 Exhibit B

John Doe #53 v Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 1

**READ THIS DOCUMENT CAREFULLY AS
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS DOCUMENT.**

WHO IS ELIGIBLE TO PARTICIPATE IN THIS SETTLEMENT

You may participate in this settlement if

- 1 You were born on or before August 30, 1980,
- 2 who, as a minor,
- 3 were sexually abused,
- 4 by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina) and
- 5 you have not previously had a similar claim fully heard by a court or settled

You may also participate in this settlement if you are

- 1 The spouse OR parent of
- 2 individuals born on or before August 30, 1998
- 3 were sexually abused as a minor,
- 4 by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina),
- 5 and you have suffered the loss of the individual's services, society and companionship, and
- 6 have not previously had a similar claim fully heard by a court or settled

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

At the end of this case, all legal rights of the individuals who fit into one of the above classes and who do not "opt-out" of the classes and settlement will be impacted by this settlement. In deciding how to proceed, you may contact Class Counsel or an attorney of your own choosing.

IF YOU ARE A MEMBER OF THE CLASS AND YOU DO NOT FILE A CLAIM WITHIN THE TIME PROVIDED OR YOU DO NOT OPT-OUT OF THE CLASS, YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS COVERED BY THIS CLASS ACTION

John Doe #53 v Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
 Page 2

SUMMARY OF YOUR RIGHTS AND CHOICES

You May

Deadline

STAY IN THE CLASS

Stay in the Class

Postmarked or received

and possibly receive

To possibly receive money under

by [Date to be inserted]

money from the

the Settlement, you must complete

Settlement

and return the Claim Form by the

deadline noted

EXCLUDE YOURSELF

Get out of the class

Postmarked or received

You do not have to remain a member

[Date to be inserted]

of the class or participate in the Settlement

To be excluded from the Settlement

you must complete and return

the Opt-out Form by the deadline noted

By Opting-out of the Settlement, you will

not receive any benefits from the Settlement

If you fail to file the Opt-out Form

by the deadline, you will be considered

a member of the class

HOW THE CLAIMS PROCESS WORKS

What follows is a basic summary of the claims process To receive a full copy of the Settlement and Arbitration Agreement and its Addendum, contact Class Counsel, Richter & Haller, LLC, at 843-849-6000 or email disocesettlement@richterfirm.com

John Doe #53 v Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 3

The classes are designed to include all individuals whose claims would normally be barred as a matter of law as a result of the statute of limitations. Whether the statute of limitations has lapsed on your claim is an individual determination which you should investigate with an attorney. However, even if for some reason your statute has not expired, you may still participate in the process if you meet all other requirements.

Those individuals who wish to participate in the claims process must submit a claims form to the office of Class Counsel. **The Claims Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

Those individuals who DO NOT WISH to participate in the claims process must submit an opt-out form to the office of Class Counsel. **The Opt-Out Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

All of the claims proceedings are confidential. Your claim will be given a fictitious name once it is received. No one who files a claim will have their name publicly disclosed. You will not have to appear in court.

All claims of members of one of the classes which are *bona fide* will receive some settlement funds. A *bona fide* claim is one in which there is some likelihood that the event(s) did occur with the Diocesan agent or employee (including priest) at the location and time period when the claimant alleges. If there is a dispute over whether a claim is *bona fide*, you will have a chance to prove your claim.

Once a claim is found to be *bona fide* it will be submitted to an arbitrator for a binding and final determination of damages. You do not have to pay for the arbitration. You will be able to present whatever evidence you wish in support of your injuries. You will not be questioned by a lawyer or other representative of the Diocese at the hearing on damages.

The arbitrator has sole and final determination on the amount of money you will receive. **By participating in this settlement process you agree to abide by whatever decision the arbitrator makes and waive any rights of appeal you may have.** The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse you sustained, the amount of time it went on and the extent of the injuries you have suffered. Claims will be generally classified into the following groups for a determination of the amount of money you will receive:

- 1 Limited inappropriate touching on the victim an amount between \$10,000.00 and \$18,500.00
- 2 Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator such as fondling of genitalia, limited masturbation, and other types of sexual contacts an amount between \$20,000.00 and \$55,000.00

John Doe #53 v Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 4

- 3 Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances. An amount between \$60,000.00 and \$125,000.00.
- 4 Egregious acts, such as sodomy, any act accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage. An amount between \$150,000.00 and \$200,000.00.
- 5 Members of the consortium class will receive \$20,000.00 for consortium damages.

In addition, you have the right to have a **free psychological examination** and two other free psychological sessions with a psychologist in Charleston. You may use this information in support of your claim. The report will not be provided to the Diocese and will be confidential.

Once the claim is *bona fide*, the Diocese is unable to provide any defenses to your claims, including the statute of limitations, immunity, or that it did not know of the events. However, once you have completed the claims process, all rights you may have against the Diocese arising from sexual abuse on you by an agent or employee of the Diocese will be gone.

**IF YOU DO NOT FILE A CLAIM TIMELY AND DO NOT OPT-OUT, YOUR RIGHTS
AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS
ARISING FROM THE CLASS.**

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL

Richter & Haller, LLC,

622 Johnnie Dodds Blvd , Post Office Box 1089

Mt. Pleasant, SC 29465

Telephone to 843-849-6000 Email to diocesettlement@richterfirm.com

**Claims and Opt-out forms may also be obtained from
www.richterfirm.com**

**Order on Matters Heard March 9
Exhibit C**

John Doe #53 et al v The Bishop of Charleston

CLAIM FORM FOR PRIMARY CLASS MEMBERS

This form is to be used by, 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 "

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity

First Middle and Last Name of Claimant _____

Date of Birth _____ Social Security Number _____

Mailing Address _____

Home Telephone Number _____ Work Telephone Number _____

Cellphone Number _____ Email Address _____

For claims made on behalf of someone else

Name of Representative Making the Claim _____

Relationship of Representative to Claimant _____

Nature of the Representative Capacity _____

Full name of parents _____

Are either or both of your parents living or deceased? If so, state which one _____

Name of spouse (if any) _____

Name of the abuser (if you claim multiple abuses use a separate claims form)

Location(s) at which the abuse occurred _____

Dates/Time period during which the abuse occurred _____

What was your relationship to the abuser, [i e priest/altar boy coach/ basketball player] _____

John Doe #53 et al v The Bishop of Charleston
CLAIM FORM FOR PRIMARY CLASS MEMBERS

Briefly state the details of the incident(s) of abuse complained of. You will have an opportunity to expand upon this at a later date. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

Briefly state any claimed injury or damages. You may attach any information relevant to damages you claim to this form. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

You are able to have a *free* session of psychological assessment and two other counseling *free* sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process.

_____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge.

Claimant

Date

MAIL THIS FORM TO
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd ,
Post Office Box 1089, Mt Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN [Date to be inserted] IN ORDER FOR IT TO BE BINDING. IF NOT, YOU WILL BE INCLUDED IN THE CLASS

Order on Matters Heard March 9 Exhibit D

*John Doe #53, et al v The Bishop of Charleston***CLAIM FORM FOR CONSORTIUM CLASS MEMBERS**

This form is to be used by, "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."

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity

First, Middle and Last Name of Claimant _____

Date of Birth _____ Social Security Number _____

Mailing Address _____

Home Telephone Number _____ Work Telephone Number _____

Cellphone Number _____ Email Address _____

For each individual for whom you claim some relationship has been damaged, please provide the information below

<u>Name</u>	<u>Address</u>	<u>Date of Birth</u>	<u>Relationship to You</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

John Doe #53, et al v The Bishop of Charleston
CLAIM FORM FOR CONSORTIUM CLASS MEMBERS

For each individual above, please state, 1) the location(s) at which the abuse occurred, 2) dates/ time period during which the abuse occurred, and 3) the relationship of the individual to the abuser, [1 e priest/altar boy, coach/ basketball player]

Please state the date or time period on which you learned of the alleged abuse described above

Briefly state ways in which you believe you have lost the use of each of the above individual's services, society, and companionship

You are able to have a *free* session of psychological assessment and two other counseling *free* sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process

_____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge

Claimant

Date

MAIL THIS FORM TO:
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd ,
Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN **[Date to be inserted]** IN ORDER FOR IT TO BE BINDING IF NOT, YOU WILL BE INCLUDED IN THE CLASS

**Order on Matters Heard March 9
Exhibit E**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

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

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

Plaintiffs,)

vs)

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

Defendants)

**DECLARATION OF OPT-OUT FROM
 CLASS SETTLEMENT**

I do not wish to participate in, and hereby opt-out of, the class action settlement in the above case, and I reserve any and all rights which I may have against the defendants to this action. I understand that by submitting this form, I will be unable to receive any benefits from the settlement agreement after the claims period has expired and that if I wish to proceed at all, I will have to proceed in court with all issues subject to litigation.

Full Printed Name _____ Signature _____

Address _____

City, State, Zip Code _____

Date of Birth _____

MAIL THIS FORM TO

**Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
 Post Office Box 1089, Mt. Pleasant, SC 29465**

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN [Date to be inserted] IN ORDER FOR IT TO BE BINDING. OTHERWISE, YOU WILL BE INCLUDED IN THE CLASS AND YOUR RIGHT MAY BE FOREVER BARRED

Order on Matters Heard March 9 Exhibit F

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE No 06-CP-18-1310
		CASE No 06-CP-18-1311
		CASE No 06-CP-18-1636

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

Plaintiffs,)

vs)

VOLUNTARY WAIVER OF APPEAL

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

Defendants)

I, _____ a claimant in the above matter, understand and agree that by participating in the class settlement process for this case approved by the court I am expressly waiving any and all rights of appeal of any and all decisions of the arbitrator appointed in this matter including decisions made on whether I am a member of one of the classes, whether my claim is *bona fide*, and as to any injuries I sustained and damages I am to receive

Before making this decision, I have asked all questions I have regarding the settlement, the claims process, and my legal rights I have had the opportunity to discuss this matter with an attorney of my own choosing

 Claimant

 Date

 Witness

 Date

Order on Matters Heard March 9 Exhibit G

CLAIMANT'S GENERAL RELEASE

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

Order on Matters Heard March 9 Exhibit H

IMPORTANT LEGAL NOTICE
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS NOTICE OF CLASS ACTION SETTLEMENT

John Doe #53, et al v Diocese of Charleston, et al

This action applies to 1) any person born before August 30, 1980, 2) who as a minor was sexually abused, 3) by an agent or employee of the Diocese of Charleston, 4) and whose individual claim has not been previously settled or otherwise resolved

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT, (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS, AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS

SUMMARY OF YOUR RIGHTS AND CHOICES

You May

STAY IN THE CLASS
and possibly receive
money from the
Settlement

Stay in the Class.

To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.

Deadline

Postmarked or received by
[Date to be inserted]

EXCLUDE YOURSELF

Get out of the class

You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.

Postmarked or received by
[Date to be inserted]

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they will receive determined by an arbitrator. The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse. Claims will be generally classified into one of four groups based on the severity of the injury sustained. Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

For a more detailed summary of your Rights, the Claims Process and your Obligations if you wish to participate click here

Orange Form Summary of Rights, Claims Process, and Obligations

ANY PERSON FITTING INTO EITHER CLASS DEFINITION WHO FAILS TO EITHER FILE A CLAIM FORM OR OPT-OUT BY THE COURT IMPOSED DEADLINE MAY HAVE THEIR RIGHTS AGAINST THE DIOCESE OF CHARLESTON FULLY BARRED BY LAW

CLAIMS FORMS AND IMPORTANT DOCUMENTS

You may download all forms and documents from this website. Please read this portion carefully to ensure that your claim is properly filed. Please call class counsel if you have any question whatsoever.

Members of the Primary Class

You may be a member of the Primary Class if you were born before August 30, 1980 and, as a minor, were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**

Blue Form Claim Form for Primary Class Members

AND

Green Form Voluntary Waiver of Appeal

AND

White Form. Claimant's Release

Members of the Consortium Class

You may be a member of the Consortium Class if you are/were the spouse and/or parent of an individual(s) who as minors were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**

Blue Form Claim Form for Consortium Class Members

AND

Green Form Voluntary Waiver of Appeal

AND

White Form. Claimant's Release

The Claimant's Release Form will be held by Class Counsel until you have received a check from the settlement fund. At that time, it will be provided to the Diocese of Charleston. If for some reason you do not receive a check from the settlement fund, it will be returned to you.

If you want to exclude yourself

If do not wish to participate in the class action and settlement process and wish to proceed on your own, then you must complete and return or have postmarked by **[Date to be inserted]**

Pink Form Opt-out Form

PLEASE NOTE

- 1 No one but the arbitrator selected under the Settlement and Arbitration Agreement can say with finality whether you are a member of either class,
- 2 Nothing on any form or on this website should be considered legal advice. If you have any questions about your rights or responsibilities, you should discuss the matter with counsel of your own choosing.

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL

**Richter & Haller, LLC, 622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 (Telephone) * 843-881-1400 (Fax) * Diocesettlement@richterfirm.com**

www.richterfirm.com

ALL FORMS MUST BE EITHER POSTMARKED BY THE U S POSTAL SERVICE OR RECEIVED
BY CLASS COUNSEL ON OR BEFORE **[Date to be inserted]**

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER)

CASE No 06-CP-18-1310

CASE No 06-CP-18-1311

CASE No 06-CP-18-1636

John Doe #53, John Doe 66, John Doe 66A,)

John Doe 67, Jane Doe 1 and Jane Doe 2)

and Rachel Roe individually and)

as representatives of a class of people)

similarly situated,)

ORDER OF THE COURT

v)

The Bishop of Charleston, a Corporation)

Sole, and The Bishop of the Diocese of)

Charleston, in his official capacity,)

Defendants)

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

AND IT IS SO ORDERED'

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

AND IT IS SO ORDERED'

QSP 1043
-1-

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

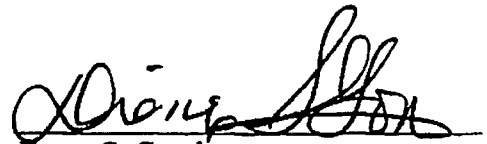
Actual Notice Class Members shall have 120 days from receipt of actual notice of the class settlement to present their claims to an Arbitrator in the same manner as provided for in the Settlement and Arbitration Agreement Actual Notice Class Members who present their claims more than 120 days after they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

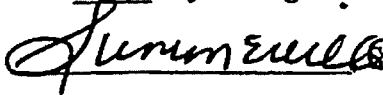
AND IT IS SO ORDERED'

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

MS - Pg 2 of 3

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


Diane S. Goodstein
Presiding Judge

This 31 day of August 2007
 South Carolina

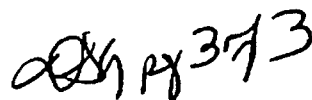


EXHIBIT A

A PETER SHAHID, JR
SHAHID LAW OFFICE, LLC

15 STATE STREET
P O BOX 591
CHARLESTON SOUTH CAROLINA 29402

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

August 30, 2007

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

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

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

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

Dear Larry and Gregg

This is to confirm that the Diocese will offer \$1 375 million to settle claims of the eleven individuals represented by Gregg Meyers Those individuals, who have been identified in previous correspondence, are John Doe C, John Doe D, Jane Doe G, John Doe H, Jane Doe I, John Doe J, John Doe K and the mother of John Doe J, John Doe L, John Doe M, Jane Doe M The payments are for personal injuries as defined in the IRS Code and are independent of the Class claims process These claimants will opt-out of the class claims process and will execute releases These claimants retain the right to meet with the presiding Bishop or the Apostolic Administrator, as they so desire

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

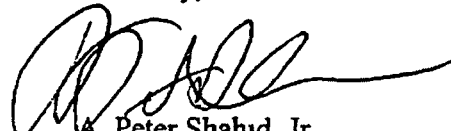
rights to the pending class action settlement by any of Mr Meyer's clients be withdrawn, and waived with prejudice Mr Meyers has certified he is unaware of any other potential or actual objectors, and does not represent any other person who has an objection to the January 12, 2007 Settlement Agreement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

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

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

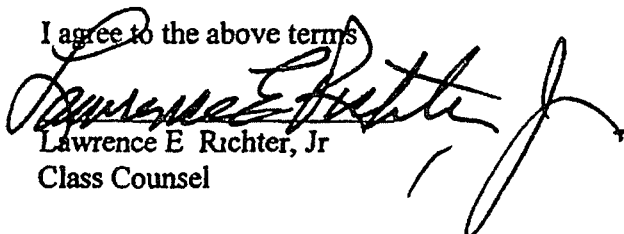
The \$1 375 million will be paid from the surplus funds, if any, after the claims process has been completed In the event there are insufficient or no funds remaining from the \$12 million pool of funds, the Diocese is still obligated to pay the \$1 375 million as stated above Payment is expected sometime after January 1, 2008

Sincerely,



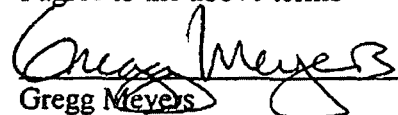
A Peter Shahid, Jr

I agree to the above terms



Lawrence E Richter, Jr
Class Counsel

I agree to the above terms



Gregg Meyers

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

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

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

Plaintiffs,)

vs)

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

Defendants)

**MOTION TO CERTIFY CLASSES
 AND FOR PRELIMINARY APPROVAL
 OF CLASS SETTLEMENT**

FILED-RECORDED
 2006 OCT -6 PM 2:03
 CLERK OF COURT
 DORCHESTER COUNTY

TO A PETER SHAHID, ESQUIRE AND JIM GEOLY, ESQUIRE, ATTORNEYS FOR
 THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the plaintiffs will move at the Dorchester County Courthouse on the tenth (10) day after service hereof, or at such other time and place as the court deems proper, for an order certifying plaintiffs classes of individuals with potential claims against the defendants, giving initial approval of a settlement between the classes and the defendants, and directing the procedure for notice, objection, and final approval of the settlement reached herein. A more specific statement of the relief requested is stated below.

1 Class Certification

On June 30, 2006,¹ plaintiffs John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, filed actionS against the defendants seeking damages arising from sexual abuse suffered at the hands of a priest under the control of the defendants while on the defendants' property. Plaintiffs John Doe #53, John Doe 66 and John Doe 66A were subsequently added to the case, also as class representatives.

This motion seeks to certify two classes of individuals. John Doe #53, John Doe, 66, John Doe 66A, and John Doe 67 request the court certify a class 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")

Jane Doe 1, Jane Doe 2, and Rachel Roe request the court certify a class of individuals as follows:

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")

Plaintiffs will provide the court such legal argument to support this motion as necessary.

2 Approval of Settlements reached on behalf of the classes

The Class Representatives with class counsel and representatives of the defendants and their counsel held a mediation June 13 and 14, 2006 with Marvin Infinger, Esquire. The principals of the Settlement have executed a Settlement and Arbitration Agreement which will be presented to the court prior to the hearing on this matter. In sum, the defendants agree to make available a fund in set out in the Settlement and Arbitration Agreement by which individuals who are members of the

¹Other actions involving the same acts have been of record since at least May of 2005

the Settlement and Arbitration Agreement and final approval of the settlement after notice to the class as set forth below

3 **Notice to Class Members**

Plaintiffs pray for an order pursuant to SCRCP Rule 23 requiring notice of the class settlement, approval process, and claims process as follows

- a **Notice** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications *USA Today*, *The Charleston Post & Courier*, *The Myrtle Beach Sun*, *The State*, *The Augusta Chronicle*, *The Rock Hill Herald*, *Beaufort Gazette*, *Greenville News*, *Spartanburg Herald*, *Orangeburg Times-Democrat*; and the *Aiken Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names, addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.
- b **Time** All publications shall be completed no later than 30 days following the entry of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.
- c **Fairness Hearing** A Fairness Hearing on final approval of this settlement will be

of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.

c **Fairness Hearing** A Fairness Hearing on final approval of this settlement will be heard by this court at a time and place convenient to it as soon after the conclusion of the notice time as possible.

d **Notice of Settlement Approval and Duration of Claims Process** The claims process will begin ten days after the date on which the settlement is approved as fair and all rights of appeal have expired. The claims period shall end 120 days after the date on which the claims period ends. Notice of the date on which the claims period begins and ends and how an individual can make a claim and learn the details of the same shall be made in the same manner as set out paragraph (b) above.

Plaintiffs will supplement this motion with such memorandum and record prior to the hearing on this motion as may be necessary.

WHEREFORE plaintiffs pray for the relief requested herein and such other relief as the court deems just, prudent, and proper.

Respectfully submitted,

By 

Lawrence E. Richter, Jr.

David K. Haller

RICHTER & HALLER, LLC

622 Johnnie Dodds Blvd

Post Office Drawer 1089

Mt Pleasant, SC 29465
(843) 849-6000

LOFTON & LOFTON, PC
Lionel S Lofton
Post Office Box 449
Charleston, SC 29402
(843) 722-6319

John Sinclair, III
Glenn P Churchill
Post Office Box 370
Charleston, SC 29402-0370
(843) 853-9300
ATTORNEYS FOR PLAINTIFF

6th day of October, 2006
Mt Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

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

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

Plaintiffs,)

vs)

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

Defendants)

FILED RECORDED
2007 JAN 17 PM 3:25
CHIEF CLERK
CLERK OF COURT
DORCHESTER COUNTY

**MOTION TO CERTIFY CLASSES
AND FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT**

TO A PETER SHAHID, ESQUIRE AND JIM GEOLY, ESQUIRE, ATTORNEYS FOR
THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the plaintiffs will move at the Dorchester County
Courthouse on the tenth (10) day after service hereof, or at such other time and place as the court
deems proper, for an order certifying plaintiffs classes of individuals with potential claims against
the defendants giving initial approval of a settlement between the classes and the defendants, and
directing the procedure for notice, objection, and final approval of the settlement reached herein
A more specific statement of the relief requested is stated below

1 **Class Certification**

On June 30, 2006,¹ plaintiffs John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, filed actions against the defendants seeking damages arising from sexual abuse of John Doe 67 suffered at the hands of a priest under the control of the defendants while on the defendants' property. Plaintiffs John Doe #53, John Doe 66 and John Doe 66A were subsequently added to the case, also as class representatives. The John Doe plaintiffs are actual victims of sexual abuse. The Jane Doe and Rachel Roe plaintiffs are spouses and a mother of the plaintiffs.

This motion seeks to certify two classes of individuals. John Doe #53, John Doe, 66, John Doe 66A, and John Doe 67 request the court certify a class 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")

Jane Doe 1, Jane Doe 2, and Rachel Roe request the court certify a class of individuals as follows:

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")

Plaintiffs will provide the court such legal argument to support this motion as necessary.

2 **Approval of Settlements reached on behalf of the classes**

The Class Representatives with class counsel and representatives of the defendants and their

¹Other actions involving the same acts have been of record since at least May of 2005

counsel held a mediation June 13 and 14, 2006 with Marvin Infinger, Esquire. The principals of the Settlement have executed a Settlement and Arbitration Agreement is attached hereto as Exhibit A. In sum, the defendants have agreed to make available a fund as set out in the Settlement and Arbitration Agreement by which individuals who are members of the classes may make a claim. Mr. Infinger, as Arbitrator, will determine the amount of any award due *bona fide* claims of members of the plaintiffs' classes. The full claims process and payment schedule for claims is set forth in the Settlement and Arbitration Agreement.

Plaintiffs' pray for an order pursuant to SCRCF Rule 23 providing conditional approval of the Settlement and Arbitration Agreement and final approval of the settlement after notice to the class as set forth below.

3 **Notice to Class Members**

Plaintiffs pray for an order pursuant to SCRCF Rule 23 requiring notice of the class settlement, approval process, and claims process as follows:

- a **Notice.** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit B hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun*, *The State*, *The Augusta Chronicle*, *The Rock Hill Herald*, *Beaufort Gazette*, *Greenville News*, *Spartanburg Herald*, *Orangeburg Times-Democrat*, and the *Aiken Standard*.

Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names,

addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

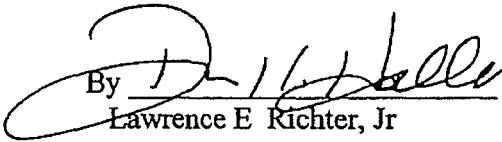
- b **Time** All publications shall be completed no later than 30 days following the entry of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.
- c **Fairness Hearing** A Fairness Hearing on final approval of this settlement will be heard by this court at a time and place convenient to it as soon after the conclusion of the notice time as possible.
- d **Notice of Settlement Approval and Duration of Claims Process** The claims process will begin ten days after the date on which the settlement is approved as fair. The claims period shall end 120 days thereafter. Notice of the date on which the claims period begins and ends and how an individual can make a claim and learn the details of the same shall be made in the same manner as set out paragraph (b) above.

Plaintiffs will supplement this motion with such memorandum and record prior to the hearing on this motion as may be necessary.

Prayer and Signature Block Continue Next Page

WHEREFORE plaintiffs pray for the relief requested herein and such other relief as the court
deems just, prudent, and proper

Respectfully submitted,

By 
Lawrence E Richter, Jr

David K Haller

RICHTER & HALLER, LLC

622 Johnnie Dodds Blvd

Post Office Drawer 1089

Mt Pleasant, SC 29465

(843) 849-6000

ATTORNEYS FOR PLAINTIFF

15th day of January 2007
Mt Pleasant, South Carolina



THE DIOCESE OF CHARLESTON

January 21, 2007

Open Letter by Bishop Robert J Baker on the Resolution of a Class Action Settlement for Child Sexual Abuse Cases

Sexual misconduct and abuse of children is an unfortunate reality in our society. Children require protection by society, since they cannot adequately provide it for themselves. The Diocese of Charleston is adamant that the abuse of children, including physical injury, sexual molestation, or grave emotional damage, will not be tolerated, by anyone, especially Church personnel.

For the past several years my staff and I have been working diligently with victims of sexual abuse to come to just resolution for those individuals who were abused within the Diocese of Charleston by clergy or laity over a number of decades. Today, I am pleased to announce an agreement has been reached and submitted to the Court of Common Pleas for approval and oversight.

While the instances of abuse addressed through this action span decades, we take to heart the pain and anguish which they may have caused to the individuals affected and those around them. Can a human family have real peace and joy if some of its members are feeling the pain of previous offenses? As a communion of persons, a family, the good of the Church is tied to the spiritual good of all of her members, without exception. In order for individuals who have been sexually abused to heal and the entire Church to grow in peace and the love of Christ, we must seek to truly mend the hurts of the past.

The demands of justice and the desire to heal the hurts of those abused by those sent to minister to them weigh heavily upon my heart. I deeply regret the anguish of any individual who has suffered the scourge of childhood abuse and am firmly committed to a just resolution of any instance in which a person who holds the responsibility of protector has become a predator.

Any instance of childhood abuse is not only a grave moral evil, it has damaging consequences that can affect the child for the rest of his or her life and influences the Church in its credibility in evangelization efforts for years to come. I believe that a proactive approach to healing the evil that has been done is not only constructive, but absolutely necessary.

The details of the settlement include an initial fund to settle instances of abuse at a predetermined amount of damages. In the event claims exceed the initial fund, there is an agreement in place to access additional funds.

I hope and pray that you will join me in praying and working for the good of those who have been harmed. It is my fervent hope that this settlement will allow us, as the Catholic community

Office of the Bishop

119 Broad Street Charleston South Carolina 29401

P O Box 818 Charleston South Carolina 29402 Phone (843) 853 2130 ext 203 FAX (843) 724 6387

Record On Appeal p 000321

Attachment F

of faith in South Carolina, to bring closure to an ugly period in our history and look forward with joyful hope to the future of our Church, where we can carry on the mission of Jesus Christ to bring light, truth, compassion, healing, and peace into our world

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert J. Baker". The signature is written in a cursive, flowing style with a large initial "R".

Most Reverend Robert J Baker
Bishop of Charleston

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe #66

v

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

CASE NO 2005-CP-10-2053

John Doe #66A

v

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

CASE NO 2005-CP-10-3293

John Doe #53

v

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

CASE NO 2005-CP-10-4913

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

*See Terms
Attached on
E+H #1*

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

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

By _____

(Print Name)

Its _____

Dated _____

By _____

(Print Name)

Its _____

Dated _____

EXHIBIT " 4 "

EXH. #1

General Terms of Settlement

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

- Ⓐ ACTUAL VICTIMS OF DOMESTIC ABUSE
- Ⓑ SPOUSAL &/or Parent claims deriving from victims abused

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

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

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

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

5. Mr T [Redacted]* shall be paid _____

Mr S [Redacted]* shall be paid _____

Mr N [Redacted]* shall be paid _____

Mr M [Redacted]* shall be paid _____

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

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

~~* Class representative shall be paid~~

June 14, 2006

James DeLoe, Attorney

ON BEHALF OF DEFENDANTS

Attorney in and under authority of the
Estate of Charleston -

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
CASE NOS 09-CP-10-6694
09-CP-10-8054
09-CP-10-8055
09-CP-10-8056

John Doe)
))
Plaintiff,)
))
v)
))
The Bishop of Charleston, a)
Corporation Sole and)
The Bishop Of The Diocese of)
Charleston, in his official Capacity,)
))
Defendants)
_____)

2011 JUL 28 PM 11:27
JUL 11 PM 11:31
JUL 11 PM 11:31
JUL 11 PM 11:31

Motion to Alter or Amend order of June 15, 2011

On June 23, 2011 counsel received written notice of entry of an order entered June 15 dismissing the four actions captioned above.¹ This motion is pursuant to SCRCP 59(e) to alter or amend the judgment, to bring to the Court's attention matters of law or of fact which the Court may have overlooked or disregarded in its consideration of these cases.

1 The court erred in applying the class action order of August 31, 2007 to these plaintiffs. The August 31, 2007 order in the class action is very precise as to the "Actual Notice" sub-class it covers and these plaintiffs do not qualify for that sub-class. The court erred in applying that order to these plaintiffs when these plaintiffs do not satisfy the criteria of the sub-

¹ In 09-CP-10-8054 the plaintiff is styled Jane Doe 1. In 09-CP-10-8055 the plaintiff is styled Jane Doe 2. In 09-CP-10-8056 the plaintiff is styled Jane Doe 3. These cases are from one family whose children each allege sexual abuse by the same priest from the Diocese, a priest sometimes designated as Leo McCarthy and in other records as James McCarthy. Jane Doe 1 (09-CP-10-8054) is the mother of three children represented in 09-CP-10-6694, 09-CP-10-8055, and 09-CP-10-8056).

class. The criteria are cited by the Court at pages 9 and 10 of its June 15, 2011 order. The only order from the class action that properly figures into *res judicata* or estoppel analysis is the July 30, 2007 order, and that order explicitly opens the ability of any person to make a claim if “for whatever reason” he or she did not receive notice.

We agree with the Court that this interpretation opens the Diocese to future claims, but that is the very point expressed by the Bishop of Charleston in his public press release. The Diocese chose to extend that coverage on its own, by its voluntarily public statements and by its representations to Judge Goodstein waiving statute of limitations, waiving charitable immunity, and offering to make restitution similar to the class settlement for “any person who comes forward at a later date and can show that he or she should have received notice but did not.” As the transcripts in the class action show, counsel for the Diocese made it plain that “if anybody has been missed,” the Diocese consented to the same relief, saying in court nothing more than the Bishop had declared publicly. That it was disingenuous is nothing new to persons who have litigated with the Diocese. But its disingenuousness is not a proper basis on which this Court should grant the motion to dismiss as if the comments had not been made.

If the class action court intended to order a general bar then it would have ordered a general bar. If the Diocese did not intend to offer relief to those who got no notice “for whatever reason” then the Bishop would have made no public statements, counsel would have made no representations consistent with those statements, and the Diocese would have moved to alter or amend the August 31, 2007 settlement as applying to a specific sub-class only, rather than to any person who did not receive notice. The Court has erred in construing the class as if those things had not taken place as they did, and in projecting things the Diocese might have refrained from doing or might have done differently than the record before the Court.

2 The Court has erred in its order at pages 12 and 13 by construing collateral estoppel on the same footing as Judge Nicholson's decision in 09-CP-10-7751, where the plaintiffs participated in the class and signed releases. None of those things occurred as to these plaintiffs.

3 The Court has erred in its statute of limitations analysis by (a) not considering the 2007 representations made by the Diocese to the public (committing to relief for every sexual abuse victim) and in the class action (consenting to waive the statute of limitations for any person who failed to get notice) (b) failing to consider the 2009 refusal of the Diocese to honor its 2007 commitments to sexual abuse victims (c) Making no analysis whatever of the collusive nature of the class action alleged in the amended complaint, which properly bears on the statute of limitations analysis and the extensive practices of fraudulent concealment by the Diocese. And (d) in making no consideration of the waiver by the Diocese of its statute of limitation defenses for any person within the class definition, whether or not inside the class action case, a waiver that has to be accepted as true.

4 The Court has erred in construing the UTPA cause of action by failing to consider the 2007 public assurances by the Bishop and his counsel's assurances on the record to the class action court about the specific acts of trade and commerce involved in making some restitution to what are conceded by the Bishop to be "hundreds" of sexual abuse victims over decades. The Diocese elected to make extra-judicial statements, and sought to give itself publicity as if it was making a genuine offer to rectify the injuries the Diocese did to past victims. The Diocese

then advertised throughout South Carolina to that end. The Court has misconstrued the amended complaint rather than view it in the light most favorable to the plaintiff.

The Diocese provides a variety of services and for decades has exposed its parishioners to priests and other personnel known to the Diocese to have a sexual interest in children. In 2007 the Diocese made public statements to give itself positive publicity, as if the Diocese intended to make restitution to all of those victims it was acknowledging. Those commitments by the Diocese were open-ended, but were false. Their falsity was not displayed until 2009, when the Diocese refused to honor its public statements.

The Court has misconstrued the historical setting of the Diocese operations of schools and other activities for children: the places and activities where the Diocese knowingly (but without disclosure) exposed children to priests and other personnel known to pose a risk to children. The Diocese then proposed to exchange things of value for those placed at risk, which involved extensive advertising and publicity. The Court has erred in concluding (order at 16) those were in a 'church setting,' when the record plainly shows, let alone the record construed in the light most favorable to the plaintiff, those offers to exchange things of value to those who were sexually abused manifestly were not made in a church setting.

The Court has also erred (order at 16) in construing the allegations of the extensive collusion, judge-shopping and misconduct by the Diocese and class counsel in the class action as having 'nothing to do with the Plaintiffs' actual causes of action,' when the overt deception and concealment by the Diocese bear entirely on the allegations of abuse (why priests and others sexually interested in children were knowingly placed around children) and the disingenuous public offer of the Diocese, even outside any legal claim context, to make a restitution for those victims. The Bishop's public offer and the Bishop's counsel's comments on the record go

beyond the context of the class action and propose (albeit disingenuously) to trade a thing of value for persons abused outside the class action. The Court has erred by construing the pleadings in the light most favorable to the Diocese, instead of in the light most favorable to the plaintiffs. Those allegations aren't about the class resolution, "a previous law suit," as the Court put it, but about an offer, disingenuously made, to avoid lawsuits in the future by publicly posturing as if they would make a similar offer to others not involved in litigation.

Conclusion

The trial court should alter or amend its order and reverse its grant of the motions to dismiss the causes of action against the Diocese.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers". The signature is fluid and cursive, with the first and last names being more prominent.

Gregg Meyers
1 Poston Road Suite 110
Charleston SC 29407
843-556-1025 556-1055 facsimile
gmeyers@gmail.com

Attorney for Plaintiffs

1
2 THE COURT Let the record reflect that
3 the Chinese firewall has taken effect and I
4 am sending my law clerk on his very last day
5 on the very last hearing out of the
6 courtroom
7 MR SHAHID I don't know if you need to
8 be on the record, Judge, but I guess we're
9 just trying to push forward
10 THE COURT Good
11 MR SHAHID And we sent letters, I sent
12 you a letter late yesterday afternoon
13 THE COURT And I wasn't real sure what
14 we were doing It's like, hum
15 MR SHAHID It was just to announce
16 that we had reached an agreement
17 THE COURT I felt like the Sony dog
18 Okay You want to stop? Do you want to
19 stop? On our of off?
20 MR SHAHID We don't need to be on the
21 record do you think?
22 MR RICHTER I think yeah, I do Why
23 not? I mean if you don't mind, let's be on
24 the record Because I don't know what you --
25 I don't know what we're talking about Go

1 ahead, shoot what?
2 MR SHAHID Judge, I sent by fax a

July 13 2007 txt

3 letter to you yesterday

4 THE COURT Right, yeah

5 MR SHAHID And I copied Mr Richter,

6 Mr Haller, the other class counsel attorneys

7 simply to announce the progress we have been

8 making regarding this case

9 THE COURT wonderful

10 MR SHAHID One was resolving this

11 issue in a motion In my conversation with

12 Mr Pascoe in the courtroom today

13 THE COURT Yes

14 MR SHAHID It was my understanding he

15 was either going to chat with you, provide

16 you with an interim report as to where he

17 stood And Mr Haller and I have been on the

18 phone I think about every day this week, one

19 of the things

20 The main concern was the diocese's

21 position on this creation of a subclass and

22 we've had very frank discussions with class

23 counsel about that and we just don't think

24 in all due respect to what --

25 THE COURT That it's necessary

1 MR SHAHID It's necessary And we
2 quite frankly think the diocese quite
3 frankly, thinks that it is going to create
4 more of a problem than what the Court is
5 trying to avoid happening
6 THE COURT Okay
7 MR SHAHID And what we re trying to do
Page 2

July 13 2007 txt

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

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

25 THE COURT Let me ask you this

4

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

5 MR. SHAHID Right

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

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

5

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

16 with regards to the other 20 while
Page 4

July 13 2007 txt

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

6

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

Page 5

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

7

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

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

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

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

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

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

July 13 2007 txt
3 down to 20 folks who had -- we believe had
4 come forward
5 THE COURT Yes
6 MR SHAHID Either directly or through
7 a third source
8 THE COURT Right
9 MR SHAHID And that source could have
10 been through either a parent or a person
11 saying I believe John Doe or Jane Doe may
12 have been abused as well We located
13 initially 15 we thought were good addresses,
14 solid addresses, of those 20 the Court
15 ordered us through a protective order to turn
16 over five names to class counsel for them to
17 use the sources they had In the interim we
18 located another name, the number actually was
19 reduced from five to four
20 THE COURT Okay
21 MR SHAHID So I received from
22 Mr Haller actually e-mail yesterday as to
23 his efforts from his investigator regarding,
24 I think two of the four I do not recall
25 And so we will follow up on that so the 20

10

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

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

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July 13 2007 txt

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

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

22 THE COURT Okay.

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

25 THE COURT Okay. Okay.

11

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

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

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July 13 2007 txt

12 MR SHAHID Yes, we can do that
13 THE COURT Great I thought there were
14 40 individuals we began some discussions
15 about I thought there were 40 No?
16 MR SHAHID The number was at one point
17 45, I think and we had split it, the 45 into
18 two categories, one was not being reported to
19 law enforcement authorities and another crowd
20 being the ones who had not had their case
21 adjudicated and may or may not have been
22 reported to the authorities And there was
23 some overlay in that because some cases in
24 which the name was reported to law
25 enforcement authorities but had not been made

12

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

11 MR SHAHID Right

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

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July 13 2007 txt

17 informed
18 MR SHAHID Right
19 THE COURT And that was his interest
20 Of course his investigation is not -- his
21 investigation is his investigation and I am
22 so grateful to the diocese for the
23 cooperation that they've given him, but his
24 investigation belongs to him in doing what he
25 needs to do. But in the event that he

13

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

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

17 MR SHAHID Right

18 THE COURT Yeah

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

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July 13 2007 txt
21 THE COURT Done that
22 MR SHAHID -- done that to the best of
23 our ability
24 THE COURT Yeah, great
25 MR SHAHID I will say that we --

14

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

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

12 MR SHAHID Thank you

13 THE COURT Yes

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

20 THE COURT Yes for the civil matter

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

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

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

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

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

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3 man hold the position that he holds

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

12 THE COURT: I know you have

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

15 THE COURT: I know you have

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

17

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

3 THE COURT: Wow.

4 MR. RICHTER: And we have put those
5 terms in the letters that we have both
6 submitted to Your Honor -- both sides
7 submitted to Your Honor yesterday and of
Page 14

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

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

16 THE COURT Four

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

18

1 just want to make a final record here

2 THE COURT Sure

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

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12 July 13 2007 txt
my statement in that regard

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

19

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

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

8 THE COURT Okay

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

July 13 2007 txt

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

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

20

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

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

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

21

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

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

Page 18

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

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

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

9 MR. RICHTER Yeah, okay.

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

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

16 THE COURT Got it.

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

21 THE COURT Okay. Great.

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

1 THE COURT Great.

2 MR. RICHTER And then there is a person.

July 13 2007 txt
3 who has a common name here in South Carolina
4 at least, he had 79 entries Mr Smith found
5 for that name in South Carolina, a
6 significant number of which were in and
7 around the lowcountry However we were
8 not -- we don't know where that person may
9 live, so that is the worst of the findings so
10 far

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

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

24

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

Page 20

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

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

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

25

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

10 THE COURT Absolutely, I agree

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

Page 21

July 13 2007 txt
12 those people
13 THE COURT There is nothing more that
14 the diocese could possibly do that I am aware
15 of I mean, at the point in time when the
16 diocese obligates itself to do as it has been
17 described, there is nothing more that they
18 can possibly do insofar as I can even
19 imagine, Mr Shahid, truly I mean, what
20 they say is if you come forward in the future
21 we will treat you just the same as we have
22 treated these individuals and the relief is
23 available for you I know of nothing more
24 that could be done So I certainly would
25 approve that

26

1 MR SHAHID Well, good
2 THE COURT Yeah
3 MR SHAHID Just a little caveat
4 THE COURT Uh-huh
5 MR SHAHID My meeting with Mr Myers
6 hopefully, and I'm confident that it will
7 but until the rubber hits the road kind of
8 test
9 THE COURT If it doesn't I'm prepared
10 to rule
11 MR SHAHID I'm confident that we've
12 chatted and we just got to iron out those
13 little problems to iron out, and so hopefully
14 by Wednesday or sometime next week we'll have
15 one minor or Mr Myers saying that's done
16 THE COURT Okay
Page 22

July 13 2007 txt

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

21 THE COURT Yeah

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

27

1 our largely -- or appearance today

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

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

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July 13 2007 txt

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

28

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

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

Page 24

1 let the solicitor or sheriff or whatever
2 agency needs to make that call, make that
3 call with hopefully that person's
4 participation and involvement in that
5 so hopefully that is the absolute
6 last t that needs to be crossed and the
7 last i that needs to be dotted with all of
8 this and that's what we're trying to get to
9 I think we just want complete healing and if
10 this accommodates that healing, we hope that
11 it will, that it will take that And so
12 we're here I think all on a common goal to
13 get that magic signature on a magic order
14 THE COURT Absolutely A couple of
15 things I would say and I think what I want to
16 do is I want to direct to the civil and then
17 to the other part Solicitor Pascoe's
18 participation First of all the civil
19 matter I will await to see what Mr Myers'
20 position is but again I am prepared to rule
21 in the event that that doesn't happen and out
22 I would ask for a proposed order from
23 plaintiffs counsel about that in the event
24 that that is needed And I'm delighted that
25 he is satisfied, that's always a better place

30

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

July 13 2007 txt

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

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

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

31

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

6 MR RICHTER Thank you

7 THE COURT Boy that is fantastic,
Page 26

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

15 MR RICHTER Thank you

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

22 MR RICHTER Thank you

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

32

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

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

July 13 2007 txt

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

33

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

6 MR. SHAHID: Thank you.

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

12 MR. SHAHID: Thank you, Judge.

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

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

34

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

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

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21 that I have to be mindful of that I have to
22 look to my solicitor to obtain whatever
23 information is appropriate to determine
24 whether or not the solicitor has the
25 information of all the victims To some
35

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

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

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

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

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

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

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

18 THE COURT Not at all

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

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

July 13 2007 txt
3 in the big city of St Matthews to answer my
4 questions and he did that on 12 hours'
5 notice So it's been an honor and a pleasure
6 to work with these lawyers Thank you, Your
7 Honor
8 THE COURT Thank you So much
9 Obviously if you are in the need of my
10 assistance at any point you know, you're
11 there because of my request, my order and so
12 I continue to be interested if you have
13 anything for me
14 MR PASCOE Thank you
15 THE COURT All right I will look -- I
16 am on vacation next week and I see -- unless
17 you all see of, I see of no reason for us to
18 continue meeting like this I am prepared, I
19 am ready to sign orders And again in the
20 event that Mr Myers withdraws, that's fine,
21 I look for an order to reflect that In the
22 event he doesn't, I'm looking for a proposed
23 order Otherwise I m looking for an order of
24 attorneys' fees I approve the settlement I
25 shared that with you You all were so

38

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

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

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

15 THE COURT Thank you Thank you all so
16 much

17 MR SHAHID Thanks, Judge

18

19

20

21

22

23

24

25

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

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

PLAINTIFFS,)

VS)

TRANSCRIPT OF RECORD

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

DEFENDANT)

AUGUST 9, 2007

ORANGEBURG, SOUTH CAROLINA

B E F O R E

THE HONORABLE DIANE S GOODSTEIN, JUDGE

A P P E A R A N C E S

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

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

ELIZABETH B HARRIS, CVR
CIRCUIT COURT REPORTER

I N D E X

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E X H I B I T S

<u>NO</u>	<u>DESCRIPTION</u>	<u>I D</u>	<u>EV</u>

NO EXHIBITS INTRODUCED

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

6 MR RICHTER There were, Your Honor

7 THE COURT Handwritten

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

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

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

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

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

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

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

16 MR RICHTER It has not, Your Honor

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

19 MR SHAHID Yes, ma'am

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

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

24 THE COURT Okay

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

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

3 THE COURT Yes

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

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

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

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

3 MS LOFTON Yes, Your Honor

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

10 (DEFENSE COUNSELORS CONFER)

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

13 THE COURT Certainly

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

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

19 MR SHAHID Okay

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

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

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

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

9 THE COURT Sure, sure

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

14 THE COURT Right, right

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

20 THE COURT Sure, sure

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

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

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

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

8 MR GEOLY No That was in October of '06

9 THE COURT That was in October of '06?

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

12 THE COURT Exactly Exactly

13 MR RICHTER I very clearly remember that

14 MR GEOLY I will agree to that

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

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

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

23 MR SHAHID Judge, I ---

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

25 MR SHAHID That's not true, Judge

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

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

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

1 well

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

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

5 THE COURT Yes, absolutely

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

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

13 MR SHAHID In March

14 THE COURT Well, in January

15 MR SHAHID In January, in March

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

18 MR SHAHID That's right That's correct

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

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

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

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

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

15 THE COURT I don't remember

16 MR SHAHID I don't remember

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

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

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

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

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

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

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

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

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

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

19 THE COURT Yes, I don't remember

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

22 THE COURT Yes, absolutely

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

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

5 (MR RICHTER AND MR WARING CONFER)

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

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

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

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

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

18 MR SHAHID That's fine

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

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

22 THE COURT Sure

23 MR SHAHID So we could just reconstruct

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

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

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

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

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

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

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

1 calls So, we're comfortable

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

4 MR SHAHID I will Okay

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

7 MR RICHTER Thank you, Your Honor

8 MR SHAHID While I'm standing, Judge

9 THE COURT Yes

10 MR SHAHID At our phone status conference yesterday

11 THE COURT Yes

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

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

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

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

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

25 I know that, and these are just my general

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

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

23 MR RICHTER The fall at least, yes

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

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

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

5 THE COURT Okay

6 MR SHAHID And explain

7 THE COURT Okay

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

10 THE COURT Very I am very frustrated

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

12 THE COURT Sure

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

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

24 THE COURT Okay

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

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

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

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

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

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

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

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

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

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

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

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

5 THE COURT Yes

6 MR SHAHID And you've asked this several times

7 THE COURT Yes

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

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

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

19 THE COURT Yes

20 MR SHAHID I sat down with Mr Myers

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

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

1 I get a demand back from him of 1 46, 1 46 million dollars
2 And so the whole -- and so understand that how this, this
3 is developing, Judge

4 And so it concerns me that you think the diocese has
5 not done what it's supposed to do, which is just, it's not,
6 that's not the issue The issue is I, I, the diocese, have
7 got to deal now with this objector, okay, who is raising
8 questions And I can't argue the validity of his
9 arguments I'm not in a position to do that because when
10 an appeal is brought, you know, like I said, two, two on
11 the Court of Appeals, three on the Supreme Court can agree
12 with him And if that happens, my question is just protect
13 us to a point so that in the event and how far reaching
14 that may be, in the event an appeal is taken and in the
15 event an appeal is successful, how do we put the toothpaste
16 back in the tube? That's all we're asking for How do we
17 protect the diocese payment out, the 2 6 million? That's,
18 that's it

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

22 THE COURT Now, you said 2 6 Tell me what money
23 specifically you're talking about, the 2 6

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

1 THE COURT Right, I know that

2 MR SHAHID We -- so, the payment is really 4 5
3 million

4 THE COURT Right

5 MR SHAHID That could be done in a sneeze, it could
6 be done in a sneeze to give the escrow agent that money
7 And we've -- that's why we made the motion to deposit the
8 money with the Court because we're -- here it is We're
9 not worried about that Here's the, here's the money to
10 the escrow agent or to the Court, all right, as the Court
11 directs us to do Whatever the order tells us to do or
12 whatever this agreement says, we're here We can do it
13 That's not the issue The question is if Mr Myers is
14 successful on appeal and we have paid out the 2 6 million
15 for attorneys' fees and costs and the order is reversed,
16 that money is gone

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

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

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

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

22 MR SHAHID Right

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

25 MR SHAHID Right

1 THE COURT Okay?

2 MR SHAHID I'm with you on that

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

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

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

15 THE COURT It's not been served on me

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

18 THE COURT I don't know

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

22 MR GEOLY The disadvantage, Your Honor ---

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

24 THE COURT It's not

25 MR DUKES I understand, Your Honor

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

2 MR DUKES Okay

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

6 THE COURT If he serves it properly under the rules

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

8 THE COURT Yes, he does

9 MR SHAHID I know

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

11 MR SHAHID We won't do it, okay

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

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

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

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

11 You know, I wish -- you know, if I was -- I know how
12 I'd rule on it, but it's not me to do that It's not you
13 and it's not Mr Richter and it's not plaintiffs' counsel
14 to do that Those folks up there, I don't know what
15 they're going to do But in the event there's 2 6 million
16 that is gone, and that's all we're asking for is to address
17 it so that we can proceed with this in an orderly fashion
18 to protect the 2 6 million that's advanced out That's all
19 we're asking to do

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

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

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

16 THE COURT Is he here today, Mr Myers?

17 MR RICHTER To our knowledge, no

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

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

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

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

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

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

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

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

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

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

1 defendants, also

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

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

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

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

24 THE COURT Sure

25 MR RICHTER Thank you This not about Greg Myers

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

5 Greg Myers, Mr Shahid represented to you, went to him
6 and said he wanted 1 46 million dollars and he'd go away
7 We have all represented to you what we think about the
8 number of claimants, the size of the class, how much money
9 there was going to be to go around, and there's aplenty
10 All of us, none of us have guaranteed that to you because
11 we can't, but we all think we're right and have a pretty
12 good handle on that If these people wanted to solve this
13 properly, they would escrow 1 46 million dollars of money
14 and deal with Mr Myers They didn't suggest that because
15 that involves parting with money, and they don't want to
16 part with money So, here's what I have to say, Your
17 Honor, and please indulge me

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

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

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

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

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

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

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

20 THE COURT You notice he didn't say calm

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

1 that are not true I'm against them saying oh, the only
2 problem is, well, what about if Richter gets his attorneys'
3 fees and they get their costs back, then things go away I
4 mean, these arguments are ludicrous Instead of saying,
5 well, we'll just escrow 1 46 million dollars and Myers will
6 be satisfied That's what he demanded and then we'll have
7 to pay some other day And there's more than enough money
8 in the fund, of course, to do that But on March 9th, Mr
9 Geoly said we'll pay money the day the order is signed or
10 similar words

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 These people could not have read the controlling case

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

6 MR GEOLY Your Honor, I have a brief comment

7 THE COURT Yes

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

10 THE COURT Yes

11 MR GEOLY Since Mr Richter did purport to quote me

12 THE COURT Yes

13 MR GEOLY At which point Mr Shahid will continue

14 THE COURT All right

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

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

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

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

17 MR SHAHID Judge?

18 THE COURT Yes

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

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

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

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

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

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

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

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

1 the 12th I just don't remember it

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

3 THE COURT Okay

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

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

12 ORDER OF THE COURT

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

18 MR RICHTER In round numbers, that is correct

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

22 MR SHAHID That's right

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

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

16 MR GEOLY Just a clarifying question, Your Honor

17 THE COURT Sure

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

1 THE COURT Yes

2 MR GEOLY Then what?

3 THE COURT Thank you, Mr Geoly

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

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

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

7 MR DUKES It references the ---

8 MR GEOLY --- the way I do

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

10 MR GEOLY Right

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

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

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

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

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

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

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

12 THE COURT Okay

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

20 THE COURT Yes

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

1 desire

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

7 MR RICHTER I don't want to run afoul of the Court's
8 order, and I don't want to stop you from you finishing
9 making it, but I do want you to know there's another whole
10 side to this we may be out 2 6 million dollars In finding
11 that our attorneys' fees are appropriate at the amount that
12 you set, that means that we've earned that amount That
13 means we've done something we've expended that amount of
14 time or legal talent or whatever it is So, in the sense
15 you could say class counsel is out that amount today that
16 they don't want to be out Certainly as to hard costs,
17 that's long since gone And today, notices started running
18 around the state on borrowed money that we had to borrow
19 because it's very expensive, as I think we've told Your
20 Honor, to publish those things today because I can't get my
21 hands on the attorneys' fees or the costs that you've
22 ordered that we have access to

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

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

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

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

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

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

10 MR RICHTER I understand

11 THE COURT Yes

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

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

1 do that, and ---

2 MR GEOLY So, until Your Honor receives briefing

3 THE COUPT Yes

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

6 THE COURT No

7 MR GEOLY But -- or to the Court?

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

10 MR GEOLY And held

11 THE COURT Yes

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

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

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

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

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

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

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

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

22 THE COURT Oh, my

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

24 THE COURT Who was stuck in traffic for hours

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

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

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

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

14 MR RICHTER He's the keeper of the key

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

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

25 THE COURT Something like that

1 MR SHAHID That's fine

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

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

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

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

11 MR MAYBANK Thank you

12 THE COURT Which one is Mr Maybank?

13 MR MAYBANK Me

14 THE COURT I should have been looking at you

15 MR GEOLY That's his boss with him

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

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

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

21 MR GEOLY With the research?

22 THE COURT Yes

23 MR GEOLY With the memo?

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

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

2 Enough, enough

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

7 THE COURT The money will just percolate

8 MR SHAHID Just percolate?

9 THE COURT It will be percolating

10 MR SHAHID That's right

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

12 MR GEOLY I have one more question

13 THE COURT Yes

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

20 THE COURT Yes

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

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

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

10 THE COURT Not at all

11 MR GEOLY Thank you

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

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

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

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

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

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

18 THE COURT I think you guys ---

19 MR GEOLY We'll just get the letter

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

22 MR GEOLY Very good, Your Honor

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

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

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

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

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

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

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

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

Certificate of Counsel

I hereby certify that pursuant to the Order of the Court of Appeals of April 19, 2012, the enclosed Record on Appeal contains all material proposed to be included by the appellant and not any other material

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

Gregg Meyers
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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
(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 25, 2012, I served upon counsel for the
defendant/respondent three copies of the

Record on Appeal

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



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