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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLETON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

Consolidated Case Nos. 2010-CP-10-5520; 2010-CP-10-7233;
2012-CP-10-5559; 2013-CP-10-3733; 2013-CP-10-4175; 2013-CP-10-4176

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, and John Doe 194.....Respondents,

v.

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

Of whom,

The Bishop of Charleston, A Corporation Sole,
Robert Guglielmone, The Bishop of Charleston,
in his official Capacity, Rev. Monsignor Martin Laughlin,
former Administrator of the Diocese of Charleston, in his
Official capacity; and Robert J. Baker, former Bishop of,
Charleston in his official capacity, are.....Appellants.

EMERGENCY PETITION FOR SUPERSEDEAS
TO STAY TRIAL SCHEDULED FOR MAY 15, 2017

IMMEDIATE ACTION REQUIRED: 5 BUSINESS DAYS UNTIL TRIAL

Appellants, The Bishop of Charleston, a Corporation Sole, Robert Guglielmone, the Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Loughlin, former Administrator of the Diocese of Charleston, in his official capacity, and Robert J. Baker, former Bishop of Charleston, in his official capacity, (the "Diocese parties" or "Appellants") hereby petition this Court to stay the trial scheduled for **May 15, 2017** until the underlying appeal is resolved because this trial will be substantially affected by the issues on appeal.

BACKGROUND AND PROCEDURAL HISTORY

This case arises out of plaintiffs' allegations that they were abused by priests in the Diocese of Charleston many years ago. These claims have been extensively litigated as a result of a class action lawsuit filed in 2007 in Dorchester County. *See Doe v. Bishop of Charleston*, 407 S.C. 128, 133, 754 S.E.2d 494, 497 (2014). The class action was resolved by way of a class settlement, which established a "fund from which awards would be made to claimants who established their sexual abuse claims by arbitration." *Id.*

These actions include consolidated civil complaints filed by various plaintiffs all represented by Gregg Myers. The plaintiffs allege they are the victims of sexual abuse perpetrated against as minors by agents of the Diocese parties or their parents or spouses. The Plaintiffs in all of these various complaints have named Lawrence E. Richter, Jr. and David K. Haller, and the former law firm, Richer & Haller, LLC as defendants, hereinafter referred as the Richter Defendants. The plaintiffs have alleged in their multi-cause of action that they or their child or spouse was sexually abused, and that they are entitled to recovery under several legal remedies including, but limited to, negligent supervision, fraudulent concealment, and legal malpractice, breach of fiduciary duty, and Unfair Trade Practices as to the Richter Defendants. In addition the Diocesan parties and the Richter Defendants are named in a cause of action for civil conspiracy.

In 2007 the circuit court approved a class action settlement action, in which the Richer Defendants served as class counsel. The court-approved class action provided a mechanism in which primary sexual abuse claimants and loss of consortium claimants could participate in a process to resolve their claims through an arbitrator. These plaintiffs in these consolidated cases did not participate in this class action settlement opportunity and did not opt-out of the class.

On October 26, 2016, the trial court issued an Order Bifurcating Trial and an Order on Limited Collateral Review. (*Exhibit 1*).[1] In bifurcating the trial of this case, the trial court ordered that the Diocese parties would be first required to proceed to trial on claims that Plaintiffs were sexually abused by priests. Then, following the conclusion of all sex abuse trials, the Diocese parties and the *John Doe* and *Jane Doe* plaintiffs would be required to participate in a second round of litigation involving the legal malpractice, breach of fiduciary duty, and civil conspiracy claims.

The Diocese parties timely moved for reconsideration of both Orders in November, 2016. The Diocese parties pointed out to the trial court that this mode of trial would require them to try their case against each Plaintiff twice, and a verdict in the first case would not bring a close to the claims against the Diocese parties in the second case. Additionally, the plaintiffs would be required to try their cases twice. Moreover, neither the Diocese parties nor the Plaintiffs would be able to appeal from the verdict or judgment in the first trial until after the second trial had concluded. Put simply, the Diocese parties contended that the mode of trial ordered by the trial court was manifestly unjust to all parties.

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[1] Because of the exceptional circumstances of this matter and the limited time for review, Appellants have included the Orders as provided by the Court. Appellants will provide certified copies of the Orders when they are made available by the Charleston County Clerk's Office, pursuant to Rules 241(d)(3) and 241(d)(4)(C), SCACR.

On May 4, 2017, the trial court denied the Diocese parties' motion to reconsider its Order Bifurcating Trial and, by separate order, its Order on Limited Collateral Review. (*Exhibit 2*). At the same time as it issued its orders denying the Diocese parties' motions to reconsider, the trial court issued a Scheduling Order, *sua sponte* and *ex parte*, which stated that the trial of this case would proceed beginning May 15, 2017 irrespective of whether the Diocese parties appealed its Order Bifurcating Trial and/or Order on Limited Collateral Review. (*Exhibit 3*). Put differently, the trial court issued an *ex parte* order stating that it would not recognize the automatic stay that would be trigged[2] when the Diocese parties' filed their notice of appeal.

Following the issuance of these orders, the Diocese parties filed their Notice of Appeal on May 4, 2017.[3] The Diocese parties' appeal challenges the trial court's Order Bifurcating Trial as well as the trial court's refusal to give *res judicata* effect to the prior class settlement and judgment. In sum and substance, the Diocese parties contend that the trial court's orders cause substantial and irreparable prejudice to the Diocese parties.

The Diocese parties maintain that the clear and unambiguous language of Rules 205 and 241, SCACR, automatically stay the impending May 15, 2017 trial.[4] However, out of an abundance of caution, the Diocese parties filed this Emergency Petition for Supersedeas.

STANDARD OF REVIEW

A supersedeas is an extraordinary writ, which appellate courts use only when necessary to preserve the fruits of a meritorious appeal, to avoid irreparable harm, or to prevent a miscarriage of justice. *See Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) ("[T]he purpose . . . of a supersedeas . . . is to . . . stay proceedings in the trial court, to preserve

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[2] *See, e.g.,* Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . . .").

[4] *See also Roddey v. Wal-Mart* Order Granting Supersedeas. *Exhibit 4.*

the status quo pending the determination of the appeal . . . , and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." (quoting 4A C.J.S. *Appeal & Error* § 662 at 494–95 (1957))); *see also Andrews v. Sumter Commercial & Real Estate Co.*, 69 S.E. 604, 606 (S.C. 1910) (explaining that a supersedeas should be issued "only to the extent clearly made to appear to be necessary to prevent irreparable injury or a miscarriage of justice").

ARGUMENT

This Court should order a stay of the May 15, 2017 trial because the trial court erred in failing to recognize the general rule that the filing of a notice of appeal automatically stays the trial. Rule 205, SCACR, provides an appellate court with exclusive jurisdiction over a case when a notice of appeal is filed and served. The lower court may only proceed with matters not affected by the appeal. To that end, Rule 241(a), SCACR, in governing matters that are stayed while on appeal, provides:

> As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Thus, a lower court may not proceed in a manner that affect an issue on appeal, which would include, but not be limited to, proceeding with a bifurcated trial when a party has appealed the bifurcation order.

In *Tillman v. Oakes*, then Chief Judge Few acknowledged that the question of determining whether a lower court may proceed with a case once an order has been appealed is "a difficult one to answer." 398 S.C. 245, 254, 728 S.E.2d 45, 50 (2012). The inquiry for this Court is

whether the trial is affected by the appeal of the bifurcation order and order refusing to give effect to the class action settlement and judgment. Here, the answer must be yes.

First, the ability to immediately appeal this ruling demonstrates the impact of the appeal on the remaining cause of action. Section 14–3–330 authorizes appellate review for an intermediate order "involving the merits" as well as orders that affect a substantial right when the order "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action" or "strikes out an answer or any part thereof or any pleading in any action." Here, the trial court's order bifurcating trial affects the substantial rights of the parties and "encourage[s] piecemeal litigation and limit[s] their appellate remedies after the first trial." *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146 (2015) (holding that a bifurcation order is immediately appealable). Indeed, irrespective of the verdict or judgment in the various first trials—as each *Doe* case will be tried separately—neither the Diocese parties nor the Plaintiffs would be able to appeal until after the conclusion of the case against former class counsel on the legal malpractice, breach of fiduciary duty, and civil conspiracy claims.

Furthermore, the trial court's October 26, 2016 Order on Limited Collateral Review and its May 4, 2017 Amended Order on Limited Collateral Review, in which it refused to give effect to a judgment entered by a Circuit Court of this State, denies the Diocese parties their substantial right to have judgments and the Class Action Settlement respected and enforced after a proper limited collateral review. The trial court has thus denied the Diocese parties their defense to the current actions.

To reiterate, the Diocese parties maintain that the filing of their Notice of Appeal automatically stayed the upcoming May 15, 2017 trial. However, the trial court's Scheduling Order

makes clear that the trial court intends on calling the case to trial unless this Court intervenes and applies well-settled rule and precedent by holding that the Diocese parties' Notice of Appeal immediately divested the trial court of jurisdiction for all matters affected by the appeal. *See Grosshuesch v. Cramer*, 377 S.C. 12, 31 n. 7, 659 S.E.2d 112, 122 n. 7 (2008) ("We take this opportunity to reiterate that while an appeal is pending, a lower court cannot act on matters affecting the issue on appeal.").[5]

CONCLUSION

For the reasons stated herein, the Diocese parties respectfully requests this Court to issue a stay and continue the trial of this matter until the appeal is resolved.

Counsel certifies that he has notified counsel for Plaintiffs that the Diocese parties intended to file the instant petition and will provide counsel with electronic copies of the filed documents as soon as possible.

(Signature Page Follows)

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[5] As stated herein, the Diocese parties maintain that a stay was automatic upon the filing of the Notice of Appeal. However, to the extent a petition for supersedeas is necessary, the Diocese parties acknowledge that the petition must be made first to the lower court. However, the Appellate Court rules obviate that requirement when extraordinary circumstances, such as the "issuance of an ex parte order or decision," make the filing in the lower court impracticable. Rule 241(d)(1), SCACR.

RESPECTFULLY SUBMITTED

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May ___, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLETON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

Consolidated Case Nos. 2010-CP-10-5520; 2010-CP-10-7233;
2012-CP-10-5559; 2013-CP-10-3733; 2013-CP-10-4175; 2013-CP-10-4176

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, and John Doe 194.....Respondents,

v.

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

Of whom,

The Bishop of Charleston, A Corporation Sole,
Robert Guglielmone, The Bishop of Charleston,
in his official Capacity, Rev. Monsignor Martin Laughlin,
former Administrator of the Diocese of Charleston, in his
Official capacity; and Robert J. Baker, former Bishop of,
Charleston in his official capacity, are.....Appellants.

**DIOCESE PARTIES' VERIFICATION OF
EMERGENCY PETITION FOR SUPERSEDEAS
TO STAY TRIAL SCHEDULED FOR MAY 15, 2017**

IMMEDIATE ACTION REQUIRED: 5 BUSINESS DAYS UNTIL TRIAL

The Bishop of Charleston, a Corporation Sole, hereby verifies the contents of the Diocese parties' Emergency Petition for Supersedeas to Stay Trial Scheduled for May 15, 2007.

Rev. Msgr. Richard D. Harris
Vicar General, Diocese of Charleston

May ___, 2017

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)
) FOR THE NINTH JUDICIAL CIRCUIT

JOHN DOE 2 AND JANE DOE 4,

PLAINTIFFS,

V.

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

DEFENDANTS.

CASE NO.: 2010-CP-10-5520

ORDER BIFURCATING TRIALS

FILED
2010 OCT 26 AM 9:58
JULIE J. ARMSTRONG
CLERK OF COURT

JOHN DOE 10,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2010-CP-10-7233

EXHIBIT 1

JANE DOE 11,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2012-CP-10-5559

JOHN DOE 193,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2013-CP-10-3733

FATHER DOE 194, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO.: 2013-CP-10-4175
JOHN DOE 194, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO.: 2013-CP-10-4176

THIS MATTER came before the Court at various status conferences held over the past several months attended by counsel for all parties. As set forth more fully below, pursuant to

Rules 18(c) and 42(b), SCRCP, and based on the pleadings, evidence of record, arguments of counsel, and applicable law, the Court hereby orders that Plaintiffs' claims against the Bishop of Charleston, a corporation sole; Robert Gugliemone, the Bishop of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former administrator of the Diocese of Charleston, in his official capacity; and Robert J. Baker, former Bishop of Charleston, in his official capacity (collectively, the "Diocese Defendants") be tried separately and before any trial of Plaintiffs' claim against Lawrence E. Richter, Jr.; David K. Haller; and Richter & Haller, LLC (collectively, the "Lawyer Defendants").

Under the South Carolina Rules of Civil Procedure, the Court may order the separate trial of any claims or issues "in furtherance of convenience," "to avoid prejudice," or "when separate trials will be conducive to expedition and economy." Rule 42(b), SCRCP. Here, the Court concludes that all of these reasons – expediency, the avoidance of prejudice, and convenience – militate in favor of separate trials for the claims against the Diocese Defendants and the Lawyer Defendants. Indeed, the Court believes that attempting to present the claims against the Diocese Defendants and Lawyer Defendants to a jury in a unified proceeding would likely result in unnecessary juror confusion.

Expediency. Separate trials are particularly appropriate "where the determination of one claim may obviate the need to adjudicate one or more other claims." Moore's Fed. Prac. Civ. § 42.20[4][d] (interpreting federal rule that is substantively the same as Rule 42(b), SCRCP). In this case, the claims against the Lawyer Defendants are explicitly alternative to the claims against the Diocese Defendants. Thus, a finding of liability against the Diocese Defendants would negate the claims against the Lawyer Defendants. The Court concludes that this strongly militates in favor of separate trials, as a set of short trials against the Diocese Defendants alone

could resolve the cases in their entirety, rather than a series of much longer and more complicated trials against both sets of defendants.

Avoidance of Prejudice. In addition, the Court concludes that the Lawyer Defendants would be prejudiced in at least two significant ways if the claims against the Diocese Defendants were tried at the same time.

- **First,** the case against the Diocese Defendants involves allegations of serious sexual abuse against minors. Forcing the Lawyer Defendants to sit at the same table as co-defendants is likely to prejudice the jury against them. This would be unfair and improper, as the Lawyer Defendants are not alleged to have engaged in any kind of sexual abuse.

- **Second,** the Court concludes that attempting to try sexual abuse claims against the Diocese Defendants and alternative legal malpractice claims against the Lawyer Defendants in the same proceeding is likely to confuse the jury. If both sets of claims were tried at the same time, the jury would be presented – in a single proceeding – with evidence of alleged sexual abuse, the Diocese Defendants' alleged cover-up of such abuse, the Diocese Defendants' alleged failure to respond to the plaintiffs' notice of such abuse, the notice procedures in the underlying class action settlement, the plaintiffs' claim that they did not receive notice of the class action settlement, competing expert testimony on the standard of care for class action lawyers, and the Lawyer Defendants' acts in litigating and settling the class action. The Court believes that this is more than a jury can reasonably be expected to handle in a single proceeding, and the Court further believes that forcing a jury to do so is likely to prejudice the Lawyer Defendants, as the primary issue the jury will understand and remember is the alleged sexual abuse.

For both of these reasons, the Court concludes that the most prudent course is for the Lawyer Defendants to be accorded separate trials from the Diocese Defendants.

Convenience. It is generally held that separate trials are more convenient where the claims "contain substantially different material" or "raise new or complex issues," or where a unified proceeding would "undermine the focus of the trier of fact" or "confuse the issues." Moore's Fed. Prac. Civ. § 42.20[4][b]. Here, the Court concludes that the claims against the Diocese Defendants are largely negligent supervision claims concerning the failure to supervise the priests who allegedly sexually abused the plaintiffs, whereas the claims against the Lawyer

Defendants are largely legal claims concerning the complex intricacies of class action practice. Because these sets of claims and the issues involved are very different, the Court believes that it would be more convenient to try them separately. Likewise, the Court believes that asking a jury to consider, at the same time, sexual abuse and complicated legal malpractice questions will likely confuse the jury. For all of these reasons, the Court concludes that convenience dictates that the claims against the Diocese Defendants and the Lawyer Defendants be tried separately.

Prejudice. Finally, the Court concludes that separate trials will not prejudice any party to these proceedings, as all parties will have their day in Court. Moreover, the Court believes that the claims against the Diocese Defendants and the Lawyer Defendants are sufficiently distinct that they can be tried separately without confusion or prejudice; indeed, it is the Court's view that confusion and prejudice are more likely to occur if the claims are tried together.

WHEREFORE, based on the pleadings, evidence, discovery materials to date, arguments of counsel and applicable law, the Court hereby orders that Plaintiffs' cases against the Diocese Defendants shall be tried SEPARATELY and BEFORE any cases are tried against the Lawyer Defendants.

AND IT IS SO ORDERED.

Hon. J.C. Nicholson, Jr., Circuit Judge

October 25, 2016

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)
) FOR THE NINTH JUDICIAL CIRCUIT

JOHN DOE 2 AND JANE DOE 4,

PLAINTIFFS,

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

DEFENDANTS.

CASE NO.: 2010-CP-10-5520

ORDER ON LIMITED COLLATERAL REVIEW

FILED
2016 OCT 26 AM 9:58
JULIE J. ARMSTRONG
CLERK OF COURT

JOHN DOE 10,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2010-CP-10-7233

JANE DOE 11,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2012-CP-10-5559

JOHN DOE 193,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2013-CP-10-3733

FATHER DOE 194,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2013-CP-10-4175

JOHN DOE 194,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2013-CP-10-4176

THIS MATTER CAME BEFORE THE COURT on the motion of Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (collectively, the "Lawyer Defendants") to alter and amend the Court's order of December 7, 2015, denying the Lawyer Defendants' motion for summary judgment. Specifically, the Lawyer Defendants moved that the

Court conduct a limited collateral review of the underlying class action and determine whether that action is binding on the plaintiffs in these matters. The Court agrees that a limited collateral review is proper and therefore grants the motion to alter and amend to the extent that it requests such a review.

In the Complaints, Plaintiffs specifically allege that their causes of action against the Lawyer Defendants are only pertinent if they, as alleged absent class members in a prior class action, are precluded from pursuing claims against the Diocese Defendants. (*See, e.g.* -5520 Compl. ¶¶ 177, 196.) Thus, the Complaints, by their own terms, present a threshold question: Are Plaintiffs precluded from pursuing claims against the Diocese Defendants?

Our Supreme Court set forth the framework for deciding such a question in *Hospitality Management Associates v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004). There, the Court held that the trial court should conduct a "limited collateral review" of the prior class action to determine whether it binds the absent class members now trying to bring suit. *Id.* at 660, 591 S.E.2d at 619-20. That review consists of reviewing the record in the prior class action to determine: "(1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied." *Id.* at 660, 591 S.E.2d at 619-20.

The Court has reviewed the record in the underlying class action and concludes that the class action court did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the Court substantially outside of the geographic territory of South Carolina.[1] The Court nonetheless recognizes that actual notice was provided to many class members and that notice of the class action was published by numerous media outlets

[1] The Court recognizes that some areas bordering South Carolina—such as Augusta, Georgia—did receive notice by publication. Nothing in this order is intended to suggest that the notice provided in such areas was in any way inadequate.

outside of South Carolina and that some class members received sufficient notice by those means. Therefore, the Court now concludes that the notice plan directed by the class action Court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived ~~substantially~~ outside of the areas in which notice was published.

At this time, the Court has not reviewed—or been asked to review—whether any specific plaintiff in any of the pending cases received sufficient notice of the class action. Counsel may make such arguments as they deem appropriate in light of the conclusions of law set forth herein.

AND IT IS SO ORDERED.

Hon. J.C. Nicholson, Jr., Circuit Judge

October 25, 2016

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)
) FOR THE NINTH JUDICIAL CIRCUIT

JOHN DOE 2 AND JANE DOE 4,

PLAINTIFFS,

V.

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

DEFENDANTS.

CASE NO.: 2010-CP-10-5520

AMENDED ORDER BIFURCATING TRIALS

FILED
2017 MAY -4 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT

JOHN DOE 10,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2010-CP-10-7233

EXHIBIT 2

JANE DOE 11,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2012-CP-10-5559

JOHN DOE 193,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2013-CP-10-3733

FATHER DOE 194, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO.: 2013-CP-10-4175
JOHN DOE 194, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO.: 2013-CP-10-4176

JOHN DOE 245 AND FATHER DOE 245, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; RICHTER & HALLER, LLC, DEFENDANTS.	)	CASE NO.: 2015-CP-10-5486
JOHN DOE 297, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	)	CASE NO.: 2016-CP-10-1632

THIS MATTER came before the Court at various status conferences held over the past several months attended by counsel for all parties and on motions to alter or amend the Court's

Order Bifurcating Trials entered on October 26, 2016 filed by Plaintiffs and the Diocese Defendants. As set forth more fully below, pursuant to Rules 18(c) and 42(b), SCRCP, and based on the pleadings, evidence of record, arguments of counsel, and applicable law, the Court hereby orders that Plaintiffs' claims against the Bishop of Charleston, a corporation sole; Robert Gugliemone, the Bishop of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former administrator of the Diocese of Charleston, in his official capacity; and Robert J. Baker, former Bishop of Charleston, in his official capacity (collectively, the "Diocese Defendants"), except for the civil conspiracy claim, be tried separately and before any trial of Plaintiffs' claim against Lawrence E. Richter, Jr.; David K. Haller; and Richter & Haller, LLC (collectively, the "Lawyer Defendants").

Under the South Carolina Rules of Civil Procedure, the Court may order the separate trial of any claims or issues "in furtherance of convenience," "to avoid prejudice," or "when separate trials will be conducive to expedition and economy." Rule 42(b), SCRCP. Here, the Court concludes that all of these reasons – expediency, the avoidance of prejudice, and convenience – militate in favor of separate trials for the claims against the Diocese Defendants and the Lawyer Defendants. Indeed, the Court believes that attempting to present the claims against the Diocese Defendants and Lawyer Defendants to a jury in a unified proceeding would likely result in unnecessary juror confusion.

Expediency. Separate trials are particularly appropriate "where the determination of one claim may obviate the need to adjudicate one or more other claims." Moore's Fed. Prac. Civ. § 42.20[4][d] (interpreting federal rule that is substantively the same as Rule 42(b), SCRCP). In this case, the claims against the Lawyer Defendants are explicitly alternative to the claims against the Diocese Defendants. Thus, a finding of liability against the Diocese Defendants would negate the claims against the Lawyer Defendants. The Court concludes that this strongly

militates in favor of separate trials, as a set of short trials against the Diocese Defendants alone could resolve the cases in their entirety, rather than a series of much longer and more complicated trials against both sets of defendants.

Avoidance of Prejudice. In addition, the Court concludes that the Lawyer Defendants would be prejudiced in at least two significant ways if the claims against the Diocese Defendants were tried at the same time.

- **First,** the case against the Diocese Defendants involves allegations of serious sexual abuse against minors. Forcing the Lawyer Defendants to sit at the same table as co-defendants is likely to prejudice the jury against them. This would be unfair and improper, as the Lawyer Defendants are not alleged to have engaged in any kind of sexual abuse.

- **Second,** the Court concludes that attempting to try sexual abuse claims against the Diocese Defendants and alternative legal malpractice claims against the Lawyer Defendants in the same proceeding is likely to confuse the jury. If both sets of claims were tried at the same time, the jury would be presented – in a single proceeding – with evidence of alleged sexual abuse, the Diocese Defendants' alleged cover-up of such abuse, the Diocese Defendants' alleged failure to respond to the plaintiffs' notice of such abuse, the notice procedures in the underlying class action settlement, the plaintiffs' claim that they did not receive notice of the class action settlement, competing expert testimony on the standard of care for class action lawyers, and the Lawyer Defendants' acts in litigating and settling the class action. The Court believes that this is more than a jury can reasonably be expected to handle in a single proceeding, and the Court further believes that forcing a jury to do so is likely to prejudice the Lawyer Defendants, as the primary issue the jury will understand and remember is the alleged sexual abuse.

For both of these reasons, the Court concludes that the most prudent course is for the Lawyer Defendants to be accorded separate trials from the Diocese Defendants.

Convenience. It is generally held that separate trials are more convenient where the claims "contain substantially different material" or "raise new or complex issues," or where a unified proceeding would "undermine the focus of the trier of fact" or "confuse the issues." Moore's Fed. Prac. Civ. § 42.20[4][b]. Here, the Court concludes that the claims against the Diocese Defendants are largely negligent supervision claims concerning the failure to supervise

the priests who allegedly sexually abused the plaintiffs, whereas the claims against the Lawyer Defendants are largely legal claims concerning the complex intricacies of class action practice. Because these sets of claims and the issues involved are very different, the Court believes that it would be more convenient to try them separately. Likewise, the Court believes that asking a jury to consider, at the same time, sexual abuse and complicated legal malpractice questions will likely confuse the jury. For all of these reasons, the Court concludes that convenience dictates that the claims against the Diocese Defendants and the Lawyer Defendants be tried separately.

Prejudice. Finally, the Court concludes that separate trials will not prejudice any party to these proceedings, as all parties will have their day in Court. Moreover, the Court believes that the claims against the Diocese Defendants and the Lawyer Defendants are sufficiently distinct that they can be tried separately without confusion or prejudice; indeed, it is the Court's view that confusion and prejudice are more likely to occur if the claims are tried together.

The Court further concludes that the civil conspiracy claim alleged against all defendants should not be tried in the initial trials against the Diocese Defendants, but instead reserved for any subsequent trials involving the Lawyer Defendants. The Court reaches this conclusion because the civil conspiracy claim is similar to the claims asserted against the Lawyer Defendants inasmuch as it involves the defendants' alleged acts or omissions concerning the class action settlement, and dissimilar to the other claims against the Diocese Defendants inasmuch as it does not focus on the allegations of substantive sexual abuse. Therefore, the civil conspiracy claim should not be tried with the substantive sexual abuse claims against the Diocese Defendants, but rather with the legal malpractice and similar claims against the Lawyer Defendants.

WHEREFORE, based on the pleadings, evidence, discovery materials to date, arguments of counsel and applicable law, the Court hereby orders that Plaintiffs' cases against the Diocese

Defendants shall be tried SEPARATELY and BEFORE any cases are tried against the Lawyer Defendants. The Court further grant's Plaintiffs' motion to alter and amend to the extent that the Court has corrected the caption to include all Doe cases assigned to the Court and to the extent that the Court has clarified when the civil conspiracy claim will be tried. The Court denies Plaintiffs' motion to alter and amend in all other respects. The Court also denies the Diocese Defendants' motion to alter and amend.

AND IT IS SO ORDERED.

The Honorable J.C. Nicholson, Jr.
Ninth Judicial Circuit

May 3, 2017
Charleston, South Carolina

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK C.P., G.S. & F.C.
By _____
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)
) FOR THE NINTH JUDICIAL CIRCUIT

JOHN DOE 2 AND JANE DOE 4,

PLAINTIFFS,

V.

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

DEFENDANTS.

CASE NO.: 2010-CP-10-5520

AMENDED ORDER ON LIMITED COLLATERAL REVIEW

FILED
2017 MAY -4 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT

JOHN DOE 10,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2010-CP-10-7233

JANE DOE 11, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO.: 2012-CP-10-5559
JOHN DOE 193, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO.: 2013-CP-10-3733

FATHER DOE 194, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	)	CASE NO.: 2013-CP-10-4175
JOHN DOE 194, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	)	CASE NO.: 2013-CP-10-4176

JOHN DOE 245 AND FATHER DOE 245,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2015-CP-10-5486

JOHN DOE 297,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2016-CP-10-1632

THIS MATTER CAME BEFORE THE COURT on the motion of Defendants Lawrence E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (collectively, the "Lawyer Defendants") to alter and amend the Court's order of December 7, 2015, denying the Lawyer

Defendants' motion for summary judgment on motions to alter or amend the Court's Order on Limited Collateral Review entered on October 26, 2016 filed by Plaintiffs and the Diocese Defendants. Specifically, the Lawyer Defendants moved that the Court conduct a limited collateral review of the underlying class action and determine whether that action is binding on the plaintiffs in these matters. The Court agrees that a limited collateral review is proper and therefore grants the Lawyer Defendants' motion to alter and amend to the extent that it requests such a review.

In the Complaints, Plaintiffs specifically allege that their causes of action against the Lawyer Defendants are only pertinent if they, as alleged absent class members in a prior class action, are precluded from pursuing claims against the Diocese Defendants. (*See, e.g.* -5520 Compl. ¶¶ 177, 196.) Thus, the Complaints, by their own terms, present a threshold question: Are Plaintiffs precluded from pursuing claims against the Diocese Defendants?

Our Supreme Court set forth the framework for deciding such a question in *Hospitality Management Associates v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004). There, the Court held that the trial court should conduct a "limited collateral review" of the prior class action to determine whether it binds the absent class members now trying to bring suit. *Id.* at 660, 591 S.E.2d at 619-20. That review consists of reviewing the record in the prior class action to determine: "(1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied." *Id.* at 660, 591 S.E.2d at 619-20.

The Court has reviewed the record in the underlying class action and concludes that the class action court did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the court substantially outside of the geographic territory of South

Carolina.[1] The Court nonetheless recognizes that actual notice was provided to many class members and that notice of the class action was published by numerous media outlets outside of South Carolina and that some class members received sufficient notice by those means. Therefore, the Court now concludes that the notice plan directed by the class action court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived outside of the areas in which notice was published.

In addition, the Court concludes as to Plaintiff John Doe 193, who alleges that he lived in South Carolina but had a repressed memory at the time of class notice, that it would be inconsistent with due process to bind him to the class action settlement if he in fact had a repressed memory of sexual abuse at the time that notice was published. Therefore, if he can prove a repressed memory by a preponderance of the evidence, he will not be bound by the class action settlement. This Order does not address the merits of whether John Doe 193 in fact had a repressed memory as he has alleged.

At this time, the Court has not reviewed—or been asked to review—whether any specific plaintiff in any of the pending cases received sufficient notice of the class action. Counsel may make such arguments as they deem appropriate in light of the conclusions of law set forth herein.

WHEREFORE, based on the pleadings, evidence, discovery materials to date, arguments of counsel and applicable law, the Court has conducted a limited collateral review as set forth above. The Court further grants Plaintiffs' motion to alter and amend to the extent that the Court has corrected the caption to include all *Doe* cases assigned to the Court and to the extent that the Court has clarified the treatment of John Doe 193. The Court denies the Diocese Defendants'

[1] The Court recognizes that some areas bordering South Carolina—such as Augusta, Georgia—did receive notice by publication. Nothing in this order is intended to suggest that the notice provided in such areas was in any way inadequate.

motion to alter or amend.

AND IT IS SO ORDERED.

The Honorable J.C. Nicholson, Jr.
Ninth Judicial Circuit

May 3, 2017
Charleston, South Carolina

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By _____
DEPUTY CLERK

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A NO. 2010-CP-10-5520
AND CONSOLIDATED CASES

John Doe 2 and Jane Doe 4,

v.

Plaintiff,

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

Defendants.

John Doe 10,

v.

Plaintiff,

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

Defendants.

SCHEDULING ORDER

Jane Doe 11,

v.

Plaintiff,

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

Defendants.

John Doe 193,

v.

Plaintiff,

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

Defendants.

Father Doe 194,

v.

Plaintiff,

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

Defendants.

John Doe 194,

v.

Plaintiff,

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

Defendants.

John Doe 245 and Father Doe 245,

v.

Plaintiff,

The Bishop of Charleston, a Corporation Sole, Robert Guglielmone, The Bishop of Charleston, in his official Capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his Official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC 10-7233)

Defendants.

John Doe 297,

v.

Plaintiff,

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

Defendants.

This Court has exclusive jurisdiction over the above captioned matters pursuant to Chief Justice Toal's Order filed on June 12, 2015. The Plaintiffs in these consolidated actions have asserted claims against the Bishop of Charleston and related Defendants based on alleged childhood sexual abuse by agents of the Diocese of Charleston. These consolidated actions also

contain claims against class counsel "Lawyer Defendants" in the underlying 2007 class action proceedings in Dorchester County. This Court conducted a limited collateral review of the underlying class action pursuant to the Supreme Court decision in Doe v. Bishop of Charleston, 407 S.C. 128, 137–38, 754 S.E.2d 494, 499 (2014) and Hospitality Management Associates, Inc. v. Shell Oil Co., 356 S.C. 644, 660, 591 S.E.2d 611, 619 (2004) and found that the settlement in the underlying class action does not preclude the out-of-state Plaintiffs in these cases from bringing claims against the Diocesan Defendants. The Court made that finding with the exception of in-state Plaintiff John Doe 193 who claims he is not bound by the settlement due to repressed memory rather than insufficient notice.

On March 21, 2017, Attorneys Richard Dukes and Brian J. Kern filed a notice of appearance. The most recent status conference in this matter was held on April 24, 2017. During that status conference Attorney Dukes requested more time to prepare for trial due to his recent appearance in the cases. The trial has been set for trial during the week of May 15, 2017 in Charleston County and the parties have been aware of that trial date for at least six (6) months. Counsel for the parties had met with the Court for several status conferences to discuss scheduling before the recent appearance of Attorney Dukes and were aware of the trial date and pertinent deadlines despite the lack of an updated scheduling order.

After the motions hearing on April 24, 2017, Attorney Dukes inquired as to when my orders would be filed and notified the Court that he intends to appeal. These cases have been pending for years. Attorney Dukes did not appear until less than two months before the trial date certain. If an appeal is filed at this stage for the sake of delay, the Court will proceed with the trial pursuant to Rule 205, SCACR. This Court will not stay proceedings or delay trial in this matter absent a Writ of Supersedeas pursuant to Rule 241, SCACR.

I find that an updated pre-trial and trial scheduling order should be issued in this case as follows:

1) On May 15, 2017 trial will begin for John Doe 10 (2010-CP-10-7233).
2) At 9:30 AM on May 15, 2017, before the jury is drawn, the Court will hear any unresolved motions.
3) The jury in this case will be drawn after all other juries are drawn in other cases set for trial the same day.
4) The Court will conduct a group voir dire and an individual voir dire.
5) Jury selection and strikes will take place as individual jurors are qualified.
6) Three (3) alternate jurors will be selected.
7) Hard copies of pretrial briefs, proposed voir dire questions, proposed jury charges, witness lists, and exhibit lists shall be delivered to the Court by 12 PM on Thursday May 11, 2017.
8) Motions in Limine, if any, shall be filed with a statement from the lawyers that they have attempted to resolve admissibility issues before filing the motions.

THEREFORE, IT IS ORDERED that this scheduling order shall be followed.

J.C. Nicholson, Jr., Circuit Court Judge

May 3, 2017
Charleston, SC

ATTEST A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK C.P., G.S. & F.C.
By _____
DEPUTY CLERK

The South Carolina Court of Appeals

Travis A. Roddey, Individually and as the Personal Representative of the Estate of Alice Monique Beckham Hancock, deceased, Appellant,

v.

Wal-Mart Stores East, L.P., U.S. Security Associates, Inc., and Derrick L. Jones, Respondents.

Appellate Case No. 2016-002248

ORDER

Appellant has filed a notice of appeal from the circuit court's order barring evidence of Appellant's negligent hiring/training/supervision/entrustment cause of action on the grounds of res judicata. Appellant has also filed a motion to stay the trial scheduled for November 14, 2016, pursuant to Rules 205 and 241 of the South Carolina Appellate Court Rules, arguing that because Appellant has served and filed a notice of appeal, the trial court now lacks jurisdiction to proceed with the trial. Respondents filed a return opposing the motion and also argue that this court should dismiss the appeal because it is interlocutory and without merit. Appellant filed a reply.

First, after careful consideration, Respondents' request to dismiss this appeal is denied. *See* S.C. Code Ann. § 14-3-330(2)(c) (1976) (providing that "[a]n order affecting a substantial right made in an action when such order . . . strikes out an answer or any part thereof or any pleading in any action" is immediately appealable); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) ("An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial."). Nothing, however, prevents the parties from addressing the issue of appealability in their briefs.

EXHIBIT 4

Second, because the resolution of this appeal will determine whether the negligent hiring cause of action can proceed below, this appeal affects the underlying trial of this case. *See* Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . . . Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal."); *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) ("[T]he lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a 'matter[ ] affected by the appeal' under Rules 205 and 241(a)."). Accordingly, the trial court lacks the power to proceed with the trial while the appeal is pending, and Appellant's motion to stay the trial is granted.

Thomas C. Hoff
FOR THE COURT

Columbia, South Carolina

cc: The Honorable G. Thomas Cooper
The Honorable Jeff L. Hammond
S. Randall Hood, Esquire
Shawn Boyd Deery, Esquire
Whitney Boykin Harrison, Esquire
Stephanie G. Flynn, Esquire
W. Howard Boyd, Jr., Esquire

FILED
November 9, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLETON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

Consolidated Case Nos. 2010-CP-10-5520; 2010-CP-10-7233;
2012-CP-10-5559; 2013-CP-10-3733; 2013-CP-10-4175; 2013-CP-10-4176

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, and John Doe 194.....Respondents,

v.

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

Of whom,

The Bishop of Charleston, A Corporation Sole, and the
Bishop of the Robert Gugliemone, The Bishop of Charleston,
in his official Capacity, Rev. Monsignor Martin Laughlin,
former Administrator of the Diocese of Charleston, in his
Official capacity; and Robert J. Baker, former Bishop of,
Charleston in his official capacity, are.....Appellants.

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Appellants, certifies that I have this 5th **day of May, 2017**, served copies of the **Emergency Petition for Supersedeas To Stay Trial Scheduled for May 15, 2017** upon all counsel of record by causing them to be deposited in the United States mail with sufficient postage attached, addressed to:

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May5, 2017

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May 5, 2017

Via Hand Delivery

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: John Doe 2, et al. v. The Bishop of Charleston, et al.
Consolidated Case Nos. 2010-CP-105520, 2010-CP-10-7233, 2012-CP-10-5559, 2013-CP-10-3733, 2013-CP-10-4175, 2010-CP-10-4176
Our File No. 8427.252

Dear Ms. Kitchings:

Enclosed are the following materials: (1) the original and six copies of an Emergency Petition for Supersedeas to Stay Trial Scheduled for May 15, 2017, (2) the original and one copy of the Proof of Service, and (3) a filing fee check. Please file the originals and necessary copies and return the extra stamped copies to our courier. Thank you for your kind assistance.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

Richard S. Dukes

Richard S. Dukes

RSD
Enclosures

cc: Gregg Myers, Esq.
James L. Bruner, Esq.
Susan Taylor Wall, Esq.