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.

Respondents' Return to Emergency Petition By Diocese Appellants for *Supersedeas* Order To Stay Trial

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Nearly seven years after his case was filed,[1] John Doe 10 is finally scheduled to get a trial against the Diocese of Charleston and its officials over the issues arising from the priest who molested him at his parochial school and parish starting in 1983. The priest involved, Frederick Hopwood, had an extensive history of molesting children that covered decades before 1983. The Diocese defendants now seek to further delay that trial. This Reply is on behalf of John Doe 10 and all other respondents.

John Doe 10, and the other respondents, each lived in a state other than South Carolina in 2007. John Doe 10 continues to live out of state. So it is useful for John Doe 10 to know if the appellate court will assert jurisdiction over this case, and delay the trial. Simply put, he needs to know whether or not to get on an airplane to come to Charleston. Pursuant to SCACR 241(c)(3), if a stay is granted, a bond should be required to reimburse John Doe 10 for his costs incurred for travel and trial preparation.

For months, John Doe 10 has known that the price for getting a May, 2017 trial was a bifurcated trial, separating the sexual abuse itself from the professional negligence of lawyers who, starting with a 2005 class action filing, purported to represent John Doe 10 and others over that childhood sexual abuse but then implemented notice calculated *not* to inform him about the class action and his opportunity to be included or to opt out. Class counsel acted with full cooperation of the Diocese to give John Doe 10 no notice of that class action.

Knowing that the notice to class members was calculated to *exclude* John Doe 10, the Diocese, through its Petition for *supersedeas*, continues to try to assert *res judicata* against him. The Diocese appellants are completely disingenuous in contending, Petition at p. 3, that the respondents "did not participate in this class settlement opportunity and did not opt-out of the

[1] The complaint was filed September 3, 2010. The trial is scheduled to begin May 15, 2017.

class." The Diocese is well aware that notice of the class "opportunity" was designed ***not*** to reach John Doe 10 and the other respondents.

Months ago, the trial court bifurcated the discovery and trial concerning the claims for the sexual abuse itself (against the Diocese) from the discovery and trial of the abuses in conducting the class action (against the lawyer defendants and the Diocese). We acknowledge that the Diocese is indeed in both portions of the bifurcated case. In the first stage, the Diocese is alleged to have been negligent in supervising its priest who it knew, or should have known, was dangerous to children. In the second, potential stage, which may or may not be needed, the lawyer defendants are alleged to have been professionally negligent in manipulating the class action, and to have done so with the full cooperation of the Diocese.

For purposes of collateral review of the class action, the essential problem was that the lawyers defined a class without a geographic limit, so as to include John Doe 10, but then *revised* their notice program (from what was originally proposed) to limit notice essentially to only within South Carolina. Meaning that John Doe 10 had no chance of getting notice.

Class counsel justified revising the notice to disadvantage John Doe 10 and their other class clients because (they actually said this, on the record in the proceedings before bifurcation) their *adversary*, the Diocese, asked them not to give notice to their class members who lived in states other than South Carolina. The manipulations in the class action are grotesque, and extensive, are detailed in the complaint, and those class action issues are what has been bifurcated for separate trial from the tort claims related to the sexual abuse itself.[2]

[2] In the class action, the Diocese also completely cooperated so as to enable the lawyers to use the class action to benefit *themselves* as the first priority of the class action.

We cannot say that bifurcation was an abuse of discretion by the trial court, since a "full recovery"[3] against the Diocese for the sexual abuse may mitigate the professional negligence by the lawyers and the collusive conduct by the Diocese in the class action.

Argument

The Petition should promptly be denied. The Diocese contends that *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 773 S.E.2d 144 (S.C. 2015) holds that a bifurcation order is immediately appealable, apparently overruling, for example, *Fulmer v. Cain*, 670 S.E.2d 652, 654 (S.C. 2008) ("the 'mode of trial' exception to the general rule that only final orders are appealable is confined to orders which abridge a party's constitutional right to trial by jury"), and *Flagstar Corp. v. Royal Surplus Lines*, 533 S.E.2d 331, 332 (S.C. 2000) ("trial of all issues in the case in a single proceeding is not a mode of trial to which the parties are entitled as a matter of right.")

If the Diocese reads *Morrow* correctly, and *Fulmer* and *Flagstar* have been overruled, then the trial must be stayed and this interlocutory appeal permitted. Given the trial court's order as to the automatic stay, John Doe 10 cannot say that the Petition itself is procedurally improper under SCACR 241(d)(2), even though SCACR 241(d)(1) requires that "an application . . . for *supersedeas* must first be made to the lower court...."

On the merits, *Morrow* articulates that appellate review of interlocutory orders is "case by case," 773 S.E.2d at 146, suggesting a standard that seems to require the Court of Appeals to grant supersede and stay the trial, to permit the case to be reviewed, even though that full review

[3] A "full recovery" would take into account the fees and costs associated with having to bring this claim, compared to the relief the plaintiff could have gotten for the cost of return postage in the class action, had he chosen not to opt out, had the notice been calculated to include him rather than calculated to exclude him.

will include John Doe 10 promptly moving to dismiss the appeal if a *supersedeas* is granted and the appeal is permitted.

In each other respect, it appears the Diocese has overstated the holding in *Morrow*, since the actual issue in *Morrow* was not about bifurcation, but that the trial court had "severed a number of defendants from this lawsuit, ostensibly under the ***label*** of 'bifurcation.'" 773 S.E. 2d at 144 (emphasis added).[4] The rationale of *Morrow* is not about a bifurcation order, but about defendants who had been dismissed, and the substantial right of the *Morrow* plaintiffs that was implicated by the trial court's "material misunderstanding," 773 S.E. 2d at 144, of the plaintiffs' various claims, specifically, the trial court's "material misunderstanding" of vicarious liability versus direct corporate liability, 773 S.E.2d at 146. The Supreme Court determined that the error of the trial court (and Court of Appeals) in *Morrow*, "deprives [the plaintiffs] of bringing their case against the defendant of their own choosing." Id. That, not bifurcation, was the issue.

The trial court in these cases has exhibited no comparable "material misunderstanding" of any issue. When the plaintiffs sought to depose the lawyer defendants, that discovery was stayed as to those lawyer defendants, and no trial can proceed against the lawyer defendants without their being deposed, and other documents produced by them. The trial court deferred the conspiracy claim against the Diocese until such time as it is known if the plaintiff recovers his full damages in an action against the Diocese for the underlying sexual abuse itself. If the plaintiff does not recover, or receives less than a full recovery (as noted above), discovery will properly resume against the lawyers, their depositions will be taken, documents produced, and a trial will be held against those lawyers on the issues unique to the lawyers who undertook to

[4] In fact, the *Morrow* court stated explicitly that its issue was *not* bifurciation, 773 S.E.2d at 147: "We decline the Fundamental Defendants' invitation to base our decision on the manner in which the motion was characterized—one of bifurcation."

represent the respondents but did so well below the standard of care, as well as against the Diocese with regard to their own corrupt cooperation in the class action. All defendants participated in altering the class notice to be notice calculated to exclude, rather than to include, the respondents from the class action. In short, a sensible rationale underlies the trial court's orders, and those orders rest on no "material misunderstanding" of a substantive legal concept. Nor has any such "material misunderstanding" been identified.

Nor is the trial court's order on collateral review the first such order. In 2011, Circuit Judge Roger Young, in another case, entered a similar interlocutory order, also agreeing that the notice in the class action was not sufficient to apply *res judicata* to class members who got no notice. Judge Young's 2011 order is attached as Exhibit 1 to this Reply.

Like Judge Nicholson in each of his orders from 2016 and 2017, Judge Young's order in 2011 concluded that *res judicata* could not fairly apply to class members for whom notice was designed to be ineffective. Notice designed to be ineffective is hardly Due Process. And, as noted in *Hospitality Management Associates, Inc. v. Shell Oil Co.*, 591 S.E.2d 611 (S.C. 2004) itself, adequacy of representation by class counsel is an independent consideration, even though in *Hospitality Management* the court concluded, 591 S.E.2d at 622, that it "need not address" that issue. However, in the most recent South Carolina Supreme Court touching the issues in this corrupt class action, *Doe v. Bishop*, 754 S.E.2d 494, 501 (S.C. 2014), the Supreme Court stated:

> Should appellants establish on remand that they were denied due process owing to lack of notice *or because of inadequate representation* in the class action proceedings, and that the statute of limitations was tolled, they may proceed to further prosecution of their claims.

Emphasis added. The Supreme Court also clarified when the time limits for a cause of action for negligent supervision begins to run, *Doe v. Bishop*, 754 S.E.2d 494, 501 (S.C. 2014):

> Appellants allege respondents engaged in a systematic practice of secrecy and concealment of their knowledge of sexual abuse by employees, including the employee who appellants allege committed the abuse at issue. The employer's knowledge of an employee's dangerousness is an element of the tort of negligent supervision. *See Greenville Hospital System, supra.* Thus, appellants' allegations could, if proven, toll the statute of limitations.

That 2014 holding of the SC Supreme Court overrules the interlocutory 2011 order of Judge Young in civil action 2010-CP-10-5520.

In various ways class counsel deliberately placed their own interests above those of the class of clients they represented. Those methods are extensively detailed in the complaint. For purpose of this Reply we provide as Exhibit 2 only the much shorter, partial summary in the affidavit of Michael Virzi, an expert on the breaches of duty to the class. His affidavit was filed with the complaint, in 2010.

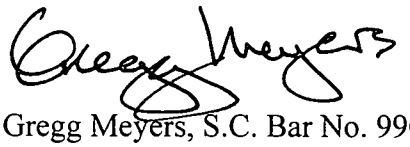
There are ample reasons for a jury to review the adequacy of representation in the class action and to review the notice given to the class, by which John Doe 10 and other respondents were each intentionally deprived of notice. While John Doe 10 would rather have one trial than multiple trials, respondents cannot say that the trial court has abused discretion in arranging, by bifurcation, a sensible program for proceeding in these cases, and making the Diocese answer first for its responsibility in the underlying sexual abuse.

Conclusion

It will be most useful if the Court of Appeals promptly informs John Doe 10 whether or not he should travel to Charleston for the scheduled trial, and whether he should present his claims in one trial or two. However, the trial preparation costs he has incurred given the

uncertainty created by the Diocese through its Petition should be ordered reimbursed by the Diocese.

Respectfully submitted,



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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

THE BISHOP OF CHARLESTON, a Corporation Sole; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, in his Official Capacity, REV. MONSIGNOR MARTIN LAUGHLIN, former Administrator of the Diocese of Charleston, in his Official Capacity; ROBERT J. BAKER, former Bishop of Charleston, in his Official Capacity; LAWRENCE E. RICHTER, JR., DAVID K. HALLER, and RICHTER AND HALLER, LLC.,

Defendants.

ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION TO DISMISS

Plaintiffs' Attorney: Gregg Meyers
Defendants' Attorney: A. Peter Shahid, Jr., for Diocese of Charleston
Susan Taylor Wall, for David Haller
James L. Bruner, for Lawrence E. Richter, Jr. and Richter and Haller, LLC
Date of Hearing: March 31, 2011

INTRODUCTION

This lawsuit was filed on July 9, 2010, and alleges a number of alternative wrong-doings by the various Defendants. Each of the Defendants responded by filing motions to dismiss which this Court heard on March 31, 2011. For the following reasons, this Court finds the motions must be denied in part and granted in part.

following:

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

The claim of fraudulent concealment fails to bar the application of the statute of limitations in this case because the Plaintiffs do not allege how the Diocese Defendants actions with regards to "The Instruction" caused the Plaintiffs to be unaware of the personal injuries they allege they suffered or of the name the alleged perpetrator. They do not allege any defect in memory or any other reason why they are unaware of their own personal injury. They do not allege that the Diocese Defendants ever made a misrepresentation or took any action that caused them to delay the filing of their lawsuit. Absent such allegations, the Plaintiffs cannot maintain a claim of fraudulent concealment in tolling the statute of limitations.[2]

Therefore, the Court finds the Plaintiffs' negligence and gross negligence claims are barred by the applicable statute of limitations and the Diocese Defendants motion to dismiss those causes of action must be granted.

UNFAIR TRADE PRACTICES ACT CLAIM

The Plaintiffs bring claims for damages alleging the Diocese violated the South Carolina Unfair and Deceptive Trade Practices Act, but fail to allege facts necessary to sustain an action under the UTPA. South Carolina's UTPA prohibits "[u]nfair methods of competition and unfair

2 For the same reasons, the cause of action for fraudulent concealment must fail and is hereby dismissed.

or deceptive acts or practices in the conduct of any trade or commerce...." S.C. Code Ann.§39-5-20 (1985). Trade or commerce is defined as "the advertising, offering for sale, sale or distribution of any services and any property ... and any other ... thing of value...." S.C. Code Ann. § 39-5-10(b) (1985). See also Foggie v. CSX Transp., Inc., 313 S.C. 98, 24, 431 S.E.2d 587, 591 (1993).

In the current case, the acts alleged by the Plaintiffs for recovery are acts of sexual abuse. The Plaintiffs allege the Defendants are subject to a claim under the UTPA because, among other reasons, they "operate schools, for which tuition is charged," and "they provide services to the public and advertise services to the public." Our Supreme Court requires that the specific acts alleged are those of trade or commerce, not the general or unrelated conduct of a defendant that might or might not qualify as trade or commerce. The acts that form the basis of the Plaintiffs' Complaints are allegations of sexual abuse, *not* acts of trade or commerce.

CIVIL CONSPIRACY AND ALL DEFENDANTS

The Plaintiffs allege a multi-faceted civil conspiracy cause of action that the Defendants all conspired to commit fraud upon the court by settling the case filed in Charleston County and re-filing it in Dorchester County in anticipation of getting favorable rulings on class certification, settlement terms, and approval of attorneys' fees. I have reviewed the voluminous allegations set forth in support of this cause of action and find it meets the requirements of pleading a valid cause of action for civil conspiracy, in particular the requirement of alleging special damages insofar as the allegations complain the Defendants proposed class membership to include the Plaintiffs, then specifically requested the Court drop nationwide publication notice. The net result was that the Plaintiffs did not have the opportunity to participate in the class settlement nor exercise their right to opt-out, and as a result they are now unable to participate in the class action settlement, while at the same time are precluded from pursing their negligence and gross negligence claims against the Diocese Defendants because of the running of the applicable

Exhibit 1 to Return

statute of limitations, which was waived by the Diocese in the Dorchester County Class Action with regards to participating class members. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore the Defendants' motion to dismiss this cause of action must be denied.

PROFESSIONAL NEGLIGENCE AND BREACH OF FIDICIARY DUTY

The Plaintiffs allege professional negligence and breach of fiduciary duty causes of action against the Attorney Defendants based upon the aforementioned facts set forth with great particularity in their Complaint. I have reviewed the voluminous allegations set forth in support of these causes of action and find they meet the requirements of pleading a valid cause of action for both. The particular duties owed and alleged to have been breach are supported by an affidavit of an expert as required by law. These claims are not precluded because of collateral estoppel or *res judicata*. Therefore, the Attorney Defendants' motion to dismiss these causes of action must be denied.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That the all of the Defendants' Motions to Dismiss on the grounds of *res judicata* are DENIED; and,
2. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross negligence because the actions are barred by the applicable statute of limitations is GRANTED; and
3. That the Diocese Defendants' Motion to Dismiss the claims of negligence and gross negligence because the actions are barred by the applicable statute of limitations is GRANTED; and

4. That the Diocese Defendants' Motion to Dismiss the cause of action for fraudulent concealment because the actions are barred by the applicable statute of limitations is GRANTED; and
5. That the Diocese Defendants' Motion to Dismiss the cause of action for Unfair Trade Practices Act is GRANTED; and
6. That all of the Defendants' Motions to Dismiss the cause of action for Civil Conspiracy is DENIED; and
7. That the Attorney Defendants' Motion to Dismiss the cause of action for Professional Negligence is DENIED; and
8. That the Attorney Defendants' Motion to Dismiss the cause of action for Breach of Fiduciary Duty is DENIED.

AND IT IS SO ORDERED.

Judge Roger M. Young, Sr.
Circuit Court Judge

Charleston, South Carolina
June 17, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

THE BISHOP OF CHARLESTON, a Corporation Sole; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, in his Official Capacity, REV. MONSIGNOR MARTIN LAUGHLIN, former Administrator of the Diocese of Charleston, in his Official Capacity; ROBERT J. BAKER, former Bishop of Charleston, in his Official Capacity; LAWRENCE E. RICHTER, JR., DAVID K. HALLER, and RICHTER AND HALLER, LLC.,

Defendants.

ORDER DENYING DEFENDANTS' MOTIONS FOR PROTECTIVE ORDERS PURSUANT TO SCRCP 26(C)

Plaintiffs' Attorney:	Gregg Meyers
Defendants' Attorney:	A. Peter Shahid, Jr., for Diocese of Charleston Susan Taylor Wall, for David Haller James L. Bruner, for Lawrence E. Richter, Jr. and Richter and Haller, LLC
Date of Hearing:	March 31, 2011

INTRODUCTION

This lawsuit was filed on July 9, 2010, and alleges a number of alternative wrong-doings by the various Defendants. Each of the Defendants responded by filing motions to dismiss which this Court heard on March 31, 2011, and which were ultimately denied in part and granted in part pursuant to the Order signed June 17, 2011.

Exhibit 1 to Return

While Defendants' Motions to Dismiss were pending, Plaintiffs served extensive discovery request on the various Defendants in the form of Admissions, Requests for Production of Documents and Interrogatories. Each Defendant filed a Motion for a Protective Order pursuant to Rule 26(C), SCRCP to stay all discovery pending disposition of Defendants' Motions to Dismiss, arguing that subjecting them to discovery prior to disposition of the motions would be unduly burdensome and expensive.

Now that this Court has disposed of Defendants' Motions to Dismiss, the pending Motions for Protection are DENIED and Defendants are ordered to respond to Plaintiffs' discovery requests pursuant to the applicable Rules of South Carolina Civil Procedure.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That Defendants' Motion for Protective Order filed on August 18, 2010 is DENIED; and,
2. That Defendant David K. Haller's Motion for Protective Order filed on August 24, 2010 is DENIED; and,
3. That Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC's Motion for Protective Order filed on November 5, 2010 is DENIED; and,
4. That the Diocese Defendants' Motion for Protective Order Re: Discovery Requests Served October 25, 2010 filed on January 18, 2011 is DENIED;

AND IT IS SO ORDERED.

Judge Roger M. Young, Sr.
Circuit Court Judge

Charleston, South Carolina
June ~~17~~, 2011

FORM 4

Exhibit 1 to Return

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. **2010-CP-10-5520**

John Doe 2 and Jane Doe 4 v **The Bishop of Charleston et al**

PLAINTIFF(S) DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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 LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2011 JUN 22 PM 12:29
JULIE J. ARMSTRONG
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

Defendants Lawrence E. Rickter, Jr. and Richter & Haller, LLC's Motion for a Protective Order from court appearances in these matters for the period of May 9 through May 23, 2011 is DISMISSED as moot.

Dated at **Charleston,** South Carolina, this ~~17th~~ 22nd day of **June**, 2011.

PRESIDING JUDGE

This judgment was entered on the day of , 20, and a copy mailed first class this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Exhibit 1 to Return

STATE OF SOUTH CAROLINA)
)
COUNTY OF COUNTY OF RICHLAND)

AFFIDAVIT

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

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

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

A. I am a lawyer licensed to practice law in South Carolina;

B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court and current Chairman of the South Carolina Bar Ethics Advisory Committee;

C. I am a frequent CLE speaker and law school guest lecturer on the topic of lawyer ethics and have been selected as one of five instructors for the South Carolina Supreme Court's Ethics School; and

D. Since leaving the Office of Disciplinary Counsel in 2006, my practice has focused almost exclusively on matters of lawyer ethics.

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

A. Complaint in the Original Jurisdiction of the Supreme Court, John Doe et al. v. Lawrence E. Richter, Jr., et al.;

B. Affidavit of Gregg Meyers, dated June 18, 2008, and filed June 18, 2008, in John Doe C, et al. v. The Diocese of Charleston, et al., Case No. 08-CP-10-1274, and attachments including:

i. Complaint, dated May 10, 2005, and filed May 12, 2005, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

ii. Complaint, dated August 10, 2005, and filed August 12, 2005, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

iii. Complaint, dated December 1, 2005, and filed December 2, 2005, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913;

iv. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66 v. The Bishop of Charleston et al., Case No. 05-CP-10-2053;

v. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #66A v. The Bishop of Charleston et al., Case No. 05-CP-10-3293;

vi. Consent Order of Dismissal Without Prejudice, dated October 19, 2006, and filed October 23, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 05-CP-10-4913; and

vii. Transcript of Record before The Honorable Diane S. Goodstein, dated August 9, 2007, in John Doe 53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

C. Amended Complaint, dated October 6, 2006, and filed October 6, 2006, in John Doe #67 et al. v. The Bishop of Charleston, Case No. 06-CP-18-1311;

D. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated October 6, 2006, and filed October 6, 2006, in John Doe #53 et al. v. The Bishop of Charleston et al., Case No. 2006-CP-18-1310. 2006-CP-18-1311, and 2006-CP-18-____ (blank line in original);

E. Motion to Certify Classes and for Preliminary Approval of Class Settlement, dated January 15, 2007, and filed January 17, 2007, in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636;

F. Settlement and Arbitration Agreement, dated January 12, 2007, and filed January 17, 2007 in John Doe #53 et al. v. The Bishop of Charleston et al., Case Nos. 2006-CP-18-1310, 2006-CP-18-1311, and 2006-CP-18-1636; and

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

i. Affidavit of Lawrence E. Richter, Jr. in Support of Plaintiffs' Petition for Attorneys Fees and Costs, with attached timesheets and expense summaries;

ii. Affidavit of David K. Haller in Support of Plaintiffs' Claim for Attorneys Fees and Costs;

iii. Affidavit of Angela Pittard, with attached timesheets;

iv. Affidavit of John P. Freeman in Support of Class Action Settlement Approval and Class Counsel's Fee Petition, with attached resume and Comparative Table of Selected Settlements; and

v. Affidavit of Lionel S. Lofton in Support of Plaintiff's Petition for Attorneys Fees and Costs, with attached timesheets.

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

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

A. failure to provide competent representation;

B. failure to act with reasonable diligence and promptness;

C. failure to promptly inform clients of decisions and circumstances with respect to which the clients' informed consent is required;

D. failure to reasonably consult with clients about the means by which the clients' objectives are to be accomplished;

E. failure to keep clients reasonably informed about the status of matters;

F. failure to explain matters to the extent reasonably necessary to permit clients to make informed decisions regarding the representation;

G. attempting to charge and charging an unreasonable fee;

H. representing clients when the representation involved a concurrent conflict of interest, without obtaining the informed consent of each client, confirmed in writing;

I. failure to exercise independent professional judgment and render candid advice in representing clients;

J. failure to expedite litigation consistent with the interests of clients;

K. lack of candor toward a tribunal; and

L. conduct prejudicial to the administration of justice.

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

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

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

A. failing to promptly seek class certification in the Charleston County class action;

B. executing Consent Orders of Dismissal in the Charleston County cases;

C. reducing the extent of notice to class members contained in Defendants' Motion to Certify Classes;

D. agreeing to reduce their clients' recovery but not Defendants' fees, if the claims exceeded the pool;

E. failing to object to the Diocese having sole, unsupervised, unfettered discretion to discover potential class members from its own files;

F. failing to seek a post-claims fairness hearing or to provide any procedure in the settlement agreement for post-claim review;

G. expressly sacrificing clients' opportunity for post-claim review by providing in the settlement agreement that the arbitrator shall have sole discretion in awards, not subject to objection, review, appeal or suit and that claimants, by participating in the claims process, expressly waive the right to appeal;

H. participating in negotiations of the claims of several opted-out class members, resulting in an agreement that payment of such claims may come from the settlement pool available to class members;

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

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

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

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

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

A. each and every entry on all 68 pages of billing records is a round, even-hour increment or an entry of ".5" hours;

B. countless round-number or .5-hour time entries at "12:00:00 AM"—including multiple tasks by the same person at the same time—while other entries indicate exact times;

C. a 10-hour time entry for "Oversight and Review" by "LER" on the 30th day of each month for 3 and a half years, including the same 10-hour time entry for "Oversight and Review" by "LER" just nine days after the first activity in the case in July 2003;

D. a 2-hour time entry for "Bookkeeping" on the 30th day of each month;

E. a 3-hour time entry for "Photocopying / Monthy" at irregular intervals but always exactly 3 hours, including one such entry when no other work had been performed in the previous month;

F. three 5-hour time entries (one each for "DKH," "LER," and "Clerk") for "Legal Research" on the 30th day of each month, including January 30, 2007, within 2 days of the end of the case (and after which no further time is recorded except 7 hours of faxing by "Staff" and 14 hours of emailing by "DKH" & "LER" over the next 2 days);

G. time entries on days that do not exist: February 30, 2004, and February 30, 2005;

H. a 16-month period, from September 2003 through December 2004, when only 5.5 hours of specific work is entered, yet 426 hours is entered in the same repeated, identical, rote entries of "Oversight and Review," "Bookkeeping," "Legal Research," and "Photocopying / Monthly" described hereinabove;

I. 3 .5-hour time entries for drafting 3 Certificates of Service at the same time on the same day (this set of entries occurs multiple times);

J. 12 *consecutive* 1-hour time entries by "LER" for work on 12 different documents, all at specific times beginning at "07:38:38 AM" on "10/26/06" but extending consecutively over a period of approximately 1 hour and 49 minutes ending at "09:27:30 AM," with many 1-hour entries within less than a minute of each other;

K. numerous sets of entries similar to the 12 described in the immediately preceding subparagraph (J), such as 3 consecutive 1-hour time entries by "LER" for work on 2 documents, all at specific times beginning at "03:54:19 PM" but extending consecutively over a period of 1 minute and 13 seconds;

L. entries of exactly 20 hours for drafting each discovery document;

M. multiple instances of more than one 20-hour time entry for the same person ("DKH") on the same day;

N. 27.5 hours (in 55 increments of .5 each, all at "12:00:00 AM") in one day by "DKH" for emailing to "David K. Haller";

O. 60 hours (10 by "LER" and 50 by "DKH") for amending complaints that ultimately contained very little amendment, including one which apparently changed only the county in the caption and the date at the end;

P. multiple instances of one person ("DKH" in some instances, "LER" in others) of billing more than 24 hours in a day;

Q. 568.5 hours of entries appended to the end of the (otherwise chronological) timesheets, for dates ranging from 2004 through 2007, 500 hours of which is in whole multiples of 10 and expressed in date ranges rather than in dates and times, including 3 130-hour single entries by "DKH" for one- and two-week time periods in June and October 2006; and

R. one of the above-referenced 130-hour single entries by "DKH" for the eight-day time period of October 4-11, 2006, during which period "DKH"

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

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

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

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

FURTHER AFFIANT SAYETH NOT.

Michael J. Virzi, Esq.

State of South Carolina
County of Richland

Sworn and subscribed before me
This 10th day of December, 2008

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

Attachment B

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

Pursuant to SCACR 240(d), by my signature below, I certify that I have on May 8, 2017, caused to be served on cunsel listed below a copy of the

including its attachments, by causing a copy of the document to be placed in the United States mail, first-class postage pre-paid, addressed to the following counsel of record:

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PO Box 1431
Charleston SC 29401

In addition, a pdf copy of the document was emailed to:

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Done May 8, 2017.

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¤ MEMBER SC & VA BAR

May 8, 2017

Via Hand Delivery

Jenny Abbott Kitchens
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia SC 29201

Re: Return to Petition for Supersedeas
Appellate Case No. 2017-001092
John Doe 2 et al. Respondents v.
The Bishop of Charleston et al. Appellants

Dear Ms. Kitchens:

Enclosed please find:

the original of a proof of service,
the original and six copies of a Return to Petition for Emergency Supersedeas

The Court asked me to file these documents by May 9. I am arguing in the Court in another case on May 9, so have the luxury of being able to myself deliver the original and copies of the petition.

Please file these documents with the court. Thank you very much.

Respectfully submitted,

Gregg Meyers

c: Counsel of Record, with encl.