THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON 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

Appellate Case No. 2017-001092

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,
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,
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,

And,

Lawrence E. Richter, Jr., David K. Haller,
and Richter and Haller, LLC..... are Respondents.

RESPONDENTS/LAWYER DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF THE COURT'S ORDER DISMISSING APPEAL

Pursuant to the Court's Order of May 24, 2017, Respondents/Lawyer Defendants Lawrence E. Richter, Jr., Richter & Haller LLC, and David K. Haller (collectively, the "Lawyer Defendants") submit this supplemental brief supporting the Court's order of May 11, 2017 dismissing the instant appeal for want of appellate jurisdiction. As set forth more fully below, the orders at issue in this case are not immediately appealable, and the Court's decision to dismiss the appeal was entirely correct.[1]

INTRODUCTION

On the eve of trial, the Diocese Defendants attempted to appeal two interlocutory orders that manifestly are not immediately appealable, but rather are classic interlocutory orders designed to organize the issues for trial. Recognizing that neither order is immediately appealable, this Court correctly dismissed the appeal so that these cases could proceed to jury trial as ordered by the Circuit Court.

The first order appealed—the Order Bifurcating Trials[2]—is an order designed to avoid jury confusion and prejudice by bifurcating two distinct sets of issues into separate trials. Plaintiffs in the instant cases are adults who claim that, when they were minors, they were victims of sexual abuse by various priests of the Roman Catholic Diocese of Charleston. Plaintiffs recognize that

[1] As an initial matter, in their petition for rehearing, the Diocese Defendants continue to argue that the Lawyer Defendants are not proper respondents in this appeal. This position is manifestly without merit. The Lawyer Defendants specifically moved for both of the orders on appeal. (Lawyer Defendants' Motion to Bifurcate, attached hereto as Exhibit A; Lawyer Defendants Rule 59(e) Motion, attached hereto as Exhibit B.) It is therefore the Lawyer Defendants who have the primary interest in defending on appeal the orders they requested, and they are proper Respondents with standing to oppose the attempted appeal.

[2] The Diocese Defendants have also appealed the Circuit Court's Amended Order Bifurcating Trial, which denied the Diocese Defendants Rule 59(e) motion to reconsider the original Order and made a few modifications based on Plaintiffs' request. The Amended Order Bifurcating Trial is not immediately appealable for the same reasons as the original Order.

there was a prior class action brought by victims of sexual abuse against the Diocese Defendants, which class action was ultimately settled and dismissed with prejudice, but Plaintiffs contend that they are not bound by the prior class action because notice of the class action was inadequate. Thus, the instant cases present two distinct sets of claims. The primary claims are substantive sexual abuse claims brought by Plaintiffs against the Diocese Defendants. The alternative claims are legal malpractice claims brought by Plaintiffs against the Lawyer Defendants, who served as class counsel, and a conspiracy claim against the Diocese Defendants and the Lawyer Defendants based on the handling of the class action. By the express terms of the Complaints, the alternative claims are "irrelevant" if Plaintiffs are allowed to pursue their primary claims against the Diocese Defendants. (*See, e.g.*, Compl. in 2010-CP-10-5520 at ¶ 23, Exhibit C.) In the Order Bifurcating Trials, the Circuit Court ruled that the primary and alternative claims should not be tried in the same proceeding; rather, the primary claims should be tried first, and the alternative claims second (if still necessary). The Supreme Court has made it very clear that trial courts have wide discretion under Rule 42(b), SCRCP to separate issues for trial, and that orders separating issues for trial are not immediately appealable. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000) ("An order granting bifurcation of issues for trial simply does not strike to the heart of this Court's traditional analysis of claims of denial of a mode of trial."). Therefore, the Diocese Defendants' appeal should be dismissed.

The second order appealed—the Order on Limited Collateral Review[3]—is an order designed to guide the parties with respect to the effect of a previous class action on Plaintiffs'

[3] The Diocese Defendants have also appealed the Circuit Court's Amended Order on Limited Collateral Review, which denied the Diocese Defendants' Rule 59(e) motion to reconsider the original Order and made a few modifications based on Plaintiffs' request. The Amended Order on Limited Collateral Review is not immediately appealable for the same reasons as the original Order.

claims. The Circuit Court addressed this issue by conducting a limited collateral review of the prior class action, as required by the Supreme Court's decision in *Hospitality Management Assocs. v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004), and concluded that, ***as a general matter***, notice to out-of-state Plaintiffs appeared to be inadequate. The Circuit Court, however, expressly did not determine the viability of any particular Plaintiff's claim or any defenses thereto, but rather permitted the parties to make such motions and arguments as they deemed appropriate at or before each Plaintiff's trial. Because the Order on Limited Collateral Review did not reach the merits of any particular Plaintiff's claim, it is not immediately appealable, and the appeal should be dismissed.

BACKGROUND

This appeal involves a series of cases, the first of which was filed in April 2009, all alleging that, as minors, Plaintiffs were victims of sexual abuse committed by priests of the Roman Catholic Diocese of Charleston, or brought by parents or spouses alleging that they lost consortium with victims of such abuse.[4]

In 2007, before the instant cases were filed, the Diocese Defendants settled a class action involving sexual abuse claims. (Final Order Approving Class Action Settlement, without forms attached, as Exhibit D.) The Lawyer Defendants were class counsel in that case. (*Id.*) Under the terms of the settlement, victims known to the Diocese received direct notice, and notice was published in a series of South Carolina and nearby newspapers for victims not known to the Diocese. (*Id.*) Abuse victims could participate in the settlement by recounting their abuse to an

[4] The first case was filed in federal court as Case No. 2:09-cv-00955-CWH and ultimately dismissed for lack of federal jurisdiction and re-filed in state court. This appeal involves eight (8) sexual abuse cases consolidated for purposes of discovery.

arbitrator selected by the parties in a non-adversarial process (i.e., they were not subject to cross-examination by the Diocese), who then awarded them compensation based on the level of abuse suffered within compensation ranges previously agreed to by the parties. (*Id.*) Following the settlement, the claims of the class were dismissed with prejudice. (*Id.*)

Plaintiffs in the instant cases contend that they are not bound by the prior class action settlement because the notice provided to the class was inadequate as to Plaintiffs who lived outside of South Carolina because notice was only published within and near the border of South Carolina.[5] (See e.g., Compl. in 2010-CP-10-5523 at ¶ 22, Exhibit C.) Thus, Plaintiffs argue that the prior class action should not prevent them from pursuing their sexual abuse claims against the Diocese Defendants.

Recognizing the potential that their sexual abuse claims could be barred, Plaintiffs also brought, expressly in the alternative, legal malpractice claims against the Lawyer Defendants and an alternative civil conspiracy claim against all Defendants. The basic theory of the alternative claims is that the Defendants improperly conspired to avoid giving notice of the settlement to out-of-state victims and that Plaintiffs were harmed because their claims against the Diocese were barred by the class action.

In preparing these cases for trial, the Circuit Court issued two case-management orders that the Diocese Defendants now attempt to appeal. ***First***, the Circuit Court ordered that the primary claims and alternative claims be bifurcated into separate trials under Rule 42(b), SCRCP, to avoid jury confusion and prejudice, which reasons were explained in a written order. (Order Bifurcating

[5] In addition, one of the Plaintiffs, John Doe 193, claims that he lived in-state at the time of the class settlement notice but had repressed his memories of the abuse and therefore could not participate in the settlement. He contends that he is not bound by the settlement because his repressed memory precluded him from receiving adequate notice.

Trials and Amended Order Bifurcating Trials, attached hereto as Exhibit E.) ***Second***, applying *Hospitality Management*, the Circuit Court opined that, ***as a general matter***, it appeared that notice was not reasonably calculated to reach out-of-state Plaintiffs and that out-of-state Plaintiffs could therefore pursue sexual abuse claims against the Diocese Defendants. (Order on Limited Collateral Review and Amended Order on Limited Collateral Review, attached hereto as Exhibit F.) The Court, however, did not apply this opinion to any particular Plaintiff and instead left open for trial (or pre-trial motion) any argument as to whether a specific Plaintiff should or should not be barred by the prior class action. (*Id.*) The Court set a trial date of May 15, 2017 for the first of these consolidated cases.

On the eve of trial, the Diocese Defendants filed the instant appeal of the Order on Limited Collateral Review and the Order Bifurcating Trials. The Lawyer Defendants promptly moved to dismiss the appeal for lack of appellate jurisdiction. This Court granted the motion by order dated May 11, 2017. The Diocese Defendants now petition for rehearing, contending that the orders were immediately appealable. Because the Court's decision to dismiss the appeal was correct in the first instance, the petition for rehearing should be denied.

ARGUMENT

As relevant here, under S.C. Code Ann. § 14-3-330(1) and (2), this Court has appellate jurisdiction over intermediate judgments that (1) "involv[e] the merits" or (2) "affect[] a substantial right" and that either effectively determines the action or strikes out part of a pleading. To satisfy this standard, an interlocutory order must "***finally*** determine[] a substantial matter." *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011) (emphasis added). For example, "when a trial court's order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable" because of the finality of such a

deprivation. *Flagstar*, 341 S.C. at 72, 533 S.E.2d at 333. In sum, unless an interlocutory order "has the effect of removing . . . material issues from the case," it is not immediately appealable. *Thornton*, 391 S.C. at 307, 705 S.E.2d at 480.

A. The Order Bifurcating Trials Is Not Immediately Appealable

South Carolina trial courts have wide discretion to order a separate trial of any issue or issues in a case "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy." Rule 42(b), SCRCP. The only express limitation on a trial court's discretion is that any order providing for separate trials must "preserv[e] inviolate the right of trial by jury." *Id.*

Here, the Circuit Court carefully analyzed the factors set forth in Rule 42(b) and concluded that it would be prudent to separate the primary sexual abuse claims from the alternative legal malpractice and conspiracy claims. (Ex. F.) In its written order, the Court explained its reasoning in detail, including its determination that the Rule 42(b) goals of convenience, avoidance of prejudice, and economy would be best served by separate trials. (*Id.*) The Court preserved all parties' right to a jury trial, as both the primary and alternative claims would ultimately be tried to a jury.

The Circuit Court's order does not implicate any party's right to a jury trial, and it is therefore not immediately appealable. As the Supreme Court held in *Flagstar*:

> **An order granting bifurcation of issues for trial simply does not strike to the heart of this Court's traditional analysis of claims of denial of a mode of trial.** That analysis proceeds by determining whether or not a party is erroneously denied a trial by jury in a law case, or is erroneously required to proceed before a jury in an equity case. In this case, no party is denied the right to a trial by jury. Moreover, after trial, [the party opposing bifurcation] will be free to advance on appeal that the trial judge abused his discretion in ordering bifurcation and that it has thereby been effectively deprived

> of a fair and/or fully informed fact finder. An abuse of discretion, if any, by the trial court in its ruling can be corrected at that time.
>
> ....
>
> **In short, 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.**

Flagstar, 341 S.C. at 71-72, 533 S.E.2d at 333 (emphasis added). Because the Circuit Court's order merely bifurcates issues for trial and does not deprive any party of a jury trial, the order is not immediately appealable, and this appeal was properly dismissed.

In their petition for rehearing, the Diocese Defendants appear to make two arguments in favor of the appealability of the Order Bifurcating Trials. First, they argue that the Supreme Court's decision in *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015) somehow changes the analysis. Not so. In *Morrow*, the trial court ruled that a nursing home Plaintiff could only pursue the nursing home corporate parent if it first prevailed at trial against the nursing home. In so doing, the trial court extinguished the Plaintiff's claim of direct negligence liability against the corporate parent. Because the trial court extinguished one of the Plaintiff's claims, the Supreme Court held that the order was immediately appealable. In so ruling, the Supreme Court emphasized that the trial court has not merely ***bifurcated*** the Plaintiff's claims into separate trials, which would not be immediately appealable; rather the trial court had actually ***extinguished*** one of the Plaintiff's claims, which made the order appealable. *Id.* at 539-40, 773 S.E.2d at 146-47 (emphasizing that the trial court's order was not a standard bifurcation order, but rather in the nature of a grant of summary judgment). In the instant cases, the Circuit Court has not extinguished any claims. Instead, it has simply bifurcated them into separate trials in accordance with the distinctions made by the Plaintiffs (who, notably, do not oppose bifurcation). Therefore, under *Flagstar*, the bifurcation order is not immediately appealable.

Second, the Diocese Defendants argue that the Order Bifurcating Trials affects their substantial rights because the Diocese Defendants could theoretically be subjected to two trials. Our Supreme Court, however, answered this concern directly in *Flagstar*, holding that "**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**." 341 S.C. at 72, 533 S.E.2d at 333 (emphasis added). Thus, the Diocese Defendants do not have a right to trial of all issues in a single proceeding, much less a ***substantial*** right subject to immediate appeal. Moreover, it is important to note that these two potential trials would be on completely separate issues: the first trial would concern only the Plaintiffs' allegations that the Diocese Defendants were negligent in allowing them to be sexually abused by Diocesan clergy; the second trial would concern whether, decades later, the Diocese Defendants and Lawyer Defendants conspired to harm the class in the prior class action. Thus, the Diocese Defendants' claim that they would have to "try the same case twice" is patently false. So is the Diocese Defendants' claim that they would lack meaningful appellate review. Errors in trial management are routinely corrected by a post-trial appeal, and, if necessary, the cases is re-tried.[6] There is nothing meaningless about our normal appellate practice, and the Diocese Defendants' attempt to create a parade of horribles should be disregarded.

* * * * *

In sum, the Diocese Defendants have given the Court no valid reason to reconsider its determination that the Order Bifurcating Trials is not appealable. To the contrary, the Order

[6] Contrary to the Diocese Defendants' argument, it is not a foregone conclusion that the Diocese Defendants (or Plaintiffs) would be unable to immediately appeal the result of the first trial. The appealability of any result would depend on the nature of the result and require analysis under S.C. Code Ann. § 14-3-330. It would be speculative to attempt to guess at whether the result would be appealable before the trial is held and the orders emanating from it are examined.

Bifurcating Trials is a garden-variety order separating issues for trial under Rule 42(b), SCRCP, and is not subject to immediate review. Therefore, the petition for rehearing should be denied.

B. The Order on Limited Collateral Review Is Not Immediately Appealable

The Order on Limited Collateral Review is not immediately appealable because it does not finally determine any issues in any individual cases. It does not grant summary judgment or any other dispositive relief. Indeed, to the contrary, all parties moved for summary judgment in these cases, and all parties' motions for summary judgment were denied *in toto*. (Orders Denying Summary Judgment, attached hereto as Exhibit G.) Instead, the Order on Limited Collateral Review merely outlines the Court's thoughts on the adequacy of the underlying class action court's notice plan under *Hospitality Management*. However, the Court expressly left open the preclusive effect (or not) of the underlying class action on any particular case. (Ex. F.)

The Court's decision not to address any particular case at this point was purposeful and proper. As an initial matter, it was the Lawyer Defendants who moved for the limited collateral review, and the Lawyer Defendants did not ask the Court to address any particular case. (Motions for Limited Collateral Review, Exhibit H; Rule 59(e) Motion, Exhibit B.) Thus, the Circuit Court ruled on the issues before it and properly declined to reach issues not presented. Moreover, as set forth in the Order on Limited Collateral Review, the Court has not decided how it will consider on an individual basis the facts of each Plaintiff's case.

As the Court noted, although the underlying class action Court's notice plan was not designed to reach out-of-state Plaintiffs, any particular out-of-state Plaintiff could still have received adequate notice though other means, including direct notice from the Diocese Defendants,

publication in newspapers in and near South Carolina,[7] and extensive coverage in media outlets around the world.[8] (Ex. F at 4-5.) Thus, the Order on Limited Collateral Review is not a final determination of the effect of the prior class action on any individual Plaintiff's case, which determination the Circuit Court expressly left open.

Without a final determination in any individual Plaintiff's case, appellate jurisdiction is lacking. As the Supreme Court has made clear, orders that merely require a party to proceed to trial without effecting a final resolution of any issues are not immediately appealable. *See, e.g.*, *Mid-State Distribs. v. Century Imports*, 310 S.C. 330, 333-35, 426 S.E.2d 777, 780 (1993) (holding that interlocutory order is not immediately appealable unless it effects a final determination of a significant issue). Here, the issue of whether the prior class action bars any individual Plaintiff remains open for resolution by pre-trial motion or at trial. Therefore, the Order on Limited Collateral Review is not immediately appealable, and the appeal should be dismissed.

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[7] For example, some of the Plaintiffs lived near Augusta, Georgia. The class action court directed that notice be published in the *Augusta Chronicle*. Accordingly, there is an open question as to whether those Plaintiffs received adequate notice.

[8] *See, e.g., S.C. Case Grows To More Than 80 Victims*, Grand Rapids (Mich.) Press, Sept. 1, 2007, at D8; *S.C. Abuse Claims Number Nearly 80*, Baton Rouge (La.) Advocate, Aug. 21, 2007, at A2; *Church Faces More Sex Abuse Claims*, Bucks County (Pa.) Courier Times, Aug. 20, 2007, at A2; *Diocese Investigated*, Kansas City (Mo.) Star, Mar. 10, 2007, at A9; *S.C. Diocese To Pay $12M To Settle Sex Abuse Claims*, Nat'l L.J., Feb. 5, 2007, at 16; *To The Point*, Investor's Bus. Daily, Jan. 29, 2007, at A02; *Diocese In £6m Child-Sex Payout*, Yorkshire (England) Post, Jan. 27, 2007; *Diocese To Settle Sex Abuse Claims*, St. Louis PostDispatch, Jan. 27, 2007, at A23; *$12 Million From Diocese To Settle Sex Abuse Claims*, South Fla. Sun Sentinel, Jan. 27, 2007, at 3A; *Catholic Diocese Prepared To Settle Sex Abuse Claims*, Press of Atlantic City (N.J.), Jan. 27. 2007, at A8; *In The Nation*, Philadelphia Inquirer, Jan. 27, 2007, at A06; *Catholic Diocese Announces Sex Abuse Settlement*, Orlando Sentinel, Jan. 27, 2007, at A10; *Abuse Suits Settled*, Akron (Ohio) Beacon Journal, Jan. 27, 2007, at A3; *Diocese To Settle Claims Of Childhood Sex Abuse*, Deseret Morning News (Salt Lake City, Utah), Jan. 27. 2007, at A03; *Charleston Diocese Settles Sex Abuse Claims Of Suit*, Fort Wayne (Ind.) Journal-Gazette, Jan. 27, 2007, at A5; *Church Pays Out On Pervs*, Mirror (London, England), Jan. 27, 2007, at 2; *Catholic Leaders Earmark $12m For Sex Abuse Suit*, Monterey County (Cal.) Herald, Jan. 27, 2007; *South Carolina Diocese To Settle Claims*, N.Y. Times, Jan. 27, 2007, at A14.

The Diocese Defendants offer no meaningful argument to the contrary in their petition for rehearing. Instead, they argue only that the Order on Limited Collateral Review "allows claims to proceed against [the Diocese Defendants]" that the Diocese Defendants contend should be barred. Again, however, the Order on Limited Collateral Review does not make a final determination as to whether any Plaintiff's claim is—or is not—barred. The Diocese Defendants remain free to make *res judicata* arguments in each individual case by way of pre-trial motion, directed verdict motion, and/or to the jury. Thus, as set forth above, the Order does not affect any substantial rights; this Court correctly determined that it was not immediately appealable; and the petition for rehearing should be denied.

CONCLUSION

For the foregoing reasons, the Diocese Defendants' petition for rehearing should be DENIED.

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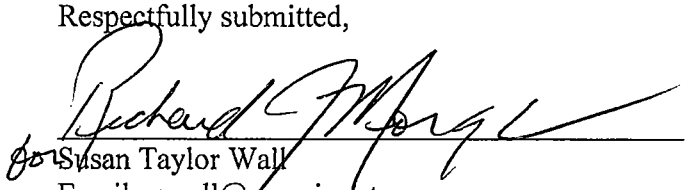
Respectfully submitted,



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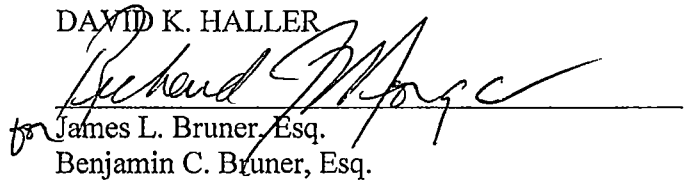

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June 7, 2017
Charleston, South Carolina

EXHIBIT A

(LAWYER DEFENDANTS' MOTION TO BIFURCATE)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS 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 **LAWYER DEFENDANTS' MOTION FOR SEPARATE TRIALS AND PROPOSED TRIAL SCHEDULE**
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

Pursuant to Rules 18 and 42(b), SCRCP, Defendants Lawrence E. Richter, Jr., Richter & Haller LLC, and David K. Haller (collectively, the "Lawyer Defendants") hereby move for

separate trials from the Diocese Defendants in the various *Doe* cases before the Court and request that the claims against the Diocese Defendants be tried first before any trial of the claims against the Lawyer Defendants.

CATEGORIES OF CASES

While all of the *Doe* cases arise out of sexual abuse allegedly committed by agents of the Diocese Defendants, the cases logically fit into three categories: (1) claims by in-state plaintiffs against the Diocese Defendants alone (the "In-State Cases"), (2) claims by the repressed memory plaintiff (John Doe #193) against the Diocese Defendants and the Lawyer Defendants (the "Repressed Memory Case"), and (3) claims by the out-of-state plaintiffs against the Diocese Defendants and the Lawyer Defendants (the "Out-of-State Cases"). Each category involves different issues:

- ***In-State Cases (6).*** These six (6) cases are pending only against the Diocese Defendants because the plaintiffs were squarely within the notice area of the underlying class action and thus cannot and do not argue that the Lawyer Defendants harmed them in any way.

- ***Repressed Memory Case (1).*** This case involves an in-state plaintiff who claims that he had a repressed memory of sexual abuse at the time of the underlying class action settlement. A threshold issue in this case is whether the plaintiff has made out a *prima facie* case of repressed memory. The Diocese Defendants have submitted deposition transcripts to the Court that bear on that issue.

- ***Out-of-State Cases (6).*** These six (6) cases are pending against both sets of defendants. The plaintiffs' primary claims are against the Diocese Defendants for the underlying sexual abuse. The plaintiffs have asserted alternative claims against the Lawyer Defendants in the event that Plaintiffs are barred by *res judicata* from proceeding against the Diocese Defendants.

OUTSTANDING PRE-TRIAL MOTIONS AND ISSUES

Before trial of any of the pending cases, there are a number of outstanding dispositive and discovery issues to be decided. In the context of proposing an orderly trial schedule, the Lawyer Defendants would request that the following matters be ruled upon before trial:

Lawyer Defendants' Motion for Summary Judgment. The Lawyer Defendants have filed a motion for summary judgment that would fully dispose of the claims against them. These motions are fully briefed and have been heard by the Court. The Lawyer Defendants also filed a supplemental brief advising the Court of the recent dismissal of a similar case by the federal court, Judge C. Weston Houck.

Limited Collateral Review. Should the Court not grant the Lawyer Defendants' motion for summary judgment, because a core issue in these cases is whether the various plaintiffs are bound by the underlying class action settlement, the Lawyer Defendants have requested that the Court conduct a limited collateral review, before trial, as set forth in *Hospitality Management* and issue a ruling as to whether the plaintiffs are bound by the underlying settlement.

Stay Cases Against the Lawyer Defendants. At the hearing on the motions for summary judgment, the Court raised the issue of staying the claims against the Lawyer Defendants while Plaintiffs proceed against the Diocese Defendants. Should the Lawyer Defendants' Motions for Summary Judgment be denied, the Lawyer Defendants request that the Court stay the claims against them until after trial against the Diocese Defendants. The Lawyer Defendants are formalizing that request in this filing as a Motion for Separate Trials.

Deposition of Peter Shahid. Should the Court determine that any claims against the Lawyer Defendants proceed, the Lawyer Defendants request that the Court resolve the issue of whether Peter Shahid may be deposed, which is pending before the Court in the form of Mr. Shahid's motion for a protective order. One of the claims against the Lawyer Defendants is that they conspired with the Diocese Defendants in the underlying class action. The Lawyer Defendants' primary contact with the Diocese Defendants in that action was Peter Shahid. Indeed, Bishop Baker, who was Bishop of Charleston during the pendency of the class action, has testified that he relied on Mr. Shahid to handle negotiations of the class action settlement, to

make certain strategic decisions, and that he was not involved in determining the scope of notice. (Baker Dep. at 16-17, 27-28, 46-51.) Accordingly, Mr. Shahid is clearly a material witness as to whether, in fact, the Lawyer Defendants conspired with the Diocese. The Lawyer Defendants cannot meaningfully prepare for trial without taking Mr. Shahid's deposition and would therefore request that the Court deny his motion for a protective order and require that he submit to a deposition expeditiously.

Repressed Memory Case. At the last hearing, the Court stated that it would determine whether Plaintiff made out a *prima facie* showing that he had a repressed memory of sexual abuse at the time of the underlying class action settlement and notice period. If the Court concludes that the plaintiff has made such a showing, then his case should proceed to trial against the Diocese Defendants alone on two core issues: (1) whether he in fact had a repressed memory so as to toll the statute of limitations, and (2) if so, whether the Diocese Defendants are liable for the underlying sexual abuse. There is no practical way of including the Lawyer Defendants in that proceeding, as Plaintiff's claims against them are only ripe if he is somehow precluded from suing the Diocese Defendants. As noted in the Lawyer Defendants' prior filings, this is a logical and legal impossibility, as a person with a repressed memory could not have received constitutionally sufficient, meaningful notice of the underlying settlement. Thus, if the plaintiff has a repressed memory, his only claims are against the Diocese Defendants, and they are the only ones against whom his claims should be tried.

If the Court concludes that plaintiff has <u>not</u> made a *prima facie* showing of a repressed memory, then the Repressed Memory Case becomes merely another In-State Case (as the repressed memory plaintiff lived in South Carolina at the time of the settlement) and should be tried as such against the Diocese Defendants only.

Treatment of Augusta Plaintiffs. It is undisputed that several of the plaintiffs in the Out-of-State cases lived in or around Augusta, Georgia at the time of the underlying class action settlement. Because notice of the settlement was published in the *Augusta Chronicle*, these individuals are in the same position as the in-state plaintiffs—that is, they were within the geographic scope of the notice provided. The cases filed by these plaintiffs should therefore be treated as In-State Cases, and the Lawyer Defendants should be dismissed from them.

PROPOSED TRIAL SCHEDULE

In the interest of proceeding in an orderly and expeditious fashion, the Lawyer Defendants propose the following trial schedule (without prejudice to the Lawyer Defendants' pending Motion for Summary Judgment):

April 18, 2016:	Begin trial(s) of In-State Cases. These cases should go first because they are the most straightforward: they involve one set of defendants and a discrete set of issues. *See Doe v. Bishop of Charleston*, 407 S.C. 128, 754 S.E.2d 494 (2014).
May 2, 2016:	Begin trial of Repressed Memory Case against the Diocese Defendants. This case should go next, as it is essentially an in-state case with one added issue: whether the plaintiff had a repressed memory at the time of the underlying settlement.
May 9, 2016:	Begin trial(s) of Out-of-State Cases against the Diocese Defendants.
June 13, 2016:	If necessary, begin trials against the Lawyer Defendants.

MOTION FOR SEPARATE TRIALS

As noted above, the Lawyer Defendants request that the claims against the Diocese Defendants and the Lawyer Defendants be tried separately. Under the rules, 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, as explained in more detail below, 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, attempting to present the claims against the Diocese Defendants and Lawyer Defendants to a jury in a unified proceeding would be hopelessly confusing and impractical.

Expediency. One of the most common reasons for separate trials if to speed the resolution of the case. Indeed, 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). Here, as the claims against the Lawyer Defendants are **explicitly alternative** to the claims against the Diocese Defendants, a finding of liability against the Diocese Defendants would negate the claims against the Lawyer Defendants. This strongly militates in favor of separate trials, as the cases could resolve the cases entirely through a set of short trials against the Diocese Defendants alone, rather than a series of much longer and more complicated trials against both sets of defendants.

Avoidance of Prejudice. 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 alleged acts of sexual abuse committed by agents of the Diocese Defendants against the plaintiffs were so gruesome and abominable that forcing the Lawyer Defendants to sit at the same table as co-defendants would prejudice the jury against them. The jury is likely to be overwhelmed with revulsion at the alleged acts of the Diocese Defendants' agents and would hold everyone on the defense side liable regardless of their role. This would be grossly unfair, as the Lawyer Defendants did not abuse anyone.

- **Second**, attempting to try sexual abuse claims against the Diocese Defendants and **alternative** legal malpractice claims against the Lawyer Defendants in the same proceeding is all but certain to hopelessly 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 horrific 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. This is far more than a jury can be reasonably expected to handle in a single proceeding, and forcing a jury to do so is highly 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, it is only fair that the Lawyer Defendants be accorded separate trials from the Diocese Defendants to avoid the substantial prejudice they would incur in a unified proceeding.

Convenience. Courts typically hold 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 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 involves in each are worlds apart, it would be far more convenient to try them separately. Likewise, asking a jury to consider, at the same time, horrific sexual abuse and complicated legal malpractice questions will necessarily and unfairly confuse the jury. For all of these reasons, convenience dictates that the claims against the Diocese Defendants and the Lawyer Defendants be tried separately.

CONCLUSION

WHEREFORE, based on the pleadings, evidence, discovery materials to date, arguments of counsel and applicable law, the Lawyer Defendants respectfully request that, subject to the Court's ruling on the Lawyer Defendants' Motion for Summary Judgment, the Court order that the claims against the Diocese Defendants and the Lawyer Defendants be tried separately and that the trials be set in accordance with the schedule set forth above.

Respectfully submitted,

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October 26, 2015

Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON 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.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-10-5520 **CERTIFICATE OF SERVICE**
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

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

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

I certify that a copy of the foregoing **LAWYER DEFENDANTS' MOTION FOR SEPARATE TRIALS AND PROPOSED TRIAL SCHEDULE** has been served upon the

following counsel of record via email and by mailing a copy of the same to them via U.S. Mail, postage prepaid and addressed as shown below this 26 day of October, 2015:

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EXHIBIT B

(RULE 59(e) MOTION)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON 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.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-10-5520 **LAWYER DEFENDANTS' NOTICE OF MOTION AND RULE 59(E) MOTION**

Pursuant to Rule 59(e), SCRCP, Defendants Lawrence E. Richter, Jr., Richter & Haller LLC, and David K. Haller (collectively, the "Lawyer Defendants") move to alter to amend the Court's Order filed on December 8, 2015, which the Lawyer Defendants received on December 14, 2015, denying their motion for limited collateral review and summary judgment **to the limited extent that the Order did not rule upon the request for a limited collateral review of the settlement in the underlying class action proceedings.**

As a threshold question, the Court must conduct a pre-trial limited collateral review to determine whether Plaintiffs are or are not bound by the settlement of the underlying class action. Accordingly, the Lawyer Defendants request that the Court amend its Order to include a limited

collateral review of the underlying class action and a determination of whether Plaintiffs are barred by the underlying class action settlement.

ARGUMENT

In the Complaint, the Plaintiffs' claims against the Lawyer Defendants are expressly alleged to be alternative to their primary sexual abuse claims against the Diocese Defendants. Indeed, 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 that 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.

In *Doe v. Bishop of Charleston*, 407 S.C. 128, 754 S.E.2d 494 (2014), the Supreme Court emphasized the necessity of a limited collateral review in these very cases. Specifically, the Court held that it was error for the lower court to dismiss one of the in-state cases without first conducting a limited collateral review to determine the preclusive effect of the prior class action settlement

and remanded that case for further proceedings. *Id.* at 128, 754 S.E.2d at 499. The purpose of the remand was to conduct such a review. *Id.* at 140, 754 S.E.2d at 501.

Moreover, from a practical perspective, this case cannot be tried without a ruling as to the preclusive effect of the underlying class action settlement. The limited collateral review will give rise to its own issues and defenses that the parties will present at trial. Without a ruling, the most fundamental legal issues are left unanswered and the case cannot be submitted to the jury without a legal foundation. Accordingly, to place these cases in a posture where they can be tried without reversible error, the Court should amend its prior Order to conduct a limited collateral review and rule on whether the underlying class action precludes the Plaintiffs' claims against the Diocese Defendants.[1]

CONCLUSION

For the foregoing reasons and any others in the record, the Lawyer Defendants respectfully submit that the Court should amend its Order denying the motion for limited collateral review and summary judgment and conduct a limited collateral review and issue a pre-trial ruling as to whether the underlying class action precludes Plaintiffs' claims against the Diocese Defendants.

[1] The Lawyer Defendants have already briefed and argued their view that the underlying class action should not be held to have a preclusive effect and thus will not repeat that argument here. While the Lawyer Defendants maintain that view, the purpose of this motion is to convey the importance of having a ruling on the preclusive effect of the underlying class action before trial whether that ruling is for or against preclusion.

Respectfully submitted,

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& HALLER, LLC

December 22, 2015

Charleston, South Carolina

EXHIBIT C

(COMPLAINT IN 2010-CP-10-5520)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 10-CP-10-5520
John Doe 2, and Jane Doe 4,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Negligence; Gross Negligence
	)	Fraudulent Concealment
The Bishop of Charleston, a	)	Civil Conspiracy
Corporation Sole; Robert	)	Professional Negligence
Gugliemone, The Bishop Of	)	Breach of Fiduciary Duty
Charleston, in his official	)	Judicial Estoppel
his official Capacity,	)	Unfair and Deceptive Trade Practices
Rev. Monsignor Martin Laughlin,	)	
former Administrator of the	)	
Diocese of Charleston, in his	)	Jury Trial Requested
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.	)	

Complaint

For their complaint, the plaintiffs allege:

Parties and Jurisdiction

1. Plaintiffs are adult citizens and residents of a state other than South Carolina. Each was sexually molested as a child by a priest of the Diocese of Charleston, James W. McCarthy, when James McCarthy was assigned to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971.

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT D

(FINAL ORDER APPROVING CLASS ACTION SETTLEMENT WITHOUT EXHIBIT FORMS)

RB

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)))	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE No. 06-CP-18-1310 CASE No. 06-CP-18-1311 CASE No. 06-CP-18-1636
John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, Plaintiffs, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	)	**ORDER APPROVING SETTLEMENT**

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CLERK OF COURT
DORCHESTER COUNTY

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

FACTUAL BACKGROUND/PROCEDURAL HISTORY

1. Notice to Class Members

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

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

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

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

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

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

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

2. Investigation by Solicitor David Pascoe

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

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

ORDER

1. Notice to All Members of the Class

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

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

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

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

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

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

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

2. Objections to the Settlement

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

A. Standing of John Does A through N

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

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

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

B. Objections to class definitions

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

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

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

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

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

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

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

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

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

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

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

C. Objection as to Matrix

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

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

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

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

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

D. Compensation of Consortium Claims

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

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

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

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

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

3. Approval of Settlement

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

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

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

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

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

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

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

5. Attorneys fees

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

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

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

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

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

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

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

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

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

6. Costs

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

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

7. Funding of Settlement Proceeds

Pursuant to paragraph 3(a) of the Settlement Agreement, the Diocese shall fund the initial $4,540,000.00 upon the execution of this order.[7]

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

[7] The Diocese previously paid $460,000.00 to the class representatives for the settlement of their claims.

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

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

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

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

AND IT IS SO ORDERED!!!

Diane S. Goodstein

The Honorable Diane S. Goodstein
Presiding Judge

This 30 day of July, 2007

At Orangeburg, South Carolina

EXHIBIT E

(ORDER BIFURCATING TRIALS

and

AMENDED ORDER BIFURCATING TRIALS)

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
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 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,

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

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

EXHIBIT F

(ORDER ON LIMITED COLLATERAL REVIEW

and

AMENDED ORDER ON LIMITED COLLATERAL REVIEW)

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 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 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.

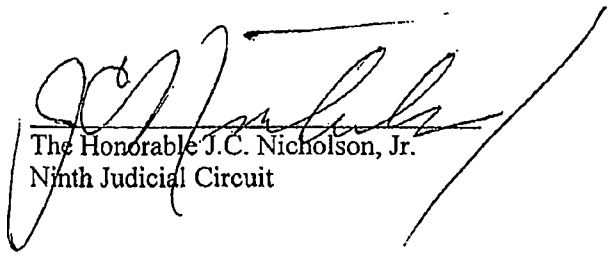
At this time, the Court has not reviewed—or been asked to review—whether any specific plaintiff in any of the pending cases received sufficient notice of the class action. Counsel may make such arguments as they deem appropriate in light of the conclusions of law set forth herein.

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

EXHIBIT G

(ORDERS DENYING SUMMARY JUDGMENT)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-5520

John Doe 2
PLAINTIFF(S)

Bishop of Charleston, A Corporation Sole, et al
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (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.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before this Court on Lawyer Defendants' Motions for Summary Judgment filed on March 2, 2015 and argued before this Court on April 16, 2015. Upon review, summary judgment is denied, viewing the evidence in favor of the non-moving party and finding a scintilla of evidence at issue.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2117
Judge Code

12/7/15
Date

SCRCP Form 4C

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-5520

John Doe 2
PLAINTIFF(S)

Bishop of Charleston, A Corporation Sole, et al
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (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
2015 DEC -8 AM 11:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Upon review, Plaintiff's Motion for Partial Summary Judgment filed on June 25, 2015 is **denied**, viewing the evidence in favor of the non-moving party and finding there is a scintilla of evidence at issue.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2117
Judge Code

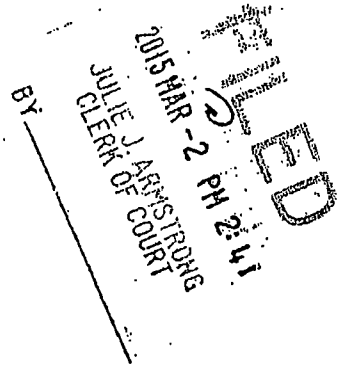
12/7/15
Date

EXHIBIT H

(MOTIONS FOR LIMITED COLLATERAL REVIEW)

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,) CASE NO.: 2010-CP-10-5520
)
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.)



JOHN DOE 10,)
)
PLAINTIFF,) CASE NO.: 2010-CP-10-7233
)
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.)

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; 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; 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; 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; RICHTER & HALLER, LLC, DEFENDANTS.	)	CASE NO.: 2013-CP-10-4176

DEFENDANT DAVID K. HALLER'S
MOTION FOR LIMITED COLLATERAL REVIEW AND SUMMARY JUDGMENT

Pursuant to Rule 56, SCRCP, and the Supreme Court's decision in *Hospitality Management Assocs. v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004), Defendant David K. Haller hereby moves the Court to conduct a limited collateral review of the underlying class action to find that it does not preclude Plaintiffs' claims against the Bishop of Charleston and the various parties related to the Roman Catholic Diocese of Charleston. Upon reaching that conclusion, the Court should, by Plaintiff's own admission, grant summary judgment in favor of David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller LLC (collectively, the "Lawyer Defendants).

This motion is supported by the pleadings, the record of the prior class action, discovery materials, applicable law and arguments of counsel. Haller specifically reserves the right to file and rely upon a more detailed memorandum of law at or before the hearing on this motion. Mr. Haller fully joins the motion for limited collateral review and summary judgment filed by Mr. Richter and Richter & Haller LLC.

In brief, the grounds for this motion are as follows:

BACKGROUND

These cases all arise out of allegations of sexual abuse committed against minors by various priests of the Roman Catholic Diocese of Charleston. Plaintiffs are the alleged victims of the abuse and their family members. The primary defendants in this matter are the Bishop of Charleston and the various parties associated with him (collectively, the "Diocese Defendants"), who are alleged, among other things, to have negligently failed to prevent the abuse.

Plaintiffs have also brought alternative causes of action against the Lawyer Defendants. The Lawyer Defendants represented a plaintiff class in a 2006 class action concerning sexual

abuse by priests of the Diocese of Charleston. The class action was settled in 2007 pursuant to a settlement and arbitration agreement wherein absent class members were permitted to tell their story to an arbitrator in a non-adversarial proceeding, after which the arbitrator awarded each an amount of money based on the severity of the abuse, within a matrix range agreed upon by the parties and the court. The settlement and class notification procedures were approved by the class action court on both a preliminary and final basis, and numerous individuals came forward and received arbitration awards pursuant to the settlement.

Plaintiffs in these cases are people who either: (1) claim that they did not receive notice of the class action and thus were unable to participate in the settlement, or (2) claim they had a repressed memory of their abuse at the time of the settlement and thus could not participate. Plaintiffs' primary theory is that they are not bound by the class settlement because of the alleged lack of notice, and that they may therefore freely sue the Diocese Defendants without any *res judicata* effects of the prior class action settlement. Their alternative theory is that, if they are precluded by the prior class action, then they have claims against the Lawyer Defendants based on the contention that they should have received notice of the class action.

MOTION FOR LIMITED COLLATERAL REVIEW

Under the Supreme Court's decision in *Hospitality Management*, when an individual attempts to bring a claim that was the subject of a prior class action, the court should conduct a "limited collateral review" of the prior class action to determine if the individual's claim is precluded. *Id.* at 659, 591 S.E.2d at 619. The core of this inquiry is whether the individual received sufficient notice of the prior class action. *Id.* at 660, 591 S.E.2d at 619. If the court concludes that the individual did not, then the prior class action has no *res judicata* effect, and the individual's claims against the class action defendant may go forward. *Id.*

In the prior class action, notice was sent to people identified by the Diocese Defendants and published in newspapers in and very near South Carolina. It therefore follows that out-of-state individuals did not receive sufficient notice and should not be bound by the prior class action. Likewise, an individual with a repressed memory could not have been expected to appreciate any notice given at the time of the prior class action and also should not be bound. Accordingly, upon conducting a limited collateral review, the Court should conclude that the Plaintiffs are not bound by the prior class action.

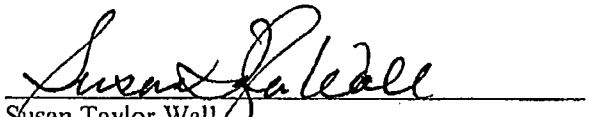
MOTION FOR SUMMARY JUDGMENT

By Plaintiffs' own admission, if their claims against the Diocese Defendants are not precluded, then they have no claims against the Lawyer Defendants. This admission is sensible, as nothing the Lawyer Defendants did in the class action could harm people not bound by it. Therefore, upon concluding that Plaintiffs are not bound by the prior class action and can freely sue the Diocese Defendants for their injuries, the Lawyer Defendants must be dismissed from this case as a matter of law.

* * * * *

WHEREFORE, Mr. Haller respectfully requests that his the Court forthwith conduct a limited collateral review of the prior class action, issue a ruling that the Plaintiffs' claims against the Diocese Defendants are not precluded by the prior class action, and grant summary judgment in favor of the Lawyer Defendants.

Respectfully submitted,



Susan Taylor Wall
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Henry W. Frampton, IV
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100 Calhoun Street, Suite 400
Charleston, SC 29401
Phone: (843) 723-7831
Fax: (843) 722-3227

ATTORNEYS FOR DEFENDANT
DAVID K. HALLER

February 27, 2015

Charleston, South Carolina

2010-CP-10-5520

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DEFENDANT DAVID K. HALLER'S MOTION FOR LIMITED COLLATERAL REVIEW AND SUMMARY JUDGMENT** has been served upon the following counsel of record by mailing a copy of the same to them, postage prepaid, in the United States Mail, addressed as shown below this 27 day of February, 2015:

Gregg Meyers, Esq.
Jeff Anderson & Associates, P.A.
366 Jackson Street, Suite 100
St. Paul, MN 55101

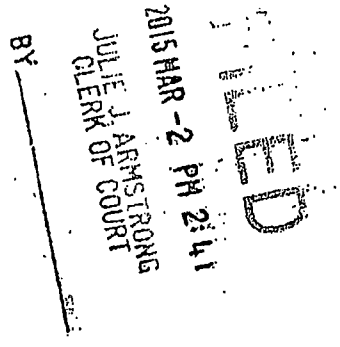
Attorney for Plaintiffs

James L. Bruner, Esq.
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260

Attorney for Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC

Albert P. Shahid, Jr., Esq.
Shahid Law Office, LLC
89 Broad Street
Charleston, SC 29401

Attorney for Defendants The Bishop of Charleston, a Corporation Sole, Robert Gugliemone, the Bishop of the Diocese of Charleston, in his Official Capacity, Rev. Monsignor Martin Laughlin, Former Administrator of the Diocese of Charleston, in his Official Capacity, and Robert J. Baker, Former Bishop of Charleston, in his Official Capacity



Jeslyn Harvey

McNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Post Office Box 1431
Charleston, South Carolina 29402
Phone: 843-723-7831

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON**	)	**IN THE COURT OF COMMON PLEAS**
John Doe 2 and Jane Doe 4, Plaintiffs, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2010-CP-10-5520
John Doe 10, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2010-CP-10-7233
Jane Doe 11, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2012-CP-10-5559
John Doe 193, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2013-CP-10-3733

Father Doe 194, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2013-CP-10-4175
John Doe 194, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	)	CASE NO.: 2013-CP-10-4176

RICHTER DEFENDANTS' NOTICE OF MOTION AND MOTION FOR LIMITED COLLATERAL REVIEW AND FOR SUMMARY JUDGMENT

TO: PLAINTIFFS AND GREGG MEYERS, THEIR COUNSEL

YOU WILL PLEASE TAKE NOTICE that the Defendants Lawrence E. Righter, Jr. and Richter and Haller, LLC will move before the Honorable J. C. Nicholson, Jr. at the Charleston County Judicial Center, Charleston, South Carolina on the tenth (10^{th}) day following service hereof, or as soon thereafter as counsel can be heard, for an Order pursuant to John Doe, et. al. v. The Bishop of Charleston, et. al., 407 S.C. 128, 754 S.E.2d 494 (2014) and Rule 56, SCRCP, as follows:

1. Conducting a limited collateral review of the class action settlement in *John Doe #53, et. al. v. The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity,* Case Nos. 2006-CP-18-1310, 1311 and 1636 ("the Underlying Class Action");

2. Upon conducting a limited collateral review of the Underlying Class Action settlement, finding that the settlement reached therein does not preclude the plaintiffs in these cases who did not reside in South Carolina in 2007 (the "Nonresident Plaintiffs") from bringing claims against the Diocesan Defendants for sexual abuse at the hands of priests;
3. Upon conducting a limited collateral review of the Underlying Class Action settlement, finding that the settlement reached therein does not preclude John Doe 193, who alleges that he repressed the memory of his sexual abuse until June 2010 (the " Repressed Memory Plaintiff "), from bringing claims against the Diocesan Defendant for sexual abuse at the hands of priests;
4. Upon concluding that the Nonresident Plaintiffs and the Repressed Memory Plaintiff are not precluded from bringing claims against the Diocesan Defendants for sexual abuse at the hands of priests by the settlement in the Underlying Class Action, then finding and concluding that the Nonresident Plaintiffs and the Repressed Memory Plaintiff's allegations against the Lawyer Defendants in their Complaints are irrelevant, as alleged, and that the Lawyer Defendants are entitled to summary judgment as a matter of law; and
5. Finding and concluding that there are no genuine issues as to any material facts relating to the Lawyer Defendants and that the Lawyer Defendants are entitled to summary judgment as a matter of law.

These motions will be based upon the pleadings in these matters, the record in the Underlying Class Action, such memoranda and affidavits as may be hereafter served and filed and the law in such cases as have been made and provided. You are intended to attend and take part as you may deem just and proper.

James L. Bruner
Caitlin C. Heyward
BRUNER POWELL WALL & MULLINS, LLC
P. O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for the Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC

February 25, 2015

* *

CERTIFICATE OF SERVICE

I, Kaye White an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC, do hereby certify that on February 25, 2015, I served a copy of the documents listed below on counsel of record by depositing a copy of same in the U.S. Mail, first-class, postage prepaid and addressed as follows:

Pleadings served:

1. Richter Defendants' Notice of Motion and Motion for Limited Collateral Review and for Summary Judgment

Counsel served:

Gregg Meyers, Esq.
Jeff Anderson & Associates, PA
366 Jackson Street, Suite 100
St. Paul, MN 55101
Attorney for the Plaintiff

A. Peter Shahid, Jr., Esq.
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89 Broad Street
Charleston, SC 29401
Attorneys for the Diocesan Defendants

Susan Taylor Wall, Esq.
McNair Law Firm, P.A.
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Charleston, SC 29401
Attorney for David K. Haller

James C. Geoly, Esq.
Burke Warren Mackay & Serritella, PC
330 N. Wabash Avenue, Ste 2100
Chicago, Illinois 60611
Attorneys for the Diocesan Defendants

Kaye White

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON 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

Appellate Case No. 2017-001092

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,
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,
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,

Of whom,

Lawrence E. Richter, Jr., David K. Haller,
and Richter and Haller, LLC..... are Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on June 7, 2017, the foregoing **RESPONDENTS/LAWYER DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF THE COURT'S ORDER DISMISSING APPEAL** was served on all counsel of record via e-mail and U.S. Mail, addressed as follows:

Gregg Meyers, Esq.
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321 East Bay Street
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greggmeyers@phswlaw.com

Attorney for Respondents

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Benjamin C. Bruner, Esq.
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bbruner@brunerpowell.com

Attorney for Respondents/Lawyer Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC

[SERVICE LIST CONTINUES ON FOLLOWING PAGE]

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Attorneys for Appellants

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, and Robert J. Baker, Former Bishop of Charleston, in his Official Capacity

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MCNAIR
ATTORNEYS

Henry W. Frampton, IV

hframpton@mcnair.net
T 843.973.6652
F 843.722.3227

June 7, 2017

VIA HAND DELIVERY

The Honorable Jenny Abbot 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-10-5520; 2010-CP-10-7233; 2012-CP-10-5559; 2013-CP-10-3733, 2013-CP-10-4175; 2013-CP-10-4176
Appellate Case No.: 2017-001092

Dear Ms. Kitchings:

Enclosed for filing, please find the original and seven copies of Respondents/Lawyer Defendants' Supplemental Brief in Support of the Court's Order Dismissing Appeal.

By copy of this letter and evidenced by the Proof of Service, I have serving counsel of record with a copy of the same.

Please file the original and return a time-stamped copy via our courier.

Thank you and with kind regards, I am

Very truly yours,

McNAIR LAW FIRM, P.A.

Henry W. Frampton, IV

HWF:rgm
Enclosures: as stated

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MCNAIR
ATTORNEYS

cc: Gregg Myers, Esq.
James L. Bruner, Esq.
Richard S. Dukes, Esq.
Brian J. Kern, Esq.
Albert P. Shahid, Jr., Esq.
James C. Geoly, Esq.
Susan Taylor Wall, Esq.