THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLETON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

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

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

v.

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

Of whom,

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

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

APPENDIX

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INDEX TO APPENDIX

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLETON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

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

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

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

Of whom,

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

NOTICE OF APPEAL

The Appellants hereby appeal several Orders of the Honorable J.C. Nicholson. Two of the Orders were filed on October 26, 2016, and the Appellants received written notice of those Orders on or about October 26, 2016. However, the Appellants filed timely motions to alter or amend those Orders pursuant to Rule 59(e), SCRCP. The Amended Orders ruling on those timely Rule 59(e) motions were filed on May 4, 2017. The Appellants received written notice of both Orders on May 4, 2017. Copies of all written Orders that are the subject of this appeal are attached.

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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

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-10-7253

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 Guglielmone, the Bishop of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former administrator of the Diocese of Charleston, in his official capacity; and Robert J. Baker, former Bishop of Charleston, in his official capacity (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.

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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

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.

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.

JANE DOE 11,

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-5520

ORDER ON LIMITED COLLATERAL REVIEW

FILED
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CLERK OF COURT

CASE NO.: 2010-CP-10-7233

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~~ can 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 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 **AMENDED ORDER BIFURCATING TRIALS**
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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CLERK OF COURT

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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 Guglielmone, the Bishop of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former administrator of the Diocese of Charleston, in his official capacity; and Robert J. Baker, former Bishop of Charleston, in his official capacity (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

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.

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.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

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

CASE NO.: 2010-CP-10-7233

1339485v2

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLETON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

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

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

v.

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

Of whom,

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

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Appellants, certifies that I have this 4th day of May, 2017, served copies of the **Notice of Appeal** upon all counsel of record by causing them to be deposited in the United States mail with sufficient postage attached, addressed to:

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ATTORNEYS FOR APPELLANTS

May 4, 2017

The South Carolina Court of Appeals

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

v.

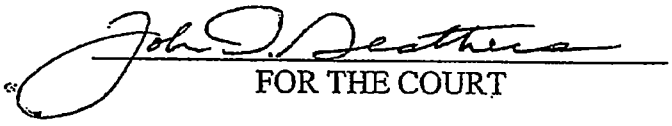
The Bishop of Charleston, A Corporation Sole, and Robert Guglielmone, The Bishop of Charleston, in his official Capacity, Rev.. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official Capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity;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

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

Appellate Case No. 2017-001092

ORDER

Appellants have served and filed a petition for supersedeas, requesting this court stay the trial scheduled for May 15, 2017. This court will act on the petition for supersedeas upon receipt and review of a return and reply. Pursuant to Rule 263(b), SCACR, and in light of the upcoming trial, Respondents' return shall be served and filed by noon on Tuesday, May 9, 2017, and Appellants' reply shall be served and filed by noon on Thursday, May 11, 2017.



FOR THE COURT

Columbia, South Carolina

cc:
Richard S. Dukes, Jr., Esquire
Brian James Kern, Esquire
Albert Peter Shahid, III, Esquire
Gregg E. Meyers, Esquire

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. 2015-002095

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,

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.....Respondents/Lawyer Defendants,

RESPONDENTS/LAWYER DEFENDANTS' MOTION TO DISMISS APPEAL AND REQUEST FOR EXPEDITED RELIEF

Pursuant to Rule 240, SCACR, Respondent/Lawyer Defendants Lawrence E. Richter, Jr., Richter & Haller LLC, and David K. Haller (collectively, the "Lawyer Defendants") hereby move to dismiss the appeal of the Diocese Defendants for want of appellate jurisdiction. Because this appeal was filed within two (2) weeks of the trial date set by the assigned Circuit Court Judge, the Hon. J.C. Nicholson, Jr., in cases that are nearly a decade old, the Lawyer Defendants respectfully request that this matter be heard by a single judge on an expedited basis so as to dispose of the appeal and allow trial to go forward expeditiously.

INTRODUCTION

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

The first order appealed—the Order Bifurcating Trials[1]—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] 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 Plaintiff's 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 A.) 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[2]—is an order designed to guide the parties with respect to the effect of a previous class action on Plaintiffs'

[2] 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 Plaintiff's 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.[3]

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 B.) 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

[3] 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.[4] (See e.g., Compl. in 2010-CP-10-5523 at ¶ 22, Exhibit A.) 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

[4] 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 C.) *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 D.) 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. For the reasons that follow, neither order is immediately appealable.

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. D.) 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 72-72, 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 should be dismissed.[5]

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 E.) 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. D.)

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

[5] The Supreme Court's decision in *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015) is not to the contrary. In that case, 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.

for Limited Collateral Review, Exhibit F; Rule 59(e) Motion, Exhibit G.) 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,[6] and extensive coverage in media outlets around the world.[7] (Ex. D 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.

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[6] 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.

[7] *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.

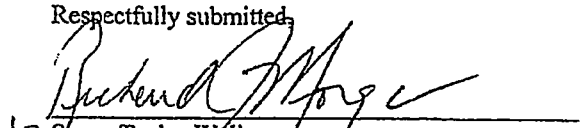
Without a final determination in any individual plaintiff's case, appellate jurisdiction is lacking. As the Supreme Court has made clear, orders that merely require a party to proceed to trial without effecting a final resolution of any issues are not immediately appealable. *See, e.g.*, *Mid-State Distribs. 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.

CONCLUSION

For the foregoing reasons, the Diocese Defendants' appeal should be DISMISSED. Moreover, in light of the age of these cases and the proximity to trial, this motion should be resolved expeditiously by a single judge.

[SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE]

Respectfully submitted,



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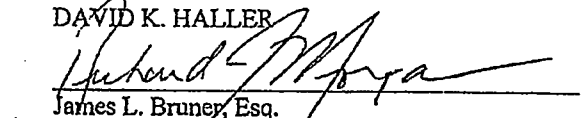

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LAWRENCE E. RICHTER, JR. AND RICHTER & HALLER, LLC

May 8, 2017
Charleston, South Carolina

The South Carolina Court of Appeals

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

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

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

Appellate Case No. 2017-001092

ORDER

Appellants have filed a petition for supersedeas, requesting this court stay the trial scheduled for May 15, 2017. Respondents Lawrence E. Richter, Jr.; David K. Haller; and Richter and Haller, LLC have filed a motion to dismiss this appeal, arguing the orders on appeal are not immediately appealable under section 14-3-330 of the South Carolina Code (2017). We agree. Accordingly, Respondents'

motion to dismiss is granted and Appellants' petition for supersedeas is denied. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

Columbia, South Carolina

cc: Richard S. Dukes, Jr., Esquire
Brian James Kern, Esquire
Albert Peter Shahid, III, Esquire
Gregg E. Meyers, Esquire
Susan Taylor Wall, Esquire
James L. Bruner, Esquire
Benjamin C. Bruner, Esquire
Henry Wilkins Frampton, IV, Esquire

FILED
May 11, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAY 12 2017
SC Court of Appeals

APPEAL FROM CHARLETON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

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

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

v.

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

Of whom,

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

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, the Appellants hereby request that the Court grant a rehearing in this matter. The Appellants respectfully assert that the Court erred in dismissing their appeal and denying their petition for a *supersedeas* order for reasons both procedural and substantive. The specific grounds in support of this Petition for Rehearing are set forth below.

STATEMENT OF THE CASE

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

These actions include consolidated civil complaints filed by various plaintiffs, all represented by Gregg Myers. The plaintiffs allege they are the victims of sexual abuse perpetrated against minors by agents of the Diocese parties. The plaintiffs in all of these various complaints have also named as defendants Lawrence E. Richter, Jr. and David K. Haller, and those attorneys' former law firm, Richer & Haller, LLC (collectively "the Richter Defendants").

Each plaintiff has alleged that he or she (or his or her child or spouse) was sexually abused, and that he or she is entitled to recovery under several legal theories including, but limited to, negligent supervision, fraudulent concealment, and legal malpractice, breach of fiduciary duty, and Unfair Trade Practices (as to the Richter Defendants). In addition the Appellants and the Richter Defendants are named in a cause of action for civil conspiracy.

In 2007 the circuit court approved a class action settlement, in which the Richer Defendants served as class counsel. The court-approved class action settlement provided a

mechanism in which primary sexual abuse claimants and loss of consortium claimants could participate in a process to resolve their claims through an arbitrator. The plaintiffs in these consolidated cases neither participated in this class action settlement opportunity, nor opted out of the class.

On October 26, 2016, the trial court issued an Order Bifurcating Trial and an Order on Limited Collateral Review. In bifurcating the trial of this case, the trial court ordered that the Appellants would first be required to proceed to trial on claims that the Respondents were sexually abused by priests. Then, following the conclusion of all sex abuse trials, the Appellants and the Respondents would be required to participate in a second round of litigation involving the legal malpractice, breach of fiduciary duty, and civil conspiracy claims. The trials in that second round would also involve the Richter Defendants, who would not be required to participate in the first round of trials.

The Appellants timely moved for reconsideration of both Orders in November, 2016. The Appellants pointed out to the trial court that this mode of trial would require them to try their case against each Respondent twice, and a verdict in the first case would not bring to a close the claims against the Respondents in the second case. Additionally, the Respondents would be required to try their cases against the Appellants twice. Moreover, neither the Appellants nor the Respondents would be able to appeal from the verdict or judgment in the first trial until after the second trial had concluded. Put simply, the Appellants contended that the mode of trial ordered by the trial court was manifestly unjust to both the Appellants and the Respondents.[1]

On May 4, 2017, the trial court denied the Appellants' motion to reconsider its Order Bifurcating Trial and, by separate order, its Order on Limited Collateral Review. At the same

[1] The Richter Defendants would not be subject to multiple trials against the same plaintiffs, and thus, the Order did not have any impact on their legal rights.

time as it issued its orders denying the motions to reconsider, the trial court issued a Scheduling Order, *sua sponte* and *ex parte*, which stated that the trial of this case would proceed beginning May 15, 2017, regardless of whether the Appellants appealed its Order Bifurcating Trial and/or Order on Limited Collateral Review. Put differently, the trial court clearly indicated that it would not recognize the automatic stay that would be trigged[2] when the Appellants filed their notice of appeal.

Following the issuance of these orders, the Appellants filed and served their Notice of Appeal on May 4, 2017. Due to the trial court's refusal to acknowledge the automatic stay, the Appellants also filed and served an Emergency Petition for *Supersedeas* Order to Stay Trial just hours after filing the Notice of Appeal.

On May 5, 2017, the Court issued an Order in response to the emergency petition, which stated the following:

> Appellants have served and filed a petition for supersedeas, requesting this court stay the trial scheduled for May 15, 2017. This court will act on the petition for supersedeas upon receipt and review of a return and reply. Pursuant to Rule 263(b), ACACR, and in light of the upcoming trial, **Respondents' return** shall be served and filed by noon on Tuesday, May 9, 2017, and Appellants' reply shall be served and filed by noon on Thursday, May 11, 2017.

[Order, p. 1 (emphasis added).] Pursuant to that Order, the Respondents filed a Return on May 8, 2017. The Appellants filed their Reply the following day.

Despite not being a party to the appeal, and not being referenced at all in this Court's Order, the Richter Defendants also submitted filings to the Court on May 8, 2017. The Richter Defendants filed and served a Reply in opposition to the emergency petition, as well as a Motion

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

to Dismiss the Appeal. Although the Appellants contended – and still contend – that the Richter Defendants' filings were improper, the Appellants complied with the Order out of an abundance of caution by filing and serving a Reply to the Richter Defendants' Return before the close of business on May 9, 2017. The Appellants did not file a Return to the Richter Defendants' Motion to Dismiss because the time for doing so under Rule 240(e), SCACR, had not responded, and the Court had not established any other deadline for a motion to dismiss.

On May 11, 2017, the Court issued a second Order. This Order granted the Richter Defendants' Motion to Dismiss and denied the emergency petition for *supersedeas*. In this second Order, the Court (apparently *sua sponte*) added a line to the case caption indicating that the Richter Defendants were "Respondents." Significantly, however, the Richter Defendants were <u>not</u> listed as such in the Notice of Appeal, in this Court's original Order, in the Respondents' Return, or in the Appellants' Reply to that Return.

The Appellants have now filed this timely Petition for Rehearing. In doing so, the Appellants expressly reserve their rights to argue that if this petition is granted, in whole or in part, and/or if the Supreme Court grants a petition for certiorari, any proceedings that the trial court decides to conduct in the interim are nullities.

ARGUMENT

The Appellants respectfully assert that the Court overlooked or misapprehended the following points in its Order:

(1) The Richter Defendants are not actual Respondents and did not have standing to file a motion to dismiss the appeal.

(2) Even if standing for such a motion existed, the Court issued its Order without giving the Appellants the proper amount of time to respond to that motion under Rule 240(e), SCACR.

(3) The challenged Orders are immediately appealable pursuant to S.C. Code Ann. §14-3-330.

(4) The emergency petition should have been granted because the challenged orders are immediately appealable and granting the requested relief would not have resulted in any prejudice to the Respondents, who were the only parties with standing to oppose the petition.

The Appellants will address each of these grounds below.

I. Lack of Standing

The challenged orders affect the rights of the Appellants and the actual Respondents (i.e. the plaintiffs below). The bifurcation order requires the Appellants and Respondents to conduct two separate trials for what is essentially the same case, without any ability to seek appellate review of trial errors in between. This requirement is prejudicial to the Appellants (and also to the Respondents, for that matter) because it forces them to spend unnecessary amounts of time and money trying the same case twice. It also creates a real and substantial risk of duplicative and/or inconsistent results in the two trials.

Similarly, the limited collateral review order affects only the Appellants and the actual Respondents. The court-approved class action settlement was designed to give claimants an opportunity to recover appropriate amounts of damages, but also to give the Appellants protection against future claimants who neither participated in the class nor opted out of it. Thus, the issue involved in the limited collateral review requested by the Appellants – i.e. whether the

plaintiffs below could assert any claims against the Appellants at this juncture – involved the Appellants and the Respondents only.

Those orders do not affect or impair any legal rights of the Richter Defendants. The bifurcation order does not affect the Richter Defendants because it does not require those defendants to try any cases twice. As a result, the burden leading to duplicative time and expenses imposed upon the Appellants (and the Respondents) does not apply to the Richter Defendants. Those defendants no doubt like the bifurcation order because it allows them to sit idly on the sidelines, hoping that the Respondents obtain enough money from the Appellants to be satisfied and drop all other claims. But the fact that the bifurcation order gives the Richter Defendants a perceived strategic advantage does not mean that it affects any protected legal right. The only legal rights impacted by the bifurcation order are those held by the Appellants (and arguably the Respondents).

The limited collateral review order also does not involve the Richter Defendants. Those defendants were not parties to the court-approved class action settlement, and they cannot assert any defenses based on that settlement. But the Appellants do have legal defenses based on the court-approved class action settlement. The requested limited collateral review, which the trial court did not properly conduct, would determine whether or not the Respondents were legally permitted to assert any claims against the Appellants. That determination does not impact any legal rights of the Richter Defendants. Again, while those defendants might prefer, for strategic reasons, some specific outcome from the limited collateral review, that does not make them a legitimate part of the current appeal.

As this discussion demonstrates, the Richter Defendants are not really respondents, and they lack any standing to participate in this appeal. They are no doubt generally interested in the

outcome of the appeal, but that does not mean they have any legal right to be involved in it. Accordingly, the Richter Defendants lacked standing to seek dismissal of the appeal, and the Court overlooked or misapprehended that fact in addressing and granting those defendants' improper motion. Therefore, the Court should grant the petition and rehear this issue.

II. Premature Ruling

Even assuming *arguendo* that the Richter Defendants had any legitimate basis for filing a motion to dismiss the appeal, the Court should not have issued its second Order because it was procedurally premature. The Richter Defendants filed their improper motion on May 8, 2017, and sent it to the counsel for the Appellants and the Respondents by e-mail after 5:00 pm that day. Under Rule 240(e), SCACR, the Appellants had until May 18, 2017, to file and serve a Return in opposition to that motion. Yet, the Court filed its Order granting that motion a full week before that deadline ever arrived.

It is true that Rule 240(e) and Rule 263(b) of the South Carolina Appellate Court rules give the appellate court discretion to extend or shorten the deadline for responding to a motion. However, it is at least implicit in these rules that the Court will let the parties know about any shortened deadline, thereby allowing the parties to comply with it. That notice never occurred in the present case. The Richter Defendants filed their motion at the end of the day on May 8th, and the Court issued its Order essentially two business days later.[3] At that point, the Appellants believed they still had over a week to submit a Return in opposition to the motion because the Court had never instructed them otherwise. As a result, the Court decided the motion without giving the Appellants a fair opportunity to respond to it.

[3] The Court was closed on Wednesday, May 10, 2017, for a state holiday.

Although the Court issued a *de facto* scheduling order the day after the appeal was filed, that Order did not contemplate or apply to any motion to dismiss the appeal. The language of the Order (which is quoted in full on page 4 of this Petition) referenced only the return and reply for the emergency petition for *supersedeas*. Thus, there was no reason for the Appellants (or anyone else) to believe that the Order was intended to shorten deadlines for responding to anything other than the emergency petition and the subsequent filings related to it.

The result of the Court's premature ruling was that the Appellants saw their appeal be dismissed without ever having a meaningful opportunity to respond to the motion to dismiss, which the Appellants believed (and still believe) to be improper. This outcome was obviously unfair and prejudicial to the Appellants. The Court overlooked that fact in issuing its second Order, and it should now grant this Petition and vacate that Order.

III. Appealability

As discussed in the previous section, the Court dismissed the appeal without ever giving the Appellants the opportunity to argue for the immediate appealability of the challenged orders. Due to the denial of the emergency petition for *supersedeas*, and the resulting need for the Appellants' attorneys to prepare for trial beginning May 15, 2017, presenting as full an argument on this point as the Appellants would like to do is also impracticable. However, to demonstrate the need for rehearing, and for the purposes of issue preservation, the Appellants will briefly set forth their arguments.

South Carolina's appellate courts have jurisdiction to review:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from

> such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
>
> (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
>
> (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. §14-3-330. In the present case, the challenged orders are immediately appealable under subsection (3) of this statute.

Although there is precedent concluding that orders bifurcating different issues in a case for separate trials are not immediately appealable, the Supreme Court has recently held that the simple fact an order is styled a "bifurcation order" does not determine its appealability. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). In *Morrow*, the Supreme Court concluded the challenged order was immediately appealable, regardless of what it was called, because it implicated the appellant's substantial rights. As the Court stated, "Our review of the trial court orders is not constrained by how the order is styled." *Id.* at 539, 773 S.E.2d at 147.. The Court further cited this Court's decision in *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 479 (Ct. App. 2011), for the proposition that "an appellate court should look to the effect of an interlocutory order to determine its appealability." *Id.* at 540, 773 S.E.2d at 147.

Here, the challenged orders affect the Appellants' substantial rights. As discussed above, the bifurcation order requires the Appellants and Respondents to conduct two separate trials for what is essentially the same case, without any ability to seek appellate review of trial errors in between. This requirement is prejudicial to the Appellants (and also to the Respondents, for that matter) because it forces them to spend unnecessary amounts of time and money trying the same case twice. It also creates a real and substantial risk of duplicative and/or inconsistent results in the two trials.

This order must be immediately appealable because even a successful appeal after a final judgment would not provide the Appellants any meaningful relief. If the Appellants are forced to try each case twice before having an ability to seek appellate review, that review would be pointless. By that time, the Appellants already would have spent the unnecessary time and money conducting multiple trials of the same cases. The costs and the limited attorney's fee available to a prevailing party on appeal would not come anywhere close to making the Appellants whole for the expenses of numerous "double trials." Thus, any victory on a post-judgment appeal of the bifurcation order would be entirely Pyrrhic in nature. *See generally Knight Pub. Co. v. University of S.C.*, 295 S.C. 31, 367 S.E.2d 20 (1988) (order allowing discovery of materials claimed to be confidential was immediately appealable because it in effect determined the action and prevented any meaningful appellate review); *rev'd on other grounds*, *Simpson v. Sanders*, 314 S.C. 413, 445 S.E.2d 93 (1994).

The limited collateral review order also affects the Appellants' substantial rights because it allows claims to proceed against the Appellants when those claims should be barred by the previous court-approved class settlement. The Appellants have not been able to find any case directly on-point as to the appealability of this specific kind of order, which suggests this is a

novel question in South Carolina. The Appellants respectfully submit that this type of novel issue should not be decided in a cursory fashion in which the party seeking to appeal has not been given a full and fair opportunity to brief and argue the issue. Therefore, the Court should grant the Petition and conduct a full rehearing after allowing the Appellants to file a Return to the motion.

Furthermore, even if the Court were to determine that the limited collateral review order were not immediately appealable, that would not warrant dismissal of the appeal. As previously argued, the bifurcation order is immediately appealable under S.C. Code Ann. §14-3-330(3). For this reason, the Court can – and should – also review the limited collateral review order. *See Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998) (an order not immediately appealable will nevertheless be reviewed if another appealable issue is before the court and review will avoid unnecessary litigation). This rule provides an additional reason to grant the rehearing petition.

IV. Petition for *Supersedeas*

For reasons that are connected to the grounds previously discussed, the Court should have granted the Emergency Petition for *Supersedeas* Order to Stay Trial. The Court has provided no reason for denying the motion other than the erroneous conclusion that the challenged orders from the trial court were not immediately appealable. In other words, it appears the Court denied the emergency petition solely because it chose to dismiss the appeal. Therefore, since the Court never should have considered the motion to dismiss, let alone granted it,[4] the denial of the petition was also in error.

---

[4] *See* sections I, II and III of this Petition.

When the Richter Defendants are taken out of the equation, as they should be for this appeal, the only relevant parties for purposes of the emergency petition are the Appellants and the Respondents. Considering only those parties, the one fair result to both sides is to grant the emergency petition. The Appellants need to obtain the requested stay the trial court proceedings in order to protect their ability to obtain any meaningful review of the challenged orders, particularly the bifurcation order. As discussed above, an appeal after multiple trials would not do the Appellants much good (if any) in this context.

At the same time, granting the requested relief will not result in any prejudice to the Respondents. Especially now that it appears the John Doe 10 trial will begin on May 15, 2017, the Respondents have articulated no legitimate claims of prejudice if future trial court proceedings are stayed. The Respondents can adjust travel plans or scheduling issues accordingly, which means they will be in no worse position if a stay is imposed.

Obviously, the original, specific need for the stay (i.e. the John Doe 10 trial) may be a moot point by the time the Court considers this Petition.[5] Yet, that does not mean a stay is no longer necessary. As the trial court has told the parties, it intends to continue conducting trials against the Appellants only – one after the other – until they are completed. Even if the John Doe 10 case is tried before the Court reaches this Petition, a stay is required in order to prevent additional trials from going forward. This is especially true since the violation of the Appellants' substantial right only increases with every trial that takes place. Therefore, this is still a critical

[5] Here, it should be noted that the Appellants will participate in the John Doe 10 trial if necessary to avoid any finding of contempt or sanctions by the trial court. However, the Appellants will do so under protest and without waiving their rights to argue that the trial is and/or was a nullity because the appeal should not have been dismissed and a *supersedeas* order should have been issued.

and pressing issue, and the Court should grant the Petition and enter an order staying all future proceedings in the trial court until the end of this appeal.

CONCLUSION

For all of these reasons, the Court should grant this Petition, vacate its Order of May 11, 2017, and allow this appeal to proceed on the merits. At the very least, the Court should vacate the Order and allow the Appellants the full amount of time to respond to the dismissal motion under Rule 240(e), SCACR.

Respectfully submitted,

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ATTORNEYS FOR APPELLANTS

May 12, 2017

The South Carolina Court of Appeals

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

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

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

Appellate Case No. 2017-001092

ORDER

Appellants have filed a petition to rehear the dismissal of this appeal, arguing in part this court improperly granted Respondents' motion to dismiss without allowing for the filing and consideration of a return to the motion. In a letter to this court, Respondents indicated they do not intend to file a return to the petition unless one is requested. In order to allow Appellants the opportunity to fully argue,

(3)

their position to this court, any party may submit a memorandum addressing the appealability of the orders on appeal within fifteen days of this order. This court will consider Appellants' petition for rehearing upon receipt of memoranda from all parties or the expiration of fifteen days.

Stephanie P. McDonald

FOR THE COURT

Columbia, South Carolina

cc: Richard S. Dukes, Jr., Esquire
Brian James Kern, Esquire
Gregg E. Meyers, Esquire
Susan Taylor Wall, Esquire
James L. Bruner, Esquire
Benjamin C. Bruner, Esquire
Henry Wilkins Frampton, IV, Esquire
Albert P. Shahid, Jr., Esquire

FILED
May 24 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLETON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

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

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

Of whom,

The Bishop of Charleston, A Corporation Sole, and
Robert Guglielmone, The Bishop of Charleston,
in his official Capacity, Rev. Monsignor Martin Laughlin,
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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.

BRIEF ON APPEALABILITY

The Appellants respectfully submit this Brief on Appealability pursuant to the Court's Order filed on May 24, 2017.

STATEMENT OF THE CASE

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

These actions include consolidated civil complaints filed by various plaintiffs, all represented by Gregg Myers. The plaintiffs allege they are the victims of sexual abuse perpetrated against minors by agents of the Diocese parties. The plaintiffs in all of these various complaints have also named as defendants Lawrence E. Richter, Jr. and David K. Haller, and those attorneys' former law firm, Richer & Haller, LLC (collectively "the Richter Defendants").

Each plaintiff has alleged that he or she (or his or her child or spouse) was sexually abused, and that he or she is entitled to recovery under several legal theories including, but limited to, negligent supervision, fraudulent concealment, and legal malpractice, breach of fiduciary duty, and Unfair Trade Practices (as to the Richter Defendants). In addition the Appellants and the Richter Defendants are named in a cause of action for civil conspiracy.

In 2007 the circuit court approved a class action settlement, in which the Richer Defendants served as class counsel. The court-approved class action settlement provided a mechanism in which primary sexual abuse claimants and loss of consortium claimants could participate in a process to resolve their claims through an arbitrator. The plaintiffs in these

consolidated cases neither participated in this class action settlement opportunity, nor opted out of the class.

On October 26, 2016, the trial court issued an Order Bifurcating Trial and an Order on Limited Collateral Review. In bifurcating the trial of this case, the trial court ordered that the Appellants would first be required to proceed to trial on claims that the Respondents were sexually abused by priests. Then, following the conclusion of all sex abuse trials, the Appellants and the Respondents would be required to participate in a second round of litigation involving the legal malpractice, breach of fiduciary duty, and civil conspiracy claims. The trials in that second round would also involve the Richter Defendants, who would not be required to participate in the first round of trials.

The Appellants timely moved for reconsideration of both Orders in November, 2016. The Appellants pointed out to the trial court that this mode of trial would require them to try their case against each Respondent twice, and a verdict in the first case would not bring to a close the claims against the Respondents in the second case. Additionally, the Respondents would be required to try their cases against the Appellants twice. Moreover, neither the Appellants nor the Respondents would be able to appeal from the verdict or judgment in the first trial until after the second trial had concluded. Put simply, the Appellants contended that the mode of trial ordered by the trial court was manifestly unjust to both the Appellants and the Respondents.[1]

On May 4, 2017, the trial court denied the Appellants' motion to reconsider its Order Bifurcating Trial and, by separate order, its Order on Limited Collateral Review. At the same time as it issued its orders denying the motions to reconsider, the trial court issued a Scheduling Order, *sua sponte* and *ex parte*, which stated that the trial of this case would proceed beginning

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[1] The Richter Defendants would not be subject to multiple trials against the same plaintiffs, and thus, the Order did not have any impact on their legal rights.

May 15, 2017, regardless of whether the Appellants appealed its Order Bifurcating Trial and/or Order on Limited Collateral Review. Put differently, the trial court clearly indicated that it would not recognize the automatic stay that would be trigged[2] when the Appellants filed their notice of appeal.

Following the issuance of these orders, the Appellants filed and served their Notice of Appeal on May 4, 2017. Due to the trial court's refusal to acknowledge the automatic stay, the Appellants also filed and served an Emergency Petition for *Supersedeas* Order to Stay Trial just hours after filing the Notice of Appeal.

On May 5, 2017, the Court issued an Order in response to the emergency petition, which stated the following:

> Appellants have served and filed a petition for supersedeas, requesting this court stay the trial scheduled for May 15, 2017. This court will act on the petition for supersedeas upon receipt and review of a return and reply. Pursuant to Rule 263(b), ACACR, and in light of the upcoming trial, Respondents' return shall be served and filed by noon on Tuesday, May 9, 2017, and Appellants' reply shall be served and filed by noon on Thursday, May 11, 2017.

[Order, p. 1.] Pursuant to that Order, the Respondents filed a Return on May 8, 2017. The Appellants filed their Reply the following day.

The Richter Defendants also submitted filings to the Court on May 8, 2017. The Richter Defendants filed and served a Reply in opposition to the emergency petition, as well as a Motion to Dismiss the Appeal. Although the Appellants contended – and still contend – that the Richter Defendants' filings were improper, the Appellants complied with the Order out of an abundance of caution by filing and serving a Reply to the Richter Defendants' Return before the close of

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

business on May 9, 2017. The Appellants did not file a Return to the Richter Defendants' Motion to Dismiss because the time for doing so under Rule 240(e), SCACR, had not responded, and the Court had not established any other deadline for a motion to dismiss.

On May 11, 2017, the Court issued a second Order. This Order granted the Richter Defendants' Motion to Dismiss and denied the emergency petition for *supersedeas*. The Appellants responded to the Order by filing a timely Petition for Rehearing. The Appellants argued, *inter alia*, that the Court had ruled on the Richter Defendants' Motion to Dismiss without allotting the full amount of time for the Appellants to make a formal response. The Court then issued another Order on May 24, 2017. That Order gave all parties fifteen days from the date of the Order (i.e. until June 8, 2017) to submit briefs on the appealability of the challenged lower court orders. The Appellants now submit this brief in response to that Order.

ARGUMENT

I. The order forcing the Appellants to participate in multiple duplicative trials is immediately appealable.

South Carolina's appellate courts have jurisdiction to review:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

> (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
>
> (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. §14-3-330. In the present case, the challenged orders are immediately appealable under subsection (3) of this statute.

Here, the "bifurcation order" affects the Appellants' substantial rights. The order requires the Appellants to conduct two separate trials for the same case, without any ability to seek appellate review of trial errors in between. This requirement is prejudicial to the Appellants (and also to the Doe Respondents, for that matter) because it forces them to spend unnecessary amounts of time and money trying the same case twice. It also creates a real and substantial risk of duplicative and/or inconsistent results in the two trials.

Although the two trials would technically involve different causes of action against the Appellants, the Appellants would still be required to present the same testimony, exhibits and arguments in both. Some of the legal issues might be slightly different in the second trial, but for all practical purposes, the Appellants would have to repeat the presentation of their case from the first trial. This unnecessary and prejudicial repetition would take place in every one of the cases that goes to trial. The end result would be several weeks' worth of additional trial time and expenses that the Appellants would have to incur for no compelling or legitimate reason.

The Respondents, specifically the Richter Defendants, may argue that there is a legitimate or compelling reason for this arrangement, but the Appellants obviously disagree, and that is the whole point of this appeal. The trial court made a decision that has a tremendous, negative impact on the Appellants' interests, both financial and strategic. That harmful impact

will be immediate and effectively irreversible. For that reason, the Appellants have exercised their right to have this Court review the trial court's decision. If the appeal proceeds, as it should, both sides will have a fair opportunity to present their arguments for and against that decision. If this Court conducts a full review and allows the decision below to stand, at least the necessary appellate oversight would have occurred before the harmful impact, not afterwards. Thus, this immediate appeal is proper and serves to protect the Appellants' substantial rights.

Furthermore, immediate appellate review is necessary because even a successful appeal after a final judgment would not provide the Appellants any meaningful relief. If the Appellants are forced to try each case twice before having an ability to seek appellate review, that review would be pointless. By that time, the Appellants already would have spent the unnecessary time and money conducting multiple trials of the same cases. The costs and the limited attorney's fee available to a prevailing party on appeal would not come anywhere close to making the Appellants whole for the expenses of numerous "double trials." Thus, any victory on a post-judgment appeal of the bifurcation order would be entirely Pyrrhic in nature.

This is especially true when one considers that the only remedy this Court could grant in that circumstance would be a new trial. This would merely add insult to the injury the Appellants had already sustained. Granted, the Appellants would have won their appeal, but the "victory" would simply mean the Appellants would have to try each case a third time in a consolidated proceeding. The only way to avoid this absurd and unfair result is to recognize that the "bifurcation" order significantly affects the Appellants' rights and to allow this appeal to proceed.

Although they have not addressed this specific factual scenario, South Carolina's appellate courts have found immediate appeals to be warranted in analogous cases where an

appeal after a final judgment would not afford any meaningful relief. *See, e.g., Hagood v. Sommerville*, 362 S.C. 191, 198, 607 S.E.2d 707, 710 (2005) (an order disqualifying a party's attorney in a civil case is immediately appealable because "an appeal after final judgment and a new trial, if granted, would not adequately protect a party's interests because it would be difficult or impossible for the afflicted party or the appellate court to ascertain by any objective standard whether prejudice resulted from the disqualification."); *Doe v. Howe*, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2004) (denial of a motion to proceed anonymously was immediately appealable because a post-judgment appeal would not adequately protect the party's claimed need for privacy); *Lakes v. State*, 333 S.C. 382, 510 S.E.2d 228 (Ct. App. 1998) (denial of a motion to proceed in forma pauperis was immediately appeal because otherwise the plaintiff could not pursue the case at all); *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 431 S.E.2d 631 (Ct. App. 1993) (denial of a motion to dismiss for lack of subject matter jurisdiction was immediately appealable because this threshold issue had to be determined in order for the lower court to hear the case); *Knight Pub. Co. v. University of S.C.*, 295 S.C. 31, 367 S.E.2d 20 (1988) (order allowing discovery of materials claimed to be confidential was immediately appealable because it in effect determined the action and prevented any meaningful appellate review); *rev'd on other grounds, Simpson v. Sanders*, 314 S.C. 413, 445 S.E.2d 93 (1994); *Rutledge v. Tunno*, 63 S.C. 205, 41 S.E. 308 (1902) (denial of a motion to intervene is immediately appealable because the purported intervenor would have no other way to obtain appellate review).

Again, the present case falls into the same category. The Appellants' substantial rights will have already been negatively impacted by the time of final judgments because the duplicative trials (and the expenses stemming from them) will have taken place. At that point,

even a successful appeal would only make things worse in terms of the time and expenses, as the Appellants would have to try each case a third time.

Of course, it is possible that if this appeal is allowed to proceed, the Court (and/or the Supreme Court) could wind up affirming the "bifurcation" order. In that event, the Appellants would be forced to incur the expenses of duplicative trials. But at least in that scenario the necessary appellate review would already have occurred, and all parties could go to trial in the knowledge that the trial court's procedure had been deemed proper by higher courts. Thus, an immediate appeal is not only proper under the governing statute, but it also removes one potential basis for re-trials of these cases.

In addition, the Supreme Court has recently held that the simple fact an order is styled a "bifurcation order" does not determine its appealability. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). In *Morrow*, the Supreme Court concluded the challenged order was immediately appealable, regardless of what it was called, because it implicated the appellant's substantial rights. As the Court stated, "Our review of the trial court order is not constrained by how the order is styled." *Id.* at 539, 773 S.E.2d at 147. The Court further cited *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 479 (Ct. App. 2011), for the proposition that "an appellate court should look to the effect of an interlocutory order to determine its appealability." *Id.* at 540, 773 S.E.2d at 147 (emphasis added). As discussed above, the effect of the trial court's order in the present case makes it immediately appealable under the statute, no matter what the order is called.

Morrow is vital to the current issue because it undercuts the Respondents' primary argument for dismissal of the appeal. Citing two decisions by the Supreme Court,[3] the Respondents claim that bifurcation orders are not immediately appealable as a hard and fast rule. However, *Morrow* makes it clear that no such *per se* rule exists anymore (to the extent one ever did), and appellate courts must consider the effects of each individual order to make the determination. This is significant because the present case is very different than the situations in *Senter* and *Flagstar*.

Senter was a personal injury case involving disputed liability and significant damages claims. The defendant moved to bifurcate the trial into a liability phase and then, if necessary, a damages phase. The defendant based its motion on a belief that a jury would be unduly swayed by the damages evidence and would not pay sufficient attention to the question of liability. The trial court denied the motion, and this Court dismissed the resulting appeal. The Supreme Court granted a writ of certiorari and affirmed the dismissal, concluding that participating in a standard trial procedure (i.e. liability and damages determined in a single trial) would not impact the defendant's rights. The present case, of course, does not involve the denial of a motion to bifurcate, and, therefore, *Senter* has no impact on the appealability of this order.

Flagstar was a contract dispute between an insured and its excess insurer over whether coverage existed for payments of a class action settlement. The trial court granted the insured's motion to bifurcate the trial into two phases. The first would determine the threshold issue of whether a specific exclusion in the excess policy applied. If the jury determined it did, the proceedings would end. If the jury decided the exclusion did not apply, the second phase would cover the remaining substantive issues, which were unrelated to the exclusion. The insurer

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[3] *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000); *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000)

appealed, and this Court addressed the merits of the bifurcation order. However, the Supreme Court granted a writ of certiorari and reversed, concluding that "an order granting separate trials of issues in a contract case is not immediately appealable." 341 S.C. at 73, 533 S.E.2d at 334. Significantly, though, the Court also took the opportunity to caution trial courts that bifurcation under Rule 42(b), SCRCP, is only appropriate for truly "separate issues." *Id.* at 73, 533 S.E.2d at 333, n. 8.

Although *Flagstar*, unlike *Senter*, did involve an order granting bifurcation, the situation was much different than the one in the present case. The bifurcation order in *Flagstar* did not force either side to participate in duplicative trials covering the same issues. To the contrary, the first trial in *Flagstar* involved a separate threshold issue that had the potential to end the case. A second trial was only necessary if the party seeking coverage cleared that first hurdle, and even then the second trial did not involve re-litigating the same issue. Thus, assuming the threshold exclusion did not apply, the litigation of the remaining issues was necessary, regardless of whether that litigation occurred in one trial or two separate proceedings. In other words, *Flagstar* represented the bifurcation of truly separate issues, as contemplated by Rule 42(b), SCRCP.

No such tidy division exists in the present case. The challenged order is not really one of "bifurcation" as it applies to the Appellants. It may be called a bifurcation order, but *Morrow* instructs the Court to disregard that label and examine the order's effect on the Appellants. As discussed above, the order forces the Appellants to try the same case twice, several times over. Granted, the specific causes of action may be different, but both trials will necessarily involve the same evidence, witnesses and arguments from the Appellants. The second trial will be an

unnecessary duplication of efforts for the Appellants; there is simply no other way to state it. This was not the situation in *Flagstar*, and that case is not controlling here.

Senter and *Flagstar* involved appellants who were merely dissatisfied with the planned methods of trying the cases because they preferred different methods for strategic reasons. This is why those appeals were dismissed. Here, on the other hand, the harm to the Appellants involves much more than strategic disadvantages. The order will force the Appellants to devote vast amounts of time and money to duplicative trials in several different cases. Thus, this is a much different kind of order than the ones seen in previous decisions.

Furthermore, under the Respondents' position, the Appellants would have no right to appeal until the duplicative trials were finished. This means the harm to the Appellants would have already occurred before they could seek any appellate review. For that reason, an appeal on this issue at that juncture would not – and could not – provide any real remedy to the Appellants. As previously discussed, our appellate courts have not hesitated to find orders to be immediately appealable in past analogous "no win scenarios," where an appeal after final judgment would not do the party any good.

While the Appellants may not be entitled to a trial in the exact format of their preference, they do have a substantial right not to be forced to try the same cases twice for no justifiable reason. This is the real issue for purposes of appealability, not the title that the trial court gave to the order. Therefore, this Court should vacate its previous dismissal order and allow this appeal to proceed in the normal course.

II. The Court should also review the limited collateral review order.

The limited collateral review order also affects the Appellants' substantial rights because it allows claims to proceed against the Appellants when those claims should be barred by the previous court-approved class settlement. Thus, this order has the practical effect of denying and/or striking one of the Appellants' defenses. This makes the order immediately appealable under S.C. Code §14-3-330(2)(c). *See Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005) ("An order affects a substantial right and is immediately appealable when ... [it] strikes out an answer or any part thereof or any pleading in any action.").

Furthermore, even if the Court were to determine that the limited collateral review order is not itself immediately appealable, that would not warrant dismissal of the appeal. As previously argued, the bifurcation order is immediately appealable under S.C. Code Ann. §14-3-330(3). For this reason, the Court can – and should – also review the limited collateral review order. *See Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998) (an order not immediately appealable will nevertheless be reviewed if another appealable issue is before the court and review will avoid unnecessary litigation).

CONCLUSION

Based on the authorities and arguments set forth above, this Court should vacate its previous dismissal order and allow this appeal to proceed.

(Signature on next page)

Respectfully submitted,

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June 7, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

RECEIVED
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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

1472106v1

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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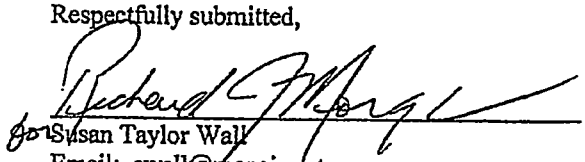
Respectfully submitted,



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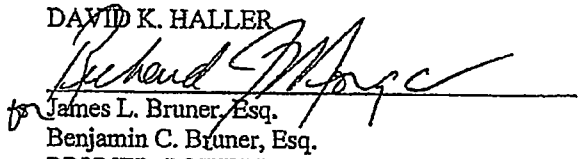

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June 7, 2017
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLETON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

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

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

v.

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

Of whom,

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

Doe Respondents' Return to Petition for Rehearing By Diocese Appellants

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The Doe Respondents, plaintiffs in the various cases in the trial court, oppose the Petition to Rehear by the Diocese Appellants. The Court correctly determined that the trial court's orders to bifurcate and schedule the trials, and giving limited collateral review of the defective class action proceedings, are interlocutory, and not reviewable. *Fulmer v. Cain*, 670 S.E.2d 652, 654 (S.C. 2008) ("the 'mode of trial' exception to the general rule that only final orders are appealable is confined to orders which abridge a party's constitutional right to trial by jury"); *Flagstar Corp. v. Royal Surplus Lines*, 533 S.E.2d 331, 332 (S.C. 2000) ("trial of all issues in the case in a single proceeding is not a mode of trial to which the parties are entitled as a matter of right.") The Diocese simply overstates the holding in *Morrow v. Fundamental Long-Term Care Holdngs, LLC*, 773 S.E.2d 144 (S.C. 2015), which incorrectly claimed to have been an interlocutory order about bifurcation. 773 S.E.2d at 147: "We decline the Fundamental Defendants' invitation to base our decision on the manner in which the motion was characterized—one of bifurcation." The rationale of *Morrow* is not that bifurcation is a substantial right, but that when defendants are dismissed a substantial right is affected.

Conclusion

The petition to rehear should be denied.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
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Charleston in his official capacity, are.....Appellants.

Proof of Service

Pursuant to SCACR 240(d), by my signature below, I certify that I have on June 6, 2017, caused to be served on cunsel listed below a copy of the

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

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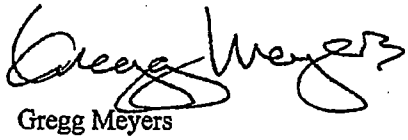
Done June 6, 2017



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The South Carolina Court of Appeals

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

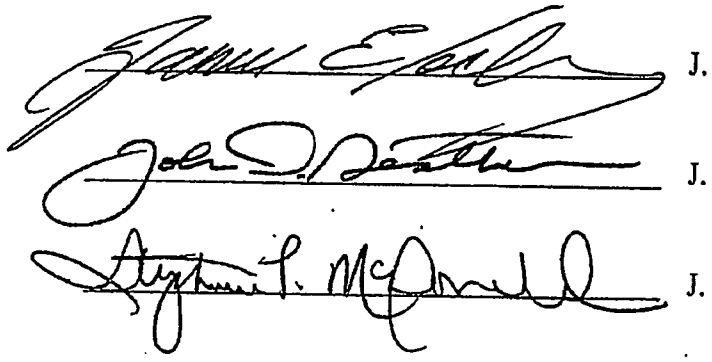
Of whom, The Bishop of Charleston, A Corporation Sole; Robert Guglielmone, The Bishop of Charleston, in his official Capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official Capacity; and Robert J. Baker, former Bishop of Charleston, in his official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

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

Appellate Case No. 2017-001092

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.

J.

J.

Columbia, South Carolina

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Brian James Kern, Esquire
Gregg E. Meyers, Esquire
Susan Taylor Wall, Esquire
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