

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; 2015 CP-10-5486; 2016-CP-10-1632

Appellate Case No. 2017-001996

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe 245
and Father Doe 245, and John Doe 297 Appellants,

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 Respondents.

RECEIVED
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SC Court of Appeals

**JOINT RETURN BY THE RESPONDENTS/LAWYER DEFENDANTS TO
THE DIOCESE RESPONDENTS' MOTION TO STRIKE**

Defendants/Respondents Lawrence E. Richter, Jr., Richter & Haller, LLC, and David K. Haller (the "Richter & Haller") submit this Joint Return in response to the Motion served October 18, 2018, by Respondents 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 (collectively, “the Diocese”) to Strike the Initial Brief of the Lawyer Respondents, or, in the Alternative, for Leave to Supplement.

In this appeal, all of the Appellants allege claims related to sexual abuse against the Diocese and allege alternative claims against Richter & Haller, who served as class counsel for an underlying class action lawsuit filed against the Diocese in Dorchester County, South Carolina.

DISCUSSION

The Diocese asks this Court to strike Richter & Haller’s initial brief based upon matters which it contends are mischaracterizations, improper, or immaterial. The motion should be denied because the Diocese’s claims are wholly incorrect and without merit. The motion to strike is a thinly veiled attempt to make arguments which the Diocese could have included in its initial brief but did not.

The Diocese’s motion sets forth nine uncited bullet points, which Richter & Haller categorize and address below.

I. Various Appellants Voluntarily Relinquished Their Sexual Abuse Claims.

The Diocese first claims Richter & Haller’s statements that the Appellants voluntarily relinquished their sexual abuse claims are mischaracterizations and that instead the record clearly shows “the opposite.” Richter & Haller accurately reported, and the record proves, that certain Appellants voluntarily abandoned their sexual abuse claims.

Richter & Haller have included in their designation of matter the transcript of the June 28, 2017 motions hearing before Judge Nicholson, at which the Diocese and the Appellants appeared to argue several dispositive motions the Diocese filed. Among those motions were motions for summary judgment based upon the doctrine of charitable immunity. The transcript from that hearing shows the following exchange:

[APPELLANTS' COUNSEL:] Anyway, here is the point, Your Honor, the one motion of Mr. Dukes that is not going to be affected by any discovery or any period of time I have is his motion about charitable immunity. Every case that now remains arises from 1971 or earlier. And I cannot, in fairness, say to Mr. Dukes or to the Court or to the Diocese that that is -- that there's nothing going to change that. And the status of the Diocese prior to 1971, in terms of the charitable immunity, was entirely daunting.

I don't have any evidence and I don't expect to find any evidence, nor have I pled - I have pled negligence, I have pled gross negligence, I have not pled intent. And prior to 1971 the charitable immunity law was so draconian I would say that it's not really possible for me to mount evidentiary issues with the Court on charitable immunity. So, I wanted to openly acknowledge that. I think Mr. Dukes and the Diocese are in a commanding position on charitable immunity as to every remaining case with respect to the Diocese.

Now, some of those cases end right there because they are in-state people, they don't have claims against class counsel. Some of the cases are out of state people that do have claims as to class counsel. But I think in fairness to the Diocese and the Court, that is not going to change even with me having ten days to respond. I just wanted to openly acknowledge that in fairness to the Court.

So, I think that I'm in a position as with my cases are now only the ones that have a phase as to class counsel are in a position to be going forward.

THE COURT: Okay.

MR. DUKES: Mr. Meyers made a great argument for me. Our -- the first motion that I wanted to take up was charitable immunity.

THE COURT: Well, he's pretty well just resolved that, hasn't he?

MR. DUKES: You said it, I think so, Your Honor.

(Transcript of June 28, 2017 Motions Hearing, page 9, line 19 to page 11, line 6, excerpts attached as Exhibit A.) **The Appellants did not oppose the Diocese's motion**; they conceded they would not be able to overcome it.

Following that hearing, Judge Nicholson entered orders granting the Diocese summary judgment based upon the doctrine of charitable immunity. In a subsequent order granting Richter & Haller summary judgment, the trial court recounted the voluntary surrender of the sexual abuse claims made by appellants' counsel:

At the outset of the hearing on those motions, Plaintiffs' counsel **voluntarily surrendered** his clients' claims to the Diocese Defendants' charitable immunity defense and agreed that the Court should grant summary judgment to the Diocese Defendants on all claims in those four cases *except* civil conspiracy (which, as noted above, was later abandoned) and aiding and abetting breach of fiduciary duty.

(Order, August 11, 2018 at 9 (emphasis added).) Given the statements in the transcript and the trial court's use of the phrase "voluntarily surrendered," the record fully supports Richter & Haller's statements that certain Appellants voluntarily relinquished their sexual abuse claims. The order entering summary judgment for the Diocese does not change that fact and merely memorialized the entry of judgment following the Appellants' abandonment of their claims.

II. The Discussion of Charitable Immunity was Warranted.

The Diocese further claims it was improper for Richter & Haller to discuss the trial court's application of the doctrine of charitable immunity because the orders granting the Diocese summary judgment on that defense were never appealed. While the Diocese is correct that those orders were not appealed, that fact does not matter.

The Appellants contend in this consolidated appeal that Richter & Haller harmed them because the Diocese "waived"¹ charitable immunity in the underlying class action settlement but successfully asserted it in the instant litigation. (Apps.' Initial Br. pp. 8, 10; Apps.' Reply Br. 5-7, 12.) The only way to evaluate this contention is to consider the strength of the charitable immunity defense in light of the egregious sexual abuse allegations presented by these cases. That evaluation would have been conducted by the trial court in the context of the Appellants' substantive sexual abuse claims. However, no such evaluation was conducted because Appellants' counsel, after prosecuting these claims for over a decade, abruptly conceded the issue, thus

¹ As discussed in Richter & Haller's brief, Appellants' use of the term "waiver" is deeply misleading.

manufacturing the argument that the non-settling Appellants were now barred from recovering against the Diocese. (Transcript, June 28, 2017, p. 9, line 19 to page 10, line 13.) Richter & Haller, in their initial brief, presented the law and analysis necessary to evaluate whether the Appellants were truly barred from recovering against the Diocese by charitable immunity, an issue which is entirely relevant and appropriate. Indeed, even a cursory review of the case law cited in Richter & Haller's brief demonstrates that the charitable immunity analysis is far more complicated and nuanced than the Appellants or the Diocese would have this Court believe.

III. The Settlement of Other Claims is Reflected in the Record.

The Diocese contends any discussion of Appellants' settlements with the Diocese is also improper. It is not.

The Appellants argue in their initial brief that the trial court erred in holding their claims were precluded due to their respective recoveries from the Diocese. (Apps.' Br. at 18-19.) In response, Richter & Haller referred to those settlements and designated the stipulations of dismissal related to those settlements to be included in the record. Richter & Haller noted the fact that the Diocese continues to settle these cases strongly suggests that the Appellants and the Diocese do not truly regard charitable immunity as the ironclad defense that they now claim. That these cases continue to settle belies the contention that the Appellants could not recover from the Diocese or recover adequately, which is their primary claim vis-à-vis Richter & Haller. It was therefore entirely appropriate for Richter & Haller, in their initial brief, to apprise this Court of the settlements, the evidence of which is in the record.

IV. The 1962 Instruction (*Crimen Solicitationis*) is Repeatedly Referenced in the Record.

The Diocese Respondents also contend that Richter & Haller have improperly made

prejudicial reference to the *Crimen Solicitationis*, a document more often referred to in the record as the 1962 "Instruction." This objection has no merit whatsoever.

First, the Instruction and its characterization is a prominent part of every complaint filed by the Appellants, which complaints are part of the record on appeal. In their complaints, the Appellants made coverup and concealment allegations against the Diocese specifically based upon the Instruction. (*See, e.g.*, Compl., C/A No. 2010-CP-10-05520 ¶ 40, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56, attached as **Exhibit B**.)

Furthermore, during the March 9, 2007 fairness hearing in the underlying class action cases, Judge Diane Goodstein expressed her "great concern" based on the Instruction, which became a court's exhibit,² and the Diocese's record-keeping:

THE COURT: Okay. Very well. Now, counsel, I want to talk to you because I'm happy to get your position on where I think I am at this juncture because it causes me grave concern. There are two pieces of information that I now have that concern me. And in all candor in the settlement, in my settlement conference with counsel and, of course, both of you were there, both of these -- all four of you lawyers were here. Mr. Lofton wasn't present, but outside Mr. Lofton the four of you were present and we met and went through the settlement proposal and talked about the settlement. But today there are two new pieces of information and those two pieces of information cause me great concern. Great concern.

The first, of course, is what has been marked as Court's Exhibit Number 1. And that -- this document causes me great concern which is why, Mr. Geoly, I wanted you to put any objections to the document that you felt compelled to place on the record.

And secondly I am concerned with counsel's representation that there is -- not representation, let me call it argument, that there is a difference between the number of priests who have engaged in sexual assault or abuse and the real number. And that the real number may be somewhere hidden or undisclosed or secret.

That, of course, would be a violation of the criminal laws of the State of South Carolina, both in the form of obstruction of justice as well as any underlying crimes which may or may not have been committed against children of this state. That now predominates in my mind.

² See Transcript, March 9, 2007, page 157, lines 19-20.

I have so informed our solicitor David Pascoe. And I contacted David Pascoe because you are in the First Judicial Circuit.

I will order Solicitor Pascoe to undertake an investigation. I will share with him what has now been marked as the Court's Exhibit Number 1, because the Court has an obligation where there is information that comes directly to the Court that there have been crimes that have been committed that the Court take appropriate action. I have, and will, order Solicitor Pascoe to do that. That must happen before I can approve the settlement for this reason: Because if it is true that which has been argued that there are children who have been abused and been undisclosed, and their only remedy is to receive newspaper publication and then to come forward, that is insufficient in my mind because those would be names that would be known and they are entitled to more attention than that.

So, that is where we are at this point. I'm happy to hear from counsel, but in my mind that is where we are. I must have assurances that there are no known crimes that have been committed against children, now adults, that have been undisclosed to law enforcement before I can go forward any further with regards to the settlement. I'll hear first from plaintiffs' counsel.

MR. RICHTER: Thank you, Your Honor. The -- I'm sorry that you had to undertake the actions that you've had to undertake, but I am most appreciative of your public sense of concern, particularly for those who as children don't have the wherewithal otherwise internally or certainly by their standing in line to proceed on their own. It is my sincere hope that the diocese has not -- has not covered up the abuse of any child.

If -- and I know there's a lot of money at stake here this proceeding today and this lawsuit keeps one further child from being abused, or uncovers any coverup whatsoever by this diocese, then the money pales in comparison of importance.

So while we don't want to delay, and I understand it, I think the good news is that the diocese is the repository of that information and can make it, I hope, readily available to the solicitor.

We have had many contacts from people during the duration of this litigation and particularly during this advertising period. And while we certainly agree to keep everything confidential, we -- that is information at least for matching purposes or scope of remedy available to these people that we would like to know in processing claims for the class as well. Thank you.

(Transcript, March 9, 2007, page 173, line 24 to page 177, line 25, excerpts attached as **Exhibit**

C.)

In their initial brief, Richter & Haller reference the Instruction only twice, both times while discussing the class action court's administration of the class action lawsuits.³ Nothing about those references is improper, disparaging, or runs afoul of the Appellate Court Rules. No party in this case has asked this Court to interpret that document or to determine a matter of ecclesiastical law. Rather, the document is mentioned to provide context to the class action court's administration of the underlying class action cases, which is entirely appropriate.

V. The Record Reflects Inadequate Diocesan Record-Keeping.

The Diocese suggests that it was somehow inappropriate for Richter & Haller to criticize the Diocese' record-keeping, going so far as to badly assert, without citation, that "ALL members of the settlement who were entitled to actual notice of the class action settlement (save the 4 whom no one could find) received such notice." The evidence belies the Diocese's assertion. Indeed, multiple Appellants have testified that they or a family member put the Diocese on notice of their sexual abuse, yet they were not among the victims found in the Diocese's records and they did not receive actual notice of the settlement. (Deposition of John Doe 10, p. 39 line 21 through p. 44 line 14; Deposition of Jane Doe 4, p. 20 lines 3-17; Deposition of John Doe 2, p. 23 line 20 through p. 25 line 18, excerpts of which are attached as **Exhibit D.**) Moreover, the Diocese was unable to produce any policy for handling or keeping records of sexual abuse claims in effect before 1994, which is itself evidence of inadequate record-keeping. (Diocese Responses to David K. Haller's Second Requests for Production, November 13, 2015, attached as **Exhibit E.**)

Thus, it was not remotely improper for Richter & Haller to note that the Diocese's lack of appropriate record-keeping exacerbated the difficulty of locating sexual abuse victims.

³ The two references are on pages 14 and 23 of Richter & Haller's initial brief.

VI. The Record and Law Reflect that Repressed Memory Victims Are Not Bound by a Class Action Settlement.

The Diocese claims that Richter & Haller's arguments regarding John Doe 193 and other repressed memory victims contradicts the record and is speculative. To the contrary, the arguments are supported by the record and clear case law.

In the order granting Richter & Haller summary judgment, the trial court held Richter & Haller owed no duty to John Doe 193 because he was not an intended beneficiary within the original class definition in the pleadings. (Order, August 11, 2017 at 20.) The Appellants attempt to create confusion by failing to distinguish between the class definition in the class action complaints and the class definition which the class action court ultimately approved. The Appellants also argue Richter & Haller breached their duties by failing to negotiate a settlement that provided for repressed memory victims like John Doe 193. (Apps.' Br. at 2-3 & 5.)

In response, Richter & Haller contend (i) the trial court was correct that Richter & Haller owed John Doe 193 no duty, and (ii) the law prevented the inclusion of claims by repressed memory victims as part of the settlement because at a fundamental level those victims were unable to assert their claims. *See Moriarty v. Garden Sanctuary of Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000) (recognizing that repressed memory syndrome can affect a victim's ability to remember abuse and, therefore, impede a victim's ability to assert a claim). A claim cannot be settled, including as part of a class action lawsuit, unless the party has the ability to assert it. The claims of repressed memory victims were future potential claims that could not have been asserted at the time of the class action. *See Georgine v. Amchem Prods.*, 83 F.3d 610, 630–31 (3d Cir. 1996) (finding no adequacy of representation due to "salient conflict" between "the presently injured" who were suffering from injuries due to asbestos exposure and "future plaintiffs" who had been exposed to asbestos but not yet suffered injuries); and *Amchem Prods. v. Windsor*, 521

U.S. 591, 606 (1997) (affirming *Georgine* and noting “disparity between the currently injured and exposure-only categories of plaintiffs[.]”).

Nothing about the arguments in Richter & Haller’s initial brief regarding repressed memory victims was new, novel, or surprising. The Diocese had a full and fair opportunity to submit its own arguments in opposition to or in support of the Appellants’ arguments as part of its initial brief. There is no justification or support under the Appellate Court Rules to strike Richter & Haller’s initial brief or allow the Diocese a second bite at the apple.

VII. The Record Facts Prove the Impossibility of Directing Notice to Unknown Sexual Abuse Victims.

Finally, the Diocese moves to strike Richter & Haller’s initial brief because it contends Richter & Haller erroneously discuss the fact that it was impossible to provide adequate notice to all potential victims. The Appellants’ primary contention in this appeal is that Richter & Haller failed to give them notice of the class action settlement. Therefore, the notice plan, whether Richter & Haller followed it, and the circumstances surrounding the plan’s adoption, are squarely at issue in this appeal. In contrast to a class action case against a television service provider, which maintains account records with names and addresses, the underlying class action court had no definite victim list or other finite list from the Diocesan records from which the class action court could determine the identities, names and addresses of all potential class members. Thus, the class action court was forced to—and did—exercise its discretion in crafting a notice plan that was appropriate under the circumstances of the class action cases.

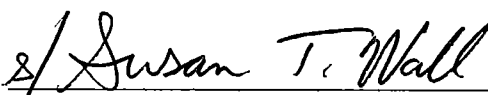
CONCLUSION

For the foregoing reasons, the Diocese Respondents’ Motion to Strike the Initial Brief of the Lawyer Respondents, or, in the Alternative, for Leave to Supplement, should be denied. Every

party has had a full and fair opportunity under the Appellate Court Rules to brief the issues presented in this case, and no further briefing is necessary or appropriate.

Respondents Lawrence E. Richter, Jr., David K. Haller and Richter & Haller, LLC, therefore respectfully request that the Diocese Respondents' Motion be DENIED in all respects.

Respectfully submitted,


Susan Taylor Wall
Email: swall@grsm.com

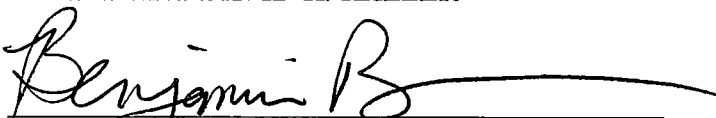
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DEFENDANTS LAWRENCE E. RICHTER, JR.
AND RICHTER & HALLER, LLC

October ²⁹23, 2018
Charleston, South Carolina

EXHIBIT A
TO
JOINT RETURN BY THE RESPONDENTS/LAWYER DEFENDANTS TO
THE DIOCESE RESPONDENTS' MOTION TO STRIKE

Excerpts from Transcript of June 28, 2017 Motions Hearing

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Charleston

3 Case Nos.: 2009-CP-10-6694, 8054,
4 8055, 8056

5 John Doe, Jane Doe 1, and Jane Doe 2,
6 Jane Doe 3,

7 Plaintiff(s),

8 vs.

Transcript of Record

9 The Bishop of Charleston, a
10 Corporation Sole, and The Bishop of
11 The Diocese of Charleston,
12 in his official capacity,

13 Defendant(s).
14 _____/

15 John Doe 2 and Jane Doe 4, Jane Doe 11,
16 John Doe 193, John Doe 230, John Doe 297,
17 Plaintiff(s),

18 vs.

19 Case Nos.: 2010-CP-10-5520,
20 2012-CP-10-5559, 2013-CP-10-3733,
21 2014-CP-10-2130, 2016-CP-10-1632

22 The Bishop of Charleston, a
23 Corporation Sole, and The Bishop of
24 Charleston, in his official capacity, Rev.
25 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,

 Defendant(s).
 _____/

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HEARING TRANSCRIPT

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5 DATE: June 28, 2017

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7 TIME: 9:30 a.m.

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9 PLACE: Charleston, South Carolina

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14

15 BEFORE:

16 The Honorable J.C. NICHOLSON

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APPEARANCES

REPRESENTING PLAINTIFF(S):

Gregg Meyers, Esquire ,
The Blake House
321 East Bay Street
Charleston, SC 29413
843-722-7733

REPRESENTING THE DIOCESE DEFENDANT(S):

Rich Dukes, Esquire
Brian J. Kern, Esquire
40 Calhoun Street, Suite 200
Charleston, SC 29401
843-576-2802

REPRESENTING RICHTER & HALLER:

Ben Bruner, Esquire
Bruner Powell

ALSO PRESENT:

Rev. Monsignor Martin Laughlin
Robert J. Baker
Lawrence E. Richter
David K. Haller
Bishop Robert Gugliemone

1 Compel. Do you want to hear that now, or do you want
2 to hear that after you hear the other motions?

3 MR. MEYERS: Your Honor, I thought that we could
4 take that last, because what I think -- here is the
5 position that I'm in as to all of Mr. Dukes' motions.
6 I have this stuff.

7 THE COURT: I understand, I'll leave the record
8 open for ten days for you to make a response, because a
9 lot of that wasn't filed until yesterday.

10 MR. MEYERS: But nothing is going to change one
11 fact about all of these cases.

12 THE COURT: Does ten days give you enough time?

13 MR. MEYERS: I think so.

14 THE COURT: I'll give you ten days to respond,
15 whatever response you want to make to everything he's
16 filed. He filed some Friday and he filed some
17 yesterday.

18 MR. MEYERS: Yes, and I appreciate that he was out
19 of town and all of that. Anyway, here is the point,
20 Your Honor, the one motion of Mr. Dukes that is not
21 going to be affected by any discovery or any period of
22 time I have is his motion about charitable immunity.
23 Every case that now remains arises from 1971 or
24 earlier. And I cannot, in fairness, say to Mr. Dukes
25 or to the Court or to the Diocese that that is -- that

1 there's nothing going to change that. And the status
2 of the Diocese prior to 1971, in terms of the
3 charitable immunity, was entirely daunting.

4 I don't have any evidence and I don't expect to
5 find any evidence, nor have I pled -- I have pled
6 negligence, I have pled gross negligence, I have not
7 pled intent. And prior to 1971 the charitable immunity
8 law was so draconian I would say that it's not really
9 possible for me to mount evidentiary issues with the
10 Court on charitable immunity. So, I wanted to openly
11 acknowledge that. I think Mr. Dukes and the Diocese
12 are in a commanding position on charitable immunity as
13 to every remaining case with respect to the Diocese.

14 Now, some of those cases end right there because
15 they are in-state people, they don't have claims
16 against class counsel. Some of the cases are out of
17 state people that do have claims as to class counsel.
18 But I think in fairness to the Diocese and the Court,
19 that is not going to change even with me having ten
20 days to respond. I just wanted to openly acknowledge
21 that in fairness to the Court.

22 So, I think that I'm in a position as with my
23 cases are now only the ones that have a phase as to
24 class counsel are in a position to be going forward.

25 THE COURT: Okay.

1 MR. DUKES: Mr. Meyers made a great argument for
2 me. Our -- the first motion that I wanted to take up
3 was charitable immunity.

4 THE COURT: Well, he's pretty well just resolved
5 that, hasn't he?

6 MR. DUKES: You said it, I think so, Your Honor.

7 THE COURT: I mean, what is there to argue about?

8 MR. DUKES: Nothing. All of the remaining cases,
9 as Mr. Meyers said, are all subject to charitable
10 immunity and the claims against the Diocese should be
11 dismissed in that regard. That would leave us with
12 only the conspiracy count. I did file the Motion for
13 Summary Judgement on the conspiracy stating --

14 THE COURT: What about, I guess even the unfair
15 trade practices would be gone also. Everything but
16 civil conspiracy you think would be the only thing that
17 would be left.

18 MR. DUKES: Yes, Your Honor. And I filed a
19 summary judgment motion on that because on Your Honor's
20 list of the cases for trial was the John Doe 2 and Jane
21 Doe 4 plaintiffs where all claims but conspiracy were
22 dismissed by Judge Young some time ago.

23 THE COURT: John Doe who?

24 MR. DUKES: John Doe 2 and Jane Doe 4. That is
25 case number 5520.

EXHIBIT B

TO

**JOINT RETURN BY THE RESPONDENTS/LAWYER DEFENDANTS TO
THE DIOCESE RESPONDENTS' MOTION TO STRIKE**

Complaint filed in C/A No. 2010-CP-10-5520

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

John Doe 2, and Jane Doe 4,)
)
Plaintiffs,)

v.)

The Bishop of Charleston, a)
Corporation Sole; Robert)
Gugliemone, The Bishop Of)
Charleston, in his official)
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.)

Negligence; Gross Negligence
Fraudulent Concealment
Civil Conspiracy
Professional Negligence
Breach of Fiduciary Duty
Judicial Estoppel
Unfair and Deceptive Trade Practices

Jury Trial Requested

FILED
2010 JUL -9 PM 2:11
JULIE J. ARISTON
CLERK OF COURT

Summons

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action. A copy of the complaint is served upon you with this summons.

Your answer to the complaint is to be served upon the attorney for the plaintiff at Post Office Box 1297, Charleston SC 29402.

According to the South Carolina Rules of Civil Procedure, which govern litigation, you are required to appear and defend yourself in this action by making and serving an answer to this complaint within thirty (30) days after the complaint is served

upon you. The thirty days begin to run from the date after this summons and complaint are served upon you; the date the service is made is excluded.

If within that time you fail to appear and defend as you are required to do by the Rules of Civil Procedure, the plaintiff in this action shall apply to the Court for the relief demanded in this Complaint and judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

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

Gregg Meyers
1 Poston Road Suite 110
Charleston SC 29407

Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

John Doe 2, and Jane Doe 4,)
)
Plaintiffs,)

v.)

The Bishop of Charleston, a)
Corporation Sole; Robert)
Gugliemone, The Bishop Of)
Charleston, in his official)
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.)

Negligence; Gross Negligence
Fraudulent Concealment
Civil Conspiracy
Professional Negligence
Breach of Fiduciary Duty
Judicial Estoppel
Unfair and Deceptive Trade Practices

Jury Trial Requested

FILED
2010 JUL -9 PM 2:11
JULIE J. ARISTON
CLERK OF COURT

Complaint

For their complaint, the plaintiffs allege:

Parties and Jurisdiction

1. Plaintiffs are adult citizens and residents of a state other than South Carolina.

Each was sexually molested as a child by a priest of the Diocese of Charleston, James W. McCarthy, when James McCarthy was assigned to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971.

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

upon their agreement to reciprocate in discovery and to maintain plaintiffs' identities as confidential in the public record.

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

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

5. The Bishop of Charleston is the formal head of the Diocese of Charleston, presently the Most Rev. Robert E. Gugliemone, a citizen and resident of Charleston County, South Carolina. He is sued in his official capacity, and is a party necessary for complete relief. All persons working for the Diocese are subordinate to the Bishop.

6. Prior to Bishop Guglielmonone, from October 2007, to March 2009, the Diocese had no Bishop, and was administered under the Code of Canon Law by the Rev. Monsignor Martin Laughlin, a citizen and resident of Charleston County, South Carolina.

7. Prior to Administrator Laughlin, from July 1999 to August 2007, the Bishop was Robert J. Baker, presently a resident of, and citizen of, Alabama.

8. In this complaint, the Diocese, the Bishop defendants, and the Administrator are collectively referred to as the "Diocese defendants," unless they are otherwise specifically referred to.

9. The Court has jurisdiction over the parties to this action.

10. The Court has jurisdiction over the subject matter of this action.

11. Venue of this action is proper in Charleston County.

12. John Doe 2 and Jane Doe 4 were each similarly situated as other individuals ostensibly within the definition of a class certified by a South Carolina court as part of a class action. However, by agreement among the defendants, the plaintiffs received no notice of the class action, thus had no opportunity to be heard or participate in the litigation, either in person or through counsel. By agreement among defendants, notice given in the class action was designed to be insufficient as to the plaintiffs, so as to permit the Diocese to later argue that the class action precluded any and all claims for abuse, by preventing the plaintiffs from either participating in the class action or being able to remove themselves from the class action by opting out. In being within the putative definition of the class as the defendants agreed to define the class, the plaintiffs, along with other members of that class who resided outside of South Carolina, ostensibly were formerly represented by, until in 2007 they was abandoned by, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC. Alternatively, and at minimum, defendants Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC assumed duties as to the plaintiffs by defining the class so as to ostensibly

include them. The defendants conspired against the plaintiffs to cause them special harm in the form of the effort to preclude them from making claims. The representation they were given in the class action was inadequate, and failed to meet the standard of care applicable to an attorney handling a class action case.

13. This action is not alleged as a class action. It involves as plaintiffs two persons who were, until they were each abandoned by their counsel, the Richter defendants, putative members of (a) a class as alleged in a state court class action, (b) a class settlement agreed to among defendants, and (c) a class approved by a state court. But for the Richter defendants having breached their duties to plaintiffs by abandoning the plaintiffs, in agreement with and full complicity with the other defendants, the class action would ostensibly have included the plaintiffs. A number of other individuals have made similar allegations of having been excluded by design from the class action, and this complaint may be amended to state a class action.

14. Lawrence E. Richter, Jr. is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

15. David K. Haller is a citizen and resident of South Carolina doing business in South Carolina as a practicing attorney.

16. Richter & Haller, LLC did business in Charleston County, South Carolina at all times pertinent to this complaint, and had its principal place of business in Charleston County.

17. In this complaint, defendants Richter, Haller, and Richter & Haller, LLC are referred to as the "Richter defendants," as noted above in paragraph 13.

Nature of Wrongdoing

18. This complaint sets out various causes of action built around four different levels of disregard for others and corruption. First, the disregard by the Diocese defendants in operating a system which actively disregarded the risks to children and families for sexual assault of children by their priests and other employees, and which then actively, and fraudulently, concealed the abuse that happened and the dangers to children it solicited into danger. Second, corruption and collusion by lawyers to manipulate three Charleston County cases, and later Dorchester County cases, to try to buy for the Catholic Church a layer of what was hoped would be protection from civil lawsuits almost certain to keep coming over that abuse and the fraudulent concealment of abuse by the Diocese. Third, the corruption of particular lawyers who assumed a duty to act for sexual abuse victims, including the plaintiffs, but who then acted in a professionally negligent way, willfully and wantonly abandoning their clients so as to not jeopardize the large fee they had otherwise arranged to be paid by the Diocese in exchange for their cooperation in trying to protect the Church from future cases, and from claims by these plaintiffs and other sexual abuse victims. The danger to the Diocese of future cases was that future cases might be brought by lawyers actually adverse to the Diocese, as opposed to the lawyers who entered into the collusive class agreement with them. Fourth, overt misrepresentations of fact by the Diocese defendants to the court, which approved the class action settlement.

19. So confident were the corrupt lawyers in their ability to manipulate the state court judge they had selected and maneuvered the cases before, and so confident were the corrupt lawyers in gaining the cooperation of the Diocese defendants and their supposed

adversary lawyers, that the corrupt lawyers, the Richter defendants, calculated they could submit even blatantly false and inflated time records to justify their large fee, and that no objection to them would be raised by the Diocese defendants. In exchange for their cooperation, the Diocese (a) agreed to take no position on whether the class should be certified, (b) agreed not to mention any of the false time records submitted by the Richter defendants, (c) agreed to state only the weakest and most vague argument that the fee awarded should be the low end of the agreed range for the fee, (d) agreed to make no objection to an unethical fixed fee for class counsel while, simultaneously, compensation to the class of victims was variable, (e) agreed to make no objection to the fee being awarded before to any class member claimant was identified, and before any class member claimant was paid, and (f) agreed to other procedural manipulations, as set forth below, which violated South Carolina rules of court and South Carolina law. In turn, the Diocese defendants overtly misrepresented to the circuit court their proposed treatment for class members who did not receive notice of the class action settlement, and once the court relied on that representation the Diocese defendants ignored that they made the representation.

20. Of the four levels of wrongdoing alleged, the causes of action which apply hinge, in part, on whether or not the plaintiffs are regarded as being bound by the *res judicata* effect of the class action to which the Diocese was party. As alleged more fully below, plaintiffs ostensibly fall within a class defined in that action, but the notice given to the classes, by design, was changed by all defendants so as to exclude notice to the plaintiffs. As a practical matter, notice was revised so it would go only to a subset of the approved classes; those class members living in and immediately adjacent to South Carolina. The

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

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

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

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

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

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

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

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

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

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

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

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

foreseeable dangers, by representing nothing to the contrary to the public. The Diocese defendants particularly owed a duty to the plaintiffs, who were minors, and their parents, a greater degree of care because as children the plaintiffs were unable to fully appreciate risks and danger. The Diocese defendants represented to its invitees and their parents or guardians, including the plaintiffs, that its facilities and its priests were safe, and that persons would be would be protected form harm when using its facilities and when interacting with its personnel.

30. After he was moved to Ward, S.C., James McCarthy molested the plaintiffs.

31. The Diocese defendants negligently supervised James McCarthy. The Bishop was grossly negligent in supervising James McCarthy. Moving him without proper warning to children and their parents was grossly negligent. As a proximate result of the negligence and gross negligence by the Diocese defendants, plaintiffs were sexually abused by James McCarthy.

32. The Diocese defendants were negligent in failing to warn the plaintiffs or their parents about James McCarthy. The Bishop performed that duty in a grossly negligent manner.

33. The Diocese defendants knew or should have known that James McCarthy was a pedophile. Despite that knowledge, the Diocese defendants, including Bishop Guglielmone, Bishop Baker, and Rev. Monsignor Laughlin, made no effort, or no competent effort, to ascertain how many children James McCarthy had molested, and no effort, or no competent effort, to locate victims of James McCarthy. If the Diocese did make such an effort, it assumed the duty but performed it negligently. Robert Baker and Rev. Monsignor Laughlin performed that duty in a grossly negligent manner.

34. The Dioceses defendants' failure to do so was negligent, and grossly negligent on behalf of the presiding Bishop from the time of the plaintiffs' abuse to the present, including the gross negligence by Bishop Guglielmone, Bishop Baker, Rev. Monsignor Laughlin, and the Bishops who preceded them.

35. As a result of the negligence and gross negligence by the Diocese defendants in failing to either prevent abuse or identify abuse victims by its agent or employee James McCarthy, the problems for the plaintiffs were first caused, and then exacerbated by the delay.

36. As set forth more fully below, the Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees are known to sexually abuse children. Those allegations are incorporated into this cause of action as if fully set forth, and that fraudulent concealment by the Diocese defendants, among other things, accounts for the delay in this action being brought against the Diocese defendants. The most recent act of fraudulent concealment by the Diocese defendants was in 2009. This action is brought within three years of that most recent act of concealment and fraudulent conduct by the Diocese defendants.

37. The plaintiffs are entitled to actual and punitive damages as a result of the negligence of the Diocese defendants, and gross negligence of Bishops Guglielmone and Baker, and Administrator Rev. Monsignor Laughlin, in failing to perform a proper review for McCarthy's victims, or in performing that duty in a negligent manner.

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

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

39. The Diocese defendants have for decades maintained a policy and practice of engaging in fraudulent concealment when their agents and employees sexually abuse children.

40. The Diocese defendants had a duty to discover and to disclose to plaintiffs or their parents their knowledge that James McCarthy had a sexual interest in children. That duty arises from (a) the preexisting fiduciary relationship between the plaintiffs and the Diocese defendants, which relationship the Diocese solicited; (b) from the parents of the plaintiffs having expressly reposed a trust and confidence in the Diocese defendants so as to entrust the plaintiffs to James McCarthy, which placed the plaintiffs in a vulnerable position with James McCarthy. That position of trust and confidence was implicit from those circumstances of plaintiffs being entrusted to James McCarthy, as well as from the nature of the dealings between the plaintiffs, their parents, and the Diocese defendants, who promoted that the plaintiffs' parents should leave the plaintiffs in the care and custody of James McCarthy, (c) from the essential nature of the Diocese defendants and their inducement to the plaintiffs' parent to have the plaintiffs participate in activities with James McCarthy as being beneficial to the plaintiffs, or at least not harmful to them, (d) from the secrecy provisions in the Code of Canon Law and the 1962 document titled "Instruction," which charges the Diocese to discover, but then to maintain secrecy about, "other persons solicited" by any person such as James McCarthy, who commits the "unspeakable crime" of sexually abusing a child, and (e) by the undertaking which the Diocese defendants assumed, negligently (and in the case of the individuals included in the Diocese defendants designation, grossly negligently), during 2005 - 2010, to locate victims such as the plaintiffs.

41. The plaintiffs were sexually abused by James McCarthy after 1962.

42. Concerning each of (a) the undisclosed dangers James McCarthy represented to the plaintiffs, and (b) assisting to repair the damage done to the plaintiffs by James McCarthy, the Diocese defendants were obligated to the plaintiffs to engage with them or their parents on their behalf in perfect good faith and with full disclosure.

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

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

45. Matters related to agents and employees of the Diocese sexually abusing children, including James McCarthy's sexual abuse of children including plaintiffs when they were children, were regarded as scandalous, and were maintained in the Secret Archive.

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

47. Plaintiffs each fit within the "penitent" referred to in the Instruction.

48. The 1962 Instruction states that "the worst crime" is "any perpetrated by a cleric or attempt [sic] with a person of his own sex." P. 15, ¶ 71. It is also defined as "any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex." P. 16, ¶ 73.

49. James McCarthy was, and John Doe 2 is, male. Jane Doe 4 is female. Thus, the conduct by James McCarthy to the plaintiff John Doe 2 qualifies under the 1962 Instruction as "the worst crime."

50. Among other things, the 1962 Instruction directs the Diocese defendants to assume the duty of locating "other persons solicited by the same confessor" (p. 7 ¶ 29), in this instance, other persons solicited by James McCarthy. The Instruction at p. 9 ¶ 37 also refers to an "Instruction of the Holy Office, February 20, 1867," in directing the

manner of interrogation for persons with information about solicitations or those solicited.

51. The Diocese defendants assumed the duty to locate victims ascribed to it by the 1962 Instruction, but performed that duty in a grossly negligent manner. The Diocese defendants failed to locate either plaintiff, failed to locate many other abuse victims, and made no competent inquiry to locate them. The Diocese defendants purposefully avoided making the type of inquiry that would have elicited discovery of the plaintiffs.

52. The 1962 Instruction was approved by the "Most Holy Father John XXIII" on March 16, 1962, according to page 16 of the 1962 Instruction.

53. In the Appendix to the 1962 Instruction are set out the terms of the secrecy to be observed for matters such as the sexual abuse of the plaintiffs. In essence, the oath provides for absolute secrecy, under pain of excommunication. Only the Pope himself can lift the obligation of secrecy, and it is a secrecy to be maintained "under whatever type of pretext, even for the most urgent and most serious cause [even] [sic] for the purpose of a greater good," unless expressly approved "by the Supreme Pontiff," according to page 17 of the 1962 Instruction.

54. "Whatever type of pretext" overtly endorses lying to civil authority, even lying under oath, to this or any other civil tribunal. No qualification is made in the 1962 Instruction for complying with civil authority.

55. Unless the Pope himself has specifically approved otherwise, secrecy was, until this complaint, to have been maintained not only by the plaintiffs, but also by every member of the Diocese defendants, and by even witnesses to sexual abuse. That secrecy is to be made despite any law, court order, or oath to which would otherwise require

disclosure. Under the 1962 Instruction, the highest obligation, higher than any law, oath, or court order, is to maintain secrecy for the benefit of the Diocese, and any pretext is to be used to maintain the secrecy. Accordingly, unless the Pope has specifically instructed otherwise, the Diocese defendants can all be expected to be obedient to the 1962 Instruction, to overtly misrepresent any facts related to sexual abuse, and to overtly conceal documents related to sexual abuse. The Diocese defendants have, to date, done so.

56. The call for secrecy in the 1962 Instruction and in the Code of Canon law constitutes spoliation of evidence, as well as fraudulent concealment.

57. Absolute secrecy more than sufficient to constitute fraudulent concealment was maintained by the defendants as to James McCarthy's sexual abuse of the plaintiffs. Consistent with that obligation of secrecy, the Diocese defendants made no effort to either prevent sexual abuse of the plaintiffs, or to ascertain that the plaintiffs were victims of the abuse by James McCarthy.

58. As courts began to require the Diocese, despite its commitment to secrecy and deception, to be accountable for sexual abuse, the Diocese had to reach a new level of deception and manipulation to limit the damage to the Diocese from its having to take responsibility for its history of sexual abuse, and to as much as possible to conceal, limit, and minimize the extent of abuse, so as to minimize its financial accountability for its history of abuse and concealment. The Diocese engaged with other defendants to conspire to do so, as set forth below. The acts of conspiracy are incorporated into this cause of action as if fully stated, although this cause of action relates to different damages than does the conspiracy cause of action. This cause of action relates to the damages

from the abuse itself, and the exacerbation caused by the long delays in redressing and taking responsibility for the sexual abuse. The conspiracy cause of action concerns deliberate exclusion from the class, so hinges on the proper interpretation of the orders in the class action, and whether the actions of the Richter defendants constituted merely greed, fraud, and self-interest, as opposed to professional negligence, in excluding from the class action, by design, the plaintiffs and many others who were within the class definition. If there was professional negligence, then the acts of professional negligence predominate, and the damages from the exclusion are properly paid by the Richter defendants. If the actions do not rise to professional negligence, and the Richter defendants and Diocese defendants were merely corrupt, then the damages for the exclusion are properly shared among all defendants for their conspiratorial actions in excluding the plaintiffs by design. And if the plaintiffs are not precluded from their claims against the Diocese by the *res judicata* effect of the class action, and the Richter defendants were merely corrupt, then the plaintiffs require no relief for either professional negligence or conspiracy.

59. This cause of action presumes that the plaintiffs are not precluded in making this claim by any prior litigation brought against the Diocese, for lack of due process in those proceedings, lack of competent representation sufficient to bind these plaintiffs, the collusive nature of the class settlement, or because the terms of the class action order do not apply to them.

60. The plaintiffs are entitled to actual and punitive damages as a result of the fraudulent concealment of the Diocese defendants in actively maintaining secrecy and

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

**For a Third Cause of Action:
Civil Conspiracy by All Defendants**

61. Allegations above, other than ¶ 57, are incorporated as if fully stated. This cause of action presumes the class action order is interpreted to bind the plaintiffs to its *res judicata* effect, despite insufficient due process and for which (by design) they got no notice, so presumes the plaintiffs are properly precluded from bringing claims against the Diocese related to sexual abuse, and presumes that class counsel was corrupt only to a degree insufficient to constitute professional negligence.

62. Defendants have conspired with others to injure the plaintiffs, and those actions have caused special damage to the plaintiffs.

63. The defendants have acted in numerous ways, which reflect the joint assent with minds of other persons to injure the plaintiffs, and have taken overt acts to pursue the common design to injure the plaintiffs.

64. Some actions that have been taken have been legal; other actions were legal but violated professional standards in rules of court and South Carolina law; other actions were false or fraudulent. The object of the conspiracy was to damage the plaintiffs by making sure they and all other out of state putative class members could not participate in the state court class action and could be prevented from bringing their own action. In exchange for a sufficient amount of money directed to corrupt lawyers as a fee, the plaintiffs' one-time lawyers, the Richter defendants, agreed to act against the plaintiffs'

interests, and to collaborate instead to act against the plaintiffs' interest and in the interest of the Diocese.

65. Specifically, in exchange for a sufficient amount of money as a fee, and the agreement by the Diocese to be silent as to the fraudulent means used to justify that fee, plaintiffs' one-time lawyers, the Richer defendants, agreed to abandon the plaintiffs, quietly dropping their request to give nationwide notice to class members such as them, even though they had defined class action classes so as to ostensibly include them and had proposed nationwide notice. The notice designed not to reach the class as defined, and designed to exclude the plaintiffs, breached a duty to the plaintiffs assumed by the Richter defendants, either from an attorney-client relationship or a fiduciary duty assumed when bringing the class action and defining it as they chose to do.

66. The Richter defendants elected to abandon their out of state putative class member clients, and dropped their request for nationwide notice to their out of state class members, so as to prevent the plaintiffs, and others similarly situated, from finding out about the class action and from making claims against the class fund. In the class allegations, joinder was said to be impracticable because the number of victims of priest sexual abuse "may exceed the hundreds," an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36 and in the identical John Doe #53 Complaint redundantly filed in 06-CP-18-1636.

67. If "too many" of those hundreds of victims participated in the class action, the Richter defendants would jeopardize the large fee the Diocese had agreed to enable them to get, and the Diocese might not get the ostensible protection from future suits it was colluding to try to obtain at the lowest possible cost.

68. For the Richter defendants, both their fee, and the interests of the Diocese, were more important than the interests of their absent putative class member clients.

69. In exchange for the Richter defendants abandoning the plaintiffs and all of their other putative class member clients living outside of South Carolina, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCPP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCPP 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which used to support the fee request by the Richter defendants, (e) agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to counsel before any class member's claim was known or the class was even identified, (g) acquiesced in the unethical conduct of abandoning all out of state class members by agreeing to give them no notice of the class resolution, and (h) agreed to maneuver, in violation of SCRCPP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the class action, to a state court judge known to have extensive social and professional ties to the Richter defendants, in the aspiration that a more pliable oversight would be received for the class settlement.

70. The Diocese defendants undertook a duty to the plaintiffs to identify abuse victims such as plaintiffs and negotiated, in June, 2006, a class resolution to what was

referred to as “spousal &/or parent claims deriving from victims abused,” in the Charleston Mediated Settlement agreement at ¶ 1. At that time no class of “spousal &/or parent claims” had been certified or even alleged. To get approval of the class settlement, the Diocese defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County. In disobeying SCRCP 23 in Charleston County, and in judge-shopping in Dorchester County, the defendants violated judicial norms and rules. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which duplicated an existing Charleston County complaint alleging a class, resulting in the identical case pending simultaneously in circuit court in both Charleston County and Dorchester County. That was done as the means of judge shopping. The Diocese defendants also agreed to remain silent so as to enable the Richter defendants to submit false information to the court.

Details of the Conspiracy

71. In 2003, the Richter defendants were associated by one or more lawyers to assist in representing a victim of sexual abuse in a claim to be asserted against, *inter alia*, The Diocese of Charleston.

72. The Richter defendants represented at least one victim of sexual abuse from the time they were associated throughout the remainder of 2003 and all of 2004.

73. In May 2005, the Richter defendants filed for an individual abuse victim an action in the Charleston County Court of Common Pleas styled *John Doe #66 v. The*

Bishop of Charleston, et al., 05-CP-10-2053. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

74. That John Doe 66 complaint made no class action allegations.

75. In August 2005, the Richter defendants filed another individual action in the Charleston County Court of Common Pleas, styled *John Doe #66A v. The Bishop of Charleston, et al., 05-CP-10-3293*. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

76. The John Doe 66A complaint made no class action allegations.

77. In October 2005, the Richter defendants met personally with then Bishop Baker.

78. As a result of that meeting, in December, 2005, the Richter defendants filed a class action complaint in the Charleston County Court of Common Pleas, styled *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al., 05-CP-10-4193*. No complaint is made against the other attorneys who signed that complaint along with the Richter defendants.

79. In February 2009 the Diocese defendants published to the public through their press spokesman the lie that the Charleston County John Doe 53 complaint was one of three individual cases filed in Charleston, as opposed to it being a complaint which alleged a class action. The representation that it was an individual suit was a lie in furtherance of the routine and consistent practice by the Diocese defendants to engage in fraudulent concealment of sexual abuse matters, and to further the agreement among defendants to cause harm to the plaintiffs.

80. Rule 23(d)(1) SCRCP requires “as soon as practicable, after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.”

81. From December 2005 until June 2006, the Richter defendants made no effort to seek class certification for the class they had alleged in the December class action complaint in Charleston County, nor did any other defendants. In that time the public records show there were no motion hearings held, in any of the three cases mentioned above. When the Charleston County court attempted to schedule pending motions, and sent out hearing notices, the parties collaborated to ask that the motions be continued rather than heard.

82. In June 2006, the defendants met in a mediation conference. At that time, no class action had been certified, and no class was alleged for spouses or parents of sexual abuse victims.

83. At that conference, which took place over two days, the parties purported to settle all claims of all class members in two classes, as the classes were defined by the 2006 agreement of the parties.

84. Ostensibly included in the classes as defined in the mediation were each of the plaintiffs. By defining the classes so as to ostensibly include each of the plaintiffs, and by purporting to settle their claims, the Richter defendants assumed professional obligations to them, including fiduciary duties towards them, and created a constructive attorney-client relationship, if not an actual attorney-client relationship with each plaintiff.

85. The agreement reached in that mediation is attached to this complaint, redacted as to client identities. Its terms are incorporated into this complaint pursuant to SCRCF 10(c). By its terms the agreement purports to settle the three cases then pending in Charleston County Circuit Court, numbers 05-CP-10-2053, 05-CP-10-3293, and the case alleging a class action, 05-CP-10-4913. The settlement purports to include the plaintiffs.

86. A typewritten agreement was drawn from the handwritten principles agreed to in the 2006 mediation of the Charleston cases.

87. The typewritten document was approved by The Vatican in January 2007.

88. The settlement of the agreement was funded by approval of The Vatican.

89. As reflected in the attached handwritten agreement, the defendants agreed that the individual plaintiffs and the purported class representative would split \$460,000 to settle their claims, whether or not the class settlement was approved. If no class was approved by the Court, the Diocese would pay only \$460,000.

90. Claims of absent class members were proposed to be resolved on terms materially different than the terms which the purported class representative or representatives received. Instead of a cash payment the same, or similar to, what the purported class representatives were to receive, absent class members were to be required to submit their claims to an arbitrator who would decide with finality how much, if anything, they might receive. Class members had to relinquish all rights for review to qualify for the arbitration.

91. As alleged below, not fewer than seven devices were chosen by overt agreement of the defendants to further the conspiracy against plaintiffs, and other absent putative members of the classes, from being included in any recovery for the class, and to limit the

class recovery from being “too much.” If the classes included “too many” claimants, the Diocese would be entitled to withdraw from the agreement. The Diocese defendants wanted the class settlement approved so they could later argue, as they in fact have argued, that no other sexual abuse claims which arose prior to the class approval could be made against the Diocese. The Diocese defendants knew that the class settlement had been negotiated with an “adverse” attorney deeply enmeshed with the Diocese and willing to compromise sexual abuse claims for far less than he would compromise a similar claim against a different Diocese. The Richter defendants wanted to assure themselves of a large fee without jeopardizing that fee by getting too great a recovery for abuse victims against defendant Richter’s own Diocese. So all defendants conspired to create methods to be able to limit the number of class members who could make claims and to limit the amount class members would recover. Doing so established a low bar for recovery for abuse victims, and permitted procedural manipulations of the class suit and class settlement approval process.

Conspiracy Technique One: Judge Shopping to Pick the Judge

92. The first technique used by the defendants to limit the class recovery was for the defendants to agree to maneuver a Charleston class action settlement to be presided over not by any judge in Charleston County, where the putative class case was filed and the class case settlement was reached, but to “shop” for a judge they selected to make those determinations. An independent judge in Charleston County was not desired to make those determinations. A judge more likely to overlook court rules and accept fraudulent filings was desired.

93. Instead of complying with SCRCP 23, and submitting the attached 2006 Charleston class action settlement for approval to a judge in Charleston County, the defendants agreed to cooperate so as to have the Richter defendants file, and the Diocese defendants accept service of, newly filed class action cases in Dorchester County, filed August 15, 2006 (06-CP-18-1310 and 06-CP-18-1311), and then the Charleston class action case, *John Doe #53 individually and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina v. The Bishop of Charleston, et al.*, 05-CP-10-4193, was redundantly re-filed in Dorchester County on October 6, 2006, with the same caption (other than the changed county name and case number 06-CP-18-1636), and with the identical allegations. The John Doe #53 class action case from Charleston County was redundantly filed in Dorchester County so as to be pending in the circuit courts of two counties at the same time, duplicating in Dorchester County the pending and already settled Charleston class action, to attempt to place all of the settled Charleston cases within the scope of the duplicate cases in Dorchester County, and as the means to shop for the desired judge.

94. This procedural maneuver agreed to among the defendants was done to judge-shop, to obtain the desired judge. The technique has no other purpose, and had no legitimate purpose.

95. Filing duplicative class actions to have the same case pending simultaneously in two different venues is inherently abusive conduct, as is cooperating to accept service of duplicative class actions filed in two different venues. Such conduct violates professional standards and breaches an independent duty to the court and to the plaintiffs, ostensibly included in each of those duplicative complaints.

96. When case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, all of the Charleston cases were still pending.

97. Once Charleston case 2005-CP-10-4913 was redundantly re-filed in Dorchester County as case 2006-CP-18-1636, the John Doe 53 class action was, by agreement of the defendants, simultaneously pending in two separate counties.

98. Dorchester County was chosen by agreement of the defendants so as to “judge shop” for a particular state court judge whose long social and professional ties with the Richter defendants was expected to produce a pliable oversight of any questionable elements of the class action, including class certification, class notice, attorneys fees, and fairness hearings. The judge was expected to tolerate fraudulent filings by the defendants, an expectation that was rewarded when fraudulent filings were made, by agreement of the defendants, and the court took no action concerning those fraudulent filings.

99. The defendants agreed with this strategy of seeking a pliable state court judge, and consented to the “judge shopping” so as to avoid having to submit the class allegations, and proposed class action settlement, for approval by any judge in Charleston County. The defendants feared completely objective judicial oversight by any of the judges in Charleston County.

100. Once Charleston action 2005-CP-10-4913 was redundantly re-filed in Dorchester County as 2006-CP-18-1636, the defendants sought to have, and succeeded in having, the judge they shopped for designate the cases as complex and assign them to that same judge. That designation was improper under the rules at the time, as set forth in more detail below.

101. Getting the complex case designation, and the judicial assignment with the shopped-for judge, meant that only that shopped-for judge would hear matters involving the class settlement, as would have been the case if the same request had been made in Charleston. But any Charleston judge would likely exert independent oversight of the class resolution, and defendants sought to avoid independent oversight.

102. Other than to shop for a particular judge, there was no legitimate reason to redundantly file case 2005-CP-10-4913 as case 2006-CP-18-1636.

103. As soon as the handpicked judge assigned the Dorchester actions to herself, the defendants submitted consent orders of dismissal to the administrative judge for Charleston County.

104. No motion was filed in Charleston to approve the class settlement reached in the Charleston cases. All defendants consented to not filing such a motion.

105. SCRCP 23 was not complied with as to the class settlement reached in the Charleston class action. All defendants consented to not complying with SCRCP 23 in Charleston County, and all defendants consented to seeking SCRCP 23 oversight only from the shopped-for judge.

106. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

Conspiracy Technique Two: Using Complex Case designation Improperly.

107. In October 2006, the defendants sought complex case designation of the Dorchester County class action cases.

108. At that time, the Charleston cases were still pending.

109. The July 26, 2006 order of the South Carolina Supreme Court enabling complex case designation approved a particular form for use with complex case motions. Among other things, that motion required counsel to represent certain facts applied to the action for which complex case status was sought. The form states:

We certify that we have made a good faith effort to settle this case and *thus far have been unable to do so*. We realize that if this case should be settled after being called for trial, we will be performing a disservice to other counsel who have cases following this case on the active trial roster, and we will endeavor to settle this case, if at all, before this date.

110. At that time, the Charleston cases were still pending, and a class settlement had been reached which, if approved, would resolve all cases.

111. By agreement of the defendants, no notice was given to class members of the dismissal of the Charleston class cases.

112. Defendants falsely represented to the shopped-for judge that no settlement had been reached. Alternatively, defendants solicited, and obtained, the shopped-for judge's consent to ignore the Supreme Court's requirements for complex case status.

113. Complex case status was approved, despite a settlement having been reached before the first Dorchester County case had been filed.

Conspiracy Technique Three: Agreeing to an unethical attorney's fee for class counsel.

114. The 2006 class action settlement reached in the Charleston class action cases included simultaneous negotiation of a common fund, and variable, recovery for the class and a fixed fee amount for class counsel, with the fee to class counsel be paid prior to the claims period.

115. As set forth in the affidavit of Michael Virzi, attached to this complaint and incorporated pursuant to SCRCP 10(c), it was unethical for the Richter defendants to

simultaneously negotiate a common fund and variable recovery for the class and a fixed fee amount for class counsel paid before the claims period. It was improper for the Diocese defendants to agree to it. Plaintiffs at no time consented to the Richter defendants negotiating such a settlement.

116. At page 13, paragraph 6B, in the typed version of the Charleston class settlement, class counsel's fee is provided as a fixed amount that would be set between a high and low figure in the document, but class member recoveries would be reduced *pro rata* "in the event that the total due exceeds the amounts provided" by the Diocese.

117. Representation of the plaintiffs by the Richter defendants in proposing an unethical fee was inadequate. Alternatively, that representation breached a fiduciary duty to the plaintiffs.

118. The fee provision in the class settlement assured the Diocese of getting maximum protection from the *res judicata* effect of the class action settlement within the financial limits of what the Diocese defendants and the Vatican were willing to pay, in exchange for an unethical fixed fee for the Richter defendants, paid before the number of class members was known, paid before any class member could make a claim, and paid before any class member could be or would be paid.

119. The Richter defendants sacrificed the interests of absent putative class members, such as plaintiffs, in exchange for the fixed fee they negotiated for themselves. The Diocese defendants agreed to it as the price of obtaining the cooperation of the Richter defendants in structuring a class resolution that provided only a fraction of the relief the Richter defendants would accept in a case against a Diocese other than Richter's own Diocese.

Conspiracy Technique Four: Disclosing to the Class neither the Settlement terms for the Class Representatives nor the Settlement for Persons who Opted Out of the Class

120. The fourth technique to conspire against the plaintiffs was to make no disclosure to them, or other class members, of either the superior settlement terms agreed to by the defendants with the individuals who were the class representatives, or the superior settlement terms reached with the individuals who opted out of the class settlement.

121. The defendants have all taken the position that the agreement with those persons who opted out of the class action was part of the class action. As part of the class action, the defendants should have informed class members of those terms as an option to the class recovery.

122. Neither the class representatives nor the opt-out abuse victims had to submit their claims to binding arbitration. Their claims were given specific dollar amounts. Each knew precisely what their recovery would be before consenting to resolve their claim.

123. In addition, the terms for the opt-out abuse victims exceeded the low bar the Richter defendants agreed to set for class member recoveries, and the opt-out victims received more than was received by any comparable abuse victim who stayed in the class settlement. In addition to the fee approved by the Court, the Richter defendants charged class members an additional fee to go through the arbitration. The court approved fixed fee was not disclosed to class members, was not reviewed by the shopped-for judge as part of the pre-award fairness hearing, and was not reviewed in any post-award fairness hearing,

124. No notice was given to any class member, including the plaintiffs, about the terms of the opt-out settlements. Had the plaintiffs been given notice of the terms negotiated by the opt-out abuse victims or the class representatives, they might have exercised a choice to receive one or the other recovery. The plaintiffs were abandoned by their attorneys, the Richter defendants, with the collaboration of the Diocese defendants. Alternatively, the fiduciary duties assumed to the plaintiffs, by defendants agreeing to define the class so as to ostensibly include the plaintiffs, were breached by all defendants in this action when they agreed to notice designed not to reach the plaintiffs. As alleged below, the abandonment by the plaintiffs was professional negligence by the Richter defendants, who had assumed the duty of representing the classes of persons that included the plaintiffs. In the alternative, it was a breach of the fiduciary duty assumed by the Richter defendants towards the plaintiffs. That duty was implicitly assumed by other defendants as well, in ostensibly defining the classes as they were defined by agreement of all defendants, when notice was designed not to reach those within the definition.

Conspiracy Technique Five: Setting the Arbitration Structure So As to Create A Means of Limiting Total Recovery for Compensating Victims

125. In the “General Terms of Settlement” agreed to in the 2006 mediation of the Charleston class action case on June 14, 2006, there are seven essential terms of the settlement agreement.

126. The first general term is that there will be two classes for the settlement. “Actual victims of Diocese abuse,” and “Spousal &/or parent claims deriving from victims abused.”

127. The second general term was to provide a means of having a \$12 million settlement fund.

128. The third general term was "Details of claims process in settlement class action. shall be developed and include a payment matrix based on nature and severity of claims."

129. The fourth term was that the court would be asked to approve a fixed fee for class counsel "between \$950,000 & \$2.5 million."

130. The fifth general term was to establish that four individuals would allocate among themselves \$460,000.

131. The sixth general term was that the four individuals would be paid whether or not the court approved a class settlement.

132. The seventh general term was that the seven terms are an offer from the Diocese and "shall be acted upon with reasonable promptness" by the four individuals who would allocate \$460,000 among them.

133. The four individual accepted the offer, and allocated among themselves \$460,000. None of those individuals received more than \$160,000. It is not yet known what portion was allocated to legal fee for class counsel.

134. Once those individuals accepted the offer, their claims were resolved. Their resolution did not depend on court approval of the class.

135. On information and belief, those four individuals accepted that offer shortly after the June 14, 2006 mediation. At least one of them had accepted it by June 16, 2006.

136. The two classes certified in an order signed January 19, 2007, excluded persons who have "previously had any similar claim adjudicated, resolved, or released."

137. After June, 2006, those individuals who represented the class, whose claims had been “resolved,” did not qualify as members of the class, and thus could not qualify as class representatives for any case filed after June, 2006. Nevertheless, they were falsely designated as class representatives in subsequent Dorchester County case, falsely put forth as class representatives, and approved as class representatives even though they did not meet the definition of the class.

138. In addition to not meeting the class definition, the class representatives received a different settlement than did class members, and excluded themselves from the arbitration process later articulated for the class members. In doing so they were guided by the Richter defendants.

139. In the June 14, 2006 settlement, when the parties reserved details for later specificity (“Details of claims process in settlement class action shall be developed and include a payment matrix based on nature and severity of claims,”) those details were reserved so the defendants could work backwards from the settlement fund, minus class counsel’s fixed fee, to enable adjustments to be made to the notice given to the class, and to the methods of relief given to the class members so the recovery to victims would not be “too much.” The fee for the Richter defendants could not be jeopardized by having “too many” sexual abuse victims served by the class settlement.

140. The structure of the notice and the arbitration process for the class was devised working backwards from the desired end result to limit claims of the class, because the highest priority of the Richter defendants, ahead of the interests of their clients or ostensible class members such as the plaintiffs, was to preserve class counsel’s fixed fee. That is why the fee is fixed, and why it takes priority over the recoveries of the clients in

the class. The highest priority of other defendants, after their willingness to pay class counsel's fixed fee, was to either exclude persons such as plaintiffs, or to limit recovery to persons such as plaintiffs, so that within the modest limits of the class settlement fund proposed, which resolved claims for a fraction of the cost of similar claims against another Diocese, the Diocese could argue a *res judicata* benefit from the class settlement without having to pay meaningful relief class members, but paying a sufficient amount so as to get the class approved. That is among the reasons that all defendants wanted class counsel's fee to be fixed but the recovery to the class to be variable, and for notice to be designed to not inform all persons within the class definitions of the settlement itself.

141. The Diocese defendants knew or should have known that the history of systematic deceit and deception about sexual abuse required by the Vatican and Code of Canon Law, and which the Diocese defendants had in fact implemented, specifically mandated by the Vatican since at least 1962, exposed the Diocese to fraudulent concealment claims which its traditional defenses of charitable immunity and statute of limitations defenses could not necessarily defeat.

142. The Diocese defendants knew that juries had placed a high value on the intangible nature of sexual abuse claims.

143. To try to limit future sexual abuse claims, the Diocese defendants elected to consent to a class settlement, hoping it would exclude enough victims so as to produce a desired *res judicata* effect at a fraction of the cost of a proper settlement with all victims. The Diocese defendants realized the close ties of the Richter defendants to the Diocese, and their willingness to sacrifice the interests of their clients for a fee, enabled the Diocese to try to minimize recoveries to the class members yet still get a class approved.

144. All defendants needed to avoid meaningful court oversight of the class action to limit the interests of absent members of the class, so all defendants agreed to “judge shop” to avoid oversight by any Charleston judge, and to obtain a lax oversight by the judge they desired to have.

145. When the defendants realized that “too many” victims, such as plaintiffs, might come forward in the class action, they changed, by agreement, what they would propose to the shopped-for judge for the notice to give the class, to limit how many victims might participate, and created the arbitration process to limit relief available to those who did participate. Neither the limited notice nor the arbitration process was provided in the essential terms of the June 2006 settlement attached to this complaint.

146. Failing to give notice outside South Carolina, other than immediately adjacent to South Carolina, was one means of eliminating claimants such as plaintiffs. No defendants objected to limit the notice to South Carolina.

147. Relying on the Diocese defendants to identify victims was another means of eliminating claimants such as the plaintiffs. All defendants were negligent in permitting victims to be identified by the Diocese defendants, rather than insisting on giving meaningful notice to putative class members.

148. Paying class counsel his fixed fee before any notice to the class, before any class claimant had been identified, and before any claims had been submitted, was another way of limiting the recovery to the class.

149. By design of all defendants, the class had no opportunity or input or comment on the proposed fixed fee, to be paid ahead of all class claims, as it was approved without notice to the class and before the class members were known.

150. No defendants disclosed that the Diocese had agreed to overlook the fraudulent information submitted to the shopped-for judge to support the fee claimed, and had agreed to make no mention of those various fraudulent time entries. Nor had the defendants disclosed that they had agreed they would request no post-award fairness hearing.

151. Structuring the arbitration into a matrix of categories, with recovery limits in each category based on physical touch rather than the psychological injury caused, was another way to limit the recovery to the class.

152. The defendants agreed to propose giving no notice nationwide, or even outside the immediate area of South Carolina, so as to try to eliminate abuse victims such as plaintiffs, then set the categories and recovery limits on the class members in the arbitration, and set the binding nature of the arbitration, all as means calculated to harm the plaintiffs by excluding them from the class recovery and to try to preclude them from any later claim, and to limit recoveries to class members so as to not exceed the amount the Diocese was willing to pay.

153. By agreement, settling on an arbitration structure from which there was no appeal or review was a way of limiting the recovery to the class to make sure that the Richter defendants were paid their fixed fee, the *quid pro quo* for the Richter defendants cooperating with the Diocese to abandon clients such as the plaintiffs, and to limit recoveries to other clients, in the interest of the Diocese defendants.

154. The Richter defendants abandoned absent class members such as plaintiffs, who reside outside of South Carolina, and gave no meaningful notice to those class members that their rights had been adversely impacted when they changed their position on notice

to the class from nationwide notice to a notice limited to publications in and around South Carolina. All other defendants cooperated with that abandonment. Unless the order approving the class settlement means what it says when the court appeared to have accommodated the limited notice by ruling, at page four, “any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement,” and the plaintiffs are not precluded from their claims, the notice and arbitration structure caused damage to the plaintiffs. Unless the plaintiffs are not bound by the *res judicata* effect of the class action, they have been specially harmed by the conspiracy engaged in by the defendants.

Conspiracy Technique Six: Providing False Information to the Court

155. The sixth technique used to cause special harm to the plaintiffs was defendants cooperated in filing with the court false information. When false information was filed by one defendant, all other defendants acquiesced, despite knowing it was false. Even after the information was identified as false, no action was taken to protect the plaintiffs, unless the order means that persons who received no notice are not barred by *res judicata*.

156. As noted above, the Dorchester County class action complaint in case 2006-CP-18-1636 was falsely filed in that before it was filed the case had already been settled in Charleston as 2005-CP-10-4913. The case was collusive, and was filed in Dorchester County only to avoid oversight by any Charleston judge and pursuant to the defendants’ agreed upon plan to shop for a particular judge.

157. As noted above, the claim that class representatives in Dorchester County met the definition of the class and could serve as adequate representatives were each false,

and known by the defendants to be false when made in any of the Dorchester County class complaints.

158. Patently false information about the procedural history of the class action was included in the Motion to Certify Classes and for Preliminary Approval of Class Settlement filed by the Richter defendants, and acquiesced in by other defendants.

159. Patently false information has also been given to the Charleston County Court and to the public by the Diocese defendants.

160. All defendants cooperated in providing incomplete information to the Court in Charleston County so as to facilitate dismissal without prejudice of the Charleston class action.

161. By agreement of all defendants, SCRCF 23 was not complied with in dismissing the Charleston class action. Plaintiffs were given no notice of the dismissal, or about the Charleston class settlement, or about the settlement provided those who opted out of the class settlement. Nor was notice given to any other ostensible class member.

162. False information was filed in Dorchester County about the class representatives and their adequacy as class representatives. All defendants acquiesced in that false information to the court.

163. False information was filed in Dorchester County in support of the fixed fee sought by the Richter defendants. The Diocese defendants made no mention of the false information filed in support of the fixed fee, because the fixed fee for the Richter defendants, and the modest variable relief for the class, was the *quid pro quo* for the Diocese defendants getting the benefit they have claimed entitles the Diocese defendants

to *res judicata* protection of the class settlement, and was the means by which the defendants conspired to try to eliminating claims by persons such as the plaintiffs.

164. Among the false information filed to support the fixed fee for the Richter defendants was false information about procedural history, false mathematical calculations, false representations to mask the cooperation among defendants, false time records by the Richter defendants (including individual lawyers billing in a single day compilations of 30, 40, 51.5, 60, 80, and even 92 hours; and billings for multiple “February 30” days), false statements of costs incurred by class counsel, false statements of the recovery to the class, and false information about the counsel for persons who had opted out of the class settlement.

165. The Diocese defendants agreed to remain silent as to these false statements, except where they overtly participated in them.

166. If the plaintiffs are barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reasons, then duties to them in the class action were breached by the defendants, and special harm has been caused to the plaintiffs by the acts of conspiracy of the defendants.

Conspiracy Technique Seven: Limiting Notice to only publications in and around South Carolina

167. The seventh technique used in the conspiracy among defendants to cause special harm to the plaintiffs was to agree to limit notice to only publications in and around South Carolina, resulting in notice to only those putative class members who reside in and immediately adjacent to South Carolina. The notice given was deficient in that it was designed not to provide notice to those within the definition of the class action. By agreement of all defendants, the notice was calculated to be ineffective to reach putative

absent class members. Unless the order approving the class settlement means what it says and plaintiffs are not bound by the res judicata effect of the class settlement, the defendants have conspired so as to cause special damage to the plaintiffs.

168. The Diocese defendants are well aware, from its own dealings with abuse victims that many victims reside out of South Carolina. All defendants were conscious in choosing limited notice, that doing so served the interests of the Diocese at the expense of persons such as the plaintiffs.

169. By motion filed in Dorchester County in October 2006, the Richter defendants proposed giving nationwide notice of the class action through advertising about the settlement in a newspaper with national coverage.

170. In January 2007, the Richter defendants revised their request for notice to the Dorchester County court, and the Diocese defendants acquiesced in that revision, to limit notice to only publications in newspapers with circulation in or near South Carolina. The request to provide notice through a newspaper with national circulation was abandoned.

171. The Richter defendants abandoned the plaintiffs as putative members of the class in agreeing to notice calculated not to reach them. Alternatively, the Richter defendants breached the fiduciary duties they had assumed as to the plaintiffs in defining the classes so as to ostensibly include them, then revising the notice so as to provide no notice to them and all other absent members of the class who resided outside of the area immediately adjacent to South Carolina.

172. The Diocese defendants conspired with the Richter defendants to submit for court approval notice to the class that was calculated to omit absent members of the class such as the plaintiffs, and all persons situated similarly to them. The agreement was to

bar the plaintiffs from being able to make claims by the *res judicata* effect of the ostensible class action without having to compensate them for sexual abuse.

173. No effort was made to protect absent members of the class, such as the plaintiffs, by providing notice beyond the immediate area around South Carolina. If the plaintiffs are barred from claims against the Diocese by the *res judicata* effect of the class action, charitable immunity, statute of limitations, or for any other reasons, then duties to them in the class action were breached by the defendants, and special harm has been caused to the plaintiffs by the acts of conspiracy of the defendants.

174. The Diocese defendants made no objection to lack of nationwide notice. They made no objection as an overt act taken in furtherance of the common plan to reduce the number of claimants by eliminating persons such as the plaintiffs from being able to make a claim, while retaining the argument that all absent class members were barred by *res judicata*. The reduced notice agreed upon by all defendants demonstrates that the representation of the class was inadequate, and that the defendants conspired specifically to defeat the interests of persons such as the plaintiffs, to cause them special harm by giving them not even a chance at notice of the class action.

175. The injury to the plaintiffs from the conspiracy engaged in by the defendants harmed the plaintiffs in a manner different from other causes of action. Plaintiffs were improperly excluded from the class action, but unique to the conspiracy cause of action are the damages from the plaintiffs being unable to influence the corrupt course of the class action, and its corrupt features by lack of participation. Plaintiffs were deprived of the opportunity to influence the class suit, and to try to assist themselves and other abuse victims from not being limited to the corrupted procedures and manipulations of the class

suit. Among other things, the plaintiffs were unable to participate to influence the miniscule recovery allocated for parent and spousal claims because they were not brought for the class using the common law "loss of services" cause of action. However, if the plaintiffs are not deemed precluded from stating their claims against the Diocese for any reasons, including the class suit, charitable immunity or the statute of limitations, then the conspiracy by the defendants to defeat their claims was ineffectual, and this cause of action will be dismissed.

176. As a proximate cause of the actions of the defendants as alleged above, the plaintiffs were damaged, and are entitled to actual and punitive damages from the defendants as a result.

**For a Fourth Cause of Action:
Professional Negligence by the Richter Defendants**

177. Allegations of paragraphs 1-18 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiffs are precluded, by any reason, including the class action, charitable immunity, or the statute of limitations, from making claims against the Diocese.

178. Pursuant to S.C. Code § 15-36-100(b), Attachment B to this complaint, and incorporated herein pursuant to SCRCF 10(c), is a copy of an affidavit of Michael Virzi specifying various negligent acts or omissions of the Richter defendants, and the factual basis of the negligent acts or omissions of the Richter defendants. The original of this affidavit has been filed with a court in another, similar, case.

179. As reflected in the 2006 Charleston class action settlement that is Attachment A to this complaint, the proposed group whose claims were settled on June 14, 2006, in the

Charleston class action mediation was a class specified as “actual victims of Diocese abuse.”

180. Plaintiffs were putative members of that class as it was defined in the proposed settlement.

181. When the June 14, 2006 Charleston class mediation agreement was formally typed and formally approved by the Richter defendants, the Vatican, and the Diocese defendants, the illicit agreement by defendants on “judge shopping” had been accomplished, and the Charleston class settlement was now claimed to be a proposed settlement of both a Charleston class case and Dorchester County class actions.

182. On October 6, 2006, the Richter defendants filed proposed class definitions that included plaintiffs, and proposed a means of notice by publications with nationwide distribution to give notice to the class. That proposed notice might have given notice to the plaintiffs, enabling them to either participate or to opt out.

183. The Richter defendants assumed a duty to the plaintiffs in each of the filings in (a) the Charleston case which alleged a class action, (b) in that June 14, 2006 class settlement agreement of the Charleston case which alleged a class action, and (c) in its October 6, 2006 Dorchester County alleging a class action.

184. On January 18, 2007, the Richter defendants abandoned giving notice to the plaintiffs about the class settlement that purported to include them. Their proposal for notice was revised to include only publications in and immediately around South Carolina, even though the class was not defined with geographic limitations.

185. On January 19, 2007, the proposed class definitions that included the plaintiffs were approved without objection from the Diocese defendants.

186. In their Charleston and Dorchester County class action cases against the Diocese defendants, the Richter defendants assumed the obligation of representing the interests of absent putative class members including the plaintiffs. In abandoning the plaintiffs, the Richter defendants performed in a professionally negligent manner the duty they had assumed to absent putative class members such as the plaintiffs.

187. The Richter defendants engaged in negligent acts and omissions in their representation of the plaintiffs. Among other things, when they abandoned the plaintiffs, they failed to provide competent representation, failed to act with reasonable promptness and diligence, failed to keep the plaintiffs reasonably informed, failed to provide them with information with respect to obtaining their informed consent, failed to consult with them about the means for accomplishing their objectives, represented them without their consent in circumstances which constituted a conflict of interest, failed to exercise independent professional judgment, failed to render candid advice, and exhibited lack of candor towards a tribunal.

188. No notice of any type, at any point, was given to absent putative class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina, such as the plaintiffs. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiffs, or even to all in-state victims.

189. Any court approval of the notice was deficient in terms of protecting the plaintiffs because the court overseeing the class action had been shopped for by the defendants, and had been given, by agreement of the defendants, fraudulent information on which to base decisions.

190. The Richter defendants abandoned their absent putative class member clients such as the plaintiffs by agreeing to change the proposed notice to notice calculated not to reach the plaintiffs, and calculated not to reach all putative class members situated similarly to the plaintiffs.

191. The Richter defendants abandoned their clients' interests and acted in a professionally negligent manner by submitting fraudulent information to the court.

192. The plaintiffs were abandoned by the Richter defendants so that "too many" class claimants would not come forward in the class action and jeopardize the fixed fee the Richter defendants had negotiated for themselves at the expense of the class members, that fee to be paid before notice to the class, before the class was known, and before the class claims process had even begun.

193. Having "too many" claimants also was believed to not be in the interest of the Diocese, and because of his conflicts of interest, which were not disclosed to the class, the Richter defendants were actually acting to protect the interests of the Diocese more than the interests of putative class members such as the plaintiffs.

194. As a result of their attorneys, the Richter defendants, abandoning the plaintiffs, no notice was given to them of the class action, and they had no opportunity to participate in either the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out. The acts and omissions of the Richter defendants have caused damage to the plaintiffs, assuming the plaintiffs are prevented from their claims against the Diocese for any reason.

195. Plaintiffs were each entitled to actual and punitive damages as a result of the professionally negligent representation they received from the Richter defendants.

**For a Fifth Cause of Action:
Breach of Fiduciary Duty by the Richter Defendants**

196. Allegations of paragraphs 1-17 above are incorporated into this cause of action as if fully stated. This cause of action presumes that the plaintiffs are precluded from making claims against the Diocese, for any reason, including the class action, charitable immunity, or the statute of limitations.

197. The Richter defendants chose to propose defining the classes in the class actions so as to have no geographical limit on the classes.

198. All defendants agreed on how the classes were defined.

199. In choosing to define the classes so as to include the plaintiffs, the Richter defendants each assumed fiduciary obligations to each of the plaintiffs, who were absent putative members of the classes they defined.

200. As an alternative to the Fourth Cause of action for professional negligence, the Richter defendants breached the fiduciary duty each assumed as to each plaintiff as an absent member of their respective putative class.

201. Those fiduciary duties were breached when the Richter defendants abandoned the interests of the plaintiffs by requesting geographically limited notice of the class action and settlement, as opposed to the nationwide notice they initially proposed.

202. The state court judge overseeing the class action was shopped for by all defendants.

203. The state court judge was not asked to give notice to all class members, only a subset of class members that excluded the plaintiffs.

204. The Richter defendants originally proposed nationwide notice, but then abandoned the proposal. The lack of nationwide notice was observed in the record of the

class action, but even after that limitation was noted, the Richter defendants did not request it.

205. On October 6, 2006, the Richter defendants filed proposed class definitions that included the plaintiffs, and proposed a means of nationwide notice to the class that might have given notice to the plaintiffs.

206. The Richter defendants in its Charleston class action filing, and in the June 14, 2006 settlement, and in its October 6, 2006 filing in Dorchester County, assumed a fiduciary duty to the plaintiffs.

207. On January 18, 2007, the Richter defendants abandoned giving to the plaintiffs notice about the class settlement that ostensibly included them.

208. On January 19, 2007, the class definitions that included the plaintiffs were approved without objection from the Diocese defendants.

209. No meaningful notice, at any point, was given to class members who reside out of South Carolina or outside the area immediately adjacent to South Carolina. If any notice was given it was deficient in that it was not designed to accomplish notice to out of state abuse victims such as the plaintiffs, or even to all in-state victims.

210. The Richter defendants contend that mention of a class action or a class action settlement in a news media outlet is sufficient due process "notice" of a class action or class action settlement within the meaning of SCRCF 23. Mention of a class action or class action settlement in a news media outlet is not notice of a class action or class action settlement within the meaning of SCRCF 23.

211. The Richter defendants each breached their fiduciary duties to the plaintiffs so they would not participate in making a claim against the fund established for the class

action settlement. If notice had been given nationwide, as originally proposed, “too many” claimants might have come forward in the class action, which would have jeopardized the fixed fee the Richter defendants had negotiated for themselves at the expense of their clients.

212. The Richter defendants arranged to have their fixed fee paid before notice to the class and before the claims process.

213. The Richter defendants arranged to have their fixed fee paid before membership in the class was known.

214. The Richter defendants arranged to have their fixed fee paid before distribution to the class was known.

215. The Richter defendants arranged to have their fixed fee paid before class members had an opportunity to object to or comment on the fixed fee and its priority over class member recovery.

216. Having “too many” claimants also was believed by the Richter defendants to not be in the interest of the Diocese, and to protect their own interest in their fixed fee the Richter defendants had to also act to protect the interests of the Diocese more than the interests of the plaintiffs. The Richter defendants have close and longstanding ties and involvement with the Diocese defendants. Those involvements were never disclosed to the class. To promote the interests of the Diocese in trying to later argue the *res judicata* effects of the class action in exchange for the lowest possible payment to class members, and to promote ahead of the interests of the plaintiffs their own interest in their fixed fee, the Richter defendants agreed to change the proposed notice to the class from notice in

publications with nationwide distribution, and also agreed to accept for the class compensation that ranked among the lowest known victim compensation.

217. As a result of the Richter defendants abandoning the interests of the plaintiffs, and breaching the fiduciary duties owed to them, the plaintiffs had no opportunity to participate in the class action, or to join those who opted-out of the class and pursue the more favorable terms available to those persons who opted out, or to make a claim against the Diocese for sexual abuse. The acts and omissions of the Richter defendants have caused damage to the plaintiffs.

218. Plaintiffs are each entitled to actual and punitive damages as a result of the fiduciary duties to them that were breached by the Richter defendants.

**For a Sixth Cause of Action:
Judicial Estoppel and Unfair and Deceptive Trade
Practices by the Diocese Defendants**

219. Allegations of paragraphs 1-17 above are incorporated into this cause of action as if fully stated.

220. The Diocese defendants engaged in unfair and deceptive acts or practices in the conduct of commerce in violation of South Carolina law.

221. The Diocese defendants operate an organization engaged in trade or commerce as defined in S.C. Code § 39-5-10(b). The Diocese defendants advertise and offer for distribution services, tangible and intangible, directly and indirectly affecting the people of South Carolina. They operate churches and schools, and activities, which cater to families.

222. The Diocese defendants encouraged people, including plaintiffs, to use their facilities, and to attend the various activities and functions offered on its premises. In

making that invitation, the Diocese defendants assumed the duty to ensure that its premises were safe from reasonably foreseeable dangers. The Diocese defendants particularly owed a duty to the plaintiffs, who were minors, and their parents, a greater degree of care because as children the plaintiffs were unable to fully appreciate risks and danger. The Diocese defendants represented to its invitees and their parents or guardians, including the plaintiffs, that its facilities and its priests were safe, and that persons would be would be protected form harm when using its facilities and when interacting with its personnel.

223. For years the Diocese defendants have been aware that certain in its operations, certain of its employees have sexually abused minors.

224. As part of a business decision to address that history of sexual abuse, in 2006 the Diocese elected to adopt a class settlement to address its known history of priests and other employees sexually abusing minors.

225. The Diocese promoted that decision as a responsible action by the Diocese defendants.

226. Part of that settlement was to advertise the offer by the Diocese to distribute both services (in the form of counseling) and property (in the form of compensation) to sexual abuse victims.

227. Advertising was done by the Diocese in, among other publications, newspapers of general circulation in Charleston (*Post and Courier*), Myrtle Beach (*Sun*), Columbia (*The State*), Augusta (*Chronicle*), Rock Hill (*Herald*), Beaufort (*Gazette*), Greenville (*News*), Spartanburg (*Herald*), Orangeburg (*Times-Democrat*), Florence (*Morning News*),

and Aiken (*Standard*). Living outside of South Carolina, plaintiffs saw none of those notices, as was designed by the defendants.

228. In that advertising, tangible property was proposed to be exchanged by the Diocese, and services provided in part for the intangible injury created by acts of sexual abuse.

229. The public interest was affected by the proposed class settlement because the offering was made to the public, the advertising was made to the public, members of the public were invited to identify themselves as abuse victims and participate in making legitimate claims for compensation, and that was approved predicated on the false representation made to the Court about how the Diocese would conduct itself.

230. A circuit court judge to approve the class settlement was “shopped for” and selected by the Diocese defendants, in conspiracy and collaboration with the Richter defendants. The Diocese defendants did not want any Charleston County judge, out of concern that the judge might be fully independent.

231. The Diocese defendants were negligent in assessing the damage done by sexual abuse by their employees and the number of persons affected by that abuse. Alternatively, the Diocese knew the number of victims would far exceed the numbers it reported to the court as its expectations for number of victims, and consciously misrepresented that number to the court.

232. The Diocese defendants were aware that the Richter defendants were willing to recover only modest relief for victims in exchange for a substantial fixed fee that took priority over the recoveries to the victims.

233. The Diocese defendants were aware that the Richter defendants had extensive and life-long ties to the Diocese, and would be willing to compromise the interests of the absent class members in exchange for a fixed fee payment.

234. The Diocese defendants conceived a plan to commit a fraud on the Court by representing to the court, falsely, a rationale upon which the court could approve a class settlement defined with no geographic limits, while giving notice to the class in a geographically limited way. As long as their fee was paid, the Richter defendants were expected by the Diocese defendants to be willing to accommodate the interest of the Diocese, even at the expense of the absent members of the class they represented.

235. All defendants collaborated to submit false information to the Court, and no defendant objected to any of the false information submitted by any of them. Part of their agreement was to remain silent while false information was submitted.

236. To gain court approval of the class settlement the Diocese made overt misrepresentations of fact to the Court that was falsely represented to reflect an “understanding” among all defendants “as to what would happen” to any person within the class definition who “shows up” (as put by the Diocese defendants) outside of the class notice procedure. The “understanding” communicated to the Court was to address if “someone pops back up who should have gotten notice who didn’t get notice.” The understanding communicated to the Court by the Diocese was:

I think we [the Diocese and class counsel] have an understanding as to what would happen to those particular folks, which would really be our problem, and I think that what we’ve discussed allows us to proceed with the agreement we’ve signed on January 12th [2007]. And then if that person shows up then we [the Diocese] would have to deal with that.

237. That representation to the Court appears on page 3 of a transcript dated July 13, 2007.

238. In that same transcript, the Diocese defendants represented to the Court, falsely, that there were only five sexual abuse victims they had not located. That representation was false, and was known to have been false when made. In fact, the Diocese was aware, or should have been aware, that the number of sexual abuse victims far exceeded the victims already known to it from its own files, as many victims had not previously identified themselves.

239. To avoid nationwide notice, the Diocese falsely represented to the Court that when an absent class member did not get notice, and later identified himself or herself, the Diocese assured the court, on page 14 of the same transcript, "we've got to find anybody else who has kind of, lack of a better word, comes out of the woodwork."

240. The Diocese defendants made no disagreement when, on pages 16 - 17 of that same transcript, class counsel summarizes the position of the Diocese as "what the Diocese has come to is that if anybody is missed . . . the diocese waives all the same defenses that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards." Those terms were supposedly submitted by letter by the Diocese.

241. Nor did the Diocese defendants state any disagreement when the Court observed, as to the Diocese, on page 25 of that same transcript, "what they [the Diocese] say is if you come forward in the future we will treat you just the same as we have treated these individuals and the relief is available for you."

242. The Diocese intended, on July 13, 2007, to create the false impression with the court that if a victim within the class definition came forward in the future, that the Diocese would extend relief to that victim. The Diocese created by impression by its statements and its silence in light of statements by others. The Diocese intended that impression to be relied on, and it was relied on. That impression was false, and was known to be false when made.

243. The Court relied on the statements and silence by the Diocese to extend in the July 30, 2007 order approving the class settlement, at page four, this statement:

The Diocese has further stated that it understands that **any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement.** Further the Diocese has stipulated before me in open Court and on the record that any person who comes forward at a later date and can show that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

... .. Emphasis added.

244. The Diocese defendants intended that the Court rely on their statements, silence, and conduct to form that impression, even though the impression was false and the Diocese had no intention of honoring the assurances given to the Court.

245. When additional victims came forward, including these plaintiffs, the Diocese refused to honor its representations to the Court, and which the Court placed in its July 30, 2007 order at page 4. Instead, the Diocese asserted the defenses it had waived, claimed the *res judicata* effect it had disclaimed, and acted exactly contrary to its assurances to the Court.

246. The Diocese defendants made their false representations to the Court for the purpose of gaining Court approval of a class settlement with only limited notice to the

class. By contending (falsely) that it would both waive its defenses and provide compensation to class members who had received no notice, the Diocese committed fraud on the Court, on the public, on the plaintiffs, and on all sexual abuse victims born before August 30, 1980. When those representations were made the Diocese had no intention of honoring the representations.

247. The Diocese amply demonstrated that its assurances to the Court were false when, despite those assurances, the Diocese refused to perform on its assurances or on the Court's order when sexually abused persons born prior to August 30, 1980, including the plaintiffs, received no notice of the class and later requested relief.

248. The Diocese has taken inconsistent positions as to different persons included in the same class definition. Those inconsistent positions also affect the public interest.

249. All of the conduct by the Diocese, from the collusive behavior in the class action to the overt misrepresentations to the Court, has the potential to be repeated, and the Diocese in fact has repeated its refusals to honor the representations made to the Court. Multiple sexual abuse victims born prior to August 30, 1980, received no notice of the class action and have since been refused relief by the Diocese.

250. The proceedings in which those inconsistent positions were taken by the Diocese are related to this action in that each involved one or more members of the class as defined by agreement of the Diocese, who received no notice of the class settlement and for whom the Diocese promised to provide relief.

251. The Diocese was successful in maintaining its disingenuous misrepresentations to the Court, got relief from the Court based on those disingenuous representations, and

as a result of taking that position the Diocese received the benefit of class approval from the Circuit Court.

252. The inconsistency by the Diocese is part of an intentional effort to mislead the Court.

253. The two positions by the Diocese are in fact inconsistent, and as a result the Diocese is estopped from taking a different position as to the plaintiffs from the position it asserted to the Dorchester County court in the class action.

254. Plaintiffs have suffered an ascertainable loss as a result of the secretive, duplicitous, and untruthful conduct of the Diocese, and is entitled to recover actual damages as a result of the wrongful conduct of the Diocese, trebled as provided by law, with costs and attorneys fees as provided by statute.

255. The secretive and disingenuous conduct by the Diocese is offensive to public policy, is immoral, unethical, and oppressive. The Diocese made a calculated business decision to invest some funds and engage in a public relations exercise, in an effort to procure positive publicity for itself without having to compensate all of its sexual abuse victims, and to attempt to seal off its liability for the full extent of its sexual abuse victims.

256. The Diocese invested funds to design a compensation program for victims which specifically excluded many victims. The Diocese engaged in collusion with other defendants to do so, as alleged above, and engaged in overt misrepresentations to the Court and the public in order to achieve its objective to deceive the public, the Court, and those persons (or the parents and spouses of such persons) sexually abused who were born prior to August 30, 1980, including the plaintiffs.

257. The Diocese defendants took no appeal from the July 30, 2007 order.

258. The Diocese defendants are bound by the July 30, 2007 order in the class action.

259. When the Diocese was contacted on behalf of the plaintiffs, having received no notice of the class action, the plaintiffs were refused relief. Instead, the Diocese has asserted against victims who did not get notice, exactly as they promised they would not, the *res judicata* effect of the class settlement, as well as the defenses it waived on the record, and has done so even as to victims for whom the Diocese did not even attempt to provide notice.

260. The representation made by the Diocese to the Circuit Court was false when made by the Diocese, and was knowingly false when made by the Diocese. The Diocese had no intention of including other victims who received no notice "for whatever reason." Despite its representations, the Diocese defendants intend to use the collusive class action cases to attempt to terminate liability of the Diocese, to do so at a fraction of the recovery a truly adversarial counsel might demand on these facts.

261. The Diocese defendants made their misrepresentations with the intention of convincing the Circuit Court to approve a collusive class settlement, even though the Diocese had no intention of honoring its assurances to the Circuit Court. The intention by the Diocese to mislead the Circuit Court succeeded, and the settlement was approved.

262. The unfair and deceptive acts and practices of the Diocese have an impact upon the public interest, and have not only had the potential for repetition, the deceptive acts and practices have actually been repeated, as the Diocese has refused multiple persons who came forward having not gotten notice of the class action. The practices engaged in by the Diocese, of misrepresentations to the court and the public through its court

statements as well as its statements to the press, are extensions of longstanding practices of deceit and deception by the Diocese. Maintaining secret archives of files, practicing “mental reservation” to support and justify lying (even while under oath), using diplomatic immunity to conceal documents, mandating that persons with knowledge of abuse conceal that knowledge, are all techniques used by the Diocese to maintain deception. Overtly misrepresenting to a Court, and to the public, its intentions, are extensions of techniques the Diocese has used for years.

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

264. The Diocese should be enjoined from further use of any deceptive practice, and enjoined from removing, concealing, withholding, destroying, mutilating, altering, publishing, or by any other means falsifying or destroying any documentary material in its possession, custody, or control that relates in any way to past sexual abuse.

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

266. The plaintiffs suffered an ascertainable loss of money as a result of the unfair or deceptive methods by the Diocese in posturing for the Court as if it would respond to additional victims who got no notice, but then refusing relief when victims who got no notice actually contacted the Diocese; posturing for the Court that it waived defenses for victims who got no notice but then asserting those same defenses when additional victims

actually came forward. Conduct by the Diocese was willful, and the Diocese knew or should have known that its conduct was unfair and deceptive.

267. The plaintiffs are entitled to treble damages as a result of the conduct of the Diocese, as well as actual and punitive damages, costs and attorneys fees, and such other and further relief as the court deems just and proper.

Demand for Jury Trial

268. Plaintiffs demand a trial by jury.

Relief Sought

Wherefore, Plaintiffs seeks relief in the form of:

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

..... 270. Costs and disbursements of this action,

271. Attorneys fees as authorized by law,

272. Punitive damages as authorized by law, and for

273. Injunctive relief to enjoin the Diocese defendants from failing to honor its representations to the Court in Dorchester County as to abuse victims who got no notice "for whatever reason," and for

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

Respectfully submitted,

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

Gregg Meyers
1 Poston Road Suite 110

Charleston SC 29407
843-556-1025
attygm@gmail.com

Attorney for Plaintiffs

EXHIBIT C

TO

**JOINT RETURN BY THE RESPONDENTS/LAWYER DEFENDANTS TO
THE DIOCESE RESPONDENTS' MOTION TO STRIKE**

Excerpts of March 9, 2007 Hearing in
C/A Nos. 2006-CP-18-1310, -1311 and -1636

ORIGINAL

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
: CASE NOS. 2006-CP-18-1310,
COUNTY OF DORCHESTER) 1311, 1636

JOHN DOE 53, JOHN DOE) TRANSCRIPT OF RECORD
66, JOHN DOE 66A, JANE)
DOE 1 AND JANE DOE 2 AND) SETTLEMENT AGREEMENT
RACHEL ROE INDIVIDUALLY)
AND AS REPRESENTATIVES) March 9, 2007
OF A CLASS OF PEOPLE)
SIMILARLY SITUATED,) St. George, South Carolina
Plaintiffs,)

-versus-

THE BISHOP OF CHARLESTON,)
A CORPORATION SOLE, AND)
THE BISHOP OF THE DIOCESE)
OF CHARLESTON, IN HIS)
OFFICIAL CAPACITY)
Defendants.)

B E F O R E:

The Honorable Diane S. Goodstein

A P P E A R A N C E S:

Lawrence Richter, Esquire
David Haller, Esquire
Richter & Haller
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For the Plaintiffs

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-and-

James C. Geoly, Esquire
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For the Defendants

Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

A L S O P R E S E N T:

Gregg Meyers, Esquire
Walter Bilbro, Esquire
Matthew Creech, Esquire
Marvin Infinger, Esquire
Lionel Lofton, Esquire
Jack Sinclair, Esquire
Glenn Churchill, Esquire

COURT'S EXHIBIT(S):

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Crimen Sollicitationis	157	

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1 would have prevailed on the issue; I believe
2 Mr. Richter believes he would have prevailed
3 on issue. That's not why we're here. We're
4 not here to fight about that. We settled
5 this case. That's all I have to say. Thank
6 you, Your Honor.

7 THE COURT: Very well. All right.
8 We're going to take -- I think there are some
9 additional issues and we're going to take a
10 lunch break and I will see everyone back here
11 at 2:30. I know that's short, but we do need
12 to conclude today. 2:30.

13 MR. RICHTER: Thank you, Your Honor.

14 THE COURT: And that document needs to
15 be made an exhibit.

16 And, Robin, bring it to me.

17 (Lunch recess taken from 1:49 p.m. to 2:39
18 p.m.)

19 (Marked for purposes of the record was
20 Court's Exhibit 1, Crimen Sollicitationis.)

21 THE COURT: Thank you all so much. And
22 please be seated. All right. Tell me what
23 now remains issue wise.

24 MR. RICHTER: Your Honor, the only issue
25 that I'm aware of that remains is that you

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1 now go back and dredge up whether he thinks
2 we were keeping our word since June and
3 trying to find out if somebody told him that
4 we were trying to get money from the bank
5 when he thinks we really weren't.

6 None of that is at issue before you
7 today. Are we here meeting our obligations?
8 We are. You have an agreement to finalize
9 and to consider. I don't -- I don't see why
10 calling our banker to the stand over what
11 occurred in June is relevant to your task
12 here.

13 THE COURT: Okay. And here's just --
14 just so that I'm real clear about what has
15 occurred, the money, you're telling me that
16 the two funds exist, that those -- that
17 the -- those funds will remain, that the --

18 MR. GEOLY: Upon your order we will sign
19 the funds over to the escrow agent.

20 THE COURT: Okay. And that the -- and
21 that there may be a substitution for the
22 letter of credit for the \$9 million fund.

23 MR. GEOLY: Correct.

24 THE COURT: Okay. Very well. Now,
25 counsel, I want to talk to you because I'm

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1 happy to get your position on where I think I
2 am at this juncture because it causes me
3 grave concern.

4 There are two pieces of information
5 that I now have that concern me. And in all
6 candor in the settlement, in my settlement
7 conference with counsel and, of course, both
8 of you were there, both of these -- all four
9 of you lawyers were here. Mr. Lofton wasn't
10 present, but outside Mr. Lofton the four of
11 you were present and we met and went through
12 the settlement proposal and talked about the
13 settlement. But today there are two new
14 pieces of information and those two pieces of
15 information cause me great concern. Great
16 concern.

17 The first, of course, is what has
18 been marked as Court's Exhibit Number 1. And
19 that -- this document causes me great concern
20 which is why, Mr. Geoly, I wanted you to put
21 any objections to the document that you felt
22 compelled to place on the record.

23 And secondly I am concerned with
24 counsel's representation that there is -- not
25 representation, let me call it argument, that

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1 there is a difference between the number of
2 priests who have engaged in sexual assault or
3 abuse and the real number. And that the real
4 number may be somewhere hidden or undisclosed
5 or secret.

6 That, of course, would be a
7 violation of the criminal laws of the State
8 of South Carolina, both in the form of
9 obstruction of justice as well as any
10 underlying crimes which may or may not have
11 been committed against children of this
12 state. That now predominates in my mind.

13 I have so informed our solicitor
14 David Pascoe. And I contacted David Pascoe
15 because you are in the First Judicial
16 Circuit.

17 I will order Solicitor Pascoe to
18 undertake an investigation. I will share
19 with him what has now been marked as the
20 Court's Exhibit Number 1, because the Court
21 has an obligation where there is information
22 that comes directly to the Court that there
23 have been crimes that have been committed
24 that the Court take appropriate action. I
25 have, and will, order Solicitor Pascoe to do

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1 that. That must happen before I can approve
2 the settlement for this reason: Because if
3 it is true that which has been argued that
4 there are children who have been abused and
5 been undisclosed, and their only remedy is to
6 receive newspaper publication and then to
7 come forward, that is insufficient in my mind
8 because those would be names that would be
9 known and they are entitled to more attention
10 than that.

11 So, that is where we are at this
12 point. I'm happy to hear from counsel, but
13 in my mind that is where we are. I must have
14 assurances that there are no known crimes
15 that have been committed against children,
16 now adults, that have been undisclosed to law
17 enforcement before I can go forward any
18 further with regards to the settlement.

19 I'll hear first from plaintiffs'
20 counsel.

21 MR. RICHTER: Thank you, Your Honor.
22 The -- I'm sorry that you had to undertake
23 the actions that you've had to undertake, but
24 I am most appreciative of your public sense
25 of concern, particularly for those who as

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1 children don't have the wherewithal otherwise
2 internally or certainly by their standing in
3 line to proceed on their own. It is my
4 sincere hope that the diocese has not -- has
5 not covered up the abuse of any child.

6 If -- and I know there's a lot of
7 money at stake here -- this proceeding today
8 and this lawsuit keeps one further child from
9 being abused, or uncovers any coverup
10 whatsoever by this diocese, then the money
11 pales in comparison of importance.

12 So while we don't want to delay,
13 and I understand it, I think the good news is
14 that the diocese is the repository of that
15 information and can make it, I hope, readily
16 available to the solicitor.

17 We have had many contacts from
18 people during the duration of this litigation
19 and particularly during this advertising
20 period. And while we certainly agree to keep
21 everything confidential, we -- that is
22 information at least for matching purposes or
23 scope of remedy available to these people
24 that we would like to know in processing
25 claims for the class as well. Thank you.

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1 MR. GEOLY: Your Honor, first of all my
2 understanding has been and is that it has
3 been the policy of the diocese for some time
4 to report every allegation it receives
5 directly to the solicitor and to encourage
6 anyone who comes forward to go to the
7 solicitor.

8 We are not aware, and I've just
9 conferred with Mr. Shahid, of any known
10 claims against the diocese involving child
11 sexual abuse that have not been reported to
12 the solicitor. We will, of course, cooperate
13 fully with any inquiry from the solicitor.

14 But I am trying to understand what
15 has -- the source of the concern that there
16 are undisclosed claims. You know, the
17 diocese has, especially of late, had to
18 inventory all the claims back to 1950 and
19 make a report of them. That's the number
20 that's been shared in the public. And my
21 understanding is that they've all been
22 reported.

23 Again, we're happy to go through
24 this step. If there's a delay in
25 implementing the settlement, then so be it,

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1 but if there's something I could address that
2 was sort of the cause of the concern, I would
3 be happy to address it I guess is what I'm
4 trying to say.

5 THE COURT: Absolutely. And I
6 appreciate that so much, Mr. Geoly, which is
7 another reason why I am not pressing any more
8 with regards to the funding. Because there
9 is a delay, and I don't want the diocese at
10 this point, I'm very comfortable with the
11 diocese not relinquishing control at this
12 moment to the trustee --

13 MR. GEOLY: Okay.

14 THE COURT: -- for that reason. I'm
15 very comfortable with it where it is. You
16 know, and obligation of the judiciary is such
17 that when you hear things, even in the
18 context of a civil matter that may be
19 applicable to the criminal law, it is
20 incumbent upon that judge to stop and to be
21 sure that -- to be sure that those -- that
22 those matters are satisfied in terms of the
23 criminal law. That is all that this -- that
24 this is. This is not a finding.

25 MR. GEOLY: Fair enough.

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1 THE COURT: This is no more than we must
2 proceed appropriately.

3 MR. GEOLY: Very good.

4 THE COURT: That would be the -- that
5 would be the appropriate first step. It
6 is -- it would be a wonderous thing and a
7 wonderful thing if this step is very short.
8 If everyone is satisfied, if law enforcement
9 is satisfied that these matters are of no
10 concern and that communicates back, then
11 we'll be able to go forward.

12 MR. GEOLY: We'll cooperate fully with
13 the solicitor, Your Honor.

14 THE COURT: And please understand at no
15 point did I intend to communicate otherwise,
16 because I absolutely believe that to be true.

17 MR. GEOLY: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. GEOLY: Mr. Shahid I think has one.

20 THE COURT: Sure.

21 MR. SHAHID: As a matter of procedure --

22 THE COURT: Yes.

23 MR. SHAHID: -- do we reconvene? How do
24 we initiate the process? How do we get back
25 to you? What is your intent on where we go

John Doe, et al v. The Bishop of Charleston, et al

1 from here?

2 THE COURT: There are a couple of
3 scenarios that could occur. Now, I will
4 articulate these and neither one of these
5 will happen because I articulate them, it
6 will be something that I cannot even think of
7 that will occur.

8 One thing that could occur is that
9 there will be an investigation by the
10 solicitor. The solicitor could say, you know
11 what, I'm satisfied these matters have been
12 heard, there are -- you know, there are no
13 new concerns, proceed onward, at which point
14 I don't need any further argument at all.

15 MR. SHAHID: Okay.

16 THE COURT: I don't need any further
17 argument because I have all the information
18 that I need to make my decision if nothing
19 else changes from this moment. And I would
20 issue my decision. That would be the first
21 thing.

22 The second thing that could occur,
23 and please, as I articulate this I do this by
24 example only because you have asked. I have
25 no information whatsoever that this would

John Doe, et al v. The Bishop of Charleston, et al

1 occur, so please don't think that I have --
2 that I have any feeling about this because I
3 don't. But let's say that 100 new cases of
4 abuse surfaced that were to that moment
5 unknown. Well, obviously, obviously at that
6 point I'm going to need to know that. I'm
7 going to need to hear from you, both sides.

8 MR. SHAHID: Sure.

9 THE COURT: How do you feel about that?
10 What, if any, effect on these proceedings, on
11 this settlement does that have? It would be
12 impossible for you to know or for me to know
13 how or what that effect might be. But again,
14 please understand I have no feeling
15 whatsoever about that occurring, I really
16 don't. I just know that this is the
17 appropriate thing to do.

18 MR. SHAHID: Okay.

19 THE COURT: Having said, again, those
20 two scenarios, neither one of those will
21 probably happen, it will probably be
22 something that none of us have anticipated.

23 It would be my intention that --
24 that our solicitor would communicate with
25 both of you and anyone else that they need

John Doe, et al v. The Bishop of Charleston, et al

1 to, and I think clearly the place to begin is
2 with you and I have told him that I will give
3 to him this document. He may want a
4 transcript of these proceedings, and beyond
5 that he will do what he does. Maybe he will
6 keep it, maybe it goes to the attorney
7 general, but it will go to someone other
8 than -- other than the Court, obviously, at
9 this point and then we will -- once that
10 has -- once that process is either concluded
11 or come to some other juncture, then we may
12 need to get together and let me hear from you
13 at that point, but at this juncture I think
14 it's very difficult to know what is the next
15 step.

16 MR. SHAHID: Okay.

17 THE COURT: And it very well may be that
18 it is clear and I'll go forward and make my
19 decision.

20 MR. SHAHID: Okay. Thank you, Judge.

21 THE COURT: Thank all so much. Anything
22 further?

23 MR. RICHTER: Nothing from plaintiffs.

24 MR. SHAHID: Nothing from us.

25 THE COURT: I want to thank all of you

John Doe, et al v. The Bishop of Charleston, et al

1 for being here today and for your patience as
2 I have gone through these matters to learn
3 about these issues. I know it has been long.
4 I hope nobody's blood sugar plummeted
5 dramatically, but thank you all for the time
6 you have given me, counsel, today and your
7 explanation and we will -- I suppose the best
8 thing to say is we will be in touch. Thank
9 you so much.

10 MR. SHAHID: Thank you, Judge.

11 THE COURT: We'll be convened with these
12 proceedings today.

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 16th day of March 2007.

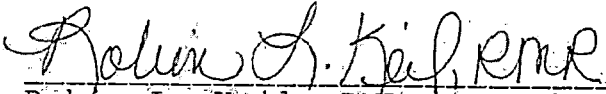

Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

EXHIBIT D

TO

**JOINT RETURN BY THE RESPONDENTS/LAWYER DEFENDANTS TO
THE DIOCESE RESPONDENTS' MOTION TO STRIKE**

Deposition Excerpts

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JOHN DOE 2 and JANE DOE 4,

Plaintiffs,

vs.

CASE NO. 2010-CP-10-5520

THE BISHOP OF CHARLESTON, et al,

Defendants.

(Caption continues on Page 2)

DEPOSITION OF: JOHN DOE 10

DATE: June 4, 2014

TIME: 9:20 a.m.

LOCATION: McNair Law Firm
100 Calhoun Street, Suite 400
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Patricia T. Morrison,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

1 A. That's really hard to say.

2 Q. Let me ask it this way: Was it related
3 to the abuse?

4 A. It hurt. It makes me unable to share
5 properly in my opinion with people, and she felt
6 alienated from me.

7 Q. Other than the chapter that you wrote
8 in the book and told us about have you written
9 about your abuse in any other media? Emails?
10 Letters?

11 A. Because of the Interrogatories I
12 touched base with the people that I listed and
13 asked them -- I didn't ask them. I notified them
14 that I was mentioning them.

15 Q. But other than that?

16 A. I haven't tried to sort of publish or
17 share anything else besides that, no.

18 Q. Did you ever contact anyone with your
19 church in Greenville, with the diocese of South
20 Carolina -- anyone in any capacity --

21 A. The church in Greenville, no. In
22 college I did send an email at one point about
23 Frederick Hopwood to the diocese saying that I
24 hoped that he would be punished and that I had
25 information that he abused me.

1 Q. Did the diocese follow up with you for
2 your information?

3 A. That's a good question. I've thought
4 about that, and I'm not sure. I believe I did get
5 an email, but --

6 Q. An email back from whom?

7 A. That's beyond me at this point.

8 Q. Did you keep that correspondence?

9 A. No.

10 Q. Is it retrievable?

11 A. You would have to ask Vanderbilt,
12 because it was through a Vanderbilt email address
13 and -- I mean, I haven't had access to that email
14 in 15 years.

15 Q. Let's explore this in more depth. So
16 in what year did you email the diocese?

17 A. '98, '99. Because it was so fresh in
18 my mind about him being -- resigned.

19 Q. So you think it was in 1998 or 1999?

20 A. No. That wouldn't have been because I
21 wasn't at Vanderbilt in those two years, so it was
22 earlier than that.

23 Q. Give us your best recollection.

24 A. My best recollection is in '96.

25 Q. So about 1996 you wrote an email. How

1 do you recall addressing that email?

2 A. It was a form.

3 Q. I'm sorry?

4 A. I believe it was a form I could click
5 on the Web site of the diocese.

6 You're really jogging my memory here.
7 I don't know if I pulled the email address or
8 clicked on it, a comment form. It's been --
9 I don't know.

10 Q. So some sort of a form that when you go
11 in --

12 A. I think so.

13 Q. -- to the diocese of South Carolina
14 there was some sort of a comment form as best you
15 can recall?

16 A. I think so.

17 Q. And tell us as best you can recall what
18 you put on that comment form.

19 A. Basically that I wanted to know if
20 there had been any progress. Something like that.

21 Q. Progress with regard to what?

22 A. Father Hopwood's guilt, and that I had
23 -- I could say that he abused me.

24 Q. Did you sign your name or give some
25 sort of --

1 A. Yeah.

2 Q. So you put your name on that. You
3 identified yourself?

4 A. Yes.

5 Q. Did you give a phone number or an email
6 address for them to get back to you?

7 A. I believe so. I wouldn't have given a
8 phone number.

9 Q. But your email address?

10 A. Uh-huh.

11 Q. So while you were at Vanderbilt you
12 still had an email address --

13 A. Sure.

14 Q. -- where you could send out emails and
15 receive them back?

16 A. Yes.

17 Q. Then as I understand your testimony,
18 you actually received an email back as best you can
19 recall.

20 A. It seems like that's true. But I mean,
21 I just remember rolling my eyes.

22 Q. What was said? To the best of your
23 recollection.

24 A. The same -- sort of like a thank you.
25 Maybe that's why I'm thinking it was a form because

1 -- but I don't think an individual -- but I don't
2 know, it's been so long.

3 Q. But you weren't satisfied with the
4 response?

5 A. I just thought it was like par for the
6 course. Yeah. That's what I figured. And so sort
7 of rolled my eyes and -- what am I supposed to do?
8 I don't know what to do.

9 Q. Did you follow up and do anything
10 further?

11 A. No.

12 Q. So in your email to the diocese
13 concerning Father Hopwood you told the diocese that
14 you had information about sexual abuse and that you
15 had been abused; is that correct?

16 A. Yes. Uh-huh.

17 Q. Now, the email address that you would
18 have used, would it have been either your name or a
19 password with [REDACTED]?

20 A. Yes.

21 Q. Do you recall what your email address
22 was?

23 A. There were a couple of them. That's
24 why I said -- there was a couple of them. Because
25 they switched from an early system to a more modern

1 system, but the one that I -- it was either [REDACTED]

2 [REDACTED] or [REDACTED] It might have been

3 [REDACTED]

4 Q. But it even had your name in the
5 address?

6 A. It was either [REDACTED] or [REDACTED]

7 [REDACTED] I can't tell you which one.

8 Q. Did the diocese or anyone on behalf of
9 the diocese -- anyone on behalf of the church --
10 ever follow up with you and ask you: Please tell
11 us what the information is that you have?

12 A. No.

13 Q. "What can we do to help you?"

14 A. No.

15 Q. Who was the first person that you told
16 about the abuse of you by Hopwood?

17 A. I don't know. Let me think. It's
18 possible that it was Erica, but I'm not sure.

19 Q. And that would have been in 2004 or
20 2005?

21 A. Right. It's possible that -- yeah.
22 That's my best guess, but I'm not sure.

23 Q. And then you wrote your chapter --

24 A. Uh-huh.

25 Q. -- in 2006?

In The Matter Of:
Doe 2, John, et al vs
Bishop of Charleston, et al

Jane Doe 4
Vol. 1
June 3, 2014
Confidential

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Original File Doe_4_Copy_Jane_-_140603.TXT
Min-U-Script® with Word Index

1 and probably any one of us would have done that to
2 get out of going with him.

3 Q. Did there come a time later on when you
4 were able to tell your mother and father what he
5 had done?

6 A. I didn't. Sister [REDACTED], Brother [REDACTED] and
7 Brother [REDACTED] went to my mom and dad and told them. I
8 believe that was in '92 or '93. We're kind of
9 unsure about that. My dad was heartbroken. He was
10 heartbroken. And my mom said she didn't -- I don't
11 think she knew whether to believe it or not. But
12 you know, I think it finally got through to her.

13 But anyway, of course they were shocked
14 and everything. And daddy actually went to
15 Charleston to talk to the bishop. And I really
16 don't know what became of that except I think the
17 bishop told him he wouldn't do anything about it.

18 Q. Was this about the time that he found
19 out?

20 A. Yeah.

21 Q. Early '90s, '92, '93, something like
22 that?

23 A. Something like that, yes. I believe
24 this was -- and this was long after he was gone,
25 too.

In The Matter Of:
John Doe 2, et al vs
Bishop of Charleston, et al

John Doe 2
September 04, 2014

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1 A. I believe my brother called me and --

2 Q. Your brother, [REDACTED]?

3 A. My brother, [REDACTED] And we, I guess, in
4 some way were discussing the matter, and he had --
5 he decided that he would call a meeting together
6 and that mom and dad needed to know. And so I
7 agreed, and I think my sister [REDACTED] agreed. I
8 don't think my other two sisters did, so they
9 didn't attend. At least that's what they tell me.
10 I don't recall exactly. I don't remember them
11 being there either. But that's the first time that
12 we came together and actually told them what had
13 happened, to our knowledge.

14 Q. And what is it that you told your
15 parents?

16 A. I don't remember specifically. I know
17 we just told them that we had been abused by him
18 for a long time, and I don't think anybody gave any
19 specific details at the time that I recall.

20 Q. Did either of your parents do anything
21 about that?

22 A. They seemed somewhat stunned, and I
23 think my dad, if I remember correctly -- I just
24 remember being told by other siblings, and I don't
25 remember which one, that he immediately went over

1 to St. Mary's Church, which is where we grew up
2 going, and I think he saw the monsignor, I think.
3 It's hard for me to recall. I think he took a trip
4 down here to Charleston to meet with the bishop.
5 These were things just related to me later by my
6 siblings. I don't recall who or which one.

7 Q. So you didn't have any personal
8 knowledge of him going to St. Mary's Church. He
9 didn't come back to you and say, I want you to know
10 now, I've gone to St. Mary's and spoken with the
11 monsignor?

12 A. Not that I recall, no.

13 Q. Who was the monsignor at St. Mary's
14 Church, if you know, that he would have spoken to
15 or you understood he spoke to?

16 A. I don't recall.

17 Q. And it's your understanding that,
18 thereafter, your father went to Charleston to speak
19 with whom in Charleston?

20 A. All I know is to speak with the bishop.

21 Q. (And what came of your father's going to
22 St. Mary's and speaking to the monsignor, going to
23 Charleston and speaking to the bishop? Did
24 anything come of that?)

25 MR. SHAHID: Object to the form of the

1 question.

2 BY MS. WALL:

3 Q. You can answer.

4 A. Not to my knowledge.

5 Q. Did anyone affiliated with the diocese
6 contact you after your father went to St. Mary's
7 and went to talk to the bishop in Charleston, did
8 anyone affiliated with the diocese contact you to
9 try to get information or ask for any information
10 from you with regard to the abuse?

11 MR. SHAHID: Object to the form of the
12 question.

13 BY MS. WALL:

14 Q. And you can answer.

15 A. No.

16 Q. To this day, has anyone with the
17 diocese made contact with you?

18 A. No.

19 Q. Now, when you and [REDACTED] and one of your
20 sisters, [REDACTED] spoke to your parents for the first
21 time that you recall in 1992, how old were you?

22 A. I would be 33.

23 Q. Before 1992, had you ever talked about
24 the abuse you suffered with any of your siblings?

25 A. I believe my brother and I had spoken

EXHIBIT E

TO

**JOINT RETURN BY THE RESPONDENTS/LAWYER DEFENDANTS TO
THE DIOCESE RESPONDENTS' MOTION TO STRIKE**

Diocese Responses to David K. Haller's Second Requests for Production

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,)

Case No.: 2010-CP-10-5520

vs.)

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 & Haller, LLC,)

**DEFENDANTS THE BISHOP OF
CHARLESTON, A CORPORATION
SOLE; MOST REV. ROBERT
GUGLIELMONE; REV. MONSIGNOR
MARTIN LAUGHLIN; and MOST
REV. ROBERT J. BAKER'S
RESPONSE TO DAVID K.
HALLER'S SECOND SET OF
REQUEST FOR PRODUCTION**

Defendants.)

John Doe 10,)
)
Plaintiff,)

Case No.: 2010-CP-10-7233

vs.)

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 & Haller, LLC,)

Defendants.)

Jane Doe 11,

Plaintiff,

vs.

The Bishop of Charleston, a Corporation
Sole, et al.,

Defendants.

Case No.: 2012-CP-10-5559

John Doe 193,

Plaintiff,

vs.

The Bishop of Charleston, a Corporation
Sole, et al.,

Defendants.

Case No.: 2013-CP-10-3733

Father Doe 194,

Plaintiff,

vs.

The Bishop of Charleston, a Corporation
Sole, et al.,

Defendants.

Case No.: 2013-CP-10-4175

John Doe 194,

Plaintiff,

vs.

The Bishop of Charleston, a Corporation
Sole, et al.,

Defendants.

Case No.: 2013-CP-10-4176

TO: DEFENDANT DAVID K. HALLER AND HIS ATTORNEY, SUSAN TAYLOR WALL

COMES NOW 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 (hereinafter referred to as the Diocesan Defendants) and Responds to the Defendant David K. Haller's Second Set of Request for Production as follows:

General Objections

1. Diocesan Defendants object to all Requests to the extent that they call for the production of privileged communications.
2. Diocesan Defendants object to all Requests to the extent that they are irrelevant, unduly burdensome or overly broad in the context of the claims now pending against Defendant Haller. Specifically, Defendant Haller faces claims arising from his representation of certain classes in a class action against the Diocese of Charleston. His requests for the personnel files of individual priests or other detailed information about the Diocese's handling of sexual abuse cases decades ago has no bearing on the claims now pending against him, or are so remote from those claims that the burden to satisfy such irrelevant and overly broad requests cannot be justified.
3. Diocesan Defendants object to any request calling upon it to create evidence that does not presently exist, or to obtain evidence from any other person or entity.

Responses

1. A complete copy of Bishop Robert Baker's calendars, daytimers and all other documents reflecting his daily meetings and activities from 1999 - 2007.

Response: Objection: Irrelevant and beyond the scope of discovery in this action, unduly burdensome, overly broad.

2. A complete copy of Bishop Robert Baker's calendars, daytimers and all other documents reflecting his daily meetings and activities from 1989 - 1999.

Response: Objection: Irrelevant and beyond the scope of discovery in this action, unduly burdensome, overly broad.

3. List of the names and corresponding positions of all senior Diocesan staff of the Dioceses of Charleston employed during the time period of 1989-2007.

Response: Objection: This is not a document request. Subject to this objection, please refer to Dropbox Directory sent under separate cover.

4. All records, including personnel files and other records relating to the employment and/or discharge/retirement or ending from the Diocese of Charleston's employment, of Father Frederick Hopwood, Father Leo/James McCarthy and Father Michael Kaney, including but not limited to all documents reflecting allegations of sexual misconduct and/or abuse and investigation of the same and steps taken by the Diocese or anyone within the Church as to said allegations and investigation, if any.

Response: Objection: Irrelevant to claims now pending against Defendant Haller.

5. A copy of all policies and procedures for staff/employees of the Diocese of Charleston related to abuse and/or sexual misconduct, including drafts, meeting notes, meeting minutes related correspondence and final policies, from 1960 to the present.

Response: Objection: Irrelevant and beyond the scope of discovery in this action, unduly burdensome, overly broad. Subject to this objection, please refer to Dropbox DOC Policy March 1994, DOC Policy December 1997, DOC Policy August 2003 and DOC Policy December 2012, sent under separate cover.

6. A copy of the Catholic Bishops' Charter on Abuse of Children and/or any similarly named charter or directive concerning abuse and/or sexual misconduct by church personnel dated on or about 2000 and any later versions of same.

Response: Objection: Irrelevant and beyond the scope of discovery in this action, vague, ambiguous. Subject to the aforesaid objection, the Diocesan Defendants will produce any responsive documents in its possession.

7. Copies of all manuals or instructions predating the Catholic Bishops' Charter on Abuse of Children and/or any similarly named charter or directive predating same.

Response: Objection: Irrelevant and beyond the scope of discovery in this action, vague, ambiguous, unduly burdensome and overly broad. Subject to the aforesaid

objections, the Diocesan Defendants will produce any by separate cover the document titled: "Charter for the Protection of Children and Young People".

8. A copy of all Church or Diocesan guidelines for defining "credible" evidence/information regarding abuse and/or sexual misconduct.

Response: Objection: Vague, ambiguous and overly broad. Subject to the aforesaid objections, the Diocesan Defendants will produce any such definitions as may exist in the policies of the Diocese of Charleston, referred to response to Request No. 5.

9. A copy of the 1994 policies of the Diocese of Charleston, under whatever name, approved during the tenure of Bishop David Thompson, regarding abuse and/or sexual misconduct and any changes, modifications or additions made to those policies through 2002.

Response: Objection: This request is duplicative of Request No. 5.

10. All documents reflecting bills received from and/or amounts paid to Denise Crockett, licensed professional counselor and/or Family Therapy & Trauma Center, Greer, South Carolina, concerning the treatment of John Doe 193 from 2010 to the present.

Response: The Diocesan Defendants has in it possession documents reflecting bills incurred from John Doe 193 from 2010 through 2015.

11. A copy of the 2002 policies of the Diocese of Charleston, under whatever name or title, approved during the tenure of Bishop Baker, regarding abuse and/or sexual misconduct and any changes, modifications or additions made to those policies through 2007.

Response: Objection: This request is duplicative of Request No. 5.

12. A copy of the Diocese of Charleston's policies, under whatever name or title, regarding abuse and/or sexual misconduct in effect from 2007 to the present, including all changes, additions or modifications made to those policies.

Response: Objection: This request is duplicative of Request No. 5

13. Copies of all emails, letters and/or correspondence in any form related to allegations of abuse and/or sexual misconduct made by any person or entity against the Diocese of Charleston personnel, past or present, from 1960 to the present.

Response: Objection: Irrelevant and beyond the scope of discovery in this action, unduly burdensome, overly broad, vague and ambiguous.

14. A copy of each published Catholic Miscellany from the Diocese of Charleston from 1994 to the present.

Response: The Catholic Miscellany has online content from 1997 through present. To access these documents select the Catholic Miscellany website; <http://themiccellany.org/#>. For any copies of the Miscellany pre 1994, please make contact with the undersigned to arrange on site inspection at the office of the Catholic Miscellany, 901 Orange Grove Road, Charleston, SC 29407.

15. A list of all Diocese priests removed, transferred, laicized, or retired or whose resignation was accepted, under allegation or suspicion of inappropriate conduct, abuse and/or sexual misconduct, from 1960 through 1989, including all files related to the same, and all documents reflecting investigation and actions taken as to each such person.

Response: Objection: Irrelevant and beyond the scope of discovery in this action, unduly burdensome, overly broad, vague and ambiguous. Diocesan Defendants further object to the extent this Request calls upon it to create "a list."

16. A list of all Diocese priests removed, transferred, laicized, or retired or whose resignation was accepted, under allegation or suspicion of inappropriate conduct, abuse and/or sexual misconduct, from 1989 through 1999, including all files related to the same, and all documents reflecting investigation and actions taken as to each such person.

Response: Objection: Irrelevant and beyond the scope of discovery in this action, unduly burdensome, overly broad, vague and ambiguous. Diocesan Defendants further object to the extent this Request calls upon it to create "a list."

17. A list of all Diocese priest removed, transferred, laicized, or retired or whose resignation was accepted, under allegation or suspicion of inappropriate conduct, abuse and/or sexual misconduct, from 1999 through 2007, including all files related to the same, and all documents reflecting investigation and actions taken as to each such person.

Response: Objection: Irrelevant and beyond the scope of discovery in this action, unduly burdensome, overly broad, vague and ambiguous. Diocesan Defendants further object to the extent this Request calls upon it to create "a list."

18. A list of all priests removed, transferred, laicized, or retired or whose resignation was accepted, under allegation or suspicion of inappropriate conduct, abuse and/or sexual misconduct, from 2007 to present, including all files related to the same, and all documents reflecting investigation and actions taken as to each such person.

Response: Objection: Irrelevant and beyond the scope of discovery in this action, unduly burdensome, overly broad, vague and ambiguous. Diocesan Defendants further object to the extent this Request calls upon it to create "a list."

19. All documents reflecting moneys or benefit paid to Leo/James McCarthy, Frederick Hopwood, and/or Michael Kaney after each priest's resignation, retirement or removal.

Response: Objection: Irrelevant and beyond the scope of discovery in this action.

20. All transcripts of depositions of Diocesan personnel or former personnel taken in cases involving in any way allegations of abuse and/or sexual misconduct.

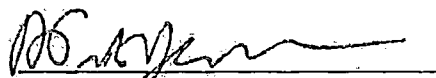
Response: Objection: Irrelevant and beyond the scope of discovery in this action, overly broad, unduly burdensome, vague, ambiguous.

21. All documents related to the maintenance of confidentiality or secrecy concerning in any way matters involving sexual misconduct and/or abuse by personnel of the Diocese of Charleston or former personnel of the Diocese of Charleston.

Response: Objection: Irrelevant and beyond the scope of discovery in this action, overly broad, unduly burdensome, vague, ambiguous.

Charleston, SC

November 13, 2015



A. Peter Shahid, Jr.

89 Broad Street

Charleston, SC 29401

Phone 843/853-4500

*Attorney for The Bishop of Charleston, a
Corporation Sole; Robert Guglielmo, 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*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Diocesan Defendants' Response to David K. Haller's Request for Production has been served this _____ day of November 2015 via U.S. Mail to:

Attorney for John Doe 2 & Jane Doe 4:
Gregg Meyers, Esquire
366 Jackson St., Suite 100
St. Paul, MN 55101

Attorney for David K. Haller:
Susan Taylor Wall, Attorney at Law
McNair Law Firm P.A.
PO Box 1431
Charleston SC 29402

**Attorney for Lawrence E. Richter, Jr.
And Richter & Haller, LLC**
James L. Bruner, Esquire
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260-1110

Katherine Gallagher for
A. Peter Shahid, Jr.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

Appellate Case No. 2017-001996

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe 245
and Father Doe 245, and John Doe 297 Appellants,

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..... Respondents.

RECEIVED
OCT 29 2018
SC Court of Appeals

PROOF OF SERVICE

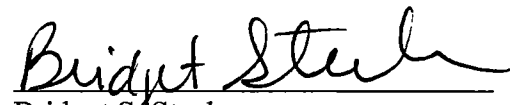
I, Benjamin C. Bruner, counsel for Respondents Lawrence E. Richter, Jr., Richter & Haller, LLC, certify that I have served a copy of the attached **JOINT RETURN BY THE RESPONDENTS/LAWYER DEFENDANTS TO THE DIOCESE RESPONDENTS' MOTION TO STRIKE** by depositing a copy of it in the U.S. Mail, postage prepaid, and via e-mail, on October 29, 2018, addressed to the following:

Gregg E. Meyers, Esquire
Pierce Hems Sloan & Wilson LLC
321 East Bay Street
Charleston, SC 29401
Attorney for Appellants

Richard S. Dukes, Esquire
Brian James Kern, Esquire
Turner Padget Graham & Laney, PA
PO Box 22129
Charleston, SC 29413-2129
Attorneys for Diocese Defendants

Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire
Gordon & Rees LLP
40 Calhoun Street, Suite 350
Charleston, SC 29401
Attorneys for David K. Haller

October 29, 2018


Bridget S. Steele

BRUNER, POWELL, WALL & MULLINS, LLC

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WARREN C. POWELL, JR., P.A.*

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JOEY R. FLOYD, P.A.

BENJAMIN C. BRUNER, P.A.

JAMES L. BRUNER (RETIRED)

BRIAN P. ROBINSON, P.A.**

CAITLIN C. HEYWARD

CHELSEA J. CLARK

STEVEN R. SPREEUWERS

* ALSO ADMITTED IN DISTRICT OF COLUMBIA

** OF COUNSEL

AUTHOR'S E-MAIL: BBRUNER@BRUNERPOWELL.COM

October 29, 2018

VIA HAND DELIVERY

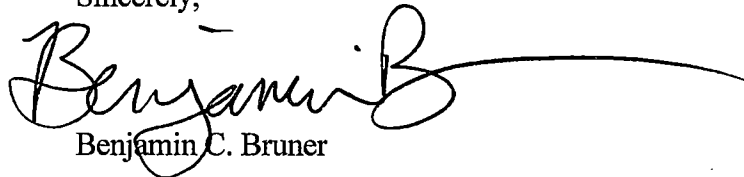
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: *Doe v. The Bishop of Charleston, et al.*
Appellate Case No.: 2017-001996
Bruner Powell File No.: 3716134.200

Dear Ms. Kitchings:

Please find enclosed for filing in the appeal the original and seven (7) copies of the **JOINT RETURN BY THE RESPONDENTS/LAWYER DEFENDANTS TO THE DIOCESE RESPONDENTS' MOTION TO STRIKE**, together with proof of service on other attorneys of record.

Sincerely,


Benjamin C. Bruner

BCB/gh

Enclosures

cc: Gregg E. Meyers, Esquire
Richard S. Dukes, Jr., Esquire
Brian James Kern, Esquire
Susan Taylor Wall, Esquire
Henry Wilkins Frampton, IV, Esquire

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OCT 29 2018

SC Court of Appeals