The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon. J.C. Nicholson, Jr., Circuit Court Judge

RECEIVED
FEB 05 2019
SC Court of Appeals

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

RECORD ON APPEAL
VOLUME ONE

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon. J.C. Nicholson, Jr., 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 Guglielmone, The Bishop Of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC.,

Respondents

Record On Appeal
Volume One

Gregg Meyers
217 Lucas Street Box 10
Mt. Pleasant SC 29464
843-324-1589
Attorney for Appellants

Richard S. Dukes
Brian James Kern
Turner Padget Graham and Laney
40 Calhoun Street, Suite 200
Charleston SC 29401-1508
843-576-2800
Attorneys for Respondents Diocese, Bishop Guglielmone, Laughlin, and Bishop Baker

Benjamin C. Bruner
Chelsea Jaqueline Clark
Bruner Powell Wall & Mullins LLC
1735 Julian Place #200
Columbia SC 29204
803-252-7693
Attorneys for Respondents Richter and Richter & Haller, LLC

Susan Taylor Wall
Henry Wilkins Frampton, IV
Gordon & Rees, LLP
40 Calhoun Street Ste 350
Charleston SC 29401
843-278-5900
Attorneys for Respondent Haller

Index

Volume One

Orders, Judgments, Decrees, Decisions

1. 7/26/06 Supreme Court administrative order for complex case designation p. 0001

2. 10/17/06 order designating cases complex in Dorchester County cases 06-CP-18-1310, 06-CP-18-1311, and 06-CP-18-1636 p. 0003

3. 10/23/06 Consent order of dismissal without prejudice in Charleston County case 05-CP-10-2053 p. 0006

4. 10/23/06 Consent order of dismissal without prejudice in Charleston County case 05-CP-10-3293 p. 0007

5. 10/23/06 Consent order of dismissal without prejudice in Charleston County case 05-CP-10-4193 p. 0008

6. 1/19/07 Order certifying classes and giving preliminary approval to settlement in Dorchester County cases 06-CP-18-1310, 06-CP-18-1311, 06-CP-18-1636 p. 0009

7. 7/30/07 Order approving settlement in Dorchester County cases 06-CP-18-1310, 06-CP-18-1311, 06-CP-18-1636 p. 0039

8. 8/31/07 Order of the court in Dorchester County cases 06-CP-18-1310, 06-CP-18-1311, 06-CP-18-1636 p. 0079

9. 3/19/09 S.C. Supreme Court order denying petition for original jurisdiction, Doe v. Richter et al. p. 0085

10. 9/8/10 Order dismissing Diocese defendants in Charleston County case 09-CP-10-7751 p. 0087

11. 9/8/10 Order granting motions to dismiss complaint in Charleston County case 09-CP-10-7751 p. 0097

12. 6/13/11 S.C. Supreme Court decision in *Doe v. Bishop*, 711 S.E.2d 892 p. 0105

13. 6/27/11 Order denying motion for protective order in Charleston County case 10-CP-10-5520 p. 0108

14. 6/27/11 Order denying in part and granting in part motion to dismiss Charleston County case 10-CP-10-5520 p. 0110

15. 7/13/11 Order denying motions to reconsider in Charleston case 10-CP-10-5520 p. 0124

16. 7/17/12 Amended consolidated scheduling order in Charleston County case 10-CP-10-5520 p. 0126

17. 6/20/13 Consent order changing venue to Charleston County in Greenville County case 13-CP-23-1843 p. 0132

18. 1/21/14 Form 4 order granting in part and denying in part motions to dismiss Charleston County case 13-CP-10-3733 p. 0134

19. 1/22/14 Order granting in part and denying in part motions to dismiss Charleston County case 13-CP-10-3733 p. 0136

20. 3/27/14 Form 4 order denying motions to amend Charleston County case 13-CP-10-3733 p. 0145

21. 7/15/14 Amended consolidated consent scheduling order in Charleston County cases p. 0147

22. 6/12/15 S.C. Supreme Court order assigning to Judge Nicholson Dorchester County cases 06-CP-18-1310, 06-CP-18-1311, and 06-CP-18-1636 p. 0153

23. 10/26/16 Order bifurcating trials for Charleston County cases p. 0155

24. 10/26/16 Order on limited collateral review for Charleston county cases p. 0161

25. 5/4/17 Amended order bifurcating trials in Charleston County cases p. 0166

26. 5/4/17 Amended order on limited collateral review for Charleston County cases p. 0174

27. 6/2/17 *Sua Sponte* scheduling order for Charleston County cases p. 0181

28. 8/10/17 Order granting Diocese Defendants' Motion for Summary

Judgment in Charleston County cases p. 0189

29. 8/11/17 Order granting Lawyer Defendants' motion for summary Judgment in Charleston County cases p. 0203

30. 8/15/17 S.C. Court of Appeals order granting motion to dismiss appeal p. 0224

Pleadings

31. 5/12/05 Complaint in Charleston County case05-CP-10-2053 for Doe 66 p. 0226

32. 8/12/05 Complaint in Charleston County case 05-CP-10-3293 for Doe 66A p. 0240

33. 12/2/05 Complaint in Charleston County case 05-CP-10-4913 for John Doe 53 and an alleged class p. 0256

34. 8/15/06 Complaint in Dorchester County case 06-CP-18-1310 for Doe 1 and an alleged class p. 0271

35. 8/15/06 Complaint in Dorchester County 06-CP-18-1311 for Doe 67 and an alleged class p. 0279

36. 9/6/06 Acceptance of Service in Dorchester County case 06-CP-18-1310 p. 0297

37. 9/20/06 Richter letter to Dorchester County Judge Goodstein County re 06-CP-18-1310 and 06-CP-18-1311 p. 0299

38. 10/6/06 Complaint in Dorchester County case 06-CP-18-1636, For John Doe 53 and an alleged class, replicating the Doe 53 class complaint filed and settled in Charleston County (05-CP-10-4913) p. 0300

39. 10/6/06 Motion to certify classes and for preliminary approval of settlement in Dorchester County class cases, 06-CP-18-1310, 06-CP-18-1311, 06-CP-18-1636 p. 0315

40. 10/17/06 Haller letter to Charleston County Judge Jefferson re consent dismissal without prejudice for Charleston County cases 05-CP-10-2053, 05-CP-10-3293, and class complaint 05-CP-10-4913 p. 0320

41. 1/17/07 Motion to certify classes and for preliminary approval of class settlement in Dorchester County class cases

06-CP-18-1310, 06-CP-18-1311, and 06-CP-18-1636 p. 0322

42. 1/17/07 Settlement and Arbitration Agreement in Dorchester County class cases 06-CP-18-1310, 06-CP-18-1311, and 06-CP-18-1636 p. 0327

43. 2/22/07 Objection to order certifying classes and giving preliminary approval in settlement [sic] p. 0350

44. 2/22/07 Objection to proposed settlement by Doe plaintiff in Then pending Hampton County case 05-CP-25-0516 p. 0352

45. 2/22/07 Objections to class settlement, motion for modification and notice of opt-out p. 0355

46. 8/1/07 Objections to proposed order approving class settlement p. 0365

47. 8/7/07 Motion to Alter or Amend order approving class settlement p. 0373

48. 10/26/07 Amended Complaint in Jasper County case 06-CP-27-143, *Ranta v. Diocese of Savannah et al.* p. 0391

49. 3/10/08 Richter letter to Dorchester County Judge Goodstein re final accounting for 06-CP-18-1310, 06-CP-18-1311, 06-CP-18-1636 p. 0456

Volume Two

Pleadings (continued)

50. 11/13/09 Memorandum in support of summary judgment in Jasper County case 06-CP-27-143, *Ranta v. Diocese of Savannah et al.* p. 0464

51. 7/9/10 Complaint in Charleston County case 10-CP-10-5520 for John Doe 2 and Jane Doe 4 p. 0514

52. 9/3/10 Complaint in Charleston County case 10-CP-10-7233 for John Doe 10 p. 0588

53. 8/23/12 Complaint in Charleston County case 12-CP-10-5559 for Jane Doe 11 p. 0667

54. 4/2/13 Complaint in Charleston County case 13-CP-10-3733 for John Doe 193 p. 0742

55. 7/17/13 Complaint in Charleston County case 13-CP-10-4175 for Father Doe 194 p. 0836

Volume Three

Pleadings (continued)

56. 7/17/13 Complaint in Charleston County cases 13-CP-10-4176 for John Doe 194 p. 0936

57. 3/2/15 Richter Defendants' for limited collateral review and for summary judgment in Charleston County cases p. 1036

58. 4/13/15 Lawyer Defendants' memorandum supporting limited collateral review and summary judgment p. 1040

59. 6/10/15 Complaint in Charleston County case 15-CP-10-3287 For Jane Doe 240 p. 1190

60. 6/10/15 Complaint in Charleston County case 15-CP-10-3288 For John Doe 240 p. 1212

61. 10/12/15 Complaint in Charleston County case 15-CP-105486 For John Doe 245 and Father Doe 245 p. 1235

62. 3/31/16 Complaint in Charleston County case 16-CP-10-1632 For John Doe 297 p. 1328

63. 3/17/17 Diocesan Defendants' memorandum of law supporting motion to alter or amend order on limited collateral review p. 1408

64. 5/22/17 Stipulation of Dismissal of Diocese Defendants only in Charleston case 10-CP-10-7233 for John Doe 10 p. 1417

Volume Four

Pleadings (continued)

65. 6/23/17 Diocese defendants' omnibus motion for summary Judgment on civil conspiracy claims in Charleston cases p. 1419

66. 6/23/17 Diocese Defendants' omnibus motion for summary Judgment on loss of consortium claims in Charleston cases p. 1440

67. 6/23/17 Diocese Defendants' omnibus motion for summary judgment in Charleston cases based on the *res judicata* effect of the Dorchester County class action settlement and judgment p. 1475

68. 6/23/17 Diocese Defendants' omnibus motion for summary judgment in Charleston cases on unfair trade practices p. 1567

69. 6/23/17 Diocese Defendants' omnibus motion for summary judgment in Charleston cases on the statute of limitations p. 1604

70. 6/23/17 Diocese Defendants' omnibus motion for summary judgment in Charleston cases for deceased plaintiffs p. 1661

71. 6/26/17 Diocese Defendants' omnibus motion for summary judgment in Charleston cases for lack of notice p. 1665

72. 7/6/17 Joint Stipulation of Dismissal of Diocese Defendants under S.C. Code § 15-38-50 in Charleston case 15-CP-10-3288 for John Doe 240 p. 1699

73. 7/6/17 Joint Stipulation of Dismissal of Diocese Defendants under S.C. Code § 15-38-50 in Charleston case 13-CP-10-4175 for Father Doe 194 p. 1701

74. 7/6/17 Joint Stipulation of Dismissal of Diocese Defendants under S.C. Code § 15-38-50 in Charleston case 13-CP-10-4176 for John Doe 194 p. 1703

75. 7/6/17 Joint Stipulation of Dismissal of Diocese Defendants under S.C. Code § 15-38-50 in Charleston case 15-CP-10-3287 for Jane Doe 240 p. 1705

76. 7/6/17 Joint Stipulation of Dismissal of Diocese Defendants under S.C. Code § 15-38-50 in Charleston case 15-CP-10-5486 for John Doe 245 and Father Doe 245 p. 1707

77. 7/10/17 Diocese Defendants' omnibus motion for summary judgment in Charleston cases on aiding and abetting breach of fiduciary duty p. 1709

78. 7/10/17 Diocese Defendants' supplemental memorandum supporting motion for summary judgment in Charleston cases on claims for civil conspiracy p. 1713

79. 7/11/17 Lawyer Defendants' omnibus motion for summary judgment in Charleston cases p. 1809

80. 7/18/17 Plaintiff's memorandum opposing motions for summary judgment as to John Doe 193, using attachments common to all plaintiffs p. 1876

Volume Five

Pleadings (continued)

81. 7/18/17 Plaintiffs' memorandum opposing summary judgment In Charleston cases with attachments applicable to all plaintiffs p. 1897

Attachment A	p. 1914
Attachment B	p. 1929
Attachment C	p. 1931
Attachment D	p. 1936
Attachment E	p. 1940
Attachment F	p. 1948
Attachment G	p. 1949
Attachment H	p. 1964
Attachment I	p. 1969
Attachment J	p. 1972
Attachment K	p. 1974
Attachment L	p. 1975
Attachment M	p. 1980
Attachment N	p. 2003
Attachment O	p. 2004
Attachment P	p. 2005
Attachment Q	p. 2013
Attachment R	p. 2015
Attachment S	p. 2048
Attachment T	p. 2089
Attachment U	p. 2107
Attachment V	p. 2157
Attachment W	p. 2168
Attachment Y	p. 2170
Attachment Z	p. 2176

82. 7/21/17 Plaintiffs' supplemental memorandum opposing motions for summary judgment p. 2204

83. 8/22/17 Plaintiffs' SCRCP 59(e) motion to alter or amend p. 2215

84. 8/25/17 Plaintiffs' letter pursuant to SCRCP 59(g) conveying to Judge Nicholson plaintiffs' SCRCP 59(e) motion p. 2234

Volume Six

Transcripts

85. Transcript of hearing March 9, 2007 in Dorchester County in cases 06-CP-18-1310, 06-CP-18-1311, 06-CP-18-1636 p. 2235

86. Transcript of hearing of July 13, 2007 in Dorchester County in cases 06-CP-18-1310, 06-CP-18-1311, 06-CP-18-1636 p. 2420

87. Transcript of hearing of August 9, 2007 in Dorchester County in cases 06-CP-18-1310, 06-CP-18-1311, 06-CP-18-1636 p. 2453

88. Transcript of hearing of April 10, 2014 in Charleston County in cases 13-CP-10-4175 p. 2513

89. Transcript of hearing of April 16, 2015 in Charleston County in Charleston cases 10-CP-10-5520, 10-CP-10-7233, 10-CP-10-5559 p. 2564

90. Transcript of hearing of April 24, 2017 in Charleston County in consolidated Charleston cases p. 2668

91. Transcript of hearing of June 28, 2917 in Charleston County in consolidated Charleston cases p. 2695

Volume Seven

Transcripts

92. Transcript of hearing of July 20, 2017 in Charleston County in consolidated Charleston cases p. 2729

Exhibits

93. 10/5/06 Richter letter to Shahid p. 2800

94. 1/17/07 Proposed notice to the class p. 2801

95. Freeman affidavit of February 13, 2007 p. 2803

Certificate

96. Certificate of counsel p. 2821

2006-07-26-01

The Supreme Court of South Carolina

ADMINISTRATIVE ORDER

Pursuant to the provisions of S.C. CONST. Art. V, §4,

IT IS ORDERED that the following procedures shall be followed in the management and disposition of all complex common pleas cases now pending or hereafter filed in each circuit:

On the Chief Administrative Judge's own motion or on motion of counsel on an **approved form**, a copy of which is attached and made a part of this order, made after the filing of the original complaint, the Chief Administrative Judge can designate a case as complex, establish a date prior to which the case will not be called for trial and assign the case to a judge assigned to the circuit or an adjoining circuit who will be given exclusive jurisdiction to handle that case from beginning to end.

The motion may be granted on the information contained in the motion or the Chief Administrative Judge may require a hearing to determine whether the case justifies special handling.

If the motion is granted, the case will not be called for trial prior to the date designated in the order. The Chief Administrative Judge will assign the case to a judge assigned to the circuit or an adjoining circuit and all pretrial motions and other matters pertaining to that case will be under the exclusive jurisdiction of the judge assigned to the case. When appropriate, the case should be given a date certain for trial with the trial of the case also handled by the assigned judge.

If the Chief Administrative Judge believes that the case is not so complex as to require the assignment of a specific judge to handle the case from beginning to end, the Chief Administrative Judge can partially grant the motion by providing a date in his or her order before which the case cannot be called to trial. This will allow counsel adequate time to prepare the case for trial without the necessity of having to attend roster meetings and justify a continuance. Continuances beyond the date established in the scheduling order should not be requested or granted by the Chief Administrative Judge without exceptional circumstances being shown. Once the continuance has expired, the case will be handled in the same manner as all other normal

cases.

If the Chief Administrative Judge does not believe that the case is complex or requires additional time for preparation, the motion will be denied and the case will be placed on the trial roster and handled in the same manner as all other normal cases.

If the motion is granted and a specific judge is assigned to handle the case from beginning to end, copies of the motion and order granting the motion will be provided by the clerk of court to counsel of record and the judge assigned to the case.

This Order shall be effective immediately and shall remain in effect until rescinded or modified by future Order of the Chief Justice. All previous Orders regarding procedures to be followed in the management and disposition of complex common pleas cases are hereby rescinded.

s/Jean Hoefer Toal
Jean Hoefer Toal
Chief Justice

July 26, 2006
Columbia, South Carolina

CK 5014
25.00/
Cle

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE No. 06-CP-18-1310
		CASE No. 06-CP-18-1311
		CASE No. 06-CP-18-1634

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated,

Plaintiffs,

vs.

The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,

Defendants.

ORDER DESIGNATING CASE COMPLEX

FILED/RECORDED
2006 OCT 17 PM 3:55
CLERK OF COURT
DORCHESTER COUNTY

THIS MATTER was before me, as Chief Administrative Judge for the First Judicial Circuit, for a status conference by telephone on September 29, 2006. This is a action seeking class certification of two classes of individuals. After hearing from counsel for all parties to the matter, and pursuant to the Order of Chief Justice Jean H. Toal dated July 26, 2006, I find that the ends of just in the disposition of the case are best served by designating this case complex.

Further, as Chief Administrative Judge, I find the interests of justice are served by assigning the case to me for exclusive jurisdiction to hear the case from beginning to end.

To the extent necessary, this matter shall not be called for trial before August 15, 2007.

AND IT IS SO ORDERED!

The Hon. Diane S. Goodstein
Chief Administrative Judge of the First Judicial Circuit

This 10 day ~~of~~ October, 2006
At Edisto, South Carolina

25.00
CA

representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina,

Plaintiff,

vs.

The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,

Defendants.

FILED-RECORDED
2006 OCT 17 PM 3:55
CLERK OF COURT
DORCHESTER COUNTY

PURSUANT TO SCRCP Rule 42(a), and with the consent of the parties, it is

ORDERED that the above captioned matters are consolidated for trials; and

IT IS FURTHER ORDERED that the following captioned shall be used hereafter for these matters:

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-1634

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated,

Plaintiffs,

vs.

The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of

Charleston, in his official capacity,)
)
Defendants.)
)

AND IT IS SO ORDERED!!!

The Hon. Diane S. Goodstein
Jude of the First Judicial Circuit

This 9 day of Oct, 2006

Edgefield, South Carolina

WE SO MOVE:

RICHTER & HALLER, LLC

By: _____

Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 26465
(843) 849-6000

ATTORNEYS FOR PLAINTIFFS

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: _____

A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CA No. 05-CP-10-2053
John Doe #66)	
)	
Plaintiff,)	
)	
vs.)	**CONSENT ORDER OF DISMISSAL WITHOUT PREJUDICE**
)	
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,)	
)	
Defendants.)	

FILED
2006 OCT 23 PM 4:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PURSUANT TO SCRCP Rule 41(a) the above referenced matters are dismissed WITHOUT PREJUDICE, with the consent of all counsel of record.

The Honorable Deadra L. Jefferson
Ninth Circuit Court Judge

This 19th day of October, 2006
Charleston, South Carolina

WE CONSENT:

RICHTER & HALLER, LLC

By: _____
Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 26465
(843) 849-6000

ATTORNEYS FOR PLAINTIFF

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: _____
A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE No. 05-CP-10-3293
John Doe #66A	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**CONSENT ORDER OF DISMISSAL WITHOUT PREJUDICE**
	)	
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,	)	
	)	
Defendants.	)	

FILED
2006 OCT 23 PM 4:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PURSUANT TO SCRCP Rule 41(a) the above referenced matters are dismissed WITHOUT PREJUDICE, with the consent of all counsel of record.

04/01/2492

The Honorable Deadra L. Jefferson
Ninth Circuit Court Judge

This 19th day of October, 2006

Chas., South Carolina

WE CONSENT:

RICHTER & HALLER, LLC

By: _____
Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 26465
(843) 849-6000

ATTORNEYS FOR PLAINTIFF

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: _____
A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE No. 05-CP-10-4913
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,	)	
Plaintiff,	)	
vs.	)	CONSENT ORDER OF DISMISSAL WITHOUT PREJUDICE
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,	)	
Defendants.	)	

FILED
2006 OCT 23 PM 4:24
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PURSUANT TO SCRCP Rule 41(a) the above referenced matters are dismissed WITHOUT PREJUDICE, with the consent of all counsel of record.

D. R. Jefferson

The Honorable Deadra L. Jefferson
Ninth Circuit Court Judge

This 19th day of October, 2006

Charleston, South Carolina

WE CONSENT:

RICHTER & HALLER, LLC

By: _____
Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 26465
(843) 849-6000

ATTORNEYS FOR PLAINTIFF

WE CONSENT:

SHAHID LAW OFFICE, LLC

By: _____
A. Peter Shahid, Jr., Esq.
Post Office Box 591
Charleston, SC 29402
(843) 853-4500

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE No. 06-CP-18-1310
	CASE No. 06-CP-18-1311
	CASE No. 06-CP-18-1636

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated,

Plaintiffs,

vs.

The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,

Defendants.

ORDER CERTIFYING CLASSES AND GIVING PRELIMINARY APPROVAL TO SETTLEMENT

THIS MATTER is before the court on motion by the plaintiffs for certification of two classes and for approval of a settlement reached between the class representatives and the defendants. After a review of the full record before the court and the law applicable to the issues hereto, the motion to certify the requested classes is GRANTED and the proposed settlement agreement is preliminarily approved, subject to the objection period and Fairness Hearing as set out in this order.

FINDINGS OF FACT

Plaintiffs John Doe #53, John Doe 66, John Doe 66A, and John Doe 67[1] are individuals who, as minors, were sexually abused by priests assigned to the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole, and The Bishop of

[1] Hereinafter all of the plaintiffs will be referred to as "Representatives."

Charleston, in his official capacity (hereinafter "the Diocese"), are the designated governing entities for the Roman Catholic Church in South Carolina. The Corporation Sole was chartered by the General Assembly in the 1880s and its reach is statewide. John Doe #53 claims to have been abused by Father Lawrence Sheedy while John Doe was a minor living at the Charleston orphanage operated by the Diocese. John Does 66, 66A, and 67 were students at Nativity School who were abused by Father James Nyhan while Nyhan was assigned there. Jane Doe 1 is the wife of John Doe #53 and Rachel Roe is his mother. Jane Doe 2 is the wife of John Doe 66A. Each of the proposed class representatives were abused in their minority and brought this action beyond the one year statute of limitations for those reaching majority.

Over the past several decades a number of priests or other agents of the Diocese have been accused, investigated, criminally charged, and/or criminally convicted of sexual activities on minors. Based on information provided by the Diocese of Charleston to the Representatives, between 1950 and 2006, the total numbers of Diocese personnel who are alleged to have committed one or more acts of sexual misconduct on a minor are 28. Of these, 26 were clerical and the remainder non-clerical. The total number of claimed victims during this time period is 50. Some of these victims have brought claims against the Diocese. In almost all of them, the Diocese has asserted the statute of limitations, charitable immunity, and lack of notice/negligence, among other things, in defense of the claims. Additionally, a common issue in cases involving sexual abuse claims is the calculation of damages for mostly psychological damages. Each of the representatives have had the defenses and issues raised here asserted in their own claims. This action is almost identical to actions brought in other states in which the plaintiffs

have alleged sexual abuse upon them by priests and the failure of the Catholic Church in that area to adequately act in response.

Counsel for the representatives has extensive experience in complex plaintiffs' litigation, including potential class actions and cases in which sexual abuse of the plaintiff is the basis for the underlying claim.[2]

ISSUES

1. Should the plaintiffs' request for certification of classes be granted pursuant to SCRCP Rule 23?
2. Is the Settlement Agreement reached between the parties in the best interests of the class such that it should be preliminarily approved?

LAW/ANALYSIS

A. Certification of the Classes

SCRCP Rule 23 provides that a case may be certified as a class action where the proposed class satisfies the following criteria:

1. the class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties will fairly and adequately protect the interests of the class; and
5. In cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Plaintiffs have requested that the following classes be certified:

[2] The Diocese, while denying the seminal allegations of the complaint, took no legal or factual position on the motion for class certification.

A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused[3] at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")

B. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

I find that certification of these class is appropriate.

1. **Numerosity/ Impracticability of Joinder.**

The first element, commonly referred to as 'numerosity,' requires that the court balance the number of potential members of the class and the ability to join each of the individuals in one suit. There is no definitive standard as to what number is sufficient to be numerous. *Haywood v. Barnes*, 109 F.R.D. 568 (E.D.N.C. 1986). Courts have certified classes where the number has been as small as 14 members. *Manning v. Princeton Consumer Discount Co.*, 390 F.Supp. 320 (ED Pa 1975)(cited by *Middleton v. Sunstar Acceptance Corp.*, 98-CP-07-1131 (SC Court of Common Pleas, Jan. 13, 2000). Further, the exact number does not have to be known. Wright, Miller, & Kane Federal Practice and Procedure (2d) § 1762. The record before the court must reasonably infer numerosity. *Id.* Determining whether numerosity exists requires a liberal interpretation of the rule. *Id.* The key is not simply the number of potential class members, but also the practicability of joining all in one action.

[3]"Sexual abuse," for these purposes, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

The record before me shows four representatives of the Primary Class and three of the Consortium Class. There have been no less than 28 priests or agents of the Diocese who have been accused, investigated, charged, and/or convicted of sexual abuse crimes on minors. However, the total number is likely to be higher because of the nature of the allegations and many of these priests have had multiple victims. As the representatives have shown, it is difficult for claimants to face up to sexual abuse. This is more true where the abuse has been accomplished by a person such as a priest, who is held by high esteem by the victim.

Further, the Diocese operates statewide and, hence, the breadth of individual claims is particularly great. The size of the Diocese's reach also weighs on the ability of individuals to be joined in the case. In addition, this court may easily take judicial notice that Catholic Dioceses around the country have been taking on the issue of priest sexual abuse in the litigation forum over the last several years. The problem of sexual abuse by priests has been in the forefront of national news which is indicative of the potential number of claimants here.

As to the Consortium Class, because members of the class are the spouses and parents of those who have actually suffered abuse, the number of members for that class is likely to be larger than in the Primary Class. It is not difficult for this court, then, to reasonably infer that the number of potential class members is such that the joinder of all is impractical. Hence, this first prong is met.

2. Commonality/Typicality

The second and third prongs of Rule 23 are general considered to be identical and are most often analyzed together. Commonality is the requirement that common question of

law or fact predominate over other questions in the case. "In fact, a single common issue will suffice if it is important enough." *McGann v. Mungo*, 287 S.C. 561, 340 S.E.2d 154 (Ct.App. 1986). Typicality requires that the claims or defenses of the class be identical. SCRCP Rule 23(a)(3). I find that the claims of the class are common and typical to each of the members.

The key issues of the case, as set out in the complaints, include the responsibility of the Diocese to monitor its agents, its knowledge of their conduct, the acts taken by the Diocese in the face of the knowledge, the type of damage (namely psychological), the applicability of the statute of limitations and defenses thereto, and the applicability of the affirmative defense of charitable immunity. Each of these issues must be addressed in the case of each individual class member in order for a resolution of the matter. Accordingly, the claims of each class member are common and typical to one another.

3. Adequacy of Representation

The fourth prong of Rule 23 is the adequacy of representation. There are two parts to this prong: (1) the plaintiffs' attorney must be qualified, experienced, and generally able to conduct the proposed litigation; (2) the plaintiffs must not have interests antagonistic to those of the class. The plaintiffs here meet these criteria.

First, the record reflects that class counsel is "qualified, experienced, and generally able to conduct the proposed litigation." It is presumed that plaintiffs' counsel is qualified unless the defense shows inadequacy of representation. *McGlothin v. Connors*, 142 F.R.D. 626 (W.V.A. 1992). The record before me shows that plaintiffs' counsel has a history of being involved in numerous complex pieces of litigation and class actions and with great success. The reputation of class counsel is known to the court and, given

their past history and their work in this matter heretofore, I have no question in finding them qualified.

Second, the class representatives' interests are not antagonistic to those of the rest of the class. The representatives have resolved their claims and agreed to be bound by the resolution in the face of whether this court approved class certification or not and the Diocese agreed to pay them regardless of whether the class was approved or not. They have nothing more to gain from the case. Accordingly, the representatives are not in an antagonistic position to the rest of the class.

4. $100 requirement.

Last, SCRCP Rule 23(a)(5) requires that the amount in controversy exceed $100 for each member of the class. In order for the amount in controversy prong to be met, the plaintiffs must show that the amount to be gained in the suit exceeds $100 per class member. *Gardner v. Newson Chevrolet-Buick, Inc.*, SC 328, 404 S.E.2d 200 (1991). The claim for the class here is the medical bills, pain, suffering, psychological injury, and loss of consortium as a result of the Diocese's acts or omissions. These damages clearly seek a gain in excess of $100 per class member. I find that the amount in controversy element is satisfied.

For the reasons set for above, the elements of SCRCP Rule 23 are met for the classes sought to be certified and, accordingly, I grant the motion to certify the classes herein.

B. Preliminary Approval of the Settlement

The parties have presented a Settlement Agreement for preliminary approval by the court pursuant to SCRCP Rule 23. At this point, the court conducts a two-step process:

1) a review of the settlement to determine whether it is within the realm of approval; and 2) instructions on providing notice to the class for purposes of objection with Notice of a Fairness Hearing for purposes of final approval of the settlement. *Clark v. Experian Information Solutions*, WL 2566433 (D.S.C. 2004).

I have given a full review of the Settlement Agreement with counsel for both parties and I believe that the settlement is fair, reasonable, and adequate in providing necessary funding for the class and a confidential means of asserting and prosecuting a claim which encourages individuals to make the same, among other things.

I order a Fairness Hearing be held March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina. The parties are required to follow the following procedure to effectuate final approval of the settlement.

A. Notice. Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: The Charleston *Post & Courier*, The Myrtle Beach *Sun*; *The State*; The Augusta *Chronicle*; The Rock Hill *Herald*; Beaufort *Gazette;* Greenville *News* Spartanburg *Herald;* Orangeburg *Times-Democrat*; Florence *Morning News* and the Aiken *Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names, addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

B. Objection. Any potential Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same on Class Counsel prior to February 22, 2007. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

C. Prayer for Attorneys Fees. The Court will also consider at this hearing an award of attorneys' fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys' fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement.

Therefore, it is ordered that the plaintiffs' motion for class certification is GRANTED; and

IT IS FURTHER ORDERED that the Settlement Agreement reached between the parties is preliminarily approved by this court; and

IT IS FURTHER ORDERED that a Fairness Hearing for final approval of the hearing be held before me on March 9, 2007 at 10:00 am at the Dorchester County Courthouse in St. George, South Carolina subject to the notice and other terms and conditions contained herein.

AND IT IS SO ORDERED!!!

The Honorable Diane S. Goodstein
Presiding Judge

This 19 day of January, 2007

At Summerville South Carolina

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SECTION 15-48-10, CODE OF LAWS OF SOUTH CAROLINA (1976).

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

This Settlement and Arbitration Agreement (hereinafter "the Agreement") is made this 12th day of January, 2007, by and between the John Doe #53, John Doe 66, John Doe 66A, John Doe 67, individually and as representatives of a class of other persons similarly situated as victims of sex abuse allegedly committed by agents or employees of the defendants in this action, and/or Jane Doe 1, Jane Doe 2, and Rachel Roe, individually and as representatives of parents or spouses who have suffered a loss of consortium as a result of sexual abuse upon John Doe #53, John Doe 66, John Doe 66A, and John 67 or members of their class, and The Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity (hereinafter "the Diocese"). This Agreement may be signed in counterparts. This Agreement represents the formal "Settlement and

EXHIBIT A

Arbitration Agreement" formalizing the agreement reached between the Representatives[1] and the Diocese and supersedes all other agreements and/or writings previously executed by the parties. This Agreement is intended to effectuate the complete and total settlement of civil actions captioned above as well as 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913, and all other claims which were alleged or may have been alleged by the Representatives and the individuals who they represent in their capacity as class representatives. It is further understood that this Agreement must be submitted to a court of competent jurisdiction for approval and that certain provisions survive this agreement even if other provisions are not approved.

WHEREFORE, for and in consideration of the promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **FORMATION OF CLASSES.** Plaintiffs shall move in a timely manner for the creation of plaintiff classes against the defendants as follows:

A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused[2] at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")

B. The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

---

1 The class representatives will be referred to throughout this Agreement as "the Representatives."

2 "Sexual abuse," as used throughout this agreement and in the class definitions, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

RJB

The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement fund, pursuant to the terms and conditions set forth in this agreement and the order approving class certification. The individuals in either class shall hereinafter be referred to as "Claimants."

2. **APPROVAL OF AGREEMENT BY COURT.** In addition to the plaintiffs requesting that the classes stated above be certified, the plaintiffs shall also submit this Settlement and Arbitration Agreement for approval by the court pursuant to SCRCP Rule 23. Should the court deny approval of the certification of the classes substantially defined in paragraph 1 above, the court will be separately asked to approve the conditions of paragraph 4, below. Plaintiffs reserve their right of appeal of any denial of class certification. Approval of the settlement shall be on such terms and conditions as the court may fix. All participation is subject to any term and condition of the approval of the classes set out in the court's order. Provided, however, that this is voluntary settlement agreement and that either the Diocese or the Representatives may interpose an objection to any of the court's rulings on the settlement agreement or claims process and may withdraw from this settlement if its terms are materially altered by the court.

3. **SETTLEMENT FUND AND DISTRIBUTION METHOD.** The parties agree to jointly ask the court to approve the terms of the Settlement Agreement, as mediated June 13 and 14, 2006, as follows:

a. The Diocese shall fund the settlement with two irrevocable letters of credit or other guaranteed pool of funds in the amounts of $5 million and $7 million, respectively. Upon disbursement from the initial letter of credit or from an aggregate amount equaling or

exceeding $4 million, then in that event, the Diocese shall take such action necessary to have the secondary $7 million dollars immediately available for disbursement. Both letters of credit (or other pools of funds) shall be guaranteed by the issuing bank to be available as of the date of the approval of this Agreement. In the event the Diocese is unable to obtain letters of credit, it will nevertheless be obligated to pay all sums awarded by the court or the Arbitrator and to deposit funds for this purpose as set forth above. This Agreement supersedes any prior agreement of the parties.

b. With regard to the claim of any Claimant, the Diocese will pay the Claimant to settle such claim an amount of money to be determined through the arbitration process set forth herein. The arbitration shall be conducted by Marvin Infinger, Esq. (hereinafter "the Arbitrator"). If for any reason Mr. Infinger is unable to continue to serve as arbitrator, the parties shall agree to a successor arbitrator. If the parties are unable to agree to a successor arbitrator one shall be appointed by the court.

c. Awards shall be based on the criteria set forth herein and the Arbitrator will make awards as follows:

Type of Alleged Abuse	Minimum Payment	Maximum Payment
Limited inappropriate touching on the victim	$10,000.00	$18,500.00
Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts.	$20,000.00	$55,000.00
Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances.	$60,000.00	$125,000.00
Egregious acts, such as sodomy, any act		

+RJB

accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage.	$150,000.00	$200,000.00
Loss of consortium (Parent or Spouse)	$20,000.00	

The criteria for the Arbitrator to determine the amount of the award for a sexual abuse claim shall include, among other things, the type of abuse, its duration and the extent of injuries suffered by the Claimant. In cases in which the claim is for loss of consortium, the award shall be $20,000.00 for each parent of the Claimant, and $20,000.00 for the spouse of the Claimant. The Arbitrator shall not consider any liability issues, including, but not limited to, defenses such as lack of negligence or notice, statute of limitations, and charitable immunity. The award issued by the Arbitrator shall be left to the sole discretion of the Arbitrator and shall not be subject to objection, review, appeal or suit brought by any Claimant or the Diocese.

d. For every claim presented, the arbitrator shall make an express written determination as to (1) whether the Claimant is, in fact, a member of one of the plaintiff classes, (2) whether the claim is *bona fide*, and (3) the amount of the award, if any. In the event that the Arbitrator determines that a Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fide*, the claim shall be denied and the Claimant shall receive no award. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fide*, and the amount of any damages which were suffered.

e. Any individual, including his/her parents and spouse, whose claim has been otherwise adjudicated, settled or resolved, is barred from filing a claim or collecting from any funds of this class.

RJB

f. The identity of all Claimants shall be kept strictly confidential except that the Diocese's counsel and those associated with the Diocese necessary for the performance of the terms of this agreement, the Arbitrator, Class Counsel and their staffs may have such access necessary to effectuate this Agreement and the court's orders on the same. Counsel before the court should take appropriate steps to ensure that access is provided to staff on an "as needed" basis. Any individual who has access to the actual name of any Claimant shall sign a court approved confidentiality and restraining agreement prohibiting the disclosure of the name of any Claimant. The name of the Claimant, his or her social security number, and the amount of his or her award will be provided to the escrow agent for purposes of distributing the award at the conclusion of the claims process.

g. Subject to approval of the court, any person wishing to make a claim must do so within 120 days of the initial notice of final approval of the settlement in a form approved by the court. The form may be obtained from Class Counsel by contacting it as provided in the court approved notice and should include at least the following information:

1. The name, date of birth, social security number, preferred address, telephone number, and email address of contact for the Claimant and, if the claim is made in a representative capacity, the name of the representative and the ward and the nature of the relationship;

2. Name of the abuser, location at which the abuse occurred, the time period during which the abuse occurred, and relation of the victim to the abuser; [i.e. priest/altar boy; coach/ basketball player]

3. A brief statement sufficient to advise the parties of the nature of the claim and the acts complained of;

4. A brief summary of any claimed injury or damages;

5. Name of parents, whether they are living or deceased;

6. Name of spouse (if any);

7. The form must be signed and dated; and

8. Any other information or documents Claimant deems necessary for a determination of his or her claim. Documentary evidence may be supplemented as provided for herein.

h. Class Counsel shall assign an anonymous name and/or numbering system to each claim made. Thereafter, the claim must be referred to by its claim number. The name of the claimant and the claim number will be provided to the Diocese lawyers and to the Arbitrator pursuant to the confidentiality provisions established herein.

i. Class Counsel will transmit the Claim Form only to counsel for the Diocese for its review pursuant to paragraphs 3(l), (m) and (n). At the conclusion of the claim review by the Diocese, Class Counsel shall transmit the Diocese's response to the Claimant. The Claimant will have fifteen (15) days to make any response or take any action Claimant deems necessary and provide the same to Class Counsel who will transmit it to the Diocese. If the Claimant has elected to obtain psychological testing and use it in support of his or her claim, Claimant should provide it to Class Counsel promptly upon receipt. Thereafter, Class Counsel will submit the entire claim package to the Arbitrator and request a hearing.

j. The Arbitrator shall schedule the Claimant's Arbitration within 90 days of submission of the claim to him. The arbitration shall be conducted pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., unless the Act conflicts with this Agreement or the court's order(s) in this matter, in which case the Agreement and order(s)

7 + RJB

shall control. In any event, as to all issues, the orders of the court shall control.

k. While the class has Class Counsel, the parties acknowledge that the Claimant may have an attorney of his or her own choice for any part of the claims process. If an attorney is selected by the Claimant, all information concerning the claim or claims process shall be sent to the attorney for the Claimant.

l. Upon receipt of any Claim Form from any Claimant, Class Counsel shall forward the claim form to Counsel for the Diocese. Counsel for the Diocese shall have thirty (30) days from receipt of the claim to review the claim to verify the accuracy of the information presented and to determine the Diocese's position on whether the Claimant is a member of one of the plaintiff classes and whether the claim is *bona fide*. If the Diocese acknowledges that the Claimant is a member of a plaintiff class and that the claim is *bona fide*, the proceedings before the Arbitrator shall be to determine the damages suffered by the Claimant within the parameters of paragraph 3(d).

m. If the Diocese objects to the claim, the Diocese shall submit an original and a copy of a written objection to Class Counsel stating why the Claimant is not properly a member of one of the plaintiff classes and/or why the claim is not *bona fide*, and attaching (to the original and the copy) any documents or other supporting evidence which the Diocese wishes to tender (such as a death certificate showing that the alleged perpetrator could not have committed the acts complained of at the time and place alleged). Class Counsel shall transmit a copy of the Diocese's objection and exhibits to the Claimant or the Claimant's attorney.

n. If the Diocese makes a timely objection to the claim, the Arbitrator shall rule on the Diocese's objection after a hearing at which Counsel for the Diocese and Claimant (and/or Claimant's counsel if the Claimant elects to be represented) and/or Class Counsel shall be

permitted to make argument. The Arbitrator may, in his sole discretion, schedule such hearing on the same day as, and immediately prior to, the Arbitration of the Claimant's claim for damages, or at some other time in advance of such Arbitration. The Arbitrator shall be the sole determiner or the Claimant's membership in one of the plaintiff classes and of the *bona fides* of the claim, and his decision shall be final and not subject to appeal. If at any time prior to the Arbitration of the claim for damages the Arbitrator determines that the Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fides*, the Arbitrator shall notify the parties of such determination and shall not proceed with the Arbitration on the claim for damages. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

o. Upon submission of the claim, Class Counsel will notify the Claimant that he or she has the opportunity to have a psychological assessment and counseling by Dr. L. Randolph Waid. The Claimant may make this election at the time of his or her claim being filed. The Diocese agrees to pay Dr. Waid, on behalf of the Claimant, for no more than three (3) sessions. Any assessment of any Claimant by Dr. Waid will be provided to the Claimant who may submit it to the Arbitrator as part of the Claimant's damages proof; however, this assessment shall be kept confidential and will not be shared with the Diocese. The payments of counseling fees to Dr. Waid shall be over and above any award made by the Arbitrator and shall not be charged to the Claimant, but shall be paid from the fund.

p. At the Claimant's hearing, a presentation shall be made by or on behalf of the Claimant concerning his or her damages suffered as a result of the alleged abuse. Each arbitration

hearing shall be no longer than two (2) hours. At Claimant's arbitration hearing, the Claimant must appear unless he or she is a minor, incompetent, serving in the military (or merchant marine), deceased or otherwise unavailable for medical, psychological, or other substantial reasons. The Claimant and/or his or her attorney may present other evidence relating to the abuse and injury, including without limitation, affidavits under oath or under the pains and penalties of perjury, from persons with relevant information, medical records, and/or forensic evaluation. Claimant may submit any information, records or testimony bearing upon damages for consideration by the Arbitrator, including videotape and audiotape testimony. Counsel for the Claimant may make comment upon the damages sustained by the Claimant. Before the close of the Claimant's arbitration hearing, Counsel for the Claimant may notify the Arbitrator that the Claimant intends to supplement the information, records or testimony submitted at Claimant's arbitration hearing with written records or information which is to be received by the Arbitrator no later than 21 days after the close of the arbitration hearing. The Arbitrator shall consider no information, records or testimony unless submitted by the Claimant or Claimant's Counsel with the exception of the Diocese's written statement as described in paragraph (q), below. In the event that the Claimant does not appear in person, the Claimant must appear by telephone or video conference. The Claimant may submit a forensic evaluation or a statement from a health care professional, but shall not be required to do so. The Claimant may have any person or persons of his or her choosing speak at the hearing.

q. Counsel for the Diocese shall not be present at said arbitration hearing regarding damages; however, the Diocese shall be entitled to provide a written submission concerning the Claimant's damages. No person other than the arbitrator shall be present at the hearing.

RJB

without the consent of the Claimant. If the Claimant requests, a representative of the Diocese, who is not an attorney, may be present at Claimant's arbitration hearing for purposes of pastoral support. The Claimant shall be entitled to have present at said hearing any of his/her family, friends, health providers, or other individuals requested by the Claimant.

r. After the Arbitrator has rendered his decision, but not before, the Claimant may be invited to meet one on one with the Bishop of Charleston or his designee for religious, spiritual, and pastoral support. No Claimant is obligated to meet with the Bishop or his designee.

s. Any materials of whatever nature submitted by Claimant or on his behalf to the Arbitrator, in connection with the arbitration process which is in any way related to the arbitration awards issued by the Arbitrator shall be returned to the Claimant or his or her counsel by the Arbitrator with the award. The Arbitrator shall not reveal the evidence or written arguments presented during the course of the arbitration hearing to anyone other than those present in the Arbitration or Class Counsel.

t. The Arbitrator shall issue a written award in conformance with the requirements of paragraph 3(d) no later than twenty (20) days after the close of the Arbitration hearing to and deliver same to Class Counsel, counsel for the Diocese, and Claimant and/or Claimant's counsel. Anyone connected with the claims process in any fashion is bound to maintain the confidentiality of each individual Claimant.

u. All costs associated with the management of the class shall be paid from the settlement fund. The fees and costs described herein include those incurred by the Arbitrator, Class Counsel, the escrow agent, Dr. Waid and any other fees and costs approved by the court.

+RJB

v. The court approving this Agreement has the authority to enforce any Arbitration award. The Diocese consents to judgment being entered against it in any federal and/or state Court having jurisdiction. The parties release the Arbitrator from any liability arising from any act or omission in connection with the arbitration hearing conducted herein. By participating in the claims process, each Claimant and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

4. SETTLEMENT OF REPRESENTATIVE'S AND POINT CLAIMANT'S CLAIMS. In consideration of the work, effort, time, stress, psychological pain, damages, liability proof, embarrassment, family turmoil and other issues relevant, the class representatives and/or point plaintiffs shall receive settlement funds as follows:

John Doe #53	$160,000.00
John Doe 66	$100,000.00
John Doe 66 A	$100,000.00
John Doe 67	$100,000.00
Jane Doe A	$30,000.00
Jane Doe B	$30,000.00
Rachel Roe	$30,000.00

It is understood and agreed that the claims of these claimants are released and these settlement funds will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.

5. ATTORNEYS FEES. In consideration of the substantial efforts of plaintiffs' counsel (past

and future), their substantial accomplishments in effectuating the settlement, and the work past and future and their role as class counsel, the parties agree to submit to the court the determination of the amount of attorneys fees which shall be paid to the plaintiffs' class counsel by the Diocese. However, it is specifically agreed that in no event shall such counsel receive fees of neither less than $950,000.00 nor more than $2.5 million to be paid to such counsel by the Diocese from the fund referred to in paragraph 3, above, all as determined by the court. Such payment shall be made to Richter & Haller, LLC on behalf of itself no later than ten (10) days after award by the court. The award of attorneys fees as set forth above in this paragraph specifically contingent upon the Court approval of this class certification and settlement agreement.

6. **PAYMENT OF CLAIMS.**

A. W. Ellison Thomas, CPA shall serve as an independent escrow agent for the payment of all sums due from the settlement fund. The escrow agent shall be provided unrestricted access to the settlement funds obtained in compliance with this agreement and will make all payments directly against the fund as set out in this agreement, order of the court, or any award made by the Arbitrator to the individual or entity to be paid. The escrow agent will be compensated at an hourly rate approved by the court and will be from the settlement fund. The escrow agent shall provide an accounting of his disbursements at the conclusion of the claims process to Class Counsel, the Diocese, and the court.

B. No later than thirty (30) days after the final Arbitration award is issued, the escrow agent and the Arbitrator will confer and agree that the total amount of all awards after the payment of all costs and fees, does not exceed the amounts provided for in paragraph 3(a). In the event that the total due exceeds the amounts provided for in paragraph 3(a), then each award shall be reduced on a *pro rata* of the net settlement fund. This revised award list shall be provided

RJB

to Class Counsel and the Diocese, if necessary.

C. Once the Arbitrator and escrow agent determine the final amount of each award, the escrow agent shall disburse the award from the settlement funds within fifteen (15) days of the final determination of the awards. The awards are to be paid to the Claimant directly or through his or her counsel. After all necessary disbursements any remaining letters of credit and/or funds will be returned to the defendants and/or letters of credit will be cancelled.

D. Any party may bring perceived errors in an award based on an interpretation of this Agreement to the attention of the Arbitrator with notice to the other party. However, the Arbitrator's decision on any such question is final. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

7. <u>PASTORAL OUTREACH AND PROTECTION OF CHILDREN BY THE DIOCESE.</u>

The parties understand and acknowledge that the Diocese has done or will do the following:

a. <u>Comprehensive Policies</u>. For the protection of children and the care of sexual abuse survivors, the Diocese has adopted a set of comprehensive policies called "The Policy of the Diocese of Charleston Concerning Allegations of Sexual Misconduct Or Abuse Of A Minor By Church Personnel" (the "Policies"). The Policies set forth the Diocese's unmitigated condemnation of child sexual abuse and its commitment to work to prevent sexual abuse, deal responsibly with accusations, and reach out with pastoral care for victims. The Policies are reviewed and updated every two years.

b. <u>Reports Of All Accusations To Solicitor</u>. Pursuant to the Policies, the Diocese reports all accusations of child sexual abuse it receives to the Solicitor of the county in which the

RJB

accusation arises or, where applicable, to law enforcement authorities in other states, and cooperates fully with all criminal investigations and prosecutions.

c. Victim Assistance Minister. Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. The VAM coordinates the Diocese's pastoral response to those who come forward, and works with victims to facilitate the healing process. Where appropriate, the VAM also assists victims in obtaining and paying for psychotherapy, on a confidential basis.

d. Sexual Abuse Advisory Board. Pursuant to the Policies, the Diocese has established, among other things, a Sexual Abuse Advisory Board (the "Board"). Although the Bishop of the Diocese has the ultimate decision-making responsibility in cases presented to the Diocese, the Board has the responsibility to advise the Bishop in particular cases. The Board also assists the Bishop in the review of the Policies that occurs every two years, and makes recommendations to the Bishop concerning any proposed revisions to the Policies. The Board consists of at least five (5) members, of whom four (4) are independent lay people who are not priests or employees of the Diocese.

e. Presentation By Class Representatives or Members To The Sexual Abuse Advisory Board. The Diocese welcomes the suggestions of the Class Representatives (or members) regarding the provisions and implementation of the Policies. The Diocese therefore agrees to permit the Class Representatives to make a presentation to the Board in advance and/or as part of the next two regularly scheduled two year policy reviews so that the views of the Representatives can be heard and considered as the Diocese undertakes such review.

RJB

8. RELEASE. When the Claimant submits his claim form, he or she shall execute the Release attached as Exhibit 1 and deliver that Release to Class Counsel. Class Counsel shall hold the Release in escrow until the award is delivered and payment is made, as provided herein. If payment is not made by Diocese pursuant to the Agreement, these copies are null and void and will be destroyed. The Diocese will provide a release to each Claimant as set out on Exhibit 2 through Class Counsel upon receipt of the Claim Form for the review under paragraphs 3(l), (m), and (n).

9. DISMISSAL OF ACTIONS. The actions pending against the Diocese shall be dismissed with prejudice pursuant to the terms and conditions set by the court in its order on class certification.

10. MISCELLANEOUS PROVISIONS. This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement may be modified, amended or supplemented to effectuate the intent of the parties under such terms and conditions set by the court approving this Agreement. It is acknowledged that each party has participated in the drafting of this Agreement, and that any claimed ambiguity should not be construed for or against any Party. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. Any dispute concerning this Agreement which arises after this Agreement is approved by the court shall be resolved by the Arbitrator. The decision of the Arbitrator regarding any such dispute is final and binding. The terms and conditions of this Agreement shall be binding and inure to the benefit of each of the Parties, their counsel and respective successors, heirs and assigns. It is further understood and agreed by Claimant that this Agreement is not to be construed as an admission of liability upon the part of any of the released parties, but rather as a good faith settlement of disputed claims. The Claimant states and warrants that he or she is the sole owner of the claims involved, and that such

RJB

claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

Executed this 12 day of January, 2007.

FOR THE CLASSES:

Lawrence E. Richter, Jr.
CLASS COUNSEL

Witness

FOR THE DEFENDANTS:

The Most Rev. Robert J. Baker
THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY AND FOR THE BISHOP OF CHARLESTON, A CORPORATION SOLE

Witness

EXHIBIT 1

CLAIMANT'S GENERAL RELEASE

_____ ("the Claimant") for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby remises, releases and forever discharges The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, ("the Diocese"); any present or former bishops, archbishops or cardinals of the Diocese, in both their individual and official capacity; any entities affiliated with the Diocese; and present or former priests, deacons, other clergy, brothers, nuns, agents, servants, officers, trustees, directors, supervisors, attorneys, employees, volunteers, insurers, predecessors, successors, assigns, subsidiaries and affiliates of the Diocese, including without limitation any such person accused of committing or negligently causing or permitting sexual abuse with respect to the Claimant or members of the Claimant's family (all of the foregoing hereinafter collectively referred to as the "Released Parties") of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities whatsoever of every name and nature, whether in LAW, in EQUITY, or otherwise which the Claimant ever had, now has, or which Claimant or Claimant's successors hereinafter can, shall, or may have by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Release, and whether such claims are now known or unknown, including without limiting the generality of the foregoing, any and all claims made or that might have been made in any pending claim or suit. With respect to any claims arising from or related to an act or acts of abuse which have formed the basis of a claim or suit against the Diocese

RVB

or persons or entities employed by or affiliated with the Diocese, the Released Parties covered by this Release shall also include any other persons or entities whether or not they are employed by or affiliated with the Diocese. This release does not apply to persons or entities who are not persons or entities employed by or affiliated with the Diocese with respect to any claims arising from or related to an act or acts of abuse that have not formed, or could not form, the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese.

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as of the ____ day of _____, 200____.

_____ _____
Print Claimant's Name Claimant's Signature

_____ _____
Witness Witness

RJB

EXHIBIT 2

DIOCESE LIMITED RELEASE

The Roman Catholic Bishop of Charleston and the Bishop of Charleston in his official capacity, a Corporation Sole ("Diocese"), for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby forever remises, releases and forever discharges _____ ("the Claimant") and Claimant's heirs, attorneys (including their law firms, agents, servants, or employees), executors, predecessors, parents, successors, agents, servants, employees, and assigns of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities which were or could have properly been raised in any form or fashion arising from the incidents alleged by Claimant in his claim submitted pursuant to the Order Approving Class Certification and Settlement Agreement (date to be inserted) in cases numbers 06-CP-18-1310 and 06-CP-18-1311, Claimant's participation in the class process set out in said Order, including any assertions of the Bishop arising from the validity or fraudulent nature of any claim, and/or any defense or claim which was or may have been raised by the Bishop in defense to the Claim or any suit which was or could have been filed against the Bishop but for the Claimant's participation in the claims process set out in the Order referenced herein, whether such claims are now known or unknown. It is the intention of the parties that the Diocese is fully and finally releasing the Claimant from any liability asserted by it against him or her arising from the Claimants assertion of sexual abuse.

IN WITNESS WHEREOF, the Bishop of Charleston has set his hand and seal to this Release

20 + RJB

as of the date written below.

_____
The Bishop of Charleston, a Corporation Sole

By: _____

Its: _____

Date: _____ Witnessed by: _____

RJB

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

CERTIFIED COPY
2007 JUL 30 AM 11:32
CLERK OF COURT
DORCHESTER COUNTY

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

FACTUAL BACKGROUND/PROCEDURAL HISTORY

1. Notice to Class Members

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

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

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

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

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

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

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

2. Investigation by Solicitor David Pascoe

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

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

ORDER

1. Notice to All Members of the Class

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

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

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

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

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

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

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

2. Objections to the Settlement

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

A. Standing of John Does A through N

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

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

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

B. Objections to class definitions

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

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

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

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

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

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

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

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

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

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

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

C. Objection as to Matrix

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

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

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

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

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

D. Compensation of Consortium Claims

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

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

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

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

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

3. Approval of Settlement

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

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

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

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

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

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

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

5. Attorneys fees

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

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

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

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

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

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

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

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

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

6. Costs

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

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

7. Funding of Settlement Proceeds

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

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

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

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

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

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

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

AND IT IS SO ORDERED!!!

Diane S. Goodstein

The Honorable Diane S. Goodstein
Presiding Judge

This 30 day of July, 2007

At Orangeburg, South Carolina

Order on Matters Heard March 9
Exhibit A

IMPORTANT LEGAL NOTICE
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE
John Doe #53, et al. v. Diocese of Charleston, et al. Class Action Settlement

This action applies to 1) any person born on or before August 30, 1980; 2) who as a minor, was sexually abused; 3) at any time by agents or employees of the Diocese of Charleston; 4) or the parent or spouse of any such minor, 5) who have not previously had any similar claim adjudicated, resolved, or released.

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT; (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS; AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS.

SUMMARY OF YOUR RIGHTS AND CHOICES

You May		Deadline
STAY IN THE CLASS and possibly receive money from the Settlement	**Stay in the Class.** To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.	**Postmarked or received by [Date to be Inserted]**
EXCLUDE YOURSELF	**Get out of the class.** You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.	**Postmarked or received by [Date to be Inserted]**

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they may receive determined by an arbitrator. The arbitrator has complete discretion within the parameters set by the Settlement Agreement to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse, and the like. Claims will be generally classified into one of 4 groups based on the severity of the injury sustained. Members of the Consortium Class with *bona fide* claims will receive $20,000.00. Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

IF YOU DO NOT FILE A CLAIM TIMELY OR YOU DO NOT OPT-OUT OF THE CLASS, YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED AS TO MATTERS COVERED BY THE CLASS ACTION.

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:
Richter & Haller, LLC,
622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 diocesesettlement@richterfirm.com
www.richterfirm.com

ALL FORMS MUST BE EITHER POSTMARKED BY THE U.S. POSTAL SERVICE OR RECEIVE BY CLASS COUNSEL ON OR BEFORE [Date to be Inserted].

Order on Matters Heard March 9
Exhibit B

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 1

READ THIS DOCUMENT CAREFULLY AS YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS DOCUMENT.

WHO IS ELIGIBLE TO PARTICIPATE IN THIS SETTLEMENT

You may participate in this settlement if:

1. You were born on or before August 30, 1980;
2. who, as a minor;
3. were sexually abused;
4. by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina); and
5. you have not previously had a similar claim fully heard by a court or settled.

You may also participate in this settlement if you are:

1. The spouse OR parent of
2. individuals born on or before August 30, 1998;
3. were sexually abused as a minor;
4. by an agent or employee (including priests) of the Diocese of Charleston (the official governing body of all Catholic Churches in South Carolina);
5. and you have suffered the loss of the individual's services, society and companionship; and
6. have not previously had a similar claim fully heard by a court or settled.

"Sexual abuse" is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

At the end of this case, all legal rights of the individuals who fit into one of the above classes and who do not "opt-out" of the classes and settlement will be impacted by this settlement. In deciding how to proceed, you may contact Class Counsel or an attorney of your own choosing.

IF YOU ARE A MEMBER OF THE CLASS AND YOU DO NOT FILE A CLAIM WITHIN THE TIME PROVIDED OR YOU DO NOT OPT-OUT OF THE CLASS, YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS COVERED BY THIS CLASS ACTION.

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 2

SUMMARY OF YOUR RIGHTS AND CHOICES

You May		Deadline
STAY IN THE CLASS and possibly receive money from the Settlement	**Stay in the Class.** To possibly receive money under the Settlement, you must complete and return the Claim Form by the deadline noted.	**Postmarked or received by [Date to be inserted]**
EXCLUDE YOURSELF	**Get out of the class.** You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class.	**Postmarked or received [Date to be inserted]**

HOW THE CLAIMS PROCESS WORKS

What follows is a basic summary of the claims process. To receive a full copy of the Settlement and Arbitration Agreement and it Addendum, contact Class Counsel, Richter & Haller, LLC, at 843-849-6000 or email disocesesettlement@richterfirm.com.

John Doe #53 v. Diocese of Charleston Class Action Settlement
Rights, Claims Process, and Obligations Summary
Page 3

The classes are designed to include all individuals whose claims would normally be barred as a matter of law as a result of the statute of limitations. Whether the statute of limitations has lapsed on your claim is an individual determination which you should investigate with an attorney. However, even if for some reason your statute has not expired, you may still participate in the process if you meet all other requirements.

Those individuals who wish to participate in the claims process must submit a claims form to the office of Class Counsel. **The Claims Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

Those individuals who DO NOT WISH to participate in the claims process must submit an opt-out form to the office of Class Counsel. **The Opt-Out Form must be postmarked no later than [Date to be inserted]** or received in the offices of Richter & Haller, LLC by that date.

All of the claims proceedings are confidential. Your claim will be given a fictitious name once it is received. No one who files a claim will have their name publicly disclosed. You will not have to appear in court.

All claims of members of one of the classes which are *bona fide* will receive some settlement funds. A *bona fide* claim is one in which there is some likelihood that the event(s) did occur with the Diocesan agent or employee (including priest) at the location and time period when the claimant alleges. If there is a dispute over whether a claim is *bona fide*, you will have a chance to prove your claim.

Once a claim is found to be *bona fide* it will be submitted to an arbitrator for a binding and final determination of damages. You do not have to pay for the arbitration. You will be able to present whatever evidence you wish in support of your injuries. You will not be questioned by a lawyer or other representative of the Diocese at the hearing on damages.

The arbitrator has sole and final determination on the amount of money you will receive. **By participating in this settlement process you agree to abide by whatever decision the arbitrator makes and waive any rights of appeal you may have.** The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse you sustained, the amount of time it went on, and the extent of the injuries you have suffered. Claims will be generally classified into the following groups for a determination of the amount of money you will receive:

1. Limited inappropriate touching on the victim: an amount between $10,000.00 and $18,500.00.

2. Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts an amount between $20,000.00 and $55,000.00.

3. Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances: an amount between $60,000.00 and $125,000.00.

4. Egregious acts, such as sodomy, any act accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage: an amount between $150,000.00 and $200,000.00.

5. Members of the consortium class will receive $20,000.00 for consortium damages.

In addition, you have the right to have a **free psychological examination** and two other free psychological sessions with a psychologist in Charleston. You may use this information in support of your claim. The report will not be provided to the Diocese and will be confidential.

Once the claim is *bona fide*, the Diocese is unable to provide any defenses to your claims, including the statute of limitations, immunity, or that it did not know of the events. However, once you have completed the claims process, all rights you may have against the Diocese arising from sexual abuse on you by an agent or employee of the Diocese will be gone.

IF YOU DO NOT FILE A CLAIM TIMELY AND DO NOT OPT-OUT, YOUR RIGHTS AGAINST THE DIOCESE WILL BE FOREVER BARRED FOR MATTERS ARISING FROM THE CLASS.

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

Richter & Haller, LLC,

622 Johnnie Dodds Blvd., Post Office Box 1089

Mt. Pleasant, SC 29465

Telephone to 843-849-6000. Email to diocesesettlement@richterfirm.com

Claims and Opt-out forms may also be obtained from www.richterfirm.com

Order on Matters Heard March 9
Exhibit C

John Doe #53, et al. v. The Bishop of Charleston

CLAIM FORM FOR PRIMARY CLASS MEMBERS

This form is to be used by, "all individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released."

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity.

First, Middle and Last Name of Claimant: _____

Date of Birth: _____ Social Security Number: _____

Mailing Address: _____

_____

Home Telephone Number: _____ Work Telephone Number: _____

Cellphone Number: _____ Email Address: _____

For claims made on behalf of someone else
Name of Representative Making the Claim: _____

Relationship of Representative to Claimant: _____

Nature of the Representative Capacity: _____

Full name of parents: _____

Are either or both of your parents living or deceased? If so, state which one: _____

_____

Name of spouse (if any): _____

Name of the abuser (if you claim multiple abuses, use a separate claims form):

_____

Location(s) at which the abuse occurred: _____

Dates/ Time period during which the abuse occurred: _____

What was your relationship to the abuser; [i.e. priest/altar boy; coach/ basketball player]: _____

_____

John Doe #53, et al. v. The Bishop of Charleston

CLAIM FORM FOR PRIMARY CLASS MEMBERS

Briefly state the details of the incident(s) of abuse complained of. You will have an opportunity to expand upon this at a later date. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

Briefly state any claimed injury or damages. You may attach any information relevant to damages you claim to this form. Use other sheets if necessary. If you have provided this to Class Counsel previously it is not necessary for you to send it again.

You are able to have a ***free*** session of psychological assessment and two other counseling ***free*** sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process.

____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge.

_____ _____

Claimant Date

MAIL THIS FORM TO:
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN **[Date to be inserted]** IN ORDER FOR IT TO BE BINDING. IF NOT, YOU WILL BE INCLUDED IN THE CLASS

Order on Matters Heard March 9
Exhibit D

John Doe #53, et al. v. The Bishop of Charleston

CLAIM FORM FOR CONSORTIUM CLASS MEMBERS

This form is to be used by, "The spouses and parents of all individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released."

Pursuant to the Court Order approving this Claims Procedure, all information provided in the process is confidential, including your name and identity.

First, Middle and Last Name of Claimant: _____

Date of Birth: _____ Social Security Number: _____

Mailing Address: _____

_____

Home Telephone Number: _____ Work Telephone Number: _____

Cellphone Number: _____ Email Address: _____

For each individual for whom you claim some relationship has been damaged, please provide the information below:

Name	**Address**	**Date of Birth**	**Relationship to You**

John Doe #53, et al. v. The Bishop of Charleston
CLAIM FORM FOR CONSORTIUM CLASS MEMBERS

For each individual above, please state, 1) the location(s) at which the abuse occurred; 2) dates/ time period during which the abuse occurred; and 3) the relationship of the individual to the abuser; [i.e. priest/altar boy; coach/ basketball player].

Please state the date or time period on which you learned of the alleged abuse described above.

Briefly state ways in which you believe you have lost the use of each of the above individual's services, society, and companionship.

You are able to have a ***free*** session of psychological assessment and two other counseling ***free*** sessions with a psychologist. The assessment may be used in support of your claim, but will not be provided to the Diocese of Charleston or any other person who is not connected with the claims review process.

____ I elect to have psychological counseling and review as provided for in the Settlement Agreement.

I affirm that the information contained in this Claims Form is true and correct to the best of my knowledge.

_____ _____
Claimant Date

MAIL THIS FORM TO:
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN **[Date to be inserted].** IN ORDER FOR IT TO BE BINDING. IF NOT, YOU WILL BE INCLUDED IN THE CLASS.

Order on Matters Heard March 9
Exhibit E

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

I do not wish to participate in, and hereby opt-out of, the class action settlement in the above case, and I reserve any and all rights which I may have against the defendants to this action. I understand that by submitting this form, I will be unable to receive any benefits from the settlement agreement after the claims period has expired and that if I wish to proceed at all, I will have to proceed in court with all issues subject to litigation.

Full Printed Name: _____ Signature: _____

Address: _____

City, State, Zip Code: _____

Date of Birth: _____

MAIL THIS FORM TO:
Richter & Haller, LLC, Class Counsel, 622 Johnnie Dodds Blvd.,
Post Office Box 1089, Mt. Pleasant, SC 29465

THIS FORM MUST BE EITHER RECEIVED BY CLASS COUNSEL OR HAVE A UNITED STATES POSTAL SERVICE POSTMARK OF NO LATER THAN **[Date to be inserted]** IN ORDER FOR IT TO BE BINDING. OTHERWISE, YOU WILL BE INCLUDED IN THE CLASS AND YOUR RIGHT MAY BE FOREVER BARRED.

Order on Matters Heard March 9
Exhibit F

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

I, _____, a claimant in the above matter, understand and agree that by participating in the class settlement process for this case approved by the court, I am expressly waiving any and all rights of appeal of any and all decisions of the arbitrator appointed in this matter, including decisions made on whether I am a member of one of the classes, whether my claim is *bona fide*, and as to any injuries I sustained and damages I am to receive.

Before making this decision, I have asked all questions I have regarding the settlement, the claims process, and my legal rights. I have had the opportunity to discuss this matter with an attorney of my own choosing.

_____ _____

Claimant Date

_____ _____

Witness Date

Order on Matters Heard March 9
Exhibit G

CLAIMANT'S GENERAL RELEASE

_____ ("the Claimant") for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby remises, releases and forever discharges The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, ("the Diocese"); any present or former bishops, archbishops or cardinals of the Diocese, in both their individual and official capacity; any entities affiliated with the Diocese; and present or former priests, deacons, other clergy, brothers, nuns, agents, servants, officers, trustees, directors, supervisors, attorneys, employees, volunteers, insurers, predecessors, successors, assigns, subsidiaries and affiliates of the Diocese, including without limitation any such person accused of committing or negligently causing or permitting sexual abuse with respect to the Claimant or members of the Claimant's family (all of the foregoing hereinafter collectively referred to as the "Released Parties") of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities whatsoever of every name and nature, whether in LAW, in EQUITY, or otherwise which the Claimant ever had, now has, or which Claimant or Claimant's successors hereinafter can, shall, or may have by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Release, and whether such claims are now known or unknown, including without limiting the generality of the foregoing, any and all claims made or that might have been made in any pending claim or suit. With respect to any claims arising from or related to an act or acts of abuse which have formed the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese, the Released Parties covered by this Release shall also include any other

persons or entities whether or not they are employed by or affiliated with the Diocese. This release does not apply to persons or entities who are not persons or entities employed by or affiliated with the Diocese with respect to any claims arising from or related to an act or acts of abuse that have not formed, or could not form, the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese.

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as of the day of , 200 .

Print Claimant's Name	Claimant's Signature
Witness	Witness

Order on Matters Heard March 9
Exhibit H

IMPORTANT LEGAL NOTICE

YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE OF CLASS ACTION SETTLEMENT

John Doe #53, et al v. Diocese of Charleston, et al.

This action applies to 1) any person born before August 30, 1980; 2) who as a minor was sexually abused; 3) by an agent or employee of the Diocese of Charleston; 4) and whose individual claim has not been previously settled or otherwise resolved.

YOU ARE HEREBY NOTIFIED OF THE (A) APPROVAL OF A CLASS ACTION SETTLEMENT; (B) THE MANNER IN WHICH YOU MAY MAKE A CLAIM TO SETTLEMENT FUNDS; AND (C) THE MANNER IN WHICH YOU CAN EXCLUDE YOURSELF FROM THE CLASS.

SUMMARY OF YOUR RIGHTS AND CHOICES

You May		Deadline
STAY IN THE CLASS and possibly receive money from the Settlement	**Stay in the Class.** To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.	**Postmarked or received by [Date to be inserted]**
EXCLUDE YOURSELF	**Get out of the class.** You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.	**Postmarked or received by [Date to be inserted]**

Individuals who are members of the class who file a *bona fide* claim will have the amount of money they will receive determined by an arbitrator. The arbitrator has full discretion to determine the amount of money you receive. In making his decision, he will evaluate the type of abuse sustained, its duration, and the extent of the injuries from the abuse. Claims will be generally classified into one of four groups based on the severity of the injury sustained. Please carefully review the Settlement and Arbitration Agreement and Addendum for all specifics on the claims process and your rights in it.

For a more detailed summary of your Rights, the Claims Process and your Obligations if you wish to participate click here:

Orange Form: Summary of Rights, Claims Process, and Obligations

ANY PERSON FITTING INTO EITHER CLASS DEFINITION WHO FAILS TO EITHER FILE A CLAIM FORM OR OPT-OUT BY THE COURT IMPOSED DEADLINE MAY HAVE THEIR RIGHTS AGAINST THE DIOCESE OF CHARLESTON FULLY BARRED BY LAW.

CLAIMS FORMS AND IMPORTANT DOCUMENTS

You may download all forms and documents from this website. Please read this portion carefully to ensure that your claim is properly filed. Please call class counsel if you have any question whatsoever:

Members of the Primary Class:

You may be a member of the Primary Class if you were born before August 30, 1980 and, as a minor, were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**:

Blue Form: Claim Form for Primary Class Members
AND
Green Form: Voluntary Waiver of Appeal
AND
White Form: Claimant's Release

Members of the Consortium Class:

You may be a member of the Consortium Class if you are/were the spouse and/or parent of an individual(s) who as minors were actually sexually abused. If you believe you fit within this category and wish to participate in the settlement, you must complete and return by **[Date to be Inserted]**:

Yellow Form: Claim Form for Consortium Class Members
AND
Green Form: Voluntary Waiver of Appeal
AND
White Form: Claimant's Release

The Claimant's Release Form will be held by Class Counsel until you have received a check from the settlement fund. At that time, it will be provided to the Diocese of Charleston. If for some reason you do not receive a check from the settlement fund, it will be returned to you.

If you want to exclude yourself:

If do not wish to participate in the class action and settlement process and wish to proceed on your own, then you must complete and return or have postmarked by **[Date to be inserted]**:

Pink Form: Opt-out Form

PLEASE NOTE:

1. No one but the arbitrator selected under the Settlement and Arbitration Agreement can say with finality whether you are a member of either class;
2. Nothing on any form or on this website should be considered legal advice. If you have any questions about your rights or responsibilities, you should discuss the matter with counsel of your own choosing.

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:
Richter & Haller, LLC, 622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 (Telephone) * 843-881-1400 (Fax) * Diocesesettlement@richterfirm.com

www.richterfirm.com

ALL FORMS MUST BE EITHER POSTMARKED BY THE U.S. POSTAL SERVICE OR RECEIVED BY CLASS COUNSEL ON OR BEFORE **[Date to be inserted]**.

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

2007 AUG 31 PM 3:00

The Court having been advised, as evidenced by the writing attached hereto as Exhibit A, that all pending motions, objections, rules to show cause, and any such related matters amongst the parties in this class action proceeding have been resolved with prejudice, and that all appeal rights of all "objectors" are waived, said agreement is hereby approved and made the Order of this Court. AND to this extent it acknowledged and

AND IT IS SO ORDERED!

Further, it is ordered that, as to any settlement funds in this matter, any restriction or impediment to the disbursement of any such funds heretofore imposed by this Court are lifted, removed, and extinguished. This class settlement shall immediately proceed as provided for in the Settlement and Arbitration Agreement entered into on January 15, 2007 and that certain Order of this Court in this matter dated July 30, 2007.

AND IT IS SO ORDERED!

R.App. 070

89p143

Furthermore, in the Court's Order of July 30, 2007 approving the Class settlement, the Court made reference to the existence of individuals who, according to the Diocese, (1) were potential class members; (2) came forward to the Diocese at some time in the past with their allegations of child sexual abuse; (3) never resolved their potential claims; and (4) were entitled to receive *actual notice* of the proposed class settlement pursuant to the agreement of the parties and earlier instructions from this Court (hereinafter referred to as "Actual Notice Class Members"). The Defendants have asked the Court to clarify how the settlement process will treat the Actual Notice Class Members. Accordingly, this Order clarifies and, where in conflict, supersedes the Court's Order of July 30, 2007.

Actual Notice Class Members shall have 120 days from receipt of actual notice of the class settlement to present their claims to an Arbitrator in the same manner as provided for in the Settlement and Arbitration Agreement. Actual Notice Class Members who present their claims more than 120 days after they receive actual notice of the settlement shall be barred from participation in the settlement process and shall be treated like any other class member who has failed to timely present a claim to the class settlement fund. Both the Arbitrator's fees and the claimant's recovery (if any) shall be paid by the Diocese, and not by the class settlement fund, because the settlement fund may already have been subject to a final accounting by the time such claims are processed.

AND IT IS SO ORDERED!

Furthermore, the Court has appointed Desa Ballard, Esq. as a non-testifying consultant in evaluating and addressing the issues before the Court in this matter, as all counsel was made aware of in a August 29, 2007 Order. Payment for Ms. Ballard's services shall be made from the

Class settlement fund within ten (10) days after the settlement funds are released from the Court's supervision.

Diane S. Goodstein
Presiding Judge

This 31 day of August 2007
Lexington, South Carolina

R.App. 072

pg 3 of 3

EXHIBIT A

A. PETER SHAHID, JR.
SHAHID LAW OFFICE, LLC

15 STATE STREET
P.O. BOX 591
CHARLESTON, SOUTH CAROLINA 29402

OFFICE (843) 853-4500
FAX (843) 722-1119
TOLL FREE 1-888-792-2456

August 30, 2007

VIA FACSIMILE TO: (843) 881-1400 / (843) 723-2852
AND REGULAR UNITED STATES MAIL

Lawrence E. Richter, Jr., Attorney at Law
Richter Law Firm, LLC
622 Johnnie Dodds Boulevard
P.O. Box 1089
Mount Pleasant, SC 29465

Gregg Meyers
Attorney at Law
P.O. Box 1297
39 Broad Street, Suite 300
Charleston, SC 29401

Re: John Doe #53, John Doe #66, John Doe 66A, John Doe #67, Jane Doe #1, Jane Doe #2, and Rachel Roe, individually and as representative of a class of people similarly situated v. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
Case No. 2006-CP-18-1310
Case No. 2006-CP-18-1311
Case No. 2006-CP-18-1636

Dear Larry and Gregg:

This is to confirm that the Diocese will offer $1.375 million to settle claims of the eleven individuals represented by Gregg Meyers. Those individuals, who have been identified in previous correspondence, are John Doe C, John Doe D, Jane Doe G, John Doe H, Jane Doe I, John Doe J, John Doe K and the mother of John Doe J, John Doe L, John Doe M, Jane Doe M. The payments are for personal injuries as defined in the IRS Code and are independent of the Class claims process. These claimants will opt-out of the class claims process and will execute releases. These claimants retain the right to meet with the presiding Bishop or the Apostolic Administrator, as they so desire.

This offer is made on the condition that all of the objections, including any all appeal

rights to the pending class action settlement by any of Mr. Meyer's clients be withdrawn, and waived with prejudice.. Mr. Meyers has certified he is unaware of any other potential or actual objectors, and does not represent any other person who has an objection to the January 12, 2007 Settlement Agreement and July 30, 2007 Order. Any other claimant represented by Mr. Meyers and not referenced above, will present their claim through the class claim process.

This offer is also contingent on the receipt by the Diocese of $100,000 from Mr. Richter and/or his clients.

All parties and objectors agree to withdraw all pending motions filed, with prejudice, including Class Counsel/Plaintiffs Motion for Sanctions, and will dismiss the Rule to Show Cause; the Objectors Motion to Alter or Amend; the Defendants' Motion to Alter or Amend, Motion to Stay Execution, Motion to Deposit Funds with the Court, and Motion to Dismiss/Vacate the Rule to Show Cause. This offer if and when accepted as acknowledged by Counsel's signatures below, is intended to pave the way for final approval of the class action settlement and to eliminate any and all objections or appeals.

The $1.375 million will be paid from the surplus funds, if any, after the claims process has been completed. In the event there are insufficient or no funds remaining from the $12 million pool of funds, the Diocese is still obligated to pay the $1.375 million as stated above. Payment is expected sometime after January 1, 2008.

Sincerely,

A. Peter Shahid, Jr.

I agree to the above terms.

Lawrence E. Richter, Jr.
Class Counsel

I agree to the above terms.

Gregg Meyers

R.App. 075

The Supreme Court of South Carolina

John Doe, individually and on behalf of all persons who are similarly situated, Plaintiff,

v.

Lawrence E. Richter, Jr., David K. Haller, Richter & Haller, LLC, Peter Shahid, Jr., Shahid Law Office, LLC, Robert Baker, The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, Defendants.

ORDER

Plaintiff has filed a complaint and a petition asking this Court to accept the complaint in our original jurisdiction. Defendants have filed returns to the petition. The petition is denied.

However, we are concerned by the delay that filings such as the one at hand have caused in finally resolving the underlying matters pending in Dorchester County. Accordingly, we hereby direct that the underlying matters be concluded within six months of the date of this order. No extension shall be granted absent prior permission by this Court.

IT IS SO ORDERED.

C. J.

J.

J.

J.

J.

Columbia, South Carolina

March 19, 2009

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON John Doe, individually and on behalf of all persons who are similarly situation, Plaintiffs, v. Lawrence E. Richter, Jr., David K. Haller, Richter & Haller, LLC, Peter Shahid, Jr., Shahid Law Office, LLC, Robert Baker, The Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston, Defendants	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2009-CP-10-7751 ORDER DISMISSING DIOCESE DEFENDANTS

FILED
2010 SEP -8 AM 9:35
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court by motion of the following above named Defendants, Robert Baker, the Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston, collectively hereinafter referred to as "Diocese Defendants" for the Court to dismiss the Complaint against the Diocese Defendants, pursuant to South Carolina Rules of Civil Procedure, Rule 12(b)(6).

Background

The Plaintiff filed his Complaint against the above named Defendants alleging five causes of action. The First, Second and Third Causes of Action name the Defendants, Lawrence E. Richter, Jr (Richter), David K. Haller (Haller) and Richter & Haller, LLC. These three causes of action allege negligence, gross negligence and breach of fiduciary duty. The Fourth and Fifth Causes of Action allege civil conspiracy and outrage against Richter, Haller and Richter & Haller, LLC, Peter Shahid, Jr., The Shahid Law Office, LLC and The Diocese Defendants.

The gravamen of this Complaint is a Class Action Settlement Agreement entered on January 12, 2007 between the Diocese Defendants and the Richter, Haller and Richter & Haller, LLC Defendants. This agreement created two classes of putative claimants who could file a claim against the Diocese Defendants through an arbitration claims determination process. The first class are those individuals who alleged to have been sexually abused as minors by personnel of the Diocese of Charleston ("primary class"), and the second class are the spouses and parents of the primary class member ("consortium class"). The creation of these classes and the process for the resolution of class members' claims were addressed in the January 12, 2007 Agreement, which was presented to the Dorchester Court of Common Pleas for final approval. In response to the request for approval of the Agreement Judge Diane S. Goodstein conducted a fairness hearing on March 9, 2007, and by Orders dated July 30, 2007 and August 31, 2007 granted final approval of the Settlement Agreement.

The Diocese Defendants in this current action are the same Party-Defendants in the Dorchester County Class Action. Included in the terms of the Settlement Agreement was an explicit provision in which each participant agreed to waive any and all rights to appeal his/her designation in the class and his/her monetary award determined by the class claims arbitrator. In furtherance of this waiver, each participant executed a General Release of all liability arising out of claims of sexual abuse against the Diocese Defendants

On the face of the Complaint the Plaintiff admits he was an actual primary class member in the above referenced Class Action Settlement, participated in the arbitration/claims process and received a damages award. For the foregoing reasons, the Plaintiff's Complaint against Robert Baker, The Bishop of Charleston, A Corporation Sole, and the Bishop of the Diocese of

Charleston is dismissed, with prejudice.

Legal Standard

The Court finds in accordance with SCRCP, 12(b)(6), that based solely on the facts alleged in the pleadings before the Court, and considering those facts in the light most favorable to the Plaintiff, the current Complaint fails to state a cause of action against the Diocese Defendants for which relief can be granted. "The circuit court may dismiss a claim when the defendant demonstrates the plaintiff's 'failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court' . . . 'The motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case.' 'All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings.'" Hambrick v. GMAC Mortgage Corp. 370 S.C. 118, 121-22, 634 S.E.2d 5, 7 (Ct. App., 2006) (internal citations omitted).

Res Judicata

The Plaintiff's request for relief as contained in the Complaint is barred by the doctrine of *res judicata*. "*Res judicata* requires proof of three elements: 1) a final, valid judgment was entered on the merits of the first suit; 2) the parties to both suits are the same; and 3) the subsequent action involves matters properly included in the first action." Judy v. Judy 383 S.C. 1, 8, 677 S.E.2d 213, 217 (Ct. App., 2009), citing Plott v. Justin Ent. 374 S.C. 504, 5111, 649 S.E.2d 92, 95 (Ct. App., 2007). "For purposes of *res judicata,* 'cause of action' is not the form of action in which a claim is asserted, but rather the cause for action, meaning the underlying

facts combined with the law giving the party a right to a remedy of one form or another based thereon.'" 383 S.C. 1, 9, 677 S.E.2d 213, 218 (Ct. App., 2009), quoting Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 35, 513 S.E.2d 106, 109 (1999).

The Plaintiff presented a claim for damages as a class action participant pursuant to the terms of the 2007 Class Action Settlement Agreement. This Agreement involved the Diocese Defendants who agreed to pay a sum of money for damages resulting upon the Plaintiff (and others similarly situated), presenting a *bona fide* claim that he was sexually abused as a minor by a Diocese Defendant agent. The nature of the claim was a personal injury, committed by an agent of the same Party-Defendants in this Complaint. The identity of the two parties is identical, and the base of recovery the same. Under the doctrine of *res judicata*, "a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action." Treadaway v. Smith, 325 S.C. 367, 377, 479 S.E.2d 849, 855 (Ct. App., 1996) (internal citation omitted).

All three elements of *res judicata* are present within the contents of the Plaintiff's Complaint. First, the Dorchester County Court of Common Pleas entered a final, valid judgment on the merits of the Plaintiff's claims of sexual abuse. The court's Orders of July 30, 2007 and August 31, 2007 approved a Settlement Agreement which incorporated the claims of a class of plaintiffs, of which the current plaintiff was a member. These Orders addressed the "fairness" of the Class Settlement Agreement and all issues relating to the Arbitration process. The Plaintiff did not appeal this Order. The Final Orders further provided clear instructions to those class members who wished to "opt-out" of the Settlement. The Plaintiff did not "opt-out," but

voluntarily participated in the arbitration process. All issues of fairness were properly adjudicated to a final, valid order in the class action litigation.

Second, the Plaintiff's status as a class member in the previously adjudicated class action satisfies the requirement for identity of parties. "There is of course no dispute that under elementary principles of prior adjudication a judgment in a properly entertained class action is binding on class members in any subsequent litigation." Cooper v. Federal Reserve Bank of Richmond, 467 U.S. 867, 874,104 S.Ct. 2794, 2798 (1984). "A judgment in favor of the plaintiff class extinguishes their claim, which merges into the judgment granting relief." Id. In the current case, the Plaintiff was an actual class member in the Dorchester County Class Action, who presented a claim, participated in the arbitration process, was granted an award of damages, accepted the award and executed a General Release and Waiver of Right to Appeal. (See Compl. ¶¶1,2, 215-228). Furthermore, the named Defendants in the Class Action are the Diocese Defendants in this action.

Third, the issues raised in the current action were, or could have been, properly included in the first action. At the heart of the Plaintiff's current Complaint is an allegation that the Class Action Settlement was unfair. All issues of fairness and all issues regarding the arbitration process were previously litigated and adjudicated in the Dorchester County litigation. This Plaintiff was afforded the opportunity to challenge any aspect of the Class Action Settlement Agreement, and he elected not to. Only after the Plaintiff voluntarily participated in the claims and arbitration process did he contend that it was unfair.

A review of the Complaint as it pertains to the Diocese Defendants reveals that the accusations raised against them simply attempt to attack the Defendants for a claimed intent to

R. App. 000091

reinstate an accused priest to ministry (Compl. ¶ 14) and a meeting with Mr. Richter and Mr. Haller (Compl. ¶ 116) during the course of the Class Action litigation. The Plaintiff in his Complaint dissects the process in which the January 2007 Agreement was reached, beginning with paragraph 63, and culminating through paragraph 213. A fair summary of the allegations contained in these paragraphs of the Complaint reflects a collateral attack on the manner and means of reaching the Agreement and obtaining court approval. Even if any or all of these accusations were true, the Plaintiff is barred from recovery. He seeks to assail the process of this class action resolution, an option he waived by failing to challenge the Agreement in 2007, by filing a claim, by accepting the monetary award and by executing a waiver and release. His participation as a party precludes his effort to undo a final adjucation over the same dispute. Any issues of fairness should have been raised before the Dorchester County Court of Common Pleas at the time the Settlement Agreement was approved. All three elements of *res judicata* are met in the current case, and admitted on the face of the Plaintiff's Complaint.

Collateral Estoppel

The Plaintiff is also collaterally estopped from obtaining any relief. Similar to the doctrine of *res judicata*, collateral estoppel precludes a party from re-litigating issues actually adjudicated in a prior action. The Court recognizes the long standing premise that unlike *res judicata*, the parties do not have to be the same in the prior action but the adjudicated issue must be the same. "Collateral estoppel, or issue preclusion, prohibits a court from adjudicating an issue that was 'actually litigated and determined by a valid and final judgment in a prior suit.' Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suit are the same." Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217, quoting Zurcher v.

Bilton, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008).

In the Complaint, the Plaintiff seeks damages on the basis that he was sexually abused by an agent of the Diocese Defendants, that the award he received in the class claims process was erroneous and that the Agreement which was the vehicle for the claims process was the product of collusion and thus unfair. (Compl ¶1 and 229).

In spite of the label the Plaintiff has placed on his Fourth and Fifth Causes of Action (collusion and outrage), the allegations in the Complaint relate to the Plaintiff's claim that he was previously abused while a minor by the Diocese Defendants' agent and that abuse entitles him to certain recovery for damages. In other words, his capacity to sue rests on the harm he may have suffered from any act(s) by Diocesan personnel. The Plaintiff has previously sought and obtained recovery for that injury. He voluntarily took part in the class claims process which addressed his allegation of harm. Thus, the elements of collateral estoppel are met and preclude the current claim.

The Plaintiff complains that the Class Action Settlement Agreement was obtained by a fraud perpetrated against the court system and other victims. Any attack on the integrity of this agreement was resolved by the Plaintiff's own assertions that the court in Dorchester County received the Agreement for review, conducted a fairness hearing, received and resolved objections and subsequently issued a ruling adopting the Agreement, placing in motion the claims process, and finally permitting those situated similarly to the Plaintiff to avail themselves of the benefit of submitting a claim. The issue of fairness of the Settlement and Arbitration Agreement was actually litigated and adjudicated before Judge Goodstein, resulting in a final order on the merits of the settlement. The fact that the Plaintiff has repackaged his claims under

the banner of new causes of action does not overcome the hurdle that his claims of sexual abuse and collusion were actually litigated in the previous case. Collateral estoppel serves as bar against a disgruntled claimant raising a prior issue submitted for consideration and resolved. The Plaintiff is not permitted to seek a review of an issue already litigated. As the prior decisions of this Court have held issue preclusion bars an end-run appeal.

The Plaintiff had an opportunity to raise any issues relating to the Settlement Agreement and should have raised those issues with the reviewing court. That he is unsatisfied with the amount of his award compared to others' does not negate the fact that his claim was fully and finally litigated in another court.

Arbitration and Award and Waiver

Finally, the Complaint is dismissed because this Court finds that the Plaintiff executed a valid and proper waiver and release. As part of the Class Claims process approved by Judge Goodstein, the Plaintiff filed a claim and participated in arbitration to resolve that claim and consequently received an award of damages. This aforementioned activity precludes the Plaintiff from asserting his claims against the Diocese Defendants. "Where the parties agree to submit a claim to arbitration and the claim is properly adjudicated by the arbitrators, the prosecution of the claim on a different theory is barred. . . . to conclude otherwise would be to sanction a double recovery and would defeat the object of arbitration, which is to avoid litigation." Save Charleston Foundation v. Murray, 286 S.C. 170, 177, 333 S.E.2d 60, 64 (Ct. App., 1985).

In Save Charleston Foundation, the parties litigated claims for anticipatory breach of contract and breach of contract. The arbitration agreement specifically dismissed those claims with prejudice, and attempted to preserve a claim for fraud by dismissing it without prejudice.

Despite this attempt to preserve the fraud claim, the Court of Appeals held that the plaintiffs "having obtained through arbitration a recovery on its claim against [defendants], can no longer sue [defendants] for fraud, notwithstanding the Foundation's attempt to preserve its fraud cause of action by agreeing to its dismissal without prejudice." The Court further held, "a party cannot agree to submit a claim to arbitration, receive a final and conclusive arbitration award, and then relitigate the claim employing a different theory of recovery." Id.

The Plaintiff concedes in his Complaint that he participated in the Class Claims process, submitted himself to arbitration and accepted an award of damages from the arbitrator. In the current case, the Arbitration Agreement in which the Plaintiff voluntarily participated states no fewer than seven times that the arbitrator's decision is final, and participants waive any and all rights to appeal. The claims process resulted in an award to compensate the Plaintiff for his alleged damages. The Plaintiff's dissatisfaction with his arbitration award does not allow him a second recovery.

Additionally, the Plaintiff affirmatively executed two additional, independent documents which forever bar the current action; a Voluntary Waiver of Appeal and General Release as to the Diocese Defendants. The Plaintiff waived all rights to claims against the Diocese Defendants. The General Release states the claimant:

> for an in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledges, hereby remises, releases and forever discharges the Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity ('the Diocese') . . . of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liability whatsoever of every name and nature, whether in LAW, in EQUITY, or otherwise which the Claimant ever had, now has, or which Claimant or

Claimant's successors hereinafter can, shall, or may have by reason of any matter, cause of thing whatsoever from the beginning of the world to the date of this Release, and whether such claims are now known or unknown, including without limiting the generality of the foregoing, any and all claims made or that might have been made in any pending claim or suit.

This Plaintiff has waived any and all rights to any claims against the Diocese Defendants whether the claim was known or unknown by participating in the arbitration agreement, and by the terms of the General Release. The Plaintiff submitted no argument that the execution of these documents were not a knowingly, intelligent and voluntary exercise.

For the reasons stated above, I find that the Plaintiff has failed to state a claim for which relief may be granted as to his causes of action against the Diocese Defendants. The Diocese Defendants' motion to dismiss is hereby **GRANTED** as to the Plaintiff's causes of action for Civil Conspiracy and Outrage. Therefore, the Complaint against the Defendants, Robert Baker, the Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston, is **DISMISSED**, with prejudice.

IT IS SO ORDERED!

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

9/7, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
JOHN DOE, INDIVIDUALLY AND ON BEHALF OF ALL PERSONS WHO ARE SIMILARLY SITUATED, PLAINTIFFS, V. LAWRENCE E. RICHTER, JR., DAVID K. HALLER, RICHTER & HALLER, LLC, PETER SHAHID, JR., SHAHID LAW OFFICE, LLC, ROBERT BAKER, THE BISHOP OF CHARLESTON, A CORPORATION SOLE, AND THE BISHOP OF THE DIOCESE OF CHARLESTON, DEFENDANTS.	)	CASE NO.: 2009-CP-10-7751 **ORDER GRANTING MOTIONS TO DISMISS COMPLAINT AS AGAINST LAWRENCE E. RICHTER, JR., DAVID K. HALLER, AND RICHTER & HALLER, LLC**

FILED
2010 SEP -8 P 9:47
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER came before the Court on Motions to Dismiss Plaintiff's Complaint filed by Lawrence E. Richter, Jr., David K. Haller, and Richter & Haller, LLC (collectively, "Class Counsel"). After due notice, a hearing was held on July 22, 2010, in Charleston County. All parties appeared at the hearing through counsel. Having carefully considered the allegations in the Complaint and the arguments and submissions of counsel, the Court grants the motions to dismiss and holds that the doctrines of waiver and collateral estoppel bar Plaintiff from re-litigating the issues essential to his claims. In addition, assuming, without deciding, that Plaintiff's allegations are true, Plaintiff has failed to allege damages proximately resulting from Class Counsel's conduct.

BACKGROUND

This is a legal malpractice case arising out of an underlying class action settlement that was approved by the class action court in a final order that was not appealed (the "Settlement"). Class Counsel filed the underlying class action on behalf of victims of child sexual abuse

allegedly perpetrated by priests of the Roman Catholic Diocese of Charleston (the "Diocese"). The parties settled the class action, and, after a fairness hearing, Judge Diane Goodstein approved the Settlement as "fair, reasonable, and adequate." Plaintiff participated in the Settlement as a member of the class and received $55,000.[1] Not satisfied with this recovery, Plaintiff now attempts to bring negligence, gross negligence, breach of fiduciary duty, civil conspiracy, and outrage claims against Class Counsel.

Rule 23(c), SCRCP requires that class action settlements be approved by the court. Here, Plaintiff admits that Judge Goodstein approved the Settlement on a preliminary and on a final basis in written orders, both times finding that the Settlement was "fair, reasonable, and adequate." The court-approved Settlement provided for a binding arbitration process whereby class members, including Plaintiff, would be accorded a non-adversarial arbitration hearing, after which they would be given awards in accordance with a pre-determined matrix. *The Settlement approved by the court expressly provided that arbitration awards would not be subject to further review, and all participants were required to acknowledge this waiver on a court-approved form prior to becoming a member of the class.* (Plaintiff's Exhibit 13, Settlement and Arbitration Agreement, at 12.) All class members, including Plaintiff, were accorded opportunities to opt out and pursue their claims individually if they disagreed with those terms. In addition, class members were given the opportunity to object, and the court's final order approving the settlement was subject to appeal. *See, e.g., Flinn v. FMC Corp.*, 528 F.2d 1169, 1172 (4th Cir. 1975) (considering appeal by class member of order approving class action settlement).

[1] In a putative class action, the named plaintiff must allege that his claims are typical of the claims of the class. Thus, on a motion to dismiss, the court considers only whether the named plaintiff himself has stated facts sufficient to constitute a cause of action. *See Zimmerman v. HBO Affiliate Group*, 834 F.2d 1163, 1170 (3d Cir. 1987).

Plaintiff, however, did not opt out, object, or appeal, and the court's order approving the Settlement became the law of the case.[2]

Instead of challenging or opting out of the Settlement, Plaintiff voluntarily participated in the binding arbitration process and received and accepted an award of $55,000, all in accordance with the court-approved Settlement. At the hearing, Plaintiff's counsel stated that Plaintiff's damages are $145,000: the difference between what he received at arbitration ($55,000) and what he believes he should have received ($200,000).

LEGAL STANDARD

A complaint should be dismissed under Rule 12(b)(6), SCRCP, if it fails "to state facts sufficient to constitute a cause of action." "[T]he motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." *Jarrell v. Petroseed Co.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998). In deciding whether the Rule 12(b)(6) standard is met, the Court may only consider the well-pleaded allegations in the complaint and the exhibits attached thereto. Rule 10(c), SCRCP. The Court should not consider "the inferences drawn by the plaintiff from the facts [alleged]," nor should it consider the Plaintiff's "conclusions of law." *Charleston County Sch. Dist. v. S.C. State Ports Auth.*, 283 S.C. 48, 50, 320 S.E.2d 727, 729 (Ct. App. 1984).

DISCUSSION

Plaintiff Waived His Claims by Participating in the Settlement, and by Failing to Object, Opt Out, or Appeal.

Class Counsel argue that Plaintiff's waived his claims by participating in the underlying Settlement, accepting an award, and failing to object, opt out, or appeal. I agree.

---

[2] For purposes of these motions, the court takes judicial notice of those portions of the record in the underlying class action that were attached to Plaintiff's Complaint and to Class Counsel's Motions to Dismiss. Rule 201, SCRE.

First, Plaintiff's claims are barred by the waiver document that he signed before participating in the arbitration, which waived any right he may have had to attack the arbitration award. (Final Order Approving Settlement, at Ex. F thereto.) The document was approved by the court in its final order, and Plaintiff knew prior to participating in the class that he was giving up appeal or challenge to the award in exchange for the other protections afforded him in the Settlement prior to becoming a formal member of the class. Plaintiff signed the waiver document, participated in the Settlement procedure, and received an award. If he disagreed with this waiver of any other part of the Settlement, his options were either to appeal the final order (which he failed to do) or opt out of the class and proceed on his own (which he chose not to do). Because Plaintiff elected to proceed in accordance with the court-approved, unappealed final order approving settlement, this Court and Plaintiff are bound by the law of the case.

Second, even absent that document, Plaintiff's participation in the Settlement waived his claims as a matter of law because participants in a class action settlement cannot collaterally attack their recovery in a second lawsuit. *See In re Factor VIII or IX Concentrate Blood Prods. Litig.*, 159 F.3d 1016, 1020 (7th Cir. 1998). Third, Plaintiff's failure to object, opt out of, or appeal the Settlement also waived the claims in this case as a matter of law because the law does not permit class members to stand idle during the settlement approval process, allow that settlement to become the law of the case, and then attack the settlement through a collateral lawsuit. *See, e.g., id.*; *Boone v. City of Phila.*, 668 F. Supp. 2d 693, 716 (E.D. Pa. 2009); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 351 n.45 (S.D.N.Y. 2005); *see also Birks v. Park*, Case No. H-08-2702, 2009 WL 365680, at *6 (S.D. Tex. Feb. 12, 2009). By signing a waiver, participating in the Settlement, and failing to object, opt out, or appeal, Plaintiff voluntarily abandoned any right to attack the Settlement itself or his arbitration award, and his claims, therefore, must be dismissed.

Plaintiff's Claims Are Collaterally Estopped Because the Class Action Court Approved the Underlying Settlement.

Class Counsel further argue that Plaintiff's claims are collaterally estopped because they constitute an attempt to re-litigate issues decided by the class action court. Again, I agree.

Under South Carolina law, "[w]here the plaintiff has had a full and fair opportunity to litigate the question of an attorney's negligence or effectiveness in a particular case, he should be collaterally estopped to adjudicate the same issues in a subsequent legal malpractice action." *Irby v. Richardson*, 278 S.C. 484, 487, 298 S.E.2d 452, 454 (1982). The record in the underlying case demonstrates that the propriety of the Settlement and Class Counsel's performance were actually and necessarily litigated to final judgment by the certified representatives of Plaintiff in accordance with Rule 23, SCRCP. *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986). Indeed, the class action court expressly praised Class Counsel, noting that "Class Counsel has been able to succeed in this case where other lawyers, in identical cases, have failed; and they accomplished these tasks against a respected and powerful adversary, the Catholic Diocese of Charleston." Because the adequacy of the Settlement and the performance of class counsel were litigated to final judgment by the certified class representatives, this Court may not, as a matter of law, look behind the class action judgment, and Plaintiff's claims must be dismissed. *Epstein v. MCA, Inc.*, 179 F.3d 647, 649 (9th Cir. 1999); *see also Hospitality Mgmt. Assocs., Inc. v. Shell Oil Co.*, 356 S.C. 644, 663, 591 S.E.2d 611, 621 (2004).

While there is no South Carolina case directly on point, three separate federal courts of appeals have held that legal malpractice claims are barred in these same circumstances. *Koehler v. Brody*, 483 F.3d 590, 599 (8th Cir. 2007) (affirming dismissal of malpractice claim brought by class member against class counsel on issue preclusion grounds); *Thomas v. Powell*, 247 F.3d 260, 264 (D.C. Cir. 2001) (enjoining state malpractice action against class counsel because relevant issues had already been decided in federal class action); *Laskey v. UAW*, 638 F.2d 954,

957 (6th Cir. 1981) (holding that court's approval of class action settlement collaterally estopped subsequent legal malpractice action against class counsel). These cases are persuasive, and they support the Court's decision to dismiss Plaintiff's claims.

Plaintiff tries to avoid the collateral estoppel effect of the class action court's Final Order Approving Settlement by claiming that the class action court should have re-reviewed the Settlement after all arbitration claims were paid. This argument is meritless because nothing in Rule 23 required any post-final-approval review of the Settlement. What Rule 23(c) requires is, quite simply, that the court approve the Settlement, which Plaintiff admits occurred. Moreover, the Settlement expressly provided that there would be no review of the arbitration awards, and the class action court found that term (and all others) to be "fair, reasonable, and adequate." By attacking his arbitration award, Plaintiff is necessarily attacking the class action court's determination that there should be no review of these awards, which Plaintiff did not object to or appeal. Plaintiff's complaint that the class action court did not re-review the Settlement after these awards were entered is also disingenuous because Plaintiff did not ask for any such review. Thus, notwithstanding Plaintiff's arguments, the class action court's Order Approving Settlement collaterally estops all of Plaintiff's claims.

Plaintiff Failed to Allege Facts Sufficient to Demonstrate that Class Counsel Proximately Caused Him any Damage.

In order to recover for any of the alleged causes of action, Plaintiff must prove damages proximately resulting from Class Counsel's conduct. Even accepting the allegations in the Complaint as true, Plaintiff did not suffer any damages as a proximate result of the Class Counsel's alleged conduct. "Proximate cause requires proof of causation-in-fact and legal cause." *Sims v. Hall*, 357 S.C. 288, 298, 592 S.E.2d 315, 320 (Ct. App. 2003). "Causation-in-fact is proved by establishing the plaintiff's injury would not have occurred 'but for' the defendant's negligence. Legal cause is proved by establishing foreseeability." *Id.*

Plaintiff has failed to allege facts sufficient to establish he would have recovered the damages claimed "but for" Class Counsel's allegedly negligent and wrongful conduct. At the hearing, Plaintiff's Counsel stated the Plaintiff's sole measure of damages is the difference between the award the Plaintiff received ($55,000) and the award the Plaintiff believes he should have received ($200,000) under the damages matrix, which is set forth in the Settlement and Arbitration Agreement, Exhibit 13 to the Complaint. The Plaintiff alleges in Paragraph 228 of the Complaint that because he was never touched, he should have recovered an award under the highest category of the matrix instead of under Category 2. Class Counsel contends, however, that all four categories within the matrix require some degree of physical contact, and if the Plaintiff was never touched, then he received an award higher than he should have. I agree.

The matrix upon which the Plaintiff bases his damages categorized levels of abuse and authorized awards as follows:

	Type of Alleged Abuse	Minimum Payment	Maximum Payment
(1)	Limited inappropriate touching on the victim	$10,000	$18,500
(2)	Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts	$20,000	$55,000
(3)	Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex (either on the victim or by the victim on the perpetrator), or other aggravated circumstances	$60,000	$125,000
(4)	Egregious acts, such as sodomy, any act accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing damage	$150,000	$200,000

Under the unambiguous language of the matrix, each category of alleged abuse required some degree of physical contact. As the class action court noted in its Order Approving

Settlement, the purpose of the matrix was to ensure that class members who suffered the most severe abuse received the highest awards. Therefore, class members who qualified for Category 4 suffered more egregious abuse than those who fell into the lower three categories. Plaintiff's admission that he was not touched conclusively demonstrates that he did not suffer such egregious abuse. Therefore, under the facts alleged, the Plaintiff received, if anything, a *higher* award that he should have. Thus, he has not alleged (and, indeed, cannot allege) any cognizable damages.

CONCLUSION

NOW THEREFORE, for the foregoing reasons, it is hereby ordered that Class Counsel's Motions to Dismiss are GRANTED, and all of Plaintiff's claims against Class Counsel are DISMISSED with prejudice. There being no just reason for delay, FINAL JUDGMENT is hereby entered against Plaintiff and in favor of Defendants Richter, Haller, and Richter & Haller, LLC, as to all claims against these Defendants.

AND IT IS SO ORDERED.

The Honorable J.C. Nicholson, Jr.

~~August~~ SEPT. 7, 2010

Charleston, South Carolina

Ex parte Doe, 393 S.C. 147 (2011)
711 S.E.2d 892

393 S.C. 147
Supreme Court of South Carolina.

Ex parte Johns DOE C, D, H, J, K, L, M, and B; Janes Doe G, I, and M; and the mother of John Doe J, Appellants,
In re John Doe # 53, John Doe # 66, John Doe # 66A, John Doe # 67, Jane Doe 1, Jane Doe 2 and Rachel Roe, individually and as representatives of classes of people similarly situated, Respondents,
v.
The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity, Respondents.

No.
26984

Heard Feb. 3, 2011.

Decided June 13, 2011.

Synopsis
Background: While several motions for interest were pending, class members who had opted out of settlement agreement with religious organization arising out of childhood sexual abuse by agents of organization entered into separate settlement agreement with organization. The Circuit Court, Dorchester County, Diane Schafer Goodstein, J., denied motions. Class members appealed.

Holding: The Supreme Court held that releases in settlement agreement waived any claim for interest.

Appeal dismissed.

West Headnotes (1)

[1] Release
⚖Release of damages for injury to the person

Releases of liability contained in settlement agreement between victims of childhood sexual abuse and religious organization released all of members' claims against organization, including claims for interest; members waived any right to interest when they signed releases discharging the organization from liability for all "actions, causes of action, claims, demands and compensation, up to and including the date of the release," and the releases did not reserve any rights as to any pending motions, rather, by their plain language, the releases resolved all of the members' claims.

1 Cases that cite this headnote

Attorneys and Law Firms

****892** Gregg Meyers, of Charleston, for Appellants.

David K. Haller and Lawrence E. Richter, Jr., of Mt. Pleasant, for Respondents John Doe # 53, et al.

A. Peter Shahid, Jr., of Charleston, for Respondents the Bishop of Charleston, a Corporation Sole, et al.

Opinion

PER CURIAM.

***148** This appeal follows a long and complex series of motions related to a class action settlement that was administered in Dorchester County. The underlying class action dealt with allegations that certain minors ****893** were victims of sexual abuse at the hands of agents of the Diocese of Charleston.[1] Appellants objected to and opted out of the class action, then reached an independent settlement with the Diocese. Pursuant to that settlement, Appellants executed releases that explicitly discharged *all* claims against the Diocese. We dismiss this appeal as moot.

[1] For simplicity, we refer to both "the Bishop of Charleston, a Corporation Sole," and the Bishop of the Diocese of Charleston, in his official capacity, as "the Diocese."

 © 2018 Thomson Reuters. No claim to original U.S. Government Works.

I.

The plaintiffs in the underlying class action consisted of two classes: one for victims of childhood sexual abuse by agents of the Diocese and one for the spouses and parents of victims. As chief administrative judge for Dorchester County, Judge Goodstein designated the case "complex," and she assigned ***149** herself exclusive jurisdiction over it. Judge Goodstein subsequently approved a settlement in the class action over Appellants' objections. Appellants moved to alter or amend the order approving the settlement.

While Appellants' motion to alter or amend was pending, they reached a separate settlement agreement ("the opt-out agreement") with the Diocese and class counsel. This agreement provided that the Diocese would pay Appellants $1.375 million to settle their claims, in exchange for Appellants' agreement to opt out of the class action, execute releases, and withdraw all pending motions and objections with prejudice. Judge Goodstein entered an order dated August 31, 2007, approving the agreement and adopting it as the order of the court to the extent that it resolved the pending motions and objections.

On March 6, 2008, Appellants filed a complaint in Charleston County alleging payment was due under the opt-out agreement. Because the opt-out agreement arose from the Dorchester County class action, the Diocese moved to enforce the opt-out agreement in Dorchester County and to deposit the $1.375 million with the Dorchester County clerk of court. Appellants moved to dismiss the Diocese's Dorchester County motions and moved for Judge Goodstein to recuse herself.

Judge Goodstein held a hearing on these motions on January 29, 2009. After Judge Goodstein orally denied Appellants' motions to dismiss and to recuse, Appellants moved to compel the Diocese to pay the $1.375 million plus pre or postjudgment interest.

Following the January 29 hearing, and while Appellants' motions for interest remained under advisement, Appellants signed releases bearing the title "FULL AND COMPLETE RELEASE," which provided in relevant part:

> For and in consideration of my having received payment ... I hereby release, acquit, and forever discharge: The Diocese of Charleston ... from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation, up to and including the date of this release, on account of, or in any way growing out of:
>
> 1. The obligations under the letter agreement dated August 30, 2007, incorporated into and adopted as an order ***150** of the Dorchester County Court of Common Pleas dated August 31, 2007 ...;
>
> ....
>
> 3. Any and all claims and/or allegations contained in or relating to the civil action styled *Johns Doe C et al. v. The Diocese of Charleston, et al.* ... now pending in the Court of Common Pleas for the Ninth Judicial Circuit (the "Charleston case"), or which could have been alleged in the Charleston case;
>
> 4. Further, in consideration of said payment, I do hereby authorize and direct my attorney to dismiss with prejudice the Charleston case, now pending in the Circuit Court for Charleston County.
>
> ....
>
> It is further understood and agreed that there is no promise or agreement on the part of the persons, firms and corporations who are hereby released to do or omit to do any act or thing not herein mentioned, that this Release contains the entire agreement between the parties hereto, and that ****894** the terms of this Release are contractual and not a mere recital.

The releases were provided to the Dorchester County clerk of court in exchange for payment of the $1.375 million on deposit with the clerk. As a result, Appellants' counsel received the funds due under the opt-out agreement. Thereafter, by order dated March 23, 2009, Judge Goodstein ended the matter and denied Appellants' motions for pre and postjudgment interest.

Appellants now appeal the denial of their motions and raise challenges to the class action settlement from which they opted out. We certified the appeal pursuant to Rule 204, SCACR.

II.

Appellants opted out of the class action settlement, released all claims against the Diocese, and received payment in exchange for their releases. Thus, as a practical matter, the only relief Appellants could receive from a judgment in their favor is an award of prejudgment interest.[2] However, Appellants ***151** waived any right to interest when they signed releases discharging the

Diocese from liability for all "actions, causes of action, claims, demands ... and compensation, **up to and including the date of th[e] release.**" The releases did not reserve any rights as to any pending motions. Rather, by their plain language, the releases resolved **all** of Appellants' claims. *See Southern Glass & Plastics Co. v. Duke,* 367 S.C. 421, 428, 626 S.E.2d 19, 22 (Ct.App.2005) ("A release is a contract, and the scope of a release is gathered by its terms." (citing *Gardner v. City of Columbia Police Dep't,* 216 S.C. 219, 223, 57 S.E.2d 308, 309–10 (1950))). Therefore, this appeal is moot. *Sloan v. Friends of the Hunley, Inc.,* 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.").

[2] If Appellants were entitled to interest, it would be prejudgment interest, not postjudgment interest, because the funds due under the opt-out agreement were not payable immediately upon entry of the August 31, 2007, order. The opt-out agreement provided: "The $1.375 million will be paid from the surplus funds, if any, after the [class action] claims process has been completed.... Payment is expected sometime after January 1, 2008."

Moreover, while Appellants now present us with complaints about the administration of the class action, Appellants opted out of the class and thus could not be harmed by any of the irregularities they allege. In fact, Appellants assert their opt-out agreement afforded them more favorable relief than the class action settlement would have. Thus, Appellants can claim no harm from the manner in which the class action settlement was handled. *See Bivens v. Knight,* 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) ("A party ... cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person.").

At oral argument, perhaps in recognition of the fact that Appellants have waived all claims by their releases, Appellants' counsel insisted that this appeal was not moot because John Doe B did not sign the release quoted above. This assertion is without merit. John Doe B's claim is not before this Court. John Doe B did not fall within the definition of the class, nor was he a party to the opt-out agreement the ***152** Diocese sought to enforce. Rather, it appears that the Appellants may have agreed among themselves to distribute a portion of their settlement to John Doe B. No exceptions to the order on appeal were made on John Doe B's behalf, and Appellants' counsel conceded at oral argument that John Doe B's separate claim against the Diocese has been resolved by agreement and John Doe B has signed a release. In sum, the attempt by Appellants to resurrect this appeal through John Doe B is without merit.

III.

We dismiss this appeal as moot. Appellants executed full and complete releases without any reservation of rights, and they received the funds due to them under the opt-out agreement in return. Moreover, Appellants have no stake in the issues they ****895** raise regarding the class action settlement because they opted out of the class. Thus, a decision in Appellants' favor would have no practical effect.

APPEAL DISMISSED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

All Citations

393 S.C. 147, 711 S.E.2d 892

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

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

Defendants.

FILED
2011 JUN 27 PM 12:30
JULIE J. ARMSTRONG
CLERK OF COURT

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

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

INTRODUCTION

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

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

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

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

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

AND IT IS SO ORDERED.

Judge Roger M. Young, Sr.
Circuit Court Judge

Charleston, South Carolina
June 17, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

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

Defendants.

FILED
2011 JUN 27 PM 12:30
JULIE J. ARMSTRONG
CLERK OF COURT

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

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

INTRODUCTION

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

Res Judicata and the Class Action Settlement

The Plaintiffs' first cause of action alleges the Diocese knew or should have known that one of its priests was a pedophile who molested the Plaintiffs, and as a result, the Diocese was negligent and grossly negligent in supervising this priest. They also allege the Diocese was negligent and grossly negligent in failing to warn the Plaintiffs or their parents about this pedophile priest. They further allege the Diocese Defendants maintained a decades-long policy and practice of engaging in fraudulent concealment when their agents and employees were known to sexually abuse children.

The Diocese asks the Court to dismiss the negligence and gross negligence cause of action because it is barred by the doctrine of *res judicata*, collateral estoppel and the statute of limitations.

The *res judicata* argument arises out of a class action lawsuit filed in Dorchester County that was approved by Circuit Court Judge Diane Goodstein. The Defendants argue that the negligence and gross negligence claims of the Plaintiffs were encompassed in that class action lawsuit and are therefore barred as a matter of law. The factual background is extensively laid out in detail in the Complaint.

However, by way of background for this preliminary issue, it should be pointed out that the Plaintiffs alternatively allege the Diocese Defendants and the Attorney Defendants, after reaching a settlement, colluded to dismiss a class action lawsuit that had been filed in Charleston County, and re-filed the same class action lawsuit in Dorchester County in order to seek a more favorable settlement approval by a circuit court judge who was a long-time friend of Defendant Richter. Procedurally, the Plaintiffs want to be able to bring their negligence and gross negligence claims against the Diocese Defendants; however, if they are barred because of the *res*

judicata effect of the Dorchester County Class Action settlement (or any of the defenses the Diocese Defendants waived by agreeing to the Dorchester County Class Action settlement), then they seek to sue the Diocese Defendants and the Attorney Defendants for civil conspiracy, and the Attorney Defendants for various causes of actions they allege flow from the actions of the Attorney Defendants in their role as class action counsel.

Since all of the Defendants have raised the defense of *res judicata* as a bar to the various causes of actions brought in the current lawsuit, this Court must address this issue first.

This Court must give collateral recognition of the Dorchester County Class Action settlement if it can be shown that the Plaintiffs were afforded due process in that action; i.e., they were given reasonable notice of the class action settlement and class counsel adequately represented them. The South Carolina Supreme Court has held that it is appropriate for a court to conduct a limited collateral review of another court's class action settlement for the sole purpose of determining if procedural due process requirements were met as it pertains to the party seeking review. This limited review looks at two factors: (1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied. Hospitality Management Associates, Inc, v. Shell Oil Company, 356 S.C. 644, 591 S.E.2d 611 (2004).

Fundamentally, due process requires that absent class members be given notice. Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812, 105 S.Ct. 2965 (1985). The standard for notice is that it must be "the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Shutts, 472 U.S. at 812, 105 S.Ct. 2965 (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15, 70 S.Ct. 652 (1950)).

I have conducted a limited collateral review of the procedures used by the circuit court in the Dorchester County Class action and find the procedures were not designed to ensure notice to any potential class members living outside of the state of South Carolina who were not otherwise given actual notice of the class action and settlement.[1] The Plaintiffs allege that they live outside the state of South Carolina and they did not receive actual notice of the settlement under the guidelines set forth in the settlement order. The newspaper notices of the class action were only published in South Carolina newspapers (with the exception of the Augusta daily newspaper which is immediately adjacent to South Carolina and is distributed in an area of South Carolina not otherwise serviced by a daily newspaper). The Defendants had originally proposed national publication of the settlement in the *USA Today* newspaper to Judge Goodstein; however, they specifically withdrew their request to have this notice published outside of South Carolina in a publication of national distribution. This is clearly evidence that the class action was not designed to be a national settlement, but rather was a settlement intended to bind only South Carolina residents who did not otherwise receive actual notice. I find, therefore, that the constructive notice of the Dorchester County Class Action settlement attempted by the in-state newspaper publications was not reasonably calculated, under all the circumstances, to apprise these out-of-state Plaintiffs of the pendency of the action and afford them an opportunity to present their objections.

The Plaintiffs also argues that the following language from Judge Goodstein's order of July 30, 2007 should estop the Diocese Defendants from raising the *res judicata*; to wit:

> 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 as a later date and can show

1 Nothing herein should be considered as adjudicating the issue of whether in-state class members received adequate notice.

> 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.

At first glance, this language certainly seems to support the Plaintiffs' position. However, at a hearing on August 9, 2007, Judge Goodstein was asked to clarify her intent of this language, and as a result she issued an Order on August 31, 2007 in which she stated that language was only intended to apply to potential class members who had *actually* contacted the Diocese at some point in the past with allegations of child sexual abuse and were therefore entitled to receive *actual notice* of the proposed class settlement. Therefore, I find the language in the July 27th Order would not have the estoppel effect advanced by the Plaintiffs.

Nevertheless, this does not affect this Court's finding that the class notice was not intended to reach non-South Carolina residents who had not otherwise received actual notice of the settlement.

Due process rights preclude any claimant who did not receive notice of the class action from being bound by any judgment rendered in it. See Hoiengs v. County of Adams, 245 Neb. 877, 516 N.W.2d 223 (1994). Therefore, the Court finds the Plaintiffs are not bound by the judgment of the Dorchester County Class Action and are free to pursue their claims of negligence and gross negligence, subject to the findings below.

Statute of Limitations and Negligence/Gross Negligence Causes of Action

Having found the Plaintiffs are not bound by the Dorchester County Class Action, the Diocese Defendants move to dismiss the negligence and gross negligence causes of action on the grounds the claims fall outside the applicable statute of limitations.

The Plaintiffs claims arise out of allegations of childhood sexual abuse that allegedly occurred between 1965 and 1971. Therefore, these claims are subject to the limitations period

found in S.C. Code § 15-3-535 for actions arising prior to 2001, and S.C. Code § 15-3-555 for actions arising after 2001.

The facts plead in the Complaint allege Plaintiffs John Doe 2 and Jane Doe 4 would have been born at the latest in 1965. Consequently, the Plaintiffs would have turned 18 in 1983. Under § 15-3-535, the Plaintiffs would have had three years from the date of discovery of the tort to bring his or her claim. These Plaintiffs do not claim they were unaware of the alleged tort at the time it happened, between 1965 and 1971, or at any time after 1971. Giving each Plaintiff the benefit of the age of majority, three years after turning 18 in 1983, the statute would have been tolled until 1986, and three years after turning 21 would be 1989. None of these claims were brought by 1989.

According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996); Bayle v. S.C. Dept of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App.2001), cert. denied. In Dean, the Supreme Court stated:

> According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the "exercise of reasonable diligence" to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial. Id. at 363, 364,468 S.E.2d at 647 (emphasis in original) (citations omitted); Young v. South Carolina Dept. of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App.1999) (stating the statute of limitations runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct).

Applying the tolling effect provided by § 15-3-555, each Plaintiff would be able to bring his or her claim within six years of turning 21 years old. Construing the facts alleged in the

Complaint in the light most favorable to the Plaintiffs, each Plaintiff would have turned 21 no later than 1986. Therefore, at the very latest their claims were barred by the limitations period in 1992. The Plaintiffs fail to allege they were unaware of the sexual abuse allegedly committed against them, or unable to discover the causal relationship between any injuries and the alleged sexual abuse.

The Plaintiffs argue the Diocese Defendants should be bound by their waiver of statute of limitations defenses in the Dorchester County Class Action. That waiver was only for class members and this Court has found the Plaintiffs are not bound by that class action. Therefore, the Plaintiffs cannot avail themselves of a waiver which only applies to a class action they wish to avoid.

The Plaintiffs further argue fraudulent concealment should bar the Diocese Defendants from raising the statute of limitations defense. The claims in the Plaintiffs' fraudulent concealment cause of action and defense are rooted in a document dated from 1962 entitled "The Instruction." The Plaintiffs claim the Vatican instructed a certain degree of secrecy to all local dioceses (including the current Diocese Defendant) in this document, the execution of which led to the concealment that is the core of the Plaintiffs' Complaint. The underlying crux of the Plaintiffs' Complaint for fraudulent concealment, which allegedly gives them a right to a remedy, is that the Diocese Defendants concealed certain information at the direction of this 1962 document.

In order to succeed on a claim of fraudulent concealment, a plaintiff must plead facts indicating an "inducement for delay" in filing the lawsuit. Hedgepath v. American Telephone & Telegraph Co., 559 S.E.2d. 327, 338 (Ct. App. 2001). In order to successfully avoid the application of the statute of limitations on this theory that the Diocese Defendants are or had engaged in acts constituting "fraudulent concealment," the Plaintiffs must allege and establish the

following:

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

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

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

UNFAIR TRADE PRACTICES ACT CLAIM

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

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

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

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

CIVIL CONSPIRACY AND ALL DEFENDANTS

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

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

PROFESSIONAL NEGLIGENCE AND BREACH OF FIDICIARY DUTY

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

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

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

4. That the Diocese Defendants' Motion to Dismiss the cause of action for fraudulent concealment because the actions are barred by the applicable statute of limitations is GRANTED; and

5. That the Diocese Defendants' Motion to Dismiss the cause of action for Unfair Trade Practices Act is GRANTED; and

6. That all of the Defendants' Motions to Dismiss the cause of action for Civil Conspiracy is DENIED; and

7. That the Attorney Defendants' Motion to Dismiss the cause of action for Professional Negligence is DENIED; and

8. That the Attorney Defendants' Motion to Dismiss the cause of action for Breach of Fiduciary Duty is DENIED.

AND IT IS SO ORDERED.

Judge Roger M. Young, Sr.
Circuit Court Judge

Charleston, South Carolina
June 17, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

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

Defendants.

FILED
2011 JUN 27 PM 12:30
JULIE J. ARMSTRONG
CLERK OF COURT

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

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

INTRODUCTION

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

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

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

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

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

AND IT IS SO ORDERED.

Judge Roger M. Young, Sr.
Circuit Court Judge

Charleston, South Carolina
June 17, 2011

FORM 4

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

JUDGMENT IN A CIVIL CASE

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

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

PLAINTIFF(S) DEFENDANT(S)

CHECK ONE:

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

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit) Rule 43(k), SCRCP (Settled); ☐ Other ☐

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2011 JUN 23 P 12: 29
JULIE J. ARMSTRONG
CLERK OF COURT

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

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

Dated at **Charleston,** South Carolina, this ~~17th~~ 23rd day of **June,** 2011.

PRESIDING JUDGE

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

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

Defendants.

ORDER DENYING DEFENDANTS LAWRENCE E. RICHTER, JR. AND RICHTER & HALLER, LLC'S MOTIONS TO RECONSIDER, ALTER, OR AMEND AND FOR A PROTECTIVE ORDER PURSUANT TO SCRCP 26(C)

FILED
2011 JUL 13 AM 11:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before this Court upon Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC's Motion to Reconsider, Alter or Amend this Court's Order dated June 27, 2011, and Motion for a Protective Order Staying All Discovery until the prior motion is heard.

STANDARD OF REVIEW

Power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment. Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992). A Rule 59(e) motion is not only the proper vehicle to request a court to alter or amend a judgment, but also to seek reconsideration of issues and arguments previously presented. Elam v. South Carolina Dept. of Transp., 361 S.E.2d 772 (S.C. 2004). It is well established that a Rule 59(e) motion can be successful in only three situations: (1) to accommodate an intervening change in controlling law;

(2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Zinkand v. Brown, 478 F.3d 634 (4th Cir. 2007).

I have thoroughly considered the Defendants' Motion, supporting and opposing material and arguments, and based on same deny Defendants' Motion to Reconsider, Alter or Amend Judgment. Having ruled on the Motion to Reconsider, I find that discovery should proceed and therefore, deny Defendants' Motion for a Protective Order.

IT IS THEREFORE ORDERED that Defendants' Motion to Reconsider, Alter or Amend this Court's June 27 Order and Defendants' Motion for a Protective Order are **DENIED**.

AND IT IS SO ORDERED.

Roger M. Young
Presiding Judge

7/12, 2011

Charleston, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

John Doe 2 and Jane Doe 4,

Plaintiffs,

v.

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

Defendants.

CASE NO.: 2010-CP-10-5520

FILED
2012 JUL 17 PM 12: 32
JULIE J. ARMSTRONG
CLERK OF COURT
BY

John Doe 10,

Plaintiffs,

v.

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

Defendants.

CASE NO.: 2010-CP-10-7233

AMENDED CONSOLIDATED CONSENT SCHEDULING ORDER

1 of 6

The Court has previously entered a Consolidated Consent Scheduling Order consolidating the above-captioned matters for discovery setting deadlines for discovery and trial. It appears to the Court that the Diocesan Defendants have petitioned the Supreme Court of South Carolina for a writ of certiorari in Case No. 2010-CP-10-5520 and that the Supreme Court has not yet ruled upon that petition. The parties now request that the Court enter an Amended Consolidated Consent Scheduling Order staying all discovery in these case until remittitur is issued by the Supreme Court in Case No. 2010-CP-10-5520. I find that the parties' request is reasonable and proper under the circumstances and enter the following Order in response to their request:

1. All discovery in the above-captioned cases that have been consolidated for discovery is stayed until such time as remittitur is issued by the Supreme Court of South Carolina in Case No. 2010-CP-10-5520.

2. The Defendants shall respond to the written discovery previously propounded by the Plaintiffs in Case No. 2010-CP-10-5520 no later than 45 days after the Supreme Court issues a remittitur in Case No. 2010-CP-10-5520.

3. The Plaintiffs shall disclose the names and addresses of any expert witnesses no later than 75 days after the Supreme Court issues a remittitur in Case No. 2010-CP-10-5520.

4. If the expert has produced a written report, the report shall be furnished to the Defendants at the same time as the experts' names are disclosed.

5. The Defendants shall disclose the names and addresses of any expert witnesses no later than 120 days after the Supreme Court issues a remittitur in Case No. 2010-CP-10-5520.

6. If the expert has produced a written report, the report shall be furnished to the Plaintiffs at the same time as the experts' names are disclosed.

2016

R. App. 000127

7. Each party shall be responsible for the costs of their own experts.

8. Discovery shall be completed no later than nine (9) months after the Supreme Court issues a remittitur in Case No. 2010-CP-10-5520. The discovery deadline may only be extended by Order of this Court or the written consent of all parties.

9. Dispositive motions shall be filed no later than 30 days after the discovery deadline.

10. Mediation shall be conducted in these cases no later than 45 days after the discovery deadline.

11. The cases shall not be placed on the jury trial roster before 90 days after the discovery deadline.

AND IT IS SO ORDERED.

Deadra L. Jefferson
Chief Judge for Administrative Purposes
Tenth Judicial Circuit

July 13, 2012

WE REQUEST AND CONSENT TO THIS ORDER

Gregg Meyers
Jeff Anderson & Associates, PA
1 Poston Road, Suite 110
Charleston, SC 29407
(843) 556-1025
Attorney for the Plaintiffs

A. Peter Shahid, Jr.
Shahid Law Office, LLC
P. O. Box 591
Charleston, SC 29402
(843) 853-4500
Attorneys for the Diocesan Defendants

Susan Taylor Wall
McNair Law Firm, PA
PO Box 1431
Charleston, SC 29402
(843) 723-7831
Attorney for David K. Haller

James L. Bruner
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for the Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC

WE REQUEST AND CONSENT TO THIS ORDER

Gregg Meyers
Jeff Anderson & Associates, PA
1 Poston Road, Suite 110
Charleston, SC 29407
(843) 556-1025
Attorney for the Plaintiffs

A. Peter Shahid, Jr.
Shahid Law Office, LLC
P. O. Box 591
Charleston, SC 29402
(843) 853-4500
Attorneys for the Diocesan Defendants

Susan Taylor Wall
McNair Law Firm, PA
PO Box 1431
Charleston, SC 29402
(843) 723-7831
Attorney for David K. Haller

James L. Bruner
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for the Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC

5 of 6

WE REQUEST AND CONSENT TO THIS ORDER

Gregg Meyers
Jeff Anderson & Associates, PA
1 Poston Road, Suite 110
Charleston, SC 29407
(843) 556-1025
Attorney for the Plaintiffs

A. Peter Shahid, Jr.
Shahid Law Office, LLC
P. O. Box 591
Charleston, SC 29402
(843) 853-4500
Attorneys for the Diocesan Defendants

Susan Taylor Wall
McNair Law Firm, PA
PO Box 1431
Charleston, SC 29402
(843) 723-7831
Attorney for David K. Haller

James L. Bruner
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for the Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC

R. App. 000131

CLERK OF COURT
GREENVILLE, SC
PAUL B. WICKENSIMER
2013 JUN 20 P 4:38

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	
John Doe 193, Plaintiff,	Case No. 2013-CP-23-1843
v.	
The Bishop of Charleston, a Corporation Sole; Robert Gugliemone, The Bishop of Charleston, in his official capacity; Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his official capacity; Robert J. Baker, former Bishop of Charleston, in his official capacity; Lawrence E. Richter, Jr.; David K. Haller; and Richter and Haller, LLC, Defendants.	**CONSENT ORDER CHANGING VENUE TO CHARLESTON COUNTY**

The Diocesan Defendants have moved to change venue to Charleston County, South Carolina. It appears to the Court that the Plaintiff and the other defendants, through their undersigned counsel, have consented to that motion.

NOW, THEREFORE, UPON MOTION of the Diocesan Defendants and with the consent of the other parties in this matter, **IT IS ORDERED** that the above-captioned matter be transferred to Charleston County, South Carolina. The Clerk of Court is directed to forward the case file in this matter to the Clerk of Court for Charleston County forthwith.

AND IT IS SO ORDERED.

Presiding Judge
Thirteenth Judicial Circuit

June 16, 2013

I MOVE FOR THIS ORDER:

A. Peter Shahid, Jr.
by J. D. Bruner, with permission

A. Peter Shahid, Jr.
Shahid Law Office, LLC
P. O. Box 591
Charleston, SC 29402
Attorneys for the Diocesan Defendants

WE CONSENT TO THIS ORDER:

Gregg Meyers
by J. D. Bruner, with permission

Gregg Meyers
Jeff Anderson & Associates, P.A.
1 Poston Road, Suite 110
Charleston, SC 29407
Attorney for the Plaintiff

James D. Bruner

James L. Bruner
Bruner Powell Wall & Mullins, LLC
P. O. Box 61110
Columbia, SC 29260
Attorneys for Lawrence E. Richter, Jr. and Richter & Haller, LLC

Susan Taylor Wall
by J. D. Bruner, with permission

Susan Taylor Wall
McNair Law Firm
P. O. Box 1431
Charleston, SC 29402
Attorneys for David K. Haller

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 **CP-**10-3733

John Doe 193,
PLAINTIFF(S)

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

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

FILED
2014 JAN 21 PM 4:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY

DISPOSITION TYPE (CHECK ONE)

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

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the Court on November 21, 2013, on Defendant David K. Haller's Motion to Dismiss and Defendants Lawrence E. Richter's and Richter and Haller, LLC's Motion to Dismiss. It is hereby ORDERED that: (1) Defendant David K. Haller's Motion to Dismiss Plaintiff's claim for professional negligence is hereby GRANTED; (2) Defendants Lawrence E. Richter's and Richter and Haller, LLC's Motion to Dismiss Plaintiff's claim for professional negligence is hereby GRANTED; (3) Defendant David K. Haller's Motion to Dismiss Plaintiff's causes of action for conspiracy, breach of fiduciary duty, and unfair and deceptive trade practices is hereby DENIED; and (4) Defendants Lawrence E. Richter's and Richter and Haller, LLC's Motion to Dismiss Plaintiff's causes of action for conspiracy, breach of fiduciary duty, and unfair and deceptive trade practices is hereby DENIED.

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge	2151 Judge Code	1/16/14 Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JOHN DOE 193, Plaintiff, vs. THE BISHOP OF CHARLESTON, a Corporation Sole; ROBERT GUGLIEMONE, The Bishop Of Charleston, in His Official Capacity; REV. MONSIGNOR MARTIN LAUGHLIN, Former Administrator 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.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2013-CP-10-03733 **ORDER**

FILED
2014 JAN 22 AM 9:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER CAME BEFORE THE COURT on November 21, 2013, for a hearing on Defendant David K. Haller's Motion to Dismiss filed on May 24, 2013, and Defendants Lawrence E. Richter and Richter and Haller, LLC's Motion to Dismiss filed on June 3, 2013 (collectively, "Richter Defendants"). Both Motions to Dismiss claim (1) the expert affidavit incorporated into the Complaint pursuant to South Carolina Code Section 15-36-100(B) is defective and (2) the Complaint fails to state a claim as to the Richter Defendants. Present at the hearing were: Gregg Meyers, Esquire, for Plaintiff John Doe 193; Susan Taylor Wall, Esquire, for Defendant David K. Haller; James L. Bruner, Esquire, for Defendants Lawrence E. Richter, Jr. and Richter and Haller, LLC; and Peter Shahid, Esquire, for Defendants The Bishop of Charleston, a Corporation Sole, Robert Gugliemone, The Bishop of the Diocese of Charleston, in

his Official Capacity, Rev. Monsignor Martin Laughlin, Former Administrator of the Diocese of Charleston, and Robert J. Baker, Former Bishop of Charleston, in his Official Capacity (collectively, "Diocese Defendants").

FINDINGS OF FACT

This is a legal malpractice action arising out of a class action settlement that was approved by Final Order of the class action court. The Richter Defendants filed the underlying class action on behalf of victims of childhood sexual abuse allegedly committed by priests of the Roman Catholic Diocese of Charleston ("Diocese"). The parties settled the class action, and after a fairness hearing, the settlement was approved.

In this case, Plaintiff alleges that, as a child, he was the victim of sexual abuse perpetrated by a priest employed with the Diocese and that his memory of the abuse was repressed until June 2010. Plaintiff claims that the Diocese is liable to him for the sexual abuse committed by its priest. Plaintiff further alleges that the Richter Defendants are liable to him because, in settling the underlying class action, the Richter Defendants failed to carve out of the class definition an exception for "any person who had no recollection of his childhood sexual abuse by any person affiliated with the Diocese Defendants."[1] Compl. ¶ 38. Plaintiff claims the Richter Defendants' representation in the class action was inadequate and failed to meet the standard of care applicable to an attorney handling a class action case. Compl. ¶ 39. Finally, Plaintiff alleges that if he is not precluded by the class action settlement from bringing claims against the Diocese Defendants, then the causes of action against the Richter Defendants are irrelevant because Plaintiff can make his claims against the Diocese Defendants. Compl. ¶ 58.

[1] Plaintiff has asserted the following causes of action against the Richter Defendants: civil conspiracy, professional negligence, breach of fiduciary duty, and unfair and deceptive trade practices.

LEGAL STANDARD

A complaint should be dismissed pursuant to the South Carolina Rules of Civil Procedure if it "fails to state facts sufficient to constitute a cause of action." SCRCP Rule 12(b)(6). In construing a motion to dismiss, an affidavit attached to a complaint is incorporated into the pleadings. *See* Rule 10(c), SCRCP. A Rule 12(b)(6) motion "must be based solely upon the allegations set forth on the face of the complaint." *Jarrell v. Petoseed Co., Inc.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct.App. 1998). For the purposes of ruling on a motion to dismiss, courts "must presume all well-pled facts to be true." *Gressette v. South Carolina Elec. & Gas Co.*, 370 S.C. 377, 378-79, 635 S.E.2d 538 (2006). "A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602–03 (1995). "The question is whether in the light most favorable to the plaintiff, and with every doubt resolved on his behalf, the complaint states any valid claim for relief. A complaint should not be dismissed merely because the trial court doubts the complainant will prevail in the action." *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987) (citing 5 C. Wright & A. Miller, Federal Practice and Procedure § 1357 (1969)).

CONCLUSIONS OF LAW

I. Plaintiff's expert affidavit fails to meet the requirements of South Carolina Code Section 15-36-100.

The Richter Defendants claim that Plaintiff's expert affidavit fails to satisfy the requirements of South Carolina Code Section 15-36-100(B) because the affidavit is a copy of an affidavit that was prepared for a different lawsuit which did not involve a repressed memory plaintiff. Under Section 15-36-100(B), in an action alleging professional negligence against an attorney, "the plaintiff must file as part of the complaint an affidavit of an expert witness which

must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." As such, Section 15–36–100(B) "requires the plaintiff to craft a viable complaint supported by the sworn testimony of a qualified expert witness." *Ranucci v. Crain*, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct.App. 2012). "Because an affidavit filed pursuant to this Section is 'part of the complaint,' it is a pleading for the purpose of the circuit court's evaluation of motions and the merits of the plaintiff's case." *Id.* "Section 15-36-100(B) requires that the expert render an opinion only as to a breach of the standard duty of care." *Grier v. AMISUB of South Carolina, Inc.*, 397 S.C. 532, 537-38, 725 S.E.2d 693, 696-97 (2012). If a plaintiff files a defective affidavit, the complaint is subject to dismissal for failure to state a claim. S.C. Code Ann. § 15-36-100(E). A plaintiff may cure an allegedly defective affidavit by amendment within thirty days of service of a motion alleging the affidavit is defective. *Id.*

In this case, Plaintiff's Complaint is not supported by Plaintiff's expert witness, Michael Virzi, as required by Section 15-36-100(B) and *Ranucci*.[2] As such, Plaintiff has not complied with the requirements of Section 15-36-100(B). The gravamen of Plaintiff's Complaint against the Richter Defendants is that they failed to carve out an exception to the class definition for class members with repressed memories. *See* Compl. ¶¶ 2, 20-22, 27, 38-39, 49-50, 109-112, 115, 231, 233, 239, 248-250, 252, 254, 278, 283, 287, 295, 299, 307. Mr. Virzi's expert affidavit, which has been incorporated into Plaintiff's Complaint, was prepared in 2012, for a case captioned, *Jane Doe 12 v. The Bishop of Charleston, et al*, Case No. 2012-CP-10-5559. This affidavit has been filed in a number of actions for class members absent at the time of the

[2] On its face, Mr. Virzi's affidavit does not purport to support the allegations in the Complaint filed by the John Doe 193. *See* Virzi Aff. p. 1, ¶ 1 ("I am offering this affidavit, pursuant to S.C. Code Ann. § 15-36-100(b), as an expert witness on behalf of the plaintiff, Jane Doe 12, (hereinafter, "Plaintiff") . . .").

class action. However, Mr. Virzi's expert opinion in this affidavit is based upon class members that did not receive notice by virtue of their living outside the zone of publication. For example, Mr. Virzi opines:

> In a June 15, 2011, order Judge Harrington ruled that the July 13, 2007, hearing colloquy and the July 30, 2007, order referred only to the individuals who had previously come forward with abuse claims but not received actual notice, and not to *the broader group of class members, like Plaintiff, who lived outside the area of notice by publication*. Regardless of whether Defendants intended at the July 13 hearing to address *this broader group* or only the individuals who had come forward already, Defendants failed to protect the interests of *the broader group, of which Plaintiff is a member*, either by not addressing their rights at the hearing or by addressing them at the hearing but making no effort to secure their rights in a final order. Defendants then acted directly adverse to Plaintiff and *this group* when Defendant Haller filed a motion in 2012 to enforce the class-action settlement, purportedly on behalf of Plaintiff and others whom Haller knew to be represented by other counsel. Haller took a position in the motion that is directly adverse to *Plaintiff and others outside the notice zone* and advantageous to Defendants.

Virzi Aff. p. 4-5, ¶ 6 (emphasis provided).

Each time Mr. Virzi identifies Plaintiff as a member of the "broader group" or "the group," his opinion is referring to individuals who did not receive notice of the class action because they lived outside the area of notice by publication; it is not referring to individuals who failed to receive notice due to their repressed memories. *See, e.g.,* Virzi Aff. p. 5-6, ¶ 6 ("this reduction in notice favored Defendants' own interests to the detriment of all class members, but particularly Plaintiff and other class members outside the notice zone of South Carolina and neighboring cities"). Thus, reading the affidavit in the light most favorable to the Plaintiff, and assuming that Mr. Virzi is referring to John Doe 193 instead of Jane Doe 12 when using the term "Plaintiff," Mr. Virzi is referencing a plaintiff that failed to receive notice because he lived outside the zone of publication; not a plaintiff who failed to receive notice due to repressed memory.

Here, Plaintiff does not claim that he failed to receive notice of the class action because he lived outside the zone of publication.[3] Instead, Plaintiff's claim of professional negligence against the Richter Defendants is predicated upon Plaintiff's lack of notice due to his repressed memory. Compl. ¶¶ 231, 233, 239. Nowhere in Mr. Virzi's expert affidavit does he mention that he had considered claims by a plaintiff with repressed memory, that he had read the Complaint filed on behalf of the Plaintiff in this action, or that he is of the opinion that the Richter Defendants breached a standard duty of care owed to repressed memory plaintiffs. Further, Mr. Virzi did not opine as to the factual basis for each claim of professional negligence based on repressed memory plaintiffs. While Mr. Vizi's affidavit renders an opinion as to a breach of the standard duty of care owed to plaintiffs living outside the zone of publication, his affidavit fails to address a breach of the standard duty of care owed to plaintiffs with repressed memories, such as the Plaintiff in this case. Therefore, Mr. Virzi's affidavit fails to support Plaintiff's Complaint and is defective as to Plaintiff's professional negligence cause of action pursuant to Section 15-36-100(B).[4]

South Carolina Code Section 15-36-100(E) permits a plaintiff to cure defects in an expert affidavit by amendment within thirty (30) days of service of the motion alleging the affidavit is defective. Defendant Haller filed a Motion to Dismiss Plaintiff's professional negligence claim due to a defective expert affidavit on May 24, 2013. Defendants Richter and Richter and Haller, LLC filed a similar Motion to Dismiss on June 3, 2013.[5] Plaintiff did not file an amended affidavit within the thirty (30) day time period. Accordingly, the Richter Defendants' Motions to Dismiss Plaintiff's professional negligence claims are hereby granted.

---

[3] Indeed, Plaintiff alleges that he lived within the zone of publication. *See* Compl. ¶ 1.
[4] This Court provides no opinion as to the sufficiency of Plaintiff's expert affidavit in other cases.
[5] These motions were filed in Greenville County, before venue was transferred to Charleston County.

II. Plaintiff's causes of action for conspiracy, breach of fiduciary duty, and unfair and deceptive trade practices against the Richter Defendants state valid claims for relief.

Plaintiff's Complaint alleges that "if the Diocese agrees, or the court finds that Plaintiff is not precluded by the class action from bringing claims against the Diocese Defendants, . . ., then the causes of action against the Richter Defendants . . . are irrelevant because the Plaintiff can make his claim against the Diocese Defendants." Compl. ¶ 58. The Richter Defendants argue that Plaintiff's Complaint fails to state a claim because Plaintiff's causes of action against them are expressly contingent upon Plaintiff's claims against the Diocese Defendants being barred by the class action settlement. Accordingly, the Richter Defendants argue that each of those causes of action fail on the face of the Complaint when Plaintiff is not barred from bringing its claims against the Diocese Defendants. In reviewing a Rule 12(b)(6) motion to dismiss, all well-pled facts in a complaint must be accepted as true. *See Jarrell*, 331 S.C. at 209, 500 S.E.2d at 794; *Gressette*, 370 S.C. at 378-79, 635 S.E.2d at 538. Here, Plaintiff's Complaint alleges that he fits within the class action settlement's definition, but failed to receive notice of the settlement due to his repressed memory. Compl. ¶ 19. Therefore, for the purposes of these Motions to Dismiss, the Court must assume that Plaintiff, due to his repressed memory, is an absent class member.

In *Doe v. The Bishop of Charleston*, No. 2011-199886, 2014 WL 60341 at *4 (Jan. 8, 2014), the South Carolina Supreme Court explained:

> [A]bsent class members are entitled to due process before their claims are subject to the suit's *res judicata* effect. . . . Specifically, *before absent class members can be finally bound by the resolution of the class action suit, they are entitled to a limited review on the issues whether sufficient notice was given to putative class members and whether class members had adequate representation.*

(internal citations omitted) (emphasis added). In that case, the trial court found that the Plaintiffs, who were absent class members, were barred by the principles of *res judicata* from bringing their claims against the Diocese Defendants. *Id.* On appeal, the Plaintiffs argued they

were deprived of due process because the settlement either failed to provide sufficient notice or the named Plaintiff in the underlying class action failed to provide adequate representation to absent class members. *Id.* The Supreme Court held that such allegations would, if substantiated, entitle the Plaintiffs to a hearing on their underlying claims, so that dismissal on the pleadings was improper. *Id.* Thus, absent class members cannot be finally bound by a class action settlement until they receive a limited collateral review on whether the absent class members received sufficient notice and were adequately represented by the named plaintiff in the underlying class action.

In this case, it would be premature to dismiss the Plaintiff's claims against the Richter Defendants because the Court has not yet conducted a limited collateral review of whether the Plaintiff was given sufficient notice or whether Plaintiff was adequately represented by the named plaintiff in the underlying class action settlement proceedings. Pursuant to *Doe v. The Bishop of Charleston*, No. 2011-199886, 2014 WL 60341 (Jan. 8, 2014), if either of those allegations were true, Plaintiff would be entitled to a hearing on its claims against the Diocese Defendants, making Plaintiff's claims against the Richter Defendants irrelevant. However, because the Court has yet to conduct such collateral review, the Richter Defendants' Motions to Dismiss Plaintiff's causes of action for conspiracy, breach of fiduciary duty, and unfair and deceptive trade practices must be denied.

CONCLUSION

IT IS HEREBY ORDERED THAT:

(1) Defendant David K. Haller's Motion to Dismiss Plaintiff's claim for professional negligence is hereby **GRANTED**;

(2) Defendants Lawrence E. Richter's and Richter and Haller, LLC's Motion to Dismiss Plaintiff's claim for professional negligence is hereby **GRANTED**;

(3) Defendant David K. Haller's Motion to Dismiss Plaintiff's causes of action for conspiracy, breach of fiduciary duty, and unfair and deceptive trade practices is hereby **DENIED**; and

(4) Defendants Lawrence E. Richter's and Richter and Haller, LLC's Motion to Dismiss Plaintiff's causes of action for conspiracy, breach of fiduciary duty, and unfair and deceptive trade practices is hereby **DENIED**.

AND IT IS SO ORDERED!

The Honorable Kristi Lea Harrington
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.
January 16, 2014

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-**CP**-10-3733

John Doe 193,	The Bishop of Charleston, a Corporation Sole, et al,
PLAINTIFF(S)	DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2014 MAR 27 AM 9:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the Court on Plaintiff's Motion to Alter or Amend and Defendants Lawrence E. Richter, Jr., Richter & Haller, LLC and David K. Haller's Joint Motion to Alter or Amend the Court's Order filed January 22, 2014. The Court held a status conference on March 19, 2014, at which time the Court heard oral argument on the Motions. The Court, after hearing Counsel's argument and reviewing the submitted memoranda, hereby DENIES Plaintiff's Motion to Alter or Amend and DENIES Defendants Lawrence E. Richter, Jr., Richter & Haller, LLC and David K. Haller's Joint Motion to Alter or Amend.

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge	2151 Judge Code	3/21/14 Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter:

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

JOHN DOE 2 AND JANE DOE 4,)
) CASE NO.: 2010-CP-10-5520
PLAINTIFFS,)
)
V.)
)
THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; RICHTER & HALLER, LLC,)
)
DEFENDANTS.)

FILED
2014 JUL 15 AM 8:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY

JOHN DOE 10,)
) CASE NO.: 2010-CP-10-7233
PLAINTIFF,)
)
V.)
)
THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; RICHTER & HALLER, LLC,)
)
DEFENDANTS.)

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

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

AMENDED CONSOLIDATED CONSENT SCHEDULING ORDER

These matters are before the Court upon the parties' joint request for the Court to consolidate these cases for discovery purposes and to enter an Amended Consolidated Consent Scheduling Order. I find that the parties' request is reasonable and proper under the circumstances and enter the following Order in response to their request:

1. The above-captioned matters are hereby consolidated for purposes of discovery. Any discovery taken in one matter shall be considered to have also been taken in the other matters whether the discovery sets forth the captions of all cases or just one case.
2. Depositions of any witness or party may be taken only once in these cases and shall be considered as taken in all cases.
3. Mediation sessions shall be conducted in these cases no later than November 1, 2014.
4. Discovery shall be completed no later than February 15, 2015.
5. Dispositive motions shall be filed no later than March 15, 2015.
6. The cases shall not be placed on the jury trial roster before May 15, 2015. No individual case will be called to trial in consecutive terms of court.
7. These deadlines may be extended by order of this court for good cause shown or by the consent of all parties.

AND IT IS SO ORDERED.

The Honorable J.C Nicholson, Jr.

7/14, 2014.

WE REQUEST AND CONSENT TO THIS ORDER:

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

Attorney for Plaintiffs

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

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

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

Attorney for Diocesan Defendants

Susan Taylor Wall, Esq.
Henry W. Frampton, IV, Esq.
McNair Law Firm, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Attorneys for Defendant David K. Haller

WE REQUEST AND CONSENT TO THIS ORDER:

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

Attorney for Plaintiffs

James L. Bruner
James L. Bruner, Esq. by SWall with permission
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Columbia, SC 29260

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

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

Attorney for Diocesan Defendants

Susan Taylor Wall, Esq.
Henry W. Frampton, IV, Esq.
McNair Law Firm, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Attorneys for Defendant David K. Haller

The Supreme Court of South Carolina

John Doe #53, John Doe 66,
John Doe 66A, John Doe 67,
Jane Doe 1 and Jane Doe 2
and Rachel Roe individually and
as representatives of a class of
people similarly situated, Plaintiffs,

v.

The Bishop of Charleston, a
Corporation Sole, and The Bishop
of the Diocese of Charleston,
in his official capacity, Defendants.

Dorchester County
2006-CP-18-01310
2006-CP-18-01311
2006-CP-18-01636

ORDER

IT IS ORDERED that the Honorable J. C. Nicholson, Jr., retired Circuit Court Judge of the Tenth Judicial Circuit, be vested with exclusive jurisdiction to hear and dispose of the above case. Judge Nicholson shall decide all matters pertaining to this case, and pursuant to this assignment shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled. Pursuant to this assignment, he is to have and exercise all powers and duties appertaining to a Circuit Judge of the First Judicial Circuit while presiding over this matter.

The previous order dated April 30, 2013 assigning this case to the late Honorable Ernest J. Kinard, Jr. is hereby rescinded.

Jean Hoefer Toal
Chief Justice

June 12, 2015
Columbia, South Carolina

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

JOHN DOE 2 AND JANE DOE 4,

PLAINTIFFS,

V.

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

DEFENDANTS.

CASE NO.: 2010-CP-10-5520

ORDER BIFURCATING TRIALS

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

JOHN DOE 10,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2010-CP-10-7233

JANE DOE 11,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2012-CP-10-5559

JOHN DOE 193,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2013-CP-10-3733

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND IT IS SO ORDERED.

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

October 25, 2016

Charleston, South Carolina

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

JOHN DOE 2 AND JANE DOE 4,

PLAINTIFFS,

V.

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

DEFENDANTS.

CASE NO.: 2010-CP-10-5520

ORDER ON LIMITED COLLATERAL REVIEW

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

JOHN DOE 10,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2010-CP-10-7233

JANE DOE 11,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2012-CP-10-5559

JOHN DOE 193,

PLAINTIFF,

V.

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

DEFENDANTS.

CASE NO.: 2013-CP-10-3733

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

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

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

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

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

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

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

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

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

AND IT IS SO ORDERED.

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

October 25, 2016

Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
JOHN DOE 2 AND JANE DOE 4, PLAINTIFFS, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO.: 2010-CP-10-5520 **AMENDED ORDER BIFURCATING TRIALS**
JOHN DOE 10, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO.: 2010-CP-10-7233

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

1339395v1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND IT IS SO ORDERED.

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

May 3, 2017
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
JOHN DOE 2 AND JANE DOE 4, PLAINTIFFS, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO.: 2010-CP-10-5520 **AMENDED ORDER ON LIMITED COLLATERAL REVIEW**
JOHN DOE 10, PLAINTIFF, V. THE BISHOP OF CHARLESTON, A CORPORATION SOLE; ROBERT GUGLIEMONE, THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J. BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K. HALLER; AND RICHTER & HALLER, LLC, DEFENDANTS.	CASE NO.: 2010-CP-10-7233

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

1339485v2

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

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

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

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

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

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

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

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

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

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

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

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

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

motion to alter or amend.

AND IT IS SO ORDERED.

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

May 3, 2017
Charleston, South Carolina

13-CP-10-3733

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

John Doe

Plaintiff,

v.

The Bishop of Charleston, a Corporation Sole, The Bishop of the Diocese of Charleston, in his official Capacity,

Defendants.

2009-CP-10-6694

Jane Doe 1

Plaintiff,

v.

The Bishop of Charleston, a Corporation Sole, The Bishop of the Diocese of Charleston, in his official Capacity,

Defendants.

2009-CP-10-8054

Jane Doe 2

Plaintiff,

v.

The Bishop of Charleston, a Corporation Sole, The Bishop of the Diocese of Charleston, in his official Capacity,

Defendants.

2009-CP-10-8055

Jane Doe 3

Plaintiff,

v.

The Bishop of Charleston, a Corporation Sole, The Bishop of the Diocese of Charleston, in his official Capacity,

Defendants.

2009-CP-10-8056

FILED
2017 JUN -2 PM 1:17
JULIE J. ARNOLD
CLERK OF COURT
BY

R. App. 000181

John Doe 2 and Jane Doe 4

Plaintiff,

v.

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

Defendants.

2010-CP-10-5520

Jane Doe 11

Plaintiff,

v.

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

Defendants.

2012-CP-10-5559

John Doe 193

Plaintiff,

v.

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

2013-CP-10-3733

capacity; Lawrence E. Richter, Jr., David K. Haller, and Richter and Haller, LLC,

Defendants.

Father Doe 194

Plaintiff,

v.

2013-CP-10-4175

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

Defendants.

John Doe 194

Plaintiff,

v.

2013-CP-10-4176

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

Defendants.

John Doe 230

Plaintiff,

v.

2014-CP-10-2130

The Bishop of Charleston, a Corporation Sole, The Bishop of the Diocese of Charleston, in his official Capacity,

Defendants.

John Doe 240

Plaintiff,

v. **2015-CP-10-3288**

The Bishop of Charleston, a Corporation Sole, The Bishop of the Diocese of Charleston, in his official Capacity,

Defendants.

Jane Doe 240

Plaintiff,

v. **2015-CP-10-3287**

The Bishop of Charleston, a Corporation Sole, The Bishop of the Diocese of Charleston, in his official Capacity,

Defendants.

John Doe 245 and Father Doe 245

Plaintiff,

v. **2015-CP-10-5486**

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

Defendants.

John Doe 297

Plaintiff,

v. **2016-CP-10-1632**

The Bishop of Charleston, a Corporation Sole, Robert Guglielmone, The Bishop of

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

This Court has exclusive jurisdiction over the above captioned matters pursuant to Chief Justice Toal's Order filed on June 12, 2015. The Plaintiffs in these consolidated actions have asserted claims against the Bishop of Charleston and related Defendants based on alleged childhood sexual abuse by agents of the Diocese of Charleston. Several of the consolidated actions also contain claims against class counsel "Lawyer Defendants" in the underlying 2007 class action proceedings in Dorchester County.

On March 21, 2017, Attorneys Richard Dukes and Brian J. Kern filed a notice of appearance in these cases. The last trial was set for May 15, 2017. Just before the trial, the Diocesan Defendants sought to appeal interlocutory Orders and filed for an Emergency Petition for Supersedeas to Stay Trial. They petitioned the Court of Appeals for a stay in six (6) cases, although only one was set for trial. Mr. Dukes represented to the Court of Appeals in his Petition that this Court's previous Scheduling Order was issued both *sua sponte* and *ex parte*. This Court finds those two characterizations to be mutually exclusive. The Order was issued *sua sponte*. It was not issued *ex parte*. An appeal does not trigger an automatic stay in every situation. Mr. Dukes did not petition this Court prior to seeking a Writ from the Court of Appeals. His decision not to follow the rule was acknowledged in a footnote, which he supported by suggesting again, rather disingenuously, that his Petition pertained to an *ex parte*

decision or order, which it did not.

The Court of Appeals dismissed the appeal in the six (6) cases pursuant to Section 14-3-330 of the South Carolina Code (2017). The case that was set for trial in May settled on the eve of trial. Because it was the only case on the roster, there was a delay in beginning the next trial. This Order seeks to prevent such a delay in the future trials by adding more than one case to the roster. The cases this Court intends to set for trial have been pending for nearly a decade. If another appeal is filed between now and the trial date for the sake of further delay, the Court will proceed with the trial(s) pursuant to Rule 205, SCACR. This Court will not stay proceedings or delay trial in this matter absent a Writ of Supersedeas pursuant to Rule 241, SCACR. If there is a legitimate reason for a party to request a Writ of Supersedeas, the party seeking a writ must first file a motion with this Court.

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

1) On June 28 and 29, 2017 the Court will hear all pending motions in these cases. Motions pertaining to cases involving the Lawyer Defendants will be heard on the 28th. Motions pertaining to cases that do not involve the Lawyer Defendants will be heard on the 29th.

2) The Clerk of Court shall mail this Court's Juror Questionnaire and summons four hundred and fifty (450) jurors to appear on July 20, 2017.

3) Pretrial motions, if any, shall be filed by 12 PM on July 12, 2017.

4) Pretrial motions will be heard on July 17, 2017. This Order shall serve as notice of the hearings.

5) Beginning July 20, 2017, the Court will conduct group voir dire and individual voir dire.

6) Jury selection and strikes will take place as individual jurors are qualified.

7) Three (3) alternate jurors will be selected in these cases.

8) Hard copies of pretrial briefs, proposed voir dire questions, proposed jury charges, witness lists, and exhibit lists shall be delivered to the Court by 12 PM on July 19, 2017.

9) Motions in Limine, if any, shall be filed with a cover letter from the lawyers containing a statement that they have attempted to resolve admissibility issues before filing the motions.

10) Trial will begin on July 24, 2017. If a case is settled, the lawyers shall be prepared to begin trial for the next case on the roster.

11) If Attorney Dukes utilizes his protection to attend a conference, trial will alternatively begin on June 31, 2017.

12) The following cases shall be placed on the active trial roster to be heard the week of July 24, 2017 in this order:

a. 2009-CP-10-6694

b. 2009-CP-10-8054

c. 2009-CP-10-8055

d. 2009-CP-10-8056

e. 2010-CP-10-5520

f. 2012-CP-10-5559

g. 2013-CP-10-4176

h. 2013-CP-10-4175

i. 2013-CP-10-3733

13) The following cases were filed more recently and will not be placed on the active trial roster until further Order of the Court to allow for a discovery extension:

a. 2015-CP-10-3287

b. 2015-CP-10-3288

c. 2015-CP-10-5486

d. 2016-CP-10-1632.

THEREFORE, IT IS ORDERED that the above schedule shall be followed.

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

June 2, 2017
Charleston, SC

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-5520

John Doe 2 and Jane Doe 4,

v.

Plaintiff,

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

Defendants.

ORDER GRANTING DIOCESE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

FILED
2017 AUG 10 PM 3:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court on a Motion for Summary Judgment filed by Defendants 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 (the "Diocese Defendants") regarding the sole remaining claims by Plaintiff – that the Diocese Defendants engaged in a civil conspiracy with the Lawyer Defendants (Third Cause of Action). All other claims against the Diocese Defendants were dismissed by Order of Judge Roger Young on June 27, 2011. During oral argument on July 20, 2017, Plaintiff's counsel notified the Court that Plaintiffs were abandoning their cause of action for civil conspiracy as to all defendants in all cases.

For that reason, the Diocese Defendants' Motion for Summary Judgment is hereby **GRANTED** and Plaintiffs' claims against the Diocese Defendants for Civil Conspiracy is **DISMISSED with PREJUDICE.** These being the last claims remaining against the Diocese

Defendants, 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 are hereby **DISMISSED** from this case entirely.

Date 8/8/17

Hon. J.C. Nicholson
Circuit Court Judge

TPGL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2012-CP-10-5559

Jane Doe 11,

v.

Plaintiff,

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

Defendants.

ORDER GRANTING DIOCESE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

FILED
2017 AUG 10 PM 3:4[illegible]
JANE L. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court on a Motion for Summary Judgment filed by Defendants 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 (the "Diocese Defendants") regarding the sole remaining claims by Plaintiff – that the Diocese Defendants engaged in a civil conspiracy with the Lawyer Defendants (First Cause of Action) and that the Diocese Defendants aided and abetted the Lawyer Defendants' breach of fiduciary duty (Fifth Cause of Action). During oral argument on July 20, 2017, Plaintiff's counsel notified the Court that Plaintiff was abandoning her cause of action for civil conspiracy as to all defendants in all cases. All that remains then, is the claim that the Diocese Defendants aided and abetted the Lawyer Defendants' breach of fiduciary duty. Having considered the Diocese

Defendants' Motion and Memorandum of Law and having heard oral arguments from all counsel on July 20, 2017, the Court finds that no genuine issues of material fact exist and that Defendants are entitled to judgment as a matter of law.

STANDARD FOR SUMMARY JUDGMENT

> Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings.

NationsBank v. Scott Farm, 465 S.E.2d 98, 100 (Ct. App. 1995) (internal citations omitted). "[A] court cannot ignore facts unfavorable to th[e nonmoving] party and must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." *Stewart v. State Farm Mut. Auto Ins. Co.*, 533 S.E.2d 597, 600 (Ct. App. 2000).

> It is not sufficient that one create an inference that is not reasonable or an issue of fact that is not genuine. The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine [or material].

Priest v. Brown, 396 S.E.2d 638 (Ct. App. 1990) (citations omitted). "'[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *See Logan v. Cherokee Landscaping & Grading Co.*, 698 S.E.2d 879, 882 n.4 (Ct. App. 2010) (citation omitted).

Plaintiff's Claim for Aiding and Abetting Breach of Fiduciary Duty

At oral argument and on brief, Plaintiff clarified that his aiding and abetting related solely to the Lawyer Defendants' original proposal to advertise the class action settlement nationally that later was changed to publication notice in 11 newspapers and the Diocese's own publication. No class had been certified at the time the Lawyer Defendants made their original proposal for nationwide notice, and the Court had not yet even considered whether class certification was appropriate. The Court further had not yet approved the class action settlement agreement – which itself had not been finalized and agreed upon by the Diocese and the Lawyer Defendants.

It has been long-settled in this State that a cause of action for aiding and abetting breach of fiduciary duty requires that plaintiff *prove* (1) a breach of fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages. "The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach." *Future Group II v. Nationsbank*, 478 S.E.2d 45, 50 (S.C. 1996) (internal citations omitted). Where the defendant owes no fiduciary duty to the plaintiff as a matter of law, then the Diocese Defendants cannot knowingly participate in a breach of that duty. *Mason v. Mason*, 770 S.E.2d 405, 422 (S.C. 2015).

In support of their Motion for Summary Judgment, the Diocese Defendants submitted deposition testimony from former Bishop Robert Baker, who as Bishop of Charleston agreed to the class action settlement on behalf of the Diocese. Bishop Baker's testimony was that he wanted as broad a class notice as possible. The class notice was, in fact, approved by and ordered by the Court. The notice program was the subject of an objection filed by clients of Mr. Meyers, in which his clients specifically requested that the Court require nationwide publication.

There is no evidence whatsoever that the Lawyer Defendants failed to carry out the notice program ordered by Judge Goodstein. It is clear that the Diocese Defendants complied in every respect with the class action settlement agreement, and that the Lawyer Defendants followed the

Court's Order Approving Class Action Settlement precisely. In short, each and every action by the parties to the class action settlement was either directly ordered by Judge Goodstein or was approved by her.

Plaintiff has submitted nothing more than argument – Plaintiff has not come forward with even the merest scintilla of evidence establishing a genuine issue of material fact regarding any of the essential elements of this claim and, failing any admissible evidence to support the claim, the Diocese Defendants are entitled to summary judgment.

CONCLUSION

For that reason, the Diocese Defendants' Motion for Summary Judgment is hereby **GRANTED** and Plaintiffs' claims against the Diocese Defendants for Civil Conspiracy and Aiding and Abetting Breach of Fiduciary Duty are **DISMISSED with PREJUDICE.** These being the last claims remaining against the Diocese Defendants, 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 are hereby **DISMISSED** from this case entirely.

Date 8/8/17

Hon. J.C. Nicholson
Circuit Court Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2013-CP-10-3733

John Doe 193,

v.

Plaintiff,

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

Defendants.

ORDER GRANTING DIOCESE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

FILED
2017 AUG 10 PM 3:48
JULIE ARMSTRONG
CLERK OF COURT
BY

gun

This matter came before the Court on a Motion for Summary Judgment filed by Defendants 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 (the "Diocese Defendants") regarding the sole remaining claims by Plaintiff – that the Diocese Defendants engaged in a civil conspiracy with the Lawyer Defendants (Third Cause of Action) and that the Diocese Defendants aided and abetted the Lawyer Defendants' breach of fiduciary duty (Sixth Cause of Action). During oral argument on July 20, 2017, Plaintiff's counsel notified the Court that Plaintiff was abandoning his cause of action for civil conspiracy as to all defendants in all cases. All that remains then, is the claim that the Diocese Defendants aided and abetted the Lawyer Defendants' breach of fiduciary duty. Having considered the Diocese

Defendants' Motion and Memorandum of Law and having heard oral arguments from all counsel on July 20, 2017, the Court finds that no genuine issues of material fact exist and that Defendants are entitled to judgment as a matter of law.

STANDARD FOR SUMMARY JUDGMENT

> Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings.

NationsBank v. Scott Farm, 465 S.E.2d 98, 100 (Ct. App. 1995) (internal citations omitted). "[A] court cannot ignore facts unfavorable to th[e nonmoving] party and must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." *Stewart v. State Farm Mut. Auto Ins. Co.*, 533 S.E.2d 597, 600 (Ct. App. 2000).

> It is not sufficient that one create an inference that is not reasonable or an issue of fact that is not genuine. The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine [or material].

Priest v. Brown, 396 S.E.2d 638 (Ct. App. 1990) (citations omitted). "'[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *See Logan v. Cherokee Landscaping & Grading Co.*, 698 S.E.2d 879, 882 n.4 (Ct. App. 2010) (citation omitted).

Plaintiff's Claim for Aiding and Abetting Breach of Fiduciary Duty

At oral argument and on brief, Plaintiff clarified that his aiding and abetting related solely to the Lawyer Defendants' original proposal to advertise the class action settlement nationally that later was changed to publication notice in 11 newspapers and the Diocese's own publication. No class had been certified at the time the Lawyer Defendants made their original proposal for nationwide notice, and the Court had not yet even considered whether class certification was appropriate. The Court further had not yet approved the class action settlement agreement – which itself had not been finalized and agreed upon by the Diocese and the Lawyer Defendants.

It has been long-settled in this State that a cause of action for aiding and abetting breach of fiduciary duty requires that plaintiff *prove* (1) a breach of fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages. "The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach." *Future Group II v. Nationsbank*, 478 S.E.2d 45, 50 (S.C. 1996) (internal citations omitted). Where the defendant owes no fiduciary duty to the plaintiff as a matter of law, then the Diocese Defendants cannot knowingly participate in a breach of that duty. *Mason v. Mason*, 770 S.E.2d 405, 422 (S.C. 2015).

In support of their Motion for Summary Judgment, the Diocese Defendants submitted deposition testimony from former Bishop Robert Baker, who as Bishop of Charleston agreed to the class action settlement on behalf of the Diocese. Bishop Baker's testimony was that he wanted as broad a class notice as possible. The class notice was, in fact, approved by and ordered by the Court. The notice program was the subject of an objection filed by clients of Mr. Meyers, in which his clients specifically requested that the Court require nationwide publication.

There is no evidence whatsoever that the Lawyer Defendants failed to carry out the notice program ordered by Judge Goodstein. It is clear that the Diocese Defendants complied in every respect with the class action settlement agreement, and that the Lawyer Defendants followed the

Court's Order Approving Class Action Settlement precisely. In short, each and every action by the parties to the class action settlement was either directly ordered by Judge Goodstein or was approved by her.

Plaintiff has submitted nothing more than argument – Plaintiff has not come forward with even the merest scintilla of evidence establishing a genuine issue of material fact regarding any of the essential elements of this claim and, failing any admissible evidence to support the claim, the Diocese Defendants are entitled to summary judgment.

CONCLUSION

For that reason, the Diocese Defendants' Motion for Summary Judgment is hereby **GRANTED** and Plaintiffs' claims against the Diocese Defendants for Civil Conspiracy and Aiding and Abetting Breach of Fiduciary Duty are **DISMISSED with PREJUDICE.** These being the last claims remaining against the Diocese Defendants, 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 are hereby **DISMISSED** from this case entirely.

Date 6/6/17

Hon. J.C. Nicholson
Circuit Court Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2016-CP-10-1632

John Doe 297,

v.

Plaintiff,

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

Defendants.

ORDER GRANTING DIOCESE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

2017 AUG 10 PM 3:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY

gjw

This matter came before the Court on a Motion for Summary Judgment filed by Defendants 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 (the "Diocese Defendants") regarding the sole remaining claims by Plaintiff – that the Diocese Defendants engaged in a civil conspiracy with the Lawyer Defendants (Third Cause of Action) and that the Diocese Defendants aided and abetted the Lawyer Defendants' breach of fiduciary duty (Sixth Cause of Action). During oral argument on July 20, 2017, Plaintiff's counsel notified the Court that Plaintiff was abandoning his cause of action for civil conspiracy as to all defendants in all cases. All that remains then, is the claim that the Diocese Defendants aided and abetted the Lawyer Defendants' breach of fiduciary duty. Having considered the Diocese

Defendants' Motion and Memorandum of Law and having heard oral arguments from all counsel on July 20, 2017, the Court finds that no genuine issues of material fact exist and that Defendants are entitled to judgment as a matter of law.

STANDARD FOR SUMMARY JUDGMENT

> Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings.

NationsBank v. Scott Farm, 465 S.E.2d 98, 100 (Ct. App. 1995) (internal citations omitted). "[A] court cannot ignore facts unfavorable to th[e nonmoving] party and must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." *Stewart v. State Farm Mut. Auto Ins. Co.*, 533 S.E.2d 597, 600 (Ct. App. 2000).

> It is not sufficient that one create an inference that is not reasonable or an issue of fact that is not genuine. The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine [or material].

Priest v. Brown, 396 S.E.2d 638 (Ct. App. 1990) (citations omitted). "'[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *See Logan v. Cherokee Landscaping & Grading Co.*, 698 S.E.2d 879, 882 n.4 (Ct. App. 2010) (citation omitted).

Plaintiff's Claim for Aiding and Abetting Breach of Fiduciary Duty

At oral argument and on brief, Plaintiff clarified that his aiding and abetting related solely to the Lawyer Defendants' original proposal to advertise the class action settlement nationally that later was changed to publication notice in 11 newspapers and the Diocese's own publication. No class had been certified at the time the Lawyer Defendants made their original proposal for nationwide notice, and the Court had not yet even considered whether class certification was appropriate. The Court further had not yet approved the class action settlement agreement – which itself had not been finalized and agreed upon by the Diocese and the Lawyer Defendants.

It has been long-settled in this State that a cause of action for aiding and abetting breach of fiduciary duty requires that plaintiff *prove* (1) a breach of fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages. "The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach." *Future Group II v. Nationsbank*, 478 S.E.2d 45, 50 (S.C. 1996) (internal citations omitted). Where the defendant owes no fiduciary duty to the plaintiff as a matter of law, then the Diocese Defendants cannot knowingly participate in a breach of that duty. *Mason v. Mason*, 770 S.E.2d 405, 422 (S.C. 2015).

In support of their Motion for Summary Judgment, the Diocese Defendants submitted deposition testimony from former Bishop Robert Baker, who as Bishop of Charleston agreed to the class action settlement on behalf of the Diocese. Bishop Baker's testimony was that he wanted as broad a class notice as possible. The class notice was, in fact, approved by and ordered by the Court. The notice program was the subject of an objection filed by clients of Mr. Meyers, in which his clients specifically requested that the Court require nationwide publication.

There is no evidence whatsoever that the Lawyer Defendants failed to carry out the notice program ordered by Judge Goodstein. It is clear that the Diocese Defendants complied in every respect with the class action settlement agreement, and that the Lawyer Defendants followed the

Court's Order Approving Class Action Settlement precisely. In short, each and every action by the parties to the class action settlement was either directly ordered by Judge Goodstein or was approved by her.

Plaintiff has submitted nothing more than argument – Plaintiff has not come forward with even the merest scintilla of evidence establishing a genuine issue of material fact regarding any of the essential elements of this claim and, failing any admissible evidence to support the claim, the Diocese Defendants are entitled to summary judgment.

CONCLUSION

For that reason, the Diocese Defendants' Motion for Summary Judgment is hereby **GRANTED** and Plaintiffs' claims against the Diocese Defendants for Civil Conspiracy and Aiding and Abetting Breach of Fiduciary Duty are **DISMISSED with PREJUDICE.** These being the last claims remaining against the Diocese Defendants, 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 are hereby **DISMISSED** from this case entirely.

Date 8/8/19

Hon. J.C. Nicholson
Circuit Court Judge

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

FILED
2017 AUG 11 PM 2:39
JULIE J. ARMSTRONG
CLERK OF COURT

Father Doe 194, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	CASE NO.: 2013-CP-10-4175
John Doe 194, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	CASE NO.: 2013-CP-10-4176
John Doe 245 and Father Doe 245, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	CASE NO.: 2015-CP-10-5486
John Doe 297, Plaintiff, v. The Bishop of Charleston, et. al. Defendants.	CASE NO.: 2016-CP-10-1632

THESE MATTERS CAME BEFORE THE COURT on motions of the Defendants Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC ("the Lawyer Defendants") for summary judgment pursuant to Rule 56, SCRCP. The Lawyer Defendants filed an omnibus

motion for summary judgment in each case on the same grounds. The Lawyer Defendants also filed separate motions for summary judgment on additional grounds against Jane Doe 4 (Case No. 2010-CP-10-5520) and John Doe 193 (Case No. 2013-CP-10-3733). This Order will address the omnibus motion in each case as well as the motions for summary judgment against Jane Doe 4 and John Doe 193.[1]

BACKGROUND

The above-captioned matters consist of eight (8) separate cases filed between 2010 and 2016 on behalf of ten (10) different plaintiffs. Each case arises out of alleged sexual abuse by priests of the Diocese Defendants. Seven (7) of the plaintiffs are alleged victims of sexual abuse and three (3) are spouses or parents of alleged abuse victims. Nine (9) of the plaintiffs are non-residents of South Carolina and one (1) is a South Carolina resident who alleges he repressed memory of the abuse.

The Lawyer Defendants represented alleged victims of sexual abuse in class action lawsuits against the Diocese Defendants that were settled in 2007 (Case Nos. 2006-CP-18-13109, 1311 and 1636; "the Underlying Case").[2] Seven of the Plaintiffs claim that they were members of the Primary Class[3] and that the Lawyer Defendants committed legal malpractice while representing

---

[1] The Lawyer Defendants also filed an omnibus motion for summary judgment as to the civil conspiracy claims in each case. They are now moot because the Plaintiffs abandoned their claims for civil conspiracy at the hearing held on July 20, 2017.

[2] While the record reflects the negotiation of a Settlement and Arbitration Agreement between the Lawyer Defendants and the Diocese Defendants in 2006, the settlement was not formalized and approved by the court until 2007.

[3] The Primary Class of abuse victims was defined as "All individuals born on or before August 30, 1980, who, as minors, were sexually abused at any time by the agents or employees of the Dioceses

R. App. 000205

them. Three of the Plaintiffs claim that they were members of the "Consortium Class" of spousal and parental victims who allege that the Lawyer Defendants committed legal malpractice while representing them as well.[4] All of the claims against the Lawyer Defendants arise out of their activities in the Underlying Case.

The crux of all but one of the Plaintiffs' claims is that the Lawyer Defendants defined the Primary and Consortium Classes without geographical limitation but geographically limited the notice that would be given of the settlement by publication to class members in South Carolina.[5] The non-resident Plaintiffs allege that, as a result, they were bound by the class action settlement but were never given notice of that settlement.

If they were bound by the settlement in the Underlying Case, then the doctrine of *res judicata* would deprive them of the opportunity to sue the Diocese Defendants without giving them notice of the settlement that satisfied their due process rights. The allegations in the Complaint filed by John Doe 2 and Jane Doe 4 are typical of each plaintiffs' complaint:

> 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

---

of Charleston who have not previously had any similar claim adjudicated, resolved, or released" (hereinafter "the Primary Class").

[4] The Consortium Class was defined as "The spouses and parents, of all individuals qualified pursuant the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released" (hereinafter "the Consortium Class").

[5] The notice plan approved by the class action court was for publication in ten South Carolina daily newspapers and *The Augusta Chronicle*, and *The Catholic Miscellany*.

> 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. (Emphasis added).

See John Doe 2 and Jane Doe 4 v. The Diocese of Charleston, et. al., Case No. 2010-CP-10-5520, Complaint, ¶ 23 (emphasis added).

The claims alleged by John Doe 193 are slightly different.[6] John Doe 193 alleges that he repressed the memory of his sexual abuse until 2010. As a result, even though he lived in South Carolina, he claims he did not receive notice of the class action settlement until 2010 (when he recovered his memory) and alleges the Lawyer Defendants failed to make a provision for repressed memory victims like him in the settlement.[7]

The Plaintiffs allege causes of action for professional negligence, breach of fiduciary duty, and unfair trade practices against the Lawyer Defendants.

I. Summary Judgment Standard

Summary judgment is appropriate where there are no genuine issues of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences that reasonably can be drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E. 2d 551 (2010); *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E. 2d 68, 70 (2007).

---

[6] Case No. 2013-CP-10-3733.

[7] John Doe 193's claim for professional negligence was dismissed by Order of the Honorable Kristi Lea Harrington, dated January 16, 2014. His claim for civil conspiracy was abandoned by Plaintiff's counsel at the hearing on July 2017. Thus, only the claim for breach of fiduciary duty remains for John Doe 193.

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E. 2d 537 (1991). With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a ***genuine issue for trial***.'" *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)) (emphasis in original). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *Id.*; *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 545 S.E. 2d 500 (2001).

gcn

II. The Lawyer Defendants' Motions

The Lawyer Defendants contend that they are entitled to summary judgment because:

A. the Court has determined that the Plaintiffs can sue the Diocese Defendants making their respective claims against the Lawyer Defendants "irrelevant";

B. the Plaintiffs have no damages proximately caused by the Lawyer Defendants;

C. no attorney-client relationship existed between the Lawyer Defendants and the Plaintiffs, who were unnamed class members; and

D. the Lawyer Defendants did not breach a fiduciary duty to the Plaintiffs.

A. Plaintiffs' Claims Against the Lawyer Defendants are Irrelevant

As noted above, the Plaintiffs' Complaints explicitly allege that if they are not precluded by the class action settlement from bringing claims against the Diocese Defendants, then the causes

of action against the Lawyer Defendants are "irrelevant". The keystone of their argument revolves around the concept of notice. The Plaintiffs allege that since they were included in the definition of the Primary Class, they should have been given notice of the settlement in accordance with their due process rights. Thus, if the Court were to find that they are precluded from maintaining their claims against the Diocese Defendants as a result of the class settlement, only then can Plaintiffs assert their claims against the Lawyer Defendants for not giving them notice of the settlement. In other words, when viewed in the light most favorable to the Plaintiffs, the complaints make a finding of preclusion by the Court a predicate upon which the Plaintiffs' claims against the Lawyer Defendants rise or fall.

In this Court's Amended Order on Limited Collateral Review dated May 3, 2017, I found that the Plaintiffs' Complaints, by their own terms, presented a threshold question: Are the Plaintiffs precluded from pursuing claims against the Diocese Defendants? I then answered the question in the negative, finding that the Plaintiffs were not precluded from bringing their claims against the Diocese Defendants because the notice plan approved in the Underlying Case "did not incorporate safeguards to provide sufficient notice because notice by publication was not provided by the court substantially outside of the geographic territory of South Carolina."

I concluded that "the notice plan directed by the class action court did not satisfy due process as to putative class members who (1) did not receive actual notice and (2) lived outside of the areas in which notice was published".[8] I further found that it would be inconsistent with due process to bind John Doe 193 to the class action settlement if he could prove a repressed memory

[8] This finding was consistent with the finding by Judge Roger Young in his Order dated June 17, 2011 in Case No. 2010-CP-10-5520 denying in part and granting in part the Diocese Defendants Motion to Dismiss.

by the preponderance of the evidence. In light of that ruling, even when this Court views the allegations in the complaints in the light most favorable to Plaintiffs, the only reasonable conclusion is the Plaintiffs have no claims against the Lawyer Defendants because the class settlement did not preclude their claims against the Diocese Defendants.

B. Plaintiffs Have No Damages Proximately Caused by the Lawyer Defendants

After the Amended Order on Limited Collateral Review was entered, this Court scheduled several of the cases against the Diocese Defendants for trial in May 2017. Soon thereafter, five (5) Plaintiffs and the Diocese Defendants voluntarily settled four (4) of the cases.[9] Since all Plaintiffs were allowed to present their claims against the Diocese Defendants and five (5) Plaintiffs in four (4) of the cases voluntarily settled their claims with the Diocese Defendants, the allegations against the Lawyer Defendants are not pertinent and are, in the Plaintiffs' own words, "irrelevant". Those Plaintiffs who have settled with the Diocese Defendants have had "their day in court" and their opportunity to hold the Diocese Defendants financially responsible for their abuse. In so doing, those Plaintiffs stood exactly where they would have stood had the underlying class actions never existed.

The Plaintiffs who did not settle with Diocese Defendants[10] were subject to a motion for summary judgment filed by the Diocese Defendants and scheduled to be heard by the Court on

---

[9] The Diocese settled with the Plaintiffs in 2010-CP-10-7233 (filed by John Doe 10), 2013-CP-10-4175 (filed by Father Doe 194), 2013-CP-10-4176 (filed by John Doe 194) and 2015-CP-10-5486 (filed by John Doe 245 and Father Doe 245).

[10] The non-settling Plaintiffs were John Doe 2 and Jane Doe 4, Case No. 2010-CP-10-5520; Jane Doe 11, Case No. 2012-CP-10-5559; John Doe 193, Case No. 2013-CP-10-3733; and John Doe 297, Case No. 2016-CP-10-1632.

June 28, 2017. In that motion, the Diocese Defendants contended that the remaining Plaintiffs' claims were absolutely barred by the defense of charitable immunity. 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.[11]

Thus, the Plaintiffs have either voluntarily settled with the Diocese Defendants or voluntarily conceded to the defense of charitable immunity. In either event, the Plaintiffs have been allowed to maintain their claims against the Diocese Defendants, have had their day in court and have no damages to assert against the Lawyer Defendants. Nothing the Lawyer Defendants did or failed to do in the Underlying Case caused harmed to the Plaintiffs. Plaintiffs have the same rights, and are subject to the same defenses, that existed prior to the class action settlement.

gcn

Damages are an essential element any plaintiff must prove to prevail on a legal malpractice claim. None of the Plaintiffs' have testified to any damages they believe they have suffered due to the alleged legal malpractice, nor have they offered any competent evidence proving damages as to the Lawyer Defendants. Absent damages, Plaintiffs have no claim for legal malpractice. *RFT Mgmt. Co. v. Tinsley &Adams, L.L.P.*, 399 S.C. 322, 732 S.E. 2d 166 (2012) ("plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach.")

[11] As previously noted, Plaintiffs' counsel abandoned his clients' claims for civil conspiracy at the hearing on July 20, 2017.

Plaintiffs' counsel argues that the four (4) cases that were settled fall under S.C. Code Ann. §15-38-50 (1976, as amended) and thus do not affect the liability of the Lawyer Defendants. That statute provides:

> When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:
>
> (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
>
> (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

jun

The Court has carefully considered this argument and concludes §15-38-50 does not apply here. The release given to the Diocese Defendants in those settlements was not given to a joint tortfeasor, notwithstanding what the settlement agreements may say. The Plaintiffs' claims are based upon one loss – the abuse at the hands of the Diocese defendants. They assert claims against the Diocese Defendants and, in the alternative, against the Lawyer Defendants. Nonetheless, they may obtain but one recovery. Civil conspiracy was the only cause of action in the complaints as to which joint and several liability could apply. As previously noted, Plaintiffs' counsel voluntarily conceded at the hearing on July 20, 2017 that summary judgment in favor of all defendants on the cause of action for civil conspiracy was appropriate. That concession resulted from a) the Plaintiffs' having pled civil conspiracy as presuming that "the class action order is interpreted to bind the Plaintiff to its *res judicata* effect…", and b) the Court having determined in its Amended Order on Limited Collateral Review that the Plaintiffs who did not receive actual notice and lived outside of the published notice area were not bound by the *res judicata* effect of the class action settlement.

Consequently, since there is but one recovery for a single wrong, the Plaintiffs who settled with the Diocese Defendants have made their recovery and have no further damages.

C. There was No Attorney-Client Relationship

1. The Majority Rule.

The Lawyer Defendants also contend Plaintiffs' claims are barred because there was no attorney-client relationship with the Plaintiffs. A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach. *RFT Mgmt. Co., supra.*

In response, the Plaintiffs, relying on *Premium Investment Corp. v. Green*, 283 S.C. 464, 324 S.E. 2d 72 (Ct. App. 1984), contend that an attorney-client relationship arose between the Lawyer Defendants and the Plaintiffs at the time the lawyers filed the class action complaints in the Underlying Case.

The majority rule in the United States appears to be that class counsel does not represent unnamed, absent class members unless and until the class is certified. *Bobryk v. Durand Glass Mfg. Co.*, No. 12-cv-5360 (NLH/JS), 2013 U.S. Dist. LEXIS 145758, at *29-31 (D.N.J. Oct. 9, 2013) (noting "the majority of case law that holds that the attorney-client relationship with putative class members 'does not begin until the class has been certified and the time for opting out by a potential member of the class has expired'."); *Palumbo v. Tele-Communications, Inc.*, 157 F.R.D. 129, 133 (D.D.C. 1994) (stating class certification confers status of litigant on absent class members and creates attorney-client relationship with class counsel); *Garret v. Metro Life Ins. Co.*, No. 95-CIV-2406, 1996 WL 325725, at *6 (S.D.N.Y. June 12, 1996) ("before class certification, the putative class members are not 'represented' by the class counsel."); *Formento v. Joyce*, 168

Ill. App. 3d 429, 522 N.E.2d 312 (Ill. App. Ct. 1988) (finding that defendant attorneys owed no duty to plaintiffs, the unnamed members of an uncertified class action); *Restatement (Third) of the Law Governing Lawyers* § 99 cmt. l ("prior to certification, only those class members with whom the lawyer maintains a personal client-lawyer relationship are clients"); *Resnick v. Am. Dental Ass'n*, 95 F.R.D. 372, 376 (N.D. Ill. 1982) ("Without question the unnamed class members, once the class has been certified, are 'represented by' the class counsel."); *Gillespie v. Scherr*, 987 S.W. 2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998) ("[W]e have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members").

The majority rule is persuasive to this Court for several reasons. The identity of the absent plaintiffs and the exact nature of their interests in the action is not known until class certification. 3 H. Newberg, *Class Actions* § 5050 (1977); *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 415, 100 S.Ct. 1202, 1218, 63 L Ed.2d 479, 502, 1980 U.S. LEXIS 12, *49, 29 Fed. R. Serv. 2d (Callaghan) 20 (U.S. Mar. 19, 1980). Similarly, in federal court, class counsel is appointed by the class action court when the class is certified. Fed. R. Civ. P. 23(c)(1)(B) ("An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)"). Furthermore, under Rule 23(a), SCRCP, the heading specifies that there is no class action until the Court finds certain "Prerequisites".[12] Only after class certification can the absent class members be bound to the outcome of the case.

In the Underlying Case, the Primary and Consortium Classes were not certified until January 19, 2007 when Judge Goodstein entered the Order Certifying Classes and Giving

[12] When the Underlying Case was filed and adjudicated, South Carolina had enacted Rule 23, SCRCP, drawn principally from Federal Rule 23.

Preliminary Approval to Settlement. In their complaints, the Plaintiffs allege that the Lawyer Defendants abandoned them and breached duties to them as clients by failing to give notice of the settlement to absent putative class members who reside outside of South Carolina. While the initial Motion to Certify Classes and for Preliminary Approval of Class Settlement filed by the Lawyer Defendants in October 2006 indicated that notice would be published in *USA Today*, that motion was amended. Later, on January 16, 2007, an amended Motion to Certify Classes and for Preliminary Approval of Class Settlement was filed by the Lawyer Defendants. In the second motion, notice was limited to ten daily newspapers in South Carolina, *The Augusta Chronicle*, and *The Catholic Miscellany*. The Order Certifying Classes and Giving Preliminary Approval to Settlement was dated January 17, 2007.

The gravamen of the Plaintiffs' complaints is that notice of the settlement in the Underlying Case was not given to them. It appears from the record that a decision was made between October 2006 and January 2007 to change the scope of the notice and that decision was made before Judge Goodstein signed the Order Certifying Classes and Giving Preliminary Approval to Settlement. Therefore, the very act about which the Plaintiffs complain took place before the classes in the Underlying Case were certified – at a point in time when an attorney-client relationship did not exist between the Plaintiffs and the Lawyer Defendants.

Applying the majority rule to the facts of the Underlying Case, there was no attorney-client relationship between the Lawyer Defendants and the Plaintiffs at the time the alleged duties were allegedly breached. Absent an attorney-client relationship, the Plaintiffs' claims for professional negligence must fail.

2. *Premium Investment Corp. v. Green*

Plaintiffs posit that *Premium Investment Corp. v. Green, supra*, supports their contention

that the attorney-client relationship and its attendant duties arose by operation of law when the Lawyer Defendants filed the class action complaints in the Underlying Cases. This is not correct because *Premium Investment Corp.* was a constructive class certification case that predated Rule 23, SCRCP. Moreover, the Underlying Case before me is an actual certification case under Rule 23.

In the underlying matter discussed in *Premium Investment Corp.*, a lawyer filed a complaint on behalf of a homeowner "individually and as a representative of a class of property owners" against the developer of a subdivision. After a hearing, the trial court entered an order finding that the homeowner brought two class actions: (i) as a member of a class owning property adjoining the lake, and (ii) as a member of a class owning property in the subdivision. The court found in favor of the plaintiffs and enjoined the developer. The developer appealed, and the case settled while on appeal.

Years later, Premium Investment Corp., a property owner in the subdivision, sued the homeowner and the lawyer to recover the proceeds of the two settlements. The Court of Appeals affirmed the trial court's order granting relief to Premium Investment. In considering whether the underlying case was a class action the Court of Appeals agreed that "court certification of the class is an important step in a class action," observing:

> It represents a judicial finding that injured parties other than the named plaintiff exist. It also provides a definition by which they can be identified. Certification identifies and sharpens the interests of unnamed class members in the outcome; only thereafter will they be bound by the outcome. After certification, class members can be certain that the action will not be settled or dismissed without appropriate notice. *United States Parole Commission v. Geraghty, 445 U.S. 388, 415 n. 8, 100 S. Ct. 1202, 1218 n. 8, 63 L. Ed. (2d) 479 (1980)* (Powell, J., dissenting).

Id. at 470.

The Court of Appeals struggled to determine what constituted class certification where there was no formal class certification and concluded that in the case at hand, where there was no formal certification order, the trial court had "constructively certified" the class when it identified "those persons with an interest in and entitled to benefit" from the action. It found that certification had occurred simultaneous with the judgment on the merits.

Premium Investment Corp. stands for the proposition that where there is a class that has not been formally certified (as under Rule 23, SCRCP), a lawyer's and a class representative's duties to absent class members arise with the constructive certification of the class. *Premium Investment Corp.* is in line with the majority rule that an attorney-client relationship does not arise between absent class members and class counsel until class certification. Since its adoption in 1985, Rule 23(a) has required specific prerequisites to certification and pursuit of a class action, while *Premium Investment Corp.*, which predates Rule 23, allows for constructive certification. It is undisputed in the case before me that Rule 23, SCRCP, was referenced and observed by Judge Goodstein in her orders in the Underlying Case and that constructive certification is not at issue before me.

3. The Plaintiffs' Testimony.

As noted above, none of the Plaintiffs have offered any sworn statement or other evidence from which any reasonable fact-finder could conclude they had an attorney-client relationship with the Lawyer Defendants. To the contrary, when examined, none of the Plaintiffs knew who the Lawyer Defendants were or why they had sued them. Instead, as noted above, the Plaintiffs claim, in essence, that the Lawyer Defendants breached duties owed prior to class certification. For the reasons discussed above, the Court finds the Lawyer Defendants owed no duties to the absent class members prior to class certification.

Having found the duties allegedly breached did not exist, I find the Plaintiffs cannot prevail on their claims against the Lawyer Defendants.

D. No Breach of Fiduciary Duty.

The Lawyer Defendants assert the Plaintiffs' claims are also barred because they owed no fiduciary duties to the Plaintiffs before class certification. Plaintiffs, in response, argue a fiduciary duty was owed upon filing the class complaints. That fiduciary duty arose by operation of law, Plaintiffs contend, upon filing the pleading, pursuant to *Premium Investment Corp.*

As discussed above, the Court disagrees with Plaintiffs' argument that *Premium Investment Corp.* stands for the proposition that the filing of a class action complaint gives rise to fiduciary duties to unnamed and unidentified class members. Furthermore, the Court notes that while the Plaintiffs argue a fiduciary duty existed upon filing, they have yet to articulate what that duty was, nor have they explained the scope of it. Rather, they rely on the following excerpt from *Premium Investment Corp.*:

> It is now generally conceded that a plaintiff who sues on behalf of a class and the attorney representing the class assume a fiduciary obligation to absent members of the class, including the obligation to inform them of proposed compromises of the group action. *Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949)*; *La Sala v. American Savings & Loan Association, 5 Cal. (3d) 864, 97 Cal. Rptr. 849, 852, 489*, P. (2d) 1113 (1971).

Id. at 470.

The Lawyer Defendants contend such statements refer to obligations that arise after class certification, whether certification pursuant to Rule 23, as here, or by constructive certification, as in *Premium Investment Corp.* The line of cases holding that an implied fiduciary duty arises when a lawyer files a complaint alleging a class action was discussed in *Gillespie v. Scherr*, 987 S.W.2d 129, 1998 Tex. App. LEXIS 8089 (Tex. App. 1998), where the court observed:

> Appellants have cited and we have found no case finding an implied attorney-client relationship to exist before class certification between an attorney who files the class action and any unnamed class members. Appellants urge us to follow federal decisions which, in the context of class certification, recognize the *general* existence of a fiduciary duty to unnamed class members once a class action suit is filed. *See, e.g., In re General Motors Corp. Pick-up Truck Fuel Tank*, 55 F. 3d 768, 801 (3rd Cir. 1995) (stating that class attorneys owe the entire class a fiduciary duty once the class complaint is filed), *cert. denied*, 516 U.S. 824, 116 S. Ct. 88, 133 L. Ed. 2d 45 (1995). However, appellants have cited and we have found no decision which has defined the scope of such a duty or addressed it with regard to an actual claim for recovery against an attorney for its breach. **Although not cited by either side, the only case we have found in which the issue was addressed held that lawyers for named plaintiffs in an uncertified class action owe no duty to unnamed class members.** *See Formento v. Joyce*, 168 Ill. App. 3d 429, 522 N.E. 2d 312, 317, 118 Ill. Dec. 857 (Ill. App. Ct. 1988).

Id. (emphasis added).

Similarly, here the Plaintiffs have not defined the scope of the fiduciary duty they claim was violated by the Lawyer Defendants. One District Court examining the question found:

> Under this analysis, we may venture a few statements about the scope of the fiduciary duty owed by class counsel to putative class members prior to class certification. In short, the scope of those duties is limited to protecting the substantive legal rights of putative class members that form the basis of the class action suit from prejudice in an action against the class defendant resulting from the actions of class counsel.

Schick v. Berg, 2004 U.S. Dist. LEXIS 6842, 2004 WL 856298; *aff'd* 2005 U.S. App. LEXIS 24671 (2d Cir. N.Y. 2005). Even if there were a basis to assume a general fiduciary duty, as asserted by the Plaintiffs, the question then is who are the intended beneficiaries of that fiduciary duty. Here, Plaintiffs claim to be the intended beneficiaries based on the definitions and notice plan of the Primary and Consortium classes. Yet, those class definitions (and the classes themselves) did not exist until the Court certified the class under Rule 23 in its January 19, 2007 Order. If the intended beneficiaries are to be identified based upon the filing of a class complaint, the better approach is to look to the allegations in the class complaints, for it is those individuals

included in the class definitions in the complaints whom the Lawyer Defendants arguably sought to represent and to whom this alleged, general fiduciary duty would run.

The class action complaints in the Underlying Case defined the class of victims of sexual abuse sought to be certified as follows:

> 41. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the catholic church under the supervision and/or control of the defendants.

John Doe #53, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1636, Complaint ¶ 41. Therefore, the complaints relevant to the Primary Class clearly limited the putative classes to individuals within the geographical boundaries of South Carolina. *See also Id.* ¶ 36 ("Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic].").

gun

With respect to the Consortium Class, the complaint in the Underlying Case alleged:

> The spouses, parents, and/or legal guardians of all individuals who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants in South Carolina between January 1, 1950 and December 31, 2000 and who suffered a loss of the abused individual's consortium.

Jane Doe 1, et. al. v. The Bishop of Charleston, et. al., Case No. 2006-CP-18-1310, Complaint ¶25. Later, that complaint alleged:

> Plaintiffs are informed and believes that the number of other individuals in South Carolina who fall within the definition of the class defined above may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable [sic'.

Id. ¶ 27. Therefore, the same geographical limitation applied to the Consortium Class.

This examination of the underlying complaints shows the Lawyer Defendants sought to represent a class of South Carolina residents who were sexually abused by priests of the Diocese Defendants and who were not barred by law from asserting a claim against those defendants. In addition, the Lawyer Defendants sought to represent South Carolina residents who were spouses, parents, and/or legal guardians of all individuals sexually abused by priests of the Diocese Defendants and who suffered a loss of the abused individual's consortium. In these cases before me, all of the Plaintiffs, save for John Doe 193, allege themselves to be non-residents of South Carolina. Therefore, even under the Plaintiffs' argument that there is a general fiduciary duty imposed upon lawyers who file a complaint alleging class action claims, I find that the Lawyer Defendants in the cases before me owed no duty to the Plaintiffs because the Plaintiffs all fall outside the class definitions alleged in the underlying class action complaints. The Court further notes that because the definition of the putative class of abuse victims specifically excluded victims whose claims were barred by law, none of the Plaintiffs whose claims are admittedly barred by the Diocese Defendants' defense of charitable immunity can prove any fiduciary duty owed by the Lawyer Defendants.

III. The Claims of Jane Doe 4:

The Lawyer Defendants filed a separate motion for summary judgment as to the claims of Jane Doe 4. The claims Jane Doe 4 alleges against the Lawyer Defendants are professional negligence and breach of fiduciary duty. Since the breach that Jane Doe 4 alleges took place before certification, when there was no attorney-client relationship, her claim for professional negligence must be dismissed. Additionally, since Jane Doe 4 was a non-resident, she was not the intended beneficiary of any general fiduciary duty owed by the Lawyer Defendants upon filing the class action complaints and her claim for breach of fiduciary duty must be dismissed as well. Finally,

R. App. 000221

and in light of the rulings set forth above, the Court need not address the issue of whether Jane Doe 4 lived in an area in which notice was published.

IV. The Claims of John Doe 193.

John Doe 193's sole surviving claims are those for breach of fiduciary duty and unfair trade practices. Since John Doe 193 is a.) a South Carolina resident, and b.) an abuse victim whose claim against the Diocese Defendants is barred by law, he was not an intended beneficiary of any general fiduciary duty that Plaintiff alleges was owed by the Lawyer Defendants when they filed the complaints. Thus, the Lawyer Defendants breached no fiduciary duty to John Doe 193 and his claim for breach of fiduciary duty must be dismissed.

V. The UTPA Claims.

Five (5) Plaintiffs have alleged claims for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et. seq.* ("UTPA").[13] In their complaints, the Plaintiffs allege their claims under the UTPA presume the Plaintiffs are precluded, for one reason or another, from maintaining claims against the Diocese Defendants. Since the Court has already determined that the Plaintiffs are not precluded from asserting their claims against the Diocese Defendants as a result of the Lawyer Defendants, those claims also fail.

Additionally, the Court views these UTPA claims as thinly veiled, duplicative claims for legal malpractice. It is well-established that where a plaintiff asserts claims against an attorney for professional negligence and breach of fiduciary duty, both of which arise from the same materials facts, the claims are duplicative and merge into a single cause of action for legal malpractice. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173-74 (2012);

[13] Those cases in which unfair trade practices claims were alleged are 2013-CP-10-3733, 2013-CP-10-4176, 2015-CP-10-5486 and 2016-CP-10-1632.

Doe v. Howe, 367 S.C. 432, 448 n.27, 626 S.E.2d 25, 33 (Ct. App. 2005). In this case, Plaintiffs' UTPA claims are based upon the same material facts and same loss. Therefore, I find the UTPA claims merge into Plaintiffs' other claims. Because the Lawyer Defendants are entitled to summary judgment on their professional negligence and breach of fiduciary duty claims, as discussed above, the UTPA claims must also be dismissed. I further note the record before the Court contains no evidence from which any fact-finder could reasonably determine the Lawyer Defendants committed any unfair or deceptive act. The Court is compelled, therefore, to grant summary judgment on Plaintiffs' UTPA claims.

CONCLUSION

Having considered the motions made and filed by the Lawyer Defendants, the supporting and opposing memoranda submitted by the parties, the admissible evidence in the record, the arguments of counsel, and applicable law, I find and conclude that there are no genuine issues of material facts in these cases preventing summary judgment as to the Lawyer Defendants and, therefore, that the Lawyer Defendants are entitled to summary judgment as a matter of law on all claims.

NOW, THEREFORE, IT IS ORDERED that all claims alleged against the Lawyer Defendants in the above-captioned matters should be, and hereby are, dismissed with prejudice.

AND IT IS SO ORDERED.

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

Dated: 8/8/17
Charleston, SC

2013-CP-10-3733

The South Carolina Court of Appeals

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

v.

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

FILED
2017 AUG 15 PM 12:22
JULIE J. ARMSTRONG
CLERK OF COURT

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

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

Appellate Case No. 2017-001092

ORDER

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

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



FOR THE COURT

Columbia, South Carolina

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

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CA No. 05-CP-10-2053
John Doe #66)	COMPLAINT
)	**Jury Trial Requested**
Plaintiff,)	
)	Outrage, Negligence/Gross Negligence,
vs.)	Breach of Fiduciary Duty, Intentional
)	Infliction of Emotional Distress, Fraudulent
)	Concealment, Civil Conspiracy, Negligent
The Bishop of Charleston, a Corporation)	Retention or Supervision
Sole, and The Bishop of the Diocese of)	
Charleston, in his official capacity,)	
)	
Defendants.)	

FILED
2005 MAY 12 AM 11:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #66 is a pseudonym for a former Charleston County resident who, while living in the Charleston area, attended schools operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various religious and non-religious functions sponsored and operated by the Diocese of Charleston. He is identified in this complaint by a pseudonym because this is a case about childhood sexual abuse upon the plaintiff, and his identity has been withheld due to the sensitivity and private nature of these allegations. His identity has been disclosed to the defendants.

2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors, is and was at all times material hereto a corporation organized under the laws of the State of South Carolina, having its principal place of

business at 117 Broad Street, Charleston, South Carolina. Diocese is and was the corporate entity through which the religious and other affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment of clergy, supervision of clergy activities, the exercise of authority over various members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

FACTUAL SUMMARY

4. Defendant Diocese operates churches and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere. One such property is Nativity Catholic Church and School (hereinafter "Nativity") located in Charleston County.

5. Diocese, as part of its general mission, encouraged its parishioners, such as the plaintiff, to enter, use, and attend its many activities on its premises, including school, worship, social, and religious based functions. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants owed minors, including the minor plaintiff, a greater degree of care because of their lack of

capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its parishioners, including the plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its parishioners, including the plaintiff, from harm.

6. At all times material to the incidents alleged in this complaint, Father James Nyhan was a clergyman assigned to Nativity. Nyhan was assigned to Nativity by the Diocese and Bishop and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.

7. Nyhan was employed by Diocese and Bishop as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff at Nativity Catholic Church and School. In this role, Nyhan came to have access to and to know the most personal and confidential information of his parishioners including the plaintiff. Diocese and Bishop encouraged their parishioners to share and trust Nyhan as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff. Among other things, Diocese and Bishop encouraged plaintiff and other parishioners to share with and trust Nyhan and other of its employees with deeply personal information and with their personal safety and salvation. As part of his employment, Nyhan reached out to parishioners of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.

8. Plaintiff, a devout member of the Roman Catholic Church, attended and actively participated in activities designed for young boys at Nativity. Among other things, plaintiff was an altar boy and participated in the youth programs with which Nyhan worked.

9. Plaintiff came to know the priest Nyhan through these various church and school related programs and activities. Based on this relationship, as cultivated by Nyhan and encouraged

by the Diocese and the Bishop, plaintiff admired, trusted, revered and respected Nyhan as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, he was taught and instructed to do so. As a result, plaintiff entrusted in Nyhan his personal safety and shared with Nyhan his most confidential information.

10. Because of plaintiff's position as a minor, together with Nyhan's position in the Roman Catholic Church as a priest, youth leader, holy man, confessor, counselor, and authority figure, Nyhan was able to have control and influence over plaintiff. By his words and actions, Nyhan represented to plaintiff that their relationship was one in which Nyhan was to provide counseling, comfort and advice to plaintiff, and to look out for plaintiff's well being and best interests. These representations were untrue and intended to deceive plaintiff. Nyhan used these representations and his various positions to gain plaintiff's trust and confidence and to obtain control over him.

11. Between 1978 and 1980, plaintiff, then a minor child, was sexually assaulted by Father Nyhan.

12. These incidents occurred while Nyhan was an employee and youth leader of Nativity Catholic Church and School. These assaults upon plaintiff occurred on the premises of Nativity Catholic Church, a property owned and controlled by the defendants, as well as other locations. For example, Nyhan preyed on young boys, including the plaintiff, in the Church Rectory of Nativity Catholic Church or took them elsewhere, such as to local beaches, for the purposes of molestation

13. Based on the relationship of trust and confidence cultivated by Nyhan and encouraged by Diocese and Bishop, plaintiff justifiably believed and relied on Nyhan and gave Nyhan his

trust and confidence. By his words and actions, Nyhan assured plaintiff that this conduct was legal and proper. Nyhan and defendants actively concealed the wrongfulness of his exploitation and misconduct involving children, plaintiff included. As a result, and because plaintiff was a minor, plaintiff was unable to understand the wrongfulness and illegality of Nyhan's sexual abuse of him and the related injury. Nyhan also threatened plaintiff with recrimination if plaintiff revealed Nyhan's actions.

14. Plaintiff is informed and believes that the defendants knew, or should have known that Nyhan had deviant sexual propensities. Furthermore, the defendants knew or should have known that Nyhan was molesting minor boys on Nativity Catholic Church's premises and at other locations as well. Nevertheless, the defendants failed to warn the plaintiff and other minor children similarly situated of the danger posed by Nyhan, failed to protect the plaintiff on its premises, and failed in the exercise of the many other duties it undertook. Moreover, it hid the conduct of Nyhan and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the Diocese and the Catholic Church.

15. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.

16. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).

17. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals

(bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.

18. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."

19. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)

20. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents in secret archives. (Ex. A, ¶ 42.)

21. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential after life of damnation. Diocese, Bishop and their agents and employees such as Nyhan using the relationships of priest, youth leader, confessor, counselor, and in a position of authority over

plaintiff which they cultivated, reinforced this belief.

22. As a result, plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Nyhan that he must conceal that Nyhan had committed upon him a horrible sin or risk an afterlife of damnation.

23. As a result of the actions and/or inactions of the defendants, Nyhan was allowed, and did, prey upon plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Nyhan's conduct and the conduct of the defendants, by, among other things, years of psychological damage with physical manifestations.

FOR A FIRST CAUSE OF ACTION

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

24. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.

25. As alleged above, plaintiff was sexually assaulted on multiple occasions between 1978 and 1980 by Father James Nyhan who was a priest, youth leader, confessors, counselor, and in a position of authority over plaintiff. Nyhan's duties to the plaintiff arose from his employment with Diocese and Bishop.

26. As a result of the relationship between plaintiff and Nyhan, plaintiff and the defendants, and/or Nyhan and the defendants, defendants owed duties of due care toward the plaintiff. defendants breached those duties and were negligent, grossly negligent, careless, reckless,

R. App. 000232

wilful, or wanton in relation to the plaintiff, in that they failed to:

a. Monitor Nyhan's behavior while on premises of the defendants including, but not limited to, Nativity Catholic Church, and/or while engaged in activities with school, church, youth;

b. Properly investigate Nyhan's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the plaintiff;

c. Address Nyhan's past conduct either at the time he first became involved with the defendants or subsequently thereafter;

d. Ignoring Nyhan's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;

e. Allowing Nyhan to work with young boys, including the plaintiff, alone and unsupervised;

f. Maintain and keep their property and premises where Nyhan worked in a reasonably safe condition;

g. Shield the plaintiff from dangerous conditions, situations and individuals including child predators such as Nyhan;

h. Warn the plaintiff and/or his family of Nyhan's deviant sexual proclivities;

i. Fulfill theirs duties *in loco parentis* to the plaintiff;

j. Educate the plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Nyhan;

k. Warn them of a priest known to have a sexual interest in children and known to act

R. App. 000233

inappropriately on that interest;

l. Supervise Nyhan in a manner so as to eliminate his chances to sexually abuse children;

m. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his predatory actions;

n. Notify parents of those children who have been exposed to Nyhan;

o. Exercise due care for the safety and well-being of plaintiff.

27. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, wilful, and wanton behavior of the defendants and/or their employees/agents, plaintiff has been injured and suffered damages. plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

28. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.

29. By and through the relationships described herein, defendants entered into a fiduciary relationship with the plaintiff. Additionally, by accepting physical custody of the minor

plaintiff, as student at Nativity School and a parishioner of Nativity Church, defendants assumed the duty to act in *loco parentis* with respect to the plaintiff. The defendants undertook a duty to provide a safe environment for plaintiff, as well as for all children at Nativity Catholic Church and School. A relationship of trust and confidence, and therefore a fiduciary relationship, was formed.

30. By entering into a fiduciary relationship with plaintiff, defendants were obligated to act only in the best interests of plaintiff. This duty extended to defendants' agents and employees, Nyhan included.

31. Plaintiff reposed trust and confidence in Nyhan, his priest, teacher, confessor, and counselor, and in the defendants. As a result of Nyhan's predatory acts described above and the Diocese and Bishop's failure to act on Nyhan's conduct, the defendants breached the duties owed to the plaintiff.

32. As a proximate result of the negligent actions, inactions and breaches of fiduciary duties by the defendants and through agents, plaintiff was harmed and is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A THIRD CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

33. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.

34. The emotional distress and its attendant physical manifestations including nervousness, poor

sleep, headaches, nausea, among others, suffered by plaintiff as a result of the defendants' actions and inactions was so severe that no reasonable person could be expected to endure it. Those effects have continued to cause problems for plaintiff and harm him severely, emotionally and physically.

35. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A FOURTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

36. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.

37. Defendants had knowledge of Nyhan's sexually deviant propensities with minors prior to the sexual molestation of plaintiff. Plaintiff could not have known, nor did he reasonably have the opportunity to know, that the defendant had specific knowledge about Nyhan's deviant and sexual propensities prior to the abuse perpetrated on him. Further, plaintiff could not have discovered the truth through reasonable inquiry or inspections. By acts and conduct described herein, defendants concealed material facts from plaintiff, inducing plaintiff and his family into a false belief that Nyhan was safe around children, a false belief that no other children were sexually abused by Nyhan, and that the defendants did not possess knowledge that Nyhan engaged in predatory sexual practices and abused other children, among other

things.

38. The defendants' failure to report, along with their active concealment of Nyhan's above mentioned propensities, as mandated by the INSTRUCTION attached at Exhibit A, constitutes fraudulent concealment of the information about Nyhan from his potential prey. This fraudulent concealment lasted until the present.

39. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A FIFTH CAUSE OF ACTION:

CIVIL CONSPIRACY

40. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.

41. Prior to the abuse of the plaintiff, plaintiff is informed and believes two or more agents of the defendants were aware of Nyhan's sexually deviant propensities with minors. The failure of these agents of the defendants to report Nyhan to the proper authorities, the active concealment of their knowledge about Nyhan's deviant activities, and their agreement to do nothing to stop, or at least report, his activities constitutes a conspiracy of silence. The purpose behind this conspiracy was to protect Nyhan at the plaintiff's expense, proximately resulting in injury to the plaintiff. The conspiracy of silence constitutes a failure to protect minors who were the potential prey of Nyhan and his sexually deviant propensities, this

plaintiff included.

42. As a direct and proximate result of the conspiratorial conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SIXTH CAUSE OF ACTION

NEGLIGENT RETENTION OR SUPERVISION

43. The allegations of paragraphs 1 through 22 above are incorporated into this cause of action as if fully stated herein.

44. Nyhan was hired by agents for the defendants, or the defendants themselves, prior to the abuse upon the plaintiff.

45. The agents for the defendants knew or should have known about Nyhan's sexually deviant propensities. Despite such knowledge, the agents for defendants failed to take steps to protect the minors at Nativity Church and School, including the minor plaintiff.

46. Despite having knowledge of Nyhan's sexually deviant propensities with minors, the defendants directly or through agents continued to retain him as a priest, youth leader, confessor, counselor, and teacher without warning the parents of children, or the children at Nativity Church and School, who were his potential prey. Several of these children, plaintiff included, became Nyhan's actual prey.

47. Despite having knowledge of Nyhan's sexually deviant propensities with minor students, the agents of the defendants did not properly supervise him. Consequently, he was able to

continue to perpetrate his sexually deviant attacks on minors.

48. Plaintiff was a minor child attending Nativity Catholic Church and School, where Nyhan was assigned. Therefore if not for Nyhan's continued employment by defendants, plaintiff would not have been injured.

49. Plaintiff was one of those minor students who was injured because the agents of the defendants failed to supervise Nyhan even though they knew or should have known of his sexually deviant propensities with minors.

50. As a direct and proximate result of the defendants' negligent conduct, plaintiff sustained and continues to sustain injuries and damages described herein and therefore is entitled to receive actual, compensatory damages in an amount to be determined by a jury, and punitive damages in a sufficient amount to deter similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By: _____
Lawrence E. Richter, Jr.
David K. Haller

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CA No. 05-CP-10-3293
John Doe #66A)	COMPLAINT
)	**Jury Trial Requested**
Plaintiff,)	
)	Outrage, Negligence/Gross Negligence,
vs.)	Breach of Fiduciary Duty, Intentional
)	Infliction of Emotional Distress, Fraudulent
)	Concealment, Civil Conspiracy, Negligent
The Bishop of Charleston, a Corporation)	Retention or Supervision
Sole, and The Bishop of the Diocese of)	
Charleston, in his official capacity,)	
)	
Defendants.)	

FILED
2005 AUG 12 PM 1:31
JULIE ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #66A is a pseudonym for a former Charleston County resident who, while living in the Charleston area, attended schools operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various religious and non-religious functions sponsored and operated by the Diocese of Charleston. He is identified in this complaint by a pseudonym because this is a case about childhood sexual abuse upon the plaintiff, and his identity has been withheld due to the sensitivity and private nature of these allegations. His identity has been disclosed to the defendants.

2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors, is and was at all times material hereto a corporation organized under the laws of the State of South Carolina, having its principal place of

business at 117 Broad Street, Charleston, South Carolina. Diocese is and was the corporate entity through which the religious and other affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment of clergy, supervision of clergy activities, the exercise of authority over various members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

FACTUAL SUMMARY

4. Defendant Diocese operates churches and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere. One such property is Nativity Catholic Church and School (hereinafter "Nativity") located in Charleston County.

5. Diocese, as part of its general mission, encouraged its parishioners, such as the plaintiff, to enter, use, and attend its many activities on its premises, including school, worship, social, and religious based functions. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants owed minors, including the minor plaintiff, a greater degree of care because of their lack of

capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its parishioners, including the plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its parishioners, including the plaintiff, from harm.

6. At all times material to the incidents alleged in this complaint, Father James Nyhan was a clergyman assigned to Nativity. Nyhan was assigned to Nativity by the Diocese and Bishop and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.

7. Nyhan was employed by Diocese and Bishop as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff at Nativity Catholic Church and School. In this role, Nyhan came to have access to and to know the most personal and confidential information of his parishioners including the plaintiff. Diocese and Bishop encouraged their parishioners to share and trust Nyhan as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff. Among other things, Diocese and Bishop encouraged plaintiff and other parishioners to share with and trust Nyhan and other of its employees with deeply personal information and with their personal safety and salvation. As part of his employment, Nyhan reached out to parishioners of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.

8. Plaintiff, a devout member of the Roman Catholic Church, attended and actively participated in activities designed for young boys at Nativity. Among other things, plaintiff was an altar boy and participated in the youth programs with which Nyhan worked.

9. Plaintiff came to know the priest Nyhan through these various church and school related programs and activities. Based on this relationship, as cultivated by Nyhan and encouraged

by the Diocese and the Bishop, plaintiff admired, trusted, revered and respected Nyhan as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, he was taught and instructed to do so. As a result, plaintiff entrusted in Nyhan his personal safety and shared with Nyhan his most confidential information.

10. Because of plaintiff's position as a minor, together with Nyhan's position in the Roman Catholic Church as a priest, youth leader, holy man, confessor, counselor, and authority figure, Nyhan was able to have control and influence over plaintiff. By his words and actions, Nyhan represented to plaintiff that their relationship was one in which Nyhan was to provide counseling, comfort and advice to plaintiff, and to look out for plaintiff's well being and best interests. These representations were untrue and intended to deceive plaintiff. Nyhan used these representations and his various positions to gain plaintiff's trust and confidence and to obtain control over him.

11. Between 1978 and 1980, plaintiff, then a minor child, was sexually assaulted by Father Nyhan.

12. These incidents occurred while Nyhan was an employee and youth leader of Nativity Catholic Church and School. These assaults upon plaintiff occurred on the premises of Nativity Catholic Church, a property owned and controlled by the defendants, as well as other locations. For example, Nyhan preyed on young boys, including the plaintiff, in the Church Rectory of Nativity Catholic Church or took them elsewhere, such as to local beaches, for the purposes of molestation

13. Based on the relationship of trust and confidence cultivated by Nyhan and encouraged by Diocese and Bishop, plaintiff justifiably believed and relied on Nyhan and gave Nyhan his

trust and confidence. By his words and actions, Nyhan assured plaintiff that this conduct was legal and proper. Nyhan and defendants actively concealed the wrongfulness of his exploitation and misconduct involving children, plaintiff included. As a result, and because plaintiff was a minor, plaintiff was unable to understand the wrongfulness and illegality of Nyhan's sexual abuse of him and the related injury. Nyhan also threatened plaintiff with recrimination if plaintiff revealed Nyhan's actions.

14. Plaintiff is informed and believes that the defendants knew, or should have known that Nyhan had deviant sexual propensities. Furthermore, the defendants knew or should have known that Nyhan was molesting minor boys on Nativity Catholic Church's premises and at other locations as well. Nevertheless, the defendants failed to warn the plaintiff and other minor children similarly situated of the danger posed by Nyhan, failed to protect the plaintiff on its premises, and failed in the exercise of the many other duties it undertook. Moreover, it hid the conduct of Nyhan and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the Diocese and the Catholic Church.

15. Plaintiff has only learned within the past two years of the defendants' knowledge of Nyhan's history, proclivities, and actions, and has similarly only then learned of defendants' concealment and effort to maintain secrecy concerning same. Other litigation, news reports, and other occurrences have led to plaintiff now becoming so aware, and plaintiff could not have so known or learned previously.

16. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.

17. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).

18. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.

19. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."

20. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)

21. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the

pertinent documents in secret archives. (Ex. A, ¶ 42.)

22. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential after life of damnation. Diocese, Bishop and their agents and employees such as Nyhan using the relationships of priest, youth leader, confessor, counselor, and in a position of authority over plaintiff which they cultivated, reinforced this belief.

23. As a result, plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Nyhan that he must conceal that Nyhan had committed upon him a horrible sin or risk an afterlife of damnation.

24. As a result of the actions and/or inactions of the defendants, Nyhan was allowed, and did, prey upon plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Nyhan's conduct and the conduct of the defendants, by, among other things, years of psychological damage with physical manifestations.

25. Plaintiff's severe psychological damage, the equivalent of a misshapen mind, was proximately caused by the actions and/or inactions of the defendants; and said damage prevented plaintiff from recognizing, understanding, and asserting his legal claims relative to the childhood sexual abuse he suffered at the hands of Nyhan and the other defendants.

R. App. 000246

FOR A FIRST CAUSE OF ACTION:

OUTRAGE

26. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.

27. The defendants intentionally inflicted severe emotional distress on plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of defendants caused plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable man could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.

28. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION:

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

29. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.

30. As alleged above, plaintiff was sexually assaulted on multiple occasions between 1978 and

1980 by Father James Nyhan who was a priest, youth leader, confessors, counselor, and in a position of authority over plaintiff. Nyhan's duties to the plaintiff arose from his employment with Diocese and Bishop.

31. As a result of the relationship between plaintiff and Nyhan, plaintiff and the defendants, and/or Nyhan and the defendants, defendants owed duties of due care toward the plaintiff. defendants breached those duties and were negligent, grossly negligent, careless, reckless, wilful, or wanton in relation to the plaintiff, in that they failed to:

a. Monitor Nyhan's behavior while on premises of the defendants including, but not limited to, Nativity Catholic Church, and/or while engaged in activities with school, church, youth;

b. Properly investigate Nyhan's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the plaintiff;

c. Address Nyhan's past conduct either at the time he first became involved with the defendants or subsequently thereafter;

d. Ignoring Nyhan's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;

e. Allowing Nyhan to work with young boys, including the plaintiff, alone and unsupervised;

f. Maintain and keep their property and premises where Nyhan worked in a reasonably safe condition;

g. Shield the plaintiff from dangerous conditions, situations and individuals including

child predators such as Nyhan;

h. Warn the plaintiff and/or his family of Nyhan's deviant sexual proclivities;

i. Fulfill theirs duties *in loco parentis* to the plaintiff;

j. Educate the plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Nyhan;

k. Warn them of a priest known to have a sexual interest in children and known to act inappropriately on that interest;

l. Supervise Nyhan in a manner so as to eliminate his chances to sexually abuse children;

m. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his predatory actions;

n. Notify parents of those children who have been exposed to Nyhan;

o. Exercise due care for the safety and well-being of plaintiff.

32. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, wilful, and wanton behavior of the defendants and/or their employees/agents, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A THIRD CAUSE OF ACTION:

BREACH OF FIDUCIARY DUTY

33. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.

34. By and through the relationships described herein, defendants entered into a fiduciary relationship with the plaintiff. Additionally, by accepting physical custody of the minor plaintiff, as student at Nativity School and a parishioner of Nativity Church, defendants assumed the duty to act in *loco parentis* with respect to the plaintiff. The defendants undertook a duty to provide a safe environment for plaintiff, as well as for all children at Nativity Catholic Church and School. A relationship of trust and confidence, and therefore a fiduciary relationship, was formed.

35. By entering into a fiduciary relationship with plaintiff, defendants were obligated to act only in the best interests of plaintiff. This duty extended to defendants' agents and employees, Nyhan included.

36. Plaintiff reposed trust and confidence in Nyhan, his priest, teacher, confessor, and counselor, and in the defendants. As a result of Nyhan's predatory acts described above and the Diocese and Bishop's failure to act on Nyhan's conduct, the defendants breached the duties owed to the plaintiff.

37. As a proximate result of the negligent actions, inactions and breaches of fiduciary duties by the defendants and through agents, plaintiff was harmed and is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION:

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

38. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.

39. The emotional distress and its attendant physical manifestations including nervousness, poor sleep, headaches, nausea, among others, suffered by plaintiff as a result of the defendants' actions and inactions was so severe that no reasonable person could be expected to endure it. Those effects have continued to cause problems for plaintiff and harm him severely, emotionally and physically.

40. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A FIFTH CAUSE OF ACTION:

FRAUDULENT CONCEALMENT

41. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.

42. Defendants had knowledge of Nyhan's sexually deviant propensities with minors prior to the sexual molestation of plaintiff. Plaintiff could not have known, nor did he reasonably have the opportunity to know, that the defendant had specific knowledge about Nyhan's deviant

and sexual propensities prior to the abuse perpetrated on him. Further, plaintiff could not have discovered the truth through reasonable inquiry or inspections. By acts and conduct described herein, defendants concealed material facts from plaintiff, inducing plaintiff and his family into a false belief that Nyhan was safe around children, a false belief that no other children were sexually abused by Nyhan, and a false belief that the defendants did not possess knowledge that Nyhan engaged in predatory sexual practices and abused other children, among other things.

43. The defendants' failure to report, along with their active concealment of Nyhan's above mentioned propensities, as mandated by the INSTRUCTION attached at Exhibit A, constitutes fraudulent concealment of the information about Nyhan from his potential prey. This fraudulent concealment lasted until the present.

44. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A SIXTH CAUSE OF ACTION:

CIVIL CONSPIRACY

45. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.

46. Prior to the abuse of the plaintiff, plaintiff is informed and believes two or more agents of the defendants were aware of Nyhan's sexually deviant propensities with minors. The failure

of these agents of the defendants to report Nyhan to the proper authorities, the active concealment of their knowledge about Nyhan's deviant activities, and their agreement to do nothing to stop, or at least report, his activities constitutes a conspiracy of silence. The purpose behind this conspiracy was to protect Nyhan at the plaintiff's expense, proximately resulting in injury to the plaintiff. The conspiracy of silence constitutes a failure to protect minors who were the potential prey of Nyhan and his sexually deviant propensities, this plaintiff included.

47. As a direct and proximate result of the conspiratorial conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SEVENTH CAUSE OF ACTION:

NEGLIGENT RETENTION OR SUPERVISION

48. The allegations of paragraphs 1 through 25 above are incorporated into this cause of action as if fully stated herein.

49. Nyhan was hired by agents for the defendants, or the defendants themselves, prior to the abuse upon the plaintiff.

50. The agents for the defendants knew or should have known about Nyhan's sexually deviant propensities. Despite such knowledge, the agents for defendants failed to take steps to protect the minors at Nativity Church and School, including the minor plaintiff.

51. Despite having knowledge of Nyhan's sexually deviant propensities with minors, the

defendants directly or through agents continued to retain him as a priest, youth leader, confessor, counselor, and teacher without warning the parents of children, or the children at Nativity Church and School, who were his potential prey. Several of these children, plaintiff included, became Nyhan's actual prey.

52. Despite having knowledge of Nyhan's sexually deviant propensities with minor students, the agents of the defendants did not properly supervise him. Consequently, he was able to continue to perpetrate his sexually deviant attacks on minors.

53. Plaintiff was a minor child attending Nativity Catholic Church and School, where Nyhan was assigned. Therefore if not for Nyhan's continued employment by defendants, plaintiff would not have been injured.

54. Plaintiff was one of those minor students who was injured because the agents of the defendants failed to supervise Nyhan even though they knew or should have known of his sexually deviant propensities with minors.

55. As a direct and proximate result of the defendants' negligent conduct, plaintiff sustained and continues to sustain injuries and damages described herein and therefore is entitled to receive actual, compensatory damages in an amount to be determined by a jury, and punitive damages in a sufficient amount to deter similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By:

Lawrence E. Richter, Jr.
David K. Haller
RICHTER & HALLER, LLC
622 Johnnie Dodds Blvd.
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000

LOFTON & LOFTON, PC
Lionel S. Lofton
Post Office Box 449
Charleston, SC 29402
(843) 722-6319

John Sinclaire, III
Glenn P. Churchill
Post Office Box 370
Charleston, SC 29402-0370
(843) 853-9300

ATTORNEYS FOR PLAINTIFF

10th day of August, 2005

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CA No. 05-CP-10-4913
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, Plaintiff, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	COMPLAINT **Jury Trial Demanded** Outrage, Negligence/Gross Negligence, Breach of Fiduciary Duty, Fraudulent Concealment, Civil Conspiracy

JULIE ARMSTRONG CLERK OF COURT 2006 DEC -2 AM 9:35 FILED

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #53 is a former Charleston County resident who, while living in the Charleston area, lived in an orphanage operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various functions sponsored and operated by the Diocese of Charleston.

2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors at all times material are and were hereto a corporation organized under the laws of the State of South Carolina, having its principal place of business at 117 Broad Street, Charleston, South Carolina. Diocese is and was the corporate

entity through which the affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment, supervision, and the exercise of authority over its various agents and the members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

4. This court has jurisdiction over the parties hereto and the subject matter hereof.

FACTUAL SUMMARY

5. Defendant Diocese operates churches, orphanages, and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere.

6.

7. Under the authority of the Diocese, Monsignor Thomas Duffy and other agents of Diocese took plaintiff from his childhood home in Charleston and placed him under the care of the Atlanta Diocese in Georgia, where he was housed at a facility operated by it.

8. While in Georgia, having been placed there by the defendants and/or its agents, Plaintiff was sexually assaulted by at least three Catholic Church agents.

9. Upon being returned to Charleston by Charleston Diocese agents, Plaintiff was placed in the Catholic orphanage in Charleston. He resided at the orphanage for two years and attended school at Blessed Sacrament in Charleston.

10. Diocese encouraged people, including the Plaintiff, to enter, use, and attend its many activities on its premises. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants owed minors, including the minor plaintiff, a greater degree of care because of their lack of capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its invitees or their legal guardians, including the Plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its invitees, including the Plaintiff, from harm.

11. At all times material to the incidents alleged in this complaint, Father Lawrence Sheedy was an authority figure, moral leader, confessor, and counselor employed and/or controlled by the defendants and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.

12. In his roles within the Diocese, Sheedy came to have access to and to know the most personal and confidential information of the Plaintiff. Diocese and Bishop encouraged the plaintiff and others to share and trust Sheedy as an authority figure, moral leader, confessor, and counselor. Among other things, Diocese and Bishop encouraged Plaintiff and others to share with and trust Sheedy and other of its employees with deeply personal information and with their personal safety and salvation. As part of his employment, Sheedy reached out to plaintiff and others within the jurisdiction of the Diocese and assisted the defendants in

cultivating relationships of trust and confidence.

13. Plaintiff, a devout member of the Roman Catholic Church from childhood to the present, attended and actively participated in activities designed for young boys at Diocese-sponsored events.

14. The Diocese operates the various components stated in paragraph 5 above, and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling function as a means of raising revenue for its operations.

15. Plaintiff came to know the priest Sheedy through these various Diocese-sponsored programs and activities. Among other things, Plaintiff was an altar boy with Sheedy and participated in the youth programs with which Sheedy worked. Based on this relationship, as cultivated by Sheedy and enforced by the Diocese and the Bishop, Plaintiff admired, trusted, followed, revered and respected Sheedy as an authority figure, moral leader, confessor, and counselor. The defendants taught and instructed the plaintiff to do so. As a result, Plaintiff entrusted in Sheedy his personal safety and shared with Sheedy his most confidential information.

16. Because of plaintiff's position as a minor under the care of the Diocese, together with Sheedy's position in the Roman Catholic Church as an authority figure, moral leader, confessor, and counselor, Sheedy was able to have control and influence over Plaintiff. By his words and actions, Sheedy represented to Plaintiff that their relationship was one in which Sheedy was to provide counseling, comfort and advice to Plaintiff, and to look out for

Plaintiff's well being and best interests. These representations were untrue and intended to deceive Plaintiff. Sheedy used these representations and his various positions to gain Plaintiff's trust and confidence and to obtain control over him.

17. Between 1966 and 1967, Plaintiff, then a minor child, was sexually assaulted repeatedly by Father Sheedy.

18. On several occasions during the time when the abuse occured, Father Sheedy provided alcohol to Plaintiff, then a minor, before sexually abusing him on Diocese property and while exercising the authorities provided to him by the defendants.

19. These incidents occurred while Sheedy was an employee and youth leader of the defendants. These assaults upon Plaintiff occurred on the premises owned and controlled by the defendants.

20. Based on the relationship of trust and confidence cultivated by Sheedy and encouraged by Diocese and Bishop, Plaintiff justifiably believed and relied on Sheedy and gave Sheedy his trust and confidence. By his words and actions, Sheedy assured Plaintiff that the abusive conduct was legal and proper. Sheedy and defendants actively concealed the wrongfulness of Sheedy's exploitation and misconduct involving children, Plaintiff included.

21. Sheedy also threatened Plaintiff with recrimination if Plaintiff revealed Sheedy's actions, often telling Plaintiff that the instances of sexual abuse on the Diocese property were "our little secret" that should never be revealed to anyone.

22. Plaintiff is informed and believes that Sheedy was known to the defendants to be unstable, unreliable, a hedonist and an abuser of alcohol. His assignment within the Diocese was as a result of his improper actions– but neither plaintiff nor his legal guardians were warned.

23. Plaintiff is informed and believes that the defendants knew, or should have known that Sheedy had deviant sexual propensities. Furthermore, the defendants knew or should have known that Sheedy was molesting minor boys on Diocese property. Nevertheless, the defendants took no action to protect the plaintiff and others from this conduct. Moreover, it hid the conduct of Sheedy and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the defendants.

24. After Plaintiff informed agents of the defendants that he had been sexually abused by Father Sheedy, church agents in their fiduciary capacity described herein directed Plaintiff to conceal Sheedy's abuse, informing Plaintiff that church officials would remedy the situation created by Sheedy's abuse. Plaintiff was told by Sheedy and other agents of the defendants that the sexual abuse was a form of "love" and that any thought the conduct was abuse was misplaced. The acts of the defendants and its agents to fraudulently conceal the tortuous and illegal acts of it and its employees has continued until the present.

25. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.

26. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).

27. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church

leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.

28. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."

29. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)

30. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents in secret archives. (Ex. A, ¶ 42.)

31. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential afterlife of damnation. Diocese, Bishop and their agents and employees such as Sheedy and the agents who dissuaded plaintiff from taking action reinforced this belief.

32. As a result, Plaintiff, a good Catholic, was taught that he must obey the rules, teachings,

R. App. 000262

doctrines, and instructions of the Roman Catholic Church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Sheedy that he must conceal that Sheedy had committed upon him a horrible sin or risk an afterlife of damnation.

33. As a result of the actions and/or inactions of the defendants, Catholic agents were allowed, and did, prey upon Plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Sheedy's conduct and the conduct of the defendants, by, among other things, years of severe psychological damage with physical manifestations.

CLASS ALLEGATIONS

34. Plaintiff brings this action on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.

35. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.

36. Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.

37. There are questions of law and fact which are common to the class, including, but no limited to, whether the Diocese and/or Bishop knew or should have known of the pervasive childhood sexual abuse throughout the state and whether the INSTRUCTION or other techniques were used to dissuade victims of the defendants' conduct from seeking civil

R. App. 000263

damages against it as a form of fraudulent concealment.

38. The claims of the class are typical of John Doe #53 and plaintiff is informed and believes that the defenses of the defendant will be identical as to each of the victims of the abuse. In fact, in all of the other individual cases brought against these defendants for similar acts alleged by this plaintiff, the defendants have asserted identical defenses. These actions are within the jurisdiction of this court and it may easily take judicial notice of the same.

39. Plaintiff, the representative party will fairly and adequately protect the interests of the class.

40. The amount in controversy for each of the members of the class exceeds $100.00.

41. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants.

42. Throughout this complaint, references to plaintiff are intended to reference the plaintiff and the members of the class who he represents as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

OUTRAGE

43. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

44. The defendants intentionally inflicted severe emotional distress on Plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of defendants caused Plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable man could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.

45. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

46. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

47. As alleged above, Plaintiff was sexually assaulted on multiple occasions by Father Laurence Sheedy who was an authority figure, moral leader, confessor, and counselor of the Plaintiff. Sheedy's duties to the Plaintiff arose from his employment with Diocese and Bishop.

48. Defendants owed duties of due care toward the Plaintiff. Defendants breached those duties and were negligent, grossly negligent, careless, reckless, wilful, or wanton in relation to the

R. App. 000265

Plaintiff, in that they failed to:

a. Monitor Sheedy's behavior while on premises of the defendants and/or while engaged in activities with school, church, youth;

b. Properly investigate Sheedy's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the Plaintiff;

c. Address Sheedy's past conduct either at the time he first became involved with the defendants or subsequently thereafter;

d. Ignoring Sheedy's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;

e. Allowing Sheedy to work with young boys, including the Plaintiff, alone and unsupervised;

f. Maintain and keep their property and premises where Sheedy worked in a reasonably safe condition;

g. Shield the Plaintiff from dangerous conditions, situations and individuals including child predators such as Sheedy ;

h. Warn the Plaintiff and/or his family of Sheedy's deviant sexual proclivities;

i. Placing the plaintiff in an unsafe environment in Georgia without fully investigating those facilities and/or knowing that the environment posed a risk to the plaintiff's well-being;

j. Fulfill their duties *in loco parentis* to the Plaintiff;

k. Educate the Plaintiff and/or his family about the dangers of sexual abuse of minors

R. App. 000266

in youth programs such as those conducted by the defendants through Sheedy;

l. Warn them of a priest known to have a sexual interest in children and known to act inappropriately on that interest;

m. Supervise Sheedy in a manner so as to eliminate his chances to sexually abuse children;

n. Retaining Father Sheady when it they defendants knew or should have known that he posed a risk to invitees of the defendant, especially the plaintiff, plaintiff class, and other invitees;

o. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his predatory actions;

p. Notify parents of those children who have been exposed to Sheedy;

q. Exercise due care for the safety and well-being of Plaintiff.

49. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, wilful, and wanton behavior of the defendants and/or their employees/agents, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A THIRD CAUSE OF ACTION

R. App. 000267

BREACH OF FIDUCIARY DUTY

50. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

51. By and through the relationships described herein, defendants entered into a fiduciary relationship with the Plaintiff. Additionally, by accepting physical custody of the minor Plaintiff, defendants assumed the duty to act in *loco parentis* with respect to the Plaintiff and were obligated to ensure that the plaintiff was safely cared for while he was in their custody, whether that be in Georgia, South Carolina, or elsewhere. By and through the conduct of the defendants, a relationship of trust and confidence, and therefore a fiduciary relationship, was formed.

52. As a result the acts and/or omissions of the defendants described herein, the defendants breached the duties owed to the Plaintiff.

53. As a proximate result of the breaches of fiduciary duties by the defendants, Plaintiff was injured and suffered damages. Plaintiff is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

54. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

55. Defendants actively worked to fraudulently conceal their conduct. Among other things,

R. App. 000268

Defendants undertook deliberate acts to conceal from the plaintiff that he had a cause of action thereby inducing him to postpone suit and/or dissuade the plaintiff from bringing suit by acts indicating affirmatively that the defendants would resolve the matter and/or that the plaintiff would suffer great and irreparable harm to himself by instituting suit, including, but not limited to, damnation. This fraudulent concealment lasted until the present.

56. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A SIXTH CAUSE OF ACTION

CIVIL CONSPIRACY

57. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

58. Defendants joined with others for the purpose of injuring the plaintiff, including, but not limited to, agents of the Diocese of Atlanta. The civil conspiracy of which these defendants were a party injured the plaintiff.

59. As a direct and proximate result of the conspiratorial conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

FILED
2005 DEC -2 AM 9:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Respectfully submitted,

By:

Lawrence E. Richter, Jr.
David K. Haller
RICHTER & HALLER, LLC
622 Johnnie Dodds Blvd.
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000

LOFTON & LOFTON, PC
Lionel S. Lofton
Post Office Box 449
Charleston, SC 29402
(843) 722-6319

John Sinclaire, III
Glenn P. Churchill
Post Office Box 370
Charleston, SC 29402-0370
(843) 853-9300

ATTORNEYS FOR PLAINTIFF

1st day of December, 2005

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE No. 06-CP-18-_____
Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated,)	
Plaintiffs,)	
vs.)	**COMPLAINT** Action for Loss of Consortium
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,)	
Defendants.)	

FILED RECORDED
2006 AUG 15 AM 11:43
BRENDA D. GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE NAMED:

Plaintiffs, individually and as representatives of a class of people similarly situated, allege and complain of the defendants as follows:

1. Jane Doe 1 is a resident and citizen of Richland County, South Carolina. She is the wife of John Doe #53, an individual who, in his youth, was assaulted and abused by a priest under the control of the defendants. Hereinafter, the abused individual shall be referred to as John Doe #53. The identity of Jane Doe 2 has been provided to the defendants.

2. Defendant Jane Doe 2 is a resident and citizen of Greenville County, South Carolina. She is the wife of John Doe #66 an individual who, in his youth, was assaulted and abused by a priest under the control of the defendants. Hereinafter, the abused individual shall be referred to as John Doe #66. The identity of Jane Doe 1 has been provided to the defendants.

3. Defendant Rachel Roe is a resident and citizen of Dorchester County, South Carolina. She

is the mother of John Doe #53. The identity of Jane Doe 3 has been provided to the defendants.

4. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors at all times material are and were hereto a corporation organized under the laws of the State of South Carolina, which owns property and does business in Dorchester County, South Carolina. Diocese is and was the corporate entity through which the affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment, supervision, and the exercise of authority over its various agents and the members of its denomination, and the maintenance of the well being of its members.

5. Defendant Diocese holds certain assets including schools, rectories, churches, and other properties real and personal throughout South Carolina, including Dorchester County, and possibly elsewhere. The Diocese operates the various components and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling functions as a means of raising revenue for its operations.

6. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

7. The defendant owns property and does business in Dorchester County. Venue is properly laid in this county and this court has jurisdiction over the parties hereto and the subject matter hereof.

ABUSE OF JOHN DOE #53

8. Under the authority of the Diocese, Monsignor Thomas Duffy and other agents of Diocese took John Doe #53 from his childhood home in Charleston and placed him under the care of the Atlanta Diocese in Georgia, where he was housed at a facility operated by it. Upon being returned to Charleston by Charleston Diocese agents, he was placed in the Catholic orphanage in Charleston. He resided at the orphanage for two years and attended school at Blessed Sacrament in Charleston.

9. At all times material to the incidents alleged in this complaint, Father Lawrence Sheedy was an authority figure, moral leader, confessor, and counselor employed and/or controlled by the defendants and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop. Because of John Doe #53's position as a minor under the care of the Diocese, together with Sheedy's position in the Roman Catholic Church as an authority figure, moral leader, confessor, and counselor, Sheedy was able to have control and influence over John Doe #53. By his words and actions, Sheedy represented to John Doe #53 that their relationship was one in which Sheedy was to provide counseling, comfort and advice to John Doe #53, and to look out for John Doe #53's well being and best interests. These representations were untrue and intended to deceive John Doe #53. Sheedy used these representations and his various positions to gain John Doe #53's trust and confidence and to obtain control over him.

10. Between 1966 and 1967, John Doe #53, then a minor child, was sexually assaulted repeatedly by Father Sheedy.

11. On several occasions during the time when the abuse occured, Father Sheedy provided alcohol to John Doe #53, then a minor, before sexually abusing him on Diocese property and while exercising the authorities provided to him by the defendants.

12. These incidents occurred while Sheedy was an employee and youth leader of the defendants. These assaults upon John Doe #53 occurred on the premises owned and controlled by the defendants.

13. Based on the relationship of trust and confidence cultivated by Sheedy and encouraged by Diocese and Bishop, John Doe #53 justifiably believed and relied on Sheedy and gave Sheedy his trust and confidence. By his words and actions, Sheedy assured John Doe #53 that the abusive conduct was legal and proper. Sheedy and defendants actively concealed the wrongfulness of Sheedy's exploitation and misconduct involving children, John Doe #53 included.

14. Sheedy also threatened John Doe #53 with recrimination if John Doe #53 revealed Sheedy's actions, often telling John Doe #53 that the instances of sexual abuse on the Diocese property were "our little secret" that should never be revealed to anyone, including his mother, plaintiff Rachel Roe.

15. John Doe #53 is informed and believes that Sheedy was known to the defendants to be unstable, unreliable, a hedonist and an abuser of alcohol. His assignment within the Diocese was as a result of his improper actions– but neither John Doe #53 nor Rachel Roe were warned.

16. As a result of the abuse of John Doe #53, has suffered deep psychological damage with accompanied physical manifestations, alcohol and drug abuse, and strain in his relationships, among other things, and they have impact his ability to function normally in life. In fact, as late as two years ago, John Doe #53 was being told by his priests that it was he who had sinned and that it was he who required absolution for the events with Sheedy. These acts by the defendants only exacerbated the injuries suffered by John Doe #53.

17. Because of the abuse of her son by the defendants' agent/employee, the priest Sheedy, Rachel Roe has been injured by, among other things, incurring expenses in the care of the child, John Doe #53 and the loss of his companionship, aid, and society.

18. Jane Doe 1 is the spouse of John Doe #53. She has assisted him in his care as he has struggled to cope with the abuse and the lifelong damage he has suffered. She has been with him during the times, recent and otherwise, when the defendants and its agents have tried to place the blame on the John Doe #53 for the events which occurred. As a result of the defendants conduct, Jane Doe 1 has suffered from the loss of the right to the companionship, aid, society and services of John Doe #53.

ABUSE OF JOHN DOE #66

19. John Doe #66 came to know Priest James Nyhan through various church and school related programs and activities while he attended Nativity Catholic School. Based on this relationship, as cultivated by Nyhan and encouraged by the Diocese and the Bishop, John Doe #66 admired, trusted, revered and respected Nyhan as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, he was taught

situated defined as follows:

> The spouses, parents, and/or legal guardians of all individuals who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants in South Carolina between January 1, 1950 and December 31, 2000 and who suffered a loss of the abused individual's consortium.

26. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.

27. Plaintiffs are informed and believes that the number of other individuals in South Carolina who fall within the definition of the class defined above may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.

28. There are questions of law and fact which are common to the class.

29. The claims of the class are typical of the plaintiffs and plaintiffs are informed and believes that the defenses of the defendant will be identical as to each of the class members.

30. Plaintiffs will fairly and adequately protect the interests of the class.

31. The amount in controversy for each of the members of the class exceeds $100.00.

32. Plaintiffs are entitled to the certification of a class of plaintiffs against the defendants are defined above.

33. Throughout this complaint, references to plaintiffs are intended to reference the plaintiffs and the members of the class who they represent as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants

which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

LOSS OF CONSORTIUM

34. Plaintiffs reallege paragraphs 1 through 33 above as if restated hereinafter verbatim.

35. The defendants have intentionally or tortiously violated the right to the companionship, aid, society and services of Jane Doe 1 and Rachel Roe to John Doe #53 and they have been injured as a direct and proximate result of the defendants' interference with said right. Plaintiff Rachel Roe has incurred expenses on behalf of John Doe #53 as a result of the defendants' conduct.

36. The defendants have intentionally or tortiously violated the right to the companionship, aid, society and services of Jane Doe 2 to John Doe #66 and she has been injured as a direct and proximate result of the defendants' interference with said right.

37. As a direct and proximate result of the acts of the defendants, the plaintiffs and the members of their class have been injured and suffered damages. Plaintiffs are entitled to a judgment against the defendants for both actual damages, in an amount to be determined by the trier of fact, and punitive damages to impress upon the defendants the seriousness of its conduct and to deter such similar conduct by other tortfeasors in the future.

JURY TRIAL DEMANDED

38. Plaintiffs demand a jury trial.

WHEREFORE plaintiffs pray for the certification of a class of individuals as defined herein, for judgment in their favor for both actual and punitive damages, and for other relief as the court may deem just, prudent, and proper.

Respectfully submitted,

By: _____

Lawrence E. Richter, Jr.
David K. Haller
RICHTER & HALLER, LLC
622 Johnnie Dodds Blvd.
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000

LOFTON & LOFTON, PC
Lionel S. Lofton
Post Office Box 449
Charleston, SC 29402
(843) 722-6319

John Sinclaire, III
Glenn P. Churchill
Post Office Box 370
Charleston, SC 29402-0370
(843) 853-9300

ATTORNEYS FOR PLAINTIFFS

14th day of August, 2006

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE NO. 06-CP-18-_____
John Doe #67, individually and a representative of a class of people similarly situated,)	
Plaintiff,)	**COMPLAINT** **Jury Trial Requested**
vs.)	Outrage, Negligence/Gross Negligence, Breach of Fiduciary Duty, Intentional Infliction of Emotional Distress, Fraudulent Concealment, Civil Conspiracy, Negligent Retention or Supervision
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,)	
Defendants.)	

FILED - RECORDED
2006 AUG 1 11:44
BERKELEY COUNTY
CLERK OF COURT
BOX 6122 MONCKS CORNER, SC 29461

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #67 is a pseudonym for a former Charleston County resident who, while living in the Charleston area, attended schools operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various religious and nonreligious functions sponsored and operated by the Diocese of Charleston. He is identified in this complaint by a pseudonym because this is a case about childhood sexual abuse upon the plaintiff, and his identity has been withheld due to the sensitivity and private nature of these allegations. His identity has been disclosed to the defendants.

2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors, is and was at all times material hereto a corporation

organized under the laws of the State of South Carolina, which owns property and does business in Dorchester County, South Carolina. Diocese is and was the corporate entity through which the religious and other affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment of clergy, supervision of clergy activities, the exercise of authority over various members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

FACTUAL SUMMARY

4. Defendant Diocese operates churches and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere. One such property is Nativity Catholic Church and School (hereinafter "Nativity") located in Charleston County.

5. Diocese, as part of its general mission, encouraged its parishioners, such as the plaintiff, to enter, use, and attend its many activities on its premises, including school, worship, social, and religious based functions. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants

owed minors, including the minor plaintiff, a greater degree of care because of their lack of capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its parishioners, including the plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its parishioners, including the plaintiff, from harm.

6. The Diocese operates the various components stated in paragraph 5 above, and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling function as a means of raising revenue for its operations.

7. At all times material to the incidents alleged in this complaint, Father James Nyhan was a clergyman assigned to Nativity. Nyhan was assigned to Nativity by the Diocese and Bishop and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.

8. Nyhan was employed by Diocese and Bishop as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff at Nativity Catholic Church and School. In this role, Nyhan came to have access to and to know the most personal and confidential information of his parishioners including the plaintiff. Diocese and Bishop encouraged their parishioners to share and trust Nyhan as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff. Among other things, Diocese and Bishop encouraged plaintiff and other parishioners to share with and trust Nyhan and other of its employees with deeply personal information and with their personal safety and salvation. As part of his

employment, Nyhan reached out to parishioners of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.

9. Plaintiff, a devout member of the Roman Catholic Church, attended and actively participated in activities designed for young boys at Nativity. Among other things, plaintiff was an altar boy and participated in the youth programs with which Nyhan worked.

10. Plaintiff came to know the priest Nyhan through these various church and school related programs and activities. Based on this relationship, as cultivated by Nyhan and encouraged by the Diocese and the Bishop, plaintiff admired, trusted, revered and respected Nyhan as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, he was taught and instructed to do so. As a result, plaintiff entrusted in Nyhan his personal safety and shared with Nyhan his most confidential information.

11. Because of plaintiff's position as a minor, together with Nyhan's position in the Roman Catholic Church as a priest, youth leader, holy man, confessor, counselor, and authority figure, Nyhan was able to have control and influence over plaintiff. By his words and actions, Nyhan represented to plaintiff that their relationship was one in which Nyhan was to provide counseling, comfort and advice to plaintiff, and to look out for plaintiff's well being and best interests. These representations were untrue and intended to deceive plaintiff. Nyhan used these representations and his various positions to gain plaintiff's trust and confidence and to obtain control over him.

12. Between 1978 and 1980, plaintiff, then a minor child, was sexually assaulted by Father Nyhan.

13. These incidents occurred while Nyhan was an employee and youth leader of Nativity

Catholic Church and School. These assaults upon plaintiff occurred on the premises of Nativity Catholic Church, a property owned and controlled by the defendants, as well as other locations. For example, Nyhan preyed on young boys, including the plaintiff, in the Church Rectory of Nativity Catholic Church or took them elsewhere, such as to local beaches, for the purposes of molestation

14. Based on the relationship of trust and confidence cultivated by Nyhan and encouraged by Diocese and Bishop, plaintiff justifiably believed and relied on Nyhan and gave Nyhan his trust and confidence. By his words and actions, Nyhan assured plaintiff that this conduct was legal and proper. Nyhan and defendants actively concealed the wrongfulness of his exploitation and misconduct involving children, plaintiff included. As a result, and because plaintiff was a minor, plaintiff was unable to understand the wrongfulness and illegality of Nyhan's sexual abuse of him and the related injury. Nyhan also threatened plaintiff with recrimination if plaintiff revealed Nyhan's actions.

15. Plaintiff is informed and believes that the defendants knew, or should have known that Nyhan had deviant sexual propensities. Furthermore, the defendants knew or should have known that Nyhan was molesting minor boys on Nativity Catholic Church's premises and at other locations as well. Nevertheless, the defendants failed to warn the plaintiff and other minor children similarly situated of the danger posed by Nyhan, failed to protect the plaintiff on its premises, and failed in the exercise of the many other duties it undertook. Moreover, it hid the conduct of Nyhan and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the Diocese and the Catholic Church.

16. Plaintiff has only learned within the past two years of the defendants' knowledge of Nyhan's

history, proclivities, and actions, and has similarly only then learned of defendants' concealment and effort to maintain secrecy concerning same. Other litigation, news reports, and other occurrences have led to plaintiff now becoming so aware, and plaintiff could not have so known or learned previously.

17. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.

18. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).

19. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.

20. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."

21. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children

are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)

22. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents in secret archives. (Ex. A, ¶ 42.)

23. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential after life of damnation. Diocese, Bishop and their agents and employees such as Nyhan using the relationships of priest, youth leader, confessor, counselor, and in a position of authority over plaintiff which they cultivated, reinforced this belief.

24. As a result, plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Nyhan that he must conceal that Nyhan had committed upon him a horrible sin or risk an afterlife of damnation.

25. As a result of the actions and/or inactions of the defendants, Nyhan was allowed, and did, prey upon plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Nyhan's conduct and the conduct of the defendants, by, among other things, years of psychological damage with physical manifestations.

26. **CLASS ALLEGATIONS**

27. Plaintiff brings this action on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.

28. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.

29. Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.

30. There are questions of law and fact which are common to the class, including, but no limited to, whether the Diocese and/or Bishop knew or should have known of the pervasive childhood sexual abuse throughout the state and whether the INSTRUCTION or other techniques were used to dissuade victims of the defendants' conduct from seeking civil damages against it as a form of fraudulent concealment.

31. The claims of the class are typical of John Doe #53 and plaintiff is informed and believes that the defenses of the defendant will be identical as to each of the victims of the abuse. In fact, in all of the other individual cases brought against these defendants for similar acts alleged by this plaintiff, the defendants have asserted identical defenses. These actions are within the jurisdiction of this court and it may easily take judicial notice of the same.

32. Plaintiff, the representative party will fairly and adequately protect the interests of the class.

33. The amount in controversy for each of the members of the class exceeds $100.00.

34. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant

representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants.

35. Throughout this complaint, references to plaintiff are intended to reference the plaintiff and the members of the class who he represents as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

OUTRAGE

36. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.

37. The defendants intentionally inflicted severe emotional distress on plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of defendants caused plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable man could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.

38. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has

been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION:

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

39. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.

40. As alleged above, plaintiff was sexually assaulted on multiple occasions between 1978 and 1980 by Father James Nyhan who was a priest, youth leader, confessors, counselor, and in a position of authority over plaintiff. Nyhan's duties to the plaintiff arose from his employment with Diocese and Bishop.

41. As a result of the relationship between plaintiff and Nyhan, plaintiff and the defendants, and/or Nyhan and the defendants, defendants owed duties of due care toward the plaintiff. defendants breached those duties and were negligent, grossly negligent, careless, reckless, wilful, or wanton in relation to the plaintiff, in that they failed to:

a. Monitor Nyhan's behavior while on premises of the defendants including, but not limited to, Nativity Catholic Church, and/or while engaged in activities with school, church, youth;

b. Properly investigate Nyhan's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the plaintiff;

c. Address Nyhan's past conduct either at the time he first became involved with the defendants or subsequently thereafter;

d. Ignoring Nyhan's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;

e. Allowing Nyhan to work with young boys, including the plaintiff, alone and unsupervised;

f. Maintain and keep their property and premises where Nyhan worked in a reasonably safe condition;

g. Shield the plaintiff from dangerous conditions, situations and individuals including child predators such as Nyhan;

h. Warn the plaintiff and/or his family of Nyhan's deviant sexual proclivities;

i. Fulfill theirs duties *in loco parentis* to the plaintiff;

j. Educate the plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Nyhan;

k. Warn them of a priest known to have a sexual interest in children and known to act inappropriately on that interest;

l. Supervise Nyhan in a manner so as to eliminate his chances to sexually abuse children;

m. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his

predatory actions;

n. Notify parents of those children who have been exposed to Nyhan;

o. Exercise due care for the safety and well-being of plaintiff.

42. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, wilful, and wanton behavior of the defendants and/or their employees/agents, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A THIRD CAUSE OF ACTION:

BREACH OF FIDUCIARY DUTY

43. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.

44. By and through the relationships described herein, defendants entered into a fiduciary relationship with the plaintiff. Additionally, by accepting physical custody of the minor plaintiff, as student at Nativity School and a parishioner of Nativity Church, defendants assumed the duty to act in *loco parentis* with respect to the plaintiff. The defendants undertook a duty to provide a safe environment for plaintiff, as well as for all children at Nativity Catholic Church and School. A relationship of trust and confidence, and therefore a fiduciary relationship, was formed.

45. By entering into a fiduciary relationship with plaintiff, defendants were obligated to act only in the best interests of plaintiff. This duty extended to defendants' agents and employees,

Nyhan included.

46. Plaintiff reposed trust and confidence in Nyhan, his priest, teacher, confessor, and counselor, and in the defendants. As a result of Nyhan's predatory acts described above and the Diocese and Bishop's failure to act on Nyhan's conduct, the defendants breached the duties owed to the plaintiff.

47. As a proximate result of the negligent actions, inactions and breaches of fiduciary duties by the defendants and through agents, plaintiff was harmed and is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION:

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

48. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.

49. The emotional distress and its attendant physical manifestations including nervousness, poor sleep, headaches, nausea, among others, suffered by plaintiff as a result of the defendants' actions and inactions was so severe that no reasonable person could be expected to endure it. Those effects have continued to cause problems for plaintiff and harm him severely, emotionally and physically.

50. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient

amount to deter such similar conduct by these defendants or others.

FOR A FIFTH CAUSE OF ACTION:

FRAUDULENT CONCEALMENT

51. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.

52. Defendants had knowledge of Nyhan's sexually deviant propensities with minors prior to the sexual molestation of plaintiff. Plaintiff could not have known, nor did he reasonably have the opportunity to know, that the defendant had specific knowledge about Nyhan's deviant and sexual propensities prior to the abuse perpetrated on him. Further, plaintiff could not have discovered the truth through reasonable inquiry or inspections. By acts and conduct described herein, defendants concealed material facts from plaintiff, inducing plaintiff and his family into a false belief that Nyhan was safe around children, a false belief that no other children were sexually abused by Nyhan, and that the defendants did not possess knowledge that Nyhan engaged in predatory sexual practices and abused other children, among other things.

53. The defendants' failure to report, along with their active concealment of Nyhan's above mentioned propensities, as mandated by the INSTRUCTION attached at Exhibit A, constitutes fraudulent concealment of the information about Nyhan from his potential prey. This fraudulent concealment lasted until the present.

54. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants

for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A SIXTH CAUSE OF ACTION:

CIVIL CONSPIRACY

55. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.

56. Prior to the abuse of the plaintiff, plaintiff is informed and believes two or more agents of the defendants were aware of Nyhan's sexually deviant propensities with minors. The failure of these agents of the defendants to report Nyhan to the proper authorities, the active concealment of their knowledge about Nyhan's deviant activities, and their agreement to do nothing to stop, or at least report, his activities constitutes a conspiracy of silence. The purpose behind this conspiracy was to protect Nyhan at the plaintiff's expense, proximately resulting in injury to the plaintiff. The conspiracy of silence constitutes a failure to protect minors who were the potential prey of Nyhan and his sexually deviant propensities, this plaintiff included.

57. As a direct and proximate result of the conspiratorial conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SEVENTH CAUSE OF ACTION:

NEGLIGENT RETENTION OR SUPERVISION

58. The allegations of paragraphs 1 through 35 above are incorporated into this cause of action as if fully stated herein.

59. Nyhan was hired by agents for the defendants, or the defendants themselves, prior to the abuse upon the plaintiff.

60. The agents for the defendants knew or should have known about Nyhan's sexually deviant propensities. Despite such knowledge, the agents for defendants failed to take steps to protect the minors at Nativity Church and School, including the minor plaintiff.

61. Despite having knowledge of Nyhan's sexually deviant propensities with minors, the defendants directly or through agents continued to retain him as a priest, youth leader, confessor, counselor, and teacher without warning the parents of children, or the children at Nativity Church and School, who were his potential prey. Several of these children, plaintiff included, became Nyhan's actual prey.

62. Despite having knowledge of Nyhan's sexually deviant propensities with minor students, the agents of the defendants did not properly supervise him. Consequently, he was able to continue to perpetrate his sexually deviant attacks on minors.

63. Plaintiff was a minor child attending Nativity Catholic Church and School, where Nyhan was assigned. Therefore if not for Nyhan's continued employment by defendants, plaintiff would not have been injured.

64. Plaintiff was one of those minor students who was injured because the agents of the defendants failed to supervise Nyhan even though they knew or should have known of his sexually deviant propensities with minors.

R. App. 000294

65. As a direct and proximate result of the defendants' negligent conduct, plaintiff sustained and continues to sustain injuries and damages described herein and therefore is entitled to receive actual, compensatory damages in an amount to be determined by a jury, and punitive damages in a sufficient amount to deter similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By: _____

Lawrence E. Richter, Jr.
David K. Haller
RICHTER & HALLER, LLC
622 Johnnie Dodds Blvd.
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000

LOFTON & LOFTON, PC
Lionel S. Lofton
Post Office Box 449
Charleston, SC 29402
(843) 722-6319

John Sinclaire, III

Glenn P. Churchill
Post Office Box 370
Charleston, SC 29402-0370
(843) 853-9300

ATTORNEYS FOR PLAINTIFF

14th day of August, 2006

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE No. 06-CP-18-1310
Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated,	
Plaintiff,	
vs.	**ACCEPTANCE OF SERVICE**
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,	
Defendants.	

FILED-RECORDED
2006 SEP -6 AM 10: 10
CLERK OF COURT
DORCHESTER COUNTY

ACCEPTANCE OF SERVICE

Due and proper service of the SUMMONS and COMPLAINT pertaining to the above-styled action is hereby acknowledged on behalf of The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity, and two copies of same are retained this 22nd day of August, 2006. The undersigned represents that he is authorized to accept service for the defendants above named.

By: _____
Albert P. Shahid, Jr., Esquire
ATTORNEY FOR THE DIOCESE OF CHARLESTON AND THE BISHOP OF THE DIOCESE OF CHARLESTON, IN HIS OFFICIAL CAPACITY

Charleston, South Carolina

CERTIFICATE OF SERVICE

I DO HEREBY certify that I have served the foregoing ACCEPTANCE OF SERVICE by placing a true and correct copy of the same in an envelope, and delivering via first class mail, postage prepaid to counsel at the address(es) indicated as follows:

FILED-RECORDED
2006 SEP -6 AM 10: 10
SHERRIL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

A. Peter Shahid, Jr.
Shahid Law Office, LLC
15 State Street
Charleston, SC 29402

James C. Geoly
Burke, Warren, MacKay & Serritella, P.C.
22nd Floor IBM Plaza
330 North Wabash Avenue
Chicago, IL 60611-3607

Lionel S. Lofton, Esq.
Lofton & Lofton, PC
P.O. Box 449
Charleston, SC 29402

John Sinclair, III, Esq.
Glenn Churchill, Esq.
P.O. Box 370
Charleston, SC 29402

Sara H. Edwards

5th day of September, 2006

Mt. Pleasant, South Carolina

RICHTER & HALLER, LLC
Attorneys & Counselors at Law
622 Johnnie Dodds Boulevard
P. O. Drawer 1089
Mount Pleasant, South Carolina 29465

Lawrence E. Richter, Jr., P.C.
David K. Haller, P.C.

Telephone: (843) 849-6000
Telefax: (843) 881-1400

September 20, 2006

The Honorable Diane S. Goodstein
Chief Judge of the First Judicial Circuit
P.O. Box 1419
Summerville, SC 29484

In Re: John Doe #67, individually and as a representative of a class of people similarly situated v. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
Case No.: 2006-CP-18-1311

Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated v. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
Case No.: 06-CP-18-1310

Dear Judge Goodstein:

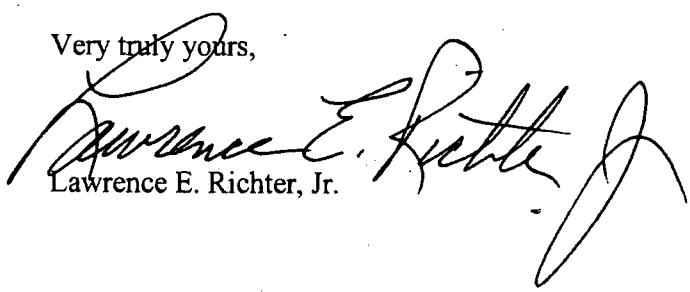
I am writing to follow up on David Haller's letter to you dated September 11, 2006.

We represent a number of individual claimants against the Bishop of Charleston and the Catholic Diocese of Charleston in all matters relating to claims for damages in these priest abuse cases. Mediation was completed in mid June and I believe these matters can now be pushed to their final resolution. That will, however, require your involvement. It is for that reason that I am writing to request a status conference as soon as you can accommodate us.

By copy of this letter I am advising Peter Shahid of the Charleston Bar and Jim Geoly of the Chicago Bar, counsel for the defendants, of this contact with the court.

Thanking you for your usual courtesies, and with best personal regards, I am

Very truly yours,



Lawrence E. Richter, Jr.

LER/lwh

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CA No. 06-CP-18-1636
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, Plaintiff, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	COMPLAINT **Jury Trial Demanded** Outrage, Negligence/Gross Negligence, Breach of Fiduciary Duty, Fraudulent Concealment, Civil Conspiracy

FILED-RECORDED
2006 OCT -6 AM 11:59
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #53 is a former Charleston County resident who, while living in the Charleston area, lived in an orphanage operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various functions sponsored and operated by the Diocese of Charleston.

2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors at all times material are and were hereto a corporation organized under the laws of the State of South Carolina, having its principal place of business at 117 Broad Street, Charleston, South Carolina. Diocese is and was the corporate entity through which the affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be

responsible for the selection and assignment, supervision, and the exercise of authority over its various agents and the members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

4. This court has jurisdiction over the parties hereto and the subject matter hereof.

FACTUAL SUMMARY

5. Defendant Diocese operates churches, orphanages, and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere.

6.

7. Under the authority of the Diocese, Monsignor Thomas Duffy and other agents of Diocese took plaintiff from his childhood home in Charleston and placed him under the care of the Atlanta Diocese in Georgia, where he was housed at a facility operated by it.

8. While in Georgia, having been placed there by the defendants and/or its agents, Plaintiff was sexually assaulted by at least three Catholic Church agents.

9. Upon being returned to Charleston by Charleston Diocese agents, Plaintiff was placed in the Catholic orphanage in Charleston. He resided at the orphanage for two years and attended school at Blessed Sacrament in Charleston.

10. Diocese encouraged people, including the Plaintiff, to enter, use, and attend its many activities on its premises. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants owed minors, including the minor plaintiff, a greater degree of care because of their lack of capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its invitees or their legal guardians, including the Plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its invitees, including the Plaintiff, from harm.

11. At all times material to the incidents alleged in this complaint, Father Lawrence Sheedy was an authority figure, moral leader, confessor, and counselor employed and/or controlled by the defendants and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.

12. In his roles within the Diocese, Sheedy came to have access to and to know the most personal and confidential information of the Plaintiff. Diocese and Bishop encouraged the plaintiff and others to share and trust Sheedy as an authority figure, moral leader, confessor, and counselor. Among other things, Diocese and Bishop encouraged Plaintiff and others to share with and trust Sheedy and other of its employees with deeply personal information and with their personal safety and salvation. As part of his employment, Sheedy reached out to plaintiff and others within the jurisdiction of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.

13. Plaintiff, a devout member of the Roman Catholic Church from childhood to the present, attended and actively participated in activities designed for young boys at Diocese-sponsored events.

R. App. 000302

14. The Diocese operates the various components stated in paragraph 5 above, and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling function as a means of raising revenue for its operations.

15. Plaintiff came to know the priest Sheedy through these various Diocese-sponsored programs and activities. Among other things, Plaintiff was an altar boy with Sheedy and participated in the youth programs with which Sheedy worked. Based on this relationship, as cultivated by Sheedy and enforced by the Diocese and the Bishop, Plaintiff admired, trusted, followed, revered and respected Sheedy as an authority figure, moral leader, confessor, and counselor. The defendants taught and instructed the plaintiff to do so. As a result, Plaintiff entrusted in Sheedy his personal safety and shared with Sheedy his most confidential information.

16. Because of plaintiff's position as a minor under the care of the Diocese, together with Sheedy's position in the Roman Catholic Church as an authority figure, moral leader, confessor, and counselor, Sheedy was able to have control and influence over Plaintiff. By his words and actions, Sheedy represented to Plaintiff that their relationship was one in which Sheedy was to provide counseling, comfort and advice to Plaintiff, and to look out for Plaintiff's well being and best interests. These representations were untrue and intended to deceive Plaintiff. Sheedy used these representations and his various positions to gain Plaintiff's trust and confidence and to obtain control over him.

17. Between 1966 and 1967, Plaintiff, then a minor child, was sexually assaulted repeatedly by Father Sheedy.

18. On several occasions during the time when the abuse occured, Father Sheedy provided alcohol to Plaintiff, then a minor, before sexually abusing him on Diocese property and while exercising the authorities provided to him by the defendants.

19. These incidents occurred while Sheedy was an employee and youth leader of the defendants. These assaults upon Plaintiff occurred on the premises owned and controlled by the defendants.

20. Based on the relationship of trust and confidence cultivated by Sheedy and encouraged by Diocese and Bishop, Plaintiff justifiably believed and relied on Sheedy and gave Sheedy his trust and confidence. By his words and actions, Sheedy assured Plaintiff that the abusive conduct was legal and proper. Sheedy and defendants actively concealed the wrongfulness of Sheedy's exploitation and misconduct involving children, Plaintiff included.

21. Sheedy also threatened Plaintiff with recrimination if Plaintiff revealed Sheedy's actions, often telling Plaintiff that the instances of sexual abuse on the Diocese property were "our little secret" that should never be revealed to anyone.

22. Plaintiff is informed and believes that Sheedy was known to the defendants to be unstable, unreliable, a hedonist and an abuser of alcohol. His assignment within the Diocese was as a result of his improper actions– but neither plaintiff nor his legal guardians were warned.

23. Plaintiff is informed and believes that the defendants knew, or should have known that Sheedy had deviant sexual propensities. Furthermore, the defendants knew or should have known that Sheedy was molesting minor boys on Diocese property. Nevertheless, the defendants took no action to protect the plaintiff and others from this conduct. Moreover, it hid the conduct of Sheedy and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the defendants.

24. After Plaintiff informed agents of the defendants that he had been sexually abused by Father Sheedy, church agents in their fiduciary capacity described herein directed Plaintiff to conceal Sheedy's abuse, informing Plaintiff that church officials would remedy the situation created by Sheedy's abuse. Plaintiff was told by Sheedy and other agents of the defendants that the sexual abuse was a form of "love" and that any thought the conduct was abuse was misplaced. The acts of the defendants and its agents to fraudulently conceal the tortuous and illegal acts of it and its employees has continued until the present.

25. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.

26. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).

27. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.

28. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."

29. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are

to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)

30. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents in secret archives. (Ex. A, ¶ 42.)

31. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential afterlife of damnation. Diocese, Bishop and their agents and employees such as Sheedy and the agents who dissuaded plaintiff from taking action reinforced this belief.

32. As a result, Plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic Church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Sheedy that he must conceal that Sheedy had committed upon him a horrible sin or risk an afterlife of damnation.

33. As a result of the actions and/or inactions of the defendants, Catholic agents were allowed, and did, prey upon Plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Sheedy's conduct and the conduct of the defendants, by, among other things, years of severe psychological damage with physical manifestations.

CLASS ALLEGATIONS

34. Plaintiff brings this action on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.

35. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.

36. Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.

37. There are questions of law and fact which are common to the class, including, but no limited to, whether the Diocese and/or Bishop knew or should have known of the pervasive childhood sexual abuse throughout the state and whether the INSTRUCTION or other techniques were used to dissuade victims of the defendants' conduct from seeking civil damages against it as a form of fraudulent concealment.

38. The claims of the class are typical of John Doe #53 and plaintiff is informed and believes that the defenses of the defendant will be identical as to each of the victims of the abuse. In fact, in all of the other individual cases brought against these defendants for similar acts alleged by this plaintiff, the defendants have asserted identical defenses. These actions are within the jurisdiction of this court and it may easily take judicial notice of the same.

39. Plaintiff, the representative party will fairly and adequately protect the interests of the class.

40. The amount in controversy for each of the members of the class exceeds $100.00.

41. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant

representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants.

42. Throughout this complaint, references to plaintiff are intended to reference the plaintiff and the members of the class who he represents as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

OUTRAGE

43. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

44. The defendants intentionally inflicted severe emotional distress on Plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of defendants caused Plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable man could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.

45. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants

for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

46. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

47. As alleged above, Plaintiff was sexually assaulted on multiple occasions by Father Laurence Sheedy who was an authority figure, moral leader, confessor, and counselor of the Plaintiff. Sheedy's duties to the Plaintiff arose from his employment with Diocese and Bishop.

48. Defendants owed duties of due care toward the Plaintiff. Defendants breached those duties and were negligent, grossly negligent, careless, reckless, wilful, or wanton in relation to the Plaintiff, in that they failed to:

a. Monitor Sheedy's behavior while on premises of the defendants and/or while engaged in activities with school, church, youth;

b. Properly investigate Sheedy's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the Plaintiff;

c. Address Sheedy's past conduct either at the time he first became involved with the defendants or subsequently thereafter;

d. Ignoring Sheedy's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;

e. Allowing Sheedy to work with young boys, including the Plaintiff, alone and

unsupervised;

f. Maintain and keep their property and premises where Sheedy worked in a reasonably safe condition;

g. Shield the Plaintiff from dangerous conditions, situations and individuals including child predators such as Sheedy ;

h. Warn the Plaintiff and/or his family of Sheedy's deviant sexual proclivities;

i. Placing the plaintiff in an unsafe environment in Georgia without fully investigating those facilities and/or knowing that the environment posed a risk to the plaintiff's well-being;

j. Fulfill their duties *in loco parentis* to the Plaintiff;

k. Educate the Plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Sheedy;

l. Warn them of a priest known to have a sexual interest in children and known to act inappropriately on that interest;

m. Supervise Sheedy in a manner so as to eliminate his chances to sexually abuse children;

n. Retaining Father Sheady when it they defendants knew or should have known that he posed a risk to invitees of the defendant, especially the plaintiff, plaintiff class, and other invitees;

o. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his

predatory actions;

p. Notify parents of those children who have been exposed to Sheedy;

q. Exercise due care for the safety and well-being of Plaintiff.

49. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, wilful, and wanton behavior of the defendants and/or their employees/agents, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A THIRD CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

50. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

51. By and through the relationships described herein, defendants entered into a fiduciary relationship with the Plaintiff. Additionally, by accepting physical custody of the minor Plaintiff, defendants assumed the duty to act in *loco parentis* with respect to the Plaintiff and were obligated to ensure that the plaintiff was safely cared for while he was in their custody, whether that be in Georgia, South Carolina, or elsewhere. By and through the conduct of the defendants, a relationship of trust and confidence, and therefore a fiduciary relationship, was formed.

52. As a result the acts and/or omissions of the defendants described herein, the defendants breached the duties owed to the Plaintiff.

53. As a proximate result of the breaches of fiduciary duties by the defendants, Plaintiff was

injured and suffered damages. Plaintiff is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

54. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

55. Defendants actively worked to fraudulently conceal their conduct. Among other things, Defendants undertook deliberate acts to conceal from the plaintiff that he had a cause of action thereby inducing him to postpone suit and/or dissuade the plaintiff from bringing suit by acts indicating affirmatively that the defendants would resolve the matter and/or that the plaintiff would suffer great and irreparable harm to himself by instituting suit, including, but not limited to, damnation. This fraudulent concealment lasted until the present.

56. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A SIXTH CAUSE OF ACTION

CIVIL CONSPIRACY

57. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

58. Defendants joined with others for the purpose of injuring the plaintiff, including, but not limited to, agents of the Diocese of Atlanta. The civil conspiracy of which these defendants were a party injured the plaintiff.

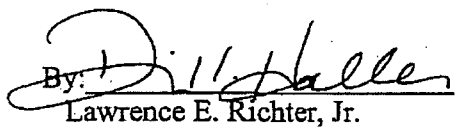
59. As a direct and proximate result of the conspiratorial conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By: 

Lawrence E. Richter, Jr.
David K. Haller
RICHTER & HALLER, LLC
622 Johnnie Dodds Blvd.
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000

LOFTON & LOFTON, PC
Lionel S. Lofton
Post Office Box 449
Charleston, SC 29402

(843) 722-6319

John Sinclaire, III
Glenn P. Churchill
Post Office Box 370
Charleston, SC 29402-0370
(843) 853-9300

ATTORNEYS FOR PLAINTIFF

6th day of October, 2006

Mt. Pleasant, South Carolina

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

FILED-RECORDED
2006 OCT -6 PM 2:03
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TO: A. PETER SHAHID, ESQUIRE AND JIM GEOLY, ESQUIRE, ATTORNEYS FOR THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the plaintiffs will move at the Dorchester County Courthouse on the tenth (10) day after service hereof, or at such other time and place as the court deems proper, for an order certifying plaintiffs classes of individuals with potential claims against the defendants, giving initial approval of a settlement between the classes and the defendants, and directing the procedure for notice, objection, and final approval of the settlement reached herein. A more specific statement of the relief requested is stated below.

1. Class Certification

On June 30, 2006,[1] plaintiffs John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, filed actionS against the defendants seeking damages arising from sexual abuse suffered at the hands of a priest under the control of the defendants while on the defendants' property. Plaintiffs John Doe #53, John Doe 66 and John Doe 66A were subsequently added to the case, also as class representatives.

This motion seeks to certify two classes of individuals. John Doe #53, John Doe, 66, John Doe 66A, and John Doe 67 request the court certify a class as follows:

> All individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Primary Class")

Jane Doe 1, Jane Doe 2, and Rachel Roe request the court certify a class of individuals as follows:

> The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

Plaintiffs will provide the court such legal argument to support this motion as necessary.

2. **Approval of Settlements reached on behalf of the classes**

The Class Representatives with class counsel and representatives of the defendants and their counsel held a mediation June 13 and 14, 2006 with Marvin Infinger, Esquire. The principals of the Settlement have executed a Settlement and Arbitration Agreement which will be presented to the court prior to the hearing on this matter. In sum, the defendants agree to make available a fund in set out in the Settlement and Arbitration Agreement by which individuals who are members of the

[1]Other actions involving the same acts have been of record since at least May of 2005.

the Settlement and Arbitration Agreement and final approval of the settlement after notice to the class as set forth below.

3. Notice to Class Members

Plaintiffs pray for an order pursuant to SCRCP Rule 23 requiring notice of the class settlement, approval process, and claims process as follows:

a. Notice. Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *USA Today*, The Charleston *Post & Courier*, The Myrtle Beach *Sun*; *The State*; The Augusta *Chronicle*; The Rock Hill *Herald*; Beaufort *Gazette;* Greenvllle *News* Spartanburg *Herald;* Orangeburg *Times-Democrat*; and the Aiken *Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names, addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

b. Time. All publications shall be completed no later than 30 days following the entry of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.

c. **Fairness Hearing.** A Fairness Hearing on final approval of this settlement will be

of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.

c. **Fairness Hearing.** A Fairness Hearing on final approval of this settlement will be heard by this court at a time and place convenient to it as soon after the conclusion of the notice time as possible.

d. **Notice of Settlement Approval and Duration of Claims Process.** The claims process will begin ten days after the date on which the settlement is approved as fair and all rights of appeal have expired. The claims period shall end 120 days after the date on which the claims period ends. Notice of the date on which the claims period begins and ends and how an individual can make a claim and learn the details of the same shall be made in the same manner as set out paragraph (b) above.

Plaintiffs will supplement this motion with such memorandum and record prior to the hearing on this motion as may be necessary.

WHEREFORE plaintiffs pray for the relief requested herein and such other relief as the court deems just, prudent, and proper.

Respectfully submitted,

By: _____

Lawrence E. Richter, Jr.
David K. Haller
RICHTER & HALLER, LLC
622 Johnnie Dodds Blvd.
Post Office Drawer 1089

Mt. Pleasant, SC 29465
(843) 849-6000

LOFTON & LOFTON, PC
Lionel S. Lofton
Post Office Box 449
Charleston, SC 29402
(843) 722-6319

John Sinclaire, III
Glenn P. Churchill
Post Office Box 370
Charleston, SC 29402-0370
(843) 853-9300
ATTORNEYS FOR PLAINTIFF

6th day of October, 2006
Mt. Pleasant, South Carolina

RICHTER & HALLER, LLC
Attorneys & Counselors at Law
622 Johnnie Dodds Boulevard
P. O. Drawer 1089
Mount Pleasant, South Carolina 29465

Lawrence E. Richter, Jr., P.C.
David K. Haller, P.C.

Telephone: (843) 849-6000
Telefax: (843) 881-1400

October 17, 2006

The Honorable Deadra L. Jefferson
Ninth Judicial Circuit
100 Broad Street, Suite 336
Charleston, SC 29401

In Re: John Doe # 66 vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
Case No.: 05-CP-10-2053

John Doe #66A vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
Case No.: 05-CP-10-3293

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, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity
Case No.: 05-CP-10-4913

Dear Judge Jefferson:

Please find enclosed proposed consent orders to dismiss the above referenced matters. If the proposed orders meet with your approval, please execute them and return them in the enclosed envelope or forward them to the Clerk of Court for filing.

By copy of this letter I am advising present counsel of this contact with the court.

R. App. 000320

Thanking you for your time and courtesies in this matter, I am

Very truly yours,

David K. Haller

DKH/she
Enclosures

cc: A. Peter Shahid, Esq.
James C. Geoly, Esq.
Lionel Lofton, Esq.
Jack Sinclaire, Esq.
Glenn Churchill, Esq.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE No. 06-CP-18-1310
	CASE No. 06-CP-18-1311
	CASE No. 06-CP-18-1636

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated,

Plaintiffs,

vs.

The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,

Defendants.

FILED - RECORDED
2007 JAN 17 PM 3:25
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

MOTION TO CERTIFY CLASSES AND FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

TO: A. PETER SHAHID, ESQUIRE AND JIM GEOLY, ESQUIRE, ATTORNEYS FOR THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the plaintiffs will move at the Dorchester County Courthouse on the tenth (10) day after service hereof, or at such other time and place as the court deems proper, for an order certifying plaintiffs classes of individuals with potential claims against the defendants, giving initial approval of a settlement between the classes and the defendants, and directing the procedure for notice, objection, and final approval of the settlement reached herein. A more specific statement of the relief requested is stated below.

1. Class Certification

On June 30, 2006,[1] plaintiffs John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, filed actions against the defendants seeking damages arising from sexual abuse of John Doe 67 suffered at the hands of a priest under the control of the defendants while on the defendants' property. Plaintiffs John Doe #53, John Doe 66 and John Doe 66A were subsequently added to the case, also as class representatives. The John Doe plaintiffs are actual victims of sexual abuse. The Jane Doe and Rachel Roe plaintiffs are spouses and a mother of the plaintiffs.

This motion seeks to certify two classes of individuals. John Doe #53, John Doe, 66, John Doe 66A, and John Doe 67 request the court certify a class as follows:

> All individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Primary Class")

Jane Doe 1, Jane Doe 2, and Rachel Roe request the court certify a class of individuals as follows:

> The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

Plaintiffs will provide the court such legal argument to support this motion as necessary.

2. Approval of Settlements reached on behalf of the classes

The Class Representatives with class counsel and representatives of the defendants and their

---

[1]Other actions involving the same acts have been of record since at least May of 2005.

counsel held a mediation June 13 and 14, 2006 with Marvin Infinger, Esquire. The principals of the Settlement have executed a Settlement and Arbitration Agreement is attached hereto as Exhibit A. In sum, the defendants have agreed to make available a fund as set out in the Settlement and Arbitration Agreement by which individuals who are members of the classes may make a claim. Mr. Infinger, as Arbitrator, will determine the amount of any award due *bona fide* claims of members of the plaintiffs' classes. The full claims process and payment schedule for claims is set forth in the Settlement and Arbitration Agreement.

Plaintiffs' pray for an order pursuant to SCRCP Rule 23 providing conditional approval of the Settlement and Arbitration Agreement and final approval of the settlement after notice to the class as set forth below.

3. Notice to Class Members

Plaintiffs pray for an order pursuant to SCRCP Rule 23 requiring notice of the class settlement, approval process, and claims process as follows:

a. **Notice.** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit B hereto in the following major publications: The Charleston *Post & Courier*, The Myrtle Beach *Sun*; *The State*; The Augusta *Chronicle*; The Rock Hill *Herald*; Beaufort *Gazette;* Greenville *News;* Spartanburg *Herald;* Orangeburg *Times-Democrat*; and the Aiken *Standard.* Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names,

addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

b. **Time.** All publications shall be completed no later than 30 days following the entry of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.

c. **Fairness Hearing.** A Fairness Hearing on final approval of this settlement will be heard by this court at a time and place convenient to it as soon after the conclusion of the notice time as possible.

d. **Notice of Settlement Approval and Duration of Claims Process.** The claims process will begin ten days after the date on which the settlement is approved as fair. The claims period shall end 120 days thereafter. Notice of the date on which the claims period begins and ends and how an individual can make a claim and learn the details of the same shall be made in the same manner as set out paragraph (b) above.

Plaintiffs will supplement this motion with such memorandum and record prior to the hearing on this motion as may be necessary.

Prayer and Signature Block Continue Next Page

WHEREFORE plaintiffs pray for the relief requested herein and such other relief as the court deems just, prudent, and proper.

Respectfully submitted,

By: _____

Lawrence E. Richter, Jr.
David K. Haller
RICHTER & HALLER, LLC
622 Johnnie Dodds Blvd.
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000
ATTORNEYS FOR PLAINTIFF

15th day of January 2007

Mt. Pleasant, South Carolina

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SECTION 15-48-10, CODE OF LAWS OF SOUTH CAROLINA (1976).

STATE OF SOUTH CAROLINA)) COUNTY OF DORCHESTER)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE No. 06-CP-18-1310 CASE No. 06-CP-18-1311 CASE No. 06-CP-18-1636
John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of classes of people similarly situated, Plaintiffs, vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, Defendants.	FILED - RECORDED 2007 JAN 17 PM 3:25 CHERYL GRAHAM CLERK OF COURT DORCHESTER COUNTY **SETTLEMENT AND ARBITRATION AGREEMENT**

This Settlement and Arbitration Agreement (hereinafter "the Agreement") is made this 12th day of January, 2007, by and between the John Doe #53, John Doe 66, John Doe 66A, John Doe 67, individually and as representatives of a class of other persons similarly situated as victims of sex abuse allegedly committed by agents or employees of the defendants in this action, and/or Jane Doe 1, Jane Doe 2, and Rachel Roe, individually and as representatives of parents or spouses who have suffered a loss of consortium as a result of sexual abuse upon John Doe #53, John Doe 66, John Doe 66A, and John 67 or members of their class, and The Bishop of Charleston, A Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity (hereinafter "the Diocese"). This Agreement may be signed in counterparts. This Agreement represents the formal "Settlement and

EXHIBIT A

Arbitration Agreement" formalizing the agreement reached between the Representatives[1] and the Diocese and supersedes all other agreements and/or writings previously executed by the parties. This Agreement is intended to effectuate the complete and total settlement of civil actions captioned above as well as 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913, and all other claims which were alleged or may have been alleged by the Representatives and the individuals who they represent in their capacity as class representatives. It is further understood that this Agreement must be submitted to a court of competent jurisdiction for approval and that certain provisions survive this agreement even if other provisions are not approved.

WHEREFORE, for and in consideration of the promises set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **FORMATION OF CLASSES.** Plaintiffs shall move in a timely manner for the creation of plaintiff classes against the defendants as follows:

A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused[2] at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")

B. The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

---

1 The class representatives will be referred to throughout this Agreement as "the Representatives."

[2]"Sexual abuse," as used throughout this agreement and in the class definitions, is any lewd or lascivious act committed on, about, or with a minor by an agent or employee of the Diocese in which the actor knew or should have known that the act may have the effect of arousing, appealing to, or gratifying the lusts, passions or sexual desires of the agent or employee of the Diocese or of the minor.

RJB

The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement fund, pursuant to the terms and conditions set forth in this agreement and the order approving class certification. The individuals in either class shall hereinafter be referred to as "Claimants."

2. **APPROVAL OF AGREEMENT BY COURT.** In addition to the plaintiffs requesting that the classes stated above be certified, the plaintiffs shall also submit this Settlement and Arbitration Agreement for approval by the court pursuant to SCRCP Rule 23. Should the court deny approval of the certification of the classes substantially defined in paragraph 1 above, the court will be separately asked to approve the conditions of paragraph 4, below. Plaintiffs reserve their right of appeal of any denial of class certification. Approval of the settlement shall be on such terms and conditions as the court may fix. All participation is subject to any term and condition of the approval of the classes set out in the court's order. Provided, however, that this is voluntary settlement agreement and that either the Diocese or the Representatives may interpose an objection to any of the court's rulings on the settlement agreement or claims process and may withdraw from this settlement if its terms are materially altered by the court.

3. **SETTLEMENT FUND AND DISTRIBUTION METHOD.** The parties agree to jointly ask the court to approve the terms of the Settlement Agreement, as mediated June 13 and 14, 2006, as follows:

a. The Diocese shall fund the settlement with two irrevocable letters of credit or other guaranteed pool of funds in the amounts of $5 million and $7 million, respectively. Upon disbursement from the initial letter of credit or from an aggregate amount equaling or

exceeding $4 million, then in that event, the Diocese shall take such action necessary to have the secondary $7 million dollars immediately available for disbursement. Both letters of credit (or other pools of funds) shall be guaranteed by the issuing bank to be available as of the date of the approval of this Agreement. In the event the Diocese is unable to obtain letters of credit, it will nevertheless be obligated to pay all sums awarded by the court or the Arbitrator and to deposit funds for this purpose as set forth above. This Agreement supersedes any prior agreement of the parties.

b. With regard to the claim of any Claimant, the Diocese will pay the Claimant to settle such claim an amount of money to be determined through the arbitration process set forth herein. The arbitration shall be conducted by Marvin Infinger, Esq. (hereinafter "the Arbitrator"). If for any reason Mr. Infinger is unable to continue to serve as arbitrator, the parties shall agree to a successor arbitrator. If the parties are unable to agree to a successor arbitrator one shall be appointed by the court.

c. Awards shall be based on the criteria set forth herein and the Arbitrator will make awards as follows:

Type of Alleged Abuse	Minimum Payment	Maximum Payment
Limited inappropriate touching on the victim	$10,000.00	$18,500.00
Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts.	$20,000.00	$55,000.00
Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances.	$60,000.00	$125,000.00
Egregious acts, such as sodomy, any act		

RJB

accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage.	$150,000.00	$200,000.00
Loss of consortium (Parent or Spouse)	$20,000.00	

The criteria for the Arbitrator to determine the amount of the award for a sexual abuse claim shall include, among other things, the type of abuse, its duration and the extent of injuries suffered by the Claimant. In cases in which the claim is for loss of consortium, the award shall be $20,000.00 for each parent of the Claimant, and $20,000.00 for the spouse of the Claimant. The Arbitrator shall not consider any liability issues, including, but not limited to, defenses such as lack of negligence or notice, statute of limitations, and charitable immunity. The award issued by the Arbitrator shall be left to the sole discretion of the Arbitrator and shall not be subject to objection, review, appeal or suit brought by any Claimant or the Diocese.

d. For every claim presented, the arbitrator shall make an express written determination as to (1) whether the Claimant is, in fact, a member of one of the plaintiff classes, (2) whether the claim is *bona fide*, and (3) the amount of the award, if any. In the event that the Arbitrator determines that a Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fide*, the claim shall be denied and the Claimant shall receive no award. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fide*, and the amount of any damages which were suffered.

e. Any individual, including his/her parents and spouse, whose claim has been otherwise adjudicated, settled or resolved, is barred from filing a claim or collecting from any funds of this class.

RJB

f. The identity of all Claimants shall be kept strictly confidential except that the Diocese's counsel and those associated with the Diocese necessary for the performance of the terms of this agreement, the Arbitrator, Class Counsel and their staffs may have such access necessary to effectuate this Agreement and the court's orders on the same. Counsel before the court should take appropriate steps to ensure that access is provided to staff on an "as needed" basis. Any individual who has access to the actual name of any Claimant shall sign a court approved confidentiality and restraining agreement prohibiting the disclosure of the name of any Claimant. The name of the Claimant, his or her social security number, and the amount of his or her award will be provided to the escrow agent for purposes of distributing the award at the conclusion of the claims process.

g. Subject to approval of the court, any person wishing to make a claim must do so within 120 days of the initial notice of final approval of the settlement in a form approved by the court. The form may be obtained from Class Counsel by contacting it as provided in the court approved notice and should include at least the following information:

1. The name, date of birth, social security number, preferred address, telephone number, and email address of contact for the Claimant and, if the claim is made in a representative capacity, the name of the representative and the ward and the nature of the relationship;
2. Name of the abuser, location at which the abuse occurred, the time period during which the abuse occurred, and relation of the victim to the abuser; [i.e. priest/altar boy; coach/ basketball player]
3. A brief statement sufficient to advise the parties of the nature of the claim and the acts complained of;

4. A brief summary of any claimed injury or damages;

5. Name of parents, whether they are living or deceased;

6. Name of spouse (if any);

7. The form must be signed and dated; and

8. Any other information or documents Claimant deems necessary for a determination of his or her claim. Documentary evidence may be supplemented as provided for herein.

h. Class Counsel shall assign an anonymous name and/or numbering system to each claim made. Thereafter, the claim must be referred to by its claim number. The name of the claimant and the claim number will be provided to the Diocese lawyers and to the Arbitrator pursuant to the confidentiality provisions established herein.

i. Class Counsel will transmit the Claim Form only to counsel for the Diocese for its review pursuant to paragraphs 3(l), (m) and (n). At the conclusion of the claim review by the Diocese, Class Counsel shall transmit the Diocese's response to the Claimant. The Claimant will have fifteen (15) days to make any response or take any action Claimant deems necessary and provide the same to Class Counsel who will transmit it to the Diocese. If the Claimant has elected to obtain psychological testing and use it in support of his or her claim, Claimant should provide it to Class Counsel promptly upon receipt. Thereafter, Class Counsel will submit the entire claim package to the Arbitrator and request a hearing.

j. The Arbitrator shall schedule the Claimant's Arbitration within 90 days of submission of the claim to him. The arbitration shall be conducted pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., unless the Act conflicts with this Agreement or the court's order(s) in this matter, in which case the Agreement and order(s)

RJB

shall control. In any event, as to all issues, the orders of the court shall control.

k. While the class has Class Counsel, the parties acknowledge that the Claimant may have an attorney of his or her own choice for any part of the claims process. If an attorney is selected by the Claimant, all information concerning the claim or claims process shall be sent to the attorney for the Claimant.

l. Upon receipt of any Claim Form from any Claimant, Class Counsel shall forward the claim form to Counsel for the Diocese. Counsel for the Diocese shall have thirty (30) days from receipt of the claim to review the claim to verify the accuracy of the information presented and to determine the Diocese's position on whether the Claimant is a member of one of the plaintiff classes and whether the claim is *bona fide*. If the Diocese acknowledges that the Claimant is a member of a plaintiff class and that the claim is *bona fide*, the proceedings before the Arbitrator shall be to determine the damages suffered by the Claimant within the parameters of paragraph 3(d).

m. If the Diocese objects to the claim, the Diocese shall submit an original and a copy of a written objection to Class Counsel stating why the Claimant is not properly a member of one of the plaintiff classes and/or why the claim is not *bona fide*, and attaching (to the original and the copy) any documents or other supporting evidence which the Diocese wishes to tender (such as a death certificate showing that the alleged perpetrator could not have committed the acts complained of at the time and place alleged). Class Counsel shall transmit a copy of the Diocese's objection and exhibits to the Claimant or the Claimant's attorney.

n. If the Diocese makes a timely objection to the claim, the Arbitrator shall rule on the Diocese's objection after a hearing at which Counsel for the Diocese and Claimant (and/or Claimant's counsel if the Claimant elects to be represented) and/or Class Counsel shall be

RJB

permitted to make argument. The Arbitrator may, in his sole discretion, schedule such hearing on the same day as, and immediately prior to, the Arbitration of the Claimant's claim for damages, or at some other time in advance of such Arbitration. The Arbitrator shall be the sole determiner or the Claimant's membership in one of the plaintiff classes and of the *bona fides* of the claim, and his decision shall be final and not subject to appeal. If at any time prior to the Arbitration of the claim for damages the Arbitrator determines that the Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fides*, the Arbitrator shall notify the parties of such determination and shall not proceed with the Arbitration on the claim for damages. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

o. Upon submission of the claim, Class Counsel will notify the Claimant that he or she has the opportunity to have a psychological assessment and counseling by Dr. L. Randolph Waid. The Claimant may make this election at the time of his or her claim being filed. The Diocese agrees to pay Dr. Waid, on behalf of the Claimant, for no more than three (3) sessions. Any assessment of any Claimant by Dr. Waid will be provided to the Claimant who may submit it to the Arbitrator as part of the Claimant's damages proof; however, this assessment shall be kept confidential and will not be shared with the Diocese. The payments of counseling fees to Dr. Waid shall be over and above any award made by the Arbitrator and shall not be charged to the Claimant, but shall be paid from the fund.

p. At the Claimant's hearing, a presentation shall be made by or on behalf of the Claimant concerning his or her damages suffered as a result of the alleged abuse. Each arbitration

hearing shall be no longer than two (2) hours. At Claimant's arbitration hearing, the Claimant must appear unless he or she is a minor, incompetent, serving in the military (or merchant marine), deceased or otherwise unavailable for medical, psychological, or other substantial reasons. The Claimant and/or his or her attorney may present other evidence relating to the abuse and injury, including without limitation, affidavits under oath or under the pains and penalties of perjury, from persons with relevant information, medical records, and/or forensic evaluation. Claimant may submit any information, records or testimony bearing upon damages for consideration by the Arbitrator, including videotape and audiotape testimony. Counsel for the Claimant may make comment upon the damages sustained by the Claimant. Before the close of the Claimant's arbitration hearing, Counsel for the Claimant may notify the Arbitrator that the Claimant intends to supplement the information, records or testimony submitted at Claimant's arbitration hearing with written records or information which is to be received by the Arbitrator no later than 21 days after the close of the arbitration hearing. The Arbitrator shall consider no information, records or testimony unless submitted by the Claimant or Claimant's Counsel with the exception of the Diocese's written statement as described in paragraph (q), below. In the event that the Claimant does not appear in person, the Claimant must appear by telephone or video conference. The Claimant may submit a forensic evaluation or a statement from a health care professional, but shall not be required to do so. The Claimant may have any person or persons of his or her choosing speak at the hearing.

q. Counsel for the Diocese shall not be present at said arbitration hearing regarding damages; however, the Diocese shall be entitled to provide a written submission concerning the Claimant's damages. No person other than the arbitrator shall be present at the hearing

 RJB

without the consent of the Claimant. If the Claimant requests, a representative of the Diocese, who is not an attorney, may be present at Claimant's arbitration hearing for purposes of pastoral support. The Claimant shall be entitled to have present at said hearing any of his/her family, friends, health providers, or other individuals requested by the Claimant.

r. After the Arbitrator has rendered his decision, but not before, the Claimant may be invited to meet one on one with the Bishop of Charleston or his designee for religious, spiritual, and pastoral support. No Claimant is obligated to meet with the Bishop or his designee.

s. Any materials of whatever nature submitted by Claimant or on his behalf to the Arbitrator, in connection with the arbitration process which is in any way related to the arbitration awards issued by the Arbitrator shall be returned to the Claimant or his or her counsel by the Arbitrator with the award. The Arbitrator shall not reveal the evidence or written arguments presented during the course of the arbitration hearing to anyone other than those present in the Arbitration or Class Counsel.

t. The Arbitrator shall issue a written award in conformance with the requirements of paragraph 3(d) no later than twenty (20) days after the close of the Arbitration hearing to and deliver same to Class Counsel, counsel for the Diocese, and Claimant and/or Claimant's counsel. Anyone connected with the claims process in any fashion is bound to maintain the confidentiality of each individual Claimant.

u. All costs associated with the management of the class shall be paid from the settlement fund. The fees and costs described herein include those incurred by the Arbitrator, Class Counsel, the escrow agent, Dr. Waid and any other fees and costs approved by the court.

RJB

v. The court approving this Agreement has the authority to enforce any Arbitration award. The Diocese consents to judgment being entered against it in any federal and/or state Court having jurisdiction. The parties release the Arbitrator from any liability arising from any act or omission in connection with the arbitration hearing conducted herein. By participating in the claims process, each Claimant and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

4. **SETTLEMENT OF REPRESENTATIVE'S AND POINT CLAIMANT'S CLAIMS.** In consideration of the work, effort, time, stress, psychological pain, damages, liability proof, embarrassment, family turmoil and other issues relevant, the class representatives and/or point plaintiffs shall receive settlement funds as follows:

John Doe #53	$160,000.00
John Doe 66	$100,000.00
John Doe 66 A	$100,000.00
John Doe 67	$100,000.00
Jane Doe A	$30,000.00
Jane Doe B	$30,000.00
Rachel Roe	$30,000.00

It is understood and agreed that the claims of these claimants are released and these settlement funds will be paid by the Diocese regardless of whether the class certification and settlement are approved by the court.

5. **ATTORNEYS FEES.** In consideration of the substantial efforts of plaintiffs' counsel (past

and future), their substantial accomplishments in effectuating the settlement, and the work past and future and their role as class counsel, the parties agree to submit to the court the determination of the amount of attorneys fees which shall be paid to the plaintiffs' class counsel by the Diocese. However, it is specifically agreed that in no event shall such counsel receive fees of neither less than $950,000.00 nor more than $2.5 million to be paid to such counsel by the Diocese from the fund referred to in paragraph 3, above, all as determined by the court. Such payment shall be made to Richter & Haller, LLC on behalf of itself no later than ten (10) days after award by the court. The award of attorneys fees as set forth above in this paragraph specifically contingent upon the Court approval of this class certification and settlement agreement.

6. **PAYMENT OF CLAIMS.**

A. W. Ellison Thomas, CPA shall serve as an independent escrow agent for the payment of all sums due from the settlement fund. The escrow agent shall be provided unrestricted access to the settlement funds obtained in compliance with this agreement and will make all payments directly against the fund as set out in this agreement, order of the court, or any award made by the Arbitrator to the individual or entity to be paid. The escrow agent will be compensated at an hourly rate approved by the court and will be from the settlement fund. The escrow agent shall provide an accounting of his disbursements at the conclusion of the claims process to Class Counsel, the Diocese, and the court.

B. No later than thirty (30) days after the final Arbitration award is issued, the escrow agent and the Arbitrator will confer and agree that the total amount of all awards after the payment of all costs and fees, does not exceed the amounts provided for in paragraph 3(a). In the event that the total due exceeds the amounts provided for in paragraph 3(a), then each award shall be reduced on a *pro rata* of the net settlement fund. This revised award list shall be provided

RJB

to Class Counsel and the Diocese, if necessary.

C. Once the Arbitrator and escrow agent determine the final amount of each award, the escrow agent shall disburse the award from the settlement funds within fifteen (15) days of the final determination of the awards. The awards are to be paid to the Claimant directly or through his or her counsel. After all necessary disbursements any remaining letters of credit and/or funds will be returned to the defendants and/or letters of credit will be cancelled.

D. Any party may bring perceived errors in an award based on an interpretation of this Agreement to the attention of the Arbitrator with notice to the other party. However, the Arbitrator's decision on any such question is final. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

7. **PASTORAL OUTREACH AND PROTECTION OF CHILDREN BY THE DIOCESE.**

The parties understand and acknowledge that the Diocese has done or will do the following:

a. Comprehensive Policies. For the protection of children and the care of sexual abuse survivors, the Diocese has adopted a set of comprehensive policies called "The Policy of the Diocese of Charleston Concerning Allegations of Sexual Misconduct Or Abuse Of A Minor By Church Personnel" (the "Policies"). The Policies set forth the Diocese's unmitigated condemnation of child sexual abuse and its commitment to work to prevent sexual abuse, deal responsibly with accusations, and reach out with pastoral care for victims. The Policies are reviewed and updated every two years.

b. Reports Of All Accusations To Solicitor. Pursuant to the Policies, the Diocese reports all accusations of child sexual abuse it receives to the Solicitor of the county in which the

accusation arises or, where applicable, to law enforcement authorities in other states, and cooperates fully with all criminal investigations and prosecutions.

c. Victim Assistance Minister. Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. The VAM coordinates the Diocese's pastoral response to those who come forward, and works with victims to facilitate the healing process. Where appropriate, the VAM also assists victims in obtaining and paying for psychotherapy, on a confidential basis.

d. Sexual Abuse Advisory Board. Pursuant to the Policies, the Diocese has established, among other things, a Sexual Abuse Advisory Board (the "Board"). Although the Bishop of the Diocese has the ultimate decision-making responsibility in cases presented to the Diocese, the Board has the responsibility to advise the Bishop in particular cases. The Board also assists the Bishop in the review of the Policies that occurs every two years, and makes recommendations to the Bishop concerning any proposed revisions to the Policies. The Board consists of at least five (5) members, of whom four (4) are independent lay people who are not priests or employees of the Diocese.

e. Presentation By Class Representatives or Members To The Sexual Abuse Advisory Board. The Diocese welcomes the suggestions of the Class Representatives (or members) regarding the provisions and implementation of the Policies. The Diocese therefore agrees to permit the Class Representatives to make a presentation to the Board in advance and/or as part of the next two regularly scheduled two year policy reviews so that the views of the Representatives can be heard and considered as the Diocese undertakes such review.

RJB

8. **RELEASE.** When the Claimant submits his claim form, he or she shall execute the Release attached as Exhibit 1 and deliver that Release to Class Counsel. Class Counsel shall hold the Release in escrow until the award is delivered and payment is made, as provided herein. If payment is not made by Diocese pursuant to the Agreement, these copies are null and void and will be destroyed. The Diocese will provide a release to each Claimant as set out on Exhibit 2 through Class Counsel upon receipt of the Claim Form for the review under paragraphs 3(l), (m), and (n).

9. **DISMISSAL OF ACTIONS.** The actions pending against the Diocese shall be dismissed with prejudice pursuant to the terms and conditions set by the court in its order on class certification.

10. **MISCELLANEOUS PROVISIONS.** This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement may be modified, amended or supplemented to effectuate the intent of the parties under such terms and conditions set by the court approving this Agreement. It is acknowledged that each party has participated in the drafting of this Agreement, and that any claimed ambiguity should not be construed for or against any Party. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. Any dispute concerning this Agreement which arises after this Agreement is approved by the court shall be resolved by the Arbitrator. The decision of the Arbitrator regarding any such dispute is final and binding. The terms and conditions of this Agreement shall be binding and inure to the benefit of each of the Parties, their counsel and respective successors, heirs and assigns. It is further understood and agreed by Claimant that this Agreement is not to be construed as an admission of liability upon the part of any of the released parties, but rather as a good faith settlement of disputed claims. The Claimant states and warrants that he or she is the sole owner of the claims involved, and that such

RJB

claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

Executed this 12th day of January, 2007.

FOR THE CLASSES:

Lawrence E. Richter, Jr.
CLASS COUNSEL

Witness

FOR THE DEFENDANTS:

The Most Rev. Robert J. Baker
THE BISHOP OF CHARLESTON, IN HIS OFFICIAL CAPACITY AND FOR THE BISHOP OF CHARLESTON, A CORPORATION SOLE

Witness

EXHIBIT 1

CLAIMANT'S GENERAL RELEASE

_____ ("the Claimant") for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby remises, releases and forever discharges The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, ("the Diocese"); any present or former bishops, archbishops or cardinals of the Diocese, in both their individual and official capacity; any entities affiliated with the Diocese; and present or former priests, deacons, other clergy, brothers, nuns, agents, servants, officers, trustees, directors, supervisors, attorneys, employees, volunteers, insurers, predecessors, successors, assigns, subsidiaries and affiliates of the Diocese, including without limitation any such person accused of committing or negligently causing or permitting sexual abuse with respect to the Claimant or members of the Claimant's family (all of the foregoing hereinafter collectively referred to as the "Released Parties") of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities whatsoever of every name and nature, whether in LAW, in EQUITY, or otherwise which the Claimant ever had, now has, or which Claimant or Claimant's successors hereinafter can, shall, or may have by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Release, and whether such claims are now known or unknown, including without limiting the generality of the foregoing, any and all claims made or that might have been made in any pending claim or suit. With respect to any claims arising from or related to an act or acts of abuse which have formed the basis of a claim or suit against the Diocese

RJB

or persons or entities employed by or affiliated with the Diocese, the Released Parties covered by this Release shall also include any other persons or entities whether or not they are employed by or affiliated with the Diocese. This release does not apply to persons or entities who are not persons or entities employed by or affiliated with the Diocese with respect to any claims arising from or related to an act or acts of abuse that have not formed, or could not form, the basis of a claim or suit against the Diocese or persons or entities employed by or affiliated with the Diocese.

IN WITNESS WHEREOF, the Claimant has set his/her hand and seal to this Release as of the ____ day of _____, 200____.

_____ _____

Print Claimant's Name Claimant's Signature

_____ _____

Witness Witness

RJB

FILED-RECORDED
2007 JAN 17 PM 3:29
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT 2

DIOCESE LIMITED RELEASE

The Roman Catholic Bishop of Charleston and the Bishop of Charleston in his official capacity, a Corporation Sole ("Diocese"), for and in consideration of the promises and undertakings contained in the Settlement and Arbitration Agreement, the sufficiency of which is hereby acknowledged, hereby forever remises, releases and forever discharges _____ ("the Claimant") and Claimant's heirs, attorneys (including their law firms, agents, servants, or employees), executors, predecessors, parents, successors, agents, servants, employees, and assigns of and from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, judgments, executions, orders, and any and all claims, demands and liabilities which were or could have properly been raised in any form or fashion arising from the incidents alleged by Claimant in his claim submitted pursuant to the Order Approving Class Certification and Settlement Agreement (date to be inserted) in cases numbers 06-CP-18-1310 and 06-CP-18-1311, Claimant's participation in the class process set out in said Order, including any assertions of the Bishop arising from the validity or fraudulent nature of any claim, and/or any defense or claim which was or may have been raised by the Bishop in defense to the Claim or any suit which was or could have been filed against the Bishop but for the Claimant's participation in the claims process set out in the Order referenced herein, whether such claims are now known or unknown. It is the intention of the parties that the Diocese is fully and finally releasing the Claimant from any liability asserted by it against him or her arising from the Claimants assertion of sexual abuse.

IN WITNESS WHEREOF, the Bishop of Charleston has set his hand and seal to this Release

20 + RJB

as of the date written below.

_____
The Bishop of Charleston, a Corporation Sole

By:_____

Its: _____

Date: _____ Witnessed by: _____

RdB

FILED-RECORDED
2007 JAN 17 PM 3:29
CLERK OF COURT
DORCHESTER COUNTY

Legal Notice

Notice of Proposed Settlement of Class Action

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated vs. The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity

YOU ARE HEREBY NOTIFIED OF A PROPOSED SETTLEMENT OF THIS CLASS ACTION, OF HEARINGS TO BE HELD BY THE COURT TO DETERMINE WHETHER IT SHOULD BE APPROVED AND TO DETERMINE THE REASONABLENESS OF CLASS COUNSEL'S FEES.

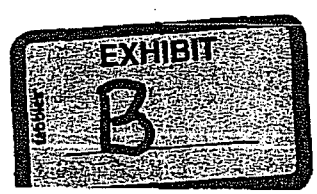
Plaintiffs John Doe #53, John Doe 66, John Doe 66A John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated brought these claims on behalf of themselves and others who with claims of sexual abuse in keeping with the class definitions, by agents or employees of the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole and The Bishop of the Diocese of Charleston, in his official capacity have denied any liability or wrongdoing in response to the claims that were made against them and have asserted various defenses in response to the claims.

The court of common pleas for Dorchester County has certified the classes on whose behalf the claims have been asserted. Those classes are:

1. All individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Primary Class")

2. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

The Class Representatives have reached a settlement on behalf of the classes, and, after a review of the terms of a Settlement Agreement entered into by the Class Representatives and the defendants, the court has preliminarily approved the terms of the settlement as being in the best interest of the classes. The court's preliminary approval is subject to final approval or disapproval after a Fairness Hearing to be held as described below. Copies of the Settlement Agreement may be obtained by a Class member or their counsel at this time by making written request of Class Counsel sent to the address for Class Counsel set forth at the end of this Notice.



The Settlement Agreement resolving this matter will not be effective unless and until the court makes a final determination as to its fairness and that the settlement is a fair, reasonable, and adequate compromise of the aggregate claims of the plaintiff classes as a whole.

In order to assist the Court in making this decision, the Court will hold a Fairness Hearing on such date determined by the court, commencing at 10:00 a.m. at the Dorchester County Courthouse in St. George, South Carolina. The court will also consider at this hearing an award of attorneys fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than November 11, 2006 documentation supporting their request for attorneys fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement. Any Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same on Class Counsel fifteen (15) days prior to the Fairness Hearing. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

The proposed settlement includes a claims process to be utilized for qualifying Class members to prove the validity of any claim and have their damages measured for payment from the Settlement Fund. The Class Representatives will also request the approval of the claims process provided for in the Settlement Agreement and for an order providing for a date on which the claims process begins and ends.

CLASS COUNSEL:
Lawrence E. Richter, Jr.
David K. Haller
RICHTER & HALLER, LLC
622 Johnnie Dodds Blvd.
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000
diocesesettlement@richterfirm.com

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

CASE No: 06-CP-18-1310
06-CP-18-1311
06-CP-18-1636

FILED-RECORDED
2007 FEB 22 AM 10:52
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

JOHN DOE #53, JOHN DOE #66 JOHN DOE #66A, JANE DOE #1, JANE DOE #2, AND RACHEL ROE, Individually and as Representatives of a Class of People similarly situated

Plaintiffs,

vs.

THE BISHOP OF CHARLESTON, a Corporation Sole and THE BISHOP OF THE DIOCESE OF CHARLESTON, in his official capacity,

Defendants.

OBJECTION TO THE ORDER CERTIFYING CLASS AND GIVING PRELIMINARY APPROVAL IN SETTLEMENT

The within parties, John Doe and Jane Doe, object to their enclusion in the class action suit on the grounds that the interest of justice for them will not be served, to wit,

1. That their special arrangements, the John Doe (not identified at the time of the Hearing) and Jane Doe have been able to keep their involvement in this matter relatively secret so that it will not harm them in their business contacts or their friendships and personal relationships with others;

2. That the Bishop of Charleston, through his counsel, has extended the Statute of Limitations in which John Doe and Jane Doe can file their causes of action individually;

3. That the John Doe who wishes to opt out in fact is still undergoing psychiatric care and psychological treatment for the injuries he suffered at the hands of Father James Nyan;

4. That the John Doe is just now getting over his suicidal attempts which have caused him great difficulty over the past several years when he began thinking about the involvements and sexual assaults of Father Nyan to his

person. That this recent recollection has stunned and harmed John Doe and he is still undergoing treatment therefore.

5. That John Doe (later to be identified at the time of the Hearing) and Jane Doe wish to opt out of any participation in the Class Action suit because they feel it would not serve their best interests; and

6. That John Doe and Jane Doe hereby move to be excluded from the Class Action suit.

WALTER BILBRO, JR., P.C.
1365-D Ashley River Road
Charleston, South Carolina
Office: (843) 766-2277
FAX: (843) 7664226

ATTORNEY FOR THE OBJECTOR,
JOHN DOE

February 20, 2007

Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE No. 06-CP-18-1310
)	CASE No. 06-CP-18-1311
)	CASE No. 06-CP-18-1636
John Doe #53, John Doe 66, John)	
Doe 66A, John Doe 67, Jane Doe 1,)	
Jane Doe 2, and Rachel Roe)	
individually and as representatives of)	
classes of people similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	PLAINTIFF JOHN DOE'S OBJECTION
)	TO PROPOSED SETTLEMENT
The Bishop of Charleston, a)	CASE No. 05-CP-25-0516
Corporation Sole, and The Bishop)	
of the Diocese of Charleston, in his)	
official capacity,)	
)	
Defendants.)	
)	

FILED-RECORDED
2007 FEB 22 PM 2:54
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiff is the John Doe plaintiff in John Doe vs. The Diocese of Charleston and the Bishop of the Diocese of Charleston in his official capacity, Civil Action No. 05-CP-25-0516, filed November 4, 2005 and currently pending in the Hampton County Court of Common Pleas. In 1966, when the Plaintiff was 15 years, he was molested by Father Frances Burn at St. Mary's Church in Hampton, South Carolina. At that time, Father Frances Burn was an employee of the Diocese of Charleston and subject to the control of the Bishop of the Diocese of Charleston. The Plaintiff's action is an action for negligence and gross negligence against the Diocese of Charleston and the Bishop of the Diocese of Charleston.

The Plaintiff was provided with a copy of the Order Certifying Classes and Giving Preliminary Approval to Settlement in the above captioned action via facsimile on

February 21, 2007. The Plaintiff John Doe hereby objects to the proposed settlement in the above captioned action. The grounds for the Plaintiff's objection are as follows:

1. The Plaintiff filed John Doe vs. The Diocese of Charleston and the Bishop of the Diocese of Charleston in his official capacity, Civil Action No. 05-CP-25-0516, in the Hampton County Court of Common Pleas on November 4, 2005. Since filing, the Plaintiff has incurred considerable expense and expended time in prosecuting this action and pursuing his individual claim. The Plaintiff would be severely prejudiced by now, after his action has been pending for more than a year, being forced into a settlement of his claim and would be deprived his right to a trial by jury.

2. The Plaintiff did not receive proper notice of the request for class certification in the above captioned action or of the proposed settlement. The Plaintiff was deprived of any opportunity to object to class certification. The Plaintiff has also not been provided an opportunity to timely investigate the fairness of the proposed settlement or the mechanism by which the awards for individual claims will be determined.

3. The Plaintiff has not been provided an opportunity to opt out of the certified class or to opt out of the proposed settlement.

4. The Plaintiff has been deprived of his right to Due Process in that the proposed settlement does not provide the Plaintiff with the opportunity to be heard at a meaningful time and in a meaningful manner.

5. The Plaintiff is informed and believes that he will not receive an adequate award under the proposed settlement.

6. The Plaintiff was not provided notice as required by the Order Certifying Classes and Giving Preliminary Approval to Settlement.

7. Such other and further grounds as may be presented at the Fairness Hearing.

The Plaintiff reserves the right to supplement this Objection and to file such affidavits, depositions, pleadings or other documents as may be necessary to support this objection.

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P. A.

BY: _____

John E. Parker
Post Office Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

February 22, 2007

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

Objections to Class Settlement, Motion for Modification and Notice of Opt-Out

Although we commend the Diocese for trying to take some responsibility for the many families that have been affected by the practices of sexual abuse by Diocese agents and employees, various individuals potentially affected by this class action hereby object to the proposed class settlement. These individuals move, pursuant to SCRCP 23(d)(1), that the order be modified to resolve the objections, and conditionally provide notice that certain of the individuals either are not included in the class settlement or, if included, intend to opt-out of the class to pursue their own individual actions outside of the class settlement.

The identities of the individuals are designated by pseudonyms to preserve the

confidentiality for the directly affected abuse victims. They are:

1. Parent Jane Doe A, a parent of an minor sexually abused by two priests whose minor's claim has been resolved,
2. John Doe B, a former Catholic school student whose sexual abuse at school and other places was admitted by a teacher for the Diocese, but against whom the Diocese successfully asserted the statute of limitations to avoid taking any responsibility for his abuse,
3. John Doe C, a former Catholic orphanage student sexually abused by multiple agents and employees of the Diocese at the orphanage,
4. John Doe D, sexually abused as a child by a priest,
5. Parent John Doe E, the father of John Doe D,
6. Parent Jane Doe F, the mother of John Doe D,
7. Jane Doe G, a former Catholic school student sexually abused by a teacher,
8. Parent John Doe H, the father of Jane Doe G,
9. Parent Jane Doe I, the mother of Jane Doe G, and
10. John Doe J, sexually abused as a child by a priest,
11. Parent John Doe K, the father of a child sexually abused by a priest.
13. John Doe L, sexually abused as a child by a priest,
14. John Doe M, the father of John Doe L,
15. Jane Doe N, the mother of John Doe L.

In the interests of these individuals and others similarly situated, the proposed class

settlement has the following weaknesses, which should be addressed by modifications by the Court.

Objections to the Preliminary Approval Order

1. The order does not specify if the class is an opt-in class or an opt-out class, and no provision is made for opting out. The order is objected to because it does not state if these purported two classes are opt-in or an opt-out classes, and the order contains no procedures for a person to opt out so as to exclude himself or herself from the class settlement. SCRCP 23(d)(2) would seem to require an opt-in class, to the extent it speaks of providing "notice to the absent persons that they *may* come in and present claims and defenses *if they so desire*."

The structure of the claims process described at page 16 of the settlement agreement in part 8 also suggests it is an opt-in class, where a claim is released through participating in the claims process. Any order should clarify that the class is an opt-in class.

Alternatively, if the order purports to create an opt-out class, due process requires that the order also provide a means by which any person otherwise included in the classes have available a method for opting out of either class.

2. The class definitions. The class definitions are objected to. On page 4 of the January 19, 2007 order appear what purport to be (on page 3 of the order) the definition of two classes. In fact, the class definitions are not independent, and they state a single, linked class, when two independent classes are appropriate.

Class A are those students (a) born before a certain time, (b) sexually abused as minors,

(c) whose claims have not been previously resolved. Class B is not, but should be, parents of minors who were sexually abused. But as it is presently defined, Class B is limited to those parents of minors who are included in Class A. So a parent of a minor whose claim was resolved, such as Jane Doe A, is not within the parent class. There is no legitimate basis to distinguish between such a parent and the parents who are within the definition of class B, particularly when the parent discovered only recently that her child was sexually abused.

Similarly, as to John Doe B, a former Catholic school student whose teacher admitted sexually abusing him, the Diocese successfully avoided taking responsibility for his abuse by asserting the statute of limitations. He is excluded from the settlement solely because he had the temerity to ask the Diocese to take responsibility for his abuse, and challenged their refusal to do so. In the purported class settlement the Diocese has agreed, as it should, to reach beyond the statute of limitations for redress. But at the same time the Diocese seeks to exclude anyone whose claim was defeated by the same statute of limitations defense. The definition for class A should be modified to include minors whose prior claims resulted in no recovery.

Likewise, John Doe D, Parent John Doe E, and Parent Jane Doe F are apparently excluded from the settlement because John Doe D previously wrote to the Diocese about the minor's molestation and the Diocese refused to accept responsibility. His claim, hence his parents' claims, would be excluded by the present definition of classes A and B. The same exclusive rationale applies both to Jane Doe G and her father, John Doe H, and her mother, Jane Doe I, as well as to John Doe L and his parents John Doe M and Jane Doe N. They are presently all excluded from the definitions of classes A and B, whereas John Doe J and John Doe K are not excluded merely because no letter has been written about John Doe J's molestation by a priest.

The arbitrariness of the class definitions can be ameliorated by the definitions being changed by the court to:

A. All individuals born on or before August 30, 1980, who, as minors, were sexually abused[3] at any time by any agent or employee of the Diocese of Charleston who have not previously received compensation for any similar claim. (Hereinafter "the Primary Class").

B. The spouses and parents, of all individuals qualified pursuant to the Primary Class, who have not previously had received compensation for any similar claim (Hereinafter the "Consortium Class").

These revised definitions do three things. (1) They eliminate the arbitrary distinction between those victims who have had the audacity to previously ask the Diocese to be accountable for sexual abuse by its agents. (2) They eliminate the arbitrary distinction between parents whose minor's claims were and were not resolved. And (3) they eliminate from the Consortium Class definition the qualifier "and who suffered a loss of the abused individual's consortium."

In light of the holding in *Manufacturer and Merchants Mutual Ins. Co. v. Harvey*, 330 S.C. 152, 158, 493 S.E.2d 222, 226 (Ct. App), that sexual abuse of a child is "inherently injurious," as a matter of law it is not possible for a child to be sexually abused and not suffer injury. Consequently, it is not possible for a parent to have avoided suffering the loss of the child's consortium. The order should not reflect otherwise, and should be changed as noted above.

3. The arbitrary distinctions in the compensation matrix for minor victims. The settlement agreement includes, at pages 4 and 5, a compensation matrix for minor victims that is unduly arbitrary and is predicated on the false presumption that the harm of sexual abuse turns

[3] The definition in the order would remain unchanged.

on the extent of the sexual battery. The ill conceived matrix is an astonishing concept for class counsel to propose. It would be just as coherent for the matrix to turn on how long the victim's hair was at the time of the abuse, or whether the perpetrator's hand were clean or needed washing at the time of the harmful or offensive touching. It is a meaningless and arbitrary rationale for the matrix.

Some harmful or offensive touching occurs in sexual abuse, of course, but using the extent of the touching as a distinction for different levels of compensation misses completely the nature of why sexual abuse is "inherently injurious," as *Harvey* concluded. It is *not* inherently injurious because the touch itself creates some lingering or lasting effect. What endures as the lasting problem from sexual abuse is not the physical intrusion on the victim but the psychological intrusion, which the order recognizes at 2 ("mostly psychological damages") that originates from a deeply personal touch coming from within an otherwise trusting relationship, such as a priest or a teacher. The compromises abuse creates for a child are psychological, not physical. The trauma for a child is to raise questions about what place is safe for the child if the church or school are not safe? What person should the child trust if the teacher or priest cannot be trusted? What authority figure should be respected if listening to the priest or teacher creates injury? The ongoing disruption that sexual abuse creates in a victim's life stems not from whether the touching was "limited" or "fondling" or "egregious," to use the terms from this matrix, but stems from the psychological conflicts created by the compromised trusting relationship.

Note that under this matrix no female, such as Jane Doe G, could under any circumstances be "seriously" molested by a female agent or employee of the Diocese. The

matrix does not contemplate at all a female agent creating a problem by sexually abusing a female minor. If the injury from sexual abuse is "inherently injurious," a finding which *Harvey* compels, the ill-conceived matrix cannot be recognized without doing undue harm to minor victims and without violating *Harvey*.

Nor does the ill-conceived matrix recognize in any way the reality that in some instances, such as a minor sexually abused by multiple agents or employees of the Diocese, the increased seriousness from repeated compromises by trusted Diocese agents. For example, the child of parent Jane Doe A, and the minor John Doe C, were each repeatedly sexually abused by different Diocese agents. The matrix makes no accommodation whatever for repeated breaches of trust and confidence by multiple agents and employees of the Diocese, and yet multiple molestations create deeper conflicts of betrayal and trust.

The betrayal of the trusting relationship occurs with the first inappropriate contact, and is not more completely betrayed by a "more" inappropriate contact. Using a physical act matrix to distinguish psychological betrayals reflects a complete misunderstanding of sexual abuse, conflicts with the holding of *Harvey,* and serves poorly the interests of class members.

The order should be modified to create a uniform compensation for minor victims using the most significant category of the proposed matrix. All minor victims shared the serious breach of a trusting relationship, regardless of the precise physical manner in which the minor's trust and confidence was breached. Alternatively, a separate award category should be created which treats all victims comparably but can add-on additional relief if the physical intrusion presented additional complications from the "inherently injurious" injury of sexual abuse.

4. Compensation for parents is out of all proportion to jury treatment of such claims. The settlement agreement accepts for parents and spouses a compromise amount out of all proportion to the treatment by juries of parent claims, a compromise apparently grounded on the false assumption that a parent's or spouse's claim for consortium injury is derivative of the minor's claim.

Consortium claims are direct, not derivative. E.g., *Stewart v. State Farm Mutual Automobile Ins Co.*, 341 S.C. 143, 156, 533 S.E.2d 597, 604 (Ct. App. 2000) ("Under South Carolina law, unlike that of some other states, loss of consortium is an independent action, not derivative."); *Manufacturers and Merchants Mutual Ins. Co. v. Harvey*,330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998) (finding insurance coverage for an alleged consortium injury to a parent when her children were sexually abused); *Berry v. Myrik*, 260 S.C. 68, ___, 194 S.E.2d 240, 242 (1973) ("loss of services or consortium is an immediate rather than a delayed consequence of the defendant's negligence or wrongful act causing physical injury to plaintiff's *spouse*, *child*, or employee . . .," *quoting,* 173 A.L.R. 755, When Statutes of limitations Begin to Run Against Action for Loss of Services or Consortium. Emphasis added.

The only known jury to rule on a parent's claim was the actual damage award of $15 million in *Glover v. Porter-Gaud School*, No. 98-CP-10-613, Verdict of October 26, 2000. That was an award for a parent's claim. Class counsel is aware of that award. For parent claims in this settlement to be valued at $20,000 is out of all proportion to the proper value of the claims as assessed by a jury, and the class settlement should be disapproved as to parent claims unless and until a more appropriate compensation award can be made. There is no objection to the parent and spouse class recovering less than the minor class, but for parents and spouses to recover a

cost-of-litigation amount is contrary to the known value of parent claims, particularly when parent and spouse claims often have far less complicated statute of limitations issues.

5. Opting out. Each of the individuals noted above reserves the right to, and provides this notice of, their right to opt-out of the proposed settlement. The decision may be re-evaluated once a ruling is made on these objections.

Conclusion

The Court should make clear that this is an opt-in class (or should provide a means for opting out), should refuse to give final approval of the class until the objections above are accommodated, and should redefine the classes in ways consistent with these objections.

Respectfully submitted,

Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

Certificate of Service

I hereby certify that I have caused a copy of the enclosed

Objections to Class Settlement, Motion for Modification and Notice of Opt-Out

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

Richter & Haller, LLC
622 Johnnie Dodds Boulevard
PO Drawer 1089
Mt. Pleasant SC.29465

Done February 22, 2007

Respectfully submitted,

Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

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

FILED-RECORDED
2007 AUG -1 AM 11:55
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Objections to Proposed Order

The proposed order approving the class settlement is objected to in the following particulars, on behalf of a number of individuals who are putative members of the class., specifically on behalf of Johns Doe C, D, H, J, K, L, M and Janes Doe G, I, K, and N.

Issues are raised in the order they are presented in what is represented to counsel to be a proposed order.

1. Solicitor's Investigation. A. Since the court elected to have the First Circuit, rather than the Ninth Circuit, Solicitor investigate matters related to the document titled "INSTRUCTION," the order should reflect, or the Court should order, more steps than are reflected in the proposed order. As presently cast, the proposed order suggests only that the Solicitor made inquiry of the Diocese. Since the concern is that the Diocese has concealed

information, and the Code of Canon Law, the governing rules of the Church, call for a "secret archive," (See, e.g., Canons 489 --- "In the diocesan curia there is also to be a secret archive. . .,"), and 490, and the Church has a doctrines of "mental reservation" and "committed secrets" which affect truth-telling in response to questions, to protect putative class members the order should reflect more than an informal request for information of the entity suspected of active concealment. We presume more steps were taken, and the requests were formal or mandatory (such as a subpoena, sworn testimony, or sworn statements), so the order should either reflect those steps or the court should order such steps.

B. Since the Solicitor's investigation continues, provision should be made for final approval to be made only when it has been made to consist of meaningful investigative steps, and only when completed. Again, we assume the investigation has been meaningful, but those meaningful steps should be articulated in the order.

C. The proposed order includes a proposed finding that any concerns regarding the "INSTRUCTION" "have been satisfied as to the civil action." The finding should be that no victims have been identified despite adversarial investigative steps, assuming there have been such adversarial investigative steps.

2. Notice by the Diocese. The Diocese apparently contends it has given notice to all persons who might qualify to receive notice, yet it appears not all known class members have been notified, if that was the criteria applied to the notice.

3. Withdrawn Objections. The proposed order states that two objectors have withdrawn their objections, but gives no reason why or what accommodations were made to cause that to happen. Since there is now confusion about whether 'side deals' or arrangements have been made regarding other putative class members and their counsel, or with the class representatives,

some of which contentions are now contested by class counsel, the proposed order should do more than just acknowledge that the objections have been withdrawn, the court should inquire about the circumstances of those withdrawals so that other putative class members might be fully informed as to what they are getting into or opting out of should the settlement ever be approved.

4. Objections not withdrawn. A. The proposed order discusses at some length objections filed on behalf of those consulting objecting counsel. As noted in the objections, the class as originally articulated failed to specify even the basic premise of whether it was an opt-in or an opt-out class. That was amended after the objections were filed, indicating it was an opt-out class. But there has been no opt-out period yet approved. Putative class members cannot have their objections discarded or their rights affected by procedures not applicable to the entire class. No class member can opt-out prior to their being an opt-out period. Since one has been specified since the objections were filed, and since the notice of opt-out was conditioned on the substantial confusion of the class being clarified, the proposed order errs in penalizing putative class members for asking the matter be clarified and for reserving their right to make that election, which was all the prior objection stated. It also specifically reserved the right to re-evaluate that issue once the court heard the objections. Whether those individuals plan to opt out in the future cannot properly affect their present status.

Also in spite of the Order's language referring to our objections as without merit, it is undeniable that the addendum altering the class definitions occurred after the objections.

B. Footnote 4 of the proposed Order discusses objector's counsel's case and indicates that certain class members are attempting to reverse consent to dismiss an earlier action. The proposed order is inaccurate. The class action was pending when the dismissal issue was raised, and the General Counsel of the Diocese made no disclosure of the action. Since that active

concealment affected putative class members, it concealed a material fact. The proposed order errs in permitting the Diocese to benefit from deception, and sheds light on the investigative steps needed with this Diocese, as discussed above. In any event, a motion remains pending in Charleston County about that active concealment, and the proposed order should at minimum permit that motion to be heard and ruled on disposition of that motion to occur prior to any order being entered.

5. Objections as to Matrix. The proposed order affirms the matrix that was objected to, but even though a small modification was made to the matrix, objection is still made as to the matrix as a means of separating out what should be specified as subclasses of victims. Victims should share equally, and a distribution should be made of all allocated settlement funds. The operation of the matrix, even as modified, benefits only the Diocese in minimizing the proceeds paid to victims, and in permitting settlement funds to revert to the Diocese. If the settlement is treated as a $12 million settlement for purposes of calculating the class counsel's fee, then the court should order that all $12 million be paid to the victims.

6. Compensation of Consortium Claims. The proposed order errs in determining that consortium claims of parents are worth zero, and those of spouses worth little. If the order remains as it is, then any member of the direct victim class will be able to object to their own settlement fund being depleted for compensating individuals for claims the court finds legally non-cognizable. And if the court determines that the parents of victims DO have legally cognizable claims (an issue with a three hundred year history of Common Law support and which the South Carolina Supreme Court currently has under consideration in a case argued this Spring), then the adequacy objection is ripe, and the proposed order's conclusion that a past verdict would "probably" not have survived appeal, thereby is to be discounted, engages the

court in speculation, without acknowledging that those cases were certified as a class, survived a series of motions for summary judgment, as well as survived directed verdict motions at trial. The three hundred year Common Law history in support of such claims, which the proposed order does not even address, bore heavily on those motions. The discussion makes the proposed order appear to reflect that class counsel has brought a claim which does not satisfy SCRCP 11, which these objectors do not believe is the case, and creates an appearance that the parties are colluding to minimize recovery for victims.

7. Notice. Notice should be posted in more than just South Carolina. Some national vehicle for notice should exist, to accommodate the reality that persons may move from the State. This is another aspect in which the proposed order appears to be designed to minimize the impact on the Diocese rather than to maximize the recovery for the victims. Publication in either the USA Today or The New York Times would seem appropriate if the parties truly were interested in giving notice to potential class members.

8. Attorneys Fees. A. As noted above, if class counsel has recovered $12 million for abuse victims then we applaud the attorney's fee award. But that is not what has occurred in the settlement, yet the proposed order presumes, incorrectly, that it has. The final order should either modify the settlement fund to make it an actual $12 million recovery for victims, or it should recast the discussion of the fee approval. Otherwise, the calculation that the fee is 20.8% of the recovery for all victims is simply incorrect.

B. Nor can counsel's fee be paid until the disbursemet is known to class members. If the fund for the class is irrevocably $12 million, and will be distributed either per capita or pro rata after the claims period, this objection will be satisfied. If the "gross settlement" turns out to be less than $5 million, then the fee calculation would have to be revised substantially.

is only the maximum amount that the Diocese might have to pay. Basing a fee on a potential result rather than an actual result is error. The claims process should go forward and the fee calculated for approval after the benefit to the class is known, not hypothetical.

C. Hence, the ten day payment requirement is objected to, unless the $12 million is revised to be disbursed to all class members either pro rata or per capita. Nor should the fees be paid before all class members have been paid, and the order should discuss whether the fee is awarded on a contingency or lodestart scheme, or a hybrid.

9. Paying class representatives first. The proposed order claims that class representatives have already been paid. To treat some class members outside of the class procedures raises issues about those persons being representative of the class, acting in the interest of the class, and acting so as to protect the class, and about whether claims of persons resolved prior to any claims process then satisfy the definition of a class member. It would seem those persons would become persons whose claims are resolved, and make them ineligible for class inclusion. It also suggests that the class representatives may have breached their duties to absent class members by being paid first, and through a different process (mediation) than applies to other class members (arbitration).

Class representatives are often permitted to obtain a premium for conducting the litigation, and there is no objection to that concept. But the proposed order does not disclose what the class representatives have already received beyond the general statement that they have collectively been already paid $460,000. The proposed order should indicate to other class members what each class representative was paid. And, as noted above, the class representatives should not be paid outside of the very claims process that all other class members must participate in, or by different criteria.

10. Provided Psychological Assessment and Counseling. The proposed order and exhibits do not indicate who does these assessments and/or counseling. If it is with a therapist of the victim's or family member's choosing, it needs to state that. If it is a therapist selected by the Diocese, it needs to state that too.

11. Exhibit A. As written, the class would include those persons abused by parents or spouses, which is probably not an intended claimant.

12. Exhibit B. The definition of the consortium class includes the spouses and parents of victims *who are not eligible to participate in the victims' class.* If this is inadvertent, it can be cleared up. If not, it suggests the settlement is designed not to maximize recovery for victims but to minimize payment by the Diocese.

The definition of "sexual abuse" is obviously taken from a criminal statute. Many aspects of abuse do not neatly fit the legalistic definition, and many putative class members may not understand it. Notice to potential class members should be clear and readily understandable.

The proposed order states that if there is a dispute about whether a claim is *bona fide*, the claimant will have a chance to prove their claim, but does not set forth a procedure on how that will occur. In order for claimants to make an informed decision on whether to participate in the class, the notice should include that information.

Objections to the matrix are not restated here.

13. Exhibit C. The proposed order requires Social Security Numbers for claimants, an unnecessary intrusion as a routine request. If it is needed to identify records or for another purpose, a provision can be made to that effect. The identity of their parents or spouses should be requested only if those persons made a claim.

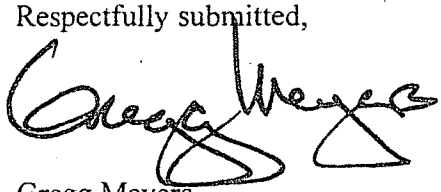
14. Exhibit D. Same concern as to Social Security Numbers.

The proposed Exhibit makes no provision for parent claims if siblings have been molested. Does each parent get $20,000 for each of their children who have been abused, or is a parent who is unfortunate enough to have two or more of their children abused by their priest only entitled to the same amount as a parent who only had one child abused? Assuming, of course, it is conceded that a parent's claim is cognizable, which the proposed order at present disputes, even while proposing to make payment to parents.

15. Exhibit F. The proposed form includes a voluntary waiver of appeal rights prior to the victim knowing whether they are considered by the arbitrator to be a class member. It should preserve that right until that determination is made.

Objectors request notice of any order entered by the Court.

Respectfully submitted,



Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

Attorney for putative class members

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

Motion to Alter or Amend

The order approving the class settlement is objected to in the following particulars, on behalf of a number of individuals who are putative members of the class, specifically on behalf of Johns Doe C, D, H, J, K, L, M and Janes Doe G, I, K, and N.

Issues are raised in the order they are presented.

1. Withdrawn Objections. The order states that two objectors withdrew their objections, but gives no reason why or what accommodations were made to cause that to happen. Since there now appear to be certain 'side deals,' or arrangements that have been made regarding other putative class members and their counsel, or with the class representatives, some of which contentions are now contested by class counsel, the order should do more than just

acknowledge that the objections have been withdrawn. The order should reflect an inquiry into the circumstances of those withdrawn objections so that other putative class members might be fully informed as to what they are getting into, or opting out of, should the settlement ever be approved.

2. Objections not withdrawn. A. The order errs in concluding that objectors lack standing. First, the objectors stated their objections as directed by the order providing for notice of the fairness hearing. To conclude that those who followed that order somehow lack standing to undertake the very tasks provided by that order is nonsensical. As the order states, page 6, "The creation of a class makes those class members parties to the litigation." Exhibit A provides "If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result." The order errs in providing different ways of opting out for only certain class members.

B. The original class proposal contained no statement as to whether it was an opt-in or an opt-out class. After that omission was noted by the objection, the class proposed was modified to state clearly that it was an opt-out class, and to provide for a method of opting out. Objectors who fall within the class cannot be said to have opted out prior to having an opportunity to review the court's disposition of the stated objections. Nor can some class members, namely those with the temerity to state objections, receive different treatment for opting out than other class members. The opt-out period remains available to class members, and these class members should be treated the same as other class members for opt-out purposes. *Gould v. Alleco* and *Condon v. South Carolina* do not hold differently, since both concerned objections from those not members of the class. It is nonsensical to require intervention by those already within the

definition of the class. As the order states, page 6, "The creation of a class makes those class members parties to the litigation." By terms of the order, there is nothing into which class members can intervene: the class members are already part of the litigation unless they opt-out through the same opt-out process available to all other members of the class. Class members cannot legitimately be "punished" for stating objections, particularly well-founded objections such as the lack of any declaration that the class is an opt-out class,

C. The opt-out period having been just approved by the order, opting-out cannot be imposed on class members by eliminating their opportunity to consider the court's order. Putative class members cannot have their objections discarded or their rights affected by procedures not applicable to the entire class. No class member can opt-out prior to their being an opt-out period.

D. An opt-out period having been for the first time approved in the June 30 order, and since the notice of opt-out was conditioned on the substantial confusion of the class being clarified, the order errs in penalizing putative class members for asking the matter be clarified and for reserving their right to make that election. Objectors merely reserved their respective rights to opt-out, specifically reserving the right to re-evaluate that issue once the court ruled on the objections. No class member can properly have his opt-out rights eliminated.

E. The order concludes, at page 6, that the objections stated have no merit. Yet it is undeniable that the addendum altering the class definitions occurred after the objections noted the omissions cured by amending the class proposal. These post-objection modifications include the class being an opt-out class (previously unstated), the "unlinking" of consortium claims with the direct abuse claims (excluded by the class as originally defined), and an opt-out procedure (completely missing). None of those was modified prior to the stated objections, so while the

addendum claims these omissions were inadvertent, they were cured only when objections noted their absence, so the order incorrectly refers to the objections as without merit.

3. Class definition. The order denies the request to modify the class to include persons whose claims had been resolved prior to class approval, page 7, but then uses a different standard in approving class representatives, each of whose claim is noted, page 15 note 7, as having already been resolved prior to the June 30 order. A double standard should not apply, and it is error to apply. Objectors should not be excluded from the class when the class representatives are permitted to be included despite having their claims resolved outside the class structure. More on that problem below, as it also raises questions about the representatives being eligible for being class representatives where their claims are (a) resolved and (b) adjudicated outside the process applicable to the class (mediation versus arbitration).

4. Page 8, footnote 3 of the order notes an action dismissed after the decision in Doe v Crooks. The order errs in interpreting the objection as attempting to reverse that action. The question the court has not considered or ruled on is whether a person who is included in a pending class action, hence is included in the class as a party to the class litigation, can properly be excluded from the class prior to the opt-out period. This question is wholly independent from the second pending question the court has not ruled on, which is whether the Diocese can exclude this potential class member, John Doe L, from the benefits of the class when the Diocese failed to disclose that the class action was pending at the time of Judge Nicholson's order. John Doe L's contention is that the Diocese cannot exclude a class member by either means. John Doe L is included within the class action by definition, and remains included regardless of the

action taken by Judge Nicholson, and, independent of that point, the Diocese may not benefit by fraud in failing to disclose the class suit that was pending in April, 2006. The order rules on neither contention.

5. The order errs in its discussion on page 10 of *Ford v. Hutson*, misnamed in the order as Ford v. Hudson, and mis-cited as 276 S.E.2d 761 when the correct citation is 276 S.E.2d 776. *Ford* stands for the very opposite proposition claimed in the order. The order states that intentional infliction of emotional distress is "the only cause [of action] where compensation for emotional distress requires a showing of physical manifestations." Order at 10. In fact, *Ford v. Hutson* holds that where behavior was extreme and outrageous, neither physical contact nor physical manifestations were necessary:

> Although 'severe' emotional distress is usually manifested by 'shock, illness or other bodily harm,' such objective symptomatology is not an absolute prerequisite for recovery of damages for intentional ... infliction of emotional distress.

Ford v. Hutson, 276 S.E.2d 776, 778-779 (S.C. 1981), quoting with approval the Restatement (Second) of Torts, § 46, comment k. Indeed, *Ford* itself recognizes that emotional distress without physical impact was already recognized in South Carolina: "In Padgett v. Colonial Wholesale Distributing Co., 232 S.C. 593, 103 S.E.2d 265 (1958), we affirmed recovery of damages for shock, fright, and emotional upset despite the absence of any physical impact between the plaintiff and defendant." *Ford v. Hutson*, 276 SE.2d 776, 778 (S.C. 1981). Using a matrix restricted to gradations of physical touch to differentiate among those suffering psychological injury draws a distinction unrelated to the harm, and under South Carolina law is an arbitrary differentiation. Class member recovery should not be geared to an arbitrary matrix of physical touch but should be entitled to recovery based on the psychological injury, as is

already permitted under South Carolina law.

That is for the direct injury category of class members. Consortium claimants have never been restricted by a matrix related to physical touch, having always been recognized as entitled to claims of "indirect emotional distress." Hubbard and Felix, South Carolina Law of Torts, 2d ed. (1997), at p. 43-44,. That history shows that a matrix of physical touch is an illogical means of sorting out categories of class members for recovery for psychological injury. Victims should share equally, and a distribution should be made of all allocated settlement funds. The operation of the matrix, even as modified, benefits only the Diocese in minimizing the proceeds paid to victims, and in permitting settlement funds to revert to the Diocese. If the settlement is treated as a $12 million settlement for purposes of calculating the class counsel's fee, then the court should order that all $12 million be paid to the victims.

6. The order errs at page 11 in discussing, and concluding, "The law simply does not recognize a right of action of a parent to recover for the loss of consortium of a child. In my view, whether the *Glover* verdict would have survived an appeal is very doubtful." Essentially, the court has concluded that consortium claimants are worth zero or very little, as they have no support in South Carolina law.

There are two problems with this conclusion. First, on what basis are direct injury class claimants (the "primary class") required to share a settlement pool with consortium claimants if the consortium claimants have no cognizable claim? The order claims too much in derogating the claims of consortium class members, and creates irretrievable conflict among the direct injury and consortium class members.

Second, and more fundamentally, this conclusion overlooks three hundred years of

Common Law authority and a substantial number of South Carolina cases to the contrary. Again, to quote Hubbard and Felix, South Carolina Law of Torts, 2d ed. at page 571 (1997):

> There is no right of for children to sue for loss of parental consortium [citing Taylor v Medenica]. However, there is authority for allowing a parent to sue for loss of services (and perhaps companionship) of a child."

Citing, as that authority, in footnote 76, *Wright v. Colleton County School District*, 391 S.E2d 564 (S.C. 1990), *Tollerson v. Atlantic Coast Line R.R. Co.*, 198 S.E. 164 (S.C. 1936), and *Webb v. Southern Ry. Co.*, 88 S.E. 297 (S.C. 1915). *Webb* is summarized by Hubbard and Felix as "Defendant intentionally placed child in a dangerous work situation where he was injured." Hubbard and Felix, South Carolina Law of Torts, 2d ed. at page 571 n. 76 (1997). Pertinent to this pleading, the opinion states, at 88 S.E. 299:

> The mother was entitled to the services of her minor child. She was entitled to his companionship, and was entitled to place him at work with some one that she had confidence in, and put him to work in a business that was reasonably safe. The defendant persuaded him to leave this occupation, carried a minor beyond the state, and put him to work in a hazardous business without the consent of his mother. He was seriously injured, and the evidence is ample to sustain the verdict for actual and punitive damages. The defendant cannot send out agents acting within the scope of their authority to entice minors away from their parents without their consent and put them in a dangerous work and have them injured without paying damages.

But there are more South Carolina cases supporting claims by parents for injuries to children than are cited even by Hubbard and Felix. Claims by parents for injuries, both pecuniary and intangible, stemming from sexual misconduct with a child have long been recognized in South Carolina decisions, and such claims have been recognized at Common Law for over three hundred years. E.g., *Rumler v. Gantt*, 121 S.C. 117, 117, 113 S.E. 581, 581 (S.C. 1922) ("This action was brought for damages for loss of services of plaintiff's daughter and for shame, humiliation, and mental anguish caused by the defendant's seducing, debauching, and

carnally knowing her."); *Villepigue v. Shuler*, 1849 WL 2667, 34 SCL 462, 3 Strob. 462 (S.C. 1849) ("This was an action on the case for seducing and getting with child the plaintiff's daughter."). The concept was most recently approved in *Manufacturers and Merchants Mutual Ins. Co. v. Harvey*, 330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998), where insurance coverage was found to exist for a parent's claim when her children were sexually abused as a result of alleged negligence. There is no way to read *Harvey* without recognizing that a parent may make such a claim. There would be no insurance coverage for a claim which was not cognizable.

A parent's right to assert claims for their own injuries after their child is injured, including injuries from sexual assault, was recognized at Common Law as early as 1653. E.g., *United States v. Standard Oil*, 332 U.S. 301, 311-312 and n.17, 67 S.Ct. 1604, 1610 and n. 17 (1947) (tracing to 1653 the Common Law Right of "the parent's right to indemnity for loss of a child's services, including his action for a daughter's seduction.").[2] An example of such a claim at Common Law is *Tullidge v. Wade*, 95 Eng. Rep. 909, 909 (K.B. 1769) (upholding father's damage award for his daughter's seduction).

It is an ancient tradition, with Biblical roots. Deuteronomy 22: 28-29 (King James): "If a man find a damsel who is a virgin, who is not bethrothed, and lay hold on her, and lie with her, and they be found; then the man who lay with her shall give *unto the damsel's father* fifty

---

[2] This is a direct, not a derivative, claim by the parents. E.g., *Stewart v. State Farm Mutual Automobile Ins Co.*, 341 S.C. 143, 156, 533 S.E.2d 597, 604 (Ct. App. 2000) ("Under South Carolina law, unlike that of some other states, loss of consortium is an independent action, not derivative."); *Manufacturers and Merchants Mutual Ins. Co. v. Harvey*,330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998) (finding insurance coverage for a parent's claim when children were sexually abused); *Berry v. Myrick*, 260 S.C. 68, ___, 194 S.E.2d 240, 242 (1973) ("loss of services or consortium is an immediate rather than a delayed consequence of the defendant's negligence or wrongful act causing physical injury to plaintiff's spouse, *child*, or employee . . .," *quoting,* 173 A.L.R. 755, When Statutes of limitations Begin to Run Against Action for Loss of Services or Consortium. Emphasis added.

shekels of silver . . . ." (emphasis added). Blackstone describes the husband's right to make this claim for a child's "ravishment" as being a writ available to him, "in the same manner as the husband may have it, on account of the abduction of his wife." 3 Blackstone, Commentaries on the Laws of England Ch. 8, p. 141 (1979 facsimile edition of the First Edition of 1765-1769).

Nor is the claim unique to South Carolina, as Georgia, North Carolina, and Virginia, to name but a few, recognize the Common Law right of parents to recover intangible damages from sexual assault of their child. It was a typical claim at Common Law. E.g., *Kendrick v. McCrary*, 11 Ga. 603, 606 (1852) (permitting parent's claim for seduction of even an *adult* daughter living at home and damages for the intangible "atrocious invasion of his household peace"); *Abbott v. Hancock*, 31 S.E. 268, 269 (N.C. 1898) (permitting widow to maintain action for daughter's seduction); *Kinney v. Lauchenour*, 89 N.C. 365, 1883 WL 2531 (N.C. 1883) (permitting claim by step-father for seduction of step-daughter); *Briggs v. Evans*, 27 N.C. 16, 5 Ired. 16 (N.C. 1844) (authorizing damages for father's intangible "outraged feelings"); *White v. Campbell*, 54 Va. 573, 573-574 (1856) (authorizing damages for intangible loss of "the peace and happiness of the injured father."). One "A. Lincoln" successfully defended such a verdict in the Supreme Court of Illinois in 1842, representing the father of a seduced daughter. *Grable v. Margrave*, 4 Ill. 372, 1842 Ill. Lexis 9 (Ill. 1842). The appellate court upheld the intangible damage award to the father Lincoln represented.

The court errs and creates unnecessary conflict among classes of class members by this conclusion in the order that concludes that consortium claims have no legal foundation. The order's conclusion that the Glover verdict would "probably" not have survived appeal, thereby is to be discounted, engages the court in speculation, without acknowledging that those cases were certified as a class, survived a series of motions for summary judgment, as well as survived

directed verdict motions at trial. The three hundred year Common Law history in support of such claims, which the order does not even address, bore heavily on those motions. The order appears to reflect that class counsel has brought a claim which does not satisfy SCRCP 11, which these objectors do not believe is the case, and creates an appearance that the parties are colluding to minimize recovery for victims.

The issue is actually pending before the South Carolina Supreme Court, and once that case is decided an adequacy objection by any direct injury class member objecting to the settlement will be ripe, regardless of the outcome of that appeal. If the appeal affirms the claim then the amount paid to consortium claimants will be subject to challenge from the rationale in the order for limiting the claims. If the appeal overturns the claim then the primary class members will object to sharing a settlement fund with persons who have no claim.

Finally, if class counsel is unaware of the legal support for the consortium claims for parents, the court should reconsider whether class counsel is "inadequate fairly to protect" the interests of the consortium class. SCRCP 23(d)(3). Alternatively, the court should reserve that issue pending the outcome of the appeal presently in the South Carolina Supreme Court.

7. Effect of Appeal. The order at pages 12 – 16 sets in motion time limits applicable to notice and claims, but makes no provision for the effect of an appeal from the court's order. No provisions should be put into effect until any appeal is resolved, including the fees provisions, to avoid having to later disgorge fees, from objections noted below. Until entry of final judgment, the court retains authority to redefine or de-certify a class. E.g., *In re Unisys Savings Plan Litigation*, 1997 WL 230789 (E.D. Pa. 1997):

> even though a court enters a class certification order, "[u]nder Rule 23(c)(1), the court retains the authority to redefine or decertify the class until the entry of final judgment on the merits. This capacity renders all certification orders conditional until the entry of judgment." *In re Gen. Motors Corp. Pickup Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 792 n. 14 (3d Cir.), *cert. denied sub nom., General Motors Corp. v. French,* 116 S.Ct. 88 (1995).

Discovery of new facts, changes in parties (such as the class representatives), or changes in the substantive or procedural law may each require reconsideration of earlier orders about certification or how the class is defined. Id., citing *Manual for Complex Litigation, Third* at § 30.18 (1995).

8. Notice. The order errs in not providing for a nationwide notice. Objectors' counsel had been assured by class counsel that a nationwide notice provision would also be included, not simply notice through various state newspapers. Yet the order provides for notice only within South Carolina. Given the number of people who move across state lines, some national means of notice should be provided. The order errs in providing for only notice in South Carolina newspapers. Publication in either the USA Today or The New York Times would seem appropriate if the parties truly were interested in giving notice to potential class members.

9. The order has erred in awarding attorneys fees. A. Entry of final judgment has not occurred. The order approves fees for class counsel as if final judgment has been entered and class counsel has recovered $12 million for abuse victims. That conclusion is clearly erroneous, as no awards have yet been made for any class members other than the class representatives. Awarding fees based on the *potential* award to class members is not a proper basis for an attorney's fee award. Only the actual recovery for class members, not a theoretical recovery for

the class, is a proper basis for assessing attorney's fees, and only after entry of final judgment is the fee issue properly addressed. SCRCP 54(d) and (e). SCRCP 23 does not provide for interim awards of attorneys fee.

B. Class recovery is not yet known. The order is premature in awarding fees before any victim has recovered an award The court should confront the fee award only when a class recovery is finished. Alternatively, the order may approve the attorney's fee at this point only by also ruling that the entire settlement fund of $12 million will be distributed to claimants, pro rata or per capita, once the claims process is concluded. Should that modification be accepted then counsel will have earned the fee as assessed by the court, and need not wait for class distribution to be paid. Otherwise, the calculation that the fee is 20.8% of the recovery for all victims is simply incorrect, and clearly erroneous in that it precedes any benefit to the class.

If the fund for the class is irrevocably $12 million, and will be distributed either per capita or pro rata after the claims period, this objection will be satisfied. If the "gross settlement" turns out to be less than $5 million, for example, then the fee calculation would have to be revised substantially, and counsel should not be restricted to 20.8% of the actual recovery to the class, a sum which could be quite modest. If the "gross settlement" turns out to be $2 million then counsel will have recovered more than 100% of the accumulated benefits to the class. $12 million is only the maximum amount that the Diocese might have to pay. The order provides, at page 15, that the Diocese is required to fund only an "initial" fund of $4,540,000. That may also prove to be the final fund, and only a portion of that $4.5 million fund may be distributed, given the caps on class member recoveries. Exhibit A states that members who remain in the class may "possibly" receive money from the settlement.

It is error to base an attorney's fee on a potential result rather than an actual result. The

claims process should go forward and the fee calculated for approval after the benefit to the class is known, not on a hypothetical benefit that seems frankly to be remote. Again, unless the order is modified to provide for a pro rata or per capita distribution of what remains of the $12 million potential pool for recovery.

C. The order errs in providing for fees to be paid in ten days. Unless the order is revised to pay $12 million to all class members either pro rata or per capita at the conclusion of the claims process, no fees should be paid before all class members have been paid,.

D. The order errs in not setting forth if the fee is awarded on a contingency or lodestar scheme, or a hybrid.

10. The orders errs in authorizing or permitting class representatives to be paid before the class, and by different means. The order recites that class representatives have already been paid. Order at page 15, n. 7. To treat some class members outside of the class procedures raises issues about those persons being representative of the class, acting in the interest of the class, and acting so as to protect the class, and about whether claims of persons resolved prior to any claims process then satisfy the definition of a class member. It would seem those persons would become persons whose claims are resolved, and make them ineligible for class inclusion. It also suggests that the class representatives may have breached their duties to absent class members by being paid first, and through a different process (mediation) than applies to other class members (arbitration). New class representatives may need to be appointed, since the class representatives have no remaining claim.

Class representatives are often permitted to obtain a premium for conducting the litigation, and there is no objection to that concept. But the order does not disclose what the

class representatives have already received beyond the general statement that they have collectively been already paid a fund of $460,000. The order should indicate to other class members what each class representative was paid. And, as noted above, the class representatives should not be paid outside of the very claims process that all other class members must participate in, or by different criteria. Since that is a fait accompli, new class representatives should be named.

The order should also disclose if the class representatives have paid attorneys fees from their recovery, or if the attorney fee authorized includes class counsel's time or actions for individual clients rather than the class.

11. Psychological Assessment and Counseling. The order and exhibits do not indicate who does these assessments and/or counseling. The order should indicate that it may be with a therapist of the victim's or family member's choosing, to be reimbursed by the Diocese, not a therapist dictated by the Diocese.

12. Exhibit A. The order errs in including persons abused by their parents or spouses. As written, the class would include those persons abused by parents or spouses, which is probably not an intended claimant. The first sentence should be two sentences:

> This action applies to 1) any person born on or before August 30, 1980; 2) who, as a minor, was sexually abused; 3) at any time by any agent or employee of the Diocese of Charleston; 4) who has not previously had any similar claim adjudicated, resolved, or released. The action also applies to 5) the parent or spouse of any such minor, 6) who has not previously had any similar claim adjudicated, resolved, or released.

13. Exhibit B. The order errs in setting two different birth dates for claimants. The definition of the consortium class includes the spouses and parents of victims *who are not eligible to participate in the victims' class.* The primary class is defined as persons born before August 30, 1980, whereas spouses or parents who may participate are for those individuals born on or before August 30, 1998. This may be a typographic error, but the notice needs, above all, to be accurate. Documents to be sent to the class need to be prepared with care. The notice the court has approved needs clarified.

The definition of "sexual abuse" is obviously taken from a criminal statute. Many aspects of abuse do not neatly fit the legalistic definition, and many putative class members may not understand it. Notice to potential class members should be clear and readily understandable. If there is no way to avoid that definition, the notice should include "You should consult with a legal professional if you are uncertain about the meaning of 'sexual abuse' as applied to you or your spouse or child."

The order states that if there is a dispute about whether a claim is *bona fide*, the claimant will have a chance to prove their claim, but does not set forth a procedure on how that will occur, except to say on page 3 of Exhibit B that the arbitrator has sole and final determination of the sums to be awarded, and in Exhibit H that the arbitrator alone determines if a person is a member of the class. Page 3 of Exhibit B states that the claim proceedings are confidential. Page 4 of Exhibit 4 provides for psychological counsel which can be used in support of the claim but deprives the Diocese of that information. In order for claimants to make an informed decision on whether to participate in the class, the notice should include that information on each aspect, since to submit the question to the arbitrator requires a waiver of appeal, and it is not clear from the forms if the Diocese can raise objections if it does not receive

all documents for claims.

The order errs in using a matrix of physical touch as the only means of separating subclasses of primary class members. Objections to the matrix are not restated here. The court's ruling to date is sufficient to submit those issues to an appellate court as a means of sorting out hard and fast subclasses of members of the primary class.

14. Exhibit C. The order errs in requiring Social Security Numbers for claimants, an unnecessary intrusion as a routine request. If it is needed to identify records or for another purpose, a provision can be made to that effect. The identity of their parents or spouses should be requested only if those persons have made a claim.

15. Exhibit D. Same concern as to Social Security Numbers.

The order and Exhibit errs in making no provision for parent claims if siblings have been molested. Does each parent get $20,000 for each of their children who have been abused, or is a parent who is unfortunate enough to have two or more of their children abused by their priest only entitled to the same amount as a parent who only had one child abused? Assuming, of course, it is conceded that a parent's claim is cognizable, which the order at present disputes, even while proposing to make payment to parents for such claims.

16. Exhibit F. The form includes a voluntary waiver of appeal rights prior to the victim knowing whether they are considered by the arbitrator to be a class member. It should preserve that right until that determination is made. If the arbitrator determines that a person is not a member of the class, that person should revert back to opt-out status as of the date the first

class suit was filed.

Conclusion

The order should be modified in the particulars as noted above. Objectors request notice of any order entered by the Court and proper notice of any hearings for these objections.

Respectfully submitted,

Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

Attorney for putative class members

Certificate of Service

I hereby certify that I have caused a copy of the enclosed

Motion to Alter or Amend

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

Richter & Haller, LLC
622 Johnnie Dodds Boulevard
PO Drawer 1089
Mt. Pleasant SC 29465

Peter Shahid
15 State Street
Charleston SC 29401

Lionel Lofton
PO Box 449
Charleston SC 29402

John Sinclaire and Glenn Churchill
PO Box 370
Charleston SC 29402

W. Ellison Thomas
109-A Simmons Street
Mt. Pleasant SC 29464

Done August 7, 2007

Respectfully submitted,

Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

STATE OF SOUTH CAROLINA	§	IN THE COURT OF COMMON PLEAS
County of JASPER	§	14th JUDICIAL CIRCUIT
ALLAN CARL RANTA, *Plaintiff,*	§ § §	AMENDED COMPLAINT
v.	§	
THE ROMAN CATHOLIC DIOCESE OF SAVANNAH, A CORPORATION SOLE; MOST REV. RAYMOND W. LESSARD; J. KEVIN BOLAND, IN HIS CAPACITY AS THE BISHOP OF THE ROMAN CATHOLIC DIOCESE OF SAVANNAH, A CORPORATION SOLE; AND WAYLAND YODER BROWN,	§	C/A No. 2006-CP-27-143
Defendants	§	

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. Allan Ranta is an adult man who was a minor at the time of the abuse alleged herein who, while living in the Savannah area, attended schools operated by the Diocese of Savannah and attended and participated in mass, confession, religious training, and various religious and non-religious functions sponsored and operated by the Diocese of Savannah, but was taken across state lines into South Carolina and sexually abused on many occasions by an ordained priest of the Diocese of Savannah. Allan Ranta also participated in prayer, confession, religious counseling and teaching with said priest on these trips to South Carolina.

R. App. 000391

2. Defendant The Roman Catholic Diocese of Savannah, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors, is and was at all times material hereto a corporation organized under the laws of the State of Georgia, having its principal place of business at 601 East Liberty St., Savannah, GA 31401. Diocese is and was the corporate entity through which the religious and other affairs of the Roman Catholic Church in Savannah are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment of clergy, supervision of clergy activities, the exercise of authority over various members of its denomination, and the maintenance of the well being of its members. At all times herein, Wayland Brown (hereinafter referred to as "Brown") was an employee, agent and/or principal of the Diocese, and acting under the authority of the Diocese.

3. The Bishop of the Diocese of Savannah (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

FACTUAL SUMMARY

4. Defendant Diocese owns and operates churches and parochial schools in and around Savannah, Georgia, only miles from the South Carolina border, offering primary, elementary, and secondary educations to the residents in and around the Savannah area and the closely neighboring counties in South Carolina.

5. Diocese, as part of its general mission, encouraged its parishioners, whether Georgia or South Carolina residents, to enter, use, and attend its schools, churches and activities in its parishes, including worship, social, educational and religious based functions. As such, the Diocese

undertook a duty to ensure its parishioners and students were safe from all dangers which were reasonably foreseeable. In particular, the defendants owed minors, including the minor plaintiff, a greater degree of care because of their lack of capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its parishioners, including the plaintiff and/or his parents that its facilities were places of safety and that it could and would protect its parishioners, including the plaintiff, from harm. Diocese and Bishop further represented to parishioners, including the plaintiff and/or his parents, that the faculty and clergy were safe and qualified to be moral, spiritual and intellectual leaders and counselors.

6. At all times material to the incidents alleged in this complaint, Brown was a clergyman assigned to the Diocese of Savannah. Brown was assigned to St. James Catholic School and Parish by the Diocese and Bishop and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.

7. Brown first began working for the Diocese in or about 1968, teaching CCD to teenagers. In December of 1969, defendants began to learn of facts which caused them to have serious suspicions about Brown's conduct. In April of 1972, Brown requested to be accepted as a seminarian for the Diocese of Savannah. When conducting its investigation before admitting Brown as a seminarian, defendants again became aware of facts suggesting Brown's inappropriate affection for young boys and his "emotional immaturity."

8. After Brown's completion of his first year in the seminary, the Bishop was advised by other clergy of grave concerns regarding Brown, specifically including that Brown was immature. Said clergy advised the Bishop that he could not, in good conscience, recommend that Brown receive Orders. Further, the Bishop was ominously advised, "I really feel he will do more

harm than good for the church." However, defendants continued to permit Brown to progress closer to his intended position as Priest.

9. Again in 1974, the Bishop noted reservations expressed by priests of the Diocese on Brown's suitability for the priesthood. The Bishop again learned of questionable conduct between Brown and young boys. Yet defendants took no action to remove Brown or deter his path toward priesthood.

10. In 1975, the Bishop noted in Brown's personnel records extremely disturbing facts concerning Brown's affinity toward young boys, yet subsequently agreed to ordain Brown as a priest. In fact, many disturbing facts were confirmed by the Bishop in a personal interview with Brown, including Brown's suspected sexual attraction to young boys, indiscrete behavior with young boys, and other disturbing personality traits not suitable to any role within the Church.

11. In 1976, the Bishop postponed the ordination of Brown to priesthood for one year, primarily due to the concerns of priests and laity within the Savannah Diocese about Brown's past behavior and suitability as a priest.

12. Immediately prior to the ordination of Brown, the Bishop received a letter from another priest expressing serious concern that Brown lacked the main requisite for priesthood, "mainly, holiness." Specifically, the Bishop and the Diocese were advised "I personally feel that Wayland's (Brown) ordination will discourage many vocations and discourage many people. I think we would be better off to have no priest rather than an unholy priest."

13. Despite this knowledge, the Bishop on behalf of the Diocese ordained Brown as a Roman Catholic priest. Immediately thereafter Brown was permitted by defendants to assume close

R. App. 000394

and intimate roles with young boys.

14. Two years later, in approximately 1979, the Plaintiff was approximately eleven years old. Plaintiff attended St. James Catholic School. Plaintiff's family also attended St. James Catholic Church. Brown was employed by Diocese and Bishop as a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff at St. James. In this role, Brown came to have access to and to know the most personal and confidential information of his parishioners, including the plaintiff. Diocese and Bishop encouraged their parishioners to share and trust Brown as a priest, youth leader, confessor, counselor, and put Brown in a position of authority over plaintiff. Among other things, Diocese and Bishop encouraged plaintiff and other parishioners to share with and trust Brown and other of its employees with deeply personal information and with their personal safety and salvation. As part of his employment, Brown reached out to parishioners of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.

15. Plaintiff came to know the priest Brown through St. James Catholic School and Parish and through counseling and mentoring offered by Brown to plaintiff's family. Based on this relationship, as cultivated by Brown and encouraged by the Diocese and the Bishop, plaintiff admired, trusted, revered and respected Brown as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, plaintiff was taught and instructed to revere and respect clergy in this manner. As a result, plaintiff entrusted in Brown his personal safety and shared with Brown his most confidential information.

16. Because of plaintiff's position as a minor, together with Brown's position in the Roman Catholic Church as a priest, youth leader, holy man, confessor, counselor, and authority

figure, Brown was able to have control and influence over plaintiff. By his words and actions, Brown represented to plaintiff that their relationship was one in which Brown was to provide counseling, comfort and advice to plaintiff, and to look out for plaintiff's well being and best interests. Brown used these representations and his position as a priest to gain plaintiff's trust and confidence and to obtain control over him.

17. Between 1978 and 1982, plaintiff, then a minor child, was sexually assaulted by Brown.

18. These incidents occurred while Brown was an employee of the Diocese of Savannah. These assaults upon plaintiff occurred in and around Savannah, GA, as well as many times in the closely neighboring counties of South Carolina. Brown took plaintiff into South Carolina easily over ten times, including visiting St. Anthony's church in Hardeeville, South Carolina on more than one occasion. On many trips into South Carolina Brown would abuse plaintiff, pray with plaintiff and talk to him about confession, the sacraments, and Catholicism, always wearing a cross around his neck. On many occasions Brown would be clothed in his priestly attire and collar.

19. Based on the relationship of trust and confidence cultivated by Brown and encouraged by Diocese and Bishop, plaintiff justifiably believed and relied on Brown and gave Brown his trust and confidence. By his words and actions, Brown assured plaintiff that this conduct was legal and proper. Brown and defendants actively concealed the wrongfulness of his exploitation and misconduct involving children. As a result, and because plaintiff was a minor, plaintiff was unable to understand the wrongfulness and illegality of Brown's sexual abuse of him and the related injury. Brown also threatened plaintiff with recrimination if plaintiff revealed Brown's actions.

20. Plaintiff is informed and believes that the defendants knew, or should have known that Brown had developed a pattern of abusing boys and had deviant sexual propensities. The defendants consciously ignored tell-tale signs and complaints regarding Brown's behavior, implicitly and explicitly permitting and authorizing his abuse. Furthermore, the defendants knew or should have known that Brown was molesting minor boys in and around Savannah and at other locations, such as the closely neighboring counties of South Carolina, as well. Nevertheless, the defendants failed to warn the plaintiff and other minor children similarly situated of the danger posed by Brown, failed to protect the plaintiff and failed in the exercise of the many other duties it undertook. Moreover, the defendants hid the behavior and known propensities of Brown. In fact, concealment of such conduct of priests and other Diocese employees was the official policy of the Diocese and the Catholic Church.

21. Plaintiff has only learned recently of the extent of defendants' knowledge of Brown's history, proclivities, and actions, and has similarly only then learned of defendants' intentional and blatant concealment and effort to maintain secrecy concerning same.

22. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.

23. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).

24. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals

(bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.

25. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."

26. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)

27. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents in secret archives. (Ex. A, ¶ 42.)

28. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential after life of damnation. Diocese, Bishop and their agents and employees such as Brown using the relationships of priest, youth leader, confessor, counselor, and in a position of authority over

plaintiff which they cultivated, reinforced this belief.

29. As a result of the actions and/or inactions of the defendants, Brown was allowed, and did, prey upon plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Brown's conduct and the conduct of the defendants, by, among other things, years of psychological damage with physical manifestations.

30. The sexual, physical, psychological and spiritual abuse of plaintiff, and the circumstances under which the abuse occurred, caused plaintiff to develop various psychological coping mechanisms and symptoms of psychological distress, including great shame, guilt, self-blame, depression, repression, and disassociation. As a result, plaintiff was unable to perceive or know the existence or nature of his psychological and emotional injuries. Furthermore, plaintiff was unable to perceive or know the existence of the actual abuse perpetrated upon him by Brown, as the memories of such were repressed until recently triggered through significant counseling. Plaintiff brings herein these claims within two years of learning of the events, the memories of which having been repressed from childhood until recent counseling unlocked the vicious memories thereof. Plaintiff's severe psychological damage, the equivalent of a misshapen mind, was proximately caused by the actions and/or inactions of the defendants; and said damage prevented plaintiff from recognizing, understanding, and asserting his legal claims relative to the childhood sexual abuse he suffered at the hands of Brown and the other defendants.

FOR A FIRST CAUSE OF ACTION:

OUTRAGE

31. The allegations of paragraphs 1 through 30 above are incorporated into this cause of action as

if fully stated herein.

32. The defendants intentionally inflicted severe emotional distress on plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of defendants caused plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable man could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.

33. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION:

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

34. The allegations of paragraphs 1 through 33 above are incorporated into this cause of action as if fully stated herein.

35. As alleged above, plaintiff was sexually assaulted on multiple occasions between 1978 and 1982 by Brown who was a priest, youth leader, confessor, counselor, and in a position of authority over plaintiff. Brown's duties to the plaintiff arose from his employment with Diocese and Bishop.

36. As a result of the relationship between plaintiff and Brown, plaintiff and the defendants, and/or Brown and the defendants, defendants owed duties of due care toward the plaintiff.

Defendants breached those duties and were negligent, grossly negligent, careless, reckless, willful, or wanton in relation to the plaintiff, in that they failed to:

a. Monitor Brown's behavior while knowing of his affinity and propensities toward young boys;

b. Properly investigate Brown's background to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the plaintiff;

c. Address Brown's past conduct either at the time he first became involved with the defendants or subsequently thereafter;

d. Ignoring Brown's known predilections toward young boys when it was known or the defendants should have known of those predilections;

e. Allowing Brown to work with young boys, including the plaintiff, alone and unsupervised;

f. Shield the plaintiff from dangerous conditions, situations and individuals including child predators such as Brown;

g. Warn the plaintiff and/or his family of Brown's deviant sexual proclivities;

h. Fulfill theirs duties *in loco parentis* to the plaintiff;

i. Educate the plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Brown;

j. Warn them of a priest known to be an emotionally immature individual with an abnormal affinity toward young boys and known to act inappropriately on that interest;

k. Supervise Brown in a manner so as to eliminate his chances to sexually abuse

children;

l. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his predatory actions;

m. Notify parents of those children who have been exposed to Brown;

n. Exercise due care for the safety and well-being of plaintiff.

37. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, willful, and wanton behavior of the defendants and/or their employees/agents, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A THIRD CAUSE OF ACTION:

BREACH OF FIDUCIARY DUTY

38. The allegations of paragraphs 1 through 37 above are incorporated into this cause of action as if fully stated herein.

39. By and through the relationships described herein, defendants entered into a fiduciary relationship with the plaintiff. Additionally, by accepting physical custody of the minor plaintiff, as student at St. James Catholic School and Parish, defendants assumed the duty to act in *loco parentis* with respect to the plaintiff. The defendants undertook a duty to provide a safe environment for plaintiff, as well as for all children who attended the Church and

School. A relationship of trust and confidence, and therefore a fiduciary relationship, was formed.

40. By entering into a fiduciary relationship with plaintiff, defendants were obligated to act only in the best interests of plaintiff. This duty extended to defendants' agents and employees, Brown included.

41. Plaintiff reposed trust and confidence in Brown as his priest, teacher, confessor, and counselor, and in the defendants. As a result of Brown's predatory acts described above and the Diocese and Bishop's failure to act on Brown's conduct, the defendants breached the duties owed to the plaintiff.

42. As a proximate result of the negligent actions, inactions and breaches of fiduciary duties by the defendants and through agents, plaintiff was harmed and is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION:

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

43. The allegations of paragraphs 1 through 42 above are incorporated into this cause of action as if fully stated herein.

44. The emotional distress and its attendant physical manifestations including nervousness, poor sleep, headaches, nausea, among others, suffered by plaintiff as a result of the defendants' actions and inactions was so severe that no reasonable person could be expected to endure it. Those effects have continued to cause problems for plaintiff and harm him severely, emotionally and physically.

45. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A FIFTH CAUSE OF ACTION:

FRAUDULENT CONCEALMENT

46. The allegations of paragraphs 1 through 45 above are incorporated into this cause of action as if fully stated herein.

47. Defendants had knowledge of Brown's deviant propensities toward minors prior to the sexual molestation of plaintiff. Plaintiff could not have known, nor did he reasonably have the opportunity to know, that the defendant had specific knowledge about Brown's deviant propensities prior to the abuse perpetrated on him. Further, plaintiff could not have discovered the truth through reasonable inquiry or inspections. By acts and conduct described herein, defendants concealed material facts from plaintiff, inducing plaintiff and his family into a false belief that Brown was safe around children, a false belief that no other children were sexually abused by Brown, and a false belief that the defendants did not possess knowledge that Brown engaged in predatory practices and abused other children, among other things.

48. The defendants' failure to report, along with their active concealment of Brown's above mentioned propensities, as mandated by the INSTRUCTION attached at Exhibit A, constitutes fraudulent concealment of the information about Brown from his potential prey. This fraudulent concealment lasted until the present.

49. As a direct and proximate result of the outrageous conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A SIXTH CAUSE OF ACTION:

CIVIL CONSPIRACY

50. The allegations of paragraphs 1 through 49 above are incorporated into this cause of action as if fully stated herein.

51. Prior to the abuse of the plaintiff, plaintiff is informed and believes two or more agents of the defendants were aware of Brown's deviant propensities with minors. The failure of these agents of the defendants to report Brown to the proper authorities, the active concealment of their knowledge about Brown's deviant activities, and their agreement to do nothing to stop, or at least report, his activities constitutes a conspiracy of silence. The purpose behind this conspiracy was to protect Brown at the plaintiff's expense, proximately resulting in injury to the plaintiff. The conspiracy of silence constitutes a failure to protect minors who were the potential prey of Brown and his deviant propensities, this plaintiff included.

52. As a direct and proximate result of the conspiratorial conduct of the defendants, plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SEVENTH CAUSE OF ACTION:

NEGLIGENT RETENTION OR SUPERVISION

53. The allegations of paragraphs 1 through 52 above are incorporated into this cause of action as if fully stated herein.

54. Brown was hired by agents for the defendants, or the defendants themselves, prior to the abuse upon the plaintiff.

55. The agents for the defendants knew or should have known about Brown's deviant propensities. Despite such knowledge, the agents for defendants failed to take steps to protect the minors at St. James Catholic School and Parish, including the minor plaintiff.

56. Despite having knowledge of Brown's deviant propensities with minors, the defendants directly or through agents continued to retain him as a priest, youth leader, confessor, counselor, and teacher without warning the parents of children, or the children at St. James Catholic School and Parish, who were his potential prey. Several children, plaintiff included, became Brown's actual prey.

57. Despite having knowledge of Brown's deviant propensities with minor students, the agents of the defendants did not properly supervise him. Consequently, he was able to continue to perpetrate his deviant attacks on minors, including the Plaintiff.

58. Plaintiff was a minor child attending St. James Catholic School and Parish, where Brown was assigned. Therefore if not for Brown's continued employment by defendants, plaintiff would not have been injured.

59. Plaintiff was one of those minor students who was injured because the agents of the defendants failed to supervise Brown even though they knew or should have known of his deviant propensities with minors.

60. As a direct and proximate result of the defendants' negligent conduct, plaintiff sustained and

continues to sustain injuries and damages described herein and therefore is entitled to receive actual, compensatory damages in an amount to be determined by a jury, and punitive damages in a sufficient amount to deter similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

By:

Lawrence E. Richter, Jr.
THE RICHTER FIRM, LLC
622 Johnnie Dodds Blvd.
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000

AND

Blake L. Beckham
Leesa B. Logan
THE BECKHAM GROUP P.C.
3400 Carlisle, Suite 550
Dallas, Texas 75204
Telephone: 214-965-9300
Facsimile: 214-965-9301

ATTORNEYS FOR PLAINTIFF

2nd day of October 2007

Mt. Pleasant, South Carolina

EXHIBIT A

CERTIFICATE OF SERVICE

I DO HEREBY certify that on this date I have served the foregoing AMENDED COMPLAINT by placing a true and correct copy of the same in an envelope, and delivering via regular U.S. mail to counsel and parties at the address(es) indicated as follows:

A. Peter Shahid, Esq.
Shahid Law Office, LLC
P.O. Box 591
Charleston, SC 29402

Joseph P. Brennan, Esq.
Brennan & Wasden
P.O. Box 8047
Savannah, Georgia 31412

Harper L. Todd

Mt. Pleasant, South Carolina
2nd day of October, 2007

FROM THE SUPREME AND HOLY CONGREGATION OF THE HOLY OFFICE

FOR ALL PATRIARCHS, ARCHBISHOPS, BISHOPS AND OTHER DIOCESAN ORDINARIES "EVEN OF THE ORIENTAL RITE"

CONFIDENTIAL

INSTRUCTION

ON THE MANNER OF PROCEEDING IN CASES OF SOLICITATION

The Vatican Press, 1962

++5++

INSTRUCTION

On the manner of proceeding in cases of the crime of solicitation

[This text is] to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries.

PRELIMINARIES

1. The crime of solicitation takes place when a priest tempts a penitent, whoever that person is, either in the act of sacramental confession, whether before or immediately afterwards, whether on the occasion or the pretext of confession, whether even outside the times for confession in the confessional or [in a place] other than that [usually] designated for the hearing of confessions or [in a place] chosen for the simulated purpose of hearing a confession. [The object of this temptation] is to solicit or provoke [the penitent] toward impure and obscene matters, whether by words or signs or nods of the head, whether by touch or by writing whether then or after [the note has been read] or whether he has had with [that penitent] prohibited and improper speech or activity with reckless daring (Constitution Sacrum Poenitentiae, § 1).

2. [The right or duty of addressing] this unspeakable crime in the first instance pertains to the Ordinaries of the place in whose territory the accused has residence (V. below, numbers 30 and 31), and this not to mention through proper law but also from a special delegation of the Apostolic See; It is enjoined upon these aforementioned persons to the fullest extent possible, [in addition to their being] gravely encumbered by their own consciences, that, after the occurrence of cases of this type, that they, as s soon as possible, take care to introduce, discuss and terminate [these cases] with their proper tribunal. However, because of particular and serious reasons, according to the norm of Canon 247, § 2, these cases can be directly deferred to the Holy Congregation of the Holy Office or be so ordered. Yet [the right of] the accused respondents ++6++ remains intact in any instance of judgment to have recourse to the Holy Office. However, recourse thus interposed does not suspend, excluding the case of an appeal, the exercise of the jurisdiction of the judge who has already begun to accept the case; and he can therefore be able to pursue the judgment up to the definitive decision, unless it has been established that the Apostolic See has summoned the case to itself (Cfr. Canon 1569).

3. By the name of Ordinaries of the place are understood to be, each for his own territory, the residential bishop, abbot or prelate nullius, the administrator, any vicar or Prefect Apostolic, [and, in the absence of these aforementioned (dignitaries), those who succeed them in power in the ~~meanwhile by the prescription of law or from approved constitutions~~ (Canon 198, § 1); [This norm does not apply], however, to the vicar general, except from his [having been] specially delegated.

4. The Ordinary of the place in these cases is the judge even for regulars [religious], even though exempt. It is indeed strictly prohibited for their superiors to interpose themselves in cases pertaining to the Holy Office (Canon 501, § 2). However, having safeguarded the right of the Ordinary, there is nothing to prevent superiors themselves, if by chance they have discovered [one of their] subjects delinquent in the administration of the sacrament of Penance, from being able and having the obligation of being diligently watchful over those same persons, and, even having administered salutary penances, to admonish and correct, and, if the case demands it, to remove him from some ministry. They will also be able to transfer him to another [assignment], unless the Ordinary of the place has forbidden it because he has already accepted the denunciation and has begun the inquisition.

5. The Ordinary of the place can either supervise these cases himself or commit their acceptance to an ecclesiastic who is serious and of a mature age. But [they may not [commit such cases] on an habitual basis or for the entire group of these cases, but must delegate as often as needed (toties quoties) for cases taken singly and through writing, saving the prescription of Canon 1613, § 1.

6. Although, as a rule, a single judge, by reason of its secrecy, is prescribed for cases of this type, it is not forbidden, however, for the Ordinary in the more difficult cases to approve one or two assessors and counsellors, selected from the synodal judges (Canon 1575); or even to three judges, likewise chosen from the synodal judges, to hand over the case to the judges to be handled with the mandate of proceeding collegially according to the norm of Canon 1577.

7. The promoter of justice, the defender of the accused and the notary, priests who are fittingly serious, of mature age, of integrity, doctors in canon ~~++7++~~law or otherwise skilled [in canon law] and worthy because of their zeal for justice (Canon 1589), and not found to be at any disadvantage toward the accused, which Canon 1613 treats, are to be nominated in writing by the Ordinary. The promoter of justice, however (who can be different from the promoter of justice of the Curia) [can be appointed] for the entire series of cases. The defender of the accused, however, and the notary are to be appointed each time for each case (toties quoties). Nor is the accused prohibited from proposing a defender seen as favorable to him (Canon 1655), who, however, is to be a priest and approved by the Ordinary.

8. Sometimes (this refers to his own location), the intervention [of the promoter of justice] is required, and, in the case where he has not been cited, unless ~~by chance even if not~~ cited he is still present [at the process], the Acts must be considered [totally] invalid. But, if, however,

he has been legitimately cited and is not present at some [parts of the] Acts, the Acts indeed are valid, but afterwards [those Acts] will be totally subject to his examination so that he is able to comment upon all of them either in words or in writing and to propose what he has judged to be necessary or opportune (Canon 1587).

9. It is fitting that the notary, on the other hand, be present at all the Acts under pain of nullity and to note down with his own hand or at least to affix his signature [to the aforesaid Acts] (Canon 1585, § 1). Because of the special character of these procedures, however, it is necessary for the Ordinary to dispense from the presence of the notary, though because of a reasonable excuse in the acceptance, as will be noted in its own place, of the denunciations and also in the expenditure of the degrees of attention or care expected of a notary in a given situation, as they say, in pursuing and in examining the witnesses inducted [into the case].

10. Minor helpers are to be used for nothing unless it is absolutely necessary; and these are to be chosen, in so far as possible, from the priestly order; always, however, they are to be of proved faithfulness and mature without exception. But it must be noted that, if, when necessity demands it, they can be nominated to accept certain acts, even if they are non-subjects living in another territory or the Ordinary of that territory [can] be interrogated (Can. 1570, § 2), observing, of course, all of the cautions treated as above and in Canon 1613.

11. Because, however, what is treated in these cases has to have a greater degree of care and observance so that those same matters be pursued in a most secretive way, and, after they have been defined and given over to execution, they are to be restrained by a perpetual silence (Instruction of the Holy Office, February 20, 1867, n. 14), each and everyone pertaining to the tribunal in any way or admitted to knowledge of the matters because of their office, is to observe the strictest ++7++ secret, which is commonly regarded as a secret of the Holy Office, in all matters and with all persons, under the penalty of excommunication latae sententiae, ipso facto and without any declaration [of such a penalty] having been incurred and reserved to the sole person of the Supreme Pontiff, even to the exclusion of the Sacred Penitentiary, are bound to observe [this secrecy] inviolably. Indeed by this law the Ordinaries are bound ipso jure or by the force of their own proper duty. The other helpers from the power of their oath which they they must always take before they undertake their duties. And these, then, are delegated, are interpolated, and are informed in their absence by means of the precept in the letters of delegation, interpellation, [or of] information, imposing upon them with express mention of the secret of the Holy Office and of the aforementioned censure.

12. The aforesaid oath, the formula for which is to be found in the appendix of this instruction (Form A), must be used (by those, obviously, who will use it habitually, once for all; by those, however, who are deputed only for some determined piece of business or case, as often as required (toties quoties), in the presence of the ordinary or his delegate done upon the Gospels of God (also by priests) and not otherwise and with the added promise of fulfilling faithfullly their duty, to which, however, the excommunication mentioned above, is not extended. There must be an

avoidance, moreover, by those who are set over those involved in this cases, lest anyone be admitted to a knowledge of the matters from helpers, unless in some way a party or an office to be performed by that person necessarily requires a knowledge of these matters.

13. The oath of keeping ~~the secret must~~ be given in these cases also by the accusers or those denouncing [the priest] and the witnesses. To none of these, however, is there subjection to a censure, unless by chance toward these same pesons some censure has been expressly threatened upon the person himself, for his accusation, his deposition or of his violation (Excussionis?) [of such] by art. The accused, however, should be most seriously warned that even he, with all [the others], especially when he observes the secret with his defender, is under the penalty of suspension a divinis in case of a transgression to be incurred ipso facto.

14. Finally, as for the publishing, the language, the confirmation, the custody of and the accidental nullity, in every way [these matters] must be observed which are prescribed by Canons 1642-43, 379-80-82 and 1680 respectively.

~~+9+~~

TITLE NUMBER ONE

THE FIRST KNOWLEDGE OF THE CRIME

15. Since the crime of solicitation takes place in rather rare decisions, lest it remain occult and unpunished and always with inestimable detriment to souls, it was necessary for the one person, as for many persons, conscious of that [act of solicitation], namely, the solicited penitent, to be compelled to reveal it through a denunciation imposed by positive law. Therefore:

16."According to the Apostolic Constitutions and especially of the Constitution of Benedict XIV Sacramentum Poenitentiae of June 1, 1941, the penitent must denounce the accused priest of the delict of solicitation in confession within a month to the Ordinary of the place or to the Holy Congregation of the Holy Office;, and the confessor must, burdened seriously in conscience, to warn the penitent of this duty." (Canon 904).

17. Moreover, according to the mind of Canon 1935 anyone of the faithful can always denounce the delict of solicitation, of which he will have had a certain knowledge; also, the obligation of denunciation urges as often as the person is bound to it from the natural law itself because of the danger to faith or religion or other imminent public evil.

18."The faithful, however, who knowingly have disregarded the obligation to denounce the person by whom he was solicited, against the prescription (related above) of Canon 904, within a month, falls into an excommunication reserved latae sententiae, not to be absolved unless after he has satisfied the obligation or has promised seriously that he would so" (Can. 2368, § 2).

19. The duty of denunciation is a personal one and is to be fulfilled regularly by the person himself who has been solicited. But if he is prevented by the most serious difficulties from doing this, then either by

letter or by another person favorable to him should approach the ordinary or the Holy Congregation of the Holy Office or the Sacred Penitentiary, revealing all the circumstances (Instruction of the Holy Office, February 20, 1967, n. 7).

++10++

20. Anonymous denunciations generally must be rejected. However, they can have supportive force or give the occasion for further investigations, if the particular circumstances of the matters involved render an accusation probable (Cfr. Can. 1942, § 2).

21. The obligation of denunciation on the part of the solicited penitent does not cease because of a spontaneous confession by the soliciting confessor done by chance, nor because of his being transferred, promoted, condemned, or presumably reformed and other reasons of the same kind. It ceases, however, at his death.

22. Sometimes it happens that the confessor or another ecclesiastic man is deputed to receive some denunciation, together with an instruction concerning the acts to be assumed for a judicial reason. Then that person is to be expressly warned that he should tell everything to the Ordinary or to the person whom he deputed, keeping no example or trace of it to himself.

23. In receiving the denunciations, this order is to be regularly observed: First, an oath to tell the truth while touching the Holy Gospels is to be given to the person making the denunciation; he should be interrogated according to the formula (Formula E), circumspectly, so that he narrates each and every circumstance briefly, indeed, and decently, but clearly and distinctly, pertaining to the solicitations he has suffered. In no way, however is it to be extracted from him whether he had consented to the solication. Rather, he should be expressly advised that he is not bound to manifest his consent which he perhaps gave. The responses [in uninterrupted fashion], not only as to what pertains to the substance but even to the words themselves of the testimony (Canon 1778) should be consigned to writing. The entire instrument [of the testimony] should be read in a clear and distinct voice to the one denouncing [the priest], giving [the one denouncing the priest] the option of adding, suppressing, correcting, or varying [his testimony]. His signature is then to be exacted [from him], or, if he does not know how to write, or cannot, the sign of the cross. And with him still being present, there should be added the signature of the person receiving the testimony, and if he is present (Cfr. n. 9), of the notary. And before he is dismissed, there should be presented to him, as above, an oath of observing the secret, threatening him, if there is a need, with an excommunication reserved to the Ordinary or to the Holy See (Cfr. n. 13).

24. Even if, sometimes, for grave obstructing reasons always to be expressed in the acts, this ordinary practice cannot be observed, it is permitted that one or the other form from the prescribed forms, saving however the substance, ~~it will be~~ omitted. Thus, if the oath cannot be taken upon the holy Gospels, it can be given with some notion and also with words only. If the instrument of denunciation cannot be put into writing in an ~~uninterrupted fashion, it can~~ be written down at a more opportune time and ~~place~~ by the interviewer (the recipient of the denunciation) and then

confirmed and signed by the person who is denunciating in the presence of the one receiving the denunciation; if the instrument itself cannot be read to the denouncer, it can be given to him to read.

25. In more difficult cases, however, it is also permitted for the denunciation (the previous permission of the denunciator having been given, lest the sacramental seal seemingly be violated: and on a ~~day~~ convenient to each party and in the confessional itself, it is to be read or given to read, and is confirmed with an oath and with one's proper signature or the sign of the cross (unless to do this is in every way impossible). Concerning all of these things, as has been said in the number above, an express mention must always be made in the Acts.

26. Still, if an entirely serious case also that is also clearly extraordinary urges, then the denunciation can also be done through a written account by the one denouncing, as long as, however, it is before the Ordinary of the place or his delegate and notary, if he is present (cfr. n. 9), and afterwards confirmed by an oath and signed. The same must be said concerning an informal denunciation, through a letter, for example, or given orally in an extrajudicial manner.

27. Any denunciation once accepted, the Ordinary is bound most gravely to communicate this as soon as possible to the promoter of justice who must declare in writing, whether the specific crime of solicitation in the first sense is present in the case or not, and whether the ordinary disagrees with this or not. Within ten days he must submit the matter to the Holy Office.

28. If, on the other hand, the Ordinary and the promoter of justice agree together, or in some way the promoter of justice does not make his recourse to the Holy Office, then the Ordinary, if he has decreed that the specific delict of solicitation was not present, should order the Acts to be put into the secret archives, or he should use his right and duty according to the nature and gravity of the things that have been denounced. If, however, he believed that they were present, then he should proceed to the inquisition (Cfr. Can. 1942, § 1).

FROM THE SUPREME AND HOLY CONGREGATION OF THE HOLY OFFICE

TO ALL PATRIARCHS, ARCHBISHOPS, BISHOPS AND OTHER DIOCESAN ORDINARIES "EVEN OF THE ORIENTAL RITE"

INSTRUCTION

CONFIDENTIAL

ON THE MANNER OF PROCEEDING IN CASES OF SOLICITATION

The Vatican Press, 1962

~~154~~

INSTRUCTION

On the manner of proceeding in cases of the crime of solicitation

[This text is] to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries.

PRELIMINARIES

1. The crime of solicitation takes place when a priest tempts a penitent, whoever that person is, either in the act of sacramental confession, whether before or immediately afterwards, whether on the occasion or the pretext of confession, whether even outside the times for confession in the confessional or [in a place] other than that [usually] designated for the hearing of confessions or [in a place] chosen for the simulated purpose of hearing a confession. [The object of this temptation] is to solicit or provoke [the penitent] toward impure and obscene matters, whether by words or signs or nods of the head, whether by touch or by writing whether then or after [the note has been read] or whether he has had with [that penitent] prohibited and improper speech or activity with reckless daring (Constitution Sacrum Poenitentiae, § 1).

2. [The right or duty of addressing] this unspeakable crime in the first instance pertains to the Ordinaries of the place in whose territory the accused has residence (V. below, numbers 30 and 31), and this not to mention through proper law but also from a special delegation of the Apostolic See; It is enjoined upon these aforementioned persons to the fullest extent possible, [in addition to their being] gravely encumbered by their own consciences, that, after the occurrence of cases of this type; that they, as soon as possible, take care to introduce, discuss and terminate [these cases] with their proper tribunal. However, because of particular and serious reasons, according to the norm of Canon 247, § 2, these cases can be directly deferred to the Holy Congregation of the Holy Office or be so ordered. Yet [the right of] the accused respondents ~~154~~ remains intact in any instance of judgment to have recourse to the Holy Office. However, recourse thus interposed does not suspend, excluding the case of an appeal, the exercise of the jurisdiction of the judge who has already begun to accept the case; and he can therefore be able to pursue the judgment up to the definitive decision, unless it has been established that the Apostolic See has summoned the case to itself (Cfr. Canon 1569).

3. By the name of Ordinaries of the place are understood to be, each for his own territory, the residential bishop, abbot or prelate nullius, the administrator, any vicar or Prefect Apostolic, [and, in the absence of these aforementioned (dignicaries), those who succeed them in power in the meanwhile by the prescription of law or from approved constitutions (Canon 198; § 1); ~~[This norm does not apply]~~, however, to the ~~vicar general, except~~ from his [having been] specially delegated.

4. The Ordinary of the place in these cases is the judge even for regulars [religious], even though exempt. It is indeed strictly prohibited for their superiors to interpose themselves in cases pertaining to the Holy Office (Canon 501, § 2). However, having safeguarded the right of the Ordinary, there is nothing to prevent superiors themselves, if by chance they have discovered [one of their] subjects delinquent in the administration of the sacrament of Penance, from being able and having the obligation of being diligently watchful over those same persons, and, even having administered salutary penances, to admonish and correct, and, if the case demands it, to remove him from some ministry. They will also be able to transfer him to another [assignment], unless the Ordinary of the place has forbidden it because he has already accepted the denunciation and has begun the inquisition.

5. The Ordinary of the place can either supervise these cases himself or commit their acceptance to an ecclesiastic who is serious and of a mature age. But [they may not [commit such cases] on an habitual basis or for the entire group of these cases, but must delegate as often as needed (toties quoties) for cases taken singly and through writing, saving the prescription of Canon 1613, § 1.

6. Although, as a rule, a single judge, by reason of its secrecy, is prescribed for cases of this type, it is not forbidden, however, for the Ordinary in the more difficult cases to approve one or two assessors and counsellors, selected from the synodal judges (Canon 1575); or even to three judges, likewise chosen from the synodal judges, to hand over the case to the judges to be handled with the mandate of proceeding collegially according to the norm of Canon 1577.

7. The promoter of justice, the defender of the accused and the notary, priests who are fittingly serious, of mature age, of integrity, doctors in canon ~~[?]~~law or otherwise skilled [in canon law] and worthy because of their zeal for justice (Canon 1589), and not found to be at any disadvantage toward the accused, which Canon 1613 treats, are to be nominated in writing by the Ordinary. The promoter of justice, however (who can be different from the promoter of justice of the Curia) [can be appointed] for the entire series of cases. The defender of the accused, however, and the notary are to be appointed each time for each case (toties quoties). Nor is the accused prohibited from proposing a defender seen as favorable to him (Canon 1655), who, however, is to be a priest and approved by the Ordinary.

8. Sometimes (this refers to his own location), the intervention [of the promoter of justice] is required, and, in the case where he has not been cited, unless by chance even if not cited he is still present [at the process], the Acts must be considered [totally] invalid. But, if, however,

he has been legitimately cited and is not present at some [parts of the] Acts, the Acts indeed are valid, but afterwards [those Acts] will be totally subject to his examination so that he is able to comment upon all of them either in words or in writing and to propose what he has judged to be necessary or opportune (Canon 1587).

9. It is fitting that the notary, on the other hand, be present at all the Acts under pain of nullity and to note down with his own hand or at least to affix his signature [to the aforesaid Acts] (Canon 1585, § 1). Because of the special character of these procedures, however, it is necessary for the Ordinary to dispense from the presence of the notary, though because of a reasonable excuse in the acceptance, as will be noted in its own place, of the denunciations and also in the expenditure of the degrees of attention or care expected of a notary in a given situation, as they say, in pursuing and in examining the witnesses inducted [into the case].

10. Minor helpers are to be used for nothing unless it is absolutely necessary; and these are to be chosen, in so far as possible, from the priestly order; always, however, they are to be of proved faithfulness and mature without exception. But it must be noted that, if, when necessity demands it, they can be nominated to accept certain acts, even if they are non-subjects living in another territory or the Ordinary of that territory [can] be interrogated (Can. 1570, § 2), observing, of course, all of the cautions treated as above and in Canon 1613.

11. Because, however, what is treated in these cases has to have a greater degree of care and observance so that those same matters be pursued in a most secretive way, and, after they have been defined and given over to execution, they are to be restrained by a perpetual silence (Instruction of the Holy Office, February 20, 1867, n. 14), each and everyone pertaining to the tribunal in any way or admitted to knowledge of the matters because of their office, is to observe the strictest ++7++ secret, which is commonly regarded as a secret of the Holy Office, in all matters and with all persons, under the penalty of excommunication latae sententiae, ipso facto and without any declaration [of such a penalty] having been incurred and reserved to the sole person of the Supreme Pontiff, even to the exclusion of the Sacred Penitentiary, are bound to observe [this secrecy] inviolably. Indeed by this law the Ordinaries are bound ipso jure or by the force of their own proper duty. The other helpers from the power of their oath which they they must always take before they undertake their duties. And these, then, are delegated, are interpolated, and are informed in their absence by means of the precept in the letters of delegation, interpellation, [or of] information, imposing upon them with express mention of the secret of the Holy Office and of the aforementioned censure.

12. The aforesaid oath, the formula for which is to be found in the appendix of this instruction (Form A), must be used (by those, obviously, who will use it habitually, once for all; by those, however, who are deputed only for some determined piece of business or case, as often as required (toties quoties), in the presence of the ordinary or his delegate done upon the Gospels of God (also by priests) and not otherwise and with the added promise of fulfilling faithfully their duty, to which, however, the excommunication mentioned above, is not extended. There must be an

avoidance; moreover, by those who are set over those involved in this cases, lest anyone be admitted to a knowledge of the matters from helpers, unless in some way a party or an office to be performed by that person necessarily requires a knowledge of these matters.

13. The oath of keeping the secret must be given in these cases also by the accusers or those denouncing [the priest] and the witnesses. To none of these, however, is there subjection to a censure, unless by chance toward these same pesons some censure has been expressly threatened upon the person himself, for his accusation, his deposition or of his violation (Excussionis?) [of such] by att. The accused, however, should be most seriously warned that even he, with all [the others], especially when he observes the secret with his defender, is under the penalty of suspension a divinis in case of a transgression to be incurred ipso facto.

14. Finally, as for the publishing, the language, the confirmation, the custody of and the accidental nullity, in every way [these matters] must be observed which are prescribed by Canons 1642-43, 379-80-82 and 1680 respectively.

++9++

TITLE NUMBER ONE

THE FIRST KNOWLEDGE OF THE CRIME

15. Since the crime of solicitation takes place in rather rare decisions, lest it remain occult and unpunished and always with inestimable detriment to souls, it was necessary for the one person, as for many persons, conscious of that [act of solicitation], namely, the solicited penitent, to be compelled to reveal it through a denunciation imposed by positive law. Therefore:

16. "According to the Apostolic Constitutions and especially of the Constitution of Benedict XIV Sacramentum Poenitentiae of June 1, 1941, the penitent must denounce the accused priest of the delict of solicitation in confession within a month to the Ordinary of the place or to the Holy Congregation of the Holy Office;, and the confessor must, burdened seriously in conscience; to warn the penitent of this duty." (Canon 904).

17. Moreover, according to the mind of Canon 1935 anyone of the faithful can always denounce the delict of solicitation, of which he will have had a certain knowledge; also, the obligation of denunciation urges as often as the person is bound to it from the natural law itself because of the danger to faith or religion or other imminent public evil.

18. "The faithful, however, who knowingly have disregarded the obligation to denounce the person by whom he was solicited, against the prescription (related above) of Canon 904, within a month, falls into an excommunication reserved latae sententiae, not to be absolved unless after he has satisfied the obligation or has promised seriously that he would so" (Can. 2368, § 2).

19. The duty of denunciation is a personal one and is to be fulfilled regularly by the person himself who has been solicited. But if he is prevented by the most serious difficulties from doing this, then either by

letter or by another person favorable to him should approach the ordinary or the Holy Congregation of the Holy Office or the Sacred Penitentiary, revealing all the circumstances (Instruction of the Holy Office, February 20, 1967, n. 7).

++10++

10. Anonymous denunciations generally must be rejected. However, they can have supportive force or give the occasion for further investigations, if the particular circumstances of the matters involved render an accusation probable (Cfr. Can. 1942, § 2).

11. The obligation of denunciation on the part of the solicited penitent does not cease because of a spontaneous confession by the soliciting confessor done by chance, nor because of his being transferred, promoted, condemned, or presumably reformed and other reasons of the same kind. It ceases, however, at his death.

21. Sometimes it happens that the confessor or another ecclesiastic man is deputed to receive some denunciation, together with an instruction concerning the acts to be assumed for a judicial reason. Then that person is to be expressly warned that he should tell everything to the Ordinary or to the person whom he deputed, keeping no example or trace of it to himself.

23. In receiving the denunciations, this order is to be regularly observed: First, an oath to tell the truth while touching the Holy Gospels is to be given to the person making the denunciation; he should be interrogated according to the formula (Formula E), circumspectly, so that he narrates each and every circumstance briefly, indeed, and decently, but clearly and distinctly, pertaining to the solicitations he has suffered. In no way, however is it to be extracted from him whether he had consented to the solication. Rather, he should be expressly advised that he is not bound to manifest his consent which he perhaps gave. The responses [in uninterrupted fashion], not only as to what pertains to the substance but even to the words themselves of the testimony (Canon 1778) should be consigned to writing. The entire instrument [of the testimony] should be read in a clear and distinct voice to the one denouncing [the priest], giving [the one denouncing the priest] the option of adding, suppressing, correcting, or varying [his testimony]. His signature is then to be exacted [from him], or, if he does not know how to write, or cannot, the sign of the cross. And with him still being present, there should be added the signature of the person receiving the testimony, and if he is present (Cfr. n. 9), of the notary. And before he is dismissed, there should be presented to him, as above, an oath of observing the secret, threatening him, if there is a need, with an excommunciation reserved to the Ordinary or to the Holy See (Cfr. n. 13).

24. Even if, sometimes, for grave obstructing reasons always to be expressed in the acts, this ordinary practice cannot be observed, it is permitted that one or the other form from the prescribed forms, saving however the substance, ++it++be omitted. Thus, if the oath cannot be taken upon the holy Gospels, it can be given with some notion and also with words only. If the instrument of denunciation cannot be put into writing in an uninterrupted fashion, it can be written down at a more opportune time and place by the interviewer (the recipient of the denunciation) and then

confirmed and signed by the person who is denunciating in the presence of the one receiving the denunciation; if the instrument itself cannot be read to the denunciator, it can be given to him to read.

25. In more difficult cases, however, it is also permitted for the denunciation (the previous permission of the denunciator having been given, lest the sacramental seal seemingly be violated and on a day convenient to each party and in the confessional itself, it is to be read or given to read, and is confirmed with an oath and with one's proper signature or the sign of the cross (unless to do this is in every way impossible). Concerning all of these things, as has been said in the number above, an express mention must always be made in the Acts.

26. Still, if an entirely serious case also that is also clearly extraordinary urges, then the denunciation can also be done through a written account by the one denouncing, as long as, however, it is before the Ordinary of the place or his delegate and notary, if he is present (cfr. n. 9), and afterwards confirmed by an oath and signed. The same must be said concerning an informal denunciation, through a letter, for example, or given orally in an extrajudicial manner.

27. Any denunciation once accepted, the Ordinary is bound most gravely to communicate this as soon as possible to the promoter of justice who must declare in writing, whether the specific crime of solicitation in the first sense is present in the case or not, and whether the ordinary disagrees with this or not. Within ten days he must submit the matter to the Holy Office.

28. If, on the other hand, the Ordinary and the promoter of justice agree together, or in some way the promoter of justice does not make his recourse to the Holy Office, then the Ordinary, if he has decreed that the specific delict of solicitation was not present, should order the Acts to be put into the secret archives, or he should use his right and duty according to the nature and gravity of the things that have been denounced. If, however, he believed that they were present, then he should proceed to the inquisition (Cfr. Can. 1942, §.1).

TITLE NUMBER TWO

THE PROCESS

Chapter I – The Inquisition

29. When the knowledge concerning the crime of solicitation is known first through the denunciations, a special inquisition must be pursued "so that it may become clear whether and on what foundation the imputation rests" (Canon 1939, § 1); and this by the fact or even more so, since a crime of this type, as has already been stated above, is usually done in secret, and direct testimonies concerning [solicitation], especially from the hurt party, can only rarely be obtained.

Once the inquisition is open, and if the denounced priest is a religious, the Ordinary can prevent him from being transferred before the conclusion of the process.

For the most part, there are three areas which such an inquisition must cover, and they are:

a) the past history of the denounced person;
b) the consistency of the denunciation;
c) other persons solicited by the same confessor or, however conscious of the crime, whether any of them, as not rarely happens, have been persuaded [to make the denunciation] by those denouncing.

30. Therefore, as to what pertains to the first letter (a), the Ordinary at the same time as he has accepted some denunciation of the crime of solicitation, if the one denounced, whether from the secular clergy or is a regular (cfr. n. 4), with residence in his territory, should try to find out from the archives whether other accusations against him are on record, even of a different type; and, if by chance he had previously been living in other territories, he should seek, even from the respective Ordinaries, and, if [he is a] religious, also from the regular superiors, whether they have anything which can aggravate the situation in any way. But he will accept these documents, referring to them in the Acts as accumulated together whether for a judgment, by reason of content [continentia] or association of causes [connexio] (cfr. Canon 1567), and thus all the matters will be brought forward together; ~~13~~or for the establishment and consideration of an aggravating circumstance of recidivism according to the sense of Canon 2208.

31. If the whole matter concerns a denounced person who does not have residance in his territory, the Ordinary should transmit all the acts to the Ordinary of the one who has been denounced, or, if he does not know who this might be, [he will transmit all the acts] to the Supreme Holy Congregation of the Holy Office, reserving the right, in the meanwhile, to deny to the denounced priest the faculty of exercising the ecclesiastical ministries in his own diocese or of revoking them already by chance conceded to him, in the event that he approaches [the Ordinary for these faculties] or returns [to the diocese of the Ordinary].

32. As to what pertains to the second letter (b), the importance of each denunciation, of their qualities and of the circumstances must be weighed seriously and accurately so that it is evident how they themselves merit belief. It is not sufficient that [this be done] in any way whatsoever, but it is necessary that this become known by means of an established and a judicial form; this customarily is signified in the Tribunal of the Holy Office by the phrase "diligentias peragere" [to undertake all the required formalities].

33. In order to arrive at this purpose [of undertaking all the required formalities], as soon as the Ordinary shall have accepted any denunciation of the crime of solicitation, either personally or through a priest, he will summon, either personally or through a priest specially delegated to do so, two witnesses (he summons them separately and with appropriate circumspection)and with appropriate circumspection) two witnesses, in so far as it is possible, from the ranks of the ecclesiastics. But it is far better, above any exception, to summon persons, who are familiar with both the one denounced and the one denouncing. These persons, with the notary present (cfr. n. 9), who is to put the interrogations and responses in writing, [are put] under the sanctity of an oath to tell the truth and to observe its secret nature, accompanied by the threat, if it seems necessary, of excommunication reserved to the Ordinary of the place or to the Holy See (cfr. n. 13). He will interrogate them (Formula G), concerning the life, morals and public reputation both of the one denounced and of the one denouncing. [They will be asked] whether they think that the one denouncing is worthy of credence; or whether, on the other hand, that person is capable of lying, of calumniating and of perjuring himself; and whether these persons know whether there has ever been any case of hatred, grudge or reason for enmity between the one denouncing and the denounced person.

34. If the denunciations are many in number, there is nothing to prevent the same [character] witnesses to be used for all or [to use different] witnesses, always being careful to have a double testimony as to the denounced and any denouncer.

35. If two witnesses cannot be found where each individual knows both the denounced and the denouncer, or if they cannot be interrogated at the same time without the danger of scandal ++14++ or without detriment to the good name concerning him, then arrangements to be made, so that two persons, by means of a divided [dimidiatae] [testimony], namely, interrogate two witnesses only about the denounced and another two only about the individual denouncers. In this case, however, it will be necessary to inquire elsewhere as to whether hatred, enmity or any other human disaffection against the denunciated [priest] was the case.

36. If not even the divided efforts cannot be pursued, or because capable witnesses cannot be found or because scandal or detriment has to be feared and rightly so, there is the possibility of substituting, cautiously, however, and prudently, [for the witnesses] with extrajudicial information about the denounced and the ones denouncing and their mutual personal relationships, with [all of this] put into writing; or [the same results can come about] also through supportive proofs which corroborate or weaken the accusation.

37. This [article], then, pertains to the third letter (c). If in the denunciations, which happens not rarely, some persons are influenced, perhaps also solicited, or others who can [simply] bring forward testimony concerning for some type of reasons. All of these people must be examined severally (that is, separately) according to the judiciary formula [below.] (Formula I). First of all, they must be interrogated through general matters, and then, by degrees, as the matter evolves, arriving at the particulars, whether and how they had really been solicited, or did they know or hear that other persons had been solicited (Instruction of the Holy Office, February 20, 1867, n. 9).

38. The greatest circumspection must be used in inviting these persons to this interview; for it will not always be opportune to bring them to a public place such as the chancery, especially if these are girls who are being subjected to the examination, married women, or those who are domestics. If those to be examined live either in monasteries, in hospitals or in pious homes for girls, then, the particular [persons] should be summoned with great diligence and on different days according to circumstances (Instruction of the Holy Office, July 20, 1890).

39. What was said above about the way to receive the denunciations, will also be applied, changing what has to be changed (mutatis mutandis), to the examination of persons who have been brought forward.

++13++

40. [If the examination of these persons, who corroborate each other by positive evidence, and because of which examinations there exists [therefore] either an arraigned priest or another person weighed down [with some accusations], then the denunciations that are true and strictly speaking denunciations and all the rest of the information about these [denunciations] are pursued regarding the qualification of the crime, regarding the resumption of the preceding acts and of the resumption of the efforts to be taken in accordance with what is prescribed above.

41. Once, however, all these matters are taken care of, the Ordinary is to communicate the Acts to the promoter of justice, who will see now whether all the procedures [actions] have been performed correctly or not. And, if he thinks that there is nothing against their acceptance, he should declare the inquisitorial process closed.

Chapter II : Canonical Directives and the Admonition of the Accused.

42. When the inquisitorial process has been closed, the Ordinary, having heard the promoter of justice, should proceed as follows, namely:

a) if it is evident that the denunciation totally lacks a foundation, he should order this to be declared in the Acts, and the documents of the accusation should be destroyed;

b) if the indications of the crime are vague and indeterminate or uncertain, he should order that the Acts be put into the archives, to be taken up again if something else happens in the future;

c) if, however, there are indications of a crime serious enough but not yet sufficient to institute an accusatorial process, as especially in the

case where only one or two denunciations are had, where, indeed, [the regular process was followed] with diligence but were not corroborated by any or insufficient proofs (cfr. n. 36), or even many [proofs] but with uncertain procedures or procedures that are deficient, he should order that the accused be admonished according to the different [types of] cases (Formula M) the first or second [time?], paternally, seriously or most seriously according to the norm of Canon 2307, adding, if necessary, an explicit threat of the trial process, should some other new accusation is laid upon [the accused]; the Acts, as above, should be kept in the archives and in meanwhile a check should be kept on the morals of the accused (Canon 1946, § 2, n. 2):

d) If then certain or at last probable arguments to institute the accusation are present, he should order the accused to be cited and be subjected to the matters [which are prescribed for this trial].

++16++

43. The admonition, concerning which treatment is made in the preceding number with the latter (c), is always to be given secretly; it can be done, however, through a letter or by an intermediary, but in each case, it must be clear from some document to be kept in the secret archives of the Curia (cfr. Canon 2309, § 1 and 5), adding the information about the manner in which the accused accepted it.

44. If, after the first admonition, other accusations against the same accused take place concerning solicitations, preceding the admonition itself, the Ordinary should see, according to his own choice and conscience, whether the first admonition shold be considered sufficient or whether he should proceed to a new admonition or even to further measures (Ibidem, § 6).

45. It is the right of the Promoter of Justice to appeal and to have recrecourse for a accused against the canonical prescriptions of this kind it to the Holy Congregation of the Holy Office within ten ten days from thethair dissemination or intimation. In this case, the Acts of the case wilhave to be transmitted to the same Holy Congregation according to the prepprescription of Canon 1890.

46. These actions, however, even if put into effect, do not extexringuish the penal action. and therefore, when other accusations by chance take place, a method will be followed concerning those matters which also have given cause to the said canonical instructions.

Chapter III - The decrees for the accused persons

47. When once there is a sufficiency to institute an accusation, as was said above in number 42 (d), arguments should be made openly, and the Ordinary, having heard the promoter of justice and having observed everything, in so far as the peculiar nature of these cases allows, which is stated concerning the citation and denunciation of judicial acts in Book IV, Title VI, Chapter II, of the code, shall issue a decree (Formula O) concerning the accused in the presence of the Ordinary, or before a judge delegated by himself (cfr. n. 5), citing [him] for crimes introduced and brought against him, which in the forum of the Holy Office are said in

unclassical parlance "Reum constitutis subiicere" [to subject the accused to an indictment]; and he will take care to bring this information to the accused himself in accordance with canonical principles.

48. The judge should paternally and gently exhort the accused, who has now been cited, when he appears, and before the indictments are formally begun, to confession, and, when he has consented to these exhortations, the judge, having summoned the notary or ~~witness~~even, if he has found it more opportune (cfr. n. 9) without his intervention, can receive the confession.

49. In this case, if the confession is found corroborated by the Acts and substantially complete, a vow first having been taken, the Promoter of Justice puts the case in writing, omitting the other formalities (See below, in Chapter IV), and he will be able to conclude [all of this] with a definitive decision, having given, however, to the accused the option of accepting the decision itself or of petitioning to have the regular and complete process carried out to the end.

50. If, however, on the other hand, the accused has denied the crime, or has made a confession that is not substantially integral, or even has summarily refused the decision in view of his confession, the judge, with the notary present, should read him the decree by which he declares, concerning which paragraph 47 speaks, and the deliberations are then opened.

51. The trial opened, the judge can, having heard the Promoter of Justice according to the mind of Canon 1956, suspend the accused respondent either from exercising any sacred ministry at all or only from hearing the sacramental confessions of the faithful up until the time of the judgment. If, however, by chance he thinks that [the accused] can impose fear upon the witnesses or secretly instigate them [to thwart the trial] or in any way impede the course of justice, he can also, having also heard the promoter of justice, order that he go to a predefined location and remain there under special vigilance (Canon 1957). And, on the other hand, [however], each decree of this type is not given a remedy in law (Canon 1958).

52. These things having been taken care of, there should be a procedure to present the accusation to the person accused, according to formula P, having cautiously and most diligently made sure that the persons of the accused and especially of those denouncing him be not revealed, and, on the part of the accused, that he in no way violate the sacramental seal. Now if something in the surge of speech slips out which seems to savor of either a direct or indirect violation of the seal, the judge should not permit this to be referred to in the Acts by the notary; and if, by chance, it has been inconsiderately [put into the Acts], he should order, as soon as he notices it, to be completely deleted. In every way the judge is to remember that it is never right for him to bind the accused by an oath to tell the truth (Cfr. Canon 1744).

53. The indictment of the accused having been completed in all matters and the Acts having been seen and approved by the Promoter of Justice, the judge is to issue a decree concerning the conclusion of the case (Canon 860), and, if by chance he is a delegated judge, he should transmit all the papers of the proceedings] to the Ordinary.

++18++

54. If it happens, however, that the accused remains contumacious, or, for some grave reasons the indictments cannot be pursued in the diocesan Curia, the Ordinary, saving to himself the right of suspending the accused *a divinis*, should defer the entire case to the Holy Office.

Chapter IV - The Discussion of the Case, the Definitive Decision, and the Appeal

55. The Ordinary, having received the Acts, unless he wishes himself to proceed to the definitive decision, should delegate the judge (cfr. n. 5), another one, in so far as it can be done, different from the one who conducted the inquisition or the indictment (cfr. Canon 1941, § 3). The judge, however, whoever he is, whether the Ordinary or his delegate, should designate, according to his prudent decision a space of time for the defender to prepare a defense and to tender this in a double copy, one copy to be given to the judge himself and the other copy to the Promoter of Justice (cfr. Canons 1862-63-64). However, the promoter of justice, within a time period likewise previously established by the judge, should tender in writing his own inquiry (requisitoriam), as they now call it.

56. Still, a congruent time having been interposed (Canon 1870), the judge, according to his conscience informed from the Acts and from the proofs (Canon 1869), will pronounce a definitive decision, either a condemnatory decision, if he is certain of the crime, an acquittal, if he is certain of his innocence; or an abandonment of the charges, if he is invincibly doubtful because of the lack of proofs.

57. The decision is rendered according to the respective formulas connected to this Instruction and will have been to put in writing, with the addition of an executory decree (Canon 1918). First of all, the Promoter of Justice having been notified beforehand, the decision must be solemnly made known to the accused, who has been cited for this by the judge who is presiding at the Tribunal, with the notary present. If, however, the accused, rejecting the citation, has not appeared, the intimation of the decision should be made through letter, having obtained exact testimony of its reception through the public post office.

58. Both the accused, if he thinks that he has been [wrongly treated], and the promoter of justice have the right of appealing from this decision to the Supreme Tribunal of the Holy Office, according to the prescription of Canon 1879 and following within ten days from the solemn notification of the same; and the appeal of this type has the effect of suspending the decision [suspensive], but not so, if it is given (Cfr. n. 51) for a suspension from the hearing ++19++of sacramental confessions or from exercising a sacred ministry.

59. The appeal having been made, the judge must transmit an authentic copy or the original itself of all the acts of the case to the Holy Office, as quickly as it can be done, adding information as necessary or as he has judged to be opportune (Canon 1890).

60. As for the complaint, then, of nullity, as sometimes might occur, let those duties prescribed by Canons 1892-97 be observed to the last detail.

However, what pertains to the execution of the decision, those prescriptions should also be observed, according to the nature of these cases, as is found in Canons 1920-24.

++20++

TITLE NUMBER THREE

PENALTIES

61. "He who has committed the crime of soliciation..., should be suspended from the celebration of Mass and from the hearing of sacramental confessions or even, according to the gravity of the delict, should be declared incapable of accepting them. He should be deprived of all benefices and dignities, of his active and passive voice, and be declared incapable for all these [honors and capacities], and in the more grievous cases also be subjected to reduction [to the lay state]. Thus states the Code in Canon 2368, § 1.

62. For a correct and practical application of this canon, in penalties decreed against priests convicted of the crime of solicitation with an equal regard for the mind of Canon 2218, § 1, these matters, especially for estimating the gravity of the crime, should be kept before one's eyes, namely: the number of persons solicited and their condition, as, for example, if they are minors in age or especially consecrated through religous vows to God; the form of solicitation, if perhaps, especially, it is joined with false teaching or false mysticism; the turpitude of the acts not only formal but also material and especially the connection of solicitation with other delicts; the length of the obscene conversation [between the parties involved]; the repetition of the crime, the recidivism after his admonition, and the obstinate malice of the solicitor.

63. To the greatest penalty of degradation, there can be added for a religious who is accused the reduction to the status of a lay-brother. This is only then imposed when, having weighed everything, it evidently appears that the accused, immersed in the depths of malice in the abuse of his sacred ministry, combined with the grave scandal that is harmful to the faithful and their souls, exists to such a degree of foolhardiness and habit, so that there is no hope, humanly speaking, or almost no hope, of his amendment that is evident any more.

64. On top of the penalties properly imposed, in order to obtain the effect of these penalties more fully and securely, there will be supplementary sanctions in cases of this type, namely:

++21++

a) Upon all accused persons judicially convicted there should be interposed congruous, to the degree of the faults, and salutary penances, not in substitution for the penalties properly speaking in the sense of Canon 2312, § 1, but as a complement [to them], and among these (cfr. Canon 2313) especially spiritual exercises for some days in some religious house to be performed with a suspension, during these times, from the celebration of Mass.

b) Upon the accused convicted who has confessed, moreover, there should be imposed an abjuration, according to the different cases, if there is a light or a strong suspicion of heresy into which because of the nature of the crime soliciting priests fall into, or even of formal heresy if by chance the crime of solicitation has been joined to false dogma.

c) Those who are in danger of falling back [into their former ways], and therefore of becoming greater recidivists should be submitted to particular vigilance (Canon 2311).

d) As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain place (Canon 2302).

e) Then, when concerning the absolution of an accomplice, as this is outlined in the Constitution Sacramentum Poenitentiae, there is no indication at all in the external forum, and, therefore, of the sacramental seal, there can be reason to add at the end of the condemnatory sentence an admonition to the accused that, if he has by chance absolved his accomplice, he should quiet his conscience by having recourse to the Sacred Penitentiary.

65. According to the norm of Canon 2236, § 3, all of these penalties, as they have been applied once by the judge ex officio, cannot be remitted except by the Holy See through the Supreme and Sacred Congregation of the Holy Office.

TITLE IV

OFFICIAL COMMUNICATIONS

66. Whenever an Ordinary immediately accepts a denunciation of the crime of solicitation, he should not omit telling this to the Holy Office. And if by chance he treats of a priest whether secular or religious having residence in another territory, he should transmit at the same time (as already has been stated above, n. 31) to the Ordinary of the place, where the denounced actually is staying, or, if the address is not known, he should send to the Holy Office an authentic copy of the denunciation itself with the procedures, in the best manner possible, and with opportune information and declarations.

67. Any Ordinary who has proceeded correctly against some priest who is soliciting, should not omit informing the Holy Congregation of the Holy Office, and, if it is a matter in which a religious is involved, also the General Superior concerning the outcome of the case.

If any priests condemned of the crime of solicitation, or even only admonished, should transfer his residence to another territory, the Ordinary a quo should immediately warn the Ordinary ad quem of the things that preceded that person and of his juridical status.

69. If any priest suspended in a case of solicitation from hearing sacramental confessions but not from sacred preaching happens to go to another territory to preach, the Ordinary of this territory should be reminded by the prelate of the accused, whether secular or religious, that he cannot be utilized for hearing sacramental confessions.

70. All these official communications shall always be made under the secret of the Holy Office; and, since they concern the common good of the church to the greatest degree, the precept of doing these things obliges under serious sin [sub gravi].

TITLE V

THE WORST CRIME

71. By the name of the worst crime is understood at this point a signification of any obscene external deed, gravely sinful, in any perpetrated by a cleric or attempt with a person of his own sex.

72. Those things that have been stated concerning the crime of solicitation up to this point are also valid, changing only those things necessary to be changed by their very nature, for the worst crime, if someone by chance in the presence of the Ordinary of the place, concerning which (which may God prevent) happens to be accused, having accepted the obligation of the denunciation from the positive law of the Church, unless

perhaps it has been joined with the crime of solicitation in sacramental confession. In decreeing penalties, however, against delinquents of this type, besides those which are found spoken of above, and they should also be kept before one's eyes (Canon 2359, § 2).

73. To have the worst crime, for the penal effects, one must do the equivalent of the following: any obscene, external act, gravely sinful, perpetrated in any way by a cleric or attempted by him with youths of either sex or with brute animals (bestiality).

74. Against accused clerics for these crimes, if they are exempt religious, and unless there takes place at the same time the crime of solicitation, even the regular superior can proceed, according to the holy canons and their proper constitutions, either in an administrative or a judicial manner. However, they must communicate the judicial decision pronounced as well as the adminsitrative decision in the more serious cases to the Supreme Congregation of the Holy Office.

++24++

FROM THE AUDIENCE OF THE HOLY FATHER, MARCH 16, 1962

Our Most Holy Father John XXIII, in an audience granted to the most eminent Cardinal Secretary of the Holy Office on March 16, 1962, deigned to approve and confirm this instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail.

At Rome, from the Office of the Sacred Congregation, March 16, 1962.

Place of the seal

A. Cardinal Ottaviani

++25++

APPENDIX

FORMULAS TO BE USED ACCORDING TO THE CIRCUMSTANCE
(Omitting other matters which are found in various places among the authors)

++27++

FORMULA A

THE FORMULA FOR TAKING AN OATH TO EXERCISE ONE'S OFFICE FAITHFULLY AND TO OBSERVE THE SECRET OF THE HOLY OFFICE

In the name of the Lord.

I...appearing before....and touching the most holy Gospels of God placed before me, swear and promise to exercise my duty faithfully....Likewise, under the pain of excommunication latæ sententiæ ipso facto and to be incurred without any declaration, from which outside of the moment of death, I can be absolved by no one except by the Holy Father, excluding even the Cardinal of the Penitentiary, and, under other most serious penalities, at the disposition of the Supreme Pontiff to be inflicted upon me in the case of transgression, I promise sacredly, vow and swear, to observe inviolably the secret in all matters and details which will take place in exercising the aforesaid duty, excepting precisely those matters at the end and at the completion of this negotiation [or of these negotiations] which can be legitimately published. Further, I shall observe this secret absolutely and in every way with all who have no legitimate part in the treatment of this same matter [or, who are not constricted by the same sworn bond]; nor [will I ever], directly or indirectly, by means of a nod, or of a word, by writing, or in any other way and under whatever type of pretext, even for the most urgent and most serious cause [even] for the purpose of a greater good, commit anything against this fidelity to the secret, unless a particular faculty or dispensation has been expressly given to me by the Supreme Pontiff.

++28++

FORMULA B

Formula of Renunciation (Abjuration)

I (name, family name, etc. of the one abjuring, which, if he is a religious, he should add his name, etc. which he used in the world) the son of (name of the father), being ...years of age, and personally brought to trial [arraigned], and, having genuflected before you (name, family name, qualities, etc. of the person who is to receive the abjuration), and having before me and touching with my hand the most holy Gospels and knowing that no one can be saved unless he believes what the Holy Catholic and Apostolic Roman Church holds, believes, preaches, professes and teaches, I confess and I am sorry that I have erred seriously against [that church] through the abuse and profanation of the sacrament of penance [and through the profession and doctrine of false dogma].

Now, sorrowful and penitent for the aforesaid [errors and heresies, persuaded about their falsity and of the truth of the Holy Catholic faith], I abjure all the same [errors I made] with a sincere heart and a real faith and I detest [in the same way in general all other errors and heresies ~~contrary to the Holy~~ Catholic and Apostolic Roman Church] and at the same time humbly accept and promise faithfully to implement all the penances given to me by R.P.D. [The reverend dignitary?]...that have already been imposed or will be disposed: and if I have not stood firmly in some matter despite these promises and oaths of mine (May God prevent this) I subject myself to all the penalties and castigations which have been stated and promulgated by the sacred canons and other general constitutions against deliquents [who have acted] in this way. Thus, may God help me and these Holy Gospels of His, which I touch with my hands.

I...the aforesaid have abjured, sworn, promised and obligated myself as above, and in testimony [of my good faith] in this matter I have signed with my hand this written promise of my abjuration ++29++which I have related orally with words (here is noted the place in which the abjuration has been made).

On this ...day of the month of...in the year...

Signature

After the absolution has been imparted, the one who received the abjuration and gave the absolution will put his signature here in the way it is noted in Formula C, which follows.

++30++

FORMULA C

The Formula of Absolution

Once the penitent, kneeling on both knees and having first touched the Holy Gospels of God, has read and signed the formula of abjuration, [the bishop or his delegate] absolves him, wearing at least the purple stole; and, while sitting, will recite the psalm Miserere or De Profundis with the Gloria Patri.

Then, standing, he will say:

Kyrie, eleison, Christe eleison, Kyrie, eleison.
Pater noster, secretly up to
And lead us not into temptation.
But deliver us from evil.
Save your people, Lord.
My God, they are hoping in you.
Lord, hear my prayer.
And let my cry come unto you.
The Lord be with you.
And with your spirit.

Let us pray

God, of whom it is proper always to have mercy and to treat with forbearance, we supplicantly beseech you, that the compassion of your holiness absolve with clemency this servant of yours whom the shackle of excommunication binds. Through Christ our Lord. Amen.

Then, again sitting down, he should absolve the penitent still kneeling before him with these words:

By the Apostolic authority which I exercise in this matter, I absolve you from the bond of excommunication, which you [perhaps] have incurred, and I restore you ++31++to the holy sacraments of the church, to the communion and unity of the faithful, in the Name of the Father + and of the Son, and of the Holy Spirit. Amen.

With these acts, the one who has imparted the absolution should impose the salutary penances (for the most part [a penance] of reciting determined prayers, of performing some pious pilgrimage, of accomplishing other works of piety, of observing a particular fast, or of dispensing alms in pious causes, etc.), and finally, then, the formula of abjuration and he signs below in this way:

[In the execution of the orders of R.P.D. (the reverend superior) (the name, etc. of the one delegating him)] the aforesaid (name, etc., of the penitent) was administered by myself [the delegate] the abjuration concerning (e.g. formal, or grave or light) ... and the salutary penances in the usual form of the church, these on the day and year given above.

So be it. I (the signature of the person absolving the other)

(The delegate will transmit the formula [evidently this means the document itself] directly to him from whom he has received his delegation together with the instruction, and other letters also received, if he has any, keeping nothing at all for himself].

++32++

FORMULA D

The Formula of Delegation to Receive a Denunciation

The ... day of the month of ... in the year ...

We...delegate with these letters...to receive [without the intervention of the notary], under the secret of the Holy Office and according to the attached instruction, the denunciation which the named person intends to make.

L. S. The signature of the Ordinary of the place who is delegating

(Formula E is connected to the letter).

FORMULA E

The Manner of Receiving the Denunciation Pertaining Particularly to Solicitation

[Note 1- Whatever words are included within the brackets are valid in the case in which the denunciation is received by the delegate, or, respectively, without the intervention of a notary.]

If the the delegate, however, having signified a serious reason, cannot observe this manner of receiving the denunciation, he should make recourse for some instruction from whom he has received the delegation.]

The notary, if he is present, or he who is to receive the deunmciation will begin with these words or in words similar to these:

On the...day of the month of...in the year...

On my own accord I personally appeared before the undersigned (there should be written the name, the family name, etc. of that person who is to receive the [denunciation], who, if the notary is not present, should write: before me the undersigned) taking place in (here there are noted the place and the diocese where the person who is to receive the action [that is, the deunciation] lives) [Delegated specially only for this action by R.P.D. [The reverend person delegating?)..., as [will be seen] from his letter directed [to me] and given under the date (Let there be expressed on what day the letter itself was written) applying to the present situation] N.N.(there should be written the name, family name, the name of the father, the country of origin [that is, nationality], age, situation [no doubt the type of work the person does] and the home address of the person denouncing; and if this person is a religious, also the name the person was called by in the world) to whom, having made an oath to speak the truth, which he took having touched the Holy Gospels of God (which he must touch with his hand, even a priest) it was explained as below, that is:

This person denouncing in ordinary language [he must declare that he knows that this faculty was obtained from the ordinary of the place to receive without the intervention of the notary what he is about to relate to exonerate his conscience, and therefore because he cannot present himself to the Most Reverend Bishop concerning the just causes; then] he must continue to narrate, in words, however, discrete and contracted [brief] what pertains to the solicitations made to him or what ++34++were the words, the writings, or the acts, accurately describing the place, time, occasion, times and singular circumstances, and whether in the act of confession either before or after the sacramental absolution these things took place. He must identify the confessional seat and the soliciting confessor himself, and in so far as he either does not know his name and family name or has forgotten it, he shall describe accurately the person of that man, noting distinctly all his characteristics, so that he might be recognized. He should note who receives the denunciation, that he should avoid interrogating the denunciating person whether he gave consent to the obscene deed in any way or refused, since the witness is not bound to manifest his defects; nay, the one denouncing is expressly advised that he is not bound to manifest consent and perchance he gave it. With these words written as they as they are

narrated, and, in so far as possible, in the same words of the one denouncing, what follows here, not is anything more required.

The interrogation: Whether he knows or heard it said, that said N.N. (naming the person), the confessor, solicited other penitents to obscene things?

He responds: (If the response was affirmative, he will seek the name and family name of the persons and the source (cause?) of the knowledge).

The interrogation: Concerning the good name of the aforesaid confessor N.N. with you yourself as with others?

He responds:...

The interrogation: Whether he made the declarations from hate or from love, and from enmity or other general reasons, etc.

He responds: Correct (if he will say that he had denounced in order to exonerate his own conscience.)

If more than one month had passed since the solicitation, moreover, there should be added:

The Interrogation: Why then did you delay the denouncing of the aforesaid matters to your Ordinary and the exoneration of your conscience?

He responds:

All of these matters having been absolved, there should read to the denouncing person everything which was given in writing, or, having given a just reason in writing, a just cause in writing, the instrument should be given to him so that he may read it in the presence of him who receives the denunciation; all of these matters proved and accepted, together with the corections, additions and erasures, if there are some, ~~135~~ he is invited to write his signature below, and, having given an account of his taking an oath to observe the secret, he should be dismissed.

All of these matters will be described in these words:

Having these matters and having accepted them, the one denouncing having been dismissed has sworn to observe the secret, again touching the Holy Gospels of God (he swears an oath upon the Gospel again); and in confirmation of what has been testified by word he writes his signature (or, if he cannot write: since he cannot write, as he asserted, (let the cause be noted), he made the sign of the cross).

After the one denouncing here has signed or made the sign of the cross, the notary should sign, if he is present, in this way:

These are the Acts signed by myself, the notary (and if he has been assumed only for this act: assumed only for this act).

Finally, he signs who receives the denunciation.
L. K S.

If, however, the notary was not present, then the one who receives the denunciation signs in this way:

These Acts are signed by myself, N.N. [specially delegated only for this act by R.P.D. (the reverend delegating person) N.N.].

[The delegate then delivers the entire act directly to him from whom he has received the delegation together with the instruction and the letters received, keeping nothing for himself].

~~36~~

FORMULA F

Formula of Delegation to Undertake the Investigation

A) TO UNDERTAKE THE COMPLETE INVESTIGATION

The...day...of the month of...in the year....

We...ask you that you will take the customary diligence in pursuing [this investigation] according to the affixed instruction about a false denunciation made by (for example, a woman or women)..... against the priest.....by interrogating [them] separately, formally and under oath to tell the truth and observe the secret, two witnesses, in so far as is possible from the ecclesiastical body, but more important than anything else [to interview somebody], who knows well both the denounced person and the one denouncing (or, if the denouncing are many in number, one and all denouncers). If you cannot find only two witnesses who know together the one denounced and each and every one denouncing, you will call many, as many, namely, as it will be fitting so that there will be a double testimony as to the denunciated and each one denouncing. An authentic copy of the Acts, however, you shall transmit to us directly and in a safe way, together with the instruction and these letters, retaining nothing for yourself.

L.S. The Signature of the Ordinary of the place, the one delegating
(Formula G is joined to the letter)

B) TO UNDERTAKE A PARTIAL INVESTIGATION

On the...day of the month of... in the year....

We...ask you to undertake the investigation according to the affixed instruction.....~~37~~by interrogating [them] separately, formally and under an oath to speak the truth and of observing the secret, two witnesses, in so far as is possible, from the group of ecclesiastics, as greater than any exception, who (e.g. the woman or women) know [them] more closely.

You will transmit an authentic copy, however, of the acts to us directly and in a safe way, together with the instruction and this letter, keeping nothing for yourself.

L.S. Signature of the delegating Ordinary of the place

(To the letter is joined Formula H)

FORMULA C

Way of Undertaking the Entire Investigation (Note 1)

[Note: Whatever is included between the brackets is valid in the case in which the work is done by a delegate.]

On the...day of the month of...in the year of....

Having been summoned, this person personally came into the presence of myself, the undersigned, (let there be written the place and diocese where he is located) [for this act only specially delegated by R.P.D.... as (is evident) from the letters of the same person delegating directed and given to me on this date...(there should be expressed on what day the letter was written) binding to the present position].

N...N...(the name, family name and qualities of the Respondent witness) who, having reported his taking his oath to tell the truth, which he gave (even if a priest), having touched the holy Gospels of God, was by myself:

1. The Interrogation: whether he knew the priest N.. N... (name, family name and qualities of the person denounciated).

He responded:....(let there be written the language that the witnesses use and his response).

2. The Interrogation: what is the lifestyle of this priest, what are his morals, what is the opinion of people [about him]?

He responds:....

3. The Interrogation: Whether he knew N....N... (name, family name, and qualities of the one denouncing, or, if there are many, of each one of them).

He responds:...

4. The Interrogation: What is his (each one of them) life-style, morals, and his opinion among the people?

He responds:...

5. The Interrogation: Whether he thought that he or she is worthy of faith or capable, on the other hand, of lying, calumniating in court and even of perjury?

He responds:...

6. The Interrogation: Whether he knows whether perhaps between him and the aforesaid priest there ever existed any reason for hate or enmity?

He responds:...

Then, have duly read the work and brought him to take the oath of observing the secret, which he took as above, he is dismissed and, before he goes away, signs in confirmation of what has been stated (or, if he cannot write, when he asserted that he cannot write (let the reason be noted), he makes the sign of the cross).

After the witness has signed here or made the sign of the cross, he signs that he received the testimony in this way:

These acts are signed by myself, N.N., (specially delegated only for this act).

L.X S.

(The delegate then directly transmits the act to him from whom he has received delegation together with the instruction and the letter he received, keeping nothing at all with himself).

++40++

FORMULA H

The Way of Undertaking Partial Investigations (Note 1)

(Note 1. Anything included in brackets is valid in the case where the investigation is done by a delegate).

On the...day of the month of...in the year...

Having been called personally there appeared before me the undersigned (let there be written the name, family name, etc., of the person who is to do the activity) taking place in (let there be noted the place and diocese where he is to be found) (specially delegated only for this act by R.P.D....., as (can be seen) in the letter of that same person directed and given to me on this date (let there be expressed on what exact day the letter was written) attached to the present document. N...N...(name, family name and qualities of the respondent witness) who, having been brought to take the oath to tell the truth, which he does (even a priest) having touched God's holy Gospels, performed this for me.

1. Interrogation: whether he knew (for example, the woman) N...N...? (name, family name and qualities of the indicated person).
He responded:....(this should be written in the same language the witnesses used for his response).

2. The Interrogation: what is his lifestyle, what are his morals, what is his reputation among the people?
He responded:...

3. Interrogation: Whether he thinks that he (or she) is worthy of credence or on the other hand thinks that he or she is capable of lying, calumniating in court and even of committing perjury?
He responded:...

4. The Interrogation: Whether he knows whether perhaps between him or her and the priest there exists or has existed a cause for hate or enmity?
He responded:...

Then, the act duly read to the witness, having signified his taking an oath to observe the secret, which he does as above, the witness will be dismissed, ++41++ and before he leaves, signs as a confirmation of what has preceded (or, if he cannot write: when he cannot write, as he asserted (let the cause be noted), he made the sign of the cross).

After the witness signed here or made the sign of the cross he who received the testimony signed himself in this way:

These are acts done through me N...N... [especially delegated only for this act].

I.X.S.

[Then the delegate will transmit the act directly to him from whom he received the delegation together with the instruction and letter keeping nothing for himself].

++42++

FORMULA I

Way of Conducting an Examination Through Generalities

Note: Whatever appears within the brackets is valid in the case where the examination is by the delegate, or respectively, without the intervention of a notary.

If the delegate, however, having given a grave reason, cannot observe this way of administering an examination, he should recur to him from whom he received the delegation for [further] instructions.

The notary, if he is present, otherwise, he who is to undertake the examination will begin the procedures in these or in similar words:

On the...day of the month of...in the year,..

By force of the decree of R.P.D. [The Most Reverend Bishop] (Let there be written the name, etc. of the Ordinary of the place) given on the date of ..... having been summoned there appeared before the undersigned (let there be written down the name, the family name, etc. of the person who is to receive the act, and who, if the notary is not present, will write: in the presence of myself the undersigned), taking place in (let there be noted the place and diocese where he is to bound who is to receive the accion) [especially delegated only for this action by R.P.D....., as appears from his letter directed to me and given to me on the date (let there be expressed on what precise day the letter was written), this person, N.N. (here there should be written the name, family name, father's name, homeland, age, condition and address of the person summoned; and, if he is a religious, also the name by which this person is known in the world), having been brought to take an oath to tell the truth, which he does touching God's holy Gospels (which he must touch with his hand), was:

Asked: Whether he knows or imagines the reason for his being called for the present examination?

He responded: ...(Let there be written his response in that language which the summoned person uses).

Asked:...For how many years have you been approaching the sacrament of penance?

He responded:...

Asked: Whether he always went to receive the sacrament of penance from the one and same confessor ++43++ or whether from many priests: moreover, whether he always went to receive the sacrament of penance in the one and same church?

He responded: ...

Aske: Whether from each of the priests to whom this person confessed he received holy admonitions and opportune instructions, which gave edification to the person being examined; and kept him from evil:

He responded:...

If the response was affirmative, that is, if he says that he had always been directed well, then he will be interrogated in the following manner:

Asked: Whether he knows or remembers if at any time it was said or heard that a certain confessor had not acted in such a holy and honest manner toward penitents, so that murmurs or even contemptible words against the confessor had been proferred: for example, had the person being examined heard similar things from one or from many penitents, and over the past year or over four or three months?

He responded:...

If after this interrogation and commentary the person being examined continues to deny, let the action be concluded with the usual formula, which appears at the bottom of this instruction.

But if there had appeared to be something against any confessor, according to those things concerning which he is being asked, then he will be interrogated further as follows:

Asked: That he tell the name, family name, office, and age of the confessor, and the place or seat of his confession; or whether he was a secular or a religious priest, etc.

He responded:...

Asked: That he tell, in order, sincerely and clearly, using, however, discrete and constricted words, all of those things less than honorable which he had heard in the sacramental confession either before or after or on the occasion of confession: whether there had been something performed with him less than honest by nods, touches or action, etc., by the priest.

He responds:...

At this point, the judge solicitously will take care that the description is in the same words which the confessor used, the obscene words, the seductions, the invitations to meet in some place for an immoral purpose, and all the other things which constitute the crime of solicitation, using the vernacular language for the answers which are to be sedulously and truthfully recorded++44++ and, in so far as possible, with the same words in which they were offered; he should add the temperament of the person examined, if he notices that he seems impeded by too much fear or bashfulness from telling the truth, assuring him that everything will be kept under an inviolable secret. Then he should ask him the time from which the solicitations began, how long they perdured, how often they were repeated, in what words or acts smacking of an immoral purpose they had been expressed. He will diligent avoid asking about the consent of the person himself being examined with regard to the solicitation, and, even more, he should advise him expressly that he is not bound to manifest whether by chance he gave consent. Likewise, he will avoid any interrogation which he give evidence of a desire to know the sins of that person.

Asked: Whether he knows or heard it said that the aforesaid confessor had solicited other penitents toward obscenities; and if affirmative, who should name them (and he will help give the name, family name, etc., or at least the better indications by which the other solicited persons can be detected).

He responded: . . .

Asked: Whether the aforesaid person being examined, had given testimony out of a love for jussice and truth, or rather from another motive of enmity or of hate, etc.?

He responded: . . .

With all of this taken care of, there should be read to the person being examined everything that has been put down in writing, or, for a just cause expressed in the notes, the instrument [that is, the document upon which the notary has written the answers] should be given to him so that this person may read it to himself in the presence of the one who accepted the examination; then, everything that has been approved and accepted by that person, together with the corrections, additions and erasures, if there are any, he should be invited to sign and led to take an oath to observe the secret, and then he should be dismissed. All of these matters shall be described in this words:

The accused, having received and accepted all these matters, was dismissed, having sworn to observe the secret, once again touching God's holy gospels (He will swear again on the Gospel book) and, in attestation of what he had stated, he signed it (or, if he cannot write; when he asserted that he could not write (let the cause be noted), he made the sign of the cross).

After the person being examined has signed here or has made the sign of the cross [on the document], the notary will sign, if he is present, in this way:

These acts are signed by myself, N.N., Notary (and if he has been authorized only for this action; authorized only for this action).
L.X S.

Finally, he who been administered the examination will sign it. If, however, the notary was not present, then the one who accepted the examination will sign in this way:

These acts are signed by myself, N.N., [specially delegated for this act only by R.P.D., N.N.].

[The delegate will then transmit the action [documentation for the lawsuit] directly to him from whom he received his delegation together with the instruction and the accepted letter, keeping nothing at all for himself].

FORMULA L

FORMULA OF THE PROPOSAL TO BE MADE BY THE PROMOTER OF JUSTICE; THE COMPLETE INQUISITION

Having made a brief summary and inquiry about the reasons of law and fact, the conclusion comes about through the promoter of justice, for example, as followed, however, according to the circumstances:

R. App. 000443

Having considered everything, I think it must be decided that the priest ...be warned (simply or correctly) - or - let the case be constituted in the Curia, that is, the diocesan Curia, and let the case be undertaken according to Law (meanwhile, however...and here there are added the canonical opportune provisions, if there are some that seem to need to be proposed to the promoter).

On the ... day of the month of ... in the year ....
The signature of the Promoter of Justice

++47++

FORMULA M

FORMULA OF THE DECREE TO CONSTITUTE A PENAL REMEDY

We (name, and so on, qualities, etc., of the Ordinary of the place), having weighed the actions against the priest, N. N. (our diocese, abbacy, prelature, etc.) about whom there is reported the crime of solicitation, we decree that the aforesaid priest, N.N. : be admonished (paternally, gravely, etc. according to the diversity of cases) under the secret of the Holy Office.

If some resolution has to be added, and there is added:

And according to the resolution, the resolution is that...

These are the acts of... (the address of the Ordinary of the place) on the...day of the month...of the year...
L. S.

Signature of the Ordinary of the Place
Signature of the Notary

++48++

FORMULA N

The Method For Warning About the Crime of Solicitation

Concerning those who have been denounced once or twice concerning the horrible crime of solicitation for the most part, having taken the opportune efforts, it is decreed that: They should be warned (simply or correctly) under the secret of the Holy Office. The person to whom belongs or is assigned the duty of imparting an admonition of this type, will summon the denounced priest, with the proper circumspection, and he is to impress upon him with serious words, more or less according to the circumstances and the tenor of the decision, but in a paternal and fatherly way, avoiding lest in any way, whether directly or indirectly, he reveal the ones denouncing him, in these words: "It has come to the ears of the Ecclesiastical authority that he, within the sacred tribunal of penance, not always acted as was befitting prudence and holiness, so that not without merit it must be feared lest he, with a rash effort, attempted to convert the sacrament itself of reconciliation into the ruin of souls. It is therefore greatly to his interest that he carefully avoid these things in the future, lest the ecclesiastical authority be compelled to proceed to more serious matters".

Let there be observed, moreover, the secret of the Holy Office regarding all the matter and with everyone to the greatest extent.

If the admonition is done through letter, the method of admonishing should be done in this way.

[The delegate, however, is to give this admonition, at an opportune time, informs him from whom he receives his delegation of the results, at the same time transmitting to him all documents, if he has any, and not keeping anything for himself.]

++49++

The Form of the Decree for the Arraignment

The formulas proposed here are not, as is evident, definitive: they can and must be varied according to the different circumstances. They are proposed therefore as an example.

A) TO INDICT SIMPLY

The Reverend... to be indicted in the diocesan Curia about all the matters deduced against him and there should be a case according to law.

These are the Acts [signed at] (the address of the Ordinary of the place)

On the ... day of the month of... in the year of....

Signature of the Ordinary of the place

Signature of the notary

B) TO INDICT, HAVING ADDED CANONICAL PROVISOS

The Reverend...is to be indicted in the diocesan Curia about all the matters brought up against him and let there be a trial according to law. Meanwhile, however (for example, let him remain suspended from the celebration of Mass, or of exercising the sacred ministries and spiritual offices; he should leave this place...and go to that place...where he should remain under special vigilance, etc.).

These acts are signed (as above) on the ... day of the month of... in the year...

L.X. S.

Signature of the Ordinary of the Place

Signature of the Notary

++50++

FORMULA F

Way of Indicting

N.B., according to the norm of article 52 he is not to bind the accused to take an oath as to tell the truth.

The notary will begin the action:

"On the ... day of the month of ... in the year ...

Having been summoned, The Reverend N.N. personally appeared before the undersigned (let there be written the name, family name, etc. of that person who is doing the indicting) [especially delegated for this action], who was:

Interrogated about his name; family name, parents, homeland, age, condition, ecc.

He answered:.. (The Notary will write in the native language, and, in so far as he can, in the same words which the accused uses, his answers.)

Interrogated: Whether he knows or perhaps imagined the reason of his having been summoned?

He answered:...(and it will be continued in this way up until the end, noting down the single questions and his answers to them)."

If the answer according to this interrogation has been affirmative, the judge will invite the accused to explain everything separately and sincerely; otherwise, he will admonish him gravely, in order that, having been stricken by his own conscience, he would say whether perhaps he felt that he was burdened by any crime. And, if he then should respond affirmatively that he, as above, will invite him to confess his own fault with appropriate humility and sincerity, expressing the names of those who were delinquent with him and the words or facts and other circumstances of the matters which constitute the matter and individuality of the impetrated crimes.

And because it is difficult for him to be able to remember everything from the beginning, the judge will be able to put aside the space of two or three days, during which the accused person can diligently examine in prayer and tears his own conscience, giving him the option of giving his confession in writing as well, which in the following indictment ~~51~~the judge will formally receive, or, if it is given in writing, he will accept from his hands the notebook in which it is contained and will give it to the notary who will make a note of the matter, for example, in this way: The accused gave [me] a notebook [containing] his confession, as he asserted, having done it in writing, which he began...(he will note the first words of the document), and finished with...(he will note the last words), and which I, accepting it, sign with the letter A (he marks the page with this or another letter of the alphabet) and I have put it into the Acts." This method must be observed always as often as any document of any type received from the accused has to be inserted into the Acts.

After these, the directing judge will compare the confession that has been made either verbally or in writing with the denunciations existing in the Acts, and, if he shall find in it nothing that is omitted or left out, having omitted the affirmations, he shall proceed to the last questions; if, however, he finds anything in these which the accused either did not confess at all or lacked integrity in his confession, he will only make mention of it, as will be stated below.

If, however, the matter still remains negative against the accused, then the judge will interrogate him further whether he knows against what delicts the supreme tribunal is proceeding; if he does not know, he will enumerate the crimes of this type (heresy, solication to grave matter, the worst crime [of

pediastry], the violation of the seal, etc.) Then he will ask him whether he impetrated any of these crimes: if he responds affirmatively, he will invite him to a spontaneous confession, as before; otherwise, he will read to him the decree by which a mandate has been issued that he be indicted. Then he will order him to relate the story of his own life and career; where he was born, where he had been educated, whether he was promoted to any academic grades or other signs of honor, where he lives, what offices and duties he had been assigned and other matters of a similar nature. Finally, he will ask of him whether he has any enemies, who they are and what is the cause of their enmity.

Having premised these general questions, the judge, before he addresses the single denunciations with the summoned accused, he will ask him about the particulars of the persons, places, and circumstances of the times brought out in the denunciation and what can demonstrate its probable truth or falsity: For example, where the place of the confessional is in the church or the rooms in the home of the priest; whether he receives the penitents before or after confession at home so that ++52++ he may impart counsel; whether he put books at their disposal, etc.; whether this took place that he would speak a long time with a woman at home or in the sacristy after confession and this with closed doors, whether it took place on such and such a day and in such a town or city, etc.

Then the judge will state to the accused -- always keeping secret the name of the one denouncing him — each denunciation. But he will not, indeed, do so in a global or combined manner. He will bring up each and every denunciation distinctly in parts by reading them to the accused so that he first presents the whole denunciation before the accused and then singly in sections such as has been revealed in each denunciation.

The judge will begin from the less serious words and deeds and slowly proceed to the more serious; nor will he omit proving also some saying or deed that is not criminal, if there is something borne out by the denouncers, so that, once the accused has admitted that, if perhaps then the accused is tainted, he can be shown that the criminal words or deeds have been so joined that the public authority of the church cannot consider some of these criminal words or deeds as true and others as false. These words and deeds will be brought forth to confirm each of the denunciations, and, should there be any, those the earnest efforts [diligentiae]," favorable to the one denouncing and not favorable to the one being denounced; "Information" that is not favorable to him should not be thrown up against him.'information', which is not held to be favorable to him.

By reason of association [connexio] or content [continentia], the judge will also bring up to the accused the crimes not pertaining to the Holy Office, for which the accused has been denounced and for which he has not yet gone into judgment.

Simultaneously, the counter arguments upon which the accused perhaps has relied, whether [based] upon subterfuges, evasions and meaningless responses, must be proved.

The declarations of all the denunciations having been completed, if there are indeed more denunciations and the accused remains negative, the

judge should not omit to declare to the same accused that, not in conformity with his denials there stand more denunciations in number, distinct in time and reported by different persons, who, from reliable testimony, are of good name, in every way worthy of credence; they are incapable of calumniating or of committing perjury; they are indeed unknown to each other, and hence conspiracy is impossible. Nor has enmity or any other human pathological state been adduced as the reason to accuse [this priest]. It is only in order to satisfy the ineluctable obligation that they have taken the counsel of their own conscience.

++53++

These things having been brought up, the judge will interrogate the accused as to what he himself feels about the sixth precept of the decalogue and the sacrament of penance; whether he thinks it is licit for the confessor to act in such a way with penitents, so that, from certain documents (or, if he has confessed, from his own confession) it was proved that he had himself acted [in this way], whether he perhaps thinks that all [his actions were] in no way sinful; whether he was familiar with the Apostolic Constitution of s.m. Benedict XIV, which begins: "The sacrament of penance", and with the penalties which this Constitution and the holy canons threaten against the confessors in the sacred ministry who have abused their sacred ministry to the ruin of souls; and finally whether he can offer anything to exonerate himself.

After this, the judge will ask him whether he should continue this process here and now as being legitimate or on the other hand does the accused have an exception to make against it; whether he would be content to be assisted by a defender ex officio [from the tribunal] or whether he would wish to name his own defender for himself and, if he insists on some exception, whether he wants perhaps to have the examination of the denunciators repeated.

If he gives an affirmative answer to this last question, or, if in some way he has some [fact] to offer in his own defence because of which the witnesses must be heard (as, moreover, if a serious and sometimes unexpected difficulty comes up), the arraignment should be suspended. It should be reconvened after the denouncing persons have been examined once more or the witnesses have been heard. From these persons the judge will elicit new depositions, and, having formally made the [second] inquisition, formerly begins anew the arraignment.

The attestations of the denunciations having been taken care of, the text of the denunciations must be given to the promoter of justice, who will scrutinize it and declare whether he has any notes to make about it or whether there are new statements or new steps that ought to be taken.

The arraignment will not be concluded by the judge, unless there has first been an express consent by the promoter of justice.

At the end of each session there shall be read to the accused everything that has been presented and in written form is read to the accused by the notary, and, once the accused has approved and accepted these statements, together with any corrections, additions and erasures, if there are any, he will be invited to write his signature; and, having been gravely warned

about keeping the secret, the accused will be dismissed. The notary will describe all of this in these words: "After having received and accepted all of this, the accused, before being dismissed, was warned about keeping the secret and before he was to leave, he was to sign in confirmation of what had been stated."

++54++

After the accused respondent has signed, the notary will sign in this way: "these Acts are signed by myself, N.N., notary (and if he has been authorized solely for this act: authorized only for this act)". Then the indicting judge will sign.

Since, however, there is a need for not only one single arraignment session to bring the many matters to their successful completion, but for many sessions, each one of these sessions should be opened and closed in the same way. At each session, at the bottom of every page, there should be the signatures of the accused, the notary and the judge, and, at the end of each session the judge will cite the accused, indicating the date for the following session which the notary will note in this way: "Having been informed of and having accepted all of these matters, the accused has now been cited for the ... day of the month of... to appear again, and he was dismissed after having been admonished, etc." as above. However, in the following session, the first question will be: Whether to those things which were treated in the preceding sessons the accused has anything to add, remove or correct on his own", and, after his answer has been transcribed, the sessions will then be continued, from that point at which the previous interrogation ended.

N.B. — It would be superfluous to note that the judge, before he comes to the indictment, must accurately subject the whole informative process to his examination, —obviously all the denunciations both informal and formal and also of the material not pertaining to the Holy Office; his examinations about the morals and the veracity of the ones denouncing, and the investigations and information about the life, morals and good name of the one denounced, plus love letters perhaps written by him, etc. — so that the same judge has at hand all the elements with which to weaken the denials of the accused, and with which to rebut his arbitrary affirmations. From the partial concessions of the accused he can force him to admit more matters.

++55++

FORMULA Q

The Formula for a Petition by the Promoter of Justice

A) IN THE CASE OF PROPOSING AN ADJOURNMENT

Once there is premised a brief summary and inquiry about the reasons of law and fact, there is this conclusion; for example

Having taken everything into consideration, I think it should be decided that the Reverend .... be dismissed with a grave admonition, the process remaining in force. And for the same reason and purpose. The purpose is (for example) that he be watched most diligently: that he be kept from any familiarity with women, also using ecclesiastical censures, and, if anything

obscene (or, if anything not in keeping with the sacerdotal state, etc.) is observed in his life-style, then he will be brought to the tribunal immediately.

On the...day of the month of...in the year...

Signature of the Promoter of Justice

B) IN THE CASE OF PROPOSING A CONDEMNATION

What has been premised above, etc.

...I think that it should be decreed that, having imposed congruent (or grave) and salutary penances, among which there would be spiritual exercises for ...days to be done in a religious house, during which he will remain suspended from the celebration of the Mass, the Reverend... should be dismissed with (here there should be expressed according to the prescription of Canon 2368 § 1 and also the supplementary sanctions which seem to need to be inflicted). If he has by chance absolved his accomplice, he should heal his conscience by a recourse to the Sacred Penitentiary.

On the ... day of the month of ... in the year ...

Signature of the Promoter of Justice

C) IN THE CASE OF PROPOSING ABSOLUTION

...I think it should be decreed: that the innocence of the charged person is evident from the Acts; and therefore the Reverend... should be dismissed once he has been absolved.

++56++

FORMULA R

The Manner of Rendering a Condemnatory Sentence in Cases where the Accused Remains Negative

We (There should be noted the name, family name, qualities, etc., of the Judge-Ordinary or the one delegated).

Since...(the name, family name, father's name, age, condition, etc. of the accused, and, if he is a religious, there should also be added the name he used in the world) was not afraid to abuse the sacrament of penance by words and acts concerning which there is treatment in the Pontifical Constitutions and especially in the Constitution of Benedict XIV, which first words are Sacramentum Poenitentiae, by saying and doing these things...(here, summarily, and in prudent and discrete words, there should be told how, how often, etc. the accused committed the fault);

And, since, because of all these matters he has been denounced to our tribunal, he has been duly cited on this day (let there be noted the day and month of citation), with a proper process having been constituted against him, he has now been indicted on these days (state on which days); however, he remains negative. Nevertheless he has been convicted of the matter.

Therefore, although he has affirmed that he feels that he has acted correctly concerning the faith and Catholic doctrine (having supposed, evidently that the matter was truly so), and the defender for the court action was not remiss in his duty of promoting and sustaining the proper defenses for the accused;

Nevertheless, having correctly and seriously weighed everything, we the Judge-Ordinary or his delegate, on this day (let there be noted the day on which the sentence is given), from the acts and proofs, believe and are convinced that the sentence which follows ought to be rendered.

Therefore, having invoked the name of God, and that of the most blesed and ever virgin Mary the Mother of God and of our Lord Jesus Christ, we issue this our definitive sentence which we, seated for the tribunal, issue, with these pages, in the cause which has been brought before us between D.....(name, family name, etc. of the Promoter of Justice) the promoter ++57++ of justice at this tribunal and ...(name, family name, etc. of the accused, as above), we say, decree and declare and hold that....(the name, family name, etc. of the accused is repeated), because of those matters of which he has been convicted, has been judged guilty of the crime of solicitation toward obscene matters (and of false dogma) and therefore has merited the censures and penalties which have been stated, legislated and promulgated against such delinquents.

Lest, therefore, the above mentioned errors and faults remain unpunished, and in order that the accused will hasten to live in the future more cautiously and be an example to others, we will therefore condemn him...(there should be added the dispositve part of the decision.)

Likewise we impose upon him these salutary penances...(and let it be said what penances are imposed).

And thus we say, discern, declare and order and definitively believe and we do intend and wish to order its execution, as we order concerning the fact in this way and with that form which by law we can and must (decree), at the same time mandating for this purpose with the present letter that the accused on this date.... will be cited to hear the reading and conveyance of this our decision.

Thus we pronounce (and the act should be closed with an indication of the place and day in which it is to be published).
L.X S.

Signature of the Judge the Ordinary or of his delegate
Signature of the notary

++58++

FORMULA S

Manner of Delivering a Condemnatory Sentence in Cases Where the Accused has Confessed His Crimes

We (Let there be noted the name, family name, qualities, etc., of the judge-Ordinary or his delegate).

Since...(name, family name, father's name, age, condition, etc. of the accused, and, if he is a religious, let there be added also the name by which he is known in the world) was not afraid to abuse the sacrament of penance by words and actions concerning which treatment was given in Pontifical Constitutions and especially in the Constitution of Benedict XIV, whose opening words are SACRAMENTUM POENITENTIAE, saying and doing these things...(here in a summary fashion and with prudent and discrete words, it should be indicated how, how often, etc. the accused has been at fault).

Since, because he has been denounced for all these matters to our tribunal, and a regular process has been set up at this tribunal against him and he was duly cited on this date (here should be noted the day, and the month of the citation), he was arraigned on these days (let it be said on what days); he confessed this and this (here should be summarized his confession).

Although, therefore, he has affirmed that he felt that he was correct in matters of faith and Catholic doctrine (and with the supposition, evidently, that this is truly the case), and his defending advocate, in keeping with his duty, was not remiss in his promotion and sustaining the due defences.

Nevertheless, having weighed everything correctly and seriously, we the judge-Ordinary or his delegate, on this day (let there be noted the day on which the sentence is given) from the acts and proofs think and retain that the sentence which follows ought to be rendered.

Therefore, having invoked the name of God, and that of the most blessed and ever virgin Mary, the Mother of God and of our Lord Jesus Christ, with this definitive sentence which we publish seated here for the tribunal on this public record in the case which was processed in our presence between D....(name, family name, etc. of the Promoter of Justice) the Promoter of Justice ++59++ in this tribunal and.... (name, family name, etc. of the accused, as above), we say, decide, declare and believe that ... (name, family name, etc. of the accused is repeated), because of those things which he has confessed, has been judged guilty of the crime of solicitation to obscene matters (and of false dogma), and, moreover, that he has merited the censures and penalties which have been put forth, stated and promulgated against such delinquents by the holy canons.

Lest the aforesaid errors and faults remain without penalty, and in order that the accused should hasten to live more cautiously in the future, and be an example to others, we condemn him in this way ...(here there should be added the dispositive part of the sentence).

Likewise for salutary penances, we impose... (here are indicated the penances which are imposed).

Because, however, the accused has spontaneously confessed the aforesaid errors and faults and he humbly asked forgiveness for them, we wish, moreover, to absolve him from any excommunication he perhaps incurred, as long as he first given evidence that, with a sincere heart and faith that

are real he first abjures those errors and detests his faults; thus we ordain by this our sentence that he act in accordance with the manner and form stated by us.

And thus we say, decree, declare, order and definitively believe and intend and wish to command to execution, as concerning the fact, we order in a better way and according to that form which we can and must use by law, at the same time ordaining with the present letter that the accused on this day...will be cited to hear the reading and being informed of this our sentence.

Thus we pronounce (and the act should be closed with an indication of the place and day on which it was made known).
L. X S.

Signature of the Judge-Ordinary or his Delegate
Signature of the Notary

++60++

FORMULA T

Manner of Declaring Solemnly about the Promulgation and Intimation of the Sentence in the Cases of Solicitation

The notary should begin the act with these words:

By force of the decree of this date (let the day be noted on which the sentence was given) given by...(name, family name, etc. of the judge), in the presence of the same person at (the location ought to be noted), with the notary present, N.N. appeared personally (name, family name, father's name, age, condition, etc. of the accused, and, be was a religious, there should also be added the name which he used in the world), to whom by the aforesaid judge seated for the tribunal there were read the following matters:

Here the document is read completely word for word by which the sentence has been given.

Then there is added:

On the...day of the month of... in the year... with these writings there has been promulgated the aforesaid sentence through the above mentioned person (name, etc. of the jduge) seated for the tribunal (let there be said in what place), and by his reading in a high and intelligible voice, to the present person (the name, etc. of the accused) listening to him and not contradicting; (if he had confessed, there should be added: being willing, genuflecting before the jduge, touching the holy Gospels of God placed before him, he abjured the aforesaid errors [and heresies and generally all the other errors and heresies contrary to the Holy, Catholic and Apostolic Roman Church], as in the schedule of his abjuration, by which he undertook his abjuration, still kneeling, was absolved in the customary form of the Church from the sentence of excommunication and was reconciled to the Holy Mother the Church, having undertaken prayers and usual and customary ceremonies) -- and there having been enjoined upon him salutary penances

contained in said sentence. Having received all these things, he was dismissed, sworn to observe the secrecy at the touch of the ~~+61+~~holy Gospels and previously, in confirmation of what was presented before, of his and my signature.

Signature of the Accused

These Acts have been signed by myself, N.N. the notary (and if he has been authorized only for this act: authorized only for this Act).

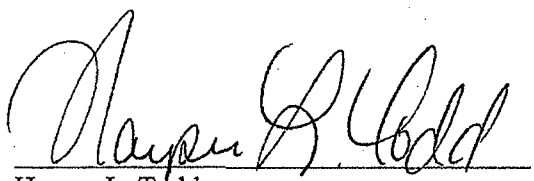
Finally, the judge signs.

CERTIFICATE OF SERVICE

I DO HEREBY certify that on this date I have served the foregoing MOTION TO AMEND COMPLAINT by placing a true and correct copy of the same in an envelope, and delivering via regular U.S. mail to counsel and parties at the address(es) indicated as follows:

A. Peter Shahid, Esq.
Shahid Law Office, LLC
P.O. Box 591
Charleston, SC 29402

Joseph P. Brennan, Esq.
Brennan & Wasden
P.O. Box 8047
Savannah, Georgia 31412



Harper L. Todd

Mt. Pleasant, South Carolina
26th day of October, 2007

THE RICHTER FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW
622 JOHNNIE DODDS BOULEVARD
POST OFFICE DRAWER 1089
MT. PLEASANT, SOUTH CAROLINA 29465

LAWRENCE E. RICHTER, JR.
ALICE ANNE RICHTER
WILLIAM H. WARING, III
HARPER L. TODD*

TELEPHONE (843) 849-6000
FACSIMILE (843) 881-1400

* (Admitted only in GA)

March 10, 2008

VIA U.S. MAIL

The Honorable Diane S. Goodstein
Post Office Box 234
St. George, SC 29477

Re: *Doe, et al. v. The Bishop of Charleston, et al.*
2006-CP-18-1310
2006-CP-18-1311
2006-CP-18-1636

Dear Judge Goodstein:

Pursuant to paragraph 6(A) of the Settlement and Arbitration Agreement executed January 12, 2007, and approved by your Order dated July 30, 2007, I have attached a copy of the final accounting of disbursements submitted by W. Ellison Thomas, CPA. Pursuant to the same, Mr. Thomas has submitted these documents to class counsel, counsel for the Diocese, and to the arbitrator, Marvin D. Infinger.

Thank you very much for your consideration. As always, I remain

Very truly yours,

William H. Waring, III

Enclosure
cc: Albert P. Shahid, Jr., Esquire [via facsimile - 722-1119]
Marvin D. Infinger, Esquire [via facsimile - 722-2266]
David K. Haller, Esquire [via facsimile - 577-7288]
W. Ellison Thomas, CPA [via facsimile – 881-9008]

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Category	Date	Check #		Amount	Description
Class Counsel - Fees					
Richter & Haller, LLC	9/4/2007	Wire	$	2,500,000.00	Court Order
Class Counsel - Expenses					
Richter & Haller, LLC	9/4/2007	Wire	$	100,991.36	Court Order
The Richter Firm, LLC	1/8/2008	1002	$	8,245.15	Partial - Control No. 6
The Richter Firm, LLC	2/10/2008	1009	$	835.70	Control No. 5
The Richter Firm, LLC	2/10/2008	1010	$	2,052.71	Partial - Control No. 6
The Richter Firm, LLC	2/27/2008	1144	$	596.20	Control No. 47
Arbitrator					
Marvin Infinger, Esq.	2/27/2008	1139	$	29,541.69	Control No. 40
Marvin Infinger, Esq.	3/7/2008	1153	$	2,450.00	Control No. 51
Counseling					
Dr. L. Randolph Waid	1/24/2008	1005	$	10,425.00	8 - 12, 14 - 19, 21 - 23
Dr. L. Randolph Waid	2/10/2008	1012	$	5,250.00	Contol No.s 24 - 30
Dr. L. Randolph Waid	2/20/2008	1135	$	1,875.00	Control No.s 32,33,34
Dr. L. Randolph Waid	2/27/2008	1137	$	1,875.00	Control Nos. 35 -38
Escrow Agent					
W. Ellison Thomas, CPA	1/8/2008	1003	$	2,635.00	Partial - Control No. 7
W. Ellison Thomas, CPA	1/8/2008	1004	$	5,657.50	Control No. 20
W. Ellison Thomas, CPA	2/10/2008	1011	$	2,555.22	Partial - Control No. 7
W. Ellison Thomas, CPA	2/10/2008	1013	$	2,247.50	Control No. 31
W. Ellison Thomas, CPA	3/7/2008	1154	$	8,544.44	Control No. 52
Other					
Desa Ballard, Esq.	11/27/2007	1001	$	2,966.93	Control No. 1
Bank Fees	1/31/2008		$	10.00	Wire Fee
Process Service, Inc.	2/10/2008	1006	$	75.00	Control No. 2
Conferencecall.com	2/10/2008	1007	$	35.66	Control No. 3
Palmetto Investigative, Inc.	2/10/2008	1008	$	1,549.00	Control No. 4
Conferencecall.com	2/27/2008	1138	$	14.42	Control No. 39
Clark & Associates, Inc.	2/27/2008	1140	$	3,228.50	Control No. 43
Process Service, Inc.	2/27/2008	1141	$	170.00	Control No. 44
Dr. John Roberts, MD	2/27/2007	1142	$	85.00	Control No. 45
Dr. Sally M. duffy Ph.D.	2/27/2008	1143	$	400.00	Control No. 46
Dr. Cathy Mintzer	2/27/2008	1145	$	500.00	Control No. 48
David K. Haller, Esq.	2/27/2008	1146	$	225.58	Control No. 49
Judy Kramer	3/6/2008	1147	$	63.20	Control No. 50
Total Non Claimant			$	2,695,100.76	

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Claimant	Date	Check #		Amount	Description
John Doe 53	*	*	$	160,000.00	Settlement Agreement
John Doe 66	*	*	$	100,000.00	Settlement Agreement
John Doe 66A	*	*	$	100,000.00	Settlement Agreement
John Doe 67	*	*	$	100,000.00	Settlement Agreement
Jane Doe A	10/23/2007	1	$	30,000.00	Settlement Agreement
Jane Doe B	10/23/2007	2	$	30,000.00	Settlement Agreement
Rachel Roe	10/23/2007	3	$	30,000.00	Settlement Agreement
The Richter Firm, LLC for DOE 501	2/15/2008	1014	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 546	2/15/2008	1015	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 502	2/15/2008	1016	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 540	2/15/2008	1017	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 541	2/15/2008	1018	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 503	2/15/2008	1019	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 504	2/15/2008	1020	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 505	2/15/2008	1021	$	10,000.00	Arbitration Order
The Richter Firm, LLC for DOE 506	2/15/2008	1022	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 507	2/15/2008	1023	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 551	2/15/2008	1024	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 556	2/15/2008	1025	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 508	2/15/2008	1026	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 554	2/15/2008	1027	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 555	2/15/2008	1028	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 509	2/15/2008	1029	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 510	2/15/2008	1030	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 511	2/15/2008	1031	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 512	2/15/2008	1032	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 513	2/15/2008	1033	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 550	2/15/2008	1034	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 549	2/15/2008	1035	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 537	2/15/2008	1036	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 533	2/15/2008	1037	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 532	2/15/2008	1038	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 538	2/15/2008	1039	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 552	2/15/2008	1040	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 531	2/15/2008	1041	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 543	2/15/2008	1042	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 544	2/15/2008	1043	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 545	2/15/2008	1044	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 514	2/15/2008	1045	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 515	2/15/2008	1046	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 534	2/15/2008	1047	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 539	2/15/2008	1048	$	20,000.00	Arbitration Order

* **Escrow Agent did not pay these amounts. Paid by Diocese prior to Escrow Agent receiving funds.**

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Claimant	Date	Check #		Amount	Description
The Richter Firm, LLC for DOE 516	2/15/2008	1049	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 517	2/15/2008	1050	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 518	2/15/2008	1051	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 519	2/15/2008	1052	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 547	2/15/2008	1053	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 520	2/15/2008	1054	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 521	2/15/2008	1055	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 522	2/15/2008	1056	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 523	2/15/2008	1057	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 524	2/15/2008	1058	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 525	2/15/2008	1059	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 548	2/15/2008	1060	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 535	2/15/2008	1061	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 536	2/15/2008	1062	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 526	2/15/2008	1063	$	10,000.00	Arbitration Order
The Richter Firm, LLC for DOE 527	2/15/2008	1064	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 553	2/15/2008	1065	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 528	2/15/2008	1066	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 529	2/15/2008	1067	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 542	2/15/2008	1068	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 530	2/15/2008	1069	$	20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 602	2/15/2008	1070	$	20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 605	2/15/2008	1071	$	20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 606	2/15/2008	1072	$	20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 608	2/15/2008	1073	$	20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 609	2/15/2008	1074	$	20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 610	2/15/2008	1075	$	20,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 621	2/15/2008	1076	$	20,000.00	Arbitration Order
Walter S. Ameika for DOE 614	2/15/2008	1077	$	20,000.00	Arbitration Order
Barr, Unger & McIntosh, LLC for DOE 623	2/15/2008	1078	$	20,000.00	Arbitration Order
Arthur E. White, Jr. for DOE 618	2/15/2008	1079	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 540	2/15/2008	1080	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 541	2/15/2008	1081	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 509	2/15/2008	1082	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 101	2/15/2008	1083	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 102	2/15/2008	1084	$	55,000.00	Arbitration Order
The Richter Firm, LLC for DOE 202	2/15/2008	1085	$	40,000.00	Arbitration Order
The Richter Firm, LLC for DOE 203	2/15/2008	1086	$	100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 301	2/15/2008	1087	$	125,000.00	Arbitration Order
The Richter Firm, LLC for DOE 302	2/15/2008	1088	$	100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 303	2/15/2008	1089	$	100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 308	2/15/2008	1090	$	40,000.00	Arbitration Order
The Richter Firm, LLC for DOE 304	2/15/2008	1091	$	60,000.00	Arbitration Order

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Claimant	Date	Check #		Amount	Description
The Richter Firm, LLC for DOE 305	2/15/2008	1092	$	200,000.00	Arbitration Order
The Richter Firm, LLC for DOE 307	2/15/2008	1093	$	60,000.00	Arbitration Order
The Richter Firm, LLC for DOE 306	2/15/2008	1094	$	55,000.00	Arbitration Order
The Richter Firm, LLC for DOE 401	2/15/2008	1095	$	150,000.00	Arbitration Order
The Richter Firm, LLC for DOE 402	2/15/2008	1096	$	175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 403	2/15/2008	1097	$	175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 404	2/15/2008	1098	$	125,000.00	Arbitration Order
The Richter Firm, LLC for DOE 405	2/15/2008	1099	$	150,000.00	Arbitration Order
The Richter Firm, LLC for DOE 406	2/15/2008	1100	$	200,000.00	Arbitration Order
The Richter Firm, LLC for DOE 407	2/15/2008	1101	$	75,000.00	Arbitration Order
The Richter Firm, LLC for DOE 408	2/15/2008	1102	$	175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 409	2/15/2008	1103	$	175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 410	2/15/2008	1104	$	200,000.00	Arbitration Order
The Richter Firm, LLC for DOE 406	2/15/2008	1105	$	100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 411	2/15/2008	1106	$	75,000.00	Arbitration Order
The Richter Firm, LLC for DOE 420	2/15/2008	1107	$	70,000.00	Arbitration Order
The Richter Firm, LLC for DOE 412	2/15/2008	1108	$	100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 414	2/15/2008	1109	$	150,000.00	Arbitration Order
The Richter Firm, LLC for DOE 415	2/15/2008	1110	$	100,000.00	Arbitration Order
The Richter Firm, LLC for DOE 416	2/15/2008	1111	$	125,000.00	Arbitration Order
The Richter Firm, LLC for DOE 616	2/15/2008	1112	$	125,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 603	2/15/2008	1113	$	150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 604	2/15/2008	1114	$	150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 607	2/15/2008	1115	$	200,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 611	2/15/2008	1116	$	150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 612	2/15/2008	1117	$	150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 613	2/15/2008	1118	$	150,000.00	Arbitration Order
McGowan, Hood, Felder & Johnson, LLC for DOE 620	2/15/2008	1119	$	70,000.00	Arbitration Order
Barr, Unger & McIntosh, LLC for DOE 615	2/15/2008	1120	$	200,000.00	Arbitration Order
Pro Se - Doe 601	2/15/2008	1121	$	200,000.00	Arbitration Order
Pro Se - Doe 619	2/15/2008	1128	$	315.00	Control No. 43
Pro Se - Doe 619	2/15/2008	1129	$	59,685.00	Arbitration Order
Pro Se - Doe 622	2/15/2008	1123	$	20,000.00	Arbitration Order
Pro Se - Doe 624	2/15/2008	1124	$	20,000.00	Arbitration Order
Pro Se - Doe 625	2/15/2008	1125	$	20,000.00	Arbitration Order
Pro Se - Doe 627	2/15/2008	1130	$	195.00	Control No. 42
Pro Se - Doe 627	2/15/2008	1131	$	149,805.00	Arbitration Order
The Richter Firm, LLC for DOE 628	2/20/2008	1134	$	20,000.00	Arbitration Order
The Richter Firm, LLC for DOE 413	2/27/2008	1136	$	175,000.00	Arbitration Order
The Richter Firm, LLC for DOE 418	3/6/2008	1151	$	40,193.87	Arbitration Order
David K. Haller, Esq. Escrow for DOE 418	3/6/2008	1152	$	159,806.13	Arbitration Order

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Claimant	Date	Check #	Amount	Description
The Richter Firm, LLC for DOE 419	3/6/2008	1149	$ 40,143.24	Arbitration Order
David K. Haller, Esq. Escrow for DOE 419	3/6/2008	1150	$ 159,856.76	Arbitration Order
Pro Se - Doe 650	3/6/2006	1148	$ 20,000.00	Arbitration Order
Total Claimant			$ 7,615,000.00	

JOHN DOE CLASS ACTION SETTLEMENT ACCOUNT
SETTLEMENT & ARBITRATION AGREEMENT
DATED JANUARY 12, 2007

March 7, 2008

Total Non Claimant	$ 2,695,100.76	
Total Settlement	$ 12,000,000.00	($ 5 M & $ 7 M)
Avaliable for Claimants	$ 9,304,899.24	
Total Claimant	$ 7,615,000.00	
Amount Over (does not include interest income)	$ 1,689,899.24	

Cash Proof

Initial Pool of Funds	$ 5,000,000.00
Second Pool of Funds	$ 7,000,000.00
Spent to Date	$ 10,310,100.76
Net	$ 1,689,899.24
Add: Interest Income	
9/30/2007	$ 398.43
10/31/2007	$ 4,365.10
11/30/2007	$ 3,428.21
12/31/2007	$ 3,289.91
1/31/2008	$ 3,114.12
2/29/2008	$ 11,828.89
3/31/2008	$ -
Cash in Bank	$ 1,716,323.90

Arbitrator Awards Paid to date $ 7,065,000.00

3/7/08 - I approve this accounting of class settlement funds.

Marvin D. Nelson

W. Ellison Thornton

R. App. 000462

3/7/2008
09:00

John Doe Class Action Settlement Account
General Ledger - Period Ending 3/07/08

Company: JOH
Page: 1

Date	Mt	Reference	Account	Description	Current	Year-to-Date
Beginning Balance			1000	Cash in Bank - BKSC		2,147,381.54*
3/6/08	3	1147	1000	Judy Kramer	-63.20	
3/6/08	3	1148	1000	Pro Se 650	-20,000.00	
3/6/08	3	1149	1000	The Richter Firm, LLC	-40,143.24	
3/6/08	3	1150	1000	David K. Haller, Esq.	-159,856.76	
3/6/08	3	1151	1000	The Richter Firm, LLC	-40,193.87	
3/6/08	3	1152	1000	David K. Haller, Esq.	-159,806.13	
3/7/08	3	1153	1000	Haynsworth Sinkler Boyd	-2,450.00	
3/7/08	3	1154	1000	W. Ellison Thomas, CPA	-8,544.44	
				Ending Balance =	-431,057.64*	1,716,323.90**

8 Transactions