

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

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SC Court of Appeals

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 FOUR

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 Four

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Volume Four

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

FILED
2017 JUN 23 PM 3:50
JULIE J. APPOSTOLAKIS
CLERK OF COURT
BY

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.

Civil Action No. 2010-CP-10-5520

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.

Civil Action No.: 2012-CP-10-5559

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.

Civil Action No.: 2013-CP-10-3733

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.

Civil Action No.: 2016-CP-10-1632

**DIOCESE DEFENDANTS' OMNIBUS MOTION
FOR SUMMARY JUDGMENT BASED UPON CIVIL CONSPIRACY**

Defendants, 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, ("the Diocese Defendants") move for judgment as a matter of law on all claims made by the above captioned Plaintiffs pursuant to Rule 56, SCRPC. Because Plaintiffs

cannot come forward with admissible evidence establishing that there remain genuine issues of material fact for trial, all claims against the Diocese Defendants should be dismissed with prejudice. In particular, the Diocese Defendants put forth the following:

I. Civil Conspiracy

The Plaintiffs allege in their Complaints that the Diocese Defendants are liable to them under the theory of civil conspiracy.¹ The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). The difference between civil and criminal conspiracy is in criminal conspiracy, the gravamen of the offense is the agreement itself, whereas in civil conspiracy, the gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design. *Id.*; see also *Pye v. Estate of Fox*, 369 S.C. 555, 567–68, 633 S.E.2d 505, 511 (2006) (“The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se.”). Moreover, “because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.” *Id.* “If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed. *Id.* The Primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injury the Plaintiff. *Pye* 369 S.C. at 567–68, 633 S.E.2d at 511 (2006).

The Plaintiffs’ allegations are that these Defendants entered into a civil conspiracy with class counsel to (a) maneuver, in violation of SCRCP 23 and other professional standards, the class away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under

¹ If we assume that *res judicata* does not bar his claim, he is still otherwise barred from bringing this action by the statute of limitations discussed above.

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

See John Doe 2 and Jane Doe 4 Compl. at ¶ 69 as **Exhibit A**, Jane Doe 1 Compl. at ¶ 71 as **Exhibit B**, John Doe 193 Compl. at ¶ 115 as **Exhibit C**, and John Doe 297 Compl. at ¶ 149 as **Exhibit D**.

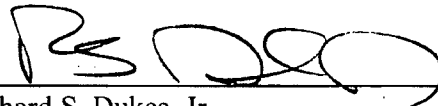
The Plaintiffs can present no genuine issue of material fact as to the allegation of civil conspiracy. The law requires that the Plaintiffs prove special damages that were caused by the civil conspiracy and that go beyond the damages alleged in the other causes of action contained in the Complaints. Plaintiffs fail to carry this burden and cannot present any genuine issue of material fact in support of their claims.

They have presented no evidence, and thus can present no genuine issue of material fact, of any actual conspiracy that caused them special harm. The above allegations are mere assumptions and conjecture. There are no documents, emails, letters, facsimiles, affidavits, testimony, statements or other factual proof of an agreement supporting the allegation that the Diocese Defendants entered into a conspiracy or common design to cause Plaintiffs special harm. There is simply not even a scintilla of evidence to support Plaintiffs' conclusory allegations.

In addition, the *Noerr-Pennington* Doctrine shields lawful acts related to the right to petition the government, including the "right of access to the courts." *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). Although there is a "sham" exception to

Noerr-Pennington, “an objectively reasonable effort to litigate cannot be sham regardless of subjective intent.” *Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 57 (1993). There is no “conspiracy” exception to *Noerr-Pennington*. See e.g. *City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365 (1991). The civil conspiracy allegations described above strictly relate to the administration and handling of the class settlement by class counsel. Any damage, special or otherwise, that arises out of the handling of the estate would be a result of conduct by class counsel – not the Diocese.

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June 28, 2017

CERTIFICATE OF SERVICE

Civil Action No.: 2010-CP-10-5520
Civil Action No.: 2012-CP-10-5559
Civil Action No.: 2013-CP-10-3733
Civil Action No.: 2016-CP-10-1632

FILED
2017 JUN 23 PM 3:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I hereby certify that this 23 day of June, 2017, a copy of the *Diocese Defendants' Omnibus Motion For Summary Judgment On Civil Conspiracy* has been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

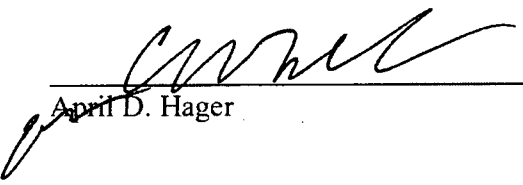
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April D. Hager

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

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

v.)

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

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

Jury Trial Requested

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

10-11694

Summons

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

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

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

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

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

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

EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 12-CP-10-5559

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 and Haller, LLC.)
Defendants.)

Civil Conspiracy
Professional Negligence
(Legal Malpractice)
Breach of Fiduciary Duty
Aiding and Abetting Breach of Fiduciary
Duty
Injunctive Relief

Jury Trial Requested

Amended Complaint

For her Amended Complaint, the Plaintiff alleges:

Parties, Jurisdiction and Venue

1. Plaintiff is an adult citizen and resident of a state other than South Carolina. She is the spouse of a person who was sexually molested as a child by a priest of the Diocese of Charleston, James W. McCarthy, also known at times as Leo McCarthy, Leo J. McCarthy, and James W. McCarthy, when he was assigned to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971.
2. A pseudonym is used for the Plaintiff due to the sexual abuse injury sustained by her husband. The Defendants will be informed of the identity of the Plaintiff upon their

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JULIE J. ARMSTRONG
CLERK OF COURT
BY 

the out-of-state class members, so as to prevent the Plaintiff, and others similarly situated, from finding out about the class action and from making claims against the class fund. Doing so protected the interests of the Richter defendants at the expense of their ostensible clients, and promoted the interests of the Diocese defendants.

68. In the class allegations, joinder was said to be impracticable because the number of victims of priest sexual abuse “may exceed the hundreds,” an allegation in both the John Doe #53 Complaint in 05-CP-10-4913 at ¶ 36, and in the identical John Doe #53 Complaint redundantly filed in 06-CP-18-1636, also at ¶ 36.

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

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

71. In exchange for the Richter defendants abandoning the Plaintiff and all of the other putative class members living outside of South Carolina, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRCP 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRCP 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which were used to support the fee request by the Richter defendants, (e) agreed to the unethical conduct of a settlement

which established a fixed fee amount for class counsel while establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to counsel before any class member's claim was known or the class was even identified, (g) acquiesced in the unethical conduct of abandoning all out-of-state class members by agreeing to give those class members no notice of the class resolution, and (h) agreed to violate SCRCP 23 and other professional standards by moving the class action cases to a state court judge outside of Charleston County known to have extensive social and professional ties to the Richter defendants, in the aspiration that a more pliable oversight would be received for the class settlement.

72. The Diocese defendants undertook a duty to the Plaintiff to identify abuse victims and their spouses, such as the Plaintiff, and negotiated, in June, 2006, a class resolution to what was referred to as "spousal &/or parent claims deriving from victims abused," in the 2006 Charleston Mediated Settlement agreement at ¶ 1. At that time no class of "spousal &/or parent claims" had been certified or even alleged. To get approval of the class settlement, the Diocese defendants colluded, along with the Richter defendants, to circumvent the requirements of SCRCP 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County.

73. In disobeying SCRCP 23 in Charleston County, and in judge-shopping in Dorchester County, the defendants violated judicial norms and rules. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which duplicated an existing Charleston County

EXHIBIT C

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

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 and Haller, LLC.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-23- 1843

2013CP 10 3 733

ENTERED COMPUTER

Jury Trial Requested

2013 APR - 2 A 9:48

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

2013 JUN 24 PM 3:51

FILED
JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

Summons

TO: 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

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action.

A copy of the complaint is served upon you with this summons.

Your answer to the complaint is to be served upon the attorney for the plaintiff at 366
Jackson Street, St. Paul MN 55101.

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ENTERED COMPUTER

the Plaintiff's ability to make a claim against the Diocese. As noted, this cause of action presumes that the Richter defendants were not professionally negligent but intentionally acted with the Diocese Defendants to limit the Plaintiff's ability to claim against the Diocese Defendants, with whom the Richter defendants shared an illicit interest in defeating the Plaintiff's potential claims.

114. For the Richter defendants, both their class counsel fee, and the interests of the Diocese Defendants, were more important to them than were the interests of their absent putative class member clients such as the Plaintiff.

115. In exchange for the Richter defendants abandoning the Plaintiff and all of their other putative class member clients who as adults had no memory of childhood sexual abuse, the Diocese defendants agreed with the Richter defendants to (a) maneuver, in violation of SCRPC 23 and other professional standards, the class action away from Charleston County judges that might exert independent scrutiny of the proposed class action settlement under SCRPC 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which the Richter defendants used to support their fee request, (e) agreed to the unethical conduct of a settlement which established a fixed fee amount for class counsel while simultaneously establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to class counsel before any class member had been identified and before any class member's claim was known, (g) acquiesced in the unethical conduct of the Richter defendants abandoning all class members who as adults did not recall their childhood sexual abuse, and (h) agreed to maneuver, in violation of SCRPC 23 and other professional standards, the class action away from those Charleston County

judges that might exert independent scrutiny of the class action, to a state court judge in Dorchester County known to have extensive social and professional ties to the Richter defendants, in the aspiration and expectation that a more pliable oversight would be received for the class settlement from that judge.

116. In the 2006 class settlement the Diocese Defendants undertook a duty to the classes as identified, including the Plaintiff to identify abuse victims, such as the Plaintiff, who had reported his sexual abuse to a nun. To get approval of the class settlement, the Diocese Defendants circumvented the requirements of SCRCF 23 so as to dismiss, without court approval, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement to the hand-picked judge in Dorchester County. In circumventing the requirement in SCRCF 23 to get approval for a class settlement in Charleston County, and in judge-shopping to pick their desired Dorchester County judge, the Defendants violated judicial norms and rules as well as professional standards. The Diocese Defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which Dorchester County complaint duplicated, word for word, an existing Charleston County complaint alleging a class, resulting in the identical class action case pending simultaneously in circuit court in both Charleston County and Dorchester County. As the Dorchester County version of the class action had already been settled before filing through the 2006 class settlement, the Dorchester County filing was done as the means of judge-shopping for the desired Dorchester County judge. The Diocese Defendants also agreed to remain silent about the duplicative class action so as to enable the Richter defendants to submit false information to the Dorchester County court.

EXHIBIT D

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2016-CP-10- 11032

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 and Haller, LLC.)

Defendants.)

FILED
2016 MAR 31 AM 11:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Summons

TO: 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.

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

Your answer to the complaint is to be served upon the attorney for the plaintiff at
366 Jackson Street, St. Paul MN 55101.

proposed class action settlement under SCRCP 23, (b) agreed to take no position on class certification, (c) agreed to make only the weakest possible argument about the fee sought by the Richter defendants, (d) agreed to remain silent about the overtly fraudulent time records which the Richter defendants used to support their fee request, (e) agreed to an unethical (for class counsel) settlement which established a fixed fee amount for class counsel while simultaneously establishing a variable, common fund recovery for the class, (f) agreed to have that fixed fee paid to class counsel before any class member had been identified and before any class member's claim was known (so the fee could not be effectively evaluated before it was paid), (g) agreed to make no objection when the Richter defendants took more fee than was authorized by court order, and (h) agreed to maneuver, in violation of SCRCP 23 and other professional standards, the class action away from those Charleston County judges that might exert independent scrutiny of the class action to a state court judge in Dorchester County known to have extensive social and professional ties to the Richter defendants, in the aspiration and expectation that from that judge they would receive a less independent and more pliable oversight for the class settlement.

149. In the 2006 class settlement the Diocese defendants undertook a duty to the classes as identified, including the Plaintiff, to identify abuse victims. To get approval of the class settlement, the Diocese defendants circumvented the requirements of SCRCP 23 so as to dismiss, without court approval of the class settlement, action 05-CP-10-4913 and other Charleston County actions, so as to collaborate with the Richter defendants to judge-shop, and move approval and management oversight of the class settlement to a hand-picked judge in Dorchester County. In circumventing the requirement in SCRCP 23 to get approval for a class settlement in Charleston County, and in judge-shopping to pick their desired Dorchester

County judge, all of the Defendants violated judicial norms and rules as well as professional standards.

150. The Diocese defendants cooperated with the Richter defendants by accepting service of a Dorchester County complaint alleging a class, which Dorchester County complaint duplicated, word for word, an existing Charleston County complaint alleging a class, resulting in the identical class action case, for the same client and purported class representative, then pending in the circuit court in both Charleston County and Dorchester County.

151. Before it was filed, the Dorchester County version of the already pending Charleston class action had already been settled through the 2006 class settlement. The Dorchester County filing was done as the means of judge-shopping for the desired Dorchester County judge.

152. The Diocese defendants agreed to remain silent about the duplicative class action so as to enable the Richter defendants to submit false information to the Dorchester County court.

Details of the Civil Conspiracy Among Defendants

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

154. The Richter defendants represented at least one victim of sexual abuse from the time they were associated throughout the events alleged in this Complaint.

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

Jane Doe 1,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8054

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.

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Civil Action No.: 2012-CP-10-5559

**DIOCESE DEFENDANTS' OMNIBUS MOTION
FOR SUMMARY JUDGMENT ON LOSS OF CONSORTIUM CLAIMS**

Defendants, 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, ("the Diocese Defendants") move for judgment as a matter of law on all

claims made by the above referenced Plaintiffs pursuant to Rule 56, SCRPC. Because Plaintiffs cannot come forward with admissible evidence establishing that there remain genuine issues of material fact for trial, all loss of consortium claims against the Diocese Defendants should be dismissed with prejudice. In particular, the Diocese Defendants put forth the following:

1. The claim for filial loss of consortium is not recognized under South Carolina law and must be dismissed.

Jane Doe 1's loss of consortium claim contains non-specific claims for damages that are identical to the claims for damages asserted by her children, the victims of alleged sexual abuse, down to typographical errors. She does not specify what injury she seeks to have compensated, nor does she allege any specific out-of-pocket losses. There are no allegations in the Complaint specifying any pecuniary losses claimed by her as a parent. In the absence of any concrete claims of injury, the Diocese Defendants are left to take aim at a spectre – a misty fog of potential claims.

It is well-settled that a parent cannot recover for loss of consortium, comfort, society, and companionship with an injured child. *Kirkland v. Sam's East*, 411 F.Supp.2d 639 (D.S.C. 2005); (See also *Bishop of Charleston v. Century Indemnity Co.* 14-cv-01289, August 31, 2016)(Gergel, J.) *Exhibit A*. Likewise, South Carolina law does not permit a parent to recover for emotional distress or psychological damages related to harm to a child unless the parent was a bystander in close proximity to the injury. *Kinard v. Augusta Sash & Door Co.*, 336 S.E.2d 465, 467 (S.C. 1985). Rather, the law is that a parent may only recover two types of damages for an injury caused to a child: (a) medical expenses paid for the treatment of the child's injuries; and (b) the pecuniary value of the loss of the child's services caused by the injury. See *Wright v. Colleton Cty School District*, 391 S.E.2d 564 (1990) (holding that medical expenses and lost services may be recoverable under the Tort Claims Act). No case has ever construed "loss of services" to extend to a parent's intangible, unquantifiable, emotional injuries stemming from an injury to a child. The

right of recovery for loss of companionship, society, and care is reserved to a spouse. *Taylor v. Medenica*, 479 S.E.2d 35 (S.C. 1996); S.C. CODE ANN. § 15-75-20.

The Supreme Court addressed strikingly similar claims in another sexual abuse case, *Doe v. Greenville County School Dist.*, 651 S.E.2d 305 (2007). In that case, parents sued the school district alleging a substitute teacher had a sexual relationship with their minor daughter. The Court concluded that South Carolina did not recognize a parent's claim for loss of consortium or companionship of a child:

The dissent would find that parents have a common law right to sue for loss of filial consortium despite the clear distinctions between a parent's claim for loss of services and a spouse's claim for loss of consortium found in our previous jurisprudence. The cases which the dissent utilizes to support its conclusion that filial consortium claims existed at common law directly address parental claims for loss of services, not loss of filial consortium. *See Wright v. Colleton County*, 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990) (providing that a parent's claim for loss of services and medical expenses resulting from the injury of a minor child is within the tort claims act statutory definition of "loss"); *see also, e.g., Berger v. Charleston Consol. Ry. Gas & Elec. Co.*, 93 S.C. 372, 76 S.E. 1096 (1913) (addressing a father's action for medical expenses and loss of services of his injured child). As discussed above, our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society which have traditionally defined loss of consortium claims. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.

Doe v. Greenville County School Dist., 651 S.E.2d at 308. The Supreme Court's holding in *Greenville County* should be the end of the inquiry – a parent cannot recover for a change in the relationship with their child. *Id.* at 308-09.

The Supreme Court's decision in *Greenville County* cannot be lightly regarded, for the Supreme Court was very clear what damages are, and are not, compensable. Plaintiff's assertions that she is seeking an ancient common law remedy for loss of services – including intangible

injuries such as loss of filial relationship, comfort, and society, and other intangible injuries flies in the face of the clear holding in *Greenville County* – intangible injuries suffered by parents are not recoverable.

There is no admissible evidence of any pecuniary loss from labor her children would have provided absent the alleged sexual abuse. In fact, Jane Doe 1 only learned of the alleged abuse when she was told by her children – then in their 30s and 40s – in about 1992. (*Deposition of Jane Doe 4* 20:6-8, *Exhibit B*). She knew nothing of the abuse before then and there is no admissible evidence that Jane Doe 1 suffered any loss of services or income as a direct result of the alleged abuse. Likewise, there is not a shred of evidence that Jane Doe 1 incurred medical expenses as a result of the alleged sexual abuse of her children. Instead, Jane Doe 1 seems to be claiming some amorphous right of recovery based upon what she did not know happened to her children in the late-1960s: She simply cannot convert a claim for loss of consortium into one for “loss of services.”

In the absence of any admissible evidence of some pecuniary loss by Jane Doe 1, her loss of consortium claim based upon her children’s being sexually abused must fail.

2. The claims for spousal loss of consortium must also be dismissed inasmuch as the alleged injury – the sexual abuse of a minor – occurred long before the marriage took place.

Jane Doe 11 is the wife of Plaintiff John Doe 2. John Doe 2 alleges he was sexually abused by Fr. Jim McCarthy sometime between 1965 and 1971. See *John Doe 2 and Jane Doe 4 Complaint* at ¶ 1, *Exhibit C*. John Doe 2 does not claim some repressed memory syndrome or other mental incapacity. He was born in 1959 and married Jane Doe 11 in 1993. (*Deposition of Jane Doe 11* 27:21 – 28:7, *Exhibit D*). John Doe 2 would have been 34 years old at the time of his marriage. Jane Doe 11 claims a right to recover for loss of consortium for injuries her husband allegedly sustained roughly 30 years before the couple married.

While not specifically addressed in South Carolina, the majority of states concur that a loss on consortium cause of action arises only if the parties were married at the time of the wrongful conduct. *See, e.g. Schroeder v. Boeing Commercial Airplane Co., a Div. of Boeing Corp.*, 712 F. Supp. 39, 41 (D.N.J. 1989) (following New Jersey law and stating that no consortium cause of action exists for injury that occurred during engagement period); , *Briggs v. Butterfield Memorial Hospital*, 104 A.D.2d 626, 479 N.Y.S.2d 758 [App.Div. Dept. 2 1984] (stating loss of consortium not recoverable where injury preceded the marriage); *Jones v. Elliott*, 551 A.2d 62, 63–64 (Del.1988) (element of consortium cause of action is that parties must be married at the time the physical injury occurred); and *Feliciano v. Rosemar Silver Co.*, 401 Mass. 141, 514 N.E.2d 1095 (1987) (where the court refused to grant recovery for loss of consortium where the plaintiffs were not married but lived together; no right to recovery arose because the plaintiffs had not accepted the correlative responsibilities of marriage).

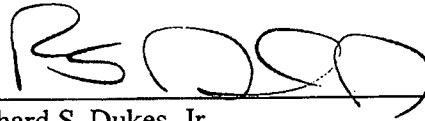
In the case of Jane Doe 11, there is no question that the physical injuries, as alleged, occurred prior to her marriage to John Doe 2. Therefore, under the only reasonable interpretation of a right of recovery for spousal loss of consortium, her claims against the Diocesan Defendants must be dismissed.

Jane Doe 1's claims must be dismissed as South Carolina has never recognized a claim for filial loss of consortium and because there is no admissible evidence of any compensable damages suffered by Jane Doe 1.

Jane Doe 11's claims should be dismissed because the injury her husband alleges he sustained occurred some 30 years before the couple married. John Doe 2 does not claim, and cannot establish, any repressed memory or other reason that his injury became known to him after his marriage to Jane Doe 11. The great weight of authority is that loss of consortium is a

remedy reserved for a spouse and that the underlying tort must have occurred while the couple was married. Because the alleged sexual abuse took place long before the marriage, Jane Doe 11 has no legal basis for her consortium claim, and her complaint should be dismissed as well.

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June 23, 2017

CERTIFICATE OF SERVICE

Civil Action No.: 2009-CP-10-8054

Civil Action No.: 2012-CP-10-5559

I hereby certify that this 23 day of June, 2017, a copy of the **DIOCESE DEFENDANTS' OMNIBUS MOTION FOR SUMMARY JUDGMENT ON LOSS OF CONSORTIUM CLAIMS** has been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

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FILED
2017 JUN 23 PM 3:52
JULIE J. ARISTON
CLERK OF COURT
BY

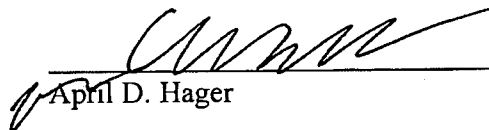

April D. Hager

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

The Bishop of Charleston, *a corporation sole*, and the Bishop of the Diocese of Charleston, *in his official capacity*,

Plaintiffs,

v.

Century Indemnity Company,

Defendant.

Civil Action No. 2:14-1289-RMG

ORDER

This matter is before the Court on Defendant Century Indemnity Company's ("Century") motion for partial summary judgment as to loss of consortium claims (Dkt. No. 69), motion for partial summary judgment as to all class action and certain individual claims (Dkt. No. 72), motion for partial summary judgment as to pre-May 6, 1965 claims (Dkt. No. 73), and motion to exclude the testimony of William Hager (Dkt. No. 74). For the reasons set forth below, the Court grants the motion for partial summary judgment as to loss of consortium claims, denies the motion for partial summary judgment as to all class action and certain individual claims, grants in part the motion for partial summary judgment as to pre-May 6, 1965 claims, and denies the motion to exclude the testimony of William Hager.

I. Background

Plaintiffs the Bishop of Charleston as a corporation sole and the Bishop of the Diocese of Charleston in his official capacity (together, the "Diocese") seek reimbursement from Century for \$11.5 million paid to settle claims arising from sexual abuse of minors by the Diocese's clergy. The abuse at issue occurred over the approximate period 1943 to 1986. (Am. Compl. Ex. 1, Dkt.

No. 1-1 at 18–22.) The settlements of claims arising from that abuse occurred between 1994¹ and the present, including a multimillion-dollar settlement of three class actions (which also settled three individual actions), executed on January 12, 2007. (*Id.*; Settlement and Arbitration Agreement, Dkt. No. 71-1.)

The parties agree that Century's predecessor-in-interest, Insurance Company of North America,² issued the Diocese occurrence-based insurance policies covering the periods May 6, 1965 to May 6, 1968 (policy CP2831), May 6, 1968 to May 6, 1971 (policy CP10065), and May 6, 1971 to May 6, 1979 (policy CP044874). (Am. Compl. ¶ 5, Dkt. No. 1-1 at 15; Answer ¶ 5, Apr. 14, 2014, Dkt. No. 4 at 1–2.) The Diocese alleges that an additional policy, CGL132981, covered the period May 6, 1962 to May 6, 1965. (Am. Compl. ¶ 5, Dkt. No. 1-1 at 15.) Century denies the existence of CGL132981. (Answer ¶ 5, Dkt. No. 4 at 1–2.) There is no claim of coverage before May 6, 1962.

The Diocese was first notified of the sexual abuse claims relevant to this action in 1989.³ The Diocese argues that those claims were “promptly reported” to its insurer, Century, “who over

¹ The Diocese asserts that the settlements at issue in this action occurred from 1995 (Dkt. No. 84 at 2), but Exhibit 1 to the amended complaint shows claims settled in 1994, e.g., John Roe 140.

² For simplicity, this Order uses “Century” to refer to both Century Insurance Company and Century Insurance Company's predecessors-in-interest.

³ The Diocese asserts “[c]laims against the Diocese for sexual abuse of minors by priest [*sic*] were first made at the end of 1994” (Dkt. No. 84 at 3), but Exhibit 1 to the amended complaint shows notice of the claim of John Roe 147, regarding abuse from 1959 to 1961, in 1989. That claim was settled in 1998 for \$425,000, including settlement of John Roe 147's claims regarding abuse from 1962 to 1962, which the Diocese received notice of in 1993. (Dkt. No. 1-1 at 18–22.) Exhibit A to the Diocese's interrogatory responses, however, provides that the Diocese received notice of all claims of John Roe 147 in 1990, that those claims had a “date of claim” of November 1997, that they were settled in February 1998, and that the insurer was advised of the claim on April 8, 1998. (Dkt. No. 94-1 at 27.) “Date of claim” in the interrogatory responses might be taken to mean when a lawsuit asserting the claim was filed, but Century, citing those same responses, represents that John Roe 147's claims “were not the subject of a lawsuit.” (Dkt. No. 72-1.)

the next 6 years responded with a pattern of delay, avoidance, and denial of the claims.” (Dkt. No. 84 at 3.) Century denies that, and argues that the Diocese’s failure to provide notice of claims before settlement vitiates coverage for those claims. (Answer ¶¶ 6–8, Dkt. No. 4 at 2; Dkt. No. 72-1 at 13–15.) The Diocese also alleges that Century “routinely denied requests for settlement authority” and refused to participate in settlement discussions, which “evolved into a practice where the Diocese undertook to negotiate and settle the claims and then seek reimbursement without prejudice to having settled without consent”—a practice to which the Diocese claims Century agreed. (Dkt. No. 84 at 6–8; *see, e.g.*, James C. Geoly Letter to Cody Smith, Dec. 19, 1997, Dkt. No. 71-14.) Finally, the Diocese argues that Century directed the Diocese to litigate charitable immunity and statute of limitations defenses, a strategy that the Diocese believes would have exposed it to excess judgments. (Dkt. No. 84 at 7.) However, the judge who approved the class action settlement, the Honorable Diane S. Goodstein, described those as “significant legal defenses” that might bar class members’ claims. (Order Approving Settlement, July 30, 2007, Dkt. No. 71-2 at 14.)

The Diocese’s interrogatory responses show that it first notified Century of some claims “pre-April 1995.” (Pls.’ Answer Def.’s Interrogs. Ex. A, Dkt. No. 94-1.) Century was notified of those claims before they settled. (*Id.*) On April 8, 1998 and again on February 20, 2000, the Diocese notified Century of certain other, already-settled claims. (*Id.*) The Diocese then concluded that “it was a waste of time to seek prior approval” from Century (Dkt. No. 84 at 8), and so it did not again provide Century with notice of any claims until June 17, 2011, when it notified Century both of certain other, already-settled individual claims and of the class action

settlement executed almost three and a half years earlier (Pls.' Answer Def.'s Interrogs. Ex. A, Dkt. No. 94-1).⁴

The Diocese filed this action in the Charleston County Court of Common Pleas on February 27, 2014, and amended the complaint on March 27, 2014 (Dkt. No. 1-1.) Attached to the amended complaint as Exhibit 1 is a spreadsheet detailing "Pre-1970 Sexual Abuse Claims." (Dkt. No. 1-1 at 18-22.) Century, asserting diversity jurisdiction, removed to this Court on April 4, 2014 (Dkt. No. 1) and answered the complaint on April 14, 2014 (Dkt. No. 4). On November 5, 2014, the Court denied as untimely Century's motion to amend its answer to assert a statute of limitations defense six weeks after the deadline for amending pleadings. Century asserted that it mistakenly understood the Diocese to be seeking indemnification only for the 2007 class action settlement and not for earlier any settlements. The Court denied that motion, noting that Century's argument contradicted the fact that its answer referenced Exhibit 1 to the amended complaint, which details many pre-2007 settlements. (Dkt. No. 21 at 4.)

Discovery is now complete and this action is scheduled for a bench trial commencing October 24, 2016. Before the Court are Century's three motions for partial summary judgment. Century seeks summary judgment as to loss of consortium claims (Dkt. No. 69), arguing that there was no liability for filial consortium claims and that no consortium claims were within the scope of coverage. Century seeks summary judgment as to all class action and certain individual claims (Dkt. No. 72), arguing that the Diocese failed to notify Century of those claims. Century seeks summary judgment as to pre-May 6, 1965 claims (Dkt. No. 73), arguing that no coverage existed before May 6, 1965. Also before the Court is Century's motion to exclude the testimony of

⁴ These notice dates are found in Exhibit A to the Diocese's interrogatory responses. The Diocese and Century engaged in considerable correspondence regarding claims, in which the Diocese may have provided notice to Century at times other than those described here.

William Hager (Dkt. No. 74), filed before the parties agreed to a bench trial. The Diocese identified Mr. Hager, formerly Commissioner of Insurance of the State of Iowa, as an expert in insurance industry practices.

II. Legal Standard

Summary judgment is appropriate if a party "shows that there is no genuine dispute as to any material fact" and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In other words, summary judgment should be granted "only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts." *Pulliam Inv. Co. v. Cameo Props.*, 810 F.2d 1282, 1286 (4th Cir. 1987). "In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities in favor of the nonmoving party." *HealthSouth Rehab. Hosp. v. Am. Nat'l Red Cross*, 101 F.3d 1005, 1008 (4th Cir. 1996). The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Once the moving party has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. *Id.* at 324. Rather, the non-moving party must demonstrate that specific, material facts exist that give rise to a genuine issue. *Id.* Under this standard, "[c]onclusory or speculative allegations do not suffice, nor does a 'mere scintilla of evidence'" in support of the non-moving party's case. *Thompson v. Potomac Elec. Power Co.*, 312 F.3d 645, 649 (4th Cir. 2002) (quoting *Phillips v. CSX Transp., Inc.*, 190 F.3d 285, 287 (4th Cir. 1999)).

III. Discussion

A. Motion for Partial Summary Judgment as to Loss of Consortium

Century moves for summary judgment as to the Diocese's claims for indemnification of its settlements of loss of consortium claims. Two types of consortium claims were settled: filial loss of consortium claims brought by abuse victims' parents, and spousal consortium claims brought by abuse victim's spouses. The Court grants Century's motion for summary judgment as to both types of consortium claims because it finds that the Diocese had no legal obligation to pay those claims. Filial consortium is unrecognized by South Carolina law, and spousal consortium is unavailable where the underlying injury occurred entirely before marriage.

1. Filial Consortium

The policies issued to the Diocese provide coverage for claims that the Diocese is "legally obligated to pay as damages." (See, e.g., Dkt. No. 7-2 at 7.) Century asserts that this language means that it is liable to indemnify only obligations enforceable by law. (Dkt. No. 69-1 at 9-10 (citing *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 594 S.E.2d 455, 457-59 (S.C. 2004).) Century argues that because "South Carolina law does not recognize claims for loss of filial consortium," it cannot be liable to indemnify the Diocese's decision to pay such claims nonetheless. (*Id.* (quoting *Doe v. Greenville Cty. Sch. Dist.*, 651 S.E.2d 305, 307-08 (S.C. 2007).) Century accordingly asks for summary judgment as to the Diocese's claims for indemnification for filial consortium claims. The Diocese responds that when these claims were settled, South Carolina law had not firmly established the unavailability of filial consortium, pointing out that the *Doe* decision that Century quotes was not rendered until August 2007—a month after final approval of the class settlement that accounts for the great majority of settled consortium claims.

The Court agrees that Century is not liable for indemnification of claims that the Diocese was not liable to pay. In the South Carolina case Century cites, *Helena Chemical*, the South

Carolina Supreme Court held that insurer liability for amounts that the insured is "legally obligated to pay as damages" extends to equitable remedies, *i.e.*, the cost of an injunction requiring environmental cleanup of a contaminated site. 594 S.E.2d at 457-58. The relevance of that holding to this case is opaque. But the South Carolina Supreme Court has held that an insurer is obligated to defend its insured only "[i]f the underlying complaint creates a possibility of coverage under an insurance policy." *City of Hartsville v. S.C. Mun. Ins. & Risk Fin. Fund*, 677 S.E.2d 574, 578 (2009). Under South Carolina law, an insurer is not obligated to defend allegations that fail to state a cognizable claim for relief. It follows logically that there is no obligation to indemnify the settlement of allegations that failed to state a cognizable claim for relief.

The Court also agrees that South Carolina law does not permit filial consortium claims. The Diocese fails to raise any genuine dispute regarding the availability of filial consortium in South Carolina at any relevant time. The August 2007 *Doe* decision the Diocese refers to was the South Carolina Supreme Court's affirmance of a trial court's dismissal of, *inter alia*, filial consortium claims. 651 S.E.2d at 308-09. The *Doe* decision did not change South Carolina's long-standing non-recognition of filial consortium claims. When overruling consortium class members' objections to the class settlement agreement at issue in this case, Judge Goodstein cited South Carolina Supreme Court cases dating from 1967 in concluding that

... there has been no change in the law as it was at that time: As the South Carolina Supreme Court has made clear, a child is the only party who may bring a loss of consortium claim under S.C. Code § 15-75-20. The law simply does not recognize a right of action of a parent to recover for the loss of consortium of a child.

(Dkt. No. 71-2 at 11 (internal quotation marks and citations omitted).) The Diocese was told that South Carolina did not recognize filial consortium claims by the judge who approved the settlement of filial consortium claims against the Diocese. This Court understands that the Diocese

may have had good reason nonetheless to settle those claims (for relatively small amounts), but Century is not liable to indemnify claims that the Diocese was not liable to pay.

2. Spousal Consortium

The Court finds that the Diocese also had no liability to pay spousal consortium claims that purportedly arose before marriage. “Loss of consortium arises out of the special relationship between a husband and wife.” *Stewart v. State Farm Mut. Auto. Ins. Co.*, 533 S.E.2d 597, 604 (S.C. Ct. App. 2000). Loss of consortium claims are unavailable where the underlying injury occurred prior to marriage. See *Rockstroh v. A.H. Robins Co.*, 602 F. Supp. 1259, 1269 (D. Md. 1985) (“It appears to be universally held that, in order to maintain a valid action for loss of consortium, the parties must be married at the time of the injury.”); Paul Davis Fancher, *To Have and Not Hold: Applying the Discovery Rule to Loss of Consortium Claims Stemming from Premarital, Latent Injuries*, 53 Vand. L. Rev. 685, 694 (“A marital relationship between the parties at the time of injury has therefore become a universal requirement for a loss of consortium claim.”). A minority position allows an exception for latent injuries undiscoverable before marriage. See, e.g., *Friedman v. Klazimer*, 718 A.2d 1238, 1241 (N.J. Super. Ct. Law. Div. 1998) (providing, as an equitable exception to “the rule that a party must be married before an injury in order to recover loss of consortium damages,” that “a spouse may proceed with a loss of consortium claim where the injury was suffered before marriage, so long as the injury was not discovered or reasonably discoverable by either spouse until after the marriage”).⁵ Courts, however, have refused to extend

⁵ There are also cases discussing cohabitating domestic partners as a possible exception to the rule that marriage before injury is a prerequisite for consortium claims, see, e.g., *One Weaver v. G.D. Searle & Co.*, 558 F. Supp. 720, 721–24 (N.D. Ala. 1983) (surveying state laws), but that exception has no relevance in the present case.

that minority view to repressed memories of sexual abuse that occurred before marriage. As the Supreme Court of Iowa explained in a repressed-memory sexual abuse case,

The discovery rule anticipates that the claimant had a valid cause of action within the period of limitations, but for some reason, was unaware of it. Here, because there was no marital relation between [the parties], there was no cause of action within the period of limitations, and the discovery rule cannot create one when none had ever existed during the period of limitations.

Doe v. Cherwitz, 518 N.W.2d 362, 364–65 (Iowa 1994); *see also Cramer v. Archdiocese of Cincinnati*, 814 N.E.2d 97, 103 (Ohio Ct. App. 2004) (“As the trial court correctly held, a claim for loss of consortium arises out of marriage and does not extend to unmarried individuals.”), *abrogated on other grounds by Doe v. Archdiocese of Cincinnati*, 849 N.E.2d 268 (Ohio 2006).

Here, as Judge Goodstein observed, “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 [] consortium.” (Dkt. No. 71-2 at 11); *cf. Sartori v. Gradison Auto Bus Co.*, 42 Pa. D. & C.2d 781, 785 (Pa. Com. Pl. 1967) (“A subsequent [to the injury] husband should not acquire any right to sue for loss of consortium. He should not be entitled to marry a cause of action. The tortfeasor, we are frequently told, takes his victim as he finds him.”). The Diocese thus was not “legally obligated to pay” spousal consortium claims, and Century has no duty to indemnify the Diocese for consortium claims. The Court therefore grants Century’s motion for summary judgment as to consortium claims.

B. Motion for Partial Summary Judgment as to All Class Action and Certain Individual Claims

The undisputed terms of the applicable insurance policies required the Diocese, as a condition of coverage, to “immediately forward to the [insurer] every demand, notice, summons, or other process received” regarding any claim; to give written notice to the insurer of any “injury

or occurrence . . . as soon as practicable"; and to cooperate with the insurer "in the conduct of suits." (Dkt. No. 72-1 at 11-12.) Those terms also provided that the Diocese "shall not, except at [its] own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative." (*Id.*) Century argues that it is entitled to summary judgment as to the class action settlement and certain other individual claims because the Diocese breached those terms by failing to provide prompt notice of claims to Century and by voluntarily assuming obligations and making payments on claims without Century's consent. (*Id.* at 13 (citing *Hodges v. State Farm Mut. Auto. Ins. Co.*, 488 F. Supp. 1057, 1061 (D.S.C. 1980) ("In South Carolina, the failure of the insured to comply with the obligations of the contract will release the insurer from liability."))).)

The Diocese responds with several arguments. For one, it argues that its duty to obtain consent does not apply "when there is a conflict of interest between the insured and the insurer because the insurer's strategy exposes the insured to an excess judgment." (Dkt. No. 84 at 12.) The Diocese claims that Century's "insistence the Diocese defend the abuse cases (on the basis of the statute of limitations and charitable immunity) exposed the Diocese to significant excess judgments." (*Id.*) That is unpersuasive. There is no evidence that a decision that the abuse cases should be fought on statute of limitations and charitable immunity grounds constituted bad faith. When approving the class action settlement, Judge Goodstein noted that the settled claims "might already be barred by significant legal defenses, including the statute of limitations and charitable immunity" and that "[c]lass counsel has been able to succeed in this case where other lawyers, in identical cases, have failed . . ." (Dkt. No. 71-2 at 14.)

Moreover, the Diocese agreed to cooperate with Century "in the conduct of suits." (*E.g.*, Dkt. No. 70-2 at 9.) That agreement is meaningless if it is bad faith dealing for the insurer to make

any decision (regarding its own money) contrary to the insured's preferences. The law does not require insurers to accept *any* within-policy-limits settlement offer, without regard to the legal strength of the claim. The Court therefore finds no suggestion of bad faith in the April 27, 1999 letter that the Diocese quotes with opprobrium: "Given these two strong defenses for the periods during which [Century's predecessor] provided coverage we consider a settlement of \$162,500.00 to be entirely unreasonable from a legal perspective. Clearly, the Diocese effected this Settlement for its own reasons—primarily to avoid negative publicity—without regard to the legal merits of the claim." (Dkt. No. 84 at 7 (quoting Letter from Cody W. Smith to James C. Geoly, Apr. 27, 1999).) This is not to say that the Court has determined that the charitable immunity or statute of limitations defenses *would have* succeeded—the Court recognizes that some victims alleged intentional, reckless, or grossly negligent conduct not subject to charitable immunity and delayed discovery of injuries due to repressed memories. (See Letter of James C. Geoly to Cody W. Smith, Apr. 8, 1998, Dkt. No. 84-14 at 25 (analysis of legal defenses).) Indeed, the Diocese's 1998 analysis regarding the applicability of the discovery rule to repressed memories proved correct. *Moriarty v. Garden Sanctuary Church of God*, 534 S.E.2d 672, 679 (S.C. 2000), *modified by South Carolina v. Cherry*, S.E.2d 475 (S.C. 2004) ("Accordingly, we affirm the Court of Appeals and hold that a plaintiff may assert the discovery rule contained in S.C. Code Ann. § 15-3-535 in a case involving repressed memories of sexual abuse."). The Court finds that a decision to defend decades-old claims against a church on statute of limitations and charitable immunity grounds is not evidence of bad faith.

The Diocese's other arguments against summary judgment, however, are stronger. The Diocese argues that an insurer's prior consent regarding settlement is unnecessary where the insurer denies the existence of the applicable policy. (Dkt. No. 84 at 12.) The Court finds that

persuasive with regard to claims of sexual abuse involving the period May 6, 1962 to May 6, 1965. Century has consistently denied the existence of a policy covering sexual abuse claims for that period. (See Answer ¶ 5, Dkt. No. 4 at 1-2.) If the existence of such a policy is proven after claims are settled, Century cannot then object to indemnifying those settled claims by arguing that the insured failed to provide notice under that policy at the very time when the insurer was denying its existence. Cf. *Episcopal Church v. Church Ins. Co.*, 53 F. Supp. 3d 816 (D.S.C. 2014) (predicting that South Carolina follows the general rule that an insurer that refuses to defend a claim has no right to control the litigation or settlement of that claim).

The Diocese raises a genuine factual issue as to whether Century agreed that the Diocese could settle claims without Century's prior consent. (See, e.g., Dkt. No. 71-14 (December 19, 1997 letter from James C. Geoly to Cody W. Smith stating that "Rather, he [William Britt, employed by CIGNA, a predecessor-in-interest of Century] agreed that the Diocese would not waive its coverage solely on the ground that it had settled the matter without CIGNA's prior consent"); Dkt. No. 71-15 at 1 (March 6, 1998 letter from James C. Geoly to Cody W. Smith stating "I do want to confirm that CIGNA has agreed that the Diocese's decision to settle these claims would not prejudice the Diocese' position with respect to coverage . . ."); Dkt. No. 71-16 at 1 (February 20, 2000 letter from James C. Geoly to Edward Rynex stating "When we spoke before settlement meetings in the fall, and you agreed that the Diocese of Charles would not waive any claim for reimbursement it may have by settling this matter"). Whether such an agreement existed and, if it did, which settlements it applied to, are factual disputes for trial.

The Diocese also raises genuine factual disputes as to whether Century acted in bad faith by denying the coverage and by denying any obligation to defend before a lawsuit was actually filed. For example, on or about April 15, 1998, internal notes titled "committee disposition

strategy" state, "Argue to insured there is no coverage for these claims." (Dkt. No. 84-3 at 2.) Earlier internal notes, dated March 9, 1994, state, "our position is that occurrence is when clt [client] becomes aware of problem" and that "current policies exclude sexual abuse"—which may indicate a bad faith attempt to read terms applicable to later policies into the policies in force when the covered abuse occurred. (Dkt. No 84-7.); cf. *Soc'y of Roman Catholic Church of Diocese of Lafayette & Lake Charles, Inc. v. Interstate Fire & Cas. Co.*, 26 F.3d 1359, 1362 (5th Cir. 1994) ("Under [an occurrence-based] policy, it is the date of the occurrence, and not the date of the claim, that determines coverage.").

Finally, and most importantly, in South Carolina "an insurer, seeking to relieve itself of liability because of the violation by the insured of a cooperation clause in the policy, has the burden of showing not only that the insured failed to cooperate within the meaning of the policy provision but that it was substantially prejudiced thereby. Such issue is generally one of fact for the jury" *Vaught v. Nationwide Mut. Ins. Co.*, 156 S.E.2d 627, 630 (S.C. 1967). The Diocese contends that "the ultimate settlement results achieved by Plaintiffs were highly favorable and well within the bounds of reasonableness by any measure." (Dkt. No. 84 at 20.) If that contention is true, Century cannot refuse to indemnify the Diocese simply because of a violation of policy provisions requiring notice or consent. Whether that contention is true is a factual issue for trial.

The Court therefore denies Century's motion for summary judgment as to the class action settlement and certain individual claims.

C. Motion for Partial Summary Judgment as to Pre-May 6, 1965 Claims

1. Pre-May 6, 1962 claims

Century argues that it is entitled to summary judgment regarding pre-May 6, 1962 claims because the Diocese does not allege that any policy covered any period before May 6, 1962. The Diocese responds that coverage exists for those claims under later policies because "South

Carolina applies a modified continuous trigger standard.” (Dkt. No. 84 at 24.) The Court concludes that South Carolina’s “modified continuous trigger standard” does not result in coverage for claims arising from abuse that ceased before any coverage commenced, and, consequently, the Court finds that Century has no liability for sexual abuse claims where the last instance of sexual abuse occurred before May 6, 1962.⁶

Under an occurrence-based policy, the date of the occurrence, and not the date of the claim, determines coverage. The word “occurrence,” however, is ambiguous where damages result from an exposure over time rather than a single discrete event. For such situations, common in toxic tort litigation, the “continuous trigger” theory provides that the date of the occurrence is the continuous period from exposure to manifestation of damage. *See Note, Toxic Waste Litigation*, 99 Harv. L. Rev. 1458, 1579, 1581 (1986) (defining and discussing the “continuous trigger” theory). South Carolina has adopted a modified version of the continuous trigger theory, modified to start when damage first occurs, rather than at the time of the injury-causing event. *Joe Harden Builders, Inc. v. Aetna Cas. & Sur. Co.*, 486 S.E.2d 89, 90 (S.C. 1997) (holding that a modified continuous trigger theory applies where defective workmanship causes “progressive damage that is not apparent at the time of the underlying injury-causing event”). But the Diocese cites no authority for the proposition that insurance policies covering the period 1965 to 1979 (or allegedly, 1962 to 1979) cover a claim, asserted in 2007, of sexual abuse occurring in the 1940s. (*E.g.*, Am. Compl. Ex. 1, Dkt. No. 1-1 at 20 (Jane Doe 408 claim in 2007 regarding abuse occurring 1943 to 1946).)

⁶ The act within the scope of coverage is the Diocese’s own recklessness or negligence in allowing the abuse and not the intentional act of the abuser himself, *see Mfrs. & Merchs. Mut. Ins. Co. v. Harvey*, 498 S.E.2d 222, 228 (S.C. Ct. App. 1998), but that distinction does not appear relevant to the dates of coverage issues *sub judice*.

To the contrary, “[t]he practical effect of applying the continuous trigger standard to sexual abuse cases is that each insurance policy in effect during the period of abuse affords coverage up to its limits for all of the plaintiff’s damages.” Barron L. Weinstein, *Sexual Misconduct Claims: A Policyholder’s Perspective of Key Coverage Issues*, Brief, Winter 2009, at 48, 53; *see also Soc’y of Roman Catholic Church of Diocese of Lafayette & Lake Charles, Inc.*, 26 F.3d at 1365–66 (achieving same result in applying continuous trigger theory to sexual abuse). In other words, coverage is not limited to the policy in effect when the sexual abuse began. Where abuse was ongoing over a number of years, the policyholder can access successive years of coverage. This does not mean that the policyholder can access coverage for periods beginning after the last act of abuse, even though sexual abuse undoubtedly causes lifelong harm. The Diocese’s position, apparently, is that any policy purchased at any time after an act of sexual abuse provides full coverage for the life of the victim. Were that the law, insurers would need to charge premiums for each period sufficient to cover decades of potential liability. *Cf. Servants of Paraclete, Inc. v. Great Am. Ins. Co.*, 857 F. Supp. 822, 834 (D.N.M. 1994) (noting, in a sexual abuse insurance coverage case, that “an insured cannot reasonably expect a policy to cover injury originating years before the policy’s inception. Insurance premiums undoubtedly do not reflect such risks and the Court can only speculate as to the enormous increase in premiums were such pre-policy injury causing events to be covered”) *amended on reconsideration in part*, 866 F. Supp. 1560 (D.N.M. 1994). The Diocese cites no case standing for such an extraordinary proposition.

The Court therefore grants summary judgment for Century as to claims involving sexual abuse occurring entirely before May 6, 1962.

2. May 6, 1962 to May 6, 1965 Claims

The parties dispute whether Century issued the Diocese a policy covering sexual abuse claims for the period May 6, 1962 to May 6, 1965. The policy itself cannot be found. The parties

agree that the Diocese may prove the existence of the policy by secondary evidence, but they dispute whether the Diocese has provided secondary evidence sufficient to establish the existence of a policy applicable to the settled claims. (See Dkt. No. 84-1 at 22 (May 30, 1996 letter from Wade H. Logan, III to James C. Geoly stating, "The issue is not whether or not the Diocese may rely upon appropriate secondary evidence to attempt to establish coverage; in our view, it may. The issue will be whether any appropriate source will be sufficient to establish coverage for these claims").) The Court finds the Diocese's evidence regarding the existence of a policy covering the period May 6, 1962 to May 6, 1965 sufficient to create a triable factual dispute, though this should not be taken as a comment on the strength of that evidence. (See, e.g., Dkt. No. 84-1 at 27-18 (January 24, 1996 letter from James C. Geoly to James M. Crowley itemizing the Diocese's evidence).) The strength of the Diocese's evidence is an issue for trial. The Court therefore denies the motion for summary judgment as to claims involving sexual abuse occurring at least in part during the period May 6, 1962 to May 6, 1965.

D. Motion to Exclude the Testimony of William Hager

Century also moves, pursuant to Rule 702 of the Federal Rules of Evidence, to exclude the testimony of William Hager. Century argues that his opinions are inaccurate legal opinions, that he adds no specialized knowledge, and that he would opine on the ultimate issue in this case. (Dkt. No. 74 at 1.)

Rule 702 provides,

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702. In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the Supreme Court interpreted Rule 702 as placing the court in a “gatekeeping role” between expert evidence and the trier of fact. 509 U.S. at 589, 597 (1993); see also *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999) (holding that *Daubert* applies to all forms of expert evidence). However, “[t]he gatekeeping function of the court is relaxed where a bench trial is to be conducted, as in this case, because the court is better equipped than a jury to weigh the probative value of expert evidence.” *Traxys N. Am., LLC v. Concept Mining, Inc.*, 808 F. Supp. 2d 851, 853 (W.D. Va. 2011). “The ‘gatekeeper’ doctrine was designed to protect juries and is largely irrelevant in the context of a bench trial,” *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 852 (6th Cir. 2004), because “[t]here is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself,” *United States v. Brown*, 415 F.3d 1257, 1269 (11th Cir. 2005).

The Court finds the objections Century raises to Mr. Hager’s expected testimony irrelevant to a bench trial.⁷ Century can challenge the relevance and reliability of his opinions at trial. “The main purpose of *Daubert* exclusion is to protect juries from being swayed by dubious scientific testimony.” *In re Zurn Pex Plumbing Prod. Liab. Litig.*, 644 F.3d 604, 613 (8th Cir. 2011). In this case, there will be no jury to sway. Century’s motion to exclude his testimony is denied.

E. Order to Provide Tabulated Data

The Court observes that the tabulations of claims data in this matter are not entirely clear or consistent. See, e.g., note 3, *supra*. To avoid confusion at trial, the Court orders the parties to file jointly a single table that details the sexual abuse claims at issue, no later than October 17,

⁷ Century filed its motion to exclude Mr. Hager before the parties agreed to a bench trial; its supporting memorandum refers to a “jury” forty-three times.

2016. The table shall contain all columns contained in Exhibit A to the Diocese's response to Century's first set of interrogatories. The parties shall stipulate to the accuracy of undisputed tabulated information. Where there is a dispute regarding tabulated information, the disagreement shall be noted on the table. Any discrepancies from the information presented in Exhibit 1 to the amended complaint shall be annotated. An Excel-format electronic copy of the table shall be provided to chambers. The table shall be filed no later than October 17, 2016. To the extent possible, the parties' pretrial briefs and proposed findings of fact shall cite to the jointly filed table.

IV. Conclusion

For the foregoing reasons, the Court the Court **GRANTS** the motion for partial summary judgment as to loss of consortium (Dkt. No. 69), **DENIES** the motion for partial summary judgment as to all class action and certain individual claims (Dkt. No. 72), **GRANTS IN PART AND DENIES IN PART** the motion for partial summary judgment as to pre-May 6, 1965 claims (Dkt. No. 73), **DENIES** the motion to exclude the testimony of William Hager, and **ORDERS** the parties jointly to file tabulated claims data in accordance with Part III.E of this Order no later than October 17, 2016.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

August 3, 2016
Charleston, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

JOHN DOE 2 AND JANE DOE 4,
 Plaintiffs,
vs. CASE NO. 2010-CP-10-5520
THE BISHOP OF CHARLESTON, ET AL,
 Defendants.

(Caption Continues on Page 2)

DEPOSITION OF: JANE DOE 4

DATE: June 3, 2014

TIME: 1:05 PM

LOCATION: Law Offices of
 MCNAIR LAW FIRM
 100 Calhoun Street, Suite 400
 Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Roxanne M. Easterwood, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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

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

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

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

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

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

20 A. Yeah.

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

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

EXHIBIT C

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

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

v.)

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

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

Jury Trial Requested

Complaint

For their complaint, the plaintiffs allege:

Parties and Jurisdiction

1. Plaintiffs are adult citizens and residents of a state other than South Carolina. Each was sexually molested as a child by a priest of the Diocese of Charleston, James W. McCarthy, when James McCarthy was assigned to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971.
2. Pseudonyms are used for the plaintiffs due to the sexual abuse injury, which is the subject of this complaint. The defendants will be informed of the identity of the plaintiffs

FILED
2010 JUL -9 PM 2:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

EXHIBIT D

Page 1

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
JANE DOE 11,
Plaintiff,

vs. CASE NO. 2012-CP-10-5559
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.

DEPOSITION OF:

DATE: September 4, 2014
TIME: 11:58 a.m.
LOCATION: McNair Law Firm
100 Calhoun Street
Charleston, SC

TAKEN BY: Counsel for the Defendants
REPORTED BY: Janice N. Shepherd,
Registered Professional
Reporter

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ADMINISTRATOR OF THE DIOCESE OF
CHARLESTON, IN HIS OFFICIAL CAPACITY;
ROBERT J. BAKER, FORMER BISHOP OF
CHARLESTON, IN HIS OFFICIAL CAPACITY:

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swall@mcnair.net

(INDEX AT REAR OF TRANSCRIPT)

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being first duly sworn, was examined and testified
as follows:

EXAMINATION

BY MS. WALL:

Q. Would you state your full name for the
record, please?

A.

Q. , my name is Susan Wall, and

I represent one of the named defendants in the
lawsuit that you filed, and you filed under the
pseudonym of Jane Doe 11. And I represent
Mr. Haller, and on the telephone is attorney Jim
Bruner. He represents Mr. Richter and Richter &
Haller. And of course your counsel is here, and
Mr. Shahid represents the diocese and the
diocese-related entities.

We're going to be asking you questions
here today. Let me go through the instructions.
Have you ever been deposed before?

A. No.

Q. We'll be asking you questions. If at
any time you either don't hear or don't understand
the question, you need to let the examiner know.
And, for example, I'll be asking you questions

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first. If at any time you don't hear or don't
understand the question, just please let me know.
I'll be happy to restate or rephrase, because once
you answer, we're entitled to assume that you did
understand the question and that you've responded
fully to the best of your ability, and of course
you are under oath to tell the truth. If at any
time you'd like to take a break, that's absolutely
fine. However, I caution you that during a break,
you are not entitled to discuss your testimony or
anticipated testimony with anyone. That will come
at the conclusion of your deposition here today.

The court reporter, whom you've met,
she will be taking down everything that's said
during your deposition. There may be some asides,
some conversation between counsel. That will also
be taken down.

A. Okay.

Q. And your testimony and the questions
asked will be part of a transcript. Now, Counsel
has agreed in these cases that your name will be
kept confidential. I'm using it during your
deposition, and the sealed deposition will contain
your real name and the names of witnesses that you
give us and that sort of thing. But for purposes

1 (Pages 1 to 4)

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EXAMINATION

BY MR. SHAHID:

Q. Good afternoon. I'm Peter Shahid. I represent the Diocese of Charleston and the other individuals, Bishop Baker, Bishop Gugliemone, Monsignor Laughlin, who we collectively refer to as the diocesan defendants. And the same ground rules that Ms. Wall had mentioned to you apply. If at any time you don't understand any of my questions, just ask me to repeat it.

A. Okay.

Q. Do you need to take a break? Are you doing okay?

A. I'm fine.

Q. You and your first husband, Paul, divorced in 1992; correct?

A. I can't remember if it was '91 or '92. But, yes.

Q. Either '91 or '92. What was the reason for the divorce?

A. He was unfaithful.

Q. Okay. And is that the reason why you separated from him?

A. Yes.

Q. And then from that, from Virginia, you

Page 26

1 moved to Georgia?

A. Yes.

Q. As a result of your separation from your husband?

A. Yes.

Q. And the divorce decree was issued in Georgia?

A. Yes.

Q. Do you remember the county?

A. Actually, I'm not -- well, I'm not sure exactly where, if it was in Georgia or Virginia where it actually was filed. It may have been Virginia. I'm not sure. I was living in Georgia, but he was still in Virginia. I don't remember how that works.

Q. You certainly did not know your husband, Robert, in the time frame that he was living in Georgia or his family was visiting relatives in South Carolina when he was a minor?

A. No.

Q. Your first meeting with your husband was in Georgia when you all were both adults?

A. Yes.

Q. How soon after you had moved to Georgia did you meet

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A. I first met him probably within the first six months.

Q. And you were employed at the time?

A. Yes.

Q. Was he employed at the time?

A. Yes.

Q. And I think Ms. Wall asked you, your daughter was about nine years old at the time?

A. When we married.

Q. So she was obviously younger at the time of meeting him?

A. Yes.

Q. You were clearly aware of allegations regarding -- stating he was abused by Father Jim?

A. Not when I first met him.

Q. Not when you first met him. But -- let me rephrase the question. Prior to your marriage in July of 1993; is that correct?

A. Yes.

Q. Prior to your July of 1993 --

A. 1993.

Q. 1993. Prior to your marriage to in July of 1993, you were fully aware of the allegations that he has raised regarding being

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1 sexually abused by Father Jim?

2 MS. WALL: Object to the form.

3 THE WITNESS: Yes, I was aware of it.

BY MR. SHAHID:

Q. You had discussions with him about those allegations?

A. Very brief.

Q. But it was your suggestion that he meet with this woman named Nancy Loeb, I think?

A. Yes.

Q. What was it that you thought was a good idea or necessary for t to meet with Nancy Loeb?

A. I mean, he was struggling with, you know, the whole situation. And just in talking to him, because I had been to counseling myself, I just felt it would be a helpful thing to him to talk it over with someone in that position.

Q. What was the reason for your counseling with this woman, Nancy Loeb?

A. Just because of my divorce.

Q. And the reason for the divorce?

A. Correct. It was just me, you know, just making sure I was healthy.

Q. This woman's name is Nancy L-O-E-B?

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1	CERTIFICATE OF REPORTER						
2							
3	I, Janice N. Shepherd, Registered						
4	Professional Reporter and Notary Public for the						
5	State of South Carolina at Large, do hereby certify						
6	that the foregoing transcript is a true, accurate,						
7	and complete record.						
8	I further certify that I am neither						
9	related to nor counsel for any party to the cause						
10	pending or interested in the events thereof.						
11	Witness my hand, I have hereunto						
12	affixed my official seal this 12th day of						
13	September, 2014, at Charleston, Charleston County,						
14	South Carolina.						
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24	Janice N. Shepherd, RPR, CSR						
25	My Commission expires						
	October 11, 2014						

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

2010-CP-10-5520
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

John Doe,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-6694

Jane Doe 1,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8054

Jane Doe 2,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8055

FILED
2011 JUN 23 PM 3:55
JULIE M. ALBISTON
CLERK OF COURT
BY _____

Jane Doe 3,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8056

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.

Civil Action No.: 2010-CP-10-5520

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.

Civil Action No.: 2012-CP-10-5559

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.

Civil Action No.: 2013-CP-10-3733

John Doe 230,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2014-CP-10-2130

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.

Civil Action No.: 2016-CP-10-1632

**DIOCESSE DEFENDANTS' OMNIBUS MOTION
FOR SUMMARY JUDGMENT BASED UPON RES JUDICATA EFFECT OF CLASS
ACTION SETTLEMENT AND JUDGMENT**

Defendants, 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, ("the Diocese Defendants") move for judgment as a matter of law on all

claims made by the above referenced Plaintiffs pursuant to Rule 56, SCRPC. Because Plaintiffs cannot come forward with admissible evidence establishing that there remain genuine issues of material fact for trial, all claims against the Diocese Defendants should be dismissed with prejudice. In particular, the Diocese Defendants put forth the following:

Plaintiffs claims are barred by the *res judicata* effect of the 2007 Class Action settlement and judgment approving settlement.

There is no genuine issue of material fact that the Diocese of Charleston entered into a Class Action Settlement of all potential claims that employees or priests of the Diocese sexually abused minors. On January 12, 2007 the Defendants entered into a Class Settlement Agreement to settle the claims of a class of people who alleged that they were sexually abused as minors by personnel of the Diocese Defendants. *See Exhibit A – Settlement Agreement - 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 Representative v. The Diocese of Charleston, A Corporation Sole, and the Bishop of the Diocese of Charleston in His Official Capacity of a Class of People Similarly Situated, Case Numbers 2006-CP-18-1310, 1311, 1636 (Dorchester County Court of Common Pleas).* The Settlement Agreement addressed the claims of two classes of individuals:

- All individuals born on or before August 30, 1980 who claim to have been sexually abused as minors by the Diocese of Charleston personnel (“primary class”) and
- those individuals’ spouses and parents (“consortium class”).

A Fairness Hearing was held before the Honorable Diane S. Goodstein, on March 9, 2007, and the Court finally approved the Settlement Agreement by Orders dated July 30, 2007 and August 31, 2007. *See Exhibit B – Order Certifying Classes and Giving Preliminary Approval to Settlement; Exhibit C - July 30, 2007 Order; Exhibit D – August 31, 2007 Order.* The Court determined that the proposed Class Settlement was fair to both the named class representatives and to the absent class members and that both the named plaintiffs and

Class Counsel were adequate representatives of the class. The Court entered its judgment approving the settlement classes and ordered Class Counsel to notify the class of the settlement. The classes were "opt-out" classes, that is, if an individual satisfied the criteria of either class, he is automatically a class member, bound to the law of the case and the terms of the Settlement Agreement. An individual must have affirmatively "opted-out" by filing a Notice of Opt Out to preserve his rights to pursue an independent claim against the Defendants. The Court's Order also specified the manner in which notice of the class settlement and claims procedure was to be provided to the members of the class, including publication in 10 South Carolina newspapers and the *Augusta Chronicle*, as well as the Diocese's publication the *Catholic Miscellany*. Class Counsel complied with the Court's order to notify the class and the claims process went forward as set forth in the settlement agreement and the Court's Orders.

With the judgment entered, the current Plaintiffs' claims are barred under the doctrine of *res judicata*, which applies to putative class members, both absent and actual, in the same manner as it applies to ordinary litigation. The doctrine of *res judicata* is an absolute bar to a subsequent complaint or cause of action in which the merits of that complaint were previously adjudicated in a final decision, the identity of the parties to the previous litigations are identical to the subsequent case, and the merits of the successor action were included in the preceding one. "*Res judicata* requires proof of three elements: (1) that 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*, 677 S.E.2d 213, 217 (S.C. Ct. App. 2009); citing *Plott v. Justin Enter.*, 679 S.E.2d 92, 95 (S.C. 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 of action, meaning the underlying facts combined with the law giving wht party a right to a remedy of one form or another based thereon." *Judy*, 677 S.E.2d at 218 quoting *Plum Creek Devel. V. City of Conway*, 513 S.E.2d 106, 109 (1999).

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*, 479 S.E.2d 849, 855 (S.C. Ct. App. 2996).

The captioned cases involve persons who were South Carolina residents (or in the case of Jane Doe 4 – a Georgia resident living within the distribution area of the *Augusta Chronicle*. See **Ex. E Jane Doe 4** Depo. at 70:25-72:15) in 2007, when notice of the class action settlement was published. See **Ex. F - Jane Doe 1** Depo. at 64:16 – 65:22, **Ex. G Jane Doe 2** Depo. at 35:3 – 38:15, **Ex. E Jane Doe 4** Depo. at 30:16-25 and 82:10-84:23, **Ex. H John Doe 193** Depo. at 48:14-16 and 90:1-22, **Ex. I- John Doe 230 Compl.** at ¶ 1, and **Ex. J - John Doe 297 Compl.** at ¶ 1. Because the class action judgment is binding upon all those for whom the notice program was reasonably calculated to reach, their claims are now barred by *res judicata*. All three elements of *res judicata* are present – the Plaintiffs’ claims of sexual abuse or loss of consortium are identical to the claims asserted in the court-approved class action settlement; Plaintiffs allege they were minors who suffered sexual abuse by an employee, agent, or priest of the Diocese of Charleston, or were parents or spouses of abuse victims; the allegations of abuse are the same as the conduct defined in the Class Action settlement. All Plaintiffs fall squarely within the classes of claimants whose causes of action were resolved and released by the Class Action Settlement and Judgment.

A judgment in favor of the class extinguishes the claims of all members of that class, and the claims merge into the judgment granting relief. *Cooper v. Fed. Res. Bank of Richmond*, 467 U.S. 867, 874 (1984). The Class Action Court entered a final, valid, and enforceable judgment on the merits of the claims asserted on behalf of the class of similarly situated individuals. The Class Action Court’s orders of July 30, 2007 and August 31, 2007 approved the Settlement Agreement that incorporated the claims of the class of claimants (**Exhibits C & D**). There is no

dispute that these Plaintiffs' claims were encompassed by the Class Action Settlement and Order Approving Settlement. These Plaintiffs neither participated in, nor opted out of the Class Action Settlement.

These Plaintiffs' status as members of the approved class of claimants under the Class Action further satisfies the requirement for identity of parties. "There is, of course, no dispute that under elementary principle of prior adjudication, a judgment in a properly entertained class action is binding on the class members in any subsequent litigation." *Id.* On the fact of their Complaints, these Plaintiffs clearly were similarly situated members of the settlement class approved by the Class Action Court, as they fall within the definitions of the classes, but did not participate in the claims process. The Defendants likewise are identical – the Catholic Diocese of Charleston and the Bishop of Charleston. Therefore, the identity of parties cannot be disputed.

Finally, the claims of these Plaintiffs could have been raised in the approved Class Action claims process. These Plaintiffs claim either to have been sexually abused as minors by agents, employees, or priests of the Diocese. The Diocese litigated and resolved all claims of past sexual abuse in the Class Action Court, ultimately buying its peace through the Class Action Settlement Agreement. The Class Action Settlement provided a specific framework for claims to be made and the Class Notice was clear that failure to participate in the settlement framework would result in their claims being completely and forever barred.

All issues arising out of claims of childhood sexual abuse by Diocese of Charleston personnel were previously litigated in the Class Action. Fair and adequate notice was provided for the March 9, 2007 Fairness Hearing and for participation in the Class Settlement. Due process was afforded the class members, and the Plaintiff had a full and fair opportunity to litigate the issues raised in his current Complaint. The Defendants now seek summary judgment on all claims on the grounds that no genuine issue of material facts exist to support the same.

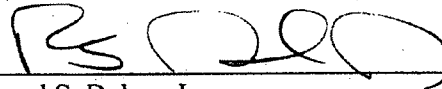
Plaintiffs are barred from relitigating the issues finally determined in the Class Action. As the Class Action Court noted, the class settlement sought to “protect the interests of both the absent class members and the *Diocese’s right to have the conclusive effect of a class action.*” (Emphasis added). The Class Settlement is binding on absent class members if the notice procedure was in the best practicable form, and was reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and give them an opportunity to present objections. *See Phillips Petroleum v. Shutts*, 472 U.S. 797, 812 (1985) (internal quotations omitted). The Class Action court has great flexibility in determining what is the most practical notice under the circumstances to meet the requirements of due process. Protecting the Members of the Class: Notice, 7B *Fed. Prac. & Proc. Civ.* § 1793 (3d. ed. 2014). The record is clear and undisputed – Class Counsel provided actual notice to the 20 or so individuals who had previously contacted the Diocese about alleged sexual abuse – the Diocese Defendants, Class Counsel, and the Solicitor for the 1st Circuit all confirmed that was the extent of the list. There are no others. Then Class Counsel provided notice by publication in 10 South Carolina newspapers plus the *Augusta Chronicle* and in the Diocese’s state-wide publication. The Class Action court took specific note of the national and international publicity regarding the Class Action Settlement. All told, approximately 27% of claims in the Class Settlement came from individuals living outside of South Carolina.

The Due Process Clause does not require any inquiry into whether any individual received notice of class settlement. Rather, the Constitution merely requires that notice be reasonably calculated to reach absent parties. *Newburg on Class Actions* § 8:35 (5th. Ed. 2014). As the Class Action Court found, the notice procedure complied with Due Process and those members of the settlement class who did not submit claims in the Class Action Settlement are now barred by the settlement and *res judicata*.

CONCLUSION

These Plaintiffs' claims are barred under the doctrine of *res judicata* and pursuant to the terms and conditions of the Class Action Settlement and the Class Action Court's Orders approving that settlement and determination that the notice program comported with Constitutional due process. Because the Class Action Court's judgment is binding against the absent class members who failed to opt out of the class action or to submit claims as approved by the Court, these Plaintiffs cannot now relitigate their claims. The Diocese Defendants resolved all claims of sexual abuse and attendant loss of consortium in 2007, and that settlement and the Court's judgment should be given their full effect. For that reason, these Plaintiffs' claims against the Diocese Defendants must be dismissed.

TURNER, PADGET, GRAHAM & LANEY, P.A.



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Monsignor Martin Laughlin, Former Administrator
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Capacity; Robert J. Baker, Former Bishop Of
Charleston, In His Official Capacity

June 28 2017

CERTIFICATE OF SERVICE

Civil Action No.: 2009-CP-10-6694
Civil Action No.: 2009-CP-10-8054
Civil Action No.: 2009-CP-10-8055
Civil Action No.: 2009-CP-10-8056
Civil Action No.: 2010-CP-10-5520
Civil Action No.: 2012-CP-10-5559
Civil Action No.: 2013-CP-10-3733
Civil Action No.: 2014-CP-10-2130
Civil Action No.: 2016-CP-10-1632

FILED
2017 JUN 23 PM 3:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I hereby certify that this 23 day of June, 2017, a copy of the *Diocese Defendants' Omnibus Motion For Summary Judgment On Absolute Charitable Immunity* has been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

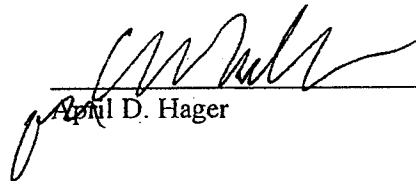
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Chicago, IL 60611-3607



April D. Hager

EXHIBIT A

John Doe 10 2010-CP-10-7233 00647

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 12^{*} 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

1 



John Doe 10 2010-CP-10-7233 00647

Arbitration Agreement" formalizing the agreement reached between the Representatives¹ 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 abused² 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.

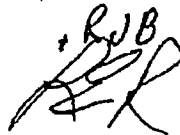


The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement 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:

<u>Type of Alleged Abuse</u>	<u>Minimum Payment / Maximum Payment</u>	
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


John Doe 10 2010-CP-10-7233 00651

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

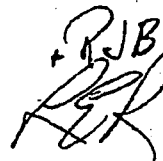
\$200,000.00

Loss of consortium (Parent or Spouse)

\$20,000.00

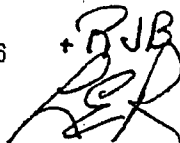
The criteria for the Arbitrator to determine the amount of the award for a sexual abuse claim shall include, among other things, the type of abuse, its duration and the extent of injuries suffered by the Claimant. In cases in which the claim is for loss of consortium, the award shall be \$20,000.00 for 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.

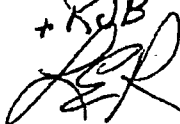


John Doe 10 2010-CP-10-7233 00651

- 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)

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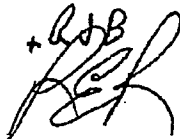
shall control. In any event, as to all issues, the orders of the court shall control.

- 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

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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 of 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



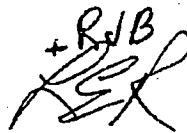
hearing shall be no longer than two (2) hours. At Claimant's arbitration hearing, the Claimant must appear unless he or she is a minor, incompetent, serving in the military (or merchant marine), deceased or otherwise unavailable for medical, psychological, or other substantial reasons. The Claimant and/or 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.



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.



- 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.

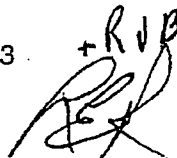
5. ATTORNEYS FEES. In consideration of the substantial efforts of plaintiffs' counsel (past



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



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.

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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

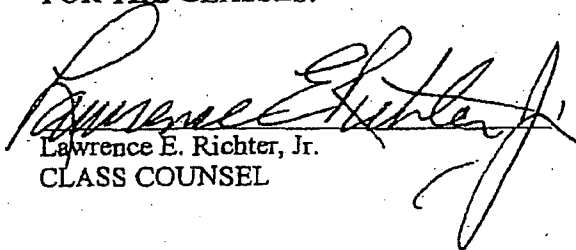


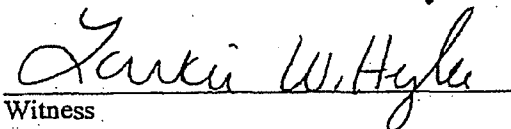
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claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

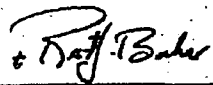
Executed this 12 day of January, 2007.

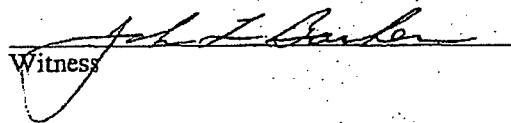
FOR THE CLASSES:


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

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EXHIBIT B

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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

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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 SCRCF 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

SCRCF 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.

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- A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused³ 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.

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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

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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. Mingo*, 287 S.C. 561, 340 S.E.2d 154 (Cl.App. 1986). Typicality requires that the claims or defenses of the class be identical. SCRCF 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. *McGlothlin 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

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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:

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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.

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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.

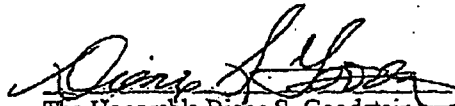
C. **Prayer for Attorneys Fees.** The Court will also consider at this hearing an award of attorneys' fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than February 14, 2007 documentation supporting their request for attorneys' fees and such other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

EXHIBIT C

John Doe 10 2010-CP-10-7233 01112

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT
 CASE No. 06-CP-18-1310
 CASE No. 06-CP-18-1311
 CASE No. 06-CP-18-1636

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

Plaintiffs,)

vs.)

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

Defendants.)

ORDER APPROVING SETTLEMENT

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

¹One 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 & Jacqueline*, 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, SCRCR (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 & Jacqueline*, 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 SCRCR 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 have 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 rewritten 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."

²Recall 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 *Ninnery 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,

³Any 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.

⁴John 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

⁵While 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*; *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 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 hours⁶, 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.

John Doe 10 2010-CP-10-7233 01127

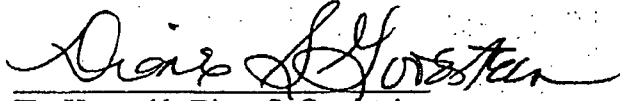
process for the members of the classes begin within 10 days of the date of this order with notice to the class as set out above; and

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!!!


The Honorable Diane S. Goodstein
Presiding Judge

This 30 day of July, 2007
At Orangeburg, South Carolina

EXHIBIT D

John Doe 10 2010-CP-10-7233 01218

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 06-CP-18-1636

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

ORDER OF THE COURT

v.

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

Defendants.

2007 AUG 31 PM 5:00
CLERK OF COURT
OFFICE OF CLERK

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 *AND to this extent it is acknowledged and approved*, said agreement is hereby approved and made the Order of
this Court.

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

QSP 1043
-1-

John Doe 10 2010-CP-10-7233 01218

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!

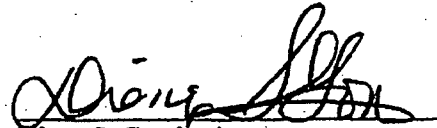
Furthermore, the Court has appointed Desa Ballard, Esq. as a non-testifying consultant in evaluating and addressing the issues before the Court in this matter, as all counsel was made aware of in a August 29, 2007 Order. Payment for Ms. Ballard's services shall be made from the

R.App. 071

Def. 2 - pg 2 of 3

John Doe 10 2010-CP-10-7233 01220

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
Summerville South Carolina

R.App. 072

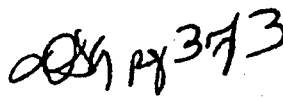

- 3 -

EXHIBIT E

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
JOHN DOE 2 AND JANE DOE 4,
 Plaintiffs,
 vs. CASE NO. 2010-CP-10-5520
THE BISHOP OF CHARLESTON, ET AL,
 Defendants.

(Caption Continues on Page 2)

DEPOSITION OF: JANE DOE 4

DATE: June 3, 2014

TIME: 1:05 PM

LOCATION: Law Offices of
MCNAIR LAW FIRM
100 Calhoun Street, Suite 400
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Roxanne M. Easterwood, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

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

1 Q. Brother P, I'm sorry. Is Brother P
2 still alive?

3 A. No.

4 Q. When did Brother P get you all together
5 to talk about it?

6 A. I'm going to say just a few months
7 before he died actually.

8 Q. When did he die?

9 A. In 2009.

10 Q. Do you recall when in 2009?

11 A. November.

12 Q. So it would have been some time during
13 the year 2009 he brought all five siblings
14 together?

15 A. I believe so.

16 Q. Did you have this meeting by telephone
17 or in person?

18 A. Let me think. I think the first time
19 Brother R wasn't there. I think I went and picked
20 Sister L up and then we went to our older sister's,
21 and her and my brother, Brother P, lived within
22 like five miles of each other.

23 Q. That was where?

24 A. In Fort Mill. So that's where we went
25 and had a talk.

1 Q. I mean alcohol or drugs, anything along
2 those lines?

3 A. No. You know what, I cannot stand the
4 taste or smell of alcohol because Father Jim put it
5 in our Kool-Aid. I hate Kool-Aid, too. I can't
6 even -- I don't want to smell it. I don't want to
7 look at it. I smoked for a lot of years.

8 Q. Cigarettes?

9 A. Yes.

10 Q. In followup to some of the other
11 questions asked about why you didn't bring the
12 lawsuit, there was never a period of time in which
13 you were unaware of what happened to you, what
14 Father Jim did to you?

15 A. There was a time when I didn't remember
16 everything, but like some things just really stood
17 out to me and they were things that I will never
18 forget, and then others I have been reminded of.

19 Q. In general terms, you have always been
20 fully aware of being abused by Father Jim?

21 A. Yes. But you have to understand, I
22 didn't want to think about that, and I wanted to
23 try to forget it. I think all of us wanted to
24 forget it even though it messed up our lives.

25 Q. I understand. Back in 2007 were you

1 living in the Augusta area?

2 A. Yeah. I was living in Martinez.

3 Q. That's in the Augusta area?

4 A. It's a suburb. It's actually a small
5 town next to Augusta, yes.

6 Q. Did you live there in 2008 as well?

7 A. Yes. I've been living there since
8 1993.

9 Q. You list on your answer to the
10 interrogatories that, and you talked about earlier
11 113 Stone Mill Drive, Martinez, Georgia?

12 A. That's where I live now.

13 Q. How long have you lived at that
14 address?

15 A. Since 1993.

16 Q. So you lived there, obviously, in 2007,
17 2008 and 2009?

18 A. Yes.

19 Q. Aiken is right across the river from --

20 A. Who?

21 Q. Aiken, South Carolina.

22 A. Aiken is about an hour away.

23 Q. The newspaper that services the Aiken
24 area, the Aiken Standard, did you ever read the
25 Aiken Standard?

1 Q. There's been no finding by any court or
2 by anybody that your mother is incompetent,
3 correct? There's been no such finding, right?

4 A. No. Just the doctor telling her that
5 she had the short-term memory loss.

6 MS. WALL: That's all I have. Thank
7 you.

8 EXAMINATION

9 BY MR. SHAHID:

10 Q. I think you said your mom lives with
11 your Sister S in Fort Mill now?

12 A. Yes.

13 Q. How long has she lived there?

14 A. I was trying to think when my sister's
15 husband died, and I think it was just a couple
16 years after daddy died. So I think it was -- he
17 died in like around 2004. At that time my sister
18 and brother-in-law had built them an in-law
19 apartment onto their house.

20 Q. Sister S?

21 A. Yes. And then of course daddy died and
22 then when my sister's husband died. It was very
23 unexpected. He just pretty much dropped dead in
24 the front yard. And so anyway they had to sell the
25 house in Tega Cay. They lived in Tega Cay at that

1 time. And my mother actually came and stayed with
2 me for about a month, and then while their house
3 was being -- getting ready for them.

4 So anyway, they bought a little house
5 in Fort Mill and then her and Sister S moved into
6 it and they shared the expense.

7 Q. That would have been in what year that
8 they moved to Fort Mill?

9 A. Probably around 2006 or so maybe. You
10 can't quote me on that because I'm not real sure,
11 but I think just about that.

12 Q. So certainly in 2008 and 2009 they
13 lived in South Carolina?

14 A. Yes. Yeah. Because before that they
15 lived in Tega Cay.

16 Q. Where was that?

17 A. In South Carolina.

18 Q. That's around the upper part of the
19 state?

20 A. Yes. It's close to Charlotte.

21 Q. But in South Carolina?

22 A. The North Carolina line, yeah.

23 Q. Your Brother P, before he died where
24 was he living?

25 A. He lived in Tega Cay.

1 Q. Also South Carolina?

2 A. Yes.

3 Q. Your Sister-in-Law A, back in 2007
4 where was she living?

5 A. They live in Ringgold, Georgia now.

6 But then -- I think that's where they live, but I'm
7 not real sure.

8 Q. That was in Georgia?

9 A. Ringgold, Georgia, yes.

10 Q. That's close to what other city?

11 A. I have no idea. I always think
12 Atlanta, but I think he's like maybe two, three
13 hours from Atlanta.

14 Q. That's your brother Brother R's wife?

15 A. Yes.

16 Q. Then Sister L lived where?

17 A. She at that time lived in North
18 Augusta.

19 Q. She still lives in North Augusta now?

20 A. No. She lives in Columbia.

21 Q. Back in 2007 she lived in North
22 Augusta?

23 A. I'm pretty sure, yeah.

24 MR. SHAHID: Thank you. That's all the
25 questions I have.

1 CERTIFICATE OF REPORTER

2 I, Roxanne M. Easterwood, Registered
3 Professional Reporter and Notary Public for the
4 State of South Carolina at Large, do hereby certify
that the foregoing transcript, pages 1 through 92,
is a true, accurate, and complete record.

5 I further certify that I am neither
6 related to nor counsel for any party to the cause
pending or interested in the events thereof.

7 Witness my hand, I have hereunto
affixed my official seal this 3rd day of June 2014
at Charleston, Charleston County, South Carolina.

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18
19 Roxanne M. Easterwood, RPR
20 My Commission expires
21 February 1, 2015
22
23
24
25

EXHIBIT F

Jane Doe 1

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, : CASE NO.
PLAINTIFFS, : 2010-CP-10-5520
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; RICHTER & HALLER, LLC, :
DEFENDANTS. :

JOHN DOE 10, : CASE NO.
PLAINTIFF, : 2010-CP-10-7233
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; RICHTER & HALLER, LLC, :
DEFENDANTS. :

DEPOSITION OF JANE DOE 1

(Caption continued on next page)

Jane Doe 1

1 Q. You need to take a break?

2 A. No, no.

3 Q. We've been going quite a while.

4 A. I don't want to take a break. I want to
5 finish.

6 MR. SHAHID: This is a good time to take a
7 break.

8 THE WITNESS: I was outvoted.

9 (A recess transpired from 11:55 a.m. until
10 12:05 p.m.)

11 MR. SHAHID: We'll go back to some
12 business.

13 THE WITNESS: I thought lunch was going to
14 be served, but I guess it isn't, okay.

15 BY MR. SHAHID:

16 Q. Jane Doe 1, where were you living, if you
17 remember, back in January of 2007?

18 A. Let me think when that would be. I don't
19 know if I was still in Augusta or in Saluda. Oh,
20 that's a lot -- how many years ago was that?

21 Q. Well, this is 2014 so more than seven
22 years ago.

23 A. I was probably in Fort Mill, I believe.

24 Q. Okay. The three places that you've lived,
25 your entire life, has either been in the Saluda area,

Jane Doe 1

1 the Augusta area and now in the Fort Mill area; is
2 that correct?

3 A. Yes. Small life.

4 Q. I think you've had a full life. And
5 you've lived with your daughter now in Fort Mill
6 still; is that correct?

7 A. Yes, I'm sorry. Sorry, darling.

8 Q. Were you able to obtain newspapers to read
9 back in -- when you lived in Fort Mill or Augusta or
10 in Saluda?

11 A. Yes.

12 Q. Okay. And would the state newspaper
13 service the Saluda area?

14 A. Yes, we would get the state in Saluda.

15 Q. What paper would you get in the Augusta
16 area?

17 A. Augusta Chronicle.

18 Q. And around the Fort Mill?

19 A. Fort Mill Times I believe is the name of
20 it.

21 Q. Charlotte Observer?

22 A. Yes.

23 Q. Okay.

24 A. I said Chronicle, didn't I? Charlotte
25 Observer.

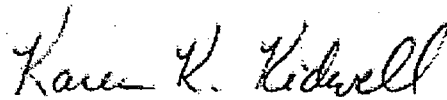
Jane Doe 1

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Karen K. Kidwell, RMR, CRR, in and for the State of North Carolina, do hereby certify that there came before me on Thursday, July 24, 2014, the person hereinbefore named, who was by me duly sworn to testify to the truth and nothing but the truth of her knowledge concerning the matters in controversy in this cause; that the witness was thereupon examined under oath, the examination reduced to typewriting under my direction, and the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any attorney or counsel employed by the parties hereto or financially interested in the action.

This the 2nd day of August, 2014.



Karen K. Kidwell, RMR, CRR
Notary Public #19971050142

EXHIBIT G

Jane Doe 2

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,	:	CASE NO.
PLAINTIFFS,	:	2010-CP-10-5520
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; RICHTER & HALLER, LLC,	:	
DEFENDANTS.	:	

JOHN DOE 10,	:	CASE NO.
PLAINTIFF,	:	2010-CP-10-7233
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; RICHTER & HALLER, LLC,	:	
DEFENDANTS.	:	

DEPOSITION OF JANE DOE 2

(Caption continued on next page)

Jane Doe 2

1 John Doe what they told your mom and dad? Or you
2 just didn't want to talk about it?

3 A. I didn't want to talk about it then. I
4 don't think they gave them any specifics, though,
5 from -- from later conversations with them.

6 So it really did, it just all went away.
7 And as I said, as far as I was concerned, that was
8 hunky dory with me. I just went on about my
9 business.

10 So my dad died in 2002. And then my
11 husband died in 2004. Matter of fact, today's the
12 tenth anniversary of his death. So . . .

13 Q. What happened to Husband of Jane Doe 2?

14 A. Big heart attack.

15 Q. Had a heart attack?

16 A. And you would never picture -- now, me,
17 yeah. Not him. He was very athletic. As a matter
18 of fact, he and our youngest son was still at home
19 then. . . And they were training to do an
20 Appalachian Trail hike. And he coached. He was
21 very -- he was -- but anyway, it's one of those --
22 just the big one.

23 And what is so ironic. I was working in
24 the cath lab at the time. And I just kept thinking
25 if we could just get him to the cath lab. Never made

Jane Doe 2

1 it out of the driveway. Anyway, so he was 50. Well,
2 51.

3 Anyway, so things kind of went along. I
4 ended up selling that house. I couldn't -- I
5 couldn't afford that. My husband was a wonderful,
6 wonderful man, but he sucked at managing money. He
7 tried many times to start his own business. And it
8 just never failed. I mean, it never, never turned
9 out well. Fortunately, I was gainfully employed as a
10 nurse for all those years so thank God, and thank God
11 I had something to fall back on.

12 And anyway, you know, I had debts to pay
13 that I had no idea. But anyway, that's neither here
14 nor there. All that's straightened out.

15 And Mom and I moved into a townhouse in
16 Fort Mill, one floor, that was, you know, good for
17 us. And because Mom was using a walker then. And
18 that's where we live today.

19 And I came home from work one day. I
20 would say and Gregg probably knows better. I don't
21 know when John Doe contacted you. 2000 -- hold on,
22 '6, '7, somewhere thereabouts. I came home from work
23 one day, and my brother John Doe was sitting on my
24 couch. And my mother was in the chair, and my mother
25 said -- you know, I can just feel when things are --

Jane Doe 2

1 Momma said, come on in, darling, and sit down, she
2 says. John Doe wants to talk to you about something.

3 Well, I had a feeling I knew what it was
4 about. So they kind of ambushed me on this. And
5 that's when John Doe told me that he -- he had to do
6 something about -- he was having terrible mental
7 illness issues. He was diagnosed bipolar. He had
8 become agoraphobic. He hoarded. And he just said he
9 had to -- he had to bring this up. He had to do
10 something. I mean, he felt that that would help him.

11 Well, how can you say no to that? So I
12 broke my steadfast rule of never discussing it. And
13 I agreed. And he told me he had already talked to
14 Gregg at that time. And I was suspect.

15 Q. Is that when you discussed it with your
16 mother the first time or did you not?

17 A. I haven't -- I still haven't discussed it
18 with my mother, only, to know --

19 Q. That something happened?

20 A. Oh, a lot happened.

21 Q. Yeah, I know.

22 A. And I told her. And I -- and even last
23 night. I've become a lot bolder ever since we met up
24 with Gregg, and I finally decided, the hell with it,
25 you know. We're caught up in this thing. And I, you

Jane Doe 2

1 know -- and I told -- and I told Gregg the other day,
2 if, you know, if nothing else happened, now --

3 MR. MEYERS: Hang on.

4 THE WITNESS: Hush.

5 MR. MEYERS: If you're relating something
6 factual about the history, that's fine. If it's a
7 conversation between you and I --

8 THE WITNESS: Okay. Never mind then.
9 I'll rephrase it. I'm glad that I'm able to talk
10 about it. That -- that was my point. So anyway.

11 BY MR. BRUNER:

12 Q. So when was this -- when did John Doe and
13 your momma ambush you?

14 A. I would think around 2007, sometime. It
15 was cold. Sometime thereabout.

16 Q. And Gregg told you at that point he had
17 already talked -- excuse me. John Doe told you?

18 A. John Doe had already talked to Gregg. And
19 I told him, I signed whatever I think, and I just
20 told him, just go ahead. And if you need me, let me
21 know. And that was the extent of my -- that was the
22 extent of my involvement at that time.

23 Q. Okay.

24 A. I became more involved -- John Doe was
25 diagnosed with cancer, and then I brought him to my

Jane Doe 2

1 n was going to ... and was going into
2 the first grade. And by that time, my husband was
3 working in Greenville.

4 Q. Greenville?

5 A. Greenville, South Carolina, and he
6 commuted some. And anyway, it was crazy. He never
7 did have -- have a job where we lived. It was the
8 craziest thing. We'd get -- anyway -- but it was all
9 right.

10 And we took Shannon to college in Rock
11 Hill, moved her in, and I like to never got my
12 husband out of there because, you know, she's daddy's
13 little girl. We finally left about 12:30 on that
14 Saturday night of, you know, moving your kid into
15 college. We got home, and that Monday morning, he
16 got offered a job in Charlotte.

17 So, heck, we sold that house and moved to
18 Charlotte. Well, we didn't move to Charlotte. We
19 moved to Tega Cay, which was wonderful because Alex,
20 you know, wonderful schools in Fort Mill, and anyway.

21 Q. So you moved --

22 A. And there I've been.

23 Q. You lived in Fort Mill since what year?

24 A. '95.

25 Q. Okay.

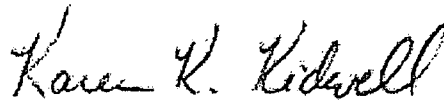
Jane Doe 2

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Karen K. Kidwell, RMR, CRR, in and for the State of North Carolina, do hereby certify that there came before me on Thursday, July 24, 2014, the person hereinbefore named, who was by me duly sworn to testify to the truth and nothing but the truth of her knowledge concerning the matters in controversy in this cause; that the witness was thereupon examined under oath, the examination reduced to typewriting under my direction, and the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any attorney or counsel employed by the parties hereto or financially interested in the action.

This the 2nd day of August, 2014.



Karen K. Kidwell, RMR, CRR
Notary Public #19971050142

EXHIBIT H

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JOHN DOE 193,

Plaintiff,

Case No.

2013-CP-10-3733

vs.

THE BISHOP OF CHARLESTON,
A CORPORATION SOLE; et al.,

Defendants.

AND RELATED CASE NOS. 2010-CP-10-5520,
2010-CP-10-7233, 2012-CP-10-5559,
2013-CP-10-4175, 2013-CP-10-4176

DEPOSITION OF: JOHN DOE 193

DATE: July 16, 2014

TIME: 10:00 a.m.

LOCATION: Family Therapy and Trauma Center
313 Bennett Circle Drive
Greer, SC 29650

TAKEN BY: Counsel for Defendants

REPORTED BY: KENNETH McCLURE,
Registered Merit Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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Myrtle Beach, SC
(843) 839-3376

Columbia, SC
(803) 731-5224

Greenville, SC
(864) 234-7030

Charlotte, NC
(704) 573-3919

1 Gates/Arrow, did you have to go through a background
2 check?

3 A. I would assume I did. I mean, you know,
4 they didn't ever talk to me about it. I assume I
5 did, because I was working under contract for the
6 government contracts.

7 Q. Did you have to have a senior clearance
8 level, since you were doing work for the Navy?

9 A. I don't know. Usually, they tell you, you
10 got this, you got that, but I was never told that.

11 Q. You were never told you had a certain level
12 of clearance that you could or couldn't do anything?

13 A. No.

14 Q. You have been a life-long resident of
15 Greenville County?

16 A. Yes.

17 Q. The incident that you just described for us
18 that Father Kaney did, the first time that something
19 happened, I believe, in response to a question
20 Mr. Bruner asked you, you said something happened at
21 Six Flags, or you were coming back from Six Flags?

22 A. That was -- the day we were coming back
23 from Six Flags wasn't the same day the thing first
24 happened, no.

25 Q. You described an incident in which he

1 putting up these bricks?

2 A. I haven't the slightest idea.

3 Q. John Doe 193, we went over that document in
4 front of you. Were you aware of a class action
5 settlement agreement taking place with the diocese
6 in 2007?

7 A. I have been told of it, yes.

8 Q. You have become aware of it now?

9 A. Yes.

10 Q. Were you aware of it back in 2007 or 2008?

11 A. No, sir.

12 Q. Were you aware of any other person
13 participating in the class action settlement
14 agreement?

15 A. No, sir.

16 Q. You have always lived in Greenville County.
17 Were you a subscriber of any newspapers in
18 Greenville County?

19 A. I have subscribed to newspapers, but to
20 read the news.

21 Q. The Greenville News?

22 A. "But to read the news."

23 Q. Okay.

24 A. I felt no reason to go looking at want ads
25 or anything else.

SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: JULY 16, 2014
REPORTER: KENNETH McCLURE.
CASE CAPTION: JOHN DOE 193 V. BISHOP OF CHARLESTON

PAGE	LINE	CHANGE	REASON

JOHN DOE 193

DATE

I, Kenneth McClure, Notary Public for the State of South Carolina, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent page within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

Kenneth McClure, RMR
My Commission Expires
September 13, 2023

EXHIBIT I

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 14-CP-10- <u>2130</u>
John Doe 230,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Negligence; Recklessness
	)	Intentional Tort
The Bishop of Charleston, a	)	Fraudulent Concealment
Corporation Sole, and	)	Unfair and Deceptive Trade Practices
The Bishop Of The Diocese of	)	
Charleston, in his official Capacity,	)	Jury Trial Requested
	)	
Defendants.	)	

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. Plaintiff John Doe 230 is a citizen and resident of South Carolina. Presently an adult, as a child he was sexually molested as children by a priest of the Diocese of Charleston named Justin L. Goodwin.
2. A pseudonym is used for the plaintiff due to the sexual abuse injury which is the subject of this complaint. The defendants will be informed of the identity of the plaintiff upon their agreement to protect his name as to the public record or, failing such agreement, upon order of the court after plaintiff's motion.
3. Justin Goodwin died in 1995. Prior to 1994, when he was arrested for sexual misconduct with minors, he was employed by the Defendants as a priest. During his employment, Defendants knew, or should have known, that Justin Goodwin was sexually abusive to children, as others were victimized prior to the plaintiff.

FILED
2014 APR - 1 AM 10:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

EXHIBIT J

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2016-CP-10- 1032

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 and Haller, LLC.

Defendants.

Negligence; Gross Negligence
Fraudulent Concealment
Civil Conspiracy
Professional Negligence
Breach of Fiduciary Duty
Injunctive Relief
UTPA

Jury Trial Requested

FILED
2016 MAR 31 AM 11:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. John Doe 297 is an adult citizen and resident presently residing in South Carolina but who resided in North Carolina from 1998 to 2014. He was born in 1964. As a child in the first grade he was sexually abused by two priests, each employed by the Diocese of Charleston. One priest the Plaintiff recalls only as "Jimmy," the other was Martin Bangert. Martin Bangert is referred to in this Complaint as the offending priest, or offending priest 1. The priest identified only by first name is referred to as offending priest 2. Collectively they are referred to as the

10-CP-10-5520

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

John Doe,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-6694

Jane Doe 1,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8054

Jane Doe 2,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8055

FILED
2017 JUN 23 PM 4:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Jane Doe 3,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8056

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.

Civil Action No. 2010-CP-10-5520

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.

Civil Action No.: 2012-CP-10-5559

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.

Civil Action No.: 2013-CP-10-3733

John Doe 230,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2014-CP-10-2130

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.

Civil Action No.: 2016-CP-10-1632

**DIOCESE DEFENDANTS' OMNIBUS MOTION
FOR SUMMARY JUDGMENT ON UNFAIR TRADE PRACTICES**

Defendants, 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, ("the Diocese Defendants") move for judgment as a matter of law on all claims made by the above-captioned Plaintiffs pursuant to Rule 56, SCRPC. Because Plaintiffs cannot come forward with admissible evidence establishing that there remain genuine issues of

material fact for trial, all claims against the Diocese Defendants should be dismissed with prejudice. In particular, the Diocese Defendants put forth the following:

I. SCUTPA

The Plaintiffs allege that the Diocese violated the South Carolina Unfair Trade Practices Act, which prohibits “[u]nfair methods competition and unfair 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); *Foggie v. CSX Transp., Inc.*, 313 S.C. 17, 24, 431 S.E.2d 587, 591 (1993). It also requires that the conduct be capable of repetition and affect the public interest. *Daisy Outdoor Advert. Co. v. Abbott*, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996). The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company’s procedures create a potential for repetition of the unfair and deceptive acts. *Wright v. Craft*, 372 S.C. 1, 30, 640 S.E.2d 486, 502 (Ct. App. 2006).

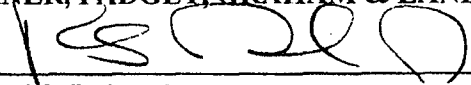
Quite simply, church activities for the benefit of its parish are not acts of trade or commerce. They are church services. It is noteworthy that the Circuit Court in Charleston has previously ordered that the operations of the Diocese are not subject to the UTPA and the victims of alleged sexual abuse cannot bring claims under the UTPA.¹ Critically, there is no allegation of the monetary value of these services offered by and engaged in by the Diocese. The accepted analysis of whether acts are subject to an UTPA claim is whether the specific acts at issue are trade or commerce, not whether general or unrelated conduct of a defendant might qualify as trade or commerce. See Ex. A at p. 15-17 and Ex. B at p. 8-9. Moreover, the entire basis of the Complaint is an allegation of sex abuse, not a claim involving trade or commerce. *Id.* The Complaint does

¹ See June 10, 2011, Judge Harrington Order as Exhibit A and June 17, 2011 Judge Young Order as Exhibit B.

not even attempt to connect sexual abuse with trade or commerce and has produced no evidence supporting the same.

Furthermore, the remainder of the UTPA allegations details issues concerning the class action settlement, meaning that the Plaintiff wants the court to consider a prior lawsuit to be considered trade or commerce. The settling of a class action claim is not trade or commerce. It is a private transaction between individuals or entities in relation to a lawsuit and no genuine issues of material fact have been produced in this lawsuit showing otherwise. Summary judgment on this issue is therefore appropriate.

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June 13, 2017

CERTIFICATE OF SERVICE

Civil Action No.: 2009-CP-10-6694
Civil Action No.: 2009-CP-10-8054
Civil Action No.: 2009-CP-10-8055
Civil Action No.: ~~2009-CP-10-8056~~
Civil Action No.: 2010-CP-10-5520
Civil Action No.: ~~2012-CP-10-5559~~
Civil Action No.: 2013-CP-10-3733
Civil Action No.: 2014-CP-10-2130
Civil Action No.: 2016-CP-10-1632

FILED
2017 JUN 23 PM 4:08
JULIE J. ARNSTROM
CLERK OF COURT

I hereby certify that this 23 day of June, 2017, a copy of the *Diocese Defendants' Omnibus Motion For Summary Judgment On Unfair Trade Practices* has been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

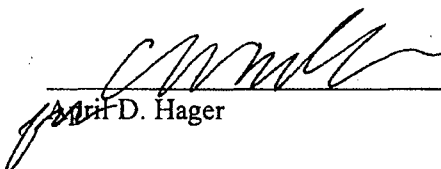
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April D. Hager

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
JOHN DOE , JANE DOE 1,)
JANE DOE 2, JANE DOE 3,)
Plaintiff,)
vs.)
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 NINTH JUDICIAL CIRCUIT
CASE NO. 09-CP-10-6694,
09-CP-10-8054,
09-CP-10-8055,
09-CP-10-8056

ORDER DISMISSING DIOCESE
DEFENDANTS

2011 JUL 15 PM 10:12
JULIE J. ARISTARQUE
CLERK OF COURT

This matter came before the Court on March 4, 2011 on Defendant's Motion to dismiss and Plaintiff's Motion for Partial Summary Judgment. After hearing arguments of counsel and reviewing the pleadings and memoranda, this Court finds that all of the claims in the four above cases are barred by the Doctrine of *Res Judicata*, collateral estoppel, and the Statute of Limitations.

The above captioned cases reference four separately filed, yet related cases.¹ The gravamen of the various causes of action contained in each Complaint are allegations of child sexual abuse which is claimed to have occurred between 1965-1971, by Fr. James McCarthy, a priest of the Diocese Defendants while he was assigned to St. William Church in Ward, South Carolina. The alleged perpetrator is deceased.

¹ The Court hereby consolidates these cases under case number 2009-CP-10-06694.

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On January 12, 2007, the above named Defendants, collectively hereinafter referred to as "Diocese Defendants," entered into a Class Action Settlement Agreement with a class of people, through Class Counsel, who claim to have been sexually abused as children by personnel of the Diocese of Charleston, and those claimants' parents and spouses. Several complaints were filed in the Dorchester County Court of Common Pleas in the following actions: 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 Representative of a Class of People Similarly Situated v. The Diocese of Charleston, A Corporation Sole, and the Bishop of the Diocese of Charleston in His Official Capacity; Case Numbers 2006-CP-18-1310, 1311, and 1636.

The Class Action Settlement Agreement, hereinafter referred to as the "Agreement," was submitted to Judge Diane Goodstein for class certification and approval. On January 23, 2007, the Court gave preliminary approval to the Class and ordered publication notice through ten South Carolina newspapers, and the Diocese Defendants' periodic newspaper, the Catholic Miscellany. Publication was satisfied through this order. On July 30, 2007, the Court entered an Order Approving Settlement Agreement. A supplemental Order was issued on August 31, 2007, addressing other issues as described below.

The Agreement provided two distinct class members defined 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"), and "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 (Hereinafter the "Consortium Class"), pursuant to the "Addendum to Settlement and Arbitration Agreement" filed on March 1, 2007. The term "sexually abused" or "sexual abuse" is defined in footnote #2 of the Agreement as follows: "...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."

The July 30, 2007, Order declared the class was an "opt-out" class, specifically providing that any individual who met the definition of either the Primary or Consortium class was automatically deemed a class member, unless that individual affirmatively "opted-out" of the Class. The Defendants presented at the March 4, 2011 hearing the "Addendum to Settlement and Arbitration Agreement," filed in Dorchester County on March 3, 2007. This document defines the class as "opt out" and clarifies the definition of the consortium class as follows:

Any person who satisfies the definition of either class is a member of that class to the fullest extent allowed by law unless they opt out of either class. Any individual who believes he or she is or may be a member of either of the plaintiff classes but does not wish to participate in the settlement for any reason may opt out of this settlement and/or the classes by completing the court approved opt out form and transmitting it to Class Counsel. Given the sensitive nature of the claims here which have or may be alleged, the parties agree that they will jointly request that the court have Class Counsel serve as the initial repository of the opt out forms. At the close of the time in which the forms can be completed, Class Counsel shall send a copy of the forms to Counsel for the Diocese, and then file the original forms with the Dorchester County Clerk of Court under seal.

The Order provided for the mechanism in processing all class claims. This procedure included the public notice of the court's approval of the Agreement and the manner in which claims were to be received, reviewed and resolved.

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The Order issued by Judge Goodstein on August 31, 2007, clarified the inclusion of class members who possessed an otherwise valid claim, who previously had notified the Diocese Defendants of their allegation, and who should have received actual notice of this class action litigation. The Class Action claims process proceeded throughout 2007 and 2008. The time to submit a claim form or a Notice of Opt-Out expired on December 6, 2007. An arbitrator heard claims and distributed awards through February 2008.

Motion to Dismiss

The legal standard in deciding a defendant's motion to dismiss rests on the facts plead in the complaint. Hambrick v. GMAC Mortgage Corp., 370 S.C. 118, 121-22, 634 S.E.2d 5, 7 (Cl. App. 2006). Stated in other terms, the Plaintiffs are bound to those allegations raised in their respective pleadings. "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." Id. The circuit court "must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint. Id. All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." Id.

This Court finds that the Plaintiffs in the four complaints at issue meet the definition of individuals who are class members in of either the Primary Class or the Consortium Class and who failed to participate in the claims process, and who failed to affirmatively opt-out of the class. John Doe, Jane Doe 2, and Jane Doe 3 are members of the Primary Class as they allege to have been sexually abused as minors by a priest of the Diocese of Charleston. Jane Doe 1 is a member of the Consortium Class, as she claims to be the parent of children who were sexually abused as minors

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by a priest of the Diocese.

I. Res Judicata

The Plaintiffs' claims are barred by the doctrine of *Res Judicata*, which applies to the putative class members, both absent and actual, in this class action litigation in the same manner it applies to litigants in non-class actions. The doctrine of *Res Judicata* is an absolute bar to a subsequent complaint or cause of action in which the merits of that complaint were previously adjudicated in a final decision, the identity of the parties of the previous litigation are identical to the subsequent one, and the merits of the successor action were included in the preceding one.

"*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, 511, 649 S.E.2d 92, 95 (Ct. App., 2007)).

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 citations omitted).

The Defendants have shown that all three elements of the Doctrine of *Res Judicata* apply to the four complaints. First, the Dorchester County Court of Common Pleas issued a final order on July 30, 2007, and an additional Order on August 31, 2007, which addressed the merits of the four Complaints. The Plaintiffs' claims of sexual abuse are identical to the claims contained within the Dorchester County Court approved class action. The Plaintiffs, John Doe, Jane Doe 2 and Jane

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Doe 3 assert that as minors they were sexually abused by an agent, a priest who was assigned to a parish of the Diocese Defendants. These Plaintiffs were born on or before August 30, 1980, as evidenced in their complaints that the abuse occurred within the time frame of 1965 and 1971. As such, John Doe, Jane Doe 2, and Jane Doe 3 are by definition members of the Primary Class. Plaintiff Jane Doe 1, the mother of John Doe, Jane Doe 2 and Jane Doe 3, is a member of the Consortium Class. The Complaints fail to allege that the Plaintiffs are not members of either class, or that they processed their individual claims through the class action mechanism, or they opted-out of the class. The effect of the final orders of that proceeding is the same as if the claims were litigated in a non-class action.

In this case, the Dorchester County Court of Common Pleas entered a final, valid judgment on the merits of a class of plaintiffs' 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 injured parties, of with these Plaintiffs were members. "A judgment in favor of the plaintiff class extinguishes their claim, which merges into the judgment granting relief." Cooper v. Federal Reserve Bank of Richmond, 467 U.S. 867, 874 (1984).

The second element of *Res Judicata*, identity of the parties, is satisfied in the current Plaintiffs' status as class members, albeit absent class members. On the face of their Complaints, the Plaintiffs admit they were absent class members in the Dorchester County Class Action, and that they fit the definition of the classes, but did not participate in the claims process. The named Defendants in the Class Action are the same Defendants as the current action, namely the Diocese of Charleston and the Bishop of Charleston. The Settlement Agreement identified the Class of persons included in the Agreement as "victims of sex abuse allegedly committed by agents or employees of the defendants in this action... and parents or spouses who have suffered a loss of

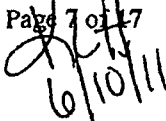
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consortium as a result of sexual abuse.” The Defendants in this action are the same as in the Class Action Settlement Agreement. Therefore, as the current Plaintiffs are part of a class which had their claims adjudicated against the Diocese Defendants, the identity of parties requirement is met.

The third element of *Res Judicata* is also satisfied: Issues raised in the current action were, or could have been, raised in the Class Action. The Plaintiffs’ current claims center on allegations of child sexual abuse which is alleged to have occurred over forty years ago. The Defendants litigated all claims of past sexual abuse in the Dorchester Class Action, culminating in the January 12, 2007, Settlement Agreement. The definition of the class provided a specific framework of which type of legal actions were included for resolution. The action is restricted to an injury attributable to sexual abuse, as previously defined, the claimant had to be a minor at the time of the injury, that the injured person was born no later than August 30, 1980, and that the claim had not been previously resolved. The issues raised in the current complaints are all attributable to alleged sexual abuse, which was raised and litigated in the Class Action.

In addition to the previously discussed elements of *Res Judicata*, this Court takes judicial notice of the issuance of a circuit court’s ruling on the issue of whether a class member from the Dorchester County Class Action is precluded from instituting a claim. In case number 09-CP-10-7751, John Doe, individually and on behalf of all persons who are similarly situated 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, a claimant who was a class member and a class action participant subsequently filed an action against the Diocese, Class Counsel and Diocesan Counsel for additional recovery. The Plaintiff in that case was an actual class member, participating in the claims process and receiving an arbitration award. The principals of *res judicata* and collateral

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estoppel are the same in that case as in the current one. In the 09-CP-10-7751 case, the Court dismissed all claims against the Diocese of Charleston holding:

[A]ll 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 30, 2007 approved a Settlement Agreement which incorporated the claims of a class of plaintiffs, of which the current plaintiff was a member. . . . Second, the Plaintiff's status as a class member in the previously adjudicated class action satisfies the requirement for identity of parties. . . . Third, the issues raised in the current action were, or could have been, properly included in the first action.

There is a valid final order that a class member is precluded by *res judicata* from bringing an additional action against these same Defendants. While the Plaintiffs allege that the July and August 2007 Orders in the class action preclude the Diocese from asserting the defense of *res judicata*, the Court finds that argument is without merit. A review of the factual history of the July 30, 2007 Order and the August 31, 2007 Order, indicates the Dorchester Court was concerned that known victims who previously presented claims which have not been completely resolved would miss the opportunity to participate in the class action process and would, by definition, be barred from pursuing their claim outside the class action as a result of the application of the doctrine of *res judicata*. In response to this concern, the Diocese Defendants agreed that it would not seek to bar those claims on two conditions. The first of these conditions was that the Diocese Defendants had prior actual knowledge of the victim and the claim was not resolved. The second condition was that the Diocese Defendants, in spite of their prior actual knowledge, failed to notify the victim of the class action process.

The Plaintiffs attempt to circumvent these two conditions and avoid the application of the Doctrine of *Res Judicata* in citing the July 30, 2007 Order Approving Settlement as follows:

The Diocese has further stated that it understands that any person who should

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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.

In citing this portion of the Order, the Plaintiffs ignore the context of the cited paragraph and further clarification and definition of the Court's reference to those "who should have had notice." First, the above paragraph was written in the context of a discussion of "how best to . . . protect the interests of both the absent class members and the *Diocese's right to have the conclusive effect of a class action.*" The Order continues in this discussion with the following: "...the Diocese undertook on its own to notify the potential members of the class *known to it.*" The Plaintiffs' limited reference of the Order as binding authority to relieve them of the prohibitive effect of *res judicata* ignores the context and the plain language of the Order which limits the discussion to those individuals actually known to the Diocese at the time of the Order.

Second, this courts finds that at a hearing on August 9, 2007, Counsel for the Diocese Defendants requested the Court to clarify its previous July 30, 2007 Order regarding those who "should have had notice."

The Court then filed an Order dated August 31, 2007, which clarified the "relatively small group of people" who would be entitled to actual notice, and whose potential future claim would not be barred by the *res judicata* effect of the litigation:

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

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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 Actual Notice Class Members. Accordingly, the Order clarifies, and, where in conflict, supersedes the Court's Order of July 30, 2007.

The August 31, 2007 Order created a specific sub-class of potential class members who were categorized as Actual Notice Class Members. This designation clarified the issue raised by Diocese Defendant's attorney at the August 9, 2007 hearing, that the *only* group who is entitled to come forward without the *res judicata* effect of the Class Action Settlement Agreement are those individuals who satisfy the above enumerated criteria and are within the umbrella of this new sub-class. The Order further distinguishes this group from the larger class in the following provision:

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. (emphasis added).

The Plaintiffs allege that the July 2007 Order suspends the *res judicata* and collateral estoppel effect of the Class Action litigation for any person who falls within the definition of the class. While the Plaintiffs acknowledge the restricted membership of the Actual Notice sub-group and admit they do not qualify for that group since they never previously presented a claim to the Diocese, they contend the *Res Judicata* effect of the litigation is suspended not only for the Actual Notice Class Members, but all absent class members.

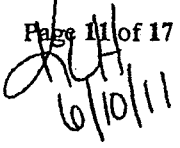
This rationale is clearly erroneous and ignores the clear language and intent of the Court in addressing this narrow issue. The Diocese Defendants were careful to address any possibility of ambiguity of the Court's language in the July 2007 Order. The Plaintiffs' interpretation would render the creation and definition of the Actual Notice sub-group meaningless, and in essence strip

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the fabric of any protection afforded the Diocese Defendants in the Class Action Settlement Agreement. If the *res judicata* effect of the class litigation was suspended for all absent class members, the identification of those who had previously presented their claims and are therefore now entitled to *actual notice* would be unnecessary. No potential claimant could ever be prejudiced by *res judicata*; therefore, there would be no need for the Court to carve out this small group of potential claimants to protect them from the application of the Doctrine of *res judicata*.

The Plaintiffs' rationale of the July 30, 2007 and August 31, 2007 Orders is further illogical because it would give the Diocese no motivation to participate in a class action settlement as it would afford no protection against future claims. The Plaintiffs would have this Court believe ~~there is no *res judicata* effect from the previous litigation which would offer the Defendants no~~ protection against future claims by absent class members, creating an indefinitely opened claims period. Our Supreme Court has listed "the significant interests in efficiency and finality" as benefits of class action litigation. Hospitality Management Associates v. Shell Oil Co., 356 S.C. 644, 659, 591 S.E.2d 611, 619 (2004). Furthermore, Judge Goodstein's Order seeks to "protect the interests of both the absent class members and the Diocese's right to have the conclusive effect of a class action." (emphasis added). The Plaintiffs' reading of the Dorchester County Class Action Orders promotes neither efficiency nor finality and conflicts with the basic nature of a class action.

Absent class members are subject to the same legal effect of *res judicata* as in a non-class action. The issues presented in the current case have already been litigated to a final, valid order in the Dorchester County Class Action between the same parties. The Plaintiffs' assertion that the Diocese waived defenses of *res judicata* for future litigation is without merit and not supported by

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a plain reading of the Class Action orders. The Diocese Defendants did not waive the *Res Judicata* effect of the class action litigation at any point.

II. Collateral Estoppel

Similar to the doctrine of *res judicata*, collateral estoppel precludes a party from re-litigating issues actually adjudicated in a prior action. Unlike *res judicata*, while the identity of the parties do not have to be the same in the prior action, the adjudicated issue must be related. "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). The Diocese Defendants have demonstrated the elements of collateral estoppel are met and preclude the current claim. The Plaintiffs' allegations of sexual abuse by Diocesan personnel were actually litigated in Dorchester County, and the issue of *res judicata* has already been decided by this court in favor of the Defendants.

The Plaintiffs' current Complaints center on the fact that they did not receive notice of the Class Action. The issue of notice and the other tangential issues of the Class Action were all litigated in Dorchester County, resulting in a final valid judgment on the merits.

Further, this Court has also decided the very issue of collateral estoppel as noted in the order issued in case number 2009-CP-10-7751, cited previously:

In spite of the label the Plaintiff has placed on this 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

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damages. In other words, his capacity to sue rests on the harm he may have suffered from any act(s) by Diocesan personnel. . . . Thus, the elements of collateral estoppel are met and preclude the current claim.

The very definition of issue preclusion is met in this case, with a ruling from the same court in favor of these same Defendants.

III. Statute of Limitations and Fraudulent Concealment

In addition to the above defenses of *res judicata* and collateral estoppel, all four of the Plaintiffs fail to state a claim for which relief can be granted because their claims fall well outside the applicable statute of limitations. The Plaintiffs' claims arise out of allegations of childhood sexual abuse which allegedly occurred between 1965 and 1971.² These claims are subject to the limitations period found in S.C. Code §15-3-535 for actions arising prior to 2001, and § 15-3-555 for actions arising after 2001. Section 15-3-535 applies to these four complaints. In Doe v. Crooks, 364 SC 349, 352, 613 S.E.2d. 536, 538 (2005), the Supreme Court of South Carolina stated, "Ordinarily, a new statute of limitations applies retroactively. However, it cannot operate to revive an action for which the limitations period has already expired."

The facts plead in the Complaint allege Plaintiffs John Doe, Jane Doe 2 and Jane Doe 3 would have been born at the latest in 1965. At the very latest, any or all of the Plaintiffs would have turned 18 in 1983. Under § 15-3-535, a Plaintiff would have 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 would be 1986,

²John Doe, Jane Doe 2 and Jane Doe 3 raise claims of childhood sexual abuse. Jane Doe 1 alleges her children were sexually abused.

and three years after turning 21 would be 1989. None of these claims were brought by 1989. Under section 15-3-535, the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of diligently acquired facts sufficient to put an injured person on notice of the existence of a cause of action against another. Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 682 S.E.2d. 1 (Ct. App. 2009). The Plaintiffs in the complaint do not allege any reason for not bringing their claims within the required time frame. The Court in Kelly makes clear that: "Statute of Limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." Id. at 4 (citing Moates v. Bobb, 332 S.C. 172, 470 S.E.2d. 402 (Ct. App. 1996), and Hooper v. Ebenezer Senior Serv. & Rehab. Ctr., 377 S.C. 217, 659 S.E.2d 213 (Ct. App. 2008)). As such, the four complaints are barred by the application of the Statute of Limitations, set forth in Section 15-3-535.

The Plaintiffs allege as a cause of action "Fraudulent Concealment" and assert that a practice of fraudulent concealment bars the Diocese from asserting the application of any Statute of Limitation defenses. 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). The claim of fraudulent concealment fails to bar the application the of statute of limitations because the Plaintiffs (John Doe, Jane Doe 2 and Jane Doe 3) allege a personal injury was committed against them (or Jane Doe 1's children). A defendant cannot fraudulently conceal a personal injury of which the Plaintiff is aware from the time of the injury. The Plaintiffs' Complaints do not meet the requirement of the application of fraudulent concealment in defeating the applicable Statute of Limitations. They do not allege they were unaware of their injuries or their alleged perpetrator.

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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 that caused them to delay in the filing of their lawsuit. Absent such allegations, the Plaintiffs cannot maintain a claim of fraudulent concealment in tolling the statute of limitations or avoiding the application of the doctrine of *res judicata*. Kelly, 383 S.C. 626, 638, 682 S.E.2d 1, 4 (Ct. App., 2009) (internal citations omitted).

In addition, the Plaintiffs' fraudulent concealment cause of action is 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 Defendant) in this document and the execution of this document led to the concealment of which the Plaintiffs now complain. The underlying crux of the Plaintiffs' Complaints for fraudulent concealment, which allegedly gives them a right to a remedy, is that the Defendants concealed certain information at the direction of this 1962 document.

This claim was litigated and resolved in the Class Action Settlement Order issued by Judge Goodstein, specifically ordering a criminal investigation relating to the "Instruction." The examination of the Instruction was to ensure it would not impact the ability to give class notice.

IV. Unfair and Deceptive Trade Practices

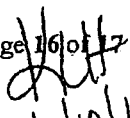
The Plaintiffs bring claims for damages alleging the Diocese violated the South Carolina Unfair and Deceptive Trade Practices Act, but fail to allege facts necessary to sustain an action under the UTPA. South Carolina's UTPA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce...." S.C. Code Ann. §39-5-20

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(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," (09-CP-10-6694 2d Am. Compl.), and "they provide services to the public and advertise services to the public." The Plaintiffs' allegations of conduct of trade or commerce reflect a misunderstanding of the Supreme Court's analysis of the UTPA. The Court requires that the specific acts alleged are those of trade or commerce, not the general or unrelated conduct of the 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.

Foggie further emphasizes the portion of the UTPA which requires the "advertising, offering for sale, sale or distribution of any services and any property ... and any other... *thing of value*" (emphasis added). The offering of "services related to association, entertainment and pastoral activities" (6694 Second Amended Compl., Para. 55) in a church setting are not a "thing of value." One cannot place a monetary value on pastoral activities involved in a religious organization. The remainder of the conduct alleged in the Plaintiffs' Complaints are allegations of collusion in the Dorchester Class Action. These allegations have nothing to do with the Plaintiffs' actual causes of action. As noted previously, the gravamen of the Plaintiffs' claims are rooted in the accusation of being sexually abused. In the context of a UTPA claim, the Defendants' settling of a previous law suit cannot be considered trade or commerce subject to a

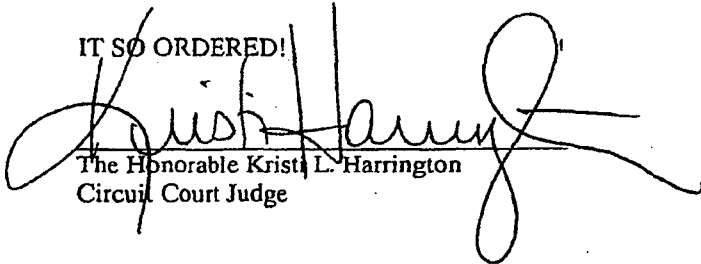
Page 16 of 17

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liability under UTPA claim, as no defendant would ever settle a claim against it, only to open itself up to further liability. The settling of a legal claim is not trade or commerce under the definitions in the UTPA.

Conclusion

For the reasons stated above, I find that the Plaintiffs have failed to state a claim for which relief may be granted as to the causes of action against the Diocese Defendants. The Diocese Defendant's motion to dismiss is hereby **GRANTED** as to the Plaintiffs' causes of action for Negligence, Gross Negligence, Reckless Intentional Tort Fraudulent Concealment, and Unfair and Deceptive Trade Practices. The Plaintiffs' motion for Partial Summary Judgment is therefore **DENIED**. The Complaint against the Defendants The Bishop of Charleston, a Corporate Sole, and The Bishop of the Diocese of Charleston, in his official capacity, is **DISMISSED** with prejudice.

IT SO ORDERED!


The Honorable Kristi L. Harrington
Circuit Court Judge


Charleston, SC

, 2011

EXHIBIT B

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.

B

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 pursuing 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 FIDUCIARY DUTY

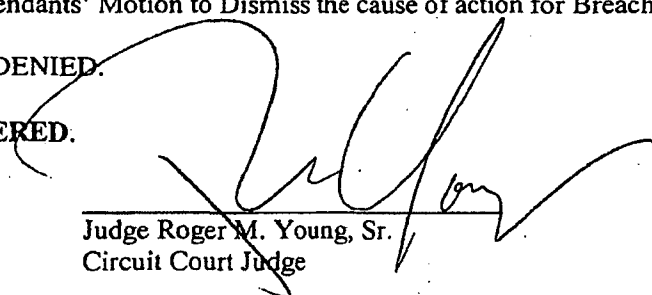
The Plaintiffs allege professional negligence and breach of fiduciary duty causes of action against the Attorney Defendants based upon the aforementioned facts set forth with great particularity in their Complaint. I have reviewed the voluminous allegations set forth in support of these causes of action 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
NINTH JUDICIAL CIRCUIT

John Doe,

v.

Plaintiff,

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

Defendants.

**DIOCESE DEFENDANTS' OMNIBUS
MOTION FOR SUMMARY JUDGMENT
ON the STATUTE OF LIMITATIONS**

Civil Action No.: 2009-CP-10-6694

Jane Doe 1,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8054

Jane Doe 2,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8055

2017 JUN 23 PM 4:18
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

Jane Doe 3,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8056

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.

Civil Action No.: 2013-CP-10-3733

John Doe 230,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2014-CP-10-2130

FILED
2017 JUN 23 PM 3:46
JULIE J. ARBIS LONG
CLERK OF COURT
BY _____

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.

Civil Action No.: 2016-CP-10-1632

Defendants, 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, ("the Diocese Defendants") move for judgment as a matter of law on all claims made by the above captioned Plaintiffs pursuant to Rule 56, SCRCP. Because Plaintiffs cannot come forward with admissible evidence establishing that there remain genuine issues of material fact for trial, all claims against the Diocese Defendants should be dismissed with prejudice. In particular, the Diocese Defendants put forth the following:

1. Plaintiffs claims are barred under the applicable statute of limitations.

Pursuant to S.C. Code Ann. § 15-3-535, any individual plaintiff whose claim arose prior to 2001 would have had 3 years from the date each discovered the tort to bring his or her claim.¹ The

¹ In 2001, § 15-3-555 became effective and extended the statute of limitations for cases involving alleged sexual abuse to 6 years after the victim turned 21 years of age. While statutes of

statute The statute of limitations begins to run when a person knows or reasonably should know of the existence of a claim. *See e.g. Kelly v. Logan, Jolly, & Smith, LLP*, 682 S.E.2d 1 (Ct. App. 2009). The limitations period is tolled until a person reaches his or her majority.

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. *Johnston v. Bowen*, 313 S.C. 61, 437 S.E.2d 45 (1993). 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. *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 278 S.E.2d 333 (1981). Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial. *Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 332 S.E.2d 555 (Ct.App.1985), *cert. granted*, 287 S.C. 234, 337 S.E.2d 697 (1985), *cert. dismissed*, 288 S.C. 468, 343 S.E.2d 613 (1986).

Dean v. Ruscon Corp., 468 S.E.2d 645, 647 (S.C. 1996). Statutes of limitation are not mere formalities or technicalities, rather statutes of limitation “have long been respected as fundamental to a well-ordered judicial system.” *Id.* at 4 (internal citations omitted).

2. There is no admissible evidence that the Diocese Defendants ever concealed any evidence of any dangerous tendencies of the specific priests who these plaintiffs allege sexually abused them and

Plaintiffs cannot come forward with any admissible evidence to substantiate their assertion that the statute of limitations should be tolled. There is no evidence of concealment, or

limitation can generally be applied retroactively, a new statute of limitations cannot revive a claim where the prior statute has already run. *Doe v. Crooks*, 613 S.E.2d 536, 538 (2005). Such a result would violate the defendant's rights under the Due Process Clause of the South Carolina Constitution. *See Goff v. Mills*, 308 S.E.2d 778, 780 (S.C. 1983); *U.S. Rubber Co. v. McManus*, 45 S.E.2d 335, 338 (S.C. 1947); *Stoddard v. Owings*, 20 S.E. 25, 26 (S.C. 1894).

that the Diocese Defendants did something to cause them to delay filing their claim. In order to succeed on a claim that the statute should be tolled based upon fraudulent concealment, Plaintiffs must prove that the Diocese Defendants induced them to delay filing suit. *Hedgepath v. American Telephone & Telegraph Co.*, 559 S.E.2d 327, 328 (S.C. Ct. App. 2001). In order to avoid being barred by the statute of limitations, Plaintiffs must prove:

[T]he defendant 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 suggestion 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 false representations or concealment of material facts; (2) intended such conduct to be relied upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts.

Kelly v. Logan Jolley & Smith LLP, 682 S.E.2d 1, 4 (S. C. Ct. App. 2009). Plaintiffs assertion that there was some fraudulent concealment is not borne out by the undisputed facts. Each plaintiff was aware of the alleged sexual abuse; they were aware of their alleged personal injuries; nothing the Diocese Defendants did or said caused them to delay filing their respective lawsuits. Absent evidence to the contrary, there is nothing in the record to substantiate the claims that the statute of limitations should have been tolled.

Additionally, there is no admissible evidence that the Diocese Defendants knew of any “dangerousness” of any priest accused of sexually abusing minors, nor is there even a scintilla of evidence that the Diocese Defendants concealed *these* priests’ prior inappropriate sexual behavior with minors. *See Doe v. Bishop of Charleston* 754 S.E.2d 494, 500-1 (S.C. 2014). As is discussed below – the priests these plaintiffs allege abused them had never had a complaint or

allegation about them prior to when the plaintiffs claim to have been abused. The Plaintiffs cannot prove that the Diocese Defendants concealed any fact from these plaintiffs.

In order to establish a claim for negligent supervision, a plaintiff must prove that

(1) [the employee] intentionally harms another when he is on the employer's premises, is on premises he is privileged to enter only as employee, or is using the employer's chattel;

(2) the employer knows or has reason to know he has the ability to control the employee; and

(3) the employer knows or has reason to know of the necessity and opportunity to exercise such control. *Degenhart v. Knights of Columbus*, 420 S.E.2d 495, 496 (1992).

This rule has been applied to find an employer liable for negligent supervision when the employee sexually assaulted a minor and the employer had some notice of the employee's prior inappropriate sexual behavior with another minor. *Doe by Doe v. Greenville Hosp. System*, 448 S.E.2d 564, 568 (S.C. Ct. App.1994). The employer's liability is direct, not derivative. *James v. Kelly Trucking Co.*, 661 S.E.2d 329, 331 (2008).

Doe v. Bishop of Charleston, 754 S.E.2d at 500.

They key to it all is that the Diocese had to be on notice of some dangerous proclivity for there to be anything to conceal that results in the statute of limitations' being tolled under *Doe v. Bishop of Charleston*. If Plaintiff cannot prove the required elements for tolling, then the statute began to run on the date of the injury.

a. The applicable statute of limitations has run on all claims asserted by John Doe, Jane Doe 1, Jane Doe 2, Jane Doe 3, and Jane Doe 11.²

² This Court has previously ruled that the claims of John Doe 2 and Jane Doe 4, the brother and sister of John Doe, Jane Doe 2, and Jane Doe 3 are barred by the statute of limitations. See *Order of Judge Young, June 17, 2011 Civil Action No. 10-CP-10-5520 attached as Exhibit A*. Additionally, Judge Young's Order specifically provides that he conducted a limited collateral review of the two out-of-state plaintiffs and determined that the class action settlement did not apply to them and, on that basis, the statute of limitations applied and barred those claims. Judge Young's Order should also be applied to the claims of John Doe 297 and Jane Doe 11, both of

These claims have been brought by members of a single family. Jane Doe 1 (now deceased) is the mother of John Doe (also deceased), Jane Doe 1, Jane Doe 2, Jane Doe 3, John Doe 2, and Jane Doe 4. She was the mother-in-law of Jane Doe 11, the spouse of John Doe 2. The children allege that they were sexually abused by Fr. James McCarthy, who was assigned to St. William Parish in Ward, South Carolina between 1965 and 1971.

Fr. McCarthy was a member of the Missionary Servants of the Most Holy Trinity, a religious order headquartered in Maryland. The priests of the Trinitarian Order are responsible to the Order's Custodian General and Council and are subject to the Order's rules and regulations. The Trinitarian Order furnished priests to St. William as part of its missionary ministry between 1956 and 1989. The Custodian General would assign priests to serve St. William. Until a priest went through a process of incardination into the Diocese, they, like Fr. McCarthy, ultimately answered to the head of their religious order and not to the local bishop, though the priest did have to agree to the requirements of the bishop regarding administering the sacraments, saying Mass, and other similar matters. Nothing in Fr. McCarthy's Diocesan personnel file reflects even the slightest impropriety of any sort, and the Trinitarian Order has never informed the Diocese that its priest ever engaged in anything like sexual abuse of minors. (See **Exhibit B** – Declaration of Brother Steven Vesely).

These plaintiffs allege that Fr. McCarthy sexually abused all five brothers and sisters while he was assigned to St. William, between 1965 and 1971. Interestingly, after he left the priesthood and married, McCarthy and his wife visited with the family. Still, the Doe children never revealed the alleged abuse until 1992 at the earliest when some of the children told their parents that they

whom allege to have been non-residents of South Carolina at the time of the class action settlement.

had been abused by Fr. McCarthy years before. None of the Doe children say they suffered from repressed memory or any other disability.

John Doe was born in approximately 1960, and turned 18 in 1978. *See Ex. C Jane Doe 2 Depo.* at 12:20 and 17:1-9. John Doe died approximately 1 month after his Complaint was filed. No estate was ever opened in York County where he lived at the time of his death, and no Personal Representative has ever been substituted.

Jane Doe 1 was the mother of the siblings who claim to have been sexually abused. At the latest, she knew or should of known of the tort alleged to have impacted her children in 1992.³

Jane Doe 2 was born in 1953, and turned 18 in 1971. She also testified that she repressed the memories and did not recall the abuse until 1983 – 1984. *See Ex. C Jane Doe 2 Depo.* at 9:23-10:4. Even assuming she could present competent evidence supporting her claim of repressed memory, the last year she could have filed a claim is 1987 which is three years after she realized or reasonably discovered the abuse.

Jane Doe 3 has not been deposed and no discovery responses from her have been received, but according to her Second Amended Complaint, she was born prior to 1980 and suffered abuse between 1965-1971. *See Ex. D Second Amended Compl. Jane Doe 3 at ¶ 1 and ¶10.* We do know that she is older than her brother John Doe 2 who was born in 1959. If we (safely) assume for purposes of this motion that she was born prior to 1959, then she would have turned 18 at the latest in 1977 and 21 three years later in 1980. Therefore the statutory date for filing her lawsuit has long expired.

Jane Doe 11 is married to John Doe 2. To the extent she even has a consortium claim⁴, that claim is barred by the statute of limitations. She knew of the alleged abuse 1992 prior to their

³ The Diocese Defendants do not concede that Jane Doe 1 has any claim for loss of services or loss of consortium with her children. There is no allegation that Jane Doe 1 witnessed her children being sexually abused by anyone.

marriage. *See Ex. E Jane Doe 11 Depo.* at 15:15-17. They were subsequently married in 1993. *Id.* at 27:21 – 28:7. Therefore her claims, if they even ever existed, expired no later than 1996.

b. John Doe 193's claims are likewise barred by the statute of limitations.

John Doe 193 claims to have been abused by Fr. Michael Kaney (now deceased) sometime in the 1960s when Fr. Kaney was at Our Lady of the Rosary Parish in Greenville, South Carolina. Fr. Kaney was an ardent anti-Vietnam War activist, which rankled many feathers in Greenville. He was arrested for possession of marijuana in 1975 and retired from the ministry. Kaney died in 1994 in Houston, Texas, where he worked in the oil industry. Nothing in the Diocese's files indicate he ever engaged in any sexual activity with minors, and, except for many complaints about his political activism in favor of liberal causes, there are no complaints of any inappropriate conduct to be found.

John Doe 193 was born in 1953 and turned 18 in 1971. *See Ex. F John Doe 193 Depo.* at 25:11-13. Therefore the statute of limitations expired as to his potential claims in 1974.

To the extent that John Doe 193 claims repressed memory syndrome in an attempt to circumvent the statute of limitations, that argument is without merit. John Doe 193 first saw his therapist Dr. Denise King Crockett on July 29, 2010 for his mental health issues. *See Ex. G Dr. Crockett Depo.* at 70:11-20. Pursuant to Dr. Crockett's testimony and contained within Dr. Crockett's therapy notes, John Doe admitted to her on November 24, 2010 to forgiving Father Kaney's alleged abuse in 1976. *Id.* at 202:3-203:21.

The facts therefore establish that John Doe 193 was aware of his alleged abuse when he was at least 23 years old. Even further, we know that he took affirmative steps address the personal effects of the alleged abuse by forgiving Father Kaney. Even if we assume that 1976 was the first

⁴ The Diocese Defendants do not concede that Jane Doe 11 has any claim for loss of services or loss of consortium. Jane Doe 11 was aware of the abuse before she married John Doe 2..

time that John Doe 193 remembered his abuse, the latest he could have brought claims against the Diocese Defendant is 1979. He did not and his claims are now barred by the statute of limitations.

c. John Doe 230's claims are barred by the statute of limitations also.

John Doe 230 alleges he was abused by Fr. Justin Goodwin in 1955 at St. Ann Parish in Kingstree, South Carolina. Therefore, the latest John Doe 230 could have turned 18 is 1973. *See Ex. H Father Goodwin Pastoral Assignments.* The statute of limitations ran on John Doe 230's claims no later than 1976.

d. The statute of limitations has long since run on all claims asserted by John Doe 297

John Doe 297 alleges he was abused by Fr. Martin Bangert, O.F.M. at St. Anthony of Padua Parish in Greenville in about 1970 or 1971. Fr. Martin was of the Order of Friars Minor, also known as the Franciscans, and belonged to the Holy Name Province. He was appointed to St. Anthony between 1970 and 1976. In 1976 Fr. Martin volunteered for a mission in Jamaica, where he remained until his death in 1986. Fr. Martin served in the Army Air Corps as a bombardier during the Second World War and was awarded the Distinguished Flying Cross in 1944.

The Diocese was never notified of any inappropriate conduct by Fr. Martin at any time during his ministry within South Carolina. The Franciscans likewise have no record of any complaint or allegation of any conduct toward minors that would be inappropriate. In fact, Fr. Martin's career was marked by a dedication to the ministry and especially for his service to the African American community in the South and then in Jamaica.

John Doe 297 was born in 1964 and therefore turned 18 in 1982. *See Ex. K Compl. at ¶*

1. The statute of limitations as to any claim he might have had against the Diocese Defendants therefore expired no later than 1985.

CONCLUSION

For the foregoing reasons, the Diocesan Defendants hereby request summary judgment on all claims addressed herein.

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CERTIFICATE OF SERVICE

Civil Action No.: 2009-CP-10-6694

Civil Action No.: 2009-CP-10-8054

Civil Action No.: 2009-CP-10-8055

Civil Action No.: 2009-CP-10-8056

Civil Action No.: 2013-CP-10-3733

Civil Action No.: 2014-CP-10-2130

Civil Action No.: 2016-CP-10-1632

FILED
2017 JUN 23 PM 3:46
JULIE J. AGOSTINHO
CLERK OF COURT
BY _____

I hereby certify that this 23 day of March, 2017, a copy of the **DIOCESE DEFENDANTS' OMNIBUS MOTION FOR SUMMARY JUDGMENT ON the STATUTE OF LIMITATIONS** have been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

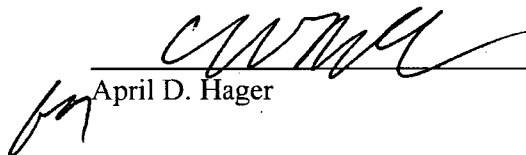
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EXHIBIT A

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. ARISTRONG
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.

B

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*

R₂

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 pursuing 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 FIDUCIARY DUTY

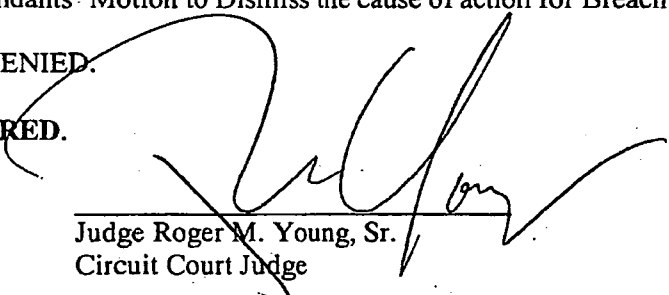
The Plaintiffs allege professional negligence and breach of fiduciary duty causes of action against the Attorney Defendants based upon the aforementioned facts set forth with great particularity in their Complaint. I have reviewed the voluminous allegations set forth in support of these causes of action 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

EXHIBIT B

DECLARATION OF BROTHER STEVEN VESELY

I, Brother Steven Vesely, under penalty of perjury, do hereby declare and say:

I am the Secretary General and custodian of records of the Missionary Servants of the Most Holy Trinity, located in Silver Spring, Maryland. I have been informed of the lawsuit now pending in Charleston, South Carolina against the Bishop of Charleston with respect to actions of alleged child sexual abuse that are said to have been committed between 1965 to 1971 in South Carolina by Fr. James W. McCarthy ("Fr. McCarthy"). I have been asked to report whether any record exists in the files of the Missionary Servants concerning an allegation or complaint of sexual abuse by Fr. McCarthy. I attest to the following:

1. Fr. McCarthy was ordained in 1956.
2. Fr. McCarthy was assigned to St. William in Ward, South Carolina in 1956 and again from 1965 to 1971.
3. In 1971, Fr. McCarthy went on a leave of absence because he had fallen in love with a Religious Sister.
4. In 1972, Fr. McCarthy was laicized and shortly thereafter, married the former Religious Sister.
5. Upon information and belief, I understand that Fr. McCarthy died in 2008.
6. A careful review of the personnel and employment file for Fr. McCarthy reveals no report, claim, or accusation of child sexual abuse, deviant sexual conduct, or other serious misconduct during Fr. McCarthy's lifetime.
7. I did receive information from the Charleston, S.C. Diocese on November 9, 2009 that the Diocese had received an accusation of sexual abuse concerning Fr. McCarthy.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

9. AND FURTHER DECLARANT SAITH NOT.

20-JUNE-2017
Date


Br. Steven Vesely

EXHIBIT C

Jane Doe 2

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

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; RICHTER & HALLER, LLC, :
DEFENDANTS. :

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

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; RICHTER & HALLER, LLC, :
DEFENDANTS. :

DEPOSITION OF JANE DOE 2

(Caption continued on next page)

Jane Doe 2

1 A. No.

2 Q. Jane Doe 2, you've been present while we
3 just took your momma's deposition?

4 A. Uh-huh.

5 Q. And your aunt's.

6 A. Uh-huh.

7 Q. And it is my understanding from also
8 having taken your sister Jane Doe 4's deposition --

9 A. Yes.

10 Q. -- that you kids, the Family Doe kids,
11 were -- I think they were molested by Father James
12 McCarthy?

13 A. Correct.

14 Q. What I would like to do, Jane Doe 2, is
15 offer you the opportunity now to tell me in your own
16 words what happened with you and Father McCarthy.

17 A. Uh-huh.

18 Q. So tell us -- tell us what he did.

19 A. I've never told anyone.

20 Q. Is that right?

21 A. That's true.

22 Q. You mean in terms of the details --

23 A. I never even told my husband what
24 happened. He knows that there was -- but I just --
25 it's something I chose not to discuss.

Jane Doe 2.

1 I repressed it for several years until
2 around 1983, '84, I -- I didn't have any memory of
3 it. And it came very suddenly to me one night, I
4 remembered. And it was appalling.

5 Q. Do you -- do you know what triggered your
6 memory?

7 A. Yes, I do.

8 Q. What triggered it?

9 A. I was at work. I'm a nurse. I've been a
10 nurse for 34 years.

11 Q. Okay.

12 A. And I was doing labor and delivery at the
13 time. I was in Greensboro, North Carolina, worked at
14 Moses Cone Hospital. That was back in the days when
15 they let nurses sit around and wait for patients to
16 come in. You don't get to do that anymore. I don't
17 do labor and delivery anymore anyway.

18 But anyway, we were sitting chatting, and
19 there was a lady, another nurse. She was an older
20 woman. And she had several children. She was
21 Catholic, a devout Catholic. And she was talking
22 about how her son, her eldest son had played piano
23 for the Pope when he visited Haiti. And she was --
24 he worked in Haiti at a school there, he and his
25 wife.

1 repression. I was older, and, you know.

2 But I walked in and I saw him looking in
3 that picture, and I thought, you know, I don't like
4 him looking at me. And I laid the picture down. And
5 that was weird because I didn't know why I did that,
6 but I did. Anyway, if I'm talking too much --

7 Q. No, ma'am.

8 A. -- you just tell me to shut up and move
9 on.

10 Q. No, no.

11 A. Because I decided if I was going to talk,
12 I'm going to talk.

13 Q. That's fine.

14 A. So anyway, I did have -- it -- when I
15 remembered that, it explained a lot about me and my
16 fear of being touched. And I was --

17 Q. So how old would you have been in '83 or
18 '84?

19 A. I don't know.

20 Q. You were born in '53. You would have been
21 30 years old?

22 A. Yes, I was going to say I was in my very
23 early 30s.

24 Q. Yeah, you're three years younger than I am
25 so . . .

Jane Doe 2

1 experience. We went to church, and I will tell you,
2 we were five beautiful children. The girls, we all
3 had long blond hair, just really pretty children.
4 The boys were just very nice looking. We were very
5 close in age. My mother had five children in seven
6 years. I was ten. And my brother was three.

7 Q. That was John Doe 2?

8 A. John Doe.

9 Q. Oh, John Doe.

10 A. And right off the bat, he -- it was after,
11 after church, and my mother, you know, introduced
12 herself. She loves to talk to people. I'm sure you
13 could tell that. And he was very charming and very,
14 oh, yeah, I -- my mother was a fabulous cook. She
15 can't even open a can of tuna now. But she was a
16 fantastic, fantastic cook and hostess and party
17 thrower.

18 And she invited him to dinner. And that
19 happened before this Medical College of Georgia junk
20 ever came up. She invited him to dinner that day,
21 the very first day. And he was at our house within
22 one week.

23 And then he was in our lives for the next,
24 what -- that was in 1965, I believe. And then all
25 the way -- now, we did see less of him in the late

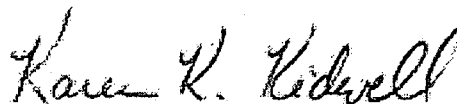
Jane Doe 2

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Karen K. Kidwell, RMR, CRR, in and for the State of North Carolina, do hereby certify that there came before me on Thursday, July 24, 2014, the person hereinbefore named, who was by me duly sworn to testify to the truth and nothing but the truth of her knowledge concerning the matters in controversy in this cause; that the witness was thereupon examined under oath, the examination reduced to typewriting under my direction, and the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any attorney or counsel employed by the parties hereto or financially interested in the action.

This the 2nd day of August, 2014.



Karen K. Kidwell, RMR, CRR
Notary Public #19971050142

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 09-CP-10-8056
Jane Doe 3,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Negligence; Recklessness
	)	Intentional Tort
The Bishop of Charleston, a	)	Fraudulent Concealment
Corporation Sole, and	)	Unfair and Deceptive Trade Practices
The Bishop Of The Diocese of	)	
Charleston, in his official Capacity,	)	Jury Trial Requested
	)	
Defendants.	)	

Amended Complaint

For her complaint, the plaintiff alleges:

Parties and Jurisdiction

1. Plaintiff is a citizen and resident of South Carolina. As a child she was sexually molested by a priest of the Diocese of Charleston, James W. McCarthy, when James McCarthy was assigned to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971.
2. A pseudonym is used for the plaintiff due to the sexual abuse injury which is the subject of this complaint. The defendants will be informed of the identity of the plaintiff.
3. James W. McCarthy was assigned by the defendants to Saint William in Ward, S.C. during the approximate time period of 1965 to his departure in 1971. During his time at St. William, defendants knew, or should have known, that James McCarthy was sexually abusive to children.
4. The Bishop of Charleston, a Corporation Sole, is the corporate entity that governs

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 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

abuse that happened, and the dangers to children the Diocese and its priests solicited into danger.

8. The Diocese defendants were reckless in exposing children to the danger of sexual abuse, or did so intentionally in that the interest of the children at risk were regarded as expendable, in order to promote the interests of priests and the Diocese in appearing to be a more pastoral organization than it was in fact.

9. Charitable immunity does not apply to intentional or reckless conduct such as is alleged in this complaint, and in any event, in 2007 the Diocese explicitly waived all charitable immunity, and explicitly all statute of limitations defenses, for persons sexually abused by its priests prior to 2001, their parents and spouses.

10. Plaintiff was born prior to 1980, as were her children.

11. Plaintiff received no notice of the class action case the Diocese agreed to accept for abuse victims, and under the explicit terms of the order which approved the class action, and by agreement of the Diocese in that action, Plaintiff is not barred by the *res judicata* effect of that class action that would otherwise apply. In addition, the Diocese has waived the defenses of charitable immunity and state of limitations as to class of persons which was defined so as to include the plaintiff, among others.

**For a First Cause of Action:
Negligence, Recklessness, and Intentional Misconduct**

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

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

14. In his capacity as priest, James McCarthy was placed by the defendants in a position of trust and confidence, and had access to the plaintiff and her children. In that

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

Respectfully submitted,

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

Gregg Meyers
PO Box 1297
Charleston SC 29402
843-720-8714
attvgm@gmail.com

Attorney for Plaintiff

EXHIBIT E

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
JANE DOE 11,
Plaintiff,

vs. CASE NO. 2012-CP-10-5559

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.

DEPOSITION OF:

DATE: September 4, 2014

TIME: 11:58 a.m.

LOCATION: McNair Law Firm
100 Calhoun Street
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Janice N. Shepherd,
Registered Professional
Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 APPEARANCES OF COUNSEL:
2 ATTORNEYS FOR THE PLAINTIFF

3 JANE DOE 11:
4 JEFF ANDERSON & ASSOCIATES, PA
5 BY: GREGG MEYERS
6 366 Jackson Street, Suite 100
7 St. Paul, MN 55101
8 (631) 227-9990
9 gregg@andersonadvocates.com

10 ATTORNEYS FOR THE DEFENDANTS

11 THE BISHOP OF CHARLESTON, A CORPORATION
12 SOLE; ROBERT GUGLIEMONE, THE BISHOP OF
13 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:

SHAHID LAW OFFICE, LLC
BY: ALBERT P. SHAHID, JR.
89 Broad Street
Charleston, SC 29401
(843) 857-1500

1
2 being first duly sworn, was examined and testified
3 as follows:

4 EXAMINATION

5 BY MS. WALL:

6 Q. Would you state your full name for the
7 record, please?

8 A.

9 Q. my name is Susan Wall, and

10 I represent one of the named defendants in the
11 lawsuit that you filed, and you filed under the
12 pseudonym of Jane Doe 11. And I represent
13 Mr. Haller, and on the telephone is attorney Jim
14 Bruner. He represents Mr. Richter and Richter &
15 Haller. And of course your counsel is here, and
16 Mr. Shahid represents the diocese and the
17 diocese-related entities.

18 We're going to be asking you questions
19 here today. Let me go through the instructions.
20 Have you ever been deposed before?

21 A. No.

22 Q. We'll be asking you questions. If at
23 any time you either don't hear or don't understand
24 the question, you need to let the examiner know.
25 And, for example, I'll be asking you questions

1 first. If at any time you don't hear or don't
2 understand the question, just please let me know.
3 I'll be happy to restate or rephrase, because once
4 you answer, we're entitled to assume that you did
5 understand the question and that you've responded
6 fully to the best of your ability, and of course
7 you are under oath to tell the truth. If at any
8 time you'd like to take a break, that's absolutely
9 fine. However, I caution you that during a break,
10 you are not entitled to discuss your testimony or
11 anticipated testimony with anyone. That will come
12 at the conclusion of your deposition here today.

13 The court reporter, whom you've met,
14 she will be taking down everything that's said

Page 13

Page 15

1 Adventist Church, yes.

2 Q. When did you first become a member of
3 the church?

4 A. I grew up in the Seventh-day Adventist
5 Church, so...

6 Q. So that was your church at the time
7 when you were a youth, when you were a young
8 person?

9 A. Yes.

10 Q. Did there come a time when you met your
11 current husband,?

12 A. Yes.

13 Q. And when was that?

14 A. I think I first met him in 1991 when I
15 moved to Georgia. He went to the same church that
16 I did, and so we met --

17 Q. He went to the Seventh-day Adventist
18 Church, and that's where you met him?

19 A. Yes.

20 Q. And when were you married?

21 A. 1993.

22 Q. And do you continue to be married?

23 A. Yes.

24 Q. At the time that you and he were
25 married in 1993, how old was your daughter at that

1 Q. Did the oldest son, once he graduated
2 from high school, did he go off outside of the
3 home, or did he stay living with you and your
4 husband?

5 A. He was on his own for some time, but
6 then he was back with us as well.

7 Q. When did you first hear that your
8 husband -- and now when I'm referring to your
9 husband, I'm referring to -- All
10 right?

11 A. Right.

12 Q. When did you first hear that your
13 husband had been the victim of abuse by someone in
14 the Catholic Church, specifically James McCarthy?

15 A. First I heard of it, I believe, was in
16 1992. We were not yet married, but we were seeing
17 each other. And that's the first I heard about it.

18 Q. And from whom did you hear it?

19 A. Well, it was from -- but through
20 his brother was the one who -- his brother,
21 was the one who first spoke with -- about it.

22 Q. Who first said anything to you about
23 abuse, -- or his brother,?

24 A. I believe --

25 Q. And what did -- say to you?

Page 14

Page 16

1 point?

2 A. She would have been nine, I believe.

3 Q. So did she grow up in your household,
4 that is, the household of you and?

5 A. Yes, she did.

6 Q. Did you have sole custody of her?

7 A. We had joint custody, but I had -- I
8 was the custodial primary parent, but we have joint
9 custody in making decisions.

10 Q. During the time that your daughter,
11 -- was growing up in your married household
12 with -- , were either of his sons also
13 growing up in your household?

14 A. Not in the beginning. His oldest son
15 moved in when he was 14.

16 Q. Did the youngest son ever live in your
17 household?

18 A. Yes.

19 Q. Except on holidays and --

20 A. He did, but as an adult. He was there
21 off and on, a couple of times.

22 Q. And was the oldest son --

23 A. Yes.

24 Q. And -- was the younger son?

25 A. Yes.

1 A. I mean, he told me that his brother had
2 asked about it, talked to him about it, and he told
3 me that he, you know, remembered some incidents
4 that happened, not a lot of --

5 Q. Did he tell you what those incidents
6 were?

7 A. Just some very vague things. I
8 remember him telling me about a camping trip that
9 he was on, and, I mean, not a lot. He just
10 remembers that they were camping with Father Jim
11 and that he remembers, you know, being out of the
12 tent and down by the water. He wasn't sure why he
13 was there. He also told me -- I think the most
14 vivid he remembered was an incident with Father Jim
15 being very close in front of him. I think he was
16 sitting. Father Jim was standing. And if you want
17 to call it doing a striptease in front of him,
18 taking his clothes off in front of him.

19 Q. And did he tell you these things in
20 1992?

21 A. I believe, at least that particular one
22 of Father Jim undressing, because that was one he
23 did remember at that point, to my recollection.

24 Q. Did -- scuss with you at any
25 other time any incidents of abuse that he had

Page 25

Page 27

EXAMINATION

BY MR. SHAHID:

Q. Good afternoon. I'm Peter Shahid. I represent the Diocese of Charleston and the other individuals, Bishop Baker, Bishop Gugliemone, Monsignor Laughlin, who we collectively refer to as the diocesan defendants. And the same ground rules that Ms. Wall had mentioned to you apply. If at any time you don't understand any of my questions, just ask me to repeat it.

A. Okay.

Q. Do you need to take a break? Are you doing okay?

A. I'm fine.

Q. You and your first husband, divorced in 1992; correct?

A. I can't remember if it was '91 or '92. But, yes.

Q. Either '91 or '92. What was the reason for the divorce?

A. He was unfaithful.

Q. Okay. And is that the reason why you separated from him?

A. Yes.

Q. And then from that, from Virginia, you

A. I first met him probably within the first six months.

Q. And you were employed at the time?

A. Yes.

Q. Was he employed at the time?

A. Yes.

Q. And I think Ms. Wall asked you, your daughter was about nine years old at the time?

A. When we married.

Q. So she was obviously younger at the time of meeting him?

A. Yes.

Q. You were clearly aware of allegations regarding stating he was abused by Father Jim?

A. Not when I first met him.

Q. Not when you first met him. But -- let me rephrase the question. Prior to your marriage in July of 1993; is that correct?

A. Yes.

Q. Prior to your July of 1993 --

A. 1993.

Q. 1993. Prior to your marriage to in July of 1993, you were fully aware of the allegations that he has raised regarding being

Page 26

Page 28

1 moved to Georgia?

A. Yes.

Q. As a result of your separation from your husband?

A. Yes.

Q. And the divorce decree was issued in Georgia?

A. Yes.

Q. Do you remember the county?

A. Actually, I'm not -- well, I'm not sure exactly where, if it was in Georgia or Virginia where it actually was filed. It may have been Virginia. I'm not sure. I was living in Georgia, but he was still in Virginia. I don't remember how that works.

Q. You certainly did not know your husband, in the time frame that he was living in Georgia or his family was visiting relatives in South Carolina when he was a minor?

A. No.

Q. Your first meeting with your husband was in Georgia when you all were both adults?

A. Yes.

Q. How soon after you had moved to Georgia did you meet

1 sexually abused by Father Jim?

2 MS. WALL: Object to the form.

3 THE WITNESS: Yes, I was aware of it.

4 BY MR. SHAHID:

5 Q. You had discussions with him about those allegations?

A. Very brief.

8 Q. But it was your suggestion that he meet with this woman named Nancy Loeb, I think?

A. Yes.

11 Q. What was it that you thought was a good idea or necessary for to meet with Nancy Loeb?

14 A. I mean, he was struggling with, you know, the whole situation. And just in talking to him, because I had been to counseling myself, I just felt it would be a helpful thing to him to talk it over with someone in that position.

19 Q. What was the reason for your counseling with this woman, Nancy Loeb?

A. Just because of my divorce.

22 Q. And the reason for the divorce?

23 A. Correct. It was just me, you know, just making sure I was healthy.

25 Q. This woman's name is Nancy L-O-E-B?

7 (Pages 25 to 28)

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1 SIGNATURE OF DEPONENT (CONTINUED)
 2 DEPOSITION DATE: SEPTEMBER 4, 2014
 3 REPORTER: JANICE N. SHEPHERD
 4 CASE CAPTION: JANE DOE II vs. BISHOP OF
 5 CHARLESTON, et al.

6 PAGE LINE CHANGE REASON
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14 I, Janice N. Shepherd, Notary Public for the
 15 State of South Carolina at Large, do hereby certify
 16 that the deponent was advised of his or her right
 17 to read and sign said deposition both verbally and
 18 in writing. If the deponent fails to execute and
 19 return foregoing Signature of Deponent pages within
 20 the thirty (30) days allowed pursuant to the Rules
 21 of Civil Procedure, the original transcript may be
 22 filed with the court.
 23

24 Janice N. Shepherd, RPR, CSR
 25 My Commission expires
 October 11, 2014

Page 42

1 CERTIFICATE OF REPORTER

2
 3 I, Janice N. Shepherd, Registered
 4 Professional Reporter and Notary Public for the
 5 State of South Carolina at Large, do hereby certify
 6 that the foregoing transcript is a true, accurate,
 7 and complete record.

8 I further certify that I am neither
 9 related to nor counsel for any party to the cause
 10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
 12 affixed my official seal this 12th day of
 13 September, 2014, at Charleston, Charleston County,
 14 South Carolina.
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24 Janice N. Shepherd, RPR, CSR
 25 My Commission expires
 October 11, 2014

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5 EXAMINATION 3 4
 6 BY MS. WALL
 7 EXAMINATION 23 17
 8 BY MR. BRUNER
 9 EXAMINATION 25 1
 10 BY MR. SHAHID
 11 SIGNATURE OF DEPONENT 40 1
 12 CERTIFICATE OF REPORTER 42 1
 13
 14

15 REQUESTED INFORMATION INDEX

16
 17 (No Information Requested)
 18
 19

20 EXHIBITS

21 Page Line
 22
 23 DFT. EXH. 1, 21-page 1/12/07 36 23
 24 Settlement and Arbitration
 25 Agreement

11 (Pages 41 to 43)

EXHIBIT F

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JOHN DOE 193,

Plaintiff,

Case No.

2013-CP-10-3733

vs.

THE BISHOP OF CHARLESTON,
A CORPORATION SOLE; et al.,

Defendants.

AND RELATED CASE NOS. 2010-CP-10-5520,
2010-CP-10-7233, 2012-CP-10-5559,
2013-CP-10-4175, 2013-CP-10-4176

DEPOSITION OF: JOHN DOE 193

DATE: July 16, 2014

TIME: 10:00 a.m.

LOCATION: Family Therapy and Trauma Center
313 Bennett Circle Drive
Greer, SC 29650

TAKEN BY: Counsel for Defendants

REPORTED BY: KENNETH MCCLURE,
Registered Merit Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC
(843) 722-8414Hilton Head, SC
(843) 785-3263Myrtle Beach, SC
(843) 839-3376Columbia, SC
(803) 731-5224Greenville, SC
(864) 234-7030Charlotte, NC
(704) 573-3919

1 Q. Do you need a break?

2 A. No.

3 Q. John Doe 193, I want to ask you a series of
4 questions. My questions are not intended to
5 embarrass you or have you relive everything. And I
6 may repeat some questions that either Miss Wall
7 asked you or Mr. Bruner asked you. But if you can't
8 understand the question, please ask me to repeat it.

9 Okay?

10 A. Okay.

11 Q. Miss Wall asked you your date of birth. I
12 think you said April 30, 1953.

13 A. Yes.

14 Q. You were handed a document, which is in
15 front of you, marked as Exhibit No. 1.

16 Do you see that in front of you?

17 A. Yes.

18 Q. Would you mind turning towards the very
19 back of that document? There is a handwritten piece
20 of paper called Exhibit A. In the handwritten
21 version, it says "Exhibit No. 1."

22 Do you see what I am talking about, sir?

23 John Doe 193?

24 A. Yes.

25 Q. Do you see what I'm talking about?

1 CERTIFICATE OF REPORTER
2

3 I, Kenneth McClure, Registered Merit
4 Reporter and Notary Public for the State of South
5 Carolina at large, do hereby certify that the
6 foregoing transcript is a true, accurate and
7 complete record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 WITNESS MY HAND, I have hereunto
12 affixed my official seal this 24th day of
13 July, 2014, at Pickens County, South Carolina.
14
15
16
17
18
19
20
21
22

23 _____
24 KENNETH McCLURE
25 REGISTERED MERIT REPORTER
MY COMMISSION EXPIRE
SEPTEMBER 13, 2023

EXHIBIT G

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 JOHN DOE 2 and JANE DOE 4,

4 Plaintiffs,

5 vs.

CASE NO. 2010-CP-10-5520

6 THE BISHOP OF CHARLESTON, A CORPORATION SOLE;
7 ROBERT GUGLIELMONE, THE BISHOP OF CHARLESTON, IN
8 HIS OFFICIAL CAPACITY; REV. MONSIGNOR MARTIN
9 LAUGHLIN, FORMER ADMINISTRATOR OF THE DIOCESE OF
10 CHARLESTON, IN HIS OFFICIAL CAPACITY; ROBERT J.
11 BAKER, FORMER BISHOP OF CHARLESTON, IN HIS OFFICIAL
12 CAPACITY; LAWRENCE E. RICHTER, JR.; DAVID K.
13 HALLER; and RICHTER & HALLER, LLC,

14 Defendants.

15 (Caption continued on next page.)

16 DEPOSITION OF: DENISE KING CROCKETT, PH.D.

17 DATE: July 29, 2015

18 TIME: 9:18 a.m.

19 LOCATION: Family Therapy and Trauma Center
20 311 Bennett Center Drive
21 Greer, SC 29650

22 TAKEN BY: Counsel for the Defendants

23 REPORTED BY: TRISHA M. THOMAS

24 A. WILLIAM ROBERTS, JR. & ASSOCIATES

25 Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376

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

John Doe 2 and Jane Doe 4 v
Bishop of Charleston, et al.

Denise King Crockett, Ph.D.
July 29, 2015

Page 70 1 you see a patient, can you identify this document 2 for me and tell me what it is? 3 A. Those are -- these are psychotherapy 4 notes that are my notes that are federally 5 protected. 6 Q. So in terms of -- they're written while 7 you're sitting with the patient? 8 A. Uh-huh. 9 Q. Yes? 10 A. Yes, they are. 11 Q. Okay. And from these notes would you 12 say that you first -- your first meeting with 13 Mr. Doe 193 was July 29, 2010? 14 A. I guess so, but I can double check 15 during the break to see 'cause I have his record. 16 'Cause I know he went in the hospital, like, June 17 of that year and then -- then PHP a couple of 18 weeks, then back in the hospital, so it should be 19 probably about last of July that I would have seen 20 him. 21 Q. Okay. So at this point I'm actually -- 22 the first thing I'm doing is just establishing what 23 kind of record you're creating so I can recognize 24 what that document is when you do your work. So I 25 understand now that that -- what I just showed you,	Page 72 1 Q. Okay. So -- 2 A. That -- that designated record set was 3 from the Catholic Church. 4 Q. Okay. So that form is something that 5 you filled out and returned to the -- 6 A. Yes. 7 Q. -- Diocese of Charleston? 8 A. Yes. 9 Q. Presumably because they're paying for 10 the treatment? 11 A. Yes. 12 Q. Okay. So I can recognize, as I turn 13 through those, that that's why you did that. 14 A. Yes. 15 Q. If you'd go a few pages forward to page 16 14 -- 17 A. Uh-huh. 18 Q. -- there is a -- there is another kind 19 of a chart. 20 A. Okay. 21 Q. At the top it says John Doe 193, the 22 last four digits of his social security number -- 23 A. Correct. 24 Q. -- then there are two columns, mental 25 status and symptoms columns.
Page 71 1 which is page 38 of Exhibit 1, those are -- 2 A. Uh-huh. 3 Q. -- those are notes that you made during 4 the therapy session. 5 A. Yes. Everything that you see has been 6 produced during the therapy session. This is when 7 I first started out. When I -- I started thinking 8 about it. I've used several different kinds, 9 borrowed from everyone else, and the last ones are 10 what I do now to make it more precise for doctors. 11 It's easier to do a checklist. 12 Q. Okay. So that's what I was going to 13 ask you. 14 A. Yeah. 15 Q. Like at the front of Exhibit 1 -- 16 A. Uh-huh. 17 Q. -- which in my numbering would be page 18 12, just to take an example, it's a form. 19 A. Page 12. 20 MR. GEOLY: And, Susan, this would 21 really just be the second page of your pile. 22 THE WITNESS: All right. I received 23 that from the Catholic Church. That's not how I do 24 it. 25 BY MR. GEOLY:	Page 73 1 A. Uh-huh. 2 Q. Is that your form? 3 A. Yes. 4 Q. What is that? 5 A. The back side of this form. 6 Q. And what page are -- when you say this 7 form, the back side of which one? 8 A. Thirteen. 9 Q. Thirteen. So why don't we go backwards 10 to 13 or -- yeah. 11 A. Okay. 12 Q. Page 13, I think is what you told us -- 13 okay. Page 13 has your letterhead on it. 14 A. Uh-huh. 15 Q. And that is a document that says Family 16 Therapy and Trauma Center -- is the letterhead -- 17 HIPAA-Approved Designated Record Set, DRS, dash, 18 Summary of Services. 19 A. Uh-huh. 20 Q. This one is, at the bottom, dated 21 September 7, 2011, just for example. So what is 22 this form? 23 A. Okay. One -- this is the -- what I can 24 send out without violating HIPAA. Everything on 25 this page right here and on page 14 is



John Doe 2 and Jane Doe 4 v
Bishop of Charleston, et al.

Denise King Crockett, Ph.D.
July 29, 2015

Page 202 1 the priest or he -- no. Some priest took him under 2 his wing and helped him through the process. 3 Q. Okay. So let's start by clarifying the 4 actual -- you know, what you've written here. 5 A. Okay. 6 Q. Okay. At the top of page 55 -- well, 7 let's just start -- yeah. At the top of page 55 is 8 the continuation of your note from November 24, 9 2010, right? 10 A. Uh-huh. Yes. 11 Q. And these words say: Brothers and 12 sisters went far away -- 13 A. Uh-huh. 14 Q. -- comma. And why don't you pick it up 15 from there and read the rest for me. 16 A. Other brother was put on a pedestal. 17 Mom and dad thought he couldn't do any wrong. The 18 nuns punished John Doe 193 without looking into, 19 like, the details. 20 Q. Without looking into stuff. 21 A. Forgave priest. He asked him to, 1976. 22 Still doesn't trust him. He decreased his 23 strength. Very negative about it. Neutral. 24 Dinner. Catholic Church. Open and truth. Expose 25 of guilt. Public condemnation. Cut hands.	Page 204 1 back of the page. 2 A. Correct. 3 Q. Why don't you read the December 20 4 entry? 5 A. Depressed and monopolizing, which meant 6 he monopolized the verbiage the time in there, and 7 says had to talk about mom and dad. State of 8 denial. Weak mom. Sleep not one or two hours at a 9 time. Dreams are killing him at night. Wakes up. 10 Tension is increased. Seven out of seven. Worry 11 about not being believed. Believes me only. Be 12 careful about who -- 13 Q. And then you flip the page. 14 A. -- who knows. Nun slapped him in the 15 face. Telling stories on the priest -- because he 16 tells, quote, unquote, stories on the priest. 17 Understanding of circumstances. What parents do. 18 Then I've got reality, getting over hatred, ulcers, 19 and that those are things we need to work on. 20 Q. Okay. So this is a repeat of what he 21 has said before about the way the nun responded 22 when he reported what happened to him? 23 A. Yes. 24 Q. He's kind of working it into his story 25 about explaining how he's feeling?
Page 203 1 Thanksgiving. Gain back self-respect. 2 Q. Okay. So I realize these are 3 abbreviated notes. 4 A. Uh-huh. 5 Q. You're not writing a transcript of what 6 someone is saying. Having read that, does that 7 help you -- can you interpret those notes for me a 8 little bit and tell me what you're saying here? 9 A. Okay. He tried to forgive the priest 10 in 1976, but still in the back of his mind he 11 doesn't trust him. He's very neutral at that 12 particular time on the Catholic Church. I don't 13 know what dinner and Catholic Church means. 14 Q. Okay. And I don't -- 15 A. He could -- 16 Q. Go ahead. I'm sorry. 17 A. He could not feel like he could be open 18 and -- and -- open and tell the truth 'cause no one 19 would believe him. There were -- there were no -- 20 be no exposure to public -- nothing would happen if 21 anything was exposed. 22 Q. Okay. Thank you. 23 On page 56 there's an entry for 24 December 20, 2010, and it continues to page 57, 25 which I assume is continuing your notes onto the	Page 205 1 A. Yes. 2 Q. Okay. And then it says: IQ 176. 3 Is that his IQ? 4 A. Not sure. 5 Q. Or is he telling you that that's his 6 IQ? 7 A. I -- I don't remember, but there's got 8 to be a reason I put that down there. 9 Q. That's an awfully high IQ. 10 A. That's an extremely high IQ. And it 11 may be -- and let me just say. When people that 12 have the type of traumas that John Doe 193's had, 13 there is -- there is a tendency to over- or 14 underestimate things depending on the circumstance. 15 He felt so depressed and down about his 16 self worth that he may have said that to me -- 17 because I know how to interpret IQs -- just to make 18 himself look good. 19 Q. That may have been a way of him 20 expressing a grandiose idea? 21 A. Uh-huh. 22 Q. Yes? 23 A. Yes. 24 Q. Okay. Page 60, please. That is 25 January 27, 2011. Top left-hand margin: Testing



John Doe 2 and Jane Doe 4 v
Bishop of Charleston, et al.

Denise King Crockett, Ph.D.
July 29, 2015

Page 394		Page 396	
1 brain.		1 SIGNATURE OF DEPONENT	
2 MR. MEYERS: That's all I've got.		2 DEPONENT: DENISE KING CROCKETT, PH.D.	
3 Thanks.		3 DEPOSITION DATE: July 29, 2015	
4 THE WITNESS: Can I just say one		3 REPORTER: TRISHA M. THOMAS	
5 statement? You asked me a question I couldn't		4 AWR JOB #: 150729tmt	
6 answer, and I had to remember it.		4 CASE CAPTION: JOHN DOE 2 and JANE DOE 4 vs. THE	
7 MR. MEYERS: Sure. Mr. Geoly -- yeah.		4 BISHOP OF CHARLESTON, A CORPORATION SOLE, et al.	
8 THE WITNESS: You asked me what we were		5 (Please return both Signature of Deponent pages)	
9 talking about prior to the meeting.		6 I, the undersigned, DENISE KING CROCKETT,	
10 MR. MEYERS: Jim?		7 PH.D., do hereby certify that I have read the	
11 MR. GEOLY: Oh, yeah. Sorry,		8 foregoing deposition and find it to be a true and	
12 Dr. Crockett.		8 accurate transcription of my testimony, with the	
13 THE WITNESS: And I remembered, so I		9 following corrections, if any:	
14 wrote it down.		9 PAGE LINE CHANGE REASON	
15 MR. GEOLY: Sure.		10	
16 THE WITNESS: I have -- I think I have		11	
17 dementia.		12	
18 He asked me did I know how to bill for		13	
19 this -- this session. And I said yes. I've		14	
20 learned that it's whoever deposes me.		15	
21 I asked him how long would it take		16	
22 'cause I had clients starting at 4:00, and he -- I		17	
23 don't know what he said to that. Apparently that		18	
24 was a long time ago.		19	
25 But I just want on record nothing was		20	
		21	
		22	
		23	
		24	
		25	

Page 395		Page 397	
1 said about how to answer any questions. I didn't		1 SIGNATURE OF DEPONENT (CONTINUED)	
2 ask him any questions about this case. But he did		2 DEPOSITION DATE: July 29, 2015	
3 say you may be asked what we talked about prior to		3 REPORTER: TRISHA M. THOMAS	
4 this deposition.		3 AWR JOB #: 150729tmt	
5 MR. GEOLY: Thank you, Dr. Crockett.		4 CASE CAPTION: JOHN DOE 2 and JANE DOE 4 vs. THE	
6 THE WITNESS: You are so welcome.		4 BISHOP OF CHARLESTON, A CORPORATION SOLE, et al.	
7 MR. GEOLY: I have no questions. I		5 PAGE LINE CHANGE REASON	
8 have no further questions in light of the		6	
9 questioning you just had. I think we're done		7	
10 unless -- that's it.		8	
11 MS. WALL: All right. Thank you.		9	
12 THE WITNESS: Thank you.		10	
13 MR. MEYERS: Thank you. We are done.		11	
14 (The witness, after having been advised		12 DENISE KING CROCKETT, PH.D., Date	
15 of her right to read and sign this transcript, does		13 I, Trisha M. Thomas, Notary Public for the	
16 not waive that right.)		14 State of South Carolina at Large, do hereby certify	
17 (The deposition was concluded at		14 that the deponent was advised of his or her right	
18 6:34 p.m.)		15 to read and sign said deposition both verbally and	
19		15 in writing. If the deponent fails to execute and	
20		16 return foregoing Signature of Deponent pages within	
21		16 the thirty (30) days allowed pursuant to the Rules	
22		17 of Civil Procedure, the original transcript may be	
23		17 filed with the court.	
24		18	
25		19	
		20	
		21	
		22	
		23	
		24	
		25	



EXHIBIT H

Final



THE DIOCESE OF CHARLESTON

110 BROAD STREET

CHARLESTON, SOUTH CAROLINA 29401

TELEPHONE: (803) 724-8375

FAX (803) 724-8368

MAILING ADDRESS:

P.O. BOX 818

CHARLESTON, S.C. 29402

DEPT. OF COMMUNICATIONS & INFORMATION

REVEREND JUSTIN L. GOODWIN

Date of Birth: May 27, 1905
Ordained: June 10, 1930
Incarnated: Diocese of Charleston, 1959

PASTORAL ASSIGNMENTS:

1910 - 1941 Assistant Rector, Atonement Seminary, Washington, D.C.
1941 - 1942 Postulant Director, Graymoor, N.Y.
1942 - 1946 Associate Pastor, Christ the King, High Point, N.C.
1946 - 1953 Pastor, St. Francis de Sales, Lumberton, N.C.

Diocese of Charleston, S.C.:

1953 - 1959 Pastor, St. Ann (Kingstree)
1959 - 1972 Pastor, St. Gerard (Aiken)
1972 - 1978 Pastor, St. Mary (Yonges Island)
1978 - 1982 Associate, Blessed Sacrament (Charleston)
1982 - 1984 Associate, Cathedral of St. John the Baptist (Charleston)
1984 - 1986 Parochial Vicar, Divine Redeemer (Hanahan)
1986 - present Retired

EXHIBIT I

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2016-CP-10- 1632

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 and Haller, LLC.

Defendants.

FILED
2016 MAR 31 AM 11:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Summons

TO: 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.

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

Your answer to the complaint is to be served upon the attorney for the plaintiff at
366 Jackson Street, St. Paul MN 55101.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2016-CP-10- 11032

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 and Haller, LLC.)

Defendants.)

Negligence; Gross Negligence
Fraudulent Concealment
Civil Conspiracy
Professional Negligence
Breach of Fiduciary Duty
Injunctive Relief
UTPA

Jury Trial Requested

FILED
2016 MAR 31 AM 11:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Complaint

For his complaint, the Plaintiff alleges:

Parties and Jurisdiction

1. John Doe 297 is an adult citizen and resident presently residing in South Carolina but who resided in North Carolina from 1998 to 2014. He was born in 1964. As a child in the first grade he was sexually abused by two priests, each employed by the Diocese of Charleston. One priest the Plaintiff recalls only as "Jimmy," the other was Martin Bangert. Martin Bangert is referred to in this Complaint as the offending priest, or offending priest 1. The priest identified only by first name is referred to as offending priest 2. Collectively they are referred to as the

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

John Doe,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-6694

FILED

JUN 23 2017

**JULIE J. ARMSTRONG
CLERK, C.P. & G.S.**

Jane Doe 1,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8054

**DIOCESE DEFENDANTS' OMNIBUS MOTION
FOR SUMMARY JUDGMENT BECAUSE NO PROPER PLAINTIFF EXISTS AND
PLAINTIFF CANNOT ESTABLISH A GENUINE ISSUE OF MATERIAL FACT FOR
TRIAL.**

Defendants, 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, ("the Diocese Defendants") move for judgment as a matter of law on all claims made by Plaintiffs John Doe and Jane Doe 1 pursuant to Rules 56 and 25, SCRCp.

Because both John Doe and Jane Doe 1 are deceased, they are no longer competent parties to appear as plaintiffs in their case.

1. Both Plaintiffs are deceased and there is no proper party plaintiff to assert claims on their behalf.

John Doe died in November, 2009, just 1 month after his Complaint commenced. Jane Doe 1 died in the Fall, 2016. No Estates were ever opened in York County, though a will was filed for Jane Doe 1, where both resided and no Personal Representative has ever been appointed. No suggestion of death has ever been filed with the Court. It is axiomatic that the dead have no standing to sue. *See In re Engle Cases* 767 F.3d 1082 (11th Cir. 2014) (“As any lawyer worth his salt knows, a dead person cannot maintain a personal injury claim).

Rule 25, SCRCF, requires that a Personal Representative be substituted for a deceased plaintiff within a reasonable time. The nearly identical Federal Rule requires substitution within 90 days. *See Notes, Rule 25 SCRCF*. In any event, there is no personal representative for either Plaintiff and there is no proper party to maintain suit against the Diocese Defendants. Pursuant to Rule 25(a)(1), the actions should be dismissed.

2. Irrespective of the Plaintiffs’ lack of standing to sue, neither Plaintiff can establish that there remains a genuine issue of material fact for trial as to the causes of action set forth in their Complaints.

John Doe was never deposed. No one can present any admissible evidence to support his claims. It is well-settled that a plaintiff cannot rest on the allegations contained in the Complaint when faced with a motion for summary judgment, but must come forward with admissible evidence to show that there remains an issue of material fact for trial. John Doe simply cannot do so. Any testimony or evidence that exists is either hearsay or is inadmissible, either pursuant

to the Dead Man's Statute¹ or for other reasons. As such, John Doe cannot establish any genuine issue of material fact for trial and his claim must be dismissed.

Jane Doe 1 was deposed before her death, but there is nothing in her testimony that would establish any genuine issue of material fact for trial – nor can she present any admissible evidence in support of her claim for damages (assuming she can recover anything at all for filial loss of consortium). In short, Jane Doe 1 cannot establish the essential elements of any of her claims for relief or of her alleged damages. For that reason, Jane Doe 1's claims must also be dismissed.

CONCLUSION

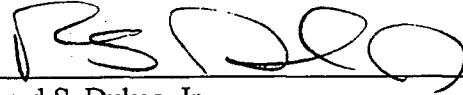
Because there is no proper party to maintain and continue these actions, both complaints should be dismissed. Neither party has an estate open in the Probate Court of York County and no personal representative has ever been appointed by the Probate Court for either deceased plaintiff. A reasonable time to effect a substitution of parties has long since passed, and the claims should be dismissed.

In the alternative, neither Plaintiff can come forward with admissible evidence in support of the essential elements of their claims, or the damages they would have alleged they sustained.

¹ South Carolina's "Dead Man's" statute prohibits interested parties from testifying as to conversations or transactions with the decedent where that testimony could affect his or her interest. S.C. Code § 19-11-20; *Brooks v. Kay*, 339 S.C. 479, 486, 530 S.E.2d 120, 124 (2000). The purpose of the statute is to prevent an interested witness from testifying to matters that cannot be contradicted if untrue. *Id.* Under South Carolina law, a person's testimony is to be excluded under the dead man's statute if she is either a party to the action or a person having an interest which may be affected by the trial. *See Suttles v. Wood*, 280 S.C. 272, 275, 312 S.E.2d 574, 577 (Ct. App. 1984) (establishing four classes of people covered under the dead man's statute). John Doe died intestate. His siblings and apparently sole heirs are beneficiaries to any recovery that might accrue to the estate. Therefore his siblings are barred from testifying about any damages or statements regarding any alleged sexual abuse. In essence, John Doe cannot establish his case in chief through testimony that must be excluded under the Dead Man's statute.

Because it is impossible for either Plaintiff to satisfy their burden in the face of a summary judgment motion, both Complaints should be dismissed.

TURNER, PADGET, GRAHAM & LANEY, P.A.



Richard S. Dukes, Jr.

Brian J. Kern

40 Calhoun Street, Suite 200

Post Office Box 22129

Charleston, South Carolina 29413-2129

Telephone: 843-576-2810

843-576-2802

Facsimile: 843-577-1646 (direct fax)

843-577-1644 (direct fax)

Email: rdukes@turnerpadget.com

bkern@turnerpadget.com

SHAHID LAW OFFICE

A. Peter Shahid, Jr.

89 Broad Street

Charleston, SC 29401

Telephone: 843-853-4500

Facsimile: 843-722-1119

Email: shahidlo@bellsouth.net

Attorneys For 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

June 23, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

John Doe,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-6694

Jane Doe 1,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8054

Jane Doe 2,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8055

Jane Doe 3,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2009-CP-10-8056

John Doe 2 and Jane Doe 4,

v.

Plaintiff,

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.

Civil Action No.: 2010-CP-10-5520

Jane Doe 11,

v.

Plaintiff,

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.

Civil Action No.: 2012-CP-10-5559

FILED
2011 JUN 26 PM 3:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

John Doe 193,

v.

Plaintiff,

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.

Civil Action No.: 2013-CP-10-3733

John Doe 230,

v.

Plaintiff,

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

Defendants.

Civil Action No.: 2014-CP-10-2130

John Doe 297,

v.

Plaintiff,

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.

Civil Action No.: 2016-CP-10-1632

**DIOCESE DEFENDANTS' OMNIBUS MOTION
FOR SUMMARY JUDGMENT ON LACK OF NOTICE OF ANY DANGEROUS
PROCLIVITY OF ACCUSED PRIESTS AND LACK ADMISSIBLE EVIDENCE TO
SUPPORT ANY CLAIM OF NEGLIGENCE, NEGLIGENT SUPERVISION, OR
FRAUDULENT CONCEALMENT**

Defendants, 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, ("the Diocese Defendants") move for judgment as a matter of law on all claims made by Plaintiffs pursuant to Rules 56, SCRPC. Plaintiffs can come forward with no admissible evidence that the Diocese Defendants ever had any notice that Fr. Jim McCarthy, Fr. Michael Kaney, or Fr. Martin Bangert ever engaged in any inappropriate conduct with minors and, on that basis, the Diocese Defendants cannot be liable for the alleged intentional torts of these priests. Furthermore, the Diocese Defendants are entitled to judgment as a matter of law regarding all claims of negligence, fraudulent concealment, negligent misrepresentation, or negligent supervision because the Diocese Defendants never had any knowledge of or information indicating that these priests might pose any danger to children. As such, Plaintiffs' claims must be dismissed in their entirety.

1. Plaintiffs cannot establish that the Diocese ever had notice that Fr. James McCarthy, Fr. Michael Kaney, or Fr. Martin Bangert posed any danger to children.

There is no admissible evidence that the Diocese Defendants knew of any "dangerousness" of the priests accused of sexually abusing minors, nor have these Plaintiffs produced even a scintilla of evidence that the Diocese Defendants concealed *these* priests' prior inappropriate sexual behavior with minors, because there is no such evidence. *See Doe v. Bishop of Charleston* 754 S.E.2d 494, 500-1 (S.C. 2014). The Plaintiffs cannot prove that the Diocese Defendants knew or should have known that any of these priests posed a danger to children or that the Diocese failed to warn anyone about these particular priests.

a. **Fr. James McCarthy**

Fr. McCarthy was a member of the Missionary Servants of the Most Holy Trinity, a religious order headquartered in Maryland. The priests of the Trinitarian Order are responsible to the Order's Custodian General and Council and are subject to the Order's rules and regulations. The Trinitarian Order furnished priests to St. William as part of its missionary ministry between 1956 and 1989.¹ The Custodian General would assign priests to serve St. William. Until a priest went through a process of incardination into the Diocese, they, like Fr. McCarthy, ultimately answered to the head of their religious order and not to the local bishop, though the priest did have to agree to the requirements of the bishop regarding administering the sacraments, saying Mass, and other similar matters. Nothing in Fr. McCarthy's Diocesan personnel file reflects even the slightest impropriety of any sort, and the Trinitarian Order has never informed the Diocese that its priest ever engaged in anything like sexual abuse of minors. Furthermore, the Order never received any report, claim, or accusation that Fr. McCarthy ever sexually abused a minor. *See Declaration of Brother Steven Vesely, Exhibit A.*

As Brother Vesely testifies, Fr. McCarthy took a leave of absence from his priestly duties in about 1971 because he had fallen in love with a nun. Jim McCarthy and Lorraine McCarthy married in 1972. (Deposition of Lorraine McCarthy, deposition, page 13, *Exhibit B*). Lorraine McCarthy testified that in their 35 years of marriage, Jim McCarthy never once did anything inappropriate with a child. *Id.* Rather, Jim McCarthy led an exemplary life – becoming a teacher and professor; a licensed family and marital counselor and sex therapist; and being involved in all manner of community service organizations. (See, *Obituary, Exhibit C*; and Lorraine McCarthy deposition page 16-17, *Exhibit B*). In short, nothing in his entire life would indicate that Jim McCarthy was capable of sexually abusing a child – and there is nothing, not a shred of evidence, to indicate to the Diocese that Fr. Jim McCarthy was a danger to children.

¹ See www.stwilliamsward.org

b. Fr. Michael Kaney.

Fr. Michael Kaney was a priest of the Diocese of Charleston. Nothing in Fr. Kaney's personnel file has even the slightest indication of any inappropriate conduct toward children. Rather, Fr. Kaney was an avid anti-Vietnam War protester, and his parishoners in Greenville complained often and loudly regarding the political tone of his sermons. He was written up in the Charleston *Post & Courier* for his efforts, along with a handful of other protesters, to delay the departure of a Navy ship on its deployment to Vietnam, with comical results.² (See newspaper article, **Exhibit D**). Fr. Kaney clearly struggled to find an appropriate outlet for his political activism. In 1975, after an arrest for possession of marijuana on Folly Road, Fr. Kaney left the priesthood. After leaving the priesthood, Kaney had a career in the oil services industry with Schlumberger.

The Diocese never once received any information to indicate that Fr. Kaney was a potential pedophile or that he ever engaged in any inappropriate conduct with a child. There was never a whiff of information that Fr. Kaney was ever a danger to children whatsoever. In short, there is just no admissible evidence showing that the Diocese knew or should have known that Fr. Kaney had dangerous propensities. Neither is there a shred of evidence that the Diocese concealed any such propensities from parishoners or anyone else.

c. Fr. Martin Bangert.

Friar Martin Bangert was priest of Holy Name Province of the Order of Friars Minor, also known as the Franciscans. The Diocese file contains no information at all that Fr. Martin posed any danger to children. Quite the contrary, it appears that Fr. Martin led an exemplary life. Friar Martin received the Distinguished Flying Cross in World War II for his service as a bombardier over Germany. (See *Profile of Martin Bangert, OFM, Exhibit E*.³) Fr. Martin

² *Post & Courier* article, **Exhibit D**.

³ www.hnp.org/who-we-are/our-friars/martin-bangert.

served in several parishes, mostly African-American parishes, during the 1950s and 1960s. *Id.* He served as pastor of St. Anthony of Padua Parish in Greenville from 1970 to 1976. He spent the remainder of his career in Jamaica serving in Franciscan missions there. He died in 1986. *Id.* The Franciscan Order likewise has no information to indicate that Fr. Martin ever did anything inappropriate with a child, and certainly there was never a claim that he sexually abused a child.

2. Plaintiffs cannot establish any genuine issue of material fact regarding their negligence-based claims against the Diocese and, on that basis, the Diocese is entitled to judgment as a matter of law.

It is axiomatic that a plaintiff must establish three elements to recover on their claim for negligence: (1) that the Diocese Defendants owed a duty of care to each of them individually; (2) that the Diocese Defendants breached that duty by a negligent act or omission; and (3) that each individual Plaintiff suffered damage as a proximate result of the negligent act. *See Carolina Chloride, Inc. v. Richland Cty.*, 714 S.E.2d 869, 873 (S.C. 2011). “If any of these elements is absent, a negligence claim is not stated.” *Summers v. Harrison Constr.*, 381 S.E.2d 493, 495 (S.C. Ct. App. 1989). “If the plaintiff fails to prove [the Diocese Defendants] owed [him or her] a duty of care, he fails to prove actionable negligence.” *See Nelson v. Piggly Wiggly Central, Inc.*, 701 S.E.2d 776, 781 (Ct. App. 2010). If there is no duty, then the defendant in a negligence action is entitled to judgment as a matter of law. *See e.g. Steinke v. South Carolina Dep’t of Labor, Licensing, and Regulation*, 520 S.E.2d 142, 153 (S.C. 1999).

The existence of a legal duty of care is a question of law for the Court. *See Johnson v. Robert E. Lee Academy, Inc.*, 737 S.E.2d 512, 515 (Ct. App. 2012). The Supreme Court and the courts of this state “will not extend the concept of a legal duty of care beyond reasonable limits.” *Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, 666 S.E.2d 247, 248 (S.C. 2008) and *Huggins v. Citibank, N.A.*, 585 S.E.2d 275, 277 (S.C. 2003).

In general, there is no common law duty to act, and foreseeability of injury, standing alone, does not give rise to a duty to act. *See Chakrabati v. City of Oarangeburg*, 743 S.E.2d 109, 122 (Ct. App. 2013) and *Oblachinki v. Reynolds*, 706 S.E.2d 844, 846 (S.C. 2011). Except in very limited circumstances, South Carolina courts have refused to impose a duty of care to prevent third persons from committing acts of violence:

Under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger. [internal citation omitted] We recognize five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant.

See Faile v. South Carolina Dep't of Juvenile Justice, 566 S.E.2d 536, 546 (S.C. 2002) (holding duty of care to prevent harm to third parties existed where DJJ had actual custody of the injurer and had actual knowledge of violent propensities) citing *Restatement (Second) of Torts § 314 et seq.* (1965).⁴

South Carolina has never recognized a duty of care to prevent acts of a third person without concrete evidence of a specific danger to *specific* persons. For example, in *Doe v. Bibby*, 763 S.E.2d 645 (Ct. App. 2014), *cert. granted* (Jan. 16, 2015), the Court of Appeals held that the spouse of a known sexual predator owed no duty to a minor that the husband sexually abused in their own home because there was no evidence that the wife had knowledge of a specific threat of harm to that specific minor. *Id.* Even a general knowledge of the sexual abuser's predilection was insufficient to trigger a duty to protect an undefined group of minors from the husband/predator.

⁴ The Restatement identifies a few such special relationships – an innkeeper owes a duty of care to guests; a common carrier owes a duty to protect passengers; a possessor of land owes a duty to members of the public who enter in response to his invitation. *See Restatement (Second) of Torts § 314A*. An employer's duty to exercise control over an employee in order to protect others from harm is discussed under the Negligent Supervision section below.

The same was true in *Doe v. Marion*, 645 S.E.2d 245 (S.C. 2007). In that case, plaintiff was sexually abused by his own pediatrician, Dr. Marion. Dr. Marion was undergoing treatment from a psychiatrist, Dr. Sue Graf for his predilection for molesting children. The victim sued Dr. Graf for her failing to warn him of Dr. Marion's predilection for molesting children. The Supreme Court affirmed dismissal of the case against the psychiatrist because, even though she was well aware of Dr. Marion's dangerous tendencies, there was no evidence of a specific threat of harm toward Doe. Without notice of a specific threat of harm to a specific individual, the psychiatrist owed no duty of care to potential victims of her patient. *Doe v. Marion*, 645 S.E.2d at 250.

South Carolina law is clear – for a person to have a duty to protect others from criminal acts of another, the person must have knowledge of a specific threat to a particular person.⁵ Even where the defendant possessed knowledge of a dangerous tendency, there arose no duty of care to any third party unless there was a specific threat to that particular individual. The Supreme Court has steadfastly refused to impose any duty of care to protect the public at large, or even to a discreet group of people, even when one *knows* of the tortfeasor's dangerous predilections.

This is even moreso when, as with these cases, the Diocese Defendants did not know and had no reason to know of any dangerous tendencies of any of the accused priests *before* they

⁵ See also:

-*Bishop v. S.C. Dep't of Public Health*, 502 S.E.2d 78 (S.C. 1998)(Department owed duty of care to warn child of potential harm when mother had threatened to harm that child prior to discharge from institution);

-*Rogers v. S.C. Dep't of Parole and Community Corrections*, 464 S.E.2d 330 (S.C. 1995)(no duty to warn potential victims that a prisoner was being furloughed, even though prisoner had burglarized their home previously absent knowledge of a specific threat that prisoner would);

-*Gilmer v. Martin*, 473 S.E.2d 812 (Ct. App. 1996)(Psychiatrist had no general duty to warn even though he was aware his patient, who expressed suicidal tendencies, worked with vulnerable persons, even though the group was discernible and small);

-*Sharpe v. S.C. Dep't of Mental Health*, 354 S.E.2d 778 (Ct. App. 1987)(therapist owed no duty to warn of a patient's violent propensities where there was no specific threat to a specific person).

allegedly molested the children who are now plaintiffs. The Diocese Defendants simply did not owe these plaintiffs any duty to protect them from potential, non-specific harm. In essence Plaintiffs' position is that the Diocese must assume all adults are pedophiles and that it would owe a duty to all children, forever, to protect them from sexual predators. Failing to prevent one sexual predator, whether the Diocese knew of the predator's very existence or not, would breach a duty of care to all children, everywhere. That simply cannot be the law.

Rather, where the Diocese has no information at all regarding a particular priest or adult, there simply is no duty of care. Without a duty to these plaintiffs, there can be no claim sounding in negligence, recklessness, or intentional conduct.

3. Plaintiffs' claims alleging negligent supervision must fail as a matter of law.

In order to establish a claim for negligent supervision, a plaintiff must prove that

- (1) [the employee] intentionally harms another when he is on the employer's premises, is on premises he is privileged to enter only as employee, or is using the employer's chattel;
- (2) the employer knows or has reason to know he has the ability to control the employee; and
- (3) the employer knows or has reason to know of the necessity and opportunity to exercise such control.

Degenhart v. Knights of Columbus, 420 S.E.2d 495, 496 (1992) citing *Restatement (Second) of Torts* § 317. This rule has been applied to find an employer liable for negligent supervision when the employee sexually assaulted a minor and the employer had some notice of the employee's prior inappropriate sexual behavior with another minor. *Doe by Doe v. Greenville Hosp. System*, 448 S.E.2d 564, 568 (S.C. Ct. App. 1994). However, where there no prior complaints of inappropriate sexual conduct, the employer or principal, the employer was not under any duty to exercise control over the employee. See *Doe v. Smith*, 2014 WL 2968925 (S.C. Ct. App. June 30, 2014) (Doe presented no evidence that the school district knew or had reason to know of a need to exercise control over Smith to prevent him from abusing Doe.

Summary judgment affirmed) citing *Moore v. Berkeley Co. Sch. Dist.*, 486 S.E.2d 9, 11 (S.C. Ct. App. 1997) and *Degenhart, supra*. As the Supreme Court recognized in *Doe v. Bishop of Charleston*, “the employer’s knowledge of an employee’s dangerousness is an element of the tort of negligent supervision.” *Doe*, 754 S.E.2d 494, 501 (S.C. 2014). Clearly, without any indicia of inappropriate conduct with another minor, the Diocese Defendants cannot be liable to these Plaintiffs for negligent supervision of Fr. McCarthy, Father Kaney, and Father Bangert.

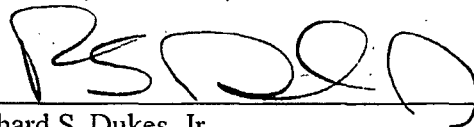
CONCLUSION

Because the Diocese Defendants owed these plaintiffs no duty of care with respect to Fr. Jim McCarthy, Fr. Michael Kaney, or Father Martin Bangert, plaintiffs’ causes of action for negligence, recklessness, and intentional conduct must be dismissed. Plaintiff cannot establish that the Diocese Defendants possessed any knowledge of any specific threat posed by *these* priests to these particular plaintiffs prior to their alleged sexual abuse. Thus, the Diocese Defendants simply owed these plaintiffs no duty of care and they cannot be liable to the plaintiffs in negligence.

Additionally, because the Diocese Defendants had no information regarding any dangerous tendency of Fr. McCarthy, Fr. Kaney, or Fr. Bangert, the Diocese had no duty to control the priests activities more closely or to supervise them more thoroughly. Failing that legal duty, the Diocese Defendants cannot be held liable for negligent supervision.

For the foregoing reasons, Plaintiffs’ separate claims sounding in negligence must be dismissed with prejudice.

TURNER, PADGET, GRAHAM & LANEY, P.A.



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Attorneys For 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

June 26, 2017

CERTIFICATE OF SERVICE

Civil Action No.: 2009-CP-10-6694
Civil Action No.: 2009-CP-10-8054
Civil Action No.: 2009-CP-10-8055
Civil Action No.: 2009-CP-10-8056
Civil Action No.: 2010-CP-10-5520
Civil Action No.: 2012-CP-10-5559
Civil Action No.: 2013-CP-10-3733
Civil Action No.: 2014-CP-10-2130
Civil Action No.: 2016-CP-10-1632

I hereby certify that this 26th day of June, 2017, a copy of the **DIOCESE DEFENDANTS' OMNIBUS MOTION FOR SUMMARY JUDGMENT ON LACK OF NOTICE OF ANY DANGEROUS PROCLIVITY OF ACCUSED PRIESTS AND LACK ADMISSIBLE EVIDENCE TO SUPPORT ANY CLAIM OF NEGLIGENCE, NEGLIGENT SUPERVISION, OR FRAUDULENT CONCEALMENT** has been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

Gregg Meyers
321 East Bay Street
Charleston, SC 29401

Susan Taylor Wall
McNair Law Firm, P.A.
Post Office Box 1431
Charleston, SC 29402

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Bruner, Powell, Wall & Mullins, LLC
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Chicago, IL 60611-3607

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2017 JUN 26 PM 3:36

FILED



April D. Hager

EXHIBIT A

DECLARATION OF BROTHER STEVEN VESELY

I, Brother Steven Vesely, under penalty of perjury, do hereby declare and say:

I am the Secretary General and custodian of records of the Missionary Servants of the Most Holy Trinity, located in Silver Spring, Maryland. I have been informed of the lawsuit now pending in Charleston, South Carolina against the Bishop of Charleston with respect to actions of alleged child sexual abuse that are said to have been committed between 1965 to 1971 in South Carolina by Fr. James W. McCarthy ("Fr. McCarthy"). I have been asked to report whether any record exists in the files of the Missionary Servants concerning an allegation or complaint of sexual abuse by Fr. McCarthy. I attest to the following:

1. Fr. McCarthy was ordained in 1956.
2. Fr. McCarthy was assigned to St. William in Ward, South Carolina in 1956 and again from 1965 to 1971.
3. In 1971, Fr. McCarthy went on a leave of absence because he had fallen in love with a Religious Sister.
4. In 1972, Fr. McCarthy was laicized and shortly thereafter, married the former Religious Sister.
5. Upon information and belief, I understand that Fr. McCarthy died in 2008.
6. A careful review of the personnel and employment file for Fr. McCarthy reveals no report, claim, or accusation of child sexual abuse, deviant sexual conduct, or other serious misconduct during Fr. McCarthy's lifetime.
7. I did receive information from the Charleston, S.C. Diocese on November 9, 2009 that the Diocese had received an accusation of sexual abuse concerning Fr. McCarthy.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

9. AND FURTHER DECLARANT SAITH NOT.

20-JUNE-2017
Date

Steven Vesely
Br. Steven Vesely

EXHIBIT B

LORRAINE MCCARTHY - 06/12/2017

1	STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
2	COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
3		
4	John Doe,)	
5	v.)	
6	Plaintiff,)	Civil Action No.:
7	The Bishop of Charleston,)	2009-CP-10-6694
8	a Corporation Sole, and)	
9	The Bishop of The Diocese)	
10	of Charleston, in his)	
11	official Capacity,)	
12	Defendants.)	
13		
14	VIDEOTAPED DE BENNE ESSE DEPOSITION OF	
15	LORRAINE MCCARTHY	
16	TAKEN ON: Monday, June 12, 2017	
17	TAKEN AT: 400 West Broadway	
18	Suite 400	
19	San Diego, California	
20		
21		
22		
23	REPORTED BY: Nancy A. Lee, CSR No. 3870	
24		
25		

1 would give this -- send this off to get a job in
2 counseling with all his background, all the things he
3 could do. And he had many licenses and he had a lot of
4 training. He's a very educated person. He was very,
5 very smart.. I don't think they knew that in the
6 seminary. But when he came out and started going to
7 college, even I discovered that he was very intelligent.

8
9 So he's got his experience here: "Instructor
10 for the San Diego Community College, college-psychology,
11 African art." He loved -- for some reason he loved
12 African art and he studied that and taught it.
13 "Adult-art, human behavior, special education,
14 government, ESL" -- English as a second language -- from
15 "1973 to 1983."

16 Then he became a "Marriage, Family and Child
17 Counselor, private practice, 1975-1983; a
18 Pastor/Administrator two-county parish,
19 Saluda-Batesburg, South Carolina, teaching, counseling,
20 lecturing, 1964-1971; Assistant Pastor teaching,
21 counseling, lecturing, 1956-1964; teacher, Norfolk
22 Catholic High, 1957-1961. Physical labor, worked way
23 through college painting, carpentry, masonry, plumbing,
24 electrical, 1946-1956."

25 His family didn't have enough money that they

1 demanded at the seminary, so he worked to get through
2 that.

3 "Counselor-Director, arts and crafts, camp for
4 boys, 1952-1955." So that's when he did work with
5 children. "Teacher inner-city children part of Black
6 studies program, Washington, D.C., 1951-1952."

7 Then he became -- then these are the
8 credentials he has. I don't know if you're interested.
9 "Community College Instructor Credentials:
10 College-psychology, sociology, special ed., philosophy
11 and religion; Adult-art, art therapy, art for
12 handicapped, music, philosophy, sociology. State of
13 California Teaching Credential, Adult education.
14 California Marriage, Family, and Child Counselor,
15 No. 7495. Registered Art Therapist, American Art
16 Therapy Association #77-018. Certification, Federation
17 of Christian Ministries."

18 And his licenses -- not his licenses --
19 memberships: American Psychological Association,
20 California Association of Marriage and Family
21 Therapists, San Diego Chapter of CAMFT" -- that's
22 marriage and family, child counseling -- "member of
23 Referral Service, American Art Therapy Association, San
24 Diego Art Museum & African Art Chapter."

25 MR. DUKES: We'll go on and mark that as

1 Q The allegations in this -- in these lawsuits
2 are that Father Jim sexually abused a number of
3 children.

4 Having been married to him for 35 years, do
5 you believe that could have ever happened?

6 A No, I do not. I mean, in 35 years he never
7 expressed any desire to be alone with children, and we
8 didn't have that many -- I mean, there were not many
9 possibilities except my nieces and nephews and children
10 of families that we counseled. But nobody ever
11 complained about his behavior with children. We talked
12 about having children ourselves, but I was not able to
13 have any.

14 Q Did any of Jim's siblings have children?

15 A Yes. They all did. Rita and Betty, Mike --
16 all of them had children.

17 Q And were you and he -- did you all get with
18 his siblings and their children?

19 A We rarely did. One or two visits, I guess.

20 Q Okay. And you said no one in your entire
21 married life ever complained about that Jim had acted in
22 any way inappropriately with a child.

23 A No. Never. My family would come -- we had a
24 pool, so they would come to our place for picnics and
25 we'd all go swimming. But there was -- I never observed

1 any -- anything out of the ordinary.

2 Q And, obviously, Jim was never required to
3 register as a sex offender anywhere.

4 A No. He couldn't have continued his work as a
5 marriage, family and child counselor. He would have
6 lost all -- everything he really was doing because it's
7 a terrible thing.

8 Q And he never lost his licenses --

9 A No.

10 Q -- as a psychologist or a therapist.

11 A No.

12 Q Was he ever disciplined by the governing
13 bodies?

14 A No. Never.

15 Q Do you know whether Jim went through the
16 Catholic church's anti-sex abuse training? I believe
17 it's called Vertus?

18 A He never said --

19 Q It's a relatively recent development, and it
20 may have come into existence after he died.

21 Did he give any training about avoidance of
22 sex abuse to other people?

23 A A training?

24 Q Or counseling.

25 A Well, I think it was part of the marriage and

LORRAINE MCCARTHY - 06/12/2017

Page 58

1 REPORTER'S CERTIFICATE

2

3

4

I, the undersigned, a Certified Shorthand
Reporter of the State of California, do hereby certify:

5

6

7

8

9

10

11

12

That the foregoing proceedings were taken
before me at the time and place herein set forth; that
any witnesses in the foregoing proceedings, prior to
testifying, were duly sworn; that a record of the
proceedings was made by me using machine shorthand which
was thereafter transcribed under my direction; that the
foregoing transcript is a true record of the testimony
given.

13

14

15

I further certify I am neither financially
interested in the action nor a relative or employee of
any attorney or party to this action.

16

17

18

19

IN WITNESS WHEREOF, I have this date
subscribed my name.

20

21

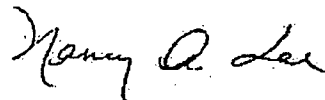
22

23

24

25

Dated: June 22, 2017



Nancy A. Lee
CSR No. 3870

SYNOPSIS

PhD to be conferred January 1984.

Completed dissertation for Saybrook Institute, San Francisco.
Committee: Rollo May, Stanley Krippner, Richard Farson.

Completed

MA 1975, sociology, San Diego State University, highest honors,

Inducted into National Honor Society--Phi Kappa Phi.

BA 1973, art, Immaculate Heart College, L.A., cum laude.

MA 1956, theology/music/Black studies, Holy Trinity College,
affiliated with Catholic University of America, Washington, D.C.

Extension, UCSD & SDSU 15 courses 1976-1979.

EDUCATION



TRAINING

Group Dynamics, 1970, 100 hours with A.J. Del Vecchio, PhD,
Chairman, Dept. of Psychology, Family Research Institute, College of
St. Thomas, St. Paul, Minnesota.

Audio-visual techniques 1969, Union Theological College, Richmond,
Va., 100 hours supervised training in all visual techniques.

Clinical fieldwork 1968, in mental hospital, general hospital, and
State prison, 100 hours supervised by William S. Hall, Psychiatric
Institute, Columbia, Sc.

Marriage counseling 1965-1971, continuing education for
professionals through the University of South Carolina.

Ethical and social sciences six month full-time refresher course,
Brackney, PA., 1961-1962.

Instructor, San Diego Community College: College-psychology,
African art; Adult-art; human behavior, special education,
government, ESL, 1973-1983.
Marriage, Family and Child Counseling, private practice, 1975-1983.
Pastor/Administrator two-County parish, Saluda-Batesburg, SC,
teaching, counseling, lecturing, 1964-1971.
Assistant pastor teaching, counseling, lecturing, 1956-1964.
Teacher, Norfolk Catholic High, 1957-1961.
Physical labor, worked way through college painting, carpentry,
masonry, plumbing, electrical, 1946-1956.
Counselor-Director, arts and crafts, camp for boys, 1952-1955.
Teacher inner-city children part of Black studies program,
Washington, D.C., 1951-1952.

EXPERIENCE

Community College Instructor Credentials: College-psychology,
sociology, special ed., philosophy & religion; Adult-art, art
therapy, art for handicapped, music, philosophy, sociology.
State of CA Teaching Credential, Adult Ed.
California Marriage, Family, and Child Counselor, #7495.
Registered Art Therapist, American Art Therapy Asso. #77-018.
Certification, Federation of Christian Ministries.

LICENCES

3 MEMBERSHIPS

American Psychological Association.
California Association of Marriage and Family Therapists.
San Diego Chapter of CAMFT, member of Referral Service.
American Art Therapy Association.
San Diego Art Museum & African Art Chapter.

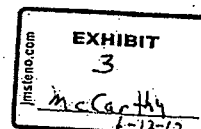




EXHIBIT C

McCarthy, James (Jim)

February 3, 2008
Sarasota, FL

"Dr. Jim", 79, had successfully survived Non-Hodgkins Lymphoma and was slowly regaining his strength while battling infections contacted at the hospital when he unexpectedly, but peacefully, passed away on February 3, 2008, at the Carroll Center, The Glenridge, Sarasota, FL. James Martin, also a resident of The Glenridge and a well-known member of CORPUS, was able to administer the Last Rites soon after Jim's death. Two former Sisters of St. Joseph (ME diocese), of Bradenton, FL, were present after having received the news of Jim's passing from his wife, Lorraine (also a former CSJ), who had returned to San Diego, CA, to continue preparing for the move to Sarasota.

Jim had been on sick leave from the San Diego Community College district. Jim and Lorraine were planning a move to Sarasota, but during a Thanksgiving visit, Jim was hospitalized due to anemia following three chemotherapy treatments he had received in San Diego.

His body was donated to the U of FL Anatomical Board, School of Medicine, Gainesville, FL. Memorial celebrations of life were held in Sarasota, FL, and in San Diego, CA.

Dr. Jim was born November 8, 1928, in Syracuse, NY, to the late William and Amelia McCarthy. He graduated from St. Patrick's High School in 1946, then studied at St. Joseph's Prep. Seminary, Holy Trinity, AL. He professed his First Vows in 1950, and began philosophy studies in Silver Spring, MD. After studies in theology and philosophy at Holy Trinity Mission Seminary, Winchester, VA, he made his final profession of vows in 1953 and received the order of diaconate in 1955. As "Father Leo," he served as a Missionary of the Most Holy Trinity for 15 years in five Southern states. Following his retirement from active ministry in 1971, he obtained a BA in Fine Arts from Immaculate Heart College, Hollywood, CA. In 1972, in Hollywood, he married Lorraine Gaudreau from Maine, who had been a teaching member of the Sister of St. Joseph for 20 years.



Dr. Jim received his MA in Sociology from San Diego State University and a PhD in Psychology from Saybrook Graduate and Research School, San Francisco, CA. He taught psychology courses, African Art, Human Sexual Behavior, and Marriage and Family Relations as an Instructor for the San Diego Community College. Jim published his own texts for three classes. He has been a registered Art Therapist; a California licensed Marriage, Family, and Child Counselor; and a member of several professional organizations, including the American Psychological Association and the African Art Committee of the San Diego Art Museum.

Jim was a member of both Federation of Christian Ministries and CORPUS. He was incardinated by Bishop Thomas Clary into the Free Catholic Church, San Diego. Fr. Jim's ministry included officiating at weddings for couples who feel disenfranchized from the Roman Catholic Church. He also considered as ministries his teaching career and his volunteer work. Volunteer positions have been: San Diego Hospice public speaker and patient visitor; Mended Hearts Accredited Hospital Visitor and co-editor of local Mental Hearts newsletters; AARP instructor of driving classes for seniors; SD Symphony usher; and past SD Society for Sex Education and Therapy historian.

Survivors include his wife of 35 and 1/2 years, Lorraine of San Diego; two sisters, Betty Hyman of Palmyra, NY, and Rita Martin of Cicero, NY; three brothers, Richard, William, and Michael of Syracuse, NY; his Godmother-Aunt, Agnes Ewald of Zephyrhills, FL; and numerous nieces and nephews.

Students and colleagues from 35 years of teaching for San Diego Adult Education and San Diego Community College will remember Dr. Jim for his dedication, enthusiasm, extensive knowledge of his subjects, and good humor. His wife, Lorraine, will forever treasure his gentle nature, his genuine spirituality, his kindness toward all, and the depth of his love for her manifested in so many diverse ways. She cherishes the messages in all the cards he so carefully chose or created for her throughout the 35 years of wedded life. A favorite phrase of Jim's was "The best is yet to be." Now Lorraine looks forward to the "to be" ... Eternal Life with the Love of her Earthly Life.

A song Jim composed, sang, and recorded for Lorraine ends with these words: "God must have meant us for each other; else why would we have met the strange way that we did?" He was referring to their six months as pen pals after responding to an ad that Charles Farley (CORPUS member) of Orange County, CA, had placed in the Oct.-Nov. 1971 edition of National Catholic Reporter: "Former priests and nuns wish to share new lifestyle with others." At the time of publication, Jim was in South Carolina and Lorraine in Maine.

Because of Dr. Jim's great love of teaching (He taught until he no longer had the strength--until age 78.), the Dr. James W. McCarthy Scholarship, (California Retired Teachers Assoc., Div. 78, San Diego), will be offered in 2009 to a deserving college student studying toward a California teaching credential. Friends and relatives are contributing to this fund.

Farewell to a unique, intellectual, compassionate, lovable Priest, Teacher, Volunteer, Friend, and Spouse.

Lorraine McCarthy

EXHIBIT D



(Staff Photo by King)

Police Unload Protester On Pier

12 Arrested As Destroyer Prepares To Set Sail

By THOMAS R. BAXTER
Staff Reporter

A flotilla of antiwar protesters led by an intrepid kayak paddler staged a "symbolic" blockade of a Vietnam-bound Navy destroyer Tuesday morning.

All the 12 persons, who manned three canoes and a kayak at the Charleston Naval Base were arrested by Coast Guard and Navy personnel. They were then turned over to county police, who declined to press any charges Tuesday afternoon.

A Coast Guard spokesman said a federal attorney was looking into possible charges for the group, and would make some decision Thursday. Officials of the FBI and federal marshals' office had said earlier that their offices planned no charges. The group was held briefly at the county police headquarters

Tuesday and then released.

Eleven members of the self-styled "people's blockade" in canoes were quickly picked up by Coast Guard boats as they made a dash for the ship, the USS Bordelon.

But the twelfth protester, identified as kayak jockey Charles Cole, 23, of 1929 Token St., led security officials a merry chase for close to an hour and a half, to the cheers and jeers of onlooking Navy personnel.

A Navy spokesman said part of the reason for the long chase came from fears that any drastic measures—such as attempting to swamp to boat with a water hose—could have resulted in serious injury to the protester.

The protesters said before the blockade their actions were spurred by reports from crewmen on the Bordelon that the ship was unseaworthy and not fit for battle.

Navy spokesmen said the ship has no major defects, and that any minor problems would be taken care of before the ship enters a battle line.

A number of Navy enlisted men shouted warnings and encouragement to Cole as he maneuvered his kayak between the ship, under the pier, and in the river to escape his pursuers.

Cole was finally captured about 10 minutes before sailing time by two Navy security personnel in a small boat. Cole was handcuffed and dragged out of his craft as he shouted antiwar slogans to the onlookers.

The Bordelon then left for its Vietnamese tour. A Navy band on the pier played "Ramblin' Rose" and "Anchors Aweigh" as the ship was tugged into the Cooper River, and a number of enlisted men onboard were observed flashing peace signs

toward the crowd of weeping wives and girlfriends, Navy personnel and newsmen on the pier.

Other members of the protest group were identified as: Ted Swifter, 23, and Elbert Swink, 18, both of Americus, Ga.; Bob Burton, 24, Hanahan; Paul Dean Jr., 20, Easley; Michael Keney, 36, Greenville; Cheryl Figeueruera, 22, Louisa Tobias, 21, and Peter Brown, 22, all of 1929 Token St.; Phillip Sharpe, 23, Louis Figeueruera, 22, both of Columbia; and Henry Eneman, 18, a University of South Carolina student.

Hillery Hunter, a member of the group of antiwar protesters who was not in the boat blockade, said the group knew the blockade would only be symbolic. She felt the demonstration, along with a vigil held outside the base, was a success, "because it drew public attention to what is going on now in Vietnam."

EXHIBIT E



FRANCISCAN FRIARS

HOLY NAME PROVINCE

Martin Bangert, OFM

1918 - 1986

Fr. Martin Bangert, OFM, was born in New York City on April 19, 1918. He graduated from Fordham University in 1940 and entered the United States Army. During World War II, he served as a First Lieutenant, flying as a bombardier on bombing raids over Germany. He received the Distinguished Flying Cross in 1944.



He was received into the Province's novitiate at St. Bonaventure Friary in Paterson, N.J., Aug. 13, 1945, and professed temporary vows Aug. 14, 1946. Fr. Martin made his profession of solemn vows Sept. 17, 1949, and was ordained a priest Jan. 2, 1950.

After ordination, he spent a year at St. Francis Parish in Beach Haven, N.J., and two years at St. Francis of Assisi Parish in New York City. In 1953, Fr. Martin went south where he ministered for the next 23 years.

He served in Emporia, Va, Winston-Salem, N.C., Americus, Ga., and Albany, Ga. Fr. Martin's dedication to ministry to black Catholics was carried on during an era of high racial tensions in America, and his sympathies were clearly on the side of justice.

In 1970, Fr. Martin was appointed pastor of St. Anthony of Padua Parish in Greenville, S.C., and served for six years. He volunteered for the mission in Jamaica, and after three years at Our Lady of Angels Parish, he was appointed pastor of Sacred Heart Parish in Highgate, Jamaica.

Fr. Martin's devoted ministry, genuine love for the Province and his Franciscan missionary spirit was the legacy he left behind.

He died in Warwick, N.Y., on July 23, 1986. Fr. Martin was 68 years old, a professed friar for nearly 40 years and a priest for 36 years.

Holy Name Province | 129 West 31st St., 2nd Fl | New York, NY 10001-3403

Phone: (646) 473-0265 | Fax: (646) 368-8127 | E-mail: hnp@hnp.org

Friars Only

Thursday, November 24, 2005

FEATURE

Southern Cross, Page 3

Traveling the timeline of Saint Jerome's Chapel, "a colored mission in Americus"

The picture of Saint Jerome's Chapel, Americus, that appeared in a 1940s issue of The Bulletin of the Catholic Laymen's Association of Georgia was particularly poignant. Headed a "Colored Mission in Americus," the simple building shown seemed more like a cabin, an outpost in the wilderness and, given the times, it was. Accompanying information indicated that Saint Jerome's Chapel was to be served by the Franciscan Fathers with Reverend Joseph Wider, OFM, as priest in charge, and added, "It is planned to replace the present structure with a church when conditions for building are more favorable."

The little Chapel of Saint Jerome in the photo was housed at first in a rented building on East Forsyth Street in Americus within the city's African-American community. Later, the property was purchased and its interior was renovated. On April 25, 1946, the chapel was blessed and placed under the patronage of Saint Jerome. The choice of Saint Jerome as patron honored the memory of the late Father Jerome Dawson, OFM, provincial of the Order of Franciscan Missionaries when Bishop Gerald P. O'Hara of Savannah invited the Franciscan Fathers to Georgia.

Dedication

The dedication of Saint Jerome's was a landmark event in the history of black Catholics of the area. Fittingly, Father Joseph C. Cassidy, legendary Georgia missionary and then rector of Atlanta's Cathedral of the Christ the King Church, was on hand to represent Bishop O'Hara.

Besides the new church's congregation, "a large representation of the Colored population of Americus, all of them non-Catholics, attended the impressive ceremony with a number of parishioners of Saint Mary's Church." (*Bulletin*, May 25, 1946).

Father Godfrey A. Weidekamp, OFM, pastor of the Franciscan Mission territory in southwest Georgia read congratulatory letters from Bishop O'Hara who regretted not

being able to be present, and from various luminaries of the Franciscan Order. H. C. Jones, mayor of Americus and other city officials were present in the congregation.

In his sermon, Father Cassidy emphasized the significance of the dedication of a Catholic church. Listening as he spoke was the amazingly large contingent of clergy who filled the small chapel that April day. Prominent among them was Father Ferdinand Gruon, OFM, Visitor General for the Canonical Visitation of the Franciscan Province of the Most Holy Name, Chicago.

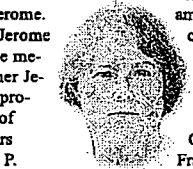
The veritable "who's

who" of priests present at the dedication included: Fathers Harold A. Gaudin, SJ, Macon, Hermansgild Messner, SDS, of Phenix City, Alabama, and Daniel J. Bourke, of Albany. Present as well were Fathers Herman Deimel (Columbus), John O'Shea (Thomasville), James E.

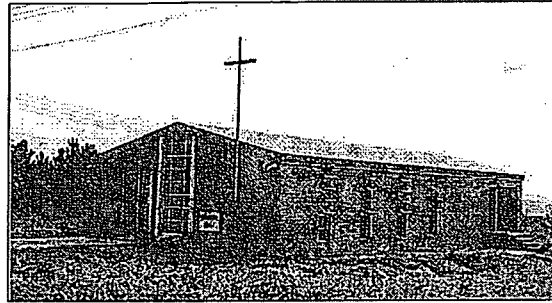
King (Warner Robins), Mark Sterbenz, SDS (Phenix City), William Dunn (Macon),

Michael McNally, SJ (Macon), Gordon Krahe, OFM (Greenville, South Carolina), Brendan Lyons, OFM (Asheville, North Carolina), Arthur Butler, OFM (Pensacola, Florida), Urban Scanlon, OFM (Paterson, NJ) Winfred McCarthy, OFM (New York), Thomas A. Albert, OFM (assistant pastor Saint Mary's Church, Americus), and Joseph B. Wider, OFM, an assistant pastor of Saint Mary's assigned to the new mission.

November is Black Catholic History Month



Rita H. DeLorme



Above: The chapel of Saint Martin de Porres.

Right: The community of Saint Martin de Porres, Americus, gathers for its 20th anniversary celebration in 1966.



Photos courtesy of the Diocesan Archives.

It was Father Weidekamp, as head of the Franciscan mission territory of southwest Georgia, who hosted a pre-dedication dinner for Monsignor Cassidy and the other priest visitors at the Windsor Hotel. "Saint Martin de Porres"

With such an auspicious beginning, Saint Jerome's church seemed firmly established, but in 1962—uprooted by urban sprawl—it was moved to 611 Lambert Street. In January, 1963, ground was broken for a new church in the Vista Heights section of Americus. On September 5, 1963, Bishop Thomas J. McDonough dedicated the new chapel and it was given another name: "Saint Martin de Porres". Father Martin Bangert, OFM, became its pastor, and remained at the church until he was transferred in 1967. Afterwards, the pastor of Saint Mary's Church, Americus, served as pastor of Saint Martin de Porres Chapel as well.

Merger

It was not long before integration of the Catholic community brought the brief parochial history of the Chapel of Saint Jerome/Martin de Porres to a close. Future plans called for its use as a human resource center for the people of Vista Heights and surrounding areas.

Saint Clare Parish in Albany, established as an offshoot of the older chapel, was to be served from Americus. Eventually, Saint Clare's was joined with Saint Teresa Parish, Albany, and its membership officially became part of Saint Teresa's. The chapel was designated "a chapel of convenience" for former members of both Saint Clare's and Saint Martin de Porres and diocesan priests assumed responsibility for it.

Circumstances generated by the times wrote the epilogue to the saga of the little Chapel of Saint Jerome which began with a rented house before it moved on to a new location, a new church and a new name, and—finally—fused with another.

Columnist Rita H. DeLorme is a volunteer in the Diocesan Archives. She can be reached at rdhelorme@diocsav.org.

Father Donahue's father dies

William J. Donahue, 76, father of Father Timothy C. Donahue, pastor of the Church of the Most Holy Trinity, Augusta, died at Liberty Regional Medical Center, Hinesville, on November 15. The native of Charlestown, Massachusetts, served in the U.S. Army for 25 years, retiring at Fort Stewart in 1977. He was a member of Saint Stephen First Martyr Parish, Hinesville. In addition to Father Tim Donahue,

William Donahue is survived by his wife of 53 years, Mary, four other sons, Daniel, Dennis, Kevin and Patrick, two daughters Kathleen Donahue and Ellen Lambert; two grandsons, and two brothers.

Father Donahue celebrated his father's Funeral Mass on November 18 at Saint Stephen's. Memorials are requested to Saint Stephen Catholic Church Building Fund, 399 Woodland Drive, Hinesville, GA. 31313.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2015-CP-10-3288

John Doe 240,

v.

Plaintiff,

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

Defendants.

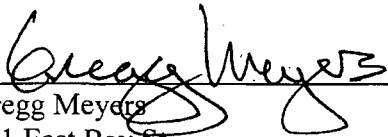
JOINT STIPULATION OF DISMISSAL

FILED
2017 JUL -6 PM 3:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY A

Pursuant to Rule 41 of the SCRPC, it is hereby stipulated between the Plaintiff and Defendants, The Bishop of Charleston, a Corporation Sole, and The Bishop of The Diocese of Charleston, in his official Capacity that this case be and hereby is **DISMISSED** against the Diocese Defendants and is discontinued, and forever ended **WITH PREJUDICE**, on the terms agreed to by the plaintiff and the Diocese defendants under S.C. Code Section 15-38-50. Plaintiff and the Diocese Defendants to bear their own attorney's fees and costs.

WE MOVE:

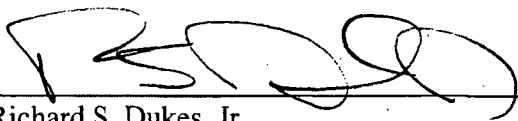
**PIERCE HERNS SLOAN & WILSON,
LLC**


Gregg Meyers
321 East Bay St.
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Phone: 843-722-7733
Email: Greggmeyers@phswlaw.com

ATTORNEY FOR PLAINTIFF

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bkren@turnerpadget.com

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A. Peter Shahid, Jr.
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**ATTORNEYS FOR THE BISHOP OF
CHARLESTON, A CORPORATION SOLE,
AND THE BISHOP OF THE DIOCESE OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY**

July 5, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2013-CP-10-4175

Father Doe 194,

v.

Plaintiff,

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.

**JOINT STIPULATION OF DISMISSAL
AGAINST DIOCESE DEFENDANTS
ONLY (THIS DOES NOT END THE
ENTIRE CASE)**

FILED
2017 JUL -6 PM 3:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Pursuant to Rule 41 of the SCRCP, it is hereby stipulated between the Plaintiff and Defendants, 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 (the "Diocese Defendants") that this case be and hereby is **DISMISSED** against the Diocese Defendants only and is discontinued, and forever ended **WITH PREJUDICE**, on the terms agreed to by the plaintiff and the Diocese defendants under S.C. Code Section 15-38-50. Plaintiff and the Diocese Defendants to bear their own attorney's fees and costs.

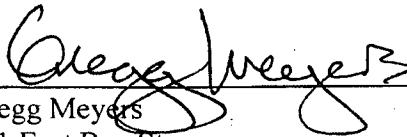
This case is NOT ended as to Plaintiff's remaining claims against Lawrence E. Richter, Jr., David K. Haller and Richter & Haller, LLC.

(Signatures on next page)

Lawrence E. Richter, Jr.
David K. Haller

WE MOVE:

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LLC**


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Phone: 843-722-7733
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ATTORNEY FOR PLAINTIFF

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**ATTORNEYS FOR 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**

July 5, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2013-CP-10-41760

John Doe 194,

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.

**JOINT STIPULATION OF DISMISSAL
AGAINST DIOCESE DEFENDANTS
ONLY (THIS DOES NOT END THE
ENTIRE CASE)**

FILED
2017 JUL -6 PM 3:44
JULIE J. ARTHUR
CLERK OF COURT
BY

Pursuant to Rule 41 of the SCRCPP, it is hereby stipulated between the Plaintiff and 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; and Robert J. Baker, former Bishop of Charleston, in his official capacity (the "Diocese Defendants") that this case be and hereby is **DISMISSED** against the Diocese Defendants only and is discontinued, and forever ended **WITH PREJUDICE**, on the terms agreed to by the plaintiff and the Diocese defendants under S.C. Code Section 15-38-50. Plaintiff and the Diocese Defendants to bear their own attorney's fees and costs.

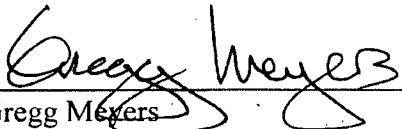
This case is NOT ended as to Plaintiff's remaining claims against Lawrence E. Richter, Jr., David K. Haller and Richter & Haller, LLC.

(Signatures on next page)

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P50

WE MOVE:

**PIERCE HERNS SLOAN & WILSON,
LLC**


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ATTORNEY FOR PLAINTIFF

WE MOVE:

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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**

July 5, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2015-CP-10-3287

Jane Doe 240,

v.

Plaintiff,

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

Defendants.

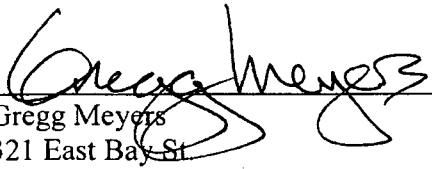
JOINT STIPULATION OF DISMISSAL

FILED
2017 JUL -6 PM 3:44
JULIE J. ADAMS, CLERK OF COURT
BY 2

Pursuant to Rule 41 of the SCRCPP, it is hereby stipulated between the Plaintiff and Defendants, The Bishop of Charleston, a Corporation Sole, and The Bishop of The Diocese of Charleston, in his official Capacity that this case be and hereby is **DISMISSED** against the Diocese Defendants and is discontinued, and forever ended **WITH PREJUDICE**, on the terms agreed to by the plaintiff and the Diocese defendants under S.C. Code Section 15-38-50. Plaintiff and the Diocese Defendants to bear their own attorney's fees and costs.

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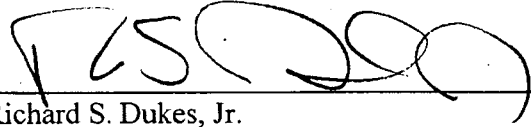
**PIERCE HERNS SLOAN & WILSON,
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Email: Greggmeyers@phswlaw.com

ATTORNEY FOR PLAINTIFF

WE MOVE:

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**ATTORNEYS FOR THE BISHOP OF
CHARLESTON, A CORPORATION SOLE,
AND THE BISHOP OF THE DIOCESE OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY**

July 5, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2015-CP-10-5486

John Doe 245 and Father Doe 245,

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.

**JOINT STIPULATION OF DISMISSAL
AGAINST DIOCESE DEFENDANTS
ONLY (THIS DOES NOT END THE
ENTIRE CASE)**

FILED
2017 JUL -6 PM 3:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY LD

Pursuant to Rule 41 of the SCRCPP, it is hereby stipulated between the Plaintiff and 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; and Robert J. Baker, former Bishop of Charleston, in his official capacity (the "Diocese Defendants") that this case be and hereby is **DISMISSED** against the Diocese Defendants only and is discontinued, and forever ended **WITH PREJUDICE**, on the terms agreed to by the plaintiff and the Diocese defendants under S.C. Code Section 15-38-50: Plaintiff and the Diocese Defendants to bear their own attorney's fees and costs.

This case is NOT ended as to Plaintiff's remaining claims against Lawrence E. Richter, Jr., David K. Haller and Richter & Haller, LLC.

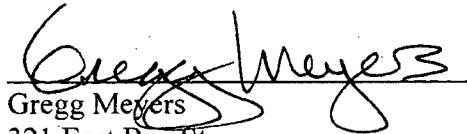
(Signatures on next page)

LD
RSD

TPGL 7799949v1

WE MOVE:

**PIERCE HERNS SLOAN & WILSON,
LLC**

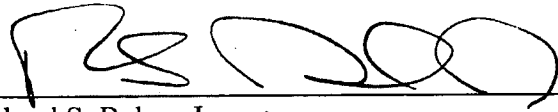


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**ATTORNEYS FOR THE BISHOP OF
CHARLESTON, A CORPORATION SOLE,
ROBERT GUGLIELMONE, THE BISHOP OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY, REV. MONSIGNOR MARTIN
LAUGHLIN, FORMER ADMINISTRATOR
OF THE DIOCESE OF CHARLESTON, IN
HIS OFFICIAL CAPACITY; ROBERT J.
BAKER, FORMER BISHOP OF
CHARLESTON, IN HIS OFFICIAL
CAPACITY**

July 5, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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.

Civil Action No.: 2012-CP-10-5559

FILED
2017 JUL 10 PM 3:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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.

Civil Action No.: 2016-CP-10-1632

DIocese DEFENDANTS' OMNIBUS MOTION
FOR SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS FOR AIDING AND
ABETTING BREACH OF FIDUCIARY DUTY

Defendants, 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, ("the Diocese Defendants") move for judgment as a matter of law on all claims made by the above captioned Plaintiffs pursuant to Rule 56, SCRPC. Because Plaintiffs cannot come forward with admissible evidence establishing that there remain genuine issues of material fact for trial, all claims against the Diocese Defendants should be dismissed with prejudice. In particular, the Diocese Defendants put forth the following:

1. Aiding and Abetting Breach of Fiduciary Duty

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."¹ 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.² Plaintiff cannot establish 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.

As a threshold, Plaintiffs concede in their Complaints that their Breach of Fiduciary Duty claim against the Lawyer Defendants "Presumes that Plaintiff is precluded from making claims against the Diocese, for any reason, including the class action, charitable immunity, or the statute of limitations."³ These Plaintiffs *were not* precluded from bringing these actions against the Diocese based upon the Court's ruling on limited collateral review. That ruling determined that the Class Notice ordered by the Class Action Court did not comply with Constitutional Due

¹ *Future Group II v. Nationsbank*, 478 S.E.2d 45, 50 (S.C. 1996) (internal citations omitted).

² *Mason v. Mason*, 770 S.E.2d 405, 422 (S.C. 2015).

³ See e.g. Jane Doe 11 Complaint, ¶ 245.

Process, and, as such, the Class Action Settlement did not bar Plaintiffs' claims arising from sexual abuse long ago.

However, that also meant that the Plaintiffs were in precisely the same position they were in 2007 – no better and no worse – as their claims of sexual abuse and damages from the Diocese's alleged negligent supervision faced the same affirmative defenses then as now. In short, even assuming, though not conceding, the Lawyer Defendants owed these plaintiffs a fiduciary duty at all, and that Richter & Haller breached some duty, these Plaintiffs were not harmed in any respect. Assuming all else, these Plaintiffs cannot ever show how they were damaged by anything the Lawyer Defendants did or did not do, or that the Diocese helped them along. For that reason alone, Plaintiffs' claim for aiding and abetting must fail.

Just as importantly, nothing Plaintiffs allege in their complaints constitutes aiding and abetting breach of fiduciary duty. Each and every action (or inaction) alleged as a basis for the aiding and abetting claim against the Diocese was in fact disclosed to the Court; scrutinized by the Court; and disclosed in the Court-approved notice to the class. Further, many of the items Plaintiffs now complain about were the subject of objections to the class settlement filed by clients of Mr. Meyers – which the Court considered and overruled. The class settlement went forward pursuant to the deal struck by the representative plaintiffs, class counsel, and the Diocese. The Diocese's *only* duty in settling the class action was to fulfill its obligations under the settlement agreement, and there is no question that the Diocese did that. The Diocese had no duty to object, oppose, or otherwise upset the settlement agreement – and, in complying with the terms of the settlement agreement, the Diocese cannot be liable for aiding and abetting any alleged breach of fiduciary duty by class counsel.

CONCLUSION

Because Plaintiffs cannot come forward with even the slightest scintilla of admissible evidence to support their claim of aiding and abetting breach of fiduciary duty against the

Diocese Defendants, the Court should grant judgment as a matter of law to the Diocese Defendants and dismiss Plaintiffs' claims with prejudice.

TURNER, PADGET, GRAHAM & LANEY, P.A.



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July 10, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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.

Civil Action No.: 2010-CP-10-5520

FILED
2017 JUL 10 PM 3:50
JULIE J. ARMSTRONG
CLERK OF COURT
RY

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.

Civil Action No.: 2012-CP-10-5559

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.

Civil Action No.: 2013-CP-10-3733

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.

Civil Action No.: 2016-CP-10-1632

**THE DIOCESE DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
THEIR MOTION FOR FOR SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS OF
CIVIL CONSPIRACY**

The Diocese Defendants supplement their Motion for Summary Judgment on Plaintiffs' Civil Conspiracy Cause of Action as follows:

The Plaintiffs allege in their Complaints that the Diocese Defendants are liable to them under the theory of civil conspiracy. Plaintiffs identify what they call Conspiracy Techniques,

all regarding the manner in which the Lawyer Defendants managed the 2006 and 2007 litigation against the Bishop of Charleston that culminated in a class action settlement agreement between the Diocese and Class Plaintiffs, individually and on behalf of a class of all similarly situated victims of sexual abuse at the hands of priests, employees, and others. (Class Action Settlement Agreement, *Exhibit A*). This class action settlement was preliminarily approved by Judge Goodstein on January 19, 2007. (Order Certifying Class and Preliminarily Approving Settlement, *Exhibit B*). The Lawyer Defendants, in full compliance with Judge Goodstein's Order, sent out notice to the class and issued notice by publication in newspapers and periodicals. There was an opt-out period and the court received objections to the fairness of the settlement. (Objections to Settlement, *Exhibit C*). After the opt out and objections period ended, the Court conducted hearings on the fairness of the settlement and determined that the settlement was, in fact, fair and reasonable; that the class representatives and class counsel satisfied the requirements for adequate representation of the absent class members; that the class action met the requirements for class certification under Rule 23, SCRPC; and approved the settlement. (Order Approving Settlement, July 30, 2007, *Exhibit D*). Counsel for a number of objectors moved for reconsideration of the Court's approval of the Class Action Settlement. (Motion, August 7, 2007, *Exhibit E*). The Court then overruled the objections and again approved the settlement of all potential sexual abuse claims against the Diocese. (Order of the Court, August 31, 2007, *Exhibit F*).

Plaintiffs in these cases make wide ranging allegations against the Diocese Defendants and the Lawyer Defendants as a basis for their civil conspiracy claim. They identify 8 separate techniques that they claim establish that the Diocese Defendants and the Lawyer Defendants, as class counsel, illegally combined to harm them: (1) Judge-shopping; (2) Improperly invoking complex case designation; (3) Agreeing to a "free sailing" provision on the attorney's fee award

to class counsel; (4) Failing to disclose the settlement terms for class representative plaintiffs and opt out claimants; (5) Establishing an arbitration process for evaluating claims by class members that somehow limited recovery; (6) Providing false information to the Court; (7) Failing to obtain a written order from the class action court regarding absent class members who did not receive notice of the settlement; (8) failing to comply with the Supreme Court's order to conclude the class action by September, 2009.¹ Clearly, each and every one of the circumstances alleged to constitute an unlawful conspiracy arose out of the filing, settlement, and management of the class action litigation against the Bishop of Charleston.

The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). The difference between civil and criminal conspiracy is, in criminal conspiracy, the gravamen of the offense is the agreement itself, whereas in civil conspiracy, the gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design. *Id.*; see also *Pye v. Estate of Fox*, 369 S.C. 555, 567–68, 633 S.E.2d 505, 511 (2006) (“The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se.”). Moreover, “because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.” *Id.* “If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed. *Id.* The Primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injury the Plaintiff. *Pye* 369 S.C. at 567–68, 633 S.E.2d at 511 (2006).

¹ So-called Conspiracy Technique 8 appears only in the Complaint of Jane Doe 11.

1. There simply was no actionable conspiracy between the Diocese and the lawyers for the plaintiffs in the class action suit.

The Plaintiffs can present no genuine issue of material fact as to the allegation of civil conspiracy. The law requires that the Plaintiffs prove special damages that were *caused* by the civil conspiracy and that go beyond the damages alleged in the other causes of action contained in the Complaints. Plaintiffs fail to carry this burden and cannot present any genuine issue of material fact in support of their claims.

Second, the “conspiracy techniques” of which Plaintiffs complain are largely standard procedure in class action practice. Each and every action that Plaintiffs contend to be conspiratorial was part and parcel of the Diocese’s business decision to resolve all potential claims by those who were victims of sexual abuse. Everything was approved by Judge Goodstein, and the Diocese did nothing contrary to its settlement agreement. In short, the members of the settlement class received all the benefits of the class settlement called for under the settlement agreement – the Diocese complied with every obligation imposed upon it.

Third, Bishop Robert Baker, who presided over the Diocese at the time of the class action settlement, adamantly denies the existence of any conspiracy:

... but I want to underline that I understand that these complaints include allegations of civil conspiracy, claiming that, certain agents – that we were conspiring contrary to the law. This is not true. Nothing could be further from the truth

(Baker deposition, 39:22 – 40:9 *Exhibit G*).

Bishop Baker went further, showing clearly that the Diocese and class counsel were adversaries not collaborators in the class action suit:

“... in the litigation that took place, it was adversarial and that was it. There was no conspiring or anything. It was adversarial and the documents, the court records with Judge Goodstein’s overseeing the follow up before I left the Diocese, would indicate clearly to you that there was no kind of collaboration until this agreement,

the mediation took place; absolutely none on my part. So I am very disturbed that suggestion could be made with no evidence.”

(Baker deposition, 40:12 – 24, *Exhibit G*). Bishop Baker categorically denied any conspiracy with Larry Richter and David Haller. (Baker deposition, 107: 9-11, *Exhibit G*).

The transcripts of the various hearings before Judge Goodstein bear out how hotly contested and zealously fought this class action settlement was. The parties argued over the fee to be awarded to class counsel; the timing of the payment of those fees (including whether Bishop Baker and the Diocesan CFO John Barker should be held in contempt for holding up that payment); and the mechanics of the agreed-upon arbitration proceeding and ultimate disbursement of settlement funds. Additionally, the settling parties fought off the objections filed by Mr. Meyers’ then clients and ultimately settled the objectors’ claims with a contribution from class counsel. Class counsel’s arguments during the approval proceedings also caused Judge Goodstein to order the First Circuit Solicitor to scour the Diocese’s internal files to ensure that the data needed for notice to the class was complete. In short, there was nothing pre-packaged or easy about resolving the class action, and no one who has read the pleadings and hearing transcripts can seriously believe there was anything conspiratorial in the settlement.

In the end, the Diocese’s responsibilities in effecting settlement of the class action, just as any class action defendant’s, was confined to two functions: providing the settlement funds; and assisting in confirming that the claimants presented verifiable claims. That is all. Class counsel was responsible for notifying the class they represented. (Baker deposition, 46: 2 – 14; 61: 17 – 23, *Exhibit G*; See also, Order Approving Settlement *Exhibit B*, and Final Approval Order, *Exhibit F*). Notice did, in fact, go out precisely as ordered and approved by the Court. The claims process proceeded exactly as the settling parties agreed. The settlement proceeds were disbursed. The Diocese was released from all claims by the class members.

Quite simply, there is no evidence whatsoever of any civil conspiracy. These plaintiffs have presented no admissible evidence, and thus can present no genuine issue of material fact, of any actual conspiracy that caused them special harm. The allegations contained in the Complaints are mere assumptions and conjecture. There is simply nothing whatsoever supporting the allegations that the Diocese Defendants entered into a conspiracy or common design to cause these particular Plaintiffs special harm. There is simply not even a scintilla of evidence to support Plaintiffs' conclusory allegations.

Additionally, to allow non-litigants and strangers to a class action settlement to sue the defendant and class counsel for conspiracy would undermine the class action procedure and make settling cases on a class-wide basis and impossibility. Every action taken by the settling parties was done pursuant to a court order or was approved by Judge Goodstein. The Diocese funded the settlement proceeds, including the litigation expenses and court-ordered attorneys' fees, and costs of administering the settlement. If a settling defendant is required to do more than is contemplated by either the settling parties, or by the court, in order to avoid future liability arising from the manner a class action is settled, then the entire reason for resolving a matter on a class-wide basis vanishes.

There simply was no conspiracy between Larry Richter, David Haller, and the Diocese. The Diocese struck a bargain to settle potential claims that might be brought by victims of abuse. The class was certified; notice went out pursuant to the Court's Orders; and the Court found the terms of the settlement to be fair to the entire class. Those actions are not the stuff of civil conspiracy. For that reason, Plaintiffs' claims must be dismissed.

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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

June 12, 2017

CERTIFICATE OF SERVICE

Civil Action No.: 2010-CP-10-5520

Civil Action No.: 2012-CP-10-5559

Civil Action No.: 2013-CP-10-3733

Civil Action No.: 2016-CP-10-1632

I hereby certify that this 10 day of June, 2017, a copy of the ***Diocese Defendants' Omnibus Motion For Summary Judgment On Civil Conspiracy*** has been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

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FILED
2017 JUL 10 PM 3:50
JULIE J. ARMSTRONG
CLERK OF COURT

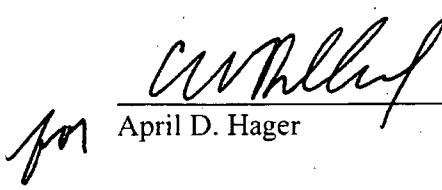

for April D. Hager

EXHIBIT A

John Doe 10 2010-CP-10-7233 00647

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

1

[Handwritten signature]



John Doe 10 2010-CP-10-7233 00647

Arbitration Agreement" formalizing the agreement reached between the Representatives¹ 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 abused² 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.

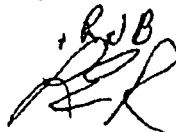


The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement 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:

<u>Type of Alleged Abuse</u>	<u>Minimum Payment / Maximum Payment</u>	
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)

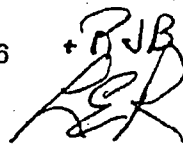
\$20,000.00

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.

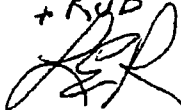
- d. For every claim presented, the arbitrator shall make an express written determination as to (1) whether the Claimant is, in fact, a member of one of the plaintiff classes, (2) whether the claim is *bona fide*, and (3) the amount of the award, if any. In the event that the Arbitrator determines that 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.



- 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)

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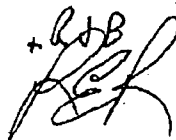
shall control. In any event, as to all issues, the orders of the court shall control.

- 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

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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 of 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.



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.

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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.

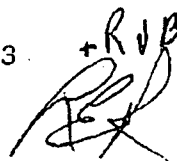
5. **ATTORNEYS FEES.** In consideration of the substantial efforts of plaintiffs' counsel (past



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



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.

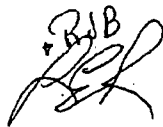
- c. Victim Assistance Minister. Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. 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.

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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.

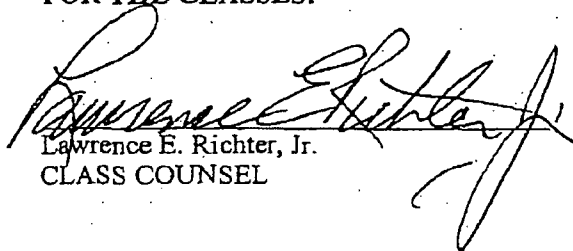
10. **MISCELLANEOUS PROVISIONS.** This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this 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

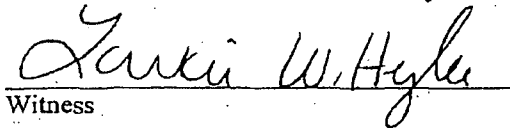


claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

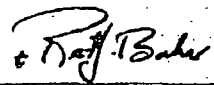
Executed this 12 day of January, 2007.

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

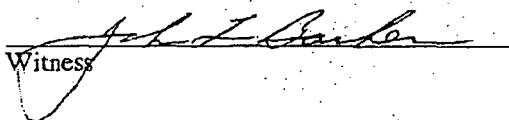

Witness

EXHIBIT B

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P. 003
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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 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 67¹ 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."

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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

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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 SCRPC 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

SCRPC 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.

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- A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused³ 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 (E.D. 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.

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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 generally considered to be identical and are most often analyzed together. Commonality is the requirement that common question of

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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. SCRCF 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

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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:

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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.

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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 Greenville South Carolina

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)

IN THE COURT OF COMMON PLEAS
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. SCRCF 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 abused³ 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

EXHIBIT D

John Doe 10 2010-CP-10-7233 01112

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT
 CASE No. 06-CP-18-1310
 CASE No. 06-CP-18-1311
 CASE No. 06-CP-18-1636

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

Plaintiffs,)

vs.)

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

Defendants.)

ORDER APPROVING SETTLEMENT

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

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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

¹One 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 & Jacqueline*, 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 & Jacqueline*, 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 rewritten 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."

²Recall 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

⁵While 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*; *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 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 hours⁶, 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.

John Doe 10 2010-CP-10-7233 01127

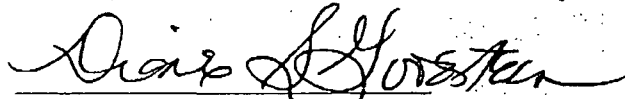
process for the members of the classes begin within 10 days of the date of this order with notice to the class as set out above; and

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!!!


The Honorable Diane S. Goodstein
Presiding Judge

This 30 day of July, 2007
At Orangeburg, South Carolina

John Doe 10 2010-CP-10-7233 01127

EXHIBIT E

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
IN THE COURT OF COMMON PLEAS
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 S.E.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 Sinclair 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

EXHIBIT F

John Doe 10 2010-CP-10-7233 01218

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 06-CP-18-1636

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

v.

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

Defendants.

ORDER OF THE COURT

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, **AND to this extent it is acknowledged and approved**, said agreement is hereby approved and made the Order of
this Court.

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

RSP 1043
-1-

John Doe 10 2010-CP-10-7233 01218

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!

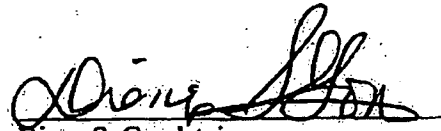
Furthermore, the Court has appointed Desa Ballard, Esq. as a non-testifying consultant in evaluating and addressing the issues before the Court in this matter, as all counsel was made aware of in a August 29, 2007 Order. Payment for Ms. Ballard's services shall be made from the

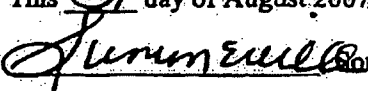
R.App. 071

Def. 2 - Pg 2 of 3

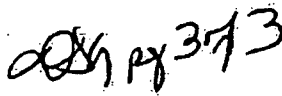
John Doe 10 2010-CP-10-7233 01220

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
 Sumner E. Williams
South Carolina

R.App. 072



- 3 -

John Doe 10 2010-CP-10-7233 01220

EXHIBIT G

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON
3 IN THE COURT OF COMMONS PLEAS
4 FOR THE NINTH JUDICIAL CIRCUIT
5
6

7 JOHN DOE 2 AND JANE DOE 4,
8 PLAINTIFFS,
9 VS. CASE NUMBER 10-CP-10-5520
10 BISHOP OF CHARLESTON, ET AL.,
11 DEFENDANTS.
12

13 JOHN DOE 10,
14 PLAINTIFF,
15 vs. CASE NUMBER 10-CP-7233
16 BISHOP OF CHARLESTON, ET AL.,
17 DEFENDANTS.
18

19 JANE DOE 11,
20 PLAINTIFF,
21 VS. CASE NUMBER 10-CP-5559
22 BISHOP OF CHARLESTON, ET AL.,
23 DEFENDANTS.
24
25

1 from 2014. Does it appear that way to you?

2 **A. Yes. And I had to verify each page as you**
3 **notice my initials, RJB, that's me.**

4 Q. Attached as an exhibit to your affidavit is a
5 copy of a typed up settlement agreement that was
6 submitted to the court. Does that seem like a fair
7 statement?

8 **A. Yes.**

9 Q. Would you mind looking at your text and let me
10 ask you this similarly just because it's the fastest
11 way I have learned to do this. Take a look at the
12 text of your affidavit, the numbered paragraphs one
13 through nine, and tell me, as you sit here today, if
14 there is anything you would change about what you
15 wrote in October of last year in terms of accuracy?

16 **A. I would say this reflects accurately, yes.**

17 Q. And as far as you can tell, it remains
18 accurate in terms of the history you are relating;
19 is that fair?

20 **A. I would like to underline very clearly number**
21 **six because the emotional reaction on my part does**
22 **not play into count here, but I want to underline**
23 **that I understand that these complaints include**
24 **allegations of civil conspiracy, claiming that**
25 **certain agents -- that we were conspiring contrary**

1 to law. This is not true. Nothing could be further
2 from the truth. And, of course, I was very grieved
3 by that accusation because from my standpoint it
4 ruins my reputation, and so I just want to underline
5 that fact. You know, how do you recover from an
6 allegation of collusion, and that was eight years in
7 the making, so I just want to underline that
8 statement. That was not true. Nothing could be
9 further from the truth.

10 Q. What I hear you telling me is that your
11 experience was that the process was adversarial?

12 A. Adversarial. And that was the way I would
13 describe our relationship -- well, you know, I have
14 a relationship as a bishop, with my people, but in
15 the litigation that took place, it was adversarial
16 and that was it. There was no conspiring or
17 anything. It was adversarial and the documents, the
18 court records with Judge Goodstein's overseeing the
19 follow up before I left the Diocese, would indicate
20 clearly to you that there was no kind of
21 collaboration until this agreement, the mediation
22 took place; absolutely none on my part. So I am
23 very disturbed that suggestion could be made with no
24 evidence.

25 Q. Well, let me clarify two things which may be

1 MS. WALL: Object to the form.

2 A. My understanding is the Diocese in that
3 written was helping form how this was to be formed.
4 That our responsibility, as I understand it, was
5 strictly to commit the amount of money that we were
6 to come up with and to the careful provision of who
7 the plaintiffs were, that they were legitimate
8 plaintiffs, and we would follow through. And then
9 my understanding is that my counsel left to Mr.
10 Richter to serve on the nation how everything was
11 done. Those two areas, I think, were our primary
12 commitments. And then as I understand it, the rest
13 was left to Mr. Richter to work out with the
14 mediator and the judge.

15 Q. As you recall your decision making, were you
16 called on at any point to try to decide how the
17 notice provision should work with respect to class?

18 A. I don't remember ever being consulted.

19 Q. So now let me reach where I had inadvertently
20 started too early.

21 A. Okay.

22 Q. This proposal made in October of 2006 to make
23 a nationwide notice was changed at the time of the
24 agreement submitted to the court in January of 2007
25 and the nationwide notice was pulled out. The

1 Q. I think I understand. I appreciate your
2 helping me understand that. Is it correct for me to
3 understand that the course of the approval process
4 between January of '07 and the time you left the
5 Diocese Charleston from your perspective would be
6 fairly reflected in the court transcripts of each
7 hearing that was held?

8 A. I would think so.

9 Q. And if I have understood what you told me,
10 you regarded it as a function of Mr. Richter and Mr.
11 Haller in their firm to undertake what to
12 communicate to members of the class; is that fair?

13 MS. WALL: Object.

14 Q. (By Mr. Meyers) Is that a fair statement?

15 A. I think --

16 MS. OBJECT: Object.

17 A. I think Mr. Shahid's intent was solely at that
18 point to be sure that all the proper people were
19 given to us and that we had an opportunity to
20 evaluate their accusations and that the funds were
21 being distributed in a proper way; those two roles
22 he had. I think everything else fell to Mr.
23 Richter, I believe.

24 Q. Is it correct for me to understand that what
25 you are just describing as Mr. Shahid's objectives

1 **A. Under an exhibit.**

2 Q. That was your paragraph number six in your
3 affidavit --

4 **A. That's right.**

5 Q. -- which goes to the claim against you and
6 others of a civil conspiracy. That is, that you
7 conspired with -- you and your lawyers conspired
8 with Richer Haller and the judge?

9 **A. Yes. That's why I state clearly and I**
10 **mentioned that is not true; nothing could be further**
11 **from the truth.**

12 Q. I understand. That is an absolutely false
13 allegation; correct?

14 **A. That is absolutely false.**

15 MS. HALL: That's all I have. Thank you
16 very much.

17 MR. SHAHID: Susan, let's take a two
18 second break. Hang on one second; all right.

19 EXAMINATION BY MR. SHAHID:

20 Q. Bishop, I have a few questions for you; okay.
21 In response to a question that Mr. Meyers asked you
22 early on, I just wanted to make sure we are clear.
23 The only time that you recall meeting with Mr.
24 Richter and/or Mr. Haller in relation to the
25 lawsuits that gave rise to the class action

REPORTER'S CERTIFICATE

I, Celeste O. Riddle, RMR, RPR, CCR, do hereby certify that the witness whose attached deposition was taken before me in the foregoing matter was by me first duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony contained in such deposition was reduced to writing by means of computer-aided transcription. The said deposition is a true and correct transcript of the whole of the testimony given by said witness, as aforesaid.

I do further certify that I am not connected by blood or marriage with any of the parties or their attorneys or agents and that I am not an employee of either of them, nor interested directly or indirectly in the matter of controversy, either as counsel, attorney, agent, or otherwise.

Done this the 6th day of August 2015.

Celeste O. Riddle, RMR, RPR, CCR
Alabama CCR #127 Expires 9-30-15

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

John Doe 2 and Jane Doe 4,

CASE NO.: 2010-CP-10-5520

Plaintiffs,

v.

**Lawyer Defendants' Omnibus
Motion for Summary Judgment**

The Bishop of Charleston, et. al.

Defendants.

John Doe 10,

CASE NO.: 2010-CP-10-7233

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

Jane Doe 11,

CASE NO.: 2012-CP-10-5559

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

John Doe 193,

CASE NO.: 2013-CP-10-3733

Plaintiff,

v.

The Bishop of Charleston, et. al.

Defendants.

FILED
2017 JUL 11 PM 3:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY 6

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

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

John Doe 245 and Father Doe 245,	)	CASE NO.: 2015-CP-10-5486
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
The Bishop of Charleston, et. al.	)	
	)	
Defendants.	)	

John Doe 297,	)	CASE NO.: 2016-CP-10-1632
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
The Bishop of Charleston, et. al.	)	
	)	
Defendants.	)	

The Defendants Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC (“the Lawyer Defendants”) move the Court for an Order pursuant to Rule 56, S.C. R. Civ. P., finding and concluding that there are no genuine issues as to any material facts relating to the

Lawyer Defendants and that the Lawyer Defendants are entitled to summary judgment as a matter of law.

I. Since the Plaintiffs are not Bound by the Settlement in the Underlying Class Action, they are free to Present, and have Presented, Their Claims for Sexual Abuse against the Diocesan Defendants, and the Lawyer Defendants should be granted Summary Judgment.

Plaintiffs' explicitly allege that if they are not precluded by the class action settlement from bringing claims against the Diocese, then the causes of action against the Lawyer Defendants are irrelevant because Plaintiffs can make their claims against the Diocese. Here is what they said:

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 ... **then the causes of action against the Richter defendants ... are irrelevant** because plaintiffs can make their claims against the Diocese. (Emphasis added)

Case No. 2010-CP-10-5520, John Doe 2 and Jane Doe 4, Complaint ¶ 23.

30. If the Diocese agrees, or the court finds, that the plaintiff is not precluded by the class action from bringing claims against the Diocese ... **then the causes of action against the Richter defendants are irrelevant** because plaintiff can make his claims against the Diocese. (Emphasis added)

Case No. 2010-CP-10-7233, John Doe 10, Complaint ¶ 30.

165. ... **Unless the Plaintiff is not bound by the *res judicata* effect of the class action**, she has been specially harmed by the conspiracy engaged in by the Defendants.

205. ... This cause of action [professional negligence] **presumes that the Plaintiff is precluded** ... from making claims against the Diocese.

245. This cause of action [breach of fiduciary duty] **presumes that the Plaintiff is precluded** from making claims against the Diocese ...

Case No. 2012-CP-10-5559, Jane Doe 11, Complaint ¶¶ 165, 205, 245.

58. If the Diocese agrees, or the court finds, that the 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 Plaintiff can make his claims against the Diocese Defendants.

Case No. 2013-CP-10-3733, John Doe 193, Complaint, ¶58.

62. If the Diocese agrees, or the court finds, that the Plaintiff is not precluded, by the class action, from bringing claims against the Diocese Defendants ... **then the causes of action against the Richter Defendants alone, other than the Conspiracy cause of action, are irrelevant.**

123. ... This cause of action [civil conspiracy] **presumes the class action order is interpreted to bind the Plaintiff to its *res judicata* effect** ... so this cause of action presumes the Plaintiff is properly precluded from bringing claims against the Diocese Defendants related to sexual abuse, ...

Case No. 2013-CP-10-4175, Father Doe 194, Complaint ¶¶ 62, 123.

61. If the Diocese agrees, or the court finds, that the Plaintiff is not precluded, by the class action, from bringing claims against the Diocese Defendants ... **then the causes of action against the Richter Defendants alone, other than the Conspiracy cause of action, are irrelevant.**

121. ... This cause of action [civil conspiracy] **presumes the class action order is interpreted to bind the Plaintiff to its *res judicata* effect** ... so this cause of action presumes the Plaintiff is properly precluded from bringing claims against the Diocese Defendants related to sexual abuse.

Case No. 2013-CP-10-4176, John Doe 194, Complaint ¶¶ 61, 121.

149. This cause of action [civil conspiracy] presumes the class action order is interpreted to bind the Plaintiffs to its *res judicata* effect, ... **so this cause of action presumes the Plaintiffs are properly precluded** from bringing claims against the Diocese defendants related to sexual abuse.

284. This cause of action [negligence] **presumes both that the Plaintiffs are precluded**, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making claims against the Diocese, or if they could make claims they were unable to fully mitigate the actual damages caused by the professional negligence of the Richter defendants.

304. This cause of action [breach of fiduciary duty] **presumes both that the Plaintiffs are precluded**, by any reason, including the *res judicata* effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making his claims against the Diocese and fully mitigating through those claims the actual damages caused by the Richter defendants.

Case No. 2015-CP-10-5486, John Doe 245 and Father Doe 245, Complaint ¶¶ 149, 284 and 304.

134. This cause of action [civil conspiracy] **presumes the class action order is interpreted to bind the Plaintiff to its res judicata effect**, despite insufficient Due Process from the collusive class action which was designed by all Defendants to limit the Plaintiff's ability to state his claim. **This cause of action presumes the Plaintiff is properly precluded from bringing claims against the Diocese defendants related to sexual abuse.**

272. This cause of action [negligence] **presumes both that the Plaintiffs precluded**, by any reason, including the res judicata effect of the 2006 class action settlement, or charitable immunity, or the statute of limitations, or on any other basis, from making claims against the Diocese, or if he could make a claim he was unable to fully mitigate the actual damages caused by the professional negligence of the Richter defendants.

Case No. 2016-CP-10-1632, John Doe 297, Complaint ¶ 134, 272.

The Court has ruled that Plaintiffs are not precluded from bringing claims against the Diocese in its Amended Order on Limited Collateral Review dated May 3, 2017. There, this Court recognized that the Plaintiffs specifically alleged that their causes of action against the Lawyer Defendants are only pertinent if Plaintiffs, as putative class members, are precluded from pursuing their claims against the Diocese Defendants. "Thus, the Complaints, by their own terms, present a threshold question: Are the Plaintiffs precluded from pursuing claims against the Diocese Defendants?"

In its Order, the Court answered that question in the negative, holding 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." Thus, by Plaintiffs' own admissions in their pleadings, they have no claims against the Lawyer Defendants, because they are not precluded from claiming against the Diocese.

After entry of that Order, the Court scheduled trial for cases against the Diocese resulting in the settlement of four (4) cases.¹ Since all Plaintiffs are now allowed to present their claims against the Diocese Defendants and five (5) plaintiffs in four (4) of the cases have also settled their claims with the Diocese Defendants, the allegations against the Lawyer Defendants are not pertinent and are, in the Plaintiffs' own words, "irrelevant".

Moreover, those Plaintiffs who have settled with the Diocese have had "their day in court" and their opportunity to hold the Diocese financially responsible for their abuse. In so doing, they stood exactly where they would have stood had the class action never taken place. Thus, neither the settling Plaintiffs nor the remaining Plaintiffs can maintain any claim against the Lawyer Defendants and the Lawyer Defendants are entitled to Summary Judgment as a matter of law.

II. Plaintiffs have suffered no Damages as to the Lawyer Defendants because Plaintiffs are not Bound by the Terms of the Class Action Settlement.

Because the Plaintiffs are not bound by the terms of the settlement in the underlying class action, nothing the Lawyer Defendants did or failed to do in negotiating that settlement could possibly have harmed them. The Plaintiffs still have all the rights, and are still subject to all the defenses, that existed prior to the class action settlement.² Absent damages, there is 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.")

¹ The Diocese settled with the Plaintiffs in 2010-CP-10-7233 (John Doe 10), 2013-CP-10-4175 (Father Doe 194), 2013-CP-10-4176 (John Doe 194) and 2015-CP-10-5486 (John Doe 245 and Father Doe 245).

² Notably, in the four cases that did not settle with the Diocese, Plaintiffs' counsel surrendered to the Diocese's charitable immunity defense and the Court, therefore, granted summary judgment to the Diocese on all claims in those four cases *except* civil conspiracy.

Moreover, the Plaintiffs have testified that there was no attorney-client relationship and that they know of no damages caused by the Lawyer Defendants.

John Doe 2 testified:

Q. John Doe 2, you have filed a lawsuit, and your pseudonym under the lawsuit is John Doe 2. Do you know either Mr. Richter or Mr. Haller, Larry Richter or David Haller?

A. No.

Q. Have you ever had any contact with either one?

A. No.

Exhibit A, Excerpts from Deposition of John Doe 2, September 4, 2014, p. 18, lines 12-19.

Jane Doe 4 testified:

Q. Jane Doe 4, you are aware that you are the plaintiff in this lawsuit that we're here about?

A. Yes, sir.

Q. Who is Larry Richter?

A. I don't know.

Q. Do you know who David Haller is?

A. No.

Q. These gentlemen are lawyers in Charleston. Have you ever met them?

A. No.

Q. Have they ever been your lawyers?

A. No.

Q. Are you aware of anything that either of those gentlemen have done to you to cause you financial harm?

A. No.

Q. Let me introduce to you -- that's Mr. Richter sitting at the end of the table, and that's Mr. Haller sitting over here next to him. These are the gentlemen I just mentioned to you. Mr. Richter and his law firm are my clients, okay?

A. Okay.

Q. Mr. Haller is represented by Mrs. Wall. Mr. Richter and Mr. Haller used to practice together but do not now. The reason I asked you those questions was because you have sued Mr. Richter and Mr. Haller in your lawsuit. Here is my question. Do you know why you have sued them?

A. I don't -- I'm not sure.

Exhibit B, Excerpts from Deposition of Jane Doe 4, June 3, 2014, p. 8, line 5 through p. 9, line 10.

John Doe 10 testified:

- Q. Who is Larry Richter?
A. I know the name from lawsuits, but I don't know the person.
Q. Do you know what he does?
A. An attorney, as far as I can tell.
Q. Has he ever been your lawyer?
A. I mean, he was in the lawsuit, so -- I mean, I've never spoken with him about it, but I don't know.
Q. For your information, this is Mr. Richter seated at the end of the table.
A. Oh.
Q. Do you know why you sued Mr. Richter in this lawsuit?
A. No.
Q. You've never spoken to him?
A. No.
Q. To your knowledge has Mr. Richter ever done anything to you to cause you financial harm?
A. To me?
Q. Uh-huh.
A. Not to my knowledge, no.

Exhibit C, Excerpts from Deposition of John Doe 10, June 4, 2014, p. 9, lines 4-25.

Jane Doe 11 testified:

- Q. Who is Lawrence Richter?
A. I don't know.
Q. Who is David Haller?
A. I am not sure who that is either.
Q. What is Richter & Haller?
A. I am not sure.
Q. Have either of those gentlemen ever been your lawyer? ... You can answer.
A. No, not that I'm aware of.
Q. Are either of those gentlemen your lawyer at this time?
THE WITNESS: No.
Q. Ma'am, are you aware of anything that either of those gentlemen have done in the past that caused you any financial harm?
A. No, I'm not.

Exhibit D, Excerpts from Deposition of Jane Doe 11, September 4, 2014, p. 23, line 25 through p. 25, line 1.

John Doe 193, the Repressed Memory Plaintiff, testified:

- Q. Now, I'm going to ask you a few questions about some people in the case that we are here on. Do you know who Lawrence Richter is?

- A. No, sir.
- Q. Do you know who David Haller is?
- A. No, sir.
- Q. All right, sir. Do you know what the firm Richter & Haller, LLC, is?
- A. No, sir.
- Q. That is a law firm in Charleston, South Carolina, and the gentlemen whose names I just asked you about are lawyers in Charleston. Have either Mr. Richter or Mr. Haller ever been your lawyer?
- Q. You can answer.
- A. Not that I know of.
- Q. And, of course, they are not your lawyers now, are they?
- A. No.
- Q. John Doe 193, do you know of anything that either Mr. Richter or Mr. Haller have done in the past that has caused you financial harm? ...
- A. Not knowing them, I don't know.

Exhibit E, Excerpts from Deposition of John Doe 193, July 16, 2014, p. 6, line 17 through p. 7, line 24.

Finally, John Doe 194 testified:

- Q. Who is Lawrence Richter?
- A. I've never met the man. He's an attorney, a part of this case.
- Q. You've never met him or talked to him?
- A. No.
- Q. Do you understand he's a lawyer?
- A. Yes, sir.
- Q. And how do you have that understanding?
- A. I learned about it from Mr. Meyers.
- Q. Okay. Has he ever been your lawyer?
- A. No.
- Q. So has Mr. Richter ever been your lawyer?
- A. Not that I know of.
- Q. Do you know of anything that Mr. Richter has done that caused you financial harm?
- A. My understanding is I've been excluded from a class action suit.
- Q. And do you think that's caused you financial harm?
- A. Hard to say.
- Q. Do you know who David Haller is?
- A. I know the name.
- Q. How do you know the name?
- A. Same as Mr. Richter.
- Q. Do you understand that Mr. Haller is also an attorney?
- A. Yeah.
- Q. Has he ever been your lawyer?
- ...

THE WITNESS: Not that I know of.

Q. Okay. Do you know of anything Mr. Haller has done to cause you financial harm?

A. Not directly.

Exhibit F, Excerpts from Deposition of John Doe 194, July 25, 2014, p. 4, line 2 through p. 6, line 2.

John Doe 245 and John Doe 297 have not been deposed. To a person, the other plaintiffs know of no damages they have suffered from the Lawyer Defendants. The Court has ruled that Plaintiffs are not bound by the terms of the class action settlement and each Plaintiff has admitted he/she knows of no damages to him/her resulting from any action of the lawyer Defendants. Without damages, Plaintiffs have no claim for professional negligence against the Lawyer Defendants as a matter of law, and the Lawyer Defendants are entitled to Summary Judgment.

III. The Lawyer Defendants did not owe the Plaintiffs a Duty because they were not Clients.

The gravamen of each of the Plaintiffs' claims is that the Lawyer Defendants failed to cause notice of the underlying class action settlement to be given to nonresident plaintiffs, thus causing those plaintiffs to be bound by the terms of the settlement without due process. This Court has already held that the non-resident Plaintiffs are not bound by the terms of the settlement in the underlying class action. Furthermore, at the time the notice requirements were negotiated by the Lawyer Defendants with the Diocese, the Plaintiffs were not clients of the Lawyer Defendants, they were only Putative Plaintiffs. *Bedoya v. Aventura Limousine & Trans. Serv.*, 2012 U.S. Dist. LEXIS 59862; 2012 WL 1534488 (So. Dist. Fla. 2012); citing *Hammond V. City of Junction City, Kansas*, 2002 U.S. Dist. LEXIS 4093, 2002 WL 169370 (D. Kan. 2002) ("it is fairly well settled that prior to class certification, no attorney-client relationship exists between class counsel and the putative class members") That being so, the Lawyer Defendants did not

owe them a duty. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *RFT Mgmt. Co.*, *supra*.

The two classes in the underlying class action were not certified until January 19, 2007. See Exhibit G, Order Certifying Classes and Giving Preliminary Approval to Settlement. Before that date, no attorney-client relationship existed between the Lawyer Defendants and these Putative Plaintiffs. Absent such relationship, the Lawyer Defendants had no duty to Plaintiffs. *RFT Mgmt. Co. v. Tinsley & Adams*, *supra*.

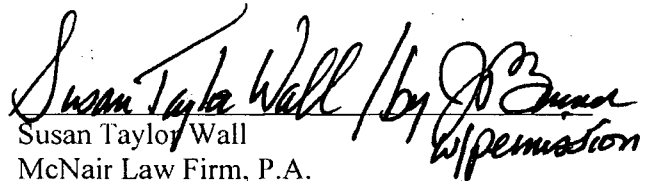
Since there was no attorney-client relationship between the Lawyer Defendants and the Plaintiffs, the Lawyer Defendants did not owe Plaintiffs a duty. Since there was no duty, the allegations against them for professional negligence, breach of fiduciary duty, civil conspiracy and unfair trade practices in each of the Complaints are not actionable and the Lawyer Defendants should be granted summary judgment.

Conclusion

For the reasons set forth and any others in the record, the Lawyer Defendants are entitled to Summary Judgment as a matter of law, and the Lawyer Defendants respectfully request that the Court dismiss the claims against them with prejudice.



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*


w/permission

Susan Taylor Wall
McNair Law Firm, P.A.
P. O. Box 1431
Charleston, SC 29402
(843) 723-7831
Attorneys for the Defendant David E. Haller

July 10, 2017

2010-CP-10-5520

CERTIFICATE OF SERVICE

The undersigned James L. Bruner, attorney for Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC, does hereby certify that on July 10, 2017, I served a copy of the documents listed below on counsel of record by electronic mail and by depositing a copy of same in the U.S. Mail, first-class, postage prepaid and addressed as follows:

Pleadings served:

1. Lawyer Defendants' Omnibus Motion for Summary Judgment

Counsel served:

Gregg Meyers, Esq.
PIERCE, HERNS, SLOAN
& WILSON, LLC
321 East Bay Street
Charleston, SC 29401
Attorney for the Plaintiff

Susan Taylor Wall, Esq.
McNair Law Firm, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401
Attorney for David K. Haller

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

Richard S. Dukes, Jr.
Turner Padgett
PO Box 22129
Charleston, SC 29413
Attorneys for the Diocesan Defendants

FILED
2017 JUL 11 PM 3:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

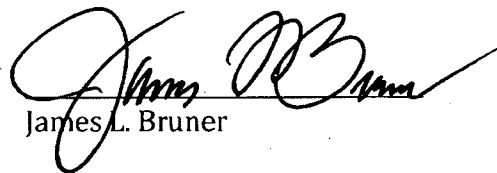

James L. Bruner

Exhibit A

to

Lawyer Defendants' Omnibus
Motion for Summary Judgment

Excerpts from
Deposition of John Doe 2,
September 4, 2014

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JOHN DOE 2 AND JANE DOE 4,

Plaintiffs,

vs.

CASE NO. 2010-CP-10-5520

THE BISHOP OF CHARLESTON, 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.

TELEPHONIC

DEPOSITION OF:

JOHN DOE 2

DATE: September 4, 2014
TIME: 10:01 a.m.
LOCATION: McNair Law Firm
100 Calhoun Street
Charleston, SC
TAKEN BY: Counsel for the Defendants
REPORTED BY: Janice N. Shepherd,
Registered Professional
Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC (843) 722-8414	Hilton Head, SC (843) 785-3236	Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

1 married 21 years?

2 A. That's correct.

3 Q. Thank you. From the time that you were
4 born until you graduated from Aquinas High School,
5 where did you live?

6 A. In Augusta, Georgia.

7 Q. That entire time?

8 A. Correct.

9 Q. Did you live during that time period at
10 home with your family?

11 A. Yes.

12 Q. John Doe 2, you have filed a lawsuit,
13 and your pseudonym under the lawsuit is John Doe 2.
14 Do you know either Mr. Richter or Mr. Haller, Larry
15 Richter or David Haller?

16 A. No.

17 Q. Have you ever had any contact with
18 either one?

19 A. No.

20 Q. We want to give you the opportunity to
21 place on the record what happened to you as a
22 youngster from whatever age -- and we'll let you
23 describe it in your own words -- that forms the
24 basis for your allegations of abuse by persons
25 affiliated with the Diocese of Charleston. So

Exhibit B

to

Lawyer Defendants' Omnibus
Motion for Summary Judgment

Excerpts from
Deposition of Jane Doe 4,
June 3, 2014

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

JOHN DOE 2 AND JANE DOE 4,
Plaintiffs,
vs. CASE NO. 2010-CP-10-5520
THE BISHOP OF CHARLESTON, ET AL,
Defendants.

(Caption Continues on Page 2)

DEPOSITION OF: JANE DOE 4

DATE: June 3, 2014

TIME: 1:05 PM

LOCATION: Law Offices of
MCNAIR LAW FIRM
100 Calhoun Street, Suite 400
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Roxanne M. Easterwood, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

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

1 A. No.

2 Q. You have been employed in the past?

3 A. Yes, but it's been a while, since 2008
4 I believe.

5 Q. Jane Doe 4, you are aware that you are
6 the plaintiff in this lawsuit that we're here
7 about?

8 A. Yes, sir.

9 Q. Who is Larry Richter?

10 A. I don't know.

11 Q. Do you know who David Haller is?

12 A. No.

13 Q. These gentlemen are lawyers in
14 Charleston. Have you ever met them?

15 A. No.

16 Q. Have they ever been your lawyers?

17 A. No.

18 Q. Are you aware of anything that either
19 of those gentlemen have done to you to cause you
20 financial harm?

21 A. No.

22 Q. Let me introduce to you -- that's Mr.
23 Richter sitting at the end of the table, and that's
24 Mr. Haller sitting over here next to him. These
25 are the gentlemen I just mentioned to you. Mr.

1 Richter and his law firm are my clients, okay?

2 A. Okay.

3 Q. Mr. Haller is represented by Mrs. Wall.

4 Mr. Richter and Mr. Haller used to practice

5 together but do not now.

6 The reason I asked you those questions

7 was because you have sued Mr. Richter and Mr.

8 Haller in your lawsuit. Here is my question. Do

9 you know why you have sued them?

10 A. I don't -- I'm not sure.

11 Q. Yes, no, and I don't know are perfectly

12 honest answers to me, and I will accept them.

13 Don't assume because I ask you a question that I

14 expect you to know some answer different than what

15 a truthful answer would be from you. So I accept I

16 don't know, no problem.

17 This is what I'd like to ask you to do.

18 Can you explain to me how old you were when you

19 first had an encounter with Father McCarthy?

20 A. I was eight, but I was almost nine.

21 Q. You were eight almost nine years old?

22 A. I believe, yes.

23 Q. Do you recall what year that was?

24 A. 19 -- let me think. I believe it was

25 1964. I'm not 100 percent on that.

Exhibit C

to

Lawyer Defendants' Omnibus
Motion for Summary Judgment

Excerpts from
Deposition of John Doe 10,
June 4, 2014

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JOHN DOE 2 and JANE DOE 4,

Plaintiffs,

vs.

CASE NO. 2010-CP-10-5520

THE BISHOP OF CHARLESTON, et al,

Defendants.

(Caption continues on Page 2)

DEPOSITION OF:**JOHN DOE 10**

DATE: June 4, 2014

TIME: 9:20 a.m.

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

TAKEN BY: Counsel for the Defendants

REPORTED BY: Patricia T. Morrison,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

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

1 happened was I saw an article about the coverup and
2 then I looked for Frederick Hopwood's name, and I
3 found Gregg Meyers' and Jeff Anderson's names.

4 Q. Who is Larry Richter?

5 A. I know the name from lawsuits, but I
6 don't know the person.

7 Q. Do you know what he does?

8 A. An attorney, as far as I can tell.

9 Q. Has he ever been your lawyer?

10 A. I mean, he was in the lawsuit, so --
11 I mean, I've never spoken with him about it, but I
12 don't know.

13 Q. For your information, this is
14 Mr. Richter seated at the end of the table.

15 A. Oh.

16 Q. Do you know why you sued Mr. Richter in
17 this lawsuit?

18 A. No.

19 Q. You've never spoken to him?

20 A. No.

21 Q. To your knowledge has Mr. Richter ever
22 done anything to you to cause you financial harm?

23 A. To me?

24 Q. Uh-huh.

25 A. Not to my knowledge, no.

Exhibit D

to

Lawyer Defendants' Omnibus
Motion for Summary Judgment

Excerpts from
Deposition of Jane Doe 11,
September 4, 2014

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JANE DOE 11,

Plaintiff,

vs.

CASE NO. 2012-CP-10-5559

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.

DEPOSITION OF:**JANE DOE 11**

DATE: September 4, 2014
TIME: 11:58 a.m.
LOCATION: McNair Law Firm
100 Calhoun Street
Charleston, SC
TAKEN BY: Counsel for the Defendants
REPORTED BY: Janice N. Shepherd,
Registered Professional
Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC (843) 722-8414	Hilton Head, SC (843) 785-3236	Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

1 A. I'm not -- I mean, years before John
2 Doe 2 and I met. But, no, not after.

3 Q. In any way --

4 A. Just this one.

5 Q. -- related in any way to John Doe 2?

6 A. No.

7 Q. And/or your marriage, your
8 relationship, your interaction? I'm talking about
9 with John Doe 2.

10 A. No, it was just this one counselor
11 during that period of time.

12 Q. All right. Have you taken any
13 medication or been prescribed any medication in
14 conjunction with this marriage counseling period,
15 '04, '05, perhaps a little bit before and after?

16 A. No.

17 MS. WALL: I believe that's all I have.
18 Thank you.

19 MR. MEYERS: Jim?

20 EXAMINATION

21 BY MR. BRUNER:

22 Q. I have just a few questions for you,
23 ma'am.

24 A. Okay.

25 Q. Who is Lawrence Richter?

1 A. I don't know.

2 Q. Who is David Haller?

3 A. I am not sure who that is either.

4 Q. What is Richter & Haller?

5 A. I am not sure.

6 Q. Have either of those gentlemen ever
7 been your lawyer?

8 MR. SHAHID: Object to the form of the
9 question.

10 MR. MEYERS: I join. Go ahead.

11 BY MR. BRUNER:

12 Q. You can answer.

13 A. No, not that I'm aware of.

14 Q. Are either of those gentlemen your
15 lawyer at this time?

16 MR. SHAHID: Object to the form of the
17 question.

18 MR. MEYERS: Join. Go ahead.

19 THE WITNESS: No.

20 BY MR. BRUNER:

21 Q. Okay. I can always tell if I'm asking
22 a good question because they object.

23 Ma'am, are you aware of anything that
24 either of those gentlemen have done in the past
25 that caused you any financial harm?

1 A. No, I'm not.

2 MR. BRUNER: Okay. Thank you. That's
3 all the questions I've got for you, please.

4 EXAMINATION

5 BY MR. SHAHID:

6 Q. Good afternoon. I'm Peter Shahid. I
7 represent the Diocese of Charleston and the other
8 individuals, Bishop Baker, Bishop Gugliemone,
9 Monsignor Laughlin, who we collectively refer to as
10 the diocesan defendants. And the same ground rules
11 that Ms. Wall had mentioned to you apply. If at
12 any time you don't understand any of my questions,
13 just ask me to repeat it.

14 A. Okay.

15 Q. Do you need to take a break? Are you
16 doing okay?

17 A. I'm fine.

18 Q. You and your first husband, Paul,
19 divorced in 1992; correct?

20 A. I can't remember if it was '91 or '92.
21 But, yes.

22 Q. Either '91 or '92. What was the reason
23 for the divorce?

24 A. He was unfaithful.

25 Q. Okay. And is that the reason why you

Exhibit E

to

Lawyer Defendants' Omnibus
Motion for Summary Judgment

Excerpts from
Deposition of John Doe 193,
July 16, 2014

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JOHN DOE 193,

Plaintiff,

Case No.
2013-CP-10-3733

vs.

THE BISHOP OF CHARLESTON,
A CORPORATION SOLE; et al.,

Defendants.

AND RELATED CASE NOS. 2010-CP-10-5520,
2010-CP-10-7233, 2012-CP-10-5559,
2013-CP-10-4175, 2013-CP-10-4176

DEPOSITION OF: JOHN DOE 193

DATE: July 16, 2014

TIME: 10:00 a.m.

LOCATION: Family Therapy and Trauma Center
313 Bennett Circle Drive
Greer, SC 29650

TAKEN BY: Counsel for Defendants

REPORTED BY: KENNETH McCLURE,
Registered Merit Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC (843) 722-8414	Hilton Head, SC (843) 785-3263	Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919

1 Could I have your full name, please, sir?

2 A. John Doe 193.

3 Q. John Doe 193, where do you live?

4 A. 121 Belle Oaks Drive, Simpsonville, South
5 Carolina.

6 Q. And how long have you lived in
7 Simpsonville?

8 A. I don't know offhand. Probably, 14 years.

9 Q. Okay. That's fine.

10 A. A good number of years.

11 Q. That's fine.

12 John Doe 193, are you employed?

13 A. No, sir.

14 Q. All right, sir. And how old are you, John
15 Doe 193?

16 A. Sixty-one.

17 Q. Now, I'm going to ask you a few questions
18 about some people in the case that we are here on.

19 Do you know who Lawrence Richter is?

20 A. No, sir.

21 Q. Do you know who David Haller is?

22 A. No, sir.

23 Q. All right, sir. Do you know what the firm
24 Richter & Haller, LLC, is?

25 A. No, sir.

1 Q. That is a law firm in Charleston, South
2 Carolina, and the gentlemen whose names I just asked
3 you about are lawyers in Charleston.

4 Have either Mr. Richter or Mr. Haller ever
5 been your lawyer?

6 MR. SHAHID: Objection to the form of the
7 question.

8 MR. MEYERS: I join.

9 Q. You can answer.

10 A. Not that I know of.

11 Q. And, of course, they are not your lawyers
12 now, are they?

13 MR. SHAHID: Objection to the form of the
14 question.

15 MR. MEYERS: Same.

16 A. No.

17 Q. John Doe 193, do you know of anything that
18 either Mr. Richter or Mr. Haller have done in the
19 past that has caused you financial harm?

20 MR. SHAHID: Object to the form of the
21 question.

22 MR. MEYERS: Join.

23 Go ahead.

24 A. Not knowing them, I don't know.

25 Q. So you don't know of anything. That's

Exhibit F

to

Lawyer Defendants' Omnibus
Motion for Summary Judgment

Excerpts from
Deposition of John Doe 194,
July 25, 2014

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JOHN DOE 194,

Plaintiff,

vs.

CASE NO. 2013-CP-10-4176

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.

DEPOSITION OF**JOHN DOE 194**

DATE: July 25, 2014

TIME: 9:57 a.m.

LOCATION: McNair Law Firm
100 Calhoun Street
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Janice N. Shepherd,
Registered Professional
Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 A. Sure.

2 Q. Who is Lawrence Richter?

3 A. I've never met the man. He's an
4 attorney, a part of this case.

5 Q. You've never met him or talked to him?

6 A. No.

7 Q. Do you understand he's a lawyer?

8 A. Yes, sir.

9 Q. And how do you have that understanding?

10 A. I learned about it from Mr. Meyers.

11 Q. Okay. Has he ever been your lawyer?

12 A. No.

13 MR. SHAHID: Object to the form of the
14 question.

15 MR. BRUNER: On occasion, Mr. Shahid
16 will be objecting. But that's okay. He's entitled
17 to. But if he makes that objection, then we just
18 allow him to say it, and then you can still answer
19 the question.

20 MR. MEYERS: Same is true of me or
21 everybody else at the table.

22 THE WITNESS: How about me?

23 MR. MEYERS: Your objections come
24 through me, not from you.

25 THE WITNESS: Okay.

1 BY MR. BRUNER:

2 Q. So has Mr. Richter ever been your
3 lawyer?

4 A. Not that I know of.

5 Q. Do you know of anything that
6 Mr. Richter has done that caused you financial
7 harm?

8 A. My understanding is I've been excluded
9 from a class action suit.

10 Q. And do you think that's caused you
11 financial harm?

12 A. Hard to say.

13 Q. Do you know who David Haller is?

14 A. I know the name.

15 Q. How do you know the name?

16 A. Same as Mr. Richter.

17 Q. Same as Mr. Richter. Do you understand
18 that Mr. Haller is also an attorney?

19 A. Yeah.

20 Q. Has he ever been your lawyer?

21 MR. SHAHID: Object to the form of the
22 question.

23 THE WITNESS: Not that I know of.

24 BY MR. BRUNER:

25 Q. Okay. Do you know of anything

1 Mr. Haller has done to cause you financial harm?

2 A. Not directly.

3 Q. You are aware, are you not, that you
4 are a plaintiff in a lawsuit that is pending in
5 Charleston County?

6 A. Yes.

7 Q. And in that lawsuit, your pseudonym is
8 John Doe 194?

9 A. Okay.

10 Q. Do you know that?

11 A. Yes. I didn't remember the number,
12 but...

13 Q. Well, I know the numbers can be
14 confusing. I agree with you. In that lawsuit,
15 Mr. Richter and Mr. Haller have been sued. Do you
16 know why you sued them?

17 A. I read the Complaint.

18 Q. You have read it?

19 A. Um-hum.

20 Q. So do you know why you've sued them?

21 A. I have a pretty good understanding.

22 Q. Tell me what that understanding is.

23 A. In layman's terms or my own words,
24 there was a class action suit, and I was not a
25 party of it. And to the best of my understanding,

Exhibit G

to

Lawyer Defendants' Omnibus
Motion for Summary Judgment

*Order Certifying Classes and Giving
Preliminary Approval to Settlement*

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 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 67¹ 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 SCRCR 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

SCRCR 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 abused³ 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. SCRCF 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. *McGlothlin 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, SCRCF 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 SCRCF 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 SCRCF 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



Arbitration Agreement" formalizing the agreement reached between the Representatives¹ 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 abused² 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.

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 SCRCF 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
RJR

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.

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RJR

- 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 of 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

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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.

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.

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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

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.

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).

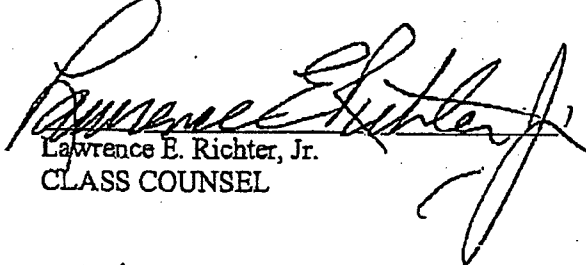
9. **DISMISSAL OF ACTIONS.** The actions pending against the Diocese shall be dismissed with prejudice pursuant to the terms and conditions set by the court in its order on class certification.

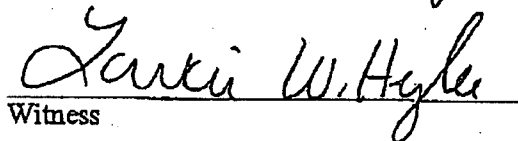
10. **MISCELLANEOUS PROVISIONS.** This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this 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

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.

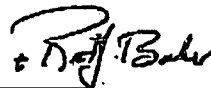
Executed this 12 day of January, 2007.

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

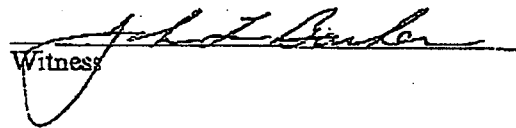

Witness

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

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

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 Claimant's assertion of sexual abuse.

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

Rx Date/Time JUL-09-2003(WED) 19:09
01/30/07 TUE 13:02 FAX 843 881 1400

843 881 1400
RICHTER AND HALLER LLC

R. App. 001875
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032

as of the date written below.

The Bishop of Charleston, a Corporation Sole

By: _____

Its: _____

Date: _____ Witnessed by: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 13-CP-10-3733

John Doe 193,)
)

Plaintiff,)
)

v.)
)

Bishop of Charleston et al.,)
)

**Plaintiffs' Memorandum Opposing Motions
 for Summary Judgment as to John Doe 193**

FILED
 2017 JUL 18 PM 4:12
 JUDGE J. HANSTON
 CLERK OF COURT
 BY _____

Motions for summary judgment have been filed by the defendants as to John Doe 193, whose issues as to class notice are slightly different from other plaintiffs, even though the basic proposition is the same. That proposition is that class counsel having chosen to define the class so as to include Doe 193, as a matter of law the lawyer defendants assumed fiduciary responsibilities to him, but then failed to provide for him in the class action.¹ References to the "Diocese Defendants" refer to those defendants represented by Mr. Dukes. References to the "lawyer defendants" refer to those defendants represented by Mr. Bruner and Ms. Wall.

Overview. The motions are based on the false premise that if Doe 193 is not precluded by the *res judicata* effect of the class action then he is presently in the same position as to the Diocese that he would have been in had some provision been made for him (and others like him) in the 2007 class action. The argument ignores that in the class action the Diocese waived various defenses, and Doe 193's abuse arose during the period of near absolute charitable immunity for the Diocese.

¹ After the class that included him was certified, the lawyer defendants acquired, also by operation of law, an attorney-client relationship with Doe 193. E.g., *Kleiner v. First Nat. Bank of Atlanta*, 751 F.2d 1193, 1207 n.28 (11th Cir. 1985) (attorney-client relationship when class certified).

The South Carolina Supreme Court has precluded the argument that when the Diocese waived defenses in the class action it waived the same defenses for everyone in the class definition. The court determined that those waivers by the Diocese do not apply to future claims. *Doe v. Bishop*, 754 S.E.2d 494, 499 (S.C. 2014) (“respondents did not waive a statute of limitations defense as to future claimants.”) Through his breach of fiduciary duty claim, Doe 193 seeks to be placed in the same position he would have been in had he been protected by the lawyer defendants in the 2007 class action who chose to include him in the definition of the class.

Discovery, of course, has long been stayed as to the lawyer defendants, so is not complete,² and summary judgment is not appropriate until “the opposing party has had a full and fair opportunity to complete discovery.” *Baughman v. American Telephone and Telegraph Co.*, 410 S.E.2d 537, 543 (S.C. 1991). *Accord, Lee v. Kelly*, 378 S.E.2d 616, 617 (S.C. App. 1989).

The present motions concern not claims for the abuse itself but for the defendants’ conduct in 2007. The lawyer defendants included Doe 193 (and persons such as him) in how they chose to define the class action they brought, but then failed to make any provision in the class action for him. Specifically, they made no accommodation in the class action for persons who in 2007 had no memory of his or her abuse. The Diocese defendants made no objection, and at every turn consented to the class proceedings, and a jury could find the Diocese defendants aided and abetted the fiduciary duty breached as to Doe 193.

South Carolina has recognized repressed memory since 2000 through the *Moriarty* case, discussed below. In addition, during the class action at issue, the lawyer defendants had filed another case, that one in Jasper County and against the Diocese of Savannah, on behalf of an

² Among other things, the lawyer defendants have to date refused to submit to deposition.

individual (Allan Ranta) who had repressed the memory of his childhood sexual abuse. The lawyer defendants were well aware of the repression issue affecting some sexual abuse victims.

The notice program for the class action neither exempted, nor accommodated, any abuse victims whose memories of abuse were repressed in 2007. All defendants have pleaded in their Answers *res judicata* as to the claims of John Doe 193.

The motions for summary judgment as to Doe 193 should be denied. Not only is discovery not complete as to the lawyer defendants, but when the lawyer defendants chose to define the class so as to include Doe 193, as a matter of law those lawyers assumed fiduciary duties to him. Facts exist from which a jury could conclude that the lawyer defendants breached those fiduciary duties, and that the Diocese defendants aided and abetted that breach.

Viewed favorably to Doe 193, his testimony must be accepted (a) that he was sexually abused at age 15 by a priest of the Diocese, (b) that at some point after that abuse he repressed his memory of that abuse; (c) that in 2007 he had no memory of his sexual abuse, (d) that his recall of the abuse occurred in August, 2010, and (e) that class counsel, with cooperation of the Diocese, failed to provide for him after including him in the class definition.

Summary Judgment Standard. The defendants have failed to comply with the applicable standard for summary judgment because they fail to view the facts in the light most favorable to John Doe 193. The defendants suggest the court should make a factual determination about whether or not John Doe 193 had repressed memory in 2007, arguing he did not, when the record must be viewed favorably to John Doe 193. That Doe 193 had no recollection of his sexual abuse in 2007 must be accepted by the court, viewing his testimony and that of his mental health professional in the light most favorable to Doe 193. E.g., the plain testimony of Doe 193, Dep. at pp. 11 – 12, (Lawyer defendant Exhibit C), as well as that of his

mental health professional, Dr. Crockett, Dep. at p. 105 (Lawyer Exhibit D), confirm that his recall began only in 2010.³

When the standard of proof is a preponderance of evidence, as it is in these cases, to overcome summary judgment requires the plaintiff to provide “a scintilla of evidence.” *Hancock v. Mid-South Management Co.*, 673 S.E.2d 801, 803 (S.C. 2009) (“in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.”). The evidence must be viewed in the light most favorable to the nonmoving party. *Id.* at 673 S.E.2d 802; *Koester v. Carolina Rental Ctr.*, 443 S.E.2d 392, 394 (S.C. 1994). There is much more than a scintilla as to Doe 193 regarding the causes of action for breach of fiduciary duty, and, as to the Diocese defendants, their aiding and abetting the breach of fiduciary duty by the lawyer defendants.

The facts, viewed favorably to the plaintiff. Viewed in the light most favorable to the plaintiff, evidence exists from which a jury could conclude that the lawyer defendants (as a matter of law) owed a fiduciary duty to John Doe 193, which was breached, and that the Diocese assisted that breach. That evidence includes the following:

³ The lawyer defendants suggest that a November, 2010 therapy note from Dr. Crockett indicates that when Doe 193 was age 23 (so in roughly 1976), Doe 193 “tried to forgive the priest,” Lawyer Defendants Exhibit D at p. 203). Whether Doe 193 repressed his memory after he turned 21 may be relevant to a statute of limitations analysis as to claims against the Diocese for the abuse itself (a defense waived by the Diocese in the class action), but is irrelevant to the present motions as to both the lawyer defendants’ fiduciary duties to Doe 193, their breach of those duties in 2007, and the aiding and abetting of that breach by the Diocese in 2007. The argument is all the more reason why Doe 193 needed the lawyers to effectuate in the class action the fiduciary duties they assumed towards him, by making some provision for him in the class action, as outside the class Doe 193 faces the Diocese still possessing all of the defenses it had waived in the class action.

1. John Doe 193 was born April 30, 1953. Attachment Z, Doe 193 dep. at p. 20. He claims multiple incidents of abuse between ages 10 and 14 by a Catholic priest (Att. Z, Doe 193 dep. at pp. 13, 14, 99), so not later than 1967. He reported the first act of abuse to a nun, Att. Z, Doe 193 dep. at p. 15, whose response was to slap him. Att. Z, Doe 193 dep. at 16.
2. In 2005, the lawyer defendants filed a class action complaint in Charleston County against the Diocese of Charleston (in case 2005-CP-10-4913, Attachment A), for an individual identified as John Doe 53, who was alleged to be the representative "of a class of other persons similarly situated as victims of priest sexual abuse in South Carolina," a phrase both in the caption of the complaint and alleged in ¶ 34 of that class complaint.
3. As defined in the 2005 class complaint, the class includes Doe 193.
4. The Diocese accepted service of the Doe 53 complaint. Attachment B.
5. When a lawyer pleads a class action, he or she assumes a fiduciary duty to the persons included within the class the lawyer has chosen to define. E.g., *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984).⁴ See also, *Tilley v.*

³ *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) (internal citations omitted, emphases added):

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.*** The class representative also surrenders the right to settle the action in return for individual gain, alone.

If the class representative ***or class counsel*** breaches the fiduciary duties he assumes and receives and retains benefits flowing from the breach, he holds what he receives upon a constructive trust for the class. This is true although the benefit received by the class representative is not at the expense of the class. Under no circumstances will the fiduciary be permitted to profit from a breach of his duty as fiduciary.

Pacesetter Corporation, 585 S.E.2d 292, 302 (S.C. 2003) (class definition “a strategy choice” that the parties and class counsel “have to live with.”)

6. Five months after filing the class complaint against the Diocese of Charleston, in April, 2006, the lawyer defendants filed a complaint in Jasper County against the Diocese of Savannah on behalf of Allan Ranta, an individual sexual abuse victim who had repressed the memory of his childhood sexual abuse. The case in Jasper County was assigned case number 2006-CP-27-00143. Attachment C, Jasper County docket sheet.⁵
7. As the docket sheet from Jasper County shows, the *Ranta* case was pending during the entire class action process that is the subject of this litigation. Attachment C, Jasper County Docket sheet for the Ranta case.
8. Repressed memory for sexual abuse victims has been recognized in South Carolina since 2000. *Moriarty v. Garden Sanctuary Church of God*, 534 S.E.2d 672 (S.C. 2000).
9. During the class action the lawyer defendants were necessarily aware that abuse victims sometimes repressed memory of their abuse, not only through *Moriarty*, but because they represented Allan Ranta and made no effort to define the class so as to exclude persons such as Allan Ranta or Doe 193.
10. In June, 2006 the class action case against the Diocese of Charleston was resolved in mediation by an agreement “to create settlement class [sic]; subject to court approval of: (a) actual victims of Diocese abuse....” (Attachment D, June 14, 2006 handwritten mediation agreement).

⁵ See also Attachment U, *Ranta* Motion for Summary Judgment in 2006-CP-27-00143, filed November 13, 2009, which at pages 5 and 21 cite to *Moriarty*, the case recognizing repressed memory for sexual abuse victims.

11. SCRCP 23(c) requires that a class settlement be submitted for court approval. (“A class action shall not be dismissed or compromised without the approval of the court....”)
12. When the June, 2006 class settlement was reached with the Diocese of Charleston, the only pending cases against the Diocese of Charleston for sexual abuse were in Charleston County. Of those three pending cases, the only one alleging a class against that Diocese was case 2005-CP-10-4913, for John Doe 53. As noted above, John Doe 53 was alleged to be “representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina.” Attachment A.
13. The June 2006 settlement explicitly included case 2005-CP-10-4913. Attachment D, June 14, 2006 mediation agreement at p. 1.
14. The mediation agreement simultaneously negotiated a fixed fee for class counsel and a variable fee for class members, with the fee explicitly taking priority over compensation to class members.
 - a. Item 2 in the mediation agreement, Attachment D, established a settlement fund of potentially \$12 million.
 - b. Item 3 in Attachment D calls for details of the claims process to benefit class members “shall be developed.”
 - c. Item 4 set the attorneys fee to be set by the court as “between \$ 950,000 + \$ 2.5 million.” Attachment D.
 - d. When the settlement was typed up, Attachment M, January 17, 2007 agreement, at p. 13, class counsel’s fee was established as fixed, with class members’ compensation being reduced *pro rata* if the settlement fund was

insufficient. By its overt terms, the attorneys fee was the priority in the settlement.⁶

- e. Item 6 of the handwritten mediation agreement provided that the claims of four named individuals, one of whom is John Doe 53, would be resolved even “if the court fails to approve settlement class +/- or provision of class settlement....” Attachment D, June 14, 2006 mediation agreement at p. 1. See also, Attachment M, January 17, 2007 typed agreement at p. 2, and at p. 12, listing John Doe 53 as designated to receive \$160,000, “regardless of whether the class certification and settlement are approved by the court.”⁷

15. The class settlement agreement was not submitted for judicial approval in Charleston County, the only court in which a class action was pending at the time the mediation agreement, Attachment D, was reached.

16. After the June, 2006 mediation agreement, the lawyer defendants and the Diocese engaged in what must be considered, in the light most favorable to the plaintiff, to have been some judge-shopping, to (a) avoid Charleston County judges and to (b) maneuver the class oversight to Judge Goodstein, in Dorchester County.

⁶ Ordinarily, class counsel’s fee is determined after the claims process has paid out class compensation and the benefit to the class is known. “Where the class payment and fees are negotiated together, there is a concern that class counsel engaged in ‘a tradeoff between merits relief and attorneys fees.’” *True v. American Honda Motor Co.*, 749 F. Supp. 2d 1052, 1078 (C.D. Cal. 2010) (class counsel’s fee application was premature), *quoting Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003). This is a special concern when a class settlement agreement is reached prior to class certification. *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). In this class action, the fee was approved, and paid, first, all details for the class members were subordinate to that priority.

⁷ The lawyer defendants have, to date, refused to provide discovery on what appears to be the *additional* fees they charged, without any order authorizing them to do so, and apparently without disclosing to class members the court awarded fee. Attachment M reflects that their court awarded fee includes future work. We will apparently need to move to compel that information.

17. Judge Goodstein had long social and professional ties with the lawyer defendant Mr. Richter. Attachment Q, Order of July 13, 2007 “relating to waiver disclosures by court.”
18. Those social and professional ties of Judge Goodstein to class counsel were not disclosed to the class before the March 2007 fairness hearing on the class action, and were never ordered to be included in any of the disclosed to either of the classes in the class action. But those ties were disclosed to the Diocese. Attachment Q, Order of July 13, 2007 “relating to waiver disclosures by court.”
19. The Diocese defendants made no objection to shopping for a judge in another county to oversee the class action from Charleston County. E.g., Attachment F, correspondence about meeting with Judge Goodstein.
20. The mechanism of the judge-shopping included these basic steps, as shown in the public filings of the Dorchester and Charleston county courts.
 - a. A consent order changing venue was prepared on August 12, 2006, according to the time records of class counsel. It appears that order was never executed, and no motion to change venue was every submitted in Charleston County. Attachment N.
 - b. Instead, on August 15, 2006, two new cases, each alleging a class, which cases were already settled as part of the mediation agreement, were filed in Dorchester County. Those actions were given case numbers 2006-CP-18-1310 (for Jane Doe 1 and Jane Doe 2 and Rachel Roe, alleged to be class representative of abuse victim spouses and parents)⁸ and 2006-CP-18-1311

⁸ Jane Doe 1 was alleged to be the wife of John Doe 53; Jane Doe 2 the wife of John Doe 66; and Rachel Roe the mother of John Doe 53. 2006-CP-18-1310 complaint at ¶¶ 1 – 3.

(for John Doe 67, alleged to represent, ¶ 27, “victims of priest sex abuse in South Carolina.”). These complaints are in the class action files, but one is provided at Attachment E.

- c. John Doe 67 was within the class as defined in the already pending action in Charleston for Doe 53.
- d. In early September, 2006, the Diocese accepted service of the newly filed, but already settled, class complaints filed in Dorchester County for John Doe 67 and Jane Doe 1 et al.
- e. Communications began with Judge Goodstein, by letter and telephone, on August 21, September 11, September 20, September 25, and September 26, 2016, according to time records submitted by class counsel and documents from class counsel. Attachment P, time records of class counsel.
- f. A conference with all defendants and Judge Goodstein occurred on October 6, 2006. Attachment F, letter of October 5, 2006 from class counsel to Diocese counsel.
- g. On October 6, 2006, the John Doe 53 class complaint remained pending in Charleston County. Attachment A.
- h. The lawyer defendants took the Doe 53 class complaint pending (and already settled) in Charleston County (2005-CP-10-4913, Attachment A), and changed on page 1 in that complaint (a) the word “Charleston” to the word “Dorchester,” (b) the circuit reference from the word “Ninth” to the word “First,” and (c) deleted the Charleston County case number to substitute a blank space for that case number.

- i. The word-for-word identical complaint for John Doe 53, individually and as a class representative, was then re-filed in Dorchester County on October 6, 2006 and assigned case number 2006-CP-18-1636 (Attachment G, Dorchester County version of the Doe 53 class complaint).⁹

21. When the Dorchester County version of the John Doe 53 class complaint was re-filed in Dorchester County, it was (a) still pending in Charleston County, (b) already settled by the 2006 mediation agreement, and (c) under that 2006 mediation agreement, Attachment D, the claims by John Doe 53 were resolved, whether or not a class was approved by the court.

22. In other words, in the light most favorable to Doe 193, when the Dorchester County version of his class complaint was redundantly filed in Dorchester County, John Doe 53 had no pending claim. As a matter of law, he could not be a proper class representative by the time the Dorchester County version of his class complaint was filed, because his individual claim had been settled during the June, 2006 mediation. Among other things, he no longer fit the definition of the class for whom he was supposedly a representative, because his claim has been “resolved” prior to the Dorchester County version of his class complaint.

⁹ In the leading treatise on class actions, 5 Newberg on Class Actions § 13:56 n. 4 (2015), the authors refer to the Manual for Complex Litigation, Fourth, § 21.61 as a source for various “red flags” in proposed class settlements that reflect “the concern that the class’s attorneys have sold out the class.” One such red flag is “filing or voluntarily dismissing class allegations for strategic purposes (for example, to facilitate shopping for a favorable forum....)”

Note also that, according to the fee petition submitted by class counsel, making those three revisions to page 1 required two lawyers a total of 60 hours on October 5, 2006. Class counsel Haller claimed to have personally worked 50 of those 60 hours that day. See attorney fee submission extract page 44, Attachment O.

23. The Diocese made no objection to the Doe 53 class complaint having been re-filed in Dorchester County and, as noted above, accepted service of the newly filed, already settled class complaints in Dorchester County.
24. In the light most favorable to John Doe 193, the Diocese defendants consented to judge-shopping to move class oversight from any Charleston County judge to Judge Goodstein in Dorchester County. The Diocese made no objection to class counsel doing so. In addition to accepting service of the new Dorchester County class complaints, the Diocese made no motion to dismiss the John Doe 53 class complaint in Dorchester County pursuant to SCRCP 12(B)(8), that another action (the identical John Doe 53 class complaint in Charleston County) was pending between the same parties for the same claim. A jury could conclude that the Diocese consented to class counsel's judge-shopping plan.
25. Also on October 6, 2006, class counsel filed in Dorchester County a "motion to certify classes and for preliminary approval of settlement." In that motion, the class that included John Doe 193 was defined to be (emphasis added):
- 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.
- Attachment H, 2006 motion to certify classes at p. 2.
26. As noted above, John Doe 193 was born April 30, 1953 (Attachment Z, Dep. at 20). He testified to abuse between ages 10 and 14, Attachment Z, Dep. at 99, meaning that his abuse occurred between 1963 and 1967.
27. The class definition chosen by the lawyer defendants in their 2006 motion includes no geographic limit on the class, and makes no provision for a person with repressed memory, such as John Doe 193.

28. The class definition from the October 6, 2006 Dorchester County filing, Attachment H, by its terms excluded John Doe 53, the supposed class representative of the cloned class complaint (Attachment G), as Doe 53's sexual abuse claim had been previously "resolved" by the June, 2006 mediation agreement, Attachment D.
29. In that October 6, 2006 motion to certify classes, the lawyer defendants proposed to give the class nationwide notice through publication in USA Today. Attachment H at p. 3, item 3a.
30. On October 17, 2006, an order was entered in Dorchester County designating as complaint cases 2006-CP-18-1310, -1311, and -1636, consolidating the cases, and assigning the cases to Judge Goodstein. Attachment I.
31. The Diocese defendants consented to that October 17, 2006 order. Attachment I.
32. The same day, October 17, 2006, proposed orders of dismissal without prejudice for the three pending Charleston County sexual abuse cases against the Diocese of Charleston were sent to Judge Jefferson, then administrative judge for Charleston County. Attachment J, letter of October 17 from class counsel to Judge Jefferson.
33. On October 23, 2006, those consent orders were entered in Charleston dismissing without prejudice pending cases 2005-CP-10-2053 (for John Doe 66); 2005-CP-10-3293 (for John Doe 66A); and 2005-CP-10-4913 (the Charleston County version of the class action filed for John Doe 53). Attachment K. Viewed favorably to the plaintiffs, a jury could find these actions, all done by consent with the Diocese, were part of a plan and agreement to move the class approval and oversight process from Charleston County to Judge Goodstein in Dorchester County.
34. Between October, 2006 and January, 2007, the notice program proposed for the class action was reduced. Without objection from the Diocese, the lawyer defendants

eliminated the nationwide notice proposed for *USA Today*, even though the definition of the class, without geographic boundaries, was not changed, and even though the funds for nationwide notice were provided in the settlement fund. Attachment L, 2007 motion to certify classes.

35. Although defendant Richter has not yet submitted to a deposition, Defendant Richer has proffered to the court, through his counsel, Mr. Bruner (a) that the class notice “was not intended to reach beyond the borders of South Carolina” (Attachment Y, April 10, 2014 hearing transcript at p. 9), and (b) that his testimony will be that the change to eliminate *USA Today* was made “because the Bishop said, no, that’s too expensive.” (Attachment Y, April 10, 2014 hearing transcript excerpts at p. 42).
36. In other words, the lawyer defendants’ representation to the Court was that they agreed to delete *USA Today* as nationwide notice to the absent class members, to whom they had fiduciary duties, as an accommodation to their supposed adversary, the Bishop.
37. At no point does it appear that the lawyer defendants disclosed to Judge Goodstein that they had eliminated *USA Today* as nationwide notice to the class, or that they had done so as to accommodate, according to the lawyer defendants, their adversary, the Diocese. Nor can we find any indication that the Diocese raised the reduced notice program with Judge Goodstein.
38. To the contrary, Judge Goodstein was told, incorrectly, by both counsel for the Diocese and the lawyer defendants in a hearing on July 13, 2007, that the Diocese was looking for four individuals about whom they knew but had not yet given notice, “and we’ve got to find anyone else who has kind of, lack of a better word, comes out of the woodwork,” as put by counsel for the Diocese. Attachment R, July 13, 2007

hearing at p. 12 (there are two different page number systems in the transcript). As put by the lawyer defendants in the same hearing, Judge Goodstein was told was that

if anybody has been missed or if there is anybody who responds as a result of these who have been identified to, the diocese waives all the same defenses that they have given up in this class settlement, consents to the same method of compensation, consents to the same early disposition of that claim by a same arbitration method, the whole nine yards.

Attachment R, July 13, 2007 hearing at p. 14. While that provision might appear to apply to give relief to Doe 193, class counsel failed to obtain a written order which included that relief to absent members of the class, and the only order actually issued was limited to a specific number of persons the Diocese knew had previously complained of abuse, referred to as the “actual notice” group. *Doe v. Bishop*, 754 S.E.2d 494, 499 (S.C. 2014).¹⁰

39. After the October 6, 2006 motion for preliminary approval of the class, pursuant to what the lawyer defendants explained in 2014 was an accommodation for their adversary, the Bishop, in January, 2007, the lawyer defendants submitted an amended motion for preliminary approval of the class settlement. Attachment L, Motion filed January 17, 2007. The class definition of what was called the “Primary class,” meaning the abuse victims, was unchanged from the October, 2006 motion, and still included Doe 193. Attachment L, Motion at p. 2. What was changed was that, consistent with the lawyer defendants’ have explained was their agreement with their adversary, *USA Today* was removed as a proposed source of notice. Attachment L,

¹⁰ 754 S.E.2d at 499: “[Doe] Appellants argue that the August order alters the terms of the settlement only as to Actual Notice Class Members. They contend that, as general class members, they are entitled to be treated under the more generous terms of the July order. We disagree.”

Motion for preliminary approval of the class settlement of January 17, 2007, at p. 3, item 3a.

40. As noted above, it was admitted by class counsel in a hearing on April 10, 2014 (at p. 9) that the notice for the class action was not intended to extend beyond South Carolina.
41. The Diocese made no objection to the change in the notice program for the class action, either to enlarge the geographic scope of the notice to match the class definition, or to refine the class definition to restrict the class to persons within South Carolina, or to make some provision for persons such as Doe 193 who did not have a memory of their abuse in 2007.
42. In the light most favorable to the plaintiffs, class counsel breached their fiduciary duty to the absent members of the class such as Doe 193, who in 2007 had repressed memory, and to absent members of the class who lived out of state.
43. After the class was certified, class counsel's conduct breached the attorney-client obligations imposed on class counsel towards the plaintiffs, including Doe 193, also by operation of law from the certification.
44. The class definition includes all persons abused "at any time," making no distinction between those who had or had not repressed their memory of the abuse. And yet the class action made no accommodation for those with repressed memory.
45. When Doe 193 filed his action, the lawyer defendants and the Diocese defendants each asserted *res judicata* as a defense to his claims.¹¹

¹¹ Answer of the Diocese defendants filed September 3, 2013, at ¶ 65, as the Fourth Defense; Answer of defendants Richter and Richter & Haller filed June 24, 2013, at ¶ 54, as the Fourth Defense; Answer of defendant Haller filed April 14, 2014, at ¶ 57, as the Tenth Defense.

46. In the light most favorable to the plaintiffs, the Diocese aided and abetted the lawyer defendants' breach of fiduciary duty as to Doe 193 by including him in the class definition and making no provision for him in the class action. They also assisted in the breach after certification, when the obligation to the plaintiffs became an attorney-client obligation, as a matter of law, imposed after the class was certified.

A fiduciary duty was owed to Doe 193 was breached by the lawyer defendants. The lawyer defendants deny that they owed any fiduciary duties to Doe 193, but as a matter of law, when the lawyer defendants chose to plead a class action for sexual abuse victims, and in that pleading defined a class that included Doe 193, the lawyer defendants necessarily assumed fiduciary obligations to him. *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) (internal citations omitted, emphases added):

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.*** The class representative also surrenders the right to settle the action in return for individual gain, alone.

If the class representative ***or class counsel*** breaches the fiduciary duties he assumes and receives and retains benefits flowing from the breach, he holds what he receives upon a constructive trust for the class. This is true although the benefit received by the class representative is not at the expense of the class. Under no circumstances will the fiduciary be permitted to profit from a breach of his duty as fiduciary.

The definition of a class is "a strategy choice," that the lawyer then must accommodate. *Tilley v. Pacesetter Corporation*, 585 S.E.2d 292, 302 (S.C. 2003). It is undisputed that the class action notice and claims process made no provision for persons who, in 2007, had repressed memory.

South Carolina law has recognized repressed memory for sexual abuse victims since 2000. *Moriarty v. Garden Sanctuary Church of God*, 534 S.E.2d 672 (S.C. 2000). And as set out

above, the lawyer defendants *while conducting the class action at issue in this case*, represented Allan Ranta, a repressed memory client abused by a priest from the Diocese of Savannah.

All defendants argue that because his memory was repressed until 2010, Doe 193 was not precluded by the class action from making his claims against the Diocese for the abuse itself. The argument about Doe 193's statute of limitations options is pointless, and is supported by none of the orders from the class action. Once Doe 193 was included in the class definition but was not provided for, he lost the benefits of the defenses waived by the Diocese in the class action, including charitable immunity. As a practical matter, he lost the ability to have a claim for the abuse itself, because his claim is now subject to defenses his claim was previously not subjected to.

Under *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000), a repressed memory can conceivably overcome a statute of limitations defense for a claim brought for the abuse itself against the Diocese within three years of the recollection. But it is undisputed that the claim by Doe 193 for the abuse itself against the Diocese independently fails as to the Diocese due to charitable immunity, since the era of his abuse was 1963 to 1967. E.g., *Decker v. The Bishop of Charleston*, 147 S.E.2d 264, 268 (S.C. 1966).

Both statute of limitations defenses and charitable immunity defenses were waived in the class action, which is why it matters that the lawyer defendants in 2007 breached their fiduciary duties to him (and other plaintiffs) when they included him (and other plaintiffs) in the class definition but made no provision for him, and why it matters that the Diocese aided and abetted that breach.

The class definition as submitted to the court for approval, with no objection from the Diocese, discussed in detail below, included Doe 193:

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.

Motion for class approval filed October 6, 2006 (Attachment H) and amended Motion for class approval filed January 17, 2007 (Attachment L) each contain the same class definition. The Diocese made no objection to that definition.

This cause of action against the Diocese has three elements. E.g., *Gordon v. Busbee*, 723 S.E.2d 822, 830 (S.C. App. 2012):

“The elements for a cause of action of aiding and abetting a breach of fiduciary duty are: (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages.” *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (2008). “The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach.” *Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996).

“Participation in the breach” is a broad standard, easily met by the facts set forth above. A jury could conclude that the Diocese aided and abetted the breach of duty by class counsel to Doe 193.

As to John Doe 193, the Diocese argues, motion at 2, that because John Doe 193 was not precluded from his claims by the order on limited collateral review then his claim for breach of fiduciary duty, and its aiding and abetting, must fail. As noted above, this is a nonsensical argument. John Doe 193 need not be precluded by *every* ground from his claim against the Diocese for the sexual abuse itself to have a claim against both (a) the lawyers who breached their fiduciary duties to him as a member of the class, and (b) against the Diocese defendants that aided and abetted that breach.

The Diocese also contends, motion at 2, that Doe 193 is no worse off now than he would have been in 2007. This argument is patently false. Doe 193 was included in each definition of the class in 2005, 2006 and 2007. In that time range he had no memory of his abuse so was

unable to make a claim in the class context, when the Diocese had waived its defenses. No provision was made for him, despite his being included in the class the lawyer defendants chose to define. For Doe 193 to now make his claim for his abuse in the time period 1963 to 1967 confronts those defenses, and his claim is not viable because of charitable immunity. He is worse off compared to the position he might have enjoyed in the class action in 2007. The lawyers who undertook to represent his interests in 2007 were aware of repressed memory, as has any lawyer in S.C. since 2000, were actually engaged at the time for a client who had repressed memory, and the lawyer defendants should have provided for Doe 193. The Diocese aided and abetted that breach. It is enough that Doe 193 has been precluded, as to his claims for the abuse against the Diocese, on *any* ground. There is no magic in which ground, or grounds, precludes him, only that *some* ground that was waived in 2007 precludes him from his claim against the Diocese.¹²

In 1967, charitable immunity protections for the Diocese defendants was effectively absolute. In the 2007 class action settlement, charitable immunity was waived. (See, Attachment M, Settlement and Arbitration Agreement of January 17, 2007, at p. 5: "The Arbitrator shall not consider any liability issues, including, but not limited to, defenses such as . . . charitable immunity.") No provision was made in the class action for persons, like Doe 193, who recalled their child hood abuse only after 2007, even though repressed memory has been recognized in South Carolina since 2000, and even though the lawyer defendants represented such a client during the class action. Had the defendants wanted to exclude Doe 193, they need only have

¹² The Diocese could, of course, eliminate this problem by agreeing to fully compensate John Doe 193. The Diocese refuses to do so, readily demonstrating why John Doe 193 is, in fact, not in "precisely the same position he was in 2007." Diocese Motion at 2. In 2017 Doe 193 faced defenses that had been waived in 2007 as part of the class resolution which included him by definition but then made no provision for him, and which forms the damage done to him.

defined the class to do so. Instead, they defined the class so as to include him, but then made no provision for him to enable him to make a claim, and he is worse off as a result.

Conclusion

The motions for summary judgment should be denied.

Respectfully submitted

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

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