

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
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

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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 Seven

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

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

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

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

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON) 2010-CP-10-5520,7233
) 2012-CP-10-5559
) 2013-CP-10-3733,4175,4176
) 2015-CP-10-5486
) 2016-CP-10-1632

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, FATHER DOE 245,)
 AND JOHN DOE 297,)

Plaintiffs,)

Transcript of Record

vs.)

July 20, 2017

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

Defendant.)

B E F O R E:

Honorable J.C. Nicholson, Jr.
 Charleston County Courthouse
 Charleston, South Carolina

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

Gregg E. Meyers, Esquire
Attorney for Plaintiff

James L. Bruner, Esquire
**Attorney for Defendant Richter
And Richter and Haller**

Richard S. Dukes, Jr., Esquire
**Attorney for Defendant Bishop of Charleston
And Diocese of Charleston**

Susan Taylor Wall, Esquire
Attorney for Defendant Haller

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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1 (JULY 20, 2017)

2 MR. BRUNER: Your Honor, I'm James Bruner and I represent
3 Larry Richter and the Richter and Haller law firm. We filed
4 four motions, four dispositive motions and I will -- first for
5 the record, the first motion is a, what we term an omnibus
6 motion for summary judgment and that is because we have eight
7 cases that are John or Jane Doe cases against the Diocese of
8 Charleston and what we call the lawyer defendants, two
9 individual lawyers and their law firm. All these motions were
10 filed on behalf of the lawyer defendants in eight cases.

11 The first ---

12 THE COURT: Those eight cases you've got captioned on
13 July the 10th, right?

14 MR. BRUNER: That's correct.

15 THE COURT: All right.

16 MR. BRUNER: An omnibus motion applies to every one of
17 the eight cases and argues that we are entitled to summary
18 judgment for the lawyer defendants in each case. The second
19 motion we filed was a motion for summary judgment as to the
20 conspiracy claims alleged in each of the eight complaints.

21 MR. DUKES: Seven of the eight, I think. No, all eight;
22 I apologize.

23 THE COURT: So, conspiracies in all eight.

24 MR. BRUNER: Yes, sir.

25 THE COURT: Okay.

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1 MR. BRUNER: And we did file these with the Clerk's
2 office in each case. So, we filed ---

3 THE COURT: But they're basically all the same argument,
4 right?

5 MR. BRUNER: Yes, sir. Same motion.

6 THE COURT: All right.

7 MR. BRUNER: We didn't file a different motion, we just
8 filed the same motion in each case so the Clerk would have a
9 piece of paper to put in the file.

10 THE COURT: Okay.

11 MR. BRUNER: The third motion we filed was a motion for
12 summary judgment as to the John Doe 193 case and that is 2013-
13 CP-3733.

14 THE COURT: Wait a minute. Let me find it real quick.
15 Which one now?

16 MR. BRUNER: John Doe 193. In my notebook that ought to
17 be Tab 3.

18 THE COURT: All right. John Doe 193.

19 MR. BRUNER: Tab 4, Tab 4, Your Honor, in my notebook.

20 THE COURT: Okay. You've got them listed A, B, C, D, I
21 guess.

22 MR. BRUNER: Well, those are exhibits.

23 THE COURT: Okay. Those are exhibits. Let me find your
24 tabs.

25 MR. BRUNER: And so there's a tab with a number on it.

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1 Number 4 is the motion for summary judgment as to John Doe
2 193. It's the last one.

3 THE COURT: Okay.

4 MR. BRUNER: And then the final motion, which is Tab
5 Number 3 in our notebook is the motion for summary judgment in
6 the case of Jane Doe 4, that is 2010 ---

7 THE COURT: Jane Doe 4?

8 MR. BRUNER: Yes, sir.

9 THE COURT: Okay.

10 MR. BRUNER: And that case number is 2010-5520.

11 THE COURT: Okay.

12 MR. BRUNER: With your permission, unless you have a
13 different order in which you would like to hear me, I will
14 argue the first motion for summary judgment as to all cases
15 first.

16 THE COURT: Okay. That'd be fine, however you want to
17 proceed.

18 MR. DUKES: Judge, just so we don't get -- forget, the
19 Diocese filed motions for summary judgment on a conspiracy --
20 the only claims remaining against us, conspiracy and aiding
21 and abetting breach of fiduciary duty.

22 THE COURT: Right. Those are separate from his motions,
23 I understand.

24 MR. DUKES: Yes, Your Honor.

25 THE COURT: You had filed those previously and that's

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1 what's left from the settlement?

2 MR. DUKES: Yes, Your Honor.

3 THE COURT: If I remember correctly, right?

4 MR. DUKES: Yes, sir. That's the only thing left.

5 THE COURT: Okay.

6 MR. DUKES: And we filed a supplemental brief in support
7 of our conspiracy motion which we had filed before and then
8 the aiding and abetting breach of fiduciary duty motion is
9 new.

10 THE COURT: All right. Mr. Meyers, you had filed a
11 response, I assume to all of them, right?

12 MR. MEYERS: Yes, Your Honor. Although I do clarify that
13 the special damage in the conspiracy claim has been eliminated
14 during the course of all the proceedings as the law clarified.
15 So, we actually don't need to argue anything about conspiracy.
16 The predicate for those conspiracy claims is really covered in
17 the aiding and abetting claims, which are not in every case,
18 but the conspiracy claim doesn't need to be argued.

19 MR. BRUNER: Are you saying you're abandoning the
20 conspiracy claim?

21 MR. MEYERS: Yeah, I have to because the special damage
22 element is not present given the rulings that have happened
23 since I started these cases till today.

24 THE COURT: Okay.

25 MR. BRUNER: I don't think I need to argue that motion

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1 then if you're abandoning the argument.

2 THE COURT: That's right. I think you're correct.

3 Mr. Meyers, where does that leave us at to get through
4 all of his motions on the conspiracy, right?

5 MR. MEYERS: Yes.

6 THE COURT: All eight of them?

7 MR. MEYERS: Yes.

8 THE COURT: All right. And he's got the motion on John
9 Doe 193 for summary judgment.

10 MR. MEYERS: Now, there are motions as to the -- all of
11 the cases having to do with other things other than
12 conspiracy.

13 THE COURT: Right. I understand.

14 MR. MEYERS: Mr. Bruner still needs to argue those.

15 MR. BRUNER: On 193, the only claim the Plaintiffs would
16 have left is for breach of fiduciary duty.

17 MR. DUKES: And aiding and abetting.

18 MR. BRUNER: Because -- what I'm talking about is to the
19 law. Judge Harrington threw out the claim for professional
20 negligence in 2014 and he has abandoned the claim for
21 conspiracy, so that leaves in 193 the claims for breach of
22 fiduciary duty as the only claim against the lawyer
23 defendants. Is that right?

24 MR. MEYERS: That sounds right.

25 THE COURT: Okay. All right. You want to start with

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1 that one?

2 MR. BRUNER: I'd rather -- if you don't mind, I'd rather
3 start with -- because I think I've got some argument that will
4 in fact take care of 193.

5 THE COURT: Okay. All right. However you want to do it.

6 MR. BRUNER: In each of these complaints, these
7 Plaintiffs allege that the Lawyer Defendants undertook to
8 represent them and therefore had duties to them and the
9 lawyers abandoned the nonresident Plaintiffs and they
10 abandoned them by not including them in the notice plan. More
11 specifically, it is alleged that the definition of the class,
12 which was certified, does not include a geographical
13 limitation. However, the notice plan for how these Plaintiffs
14 would be notified did obtain -- did have a geographical
15 limitation because it was only in 11 newspapers in South
16 Carolina and one in Augusta in the Augusta Chronicle. All of
17 these complaints allege that because of what the lawyers did,
18 they have been precluded from filing suit or maintaining their
19 claims against the Diocese for sexual abuse. They each
20 allege, however, that if they are allowed to sue the Diocese,
21 then the claims against the lawyers are irrelevant. So, in
22 essence, they are saying, lawyers, you messed up with our
23 rights because you barred us under the definition of the class
24 from suing the Diocese and we want to pursue those claims.
25 However, if the Court finds that we can pursue those claims,

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1 never mind, the claims against you are irrelevant. As Your
2 Honor knows, in your amended order on collateral review you
3 found that they were not barred if they were residents of an
4 area in which notice was not publicized. We have one issue
5 with Jane Doe 4 since she lived in Augusta but it's not
6 material to the argument I think I'm gonna make to you. Since
7 they are not precluded from asserting their claims against the
8 Diocese, then the allegations against the lawyers are
9 irrelevant and the claims against the lawyers are irrelevant
10 and should be dismissed. In addition, five Plaintiffs in four
11 of these cases, more specifically, the Plaintiffs in Number
12 2010-7233, who is John Doe 10; the Plaintiff in 2013-4175, who
13 is Father Doe 194; the Plaintiff who is in 2013-4176, John Doe
14 194; and the two Plaintiffs in 2015-5486, that would be John
15 Doe 245 and his father, Father Doe 245 -- these five
16 Plaintiffs in these four cases have settled with the Diocese.
17 So, they have not only been allowed to maintain their claims,
18 they were in fact ready to go to trial in May on these claims,
19 but they voluntarily settled against the Dioceses. Therefore,
20 they have by their own definition had their day in court and
21 they have no claims against the lawyers to pursue. The other
22 Plaintiffs in the other four cases were barred from pursuing
23 their claims by virtue of the doctrine of charitable immunity.
24 And the last time we were here, Mr. Myers surrendered on
25 charitable immunity just as he is done today on conspiracy.

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1 However, even though they've been barred by charitable
2 immunity, the Court has ruled that they are free to pursue
3 their claims against the Diocese subject to whatever defenses
4 might be there. Therefore, it's our contention that in four
5 of these cases, the Plaintiffs had their day in court,
6 voluntarily settled, cannot have their cake and eat it, too;
7 therefore, they cannot recover from the Diocese and still come
8 back and sue the lawyers. And the other four had no claim to
9 pursue.

10 Here's where I get to the real crux of it. Each of these
11 Plaintiffs has testified, and I've said that in my brief, that
12 they don't know who these lawyers are, and these lawyers have
13 never been their lawyers, that basically there is -- there was
14 no attorney/client relationship. In addition, the Plaintiffs
15 can each testify that they know of no harm that has been
16 caused to them by anything these lawyers have done. We know
17 it's hornbook law in this state that in order to establish ---

18 THE COURT: Let me just ask you one question. You say
19 there's no attorney/client relationship, traditionally you're
20 probably correct, but in the context of a class action, is
21 that still correct in your opinion? I mean ---

22 MR. BRUNER: Yes, sir.

23 THE COURT: There's all kind of classes -- when you got a
24 class action, there's all kind of members of the class that
25 the attorney doesn't have a traditional attorney/client

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1 privilege but they're still representing the class through the
2 selected members of the class.

3 MR. BRUNER: Directly to the point and I want to address
4 that.

5 THE COURT: Okay.

6 MR. BRUNER: It's a good question and that is the crux of
7 my argument today.

8 THE COURT: Right.

9 MR. BRUNER: My argument is that neither at the time the
10 suit was filed, nor at the time that the class was certified,
11 were these people his clients ever the clients of our lawyers.
12 Therefore, the lawyers never had any duty to them. Let me
13 explain why.

14 THE COURT: Well -- okay, go ahead. I mean, there were
15 ---

16 MR. BRUNER: I can make it clear for you.

17 THE COURT: Yeah, please, do.

18 MR. BRUNER: First of all, we contend that there could
19 not have been any relationship until class certification. The
20 majority rule in the United States is that there is no
21 attorney/client relationship and no duties that go along with
22 that until class certification. The reason for that is you
23 don't know until class certification exactly who the members
24 of the class will be because it can change. And it may be
25 different than what is originally requested. So, until class

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1 certification, you don't know who the clients are. In
2 addition, you don't know until class certification, at which
3 time class counsel is normally on it, you don't know who those
4 lawyers are gonna be. Oftentimes, there are many lawyers
5 competing to be class counsel and then one is finally
6 appointed. So, just because one files the case, doesn't mean
7 automatically that you are going to be the lawyer and
8 therefore there's gonna be the lawyer/client relationship.
9 So, our initial point is until class certification, no
10 attorney/client relationship, no duty, they lose. Second
11 point is, it doesn't matter. In this case, it doesn't matter.

12 THE COURT: What's all the aided and abetted and the
13 fiduciary -- violation of fiduciary duty occur -- all that I
14 assume occurred after the class had been certified, long
15 after.

16 MR. BRUNER: Before.

17 THE COURT: You think it was before class certification?

18 MR. BRUNER: The allegations are that we gave notice --
19 and that was done, negotiated before the class was certified,
20 but I've got ---

21 THE COURT: Let me ask Mr. Meyers.

22 Mr. Meyers, what's your theory on your aided and abetted
23 and your breach of fiduciary duty? What's your factual
24 allegation or theory?

25 MR. MEYERS: Two things, two things. First, they pled a

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1 class.

2 THE COURT: They did what?

3 MR. MEYERS: They pled a class. In 2005, they filed a
4 lawsuit here in Charleston pleading the class. The moment
5 they plead the class, the fiduciary duty to the class is
6 imposed upon them. That's by operation of law; it's the
7 *Premium Investment* case. Then in the next -- fast forward six
8 months, they settle a class ---

9 THE COURT: I thought the settlement process was where
10 you felt like the duty was violated and the aided and abetted
11 by the two parties concocting the settlement, or maybe I'm
12 wrong.

13 MR. MEYERS: No, I'm getting to this. So, so, they
14 pleaded class and assumed the duty to the articulated class in
15 that pleading.

16 THE COURT: Okay.

17 MR. MEYERS: Then, in the summer of 2006, they settle the
18 class and they expand it to two classes, nobody has pled this
19 yet. And then a few months later, they start filing new class
20 actions in Dorchester County and move everything up to
21 Dorchester County where they, again, pleading classes. This
22 time they filed three different class actions and articulate
23 the two new classes -- I'm sorry, they articulate the one new
24 class that they picked up in the settlement, and then they
25 filed two separate class actions for victims. One was first

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1 filed in Dorchester County and, of course, they're all settled
2 because they're part of the class settlement. And then they
3 take the John Doe 53 case from Charleston County and word-for-
4 word, refile it in Dorchester County. So, now it's pending in
5 two places at once but it's already been settled in the
6 summertime of 2006. So, I'm a little bit confused about the
7 factual picture. But, by operation of law, when they plead
8 the class or settle the class, the fiduciary duty is imposed
9 upon them. Then when the class is certified, which doesn't
10 occur -- final certification doesn't occur until the summer of
11 2007, that's when the attorney/client relationship is imposed
12 on them. There's a preliminary certification in January of
13 2007 but I would say that the way the facts lie, the fiduciary
14 duty starts in December of 2005. It expands in the summer of
15 2006 when they add the second class to the settlement. They
16 confirm those things by pleading. So, now by operation of
17 law, we've got a fiduciary duty that's imposed as to both
18 classes, and then the class gets certified which imposes also
19 by operation of law the attorney/client relationship for
20 everybody in the definition, whether they know the lawyers or
21 the lawyers know them or they're absent members and nobody
22 knows anybody, which is what the circumstance is here. So,
23 that's my view of what -- where these duties are if that
24 responds to the Court's concern.

25 THE COURT: Yes, sir. Thank you.

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1 Go ahead, Mr. Bruner.

2 MR. BRUNER: And so here's the crux of it. We contend
3 there was no duty that arose to anyone until class
4 certification. He contends, I think incorrectly so, that it
5 arose upon the filing of the complaint. The majority rule in
6 the United States is you wait till class certification, and I
7 told you why that is. However, he has ignored what the
8 lawyers at last asked for in this class action. I'm gonna
9 read it to you. This is exactly what they asked for in John
10 Doe 53 seeking a class action. Plaintiff is entitled to the
11 certification of a class of Plaintiffs against the Defendants
12 representing all individuals save for those barred by law from
13 serving an action against the Defendants in South Carolina who
14 were sexually abused and/or otherwise molested by agents of
15 the Catholic Church. The class they asked for and that they
16 pled did not include nonresidents. It was only for those in
17 South Carolina, and it did not include those who were
18 precluded by law, charitable entity or statute of limitations.
19 Therefore, even if he is correct and there were duties that
20 arose at the time they pled, it was only to people who they
21 sought to represent as a class. It was not to nonresidents as
22 he has pled. So, either way, he loses. Either way there was
23 no duty, either way there was no attorney/client relationship,
24 and either way all claims should be dismissed, plain and
25 simple.

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1 THE COURT: Thank you very much.

2 Anybody else from the Defense table want to chime in or
3 tell me anything before I move to Mr. Meyers? I'll just give
4 you an opportunity.

5 MS. WALL: Your Honor, let me just -- because I actually
6 know some law to cite to Your Honor with regard to Mr.
7 Bruner's point, that when does the duty arise with regard to
8 the attorneys and a class. It is not upon pleading. These
9 are factual matters. Mr. Bruner just brought out the pleading
10 which was original pled by these lawyers. There is not -- the
11 definition given in that was not ultimately the definition
12 that was in the class action. And why is that, Your Honor,
13 because this is why we have a judge, this is why we have the
14 court. All this has to come before a judge and it is the
15 judge, under Rule 23, who has the authority and control over a
16 class action. Rule 23 of the South Carolina Rules of Civil
17 Procedure provides the Court with the authority to safeguard
18 the interest of punitive class members during the notice
19 process and it's both the definition and the notice, which of
20 course is at the heart of the Plaintiffs' argument here.
21 Various cases such as *Macarz v. Transworld*. And, Your Honor,
22 we earlier had filed -- this was way back when, we've had so
23 many motions before Your Honor, but we had finding where we
24 cite these various cases. And then it is a -- it is a -- it's
25 201 F.R.D 54. Federal Courts, in applying the federal

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1 counterpart to Rule 23 -- we all know that's where this rule
2 started in the federal courts and then the South Carolina
3 adopted it -- have found that the Court has a duty to ensure
4 that the activities in a class action, and that's what we have
5 preliminary certification, you then have it open to comment,
6 and then they have the final certification after a hearing.
7 And I do want to get into that and I can wait on that, Your
8 Honor. But, the history in this particular case of what Judge
9 Goodstein did makes it absolutely clear that all of the
10 arguments with regard to class definition, the notice itself
11 were all before her because there were various objections that
12 were filed to the preliminary ruling that she made, the
13 preliminary certification of this class. And, in fact, it was
14 Mr. Meyers himself who filed objections to -- objections to
15 the definition of the class, objections to the notice. And,
16 when she holds a hearing and then she does her certification,
17 she knows all these arguments against it and then her
18 conclusions as to why she wanted this class to be the way it
19 was defined, the way it was noticed, and why she thought that
20 the -- or why she concluded that the settlement was
21 appropriate. What Mr. Meyers is trying to tell the Court here
22 this morning is that the minute any lawyer willy-nilly files
23 what he wants to be a class action and there is a settlement,
24 then all of a sudden this whole process is over. Absolutely
25 not. The Court has to come -- you don't have a settlement

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1 until the Court examines it and approves it.

2 THE COURT: But you don't think the duty arises when
3 there's a preliminary finding that the Court makes that they
4 gonna certify the class?

5 MS. WALL: Once the Court gets involved ---

6 THE COURT: Not at settlement, not at the fairness
7 hearing but whenever the class is certified preliminarily.

8 MS. WALL: That's correct, Your Honor. But what Mr.
9 Meyers is arguing to this Court is that it starts at the very
10 beginning.

11 THE COURT: I hadn't heard his argument yet, but I mean
12 ---

13 MS. WALL: I believe that's what he was just telling Your
14 Honor ---

15 THE COURT: I understand, but ---

16 MS. WALL: Cause he says that there was a settlement and
17 the lawyers filed and all of a sudden that's where all these
18 duties began to arise and there's this relationship. But
19 there isn't because that's not what the case law says and it
20 makes absolutely no sense because that means that we, as
21 lawyers get to control what goes on. That's not true. It's
22 the Court that controls and that's why you have Rule 23 and it
23 gives the authority to the Court, explicitly to the Court, not
24 to the lawyers but to the Court. At which point, the argument
25 arises or the point arises that if there is a relationship,

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1 attorney/client relationship and duties falling from that,
2 that's the time. But you can't ignore the Court's position in
3 all of this and that the Court is examining what's going on
4 and making determinations. The Court isn't just rubber
5 stamping something, and the Court is repeatedly holding
6 hearings, repeatedly, particularly in this case and we have
7 transcripts and we have various rulings from the class action
8 court. And so there is case law with regard to what I've just
9 been saying where we're -- any relationship and duty arises
10 disburse because you don't really have a class, you don't have
11 any duties, you don't have a relationship until you have the
12 Court who comes in examines, makes a determination and makes a
13 preliminary ruling. And, in this case, that preliminary
14 ruling was objected to in writing and there was a hearing and
15 the objections went to the definition and the objections went
16 to the notice. And the most interesting part is when the, the
17 Court -- the class action court went through in great detail
18 in her order why she wasn't gonna make the change as requested
19 and what was in Mr. Meyers' objection. He then filed a motion
20 to alter or amend in which he specifically brings up, oh, I
21 think this should be nationwide notice but that is not what
22 the Court, the class action court determined to do. And, that
23 was the Court's right under her authority to make that
24 decision. So, if you read his complaint, he goes on and on
25 about how no one gave the Court any information. The Court

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1 had all of the information, Your Honor, and it's all in the
2 pleadings that are in the record and that is the evidence in
3 this case. So, on that point, that's what I wanted to bring
4 up.

5 THE COURT: Thank you very much.

6 Mr. Meyers?

7 MR. MEYERS: Thank you, Your Honor.

8 THE COURT: Mr. Dukes, I didn't mean to -- I know you
9 don't have a dog in this fight. Okay?

10 MR. DUKES: I'm happy to sit over here on the side, Your
11 Honor.

12 THE COURT: Okay. I just didn't want to ignore you if
13 you had -- wanted to add anything. Okay? Okay.

14 Mr. Meyers?

15 MR. MEYERS: The -- let me start with the original class
16 action complaint filed here in Charleston in 2005, December of
17 2005 by the lawyers for the class or what became what is the
18 class.

19 What Mr. Bruner read was a portion of Paragraph 41 from
20 that complaint where it says save for those barred by law.
21 But, of course, those barred by law were not what got included
22 in the class. And earlier in the pleading, the class is
23 defined as this, from Paragraph 34, Plaintiff brings this
24 action on behalf of himself and as a representative of a class
25 of other persons similarly situated as victims of priest

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1 sexual abuse in South Carolina pursuant to Rule 23 of the
2 South Carolina Rules of Civil Procedure. The class -- when
3 the motion to certify the class got filed, which happened in
4 Dorchester County, the first in October and then amended and
5 refiled in January, class definition didn't change and this is
6 what ultimately got approved by the Court. All individuals
7 born on or before a certain date in 1980, who as minors were
8 sexually abused at any time by agents or employees of the
9 Diocese of Charleston who have not previously had any similar
10 claim adjudicated, resolved, or released. So, that was the
11 persons directly affected, that's Class Number 1, and they're
12 called primary class. And then the second class, they called
13 them the consortium class, parents or spouses of those
14 persons. Now, when the lawyers articulate that in a pleading
15 in South Carolina by operation of law, and this is again
16 *Premium Investments*, which we cite, we quote, a fiduciary duty
17 is imposed and it's imposed on everybody within that
18 definition. Everybody presently a Plaintiff meets that
19 definition, whether they have repressed memory or not, they're
20 in the definition. And when the lawyers assume that fiduciary
21 duty, they have to then protect the interest of those people.
22 By the time the class is certified by the Court, then they
23 have to -- after certification, they assume an attorney/client
24 relationship with all those people even if they don't know who
25 they are. And even if those people had no idea there was a

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1 class action going on. And the duties that you have to absent
2 members of the class, I would submit is the hardest thing to
3 get your head around when you start doing class action
4 litigation and being aware of those duties when you don't know
5 the clients and they don't know you. And I will inject, when
6 the class got certified, they then had to effectuate the
7 issues that were raised with the Court and were approved.
8 They had to effectuate the notice, they had to effectuate the
9 claims process. No one brought up to the Judge Goodstein that
10 ---

11 THE COURT: Well, let me ask you this.

12 MR. MEYERS: Yes.

13 THE COURT: You made the statement that in class actions
14 for the attorney representing and trying to get a class
15 certified other than possibly these construction cases where
16 it's, you know, condominiums, you pretty well know who the
17 class is gonna be, it's hard to get your hands around the ones
18 that you don't know that may show up. Now, from Ms. Wall's
19 argument, I presume she's saying that's the Court's
20 responsibility to protect that class not the attorneys.
21 What's your position on that?

22 MR. MEYERS: I agree the Court has a responsibility but
23 the lawyers also have a responsibility.

24 THE COURT: You think the lawyers also have a
25 responsibility?

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1 MR. MEYERS: Absolutely, because that's where premium
2 investments places it.

3 THE COURT: Because there's an awful lot of powers that
4 they give the Court to deal with the unknown classes,
5 subclasses, et cetera, it's pretty broad, which that doesn't
6 attribute down to the attorneys.

7 MR. MEYERS: Well, the attorney assumes the duties as a
8 fiduciary matter by pleading the class. The Court is
9 obligated to protect the class as best they can but that
10 doesn't relieve the lawyers of their obligations to the class.
11 That's independent according to Rule 23.

12 THE COURT: It may not relieve them -- I'm not sure -- I
13 think it probably relieves them from any positive action. It
14 may not relieve them from any negative action, taking negative
15 action that would affect the unknown members who ultimately
16 are identified.

17 MR. MEYERS: Well, the lawyers are going to get a certain
18 amount of protection once the class action court makes the
19 decisions.

20 THE COURT: Right.

21 MR. MEYERS: All right. Now, here's the problem
22 factually in this record.

23 THE COURT: Right.

24 MR. MEYERS: When they first filed the motions in
25 Dorchester County, after they had moved everything up there,

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1 they represented they were gonna give nationwide notice, then
2 they eliminated that. Now, they didn't explain to Judge
3 Goodstein why they eliminated that. But, what they did do was
4 what we characterize as pretty close to a misrepresentation to
5 her and it affects the notice question. Because, in the July
6 -- and attached with R, which is the transcript of the hearing
7 held July 13th, they told her, both the Diocese counsel told
8 her and the lawyers told her that if anybody came out of the
9 woodwork they were going to give them the same relief, and
10 they represented that to her. When she issued an order about
11 that, it wasn't so broad. So, either class counsel got
12 snuckered by counsel for the Diocese or class counsel failed
13 to secure the relief he had offered to her. But, what they're
14 saying to her is the notice really doesn't matter that much,
15 Judge, you don't have to worry about it because we're gonna do
16 right by everybody that comes forward, even down the road.

17 MR. DUKES: Judge, can I just register an objection to
18 that?

19 THE COURT: No, hold on. I'll let you address it when
20 you want to but don't interrupt him. I'm trying to train in
21 on what he's saying. Okay?

22 MR. DUKES: I understand.

23 MR. MEYERS: When the judge issued a ruling, she decided
24 that that really only applied to the specific individuals they
25 already knew about but it's not the representation that was

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1 made to the Court. They weren't qualifying it. It got
2 qualified but -- and the orders are now a problem, I contend,
3 for the class lawyers because they didn't get the relief that
4 they represented to the Court they were -- actually had
5 achieved, they didn't get an order reflecting that. So, from
6 a factual point of view on this record, which has to be
7 construed in the light most favorable to the Plaintiffs, I
8 think the Court must presume that there was not full
9 disclosure made to Judge Goodstein about why the notice was
10 reduced. Now, what the Court has been told in these
11 proceedings three years ago, in the April hearing that at one
12 point is mistakenly referred to as Attachment X in my memo --
13 and it's actually Attachment Y, there is no Attachment X. The
14 Court was told, well, we did that to accommodate the Bishop.
15 The Bishop told us that was too expensive. So, that's why we
16 took out notice that might've reached all these Plaintiffs,
17 but that of course is not a legitimate reason. You can't
18 accommodate your adversary to disadvantage your clients. So,
19 there is a question of law for the Court as to what happens
20 with the Court issues rulings except there was not a full
21 disclosure made factually to that Court about why they reduced
22 the notice. And we depend on this record at summary judgment,
23 the Court must presume that the Trial Court overstated the
24 class, which ---

25 THE COURT: Well, why do you think they misled the Court

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1 from your perspective?

2 MR. MEYERS: Well, I think there are actually likely two
3 reasons. First, I think they were overconfident that they had
4 identified everybody.

5 THE COURT: Now, when you say identify, this is the ones
6 that the church came forward that they had been previously
7 appointed, they'd kept under wraps, but they agreed at that
8 time to produce those names.

9 MR. MEYERS: Right.

10 THE COURT: Is that the group you're talking about?

11 MR. MEYERS: Yes.

12 THE COURT: Okay.

13 MR. MEYERS: They refer to that as the actual notice
14 group.

15 THE COURT: Okay.

16 MR. MEYERS: And when the order came out from Judge
17 Goodstein, that's how she referred to and so the Supreme Court
18 decided, well, Judge Young decided, I think that that is only
19 to represent that specific group of individuals which meant
20 that everybody didn't know about was now uncomfortable. And
21 so, I think they were over confident about having identified
22 everybody and I think that they maybe overstated the relief
23 they had obtained for the class. So, I think that's the
24 reason why and they were giving Judge Goodstein the assurance
25 that what the Diocese had agreed to do was make right by

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1 everybody who came forward, nobody -- counsel to the Diocese
2 referred to it as anybody who comes out of the woodwork. So,
3 they were stating things a little broader than what the order
4 ultimately covered. And I think that factual representation
5 must be construed at this point by Your Honor as being a
6 problem now for the lawyers because they didn't get all that
7 relief and it has to be construed favorably to us. So, the
8 notice that -- what we are not saying is that they necessarily
9 would've had to give notice to make it sufficient notice but
10 they proposed this notice. The standard for notice is the
11 best practicable notice. They propose better notice than
12 ultimately got ordered and they never explained to the Court
13 why they had reduced it nor does Judge Goodstein have the
14 opportunity to address one notice program versus the other.
15 But it can't possibly be, we contend, the best practicable
16 notice when you voluntarily reduce it. It was practicable
17 because it was already paid for, it's part of the settlement
18 fund and what should've happened and what could still happen
19 since Your Honor now has responsibility for the class. At any
20 time under Rule 23 notice can be adjusted. You could order
21 that the notice be reissued and the class be reopened. But,
22 even without regard to that, in these proceedings, we contend
23 that the lawyers breached what was first a fiduciary duty and
24 became an attorney/client duty once the class got certified.

25 THE COURT: One thing that's bothered me about when we

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1 did the collateral review, I don't think I addressed it in the
2 order, is the fact that -- and this is aside from the legal
3 issues here today but I still want to hear your thoughts on
4 it. The fact that no electronic type of media was used to put
5 out notice. And I'm talking about, I guess, the old radio,
6 the T.V. or internet, nothing, in modern -- our modern age,
7 that's where a lot of people get their information from. They
8 don't read the newspapers. The newspapers are dying. That
9 concerned me about the notice for everybody, state and out-of-
10 state.

11 MR. MEYERS: I agree with you.

12 THE COURT: And I'm not sure that's the responsibility of
13 the lawyers or the Court should've changed that.

14 MR. MEYERS: Well, I think the answer is yes, it's the
15 responsibility of everybody. And I don't think it shields the
16 lawyers, they never proposed that. But that's in question
17 about whether the question was itself adequate. If we assume
18 the notice was adequate, it's still a problem because they
19 proposed better notice than they actually delivered. And they
20 never explained why it was reduced, they never explained why
21 all these other alternative weren't used, and I think it was
22 because they were overconfident about having identified
23 everybody. If they had been correct in identifying everybody,
24 there wouldn't be a problem because these -- all these new
25 Plaintiffs ---

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1 THE COURT: I think they were saying that they were just
2 gonna identify the ones that they knew about. And, as you
3 said, there was others that were coming out of the woodwork
4 that they didn't know about.

5 MR. MEYERS: That's the phrase they used with Judge
6 Goodstein, that if somebody comes out of the woodwork, we're
7 gonna give them the same relief was essentially their point,
8 which naturally would go to reduce the Court's concern about
9 the notice problem. I mean, you wouldn't even have to confirm
10 with that assurance because nobody is really being excluded.
11 If because that wasn't true and when people did come forward,
12 they said, oh, no, you're barred by the class action, it
13 throws us right back on the notice question. And I think, on
14 summary judgment the Court has to deny it because they
15 actually had proposed a better notice program than reduced it
16 and cut it back. That's really the heart of what I have to
17 say about the notice program, but the class definition
18 includes every single person. It includes Doe 193, it
19 includes everybody who lives out of state and they didn't even
20 try on the out-of-state people and they reduced the notice
21 program even within the state, and we think that's a very
22 significant fact that was never explained to the Trial Court.
23 And no one inquired into it because the Trial Court was
24 assured that it just wasn't that big of a deal. We're gonna
25 do right by everybody no matter when they come out of the

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1 woodwork. That's the heart of what I'm here to say today.

2 THE COURT: Okay. Mr. Dukes, I know you wanted to
3 address what he was saying about the church and you tried to
4 interrupt. I'll be glad to hear you now.

5 MR. DUKES: Well, I just ---

6 THE COURT: I'll be glad to hear anything you want to
7 tell me.

8 MR. DUKES: I object to all of this triple hearsay at
9 best, the Bishop said ---

10 THE COURT: Well, let me say this to you, I don't care
11 whether you object or not, we're in a motion hearing, so I'm
12 not gonna exclude it. Let me hear you what he's or making an
13 argument.

14 MR. DUKES: I'm ---

15 THE COURT: I don't care whether you object or not. I'll
16 note your objection; it's overruled if that's the appropriate
17 way to do it. Okay?

18 MR. DUKES: I have introduced testimony of Bishop Baker,
19 who Mr. Meyers deposed who denied that, who said, I didn't say
20 limit the class, that publishing in USA Today was too
21 expensive. I would've wanted as broad a notice as possible.
22 There is no admissible evidence to controvert that statement.
23 So, there's no genuine issue of material fact that the church
24 wanted as broad a notice as possible. I just want to point
25 that out that in the record before you, the only admissible

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1 evidence is Bishop Baker's testimony and that does not support
2 what Mr. Meyers had -- is arguing.

3 THE COURT: All right. Thank you very much.

4 All right. Mr. Bruner, any reply?

5 MR. BRUNER: In addition, Mr. Myers has represented to
6 you that the lawyers represented to Judge Goodstein at a
7 hearing on July 13th, 2007, that the Dioceses, and actually I
8 think this was Mr. Shahid who made the misstatement to the
9 Court was gonna take care of anybody that came out of the
10 woodwork. He was not referring -- and in context, you can see
11 easily he was not referring to anyone who may come out and
12 make a claim. What he was referring to was those people who
13 were to receive actual notice. And as to that group, which
14 generally was comprised of those who had complained about
15 abuse ---

16 THE COURT: To the church, okay.

17 MR. BRUNER: --- to the Diocese before, but if they
18 missed somebody. That's what he was talking about, if they
19 missed somebody who had actually ---

20 THE COURT: So, you think he was saying if they missed
21 somebody when they prepared the list that they were gonna
22 produce.

23 MR. BRUNER: They would treat them and they would allow
24 them to make a claim because they should've included them in
25 the actual notice.

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1 THE COURT: If they had previously actually reported it
2 to the church?

3 MR. BRUNER: Yes, that's correct. If they missed
4 somebody and they came out of the woodwork, they were gonna
5 allow them to make a claim. They were not talking about
6 absent members of the class.

7 THE COURT: Okay.

8 MR. BRUNER: That had nothing to do with that.

9 MR. DUKES: And it was in response to Mr. Richter made a
10 statement about a canon law document that the Plaintiffs'
11 lawyers in these cases always waive around but the Diocese in
12 Charleston never received it, but -- and it's called criminis
13 sollicitanis (spelled phonetically). It's misconstrued and it
14 has to do with what happens in the confessional. But in that
15 hearing, Mr. Richter made some statements about the secret
16 archives that doesn't exist. And Mr. Shahid then responded,
17 if we find anybody who has told us about it, we'll treat them
18 like the actual notice class. It had nothing to do with
19 people we didn't know -- the Diocese did know about. That's
20 all -- that's the context of what happened in this hearing.

21 THE COURT: Okay. Thank you.

22 Mr. Bruner? I'm sure you had something else to say.

23 MR. BRUNER: I did. I did.

24 THE COURT: Okay.

25 MR. BRUNER: I just -- I want to gather my thoughts

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1 before I say ---

2 THE COURT: Well, just have a seat and gather them and
3 let me know when you're ready.

4 Take your time.

5 MR. BRUNER: Mr. Meyers just said his argument is
6 basically that the lawyers changed notice and never explained
7 to the Court why they did it. And because they changed
8 notice, his clients were harmed. That's the nut or what he
9 just told you.

10 THE COURT: Well, I understand, but it's -- well, go
11 ahead. I don't want to argue with you. Let me listen you
12 your argument.

13 MR. BRUNER: My argument is this, they never undertook to
14 represent his clients because the class they pled in the
15 original complaint in Charleston and in the Dorchester County
16 class action complaint was for South Carolina residents who
17 had been abused by employees of the Diocese who were not
18 otherwise barred by operation of law. So, the people they
19 sought to represent at the outset were South Carolina
20 residents who had been abused. Therefore, when the notice was
21 modified what it did was actually conform to the class they
22 sought to represent because the definition was now, instead of
23 saying in South Carolina, the definition said of a certain
24 age, where the abuse occurred after a certain age, but the
25 notice provision in effect limited its effect and you found

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1 that it limited its effect to those who lived in South
2 Carolina and received notice. So, there is nothing
3 inconsistent between what the lawyers pled ---

4 THE COURT: Well, I can't quote it but I was thinking
5 there was something in the pleadings talking about nationwide.
6 I mean, it didn't use those terms and I don't remember the
7 exact words in the pleadings initially.

8 MR. BRUNER: No.

9 THE COURT: No?

10 MR. BRUNER: No, sir.

11 THE COURT: All right. I'll have to go back and look at
12 them again.

13 MR. BRUNER: No, sir, because ---

14 THE COURT: It's been awhile since I read them.

15 MR. BRUNER: But the class itself that they said that
16 they were entitled to certification on was South Carolina
17 residents.

18 THE COURT: Just geographical South Carolina.

19 MR. BRUNER: Geographical South Carolina residents who
20 were not otherwise barred.

21 THE COURT: Okay.

22 MR. BRUNER: Now, that's important because you have
23 somebody like John Doe 193 ---

24 THE COURT: In the preliminary certification, what did
25 Judge Goodstein -- what class did she preliminarily certify

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1 when ---

2 MR. BRUNER: She did not place a geographical limitation
3 on it, what she did was place a time limitation. The people
4 who had been abused by employees who were born on or after a
5 date, and it escapes me. But then it was the notice plan
6 which in effect limited those who would be bound by it. So,
7 in combination, they accomplished the same thing. The intent
8 all along was to bring class action on behalf of people in
9 South Carolina who had suffered sexual abuse at the hands of
10 the Diocese, period, amen, end of story, and that's what they
11 got.

12 THE COURT: As I said, I haven't read it in what six
13 months. I got the impression reading the documents that y'all
14 had produced to this Court, it started out nationwide and
15 somewhere along the way they decided to limit geographically
16 just to South Carolina. I can't point to you verbally where I
17 picked up on that thought but that was my impression and
18 that's my impression today but I can't sit here and tell you
19 specifically what I read to make me have that impression.

20 MR. BRUNER: The only thing there giving me that
21 impression was the words he has written.

22 THE COURT: I'm not talking about his words.

23 MR. BRUNER: I understand.

24 THE COURT: I'm talking about reading the documents.

25 Okay?

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1 MR. BRUNER: I don't -- I don't ---

2 THE COURT: I can't put my finger because it's been six
3 months or maybe longer since I read it.

4 MR. BRUNER: I'm not aware of any of our pleadings that
5 pled nationwide.

6 THE COURT: I'm not talking about your pleadings. I'm
7 talking about the transcripts and the orders and that sort of
8 thing. But go ahead.

9 MR. BRUNER: I'm not aware of any. I mean, just -- that
10 simply was not what they had in mind ---

11 THE COURT: Okay.

12 MR. BRUNER: --- and not who they chose to represent and
13 as a result, if Mr. Meyers can't address the question of the
14 class that they sought to represent because they class they
15 sought to represent was limited to South Carolina and to
16 people who were not otherwise barred.

17 THE COURT: The only thing I can say to all of the four
18 of y'all when you're involved in a class action, be very
19 specific about the geography next time. But, go ahead, sir.

20 MR. BRUNER: Class actions are tricky at best.

21 THE COURT: Oh, yeah. They got a lot of pitfalls, a lot
22 of pitfalls.

23 MR. BRUNER: You got to be very, very careful and I
24 recognize that. But here the lawyers are accused essentially
25 of selling clients down the river because they undertook

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1 duties to represent them and then abandoned them. And what I
2 am telling you is, in no sense, in no way did they ever
3 undertake to represent nonresidents. They didn't do it. Mr.
4 Meyers says if I'm barred for any reason from making my claims
5 against the Diocese, and he includes statute of limitations
6 and charitable immunity, what we know in four cases that they
7 are barred by charitable immunity. He says even in those
8 cases, I get to sue the lawyers. No, because the lawyers
9 originally sought to -- did not seek to represent people who
10 either had statute of limitations or charitable immunity
11 defenses. The only people they sought to represent were
12 people in South Carolina who did not have those defenses that
13 could be asserted against them, period, amen; that was it.
14 And now Mr. Meyers comes in and says, no, no, by operation of
15 law you undertook to represent a whole new group of people.
16 That's simply not the law. And *Premium Investment* does not
17 say that and *Premium Investment* doesn't stand for that and
18 that wasn't the underlying case in *Premium Investment* -- in
19 *Premium Investment*, but the Court of Appeals actually found
20 that the constructive certification of the class had taken
21 effect.

22 THE COURT: I'm sorry, what?

23 MR. BRUNER: That constructive certification of the class
24 had happened.

25 THE COURT: Okay.

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1 MR. BRUNER: They thought that class certification was
2 very important and they looked at the facts and they said well
3 -- well, see, you got to understand the underlying case.
4 There was this man who hired Mr. Green to sue a developer of
5 lots in Cherry Grove because the developer was draining a
6 lake, was filling it in in order to sell more lots. So, they
7 sued the developer and they sued for an injunction to make you
8 stop filling it in and make you put it back the way it was.
9 So, they went to trial and the plaintiffs won and the Judge
10 gave them an injunction saying, developer, you got to stop and
11 you got to put it back. And in addition, the people who have
12 an interest in this are the lot owners adjacent to the land
13 and all the lot owners in the subdivision. From that order,
14 the developer appealed and it was while that order was on
15 appeal that they settled the case, and they settled the case
16 by the class representative getting a lot and by the lawyer
17 getting a lot. And then they came back later -- and then they
18 went back to the Circuit Court -- they dismissed the appeal
19 and went back to Circuit Court and they did a nonsuit without
20 prejudice. So, it goes along and one of the other lot owners
21 sues and says, no, no, you said you represented all of us.
22 Well, one of the -- the defense was there was no class
23 certification so it wasn't a class action. So, we didn't owe
24 you any duties. And that troubled the Court of Appeals
25 because of what had happened in the underlying case. And so

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1 they searched and they decided that when the Trial Judge
2 entered an injunction and named the groups who, who had an
3 interest in it and what their interest was, that that was in
4 effect a certification of the class. And once that took
5 place, that's when the lawyer, Mr. Green, had duties to those
6 people and after that they couldn't settle the case without
7 giving notice and therefore they had to cough up everything
8 they got. Those were the facts in *Premium Investment*. So, it
9 wasn't a situation like he's saying it was. What it was was a
10 class certification and the Court of Appeals found that and
11 imposed the duties that in fact go with class certification.
12 And that's why *Premium Investment* was decided the way it was.
13 It was a bad underlying case but that's what happened. Now,
14 he wants to say that that stands for the proposition that once
15 you file a complaint you undertake a duty. That's not what it
16 said. That wasn't the facts. You got to limit the holding to
17 the facts of the case. It wasn't what the Court of Appeal
18 said or what it found. We contend that's the minority rule in
19 this country.

20 THE COURT: That is the minority rule?

21 MR. BRUNER: That that is the minority rule but we also
22 contend even if you think that's the ruling.

23 THE COURT: But other than that case has the South
24 Carolina Supreme Court or the Court of Appeals addressed the
25 issue on whether they're with the majority or the minority?

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1 MR. BRUNER: I'm not aware -- I'm not aware of ---

2 THE COURT: Because what they did in this case, I
3 understand what they did but it wasn't technically a class
4 certification. They just -- they called it that and I guess
5 it is but ---

6 MR. BRUNER: They called it a constructive class
7 certification.

8 THE COURT: I understand but there's never been -- the
9 issue of when the duty attaches, either filing a class action
10 as to the class certification or at the time the class was
11 certified the duty of -- has never been technically addressed
12 in South Carolina. But you do say the majority of the states
13 in the United States say it's when the class is certified.

14 MR. BRUNER: Yes, sir.

15 THE COURT: The minority view is when it's filed.

16 MR. BRUNER: There are some duties that arise when it's
17 filed.

18 THE COURT: Filed, okay. All right.

19 MR. BRUNER: I'm not aware -- there's a attorney/client
20 relationship ---

21 THE COURT: That alone is -- that particular issue has
22 not been addressed in South Carolina.

23 MR. BRUNER: That's correct. Moreover it doesn't have to
24 be addressed in this case because I'm telling you that the
25 class they sought to represent ---

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1 THE COURT: I understand. That's where I sorta got to do
2 some reading. I disagree with you on that but -- from my
3 memory, okay. I may be wrong. I'm not saying I'm right; I'm
4 gonna have to revisit that. I'm gonna ask Mr. Meyers a
5 question just here in a second.

6 Anything else?

7 MR. BRUNER: No, that's it, Your Honor.

8 THE COURT: Thank you very much.

9 Yes, ma'am?

10 MS. WALL: Your Honor, just on this one point. The case
11 that -- the *Premium* case is, of course, pre South Carolina
12 adopting Rule 23. The cases we're about here today, this
13 class action, is after South Carolina had Rule 23. Judge
14 Goodstein was operating under Rule 23.

15 THE COURT: Rule 23.

16 MS. WALL: --- in South Carolina.

17 THE COURT: Not this case.

18 MS. WALL: *Premium* was prior to that so it's a -- it's --
19 makes it a little bit more difficult to follow exactly what
20 was going on.

21 THE COURT: Well, if the Court of Appeals had problems
22 with it, they were just trying to split the baby some.

23 MS. WALL: Your Honor, I had said something about various
24 case law. There's the *Gillespie* case, there's the *Atari* and
25 the Courts generally hold that the attorney/client

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1 relationship does not arise until the class is properly
2 certified and notified. There's also an ABA Commission on
3 Ethics and Professional Responsibility, formal Opinion 445 in
4 2007 which says the client/lawyer relationship of a potential
5 member of the class does not begin until the class has been
6 certified and the time for opting out by a potential member of
7 the class has expired. And of course, that makes sense
8 because if -- again, the Court is in control here just as
9 you're in control of this case, Judge Goodstein was in control
10 of that case, and the Court itself has certain -- certainly
11 has powers and responsibility in investigating what is going
12 on and ultimately making the determination. It struck me when
13 Mr. Meyers was talking before, he was talking about the
14 various orders but he made it sound as if these are the
15 lawyers' orders, they're not. They're the Court's orders.
16 The Court makes the orders, the Court has done the
17 investigation and comes to a conclusion. And in fact, in her
18 orders, which Judge, they're all attached to the Diocese
19 motion that we sent up to the Court for today's hearing. He's
20 attached all of Judge Goodstein's orders and she's very clear
21 there. She says the Court has considered, I conclude, because
22 of course that is exactly the province only of the Court, not
23 of the lawyers who are simply making argument and taking
24 positions.

25 THE COURT: Yeah, but the Court can only make those

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1 findings or those conclusions based upon what's presented. If
2 they had been misled in what was presented, that's a different
3 story.

4 MS. WALL: And, Your Honor, there's no evidence in the
5 record or any misleading. That's Mr. ---

6 THE COURT: And the only thing I can base my decision on
7 is what you present to me factually and otherwise.

8 MS. WALL: That's correct, Your Honor. And the record
9 before you, the evidence before you, the cases that are cited,
10 but otherwise what we're doing here today is mere argument,
11 which is not evidence.

12 THE COURT: Right.

13 MS. WALL: But when we point the Court to the evidence --
14 and I would ask the Court to look at Judge Goodstein's orders
15 and then the objections which are also attached to the
16 Diocese's memo, the objections to both the notice and the
17 class definition that were in fact filed by Mr. Meyers on
18 behalf of various plaintiffs that he represented during the
19 time of the underlying class action, Your Honor.

20 THE COURT: Okay.

21 MR. BRUNER: Your Honor, please let me give you one
22 reference. The paragraph I read to you ---

23 THE COURT: Uh-huh, (affirmative response).

24 MR. BRUNER: --- defining the class and what they wanted
25 certified from the original complaint was Paragraph 41 in the

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1 John Doe 53 class action complaint filed in Dorchester County.
2 And I understand that that definition was identical to the
3 definition that was used in the complaint in Charleston
4 County.

5 THE COURT: Thank you.

6 Mr. Meyers? Can you address that one issue?

7 MR. MEYERS: Which issue, Your Honor? The class
8 definition?

9 THE COURT: The class definition and if in fact it did
10 change and what basis do you have on it changing?

11 MR. MEYERS: Yes, sir. The class definition in the
12 original complaint and in the Dorchester complaint when it was
13 cloned and moved down, can be read one of two ways. You can
14 say if you were abused in South Carolina, which applies to
15 everybody, or you can say you reside in South Carolina. It
16 doesn't actually plead people who reside in South Carolina.
17 All right. So, there's an ambiguity in the original complaint
18 on this record that has to be construed favorably to me and my
19 clients. Now, when the class was specifically defined, after
20 the settlement agreement and they decided to try to type it
21 up, they submitted that in Dorchester County, they submitted
22 it two times, they submitted it in October of 2006, which is
23 Attachment H to our materials, and they resubmitted it in
24 January of 2007 which is Attachment L. The definition at this
25 point never changes. So, what they start with in October,

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1 they continue it in January, and this is what Judge Goodstein
2 approved, and this is why you have the impression it's a
3 nationwide class, because it says all individuals born before
4 a date, who as minors were sexually abused at any time by
5 agents or employees of the Diocese of Charleston who have not
6 previously had any similar claim adjudicated, resolved, or
7 released. That's the entire definition. All individuals
8 abused at any time. No geographic limit, no reference to the
9 state line, no reference anywhere. And we told them they were
10 making this mistake. We told them and they ignored all of
11 that. So, unless as a matter of law, Judge Goodstein also
12 ignoring what we told them in 2007 absolves everybody, which I
13 would contend it does not, neither under Rule 23 nor under the
14 obligations they've assumed all these people out of state
15 unless there's an absolution from the Trial Court also
16 ignoring that warning, these claims need to survive summary
17 judgment and proceed to jury trial.

18 THE COURT: Okay. Thank y'all very much.

19 Does that leave us now to the Diocese and their motions,
20 as far as the attorneys? Do I have any other motions?

21 MR. BRUNER: The two other motions were individual
22 motions as to Jane Doe 4 and John Doe 193 and the arguments
23 are very ---

24 THE COURT: Jane Doe 4?

25 MR. BRUNER: Yes.

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1 THE COURT: And what was the other one?

2 MR. BRUNER: John Doe 193.

3 THE COURT: Okay.

4 MR. BRUNER: We contend we are entitled to summary
5 judgment in each of those cases. First as to Jane Doe 4, she
6 lives in Martinez, Georgia, which is a suburb of Augusta,
7 according to her testimony. The paper that is the -- that
8 services that area is the Augusta Chronicle. She had access
9 to the Augusta Chronicle but she never subscribed to it. So,
10 she testified on her deposition that the area where she lived
11 was serviced by the Augusta Chronicle. That, of course, was
12 one on those newspapers in which notice was published. So,
13 the fact that she actually was a resident of Georgia was not
14 determinative of the fact that she lived in a notice area is.
15 Now, you have determined that she is not barred from suing the
16 Diocese. That alone according to her pleadings means that the
17 allegations she has made against the lawyers are irrelevant
18 and they should be -- they should get summary judgment. On
19 the other hand, if she was bound by the notice, if she didn't
20 get -- she was within the notice area, she's bound by the res
21 judicata principles of the settlement, then she can't sue and
22 because we gave her notice, she can't sue us for not giving
23 her notice. So, either way, with Jane Doe 4, she has no claim
24 against the lawyers, either way.

25 John Doe 193, is our repressed memory plaintiff. He has

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1 been found to be subject to charitable immunity and therefore
2 we contend that he was not within the contemplation of the
3 class in the first place because he was subject to a defense
4 in his claims against the Diocese. He also alleged that if he
5 is precluded from suing the Diocese he gets to sue the
6 lawyers, but if he can sue the Diocese, then his allegations
7 against the lawyers are gone. You've ruled that if in fact he
8 has a repressed memory, then he can maintain his claims
9 against the Diocese. You found that in the amended order on
10 collateral review.

11 THE COURT: Right.

12 MR. BRUNER: Therefore, he was not barred by anything the
13 lawyers did from suing the Diocese. What he was barred by
14 doing was by charitable immunity, and that wasn't included to
15 be a member of the class in the first place. So, John Doe
16 193, whether he has a repressed memory or not, has no claims
17 against the lawyers. We have raised an issue about whether or
18 not in fact he has a repressed memory because his social
19 worker had notes that said he had tried to forgive the priest
20 in 1976, which is inconsistent with not remembering until
21 2010. So, he's got a -- he's got a tough row to show to show
22 repressed memory. He doesn't have an expert's affidavit
23 submitted to you that says according to me he's got a
24 repressed memory.

25 THE COURT: I think the only thing they had was the

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1 social worker, right?

2 MR. BRUNER: I think that was it.

3 THE COURT: You're right. That's the only thing he had
4 to ---

5 MR. BRUNER: I'm not sure that'll get him to a jury.

6 THE COURT: I know, but we're not here for that issue.
7 That's an entirely separate issue. Okay?

8 MR. BRUNER: I agree. I agree. But, I think either way
9 you cut 193, whichever way you go, he has no claims against
10 the lawyers.

11 THE COURT: Okay.

12 Mr. Meyers, let's talk about 193 first. And then we can
13 do Jane Doe 4.

14 MR. MEYERS: I don't believe Dr. Cochran (spelled
15 phonetically) is merely a social worker. I mean, she's a
16 licensed mental health professional in South Carolina and she
17 agrees that the ---

18 THE COURT: Or social worker or whatever, but she's a
19 licensed therapy, if I remember correct.

20 MR. MEYERS: And her testimony ---

21 THE COURT: Wasn't she a licenses therapist?

22 MR. MEYERS: Yes, and her testimony was ---

23 THE COURT: I didn't mean to belittle your potential
24 expert. Okay?

25 MR. MEYERS: In defense of Dr. Cochran, I thought I

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1 should note that that for the record.

2 THE COURT: Okay.

3 MR. MEYERS: Her testimony was that she accepted his
4 representation that his memory started coming back in 2010.
5 Now, if they want to make an argument about that in front of a
6 jury that, no, he didn't have repressed memory, that's a
7 statute of limitations argument.

8 THE COURT: Right.

9 MR. MEYERS: His problem, he's got -- both problems, he's
10 got that if they want to make something out of it, fine. He's
11 got charitable immunity because of the year in which his
12 molestation occurred. But, more fundamentally, he's included
13 in the class definition. There is nothing about the
14 limitations that they may've originally pled, if you take the
15 ambiguity as construed contrary to the record that they have
16 to in this case and say, well, let's give that to the lawyers,
17 because they change and articulated more specifically what
18 their class was and it is all individuals born before a
19 certain date, abused at any time. So, it picks up his
20 charitable immunity problem and they know, and we've provided
21 this to the Court, because they're representing a guy in
22 Jasper County simultaneous with all of this, they plead he's
23 got repressed memory. They cite the case from 2000 that says
24 it recognizes repressed memory and yet they make no provision
25 in the class definition or the notice. You've got to be very

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1 careful when you plead a class. The *Tilley* (spelled
2 phonetically) case that we cite in our memo says it's a
3 strategist choice and you have to live with it. You as the
4 lawyer for the class have to live with it once you make it.
5 So, it's not -- they're not excused by whatever the ambiguity
6 is in their original filing when they came back and said
7 here's real specifically who we're talking about and it
8 includes all of these people. It includes Jane Doe 4 and it
9 includes John Doe 193. So, without a provision for people
10 with repressed memory, we contend they have reached their
11 fiduciary duty to him or their attorney/client duty to him
12 after the class got certified. That's the heart of my point.

13 THE COURT: Okay.

14 MR. BRUNER: On 193, he has no professional negligence
15 claim against the lawyers because Judge Harrington dismissed
16 that in 2014. He had just conceded that he has no conspiracy
17 claim. The only claim he's got left potentially against the
18 Lawyer Defendants for 193 is the claim for breach of fiduciary
19 duty. Now, I would stand to be corrected, but I have never
20 been able to find a case that said that a lawyer ought to
21 carve out a definition of somebody who has a repressed memory,
22 someone who is really not capable of appreciating the notice
23 that was given. Notice was given in the area where he lived.
24 But, of course, if he didn't remember it, it would mean
25 nothing to him. Carry that to a logical conclusion, how do

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1 you give notice to a blind person who may've been abused? How
2 do you give notice to someone who may can only read Braille?
3 Do you have to do that? Do you have to do it over the radio
4 so somebody can listen to it? What do you have to do to carve
5 out someone who is overseas in the Armed Forces serving over
6 there? How do you preserve their claims? How do you preserve
7 the claims of a U.S. citizen who is working and living abroad?
8 How do you do that? If you carry this notion to its logical
9 conclusion, it's absurd. It is absurd. You cannot possibly
10 do what he is suggesting to be done. And, I know of no case
11 nor no expert -- and his expert doesn't say it -- that says
12 your obligation as class counsel is to carve out the
13 definition of someone with a repressed memory. He doesn't say
14 it and there's no law I've seen that says you have to do that.
15 I think he's making it up, personally.

16 THE COURT: Okay.

17 MS. WALL: And, Your Honor, I would just add to that it
18 makes absolutely no sense as to what he's saying. And why is
19 that because fundamentally our law in and of itself protects
20 people such as those with repressed memory. It's a due
21 process argument. If you have a repressed memory you couldn't
22 possible know that you were injured so you can read your
23 notice till the cows come home. It could say in your notice
24 and this doesn't include repressed memory but you don't even
25 know you've been injured to begin with. Our law protects

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1 people with repressed memory under the due process argument.
2 They don't know that they've been injured, thus they couldn't
3 possibly know that they have a cause of action that could be
4 brought. And Your Honor has already ruled in this case that
5 John Doe 193 is not precluded. You've ruled that, Your Honor,
6 if he can make his proof, satisfy his proof that in fact he's
7 telling the truth when he says he had a repressed memory.

8 THE COURT: I don't think I ruled that. I just denied
9 the summary judgment motions.

10 MS. WALL: No, Your Honor ---

11 MR. BRUNER: I think you said in the amended order for
12 collateral review ---

13 MS. WALL: I have your ---

14 THE COURT: What did I do on the collateral review?

15 MR. BRUNER: You said that he was not barred.

16 THE COURT: Right. Okay.

17 MS. WALL: If he ---

18 MR. BRUNER: If he could prove repressed memory ---

19 THE COURT: If he could prove repressed memory is what
20 I'm thinking.

21 MS. WALL: That's correct. And that's what I said.

22 THE COURT: I thought you said I found he had a repressed
23 memory.

24 MS. WALL: Oh, no, no, no. If he can ---

25 THE COURT: I misunderstood what you said, cause I knew I

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1 hadn't done that.

2 MS. WALL: No, no, no. If he can prove that he's telling
3 the truth, since he has repressed memory he is therefore not
4 barred from ---

5 THE COURT: I follow you. I misunderstood what you were
6 telling me.

7 MS. WALL: So, certainly nothing that the lawyers did
8 could have injury, there is no damages as to the lawyers.

9 MR. DUKES: And just to remind Your Honor, you granted
10 summary judgment on charitable immunity when Mr. Meyers
11 conceded in that case.

12 THE COURT: I understand. Thank you very much.
13 Anything else?

14 MR. BRUNER: Nothing further from the Defendants.

15 THE COURT: You got your -- how many motions do you have
16 for the church?

17 MR. DUKES: Since Mr. Meyers has conceded that the
18 conspiracy goes out ---

19 THE COURT: Uh-huh, (affirmative response).

20 MR. DUKES: --- I will -- I want to make clear that case
21 number 5520, 2010-5520, the Diocese is now completely out of
22 that case. The only claim remaining against the Diocese was
23 conspiracy and summary judgment has not been conceded in that,
24 and so that ends the case as to the Diocese.

25 In three of the remaining cases, Mr. Meyers has alleged

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1 that the Diocese aided and abetted the breach of fiduciary
2 duty by class counsel, Mr. Richter and Mr. Haller. We have
3 filed a motion for summary judgment on that claim which is the
4 only remaining claim against the Diocese in any of these
5 cases. It is puzzling what the basis of Mr. Meyers ---

6 THE COURT: Let me do this, before we get into argument,
7 let's take about a five-minute break if you don't mind.

8 MR. DUKES: Sure, absolutely.

9 THE COURT: I'd appreciate it. About five or ten
10 minutes, okay?

11 MR. DUKES: Okay.

12 *****OFF THE RECORD*****

13 (On the Record.)

14 THE COURT: All right. Mr. Dukes, be glad to hear you.

15 MR. DUKES: Judge, just to clarify the cases involving
16 the Diocese, we're down to three cases and those are 2012-
17 5559, that's Jane Doe 11, she's a loss of consortium
18 Plaintiff; 2013-3733, that's John Doe 193, our repressed
19 memory ---

20 THE COURT: 193, okay.

21 MR. DUKES: 193, the repressed memory; and 2016-1632,
22 John Doe 297. And the only claim still alive in those cases
23 is that the Diocese aided and abetted a breach of fiduciary
24 duty by class counsel, Mr. Richter and Mr. Haller.

25 There is a complete absence of proof that would get Mr.

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1 Meyers to a jury in those cases. He has not submitted any
2 evidence, even a scintilla of evidence to support this claim
3 against the Diocese in response to a supported motion for
4 summary judgment. On the two levels he has to establish, he
5 has to establish that Mr. Haller and Mr. Richter breached
6 their fiduciary duty to the members, to the absent members of
7 the class or to non-class members; he hasn't established that.
8 And he hasn't established a factual basis for -- that there's
9 a genuine issue of material fact as to the Diocese. The long
10 and short of it is that the Diocese settled the lawsuit,
11 settled it on a -- and in very generous terms to the claims.
12 All the Diocese -- the Diocese's only responsibility at that
13 point is to show up with \$12,000,000 and pay that over. How
14 in the world can a Defendant who is settling a lawsuit be
15 liable for aiding and abetting Plaintiffs' counsel's breach of
16 fiduciary duty to somebody? I -- that can be -- there can't
17 be a remedy for that. I take that back, perhaps if -- and
18 I'll beat up on Mr. Bruner.

19 THE COURT: Okay.

20 MR. DUKES: If Mr. Bruner is ---

21 THE COURT: I wouldn't go as far as to say can't be but
22 go ahead.

23 MR. DUKES: Well, if Mr. Bruner is the plaintiff's lawyer
24 and I know that he is a thief or my client knows that he's a
25 thief and we settle a lawsuit with his client and pay the

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1 money to his escrow account and then he steals it and we knew
2 he was gonna steal it, then maybe. But other than that, I
3 don't see how you could properly prove a case for aiding and
4 abetting because you have to know and you have to actively
5 assist them in breaching their fiduciary duty. And for a
6 settling defendant, especially one settling a class action to
7 later be liable to strangers to the class action because the
8 plaintiff's lawyers didn't do something, then you would never
9 have another class action settlement. That just can't be the
10 law. The Diocese complied with all of Judge Goodstein's
11 orders, paid the money, did everything we were supposed to do
12 under that settlement. We evaluated each claim and under the
13 class action settlement agreement and the arbitration
14 provision, all the Diocese had to do was confirm that the
15 person was a member of a parish that the alleged priest was in
16 that parish at the time they alleged to have -- that they were
17 abused and that's it. How the Diocese has any obligation to
18 that ---

19 THE COURT: Other than put up the money, but you already
20 mentioned that.

21 MR. DUKES: We paid the money.

22 THE COURT: I know.

23 MR. DUKES: But that's it. I think what Mr. Meyers is
24 saying is that the Diocese was silent ---

25 THE COURT: Well, we're gonna hear what he's gonna say in

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1 a minute and you can reply to it, so don't be guessing what
2 he's gonna say, but go ahead.

3 MR. DUKES: Much of what Mr. Meyers has said thus far is
4 complaining about the notice that went out and that that was
5 somehow a breach of fiduciary duty. The only entity that
6 bears a risk of an inadequate class notice is the settling
7 defendant. If the notice is ineffective, then the settling
8 defendant is going to face additional lawsuits. We did and we
9 had legal defenses to those claims which we asserted and
10 prevailed on. You know, even if silence -- I guess what --
11 well, I'll let Mr. Meyers speak to it but there is no
12 obligation to the strangers to the class for the Diocese to
13 have done anything and there's no evidence before you that the
14 Diocese aided and abetted any breach of fiduciary duty or that
15 there was any breach of fiduciary duty. Therefore, the aiding
16 and abetting cause of action must fail.

17 THE COURT: Okay. Thank you very much.

18 Mr. Meyers?

19 MR. MEYERS: Very succinctly, Your Honor, the case
20 against the Diocese turns on the element two of the three
21 elements. We cite the *Busbee* -- *Gordan v. Busbee* case on Page
22 9 of our memorandum and that applies to everybody but John Doe
23 193. That element is the Diocese must make a knowing
24 participation in the breach. We contend that they knowingly
25 participated in the breach. The breach was not to strangers

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1 to the class. The breach was to class members. When the
2 notice program was reduced by class counsel and the Diocese
3 didn't do anything about it. They didn't raise an objection
4 to it. They were glad to participate and reduce those
5 programs. We think that it satisfies all the elements of
6 aiding and abetting because the fiduciary duty was imposed by
7 *Premium Investments*. And *Premium Investments* has been cited
8 four times since it was originally cited. It's still good law
9 imposing a fiduciary duty. There's nothing in Rule 23 that
10 says you don't have a fiduciary duty when you plead a class.
11 So, as to the Diocese, it is about the notice. Mr. Dukes is
12 right about that, but it's about the Diocese knowingly
13 participating in a reduced notice that was specifically
14 identified as a problem for them in 2007 and they just let it
15 go. So, the people who are in the class definition have a
16 right to complain not only about class counsel but about the
17 Diocese participate -- knowingly participating in that breach.
18 That's the heart of what I have to say about that.

19 THE COURT: All right. Anything else?

20 MR. MEYERS: That's it.

21 THE COURT: Anything you want to say in rebuttal?

22 MR. DUKES: The only admissible evidence in the record is
23 that -- is Bishop Baker's testimony which says that he wanted
24 it as broad a notice as possible. That defeats the element of
25 knowing participation in breach of fiduciary duty. There's no

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1 admissible evidence to show that there is a genuine issue of
2 material fact. Summary judgment is appropriate.

3 THE COURT: Mr. Meyers, let me ask you this question.

4 MR. MEYERS: Yes, sir.

5 THE COURT: Nobody has addressed it but I want to hear
6 from you or whoever wants to address it. I assume that you
7 have received money from the Diocese on all the cases that
8 have been settled and are still pending before this Court; is
9 that correct?

10 MR. MEYERS: Yes. Some fell under defenses, but some ---

11 THE COURT: I understand one that fell under -- that did
12 not fall under the defenses.

13 MR. MEYERS: Right.

14 THE COURT: But the rest of them you received money for,
15 right?

16 MR. MEYERS: Yes.

17 THE COURT: Now, my question to you, the way I understand
18 the professional negligence that the lawyer did something to
19 violate the standard of care of legal practice and therefore
20 your client would not receive any damages. Now, you've
21 accepted money from the tortfeasor in this case. So, how can
22 now you go back and try to get more money out of the attorneys
23 under the damage theory or professional negligence when you've
24 already received it? The damage has been identified. Even
25 including the breach of fiduciary duty, how does that increase

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1 their damages because you've already identified those damages
2 by accepting money from the tortfeasor?

3 MR. MEYERS: The settlement ---

4 THE COURT: I mean, that's my question to you, other than
5 the ones that have been excluded for legal reasons, I think
6 charitable immunity and, this morning, civil conspiracy.

7 MR. MEYERS: The answer has two levels, Your Honor.

8 THE COURT: Yes, sir.

9 MR. MEYERS: The answer has two levels, Your Honor.

10 THE COURT: Yes, sir.

11 MR. MEYERS: Each of the agreements with the Diocese has
12 been met under South Carolina Code 15-38-50.

13 THE COURT: All right. 15 what?

14 MR. MEYERS: 15-38-50.

15 THE COURT: Okay.

16 MR. MEYERS: And what we have attempted to do is
17 articulate the injury that we are resolving with the Diocese
18 and to distinguish it from the injury we are claiming against
19 the lawyers. So, the Diocese is the original abusive entity
20 for the Plaintiffs. But here we have breaches of either
21 fiduciary duty ---

22 THE COURT: But haven't you already quantified the damage
23 to your individual?

24 MR. MEYERS: No, because we had to compromise -- even if
25 we assume they are the same entity, which we dispute ---

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1 THE COURT: Well, how do you dispute that? I mean, the
2 injury was as to psychological and that personal damage to the
3 individual from the sexual abuse by the priest. You've
4 accepted money for that. You quantify how much each
5 individual is entitled to, have you not?

6 MR. MEYERS: Well, we have resolved our claim with the
7 Diocese having had to confront ---

8 THE COURT: I know, but that's the only thing you're
9 entitled to in your lawsuit against the lawyers, is it not?

10 MR. MEYERS: No, because in the class action, they also
11 quantify the relief. And we have a difference -- even if it's
12 the same injury, we have a difference between what the partial
13 loaf obtained my clients against the Diocese versus the whole
14 loaf that could be obtained against the lawyers.

15 THE COURT: But that's your view of the whole loaf.
16 You've compromised and accepted money. I, I know it's not
17 collateral estoppel but it's the same type of approach from a
18 -- where I sit, you've received money.

19 MR. MEYERS: Well, that's the reason ---

20 THE COURT: How are you gonna quantify it to a jury?

21 MR. MEYERS: I'm glad to accept that challenge, Your
22 Honor, because we -- and that's the reason we used 15-38-50
23 because we think actually we've got different injuries
24 involved.

25 THE COURT: Okay.

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1 MR. MEYERS: The professional duty breach is a different
2 injury that the underlying abuse, so ---

3 THE COURT: In what respect?

4 MR. MEYERS: In the respect that in 2007 they created a
5 structure whereby anybody even with a claim that would
6 otherwise be defeated on charitable immunity or limitations
7 grounds could come forward and get compensation.

8 THE COURT: But it has a structured amount you could
9 receive.

10 MR. MEYERS: Well, that's right, and we contend that any
11 of these people ---

12 THE COURT: Well, did you settle this case based on those
13 structures?

14 MR. MEYERS: We settled it within those structures in the
15 sense that nobody exceeded them.

16 THE COURT: Okay. All right.

17 MR. MEYERS: If somebody had exceeded them, they could
18 ---

19 THE COURT: Well, then you've accepted those structures.

20 MR. MEYERS: But what we got was half a loaf from the
21 Diocese because we had to confront defenses we didn't
22 otherwise have to confront.

23 THE COURT: Okay.

24 MR. MEYERS: If we were standing alone against the
25 Diocese, we have very substantial defenses against us, all of

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1 which were waived in the class action. That is the reason why
2 there's damage from being excluded from the class. You have
3 an enhanced position in the class but you didn't get told
4 about it.

5 THE COURT: Well, I understand that's your theory but
6 when you start putting numbers together, how do you
7 distinguish that?

8 MR. MEYERS: Well, if the harm ---

9 THE COURT: And why aren't you entitled to a setoff and
10 why shouldn't all this come out at trial based upon your
11 theory?

12 MR. MEYERS: Well ---

13 THE COURT: If it goes to a trial.

14 MR. MEYERS: If the evidence comes out at trial, which we
15 would contend would not be appropriate under 15-38-50 ---

16 THE COURT: I understand but we're talking about a unique
17 situation here. But go ahead.

18 MR. MEYERS: Yeah, but if it did, we contend that we can
19 distinguish those to a jury.

20 THE COURT: You contend what?

21 MR. MEYERS: That we can distinguish it to a jury.

22 THE COURT: Okay.

23 MR. MEYERS: The different injuries and why it matters
24 and what the quantity is. So -- but we think none of that is
25 admissible under 15-38-50.

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1 THE COURT: Anything else?

2 MR. MEYERS: So, that's my answer.

3 THE COURT: Pardon?

4 MR. MEYERS: So, that's my answer.

5 THE COURT: Okay. I understand.

6 Does anybody else want to address that or is it a moot
7 issue as far as y'all are concerned?

8 MR. BRUNER: May it please the Court, first I would like
9 to hand up a copy of the John Doe 53 complaint in Charleston.
10 It has the language -- the paragraph should start on Page 8
11 that has the language I was referring to. And that is Exhibit
12 A to Mr. Meyers' memorandum in opposition to my motion.

13 THE COURT: Okay.

14 MR. BRUNER: That's the original class action complaint
15 we filed in Dorchester.

16 THE COURT: Okay.

17 MR. BRUNER: That's the one that was certified
18 eventually. Nothing he said makes sense to me. What he pled
19 was lawyers ---

20 THE COURT: You mean the whole morning didn't make sense
21 to you or just what he said a minute ago?

22 MR. BRUNER: Just what he said doesn't make any sense to
23 me.

24 THE COURT: Okay.

25 MR. BRUNER: Because he says he can distinguish. I don't

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1 see how. What he pled was lawyers because you messed up, I've
2 been deprived of the opportunity to sue the Bishop.
3 Therefore, I get to sue you for depriving me of that
4 opportunity.

5 THE COURT: I think what he's saying is I couldn't be
6 part of the class and I guess opt out of it and sue you
7 individually and avoid the high/low or whatever you want to
8 call it the structure or the matrix or whatever you want to
9 call it.

10 MR. BRUNER: The matrix.

11 THE COURT: The matrix. I assume that's what he's
12 saying.

13 MR. BRUNER: I think he's talking out both sides of his
14 mouth. And one time he says I should've been able to sue the
15 Diocese and the ---

16 THE COURT: He's making a valiant effort, but go ahead.

17 MR. BRUNER: Well, he got to do that, and he got paid
18 money for that claim. Now, he wants to come back and say but
19 no, what you really did was you deprived me of not being able
20 to participate in the class action. But he didn't claim that.
21 That's not what he's asking for. He didn't say that was his
22 damage, being deprived of being able to participate. He
23 didn't want to participate. The other 11 people he
24 represented in 2007 opted out. They didn't want to
25 participate. So, this -- what he's saying is simply not so.

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1 He said he wanted a chance to sue the Diocese and, by golly,
2 he got it. And he settled with them and that's what he gets,
3 nothing else.

4 MS. WALL: Just let me add, Your Honor ---

5 THE COURT: I'm sorry, what?

6 MS. WALL: If I might add something. It was this Court,
7 Your Honor gave Mr. Meyers and these four clients of his the
8 opportunity to actually try their case. This Court called in
9 a jury panel, said okay, first your case is ready to go. Mr.
10 Meyers and his clients chose to settle instead of going
11 forward with their trial. That's their choice but they can't
12 now come and say, well, we settled but -- and I guess he's
13 saying he got half a loaf. He had the opportunity to get the
14 more than what he would've been compensated under the matrix
15 if his client had been part of the original class action,
16 more, far more. You had a jury ready for him to try that
17 first case. He chose not to do it, instead chose to settle.
18 That settlement defines the universal parameter of his
19 clients' injury. It makes zero sense, and if we look at his
20 pleadings and he is bound to his pleadings, and the pleadings
21 say the only reason that he has a claim against the lawyer is
22 if he doesn't have a claim against the Diocese. Your Honor
23 gave him that claim fully to try in those four cases that he
24 settled. So, he's been -- his clients have been fully
25 compensated on whatever number he and his clients and the

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1 Diocese determined was the number.

2 MR. BRUNER: Judge, as a practical matter, look, you
3 wanted to move these cases along. They've been pending for
4 nine years and I understand that and, frankly, we did, too.
5 We wanted to see something move along towards an end. You
6 basically handed Mr. Meyers the Diocese on a silver platter by
7 saying you're going to trial. Now, I'll tell you something
8 and you and I and Mr. Meyers and Mr. Dukes know this, this
9 ain't no secret, those cases were never going to trial. That
10 wasn't gonna happen and it didn't happen. But he had every
11 opportunity to if he wanted to get everything his clients he
12 thought would be entitled to under the matrix, which is
13 \$200,000, he had every opportunity to stick to his guns and
14 get it and Mr. Dukes would've -- but he didn't do that. He
15 was willing to take less. And I think that's all he gets. I
16 think he had the opportunity, he had his full opportunity, he
17 could've gotten his whole loaf. He can't complain to the
18 Court that he didn't get his whole loaf simply because he
19 bargained half his loaf away.

20 THE COURT: Okay. Anything else?

21 Thank you very much. Since you don't have anything else.

22 Give me an opportunity to review this. As I said when we
23 started, I haven't read it, so I need to refresh my memory
24 somewhat and review it and make a decision.

25 MR. DUKES: Judge, was our motion on the aiding and

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1 abetting and I guess the conspiracy, too, was that included in
2 Mr. Bruner's notebook that he sent? Because I can hand up a
3 hard copy now, if you want.

4 THE COURT: What I would like to do, if you don't mind --
5 I don't know if it was or not. As I said, I haven't looked at
6 it. I opened it this morning from the FedEx package, if it
7 is, that's fine. But what I'm going to do is mark Mr. Meyers'
8 notebook with his exhibits as Court's Exhibit Number 1. I'm
9 going to mark the Lawyer's Defendant's dispositive motions
10 notebook as Court's Exhibit Number 2. Now, if you want to
11 submit that as Number 3, I'd be happy for you to do it. And
12 it may already be -- y'all may've filed them downstairs but
13 this way I know ---

14 MR. DUKES: We filed them downstairs but I know you like
15 to have a hard copy.

16 THE COURT: Please. I know it's really part of the
17 record if I mark it for Court's exhibit. I know it -- then I
18 know it's in the record when I mark it as a Court's exhibit.

19 MR. DUKES: And I think the exhibits to the conspiracy,
20 even though conspiracy is no longer in play but you may want
21 to look at that motion as well.

22 THE COURT: Will you mark those as Court's Exhibit 1, 2,
23 and 3 and sign them back out to me, please, ma'am.

24 COURT'S EXHIBITS 1, 2, AND 3

25 MARKED FOR IDENTIFICATION

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1 MR. BRUNER: Your Honor, would you like us to submit
2 proposed orders to you or not?

3 THE COURT: If I want to, I'll email you and tell you.
4 Not at this point in time.

5

6 ADJOURNED.

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DOE, ET AL. v. BISHOP, ET AL. - 2010-CP-10-5520
CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of John Doe, et al. versus The Bishop of Charleston, et al., held in the Court of Common Pleas for Charleston County, Charleston County Courthouse, Charleston, South Carolina, on July 20, 2017, taken by Dixie C. Eubank.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

November 27, 2017.

Attachment F

RICHTER & HALLER, LLC

Attorneys & Counselors at Law
622 Johnnie Dodds Boulevard
P. O. Drawer 1089
Mount Pleasant, South Carolina 29465

Lawrence E. Richter, Jr., P.C.
David K. Haller, P.C.

Telephone: (843) 849-6000
Telefax: (843) 881-1400

October 5, 2006

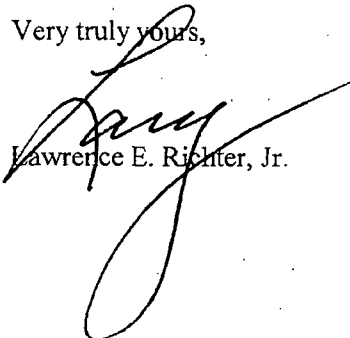
720-7119
via facsimile ~~853-6124~~
Albert P. Shahid, Jr., Esquire
Shahid Law Office, LLC
15 State Street
Charleston, SC 29401

In Re: John Doe v. Diocese matters

Dear Peter:

This is to confirm that we are to be before Judge Diane Goodstein at 11:00am tomorrow, Friday, October 6, 2006 at the court in St. George.

Very truly yours,


Lawrence E. Richter, Jr.

LER/lwh

cc: Lionel S. Lofton, Esq.
Glenn Churchill, Esq.
John Sinclair, III Esq.
James C. Geoly, Esq.

Legal Notice

Notice of Proposed Settlement of Class Action

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity

FILED-RECORDED

2007 JAN 17 PM 3:29

YOU ARE HEREBY NOTIFIED OF A PROPOSED SETTLEMENT OF THIS CLASS ACTION, OF HEARINGS TO BE HELD BY THE COURT TO DETERMINE WHETHER IT SHOULD BE APPROVED AND TO DETERMINE THE REASONABLENESS OF CLASS COUNSEL'S FEES.

Plaintiffs John Doe #53, John Doe 66, John Doe 66A John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated brought these claims on behalf of themselves and others who with claims of sexual abuse in keeping with the class definitions, by agents or employees of the Diocese of Charleston. The Bishop of Charleston, a Corporation Sole and The Bishop of the Diocese of Charleston, in his official capacity have denied any liability or wrongdoing in response to the claims that were made against them and have asserted various defenses in response to the claims.

The court of common pleas for Dorchester County has certified the classes on whose behalf the claims have been asserted. Those classes are:

1. All individuals born on or before August 30, 1980 who, as minors, were sexually abused at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Primary Class")
2. The spouses and parents, of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

The Class Representatives have reached a settlement on behalf of the classes, and, after a review of the terms of a Settlement Agreement entered into by the Class Representatives and the defendants, the court has preliminarily approved the terms of the settlement as being in the best interest of the classes. The court's preliminary approval is subject to final approval or disapproval after a Fairness Hearing to be held as described below. Copies of the Settlement Agreement may be obtained by a Class member or their counsel at this time by making written request of Class Counsel sent to the address for Class Counsel set forth at the end of this Notice.



The Settlement Agreement resolving this matter will not be effective unless and until the court makes a final determination as to its fairness and that the settlement is a fair, reasonable, and adequate compromise of the aggregate claims of the plaintiff classes as a whole.

In order to assist the Court in making this decision, the Court will hold a Fairness Hearing on such date determined by the court, commencing at 10:00 a.m. at the Dorchester County Courthouse in St. George, South Carolina. The court will also consider at this hearing an award of attorneys fees to Class counsel. Class counsel shall file in the Dorchester County Clerk of Court's Office no later than November 11, 2006 documentation supporting their request for attorneys fees and such other documentation as they deem appropriate in support of the reasonableness of the proposed settlement. Any Class member may appear and raise any objection he or she may have to the proposed settlement at this hearing, provided he or she has filed written objection in the Dorchester County Clerk of Court's Office and served the same on Class Counsel fifteen (15) days prior to the Fairness Hearing. The written objection should adequately state the basis for the objection such that Class Counsel may make a proper response.

The proposed settlement includes a claims process to be utilized for qualifying Class members to prove the validity of any claim and have their damages measured for payment from the Settlement Fund. The Class Representatives will also request the approval of the claims process provided for in the Settlement Agreement and for an order providing for a date on which the claims process begins and ends.

CLASS COUNSEL:

Lawrence E. Richter, Jr.

David K. Haller

RICHTER & HALLER, LLC

622 Johnnie Dodds Blvd.

Post Office Drawer 1089

Mt. Pleasant, SC 29465

(843) 849-6000

diocesessettlement@richterfirm.com

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
JOHN DOE #53, et al.,	)	Case Nos. 06-CP-18-1310, 1311, 1636
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF JOHN P. FREEMAN IN SUPPORT OF CLASS ACTION SETTLEMENT APPROVAL AND CLASS COUNSEL'S FEE PETITION
	)	
THE BISHOP OF CHARLESTON, A CORPORATION SOLE, et al.,	)	
	)	
Defendants.	)	
	)	

QUALIFICATIONS AND FACTUAL BACKGROUND

1. I am the Campbell Professor of Business and Legal Ethics at the University of South Carolina Law School. I am a member of the Ohio and South Carolina Bars.
2. Following my graduation from the University of Notre Dame Law School in 1970, I worked at the Jones, Day, Reavis and Pogue law firm (then known as Jones, Day, Cockley and Reavis). I left Jones Day in 1972 to take a Fellowship at the University of Pennsylvania Law School's Center for Study of Financial Institutions. I subsequently received my LL.M. from Penn Law School. In 1973 I joined the faculty of the University of South Carolina Law School. Besides teaching at USC, I have taught at the University of Texas Law School and Loyola Law School in Chicago. I have also worked for the Securities and Exchange Commission as a special counsel. As a law school professor I have specialized in business courses and legal ethics. I am familiar with lawyer disciplinary proceedings, having participated in the litigation of discipline cases as a lawyer and as an expert witness on various occasions. I have served as a member of the South Carolina Bar's Ethics Advisory Committee and have written various ethics opinions published by the Bar.

I have taught legal ethics for 34 years at USC Law School, at numerous CLE programs, and at several JCLE programs. I have lectured on the standards applicable to legal fees many times, and have written about the topic. I have served as an expert witness on such issues as legal fees, co-counsel dealings, class action settlements, and the behavior of class counsel. A copy of my resume is attached as Exhibit 1.

3. As an attorney, I have brought and prosecuted complex cases, including class actions. I have also opposed class actions as counsel for defendants. I have settled class action lawsuits, and I have tried class actions and handled appeals of same. I have testified in various class actions as an expert witness. From 1970 to the present I estimate that I have spent over 10,000 hours in dealing with class actions, either as legal counsel for the class, as counsel for a class action defendant, or as an expert witness in connection with settlement, ethical or fee issues.

NATURE OF EXPERT'S ASSIGNMENT

4. I have been asked to express an opinion as to the reasonableness of the settlement's substantive terms, and the reasonableness of the fee award sought by class counsel.

5. In preparing to express my opinion, I have consulted with class counsel, have researched legal issues raised in the case, and have been given access to a wealth of background information illustrating the work done by counsel in this matter, including voluminous correspondence files, pleadings files, discovery files, transcripts of Court proceedings, witness statements, and copies of motions and briefs. As is normal in case reviews of this sort, I asked for and received class counsel's file in this case, consisting of five bankers boxes of documents, a total volume of documents stacked six feet high, which were delivered to me in Columbia. Counsel's

file is substantial, as one would expect of a case this size, complexity, and importance. I have also reviewed the Court's Order dated January 19, 2007, Certifying Classes and Giving Preliminary Approval to Settlement, as well as the Settlement and Arbitration Agreement.

EXPERT OPINION

6. Under paragraph 3a of the Settlement Agreement, the Diocese agrees to fund the settlement with as much as \$12 million in guaranteed funds. For their work in making the liability case, structuring the class action resolution, and implementing the class action, class counsel seek a court awarded fee, to be paid separately by the Diocese, of \$2.5 million. None of these fee payments will go to reduce any recovery by the class. This fee, if awarded, would amount to approximately 17 percent of the potential recovery earmarked for the class. Although class counsel would be eligible to receive additional compensation for future work done in processing claims, such fees, if any, would be subject to a reasonableness review by the arbitrator under the claims resolution mechanism. The arbitrator would be expected review the reasonableness of any future claims for legal fees, taking into account all relevant factors, including those spelled out in SCACR 407, Rule 1.5. The arbitrator would also be expected to take into account the reasonableness of future fees in light of payments already received by class counsel. Class counsel seek reimbursement of advanced costs of approximately \$100,000, plus the costs of providing notice to the class, which will be another \$50,000 or so. In my opinion, on the unique facts of this case, a fee award to counsel for the class in an amount equal to 17 percent of the maximum recovery by the class would be reasonable in this case. I judge the settlement fair, reasonable and adequate, and I find the fee petition is meritorious in light of all relevant factors. In summary, I recommend that the Court approve the settlement and grant the fee petition in its entirety.

REASONS FOR OPINION

7. First and foremost, this is a very difficult case. Certain underlying facts extend back in time nearly 30 years. It is rife with issues pertaining to statutes of limitations (*see, e.g., Doe v. Crooks*, 364 S.C. 349, 352, 613 S.E.2d 536, 538 (2005) (strictly interpreting statute of limitations in molestation case brought against physician where plaintiff was a minor at the time of the act) and charitable immunity, lack of notice/negligence. The lawsuit was filed in June of 2005, and has been hotly contested throughout. When it preliminarily approved the settlement, the Court noted that in addition to substantive barriers to recovery, the plaintiffs faced difficulty in proving large damage numbers for injuries that are mostly psychological. The Court's appraisal of the difficulties faced by the plaintiffs in this class action is amply supported by the record. Truly, the effort of class counsel was very substantial. But this is only half the story. Class counsel's diligent work was met and resisted by strong and aggressive lawyering from defense counsel functioning on behalf of an esteemed and important entity charged with serious wrongdoing. This case held the potential for being a harrowing, profoundly unpleasant experience for many people on both sides.

8. In my opinion, this case is ideal for class disposition. It offers an opportunity for the defendants to close the door on a very disturbing chapter in the Diocese's history. Closure is in the best interest of the parties and the community. This case is also ideal for a generous fee award. This difficult case was staffed by excellent, experienced, tenacious lawyers on both sides. When you have lawyers of this quality with tough facts and legal questions, you see the legal profession function at its best. That is what happened in this matter.

9. The conduct that caused this case to be brought was conduct on the part of the

Diocese's agents. That conduct deserves the full measure of opprobrium it has received. There is in the Diocese's settlement an implicit apology for the wrongs and errors that have been injured the plaintiff class. The result in this case should and will send a message forward in time to others who might be tempted to engage in similar abusive behavior. This is a laudable result in itself. In finding the settlement fair, reasonable and adequate, I have considered the terms, and compared them with terms reached in similar cases. For a report on various settlements, including a table analyzing the financial terms of various settlements reached in cases of clergy abuse, see <http://www.bishop-accountability.org/ma-bos/settlements/SettlementTable.html> (Attached hereto as Exhibit B).

10. Even though the terms of this settlement compare favorably with settlements in other parts of the country, I recognize there is still some likelihood that this settlement may be opposed by counsel for putative class members. Any such attacks will fail, I predict. Cases against the Diocese are not easy in light of the defenses available which have been used successfully in the past. Any parent with an consortium claim will have a far easier time recovering under the settlement than outside it. The same is true, I believe, for spouses. As for victims, the Diocese is barred from using its biggest defensive weapons, particularly the statute of limitations defense. This enhances substantially chances for recovery. In my judgment, weighing the totality of the unique facts presented by this case, I believe the settlement terms are fair, reasonable, and adequate to the class claimants. I next turn to factors deemed relevant in setting a fee award under South Carolina law.

FEE AWARD FACTORS

11. Under South Carolina law, a fee award calls for "the court [to] consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the

case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). An award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Id.* Consideration of all six factors is necessary but none controls.

12. There is no requirement that a fee award be limited to no more than a specific percentage of the plaintiffs' damages. Indeed, in *Baron Data Systems*, the court awarded a fee of \$26,000 in a case where the prevailing plaintiff recovered a \$16,161 verdict. I testified via affidavit for the petitioning lawyer in *Baron*. In *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998), the Supreme Court affirmed an attorney's fee award of \$500,000 after the plaintiff therein recovered a treble-damages verdict under the UTPA in the amount of \$108,726. The Supreme Court in *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (1998), approved a fee of one-third of the plaintiff's recovery, finding that contingent fee arrangements were common in complex cases, and that the typical range of such contingency fees was one-third to one-half of the recovery. 332 S.C. at 161, 503 S.E.2d at 489. After considering each of the six factors, the court decided that a fee of one-third of the recovery was reasonable. In *Bazzle v. Green Tree Financial Corp.*, 351 S.C. 244, 569 S.E.2d 349 (2002), the South Carolina Supreme Court affirmed an award to the class of \$10,935,000, accompanied by an additional \$3,645,500 in attorney's fees and \$18,242 in costs. More recently, in *Condon v. State*, 354 S.C. 634, 583 S.E.2d 430 (2003), the Supreme Court upheld a fee award of 28% of the \$7.5 million common fund, noting that class counsel “were awarded a very substantial sum (\$2.1 million) for their work on this case that took 10 months to settle, [and] Respondents achieved a good result for the class.” In another case, *Fairey v. Exxon Corp.*, Civil

Action No. 94-CP-38-118 (C.P. Orangeburg County), a fee award of 40 percent of the \$30 million common fund accumulated for the class was approved by the Circuit Court.

13. As stated above, class counsel here seek an award of 2.5 million, which equates to around 17 percent of the maximum gross recovery that would be paid by the defendants, depending on the number of class members who choose to step forward. I agree with class counsel that the amount sought would be a fair and reasonable fee when the totality of the six factors is considered. I now turn my attention to each facet of the South Carolina Supreme Court's six-factor test.

The Nature, Extent, and Difficulty of the Case

14. This has been a tough case, unpleasant case from Day 1. Class actions by their nature increase the complexity of a case, as well as class counsel's potential malpractice exposure in the event something misfires. Assembling proof of facts concerning events many years after the fact, where witnesses have scattered posed a huge challenge to plaintiffs' counsel.

15. Based on my knowledge, training, background and experience, I have no hesitation in saying that class counsel's industry, ingenuity, and determination in prosecuting this case has been exemplary. In my opinion, the team of class counsel has consistently fought well against a very powerful and resourceful adversary. I believe that few, if any, other counsel in South Carolina or anywhere else would have had the combination of drive, expertise, resources, and creativity to achieve the result they did under the uniquely difficult circumstances presented by this case. I believe that the first South Carolina Supreme Court fee award factor strongly supports a very substantial fee award.

16. The fee sought here is substantial, but by no means unprecedented. By way of comparison, in the *Broin/Ramos* class action case in Florida, a case in which I was involved as an

expert, the court approved a fee award of \$46 million for two lawyers from a single firm. The settlement in *Broin/Ramos* was affirmed on appeal. See *Ramos v. Philip Morris Cos., Inc.*, 743 So.2d 24 (Fla. 3d DCA 1999). Here the fee sought is far less.

The Time Necessarily Devoted to the Case

17. Plaintiffs' counsel have devoted in excess of 3,500 hours to the handling of this case and processing settlements will require substantial additional time. All counsel involved are extremely busy professionals, and my review shows no padding of time or unnecessary duplication. The case settled because class counsel invested all of the many hours need to move this case down the path toward trial.

18. There is a reason why so many hours have been spent on this case. The Diocese chose to require class counsel to fight for every inch of turf, which it had a perfect right to do. By dogged persistence and dedication, class counsel demonstrated the ability to protect class members and secure a substantial award.

The Professional Standing of Counsel

19. This factor counts strongly in class counsel's favor. Plaintiffs' lead counsel are personally known to me. They are excellent lawyers, sporting enviable reputations, and they jelled into an outstanding litigation team. I have known lawyers on both sides of the case for years; in some cases, many years. I have worked with them on various legal projects in the past. They are top quality lawyers. Lead class counsel Larry Richter, David Haller and Lionel Lofton are universally recognized as excellent advocates. The same is true of Mr. Churchill and Mr. Sinclair. I have previously served as an expert for Messrs. Richter, Haller and Lofton. For years their firms have been in the forefront of efforts to vindicate clients' rights in court, and the Richter-Haller firm

has specialized in complex litigation. Larry Richter led the successful fight to rid South Carolina of the scourge of video poker. I can say that all of these lawyers I mention are outstanding advocates based on my own experience and observation. Each is a highly respected, highly effective, well-respected lawyer. The result in this case speaks for itself. To sum up, the class has had the benefit of truly outstanding advocacy.

20. There was no need for on-the-job training of class counsel. They have meshed into an excellent team, one accomplished enough to bring a very formidable and well-represented adversary to heel. Class counsel's deep and wide experience means there was little risk of wasted time, and hence no need for substantially discounting their time. Their outstanding reputation for integrity and professionalism means their records, including their billing records, are entitled to be credited.

Contingency of Compensation

21. This was a contingent fee case from its inception. Class counsel have advanced all costs in this litigation without any expectation of reimbursement except in the event of recovery on behalf of the Plaintiff Class. They have placed at risk substantial advanced costs. Indeed, very, very few law firms in South Carolina have the ability to front costs running into the millions for years on end as class counsel have. This action attests to their commitment to their clients, and to their professional diligence.

Beneficial Results Obtained

22. The gross pecuniary benefit achieved by class counsel, assuming that there is maximum payout of funds, will exceed \$12 million. This is one of the largest common fund recoveries in South Carolina history. This result was achieved in the face of intransigence on the

part of the opposition, represented locally by lawyers known by me to be very excellent attorneys. Plaintiffs' case was prepared with all the care needed for class counsel to do a first rate job. This case has been marked from the start by careful, determined, dogged preparation--and, obviously, a very good final result. I find that the net result is a significant recovery for the class. This victory is a tribute to aggressive, heady, creative lawyering by class counsel. They have given their clients an outstanding result. In truth, the class will net what for many will be a substantial financial benefit. The result achieved by class counsel has exceeded any expectations. I reiterate that I consider the settlement fund in the maximum amount of \$12 million to be fair, reasonable and adequate.

Customary Legal Fees for Similar Services

23. It is true that fees for like work are "to be calculated according to the prevailing market rates in the relevant community." *Blum v. Stensen*, 465 U.S. 886, 104 S.Ct. 1541, 1547 (1984). The South Carolina Supreme Court determined in *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (1998), the customary fee in South Carolina for complex cases accepted on a contingent-fee basis ranges from one-third to one-half of the gross recovery. I personally have participated in very difficult cases where contingent fees of as much as 50 percent were collected. *See also Miller v. Botwin*, 258 Kan. 108, 899 P.2d 1004 (1995) (court allowed 50 percent contingent fee for amounts the attorney saved the client in property taxes). I note that a web site tracking results in clergy sex-abuse cases assumes a fee rate of 40 percent applies to the various recoveries. *See* <http://www.bishop-accountability.org/ma-bos/settlements/SettlementTable.html>. The requested fee here is less than one-half of that.

24. The court should use the prevailing market rate in the community for similar services of lawyers "of reasonably comparable skill, experience, and reputation." *Chalmers v. City of Los*

Angeles, 796 F.2d 1205, 1210-11 (9th Cir. 1986). With complex class action cases of this sort, the community is really nationwide. In contingent fee cases, fees tend to range in the local community from 30-40 percent. The Supreme Court in *Condon* was correct in noting that in class actions generally, "fees ordinarily 'range from 20 percent to 30 percent of the common fund created.'" *Condon v. State*, 354 S.C. 634, 644, n.8 583 S.E.2d 430, 435 n.8 (2003) (citing and relying on *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 272 (9th Cir.1989)). In the *Fairey* case mentioned above, the fee awarded was 40 percent of the settlement fund. Every case turns on its own facts. Here, the fee sought is below the normal range in common fund cases, but the fee is reasonable in light of all relevant facts.

25. In the class action case of *Carolina Model Home Corp. v. Wise*, Civ. Action No. 95-CP-36-172 (C.P. Newberry County Nov. 8, 1996), Circuit Judge Hughston found that an award of fees and costs amounting to 30 percent of the settlement fund would be reasonable. *Carolina Model Home Corp.* was an easy case compared to this one.

26. The same is true of *Maddox v. First American Companies*, Case No.: 96-CP-07-599 (C.P. Beaufort County). In *Maddox*, I participated as counsel in a complex securities class action that was settled as to most defendants. The court awarded class counsel a fee based on one-third of the amount recovered through settlement.

27. In other easier class action cases, 1/3 fee awards have been approved. *Malanka v. Castro*, Fed. Sec. L. Rep. (CCH) ¶ 95,657 (D. Mass. 1990), featured a payout to class counsel of approximately 1/3 of the settlement fund. So did *In re Fiddler's Woods Bondholders' Litigation*, Fed. Sec. L. Rep. (CCH) ¶ 93,537 (E.D. Pa. 1987), also a securities case. This case was far more difficult than either *Malanka* or *In re Fiddler's Woods Bondholders' Litigation*.

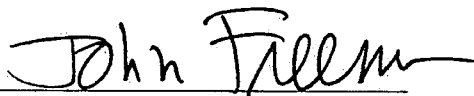
SUMMARY

28. As I have explained above in detail, this has been a difficult and unusual case against a resourceful and well-represented adversary.

29. The issue is how to treat fairly those who have done a large job supremely well. I believe that excellent legal work deserves to be recognized as such, and rewarded as such, and excellence on the part of class counsel's team is what I find evidenced by the records chronicling this important and hard-fought lawsuit.

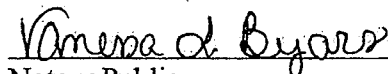
30. In summary, I recommend that proposed settlement be approved and that class counsel's fee petition be granted.

31. Further affiant sayeth not.


John P. Freeman

SWORN TO AND SUBSCRIBED BEFORE ME

this 13 day of February 2007


Notary Public
My Commission Expires: July 15, 2016

RESUME

Professor John P. Freeman

Address and phone numbers: 2329 Wilmot Avenue
Columbia, South Carolina 29205
803-254-4667 (home)
803-777-7224 (Law School)

Education history: LL.M., 1976, University of Pennsylvania Law School; J.D.,
1970, University of Notre Dame Law School; B.B.A.,
1967, University of Notre Dame (Accounting)

Employment history: 1970-72, Attorney, Jones, Day Law Firm, Cleveland, Ohio

1972-73, Fellow, University of Pennsylvania Law School
Center for the Study of Financial Institutions

1973-75, Assistant Professor of Law, University of South
Carolina

1974 and 1975 (Summers), Special Counsel, Division of
Investment Management, SEC, Washington, D.C.

1975-78, Associate Professor of Law, University of South
Carolina; Visiting Associate Professor of Law at Loyola
Law School (Chicago) Spring 1977

1978-Present, Professor of Law, University of South
Carolina; Visiting Professor of Law at University of Texas
Law School, Summer 1978

Honors and Awards: Undergraduate: Member Beta Alpha Psi (Honorary
Accounting Fraternity)
Law School: Executive Editor, Notre Dame Lawyer;
Distinguished Military Graduate

Professional: At University of South Carolina Law School: Senior Class
Annual Outstanding Faculty Award of 1975, 1976,
1977, 1984; Winston Churchill Award, South Carolina Jury
Trial Foundation 1995; Distinguished Service Award,
South Carolina Trial Lawyers Association 2000; Appointed
Member, South Carolina Judicial Merit Selection
Commission (presently serving)

Admitted to Practice: Ohio; South Carolina

Teaching History

Courses Taught: Professional Responsibility, Legal Accounting, Business Associations, Corporations, Agency-Partnership, Securities Regulation, Corporate Finance, Business Planning, Legal Research and Writing, Business Crime, Legal Malpractice Component of Advanced Legal Profession Seminar

Scholarly and Professional Publications

Author, Regular Legal Ethics Column for South Carolina Lawyer.

Article, The Mutual Fund Distribution Fee Mess, 32 J. Corporation Law ____ (2007) (accepted for publication).

Article, It's the Conflict of Interest, Stupid, Money Mgm't Exec., May 17, 2004, at 14.

Chapter on Legal Opinion Liability in Legal Opinion Letters A Comprehensive Guide to Opinion Letter Practice (M. John Sterba, Jr., ed. 2003) (plus annual updates).

Chapter in South Carolina Damages Treatise on Damages in Securities Cases (2004)

Article, The Ethics of Using Judges to Conceal Wrongdoing, 55 S.C.L. Rev. 829 (2004).

Article (with Stewart Brown), Mutual Fund Advisory Fees: The Cost of Conflicts of Interest, 26 J. Corporation Law 610 (2001).

Article, Liens, Fees and Taxes, South Carolina Trial Lawyer, Summer 2000, at 26.

Article, A Business Lawyer Looks at the Internet, 49 S.C.L. Rev. 903 (1998).

Article, Payments to Medical Care Providers: What Are the Lawyer's Obligations? South Carolina Lawyer, September-October 1994, at 39.

Article, Current Developments in Lawyer Liability: Coping with the Fraudulent Client, Delaware Lawyer, Winter 1993, at 27.

Article, Treble Damage Statutes Can Increase Trust Recoveries, 4 Probate Practice Reporter, June 1992, at 1.

Article (with Nathan Crystal), Scientoer in Professional Liability Cases, 42 S.C.L. Rev. 783 (1991).

Article, How Computerized Databases Are Redefining Due Diligence, Carolina Lawyer (July-August 1991).

Article, When Are Lawyers' Gifts to Judges Improper? Carolina Lawyer (November-December 1990).

Article, Current Developments in Legal Opinion Liability, 1989 Col. J. Bus. L. 235.

Article, Understanding the Joint Client Exception to the Attorney-Client Privilege, Carolina Lawyer (July-August 1989).

Article, A RICO Primer, 1985 Small Business Counselor No. 4.

Article, The Use of Mutual Fund Assets to Pay Marketing Costs, 9 Loy. Chi. L.J. 553 (1978).

Article, Marketing Mutual Funds and Individual Life Insurance, 28 S.C.L. Rev. 1-124 (1976), reprinted in Nat'l Ins. L. Rev. Serv. (1977).

Article, Opinion Letters and Professionalism, 1973 Duke L.J. 371-439, reprinted in Securities Law Review 1974 (E. Folk, III, ed.).

Co-author, Multi-student Survey, The Mutual Fund Industry: A Legal Survey, 44 Notre Dame Lawyer 732-983 (1969).

Case Comment, Escott v. BarChris Constr. Corp., 44 Notre Dame Lawyer, 122-40 (1968).

Other Scholarly Activities

Speeches (with accompanying outlines) presented at numerous CLE courses sponsored by various entities including the South Carolina Bar, University of South Carolina Law School and the South Carolina Supreme Court.

CLE Presentations 2001-06: S.C. Association of Counties, Ethics Update, Dec. 8, 2006; Lexington County Bar Ass'n, Ethics Update, Dec. 6, 2006; Richland County Bar, Ethics Update, Nov. 3, 2006; S.C. State Government Lawyers, Ethics Update, Nov. 3, 2006; S.C. Judicial Merit Selection Commission, Overview of Judicial Ethics, Sept. 14, 2006 (½ hr.); Federal Bar Ass'n, SC Bar, Ethics and Professionalism, Sept. 8, 2006; Commercial Law League of America, Avoiding Grievances and Malpractice Worries in Your Practice, July 6, 2006, Asheville, N.C. (2 hours); National Structured Settlement Trade Ass'n, Ethics in Litigation, Westin Rio Mar, Puerto Rico, May 9, 2006; S.C. Chamber of Commerce, Legal Ethics for the Employment Lawyer, Hilton Head, S.C., May 6, 2006; American Ass'n Matrimonial Lawyers, Ethic Lecture, Los Cabos, Mexico, March 11, 2006; SC Bar, Legal Ethics for Health Care Providers, Jan. 28, 2006;

S.C. Association of Counties, Ethics Update, Dec. 9, 2005; SCTLA, Making Money Out of Discovery Abuse, Dec. 2, 2005, Atlanta; Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar, Nov. 4, 2005, Asheville; S.C. Bar, Ethics in Masters Court, Oct. 14, 2005; N.C. Bar-S.C. Bar Construction Law Ethics Program, Asheville, Oct. 1, 2005; S. C. Bar, Unauthorized Practice Problems in Probate Court, Sept. 16, 2005; Greenville County Solicitor's Office, Prosecutorial Ethics, May 9, 2005; Mass Tort Seminar, NYC, Discovery Abuse Issues, March 18, 2005; S.C. Ass'n of Counties, Legal Ethics, Dec. 10, 2004; Federal Bar Ass'n, S.C., Ethics CLE, Dec. 10, 2004 ½ hr.; S.C. Bar Construction Law Section, Ethics CLE on the new Oath; Dec. 3, 2004; NASAA, Salt Lake City, Legal Ethics for Securities Enforcement Lawyers, Dec. 4, 2004; DSS Ethics Training, Dec. 3, 2004; (2-hr. lecture); PIABA, Ethics for Securities Lawyers, and Comments on the Mutual Fund Mess, Oct. 20, 2004 (2 hrs.); Commercial Law League of America, Southern Region Members' Ass'n, Ethical Issues in Commercial Law, Oct. 1, 2004; S.C. Bar, Annual Probate Bench/Bar, Ethics in Probate Court, Sept. 17, 2004; Charleston Bar Ass'n, Lawyer's Oath Seminar, August 27, 2004; S.C. Government Lawyers, Legal Ethics for Government Attorneys, August 20, 2004; S.C. Judiciary, Judicial Ethics Lecture, August 19, 2004; S.C. Bar, Accounting for Non-tax Lawyers, May 2, 2004; Palmetto Land Title Ass'n, Ethics for Closing Attorneys, April, 24, 2004; Richardson, Patrick Law Firm, CLE on Legal Issues Concerning the Mutual Fund Mess, March 26, 2004; S.C. Bar, An Update on Ethical Considerations for the Guardian, March 5, 2004; S.C. Prof. Society on the Abuse of Children, Ethics and Child Abuse, Feb. 26, 2004; National Ass'n of State Boards of Accountancy, Professionalism, Accountability and the Accounting Profession, Feb. 9, 2004; Fidelity Nat'l Title, Ethical Duties of Closing Attorneys, Feb. 5, 2004; S.C. Bar, Annual Convention, Ethical Issues in Handling the Appeal, Jan. 22, 2004 (co-presenter).

Member, ABA Section of Business Law Task Force on Legal Opinions

Participant in Conference on Legal Opinions at Silverado, California, May 31-June 3 (1989).

University and Community Service

Author, Report on Tax Sheltered Annuities to USC Faculty and Staff (1976).
Faculty Senate (1996-98)

University Committees

Promotion and Tenure

Faculty Welfare

Annuities and Insurance

Budget Committee

Law School Committees

Faculty Selection

Academic Standing (currently serving)

Minority Student Affairs

Executive Committee

Dean Evaluation Committee

Dean Search Committee

Chairman, Supreme Court Commission on Continuing Lawyer Competence (1980-83)

President, Leaphart Elementary School PTO (1983)

Chairman, Irmo Middle School-School Improvement Council (1985)

Member, Irmo Middle School-School Improvement Council (1985-89),

President, Irmo High School Parent, Teacher, Student Association (1988-89, 1992-93)

Member Executive Board (1988-93)

Member, Irmo High School-School Improvement Council (1988-93)

Founder and Past-president, University of Notre Dame Club of South Carolina

Lexington District Five and South Carolina State School Volunteer of the Year 1993

BishopAccountability.org**Comparative Table of Selected Settlements**

Settlement	Year	Priests	Settlement Amount (thousands)	Number of Victims	Estimated Legal Fees	Net Amount Per Victim (thousands)
LA CA (DiMaria)	2001	1 (Harris), no conviction	\$5,200	1	40%	\$3,120
Oklahoma City OK	2002	1 (Rapp), 40 years in prison	\$5,000	1	40%	\$3,000
Dallas TX [a]	1998	1 (Kos), life in jail	\$23,400	5	40%	\$2,808
Stockton CA [b]	1998	1 (O'Grady), 14 years in prison	\$7,650	2	40%	\$2,295
Los Gatos CA	2002	4 Jesuits	\$7,500	2	40%	\$2,250
San Bernardino CA	2003	1 (Ball)	\$4,200	2	40%	\$1,260
LA CA	2002	1 (Hagenbach)	\$1,500	1	40%	\$900
Tucson AZ	2002	4 priests	\$14,000	11	40%	\$764
Orange CA	2004	31 priests, 10 lay personnel, 2 nuns and 1 religious brother	\$100,000	91	40%	\$659
Boston MA (BC High)	2003	2 (Talbot, McManus)	\$5,800	15	40%	\$232
Providence RI [c]	2002	10 priests, 1 nun	\$13,500	36	40%	\$225
Davenport IA	2004	5 priests	\$9,000	37	40%	\$146
Boston MA - Lawyers' Top	2003	140 priests, 2 others	\$120,000	542	40%	\$133
Boston MA - Lawyers' Bottom	2003	140 priests, 2 others	\$90,000	542	40%	\$100
Boston MA - Final Offer	2003	140 priests, 2 others	\$85,000	552	40%	\$92
Boston MA - 2nd Offer	2003	140 priests, 2 others	\$65,000	542	40%	\$72
Boston MA	2002	1 (Geoghan), 9-10 years in prison	\$10,000	86	40%	\$70
Louisville KY [c]	2003	34 priests and 5 workers	\$27,000	243	40%	\$67
Boston MA - 1st Offer	2003	140 priests, 2 others	\$55,000	542	40%	\$61
Manchester NH [d]	2003	28 priests, 3 others	\$15,500	176	40%	\$53
Fall River MA [e]	1992	1 (Porter), 18-20 years in prison	\$8,000	101	40%	\$48

[a] original jury award on 7/23/97 was \$119.6 million

[b] original jury award on 7/16/98 was \$30 million

[c] 40% fees are actual

[d] priest count is for 11/26/02 settlement; amount and victim count are 5/22/03 aggregates

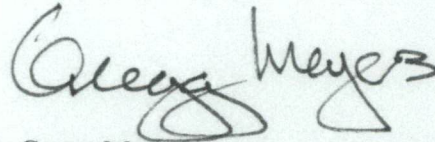
[e] original 12/3/92 settlement involved 68 victims, but others subsequently joined

Source: *Boston Globe*, August 9, 2003; other news sources.

B

Certificate of Counsel

I hereby certify that the enclosed Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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

Attorney for Appellants

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