(9)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J. C. Nicholson, Jr., Circuit Court Judge

Consolidated 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.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE No. 06-CP-18-_____
Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated,)	
Plaintiffs,)	
vs.)	**COMPLAINT** Action for Loss of Consortium
The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,)	
Defendants.)	

FILED RECORDED
2006 AUG 15 AM 11:43
CAROLYN GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE NAMED:

Plaintiffs, individually and as representatives of a class of people similarly situated, allege and complain of the defendants as follows:

1. Jane Doe 1 is a resident and citizen of Richland County, South Carolina. She is the wife of John Doe #53, an individual who, in his youth, was assaulted and abused by a priest under the control of the defendants. Hereinafter, the abused individual shall be referred to as John Doe #53. The identity of Jane Doe 2 has been provided to the defendants.

2. Defendant Jane Doe 2 is a resident and citizen of Greenville County, South Carolina. She is the wife of John Doe #66 an individual who, in his youth, was assaulted and abused by a priest under the control of the defendants. Hereinafter, the abused individual shall be referred to as John Doe #66. The identity of Jane Doe 1 has been provided to the defendants.

3. Defendant Rachel Roe is a resident and citizen of Dorchester County, South Carolina. She

is the mother of John Doe #53. The identity of Jane Doe 3 has been provided to the defendants.

4. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors at all times material are and were hereto a corporation organized under the laws of the State of South Carolina, which owns property and does business in Dorchester County, South Carolina. Diocese is and was the corporate entity through which the affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment, supervision, and the exercise of authority over its various agents and the members of its denomination, and the maintenance of the well being of its members.

5. Defendant Diocese holds certain assets including schools, rectories, churches, and other properties real and personal throughout South Carolina, including Dorchester County, and possibly elsewhere. The Diocese operates the various components and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling functions as a means of raising revenue for its operations.

6. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.

7. The defendant owns property and does business in Dorchester County. Venue is properly laid in this county and this court has jurisdiction over the parties hereto and the subject matter hereof.

ABUSE OF JOHN DOE #53

8. Under the authority of the Diocese, Monsignor Thomas Duffy and other agents of Diocese took John Doe #53 from his childhood home in Charleston and placed him under the care of the Atlanta Diocese in Georgia, where he was housed at a facility operated by it. Upon being returned to Charleston by Charleston Diocese agents, he was placed in the Catholic orphanage in Charleston. He resided at the orphanage for two years and attended school at Blessed Sacrament in Charleston.

9. At all times material to the incidents alleged in this complaint, Father Lawrence Sheedy was an authority figure, moral leader, confessor, and counselor employed and/or controlled by the defendants and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop. Because of John Doe #53's position as a minor under the care of the Diocese, together with Sheedy's position in the Roman Catholic Church as an authority figure, moral leader, confessor, and counselor, Sheedy was able to have control and influence over John Doe #53. By his words and actions, Sheedy represented to John Doe #53 that their relationship was one in which Sheedy was to provide counseling, comfort and advice to John Doe #53, and to look out for John Doe #53's well being and best interests. These representations were untrue and intended to deceive John Doe #53. Sheedy used these representations and his various positions to gain John Doe #53's trust and confidence and to obtain control over him.

10. Between 1966 and 1967, John Doe #53, then a minor child, was sexually assaulted repeatedly by Father Sheedy.

11. On several occasions during the time when the abuse occured, Father Sheedy provided alcohol to John Doe #53, then a minor, before sexually abusing him on Diocese property and while exercising the authorities provided to him by the defendants.

12. These incidents occurred while Sheedy was an employee and youth leader of the defendants. These assaults upon John Doe #53 occurred on the premises owned and controlled by the defendants.

13. Based on the relationship of trust and confidence cultivated by Sheedy and encouraged by Diocese and Bishop, John Doe #53 justifiably believed and relied on Sheedy and gave Sheedy his trust and confidence. By his words and actions, Sheedy assured John Doe #53 that the abusive conduct was legal and proper. Sheedy and defendants actively concealed the wrongfulness of Sheedy's exploitation and misconduct involving children, John Doe #53 included.

14. Sheedy also threatened John Doe #53 with recrimination if John Doe #53 revealed Sheedy's actions, often telling John Doe #53 that the instances of sexual abuse on the Diocese property were "our little secret" that should never be revealed to anyone, including his mother, plaintiff Rachel Roe.

15. John Doe #53 is informed and believes that Sheedy was known to the defendants to be unstable, unreliable, a hedonist and an abuser of alcohol. His assignment within the Diocese was as a result of his improper actions– but neither John Doe #53 nor Rachel Roe were warned.

16. As a result of the abuse of John Doe #53, has suffered deep psychological damage with accompanied physical manifestations, alcohol and drug abuse, and strain in his relationships, among other things, and they have impact his ability to function normally in life. In fact, as late as two years ago, John Doe #53 was being told by his priests that it was he who had sinned and that it was he who required absolution for the events with Sheedy. These acts by the defendants only exacerbated the injuries suffered by John Doe #53.

17. Because of the abuse of her son by the defendants' agent/employee, the priest Sheedy, Rachel Roe has been injured by, among other things, incurring expenses in the care of the child, John Doe #53 and the loss of his companionship, aid, and society.

18. Jane Doe 1 is the spouse of John Doe #53. She has assisted him in his care as he has struggled to cope with the abuse and the lifelong damage he has suffered. She has been with him during the times, recent and otherwise, when the defendants and its agents have tried to place the blame on the John Doe #53 for the events which occurred. As a result of the defendants conduct, Jane Doe 1 has suffered from the loss of the right to the companionship, aid, society and services of John Doe #53.

ABUSE OF JOHN DOE #66

19. John Doe #66 came to know Priest James Nyhan through various church and school related programs and activities while he attended Nativity Catholic School. Based on this relationship, as cultivated by Nyhan and encouraged by the Diocese and the Bishop, John Doe #66 admired, trusted, revered and respected Nyhan as a holy man, authority figure, confessor, clergyman, counselor and spiritual advisor. In school and church, he was taught

and instructed to do so. As a result, John Doe #66 entrusted in Nyhan his personal safety and shared with Nyhan his most confidential information.

20. Using this relationship, Nyhan gained access to John Doe #66. Between 1978 and 1980, John Doe #66, then a minor child, was sexually assaulted by Father Nyhan.

21. These incidents occurred while Nyhan was an employee and youth leader of Nativity Catholic Church and School. These assaults upon John Doe #66 occurred on the premises of Nativity Catholic Church, a property owned and controlled by the defendants, as well as other locations. For example, Nyhan preyed on young boys, including the John Doe #66, in the Church Rectory of Nativity Catholic Church or took them elsewhere, such as to local beaches, for the purposes of molestation

22. In the spring of 2006, Nyhan pled guilty to Assault and Battery of a High and Aggravated Nature upon John Doe #66.

23. As a result of the defendants conduct vis-a-via Nyhan, John Doe #66 has suffered deep psychological damage with accompanied physical manifestations, strain in his relationships, and loss of his religious background, among other things, and they have impact his ability to function normally in life.

24. Jane Doe 2 is the wife of John Doe #66. As a result of the defendants conduct, she has lost of the right to the companionship, aid, society and services of John Doe #66.

CLASS ALLEGATIONS

25. Plaintiffs brings this action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure on behalf of themselves and as representatives of classes of other persons similarly

situated defined as follows:

> The spouses, parents, and/or legal guardians of all individuals who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants in South Carolina between January 1, 1950 and December 31, 2000 and who suffered a loss of the abused individual's consortium.

26. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.

27. Plaintiffs are informed and believes that the number of other individuals in South Carolina who fall within the definition of the class defined above may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.

28. There are questions of law and fact which are common to the class.

29. The claims of the class are typical of the plaintiffs and plaintiffs are informed and believes that the defenses of the defendant will be identical as to each of the class members.

30. Plaintiffs will fairly and adequately protect the interests of the class.

31. The amount in controversy for each of the members of the class exceeds $100.00.

32. Plaintiffs are entitled to the certification of a class of plaintiffs against the defendants are defined above.

33. Throughout this complaint, references to plaintiffs are intended to reference the plaintiffs and the members of the class who they represent as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants

which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

LOSS OF CONSORTIUM

34. Plaintiffs reallege paragraphs 1 through 33 above as if restated hereinafter verbatim.

35. The defendants have intentionally or tortiously violated the right to the companionship, aid, society and services of Jane Doe 1 and Rachel Roe to John Doe #53 and they have been injured as a direct and proximate result of the defendants' interference with said right. Plaintiff Rachel Roe has incurred expenses on behalf of John Doe #53 as a result of the defendants' conduct.

36. The defendants have intentionally or tortiously violated the right to the companionship, aid, society and services of Jane Doe 2 to John Doe #66 and she has been injured as a direct and proximate result of the defendants' interference with said right.

37. As a direct and proximate result of the acts of the defendants, the plaintiffs and the members of their class have been injured and suffered damages. Plaintiffs are entitled to a judgment against the defendants for both actual damages, in an amount to be determined by the trier of fact, and punitive damages to impress upon the defendants the seriousness of its conduct and to deter such similar conduct by other tortfeasors in the future.

JURY TRIAL DEMANDED

38. Plaintiffs demand a jury trial.

WHEREFORE plaintiffs pray for the certification of a class of individuals as defined herein, for judgment in their favor for both actual and punitive damages, and for other relief as the court may deem just, prudent, and proper.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

14th day of August, 2006

Mt. Pleasant, South Carolina

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

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

FINDINGS OF FACT

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

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

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

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

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

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

ISSUES

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

LAW/ANALYSIS

A. Certification of the Classes

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

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

Plaintiffs have requested that the following classes be certified:

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

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

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

I find that certification of these class is appropriate.

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

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

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

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

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

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

2. Commonality/Typicality

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

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

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

3. Adequacy of Representation

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

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

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

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

4. $100 requirement.

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

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

B. Preliminary Approval of the Settlement

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

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

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

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

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

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

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

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

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

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

AND IT IS SO ORDERED!!!

The Honorable Diane S. Goodstein
Presiding Judge

This 19 day of January, 2007

At Summerville South Carolina

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

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

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

EXHIBIT A

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

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

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

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

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

---

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

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

RJB

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Name of spouse (if any);

7. The form must be signed and dated; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. **PAYMENT OF CLAIMS.**

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

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

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to Class Counsel and the Diocese, if necessary.

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

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

7. **PASTORAL OUTREACH AND PROTECTION OF CHILDREN BY THE DIOCESE.**

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

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

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

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

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

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

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

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

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

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

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

Executed this 12th day of January, 2007.

FOR THE CLASSES:

Lawrence E. Richter, Jr.
CLASS COUNSEL

Witness

FOR THE DEFENDANTS:

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

Witness

EXHIBIT 1

CLAIMANT'S GENERAL RELEASE

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

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

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

_____ _____
Print Claimant's Name Claimant's Signature

_____ _____
Witness Witness

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EXHIBIT 2

DIOCESE LIMITED RELEASE

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

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

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as of the date written below.

_____
The Bishop of Charleston, a Corporation Sole

By:_____

Its: _____

Date: _____ Witnessed by: _____

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Legal Notice

Notice of Proposed Settlement of Class Action

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

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

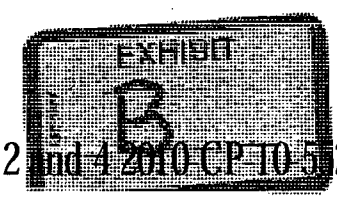
Plaintiffs John Doe #53, John Doe 66, John Doe 66A John Doe 67, Jane Doe 1, Jane Doe 2, and Rachel Roe individually and as representatives of classes of people similarly situated brought these claims on behalf of themselves and others who with claims of sexual abuse in keeping with the class definitions,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

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

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

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

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



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

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

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

CLASS COUNSEL:
Lawrence E. Richter, Jr.
David K. Haller
RICHTER & HALLER, LLC
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Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000
diocesesettlement@richterfirm.com

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

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

Plaintiffs,

vs.

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

Defendants.

Objections to Proposed Order

The proposed order approving the class settlement is objected to in the following particulars, on behalf of a number of individuals who are putative members of the class., specifically on behalf of Johns Doe C, D, H, J, K, L, M and Janes Doe G, I, K, and N.

Issues are raised in the order they are presented in what is represented to counsel to be a proposed order.

1. Solicitor's Investigation. A. Since the court elected to have the First Circuit, rather than the Ninth Circuit, Solicitor investigate matters related to the document titled "INSTRUCTION," the order should reflect, or the Court should order, more steps than are reflected in the proposed order. As presently cast, the proposed order suggests only that the Solicitor made inquiry of the Diocese. Since the concern is that the Diocese has concealed

information, and the Code of Canon Law, the governing rules of the Church, call for a "secret archive," (See, e.g., Canons 489 --- "In the diocesan curia there is also to be a secret archive. . .,"), and 490, and the Church has a doctrines of "mental reservation" and "committed secrets" which affect truth-telling in response to questions, to protect putative class members the order should reflect more than an informal request for information of the entity suspected of active concealment. We presume more steps were taken, and the requests were formal or mandatory (such as a subpoena, sworn testimony, or sworn statements), so the order should either reflect those steps or the court should order such steps.

B. Since the Solicitor's investigation continues, provision should be made for final approval to be made only when it has been made to consist of meaningful investigative steps, and only when completed. Again, we assume the investigation has been meaningful, but those meaningful steps should be articulated in the order.

C. The proposed order includes a proposed finding that any concerns regarding the "INSTRUCTION" "have been satisfied as to the civil action." The finding should be that no victims have been identified despite adversarial investigative steps, assuming there have been such adversarial investigative steps.

2. Notice by the Diocese. The Diocese apparently contends it has given notice to all persons who might qualify to receive notice, yet it appears not all known class members have been notified, if that was the criteria applied to the notice.

3. Withdrawn Objections. The proposed order states that two objectors have withdrawn their objections, but gives no reason why or what accommodations were made to cause that to happen. Since there is now confusion about whether 'side deals' or arrangements have been made regarding other putative class members and their counsel, or with the class representatives,

some of which contentions are now contested by class counsel, the proposed order should do more than just acknowledge that the objections have been withdrawn, the court should inquire about the circumstances of those withdrawals so that other putative class members might be fully informed as to what they are getting into or opting out of should the settlement ever be approved.

4. Objections not withdrawn. A. The proposed order discusses at some length objections filed on behalf of those consulting objecting counsel. As noted in the objections, the class as originally articulated failed to specify even the basic premise of whether it was an opt-in or an opt-out class. That was amended after the objections were filed, indicating it was an opt-out class. But there has been no opt-out period yet approved. Putative class members cannot have their objections discarded or their rights affected by procedures not applicable to the entire class. No class member can opt-out prior to their being an opt-out period. Since one has been specified since the objections were filed, and since the notice of opt-out was conditioned on the substantial confusion of the class being clarified, the proposed order errs in penalizing putative class members for asking the matter be clarified and for reserving their right to make that election, which was all the prior objection stated. It also specifically reserved the right to re-evaluate that issue once the court heard the objections. Whether those individuals plan to opt out in the future cannot properly affect their present status.

Also in spite of the Order's language referring to our objections as without merit, it is undeniable that the addendum altering the class definitions occurred after the objections.

B. Footnote 4 of the proposed Order discusses objector's counsel's case and indicates that certain class members are attempting to reverse consent to dismiss an earlier action. The proposed order is inaccurate. The class action was pending when the dismissal issue was raised, and the General Counsel of the Diocese made no disclosure of the action. Since that active

concealment affected putative class members, it concealed a material fact. The proposed order errs in permitting the Diocese to benefit from deception, and sheds light on the investigative steps needed with this Diocese, as discussed above. In any event, a motion remains pending in Charleston County about that active concealment, and the proposed order should at minimum permit that motion to be heard and ruled on disposition of that motion to occur prior to any order being entered.

5. Objections as to Matrix. The proposed order affirms the matrix that was objected to, but even though a small modification was made to the matrix, objection is still made as to the matrix as a means of separating out what should be specified as subclasses of victims. Victims should share equally, and a distribution should be made of all allocated settlement funds. The operation of the matrix, even as modified, benefits only the Diocese in minimizing the proceeds paid to victims, and in permitting settlement funds to revert to the Diocese. If the settlement is treated as a $12 million settlement for purposes of calculating the class counsel's fee, then the court should order that all $12 million be paid to the victims.

6. Compensation of Consortium Claims. The proposed order errs in determining that consortium claims of parents are worth zero, and those of spouses worth little. If the order remains as it is, then any member of the direct victim class will be able to object to their own settlement fund being depleted for compensating individuals for claims the court finds legally non-cognizable. And if the court determines that the parents of victims DO have legally cognizable claims (an issue with a three hundred year history of Common Law support and which the South Carolina Supreme Court currently has under consideration in a case argued this Spring), then the adequacy objection is ripe, and the proposed order's conclusion that a past verdict would "probably" not have survived appeal, thereby is to be discounted, engages the

court in speculation, without acknowledging that those cases were certified as a class, survived a series of motions for summary judgment, as well as survived directed verdict motions at trial. The three hundred year Common Law history in support of such claims, which the proposed order does not even address, bore heavily on those motions. The discussion makes the proposed order appear to reflect that class counsel has brought a claim which does not satisfy SCRCP 11, which these objectors do not believe is the case, and creates an appearance that the parties are colluding to minimize recovery for victims.

7. Notice. Notice should be posted in more than just South Carolina. Some national vehicle for notice should exist, to accommodate the reality that persons may move from the State. This is another aspect in which the proposed order appears to be designed to minimize the impact on the Diocese rather than to maximize the recovery for the victims. Publication in either the USA Today or The New York Times would seem appropriate if the parties truly were interested in giving notice to potential class members.

8. Attorneys Fees. A. As noted above, if class counsel has recovered $12 million for abuse victims then we applaud the attorney's fee award. But that is not what has occurred in the settlement, yet the proposed order presumes, incorrectly, that it has. The final order should either modify the settlement fund to make it an actual $12 million recovery for victims, or it should recast the discussion of the fee approval. Otherwise, the calculation that the fee is 20.8% of the recovery for all victims is simply incorrect.

B. Nor can counsel's fee be paid until the disbursemet is known to class members. If the fund for the class is irrevocably $12 million, and will be distributed either per capita or pro rata after the claims period, this objection will be satisfied. If the "gross settlement" turns out to be less than $5 million, then the fee calculation would have to be revised substantially.

is only the maximum amount that the Diocese might have to pay. Basing a fee on a potential result rather than an actual result is error. The claims process should go forward and the fee calculated for approval after the benefit to the class is known, not hypothetical.

C. Hence, the ten day payment requirement is objected to, unless the $12 million is revised to be disbursed to all class members either pro rata or per capita. Nor should the fees be paid before all class members have been paid, and the order should discuss whether the fee is awarded on a contingency or lodestart scheme, or a hybrid.

9. Paying class representatives first. The proposed order claims that class representatives have already been paid. To treat some class members outside of the class procedures raises issues about those persons being representative of the class, acting in the interest of the class, and acting so as to protect the class, and about whether claims of persons resolved prior to any claims process then satisfy the definition of a class member. It would seem those persons would become persons whose claims are resolved, and make them ineligible for class inclusion. It also suggests that the class representatives may have breached their duties to absent class members by being paid first, and through a different process (mediation) than applies to other class members (arbitration).

Class representatives are often permitted to obtain a premium for conducting the litigation, and there is no objection to that concept. But the proposed order does not disclose what the class representatives have already received beyond the general statement that they have collectively been already paid $460,000. The proposed order should indicate to other class members what each class representative was paid. And, as noted above, the class representatives should not be paid outside of the very claims process that all other class members must participate in, or by different criteria.

10. Provided Psychological Assessment and Counseling. The proposed order and exhibits do not indicate who does these assessments and/or counseling. If it is with a therapist of the victim's or family member's choosing, it needs to state that. If it is a therapist selected by the Diocese, it needs to state that too.

11. Exhibit A. As written, the class would include those persons abused by parents or spouses, which is probably not an intended claimant.

12. Exhibit B. The definition of the consortium class includes the spouses and parents of victims *who are not eligible to participate in the victims' class.* If this is inadvertent, it can be cleared up. If not, it suggests the settlement is designed not to maximize recovery for victims but to minimize payment by the Diocese.

The definition of "sexual abuse" is obviously taken from a criminal statute. Many aspects of abuse do not neatly fit the legalistic definition, and many putative class members may not understand it. Notice to potential class members should be clear and readily understandable.

The proposed order states that if there is a dispute about whether a claim is *bona fide*, the claimant will have a chance to prove their claim, but does not set forth a procedure on how that will occur. In order for claimants to make an informed decision on whether to participate in the class, the notice should include that information.

Objections to the matrix are not restated here.

13. Exhibit C. The proposed order requires Social Security Numbers for claimants, an unnecessary intrusion as a routine request. If it is needed to identify records or for another purpose, a provision can be made to that effect. The identity of their parents or spouses should be requested only if those persons made a claim.

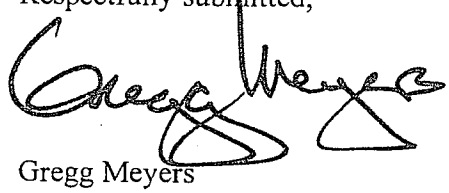
14. Exhibit D. Same concern as to Social Security Numbers.

The proposed Exhibit makes no provision for parent claims if siblings have been molested. Does each parent get $20,000 for each of their children who have been abused, or is a parent who is unfortunate enough to have two or more of their children abused by their priest only entitled to the same amount as a parent who only had one child abused? Assuming, of course, it is conceded that a parent's claim is cognizable, which the proposed order at present disputes, even while proposing to make payment to parents.

15. Exhibit F. The proposed form includes a voluntary waiver of appeal rights prior to the victim knowing whether they are considered by the arbitrator to be a class member. It should preserve that right until that determination is made.

Objectors request notice of any order entered by the Court.

Respectfully submitted,



Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

Attorney for putative class members

Certificate of Service

I hereby certify that I have caused a copy of the enclosed

Objections to Proposed Order

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

Richter & Haller, LLC
622 Johnnie Dodds Boulevard
PO Drawer 1089
Mt. Pleasant SC 29465

Peter Shahid
15 State Street
Charleston SC 29401

Done July 30, 2007

Respectfully submitted,

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July 30, 2007

Cheryl L. Graham
Clerk of Court for Dorchester County
101 Ridge Street
St. George, SC 29477

RE: John Doe #53 v. The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity, et al.
Case No.: 06-CP-18-1310
06-CP-18-1311
06-CP-18-1636

Dear Sir or Ma'am:

Enclosed is the original and one copy of Objections to Proposed Order to be filed. Once the same has been filed, I would appreciate your returning a filed stamped copy to me in the enclosed self-addressed, stamped envelope provided.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Jackie Lunsford
Assistant to Gregg Meyers

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

Motion to Alter or Amend

The order approving the class settlement is objected to in the following particulars, on behalf of a number of individuals who are putative members of the class, specifically on behalf of Johns Doe C, D, H, J, K, L, M and Janes Doe G, I, K, and N.

Issues are raised in the order they are presented.

1. Withdrawn Objections. The order states that two objectors withdrew their objections, but gives no reason why or what accommodations were made to cause that to happen. Since there now appear to be certain 'side deals,' or arrangements that have been made regarding other putative class members and their counsel, or with the class representatives, some of which contentions are now contested by class counsel, the order should do more than just

acknowledge that the objections have been withdrawn. The order should reflect an inquiry into the circumstances of those withdrawn objections so that other putative class members might be fully informed as to what they are getting into, or opting out of, should the settlement ever be approved.

2. Objections not withdrawn. A. The order errs in concluding that objectors lack standing. First, the objectors stated their objections as directed by the order providing for notice of the fairness hearing. To conclude that those who followed that order somehow lack standing to undertake the very tasks provided by that order is nonsensical. As the order states, page 6, "The creation of a class makes those class members parties to the litigation." Exhibit A provides "If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result." The order errs in providing different ways of opting out for only certain class members.

B. The original class proposal contained no statement as to whether it was an opt-in or an opt-out class. After that omission was noted by the objection, the class proposed was modified to state clearly that it was an opt-out class, and to provide for a method of opting out. Objectors who fall within the class cannot be said to have opted out prior to having an opportunity to review the court's disposition of the stated objections. Nor can some class members, namely those with the temerity to state objections, receive different treatment for opting out than other class members. The opt-out period remains available to class members, and these class members should be treated the same as other class members for opt-out purposes. *Gould v. Alleco* and *Condon v. South Carolina* do not hold differently, since both concerned objections from those not members of the class. It is nonsensical to require intervention by those already within the

definition of the class. As the order states, page 6, "The creation of a class makes those class members parties to the litigation." By terms of the order, there is nothing into which class members can intervene: the class members are already part of the litigation unless they opt-out through the same opt-out process available to all other members of the class. Class members cannot legitimately be "punished" for stating objections, particularly well-founded objections such as the lack of any declaration that the class is an opt-out class,

C. The opt-out period having been just approved by the order, opting-out cannot be imposed on class members by eliminating their opportunity to consider the court's order. Putative class members cannot have their objections discarded or their rights affected by procedures not applicable to the entire class. No class member can opt-out prior to their being an opt-out period.

D. An opt-out period having been for the first time approved in the June 30 order, and since the notice of opt-out was conditioned on the substantial confusion of the class being clarified, the order errs in penalizing putative class members for asking the matter be clarified and for reserving their right to make that election. Objectors merely reserved their respective rights to opt-out, specifically reserving the right to re-evaluate that issue once the court ruled on the objections. No class member can properly have his opt-out rights eliminated.

E. The order concludes, at page 6, that the objections stated have no merit. Yet it is undeniable that the addendum altering the class definitions occurred after the objections noted the omissions cured by amending the class proposal. These post-objection modifications include the class being an opt-out class (previously unstated), the "unlinking" of consortium claims with the direct abuse claims (excluded by the class as originally defined), and an opt-out procedure (completely missing). None of those was modified prior to the stated objections, so while the

addendum claims these omissions were inadvertent, they were cured only when objections noted their absence, so the order incorrectly refers to the objections as without merit.

3. Class definition. The order denies the request to modify the class to include persons whose claims had been resolved prior to class approval, page 7, but then uses a different standard in approving class representatives, each of whose claim is noted, page 15 note 7, as having already been resolved prior to the June 30 order. A double standard should not apply, and it is error to apply. Objectors should not be excluded from the class when the class representatives are permitted to be included despite having their claims resolved outside the class structure. More on that problem below, as it also raises questions about the representatives being eligible for being class representatives where their claims are (a) resolved and (b) adjudicated outside the process applicable to the class (mediation versus arbitration).

4. Page 8, footnote 3 of the order notes an action dismissed after the decision in Doe v Crooks. The order errs in interpreting the objection as attempting to reverse that action. The question the court has not considered or ruled on is whether a person who is included in a pending class action, hence is included in the class as a party to the class litigation, can properly be excluded from the class prior to the opt-out period. This question is wholly independent from the second pending question the court has not ruled on, which is whether the Diocese can exclude this potential class member, John Doe L, from the benefits of the class when the Diocese failed to disclose that the class action was pending at the time of Judge Nicholson's order. John Doe L's contention is that the Diocese cannot exclude a class member by either means. John Doe L is included within the class action by definition, and remains included regardless of the

action taken by Judge Nicholson, and, independent of that point, the Diocese may not benefit by fraud in failing to disclose the class suit that was pending in April, 2006. The order rules on neither contention.

5. The order errs in its discussion on page 10 of *Ford v. Hutson*, misnamed in the order as Ford v. Hudson, and mis-cited as 276 S.E.2d 761 when the correct citation is 276 S.E.2d 776. *Ford* stands for the very opposite proposition claimed in the order. The order states that intentional infliction of emotional distress is "the only cause [of action] where compensation for emotional distress requires a showing of physical manifestations." Order at 10. In fact, *Ford v. Hutson* holds that where behavior was extreme and outrageous, neither physical contact nor physical manifestations were necessary:

> Although 'severe' emotional distress is usually manifested by 'shock, illness or other bodily harm,' such objective symptomatology is not an absolute prerequisite for recovery of damages for intentional ... infliction of emotional distress.

Ford v. Hutson, 276 S.E.2d 776, 778-779 (S.C. 1981), quoting with approval the Restatement (Second) of Torts, § 46, comment k. Indeed, *Ford* itself recognizes that emotional distress without physical impact was already recognized in South Carolina: "In Padgett v. Colonial Wholesale Distributing Co., 232 S.C. 593, 103 S.E.2d 265 (1958), we affirmed recovery of damages for shock, fright, and emotional upset despite the absence of any physical impact between the plaintiff and defendant." *Ford v. Hutson*, 276 SE.2d 776, 778 (S.C. 1981). Using a matrix restricted to gradations of physical touch to differentiate among those suffering psychological injury draws a distinction unrelated to the harm, and under South Carolina law is an arbitrary differentiation. Class member recovery should not be eared to an arbitrary matrix of physical touch but should be entitled to recovery based on the psychological injury, as is already

permitted under South Carolina law.

That is for the direct injury category of class members. Consortium claimants have never been restricted by a matrix related to physical touch, having always been recognized as entitled to claims of "indirect emotional distress." Hubbard and Felix, South Carolina Law of Torts, 2d ed. (1997), at p. 43-44,. That history shows that a matrix of physical touch is an illogical means of sorting out categories of class members for recovery for psychological injury. Victims should share equally, and a distribution should be made of all allocated settlement funds. The operation of the matrix, even as modified, benefits only the Diocese in minimizing the proceeds paid to victims, and in permitting settlement funds to revert to the Diocese. If the settlement is treated as a $12 million settlement for purposes of calculating the class counsel's fee, then the court should order that all $12 million be paid to the victims.

6. The order errs at page 11 in discussing, and concluding, "The law simply does not recognize a right of action of a parent to recover for the loss of consortium of a child. In my view, whether the *Glover* verdict would have survived an appeal is very doubtful." Essentially, the court has concluded that consortium claimants are worth zero or very little, as they have no support in South Carolina law.

There are two problems with this conclusion. First, on what basis are direct injury class claimants (the "primary class") required to share a settlement pool with consortium claimants if the consortium claimants have no cognizable claim? The order claims too much in derogating the claims of consortium class members, and creates irretrievable conflict among the direct injury and consortium class members.

Second, and more fundamentally, this conclusion overlooks three hundred years of

Common Law authority and a substantial number of South Carolina cases to the contrary. Again, to quote Hubbard and Felix, South Carolina Law of Torts, 2d ed. at page 571 (1997):

> There is no right of for children to sue for loss of parental consortium [citing Taylor v Medenica]. However, there is authority for allowing a parent to sue for loss of services (and perhaps companionship) of a child."

Citing, as that authority, in footnote 76, *Wright v. Colleton County School District*, 391 S.E2d 564 (S.C. 1990), *Tollerson v. Atlantic Coast Line R.R. Co.*, 198 S.E. 164 (S.C. 1936), and *Webb v. Southern Ry. Co.*, 88 S.E. 297 (S.C. 1915). *Webb* is summarized by Hubbard and Felix as "Defendant intentionally placed child in a dangerous work situation where he was injured." Hubbard and Felix, South Carolina Law of Torts, 2d ed. at page 571 n. 76 (1997). Pertinent to this pleading, the opinion states, at 88 S.E. 299:

> The mother was entitled to the services of her minor child. She was entitled to his companionship, and was entitled to place him at work with some one that she had confidence in, and put him to work in a business that was reasonably safe. The defendant persuaded him to leave this occupation, carried a minor beyond the state, and put him to work in a hazardous business without the consent of his mother. He was seriously injured, and the evidence is ample to sustain the verdict for actual and punitive damages. The defendant cannot send out agents acting within the scope of their authority to entice minors away from their parents without their consent and put them in a dangerous work and have them injured without paying damages.

But there are more South Carolina cases supporting claims by parents for injuries to children than are cited even by Hubbard and Felix. Claims by parents for injuries, both pecuniary and intangible, stemming from sexual misconduct with a child have long been recognized in South Carolina decisions, and such claims have been recognized at Common Law for over three hundred years. E.g., *Rumler v. Gantt*, 121 S.C. 117, 117, 113 S.E. 581, 581 (S.C. 1922) ("This action was brought for damages for loss of services of plaintiff's daughter and for shame, humiliation, and mental anguish caused by the defendant's seducing, debauching, and

"Class action" for challenge

carnally knowing her."); *Villepigue v. Shuler*, 1849 WL 2667, 34 SCL 462, 3 Strob. 462 (S.C. 1849) ("This was an action on the case for seducing and getting with child the plaintiff's daughter."). The concept was most recently approved in *Manufacturers and Merchants Mutual Ins. Co. v. Harvey*, 330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998), where insurance coverage was found to exist for a parent's claim when her children were sexually abused as a result of alleged negligence. There is no way to read *Harvey* without recognizing that a parent may make such a claim. There would be no insurance coverage for a claim which was not cognizable.

A parent's right to assert claims for their own injuries after their child is injured, including injuries from sexual assault, was recognized at Common Law as early as 1653. E.g., *United States v. Standard Oil*, 332 U.S. 301, 311-312 and n.17, 67 S.Ct. 1604, 1610 and n. 17 (1947) (tracing to 1653 the Common Law Right of "the parent's right to indemnity for loss of a child's services, including his action for a daughter's seduction.").[2] An example of such a claim at Common Law is *Tullidge v. Wade*, 95 Eng. Rep. 909, 909 (K.B. 1769) (upholding father's damage award for his daughter's seduction).

It is an ancient tradition, with Biblical roots. Deuteronomy 22: 28-29 (King James): "If a man find a damsel who is a virgin, who is not bethrothed, and lay hold on her, and lie with her, and they be found; then the man who lay with her shall give *unto the damsel's father* fifty

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[2] This is a direct, not a derivative, claim by the parents. E.g., *Stewart v. State Farm Mutual Automobile Ins Co.*, 341 S.C. 143, 156, 533 S.E.2d 597, 604 (Ct. App. 2000) ("Under South Carolina law, unlike that of some other states, loss of consortium is an independent action, not derivative."); *Manufacturers and Merchants Mutual Ins. Co. v. Harvey*,330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998) (finding insurance coverage for a parent's claim when children were sexually abused); *Berry v. Myrick*, 260 S.C. 68, ___, 194 S.E.2d 240, 242 (1973) ("loss of services or consortium is an immediate rather than a delayed consequence of the defendant's negligence or wrongful act causing physical injury to plaintiff's spouse, *child*, or employee . . .," *quoting*, 173 A.L.R. 755, When Statutes of limitations Begin to Run Against Action for Loss of Services or Consortium. Emphasis added.

shekels of silver . . . ." (emphasis added). Blackstone describes the husband's right to make this claim for a child's "ravishment" as being a writ available to him, "in the same manner as the husband may have it, on account of the abduction of his wife." 3 Blackstone, Commentaries on the Laws of England Ch. 8, p. 141 (1979 facsimile edition of the First Edition of 1765-1769).

Nor is the claim unique to South Carolina, as Georgia, North Carolina, and Virginia, to name but a few, recognize the Common Law right of parents to recover intangible damages from sexual assault of their child. It was a typical claim at Common Law. E.g., *Kendrick v. McCrary*, 11 Ga. 603, 606 (1852) (permitting parent's claim for seduction of even an *adult* daughter living at home and damages for the intangible "atrocious invasion of his household peace"); *Abbott v. Hancock*, 31 S.E. 268, 269 (N.C. 1898) (permitting wife to maintain action for daughter's seduction); *Kinney v. Lauchenour*, 89 N.C. 365, 1883 WL 2531 (N.C. 1883) (permitting claim by step-father for seduction of step-daughter); *Briggs v. Evans*, 27 N.C. 16, 5 Ired. 16 (N.C. 1844) (authorizing damages for father's intangible "outraged feelings"); *White v. Campbell*, 54 Va. 573, 573-574 (1856) (authorizing damages for intangible loss of "the peace and happiness of the injured father."). One "A. Lincoln" successfully defended such a verdict in the Supreme Court of Illinois in 1842, representing the father of a seduced daughter. *Grable v. Margrave*, 4 Ill. 372, 1842 Ill. Lexis 9 (Ill. 1842). The appellate court upheld the intangible damage award to the father Lincoln represented.

The court errs and creates unnecessary conflict among classes of class members by this conclusion in the order that concludes that consortium claims have no legal foundation. The order's conclusion that the Glover verdict would "probably" not have survived appeal, thereby is to be discounted, engages the court in speculation, without acknowledging that those cases were certified as a class, survived a series of motions for summary judgment, as well as survived

directed verdict motions at trial. The three hundred year Common Law history in support of such claims, which the order does not even address, bore heavily on those motions. The order appears to reflect that class counsel has brought a claim which does not satisfy SCRCP 11, which these objectors do not believe is the case, and creates an appearance that the parties are colluding to minimize recovery for victims.

The issue is actually pending before the South Carolina Supreme Court, and once that case is decided an adequacy objection by any direct injury class member objecting to the settlement will be ripe, regardless of the outcome of that appeal. If the appeal affirms the claim then the amount paid to consortium claimants will be subject to challenge from the rationale in the order for limiting the claims. If the appeal overturns the claim then the primary class members will object to sharing a settlement fund with persons who have no claim.

Finally, if class counsel is unaware of the legal support for the consortium claims for parents, the court should reconsider whether class counsel is "inadequate fairly to protect" the interests of the consortium class. SCRCP 23(d)(3). Alternatively, the court should reserve that issue pending the outcome of the appeal presently in the South Carolina Supreme Court.

7. Effect of Appeal. The order at pages 12 – 16 sets in motion time limits applicable to notice and claims, but makes no provision for the effect of an appeal from the court's order. No provisions should be put into effect until any appeal is resolved, including the fees provisions, to avoid having to later disgorge fees, from objections noted below. Until entry of final judgment, the court retains authority to redefine or de-certify a class. E.g., *In re Unisys Savings Plan Litigation*, 1997 WL 230789 (E.D. Pa. 1997):

> even though a court enters a class certification order, "[u]nder Rule 23(c)(1), the court retains the authority to redefine or decertify the class until the entry of final judgment on the merits. This capacity renders all certification orders conditional until the entry of judgment." *In re Gen. Motors Corp. Pickup Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 792 n. 14 (3d Cir.), *cert. denied sub nom., General Motors Corp. v. French*, 116 S.Ct. 88 (1995).

Discovery of new facts, changes in parties (such as the class representatives), or changes in the substantive or procedural law may each require reconsideration of earlier orders about certification or how the class is defined. Id., citing *Manual for Complex Litigation, Third* at § 30.18 (1995).

8. Notice. The order errs in not providing for a nationwide notice. Objectors' counsel had been assured by class counsel that a nationwide notice provision would also be included, not simply notice through various state newspapers. Yet the order provides for notice only within South Carolina. Given the number of people who move across state lines, some national means of notice should be provided. The order errs in providing for only notice in South Carolina newspapers. Publication in either the USA Today or The New York Times would seem appropriate if the parties truly were interested in giving notice to potential class members.

9. The order has erred in awarding attorneys fees. A. Entry of final judgment has not occurred. The order approves fees for class counsel as if final judgment has been entered and class counsel has recovered $12 million for abuse victims. That conclusion is clearly erroneous, as no awards have yet been made for any class members other than the class representatives. Awarding fees based on the *potential* award to class members is not a proper basis for an attorney's fee award. Only the actual recovery for class members, not a theoretical recovery for

the class, is a proper basis for assessing attorney's fees, and only after entry of final judgment is the fee issue properly addressed. SCRCP 54(d) and (e). SCRCP 23 does not provide for interim awards of attorneys fee.

B. Class recovery is not yet known. The order is premature in awarding fees before any victim has recovered an award The court should confront the fee award only when a class recovery is finished. Alternatively, the order may approve the attorney's fee at this point only by also ruling that the entire settlement fund of $12 million will be distributed to claimants, pro rata or per capita, once the claims process is concluded. Should that modification be accepted then counsel will have earned the fee as assessed by the court, and need not wait for class distribution to be paid. Otherwise, the calculation that the fee is 20.8% of the recovery for all victims is simply incorrect, and clearly erroneous in that it precedes any benefit to the class.

If the fund for the class is irrevocably $12 million, and will be distributed either per capita or pro rata after the claims period, this objection will be satisfied. If the "gross settlement" turns out to be less than $5 million, for example, then the fee calculation would have to be revised substantially, and counsel should not be restricted to 20.8% of the actual recovery to the class, a sum which could be quite modest. If the "gross settlement" turns out to be $2 million then counsel will have recovered more than 100% of the accumulated benefits to the class. $12 million is only the maximum amount that the Diocese might have to pay. The order provides, at page 15, that the Diocese is required to fund only an "initial" fund of $4,540,000. That may also prove to be the final fund, and only a portion of that $4.5 million fund may be distributed, given the caps on class member recoveries. Exhibit A states that members who remain in the class may "possibly" receive money from the settlement.

It is error to base an attorney's fee on a potential result rather than an actual result. The

claims process should go forward and the fee calculated for approval after the benefit to the class is known, not on a hypothetical benefit that seems frankly to be remote. Again, unless the order is modified to provide for a pro rata or per capita distribution of what remains of the $12 million potential pool for recovery.

C. The order errs in providing for fees to be paid in ten days. Unless the order is revised to pay $12 million to all class members either pro rata or per capita at the conclusion of the claims process, no fees should be paid before all class members have been paid,.

D. The order errs in not setting forth if the fee is awarded on a contingency or lodestar scheme, or a hybrid.

10. The orders errs in authorizing or permitting class representatives to be paid before the class, and by different means. The order recites that class representatives have already been paid. Order at page 15, n. 7. To treat some class members outside of the class procedures raises issues about those persons being representative of the class, acting in the interest of the class, and acting so as to protect the class, and about whether claims of persons resolved prior to any claims process then satisfy the definition of a class member. It would seem those persons would become persons whose claims are resolved, and make them ineligible for class inclusion. It also suggests that the class representatives may have breached their duties to absent class members by being paid first, and through a different process (mediation) than applies to other class members (arbitration). New class representatives may need to be appointed, since the class representatives have no remaining claim.

Class representatives are often permitted to obtain a premium for conducting the litigation, and there is no objection to that concept. But the order does not disclose what the

class representatives have already received beyond the general statement that they have collectively been already created a fund of $460,000. The order should indicate to other class members what each class representative was paid. And, as noted above, the class representatives should not be paid outside of the very claims process that all other class members must participate in, or by different criteria. Since that is a fait accompli, new class representatives should be named.

The order should also disclose if the class representatives have paid attorneys fees from their recovery, or if the attorney fee authorized includes class counsel's time or actions for individual clients rather than the class.

11. Psychological Assessment and Counseling. The order and exhibits do not indicate who does these assessments and/or counseling. The order should indicate that it may be with a therapist of the victim's or family member's choosing, to be reimbursed by the Diocese, not a therapist dictated by the Diocese.

12. Exhibit A. The order errs in including persons abused by their parents or spouses. As written, the class would include those persons abused by parents or spouses, which is probably not an intended claimant. The first sentence should be two sentences:

> This action applies to 1) any person born on or before August 30, 1980; 2) who, as a minor, was sexually abused; 3) at any time by any agent or employee of the Diocese of Charleston; 4) who has not previously had any similar claim adjudicated, resolved, or released. The action also applies to 5) the parent or spouse of any such minor, 6) who has not previously had any similar claim adjudicated, resolved, or released.

13. Exhibit B. The order errs in setting two different birth dates for claimants. The definition of the consortium class includes the spouses and parents of victims *who are not eligible to participate in the victims' class.* The primary class is defined as persons born before August 30, 1980, whereas spouses or parents who may participate are for those individuals born on or before August 30, 1998. This may be a typographic error, but the notice needs, above all, to be accurate. Documents to be sent to the class need to be prepared with care. The notice the court has approved needs clarified.

The definition of "sexual abuse" is obviously taken from a criminal statute. Many aspects of abuse do not neatly fit the legalistic definition, and many putative class members may not understand it. Notice to potential class members should be clear and readily understandable. If there is no way to avoid that definition, the notice should include "You should consult with a legal professional if you are uncertain about the meaning of 'sexual abuse' as applied to you or your spouse or child."

The order states that if there is a dispute about whether a claim is *bona fide*, the claimant will have a chance to prove their claim, but does not set forth a procedure on how that will occur, except to say on page 3 of Exhibit B that the arbitrator has sole and final determination of the sums to be awarded, and in Exhibit H that the arbitrator alone determines if a person is a member of the class. Page 3 of Exhibit B states that the claim proceedings are confidential. Page 4 of Exhibit 4 provides for psychological counsel which can be used in support of the claim but deprives the Diocese of that information. In order for claimants to make an informed decision on whether to participate in the class, the notice should include that information on each aspect, since to submit the question to the arbitrator requires a waiver of appeal, and it is not clear from the forms if the Diocese can raise objections if it does not receive

al documents for claims.

The order errs in using a matrix of physical touch as the only means of separating subclasses of primary class members. Objections to the matrix are not restated here. The court's ruling to date is sufficient to submit those issues to an appellate court as a means of sorting out hard and fast subclasses of members of the primary class.

14. Exhibit C. The order errs in requiring Social Security Numbers for claimants, an unnecessary intrusion as a routine request. If it is needed to identify records or for another purpose, a provision can be made to that effect. The identity of their parents or spouses should be requested only if those persons have made a claim.

15. Exhibit D. Same concern as to Social Security Numbers.

The order and Exhibit errs in making no provision for parent claims if siblings have been molested. Does each parent get $20,000 for each of their children who have been abused, or is a parent who is unfortunate enough to have two or more of their children abused by their priest only entitled to the same amount as a parent who only had one child abused? Assuming, of course, it is conceded that a parent's claim is cognizable, which the order at present disputes, even while proposing to make payment to parents for such claims.

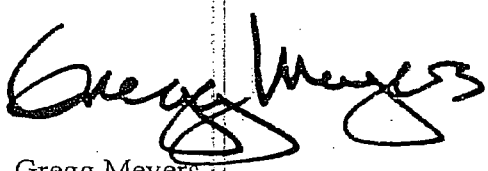
16. Exhibit F. The form includes a voluntary waiver of appeal rights prior to the victim knowing whether they are considered by the arbitrator to be a class member. It should preserve that right until that determination is made. If the arbitrator determines that a person is not a member of the class, that person should revert back to opt-out status as of the date the first

class suit was filed.

Conclusion

The order should be modified in the particulars as noted above. Objectors request notice of any order entered by the Court and proper notice of any hearings for these objections.

Respectfully submitted,



Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

Attorney for putative class members

Certificate of Service

I hereby certify that I have caused a copy of the enclosed

Motion to Alter or Amend

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

Richter & Haller, LLC
622 Johnnie Dodds Boulevard
PO Drawer 1089
Mt. Pleasant SC 29465

Peter Shahid
15 State Street
Charleston SC 29401

Lionel Lofton
PO Box 449
Charleston SC 29402

John Sinclaire and Glenn Churchill
PO Box 370
Charleston SC 29402

W. Ellison Thomas
109-A Simmons Street
Mt. Pleasant SC 29464

Done August 7, 2007

Respectfully submitted,

Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

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

Memorandum In Support of Motion to Alter or Amend

Counsel for class objectors has seen class counsel's contention that the Diocese is colluding with "parties who seek to disrupt the Settlement." This can be a reference only to the class members who have raised objections, but we would note for the Court's attention that at no time have the class members stating objections sought to "disrupt" the settlement. Class members stating objections have sought to expand the recovery for victims of sexual abuse, and nowhere in the pleadings is there a request that the court disapprove the settlement. The most we have requested are modifications that would result in greater recovery for victims of the sexual abuse, both the direct victims class and the consortium class, but do so without increasing the funds committed to the settlement by the Diocese.

As was apparent at the March 9 hearing, it is class counsel's style to make personal attacks, and we accept that reality without reciprocating it. We do not believe it advances a resolution of the merits to do so. Our concern has been the merits of the court's order, which we believe contains unnecessary problems for various individuals who are undisputedly included within the class definition, as even class counsel acknowledges in his pleading. The motion we have filed addresses those concerns.

Class counsels intensity, of course, likely derives from class members objecting to class counsel being paid a final attorney's fee *at this point*. It is regrettable, for example, that class counsel is so intense and so demanding on the issue of attorneys fees that it lends itself to, if not creates, the appearance that this case was brought to garner a large attorney fee with benefit to the class only an afterthought. That appearance could not exist but for the demand for payment of an attorney's fee that is far more than the class is likely to actually recover, and for immediate payment of that disproportionate fee, far ahead of the timetable for when class members will receive compensation.

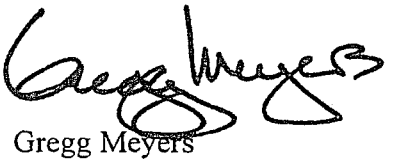
As to the unsupported (and absurd) claim of collusion, note that the Diocese objects to the settlement being made a full $12 million to victims, demonstrating that the Diocese does not expect to ultimately pay out $12 million in this settlement, and class counsel objects to his fee being assessed based on the actual recovery to victims, demonstrating that class counsel also does not expect that $12 million, or anything close to it, will be disbursed to victims once claims are made. So it appears no counsel who negotiated the settlement believe that anything close to $12 million will actually be paid to victims, yet the recovery to the class is diminished by an attorney's fee predicated on a $12 million payout and the Diocese has received the public relations value of posturing as if it is paying as much as $12 million.

These issues could have been avoided with a more prudent approach by class counsel to the attorney's fees issues.

Conclusion

Counsel are usually most helpful to the court when they calm down, analyze the issues, and advocate on the merits rather than by personal attack. Perhaps it is too much to hope for given the personalities involved in this action. The court's order has created far more issues than it needs to towards resolving the problems of this settlement. This brief memorandum addresses only one. Class objectors are attempting in their motion to alert the court to those unnecessary issues so they can be cured. Objectors are not trying to "disrupt the Settlement," but to keep it from being delayed by a trip through the appellate courts. The present order, if unchanged, makes an appeal inevitable when an appeal might be avoided.

Respectfully submitted,



Gregg Meyers
39 Broad Street, Suite 300
Charleston, S.C. 29401
843-720-8714

Attorney for putative class members

Certificate of Service

I hereby certify that I have caused a copy of the enclosed

Memorandum in Support of Motion to Alter or Amend

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

Richter & Haller, LLC
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W. Ellison Thomas
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Done August 20, 2007

Respectfully submitted,

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843/723-2852 facsimile
attygm@aol.com

August 20, 2007

Clerk of Court
Dorchester County Court
PO Box 158
St. George SC 29477

Re: Filing in 2006-CP-18-1310 et al.

Dear Clerk of Court:

This case has been combined with 06-CP-18-1311 and 06-CP-18-1636. They are all part of a class action.

Enclosed please find a memorandum to be filed in each of these cases. It has been served on counsel involved. Please return one file-stamped copy to me in the envelope enclosed for that purpose.

Thank you very much.

Yours very truly,

Gregg Meyers

Enclosures:
Memorandum and certificate of service
SASE

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

John Doe 193,

v.

Plaintiff,

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

Defendants.

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

DIOCESE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS FOR AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

Defendants, Bishop of Charleston a Corporation Sole, Robert Guglielmone, the Bishop of Charleston, in his official capacity, Rev. Monsignor Martin Laughlin, former Administrator of the Diocese of Charleston, in his Official Capacity, and Robert J. Baker, former Bishop of Charleston, in his Official Capacity, ("the Diocese Defendants") move for judgment as a matter of law on all claims made by the above captioned Plaintiff pursuant to Rule 56, SCRCP. Because Plaintiff cannot come forward with admissible evidence establishing that there remain genuine issues of material fact for trial, all claims against the Diocese Defendants should be dismissed with prejudice. In particular, the Diocese Defendants put forth the following:

1. Aiding and Abetting Breach of Fiduciary Duty

It has been long-settled in this State that a cause of action for aiding and abetting breach of fiduciary duty requires that plaintiff *prove* (1) a breach of fiduciary duty owed to the plaintiff;

(2) the defendant's knowing participation in the breach; and (3) damages. "The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach."[1] Where the defendant owes no fiduciary duty to the plaintiff as a matter of law, then the Diocese Defendants cannot knowingly participate in a breach of that duty.[2] Plaintiff cannot establish any of the essential elements of this claim and, failing any admissible evidence to support the claim, the Diocese Defendants are entitled to summary judgment.

As a threshold, Plaintiff concedes in his Complaints that his Breach of Fiduciary Duty claim against the Lawyer Defendants "Presumes that Plaintiff is precluded from making claims against the Diocese, for any reason, including the class action, charitable immunity, or the statute of limitations."[3] This Plaintiff *was not* precluded from bringing these actions against the Diocese based upon the Court's ruling on limited collateral review. That ruling determined that the Class Notice ordered by the Class Action Court did not comply with Constitutional Due Process, and, as such, the Class Action Settlement did not bar Plaintiff's claims arising from sexual abuse long ago.

However, that also meant that the Plaintiff was in precisely the same position he was in 2007 – no better and no worse – as his claims of sexual abuse and damages from the Diocese's alleged negligent supervision faced the same affirmative defenses then as now. In short, even assuming, though not conceding, the Lawyer Defendants owed this plaintiff a fiduciary duty at all, and that Richter & Haller breached some duty, this Plaintiff was not harmed in any respect. Assuming all else, this Plaintiff cannot ever show how he was damaged by anything the Lawyer Defendants did or did not do, or that the Diocese helped them along. For that reason alone, Plaintiff's claim for aiding and abetting must fail.

---

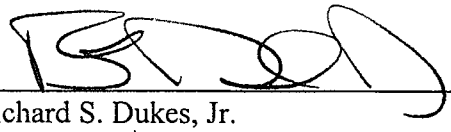
[1] *Future Group II v. Nationsbank*, 478 S.E.2d 45, 50 (S.C. 1996) (internal citations omitted).
[2] *Mason v. Mason*, 770 S.E.2d 405, 422 (S.C. 2015).
[3] *See e.g.* Jane Doe 11 Complaint, ¶ 245.

Just as importantly, nothing Plaintiff alleges in his complaint constitutes aiding and abetting breach of fiduciary duty. Each and every action (or inaction) alleged as a basis for the aiding and abetting claim against the Diocese was in fact disclosed to the Court; scrutinized by the Court; and disclosed in the Court-approved notice to the class. Further, many of the items Plaintiff now complains about were the subject of objections to the class settlement filed by clients of Mr. Meyers – which the Court considered and overruled. The class settlement went forward pursuant to the deal struck by the representative plaintiffs, class counsel, and the Diocese. The Diocese's *only* duty in settling the class action was to fulfill its obligations under the settlement agreement, and there is no question that the Diocese did that. The Diocese had no duty to object, oppose, or otherwise upset the settlement agreement – and, in complying with the terms of the settlement agreement, the Diocese cannot be liable for aiding and abetting any alleged breach of fiduciary duty by class counsel.

CONCLUSION

Because Plaintiff cannot come forward with even the slightest scintilla of admissible evidence to support his claim of aiding and abetting breach of fiduciary duty against the Diocese Defendants, the Court should grant judgment as a matter of law to the Diocese Defendants and dismiss Plaintiff's claims with prejudice.

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



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Attorneys For The Bishop Of Charleston, A Corporation Sole, Robert Guglielmone, The Bishop Of Charleston, In His Official Capacity, Rev. Monsignor Martin Laughlin, Former Administrator Of The Diocese Of Charleston, In His Official Capacity; Robert J. Baker, Former Bishop Of Charleston, In His Official Capacity

July 10, 2017

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF CHARLESTON	)	
John Doe 2 and Jane Doe 4,	)	CASE NO.: 2010-CP-10-5520
Plaintiffs,	)	
v.	)	**Lawyer Defendants' Motion for Summary Judgment as to Claims of Jane Doe 4 on Notice**
The Bishop of Charleston, et. al.	)	
Defendants.	)	

The Defendants Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC ("the Lawyer Defendants") move the Court for an Order pursuant to Rule 56, S.C. R. Civ. P., finding and concluding that there are no genuine issues as to any material facts relating to the claims of Jane Doe 4 against the Lawyer Defendants and that the Lawyer Defendants are entitled to summary judgment against this Plaintiff as a matter of law on the grounds set forth below.

In its Amended Order on Limited Collateral Review dated May 3, 2017, the Court found that Jane Doe 4 and the other nonresident Plaintiffs were not precluded from pursuing claims against the Diocese Defendants in these cases because "the notice plan directed by the class action Court did not satisfy due process as to putative class members[1] (1) who did not receive actual notice and (2) lived outside of the areas in which notice was published." Amended Order on Limited Collateral Review, page 5. In the Order, the Court recognized that some areas bordering South Carolina – such as Augusta, Georgia – did receive notice by publication. The Court stated that "Nothing in this Order is intended to suggest that the notice provided in such areas was in any way inadequate." *Id.*, Footnote 1, page 4.

[1] Putative class members are ostensible or purported class members who are not named parties in the litigation but who meet the definition of a class member as adopted by the court. All nonresident Plaintiffs in the pending cases would have been putative plaintiffs in the underlying class action.

This motion addresses just such a claim. Plaintiff, Jane Doe 4, lives in Martinez, Georgia, a suburb of Augusta. Exhibit A, Excerpts from Deposition of Jane Doe 4, June 3, 2014, p. 31, ll. 8 -15. The *Augusta Chronicle* is the primary newspaper for the area. *Id.*, pp. 43-44. Jane Doe 4 lived in Martinez in 2007 when the underlying class action was settled and notice of the settlement was published in the *Augusta Chronicle. Id.*, page 70, line 25 to page 71, line 18. Jane Doe 4 admits that she had access to the *Augusta Chronicle. Id.,* page 72, lines 3 – 15.

The logic applied by the Court to the other nonresident Plaintiffs in its Amended Order on Limited Collateral Review does not apply to Jane Doe 4. Jane Doe 4 lived inside of the area in which notice was published. The notice plan in the underlying class action was reasonably calculated to give her notice and, therefore, accorded her rights of due process. That being so, Jane Doe's claims against the Diocese are barred by the *res judicata* effect of the class action settlement. Since she was, in fact, given notice of the settlement through publication, her claims against the Lawyer Defendants fail as well because of all those claims hinge on the premise that she was not given notice of the settlement.

Whether Jane Doe 4 is viewed as (1) a nonresident who did not receive notice of the settlement through publication, or (2) a resident of an area in which notice was published, she has no claims against the Lawyer Defendants. In the former situation, she is not bound by the terms of the class action settlement and can pursue her claims against the Diocese, which makes her allegations against the Lawyer Defendants "irrelevant". In the latter situation, she is bound by the terms of the class action settlement, and because she received notice she has no claims against the Lawyer Defendants. Either way, the Lawyer Defendants are entitled to summary judgment as to the claims alleged against them by Jane Doe 4.

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Benjamin C. Bruner
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& MULLINS, LLC
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Columbia, SC 29260
(803) 252-7693
Attorneys for the Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC

Susan Taylor Wall
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P. O. Box 1431
Charleston, SC 29402
(843) 723-7831
Attorneys for the Defendant David E. Haller

July 10, 2017

2010-CP-10-5520

CERTIFICATE OF SERVICE

The undersigned James L. Bruner, attorney for Defendants Lawrence E. Richter, Jr. and Richter & Haller, LLC, does hereby certify that on July 10, 2017, I served a copy of the documents listed below on counsel of record by electronic mail and by depositing a copy of same in the U.S. Mail, first-class, postage prepaid and addressed as follows:

Pleadings served:

1. Lawyer Defendants' Motion for Summary Judgment as to Claims of Jane Doe 4 on Notice.

Counsel served:

Gregg Meyers, Esq.
PIERCE, HERNS, SLOAN
& WILSON, LLC
321 East Bay Street
Charleston, SC 29401
Attorney for the Plaintiff

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

FILED
2017 JUL 11 PM 1:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Susan Taylor Wall, Esq.
McNair Law Firm, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401
Attorney for David K. Haller

Richard S. Dukes, Jr.
Turner Padget
PO Box 22129
Charleston, SC 29413
Attorneys for the Diocesan Defendants

James L. Bruner

Exhibit A

to

Lawyer Defendants' Motion for Summary Judgment as to Claims of Jane Doe 4 on Notice

Excerpts from Deposition of Jane Doe 4, June 3, 2014

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

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

(Caption Continues on Page 2)

DEPOSITION OF: JANE DOE 4

DATE: June 3, 2014

TIME: 1:05 PM

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

TAKEN BY: Counsel for the Defendants

REPORTED BY: Roxanne M. Easterwood, RPR

Q. You and your Sister L lived close to each other? She's in North Augusta?

A. She's in North Augusta now.

Q. And is it Martinez?

A. My husband says it's Martinez, and he says rednecks say Martinez. I say I must be a redneck.

Q. Martinez, Georgia, is that in essence a suburb of Augusta?

A. Yeah. It's about ten minutes. I mean, you know, it's Augusta. There's Martinez. There's Evans. Yeah.

Q. In fact, Augusta is very close to North Augusta, correct?

A. It's across the river.

Q. One being Georgia and one being in South Carolina?

A. Right. The state line is right down the middle of the river.

Q. So Brother P tried to bring all of you together in 2009?

A. I think it was 2009.

Q. And how did it come about that only you and Brother R decided to file a suit?

MR. MEYERS: Object to form of the

A. Every Friday.

Q. Once a week?

A. Uh-huh. Last week I saw her twice because of high anxiety.

Q. Was it the anxiety because of this deposition?

A. Uh-huh.

Q. You need to say yes or no.

A. Yes. Sorry.

Q. While we're talking about your medical condition and treatment, I had sent to your attorney for you to sign a HIPAA compliant authorization for release of protected health information. I never received that back. Do you have any reason why you would not sign such a document?

A. No.

Q. I have it with me here today. We'll go through that afterwards. I'm not going to make it an exhibit, but I would ask that you sign those with your attorney present.

A. Okay. I have no problem with that.

Q. What is the primary newspaper in Martinez, Georgia?

A. We don't have a newspaper for Martinez.

We have something called the Metropolitan Spirit that's for the whole CSRA, which is Central Savannah River area which includes all of the little towns around there. But Augusta's paper is called the Augusta Chronicle.

Q. Is that the primary newspaper for the area?

A. I guess.

Q. Would you ever read the Augusta Chronicle?

A. Not really, no.

Q. Really?

A. I don't -- I find the news very disturbing.

Q. So you just generally don't read the news?

A. Huh-uh.

Q. Do you listen to the news on television?

A. I listen to a couple of people on talk radio when I'm in the car. No, not really. Now my husband likes to watch the news, and I play my computer games when he's watching that.

Q. Does he read the Augusta Chronicle?

A. No, he doesn't get it either.

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

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

Q. Cigarettes?

A. Yes.

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

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

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

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

Q. I understand. Back in 2007 were you

living in the Augusta area?

A. Yeah. I was living in Martinez.

Q. That's in the Augusta area?

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

Q. Did you live there in 2008 as well?

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

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

A. That's where I live now.

Q. How long have you lived at that address?

A. Since 1993.

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

A. Yes.

Q. Aiken is right across the river from --

A. Who?

Q. Aiken, South Carolina.

A. Aiken is about an hour away.

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

A. No, I have never looked at the Aiken Standard.

Q. But you certainly had access to the Augusta Chronicle?

A. I would say I had access to it, but I have never had a subscription to the Augusta Chronicle.

Q. The area that you lived in, the Augusta Chronicle serviced -- that was part of the circulation of the Augusta Chronicle?

A. Yes.

Q. If you wanted to, you could easily have subscribed to it and it could have been delivered to your home?

A. Yes.

Q. How much is the counseling sessions that you're going to on a weekly basis? How much are those that they cost you?

A. I have to pay a $25 co-pay.

Q. So the insurance picks up the rest of that?

A. Yes.

Q. That's insurance through your husband's military benefit?

A. Yes.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case Nos.: 2010-CP-10-05520, 2010-CP-10-07233,
2012-CP-10-05559, 2013-CP-10-03733, 2013-CP-10-04175,
2013-CP-10-04176, 2015-CP-10-05486, 2016-CP-10-01632

Consolidated as 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.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, the undersigned certifies that this Volume of the Record on Appeal contains only matter which was designated by one or more of the Respondents and is incomplete or omitted from Volumes One through Seven of the Record on Appeal.

January 22, 2019

Benjamin C. Bruner, Esquire