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The State of South Carolina In The Court of Appeals

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

Appellate Case No. 2017-001996

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SC Court of Appeals

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

Appellants

v.

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

Respondents

RECORD ON APPEAL
VOLUME FIVE

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John Doe 193, Father Doe 194, John Doe 194, John Doe 245
and Father Doe 245, and John Doe 297,

Appellants

v.

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

Respondents

Record On Appeal Volume Five

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

v.)

Bishop of Charleston et al.,)

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

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CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

John Doe 10,)
Plaintiff,)

v.)

Bishop of Charleston et al.,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 10-CP-10-7233

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Jane Doe 11,)
Plaintiff,)

v.)

Bishop of Charleston et al.,)

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

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Father Doe 194,)
Plaintiff,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 13-CP-10-4175

v.)
)
Bishop of Charleston et al.,)
_____)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 13-CP-10-4176

John Doe 194,)
)
Plaintiff,)

v.)
)
Bishop of Charleston et al.,)
_____)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 15-CP-10-5486

John Doe 245 and Father Doe 245,)
)
Plaintiffs,)

v.)
)
Bishop of Charleston et al.,)
_____)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 16-CP-10-1632

John Doe 297,)
)
Plaintiff,)

v.)
)
Bishop of Charleston et al.,)
_____)

**Plaintiffs' Memorandum Opposing
Motions for Summary Judgment**

A separate memorandum, and the facts set out in the light most favorable to the plaintiffs, has been submitted as to John Doe 193, who resides in South Carolina but who in 2007 had no memory of his abuse. See, *Moriarty v. Garden Sanctuary Church of God*, 534 S.E.2d 672 (2000) (recognizing repressed memory statute of limitations exception for sexual abuse victims). It is undisputed that the plaintiffs other than John Doe 193 each resided out of state in 2007. John Doe 2, his spouse Jane Doe 11, and Jane Doe 4 resided in Georgia. John Doe 10 resided in New York. John Doe 194 and Father Doe 194 resided in Minnesota. John Doe 245 and Father Doe 245 resided in California. John Doe 297 resided in North Carolina.

Summary Judgment Standard. We incorporate from the Doe 193 memorandum the statement of the applicable summary judgment standard and the obligation to view the facts in the lights most favorable to the plaintiff, the scintilla evidence standard, and that discovery involving the lawyer defendants and the Diocese role in the aiding and abetting has been stayed (and on that ground alone summary judgment should be denied). We also incorporate the facts as set out in that Doe 193 memorandum, in the light most favorable to the plaintiffs, a standard with which the defendants do not comply.

The facts, viewed favorably to the plaintiff. A series of facts are set out in the plaintiff's memorandum submitted as to John Doe 193. Those facts are also pertinent to these summary judgment motions, and are incorporated into this memorandum.

Judge Young's Prior Order. In 2011, Judge Roger Young ruled on a motion to dismiss the claims of John Doe 2 and Jane Doe 4, in civil action number 2010-CP-10-5520. Attachment V, Order of Judge Young filed June 27, 2011. Judge Young conducted a limited collateral review, and found the notice in the class action inadequate to provide Due Process to John Doe 2 and Jane Doe 4, out-of-state plaintiffs. He denied the motion to dismiss as to the civil conspiracy, professional negligence, and breach of fiduciary duty claims, specifically finding that

the conspiracy claim properly included alleged special damages. Attachment V, Judge Young Order entered June 27, 2011 at 9. An appeal was taken by the defendants, but that appeal was dismissed.

Argument

The motion as to Jane Doe 4 on Notice should be denied. The lawyer defendants make two arguments as to Jane Doe 4. First, that she was given sufficient notice in the class action to be barred (from any sexual abuse claim against the Diocese) by *res judicata* from the class action. And second, that because she was given notice in the class action, she has no cognizable claim against the lawyer defendants.

It is undisputed that Jane Doe 4 resides in Martinez, Georgia, which is in Columbia County, and has lived at the same address since 1993. She does not reside in Augusta or in Richmond County, the county in which Augusta sits. Jane Doe 4 has never subscribed to the *Augusta Chronicle*, although the *Chronicle* can be obtained in Martinez. Where she lives has its own regional newspaper that covers the small towns in Columbia County in what she called the Central Savannah River Area. Jane Doe 4 dep. at 44, submitted by the lawyer defendants as part of their motion as to Jane Doe 4 on notice.

In the class action, the lawyer defendants were ordered to run a notice about the class action once a week for three consecutive weeks in various South Carolina newspapers and in the *Augusta Chronicle*. Attachment S, July 30, 2007 order approving class settlement, at p. 12. No evidence has been provided with the motion that the notice was actually run in the *Chronicle*. Nor has any evidence been offered to show the circulation area of the *Augusta Chronicle*. The latest statistics, from 2011, in the publicly available Audit Bureau of Circulation, www.auditbureau.org/ lists the *Chronicle* as having in 2011 a daily circulation of less than 45,000. The area around Augusta has a population of over 590,000.

But the lawyer defendants also do not cite to any factual explanation given to Judge Goodstein in the class action as to why they deliberately impaired notice to absent class members when they modified their notice program to delete notice originally proposed in *USA Today* (originally proposed October 6, 2006 by means of Attachment H, the motion to certify classes), to change the notice program so it did not include *USA Today* (by means of Attachment L, the revised motion to certify classes, proposed January 17, 2007). As set forth in detail in the Doe 193 memorandum, the lawyer defendants in this case have proffered to this court the claim that they will testify that they restricted notice to Jane Doe 4 (and every other plaintiff) at the request of their adversary, the Bishop, on the supposed objection by the Bishop that better national notice, in *USA Today* was “too expensive.” Attachment X, Hearing transcript. In fact the settlement agreement provided that all costs for notice came from the settlement fund, so the nationwide notice was already paid for and did not increase the obligation of the Diocese. So the representation made on the record to this court is dubious, at best. But utterly no explanation was given to Judge Goodstein, and the Diocese made no objection, to the notice program being modified to make it *less* effective at reaching Jane Doe 4 and the other plaintiffs.

In Judge Young’s order filed June 27, 2011, he concluded (Attachment V, Order at 3) that Jane Doe 4 (and John Doe 2) had not received adequate notice, citing that notice “must be ‘the best practicable, ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,’” and cited *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, 105 S.Ct. 2965 (1985). That remains the standard for publication notice to a class. When the lawyer defendants deliberately changed their notice program from national notice in *USA Today* to only local notice, changes made deliberately to *weaken* the notice program, Attachment V, Order at 4, Judge Young found that the local notice was “not reasonably calculated, under all the circumstances, to apprise these

out-of-state Plaintiffs of the pendency of the action.” Attachment V, Judge Young order at 5. The lawyer defendants attempted to appeal Judge Young’s order, but the S.C. Court of Appeals dismissed the appeal. Attachment W, 2011 Order of Court of Appeals.

Nor is it possible that the notice actually given was the “best practicable” when deliberate changes were made to cause it to be less effective. There is no reason to disturb Judge Young’s conclusion as to Jane Doe 4. Class counsel originally proposed notice to the class via *USA Today*. Attachment H, October 6, 2006 motion for class approval. Without explanation to Judge Goodstein, and without objection by the Diocese, the national notice was simply deleted, making it less likely that any notice would reach Jane Doe 4.

Publication notice to a fraction of the population in Georgia of a South Carolina class action is not “the best practicable” notice or a notice that is “reasonably calculated” to have reached Jane Doe 4, who lives outside of Augusta and has never taken the Augusta paper, particularly when the settlement agreement provided that the class notice would be paid for by the funds advanced by the Diocese. Attachment M, January 17, 2007 typed agreement, at p. 11 item (u) (“All costs associated with the management of the class shall be paid from the settlement fund.”) Removing *USA Today* as a source of publication notice was not reasonable, was not explained to Judge Goodstein, and was not reasonably calculated to give notice to Jane Doe 4. It cannot properly preclude her claim that the notice given to her was deliberately made less effective.

The motion as to the class notice and Jane Doe 4 should be denied.

The Conspiracy claims, by its terms, rested on the class precluding the plaintiffs’ claims. As is overtly stated in each complaint, the Conspiracy cause of action presumes that *res judicata* has barred each of the plaintiffs from bringing a claim. E.g., Doe 2 and Jane Doe 4 at ¶

61; Doe 10 at ¶ 70; Doe 193 at ¶ 104; Doe 194 at ¶ 121; Father Doe 194 at ¶ 123; Doe 245 at ¶ 149; Doe 297 at ¶ 134. Each complaint includes the same alleged conduct in the professional negligence and breach of fiduciary duties causes of action, although the damages alleged are different, and (despite the lawyers' misrepresentations) each of those causes of action are predicated on different facts, including that any defense waived in the class action would apply to burden the claim. Given that there are ample facts to support claims for professional negligence and breach of fiduciary duty by class counsel, and given that *res judicata* has not barred the plaintiffs' claims, the conspiracy claims are unnecessary to the remaining claims, unless the court applies *res judicata* to the claims of Jane Doe 4.

Counsel for the lawyer defendants are simply incorrect that the conspiracy allegations relate to the *negotiations* that produced the mediation agreement. The allegations relate to the conduct by class counsel and the Diocese after that agreement was reached, facts extensively set out in the memorandum as to John Doe 193, and incorporated into this response to the motion for summary judgment.

Nor was every action disclosed to the judge shopped-for by these defendants to oversee the class action, as the lawyer defendants maintain. A few examples are readily apparent to show that the contention is factually incorrect. As noted above, no explanation was given to Judge Goodstein as to why *USA Today* was deleted as part of the notice program, between the motions for class approval filed October 6, 2006 (Attachment H) and the same motion as re-submitted on January 17, 2007 (Attachment L). Nor was any explanation given to Judge Goostein as to why the Doe 53 class complaint (Attachment A) was duplicated in Dorchester County, word for word, after it was settled in Charleston County (Attachment G), or how Doe 53 could be a viable class representative in the Dorchester County version of his class complaint, filed in October, 2006, when his individual claim had been settled four months earlier in the

June, 2006 mediation. Nor was any explanation given Judge Goodstein for class counsel's inventive time keeping records. And Judge Goodstein did not ask, after any of these issues, which as noted below and as set out in detail in the Doe 193 memorandum, may be one reason why the defendants collaborated in the judge-shopping mechanisms used to move the cases to her.

We look forward to exploring those topics in deposition with class counsel, but the motion for summary judgment on these grounds should be denied.

Claims against the Diocese for Aiding and abetting breach of fiduciary duty are supported by the facts viewed in the light most favorable to the plaintiff. As with Doe 193, the Diocese contends that the claims against it for aiding and abetting the breach of fiduciary duty must be dismissed because the plaintiffs were not barred by *res judicata* from bringing claims against the Diocese.

And as with Doe 193, this is a nonsense argument. To briefly recap the argument made in the Doe 193 memorandum, a fiduciary duty was owed to the plaintiffs by operation of law when the lawyer defendants elected to plead a class action which included the plaintiffs in the class definition. Having done so, the lawyer defendants necessarily assumed fiduciary obligations to each of the plaintiffs.¹ *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) (internal citations omitted, emphases added):

a plaintiff who sues on behalf of a class ***and the attorney representing the class assume***

¹ As to Jane Doe 11, Father Doe 194, and Father Doe 245, the class for "spouses and parents" including each of them was stated in the June 2006 settlement agreement, Attachment D; and in the typed version of the agreement, Attachment M, filed January 17, 2007; and in the complaint in 2006-CP-18-1310, the class action for Jane Doe 1 et al, which the court has in its files, and in the Motion to Certify classes filed October 6, 2006 (Attachment H) and re-filed on January 17, 2007 (Attachment L), having removed from the 2007 filing the previously proposed notice through *USA Today*.

a fiduciary obligation to absent members of the class, including the obligation to inform them of proposed compromises of the group action. The class representative also surrenders the right to settle the action in return for individual gain, alone.

If the class representative *or class counsel* breaches the fiduciary duties he assumes and receives and retains benefits flowing from the breach, he holds what he receives upon a constructive trust for the class. This is true although the benefit received by the class representative is not at the expense of the class. Under no circumstances will the fiduciary be permitted to profit from a breach of his duty as fiduciary.

The definition of a class is “a strategy choice,” that the lawyer then must accommodate. *Tilley v. Pacesetter Corporation*, 585 S.E.2d 292, 302 (S.C. 2003).

In the class action the Diocese waived defenses of statute of limitations and charitable immunity, which is why, as to these out of state plaintiffs, it matters that the lawyer defendants in 2007 breached their fiduciary duty to each of them when the lawyers included each plaintiff in the class definition but then proceeded to give them no notice, and to impair the notice program to make notice to them less likely than originally proposed. It is also why it matters that the Diocese raised no objection to the nationwide notice program having been eliminated.

Aiding and abetting breach of fiduciary duty has three elements. E.g., *Gordon v. Busbee*, 723 S.E.2d 822, 830 (S.C. App. 2012):

“The elements for a cause of action of aiding and abetting a breach of fiduciary duty are: (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages.” *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (2008). “The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach.” *Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996).

“Participation in the breach” is a broad standard, easily met by the facts set forth in detail in the Doe 193 memorandum and incorporated here. A jury could readily conclude that the Diocese aided and abetted the breach of duty by class counsel to each of these out of state plaintiffs when the Diocese acquiesced in the notice program being deliberately reduced, without explanation to the court when the reduction was proposed.

It is undisputable that the notice program having been altered was done knowingly by the Diocese. The Diocese had both the original 2006 motion to certify classes (Attachment H) and its revised, 2007 version (Attachment L). To make it plainer, the Diocese also had Attachment T, a Motion to Alter or Amend the order approving that approved the class settlement, served August 7, 2007, filed in the class action by those clients who later opted out of the class settlement (after getting better terms than did class members. That motion states at p. 11, item 8:

The order errs in not providing for nationwide notice. * * * 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.

Attachment T. Class counsel also had that motion. The Diocese, and class counsel knew, or should have known, that by deliberately reducing the notice program, they were excluding many persons who lived out of state. The change to the notice program, to make it less effective, was deliberate, and intentional.

Contrary to the argument of the Diocese, there was not full disclosure about these changes made to the court, let alone disclosure in the materials published to the class. No explanation was given to Judge Goodstein, by the Diocese or class counsel, about why the nationwide notice was dropped. None whatever was given in any publications or mailings to the class. Nor has any been proffered. Class counsel's long affiliation with the Diocese was not disclosed to the class. The better settlement terms given to those who opted out were not disclosed to the class. There was hardly full disclosure to the class, or even to the court. And, as explained in the Doe 193 memorandum, when Judge Goodstein appeared to have been told, in the July 13, 2007 hearing, false information that persons who later "come out of the woodwork" (as have all these plaintiffs) would be given relief, class counsel failed to obtain a written order to that effect. When plaintiffs did come "out of the woodwork," neither the Diocese nor class

counsel honored the representation made to Judge Goodstein. Hence these lawsuits, which should continue.

As with the argument made by the Diocese against John Doe 193, it is similarly nonsensical for the Diocese to contend that because the plaintiffs were not precluded from claims by the order on limited collateral review then each of their claims for breach of fiduciary duty, and the Diocese having aided and abetted, should be dismissed. The plaintiffs need not be precluded by *every* ground from making claims against the Diocese, only precluded from *any* ground. And each of these plaintiffs is now worse off than he or she would have been in 2007, because the Diocese has waived no defenses as to these plaintiffs. The plaintiffs' position is less secure than it would have been in 2007. Each is worse off compared to his or her position in the class action in 2007.

As with Doe 193, the Diocese could eliminate the problem by fully compensating each plaintiff. That will take a jury, apparently. In the meantime, the motion for summary judgment as to aiding and abetting should be denied. Far more than a scintilla of evidence exists to show the knowing complicity of the Diocese in eliminating nationwide notice.

The motions by the lawyer defendants should be denied. The most extensive motion by the lawyer defendants, which they style their "omnibus motion," sets out three arguments in favor of summary judgment, which we take in turn. Each should be denied as a grounds for granting summary judgment.

Argument 1: the plaintiffs have not been precluded by collateral review from stating their claims. At pages 3 to 6 of what they style their omnibus motion, the lawyer defendants contend that no cause of action can proceed against the lawyers because collateral review of the lack of notice did not preclude the plaintiff from making claims against the Diocese. The

argument is disingenuous. Even the pleading excerpts proffered are carefully edited to claim the opposite of what they actually say.

Only the conspiracy claim and its special damages were predicated on the plaintiffs being precluded by *res judicata*. All other claims hinged on the plaintiffs being impaired for *any reason* against the Diocese. The lawyers' argument would be accurate only if *Doe v. Bishop*, 754 S.E.2d 494, 499 (S.C. 2014) had been decided differently. Once the S.C. Supreme Court ruled that outside the class action the Diocese was free to use against these plaintiffs the defenses they had waived in the class action, the plaintiffs had, and have, an impaired position against the Diocese. That impaired position is, in some instances, disabling due to the statute of limitations or due to charitable immunity. But in every instance the plaintiffs' claims for the abuse itself have been compromised in some degree, due to defenses that in 2007 they would not have faced had they been given notice.

Because the defendants cooperated in the class action to deliberately make the notice program less effective, by their actions between October 6, 2006 and January 17, 2007, by eliminating nationwide notice for a class defined without geographic limit, the defendants unarguably created classes defined so as to include the plaintiffs, but then the defendants consciously chose to give no notice to these out of state abuse victims. Each defendant in his Answer asserted *res judicata* against these plaintiffs, even though the defendants were aware they had, in the class action, knowingly eliminated the means of publication notice more likely to reach them than was publication notice not made nationwide. The funds for nationwide notice were available. Not engaging nationwide notice was deliberate. By definition, the notice provided to the class was *not* "the best practicable." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812, 105 S.Ct. 2965 (1985), because a readily available method of nationwide notice was

proposed, with funding provided, but was then deliberately eliminated by cooperation of all defendants.

No explanation for that deliberately reduced notice was provided to Judge Goodstein. Nor did she ask. Affirmative *misrepresentations* were made to Judge Goodstein about what the Diocese would do for victims who “came out of the woodwork,” by all defendants, and those assurances were not embodied in any order, so were unenforceable, either by design of the defendants or by carelessness of the lawyer defendants being outwitted by the Diocese. As a result, each plaintiff’s claims against the Diocese are impaired compared to what they could have been in 2007, and to be made whole requires additional proceedings against class counsel and the Diocese.

Argument 2: no damage has been sustained. Beginning at page 6 of the omnibus motion, the lawyer defendants contend that no plaintiff has sustained any damage and that it was not “possible” the lawyers harmed them. They then recount the testimony from various plaintiffs, who of course had no contact with the lawyer defendants.

We agree that the plaintiffs testified they were not familiar with the lawyer defendants. Rather than that testimony barring their claims, as the lawyer defendants seem to think is the case, that the plaintiffs are entirely unfamiliar with class counsel is precisely because class counsel, with the active assistance of the Diocese, *gave the plaintiffs no notice*. A conscious change was made to the class action notice program, to reduce nationwide publication notice, which necessarily reduced the likelihood that the plaintiffs would participate. The Diocese acquiesced in that change.

Under *Premium Investment*, a fiduciary obligation was imposed on the lawyer defendants, as a matter of law, the moment the lawyer defendants chose to plead a class action for abuse victims. For the plaintiffs who were directly abused, that fiduciary obligation

commenced when the Doe 53 class complaint was filed in 2005 in Charleston County. For the parents and spouse, that fiduciary obligation commenced not later than the August, 2006 parent/spouse class complaint (case 2006-CP-18-1310), and was reaffirmed with the October, 2006 and January, 2007 motions to certify classes. Once the class was approved, in July 30, 2007, different obligations for counsel ensued, about which class counsel was apparently comparably oblivious.

For example, as stated in *Hege v. Aegon USA*, 780 F. Supp. 2d 416, 432 (D.S.C. 2011), “Both class counsel and the class representatives must adequately represent the absent class plaintiffs at all times.” Class counsel has “duties of loyalty to each class member.” *Hege*, 780 F. Supp. 2d 416, 435 (D.S.C. 2011) (finding class counsel’s conduct constitutionally deficient). In this settlement, among other things, class counsel simultaneously negotiated, for themselves, a fixed fee, while negotiating for the class a variable recovery.

The settlement provided, Attachment M, Jan 17, 2007 agreement, at p. 13, that counsel’s fee would be established between a maximum and minimum, and, also at p. 13 item 6B, that counsel’s fee was fixed, and took priority over class members’ compensation, such that each client’s award was to be “reduced on a *pro rata* of the net settlement fund” if too many claims were submitted for the fund established.

That fact alone, viewed in the light most favorable to the plaintiffs, a jury could find that class counsel made their fee the priority, and that nationwide notice was eliminated so as to not have “too many” clients recovering, because “too many” clients would cause the *pro rata* provision in the settlement agreement to exacerbate class counsel’s self-dealing. So the notice to out of state class members was understandably reduced. But that did not serve the interests of the class, it served the fee interests of the lawyer defendants.

Argument 3: no attorney-client relationship existed when the lawyers deliberately compromised the notice program for the absent members of the class. This argument by the lawyer defendants reflects class counsel's deficient understanding of the ethical obligations and legal duties imposed on them by law towards absent members of the class, and reflects class counsel's inexperience with class actions.² The lawyer defendants contend, motion at 10, that they cannot have committed professional negligence because "*at the time the notice requirements were negotiated*" the class had not been certified, so the plaintiffs were merely putative class members, "not clients of the Lawyer Defendants." Motion at 10.

This careful parsing does not help the lawyer defendants, because, of course, the plaintiffs became clients of the lawyer defendants when the class whose definition included the plaintiffs was certified, by order of July 30, 2007. What matters is not only when the deficient notice was negotiated, but what notice was actually performed once the class had been approved by the court. Under SCRCP 23(d)(2), a judge can modify class action procedures "at any time."

When a class is certified, "an attorney-client relationship arises between all members of the class and class counsel." *Fulco v. Continental Cablevision, Inc.*, 789 F. Supp. 45, 47 (D. Mass. 1992) (quoting *Bower v. Bunker Hill Company*, 689 F. Supp. 1032, 1033 (E.D. Wash. 1985)). Accord, *Kleiner v. First Nat. Bank of Atlanta*, 751 F.2d 1193, 1207 n.28 (11th Cir. 1985) (attorney-client relationship at certification). Prior to certification, the obligation is fiduciary, to not prejudice the absent class members interest. E.g., *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) (fiduciary obligations imposed as a matter of law upon pleading a class action). We incorporate the Doe 193 memorandum argument about the fee being the highest priority in this class settlement, and the danger of allowing (a) fees negotiated

² At no point did class counsel claim experience in class actions.

simultaneously with class payment and (b) class agreements reached prior to class certification. E.g., *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (danger of settlements prior to class certification); *True v. American Honda Motor Co.*, 749 F. Supp. 2d 1052 (C.D. Cal. 2010) (class counsel's fee application found to be premature).

That the lawyers attempted, before certification, to disadvantage the absent members of the class by consciously changing the notice program to limit the plaintiffs' chances to get notice does not, after certification, excuse the lawyers' conduct. Judge Goodstein was never told why the notice program was deliberately reduced. Funds were provided to make the nationwide notice. It had originally been proposed, then was eliminated. Reducing the notice program served only the lawyers' fee interest, not any interest of the plaintiffs who were clients of the lawyer defendants after class certification. That the *effects* of that intentional conduct, conduct designed specifically to *disadvantage* the interests of their absent class member clients (and better secure the lawyers fee), occurred only after the attorney-client relationship was imposed by operation of law, is no defense to unprofessional conduct.

The conduct should not have been permitted in 2007. That the defendants were permitted to disadvantage the plaintiffs in 2007 needs a present remedy, and has a present remedy, through the fiduciary duty, professional negligence, and aiding and abetting breach of fiduciary duty claims in these actions.

Conclusion

The motions for summary judgment should be denied.

Respectfully submitted



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Attachment A - 000001

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

John Doe #53, individually and as a
representative of a class of other persons
similarly situated as victims of priest
sex abuse in South Carolina,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CA No. 05-CP-10- 4913

COMPLAINT
Jury Trial Demanded

Outrage, Negligence/Gross Negligence
Breach of Fiduciary Duty, Fraudulent
Concealment, Civil Conspiracy

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JULIE A. ARMSTRONG
CLERK OF COURT

FILED

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #53 is a former Charleston County resident who, while living in the Charleston area, lived in an orphanage operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various functions sponsored and operated by the Diocese of Charleston.
2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors at all times material are and were hereto a corporation organized under the laws of the State of South Carolina, having its principal place of business at 117 Broad Street, Charleston, South Carolina. Diocese is and was the corporate

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entity through which the affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be responsible for the selection and assignment, supervision, and the exercise of authority over its various agents and the members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.
4. This court has jurisdiction over the parties hereto and the subject matter hereof.

FACTUAL SUMMARY

5. Defendant Diocese operates churches, orphanages, and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere.
- 6.
7. Under the authority of the Diocese, Monsignor Thomas Duffy and other agents of Diocese took plaintiff from his childhood home in Charleston and placed him under the care of the Atlanta Diocese in Georgia, where he was housed at a facility operated by it.
8. While in Georgia, having been placed there by the defendants and/or its agents, Plaintiff was sexually assaulted by at least three Catholic Church agents.

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9. Upon being returned to Charleston by Charleston Diocese agents, Plaintiff was placed in the Catholic orphanage in Charleston. He resided at the orphanage for two years and attended school at Blessed Sacrament in Charleston.
10. Diocese encouraged people, including the Plaintiff, to enter, use, and attend its many activities on its premises. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants owed minors, including the minor plaintiff, a greater degree of care because of their lack of capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its invitees or their legal guardians, including the Plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its invitees, including the Plaintiff, from harm.
11. At all times material to the incidents alleged in this complaint, Father Lawrence Sheedy was an authority figure, moral leader, confessor, and counselor employed and/or controlled by the defendants and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.
12. In his roles within the Diocese, Sheedy came to have access to and to know the most personal and confidential information of the Plaintiff. Diocese and Bishop encouraged the plaintiff and others to share and trust Sheedy as an authority figure, moral leader, confessor, and counselor. Among other things, Diocese and Bishop encouraged Plaintiff and others to share with and trust Sheedy and other of its employees with deeply personal information and with their personal safety and salvation. As part of his employment, Sheedy reached out to plaintiff and others within the jurisdiction of the Diocese and assisted the defendants in

Attachment A - 000004

cultivating relationships of trust and confidence.

13. Plaintiff, a devout member of the Roman Catholic Church from childhood to the present, attended and actively participated in activities designed for young boys at Diocese-sponsored events.
14. The Diocese operates the various components stated in paragraph 5 above, and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling function as a means of raising revenue for its operations.
15. Plaintiff came to know the priest Sheedy through these various Diocese-sponsored programs and activities. Among other things, Plaintiff was an altar boy with Sheedy and participated in the youth programs with which Sheedy worked. Based on this relationship, as cultivated by Sheedy and enforced by the Diocese and the Bishop, Plaintiff admired, trusted, followed, revered and respected Sheedy as an authority figure, moral leader, confessor, and counselor. The defendants taught and instructed the plaintiff to do so. As a result, Plaintiff entrusted in Sheedy his personal safety and shared with Sheedy his most confidential information.
16. Because of plaintiff's position as a minor under the care of the Diocese, together with Sheedy's position in the Roman Catholic Church as an authority figure, moral leader, confessor, and counselor, Sheedy was able to have control and influence over Plaintiff. By his words and actions, Sheedy represented to Plaintiff that their relationship was one in which Sheedy was to provide counseling, comfort and advice to Plaintiff, and to look out for

Attachment A - 000005

Plaintiff's well being and best interests. These representations were untrue and intended to deceive Plaintiff. Sheedy used these representations and his various positions to gain Plaintiff's trust and confidence and to obtain control over him.

17. Between 1966 and 1967, Plaintiff, then a minor child, was sexually assaulted repeatedly by Father Sheedy.
18. On several occasions during the time when the abuse occurred, Father Sheedy provided alcohol to Plaintiff, then a minor, before sexually abusing him on Diocese property and while exercising the authorities provided to him by the defendants.
19. These incidents occurred while Sheedy was an employee and youth leader of the defendants. These assaults upon Plaintiff occurred on the premises owned and controlled by the defendants.
20. Based on the relationship of trust and confidence cultivated by Sheedy and encouraged by Diocese and Bishop, Plaintiff justifiably believed and relied on Sheedy and gave Sheedy his trust and confidence. By his words and actions, Sheedy assured Plaintiff that the abusive conduct was legal and proper. Sheedy and defendants actively concealed the wrongfulness of Sheedy's exploitation and misconduct involving children, Plaintiff included.
21. Sheedy also threatened Plaintiff with recrimination if Plaintiff revealed Sheedy's actions, often telling Plaintiff that the instances of sexual abuse on the Diocese property were "our little secret" that should never be revealed to anyone.
22. Plaintiff is informed and believes that Sheedy was known to the defendants to be unstable, unreliable, a hedonist and an abuser of alcohol. His assignment within the Diocese was as a result of his improper actions— but neither plaintiff nor his legal guardians were warned.

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23. Plaintiff is informed and believes that the defendants knew, or should have known that Sheedy had deviant sexual propensities. Furthermore, the defendants knew or should have known that Sheedy was molesting minor boys on Diocese property. Nevertheless, the defendants took no action to protect the plaintiff and others from this conduct. Moreover, it hid the conduct of Sheedy and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the defendants.
24. After Plaintiff informed agents of the defendants that he had been sexually abused by Father Sheedy, church agents in their fiduciary capacity described herein directed Plaintiff to conceal Sheedy's abuse, informing Plaintiff that church officials would remedy the situation created by Sheedy's abuse. Plaintiff was told by Sheedy and other agents of the defendants that the sexual abuse was a form of "love" and that any thought the conduct was abuse was misplaced. The acts of the defendants and its agents to fraudulently conceal the tortuous and illegal acts of it and its employees has continued until the present.
25. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.
26. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).
27. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church

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- leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.
28. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."
29. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)
30. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents in secret archives. (Ex. A, ¶ 42.)
31. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential afterlife of damnation. Diocese, Bishop and their agents and employees such as Sheedy and the agents who dissuaded plaintiff from taking action reinforced this belief.
32. As a result, Plaintiff, a good Catholic, was taught that he must obey the rules, teachings,

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doctrines, and instructions of the Roman Catholic Church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Sheedy that he must conceal that Sheedy had committed upon him a horrible sin or risk an afterlife of damnation.

33. As a result of the actions and/or inactions of the defendants, Catholic agents were allowed, and did, prey upon Plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Sheedy's conduct and the conduct of the defendants, by, among other things, years of severe psychological damage with physical manifestations.

CLASS ALLEGATIONS

34. Plaintiff brings this action on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.
35. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.
36. Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.
37. There are questions of law and fact which are common to the class, including, but no limited to, whether the Diocese and/or Bishop knew or should have known of the pervasive childhood sexual abuse throughout the state and whether the INSTRUCTION or other techniques were used to dissuade victims of the defendants' conduct from seeking civil

Attachment A - 000009

damages against it as a form of fraudulent concealment.

38. The claims of the class are typical of John Doe #53 and plaintiff is informed and believes that the defenses of the defendant will be identical as to each of the victims of the abuse. In fact, in all of the other individual cases brought against these defendants for similar acts alleged by this plaintiff, the defendants have asserted identical defenses. These actions are within the jurisdiction of this court and it may easily take judicial notice of the same.
39. Plaintiff, the representative party will fairly and adequately protect the interests of the class.
40. The amount in controversy for each of the members of the class exceeds \$100.00.
41. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants.
42. Throughout this complaint, references to plaintiff are intended to reference the plaintiff and the members of the class who he represents as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION**OUTRAGE**

43. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

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44. The defendants intentionally inflicted severe emotional distress on Plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of defendants caused Plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable man could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.
45. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION**NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS**

46. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
47. As alleged above, Plaintiff was sexually assaulted on multiple occasions by Father Laurence Sheedy who was an authority figure, moral leader, confessor, and counselor of the Plaintiff. Sheedy's duties to the Plaintiff arose from his employment with Diocese and Bishop.
48. Defendants owed duties of due care toward the Plaintiff. Defendants breached those duties and were negligent, grossly negligent, careless, reckless, wilful, or wanton in relation to the

Attachment A - 000011

Plaintiff, in that they failed to:

- a. Monitor Sheedy's behavior while on premises of the defendants and/or while engaged in activities with school, church, youth;
- b. Properly investigate Sheedy's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the Plaintiff;
- c. Address Sheedy's past conduct either at the time he first became involved with the defendants or subsequently thereafter;
- d. Ignoring Sheedy's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;
- e. Allowing Sheedy to work with young boys, including the Plaintiff, alone and unsupervised;
- f. Maintain and keep their property and premises where Sheedy worked in a reasonably safe condition;
- g. Shield the Plaintiff from dangerous conditions, situations and individuals including child predators such as Sheedy;
- h. Warn the Plaintiff and/or his family of Sheedy's deviant sexual proclivities;
- i. Placing the plaintiff in an unsafe environment in Georgia without fully investigating those facilities and/or knowing that the environment posed a risk to the plaintiff's well-being;
- j. Fulfill their duties *in loco parentis* to the Plaintiff;
- k. Educate the Plaintiff and/or his family about the dangers of sexual abuse of minors

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in youth programs such as those conducted by the defendants through Sheedy;

- l. Warn them of a priest known to have a sexual interest in children and known to act inappropriately on that interest;
 - m. Supervise Sheedy in a manner so as to eliminate his chances to sexually abuse children;
 - n. Retaining Father Sheedy when it they defendants knew or should have known that he posed a risk to invitees of the defendant, especially the plaintiff, plaintiff class, and other invitees;
 - o. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his predatory actions;
 - p. Notify parents of those children who have been exposed to Sheedy;
 - q. Exercise due care for the safety and well-being of Plaintiff.
49. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, wilful, and wanton behavior of the defendants and/or their employees/agents, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A THIRD CAUSE OF ACTION

Attachment A - 000013

BREACH OF FIDUCIARY DUTY

50. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
51. By and through the relationships described herein, defendants entered into a fiduciary relationship with the Plaintiff. Additionally, by accepting physical custody of the minor Plaintiff, defendants assumed the duty to act *in loco parentis* with respect to the Plaintiff and were obligated to ensure that the plaintiff was safely cared for while he was in their custody, whether that be in Georgia, South Carolina, or elsewhere. By and through the conduct of the defendants, a relationship of trust and confidence, and therefore a fiduciary relationship, was formed.
52. As a result the acts and/or omissions of the defendants described herein, the defendants breached the duties owed to the Plaintiff.
53. As a proximate result of the breaches of fiduciary duties by the defendants, Plaintiff was injured and suffered damages. Plaintiff is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION**FRAUDULENT CONCEALMENT**

54. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
55. Defendants actively worked to fraudulently conceal their conduct. Among other things,

Attachment A - 000014

Defendants undertook deliberate acts to conceal from the plaintiff that he had a cause of action thereby inducing him to postpone suit and/or dissuade the plaintiff from bringing suit by acts indicating affirmatively that the defendants would resolve the matter and/or that the plaintiff would suffer great and irreparable harm to himself by instituting suit, including, but not limited to, damnation. This fraudulent concealment lasted until the present.

56. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A SIXTH CAUSE OF ACTION**CIVIL CONSPIRACY**

57. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
58. Defendants joined with others for the purpose of injuring the plaintiff, including, but not limited to, agents of the Diocese of Atlanta. The civil conspiracy of which these defendants were a party injured the plaintiff.
59. As a direct and proximate result of the conspiratorial conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

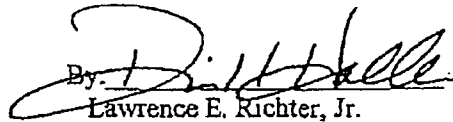
Attachment A - 000015

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By: 
Lawrence E. Richter, Jr.

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ATTORNEYS FOR PLAINTIFF

15th day of December, 2005

Mt. Pleasant, South Carolina

FILED
2005 DEC -2 AM 9:35
JULIE J. ARISTRONG
CLERK OF COURT

Attachment B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CA No 05-CP-10- <u>4913</u>
John Doe #53, individually and as a	)	
representative of a class of other persons	)	
similarly situated as victims of priest	)	
sex abuse in South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs	)	
	)	
The Bishop of Charleston, a Corporation	)	
Sole, and The Bishop of the Diocese of	)	
Charleston, in his official capacity,	)	
	)	
Defendants.	)	

FILED

2005 DEC 29 PM 1:25

JULIE J. AINSWORTH
CLERK OF COURT

BY CP

Due and proper service of the SUMMONS and COMPLAINT pertaining to the above-styled action is hereby acknowledged on behalf of The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston in his official capacity, and two copies of same are retained this 16th day of December, 2005. The undersigned represents that he is authorized to accept service for the defendants above named.

By 
 Albert P. Shahid, Jr., Esquire
 ATTORNEY FOR THE DIOCESE OF CHARLESTON
 AND THE BISHOP OF THE DIOCESE OF CHARLESTON,
 IN HIS OFFICIAL CAPACITY

Charleston, South Carolina

Attachment B

RICHTER & HALLER, LLC

Attorneys & Counselors at Law
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Lawrence E. Richter, Jr., P.C.
David K. Haller, P.C.

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

December 27, 2005

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

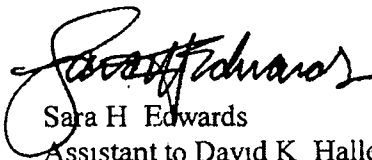
In Re John Doe #53, individually and as a representative of a class of other persons
similarly situated as victims of priest sex abuse in South Carolina v The Bishop of
Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his
official capacity
Case No 05-CP-10-4913

Dear Ms. Armstrong

Please find enclosed for filing an original and two (2) copies of an Acceptance of Service in
the above referenced matter. Please file the original and return the stamped copies to me in the self-
addressed stamped envelope that has been provided.

With kind regards, I remain

Very truly yours,


Sara H. Edwards
Assistant to David K. Haller

/s/
Enclosures

cc Lionel S. Lofton, Esq.
Glenn Churchill, Esq.
John Sinclair, III, Esq.



Jasper County Fourteenth Judicial Circuit Public Index



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Allan Carl Ranta VS Holy See , defendant, et al					
Case Number:	2006CP2700143	Court Agency:	Common Pleas	Filed Date:	04/06/2006
Case Type:	Common Pleas	Case Sub Type:	Torts/Other 399	File Type:	Jury
Status:	Disposed	Assigned Judge:			
Disposition:	Other / Circuit Civil	Disposition Date:	01/07/2010	Disposition Judge:	Mullen, Carmen Tevis
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties	Judgments	Tax Map Information	Associated Cases	Actions	Financials	
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Ranta, Allan Carl	CP Jury Trial Docket	Event		02/22/2010-09:30	01/07/2010-17:00	
Ranta, Allan Carl	Order/Summary Judgment Granted	Order		01/07/2010-10:24	01/07/2010-10:24	
Ranta, Allan Carl	CP Jury Trial Docket	Event		12/07/2009-09:30	01/07/2010-17:00	
Ranta, Allan Carl	Reply/To Response of Mr. Brown/Cert of Service	Filing		11/18/2009-16:03	01/07/2010-16:03	
Ranta, Allan Carl	Filing Of Supplemental Exhibits/Certificate of Service	Filing		11/17/2009-16:02	01/07/2010-16:02	
Ranta, Allan Carl	Plaintiffs/Memo in Support of Motion for Summary Judgment	Filing		11/17/2009-15:57	01/07/2010-15:57	
Brown, Wayland Yonder	Response to Motion Summary Judgment	Filing		11/16/2009-09:11	01/07/2010-09:11	
Ranta, Allan Carl	Stipulation Of Dismissal/Settlement	Filing		11/13/2009-09:37	01/07/2010-09:37	
Ranta, Allan Carl	Mediation Results	Filing		11/05/2009-14:40	01/07/2010-14:40	
Ranta, Allan Carl	Motion/Motion For Summary Judgment	Event		11/02/2009-12:42	01/07/2010-12:42	
Ranta, Allan Carl	CP Jury Trial Docket	Event		10/26/2009-09:30	01/07/2010-17:00	
Ranta, Allan Carl	Reply/Reply to Motion to Quash	Filing		10/23/2009-12:35	01/07/2010-12:35	
Roman Catholic Diocese Of Sava	Motion/Remove Post from YOUTUBE.COM/Cert of Service	Motion		10/20/2009-10:16	01/07/2010-10:16	
Roman Catholic Diocese Of Sava	Motion/Motion For Gag Order/Certificate of Service	Motion		10/20/2009-10:14	01/07/2010-10:14	
Ranta, Allan Carl	Filing/Filing Of Objection to Prior Restraint	Filing		10/19/2009-10:51	01/07/2010-10:51	
Holy See	Motion/Motion For An Order of Commision	Motion		10/16/2009-10:32	01/07/2010-10:32	
Ranta, Allan Carl	Filing/Filing Of Supplemental Exhibit	Filing		10/14/2009-14:11	01/07/2010-14:11	
Ranta, Allan Carl	Order/Motion in Limine Denied	Order		10/13/2009-14:03	01/07/2010-14:03	
Ranta, Allan Carl	Memo in Opposition of Motion in Limine	Filing		10/05/2009-10:20	01/07/2010-10:20	
Holy See	Motion/Motion For Limine/Certificate of Service	Motion		10/01/2009-13:57	01/07/2010-13:57	
Ranta, Allan Carl	Motion/Strike Material from Record/Certificate of Service	Motion		09/28/2009-10:46	01/07/2010-10:46	
Ranta, Allan Carl	Order/Denying Motion to Alter or Amend	Order		09/23/2009-11:26	01/07/2010-11:26	
Ranta, Allan Carl	Order of Commission Granted	Order		09/22/2009-12:25	01/07/2010-12:25	
Ranta, Allan Carl	Motion/Motion For Order of Protection/Certificate of Service	Motion		09/21/2009-11:41	01/07/2010-11:41	
Ranta, Allan Carl	Motion/Motion For Order of Commission	Motion		09/10/2009-10:20	01/07/2010-10:20	
Ranta, Allan Carl	Motion/Alter and/or Amend/Certificate of Service	Motion		09/10/2009-10:19	01/07/2010-10:19	

Ranta, Allan Carl	Order/Order of Commission	Order	09/10/2009-08:50	01/07/2010-08:50
Ranta, Allan Carl	Order of Commission	Order	09/04/2009-08:32	01/07/2010-08:32
Ranta, Allan Carl	Motion/Motion For Order of Commission	Motion	09/02/2009-11:43	01/07/2010-11:43
Ranta, Allan Carl	Deposition Of mark Anthony Dassen	Filing	09/02/2009-08:43	01/07/2010-08:43
Ranta, Allan Carl	Deposition Of Michael Slattery	Filing	09/02/2009-08:42	01/07/2010-08:42
Ranta, Allan Carl	Deposition Of Larry Dassen	Filing	09/02/2009-08:42	01/07/2010-08:42
Ranta, Allan Carl	Plaintiffs Response to Motion for Protective Order	Filing	08/31/2009-09:35	01/07/2010-09:35
Ranta, Allan Carl	Motion/Protection /Certificate of Service	Motion	08/26/2009-10:19	01/07/2010-10:19
Ranta, Allan Carl	CP Jury Trial Docket	Event	08/24/2009-09:30	01/07/2010-17:00
Ranta, Allan Carl	Motion/Motion For Order of Commission	Motion	08/18/2009-10:00	01/07/2010-10:00
Ranta, Allan Carl	Motion/Alter and/or Amend	Motion	08/18/2009-09:59	01/07/2010-09:59
Ranta, Allan Carl	Order/Order of Commission	Order	08/14/2009-14:10	01/07/2010-14:10
Roman Catholic Diocese Of Sava	Motion/Motion For Order of Commissio	Motion	08/14/2009-11:04	01/07/2010-11:04
Ranta, Allan Carl	Service/Certificate Of Service	Filing	07/20/2009-11:46	01/07/2010-11:46
Ranta, Allan Carl	Order/Form 4 Order-Motion Sactions Denied	Order	07/16/2009-10:47	01/07/2010-10:47
Ranta, Allan Carl	Order/Order	Order	07/06/2009-16:15	01/07/2010-16:15
Ranta, Allan Carl	Order/Order of Commission	Order	07/06/2009-16:15	01/07/2010-16:15
Ranta, Allan Carl	Order/Denying Summary Judgment Vicarious Liability	Order	06/30/2009-14:40	01/07/2010-14:40
Ranta, Allan Carl	Order/Denying Summary Judgment/charitable Immunity	Order	06/30/2009-14:33	01/07/2010-14:33
Ranta, Allan Carl	Memo In Opposition/Summary Judgment on Statue Limitations	Filing	06/29/2009-09:53	01/07/2010-09:53
Ranta, Allan Carl	Memo In Opposition/Summary Judgment on Vicarious Liability	Filing	06/29/2009-09:52	01/07/2010-09:52
Ranta, Allan Carl	Motion/Compel/Certificate of Service	Motion	06/24/2009-11:33	01/07/2010-11:33
Ranta, Allan Carl	Order of Commission	Order	06/24/2009-09:13	01/07/2010-09:13
Ranta, Allan Carl	Order of Commission	Order	06/24/2009-09:12	01/07/2010-09:12
Ranta, Allan Carl	Service/Certificate Of Service(2)	Filing	06/23/2009-08:53	01/07/2010-08:53
Ranta, Allan Carl	Motion/Sanctions	Motion	06/22/2009-11:15	01/07/2010-11:15
Ranta, Allan Carl	Service/Certificate Of Service	Filing	06/22/2009-11:13	01/07/2010-11:13
Ranta, Allan Carl	Motion/Compel	Motion	06/22/2009-11:10	01/07/2010-11:10
Ranta, Allan Carl	Memo/Opposition of Motion for Summary Judgment/Cert of Serv	Filing	06/22/2009-11:19	01/07/2010-11:19
Ranta, Allan Carl	CP Jury Trial Docket	Event	06/22/2009-09:30	01/07/2010-17:00
Ranta, Allan Carl	Service/Certificate Of Service(8)	Filing	06/19/2009-13:24	01/07/2010-13:24
Ranta, Allan Carl	Order/Form 4 Order	Order	06/16/2009-16:01	01/07/2010-16:01
Ranta, Allan Carl	Memo In Support Motion for Summary Judgment	Filing	06/15/2009-14:53	01/07/2010-14:53
Ranta, Allan Carl	Order/Order of Commission	Order	06/11/2009-14:01	01/07/2010-14:01
Ranta, Allan Carl	Order/Regarding Privilege Log	Order	06/11/2009-14:00	01/07/2010-14:00
Ranta, Allan Carl	Motion/Alter and/or Amend/Certificate of Service	Motion	06/09/2009-13:02	01/07/2010-13:02
Ranta, Allan Carl	Order Denying Plaintiffs Motion to Determine Sufficiency	Order	06/04/2009-15:38	01/07/2010-15:38
Ranta, Allan Carl	Order on Motions to Compel	Order	06/04/2009-15:38	01/07/2010-15:38
Ranta, Allan Carl	Order/Order of Commission	Order	05/28/2009-14:53	01/07/2010-14:53
Ranta, Allan Carl	Motion/Motion For order of Commission	Motion	05/28/2009-10:44	01/07/2010-10:44
Ranta, Allan Carl	Motion/Summary Judgment/Certificate of Service	Motion	05/07/2009-10:51	01/07/2010-10:51

Ranta, Allan Carl	Defendant Request/Original Depos. of R. Lessard/Cert Serv	Filing		05/05/2009-10:37	01/07/2010-10:37
Roman Catholic Diocese Of Sava	Motion/Summary Judgment Regarding Personal Jurisdiction	Motion		05/01/2009-17:00	01/07/2010-17:00
Roman Catholic Diocese Of Sava	Motion For Summary Judgment Statue of Limitations	Event		05/01/2009-16:38	01/07/2010-16:38
Ranta, Allan Carl	Memo/Memo in Support Motion Statue of Limitations	Filing		05/01/2009-15:11	01/07/2010-15:11
Roman Catholic Diocese Of Sava	Motion/Summary Judgment Lack of Personal Jurisdiction	Motion		05/01/2009-17:00	01/07/2010-17:00
Ranta, Allan Carl	Order/Order Compelling Production	Order		04/27/2009-11:08	01/07/2010-11:08
Ranta, Allan Carl	Form 4 Order/Defendants Protective Order Denied	Order		04/27/2009-11:07	01/07/2010-11:07
Ranta, Allan Carl	Order/Form 4 Order/Motion Protective Order Granted	Order		04/27/2009-11:07	01/07/2010-11:07
Ranta, Allan Carl	Order/Form 4 Order-Motion Compel Granted	Order		04/27/2009-11:06	01/07/2010-11:06
Ranta, Allan Carl	CP Jury Trial Docket	Event		04/27/2009-09:30	01/07/2010-17:00
Roman Catholic Diocese Of Sava	Motion/Motion For Summary Judgment/Certificate of Service	Event		04/21/2009-10:10	01/07/2010-10:10
Roman Catholic Diocese Of Sava	Filing Of Brief/Support Motion for Summary Judgment	Filing		04/21/2009-09:15	01/07/2010-09:15
Roman Catholic Diocese Of Sava	Deposition Of Bishop J. Kevin Boland/Certificate of Service	Filing		04/20/2009-09:19	01/07/2010-09:19
Roman Catholic Diocese Of Sava	Deposition Of Paul Kimmel, M.D./Certificate of Service	Filing		04/20/2009-09:17	01/07/2010-09:17
Roman Catholic Diocese Of Sava	Deposition Of Alan Carl Ranta/Certificate of Service	Filing		04/20/2009-09:16	01/07/2010-09:16
Ranta, Allan Carl	Order/Compelling Production Documents of the Holy See	Order		04/14/2009-09:44	01/07/2010-09:44
Ranta, Allan Carl	Order/Diocesan Advisory Board Materials	Order		04/14/2009-09:43	01/07/2010-09:43
Roman Catholic Diocese Of Sava	Second Motion/Compel	Motion		03/18/2009-10:18	01/07/2010-10:18
Roman Catholic Diocese Of Sava	Filing of Brief In Support of Motion Protective Order/Certs	Filing		03/05/2009-14:12	01/07/2010-14:12
Ranta, Allan Carl	Service/Certificate Of Service	Filing		03/03/2009-14:17	01/07/2010-14:17
Ranta, Allan Carl	Filing/Filing Of Subpoena	Filing		03/03/2009-14:16	01/07/2010-14:16
Ranta, Allan Carl	Notice of Deposition R. Pate	Filing		03/03/2009-14:16	01/07/2010-14:16
Ranta, Allan Carl	Motion For Order of Commission	Motion		03/03/2009-10:21	01/07/2010-10:21
Ranta, Allan Carl	Filing Of Brief In Support of Motion for Protective Order	Filing		03/02/2009-14:58	01/07/2010-14:58
Ranta, Allan Carl	Order/Order of Commission	Order		02/20/2009-10:17	01/07/2010-10:17
Roman Catholic Diocese Of Sava	Deposition Of Douglas J. Giorgio, III	Filing		02/19/2009-11:04	01/07/2010-11:04
Roman Catholic Diocese Of Sava	Filing/Filing Of Subpoena/Certificate of Service	Filing		02/19/2009-11:02	01/07/2010-11:02
Ranta, Allan Carl	Motion/Motion For Order of Commission	Motion		02/19/2009-09:42	01/07/2010-09:42
Ranta, Allan Carl	Motion/Compel/Certificate of Service	Motion		02/13/2009-10:32	01/07/2010-10:32
Ranta, Allan Carl	Motion/Compel/Certificate of Service	Motion		02/12/2009-11:28	01/07/2010-11:28
Shahid, Albert P. Jr.	Motion/Protective Order/Certificate of Service	Motion		02/12/2009-09:58	01/07/2010-09:58
Ranta, Allan Carl	Order/Form 4 Order-Motion Denied	Order		02/10/2009-12:13	01/07/2010-12:13
Ranta, Allan Carl	Motion/Compel	Motion		02/10/2009-10:17	01/07/2010-10:17
Ranta, Allan Carl	Order/Form 4 Order-Motion for Protective Order Denied	Order		01/30/2009-13:54	01/07/2010-13:54
Ranta, Allan Carl	J. Kevin Boland Request for Protective Order/Cert of Service	Filing		01/26/2009-13:20	01/07/2010-13:20
Boland, J Kevin	Motion/Motion For Protective Order	Motion		01/26/2009-10:14	01/07/2010-10:14

Ranta, Allan Carl	Order/Order of Commission	Order	01/23/2009-10:54	01/07/2010-10:54
Ranta, Allan Carl	Service/Certificate Of Service(2)	Filing	01/23/2009-10:53	01/07/2010-10:53
Ranta, Allan Carl	Plaintiffs Reply to Motion to Alter or Amend Judgment	Filing	01/23/2009-10:53	01/07/2010-10:53
Ranta, Allan Carl	Notice Video Deposition of Alan C. Ranta/Cert of Service	Filing	01/21/2009-11:01	01/07/2010-11:01
Roman Catholic Diocese Of Sava	Motion/Motion For Protection/Certificate of Service	Motion	01/21/2009-10:10	01/07/2010-10:10
Roman Catholic Diocese Of Sava	Motion/Alter and/or Amend/Certificate of Service	Motion	01/21/2009-10:00	01/07/2010-10:00
Ranta, Allan Carl	Letter/Letter	Filing	01/16/2009-11:30	01/07/2010-11:30
Ranta, Allan Carl	Motion/Compel	Motion	01/16/2009-10:45	01/07/2010-10:45
Ranta, Allan Carl	Order/Order of Commission	Order	01/15/2009-10:13	01/07/2010-10:13
Ranta, Allan Carl	Notice/Notice of Appearance/Certificate of Service	Filing	12/29/2008-10:56	01/07/2010-10:56
Ranta, Allan Carl	Motion/Motion Order of Commission	Motion	12/02/2008-13:49	01/07/2010-13:49
Brown, Wayland Yonder	Answer	Filing	12/01/2008-10:22	01/07/2010-10:22
Ranta, Allan Carl	Second/Motion For Protection/Cert. of Service	Motion	11/24/2008-15:44	01/07/2010-15:44
Ranta, Allan Carl	Order/Scheduling Order	Order	11/10/2008-11:11	01/07/2010-11:11
Ranta, Allan Carl	Motion/Motion To Determine Sufficiency	Motion	10/27/2008-10:42	01/07/2010-10:42
Ranta, Allan Carl	Summons	Filing	10/15/2008-10:08	01/07/2010-10:08
Holy See	Motion/Compel/Certificate of Service	Motion	10/14/2008-12:54	01/07/2010-12:54
Holy See	Motion For Order Of Protection/Certificate of Service	Motion	10/14/2008-12:46	01/07/2010-12:46
Ranta, Allan Carl	Motion/Compel	Motion	10/08/2008-11:49	01/07/2010-11:49
Ranta, Allan Carl	CP Jury Trial Docket	Event	08/04/2008-09:00	01/07/2010-17:00
Ranta, Allan Carl	CP Jury Trial Docket	Event	06/16/2008-09:30	01/07/2010-17:00
Roman Catholic Diocese Of Sava	Answer/Amended Answer/Certificate of Service	Filing	05/28/2008-10:30	01/07/2010-10:30
Ranta, Allan Carl	Amended/Amended Complaint	Filing	04/23/2008-09:07	01/07/2010-09:07
Ranta, Allan Carl	Order/Plaintiff's Motion to Amend Granted	Order	04/23/2008-09:06	01/07/2010-09:06
Ranta, Allan Carl	Order/Dep's Motion to Dismiss Denied	Order	04/23/2008-09:05	01/07/2010-09:05
Ranta, Allan Carl	CP Jury Trial Docket	Event	04/21/2008-09:00	01/07/2010-17:00
Ranta, Allan Carl	Order/Form 4 Order	Order	03/31/2008-11:42	01/07/2010-11:42
Ranta, Allan Carl	Affidavit-W. Waring III/Cert of Service	Filing	03/26/2008-15:21	01/07/2010-15:21
Ranta, Allan Carl	Affidavit-A. Ranta/Cert. of Service	Filing	03/26/2008-15:20	01/07/2010-15:20
Ranta, Allan Carl	Order/Order for Pro Hac Vice	Order	02/29/2008-10:08	01/07/2010-10:08
Ranta, Allan Carl	CP Motion Hearing	Event	12/12/2007-09:00	01/07/2010-17:00
Ranta, Allan Carl	CP Jury Trial Docket	Event	12/10/2007-09:00	01/07/2010-17:00
Ranta, Allan Carl	Form 4 Order/Complex Case Granted	Order	11/28/2007-08:49	01/07/2010-08:49
Holy See	Order/Continuance/Cert of Service	Order	10/30/2007-11:34	01/07/2010-11:34
Ranta, Allan Carl	Motion To Designate Case As Complex/Cert of Service	Motion	10/29/2007-11:22	12/12/2007-11:22
Ranta, Allan Carl	Letter/Letter	Filing	10/29/2007-09:09	01/07/2010-09:09
Ranta, Allan Carl	Motion/Amend Complaint/Cert of Service	Motion	10/29/2007-08:56	12/12/2007-08:56
Ranta, Allan Carl	CP Jury Trial Docket	Event	10/29/2007-09:00	01/07/2010-17:00
Ranta, Allan Carl	Motion/Dismiss/Certificate of Service	Motion	10/22/2007-12:56	12/12/2007-12:56
Holy See	Motion/Dismiss Plaintiff Amended Complaint/Cert of Service	Motion	10/22/2007-10:55	01/07/2010-10:55
Holy See	Motion/Continuance	Motion	10/22/2007-09:02	01/07/2010-09:02
Ranta, Allan Carl	Amended Complaint	Filing	10/04/2007-10:17	01/07/2010-10:17
Ranta, Allan Carl	Letter/Office of Bar Admissions	Filing	09/11/2007-10:41	01/07/2010-10:41
Ranta, Allan Carl	CP Motion Hearing	Event	09/06/2007-14:30	01/07/2010-17:00

Ranta, Allan Carl	Consent Order/Substitution Of Counsel	Order	08/02/2007-11:14	01/07/2010-11:14
Holy See	Motion/Hearing	Motion	07/31/2007-09:00	01/07/2010-17:00
Ranta, Allan Carl	Order/Continuance	Order	06/18/2007-14:43	01/07/2010-14:43
Ranta, Allan Carl	Motion/Continuance	Motion	06/18/2007-14:41	07/31/2007-14:41
Ranta, Allan Carl	CP Jury Trial Docket	Event	06/18/2007-09:00	01/07/2010-17:00
Ranta, Allan Carl	CP Jury Trial Docket	Event	06/18/2007-09:00	01/07/2010-17:00
Ranta, Allan Carl	CP Jury Trial Docket	Event	05/29/2007-09:30	05/11/2007-17:00
Holy See	CP Motion Hearing	Event	05/22/2007-09:30	01/07/2010-17:00
Ranta, Allan Carl	Motion/Hearing	Motion	05/22/2007-09:30	06/18/2007-17:00
Ranta, Allan Carl	CP Jury Trial Docket	Event	05/07/2007-09:30	04/18/2007-21:30
Holy See	Service/Certificate Of Service	Filing	04/25/2007-09:33	01/07/2010-15:34
Holy See	Service/Certificate Of Service	Filing	04/23/2007-10:26	01/07/2010-16:16
Holy See	Motion/Protective Order	Motion	04/23/2007-10:24	05/22/2007-10:24
Roman Catholic Diocese Of Sava	Motion/Protective Order	Motion	04/23/2007-10:26	01/07/2010-14:59
Ranta, Allan Carl	Motion/Motion Filing Fee	Filing	08/11/2006-15:32	05/22/2007-15:32
Ranta, Allan Carl	Motion/Motion Filing Fee	Filing	08/11/2006-15:32	05/22/2007-15:32
Ranta, Allan Carl	Order/Order for Pro Hac Vice	Order	08/08/2006-15:31	01/07/2010-15:31
Ranta, Allan Carl	Order/Order for Pro Hac Vice	Order	08/08/2006-15:31	01/07/2010-15:31
Ranta, Allan Carl	CP Motion Hearing	Event	08/08/2006-10:00	01/07/2010-17:00
Ranta, Allan Carl	CP Motion Hearing	Event	07/11/2006-09:00	01/07/2010-17:00
Ranta, Allan Carl	Order/Consent Order cont	Order	07/07/2006-15:54	01/07/2010-15:54
Holy See	Motion/Pro Hac Vice	Motion	06/19/2006-11:00	05/22/2007-11:00
Holy See	Motion/Dismiss	Motion	06/08/2006-09:51	05/22/2007-09:51
Roman Catholic Diocese Of Sava	Answer	Filing	05/15/2006-10:30	01/07/2010-11:05
Lessard, Raymond W	Answer	Filing	05/15/2006-10:30	01/07/2010-11:05
Boland, J Kevin	Answer	Filing	05/15/2006-10:30	01/07/2010-11:05
Ranta, Allan Carl	Service/Certificate Of Service Certified Mail/ 3	Filing	04/26/2006-09:21	01/07/2010-11:49
Ranta, Allan Carl	SUMMONS & COMPLAINT	Filing	04/06/2006-00:00	04/06/2006-00:00
Ranta, Allan Carl	SUMMONS & COMPLAINT	Filing	04/06/2006-00:00	04/06/2006-00:00
Ranta, Allan Carl	Filing Fee -150	Filing	04/06/2006-00:00	04/06/2006-00:00
Ranta, Allan Carl	Filing	Filing		
Ranta, Allan Carl	Filing	Filing		

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Attachment D - 000001

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe #66

v.

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

CASE NO.: 2005-CP-10-2053

John Doe #66A

v.

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

CASE NO.: 2005-CP-10-3293

John Doe #53

v.

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

CASE NO.: 2005-CP-10-4913

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

Settlement Agreement

*See Terms
Attached on
E+H. #1*

In a mediation conducted on this _____ day of _____, 2006, the above named parties agreed to the following terms:

1. _____ shall pay to _____ \$ _____;
2. Plaintiff/Respondent will execute a general release dismissing all claims on account of the matters raised in the above captioned lawsuit;
3. Plaintiff/ Respondent will cooperate in having a dismissal with prejudice entered by the court; and
4. The parties shall split the mediation fees _____.

By: _____

(Print Name)

Its: _____

Dated: _____

By: _____

(Print Name)

Its: _____

Dated: _____

EXHIBIT " 4 "

EXH. #1

General Terms of Settlement:

1. PARTIES Agree to create Settlement class, subject to Court approval of:
 - Ⓐ ACTUAL VICTIMS OF DOMESTIC ABUSE
 - Ⓑ SPOUSAL +/or Parent claim deriving from victim abused
2. Class Settlement Fund will be for \$12,000,000 FUNDED AS FOLLOWS:
 - Ⓐ \$5,000,000 by Letter of Credit, subject to Bank's willingness to issue. With a further obligation to procure additional Letter of Credit with \$7,000,000 limits once the \$5,000,000 Letter of Credit has been drawn down to \$1,000,000.
3. DETAILS of claim process in settlement class action shall be developed & include a payment matrix based on nature & severity of claims.

4. Court shall be asked to approve attorney's fee for class counsel at between \$950,000 + \$2.5 million, subject to Defendant's obtaining credit to secure the obligation.

5. Mr. T Redacted shall be paid _____

Mr. S Redacted shall be paid _____

Mr. N Redacted shall be paid _____

Mr. M Redacted shall be paid _____

* COLLECTIVELY paid \$460,000 to be divided among the 4 gentlemen above after accepted or agreed to.

6. If the Court fails to approve settlement class &/or provision of class settlement, the compromise settlement with the individuals in "5." above shall not be executed & shall proceed to settlement in the amounts set out in "5." above with appropriate general releases &/or dismissals with prejudice executed in favor of defendant.

~~Class of actions & proceeds~~

Attachment D - 000004

7. These terms are in the form of an offer by Defendants & shall be acted upon with reasonable promptness by Plaintiff/Claimants named in "5" above.

James DeLoe, Attorney

ON BEHALF OF DEFENDANTS

Attorney in and under authority of the
Successor of Unibody

June 14, 2006

Attachment E - 000001

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT
 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.

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

Defendants.

COMPLAINT
 Action for Loss of Consortium

FILED-RECORDED
 2006 AUG 15 AM 11:43
 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 occurred, 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.

Attachment E - 000005

16. As a result of the abuse of John Doe #53, has suffered deep psychological damage with accompanied physical manifestations, alcohol and drug abuse, and strain in his relationships, among other things, and they have impact his ability to function normally in life. In fact, as late as two years ago, John Doe #53 was being told by his priests that it was he who had sinned and that it was he who required absolution for the events with Sheedy. These acts by the defendants only exacerbated the injuries suffered by John Doe #53.
17. Because of the abuse of her son by the defendants' agent/employee, the priest Sheedy, Rachel Roe has been injured by, among other things, incurring expenses in the care of the child, John Doe #53 and the loss of his companionship, aid, and society.
18. Jane Doe 1 is the spouse of John Doe #53. She has assisted him in his care as he has struggled to cope with the abuse and the lifelong damage he has suffered. She has been with him during the times, recent and otherwise, when the defendants and its agents have tried to place the blame on the John Doe #53 for the events which occurred. As a result of the defendants conduct, Jane Doe 1 has suffered from the loss of the right to the companionship, aid, society and services of John Doe #53.

ABUSE OF JOHN DOE #66

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

situated defined as follows:

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

26. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.
27. Plaintiffs are informed and believes that the number of other individuals in South Carolina who fall within the definition of the class defined above may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.
28. There are questions of law and fact which are common to the class.
29. The claims of the class are typical of the plaintiffs and plaintiffs are informed and believes that the defenses of the defendant will be identical as to each of the class members.
30. Plaintiffs will fairly and adequately protect the interests of the class.
31. The amount in controversy for each of the members of the class exceeds \$100.00.
32. Plaintiffs are entitled to the certification of a class of plaintiffs against the defendants are defined above.
33. Throughout this complaint, references to plaintiffs are intended to reference the plaintiffs and the members of the class who they represent as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants

which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

LOSS OF CONSORTIUM

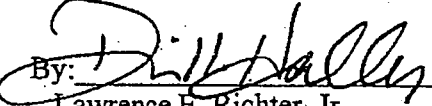
34. Plaintiffs reallege paragraphs 1 through 33 above as if restated hereinafter verbatim.
35. The defendants have intentionally or tortiously violated the right to the companionship, aid, society and services of Jane Doe 1 and Rachel Roe to John Doe #53 and they have been injured as a direct and proximate result of the defendants' interference with said right. Plaintiff Rachel Roe has incurred expenses on behalf of John Doe #53 as a result of the defendants' conduct.
36. The defendants have intentionally or tortiously violated the right to the companionship, aid, society and services of Jane Doe 2 to John Doe #66 and she has been injured as a direct and proximate result of the defendants' interference with said right.
37. As a direct and proximate result of the acts of the defendants, the plaintiffs and the members of their class have been injured and suffered damages. Plaintiffs are entitled to a judgment against the defendants for both actual damages, in an amount to be determined by the trier of fact, and punitive damages to impress upon the defendants the seriousness of its conduct and to deter such similar conduct by other tortfeasors in the future.

JURY TRIAL DEMANDED

38. Plaintiffs demand a jury trial.

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

Respectfully submitted,

By: 

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ATTORNEYS FOR PLAINTIFFS

14th day of August, 2006

Mt. Pleasant, South Carolina

Attachment F

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October 5, 2006

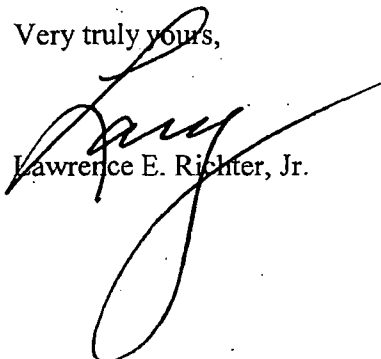
722-7119
via facsimile 853-6124
Albert P. Shahid, Jr., Esquire
Shahid Law Office, LLC
15 State Street
Charleston, SC 29401

In Re: John Doe v. Diocese matters

Dear Peter:

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

Very truly yours,


Lawrence E. Richter, Jr.

LER/lwh

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

Attachment G - 000001

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

John Doe #53, individually and as a
 representative of a class of other persons
 similarly situated as victims of priest
 sex abuse in South Carolina,

Plaintiff,

vs.

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

Defendants.

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

COMPLAINT
Jury Trial Demanded

Outrage, Negligence/Gross Negligence,
 Breach of Fiduciary Duty, Fraudulent
 Concealment, Civil Conspiracy

FILED-RECORDED
 2006 OCT -6 AM 11:59
 CHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff, complaining of the Defendants, alleges and says:

PARTIES AND JURISDICTION

1. John Doe #53 is a former Charleston County resident who, while living in the Charleston area, lived in an orphanage operated by the Diocese of Charleston and attended and participated in mass, confession, religious training, and various functions sponsored and operated by the Diocese of Charleston.
2. Defendant The Bishop of Charleston, a Corporation Sole (hereinafter referred to as "Diocese"), and/or its predecessors at all times material are and were hereto a corporation organized under the laws of the State of South Carolina, having its principal place of business at 117 Broad Street, Charleston, South Carolina. Diocese is and was the corporate entity through which the affairs of the Roman Catholic Church in South Carolina are and were conducted. The Diocese and its agents and employees were and continue to be

Attachment G - 000002

responsible for the selection and assignment, supervision, and the exercise of authority over its various agents and the members of its denomination, and the maintenance of the well being of its members.

3. The Bishop of the Diocese of Charleston (hereinafter referred to as "Bishop") is sued in his official capacity. The Bishop is ultimately responsible for the priests in his Diocese. Bishop is the successor in interest to his predecessors in his official position.
4. This court has jurisdiction over the parties hereto and the subject matter hereof.

FACTUAL SUMMARY

5. Defendant Diocese operates churches, orphanages, and parochial schools in Charleston County and throughout South Carolina offering primary, elementary, and secondary educations. It holds certain assets including schools, rectories, churches, and other properties real and personal in Charleston County and throughout South Carolina and possibly elsewhere.
- 6.
7. Under the authority of the Diocese, Monsignor Thomas Duffy and other agents of Diocese took plaintiff from his childhood home in Charleston and placed him under the care of the Atlanta Diocese in Georgia, where he was housed at a facility operated by it.
8. While in Georgia, having been placed there by the defendants and/or its agents, Plaintiff was sexually assaulted by at least three Catholic Church agents.
9. Upon being returned to Charleston by Charleston Diocese agents, Plaintiff was placed in the Catholic orphanage in Charleston. He resided at the orphanage for two years and attended school at Blessed Sacrament in Charleston.

Attachment G - 000003

10. Diocese encouraged people, including the Plaintiff, to enter, use, and attend its many activities on its premises. As such, the Diocese undertook a duty to ensure its premises were safe from all dangers which were reasonably foreseeable. In particular, the defendants owed minors, including the minor plaintiff, a greater degree of care because of their lack of capacity to appreciate risks and avoid danger. Diocese and Bishop represented to its invitees or their legal guardians, including the Plaintiff and/or his parents, that its facilities were places of safety and that it could and would protect its invitees, including the Plaintiff, from harm.
11. At all times material to the incidents alleged in this complaint, Father Lawrence Sheedy was an authority figure, moral leader, confessor, and counselor employed and/or controlled by the defendants and, at all times, was under the direct supervision, employ and control of the Diocese and its then Bishop.
12. In his roles within the Diocese, Sheedy came to have access to and to know the most personal and confidential information of the Plaintiff. Diocese and Bishop encouraged the plaintiff and others to share and trust Sheedy as an authority figure, moral leader, confessor, and counselor. Among other things, Diocese and Bishop encouraged Plaintiff and others to share with and trust Sheedy and other of its employees with deeply personal information and with their personal safety and salvation. As part of his employment, Sheedy reached out to plaintiff and others within the jurisdiction of the Diocese and assisted the defendants in cultivating relationships of trust and confidence.
13. Plaintiff, a devout member of the Roman Catholic Church from childhood to the present, attended and actively participated in activities designed for young boys at Diocese-sponsored events.

14. The Diocese operates the various components stated in paragraph 5 above, and other assets through a businesslike operation. Often, it charges for its services and sometimes charges its non-practitioners a higher amount for its services in order to garner a profit. In fact, in order manage its business operations, the Diocese employs an individual to serve as its "Chief Financial Officer." The Diocese has a history of using gambling function as a means of raising revenue for its operations.
15. Plaintiff came to know the priest Sheedy through these various Diocese-sponsored programs and activities. Among other things, Plaintiff was an altar boy with Sheedy and participated in the youth programs with which Sheedy worked. Based on this relationship, as cultivated by Sheedy and enforced by the Diocese and the Bishop, Plaintiff admired, trusted, followed, revered and respected Sheedy as an authority figure, moral leader, confessor, and counselor. The defendants taught and instructed the plaintiff to do so. As a result, Plaintiff entrusted in Sheedy his personal safety and shared with Sheedy his most confidential information.
16. Because of plaintiff's position as a minor under the care of the Diocese, together with Sheedy's position in the Roman Catholic Church as an authority figure, moral leader, confessor, and counselor, Sheedy was able to have control and influence over Plaintiff. By his words and actions, Sheedy represented to Plaintiff that their relationship was one in which Sheedy was to provide counseling, comfort and advice to Plaintiff, and to look out for Plaintiff's well being and best interests. These representations were untrue and intended to deceive Plaintiff. Sheedy used these representations and his various positions to gain Plaintiff's trust and confidence and to obtain control over him.
17. Between 1966 and 1967, Plaintiff, then a minor child, was sexually assaulted repeatedly by Father Sheedy.

Attachment G - 000005

18. On several occasions during the time when the abuse occurred, Father Sheedy provided alcohol to Plaintiff, then a minor, before sexually abusing him on Diocese property and while exercising the authorities provided to him by the defendants.
19. These incidents occurred while Sheedy was an employee and youth leader of the defendants. These assaults upon Plaintiff occurred on the premises owned and controlled by the defendants.
20. Based on the relationship of trust and confidence cultivated by Sheedy and encouraged by Diocese and Bishop, Plaintiff justifiably believed and relied on Sheedy and gave Sheedy his trust and confidence. By his words and actions, Sheedy assured Plaintiff that the abusive conduct was legal and proper. Sheedy and defendants actively concealed the wrongfulness of Sheedy's exploitation and misconduct involving children, Plaintiff included.
21. Sheedy also threatened Plaintiff with recrimination if Plaintiff revealed Sheedy's actions, often telling Plaintiff that the instances of sexual abuse on the Diocese property were "our little secret" that should never be revealed to anyone.
22. Plaintiff is informed and believes that Sheedy was known to the defendants to be unstable, unreliable, a hedonist and an abuser of alcohol. His assignment within the Diocese was as a result of his improper actions-- but neither plaintiff nor his legal guardians were warned.
23. Plaintiff is informed and believes that the defendants knew, or should have known that Sheedy had deviant sexual propensities. Furthermore, the defendants knew or should have known that Sheedy was molesting minor boys on Diocese property. Nevertheless, the defendants took no action to protect the plaintiff and others from this conduct. Moreover, it hid the conduct of Sheedy and others. In fact, concealment of the conduct of the priests and other Diocese employees was the official policy of the defendants.

24. After Plaintiff informed agents of the defendants that he had been sexually abused by Father Sheedy, church agents in their fiduciary capacity described herein directed Plaintiff to conceal Sheedy's abuse, informing Plaintiff that church officials would remedy the situation created by Sheedy's abuse. Plaintiff was told by Sheedy and other agents of the defendants that the sexual abuse was a form of "love" and that any thought the conduct was abuse was misplaced. The acts of the defendants and its agents to fraudulently conceal the tortuous and illegal acts of it and its employees has continued until the present.
25. At least since approximately 1960 through the present, defendant Diocese and the Holy See of the Catholic Church had knowledge that Roman Catholic clergy were sexually abusing children.
26. In 1962, the Holy See, which dictates policy and procedure for the Diocese and the Bishop, issued an INSTRUCTION entitled "On the Manner of Proceeding in Cases of Solicitation." (Attached as Exhibit A).
27. The INSTRUCTION identifies as the worst crime as any obscene, external act, gravely sinful, perpetrated in any way by a priest with youths of either sex or sex with brute animals (bestiality). (Ex. A, ¶ 73.) The Vatican INSTRUCTION encourages bishops and church leaders to avoid "scandal." (Ex. A, ¶¶ 35, 36, 64.) Yet, the INSTRUCTION required the victim to keep his or her victimization secret.
28. This INSTRUCTION was intended to reach all patriarchs, archbishops, superiors and diocesan ordinaries (bishops). At the top of this INSTRUCTION, it states that the document is "to be diligently stored in the secret archives of the Curia as strictly confidential. Nor is it to be published nor added to with any commentaries."
29. The INSTRUCTION contains explicit instructions as to how bishops and church leaders are

to proceed in cases where a priest entices a penitent to engage in sexual conduct. The INSTRUCTION specifically mentions that these cases encompass situations where children are sexually abused. (Ex. A, ¶¶ 62, 73) It mentions that church officials could transfer offending priests to different assignments. (Ex. A, ¶ 4.)

30. Pursuant to the dictates of the INSTRUCTION, all points in the process of handling sex abuse cases dealing with a penitent, the matters are to be kept secret and concealed. In particular, if church leaders find, in their own investigation, that the allegations lack foundation, they are mandated to destroy all of the documents. If, however, the allegations are found to have foundation the bishop and church leaders were required to keep the pertinent documents in secret archives. (Ex. A, ¶ 42.)
31. Under standard Catholic doctrine, "good" Catholics are required to follow the mandates of the Holy See such as dictates of the INSTRUCTION or face a potential afterlife of damnation. Diocese, Bishop and their agents and employees such as Sheedy and the agents who dissuaded plaintiff from taking action reinforced this belief.
32. As a result, Plaintiff, a good Catholic, was taught that he must obey the rules, teachings, doctrines, and instructions of the Roman Catholic Church and was, therefore, instructed and led to believe, by the Diocese, Bishop and their agents and employees such as Sheedy that he must conceal that Sheedy had committed upon him a horrible sin or risk an afterlife of damnation.
33. As a result of the actions and/or inactions of the defendants, Catholic agents were allowed, and did, prey upon Plaintiff by engaging in its own defined "worst sin." Plaintiff has suffered from Sheedy's conduct and the conduct of the defendants, by, among other things, years of severe psychological damage with physical manifestations.

CLASS ALLEGATIONS

34. Plaintiff brings this action on behalf of himself and as a representative of a class of other persons similarly situated as victims of priest sex abuse in South Carolina pursuant to Rule 23 of the South Carolina Rules of Civil Procedure.
35. The defendants have jurisdiction over the operations of the Roman Catholic Church within the territorial boundaries of the State of South Carolina.
36. Plaintiff is informed and believes that the number of other individuals in South Carolina have been the victims of childhood priest sexual abuse may exceed the hundreds and that the joinder of all such individuals in the instant suit is impracticable.
37. There are questions of law and fact which are common to the class, including, but not limited to, whether the Diocese and/or Bishop knew or should have known of the pervasive childhood sexual abuse throughout the state and whether the INSTRUCTION or other techniques were used to dissuade victims of the defendants' conduct from seeking civil damages against it as a form of fraudulent concealment.
38. The claims of the class are typical of John Doe #53 and plaintiff is informed and believes that the defenses of the defendant will be identical as to each of the victims of the abuse. In fact, in all of the other individual cases brought against these defendants for similar acts alleged by this plaintiff, the defendants have asserted identical defenses. These actions are within the jurisdiction of this court and it may easily take judicial notice of the same.
39. Plaintiff, the representative party will fairly and adequately protect the interests of the class.
40. The amount in controversy for each of the members of the class exceeds \$100.00.
41. Plaintiff is entitled to the certification of a class of plaintiffs against the defendant

representing all individuals, save for those barred by law from asserting an action against the defendants, in South Carolina who were sexually abused and/or otherwise molested by agents or employees of the Catholic Church under the supervision and/or control of the defendants.

42. Throughout this complaint, references to plaintiff are intended to reference the plaintiff and the members of the class who he represents as factual circumstances similar to those suffered by the class members and of the legal or equitable claims against the defendants which each member of the class is entitled to assert.

FOR A FIRST CAUSE OF ACTION

OUTRAGE

43. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
44. The defendants intentionally inflicted severe emotional distress on Plaintiff or were certain or substantially certain that such distress would result from their conduct. Defendants' conduct as alleged above was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community. The actions of defendants caused Plaintiff emotional distress and the emotional distress suffered was severe such that no reasonable man could be expected to endure it and it had physical manifestations of pain, loss of sleep, nervousness, stress, and other manifestations.
45. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants

for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A SECOND CAUSE OF ACTION

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS

46. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
47. As alleged above, Plaintiff was sexually assaulted on multiple occasions by Father Laurence Sheedy who was an authority figure, moral leader, confessor, and counselor of the Plaintiff. Sheedy's duties to the Plaintiff arose from his employment with Diocese and Bishop.
48. Defendants owed duties of due care toward the Plaintiff. Defendants breached those duties and were negligent, grossly negligent, careless, reckless, wilful, or wanton in relation to the Plaintiff, in that they failed to:
 - a. Monitor Sheedy's behavior while on premises of the defendants and/or while engaged in activities with school, church, youth;
 - b. Properly investigate Sheedy's background through a proper background check, to determine his proclivities toward deviant sexual conduct perpetrated upon individuals such as the Plaintiff;
 - c. Address Sheedy's past conduct either at the time he first became involved with the defendants or subsequently thereafter;
 - d. Ignoring Sheedy's known predilections toward sexually assaulting young boys when it was known or the defendants should have known of those predilections;
 - e. Allowing Sheedy to work with young boys, including the Plaintiff, alone and

Attachment G - 000011

unsupervised;

- f. Maintain and keep their property and premises where Sheedy worked in a reasonably safe condition;
- g. Shield the Plaintiff from dangerous conditions, situations and individuals including child predators such as Sheedy ;
- h. Warn the Plaintiff and/or his family of Sheedy's deviant sexual proclivities;
- i. Placing the plaintiff in an unsafe environment in Georgia without fully investigating those facilities and/or knowing that the environment posed a risk to the plaintiff's well-being;
- j. Fulfill their duties *in loco parentis* to the Plaintiff;
- k. Educate the Plaintiff and/or his family about the dangers of sexual abuse of minors in youth programs such as those conducted by the defendants through Sheedy;
- l. Warn them of a priest known to have a sexual interest in children and known to act inappropriately on that interest;
- m. Supervise Sheedy in a manner so as to eliminate his chances to sexually abuse children;
- n. Retaining Father Sheedy when it they defendants knew or should have known that he posed a risk to invitees of the defendant, especially the plaintiff, plaintiff class, and other invitees;
- o. Take steps to report to civil and criminal authorities a priest who sexually abused children so those who consider employing him for jobs having contact with children can make an informed decision about whether or not to do so, or the conditions on which to employ him, and so that parents and children can protect against his

predatory actions;

p. Notify parents of those children who have been exposed to Sheedy;

q. Exercise due care for the safety and well-being of Plaintiff.

49. As a direct and proximate result of the negligent, grossly negligent, reckless, careless, wilful, and wanton behavior of the defendants and/or their employees/agents, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

FOR A THIRD CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

50. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
51. By and through the relationships described herein, defendants entered into a fiduciary relationship with the Plaintiff. Additionally, by accepting physical custody of the minor Plaintiff, defendants assumed the duty to act in *loco parentis* with respect to the Plaintiff and were obligated to ensure that the plaintiff was safely cared for while he was in their custody, whether that be in Georgia, South Carolina, or elsewhere. By and through the conduct of the defendants, a relationship of trust and confidence, and therefore a fiduciary relationship, was formed.
52. As a result the acts and/or omissions of the defendants described herein, the defendants breached the duties owed to the Plaintiff.
53. As a proximate result of the breaches of fiduciary duties by the defendants, Plaintiff was

injured and suffered damages. Plaintiff is entitled to actual, compensatory damages in an amount to be determined by the jury, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A FOURTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT

54. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.
55. Defendants actively worked to fraudulently conceal their conduct. Among other things, Defendants undertook deliberate acts to conceal from the plaintiff that he had a cause of action thereby inducing him to postpone suit and/or dissuade the plaintiff from bringing suit by acts indicating affirmatively that the defendants would resolve the matter and/or that the plaintiff would suffer great and irreparable harm to himself by instituting suit, including, but not limited to, damnation. This fraudulent concealment lasted until the present.
56. As a direct and proximate result of the outrageous conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants and others.

FOR A SIXTH CAUSE OF ACTION

CIVIL CONSPIRACY

57. The allegations of paragraphs 1 through 41 above are incorporated into this cause of action as if fully stated herein.

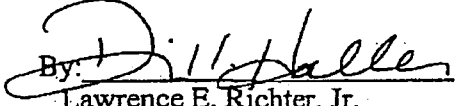
58. Defendants joined with others for the purpose of injuring the plaintiff, including, but not limited to, agents of the Diocese of Atlanta. The civil conspiracy of which these defendants were a party injured the plaintiff.
59. As a direct and proximate result of the conspiratorial conduct of the defendants, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against the defendants for actual damages to be determined by the trier of fact, and punitive damage in a sufficient amount to deter such similar conduct by these defendants or others.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff requests actual, compensatory and punitive damages against the defendants in amounts to be determined by the finder of fact for the various causes of action set forth above, that the costs of this action be taxed against the defendants, and such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

By: 

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Attachment G - 000015

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ATTORNEYS FOR PLAINTIFF

6th day of October, 2006

Mt. Pleasant, South Carolina

Attachment H - 000001

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-_____

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

Plaintiffs,)

vs.)

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

Defendants.)

**MOTION TO CERTIFY CLASSES
AND FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT**

FILED-RECORDED
2006 OCT -6 PM 2:03
SHERYL G. HAM
CLERK OF COURT
DORCHESTER COUNTY

TO: A. PETER SHAHID, ESQUIRE AND JIM GEOLY, ESQUIRE, ATTORNEYS FOR
THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the plaintiffs will move at the Dorchester County Courthouse on the tenth (10) day after service hereof, or at such other time and place as the court deems proper, for an order certifying plaintiffs classes of individuals with potential claims against the defendants, giving initial approval of a settlement between the classes and the defendants, and directing the procedure for notice, objection, and final approval of the settlement reached herein. A more specific statement of the relief requested is stated below.

1. Class Certification

On June 30, 2006,¹ plaintiffs John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, filed actions against the defendants seeking damages arising from sexual abuse suffered at the hands of a priest under the control of the defendants while on the defendants' property. Plaintiffs John Doe #53, John Doe 66 and John Doe 66A were subsequently added to the case, also as class representatives.

This motion seeks to certify two classes of individuals. John Doe #53, John Doe, 66, John Doe 66A, and John Doe 67 request the court certify a class as follows:

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

Jane Doe 1, Jane Doe 2, and Rachel Roe request the court certify a class of individuals as follows:

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

Plaintiffs will provide the court such legal argument to support this motion as necessary.

2. Approval of Settlements reached on behalf of the classes

The Class Representatives with class counsel and representatives of the defendants and their counsel held a mediation June 13 and 14, 2006 with Marvin Infinger, Esquire. The principals of the Settlement have executed a Settlement and Arbitration Agreement which will be presented to the court prior to the hearing on this matter. In sum, the defendants agree to make available a fund in set out in the Settlement and Arbitration Agreement by which individuals who are members of the

¹Other actions involving the same acts have been of record since at least May of 2005.

the Settlement and Arbitration Agreement and final approval of the settlement after notice to the class as set forth below.

3. Notice to Class Members

Plaintiffs pray for an order pursuant to SCRCP Rule 23 requiring notice of the class settlement, approval process, and claims process as follows:

- a. **Notice.** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit A hereto in the following major publications: *USA Today*, *The Charleston Post & Courier*, *The Myrtle Beach Sun*; *The State*; *The Augusta Chronicle*; *The Rock Hill Herald*; *Beaufort Gazette*; *Greenville News Spartanburg Herald*; *Orangeburg Times-Democrat*; and the *Aiken Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names, addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.
- b. **Time.** All publications shall be completed no later than 30 days following the entry of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.
- c. **Fairness Hearing.** A Fairness Hearing on final approval of this settlement will be

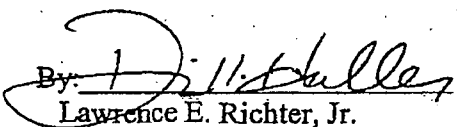
of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.

- c. **Fairness Hearing.** A Fairness Hearing on final approval of this settlement will be heard by this court at a time and place convenient to it as soon after the conclusion of the notice time as possible.
- d. **Notice of Settlement Approval and Duration of Claims Process.** The claims process will begin ten days after the date on which the settlement is approved as fair and all rights of appeal have expired. The claims period shall end 120 days after the date on which the claims period ends. Notice of the date on which the claims period begins and ends and how an individual can make a claim and learn the details of the same shall be made in the same manner as set out paragraph (b) above.

Plaintiffs will supplement this motion with such memorandum and record prior to the hearing on this motion as may be necessary.

WHEREFORE plaintiffs pray for the relief requested herein and such other relief as the court deems just, prudent, and proper.

Respectfully submitted,

By: 

Lawrence E. Richter, Jr.

David K. Haller

RICHTER & HALLER, LLC

622 Johnnie Dodds Blvd.

Post Office Drawer 1089

Attachment H - 000005

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ATTORNEYS FOR PLAINTIFF

6th day of October, 2006
Mt. Pleasant, South Carolina

Attachment I

OK 5014
25.00/
claw

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-18-1434

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

Plaintiffs,)

vs.)

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

Defendants.)

ORDER DESIGNATING CASE
COMPLEX

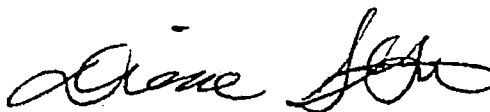
FILED-RECORDED
2006 OCT 17 PM 3:55
CLERK OF COURT
DORCHESTER COUNTY

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

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

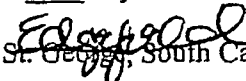
To the extent necessary, this matter shall not be called for trial before August 15, 2007.

AND IT IS SO ORDERED!



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

This 10 day of October, 2006

At St. George, South Carolina


Attachment I

25.00/
Cla

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

Plaintiff,)

vs.)

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

Defendants.)

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

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

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

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

matters:

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE No. 06-CP-18-1310
CASE No. 06-CP-18-1311
CASE No. 06-CP-18-14 3 4

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

Plaintiffs,)

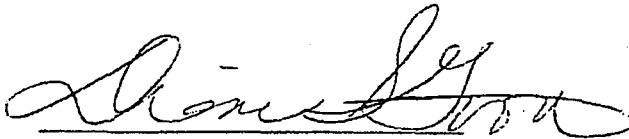
vs.)

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

Attachment I

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

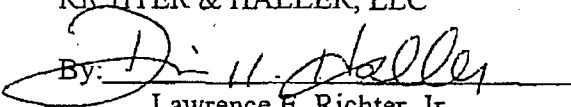
AND IT IS SO ORDERED!!!


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

This 9 day of Oct., 2006
Edgely, South Carolina

WE SO MOVE:

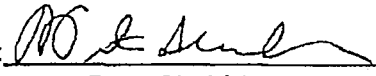
RICHTER & HALLER, LLC

By: 
Lawrence E. Richter, Jr.
David K. Haller
Post Office Drawer 1089
Mt. Pleasant, SC 29465
(843) 849-6000

ATTORNEYS FOR PLAINTIFFS

WE CONSENT:

SHAHID LAW OFFICE, LLC

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

ATTORNEYS FOR DEFENDANTS

Attachment J

RICHTER & HALLER, LLC

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

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

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

October 17, 2006

The Honorable Deadra L. Jefferson
Ninth Judicial Circuit
100 Broad Street, Suite 336
Charleston, SC 29401

In Re: John Doe # 66 vs. The Bishop of Charleston, a Corporation Sole, and The Bishop
of the Diocese of Charleston, in his official capacity
Case No.: 05-CP-10-2053

John Doe #66A vs. The Bishop of Charleston, a Corporation Sole, and The
Bishop of the Diocese of Charleston, in his official capacity
Case No.: 05-CP-10-3293

John Doe #53, individually and as a representative of a class of other persons
similarly situated as victims of priest sex abuse in South Carolina v. The Bishop
of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston,
in his official capacity
Case No.: 05-CP-10-4913

Dear Judge Jefferson:

Please find enclosed proposed consent orders to dismiss the above referenced matters. If
the proposed orders meet with your approval, please execute them and return them in the
enclosed envelope or forward them to the Clerk of Court for filing.

By copy of this letter I am advising present counsel of this contact with the court.

Attachment J

Thanking you for your time and courtesies in this matter, I am

Very truly yours,



David K. Haller

DKH/she
Enclosures

cc: A. Peter Shahid, Esq.
James C. Geoly, Esq.
Lionel Lofton, Esq.
Jack Sinclair, Esq.
Glenn Churchill, Esq.

Attachment K

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE No. 05-CP-10-4913

John Doe #53, individually and as a
representative of a class of other persons
similarly situated as victims of priest
sex abuse in South Carolina,

Plaintiff,

vs.

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

Defendants.

CONSENT ORDER OF DISMISSAL
WITHOUT PREJUDICE

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

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

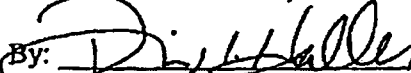

The Honorable Deadra L. Jefferson
Ninth Circuit Court Judge

This 19th day of October, 2006

Charleston, South Carolina

WE CONSENT:

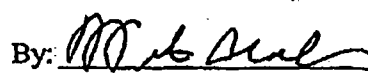
RICHTER & HALLER, LLC

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

ATTORNEYS FOR PLAINTIFF

WE CONSENT:

SHAHID LAW OFFICE, LLC

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

ATTORNEYS FOR DEFENDANTS

Attachment L - 000001

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 06-CP-18-1636

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

Plaintiffs,)

vs.)

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

Defendants.)

**MOTION TO CERTIFY CLASSES
 AND FOR PRELIMINARY APPROVAL
 OF CLASS SETTLEMENT**

FILED - RECORDED
 2007 JAN 17 PM 3:25
 SHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

TO: A. PETER SHAHID, ESQUIRE AND JIM GEOLY, ESQUIRE, ATTORNEYS FOR
 THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the plaintiffs will move at the Dorchester County Courthouse on the tenth (10) day after service hereof, or at such other time and place as the court deems proper, for an order certifying plaintiffs classes of individuals with potential claims against the defendants, giving initial approval of a settlement between the classes and the defendants, and directing the procedure for notice, objection, and final approval of the settlement reached herein.

A more specific statement of the relief requested is stated below.

1. Class Certification

On June 30, 2006,¹ plaintiffs John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe individually and as representatives of a class of people similarly situated, filed actions against the defendants seeking damages arising from sexual abuse of John Doe 67 suffered at the hands of a priest under the control of the defendants while on the defendants' property. Plaintiffs John Doe #53, John Doe 66 and John Doe 66A were subsequently added to the case, also as class representatives. The John Doe plaintiffs are actual victims of sexual abuse. The Jane Doe and Rachel Roe plaintiffs are spouses and a mother of the plaintiffs.

This motion seeks to certify two classes of individuals. John Doe #53, John Doe, 66, John Doe 66A, and John Doe 67 request the court certify a class as follows:

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

Jane Doe 1, Jane Doe 2, and Rachel Roe request the court certify a class of individuals as follows:

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

Plaintiffs will provide the court such legal argument to support this motion as necessary.

2. Approval of Settlements reached on behalf of the classes

The Class Representatives with class counsel and representatives of the defendants and their

¹Other actions involving the same acts have been of record since at least May of 2005.

counsel held a mediation June 13 and 14, 2006 with Marvin Infinger, Esquire. The principals of the Settlement have executed a Settlement and Arbitration Agreement is attached hereto as Exhibit A. In sum, the defendants have agreed to make available a fund as set out in the Settlement and Arbitration Agreement by which individuals who are members of the classes may make a claim. Mr. Infinger, as Arbitrator, will determine the amount of any award due *bona fide* claims of members of the plaintiffs' classes. The full claims process and payment schedule for claims is set forth in the Settlement and Arbitration Agreement.

Plaintiffs' pray for an order pursuant to SCRCR Rule 23 providing conditional approval of the Settlement and Arbitration Agreement and final approval of the settlement after notice to the class as set forth below.

3. Notice to Class Members

Plaintiffs pray for an order pursuant to SCRCR Rule 23 requiring notice of the class settlement, approval process, and claims process as follows:

- a. **Notice.** Class counsel shall arrange for notice of the settlement to be published in a form comparable to that set forth on Exhibit B hereto in the following major publications: *The Charleston Post & Courier*, *The Myrtle Beach Sun*, *The State*; *The Augusta Chronicle*; *The Rock Hill Herald*; *Beaufort Gazette*; *Greenville News*; *Spartanburg Herald*; *Orangeburg Times-Democrat*; and the *Aiken Standard*. Publication of the notice shall be at least once a week for six weeks during the notice period. In addition to the notice, class counsel shall mail by certified mail, return receipt requested the notice to any individual who may fit within the confines of either class. The defendants shall be required to provide to the plaintiffs the names,

addresses and telephone numbers of all such persons known to them. The defendant shall publish the notice in its Catholic Miscellany publication for three (3) consecutive publications.

- b. **Time.** All publications shall be completed no later than 30 days following the entry of an order providing conditional approval of this settlement. Any objection to the approval of this settlement must be sent to class counsel and to the clerk of court for Dorchester County for filing with the required filing fee no later than fifteen (15) days prior to the Fairness Hearing on this matter.
- c. **Fairness Hearing.** A Fairness Hearing on final approval of this settlement will be heard by this court at a time and place convenient to it as soon after the conclusion of the notice time as possible.
- d. **Notice of Settlement Approval and Duration of Claims Process.** The claims process will begin ten days after the date on which the settlement is approved as fair. The claims period shall end 120 days thereafter. Notice of the date on which the claims period begins and ends and how an individual can make a claim and learn the details of the same shall be made in the same manner as set out paragraph (b) above.

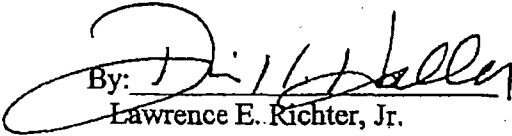
Plaintiffs will supplement this motion with such memorandum and record prior to the hearing on this motion as may be necessary.

Prayer and Signature Block Continue Next Page

Attachment L - 000005

WHEREFORE plaintiffs pray for the relief requested herein and such other relief as the court
deems just, prudent, and proper.

Respectfully submitted,

By: 

Lawrence E. Richter, Jr.

David K. Haller

RICHTER & HALLER, LLC

622 Johnnie Dodds Blvd.

Post Office Drawer 1089

Mt. Pleasant, SC 29465

(843) 849-6000

ATTORNEYS FOR PLAINTIFF

15th day of January 2007
Mt. Pleasant, South Carolina

Attachment M - 000001

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**

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2007 JAN 17 PM 3:25

FILED - RECORDED

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

1



Arbitration Agreement" formalizing the agreement reached between the Representatives¹ and the Diocese and supersedes all other agreements and/or writings previously executed by the parties. This Agreement is intended to effectuate the complete and total settlement of civil actions captioned above as well as 2005-CP-10-2053, 2005-CP-10-3293, and 2005-CP-10-4913, and all other claims which were alleged or may have been alleged by the Representatives and the individuals who they represent in their capacity as class representatives. It is further understood that this Agreement must be submitted to a court of competent jurisdiction for approval and that certain provisions survive this agreement even if other provisions are not approved.

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

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

- A. All individuals born on or before August 30, 1980 who, as minors, were sexually abused² at any time by agents or employees of the Diocese of Charleston who have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter "the Primary Class")
- B. The spouses and parents of all individuals qualified pursuant to the Primary Class and who suffered a loss of the abused individual's consortium, and who as spouses or parents have not previously had any similar claim adjudicated, resolved, or released. (Hereinafter the "Consortium Class")

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

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

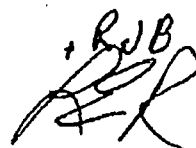


The Diocese agrees to take no position as to the creation of the plaintiff classes and to cooperate with the provision of information reasonably necessary for the approval of such class or classes. The individuals who fall in either class defined above shall be entitled to make a claim against the settlement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

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

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

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



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

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

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

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Attachment M - 000005

accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage.

\$150,000.00

\$200,000.00

Loss of consortium (Parent or Spouse)

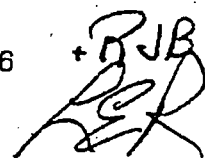
\$20,000.00

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

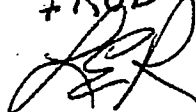
- d. For every claim presented, the arbitrator shall make an express written determination as to (1) whether the Claimant is, in fact, a member of one of the plaintiff classes, (2) whether the claim is *bona fide*, and (3) the amount of the award, if any. In the event that the Arbitrator determines that a Claimant is not a member of one of the plaintiff classes and/or that the claim is not *bona fide*, the claim shall be denied and the Claimant shall receive no award. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fide*, and the amount of any damages which were suffered.
- e. Any individual, including his/her parents and spouse, whose claim has been otherwise adjudicated, settled or resolved, is barred from filing a claim or collecting from any funds of this class.



- f. The identity of all Claimants shall be kept strictly confidential except that the Diocese's counsel and those associated with the Diocese necessary for the performance of the terms of this agreement, the Arbitrator, Class Counsel and their staffs may have such access necessary to effectuate this Agreement and the court's orders on the same. Counsel before the court should take appropriate steps to ensure that access is provided to staff on an "as needed" basis. Any individual who has access to the actual name of any Claimant shall sign a court approved confidentiality and restraining agreement prohibiting the disclosure of the name of any Claimant. The name of the Claimant, his or her social security number, and the amount of his or her award will be provided to the escrow agent for purposes of distributing the award at the conclusion of the claims process.
- g. Subject to approval of the court, any person wishing to make a claim must do so within 120 days of the initial notice of final approval of the settlement in a form approved by the court. The form may be obtained from Class Counsel by contacting it as provided in the court approved notice and should include at least the following information:
1. The name, date of birth, social security number, preferred address, telephone number, and email address of contact for the Claimant and, if the claim is made in a representative capacity, the name of the representative and the ward and the nature of the relationship;
 2. Name of the abuser, location at which the abuse occurred, the time period during which the abuse occurred, and relation of the victim to the abuser; [i.e. priest/altar boy; coach/ basketball player]
 3. A brief statement sufficient to advise the parties of the nature of the claim and the acts complained of;



4. A brief summary of any claimed injury or damages;
 5. Name of parents, whether they are living or deceased;
 6. Name of spouse (if any);
 7. The form must be signed and dated; and
 8. Any other information or documents Claimant deems necessary for a determination of his or her claim. Documentary evidence may be supplemented as provided for herein.
- h. Class Counsel shall assign an anonymous name and/or numbering system to each claim made. Thereafter, the claim must be referred to by its claim number. The name of the claimant and the claim number will be provided to the Diocese lawyers and to the Arbitrator pursuant to the confidentiality provisions established herein.
- i. Class Counsel will transmit the Claim Form only to counsel for the Diocese for its review pursuant to paragraphs 3(l), (m) and (n). At the conclusion of the claim review by the Diocese, Class Counsel shall transmit the Diocese's response to the Claimant. The Claimant will have fifteen (15) days to make any response or take any action Claimant deems necessary and provide the same to Class Counsel who will transmit it to the Diocese. If the Claimant has elected to obtain psychological testing and use it in support of his or her claim, Claimant should provide it to Class Counsel promptly upon receipt. Thereafter, Class Counsel will submit the entire claim package to the Arbitrator and request a hearing.
- j. The Arbitrator shall schedule the Claimant's Arbitration within 90 days of submission of the claim to him. The arbitration shall be conducted pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., unless the Act conflicts with this Agreement or the court's order(s) in this matter, in which case the Agreement and order(s)

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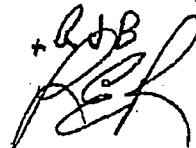
shall control. In any event, as to all issues, the orders of the court shall control.

- k. While the class has Class Counsel, the parties acknowledge that the Claimant may have an attorney of his or her own choice for any part of the claims process. If an attorney is selected by the Claimant, all information concerning the claim or claims process shall be sent to the attorney for the Claimant.
- l. Upon receipt of any Claim Form from any Claimant, Class Counsel shall forward the claim form to Counsel for the Diocese. Counsel for the Diocese shall have thirty (30) days from receipt of the claim to review the claim to verify the accuracy of the information presented and to determine the Diocese's position on whether the Claimant is a member of one of the plaintiff classes and whether the claim is *bona fide*. If the Diocese acknowledges that the Claimant is a member of a plaintiff class and that the claim is *bona fide*, the proceedings before the Arbitrator shall be to determine the damages suffered by the Claimant within the parameters of paragraph 3(d).
- m. If the Diocese objects to the claim, the Diocese shall submit an original and a copy of a written objection to Class Counsel stating why the Claimant is not properly a member of one of the plaintiff classes and/or why the claim is not *bona fide*, and attaching (to the original and the copy) any documents or other supporting evidence which the Diocese wishes to tender (such as a death certificate showing that the alleged perpetrator could not have committed the acts complained of at the time and place alleged). Class Counsel shall transmit a copy of the Diocese's objection and exhibits to the Claimant or the Claimant's attorney.
- n. If the Diocese makes a timely objection to the claim, the Arbitrator shall rule on the Diocese's objection after a hearing at which Counsel for the Diocese and Claimant (and/or Claimant's counsel if the Claimant elects to be represented) and/or Class Counsel shall be

+ ROB
RJR

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

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



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

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

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

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

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

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

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

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

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

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

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

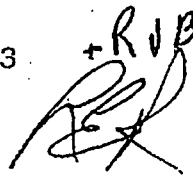
5. **ATTORNEYS FEES.** In consideration of the substantial efforts of plaintiffs' counsel (past



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

6. PAYMENT OF CLAIMS.

- A. W. Ellison Thomas, CPA shall serve as an independent escrow agent for the payment of all sums due from the settlement fund. The escrow agent shall be provided unrestricted access to the settlement funds obtained in compliance with this agreement and will make all payments directly against the fund as set out in this agreement, order of the court, or any award made by the Arbitrator to the individual or entity to be paid. The escrow agent will be compensated at an hourly rate approved by the court and will be from the settlement fund. The escrow agent shall provide an accounting of his disbursements at the conclusion of the claims process to Class Counsel, the Diocese, and the court.
- B. No later than thirty (30) days after the final Arbitration award is issued, the escrow agent and the Arbitrator will confer and agree that the total amount of all awards after the payment of all costs and fees, does not exceed the amounts provided for in paragraph 3(a). In the event that the total due exceeds the amounts provided for in paragraph 3(a), then each award shall be reduced on a *pro rata* of the net settlement fund. This revised award list shall be provided



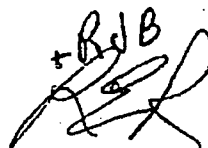
to Class Counsel and the Diocese, if necessary.

- C. Once the Arbitrator and escrow agent determine the final amount of each award, the escrow agent shall disburse the award from the settlement funds within fifteen (15) days of the final determination of the awards. The awards are to be paid to the Claimant directly or through his or her counsel. After all necessary disbursements any remaining letters of credit and/or funds will be returned to the defendants and/or letters of credit will be cancelled.
- D. Any party may bring perceived errors in an award based on an interpretation of this Agreement to the attention of the Arbitrator with notice to the other party. However, the Arbitrator's decision on any such question is final. By participating in the claims process, the Claimants and the Diocese expressly waive any and all rights of appeal of any and all decisions of the Arbitrator, including decisions made on whether the individual is a member of the class, whether the claim is *bona fides*, and any damages which were suffered.

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

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

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

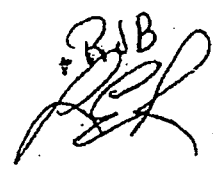


accusation arises or, where applicable, to law enforcement authorities in other states, and cooperates fully with all criminal investigations and prosecutions.

- c. Victim Assistance Minister. Pursuant to the Policies, the Diocese has established, among other things, a Victim Assistance Minister ("VAM"), who is available to all victims of child sexual abuse allegedly committed by an agent or employee of the Diocese. The VAM can be reached at 1-800-921-8122. The VAM coordinates the Diocese's pastoral response to those who come forward, and works with victims to facilitate the healing process. Where appropriate, the VAM also assists victims in obtaining and paying for psychotherapy, on a confidential basis.
- d. Sexual Abuse Advisory Board. Pursuant to the Policies, the Diocese has established, among other things, a Sexual Abuse Advisory Board (the "Board"). Although the Bishop of the Diocese has the ultimate decision-making responsibility in cases presented to the Diocese, the Board has the responsibility to advise the Bishop in particular cases. The Board also assists the Bishop in the review of the Policies that occurs every two years, and makes recommendations to the Bishop concerning any proposed revisions to the Policies. The Board consists of at least five (5) members, of whom four (4) are independent lay people who are not priests or employees of the Diocese.
- e. Presentation By Class Representatives or Members To The Sexual Abuse Advisory Board. The Diocese welcomes the suggestions of the Class Representatives (or members) regarding the provisions and implementation of the Policies. The Diocese therefore agrees to permit the Class Representatives to make a presentation to the Board in advance and/or as part of the next two regularly scheduled two year policy reviews so that the views of the Representatives can be heard and considered as the Diocese undertakes such review.

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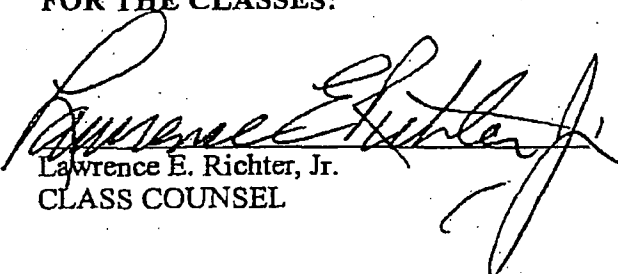
8. **RELEASE.** When the Claimant submits his claim form, he or she shall execute the Release attached as Exhibit 1 and deliver that Release to Class Counsel. Class Counsel shall hold the Release in escrow until the award is delivered and payment is made, as provided herein. If payment is not made by Diocese pursuant to the Agreement, these copies are null and void and will be destroyed. The Diocese will provide a release to each Claimant as set out on Exhibit 2 through Class Counsel upon receipt of the Claim Form for the review under paragraphs 3(l), (m), and (n).
9. **DISMISSAL OF ACTIONS.** The actions pending against the Diocese shall be dismissed with prejudice pursuant to the terms and conditions set by the court in its order on class certification.
10. **MISCELLANEOUS PROVISIONS.** This Agreement, with attached Exhibits, constitutes the entire agreement between the Representatives, the Claimant, and the Diocese. To address omissions, inadvertent mistakes, or matters which arise after the execution of this Agreement, each Claimant agrees that this Agreement may be modified, amended or supplemented to effectuate the intent of the parties under such terms and conditions set by the court approving this Agreement. It is acknowledged that each party has participated in the drafting of this Agreement, and that any claimed ambiguity should not be construed for or against any Party. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. Any dispute concerning this Agreement which arises after this Agreement is approved by the court shall be resolved by the Arbitrator. The decision of the Arbitrator regarding any such dispute is final and binding. The terms and conditions of this Agreement shall be binding and inure to the benefit of each of the Parties, their counsel and respective successors, heirs and assigns. It is further understood and agreed by Claimant that this Agreement is not to be construed as an admission of liability upon the part of any of the released parties, but rather as a good faith settlement of disputed claims. The Claimant states and warrants that he or she is the sole owner of the claims involved, and that such

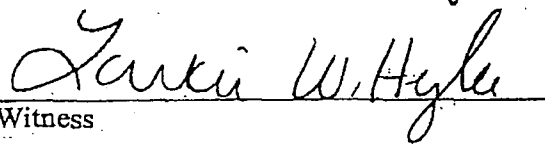


claims have not been assigned, encumbered, or transferred. Where applicable herein, the masculine gender shall include the feminine gender and the feminine gender shall include the masculine gender.

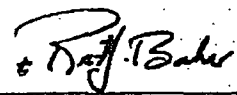
Executed this 12 day of January, 2007.

FOR THE CLASSES:


Lawrence E. Richter, Jr.
CLASS COUNSEL


Witness

FOR THE DEFENDANTS:


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

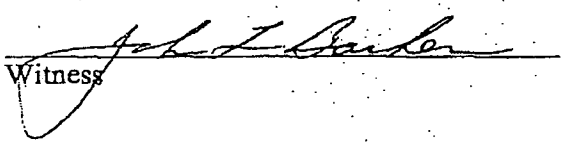

Witness

EXHIBIT 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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Attachment M - 000019

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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Attachment M - 000020

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EXHIBIT 2

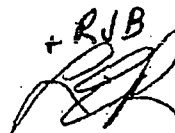
DIOCESE LIMITED RELEASE

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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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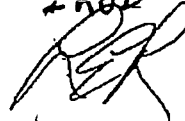
as of the date written below.

The Bishop of Charleston, a Corporation Sole

By: _____

Its: _____

Date: _____ Witnessed by: _____

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Attachment M - 000022

Legal Notice**Notice of Proposed Settlement of Class Action**

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

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

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

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

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

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



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

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

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

CLASS COUNSEL:

Lawrence E. Richter, Jr.

David K. Haller

RICHTER & HALLER, LLC

622 Johnnie Dodds Blvd.

Post Office Drawer 1089

Mt. Pleasant, SC 29465

(843) 849-6000

diocesessettlement@richterfirm.com

Attachment N - excerpt from fee petition

38

Consent Order Changing Venue.wpd	08/12/06 09:50:50 AM	F:\WPFILES\05civ033\ Pleadings\	2		
Diocese complaint.wpd	08/12/06 11:18:20 AM	F:\WPFILES\06civ010\	30	DKH	
motion coversheet.wpd	08/14/06 10:11:12 AM	F:\WPFILES\05civ033\ Pleadings\	0.5	Staff	
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David K. Haller	08/15/06 12:00:00 AM	e-mail	0.5	LER	
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R. App. 002003

R. App. 002003

R.App. 956

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Attachment P - excerpt from fee petition

38

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Consortium Complaint.wpd	08/14/06 03:21:36 PM	F:\WPFILES\06civ023\	15	DKH	
Shahid.wpd	08/14/06 04:12:24 PM	F:\WPFILES\06civ010\	0.5	Staff	
Shahid.wpd	08/14/06 04:12:34 PM	F:\WPFILES\06civ023\	0.5	Staff	
David K. Haller	08/15/06 12:00:00 AM	e-mail	0.5	LER	
Shahid.2.wpd	08/15/06 07:45:28 AM	F:\WPFILES\06civ010\	0.5	Staff	
Shahid.Peter.11.wpd	08/15/06 07:45:48 AM	F:\WPFILES\05civ033\ Letters\	0.5	Staff	
Shahid.2.wpd	08/15/06 07:46:40 AM	F:\WPFILES\06civ023\	0.5	Staff	
New File Form.wpd	08/15/06 10:11:02 AM	F:\WPFILES\06civ023\	0.5	Staff	
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R. App. 002005

R. App. 002005

R.App. 956

Attachment P - excerpt from fee petition

39

Judge Goodstein.wpd	08/21/06 09:43:52 AM	F:\WPFILES\05clv033\ Letters\	0.5	Staff	
fax.counsel.wpd	08/21/06 09:45:49 AM	F:\WPFILES\05clv033\	0.5	Staff	
cert.service	08/25/06 12:00:00 AM	F:\WPFILES\03clv037\	0.5	Staff	
cert.service	08/28/06 12:00:00 AM	F:\WPFILES\03clv037\	0.5	Staff	
David K. Haller	08/28/06 12:00:00 AM	e-mail	0.5	LER	
Telephone Conference/ Geoly. Shahid	08/29/06 10:30:30 AM		1	DKH	
Telephone Conference/ Geoly. Shahid	08/29/06 10:30:30 AM		1	LER	
Bookkeeping	08/30/06 12:00:00 AM	Diocese (all)	2	LWH	
Fax	08/30/06 12:00:00 AM	F:\WPFILES\03clv037\	0.5	Staff	
Fax	08/30/06 12:00:00 AM	F:\WPFILES\03clv037\	0.5	Staff	
Legal Research	08/30/06 12:00:00 AM	F:\WPFILES\03clv037\	5	DKH	\$24.52
Photocopying / Monthly	08/30/06 12:00:00 AM	F:\WPFILES\06clv010\	0.5	Staff	
Legal Research	08/30/06 12:00:00 AM	F:\WPFILES\03clv037\	5	LER	\$24.52
Legal Research	08/30/06 12:00:00 AM	F:\WPFILES\03clv037\	5	Clerk	\$24.52
Oversight and Review	08/30/06 12:00:00 AM	Diocese (all)	10	LER	
Settlement_and_Arbitration_Agreement_1_1_1_August_30:06.wpd	08/30/06 08:25:17 AM	F:\WPFILES\03clv037\ Settlement\	10	DKH	
Clerk.wpd	09/05/06 03:46:04 PM	F:\WPFILES\06clv010\	0.5	Staff	
Clerk.wpd	09/05/06 03:46:14 PM	F:\WPFILES\06clv023\	0.5	Staff	
cert.srv.wpd	09/05/06 03:48:52 PM	F:\WPFILES\06clv010\	0.5	Staff	
cert.srv.wpd	09/05/06 03:49:30 PM	F:\WPFILES\06clv023\	0.5	Staff	

R.App. 957

Attachment P - excerpt from fee petition

40

David K. Haller	09/08/06 12:00:00 AM	e-mail	0.5	LER	
James Geoly	09/08/06 12:00:00 AM	e-mail	0.5	DKH	
James Geoly	09/08/06 12:00:00 AM	e-mail	0.5	DKH	
James Geoly	09/08/06 12:00:00 AM	e-mail	0.5	DKH	
James Geoly	09/11/06 12:00:00 AM	e-mail	0.5	DKH	
James Geoly	09/11/06 12:00:00 AM	e-mail	0.5	DKH	
Judge Goodstein.wpd	09/11/06 01:42:52 PM	F:\WPFILES\03clv037\ Letters\	0.5	Staff	
Judge Goodstein.2.wpd	09/11/06 04:12:27 PM	F:\WPFILES\03clv037\ Letters\	0.5	Staff	
David K. Haller	09/12/06 12:00:00 AM	e-mail	0.5	LER	
David K. Haller	09/13/06 12:00:00 AM	e-mail	0.5	LER	
Geoly, James C.	09/13/06 12:00:00 AM	e-mail	0.5	DKH	
James Geoly	09/18/06 12:00:00 AM	e-mail	0.5	DKH	
A Peter Shahid, Jr.	09/19/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/19/06 12:00:00 AM	e-mail	0.5	LER	
A Peter Shahid, Jr.	09/20/06 12:00:00 AM	e-mail	0.5	DKH	
Fax	09/20/06 12:00:00 AM	F:\WPFILES\03clv037\	0.5	Staff	
Fax	09/20/06 12:00:00 AM	F:\WPFILES\03clv037\	0.5	Staff	
Fax	09/20/06 12:00:00 AM	F:\WPFILES\03clv037\	0.5	Staff	
Fax	09/20/06 12:00:00 AM	F:\WPFILES\03clv037\	0.5	Staff	
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James Geoly	09/20/06 12:00:00 AM	e-mail	0.5	DKH	
Judge Goodstein.3.wpd	09/20/06 11:03:56 AM	F:\WPFILES\03clv037\ Letters\	0.5	Staff	
A Peter Shahid, Jr.	09/21/06 12:00:00 AM	e-mail	0.5	DKH	
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Fax	09/22/06 12:00:00 AM	F:\WPFILES\03clv037\	0.5	Staff	

R. App. 002007

R. App. 002007

R.App. 958

Attachment P - excerpt from fee petition

41

Fax	09/22/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/22/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Memo to Counsel of Record.wpd	09/22/06 03:29:05 PM	F:\WPFILES\03civ037\ Memos\	0.5	Staff	
A Peter Shahid, Jr.	09/25/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/25/06 12:00:00 AM	e-mail	0.5	LER	
Fax	09/25/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/25/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/25/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	09/25/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
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Meeting / LER & DKH	09/26/06 12:00:00 AM	F:\WPFILES\03civ037\	2	DKH	
Meeting / LER & DKH	09/26/06 12:00:00 AM	F:\WPFILES\03civ037\	2	LER	
Telephone Conference/ Goodstein, Geoly	09/26/06 01:30:30 PM	F:\WPFILES\03civ037\	1	DKH	
Telephone Conference/ Goodstein, Geoly	09/26/06 01:30:30 PM	F:\WPFILES\03civ037\	1	LER	
Telephone Conference/ Goodstein, Shahid, Geoly	09/26/06 01:30:30 PM		1	DKH	
Telephone Conference/ Goodstein, Shahid, Geoly	09/26/06 01:30:30 PM		1	LER	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	

R.App. 959



R. App. 002009

Attachment P - excerpt from fee petition

Attachment P - excerpt from fee petition

43

David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	09/27/06 12:00:00 AM	e-mail	0.5	DKH	
Bookkeeping	09/30/06 12:00:00 AM	Diocese (all)	2	LWH	
Legal Research	09/30/06 12:00:00 AM	F:\WPFILES\03civ037\	5	DKH	
Photocopying / Monthly	09/30/06 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
Legal Research	09/30/06 12:00:00 AM	F:\WPFILES\03civ037\	5	LER	
Legal Research	09/30/06 12:00:00 AM	F:\WPFILES\03civ037\	5	Clerk	
Oversight and Review	09/30/06 12:00:00 AM	Diocese (all)	10	LER	
Photocopying / Monthly	10/01/06 12:00:00 AM	F:\WPFILES\03civ037\	3	Staff	
David K. Haller	10/05/06 12:00:00 AM	e-mail	0.5	DKH	
Fax	10/05/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	10/05/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
Fax	10/05/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	
fax:Counsel.wpd	10/05/06 01:46:07 PM	F:\WPFILES\03civ037\	0.5	Staff	
Summons.wpd	10/05/06 02:37:50 PM	F:\WPFILES\03civ037\ Pleadings\	0.5	Staff	
fax:Counsel of Record.wpd	10/05/06 02:40:11 PM	F:\WPFILES\03civ037\	0.5	Staff	
Shahid.Peter.35.wpd	10/05/06 02:40:24 PM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
[REDACTED] dorchester.wpd	10/05/06 03:28:33 PM	F:\WPFILES\03civ037\ Pleadings\			

R.App. 961

Attachment P - excerpt from fee petition

44

Amended Diocese complaint.wpd	10/05/06 03:29:39 PM	F:\WPFILES\05civ032\ PLEADINGS\	10	LER	
Amended Diocese complaint.a.wpd	10/05/06 04:36:18 PM	F:\WPFILES\06civ010\	20	DKH	
DORCHESTER.wpd	10/05/06 04:36:23 PM	F:\WPFILES\05civ033\ Pleadings\	30	DKH	
Order to Dismiss w/out Prejudice	10/05/06 04:39:13 PM	F:\WPFILES\05civ033\ Pleadings\	1	DKH	
Dismiss w.o Prejudice.Consent Order.wpd	10/06/06 08:11:30 AM	F:\WPFILES\03civ037\ Pleadings\	2	DKH	
Civil Cover Sheet.UPDATE.doc	10/06/06 08:31:29 AM	F:\WPFILES\05civ033\ Pleadings\	0.5	Staff	
Dismiss w.o Prejudice.Consent Order.doc	10/06/06 08:44:26 AM	F:\WPFILES\05civ032\ PLEADINGS\	2	DKH	
Dismiss w.o Prejudice.Consent Order.doc	10/06/06 08:50:40 AM	F:\WPFILES\05civ033\ Pleadings\	2	DKH	
Motion Coversheet.wpd	10/06/06 08:53:23 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
Motion Coversheet.3.wpd	10/06/06 08:55:54 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
motion coversheet.5.doc	10/06/06 08:58:34 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
Consent Order Consolidating Class.wpd	10/06/06 09:06:48 AM	F:\WPFILES\05civ032\ PLEADINGS\	2	DKH	
Consent Order Consolidating Cases.wpd	10/06/06 09:07:08 AM	F:\WPFILES\03civ037\ Consolidate Cases\	2	DKH	
Motion Coversheet.2.wpd	10/06/06 09:07:51 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
motion coversheet.5.doc	10/06/06 09:08:05 AM	F:\WPFILES\05civ033\ Pleadings\	0.5	Staff	
Motion Coversheet.4.wpd	10/06/06 09:09:39 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
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Motion Coversheet.5.wpd	10/06/06 09:19:44 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
Order Designating Complex Case.wpd	10/06/06 09:27:54 AM	F:\WPFILES\03civ037\ Consolidate Cases\	2	DKH	

R. App. 002011

R. App. 002011

R.App. 962

Attachment P - excerpt from fee petition

45

Motion Coversheet.6.wpd	10/06/06 09:29:02 AM	F:\WPFILES\03civ037\ Consolidate Cases\	0.5	Staff	
mollon coversheet.5.doc	10/06/06 09:30:13 AM	F:\WPFILES\05civ032\ PLEADINGS\	0.5	Staff	
Motion Hearing / Judge Goodstein	10/06/06 11:30:30 AM		6	DKH	
Mollon Hearing / Judge Goodstein	10/06/06 11:30:30 AM		6	LER	
Larkin Hegler	10/10/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
Larkin Hegler	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
Larkin Hegler	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
Meeting / LER & DKH	10/11/06 12:00:00 AM	F:\WPFILES\03civ037\	2	DKH	
Meeting / LER & DKH	10/11/06 12:00:00 AM	F:\WPFILES\03civ037\	2	LER	
[REDACTED]	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
sunny@richterfirm.com	10/11/06 12:00:00 AM	e-mail	0.5	DKH	
Larkin Hegler	10/13/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/16/06 12:00:00 AM	e-mail	0.5	DKH	
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David K. Haller	10/17/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/17/06 12:00:00 AM	e-mail	0.5	LER	
David K. Haller	10/17/06 12:00:00 AM	e-mail	0.5	LER	
Geoly, James C.	10/17/06 12:00:00 AM	e-mail	0.5	DKH	
[REDACTED].com	10/17/06 12:00:00 AM	e-mail	0.5	LER	
sunny@richterfirm.com	10/17/06 12:00:00 AM	e-mail	0.5	DKH	
sunny@richterfirm.com	10/17/06 12:00:00 AM	e-mail	0.5	DKH	
Shahid.Peter.36.doc	10/17/06 11:03:25 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
Judge Jefferson.doc	10/17/06 11:53:51 AM	F:\WPFILES\03civ037\ Letters\	0.5	Staff	
David K. Haller	10/18/06 12:00:00 AM	e-mail	0.5	DKH	
David K. Haller	10/18/06 12:00:00 AM	e-mail	0.5	DKH	
Fax	10/18/06 12:00:00 AM	F:\WPFILES\03civ037\	0.5	Staff	

R. App. 002012

R. App. 002012

R.App. 963

Attachment Q

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

ORDER RELATING TO WAIVER
DISCLOSURES BY COURT

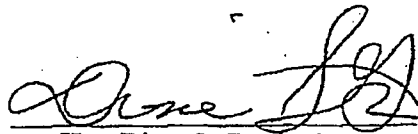
FILED RECORDED
2007 JUL 13 AM 1:38
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

At my direction, counsel for the plaintiffs informed the Diocese that it represented a co-party in a restored action in which the second party is a company in which undersigned's husband has a controlling interest. Further, one of plaintiffs' counsel serves on the Charleston County Aviation Authority and the undersigned's husband is the attorney for the Authority. Additionally, plaintiffs' counsel and the undersigned's families have a long social history which is known to defense counsel. I have given the Diocese an opportunity to discuss these matters before proceeding. These matters were made known to the Diocese by writings dated October 6, 2006 and June 4, 2007 from plaintiffs' counsel to defense counsel.

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Attachment Q

After full disclosure to defense counsel of the foregoing facts of any potential conflict which may exist, the Diocese has elected to waive all conflicts and proceed with me as the designated trial judge.

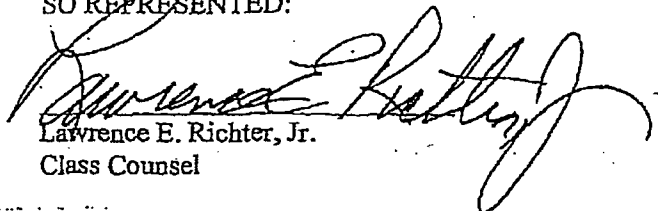

The Hon. Diane S. Goodstein
Presiding Judge

This 13 day of July, 2007
At Myrtle Beach, South Carolina

I CONCUR:


A. Peter Shahid, Jr., Esquire, General Counsel
The Bishop of Charleston, a Corporation
Sole, and The Bishop of the Diocese of
Charleston, in his official capacity

SO REPRESENTED:


Lawrence E. Richter, Jr.
Class Counsel

Attachment R - 000001

July 13 2007.txt

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THE COURT: Let the record reflect that the Chinese firewall has taken effect and I am sending my law clerk on his very last day on the very last hearing out of the courtroom.

MR. SHAHID: I don't know if you need to be on the record, Judge, but I guess we're just trying to push forward.

THE COURT: Good.

MR. SHAHID: And we sent letters, I sent you a letter late yesterday afternoon.

THE COURT: And I wasn't real sure what we were doing. It's like, hum.

MR. SHAHID: It was just to announce that we had reached an agreement.

THE COURT: I felt like the Sony dog. Okay. You want to stop? Do you want to stop? On our, of off?

MR. SHAHID: We don't need to be on the record, do you think?

MR. RICHTER: I think, yeah, I do. Why not? I mean, if you don't mind, let's be on the record. Because I don't know what you -- I don't know what we're talking about. Go

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ahead, shoot. what?

MR. SHAHID: Judge, I sent by fax a

Page 1

Attachment R - 000002

July 13 2007.txt
letter to you yesterday.

THE COURT: Right, yeah.

MR. SHAHID: And I copied Mr. Richter, Mr. Haller, the other class counsel attorneys simply to announce the progress we have been making regarding this case.

THE COURT: Wonderful.

MR. SHAHID: One was resolving this issue in a motion. In my conversation with Mr. Pascoe in the courtroom today.

THE COURT: Yes.

MR. SHAHID: It was my understanding he was either going to chat with you, provide you with an interim report as to where he stood. And Mr. Haller and I have been on the phone I think about every day this week, one of the things.

The main concern was the diocese's position on this creation of a subclass and we've had very frank discussions with class counsel about that and we just don't think in, all due respect to what --

THE COURT: That it's necessary.

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MR. SHAHID: It's necessary. And we quite frankly think the diocese, quite frankly, thinks that it is going to create more of a problem than what the Court is trying to avoid happening.

THE COURT: Okay.

MR. SHAHID: And what we're trying to do
Page 2

Attachment R - 000003

July 13 2007.txt

8 is take care of those victims to make sure
9 that they are included in the class and they
10 get notice of the class and try to stop
11 whatever potential loophole they may be -- if
12 something strange happens, I guess in which
13 someone pops back up who should have gotten
14 notice who didn't get notice.

15 And I think that after talking with
16 Mr. Haller about that and class counsel about
17 that, I think we have an understanding as to
18 what would happen to those particular folks,
19 which would be really our problem, and I
20 think that what we've discussed allows us to
21 proceed with the agreement we've signed on
22 January 12th. And then if that person -- as
23 remote as it may be, but if that person shows
24 up then we would have to deal with it.

25 THE COURT: Let me ask you this

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1 question: It is my understanding that, and
2 I'm not going to be as crisp as I would want
3 to be because I really was not anticipating
4 this issue today.

5 MR. SHAHID: Right.

6 THE COURT: I was anticipating only the
7 motion to compel, but there was, as I
8 understand it, a list of some 40 names ab
9 initio that the diocese had and I am not
10 talking about the individuals that the
11 plaintiffs' counsel already knew about,

Page 3

Attachment R - 000004

July 13 2007.txt

12 pursuant to notice already knew about. I'm
13 talking about sum total of 40 individuals
14 that the diocese was aware of had made at
15 some point through going through old records
16 pursuant to -- really to working with
17 solicitor Pascoe's request, that there were
18 some 40 individuals who were identified as
19 being individuals that were potentially or
20 were sexually abused by priests, by
21 individuals from the diocese and that
22 pursuant to our status conferences I wanted
23 obviously the solicitor have all the
24 information that you have had and I think
25 you've shared that with the solicitor.

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1 And additionally, although he would
2 certainly speak for himself, but my
3 understanding was that you all had shared
4 that with him and that out of that 40 there
5 were 20 people that you all have really been
6 trying to locate and that out of that 20 you
7 got 15 and then there are five folks for
8 which I wanted you all to enter into a
9 protective order and those five names be
10 given to the plaintiff and allow the
11 plaintiff to try to find those five
12 individuals but not contact those people
13 until the diocese had an opportunity to
14 contact them since they had originally come
15 to the diocese.

16 with regards to the other 20 while
Page 4

Attachment R - 000005

July 13 2007.txt

17 there was some information about those folks
18 coming out of the file -- out of the old
19 files, archive, that there was a real problem
20 with determining really what the status of
21 those other 20 were, that it was less clear
22 about those 20 folks. Go ahead, yes, sir.
23 And that's my memory. Those are the people
24 that have -- let me just for the record, in
25 our discussions and the discussions with the

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1 solicitor's office, I -- my concern has been
2 that I know that there are some individuals
3 out there for which there's pretty specific
4 indications that they ought to be included in
5 this class, I've wanted them to be included
6 in this class and in the attempts to sort of
7 move -- move those folks that we knew about
8 and the ones that had already responded and
9 there was a real concern and I think
10 legitimately so for those folks that we knew
11 about that had come forward that really the
12 fairness hearing, they had participated in,
13 made contact with plaintiffs' class counsel,
14 that those folks kind of needed to move
15 forward, and yet I know of these 20 people
16 and that 15 we now know of and I think the
17 diocese is trying to make contact, there's
18 another five people that the plaintiffs are
19 specifically going to reach and I don't know
20 about the other 20. You can put on the

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21 record whatever you need to. My concern was,
22 I wanted to be able to go forward on those
23 people that have already gone forward that
24 everybody sort of knows about.
25 MR. SHAHID: Right.

7

1 THE COURT: But I'm not of a mind to
2 force the solicitor, our solicitor has number
3 one gone outside his judicial circuit and I
4 think done a lion's job of really going into
5 Charleston, I think the diocese has done so
6 far a wonderful job of cooperating. He's had
7 to contact the attorney general, U. S.
8 attorney's office, he's dealt with this --
9 sort of this document that's been floating
10 around out there, he's made contacts with the
11 United States attorney's office, with -- he's
12 reached out to the United States attorney's
13 office in Massachusetts, he's talked to not
14 only plain old garden variety lay lawyers,
15 but those with more familiarity as I
16 understand it with the (Coccracy okracy and
17 to try to ascertain what the words mean and
18 done research, worked with the attorney
19 general's office to do the same.

20 And my concern was, was that I did
21 not -- A, I didn't want the solicitor who is
22 obviously working incredibly diligently, I
23 didn't want him disturbed, I wanted him to
24 continue doing what he was doing but I didn't
25 want to hold these other folks up because

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1 they seemed to want to go forward.

2 I wanted to fashion a way because
3 it didn't seem fair to me that when we
4 identify actual people, individuals who ought
5 to be included in the class, it didn't quite
6 seem fair to me to just say, listen, either
7 come forward based on publication or you
8 don't because these people already have come
9 forward at some point in their lives. And it
10 just didn't seem fair to me to exclude those
11 folks that ought to have more individual
12 notice. That was the reason that I thought
13 maybe the solution was to come up with some
14 sort of, if you will, additional class or
15 subsection or that we could sort of hold
16 something for those folks and yet go forward
17 on the other ones. We certainly have done
18 that in other class actions that I've been
19 involved in, so I know that the procedure
20 exists so that was my concern in short.

21 So I want you to put on the record
22 for me, please, Mr. Shahid, about the 40 and
23 that breakdown.

24 MR. SHAHID: well, it was actually
25 through the file review the court alluded, to

9

1 the diocese has gone through there were
2 actually 20 -- we had dwindled the number

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3 down to 20 folks who had -- we believe had
4 come forward.

5 THE COURT: Yes.

6 MR. SHAHID: Either directly or through
7 a third source.

8 THE COURT: Right.

9 MR. SHAHID: And that source could have
10 been through either a parent or a person
11 saying I believe John Doe or Jane Doe may
12 have been abused as well. We located
13 initially 15 we thought were good addresses,
14 solid addresses, of those 20 the Court
15 ordered us through a protective order to turn
16 over five names to class counsel for them to
17 use the sources they had. In the interim we
18 located another name, the number actually was
19 reduced from five to four.

20 THE COURT: Okay.

21 MR. SHAHID: So I received from
22 Mr. Haller actually e-mail yesterday as to
23 his efforts from his investigator regarding,
24 I think, two of the four, I do not recall.
25 And so we will follow up on that. So the 20

10

1 is down to four names and some of those
2 names, as I recall, are the result of not
3 exactly a direct claim but through a second
4 or third source.

5 There was a list of folks that we
6 have that we were concerned that were not
7 reported to law enforcement authorities and

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8 so that is a -- whose claims may have been
9 adjudicated through some process outside of
10 what we have done in here. And so we were in
11 the process of identifying the counties that
12 would be the most appropriate county to make
13 that report to. So we have -- that was the
14 second leg of what we've done.

15 Those -- I think those folks, those
16 20-odd folks, those cases have already been
17 adjudicated. In other words, there may have
18 been settlement between them and the diocese
19 and that case has been resolved so they would
20 not be -- they would not qualify as a class
21 member..

22 THE COURT: Okay.

23 MR. SHAHID: And those folks would --
24 would not qualify to be part of this action.

25 THE COURT: Okay. Okay.

11

1 MR. SHAHID: So the essential concern is
2 what the Court had said earlier, is to make
3 sure that those people had somehow through
4 either directly or indirectly come to the
5 diocese's attention those people should have
6 gotten direct notice and we've done the best
7 we can in finding them and locating them and
8 will continue that process.

9 THE COURT: And those are the ones, too,
10 I want you to give the names to the
11 solicitor.

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12 MR. SHAHID: Yes, we can do that.

13 THE COURT: Great. I thought there were
14 40 individuals we began some discussions
15 about. I thought there were 40. No?

16 MR. SHAHID: The number was at one point
17 45, I think and we had split it, the 45 into
18 two categories, one was not being reported to
19 law enforcement authorities and another crowd
20 being the ones who had not had their case
21 adjudicated and may or may not have been
22 reported to the authorities. And there was
23 some overlay in that because some cases in
24 which the name was reported to law
25 enforcement authorities but had not been made

12

1 directly aware of this action.

2 THE COURT: Right, okay. Oh, yeah,
3 yeah. And those were some folks I was
4 concerned about. The other subcategory, the
5 other group that I was concerned about was
6 that anyone that through Solicitor Pascoe's
7 efforts that we -- because he's -- I mean,
8 obviously he's not involved in the civil
9 matter, he has no dog in that fight so to
10 speak, that is not his focus.

11 MR. SHAHID: Right.

12 THE COURT: His focus simply comes from
13 the position of law enforcement to be sure
14 that there is not information of individuals
15 who were -- had crimes committed against them
16 over time for which law enforcement was never

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17 informed.

18 MR. SHAHID: Right.

19 THE COURT: And that was his interest.
20 Of course his investigation is not -- his
21 investigation is his investigation and I am
22 so grateful to the diocese for the
23 cooperation that they've given him, but his
24 investigation belongs to him in doing what he
25 needs to do. But in the event that he

13

1 disclosed individuals who ought have more
2 individualized, you know, contact or notice,
3 those were the folks I was interested in
4 which is very unusual because it's people we
5 don't know about that could potentially
6 exist. But I don't want him put in a
7 position that for the civil matter he's got
8 to alter what we would normally do in his
9 investigation.

10 So that was the -- and I know that
11 this is a strange group, my concern is, is
12 that I have some concern that those
13 individuals who might be disclosed in that
14 process and ought be afforded an opportunity
15 to participate in the class not be excluded
16 and that was my interest.

17 MR. SHAHID: Right.

18 THE COURT: Yeah.

19 MR. SHAHID: And hopefully I think that
20 we have --

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21 THE COURT: Done that.
22 MR. SHAHID: -- done that to the best of
23 our ability.
24 THE COURT: Yeah, great.
25 MR. SHAHID: I will say that we --

14

1 Judge, I view that responsibility as ongoing
2 and so that we got to find the other four and
3 we've got to find anybody else who has kind
4 of, lack of a better word, comes out of the
5 woodwork.

6 THE COURT: Absolutely. And I know the
7 record ought to reflect that I have on a
8 weekly basis been apprised of the efforts and
9 I think that they have been reasonable and
10 more than reasonable, those efforts based on
11 what I know.

12 MR. SHAHID: Thank you.

13 THE COURT: Yes.

14 MR. RICHTER: Your Honor, I think that
15 you -- if we make doubly clear what
16 Mr. Shahid went through, I think you'll feel
17 very comfortable about where we are which I
18 think is -- the end is where we are or
19 virtually at the end.

20 THE COURT: Yes, for the civil matter.

21 MR. RICHTER: Yes, ma'am. Let me
22 preface my remarks, however, by saying that,
23 and I certainly don't do this in any
24 patronizing way to anybody, I genuinely mean
25 this, and I know my co-counsel joins me in

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15

1 this statement. I want to thank you for your
2 concern that you have just been referring to,
3 it's a legitimate concern, it's a legitimate
4 legal concern, but it's a very legitimate
5 humane concern as well. I have shared, as I
6 think has been displayed to Your Honor, a
7 similar set of concerns. I thank you for
8 that and I think that cat is skinned in a
9 good fashion now.

10 I would also like to thank the
11 solicitor for two things: For performing the
12 function that was imposed upon him by this
13 Court, but I had a chance to meet with him in
14 this process and speak with him more than one
15 time about these matters and I want to thank
16 him in this record for caring again in a
17 legal way, but he too caring in a very
18 personal and humane way about this concerning
19 the best interests of persons who may have
20 not had their best interests heretofore
21 properly looked after and I genuinely salute
22 him for that.

23 This circuit is fortunate, indeed,
24 not only to have -- I know Mr. Pascoe's legal
25 talents because I've known him for years in

16

1 this environment, but beyond that this
2 circuit is very fortunate to have a decent

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3 man hold the position that he holds.

4 Now, that having been said, I think
5 that what Mr. Shahid has said to you, and I
6 know that we have written you, both
7 Mr. Shahid and us we have indicated as class
8 counsel in our letter that the subclass idea
9 was a thing that was acceptable to us. We
10 are satisfied and we really have worked very
11 hard.

12 THE COURT: I know you have.

13 MR. RICHTER: Very much together on this
14 thing.

15 THE COURT: I know you have.

16 MR. RICHTER: We really think that it's
17 not necessary because of what the diocese has
18 come to. And what the diocese has come to is
19 that if anybody has been missed or if there
20 is anybody who responds as a result of these
21 who have been identified to, the diocese
22 waives all the same defenses that they have
23 given up in this class settlement, consents
24 to the same method of compensation, consents
25 to the same early disposition of that claim

17

1 by a same arbitration method, the whole nine
2 yards.

3 THE COURT: Wow.

4 MR. RICHTER: And we have put those
5 terms in the letters that we have both
6 submitted to Your Honor -- both sides
7 submitted to Your Honor yesterday and, of

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8 course, they'll be submitted to you in a
9 formal way assuming that Your Honor is now
10 comfortable with that. But we are completely
11 now comfortable with that. So that's said.

12 Next, as to -- we were initially
13 given five names as I think your Honor knows.
14 Secondly, as Mr. Shahid told you, that was
15 reduced --

16 THE COURT: Four.

17 MR. RICHTER: -- to four names. And I
18 have in my hand and he had to leave here
19 because of an involvement that he has with
20 the fire tragedy in Charleston, I have in my
21 hand an affidavit of Steven A. Smith who is
22 the person who we utilized to perform the
23 same functions that Mr. Brucetti has been
24 performing for the diocese and I realize we
25 discussed all this with you before, but I

18

1 just want to make a final record here.

2 THE COURT: Sure.

3 MR. RICHTER: So that nobody can have
4 any question about where we are and what
5 we've done. I have this affidavit I'd like
6 to hand up. And attached to it we have the
7 curriculum vitae or the résumé of Mr. Smith.
8 In summary it is as impressive a law
9 enforcement and expert résumé as any one I
10 have ever seen anywhere and I think opposing
11 counsel and Mr. Brucetti as well will second

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my statement in that regard.

Stephen Smith is twice a retiree, he's a full bird colonel retiree on the military side and he's a 30-year SLED, South Carolina Law Enforcement Division retiree on the law enforcement side having done, I think, 25 years of narcotics including undercover work for many years and five years -- his last five years as the deputy director of SLED, I'm not sure which exactly five years, I can't say that, but he finished his career as a deputy director of SLED and is now retired. He has taught all over the country and the world, including teaching in

19

Russia. He is, as I say, a true expert.

He has followed on Mr. Brucetti's efforts as to these four persons, four names that we have been supplied and I'm -- if you would allow I'd like to hand up his affidavit and CV and I'll work from a copy of this thing. May I hand this up to you, please?

THE COURT: Okay.

MR. RICHTER: The affidavit simply states what I have just said, who he is and how he got to this. The crux of the affidavit is in paragraphs four, five and six. Six -- in four he simply says he used recognized methods. We're a little hammered in the sense that we don't have name, rank, serial number, middle name, father and

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17 mother's maiden names or whatever to make the
18 finding process that much easier, but as you
19 can see on number one in paragraph five he
20 goes through the four victims.

21 The first was identified as a
22 person living in Georgetown. we were
23 supplied a name, he has not included the
24 names here, and given a relative age. He
25 searched on both sides of those ages, that

20

1 age by two years. we know -- we have
2 confidence, all of us have confidence about
3 the time frame because we know the alleged
4 perpetrator and the assignment as to where
5 the alleged perpetrator would have been, so
6 that we have some comfort about the time
7 frame we're looking in and the locale we're
8 looking in so we then focus on the individual
9 alleged victim.

10 As you can see his search revealed
11 231 potential entries, some were in South
12 Carolina, none of which had the first name
13 which matched or were sufficiently close to
14 the victim, so he then moves to a nationwide
15 analysis where he came up with 117
16 individuals. Again, none appeared to have
17 any connection, one of those 117 had any
18 Georgetown connection -- connection.
19 However, he did identify one who
20 interestingly enough is now a Catholic priest

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21 in Arkansas, so that we have reported all of
22 that back to the diocese for them now to take
23 the next most appropriate action. Similar
24 accounts for all of these.

25 Number two again in the Georgetown

21

1 area we identified, had someone identified by
2 close proximity in age and he found a person
3 in close proximity and age and with a Social
4 security number which was a South Carolina
5 security -- Social Security and which person
6 had a Georgetown address. We think that's on
7 the money then. That person found has been
8 given, again, the next step under the plan
9 that Your Honor laid out at our last time
10 before you, that goes back to the diocese.

11 C, there were 269 entries
12 nationwide with the first and last name of
13 that individual and 631 entries with the last
14 name of that individual. However, none gave
15 him sufficient confidence to raise his
16 comfort level at all. He's informed that --
17 Mr. Smith represents to you in this affidavit
18 that he has been informed the victim C may
19 not, in fact, be an actual victim. This
20 person did not come forward to the diocese
21 and declare himself a victim; rather another
22 person according to the diocese files had
23 this person's name mentioned in that alleged
24 victim's files. As I understand it -- did
25 Mr. Shahid or Mr. Smith make contact with

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22

1 that person? As I understand it Mr. Shahid
2 has actually made contact with that person
3 who has indicated --

4 THE COURT: He has a great expression on
5 his face like I did, I did, I did?

6 MR. SHAHID: Tell me which one you're
7 talking about. Actually what I did is I made
8 contact with the source of the person.

9 MR. RICHTER: Yeah, okay.

10 MR. SHAHID: It was a very interesting
11 conversation.

12 MR. RICHTER: He was able to make a much
13 more direct -- a much more closer contact
14 than Mr. Smith could do because of the way
15 we're working this thing.

16 THE COURT: Got it.

17 MR. SHAHID: I shared this with David.
18 He, quite frankly, said he didn't believe
19 that person was a victim but we're still
20 going to follow through.

21 THE COURT: Okay. Great.

22 MR. RICHTER: So we expect that there is
23 nothing to that. But even as to that person,
24 the diocese has given up all of what we
25 recited a while ago it had given up.

23

1 THE COURT: Great.

2 MR. RICHTER: And then there is a person

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3 who has a common name here in South Carolina
4 at least, he had 79 entries Mr. Smith found
5 for that name in South Carolina, a
6 significant number of which were in and
7 around the lowcountry. However, we were
8 not -- we don't know where that person may
9 live, so that is the worst of the findings so
10 far.

11 we think this translates that two
12 are out, maybe three are out and one may
13 still be there, but in short order we're
14 going to know that.

15 The last thing I think that we need
16 to tell you, and I say this for everybody's
17 benefit but mostly for your own comfort level
18 as to how many times you need to see us again
19 or what else we need to deal with, if you
20 recall when we started this Mr. Parker's
21 firm, Mr. Bilbro's and Mr. Myers had filed
22 objections, you dealt with Mr. Parker here on
23 the spot and that was over and withdrawn.
24 Mr. Bilbro by writing withdrew his and
25 Mr. Haller tells me and/or Mr. Shahid, I

24

1 don't know which one told me, I didn't talk
2 to Mr. Myers personally, one or both of them
3 report to me that they have spoken with
4 Mr. Myers who has also withdrawn his, the
5 writing on that. However, Peter has -- Peter
6 Shahid has a meeting on Wednesday of this
7 week because we would like to have that

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8 withdrawal in a form that we could have in
9 our hands, in our files which would mean that
10 there are no objections.

11 Myers is important only to this
12 extent: If you remember -- I don't know how
13 to characterize it -- he raised an issue
14 about consortium and we huddled, and when I
15 say we, both sides huddled and really as we
16 didn't think there was any legal relief he
17 was entitled to, but as an accommodation to
18 Mr. Myers and to move the matter forward we
19 agreed to do a certain thing. He is now
20 going to withdraw that so that there are no
21 objection issues whatsoever anywhere in the
22 record so that Your Honor can know that you
23 are really at an end about all of that.

24 So our point is with the diocese
25 having dealt with this in the way it has and

25

1 so broadly and accepting, if there is further
2 exposure from any of these people who were
3 entitled to direct notice, but didn't get it,
4 we think that -- we actually think that if we
5 created a subclass and did it and some of
6 them still didn't show up we'd really do more
7 harm in the sense of really now cutting off
8 the rights of those persons. We have now got
9 the diocese saying --

10 THE COURT: Absolutely, I agree.

11 MR. RICHTER: -- my arm's wide open to

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13 those people.
14 THE COURT: There is nothing more that
15 the diocese could possibly do that I am aware
16 of. I mean, at the point in time when the
17 diocese obligates itself to do as it has been
18 described, there is nothing more that they
19 can possibly do insofar as I can even
20 imagine, Mr. Shahid, truly. I mean, what
21 they say is if you come forward in the future
22 we will treat you just the same as we have
23 treated these individuals and the relief is
24 available for you. I know of nothing more
25 that could be done. So I certainly would
 approve that.

26

1 MR. SHAHID: Well, good.
2 THE COURT: Yeah.
3 MR. SHAHID: Just a little caveat.
4 THE COURT: Uh-huh.
5 MR. SHAHID: My meeting with Mr. Myers
6 hopefully, and I'm confident that it will,
7 but until the rubber hits the road kind of
8 test.
9 THE COURT: If it doesn't, I'm prepared
10 to rule.
11 MR. SHAHID: I'm confident that we've
12 chatted and we just got to iron out those
13 little problems to iron out, and so hopefully
14 by Wednesday or sometime next week we'll have
15 one minor or Mr. Myers saying that's done.
16 THE COURT: Okay.
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17 MR. RICHTER: I left one thing out, if
18 you don't mind, just let me add this to the
19 record because I think your Honor is entitled
20 to an explanation.

21 THE COURT: Yeah.

22 MR. RICHTER: On March 9th is when all
23 of this path started being gone down, the
24 path that we have now been dealing with with
25 our various recent appearances before you and

27

1 our largely -- or appearance today.

2 I want to make sure that the
3 record's clear, but Your Honor is clear and
4 the diocese as well as to how and why that
5 came up. It came about in an argument about
6 legal fees is actually about how the issue of
7 this instruction came up. Mr. Pascoe is
8 entitled to both explanation and credit and I
9 would -- in a minute I can do this if you'll
10 indulge me.

11 I don't think, didn't think then,
12 don't think now that the church had done
13 right about not reporting these persons who
14 had revealed themselves to the church as
15 having been abuse victims and didn't have any
16 right to do that and so that issue was
17 raised, and in part to stop that activity
18 Mr. Pascoe has dealt with that, the diocese
19 has dealt with that and hopefully for
20 everybody's benefit, not just everybody here,

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21 but for the public's benefit as well that
22 practice now has been recognized and modified
23 appropriately so that we don't find ourselves
24 back here before you ten years down the line.
25 And so again I want to thank Mr. Pascoe for

28

1 helping to accomplish that and the diocese
2 for helping to accomplish the same thing.
3 And I think with that we have covered the
4 water front, haven't we, Peter?
5 MR. SHAHID: I think so. Let me just
6 echo a little bit of what Mr. Richter's
7 saying, Judge. Mr. Pascoe and I have had
8 very -- I think very frank conversations
9 regarding the application of reporting
10 statutes and the law and things of that
11 nature and that our bishop has clearly stated
12 that he wants to be transparent on this issue
13 and that arguable there was no obligation to
14 legally maybe, and I say that arguably, to
15 have reported, but there is an obligation in
16 another sense to report and so -- and some of
17 the folks who came forward were adults when
18 their report was made and not just always a
19 justification, but an explanation I think,
20 and some people wanted anonymity and the
21 Church tried to honor the victims' request
22 for anonymity, but we're trying to make sure
23 and we will to the best of our ability so
24 that those individuals will be reported to
25 the appropriate law enforcement agency and

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1 let the solicitor or sheriff or whatever
2 agency needs to make that call, make that
3 call with hopefully that person's
4 participation and involvement in that.

5 So hopefully that is the absolute
6 last "t" that needs to be crossed and the
7 last "i" that needs to be dotted with all of
8 this and that's what we're trying to get to.
9 I think we just want complete healing, and if
10 this accommodates that healing, we hope that
11 it will, that it will take that. And so
12 we're here I think all on a common goal to
13 get that magic signature on a magic order.

14 THE COURT: Absolutely. A couple of
15 things I would say and I think what I want to
16 do is I want to direct to the civil and then
17 to the other part, Solicitor Pascoe's
18 participation. First of all, the civil
19 matter. I will await to see what Mr. Myers'
20 position is, but again, I am prepared to rule
21 in the event that that doesn't happen and but
22 I would ask for a proposed order from
23 plaintiffs' counsel about that in the event
24 that that is needed. And I'm delighted that
25 he is satisfied, that's always a better place

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1 for people to be in a place where they can
2 accept and can join in to and I'm excited

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3 about that, so that's the first thing. And I
4 look for an order in that regard.

5 Secondly with regards to the
6 attorneys' fees and, of course, I had the
7 opportunity to review Professor Freeman's
8 extensive affidavit about that and, of
9 course, I know him and know him well and have
10 had the opportunity to know him when I
11 practiced law as well as to know him since
12 I've been on the bench and found that along
13 with the other affidavits, but his probably
14 primarily to be most informative.

15 Aside from that, my own experience
16 in class actions has also been helpful, but
17 also, also reality is when you have an
18 opportunity to sit where I get to sit and
19 watch lawyers on both sides, but I'm going to
20 speak for the moment to the plaintiffs'
21 lawyers, it's like you just want to stand up
22 and cheer because it's what makes me really
23 love lawyers. And I mean that, because
24 lawyers, particularly these lawyers, just go
25 wading into places that lots of -- no one

31

1 other than a lawyer would ever wade there,
2 but particularly these groups of lawyers have
3 gone there and have gone to a place that
4 supposedly there was no remedy and made a
5 remedy.

6 MR. RICHTER: Thank you.

7 THE COURT: Boy that is fantastic,
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8 that's the best lawyering in my book. So I
9 celebrate everything that you have done and
10 it's extraordinary and it's wonderful and
11 it's all about being a lawyer and why it
12 matters to the world and why it matters to
13 this country that you did and I'm just so
14 proud for you and of you.

15 MR. RICHTER: Thank you.

16 THE COURT: Let me also say that the
17 fees, there was a range of fees in this case
18 went up to 2 1/2 million dollars and that's
19 an appropriate fee. Under all the
20 circumstances that's an appropriate fee and
21 that is the fee that I will order be paid --

22 MR. RICHTER: Thank you.

23 THE COURT: -- happily. On the basis of
24 the time, the energy, the effort, the effort
25 going forward to deal with the kind of

32

1 heartbreak that wonderful lawyers deal with,
2 get their hands dirty in, care about and
3 that's the reason this fee not only has been
4 earned, but will continue to be earned, and
5 I'm happy to order that, think it's
6 appropriate absolutely. So I'll look for an
7 order in that regard as well.

8 I want to also say that I have
9 been -- as much as any piece of litigation I
10 have ever been involved in been touched by,
11 noticed that there has been an intention on

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12 these lawyers and I know that it comes from
13 probably perhaps a change in the -- perhaps a
14 change in the theory and, but you're right,
15 there's been a real need, Mr. Shahid, for
16 transparency and I've watched it. I've
17 watched it. You know, and Mr. Richter is
18 about as aggressive a lawyer as there is.
19 There are those that say he practices law
20 like the Texas chainsaw massacre, he takes no
21 prisoners, and even in the most gentle status
22 conferences he's been ready to, you know,
23 take you and Mr. ((Geoly out most every time.
24 And you all have been most patient. And
25 particularly I've watched Mr. ((Geoly also,

33

1 just hear the angst and keep moving forward
2 even when you would be gritting your teeth.
3 And so the diocese has been very, very
4 committed to this process being a healing one
5 and I got it.

6 MR. SHAHID: Thank you.

7 THE COURT: Irrespective of where they
8 may have been in the past, ain't no question
9 in this process they have been very
10 interested in the healing part of the process
11 so I thank you for that.

12 MR. SHAHID: Thank you, Judge.

13 THE COURT: And applaud those efforts, I
14 truly do. And Mr. Brucetti, goodness knows
15 all the work you've been there as well,
16 so.... Now, that's the civil matter.

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17 with regards to the criminal
18 matter, you know, my solicitor, of course,
19 you know, I've sung his praises, but I expect
20 his solicitor, and interesting the diocese,
21 as I have been concerned, have been twofold,
22 he and I have had some discussions about it,
23 what you worried about he knows it's twofold,
24 I agreed with you, there certainly has been a
25 period of time that the duty to report didn't

34

1 exist, okay, statutorily.
2 But it transcends that, it
3 transcends that because the reality is, that
4 there are individuals against whom crimes
5 have been committed and the information lies
6 with the diocese and the solicitor is charged
7 with the responsibility to enforce the law.
8 So on a portion of it may be reporting, but
9 on a portion of it -- it's not about
10 reporting, but the information that crimes
11 have been committed lies with the diocese.
12 And I certainly have sensed the diocese has
13 been forthcoming with that information.

14 Having said that, my solicitor is
15 charged with the responsibility to transcend
16 that. You know, I think, I think and I don't
17 demean in any regard or I have no interest in
18 demeaning the Church and its position in our
19 society and the ancient nature of it.
20 However, there is a little bit of an element

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21 that I have to be mindful of that I have to
22 look to my solicitor to obtain whatever
23 information is appropriate to determine
24 whether or not the solicitor has the
25 information of all the victims. To some

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1 extent you can liken it to the person that's
2 trying to come clean on all the bad checks
3 that they have written, but it's incumbent
4 not on the victim -- not on the person who is
5 if you will re-pen tent at the time of the
6 checks it's incumbent upon the solicitor and
7 law enforcement to satisfy himself and
8 themselves that they have all of that
9 information as to those victims and potential
10 victims. And I am very satisfied that our
11 solicitor will do that.

12 I do not see -- finally, I do not
13 see the victim that the civil matter is ended
14 as any more than, Mr. Shahid, and the diocese
15 in a wonderful way allowing the civil matter
16 to go forward and for that I am grateful and
17 I applaud that because it allows those who
18 are hurting to avail themselves of this
19 wonderful settlement that the diocese and the
20 plaintiffs have come to and I applaud that.

21 That being said, that is a
22 completely different track, that is a
23 completely different circumstance than what
24 my solicitor is doing and they just happen to
25 be parallel perhaps. The fact that you all

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1 will go wherever you all will go is of no
2 moment to the solicitor in that sense because
3 his obligations are different and he will do
4 those things that I know he will do to
5 conclude his investigation.

6 Having said that, I am so grateful,
7 Mr. Shahid, to yours and the church's
8 continuing cooperation and I know that if
9 that should change, no question that I will
10 hear about it from the solicitor as will you.

11 So I think that, Mr. Solicitor,
12 Mr. Pascoe, anything you need to add? Just
13 continue to do your work.

14 MR. PASCOE: No, ma'am. Thank you, Your
15 Honor. I would agree 100 percent that I
16 think my matter has nothing whatsoever to do
17 with the civil action that's taking place.

18 THE COURT: Not at all.

19 MR. PASCOE: I will add this: I want to
20 thank both sides, all of the attorneys in
21 this case, they have been an absolute
22 pleasure and an honor to work with, the
23 lawyers of this caliber. Mr. Shahid and I
24 talk at least two or three times a week,
25 Mr. Lofton has been great to work with,

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1 Mr. Richter. Very seldom do attorneys from
2 Charleston take the time to come meet with me

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3 in the big city of St. Matthews to answer my
4 questions and he did that on 12 hours'
5 notice. So it's been an honor and a pleasure
6 to work with these lawyers. Thank you, Your
7 Honor.

8 THE COURT: Thank you. So much.
9 Obviously if you are in the need of my
10 assistance at any point, you know, you're
11 there because of my request, my order, and so
12 I continue to be interested if you have
13 anything for me.

14 MR. PASCOE: Thank you.

15 THE COURT: All right. I will look -- I
16 am on vacation next week and I see -- unless
17 you all see of, I see of no reason for us to
18 continue meeting like this. I am prepared, I
19 am ready to sign orders. And again, in the
20 event that Mr. Myers withdraws, that's fine,
21 I look for an order to reflect that. In the
22 event he doesn't, I'm looking for a proposed
23 order. Otherwise I'm looking for an order of
24 attorneys' fees. I approve the settlement, I
25 shared that with you. You all were so

38

1 gracious and kind to inform me of it, I think
2 it's extraordinary and I will look for orders
3 when I return from vacation. I will be in
4 St. George the week of the 23rd, for your
5 information. I'm looking for orders from you
6 that week. The week after that, I think the
7 next week I'm actually in St. George, if not

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8 St. George, Orangeburg. I'm either in
9 St. George or Orangeburg for the three weeks
10 after this coming week for -- after my
11 vacation and would like your orders from you
12 just as soon as they're ready.

13 MR. RICHTER: We'll have it for you
14 thank. You very much.

15 THE COURT: Thank you. Thank you all so
16 much.

17 MR. SHAHID: Thanks, Judge.
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25

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

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

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

Plaintiffs,)

vs.)

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

Defendants.)

ORDER APPROVING SETTLEMENT

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

FACTUAL BACKGROUND/PROCEDURAL HISTORY

1. Notice to Class Members

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

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 Clerk of Court
 Charleston County

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

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

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

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

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

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

2. Investigation by Solicitor David Pascoe

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

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

ORDER

1. Notice to All Members of the Class

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

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

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

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

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

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

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

2. Objections to the Settlement

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

A. Standing of John Does A through N

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

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

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

B. Objections to class definitions

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

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

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

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

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

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

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

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

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

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

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

C. Objection as to Matrix

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

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

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

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

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

D. Compensation of Consortium Claims

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

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

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

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

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

3. Approval of Settlement

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

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

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

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

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

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

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

5. Attorneys fees

In the Settlement and Arbitration Agreement, the parties agreed that the Court should, exercising its discretion, set attorney fees for class counsel in a range of no less than \$950,000.00 and no more than \$2.5 million. Defense counsel argued for the lower end of the fee range and asked the Court to take into consideration the charitable nature of the Diocese and that it settled the case rather than requiring a trial. Class Counsel requested the Court award them a fee of \$2.5 million. In support of their petition for an award of attorneys' fees, class counsel submitted a substantial record which included an affidavit from each attorney involved in the case, a statement of hours from each law firm the total of which exceeded 3,720 hours⁶, and an affidavit from Professor John Freeman regarding the reasonableness of the fee request and the beneficial public impact of the settlement. Class Counsel has worked on the case for 4 years; it has proceeded in Court for 2 years, with settlement negotiations lasting more than 15 months. The Court took its own notice of the arms-length advocacy of counsel for their respective clients in the case. The case was brought to a mediated resolution and it heard from the mediator, Marvin Infinger, regarding the negotiations between counsel.

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

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

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

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

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

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

Attachment S - 000014

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

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

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

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

Attachment S - 000015

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

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

6. Costs

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

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

7. Funding of Settlement Proceeds

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

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

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

Attachment S - 000016

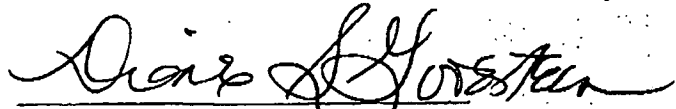
process for the members of the classes begin within 10 days of the date of this order with notice to the class as set out above; and

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

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

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

AND IT IS SO ORDERED!!!


The Honorable Diane S. Goodstein
Presiding Judge

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

Attachment S - 000017

Order on Matters Heard March 9 Exhibit A

Attachment S - 000018

**IMPORTANT LEGAL NOTICE
YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE SETTLEMENT
DESCRIBED IN THIS NOTICE**

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

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

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

SUMMARY OF YOUR RIGHTS AND CHOICES

**You May
STAY IN THE CLASS
and possibly receive
money from the
Settlement**

Stay in the Class.
To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.

**Deadline
Postmarked or received by
[Date to be Inserted]**

EXCLUDE YOURSELF

Get out of the class.
You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.

**Postmarked or received by
[Date to be Inserted]**

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

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

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

**Richter & Haller, LLC,
622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 diocesessettlement@richterfirm.com
www.richterfirm.com**

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

Attachment S - 000019

Order on Matters Heard March 9 Exhibit B

Attachment S - 000020

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

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

WHO IS ELIGIBLE TO PARTICIPATE IN THIS SETTLEMENT

You may participate in this settlement if:

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

You may also participate in this settlement if you are:

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

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

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

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

Attachment S - 000021

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

SUMMARY OF YOUR RIGHTS AND CHOICES

You May**Deadline**

STAY IN THE CLASS

and possibly receive

money from the

Settlement

Stay in the Class.

 To possibly receive money under
 the Settlement, you must complete
 and return the Claim Form by the
 deadline noted.

Postmarked or received

by [Date to be inserted]

EXCLUDE YOURSELF**Get out of the class.**

Postmarked or received

[Date to be inserted]

You do not have to remain a member
 of the class or participate in the Settle-
 ment. To be excluded from the Settle-
 ment, you must complete and return
 the Opt-out Form by the deadline noted.
 By Opting-out of the Settlement, you will
 not receive any benefits from the Settle-
 ment. If you fail to file the Opt-out Form
 by the deadline, you will be considered
 a member of the class.

HOW THE CLAIMS PROCESS WORKS

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

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

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

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

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

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

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

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

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

1. Limited inappropriate touching on the victim: an amount between \$10,000.00 and \$18,500.00.
2. Improper touching by the perpetrator upon the victim or by the victim upon the perpetrator, such as fondling of genitalia, limited masturbation, and other types of sexual contacts an amount between \$20,000.00 and \$55,000.00.

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

Page 4

3. Aggravated touching of the genital area by the perpetrator on the victim or by the victim upon the perpetrator. These types of abuse include, but are not limited to, oral sex, (either on the victim or by the victim on the perpetrator) or other aggravated circumstances: an amount between \$60,000.00 and \$125,000.00.
4. Egregious acts, such as sodomy, any act accomplished by force or coercion, or repeated acts involving any type of sexual activities over extended period of time causing serious damage: an amount between \$150,000.00 and \$200,000.00.
5. Members of the consortium class will receive \$20,000.00 for consortium damages.

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

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

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

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

Richter & Haller, LLC,

622 Johnnie Dodds Blvd., Post Office Box 1089

Mt. Pleasant, SC 29465

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

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

Order on Matters Heard March 9 Exhibit C

Attachment S - 000025

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

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

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

First, Middle and Last Name of Claimant: _____

Date of Birth: _____ Social Security Number: _____

Mailing Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

Cellphone Number: _____ Email Address: _____

For claims made on behalf of someone else

Name of Representative Making the Claim: _____

Relationship of Representative to Claimant: _____

Nature of the Representative Capacity: _____

Full name of parents: _____

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

Name of spouse (if any): _____

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

Location(s) at which the abuse occurred: _____

Dates/ Time period during which the abuse occurred: _____

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

Attachment S - 000026

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

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

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

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

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

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

Claimant

Date

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

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

Attachment S - 000027

**Order on Matters Heard March 9
Exhibit D**

Attachment S - 000028

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

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

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

First, Middle and Last Name of Claimant: _____

Date of Birth: _____ Social Security Number: _____

Mailing Address: _____

Home Telephone Number: _____ Work Telephone Number: _____

Cellphone Number: _____ Email Address: _____

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

<u>Name</u>	<u>Address</u>	<u>Date of Birth</u>	<u>Relationship to You</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Attachment S - 000029

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

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

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

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

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

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

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

Claimant

Date

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

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

Attachment S - 000030

Order on Matters Heard March 9 Exhibit E

Attachment S - 000031

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER)

FOR THE FIRST JUDICIAL CIRCUIT

CASE No. 06-CP-18-1310

CASE No. 06-CP-18-1311

CASE No. 06-CP-18-1636

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

Plaintiffs,)

vs.)

DECLARATION OF OPT-OUT FROM
CLASS SETTLEMENT

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

Defendants.)

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

Full Printed Name: _____ Signature: _____

Address: _____

City, State, Zip Code: _____

Date of Birth: _____

MAIL THIS FORM TO:

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

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

Attachment S - 000032

Order on Matters Heard March 9 Exhibit F

Attachment S - 000033

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS)

FOR THE FIRST JUDICIAL CIRCUIT)

CASE No. 06-CP-18-1310)

CASE No. 06-CP-18-1311)

CASE No. 06-CP-18-1636)

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

Plaintiffs,)

vs.)

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

Defendants.)

VOLUNTARY WAIVER OF APPEAL

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

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

Claimant_____
Date_____
Witness_____
Date

Attachment S - 000034

Order on Matters Heard March 9 Exhibit G

Attachment S - 000035

CLAIMANT'S GENERAL RELEASE

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

Attachment S - 000036

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

Attachment S - 000037

Order on Matters Heard March 9

Exhibit H

Attachment S - 000038

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

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

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

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

SUMMARY OF YOUR RIGHTS AND CHOICES

You May

STAY IN THE CLASS
 and possibly receive
 money from the
 Settlement

Stay in the Class.

To possibly receive money under the Settlement, you must complete and return the appropriate Claim Form by the deadline noted.

Deadline

**Postmarked or received by
 [Date to be inserted]**

EXCLUDE YOURSELF

Get out of the class.

You do not have to remain a member of the class or participate in the Settlement. To be excluded from the Settlement, you must complete and return the Opt-out Form by the deadline noted. By Opting-out of the Settlement, you will not receive any benefits from the Settlement. If you fail to file the Opt-out Form by the deadline, you will be considered a member of the class and your rights will be impacted as a result.

**Postmarked or received by
 [Date to be inserted]**

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

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

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

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

Attachment S - 000039

CLAIMS FORMS AND IMPORTANT DOCUMENTS

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

Members of the Primary Class:

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

Blue Form: Claim Form for Primary Class Members

AND

Green Form: Voluntary Waiver of Appeal

AND

White Form: Claimant's Release

Members of the Consortium Class:

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

Yellow Form: Claim Form for Consortium Class Members

AND

Green Form: Voluntary Waiver of Appeal

AND

White Form: Claimant's Release

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

If you want to exclude yourself:

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

Pink Form: Opt-out Form

PLEASE NOTE:

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

FOR FURTHER INFORMATION CONTACT CLASS COUNSEL:

**Richter & Haller, LLC, 622 Johnnie Dodds Blvd., Post Office Box 1089, Mt. Pleasant, SC 29465
843-849-6000 (Telephone) * 843-881-1400 (Fax) * Diocesettlement@richterfirm.com**

Attachment S - 000040

www.richterfirm.com

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

Attachment T - 000001

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

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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

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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

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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

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

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

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

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

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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

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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

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

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

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

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

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

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

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

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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):

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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

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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

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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

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

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

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

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

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

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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

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all documents for claims.

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

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

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

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

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

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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

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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 prepaid, 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

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	Case No.: 2006-CP-27-143
ALLAN CARL RANTA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MEMORANDUM IN
	)	SUPPORT OF MOTION FOR
THE ROMAN CATHOLIC DIOCESE	)	SUMMARY JUDGMENT
OF SAVANNAH, A CORPORATION	)	
SOLE; MOST REV. RAYMOND W.	)	
LESSARD; J. KEVIN BOLAND, IN	)	
HIS CAPACITY AS THE BISHOP OF	)	
THE ROMAN CATHOLIC DIOCESE	)	
OF SAVANNAH, A CORPORATION	)	
SOLE; AND WAYLAND YODER	)	
BROWN;	)	
	)	
Defendants.	)	

TO: DEFENDANT WAYLAND YODER BROWN

The Plaintiff, by and through his undersigned attorneys, hereby submits the following memorandum in support of his Motion for Summary Judgment against Defendant Wayland Yoder Brown:

FACTUAL BACKGROUND/ABUSE SUFFERED BY THE PLAINTIFF

Wayland Brown met Allan Ranta when he was a priest at the St. James Catholic Church and School in approximately 1979. Aff. Allan Carl Ranta at 1, attached hereto as Exhibit 1. Ranta was in the 5th grade. Id. Using his position as a priest, Brown immediately positioned himself, masquerading as a man of God, to gain the trust and confidence of the child and Ranta's family by offering counseling and spiritual guidance.

Id.

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Once Brown had the family's trust, he began spending time with young Allan Ranta as a priest, counselor, confessor, spiritual leader, and mentor in the Catholic faith. Id. Brown would take Ranta to hobby shops, the movies, and out to eat. Aff. Carl Allan Ranta at 2. During each occasion, Brown would discuss family and faith with Ranta. Id.

During the course of the relationship, Brown took Ranta to South Carolina numerous times: to a nature preserve across the Savannah River in South Carolina; to a train yard in Yemassee, South Carolina; to ride around on the roads in between the nature preserve in Bluffton and Hilton Head, South Carolina; to St. Anthony's Catholic Church in Hardeeville, South Carolina where they would kneel and pray for forgiveness. Id. at 2-3. On each trip, Brown would wear a cross around his neck, would perform one or more acts of counseling, praying, hearing Ranta's confessions, "absolving" Ranta of his sins, teaching, and preaching about forgiveness, God, salvation and the Church. Id. On many occasions, Brown would even be clothed in his priestly attire and Roman collar. Id. He would tell Ranta that he loved him and that God would forgive him for his sins.

During these trips, Brown repeatedly and violently raped and otherwise sexually abused Ranta while in the State of South Carolina and while acting as a holy priest working on behalf of the Roman Catholic Church and the Diocese of Savannah. Before and after each act of abuse, Brown would say that God loved Ranta, that he (Brown) loved Ranta, and that Ranta would be forgiven. Id. On many occasions Brown would further exercise his priestly duties by praying and performing the sacrament of confession with Ranta. Id. Brown told Ranta that the Church teaches forgiveness and in order to be forgiven Ranta must spend time with Brown and talk with him, otherwise Ranta would not be able to go to heaven. Id.

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On a trip to the nature preserve in South Carolina, Brown sexually abused Ranta then told him that they both were forgiven for their sins. He then made the sign of the cross, saying 'in the name of the Father, the Son, and the Holy Spirit.' Id. On a trip to the train yard to see the locomotives, Brown told Ranta, before raping him, that God loved him and that he (Brown) loved him. Id. After abusing him, Brown told Ranta the same thing and then told him he was forgiven. Id.

The sexual abuse suffered by the Plaintiff included rape, sodomy, oral sex, fondling, digital and penile penetration, exposure, masturbation, among other physical and sexual abuse. *See* Deposition of Allan Ranta attached hereto as Exhibit 2. They occurred within the State of South Carolina and in the State of Georgia, within properties owned by the Diocese of Savannah, in homes of employees of the Diocese of Savannah, in rectories of the Diocese of Savannah, and in churches of the Diocese of Savannah as well as the Diocese of Charleston. Id.

He was taught to respect his priest, Defendant Brown, and to respect the church. Id. He was taught, and believed, that Brown and the church was his path to salvation, his access to God. Id. As a child, he was too fragile, mentally and physically, to prevent the abuse. Id.

He was raped inside churches; he was raped in a train car; he was raped repeatedly. Id. He was made to watch pornographic films and to view pornographic magazines. Id. He was talked to about homosexuality. Id. He was encouraged to engage in homosexual activities. Id. He was encouraged to identify himself as being homosexual. Id.

The aforementioned trips and other trips and accompanying abuse continued over

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a period of at least 4 plus years, were extremely violent in nature, and caused tremendous emotional and physical injury to the Plaintiff. *Id.* The Plaintiff was physically assaulted and threatened with his life if he did not acquiesce to Defendant Brown's demands. *Id.* As a result, the Plaintiff repressed, or dissociated, the memories of this abuse. *Id.* Because of the severity and aggravated nature of the abuse, these memories were repressed until approximately early 2005. *Id.*

In order to live, to function, to even perform everyday tasks, the memories of his abuse were repressed; he dissociated. He was unable to remember. But he could suffer. He suffered pain. He suffered confusion. He suffered instability. He sought care, and has spent a lifetime receiving treatment from healthcare providers for all of the manifestations that could possibly be encompassed in a general heading of "post traumatic stress disorder", "depression", "anxiety", "fear", "physical pain", "nervousness", etc., etc., etc., never knowing why he was the way he was, or what caused him to be that way, until he was flooded with the memories of the abuse perpetrated by Defendant Brown. *Id.*; *See also* deposition transcripts attached hereto as Exhibit 8 of Dr. James Montgomery, Dr. Linda Hudson, Dr. Claudia Crenshaw, Dr. Paul Kimmel, Dr. Steve Shindell, Dr. Sam Hill, and Dr. Gregory Haley.

Allan has become a man now and has found the strength and the ability to call Defendant Brown to account, to do that in an open and public forum, to demand, at long last, justice at the hands of this Defendant, and the cessation of child abuse in our churches.

I. OBJECTIVE VERIFICATION OF THE PLAINTIFF'S ABUSE

Plaintiff is proceeding under a repressed memory theory of recovery, which

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requires "objective verifiability" for the application of the discovery rule. The element of objective verifiability may be satisfied by corroborating evidence such as an admission by the abuser, a criminal conviction, documented medical history of childhood sexual abuse, evidence the abuser had sexually abused others, or proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred. Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 171 (S.C. Ct. App. 1999). Expert testimony on the phenomenon of memory repression is also required. Id at 173 (S.C. Ct. App. 1999).

Plaintiff meets the required burden of objective verifiability of his abuse, and, as more fully discussed in section II, numerous experts in this case have confirmed the validity of memory repression, also known as "dissociation."

a. **CRIMINAL CONVICTION AND ADMISSIONS BY WAYLAND BROWN**

In 2002 Brown was charged with and, in 2003, pled guilty to child sexual abuse and battery in Montgomery County, Maryland, and was sentenced to prison for a term of 10 years. *See* Wayland Brown arrest information and sentencing memorandum attached hereto as Exhibit 3. He was recently released from prison on parole and lives in the Baltimore area. The abuse which resulted in Brown's incarceration occurred during the mid 1970's, prior to the abuse suffered by the Plaintiff in this case, and after numerous warnings and notifications to the Defendants, while Brown was a seminarian of the Diocese of Savannah.

Responding to the allegations made by the Plaintiff in this case, Defendant Brown answered by pleading his 5th Amendment right against self-incrimination. *See* Exhibit 4. In civil proceedings, the Plaintiff is entitled to a negative, adverse inference against

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Defendant Brown that had Defendant Brown responded to the allegations, the response would operate against Defendant Brown's interests. Baxter v. Palmigiano, 425 U.S. 308, 47 L. Ed. 2d 810, 96 S. Ct. 1551 (1976); *see also* Griffith v. Griffith, 332 S.C. 630, 641 (S.C. Ct. App. 1998). The negative, adverse interest to be drawn in this case against Defendant Brown is that, had Defendant Brown responded to the Plaintiff's allegations of violent sexual abuse and a conspiracy to cover up allegations of Defendant Brown's sexual abuse of minors, the Plaintiff included, his responses would indicate that he did in fact sexually abuse the Plaintiff and cover up allegations as alleged by the Plaintiff. Defendant Brown has failed and/or refused to participate in any further proceedings in this case that would indicate otherwise.

Moreover, in 1986, police authorities were actively investigating allegations of child molestation by Wayland Brown in Richmond County (Augusta) and Moultrie, Georgia. Three times an investigating detective called then Bishop Lessard, who never called him back. Rather than cooperating with law enforcement, Diocesan officials informed the investigating detective that Wayland Brown was in Germany and would not return for years,¹ if at all, and Bishop Lessard called with Wayland Brown and other high ranking Diocesan officials to discuss the investigation. The meeting was of such importance that it was transcribed. The transcript is dated August 8, 1986, the same day as one of the investigating detective's phone calls and reveals, among other things, the following admissions by Defendant Brown (Exhibit 6):

Lessard: "There is nothing in your file regarding the issue about to be raised...are there grounds for the charges made against you? The word we have heard used is molestation? Are you guilty of any indiscretion?"

¹ See deposition transcript of Sergeant Darrell Wright attached hereto as Exhibit 5.

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Brown: "Yes."

Lessard: "Do you think your behavior was indiscrete? Or questionable?"

Brown: "It was not any worse than any of my other indiscretions."

Lessard: "Do you think this behavior is normal?"

Brown: "I am affectionate...since I have been in Moultrie I have avoided that kind of thing...while in Augusta, I did not avoid it."

Lessard: "if it is a question of your reputation we will deal with it. If the matter is beyond this, we will also have to deal with that." (emphasis added).

See also deposition transcripts of Bishop Raymond W. Lessard, Bishop J. Kevin Boland, Monsignor Robert Mattingly, and Monsignor Jeremiah McCarthy, confirming Defendant Brown's admissions to these and other transgressions, attached hereto as Exhibit 7.

b. DOCUMENTED MEDICAL HISTORY OF THE ABUSE

The Plaintiff repressed the memories of Wayland Brown's abuse until approximately early 2005. At that time, Plaintiff experienced a flood of memories of the abuse by Defendant Brown. This flood of memories has required the Plaintiff to undergo extensive therapy, counseling, and other medical care in order to help him cope with the physical and mental damage caused by his recollection of the violent sexual abuse perpetrated by Defendant Brown. Plaintiff has sought and received various forms of treatment from more than 25 medical providers since his recollection of the abuse by Defendant Brown in an attempt to deal with the severe physical and emotional damage he has suffered as a result of the recollection of Defendant Brown's abuse.

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The Diocese of Savannah, Defendant Brown's employer at the time of the abuse, has paid and/or reimbursed the Plaintiff for the costs associated with this medical care, including several in-patient treatment facilities, prescription costs, therapy costs, and other expenses related to the treatment and medical care which is necessary for the Plaintiff to function in as normal of a manner as possible. These medical care costs, which in many instances are merely co-pays, total approximately \$200,000 since 2005 alone. *See e.g.* deposition of Bishop J. Kevin Boland attached hereto as Exhibit 7. The Plaintiff is expected to require even more intense and extensive medical care and therapy in the future as well.

Additionally, as more fully describe below, the medical providers who have been deposed, all identified as experts, have testified that their treatment of the Plaintiff was caused by the severe mental and physical pain and trauma suffered by the Plaintiff as a result of the abuse by Defendant Brown, and all have testified that the memories of the violent sexual assaults suffered by the Plaintiff are typically dissociated and repressed as an automatic defense mechanism for the Plaintiff to survive. *See* deposition transcripts attached hereto as Exhibit 8 of Dr. James Montgomery (4 month stay at in-patient facility caused by recollection of abuse by Wayland Brown) (dissociation is a normal and necessary defense mechanism for children); Dr. Linda Hudson (treatment dealt with abuse suffered by Wayland Brown) (reasonable and not unusual that Mr. Ranta could not have recalled being abused by Wayland Brown); Dr. Claudia Crenshaw (treatment centered and continues to center around the abuse suffered by Wayland Brown) (absolutely typical for someone involved in a violent act to dissociate that memory - a child rape victim needs to dissociate or not remember to survive and continue

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functioning); Dr. Paul Kimmel (treatment resulted and continues from abuse by Wayland Brown) (compartmentalizing these memories is not a willful act, but an automatic, subconscious response to severe abuse which the Plaintiff could not handle – it is the only way for a child to handle severe abuse and function); Dr. Steve Shindell (somebody with significant physical or sexual abuse dissociates in order to maintain or survive through their life); Dr. Sam Hill (dissociation is brain's way of compartmentalizing something that is so traumatic the child cannot deal with it); Dr. Gregory Haley (child who is violently sexually abused needs to dissociate to survive).

c. EVIDENCE DEFENDANT BROWN HAS ABUSED OTHERS

In addition to the abuse suffered by the Plaintiff, many other victims have come forward and testified that Defendant Brown sexually abused them as well. Brown pled guilty to abusing 2 young brothers in the State of Maryland in the mid 1970's. During that criminal prosecution, at least 2 other child victims testified that Brown abused them in addition to the brothers who initiated the criminal proceedings. Moreover, throughout the course of this litigation, the Plaintiff has revealed at least 10 additional Wayland Brown victims, bringing the total known victims of Defendant Brown to at least 15, including the Plaintiff. All of the victims were abused as children, and Defendant Brown's patten of actions and molestation was virtually identical in each instance.

All victims have testified to the same *modus operandi* of Defendant Brown – a grooming period which included befriending the victims family, playing sexual "games", sexual discussions, taking the victims on trips, and buying them gifts, among other things. Once "groomed" the victims were ultimately sexually and physically abused, including fondling, exposure, oral sex, digital and penile penetration, and sodomy in

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addition to physical restraint of the victims, striking them, physical violence and threats with weapons including firearms. *See e.g.* deposition transcripts of Allan Ranta, Russell Kill, John Doe #10, John Doe # 20, and Dennis Courtney attached hereto as Exhibit 9.

d. **PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES
HAVING SUFFICIENT PROBATIVE FORCE TO PRODUCE A
REASONABLE CONCLUSION THAT SEXUAL ABUSE
OCCURRED.**

In addition to the foregoing evidence, the documentation found in Defendant Brown's personnel file corroborates and objectively verifies the Plaintiff's abuse. By way of example, the following documents prove a chain of facts and circumstances which have sufficient probative force to produce a reasonable conclusion that Defendant Brown sexually abused many children, the Plaintiff included (Exhibit 10).

November 25, 1969, a letter is written to Rev. Moschini regarding Brown at Blessed Sacrament and his place as a youth advisor:

"He gives me the impression of being 'an immature intellectual.' Since he is developing a coterie of young boys around him, I would be grateful for some confidential background information on him concerning his place as an unofficial advisor to youth." (emphasis added).

May 26, 1972, a letter is written to then Bishop Frey from Pastor McDonald at Blessed Sacrament in Savannah regarding Wayland Brown's interest in becoming a student for the priesthood. McDonald states:

"from my association with him over the last several years, I have come to the conclusion that he is an immature intellectual...I have shared the grief that he has caused one family in this parish by isolating one of the children from other playmates of his own age. This child is now under the care of a psychiatrist. When the Mother learned from other sources that Wayland was thinking of the priesthood, this balanced lady remarked 'I

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do not see how anyone so destructive could be a priest....if these traits of character and personality are correctly assessed, **I don't see how a few years in the seminary will change him.**" (emphasis added).

Brown's association with boys has already been identified since 1969, and has now had an adverse effect on at least one family by 1972. This writing reflects notice to the Diocese of Brown's misconduct. The reporter, Father McDonald, was later elevated to the position of Bishop and served in Arkansas.

June 13, 1972, McDonald, at Blessed Sacrament in Savannah, writes another letter to Bishop Frey notifying Frey of the reasons behind Wayland Brown's termination from Armstrong College:

"The president of the college noted his (Brown's) desire to carry out 'the Father figure' with younger people, but could not adjust to a rapport with his equals. This he termed perhaps incurable immaturity." (emphasis added).

Brown's "immaturity" is now mentioned for a third time.

June 14, 1972, Father Mattingly, Diocesan Vocations Director, writes a letter to Bishop Frey notifying the Bishop of his conversations with Pastor McDonald about Wayland Brown:

"The conversation with Monsignor does point out the real need for a better screening process." (emphasis added).

In the face of those warnings and red flags regarding Brown's "immaturity" and affinity for young boys, on July 14, 1972, then Bishop Frey notified the Theological College of Brown's provisional acceptance as a seminarian, Brown agreeing to pay his own education costs:

"You will note that it is somewhat provisional. I

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would like to evaluate his progress with the Seminary faculty after one year if he is accepted. **I have had some indications of emotional immaturity in his makeup.**" (emphasis added).

By this time, before Brown spends even one day in the seminary, a future Bishop (McDonald), the Vocations Director for the Diocese (Mattingly), and the then Bishop (Frey) have all noted Brown's "immaturity" and affinity for young boys.

August 18, 1972, the Chancellor of the Diocese of Savannah, at the direction of Bishop Frey, writes to Father Frazer, head of the Theological College in Washington, D.C., identifying the reason behind the provisional acceptance of Wayland Brown as a candidate for priesthood:

"As you aware the general reason given is that **Wayland is emotionally immature**...the following characteristics of Wayland's life-style could certainly be documented...**he likes to carry out 'the father figure' with younger people** but finds it difficult at times to have a good rapport with his equals...**hopefully some of this immaturity can be cured.**" (emphasis added).

Again, evidence that the Diocese had knowledge and concern about Brown's emotional "immaturity." Apparently, the Diocese thought that Brown could be "cured" even of his affinity for young boys.

June 11, 1973, Father Mattingly, Diocesan Vocations Director, writes again to Bishop Lessard identifying and notifying the Bishop of the danger of employing Brown in a position of trust and authority by giving him Orders in the Diocese of Savannah:

"In my files I have copies of letters from the now Bishop McDonald who vehemently opposed Mr. Brown's acceptance. Now that I know Mr. Brown better, I now believe Bishop McDonald's statement that **Mr. Brown is an 'immature intellectual.'**...**I personally could not in conscience recommend that Mr. Brown receive any Orders , and I even question whether we should keep**

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him...I really feel he will do more harm than good for the Church." (emphasis added).

This was written after Brown's first year in the seminary and before he received any Orders. Vocations Director Mattingly was bringing prior concerns directed to Bishop Frey to the attention of newly appointed Bishop Lessard in an effort to notify Lessard of the potential danger of employing Brown as a priest.

In 1972-1973 Wayland Brown writes his self-evaluation for the faculty of the seminary. Among the topics of his evaluation: celibacy. On page 3, Brown states:

"the greatest difficulty in my celibate life is not sex; indeed, several years have passed since I became aware of my sexuality and learned to deal with it in a constructive way. The prime difficulty is not yielding to the need to satisfy myself or to make myself more comfortable when I am called on or asked to be with someone else...." (emphasis added).

It has already been noted that Brown has a proclivity for young boys. Here, Brown is talking about his homosexuality, and this is further documentation notifying the Diocese of the potential for sexual misconduct, particularly with young boys.

July 1, 1974, Rev. Costigan responds to Bishop Lessard's letter of April 11, 1974 regarding Wayland Brown's candidacy for priesthood:

"I also had question, without proof, of his association with 'pueri.' I just wanted to make you aware of this." (emphasis added).

'Pueri' is a Latin reference to children – boys; another document notifying the Bishop and the Diocese of Brown's proclivities and propensity to improperly associate himself with young boys. Despite these and other red flags, Brown is accepted as a candidate for the Diaconate in the Diocese of Savannah. Again, no safeguards, warnings, supervision, or other mechanism to control Brown's inappropriate activity with young boys is put in

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place.

August 27, 1975, Lessard has a meeting with Wayland Brown, making notations to the file:

"Principal subject of discussion today was: reports of his behavior before he went into seminary, both with local Boy Scouts group and Armstrong College: insinuations of homosexual orientation, poor leadership, instigatory activity, etc. Also, he was seen at the local beach this summer in indiscreet behavior with a woman...W. spoke frank (sic) on all subjects, explaining the last mentioned matter: it was actually a young boy with long hair!!! I accept his explanation. His confessions in the other matters were frank, though perhaps disturbing. Of maybe greater importance is the subject of his inability and difficulty to relate with people." (emphasis added).

Brown admits to Lessard he was at a beach in indiscreet behavior with a boy with long hair. Lessard puts three exclamation marks next to this line, yet Lessard believes Brown's inability and difficulty relating to people is of greater importance than Brown's indiscreet and inappropriate behavior with young boys.

Immediately thereafter, Bishop Lessard's identifies further concerns about Wayland Brown:

"2 ladies confided their deepest suspicions re: W.B., based on reports/reactions of their boys to W's 'queer' behavior...Timmie Parker² traumatized... (drinking in the presence of boy scouts... countenancing the stealing of street signs.)" (emphasis added).

September 18, 1975, Bishop Lessard writes to Brown's file to detail the information

² When questioned about this boy, both Bishop Boland and former Bishop Lessard denied any knowledge of any person named "Timmie Parker." However, after the filing, on June 19, 2009, of the Plaintiff's motion for sanctions arising out of, among other things, the fraudulent listing of victims previously produced to the court and Plaintiff's counsel, the Defendants finally produced documentation in their possession which confirms that Parker was in fact a known victim of Wayland Brown from as early as 1975.

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provided to the Bishop regarding Wayland Brown's internship:

"Msgr.'s report was somewhat critical of Wayland's attitude and approach. He was characterized as arrogant and 'center stage' in his comportment, **imprudent in his relations with others, especially younger boys (!!!)**, critical of anyone who did not cater to his needs, preferences, etc." (emphasis added).

For the second time Lessard puts three exclamation marks next to the remark about Brown's relationship with boys. Lessard knew this was a problem, as he and the Diocese had been put on notice repeatedly for, at this point, six years, but still allowed Brown to assume an unfettered close and intimate role with young boys.

January 21, 1976, Father Mattingly, Vocations Director for the Diocese of Savannah at the time, writes to Bishop Lessard notifying him about Wayland Brown about his "problem" and past situations in Savannah:

"I discussed Wayland's future with Father Frazer. In our conversation, **Father Frazer (Director of the seminary where Defendant Brown was enrolled) leaned toward postponement of his ordination.** Two questions come to mind. **First, is Wayland's 'problem' a thing of the past or is it still a problem? Second, is the past situation in Savannah serious enough from preventing him being stationed there...I am concerned about him personally and the people he serves.**" (emphasis added).

Again, Mattingly notes Brown's "problem," and the writing expresses great concern over that "problem" and the people affected by that "problem," Plaintiff included. Brown's ordination was in fact delayed, yet Lessard pointedly does not make a record of the reasons. During this postponement, Brown was assigned to St. James parish in Savannah as a deacon, not an ordained priest, but was still allowed to assume an unfettered close and intimate role with young boys. St. James is, of course, where Brown met Allan Ranta, as a 5th grade student.

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June 29, 1977, Robert Mattingly, Diocesan Vocations Director, again writes to Bishop Lessard warning the Bishop of the danger of employing Wayland Brown as a priest:

"Wayland is not a fit candidate for the priesthood...Wayland lacks the main requisite for the priesthood; namely, holiness...I think we would be better off to have no priest rather than an unholy priest." (emphasis added).

This document speaks for itself, but despite this, the foregoing concerns, and other red flags, Lessard, individually and for the Diocese, ordains Brown on July 9, 1977, just ten days after this latest, and dire, warning, with the result being that Brown now has unfettered access to young boys who he will rape and torment under the guise of being their friendly and trustworthy priest.

All of the aforementioned occurs **before** Brown's ordination, and prior to Brown and Allan Ranta ever coming into contact. The warnings spanned a period of eight years from 1969 to June 29, 1977. But it didn't stop with Brown's ordination. After Brown was ordained, despite actual and constructive knowledge, the Defendants, Brown included, continued to conceal their knowledge relating to Brown and his activities from the Plaintiff, the general public, law enforcement authorities, and others. Some illustrative examples include the following:

March 22, 1979, Bishop Lessard writes to Wayland Brown in response to his request for a teaching assignment in one of the Diocesan schools:

"Although I am conscious of your keen interest in teaching in general and in the Aquinas position in particular, it is my considered judgment that you should not give further thought into a full-time position in one of our diocesan schools." (emphasis added).

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Lessard acknowledges the danger of placing Brown in close contact with young boys at a diocesan school, but he intentionally fails and/or refuses to disclose or in any way warn parents, students, schools, parishes, parishioners, or the public of his well founded concern while inexplicably and inexcusably assigning Brown to positions in close proximity to schools full of young boys.

October 11, 1986, after sending Brown to St. Luke's for psychological treatment/evaluation relating to the molestation allegations in Richmond County, GA and Moultrie, GA areas, an announcement was made to the parishioners of Immaculate Conception Church regarding Wayland Brown's leave of absence:

"I have granted him (Brown) for **medical reasons** a temporary leave of absence from his pastoral assignments in the Diocese." (emphasis added).

The Diocese and Defendant Brown, rather than being truthful, intentionally and knowingly conceal the truth about Brown from the parishioners, the public, and law enforcement authorities. The then Bishop, Defendant Lessard, took part in writing the dishonest statement with Defendant Brown.³ Brown stayed "hospitalized" at St. Luke Institute for some 7 months.

In spite of the statement conjured together by Brown and Lessard, on September 20, 1986, when St. Luke Institute writes to Bishop Lessard detailing their initial evaluation of Brown, the truth is revealed:

"As per our request, we suggested that he call frequently...to let us know...if any change has occurred in the legal issues...the purpose of the evaluation was to establish whether or not there was any psychiatric evidence to explain allegations concerning possible child abuse in two counties: Richmond County and Moultrie

³ See Lessard deposition transcript attached hereto as Exhibit 7.

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County...we asked him to write an extensive sexual history which will be destroyed and will not be part of the medical record at all...there is no question that Father Brown has some sexual issues that he has been struggling with for all of his life and continues to do so" (emphasis added).

After Brown's "hospitalization," the Defendants, Brown included, rather than notifying police authorities that a suspected child molester had returned to the jurisdiction, schemed to quietly reassign Brown. May 19, 1987, a memo is written to Bishop Lessard regarding possible appointments for Wayland Brown upon his return from St. Luke's. Positive and negative points were given for each potential assignment. Repeatedly a negative indicator is proximity to schools. Specifically addressing St. James in Savannah, the negative points listed were:

"Wayland's past record in regard to St. James, proximity to the school, living conditions, and the problems encountered at St. James as encountered over the past few years may indicate that this is not the best time to make this type of assignment to St. James Parish....we would definitely rule out an assignment in the Augusta area or the Moultrie area⁴" (emphasis added).

Of course, despite these warnings, Brown was promptly assigned as an associate pastor at St. James on June 8, 1987, a mere 20 days after this latest significant warning. Again, the Defendants' refused to warn, protect, or otherwise notify anybody of Brown's history of misconduct and danger to minor boys, despite decades of "problems" encountered by Brown.

February 14, 1988, Wayland Brown writes to Ms. Joan Broderick, aftercare therapist at St. Luke's, regarding an evaluation sent to Bishop Lessard:

⁴ Recall that Augusta and Moultrie Georgia police authorities were investigating allegations of Brown's sexual molestation of young boys. The Defendants made certain that they avoided giving any cooperation, information, or even a return phone call to law enforcement agents.

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"I have not made any contact with 'the' gay community - I honestly believe that to be because of the lack of any stable group or community spirit such as that in D.C. **The office staff and brother priests are a great support to my sexuality - the staff gave me red, heart earrings for Valentine's, which, save for the cook, I very nearly accidentally wore uptown.** The death, during the aftercare workshop, of my closest gay friend has been a real loss to me." (emphasis added).

The Diocese is aware Brown is a homosexual, a child molester, and struggling to reacclimate himself in the gay community; yet he was still permitted to assume an unsupervised and unfettered role with young boys at a diocesan facility - St. James Catholic Church and School. Once again, the Defendants, Brown included, refuse to warn, protect, or otherwise notify anybody of Brown's history of misconduct and danger to minor boys, or to control him in any way.

May 16, 1988, a memo is written by Sister Kathleen Gorman, the principal at St. James School in Savannah, regarding her concerns over Wayland Brown:

"Parents request me not to permit him to be around the boys, don't want children serving his masses...eighth grade boys were told what a beautiful nude body he has...also told boys Irishmen's organs don't develop as well as other men's do...took student off the school grounds and no one in the office knew it...gave alter boy \$50 for serving a baptism...major concern is around the school children...he pays no attention to the girls, but falls all over the boys...one mother said her feeling was that something is amiss when Father Brown called her son to go out with him." (emphasis added).

Again, Brown's behavior remains the same and parents and Diocesan officials continue notifying the Bishop, as they have since at least 1969, yet the Defendants, Defendant Brown included, continue to remain silent and take no action to protect the children upon whom Brown preyed, Plaintiff included.

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May 17, 1988, a memo is written to Bishop Lessard from Father McCarthy:

“As you ponder the options of Fr. Wayland Brown, I thought that you might be interested in reading the enclosed case...”

The enclosed case detailed the handling by another Diocese of a sex offending priest who had been given several opportunities to receive treatment and been reassigned numerous times following allegations of sexual abuse and the priest admitting to the abuse. Rather than reporting Brown to law enforcement authorities, higher church authorities, or child protection agencies, Lessard paid Brown full salary and benefits to *not* be a priest for another 15 or so years until 2002 when Brown pled guilty to child sexual assault occurring while he was a seminarian of the Diocese of Savannah in the mid 1970's.⁵

June 3, 1988 Brown, still in active ministry, writes Lessard regarding another possible assignment. Brown expresses his preference:

“a small parish with a young priest either as an associate or resident...I have a lot to offer to a young man from my experiences and I would enjoy the potential of that relationship...Next that I do not think that the brothers take my drinking history as the truth and my alcoholism as real. Last I will suggest that they think I am a pedophile...some (most?) priests think I am a pedophile...Pat Shinnick is said to have told people in the community, who have told me, that he does not believe I am an alcoholic but that I was treated for pedophilia and the alcoholism is just a smoke screen.... remarks implying that I am a pedophile.” (emphasis added).

It is clear that most, if not all, of the priests within the Diocese are aware of Wayland Brown's molestation of boys, yet the Diocese still permits him to have unfettered access to children, and does not warn the parishioners or in any way protect the children and

⁵ Sadly, we may never know how many other children's lives were ruined, how many children were raped and victimized by Wayland Brown and whose abuse could have been prevented during these years when Brown should have been behind bars.

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knowingly and intentionally conceals the truth.

August 15, 1988, after receiving reports of Wayland Brown's continued misconduct, a memo is written notifying Bishop Lessard:

"Wayland has rented a house in St. James Parish...Some people have told John K. (Father John Kenneally) that **he has a boy living with him...John K. thinks a young boy (13 or 14) is spending a lot of time with Wayland** (this has no reference to the boy mentioned above)...some teen age boys were working on the site-I just did not think we should take the risk that their presence presented... excuse the handwriting but **I did not want others to be exposed to this information.**" (emphasis added).

The conspiracy of silence regarding Defendant Brown continues as Simmons writes that he has hand written this communication to Bishop Lessard because he does not "want others to be exposed to these matters."

These and other documents contained in Defendant Brown's personnel file show a chain of facts and circumstances which have sufficient probative force to produce a reasonable conclusion that Defendant Brown sexually abused the Plaintiff as well as many other children, and that Defendant Brown, in concert with the Diocese of Savannah, actively concealed allegations of his sexual abuse from the public, parishioners, parents, child victims, Plaintiff included, child protection and law enforcement authorities, from as early as 1969.

II. DAMAGES AND EXPERT WITNESS TESTIMONY ON REPRESSED MEMORY SYNDROME.

Plaintiff is proceeding under a repressed memory theory of recovery, which requires expert testimony on the phenomenon of memory repression for the application of the discovery rule. Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 173

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(S.C. Ct. App. 1999). Plaintiff meets the required burden of expert witness testimony on this phenomenon, as numerous experts in this case have confirmed the validity of memory repression, also known as "dissociation."

The Plaintiff has also suffered tremendous physical, emotional, mental, and other damage as a result of the abuse suffered by Defendant Brown. By way of example, the following deposition testimony reflects a portion of the damages incurred by the Plaintiff and validates the phenomenon of memory repression, also known as "dissociation":

a. Allan Ranta

The Plaintiff testified extensively about the massive personal injury, pain, suffering, trauma, terror, and other damage caused to him by the abuse perpetrated by Defendant Brown:

A. [Regarding 2nd sexual interaction with Wayland Brown] . . . He would always approach me from the left side. He put his hand on my right shoulder and then that's when he, as he always would, move his hand down my back then I began to move away and he put his hand down the back of my pants and I moved away and froze and then that's when he didn't like that and so then that's when I fought back and once I fought back, that's when he fought back and that's when he knocked me down on to the ground in the train and I could still feel the cold floor of the train and grabbing on to the railing and I swung and I had kicked and I swung and I kicked as hard as I could. And then he flipped me over and I was able to get back over and then he put his hand around my neck and then I couldn't breathe and then it felt like I was going to pass out with his hand over my neck, with him spreading my legs and forcing me down on the ground and not letting me get up and I was trying to fight back. He overpowered me. He overpowered me. He flipped me over, he pulled my pants down and then what I remember from there was focusing on the light up on top of the train and then I could see myself from above. I couldn't feel anything. I could see me. I could see him raping me. I could see him on top of me. Once he was done I guess I came back into my - I became back into consciousness where I could fight back and as soon as I got the opportunity, I kicked him and then I ran and I ran off pulling my pants up and I was out in the middle of nowhere and I ran towards the woods, it was dark out and he came after me and once I got to the woods he was yelling at me the whole time running after me. . . . And

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he was telling me the whole time there were people in the woods and things in the woods that would get me so I stopped because I was afraid to go into the woods and that's when he caught me and grabbed me on the right shoulder and yanked me back and dragged me to his car and he put me in his car. . . . All I wanted to do was go home. I got home. My mom is still there with her friends playing cards and my dad was in his room and I just went to the bathroom and showered and scrubbed and showered and scrubbed. It was on the way home after he had mentioned about the gun this was the first time when he told me that I could be killed or taken away from my parents and my family or my family could be killed or they could be taken away from me. That was the next time that I had an encounter with Father Wayland Brown.

Allan Ranta Deposition at 58:23-59:1; 59:4-60:12; 60:15-21; 61:7-17.

Q. and the time in the locomotive, that was the first time that he actually exposed your body and touched you?

A. That was the first time that he - - that was the first time that he exposed my body and touched me. That was the first time that he violently raped me and that was the first time that he choked me to the point to where I thought I was going to die. That was the first time to where he would not let me go when I wanted and screamed out to let me go. That is the first time that I fought back with every bit of life in me to get him off of me, as a child to get this priest off of me and I could not get him off of me. I did everything I could. That was the first time. That was the first time the he had mentioned to me about my family being killed and me being killed.

Allan Ranta Deposition at 62:17-63:8.

A. And throwing me on the ground. As far as any other type of marks, if that's what you're referring to or bruises or physical type of injury at the Frews house, I mean, he stuck his finger in my rectum for the first time. There was blood and I can still see blood and semen mixed together. He would use Vaseline after that for himself but not for me and then he would use a talcum powder of some sort, some kind of powder with me to put on me. There was bleeding in my rectum from him. I remember my underwear with blood and I would throw them away and hide them and throw them away. There was - to this day my perineum is numb. There is hardly any sensation there. I have burning in my rectum all of the time. Right now as I talk to him, talk about him it flares up like it's on fire. My perineum, it moves through there. My testicles burning in my penis up into my naval tightens up like it's doing right now and above my naval. Every time I see a train, every time I go over train tracks, every time I hear a train, my rectum clenches up tightly and burns like it's on

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fire. My penis burns as the tip like it's on fire.

Q. How long have you had this numbness in your perineum and the sensations in your rectum and penis?

A. In eighth grade is when I started to have physical manifestations. I started fainting. I started having seizures. I started having burning in my penis. I started having the burning in my rectum.

Q. And have you had those continually to today?

A. Correct.

Allan Ranta Deposition at 89:15-90:24.

Q. How long did you have these fainting and seizure spells?

A. Started in eighth grade and went into around, if I remember correctly, around sophomore year of high school and I haven't had them since.

Allan Ranta Deposition at 92:25-93:4.

A. I've been to different physicians over a period of time since then and I have mentioned to them the seizures, the fainting and the burning and everything else. I've had pretty much every scan that you can imagine: MRI's CT scans, everything. Everything comes back from that perspective of the brain as nothing showing of why I would be seizing or why I would have been fainting but that was so long ago that if it were to show up, they said it wouldn't show up now since I've stopped.

Allan Ranta Deposition at 93:9-18.

A. To me, it was terrorizing. To me, it was traumatizing. To him, it was sexual in nature.

Allan Ranta Deposition at 118:10-18.

A. "... why do people who are abducted and held in prison cells in basements protect their abusers and when they have the opportunity to come forward in public with other people around, why don't they yell out for help? I had no ability. I was in prison by this man through the mind, through the ritualistic conditioning as a child that he put me through. I realize that now. Back then I didn't realize that. All I knew was whatever this man is telling me to do, I

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can't seem to escape it but once he made the death threats, that was it."

Allan Ranta Deposition at 121:2-13.

A. When I saw him in college, I still had the burning – and I'll answer your question. I still had the burning in my penis. And as far as the numbness in my perineum, I still had the burning in my rectum. At that time I didn't realize what I would have is this burning sensation that would, and I still do, that would move from my rectum forward under my perineum into my penis and up to above my naval and it burns and hurts so bad at times so badly that I'll keel over sometimes, you know, and so I did still have that going on.

Q. And you still do?

A. And I still do.

Q. Today you attribute that numbness and burning sensation to Wayland Brown?

A. Absolutely. I attribute every single bit of it to him.

Allan Ranta Deposition at 121:17-122-5; 122:17-20.

Q. Okay. Did you ever advise anyone that you pulled your hair and your eyebrows as a child?

A. I did.

Q. And when did those events occur?

A. After I met Father Brown and he started abusing me.

Q. That would have been in the fifth? Sixth? Seventh? What grade?

A. In the fifth grade is when I started to chew my fingernails down to below the quick and my mother was trying to figure out what's going there to stop it and then it escalated from there from sixth and seventh and eighth grade to pulling out my eyebrows, shaving my eyebrows, cutting myself on my arms and hands so.

Q. What did she [his mother] do about them?

A. She asked me what was going on and I had no idea what

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was going on. All I knew was that I hated myself. I hated looking at myself in the mirror and I was, what I believed at the time based on what Brown had done to me and what he told me, is that I was this horrible person and so therefore, when I looked in the mirror, I saw someone completely different than who was there. So all through grade school and then all through high school and into moving to Savannah and Atlanta, never once did I look directly into the mirror. Never once would I look at myself naked. I hated my body. I saw something different every time I looked at my body. So if you ever wonder what it's like for a young woman or man who things that - who is anorexic or bulimic and they are thin and they think they are fat, I know where they are coming from because of what happened to me by Brown.

Q. You realized during all that period that you had been harmed by somebody?

A. As I had mentioned to you before, no. I had absolutely no recollection of what Brown had done to me. All I knew was that I absolutely did not like, I hated my body. I could not shower and scrub myself enough. I could not take enough baths; that my mother had a cross in my room with Jesus on it and I would yell and scream in anger at that cross for him to come down off the cross so I could kick his F-ing ass because I hated him for what he allowed to happen to me. But I had no idea what was going on at this time.

Q. All right. My question to you to be specific was not about Wayland Brown. I just asked you - that you were telling us about how you wouldn't look in the mirror and those other things you had problems with. I said was that because you had a realization that you had somehow been harmed. I didn't say by whom but you had somehow been harmed?

A. Correct. And I answered your question and that question is directly related to Brown and so I answered it with that.

Q. So you did realize that you had been harmed. You just didn't realize Wayland Brown had a part in it back then?

A. As I mentioned to you two to three times before, at that time I had no recollection of being harmed at all. All I knew was that I was extremely angry and resentful towards anything and everyone and I hated my life at that time.

Allan Ranta Deposition at 154:21-155:11; 155:22-156:157:21

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Q. ...Have you been treated for drug abuse?

A. I have been treated for prescription abuse and so once I started having the memories in order to try and numb all of this out, what I was prescribed were different painkillers and different pills such as different pills in the family of Clonazepam, and so with that comes the body's physiological addiction to it, and so in order to maintain some sense of trying to continue on with my life on a daily basis and fighting for my life every single day with this, I'm still on Clonazepam and that is an addictive substance. And because of him I am on numerous drugs running through my body that are all prescription based and at this time the only drugs that I take are those drugs that are prescribed by my doctor and that these are the only drugs I've ever taken and it's on a monthly basis and any doctor that I go to, if they mention to me that it's the dentist and he wants to provide me with a drug like that, I will let him know, you know, I don't need that drug.

Allan Ranta Deposition at 169:6-170:2.

Q. Okay. How would you diagnose your current mental condition?

A. I'm not a therapist. I'm not a doctor, so I don't think it's my place to diagnose my condition.

Q. Well, I'm not asking you from that standpoint. I mean, how do you feel mentally?

A. Let me say that - let's start with this: Every single night when I go to bed no matter how tired I am, it doesn't matter what I've done during the day and how tired I am, it doesn't matter how many drugs that these doctors pump me in, pump into my body, my body goes into overdrive because I am terrorized to go to sleep because I'm so fearful of the dreams that I'm going to have. And then when I do finally fall asleep, then I wake up all throughout the night almost every single night startled and then I'll fall right back asleep or I may get up and look around just to make sure, reassure myself and reassure myself as an adult that I'm safe. I'm okay. But now, I don't know that I'm safe because Brown's out and he's already threatened to kill me. So my mental state, to finish here, is not good at all. Every single day for me in my life is a struggle to survive. I work very, very hard in order to maintain what I'm doing here, very hard, and I am drugged up. As many drugs as I know to be on and they keep adding up because they stop working, and once they stop working, they add more and change them up.

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Allan Ranta Deposition at 178:5-179:10.

"As I mentioned to you before, I've had burning in my rectum, burning in my penis, burning in my perineum. I have had up to my naval, above my naval and with that there will be no one who will come anywhere near my rectum and if anyone ever tries to rape me again, it's not going to happen.

Q. All right. With this sensitivity that you've described relative to your rectum and perineum and etc., did that result in your thinking that you had been abused in the rectum before?

A. The memories of abuse for me flooded me back in January of 2005 and at that time that is when I recall the memories, and with that I very clearly remembered the abuse of Wayland Brown and that included rape and him penetrating my rectum with penis as well as his finger.

Q. Okay.

A. And that included at the -- that included at the nature preserve with what he did to me there. That included when we were at St. Anthony's in Hardeeville where he stuck his finger right up my rectum on numerous occasions as well as many other places.

Q. Okay. I just wanted to get clarification, though, that prior to '05 you didn't have this thought in the back of your head relative to your rectum that you had been abused there before?

A. Absolutely not.

Q. Okay.

A. All I knew is my --

Q. It was painful?

A. Yeah. It was painful, it burns. I don't know why.

Allan Ranta Deposition at 192:4-193:13

This and other testimony reflects the severe physical and emotional trauma and damage suffered by the Plaintiff. This damage continues through the present and will

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endure for the remainder of his life.

b. Dr. Claudia Crenshaw

Dr. Claudia Crenshaw has a Ph.D in nursing and a master's in psychiatric nursing. She has a license in Georgia as an advanced practice R.N. and a professional counselor. She can also write medications. She provides psychiatric-type therapy and is Ranta's current treating therapist. She's had significant training in trauma as well as a treatment modality known as EMDR. Her specialty is trauma. She is a designated expert of the Plaintiff and testified as follows:

Q. When Allan first came to you, what recollection did he have of being abused by Wayland Brown?

A. I saw him - - I just looked at my notes. I think I only saw him once before he went to Santé. And I did one EMDR session. And he was referred to me by his therapist, Linda Hudson, to kind of help him stay in his skin, which is languaging in my field, which is basically when someone is so frightened and so scared that they can barely just sit still. And she asked me to help him just kind of regroup enough till she could get him into treatment. And at that point he told me that he was beginning to have memories of being sexually abused by a priest. And he said his name was Wayland.

Claudia Crenshaw Deposition 34:18 - 35:6.

A. (Crenshaw reading a note from her records dated February 14, 05): "2/14/05. Session Number 1. Paid \$50. S" - - which means subjective - - "Can we do EMDR today? O" - - which is objective - - "31-year-old white male panic-stricken appearance. Referred by M.D., Dr. Haley, and therapist, Linda Hudson, to contain symptoms, re sexual abuse with priest, in order to make arrangements to go to inpatient treatment: "Meds, Zoloft, 200 milligrams each morning; Risperdal, 1 milligram at bedtime; Xanax, .25 milligrams PRN. Gives history of anxiety, depression. Stopped ETOH" - - which is alcohol - - "12/04." That's in parentheses. So it gives a history of anxiety and depression for years. "Went to an SA meeting around sexually acting out. Referred to Linda Hudson there around sexual abuse and started decompensating....Mental status exam: 'No audio/visual hallucinations. No suicidal/homicidal ideation. Panicked and triggered. Insight and judgment intact. Assessment: Multiple PTSD

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secondary to sexual abuse. Plan: Phone call from Dr. Haley. Phone call to Linda Hudson. EMDR today concerning symptom relief." My signature.

Claudia Crenshaw Deposition 75:3 – 76:7.

Q. Could you tell us what each of those says, please? And what it means is really what I want to know.

A. Okay. Axis I, 296.33, it's major depression, severe, recurrent. So I spelled that out. You can actually look up that in the DSM-III in 309.81, posttraumatic stress syndrome secondary to sexual abuse by a priest. Do you need to know more than that or - -

Q. No, no.

A. Okay. And on Axis II he does have no diagnosis. He doesn't have a personality disorder. He doesn't have mental retardation or autism or Asperger's or Down's Syndrome. Then Axis III, lattice dystrophy of the eyes. He got that diagnosis a year or two ago. And his father had it. And his father died blind. And so it's a possibility he may end up blind. And up - - UGI is upper-GI difficulties, which he developed this summer as he was having memories about oral penetration and oral rape. And - -

Q. At the hands of Wayland Brown?

A. Right. And then body memories of abuse. He still has memories in his perineum, abdomen, and rectum but not as severe as when I first met him. And then Axis IV, the stressors right now are the release of the perpetrator.

Q. And by that, the word "perpetrator," you mean Wayland Brown?

A. Wayland Brown from Maryland.

Q. When you say "released," do you mean released from prison?

A. He was released from prison. And apparently, from what Allan tells me, is in a halfway house in Maryland. And then criminal investigation which started this summer, just having to tell the story again, visit sites.

...
Q. Thank you. Could you go ahead and finish the Axis, please.

A. Yeah, sure. At current - - And this is where diagnoses are fluid. Like, what I would add to Axis IV right now is seeing this Maryland license plate care and someone who fit the description of Wayland Brown at his

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house has been a huge stressor.

Q. I understand.

A. And then Axis V, level of functioning, 65, that's a level of functioning where you've got some moderate symptoms but you're still able to go to work; You don't need to be in a hospital.

Claudia Crenshaw Deposition 85:8 – 87:21; 88:7 - 18.

Q. Okay. Thank you. Now, you continue currently to treat Allan Ranta, do you not?

A. Correct.

Q. You would not continue to treat him if he didn't need further care, would you?

A. Correct.

Claudia Crenshaw Deposition 93:15 – 20

A. ...“And you can certainly compartmentalize memories. I use the word “compartmentalize memories,” so you're not conscious of memories for a very long time.”

Claudia Crenshaw Deposition 21:21 – 24.

A. ...Allan doesn't have that. He's got dissociation somewhere in the middle like that.

Q. He's got dissociative memory?

A. I don't - - He's got dissociation.

Q. Dissociation?

A. Mm-hmm.

Q. How do you define that?

A. Dissociation. Dissociation is a defense mechanism that allows you to -
- It's a high-level defense mechanism that allows you to put things places if you don't want to remember them or think about them. And it's an unconscious defense mechanism. But we can use it consciously. Like, if you're too stressed out and you want to go to a movie to forget your

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problems, that's a conscious use of dissociation.

Claudia Crenshaw Deposition 23:2 - 17.

Q. And people that have dissociation issues - - For example, he apparently in 2005 started recalling abuse by Wayland Brown. So those were dissociated memories that he had?

A. Yeah, correct. And a lot of people will use alcohol, drugs, sex, or food to just keep everything down. And part - - I think part of why things happened then is that he stopped drinking.

Q. Is it typical for someone who has been involved in a violent act to dissociate that memory?

A. Yes, absolutely. Absolutely.

Q. Even if it's been repeated a number of times?

A. Absolutely. Actually, the worse the repetition, the more that it might be dissociated. And if you talk to rape victims - - I'm not talking about Allan but female rape victims, which I work with a number - - they always say at the time of the rape, they're up in the corner. They're not right there at the rape and that they dissociate right then. And then they have - - Then they have ways of putting it places. And some rape victims remember the rapes, and some of them don't. It's interesting, isn't it?

Q. Do they forget them for 30 years?

A. Sure.

Claudia Crenshaw Deposition 24:3 - 25:6.

Q. Okay. Do you believe it's plausible for a 6th grader, someone about that age group, to be violently raped like Allan alleged in the train yard and that he dissociate that memory immediately?

A. Absolutely. Particularly usually with these experiences - - and it was Allan's experience, too - - is there are threats and threats that you're going to get hurt, your family's going to get hurt, you'll be taken away from your family. And so it's actually the best option. And that memory just gets dissociated. It's like it didn't happen. Absolutely. Absolutely.

Q. And then within a short period of time after that he goes back out with the individual and it happens again?

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A. Absolutely. And I see that a lot with rape victims, date rapes, that people are raped and they dissociate and he calls up for another date, and this can go on and on. Yeah. Yeah. No, I've seen this in trauma definitely. Definitely. And he doesn't remember. You know, as he said - - and you probably have it in testimony - - that, you know, Wayland would say, we're going to the movies. We're going to the fireworks stores. And there's also the fear if you don't cooperate that that's the time that you're going to get hurt and you're going to be taken away from your family.

Q. Do you believe that someone would dissociate the memory though, or do they remember it but just know there's a threat hanging over it?

A. They - - You literally can just not remember it. Yeah. Yeah. And that's my experience working with clients with this sort of trauma.

Q. A 6th, 7th grader would be raped like he says he was and wouldn't say anything to anybody and would forget about it and then become a victim again?

A. Yes. The defense mechanism used in children and how children can survive, like, a parent dying and all, they just use denial. And it's a major defense mechanism in childhood. And dissociation is actually a higher level. And it was - - It allowed Allan to survive. So it was a very, very useful defense mechanism.

Claudia Crenshaw Deposition 44:11 - 46:2.

Q. Dr. Crenshaw, I noticed in some of your records in talking about Allan he relates to you conversations that he recalled with Wayland Brown. Is it unusual for verbal memory or memory of conversations to be dissociated for 20 years or whatnot and then be remembered?

A. Yes.

Q. That's unusual?

A. No, no, it's usual.

Q. Okay.

A. It is usual. It is not unusual.

Claudia Crenshaw Deposition 65:21 - 66:6.

Q. Let me go further. Does the child rape victim need not to remember?

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A. To continue functioning?

Q. Yes.

A. Yes.

Claudia Crenshaw Deposition 92:9 – 93:1.

c. Dr. James C. Montgomery

Dr. Montgomery is board certified in psychiatry. He is certified by the American Board of Addiction Medicine and the American Society of Addiction Medicine which are overlapping organizations. He has been the Medical Director of Santé Center for Healing since 2004, the in-patient facility that treated the Plaintiff for approximately 4 months in 2005 after the Plaintiff first recalled the memories of the abuse suffered by Wayland Brown. He managed a program in Lafayette Louisiana at a psychiatric wing of a hospital that dealt purely with sexual trauma. Dr. Montgomery was Allan Ranta's attending psychiatrist. He is a designated expert of the Plaintiff and testified as follows:

A. ...“Allan had a real difficult time trusting.... He had a very vulnerable posture in terms of coming here and dealing with issues he was dealing with, so to be shaky at that point would not be surprising at all.”

James Montgomery Deposition 21:7-12.

Q. Okay. What were your initial impressions of him when you first met him?

A. The first time I met him I was struck by his anxiety. He was very frightened, very wounded. I remember it seemed very important for him to feel as though I understood, which is very typical in a first meeting; and it was very hard for him to let me guide him into things other than trauma because particularly when there's that much anxiety, one of the ways of taking a break is “Tell me about your job, let's talk about your pets, let's talk about something else, we'll come back to that,” and he had a very hard time with shifting that primarily due to the anxiety.

James Montgomery Deposition 28:18 – 29:3.

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A. ...“He had some issues around sex and sexuality which also included his trauma, so that was a whole complicated treatment plan; and then he had psychiatric symptoms, his anxiety, the symptoms of posttraumatic stress disorder, which were going to require both pharmacologic treatment, some of the adjunct treatment such as the neurobiofeedback, Alpha-Stim, some of the other things he was doing and would also impact his other treatment.”

James Montgomery Deposition 30:11 – 19.

A. ...“He had several other areas where he dampened his mood. He could do it by some of his sexual acting out, going to the gym and picking up people, going to bars even when he didn’t drink, some of his relationship issues; and that’s where, in sexual trauma particularly, we see the reenactment of the trauma is much like the high you get riding a roller coaster, and that becomes mood altering.”

James Montgomery Deposition 32:25 – 33:7.

Q. Okay. The treatment plan and I guess the initial intake or the master treatment plan references three initial diagnoses: I guess PTSD, major depression, and I guess substance abuse?

A. Right.

James Montgomery Deposition 35:9 – 12.

Q. And it was not until early 2005 before he came to Santé that he began recalling these abusive memories by Wayland Brown...Is that correct? (objections omitted) Do you know that?

A. That’s what he reported.

Q. Okay. And you’ve said he was very anxious while he was here?

A. Yes.

James Montgomery Deposition 57:24 – 58:12.

Q. And these issues, they’re not static. They kind of go up, and they go down. Sometimes a child sexual abuse victim will have sometimes a good day, and sometimes they’ll have bad days. Isn’t that right?

A. Yes.

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Q. And, in fact, it could go just good and bad days, but it can go on such an increase or decrease that he could require another inpatient stay at Santé or some other treatment facility, isn't that right?

A. That wouldn't be unusual.

Q. Okay. Would you agree with me that victims of child sexual assault, they carry that with them throughout their lives? (objection omitted)

A. I think any kind of trauma because of the definition of trauma as being something that involves the perception or risk of loss of life and limb stays with us throughout life.

James Montgomery Deposition 59:15 – 60:7.

Q. Okay. And you're aware that his stay here at Santé was prompted by his recollection of his abuse by Wayland Brown?

A. Yes

James Montgomery Deposition 62:8 – 11.

Q. Okay. And you're aware that Allan Ranta has - - when discussing Wayland Brown often has body pains - -

A. Right.

Q. - - when even just discussing or thinking about it. Is that typical?

A. Yes.

James Montgomery Deposition 84:25 – 85:5.

Q. There are probably a hundred other issues that he still is dealing with now?

A. Right.

Q. You would agree with me that these things take time and effort - -

A. Right.

Q. - - to ultimately get back to where the baseline should be?

A. And he dealt with it once; he'll have to deal with it many times.

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James Montgomery Deposition 86:18 – 87:2.

Q. I mean, as a general rule, do you believe in disassociation?

A. Disassociation is a normal defense.

Q. Okay.

A. We all do it. My example is most physicians by the time they finish medical school have learned to disassociate the sense of smell. It is a survival technique.

James Montgomery Deposition 44:4 – 11.

Q. Would you agree with me that children who dissociate severe traumatic memories - - I think you testified earlier that's a defense mechanism that happens on a subconscious level, right?

A. Right.

Q. It's not an intentional thing?

A. Right.

Q. Would you agree that the child who dissociates needs to disassociate that memory in order to function as an everyday child, to go to school the next day, to live?

A. Actually it is the unconscious that makes the decision at that moment that this can't be processed, so it is shifted into an area of unconscious memory, blocked memory, however you want to describe it, where whatever is going on at the moment goes into registered memory, and everything else - - the other 11 million bits goes somewhere else.

James Montgomery Deposition 69:23 – 70:14.

Q. All right. An example where a child has been sexually assaulted and he dissociates that memory as a defense mechanism as a protection device, would it then correlate that that dissociation is to a greater degree than the example of a small child?

A. Certainly.

Q. So they could disassociate that memory and it's gone for all intents and purposes, and the more severe the trauma, perhaps the longer the time that memory is disassociated?(objection omitted)

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A. I think it has to do - - And our understanding of this is increasing as we understand the brain. Both the mechanism and the learning process are involved in that. Because it's a protective mechanism, the more protected the memory is, the more later is that more defenses that are going to be put around it and the ease with which we access it is going to be greater.....

James Montgomery Deposition 75:13 - 78:2.

d. Dr. Steve Shindell

Dr. Steve Shindell was a treating psychologist of Allan Ranta. The first time he had the occasion to see Allan Ranta was in 1999, before Ranta recalled the abuse by Defendant Brown. He is a designated expert of the Plaintiff and testified as follows:

Q. Did he ever discuss with you issues that he thought had been repressed, like repressed memory syndrome, of having been abused by other people when he was a child?

A. No, not to my knowledge.

Steve Shindell Deposition 12:24, 13:1-2.

Q. Would you expect him a year into therapy with you having never mentioned it before to bring it up for the first time and then have a flood of memories about all these various episodes when he's with an individual?

A. No; that would be very atypical. I saw Allan for a number of years. And I think it was - - I saw the note just a few seconds ago - - probably 50 times, 45, 50 times over a large period of time. We talked over a lot of things that were potentially embarrassing, a lot of things that were difficult to talk about, some things that were illegal. I would be surprised if he came up with something that he wouldn't have been comfortable talking about.

Q. And a normal person would have been able to express that to you during the course of your therapy after a given period of time?

A. I don't know what you mean by normal. But yes, it would occur, or it would be very obvious that there's a part of their life that they aren't sharing that they are - - that they are resisting talking about.

Steve Shindell Deposition 23:23 - 24:23.

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Q. Now, when a child is sexually abused, raped by a person who is an authority figure and the person in whom trust and confidence has been reposed by the child, does that, in your view, exacerbate the suffering of the child in the sense of a breach of trust? (objection omitted).

A. Well, by definition a sexual abuse would be somebody that would be in a higher-powered position. So the answer would be yes, but it would be yes in all cases.

Steve Shindell Deposition 26:14 – 23.

Q. You talked about Allan Ranta in relationship to alcohol and drug abuse. I want to ask you if that is something that you see in victims of sex abuse?

A. Yes. It certainly is more common with people with sexual abuse. It's also very common in general populations. But certainly the incidence is higher in people who have a history of sexual abuse.

Steve Shindell Deposition 38:20 – 39:1.

Q. ...In the world of sexual abuse, if a child is horribly and violently and repeatedly sexually abused and they do this dissociation that you were talking about a while ago, does a child - - Does that happen - - I hate to use a lay word like automatically. What I'm trying to say is the child is not sophisticated at age eight, nine, or ten to work through all of that and to decide, "I'm going to compartmentalize this and this and this, but I'm not going to compartmentalize - - I'm going to middle compartmentalize the following things." Do you follow what I'm - -

A. Yes.

Q. - - getting at? So what I want to ask you - - and I'm sorry for the rambling. But the question is very simple: Do children do that? Do they put it away, get it out of their mind, to live otherwise?

A. Oftentimes. They typical child that's been sexually abused remembers everything and can talk about it. The typical child doesn't dissociate. In other words, dissociation is a rare phenomenon.

Q. Rarer than - -

A. Than not dissociating.

Q. - - than not dissociating? Okay.

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A. Now, somebody with, you know, horrific physical or sexual abuse, is it possible for somebody to dissociate in order to maintain and make it through life, yes.

Q. And when you say "maintain" - - I said to live - -

A. Yes.

Q. - - you say "to maintain," we mean the same thing - -

A. Yes.

Steve Shindell Deposition 45:25 - 47:10.

e. Dr. Sam Hill

Sam Hill is a licensed professional counselor/case manager at the Santé Center for Healing, the in-patient facility that treated the Plaintiff for approximately 4 months in 2005 after the Plaintiff first recalled the memories of the abuse suffered by Wayland Brown. He has his master's degree in counseling and human services. He is licensed by the state of Texas. His specialty is addiction. He is a designated expert of the Plaintiff and testified as follows:

A. ... "When he got here, he was so beaten down he was - - He had been suicidal, was still suicidal. It was several weeks, I think, before he really even brightened up enough to be able to string along any of the assignments that we asked him to do."

Sam Hill Deposition 21:21 - 25.

Q. Yeah. Let's talk about the body memories a little bit. Can you tell me what that is? What is a body memory?

A. Well, you're familiar with muscle memory, the idea of a repetitive behavior. If you swing the baseball bat just right, you know that you've swung it right. If you swing it the wrong way, you know that there's something not right about that. The muscle develops memory, and the brain stores the memory of the pain.

Q. And that could be manifested - - A psychological injury can be manifested physically?

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A. Yes.

Q. And that happened with Allan Ranta?

A. Yes, it did.

Q. I don't know if you note, in the records much of his body memory is activated when he discusses Wayland Brown. Are you aware of that?

A. Yes.

Q. Do you attribute those body memories to the abuse suffered at the hands of Wayland Brown?

A. It's certainly part of it...

Sam Hill Deposition 91:23 – 92:21.

Q. A child uses - - As a defensive mechanism, some children dissociate, do they not?

A. Yes.

Q. And that dissociation is not an intentional thing; it's an automatic, subconscious sort of compartmentalization?

A. Yes, the brain's way of compartmentalizing something that's - -

Q. It's so traumatic that they can't deal with it?

A. Yes. (objection omitted)

Sam Hill Deposition 96:10 – 20.

f. Dr. Paul Kimmel

Dr. Paul Kimmel is a board certified psychiatrist. He first treated Allan Ranta, August 19th, 2005. The purpose for seeing him on that date was for medication monitoring. At the time of their first meeting, Ranta was on Baclofen, Klonopin, Zoloft, Seroquel, and Labetalol. Labetalol is a beta blocker for anxiety. Seroquel is an antipsychotic for anxiety. Zoloft's an antidepressant for anxiety and depression.

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Klonopin is an anti-anxiety medication and baclofen is an anti-anxiety medication. Allan was referred to this doctor by Claudia Crenshaw. He is a designated expert of the Plaintiff and testified as follows:

Q. On the first entry, the 8/19, he comes to you and he's discussing abuse by a priest on the first visit.

A. Yeah, he's providing me his history.

Q. Okay. And do you recall what information he gave you about that incident?

A. What's in my notes. Mostly gave me background history, his current state of anxiety and depression. He did say that is abuse was from Wayland Brown in Savannah. He mentioned that he had addictions, especially sex. Sometimes food and occasional abuse of alcohol and Xanax, that he's chronically suicidal.

Paul Kimmel Deposition 11:23 – 12:9.

Q. Okay. But you and Claudia didn't coordinate treatment or anything?

A. Occasionally if Allan got suicidal she would call me to let me know he's in trouble. If there was a medication adjustment that she thought needed to be made, she would call and ask me about it. So we did have contact but it was infrequent.

Paul Kimmel Deposition 22:4 – 10.

Q. All right. The bottom of that page, January 3rd, '05 - - I guess it's '06. Can you just read that record, the entry for me?

A. "Seroquel 25 milligrams. Very sedating in the morning. Symptoms didn't improve. Sleep and less nightmares but still present."

Q. Okay.

A. So apparently he had a decrease in those symptoms but they were still there.

Paul Kimmel Deposition 32: 23 – 33:7.

Q. Okay. Your - - step back from this record for a second. Your diagnosis of him - - what were your diagnoses of him overall?

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A. Oh, major depression, generalized anxiety disorder, posttraumatic stress disorder, addiction.

Q. And the posttraumatic stress, that's - - in your opinion that's related to the abuse by the priest?

A. (Witness nods head.)

Paul Kimmel Deposition 34:12 - 23.

Q. About the middle of the page (Discussing January 26 report in doctor's records) it says "reports" and I can't read the rest of it. Can you -

A. In addition to poor sleep, lower energy, tearfulness, fear and anxiety, overeating comfort foods, increased frequency of sexual acting out, good work functioning and work is helpful because it distracts him from his feelings and ruminating about what happened to him.

Q. Okay. During the course of your treatment of him, I mean, how would you characterize his progress? Was he improving?

A. It's hard to say. At times he was certainly doing better. He was able to maintain work most of the time. That's pretty good, but he had struggles the whole time too.

Paul Kimmel Deposition 39:7 - 21.

A. ... "His depression and his anxiety were major aspects of my treatment of him, as well as his symptoms of posttraumatic stress and anxiety."

Q. Okay. So they're all equally important or I mean -

A. Oh, yeah.

Q. Okay. All right. The last page or page 2 of the report says, Mr. Ranta has actively participated in his treatment and is highly motivated although his prognosis is guarded.

A. Umm-hmm.

Q. What do you mean by that?

A. Guarded because it was so hard to manage his symptoms. As much work as he'd done, as much therapy as he'd done, as much as he'd traveled for therapy, as much body work as he'd done, EMDR - all the

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modalities that were used, he was still having a great deal of distress so at that point I would say his prognosis was guarded.

Q. Okay. And by "guarded," what do you mean?

A. 'Guarded' just means you're not really sure how it's going to come out.

Q. There is a note, that main paragraph about halfway through. Wayland ejaculated on him.

A. Yes.

Q. Okay. Now, explain to me how that comes up. Is that -

A. He would volunteer. I rarely ask questions again because my role is medication. But if he's upset or anxious, I would ask him are you okay. What's going on and he would tell me then information and on that day that's what he told me.

Q. Okay. And is that a memory he's having or is that some sort of vision he's having?

A. I think they were part of his flashbacks which would be that it wasn't a dream. It was him remembering what had happened and re-experiencing it -

Q. Okay.

A. - - as a flashback.

Q. And these flashbacks, they appear in your records quite a bit.

A. Umm-hmn.

Q. Well, not quite a bit. I mean, they appear in your records but are these things that - - past memories he's forgotten and they are coming back to him?

A. Yes.

Q. Okay. And do you know -

A. Although usually he already has the memories by the time he sees me because he's already talked to Claudia and done work and yada, yada.

Q. Okay.

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A. So these are things that he was aware of when he was talking to me, but they were recent memories of his.

Q. Okay. And something that had been out of his memory for some period of time?

A. Correct.

Paul Kimmel Deposition 20:9 – 21:18.

Q. Yeah. If you can help me with a couple of things, I would like to try to understand as fully as I could please how are children who are sexually abused by priests, particularly in an instance where the priest has violently raped the child repeatedly over an extended period of time, how are those children impacted?

A. Profoundly. That's why they learn how to dissociate because they can't really make it with all that pain and trauma if they didn't find a way to separate it out and not know about it.

Q. I'm a layman obviously to your profession so I apologize in advance to my inability to properly use your language, your professional language with what I am about to ask you.

A. You're doing fine.

Q. Is it fair to say that a child who has been abused and has rid himself or herself of that memory needs to do that to survive?

A. (Witness nods head.)

Q. You need to say yes or no because she's taking it down.

A. Yes, yes.

Q. Okay.

A. If they have that ability. Not everybody does.

Q. I understand. And I'd like to ask a few more questions about abuse by persons in authority. Is it typical that children who are abused are abused by persons whom they trust?

A. In general but not always.

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Q. No, I understand not always. I'm just asking is that a typical thing you see?

A. Yes. It's not uncommon.

Paul Kimmel Deposition 59:9 – 60:20.

g. Dr. Gregory A. Haley

Dr. Haley is an M.D. who specializes in psychiatry and is licensed in the state of Georgia.

He first saw Ranta in late 2004 through early 2005 before referring him to Santé Center

for Healing in Dallas, Texas, for in-patient therapy. He is a designated expert of the

Plaintiff and testified as follows:

Q. Let me move on to page 35, which is for February 22, '05, and ask you to give us your assessment on that occasion.

A. At that time he said that he found himself constantly going to check the door to make sure that it was locked. He had had no previous checking behaviors like this. He is reporting that the top of his head felt like it had been really hurting, although he always was prone to excessive headaches, leg shaking, and so on. He also had similar pain in other regions. He reported that he had been having blackouts, seizures or convulsions of some sort around the eighth grade. And around that same time he reported he had been cutting himself, plucking his eyebrows and eyelashes out, and that's when pain in his abdomen had begun as a complaint.

Gregory Haley Deposition at 20:1-16.

A. ... "[H]e had become so labile and acting out, we weren't – and acting so paranoid and beginning to act so irrational that we weren't convinced he was going to be safe with just outpatient."

Gregory Haley Deposition at 42:10-13.

Q. And you quoted a sentence that said he came in very anxious and shaky, flooded with recollection of sexual abuse at the hands of a parish priest...

A. Correct.

Q. Alan had never told you that he had been abused –

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A. Prior to that February session, no.

Gregory Haley Deposition at 31:25-32:13.

Q. And as a child, if a child is abused sexually and violently, does that child need to compartmentalize or disassociate that memory to survive?

A. Absolutely.

Gregory Haley Deposition at 33:14-18.

Q. Since that memory is dissociated, the child can't retrieve that memory; however, can there be manifestations in that child's life, whether physical or psychological, in the form of acting out such as cutting, plucking eyebrows, seizures, blackouts? (objection omitted).

Q. Can that happen?

A. Yes.

Q. But the child doesn't remember or doesn't know the source of what's causing him to act out or have these internal feelings; is that correct?

A. Correct.

Q. But they can feel depression and anxiety and other symptoms like that; correct?

A. And often do, yes.

Q. And in addition to that it can lead to various other issues in a person's life, addictions, sexual dysfunction or sexually acting out; is that right?

A. Correct.

Gregory Haley Deposition at 38:20-39:14

CONCLUSION

Given the aggravated, violent, and severe sexual abuse suffered by the Plaintiff in this case, the massive pain and suffering that has resulted therefrom, the extensive and substantial medical care already incurred by the Plaintiff since his recollection of the

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abuse by Defendant Brown, in addition to the extensive and substantial need for further medical care and therapy for normal functioning, the breach of trust due to the nature of Defendant Brown and the Plaintiff's relationship – priest and parishioner, the decades of documentation of Defendant Brown's proclivities and propensities for sexual interaction and molestation of minor boys prior to the abuse suffered by the Plaintiff and the decades of concealment of this knowledge by Defendant Brown in conjunction with the Diocese of Savannah, the Plaintiff is entitled, and urges, a judgment that accurately reflects this court's and society's disgust and disdain for the outrageous conduct of Defendant Wayland Yoder Brown, in the amount of \$100 million dollars⁶ (\$100,000,000.00) for actual damages and a similar amount in punitive damages sufficient to deter similar conduct by this Defendant and others.

For the foregoing reasons, the Plaintiff respectfully requests this honorable court enter judgment against Defendant Brown, and for such other and further relief as the court deems just, prudent, and proper.

Signature page to follow

⁶ While this may seem like a large amount, it accurately reflects South Carolina's disgust for this type of conduct. See Glover v. Porter Gaud School CASE NO.: 98-CP-10-613 (jury verdict of \$105 million for the sexual abuse of school children by school teacher) (verdict form attached hereto as Exhibit A).

Moreover, to help determine the appropriate damages in this matter, the Plaintiff engaged a focus group to review this case. When \$100 million in damages were discussed, none of the participants were surprised by the figure. In fact, 3 of the 8 participants felt \$100 million an accurate reflection of the Plaintiff's damages, while 2 others felt that \$100 million was too low.

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Respectfully submitted,

THE RICHTER FIRM. LLC

By: 

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Mt. Pleasant, South Carolina
Nov. 13 2009.



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

JUDGMENT IN A CIVIL CASE

Case No.: 98-CP-10-613

HAROLD CLOVER

versus

PORTER- GAUD SCHOOL,
the ESTATE of JAMES
BISHOP ALEXANDER and
the ESTATE of BERKELY
GRIMBALL

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☐ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Voluntary nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other - _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40g, SCRPC; ☐ Bankruptcy; ☐ Other - _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by Court.
Judgment Entered Against all Defendants in the Amount of 15 Million Dollars in Actual Damages. Judgment also Entered Against The Estate of James Bishop Alexander in the Amount of 45 Million Dollars Punitive Damages. Judgment also Entered Against The Estate of Berkely Grimball in the Amount of 45 Million Dollars in Punitive Damages. All Post Trial Motions were heard rather than waiting 10 Days, And Taken Under Advisement.

\$105,000,000.00

Dated at Charleston, South Carolina, October 27, 2000

Thomas P. French
Judge

FILED
OCT 31 2000
CLERK OF COURT
JULIE J. ARMSTRONG

This judgment was entered on the 27 Day of October, 2000, and a copy mailed first class this 30 Day of October, 2000, to attorneys of record or to parties (when appearing pro-se) as follows:

DAVID FLOWERS & GREGG MEYERS

ROBERT STEPP, LAURA ROBERSON & DAVID RULERFORD

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & G.S.

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

Debra A. Burke
DEPUTY CLERK

John J. French
Clerk of Court

SCRPC Form 4 (Rev. 1/95)

Attachment U - 000050

Attachment V - 000001

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

JOHN DOE 2 AND JOHN DOE 4,

Plaintiff,

vs.

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

Defendants.

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

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

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

INTRODUCTION

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

B

Attachment V - 000002

Res Judicata and the Class Action Settlement

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

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

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

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

Attachment V - 000003

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

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

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

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

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

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

The Diocese has further stated that it understands that any person who should have had notice, but did not receive notice for whatever reason, would not be bound by the *res judicata* effect of the settlement. Further, the Diocese has stipulated before me in open Court and on the record that any person who comes forward as a later date and can show

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



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that he or she should have received notice but did not could participate in an arbitration process with terms identical to the Settlement and Arbitration Agreement before the Court for approval today.

At first glance, this language certainly seems to support the Plaintiffs' position.

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

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

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

Statute of Limitations and Negligence/Gross Negligence Causes of Action

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

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

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

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

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

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

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

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

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

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

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

Attachment V - 000008

following:

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

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

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

UNFAIR TRADE PRACTICES ACT CLAIM

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

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

Attachment V - 000009

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

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

CIVIL CONSPIRACY AND ALL DEFENDANTS

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

Attachment V - 000010

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

PROFESSIONAL NEGLIGENCE AND BREACH OF FIDUCIARY DUTY

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

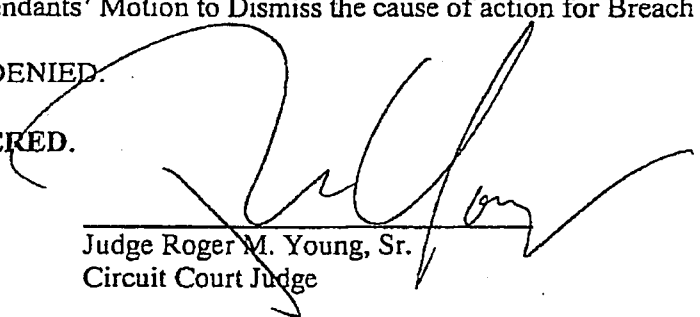
THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

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

Attachment V - 000011

4. That the Diocese Defendants' Motion to Dismiss the cause of action for fraudulent concealment because the actions are barred by the applicable statute of limitations is GRANTED; and
5. That the Diocese Defendants' Motion to Dismiss the cause of action for Unfair Trade Practices Act is GRANTED; and
6. That all of the Defendants' Motions to Dismiss the cause of action for Civil Conspiracy is DENIED; and
7. That the Attorney Defendants' Motion to Dismiss the cause of action for Professional Negligence is DENIED; and
8. That the Attorney Defendants' Motion to Dismiss the cause of action for Breach of Fiduciary Duty is DENIED.

AND IT IS SO ORDERED.



Judge Roger M. Young, Sr.
Circuit Court Judge

Charleston, South Carolina
June 17, 2011

Attachment W

The South Carolina Court of Appeals

John Doe 2 and Jane Doe 4,

Respondents,

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; Robert J.
Baker, former Bishop of Charleston, in
his Official Capacity; Lawrence E.
Richter, Jr., David K. Haller, and
Richter and Haller, LLC,

Defendants,

Of Whom 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; Robert J.
Baker, former Bishop of Charleston, in
his Official Capacity, are the

Appellants.

The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2010-CP-10-5520

ORDER

Respondents have filed a motion to dismiss Appellants' appeal from an order of the circuit court denying in part their motion to dismiss. In their return to Respondents' motion, Appellants contend the circuit court's order is immediately appealable because it effectively

Attachment W

struck their defense of res judicata/collateral estoppel. In addition, Appellants contend the circuit court's order is immediately appealable because it involves the merits.

After careful review of the order and the parties' filings, we dismiss Appellants' appeal. Section 14-3-330 of the South Carolina Code (1976 & Supp. 2010) governs appellate jurisdiction and provides in relevant part that an appeal may be made from an "intermediate judgment . . . involving the merits" and from "[a]n order affecting a substantial right . . . when such order . . . strikes out an answer or any part thereof or any pleading in any action." See also Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006) (holding the right of appeal arises from and is controlled by statutory law). As explained in McLendon v. South Carolina Department of Highways and Public Transportation, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994), "the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings." Accordingly, the denial of a motion to dismiss does not finally determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings. Based on the foregoing, we dismiss this appeal.

IT IS SO ORDERED.

13 3 13 J.

Columbia, South Carolina

cc: Henry W. Frampton, IV, Esq.
Gregg Meyers, Esq.
James L. Bruner, Esq.
A. Peter Shahid, Jr. Esq.

FILED
11/7/11

Attachment Y

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) CASE NO.: 2013-CP-10-04175

FATHER DOE 194,)
)
 PLAINTIFF,)
)
 VS.)
)
 BISHOP OF CHARLESTON, ET AL.,)
)
 DEFENDANTS.)
)

MOTIONS HEARING

held before the Honorable J.C. Nicholson, Jr.
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Friday, April 10, 2014, Commencing at 9:15 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
 Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

Attachment Y

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Attorney at Law
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Charleston, South Carolina 29401

MIA PERRON, CVR-CM-M

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Attachment Y

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EXHIBITS

[None]

Attachment Y

Father Doe vs. Bishop
Motions Hearing
April 10, 2014

PROCEEDINGS

THE COURT: Father Doe 194 versus Bishop of Charleston. Who's here on that?

MR. BRUNER: Yes, Your Honor. I'm Jim Bruner from Columbia. I represent the defendant, Lawrence Richter, and the firm Richter and Haller.

This is Mr. Hal Frampton, with the McNair Firm here in Charleston, and he represents Mr. Richter's former partner, David Haller.

MR. MEYERS: My name is Gregg Meyers, Your Honor. I represent the plaintiffs.

THE COURT: Okay.

MR. SHAHID: Good morning, Judge. Peter Shahid. I represent the Diocese of Charleston, the Bishop of Charleston, and the corporation, so that all of the Diocese and defendants named in the complaint.

THE COURT: You've been representing them a long time, haven't you?

MR. SHAHID: Yes, sir, I have. You've seen us before.

THE COURT: Let me see. It's a motion to dismiss and disqualify counsel by the defendant -- by both defendants, or all three --

MR. BRUNER: Your Honor, I originally filed a motion to dismiss in this case and a companion case.

MIA PERRON, CVR-CM-M

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Attachment Y

Father Doe vs. Bishop
Motions Hearing
April 10, 2014

1 without him having a fourth amendment right to due
2 process.

Bruner

3 Frankly, I agree with him. The publication of
4 the class action was not intended to reach beyond the
5 borders of South Carolina. In matter of fact, in a
6 recent Supreme Court case actually dealing with four
7 resident alleged victims of abuse, the South Carolina
8 Supreme Court said before the trial court can
9 determine whether or not a complaint should be
10 dismissed, it must conduct a limited collateral review
11 of the underlying class action to determine if the
12 plaintiff's due process rights were protected.

13 They were doing that in response to a ruling by
14 Judge Harrington here in Charleston, on these four
15 cases with residents, and she granted motions to
16 dismiss saying the class action settlement barred the
17 residents' claim. The Supreme Court said, no, you've
18 got to do this limited collateral review before you
19 can make that decision, and sent them back to Judge
20 Harrington. In our situation --

21 THE COURT: What happened there?

22 MR. BRUNER: They are back and they are under
23 her consideration for a limited collateral review.

24 THE COURT: Well, tell me, if you would, what
25 does collateral review mean?

MIA PERRON, CVR-CM-M

-9-

Attachment Y

Father Doe vs. Bishop
Motions Hearing
April 10, 2014

1 THE COURT: -- change my mind. I may change my
2 mind. I'm subject to --

3 MR. BRUNER: But I call --

4 THE COURT: -- changing my mind.

5 MR. BRUNER: -- I call your attention to what
6 Judge Young did, and I think that will satisfy you to
7 what I'm trying to tell you in response to what these
8 guys have said trying to throw us under the bus, is we
9 propose to have --

10 THE COURT: Well, you might be under the bus.
11 Who knows?

12 MR. BRUNER: We might be, but I'm trying like
13 hell to get out from under it.

14 THE COURT: You're trying --

15 MR. BRUNER: We proposed to advertise nationwide
16 in USA today.

17 THE COURT: You might be under the bus and you
18 want out get out of it; right?

19 MR. BRUNER: Yes, sir.

20 THE COURT: Okay.

21 MR. BRUNER: We proposed that -- our testimony
22 will be that we proposed that to the Bishop and that
23 the Bishop said, no, that's too expensive. So from
24 our point of view, the Bishop bought the degree of res
25 judicata he was willing to pay for. But he points

MIA PERRON, CVR-CM-M

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Attachment Z

1

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 JOHN DOE 193,

4 Plaintiff,

Case No.
2013-CP-10-3733

5 vs.

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

7 Defendants.

8
9 AND RELATED CASE NOS. 2010-CP-10-5520,
2010-CP-10-7233, 2012-CP-10-5559,
10 2013-CP-10-4175, 2013-CP-10-4176

11 DEPOSITION OF: JOHN DOE 193

12 DATE: July 16, 2014

13 TIME: 10:00 a.m.

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

15 TAKEN BY: Counsel for Defendants

16 REPORTED BY: KENNETH McCLURE,
17 Registered Merit Reporter18
19 A. WILLIAM ROBERTS, JR. & ASSOCIATES

20 Fast, Accurate & Friendly

21 Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
22 (843) 722-8414	(843) 785-3263	(843) 839-3376
23 Columbia, SC	Greenville, SC	Charlotte, NC
24 (803) 731-5224	(864) 234-7030	(704) 573-3919

25
A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

Page 2

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10 CHARLESTON, A CORPORATION SOLE, ROBERT
11 GUGLIEMONE, THE BISHOP OF THE DIOCESE OF
12 CHARLESTON, IN HIS OFFICIAL CAPACITY, REV.
13 MONSIGNOR MARTIN LAUGHLIN, FORMER ADMINISTRATOR
14 OF THE DIOCESE OF CHARLESTON, and ROBERT J.
15 BAKER, FORMER BISHOP OF CHARLESTON, IN HIS
16 OFFICIAL CAPACITY:

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(843) 723-7831
swall@mcnair.net

ALSO PRESENT:

WIFE SANDRA

Page 3

1 STIPULATION

2 It is stipulated by and among Counsel that

3 this deposition is being taken in accordance with

4 the South Carolina Rules of Civil Procedure, Rule

5 30; that all objections as to Notice of this

6 deposition are hereby waived; that all objections

7 except as to form are reserved until the time of

8 trial; and that the deponent does not waive reading

9 and signing of this deposition.

10 * * * * *

11 MR. MEYERS: This is Greg Meyers. We have

12 John Doe 193 and Wife Sandra here in the room, along

13 with Peter Shahid and Jim Bruner.

14 MS. WALL: Good morning. Thank you for

15 letting me participate in this way.

16 MR. BRUNER: Glad to.

17 I spoke with the court reporter about what

18 we have been doing in terms of handling names,

19 Susan.

20 MS. WALL: Okay.

21 MR. MEYERS: I told him that what we have

22 been doing so far is letting everybody use actual

23 names, and I will try to keep a list that we will

24 agree on at the end of what the appropriate

25 substitution would be.

Page 4

1 MS. WALL: Good.

2 MR. BRUNER: Susan, we are going to adjust

3 the volume on the phone so we can hear you a little

4 better.

5 MS. WALL: Sure.

6 (There was a discussion off the record.)

7 MR. SHAHID: Susan, there was some

8 discussion when I arrived this morning about taking

9 the therapist's deposition this afternoon.

10 MS. WALL: All right.

11 MR. SHAHID: I'm not prepared to do that.

12 I don't have her records.

13 MS. WALL: All right.

14 I didn't notice the therapist's deposition

15 for this afternoon. I wasn't aware that there was a

16 consensus to do that.

17 MR. BRUNER: I was not aware of any

18 consensus to take her deposition until I came here

19 this morning.

20 MS. WALL: Do the rest of counsel want to

21 do it by way of sufficiency?

22 MR. BRUNER: Well, we were trying to figure

23 out where that had come from, because it was news to

24 me too.

25 MS. WALL: I didn't notice it. I only

Page 5

1 noticed the one deposition today.

2 MR. BRUNER: Then that answers that.

3 MR. MEYERS: So we don't have an issue. We

4 all agree.

5 Those are the preliminaries that we needed

6 to cover.

7 MS. WALL: And Jim Bruner is going to begin

8 the questioning. I'd like to follow up after him,

9 and then whoever else has questions.

10 MR. MEYERS: Sure. No problem.

11 JOHN DOE 193,

12 Being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. BRUNER:

15 Q. Good morning, sir.

16 My name is Jim Bruner. I'm going to ask

17 you a few questions that morning. I will try to ask

18 clear and concise questions so that you can

19 understand them.

20 If for any reason you don't understand my

21 question, if you will just let me know that, I will

22 try to rephrase it so that you do understand it.

23 Is that agreeable?

24 A. Yes, sir.

25 Q. Thank you, sir.

John Doe 193
July 16, 2014

Attachment Z

John Doe 2, et al vs
Bishop of Charleston, et al

Page 6

1 Could I have your full name, please, sir?
2 A. John Doe 193.
3 Q. John Doe 193, where do you live?
4 A. 121 Belle Oaks Drive, Simpsonville, South
5 Carolina.
6 Q. And how long have you lived in
7 Simpsonville?
8 A. I don't know offhand. Probably, 14 years.
9 Q. Okay. That's fine.
10 A. A good number of years.
11 Q. That's fine.
12 John Doe 193, are you employed?
13 A. No, sir.
14 Q. All right, sir. And how old are you, John
15 Doe 193?
16 A. Sixty-one.
17 Q. Now, I'm going to ask you a few questions
18 about some people in the case that we are here on.
19 Do you know who Lawrence Richter is?
20 A. No, sir.
21 Q. Do you know who David Haller is?
22 A. No, sir.
23 Q. All right, sir. Do you know what the firm
24 Richter & Haller, LLC, is?
25 A. No, sir.

Page 7

1 Q. That is a law firm in Charleston, South
2 Carolina, and the gentlemen whose names I just asked
3 you about are lawyers in Charleston.
4 Have either Mr. Richter or Mr. Haller ever
5 been your lawyer?
6 MR. SHAHID: Objection to the form of the
7 question.
8 MR. MEYERS: I join.
9 Q. You can answer.
10 A. Not that I know of.
11 Q. And, of course, they are not your lawyers
12 now, are they?
13 MR. SHAHID: Objection to the form of the
14 question.
15 MR. MEYERS: Same.
16 A. No.
17 Q. John Doe 193, do you know of anything that
18 either Mr. Richter or Mr. Haller have done in the
19 past that has caused you financial harm?
20 MR. SHAHID: Object to the form of the
21 question.
22 MR. MEYERS: Join.
23 Go ahead.
24 A. Not knowing them, I don't know.
25 Q. So you don't know of anything. That's

Page 8

1 fine.
2 I'm going to hand you what I will ask the
3 court reporter to mark as Exhibit 1 to your
4 deposition.
5 (DFT. EXH. 1, 94 pages, Complaint, was
6 marked for identification.)
7 Q. John Doe 193, the document that the court
8 reporter has just marked as Exhibit 1 to your
9 deposition is the complaint that was filed in this
10 case on your behalf.
11 Have you ever seen this document before?
12 A. Not that I know of.
13 Q. I'm sorry?
14 A. Not that I know of.
15 Q. Okay. I'm a little hard of hearing, so
16 sometimes I will have to ask you to repeat the
17 answer. I'm sorry.
18 If you will look, there is a list of names
19 on the top left-hand side. And the list starts with
20 "The Bishop of Charleston."
21 Do you see where I'm reading?
22 A. Yes.
23 Q. And at the bottom of that list are the
24 names of the gentlemen I just asked you about,
25 Mr. Richter, Mr. Haller, and their law firm.

Page 9

1 Do you see those names?
2 A. Yes, sir.
3 Q. All right. By their names appearing there,
4 that signifies that they are defendants in this
5 lawsuit.
6 Are you aware that your pseudonym in this
7 lawsuit is John Doe 193?
8 A. Yes, sir.
9 Q. Sir, in this complaint, you have sued
10 Mr. Richter, Mr. Haller, and their law firm. And my
11 question to you is, do you know why you have sued
12 them?
13 A. Yes, sir.
14 Q. Why have you sued them?
15 A. In my understanding, it's because they did
16 not make a place for me, to take care for me, take
17 care of me, in the original lawsuit. Even though
18 they knew quite well from their previous dealings
19 with the diocese and everything else that there was
20 a class of person out there that existed out there,
21 they chose to ignore it and not include it in their
22 final disposition.
23 Q. When you say "a class of persons like me,"
24 to what are you referring?
25 A. I'm referring to people who have long

Page 10 1 suppression cycles. Mine was a completely long 2 suppression cycle. When it came out, it was very 3 hard for me to deal with. I was in the hospital for 4 a long time. 5 And I -- I just -- you know -- you know, it 6 was, like, people are in this filing that got 7 covered, and these people got filed and got covered. 8 But there was this hole in there with people like me 9 who hadn't brought forth their suppressed memories, 10 who everybody says, well, you know, they thought 11 about it, you know, but maybe they will just go by. 12 That's the way I felt about it. 13 Q. Okay. Tell me how you think what you just 14 described has caused you harm. How has that 15 affected you? 16 Let me be a little bit clearer. 17 MS. WALL: Excuse me. 18 May I ask the court reporter to place the 19 phone area that has the speaker on it closer to the 20 witness? I'm unable to hear any response. 21 Thank you. 22 MR. MEYERS: Susan, this is Greg. 23 I'm going to slide the phone about 24 18 inches closer to John Doe 193. 25 MS. WALL: Thank you.	Page 12 1 to you? 2 A. All I know is, something happened. 3 Something triggered it. And I started to withdraw 4 into myself. And when I withdrew into myself, I 5 started to relive. 6 I can't tell you why. I can't tell you 7 how. But I just know, it drew me -- or drew a part 8 of myself out of me that came forward. And I 9 couldn't stop it. And that's the things that 10 happened in the hospital. 11 Q. Can you describe for us in your own words 12 what happened to you with this priest? 13 And you can take your time. Just describe 14 in your own words what happened, what you remember 15 about what happened. 16 A. It was -- he was always there for me. I 17 mean, he was a friend, I thought. He helped me out. 18 He took me out for lunch sometimes. 19 Q. Was this Father Kaney? 20 A. Yes. 21 Q. Okay. 22 A. And we went down to Six Flags. And we were 23 coming back. We got soaked in the rain. He had me 24 take all my underwear off, he said, because I would 25 catch a cold. And then he was -- you know, he was
Page 11 1 Q. My question to you is: How has what you 2 think these lawyers did or did not do in the 3 underlying case hurt you? 4 A. Personally, what I feel is that, by not 5 providing for me, I have been put in a position 6 where I'm having to take care of a lot of things 7 myself that should have, in my opinion, been taken 8 care of by the diocese. 9 And I think the attitude of the diocese of 10 pushing it to the burner, pushing it back, and 11 actually trying to, I would say, bury it, makes me 12 feel as if they are doing just that, they are trying 13 to make me go away and bury this thing. 14 And I know that I have a lot of therapy 15 left. I have issues that are coming up in my sleep 16 now that concern the school. And I'm afraid of what 17 I'm going to cross. There is more in me. And I 18 don't know where it's going. 19 Q. Tell me, if you can, John Doe 193, when you 20 first remembered what had happened to you. Are you 21 able to give us a date about when you began 22 remembering this? 23 A. I know it was in 2010. 24 Q. Can you give me a description of the 25 context in which you began remembering what happened	Page 13 1 patting me on my leg, my legs and shoulders. And I 2 didn't think anything of that at the time. 3 And a couple days later, I was at school. 4 And my dad was not the most reliable pickup at 5 school. And he invited me up to the house. And it 6 sprinkled a little bit. 7 Q. I'm sorry. I didn't hear the last part. 8 A. I said, it had sprinkled a little bit at 9 school that same day. 10 And he got me -- I got into the room. That 11 is, like, say, about three or four days between the 12 two instances. And we went in the door. His bed 13 was on the left-hand side. And he, again, said: 14 Just get your clothes off and I will throw them in 15 the dryer. 16 And I did. And he came back and he took 17 his clothes off, he said, "so you will be 18 comfortable." And he said some things. But I still 19 haven't been able to get a lot of it out. 20 But I know that, at some point, he was 21 caressing, touching. And then he had me lying on my 22 stomach and he was massaging me. And I felt my 23 underwear go down. And then that's when I felt the 24 petting. I knew what was happening. I didn't know 25 what else to do. I was lost.

John Doe 193
July 16, 2014

Attachment Z

John Doe 2, et al vs
Bishop of Charleston, et al

Page 14

1 **Q. How old were you when this happened?**
2 A. I don't know. I can't --
3 **Q. Did it happen more than once?**
4 A. I don't -- it was, like, two or three.
5 It's like, I mean, he -- he knew -- I felt like I
6 had -- I had better do what --
7 **MR. SHAHID:** I'm sorry. I'm having a hard
8 time hearing you.
9 A. I felt I had to do what he wanted.
10 **Q. Did he force you to do anything to him,**
11 **physically force you?**
12 A. No.
13 **Q. Okay. Would he physically hold you down so**
14 **that he could do what he wanted to do?**
15 A. Only when he was, like, on top. Only when
16 he was on top. He was on top of me and I couldn't
17 move.
18 **Q. So he would lay on top of you?**
19 A. His hands were on my shoulders.
20 **Q. Did he penetrate you?**
21 A. Yes.
22 **Q. He did. Would he do that for every time**
23 **you remember?**
24 A. Yes, sir.
25 **Q. Okay. Is there anything else that you**

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1 remember that you can tell us about what he did to
2 you?
3 A. No. I can only -- the only thing is -- I
4 am telling you that I can't figure out why it is in
5 my head. And I tell you this just because I want
6 you to know it all.
7 I have a lot of darkness about being in the
8 house that was there. Because I was in the house,
9 the big house. And I don't know -- I don't know why
10 I would ever be in the big house. Because that
11 was -- that was in Father Chemeley's control.
12 **Q. After the first time that this happened to**
13 **you, did you tell anybody about it?**
14 A. I told a nun at school.
15 **Q. A nun?**
16 A. Yes.
17 **Q. Do you remember her name?**
18 A. I don't remember any name.
19 **Q. Now, I'm guessing -- were you attending the**
20 **Catholic school?**
21 A. Yes.
22 **Q. So she would have been a nun there at your**
23 **school?**
24 A. Yes.
25 **MR. SHAHID:** Object to the form of the

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1 question.
2 **Q. And you told her about that?**
3 A. Yes, sir.
4 **Q. What did she say or do in response to what**
5 **you told her?**
6 A. She slapped me.
7 **Q. Did she say anything to you before or after**
8 **she slapped you?**
9 A. The exact words, I don't remember. But I
10 know it was something to do with lying about a
11 priest, telling such horrible stories.
12 **Q. Did you --**
13 A. She called my parents.
14 **Q. She called your parents?**
15 A. And she told them I was spreading false
16 rumors and telling lies about priests. So I got
17 another beating when I got home.
18 **Q. And who beat you when you got home?**
19 A. My dad.
20 **Q. Did you tell your mother and father what**
21 **you had told the nun?**
22 A. By then, I didn't want any more beatings.
23 **THE COURT REPORTER:** I'm sorry, sir?
24 A. By then, I didn't want any more beatings.
25 **Q. Let me ask you this. Did they ask you what**

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1 you had said about the priest?
2 A. No, sir.
3 **Q. So they didn't ask you and you didn't tell**
4 **them about what the priest had done to you?**
5 A. (The witness nodded.)
6 **Q. You need to answer out loud, yes or no,**
7 **please.**
8 A. I didn't get the question.
9 **Q. So you didn't tell your parents what the**
10 **priest had done to you, nor did they ask you what**
11 **the priest had done to you?**
12 A. No. My parents were of the same ilk as the
13 sisters. A priest or a man of God is a stand above
14 the rest of the normal people. And to say something
15 against one is horrible. A great sin.
16 **Q. John Doe 193, did you tell anyone else**
17 **other than this nun about what Father Kaney had done**
18 **to you?**
19 A. No, sir.
20 **Q. Can you describe for me what psychological**
21 **effect this has had on you?**
22 A. I don't really know how to explain the
23 psychological effect. But it has a way of hitting
24 away or stripping you of what masculinity you have
25 left. You can't function as you should. I didn't

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1 function well. You are -- you really tend to freeze
2 at moments when you should be able to move.
3 And I think it's affected the way I act,
4 although I don't know for sure how I would describe
5 that. But the PTSD that I have seems to manifest in
6 a lot of ways. And, for some reason, one of the
7 ways it manifests, the processing makes some people
8 uneasy, some women uneasy.
9 I don't have any idea that I'm doing
10 something, but they perceive it as I'm doing
11 something. I'm a big guy. So I've always had to be
12 extra, extra careful about what I do, because I
13 don't want to be perceived like that.
14 **Q. Have you been required to take any**
15 **medication to assist you with your condition?**
16 A. I have been taking so much medication.
17 They have tried everything. And I've got a fairly
18 good balance now.
19 **Q. Describe for me how you feel if you don't**
20 **take this medication.**
21 A. The first is, if I stop taking it, is I got
22 agitated and confrontational very quick. It is very
23 hard for me to contain myself at that point. And as
24 I go on, I become explosive.
25 **Q. And the medication helps you control**

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1 yourself?
2 A. Yes, sir.
3 **Q. Have you been hospitalized as a result of**
4 **this condition?**
5 A. Twice.
6 **Q. Do you remember when that was?**
7 A. I don't. She knows, but, I mean, I just
8 can't say.
9 **Q. I understand you have been in therapy to**
10 **assist you with this condition?**
11 A. Yes, sir.
12 **Q. And is that with Dr. Denise Crockett?**
13 A. Yes.
14 **Q. Do you know how long you have been seeing**
15 **Dr. Crockett?**
16 A. A few years.
17 **Q. Is she the first therapist you have seen,**
18 **or you saw others before?**
19 A. I saw a couple of others before, but they
20 were just for a few visits. I couldn't connect.
21 And if you can't connect with your therapist, they
22 told me I should move on and find another one.
23 **Q. But you have been able to connect with**
24 **Dr. Crockett?**
25 A. Yes. She works very well.

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1 **Q. Do you think she is helping you?**
2 A. Yes, sir, I know so.
3 **Q. And do you intend to continue to seek**
4 **therapy with her?**
5 A. Yes, sir.
6 **MR. BRUNER:** Okay. John Doe 193, those are
7 all the questions that I have for you right now.
8 Mrs. Wall, the lady on the phone, has a few
9 questions for you. So please listen to her.
10 **MS. WALL:** Thank you.
11 **EXAMINATION**
12 **BY MS. WALL:**
13 **Q. John Doe 193, my name is Susan Wall. I**
14 **have a few questions for you. Please let me know if**
15 **you can't hear me or don't understand my question.**
16 **I'll be happy to repeat or rephrase.**
17 **What is your date of birth?**
18 A. 4/30/1953.
19 **Q. When you remembered the abuse that you**
20 **suffered in -- I believe you said it was 2010. Is**
21 **that correct?**
22 A. What in 2010?
23 **Q. When did you remember about the abuse that**
24 **you had suffered as a child? When did you remember**
25 **it?**

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1 A. I think it was 2010. Yeah, I think you're
2 right. I don't know. My mind is very foggy this
3 morning.
4 **Q. All right. Let me ask you this. At the**
5 **time that you remembered the abuse that you had**
6 **suffered when a child, were you undergoing**
7 **counseling at the time? Were you undergoing**
8 **therapy?**
9 A. I could have been. I don't know.
10 **Q. Okay.**
11 A. The reason I answered that is, you know, I
12 do have other problems from other things.
13 **Q. After telling the nun at your school about**
14 **the bad things that were being done to you by the**
15 **priest, did you ever tell anyone else until the time**
16 **that you went into therapy as an adult?**
17 A. To my knowledge, no. I cannot remember
18 anybody.
19 **Q. Okay. How many years did Father Kaney**
20 **abuse you?**
21 A. I don't think it was a very long time. It
22 was under a year.
23 **Q. Was there any other priest or anyone else**
24 **at your school or at your church that abused you, or**
25 **was it just Father Kaney?**

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1 A. That's a hard question for me to answer,
2 because I still have dark places with certain
3 priests that I can't bring out. So I would have to
4 say: I am not sure.
5 Q. Okay. So you're not sure but that, in
6 addition to Father Kaney, other priests may have
7 abused you; you're not sure, is that right?
8 MR. SHAHID: Objection to the form of the
9 question.
10 A. Yes.
11 Q. Were you an altar boy?
12 A. Yes.
13 Q. For how many years?
14 A. Somewhere between eight and ten.
15 Q. Did you finish your schooling at a Catholic
16 school?
17 A. Just through eighth grade. That's all they
18 had.
19 Q. I'm sorry. Was that just through the
20 eighth grade or was it twelfth grade?
21 A. Eighth grade.
22 Q. And where did you go to high school?
23 A. Greenville Senior High School.
24 Q. And the Catholic school that you attended
25 through the eighth grade was called what?

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1 A. Our Lady of the Rosary.
2 Q. And had you started your schooling there in
3 the first grade?
4 A. Yes.
5 Q. And do I understand that you do not recall
6 today the name of the nun whom you told, and then
7 she slapped you when you told her?
8 A. No, ma'am, I don't.
9 Q. After you left the Catholic school after
10 the eighth grade, did you ever see Father Kaney
11 again?
12 A. I do not know. I don't know what years he
13 was there.
14 Q. As an adult, were you ever employed? Did
15 you ever have a job?
16 A. Yes.
17 Q. And what did you do?
18 A. I worked for Sears for 27 years.
19 THE COURT REPORTER: Twenty-seven, sir?
20 THE WITNESS: About 27, yeah.
21 THE COURT REPORTER: Thank you. I just
22 didn't hear.
23 Q. And what did you do at Sears?
24 A. I can't remember the name of the job. I
25 was a department manager.

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1 Q. And was that a Sears in the Greenville
2 area?
3 A. Yes.
4 Q. John Doe 193, I'm sorry. I didn't hear
5 your response.
6 Were you working in a Sears in the
7 Greenville area?
8 A. Yes.
9 MS. WALL: Thank you.
10 That's all the questions I have at this
11 time.
12 EXAMINATION.
13 BY MR. SHAHID:
14 Q. Good morning.
15 My name is Peter Shaid. I represent the
16 Diocese and the individuals named on the complaint,
17 the Bishop of Charleston, a Corporation Sole, Robert
18 Gugliemone, The Bishop of Charleston, Rev. Monsignor
19 Martin Laughlin, the former Administrator of the
20 Diocese, in his official capacity, and Robert J.
21 Baker, former Bishop of Charleston in his official
22 capacity. We just call those, for convenience sake,
23 "the diocesan defendants." That is who I represent.
24 Okay?
25 A. Yes.

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1 Q. Do you need a break?
2 A. No.
3 Q. John Doe 193, I want to ask you a series of
4 questions. My questions are not intended to
5 embarrass you or have you relive everything. And I
6 may repeat some questions that either Miss Wall
7 asked you or Mr. Bruner asked you. But if you can't
8 understand the question, please ask me to repeat it.
9 Okay?
10 A. Okay.
11 Q. Miss Wall asked you your date of birth. I
12 think you said April 30, 1953.
13 A. Yes.
14 Q. You were handed a document, which is in
15 front of you, marked as Exhibit No. 1.
16 Do you see that in front of you?
17 A. Yes.
18 Q. Would you mind turning towards the very
19 back of that document? There is a handwritten piece
20 of paper called Exhibit A. In the handwritten
21 version, it says "Exhibit No. 1."
22 Do you see what I am talking about, sir?
23 John Doe 193?
24 A. Yes.
25 Q. Do you see what I'm talking about?

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1 A. Yes. 2 Q. It says "Attachment A" and it has the 3 numbers 000002, I believe. 4 A. I see it. 5 Q. Underneath that, there is handwritten "EXH 6 No. 1." 7 A. Yes. 8 Q. Underneath that, it says: General terms of 9 settlement. 10 A. Right. 11 Q. Okay. And you see, under that paragraph 1, 12 what is written there. 13 Can you read that to yourself, first, 14 please? 15 A. Yes. 16 Q. Paragraph 1 reads as follows: Parties 17 agree to create settlement class, subject to court 18 approval of: (a) actual victims of diocese abuse. 19 And underneath that, it looks like: 20 (b) spousal and/or parent claims deriving from 21 victims abused. 22 Did I read that correctly? 23 A. Yes. 24 Q. Okay. So a settlement class, from what 25 you've described in questions presented by either	1 for class counsel at between 950,000 and 2 2.5 million, subject to defendant obtaining credit 3 to secure the obligation. 4 Is that accurate as well? 5 A. Yeah. 6 Q. Were you aware, sir, that Mr. Richter and 7 Mr. Haller served as class counsel who may have been 8 beneficiaries, then, of the amount of money 9 described in paragraph 4? 10 A. The question -- clarify what your question 11 is, please. 12 Q. My question is, were you aware that the 13 defendants that you sued, Mr. Richter and Mr. Haller 14 and the law firm of Richter & Haller, served as 15 class counsel to whom this paragraph 4 is referring 16 to? 17 A. I don't believe I was really aware of the 18 specific ones. Or I know I wasn't, of the specific 19 amounts. 20 Q. Okay. All right. Were you aware, 21 John Doe 193, that a more formal document, called a 22 Settlement and Arbitration Agreement, was created 23 after this document we have been reading from was 24 entered into? 25 Let me repeat the question, if you don't
Page 27	Page 29
1 Mr. Bruner or Miss Wall, you would be an actual 2 victim of diocese abuse, is that correct, sir? 3 Would you agree with me that the things 4 that you just described that Father Kaney did to 5 you -- 6 A. Uh-huh. 7 Q. -- that you would fall into that 8 description of "actual victims of diocese abuse"? 9 A. Yes, sir. 10 Q. You would. Okay. 11 And do you see, underneath that, No. 2: 12 Class settlement fund will be for \$12 million as 13 follows? 14 A. Yes, sir. 15 Q. Okay. And then, next, paragraph 3: 16 Details of claims process in settlement class 17 actions shall be developed and include a payment 18 matrix based on nature and severity of claims. 19 Is that accurate as well? 20 A. I see that, where it says "claims." Okay. 21 Q. In paragraph 3, it talks about a payment 22 matrix. 23 A. Okay. 24 Q. Okay. Then, on the next page, on paragraph 25 4: Court shall be asked to approve attorney's fees	1 understand. 2 A. I'm lost. 3 Q. All right. Were you aware that another 4 document was created following this document that 5 you are reading right now was signed? 6 A. No. 7 Q. Okay. Were you aware that the document 8 called "Settlement and Arbitration Agreement" 9 provided for a formation of classes? 10 A. No. 11 Q. Let me read it to you and ask if this would 12 apply to you. 13 A. In that document, in the Formation of 14 Classes, it says as follows: Plaintiffs shall move 15 in a timely manner for the creation of plaintiff 16 classes against the defendants as follows. 17 And the first definition is: All 18 individuals born on or before August 30, 1980, who, 19 as minors, were sexually abused at any time by 20 agents or employees of the Diocese of Charleston who 21 have not previously had any similar claim 22 adjudicated, resolved or released. 23 Would that definition apply to what you 24 have just described to us that Father Kaney did to 25 you?

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1 MS. WALL: Objection to the form. 2 Q. Do you understand my question, sir? 3 A. No. I am really not following. 4 Q. Okay. 5 If a class of injured people was created, 6 and that class included folks who were born prior to 7 August 30, 1980, that would apply to you; is that 8 correct? 9 A. That's right. 10 Q. And if those individuals who were born 11 before August 30, who, as minors, were sexually 12 abused, that would apply to you? 13 MS. WALL: Object to the form. 14 Q. Is that correct, sir? 15 A. Yes. 16 Q. Is that a yes? 17 A. Yes. 18 Q. Okay. And that the people who abused you 19 were agents or employees of the Diocese of 20 Charleston, that would apply to you as well, 21 correct, because Father Kaney would have been an 22 agent or employee of the diocese? 23 A. Yes. 24 Q. Okay. And, John Doe 193, you have not 25 previously brought this claim forward in any manner,	1 The definition of "sexual abuse," as 2 contained in this previous agreement I mentioned to 3 you, includes the following: Any lewd or lascivious 4 act committed on or about or with a minor, by an 5 agent or employee of the diocese in which the actor 6 knew or should have known that the act may have the 7 effect of arousing, appealing to, or gratifying the 8 lust, passions or sexual desires of the agent or 9 employee of the diocese or of the minor. 10 That was a lot of words. Did you 11 understand my reading to you? 12 In other words, in the act that Father 13 Kaney did to you, you were a minor at the time that 14 occurred? 15 A. Yes. 16 Q. And as far as you knew, he was a priest in 17 the Diocese of Charleston -- 18 A. Yes. 19 Q. -- when those things happened. 20 And did Father Kaney get aroused, to your 21 knowledge? 22 A. Yes. 23 Q. Okay. All right. 24 You were born in Greenville County? 25 A. Yes, sir.
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1 until you brought this lawsuit; is that correct? 2 A. I made the diocese aware of it long before 3 I filed a lawsuit. 4 Q. You made the diocese aware of it back in 5 2010, I believe. Is that correct? 6 A. I don't know. I'd say that we made the 7 diocese aware of it before we did the other. 8 Because we talked with the sister and the other 9 people, trying to get help, and things like that. 10 Q. Okay. So you made the diocese aware of it 11 prior to bringing your lawsuit, but your claim had 12 not been resolved prior to you bringing the lawsuit? 13 A. No, sir. 14 Q. Is that correct? 15 A. Yeah. 16 MS. WALL: Objection to the form. 17 Q. The term "sexual abuse," as it has been 18 described for our purposes, is any lewd or 19 lascivious act committed on or about or with a 20 minor -- 21 (A cellphone rang.) 22 MR. MEYERS: We just had a cellphone go 23 off, Susan. 24 Q. Let me go back to my question, if you don't 25 mind.	1 Q. What are the names of your parents? 2 A. Father John. 3 Q. Father John? 4 A. Yeah. 5 Q. And your mom? 6 A. Mother Dorothy. 7 THE COURT REPORTER: "Mother Dorothy," sir? 8 THE WITNESS: Mother D-O-R-O-T-H-Y. 9 Q. And how many brothers and sisters did you 10 have? 11 A. I had three brothers and two sisters. 12 Q. Three brothers and two sisters? 13 A. Yes. 14 Q. And are your parents still alive? 15 A. No. 16 Q. They are both deceased? 17 A. Yes. 18 Q. When did your dad die? 19 A. Eighty-five. 20 Q. How old was he when he died in 1985? 21 A. Seventy-six. 22 Q. Did he die of natural causes? 23 A. He had a heart attack. 24 Q. And your mom, what year did she pass away? 25 A. 2000.

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1 Q. How old was she? 2 A. Eighty-one. 3 Q. Did she die of natural causes as well? 4 A. Yes. 5 Q. What are the names of your brothers and 6 sisters? 7 A. Brother John. Sister Anita. 8 Q. I'm sorry? 9 A. Sister Anita. 10 And Brother Richard. Myself. And then 11 Brother David. 12 Q. Brother David? 13 A. Brother David. 14 Q. Lee. 15 A. And Sister Mary. 16 Well, I'm sorry. I am giving you her -- 17 no. Sister Mary. That is her married name. 18 Q. You said -- 19 A. Sister Mary. 20 Q. I'm sorry? 21 A. Sister M-A-R-Y. 22 And she is deceased. 23 Q. What year did she die? 24 A. I don't remember. 25 Q. And your oldest brother is still alive,	1 Q. Is your husband of Turkish descent? 2 A. Pardon? 3 Q. Is her husband of Turkish decent? 4 A. Yes, White Turk. 5 Q. Sir? 6 A. White Turk. European. There are both in 7 Turkey. You have to kind of specify. 8 Q. And then, your brother Richard? 9 A. Pensacola, Florida. 10 Q. Then your other brother, David, I think? 11 A. Yes. 12 Q. Where does he live? 13 A. He is retired. 14 Q. Okay. 15 A. Medically retired. 16 Q. What state does he live in? 17 A. He actually lives in Laurens. 18 Q. I'm sorry? 19 A. In Laurens. 20 Q. New Orleans? 21 A. Laurens. 22 Q. Laurens. Thank you. I apologize. 23 You are married to Sandra? 24 A. Yes. 25 Q. And how long have you and Sandra been
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1 John? 2 A. Yeah. 3 Q. Does live in the Greenville area? 4 A. Arizona. 5 Q. Arizona? 6 A. Arizona. 7 Q. Then I didn't catch the name of your 8 sister. 9 A. Sister Anita. 10 Q. You call her "Sister Anita"? 11 A. I call her "Sister Anita." 12 Q. Where does she live? 13 A. She lives in Turkey. I'm trying to 14 remember the exact city. 15 Q. The country Turkey? 16 A. What? 17 Q. The country Turkey, you said? 18 A. There are two big cities. There's Istanbul 19 and -- she's in Ankara. 20 Q. Is she married? 21 A. Yes. 22 Q. What is her husband's name? 23 A. Brother-in-Law Nuri. 24 Q. What does your sister do in Turkey? 25 A. Teaches.	1 married? 2 A. Thirty-seven years. 3 Q. Thirty-seven years. 4 Y'all have how many children? 5 A. Two. 6 Q. And they live in the Greenville area? 7 A. My daughter lives with us. My son is 8 married and lives up in New York State, where it 9 snows a lot. 10 Q. I'm sorry? 11 A. Where it snows a lot. Rockport? Rockport. 12 Q. Rockville? 13 A. Rockport. 14 Q. I apologize for being hard of hearing. 15 Miss Wall had asked you about school. And 16 you went to Our Lady of the Rosary School from the 17 first to the eighth grade. 18 Do you remember what year you graduated 19 from Our Lady of the Rosary? 20 A. What? 21 Q. Do you remember what year that you 22 graduated or finished the eighth grade at Our Lady 23 of the Rosary? 24 A. I have no idea. 25 Q. Okay.

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1 A. I didn't pay attention to it.
2 **Q. Did all your brothers and sisters also go**
3 **to Our Lady of the Rosary?**
4 A. Yes, but not all of them went through the
5 eighth grade.
6 **Q. Okay. So they all attended at one time or**
7 **another?**
8 A. Yes.
9 **Q. Was your family life-long parishioners of**
10 **Our Lady of the Rosary?**
11 A. They were founding parishioners.
12 **Q. So they were active and involved in the**
13 **life of the church?**
14 A. Yes, sir.
15 **Q. Did you and your siblings all receive your**
16 **sacraments at Our Lady of the Rosary church?**
17 A. Yes.
18 **Q. And including baptism, first communion,**
19 **confirmation, all of those?**
20 A. Yes.
21 **Q. And that would apply to you and your**
22 **siblings, as far as you can remember?**
23 A. What?
24 **Q. The sacraments that were obtained would**
25 **apply to you and your siblings at Our Lady of the**

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1 **Rosary?**
2 A. Yes.
3 **Q. Are you a member of Our Lady of the Rosary**
4 **church now?**
5 A. No.
6 **Q. No. Okay.**
7 **I think you said you lived in Simpsonville?**
8 A. Yes.
9 **Q. Do you attend a Catholic church in the**
10 **Simpsonville area?**
11 A. No.
12 **Q. Do you attend any Catholic church?**
13 A. No.
14 **Q. When was the last time you can remember**
15 **that you attended or were a parishioner of a**
16 **Catholic church?**
17 A. Three years ago, probably.
18 **Q. What church were you last a parishioner at?**
19 A. Mary Magdalene, Saint Mary Magdalene.
20 **Q. That is in Simpsonville?**
21 A. Yes.
22 **Q. Who was the pastor at the time that you**
23 **left?**
24 A. When I left?
25 **Q. When you were -- I'm sorry.**

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1 A. You said what?
2 **Q. Who was the pastor at Mary Magdalene?**
3 A. Father Conner.
4 **Q. Bert Conner.**
5 **What was the reason for leaving Mary**
6 **Magdalene Church?**
7 A. It was a psychological thing for me. It
8 got to where, every day I went to church, I started
9 reliving a lot of the things that happened to me.
10 So it just got to be too much for me.
11 **Q. Did you ever have a conversation with**
12 **Father Conner on what happened to you?**
13 A. No.
14 **Q. Did you --**
15 A. I got to a point where I couldn't talk
16 anybody, not within the church.
17 **Q. How long were you a parishioner at Mary**
18 **Magdalene before you left?**
19 A. Gosh! Since its founding.
20 **Q. Since --**
21 A. Since its founding.
22 **Q. Your children, did they receive their**
23 **sacraments at that church?**
24 A. Yes.
25 **Q. And before being a member of Mary**

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1 **Magdalene, where were you a parishioner?**
2 A. Prince of Peace, Taylors.
3 **Q. About how long were you a parishioner at**
4 **Prince of Peace?**
5 A. Couple of years.
6 **Q. I'm sorry?**
7 A. A couple years. Three or four years,
8 maybe.
9 **Q. So you went from Our Lady of the Rosary, as**
10 **a parishioner, to Prince of Peace, and then to Mary**
11 **Magdalene?**
12 A. Well, there was a time we lived on the
13 other side of town and went to Saint Mary's,
14 downtown.
15 **Q. How long were you a member of Saint Mary's?**
16 A. Goodness. A long time. I can't --
17 **Q. That's okay. The best you can tell me is**
18 **fine. Thank you.**
19 **At any of these churches in which you were**
20 **a parishioner, were you active in any of the**
21 **activities of the church, besides just coming to**
22 **mass on Sunday?**
23 A. I tried, but I didn't have much success. I
24 tried being in Boy Scouts, but it was just hard.
25 Every time I was out, I was nervous. I didn't want

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1 to do the wrong thing, you know. 2 Q. Okay. 3 A. And it was just too nervous, so I stopped. 4 Q. Did you ever serve as, like, an usher at 5 any of these churches? 6 A. Yes. 7 Q. Okay. 8 A. I was usher. I did little things that I 9 could do. I worked with the Knights of Columbus for 10 a while and -- you know, just pancake breakfasts. 11 Q. Were you a member of the Knights of 12 Columbus? 13 A. Yes. 14 Q. Did you go to the fourth degree rank? 15 A. No, just third. 16 Q. Did your children go to Catholic schools? 17 A. No. 18 Q. No. 19 And, I think, in a question asked by one of 20 the other lawyers, you graduated from Greenville 21 High School? 22 A. I went to Greenville High School. 23 Q. Do you remember what year you graduated 24 from Greenville High School? 25 A. Seventy-one.	1 Q. That would have been a master's in 2 financial management? 3 A. The master's degree is in operations. It 4 is an MBA in operations. 5 Q. That would have been in what year? 6 A. Ninety-three. 7 Q. Did you ever work in any particular field 8 or occupation in which you used your master's 9 degree? 10 A. Well, yes and no. I worked with a company 11 called Gates/Arrow. 12 Q. Gates/Arrow? 13 A. Yes. 14 And it was bought by Arrow Electronics. 15 And I configured systems, and I worked within the 16 budget to try -- we followed feasibility projects 17 for computers and things like that. And I also 18 worked for United States Navy. 19 Q. I'm sorry? 20 A. I worked with the Navy. 21 Q. The Navy? 22 A. Yes. So I had a contract saying that they 23 wanted so much, and it had to be under this price, 24 so I had to find a way to get there. 25 Q. So Gates/Arrow, how long were you employed
Page 43	Page 45
1 Q. Seventy-one? 2 A. Yes. 3 Q. Were you active in anything at Greenville 4 High School, in sports or any other extracurricular 5 activities? 6 A. No. 7 Q. No. From Greenville High School, did you 8 go to college? 9 A. Yes. 10 Q. What college did you go to? 11 A. Clemson. 12 Q. Did you obtain a degree from Clemson? 13 A. Bachelor's degree. 14 Q. What year would that have been? 15 A. Seventy-six. 16 Q. Do you have any postgraduate degrees from 17 Clemson? 18 A. My undergraduate degree was in financial 19 management. 20 Q. Financial management. Do you have a 21 master's degree? 22 A. Yes, sir. 23 Q. Where did you obtain the master's degree, 24 from what college? 25 A. Clemson.	1 with either them or their successor company? 2 A. Nine years. 3 Q. Then you worked with a contractor or as a 4 contractor for the Navy? 5 A. No, the company was a contractor. 6 Q. The company was a contractor? 7 A. Yes. 8 Q. What was the name of that company again? 9 A. Gates/Arrow. 10 Q. Gates/Arrow, still? 11 A. Yes. And then it became Arrow Electronics 12 completely. 13 Q. And I think you said you worked with Sears 14 for a while? 15 A. Twenty-seven years. 16 Q. That was at Sears. 17 Any other places you worked? 18 A. I worked as a reserve police officer in 19 Greenville. 20 Q. For what agency? 21 A. Pardon? 22 Q. For what agency? 23 A. That was from 1980 to 1992. 24 Q. What police department? 25 A. Greenville.

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1 **Q. Greenville Police?**
2 A. Yes.
3 **Q. City police.**
4 **What did you do as a city reserve officer?**
5 A. You just basically back up patrol. You
6 know, you -- I reached the point that I was by
7 myself. I had passed all the tests. I was, what,
8 27 when I got hired.
9 **Q. I'm sorry?**
10 A. I said -- I was trying to think. I was 27
11 when I got hired. So I was probably about 40 when I
12 left.
13 **Q. Did you obtain any rank as a reserve**
14 **officer?**
15 A. You can't really have a rank under the
16 state law of South Carolina. You can have what is
17 basically a corporal rank. That is about all you
18 can achieve. And that's probably just the same as
19 training officer or something like that.
20 **Q. Okay.**
21 A. And that's what we did. I mean, that's
22 where I got and that's where I stayed. Up until,
23 probably, '81, you know, you could go as high as the
24 rank of lieutenant. But the state passed a law, the
25 way it read. They changed it.

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1 **Q. You got as high as corporal?**
2 A. What?
3 **Q. Did you obtain the rank of corporal?**
4 A. Yes.
5 **Q. I presume you had to go through the state**
6 **criminal justice academy.**
7 A. Not the state criminal justice academy. We
8 had our own school.
9 **Q. Okay.**
10 A. Because it was at night. We all worked
11 other jobs, so we had a school we went through at
12 night and on the weekends.
13 **Q. You were a sworn officer?**
14 A. Yes.
15 **Q. And you were certified as a sworn officer?**
16 A. Yes, sir.
17 **Q. And you had to go through training, like**
18 **weapons training and --**
19 A. I had to meet the same performance
20 standards that a police officer -- that any police
21 officer would meet.
22 **Q. Any police officer in the State of South**
23 **Carolina?**
24 A. Yes.
25 **Q. When you worked for this company,**

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1 Gates/Arrow, did you have to go through a background
2 check?
3 A. I would assume I did. I mean, you know,
4 they didn't ever talk to me about it. I assume I
5 did, because I was working under contract for the
6 government contracts.
7 **Q. Did you have to have a senior clearance**
8 **level, since you were doing work for the Navy?**
9 A. I don't know. Usually, they tell you, you
10 got this, you got that, but I was never told that.
11 **Q. You were never told you had a certain level**
12 **of clearance that you could or couldn't do anything?**
13 A. No.
14 **Q. You have been a life-long resident of**
15 **Greenville County?**
16 A. Yes.
17 **Q. The incident that you just described for us**
18 **that Father Kaney did, the first time that something**
19 **happened, I believe, in response to a question**
20 **Mr. Bruner asked you, you said something happened at**
21 **Six Flags, or you were coming back from Six Flags?**
22 A. That was -- the day we were coming back
23 from Six Flags wasn't the same day the thing first
24 happened, no.
25 **Q. You described an incident in which he**

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1 touched you.
2 A. Right.
3 **Q. Or made you take off your underwear.**
4 A. That was not the trip back from Six Flags.
5 The trip back from Six Flags ended when we got back
6 from Six Flags.
7 **Q. Okay. Let me ask you some questions about**
8 **Six Flags first.**
9 **You traveled with Father Kaney --**
10 A. Right.
11 **Q. -- to and from Six Flags?**
12 A. Yes.
13 **Q. And about how old do you think you may have**
14 **been for that trip?**
15 A. I don't know.
16 **Q. Was anybody else with you?**
17 A. There was another boy, but I don't remember
18 his name.
19 **Q. Do you recall what led up to you and this**
20 **other boy traveling with Father Kaney to Six Flags?**
21 A. What?
22 **Q. Do you recall what led up to you and this**
23 **other individual traveling with Father Kaney to go**
24 **to Six Flags?**
25 A. It was -- one of the Catholic groups was

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1 going. And we wanted to go. And so he said: Come 2 on; I'll take you. And he paid for the ticket and 3 everything. 4 Q. Do you remember being with a group of other 5 students or other parishioners when y'all went to 6 Six Flags? 7 A. Well, there was another group, the group 8 that was -- you know, that was supposed to go, that 9 I was a part of. You know, they were riding the 10 bus, the church bus. 11 Q. Do you recall why you were not a part of 12 the other group? 13 A. It seems like I wasn't old enough. 14 Q. And you don't remember the other child's 15 name who was with you? 16 A. No. 17 Q. Do you remember the kind of car that Father 18 Kaney was driving? 19 A. A white Ford Fairlane 500. It had the long 20 taillights. We always thought it was cool. I'm 21 sorry. I was a kid. 22 Q. Do you remember if you were in the front or 23 the back seat? 24 A. Front seat. 25 Q. Was the other child in the back seat?	1 A. He sold insurance also. 2 Q. Where did he work? Where was the 3 barbershop? 4 A. The barbershop was at the corner of Augusta 5 and Faris Road, right at the fire station. 6 Q. This was in Greenville? 7 A. Yes. 8 Q. He sold insurance for what agency or what 9 company? 10 A. Becker. 11 Q. So what you remember is that he wasn't very 12 good at picking you up? 13 A. He -- he was a functioning alcoholic. That 14 explains a lot. 15 Q. When this incident that you described to 16 us, the first time it happened, were your other 17 siblings attending Our Lady of the Rosary School? 18 A. Yes. 19 Q. Including the children who were older than 20 you? 21 A. Two children were already gone from Our 22 Lady of the Rosary, but, at most, there were four of 23 us there. 24 Q. The oldest son, John, when this incident 25 took place, this first incident took place, was he a
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1 A. Yes. 2 Q. And you had described Father Kaney touching 3 you on your leg or something? 4 A. Just the leg. Just, you know, this kind of 5 (indicating) action on the leg. Just a brushing. 6 Rubbing up and down the leg. 7 Q. And you didn't think anything of it at the 8 time? 9 A. Did I think anything of it? 10 Q. Right. At the time that it happened. 11 A. No. I -- to be truthful, I think I was 12 probably too naive to think anything of it. 13 Q. Was the trip to Six Flags a day trip? 14 A. Yes. 15 Q. You did not spend the night anywhere? 16 A. No. 17 Q. Then you described an incident in which you 18 were outside of school, and your father was supposed 19 to pick you up or something? 20 A. Yeah. 21 Q. What kind of work did your father do? 22 A. He was a barber. 23 Q. He had his own shop? 24 A. Pardon? 25 Q. Did he have his own shop?	1 student at Our Lady of the Rosary? 2 A. He was a student. 3 Q. He was a student? 4 A. But he wasn't at that time. He went, but 5 he was gone. 6 Q. That's what I'm trying to understand. When 7 the first incident took place with Father Kaney, 8 your older brother, John, was not a student at Our 9 Lady of the Rosary? 10 A. Right. 11 Q. Okay. 12 A. And I don't think my sister Anita was 13 either. 14 Q. Do you remember what school he would have 15 been at? 16 A. Hughes Middle School. 17 Q. Both the oldest brother and oldest sister? 18 A. Yes. 19 Q. How about Richard? 20 A. I don't know. 21 Q. What is the age difference between you and 22 your three older siblings? 23 A. About 18 months between us. Eighteen 24 months or so between me and Richard. But they are 25 very close. They are like bing-bada-boom.

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1 Q. The older sister who is just above you?
2 A. She is about 64, you know.
3 Q. She is 64 years old today?
4 A. What?
5 Q. She is 64 and you are 61. So there is
6 about three years' difference?
7 A. Yes.
8 Q. Hughes Middle School, do you know what
9 grade it would have started as a middle school?
10 A. Seventh and eighth and ninth.
11 Q. So she may have been in the seventh grade
12 at the time?
13 A. Yeah.
14 Q. Okay.
15 A. That's what I say, my parents let some of
16 us go on to Hughes, because they had the advanced
17 subjects. And, others, they didn't.
18 Q. So if your sister was in the seventh grade
19 at the time at Hughes Middle School, then you would
20 have been in about the fourth grade?
21 A. I don't know. Yes, I guess. I'm just --
22 I'm not really good at calculating in my head.
23 Q. And I'm just trying to get a point of
24 reference when these things took place.
25 A. I know. I can't help you very much.

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1 Q. And I'm not trying to put words in your
2 mouth.
3 Your sister was in Hughes Middle School, so
4 you were three years younger than her. So you would
5 have been somewhere in that general grade of third,
6 fourth, or fifth grade, do you think?
7 A. Could have been. I don't know.
8 Q. And you said your brother Richard is 18
9 months younger than you?
10 A. Eighteen months older.
11 Q. I'm sorry. Eighteen months older than you.
12 A. Yeah.
13 Q. Was he at Our Lady of the Rosary at this
14 time?
15 A. No.
16 Q. Where was he going to school?
17 A. At Hughes.
18 Q. So he was at Hughes as well?
19 A. Yes.
20 Q. The three oldest siblings were at Hughes
21 Middle School?
22 A. Yeah. Because if Richard was there, that
23 would have made this about 1963 or 1964 or
24 something. I don't know.
25 Q. Okay. The brother after you, born after

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1 you, was David; is that correct?
2 A. What?
3 Q. The brother born after you was David, is
4 that right?
5 A. Yes.
6 Q. What is the age difference between you and
7 David?
8 A. Sixteen months.
9 Q. Sixteen months?
10 A. Yes.
11 Q. Would he have been at Our Lady of the
12 Rosary School when this first incident took place?
13 A. He could have been there, yes. But I don't
14 feel that either he nor my sister were at an age
15 that they could have understood.
16 Q. Okay. Then the last child, youngest
17 sibling, her name is --
18 A. Mary Keller.
19 Q. And she is deceased?
20 A. Yes.
21 Q. What is the age difference between you and
22 Mary?
23 A. Three years.
24 Q. Three years?
25 A. Yeah.

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1 Q. Do you recall if she was at Our Lady of the
2 Rosary when this incident took place?
3 A. Yes.
4 Q. So this first incident that occurred
5 happened after school was excused for the day?
6 A. Yes.
7 Q. Okay. Do you remember how y'all were
8 picked up from school? Was there like a --
9 A. What?
10 Q. Do you remember how your parents would have
11 picked you up from school when it was over for the
12 day?
13 A. They just would -- my dad would just show
14 up when he showed up. Sometimes, he would take us
15 home. Sometimes he would take us back to the
16 barbershop, and we would sit behind the barbershop
17 in the car.
18 Q. Was your mom working at the time?
19 A. She was a private duty nurse. Her work
20 would be sporadic.
21 Q. So she was a nurse at the time?
22 A. Yes.
23 Q. Do you want to take a break, John Doe 193?
24 A. No. I just don't feel well. It is very
25 hard, coming back, for me.

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1 **MR. MEYERS:** Do you want to take a short
2 break?
3 Off the record.
4 (There was a discussion off the record.)
5 **Q. I think I had asked you about your mom**
6 **being a nurse.**
7 A. Yes.
8 **Q. Sometimes, your dad would pick you up from**
9 **school?**
10 A. My mother didn't drive, so she never picked
11 us up.
12 **Q. She did not operate a car?**
13 A. No.
14 **Q. So do you have any recollection,**
15 **John Doe 193, as to where your younger brother and**
16 **sister may have been when you were waiting for your**
17 **dad to come pick you up?**
18 A. I know they weren't in school.
19 **Q. They weren't in school?**
20 A. That's all I can say for sure.
21 **Q. Okay.**
22 A. So I had to be -- I don't know. I just
23 can't pull it out of my head.
24 **Q. Was y'all's home close to the church?**
25 A. Well, it was a few miles.

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1 **Q. Was it within walking distance?**
2 A. Well, technically, you know. But that's
3 what I did. That was my time, getting away.
4 **Q. Okay.**
5 A. I would walk home from school. A lot of
6 times, it settled your nerves.
7 **Q. What is your first recollection of meeting**
8 **Father Kaney?**
9 A. I don't remember. I don't know when I
10 first met him.
11 **Q. Miss Wall asked you a question earlier**
12 **about being an altar boy. Was he in charge of**
13 **training or supervising the altar boys, if you**
14 **remember?**
15 A. If he was -- all the alerts I had when I
16 was becoming an altar boy were with Father Chemeley
17 and a priest named Paul Sykes.
18 **Q. You had some kind of a friendly**
19 **relationship with Father Kaney?**
20 A. I think so, yeah.
21 **Q. But you don't have any specific**
22 **recollection of how that was formed or how that came**
23 **about?**
24 A. Our relationship came about, just him
25 taking me places, you know.

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1 **Q. Him taking you places?**
2 A. Well, you know, to get a hamburger or
3 things like that. Just to get a soda. French
4 fries.
5 **Q. When would he do that?**
6 A. Just every once in a while. It doesn't
7 seem like it was often. But, yet, he did do it.
8 Just like I say, it is not anything that was a lot
9 of times. It might have been three or four times.
10 **Q. Was that usually after school that he would**
11 **do that?**
12 A. Yeah. It always seemed to happen when I
13 was lounging around.
14 **Q. Okay. What you described that happened to**
15 **you, you said that you were outside and it was**
16 **raining and you got wet?**
17 A. Well, yeah, it rained.
18 **Q. Okay.**
19 A. We are very susceptible to sudden downpours
20 around here.
21 **Q. Do you remember what time of year this**
22 **would have happened? Was it in the summer, early**
23 **part of the school year, or was it cold?**
24 A. It wasn't cold.
25 **Q. Did the students at Our Lady of the Rosary,**

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1 **were they required to wear a uniform?**
2 A. No.
3 **Q. Was there anything particular about that**
4 **day that you can recall that was different than any**
5 **other day, besides it raining?**
6 A. Not that I recall.
7 **Q. You mentioned that he took you to the**
8 **house?**
9 A. Uh-huh.
10 **Q. Is this the rectory where the priests live?**
11 A. Yes. The rectory was a big house, but it's
12 part of his room. It's a little, small place.
13 **Q. I'm sorry?**
14 A. It was a real small place.
15 **Q. Was the rectory located on the same grounds**
16 **as the church?**
17 A. Yes.
18 **Q. And the church is the same church that is**
19 **existing now, on the same campus?**
20 A. It doesn't exist anymore.
21 **Q. The church does not exist anymore?**
22 A. No.
23 **Q. Okay.**
24 A. The rectory doesn't exist anymore.
25 **Q. I'm sorry. The rectory doesn't exist**

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1 anymore?
2 A. As it was then. I think they took over the
3 nunnery, and that serves as the priests' residence
4 now.
5 Q. The building that served as the rectory,
6 the house that you have described, that building
7 does not exist at all?
8 A. Right.
9 Q. It has been torn down or demolished?
10 A. Demolished.
11 Q. How big was this house?
12 A. I don't know. Like I say, that's the
13 thing. I know that one room.
14 Q. Uh-huh.
15 A. And I can tell you about it being dark and
16 me being in the other room, the living room. But
17 the minute I think about any other area, it is
18 blank. So that's ...
19 Q. Had you ever been in that house before this
20 took place?
21 A. No.
22 Q. How many priests were at Our Lady of the
23 Rosary around that time? There was Father Kaney --
24 A. Just two. Or was it -- I think, just two.
25 Q. The pastor that was there --

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1 A. It was Father Chemeley.
2 Q. He was certainly there, and Father Kaney
3 was certainly there?
4 A. Yes.
5 Q. Were there any other priest there?
6 A. I don't know. I don't think so.
7 Q. Was Father Chemeley's living quarters in
8 the same building?
9 A. Yes.
10 Q. In the same house?
11 A. Yes.
12 Q. Was this, like, a one-story or a two-story
13 building?
14 A. As far as I know, it was only one,
15 unless -- you know. It might have had an attic or
16 something.
17 Q. Did they have any staff at the house?
18 A. I think they had a cook.
19 Q. Do you remember seeing the cook at the
20 house when this took place?
21 A. No.
22 Q. Do you remember seeing any other
23 individuals in the house when this took place?
24 A. No.
25 Q. Were the church offices located in this

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1 building as well, or was that a separate building?
2 A. The offices were at the -- at the rectory
3 also.
4 Q. Okay. Do you remember seeing any church
5 staff, like a secretary or a bookkeeper, there?
6 A. No. Because the part that I was always
7 taken into was the residence.
8 Q. Okay.
9 A. Never the office.
10 Q. Was the school close to where the rectory
11 was?
12 A. Yes. Couple hundred yards.
13 Q. And do you remember anybody else being
14 around the school campus when you were confronted by
15 Father Kaney?
16 A. No, sir.
17 Q. Like the principal or any of the teachers?
18 A. No. I mean, you know, they were after
19 school. They stayed for a while. But they -- I
20 know that, when I left, that is where my mind gets
21 real jumbled.
22 I have been trying real hard to put a
23 finger down on, did I tell the nun then, or did I
24 tell her what happened the next day that that
25 transpired. And -- and I can't put a distinguishing

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1 mark on it.
2 Q. Do you remember getting home that night?
3 A. Yes.
4 Q. When you got home that night, do you
5 remember telling your parents what happened to you?
6 A. No.
7 Well, the nun had already called. So it
8 has to be, I didn't tell them.
9 I did not first tell them. I just know
10 that.
11 Q. You do remember getting home after the
12 incident took place?
13 A. Yes.
14 Q. And you don't remember, if I understand you
15 correctly, if you told the nun that same day or the
16 day after or two days after?
17 A. I don't remember what day.
18 Q. Okay. Did your dad eventually come to pick
19 you up and take you home?
20 A. Somebody would have.
21 Now, sometimes his secretary from the
22 insurance business would come and get us and take us
23 home. But I don't know.
24 Q. Okay.
25 A. I feel stupid. I just don't know.

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1 Q. No, don't feel stupid. What you recall is
2 all I'm asking you for, and all you can relate to us
3 today.
4 This first incident is when he laid on top
5 of you?
6 A. Yes.
7 Q. Were you on his bed?
8 A. Yes.
9 Q. And you recall him penetrating you anally?
10 A. Yes.
11 Q. And I think you said that this happened
12 maybe two or three more times?
13 A. Yes, sir.
14 Q. Do you remember the timespan between when
15 the second event occurred and the first event
16 occurred?
17 A. No.
18 Q. Do you remember any of the circumstances
19 regarding that?
20 A. No, because those are the parts that I --
21 it's really very hard. And I haven't got any of
22 that out. I mean, I know they happened. I could
23 see the room. I could see him. And I see the bed.
24 I know it's going to happen. In fact, I feel like I
25 owe it to him, almost.

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1 Q. I'm sorry?
2 A. I feel like I owe it to him, almost. I
3 know it is a strange feeling. I can't describe it.
4 Q. The things that happened to you the first
5 time, it happened again the second time as well?
6 A. Yeah.
7 Q. Yes?
8 A. Yes.
9 Q. Any particular recollection about the third
10 incident taking place?
11 A. No, sir.
12 Q. All right. What I mean by that, as far as
13 the length of time between these things happened to
14 you or --
15 A. No.
16 Q. And you never told anybody else, except the
17 nun, what happened?
18 A. After the nun, I kind of -- the way I am
19 able to pull it together, that is what I thought.
20 If they didn't believe me, who is going to?
21 Q. I'm sorry?
22 A. I kind of thought: If the nuns didn't
23 believe me, who was going to?
24 Q. And you have no recollection of the nun's
25 name?

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1 A. No.
2 Q. Do you know what order she may have been a
3 member of?
4 A. Saint Francis, maybe. Order of
5 St. Francis.
6 There are two names I can remember, Society
7 of Jesus, Jesuit nuns. And I don't know which ones
8 were there.
9 Q. The teachers in the school, were they lay
10 teachers or nuns?
11 A. No, they were nuns.
12 Q. All of them were nuns?
13 A. Yes, because I know that they had the
14 habit. I mean, you know, when they wore it, they
15 had the cross on them, in front of them, and the
16 little flower pad underneath and everything. I can
17 remember seeing, you know, all my life, that pretty
18 distinct pattern.
19 Q. The woman you talked to, did she dress the
20 way you just described to us?
21 A. Yes.
22 Q. Do you remember whether or not she was your
23 teacher in your grade?
24 A. She was -- she had or was my teacher.
25 Q. Any particular reason you would have

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1 approached this particular nun as opposed to any
2 other person?
3 A. I actually thought I could say something to
4 her.
5 Q. Why did you feel that way?
6 A. Sometimes you just feel there are people in
7 this world who you could trust.
8 Q. But you had some kind of a connection with
9 this particular person, either as a teacher or
10 former teacher?
11 A. (The witness nodded.)
12 Q. Were the priests at the parish active with
13 the school in any way?
14 A. Not really. I mean, they would come in and
15 talk with you, give us a blessing here and there.
16 That was about it.
17 Q. Do you remember whether or not you had to
18 go to mass in the beginning of the week?
19 A. What?
20 Q. Did y'all go to church in the middle of the
21 week?
22 A. We went to church every day.
23 Q. Every day. Okay.
24 Were you involved in any activities at Our
25 Lady of the Rosary as far as attending school?

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1 A. The only thing we did was a science fair.
2 **MR. SHAHID:** John Doe 193, any time you
3 need a break, let us know and we'll do that.
4 **MS. WALL:** The witness has been going on
5 for two hours. Should we take a five-minute break?
6 **MR. SHAHID:** Sure.
7 **MS. WALL:** Let's take five minutes and then
8 resume.
9 **MR. SHAHID:** Sure.
10 (A recess was taken.)
11 **MR. SHAHID:** Back on the record after a
12 short break.
13 **CONTINUED EXAMINATION**
14 **BY MR. SHAHID:**
15 **Q.** John Doe 193, are you ready to go back?
16 A. Yes, sir.
17 **Q.** I think I was asking you questions about
18 anything in particular or peculiar that you can
19 recall as to the other instances of abuse taking
20 place with Father Kaney.
21 I was asking you the time difference
22 between the first and second, or second and third,
23 or anything else that sticks out in your mind that
24 helps you recollect these events happening to you.
25 A. Sir, I have to tell you, it is very, very

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1 difficult for me to pull things in time frames.
2 That is a large part of the therapy I'm trying to
3 undergo and trying to pull out, so that I can be
4 able to. How long it will take me to do that, I
5 don't know.
6 **Q.** Okay. Right now, as we are sitting in this
7 room, you have given us all the details that you can
8 recollect at this moment?
9 A. I have given you what I know, yes.
10 **Q.** Okay.
11 A. That I can remember right now.
12 **Q.** Thank you.
13 In response to a question that Miss Wall
14 asked you, concerning other priests or other people
15 at the school or church abusing you, I think you
16 said you just know or you don't remember?
17 A. I don't remember. I mean, I remember being
18 in rooms, but as far as anything happening, I have
19 nothing.
20 **Q.** Okay.
21 A. I mean, you know, it is like -- it is just
22 like the curtains are drawn.
23 **Q.** Were you abused, John Doe 193, prior to the
24 description that you gave us by Father Kaney? Were
25 you abused as a younger boy by another boy?

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1 A. I was fondled and there was an attempt at
2 sexual intercourse when I was about five years old.
3 **Q.** Can you relate those circumstances to us?
4 A. It was at dad's office. I was in a car by
5 myself. And one of the neighborhood boys -- I was
6 probably five years old. He was probably 14. And
7 he got in. He got in the back seat and said: Let's
8 play.
9 And that's where we ended up. He had me on
10 the floorboard with my bottom naked. And I knew
11 what he was going to do. I thought. Well, as I sit
12 here, I was so young, I really don't think I had an
13 idea.
14 But, anyway, when I felt him behind me, I
15 got very scared, because the feelings were very
16 foreign to me. And, about that time, my dad came
17 out the back door, saw the guy in the car with me,
18 and he jerked the guy out of the car, ran him off,
19 and proceeded to whip me quite severely and put me
20 down in the storeroom of his office.
21 That was my experience.
22 **Q.** So you were in the back seat of your dad's
23 car?
24 A. I was in the back seat of my dad's car.
25 **Q.** And this was a neighborhood child?

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1 A. Neighborhood of where he worked, yes.
2 **Q.** I'm sorry?
3 A. Neighborhood of where he worked, yes.
4 **Q.** Do you remember this person's name?
5 A. I don't think I knew it fully then.
6 **Q.** Can you describe this person?
7 A. No.
8 **Q.** But was he older than you?
9 A. Fourteen.
10 **Q.** Fourteen?
11 A. Yes. I knew he was that because -- I think
12 he told me. I mean, you know, that's all I can
13 think about that.
14 **Q.** Was he a big person?
15 A. I was a five-year-old. Yes.
16 **Q.** Do you remember telling a fellow named Paul
17 Bucetti that this individual raped you?
18 A. This guy?
19 **Q.** Yes.
20 A. I don't remember it. Could I have? Yes.
21 Perhaps that was in the early stages and I was still
22 going through some of my memory. But this feels --
23 what I say today, I feel, is a better representation
24 of what happened, of what I remember now, as my
25 therapy has progressed.

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1 Q. The incident with this 14-year-old boy, the
2 things that he did to you, were they similar to what
3 you described to us that Father Kaney did to you, or
4 were they different?
5 A. They're different in a few ways. One, his
6 actions were not gentle.
7 Q. The 14-year-old was not gentle?
8 A. Weren't gentle. He was a very rough
9 person.
10 Q. Did he penetrate you?
11 A. No. He was there. He wasn't -- could he
12 have penetrated part way? Yeah. I just can't sit
13 here and say, yes, he had full penetration. I just
14 have to go with what I can put full memory on at
15 this moment in time.
16 Q. But what you can remember is that it was
17 more violent --
18 A. Yes.
19 Q. -- than what you experienced with Father
20 Kaney?
21 A. Yes.
22 Q. All right.
23 A. Father Kaney -- how do I put this? He used
24 lubricant.
25 Q. I'm sorry?

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1 A. He used a lubricant.
2 Q. I know this is painful for you to describe
3 to us, John Doe 193, so please take your time.
4 A. And he talked. I mean, he talked to me.
5 He was gentle.
6 Q. This experience was not gentle, it was
7 rough?
8 A. It was very rough and very --
9 Q. John Doe 193, did that episode ever repeat
10 itself, with this 14-year-old boy?
11 A. No.
12 Q. Or any other children?
13 A. No.
14 Q. Or any other individual at all? Besides
15 Father Kaney, were you the subject of any other
16 abuse?
17 A. When I was 16.
18 Q. When you were 16. What do you recall
19 happening to you when you were 16?
20 A. My dad had gotten me into the Young
21 Republicans, to work. And that was -- gosh. It was
22 the year Richard Nixon came to town.
23 Q. Okay.
24 A. And we did all this stuff and got, you
25 know, stuff with the campaign.

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1 Q. I'm sorry. I am --
2 A. We did things for the campaign that night,
3 and then I stayed at a hotel. And I was by myself.
4 And I awoke to one of my guidance counselors who was
5 performing an oral act on me. And I flipped out.
6 He ran and -- and that was it.
7 Q. This was one of the people involved in the
8 campaign?
9 A. Yes. One of the local people in the
10 campaign.
11 Q. From the Greenville area?
12 A. Yeah. But I can't remember his name. And
13 the only thing I remember is that he had -- his wife
14 had a twin sister. That's all I can remember about
15 him.
16 Q. His wife had a twin sister?
17 A. Yes.
18 Q. So you think this may have happened in the
19 campaign back in '68?
20 A. Yeah.
21 Q. This was when Nixon was running for office
22 for the first time?
23 A. Right.
24 Q. And there was some campaign event in
25 Greenville?

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1 A. Yes.
2 Q. Do you remember the name of the hotel that
3 you stayed in?
4 A. It was on Wade Hampton Boulevard. Used to
5 be a big green hotel. It was on the right, just
6 before you got to IHOP. It was on, like, two
7 different levels. But I can't tell you the name.
8 Q. Was it, like, a motel, kind of like a motel
9 with the rooms --
10 A. The doors were on the outside. You know,
11 it was like a motel.
12 Q. When you went to bed the night before, were
13 you alone?
14 A. Yes.
15 Q. And was there a reason why you didn't go
16 home that night?
17 A. What?
18 Q. Was there a reason why you did not go home
19 that night?
20 A. Well, supposedly, we were working on these
21 projects. And we had been working on them, and we
22 would go to Spartanburg and some other parts of the
23 state with stuff and distribute it and everything.
24 Q. Before today, telling us about this
25 incident, had you told anybody else about what

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1 **happened to you when you were 16?**
2 A. I think I told my wife and the therapist.
3 **Q. When did you tell them about this?**
4 A. Pardon?
5 **Q. When did you tell them?**
6 A. I don't remember. A year ago or two. They
7 were slow to come out.
8 **Q. Sir?**
9 A. They were slow for me to work out.
10 **Q. Any other instances that happened to you**
11 **like that, John Doe 193?**
12 A. I don't think so.
13 **Q. Okay.**
14 A. I can't think of any.
15 **Q. When was the last time that you were**
16 **employed? What year?**
17 A. The last time I was employed?
18 **Q. Yes, sir.**
19 A. It was 2003, I think.
20 **Q. The company you were working for in 2003**
21 **was what?**
22 A. That was Gates/Arrow.
23 **Q. That was --**
24 A. Gates/Arrow.
25 **Q. Why did you stop being employed in 2003?**

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1 A. Arrow Electronics had bought the company,
2 completely, and they were divesting parts of it.
3 You know, basically selling off the parts that they
4 didn't have any interest in working. So they sold
5 parts to Synnex Corporation, and parts here, and
6 they took parts that they wanted to keep, and they
7 took the headquarters to Colorado.
8 **Q. Was your unemployment due to you suffering**
9 **from anything that we have been talking about today?**
10 A. What?
11 **Q. Was your lack of employment since 2003 a**
12 **result of any of the instances that you have talked**
13 **about today?**
14 A. I think that it played a part. Because all
15 of what I have gone through, I start to see the
16 threads of the PTSD. PTSD manifestations,
17 especially complex PTSD, has a way of hiding many
18 things.
19 And what was happening to me there is, I
20 was just -- I was so frustrated because I would have
21 days that I couldn't work properly, because things
22 were bothering me and I didn't know what. And that
23 was showing in my work.
24 **Q. Okay. Are you on disability now?**
25 A. Yes, sir.

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1 **Q. And are you receiving social security**
2 **disability?**
3 A. Yes.
4 **Q. How long have you been receiving social**
5 **security disability?**
6 A. I don't know. It has been a long time.
7 **Q. Has it been since 2003?**
8 A. Probably, 2004.
9 **Q. What is your disability?**
10 A. I think they have it under bipolar
11 disorder, complex PTSD, or something like that.
12 **Q. When do you remember that you were first**
13 **diagnosed as being bipolar PTSD?**
14 A. It was around that time.
15 **Q. Okay. And were you going to see a**
16 **therapist or counselor or a doctor?**
17 A. I had both a psychiatrist and a
18 psychologist at that time.
19 **Q. And who would that have been in that time**
20 **frame?**
21 A. Jeffrey -- I can't remember his last name.
22 **Q. Was Jeffrey a psychiatrist?**
23 A. Yes.
24 **Q. Medical doctor?**
25 A. Yes.

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1 **Q. And where was his office located?**
2 A. Right off Woodruff Road Medical Park.
3 **Q. I'm sorry?**
4 A. Right off Woodruff Road, at a medical park.
5 Near McDonald's.
6 **Q. How long did you see him?**
7 A. Two years.
8 **Q. Would that have been in the time frame**
9 **beginning around 2003?**
10 A. Yes.
11 It seems like it would be -- I am honestly
12 more scrambled as we go. Please bear with me.
13 **Q. I'm sorry?**
14 A. My mind is getting more scrambled.
15 **Q. As a result of seeing Doctor Jeffrey, were**
16 **you able to then get this designation or**
17 **determination that you are entitled to social**
18 **security disability?**
19 A. Yes. I believe. Yes.
20 **Q. And the PTSD that we are talking about is**
21 **as a result of these incidences that you just**
22 **related to us?**
23 A. It was -- it was her diagnosis off the new
24 standardization testing that they use.
25 **Q. I'm sorry. It was Dr. Crockett?**

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Page 82 1 A. Dr. Crockett, she diagnosed it, using the 2 standardized testing procedures which they have now. 3 Q. That would be back in the time frame of 4 2003, 2004, 2005? 5 A. I don't know. 6 Q. But she diagnosed you with PTSD? 7 A. Yes. Complex PTSD. 8 Q. And the PTSD is related to the events of 9 the sexual abuse we have been talking about this 10 morning? 11 A. Yes. 12 Q. So when was the first time you saw 13 Dr. Crockett? 14 A. I don't know. Because I came to her right 15 after I came out of the hospital. 16 Q. I think Miss Hall asked you before, you 17 were hospitalized two times? 18 A. Yes, sir. 19 Q. When was the first time you were 20 hospitalized? 21 A. Dates and stuff -- I really don't remember. 22 That's why I have to have her, because -- 23 Q. Okay. Would the first hospitalization have 24 occurred prior to 2010? 25 A. I don't think there are very many people	Page 84 1 A. You know, it is very -- I was last 2 employed, and then you got hospitalizations. And it 3 is a long wait, you know. I think, in between, I 4 tried lots of little jobs, trying to find something 5 to do. Because I couldn't get my social security. 6 Q. Do you think you were still working for 7 Gates/Arrow when you were hospitalized? 8 A. No. 9 Q. And then you said you were hospitalized a 10 second time? 11 A. Uh-huh. 12 Q. What is the time difference between the 13 first hospitalization and the second 14 hospitalization? 15 A. Two, three weeks. 16 Q. Was there anything that happened, 17 John Doe 193, that triggered either the first or 18 second hospitalization that you can recall? 19 A. Something happened to trigger the first 20 one, but I can't remember right now what it is. 21 Q. Was it something that did take place, but 22 you don't remember what it was? 23 A. I don't remember what it was. It was -- I 24 don't remember what it was. 25 Q. I had asked you earlier about your
Page 83 1 who knew how bad I was before 2010. 2 Q. I'm sorry. I didn't understand you. 3 A. I don't believe that many people knew how 4 bad I was before 2010. 5 Q. I'm trying to get a time of reference for 6 your first hospitalization. 7 A. Yeah, it happened in 2010. 8 Q. Before 2010? 9 A. No. I would say it was in 2010. 10 Q. Were you under either Doctor Jeffrey or 11 Dr. Crockett's care before the hospitalization? 12 A. I don't think I was under anybody's. 13 Or was I? I don't know. 14 Q. Okay. Do you remember the name of the 15 hospital that you went to? 16 A. Carolina Center for Behavioral Health. 17 Q. Is that located up here in the Greenville 18 area? 19 A. It is up here, yes. 20 Q. And do you remember how long you were 21 hospitalized? 22 A. Two and a half weeks, I believe. 23 Q. And you just are not sure of the time 24 reference from the time you were last employed to 25 when you had your first hospitalization?	Page 85 1 children. You have a son and a daughter? 2 A. Uh-huh. 3 Q. What is your son's name? 4 A. Michael. 5 Q. Michael? 6 A. Yes. 7 Q. Did he apply to become a seminarian? 8 A. Yes. 9 Q. Was he accepted as a seminarian? 10 A. Yes. 11 Q. Where did he go to seminary? 12 A. Pontifical College Josephinum. 13 Q. What year did he enroll or start seminary? 14 A. He started right out of high school. He 15 was born in '84. 16 Q. He was born in 1984? 17 A. Eighty-three. 18 Q. 1983. 19 A. Eighty-three. 20 Q. So right after high school -- 21 A. He went when he was 17, right. So that 22 would be 1990. 23 Q. If he was born in '83, in 1993, he would 24 have been ten. In 2003, he would have been twenty. 25 Does that sound about right?

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1 A. No, 17. He would have to be -- it would
2 have to be -- what? 1999? No, 2000.
3 I don't know.
4 **Q. John Doe 193, let me ask it this way.**
5 **Did your son's applications and acceptance**
6 **into the seminary have an effect on you recalling**
7 **these things that happened to you by Father Kaney?**
8 A. Yes, sir.
9 **Q. Okay. So is it fair to say that your son's**
10 **desire to become a priest triggered some bad**
11 **memories of you being abused by a priest?**
12 A. They didn't trigger abuse memories, but I
13 did get memories triggered that, just -- I didn't
14 want -- it just -- knowing what I went through with
15 the Catholic Church, I just didn't want him to go
16 through it.
17 **Q. You didn't want him to go through it?**
18 A. I didn't want him to go through it, no.
19 But that was my belief. So, basically, what I did
20 was just take a step back and be neutral.
21 **Q. Did there come a point in time that you**
22 **don't remember being abused by Father Kaney?**
23 A. That is like asking: When did you forget
24 you lost your keys? I am just not following how to
25 answer the question.

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1 **Q. You have relayed to us an incident when you**
2 **were five years old, and then an incident when you**
3 **were 16 years old, and these other instances**
4 **involving Father Kaney. Is that correct?**
5 A. Right.
6 **Q. Do you always remember those things**
7 **happening to you?**
8 A. No.
9 **Q. Okay.**
10 A. Most of this, the therapy brought.
11 **Q. When you were abused as a 16-year-old in**
12 **that incident that you related to us, when that**
13 **happened to you, were you aware of what happened to**
14 **you by Father Kaney?**
15 A. No. It didn't bring that memory up. I
16 don't know why, but it didn't.
17 **Q. That was not in your memory when you were**
18 **16 years old?**
19 A. No.
20 **Q. Your recollection of what happened to you**
21 **with Father Kaney did not come to the surface until**
22 **you started some therapy, some counseling?**
23 A. Right.
24 **Q. Okay.**
25 A. I was just having a horrible time. And I

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1 couldn't think. And I was miserable. I was just
2 totally miserable. And I attempted suicide.
3 **Q. You attempted suicide. When did you**
4 **attempt suicide?**
5 A. Just before I went to the hospital, about
6 three days or two days before.
7 **Q. Do you remember what precipitated your**
8 **attempt?**
9 A. Because that's when some of the stuff
10 started floating back into my memory.
11 **Q. Okay.**
12 A. And I felt very sick. I felt very used. I
13 felt horrible. I felt that, truly, death was better
14 than that people would have done this.
15 **Q. And you can't recall the year this took**
16 **place, this attempted suicide?**
17 A. It was the same year as the hospital, which
18 I still think was 2010.
19 **Q. Two thousand --**
20 A. -- ten.
21 **Q. You think that you were diagnosed and**
22 **entitled to social security disability prior to your**
23 **hospitalization. Am I understanding that correctly?**
24 **The diagnosis of PTSD happened before your**
25 **hospitalization?**

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1 A. Well, yes. There were things that happened
2 at work, that -- you know, they were bad. So, yes,
3 my time with Arrow created some very bad nerves on
4 my part. And I did have some breakdown.
5 **Q. Okay. When these things happened to you,**
6 **when these things with Father Kaney happened to you,**
7 **you knew they were bad things that happened, that**
8 **were going on?**
9 A. Yes.
10 **Q. Okay. You knew they were wrong when they**
11 **took place. You knew they were wrong, to the point**
12 **you told the nun about it?**
13 A. Yes.
14 **Q. Okay. And so that was -- those things that**
15 **happened were with you for a while. Are you saying**
16 **that, at some point in time, that you just repressed**
17 **that memory? You blocked it out somehow?**
18 A. I think you have to -- I think that, as a
19 person; when you have the former things in your life
20 that I had, you have to quench them or bury them. I
21 wasn't able to quench them, so I buried them. And
22 you put up walls, and you put up bricks, and you
23 keep building those bricks until you forgot why you
24 were putting up the bricks.
25 **Q. Do you remember when you think you started**

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1 putting up these bricks?
2 A. I haven't the slightest idea.
3 Q. John Doe 193, we went over that document in
4 front of you. Were you aware of a class action
5 settlement agreement taking place with the diocese
6 in 2007?
7 A. I have been told of it, yes.
8 Q. You have become aware of it now?
9 A. Yes.
10 Q. Were you aware of it back in 2007 or 2008?
11 A. No, sir.
12 Q. Were you aware of any other person
13 participating in the class action settlement
14 agreement?
15 A. No, sir.
16 Q. You have always lived in Greenville County.
17 Were you a subscriber of any newspapers in
18 Greenville County?
19 A. I have subscribed to newspapers, but to
20 read the news.
21 Q. The Greenville News?
22 A. "But to read the news."
23 Q. Okay.
24 A. I felt no reason to go looking at want ads
25 or anything else.

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1 Q. But you were a subscriber back in 2007 and
2 2008 to the Greenville News?
3 A. I could have been. We were on a
4 subscribership, yes.
5 MR. SHAHID: Off the record.
6 (There was a discussion off the record.)
7 Q. John Doe 193, you were aware of the
8 hierarchy of the church?
9 A. Am I aware of it?
10 Q. Yes, sir.
11 A. Yes, sir.
12 Q. There is a bishop, and bishops have certain
13 duties and responsibilities to priests, and things
14 of that nature?
15 A. Yes.
16 Q. Okay. And, also, that Father Kaney had a
17 pastor who was supervising him?
18 A. Yes.
19 Q. Okay. And I think, earlier, to my
20 questions, you were involved in trying to be
21 involved in the various parishes that y'all were
22 members of over the time, over the years?
23 A. Yes.
24 MR. SHAHID: All right. Thank you.
25 That's all the questions I have.

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1 MR. MEYERS: No questions from me.
2 Jim, do you have any follow-up?
3 FURTHER EXAMINATION
4 BY MR. BRUNER:
5 Q. John Doe 193, in 2007, did you remember
6 that the 14-year-old neighborhood boy had attempted
7 to assault you when you were five years old?
8 A. I don't remember when that recollection
9 came to me first. I don't.
10 Q. You don't remember when you recalled that
11 first?
12 A. When I recalled that first. I don't know
13 if it was before or after I was with her in therapy.
14 Q. With Dr. Crockett in therapy?
15 A. Yes.
16 Q. In 2007, did you remember that you had been
17 sexually assaulted by Father Kaney?
18 A. No.
19 Q. In 2007, did you remember that you had been
20 assaulted by a man when you were 16 years old in the
21 hotel in Greenville?
22 A. That, I may have remembered.
23 Q. So that was a memory you constantly had, it
24 was not a memory you repressed?
25 A. It was more current. I can't say that it

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1 was totally buried, but it was buried for a little
2 bit. But not like the others.
3 Q. Was one of the reasons that you received
4 social security disability in 2004 your PTSD?
5 A. Part of it, yes.
6 Q. And do you know what the trauma was that
7 caused your PTSD?
8 A. Can I name it all? No. Mine is a complex
9 PTSD. In being there, it comes from many different
10 directions. And it is formed by many different
11 actions. And it manifests itself in many different
12 ways.
13 So it can be misinterpreted by -- you know,
14 as many different things. I am not a psychiatrist
15 or psychologist. Sometimes I can barely remember
16 what day it is, what time it is, and whether I have
17 eaten or not. So, to answer your question: I don't
18 know.
19 Q. Okay. Did a doctor diagnose you with PTSD
20 for purposes of your social security disability?
21 A. Did a doctor? The therapist did it. Well,
22 a doctor-therapist.
23 Q. A psychologist?
24 A. Yes.
25 Q. And who was that?

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1 A. Dr. Crockett.
2 **Q. So Dr. Crockett is the one who diagnosed**
3 **you with PTSD for purposes of social security**
4 **disability?**
5 A. No.
6 **Q. That was my question.**
7 A. Okay. I don't remember what happened to be
8 diagnosed. I don't remember. I know she has got it
9 somewhere.
10 **Q. Does your wife have records of this, do you**
11 **think?**
12 A. She has a lot of records.
13 **MR. BRUNER:** Okay. That's good.
14 Thank you.
15 **MR. MEYERS:** Susan?
16 **MS. WALL:** I have just a few follow-up
17 questions.
18 **FURTHER EXAMINATION**
19 **BY MS. WALL:**
20 **Q. Were any of your brothers or sisters abused**
21 **by anyone involved or affiliated with the Catholic**
22 **Church?**
23 A. You kind of put me in a bind here.
24 Because, you know, I can answer yes, they were.
25 Because it came out after my story came out. I

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1 don't know their whole story.
2 **MR. SHAHID:** I'm sorry?
3 A. I don't know their whole story. But I did
4 have a sister.
5 **Q. Which one of your sisters was abused?**
6 A. My oldest sister, Anita.
7 **Q. Were any of your brothers abused?**
8 A. Not that I know of.
9 **Q. And how did you learn that your sister had**
10 **been abused?**
11 A. Because I was talking to my brother about
12 my situation. And my brother started talking about
13 her, because she was -- she, at that time, had only
14 told him. And he told me then.
15 **Q. Which brother?**
16 A. John. Oldest. Because she came to him
17 when the first thing had happened.
18 **Q. Was she abused by Father Kaney or someone**
19 **else?**
20 A. Father Kaney.
21 **Q. By Kaney?**
22 A. Yes.
23 **Q. How old was she when she was abused by**
24 **Kaney?**
25 A. I don't know. I have never talked to her

1 about it completely. She doesn't talk about it.
2 **Q. Did you later learn that your sister Anita**
3 **had ever told anyone other than your brother John**
4 **about the abuse?**
5 A. No, I haven't. I don't know if he is the
6 only one that knows or not. I know that he, at that
7 time, had a major confrontation with Father Kaney.
8 **Q. And tell us about that.**
9 A. I only know that he had a major
10 confrontation. I wasn't there.
11 **Q. Do you know if your brother John, other**
12 **than having a confrontation with Kaney, took the**
13 **information to anyone else, to a nun, to anyone else**
14 **affiliated in any way with the Catholic Church?**
15 A. I do not know. She -- what happened with
16 her life, prior to her 18th birthday, she has pretty
17 much given up on a lot of things. And she moved to
18 Turkey when she was 20 and has lived there, except
19 for about two or three years that she was here, ever
20 since.
21 **Q. And she is how old now?**
22 A. About 64 or 65. Sixty-four or 65. I can't
23 remember.
24 **Q. When your brother John had his**
25 **confrontation with Kaney, did he know what had**

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1 **happened to you?**
2 A. Oh, no. No.
3 **Q. Do you know if John told your parents what**
4 **had happened to Anita?**
5 A. I don't know. Anita's took place prior to
6 mine. No one told me about what took place with
7 Anita. I was totally unaware of that until a couple
8 of years ago, when I was out visiting him in
9 Arizona, and I was discussing this situation with
10 him.
11 **Q. Okay.**
12 A. And he then told me.
13 **Q. Did you ever see Father Kaney**
14 **inappropriately touching any other young boy or**
15 **young girl, other than yourself?**
16 A. No.
17 **Q. Were there any witnesses who saw Father**
18 **Kaney improperly, in any way, touching you?**
19 A. The only person would have been the guy
20 that was in the back seat of the car. And I can't
21 tell you who he is, so ...
22 **Q. Did you ever become aware that Father Kaney**
23 **was ultimately relieved of his position as a priest?**
24 A. I became aware of that being his -- part of
25 his situation while I was in the hospital.

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1 Q. Did anyone affiliated with the Catholic
2 Church ever contact you at any time to ask you
3 whether or not you had suffered abuse at the hands
4 of Father Kaney?
5 A. No.
6 Q. Do you know whether the nun whom you told
7 about the abuse, in turn, told Father Kaney? In
8 other words, did Father Kaney ever say to you, "Gee,
9 I heard you told the nun, and you better stop doing
10 that," or something like that?
11 A. I don't know.
12 Q. You have no recollection of having any
13 information that the nun went to Father Kaney to say
14 that you had told on him?
15 A. No. That wouldn't have been something they
16 did within my earshot or sight.
17 Q. Okay. Now, do we understand that the
18 reason you told the nun was that you were hoping the
19 nun was going to do something about this to protect
20 you, to stop this abuse?
21 MR. SHAHID: Object to the form of the
22 question.
23 A. Yes.
24 Q. Do you know whether or not the nun reported
25 to the bishop or anyone in authority at the church?

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1 A. I do not know. And I just assumed, not
2 hearing anything meant that nothing was done.
3 Q. John Doe 193, other than talking to your
4 therapist, the psychologist, psychiatrist, your
5 attorney, your wife, and, now we learn, your brother
6 John, have you discussed the incidents of abuse at
7 the hands of Father Kaney with anyone else?
8 A. No, ma'am.
9 Q. When did you first contact Mr. Greg Myers
10 about filing a lawsuit?
11 A. I don't know. It didn't flow that way.
12 Q. I'm sorry?
13 A. It didn't flow that way. I contacted Kelly
14 Pope, and, at some point in time, she contacted
15 Mr. Myers.
16 Q. Okay. And, finally, I'm trying to get --
17 and I know time and dates are difficult. But in
18 looking at the complaint that was filed on your
19 behalf, it says that you were abused by Father Kaney
20 when you were between the ages of ten and twelve.
21 Does that sound correct? Do we have the
22 right age?
23 A. I don't know. I just don't know. Does it
24 seem probable as to the dates? I would say the
25 dates were probably between ten and fourteen. So,

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1 yeah, it could be that time frame.
2 Q. So do we understand that Father Kaney
3 abused you for more than two years, it may have been
4 as long as four years?
5 A. No. No. No. It didn't last that long.
6 Because -- well, basically, I just started avoiding
7 him. I just couldn't handle it.
8 Q. So being abused for approximately two years
9 sounds correct?
10 A. I think I said something to someone, it was
11 more like a period of, maybe, ten months, or
12 something like that.
13 Q. More than three times?
14 A. Well, that's what we were talking about,
15 trying to figure out. I can state to you that I
16 recall two times, but the third time is very foggy.
17 Q. Okay. But there was other inappropriate
18 touching that you have already testified to,
19 correct, such as sitting --
20 A. Yes.
21 Q. -- in the car and having him put his hands
22 on you?
23 A. Yes. The rubbing and stroking and
24 everything.
25 MS. WALL: Thank you, John Doe 193.

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1 That's all I have.
2 MR. SHAHID: Just a couple things in
3 follow-up.
4 FURTHER EXAMINATION
5 BY MR. SHAHID:
6 Q. The information about your sister Anita,
7 the source of that information comes from your
8 brother John, and no other person has relayed that
9 information to you, including Anita?
10 A. Yes.
11 Q. Right?
12 A. There is no other source, and she said
13 nothing.
14 Q. And Miss Wall asked you a question about
15 the Church contacting you about Father Kaney abusing
16 you, coming to you and asking you whether Father
17 Kaney had abused you. The first time you brought
18 this information to the Church's attention was in
19 2010; is that correct?
20 A. Two thousand and what?
21 Q. Ten?
22 A. Ten?
23 Q. Yes.
24 A. Yes.
25 MR. SHAHID: Thank you.

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1 SIGNATURE OF DEPONENT

2 DEPONENT: JOHN DOE 193

3 DEPOSITION DATE: JULY 16, 2014

4 REPORTER: KENNETH MCCLURE.

5 CASE CAPTION: JOHN DOE 193 V. BISHOP OF CHARLESTON

6 (Please return both Signature of Deponent pages)

7 I, the undersigned, JOHN DOE 193, hereby

8 certify that I have read the foregoing deposition

9 and find it to be a true and accurate transcription

10 of my testimony, with the following corrections, if

11 any:

12 PAGE	13 LINE	14 CHANGE	15 REASON
16	17	18	19
20	21	22	23
24	25		

Page 105.

1 SIGNATURE OF DEPONENT (CONTINUED)

2 DEPOSITION DATE: JULY 16, 2014

3 REPORTER: KENNETH MCCLURE.

4 CASE CAPTION: JOHN DOE 193 V. BISHOP OF CHARLESTON

5 PAGE LINE CHANGE REASON

6

7

8

9

10

11

12

13

14 JOHN DOE 193 DATE

15 I, Kenneth McClure, Notary Public for the State

16 of South Carolina, do hereby certify that the

17 deponent was advised of his or her right to read and

18 sign said deposition both verbally and in writing.

19 If the deponent fails to execute and return

20 foregoing Signature of Deponent page within the

21 thirty (30) days allowed pursuant to the Rules of

22 Civil Procedure, the original transcript may be

23 filed with the court.

24

25

Kenneth McClure, RMC
My Commission Expires
September 13, 2023

John Doe 2, et al vs
Bishop of Charleston, et al

Attachment Z

John Doe 193
July 16, 2014

Page 106

1 CERTIFICATE OF REPORTER

2
3 I, Kenneth McClure, Registered Merit
4 Reporter and Notary Public for the State of South
5 Carolina at large, do hereby certify that the
6 foregoing transcript is a true, accurate and
7 complete record.

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

11 WITNESS MY HAND, I have hereunto
12 affixed my official seal this 24th day of
13 July, 2014, at Pickens County, South Carolina.

14
15
16
17
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21
22
23
24 KENNETH MCCLURE
25 REGISTERED MERIT REPORTER
MY COMMISSION EXPIRE
SEPTEMBER 13, 2023

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1 I N D E X

2 Page

3 WITNESS/EXAMINATION

4 JOHN DOE 193

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14 REQUESTED INFORMATION INDEX

15 (No information requested.)

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20

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 10-CP-10-5520

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 10-CP-10-7233

John Doe 10,	)
	)
Plaintiff,	)
	)
v.	)
	)
Bishop of Charleston et al.,	)
_____	)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 12-CP-10-5559

Jane Doe 11,	)
	)
Plaintiff,	)
	)
v.	)
	)
Bishop of Charleston et al.,	)
_____	)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 13-CP-10-3733

John Doe 193,	)
	)
Plaintiff,	)
	)

v.)
)
Bishop of Charleston et al.,)
_____)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 13-CP-10-4175

Father Doe 194,)
)
Plaintiff,)

v.)
)
Bishop of Charleston et al.,)
_____)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 13-CP-10-4176

John Doe 194,)
)
Plaintiff,)

v.)
)
Bishop of Charleston et al.,)
_____)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 15-CP-10-5486

John Doe 245 and Father Doe 245,)
)
Plaintiffs,)

v.)
)
Bishop of Charleston et al.,)
_____)

STATE OF SOUTH CAROLINA)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON	)	CASE NO. 16-CP-10-1632
John Doe 297,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Bishop of Charleston et al.,	)	
_____	)	

**Plaintiffs' Supplemental Memorandum Opposing
Motions for Summary Judgment**

This short memorandum addresses the two issues the court raised *sua sponte*, at the end of the June 20, 2017 hearing.

1. The *Premium Investment* case. First, the court asked about the fiduciary duty imposed as a matter of law on counsel who plead a class action, the holding in *Premium Investment Corp. v. Green*, 324 S.E.2d 72, 76 (S.C. App. 1984) (internal citations omitted, emphases added):

a plaintiff who sues on behalf of a class ***and the attorney representing the class assume a fiduciary obligation to absent members of the class, including the obligation to inform them of proposed compromises of the group action.*** The class representative also surrenders the right to settle the action in return for individual gain, alone.

If the class representative ***or class counsel*** breaches the fiduciary duties he assumes and receives and retains benefits flowing from the breach, he holds what he receives upon a constructive trust for the class. This is true although the benefit received by the class representative is not at the expense of the class. Under no circumstances will the fiduciary be permitted to profit from a breach of his duty as fiduciary.

The definition of a class is “a strategy choice,” that the lawyer then must accommodate. *Tilley v. Pacesetter Corporation*, 585 S.E.2d 292, 302 (S.C. 2003).

Premium Investment presented, and upheld, a breach of fiduciary duty claim *against the lawyer*, D.W. Green, Jr., as well as against the alleged class representative client, H.E. McArver.

Green had filed, on behalf of McArver and a class, a complaint alleging a class action but then settled it without giving notice to the class.¹ The opinions begins this way:

This is a class action to recover the proceeds of the settlement of an alleged prior class action. Respondent Premium Investment Corporation alleged that the appellants McArver and Green, class representative and class counsel, respectively, in the previous action, breached their fiduciary duties to notify class members of the institution and subsequent settlement of the action. The circuit court ordered the appellants to convey the proceeds of the settlement to a trustee for the benefit of the class and they appeal. We affirm.

In other words, *Premium Investment* is completely parallel with these actions against class counsel.

It was suggested at the hearing for the first time by counsel for the lawyer defendants that somehow *Premium Investment* is inapplicable. Mr. Bruner argued that *Premium Investment* is limited to its specific facts, and is a “minority rule,” and Ms. Wall argued that the case is not applicable because the case was decided in 1984, preceding the 1985 adoption of the Rules of Civil Procedure. Each suggested the trial court should feel at liberty to ignore the 1984 ruling of the Court of Appeals and find an obligation of the lawyer defendants only when a class has been certified, and that the obligation is solely the obligation of the court, not the lawyers who bring the class action.

Nothing indicates that the obligation *Premium Investment* has been overruled as to its imposition of an obligation on lawyers who plead a class action. The case has been cited multiple times since 1985. SCRCP 23 *embodies* the holding in *Premium Investment*, as SCRCP 23(c) provides, “A class action shall not be dismissed or compromised without the approval of the

¹ Green was also disciplined for ignoring his fiduciary obligation to the class. *In re Green*, 354 S.E.2d 557, 558 (S.C. 1987) (“Respondent was charged with misconduct as a result of his institution and settlement of a class action lawsuit without notice to all class members.”)

court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.”²

It did not help attorney Green in his 1987 disciplinary hearing to claim that it was “a mere oversight” that he had not removed his class action designation from his *caption* when he prepared an order for the court after he was aware that McArver was his only client. *In re Green*, 354 S.E.2d 557, 558 (S.C. 1987). Having the class reference “in the caption” was sufficient to invoke his fiduciary obligation. 354 S.E.2d at 558. The court determined that he had

has breached a fiduciary duty in violation of DR5-106(A), damaged a member of a class in the course of a professional relationship in violation of DR7-101(A)(3); and neglected a legal matter raised by the pleadings in violation of DR6-101(A)(2).

Premium Investment itself relied on, among other things, a 1949 decision of the United States Supreme Court involving Fed. R. Cvi. P. 23, *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221 (1949). *Cohen* articulated a fiduciary relationship when one brings a suit on behalf of others:

a stockholder who brings suit on a cause of action derived from the corporation assumes a position, not technically as a trustee perhaps, but one of a fiduciary character. He sues, not for himself alone, but as representative of a class comprising all who are similarly situated.

Cohen v Beneficial Indus. Loan Corp., 337 U.S. 541, 549, 69 S.Ct. 1221, 1227 (1949). There is no reason to believe that SCRCP 23 makes any change to *Premium Investment*, particularly when SCRCP 23(c) incorporates its holding, and the holding of *In re Green*, 354 S.E.2d 557 (S.C. 1987).

In 2007, during the class proceedings at issue in this case, the lawyer defendants retained

² As reflected in the Attachment J and K submitted by the plaintiffs, this provision of Rule 23 was not complied with when the Charleston version of the 2005 class complaint for Doe 53 was, in 2006, “cloned” (with no objection from the Diocese) to be filed in Dorchester County.

John Freeman to provide support for their February, 2007 fee application. A few months after his contributions in the class action, Mr. Freeman wrote the attached article about the 2007 ABA Opinion Ms. Wall referred to at the motions hearing, opinion 07-445. That ABA opinion analyzes the ethical issues involved in contacting putative class members before class certification. Mr. Freeman analyzed the ABA opinion, which concerns the Federal Rules, and wrote this, of SCRCP 23. His comments shed light on his view of Premium Investment:

What is clear under South Carolina law is that any lawyer bringing a class action is foolish to assume no special duties are owed to putative class members prior to the certification order/opt-out deadline set in the ABA's ethics ruling.

Page 1. Mr. Freeman in his article contends, at page 2, that one of those "special duties" counsel would be "foolish" to ignore is the fiduciary obligation that arises from pleading a class action, even prior to certification:

In essence, the Supreme Court in *Green* held that a fiduciary obligation is owed by class counsel to putative class members so long as the case is postured as a class action regardless of whether a formal certification order has been issued. *Premium Inv. Corp.*'s "constructive certification" concept presents risks in two directions. For lawyers bringing class actions, it means that, so long as the caption claims the case is a class action, unless and until the class certification motion is denied or the class is decertified, class counsel must assume that a duty of loyalty and fair dealing is owed to absent class members.

Even according to the layer defendants' own expert, there is no basis for ignoring *Premium Investment*, or construing it as inapplicable to class counsel now or at any time since 2005.

Without this obligation imposed, lawyers would plead class allegations merely to gain leverage for settlement, exactly what attorney Green appears to have done. There are two ways for any attorney to avoid the fiduciary obligations attendant with pleading a class. Those are: (a) properly recognize those obligations and satisfy them, before and after certification, or (b) don't plead the case as a class action. Lawyer such as Mr. Green, who appears to have used the class action allegations to get settlement leverage, are properly exposed *and held liable* (as was Mr. Green) when his disregard for the absent class members was exposed.

The all counsel in the class action at issue, those for the class and those for the Diocese, collaborated to make sure these plaintiffs would not get “the best practicable” notice of the class action, is properly the subject of these cases and none of their claims should be dismissed.

2. The partial resolution with the Diocese. The court also asked about an issue that had not been previously raised, which was the effect of the resolution in some of these cases with the Diocese. More information can be provided to the court if desired, but in essence, the settlements are each under S.C. Code § 15-38-50, and do not affect in any way the liability of the lawyer defendants. E.g., *Smith v. Tiffany*, 799 S.E.2d 479 (S.C. 2017). Certainly that liability is not extinguished or in any way diminished by those partial resolutions.

Conclusion

The motions for summary judgment should be denied.

Respectfully submitted



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19-SEP S.C. Law. 10**South Carolina Lawyer**

September, 2007

Column

John Freeman

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ETHICS WATCH**Dealing with Putative Class Members**

On April 11, 2007, the ABA's ethics advisory committee issued Formal Opinion 07-445, outlining the rights and ethical responsibilities of counsel for plaintiff and the defense in communicating prior to class certification with persons who may be class members, but are not named parties. The opinion gives a green light to pre-certification communications by both sides, with some caveats.

Central to the ABA's analysis was its view that putative class members are not clients of the lawyer seeking to have the class certified. The ethics panel held that an attorney-client relationship results only when either (1) a client or the client's agent requests legal services, with the lawyer then accepting that invitation, or (2) "a substitute for that assent is given by a court," such as occurs when a class is certified. The panel held that putative class members are not represented by counsel for the named plaintiff prior to entry of a certification order, followed by the running of the opt-out period specified in the notice. The ABA panel held that putative class members cannot be viewed as class counsel's clients prior to the running of the opt-out deadline. This finding led the panel to conclude Rule 4.2 cannot prohibit defense counsel from contacting putative class members without going through opposing counsel.

The ABA's bright line test works fine for class actions under F.R.C.P. 23(b)(3), which requires notice and gives class members an opt-out right. Notice dissemination obligations and opt-out rights are less clear for class actions brought under federal Rule 23(b)(1) & (2), as well as under S.C.R.C.P. 23. What is clear under South Carolina law is that any lawyer bringing a class action is foolish to assume no special duties are owed to putative class members prior to the certification order/opt-out deadline set in the ABA's ethics ruling. The problem with depending on a bright line test is that class certification can occur informally in South Carolina.

In *Premium Inv. Corp. v. Green*, 283 S.C. 464, 324 S.E.2d 72 (S.C. App. 1984), the lawyer who brought a class action that was settled but never formally certified was sued by a putative class member for breaching his fiduciary duty to protect the absent class member's rights. The suit was upheld despite the absence of any formal certification order. The Court of Appeals ruled "constructive certification" had occurred. Subsequently, in *Matter of Green*, 291 S.C. 523, 354 S.E.2d 557 (1987), the lawyer in *Premium*

Inv. Corp. was publicly reprimanded for settling the lawsuit without notice to the class, even though no formal certification order had been issued and even though “it was clear that no other property owners would participate.” *Id.* at 523, 354 S.E.2d at 558.

In essence, the Supreme Court in *Green* held that a fiduciary obligation is owed by class counsel to putative class members so long as the case is postured as a class action regardless of whether a formal certification order has been issued. *Premium Inv. Corp.*’s “constructive certification” concept presents risks in two directions. For lawyers bringing class actions, it means that, so long as the caption claims the case is a class action, unless and until the class certification motion is denied or the class is decertified, class counsel must assume that a duty of loyalty and fair dealing is owed to absent class members. Likewise, lawyers defending the case must be wary of violating Rule 4.2 by contacting unnamed class members after some form of “constructive certification” has occurred, making the unnamed class members class counsel’s actual clients.

Rule 4.3 (covering contacts with unrepresented persons) and Rule 7.3 (dealing with advertising) were highlighted in Opinion 07-445 as the two ethics rules most apt to be applicable to communications with putative class members. The panel pointed out that Rule 4.3 “does not limit factual inquiries” of putative class members, but it does regulate such communications. The regulation comes in the form of Rule 4.3’s requirement that the lawyer make clear his or her role in the matter, and not state or imply that the lawyer is disinterested. In other words, Rule 4.3 prohibits lawyers from taking advantage of the unnamed class members’ naiveté or ignorance.

Like Rule 4.3, Rule 7.3 is designed to prevent lawyers from treating the public unfairly. In holding that lawyers seeking to bring a class action may use advertising to generate class action business, the ABA broke no new ground. *See, e.g.,* North Carolina State Bar 2004 Formal Eth. Op. 5 (Jan. 21, 2005) (Solicitation of Claimants in a Class Action) (lawyer may send solicitation to prospective class members on wide array of topics prior to class certification, but letter must contain the words “This is an advertisement for legal services.”); District of Columbia Bar Assn. Eth. Op. 302 (Nov. 21, 2000) (Soliciting Plaintiffs for Class Action Lawsuits or Obtaining Legal Work Through Internet-based Web *11 Pages) (permissible for lawyers to use Internet-based Web pages to seek plaintiffs for class action lawsuits as long as communications are not vexatious or harassing); Massachusetts Bar Assn. Eth. Op. 93-5 (Mar. 23, 1993) (lawyer in class action permitted to contact prospective plaintiffs under applicable class action law).

Though Rule 7.3 was held applicable to communications designed to drum up class action business, Opinion 07-455 held that “rule 7.3’s [advertising] restrictions do not apply to contacting potential class members as witnesses, so long as those contacts are appropriate and comport with the Model Rules.”

The big winners under the ABA’s analysis of dealings with putative class members are defense lawyers who can now legitimately claim they are entitled to interview putative class members prior to class certification without notifying class counsel. Data gathered through such interviews may pave the way for defeating class certification, which, in turn, may provide a means for ending the lawsuit’s economic viability.

19-SEP SCLAW 10

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**Plaintiffs' Supplemental Memorandum Opposing
Motions for Summary Judgment**

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Charleston SC 29413-2129

Peter Shahid
Shahid Law Office
89 Broad Street
Charleston SC 29401

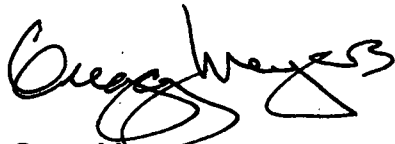
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Charleston SC 29401

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Done July 21, 2017.



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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 10-CP-10-7233

John Doe 10,)
Plaintiff,)
v.)
Bishop of Charleston et al.,)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

Jane Doe 11,)
Plaintiff,)
v.)
Bishop of Charleston et al.,)

FILED
2017 AUG 22 AM 10:20
JULIE ADAMS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 13-CP-10-3733

John Doe 193,)
Plaintiff,)
v.)
Bishop of Charleston et al.,)
_____)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 13-CP-10-4175

Father Doe 194,)
Plaintiff,)
v.)
Bishop of Charleston et al.,)
_____)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 13-CP-10-4176

John Doe 194,)
Plaintiff,)
v.)
Bishop of Charleston et al.,)
_____)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 15-CP-10-5486

John Doe 245 and Father Doe 245,	)
	)
Plaintiffs,	)
	)
v.	)
	)
Bishop of Charleston et al.,	)
_____	)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 16-CP-10-1632

John Doe 297,	)
	)
Plaintiff,	)
	)
v.	)
	)
Bishop of Charleston et al.,	)
_____	)

SCRCP 59(e) Motion To Alter or Amend

This motion is made pursuant to SCRCP 59(e) to alter or amend the Court's orders signed August 8, filed August 10, and received by email on August 11, 2017.

Issues Not Ruled On.

1. Although it was implicitly denied, the Court erred in not ruling on the plaintiff's request to have the motions decided only after full discovery. (The Supreme Court seems to prefer explicit denials rather than implicit denials). Discovery had been stayed as to the Lawyer Defendants when the actions were bifurcated. Prior to that the Lawyers had worked to avoid deposition. After their motion for a protective order had been denied, no date could be arranged

to depose them. When discovery as to them was stayed, it meant their depositions have not yet been taken and that discovery has not been completed about the collusive elements of the class settlement, class approval, and class administration. Among other things, the plaintiff was prevented from taking testimony and additional discovery about:

- a. representation made to the Court that the Lawyer Defendants had eliminated notice to certain of their class members as an accommodation to their supposed adversary,
- b. the Lawyer Defendants charging the class members a fee not authorized by any court order, without objection by the Diocese,
- c. the Lawyer Defendants negotiating a fixed fee for themselves simultaneously with negotiating a variable recovery for the class, the fee to take priority over the client claims,
- d. the Lawyer Defendants insistence on being paid before any class members had been identified, and class claim had been made, and any notice had been provided.
- e. the patently fraudulent time records submitted by class counsel in the class action,
- f. class counsel's failing to secure by written order the relief he represented on the record in the class action that he had obtained for absent class members who got no notice,
- g. the agreements by which the Diocese took no position as to class certification, even though the difference to the Diocese was more than \$11.5 million,
- h. class counsel's awareness in 2007 that abuse victims sometimes had repressed memory,
- i. that after the June, 2006 settlement, none of the putative class representatives met the definition of the class, and none of them qualified to be a class representative; and

- j. the collusive conduct associated with the class action filed in Charleston County; dismissed without notice in Charleston; replicated in Dorchester County while still pending in Charleston; moved to a judge in Dorchester County with whom class counsel had long contacts; misrepresentations made to that judge; and omissions in the disclosures to that judge.

2. The Court erred in failing to consider the factual record submitted by the plaintiffs, the Court concluding instead that only argument and “not a scintilla of evidence” was offered. In fact, a considerable factual record was provided by the plaintiffs, and citations were made to the factual record provided by the defendants.

3. The Court failed to consider any of the factual evidence from which a jury could find collusion among the defendants once the class settlement was reached, if not before. E.g., that no motions had been heard or decided prior to the 2006 mediation; that between June, 2006 and October, 2006, extensively detailed in the record, the defendants judge-shopped, filed a duplicative class action for the same putative class representative, moved the cases to Dorchester County where a more pliable judicial oversight (it must be presumed when the record is viewed favorably to the plaintiff) was expected by the parties, and received by the parties, due to the long-standing affiliation between the court and class counsel. Among the manifestations of the collusive conduct is that (a) the notice to the class, once the class was approved, was constitutionally deficient, the shortcoming of which was observed in the record of the class action to have been deficient. Due to the collusive nature of the settlement, the issue was not raised by either the Lawyer or Diocese Defendants or ruled on by the class action court.

4. The Court erred in failing to consider the factual record in the light most favorable to the plaintiffs.

5. The Court erred in not ruling on the notice publication issue as to Jane Doe 4.

6. The Court erred in concluding that the class notice was run as ordered, since no factual record to that effect was offered.

7. The Court failed to rule on the Lawyer Defendants having provided no explanation to the class action court as to why they deliberately impaired notice to absent class members in their second Motion to Certify Classes (January, 2007) compared to their original Motion to Certify Classes (October, 2006), and the Diocese making no objection to that modification.

8. The Court failed to rule on the Lawyer Defendants' proffer (about which discovery was not permitted) that they modified the notice to disadvantage the classes they agreed to with the Diocese as part of the class settlement as an accommodation of their supposed adversary, the Bishop, and the inherent breach of fiduciary duty that represented.

9. The Court failed to rule on the fiduciary duties of class counsel in providing notice to class members after class certification, and the breach of those duties. Nor did the court construe the obligations from the attorney-client relationship concededly established by certification.

10. The Court failed to rule on the argument that the notice provided to the class necessarily could not have been "the best practicable" notice when the notice program was deliberately changed from national notice in *USA Today* to only local notice, changes made deliberately to *weaken* the notice program. Nor has the court explicitly reconciled the obligations breached by class counsel having given notice to the class that was constitutionally insufficient, including class counsel giving deliberately reduced notice to the class when the Settlement Agreement, once approved, provided funding for nationwide notice.

11. The Court failed to rule on the significance of the collusion among defendants, their judge-shopping, the mis-information provided and the information withheld from the class

action court and the effect of that conduct on the orders of the class action court. If class counsel has failed to do what Due Process requires, and failed to explain to the class action court why it had deliberately reduced notice, class counsel has breached his obligation to his client class members.

12. The Court failed to rule on the defendant having withheld information from the class action court (changes to the notice program; “cloned” Doe 53 class complaint; class representatives not meeting class definition; patently false billing records; and why that judge was shopped-for by the defendants), issues which relate to the collusive nature of the class action.

13. The Court considered the class definitions in the complaints (e.g., at pp. 18 and 19 of the Lawyer order), but did so without viewing those complaints in the light most favorable to the plaintiff, or without considering the complaints as a whole. But more importantly, the Court failed to rule in any way on (a) the classes as defined by class counsel in their October 2006 motion to certify classes; the January, 2007 Settlement Agreement; and the January, 2007 Motion to Certify Classes; each of which specifically defined the classes for the first time; or (b) the fiduciary obligations by class counsel to absent members of the class upon class certification, and their obligation to accommodate the class as certified with notice which satisfied Due Process requirements.

14. The Court failed to rule on the breached fiduciary obligations which arose from class counsel’s failure, without objection from the Diocese defendants, in failing to secure for absent class members a waiver of defenses of statute of limitations and charitable immunity; or in failing to obtain a written order securing the relief for absent class members who did not get notice as was represented had been obtained; without objection by the Diocese (in the cited July 13, 2007 hearing).

15. The Court failed to rule on the defendants' failure to change the notice program when lack of nationwide notice was explicitly identified.

16. The Court failed to rule on the defendants' failing to disclosure to the class action court why the notice program had been reduced from nationwide notice.

17. The Court has failed to rule on class counsel failing to disclose to the class his long affiliation with the Diocese, or the better settlement terms given to those who opted out of the class.

18. The Court failed to rule on class counsel placing their fee interest ahead of the class recovery, both in priority (the fee, which was to come from the common fund, was fixed and class members would get a pro rata reduction, the fee being more important than the class recovery), and in time (class counsel demanded to be paid before the class claims period had even begun, before the extent of the class was known and any class member had been compensated); or that the Diocese made no objection to those provisions.

19. The Court failed to rule on the professional and fiduciary breach inherent in (a) class counsel's fees negotiated simultaneously with class payment and (b) class settlement agreements reached prior to class certification, and (c) how reducing the notice program served only the lawyers' fee interest, not any interest of the plaintiffs who are conceded to have been clients of the Lawyer Defendants after class certification.

20. The Court has subsumed the lawyers breach of duty to the class by the class action trial having issued orders plainly deficient to the class as to Due Process. The Court has not ruled on the fiduciary obligation of class counsel to protect absent members of the class given the evidence that colluding defendants had ceased to be adversarial, and failed to present the issues to the class action court.

21. The Court erred in failing to rule on the fiduciary duty assumed by a class representative and by class counsel after classes were certified but then breached when class counsel failed to propose notice sufficient to inform the classes that had been certified.

22. At p. 20, the court erred in not ruling on the issue as to John Doe 193 that after certification, class counsel had defined the class so as to include him, but failed to accommodate those such as John Doe 193 with repressed memory.

Rulings Made But Which Should be Altered or Amended

23. The Court has erred factually, e.g., Jane Doe 11 order as to the Diocese, at p. 3, in concluding that no settlement had been agreed upon between the Lawyer and Diocese Defendants before class certification. The class settlement was reached, and reduced to writing sufficient to be enforceable, in June, 2006. It is undisputed that the settlement reached was a class settlement with two proposed classes, and that if the agreed upon class settlement was not approved, that the individual settlements would nevertheless occur. That is the 2006 handwritten agreement, but it satisfied the requirements of SCRCP 43(k).

24. The Court has erred in ruled that no fiduciary duty is assumed to absent members of a class when a putative class representative and putative class counsel voluntarily advance themselves as representatives by pleading a class action, citing cases in which class certification was denied or had not been granted. This class was certified.

25. The Court erred in ruling, Order as to the Diocese at p.4, that complying with orders that fail to give proper Due Process notice to absent members of the class relieves the class representative or class counsel of their fiduciary obligations, either before or after certification. The trial court, the class representative, and class counsel each have obligations to the class, but only class counsel and the class representative volunteer for those roles, and they breach those obligations when the court is not given full information.

26. The Court erred in considering Bishop Baker's testimony about his desire for widespread class notice in the light most favorable to the Diocese, rather than considering in the light most favorable to the plaintiffs the offsetting evidence that (a) the Diocese made no objection in the class proceedings to the notice being reduced from nationwide to statewide, (b) made no objection to the class definition having no geographic limit, or the class being certified without geographic limit, and (c) the proffer of the Lawyer Defendants that they deliberately disadvantaged their absent class members who lived out of state at the request of their adversary, the Bishop, and made no change to it when the class was certified without geographic limit. In the light most favorable to the plaintiff, the collusive aspect of that change should be accepted.

27. In its order as to the Lawyer Defendants, at p. 3, the Court recounted none of the 2005 and 2006 origins of the class action and class settlement, and mistakenly attributes the 2006 class settlement as occurring only in January, 2007, when an expanded version of the 2006 mediation agreement was prepared. The Court has elided over the collusive conduct that began in June, 2006, once the mediation agreement had been reached, and has ignored the specific class definitions which were advanced starting in October, 2006 and which contained no geographic limitation.

28. On pages 6 and 7 of the order as to the Lawyer defendants, the Court failed to properly recognize the language quoted at pages 3 and 4 from the John Doe 2 and Jane Doe 4 complaint that claims against the Lawyer Defendants are critical, "If the court finds that the plaintiffs are precluded for any reasons, including . . . charitable immunity, or by the statute of limitations . . . then claims are properly made against . . . the [Lawyer] defendants who failed to properly represent them." Because many of the plaintiff's claims arose from a period in which charitable immunity would have otherwise barred their claim, and because they were precluded from participating in the class action by the lack of Due Process notice, many plaintiffs needed

the waiver of charitable immunity to get any recovery from the Diocese. Their proper remedy, and only remedy, are their claims against the Lawyer Defendants who failed to give them notice. It is not only a “finding of preclusion by the Court,” order at 7, that opens lawyer liability, but also the defenses that were otherwise waived in the class action, a benefit of which the plaintiffs were deprived by the lack of notice given by their lawyers. The Court has erred in simply misreading the complaint as hinging lawyer claims only on *res judicata*, when it hinged on **either** *res judicata* or not being able to benefit from the defenses waived in the class action. The Court has simply gotten it wrong. Lack of proper notice kept the plaintiffs from any chance of the benefits from the defenses waved in the class action but not waived outside of the class action, as was concluded in *Doe v. Bishop*, 754 S.E. 2d 494 (S.C. 2014). Not being barred by the class action does not put the plaintiffs in the same position as they would have enjoyed with proper notice in the class action.

29. Similarly, the Court erred in concluding, order as to the Lawyer Defendants at p. 8, that no damage was caused to the plaintiffs by the Lawyer Defendants failing to give them Due Process notice. Because of lack of proper notice, the plaintiffs’ claims as to the Diocese have to overcome defenses that would have been waived in the class action. They lost the benefit of that waiver due to the conduct of the lawyer defendants, and those claims have been misconstrued by the Court. The plaintiffs were excluded, intentionally, by the notice program of the class action, could not participate in the class action, and thereby lost the benefit of the defenses waived in the class action. The Court erred by ignoring that proper notice or, in the case of John Doe 193, proper accommodation by class counsel for the known issue of repressed memory, would have permitted each of the plaintiffs to participate in the class action. The Court has erred in concluding there has been no injury, and the plaintiff have no damages, when it was the deliberate conduct of the Lawyer Defendants, without objection from the Diocese

Defendants, that prevented them from participating in the class action. No defendant disclosed to the trial court the rationale for the deliberately reduced notice.

30. At page 10 of the order as to the Lawyer defendants, the Court erred in concluding that that plaintiff has only one injury and that S.C. Code § 15-38-50 does not apply. A few plaintiffs that could obtain settlements with the Diocese outside of the class action, because they had at least an argument that could respond to limitations or immunity defenses that in the class action had been waived. But for the conduct of the defendants, each plaintiff could have avoided those defenses in the context of the class action. The Court has erred by concluding, Lawyer order at p. 10, that the "Plaintiffs' claims are based upon one loss — the abuse at the hands of the Diocese defendants." That is incorrect, as the personal injury claim is distinct from the breach of professional duty claim, the way the professional misconduct claim in failing to disclose a conflict in *True v. Monteith*, 489 S.E.2d 615 (S.C. 1997) was distinct from the damage from the commercial lease injury, lack of cost of living provision. 489 S.E.2d at 617.

The Plaintiffs were each sexually abused by an agent of the Diocese. That is a personal injury by a priest or employee made possible by arguable gross negligence of the Diocese. The Lawyer Defendants assumed the duty of creating for that personal injury a remedy for a class that included the plaintiffs. The Lawyer Defendants then deliberately, and (they say) to accommodate the Bishop, defined the class so as to include the plaintiffs but deliberately reduced the notice to the class so the plaintiffs would not get notice, and failed to accommodate the repressed memory of John Doe 193. As in *True v. Monteith*, that conduct by counsel is arguably a breach of professional or fiduciary duty. No lawyer has committed personal injury against any plaintiff. Through the Lawyers' conduct, the Plaintiffs were included in the class definition but were given no chance of participating in the class. Each plaintiff has lost the benefit of the defenses waived in the class.

The plaintiffs' professional malpractice injury, or breach of fiduciary duty injury, is a different injury than the personal injury from the sexual abuse and negligence by the Diocese. As is necessarily true for a legal malpractice claim, the injury inflicted by the Lawyer Defendants is entirely different in nature compared to the bodily injury inflicted by the Diocese defendants, which the agreement with the Diocese reflects.¹ The Court has erred in deciding that the plaintiffs have but one injury, in negating the terms of their agreements, in relieving the Lawyer Defendants of liability for their conduct, and, if there is but one injury, in failing to properly apply S.C. Code § 15-38-50 consistently with its text, with § 15-38-15, or with *Smith v. Tiffany*, 799 S.E.2d 479 (S.C. 2017).

The Lawyer Defendants are not entitled to the claims against them being extinguished by any of the partial settlements with the Diocese by the four plaintiffs whose claims could possibly have survived the defenses that would have been waived in the class action.

31. At page 11 (and pp. 13 and 16) of the Lawyer order, the Court has misconstrued the breach of fiduciary duty claim, which rests on the holding of *Premium Investment*. The court has determined that *Premium Investment Corp. v. Green*, 324 S.E.2d 72 (S.C. App. 1984) does not impose, an *attorney-client* relationship when the Lawyer Defendants included class allegations in their 2005 class complaint. The argument has been that *Premium Investment* (and many other jurisdictions including the U.S. Supreme Court) impose by operation of law a

¹ The Court purported to have reviewed the confidential agreements some Plaintiffs (Does 10, 194, 240 and 245) reached with the Diocese, which explicitly do not settle any claims made against the Lawyer defendants, explicitly distinguishes the personal injury of the abuse from the breach of professional obligation of class counsel, and invokes S.C. Code § 15-38-50, should a court find that a contribution interest by the Diocese exists, to define the amount paid as a *pro rata* share by the Diocese for its contribution. The agreements were provided to counsel for the Lawyer Defendants.

fiduciary duty when a class is alleged.² The attorney-client relationship for those within the class definition arose when the class was approved by the court. E.g., *Newberg on Class Actions* (5th Ed.) Sec. 7.28.

Many other courts recognize the fiduciary obligation to the class that arises when a class is alleged. “Constructive certification,” which the court uses to dismiss the import of *Premium Investment*, is not required to impose the fiduciary obligation. E.g., *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 549–50, 69 S.Ct. 1221, 1227 (1949) (pleading creates a “fiduciary obligation towards the members of the class that may not be abandoned at will or by agreement with the defendant if prejudice to the class members would result”). That fiduciary obligation is why SCRCP 23(c) does not permit a class complaint from being dismissed or compromised without notice to the class — which can apply even before certification. E.g., *Shelton v. Pargo*, 582 F.2d 1298, 1305 (4th Cir. 1978) (setting criteria for when to require notice to the class of a settlement before certification, footnote omitted):

By asserting a representative role on behalf of the alleged class, [the putative class representative] voluntarily accepted a fiduciary obligation towards the members of the putative class they thus have undertaken to represent. They may not abandon the fiduciary role they assumed at will or by agreement with the appellant, if prejudice to the members of the class they claimed to represent would result or if they have improperly used the class action procedure for their personal aggrandizement. This has been declared in repeated decisions.

Among other things, fiduciary obligation can protect against a class counsel who will compromised matters in exchange for “red-carpet treatment on fees,” *Weinberger v. Great*

² The scope of the fiduciary obligation is also imposed by law: it is to not “prejudice unfairly the members of the class he seeks to represent.” *Shelton v. Pargo, Inc.*, 582 F.2d 1298, 1306 (4th Cir.1978) (footnote omitted). Failing to even try to give notice to the class that class counsel asked to be certified breaches that duty, and it disadvantaged each of the plaintiffs.

Northern Nekoosa Corp., 925 F.2d 518, 524 (1st Cir.1991).³

[B]ecause the abuses which Rule 23(e) is designed to combat can occur prior to class certification, this Court holds that Rule 23(e) approval must be obtained for the proposed settlement of a named plaintiff's claim when the plaintiff has purported to represent a class that he now seeks to dismiss.

Magana v. Platzer Shipyard, Inc., 74 F.R.D. 61, 66 (S.D. Tex. 1977). This class settlement was reached before class certification, and posed the same dangers.

The Court also has a duty to act as a fiduciary of the class. *Runion v. U.S. Shelter*, 98 F.R.D. 313, 318 (D.S.C. 1983):

the district court acts as a fiduciary who must serve as a guardian of the rights of the absent class members. *Grunin v. International House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975). Although no class has been certified, this court accepts its fiduciary responsibilities at this stage of the litigation. Absent class members have substantial due process rights that are being affected in this case even though a class has not been certified. In *Shelton v. Pargo, Inc.*, 582 F.2d 1298 (4th Cir. 1978), the court recognized the need of the district court to protect the rights of absent class members even at the precertification stage of the litigation.

Compare, *Martin v. Ball*, 326 Fed. Appx. 191 (4th Cir. 2009) (breach of fiduciary duty claims against class counsel, including lack of notice, remanded for further proceedings.) But the court does not have professional obligations to class member clients. Nor has the court volunteered to represent the class, as have class counsel and the class representative.

The comment to SCRCP 23(d) states, emphasis added, "This Rule requires those *seeking to maintain* an action on behalf of a class to notify the members of the class of the pendency of the action." In other words, the fiduciary obligation applies to class counsel and the class representative even before certification. That is the principle of *Premium Investment*, embedded

³ As put in *Magana v. Platzer Shipyard, Inc.*, 74 F.R.D. 61, 65 (S.D. Tex. 1977), the "plaintiff's attorney may accept an insufficient judgment for the class in trade for immediate and certain compensation for himself in the form of legal fees deducted from the total available funds proffered by defendant." Evidence in this record shows that class counsel placed his fee interest above the class recovery, which provided the incentive to restrict notice to not have "too many" class claimants.

in Rule 23. The Court has erred in concluding that no fiduciary duty existed, or that *Premium Investment* did not impose a fiduciary obligation when the class was alleged. *See, Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 331, 100 S.Ct. 1166 (1980) (class representatives have a responsibility "to represent the collective interest of the putative class" in addition to their private interests).

The fiduciary duty to the clients within the class definition is not lessened after certification, it is merely made more precise. *Sondel v. Northwest Airlines, Inc.*, 56 F.3d 934, 938–39 (8th Cir.1995) ("certified representatives and the class counsel assume[] certain fiduciary responsibilities to the Class," and as a result, "the certified representatives may not take any action which will prejudice the Class's interest, or further their personal interests at the expense of the Class"). The voluntarily assumed obligations of class counsel to his class member clients, including his absent class member clients, do not disappear when the court has certified a class, but are enhanced and made more precise by the class definition that is approved. "When the District Court certified the propriety of the class action, the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted by appellant." *Sosna v. Iowa*, 419 U.S. 393, 399, 95 S.Ct. 553, 557 (1975).

The class that was certified had no geographic limit, as proposed by class counsel in October, 2006, when nationwide notice was proposed. In January, 2007, the class definition proposed by class counsel remained unchanged, but the proposed nationwide notice was eliminated by class counsel. No explanation was given for that change to the class action court, even after that lack of nationwide notice to the certified class was called to the attention of the defendants after certification.

Viewed favorably to the plaintiffs, the record suggests that the change to notice was collusive. The defendants agreed to deliberately give notice that would not reach the certified

class, which necessarily cannot be “the best practicable” notice under the circumstances, and, as the record shows, lack of nationwide notice was pointed out in the class proceeding before any class notice was published.⁴

The Court has erred in concluding, Lawyer order at pp. 13 and 15, that no professional malpractice, or breach of fiduciary duty, even could arise when the change to make the notice intentionally ineffective was made before certification but not disclosed to the class action court. The inadequate notice was given after certification, meaning after the attorney-client relationship unarguably had arisen among those within the class definition.⁵

32. The court has erred at p. 19 of the Lawyer order in construing the plaintiffs as being “outside the class definitions,” when they are within the class definition as it was proposed for certification in October, 2006 and as it was certified. There is no basis to conclude that any of the plaintiffs are not within the classes as defined.

33. The Court also erred at p. 19 in mis-stating the class definition so as to contend that claims which are “barred by law,” such as by charitable immunity, are excluded from the class. This is plain error. Charitable immunity was waived in the class action, and the “Primary Class” definition as proposed by class counsel and as certified had nothing to do with whether a claim was “barred by law.” The certified definition, first proposed in October, 2006 and eventually approved was:

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.

⁵ The court relied on *Gillespie v. Scherr*, 987 S.W. 2d 129 (Tex. App. 1998), and *Formento v. Joyce*, 522 N.E.2d 312 (Ill. App. 1988), but in neither of those cases had a class been certified. In *Joyce*, the court permitted amendment to withdraw a class allegation. Compare, *Masztal v. City of Miami*, 971 So. 2d 803 (Fla. App. 2007) (upholding breach of fiduciary duty claim and a disgorgement order against lawyers who alleged a class for leverage in negotiating a settlement). This class action, of course, was certified.

The definition contains no geographic limitation, and contains no exclusion for someone whose claim might *otherwise* be “barred by law.” The Court has erred in falsely imposing a criteria nowhere applicable to the class definition, and has for some reason scrambled into the class definition a defense which did not apply to the class because it was waived in the class action. That waiver is why it is significant that the plaintiffs were given no notice of the class action, and why it is significant that the “best practicable” notice was deliberately not used.

34. For the general reasons set forth above, the Court also erred at pp. 19-20 in concluding as to Jane Doe 4 that no breach of fiduciary or other professional duty could apply because the breach supposedly took place before certification, when intentionally deficient notice was given only after certification.

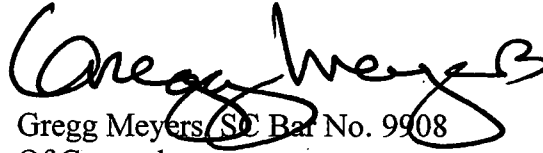
35. The Court erred at pp. 19-20 in concluding that Jane Doe 4 was not an intended beneficiary of the class action. She was explicitly within the class definition the lawyers chose to use and which the court adopted. The court erred in ignoring that class counsel proposed more precisely an unambiguously a class defined without geographic limitation.

36. The Court erred at p. 20 of the Lawyer order in concluding that John Doe 193 is somehow excluded by the class action because his claim is “barred by law.” As noted above, the court has plainly mis-read the class definition. John Doe 193 had not previously “adjudicated resolved or released his claim” his claim. He would not have been barred if he had been able to participate in the class, and met the class definition. His claim is barred by charitable only because he had no opportunity to participate in the class action. The Court also erred in concluding he was not an intended beneficiary since he met the class definition.

Conclusion

The orders should be altered or amended.

Respectfully submitted

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

Gregg Meyers, SC Bar No. 9908
Of Counsel

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August 25, 2017

Via First Class Mail:

The Honorable J. C. Nicholson, Jr.
100 Broad Street, Ste. 106
Charleston, SC 29401

John Doe 2 and Jane Doe 4 v. Bishop of Charleston, et al.
Civil Action No. 10-CP-10-5520;
John Doe 10 v. Bishop of Charleston, et al
Civil Action No. 10-CP-10-7233;
John Doe 11 v. Bishop of Charleston, et al
Civil Action No. 12-CP-10-5559;
John Doe 193 v. Bishop of Charleston et al
Civil Action No. 13-CP-10-3733;
Father Doe 194 v. Bishop of Charleston, et al.
Civil Action No. 13-CP-10-4175;
John Doe 194 v. Bishop of Charleston, et al.
Civil Action No. 13-CP-10-4716

Dear Judge Nicholson:

Pursuant to Rule 59(g), I am providing you a copy of Plaintiff's filed SCR 59(e) Motion to Alter or Amend, in regard to the above-referenced matter.

With kind regards, I am,

Sincerely,


Gregg Meyers

GM/mkg