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The State of South Carolina  
In The Court of Appeals

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

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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

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RECORD ON APPEAL  
VOLUME SIX

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# The State of South Carolina In The Court of Appeals

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

Appellants

v.

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

Respondents

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## Record On Appeal Volume Six

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STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
: CASE NOS. 2006-CP-18-1310;  
COUNTY OF DORCHESTER ) 1311, 1636

JOHN DOE 53, JOHN DOE ) TRANSCRIPT OF RECORD  
66, JOHN DOE 66A, JANE )  
DOE 1 AND JANE DOE 2 AND ) SETTLEMENT AGREEMENT  
RACHEL ROE INDIVIDUALLY )  
AND AS REPRESENTATIVES ) March 9, 2007  
OF A CLASS OF PEOPLE )  
SIMILARLY SITUATED, ) St. George, South Carolina  
Plaintiffs, )

-versus-

THE BISHOP OF CHARLESTON, )  
A CORPORATION SOLE, AND )  
THE BISHOP OF THE DIOCESE )  
OF CHARLESTON, IN HIS )  
OFFICIAL CAPACITY )  
Defendants. )

The Honorable Diane S. Goodstein

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Resident Court Reporter  
First Judicial Circuit



## A L S O P R E S E N T :

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Matthew Creech, Esquire  
Marvin Infinger, Esquire  
Lionel Lofton, Esquire  
Jack Sinclair, Esquire  
Glenn Churchill, Esquire

COURT'S EXHIBIT(S) :

| <u>NO.</u> | <u>DESCRIPTION</u>     | <u>ID.</u> | <u>EV.</u> |
|------------|------------------------|------------|------------|
| C-1        | Crimen Sollicitationis | 157        |            |

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(March 9, 2007.)

THE COURT: Thank you all so much and  
please be seated.

Let me just share with everyone  
what counsel was discussing with me in the  
back. First of all, they have -- they wanted  
me to know that there had been some agreement  
to change some of the language in the  
proposed resolution and ultimately order, and  
they wanted me to know that and they wanted  
to have an opportunity to publish that for  
the Court and, of course, for everyone, the  
class members.

And those are the objections, they  
wanted to do that first, and then they wanted  
to have an idea of what the schedule might be  
this morning.

And what I shared with them I  
thought made sense would be to place those  
proposed amendments, supplementations on the  
record and then next I want to hear from  
those with objections and I'd like to hear  
them in this order: The ones proposed by  
Mr. Parker first, then the objections  
proposed by Mr. Bilbro and last, but not

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1 least, certainly not Mr. Meyers, because  
2 Mr. Meyers, he has more grounds if you will  
3 and I thought we would take the ones at least  
4 that appeared to be perhaps not as lengthy.

5 And then once those matters are  
6 concluded, we'll probably take a little break  
7 because y'all will probably be ready for a  
8 little break at that point. And then I'll  
9 hear the issues regarding expenses and fees  
10 and the like if any of those remain.

11 So my sense is that that will give  
12 us some order. That's what we were  
13 discussing so that we would have that -- that  
14 organization this morning.

15 And without further ado, who would  
16 like to tell me about the either amendment or  
17 supplementation, however you would refer to  
18 it?

19 MR. RICHTER: Your Honor, Lawrence  
20 Richter together with David Haller for the  
21 plaintiffs. And we appear as class counsel,  
22 Your Honor.

23 I think that there are only two  
24 matters that need to be amended. This has  
25 been accomplished, as you know, this order

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1 and the settlement agreement and all the  
2 documents that have come together to get us  
3 where we are today, have been put together  
4 over a period of many months and over the  
5 expenditure of many hours before Your Honor  
6 and in Your Honor's chamber. We all join in  
7 thanking you for your accessibility and your  
8 input in that regard.

9 I suppose it was inevitable there  
10 was going to be some kind of drafting error  
11 or at least an unclear statement. And I  
12 think that has occurred in a couple of  
13 instances.

14 Somewhere in the transcriptions the  
15 words "opt out" were left out. And clearly  
16 that is not the intent. We have drafted  
17 language specifically providing, as we must,  
18 the rule does, that anyone has a right to opt  
19 out of the class. They are not mandated into  
20 the class.

21 That is a matter that Mr. Parker  
22 and his office made objection about and I  
23 think Mr. Bilbro, yes, and Mr. Bilbro also  
24 made objection and Mr. Meyers did as well.  
25 So hopefully -- and we've got language to

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1 hand up to you simply correcting what was  
2 some of our errors. We're not laying any  
3 blame on anybody, we should have been clearer  
4 in what we said.

5 THE COURT: All right. Let me ask you  
6 this question. Have counsel with objections,  
7 has that language been shared with them?  
8 Because you may just publish it, you may not  
9 have copies for everyone.

10 MR. RICHTER: We served all of the  
11 objecting counsel.

12 THE COURT: Okay. Great. Good. All  
13 right. Well, either if you will publish it  
14 or pass up, either way would be fine.

15 MR. RICHTER: We propose just rewording  
16 what is paragraph 3W.

17 THE COURT: Okay.

18 MR. RICHTER: As follows: Any person  
19 who satisfies the definition of either class  
20 is a member of that class to the full extent  
21 allowed by law, unless they opt out of either  
22 class. Any individual who believes he or she  
23 is or may be a member of either of the  
24 plaintiffs' classes, but does not wish to  
25 participate in the settlement for any reason,

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1 may opt out of the settlement and/or the  
2 classes by completing the court-approved opt  
3 out form, which we have submission for Your  
4 Honor -- we've shared it around -- and  
5 transmitting it to class counsel. Given the  
6 sensitive nature of the claim which here have  
7 or may be alleged, the parties agree that  
8 they will jointly request that the Court have  
9 class counsel serve as the initial repository  
10 of the opt out forms. At the close of the  
11 time in which the forms can be completed,  
12 class counsel shall send a copy of the forms  
13 to counsel for the diocese and then file the  
14 original forms with the Dorchester County  
15 clerk of court under seal.

16 Typically opt out -- often, I  
17 should say often, not typically, often opt  
18 outs are accomplished by mailing in to the  
19 clerk.

20 THE COURT: Right.

21 MR. RICHTER: The difficulty here is the  
22 nature of the claims, everyone's desire to  
23 preserve identity as fully as we can. That's  
24 the reason that we outlined this procedure.

25 As far as we know, it's

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1 satisfactory to everybody. I don't think  
2 anybody has any difficulty. Walter, are you  
3 all right with that?

4 MR. BILBRO: No problem.

5 MR. RICHTER: Everyone has indicated to  
6 us that was fine. That was the first.

7 And the second, Your Honor --

8 THE COURT: Wait. Let me stop right  
9 there, if I may. And with the opt out  
10 language changed, first of all I'll ask from  
11 the diocese is that acceptable?

12 MR. SHAHID: Yes, ma'am.

13 THE COURT: Very well. And then -- and  
14 if you are uncomfortable, counsel who are  
15 here with the objections, at all in  
16 expressing your position now, let me know and  
17 I'll hear you fully. But I'd ask,  
18 Mr. Bilbro, first from you.

19 MR. BILBRO: Since the language has been  
20 changed, we're going to withdraw our opt out  
21 request since we will have some additional  
22 time, because it would be premature at this  
23 point. I have to meet with Mr. Richter on  
24 some matters.

25 THE COURT: Very well. So the language

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1 as proposed is acceptable?

2 MR. BILBRO: It is acceptable.

3 THE COURT: Very well.

4 MR. CREECH: Matthew Creech here for  
5 Johnny Parker. I haven't had an opportunity  
6 to review it, but from listening to  
7 Mr. Richter I think that language is fine;  
8 we're willing to comply with it.

9 THE COURT: Yes, sir, Mr. Meyers.

10 MR. MEYERS: I, too, thought that  
11 language addressed the concern that I  
12 expressed.

13 THE COURT: Thank you so much. All  
14 right.

15 MR. SHAHID: Judge, I didn't identify  
16 myself for the record. Just so the record's  
17 clear, Peter Shahid and Jim Geoly.

18 THE COURT: Yes. Thank you, Mr. Shahid.  
19 All right.

20 Now, all right, then the amendment  
21 as proposed would simply be added without  
22 further discussion regarding that and the  
23 language as you have published it as everyone  
24 has reviewed would be added.

25 Now, next issue.

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1 MR. RICHTER: The next issue deals with  
2 the consortium class definition. And I am an  
3 English major, but from a state, I shouldn't  
4 say but from a state university, although I  
5 think quite a fancy state university, and I  
6 don't know whether all of us were involved in  
7 this drafting process as you may remember.  
8 We could now recognize that there can be some  
9 difficulty in reading our drafted language  
10 perhaps in another way.

11 THE COURT: All right.

12 MR. RICHTER: For that reason we wish to  
13 clarify what as in the first instance has  
14 always been the intent of all of the parties  
15 to this litigation. So we would propose the  
16 following as the now new amended paragraph  
17 concerning the definition of the consortium  
18 class.

19 THE COURT: All right. Now, tell me  
20 where we are in the document.

21 MR. RICHTER: Paragraph 1, Your Honor.

22 THE COURT: Got it, okay. I'm there.

23 Page 2.

24 MR. RICHTER: Page 2, paragraph 1. The  
25 spouses and parents of all individuals born

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1 on or before August 30, 1980 who as minors  
2 were sexually abused at any time by agents or  
3 employees of the Diocese of Charleston who  
4 suffered a loss of the individual's  
5 consortium and, who as spouses and parents,  
6 have not previously had any similar claim  
7 adjudicated, resolved or released.

8 And it had been read in a more  
9 restrictive way by some persons who had an  
10 interest in this matter. And I think that  
11 everybody has seen this; is that correct?  
12 Everyone has, all the interested objectors  
13 and certainly all of us, we've all signed off  
14 on it, the interested objectors have had it  
15 provided to them. And as far as we know that  
16 satisfies, really it's only Gregg I think as  
17 to the consortium claim.

18 THE COURT: Let me ask this of you.  
19 What you read though just now, and it could  
20 be significant, let me begin with the phrase  
21 who suffered a loss of the abused  
22 individual's consortium.

23 MR. RICHTER: That's right.

24 THE COURT: Did you mean to not include  
25 the word abused individual's consortium?

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1 MR. RICHTER: We do mean to include  
2 that.

3 THE COURT: In other words, as it is  
4 written on page 2, paragraph 1 is the  
5 intended language?

6 MR. RICHTER: Yes, ma'am. Who suffered  
7 the loss of abused, the individual. That's  
8 the only person, consortium, who they could  
9 have claimed to have lost in this matter.

10 THE COURT: Sure. And I ask again, was  
11 this proposed language circulated to those --  
12 first of all, to the diocese and then those  
13 who had concerns?

14 MR. RICHTER: The diocese was a part of  
15 the drafting, Your Honor, their signature is  
16 affixed --

17 THE COURT: Okay. Yes.

18 MR. RICHTER: -- together with ours on  
19 the document submitted to you.

20 Can you answer that for the Court?

21 MR. HALLER: Yes, ma'am. David Haller  
22 for the class. The motion for the approval  
23 of the addendum was served on, together with  
24 the diocese, all of the objectors.

25 THE COURT: Okay. Very well. All

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1 right. And the language as proposed is the  
2 language also proposed by the diocese?

3 MR. SHAHID: That's correct, Your Honor.

4 THE COURT: Okay.

5 MR. SHAHID: As written in the addendum  
6 page 2, paragraph number 1, that language  
7 we've agreed to.

8 THE COURT: Okay. And, Mr. Bilbro, that  
9 was not a concern that you had, nor on behalf  
10 of Mr. Parker?

11 MR. BILBRO: No.

12 MR. CREECH: No, Your Honor.

13 THE COURT: Okay. Very well.

14 Mr. Meyers, and again I'll leave it to you,  
15 you may wish to address it now or not, it's  
16 completely up to you.

17 MR. MEYERS: I will hold off --

18 THE COURT: Okay.

19 MR. MEYERS: -- Your Honor, take it up  
20 later. It goes a long way though. It's  
21 helpful, it's almost there.

22 THE COURT: All right. Very well.

23 Thank you. Thank you for that.

24 All right. What then -- that's  
25 then been addressed. When Mr. Meyers has had

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1 an opportunity to address it more fully,  
2 we'll see where we are, all right?

3 MR. RICHTER: Thank you.

4 THE COURT: Any other proposed changes  
5 in the language?

6 MR. RICHTER: Your Honor needs to sign  
7 off ultimately on the forms to be utilized.  
8 Those have been submitted to the Court and  
9 circulated to the interested parties.

10 THE COURT: Okay.

11 MR. RICHTER: And to my knowledge  
12 there's no disagreement about anything  
13 concerning the forms.

14 THE COURT: Okay. All right. Very  
15 well.

16 MR. SHAHID: Your Honor, there were --  
17 in the addendum there was paragraph 2,  
18 paragraph 3. Do you want to address those  
19 now as well?

20 THE COURT: Yes.

21 MR. RICHTER: Oh, I'm sorry, yes. Yeah,  
22 I'm sorry. The sentence -- number 2  
23 indicates a sentence to be added at the end  
24 of paragraph 3 as follows: It is the  
25 intention of the parties that the arbitrator

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1 be given discretion in using the above-stated  
2 guidelines to award damages based on the  
3 circumstances of each individual claimant.

4 We think that's a restatement of  
5 the obvious. If you remember, the matrix  
6 create categories, somebody will fall in that  
7 category. What the evidence presented and  
8 what the facts are as to that individual  
9 claimant may vary from person -- from  
10 claimant to claimant.

11 Pursuant to the Court's instruction  
12 earlier the arbitrator, Marvin Infinger, of  
13 the Charleston Bar is present should Your  
14 Honor need him for examination or for any  
15 instruction.

16 THE COURT: Okay.

17 MR. RICHTER: The second, paragraph 3,  
18 the next paragraph, 3, reads as follows:  
19 Paragraph 3E is amended to read: Any primary  
20 class or consortium class claimant whose  
21 claim has been otherwise adjudicated, settled  
22 or resolved is barred from filing a claim or  
23 collecting any funds of this class.

24 Which the diocese and class counsel  
25 are fully in agreement with that. We believe

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1 that is a restatement of the law, but for  
2 whatever reason the only person who has  
3 raised an issue is Gregg Meyers about that  
4 and I can't say that he's in agreement with  
5 this language.

6 THE COURT: Was this language which was  
7 requested be added by the diocese,  
8 Mr. Shahid?

9 MR. SHAHID: Quite frankly, I don't  
10 remember. I think what happened is that when  
11 the objections came in, they provided us  
12 opportunity to go through the agreement one  
13 more time and as we were going through it  
14 things popped up, so to speak.

15 THE COURT: Okay.

16 MR. SHAHID: And there was an issue  
17 about it. I'm not sure if it came from class  
18 counsel our us, but it was something we  
19 discussed openly and freely and we came to  
20 the same conclusion that this should be  
21 included in there. I think that's true for  
22 both number 2 and number 3 on page 2 of the  
23 addendum. I just don't recall how that  
24 generated.

25 MR. RICHTER: We think it's -- some of

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1 us think that it is surplusage, Your Honor,  
2 in the sense that a matter that is res  
3 judicata, is res judicata as a matter of law  
4 not because of this Court's ruling or not  
5 ruling. It either is res judicata or not, so  
6 this is the plaintiffs' possible statement  
7 for lay consumption. The law is the law.

8 MR. GEOLY: Your Honor, may I just  
9 remind the Court that the definitions of the  
10 classes already have language in them that  
11 define people in or out on this basis. This  
12 is just to make it crystal clear in a section  
13 of the agreement that deals with the claims  
14 process so there would just be no ambiguity.  
15 I do think it's belt and suspenders, in other  
16 words.

17 THE COURT: Okay. All right.

18 And, Mr. Meyers, is this language  
19 that -- I'm not quite sure whether this is  
20 language which would be encompassed within  
21 your objection or not?

22 MR. MEYERS: It is and I'll be glad to  
23 address it when I get a chance.

24 THE COURT: Okay. All right. All  
25 right. Okay. And then paragraph --

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1 courtroom. If you all need to access them, I  
2 want you to have that ability. If you snuck  
3 and just turned it off and stuck it in your  
4 briefcase or whatever, that's okay too, if  
5 you'll just step out. And we'll take 15  
6 minutes to give you all an opportunity to do  
7 that.

8 MEMBER OF THE PRESS: Thank you.

9 THE COURT: Not a problem at all.

10 (Recess, from 10:35 a.m. to 10:54 a.m.)

11 THE COURT: Thank you, everyone. Please  
12 be seated. All right. I'm looking at my  
13 caucus over here. Were you all able to  
14 make -- oh, great.

15 MR. SMITH: I'm not sure what we  
16 resolved. I'm Bruce Smith with the  
17 Associated Press. We've contacted Jay  
18 Bender, our attorney.

19 THE COURT: Absolutely.

20 MR. SMITH: I doubt that he's -- cell  
21 phone doesn't answer, not in the office, I  
22 don't know, on a Friday like this he may be  
23 gone.

24 THE COURT: Well, you know he's  
25 partially retired. And if he's not teaching

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1 MR. RICHTER: We've done the rest of it,  
2 Your Honor.

3 THE COURT: We've done 4. Okay. All  
4 right. Well, then that would conclude it  
5 then, all right. Okay. Any other additional  
6 language? I think that concludes, does it  
7 not, the amendment or supplementation?

8 MR. RICHTER: It does, Your Honor.

9 MR. SHAHID: It does. Thank you, Judge.

10 THE COURT: Okay. All right. Very  
11 well. Now, with regards to the objections,  
12 and again on behalf of Mr. Parker I was going  
13 to hear his first. You all are now with the  
14 opt out language as amended?

15 MR. CREECH: We're satisfied.

16 THE COURT: You're satisfied?

17 MR. CREECH: Yes, ma'am.

18 THE COURT: Very well. Thank you so  
19 much.

20 And, Mr. Bilbro?

21 MR. BILBRO: Your Honor, we have some  
22 concerns about the fairness of the issue  
23 because of the ongoing -- fairness on page 4.  
24 My concerns are that --

25 MR. RICHTER: Your Honor, excuse me for

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1 interrupting counsel, but I believe that  
2 his -- the only objection Mr. Bilbro stated  
3 was the one that has heretofore been  
4 addressed. We object to expanding beyond  
5 anything we've had notice of.

6 THE COURT: Okay.

7 MR. BILBRO: I believe we said in the  
8 language we put, we said we wanted to opt out  
9 because we didn't feel that it was fair. And  
10 I understood this was to be a fairness issue.  
11 Since we are withdrawing our opt out, we  
12 still want to address the fairness issues and  
13 we put information in our motion to deal with  
14 that. My John Doe is in recent years, in I  
15 would say the last two, two and a half years  
16 is not only getting psychological but  
17 psychiatric treatment. He's had suicidal  
18 attempts. I think to limit his wife who is  
19 having to go through all this with him to  
20 only \$20,000, I think there should be another  
21 category because some of this is becoming  
22 very aggravated. My man over the last two  
23 and a half years has lost more wages and more  
24 income than he did --

25 THE COURT: Hold on one second for me

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1 there. I want to be sure that we're crafting  
2 the issue, Mr. Bilbro.

3 MR. BILBRO: Looking at number 3 and  
4 number 4 primarily, Your Honor.

5 THE COURT: Okay. All right. Number 3  
6 states that your client wishes to opt out and  
7 number 4 says -- it seems to me that what is  
8 referred to in your objection repeatedly is  
9 your client's simply -- your client's desire  
10 to opt out of the class.

11 MR. BILBRO: No. Because we did not  
12 think it was fair to them, that was our  
13 reason. We understood we were making it for  
14 both. Number one, there was no opt out  
15 procedure; but number two, if there was we  
16 were going to have to opt out because it  
17 wasn't fair because they weren't being  
18 adequately cared for with all the problems  
19 that have occurred in the last two and a half  
20 years. And that's why we put that language  
21 in there.

22 THE COURT: Okay.

23 MR. BILBRO: Obviously at this point we  
24 want to set aside, wish to opt out, we don't  
25 want to reduce what our concerns about the

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1 fairness of the class are.

2 THE COURT: Okay. Okay. All right.

3 Well, I think what I want you to -- hold  
4 that.

5 MR. BILBRO: Yes, ma'am.

6 THE COURT: Because I certainly want to  
7 hear that as well and -- because as I  
8 understand it the -- your concern regarding  
9 the fairness has to be -- has to do with the  
10 amounts of money and treatment, etcetera,  
11 which are a part of the settlement; is that  
12 right?

13 MR. BILBRO: That is correct. And it's  
14 ongoing.

15 THE COURT: Okay. Hold that for me  
16 then, Mr. Bilbro --

17 MR. BILBRO: Thank you.

18 THE COURT: -- okay, if you will?

19 And, Mr. Meyers, of course I want  
20 to hear fully about just the underlying  
21 concern about the fairness of the proposed  
22 moneys and treatment and the like, but you  
23 had some other concerns with the language as  
24 proposed, I certainly want to hear from you  
25 on that as well, okay?

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1 MR. MEYERS: Yes, Your Honor.

2 THE COURT: Then we'll get to just the  
3 underlying concern about I gather the  
4 amounts, etcetera, okay? All right.

5 MR. MEYERS: Thank you very much, Your  
6 Honor. In the past I had represented a  
7 handful of people who have either present or  
8 past claims involving agents and employees of  
9 the diocese. And --

10 THE COURT: Let me tell you what's got  
11 me concerned. I'm a little bit concerned  
12 because we don't have a table. You know --  
13 oh, no, no, that's fine, because we have this  
14 one here. I know it's hard for counsel to  
15 stand and not have a table. There's a table  
16 here, why don't you come -- as you all argue  
17 your objections, you can come on use this  
18 table. We'll just push them --

19 MR. MEYERS: Why don't I wheel the  
20 podium over here, park myself?

21 THE COURT: That's great, if you're  
22 happy with that.

23 MR. RICHTER: I'm advised by someone in  
24 the crowd here that apparently -- I can't see  
25 what's behind me, but apparently there's

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1 filming taking place and that it is panning  
2 the crowd. I don't know, I can't see it,  
3 haven't seen any of it. I call that to your  
4 attention only because I know of your concern  
5 about respecting the identities of the  
6 parties involved.

7 THE COURT: Okay. And you are correct  
8 we certainly -- I certainly want to be  
9 sensitive to those issues. At this point the  
10 plaintiffs, of course, are identified.  
11 anonymously.

12 MR. MEYERS: Right.

13 THE COURT: And I don't -- as -- and,  
14 counsel, I'll hear from you fully about it,  
15 but this is certainly a public place and it  
16 is appropriate that the press be present.

17 MR. MEYERS: If I might suggest, Your  
18 Honor.

19 THE COURT: Sure.

20 MR. MEYERS: It seems to me a -- the  
21 only concern is whether someone uses a name  
22 or uses an image.

23 MR. RICHTER: That's correct. We do not  
24 intend to do either of those things, nor does  
25 the diocese is our understanding.

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1 MR. MEYERS: And no one has.

2 THE COURT: Okay.

3 MR. MEYERS: No one has verbally said  
4 anything about identifying themselves as a  
5 victim, but with the press present with the  
6 appropriate public issue being resolved from  
7 this point forward in this courtroom, from  
8 this bar forward where the Court's presence  
9 and decision making is taking place and the  
10 arguments of counsel are taking place, even  
11 though Mr. Bilbro and I and Mr. Parker's  
12 representative stood from the bench, but if  
13 we could -- if the Court would entertain  
14 restricting the press's use of any images  
15 today from the point of the bar forward then  
16 I think it resolves the legitimate concerns  
17 the victims may have.

18 THE COURT: I understand. Whose -- I  
19 know -- I know I've got press members here  
20 with the cameras and the -- and the -- but  
21 let me just ask, is there any concern, do you  
22 all want to take a short recess so you can  
23 call your counsel? It seems to me to be an  
24 easy resolution. I don't know that the  
25 audience that's in the courtroom, whether or

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1 not that's appropriate, but by the same token  
2 I want you to have an opportunity to have  
3 your lawyers consulted if you feel that  
4 that's appropriate.

5 So if you would like to take a  
6 short recess, those of you who are here from  
7 the press, raise your hand and we'll do that.  
8 If you just want to ask, ask your counsel, I  
9 want you to feel free to do that. Just raise  
10 your hand if you need to do that for me.  
11 Because clearly at least on first blush  
12 that's reasonable to ask the press to concern  
13 yourselves with what is occurring beyond the  
14 bar, if you will.

15 And if anyone wants to consult your  
16 lawyer I want you to have that opportunity,  
17 because there may be issues that could help  
18 me make that determination as well. Anyone  
19 concerned? If so raise your hand. You all  
20 are caucusing. Feel free to caucus, that's  
21 okay.

22 MEMBER OF THE PRESS: Judge, if we  
23 choose not to identify them, if we choose not  
24 to identify, we need to know who we should  
25 shoot and who we should not shoot. So we'd

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1 almost need to identify the victims to know  
2 who not to put on camera to make sure that we  
3 don't get those images.

4 THE COURT: I think what -- I think if I  
5 can -- got your point, first of all, I got  
6 your point and but I think here's the  
7 concern. The concern is, is that -- and  
8 Mr. Meyers and Mr. Richter have stated that  
9 if the -- clearly the lawyers and the  
10 determinations being made beyond the rail, if  
11 you will, in this area, and if you shoot  
12 these folks up here, clearly there's not a  
13 problem. Clearly there's not a problem.

14 Now, obviously, obviously though  
15 I've been communicating with folks in the  
16 audience to some extent because the lawyers  
17 have been there. We can bring them forward  
18 as they argue and that certainly can be  
19 remedied so that we know if -- that there  
20 wouldn't be anyone filmed who is a potential  
21 victim.

22 Having said that, obviously there  
23 are many -- there are going to be many --  
24 this is a public place and there could be  
25 many people who are not, who are interested,

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1 who for whatever reason are in the  
2 courthouse. So the -- I guess the easiest  
3 determination is if we're above the rail it's  
4 easy.

5 Having said that, I don't want to  
6 limit you all from having a conversation if  
7 you think it might matter. And that really  
8 is where I'm -- it's just what's easy, what I  
9 know is safe, what I know will accommodate.  
10 But again, if you all have any concerns I  
11 certainly want you to -- I don't want you to  
12 go back to the station, they're like why  
13 don't you call, do you know what I mean? I'm  
14 willing to recess for you all to do that  
15 because I don't want you all to have any  
16 repercussions, quite frankly, that there's  
17 something you felt like you needed to do.

18 MEMBER OF THE PRESS: Can we recess for  
19 a moment then?

20 THE COURT: I think that's a brilliant  
21 idea. We'll take about 15 minutes. Now,  
22 having said that, I'm well aware that there  
23 is a sign on the back of the courtroom that  
24 says you can't have any cell phones. So  
25 there are phones in the back behind the

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1 courtroom. If you all need to access them, I  
2 want you to have that ability. If you snuck  
3 and just turned it off and stuck it in your  
4 briefcase or whatever, that's okay too, if  
5 you'll just step out. And we'll take 15  
6 minutes to give you all an opportunity to do  
7 that.

8 MEMBER OF THE PRESS: Thank you.

9 THE COURT: Not a problem at all.

10 (Recess, from 10:35 a.m. to 10:54 a.m.)

11 THE COURT: Thank you, everyone. Please  
12 be seated. All right. I'm looking at my  
13 caucus over here. Were you all able to  
14 make -- oh, great.

15 MR. SMITH: I'm not sure what we  
16 resolved. I'm Bruce Smith with the  
17 Associated Press. We've contacted Jay  
18 Bender, our attorney.

19 THE COURT: Absolutely.

20 MR. SMITH: I doubt that he's -- cell  
21 phone doesn't answer, not in the office, I  
22 don't know, on a Friday like this he may be  
23 gone.

24 THE COURT: Well, you know he's  
25 partially retired. And if he's not teaching

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1 today, finding him is probably, you are  
2 exactly right, going to be problematic.

3 MR. SMITH: I've asked him to call you  
4 if he gets the message; my cell phone is in  
5 the car.

6 THE COURT: Great.

7 MR. SMITH: And again I think the issue  
8 is it's conflict between a public place and  
9 identifying folks and we understand that.  
10 But I don't -- I just wanted to get what his.

11 THE COURT: Absolutely. What his input  
12 would be. All right. Very well. And did  
13 you -- do you have anything to add to that  
14 anyone?

15 MS. BEAHM: I'm Grace Beahm with the  
16 Post & Courier. And in order to illustrate  
17 the emotions of the courtroom and the people  
18 that are here for the interests of this case,  
19 it's important that we have permission to  
20 photograph in the courtroom, permission to  
21 photograph the audience.

22 THE COURT: Sure. You know, I think  
23 under these circumstances I'm going to ask  
24 you all to -- to -- to keep your -- not pan  
25 the audience because of the -- because of the

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1 issues. Typically and normally when the  
2 coverage is the issues involved in the  
3 litigation, that's normal. It's very rare  
4 that I've ever seen, I don't know that I have  
5 ever seen, not that it doesn't happen, the  
6 panning of the courtroom.

7 My concern is, is if there is  
8 panning of the courtroom, the clear intention  
9 for the panning of the courtroom is to  
10 identify the -- potentially the anonymous  
11 litigants and I certainly have sensitivity to  
12 that. So I'm going to ask you to please feel  
13 free to film anything above the -- above the  
14 bar. Please do position yourself where you  
15 can do that. But much as we try to protect  
16 jurors, I think it's reasonable to ask that  
17 we likewise protect those anonymous litigants  
18 who are allowed, under our law, to be  
19 anonymous.

20 And if we go into this afternoon  
21 and you all reach Mr. Bender or anyone else  
22 and they wish to be heard, just let me know,  
23 all right? Great. Thank you so much.

24 MS. DeMARCO: Judge?

25 THE COURT: With all that where are

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1 they?

2 MS. DeMARCO: I'm Sarah DeMarco with  
3 Channel 4. May the exception be maybe we  
4 could shoot in the courtroom without faces?  
5 That would give our photographers a little  
6 more room to cover today's story without  
7 identifying anyone sensitive to this issue.

8 THE COURT: What does that mean?

9 MS. DeMARCO: Basically shoot hands,  
10 people sitting. Back there like a wide shot  
11 so you don't actually see someone's face.

12 THE COURT: Back of the head, that  
13 doesn't identify folks, yeah, that's  
14 reasonable. Absolutely.

15 MS. DeMARCO: Thank you, Judge.

16 THE COURT: You do realize it's going to  
17 be very traumatic for those that didn't style  
18 the back of their hair today, but alas. All  
19 right. Very well.

20 Mr. Meyers.

21 MR. MEYERS: Thank you, Your Honor.

22 THE COURT: Absolutely.

23 MR. MEYERS: And it really is with  
24 respect to the press as much as what they run  
25 as opposed to what they shoot, so if they're

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1 just careful about getting permission for  
2 what they choose to run.

3 THE COURT: All right.

4 MR. MEYERS: Your Honor, I do want to  
5 start by acknowledging the positive  
6 development by both the diocese and class  
7 counsel in even bringing the resolution this  
8 far. I do have concerns about it, but I  
9 really want to commend both the diocese and  
10 class counsel for generating what has brought  
11 us here today. It's a good thing. It's a  
12 good thing for the organization, it's a good  
13 thing for the people they have served and the  
14 interest they attempted to serve in the first  
15 place.

16 Let me say the -- we filed four  
17 objections. The opt in/opt out issue is  
18 clarified and that one has gone away.

19 We had a concern about the class  
20 definitions. One of those concerns has been  
21 addressed, it was the unlinking of a parent's  
22 claim and a child's claim. Because the way  
23 the class definitions originally were  
24 written, for a consortium claim to happen a  
25 child's claim had to be unresolved. And as I

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1 read these pleadings, and I would simply ask  
2 for confirmation of this, it appears to me  
3 they have indeed unlinked them. And so a  
4 consortium claim could exist even if a  
5 child's claim had been previously adjudicated  
6 or resolved or released.

7 MR. RICHTER: That is -- if it will aid  
8 the Court, that is certainly a statement of  
9 the law. Consortium claim is not a  
10 derivative claim, it is a claim which stands  
11 on its own feet anyway and so I think that is  
12 again a restatement of the law. To the  
13 extent that that was unclear before, this is  
14 what I was referring to about the verbiage  
15 being construable in more than one way by  
16 different readers. Certainly we anticipate  
17 that anybody who has such a claim, it is an  
18 independent claim.

19 THE COURT: Okay.

20 MR. MEYERS: All right. That addresses  
21 that one concern.

22 Two concerns remain and they have a  
23 few pieces. Well, there's actually --  
24 it's -- I still have one concern, but let  
25 me -- let me back up and start by restating

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1 Rule 23 addresses the Court and asks the  
2 Court to have -- to approve something that  
3 is -- that fairly and adequately protects the  
4 interests of the persons on whose behalf the  
5 action was brought.

6 This is a very unusual settlement  
7 in the sense that the diocese has taken the  
8 initiative in response to the suits to extend  
9 themselves very consciously beyond the  
10 statute of limitations. They do not have to  
11 do that. They could fight every one of these  
12 cases as they have done in the past and  
13 sought to grind them all to the ground on the  
14 basis of the statute of limitations.

15 But having done that, having  
16 extended themselves beyond the statute of  
17 limitations, the concern that we've expressed  
18 is that some of my clients were the previous  
19 people challenging the diocese against whom  
20 the statute of limitations was asserted.  
21 They have no right to bring another case.  
22 They have no right to make a claim. They are  
23 excluded by this class definition. And  
24 certainly there is a res judicata element  
25 that works on them as a matter of law. But

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1 this is a settlement. And it is a settlement  
2 predicated on -- from the very beginning  
3 predicated on extending beyond the statute of  
4 limitations.

5 The objection I am seeking to  
6 accommodate does not require the diocese to  
7 pay any additional funds. It simply allows  
8 into the tent, so to speak, the very people  
9 the settlement tries to address, but for them  
10 having the temerity, as I put it in the past,  
11 to have attempted to do the very thing that's  
12 happening today: Seek compensation, ask the  
13 diocese to hold themselves accountable and to  
14 make a response on a pastoral level, if  
15 nothing else, to them.

16 So the way the definition is  
17 crafted, and this is the only definition  
18 issue I have, is the way we're going to  
19 interpret the word minor and claim  
20 adjudicated, resolved or released. We had  
21 proposed that the class be limited to those  
22 who had made no previous recovery. And we  
23 filed a proposed alternative definition.

24 If it is expanded to be no previous  
25 recovery, then the diocese is not committed

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1 to anything more. We are simply not making a  
2 distinction between those persons barred by  
3 the statute of limitations in theory and  
4 those who have been barred in fact. And I  
5 think there would be no basis for this  
6 objection if the settlement was not  
7 predicated on from the beginning reaching  
8 beyond the statute of limitations.

9 The case of Doe v. Crooks would bar  
10 anyone who was attempting to use anything  
11 other than the new statute of limitations  
12 that I think was passed August 30th in 2000  
13 that extends the time, page 27. And on --  
14 that was the concern. We put proposed  
15 language in the objection so the Court could  
16 really contemplate that in a very concrete  
17 way.

18 I mentioned the word minor.  
19 We've -- the definition goes back to those  
20 people, persons born before August 30th,  
21 1980, but then says who as minors were  
22 sexually abused. The age of majority has  
23 changed. It changed in 1975 from 21 to 18.  
24 And so if you had to be abused as a minor,  
25 that could actually involve persons of a

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1 different age. And the way the notice papers  
2 are written it is only 18. And I was  
3 concerned that that would be misleading.

4 And let me give you a very concrete  
5 example. The diocese runs parochial schools.  
6 One of my victims, clients, was female and  
7 molested by a female teacher at a parochial  
8 school. But the teacher was very astute and  
9 made sure that there was nothing beyond  
10 inappropriate touching of what would be  
11 considered the mild category under this  
12 matrix that I don't like so much until she  
13 was 18. She was still a student, but she was  
14 not 18. I mean, she was past 18.

15 THE COURT: Yes.

16 MR. MEYERS: And so under this  
17 settlement you could be molested as a student  
18 at a parochial school, but if the pedophile  
19 was astute enough to wait until you were 18,  
20 the diocese has no responsibility.

21 Now, if it said minor or parochial  
22 school student, that issue also would be  
23 addressed. And it is a nuance that I have  
24 come to appreciate from other cases where --  
25 and surely the diocese doesn't intend to say,

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1 as no school intends to say, that once our  
2 students reach age 18 they are fair game for  
3 any teacher who wants to be sexually involved  
4 with them, surely that is not a position they  
5 want to espouse.

6 The -- let me turn now to the last  
7 two points. The -- and let me make number  
8 four first. The second point is the value  
9 escribed to the consortium claims. I have  
10 stated in my objection that we know that that  
11 is completely disproportionate to what a jury  
12 has done in Charleston County with such a  
13 claim and that it seems very inappropriate to  
14 be so restricting to a consortium claim and  
15 the arbitrator does not have the discretion,  
16 even though he has discretion within the  
17 guidelines, does not have discretion the way  
18 this is written to go outside the guidelines.  
19 And so no consortium claim could ever be  
20 valued at above that amount.

21 I have presently both persons  
22 abused as minors and parents of persons  
23 abused as minors who could be in the  
24 settlement turning on this issue because the  
25 parents surely will respond if they feel

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1        their children are being addressed. And that  
2        goes to the point I was talking about  
3        earlier, whether those children could be in  
4        probably will determine whether parents are  
5        in. But parents will have to defend their  
6        own children. And my experience has been the  
7        parents defend their own children pretty  
8        vigorously and will probably be as aggressive  
9        as they feel like they perhaps should be.  
10       And there's not much risk if the only upside  
11       for them is a number that is so  
12       disproportionate to what a jury has done.

13                We have stated no objection to  
14       having parents recover less than the minors  
15       who were actually touched, but because of the  
16       same rationale that underlies my objection to  
17       the matrix itself and what it turns on, we  
18       have been very concerned about the number  
19       chosen, the fairness and adequacy of the  
20       number chosen for the consortium claims. And  
21       again, this does not require the diocese to  
22       pay any more money, it simply allocates  
23       within the claimants differently the moneys  
24       awarded.

25                THE COURT: Let me ask this question of

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1           you, Mr. Meyers, just to be sure that I  
2           understand the issue. The issue is twofold.  
3           Number one, you have concerns about the  
4           potential limitation on -- on those  
5           individuals who may have been beyond the age  
6           of majority still in parochial school when  
7           the age of majority went from 21 to 18 in  
8           1975 and that -- I have a concern about that.

9           MR. MEYERS: It's actually independent  
10          of the issue of the age. Because if 21 was  
11          the age of the majority, you're out of  
12          school. But once the age of majority after  
13          '75 dropped to 18 you get into this small --

14          THE COURT: Right.

15          MR. MEYERS: -- ambiguity period. And  
16          if it said minor or parochial school student,  
17          it would address that.

18          THE COURT: All right. And that was a  
19          concern. And then, of course, you expressed  
20          a concern regarding the value allowable under  
21          the settlement to the consortium claim.

22          MR. MEYERS: Right, that entire class.

23          THE COURT: And, of course, your concern  
24          that there may be those who have litigated  
25          issues in the past, been unsuccessful as a

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1 result of the statute of limitations and  
2 would be excluded because they -- because  
3 they are those who have been involved in  
4 litigation and not been successful.

5 MR. MEYERS: Right. And again, I think  
6 we distinguish between res judicata which  
7 certainly would bar, but this is a  
8 settlement, and a settlement to be fair and  
9 adequate since the settlement is predicated  
10 on extending beyond, I think there is a  
11 fairness issue about limiting only those  
12 people who have previously brought suit.

13 THE COURT: Yes. And so this is, of  
14 course, this is a settlement, this is not  
15 anything imposed by the Court and, of course,  
16 this is a fairness hearing. And do you  
17 maintain that because of these issues that  
18 the settlement as proposed is not fair? That  
19 would be, I guess, my first question.

20 And but I probably want to ask --  
21 that's maybe my second question. And my  
22 first question is, have you addressed those  
23 issues to proposed class counsel as well as  
24 to the diocese? Because I think that this  
25 hearing is one to determine the fairness as

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1 proposed, because this is settlement and the  
2 proposals as I have heard them from you are  
3 different, they contain different language.  
4 And as you've indicated, perhaps from the  
5 perspective of the diocese, they wouldn't be  
6 paying any more money potentially. It is  
7 different than what is proposed.

8 And so my first question, I guess,  
9 is have you addressed your requests with the  
10 class, proposed class counsel and the  
11 diocese?

12 MR. MEYERS: I have only very slightly.

13 THE COURT: Okay.

14 MR. MEYERS: I sent them, of course,  
15 what my objection was.

16 THE COURT: Sure.

17 MR. MEYERS: And talked very overtly  
18 with class counsel yesterday and have talked  
19 with diocese counsel, but only this morning.

20 THE COURT: Sure.

21 MR. MEYERS: So, and I intend to  
22 continue those discussions after today's  
23 hearing.

24 THE COURT: Okay.

25 MR. MEYERS: What I would say, though,

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1 is that what I'm trying to do is stay within  
2 Rule 23.

3 THE COURT: Yes.

4 MR. MEYERS: And to talk about whether  
5 we are fair -- it's not so much an issue of  
6 fairness, it's more an issue of adequacy.

7 THE COURT: Okay.

8 MR. MEYERS: Because Rule 23 talks about  
9 the interests of the persons on whose behalf  
10 the claim was brought. And if the claim is  
11 brought on behalf of anybody who hasn't  
12 previously sued, then my concerns can be  
13 swept off the table.

14 THE COURT: And your position is under  
15 Rule 23 that the Court can change the terms  
16 of the settlement, or simply disallow the  
17 settlement?

18 MR. MEYERS: No. The Court has  
19 authority under Rule 23 to change the terms.  
20 And the parties I guess could say, well, then  
21 we don't like it, I'm not going to do it, but  
22 in terms of passing muster with the Court, I  
23 think the Court has some fair amount of  
24 latitude under Rule 23.

25 THE COURT: No question but the Court

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1 can clearly say based on everything that the  
2 Court has heard; not going -- don't think  
3 it's fair.

4 MR. MEYERS: What you would really be  
5 saying is I don't think it's fair this way,  
6 it would be fair that way.

7 THE COURT: I understand. I understand.  
8 All right. I think that -- I want to be  
9 sure, because I may have cut you off.

10 MR. MEYERS: I got one more.

11 THE COURT: Okay.

12 MR. MEYERS: We had devoted the most  
13 time in our objection to the matrix being  
14 proposed.

15 THE COURT: Yes.

16 MR. MEYERS: Because the matrix is  
17 predicated on touch. We need a touch for the  
18 violation, but the problem we have with the  
19 matrix is that it uses the touch as the  
20 categorization method. So this is not an  
21 objection so much to the values in the  
22 matrix, it is that the criterion by which you  
23 move from one category to another has to do  
24 with the extent of touch.

25 But the psychological damage from

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1       these cases, as the order expresses this is  
2       about psychological damage, is not a function  
3       of touch, it is a function of betrayal, it is  
4       a function of trust being broken, but it --  
5       it's a subtle point in some respects because  
6       a touch is necessary for there to be a claim.  
7       But to use the extent of touch as the  
8       criterion by which the arbiter must choose  
9       one value or another, seems to be  
10      disassociated and unfairly and inadequately  
11      disassociated from the nature of the injury.

12               It's not lasting physical injury  
13      from the touch that plagues people's lives,  
14      it is the incredible turmoil created in them  
15      on a psychological basis because of the  
16      betrayals. And our concern was that the  
17      categories should not be segregated based on  
18      touch, they can stay as they are, but be  
19      disconnected from the criterion used to move  
20      from one to another.

21               I'm completely comfortable with  
22      using the upper limit and the lower limit and  
23      giving the arbiter discretion, but not  
24      restricting the arbiter as he's presently  
25      restricted from using the criterion that are

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1 being proposed. And I think that is also a  
2 nuance that the Court, again, could have a  
3 say-so about and again does not require the  
4 diocese necessarily to commit any further  
5 funds to it.

6 Those are my -- those are the  
7 objections that we stated and those are the  
8 concerns that we have.

9 THE COURT: All right. In other words,  
10 just to be sure that I understand, and it  
11 would be your position that once touch is  
12 established as the criteria, then the guiding  
13 factor would be the psychological effect?

14 MR. MEYERS: Right. How it has  
15 reverberated through someone's life, what  
16 problems have they had. Very typical have  
17 problems with authority figures, substance  
18 abuse problems, problems with intimacy and  
19 problems with family relations.

20 THE COURT: And then the arbitrator  
21 once -- once the touch has been --

22 MR. MEYERS: It's merely the starting  
23 point, right.

24 THE COURT: -- shown, then the range  
25 would be less limited.

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1 MR. MEYERS: And the arbiter could even  
2 use the extent of touch as one criterion, but  
3 not the sole criterion to separate out from  
4 one category to another, that was what our  
5 concern was.

6 THE COURT: Okay.

7 MR. MEYERS: It's not irrelevant, but it  
8 is not the only factor. And right now the  
9 way it's structured that is the only factor  
10 that moves you from one category to another.  
11 And similarly, Your Honor, with that  
12 consortium issue could also be folded into  
13 this same aspect. In other words, there's  
14 two ways to go at the limitations now in the  
15 consortium claim. One is to adjust the  
16 dollar amount, another is to simply put the  
17 parents into the same matrix and to say you  
18 as a parent might also be able to demonstrate  
19 an enormous dislocation in your life.

20 Many parents don't even understand  
21 why their children spend time in jail  
22 repeatedly, continue to have substance abuse  
23 problems, and parents turn themselves inside  
24 out. And there's so many times in my  
25 experience with these cases where the "ah-ha"

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1 moment doesn't occur until they finally  
2 understand their child was molested as a  
3 child, then many things make sense and things  
4 can again for the first time be effectively  
5 dealt with.

6 THE COURT: Okay.

7 MR. MEYERS: And I think there's -- it's  
8 hard to imagine as a parent, for any parent  
9 to imagine that as a parent that would not be  
10 distressing to know what happened to your  
11 child, which creates under South Carolina law  
12 an injury in you as a parent. And I think  
13 the cases have recognized that pretty well.  
14 I've actually -- I'm arguing that issue again  
15 up in the Supreme Court in May. But right  
16 now the law is very clear that exists. It is  
17 cognizable, independently cognizable as  
18 Mr. Richter alluded to earlier. Thank you so  
19 much.

20 THE COURT: Thank you so much. Thank  
21 you so much. And you can just, if you want  
22 to, you're welcome to just stay with us here  
23 if you will.

24 MR. MEYERS: Glad to.

25 THE COURT: Thank you. Yes, sir.

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1 MR. RICHTER: May it please the Court.

2 Your Honor, I'll try to run quickly through  
3 in order Mr. Meyers's objections and  
4 comments. I need to clarify for the record,  
5 however, one matter before I do that.

6 THE COURT: All right.

7 MR. RICHTER: Mr. Meyers filed his  
8 objections on behalf of certain people.  
9 Clearly those were not named and we  
10 understand that we're all seeking to preserve  
11 identity as fully as we can. We represent  
12 the interests of many people in a class, so  
13 both the diocese and us inquired of  
14 Mr. Meyers as to those individuals thereby  
15 meeting our obligations about fictitious  
16 people, fraudulent claims. And I'm not  
17 suggesting any of that, but -- and he, of  
18 course, cooperated fully by sending us a  
19 letter listing out all of those people.

20 I just need to put in the record  
21 here now, if you would allow me, just a  
22 statement from Mr. Meyers, if he will,  
23 verifying that the people he's appearing for  
24 are the people that he sent -- he gave us a  
25 John Doe plus the identity of the individuals

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1 in the letter and we would just like him to  
2 say those are the people I'm appearing for  
3 and not somebody else.

4 THE COURT: And the letter went to both  
5 sides, to the diocese as well as --

6 MR. SHAHID: When we received the  
7 objections, Your Honor, it was difficult  
8 to -- I understand who the John Does are, had  
9 an idea, but for clarity I wrote Mr. Meyers a  
10 letter asking him to provide me with the  
11 actual names and I told him I would keep that  
12 in confidence. He complied with my request,  
13 and so I was able to then clarify what  
14 individuals fit into these John Does and have  
15 a better idea now that he's spoken. Some of  
16 the other identities I didn't recognize.

17 So we have the names and we have --  
18 some of the names, as I understand them, are  
19 parents or spouses I think of the actual  
20 claimant which helps us identify them as well  
21 too.

22 MR. RICHTER: We made a similar request  
23 then and Mr. Meyers said just tell Peter to  
24 send, or maybe he told Peter to send the  
25 letter to us, maybe he sent a us a copy of

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1 the letter he sent to Peter, but he  
2 immediately accommodated our need to know as  
3 well. We're just simply trying to make the  
4 record clear that that's who he appears for  
5 and not somebody else.

6 THE COURT: I'm with you completely.

7 MR. RICHTER: We're not seeking to put  
8 the name in the record.

9 MR. MEYERS: Here's what I did. When I  
10 got notice there was class resolution, I went  
11 through every abuse-related case I had ever  
12 been in. It's a pretty long list. But  
13 anybody who had contact with the diocese  
14 agent or employee I marked that person,  
15 pulled out the name and then framed my  
16 objections using that mix.

17 Now, some of these are persons I  
18 represented some years ago, and in one  
19 instance I sent a letter saying here's what's  
20 going on, I think you need to know about it.  
21 It came back to me because the person's  
22 moved.

23 So these are individuals who I've  
24 previously represented or their parents and  
25 that's the list that I'm using. They're all

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1 real people. I have presumed parents for  
2 people when I -- like that individual who the  
3 letter came back from, haven't spoken to them  
4 yet. His parents could be deceased, so there  
5 is not more than those people, there is --  
6 and I've made note of that one individual, he  
7 was not on my list, but I added him to the  
8 letter saying I haven't heard back from him.  
9 So that is, indeed, on whose behalf I stated  
10 my objections.

11 THE COURT: And when you transmitted  
12 those names to counsel, was it your  
13 understanding that the transmission of those  
14 names was done in a protected fashion?

15 MR. MEYERS: Yeah, it was. Both the  
16 expressed assurance by Mr. Shahid and by  
17 Mr. Haller. And it certainly fits with the  
18 Court's order to date ascribing  
19 confidentiality to everyone who is  
20 participating in the process.

21 THE COURT: I would certainly,  
22 gentlemen, entertain an order, consent order  
23 from the three of you to that effect since  
24 that was your agreement.

25 MR. RICHTER: Here we have a problem

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1 greater than that, Your Honor.

2 THE COURT: All right.

3 MR. RICHTER: We represent the interests  
4 of persons who may be here today, may not be  
5 here today, may not have made a claim yet, a  
6 class, punitive class or actual class,  
7 punitive initially, now an actual class. My  
8 concern is I have to defend positions for the  
9 persons I represent.

10 THE COURT: Yes.

11 MR. RICHTER: If a lawyer comes in here,  
12 files a pleading that says I'm filing this  
13 pleading on behalf of these people, that must  
14 mean I represent these people. He hasn't  
15 said that. And my concern is, and I'm not  
16 accusing Mr. Meyers of this in any way, but I  
17 know something about mass litigation,  
18 parachute lawyers and lawyers who challenge  
19 classes. And I'm not suggesting Mr. Meyers  
20 is in that category, I'm simply saying I've  
21 been through it before and I know what  
22 motivates a lot of people and it's money.

23 So to be candid with you, I can't  
24 stand here and let him represent to you that  
25 he's making all these arguments seeking to

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1 broaden the class beyond, as I'll argue in a  
2 moment, what the law provides for, for people  
3 he doesn't even represent. He's got no  
4 standing to be in here. Worse than that, if  
5 they've opted out, he doesn't have a right to  
6 say anything anymore, unless he's intervened  
7 under Rule 24. He hasn't tried to do that.

8 Most compellingly, I'm not going to  
9 sit idly by, I'm not accusing him of any ill  
10 motive at all, I can't as an officer of the  
11 Court or as counsel for a member of this  
12 class, I'm here arguing for the rights of a  
13 long list of people and in the face of that  
14 list saying so and so, a certain John Doe  
15 whose name is provided D, and then naming  
16 John Doe E as being John Doe D's father whose  
17 name I do not yet know. I do know it. I  
18 went to church with the family. He's dead.  
19 I object to that.

20 I don't think anybody ought to  
21 represent to this Court or any court they  
22 represent -- I don't think you can represent  
23 to the Court that you represent somebody if  
24 you don't. There are requirements about  
25 taking on a representation.

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1                   So among the objections we're going  
2                   to have in a moment to his substantive  
3                   points, is that he doesn't have any client.  
4                   So that's why I said we got to know who he  
5                   represents. And he says the people. I  
6                   think, he hasn't said it yet, he either  
7                   represents or doesn't represent. Who is live  
8                   on this list that he represents, I guess is  
9                   what we're asking.

10                   And let me -- and I'm being candid  
11                   with the Court, people on this list have  
12                   called me and asked me to represent them in  
13                   this matter.

14                   THE COURT: All right. Again, which  
15                   underscores my comment to you earlier that I  
16                   will entertain an order protecting the names  
17                   of those individuals, because obviously those  
18                   names would not be protected under the  
19                   attorney/client privilege or under work  
20                   product. So they're out there. And what  
21                   concerns me is that the names, no doubt in  
22                   good faith, were provided pursuant to request  
23                   of counsel and without the Court's order to  
24                   protect those names.

25                   MR. RICHTER: Yes, ma'am.

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1 THE COURT: There is no protection  
2 either on the work product or under  
3 attorney/client to protect those names and  
4 they've now been communicated, okay?

5 So irrespective, in order to do  
6 what I think counsel intended to do, was to  
7 have the benefit of the information, and no  
8 doubt Mr. Meyers hasn't intended to harm  
9 anyone. I would say by communicating that  
10 pursuant to your request there needs to be a  
11 court order in place, okay? That's the first  
12 issue.

13 The second issue is the -- the  
14 potentiality of -- of Mr. Meyers's argument.  
15 And he tells me that these are individuals  
16 that he has in the past represented,  
17 particularly those whose litigation came no  
18 doubt to his mind an early demise and that  
19 he's contacted those individuals and no doubt  
20 one or more have said please proceed in this  
21 regard.

22 MR. MEYERS: And there are only two  
23 cases.

24 THE COURT: You know, one of the  
25 benefits of having practiced law in this

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1 courthouse for about 15 years and being a  
2 judge for about nine, I know my trains. I  
3 know my trains. Okay. I'm sorry, go ahead.

4 MR. MEYERS: In only two instances, if I  
5 remember the list right, was there a prior  
6 claim that was taken all the way to the  
7 litigation. In another instance it was a  
8 letter to Mr. Shahid and no litigation  
9 followed.

10 But what I'm actually trying to do  
11 today is increase the number of clients in  
12 Mr. Richter's class. The invitation in the  
13 Court's order was to state objections to the  
14 fairness and the adequacy of the proposed  
15 settlement. And some of these people have  
16 explicitly called in, said here's my concern.  
17 Many of them I have encouraged to call  
18 Mr. Richter. So I'm not in competition with  
19 Mr. Richter.

20 MR. RICHTER: That's not the issue.

21 MR. MEYERS: And I don't want him to  
22 feel like I am.

23 THE COURT: That's -- that's not a  
24 matter that concerns me in the least. The  
25 question has been who are you here

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1 representing. There have been a number of  
2 people that you have given -- in your attempt  
3 to be candid, my question to you is are you  
4 here representing one person?

5 MR. MEYERS: Yes.

6 THE COURT: Very well. That's enough.  
7 Enough said on that issue. All right. At a  
8 later time those issues can be clarified.

9 MR. RICHTER: Sure.

10 THE COURT: My concern today is now  
11 satisfied. Okay.

12 MR. RICHTER: Thank you. And now if I  
13 can have a merits argument, please.

14 THE COURT: Yes.

15 MR. RICHTER: If you don't mind I'll  
16 stay here, Your Honor.

17 THE COURT: Sure.

18 MR. RICHTER: I'm going to ask  
19 Mr. Haller to hand out a brief that we have  
20 containing authorities about this point, hand  
21 it up to your clerk and a copy for the Court.  
22 And while he's doing that -- I'm a stickler  
23 for accuracy, Your Honor, as best I can  
24 accomplish it. And while we didn't come here  
25 to fight back and forth today certainly

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1 between the diocese and the class, I've got  
2 to correct what Mr. -- it would be an  
3 injustice to the victims in this case if I  
4 didn't correct the statement that Mr. Meyers  
5 made in the beginning of his presentation  
6 when he said that the diocese took the  
7 initiative to do what has been done here and  
8 expand the availability of claims well  
9 outside the statute of limitations.

10 I want to say publicly that the  
11 diocese did nothing of its own initiative.  
12 The diocese was brought here kicking and  
13 screaming. And you'll hear more about that  
14 perhaps depending upon certain positions the  
15 diocese takes.

16 Now, that having been said, I want  
17 to further clarify, Mr. Meyers made reference  
18 to the Doe case which dealt with the statute  
19 of limitations. And what he said was that  
20 the Doe case said nobody could proceed except  
21 now under that statute of limitations and  
22 that authority. What the Doe case didn't do,  
23 is it didn't take away any defenses to the  
24 statute of limitations. There are defenses  
25 to the statute of limitations. For example,

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1 fraudulent concealment is a defense to the  
2 statute of limitations. There are others.

3 It's the burden of effective  
4 counsel to defeat the statute of limitations  
5 or to raise a substantial obstacle for those  
6 seeking to assert a statute of limitations  
7 building in for them the fear that they may,  
8 in fact, not prevail on that argument. We  
9 don't come here to self-aggrandize, but I  
10 must now say to you because of the argument  
11 that was made earlier, we did that and that's  
12 why this class exists in part, in large part.  
13 There are other issues that helped us --  
14 other positions that we took that helped us  
15 get around the statute of limitations.

16 Every issue in this case was hotly  
17 contested. Professor Freeman has submitted  
18 an affidavit having reviewed everything.  
19 That's one of the things he says in his  
20 affidavit. You have before you the  
21 arbitrator, who had been the mediator in this  
22 case in a multi-day mediation. If anybody  
23 can attest to the tenacity with which the  
24 issues were propounded and defended in this  
25 case, I know cocounsel will join me, opposing

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1 counsel will join me in making that  
2 representation, certainly the independent  
3 mediator, now arbitrator, will also, I'm  
4 certain, substantiate those comments.

5 So Doe didn't take away any defense  
6 to the statute of limitations and we don't  
7 seek to, obviously, in this class.

8 As to the issue about minor, 18  
9 versus 21, all the class definition says is  
10 while a minor. Nobody's rights are taken  
11 from them. Any right any client Mr. Meyers  
12 may have who fell into the category of being  
13 over 18 but under 21 at any particular time,  
14 that right, if that person has a right, is  
15 not taken away. That person can litigate  
16 from here to kingdom come outside this class.  
17 Mr. Meyers has done that in many instances.  
18 So nobody's rights are taken away at all.  
19 Many people will enjoy the benefit, however,  
20 of us having gotten over the statute of  
21 limitations issues, and if they were abused  
22 as minors we have agreed, after hard  
23 negotiations with the diocese, that that's  
24 who makes up this class.

25 Adding these other people would

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1 have an effect, we believe, outside the law,  
2 but it may also have a very large effect on  
3 what is -- what individual claimants could  
4 then recover in the matter. So I do think --  
5 I'm not arguing that, I'm just saying that's  
6 a consideration, that it's appropriate for  
7 Your Honor to take.

8 As to lifting the cap on the  
9 consortium claim, Mr. Meyers makes reference  
10 to a very large verdict that he obtained  
11 against, if I recall, Porter Gaud school and  
12 several individuals, maybe only two  
13 individuals or their estates. And I am  
14 familiar as he, I believe, noted in his  
15 submission to the Court, we are -- we, too,  
16 represented people in the Porter Gaud  
17 litigation.

18 So I'm familiar with how that went  
19 down and I'm not at liberty to offer specific  
20 numbers, but this argument having been raised  
21 by counsel, I feel that I am compelled to  
22 note that obtaining a very large verdict and  
23 collecting, I would guess, less than  
24 2 percent of that verdict is very different  
25 from obtaining a certain recovery for all the

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1 people who are going to appear in this -- in  
2 this class. And I believe that's what  
3 happened as to that, quote, very large  
4 verdict.

5 We say in our brief, only half  
6 tongue and cheek, the jury verdict in that  
7 case may be quite useful for placement on a  
8 wall, but it doesn't have much utility of  
9 putting money in the bank. This does.

10 Now, as to the matrix objection,  
11 Mr. Meyers says that there's something wrong  
12 with the degree of sexual abuse claim  
13 triggering where you are placed in a matrix.  
14 So that the Court can be clear or anybody  
15 else who is involved in these arguments can  
16 be clear, a distinction has been made if an  
17 offender patted someone on the posterior  
18 through clothing, that person may consider  
19 that a sexual touching and may make a claim  
20 herein. Quite different from fellatio,  
21 digital penetration, a plethora of other  
22 matters, some over some period of time. So  
23 there is a range of injuries.

24 South Carolina in Harvey is it, in  
25 The Harvey case cited in our memorandum,

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1 particularly page 8 and 9, clearly recognizes  
2 that the nature of a sexual offense in the  
3 realm of torts, the nature of a sexual  
4 offense, is so intrusive as to impugn intent.  
5 So even the touching, as I described earlier  
6 on the fanny, the single slap, qualifies and  
7 is a trigger mechanism, but clearly degrees  
8 are recognized.

9 And the most concrete and current  
10 example I can give you is from the diocese of  
11 Covington, Kentucky. And I'm not sure that's  
12 the proper name of that diocese. Is that  
13 correct? Covington, Kentucky, I believe is  
14 the correct name, Mr. Geoly tells me, in  
15 which, you know, we -- and again, this is --  
16 we don't claim to be any more or better than  
17 what we are, but we worked pretty hard on  
18 this matter, we've been opposed pretty hard  
19 by able counsel on the other side, and at the  
20 end of the day we've all tried to make sort  
21 of the best that we can make of this.

22 And on our behalf and behalf of  
23 those potential class members we've been  
24 working for, we looked at every settlement in  
25 the United States of America. I'm sure

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1 that -- Mr. Geoly is from Chicago and this is  
2 what he does, has been doing, sadly, across  
3 the nation for the last little while, so I'm  
4 sure he has done at least and Mr. Shahid  
5 probably, too, all the same things.

6 In Covington, Kentucky, a matrix is  
7 adopted, an Exhibit A is captioned "Sexual  
8 Abuse Categories and Ranges of Award." Then  
9 even in more detail than we do, it starts  
10 with individual remarks about a minor's  
11 genitals, breasts, buttocks, etcetera,  
12 etcetera. Starts at a \$5,000 level down  
13 here. My point is it's a matrix and it goes  
14 the whole way up and it is tied squarely to  
15 the degree of the activity perpetrated upon  
16 that -- the various victims.

17 So it is very clear and very fair,  
18 I might add, precedent that exists about this  
19 approach. We didn't just dream this up.

20 So all of that having been said, it  
21 would be great if all lawyers who try cases  
22 and don't prevail -- I say this as a  
23 lawyer -- could come back and get another  
24 chance to make your claim again. The law  
25 won't stand that, reason won't stand that.

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1 Now, I understand that there can be  
2 reasons why a settlement is defective or  
3 someone can seek to set it aside or  
4 consideration can fail, various things. I  
5 certainly recognize all of that. And we  
6 don't seek to restrict anybody's rights about  
7 filing their claim and saying whatever facts  
8 may exist however they cut.

9 But the idea of saving everybody's  
10 rights who have already been to the bar of  
11 justice and didn't prevail, either from  
12 letting time run, for example, by striking  
13 cases pursuant to a rule that requires within  
14 a year you can put it back and missing that  
15 time frame in perhaps two cases, just as an  
16 example I offer that, to not propounding the  
17 arguments and not making the points and  
18 issues that we have so vigorously pursued in  
19 this case which have succeeded in bringing a  
20 very recalcitrant, proud diocese to heel in  
21 this case to the extent of getting rid of the  
22 statute of limitations, charitable immunity  
23 cases.

24 We've heard from one person who is  
25 52 years old. You could be 114 and have been

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1           abused when you were six years old and under  
2           this class, if you haven't adjudicated that,  
3           you can be heard. That's the best we can do.  
4           And frankly, we've been adversaries the whole  
5           way, still are adversaries, the truth is the  
6           truth, that's probably the best they can do  
7           as well.

8                       So that's our argument, Your Honor,  
9           our legal positions. If you can give counsel  
10          a copy. Our legal positions, the authorities  
11          that support those arguments are all set  
12          forth in this brief. Thank you for hearing  
13          me.

14                   THE COURT: Thank you.

15                   Mr. Shahid, Mr. Geoly.

16                   MR. SHAHID: Thank you, Judge.

17                   THE COURT: Yeah.

18                   MR. SHAHID: Your Honor, I want to say  
19          that from the outset that the one thing  
20          that's been a theme which is a fact of this  
21          case is that the Diocese of Charleston is a  
22          charitable, religious organization and that  
23          while we may have come in here as adversaries  
24          with class counsel, the mere fact of the  
25          matter is that we have reached an agreement

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1 and it's not court imposed, it's an agreement  
2 between the parties.

3 And it may have been a hard road to  
4 get there, it may have been that we fought  
5 back and forth over a period of time, but the  
6 bottom line and what -- is that everybody  
7 take recognition of this is an agreement. In  
8 litigation courts encourage agreements,  
9 courts like to see us reach an agreement and  
10 that is what we have done. And that's, I  
11 think, a credit to everybody at these tables  
12 this morning, this afternoon.

13 We are a church. And in response  
14 to some of the comments made by Mr. Meyers  
15 about people who have litigated and sort of  
16 lost out, over the past ten years we have  
17 addressed claimants who have come forth  
18 either with or without counsel and we have  
19 looked at the defenses that have been made  
20 available to us. And first charitable  
21 immunity has been a complete bar, statute of  
22 limitations have been a complete bar, lack of  
23 notice by that person, propensity has been a  
24 bar.

25 But we have attempted to address

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1        those claims in the way that looks at the  
2        nature of the abuse, the extent of the abuse,  
3        the actor involved in the abuse, the victim,  
4        the victim's family, the whole set of  
5        circumstances and factors. And we have  
6        settled these cases knowing the pitfalls of  
7        litigation as it applies to the diocese and  
8        as it may apply to the victim.

9                I say that so that the Court and  
10       the public is aware that this agreement was  
11       reached with that type of backdrop. And  
12       we've settled cases, maybe not because a  
13       person could legally proceed with that, they  
14       may have been barred by the statute of  
15       limitations or charitable immunity, but  
16       several cases of being pastoral.

17               The issues that Mr. Meyers has  
18       brought up I think applies to two particular  
19       folks whose claims may now not be eligible to  
20       be a member of this class. And that's sort  
21       of the gamble, unfortunately, that we take as  
22       lawyers when we initiate a claim and we're  
23       not successful with it.

24               Nothing prevents the diocese from  
25       addressing Mr. Meyers's particular claims now

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1 outside of the class. Nothing prevents us  
2 from addressing that now in the pastoral  
3 approach. I'm not saying we will do it or  
4 offer more money, but we have other ways of  
5 addressing those concerns outside the strict  
6 definitions of this class.

7 There has to be boundaries, there  
8 have been boarders, there have to be  
9 deadlines, there have to be clear definition  
10 of minor and filing a claim and things of  
11 that nature: The one particular case that  
12 Mr. Meyers referenced involved a minor. He  
13 brought that to my attention several years  
14 ago; we have addressed that. No other claim  
15 was brought forth at the time because of some  
16 discussions that we had.

17 That particular case the definition  
18 of minor has got to be, as Mr. Richter said,  
19 it's nothing taken away from that person, but  
20 we cannot expand it beyond what the law  
21 allows us or disallows us to do. Mr. Richter  
22 used the Covington approach as to the  
23 specifics as to the amount of money contained  
24 in the matrix.

25 THE COURT: But before you move on, let

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1 me ask this question of you, Mr. Shahid,  
2 because I sense you're moving to a different  
3 topic. Am I given to understand that the --  
4 that this litigation was, as argued by  
5 counsel, that this was an adversarial process  
6 and contested in this instance or more of the  
7 pastoral nature?

8 MR. SHAHID: Judge, it was a  
9 combination. They brought a lawsuit and we  
10 were adversaries. We got to mediation and  
11 the mediator, God bless him, got us together  
12 and deserves all the credit in the land for  
13 getting us to this point. And it took that  
14 process to go through it.

15 THE COURT: Okay.

16 MR. SHAHID: So it was adversarial.

17 THE COURT: Okay. I was going to note  
18 for the record that I had the occasion to  
19 speak to you, Mr. Shahid, and to Mr. Richter,  
20 with Mr. Geoly also on the line and  
21 Mr. Haller, and I was just going to reflect I  
22 noticed a certain heat from your responses.

23 MR. SHAHID: You're being very kind in  
24 saying it that way, Judge.

25 THE COURT: You know, and we were only

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1 talking about do we meet on a Tuesday or  
2 Thursday. So it wasn't like it was  
3 substantive and difficult, so I just wanted  
4 to be sure that I had not caught you all on a  
5 bad day.

6 MR. SHAHID: No. I think that it's sort  
7 of just been this very odd relationship, I  
8 guess, when we clearly are adversaries but we  
9 clearly were generating and sort of pedaling  
10 in the same direction and the direction was  
11 to get to this agreement.

12 THE COURT: That's not unusual when --  
13 that is not unusual certainly based on my  
14 experience, because at some point if you're  
15 going to try to craft a settlement in a class  
16 action that -- and they are all complicated,  
17 even the simplest ones are complicated, there  
18 has to be cooperation to just get through the  
19 process to come up with a process.

20 So I just -- my only interest was  
21 to be sure that I understood that the --  
22 certainly until there reached -- there  
23 reached the point where there was some  
24 discussion of settlement, that it was  
25 adversarial. Because one of the concerns,

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1 obviously, particularly in the class action  
2 realm is -- is that resolution in class  
3 actions are not borne out of the adversarial  
4 process.

5 MR. SHAHID: Right.

6 THE COURT: And I just wanted to be sure  
7 that I was clear about that, because  
8 certainly my participation in it certainly --  
9 certainly appeared that it was adversarial, I  
10 mean, particularly there were some occasions  
11 where, you know, Mr. Geoly, you know, had to  
12 not separate the two of you, I don't mean to  
13 use that strong of language, but he had to  
14 come in to sort of be the voice of reason, if  
15 you will.

16 MR. RICHTER: Your Honor, not to  
17 interrupt my friend.

18 THE COURT: Yes.

19 MR. RICHTER: But to the extent I know  
20 he will join me in this, I mentioned to you  
21 earlier that the mediator, now arbitrator, is  
22 present in the courtroom.

23 THE COURT: Okay.

24 MR. RICHTER: We certainly have no -- if  
25 you just want some independent verification

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1 for the record about the adversarial nature  
2 of these proceedings, you can sure get it  
3 there.

4 THE COURT: Okay. Thank you.

5 MR. SHAHID: But I see that just sort of  
6 the spirit that, you know, it's -- in  
7 Covington, and I've talked to the lawyer who  
8 addressed in Covington, I mean, that was --  
9 that literally was something shoved down  
10 their throat. A court, a judge said this is  
11 what you're going to do against your  
12 opposition. Well, we didn't -- we mediated  
13 it, we got an agreement, and that's, I think,  
14 the point I just want the public to  
15 understand is we've reached a consensus, be  
16 that as it may.

17 Your Honor, as to the matrix issue  
18 and Mr. Richter addressed this with how he  
19 looked at the Covington matrix. Mr. Geoly  
20 has more of a national exposure to these  
21 types of cases and has been involved in other  
22 jurisdictions and we're certainly aware of  
23 what other jurisdictions have done in  
24 resolving these cases.

25 And we have, unfortunately, a

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1 history of comparing how these kind of cases  
2 have settled and been resolved based upon  
3 what's outlined in the matrix. And  
4 unfortunately you've got to create something  
5 of a box as to the nature and extent of as,  
6 Mr. Meyers said, a touch. Because that's the  
7 initial part. You've got to have that  
8 activity or the intent of that activity to  
9 get you to the starting block.

10 What we have done is on page 9 of  
11 the agreement, paragraph -- subparagraph O,  
12 we provide for -- the agreement, I should  
13 say, provides for that, that at any time a  
14 claimant can have a psychological assessment  
15 by Dr. Wade and that assessment at the  
16 claimant's choice can be presented to the  
17 arbitrator.

18 Now, what that does is it gives the  
19 arbitrator a clear document to help him look  
20 at the nature and extent of the injuries by  
21 the claimant that takes in consideration  
22 something more than just the touch part, that  
23 takes in consideration concerns that  
24 Mr. Meyers brought up, such as position of  
25 trust, the extent over a period of time of

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1 the injury, how it affects that person, that  
2 person's family, holding a job, substance  
3 abuse problems, marriage problems,  
4 relationship problems, all those things,  
5 those intangibles that we, as lawyers, have  
6 to deal with from time to time in resolving  
7 personal injury cases.

8 And in this context gives the  
9 arbitrator not just a clear black and white  
10 as there's a touch, but it also gives the  
11 arbitrator opportunity to then evaluate,  
12 based on Dr. Wade's report, how much this has  
13 affected that particular claimant. So we  
14 haven't not ignored and we're not trying to  
15 be mechanical with this, I think we were  
16 attempting to use experience, what other  
17 dioceses have used, what we have seen  
18 nationally and what we have seen in our own  
19 diocese where these cases kind of fit.

20 And that's why the range is  
21 somewhat, I think, generous and I think  
22 appropriate, for the way we came up to this  
23 conclusion or this agreement.

24 THE COURT: Of course there is a  
25 counseling component to the settlement.

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1 MR. SHAHID: Exactly.

2 THE COURT: And it's -- it's -- it has a.  
3 limitation, but it certainly is included.

4 MR. SHAHID: Right. Thank you, Judge.

5 THE COURT: All right. Let me see.

6 MR. GEOLY: Your Honor, may we make one  
7 additional comment?

8 THE COURT: Yes.

9 MR. GEOLY: And I think Mr. Richter may  
10 have addressed this as well. But Mr. Meyers  
11 did raise the issue of the age of the victim  
12 in the parochial school setting. And I think  
13 that it's just important to state that the  
14 purpose here was to deal with child sexual  
15 abuse claims. That's not to say those are  
16 the only torts that any agent of the diocese  
17 will ever commit, unfortunately, and to the  
18 extent there are other claims that are not  
19 child sexual abuse related, well, we're here  
20 and available to talk to whomever wants to  
21 come forward.

22 But you have to define a class  
23 somehow. And wherever you draw the line,  
24 there will be people who are just there  
25 beyond where you drew the line. They're that

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1 much older or it happened that much later or  
2 they were that much younger or it's this  
3 slightly different kind of tort, or however  
4 you draw the line you are including and  
5 excluding, it just goes with the territory.

6 The idea was to address a very  
7 broad concept, but one that could at least be  
8 defined, and that was child sexual abuse  
9 claims. So while there may be people who are  
10 over 18 in a school setting, if under the law  
11 at the time they were not minors, they're not  
12 included in the class, and that is by intent.  
13 And it's not to be arbitrary, it's to be  
14 clear.

15 THE COURT: Okay. All right. And just  
16 for the record, since the mediator now  
17 arbitrator is here, if you'd come on forward,  
18 come in front of the bar so that -- there we  
19 go. And do you -- both counsel have made  
20 reference to the mediation as being a  
21 mediation which, I gather, would have  
22 depicted certainly in your presence, as both  
23 have indicated, that this settlement was one  
24 borne out of an adversarial procedure?

25 MR. INFINGER: Your Honor, Marvin

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1 Infinger for the record.

2 THE COURT: Yes.

3 MR. INFINGER: And I can attest that the  
4 advocacy was absolutely wonderful, if not  
5 overly vigorous at times by both sides.  
6 Absolutely no question but that there were  
7 very strong legal positions taken, factual  
8 positions taken, and it was very, very much  
9 adversarial.

10 THE COURT: Okay. Very well. And  
11 you're very bold to remain.

12 MR. INFINGER: Well, didn't get beat up,  
13 didn't have to separate Mr. Shahid and  
14 Mr. Richter luckily.

15 THE COURT: Very well. All right.

16 All right. Mr. Meyers, I'm going  
17 to turn to you for response.

18 MR. MEYERS: Thank you, Your Honor.  
19 There's really -- just on the personal side  
20 there's a few just incorrect statements in  
21 Mr. Richter's pleading which I don't think  
22 relate to anything having to do with that,  
23 it's really attacks he made about me  
24 personally which I set aside in past cases  
25 and things like that.

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1 I think the main issue is whether  
2 the Court is really satisfied with the  
3 fairness and adequacy and I think that's  
4 almost completely driven by the Court's  
5 conception of who is trying to be addressed.

6 The language from Rule 23, the  
7 persons who are to be addressed by the  
8 litigation I think is the exact language of  
9 the statute. The interests of the person on  
10 whose behalf the action is brought. And if  
11 that is conceived of as children who are in  
12 the diocese system as students, whether  
13 they're 18 or 17 and 350 days, I think that  
14 drives the first issue that we were talking  
15 about where that line is drawn.

16 Certainly you have to draw the  
17 line, but on whose behalf is the litigation  
18 brought, I think is the lens through which I  
19 would encourage the Court to look at that.  
20 And I think that helps to clarify some of the  
21 issues.

22 The issue of the matrix, I  
23 appreciate that it's often used. I just  
24 think it is a very bad fit for what is really  
25 going on in these cases and that's why I

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1 encourage the Court to create a better  
2 template that I think more adequately creates  
3 both the fluidity for the arbitrator and  
4 the -- plugs into the real mechanisms of what  
5 is going on.

6 THE COURT: And part of your concern is  
7 that -- the example is used as the pat on the  
8 bottom, and for whatever reason for this  
9 person the pat on the bottom could be an  
10 overwhelmingly -- for whatever reason, for  
11 that individual, could be an overwhelmingly  
12 damaging event psychologically. And your  
13 concern is -- is placing the matrix on the  
14 physicalness rather than the psychological  
15 basis.

16 MR. MEYERS: Right.

17 THE COURT: Do I understand your  
18 argument?

19 MR. MEYERS: Exactly. And again we  
20 don't object to it being a factor, the  
21 physical touch being a factor, but once you  
22 cross the starting line it shouldn't be  
23 arbitrarily limited by the nature of the  
24 touch.

25 THE COURT: Very well.

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1 MR. MEYERS: Thanks, Your Honor.

2 THE COURT: Thank you so much.

3 And all right, Mr. Bilbro.

4 MR. BILBRO: First of all, Your Honor, I  
5 would like to --

6 THE COURT: Hold on so they -- because  
7 I've restricted our folks from the press.  
8 Come on forward and now begin.

9 MR. BILBRO: Okay. My name is Walter  
10 Bilbro. I represent two claimants. I was  
11 concerned about the fairness. I, like  
12 Mr. Gregg Meyers, was concerned about the  
13 matrix not taking in what I thought was very  
14 serious psychological factors which I put in  
15 my objection to how they were setting up the  
16 class and so forth.

17 The other thing I was concerned  
18 about, Your Honor, and I've maybe refined a  
19 little more after listening to him today, was  
20 if you look at page 5 of the agreement,  
21 specifically the first full paragraph.

22 THE COURT: Okay.

23 MR. BILBRO: It says, The criteria for  
24 the arbitrator to determine the amount of the  
25 award for sexual abuse claims shall include,

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1 among other things, the type of abuse, its  
2 duration and the extent of injuries suffered  
3 by the claimant.

4 I believe, Your Honor, because  
5 since there are ongoing injuries, ongoing  
6 psychological problems I thought there should  
7 be inserted to make it more clear after the  
8 word injuries and damages, because there are  
9 things like loss of income, and used the word  
10 suffered, suffered is past tense, so I think  
11 we leave it suffered by the claimant and in  
12 the future. So there's no question when the  
13 arbitrator's actually considering this, that  
14 it is anticipated.

15 And in talking with them earlier  
16 this morning, and it is anticipated, but I  
17 think -- and I don't want to criticize the  
18 artfulness or inartfulness of the drafting, I  
19 do think that it does need to be a little  
20 more specific because it is ambiguity in that  
21 particular sentence.

22 The next sentence in which it says,  
23 The award for a claim for a loss of  
24 consortium, it should be \$20,000 for each.  
25 Based on my understanding, it sounds like

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1 based for each living parent of a claimant.  
2 I may be mistaken, but that's what I  
3 understood.

4 MR. SHAHID: Yes, that's correct.

5 MR. GEOLY: Yes, that's correct.

6 MR. BILBRO: Number two, And \$20,000 for  
7 the spouse of a claimant. I don't know if  
8 that means a former spouse?

9 MR. GEOLY: No.

10 MR. BILBRO: A present spouse?

11 MR. GEOLY: Yes.

12 MR. BILBRO: Can we say present spouse?  
13 I think we just need to be a little clearer.  
14 Other than that, I'm satisfied with the  
15 agreement.

16 THE COURT: Okay. Very well. Thank you  
17 so much. All right.

18 All right. And does that prompt  
19 anything, the discussion? If so, come on  
20 forward and let's put that on the record.

21 MR. CREECH: Thank you, Your Honor.

22 THE COURT: Just again identify yourself  
23 for the record.

24 MR. CREECH: Matthew Creech here for  
25 Johnny Parker.

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1 THE COURT: Yes.

2 MR. CREECH: Having listened, I think  
3 that our concerns still have been basically  
4 met. Mr. Parker filed a lawsuit 17 months  
5 ago, which has been vigorously prosecuted,  
6 defended as well, and our only concern is  
7 that we are allowed to opt out and continue  
8 our claim separate from this action. So  
9 we're satisfied.

10 THE COURT: Very well. Thank you all  
11 for that, because I certainly would not have  
12 wanted that to be unclear, so, as so often  
13 lawyers help the court immensely, and that  
14 certainly is an example of that, because it  
15 certainly does need to be crystal clear that  
16 this class is intended to be opt out, so I am  
17 grateful for that for sure.

18 All right. Now, it is  
19 twelve o'clock and we've been at it for quite  
20 sometime. We're going to take a break  
21 because, as I understand, our remaining issue  
22 has to do with fees and expenses. And we'll  
23 take -- I think we'll probably take about 15  
24 minutes and then hopefully we'll be able to  
25 conclude that by one o'clock. So we'll take

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1 about a -- take a break for about 15 minutes.  
2 Thank you all. And that's the official clock  
3 in the back of the courtroom in case anyone  
4 is interested.

5 (Recess, from 12:00 p.m. to 12:20 p.m.)

6 THE COURT: Okay. Great. All right.  
7 Now on to the issue of expenses, fees and  
8 costs.

9 MR. RICHTER: Your Honor, we have  
10 submitted to the Court and to the opposing  
11 counsel a pretty -- I think a pretty broad  
12 and comprehensive petition. I would like --  
13 we certainly rely on the petition including  
14 specifically the affidavits, most  
15 specifically even, the expert affidavit found  
16 at Tab 5 and all the attachments to that  
17 affidavit and to this.

18 I think what I'd like to do that  
19 would be most beneficial, most efficient and  
20 least likely to lead us into a conflict among  
21 counsel here, is I'd like to just summarize  
22 some of the statements that are made in this  
23 affidavit. I don't want to read this  
24 affidavit to you, but I think that having  
25 done that we can say -- all of us who are

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1 counsel and have joined in this petition, we  
2 can say that we rely on that, adopt those  
3 statements and positions, they've all been  
4 supplemented by our own affidavits and we can  
5 give you as much showing or answer as much  
6 inquiry as the Court desires.

7 But let me begin, and I'll do this  
8 very briefly, by referring to page 2 of the  
9 affidavit of John Freeman. John Freeman is a  
10 very well renowned and well qualified expert  
11 in certain fields. He is a graduate of the  
12 University of Notre Dame Law School and  
13 practiced broadly and has taught at the  
14 University of South Carolina Law School for  
15 some 34 years now where he's received  
16 numerous awards and been widely published.  
17 He is the consensus, class, corporate, issue  
18 and ethics expert in the state of South  
19 Carolina and has been, I think from the first  
20 day I met him which was those 30 some years  
21 ago.

22 We asked him to express an opinion  
23 in this matter as an expert opinion based on  
24 his training, his teaching status, his  
25 practice status and the fact that he has

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1 independently handled these kinds of claims  
2 on a fairly -- in a fairly broad-based  
3 manner. In addition, he has been called upon  
4 by courts throughout the state and recognized  
5 as an expert in these very kinds of issues.  
6 So for those reasons we've asked Professor  
7 Freeman to submit this affidavit.

8 He indicates what his assignment is  
9 as being to express an opinion as to the  
10 reasonableness of the settlement's  
11 substantive terms and the reasonableness of  
12 the fee award sought by class counsel. He  
13 goes on to say that the fee petition is  
14 restricted in its amount, and I'm going to  
15 use round number 20 percent, it doesn't come  
16 out precisely to that round number of  
17 20 percent of the -- of the class. And as  
18 you see in the agreement, there have been  
19 ranges that have been put forth within the  
20 agreement between .95 and 2.5, low and high  
21 end.

22 Now, I don't mean to imply from our  
23 standpoint by that nor I'm sure does the  
24 diocese mean to imply by its standpoint, we  
25 think our services are frankly worth

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1 substantially more than that. I'm sure  
2 the -- I shouldn't say I'm sure, I hope they  
3 don't think our services are worth a lot less  
4 than what the low end is, but that was a  
5 very, very difficult part of the  
6 negotiations. And, again, Mr. Infinger  
7 oversaw of those.

8 He recommends, Professor Freeman,  
9 that the approval of the settlement and the  
10 grant of the petition in its entirety, which  
11 is the 2.5 petition. Now, he says in  
12 supporting his opinion that this is a very  
13 difficult case and that the facts extend back  
14 in time, Professor Freeman says 30 years. We  
15 are now learning that they extend back about  
16 50 years and so it's even more than what we  
17 thought it was going to be.

18 He further goes on to say that the  
19 issues pertaining to statutes of limitations,  
20 charitable immunity, lack of notice to the  
21 defendants, negligence issues, were hotly  
22 contested and that everyone recognized the  
23 difficulty of the legal issues first, but  
24 then difficulties of proof in proving large  
25 damage numbers for injuries that are almost

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1 entirely psychological as we have been made  
2 to see them thus far at least.

3 He says, quote, the effort of class  
4 counsel was very substantial. Strong and  
5 aggressive lawyering from defense counsel on  
6 behalf of an esteemed and important entity  
7 charged with serious wrongdoing is what class  
8 counsel met. And I represent to you that  
9 that is 100 percent accurate. The potential  
10 for being a harrowing, profoundly unpleasant  
11 experience for many people on both sides is  
12 what this litigation, that was its etiology.

13 He says that in his opinion this  
14 particular case is a class disposition case,  
15 is a case that is ideal for class  
16 disposition. He says the defendants need  
17 that just as clearly as the plaintiffs need  
18 it, because defendants need closure and  
19 closure's in the best interest, he says, of  
20 the parties and he notes the community. And  
21 none of us have argued that to you, but  
22 frankly this is more than -- more than a  
23 lawsuit and will impact the community at  
24 large and in hopefully a very positive way.

25 He says the case is ideal for a

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1 generous fee award because it was a difficult  
2 case. He says, and I offer this again not on  
3 a self-aggrandizing way, he says staffed by  
4 excellent, experienced, tenacious lawyers on  
5 both sides.

6 There is, he says, in the diocese  
7 settlement an implicit apology for the wrongs  
8 and errors that have been endured by the  
9 plaintiff class. The result in this case  
10 should and will send a message forward in  
11 time to others who might be attempted to  
12 engage in similar abusive behavior. He calls  
13 that a laudable result and he specifically  
14 calls it a laudable result compared with the  
15 terms reached in similar cases.

16 He has researched fully through our  
17 file, he says in his affidavit, and has  
18 independently researched and actually  
19 attaches as an exhibit to his -- Exhibit 2, I  
20 believe B, to his affidavit, a printout  
21 which -- from a certain website which tracks  
22 these matters nationwide. So he has had the  
23 comparative analysis ability independently of  
24 just us and our files.

25 He says the cases against the

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1 diocese are not easy in light of the defenses  
2 available which have been used successfully  
3 in the past. Any parent with a consortium  
4 claim will have a far easier time recovering  
5 under the settlement than outside it. I echo  
6 those sentiments. The same is true for  
7 spouses. As for victims, Professor Freeman  
8 says, the diocese is barred from using its  
9 biggest defensive weapons, particularly the  
10 statute of limitations defense. This  
11 enhances substantially the ability of these  
12 claimants to recover.

13 He then specifically at page 5 of  
14 his affidavit begins an analysis of the fee  
15 award factors which have been established  
16 under South Carolina law. He specifically  
17 addresses the six factors laid out in Jackson  
18 v. Speed. And let me -- for the sake of the  
19 record, let me say that those factors are the  
20 nature, extent and difficulty of the case,  
21 the time necessarily devoted to the case, the  
22 professional standing of counsel, the  
23 contingency of compensation, the beneficial  
24 results obtained and customary legal fees for  
25 similar services.

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1                   We have -- the lawyers who have  
2                   done this work on the class side of the case  
3                   have submitted independently affidavits and  
4                   documentation to the Court as part of this  
5                   petition setting forth our own professional  
6                   standing and experience and a detailed  
7                   listing of time expenditures, which honestly  
8                   by -- and I'm sure counsel for the diocese  
9                   would join me in saying this, would not -- in  
10                  and of themselves are not of sufficient  
11                  measure because of what really was involved  
12                  here.

13                  We spent -- I'm digressing now, I  
14                  said I wasn't going to do that, but we spent  
15                  endless hours conceptualizing this claim. We  
16                  had some individual plaintiffs and we were  
17                  trying to figure the way to get them to the  
18                  end, but also the concept of serving the  
19                  bigger need, and frankly the strategical  
20                  value of that kind of an exposure to our  
21                  adversary, the diocese.

22                  And again, I'm not  
23                  self-aggrandizing, but I can't avoid saying  
24                  this has never been done before. This is a  
25                  fight they've never had to face before. And

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1 it was executed, we believe, in the most high  
2 quality manner and it was heated at times and  
3 it was difficult at times, but on all sides,  
4 all of the positions taken were honorably and  
5 reasonably taken and were just fought  
6 through. And again, I'm sure that counsel  
7 for the diocese will echo that sentiment,  
8 albeit they've been in an adversary position  
9 throughout this thing.

10 Back to Professor Freeman. He says  
11 that he agrees with class counsel that the  
12 amount sought would be a fair and reasonable  
13 fee when the totality of the six factors is  
14 considered. He then turns his attention to  
15 each specific factor of the South Carolina  
16 Supreme Court six-factor test. And he says  
17 that based on his own knowledge he has no  
18 hesitation in saying that class counsel's  
19 industry, ingenuity and determination in  
20 prosecuting this case has been exemplary.  
21 The team of class counsel has consistently  
22 fought well against a very powerful and  
23 resourceful adversary. I believe that few,  
24 if any other counsel in South Carolina or  
25 anywhere else, would have had the combination

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1 of drive, expertise, resources and creativity  
2 to achieve the result they did under the  
3 uniquely difficult circumstances presented by  
4 this case. The first, therefore, South  
5 Carolina fee award factor strongly supports a  
6 substantial fee award says Professor Freeman.

7 We submitted to him our entire  
8 files. Those time records showed the  
9 expenditure of at least 3,500 hours in the  
10 handling of the case and the processing. And  
11 that includes nothing going forward, this is  
12 actual time recorded. And as Your Honor must  
13 remember from practice days, what gets  
14 recorded and what you lose in your car is --  
15 is two different things or at your home or  
16 wherever you are.

17 Significantly Professor Freeman  
18 says his review shows no padding of time or  
19 unnecessary duplication. You have to be  
20 careful when you have multiple lawyers not to  
21 duplicate each other's efforts and we tried  
22 to be very diligent about that. He goes on  
23 to say there's a reason why so many hours  
24 have been spent on the case. The diocese  
25 chose to require class counsel to fight for

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1 every inch of turf, which it had a perfect  
2 right to do. By dogged persistence and  
3 dedication, class counsel demonstrated the  
4 ability to protect class members and secure a  
5 substantial award.

6 When I corrected Mr. Meyers this  
7 morning I was not shooting at the diocese, I  
8 was simply trying to say that it was a fight  
9 and it was a fight honorably conducted, but  
10 it was a first-rate fight.

11 He goes on to say that the class  
12 has had the benefit of truly outstanding  
13 advocacy, that there was no need for  
14 on-the-job training. This is a considerable  
15 factor in the sense that if the lawyer goes  
16 in and has to learn the ropes, time is  
17 expended and really wasted in that process.

18 I, myself, am an AB rated  
19 Martindale Hubble lawyer, which Your Honor  
20 knows is the highest rating available to  
21 members of the bar. My firm is so rated and  
22 I'm sorry I don't know offhand the ratings of  
23 other counsel, but I do know Mr. Lofton, he's  
24 been in it so long, enjoys the same status I  
25 do. But the point of it was there was no

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1 ramp-up time when we hit the ground. We hit  
2 the ground with in my case, experience from  
3 1971, 36 years of experience now. Wow.

4 At any rate, he says there was no  
5 need for on-the-job training and he goes on  
6 to say that the outstanding reputation for  
7 integrity and professionalism of class  
8 counsel leads him to have full confidence in  
9 the records, the recordkeeping, the  
10 pleadings, the documentation, all those  
11 items.

12 He then cites the contingency of  
13 compensation and, of course, we went into  
14 this matter fully willing to expend however  
15 many hours it took, being obligated to expend  
16 however many hours it took and we had to  
17 front the cost as well and, of course, there  
18 was no certainty whatsoever that we'd ever  
19 recover one dollar.

20 So one of the significant  
21 considerable factors is the contingency of  
22 compensation which means you might lose, and  
23 if you lose you might be back asking for a  
24 second bite at the apple which our law  
25 doesn't allow.

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1 In any event, he goes on then to  
2 praise us undertaking the action on a  
3 contingency basis, getting no money for it in  
4 other words.

5 THE COURT: Sure.

6 MR. RICHTER: Then he turns to the  
7 beneficial result obtained and says that this  
8 is one of the largest common fund recoveries  
9 in South Carolina history. He says that the  
10 plaintiffs' case was prepared with all the  
11 care needed for class counsel to do a  
12 first-rate job. This case has been marked  
13 from the start by careful determination,  
14 dogged preparation and obviously a very good  
15 final result.

16 I would like to parenthetically  
17 note for Your Honor that we -- yesterday we  
18 were looking for something and we Googled not  
19 ourselves, but we Googled some things about  
20 class settlement in this case and this case.  
21 I had no idea how broadly this was reported.  
22 We were reported all over the United States  
23 of America and in the *Harold Tribune*  
24 internationally. What other national  
25 publications, I don't know.

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1 I offered that point to say you  
2 heard three people come in this morning with  
3 some kind of either objection, criticism or  
4 suggestion in some of these cases. Your  
5 Honor will have to pass on what motivates  
6 people to do that, but you heard three. And  
7 my point is that we've been -- we've had to  
8 advertise now publicly on six separate weekly  
9 occasions throughout South Carolina and we've  
10 been in every newspaper -- anybody in the  
11 country could have read about this who can  
12 read a newspaper and apparently so around the  
13 world. And what you heard this morning was  
14 all that anybody had to offer about how  
15 something might be better or how something  
16 could be tweaked.

17 And we're not -- there's no pride  
18 in authorship, we want to get it as best we  
19 can all get it. Again, I know I speak for  
20 these fellows as well when I say that. But I  
21 think it's extraordinary. I embarrassed, I  
22 sound like I'm blowing our own horns, I don't  
23 mean that, but it is extraordinary that no  
24 more suggestion or criticism could be  
25 generated than that having had the exposure

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1 this case has had.

2 And, of course, in the communities  
3 legal, victim, advocate and other related  
4 communities, nobody, and that's, of course,  
5 where you are most likely to hear from  
6 somebody, those people broadly are interested  
7 in it and intimately familiar, as sending  
8 someone in from another state just two days  
9 ago to have some kind of press conference in  
10 front of the diocese building.

11 He then addresses -- in closing  
12 that analysis he says that we have given the  
13 clients an outstanding result. He then  
14 addresses customary legal fees for similar  
15 services. There are few ways that courts  
16 address that issue and seek to -- seek to  
17 reach a fair fee arrangement. One of them,  
18 of course, is a straight hourly calculation,  
19 one of them is a load star analysis, a kicker  
20 for the benefit of if I can use another word.  
21 Others are flat fees, contingency fees.

22 This case we took on as a  
23 contingency fee because that's the kind of --  
24 generally the kind of fee mechanism that  
25 injured parties need because nobody who is a

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1 claimant here had the ability, of course, to  
2 finance this thing.

3 We've spent, I think, 100 some  
4 thousand dollars so far. We've submitted the  
5 petition, it's in the petition, if you could  
6 pull the exact numbers out, please. And as  
7 you know we're going to have to publish  
8 further, because we're not through meeting  
9 the requirements that you're fixing to set in  
10 that regard, I believe.

11 So at least half of that again will  
12 be -- will be spent. First round of  
13 publication was 50, in round numbers \$50,000..  
14 It's a little more than that, I believe.

15 So he analyzed, Professor Freeman  
16 analyzed all those things and even discounted  
17 an hourly basis analysis. And long story  
18 short, at the end of it recommends that what  
19 we have requested, and again I use the figure  
20 20 percent in round number -- as a round  
21 number, it's 20 point something, but it's  
22 not -- you know, it's not 21 or it's not 19,  
23 he suggests that that is a more than fair fee  
24 because the typical fee arrangement, and then  
25 he cites all the cases in which the South

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1 Carolina Supreme Court has acknowledged this,  
2 the typical contingent fee arrangement is  
3 from 33 1/3 to 50 percent depending upon all  
4 other six factors that we went through  
5 before. I said something incorrect. I said  
6 \$100,000. It's \$85,259.50 as of  
7 February 14th, not including anything  
8 perspective.

9 THE COURT: Uh-huh.

10 MR. RICHTER: Now, that's what Professor  
11 Freeman has said.

12 This -- all of us have submitted  
13 our own affidavits. And in a general  
14 description without necessity of you hearing  
15 from everybody, we have all talked about our  
16 own experience base, where we've come from,  
17 what we've done at the law and our abilities  
18 to handle this kind of litigation and then  
19 our abilities proving themselves and  
20 obtaining what frankly is -- must be  
21 described as an extraordinary result.

22 Having done that, although I think  
23 mine is the only affidavit that says this, I  
24 am not the only person affected in the way  
25 that I'm about to mention. But one of the

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1           considerations that courts typically make is  
2           about unpopularity of a cause or difficulty  
3           as it's sometimes referred to, difficulty of  
4           a cause.

5                     I'm a Roman Catholic and I have --  
6           my family is all Catholic and we have been  
7           very active in the Catholic church here.  
8           I've served in numbers of capacities and done  
9           numbers of things for the diocese. I  
10          received 12 years of parochial school  
11          education here in Charleston. I've known  
12          great men who were priests, great men who  
13          have given their entire lives to the service  
14          of their fellow man and their church, their  
15          God.

16                    I am sickened that a few perverts  
17          have besmirched the good name of my religion  
18          and I am sickened that the administration of  
19          my church and my diocese have handled this  
20          heretofore in what I believe is the poorest  
21          possible way.

22                    So I went to see the bishop and had  
23          this conversation and said this is difficult  
24          for me, but I have thought all of this  
25          through and have decided for myself that I

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1 just must stand for what I believe to be  
2 right, I've always done that and I am against  
3 child abuse period. I would fight anybody  
4 today over child abuse period. So I, not  
5 threatening the bishop, but having an open  
6 exchange with him, told him very frankly I'm  
7 going to the mat on this case and it is going  
8 to be very vigorously pursued and so we did.

9 I simply offer that to say to you  
10 that Jack Sinclair and Glenn Churchill having  
11 made references, for example, in their  
12 affidavits submitted to you to similar  
13 difficulties, but we have again as my friends  
14 here can tell you, I've had the finger of my  
15 pastor, my confessor, a vicar general of this  
16 diocese shaken in my face about what I was  
17 doing.

18 So while that doesn't require legal  
19 expertise to be treated that way, I do think  
20 it is fair that we at least comment that this  
21 is not the typical intersectional wreck case  
22 where there are no emotions involved on any  
23 side. And we have been scrupulous in  
24 checking our emotions to advocate and  
25 accomplish the rights of the persons who we

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1 represent in this matter.

2 So to the extent that that's  
3 considerable, we urge it upon Your Honor.  
4 All counsel who have worked with us are here.  
5 David Haller, Lionel Lofton, Jack Sinclair  
6 and Glenn Churchill are all available to Your  
7 Honor should you desire anything from them.  
8 I can tell you that I have caucused with all  
9 of them and they join me in these comments,  
10 they join me in this submission. As you can  
11 see from the reading from it, the submission,  
12 I don't know how big this is, it must be a  
13 couple hundred pages at least. But we are  
14 all available to the Court for anything that  
15 you may want from us.

16 We request the award of 2.5 and do  
17 that calling to your attention that that  
18 would equate to right at 20 percent of the  
19 pool recovered. And normally in these cases  
20 we would have charged 40 percent for any  
21 individual claimant.

22 THE COURT: I think Professor Freeman  
23 refers to 17 percent.

24 MR. RICHTER: Yeah, and it's a little  
25 higher than that. I'm sorry to use a round

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1 number, but it is a little higher than that.

2 THE COURT: Okay. Okay. All right.

3 One of the things that I want to be -- and I  
4 just want to have it articulated and now is  
5 as good a time as any. This class, this  
6 class, as I understand it, is a class of  
7 people who are no longer minors by the  
8 chronology of the class, but at the time of  
9 the events would have been children. Would  
10 have been minors. And the period of time  
11 covered by this class is the period of time  
12 for which the statute of limitations argument  
13 existed.

14 MR. RICHTER: Existed and would -- in my  
15 view would be fatal almost certainly and was  
16 fatal as you've heard here today in so many  
17 cases where someone actually brought on some  
18 different theory or something else, I don't  
19 know what, but brought these claims and  
20 didn't succeed.

21 THE COURT: All right. And I think it's  
22 important to note that this is not --  
23 these -- that the terminating date for this  
24 class is 1980 and before.

25 MR. RICHTER: Any person born before

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1 August the 30th of 1980 who was abused as a  
2 minor can come forward, irrespective of the  
3 statute of limitations, irrespective of the  
4 fact that South Carolina didn't allow suits  
5 against charitable institutions, irrespective  
6 of any other defense that could be propounded  
7 against them, and no defense can be  
8 propounded against them and they will  
9 certainly recover.

10 Where they fit in the scheme, how  
11 much they will recover, I don't -- I don't  
12 know the individual cases at this time  
13 because the claims period hasn't even begun  
14 yet. But, yes, all of those people are  
15 covered. Nobody's rights are taken from  
16 them. Not one person loses one right that  
17 any person has today. Anybody can, A, not  
18 take part in this by opting out; or B, be  
19 outside of what the definition of the class  
20 is and pursue whatever claims that they wish  
21 to pursue. That's what this class is and:  
22 that's what we fought over.

23 That is a substantial  
24 accomplishment to get -- I've never seen  
25 anybody admit that from a particular date to

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1 the beginning of time we give up all defenses  
2 and all persons who may have a claim can come  
3 forward and we can't even defend against the  
4 claim, except in cases of where if someone  
5 propounded a fraudulent claim we have a  
6 screening process to guard against that kind  
7 of thing.

8 THE COURT: Of course.

9 MR. RICHTER: So that -- so, yes, ma'am,  
10 you do read right the terms and breadth and  
11 purpose of the class. That is the recovery  
12 purpose of the class. The intangible  
13 purposes of the class are what Professor  
14 Freeman made reference to.

15 THE COURT: Yes.

16 MR. RICHTER: The diocese has been  
17 brought forth and cannot and does not try --  
18 does not seek to or try to avoid the apology  
19 that goes with this kind of formation of this  
20 kind of class giving this kind of  
21 compensation. I wish it was a lot more. We  
22 tried to do perhaps amateurish demographic  
23 work to figure how many Catholics in South  
24 Carolina over these various years. It used  
25 to be very small. All my growing up life it

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1 was, you know, maybe 1 percent.

2 But we went around the country and  
3 took groups of claimants from various places,  
4 Covington, Boston, Dallas, Forth Worth, all  
5 around and tried to do projections. And we  
6 looked at demographics information, how many  
7 Catholics were there, what period of time,  
8 etcetera. I don't know of anybody that had  
9 the breadth of claim time and ability that  
10 this group had. Jim Geoly can tell you,  
11 because he sees it daily on a national basis  
12 whether anybody has broader rights, but I  
13 don't know of any and I would be surprised if  
14 they do.

15 So that's what we sought to  
16 accomplish. And we fought over it and the  
17 diocese does not try to say -- I mean, they  
18 can say what they want to, but they don't  
19 come up here and say we're not apologizing,  
20 Judge. That has been accomplished in this  
21 payment. They have to -- you have ordered  
22 that today they deposit with you in  
23 guaranteed funds \$12 million, five and seven.  
24 And we have -- when we get to that at the end  
25 of all of this we have, I should tell you,

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1 the escrow agent who is a CPA, forensic CPA  
2 actually here in South Carolina present in  
3 the courtroom to address anything you need  
4 about that as well.

5 But that's our petition. And we  
6 urge it upon you. And do you want me to  
7 bring anyone else up here now, Your Honor?

8 THE COURT: I don't want to keep anyone  
9 from speaking, certainly not. Counsel, I  
10 have affidavits and I'm happy to hear from  
11 whomever. There are a number of --

12 MR. RICHTER: I don't think it's  
13 necessary for anybody to speak. Again, we've  
14 caucused about this and we've been authorized  
15 to make these comments for them. Thank you  
16 very much.

17 THE COURT: Very well. Mr. Geoly.

18 MR. GEOLY: It's nice to be up here.  
19 I'd like to say a word about the spirit in  
20 which I'm standing before you right now.  
21 Because this is our response to the class  
22 counsel's fee petition, we have certain  
23 objections we'd like to lodge with you and  
24 for the record.

25 THE COURT: Certainly.

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1 MR. GEOLY: But I think it's important  
2 to say and to echo Mr. Richter's comments  
3 that both sides in this case worked extremely  
4 hard and there were ups and there were downs,  
5 but diligence was not lacking. The counsel  
6 on both sides fought hard over the issues,  
7 fought in good faith over the issues.

8 The fact that you have a range of  
9 attorneys' fees agreed to in the settlement  
10 agreement rather than a number that  
11 represents attorneys' fees that were agreed  
12 to, I think bespeaks the kind of advocacy and  
13 certain adversarial practices that went on in  
14 this case.

15 Class counsel have requested that  
16 you award as fees the complete total maximum  
17 number allowed in that range. And I think  
18 that before I get to the number I would like  
19 to give you kind of a -- a window on our  
20 perception of this.

21 THE COURT: Uh-huh.

22 MR. GEOLY: We come to the table as a  
23 charitable organization. The assets at stake  
24 in this settlement are charitable assets.  
25 They're donated and the proceeds are donated

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1 assets. The structure of the settlement is  
2 such that while there is a \$12 million,  
3 potential \$12 million fund available in two  
4 funds, five and seven, it is not necessarily  
5 the case that \$12 million will be spent. It  
6 really depends on how many people come  
7 forward and what the claims process results  
8 in.

9 And so it's fair to say that the  
10 level of the attorneys' fees awarded is an  
11 expense to the diocese. It's not coming from  
12 money that's already necessarily been given  
13 up, it is money we will spend. And if it  
14 isn't spent on attorneys' fees, then we won't  
15 be spending it, or at least it will be  
16 available for the larger fund that will be  
17 available for claims satisfaction.

18 And that's why we care so much,  
19 because we certainly are not here to try to  
20 in any way cast aspersions on class counsels'  
21 work or the efforts they've made in this  
22 case, nor to take issue with their statements  
23 about the challenges they faced and the legal  
24 challenges that they faced.

25 One point I'd like to make that is

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1 I think reflected in the petition already,  
2 but I want to -- I want to just make sure  
3 it's clear, is that our settlement agreement  
4 makes clear that the maximum attorneys' fee  
5 award --

6 THE COURT: I'm looking for that part of  
7 the --

8 MR. GEOLY: Well, it's quoted in the fee  
9 petition, it's on page 1 of the fee petition,  
10 it's paragraph 5 of the settlement agreement.

11 THE COURT: All right. I'm in the  
12 agreement, so let me go there. Okay. Go  
13 ahead.

14 MR. GEOLY: Maximum attorney' fees  
15 award, no more than \$2.5 million. This is to  
16 represent, and going to the first sentence of  
17 the section, substantial efforts of  
18 plaintiffs' counsel, quote, past and future.  
19 I just want to be clear that whatever fee  
20 award Your Honor makes, that is the fee award  
21 for this case. There are no future  
22 attorneys' fees awarded as the claims  
23 administration process goes forward. The  
24 maximum exposure to the diocese for  
25 attorneys' fees here is \$2.5 million.

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1 That was hard bargained on both  
2 ends, on the low end and on the high end, and  
3 we at least deserve the benefit of that  
4 bargain. I don't think there should be a  
5 back door, I don't think there is one, I just  
6 want to make clear that that's our  
7 understanding.

8 THE COURT: Let me be clear. Based on  
9 my reading while Mr. Richter was arguing, I  
10 want to be sure, as I understand it, there  
11 can be a contractual arrangement with each  
12 claimant for fees for the work done on each  
13 individual claim, but that amount is to be  
14 approved by the arbitrator with an  
15 appreciation for the amounts awarded for  
16 class counsel.

17 Now, that would -- what I'm  
18 speaking of would not entail an arrangement,  
19 a fee request from the diocese, but would be  
20 a matter of contract between class counsel  
21 and the individual claimants.

22 MR. GEOLY: That's my understanding,  
23 too.

24 THE COURT: Okay.

25 MR. GEOLY: In that instance it's really

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1 the claimant who is providing the funding --

2 THE COURT: Yes. Yes.

3 MR. GEOLY: -- even though the funding  
4 is coming out of the claimant's award.

5 THE COURT: I just wanted to be clear on  
6 that.

7 MR. GEOLY: Yes, Your Honor, that's my  
8 understanding as well.

9 THE COURT: Okay.

10 MR. GEOLY: Let me turn to our  
11 objections. We think that the Court in the  
12 first instance in addition to the factors  
13 raised by Mr. Richter, should look at the  
14 bargain that's been struck. And I think that  
15 the range of 950,000 to 2.5 million suggests  
16 to the Court that a fair outcome would not  
17 necessarily be either extreme in that range,  
18 that that obviously was as far as the parties  
19 got in their bargaining, and we were hoping  
20 that the Court would do the rest of the work  
21 for us because we wanted the settlement to  
22 happen and didn't want it to break up over an  
23 attorney fee award.

24 And this is really a plea to the  
25 Court's equitable instincts, I suppose.

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1 THE COURT: Sure.

2 MR. GEOLY: In saying that, you know,  
3 this is diocesan, these are charitable funds  
4 that should be respected. That's not in any  
5 way to take away from the work Mr. Richter  
6 and his colleagues have done.

7 You have heard a lot about opting  
8 out today. There appear to be a significant  
9 number of people who will opt out of this  
10 settlement. In that sense they are not being  
11 served by class counsel, the diocese will  
12 still face those claims, and to the extent  
13 those were not anticipated at the time the  
14 fee negotiations were made, that is a greater  
15 exposure to the diocese. And I'm going to  
16 say it like this and it's not going to sound  
17 good when it come out of my mouth, but I  
18 don't mean it quite the way it sounds. Less  
19 of an accomplishment by class counsel, in the  
20 sense those folks are not represented by  
21 class counsel and are not the receivers of  
22 the benefit of this bargain.

23 THE COURT: Uh-huh.

24 MR. GEOLY: In terms of the work that  
25 was performed, I believe Mr. Richter's

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1 petition states that 3,500 hours have been  
2 expended. He's made a request for a \$500 an  
3 hour fee. I think I come out with  
4 \$1.75 million if he got every penny of that.  
5 We have purposely not -- we have chosen to  
6 purposely not quibble with Mr. Richter's and  
7 his colleagues' time sheets. That's not the  
8 spirit of today's proceeding. And again, we  
9 are not at all contesting it. He's done a  
10 lot of work.

11 We think that \$500 an hour is a bit  
12 steep for the prevailing rates in the  
13 Charleston area. We're not trying to nickle  
14 and dime him. It's a matter, again, of you  
15 using your equitable instincts in deciding  
16 what would be fair. That combined with the  
17 fact that even if you multiply the fee -- the  
18 rate times the hours, you come out with a  
19 number below \$2 million we think should weigh  
20 on your decision.

21 Going forward nobody knows how many  
22 people will come forward to this class, but  
23 as much as we could estimate what we would be  
24 facing in this claims administration process,  
25 I don't think either side is anticipating a

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1 flood of claimants. We're not looking at  
2 hundreds of claimants. The amount of work  
3 expected to be done in the future, while it  
4 will be substantial in the sense of being  
5 important, may not be massive in the sense of  
6 volume. And I don't think that should be --  
7 play a huge role in the fee award. I think  
8 the accomplishment of achieving the  
9 settlement is a major accomplishment and I  
10 think that is really more where the focus is.

11 Indeed, the claims administration  
12 process is very user friendly. The claimants  
13 are encouraged to participate in it and once  
14 they do they receive -- it's almost  
15 self-executing. The lack of any adversarial  
16 component I think significantly decreases the  
17 amount of work either counsel have to do once  
18 the claim process goes forward.

19 I guess I want to close with -- by  
20 returning to the accomplishment that we've  
21 made here. Mr. Richter spoke about it to  
22 some extent. This is a very good day for the  
23 victims who are represented in this case and  
24 for the diocese. And it's a very good day  
25 not just because important legal hurdles were

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1 overcome, it's a good day because both sides  
2 have an interest in a -- really a  
3 reconciliation over this issue.

4 To the extent the legal papers  
5 create any ambiguity, I think it is very  
6 important to say that not just the diocese,  
7 but the Catholic church as its faced this  
8 issue deeply and sincerely apologizes for the  
9 wrongs that have occurred in the past. We  
10 are not shy about that.

11 THE COURT: Well, Mr. Geoly, to that end  
12 I suppose I was a little bit surprised that  
13 with the objection that there was no  
14 objection from the diocese, because as you  
15 know from my review of these documents early  
16 on I've been quite surprised that the  
17 diocese, that the bishop and the bishop's  
18 individuals were willing to meet with these  
19 folks for purposes, as I understand it, of  
20 apologizing one on one.

21 MR. GEOLY: It's absolutely true. The  
22 bishop stands ready to meet with victims.  
23 And the settlement agreement, as you know,  
24 specifically provides for the ability of  
25 people who have been through this claim

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1 process to come forward and address the  
2 Sexual Abuse Advisory Board -- I hope I have  
3 that name right -- the Sexual Abuse Advisory  
4 Board, which has the official function of  
5 forming diocesan policy on the issue  
6 rendering advice to the bishop. That's not  
7 to replace direct contact with the bishop,  
8 but it's actually the formal way one could  
9 have an impact on the issue that's been  
10 important to both sides.

11 It's a moment, I think it's an  
12 opportunity today to really turn a corner.  
13 And I don't want to parrot Mr. Richter's  
14 words, I don't want to pat ourselves on the  
15 back, but I do think that what Mr. Meyers  
16 said is true, that we deserve some credit for  
17 doing something that is unique, that is  
18 creative and that reaches out beyond the law  
19 to people who need help.

20 Now, Mr. Richter thinks we came  
21 kicking and screaming, maybe that's true,  
22 maybe that's advocacy, maybe that's the  
23 nature of adversarial process. What's  
24 important is that both sides eventually were  
25 able to put that aside and are here today.

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1           You know, in response to this fee  
2           petition, I think we're really on an issue  
3           here of administration. And I don't want it  
4           to be taken as in any way sour grapes about  
5           the process of casting aspersions on counsel.  
6           What's important, though, is that just  
7           because we got here doesn't necessarily mean  
8           that every last penny that could possibly  
9           have been awarded, ought to be awarded.  
10          We're asking you to use your equitable  
11          instincts and your good judgment about value.  
12          And there's value on both sides here and I  
13          think that's what we're asking you to  
14          consider.

15               THE COURT: Thank you so much.

16               MR. RICHTER: Your Honor, may I briefly  
17          respond?

18               THE COURT: Of course.

19               MR. RICHTER: Just a couple of things  
20          briefly concerning Mr. Geoly's argument in  
21          opposition to the petition for fee approval.  
22          I need to clarify. I don't mean to imply  
23          that load star, as I referenced before, is  
24          the accepted South Carolina method. I  
25          simply -- I think I said it is a method that

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1 has been utilized in making these  
2 determinations. I don't mean to imply that  
3 South Carolina has promulgated a load star.

4 Secondly, Mr. Geoly indicated that  
5 all these opt out people that he referred to,  
6 not so many that you heard from, at least  
7 thus far, were not anticipated. Not  
8 anticipated. That's what he said.

9 Now, we submitted to you a petition  
10 clarifying certain language. We talked about  
11 this earlier.

12 THE COURT: Yes.

13 MR. RICHTER: I want to call to your  
14 attention, as you will have it before Your  
15 Honor, that the signatures of class counsel  
16 and counsel for the defendants, the diocese,  
17 are affixed jointly to this petition. And  
18 I'll call your attention to the bottom of  
19 page first, page 1, which in the whereas  
20 clauses, the second, third whereas clause,  
21 says, Whereas, the parties have determined  
22 that the agreement requires clarification in  
23 certain particulars in order to fully  
24 effectuate the original intention of the  
25 parties.

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1                   There is no doubt about what the  
2                   intention of the parties is, and they have  
3                   affixed their name to a document writing and  
4                   handing to Your Honor that that was our  
5                   original intention. So the idea that we  
6                   didn't intend opt out people is -- his memory  
7                   just lapsed, I suppose.

8                   MR. GEOLY: Your Honor, very briefly may  
9                   I --

10                  THE COURT: Just a moment. Yeah, I'll  
11                  hear you in just a moment. Let him finish.

12                  MR. RICHTER: I failed to mention to you  
13                  some things earlier because I -- I'm not here  
14                  to have a fight with how recalcitrant, how  
15                  recalcitrant the diocese was about coming to  
16                  this or what we accomplished. I think, Your  
17                  Honor, because of your personal legal breadth  
18                  of experience and certainly your experience  
19                  in the breadth of matters you have presided  
20                  over on this court, I think Your Honor is  
21                  fully familiar, at least with what it is that  
22                  we've accomplished. It's impossible to tell  
23                  you everything that -- every step that went  
24                  into this -- into the process of  
25                  accomplishing these things, although I do

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1 have a time line for my own reference and I  
2 note that it -- and I can do this in  
3 painstaking detail, I don't seek to, but I do  
4 want to remind Your Honor as to what we've  
5 accomplished and how hard it was.

6 On June the 14th, on the second day  
7 of a mediation of 2006, June the 14th, 2006  
8 we agreed with the diocese, wrote an  
9 agreement, signed our names to it as did --  
10 under the good auspices of Mr. Infinger, that  
11 day agreed to many things, including setting  
12 a very narrow time frame in which the diocese  
13 was going to --

14 THE COURT: I'm smiling at you because  
15 I'm well aware of this, because this is how I  
16 know that there has been great advocacy in  
17 this case because I have heard -- yes, I've  
18 heard your upset about this many times, yes.

19 MR. RICHTER: The point is it was  
20 represented to us the diocese was going  
21 Monday to the bank, they could get letters of  
22 credit with no problem, that there was a very  
23 short fuse, therefore, for funding this  
24 thing. That was in June, June 14th of 2006.

25 Today the diocese has not put up

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1 one dollar and you have ordered ultimately  
2 that no later than today they got to post  
3 \$12 million in guaranteed funds. We're going  
4 to get to that as soon as we finish this, but  
5 I give you a preview. I don't think they  
6 have it, I don't think they have guaranteed  
7 funds, although you're going to see and read  
8 perhaps about the 36 or \$46 million of  
9 unencumbered, unrestricted funds held by the  
10 diocese. That's the next issue. That's not  
11 this issue.

12 I want to just though make a couple  
13 of comments about the breadth of what we  
14 accomplished. We have -- we had input on  
15 board representation, Mr. Geoly was telling  
16 you about one of the diocesan boards.

17 THE COURT: Yes.

18 MR. RICHTER: We had input into that,  
19 both of makeup and function. That's an  
20 extraordinarily important aspect of this  
21 case.

22 THE COURT: Just so our record is clear  
23 and my consideration is accurate, you are  
24 talking about -- I was just looking again at,  
25 the different bodies. There's the -- there

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1 are a couple of groups. Here it is. It's  
2 under the section of the agreement called  
3 Pastoral Outreach and Protection of Children  
4 by the Diocese, there's discussion about  
5 comprehensive policies. The reports of all  
6 accusations to the solicitor, victim,  
7 assistant minister.

8 MR. RICHTER: That's right.

9 THE COURT: Sexual Abuse Advisory Board.

10 MR. RICHTER: That's correct.

11 THE COURT: Presentation by class  
12 representatives or members to the Sexual  
13 Abuse Advisory Board.

14 MR. RICHTER: That's correct. There's  
15 not a dollar sign attached to any one of  
16 those. That's not what this is about, but it  
17 is an accomplishment helping to shape the  
18 functioning of this diocese and the treatment  
19 of the faithful who have been abused at the  
20 hands, or who may in the future have been,  
21 and hopefully we now avoid abuse at the hands  
22 of agents, representatives and particularly  
23 religious representatives of this diocese.

24 That -- all of that further  
25 projects itself as follows: The diocese has

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1 reported to us 28 known abusers since 1950 in  
2 their secret records. Twenty-six of whom  
3 were priests, two were non priests. That's  
4 what they reported to us. Nine priests in  
5 South Carolina have been found or pled guilty  
6 in these matters and not one day of jail time  
7 to one of those perpetrators has been imposed  
8 as a sentence. I think that is now over. I  
9 think this case bespeaks the end of that kind  
10 of treatment for sexual predators in our  
11 state.

12 But we tried to do even more in  
13 fairness. In fairness, it's not fair for me,  
14 I suppose, to say give us the highest range  
15 of this fee without saying to you but we  
16 really didn't recover the highest things that  
17 we wanted, didn't accomplish the highest  
18 things that we wanted, like to have more  
19 money for the claimants for one. We got  
20 \$12 million, that's all. We'd like -- but we  
21 did a lot of things that you now need to know  
22 about.

23 We subpoenaed the records of what  
24 is called the secret archives of the diocese  
25 and that's where is locked up all of the

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1 information that would lay bare priest abuse  
2 in South Carolina and other matters. Our  
3 focus was that.

4 We subpoenaed from two parishes,  
5 only two parishes in this state and only back  
6 to 1950, all records of gambling operations,  
7 illegal lotteries, raffles, drawings --

8 MR. SHAHID: Your Honor, I have an  
9 objection to this. Excuse me for a second,  
10 Mr. Richter. The purpose of this phase of  
11 this hearing is to -- for the Court to  
12 determine the award of the fees that  
13 Mr. Richter and class counsel's entitled to  
14 have. He made a presentation that we replied  
15 to. The issue that he's trying to raise I  
16 think has gone outside the boundaries of  
17 where we are with this fee arrangement.

18 Whether or not there are such thing  
19 as a secret archives and whether or not he's  
20 subpoenaed records about gambling and stuff,  
21 he's -- his work that he has done has been  
22 addressed in his affidavit and he went  
23 through painstakingly what he did with  
24 Professor Freeman's affidavit. That's all  
25 been addressed already. This is unnecessary.

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1 And there's no benefit to the Court as to  
2 this line of argument that he's now trying to  
3 present.

4 We have agreed that he has spent  
5 3,500 hours plus and we have agreed that he  
6 has expenses of close to \$90,000 on this  
7 stuff. We have not gone back and nitpicked  
8 those things intentionally because we've come  
9 here in good faith to just address the  
10 Court's latitude between one range or  
11 another.

12 And that's sort of where we are  
13 right now. And where else we're going in to  
14 this arena that he's seeking to go into, I  
15 think is inappropriate.

16 MR. RICHTER: May I respond to that,  
17 Your Honor?

18 THE COURT: Sure.

19 MR. RICHTER: All of what you have now  
20 learned, because this is what made opposing  
21 counsel stand up and try to shut me up,  
22 you've now learned the beginnings of how this  
23 settlement got accomplished. The last thing  
24 the diocese wants us to do is see the inside  
25 of the secret archives. And that's why he

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1 now stood up.

2 MR. SHAHID: Judge, that is absolutely  
3 not true. And I take exception to that  
4 comment.

5 MR. RICHTER: Well, fine, it's easy. If  
6 you just let me go on for 30 seconds I can  
7 lay it to rest. Because I hereby --

8 THE COURT: Hold on. There's an  
9 objection. I got to rule on it.

10 MR. RICHTER: I'm sorry.

11 THE COURT: So the nature of the  
12 objection, Mr. Shahid, is that Mr. Richter's  
13 comment is unresponsive to the argument?

14 MR. SHAHID: His initial -- he stood up.

15 THE COURT: Yes.

16 MR. SHAHID: And presented his petition.

17 THE COURT: Right.

18 MR. SHAHID: His affidavits, and he went  
19 through all that.

20 THE COURT: Yes. Right.

21 MR. SHAHID: We presented a very limited  
22 response.

23 THE COURT: Yes.

24 MR. SHAHID: His reply to that response  
25 should be restricted to our response.

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1 THE COURT: Yes.

2 MR. SHAHID: And he's gone beyond that.

3 THE COURT: Yes. The response, as I  
4 understood it, was really twofold. Number  
5 one, there was a concern expressed by  
6 Mr. Geoly regarding the folks who were here  
7 that the diocese had concern, and I certainly  
8 don't think it's unreasonable that there were  
9 now cases that there would be an opt out  
10 provision for which the diocese really didn't  
11 contemplate perhaps, and here they were and  
12 there was some concern about that. And the  
13 argument was please be mindful of that as you  
14 determine these fees.

15 MR. SHAHID: Yes, ma'am.

16 THE COURT: And also please be mindful  
17 of the fact that what we are dealing with is  
18 that we are dealing with a charitable  
19 organization and these are funds which are  
20 voluntarily given and these are charity  
21 donations that are made by individuals, and  
22 please be mindful of that as well as -- as --  
23 as you make -- as you make that  
24 determination.

25 I gather that the response, I

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1 gather, is to the argument of please be  
2 mindful that these are -- these are  
3 charitable funds that are given and I gather  
4 that this argument is made to offset that  
5 argument of the -- that this is no more than  
6 taking of charitable funds.

7 MR. RICHTER: I was not allowed to  
8 finish the point yet about charity, but  
9 you're exactly right. And as I say, I can  
10 close that circle in a minute or two minutes  
11 so that you'll understand.

12 THE COURT: I think perhaps some limited  
13 comment to be made --

14 MR. RICHTER: Thank you.

15 THE COURT: -- obviously.

16 MR. RICHTER: Thank you, Your Honor.

17 THE COURT: And then I have a couple of  
18 questions.

19 MR. RICHTER: I made reference to the  
20 secret archives and that's what got us off to  
21 where we are now. Mr. Shahid has said if  
22 they do exist or if they don't exist. I  
23 represent to the Court as an officer of this  
24 Court they exist. But as to charity, this is  
25 the second of the killer issues that other

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1 cases have been -- and again I'm not  
2 self-aggrandizing, please -- that other cases  
3 have been lost on because other lawyers or  
4 teams of lawyers have not known how or had  
5 the vigor or the wherewithal, the acumen to  
6 conceive and then execute on issues such as  
7 charity. They did argue it's a charity.  
8 Very sympathetic. Very sympathetic.

9 Among the issues we approached as  
10 to charity are the following: We subpoenaed  
11 the records from only two parishes, they  
12 resisted this of course, only two parishes  
13 seeking all of the records from 1950 forward  
14 concerning lotteries, raffles, drawings,  
15 bingos, all of which qualifies -- and I know  
16 something about this because I learned it in  
17 the video poker litigation which we  
18 handled -- all of which qualifies as illegal  
19 gambling operations.

20 We can show, we could have shown  
21 had we -- had these people not come to the  
22 table, that the diocese, I went to 12 years  
23 of Catholic schools on bingos and raffles in  
24 a large part, I'm not touchy about that, I  
25 don't have thin skin about that, I understand.

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1           how churches raise money. The fact is those  
2           are illegal gambling operations as a matter  
3           of law. Not canon law, South Carolina law.  
4           They're illegal gambling operations.

5                       So we subpoenaed the records of  
6           those illegal gambling operations from only  
7           two parishes. Had they not come to the  
8           table, had they not paid up, we would have  
9           subpoenaed those from every diocese in the  
10          state from 1950 forward. And I think, and we  
11          told the bishop and everybody else who runs  
12          the diocese or shakes their finger in my face  
13          in that capacity, told them that we believe  
14          that was going to jeopardize the 501(c)(3)  
15          status of this charity, because under our  
16          system of laws charities can't engage in  
17          patterns of illegal gambling.

18                      Now, I represent -- I don't  
19          represent the diocese, I represent a class of  
20          counsel seeking to recover. We have done  
21          that when nobody else could. Part of it is  
22          for that reason. But all of this forthcoming  
23          good natured, good hardiness, public spirit,  
24          reconciliation and healing and apology that  
25          these fellows are now standing up telling you

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1 is on the side of the diocese, and all of  
2 this -- these issues that they find offensive  
3 and objected to and sought legal protection  
4 from the Court about, are easily answered.

5 I did this not in a formal forum  
6 like this, but I do it now as public record.  
7 I call on the Bishop of the Diocese of  
8 Charleston to release the names of all known  
9 perpetrators. I call on the Bishop to  
10 release their locations so that our children  
11 in South Carolina and their parents can know  
12 they don't live next door to them or get  
13 taught by them. I call on the Bishop to  
14 release all the reports mandated by statute,  
15 all the reports made to law enforcement,  
16 prosecutors or child protection agencies  
17 concerning abuse by priests in the diocese on  
18 minors. We don't have to argue about it.  
19 Those aren't in.

20 Those things aren't in this  
21 settlement agreement, so in seeking a fee  
22 from you we've asked for the top of the  
23 range, but I must tell you we didn't  
24 accomplish everything that we would like to  
25 have accomplished. We would like to have

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1 accomplished that. Not just for the members  
2 of the class, but we'd like to have  
3 accomplished that for the people.

4 Now, I have in my hand 53  
5 plaintiffs who have contacted us since  
6 advertising has begun. Mr. Meyers made  
7 reference to many more. The stories that  
8 these claimants have to tell are  
9 extraordinary and are important here not for  
10 purpose -- not for purposes of any --  
11 striking any blows on the diocese or  
12 embarrassing anyone or for any other purpose  
13 than that which we now address. An opposed  
14 fee petition. Because you're entitled to  
15 know what we have been dealing with in this  
16 litigation.

17 This was not removing a speck from  
18 an eyelid. This was heart surgery. You're  
19 entitled to know that because they've chosen  
20 to oppose this fee, this cooperative and  
21 healing-oriented group.

22 I'm going to -- there was a child  
23 in this courtroom. Take that child out,  
24 please.

25 THE COURT: Whoa. Stop. Just hold on a

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1 second. Wait, I'm sorry. Hold on one  
2 second. If you're going to exclude somebody,  
3 you got to address that to me.

4 MR. RICHTER: I'm sorry. I apologize.

5 THE COURT: I know you're worked up, but  
6 you got to address that to the Court.

7 MR. RICHTER: I apologize.

8 THE COURT: Do you intend to go into an  
9 area that you maintain it would not be  
10 appropriate for a child?

11 MR. RICHTER: I do.

12 THE COURT: All right. Very well..

13 MR. RICHTER: I apologize.

14 THE COURT: And, you know, I don't know  
15 what it is. Normally and typically I don't  
16 allow children in the courtroom, because  
17 typically what goes on in the courtroom are  
18 those topics that I certainly don't want  
19 little ones to hear, but she's -- I noticed  
20 her and she has absolutely been just so  
21 perfect and it's also an educational place,  
22 so if -- but based upon what I am told,  
23 perhaps you would want to consider that. All  
24 right. Very well.

25 MR. RICHTER: And I apologize for

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1 usurping your function.

2 THE COURT: Now, stop. Whoa. Whoa.

3 Okay. Well, hold on right where we are.

4 Now, it is my understanding that the argument  
5 to this point has to do with the request for  
6 fee; is that right?

7 MR. RICHTER: That is correct. And it  
8 will not get away from that.

9 THE COURT: All right. Okay. Well, let  
10 me hold -- hold on at that point. Because  
11 two things really are in my mind. Number  
12 one, I certainly want to give the diocese an  
13 opportunity to address the very strong  
14 argument regarding the subpoenas and I want  
15 to hear from you, I want you to be able to be  
16 heard on that.

17 Having -- so that's number one. I  
18 certainly want you to have an opportunity to  
19 be heard on that. Secondly, it is very -- it  
20 is very clear to me, it is very clear to the  
21 Court, and I'll say this at this juncture, it  
22 is very clear to the Court that no matter the  
23 defendant, when there is a defense such as  
24 the statute of limitations which is one of  
25 the strongest defenses available to any

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1 defendant under the law and there -- that  
2 defense is yielded in a settlement such as  
3 this, it's clear to me that there has been a  
4 great amount of advocacy that has been  
5 ongoing.

6 I think and would say that once  
7 it's established that there was advocacy,  
8 then -- then it's very clear that there's  
9 been a substantial amount of advocacy. And  
10 there are those class actions, and I don't  
11 speak it in terms of South Carolina because  
12 I'm not aware of it occurring in South  
13 Carolina, but I am aware that there's been  
14 some concern on a nationwide basis that there  
15 can be concern about a class action being  
16 created, being created because what the  
17 defendants get out of a class action is they  
18 get res judicata which brings to closure many  
19 of the issues. And oft times that's all a  
20 defendant gets out of a class action..

21 And I wanted to be satisfied,  
22 although -- although I must again say that I  
23 was pretty satisfied before we came in here  
24 today that this was not one of those kinds of  
25 class actions based on my interaction.

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1 I say that because you are Catholic  
2 and you put that on the record. That you  
3 went to parochial schools, you are Catholic,  
4 although you are ably assisted by your law  
5 partner who is not Catholic and I'm aware of  
6 that as well.

7 So having -- having said that, in  
8 terms of the issue of what legally has been  
9 accomplished in terms of the advocacy of  
10 this, I'm satisfied --

11 MR. RICHTER: Thank you.

12 THE COURT: -- with regards to that.

13 MR. RICHTER: I understand.

14 THE COURT: Having said that, and the  
15 reason for that is, is I'm probably less  
16 concerned about when you talk about the  
17 subpoenas and the like. That's good strong  
18 advocacy. And when a case doesn't come to  
19 conclusion, then you take the snapshot at  
20 that moment. And I don't want to disserve  
21 our system of justice either, because when  
22 cases are resolved, they are resolved for any  
23 number of reasons. Some of it is because of  
24 good strong advocacy, some of them is -- for  
25 as many reasons as there are litigants and

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1 lawyers.

2 I am satisfied and I think that my  
3 concern was to establish that there was good  
4 and substantial advocacy and of that I'm  
5 satisfied.

6 I'm also aware of where  
7 contributions come from. They come from --  
8 they begin with the contributions of  
9 individuals. There can be appropriate  
10 investments made and the like. I'm well  
11 aware of that, so I don't know that we add  
12 anything to that. So I don't know -- I don't  
13 know in terms of an argument over the fee  
14 issue that I am -- that I need any more along  
15 those lines.

16 Now, is everyone clear about that  
17 much? And certainly again I certainly want  
18 to hear from Mr. Geoly with regards to -- to  
19 the arguments that you've made because I know  
20 he wants to address those.

21 MR. GEOLY: Only briefly, Your Honor. I  
22 have very little to say.

23 THE COURT: Huh?

24 MR. GEOLY: I have very little to say.

25 THE COURT: Absolutely. And then I

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1 don't want to keep you from telling me what  
2 you need, but I was hoping that would be --

3 MR. RICHTER: That goes a long way.

4 THE COURT: That would be a guidance.

5 Now, when you all finish though,  
6 then you have --

7 MR. RICHTER: Then it's on you.

8 THE COURT: Then I have an issue, so....

9 MR. RICHTER: I will -- I will refrain  
10 from what I was -- this file folder and go  
11 back to what I think you will find to be --  
12 and this will only be a couple of minutes, go  
13 back to what you, I believe, will find to be  
14 extraordinarily brief.

15 Please, Your Honor, understand that  
16 I am now faced with the prospect of a record  
17 I must make here because this is now a  
18 controverted issue. The fee petition is now  
19 contested by the diocese and should there  
20 ever be any appellate remedy sought by  
21 anybody in this matter, I have to be  
22 concerned about the record I make here or I  
23 don't -- I would have given up what I had not  
24 put in the record.

25 THE COURT: How so?

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1 MR. RICHTER: Well, I can only -- I can  
2 only --

3 THE COURT: This is a settlement.

4 MR. RICHTER: I'm sorry?

5 THE COURT: It's a settlement. It's a  
6 settlement.

7 MR. RICHTER: Well, it is a settlement  
8 but Your Honor has to rule on an issue that  
9 is a controverted issue. The settlement only  
10 set parameters. Your Honor's going to have  
11 to rule on within those parameters if they're  
12 not satisfied about that.

13 THE COURT: If I stay within the --

14 MR. RICHTER: If I stay within, it's  
15 probably not appealable.

16 THE COURT: If I stay within the  
17 parameters it's your position that --

18 MR. RICHTER: No. No, it's not.

19 THE COURT: I thought maybe you got  
20 yourself a little worked up.

21 MR. RICHTER: Okay. But I would still  
22 like to, because you've heard comments here,  
23 that you can't understand what this -- you  
24 can't in considering these matters understand  
25 what this is about if I let comments stand

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1 like Mr. Shahid saying secret archives, if  
2 there are secret archives. Not that  
3 that's --

4 THE COURT: And I'm only smiling  
5 because, again, if anyone had any question  
6 that this is the result of anything other  
7 than advocacy just, yes, that you would be  
8 Exhibit A.

9 MR. RICHTER: Well, I'll quit with this,  
10 but I would like you, please, to hear me just  
11 as to this last issue.

12 THE COURT: All right. Yes, sir. Of  
13 course.

14 MR. RICHTER: So that you can again  
15 understand how they got to the table and how  
16 they got to the process of agreeing to  
17 this -- to this resolution for these dollars.  
18 And it will lay to rest whether or not,  
19 incidentally, there are secret archives.

20 Among the things that we utilized  
21 in this litigation -- and this is filed in  
22 the record, so I'm only telling you something  
23 that's in the records of the court -- among  
24 the things that we used is a document which  
25 is titled "An Instruction," and it says

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1 "Instruction on the Manner of Proceedings in  
2 Cases of solicitation." This document bears  
3 the date 1962 and it is a document  
4 promulgated, I'm sorry, embarrassed and  
5 ashamed to say by the Holy See, Rome, the  
6 head of the Catholic church.

7 This document requires secrecy.  
8 That was one of the positions that we took.  
9 They challenged that position and said, Oh,  
10 it only applies to the confessional where we  
11 even had a legal privilege. I just want to  
12 make a few references to this so you can  
13 understand how we got to where we are.

14 This text is to be diligently  
15 stored in the secret archives of the Curia as  
16 is -- as strictly confidential. What does it  
17 deal with? The crime of solicitation, that's  
18 what it was -- I read you the title a moment  
19 ago. Takes place when a priest tempts a  
20 penitent, whoever that person may be, either,  
21 either that's disjunctive, either in the act  
22 of sacramental confession, that's one place  
23 it can happen, whether before the act of  
24 confession, or immediately afterwards, it  
25 could happen after confession, it's a little

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1 bit now outside the privilege of the  
2 priest/penitent, isn't it? Whether on the  
3 occasion of a confession or the pretext of a  
4 confession, whether even outside the times  
5 for confession. And it goes on and on and  
6 on.

7 At our mediation this was pretty  
8 heatedly exchanged. We engaged -- among our  
9 costs, we incurred the cost for a canon law  
10 expert from another part of the country.  
11 That's the beginning of this very multipage  
12 document.

13 And it goes on to say that the one  
14 denouncing, which means in this language  
15 accusing the priest, should be presented an  
16 oath of observing the secret, threatening  
17 him, I'm quoting, threatening him if there is  
18 need with an excommunication. That's being  
19 thrown out of your faith. That's the person  
20 making the complaint.

21 It goes on to say, if you want to  
22 know the attitude of the church about people  
23 reporting, and I hope we have changed this  
24 attitude is the reason I'm arguing this to  
25 you right now, that there are certain areas

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1 that the inquiry must then, the diocese  
2 inquiry must delve into, and the third of  
3 those is other persons, whether other persons  
4 have been solicited by the same priest. Now  
5 I'm quoting, whether any of them, as not  
6 rarely happens, have been persuaded to make  
7 the denunciation accusation by those  
8 denouncing.

9 What that says is we assume that  
10 people who accuse priests of molesting them,  
11 go out and try to get other people to say  
12 that the priest did it to them too. That's  
13 disgraceful.

14 It goes on to say, as often as in  
15 the prudent judgment of the ordinary, the  
16 governance, I'll call it of the diocese, it  
17 seems necessary, for various reasons, as to a  
18 soliciting or offending priest, sexually  
19 offending priest, there should be added a  
20 prescription for a prohibition of remaining  
21 in a certain place. That translates move  
22 them someplace else. If any priest condemned  
23 of the crime of solicitation, sexual  
24 misbehavior, should transfer his residence to  
25 another territory, so they anticipate that

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1 the priests will be moved around. This was  
2 1962 this came down.

3 Goes on to say that all of these  
4 official communications, it lays out a  
5 process for how to adjudicate these matters,  
6 shall be made under the secret of the Holy  
7 Office. In other words, don't let the  
8 faithful know who the abusing priest is. I'm  
9 embarrassed by that and ashamed by it and  
10 disgusted by it. And I hope that this  
11 church, my church, will be better in the  
12 future for me standing here right now and  
13 doing what I'm doing. At least I think it  
14 shouldn't oppose a fee for a lawyer who  
15 accomplishes what we've accomplished in this  
16 matter.

17 There should be read to the  
18 denouncing person, let's say the child who  
19 went and got abused by the priest and then  
20 told, there should be read to the denouncing  
21 person everything which was given in writing,  
22 statements concerning the matter that the  
23 diocese has now looked into, and having given  
24 an account, having said to him, don't forget  
25 you took an oath, having given an account of

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1 his taking an oath to observe the secret, he  
2 should be dismissed. So before we send him  
3 out of the room we remind him that he took an  
4 oath and that he can be excommunicated if he  
5 tells about this. So he can't go to civil  
6 authorities, I guess is what this says.

7 Now, you want to know why these  
8 people have damages? Because this is how the  
9 church in this diocese and all the other  
10 dioceses heretofore has been treating these  
11 matters. It's dark ages. And hopefully they  
12 have now been brought to light.

13 I can go on with this. This is a  
14 multipage document. But I close by reminding  
15 you that this text is to be diligently stored  
16 in the secret archives from Rome.

17 THE COURT: The document will now be  
18 made the Court's Exhibit.

19 MR. RICHTER: Thank you. I have written  
20 on this and I'll hand up, if it's okay, a  
21 clean one. Thank you.

22 THE COURT: All right.

23 MR. RICHTER: And it is attached to the  
24 complaint in this matter.

25 THE COURT: Very well. I'm a little bit

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1 concerned about -- Mr. Geoly, come on and  
2 make your comments and then at that point we  
3 very well may take a short lunch break.

4 MR. GEOLY: Your Honor, if all  
5 Mr. Richter was saying is that he believes  
6 he's accomplished something in this case, and  
7 that is the reason he took us through the  
8 document known as "Crimen Sollicitationis,"  
9 I'm not sure why we had to hear that. I  
10 don't think anything in my comments or my  
11 objections to the fee petition in any way  
12 implied that class counsel did not do work,  
13 did not work hard, did not accomplish  
14 anything here, did not adequately or well  
15 represent their clients or that there was any  
16 lack of advocacy on either side.

17 I think what I pointed to was that  
18 there was a range agreed to and directed the  
19 Court to what I felt was an equitable  
20 approach to that range.

21 That is not implying that class  
22 counsel don't deserve a fee. It's implying  
23 that the Court simply be judicious in what  
24 the fee should be within an agreed range.

25 As to the document, unfortunately

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1 Mr. Richter felt the need to go through that  
2 detail and now I've got to take your time to  
3 at least respond to some of it.

4 As you know because there's a  
5 settlement in this case, nothing about this  
6 document has been adjudicated in this case,  
7 including Mr. Richter's, I guess, canonical  
8 expertise about what the document means.  
9 Now, I'm sure he thinks he has a canon law  
10 expert who will say what he thinks that  
11 expert should say. Let he tell you the Roman  
12 Catholic Church also thinks it knows what its  
13 own canonical document means.

14 That document is not, and never was  
15 intended to be, a prohibition on anyone  
16 coming forward with any claim against anyone  
17 in the secular world. That document is a  
18 canonical document dealing with a canon law  
19 process internal to the church for dealing  
20 with priests who misuse the sacrament of  
21 confession and the moments and circumstances  
22 surrounding before, after, around or related  
23 to confession. Confession itself being under  
24 a canonical seal, all proceedings to  
25 discipline priests for a violation of the.

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1 seal of confession themselves require oaths  
2 of secrecy. It is a parallel universe and it  
3 has absolutely no threat of excommunication  
4 or any other sanction to any member of the  
5 laity who has a criminal accusation to make  
6 against a priest in any context.

7 Now, of course a priest would not  
8 be free to reveal in public anything that  
9 occurred in the confessional. He would face  
10 a sanction. But the layperson is free to  
11 reveal what occurs in their own confession in  
12 some other context. But if you want the  
13 church to discipline the priest, if you want  
14 a canonical sanction for a canonical process,  
15 then the rules of confession have to be  
16 observed. That is why that structure was  
17 created. That is at least how I understand  
18 the document. That is at least how the  
19 canonists who we've consulted with understand  
20 the document.

21 The next thing is that document did  
22 not come from the Diocese of Charleston. We  
23 have searched and have not been able to  
24 locate it anywhere in the diocese's files.  
25 We have no record of the diocese ever

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1 receiving it, and certainly of the diocese  
2 ever following it. Certainly the diocese  
3 would observe all the rules related to the  
4 seal of confession under any circumstances.  
5 That just does not happen to be a document  
6 anywhere in our files.

7 With regard to secret archives:  
8 Canon law is a very colorful body of language  
9 and uses descriptive and colorful phrases and  
10 it has been extremely useful to plaintiffs'  
11 counsel around the country to refer to and  
12 repeat the phrase "secret archives" because  
13 the word "secret" implies something sinister.  
14 But in American business parlance that is  
15 nothing more than confidential records and  
16 they are no more confidential than they would  
17 otherwise be than if we didn't call them  
18 secret archives.

19 If they happen to contain mental  
20 health records, they may well be protected  
21 from disclosure. If they happen not to  
22 contain privileged material that the law  
23 recognizes, then they are not protected from  
24 disclosure. That has always been at least  
25 our approach and this diocese's approach.

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1                   Whether a confidential file cabinet  
2                   is called secret archives or not, is entitled  
3                   to no special melodrama, I guess is the  
4                   point. And the fact that counsel issued a  
5                   bunch of subpoenas in this case is neither  
6                   entitled to any special melodrama. He's a  
7                   diligent lawyer and he issues a lot of  
8                   subpoenas. He issued subpoenas or threatened  
9                   to for today as well. That's fine. I don't  
10                  think that any way detracts from the work  
11                  he's done and I don't think it in any way  
12                  adds to the work he's done.

13                  Your Honor has already observed  
14                  that both sides worked very hard here. No  
15                  one is contesting that. So, I mean, it's  
16                  wonderful that he issued subpoenas and that  
17                  he was getting ready to litigate his case.  
18                  More credit to him. But I'm not sure where  
19                  it cuts on the fee petition.

20                  The opt outs. I was either not  
21                  clear or counsel misrepresented what I said  
22                  or he understood me but I just didn't make it  
23                  clear, so let me make it clear now. I was  
24                  not saying we were not aware that nobody  
25                  could opt out of the settlement. It's true

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1 we signed a motion that says that the true  
2 meaning of this agreement was always to  
3 recognize opt outs.

4 My point was we did not know how  
5 many people would opt out. We didn't know  
6 the scope or the magnitude of that. It  
7 appears there are more than we anticipated.  
8 Yes, we anticipated that some people would  
9 have the right to opt out here.

10 I think it is an accomplishment of  
11 both sides that the pastoral mission of the  
12 church has been joined with the compensatory  
13 aim of litigation in this case. And I don't  
14 want to take anything away from anyone's  
15 accomplishment, because pastoral aims are  
16 served by this settlement.

17 But I do want to be clear that  
18 every pastoral item in that settlement  
19 agreement, except Item E, presentation to the  
20 Sexual Abuse Advisory Board, reflects what  
21 the diocese was already doing before this  
22 litigation was instituted. Those are our  
23 policies. But it is important that those are  
24 major concerns and people need to know why  
25 there wasn't a need to compel us to do those

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1 things. Well, we've documented that we were  
2 already doing them. And having satisfied  
3 that obligation, we reflected that in a  
4 settlement agreement.

5 That doesn't take anything away  
6 from Mr. Richter's fee. I simply want it  
7 clear on the record that we did not have to  
8 be dragged kicking and screaming to have a  
9 Sexual Abuse Advisory Board, to have  
10 policies, to have a victim assistance  
11 minister, those are things we were previously  
12 doing.

13 Finally, it's true that Mr. Richter  
14 was going to argue that the diocese was not  
15 properly a charity and, therefore, not  
16 entitled to charitable immunity. The two  
17 sides were getting ready to litigate that  
18 issue and the case moved on into settlement  
19 mode so it did not get resolved. I'm  
20 disappointed that he felt the need to make  
21 accusations and assert his side of that case  
22 before you today when what was in front of  
23 you was the issue of his fee petition. He  
24 did. I'm just going to tell you the diocese  
25 has its side of the story. We believe we

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1 would have prevailed on the issue; I believe  
2 Mr. Richter believes he would have prevailed  
3 on issue. That's not why we're here. We're  
4 not here to fight about that. We settled  
5 this case. That's all I have to say. Thank  
6 you, Your Honor.

7 THE COURT: Very well. All right.  
8 We're going to take -- I think there are some  
9 additional issues and we're going to take a  
10 lunch break and I will see everyone back here  
11 at 2:30. I know that's short, but we do need  
12 to conclude today. 2:30.

13 MR. RICHTER: Thank you, Your Honor.

14 THE COURT: And that document needs to  
15 be made an exhibit.

16 And, Robin, bring it to me.

17 (Lunch recess taken from 1:49 p.m. to 2:39  
18 p.m.)

19 (Marked for purposes of the record was  
20 Court's Exhibit 1, Crimen Sollicitationis.)

21 THE COURT: Thank you all so much. And  
22 please be seated. All right. Tell me what  
23 now remains issue wise.

24 MR. RICHTER: Your Honor, the only issue  
25 that I'm aware of that remains is that you

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1 had previously issued an order in this  
2 matter, and among the things you addressed  
3 was the issue about the diocese posting the  
4 money. And you required that as of today  
5 they had to post the money by guaranteed  
6 funds. So I assume they're going to walk up  
7 here and do that and we'll be out of here and  
8 that's the last thing I think we need to do.

9 THE COURT: Okay. Great. All right.  
10 Where are we?

11 MR. GEOLY: Your Honor, what the diocese  
12 has done is segregate two specific funds that  
13 are in existence now. One is a money market  
14 fund in which the \$5 million obligation under  
15 the settlement agreement is satisfied. The  
16 balance in the account is less than  
17 \$5 million because of certain advances on the  
18 settlement that have been made, but it  
19 complies with the \$5 million obligation.  
20 That is the \$5 million fund.

21 The \$7 million obligation is  
22 addressed with a fund that has a 50/50 split  
23 of corporate and treasury bonds valued as of  
24 the February statement at \$9 million.

25 As the Court has probably heard

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1 directly or indirectly, the diocese is in the  
2 process of procuring a letter of credit to  
3 fulfill the \$7 million guarantee obligation,  
4 but since that was not prepared and issued in  
5 time for today, this fund which is in  
6 existence is.

7 And the idea would be, obviously  
8 with notice to the Court and approval, that  
9 at such time as the letter of credit is  
10 actually issued by the bank we would simply  
11 swap the letter of credit for this particular  
12 account. But in the meantime, the account is  
13 fully ready to be tendered as the guarantee  
14 for the \$7 million obligation.

15 I am a little bit unclear about the  
16 procedure, so I'll just say it out loud and  
17 make sure that we all know what we're  
18 supposed to do. My understanding is that  
19 after you've considered everything from  
20 today, at some point today or some other day  
21 you're going to issue a final order  
22 encompassing all of this. And that upon  
23 receipt of that order we will be executing  
24 papers to vest control over these accounts in  
25 the escrow agent who is, I think, here today.

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1 And I just -- that's my understanding of what  
2 we were supposed to do.

3 I do know from the chief financial  
4 officer of the diocese that he's already done  
5 the homework of what papers those need to be,  
6 they're not complicated, and can be done on,  
7 you know, less than 24 hours' notice. So  
8 upon -- my understanding is upon receipt of  
9 the order we're prepared to simply vest  
10 complete control over these funds in the  
11 escrow agent. That's where we are.

12 THE COURT: I understand. Now, just let  
13 me see if I'm clear. There is a money market  
14 fund of \$5 million, but it's something less  
15 than \$5 million.

16 MR. GEOLY: Let me give you the exact  
17 balance, I don't mean to be vague. As of the  
18 February 28th, 2007 statement the money  
19 market has \$4,544,000 in it leaving off the  
20 change, the loose change, \$44,000 of which I  
21 believe is interest that's been earned in the  
22 account. There was a previous advance of  
23 some of the settlement funds made, that's the  
24 only reason this is less than \$5 million, but  
25 both sides agree that this fund satisfies the

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1 \$5 million obligation. That this amount  
2 satisfies the \$5 million obligation.

3 THE COURT: I understand. And what do  
4 you propose to do with the money market fund?

5 MR. GEOLY: We propose to sign a paper  
6 directing the institution holding the funds  
7 changing control over the account.

8 THE COURT: Okay.

9 MR. GEOLY: And vesting control in this  
10 money market account in the escrow agent who  
11 would then be governed by the settlement  
12 agreement in terms of how he could, would  
13 have access to the money.

14 THE COURT: Okay. And that is the  
15 moneys to satisfy the \$5 million part of the  
16 settlement. Very well. And what I think  
17 you're telling me, Mr. Geoly, is that the  
18 diocese would propose to keep that money  
19 unaffected other than it would continue to  
20 earn interest, I gather, until such time as  
21 assuming that the agreement is -- there's a  
22 final order entered regarding the agreement,  
23 at that point it would be then turned over to  
24 the escrow agent.

25 MR. GEOLY: Upon receipt of your order,

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1 right. We would not propose giving the money  
2 over because we haven't yet received the  
3 settlement.

4 THE COURT: Right. Right, exactly.

5 MR. GEOLY: But with your order, this  
6 settlement is effective and I think that is  
7 simultaneously our obligation to tender the  
8 funds.

9 THE COURT: Right. Exactly. I'm afraid  
10 I'm not being clear because it's really a  
11 two-step process.

12 MR. GEOLY: Sure.

13 THE COURT: One of the concerns, as I  
14 have understood it from counsel, is that the  
15 diocese was to obligate, set aside funds.

16 MR. GEOLY: Correct.

17 THE COURT: And then there's been some  
18 concern because as you all have gone through  
19 this process that hadn't occurred.

20 MR. GEOLY: Correct.

21 THE COURT: And I agree with you  
22 completely, you wouldn't relinquish control  
23 until such time as the settlement is --  
24 becomes a court order. All right. But just  
25 so I'm clear, the money market fund that

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1 you've just mentioned satisfies that element  
2 of having the funds obligated in the event  
3 that the settlement is approved.

4 MR. GEOLY: Correct.

5 THE COURT: Okay.

6 MR. GEOLY: And they are the actual  
7 funds that will be handed over, or control of  
8 which will be handed over to the escrow  
9 agent.

10 THE COURT: Got it. And the second  
11 prong would be the \$7 million fund, what  
12 you're saying is actually going to be funded  
13 with a \$9 million --

14 MR. GEOLY: Account.

15 THE COURT: -- account.

16 MR. GEOLY: Yes.

17 THE COURT: And that it would be the  
18 intention, however, of the diocese to  
19 substitute the irrevocable line of credit  
20 letter for that \$9 million fund and that the  
21 control of that would be relinquished also to  
22 the escrow agent.

23 MR. GEOLY: Right. We're not going to  
24 ask anybody to wait. Upon receipt of your  
25 order immediate control of the fund will be

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1           relinquished.

2           THE COURT:   Okay.

3           MR. GEOLY:   But the swapping would occur  
4           later when the letter of credit is actually  
5           issued.

6           THE COURT:   Sure.   I understand.

7           MR. GEOLY:   That's what we wish to do.

8           THE COURT:   I understand.   And at this  
9           point what you're doing to satisfy that  
10          concern that the money be obligated, you have  
11          two items.   Number one, the money market  
12          5 million which is actually 4,544,000, right?

13          MR. GEOLY:   Yes.

14          THE COURT:   And then the second fund  
15          that you were referring to that actually has  
16          about \$9 million in it.

17          MR. GEOLY:   Your Honor, as of  
18          February 28th, 2007 the balance is 9,000,653  
19          and change.

20          THE COURT:   All right.   And have you  
21          identified those accounts and numbers and all  
22          to the plaintiffs?

23          MR. GEOLY:   We're happy to do that, Your  
24          Honor.   We have one concern which I don't  
25          think will be a problem for anyone.   Simply

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1 for the financial privacy of the diocese,  
2 we'd like to provide the account numbers and  
3 the institutions to counsel confidentially.

4 THE COURT: Sure.

5 MR. GEOLY: And I don't think that as  
6 long as they're satisfied that these accounts  
7 exist, I think that should be sufficient.

8 THE COURT: I have no problem with that  
9 at all --

10 MR. GEOLY: Thank you.

11 THE COURT: -- to maintain the  
12 confidentiality at this point at all.

13 MR. GEOLY: Thank you.

14 THE COURT: I certainly do not. All  
15 right. Thank you. Let me hear from --

16 MR. GEOLY: Your Honor.

17 THE COURT: Yeah, sure.

18 MR. GEOLY: I have a housekeeping matter.  
19 and it's my own -- I should have clarified  
20 this earlier before we took the break, but I  
21 just wanted to understand something and God  
22 knows I don't want to reopen a closed issue.

23 You had asked Mr. Richter to put  
24 into the record the "Crimen Sollicitationis"  
25 document.

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1 THE COURT: Yes.

2 MR. GEOLY: As you probably know, it is  
3 attached to the complaint that was filed,  
4 it's in the pleadings this case, so it's  
5 there. But I wasn't understanding the  
6 capacity in which you were taking it into the  
7 record.

8 THE COURT: Thank you. Thank you.

9 MR. GEOLY: If it's admitted in  
10 evidence, then we do have an objection. If  
11 it's in because you wanted to see the  
12 document that he was referring to, and it is  
13 in the pleadings already, then we don't have  
14 an objection. So I just -- I just want to  
15 know so I know whether to make an objection  
16 for the record.

17 THE COURT: Make the objection for the  
18 record.

19 MR. GEOLY: My objection for the record  
20 is that the document lacks authentication and  
21 is hearsay. Thank you, Your Honor.

22 THE COURT: Thank you. Very well.

23 Anything further from class counsel.  
24 at this point regarding --

25 MR. RICHTER: This issue?

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1 THE COURT: Yes, the funds.

2 MR. RICHTER: Yes, ma'am. Your order,  
3 Your Honor, specifically required that  
4 guaranteed funds be posted. There's a good  
5 reason for that, of course, and there's a  
6 good reason to get it out of the diocese and  
7 in to the escrow agent, because if tomorrow  
8 afternoon somebody came in and attached all  
9 the assets of the diocese for whatever  
10 reason, then this class wouldn't be funded,  
11 although it was supposed to have been many  
12 months ago.

13 Our concern is we'd like to read  
14 the guarantee. They haven't told us who's  
15 guaranteeing these funds and what the  
16 guarantee is. Now, I know a little something  
17 about corporate bonds. T bills are one  
18 thing, corporate bonds are a very different  
19 issue.

20 Secondly, we -- I don't think these  
21 are IOLTA funds. We have looked at that, and  
22 I just want to make sure they have looked at  
23 that issue and that none of us are doing  
24 something that we're not allowed to do about  
25 how we classify these funds. I just offer

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1 that for everybody's benefit.

2 And then the last thing, the last  
3 thing is depending upon what you're going to  
4 do, we obviously have been going back and  
5 forth and meeting about all this, we didn't  
6 just come in here today cold. And last  
7 evening they told us, afternoon late they  
8 told us about these two funds. Previously  
9 the chief financial officer told us he was  
10 only posting \$5 million today, wasn't  
11 obligated to post any more than that. But in  
12 any event.... And they said we're getting a  
13 letter of credit, but it will be a seven- to  
14 14-day delay.

15 Now, we met with you for four hours  
16 on our initial meeting, all counsel, and  
17 these counsel represented to you, as they had  
18 consistently represented to us, that the bank  
19 was a holdup, that the bank couldn't get --  
20 they needed one more thing, they needed one  
21 more thing, they needed one more thing. I  
22 don't know if you remember this way back in  
23 October or so.

24 We were skeptical of that because  
25 we had been hearing that since June. I have

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1 subpoenaed Ms. Creed Jennings who is the  
2 bank --

3 THE COURT: B of A, Bank of America.

4 MR. RICHTER: B of A, yeah, the B of A  
5 representative of this client account, client  
6 transactions. I've also subpoenaed her file  
7 records concerning requests by the diocese  
8 for the issuance of letter of credit since  
9 June the 14th of 2006 for the reason that  
10 we're now being asked -- they're saying to  
11 you, without saying it, your order doesn't  
12 mean a thing to us, we're the diocese, and  
13 although you said we got to have guaranteed  
14 funds, we're not going to do it still today.  
15 We're going to give you something else that's  
16 not guaranteed.

17 In addition to that, I'm concerned  
18 about the representations that have been  
19 made, and by brief inquiry of this witness we  
20 believe that it will be shown to this Court  
21 when a request for the letters of credit  
22 which would have solved this problem was  
23 made. So that's the reason that she is here  
24 and we'd like to hear from her in that  
25 regard. And she may say day one. If she

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1 says day one, I understand, may be all the  
2 bank's fault.

3 THE COURT: Okay.

4 MR. GEOLY: Your Honor, I object to  
5 this. For one thing, it's utterly  
6 irrelevant. You scheduled this hearing for  
7 today. We're here today. We're supposed to  
8 have money. We have the money. What is the  
9 point of this?

10 Number two, the settlement  
11 agreement says simply that the funds shall be  
12 guaranteed by the issuing bank to be  
13 available. Well, they're in the account. If  
14 they want to receive assurance from our bank  
15 that the funds are really in the account, we  
16 have no objection to that. We've been  
17 providing the assurances, we have the bank  
18 statements, we'll provide them again. I  
19 don't see the point of calling our banker to  
20 the stand to delve into when we contacted  
21 them and what we said to them going back to  
22 June of 2006. That's not what's before you.

23 MR. RICHTER: We can't get the funds  
24 from the bank. If tomorrow we needed the  
25 funds, we'd have to now go deal with some

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1 corporate issuer of some bond. I don't know  
2 anything about the restrictions on calling  
3 that bond, I don't know anything about a  
4 penalty for any of those things. And they're  
5 not guaranteed as funds.

6 What he's saying to you is, we're  
7 willing to represent to you that we've got  
8 some bonds. One set of government, one set  
9 of private corporate. Don't know anything  
10 about the litigation that these corporations  
11 are in, their final viability at any point in  
12 time. But I do know that the diocese has  
13 either 36 or \$46 million of unrestricted  
14 funds, which I assume unrestricted funds  
15 means they can place with this Court and  
16 satisfy this obligation.

17 And I do know that since June of  
18 last year, I believe, the diocese hasn't  
19 asked for a letter of credit until very  
20 recently, and I do know that we don't have  
21 the letters of credit still today, which we  
22 could then -- not us, but the escrow agent  
23 could call and the bank must honor upon  
24 our -- I'm saying our, not literally our.

25 THE COURT: Right.

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1 MR. GEOLY: Your Honor, first of all the  
2 settlement agreement says letters of credit  
3 of other pools of funds. It anticipates  
4 specifically we may not ever use a letter of  
5 credit. That was in our discretion.

6 Number two, the \$5 million  
7 obligation is sitting in a money market  
8 account as cash money available to spend  
9 tomorrow on the fee that counsel has so  
10 vigorously argued for.

11 Number three, there isn't a dime of  
12 the settlement pool that can be spent  
13 tomorrow on claim satisfaction. As you know,  
14 there's a 120-day period before people can  
15 even -- even close the claims process.

16 If more assurances are needed -- I  
17 mean, my understanding is that with an  
18 instruction from the escrow agent the bond  
19 fund -- it's a fund of bonds is liquidated,  
20 and the money's made available. If counsel  
21 needs more assurance on how that's done or  
22 what the actual terms are, we're happy to  
23 provide that to him. The real point is we  
24 had a \$5 million and a \$7 million obligation,  
25 we've met them. And what he wants to do is

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1 now go back and dredge up whether he thinks  
2 we were keeping our word since June and  
3 trying to find out if somebody told him that  
4 we were trying to get money from the bank  
5 when he thinks we really weren't.

6 None of that is at issue before you  
7 today. Are we here meeting our obligations?  
8 We are. You have an agreement to finalize  
9 and to consider. I don't -- I don't see why  
10 calling our banker to the stand over what  
11 occurred in June is relevant to your task  
12 here.

13 THE COURT: Okay. And here's just --  
14 just so that I'm real clear about what has  
15 occurred, the money, you're telling me that  
16 the two funds exist, that those -- that  
17 the -- those funds will remain, that the --

18 MR. GEOLY: Upon your order we will sign  
19 the funds over to the escrow agent.

20 THE COURT: Okay. And that the -- and  
21 that there may be a substitution for the  
22 letter of credit for the \$9 million fund.

23 MR. GEOLY: Correct.

24 THE COURT: Okay. Very well. Now,  
25 counsel, I want to talk to you because I'm

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1 happy to get your position on where I think I  
2 am at this juncture because it causes me  
3 grave concern.

4 There are two pieces of information  
5 that I now have that concern me. And in all  
6 candor in the settlement, in my settlement  
7 conference with counsel and, of course, both  
8 of you were there, both of these -- all four  
9 of you lawyers were here. Mr. Lofton wasn't  
10 present, but outside Mr. Lofton the four of  
11 you were present and we met and went through  
12 the settlement proposal and talked about the  
13 settlement. But today there are two new  
14 pieces of information and those two pieces of  
15 information cause me great concern. Great  
16 concern.

17 The first, of course, is what has  
18 been marked as Court's Exhibit Number 1. And  
19 that -- this document causes me great concern  
20 which is why, Mr. Geoly, I wanted you to put  
21 any objections to the document that you felt  
22 compelled to place on the record.

23 And secondly I am concerned with  
24 counsel's representation that there is -- not  
25 representation, let me call it argument, that

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1           there is a difference between the number of  
2           priests who have engaged in sexual assault or  
3           abuse and the real number. And that the real  
4           number may be somewhere hidden or undisclosed  
5           or secret.

6                     That, of course, would be a  
7           violation of the criminal laws of the State  
8           of South Carolina, both in the form of  
9           obstruction of justice as well as any  
10          underlying crimes which may or may not have  
11          been committed against children of this  
12          state. That now predominates in my mind.

13                    I have so informed our solicitor  
14          David Pascoe. And I contacted David Pascoe  
15          because you are in the First Judicial  
16          Circuit..

17                    I will order Solicitor Pascoe to  
18          undertake an investigation. I will share  
19          with him what has now been marked as the  
20          Court's Exhibit Number 1, because the Court  
21          has an obligation where there is information  
22          that comes directly to the Court that there  
23          have been crimes that have been committed  
24          that the Court take appropriate action. I  
25          have, and will, order Solicitor Pascoe to do

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1 that. That must happen before I can approve  
2 the settlement for this reason: Because if  
3 it is true that which has been argued that  
4 there are children who have been abused and  
5 been undisclosed, and their only remedy is to  
6 receive newspaper publication and then to  
7 come forward, that is insufficient in my mind  
8 because those would be names that would be  
9 known and they are entitled to more attention  
10 than that.

11 So, that is where we are at this  
12 point. I'm happy to hear from counsel, but  
13 in my mind that is where we are. I must have  
14 assurances that there are no known crimes  
15 that have been committed against children,  
16 now adults, that have been undisclosed to law  
17 enforcement before I can go forward any  
18 further with regards to the settlement.

19 I'll hear first from plaintiffs'  
20 counsel.

21 MR. RICHTER: Thank you, Your Honor.  
22 The -- I'm sorry that you had to undertake  
23 the actions that you've had to undertake, but  
24 I am most appreciative of your public sense  
25 of concern, particularly for those who as

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1 children don't have the wherewithal otherwise  
2 internally or certainly by their standing in  
3 line to proceed on their own. It is my  
4 sincere hope that the diocese has not -- has  
5 not covered up the abuse of any child.

6 If -- and I know there's a lot of  
7 money at stake here -- this proceeding today  
8 and this lawsuit keeps one further child from  
9 being abused, or uncovers any coverup  
10 whatsoever by this diocese, then the money  
11 pales in comparison of importance.

12 So while we don't want to delay,  
13 and I understand it, I think the good news is  
14 that the diocese is the repository of that  
15 information and can make it, I hope, readily  
16 available to the solicitor.

17 We have had many contacts from  
18 people during the duration of this litigation  
19 and particularly during this advertising  
20 period. And while we certainly agree to keep  
21 everything confidential, we -- that is  
22 information at least for matching purposes or  
23 scope of remedy available to these people  
24 that we would like to know in processing  
25 claims for the class as well. Thank you.

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1 MR. GEOLY: Your Honor, first of all my  
2 understanding has been and is that it has  
3 been the policy of the diocese for some time  
4 to report every allegation it receives  
5 directly to the solicitor and to encourage  
6 anyone who comes forward to go to the  
7 solicitor.

8 We are not aware, and I've just  
9 conferred with Mr. Shahid, of any known  
10 claims against the diocese involving child  
11 sexual abuse that have not been reported to  
12 the solicitor. We will, of course, cooperate  
13 fully with any inquiry from the solicitor.

14 But I am trying to understand what  
15 has -- the source of the concern that there  
16 are undisclosed claims. You know, the  
17 diocese has, especially of late, had to  
18 inventory all the claims back to 1950 and  
19 make a report of them. That's the number  
20 that's been shared in the public. And my  
21 understanding is that they've all been  
22 reported.

23 Again, we're happy to go through  
24 this step. If there's a delay in  
25 implementing the settlement, then so be it,

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1 but if there's something I could address that  
2 was sort of the cause of the concern, I would  
3 be happy to address it I guess is what I'm  
4 trying to say.

5 THE COURT: Absolutely. And I  
6 appreciate that so much, Mr. Geoly, which is  
7 another reason why I am not pressing any more  
8 with regards to the funding. Because there  
9 is a delay, and I don't want the diocese at  
10 this point, I'm very comfortable with the  
11 diocese not relinquishing control at this  
12 moment to the trustee.--

13 MR. GEOLY: Okay.

14 THE COURT: -- for that reason. I'm  
15 very comfortable with it where it is. You  
16 know, and obligation of the judiciary is such  
17 that when you hear things, even in the  
18 context of a civil matter that may be  
19 applicable to the criminal law, it is  
20 incumbent upon that judge to stop and to be  
21 sure that -- to be sure that those -- that  
22 those matters are satisfied in terms of the  
23 criminal law. That is all that this -- that  
24 this is. This is not a finding.

25 MR. GEOLY: Fair enough.

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1 THE COURT: This is no more than we must  
2 proceed appropriately.

3 MR. GEOLY: Very good.

4 THE COURT: That would be the -- that  
5 would be the appropriate first step. It  
6 is -- it would be a wonderful thing and a  
7 wonderful thing if this step is very short.  
8 If everyone is satisfied, if law enforcement  
9 is satisfied that these matters are of no  
10 concern and that communicates back, then  
11 we'll be able to go forward.

12 MR. GEOLY: We'll cooperate fully with  
13 the solicitor, Your Honor.

14 THE COURT: And please understand at no  
15 point did I intend to communicate otherwise,  
16 because I absolutely believe that to be true.

17 MR. GEOLY: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. GEOLY: Mr. Shahid I think has one.

20 THE COURT: Sure.

21 MR. SHAHID: As a matter of procedure --

22 THE COURT: Yes.

23 MR. SHAHID: -- do we reconvene? How do  
24 we initiate the process? How do we get back  
25 to you? What is your intent on where we go

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1 from here?

2 THE COURT: There are a couple of  
3 scenarios that could occur. Now, I will  
4 articulate these and neither one of these  
5 will happen because I articulate them, it  
6 will be something that I cannot even think of  
7 that will occur.

8 One thing that could occur is that  
9 there will be an investigation by the  
10 solicitor. The solicitor could say, you know  
11 what, I'm satisfied these matters have been  
12 heard, there are -- you know, there are no  
13 new concerns, proceed onward, at which point  
14 I don't need any further argument at all.

15 MR. SHAHID: Okay.

16 THE COURT: I don't need any further  
17 argument because I have all the information  
18 that I need to make my decision if nothing  
19 else changes from this moment. And I would  
20 issue my decision. That would be the first  
21 thing.

22 The second thing that could occur,  
23 and please, as I articulate this I do this by  
24 example only because you have asked. I have  
25 no information whatsoever that this would

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1 occur, so please don't think that I have --  
2 that I have any feeling about this because I  
3 don't. But let's say that 100 new cases of  
4 abuse surfaced that were to that moment  
5 unknown. Well, obviously, obviously at that  
6 point I'm going to need to know that. I'm  
7 going to need to hear from you, both sides.

8 MR. SHAHID: Sure.

9 THE COURT: How do you feel about that?  
10 What, if any, effect on these proceedings, on  
11 this settlement does that have? It would be  
12 impossible for you to know or for me to know  
13 how or what that effect might be. But again,  
14 please understand I have no feeling  
15 whatsoever about that occurring, I really  
16 don't. I just know that this is the  
17 appropriate thing to do.

18 MR. SHAHID: Okay.

19 THE COURT: Having said, again, those  
20 two scenarios, neither one of those will  
21 probably happen, it will probably be  
22 something that none of us have anticipated.

23 It would be my intention that --  
24 that our solicitor would communicate with  
25 both of you and anyone else that they need

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1 to, and I think clearly the place to begin is  
2 with you and I have told him that I will give  
3 to him this document. He may want a  
4 transcript of these proceedings, and beyond  
5 that he will do what he does. Maybe he will  
6 keep it, maybe it goes to the attorney  
7 general, but it will go to someone other  
8 than -- other than the Court, obviously, at  
9 this point and then we will -- once that  
10 has -- once that process is either concluded  
11 or come to some other juncture, then we may  
12 need to get together and let me hear from you  
13 at that point, but at this juncture I think  
14 it's very difficult to know what is the next  
15 step.

16 MR. SHAHID: Okay.

17 THE COURT: And it very well may be that  
18 it is clear and I'll go forward and make my  
19 decision.

20 MR. SHAHID: Okay. Thank you, Judge.

21 THE COURT: Thank all so much. Anything  
22 further?

23 MR. RICHTER: Nothing from plaintiffs.

24 MR. SHAHID: Nothing from us..

25 THE COURT: I want to thank all of you

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1 for being here today and for your patience as.  
2 I have gone through these matters to learn  
3 about these issues. I know it has been long.  
4 I hope nobody's blood sugar plummeted  
5 dramatically, but thank you all for the time  
6 you have given me, counsel, today and your  
7 explanation and we will -- I suppose the best  
8 thing to say is we will be in touch. Thank  
9 you so much.

10 MR. SHAHID: Thank you, Judge.

11 THE COURT: We'll be convened with these  
12 proceedings today.

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March 9, 2007

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER ) : C E R T I F I C A T E

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 16th day of March 2007.

*5/*  
\_\_\_\_\_  
Robin L. Keil, RMR  
Resident Court Reporter  
First Judicial Circuit

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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

2

1

2

ahead, shoot. What?

MR. SHAHID: Judge, I sent by fax a

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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.

3

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  
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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

4

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,

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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.

5

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  
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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

6

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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8

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

12                   July 13 2007.txt  
13                   my statement in that regard.

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

19

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

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

8                   THE COURT: Okay.

9                   MR. RICHTER: The affidavit simply  
10                   states what I have just said, who he is and  
11                   how he got to this. The crux of the  
12                   affidavit is in paragraphs four, five and  
13                   six. Six -- in four he simply says he used  
14                   recognized methods. We're a little hammered  
15                   in the sense that we don't have name, rank,  
16                   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 correction -- 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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12 those people.  
13 THE COURT: There is nothing more that  
14 the diocese could possibly do that I am aware  
15 of. I mean, at the point in time when the  
16 diocese obligates itself to do as it has been  
17 described, there is nothing more that they  
18 can possibly do insofar as I can even  
19 imagine, Mr. Shahid, truly. I mean, what  
20 they say is if you come forward in the future  
21 we will treat you just the same as we have  
22 treated these individuals and the relief is  
23 available for you. I know of nothing more  
24 that could be done. So I certainly would  
25 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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29

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

30

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

35

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,

37

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.  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER ) FIRST JUDICIAL CIRCUIT  
2006-CP-18-1310  
2006-CP-18-1311  
2006-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. )

TRANSCRIPT OF RECORD

THE BISHOP OF CHARLESTON, A )  
CORPORATION SOLE, AND THE )  
BISHOP OF THE DIOCESE OF )  
CHARLESTON, IN HIS OFFICIAL )  
CAPACITY, )

DEFENDANT. )

AUGUST 9, 2007  
ORANGEBURG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

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

DAVID K. HALLER, ESQUIRE  
V. LYNN LOFTON, ESQUIRE  
LAWRENCE E. RICHTER, JR., ESQUIRE  
WILLIAM H. WARING, III, ESQUIRE  
ATTORNEYS FOR THE PLAINTIFFS

RICHARD S. DUKES, JR., ESQUIRE  
JAMES C. GEOLY, ESQUIRE  
A. PETER SHAHID, JR., ESQUIRE  
ATTORNEYS FOR THE DEFENDANTS

ELIZABETH B. HARRIS, CVR  
CIRCUIT COURT REPORTER

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E X H I B I T S

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NO EXHIBITS INTRODUCED.

1 THE COURT: Let me tell you one other document I need  
2 because I believe there were some notes made after the  
3 mediation in June of '06, the mediation from June the 13th  
4 and 14th. Weren't there notes of agreement made on June  
5 14th?

6 MR. RICHTER: There were, Your Honor.

7 THE COURT: Handwritten.

8 MR. RICHTER: And I don't think any of us anticipated  
9 that would be needed today, but we don't -- I don't think  
10 we have any disagreement. We can tell you what those notes  
11 were. I think we're all in agreement about what they were.  
12 Certainly Mr. Infinger has been here previously and spoke  
13 to the Court.

14 Your Honor, I believe I'm correct in stating the fact,  
15 I think in October after the initial June mediated  
16 settlement, you ruled that whatever was in that agreement  
17 was going to be superseded by your order because we were  
18 giving you terms that were different in payment than we had  
19 actually written in that agreement. And we all in open  
20 court, I think, all agreed to -- Mr. Geoly's indicating  
21 agreement with my summary. We all agreed to that in open  
22 court. And I don't know that you issued a written order,  
23 but certainly you made it the oral order, and that was all  
24 the case -- and we all agreed to it.

25 MR. SHAHID: Judge, I'll do one more better than that.

1 The January 12th agreement, page 1, bottom of page 1:

2 This agreement represents the formal settlement and  
3 arbitration agreement, in quotations, formalizing the  
4 agreement agreed between the representatives of the  
5 diocese and supersedes all other agreements and/or  
6 writings previously executed by the parties.

7 So, that written agreement, I think, merged or took a  
8 backseat to the January 12th order.

9 THE COURT: Okay. Now, yesterday when we talked, I  
10 told you all that if you could come to an agreement  
11 regarding the order in which these matters would be heard,  
12 that I would consider hearing them outside of the order in  
13 which the motions in the matters had been filed. And I  
14 would just simply ask, and I'll start with plaintiffs'  
15 counsel, whether or not such an agreement has been reached.

16 MR. RICHTER: It has not, Your Honor.

17 THE COURT: All right, you concur with that, Mr.  
18 Shahid?

19 MR. SHAHID: Yes, ma'am.

20 THE COURT: All right. Well, then we will go  
21 chronologically, and chronologically ---

22 MR. RICHTER: Your Honor, before you do, could I put  
23 something in the record, please?

24 THE COURT: Okay.

25 MR. RICHTER: Because properly I'm sure the bar and

1 the Supreme Court itself is very particular now about these  
2 kinds of matters.

3 THE COURT: Yes.

4 MR. RICHTER: I know that throughout, we all know that  
5 throughout this litigation, Your Honor internally walled  
6 off Mr. Will Waring, who was then your clerk, from having  
7 any substantial contact with us. None of us had, I'm  
8 confident -- I know from our side, and I'm confident in  
9 saying that from their side I'm sure it's true, too. None  
10 of us had any such contact Mr. Waring. Our only contacts  
11 with him were we may have gotten a call saying you're  
12 scheduled for a hearing at 3:00 on next Tuesday or  
13 whatever.

14 But I want to make clear now Mr. Waring is now in  
15 private practice and engaged by my firm. He is an active,  
16 desires to be an active participant in all the litigation  
17 that my firm is involved in. And I want the record to be  
18 clear for his benefit, for my benefit, for your benefit,  
19 for theirs, for everybody's benefit, that he was clearly  
20 walled off when he existed in your employ, and that he is  
21 under no disability in now appearing as counsel in this  
22 matter. If anyone has any different recollection or  
23 opinion about that, please let me ask it be stated.

24 THE COURT: All right, Ms. Lofton is here. She is  
25 certainly a plaintiff's counsel also and not in your law



1 firm. I gather you are comfortable with Mr. Waring. We'll  
2 start with plaintiffs' side, Ms. Lofton.

3 MS. LOFTON: Yes, Your Honor.

4 THE COURT: Okay, very well. Mr. Shahid, it's up to  
5 you all and you and Mr. Geoly completely. He was walled  
6 off from the litigation when he was with me, and I want you  
7 all completely, one hundred percent comfortable, and he  
8 will vacate the courtroom if you have even a moment's worth  
9 of concern.

10 (DEFENSE COUNSELORS CONFER.)

11 MR. SHAHID: Judge, as I, just so I'm clear on the  
12 record with all of this.

13 THE COURT: Certainly.

14 MR. SHAHID: As I understand it, he was your law clerk  
15 until the fall or August of 2006?

16 THE COURT: No. He was my law clerk, and he began in  
17 August of 2006, was my law clerk until about a month ago  
18 when he left my employ.

19 MR. SHAHID: Okay.

20 THE COURT: And at the point in time when he began to  
21 look for employment and had interviewed, whoever he  
22 interviewed with as he was going through that process, as  
23 he began to interview with those folks, he got walled off  
24 from that, the litigation, once he was seeking employment.  
25 And particularly once he had decided to take the employment.

1 with Mr. Richter's law firm. He was walled off on all  
2 their litigation, and I think this is all I've got  
3 involving that particular law firm.

4 And, quite frankly, quite frankly it became a bit of a  
5 difficulty, yes, because the more he interviewed, the less  
6 law clerk I had.

7 MR. SHAHID: As I recall this, Judge, and I'm just  
8 going back several months now.

9 THE COURT: Sure, sure.

10 MR. SHAHID: To make sure that we're all -- this is  
11 brought up. There was some controversy, I guess, or  
12 advocacy that started probably after October 2006, and  
13 those things got worked out in January of '07.

14 THE COURT: Right, right.

15 MR. SHAHID: That's when the agreement got, the  
16 agreement got signed on January 12th of '07. So, I'm  
17 trying to put this in context that we're all clear on the  
18 record as to when his active participation for employment  
19 seeking started.

20 THE COURT: Sure, sure.

21 MR. SHAHID: And I'm just -- and that would help for  
22 the record, I think, if we got all that.

23 THE COURT: I don't remember; in all candor, I don't  
24 remember. I do know obviously I want to say by January I  
25 don't think he was -- I really don't remember. I really

1 don't remember, in all candor. I don't remember him being  
2 in and around this litigation.

3 I do remember having -- when you all, I remember when  
4 you all came to me and wanted me to review the agreement  
5 and the documents, Mr. Geoly, that was the marathon three  
6 and a half, four-hour meeting. He did not participate in  
7 that.

8 MR. GEOLY: No. That was in October of '06.

9 THE COURT: That was in October of '06?

10 MR. RICHTER: And we can document that, Your Honor, by  
11 how far the chicken went.

12 THE COURT: Exactly. Exactly.

13 MR. RICHTER: I very clearly remember that.

14 MR. GEOLY: I will agree to that.

15 THE COURT: And I don't remember him, I don't remember  
16 him -- I remember him not being involved in that. Am I  
17 right with that?

18 MR. SHAHID: He was not involved in the October '06  
19 conference we had in your chambers.

20 THE COURT: And I don't remember. I know he wasn't  
21 involved in the January. I say I know he wasn't. I mean  
22 I'm confident that he wasn't.

23 MR. SHAHID: Judge, I ---

24 THE COURT: Well, that's, wait a minute now.

25 MR. SHAHID: That's not true, Judge.

1 THE COURT: That's not true. No, because I -- no,  
2 because I remember, I remember, actually remember having  
3 conversations with him because he didn't understand the  
4 procedure, and he didn't understand. I do remember he was  
5 there because he did not understand how we could spend  
6 three and a half hours on a document and it wasn't  
7 approved, in all candor. And I do remember he was  
8 nonplused about that and having that discussion with him:  
9 Judge, what in the world just happened.

10 MR. RICHTER: Your Honor, maybe I can make this easier  
11 for all of us. I called this to your attention because  
12 there is actually a rule about this, but what the rule says  
13 is that if your clerk has substantial involvement with a  
14 case. Now, that substantial involvement I think is used as  
15 a term of art. It doesn't mean asking you a question about  
16 it, how a thing happens, which may happen in any case. It  
17 says is substantially involved with a particular case.

18 In that instance, if that had happened, we'd have to  
19 wall him off. But by you walling him ahead of that, which  
20 is also provided for, it precludes the, quote, substantial  
21 involvement in the case. I don't know of any legal issue  
22 anywhere in our many, many visits with you and appearances  
23 before you that Mr. Waring was ever involved in at all.  
24 And if I'm wrong, I certainly stand corrected, but he's  
25 sitting right here, and he can represent that to you as

1 well.

2 THE COURT: I don't know that he was and I don't think  
3 that he was, but I don't want these folks uncomfortable.

4 MR. SHAHID: Judge, I'm just trying to reconstruct.

5 THE COURT: Yes, absolutely.

6 MR. SHAHID: And I'm just making sure the record's  
7 clear so we're all protected.

8 THE COURT: But after, yes, after -- I was trying to  
9 think. After January, the issues -- because when we met in  
10 January, that was the hearing. That was the hearing, of  
11 course, on the issue of fairness, and certainly you all  
12 were singing on the same sheet of music ---

13 MR. SHAHID: In March.

14 THE COURT: Well, in January.

15 MR. SHAHID: In January, in March.

16 THE COURT: Early in the hearing, early in the  
17 hearing.

18 MR. SHAHID: That's right. That's correct.

19 THE COURT: Early in the hearing, and then the only  
20 reason it didn't go forward at that point obviously sua  
21 sponte from the Court.

22 MR. SHAHID: And the only conflict or controversy or  
23 adversarial role I think we really had was sometime in late  
24 December or early January. I think it was more of late  
25 December, like the 5th or the 15th of December. It sort of

1 sticks in my mind and that's -- I just don't remember what  
2 role he had in some of the walling off process at that  
3 time. There was a motion filed by the -- to compel or  
4 something along those lines, and -- because there was an  
5 issue getting the funding all together. And that was -- I  
6 remember being there, Mr. Richter, Mr. Haller, myself, my  
7 law clerk, and it was around Christmas time and we all --  
8 and you set out specific parameters on dates on which  
9 certain things had to be done. And I'm saying this. I  
10 just don't remember his participation, and I'm asking that  
11 out loud.

12 THE COURT: I appreciate you doing it, Mr. Shahid, in  
13 all candor.

14 MR. SHAHID: And I'm just, and I just...

15 THE COURT: I don't remember.

16 MR. SHAHID: I don't remember.

17 THE COURT: I don't know. Did he have any ---

18 MR. SHAHID: I don't remember him being there in  
19 December.

20 THE COURT: I don't know if he did or not. I don't  
21 remember him having any participation in it or not.

22 MR. RICHTER: Well, let me suggest that if anybody  
23 wants to know whether Will Waring has been substantially  
24 involved in this case as your clerk, he was so  
25 substantially involved that nobody remembered.

1 THE COURT: That's kind of embarrassing for him, isn't  
2 it?

3 MR. RICHTER: It's almost a self-answering situation.

4 THE COURT: We have a brand new clerk that's watching  
5 this, going this poor clerk wasn't remembered. What a  
6 horrible thing.

7 MR. SHAHID: The reason I say that, that is my only  
8 ---

9 THE COURT: I don't remember. Y'all help me if you  
10 remember. I don't remember him being involved in it.

11 MR. SHAHID: My contact with him was simply he called  
12 to say the judge wants to see you on this date, and I don't  
13 remember him in the courtroom on the hearing in December,  
14 and that's why I'm asking because that's the only time I  
15 would recall anything of an adversarial relationship that  
16 we may have had between plaintiffs' counsel and defense  
17 counsel, and that's it. That's all I recall. Otherwise,  
18 it was mainly ---

19 THE COURT: Yes, I don't remember.

20 MR. RICHTER: Your Honor, could Mr. Waring make a  
21 representation to you?

22 THE COURT: Yes, absolutely.

23 MR. WARING: Your Honor, the only involvement I ever  
24 had with the case was, at that time or at any other time,  
25 was that I was actually scheduling some kind of hearing or

1 status conference for you on behalf of all the parties.

2 And I think I spoke to Mr. Shahid first, and then I spoke  
3 to Mr. Richter, and then to Mr. Shahid again. So, I was  
4 trying to coordinate a date for you to meet with them.

5 (MR. RICHTER AND MR. WARING CONFER.)

6 MR. WARING: No, there was nothing substantive about  
7 it at all. That's all I did.

8 Now, I was in attendance at the March 9th fairness  
9 hearing. I was in attendance at that hearing, if you  
10 recall, and then after that, that was it. That was  
11 completely it.

12 THE COURT: That's the one where you were wondering  
13 how could this have been worked out, and yet it blew up.

14 MR. WARING: That, yes. I had no knowledge of  
15 anything that went on between any of the parties before  
16 that March 9th hearing.

17 THE COURT: And again, y'all ---

18 MR. SHAHID: That's fine.

19 THE COURT: --- remember more about it than I do.

20 MR. SHAHID: Which is okay and as I said, I was just  
21 trying to go through for the sake of trying ---

22 THE COURT: Sure.

23 MR. SHAHID: So we could just reconstruct.

24 THE COURT: I do remember, I absolutely, though, I  
25 remember feeling very strongly that at the point in time



1 when Mr. Waring began to interview that, you know, when you  
2 learn things in your background when you practice law and  
3 you remember things, I just remember real strongly going  
4 whoa, you've got to be Chinese walled. And even at that  
5 point, I don't even remember wanting him to make phone  
6 calls back and forth scheduling things. I think my  
7 secretary and other people did that because I didn't want  
8 him to do that.

9 MR. RICHTER: We primarily, I can tell you we  
10 primarily dealt with Stephanie, Stephanie I think was her  
11 name.

12 THE COURT: Yes, yes, exactly because I didn't want  
13 him to, I just didn't want him to have any interaction at  
14 all with the case or with you guys at that point, either  
15 side, because it doesn't look wonderful at that point.

16 MR. RICHTER: If it makes everybody feel any better,  
17 he hasn't shown any knowledge of the case to me so far.

18 THE COURT: So, in any event, but again, Mr. Shahid,  
19 please know your comfort is most important.

20 MR. SHAHID: No, Judge, and really, my exercise with  
21 you then was just to reconstruct to make sure the record  
22 was clear. My recollection was only that one possible time  
23 that he was there in December, and if he said he wasn't  
24 there, he wasn't there. And that's the only time I would  
25 think of that, besides when I mentioned about the telephone

1 calls. So, we're comfortable.

2 THE COURT: Okay, and if that changes, please let me  
3 know.

4 MR. SHAHID: I will. Okay.

5 THE COURT: If at any point, please, please let me  
6 know.

7 MR. RICHTER: Thank you, Your Honor.

8 MR. SHAHID: While I'm standing, Judge.

9 THE COURT: Yes.

10 MR. SHAHID: At our phone status conference yesterday.

11 THE COURT: Yes.

12 MR. SHAHID: You did, you did say that you would  
13 reserve the right, and you have obviously, to reshuffle the  
14 decks as I asked you concerning how these motions would be  
15 heard because there is importance on the order of these  
16 motions being brought to your attention besides the order  
17 that they were filed by chronological date as opposed to  
18 the implications that these orders may have on this rule to  
19 show cause.

20 THE COURT: I don't think so. Let me tell you why I  
21 don't. What concerned me about that is that I'll first  
22 hear from the rule to show cause. But what's real  
23 important to me in the context of the rule is when you all  
24 saw language -- I'm concerned about that, but I think  
25 that's a part of it, in all candor, part of the rule to

1 show cause because one of the concerns that you have is  
2 that you all say that you all thought the order was  
3 presented to the Court before it was presented to you guys,  
4 and you know that is not appropriate under our rules. So,  
5 I'm kind of keyed on that; I'm concerned about that. I'm  
6 concerned that I would have received the order faster than  
7 you all have because that's not the rule. The rule is that  
8 you must receive it at the same time or earlier, and that  
9 concerns me.

10 But along that same line, I'm concerned that days  
11 would have gone passed and I didn't hear from you all that  
12 the language wasn't language with which you were  
13 comfortable. And I'll just put this out there for  
14 everyone's edification. If this was a case that was more  
15 in the normal course where there's very little interaction  
16 with the Court, I would feel probably one way.

17 But I'm very concerned at the way this comes to me and  
18 how it is at this juncture when this is a case that I have  
19 had as much interaction with lawyers as ever in any case  
20 that I have been involved in in ten years. And in all  
21 candor, I'm a little bit nonplused to say the least by it,  
22 nonplused. And in all candor, I don't know how we're here.  
23 I don't know how we're here, and I am very concerned that  
24 we are here.

25 I know that, and these are just my general

1 observations, there have been times in this litigation that  
2 I felt like I was talking with both sides all the time  
3 about everything. And the funding of this settlement has  
4 been one of those issues that I feel like plaintiffs have  
5 been screaming about. And I have been saying, you know,  
6 quit. Stop accusing the defendants of not acting in good  
7 faith to fund this settlement because I'm not going there  
8 with you at this point. They have separated the funds.  
9 I'll order that they separate these funds, and stop already  
10 with the grouching, the grouching about the failure to fund  
11 the settlement. And I feel as though I have kept that at  
12 bay to allow both sides to work on the terms of the  
13 settlement.

14 So, I am concerned, based on everything that I have  
15 seen to this date, that there has been a change of position  
16 on behalf of the defendant. And, quite frankly, I don't  
17 understand it. I don't understand. I mean, I almost --  
18 well, I'm going to allow you all to certainly argue. But  
19 both sides please be mindful: I do not come to this case  
20 anew. I have been mired in this case now for how many  
21 months? When did y'all first -- October? Is that first  
22 when you, October?

23 MR. RICHTER: The fall at least, yes.

24 THE COURT: A lot, a whole lot. I am not a stranger  
25 to this case, and do not treat me like one, and I do not

1 understand why we are where we are. I almost want to turn  
2 to the defense for that.

3 MR. SHAHID: But, Your Honor, if I, I may be able to  
4 short circuit all of that.

5 THE COURT: Okay.

6 MR. SHAHID: And explain.

7 THE COURT: Okay.

8 MR. SHAHID: Because I get a sense that the Court's  
9 frustrated with us.

10 THE COURT: Very. I am very frustrated.

11 MR. SHAHID: And if I could be candid with the Court?

12 THE COURT: Sure.

13 MR. SHAHID: I mean, I think that's unfair to us to  
14 have that kind of frustration because when you boil all  
15 this out, the motions we've filed and the rule to show  
16 cause that they filed, it comes down to a single question  
17 that just needs to be resolved that will take care of  
18 everything, okay, I think. In my humble opinion, I think  
19 it will take care of everything.

20 The question is this. In the event there is an appeal  
21 to your order, and I think that's a pretty good chance  
22 that's going to happen because Mr. Myers has filed his  
23 motion to alter or amend yesterday.

24 THE COURT: Okay.

25 MR. SHAHID: And in the event the Court of Appeals or

1 three of the five Supreme Court justices says Mr. Myers is  
2 correct and your order is wrong and kicks out the order,  
3 and in the event that we have funded 5 million dollars or 7  
4 million dollars, if we have to tap into the 7 million  
5 dollars, and in the event we have paid out in advance 2.6  
6 million dollars in attorneys' fees and costs and the order  
7 is gone, the order is reversed, the question I have, the  
8 question the diocese has is what do we do with the 2.6  
9 that's already been paid out or any funds that have been  
10 paid out? Because all we need to do is address the issue  
11 as to what happens in that event. How do we protect those  
12 funds?

13 That's the question. I mean, that's really the  
14 question. And because if the money is going out, that's  
15 sort of like the toothpaste going out of the tube.. How do  
16 you put the money back in? And so the question is how to  
17 protect those funds as we've paid those out to the escrow  
18 agent, and we paid those out to plaintiffs' counsel. How  
19 do we get that money back in the event, and it may be a one  
20 percent probability, it may be a five percent probability.

21 But the bottom line is he's going, I promise -- I know  
22 he's -- I'm pretty sure he's going to appeal because he's  
23 filed his motion to alter or amend. In the event that  
24 happens, how do we protect that money? That's really the  
25 bottom-line question of why we're here.

1 THE COURT: Okay, let me ask, let me explore that with  
2 you. As I recall the objection, and please help me if I  
3 recall it incorrectly. But as I recall the objection, the  
4 objection was as to the definition of the class because the  
5 class excluded people that he had represented for which *res*  
6 *judicata* had been granted. It was not an objection to set  
7 aside the settlement. It was an objection on the basis  
8 that his former clients had been excluded and the exclusion  
9 being based on *res judicata* because there were cases for  
10 which there had already been adjudication. And this class,  
11 by its very definition, excluded that. It didn't include  
12 people for whom the diocese had already had litigation and  
13 those matters had been resolved.

14 So, as I see that, as I see your concern, it seems to  
15 me that in the event, and there's a definite number of  
16 those individuals because he mentioned the number and I  
17 don't remember the number, but I don't remember it being  
18 any extraordinary number of people. I want to say  
19 twenties, perhaps fifties. I don't remember the number,  
20 but it was not hundreds; it was a hundred, substantially  
21 under a hundred. But that in the event there would be an  
22 appeal, based upon counsel, what both sides have told him  
23 about the health of this class financially, I don't think  
24 that's a realistic problem. I just don't, and given that  
25 it causes the numbers to be increased -- does anyone

1 remember the number that he argued for? I don't remember.

2 MR. RICHTER: He represented to you it was fifteen. I  
3 challenged that number because some of the people he had  
4 named in a letter to us I represent. One of these we think  
5 is dead, and I asked that Your Honor at that time require  
6 him to state the names and place into the record in a  
7 protective way the names. And then Your Honor did not do  
8 that but asked Mr. Myers do you represent at least one  
9 person, and he said yes. He has now -- I'm going off into  
10 argument. Fifteen.

11 THE COURT: So, that certainly is my thought. I, in  
12 all candor, in all candor, given our discussions as you all  
13 talked about the numbers, and again I heard an awful lot of  
14 agreement with all of you about these numbers and the  
15 financial health of this class, okay? I mean, in all  
16 candor, okay.

17 You all, the diocese, again I'm nonplused because the  
18 diocese in our discussion has been remarkable in its  
19 willingness to even be inclusive of people that we don't  
20 think exist realistically but theoretically could, and the  
21 church has been -- I've never seen a defendant do it in all  
22 candor, Mr. Shahid. The diocese has been willing to say if  
23 these people exist, we will not call the statute of  
24 limitations on them. We will include them in the class no  
25 matter when they arise. So, given the perspective that I



1 have had, I frankly haven't seen it as, I don't see it as  
2 an issue.

3 MR. SHAHID: And, Judge, you know, the odd thing of  
4 all this.

5 THE COURT: Yes.

6 MR. SHAHID: And you've asked this several times.

7 THE COURT: Yes.

8 MR. SHAHID: Because you wanted to make sure there was  
9 enough controversy between the two of us, and there has  
10 been.

11 THE COURT: Oh, yes, and I've heard that, too.

12 MR. SHAHID: I know that, but in spite of that  
13 controversy, we all have pulled in the direction, I think,  
14 of making sure the January 12th agreement got approved by  
15 this Court, and that's our -- I mean, that has not changed.  
16 That position by the diocese has not changed, and we've  
17 tried to address every hurdle. And I've met with Mr.  
18 Myers, as I told the Court I was going to do.

19 THE COURT: Yes.

20 MR. SHAHID: I sat down with Mr. Myers.

21 THE COURT: You thought he was going to withdraw the  
22 objection, with all candor.

23 MR. SHAHID: I wrote him a letter saying this is to  
24 confirm my understanding that we've reached an agreement on  
25 everything, how long I thought the agreement was. And then

1 I get a demand back from him of 1.46, 1.46 million dollars.  
2 And so the whole -- and so understand that how this, this  
3 is developing, Judge.

4 And so it concerns me that you think the diocese has  
5 not done what it's supposed to do, which is just, it's not,  
6 that's not the issue. The issue is I, I, the diocese, have  
7 got to deal now with this objector, okay, who is raising  
8 questions. And I can't argue the validity of his  
9 arguments. I'm not in a position to do that because when  
10 an appeal is brought, you know, like I said, two, two on  
11 the Court of Appeals, three on the Supreme Court can agree  
12 with him. And if that happens, my question is just protect  
13 us to a point so that in the event and how far reaching  
14 that may be, in the event an appeal is taken and in the  
15 event an appeal is successful, how do we put the toothpaste  
16 back in the tube? That's all we're asking for. How do we  
17 protect the diocese payment out, the 2.6 million? That's,  
18 that's it.

19 I mean, that really has been the heart of this because  
20 we are ready, willing and able. We dedicated all the staff  
21 necessary to fund this thing.

22 THE COURT: Now, you said 2.6. Tell me what money  
23 specifically you're talking about, the 2.6.

24 MR. SHAHID: Right, the initial pool was 5 million  
25 dollars.

1 THE COURT: Right, I know that.

2 MR. SHAHID: We -- so, the payment is really 4.5  
3 million.

4 THE COURT: Right.

5 MR. SHAHID: That could be done in a sneeze; it could  
6 be done in a sneeze to give the escrow agent that money.  
7 And we've -- that's why we made the motion to deposit the  
8 money with the Court because we're -- here it is. We're  
9 not worried about that. Here's the, here's the money to  
10 the escrow agent or to the Court, all right, as the Court  
11 directs us to do. Whatever the order tells us to do or  
12 whatever this agreement says, we're here. We can do it.  
13 That's not the issue. The question is if Mr. Myers is  
14 successful on appeal and we have paid out the 2.6 million  
15 for attorneys' fees and costs and the order is reversed,  
16 that money is gone.

17 Now, what I'm saying is this. At some point in time  
18 Greg Myers or whoever, let's say Greg Myers who I know he's  
19 filed the motion to alter or amend, is his motion to alter  
20 or amend is denied by the Court, okay? Or you make some  
21 changes to it, but still he's not satisfied and he then  
22 appeals. He's got thirty days from that date to appeal.  
23 Now, he may not be in a position to appeal. He may have  
24 waived, and I've had this discussion with Mr. Richter. He  
25 may have waived his ability or excluded himself to have

1 standing to appeal. I don't know that for certain, but  
2 that's a pretty good argument.

3 But assuming that he does have standing to appeal,  
4 okay, and he does appeal, then he's going to either appear  
5 before you or the Court of Appeals and petition that order  
6 be stayed. At that point, there's going to be conditions  
7 placed on his ability to appeal or to stay, stay the  
8 matter. At that point, whatever conditions they might be,  
9 like a bond, for instance, he may not be able to meet those  
10 conditions. He goes away. That's it. But if he does meet  
11 all those conditions, if he does appeal and it runs the  
12 gauntlet of a full appeal and that order is reversed, the  
13 money that's been paid out already is money that should not  
14 have been paid out because an order that granted the money  
15 being paid out is no longer around. And the money that was  
16 paid out on attorneys' fees, they're not entitled to  
17 receive.

18 THE COURT: Well, the problem with that is that you  
19 have to, under our law, you have to raise an issue in order  
20 for there -- you've got to raise it in order for it to be  
21 raised on appeal with very few exceptions.

22 MR. SHAHID: Right.

23 THE COURT: His objection had to do with the identity  
24 of the class excluding fifteen people.

25 MR. SHAHID: Right.

1 THE COURT: Okay?

2 MR. SHAHID: I'm with you on that.

3 THE COURT: So, are you saying you believe if he is  
4 successful on appeal, that the Court of Appeals would  
5 endeavor to either decertify the class or set the  
6 settlement completely aside? What do you think the remedy  
7 -- what remedy are you concerned about?

8 MR. SHAHID: Well, what I'm talking about is this  
9 motion to alter or amend. He attacks the payment of the  
10 attorneys' fees, the advancement of attorneys' fees. He  
11 addresses the payment of the funds to the -- to certain  
12 claimants as too low in certain circumstances.

13 MR. DUKES: Judge, have you seen the motion to alter  
14 or ---

15 THE COURT: It's not been served on me.

16 MR. SHAHID: Do you want it? But that's what -- he's  
17 raised all those ---

18 THE COURT: I don't know.

19 MR. SHAHID: I mean, he has raised those issues in his  
20 motion to alter or amend. I mean, that's what is -- that's  
21 what's in ---

22 MR. GEOLY: The disadvantage, Your Honor ---

23 MR. RICHTER: I object. It's not before the Court.

24 THE COURT: It's not.

25 MR. DUKES: I understand, Your Honor.

1 THE COURT: I don't want you to serve it on me.

2 MR. DUKES: Okay.

3 MR. SHAHID: At some point in time, Judge, you're  
4 going to have to review the motion to alter or amend, and  
5 you're going to have make an issue of ruling on the ---

6 THE COURT: If he serves it properly under the rules.

7 MR. SHAHID: I know. He's got to serve it on you.

8 THE COURT: Yes, he does.

9 MR. SHAHID: I know.

10 THE COURT: That's why I didn't want y'all to do it.

11 MR. SHAHID: We won't do it, okay.

12 MR. RICHTER: They'll no doubt go back and call Mr.  
13 Myers.

14 MR. SHAHID: I'm not going to do anything along those  
15 lines. I mean, my conversation with him was, you know,  
16 because he filed or he sent to me objections to the  
17 proposed order. I asked him about how that all came about.  
18 And, you know, then he told me he was working on a motion  
19 to alter or amend. That's why I mentioned that to you  
20 yesterday. I asked had that come to your attention because  
21 it -- and after I hung up with you, he walks in the door.  
22 I'm not going, you know, I'm not going to tell somebody  
23 what to do, what not to do. That's not my job.

24 But at some point in time -- he knows what the rules  
25 are. If he does all this stuff and you, then you have to

1 issue an order addressing those issues raised in there,  
2 then if he doesn't have standing, if he's kicked out,  
3 that's, that's the one thing we don't have to worry about.  
4 But if he does create an ability for him to appeal and he  
5 does appeal and it is reversed, where are we? And that's,  
6 that's the cold question. That's the bottom-line question  
7 because I don't, I don't think -- I mean, in my humble  
8 opinion in going through all this, I don't think he's got a  
9 snowball's chance of being successful. That's my opinion,  
10 but I'm not up there in Columbia making that decision.

11       You know, I wish -- you know, if I was -- I know how  
12 I'd rule on it, but it's not me to do that. It's not you  
13 and it's not Mr. Richter and it's not plaintiffs' counsel  
14 to do that. Those folks up there, I don't know what  
15 they're going to do. But in the event there's 2.6 million  
16 that is gone, and that's all we're asking for is to address  
17 it so that we can proceed with this in an orderly fashion  
18 to protect the 2.6 million that's advanced out. That's all  
19 we're asking to do.

20       If I could say just one more thing, Judge, just so  
21 that everybody's clear? When I met with Mr. Myers, we made  
22 concessions to him to allow him to have people come that we  
23 had by all legal right to tell him to go away, take a hike  
24 because it is in the diocese's best interest that his  
25 objections go away. And I tried to do that. I tried to

1 accommodate his objections. I tried to accommodate him on  
2 folks who were not entitled to any more counseling, to give  
3 some folks counseling. People who had -- who, by the way  
4 the definition was formed, to let them back in because they  
5 could argue it's a technicality how they were excluded but  
6 to let those people back in. He had questions about  
7 certain people, and I said I don't have any objection to  
8 these people, this list that he presented.

9 It's in the diocese's best interest that Mr. Myers'  
10 objections be resolved and taken care of, and I tried to do  
11 that, and I thought it had been resolved. And, you know, I  
12 don't want him to raise an appeal; I don't want him to file  
13 his motion to alter or amend. That doesn't help us one  
14 bit, but I just know that that is a wild card out that has  
15 got to be addressed.

16 THE COURT: Is he here today, Mr. Myers?

17 MR. RICHTER: To our knowledge, no.

18 MR. SHAHID: I did not tell him about the hearing,  
19 Judge.

20 THE COURT: There's something, there's a  
21 communications technique called reflective listening, so  
22 I'm going to reflect, try to reflect what I am hearing.  
23 Let's see where we are.

24 What I am hearing is that the defendants still would  
25 like nothing better than to go forward and fund this



1 settlement and proceed with these claims. But the  
2 concerns, the primary concerns really don't have anything  
3 to do with the plaintiffs at this point, the plaintiff  
4 class. But where the defendants have found themselves at  
5 this point is that they have found themselves in a position  
6 where, pursuant to the terms of the agreement, they have  
7 come to the Court preliminarily and in final hearing to say  
8 to the Court we believe this agreement is fair. We are  
9 asking the Court together to review and find it fair.  
10 Plaintiffs' counsel for the class believes it's fair;  
11 defense thinks it's fair.

12 There is an objection raised at the fairness hearing,  
13 completely unassociated with both plaintiff and defendant,  
14 and the Court overruled the objection. Without any role on  
15 behalf of the plaintiffs' class, defendants find themselves  
16 in a position where this objector, overruled, comes to the  
17 defendant and says to the defendant we want to be included  
18 in some sort of resolution with you or we're going to file  
19 a motion to alter and amend and here it is. And we're  
20 going to appeal, and if you don't include us or pay us in  
21 some form or fashion, we're going to try to undo your  
22 settlement. Is that correct?

23 MR. SHAHID: That's a very good summary, Judge.

24 THE COURT: Okay. I'm not so sure that the rule to  
25 show cause has been filed against the correct party. How

1 about that? This is what I would like to have happen  
2 interimly. I would still like to have, I would like to  
3 have the class funded, and that is all. I would like to be  
4 in a position that I know that my defendants are serious  
5 about going forward with this settlement, and then no more.

6 And then, counsel, I am very concerned about a  
7 litigant, an objector who's been overruled and to my  
8 knowledge there's been nothing served on me, alter and  
9 amend disturbing this settlement, attempting, based on what  
10 you're telling me, disturbing this settlement. I am  
11 concerned sufficiently that I want to hear from that  
12 person. Entitled to file a motion to alter and amend,  
13 serve it on the Court and have it argued. Entitled to  
14 appeal but not entitled, I don't believe, perhaps to some  
15 of the conduct that has occurred, and I am concerned about  
16 it. I am concerned about it.

17 Let me say, because I think the record needs to  
18 reflect, to conclude where I think we are. Plaintiffs and  
19 defendant have come to court repeatedly together to say  
20 there are people who are hurting. There are people in  
21 pain, and we understand your concern about the solicitor  
22 and the solicitor's involvement. But, Judge, there are  
23 people in pain, and we have to proceed to the settlement  
24 because now we have opened these wounds anew, and we have  
25 to proceed. That came from both of you. Came from the

1 defendants, also.

2 I've not heard from the plaintiff, and doesn't seem  
3 quite right when one normally -- this is begun by the  
4 plaintiff. Mr. Richter, do you understand my concern? My  
5 concern is that I'm feeling a little bit like Alice in  
6 Wonderland, in all candor.

7 MR. RICHTER: I understand your concern, and as I said  
8 at our last appearance before you, thank you again for your  
9 accessibility. You made a comment at the beginning about  
10 how much you've been accessible and how much you've been  
11 involved. Nobody could -- possibly involved in this  
12 litigation could possibly say that the Court has not been  
13 accessible.

14 And I hear what you're saying, and I do understand  
15 what you're saying. And I see the color on your face,  
16 which from this side of the bench is apparent and your  
17 pallor which exists, because I think I understand not only  
18 what is going on not only through your brain but through  
19 your heart as you address this matter.

20 But there is another whole characterization of this  
21 than what you've heard, and I would like to have the right  
22 to make that characterization before you ultimately decide  
23 what you want to do. So, if you would allow me to do that?

24 THE COURT: Sure.

25 MR. RICHTER: Thank you. This not about Greg Myers.

1 Another day will be about Greg Myers. This is about money  
2 in large part and a lot of wringing of hands to keep from  
3 being held to the responsibility of being separated from  
4 money.

5 Greg Myers, Mr. Shahid represented to you, went to him  
6 and said he wanted 1.46 million dollars and he'd go away.  
7 We have all represented to you what we think about the  
8 number of claimants, the size of the class, how much money  
9 there was going to be to go around, and there's aplenty.  
10 All of us, none of us have guaranteed that to you because  
11 we can't, but we all think we're right and have a pretty  
12 good handle on that. If these people wanted to solve this  
13 properly, they would escrow 1.46 million dollars of money  
14 and deal with Mr. Myers. They didn't suggest that because  
15 that involves parting with money, and they don't want to  
16 part with money. So, here's what I have to say, Your  
17 Honor, and please indulge me.

18 On June the 12th and 13th or 14th of 2006, a  
19 settlement was reached, a mediation of this matter. I  
20 think that was a Thursday or a Friday. I don't remember  
21 which day. Jim knows because he had to fly back to  
22 Chicago. We left with the representation from the diocese  
23 that on Monday, they were going to the bank -- happens to  
24 be the Bank of America -- to get the letters of credit to  
25 fund this matter June the 12th of 2006. It didn't happen.

1 They had signed, of course, a mediation agreement to that  
2 effect.

3 Not until January the 12th -- I started complaining,  
4 as you know, in the fall. On January the 12th of 2007, for  
5 the first time the diocese deigned to put its name on the  
6 settlement and arbitration agreement. So, from June to  
7 January, they wouldn't even sign the agreement. That's why  
8 I started complaining, if you remember..

9 We had multiple status conferences before Your Honor.  
10 Now, March we had hearings before you. On March the 9th,  
11 we had a big hearing before Your Honor. That was five  
12 months ago today. Among the things that I argued about at  
13 these various appearances before you was that I said to you  
14 I think there's an obligation on opposing counsel under the  
15 canons of ethics to be candid with the tribunal because it  
16 kept saying it's not so. They're not going to do what  
17 they're telling you they're going to do because I had some  
18 experience about it since June. I'd met with the bishop  
19 the October before. That's not part of this record, but  
20 that's what happened and they were there. Mr. Shahid was  
21 there.

22 So, we had a hearing. March the 9th was a significant  
23 hearing. How significant? Five months ago today was when  
24 it was. So significant that in that hearing, see if Your  
25 Honor may remember this, please, Mr. Geoly stood up and

1 said -- because I was complaining about them not putting up  
2 the money. They would not part with the money. Mr. Geoly  
3 said we will part with the money, we will fund it the day  
4 the order is signed. It's in the record. Now, that's the  
5 representation of counsel to the tribunal.

6 There was never in any of these meetings that we had  
7 over all the months that I've now been referring to, never,  
8 ever one time a mention of an escrow agreement. Everything  
9 else was mentioned. We said who the escrow agent was going  
10 to be, what his duties were going to be, how he was going  
11 to handle the funds. Everything else was mentioned over  
12 and over and over again all in good faith representations,  
13 according to these defendants, good faith representations  
14 that they were going to do these things. And this was  
15 hunky dory. Everything was fine, and I kept saying I don't  
16 believe them. They don't honor their word, and you kept  
17 saying calm down. They tell me they're going to do it;  
18 they're going to do it. So, I sat down. Then the next  
19 time I came back ---

20 THE COURT: You notice he didn't say calm.

21 MR. RICHTER: Well, I don't mean to seem animated  
22 about this except to the extent that I think you know I'm  
23 against this kind of thing. I'm against the sexual abuse  
24 of children by priests, number one. I'm against not being  
25 candid with the tribunal. I'm against saying things to you

1 that are not true. I'm against them saying oh, the only  
2 problem is, well, what about if Richter gets his attorneys'  
3 fees and they get their costs back, then things go away. I  
4 mean, these arguments are ludicrous. Instead of saying,  
5 well, we'll just escrow 1.46 million dollars and Myers will  
6 be satisfied. That's what he demanded and then we'll have  
7 to pay some other day. And there's more than enough money  
8 in the fund, of course, to do that. But on March 9th, Mr.  
9 Geoly said we'll pay money the day the order is signed or  
10 similar words.

11 We have now learned that when all these meetings were  
12 going on and all these representations were being made to  
13 you, whose name ultimately had to be put on, in good faith  
14 a signature was being induced out of you, a judicial act.  
15 We now learn that Elaine Fowler was hired in May of 2007  
16 two months before your July 13th hearing at which you  
17 approved or made your final order and instructed us to  
18 draft it into written form. Two months before that, they  
19 had hired somebody to write a lot of other terms, but they  
20 didn't tell you that; they didn't tell me that. They  
21 secreted that from the litigants, from the victims who have  
22 been waiting patiently and painfully.

23 And most importantly, they induced Your Honor to act,  
24 and I don't care that it's Your Honor. I mean, I don't  
25 mean this that way, but Your Honor, any honor. They

1 induced the Court, this institution to act in the face of  
2 the knowledge that they had no intention of adhering to  
3 what they were asking you to do and representing to you  
4 that they would honor and do. They hired two months before  
5 that a lawyer to alter those terms and didn't disclose it.  
6 I think that's horrible; I think that's reprehensible. I  
7 think it's bad faith, and it ought to be dealt with. And  
8 you -- fortunately in our -- it's in her affidavit. She,  
9 of course, admits she was hired in May two months before.  
10 And yesterday on the telephone she said to you I was hired  
11 in May two months before.

12 Mr. Geoly said the diocese is going to pay; Mr. Shahid  
13 said the diocese is going to pay. Ms. Fowler, when I  
14 finally on the 23rd got this document altering the terms of  
15 your order, she said the diocese was going to pay. They  
16 told Mr. Maybank, who is here subpoenaed as a witness from  
17 Smith Barney, they told him they were going to pay. They  
18 set forth the mechanism for paying. Poor Mr. Maybank was  
19 put square in the middle trying to be honorable, and he was  
20 about the whole thing clearly embarrassed. Ms. Fowler was  
21 clearly embarrassed in her telephone conversations with me  
22 because they told her. She wrote me an e-mail at night  
23 that says tomorrow morning, tomorrow morning. They just  
24 told me tomorrow morning. Told me John Barker's going to  
25 fax his signature over; it's going to be done tomorrow.



1 morning. Every, every conversation I had with Elaine  
2 Fowler I said I hope you're right, but it is not true. It  
3 will not happen.

4 Mr. Maybank will testify if we go forward with  
5 evidence today that in every conversation I had with him in  
6 which he in the best of faith, best of faith represented  
7 that it was all going to happen because the diocese had  
8 told him that, and he had talked with the diocesan  
9 officials in the best of faith. And in the best of effort  
10 to help everybody get to the ending, Mr. Maybank made those  
11 representations to me, and in every conversation I had with  
12 him, I said it's not true. They won't do it. They're  
13 saying something that is not true; they won't honor their  
14 word.

15 And, sure enough, I sat in Mr. Maybank's office with  
16 Ellie Thomas, the escrow agent, like bumps on a log  
17 waiting.. Tried to get somebody on the phone representing  
18 the diocese, finally to have Elaine Fowler to call us back  
19 and say we're not going to do it, and that's what got us to  
20 here.

21 Now, we negotiated this settlement. These cases first  
22 came to Jack Sinclair's office I believe in 2002. I don't  
23 have the dates in front of me. I know we opened our file  
24 in 2003 because I can tell by our case number. These  
25 people have been led around and have been hanging around

1 and have been misled since that time struggling to get  
2 justice.

3       Ellie Thomas is the appointed escrow agent. He's a  
4 forensic certified public accountant here. I think he's  
5 testified or appeared before Your Honor in the past. He's  
6 appeared before many courts. His wife's mother died right  
7 when everybody was saying tomorrow, tomorrow, tomorrow. He  
8 left his wife alone at the funeral to come to the backdoor  
9 of my office to sign the document that Mr. Maybank again in  
10 the best of faith said they needed to effectuate the money  
11 which was coming the first thing the next morning from the  
12 diocese. He did that with his three year-old child in the  
13 backseat, and he signed that document and then went back to  
14 the funeral home. The next day was the funeral for his  
15 wife's mother.

16       After the funeral, the family went to Mr. Thomas's  
17 house, as I did. I was a lector at the funeral. After the  
18 funeral, the family, the bereaved gathered and Mr. Thomas  
19 again left his wife and family and two young children and  
20 all of his in-laws to go with me to Mr. Maybank's office  
21 because he had to be there at this particular time frame to  
22 execute the documents that Mr. Maybank had been instructed  
23 by the diocese were going to be necessary to have this  
24 happen.

25       We went and sat in Mr. Maybank's office and sat and

1 sat. All the way down, I tried to get Peter Shahid on the  
2 phone. Couldn't do it. He was on the phone. Ultimately,  
3 I tried from the office. Couldn't get him. Ultimately, I  
4 asked Mr. Maybank to try. He had better luck, if I recall  
5 this correctly, and got through, but Mr. Shahid said you're  
6 going to get a call in just a little while from Elaine  
7 Fowler. Take it. That's all.

8 We're sitting, waiting in the Smith Barney office --  
9 and he's here to verify all this -- bumps on a log because  
10 of the representations of the defendants, the diocese of  
11 Charleston, the Catholic Church of South Carolina whose  
12 word we ought to be able to rely on. And, of course, Ms.  
13 Fowler ultimately told us that we're not going to do it.  
14 They're not. Not we. They're not going to do it. She  
15 said, you know, we'll tomorrow make another arrangement. I  
16 said Ms. Fowler, I have an order that says they've got to  
17 do it. They don't have any choice about doing it. They  
18 induced the judge to sign this order saying you've got to  
19 do it upon the issuance of the order, which was the 30th of  
20 July.

21 I'm saying this to tell you that more people's lives  
22 have been touched. I haven't even mentioned the victims.  
23 More people's lives have been touched by this in an Alice  
24 in Wonderland way as Your Honor alluded a while ago.

25 I settled a case on June the 12th of 2006. I must say

1 to you as to what position we take about this matter, and I  
2 take no pleasure in saying this. I'm embarrassed and  
3 ashamed of the activities of the diocese. I've got to tell  
4 you, Your Honor, in candor that the diocese's word is no  
5 good; the defendant's word is no good. Their written  
6 agreement is no good. The sexual abuse of the boys by  
7 priests of the diocese is no good. The refusal to report  
8 the sexual abuse of children, which you've come to be  
9 familiar with in this litigation, even though that  
10 reporting is required by South Carolina law is no good.  
11 The transfer of known sex offenders to different places  
12 where they can victimize new children is no good. The  
13 wide-spread effort to cover up these activities is no good.  
14 The failure to be candid with this tribunal, mandated, the  
15 failure to do that is no good. The refusal to abide by the  
16 terms of the very agreement and order that the defendants  
17 themselves induced this Court to sign is no good.

18 Now, all of this besmirches our judicial process.  
19 It's more than just this case. It's nothing but money, but  
20 it besmirches our judicial process. It compromises the  
21 rights and the remedies of child victims of priests' sexual  
22 abuse, and it at least delays justice. That, in turn,  
23 denies justice, and that's got to be stopped. So, it's  
24 nothing but money.

25 These people could not have read the controlling case

1 law authority about the validity of Mr. Myers' objections.  
2 They wouldn't be here today except that these are people  
3 who have come before you in the past and said we're going  
4 to fund it on the day you issue your order. They have no  
5 intention to do it. That's our prediction.

6 MR. GEOLY: Your Honor, I have a brief comment.

7 THE COURT: Yes.

8 MR. GEOLY: I consider it almost a matter of personal  
9 privilege.

10 THE COURT: Yes.

11 MR. GEOLY: Since Mr. Richter did purport to quote me.

12 THE COURT: Yes.

13 MR. GEOLY: At which point Mr. Shahid will continue.

14 THE COURT: All right.

15 MR. GEOLY: I have never represented to a tribunal  
16 anything that is untrue, and I have not represented  
17 anything to this tribunal anything that is untrue. And the  
18 diocese has moved for leave to tender these funds to the  
19 Court. We are not trying to withhold the funds; we are not  
20 trying to avoid our responsibilities. The point of that  
21 comment at the previous hearing, and I don't have the  
22 benefit of the transcript in front of me. It doesn't even  
23 matter because I understand the point of the quote was to  
24 say the funds are available, the funds are secured, the  
25 funds are ready to be used upon the Court's order.

1 However, that in no way addressed the technical legal  
2 question of finality of this Court's order, which I think  
3 is the issue Mr. Shahid had raised with you before.

4 The final order, if you pay on a final order,  
5 obviously it's not appealable anymore. The thirty days has  
6 run. The order is final and enforceable and there is no  
7 risk. If you pay before an order is final and the order is  
8 reversed, what happens to your payment? That was a  
9 legitimate legal question that was raised.

10 The diocese tendered the final -- has made a motion to  
11 tender these funds to the Court. We are not trying to  
12 grasp and hold and retain monies that were promised in this  
13 agreement. We want the benefit of our bargain in this  
14 agreement and so does that class, and we're trying to  
15 effectuate that. And I, and I do object to any inference  
16 that I in any way made a misrepresentation to this Court.

17 MR. SHAHID: Judge?

18 THE COURT: Yes.

19 MR. SHAHID: I can't sit silent when another member of  
20 the bar impugns my character or my reputation, and I take  
21 great exception to Mr. Richter making that type of  
22 accusation against me.

23 I will state for the Court that Mr. Barker and I,  
24 following the June mediation session, did in fact meet with  
25 representatives of the bank to start this process of

1 funding these claims. I will say that. I said that a  
2 hundred times. I'll say it a thousand times. We did, in  
3 fact, meet with the bank to get this process rolling. We  
4 did, the diocese did hire Turner Padgett to help us make  
5 sure we were following the letter of the law, spirit of the  
6 order, the letter of the order to make sure that this  
7 finding was going to be taken, taken care of properly and  
8 one hundred percent.

9 The escrow agreement that Mr. Richter has raised was  
10 not to modify, change, alter, in any way supersede the  
11 order of this Court. We offered it as a way to make sure  
12 that all parties were protected on how the money was  
13 disbursed. And, in fact, Judge, as I understand it, the  
14 parties have looked this agreement over. They have at  
15 points agreed to terms of this escrow agreement, think it  
16 was a good idea. I talked with Mr. Thomas, and to my  
17 knowledge the escrow agreement, if we execute it or not, is  
18 not the critical part of what we're here for about. But it  
19 would be a good thing to have to be prudent on how these  
20 monies will be disbursed.

21 To say that we've not, that I've not, that Mr. Geoly  
22 or anyone else who's represented the diocese is not a  
23 person of their word, I take extreme personal offense. I  
24 have represented to this Court with all due candor my  
25 position, my client's position, and I hope the Court will

1 take judicial notice of that. Just because we don't agree  
2 with their position or their suggestion of how to handle  
3 Mr. Myers, we're now the bad guys on this thing. We tried  
4 to deal with Mr. Myers the best way we know how to  
5 accommodate his objections and to bring him into the party,  
6 and now we're chastised because we won't do the  
7 recommendation that he has presented to the -- or presented  
8 to Your Honor.

9 We're trying to get this thing agreed upon, to get it  
10 resolved, to get it taken care of, to be finalized with it.  
11 As somebody said to you earlier, to close the barn door on  
12 this thing, and that's what we want to do, just close the  
13 barn door on this thing and be done with it. The Court's  
14 suggestion or the Court's order to just do nothing else so  
15 we can move on, that, as I said earlier, that could be  
16 done. That will be done. And if anything else just far as  
17 a catchall, the other matters, I think it's an appropriate  
18 remedy for what we're seeking to do this afternoon.

19 THE COURT: Well, let's go back. Let me tell you what  
20 the controlling document is in this case, and that is the  
21 12th day of January 2007 document. That's the agreement  
22 and that must be the agreement that controls your actions.  
23 It seems -- I've not seen an escrow agreement, and I did  
24 not recall an additional escrow agreement being referenced  
25 in the settlement and arbitration agreement signed January



1 the 12th. I just don't remember it.

2 MR. SHAHID: You're right. It's not there.

3 THE COURT: Okay.

4 MR. RICHTER: Not only is it not there, it has never  
5 been referenced to this Court and never to us until the  
6 23rd day of July.

7 THE COURT: And it doesn't matter. This is the  
8 operative document. So, there can be no escrow agreement  
9 that can interfere with the settlement documents; it just  
10 can't be. This agreement has been approved by the Court.  
11 So, tell me.

12 ORDER OF THE COURT:

13 All right, this is what I want to do. I want the  
14 settlement funded; I want the settlement funded without  
15 further ado. And having said that, the amount, as I  
16 understand it, is the four and a half million. I want it  
17 funded, not the ---

18 MR. RICHTER: In round numbers, that is correct.

19 THE COURT: That's right, and you all have been very  
20 precise with that number because there's been some that's  
21 been paid.

22 MR. SHAHID: That's right.

23 THE COURT: But the remainder of the funds, and of  
24 course it's way too late today, but I want it funded  
25 tomorrow. What's tomorrow, Friday? Tomorrow.

1           Next week, this is what I want, and it's very specific  
2 insofar as I believe. With an eye towards the arbitration  
3 and the settlement agreement, I want briefs regarding what  
4 is the effect of an appeal from an objection on the  
5 underlying class. Not an objection by class member, not an  
6 objection by a defendant, but someone outside the class. I  
7 think I know the answer, but I want it researched because  
8 in order for -- and you all research this for me, but I  
9 think that in order for someone to be successful to set  
10 aside the class, they've got to be someone who would be  
11 included within the class in order to object to the  
12 fairness of the class. In other words, this is someone  
13 objecting to the class definition and the remedies provided  
14 in the class who is not a member of the class, of the  
15 class's own definitions.

16           MR. GEOLY: Just a clarifying question, Your Honor.

17           THE COURT: Sure.

18           MR. GEOLY: Whether he's right or he's wrong, at least  
19 my understanding is that Mr. Myers purports to represent at  
20 least one, I think what he's saying is at least one person  
21 who he claims is, would be, could be a member of the class.  
22 So, in terms of Your Honor resolving questions here, should  
23 the legal question you're asking us be so limited, or  
24 should we try to help you on even if he has somebody who  
25 purports to be a member of the class?

1 THE COURT: Yes.

2 MR. GEOLY: Then what?

3 THE COURT: Thank you, Mr. Geoly.

4 MR. DUKES: And his, Mr. Myers' motion ---

5 THE COURT: Don't publish that to me, please.

6 MR. GEOLY: That's why I phrased it ---

7 MR. DUKES: It references the ---

8 MR. GEOLY: --- the way I do.

9 THE COURT: Because let me be clear. I am where I am.

10 MR. GEOLY: Right.

11 THE COURT: This job, it is complicated enough what I  
12 do than for lawyers to start talking about pleadings that  
13 are not pleadings to me.

14 MR. GEOLY: Right, so I say if we frame your legal  
15 question a little more broadly, that way you're covered.

16 THE COURT: I would, yes. I want you to go back to  
17 what it was that he raised at the hearing. He cannot tell  
18 me now something other than he told me at the underlying  
19 hearing: that is, at the time the objection was raised.  
20 I'm not interested if he wants to expand it or change it or  
21 dress it up at all. He is bound by what he raised to the  
22 Court at the point where the Court's order allowed him to  
23 raise the objection. And I have no idea because remember  
24 I've not been served with anything. So, your concern has  
25 to do with the objection that was raised. I'm only

1 interested in the objection as it was raised at ---

2 MR. GEOLY: To the extent he's purporting to represent  
3 somebody.

4 THE COURT: If he did it on that occasion, certainly.  
5 If he does it now, it comes too late.

6 MR. RICHTER: Just so that everyone can feel a little  
7 better about this, these persons may, may, person or  
8 persons may have been putative members of a class. There  
9 were not named parties, the plaintiffs, although they may  
10 be a putative member at the time that we were dealing with  
11 them.

12 THE COURT: Okay.

13 MR. RICHTER: There is authority about this, and the  
14 bright line distinction as we read the cases is that there  
15 is an opt-out provision. If you recall at the time Mr.  
16 Myers objected that there -- or somebody objected that  
17 there was no opt-out provision, which we made a mistake,  
18 all counsel here present today just made a mistake on. We  
19 said that at the time.

20 THE COURT: Yes.

21 MR. RICHTER: And so of course there's an opt-out, and  
22 what that means, of course, is that that putative member's  
23 rights are then not bound by anything that we agreed to in  
24 the settlement of this case because they have the opt-out  
25 and can litigate the next day if that's what they so

1     desire.

2           THE COURT:  If they are included, but he also alleges  
3     that those who are not included in the class definition  
4     ought be included in the class definition.  But there's  
5     nothing to keep them from doing whatever they wish to do in  
6     terms of beginning a new litigation.

7           MR. RICHTER:  I don't want to run afoul of the Court's  
8     order, and I don't want to stop you from you finishing  
9     making it, but I do want you to know there's another whole  
10    side to this we may be out 2.6 million dollars.  In finding  
11    that our attorneys' fees are appropriate at the amount that  
12    you set, that means that we've earned that amount.  That  
13    means we've done something; we've expended that amount of  
14    time or legal talent or whatever it is.  So, in the sense  
15    you could say class counsel is out that amount today that  
16    they don't want to be out.  Certainly as to hard costs,  
17    that's long since gone.  And today, notices started running  
18    around the state on borrowed money that we had to borrow  
19    because it's very expensive, as I think we've told Your  
20    Honor, to publish those things today because I can't get my  
21    hands on the attorneys' fees or the costs that you've  
22    ordered that we have access to.

23           And so I don't -- when they put the money in the  
24    Court, as I understand it, your order is still your order.  
25    Whatever the terms of that are still the terms of that

1 order. Are you saying that you're going to impose some  
2 further delay on us to get what you've ordered we could  
3 have? I mean, if that's the case, we will have lost all  
4 these legal arguments today without them ever winning any  
5 of the legal arguments of today.

6 The legal interest rate is twelve and a half percent,  
7 judgement interest rate is twelve and a half percent. In  
8 ten days, that equates to \$9,300 or so. I don't know how  
9 much is it per day. Mr. Thomas came to testify \$890 per  
10 day in interest is what -- is we're being cost now in this  
11 process. And, you know, it's been a long time. We haven't  
12 -- as I said earlier, it's been a long time coming.

13 MR. GEOLY: Your Honor, I don't think we've suggested  
14 that counsel hasn't worked for his fees. We're beyond that  
15 argument at this point. Your order's not a final order.  
16 I've never heard of interest accruing on an order or a  
17 judgment for money that's not a final judgement. I think  
18 what Your Honor was suggesting to us is that we have a  
19 practical question here and a procedural one, and you want  
20 law on what the impact of it is. And our only objection  
21 here, and that's why we're tendering money to the Court.  
22 We're not to retain it for ourselves and ourselves keep the  
23 interest on it. We're just saying that there is a problem  
24 here and what is the -- how should the money be managed so  
25 that -- because the difference is that if your order were

1 overturned on appeal, the fact is we wouldn't owe the  
2 money.

3 THE COURT: Let me tell you what my concern is about  
4 that because that does a good job in underscoring that for  
5 me. If there is case law that exists that the Court is  
6 obligated to stay a settlement in a class action when there  
7 is an objection raised and an appeal had absent terms  
8 within the settlement itself, that is what I'm interested  
9 in knowing, you see?

10 MR. RICHTER: I understand.

11 THE COURT: Yes.

12 MR. RICHTER: To our knowledge, it doesn't exist.  
13 We've researched that.

14 THE COURT: Well, I don't know that because I've not  
15 researched it. I want you to research it because you all  
16 have a stinging interest, both, to do that for me. Be  
17 mindful and be aware if the law does not require me to do  
18 that as a matter of course, the terms of your settlement  
19 are set insofar as I am concerned. And if the law does not  
20 require me to place such a savings on it, I will not alter  
21 the terms of the settlement. That's why the reason is  
22 important to me. That is the reason for the pause at this  
23 juncture as I learn that information. But if the law does  
24 not require me to stop the imposition of this settlement  
25 without the terms within the settlement itself, I will not

1 do that, and ---

2 MR. GEOLY: So, until Your Honor receives briefing.

3 THE COURT: Yes.

4 MR. GEOLY: The money will be very promptly paid into  
5 escrow.

6 THE COURT: No.

7 MR. GEOLY: But -- or to the Court?

8 THE COURT: Yes. The money's paid into escrow  
9 tomorrow.

10 MR. GEOLY: And held.

11 THE COURT: Yes.

12 MR. GEOLY: Until you've had a chance to review the  
13 law?

14 THE COURT: Indeed, indeed, and I would like -- this  
15 is a very exquisite issue, and there's absolutely no reason  
16 why I could not have, and I'm not looking for anything -- I  
17 just want the information and however you all -- if you  
18 would be so kind as to get that to me, I see no reason why  
19 I ought not be able to receive it on Wednesday because  
20 there is an awful lot of money at stake. And I feel  
21 compelled to get it done and at least get my decisions  
22 concluded.

23 I'd like to have the memorandum by Wednesday at 5. I  
24 will be in Horry County, but you all don't have to track me  
25 down to the Horry County courthouse. If you get it to St.



1 George, fax it, my administrative assistant can fax it to  
2 me or email it to me.

3 But that's the reason I feel compelled to answer that  
4 question. If you all -- if it must be a term of the  
5 settlement documents in order for there to be a stay, then  
6 so be it. Otherwise, otherwise, there could be a very  
7 difficult result for all class-action settlements. And  
8 that is that irrespective of the quality or the merit of an  
9 issue, class actions could be stayed even without  
10 appropriate standards being met.

11 I don't mean to say that's what's ongoing here, but  
12 I'm concerned. I'm concerned, Mr. Shahid, when you had the  
13 kind of conversation that you had. I'm very concerned  
14 about that.

15 All right, great, by Wednesday, and I would  
16 appreciate, along with the memorandum, proposed orders.  
17 Please, remember please, counselor, you must send whatever  
18 you send me at least as quickly, if not quicker, to your  
19 opposing counsel. So, please be mindful of that.

20 MR. RICHTER: Your Honor, we have two people here who  
21 are under subpoena.

22 THE COURT: Oh, my.

23 MR. RICHTER: And Mr. Maybank, John Maybank is ---

24 THE COURT: Who was stuck in traffic for hours.

25 MR. RICHTER: That's true. Mr. Thomas, Ellie Thomas

1 who stepped out for a moment, is the other. Mr. Maybank  
2 could not have been more accommodating to us throughout  
3 this transaction, and we have tried to equally accommodate  
4 him through issues of service and that sort of thing.

5 If it is all right with everybody and if Your Honor  
6 would so require, rather than us in the event that you need  
7 to reconvene, rather than us resubpoenaing him and making  
8 him come back, I'm prepared to just extend that subpoena,  
9 and same thing with Mr. Thomas. And if anybody objects to  
10 it ---

11 THE COURT: Well, I'm less concerned about Mr. Thomas  
12 because he's the escrow agent. He's in this thing. Mr.  
13 Maybank is just, he's just at work.

14 MR. RICHTER: He's the keeper of the key.

15 THE COURT: He's just at work and he gets caught up in  
16 it, so I'm very concerned about Mr. Maybank. You know, is  
17 it all right? Can we agree, everyone, that if Mr.  
18 Maybank's testimony is needed, that we'll try to do that by  
19 phone or something much more convenient? I mean, I know he  
20 loves being in Orangeburg and loves coming up I-26 forever,  
21 but if we could agree to do that, I'd certainly want to.  
22 In other words, my court reporter is usually ---

23 MR. RICHTER: Or he may be able to -- we may be able  
24 to draft an affidavit for him.

25 THE COURT: Something like that.

1 MR. SHAHID: That's fine.

2 MR. GEOLY: Your Honor, we either, we either got  
3 distracted or we just didn't pay close enough attention.

4 THE COURT: Let me short circuit. Mr. Maybank is here  
5 under a ---

6 MR. GEOLY: No, on this I understand, but I'm jumping  
7 backwards to something that you said just before.

8 THE COURT: You're good to go. We're going to take  
9 care of you so that if we need you again, we're going to  
10 make it easy.

11 MR. MAYBANK: Thank you.

12 THE COURT: Which one is Mr. Maybank?

13 MR. MAYBANK: Me.

14 THE COURT: I should have been looking at you.

15 MR. GEOLY: That's his boss with him.

16 THE COURT: Thank y'all so much. We sure will try to  
17 make it easy, guys. Thank you.

18 MR. GEOLY: Did you ask us for a proposed order today?

19 THE COURT: No, not today. Just, yes, when you send  
20 me your research, send me a little proposed order, too.

21 MR. GEOLY: With the research?

22 THE COURT: Yes.

23 MR. GEOLY: With the memo?

24 THE COURT: Yes, yes, yes, yes, and to each other  
25 quick, same speed or quicker. And I'm going to resolve

1 this, I'm going to resolve it no later than next Friday.  
2 Enough, enough.

3 MR. SHAHID: Judge, we're going to put the money into  
4 escrow agreed upon tomorrow, and there's just sort of --  
5 nothing else happens with that money until some time after  
6 Wednesday and we send you this brief?

7 THE COURT: The money will just percolate.

8 MR. SHAHID: Just percolate?

9 THE COURT: It will be percolating.

10 MR. SHAHID: That's right.

11 THE COURT: Okay. Very well, thank you all so much.

12 MR. GEOLY: I have one more question.

13 THE COURT: Yes.

14 MR. GEOLY: And I hate to open up a new issue, but I  
15 don't think that there's any disagreement between the  
16 parties on it, so it hopefully won't cost us much time. In  
17 -- and I realize in a sense you're going to revisit the  
18 order you entered on July 30th by virtue of the briefs that  
19 are coming.

20 THE COURT: Yes.

21 MR. GEOLY: There is language concerning members of  
22 the class who are entitled to actual notice of the  
23 settlement agreement and of the class action and of the  
24 whole process. And a window is left open for such people  
25 if they don't receive actual notice. It turns out that

1 this relatively small group of people who've been  
2 identified don't actually get notice, they, in fact, are  
3 not barred and that was something that the diocese had  
4 agreed to.

5 There was -- we saw some ambiguity in the language and  
6 I just, I wanted, I guess I wanted to clarify with the  
7 Court that that was the intent. You weren't opening up  
8 future litigation to those who were not on the list of  
9 those entitled to notice of the settlement.

10 THE COURT: Not at all.

11 MR. GEOLY: Thank you.

12 THE COURT: Not at all. Thank you. I'm glad you did  
13 that, and let the record reflect that that is limited to  
14 those people that, despite all of the efforts that the  
15 diocese has given and class counsel's investigator and  
16 class counsel, despite all those efforts, that there are  
17 these people that are really -- don't leave me -- that we  
18 learn of in the process that they have agreed to do that.

19 Basically the solicitor -- I hate to use the term, but  
20 the solicitor discovers. But let me say this and let me  
21 tell you of this conversation, everything that I know of  
22 this conversation, and I will do no more than that and ask  
23 both sides to learn of this on your own.

24 I received a telephone call yesterday from Carolyn  
25 Ayers, who is the civil court coordinator for Dorchester

1 County for our clerk's office. Her name is Caroline Ayers.  
2 Ms. Ayers has received a letter, a letter sent to the clerk  
3 of court. Not a telephone conversation but a letter. And  
4 this letter says that this individual is someone who would  
5 fall within the class. May I say no more than that? I  
6 don't know why. They are articulating some sort of abuse.  
7 They say that the diocese knows specifically of them, and  
8 that they have attempted repeatedly to contact class  
9 counsel, and that no one will talk to this person.

10 I thought it was just best to raise it with you all  
11 because that's, if I may, a little counterintuitive. My  
12 experience in this case that no one, that forty-five people  
13 from both sides wouldn't have been talking to this person,  
14 okay? So, I share that with you for your continuing --  
15 check it out.

16 MR. GEOLY: Okay. Your Honor, should that person be  
17 referred to Marvin Infinger once the matter is final?

18 THE COURT: I think you guys ---

19 MR. GEOLY: We'll just get the letter.

20 THE COURT: I think you guys get the letter, and I am  
21 satisfied ---

22 MR. GEOLY: Very good, Your Honor.

23 THE COURT: --- that what needs to happen is going to  
24 happen with it, okay? I just wanted you all to know that  
25 that, in all candor, that that had happened because I was,

1 to use my favorite word today, I was a little nonplused  
2 that that had happened in this case.

3 All right, guys, I'll look for something Wednesday  
4 from y'all. Y'all look for something no later than Friday  
5 from me, okay? Thank you guys so much.

6 Now, who's going to give me the happy phone call  
7 tomorrow that the settlement has been signed and -- both of  
8 you? Okay, what time? No later than 4.

9 MR. SHAHID: I'm supposed be in Aiken on the James  
10 Brown matter. I'll figure out how to get that word to you.

11 MR. DUKES: Judge, if Peter can't, Richard Dukes, I  
12 will call you.

13 THE COURT: That will be great. That would be great.  
14 Y'all just on the phone and give me a call. Everybody's  
15 got my cell. All right, thank you so much.

16 --- END OF TRANSCRIPT OF RECORD ---

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  
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[None]

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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.

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1 THE COURT: Yeah. There's two of them on here.

2 MR. BRUNER: Yes, sir. One -- I think it's 170  
3 -- 4175 and 41 --

4 THE COURT: One motion to amend and a motion to  
5 dismiss.

6 MR. BRUNER: I filed the same motion in each  
7 case. One is the abuse victim, the alleged abuse  
8 victim, and the other is his father.

9 THE COURT: Right.

10 MR. BRUNER: I filed an amended motion. And the  
11 gist of the amended motion was I still want to dismiss  
12 the complaint against the lawyer-defendants.

13 I have removed my alternative claim to  
14 disqualify counsel.

15 THE COURT: Okay. So that's gone?

16 MR. BRUNER: That's gone.

17 THE COURT: All right. So we're --

18 MR. FRAMPTON: Your Honor, we did the same thing  
19 on behalf of Mr. Haller.

20 THE COURT: Okay.

21 MR. MEYERS: Your Honor, Mr. Shahid and I this  
22 morning provided to the Court what we have filed with  
23 the clerk: some response memoranda to Mr. Bruner's  
24 motion.

25 THE COURT: Okay. Did y'all file a memoranda?

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1 MR. BRUNER: It's in my motion. My motion is my  
2 memoranda.

3 THE COURT: All right.

4 MR. BRUNER: If you have my amended motion, it  
5 states everything.

6 THE COURT: I got the amended motion.

7 MR. BRUNER: Yes, sir.

8 THE COURT: So your amended motion is your  
9 memoranda?

10 MR. BRUNER: Yes, sir.

11 THE COURT: All right. I'll be glad to hear  
12 you.

13 MR. BRUNER: Thank you, Your Honor.

14 As Your Honor has stated, these --

15 THE COURT: Hold it. Just one second.

16 MR. BRUNER: Yes, sir.

17 THE COURT: On the other motion, I'm just going  
18 to do a form order saying it was withdrawn.

19 MR. BRUNER: That's fine.

20 THE COURT: Okay?

21 MR. BRUNER: Yes, sir.

22 THE COURT: So we can get it off the books, so  
23 to speak.

24 MR. BRUNER: Yes, sir.

25 THE COURT: And we're going to hear the two

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1 amended motions; is that correct?

2 MR. BRUNER: That's correct.

3 THE COURT: I'll do a short order withdrawing  
4 those other non-amended motions.

5 Okay. Be glad to hear you.

6 MR. BRUNER: Your Honor, this is -- and  
7 particularly case 176, Joe Doe 194, is a claim by an  
8 alleged victim of sexual abuse at the hands of an  
9 employee of the Diocese of Charleston.

10 This is one of a number of cases Mr. Meyers has  
11 brought on behalf of alleged victims of sexual abuse  
12 against the lawyer-defendants, Mr. Richter and Mr.  
13 Haller, as well as various I call them the Diocese and  
14 defendants. It's the Bishop of Charleston and the  
15 Diocese of Charleston and others he chose to name.

16 I think it's important to remember that at its  
17 core, this is a claim for sexual abuse at the hands of  
18 employees of the Diocese. And because of that, there  
19 is no allegation that the lawyers did anything or had  
20 any part in the sexual abuse itself.

21 What the lawyers did was they brought a class  
22 action on behalf of victims of sexual abuse against  
23 these various named defendants and they reached a  
24 successful resolution and settlement of that claim in  
25 a class action context. The class action settlement

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1 was approved by Judge Goodstein and has been entered  
2 in --

3 THE COURT: I thought there was a -- wasn't  
4 there a lawyer from Spartanburg, or somewhere,  
5 involved in that case? Or was that a different case?

6 MR. BRUNER: It must have been a different case.  
7 I don't recall a lawyer from Spartanburg.

8 MR. SHAHID: It was a -- the prior matter you  
9 had would be -- that was out of Greenville.

10 THE COURT: Yeah. Okay. Yeah.

11 All right. Go ahead.

12 MR. BRUNER: He had a different claim than the  
13 one that's here.

14 And at the risk of over-simplifying what is a  
15 fairly complex allegation, here's how I read his  
16 complaint in this case and other cases. He says  
17 basically if anything in the class action bars me, as  
18 a victim, from pursuing my claim against the Diocese,  
19 then I am suing the lawyers and the Diocese for  
20 conspiring and cooking up something to harm me.

21 It is important to remember that in this case,  
22 John Doe 194 alleges himself to be a non resident of  
23 South Carolina. Because of that, he says he did not  
24 get notice of the class action settlement and,  
25 therefore, it all took place without his knowledge and

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1 without him having a fourth amendment right to due  
2 process.

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?

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1 MR. BRUNER: It means --

2 THE COURT: I mean, what are they referring to  
3 as a collateral review? Are you doing a De Novo  
4 hearing or --

5 MR. BRUNER: No, sir.

6 THE COURT: -- or what are you -- I haven't read  
7 the case. What does that term mean or --

8 MR. BRUNER: Well, what it means --

9 THE COURT: -- or what does that term entail?

10 MR. BRUNER: What it entails is, as they  
11 explained it in that case, was that they were basing  
12 it on an earlier case called Hospitality Management  
13 that dealt with the issue of whether an out of  
14 claim -- out-of-state nationwide class action  
15 settlement bound a resident of South Carolina.

16 What they said was, what you do is you look at  
17 the class action settlement and you look at the  
18 publication notice and the rights that were afforded  
19 to give notice of the settlement to non, let's say,  
20 punitive plaintiffs, the people who were not actually  
21 named in the suit.

22 So how do you tell all these people you purport  
23 to bind with this settlement that it's going on and  
24 that it will affect their rights. That is what they  
25 said. You've got to look at what was designed, as far

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1 as due process and notice, and then you look at what  
2 was implemented. You don't go underneath that. You  
3 do a limited review of what was done with the class  
4 action settlement. Now --

5 THE COURT: Have you got -- is that case in your  
6 brief?

7 MR. BRUNER: Yes, sir. It's another Doe vs.  
8 Bishop of Charleston case.

9 THE COURT: Okay. All right.

10 MR. BRUNER: So Judge Harrington has not  
11 conducted her limited collateral review of these  
12 resident South Carolina plaintiffs' cases.

13 In our situation, however -- .

14 THE COURT: And this is an out-of-state claim in  
15 this case.

16 MR. BRUNER: This is a non resident --

17 THE COURT: It's non resident. Okay.

18 MR. BRUNER: And in an earlier case, a 2010 -- I  
19 think the case is 5520, on motion by the Bishop to bar  
20 the plaintiffs' claim by reason of res judicata from  
21 the class-action settlement, Judge Young conducted a  
22 limited collateral review. I've attached his order to  
23 my amended motion. He says, I have conducted a  
24 limited collateral review. And he says what he did.  
25 And he says, after doing that, I conclude that this

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1 prior class action settlement does not bar the non  
2 residents' claim -- right to make a claim against the  
3 Bishop. So he's concluded that.

4 I think -- and I don't know -- but plaintiff's  
5 lawyer will disagree with me that that conclusion is,  
6 in effect, binding and resolves that issue as to all  
7 suits he has brought by non resident claims.

8 There has been a limited collateral review. It  
9 has been determined that these non resident plaintiffs  
10 can sue the Bishop of Charleston for alleged sexual  
11 abuse by employees.

12 Now, because that is so --

13 THE COURT: Well, let me back up --

14 MR. BRUNER: Yes, sir.

15 THE COURT: -- and ask you a question.

16 When that was before Judge Young, why weren't  
17 all of these cases resolved at that time, or at least  
18 consolidated for purposes of that motion? They  
19 weren't pending, or what was going on?

20 MR. BRUNER: That's a good question. They  
21 weren't pending.

22 The motion to dismiss was actually made I think  
23 in the first case he filed in Charleston Circuit  
24 Court.

25 THE COURT: Has that issue been -- has Judge

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1 Young's order been appealed?

2 MR. BRUNER: It was appealed.

3 THE COURT: So it's under appeal.

4 MR. BRUNER: And then the Court of Appeals  
5 dismissed it as being interlocutory.

6 THE COURT: Okay.

7 MR. BRUNER: I think that's correct, guys. I  
8 wasn't --

9 THE COURT: All right. So right now, that's the  
10 law in those cases.

11 MR. BRUNER: That's correct.

12 THE COURT: Okay. All right.

13 MR. BRUNER: So these other cases --

14 THE COURT: So now you're saying I should follow  
15 Judge Young's order?

16 MR. BRUNER: No, I'm not.

17 THE COURT: Pardon?

18 MR. BRUNER: No, sir.

19 I am telling you you should take judicial notice  
20 that there has been a limited collateral review and  
21 that it has, in fact, been determined that a claim by  
22 the non resident victim of sexual abuse is not barred  
23 by the class action settlement.

24 THE COURT: Right.

25 MR. BRUNER: That's all.

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1 THE COURT: Okay.

2 MR. BRUNER: That having been determined, then  
3 according to the very pleadings in the complaint it  
4 has been determined that this plaintiff can make his  
5 claim against the Bishop of Charleston. He has pled  
6 generally in this complaint that he has been abused  
7 and he wants compensation from the Bishop of  
8 Charleston. And then he's also pled -- however, if I  
9 cannot make my claim against the Bishop because of  
10 this class action settlement, then I'm suing the  
11 Bishop and all these lawyers for concluding and  
12 conspiring to cause me harm and not give me notice of  
13 this class action settlement.

14 Since, in fact, nothing that happened in the  
15 class action settlement has any effect whatsoever on  
16 this plaintiff's rights to sue the Bishop, it is -- as  
17 to this plaintiff, it is as if the class action never  
18 happened. Whatever rights he had, absent -- whatever  
19 he had in the class action, whatever rights he had, he  
20 still has.

21 Moreover, the Supreme Court said in the recent  
22 Doe case that the statute of limitations may not bar  
23 this plaintiff's or those plaintiffs' -- resident  
24 plaintiffs' claims because one of the allegations is  
25 negligent supervision. And they pointed out, they --

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1 in a claim for negligent supervision, if you conceal  
2 the conduct, the misconduct, then that can toll the  
3 statute of limitations against the employer. And they  
4 said there was evidence in the case that had been  
5 proffered that there was an instruction from the  
6 Vatican to keep everything quiet. And they said if  
7 that's shown, then the statute of limitation may well  
8 not be a bar to these plaintiffs' claims. That was in  
9 the recent Supreme Court order.

10 So my point is simply this. It has been  
11 determined that the class action settlement that the  
12 lawyer-defendants crafted and worked hard to achieve  
13 does not bar and does not affect in any way the  
14 plaintiff's claim, his right to sue the Bishop in this  
15 case. That being so, the plaintiff has no claims that  
16 he can assert. Even by his own complaint, he says if  
17 the Diocese agrees or the Court finds that the  
18 plaintiff is not precluded by the class action from  
19 bringing claim against the Diocese defendants, then  
20 the causes of action against the Richter defendants  
21 alone -- he says other than conspiracy -- are  
22 irrelevant.

23 That means by his own complaint that the causes  
24 of action for professional negligence, breach of  
25 fiduciary duty, and unfair trade practices should not

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1 be maintained. They ought to be dismissed. By his  
2 own complaint, taken as true, since he can sue the  
3 Bishop, these things go out the door. For civil  
4 conspiracy --

5 THE COURT: Let me ask you this question --

6 MR. BRUNER: Yes, sir.

7 THE COURT: -- primarily about Judge Young's  
8 order.

9 MR. BRUNER: Yes, sir.

10 THE COURT: Let's just assume that the Supreme  
11 Court -- or the Court of Appeals says it's  
12 interlocutory, which we can't hear at this time, and  
13 they move forward against the suit with the Diocese  
14 and there goes the appeal.

15 And the -- were the lawyers sued in that case?

16 MR. BRUNER: Yes, they were.

17 THE COURT: All right. Let's assume for  
18 purposes of my question that at that time the Court of  
19 Appeals reverses Judge Young and said, no, the class  
20 is protected, then why shouldn't he come back and be  
21 able to litigate the issue with the attorneys since --  
22 at that point in time? Or could he? If you  
23 understand what I'm asking you.

24 MR. BRUNER: I think what you're asking me is if  
25 the appeal had played out --

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1 THE COURT: Right.

2 MR. BRUNER: -- and they had reversed --

3 THE COURT: Right.

4 MR. BRUNER: -- Judge Young's --

5 THE COURT: Right.

6 MR. BRUNER: -- limited collateral review. Then  
7 my point to you would be, yes, I think so, in that  
8 case.

9 What I would invite you to do --

10 THE COURT: Well, procedurally, how would they  
11 do that since the lawyers are already out of the case?  
12 I assume -- I haven't read Judge Young's order, but I  
13 assume he dismissed the attorneys?

14 MR. BRUNER: No.

15 THE COURT: He did not?

16 MR. BRUNER: This is what he did. He said --

17 THE COURT: Okay.

18 MR. BRUNER: He said that the class action  
19 settlement did not bar the victim's right to bring a  
20 claim.

21 THE COURT: Right. Against the Diocese.

22 MR. BRUNER: Then he said he analyzed the  
23 victim's claim and he said --

24 THE COURT: Diocese. Excuse me.

25 MR. BRUNER: -- I think the victim's claim

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1 against the Diocese is barred by reason of the statute  
2 of limitations.

3 THE COURT: All right.

4 MR. BRUNER: So you've got a situation where the  
5 class action didn't bar him. He can bring the claim  
6 but he says the statute of limitations --

7 THE COURT: Had applied and they can't bring it.  
8 So now the suit is still pending against the  
9 attorneys; is that correct?

10 MR. BRUNER: And then what he said in that case  
11 was, I think that the civil conspiracy states enough  
12 to maintain a claim for it to go forward. Okay?

13 What has changed since that time is that the  
14 Supreme Court has said the statute of limitations, as  
15 Judge Young analyzed it --

16 THE COURT: Right.

17 MR. BRUNER: -- Judge, probably doesn't bar the  
18 claim.

19 THE COURT: Right. I understand.

20 MR. BRUNER: So they --

21 THE COURT: So they could proceed against the  
22 Diocese in that specific case, is what you're telling  
23 me.

24 MR. BRUNER: That's right.

25 THE COURT: Okay. So my question is,

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1 ultimately, if that issue is appealed -- in other  
2 words, Mr. Meyers represents the people in that case.  
3 Let's say Mr. Meyers -- at the end of the trial, he  
4 appeals Judge Young's order, which he can do, and the  
5 Supreme Court says, no, Judge Young was wrong, they  
6 could proceed against the Diocese, what does that do  
7 with the claim against the attorneys that Judge Young  
8 has just said you could proceed on the conspiracy  
9 issue, the other claims against the attorneys?

10 MR. BRUNER: Well, it's remanded for retrial.  
11 You know, I think -- it's just reversed. That's the  
12 way it is.

13 On the other hand, because there was no  
14 dismissal of a party --

15 THE COURT: Right.

16 MR. BRUNER: -- in the case Judge Young heard,  
17 there really wasn't a ripe issue for him.

18 What we've got is a situation, then, if your  
19 analysis is correct. And you, as the presiding judge  
20 in this case, would need to have a limited collateral  
21 review, make the same decision that Judge Young made,  
22 and then determine, okay, I think the lawyers ought to  
23 be dismissed. That would put the case in a posture  
24 where it would be appealed. And if it would be --

25 THE COURT: And he could -- Mr. Meyers could

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1 appeal it at that time.

2 MR. BRUNER: Mr. Meyers could appeal it and we  
3 could get an answer.

4 What we are finding is that it's leaving  
5 everything in a posture where he's pleading  
6 alternatively. We know he can pursue the Bishop. And  
7 there's absolutely no reason on this earth why these  
8 lawyers ought to have to go to trial in front of a  
9 jury on a sexual abuse case against the Diocese when  
10 they didn't do anything.

11 It's a legal -- it is really, I think, not a  
12 factual issue for a jury. It's a legal issue for the  
13 Court to determine, in the first place, whether or not  
14 they can sue the Bishop. If they can sue the Bishop,  
15 then the lawyers are out. And if he doesn't like that  
16 result, he can appeal it and get it reversed. Plain  
17 and simple.

18 But the lawyers -- there's no logical reason for  
19 the lawyers to be in a courtroom with the Bishop in a  
20 sexual abuse trial.

21 By all means, we sue the Bishop. We want  
22 victims of sexual abuse to have their day in court and  
23 to have an opportunity to make a recovery and get  
24 their rightful award. So we don't begrudge them that.  
25 We wish them well. But if they can do that, they have

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1 no claim whatsoever against us. They have no claim  
2 for conspiracy, because the only actions we took were  
3 in the context of the class action. And Judge Young  
4 has determined that with respect to non residents,  
5 class action does not impact them.

6 So I invite you to look at Judge Young's order.  
7 He says exactly what he did to conduct a limited  
8 collateral review. I think you can either say, I  
9 agree with him and I agree with his approach, or you  
10 can say, I want to do one in this case, or you can  
11 say, by reviewing this, I consider that I have  
12 conducted a limited collateral review in this case and  
13 I do not find that the class action bars the  
14 plaintiff's claim. We don't think it does. We don't  
15 think we intended for it to bar a non resident claim.

16 That being so, nothing we possibly could have  
17 done -- and if you believe all of the diatribe in the  
18 eighty pages of complaint that he writes about us, if  
19 you believe every word of it, not a thing we did, even  
20 if you believe it, harmed the plaintiff because he is  
21 absolutely not impacted by the class action settlement  
22 that we reached in the underlying case.

23 THE COURT: Okay.

24 MR. BRUNER: Thank you.

25 MR. SHAHID: Good morning.

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1 THE COURT: Yes, sir.

2 MR. SHAHID: Judge, what I have done for you is  
3 I have presented a response to the motion to dismiss.  
4 I've included in there certain attachments. I've  
5 included the actual settlement agreement that was  
6 entered into back in January of 2007. I've included  
7 the orders by Judge Goodstein. There were two orders.  
8 One was in July of 2007; an amended order,  
9 supplemental order, in August of 2007.

10 I've also attached, Judge, for your review, a  
11 motion that was filed by Mr. Haller, past counsel,  
12 filed in Dorchester County about a year or so ago.  
13 There's a motion under Rule 43 to enforce. That  
14 hearing was held in front of Judge Dixon and he issued  
15 an order in late November of 2013 denying the motion  
16 to dismiss.

17 If the Court is of a mind to dismiss the lawyers  
18 in this case, I just want the record to be kind of  
19 clear because it has an impact upon -- whatever impact  
20 it may have against the Diocese. In 2011 --

21 THE COURT: Well, let me back up and ask you a  
22 question. You were involved in the settlement  
23 process?

24 MR. SHAHID: Yes, sir.

25 THE COURT: What's your opinion as to the out-

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1 of-state plaintiffs?

2 MR. BRUNER: And that's what I was getting ready  
3 to answer, Judge.

4 The lawyer-defendants in this case, who we  
5 collectively call the Richter Defendants, Mr. Richter,  
6 Mr. Haller and the law firm, they took on the  
7 responsibility of drafting and approving the  
8 settlement agreement. So they represented the class,  
9 and so they took on the complete responsibility of  
10 having to -- of going to Judge Goodstein, going to  
11 Dorchester County, drafting the document. We've  
12 reviewed it, we've made edits to the draft, but they  
13 took on that responsibility of having it approved. So  
14 the in-state, out-of-state, falls squarely on their  
15 shoulder. They represented the class. We did not.  
16 The Diocese's obligation are the terms of the  
17 agreement, which is fund the money.

18 Judge, this --

19 THE COURT: But you had an obligation to look at  
20 your clients' liability issues.

21 MR. SHAHID: That's correct.

22 THE COURT: And you -- I assume you approved  
23 what they were doing.

24 MR. SHAHID: That's correct. And the terms --

25 THE COURT: So I don't think you can dump it all

1 on the lawyers now. Okay?

2 MR. SHAHID: No. And I'm not trying to throw  
3 any under the bus.

4 But I think that the context of all this is our  
5 responsibility -- was to protect the Diocese under the  
6 terms of the agreement.

7 THE COURT: Well, so my question: were you  
8 protecting the Diocese South Carolina residents, or  
9 South Carolina residents and non residents, or was  
10 that issue ever even discussed?

11 MR. SHAHID: That issue was resolved I think by  
12 Judge Dixon's order, which he says a copy of it is  
13 attached for your review, that the issue of residency  
14 is not a preclusion; in-state and out-of-state  
15 residents were corralled, for lack of a better word,  
16 for the purposes of this case. And that's Judge  
17 Dixon's ruling.

18 So our position has always been that this class  
19 action settlement agreement addressed all claims  
20 against the Diocese, that they met the very narrow  
21 definition if you're a class member. Residency was  
22 not a prohibitive factor. If you were in state or out  
23 of state, it did not prohibit, because the Diocese of  
24 Charleston is restricted by its geographical  
25 boundaries within the State of South Carolina.

1 THE COURT: Well, was there any advertisement --  
2 I assume the advertisement was limited to just South  
3 Carolina?

4 MR. SHAHID: There were some --

5 THE COURT: Was there any out-of-state  
6 publication?

7 MR. SHAHID: Yes, sir, there were. Because we  
8 were counting the boundaries, I think there was the  
9 Augusta Chronicle and the Charlotte Observer.

10 THE COURT: Okay.

11 MR. SHAHID: In addition, the class action  
12 received national exposure. There were articles that  
13 were published all over about the class action, all  
14 the way throughout the country. So there was no  
15 official notice that was published nationally. It was  
16 published on the border states and --

17 THE COURT: Well, was there any television  
18 advertisements?

19 MR. SHAHID: That television advertisement --

20 THE COURT: You see them all the time on  
21 television.

22 MR. SHAHID: There was not television  
23 advertisement. There was just television --

24 THE COURT: Pardon?

25 MR. SHAHID: There was not television



1 advertisement, no, sir, but there was television  
2 coverage about it. I'm not sure how far that went.

3 THE COURT: News media coverage.

4 MR. SHAHID: News media coverage. That's  
5 correct.

6 Judge, there are a couple of things to bring to  
7 the Court's attention. And clearly the order of Judge  
8 Young references this business about a limited  
9 collateral review. But it's important to note that --  
10 and Mr. Bruner brought this up. It's important to  
11 note that even with the judge's statement of a limited  
12 collateral review, that was done based upon the  
13 pleadings at the time. There was no presentation.  
14 There was no affidavits submitted. There was no  
15 evidentiary evidence presented to the Court. It was  
16 done on a motion to dismiss that I brought as to the  
17 effect that the class action had, including Mr.  
18 Meyers' clients --

19 THE COURT: To what extent do you think the --  
20 was it the Court of Appeals or the Supreme Court?

21 MR. SHAHID: The Supreme Court --

22 THE COURT: -- the Supreme Court -- to what  
23 extent do you think they mean a collateral review  
24 should extend? Affidavits, testimony, de novo type  
25 hearing, or just looking procedurally with the

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1 pleadings? What do you think?

2 MR. SHAHID: I think it had to be --

3 THE COURT: I mean, that's why I asked the  
4 question of Mr. Bruner earlier.

5 MR. SHAHID: I think that it shifts the burden  
6 on the plaintiffs to make a showing that the notice  
7 was inadequate. So the burden is on --

8 THE COURT: You think it shifts the burden to  
9 the plaintiff?

10 MR. SHAHID: To the plaintiff to show that the  
11 notice was inadequate. And I think it's going to be  
12 fact-specific to some limited degree. There may be  
13 certain factors --

14 THE COURT: So you think there needs to be some  
15 limited de novo testimony?

16 MR. SHAHID: Some limited novo testimony.

17 And, also, Judge, this is important to know,  
18 what the Supreme Court said. And Mr. Bruner attached  
19 it as Exhibit 3 to his motion. In the order -- in the  
20 opinions by the Supreme Court, it made this holding.  
21 Specifically before absent class members can be finely  
22 bound by the resolution of the class action suit, they  
23 are entitled to a limited review of the issues whether  
24 sufficient notice was given to punitive class members  
25 and whether class members had adequate representation.

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1           So the two elements that they're entitled to  
2 demonstrate: number one, that notice was inadequate,  
3 and, number two, that they had adequate  
4 representation. Now, that's --

5           THE COURT: Why do you think that's a shift to  
6 the plaintiff? I mean, it's your -- it's the  
7 defendant's motion to dismiss. I'm not sure I agree  
8 with your analysis about shifting that burden to the  
9 plaintiff. I mean, it's your motion. It was your  
10 class action. It was your order. I mean, it seems  
11 like the burden should be on you to show the Court  
12 that it was proper or also included non residents.

13           MR. SHAHID: Because I think the way they worded  
14 this says they --

15           THE COURT: Mr. Meyers, what's your position on  
16 that?

17           I mean, I don't mean to interrupt you.

18           But, I mean, while it's fresh on my mind, what's  
19 your -- and I haven't read the opinion. Okay?

20           MR. MEYERS: Understood, Your Honor.

21           And, really, because we're in the specialized  
22 world of class actions --

23           THE COURT: Right.

24           MR. MEYERS: -- there are statually, in my view,  
25 two dimensions to it. The first dimension is the

1 limited collateral review. And that is just whether  
2 somebody who fits the definition is barred, can they  
3 bring a later claim. What Judge Young said is if you  
4 didn't even try to give notice out of state, then you  
5 can't bar out-of-state people.

6 Once you get past that and you can make your  
7 claim. If the Supreme Court says they can make a  
8 claim, then the other issues that I think Mr. Shahid  
9 is touching on are actually not part of the collateral  
10 review. That's part of making the substantive claim  
11 in the case on the merits.

12 THE COURT: Well, I mean, you said Judge Young  
13 said they didn't make an effort. He says they  
14 advertised in Augusta and Charlotte. I mean, both of  
15 those are out of state.

16 MR. MEYERS: Well, they didn't advertise in  
17 Charlotte, actually. They advertised in --

18 THE COURT: Oh. They did not?

19 MR. BRUNER: They advertised in eleven  
20 newspapers, most of which were in South Carolina.

21 THE COURT: In other words, my question: how  
22 can I make a collateral review of whether it was  
23 proper or not without taking some affidavits or  
24 testimony or something, is my question.

25 MR. MEYERS: Yeah. And I --

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1 THE COURT: Because I don't know what happened.  
2 And it's -- you can't glean that from just looking at  
3 pleadings and the file.

4 MR. MEYERS: And we are here on a motion to  
5 dismiss, so the Court must take everything in the  
6 complaint as true.

7 THE COURT: Right.

8 MR. MEYERS: And I set out in great detail, the  
9 record shows in the class action, about what they did  
10 and didn't do starting with they first proposed to  
11 give nationwide notice and then they changed that.

12 THE COURT: All right. I appreciate it.

13 I didn't mean to interrupt you. Go ahead.

14 MR. SHAHID: No, sir.

15 THE COURT: I just -- I'm trying to decide in my  
16 mind what I should be doing to make this collateral  
17 review, if I should make a collateral review.

18 MR. SHAHID: And I don't think at this point, in  
19 this juncture, Judge, that you have the ability to  
20 make a collateral review on that issue. And I think  
21 that was the issue that we tried, on behalf of the  
22 Diocese, to appeal and we got kicked out of the Court  
23 of Appeals and kicked out of the Supreme Court --

24 THE COURT: Right.

25 MR. SHAHID: -- because that issue, as Judge

1 Young framed it, could have an impact on other Courts  
2 taking judicial notice of his decision.

3 What I think was curious, as I was trying to  
4 point out, was two things in Judge Young's order.  
5 Number one, he didn't receive any type of evidentiary  
6 information, documents, at -- to making that  
7 determination. It was basically on the -- on the  
8 pleadings. And, second, as pointed out, he left the  
9 civil conspiracy in, which we all scratch our head  
10 about as to how he made that determination. So even  
11 with this limited collateral review, he kept that  
12 cause of action viable.

13 In this opinion that the Supreme Court issued in  
14 January, it involved a lawsuit that Mr. Meyers brought  
15 naming -- we consolidated it to four plaintiffs that  
16 were involved in that, dealing with the same priest.  
17 That lawsuit did not include any of the lawyer-  
18 defendants. So the Supreme Court, in making its  
19 decision, in heading up its opinion, included this  
20 language about that the class -- that the absent class  
21 members, the punitive absent class member, who did not  
22 participate in the claims process, before that person  
23 is barred has an opportunity to bring a limited  
24 collateral review as to both the notice part and to  
25 the adequacy of his representation.

1           So the Court seemed to send a message to us  
2           because there are I think, by my last count, ten  
3           cases. One is in federal court and then the rest are  
4           here in state court in Charleston County. Some of  
5           these cases do not involve lawyer-defendants, but the  
6           majority of them do. So the Court is sending a  
7           message that, you know, before you dismiss this, I  
8           think that a trial court, when it comes to that  
9           particular point in time that motion is being made,  
10          collateral review has got to accomplish both things.

11          So Mr. Bruner may be completely correct. But I  
12          think that the motion is premature at this time until  
13          we do a limited collateral review on both issues as to  
14          the matter of notice and as to the matter of legal  
15          representation.

16          So I think we're kind of stuck at this juncture  
17          and we may have to do some discovery and some  
18          presentation, some type of limited evidence, to  
19          address that particular issue because the Court is  
20          very clear that that plaintiff has an opportunity to  
21          attack the agreement on both those grounds.

22          THE COURT: Okay. Thank you so very much.

23          Mr. Meyers?

24          MR. MEYERS: Mr. Bruner expressed a very  
25          legitimate concern that at the risk of over-

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1 simplifying things. This is a very complicated  
2 landscape. About three weeks ago, we approached -- we  
3 were in front of Judge Harrington and we said, Judge,  
4 you know, we -- nobody minds here if you approach the  
5 administrative judge and get all these cases assigned  
6 as a complex matter so that we're always in front of  
7 the same judge. Because this is a very hard landscape  
8 to --

9 THE COURT: I mean, you could wind up with a  
10 half a dozen different viewpoints.

11 MR. MEYERS: Right. And we're starting to get a  
12 little bit of fraying like that already.

13 THE COURT: Right.

14 MR. MEYERS: But in this proceeding today, Your  
15 Honor does not need to make any collateral review  
16 because it's undisputed that the people who live out  
17 of state didn't get due process. Mr. Bruner confirmed  
18 it today. Mr. Haller says that in his last action  
19 last year. They don't dispute that, that if you were  
20 out of state they didn't even try and give you notice.

21 I think they weren't appreciating at the time  
22 that they were defining the class without any  
23 geographic limit but then they only gave notice around  
24 South Carolina. You know, they gave notice in the  
25 Augusta paper because it covers part of South



1 Carolina. They didn't do the same thing in the  
2 Charlotte Observer. They didn't give notice in  
3 Charlotte except through the Rock Hill Herald. So  
4 most of the people --

5 THE COURT: That's close to Charlotte.

6 MR. MEYERS: It's close to Charlotte, but --

7 THE COURT: I doubt if everybody --

8 MR. MEYERS: -- it doesn't have near the --

9 THE COURT: -- in Charlotte reads the Rock Hill  
10 paper.

11 MR. MEYERS: Yeah. And I --

12 THE COURT: Probably the other way around: Rock  
13 Hill --

14 MR. MEYERS: I think so.

15 THE COURT: -- reads the Charlotte paper,  
16 Charlotte Observer.

17 MR. MEYERS: And those people that brought the  
18 case that went to the Supreme Court all live around  
19 Charlotte and none of them knew a thing about it.

20 But for purposes -- Mr. Bruner's point this  
21 morning is, Judge, there is no dispute these people  
22 didn't get due process, so they can sue the Diocese,  
23 so therefore you can't sue the lawyers.

24 THE COURT: I understand. But the Diocese's  
25 position is different from that --

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1 MR. MEYERS: I agree --

2 THE COURT: -- and they're involved in this,  
3 also. Okay?

4 MR. MEYERS: And I don't agree with Mr. Bruner,  
5 because these are fair questions but they are way  
6 premature. My clients have a right to recover against  
7 somebody. Either they should be able to recover  
8 against the Diocese -- and the Supreme Court has said  
9 we can proceed against the Diocese. But that's far  
10 different than we get a recovery against the Diocese.

11 THE COURT: Right.

12 MR. MEYERS: And it seems to me this motion  
13 needs to be denied because the question about how this  
14 shakes out is after the verdict is when we confront  
15 all these things. When the jury decides whether or  
16 not the Diocese has a good defense on the merits or  
17 these lawyers prevented my client from the benefits  
18 they could have gotten had they given them notice,  
19 that's the point at which -- my people are only trying  
20 to get one recovery. Well, we don't know who it comes  
21 from. And only once we try the case and get a jury  
22 reaction to the different causes of action do we know  
23 how that breaks out.

24 THE COURT: So you think you need -- you think  
25 you want to go -- I assume -- I know the answer to

1 this, but I'll ask you anyhow. You want to proceed  
2 against everybody at one time with the same jury, same  
3 trial?

4 MR. MEYERS: Yes, because the only cause -- for  
5 most of the causes of action, it's either one or the  
6 other. But on the conspiracy claim -- there was an  
7 enormous amount of funny business in this class  
8 action.

9 THE COURT: A lot of what? I'm sorry.

10 MR. MEYERS: Funny business.

11 THE COURT: Funny business?

12 MR. MEYERS: Yes. And it's laid out in the  
13 complaint.

14 But the conspiracy cause of action is one where  
15 the jury could actually return a verdict against each  
16 defendant.

17 So my position is that Mr. Bruner's point is  
18 premature on a motion to dismiss. He's got to wait  
19 until after the verdict for us to figure out, once the  
20 jury makes a decision, if there is a claim against the  
21 Diocese, or a claim against the lawyers, or a claim  
22 against both, under the conspiracy cause of action, or  
23 a claim against nobody and they return a defense  
24 verdict. But you can't decide it on a motion to  
25 dismiss because you've got to take everything and

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1 believe that it's true.

2 There's no dispute that due process does not  
3 preclude these out-of-state people from bringing this  
4 case. It's only a question -- Mr. Bruner is trying to  
5 accelerate the question of this either/or position.  
6 But all I'm trying to do is state -- I'm asking for  
7 just one recovery. You just have to clarify for me is  
8 it the lawyers who've precluded my people from suing  
9 the Diocese and recovering against the Diocese or can  
10 I recover against the Diocese.

11 If I can recover against the Diocese, I can't  
12 fault the lawyers for getting in their way from  
13 recovering against the Diocese. But if I don't  
14 recover against the Diocese, it's the lawyers who are  
15 obligated to my people because of the way they defined  
16 the class. They had fiduciary duties to my people.  
17 They were clients of -- my people were clients of  
18 theirs and they gave them no chance to participate.  
19 And that's the fundamental problem that has given rise  
20 to all these cases.

21 I think the motion to dismiss is premature and  
22 should properly be denied.

23 THE COURT: Was Judge Young's order based on  
24 summary judgment or based on --

25 MR. MEYERS: It was based on the pleadings --

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1 THE COURT: On a 12(b) motion?

2 MR. SHAHID: Yeah. Motion to dismiss --

3 MR. BRUNER: Yeah. Motion to dismiss.

4 MR. SHAHID: -- Judge.

5 THE COURT: Pardon?

6 MR. SHAHID: It was a motion to dismiss.

7 THE COURT: Okay.

8 MR. MEYERS: And all he was doing was saying are  
9 these people precluded -- does this case has to stop  
10 because of the preclusive effect -- the res judicata  
11 effect of the class action or not. And he said if you  
12 were out of state, you can go forward.

13 THE COURT: Now, Judge Harrington's order was at  
14 what stage?

15 MR. MEYERS: Also a motion to dismiss. And the  
16 Supreme Court said, no, even if you're in-state, you  
17 can state a claim if you can later show either this or  
18 that.

19 THE COURT: All right. Thank you, Mr. Meyers.  
20 I'm sorry. Anything else?

21 MR. MEYERS: That's essentially it, Your Honor.  
22 And I submitted a brief memorandum about this.

23 THE COURT: Okay. Thank you, Mr. Meyers.

24 MR. BRUNER: Nothing he said is persuasive that  
25 this motion is premature. I've been in these cases

1 for five years. He keeps bringing them. We have  
2 developments. We have Supreme Court cases come out.  
3 We have Judge Young's order. So we have things coming  
4 together that make this kind of ruling very right. In  
5 effect, what he's telling you now is, I have --

6 THE COURT: Let me --

7 MR. BRUNER: My clients have the right --

8 THE COURT: -- let me say this. Okay?

9 MR. BRUNER: Yes, sir.

10 THE COURT: Go ahead with your argument.

11 MR. BRUNER: He's telling you, my clients have a  
12 right to recover. That's not so. That's not the law  
13 and that's not what he has pled. What he has pled is,  
14 my clients have a right to make a claim against the  
15 Bishop. And what I'm trying to represent to you is  
16 Judge Young has looked at it and --

17 THE COURT: I understand.

18 MR. BRUNER: -- not just on the pleadings.

19 THE COURT: And going to let him proceed against  
20 the Bishop.

21 MR. BRUNER: That's correct.

22 THE COURT: I understand. After the Supreme  
23 Court said the statute of limitations didn't apply. I  
24 understand.

25 I'm just going to have to read all of this.

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1 Okay? I mean -- I don't mean -- I should have read it  
2 before, but I didn't. I didn't know it was coming up.  
3 Y'all dumped it on me. I've got a lot of reading to  
4 do.

5 And one -- off the record, please.

6 [Off the record momentarily]

7 THE COURT: Go back on the record.

8 MR. BRUNER: I do not disagree with Your Honor.

9 I think that I made the same argument in front of  
10 Judge Harrington. And when I argued that to her,  
11 Mr. Meyers said, but, Judge you don't need to make  
12 a -- to have a limited collateral review of the non  
13 resident cases, Judge Young has already done that.  
14 And I said, well, by golly, he's right. So that's  
15 what I'm telling you. He made the argument that it  
16 had already been conducted. I think it has.

17 I call your attention to page 3 of Judge -- let  
18 me make sure I'm -- excuse me -- page 4 of Exhibit 4.  
19 At the top of which he says, I conducted a limited  
20 collateral review. He tells you what he did. He did  
21 not just have the pleadings in the case. He had a  
22 stack of documents from the class action that thick.  
23 You're welcome to look at the file he was given before  
24 he made that decision. But what he went on was that  
25 the lawyers had originally proposed to the Court in

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1 the class action to advertise in the USA Today.

2 THE COURT: Well, let me say this. And I may be  
3 wrong. But my gut reaction to collateral review, the  
4 Court can do what they want to do. They can take  
5 testimony, affidavits or whatever. Now, that's just  
6 my opinion. I think that coming from the Supreme  
7 Court leaves it sort of wide open on what you're going  
8 to do in conducting a collateral review.

9 MR. BRUNER: I think you might change your mind  
10 if you read the Hospitality Management case --

11 THE COURT: I may be. I may be. But I said  
12 that's my gut reaction. I think that's sort of --

13 MR. BRUNER: -- Supreme Court. Because what  
14 they wanted to avoid was --

15 THE COURT: -- that's sort of throwing it in my  
16 lap saying --

17 MR. BRUNER: Sure.

18 THE COURT: -- do a collateral review, do it  
19 however you want to do it. But I may be wrong.

20 MR. BRUNER: But I think you can read  
21 Hospitality Management and the recent Supreme Court  
22 case.

23 THE COURT: I will. And I may --

24 MR. BRUNER: You might come away with a  
25 different feeling.



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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

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1 this out --

2 [Off the record momentarily]

3 MR. BRUNER: I think you are correct, Judge  
4 Nicholson. I think that there has to be a  
5 determination. And if the determination is what Judge  
6 Young found, unlimited collateral review, that's fine  
7 and we don't disagree with that.

8 I also want to respond to what Mr. Meyers said  
9 about a lot of funny business going on in the class  
10 action. Even if you believe all of that trash he  
11 wrote in the complaint about my clients --

12 THE COURT: Well --

13 MR. BRUNER: -- it makes no difference.

14 THE COURT: -- under the 12(b) motion, I've got  
15 to accept it as true.

16 MR. BRUNER: No. But if you also accept he's  
17 pleading in the alternative and if he can make his  
18 claim against the Bishop, all of this is irrelevant.

19 THE COURT: I understand.

20 MR. BRUNER: I'm asking you to accept that, as  
21 well.

22 THE COURT: I understand. You want to dump it  
23 on them and get out, get out from under the bus. I  
24 understand.

25 MR. BRUNER: All I'm saying is all of that makes

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1 no difference because he can pursue a claim --

2 THE COURT: See, Mr.. Meyers is in the cat-bird  
3 seat. He's got two defendants arguing with each  
4 other. He's just got to sit back and decide which one  
5 is going to pay the money.

6 MR. BRUNER: I think he's in a seat. I'm not  
7 sure the cat-bird --

8 THE COURT: Cat-bird seat? Okay. All right.

9 MR. BRUNER: But what I'm trying to tell you, he  
10 has -- standing here today, he has said you should  
11 dismiss all the other claims against the professionals  
12 except for conspiracy because, he said, there was  
13 funny business.

14 I agree with him. But I'm telling you, in  
15 addition --

16 THE COURT: Well, was there funny business?

17 MR. BRUNER: No, sir, there was not.

18 THE COURT: Okay.

19 MR. BRUNER: But I'm telling you, in addition he  
20 cannot state conspiracy because everything that took  
21 place in his allegations was within the context of the  
22 class action.

23 THE COURT: Judge Young said he could state  
24 conspiracy.

25 MR. BRUNER: Well, I disagreed with that then

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1 and I disagree with it now.

2 THE COURT: I was just saying, you've been  
3 telling me to accept part of Young's order but not all  
4 of it.

5 MR. BRUNER: That is exactly right.

6 THE COURT: Okay. I understand.

7 MR. BRUNER: And I don't argue that.

8 THE COURT: Okay. You like part of it but you  
9 don't like the other part.

10 MR. BRUNER: He was a genius in his first five  
11 pages --

12 THE COURT: Okay. I understand. Thank you.  
13 Yes, sir?

14 MR. SHAHID: I just want to make a couple of  
15 points pretty clear, Judge, as to what was just  
16 referenced.

17 Mr. Meyers' plaintiffs in -- as a pre-court case  
18 had the opportunity to present this collateral review  
19 to determine if the settlement agreement approved by  
20 Judge Goodstein bars them or not. So the stage that  
21 we're in -- and I think we kind of glossed over this  
22 too quickly. Their claim is still alive but there's  
23 another hurdle that needs to be determined. And I  
24 disagree with the Court. I don't think it's just the  
25 way that Judge Young did it. I think it's going to be

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1 fact-specific as to residency, non residencies, and  
2 other issues that may come up factually as to whether  
3 or not they've overcome that hurdle as to the  
4 preclusive effect of the settlement -- the class  
5 action settlement agreement.

6 So the Diocese still has the class action -- the  
7 Supreme Court opinion is very clear about this. They  
8 left open the opportunity for the class action to  
9 still be a bar to the -- to class members.

10 THE COURT: Well, let me ask you this, then,  
11 along those same lines. I know that's your position,  
12 and it may be the proper position, I don't know. But  
13 under the Rules, under the 12(b), I'm limited to just  
14 what's in the pleadings.

15 MR. SHAHID: Correct.

16 THE COURT: Okay? You're wanting to go outside  
17 the pleadings.

18 Now, whether the Supreme Court gives the Court  
19 the right to do it on the collateral issue with Judge  
20 Harrington and these other cases -- and I'm sure that  
21 case is going to apply to all these cases, or not, and  
22 go outside on a 12(b), or whether the Court ought to  
23 back off and say, okay, people, go through discovery,  
24 that's ninety days, come back to me and then we'll do  
25 a -- convert it to a -- in other words, convert the

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1 12(b) to summary judgment and give y'all an  
2 opportunity to do some discovery.

3 I don't know the answer to that. Okay?

4 MR. SHAHID: And I agree --

5 THE COURT: But that concerns me on procedurally  
6 how to proceed.

7 MR. SHAHID: And I think the problem is going to  
8 be this. If we adopt Judge -- if we try to appeal  
9 Judge Young's order, we solve this --

10 THE COURT: Well, you can appeal it down at --  
11 at some point down the road. You'll get your  
12 opportunity, assuming that he gets a verdict.

13 MR. SHAHID: Right.

14 But now we've got a Supreme Court case that has  
15 taken Judge Young's order -- and if you read it side  
16 by side, the Supreme Court's order is different than  
17 Judge Young's order. And that right now seems to be  
18 the controlling authority that we're operating under.

19 So I just think the Court is going to be  
20 cognizant that the claim that Mr. Meyers's clients  
21 have against the Diocese still need to --

22 THE COURT: Basically, you're just telling me  
23 the issue is whether the out-of-state people were  
24 excluded is still open.

25 MR. SHAHID: Is still open.

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1 THE COURT: I understand.

2 MR. SHAHID: Maybe narrowly. Maybe narrow, but  
3 still open.

4 THE COURT: I understand. But it's still open.  
5 And these two parties disagree with you. And for  
6 their clients, I understand why. I understand what  
7 you're saying. I don't know. You may be right. I  
8 don't know. I've got to read the opinion. I've got  
9 to do some reading, some studying, and some talking  
10 and we'll find out. Okay?

11 MR. SHAHID: The other point I was going to  
12 make, Judge, is that when we were last in front of  
13 Judge Harrington, we were discussing this issue about  
14 -- and Judge Harrington was going to talk with Judge  
15 McDaniel [phonetic] about it. So there was some -- we  
16 did have some discussion about these cases all coming  
17 in one --

18 THE COURT: We're going to have some more  
19 discussion. Okay? I promise you that. Okay? Thank  
20 you y'all so very much.

21 MR. MEYERS: If I may just make one point, Your  
22 Honor.

23 THE COURT: Yes, sir.

24 MR. MEYERS: I think Your Honor is right about  
25 the flexibility the Court has in collateral review.

1 And I think you'll find in the Hospitality Management  
2 case and the Supreme Court opinion from January of  
3 these cases, were in-state people. That what the  
4 court observes about Hospitality Management is it's  
5 one thing if you've got an in-state proceeding that's  
6 all South Carolina based. It's another thing if  
7 you've got a Hospitality Management, like they had, an  
8 out-of-state decision, where you've also got the  
9 constitutional questions of full faith and credit. So  
10 all --

11 THE COURT: Let me go off the record for a  
12 second.

13 [Off the record momentarily]

14 MR. MEYERS: And if we could go back on the  
15 record, Your Honor.

16 THE COURT: Go back on the record.

17 MR. MEYERS: And it seems to me that the one  
18 caution I would urge on the Court as I have thought  
19 about these cases is there's different issues for the  
20 in-state people and the out-of-state.

21 THE COURT: Right. I understand. I think  
22 you've got a dual --

23 MR. MEYERS: But --

24 THE COURT: -- you've got to deal with it on a  
25 dual basis, in-state and out-of-state.



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1 MR. MEYERS: And there are many interconnecting  
2 issues in both arenas of the cases.

3 THE COURT: Okay.

4 [HEARING CONCLUDES AT 11:48 A.M.]  
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing before the Honorable J.C. Nicholson, Jr., on Friday, April 10, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 2nd day of July, 2014.



Mia Perron, CVR-CM-M  
Circuit Court Reporter  
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )

IN THE COURT OF  
COMMON PLEAS FOR THE  
NINTH JUDICIAL CIRCUIT

JOHN DOE 2 AND JANE DOE 4 )  
PLAINTIFF )  
v. )  
BISHOP OF CHARLESTON, et al )  
\_\_\_\_\_ )

2010-CP-10-5520

JOHN DOE 10, )  
 )  
 ) PLAINTIFF )  
 )  
 ) v. )  
 )  
 ) BISHOP OF CHARLESTON, et al )  
 )

2010-CP-10-7233

JANE DOE 11, )  
PLAINTIFF. )  
v. )  
BISHOP OF CHARLESTON, et al) )

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2010-CP-10-5559

APRIL 16. 2015  
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JR. PRESIDING

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

GREGG E. MEYERS, ESQUIRE  
ATTORNEY FOR PLAINTIFF

SUSAN T. WALL, ESQUIRE  
HALL FRAMPTON, ESQUIRE  
ATTORNEYS FOR DEFENDANT/HALLER

JAMES L. BRUNER, ESQUIRE  
ATTORNEY FOR DEFENDANT/RICHTER

A. PETER SHAHID, ESQUIRE  
JAMES GEOLY, ESQUIRE  
ATTORNEYS FOR DEFENDANT/DIOCESE

SHARON VIZER, CIRCUIT COURT REPORTER

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I N D E X

MOTIONS

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\* \* \* P R O C E E D I N G S \* \* \*  
APRIL 16, 2015

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1                   THE COURT: All right. Let me see, we've got  
2  
3 several motions. Who wants to -- before we get to  
4 that, if we would for the record, would everybody  
5 please stand and identify themselves, and tell me who  
6 they represent, please.

7  
8                   MR. MEYERS: My name is Gregg Meyers. I represent  
9 the plaintiffs.

10                  MS. WALL: Susan Wall, I represent defendant, Mr.  
11 Haller.

12                  MR. BRUNER: I'm Jim Bruner, and I represent  
13 Lawrence Richter, as well as the former firm of Richter  
14 & Haller.

15                  MR. FRAMPTON: Hal Frampton, also representing the  
16 defendant, Haller.

17                  MR. GEOLY: James Geoly for Diocese defendants,  
18 and moving pro hac vice in the case.

19                  MR. SHAHID: Good morning. Peter Shahid. I  
20 represent the Diocese defendants.

21                  THE COURT: Okay. All right. There are several  
22 motions. I believe the -- Ms. Wall has some motions,  
23 Mr. Shahid has some motions and -- who wants to go  
24 first?

25                  MS. WALL: Your Honor, before we begin with the

1 motions, if I might, I wanted to bring the court up to  
2 date. The last time we were before Your Honor, we were  
3 just before going into a mediation, and I wanted to  
4 bring the court up-to-date on that matter. It was a  
5 court ordered mediation.

6 We did mediate in December, Your Honor. And  
7 when we finished a full day, there was on-going  
8 discussion. It was my understanding from that, at the  
9 end of the day, that the Diocese defendants and the  
10 plaintiff's counsel were going to continue discussions  
11 on one particular aspect, which was a foundational  
12 aspect which had to do with where the various  
13 plaintiffs would fit into the matrix that had been  
14 established in the underlying earlier class action as a  
15 part of the settlement.

16 I e-mailed counsel once or twice about where was  
17 the status on all of that, and I never heard back. And  
18 I thought perhaps the Court would like to hear from  
19 either Mr. Meyers or Mr. Shahid or Mr. Geoly as to what  
20 the status is on that because we've -- I haven't heard.

21 THE COURT: Okay.

22 MS. WALL: Thank you, Your Honor.

23 THE COURT: Mr. Shahid or Mr. Geoly?

24 MR. GEOLY: Well, Your Honor, first of all, I  
25 think -- I don't know how comfortable I am discussing

1 the internal contents of mediation communications in  
2 open court. It was a court ordered mediation and I  
3 think we could report to the court on progress --

4 THE COURT: I'm not asking you to give me any --

5 MR. GEOLY: Right.

6 THE COURT: -- as it relates -- is there any  
7 chance it's going to be resolved?

8 MR. GEOLY: Yeah.

9 THE COURT: I guess that's the question.

10 MR. GEOLY: And -- and the simple -- I guess there  
11 are two simple answers to that or two points to make.  
12 Number one, is we have had communications with Mr.  
13 Meyers. They have been cordial and I think productive.  
14 We were not able to get down to the level where the  
15 matter could actually be resolved because of some  
16 barriers. There are some legal barriers -- because all  
17 the parties have a common interest in achieving some  
18 kind of finality in the outcome of any resolution. And  
19 we are still engaged in that.

20 We are working hard looking at legal options,  
21 and even are working on ideas --

22 THE COURT: Well, I mean, I think this occurred --  
23 what? How long ago?

24 MS. WALL: Mid December, Your Honor.

25 THE COURT: I mean, this is probably what -- six

1 months ago, or was it that long ago? When did we meet  
2 last time? I think we met in conference, though, we  
3 didn't meet in --

4 MS. WALL: Yes, Your Honor. Early December.

5 MR. GEOLY: If I'm not mistaken, I think it was  
6 December. I -- but I'm pointing out that is --

7 THE COURT: Well, I guess my -- my concern is  
8 this: I'm not going to get into how close you are, et  
9 cetera, et cetera, et cetera. My concern is this:  
10 Y'all had six months to try to resolve it  
11 approximately. Okay. From the time -- the last time  
12 we talked, y'all had a conference -- a status  
13 conference.

14 So my question is, is it going to assist the  
15 parties to resolve these issues if we go ahead and move  
16 forward on these motions, or do we need to hold off on  
17 them from your standpoint? And then I'll ask Mr.  
18 Meyers the same question.

19 MR. GEOLY: Well, the second barrier, I think,  
20 answers your question, that you brought up at the  
21 settlement conference, there really wasn't going to be  
22 a settlement if the lawyer/defendants or their insurers  
23 were not willing to put any money into the settlement.  
24 And as of now, they're not willing to put any money  
25 into a settlement. That's what has caused us to spend



1 so much time trying to work on creative legal  
2 approaches that would somehow persuade them to do that.  
3 And that's where the energy has gone.

4 So I think what -- what we would say is we would  
5 always be willing to sit down and discuss this further.  
6 The resolution of today's motions -- well, I don't know  
7 if they will advance settlement. If somebody loses, I  
8 suppose, that will have some outcome that will create  
9 an outcome --

10 THE COURT: Well, the -- the posture of the motion  
11 is somebody is going to lose.

12 MR. GEOLY: Right. Right. I mean, the point is  
13 the direction from the court in a resolution of  
14 motions, might aid in the resolution of the case. We  
15 aren't on the brink of a settlement, if that's what the  
16 question is. There isn't some, you know, simple thing  
17 that just needs to be resolved.

18 THE COURT: Well --

19 MR. GEOLY: If we were just separated by dollars  
20 --

21 THE COURT: I guess my concern is this -- and Mr.  
22 Meyers, let me hear from you, my concern if -- if I --  
23 I'm going to hear the motions today. Okay. Now, I can  
24 take those under advisement, which I know I'm going to  
25 have to do because I've read a lot of material, some of

1 it I haven't read. So I'm just going to tell you up  
2 front, I'm going to take it under advisement today.

3 I can hold that under advisement and give y'all  
4 an opportunity to resolve it, or I can go ahead and  
5 rule, and then they -- see if y'all can resolve it or  
6 set a trial date, which is -- Mr. Meyers, from your  
7 perspective and from the church's perspective, what's  
8 the best approach as far as trying to get it resolved  
9 if you can? If you can't, that's fine. We'll set a  
10 trial date and go to trial.

11 MR. MEYERS: Yeah. I don't -- I think if I knew  
12 the answer to that question, I'd be a lot smarter  
13 lawyer, Your Honor. I'm not sure what is the most  
14 pragmatic way to get to a resolution. We are still  
15 trying to work on the issues that we think could lead  
16 there. We're not -- we're not done by any means, but  
17 we're not down to the easy part, which would be  
18 negotiating dollars.

19 So -- and I'm not sure what's on the plate  
20 today. My understanding was it was Mr. Bruner's motion  
21 and not a comprehensive --

22 THE COURT: I think the church has a motion, also,  
23 I believe if --

24 MR. GEOLY: Well, yes, our response to the lawyer  
25 defense -- lawyer/defendant's motion is a cross motion,

1 but it's on the same issue. It's --

2 THE COURT: Right. I mean, it's all basically the  
3 same issue. I guess it boils down to notice, proper  
4 notice of whether it was given or not, plus some other  
5 issues they've raised.

6 MR. MEYERS: Yeah. And I certainly think that  
7 those two motions, it's useful to argue today, to have  
8 the court take -- and the court should rule when the  
9 court's comfortable ruling -- you know, and we'll keep  
10 working. And your rulings, probably, will be helpful.

11 THE COURT: Okay. All right. I'll be glad to  
12 hear you, Ms. Wall, on your motion.

13 MS. WALL: Your Honor, Mr. Bruner would like to  
14 take the lead in this argument.

15 MR. BRUNER: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. BRUNER: May it please the court. I've argued  
18 in the memorandum more detailed points in support of  
19 our motion for summary judgment on behalf of the  
20 lawyer/defendants.

21 Your Honor, the -- the plaintiffs in these --  
22 we're dealing with six state court cases pending here  
23 in Charleston Common Pleas. In those six cases, we  
24 have a total of seven plaintiffs. And of those seven  
25 plaintiffs, six are non-resident plaintiffs who fall in

1 that category that we call the non-resident plaintiffs.  
 2 And we have one plaintiff who is a repressed memory  
 3 plaintiff. That is John Doe 193 in case 3733. So we  
 4 have six --

5 THE COURT: Well, let me --

6 MR. BRUNER: Yes, sir.

7 THE COURT: Let me sort of break it down for you.  
 8 Let's talk about John Doe 193 first.

9 MR. BRUNER: All right, sir.

10 THE COURT: Which is the South Carolina resident.  
 11 And I don't think, in any stretch of the imagination,  
 12 the advertisement would affect as to him -- okay. It's  
 13 just his repressed memory whether or not he should be  
 14 part of the class because of the repressed memory. I  
 15 understand he regained his memory sometime in September  
 16 of 2010; is that correct?

17 MR. BRUNER: June of 2010 is when --

18 THE COURT: June 2010. Okay. I'll be glad to  
 19 hear you and the church on the issue, but my  
 20 inclination, having read all the memos -- and I'm  
 21 not -- I'm not going to rule today, but my inclination  
 22 is probably to allow him to proceed. Okay. Primarily  
 23 because it's a repressed memory. Now --

24 MR. BRUNER: When you say "allow him to proceed",  
 25 against whom?

1           THE COURT: And how it's going to proceed, in my  
2 opinion, having read the case in this particular court  
3 from the Supreme Court, basically there are findings  
4 where it determined lack of notice, inadequate  
5 representation where the statute of limitations were  
6 tolled. And it's a remand back to the circuit court to  
7 make those determinations is the way I read the case.

8           So as far as his repressed memory is concerned,  
9 I'm planning on setting up a factual hearing where  
10 everybody can participate to see if, in fact, medically  
11 he did have a repressed memory. And I'm going to let  
12 y'all call witnesses and cross-examine witnesses, and  
13 I'm going to listen to that testimony and make a  
14 decision whether he had a repressed memory or not.

15           Now, that's my inclination. Because I sort of  
16 -- I know y'all made arguments otherwise, I sort of  
17 eluded to the statute of limitations analogy by the  
18 case law in South Carolina. You know, you can't -- the  
19 statute doesn't run against a minor; if someone is  
20 mentally incompetent, it doesn't run. In this  
21 particular situation, whether it was constructive  
22 notice, actual notice or not, it's immaterial because  
23 he was incapable of receiving the notice.

24           MR. BRUNER: Right.

25           THE COURT: So my plans are setting up a hearing

1 to determine if, in fact, he had a repressed memory,  
2 and when that came back. Okay.

3 Now, that's my -- having read all the memos and  
4 read his complaint, that's my inclination as to John  
5 Doe 193. Now, that's entirely separate from the rest  
6 of the out-of-state plaintiffs.

7 MR. BRUNER: I agree with you. I think the  
8 analysis, with respect to 193, is a different analysis.

9 THE COURT: Completely.

10 MR. BRUNER: And may I make a comment, Your Honor?

11 THE COURT: Yes, sir. I just wanted to share that  
12 with you.

13 MR. BRUNER: Yes, sir.

14 THE COURT: To see what you wanted to tell me on  
15 the argument.

16 MR. BRUNER: Well, I -- I agree with everything  
17 you've said, and that's in essence what we've argued is  
18 notice of any kind would have been ineffective as to  
19 him, so he should be able to proceed.

20 THE COURT: Assuming, medically, he had a  
21 repressed memory is my point.

22 MR. BRUNER: The problem is this, the -- in Mr.  
23 Meyers' case, the Moriarty case between the Court of  
24 Appeals and Supreme Court, what the Supreme Court said  
25 was whether or not, in fact, he had a repressed memory,

1 and when he recovered that memory, are questions of  
2 fact for the jury. And that's why I think that Your  
3 Honor holding a hearing on whether or not he had it --

4 THE COURT: Well, I'm -- I'm primarily just  
5 holding a hearing as to whether or not he had it based  
6 upon trying to do a limited evaluation of what took  
7 place. In other words, I don't think I can rule on --  
8 I'll agree with you, I don't think I can do a limited  
9 review without addressing that particular issue --  
10 unless everybody is going to agree --

11 MR. BRUNER: I think --

12 THE COURT: Unless everybody's going to stipulate  
13 that he had a repressed memory, and medically that's  
14 correct. I don't know what discovery y'all had on that  
15 issue, but how can I do a limited review without  
16 addressing that issue?

17 Now, I'll agree with you, the jury will  
18 ultimately make the decision as far as the damage  
19 issue. But as far as the limited review, I think I've  
20 got to address that issue in limited review.

21 That's not going to necessarily be binding on  
22 the jury as to damages --

23 MR. BRUNER: I understand. You're not talking  
24 about making any final determination --

25 THE COURT: No.

1 MR. BRUNER: -- for purposes of the case?

2 THE COURT: No. But I don't think there's any way  
3 I can do a limited review without addressing that. If  
4 y'all don't want to do a hearing, y'all can do it by  
5 affidavit -- medical affidavits or whatever you want to  
6 do. But I think for a limited review, I have to  
7 address that. That's all I'm saying.

8 MR. BRUNER: So you'd be determining whether  
9 there's a prima facie showing --

10 THE COURT: Right. That's all I'm saying.

11 MR. BRUNER: Sufficient evidence to go to the jury  
12 for them to determine --

13 THE COURT: Right. To get around the notice  
14 issue.

15 MR. BRUNER: I understand.

16 THE COURT: And that's what I'm saying. I guess I  
17 mis --

18 MR. BRUNER: I understand.

19 THE COURT: You misunderstood -- I didn't relate  
20 it to you properly. Okay.

21 MR. BRUNER: I understand. So I understand I'm --  
22 what you're saying and -- and we -- we don't -- I don't  
23 necessarily disagree with what you're saying.

24 THE COURT: All right. Mr. Meyers, what is your  
25 position on that?



1 MR. MEYERS: Your Honor, I think that makes a  
2 certain amount of sense, Your Honor. What you're  
3 trying to do, as I hear you, is you're trying to say,  
4 well, for purposes of analyzing the class, the limited  
5 review as to that plaintiff --

6 THE COURT: That's right.

7 MR. MEYERS: -- has to involve whether he can make  
8 a prima facie showing under the Moriarty case --

9 THE COURT: Right.

10 MR. MEYERS: -- to have the evidence needed to go  
11 to the jury --

12 THE COURT: And I'm not saying that's -- the jury  
13 ultimately will make that decision.

14 MR. MEYERS: That makes sense.

15 THE COURT: What does the church have to say on  
16 that issue?

17 MR. GEOLY: Yeah, Your Honor, we understand you're  
18 saying this is what you're inclined to do. You have  
19 not decided --

20 THE COURT: I said I'm inclined. I'm not ruling  
21 today. I'm just trying to put it on the table so we  
22 can have a meaningful motion hearing this morning.

23 MR. GEOLY: I appreciate that, Your Honor. And we  
24 object to that approach. We object to it on a number  
25 of grounds. First of all, what limited review asks is

1 not to second guess the class action court about  
2 whether notice was in fact done in the perfect or best  
3 way --

4 THE COURT: I'll agree with you on the rest of the  
5 defendants, but not on the repressed memory. The only  
6 reason I'm saying notice wasn't applicable, is the  
7 alleged repressed memory. Okay.

8 MR. GEOLY: So, the definition of the class does  
9 not exclude people who may have had repressed memories.  
10 And I think Mr. Bruner just told you, that notice of  
11 any kind would have been ineffective as to John Doe 193  
12 because of the repressed memory argument. So he's  
13 essentially saying that there can never be a class  
14 action matter involving people who may have repressed  
15 memories.

16 THE COURT: I don't think he's saying that. I'm  
17 just thinking you got to address that issue when and if  
18 the memory is no longer repressed, and he comes  
19 forward.

20 MR. GEOLY: But the point is that the -- under  
21 Rule 23 and the standards for due process, there is not  
22 a requirement that actual notice be received by all of  
23 the potential class members --

24 THE COURT: I understand and I -- I agree with  
25 that. But as far as the mental ability of him to

1 receive that notice is an issue, which is separate from  
2 what you're arguing.

3 MR. GEOLY: But the inquiry is not as much his  
4 ability to receive the notice, as the reasonable  
5 efforts by the court, class counsel and the defendants  
6 to give the notice. It's an objective standard from  
7 the perspective of the court giving notice, not whether  
8 an individual, because of his own circumstances, might  
9 not have been able to receive it because there are any  
10 number of reasons a person might not receive what was  
11 otherwise reasonable notice, and they would still be  
12 barred by preclusion. An alleged repressed memory is  
13 one of those potential reasons. Some other disability  
14 would be a different reason; being out of the country  
15 at certain points in time would be another reason.

16 But the fact that individuals may have reasons  
17 that they don't receive the notice, is not a reason to  
18 disqualify -- to invalidate the notice. It's -- the  
19 inquiry has to be the reasonableness of the notice to  
20 the class as a whole. And the class did not  
21 distinguish between those with repressed memories and  
22 those without. And the -- the lawyer/defendants have  
23 already, as class counsel, gone back to the class  
24 action court --

25 THE COURT: Well, what --

1 MR. GEOLY: -- at least for -- the definition of a  
2 class.

3 THE COURT: What if that client would have been  
4 declared by the court as incompetent, had a conservator  
5 representing him?

6 MR. GEOLY: Different approaches could have been  
7 taken. It is possible to have a class of people who  
8 lack com --

9 THE COURT: Well, the Settlement Agreement never  
10 addressed repressed memory, period, that I can find.  
11 It's all come up in this lawsuit. It wasn't addressed  
12 in the Settlement Agreement. It wasn't addressed in  
13 the order. I found no place where it's been addressed.

14 Now, what if he was 17? Then you would sit  
15 there and tell me --

16 MR. GEOLY: No, if he was 17 -- if he was 17, he  
17 would have been excluded from the class by  
18 definition --

19 THE COURT: You see --

20 MR. GEOLY: -- because the class was defined to  
21 only include people who were already adults.

22 THE COURT: I understand what you're saying. But  
23 where I disagree with you, if you're going to exercise  
24 due process for the potential class members, and this  
25 particular class member did not have the mental

1 capacity to receive those, I have a problem with  
2 lumping him with everybody else. And that's where I  
3 disagree with your argument.

4 MR. GEOLY: I -- I certainly understand the  
5 Court's -- the Court's point and I respect the argument  
6 the Court is making. My only argument is that -- there  
7 are any number of reasons an individual might not be  
8 able to receive notice. This may be one of them.  
9 There are other incapacities that exist as well --

10 THE COURT: I don't disagree with that. All I can  
11 do is deal with this one. This is the only one I know  
12 about.

13 MR. GEOLY: But the -- the point is that that fact  
14 alone does not make notice inadequate to the class as a  
15 whole. Because otherwise, every person who has some  
16 reason why they didn't get notice -- even if it is a  
17 good reason, would be able to later on challenge the  
18 preclusive effect of a class settlement on limited  
19 collateral review because, you know, they had a brain  
20 injury. They were sick that day. They were out of the  
21 country or some other -- they -- at some point in their  
22 lives, they had a mental illness or something else.  
23 Class settlements that deal with a whole group of  
24 people don't always have to break out every particular  
25 condition an individual might have.

1 THE COURT: Well, I understand the notice doesn't  
2 have to be perfect. It's going to miss people. Okay.  
3 I understand. And that's basically what you're  
4 arguing. And this guy is not perfect because he had a  
5 repressed memory, so he couldn't have received notice.  
6 I just disagree with the due process as to this  
7 particular individual, i.e., John Doe 193. Okay.

8 MR. GEOLY: Understood, Judge.

9 THE COURT: And I fully understand your argument,  
10 and I will -- I will read your brief again, and I will  
11 reflect on it again.

12 MR. GEOLY: Thank you, Your Honor.

13 THE COURT: Okay.

14 MR. GEOLY: On the rest of your treatment of the  
15 issue, though, putting aside whether we should even be  
16 doing this, if we are doing it, I think we do agree  
17 with your analysis that this kind of a hearing that you  
18 propose is in the exercise of your power to do a  
19 limited collateral review, and to distinguish that from  
20 some decision ultimately on the merits of the -- of the  
21 repressed memory at issue. That approach procedurally  
22 is not something we object to. It's the first argument  
23 that I made --

24 THE COURT: I understand.

25 MR. GEOLY: That is our point. Thank you.

1 THE COURT: I understand. I appreciate your  
2 argument. Okay. And I -- I understand your argument.  
3 I just don't know if -- and I'll reflect on it and I'll  
4 read your memo again, and I'll think about it some  
5 more. As I said, I'm not completely one-sided. I'm  
6 just making my argument against you to see what you  
7 have to say. Okay.

8 MR. GEOLY: Thank you, Your Honor.

9 THE COURT: Not that I totally disagree with you.  
10 Okay.

11 MR. GEOLY: Understood. Thank you.

12 THE COURT: Yes, sir. Mr. Meyers.

13 MR. MEYERS: Yes, sir --

14 THE COURT: And why did you wait until 11:30 last  
15 night to send me your memo?

16 MR. MEYERS: Well, because --

17 THE COURT: I mean, it's absolutely worthless.

18 MR. MEYERS: I apologize for that, Your Honor. I  
19 simply couldn't get it done before that, because I had  
20 other things that I had --

21 THE COURT: I mean, it didn't do any good. He got  
22 it at 11:30. I wouldn't have got it because my phone  
23 is on privacy at that time.

24 MR. MEYERS: Yeah. And the point is well taken.  
25 I brought a copy with me, of course, today to hand up.

1 THE COURT: Well, I've got a copy of it, but it's  
2 unfortunate I just haven't had the chance to read it  
3 and reflect on it. So for purposes of today it's  
4 almost worthless.

5 MR. MEYERS: I hear you, Your Honor. That's the  
6 best I could do. That's all I can tell you.

7 Your Honor, when we met last time, you proposed  
8 another idea that I think has now -- makes some sense  
9 to talk about in light of the discussion we've just  
10 had. And that was the assignment of the class action  
11 to Judge Kinard, who I understand has got an illness,  
12 and you had proposed to us whether it made sense for  
13 you to request that case also be assigned to you --

14 THE COURT: Well, that's one question I had for  
15 y'all because I don't know. My question is, what's the  
16 -- in other words, the Supreme Court in September of --  
17 what '09?

18 MR. MEYERS: 2009.

19 THE COURT: Closed out the class.

20 MR. MEYERS: Well, they directed that it be  
21 closed.

22 THE COURT: Be closed. Now, has the case in  
23 Dorchester been dismissed with prejudice? Is it still  
24 pending? What's going on in Dorchester?

25 MR. MEYERS: Still pending.



1 THE COURT: That's what I don't know.

2 MR. MEYERS: And in light of the collateral  
3 review, the court would then -- if the court had the  
4 class action, the court would have both the option to  
5 do the collateral review or we can do direct review.

6 THE COURT: Well, what's going on in that case --

7 MR. MEYERS: It's just stopped --

8 THE COURT: Everything, I understand, it's over.

9 MR. MEYERS: It's been stuck since 2008.

10 THE COURT: Well, is it over?

11 MR. BRUNER: It's -- it's over. No order has been  
12 issued. We prepared --

13 THE COURT: I don't -- I don't even understand why  
14 the case is still open.

15 MR. BRUNER: It shouldn't be.

16 MS. WALL: It shouldn't be, Your Honor.

17 MR. BRUNER: We prepared the order of dismissal  
18 with prejudice. We sent it to Mr. Shahid. He says  
19 he's sent it to the court, and it's never been signed.

20 THE COURT: Mr. Meyers, what -- I mean, is it  
21 over? That's all I'm asking.

22 MR. MEYERS: I sure thought it was over, but the  
23 Supreme Court seems to think it's not. And so no final  
24 order is issued. The judge recused herself. And it's  
25 just been dead in the water, sitting, waiting for

1 somebody to take it over and --

2 THE COURT: Well, if she recused herself, then  
3 Judge Dickson issued that order about whether to go  
4 ahead and include people out of state in the class and  
5 he said you could.

6 MR. MEYERS: So it appears to be still going on.  
7 I argued to the Supreme Court that it was over in Doe  
8 v. Bishop of Charleston in 2014. That decision,  
9 they -- they don't seem to think it is. So I agree  
10 with you, that it seems like it should be over. I  
11 agree with Mr. Bruner, but the Supreme Court tells me  
12 I'm wrong.

13 THE COURT: Well, let's assume that it's not over,  
14 what are you -- do y'all think it's over too?

15 MR. GEOLY: No. Your Honor, I just wanted to  
16 moment.

17 THE COURT: Okay. I'm sorry. You've raised your  
18 hand.

19 MR. GEOLY: I raised my hand.

20 THE COURT: You don't have to raise your hand,  
21 just -- we are not in school. Okay.

22 MR. GEOLY: I just -- I wanted you to know that I  
23 was waiting, but I didn't want to speak over Mr.  
24 Meyers. As a technical proposition, the case is  
25 pending. It's on the docket. It has not been

1 dismissed with prejudice. The caption is there. The  
2 case numbers -- the case number is there. It exists as  
3 a matter assigned to a judge.

4 We all agree on what's been said about the case,  
5 and that's all true, what the Supreme Court has said,  
6 what counsel has said, but the matter still is pending.

7 And the only point that I was going to make was  
8 the order that Your Honor just referred to, I mean, the  
9 matter was certainly pending when the lawyer/defendants  
10 went to court to seek relief, asking that the class  
11 be -- the definition of the class be clarified. And  
12 the court, in fact, did issue an order clarifying the  
13 definition of the class, even though by then the -- the  
14 arbitration phase of the class action was already over.  
15 So it functioned as a court exercising jurisdiction  
16 over its own order during -- during that proceeding --  
17 I want to say 2012 is when -- was when that occurred.

18 THE COURT: Yes, sir. That's what you're talking  
19 about, Judge Dickson's order; right?

20 MR. GEOLY: Yes, Your Honor.

21 MR. BRUNER: I'm not sure, Your Honor, that the --  
22 a request to a Court to interpret its own order  
23 requires that the underlying case still be open.

24 THE COURT: That was April 21, 2013.

25 MR. BRUNER: I think -- I think the simple answer

1 is, it is technically -- it is over practically  
2 speaking. Technically, an order of dismissal with  
3 prejudice has --

4 THE COURT: Mr. Meyers, I interrupted you when you  
5 were saying something. I don't remember what you -- I  
6 said it, but the status conference. You were  
7 refreshing my memory about something -- I may have  
8 proposed -- I don't recall.

9 MR. MEYERS: Yes. You had proposed to us whether  
10 it made sense for you, in light of Judge Kinard's  
11 health issues, to request the Supreme Court redirect  
12 even the class action proceedings, to whatever extent  
13 they need to be done, to Your Honor.

14 And what I'm saying is that given -- if the --  
15 if the Court did that, and goodness knows it would be a  
16 blessing for somebody to have the case and have it --  
17 you know, somebody we can talk to about it, and you  
18 would have both the option of collateral review in your  
19 capacity now on these cases, as well as authority to --  
20 at any time is what Rule 23 says -- at any time issue  
21 any other order to straighten it out. So it seems to  
22 me that suggestion, I just wanted to remind the court  
23 --

24 THE COURT: I don't remember saying that, but if  
25 you said I did, that's fine.

1 MR. MEYERS: It's because we were talking about  
2 Judge Kinard's health --

3 THE COURT: Does anyone want me to try to pursue  
4 that line because I haven't done that?

5 MR. GEOLY: Your Honor, we agree with that. We  
6 think that that would be a good idea.

7 THE COURT: All right. What about that, Ms. Wall?

8 MS. WALL: Your Honor --

9 THE COURT: -- or Mr. Bruner, I didn't mean --  
10 what's y'all's position?

11 MS. WALL: Well --

12 THE COURT: I mean, y'all are not involved in  
13 that lawsuit at all?

14 MS. WALL: What's interesting is that Mr. Meyers,  
15 in these cases, has been very careful all along to say  
16 oh, no, no, no, we're not part of, don't want to be  
17 part of, anything to do with the class action. And --

18 THE COURT: Well, that's in his pleadings. That's  
19 not my question. My question is, do you want me to  
20 pursue that line? That's all asking.

21 MR. BRUNER: I don't think it's necessary.

22 THE COURT: Pardon?

23 MR. BRUNER: I don't think it's necessary. I  
24 don't think there's anything that -- if you had the  
25 underlying case, as the assigned Judge, I don't think

1 there would be anything for you to do in that case.

2 THE COURT: Well -- well, I think at some point in  
3 time that -- I don't know. That case ought to be  
4 dismissed and be done with it. Because there's no  
5 appeal pending. There's nothing going on in the case.  
6 But that's neither here nor there. What is your  
7 objection?

8 MR. BRUNER: I don't have an objection. I'm  
9 saying I don't think it's necessary. Now, if -- if  
10 Your Honor wants to take --

11 THE COURT: Well, they've raised the jurisdiction  
12 of this court in this case based on that case in the  
13 memo. You saw that, didn't you?

14 MR. BRUNER: I saw that. I didn't think much of  
15 it.

16 THE COURT: Well, that's beside the point. They  
17 still raised it. So you said there's no reason to do  
18 it, that's one reason to be honest with you.

19 MR. BRUNER: There -- I don't -- I don't think it  
20 is, but if you -- if Your Honor wants it assigned to  
21 you --

22 THE COURT: I don't --

23 MR. BRUNER: -- for purpose of issuing an order of  
24 dismissal, I don't have a problem --

25 THE COURT: If the parties want me to do it, I'll

1 be happy to pursue that. If you don't want me to do  
2 it, that's fine. I'm not trying to volunteer to take  
3 on any more work. I'll be happy to pursue that if you  
4 want me to. If you don't, that's fine.

5 MR. BRUNER: I don't think it's necessary, but I  
6 don't have an objection to it.

7 THE COURT: All right. Okay. All right. Mr.  
8 Meyers, thank you very much. Where -- where do you  
9 want to go from here?

10 MR. MEYERS: I'm not sure I had the floor once  
11 that point was done, Your Honor, that was the only  
12 point I was going to make.

13 THE COURT: Okay.

14 MR. MEYERS: I mean, I do want to speak to the  
15 motion, but --

16 THE COURT: I understand. All right. Let's hear  
17 the attorney's motion, Mr. Bruner?

18 MR. BRUNER: Did you have something --

19 MR. GEOLY: Well, maybe this is more of a question  
20 than a -- than a suggestion. But we've understood  
21 where we are in the repressed memory plaintiff --

22 THE COURT: Right.

23 MR. GEOLY: We've just addressed, I think, kind of  
24 a fundamental procedural question that could involve  
25 restructuring the action. Your Honor mentions the

1 subject matter jurisdiction argument we've made, which  
2 regardless --

3 THE COURT: I'm like Mr. Bruner, I wasn't real  
4 impressed with it, but you may proceed with it if you  
5 want to.

6 MR. GEOLY: No, I'm not going hijack the flow of  
7 the arguments into it.

8 THE COURT: Okay.

9 MR. GEOLY: The point being, though, that it  
10 raises at least a practical question about putting  
11 together the power to, quote unquote, fix the class  
12 action prospectively and resolve these cases and  
13 ultimately maybe get a resolution that has enough  
14 finality so that we kind of get a real resolution.

15 My question is if that is conceivable and  
16 something that could be discussed as a practical way  
17 forward, I'm returning to the very first question you  
18 asked us which is, is today helpful in advancing a  
19 settlement if we proceed through these motions, or  
20 is -- is there something else we should do today to  
21 advance the prospect of resolution.

22 THE COURT: Well, I will pursue that and I'll give  
23 you a question (ph) shortly. Okay. That's all I can  
24 tell you.

25 MR. GEOLY: Thank you.



1 THE COURT: I can't sit here and do it today, but  
2 I will pursue that and I'll get you an answer.

3 MR. GEOLY: Thank you, Your Honor.

4 THE COURT: I'll let you know what Chief Justice  
5 Toal says. Okay.

6 MR. BRUNER: Thank you, Your Honor.

7 THE COURT: Now, who --

8 MR. BRUNER: Turning to the substantive motion  
9 that we made for summary judgment --

10 THE COURT: Okay.

11 MR. BRUNER: -- and with respect only to the  
12 non-resident plaintiffs, and so we have here in these  
13 six state court actions, we have six non-residents who  
14 are plaintiffs, and four are victims and two are their  
15 spouses.

16 THE COURT: Well, one is the father, isn't it?

17 MR. BRUNER: Well, I say spouses, it falls into  
18 consortium claims.

19 THE COURT: I mean, one father and one spouse,  
20 right?

21 MR. BRUNER: That's correct.

22 THE COURT: Not two spouses?

23 MR. BRUNER: That's correct. So we have two  
24 consortium claims more properly.

25 THE COURT: Well, I don't know. I was going to

1 ask Mr. Meyers -- Mr. Meyers, I apologize, I -- the  
2 complaint was 82 pages long, and I have read 193, I  
3 haven't read the spouse and the father's complaint.  
4 What damages are you alleging in the spouse and the  
5 father's claim? Were you alleging pecuniary losses or  
6 are you alleging -- what are you alleging? And I  
7 haven't read it. I can look in the complaint real  
8 quick, but I haven't done that. I'm sorry.

9 MR. MEYERS: There's -- it's a two headed answer,  
10 Your Honor.

11 THE COURT: Okay.

12 MR. MEYERS: The first answer is that in the class  
13 action each of those people would have been granted  
14 \$20,000. All right. So the pecuniary loss as to the  
15 lawyers is \$20,000. As to the Diocese, there is a --  
16 there would be a loss of services claim from the father  
17 as to the son, which involves --

18 THE COURT: So you are alleging lost services, not  
19 lost companionship?

20 MR. MEYERS: Well --

21 THE COURT: And you know where I'm going with  
22 that -- with the Deville (ph) case. Okay.

23 MR. MEYERS: As to the wife, it's loss of  
24 consortium. As to the father, it's loss of services.

25 THE COURT: So the wife is loss of consortium.

1   Okay. All right. While you are up, tell me about why  
2   you think that should survive in light of the Deville  
3   case and what's going on with it? I know no order has  
4   been issued, but do you know where it's coming --

5         MR. MEYERS: Yes.

6         THE COURT: -- or where it's going?

7         MR. MEYERS: And Judge Dennis' view in the Deville  
8   case is that the parent cannot make a claim for a child  
9   he thinks -- he's trying to help me get that issue teed  
10  up for a direct review.

11        THE COURT: I understand. I understand what's  
12  going on, but the legislature doesn't recognize that  
13  cause of action --

14        MR. MEYERS: Yes.

15        THE COURT: You are trying to create a new cause  
16  of action.

17        MR. MEYERS: Well, no, no. Actually I'm trying to  
18  use one that's 500 years old.

19        THE COURT: Okay.

20        MR. MEYERS: But the Supreme Court in Doe v.  
21  Greenville County School District, a case I argued,  
22  they -- they said that I couldn't bring a loss of  
23  consortium claim, a parent for the child. And the --  
24  the criticism was that the lawyer who pled that case,  
25  didn't plead it as loss of services. Loss of services

1 is based on Blackstone. It's 600 years old. And it's  
2 got a long pedigree. It's been recognized in South  
3 Carolina as common law, but that's where I think that  
4 stands. So I think if the Supreme Court gets it  
5 directly, they will recognize the common law history of  
6 it, but Judge Dennis has excluded being in the --

7 THE COURT: I understand. Okay. All right. Go  
8 ahead.

9 MR. BRUNER: Well, I was just trying to take --  
10 give us a look at the forest and we got in the trees --

11 THE COURT: I think the tree is important in that  
12 situation.

13 MR. BRUNER: I think it's for the spouse and the  
14 father, I agree with you. So we have two who have --  
15 who are related and have those kinds of claims. And we  
16 have two of the victims, and that is John Doe 2 and  
17 Jane Doe 4. They're in the first case which is a  
18 2010-5520 case.

19 Those two non-resident victims have already been  
20 found by Judge Roger Young in his order, which we  
21 attached to our memorandum, not to be bound by the  
22 class action settlement.

23 THE COURT: You're talking about four  
24 non-residents?

25 MR. BRUNER: I'm talking about two of them.

1 THE COURT: Two of them.

2 MR. BRUNER: There was -- there was a challenge --

3 THE COURT: All right. Which two?

4 MR. BRUNER: In -- in case 5520, John Doe 2 and  
5 Jane Doe 4.

6 THE COURT: So I just haven't digested all of  
7 this. Okay.

8 MR. BRUNER: It's -- there are a lot of cases,  
9 there are a lot of plaintiffs. It's hard to keep it  
10 all straight.

11 THE COURT: All right. Tell me which John Doe we  
12 are talking about --

13 MR. BRUNER: John Doe 2 and Jane Doe 4 are brother  
14 and sister.

15 THE COURT: John Doe 2 and Jane Doe 4, brothers  
16 and sisters.

17 MR. BRUNER: And they are in 2010-5520.

18 THE COURT: All right. So Judge Young has ruled  
19 that those non-residents -- or the notice was not  
20 proper out-of-state, correct?

21 MR. BRUNER: He actually ruled that the notice  
22 plan was not designed to reach them.

23 THE COURT: As to those defendants?

24 MR. BRUNER: And to those defendants. Therefore,  
25 they are not bound.

1 THE COURT: So right now, that's the law in the  
2 case as far as those two --

3 MR. BRUNER: As far as those two are concerned.

4 THE COURT: Mr. Meyers, I guess I should ask the  
5 church, what's your position on that? I mean, I got  
6 Judge Young's order already addressing that notice  
7 issue. And that's the law in this particular case as  
8 far as I'm concerned. Now, on appeal that may change.  
9 I don't know. But I'm obligated to follow that. I'm  
10 not going to go behind it or change it.

11 MR. GEOLY: Your Honor, those are -- procedurally  
12 that was the denial of a motion to dismiss at the time.  
13 It was not the limited collateral review that you are  
14 now performing. It was non-preclusive --

15 THE COURT: Well, tell me how I can go behind that  
16 order because it's very clear law in South Carolina,  
17 one circuit judge cannot modify another circuit judge's  
18 order. That's my opinion.

19 MR. GEOLY: Yes, Your Honor. We agree with that  
20 opinion, and that's kind of the basis of our  
21 jurisdictional argument. The difference is that if --  
22 if we move to dismiss and our motion is denied, it  
23 doesn't mean we can't come back later and move for  
24 summary judgment.

25 THE COURT: Right. Was this a 12 (b) motion?

1 MR. GEOLY: I believe it was a Rule 12 motion, if  
2 it's a pleadings motion -- and you are now performing a  
3 limited collateral review if you follow the path that's  
4 being proposed, and you're applying a different  
5 standard and doing a different thing. So it really --  
6 you know, it's an interlocutory pleadings motion  
7 decision and not binding on the rest of the case.

8 If we were to bring the same motion again, then  
9 sure, it would be the law of the case.

10 MR. BRUNER: That's not so. Let me tell you why.

11 THE COURT: Okay.

12 MR. BRUNER: He says all of that was then, this is  
13 now. I refer you to Exhibit B of our memorandum, which  
14 is Judge Roger Young's order. It was filed June 27,  
15 2011. The top of page four of that order he says, "I  
16 have conducted a limited collateral review of the  
17 procedures used by the circuit court in the Dorchester  
18 County Class Action. And I find the procedures were  
19 not designed to ensure notice to any potential class  
20 members living outside the State of South Carolina".  
21 That's what he wrote. He's already conducted a limited  
22 collateral review, therefore I think as to that -- as  
23 to those two plaintiffs, that's a done deal.

24 THE COURT: Well, maybe -- maybe not based on his  
25 argument.

1 MR. BRUNER: Well, I understand what he's saying,  
2 because he doesn't want to be -- he wants another bite  
3 at the apple.

4 THE COURT: Well, I understand.

5 MR. BRUNER: My position is you had one judge look  
6 at it, and conducted a limited collateral review, he  
7 found that the non-resident plaintiffs were not bound.  
8 Moreover, I would point you to the fact that Jane Doe  
9 11 in case 2012-5559 is the wife --

10 THE COURT: I'm sorry, which one now?

11 MR. BRUNER: Jane Doe 11, 5559 is the case.

12 THE COURT: Okay.

13 MR. BRUNER: She is the wife of John Doe 2. She  
14 lives with him. It stands to reason that if John Doe 2  
15 is a non-resident living in Georgia, and he is not  
16 bound by the class action settlement, that his wife  
17 would not be bound by it either.

18 THE COURT: Okay.

19 MR. BRUNER: Furthermore, that leaves the other  
20 cases, that leaves all the cases that need to have a  
21 limited collateral review before any extermination --

22 THE COURT: So from your perspective the only one  
23 that we can do a collateral review on would be -- let  
24 me see -- that's one, two -- three would be basically  
25 one?



1 MR. BRUNER: Actually, we have -- we have six  
2 cases. It's already been done in one and --

3 THE COURT: So it'll be three for collateral?

4 MR. BRUNER: So it would be four. It would be  
5 four for collateral review.

6 THE COURT: You just told me, you said Jane Doe  
7 should go along with husband, so that's --

8 MR. BRUNER: That makes sense.

9 THE COURT: That brings it back to three, doesn't  
10 it?

11 MR. BRUNER: Three. That's right. But I think  
12 you have to do the same analysis for limited collateral  
13 --

14 THE COURT: Let me ask you this: What's -- what's  
15 your interpretation of the extent or how a collateral  
16 review procedure should be done?

17 MR. BRUNER: Just like they said in the  
18 hospitality management --

19 THE COURT: Tell me.

20 MR. BRUNER: You look to see what procedures were  
21 actually --

22 THE COURT: Well, I understand that. But from a  
23 fact standpoint, how do you do that? In other words,  
24 are you supposed to look at the pleadings or the case  
25 file, are you supposed to receive affidavits? Are you

1 supposed to take testimony? How do you proceed  
2 procedurally doing a collateral review? I know what  
3 the cases said, but that doesn't mean how I'm going to  
4 physically do it. That's my question to you.

5 MR. BRUNER: Practically speaking, the first thing  
6 you have to do is look and see what was planned in the  
7 underlying settlement.

8 THE COURT: Okay.

9 MR. BRUNER: Now, for purposes of doing that, we  
10 have given you the documents from the underlying claims  
11 to show you what the plan was.

12 THE COURT: So you've got to look at the plan  
13 first. Then what?

14 MR. BRUNER: Then the second thing you've got to  
15 do is to look and see whether that plan was  
16 implemented. So what was their plan, was it a good  
17 plan, and did they do that.

18 THE COURT: All right. Then what?

19 MR. BRUNER: And then once you do that, then you  
20 have a legal determination to make as to whether or not  
21 that -- what they did satisfied due process, notice and  
22 opportunity to be heard. Very simple. For our  
23 purposes in --

24 THE COURT: I mean, for your purpose -- go ahead,  
25 I'm sorry.

1           MR. BRUNER: For our purposes today and for these  
2 cases, I don't think you actually have to get into the  
3 analysis of what was done, although that is instructive  
4 because what was done was what was planned. But, in  
5 fact, the notice plan in the underlying class action  
6 was not designed to reach outside of the geographical  
7 foot print of the Diocese of Charleston, which is the  
8 State of South Carolina.

9           THE COURT: I know, but Judge Dickson's order said  
10 it did. And that's also another order in that case,  
11 not this case.

12          MR. BRUNER: No, sir -- I apologize.

13          THE COURT: He said, if I remember correctly --

14          MR. BRUNER: With all due respect, let me -- let  
15 me tell you what I think he said --

16          THE COURT: I'll read to you what the order says.  
17 Let me find it real quick. I mean, you probably  
18 already know what it says. But here's the order. They  
19 ask -- they didn't quite ask for this in their motion,  
20 but his order says "Therefore the court finds that the  
21 class action court intended the class to include  
22 victims of the Diocese abuse as defined above,  
23 regardless of the state of residence at the time of the  
24 claims" period.

25               So now you're sitting there telling me it's all

1 in-state. I mean, that's what his order says. It  
2 didn't exclude -- now, you may be right in that the  
3 notice itself wasn't proper to reach outside the state.

4 MR. BRUNER: I'm talking about two different  
5 things.

6 THE COURT: What are you talking about?

7 MR. BRUNER: What he's talking about is the class  
8 definition.

9 THE COURT: Right.

10 MR. BRUNER: He says when I read the class  
11 definition, I do not see a geographical limitation.  
12 Therefore reading it on its face, I conclude there was  
13 no geographical limitation.

14 THE COURT: All right. He said it had to be  
15 specifically limited geographically in the order and it  
16 wasn't.

17 MR. BRUNER: And it wasn't. Therefore, by  
18 definition, I think it -- he says the definition  
19 reached beyond the state borders.

20 Now, with respect to the notice plan, that is  
21 how are we going to get notice to these people who are  
22 defined. My argument is simply that the notice plan  
23 was not designed to reach beyond the geographical  
24 limitation --

25 THE COURT: Tell -- tell me why not. I mean, you

1 know it's -- I'm particularly referring to their brief  
2 on the Illinois case. The Catholic Church was limited  
3 to South Carolina; right?

4 MR. BRUNER: That's the Diocese, yes, sir.

5 THE COURT: That's the Diocese. I believe it's  
6 the Diocese of Charleston, which geographically covers  
7 the whole state of South Carolina?

8 MR. BRUNER: That's my understanding.

9 THE COURT: That that was brought against -- that  
10 Diocese -- excuse me -- my tongue is tied --

11 MR. BRUNER: The class action was against the  
12 Diocese.

13 THE COURT: Right. The class action against the  
14 Diocese, okay, which covered the state of South  
15 Carolina?

16 MR. BRUNER: Yes, sir.

17 THE COURT: Now, geographically, are you going to  
18 get some people outside the state when you start  
19 publishing in the newspaper -- I think they ran one in  
20 the USA -- at least one?

21 MR. BRUNER: No.

22 THE COURT: I thought they ran one ad in USA?

23 MR. BRUNER: No. There were ten South Carolina  
24 Newspapers --

25 THE COURT: And the Catholic Church ran it in

1 their publication.

2 MR. BRUNER: And the Augusta Chronicle.

3 THE COURT: Right.

4 MR. BRUNER: And then the Catholic Church put it  
5 in its church newspaper.

6 THE COURT: So my question to you -- you are going  
7 to get people from outside the state probably, so why  
8 wasn't that proper since geographically it was just  
9 South Carolina we are talking about where the harm  
10 occurred? If people moved to other states that were  
11 harmed, granted, but why should you have a nationwide  
12 search? Are you promoting a nationwide search that  
13 should have been done, or a reasonable search, or what  
14 are you promoting?

15 MR. BRUNER: I'm not promoting anything.

16 THE COURT: Wait. But you are sitting there  
17 saying the notice was wrong. So my question to you is,  
18 what type of notice do you think should be given?  
19 That's what I'm getting around to asking you.

20 MR. BRUNER: I'm not saying I think the notice was  
21 wrong. I am looking at the notice plan and telling you  
22 that it was not designed to reach people who were  
23 outside the boundaries of the state of South Carolina.

24 THE COURT: Well, then maybe my question was  
25 wrong -- why should it have been designed to reach

1 outside of South Carolina when the victims were all in  
2 South Carolina?

3 MR. BRUNER: Well --

4 THE COURT: The victims, when it occurred, were in  
5 South Carolina.

6 MR. BRUNER: I'm not advocating any particular  
7 plan, that is what you're left to ask the plaintiff.

8 THE COURT: But you are making -- I mean, the  
9 plaintiff is sort of in the catbird seat, he's got you  
10 arguing one way and got two defendants arguing. All  
11 he's got to do is sit there and listen to the  
12 arguments.

13 But my question -- you're the one arguing about  
14 the notice. So my question is what -- what should have  
15 been done? What do you think should have been done?

16 MR. BRUNER: I don't know what should have been  
17 done.

18 THE COURT: Okay. But you're sitting here telling  
19 me it's not adequate as far as -- it was limited  
20 geographically and it wasn't adequately given notice to  
21 people outside of the state. So, I mean, what kind of  
22 notice do you think should have been given?

23 MR. BRUNER: If, in order to preclude issues --  
24 preclude claims by non-residents, one living in Oregon  
25 or Washington State, then the only way to do that is by

1 going through a nationwide publication.

2 THE COURT: But it would -- the harm was  
3 geographically confined to South Carolina.

4 MR. BRUNER: Which is why --

5 THE COURT: As they said, the notice doesn't have  
6 to be perfect. Obviously you're going to miss some  
7 people.

8 MR. BRUNER: I understand.

9 THE COURT: And weren't we talking about -- how  
10 much was the total put up, \$7 million?

11 MR. BRUNER: \$12 million.

12 THE COURT: \$12 million. I mean, are you talking  
13 about national -- do you think they should have gone on  
14 national television like you see all the time about the  
15 --

16 MR. BRUNER: I don't think so.

17 THE COURT: -- about the class actions.

18 MR. BRUNER: I don't think so.

19 THE COURT: Well, then, what are -- what are you  
20 proposing? You're telling me it's wrong, so tell me  
21 what you think should have been done.

22 MR. BRUNER: I -- I -- I don't have to --

23 THE COURT: I think you do.

24 MR. BRUNER: To give you --

25 THE COURT: I think you do.



1 MR. BRUNER: -- to give the non-resident  
2 plaintiffs notice. They say -- we've got plaintiffs in  
3 Wisconsin or Minnesota --

4 THE COURT: Right.

5 MR. BRUNER: Who lived there in 2007 at the time  
6 the underlying class action was settled. He says, you  
7 know, I never heard about it. I never heard. Well,  
8 that's because the notice plan was not designed to  
9 reach to Wisconsin or Minnesota. The only way it could  
10 have reached there was --

11 THE COURT: So my question --

12 MR. BRUNER: -- through a nationwide --

13 THE COURT: My question to you is, what's wrong  
14 with that when the harm -- the victim's harm was  
15 limited geographically, i.e, to South Carolina? What's  
16 wrong with that?

17 MR. BRUNER: What is wrong with -- with not  
18 reaching him?

19 THE COURT: No. What's wrong with what they did?

20 MR. BRUNER: I don't know that there was anything  
21 wrong with what they did.

22 THE COURT: Well, you're sitting there telling me  
23 the plan was improper because it couldn't reach --

24 MR. BRUNER: No.

25 THE COURT: -- people outside of the State.

1 MR. BRUNER: No, I'm not telling you it was  
2 improper.

3 THE COURT: Or the notice wasn't proper --

4 MR. BRUNER: I'm saying as to a non-resident  
5 plaintiff, the plan not designed to give notice to that  
6 person.

7 THE COURT: Okay.

8 MR. BRUNER: So plan was not designed to tell  
9 somebody in Wisconsin or Minnesota, that there was this  
10 case going on here.

11 THE COURT: Okay.

12 MR. BRUNER: I'm not saying that was the only way  
13 to do it or that was the wrong way to do it, I'm saying  
14 that's what they did --

15 THE COURT: I agree with that for purpose of  
16 discussion. Okay.

17 MR. BRUNER: Yes, sir.

18 THE COURT: So what?

19 MR. BRUNER: The conclusion for that is, if it was  
20 not reasonably designed to give notice to that person,  
21 and that person falls within the class, then they are  
22 not bound by the class action settlement, which is my  
23 point. These non-resident plaintiffs are not bound by  
24 res judicata to the class action settlement.

25 THE COURT: Well --

1 MR. BRUNER: Therefore, they have no claim against  
2 the lawyer/defendants.

3 THE COURT: Okay.

4 MR. BRUNER: The only way they have a claim -- a  
5 possible claim against the lawyer/defendants is if they  
6 are bound. However, even if they are bound, they have  
7 limited damages, if any. And just because they might  
8 be bound, that doesn't mean that the lawyers committed  
9 malpractice or engaged in a conspiracy.

10 THE COURT: Well, let me ask -- assuming --  
11 assuming that in -- as I said several times -- the  
12 victims were geographically within South Carolina,  
13 you're saying even when it's geographically located in  
14 South Carolina, if some victim shows up from  
15 California, notice can't apply to him? That's  
16 basically what you're saying?

17 MR. BRUNER: That is what -- yes, that's what I'm  
18 saying and that's what the plaintiff is saying. The  
19 plaintiff is saying, we don't think we are bound  
20 because we didn't live here and the notice wasn't  
21 reasonably calculated to reach us.

22 THE COURT: Okay.

23 MR. BRUNER: It was not designed to reach outside  
24 the geographical footprint of --

25 THE COURT: Do you think it's wrong -- against the

1 law to just limit the geographical area as to notice?  
2 You don't think that can be done legally?

3 MR. BRUNER: Yes. I don't think it's a question  
4 of being against the law.

5 THE COURT: Okay.

6 MR. BRUNER: It's a question of -- of -- according  
7 to due process rights, to those you purport to bind by  
8 the resolution, that's the question. So if you propose  
9 to bind somebody by the resolution of a class action,  
10 you must design a notice plan that is reasonably  
11 calculated to tell them what you're getting ready to  
12 do, and that it will affect their legal rights. That's  
13 what we are discussing here.

14 THE COURT: All right.

15 MR. BRUNER: And my point is, the design of this  
16 notice plan was such that it reached the geographical  
17 footprint of the Diocese of Charleston and no further.  
18 It was not designed to reach a non-resident in  
19 Minnesota. So it is difficult to argue that that  
20 non-resident should be bound by it. It's not a  
21 question, Judge, of whether or not that person got  
22 actual notice --

23 THE COURT: I understand.

24 MR. BRUNER: That has absolutely nothing to do  
25 with it. It's whether or not what they did for the

1 notice plan was reasonably calculated to give that  
2 notice.

3 THE COURT: Well, under your argument, then no --  
4 no regional or geographical class action could be  
5 limited just to that area, under your argument. You're  
6 going to have to go regional or national for every  
7 class action as far as notice is concerned; or I guess  
8 you're not saying that -- you're saying if they show up  
9 out-of-state, they shouldn't be entitled to participate  
10 in the class?

11 MR. BRUNER: That's right.

12 THE COURT: If it says regional. Now, are there  
13 any cases that specifically say that, that you know of?  
14 In other words, let's assume it's geographically  
15 situated, which it was in this case. No question about  
16 it. And you got cases come in from Minnesota and this  
17 case, any cases say that that is an analogy process  
18 when the class itself was designed geographically  
19 within South Carolina?

20 MR. BRUNER: I have not found any case which deals  
21 with the situation in which there was no geographical  
22 limitation in the class definition --

23 THE COURT: Right.

24 MR. BRUNER: -- but there was a geographical  
25 limitation built into the notice plan. I've looked for

1 those, but I haven't seen them. That's what we have  
2 here.

3 THE COURT: But you did find some where the class  
4 itself is geographically limited and the notice itself  
5 is geographically limited. In this situation, the  
6 class was not geographically limited.

7 MR. BRUNER: That's correct.

8 THE COURT: What do the cases where the class  
9 itself is geographically limited and the notice is  
10 geographically limited say about someone from  
11 out-of-state coming in?

12 MR. BRUNER: One -- I didn't see that fact  
13 situation.

14 THE COURT: Okay.

15 MR. BRUNER: I would have brought a copy of it if  
16 I had, but I didn't see that fact situation where a  
17 non-resident came in on -- most of -- most of the  
18 situations you see in the reported cases -- are class  
19 actions that involve actions that took place  
20 nationwide. So what you're looking at is nationwide  
21 publication --

22 THE COURT: Right.

23 MR. BRUNER: And then what the -- the challenger  
24 comes in and says, I didn't get the letter. I was out  
25 of town. I never saw it. It -- they are really

1     arguing actual notice.

2             THE COURT:   Right.

3             MR. BRUNER:   And, of course, it -- it was saying  
4     you don't have to give it, it's what they plan to do  
5     and did they do what they planned to do.

6             THE COURT:   Okay.

7             MR. BRUNER:   So here, my argument is very simple.  
8     I guess the best way to put this into perspective, Your  
9     Honor, is these lawyers were -- they represented a  
10    group of people who had been abused by employees of the  
11    Diocese.   They want every victim of abuse to have their  
12    day in court, to have a remedy.   They want that.   They  
13    believe all -- all victims of abuse should have that.

14            And they think that it is wrong to -- to  
15    preclude these people from having their remedy against  
16    the Diocese because of this class action settlement,  
17    when the notice plan wasn't designed to preclude that.  
18    That -- that wasn't the purpose.   It just wasn't  
19    designed to do that.

20            THE COURT:   Okay.

21            MR. BRUNER:   So they should be able either --  
22    through opening up the claims process so that they can  
23    participate in the claims process as it was designed  
24    and actually utilized in the underlying class action,  
25    that's one remedy.   The other remedy is to let them

1 have their day in court against the Diocese.

2 Now, Mr. Meyers just argued to you his  
3 alternative remedy theory. He thinks that he can sue  
4 --

5 THE COURT: Well, you don't need to argue for him.  
6 I'm sure he can argue --

7 MR. BRUNER: No, I'm arguing against him.

8 THE COURT: Okay. You're against him?

9 MR. BRUNER: I'm arguing against him because he --

10 THE COURT: Okay.

11 MR. BRUNER: Because he thinks he can sue both,  
12 but that is not the way he plead it. And legally, he  
13 cannot do both.

14 THE COURT: He can put -- he can put it in his  
15 complaint if his clients -- to proceed against the  
16 church, then the claim against the lawyers is  
17 irrelevant. He --

18 MR. BRUNER: -- that's right -- and I understand  
19 that. And is, in fact, so because if his clients are  
20 not bound by the underlying class action settlement,  
21 then nothing that these lawyers did or failed to do  
22 could possibly have affected their legal rights. It  
23 makes perfect sense. That's why he plead it that way  
24 in the alternative.

25 Judge, we are Plan B. Plan A is -- is the



1 remedy against the Diocese. We are Plan B. My  
2 argument is, you don't need us for Plan B because he  
3 has Plan A.

4 THE COURT: Well, along those lines, procedurally  
5 let's assume that I rule -- for purposes of my  
6 question -- let's assume that I rule that he has his  
7 day in court for his clients against the church. Okay.  
8 And you're out.

9 MR. BRUNER: Yes, sir.

10 THE COURT: All right. Then down the road, they  
11 travel down to Columbia, and the Supreme Court or the  
12 Court of Appeals says, oh, that's wrong. The  
13 collateral review was wrong. The -- they can't  
14 proceed -- the notice wasn't proper. They can't  
15 proceed against the church. And you're out of it.  
16 Where does that put him procedurally on his alternative  
17 Plan B?

18 MR. BRUNER: No, this is what happens. I have  
19 tried do --

20 THE COURT: You think he will appeal the --

21 MR. BRUNER: Absolutely.

22 THE COURT: -- grant the summary judgment at the  
23 same time --

24 MR. BRUNER: That's why --

25 THE COURT: -- for his protection.

1 MR. BRUNER: We sat in this courtroom a year ago,  
2 and I made an argument on my motion to dismiss the John  
3 Doe 194 cases. And you told me, this sounds more like  
4 a dispositive motion to me and there's been no  
5 discovery, so y'all go get some discovery and come  
6 back. That's what I've done. I didn't want to file  
7 the motion. I hoped that the mediation was going to  
8 work. It didn't.

9 THE COURT: Okay.

10 MR. BRUNER: Therefore, I filed the motion and I  
11 am presenting it to you in a fashion that you can  
12 rule -- and if you rule that way, then the Supreme  
13 Court will take it up. And before anybody has a day in  
14 court against the Diocese, or anybody else, the Supreme  
15 Court is going to tell us what we need to do in this  
16 case.

17 THE COURT: Well, I mean, there's some law that  
18 says you got to wait -- well, I don't know. Y'all are  
19 going to have to address that issue on appeal, whether  
20 you can go ahead and appeal summary judgment before we  
21 move forward.

22 MR. BRUNER: I think he's got to.

23 THE COURT: Do you address that issue? I mean,  
24 obviously, it substantially affects his client's legal  
25 rights, so probably you would have to do that. Mr.

1 Meyers, you want to address that? And the reason I'm  
2 asking this -- and I'm not trying to prejudge what I'm  
3 going to do. I was -- my concern possibly, rather than  
4 grant the summary judgment motion, just stay his action  
5 until your case is heard, so it all goes up. That was  
6 my thought and the reason I asked him that question.  
7 Just get them out of it as far as the stay is  
8 concerned.

9 MR. MEYERS: Yeah, I mean --

10 THE COURT: And let -- let them sit tight until  
11 you move against the church, if I rule that way. And  
12 then let you make a decision whether you want to  
13 proceed against them, or not, rather than having to  
14 appeal the summary judgment motion now and wait 18  
15 months, two years to go against the church. That was  
16 what my -- I'm just thinking out loud to the attorneys.  
17 Okay.

18 MR. MEYERS: Yeah. I certainly like getting to  
19 the finish line as quickly as I can in some direction.  
20 But here the -- I mean the confusion, I think, is we  
21 have a definition that was chosen by lawyers that was  
22 unlimited --

23 THE COURT: Right.

24 MR. MEYERS: -- and they acknowledge that it was  
25 unlimited because Your Honor mentioned USA Today, that

1 was proposed in their first request to certify the  
2 class. They proposed to give nationwide notice,  
3 because they knew they had a nationwide class by the  
4 way they defined it.

5 THE COURT: Right.

6 MR. MEYERS: Then they changed their minds. And  
7 Mr. Bruner told us why they changed their minds because  
8 the Bishop didn't like it. And so they accommodated  
9 the Bishop by cutting off their clients who lived  
10 out-of-state.

11 THE COURT: Well, I understand. That goes to your  
12 conspiracy argument --

13 MR. MEYERS: No, no.

14 THE COURT: As far as your -- what I'm proposing,  
15 staying them, what -- what is your reaction to that --  
16 rather than dismissing summary judgment at this time,  
17 and going to Columbia on that issue?

18 MR. MEYERS: A stay as to the actions against the  
19 lawyers?

20 THE COURT: Right.

21 MR. MEYERS: To clarify whether or not I can go  
22 against the Diocese?

23 THE COURT: Right. Well, I mean, assuming I rule  
24 you can't go against the Diocese and stay their action  
25 rather than actually granting summary judgment.

1 MR. MEYERS: I mean, it's certainly better than  
2 summary judgment. So from my point of view, I like  
3 that more. Although the way, what -- what I want to  
4 make sure the Court is clear about is the pleadings say  
5 that if for any reason, I can't proceed against the  
6 Diocese --

7 THE COURT: You want to go against the lawyers?

8 MR. MEYERS: Not just the res judicata issue, but  
9 their -- the defenses they waived in the -- the class  
10 action included sexual intentions and charitable  
11 immunity. So I wasn't saying, look, as long as the  
12 case will proceed against the Diocese, the lawyers  
13 should be out. I was saying if I get to the finish  
14 line as to the Diocese, I don't need the lawyers. They  
15 haven't done anything to damage me.

16 But what they've done so far is they excluded  
17 all those people from the class. So we know for sure  
18 that they've done that. The question is, can I  
19 mitigate the damage by bringing the action against the  
20 Diocese and collecting.

21 THE COURT: Right.

22 MR. MEYERS: So a stay would be -- makes it -- on  
23 one level, Your Honor, that makes some sense. I don't  
24 like it, but I think it makes some sense and I like it  
25 more than summary judgment as to the lawyers. But

1 the -- the real question is, can I go against the  
2 Diocese. Can I recover against the Diocese. If I can  
3 go against them, but I can't recover against them, I'm  
4 coming back to the lawyers to say, you're the ones who  
5 got my clients out of court as to the Diocese --

6 THE COURT: I understand what you're doing. I  
7 mean, I've read your pleadings. I understand what  
8 you're doing. I didn't -- does the church want to  
9 comment -- you're really not the -- you don't have a  
10 dog in that particular --

11 MR. GEOLY: On that specific issue, no.

12 THE COURT: Pardon?

13 MR. BRUNER: I think he's wrong.

14 THE COURT: Pardon me.

15 MR. BRUNER: I think he's wrong.

16 THE COURT: Okay.

17 MR. BRUNER: And let me tell you why.

18 THE COURT: Okay.

19 MR. BRUNER: If the class action had never  
20 happened, then his clients would have had whatever  
21 rights they had at that point in time, in the summer of  
22 2007, subject to whatever defenses the Diocese had.  
23 The Supreme Court has held in John Doe -- whatever  
24 Doe -- the Doe vs. Charleston -- the Diocese case that  
25 was in January --

1           THE COURT:   John Doe, Jane Doe, Jane Doe 2, Jane  
2 Doe 3 --

3           MR. BRUNER:   Yes.   All the John Doe 2s, brothers  
4 and sister and mother --

5           THE COURT:   Right.

6           MR. BRUNER:   That's the whole family.   The Supreme  
7 Court held that the Diocese did not waive, as to any  
8 future claimants, its defenses of statute of  
9 limitations --

10          THE COURT:   Right.

11          MR. BRUNER:   -- only waived it within the context  
12 of the class action settlement.   So if his clients are  
13 not bound by the class action settlement, they have  
14 whatever legal rights they had, absent settlement.   The  
15 Diocese has whatever legal defenses it had absent the  
16 settlement.   And that's the way it is.   So that's why  
17 what he says, that even though I can't collect against  
18 the Diocese, I'm coming against the lawyers is wrong.  
19 It doesn't stand up the legal scrutiny to say that.

20          THE COURT:   Okay.   Thank you very much.

21          MR. MEYERS:   If it matters to the court, this is a  
22 little bit of a hypothetical, but it seems to me for  
23 that very reason, it actually does.   Because the  
24 only -- if the defenses of charitable immunity or  
25 statute of limitations pose barriers, then the only

1 thing that prevented my clients from realizing some  
2 recovery against the Diocese, was the conscious  
3 decision by their lawyers in 2007 to not tell them --  
4 not even try to tell them that there was a class action  
5 going on. So the waiver issue winds up becoming  
6 important on the landscape when the lawyers chose the  
7 definition and included my people, they needed to give  
8 them notice.

9 THE COURT: All right. What -- what -- what do  
10 you think -- what type of notice do you think they  
11 should have done assuming they -- the definition of the  
12 class was not geographically limited?

13 MR. MEYERS: What they proposed made a certain  
14 amount of sense. What they initially proposed was,  
15 we'll do a nationwide publication. All right. And  
16 then they changed their minds and they never asked for  
17 that again. And that was all by consent with everybody  
18 in the case.

19 And the way you do it geographically with a  
20 class --

21 THE COURT: Well, you've got to limit the class to  
22 geographical to begin with, I would assume.

23 MR. MEYERS: And define --

24 THE COURT: I don't know that.

25 MR. MEYERS: -- in a geographically limited way.



1 Right. You -- you be careful in how far you define it,  
2 and then you exclude people who have repressed memory.  
3 That would have been the perfect landscape if -- if  
4 you're only going to do notice limited. But that's  
5 what Judge Young analyzed. So his analysis on limited  
6 collateral review, I agree with Mr. Bruner in this  
7 respect. He -- he's done essentially the same thing,  
8 even though it was in response to a motion to dismiss.  
9 He's done that analysis for two and four, John Doe 2  
10 and Jane Doe 4.

11 THE COURT: Right. I'll ask you the same question  
12 I asked Mr. Bruner, how do you think a limited review  
13 should be done?

14 MR. MEYERS: The only way I've seen it, one -- and  
15 I'm interpreting from the cases I've read about it, is  
16 the Court takes it essentially as a matter of summary  
17 judgment. It takes submissions. And it analyzes it,  
18 as Mr. Bruner laid out, what do they plan to do; what  
19 did they actually do. Now, what are the considerations  
20 that are competing with that, explain that to me, and  
21 I'll assess whether or not they really got due process.  
22 Here, I don't think it's very hard. They didn't  
23 even -- by design, they didn't even try. And so you  
24 can't say it was reasonably calculated to reach them  
25 when they didn't even try.

1 THE COURT: Okay. Thank you very much. Yes, sir.

2 MR. GEOLY: Your Honor, let me first turn to Judge  
3 Young's order, because it's kind of a loose end here.

4 THE COURT: Okay.

5 MR. GEOLY: It was a Rule 12 motion. The limited  
6 collateral review was not prepared or briefed or argued  
7 to him. He reached the issue on his own. Whatever he  
8 labeled it, it was not a limited collateral review as  
9 prescribed by hospitality management.

10 We don't dispute the words are in his opinion,  
11 but what he did was deny a motion to dismiss. There  
12 was no prepared limited collateral review hearing such  
13 as today, and the process that was -- at least  
14 described in general by the Supreme Court was not --  
15 was not followed.

16 What it was, was a denial of the motion to  
17 dismiss for whatever reasons, at the pleadings stage,  
18 Judge Young chose to get -- it's not preclusive in this  
19 case. It is not the law of the case. It's -- it's for  
20 you to review and consider for whatever persuasive  
21 weight might be, but it's -- it's not the law of the  
22 case.

23 THE COURT: Well, tell me procedurally how you  
24 think the court should conduct a collateral review?

25 MR. GEOLY: I turn --

1           THE COURT: And what -- what I'm -- well, you've  
2 heard what they've said.

3           MR. GEOLY: Yes, sir.

4           THE COURT: I want to hear what your opinion is.

5           MR. GEOLY: Exactly, Your Honor. And I think  
6 what's missing from the conversation is an injection of  
7 the actual legal standard that comes directly from the  
8 Supreme Court, concurring with the Ninth circuit's  
9 view, they find that due process requires that absent  
10 class members' rights are protected by the adoption  
11 utilization of appropriate procedures by the certifying  
12 court, their efforts and merits of the certifying  
13 court's determinations are subject to direct appellate  
14 review.

15           As for collateral review, however, due process  
16 does not afford any second guessing of those  
17 determinations, quote, in citing Epstein. Instead this  
18 limited review entails an examination of procedural due  
19 process and nothing more. More specifically, we must  
20 determine whether there were safeguards in place to  
21 guarantee sufficient notice and adequate representation  
22 and whether such safeguards were, in fact, applied.  
23 And that's it.

24           In other words, if the -- if the class action  
25 trial court considered and ruled on the issues that we

1 are talking about, the reasons Mr. Meyers is advancing,  
2 the reason that Mr. Bruner is advancing for why due  
3 process concerns were not met, if that was addressed in  
4 the class action court, then the remedy -- if an error  
5 was made, is direct appellate review and not collateral  
6 review.

7       What this standard means is that the -- the  
8 trial court in the collateral matter did not address  
9 the issue, that there were no procedural safeguards in  
10 place. So what you should be doing -- to answer your  
11 question directly -- is reviewing the record of the  
12 Court -- it's not the court below, it's the court next  
13 door, the actual transcripts of the hearings, of the  
14 fairness hearing, and other hearings before Judge  
15 Goodstein; the pleadings that were filed in that case;  
16 the submissions that were made; the evidence that was  
17 submitted; and the rulings by the Judge. And what that  
18 material tells you is the court considered these issues  
19 and made rulings.

20       Now, whether she was -- whether Judge Goodstein  
21 was correct or incorrect in those rulings is not the  
22 issue. You're not sitting here to make a judgment about  
23 substantive due process. Your review is simply to  
24 determine whether procedural due process was met.

25       THE COURT: You think you need to look at the

1 transcripts, the affidavits, and what else do you  
2 think?

3 MR. GEOLY: The transcripts of the proceedings  
4 before Judge Goodstein.

5 THE COURT: Right.

6 MR. GEOLY: The pleadings that were filed with  
7 Judge Goodstein, her orders -- the record. The record  
8 of the case that tells you what occurred there and what  
9 was considered.

10 If the -- if the procedural review shows you  
11 that the issue was treated, then procedural due process  
12 requirements were met and that's just -- they were  
13 speaking here in a general way. I will address why  
14 this was adequate to satisfy the due process rights of  
15 the absent class members. I'm not trying to avoid that  
16 question.

17 THE COURT: I understand.

18 MR. GEOLY: But we're at a level here of process  
19 and I think that what hospitality management tells you  
20 is that this is -- it's not just that it's a  
21 deferential review or a light review, it's not a  
22 substantive review, it's -- it's procedural due process  
23 rights. And that, I think, is what has been missed --

24 THE COURT: Well, let me ask you this: Instead  
25 of -- I mean -- instead of -- you propose to look at

1 the transcript and the pleadings, we -- we've sort of  
2 zeroed in on a limited notice, of was notice proper,  
3 was due process proper on the out-of-state --

4 MR. GEOLY: Yes.

5 THE COURT: -- plaintiffs --

6 MR. GEOLY: Thank you. That's what I'm trying to  
7 argue --

8 THE COURT: And the transcripts are going to cover  
9 a whole lot more than that. I guess, what I'm trying  
10 to get down to is this: The court has to have some  
11 factual basis for making the decision, regardless of  
12 how I make it, and that's not sufficient in memos. I'm  
13 of the opinion that you either have to take live  
14 testimony, you have to look at affidavits, or prior  
15 sworn testimony.

16 MR. GEOLY: Well, to resolve factual issues --

17 THE COURT: Well, my question to you, I guess,  
18 really is -- or stipulation of facts. But this is a  
19 narrow issue. And I don't think collateral review is  
20 going to require me to look at the entire transcript of  
21 everything that transpired before Judge Goodstein  
22 because of the narrow issues -- I'm looking at i.e.,  
23 due process rendered to the proposed out-of-state  
24 claimants, was notice sufficient.

25 So from a process standpoint, why can't I either

1 get y'all to give me some stipulation of facts on what  
 2 y'all agree to, or some affidavits -- however you want  
 3 to proceed -- as to what transpired, rather than me  
 4 having to read through a lot of stuff that doesn't have  
 5 any relevance as to what I'm trying to decide. That's  
 6 what I'm trying to glean from all of you.

7 MR. GEOLY: Yes, Your Honor.

8 THE COURT: Lawyers walk in every day and hand me  
 9 a memo and they stand up and make an argument. Well,  
 10 that's fine. I don't disbelieve those memos, but the  
 11 court has to have some factual basis for making a  
 12 decision, i.e., you give me a factual basis by  
 13 stipulation of fact, affidavit or sworn testimony.

14 MR. GEOLY: Right. Your Honor, we completely  
 15 agree with that. And I'm sorry if what I said implied  
 16 or sounded so -- I was implying you should review the  
 17 whole record --

18 THE COURT: I'm not going to do that.

19 MR. GEOLY: I'm not asking you to.

20 THE COURT: Okay.

21 MR. GEOLY: But when the issue -- the issue has  
 22 been narrowed --

23 THE COURT: That's not going to happen.

24 MR. GEOLY: So let me clarify what I'm saying. My  
 25 point is, that the source of your information about

1 that narrow issue comes from the places I mentioned,  
 2 meaning -- what it means when we say procedural due  
 3 process, is that we are talking about what procedures  
 4 where in and used by the class action court, not -- no  
 5 outside evidence --

6 THE COURT: See, I don't know what the arguments  
 7 were, I know what the orders say. Okay.

8 MR. GEOLY: Right.

9 THE COURT: But the orders don't necessarily  
 10 address the notice. So, I mean, how do y'all propose  
 11 doing this? Can we do a stipulation of fact, and let  
 12 y'all submit some affidavits; or do I have to convene  
 13 and let you put up some witnesses --

14 MR. GEOLY: I don't believe --

15 THE COURT: Or can you give me some excerpts from  
 16 the transcripts in those cases, and I can look at  
 17 them -- like you do excerpts of depositions?

18 MR. GEOLY: I think that is actually more to the  
 19 point. Because if the issue is what occurred actually  
 20 on the record in the case, then -- because it's  
 21 procedural due process --

22 THE COURT: That's what I want to look at. I want  
 23 to see what was actually said.

24 MR. GEOLY: And I think that we can do that. I  
 25 think to some extent we have cited those parts of the



1 record in our brief.

2 THE COURT: I understand. But the brief is not --  
3 I can't make it -- I understand -- I can't make it on  
4 the brief is what I'm saying.

5 MR. GEOLY: So I think that can be done, but --  
6 but what I'm trying to stress is that it's not really a  
7 subject fit for extrinsic evidence with new testimony  
8 --

9 THE COURT: I didn't say extrinsic evidence.

10 MR. GEOLY: Right.

11 THE COURT: I'm saying -- I agree with you on  
12 extrinsic evidence.

13 MR. GEOLY: Okay.

14 THE COURT: As to the repressed memory, that's  
15 going to be extrinsic.

16 MR. GEOLY: Well, we --

17 THE COURT: We've already argued about that.  
18 We're not going to argue anymore about that.

19 MR. GEOLY: Right. We did that. But for the rest  
20 of, I mean, you know, one of the things we cited in the  
21 brief, is the motion that the lawyer/defendants made to  
22 clarify the definition of the class when they went back  
23 to Dorchester. And in their papers, they actually say  
24 and acknowledge, but it's in the court order you've  
25 received --

1       THE COURT: So, you don't think -- you don't think  
2 my review is limited just to orders and briefs -- and  
3 motions, and documents in the file with the clerk's  
4 office?

5       MR. GEOLY: I don't think it has to be limited to  
6 those documents, but because of the -- of the issue you  
7 are reviewing, which is subject to a procedural due  
8 process standard, the question we're asking is simply,  
9 was the issue treated by the class action court, not  
10 second guessing how she decided to rule on it, but  
11 rather did she at least treat the issue. So how much  
12 do you really need to look at it to figure out whether  
13 the Court dealt with the issue. That's really what I'm  
14 trying to convey.

15       And the Illinois Court that you mentioned --  
16 just to get to the next issue -- the Tellico -- Tylka  
17 is the name of the case from the Northern District of  
18 Illinois. And, you know, you are correct there isn't a  
19 case where somebody came back later and challenged  
20 preclusion from out-of-state and was told, no, this is  
21 an in-state -- you know, that geographically --

22       THE COURT: What was the definition of class in  
23 that case --

24       MR. GEOLY: But that's it, in Tylka, the class was  
25 nationwide. And the dispute was over whether the

1 notice to be given needed to be nationwide. So it was

2 --

3 THE COURT: -- it's the same issue we have here.

4 MR. GEOLY: So it's the same as our case except  
5 that the legal matter came to the Judge on the level of  
6 the approval instead of after the fact when somebody  
7 came back and challenged on due process grounds.

8 Nonetheless, the court's holding is that the notice  
9 satisfied due process.

10 THE COURT: Okay.

11 MR. GEOLY: This federal judge said that because  
12 of the geographic confines of the cause of action and  
13 of the settlement, even though people may have moved  
14 away, this still satisfies due process for this  
15 nationwide class. The defendants objected. This was  
16 not a very friendly class action settlement or a  
17 cooperative mediated class action settlement --

18 THE COURT: It wasn't friendly like this one, huh?

19 MR. GEOLY: No. I mean, like our friendly  
20 criminal investigation that we had --

21 THE COURT: Mr. Meyers says it was too friendly.

22 MR. GEOLY: I know, but they should speak to  
23 the -- he should speak to the Solicitor if he thinks  
24 that. The -- the point I'm making is --

25 THE COURT: What --

1 MR. GEOLY: -- the defendants hotly contested --

2 THE COURT: What did the solicitor finally do?

3 Anything?

4 MR. GEOLY: He investigated the Diocese --

5 THE COURT: Oh boy, did he issue a report?

6 MR. GEOLY: -- a review of files, and he reported  
7 to the class action court that there were no criminal  
8 violations, but there were identified people who had  
9 reported being abused. And those became the actual  
10 notice class actually.

11 But in Tylka, the defendants contested whether  
12 it should be a nationwide class and they lost that  
13 issue. The Judge said, no, it is a nationwide class,  
14 but notice could be given just in Illinois. And that's  
15 what you have, except it just happens beforehand  
16 instead of afterwards.

17 So, you know, that's kind of the procedural  
18 framework argument we've been having. On the matters  
19 of this, I think a lot of this has been suggested  
20 already, but notice does not have to be perfect, it  
21 does not have to reach every class member. It has to  
22 be reasonably calculated to reach the class.

23 It's true, people can move away, but that's  
24 always true in any geographic situation. How far does  
25 that -- you know, far flung notice has to go -- have to

1 go. The question is, was it reasonable under all of  
2 the circumstances. And that's what Judge Goodstein  
3 held, that it was. As the lawyer/defendant's brief  
4 says, the court held a fairness hearing, 11 --

5 (Court Reporter interruption).

6 THE COURT: Slow down. She can't take it that  
7 quick.

8 MR. GEOLY: I get excited. I'm very sorry.

9 THE COURT: Slow down and -- calm down and slow  
10 down. Okay.

11 MR. GEOLY: Lawyer/defendants acting as class  
12 counsel, in their memorandum to the class action court  
13 on the motion to clarify class actions -- a judge's  
14 order of July 30, 2007 -- per the order of July 30,  
15 2007, page three of their brief. In its order of July  
16 30, 2007, the court held quote, "The fairness hearing  
17 was noticed in 11 newspapers of general circulation in  
18 all parts of the state. In addition, the court takes  
19 notice that there was substantial media coverage of the  
20 proposed settlement in advance of the fairness  
21 hearing".

22 I want to take issue with one thing that both  
23 Mr. Bruner and Mr. Meyers have said, and that is that  
24 the notice -- and mainly Mr. Bruner -- that the notice  
25 was not reasonably calculated to reach anybody outside

1 of South Carolina. It's kind of the legal lynchpin of  
2 what he's saying. The notice was not designed to be --

3 THE COURT: While we're on that subject, I believe  
4 there were -- a third of the ones that came forward  
5 were out-of-state -- where were they from?

6 MR. GEOLY: I don't have the breakdown right in  
7 front of me, but a quarter of them, I think, not a  
8 third.

9 THE COURT: A quarter. Where were they from?

10 MR. GEOLY: But they were from other states.

11 THE COURT: I know that. I understand that.

12 MR. GEOLY: I don't have a list in front of me,  
13 Your Honor. I can provide it.

14 THE COURT: Does anybody know?

15 MR. BRUNER: I don't know.

16 MR. MEYERS: I only know one person who called me  
17 was from Tennessee, and I referred them to class  
18 counsel. So one client came from Tennessee.

19 THE COURT: Okay.

20 MR. GEOLY: We'd be happy to provide that to the  
21 court. I just don't have that available to me right  
22 now.

23 THE COURT: Well, I don't think -- that's  
24 dispositive of what I've got to decide, I'm just sort  
25 of curious.

1       MR. GEOLY: I can say this much, they were -- a  
2       quarter were from outside of the places where the  
3       notice was published. So it actually -- you kind of  
4       jumped ahead to where I was, that -- that the notice  
5       had the effect of reaching --

6       THE COURT: But the journal that you put it in,  
7       the church journal, what's the distribution of that?  
8       Does that go out-of-state?

9       MR. GEOLY: On the internet, it goes out-of-state.  
10      And then -- but in terms of paper copies, it's just  
11      within the State of South Carolina. It's called the  
12      Catholic Miscellany. It's the Diocese's newspaper.

13      THE COURT: Okay.

14      MR. GEOLY: Just like the other publications,  
15      though, including the major publications of the state.  
16      We are talking about 2007. These are all on the  
17      internet at the same time, so to speak about geographic  
18      limitations of publication, is a little bit illusory  
19      given the way most people -- many people get their  
20      news.

21             And that's what Judge Goodstein was trying to  
22      say, that the actual newspapers were in-state  
23      newspapers, but this was widely circulated and the fact  
24      --

25      THE COURT: Well, one was out-of-state, the

1 Augusta Chronicle? That was out-of-state.

2 MR. GEOLY: Pardon me.

3 THE COURT: Augusta -- was Augusta Chronicle --

4 MR. GEOLY: There were counties -- right, there  
5 were publications in neighboring states as well. And  
6 the quarter, who we're saying came from out-of-state,  
7 were beyond those.

8 In addition, the -- the only out-of-state -- the  
9 only nationwide publication that was proposed, and then  
10 not done, was USA Today. What if we had done that,  
11 some out-of-state people would have read it; some would  
12 not. We'd be right back here saying, well, you didn't  
13 publish it enough in nationwide newspapers. It's kind  
14 of like a box to check off. Oh, well, you did USA  
15 Today.

16 That really isn't the lynch pin between it was  
17 adequate or not adequate, was it reasonably calculated  
18 to reach the members of the class, given the geographic  
19 centrality of the torts, it was reasonably calculated.  
20 Was it going to reach every single person in the world  
21 who had -- used to live in South Carolina and now lives  
22 somewhere else? No. It couldn't. That would be  
23 unreasonable.

24 The judge here, Judge Goodstein, made a  
25 reasonableness determination, that we're suggesting



1 this court cannot second guess under limited collateral  
2 review --

3 THE COURT: Well, I mean, Mr. Meyers' objection --  
4 and I'm sure the attorney's objection is -- is you go  
5 into a class that you are proposing to be nationwide,  
6 and then in midstream, uh-oh, we can't go nationwide.  
7 It's going to cost too much. There's not enough money  
8 to cover all of this, we just going to make it local.

9 MR. GEOLY: And I don't want to have a debate in  
10 the front of Your Honor about whose idea it was --

11 THE COURT: Well, I don't either. That's --

12 MR. GEOLY: It doesn't matter --

13 THE COURT: I may look at the transcript of what  
14 was proposed before Judge Goodstein -- is where I'm  
15 coming from --

16 MR. GEOLY: So the answer is -- the answer is that  
17 it is a balance. It's because the word is reasonable.  
18 It's reasonableness. It can be reasonable to have a  
19 class that has nationwide effect without nationwide  
20 notice when, as you pointed out. And in light of the  
21 Tylka case, there's every reason to believe that the  
22 overwhelming majority of people concerned are -- are --  
23 are either living in or sufficiently connected with  
24 South Carolina, that they will receive the notice.

25 So even people who moved still care about South

1 Carolina because they used to live here. There's every  
2 reason to think they're going to be aware of South  
3 Carolina media publications. Again, in the internet  
4 age especially.

5 And I don't know where you draw the line. I  
6 mean, South Carolina residents have moved all over the  
7 world. We weren't going to publish notice in Europe or  
8 Asia. I mean, at some point you have to make a  
9 determination that what you're doing is enough given  
10 what the torts are. And that's really what the  
11 court -- what the trial court did.

12 So, you know, the question is how much of a  
13 review do you do of that judgment, and are you second  
14 guessing that judgment; or are you merely making sure  
15 that what the trial judge did was consider the issue.  
16 And what we've suggested is your role is to consider  
17 whether she considered the issue, not whether you agree  
18 with how she came out on the issue. That's the key  
19 distinction for limited collateral review.

20 THE COURT: Thank you. Anything else? Thank you.  
21 Anything else?

22 MR. MEYERS: Just one point.

23 THE COURT: Yes, sir. Mr. Meyers.

24 MR. MEYERS: Just one point. And that is that --  
25 I want to make sure -- there's two dimensions to the

1 due process issue, and we've been talking about one,  
2 the notice dimension. The second dimension is, was  
3 there adequate representation. And we believe that all  
4 of the circumstances of what went on in a class action  
5 bear on the representation question.

6 And the Supreme Court in Doe vs. Bishop in 2014  
7 reaffirmed that either one of those can deprive my  
8 people of due process. So the notice issue was one  
9 issue. We think that's fairly simple, because they  
10 didn't even try. But, secondly, the way the definition  
11 in -- in the notice, we think has to do with adequate  
12 representation.

13 So the court could find -- the court could agree  
14 with Mr. Geoly on notice, but say if you defined the  
15 class, if you choose lawyers to the class this way,  
16 you've got to do something to at least try. And so on  
17 the grounds solely of inadequate representation, the  
18 court could find -- I think you could find it either  
19 way -- in both ways, that people did not get due  
20 process.

21 And I just want to make sure that any  
22 representation factor is also consciously before the  
23 court on this question of due process --

24 THE COURT: Let me -- I want --

25 MR. GEOLY: Can I just correct one thing I said?

1 THE COURT: I want to ask you a question.

2 MR. GEOLY: Your Honor, may I just --

3 THE COURT: Hold on just a second, please, sir.

4 Hold on just a second.

5 MR. GEOLY: Sure.

6 THE COURT: I've got too much paperwork up here  
7 and too many lawyers. Along those lines, I was trying  
8 to read the affidavit that you attached to your  
9 complaint on your legal expert on --

10 MR. MEYERS: Mr. Versey (ph).

11 THE COURT: I'm sorry. I don't remember his name.

12 MR. MEYERS: Mr. Versey.

13 THE COURT: Okay. Mr. Versey, I believe in number  
14 five, he was talking about whether the unnamed class  
15 members -- upon filing -- says it's generally regarded  
16 creating an attorney/client relationship, and goes on  
17 down and talks about the fiduciary duty. Is there any  
18 South Carolina case addressing that issue?

19 MR. MEYERS: Yeah. The Perricel (ph) case out of  
20 Beaufort explicitly states that the moment you plead a  
21 class, you've assume fiduciary duties --

22 THE COURT: To each -- but do you assume  
23 attorney/client relationship or just fiduciary duty?

24 MR. MEYERS: Well, the case says at least  
25 fiduciary duty.

1 THE COURT: Okay. All right.

2 MR. GEOLY: Your Honor, could I just correct one  
3 fact I told you?

4 THE COURT: Yes, sir.

5 MR. GEOLY: I just want to be accurate. I told  
6 you that the Catholic Miscellany is just distributed  
7 within the state. Mr. Shahid reminds me that it also  
8 has a subscriber list of people who have moved away  
9 from South Carolina, and continue to receive it by  
10 mail. So some small number of people do receive it  
11 out-of-state.

12 THE COURT: Okay. Thank you so very much.

13 MR. BRUNER: I wanted to respond to Mr. Meyers'  
14 argument about adequate representation. The first  
15 thing I want to say, I think that those are two grounds  
16 --

17 THE COURT: I think that was listed in the case  
18 that came out.

19 MR. BRUNER: Adequate representation is one of  
20 them.

21 THE COURT: And that was -- that was one that they  
22 listed, lack of notice, adequate representation, and  
23 statute of limitation was tolled.

24 MR. BRUNER: Right.

25 THE COURT: That's what was remanded to me.

1           MR. BRUNER: That's correct. That's correct.  
2 What he says is, he's saying adequate representation  
3 means the lawyer. That's not necessarily so. And what  
4 he says is, that the lawyers were the ones that  
5 designed the plan, proposed the plan, and they got the  
6 plan. That's not so. The notice plan --

7           THE COURT: Well, see that's where -- that's where  
8 y'all got me over the barrel. Okay. I need something  
9 to -- I need some evidence from the transcripts or  
10 depositions or somewhere, of what transpired when Judge  
11 Goodstein made her decision and this was put together.  
12 I don't have that.

13           MR. BRUNER: I don't think you do.

14           THE COURT: Pardon?

15           MR. BRUNER: I don't think you do. And let me --

16           THE COURT: You know, I got varying views from the  
17 different lawyers, which is great. I appreciate your  
18 arguments. But I need to look -- in my opinion, on a  
19 collateral review on this issue, I need to look and see  
20 what the lawyers presented to Judge Goodstein, what the  
21 arguments were, et cetera, et cetera, before I can do  
22 any type of -- and I agree that I -- I can't disagree  
23 with what she did, but I can look and see -- and I  
24 can't make a due process decision until I see what was  
25 presented to her, especially from the attorneys

1 standpoint. Now, how are we going to do that?

2 MR. BRUNER: I think if you do that, then you are  
3 engaging in a substantive collateral review.

4 THE COURT: That may be. You take that up in  
5 Columbia if I'm wrong. But how can we do that?

6 MR. BRUNER: Well, I don't think you have to --

7 THE COURT: Y'all want me to read the whole  
8 transcript or --

9 MR. BRUNER: No.

10 THE COURT: -- are y'all going to give me some  
11 excerpts?

12 MR. BRUNER: It won't help you. I've read the  
13 whole transcript.

14 THE COURT: I mean --

15 MR. BRUNER: I just don't think you have to do  
16 that.

17 THE COURT: I don't know if it will or not until I  
18 look at it, the excerpts.

19 MR. BRUNER: I think what you can do is look at  
20 the -- the settlement order, the final order that was  
21 issued.

22 THE COURT: I've done all of that.

23 MR. BRUNER: And you can look at the notice plan  
24 that was proposed, and then you can look at what was  
25 actually done. Now, I don't think there's any dispute

1 among the parties about what was actually done in terms  
2 of publication.

3 THE COURT: Okay.

4 MR. BRUNER: I haven't heard anybody say anything  
5 about what was actually done --

6 THE COURT: I think that was even in one of the  
7 orders, I believe. I think. I read what was actually  
8 done.

9 MR. BRUNER: So I think you have to before you --

10 THE COURT: So you think I could look at what I  
11 have before without anything additional?

12 MR. BRUNER: I think so, yes, sir.

13 THE COURT: Mr. Meyers, what do you think?

14 MR. MEYERS: Well, we wanted to depose the lawyers  
15 and they've refused to submit to depositions, which is  
16 one of the motions held before Your Honor. But as I  
17 have read the record, it looks to me like there's only  
18 the initial motion in October of 2006. And then months  
19 of discussion that went on behind the scenes. And then  
20 a new motion in January of 2007. And in that couple of  
21 month period, is where the nationwide notice dropped  
22 out.

23 It was never argued. It was never debated. It  
24 doesn't appear to have been addressed, it was just  
25 accepted by the court without any analysis or



1 questioning as far as I can tell from the record. So I  
2 don't know that the record shows more than that --

3 THE COURT: So there is nothing there really  
4 that's going to assist me from your -- from what you've  
5 read?

6 MR. MEYERS: Yeah. That's -- as far as I can  
7 tell.

8 THE COURT: Okay. That's fine. That's all I'm  
9 trying to get y'all to tell me. I don't want to go  
10 reading anything unnecessary.

11 MR. MEYERS: So the -- the two motions and the  
12 orders are the only thing that talk about it, but at no  
13 point is it debated.

14 THE COURT: Okay.

15 MR. GEOLY: I think that --

16 THE COURT: I believe you wanted to say something?

17 MR. GEOLY: Only to answer the same question.

18 It -- if -- if it would help the court, we could give  
19 you a supplemental submission, limited to what we feel  
20 are the relevant --

21 THE COURT: Well, let me -- let me do this.

22 MR. GEOLY: Portions of those transcripts --

23 THE COURT: I'm going to give all of you the  
24 opportunity to submit what excerpts from depositions of  
25 the transcript you would like to submit. How soon can

1 you get that to me? You may not want to do it, and  
 2 that's fine if you don't. But I'm going to give you  
 3 that opportunity. The church wants to do it, so I'm  
 4 going to give them -- everybody that same opportunity.  
 5 You may say, hey, it's nothing -- Mr. Meyers says  
 6 there's nothing there. That's fine.

7 MR. MEYERS: Let me ask you for 20 days, Your  
 8 Honor, because that way I'll have time to get --

9 THE COURT: That's fine. Can y'all do that within  
 10 20 days? 30 days?

11 MR. BRUNER: I think we can deal with 20 -- I  
 12 don't think there's anything there.

13 THE COURT: Well --

14 MR. BRUNER: So we can do it in 10 days.

15 THE COURT: And just -- just write me a letter and  
 16 say, I don't want to submit anything. That's fine.  
 17 I'm just going to give you an opportunity. I don't  
 18 know what's there. I haven't seen it.

19 MR. BRUNER: And you're talking about just  
 20 information from the underlying case record concerning  
 21 --

22 THE COURT: Any due process arguments by either  
 23 party on what transpired.

24 MR. BRUNER: There's fine.

25 THE COURT: Okay. Because part of his argument

1 against the attorneys, that they -- that they didn't  
2 present everything properly to Judge Goodstein. Okay.  
3 So I don't know what was presented.

4 MR. GEOLY: Your Honor, those timeframes are fine  
5 for us, too, which will it be? What would you like to  
6 --

7 THE COURT: I don't care.

8 MR. GEOLY: Thirty days?

9 THE COURT: I don't care, deposition excerpts of  
10 the transcript -- whatever you want to present to me --

11 MR. GEOLY: By just the date by which you want  
12 them?

13 THE COURT: Thirty days.

14 MR. MEYERS: That's fine.

15 MS. WALL: Your Honor, I've been  
16 uncharacteristically quiet --

17 THE COURT: I'm sorry, what?

18 MS. WALL: May I just have a few minutes --

19 THE COURT: Can we take about a five or ten minute  
20 break?

21 MS. WALL: Certainly.

22 THE COURT: Please.

23 MS. WALL: Absolutely.

24 THE COURT: Real short break. Okay. Thank you.

25 (WHEREUPON, a brief recess was taken.)

1 THE COURT: Please be seated. All right. What  
2 else do we have? Ms. Wall, you wanted to address the  
3 court. I'll be glad to hear you.

4 MS. WALL: Thank you, Your Honor. May it please  
5 the court. Just very briefly, Your Honor, on behalf of  
6 the attorney/defendants, I don't want to lose sight of  
7 what we're doing here today. And I submit to the  
8 court, these attorney/defendants are entitled to  
9 summary judgment.

10 The plaintiff admits in his own pleadings -- I  
11 mean -- they are irrelevant in all of this --

12 THE COURT: What, now, I'm sorry? I'm sorry,  
13 what?

14 MS. WALL: The attorney/defendants, as the  
15 plaintiff even says in his own pleadings, they are  
16 irrelevant. They shouldn't have been named to begin  
17 with. They're entitled --

18 THE COURT: Well, he says they're irrelevant if  
19 he's successful against the church.

20 MS. WALL: Yes, Your Honor.

21 THE COURT: Let me qualify it. I mean, he doesn't  
22 say, hey, it's irrelevant, I want you out.

23 MS. WALL: I understand, Your Honor. But -- but  
24 it's just so telling. And the fact of the matter is,  
25 we have moved for summary judgment. It's the attorneys

1 who have attempted and done everything that they can to  
 2 see to it that victims of the abuse -- the abuse came  
 3 at the hands of employees of the Diocese, not the  
 4 attorneys, and they have done everything to try to  
 5 allow abuse victims to have their day in court, Your  
 6 Honor.

7 It's -- I'm concerned about Your Honor has asked  
 8 the question of everyone who stood up here, what does  
 9 Your Honor need to look at in order to satisfy the  
 10 review, the collateral review that we've asked --

11 THE COURT: Well, I haven't asked you. What's  
 12 your opinion?

13 MS. WALL: Yes. My opinion, Your Honor, is this:  
 14 You currently have before you -- in all the materials  
 15 that have been submitted by every party here, so it's  
 16 not as if this request coming to the Court, that the  
 17 attorney/defendants made for Your Honor to do a limited  
 18 collateral review, came as any surprise. Our brief has  
 19 been out there. We attach what we believe is  
 20 everything that the court needs to look at to make a  
 21 determination on that collateral review, and to grant  
 22 summary judgment on behalf of the defendants.

23 In turn, the Diocese has filed with the court a  
 24 long brief with a lot of attachments. Last night, we  
 25 all got from -- or this morning -- Mr. Meyers a long --

1 THE COURT: You didn't get yours last night? You  
2 weren't awake at 11:30 to look at it?

3 MS. WALL: No, I wasn't, Your Honor. I'm like  
4 you, my cell phone is off at 11:59 at night.

5 THE COURT: Okay. Mine goes off at 10 o'clock.

6 MS. WALL: Well, even before that. He -- he has  
7 also submitted to the Court, it -- I would respectfully  
8 suggest to the Court, because I'm concerned and I  
9 think -- and I know the court is, and we all are, we  
10 are trying to bring these cases that have been out  
11 there for so many years. They are a tremendous burden  
12 on the attorney/defendants, a tremendous burden. And  
13 we are trying to bring these matters to a close.

14 Might I request that the Court give the parties  
15 no more than 10 days to supplement. They know what the  
16 issues are, they've already produced to you what they  
17 think is relevant. If there's something else -- I  
18 mean, we can do it by 5:00 tomorrow afternoon. But to  
19 drag this out another 30 days, Your Honor, I think is  
20 unfair to the parties and definitely unfair to the  
21 Court.

22 We've asked you to do something and you've given  
23 us the opportunity to give you the materials. All the  
24 parties have done it. And, at most, Your Honor, I  
25 would suggest no more than 10 days.

1           But let me go to the -- to the final, the bottom  
2 line in all of this. Why should the attorneys not be  
3 in this lawsuit? Because, Your Honor, regardless of  
4 how you ultimately rule on the issue of the notice  
5 plan -- and that is the issue, the notice plan. If  
6 Your Honor rules -- as did Judge Young --

7           THE COURT: You don't think inadequate  
8 representation is an issue?

9           MS. WALL: I'm sorry.

10          THE COURT: The inadequate representation, whether  
11 it existed or did not exist, is an issue based upon the  
12 Supreme Court opinion? I know y'all haven't raised  
13 that in your pleadings, but on the remand in the  
14 holdings of -- the conclusions pretty well address  
15 that.

16          MS. WALL: Your Honor --

17          THE COURT: And I'm not saying -- I'm just asking  
18 what your interpretation is of this case.

19          MS. WALL: No, I don't think so, Your Honor. I  
20 think the crux of the issue here for the Court is an  
21 examination of the notice plan.

22          THE COURT: Well, let me read to you what the case  
23 says. Okay. I know you've read it, but it says -- I'm  
24 just going to read the first part, "should appellates  
25 accomplish on remand that they were denied due process,

1 or to the lack of notice, or because of inadequate  
2 representation".

3 MS. WALL: But, Your Honor --

4 THE COURT: I mean, I'm not saying -- I'm just  
5 reading what they said. Take it literally. The  
6 Supreme Court is saying, hey, Circuit Court, address  
7 those three issues. I don't know how I can get around  
8 that. That's not your issue -- that's not y'all's  
9 issue, that's what the Supreme Court has said in their  
10 remand. That's all I'm saying.

11 And I'm not trying to pass judgment on that  
12 issue, but I'm just going by what the language is and  
13 the Supreme Court opinion.

14 MS. WALL: But, Your Honor, the -- when you look  
15 at the procedural due process, look at the notice plan,  
16 if Your Honor concludes -- as did Judge Young -- that  
17 the class action -- that the plan was not designed to  
18 be a national settlement, or rather a settlement  
19 intended to bind only South Carolina residents, there  
20 can be no liability of the attorneys. There can't be.  
21 I mean, there can't be. Because if they're not bound,  
22 if these plaintiffs are not bound, then they have all  
23 the rights, remedies, defenses, whatever it is, that  
24 they always had.

25 If the Court finds to the contrary, that in fact



1 these plaintiffs are part of the -- and were -- are  
2 part of the class, given their due process through this  
3 notice plan, that the class action the court approved  
4 of -- it's not like the lawyers are out here doing it  
5 on their own, they're not. The Court, the class action  
6 -- the Rule 23 Court is a part of all of this.

7 If this Court, in its collateral review, finds  
8 that it did bind, they were part of this class, then  
9 there can be no error on the part of the attorneys.  
10 There can be no malpractice of the attorneys. There  
11 can be no --

12 THE COURT: Well --

13 MS. WALL: -- breach of duty.

14 THE COURT: Well, what about the issue -- and I  
15 may have misquoted it because a lot of this --

16 MS. WALL: A conspiracy?

17 THE COURT: Well, I tried to digest too much too  
18 quickly, so some of it is with me, some of it is not--  
19 what about the issues of the statute of limitations, as  
20 well as the res judicata issue, and the charitable  
21 immunity with the plan -- the class action -- or the  
22 class members, they waived those.

23 MS. WALL: That was part of a settlement --

24 THE COURT: So -- so my question is, if the notice  
25 wasn't proper, how does those issues fit into -- I

1 guess, I should be asking Mr. Meyers that question.

2 Okay.

3 MS. WALL: But I want to make sure we don't --  
4 it's not an issue of whether notice is proper. It's an  
5 issue of whether the notice was intended to and did  
6 provide due process to the out-of-state, and therefore  
7 bound them into this class --

8 THE COURT: You said due process rather than  
9 notice -- that choice of words --

10 MS. WALL: It's not proper or improper, it's  
11 really when you look at it another way, saying it's the  
12 breath of it --

13 THE COURT: Okay.

14 MS. WALL: -- it's scope, who does it hold into,  
15 who got -- did they get due process, the out-of-state  
16 people; was their due process, fundamental rights  
17 satisfied through this notice plan? And if not, then  
18 they are free to bring whatever action they think they  
19 have against the at-fault party. That is the Diocese  
20 assuming there was abuse.

21 THE COURT: Well, I guess, let's just assume that  
22 the -- I ruled that the claimants can proceed against  
23 the church. Okay. And at that trial, that case gets  
24 dismissed for charitable immunity. Okay. Now, why  
25 doesn't that give him the right to go back against the

1 attorneys. Because at the time, if the -- if the  
2 notice had been properly done, possibly the Minnesota  
3 residents would have seen it and been able to  
4 participate in it. And at that time, the church had  
5 waived charitable immunity. So why wouldn't that come  
6 back against the attorneys at that point in time, is my  
7 question to you.

8 MS. WALL: All right. And my answer to you, Your  
9 Honor, is this --

10 THE COURT: And when I say charitable, I'm talking  
11 about the statute of limitations --

12 MS. WALL: Whatever the defenses are. I  
13 understand. And the answer, Your Honor, is this: If  
14 this class -- if the notice was not intended to -- it  
15 was intended to be geographic only, as Judge Young has  
16 ruled, and did not -- was not intended to, did not  
17 bind, bring into it out-of-state residents, those  
18 out-of-state people, not being a part of the class,  
19 couldn't possibly have a claim against class counsel  
20 because there's no requisite relationship. The counsel  
21 doesn't owe them any duty.

22 They have no relationship and they have all the  
23 rights and defenses against them that would exist --  
24 that have always existed because they were never a part  
25 of the class. They are not, they were not intended, as

1 Judge Young has ruled, were focused on the notice to  
2 these people -- were they intended to be bound into  
3 this class? And if the answer is no, they are not part  
4 of the class. They go forward as they would have  
5 always gone forward. They don't have a thing to do  
6 with the class.

7 There are people out there who may or may not  
8 have viable claims -- and I don't want to forget this:  
9 Judge Pleicones -- or Justice Pleicones -- -

10 THE COURT: Chief Justice Pleicones.

11 MS. WALL: Or soon to be Chief Justice Pleicones  
12 told us in that Doe case, that there was yet another  
13 cause of action, or certainly everybody shouldn't --  
14 between the victims and the Diocese, should be  
15 forgetting the cause of action having to do with -- I  
16 think he called it -- negligent supervision. But then  
17 there was a whole fraud element because there was that  
18 issue of whether or not they knew the abuse was going  
19 on, but was hiding it, so on and so forth, which would  
20 of course toll the statute of limitations. But that's,  
21 again, in issue.

22 But that's the whole point. That then becomes  
23 -- all of that becomes an issue between these  
24 out-of-state victims and the Diocese. And the court  
25 then will make a determination, are there any viable

1 defenses for the Diocese. There may not be. A Judge  
2 may decide absolutely not. Statutes toll because you  
3 perpetrated a fraud. You knew all along that these  
4 people were abusing and so on and so forth. But that  
5 has nothing to do with the lawyers in a class action,  
6 which as we started this hearing, is not technically  
7 over with, but substantively is over, Your Honor.

8 So my point to Your Honor is, we believe that  
9 the attorney/defendants should not be in this  
10 lawsuit -- these lawsuits that have been consolidated  
11 for discovery. These lawsuits are properly against the  
12 Diocese. And so regardless of what your determination  
13 is on the limited collateral review, on the scope of  
14 the notice -- notice, due process to these out-of-state  
15 plaintiffs, three of whom -- of the six, Judge Young  
16 has ruled they are not bound to the class action  
17 because otherwise their due process rights, through  
18 that notice, was not intended --

19 THE COURT: That's when he denied your 12 (b)  
20 motion; right?

21 MS. WALL: Yes, sir.

22 THE COURT: Okay.

23 MS. WALL: And that leaves us with three or four  
24 -- Your Honor can certainly do all six. But -- so my  
25 point anyway is, I don't want to lose sight of what our

1 motion is, this request that you do the collateral --  
 2 limited collateral review. But that you also dismiss  
 3 the attorney/defendants from these cases. Because  
 4 regardless of the outcome, they are entitled to summary  
 5 judgment, Your Honor.

6 MR. BRUNER: Your Honor, may I add one thing to  
 7 what she said, Your Honor for 30 seconds.

8 THE COURT: Hang on just a second.

9 (Pause.)

10 THE COURT: Okay. I'm sorry. Go ahead.

11 MR. BRUNER: Your Honor, I agree with Ms. Wall --

12 THE COURT: If I quit asking questions, will y'all  
 13 quit talking? But go ahead.

14 MR. BRUNER: I want to -- I want to try to make a  
 15 specific point that I think Ms. Wall was making too,  
 16 and that is without regard to which way the court rules  
 17 on the notice issue, whether the court rules consistent  
 18 with our position that the notice plan was not designed  
 19 to bind these non-resident plaintiffs, therefore they  
 20 are not bound. Therefore, they can proceed against the  
 21 Diocese.

22 Or if the court says, no, I don't agree with  
 23 you, I agree with the Diocese, that the notice plan met  
 24 due process requirements, was sufficient under the  
 25 circumstances and binds the plaintiff, either way the

1 lawyers should be out of the case. And that's because,  
2 if you agree with us, in fact, they can proceed against  
3 the Diocese -- and according to Mr. Meyers pleadings,  
4 we are irrelevant.

5 THE COURT: Well, I don't think he said -- if you  
6 can proceed against -- I think he's saying, if he is  
7 successful against the Diocese, that's he's irrelevant.  
8 I don't remember the exact language --

9 MR. BRUNER: His language was, if we can make our  
10 claim against Diocese --

11 THE COURT: Well, make your claim, means you are  
12 successful with the claim.

13 MR. BRUNER: I don't think so.

14 THE COURT: I don't interpret -- I don't interrupt  
15 it that way.

16 MR. BRUNER: I don't think --

17 THE COURT: But I'll go back and read it. I -- I  
18 see your point, but I'll go back and read the language  
19 in the complaint.

20 MR. BRUNER: But if -- if you find he can proceed  
21 against the Diocese, then we're irrelevant and we're  
22 out. If you think that the notice plan was sufficient,  
23 and it binds the plaintiffs, then you are finding that  
24 the notice -- that we -- that the lawyer/defendants  
25 participated in crafting it, and that the underlying

1 class action the court adopted was proper. Therefore,  
2 everything we did was fine. He has no complaint  
3 against us. So if you analyze it, either way you find  
4 on this notice issue, the lawyers have no part in this  
5 case and should be granted summary judgment.

6 THE COURT: Okay. Mr. Meyers, anything you want  
7 to address on what Ms. Wall said?

8 MR. MEYERS: Only to say, Your Honor, that the --  
9 the assumption of the fiduciary duty by the lawyers to  
10 my clients is -- in the Perricil case, it says when you  
11 plead it, you've got a fiduciary duty. And if you  
12 breach it, then it can state a cause of action, as well  
13 as you cannot profit if you breach the fiduciary duty.  
14 So there's obligations the lawyers have, absent members  
15 of the class, we think they weren't followed for the  
16 reasons we've tried to detail.

17 THE COURT: Okay.

18 MR. MEYERS: So that's what -- my position in a  
19 nutshell.

20 THE COURT: Yes, sir.

21 MR. GEOLY: Your Honor, I just want to correct one  
22 statement. And that is that Judge Young did not find  
23 that out-of-state claimants were not meant to be  
24 members of the class. Judge Young found that, in his  
25 opinion, the notice did not meet due process



1 requirements.

2 And, in fact, the issue of whether the class was  
3 or was not intended to be nationwide, the  
4 lawyer/defendants put at issue when they went back to  
5 the class action court, resulting in the order from  
6 Judge Dickerson (ph) saying that the class clearly was  
7 a nationwide class.

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

9 MR. MEYERS: Thank you, sir.

10 THE COURT: All right. Let me go off the record  
11 for a minute.

12 (Pause.)

13 (Whereupon, the hearing adjourned.)  
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**CERTIFICATE OF REPORTER**

I, SHARON D. JONES, CERTIFIED COURT REPORTER, DO  
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE  
AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS  
HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE  
CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF  
COMMON PLEAS FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON  
THE 16TH DAY OF APRIL, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

5.8.15

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SHARON D. JONES,  
CERTIFIED COURT REPORTER

John Doe 2 and Jane Doe 4 v the Bishop of Charleston, et al  
Motions to Alter or Amend Order, Motion to Compel, Rule 53(e) Motion  
April 24, 2017

PROCEEDINGS

THE COURT: I think I said we will have a status conference before we heard any of the motions. If you all want to come back to the conference room back here and see what's happened if anything.

[Whereupon, an off the record in chambers conference is held with all counsel]

THE COURT: I believe the bifurcated parties have the motions that we need to put on the record. I think everybody basically has agreed with those motions, is that correct?

MS. WALL: Yes, Your Honor, I believe so.

THE COURT: Ms. Wall, I'll be glad to hear you. If you would please stand for the record and state your name and who you represent for the record please?

MR. MEYERS: My name is Gregg Meyers representing the plaintiffs in these various cases.

MR. DUKES: I'm Richard Dukes from Turner Padgett. I represent the Diocese defendants.

MR. SHAHID: Peter Shahid on behalf of the Diocese.

MR. BRUNER: I'm Jim Bruner; and I represent the Richter Haller defendants as well as Mr. Lawrence Richter.

MS. WALL: Susan Wall; and I represent the attorney David Haller, defendant.

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1 MR. FRAMPTON: Hal Frampton; and I also represent  
2 David Haller.

3 THE COURT: Ms. Wall, I understand collectively  
4 y'all had some motions correct?

5 MS. WALL: Your Honor, what we have is after Your  
6 Honor issued his order on limited collateral review and  
7 Your Honor issued your order bifurcating trials we -- the  
8 attorney defendants moved as did the plaintiff moved --  
9 our motion was to make clear that your order bifurcating  
10 trials and order on limited collateral review would apply  
11 to all of the pending what we have been calling Doe  
12 cases, Your Honor because at the time of the order just  
13 about the time that the order came out we had two  
14 additional Doe cases filed.

15 And since that time, Your Honor, and plaintiff can  
16 correct me if I'm wrong, there might have been even one  
17 more. But our motion was to be sure that the order was  
18 clear that it applies not only to the captioned cases  
19 that were made a part of your order but all the other  
20 pending, the subsequent pending Doe cases of which there  
21 are either two or potentially three, Your Honor.

22 THE COURT: Okay.

23 MS. WALL: That was the first portion of it.

24 THE COURT: And I'll be happy to grant that motion.

25 MS. WALL: Thank you, Your Honor. And the second

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1 portion of our request was to clarify that the attorney  
2 defendants Lawrence C. Richter, David K. Haller and  
3 Richter and Haller, LLC based upon your order bifurcating  
4 trials any activity as to them would be stayed. And that  
5 the conspiracy cause of action which is in each one of  
6 the plaintiff's complaints, the conspiracy cause of  
7 action would not be tried until and if any of the cases  
8 would be tried against the attorney defendants if that  
9 should happen in the future.

10 THE COURT: Okay. That motion is granted.

11 MS. WALL: Thank you, Your Honor.

12 THE COURT: Now, I believe the church has some  
13 motions pending is that correct?

14 MR. DUKES: Yes, Your Honor, we do. First and  
15 foremost we have a motion to reconsider your order  
16 bifurcating trials and separating the attorney defendants  
17 from the Diocese. And the basis of that motion is that  
18 it would be fundamentally unfair to the Diocese to make  
19 the Diocese try its case twice or to give the plaintiffs  
20 two shots at the Diocese in consecutive cases.

21 With the conspiracy count still in the case we don't  
22 see how it's fair or practical or non-prejudicial to make  
23 the Diocese come up, try the sexual abuse case and then  
24 try the conspiracy case arising from the way the class  
25 action was handled. And we think that there must be a

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1 better way than bifurcating the trial and staying the  
2 case against the attorney defendants is prejudicial to  
3 the Diocese and deprives us of due process.

4 THE COURT: Okay.

5 MR. DUKES: The second motion we have ---

6 THE COURT: --- let me see if any other parties  
7 want to address that issue about the bifurcation and the  
8 attorneys out of the lawsuit.

9 MS. WALL: Your Honor, thank you on behalf of the  
10 defendant attorneys we have filed a response to  
11 plaintiff's motion in opposition. And clearly we have  
12 fundamentally different cases. Your Honor has already  
13 ruled that the abuse cases are to go forward first and  
14 any cause of action with regard to conspiracy is wholly  
15 different from an abuse case and therefore there is no  
16 prejudice as to the Diocese.

17 And Your Honor has considered this issue, very  
18 carefully considered it; not just argument of counsel in  
19 reading the briefs but also Your Honor looking at all the  
20 case law. And your order of bifurcation was very  
21 thorough and very clear. And we again would respectfully  
22 request that the court deny the Diocese motion.

23 THE COURT: Mr. Meyers, is there anything you would  
24 like to add?

25 MR. MEYERS: My sense is they could be separated

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1 out and I can do it either way. But I don't have a  
2 problem with what Ms. Wall is ---

3 THE COURT: --- I think during that process when  
4 that decision was made by the court the plaintiff also  
5 put on the record that they would not proceed against the  
6 attorneys if they got a verdict against the church, is  
7 that correct?

8 MR. MEYERS: Well, that is one point in my motion  
9 and that is true provided the recovery matches or exceeds  
10 what was available in the class action. So it's not -- a  
11 finding of liability in my view doesn't cut off a claim  
12 against the attorneys unless the damages are sufficient  
13 to completely cover the claim of malpractice.

14 MR. BRUNER: Your Honor, in response to that might  
15 I point out that if the plaintiff gets to assert a claim  
16 and try a claim against the Diocese the Diocese may still  
17 lose on the statute of limitations or charitable  
18 immunity. So the recovery of a verdict does not govern  
19 whether or not he can still pursue the lawyers. I  
20 maintain and have all along that if he gets to go forward  
21 against the Diocese we're out. And I still have that  
22 same position.

23 THE COURT: Well, we can address that if and when  
24 it occurs okay.

25 MR. BRUNER: Yes, we can take that up afterwards.

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1 THE COURT: We can take that up down the road.  
2 Anything very briefly in reply?

3 MR. DUKES: Your Honor, I just want to point out  
4 that for example one solution could have been to let the  
5 Diocese do its work and then let the plaintiff go against  
6 the attorneys including the conspiracy claim but that  
7 would still leave the Diocese open to a claim in  
8 contribution from the attorney defendants as a co-  
9 conspirator. And I'm not offering a solution to that  
10 because I don't know but there is something that is  
11 troubling me about how we can deal with this issue.

12 But I think it's fundamentally unfair as I've said  
13 to have the Diocese required to go through two trials and  
14 in essence to do discovery twice because you've stayed  
15 the discovery against the attorneys and the Diocese will  
16 have to sit through that again. So I just want to point  
17 out to the court that the Diocese believes that  
18 bifurcating trials is manifestly unjust to the Diocese.

19 THE COURT: Thank you very much.

20 MS. WALL: And just briefly in response, Your  
21 Honor?

22 THE COURT: Yes, ma'am..

23 MS. WALL: Just to remind the court that as the  
24 court is well aware these cases have been going on for  
25 nigh onto nine years and a great deal of discovery has



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1 been done in which, of course, the attorney defendants  
2 participated because Your Honor issued his ruling in  
3 November of 2016 so up until that point the attorneys  
4 were in fact participating ---

5 THE COURT: --- how much discovery has been going  
6 on since November 16th anything?

7 MS. WALL: Nothing ---

8 THE COURT: --- I mean nothing has been going on ---

9 MS. WALL: --- none that the attorneys have been a  
10 part of, Your Honor, based on ---

11 THE COURT: --- okay, motion denied. What's the  
12 next motion?

13 MR. DUKES: We have a motion to reconsider your  
14 order on limited collateral review.

15 THE COURT: Okay.

16 MR. DUKES: That order, the due process -- your  
17 order essentially amounted to merits of the class notice  
18 decision looking at whether the individual plaintiff  
19 received notice. And that is not the appropriate  
20 standard to apply on limited collateral review. As the  
21 Hospitality Management case points out and cases from  
22 around the country point out your review should have been  
23 limited to two steps. One; did the judgment entered by  
24 Judge Goodstein set forth a process that was reasonable  
25 and reasonably calculated to give notice to the entire

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1 class and second; did the class counsel go through with  
2 those steps to do that? And the answer to both of those  
3 questions is yes. And therefore the limited collateral  
4 review findings should be at the very least for all the  
5 in-state South Carolina resident plaintiffs that they are  
6 barred by the class action settlement from prosecuting  
7 these claims and their claims should be dismissed.

8 For the out-of-state plaintiffs we likewise believe  
9 that the limited collateral review should reveal that the  
10 out-of-state plaintiffs got or the process approved and  
11 ordered by Judge Goodstein was adequate to provide notice  
12 to the out-of-state class members. And the clearest  
13 evidence of that is that of the people who filed claims,  
14 and Judge Goodstein references it in her orders, I  
15 believe there is evidence in the record before you that  
16 either Mr. Richter or Mr. Haller did some Internet  
17 research about the publicity regarding the Diocese of  
18 Charleston class action settlement.

19 It was nationwide and international. And of the  
20 people who filed claims more than 27 percent of the  
21 claimants were out-of-state claimants. The word got out  
22 and they got notice and notice was adequate to comply  
23 with due process and therefore the limited collateral  
24 review should determine that the out-of-state claimants  
25 are barred from prosecuting their claims. The court's

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1 order on limited collateral review finished with a  
2 statement that said I haven't been asked to make a  
3 determination on limited collateral review with respect  
4 to any of the plaintiffs or any of the particular  
5 plaintiffs in these cases.

6 We're asking you to do that and it is our position  
7 that the court, and especially in the cases involving the  
8 attorney defendants John Doe 193, the repressed memory  
9 plaintiff I couldn't find a single case involving class  
10 notice and repressed memory. But I did look to Newberg  
11 on Class Actions, which is the seminal treatise on class  
12 actions and the editor of Newberg Professor Rubenstein  
13 says as follows and I'm just going to read it.

14 The primary argument litigants make in collaterally  
15 attacking the class action courts provision of notice is  
16 that they never received that notice. Such an argument  
17 has intuitive appeal and may be evidence of a problematic  
18 notice program. But that standing alone fails for two  
19 separate reasons.

20 The argument implies that the constitutionality of  
21 the class action court's notice program should be  
22 assessed exposed or after the fact based on events that  
23 occurred later when in fact that constitutional question  
24 is whether the court, the class action court, adopted a  
25 reasonable notice program not whether a class member

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1 later received that notice. Thus the constitutional  
2 command is that the notice must be the best practical and  
3 reasonably calculated under all the circumstances to  
4 apprise interested parties of the pendency of the action  
5 and afford them an opportunity to present their  
6 objections.

7 Newberg also notes that given these factors courts  
8 in nearly every circuit have rejected collateral attacks  
9 on notice in class actions. And very few such attacks  
10 have proven successful enough to remove the class member  
11 from the binding affect of the class too. The only cases  
12 that are cited in Newberg on Class Actions are cases  
13 where a court entered an injunctive relief class action  
14 like a civil rights class action, a 23(b)(2) class  
15 action. And the question was whether that injunctive  
16 relief class action barred a money damages class action  
17 later.

18 And the law has evolved that it really does wind up  
19 barring it but there are some old cases saying it  
20 doesn't. In these circumstances the Diocese's position  
21 is that the class action settlement acts as an  
22 insurmountable bar to the claims brought by both the in-  
23 state plaintiffs and the out-of-state plaintiffs. And we  
24 would like the court to reconsider its order on  
25 collateral -- on limited collateral review and issue an

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1 order in each of the cases determining whether that  
2 plaintiff is barred by due process from asserting their  
3 claims.

4 THE COURT: What is the case that you cited?

5 MR. DUKES: The Hospitality Management case.

6 THE COURT: Okay.

7 MR. DUKES: And the section in Newberg on Class  
8 Actions is section number 18 colon 43, 5th Edition  
9 December 2016 update.

10 THE COURT: You got the site on Hospitality?

11 [Whereupon, Mr. Dukes reviews documents]

12 THE COURT: It's in your memo right?

13 MR. DUKES: Yes, sir.

14 THE COURT: I'll find it in the memo.

15 MR. DUKES: It's 356 S.C. 644.

16 THE COURT: Okay. Anything else?

17 MR. DUKES: That's all from me, Your Honor.

18 THE COURT: Mr. Meyers?

19 MR. MEYERS: A few things, Your Honor. News about  
20 the class action is not notice to the class members  
21 because notice requires you to be -- to have explained to  
22 you what steps you need to do to pursue a claim. A news  
23 item that there is a case going on in Charleston about a  
24 class is not notice to a class member. The question is a  
25 due process question. And as Your Honor concluded and as

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1 Judge Young concluded and as the State Supreme Court  
2 concluded if even an in-state person in Doe v Bishop,  
3 which is 754 S.E. 2d 494 at the very end of the opinion  
4 the Supreme Court says should appellants in states of  
5 these victims who are in these cases should appellants  
6 establish on remand that they were denied due process  
7 owing to lack of notice or because of inadequate  
8 representation in the class action proceedings and that  
9 the statute of limitations was tolled because of that  
10 they may proceed to further prosecution of their claims.  
11 The state Supreme Court left the door open even for in-  
12 state persons on issues of due process in the class.

13 So my concern about the Diocese motion is that they  
14 are arguing an incorrect standard that when you define a  
15 class but you don't give notice consistent with your  
16 definition; in other words they define a class without  
17 geographic limit but they give notice only within the  
18 geographic limit, essentially the state, then people  
19 outside the state can't possible have gotten due notice,  
20 due process rather even if some people outside the state  
21 learned about it and knew enough to pursue it.

22 So I think that the motion has to be denied on that  
23 basis. The fact that class counsel simultaneously was  
24 pursuing this class action, simultaneously was  
25 representing a person who had been abused who had

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1 repressed memory in a lawsuit against the Diocese of  
2 Savannah was certainly enough information to class  
3 counsel that they should provide some mechanism for  
4 people who have repressed memory even if they gave notice  
5 within the state and that person lived within the state.  
6 So we think in the unusual circumstances of sexual abuse  
7 there is a challenge there to meet due process for people  
8 in the position of John Doe 193. But even he is included  
9 in the Supreme Court's language in Doé v Bishop.

10 So we think the motion has to be denied and the  
11 language of the Supreme Court covers even the in-state  
12 people that news about the case is not notice to the  
13 class members. That is essentially my position. And  
14 each of those topics is in my motion to alter or amend  
15 and depending on how the court reacts to this it takes  
16 care of the same issues that I raised.

17 THE COURT: Okay. Anything from the attorney's  
18 clients?

19 MS. WALL: Thank you, Your Honor. Just very  
20 briefly I would say your order makes it clear. You say  
21 in your order at this time the court has not reviewed or  
22 been asked to review whether any specific plaintiff in  
23 any of the pending cases received sufficient notice of  
24 the class action. So counsel may make such arguments as  
25 they deem appropriate in light of the conclusions of law

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1 set forth herein; that is when they decide which of these  
2 cases they are going to bring before the court, first,  
3 second, third, whatever. One would assume under Your  
4 Honor's order that they will raise that issue then and  
5 Your Honor will make a ruling specific as to that  
6 plaintiff. But no one has brought that to Your Honor  
7 yet.

8 THE COURT: Okay. Yes sir, very briefly in reply.

9 MR. DUKES: I believe in our motion to reconsider  
10 we have and we specifically asked that Your Honor rules  
11 on the Diocese's motion for partial summary judgment that  
12 includes this exact issue for each ---

13 THE COURT: --- I don't think you have -- I think  
14 you are going to have to deal individual; not as a group.  
15 There are 12 of them and all 12 of them have different  
16 situations okay. Some of them are in-state and some of  
17 them are out-of-state.

18 MR. DUKES: No sir, I don't think so. And the law  
19 is that due process doesn't care whether any individual  
20 received notice or didn't receive notice. But in the end  
21 the Diocese didn't represent these plaintiffs. The  
22 Diocese isn't charged with an obligation to provide  
23 adequate representation of the class members; that's  
24 class counsel's job. And if they are later -- if they  
25 are now barred by the class settlement from asserting



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1 their claims then they can take it up with the lawyers  
2 because the class counsel represented the class once that  
3 class was certified. The Diocese shouldn't be prejudiced  
4 because class counsel -- because a class member now says  
5 they didn't receive notice. That wasn't the Diocese's  
6 job. Judge Goodstein's judgment says class counsel shall  
7 provide notice to the class by advertising in these  
8 newspapers.

9 Class counsel made that proposition, not the  
10 Diocese. The Diocese didn't object to it but it isn't  
11 the job of the defendant settling the class action to  
12 notify the class. In this case there was a specific  
13 circumstance with 20 individuals who had notified the  
14 Diocese of a claim of sexual abuse and we knew who they  
15 were. We did notify them to preserve their privacy as  
16 Judge Goodstein ordered; I believe that's the case, or we  
17 provided the names to the lawyers.

18 THE COURT: The only thing I would suggest is you  
19 bring it up on the individual plaintiffs involved in  
20 these cases because I don't think that is before the  
21 court on this motion to reconsider, okay. The collateral  
22 review was primarily in my opinion based upon whether the  
23 notice given was adequate under a due process argument to  
24 notify unknown or known possible victims okay. And the  
25 way it was conducted in this court's opinion the notice

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1 was improper okay to sort of sum it up in a very brief  
2 statement. Okay, motion denied.

3 MR. DUKES: Thank you, Your Honor.

4 THE COURT: Any other motions?

5 MR. DUKES: Judge, do you want to issue a written  
6 order or just a Form 4?

7 THE COURT: Whatever you want. I'll do a Form 4  
8 unless you want a written order.

9 MR. DUKES: Form 4 would be sufficient.

10 THE COURT: Okay.

11 MR. MEYERS: And Your Honor for the court's  
12 convenience the two cases that get consolidated as a  
13 result of today's rulings I believe are 15-CP-10-5496 ---

14 THE COURT: --- I'm sorry. What now; what cases?

15 MR. MEYERS: One case is 15-CP-10-5496.

16 THE COURT: Okay.

17 MR. MEYERS: And one is 16-CP-10-1632.

18 THE COURT: 1634?

19 MR. MEYERS: 1632.

20 THE COURT: Okay.

21 MS. WALL: Your Honor, for your convenience we had  
22 filed some time ago a draft amended order on each of your  
23 orders in which we included the new what I'm calling the  
24 new captions. And there is some language in there with  
25 regard to the second issue that I raised.

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1 THE COURT: The amended order for bifurcated trials  
2 and amended order for limited collateral review.

3 MS. WALL: That's correct, Your Honor.

4 THE COURT: I got them.

5 MS. WALL: If you would like I even did a red line  
6 so that you can see exactly what the proposed change was  
7 from changed to your original order. I will be happy to  
8 hand that up to you so you can see exactly.

9 MR. DUKES: Can I see it first?

10 MS. WALL: I'll give you a copy.

11 [Whereupon, Ms. Wall provides document to Mr. Dukes]

12 MS. WALL: And this has been in the record because  
13 we filed this probably three or four months ago. So all  
14 I'm handing to the court, Your Honor, is simply a red  
15 line to make it easier to see what the addition is. But  
16 all counsel has had this because I filed it.

17 [Whereupon, the court reviews documents]

18 THE COURT: I got it, okay.

19 MS. WALL: I had already filed with the court a red  
20 line version because I wanted to be sure everyone  
21 received a copy of it as well and then everyone would  
22 know ---

23 THE COURT: --- yes, you sent me a copy of it.  
24 It's in blue.

25 MS. WALL: Yes. Thank you, Your Honor.

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1 THE COURT: Any other motions pending that we need  
2 to hear today?

3 MR. DUKES: Your Honor, just for clarity. Ms. Wall  
4 has handed up these amended orders. We don't want to  
5 have to file another motion to reconsider as to these  
6 orders.

7 MS. WALL: You've had a copy of the proposed  
8 amended order for almost four months and you didn't file  
9 anything.

10 MR. DUKES: Were they the same?

11 MR. SHAHID: It wasn't signed; it's not an order.

12 MS. WALL: But the Judge granted this afternoon  
13 both of the items that we had in the proposed amended  
14 order. The Judge granted the addition of the other  
15 Doe's.

16 THE COURT: Have you seen them and do you have a  
17 problem with them?

18 MR. DUKES: I had not seen them before this moment.  
19 The paragraph in the order on limited collateral review  
20 about John Doe 193 ---

21 THE COURT: --- why don't you do this, why don't  
22 you respond with your objections in writing to the law  
23 clerk and I'll look at it. If I agree with you I'll  
24 change the order and if I don't I won't, okay.

25 MR. DUKES: Yes, sir.

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1 THE COURT: Why don't you do that and you'll have  
2 time to digest it okay?

3 MR. DUKES: Thank you, Your Honor.

4 THE COURT: Okay.

5 MR. MEYERS: Fair enough, Your Honor, nothing more  
6 from me.

7 THE COURT: I'm sorry?

8 MR. MEYERS: I said fair enough and nothing more  
9 from me.

10 THE COURT: Okay. Anything else pending?

11 MR. DUKES: No, sir.

12 THE COURT: I understand the church is going to be  
13 filing some motions, is that correct?

14 MR. DUKES: Yes, Your Honor.

15 THE COURT: Have any motions been filed about the  
16 plaintiff and consortium cases?

17 MR. DUKES: I don't believe so.

18 THE COURT: Okay. So what motions are you  
19 planning on filing if you would please tell me?

20 MR. DUKES: Just off the top of my head we would  
21 have to file a motion for summary judgment on the  
22 consortium claims. We'd have to file a motion for  
23 summary judgment on res judicata as to either the in-  
24 state claims or the out-of-state claims; each  
25 individually.

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1           THE COURT:   And your statute of limitations ---  
2           MR. DUKES:   --- statute of limitations, charitable  
3 immunity ---  
4           THE COURT:   --- and charitable immunity ---  
5           THE COURT REPORTER:   --- what was the last one? I  
6 didn't hear it.  
7           THE COURT:   Charitable immunity.  
8           MR. SHAHID:   Charitable immunity and statute of  
9 limitations.  
10          MR. DUKES:   And for some of the priests -- lack of  
11 notice of any claim of abuse by their priest and so there  
12 would be no negligent supervision.  
13          THE COURT:   Let me ask you this. He is going to  
14 start with John Doe 10, okay.  
15          MR. DUKES:   Yes, Your Honor.  
16          THE COURT:   7223. Do you want to file those  
17 motions on all the cases or just the two we plan on going  
18 to trial in May?  
19          MR. DUKES:   We can do it either way.  
20          THE COURT:   It doesn't matter to me. I'm just  
21 asking so I can gauge what's coming.  
22          MR. DUKES:   Right. It will be largely the same  
23 issue for each ---  
24          THE COURT:   --- it's basically the same issue in  
25 every case.

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1 MR. DUKES: Correct, except where in certain cases  
2 where the Diocese did have notice of prior claims of  
3 abuse then we wouldn't file the negligent supervision  
4 motion but we would file motions on the statute and  
5 charitable immunity.

6 THE COURT: Well however you want to do it, it  
7 doesn't matter.

8 MR. DUKES: Okay.

9 THE COURT: When do you think you can get those  
10 filed?

11 MR. DUKES: The form motions we could put together  
12 relatively quickly but putting together a memorandum of  
13 law would take a little bit longer. We could get the  
14 motions on file by Tuesday or so of next week I would  
15 think. Putting together a brief for you would take us a  
16 little bit longer. The end of next week I would think we  
17 could get something to you.

18 THE COURT: The end of next week that will put it  
19 up through the first week in May?

20 MR. DUKES: Yes, Your Honor.

21 THE COURT: The second or the 6th of May?

22 MR. DUKES: I think that would work. I would like  
23 to talk to both Mr. Meyers and Mr. Shahid to see if that  
24 is reasonable ---

25 THE COURT: --- that's nine days before trial is

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1 supposed to start.

2 MR. DUKES: Yes, sir.

3 THE COURT: When do you propose hearing these?

4 MR. DUKES: We could hear them within a day of our  
5 getting the briefs in. And it may not take that long  
6 since it's really one brief that will be recycling in  
7 each of the cases.

8 THE COURT: Okay. If you think you need that much  
9 time we'll try to get it done ---

10 MR. DUKES: --- we may not. We may not need that  
11 much time. We'll try to get it done sooner than that.

12 THE COURT: Well my problem is when am I going to  
13 set the motion hearing up to be heard?

14 MR. DUKES: I understand.

15 THE COURT: And if you wait until the 6th that's  
16 nine days before the trial is supposed to start. It will  
17 have to be the following week.

18 MR. DUKES: Okay. We'll get it in earlier than  
19 that. It may be easier for us to start with the two that  
20 Mr. Meyers wants to try first and get just two motions  
21 rather than ---

22 THE COURT: --- that's why I sort of proposed that.  
23 That's the only one on your burner right now.

24 MR. DUKES: And now that I think about it that may  
25 make more sense.



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1 THE COURT: I guess my question is do you think we  
2 can schedule this for a hearing say on the 6th of May?

3 MR. DUKES: The 6th is a Saturday.

4 THE COURT: The 5th of May. I got my days mixed  
5 up. When is the 1st; Monday?

6 MR. DUKES: Monday is the 5th -- I mean Monday is  
7 the 1st.

8 CLERK OF COURT: That's a chambers week.

9 THE COURT: Huh?

10 CLERK OF COURT: That's a chambers week.

11 THE COURT: That's a chambers week? How about then  
12 the following week? We'll need to get a court reporter  
13 in chambers week.

14 MR. MEYERS: I'm in the Court of Appeals ---

15 CLERK OF COURT: --- you're not due for another  
16 motions obviously until June which is too late for this.

17 THE COURT: How about the 8th or the 9th?

18 CLERK OF COURT: Let me see who is going to be here  
19 the 8th and 9th.

20 MR. MEYERS: Your Honor, I'm in the Court of  
21 Appeals on the 9th.

22 THE COURT: You are? Okay.

23 MR. MEYERS: I have an appeal argument that day so  
24 the 10th or before that.

25 THE COURT: 10th is on a Wednesday. What about the

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1 12th? That's the Friday before you start the trial.  
2 What if I just go ahead and set up the hearing on Friday,  
3 May 12th? That's the Friday before your trial starting  
4 on Monday?

5 MR. MEYERS: That's okay with me.

6 MR. DUKES: That will work.

7 THE COURT: Will that work for y'all?

8 MR. DUKES: Yes, Your Honor.

9 THE COURT: Okay. I'll get a court reporter for  
10 that day. What time suits y'all?

11 MR. DUKES: Any time that day will be fine with me,  
12 Your Honor.

13 THE COURT: 10 o'clock?

14 MR. DUKES: That will work.

15 THE COURT: Okay, 10 o'clock on Friday May the 12th  
16 okay. And any motions -- dispose of all pretrial  
17 motions. Now ---

18 MR. DUKES: --- and Your Honor we ---

19 THE COURT: --- when can you get me some pretrial  
20 briefs?

21 MR. DUKES: On the 12th ---

22 THE COURT: --- and your voir dire questions, and  
23 your list of witnesses, and your list of exhibits. I  
24 want all those four things; a list of witnesses, a list  
25 of exhibits, a pretrial brief, and your voir dire

John Doe 2 and Jane Doe 4 v the Bishop of Charleston, et al  
Motions to Alter or Amend Order, Motion to Compel, Rule 53(e) Motion  
April 24, 2017

1 questions.

2 MR. DUKES: Your Honor, I did want to inform the  
3 court that we likely will appeal your order on  
4 bifurcating and your order on limited collateral review.

5 THE COURT: That's fine.

6 MR. DUKES: For those -- if we don't appeal we  
7 would get the trial materials in on that Friday the 12th.

8 THE COURT: That will be fine. Okay?

9 MR. DUKES: Okay.

10 THE COURT: All right, thank y'all very much.

11 MR. DUKES: Thank you, Judge.

12 MR. MEYERS: Thank you, Judge.

13 MS. WALL: Thank you, Your Honor.

14 MR. SHAHID: Thank you.

15 THE COURT: Thank y'all very much.

16 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
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John Doe 2 and Jane Doe 4 v the Bishop of Charleston, et al  
Certificate of the Court Reporter  
April 24, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official  
Circuit Court Reporter for the Ninth Judicial Circuit of  
the State of South Carolina, do hereby certify that the  
foregoing is a true, accurate, and complete Transcript of  
Record of the proceedings had and evidence introduced in  
the trial of the captioned case, relative to appeal, in  
the Court of Common Pleas for Charleston County, South  
Carolina on the 24th day of April, 2017.

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

April 27, 2017

---

Joyce C. Rueger, CVR-M  
Court Reporter

1

1 In the Court of Common Pleas for the  
2 State of South Carolina, County of Charleston

3 Case Nos.: 2009-CP-10-6694, 8054,  
4 8055, 8056

5 John Doe, Jane Doe 1, and Jane Doe 2,  
6 Jane Doe 3,

7 Plaintiff(s),

8 vs.

**Transcript of Record**

9 The Bishop of Charleston, a  
10 Corporation Sole, and The Bishop of  
11 The Diocese of Charleston,  
12 in his official capacity,

13 Defendant(s).  
14 \_\_\_\_\_/

15 John Doe 2 and Jane Doe 4, Jane Doe 11,  
16 John Doe 193, John Doe 230, John Doe 297,  
17 Plaintiff(s),

18 vs.

Case Nos.: 2010-CP-10-5520,  
2012-CP-10-5559, 2013-CP-10-3733,  
2014-CP-10-2130, 2016-CP-10-1632

19 The Bishop of Charleston, a  
20 Corporation Sole, and The Bishop of  
21 Charleston, in his official capacity, Rev.  
22 Monsignor Martin Laughlin, former  
23 Administrator of the Diocese of  
24 Charleston, in his Official capacity;  
25 Robert J. Baker, former Bishop of  
Charleston, in his official capacity;  
Lawrence E. Richter, Jr., David  
K. Haller, and Richter and Haller, LLC,

Defendant(s).  
\_\_\_\_\_/

1  
2                   **HEARING TRANSCRIPT**  
3  
4

5     DATE:   June 28, 2017  
6

7     TIME:   9:30 a.m.  
8

9     PLACE:   Charleston, South Carolina  
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14

15    BEFORE:

16               The Honorable J.C. NICHOLSON  
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APPEARANCES

REPRESENTING PLAINTIFF(S):

Gregg Meyers, Esquire  
The Blake House  
321 East Bay Street  
Charleston, SC 29413  
843-722-7733

REPRESENTING THE DIOCESE DEFENDANT(S):

Rich Dukes, Esquire  
Brian J. Kern, Esquire  
40 Calhoun Street, Suite 200  
Charleston, SC 29401  
843-576-2802

REPRESENTING RICHTER & HALLER:

Ben Bruner, Esquire  
Bruner Powell

ALSO PRESENT:

Rev. Monsignor Martin Laughlin  
Robert J. Baker  
Lawrence E. Richter  
David K. Haller  
Bishop Robert Gugliemone



1 PROCEEDINGS

2 THE COURT: All right. For the record, if the  
3 parties will state who they are, who they represent,  
4 I'll appreciate it please.

5 MR. MEYERS: Your Honor, Greg Meyers for the  
6 plaintiffs.

7 MR. DUKES: Richard Dukes for the Diocese  
8 defendants, the church.

9 MR. KERN: Brian Kern, here on behalf of the  
10 Diocese.

11 THE COURT: Okay.

12 All right. How do you wish to proceed? It is  
13 your motion, Mr. Dukes.

14 MR. KERN: Mr. Meyers has housekeeping matters  
15 that he needs to take care of, with his dispute with  
16 his former employer and I thought that it would be best  
17 for him to handle that very quickly and then we can  
18 proceed on with our motions.

19 THE COURT: Okay. Yes, sir.

20 MR. MEYERS: Your Honor, I had filed two motions  
21 related to the attorneys fees. The good news is  
22 Mr. Dukes and I have managed to settle four cases, so  
23 we have taken four cases off of the list, as to the  
24 Diocese portion. And I have reached agreement with my  
25 former employer, got a little excited when I did what

1 I'm ethically required to do and sent a letter to all  
2 of these clients saying that I bought the firm, what do  
3 you want me to do as far as the representation. He  
4 thought that I was doing something wrong in doing that  
5 and got excited about it, but I met with him last week  
6 and we went through the list, so we have got an  
7 agreement.

8 He's moved before Your Honor to intervene. I'm  
9 glad for him to do that. I have prepared an order and  
10 he's approved the distribution that I proposed. So, we  
11 have worked everything out and I have brought an order  
12 for the Court to sign with respect to those four cases.  
13 If I could bring them up?

14 THE COURT: How about the one, the previous one  
15 that y'all settled; is that settlement with him also?

16 MR. MEYERS: Yes, so that is the order that  
17 approves the distribution.

18 ( The order was handed up to the Judge.)

19 THE COURT: So these are the five cases that are  
20 now settled, right?

21 MR. MEYERS: Four cases.

22 THE COURT: You have got them all listed, don't  
23 you?

24 MR. DUKES: Well, I think that one of them was  
25 prepared with two separate cases. They are -- the two

1 40s were filed separately.

2 MR. MEYERS: Well, that's correct, that's true,  
3 there are five cases resolved effective for four  
4 different.

5 MR. DUKES: Sets of.

6 MR. MEYERS: Five cases for more than five  
7 clients. Because some of the cases combine multiple  
8 clients. There may be -- it may be helpful if I  
9 identify which of those have been resolved as to the  
10 Diocese.

11 THE COURT: All right. Looking at your list, you  
12 have got John Doe 10, John Doe 235, John Doe 194, and  
13 Jane Doe 240. Right?

14 MR. MEYERS: John Doe 240.

15 THE COURT: Okay. So, those are the four that  
16 y'all have settled?

17 MR. DUKES: Yes, Your Honor.

18 MR. MEYERS: Yes.

19 THE COURT: Do you know the case numbers by any  
20 chance?

21 MR. MEYERS: I do.

22 THE COURT: Can you give me the case numbers for  
23 John Doe 10?

24 MR. MEYERS: John Doe 10 is 10CP10-7233.

25 THE COURT: 7233?

1 MR. MEYERS: Yes.

2 THE COURT: Okay, I just need the last four.

3 MR. MEYERS: The John Doe 194 case is 4175 and  
4 4176, so that is two cases. The John Doe and Jane Doe  
5 240 cases are 3287 and 3288, each filed in 2015. The  
6 John Doe 245 case was filed in 2015 and the last four  
7 are 5486.

8 THE COURT: 5486.

9 MR. MEYERS: Yes, that case was originally filed  
10 in Federal court.

11 THE COURT: All right. Now, are these the cases  
12 that we have put off for later dates, Mr. Dukes?

13 MR. DUKES: One of them is. The John Doe 245  
14 cases we had put off until later.

15 THE COURT: Okay, all right.

16 MR. DUKES: The rest --

17 THE COURT: The rest come off of the list of the  
18 17, I believe, right?

19 MR. DUKES: Yes, sir.

20 THE COURT: All right. Anything else, Mr. Meyers?

21 MR. MEYERS: Not in terms of my two motions. I  
22 have --

23 THE COURT: What about the motion to be relieved  
24 as counsel? He's going to intervene or what --

25 MR. MEYERS: My former employee -- there's no

1 objection to Mr. Watson's firm being relieved, because  
 2 he, my former employer, contested the distribution to  
 3 Mr. Flowers. It put his South Carolina lawyer in  
 4 conflict because they also represent Mr. Flowers. So,  
 5 Mr. Rutledge, you know, has taken over for Mr. Watson.  
 6 So, no objection to Mr. Watson being relieved. But in  
 7 fact, we have worked it out.

8 THE COURT: Do you have an order relieving him and  
 9 appointing Rutledge?

10 MR. MEYERS: Well, I don't have that, because that  
 11 doesn't involve me. But there's no objection to Mr.  
 12 Anderson intervening, Your Honor. And I wrote in the  
 13 consent is granted in that order.

14 THE COURT: Okay. Is Rutledge or somebody going  
 15 to get me a proposed order for that?

16 THE LAW CLERK: I have got it.

17 THE COURT: I am sorry, we have got it here.  
 18 Order relieving counsel. Do we have an order allowing  
 19 them to intervene?

20 MR. MEYERS: I haven't seen it.

21 THE COURT: I'll just talk to Rutledge about that,  
 22 okay.

23 MR. MEYERS: And the intervention is granted in  
 24 what I have handed up to the Court, by consent.

25 THE COURT: All right. And you have a Motion to

1       Compel. Do you want to hear that now, or do you want  
2       to hear that after you hear the other motions?

3               MR. MEYERS: Your Honor, I thought that we could  
4       take that last, because what I think -- here is the  
5       position that I'm in as to all of Mr. Dukes' motions.  
6       I have this stuff.

7               THE COURT: I understand, I'll leave the record  
8       open for ten days for you to make a response, because a  
9       lot of that wasn't filed until yesterday.

10              MR. MEYERS: But nothing is going to change one  
11       fact about all of these cases.

12              THE COURT: Does ten days give you enough time?

13              MR. MEYERS: I think so.

14              THE COURT: I'll give you ten days to respond,  
15       whatever response you want to make to everything he's  
16       filed. He filed some Friday and he filed some  
17       yesterday.

18              MR. MEYERS: Yes, and I appreciate that he was out  
19       of town and all of that. Anyway, here is the point,  
20       Your Honor, the one motion of Mr. Dukes that is not  
21       going to be affected by any discovery or any period of  
22       time I have is his motion about charitable immunity.  
23       Every case that now remains arises from 1971 or  
24       earlier. And I cannot, in fairness, say to Mr. Dukes  
25       or to the Court or to the Diocese that that is -- that

1       there's nothing going to change that. And the status  
2       of the Diocese prior to 1971, in terms of the  
3       charitable immunity, was entirely daunting.

4               I don't have any evidence and I don't expect to  
5       find any evidence, nor have I pled -- I have pled  
6       negligence, I have pled gross negligence, I have not  
7       pled intent. And prior to 1971 the charitable immunity  
8       law was so draconian I would say that it's not really  
9       possible for me to mount evidentiary issues with the  
10      Court on charitable immunity. So, I wanted to openly  
11      acknowledge that. I think Mr. Dukes and the Diocese  
12      are in a commanding position on charitable immunity as  
13      to every remaining case with respect to the Diocese.

14             Now, some of those cases end right there because  
15      they are in-state people, they don't have claims  
16      against class counsel. Some of the cases are out of  
17      state people that do have claims as to class counsel.  
18      But I think in fairness to the Diocese and the Court,  
19      that is not going to change even with me having ten  
20      days to respond. I just wanted to openly acknowledge  
21      that in fairness to the Court.

22             So, I think that I'm in a position as with my  
23      cases are now only the ones that have a phase as to  
24      class counsel are in a position to be going forward.

25             THE COURT: Okay.

1 MR. DUKES: Mr. Meyers made a great argument for  
2 me. Our -- the first motion that I wanted to take up  
3 was charitable immunity.

4 THE COURT: Well, he's pretty well just resolved  
5 that, hasn't he?

6 MR. DUKES: You said it, I think so, Your Honor.

7 THE COURT: I mean, what is there to argue about?

8 MR. DUKES: Nothing. All of the remaining cases,  
9 as Mr. Meyers said, are all subject to charitable  
10 immunity and the claims against the Diocese should be  
11 dismissed in that regard. That would leave us with  
12 only the conspiracy count. I did file the Motion for  
13 Summary Judgement on the conspiracy stating --

14 THE COURT: What about, I guess even the unfair  
15 trade practices would be gone also. Everything but  
16 civil conspiracy you think would be the only thing that  
17 would be left.

18 MR. DUKES: Yes, Your Honor. And I filed a  
19 summary judgment motion on that because on Your Honor's  
20 list of the cases for trial was the John Doe 2 and Jane  
21 Doe 4 plaintiffs where all claims but conspiracy were  
22 dismissed by Judge Young some time ago.

23 THE COURT: John Doe who?

24 MR. DUKES: John Doe 2 and Jane Doe 4. That is  
25 case number 5520.



1 THE COURT: Okay.

2 MR. DUKES: Judge Young had previously dismissed  
3 all claims against the Diocese on statute of  
4 limitations except for the conspiracy count, and that  
5 is the only one that remains in that case. And that  
6 would be one of the cases -- that is one of the cases  
7 that Your Honor put on his trial list for July.

8 THE COURT: Okay.

9 MR. DUKES: So, I filed a summary judgment motion  
10 on the conspiracy count. In that case and in all of  
11 the other ones stating that there's no evidence that  
12 the Diocese conspired with class counsel to do  
13 anything. And now the burden is on Mr. Meyers to come  
14 up with some evidence that we did something. He's  
15 deposed the Bishop who was over the Diocese at the time  
16 of the class action settlement. I'm not sure what  
17 other discovery needs to be done in that regard. And  
18 so I believe that there's no evidence to support that  
19 conspiracy count and the Diocese is entitled to  
20 judgment as a matter of law.

21 THE COURT: Mr. Meyers.

22 MR. MEYERS: Yes, I don't agree with that, Your  
23 Honor. I think that there's a circumstantial case and  
24 some overt acts of cooperation by the Diocese as to the  
25 manipulation of the class action, moving it from

1 Charleston to Dorchester, accepting service in  
2 Dorchester, and the machinations they went through to  
3 modify the notice. So I think that there's a case that  
4 I can marshal on conspiracy that we can take up when I  
5 have the opportunity. Or we can take it up in the  
6 context of the case against the class counsel, since  
7 the conspiracy cause of action has been moved into that  
8 phase under the bifurcation order. And I could do it  
9 either way.

10 THE COURT: I mean, as far as the conspiracy, if I  
11 remember correctly I think we had postponed that until  
12 we dealt with and brought the lawyers in for  
13 litigation.

14 MR. MEYERS: Right.

15 THE COURT: I don't know how -- I'm really not  
16 interested in dealing with it separately, the Diocese,  
17 because I think that the lawyers may have something to  
18 say about that one way or the other.

19 MR. MEYERS: I think that's right.

20 THE COURT: I don't know, I am just projecting  
21 that out. And it has been bifurcated to the area, so I  
22 wasn't even planning on hearing anything about civil  
23 conspiracy today.

24 Now, as to Mr. Dukes, you may disagree with that.  
25 I don't know. I'll be glad to hear you on that. And

1 my position is that I want to get the attorneys for the  
2 lawyers involved in that argument.

3 MR. DUKES: And I understand that.

4 THE COURT: Okay.

5 MR. DUKES: The only reason that I filed the  
6 summary judgment --

7 THE COURT: I'm not saying that you are not  
8 correct in your argument. I'm not taking a position  
9 there, okay.

10 MR. DUKES: I understand your position. The  
11 reason that I filed the summary judgment motion on the  
12 conspiracy count is because the 5520 case was on your  
13 trial for July.

14 THE COURT: I understand.

15 MR. DUKES: If it's going to be put off then we  
16 can leave that until --

17 THE COURT: Well, we will just have to deal with  
18 that. So, that really disposes of all of the cases  
19 with the Diocese, except the civil conspiracy?

20 MR. MEYERS: Correct.

21 THE COURT: Where does that put us for the trial  
22 in July?

23 MR. MEYERS: Well, I think --

24 THE COURT: From the Plaintiff's standpoint?

25 MR. MEYERS: From the Plaintiff's standpoint I

1 can't try the case in July, I need to finish discovery  
2 against class counsel and take their deposition. I  
3 expect them to be extraordinarily difficult and I  
4 expect to have to come to the Court a few times, if not  
5 once, to get some of those things straightened out. I  
6 don't mean Mr. Bruner, I mean his clients.

7 THE COURT: Okay. So, I think --  
8 Somebody here today for the lawyers?

9 MR. BRUNER: Your Honor, I'm Jim Bruner, I  
10 represent the lawyer defendants, Richter Haller, as  
11 well as Mr. Richter. I am also here as an observer and  
12 representing Mr. Haller as well.

13 THE COURT: All right.

14 MR. MEYERS: I think that they need notice and I  
15 think that I need six months to finish that discovery  
16 off. And I'll be astonished if I don't have to move to  
17 compel a few times.

18 THE COURT: Mr. Bruner, how long do you think you  
19 need to do the discovery to get it in somewhat posture  
20 for trial?

21 MR. BRUNER: Six months. I think six months we  
22 can do that.

23 THE COURT: Mr. Meyers, do you agree?

24 MR. MEYERS: I do, Your Honor.

25 THE COURT: Okay.

1           MR. BRUNER: Assuming that we get some kind of  
2 cooperation. We don't intend to be obstructive, but,  
3 of course, it depends on what he wants or what he asks  
4 as to whether or not we object.

5           THE COURT: I am just asking.

6           MR. BRUNER: Same would be true for me. I mean,  
7 he might have some objections. We know that we have  
8 got some issues with respect to discovery from his  
9 expert. They have to be dealt with. So we will have  
10 some discovery issues, I'm sure. But six months should  
11 be enough.

12          THE COURT: To deal with all of the motions and  
13 whatever else you are going to do?

14          MR. BRUNER: Well --

15          THE COURT: Because when I ask it, I mean, I  
16 understand that y'all are probably going to have some  
17 motions to be heard.

18          MR. BRUNER: Yes, sir.

19          THE COURT: Does the six months include that time  
20 frame is my question, or do y'all have to take some  
21 depositions before you can get to the motions?

22          MR. BRUNER: Yes, sir, that's right, I'm thinking  
23 in terms of the discovery.

24          MR. MEYERS: All right. I am on the same  
25 wavelength as Mr. Bruner.

1 THE COURT: All right. So, you are thinking six  
2 months to take depositions, and then we have to deal  
3 with whatever motions come up; is that what you are  
4 telling me?

5 MR. BRUNER: That's correct.

6 THE COURT: All right. So, how much time do you  
7 think that will take? What I'm trying to decide is  
8 when we can set all of this for trial.

9 MR. BRUNER: Six months takes us to --

10 THE COURT: Hold on a second. I don't need all of  
11 this on the record, I am just converting this to a  
12 status conference very briefly.

13 (Off-the-record discussion held.)

14 THE COURT: Put on the record on what is  
15 remaining. And I have got a list here and a scheduling  
16 order and we can just go down them if you want. Do you  
17 have the scheduling order so we can look at least at  
18 the same cases?

19 MR. MEYERS: Well, I have the caption.

20 THE COURT: All right. Well, look on number 12  
21 where I have listed the cases in order. Just go  
22 through and tell which ones are gone and which ones are  
23 still pending.

24 MR. DUKES: Okay.

25 MR. MEYERS: The one that I do not have is that

1 particular list, Your Honor. If you can give me the  
2 last four we can --

3 THE COURT: All right, 6699 is John Doe 94.

4 MR. MEYERS: 6694, that case is ended on  
5 charitable immunity.

6 THE COURT: It is gone?

7 MR. DUKES: Everything is gone.

8 THE COURT: All right. 8054 is Jane Doe 1.

9 MR. DUKES: Everything is gone.

10 THE COURT: 8055 is Jane Doe 2.

11 MR. DUKES: Everything is gone.

12 THE COURT: All right. 8056 is Jane Doe 3.

13 MR. DUKES: Everything is gone.

14 THE COURT: All right. 5520 is John Doe 2 and  
15 Jane Doe 4.

16 MR. DUKES: The only claim remaining is the  
17 conspiracy against the Diocese and the claims against  
18 the attorneys.

19 THE COURT: Okay. All right. 5559, Jane Doe 11.

20 MR. MEYERS: That case remains.

21 MR. DUKES: Well, all claims against the Diocese  
22 are gone, except is there a conspiracy count in that  
23 one?

24 MR. MEYERS: I think so.

25 MR. DUKES: Yes.

1 THE COURT: Diocese gone, still got conspiracy;  
2 right?

3 MR. DUKES: Correct.

4 THE COURT: All right. On the ones that we were  
5 talking about, Mr. Dukes, before, conspiracy is gone on  
6 those also? John Doe. John Doe 1, 2, and 3.

7 MR. DUKES: There was no conspiracy claim in that  
8 first batch.

9 THE COURT: In that first batch, Jane Doe, Jane  
10 Doe -- John Doe, all of those?

11 MR. DUKES: Everything, all claims are now  
12 dismissed.

13 THE COURT: Okay. All right. So, when I do a  
14 Form 4 I can say that those are gone, ended?

15 MR. MEYERS: Yes.

16 THE COURT: Okay. Even against the attorneys?

17 MR. MEYERS: No claims against attorneys, those  
18 are in-state residences, Your Honor.

19 THE COURT: No attorneys, okay. Then we have got  
20 4176, John Doe 194.

21 MR. MEYERS: I think that 4176 is settled, Your  
22 Honor.

23 THE COURT: It is settled completely?

24 MR. MEYERS: Yes.

25 THE COURT: Even with the lawyers?



1 MR. DUKES: Not as to the lawyers.

2 MR. MEYERS: Just as to the Diocese.

3 THE COURT: All right. And we have got 4175, John  
4 Doe 194.

5 MR. MEYERS: Also settled with the Diocese.

6 THE COURT: Still outstanding with the attorneys,  
7 right?

8 MR. MEYERS: Yes.

9 THE COURT: And we have got 3733, John Doe 193.

10 MR. MEYERS: That case remains as claims against  
11 the lawyers, so it has the conspiracy for aiding and  
12 abetting.

13 THE COURT: But gone with the attorneys -- I mean,  
14 excuse me, with the Diocese?

15 MR. MEYERS: Yes.

16 THE COURT: All right. Then we have got 3287.

17 MR. MEYERS: That case is settled as to the  
18 Diocese and has no claims against the lawyers. So that  
19 case has ended.

20 THE COURT: It has ended?

21 MR. MEYERS: 87 and 88 are each ended.

22 THE COURT: Are ended completely?

23 MR. DUKES: Yes, Your Honor.

24 THE COURT: All right. And then 5486.

25 MR. MEYERS: Settled as to the Dioceses. Still

1 has claims against the lawyers and the conspiracy  
2 claim.

3 THE COURT: Okay. And then we have got 1632.  
4 That is still Diocese, settled, and the attorneys.

5 MR. DUKES: Everything is dismissed against the  
6 Diocese except for the aiding and abetting breach of  
7 fiduciary claim against the Diocese, and then the  
8 attorney claims remaining.

9 THE COURT: All right. I have got my notes, could  
10 y'all get an order together?

11 MR. DUKES: Your Honor, there's one more that  
12 wasn't on your scheduling order at all. That is 2130,  
13 John Doe 230.

14 THE COURT: John Doe 230.

15 MR. MEYERS: That case completely ended on  
16 charitable immunity, Your Honor, and has no claims  
17 against the lawyers.

18 THE COURT: Y'all got the first, the 15 case?  
19 What is the full caption on it?

20 MR. DUKES: 14CP1002130.

21 MR. MEYERS: And it is John Doe 230.

22 THE COURT: Okay. It is settled completely?

23 MR. DUKES: Yes, Your Honor.

24 THE COURT: All right. Can y'all --

25 MR. DUKES: It is dismissed completely on

1       charitable immunity, not settled.

2               THE COURT: Well, settled completely, what do you  
3       want to say. Okay.

4               All right. Can y'all get me an order together?

5               MR. DUKES: Yes, Your Honor.

6               THE COURT: If you don't mind.

7               MR. DUKES: Not at all.

8               THE COURT: If you would, lay it out separate, the  
9       ones that we are going to end completely. Because that  
10      will simplify it for the clerk downstairs. And then  
11      the ones that ended as with the Diocese but remain with  
12      the attorneys. And then the ones that continue with  
13      the Diocese on certain issues and then the attorneys.  
14      If you will break it down like that it'll be a lot  
15      easier for the girls downstairs to mark it.

16              MR. DUKES: How about if I do a single caption, an  
17      order in each of the cases.

18              THE COURT: You can do three orders if you want  
19      to. I mean, however it's easier for you to do it. All  
20      in one order. It might be easier to do three different  
21      orders.

22              MR. DUKES: What I was thinking is I would do one  
23      order for each of the cases.

24              THE COURT: That is fine. That would be fine if  
25      you want to do that.

1           MR. DUKES: That will be simpler for the people  
2 downstairs.

3           THE COURT: That will be a lot easier for them if  
4 you will do that.

5           MR. DUKES: Okay. I will do that. No problem.

6           THE COURT: You can do a Form 4 if you want to.

7           MR. DUKES: It may be easier for me to just bang  
8 it out.

9           THE COURT: It might be easier for you to do a  
10 regular order because sometimes that Form 4 doesn't  
11 have the right blocks for you.

12          MR. DUKES: Yes. I'll take care of it today, Your  
13 Honor, and send it out to the lawyers and then to  
14 y'all.

15          THE COURT: All right. Anything else?

16          MR. MEYERS: My Motion to Compel, it is still  
17 useful for me, as to the remaining claims; to get from  
18 the Diocese the remaining things that I have requested.

19          THE COURT: What have you requested?

20          MR. MEYERS: I have requested, the heart of it,  
21 Your Honor, is the various types of files that the  
22 Diocese maintains on every individual who in the class  
23 action have been accused of sexual misconduct. So,  
24 there was a list that I sent over and I asked for --  
25 the Diocese has historically kept different files.

1       They claim that they have consolidated them. I have  
2       heard that in the past. If that's true, I just need  
3       the file. I have had produced to me, I think, three of  
4       those files, but not all of them.

5               THE COURT: How many are there, do you know?

6               MR. MEYERS: There's about 20.

7               MR. DUKES: He wants the personnel file for every  
8       person who has ever been accused of the sexual abuse of  
9       a minor in the past, going back forever.

10              MR. MEYERS: I have a list of specific names.

11              MR. DUKES: We produced the personnel files for  
12       the three priests who were still involved in  
13       litigation. I believe that he was entitled to them and  
14       we produced them to him. All of the others are  
15       absolutely irrelevant and we object to producing any  
16       other files regarding any other employee accused, or  
17       priest, or teacher, or anybody accused of sexually  
18       abusing a minor in the past.

19              MR. MEYERS: I can tell you they are not  
20       irrelevant even though they are not at issue with the  
21       cases that were made, because I have an organization  
22       that has made a series of decisions in the universe of  
23       information that they have got about people engaging in  
24       misconduct I contend bears on their decision making,  
25       even if they know about Father Hopwood or Father

1 Goodwood, for example, who are --

2 THE COURT: Well, what type of relevant  
3 information do you think that it would lead you to by  
4 making them produce it that you could admit at trial on  
5 what's left in these cases? I mean, the issue is not  
6 whether it's relevant or not, the issue is whether or  
7 not it'll lead to relevant information. So, what  
8 relevant information do you think that it'll lead to in  
9 the cases that we still have pending?

10 MR. MEYERS: The information that the organization  
11 has about the breadth of misconduct in the organization  
12 leads to the decisions that an organization makes or  
13 doesn't make over time about how to protect children in  
14 their organization. Knowing when those problems  
15 started, knowing the extent of those problems is what  
16 the decision makers either ignore or accommodate. And  
17 that is the heart of what I'm trying to get at.

18 THE COURT: The only thing that it could possibly  
19 lead to is some type of evidence toward your conspiracy  
20 claim.

21 MR. MEYERS: That's correct.

22 THE COURT: As to when they knew about it or I  
23 guess some --

24 MR. DUKES: No, no.

25 THE COURT: Don't interrupt. I'll listen to you.

1 I will listen to you before I rule. Okay. But please  
2 don't interrupt. I won't let him interrupt you. She  
3 can't take but one person down at the time, okay, and I  
4 want to hear everything that you have to say and if I'm  
5 talking I can't hear what you are saying. Okay?

6 MR. DUKES: Sorry.

7 THE COURT: Go ahead, Mr. Meyers.

8 MR. MEYERS: I think that it relates to the  
9 decision making even within the class action about how  
10 they limited the notice, why they decided to change the  
11 notice, and why they accommodated that change. I think  
12 that it goes to the decision making in the Diocese.

13 THE COURT: If that's the case on the class  
14 action, shouldn't you limit it in time? I mean, you  
15 are asking for them to produce them all the way back to  
16 1942.

17 MR. MEYERS: It is a list of specific individuals.  
18 It is like these 20 or so people, I want the files on  
19 those people, the complaints about those people, and  
20 information that you have about those people, or any  
21 analysis that you did on those people. It is focused  
22 on specific individuals for whom complaints we know  
23 have been made in the class.

24 THE COURT: But the conspiracy from your  
25 perspective, if I remember correctly, is involving when

1 they did the advertisement, when they moved to  
 2 Dorchester County, so the time frame -- why would you  
 3 need it before that date? Because all of those  
 4 decisions were made some time after the original  
 5 lawsuit was filed. I probably don't have any problem  
 6 giving you from that time forward, but prior to that I  
 7 don't understand why you would need that other than a  
 8 fishing expedition for future claims.

9 MR. MEYERS: I'm not fishing at all. We know in  
 10 the class action that certain individuals were  
 11 identified as being a problem that various individuals  
 12 were reporting. The Diocese knows that information in  
 13 the context of the class and makes decisions about the  
 14 class action knowing the scope and breadth of what was  
 15 explained about by various individuals. So, all of  
 16 these problems are historical for the Diocese, but the  
 17 Diocese -- it is that context that bears on their  
 18 decision making in the class action by cutting the  
 19 knows down and keeping everything --

20 THE COURT: Well, I understand that. But my  
 21 intention is to limit you in some type of time frame.  
 22 Okay?

23 MR. MEYERS: I'm trying to encourage the Court to  
 24 limit me only in terms of -- by subject. We have  
 25 specific individuals who have files in the Diocese. We



1 have identified them by name.

2 THE COURT: I understand. You listed them in your  
3 motion.

4 MR. MEYERS: Yes.

5 THE COURT: But still, I mean, I don't know when  
6 these -- let's just take Father Shealy, I don't know  
7 when he was a priest with the church, and at the same  
8 time, they know, I don't, you don't, I guess. Maybe  
9 you do. I don't know. But take him for instance, if  
10 he was a priest in the 1950s, what would that have to  
11 do now, or with the '60s or with the '70s or with the  
12 '80s? That is my problem.

13 MR. MEYERS: Here is why I think that it matters,  
14 Your Honor.

15 THE COURT: Okay.

16 MR. MEYERS: Take that priest or any other priest.

17 THE COURT: I just picked him off of your list,  
18 okay.

19 MR. MEYERS: What the Diocese is confronting in  
20 the class action is the number of victims of those  
21 priests, whether no matter how historical they are, in  
22 2017 they have decided that they are going to try to  
23 make it right by people. The scope of the problem that  
24 they are addressing it appears to me is one very  
25 sensible reason why they have decided to reduce,

1 particularly from class counsel's point of view, to  
2 reduce the scope of the notice. Because the way that  
3 the class action is structured, if there are too many  
4 victims then class counsel wrote into the agreement --

5 THE COURT: But why can't they give you numbers  
6 for that?

7 MR. MEYERS: Numbers of victims?

8 THE COURT: Yes.

9 MR. MEYERS: If I got numbers of victims and dates  
10 of victims, I would be happy.

11 THE COURT: Okay.

12 MR. DUKES: Judge, I think --

13 THE COURT: Hold on. Let me just make myself a  
14 note. Okay? All right, anything else, Mr. Meyers?

15 MR. MEYERS: That is the heart of what I'm after.

16 THE COURT: All right. Let me hear from you,  
17 Mr. Dukes.

18 MR. DUKES: Let me show Mr. Meyers something and  
19 see if that will satisfy him.

20 THE COURT: I mean, my inclination is to give him  
21 what he just asked for because I think that that may  
22 very well bear on the conspiracy issue.

23 MR. MEYERS: I can work with that. That will  
24 solve my problem.

25 MR. DUKES: Okay, all right. I'll give him that.

1 THE COURT: All right. Anything else on your  
2 motion to compel?

3 MR. MEYERS: That is the heart of it.

4 THE COURT: All right. Anything else?

5 MR. DUKES: I think that my motion to compel is  
6 now moot. All of the claims have been dismissed except  
7 for the conspiracy. But I'm sure even if there are  
8 outstanding discovery that Mr. Meyers needs to respond  
9 to, he will get it to me soon enough.

10 MR. MEYERS: I'm working on it, Your Honor. I  
11 have got a bunch of people working on it, responding to  
12 it.

13 THE COURT: Okay. Whatever he's sharing with you  
14 in this, share it with the lawyer's attorneys too,  
15 please Mr. Meyers.

16 MR. MEYERS: Will do.

17 THE COURT: Okay. I mean, they may not want it,  
18 but I think that they are entitled to at least look at  
19 it.

20 MR. BRUNER: Speaking of sharing, Your Honor, may  
21 it please the Court, there have been a number of cases  
22 that were settled between the Diocese and the plaintiff  
23 that involve the lawyer defendants. In order to  
24 properly present motions to you later in July, we would  
25 like to receive a copy of the settlement documents as

1 to those cases. I understand, having already made the  
2 request of Mr. Dukes, that they are subject to  
3 confidentiality.

4 THE COURT: Well, I mean, that's fine, I will put  
5 them on a protective order. I think you are entitled  
6 to know that. And at this time it is just for your  
7 eyes only, okay? Not to be revealed to anybody else at  
8 this point in time.

9 MR. MEYERS: I mean, I have got to show it to my  
10 son, or he will get mad at me. And I would also share  
11 it with Susan Wall.

12 THE COURT: Right, I'm talking about just the  
13 lawyers, okay, no experts, nobody else at this point in  
14 time, okay.

15 MR. BRUNER: That's correct.

16 THE COURT: Could you get that to him?

17 MR. DUKES: I can't do anything with it because  
18 the convention on child abuse that the Bishops have  
19 adopted. If the plaintiffs wanted to be confidential  
20 which each of them does, I have to respect that.  
21 Mr. Meyers can turn it over to them.

22 MR. MEYERS: I don't have any objection. I think  
23 that they are entitled.

24 MR. BRUNER: Email me copies.

25 THE COURT: I mean I think that they are entitled

1 to it. Regardless of whether he wants to, I'll order  
2 you to do it, okay. But he agrees to it, so get it to  
3 him.

4 MR. DUKES: Yes, we will get it to him.

5 THE COURT: Anything else that we need to take up  
6 today?

7 MR. MEYERS: Could I ask Your Honor if I could get  
8 a copy of what you signed, in terms of distribution, if  
9 I could make a copy of it so I can have a copy of it so  
10 I can send it out. I'm talking about the attorneys  
11 fees issues.

12 THE COURT: You want what now? I am sorry.

13 MR. MEYERS: The Court's signed order that I  
14 proposed on the distribution with my former employer.

15 THE COURT: I mean, I'll be happy to get that to  
16 you. And Mr. Dukes, before you send me the orders on  
17 each case, run it by counsel if you would, please,  
18 okay?

19 MR. DUKES: I will.

20 THE COURT: And I'll run you a copy of that,  
21 Mr. Meyers.

22 MR. MEYERS: Thank you, Your Honor. I need to  
23 satisfy everybody that needs to see it.

24 THE COURT: Does Rutledge still need to be  
25 involved?

1           MR. MEYERS: I think that's all over and done  
2           with.

3           THE COURT: The continued litigation, is that over  
4           and done with or are they still involved with what is  
5           left?

6           MR. MEYERS: No, we reached an agreement on every  
7           case that I ever had that came with me when I left. I  
8           should be good in terms of Rutledge.

9           THE COURT: All right. She will run you a copy of  
10          it.

11          MR. MEYERS: That is all I need.

12          THE COURT: Anything else?

13          MR. DUKES: Nothing further, Your Honor.

14          THE COURT: Thank y'all very much for working and  
15          getting these cases resolved. I appreciate it.

16          (Whereupon, the hearing concluded.)

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 14th day of August, 2018.

*Mona L. Manley* /s/  
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