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**Dec 29 2021**

**SC Court of Appeals**

The State of South Carolina  
In The Supreme Court

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Appeal from Charleston County  
Hon. J.C. Nicholson, Circuit Court Judge  
Appellate Case No. 2017-001996

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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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Petition for A Writ of *Certiorari* To the Court of Appeals

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## Certificate of Counsel

Petitioner's counsel certifies that on November 30, 2021, the Court of Appeals, citing SCACR 221, declined to act on the Petition for Rehearing, even though as provided by SCACR 221(c), the court's action had "the effect of dismissing or finally deciding a party's appeal." It is yet another instance in this record of Supreme Court rules or orders being simply ignored.

The \$250 filing fee required by SCACR 242 for this petition will be transmitted by US Mail to the clerk of court.

## Questions Presented

Has the Court of Appeals erred by:

- a. refusing to recall a remittitur issued after a Petition for *Certiorari* had been served by email and sent electronically to the Supreme Court,
- b. failing to consider whether the Petition for *Certiorari* was timely sent under the court rules that had been modified during the covid-19 pandemic and then changed permanently in August 2021, or
- c. failing to consider whether the death of counsel's mother constituted good cause sufficient to accept the petition as timely filed.

## Statement of the Case

In 2009 counsel filed the first of a series of cases arising from a collusive class action. In 2014 the Supreme Court decided *Doe v. Bishop*, 407 S.C. 128, 754 S.E.2d 494 (2014), reversing an order dismissing various actions which arose from that collusive class action. The claims associated with the collusive conduct and legal malpractice were remanded for further proceedings.<sup>1</sup>

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<sup>1</sup> "Should appellants establish on remand that they were denied due process owing to lack of notice or because of inadequate representation in the class action proceedings, and that the

Three years later, without full discovery having been permitted on the central issues decided in *Doe v. Bishop*, summary judgment was granted for the defendants. Another appeal was noticed. Four years after that appeal was noticed, twelve years after the first of the cases related to the collusive class action was filed, the Court of Appeals affirmed the 2017 grant of summary judgment. Order of the Court of Appeals of March 3, 2021. A petition to rehear was denied by the Court of Appeals by letter of May 13, 2021.

On June 12, 2021, counsel's mother passed away in Minnesota and counsel left South Carolina to attend to family matters associated with his mother's death. Counsel arranged for a colleague to monitor his mail while he was in Minnesota.

On June 14, 2021,<sup>2</sup> from Minnesota, counsel served on opposing counsel by electronic means, and submitted electronically to the Supreme Court both a Petition for *Certiorari* and the voluminous Record on Appeal required by SCACR 242(e) concerning those few merits issues which the Court of Appeals addressed from the collusive class action and the many merits issues which the Court of Appeals had chosen not to address.

The appellate rule which required the petition be accompanied by the voluminous record was changed in August 2021 to require only the Petition be submitted, not the Record. Meaning that a petition can now simply be sent via email to the court without the size of the filing exceeding email limits.

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statute of limitations was tolled, they may proceed to further prosecution of their claims.” *Doe v. Bishop*, 754 S.E.2d at 501 (S.C. 2014).

<sup>2</sup> Pursuant to SCACR 242(c) and 263, June 14 was the due date for the petition.

Upon receiving the June 14 petition and record the Supreme Court requested, by email only (i.e., not also by U.S. Mail), that counsel submit the petition using an electronic routing method (meaning via box.com) other than the one used for the voluminous filing (via wetransfer.com). Due to his mother's death and due to the court notice being sent only by email, counsel was unaware it had been sent, and unaware of any issue about the filing the court had received.

On June 24 the Court of Appeals issued the remittitur in the underlying consolidated appeal. When counsel saw notice about the remittitur having issued, he consulted with the clerk's office of each of the Court of Appeals and the Supreme Court about the Petition for *Certiorari* that had been submitted June 14. During those consultations, counsel learned for the first time that the Supreme Court preferred to receive its voluminous electronic submissions by a particular electronic routing.

A motion to recall the remittitur was submitted on June 24. The Court of Appeals denied the motion, and refused to consider a petition to rehear, citing SCACR 221, even though the action by the Court of Appeals has the effect of ending the appeal, something SCACR 221(c) explicitly enables the Court of Appeals to address by means of a petition to rehear.

In August 2021 the Supreme Court changed the appellate court rules to eliminate the requirement for submitting the record with a petition, enabling, as noted above, a petition to be emailed directly to the court. As SCACR 242(d)(5) limits a petition to 25 pages, a petition alone would be unlikely to ever exceed email size constraints, eliminating the need for any website for transferring a large file.

None of this confusion would have occurred but for the disruption to counsel from his mother's death and the court sending its notice by only electronic means. This petition seeks to

have the court reverse the Court of Appeals, order the remittitur be recalled, reinstate the appeal so the Court can consider the merits of the petition originally submitted June 14.

## Argument

The Court of Appeals has erred in:

- a. refusing to recall a remittitur issued after a Petition for *Certiorari* had been served by email and sent electronically to the Supreme Court,
- b. failing to consider whether the submitted Petition for *Certiorari* was timely sent under the court rules that were modified during the covid-19 pandemic and then changed permanently in August 2021, or
- c. failing to consider whether the death of counsel's mother constituted good cause to accept the petition as timely filed without the electronic record.

The Supreme Court has, and occasionally exercises, the discretion to order the Court of Appeals to recall a remittitur. E.g., *James v. State*, 372 S.C. 287, 290 (2007) (the Supreme Court “ordered the court of appeals to recall the remittitur...”); *Barber v. Crawford*, 86 S.C. 51 (1910) (“this Court is satisfied that [the remittitur] should be recalled, and it is so ordered.”) The Court will recall a remittitur if the record reflects “some mistake or inadvertence on the part of this court or its officer....” *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893).

Counsel's electronic filing of June 14 was received by the Supreme Court, but apparently deemed not accepted by the Court due to the electronic means by which the voluminous filing was submitted. The Court has since altered the appellate rule that previously required that voluminous filing which traditionally accompanied a petition. Had counsel's mother not died, or had the court sent by U.S. Mail as well as email its notice about the electronic method it preferred for a voluminous record, the matter could readily have been addressed and the remittitur would not have issued.

The Court of Appeals refused to address whether these unusual circumstances constituted good cause for the June 14 petition deemed not to have “counted” so as to recall the remittitur, or whether the August change to the appellate rules reflected that the requirement for a voluminous record (which led to the June 14 confusion) supported the petition being considered on its merits.

The underlying appeal concerns significant issues arising from a collusive class action as well as both attorney and judicial misconduct.<sup>3</sup> Despite the clear statement of the Supreme Court in *Doe v. Bishop*, 407 S.C. 128, 754 S.E.2d 494 (S.C. 2014), noted above, remanding the first appeal, the Court of Appeals opinion chose to avoid many of the difficult questions in this record, appearing to defer (as the trial court appears to have deferred) to the lawyers or the circuit judge whose conduct is challenged, a deference that is despite the negative impact on the appellants and hundreds of other sexual abuse survivors affected by the underlying class action. Significant issues related to class action practice and professional conduct underlie the appeal on the merits, which makes no deference to individuals whose conduct is challenged. If deference is due or applicable legal principles should be overlooked based on the persons involved, then the Court should deny either this petition or the petition on the merits and assist the bench and bar by articulating the circumstances or criteria under which the Supreme Court permits its orders or rules to be ignored. Alternatively, if the Court elects to review the June 14 petition on the merits, the Supreme Court may choose to benefit bench and bar by articulating that the court’s rules, orders and legal principles are to be applied without regard to personality.

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<sup>3</sup> The June 14 petition as submitted is attached as an exhibit.

## Conclusion

In light of this record we contend the court should exercise its discretion to direct the Court of Appeals to recall the remittitur, reinstate the appeal and accept the June 14 petition for purposes of considering the merits of the issues presented in the June 14 petition.

Respectfully submitted,



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## Certificate of Counsel

Petitioner's counsel certifies that on May 13, 2021, the Petition for Rehearing was denied by the Court of Appeals. R. App. 3061.

### Questions Presented

1. Have the lower courts erred in determining that because *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984), predated SCRCP 23 that class counsel owed no fiduciary duty to absent class members in pleading a class action, or settling a class action, instead finding class counsel owed no duty to the class until an attorney-client relationship was formed at class certification?
2. Have the lower courts erred in concluding appellants were not damaged when the collusive change to the notice program deprived appellants of the benefit of the defenses waived for class members?
3. Has the Court of Appeals erred in determining that there had been "adequate time for discovery" as to damages, when even the trial court recognized that full discovery has not been permitted in any case and in two cases no discovery at all has yet been permitted and a separate discovery schedule was needed for those cases?

### Statement of the Case

This appeal turns on the first question presented: whether SCRCP 23 eliminated the fiduciary obligations that (until the trial court's ruling in this action) imposed as a matter of law on counsel who allege a class action; or who reach a class settlement; or who move to certify a class. Other issues are subsidiary to that novel question and are properly remanded for reconsideration if in considering the first question presented the court overturns the lower courts.<sup>1</sup> E.g., *Doe v. Howe*, 367 S.C. 432, \_\_\_, 626 S.E.2d 25, 27-28 (2005) (vacating and remanding decision on breach of fiduciary duty for ambiguity in the trial court's rationale).

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<sup>1</sup> Subsidiary questions that will be briefed if the Petition is granted will include the lower

The record below is full of irregularities from the 2006 class settlement at issue in this appeal. On this record, it must be presumed that the class action was collusive. A class settlement was reached seven months after the class case was filed, without a single motion having been argued or decided, or a single deposition taken. (Compare, R. App. 256, the Charleston class complaint filed December 2, 2005, with R. App. 592 – 595, the June 14, 2006, handwritten class settlement agreement reached in mediation).

After the settlement, the parties did not submit the class settlement for approval as required by SCRCP 23. Instead, through less-than-candid procedures outside of SCRCP 23 the parties moved the class settlement to a preferred judge in another circuit. E.g., R. App. 315 (first motion to approve class settlement, made in Dorchester County). Pertinent to this appeal, after filing a motion to certify the class, but before class certification, the parties agreed to change the notice program for the class from the nationwide notice originally proposed (R. App. 317, proposing notice in *USA Today*) to (in effect) notice in only South Carolina (R. App. 324, eliminating notice in *USA Today*), essentially eliminating any chance of notice to persons such as appellants, who resided outside of South Carolina. The motion to certify was amended for that change to the notice program. (R. App. 322).

The lack of nationwide notice was one of the objections made by other abuse victims who objected to aspects of the proposed class settlement. (R. App. 369, 383). While no explanation about the change to the notice program was given to the trial court reviewing the class settlement, and neither inquiry nor order was made by that court even after the objections to

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court's conclusion that, as out-of-state residents, appellants were not within the class definition; that John Doe 193 could make no claim for breach of fiduciary duty; that the lower court's "alternative pleading" theory barred appellants who resolved their claims against the Diocese from making a claim against class counsel.

the change to the notice program brought it to her attention, class counsel later represented in these proceedings (in a 2014 hearing) that the change was made by class counsel to accommodate a request by the Bishop of Charleston, his supposed adversary. R. App. 2435.<sup>2</sup>

Despite a 2009 order from the Supreme Court, R. App. 85, no final order has ever been entered in the class action case, so no appellate review has ever occurred of the conduct of the class action.<sup>3</sup> (E.g., R. App. 474 – 481: a final accounting was proposed to the trial court by class counsel in March 2008 but never acted upon).

A series of cases are consolidated in this appeal. The earliest were filed in 2010,<sup>4</sup> the most recent cases were filed in 2015 and 2016,<sup>5</sup> after remand of *Doe v. Bishop*, 407 S.C. 128, 754 S.E.2d 494 (S.C. 2014), the first appeal related to how the absent class members' interests were not protected. Despite the holding of *Doe v. Bishop*, 407 S.C. 128, 754 S.E.2d 494 (S.C. 2014),<sup>6</sup> full discovery as to class counsel's conduct has not been permitted in any case. Judge Nicholson

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<sup>2</sup> Counsel for class counsel: "Our testimony will be that we proposed that [nationwide notice] to the Bishop and that the Bishop said, no, that's too expensive."

<sup>3</sup> Implicit in this appeal is whether the collusive strategy of ignoring S.C. Supreme Court orders, such as the 2009 order to conclude the class action, or the holding of *Doe v. Bishop*, discussed below, is as acceptable to the Supreme Court as it has been to the lower courts.

<sup>4</sup> E.g., R. App. 532, 2010 complaint for John Doe 2 and Jane Doe 4.

<sup>5</sup> E.g., R. App. 1208 (Complaint for Jane Doe 240); R. App. 1230 (Complaint for John Doe 240); R. App. 1253 (Complaint for John Doe 245 and Father Doe 245); R. App. 1346 (Complaint for John Doe 297).

<sup>6</sup> *Doe v. Bishop*, 754 S.E.2d at 501 (S.C. 2014): "Should appellants establish on remand that they were denied due process owing to lack of notice or because of inadequate representation in the class action proceedings, and that the statute of limitations was tolled, they may proceed to further prosecution of their claims." While that opinion presumes that class counsel owed a duty to absent class members, the lower courts disagree.

acknowledged that the 2015 and 2016 cases, in which no discovery had been done, would require a further order of the court to permit discovery. R. App. 188. Nevertheless, in its brief decision, the substance of which is on two pages, the Court of Appeals determined there had been “adequate time for discovery.” R. App. 3030, making no distinction among cases with different complaints.

Summary judgment was granted in 2017 as to the claimed breaches of fiduciary duty by class counsel. R. App. 203. The trial court found class counsel owed no fiduciary duty to absent class members until a court certified a class, R. App. 217, discounting the obligations imposed at pleading by *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984). The rationale to discount those cases was because those cases were decided before the 1985 implementation of the Rules of Civil Procedure<sup>7</sup> and because no class had been certified in the class case giving rise to those decisions. R. App. 217. The order contains no analysis about how SCRPC 23 changed those case holdings, and none is apparent.

Without a fiduciary duty owed by class counsel at any time before formal class certification, the trial court found that the pre-certification collaboration among the parties to change the notice program for the effective purpose of excluding class members who resided outside of South Carolina could not constitute aiding and abetting breach of fiduciary duty by the Diocese defendants. R. App. 193. For its part, the Court of Appeals refused to rule on the alleged breach of fiduciary duty claims made against the Diocese.

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<sup>7</sup> The order contains no analysis about how SCRPC 23 changed those case holdings, and none is apparent.

In a brief opinion, the Court of Appeals affirmed. R. App. 3029. The Court made no distinction among the complaints, which have evolved over time and more explicitly addressed the “alternative pleading” argument accepted by the Court of Appeals. Class counsel had first begun making that “alternative pleading argument” in 2014, R. App. 2407, so successive complaints in 2015 and 2016 grew more explicit about the request for only one recovery, as opposed to alternative claims for liability. In other words, not all complaints are identical.

A petition for rehearing was denied by the Court of Appeals. R. App. 3061 .

## Argument

1. SCRCP 23 makes no change to the holdings of *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984). A fiduciary duty to absent members of a class begins at pleading a class action.

For the core question in this petition — the duty owed by class counsel upon pleading a class action, and the subsidiary issues that derive from the core issue — even though it might be helpful to bench and bar for the Court to do so, the Court need not wade into the extensive evidence of collusion or the judge-shopping that occurred in this record. Every court other than this Court (in 2014) has studiously avoided addressing how class counsel placed their own financial interests ahead of the class and deliberately compromised the interest of the absent class members they undertook to represent so as to accommodate a request of their “adversary.” Full discovery has not been permitted into class counsel’s class representation.

But if there is no duty to absent class members until certification, then class counsel can presumably manipulate the class action as exemplified not only in this record but also as exemplified in *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984).

As the case stands at present, it is apparently accepted that such manipulative conduct by class counsel is permitted, since class counsel has been construed to have no duty to the class prior to formal class certification.

Nothing about SCRCP 23 changes the rationale of *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) or *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984). SCRCP 23(d) requires a motion to certify a class be made “as soon as practicable” after the class action is filed. SCRCP 23(c) provides:

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

SCRCP 23 embodies the Due Process obligations that protect absent class members. *Premium Investment Corp. v. Green*, 283 S.C. 484, \_\_\_, 324 S.E.2d 72, 76 (Ct. App. 1984): (internal citations omitted, emphases added) held:

a plaintiff who sues on behalf of a class ***and the attorney representing the class assume a fiduciary obligation to absent members of the class, including the obligation to inform them of proposed compromises of the group action.*** The class representative also surrenders the right to settle the action in return for individual gain, alone.

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

See also, *Tilley v. Pacesetter Corporation*, 355 S.C. 381, \_\_\_, 585 S.E.2d 292, 302 (2003) (class definition “a strategy choice” that the parties and class counsel “have to live with.”)

These holdings are consistent with Fed. R. Civ. P. 23, on which the South Carolina Rules are modeled. The Notes to SCRCP refer specifically to the federal rules of civil procedure, which have long held that counsel undertakes a fiduciary duty upon pleading a class action. E.g., *Cohen*

*v Beneficial Indus. Loan Corp.*, 337 U.S. 541, 549, 69 S.Ct. 1221, 1227 (1949)

a stockholder who brings suit on a cause of action derived from the corporation assumes a position, not technically as a trustee perhaps, but one of a fiduciary character. He sues, not for himself alone, but as representative of a class comprising all who are similarly situated.

Until the trial court in this case concluded that it no longer had effect, *Premium Investment* held that upon *pleading* a class action class counsel assumes fiduciary duties to absent members of the class. Upon class *certification*, class counsel assumes an attorney-client relationship with class members, present and absent.

The commentary to SCRCP 23(d) reinforces the identical point:

This Rule requires those seeking to maintain an action on behalf of a class to notify members of the class of the pendency of the action.

That obligation is on “those seeking to maintain,” not just on “certified” class actions. As reflected in the Ethics Watch article by Professor Freeman from September 2007, R. App. 2092 – 2093, discussing both *Premium Investment* and *Green*:

In essence, the Supreme Court in *Green* held that a fiduciary obligation is owed by class counsel to putative class members so long as the case is postured as a class action regardless of whether a formal certification order has been issued.

Professor Freeman advised “so long as the caption claims the case is a class action, unless and until the class certification motion is denied or the class is decertified, class counsel must assume that a duty of loyalty and fair dealing is owed to absent class members.” *Id.* Yet the trial court and Court of Appeals disagreed.

Given the divergence between Professor Freeman’s academic commentary, Professor Virzi’s affidavits attached to the various complaints (E.g., R. App. 1045 – 1046), and the orders of the trial court and Court of Appeals, it obviously needs clarified by the Supreme Court if class counsel does or does not assume a fiduciary obligation upon alleging a class. Or moving to

certify a class. Or reaching a class settlement. The Petition should be granted to provide that clarity.

The collusive changes to the notice program matter. Absent class members were deliberately excluded from any chance of participation. Class counsel claimed in the record to have secured for all class members, known and unknown, the same agreement from the Diocese as was extended to class members: that the Diocese would waive its available defenses, including the statute of limitation and charitable immunity.<sup>8</sup> But no written order secured that relief, so any class member who files an independent action against the Diocese must confront the defenses waived for class members.<sup>9</sup> In many cases, that failure is fatal to an abuse victim being able to make a claim.<sup>10</sup>

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<sup>8</sup> Compare, R. App. 2312, in discussing four known abuse victims that had not been located and, as counsel for the Diocese put it, “anybody else who has kind of, lack of a better word, comes out of the woodwork,” class counsel responded with the claim, R. App. 2314, that the Diocese had supposedly agreed, that “if anybody has been missed” the Diocese “waives all the same defenses.”) No order secured that relief.

<sup>9</sup> Although class counsel was aware of such claims, e.g., R. App. 409, 482, nothing in the class settlement provided for persons such as John Doe 193, who alone among appellants (a) resides within South Carolina and (b) had no memory of his abuse until 2010 (R. App. 1708, 2454). His complaint begins at R. App. 760. Unique among appellants, Doe 193 might conceivably avoid the statute of limitations under authority of *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). Judge Nicholson held he had not received Due Process in the class action. R. App. 179. But like every other appellant he is exposed to the other defenses the Diocese otherwise waived for the class. Had class counsel actually secured the relief he claimed for the clients he undertook to represent, none of these cases would be necessary.

<sup>10</sup> The trial court concluded that there was no claim against class counsel because the failure by class counsel left the appellants in the same place they would have been without any class action case having been filed, R. App. 210, a truism that if accepted would nullify any claim for legal malpractice or breach of fiduciary duty. Such cases are *always* about a duty voluntarily assumed, conduct that would not exist but for the duties assumed.

As a result, even though class counsel undertook to represent appellants, class counsel cooperated with the Diocese to deprive appellants of any chance of obtaining the benefit of the defenses waived for class members. Those defenses explicitly included charitable immunity and the statute of limitations.

Without action by this Court, class counsel was, and future class counsel will be, entirely free to replicate the conduct in this record to remove notice so as to exclude absent class members, and arrange for the fee to be the highest priority of the class action. Additionally, class counsel would be free to replicate the conduct described in *In re Green*, 291 S.C. 523, 354 S.E.2d 557 (1987) and *Premium Investment Corp. v. Green*, 283 S.C. 484, 324 S.E.2d 72 (S.C. App. 1984), where a class was pleaded for effect and used to benefit counsel and the putative class representative. If the court does not accept the Petition, any class action can be manipulated however class counsel chooses, provided that manipulation is done prior to class certification.

2. The lower courts erred in concluding appellants were not damaged when the collusive change to the notice program deprived appellants of the benefit of the defenses waived for class members.

Among the subsidiary issues in this Petition are that the plaintiffs had no evidence of damage from any conduct by the lawyers. R. App. 210 (in the trial court); R. App. Court of Appeals decision at p. 3, R. App. 3030. “Damages in an action for breach of a fiduciary duty are those proximately resulting from the wrongful conduct of the defendant.” *Moore v. Moore*, 360 S.C. 241, 253 (Ct. App. 2004). Because class counsel was construed to owe no duty to absent class members until certification, the lower courts did not consider the damage from class counsel’s failures in (a) altering the notice program at the Bishop’s request to deliberately exclude appellants, and then (b) failing to mitigate that damage by securing in a written order the waiver of defenses they claimed to have secured for each class member. Each is a cognizable

damage, as set forth in the affidavits of Mr. Virzi. E.g., R. App. 1045 – 1046. Each absent class member is now compelled to confront the powerful defenses that the Diocese otherwise had waived.

3. The Court of Appeals erred in determining that there had been “adequate time for discovery” as to damages and class counsel’s conduct

As noted above, the trial court recognized that cases filed in 2015 and 2016 required a separate discovery order, as no discovery had been done. R. App. 188. If class counsel assumes a fiduciary duty to absent class members of the class upon pleading, the Court of Appeals plainly erred in concluding there had been “adequate time for discovery,” R. App. 3030, and the case should be remanded for further proceedings.

## Conclusion

The petition for *certiorari* should be granted on the questions presented and the subsidiary issues that will be briefed if the Petition is granted.

Respectfully submitted,



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**RECEIVED**

**Dec 29 2021**

**SC Court of Appeals**

The State of South Carolina  
In The Supreme Court

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Appeal from Charleston County  
Hon. J.C. Nicholson, Circuit Court Judge  
Appellate Case No. 2017-001996

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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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**Proof of Service**

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I hereby affirm that pursuant to SCACR 226C I have served upon counsel for the  
defendants/respondent one copy of the Appellant's

**Petition for *Certiorari***

by causing the document, its exhibit, and a copy of this Proof of Service to be sent via email to:

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