

• NO. CV X06-95 0322639 S (CLD) : SUPERIOR COURT
 JON W. FLEETWOOD : J. D. OF FAIRFIELD
 VS. : AT BRIDGEPORT
 BRIDGEPORT ROMAN CATHOLIC
 DIOCESAN CORP., ET AL : DECEMBER 9, 1999

**MEMORANDUM OF LAW IN SUPPORT OF
 PLAINTIFF'S OBJECTION RE: ADMISSIBILITY OF PRIOR AND
 SUBSEQUENT CLERGY SEXUAL MISCONDUCT COMPLAINTS**

We need only review the allegations of the plaintiff's claims of negligence and claims for relief in order to appreciate the materiality and relevance of evidence or information regarding the defendant Diocese's knowledge or awareness of clergy sexual misconduct at any time during the history of the Diocese of Bridgeport. On January 14, 1999, the plaintiff filed a revised and amended complaint with the Court. These amendments further detail the nature of the claims that the plaintiff intends to prove at the time of trial. Therein, the plaintiff alleges that the defendants Diocese of Bridgeport and the late Bishop Curtis were careless and negligent in that they:

- Failed to promulgate policies and rules proscribing priests from bringing children to private rooms and private apartments of rectories when they knew or should have known that **since the inception of the Diocese priests have sexually abused children in such places;**
- Failed to investigate and supervise the defendant Carr, in order to prevent such sexual abuse, sexual exploitation and sexual assault from occurring, when it knew or should

- have known that **since the inception of the Diocese its priests have sexually abused children;**
- Induced the Catholic Faithful to entrust their children's moral and spiritual well being and safety to its priests and then failing to protect these children who were without their parents and/or guardians... **in that they knew that priests were abusing minor parishioners but failed to take any preventative measures to make the relationship between all priests and minor parishioners safe and free from sexual harm;**
- Failed to establish, maintain and enforce a policy of reporting, investigating and pursuing members of its clergy engaged in sexual misconduct including adherence to a policy discouraging the dissemination of information regarding sexual misconduct **including their failure to seek out victims of sexual abuse in order to render assistance and prevent or reduce further damage to untreated victims; and**
- **Failed to police activities of priests upon premises they controlled in the bedrooms and private apartment of rectories** including allowing priests to be unchaperoned with minors.

Practice Book Section 10-60 provides that any adverse party may within fifteen (15) days of the filing raise objection to the proposed amendments. The defendants did not do so; instead, on January 26, 1999, the defendants filed an answer. Further, Practice Book

- Section 10-35 provides that whenever a party desires to obtain ... (2) the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper

• allegations in an adverse party's pleading, the party may file a timely Request to Revise. The defendants did not avail themselves of this practice. The plaintiff here is left to prove the allegations of his complaint at the time of trial. To do so, the plaintiff will necessarily introduce evidence and information regarding the Diocese's awareness or knowledge of prior and subsequent clergy sexual misconduct. At the onset, counsel for the plaintiff emphasizes that the arguments made in connection with this case may differ and/or be further strengthened by production of court-ordered clergy sexual misconduct evidence or information not yet produced by the defendants.

**A. HISTORY OF CLERGY SEXUAL MISCONDUCT
WITHIN THE DIOCESE OF BRIDGEPORT**

The plaintiff Jon Fleetwood alleges that the defendant Diocese and late Bishop Curtis are liable for injury and damage sustained by him as a result of being sexually abused as a child by the defendant Father Charles Carr, a Bridgeport Diocesan priest. He claims that these defendants had the power, authority and knowledge to: (1) prevent the abuse from occurring; and, (2) render assistance to the plaintiff after the abuse occurred in order to reduce and prevent further damage. The plaintiff argues that prior to the time that the plaintiff was abused in 1985, the defendants were acutely aware of clergy sexual abuse and yet failed to take action in order to prevent it from occurring. Further, that the Diocese continued to receive information regarding clergy sexual abuse after 1985, which

• would enable it to identify the plaintiff and offer him assistance in order to reduce or prevent further damage.

It must be noted that the plaintiff has not yet been given access to all records, memos and documentation regarding claims of sexual impropriety, sexual misbehavior, sexual suggestion and/or sexual abuse as they relate to present or former Bridgeport Diocesan priests. He is, therefore, at a clear disadvantage in detailing the *involved* history of sexual abuse by the clergy. Still, despite the defendants' best efforts to conceal this information, the following is an account of the sexual misconduct and abuse that involved Bridgeport Diocesan priests:

In the early 1960's, before any allegations in this complaint, the Rev. Lawrence Brett is involved in sexual misconduct with a minor who is a communicant of the Diocese of Bridgeport. (Bishop Curtis deposition at 160- 162, attached as Exhibit 1). Specifically, Father Brett bites the victim's penis in an attempt to stop an emission. This causes urological difficulties for the victim and he has to be taken to an urologist. (Diocesan memo dated 12/2/64, attached as Exhibit 2) Soon thereafter, Monsignor Genuario writes a memo indicating that the priest, who confessed to the abuse, will to sent away and that if anyone is to ask about his whereabouts, "a reoccurrence of hepatitis should be feigned". (Exhibit 2). Bishop Curtis never reveals this information to Msgr. Cusack who is supposedly in charge of sexual abuse by priests. (Cusack deposition at 142 – 143, attached as Exhibit 3). Cusack indeed knows that Brett is no longer in the Diocese, but when questioning the Bishop, the Bishop never tells him what happened. (Exhibit 3). Apparently, the parents of another boy can get no satisfaction from the Bishop regarding their sexual misconduct complaint against Brett until the Office of the

• Papal Nuncio in Washington, D.C., intercedes. (Apostolic Delegation, series of letters in 1966-1967, attached as Exhibit 4). Bishop Curtis does not remember any of these events. (Exhibit 1 at 165). Despite these shocking occurrences, in July of 1990, Bishop Egan writes a letter to Monsignor Bronkiewicz advising that Father Brett “will be well received in the Diocese [of Bridgeport]” if he chooses to return. (Diocesan memo dated 7/12/90, attached as Exhibit 5). In the meantime, Brett travels around the country where he admits molesting children in a number of states including New Mexico, California and Maryland, all while incardinated in the Diocese of Bridgeport. (Diocesan memo dated 11/16/92, attached as Exhibit 6).

During the period of 1968 through 1970, a defendant in another case of sexual abuse, the Rev. Martin J. Federici of the Bridgeport Diocese, is assigned to the Assumption Church of Westport, Connecticut, whose pastor is Msgr. Patrick Donnelley. (Federici deposition at 36-38, attached as Exhibit 7). During this assignment, a local police department contacts the Bishop or Federici's pastor to advise him of a sexual abuse complaint against the priest by a young boy, which occurs in Federici's car. (Exhibit 3 at 54-55). At that very time, before the incident, Federici has been undergoing psychiatric treatment. (Exhibit 7 at 66). When asked about these incidents of abuse, Federici pleads the Fifth Amendment and refuses to answer numerous questions regarding sexual abuse of children. (Exhibit 7 at 7-8, 15). Federici is transferred to St. Ambrose Parish in Bridgeport and no one is advised at that parish of Federici's sexual involvement with young boys, as it is Bishop Curtis' policy not to let anyone know of the predatory sexual

activities of a priest. He transfers the priest to a new parish to "allow him a fresh start". (Exhibit 1 at 46- 47). There is no supervision of Federici and while at St. Ambrose in 1971, he sodomizes another young male parishioner in the cellar of the rectory. Father Federici who is assigned to St. Ambrose in 1970, is immediately transferred on September 11, 1971. (Exhibit 7 at 38-41). That individual advises his father who tells the pastor of the incident. (Medgansis Affidavit attached as Exhibit 8). In 1978, a psychological evaluation of Federici reveals that the priest "has very poor contact with reality...His emotional life is in a state of chaos. His thinking is very primitive like that of a little child. Prognosis is poor...He needs to be watched and cared for like a child." (Dr. James Cassidy's report dated 11/16/78, attached as Exhibit 9). In 1983, Father Federici, still an active priest with the Diocese, again sodomizes another boy, this time during confession at St. Joseph's Church in Shelton, CT. The boy and his father immediately complain to Monsignor Cusack and Father Federici is transferred to another church. (Diocesan report of 3/21/94 with attached summary, attached as Exhibit 10). In June of 1989, a psychiatrist reports that "[c]learly the problem here is that these two incidents are known and the question arises as to whether there have been others which have not been discovered". (Dr. Richard Bridburg's report dated 6/26/89, attached as Exhibit 11). In 1990 Monsignor Bronkiewicz receives a call from a gentleman indicating that Father Federici made sexual advances upon his wife when she was a student at Cathedral Girls' High School sometime during 1970-72. (Exhibit 10). That same year, a child abuse advocate at the Rape and Sexual Abuse Crisis Center in Stamford calls the

• Diocese and reports that Father Federici approached a young man on a Emmaus Weekend. (Exhibit 10). In 1993, parents complain to Monsignor Bronkiewicz that Father Federici was sexually inappropriate with their son during a private meeting at the parochial school. (M-013 Affidavit dated 7/11/97, attached as Exhibit 12). On March 31, 1994, Father Federici is given a sabbatical for personal growth (Diocesan memo dated 5/31/94, attached as Exhibit 13). On April 20, 1994 a psychiatrist reports to the Diocese that “[t]he history that you know involving the incidents in his life regarding sex are well documented and substantiated.” (Dr. Louis Padovano’s report dated 4/20/94, attached as Exhibit 14). In 1994, despite all of the evidence of sexual misconduct, Federici is promoted to Parochial Vicar at St. Augustine’s Cathedral in Bridgeport. (Diocesan memo dated 7/23/96, attached as Exhibit 15). **On July 23, 1996, Father Federici is granted an indefinite leave of absence and his priestly faculties are withdrawn in response to the civil suit served in July 1996.** (Exhibit 15).

In the late 1960’s Monsignor Genuario is informed that Monsignor Gregory Smith was sexually abusive to a girl with whom he was having an affair. In the mid-80’s, F-011 also advises Genuario that she, too, was abused by this priest. (F-011 letter dated 1/25/98, attached as Exhibit 35). Msgr. Smith is kept on as a priest and is promoted to a Director at Sacred Heart University. **He is only suspended once a lawsuit is filed in 1997.**

• Sometime during 1978 or 1979, a priest of the Diocese, Joseph P. Moore of the Assumption Parish in Westport, Connecticut, sexually abuses and attempts to sodomize

• two young parishioners who were formerly altar boys and whom he brings to a vacation spot on Block Island. Both boys dramatically jump out of a bedroom window to escape Moore's sexual advances and immediately report the incidents to their parents. The parents and the boys meet with Msgr. Cusack who at the time is "in charge of the sexual abuse policy for the Diocese" and are told by Cusack that Moore has been previously evaluated and it was determined that he was not a homosexual. (M-021 affidavit dated 12/4/96, attached as Exhibit 16). Cusack denies that there is ever such a complaint nor does he have any record whatsoever of this meeting. (Exhibit 3 at 45-46). Parenthetically, it is interesting that Msgr. Cusack's definition of a predator who sexually abuses a minor boy under the age of 18 but after the boy is capable of having an erection is characterized as a homosexual encounter. (Exhibit 3 at 288-289). Msgr. Cusack does, however, admit that there are complaints against Father Moore, but they are in regard to alcoholism (Exhibit 3 at 298-302, 313-314) and that Moore is diagnosed by a psychiatrist as having "psychosexual confusion". (Exhibit 3 at 320).

In approximately 1975 or 1976, Mrs. Mary Forsberg complains to officials at the Diocese regarding sexual impropriety that occurs on an overnight trip that her daughter takes to New Hampshire with Father Raymond Pcolka, a Bridgeport Diocesan priest. Mrs. Forsberg and her daughter are sent to Catholic Charities for counseling. (Forsberg deposition at 19-30, attached as Exhibit 17). (M-016), Sr., a parent of two young parishioners, (M-015), Jr. and (M-014), at St. John's Nepomucene Church complains that the defendant Pcolka sexually abused his boys while they were altar boys

at St. John's Church. That complaint is made sometime during 1979 to 1981 to Father Patoniak who is the pastor at the Holy Name Church at which Pcolka is then serving and during the time that Pcolka is abusing the plaintiff, Sharon See. [M-016] Sr. affidavit dated 10/11/96 and [M-014] affidavit dated 11/14/96 and [M-016], Sr. deposition at 16-20 attached as Exhibit 18). According to [M-016], Sr., Father Patoniak replies, **"Where the hell do you think you are going to go with this? Do you think the cops are going to believe you or the Catholic church?"** (Exhibit 18). His son, [M-014], never receives any response to the written complaints he makes to the Diocese in the early 1980's. (Exhibit 18, [M-014] affidavit). In 1983, [F-006] goes to Monsignor Cusack with her counselor in order to report that she, her sister and her cousins were sexually abused as children by Father Pcolka. ([F-006] deposition at 25-45 and Martin Starr affidavit dated 2/8/93, letters dated June and July 1983, attached as Exhibit 19). Her complaint is not felt to be substantiated. (Exhibit 3 at 397-402). When asked about these accusations and others during his deposition, Pcolka claims the Fifth Amendment privilege over one hundred (100) times. (Father Raymond Pcolka deposition at 18-275 attached as Exhibit 20). At present, sixteen (16) of the plaintiffs who have claims in these cases have claims against Father Pcolka. They include the following individuals and the approximate time periods:

George Rosado	1970-1975
Jennilee Rosado	1970-1975
[F-009]	1971-1972
Richard Rosado	1972
Theresa Pace	1972

Alvin Koscelek	1972-1973
F-006	1972-1976
M-014	1972-1978
M-015	1973
Paul Doyle	1975
Sandra Forsberg	1975
Jamie Krug Belleville	1975
James Krug	1975
Sharon See	1978-1982
Brian Freibott	1978-1982
James See	1978-1982

In addition, plaintiff's counsel is aware of at least ten (10) other victims who have been abused by Pcolka beginning with Pcolka's first priestly assignment in 1966 at St.

Benedict's Parish in Stamford and continuing through 1969. In 1989, Mrs. Barbara Krug complains to Monsignor Bronkiewicz regarding Father Pcolka. (Diocesan memo dated 8/16/89 and 8/29/89, attached as Exhibit 21). In late 1992, James Krug comes forward with a much more "detailed set of accusations" regarding Pcolka. (Diocesan memos dated 12/29/92, attached as Exhibit 22). **On January 4, 1993, the same day that the Sharon See lawsuit is served, the Diocese grants Pcolka a leave of absence.** (Diocesan memo dated 1/4/93, attached as Exhibit 23).

On November 17, 1976, Monsignor Toomey receives a complaint indicating that Father Walter Coleman has rented an apartment in New Canaan "visited by teenagers – nuisance" (Diocesan memo dated 11/17/76, attached as Exhibit 24). For two (2) months during 1976, Father Coleman is able to take leave of his priestly duties in order to travel across country with a minor, James Harding. (Harding deposition at 72-74, attached as Exhibit 25). During the months of January and April of 1977, Mrs. Kathleen Harding

• makes an appointment to see the Bishop in order to lodge a complaint against Father Walter Coleman in connection with the abuse of her two sons. (Diocesan hand-written notes dated 1/6/77 and 4/11/77, attached as Exhibit 26). In April of 1985, the Diocese is advised that Father Coleman had purchased a home with a single mother that is now being foreclosed. The woman's attorney advises the Diocese that a lawsuit has been commenced against Coleman seeking financial assistance in resolving the situation. (Attorney Keenan's letter dated 4/19/85, attached as Exhibit 27).

In August 1976 M-022 tells Father Hanover that Bridgeport Diocesan priest, Father Charles Stubbs abused him when he was child and parishioner at St. Andrew's Parish. (M-022 deposition at 31-32, attached as Exhibit 33). In September 1998, Mr. M-022 further informs the Principal of St. Andrew's Parochial School of the abuse. (Exhibit 33 at 41-46) The Diocese never responds to complaints but rather promotes Father Stubbs to a pastor in Ridgefield and Greenwich and ultimately makes him a Monsignor.

In 1982, the Diocese appoints Coleman as spiritual director of Immaculate High School in Danbury. (Bishop Curtis affidavit dated 5/30/97, attached as Exhibit 28). In March 1994, M-020 advises the Diocese that Father Coleman sexually abused him when he was a child. (M-020 letter dated 3/8/94 and Diocesan memo dated 3/23/94, attached as Exhibit 29). The Diocese pays Mr. M-020 a settlement under a confidentiality agreement but allows Coleman continue to serve as a priest. (Court (Skolnick, J.) transcript dated 9/2/98 and redacted confidentiality agreement attached as Exhibit 30).

• **Father Coleman is only suspended after James Harding brings a lawsuit in**

November of 1995. (Diocesan memo dated 11/29/95, attached as Exhibit 31). Yet, the Diocese neglects to advise the Archdiocese of Miami, where it knows Coleman is serving as a priest, of his suspension until September 1996, only after receiving a specific inquiry from the Miami office. (Msgr. Bronkiewicz letter dated 9/11/96, attached as Exhibit 32).

In 1984, M-023 reports to the Diocese his sexual encounters with Father Mark Grimes of the Diocese of Bridgeport. (M-023 letter dated 4/17/97, attached as Exhibit 34).

In 1985, Monsignor Cusack is made aware that Father Gavin O'Connor sexually molested three teenage boys. (Dr. Kabir's report dated 5/29/86, attached as Exhibit 36). A lawsuit is eventually brought in Hartford Superior Court and the case settles soon after Judge Rittenband orders that the Diocese produce all clergy sexual misconduct evidence or information within their files. (Court (Rittenband, J.) transcript attached as Exhibit 37).

Against this backdrop, the plaintiff Jon Fleetwood brings his case of clergy sexual abuse. In the spring of 1982, parishioner Carole Surran contacts Father Michael Palmer in order to report that her son Christopher was sexually assaulted by Bridgeport Diocesan priest, Father Charles Carr. Palmer advises Mrs. Surran that Father Carr "would not go near Chris under any circumstances" and that he, Father Palmer was "trying to get a new assistant [pastor]". (Diocesan memo dated 5/3/90; Surran memo undated attached as Exhibit 38). Carr is thereafter assigned to Immaculate High School with residence at St. Mary's Parish in Bethel, CT. (Exhibit 38). Within two (2) months of Carr's arrival,

Deacon Robert Becker and Father Peter DeMarco are contacted by two (2) sets of parents who complain that Carr took their sons to a movie and inappropriately put his hands on the boys' legs. One of the parents thinks about reporting the incident to the police. (Exhibit 38 and Father Charles Carr deposition at 139 attached as Exhibit 39). The matter is referred to Monsignor Cusack and a meeting is held. On September 20, 1984, Carr is transferred to St. Thomas The Apostle Parish in Norwalk, CT (Exhibit 38) where he then abuses the plaintiff Jon Fleetwood. On April 3, 1990, Father Palmer is contacted by parishioner M-025 who indicates that Father Carr took his son M-024 to the movies when M-024 was in the sixth grade and ran his hands along M-024's thigh. (Diocesan memo 4/3/90 attached as Exhibit 40). A few days later, a psychiatrist tells Msgr. Bronkiewicz that there is an increased likelihood that Carr acted sexually inappropriately in the past and further advises the Diocese that "...it is necessary for you to take some...action to protect ...the public from lapses in his judgment". (Dr. Iger's report dated 4/9/90 attached as Exhibit 41). In January 1993, M-026 again reports (his parents had previously reported it back in 1984) to the Diocese that he was fondled by Carr when he was 14 years old in a car and movie theater. (Diocesan memo 1/11/93 attached as Exhibit 42). **In March 1995, the Diocese suspends Carr only after the first lawsuit against him is commenced.** (Diocesan memo dated 3/30/95 attached as Exhibit 43).

This history of repetitive clergy sexual abuse complaints serves as the basic foundation for all our claims of relevance and materiality as they relate to the admissibility of this evidence. This historical account shows a complete and total lack of

process, procedure and follow-up on the part of the Diocese in handling these most serious complaints. It is clear that no matter what the evidence and proof, the Diocese will not suspend a priest's faculties until and unless a lawsuit is commenced.

This history reveals that the Diocese had no rules preventing priests from having unchaperoned contact with children. Nor did it prohibit priests from inviting children into rectory bedrooms. It shows a pattern of the Diocese's failure to warn parishioners of a priest's propensities to sexually molest children. Camille Fleetwood, the mother of the plaintiff, testified that if she had known that Father Carr had been previously accused of sexually molesting a minor, she would not have allowed her son Jon to be involved with the church or with Father Carr. (Camille Fleetwood deposition at 64, attached as Exhibit 44).

The defendants' position that they did not exercise control over the priests because they were staff employees of particular parishes is ludicrous. Moreover, their technical reliance on Section 317 of the Restatement of the Law of Torts (2d ed.) is incorrect. That the property listed as 203 East Avenue, Norwalk, CT is owned by St. Thomas The Apostle Roman Catholic Church is not dispositive on the issues of possession and control. Bishop Egan, and his predecessor the late Bishop Curtis, are the only "masters" of the Bridgeport Diocesan priests. It is well established that owners of the property may not, in fact, be in control or possession of the property. Farlow v. Andrews Corp., 154 Conn. 220, 225 (1966); Corvo v. Waterbury, 141 Conn. 719, 725; Ziulkowski v. Kolodziej, 119 Conn. 230, 232. All of the priests of the Diocese of

• Bridgeport are “servants” of the Bishop and are only “privileged to enter” the Roman Catholic parishes within Fairfield County in order to serve as priests by virtue of the fact that the Bishop has given them authority to do so. See Restatement of Law of Torts (2d. Ed.) Section 317 (a). When we examine the documentation produced by the Diocese in connection with clergy sexual misconduct complaints we see:

1. That it is only the Bishop who can suspend the faculties of any priest within the Diocese;
2. That it only the Bishop that can transfer the priest to another parish;
3. That it is only the Bishop who can send the priest for psychiatric counseling and thereafter obtain copies of his medical reports;
4. That Section 2.2 of the Sexual Misconduct Policy identifies the “Diocese” as encompassing “all parishes...including parish corporations...” (Sexual Misconduct Policy attached as Exhibit 45);
5. That all priests are employees of the Diocese of Bridgeport (Bishop Edward Egan deposition at 40-42, attached as Exhibit 46);
6. That it was Bishop Egan who issued an edict sometime in the late 1980’s or early 1990’s that no person, other than Diocesan employees, may be allowed off the first floor of any rectory. Prior to that announcement, there were no rules prohibiting children from being in rectory bedrooms. (Exhibit 20 at 529-530).

• A review of the Diocese of Bridgeport’s Pastoral Book illustrates the complete and ultimate control that the Bishop exercises over all priests incardinated in the Diocese of

• Bridgeport. The Pastoral Book of the Diocese of Bridgeport contains all directives that must be followed by Bridgeport Diocesan priests and includes directives for their clergy lives, personnel policies and specific faculties of the Diocese. (Pastoral Book, pertinent portions, attached as Exhibit 47). All clerics of the Diocese of Bridgeport are given copies of these policies and must follow them in their pastoral service and a copy of the book must be available in every church, rectory, religious house, and ecclesiastical institution of the Diocese. (Exhibit 47 at 100) In outlining the faculties for clergy authorized to exercise the sacred ministry of the Diocese of Bridgeport, Bishop Curtis states:

In virtue of my ordinary power and of the authority delegated to me by the Holy See, I affirm or grant, as the case may be, to priests, and deacons, when indicated, the special faculties described herein...Priests, secular or religious, not of this Diocese nor of another New England Diocese, if accorded these faculties, enjoy them for the time for which they have been granted; if before the expiration of the grant, such priests leave this Diocese for assignment or residence outside New England, these faculties cease; if desired again, they must be requested anew.

(Exhibit 47 at 201).

• Monsignor Blasé Gintoli, an employee of the Diocese of Bridgeport, indicates that the pastoral book contains all of the guidelines written by the Diocese where “everything is spelled out”. (Gintoli deposition at 24, attached as Exhibit 48). The Pastoral Book covers all faculties that can be exercised by priests of the Diocese, i.e. to administer sacraments, to admit adults to baptism, to offer mass outside a sacred place, to celebrate mass at any hour of the day. (Exhibit 47 at 200 –201.19). An entire section is devoted to General Norms for priests that requires the priest to make an annual retreat, keep his personal

finances in good order, make a will and testament within three months after ordination and prohibits the priest from instituting a civil or criminal action or voluntarily giving testimony without consulting the Bishop. (Exhibit 47 at 301-310.1). It goes on to outline the role specifications of priests in parish ministry (Exhibit 47 at 302 – 302.4), the way in which the pastor can make sick calls (Exhibit 47 at 303), the manner in which the priest can furnish the rectory (dignified but simple), the way in which meals should be prepared (nourishing and balanced but not wasteful or expensive) (Exhibit 47 at 305) and the manner in which the telephone and door should be answered (Exhibit 47 at 305.2). It further addresses priests' leaves of absence (Exhibit 47 at 312), sabbaticals (Exhibit 47 at 311) and time off (Exhibit 47 at 313) as well as the procedure that must be followed when transferring or assigning a priest to a parish (Exhibit 47 at 310). It is plain that if a priest is incardinated in the Diocese of Bridgeport, the Bishop controls all aspects of his existence, from how he dresses and eats and including the preparation of his last will and testament.

The plaintiff also intends to present expert testimony from Father Thomas Doyle and W. Richard Sipe, both ordained Catholic priests. Father Doyle is a Dominican and is a doctor of Canon law. He was the Canonist for the Vatican Embassy in Washington, D.C. for over five years. Doyle will testify that it is the Bishop who is control of the priests. (Father Thomas Doyle affidavit attached as Exhibit 49). Mr. Sipe, who was involved in programs of psychiatry and mental health for clergy who have problems regarding sexual celibate practices within the Roman Catholic Church, will also testify that it is the Bishop

who dictates all aspects of the priest's daily life. (W. Richard Sipe affidavit attached as Exhibit 50).

The defendants are hiding behind a diaphanous veil in arguing that by the mere fact that they did not hold title to the premises upon which the abuse occurred, they could not be held responsible for the claim. Most importantly, these defendants actually "possessed", in the true sense of that word, the "servant" or priest, dictating what he wore, when he took vacation, where he lived and worked. The relationship between the priest and his Bishop is entirely different than the relationship of an ordinary employer to an employee as illustrated by the Pastoral Book.

The defendant Carr testified that the Diocese provided him his sleeping quarters and food. He received his salary from the Diocese. He was required to be available to minister to Bridgeport Diocesan parishioners twenty-four (24) hours a day, day or night, and would make house calls and hospital calls. (Exhibit 39 at 83-84). The priest must always obey the Bishop and must live in a facility and in a manner authorized by the Bishop. As Bishop of the Diocese of Bridgeport, Curtis was the Ordinary of Father Carr and all priests within the bounds of the Diocese. The Bishop and Diocese did make rules in regard to living conditions within the rectories of the parishes (Exhibit 3 at 131), but never made any rules which prohibited the clergy from having children in bedrooms or private apartments of the rectories (Exhibit 1 at 31-33) until Bishop Egan's tenure. It is the Bishop and Diocese, which control the parish buildings and the living conditions of the persons within. (Exhibit 1 at 31). They had the power, authority, knowledge and duty

- to prevent children from being sexually abused by priests. They had the power, authority, knowledge and duty to identify victims of clergy sexual abuse in order to render assistance. They failed to act as reasonable people would act knowing what they knew about clergy sexual abuse. Their failure to act resulted in the sexual molestation of Jon Fleetwood, sexual misconduct that was entirely preventable.

1. PRIOR HISTORY IS RELEVANT AND MATERIAL AS IT PROVES THAT THE DEFENDANTS HAD NOTICE OF THE PROBLEM OF CLERGY SEXUAL ABUSE WELL BEFORE THE DATE OF THE PLAINTIFF'S ABUSE

The plaintiff must prove that the Diocese and the late Bishop Curtis were negligent in the supervision of Father Carr. He must prove that they knew or should have known of the risk that priests may pose to children who are left unsupervised with them especially in such places as rectory bedrooms. In the Court's (Thim, J.) Memorandum of Decision dated July 31, 1997 (attached as Exhibit 51 at 22-23), Judge Thim specifically commented on the known complaints against Father Brett, Father Federici and Father Moore between the years 1964 through 1978. (Exhibit 51 at 22-23) The Court concluded that these complaints involving non-party priests were relevant as they created questions of fact as to whether the Diocese was negligent in failing to create adequate policies to deal with the sexual abuse of minors. (Exhibit 51 at 23) Judge Rittenband reached the same conclusion when he ordered the Diocese of Bridgeport to produce all complaints of non-party priests in the context of that clergy sex abuse case. (Exhibit 37).

The conclusions reached by these courts are based upon the test set forth in

• Martins v. Connecticut Light & Power, 35 Conn. App. 212 (1994) cert. denied 231 Conn. 915 (1994). In Martins, a claim was brought by a man for injuries sustained when the excavator he was operating struck an overhead, uninsulated wire owned by CL& P. The issue on appeal was whether the trial court had improperly excluded evidence of nine (9) other electrocutions that had occurred between 1960 and 1981 at *other* CL& P locations. The Court found reversible error. Justice Dupont, in a clearly reasoned opinion, held that prior accidents are admissible to prove the existence of particular physical conditions, situations or defects or to prove notice of a dangerous characteristic even though the accident or the condition is not involving the same mechanism or place at which the plaintiff in the present case was injured. “Such evidence is admissible to show that the defendant knew or should have known of the hazards created by the particular condition or danger”, said the Court at page 216. **“The requirement of a substantially similar condition is lessened when the evidence is offered to show notice of a dangerous condition. In such a case the prior accidents need only be such as would call defendant’s attention to the dangerous situation that resulted in the litigated accident.”** Id. at 217 (emphasis supplied).

More recently, the Massachusetts Supreme Court ruled in a similar fashion in the context of a product liability action in which the plaintiff claimed injury causally related to premature rear lockup of his Chrysler minivan. Santos v. Chrysler Corporation, 430 Mass. 198, 715 N.E. 2d 47 (1999). The Court held that there was no error in the trial judge’s admitting the testimony of six Chrysler minivan owners regarding other incidents

• involving their own minivans. Id. at 204. The defendant Chrysler claimed that other incidents were not “substantially similar”. Id. at 202. However, the high court ruled that the evidence was admissible to establish notice, to corroborate the alleged defect and to refute evidence that the minivan was designed without safety hazards. Id. at 205.

The plaintiff claims that the fact that there were numerous instances of known sexual abuse of children by priests within the Diocese of Bridgeport beginning in the early 1960’s (although the plaintiff is aware of victims in the 1950’s) and continuing through 1993, all of which involved parishioners whose families entrusted their children to the priests because they had a right to expect that their children were safe as the priests were held out to be celibate (Exhibit 3 at 438), would be adequate notice to require that proper supervision and rules be set into place to preclude other priests from engaging in that same activity. The Diocese and the late Bishop Curtis had a duty to use care to the plaintiff. “A duty to use care may arise from circumstances under which a reasonable person, knowing what he knew or should have known would anticipate that harm of the general nature that was suffered was likely to result from his act or failure to act.” Id. at 219. *Put another way, in 1985, given the prior history of what had already occurred in the context of clergy sexual misconduct, should the Diocese and the late Bishop Curtis have anticipated that harm might come to Jon Fleetwood who was left alone with Father Carr in his rectory bedroom and in his car?* Based on the extensive history of sexual misconduct, the defendant Father Carr’s conduct was entirely foreseeable.

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• A review of the complete transcripts of Bishop Curtis and Monsignor Cusack clearly shows the negligence of the Diocese. (The depositions of Bishop Curtis, Msgr. Cusack, Fathers Federici, Pcolka and Carr were already filed with the Court in connection with the plaintiffs' objection to Motion for Summary Judgment dated January 16, 1997 in the Sharon See case; Bishop Egan's deposition was filed with the Court in connection with the plaintiffs' objection to Motion for Protective Order dated November 30, 1999 in the George Rosado case). Bishop Curtis continually states that he absolutely relied on Msgr. Cusack. In many instances Bishop Curtis would not even be advised of claims against priests because it was within Cusack's discretion to handle these complaints without discussing them with the Bishop or informing the Bishop if Cusack believed that it was not necessary. Indeed, Curtis' mail would be intercepted and as a result he did not see complaints of sexual abuse that were addressed to him. (Exhibit 1 at 41-43). On the other hand, Cusack indicates that the only records that might have been kept regarding priests' sexual abuse of children were in the hands of the Bishop and within his secret file. Cusack said he never would presume to ask the Bishop about the contents of that file. In addition, Cusack emphasized that the primary goal was absolute privacy and confidentiality so that priests who had sexually abused children would continue in a new assignment being responsible for children such as altar boys and grammar school students. In an incredible instance, Msgr. Cusack himself recommended a priest to the review board for assignment in a boy's Catholic high school despite that

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- priest undergoing continual therapy for sexual dysfunction involving minors. (Exhibit 3 at 328- 336).

All of the evidence of prior complaints of clergy sexual abuse as well as the Diocesan procedure in handling the same serves as a basis for the expert opinions to be offered by Father Doyle and Mr. Sipe. Father Doyle states that it is the Bishop who must investigate any complaints regarding sexual abuse whether the complaints are truthful or not. It is his opinion, after reading the various depositions in these cases that the defendant Diocese and the late Bishop Curtis were negligent and that negligence was the cause of the abuse suffered by the plaintiff. (Exhibit 49). Mr. Sipe concludes that one of the dramatic violations of the standard was Msgr. Cusack's failure to take any kind of supervisory action. The evidence reveals that Msgr. Cusack was aware of the fact that sexual abuse of children by priests was occurring from the early 1970's. (Exhibit 3 at 144-145). He believed, however, that only a small number of priests were involved, so he refused to "generalize from the marginal population to the general population" and therefore, did nothing and refused to set up any rules of supervision over the priests of the Diocese. (Exhibit 3 at 148-149 and Exhibit 50). Bishop Curtis as well refused to face reality. Despite the sexual abuse which was going on and of which he had actual knowledge, he took no steps to see that children were not abused because "he presumed it was not going on" (Exhibit 1 at 28-29). In addition, Sipe indicates after reviewing the deposition transcripts it is his opinion that Bishop failed to teach and monitor celibate observance,

- which constituted negligence and resulted in the specific sexual abuse of the plaintiffs. (Exhibit 50).

Evidence of prior sexual misconduct complaints will be used to test the validity and effectiveness of the sexual misconduct policy in use at the time that Mr. Fleetwood was molested. It is our position that there was no policy other than perhaps an unwritten one not to investigate, document or react to these claims. This is demonstrated by the defendants' claim that Father Palmer, a senior pastor, *never advised* the Diocese of the sexual misconduct complaint reported by Mrs. Surran in 1982, until 1990. While we take issue with the claim, it is evident that to the extent there was a policy, it was not enforced nor clearly disseminated to the priests of the Diocese.

Bishop Curtis, who was the Ordinary of the Bridgeport Diocese from November of 1961 through December of 1988, the period covered in the Fleetwood complaint, clearly testified that there was no policy or instruction that pastors were to report priest sexual misconduct. (Exhibit 1 at 44-45, 67). Monsignor Genuario, who was Vice Chancellor, Chancellor and Vicar General of the Diocese of the Diocese from 1959 through 1987, (Genuario affidavit attached as Exhibit 52) indicates via affidavit that Msgr. John J. Toomey was the Diocesan official responsible for this policy through 1972 and that Msgr. Andrew Cusack, Vicar of Religious and Clergy, enforced that policy from 1972 through 1987. (Exhibit 52). A review of the depositions of Bishop Curtis and Msgr. Cusack make a mockery of the statements in the affidavit. Bishop Curtis testified that he set up no policy regarding sexual abuse regarding his priests despite a sodomization of a

• student in 1964. (Exhibit 1 at 167). In later years his policy was "practical" and not promulgated. (Exhibit 1 at 9). After a priest was treated for pedophilia, the Bridgeport Diocese had no policy of monitoring the priest or his activities in a new parish. (Exhibit 1 at 76,77). If a priest was involved in subsequent complaints after receiving treatment, the Diocese had no policies regarding these multiple sexual offenders. (Exhibit 1 at 77).

Cusack testified that when he became Vicar he was never told by Bishop Curtis or his predecessor, Msgr. Toomey, about any sexual misconduct complaints against priests in the Diocese of Bridgeport. (Exhibit 3 at 135, 140). He indicated that there were no records, files or reports, which were ever given to him. He indicated that Toomey either kept no files or presented him with no files. (Exhibit 3 at 215-216). He indicated that the Bishop had secret files, which he never asked to see, were never shown by the Bishop; and which contained allegations of sexual misconduct. (Exhibit 3 at 218, 221). Cusack himself stated that it was his policy and the Bishop's never to reveal the facts of any sexual complaint - even those allegations proven - to anyone including the personnel board which assigned the priests (Exhibit 3 at 81, 105), to various positions. After several allegations were confirmed the priest would be reassigned and not even the Pastor in the new assignment would be advised of the sexual abuse problem. (Exhibit 3 at 81).

Cusack himself kept absolutely no written records of sexual abuse claims against priests and any correspondence or psychiatric reports regarding such conduct would be given to the Bishop to place in his secret file. (Exhibit 3 at 305-309).

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• Bishop Curtis himself testified that he maintained the Secret Archives of the Church, which required a two-key arrangement (Exhibit 1 at 57). He would review these files and destroy records of abuse complaints against priests in order to give them a "fresh start". (Exhibit 1 at 47, 54-56). **Although it is difficult to prove a negative, in this case there are two clear omissions from the "complete" file of the Diocese regarding defendant Pcolka as presented in discovery material which are letters regarding sexual abuse claims written upon Diocesan stationary and given to the Bishop by Msgr. Cusack (Exhibit 3 at 396; Letter to F-006 dated 7/7/83, part of Exhibit 19), and the notations which the Bishop would make in his own hand regarding sexual abuse cases that he placed within his secret file. (Exhibit 3 at 235-236). These items were obviously destroyed.**

The last sentence of Exhibit 2 which states that "A recurrence of hepatitis was to be feigned should anyone ask" clearly and unambiguously expresses the policy that the Diocese followed. It would suppress any discussion of sexual abuse; it would move the priest from his assignment and lie regarding the priest's reassignment. Msgr. Genuario, despite high positions he held in the Diocese, states that he never spoke of the Brett matter to Bishop Curtis nor to Msgr. Toomey nor Msgr. Cusack, all of whom were supposedly in charge of the sexual abuse program for the Diocese. (Monsignor Genuario deposition at 42-43, attached as Exhibit 53). Msgr. Cusack was never told about the Brett matter nor that such an incident ever occurred (Exhibit 3 at 136). As a matter of fact, neither Cusack nor Genuario ever inquired nor were aware of the other complaints which

• clearly had been brought to the attention of the Diocese against Father Brett. When asked about this lack of communication, Msgr. Genuario candidly answered, “No I wouldn’t—we just don’t talk about these things.” (Exhibit 53 at 58). The defendants present Msgr. Genuario by affidavit as the individual who was aware of the sexual abuse policy in the Diocese, but in his deposition (Exhibit 53 at 73-74) he says that there was in effect no stated policy:

Q- Isn’t it a fact that you claim--the Diocese claims that any—that priests were instructed that if there was any complaint of sexual misconduct concerning other priests that was brought to their attention, that they should immediately bring it to the attention of Monsignor Toomey at one point and Monsignor Cusack at another?

A- I don’t believe that there was ever any specific instruction. It was- it would have occurred as a matter of fraternal charity and to help the individual if it came to our attention officially or unofficially that we would direct such a person to them.

Q- So there was no policy then of priests in the Diocese being told that they should report any claim of sexual abuse directly to a person in the chancery?

A- No, because it wasn’t an everyday occurrence to – to warrant a policy.

Compare this account with the deposition testimony of Bishop Egan in which he continually comments on the “excellent” sexual misconduct policy that was in place when he took over the Diocese and how he basically took this “excellent” oral policy and committed it to writing. (Exhibit 46 at 30-33). Evidence of the handling of prior complaints of clergy sexual misconduct is clearly relevant in order to refute the supposed “excellent policy” in effect during this time period. See Santos v. Chrysler Corp., *supra* at

• 205. Why did young people continue to fall prey to the sexual abuses of clergy if the policy was so effective? In addition to the twenty three (23) people who presently have

- pending claims for clergy sexual abuse, plaintiff's counsel is aware of at least forty (40) other people who were abused as children by both party and non-party priests incardinated in the Diocese of Bridgeport.

The weight of the evidence as it relates to the Diocese's knowledge of clergy sexual misconduct complaints is also relevant in terms of defining the degree of care and diligence required. In circumstances of greater danger there is a higher degree of care required. Geoghegan v. Fox & Co., 104 Conn. 129, 134 (1926). The care required is to be proportioned to the danger and is to be reasonable and adequate under the circumstances to prevent injury to those rightfully on the premises. Barrett v. Central Vermont Railway, Inc., 2 Conn. App. 530, 534 (1984); Pompano v. New York H.H. & H.R. Co., 66 Conn. 528, 541 (1895). Here, based on the history and knowledge of prior complaints, the Diocese's duty of care was greater because the potential for significant danger was well known.

2. SUBSEQUENT HISTORY IS RELEVANT AND MATERIAL IN ORDER TO SHOW THAT THE DIOCESE BREACHED ITS FIDUCIARY DUTIES TO THE PLAINTIFF

The history of the Diocese's handling of subsequent sexual misconduct complaints are equally material and relevant to the plaintiff's claims. The recent decision in the case of Martinelli v. Bridgeport Roman Catholic Diocesan Corp., et al, Docket No.

- 98-7876 U.S.C.A. (2nd Cir.) November 10, 1999 (attached as Exhibit 44) unequivocally defines the significance of the fiduciary relationship that can exist between a parishioner

• and his Diocese. The Second Circuit Court of Appeals agreed with the district court that a jury could reasonably have found that the Diocese's relationship to the sexually abused plaintiff was of a fiduciary nature resulting in a duty of care to investigate and warn or inform so as to prevent or alleviate harm to additional victims. Id. at 51-54. Such a relationship existed between the plaintiff Jon Fleetwood and the Diocese of Bridgeport.

The plaintiff grew up in an extremely religious family which practiced Roman Catholicism was practiced. He and his family were members of the St. Thomas The Apostle Parish in Norwalk, CT which was part of the Diocese of Bridgeport. His mother, Camille Fleetwood and his grandmother, Johanna Oliveri, were highly visible and well respected within the church, always very involved in church affairs for many years. His mother was a lector during mass and she was also involved in retreat weekends for young people and adults, the bereavement committee and the rosary society. His grandmother served as a Eucharistic minister and she would often cook meals for Monsignor Toomey and other priests affiliated with St. Thomas. His family was the first family to make a family mass at St. Thomas. During Mr. Fleetwood's childhood years, he carried the cross in the Processional and served as an altar boy. He also went on Church retreats. It was through his affiliation with the Diocese of Bridgeport that he received all the sacraments, was confirmed and went to catechism through Sunday school after mass. (Jon Fleetwood affidavit attached as Exhibit 55).

• During every mass that he attended, he recalled always being reminded to worship and respect the Bishop. Through his dealings with the Diocese of Bridgeport, he

- was always taught by the church to trust and respect the Bishop of the Diocese who he considered to be his caretaker and moral authority. The plaintiff met Father Charles Carr, a priest incardinated in the Diocese of Bridgeport, soon after he was assigned to St. Thomas The Apostle Church. After Father Carr's arrival at St. Thomas, the plaintiff recalls that his grandmother would invite Carr to her home for dinner. The plaintiff specifically remembers having dinner at his grandmother's home with Father Carr as a guest. When the plaintiff was about 14 years of age, he got an after school job helping out at the St. Thomas rectory, answering the phone and door. At the time, Father Carr lived at the rectory. (Exhibit 55).

It was during this point in time that Father Carr invited the plaintiff to his bedroom, under the pretense of watching movies, in order to sexually molest him. The plaintiff's family always encouraged and allowed him to participate in church activities including his job at the rectory. They trusted all priests, including Father Carr, because these men were priests with the Diocese of Bridgeport. All of the priests at St. Thomas knew that the plaintiff worked there. At the time that Father Carr sexually abused the plaintiff in the rectory, there was other Bridgeport Diocesan priests who lived at the rectory and who were present in the rectory. (Exhibit 55).

- As a result of the special relationship between the plaintiff and the Diocese, evidence of subsequent knowledge and awareness of sexual misconduct complaints is pertinent in establishing the defendants' duty to investigate and warn in order to prevent or alleviate harm.

Furthermore, evidence of subsequent complaints, policy and conduct would be admissible in accordance with Section 407 of the Connecticut Code of Evidence. Effective January 1, 2000, Connecticut has enacted a Code of Evidence that controls the admissibility of subsequent remedial measures in a negligence action. The Code of Evidence was adopted to place common law rules of evidence and certain statutory rules into an accessible body of rules. Section 407 provides that in negligence actions evidence of measures taken after an event is admissible when offered to prove controverted issues of ownership, control or feasibility of precautionary measures. *Id.*; Williams v. Milner Hotels Co., 130 Conn. 507, 509-10 (1934)(evidence of subsequent structural changes admissible for purposes of control); Quinn v. New York, New Haven & Hartford R.R., 56 Conn. 44, 53-54 (1887) (evidence of subsequent change in policy admissible). The commentary also suggests that the list of purposes for which subsequent remedial measures are admissible is illustrative not exhaustive. Therefore, this information would be admissible with respect to all non-negligence issues. See Baldwin v. Norwalk, 96 Conn.1, 8 (1921)(holding that subsequent remedial measures evidence may also be offered for impeachment purposes); Quin v. New York, New Haven & Hartford R.R., *Id.* at 54.

Evidence of subsequent measure taken by the Diocese in its handling of sexual abuse cases is admissible in order to show control, feasibility and for impeachment purposes. On December 14, 1990, the defendant Diocese issued a written policy with respect to sexual misconduct and abuse. (Exhibit 45). It is controverted as to whether or

- not this written policy was in effect in an oral form at the time of the plaintiff's abuse. Therefore the actual policy is admissible on the basis of feasibility. It demonstrates the Diocese's ability to institute a policy with respect to sexual misconduct of its priests. In other words, it will demonstrate what the Diocese could have done to control and supervise priests in order to prevent clergy sexual misconduct. It is further admissible on the issue of control as it relates to priests. For instance, while the defendants argue that the Diocese did not have control because the parish corporation owned the parish building, the policy establishes, that, indeed, the Diocese did exercise control. Here the plaintiff asks the Court to recall the testimony of Father Pcolka wherein he states that Bishop Egan issued a prohibition against having children off the first floor of the rectory buildings. (Exhibit 20 at 529-530). It will further be used for impeachment purposes as to whether the policy was in effect at the time of Jon Fleetwood's abuse.

Finally, the plaintiff claims that evidence of the Diocese's handling of prior and subsequent clergy sexual misconduct is relevant and admissible because it will be used to support the plaintiff's claim for punitive damages. Punitive damages are awarded when the evidence shows a reckless indifference to the rights of others or intentional and wanton violation of those rights. Collens v. New Canaan Water Co., 155 Conn. 477, 489 (1967) citing Hall v. Smedley Co., 112 Conn. 115, 119. In arriving at a determination regarding punitive damages, the court or jury may inquire into all circumstances surrounding the act in determining the question of damages. Connecticut Law of Torts, Section 174. The weight of evidence, as it relates to the historical account of the

- Diocese's handling of clergy sex abuse claims, illustrates a reckless disregard for the rights of others, including the plaintiff Jon Fleetwood. This account is a proper consideration for the trier of fact when assessing punitive damages.

In closing, the plaintiff submits that any prejudice suffered by the defendants as a result of admission of this kind of evidence or information is far outweighed by the probative value of the admission. In this regard, we ask this Court to be mindful of the nature of the damages claimed—permanent damage to the plaintiff's soul and spirit. The preclusion of this weighty evidence would result in a miscarriage of justice.

B. ADMISSION OF EVIDENCE REGARDING PRIOR AND SUBSEQUENT CLERGY SEXUAL MISCONDUCT WILL NOT INTERFERE WITH THE FIRST AND FOURTEENTH AMENDMENTS

The second basis asserted by the Diocese in support of its Motion in Limine is that the First and Fourteenth Amendments to the United States Constitution restrict the power of this court to act upon the "specifications of alleged negligence of the plaintiff's complaint in this case, which are predicated on the alleged reasonableness or appropriateness of the Diocese's internal priest personnel policies and practices."

Therefore, the Diocese argues that evidence of misconduct involving other priests should not be allowed in this case to evaluate the conduct or response of the Diocese when dealing with complaints of sexual abuse of children. Essentially, the Diocese is making

- the bald assertion that it is immune from any type of negligence action where the claim

- involves the response of the Diocese to the misconduct of its priests, even where the misconduct involves the sexual abuse of children.

On February 14, 1997, the Diocese of Bridgeport raised this First Amendment argument as part of a Motion for Summary Judgment it filed in the George Rosado v. Bridgeport Roman Catholic Diocesan Corporation matter. Specifically, the Diocese briefed the issue at pages five through six and pages thirty-five through thirty-seven of its Memorandum of Law. On July 31, 1997, the court, Thim, J. denied the Motion for Summary Judgment in its entirety including the First Amendment arguments.

On November 6, 1997, the defendant Diocese, in the George Rosado matter filed a pleading which it uniquely entitled, “Renewed Motion for Summary Judgment”. While entitled a “Renewed Motion” it would have been more appropriately entitled, “Motion to Reargue” as it did nothing more than reassert the same First Amendment arguments, previously made to Judge Thim, now to Judge Skolnick who was assigned to the cases in November 1997. On February 12, 1998, the plaintiff fully briefed the First Amendment issue in its opposition papers to the Renewed Motion for Summary Judgment and the plaintiff herein incorporates by reference the arguments raised therein. After oral argument, on June 2, 1998, the court, Skolnick, J. denied the “Renewed Motion” of the Diocese.

- In doing so, the Court rejected the argument of the Diocese that allowing the lawsuits to continue would result in the unnecessary entanglement of the courts in the

- internal affairs of the church by requiring a jury to evaluate the conduct of the Diocese when responding to complaints of sexual misconduct of priests with children. Rather,

review only requires the court to determine if the Church Defendants knew of the minister's inappropriate conduct, yet failed to protect third parties from him. The court is simply applying secular standards to secular conduct, which is permissible under First Amendment standards. ... The court's determination of an action against the defendants based upon their alleged negligent supervision of Pcolka would not prejudice or impose upon any of the religious tenets or practices of Catholicism. Rather, such a determination would involve an examination of the defendants' possible role in allowing one of its employees to engage in conduct which they, as employers, as well as society in general expressly prohibit. ... It is apparent to the court, that in determining whether the defendants were negligent in the supervision of Pcolka, it would be able to apply neutral principles of tort law to determine whether the defendants failed to act when **they knew or should have known of Pcolka's engaging in the alleged tortious conduct...** The court finds that the free exercise clause does not relieve the defendants from observing Connecticut General Statutes Section 17a-101, a general law not aimed at the promotion or restriction of religious beliefs ... To rule otherwise would result in declaring the state and its inhabitants unable to seek redress when clergy are accused of endangering the welfare and safety of minors regardless of state law in place to protect such minors from the very abuses alleged. This court believes that purely neutral secular principles or standards may adjudicate these plaintiffs' claims. Therefore, the court concludes that neither the establishment clause nor the free exercise clause of the first amendment preempt or prohibit this court from determining negligent supervision claims against the defendants. (Emphasis provided)

(Skolnick decision dated June 2, 1998, pages 5 through 17). In this respect, the Motion in Limine attempts to raise the entanglement issue for yet a third time in these series of cases.

- Judge Skolnick's decision provided a thorough analysis as to why the motion was being denied on both substantive and procedural grounds. Judge Skolnick held that

- Judge Thim had set the law of these cases when he had previously denied the motions on July 31, 1997. Citing CFM of Connecticut, Inc. v. Chowdhury, 239 Conn. 375, 403 (1996), Judge Skolnick held that it is the law of the case that the negligence counts against the Diocese of Bridgeport must be decided by a jury and that decision making process should not be further stalled by the repeated requests of the Diocese.

These prior court rulings do not stand in a vacuum. In fact, every judge in Connecticut who has been faced with an argument of First Amendment entanglement, as raised by a religious institutional defendant, has rejected the same. Judge Arterton also provided a most thorough analysis when denying the Diocese of Bridgeport's Motion for Summary Judgment in Martinelli, *supra* in a March 31, 1998 decision subsequently affirmed by the Second Circuit Court of Appeals. Likewise, Judge Covello in Nutt v. Norwich Roman Catholic Diocese, 921 F. Supp. 66 (D. Conn. 1995); Judge Rittenband in Doe v. Diocese of Bridgeport, *supra*; and Judge Aurigemma in Reynolds v. Zizka, 4 Conn. Ops. 396 (March 30, 1998) (case involving the Diocese of Hartford) all rejected arguments of First Amendment entanglement.

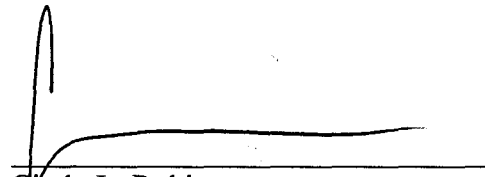
The decisions of these Connecticut jurists are in line with the vast majority of decisions across the country that have held that there is no First Amendment entanglement when a negligence action is brought against a religious institution where the claim is that the institution was negligent in supervising its ministry. See Smith v. O'Connell, 1997 U.S. Dist. LEXIS 18957 (D. of R.I. November 25, 1997)(previously provided); Bear Valley Church of Christ v. DeRose 928 P.2d 1315 (Colo. 1996) (after

trial on the merits of claims brought on behalf of a child alleging improper touching by a minister during course of counseling sessions, the court sustained verdicts in favor of the child against the church, holding that courts may review an injured third party's claim that a religious institution negligently supervised one of its employees without implicating or running afoul of the First Amendment); Moses v. Diocese of Colorado, 863 P.2d. 318 (Colo. 1993)(First Amendment does not grant religious organizations immunity from breach of a fiduciary duty, negligent hiring or negligent supervision of a priest); Konkle v. Henson, 672 N.E. 2d 450 (Ind. App. 1996)(First Amendment did not bar claims for negligent hiring and retention based on minister's sexual molestation of plaintiff); Isley v. Capuchin Province, 880 F. Supp. 1138 (E.D. Mich 1995)(First Amendment does not bar negligent supervision claim against institutional defendants where priest allegedly sexually abused plaintiff); Erikson v. Christenson, 781 P.2d. 383 (Or. App. 1989), rev allowed, 787 P.2d. 887 (1990), appeal dismissed, 817 P.2d 758 (1991)(First Amendment does not bar claim for clerical malpractice); Kenneth R. v. Roman Catholic Diocese, 654 N.Y. S. 2d 791 (A.D. 2 Dept 1997), cert denied, 118 S. Ct. 913 (1997)(denying Diocese's motion to dismiss claims of negligent supervision after child was allegedly sexually abused); F.G. v. MacDonell, 696 A. 2d 697 (N.J. 1997); Sanders v. Baucum, 929 F. Supp. 1028 (N.D. Texas 1996); Doe v. Dorsey, 683 So. 2d. 614 (FL Dist. C. App. 1996), review denied, 695 So. 2d 699 (FL 1996) (First Amendment does not protect Church from negligent supervision claims based on criminal conduct); Smith v. Privette, 1998 WL 67650 (N.C. App. Feb 3, 1998, previously

provided) (Appellate Court reversed, finding that Church may be held liable in negligence without First Amendment entanglement where church knew or should have known of minister's propensity).

WHEREFORE, the plaintiff requests that this Court deny the Motions in Limine in their entirety and, thus, permit the admission of prior and subsequent clergy sexual misconduct evidence and information at the time of trial.

THE PLAINTIFF




Cindy L. Robinson
Tremont & Sheldon, P.C.

This is to certify that a copy of the foregoing has been mailed postage prepaid to all counsel of record on this date as follows:

Joseph T. Sweeney, Esq.
Halloran & Sage
One Goodwin Square
225 Asylum Street
Hartford, CT 06103

Robert Golger, Esq.
Quatrella & Rizio
One Post Road
Fairfield, CT 06430



Cindy L. Robinson