

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
C.A. NO. HDCV2005-602

 THE ROMAN CATHOLIC BISHOP OF *
 SPRINGFIELD, a corporation sole, *
 *
 *
 *
 v. *
 *
 TRAVELERS PROPERTY CASUALTY *
 COMPANY, et al, *
 *
 *
 Defendants *

HAMPDEN COUNTY
 SUPERIOR COURT
FILED
 JAN 29 2007
Brian P. [Signature]
 CLERK-MAGISTRATE

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S EMERGENCY
 MOTION TO PERMIT PRODUCTION OF DISCOVERY UNDER A
 PROTECTIVE ORDER IN LIEU OF FURTHER IN CAMERA
REVIEWS AND APPELLATE REVIEW**

Defendants Travelers Property Casualty Company, Massachusetts Insurers
 Insolvency Fund, North Star Reinsurance Corporation, Underwriters at Lloyd's, London,
 Centennial Insurance Company and Interstate Fire & Casualty Company (collectively,
 "Defendants") hereby oppose Plaintiff's Emergency Motion to Permit Production of
 Discovery Under a Protective Order in Lieu of Further In Camera Reviews and Appellate
 Review (the "Diocese's Second Emergency Motion"). Although Defendants have not
 disclosed and will not disclose information produced during discovery in this case in such
 a way as to identify (or facilitate identification of) any victim of sexual abuse to the
 public or to the media – the stated concern which purports to be the focus of the
 Diocese's Second Emergency Motion – Defendants submit that the Diocese's Second

Emergency Motion seeks to impose a procedural mechanism that is inappropriate, unwieldy and entirely unnecessary.

The Diocese's Second Emergency Motion should be denied for the following reasons:

(1) The Diocese is already under an existing order requiring production of discovery without a protective order. The Court's January 3, 2007 order required the Diocese to answer certain of Defendants' interrogatories that the Diocese had declined to answer and to produce certain documents – either directly to Defendants or, in the case of certain documents, to the Court for *in camera* review – that the Diocese had withheld from production. In response, the Diocese filed Plaintiff's Emergency Motion to Enlarge Time to Respond to Court's January 3, 2007, Discovery Order (the "Diocese's First Emergency Motion"), which raised, *inter alia*, the argument that the Diocese had proposed producing certain of the subject withheld documents under a protective order in lieu of *in camera* inspection or the Diocese seeking appellate review from the Single Justice with respect to the January 3, 2007 Order.¹ Defendants strenuously opposed the Diocese's First Emergency Motion, except insofar as Defendants agreed that the Diocese be permitted an extension of time until January 15, 2007 to comply with the Court's January 3, 2007 Order, in large measure because of the many delays that had marred the discovery schedule to date in this case. Defendants also clearly informed the Court that Defendants had *rejected* the Diocese's proposal that the discovery subject to the January 3, 2007 Order be produced pursuant to a protective order. The Court's January 19, 2007

¹ At the time of the filing of the Diocese's First Emergency Motion, the Diocese indicated that it had *not* produced – either to Defendants or to the Court for *in camera* inspection – documents that related to the laicization of Priests of the Diocese. It is unclear whether, absent a protective order, the Diocese will continue to defy the Court's order that these documents be produced.

Order, which allowed the Diocese's First Emergency Motion, expressly stated that the Diocese "is ordered to *fully comply* with the discovery order on or before February 5, 2007, unless such order is stayed or vacated by an appellate court." Thus, the Court *sub silentio* rejected the Diocese's request to restrict the production of discovery by requiring such production to be undertaken pursuant to a protective order, and ordered the Diocese to "fully comply" with the January 3, 2007 Order absent such an order.²

(2) The Diocese's proposal would create more discovery disputes and further delay. The procedural mechanism that the Diocese proposes poses significant practical problems, none of which are addressed in the Diocese's Second Emergency Motion.³ In particular, the mechanism fails to address with specificity how information and documents designated as "Protected Material" can and should be used in depositions, filings with the Court, hearings before the Court or trial. Given the difficulty that has attended the mere production of such information and documents, Defendants foresee extensive conflict (with concomitant motion practice and resultant delay) associated with this issue.

As stated at the outset, Defendants have not publicized information or documents that relate to the identity of victims of the sexual abuse that underlies the insurance coverage issues in this case, nor do they intend to do so in the future. To the extent necessary and appropriate, Defendants will exercise their best efforts to excise names or

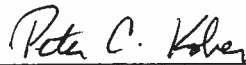
² In addition, the Diocese's proposed order contains inappropriate references to "privileged" materials, notwithstanding that the Court has already ruled that those materials are *not* privileged.

³ The Diocese's Second Emergency Motion suggests the protocol imposed for review of certain treatment records under Mass.R.Crim.P. 17 (a)(2), as recently revised in *Com. v. Dwyer*, 448 Mass. 122 139-146 (2006) is controlling with respect to discovery in a civil case. The mechanism afforded under Criminal Rule 17 (a) does not relate to pretrial discovery, nor is there any indication in *Dwyer* that the protocol imposed is applicable to civil cases. Finally, *Dwyer* applies only where documents are presumptively privileged; that is not the case here.

other potentially identifying information from their filings with the Court and otherwise refrain from disclosure of such information to the media. That particular issue, *i.e.*, the need to protect the identity of the *victims*, has never been the subject of controversy. However, the Diocese's Second Emergency Motion seeks to impose constraints on the discovery process – at a point where the Diocese is already under a mandate from the Court to produce information and documents that have been withheld on the basis of privilege and relevancy arguments that the Court has rejected – that are not appropriate, are unnecessarily awkward and may prejudice Defendants in their defense of this action.

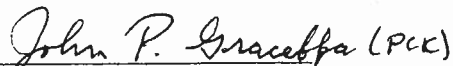
Respectfully submitted,

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