

COMMONWEALTH OF KENTUCKY  
BOONE CIRCUIT COURT  
CASE NO. 03-C1-181

JOHN DOE, et al.,  
PLAINTIFFS

v.

HON. JOHN POTTER

ROMAN CATHOLIC DIOCESE OF  
COVINGTON, et al.  
DEFENDANTS

PLAINTIFFS' PROPOSED TRIAL PLAN

I. INTRODUCTION

Class Counsel respectfully submit herein two alternative proposed trial plans for the trial of this class action litigation, for the Court's consideration. The first plan incorporates a common issues trial that includes a punitive damages determination *and* several bellwether plaintiff claims. The second proposal incorporates a common issues trial that includes a punitive damages determination but omits bellwether plaintiff claims. The proposed trial plans have been designed to address the specific facts of this case and are derived from Class Counsels' previous class action trial experience<sup>1</sup> and the guidance offered by the Manual for Complex Litigation – Fourth. In formulating these alternative plans, Class Counsel have been mindful of two primary considerations – expediency (a proper and reasonable use of the Court's time and resources) and simplicity (presentation of a coherent, structured, and understandable case to the jury).

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<sup>1</sup> The trial plans adopted by the Courts in the Beverly Hills Fire Litigation, In Re Fernald I and II and the Copley Pharmaceutical Litigation have been relied upon by Class Counsel in formulating the proposed alternative trial plans in this case.

## **II. LENGTH OF TRIAL**

Plaintiffs propose that the entirety of plaintiffs' case; including opening statements, can be presented in ten trial days, with two additional trial days needed for rebuttal. Defendant's case should require less than ten trial days.

In order to assure that the parties abide by the time restrictions placed upon them during trial, some Courts have used a "stop watch" approach. Plaintiffs are entitled to a specific amount of time during the entirety of trial to conduct direct and cross-examination and the defendant is entitled to a specific amount of time to do the same. Time used is kept contemporaneously to assure that no party exceeds its specific time limitations. Or, alternatively, time is kept during direct examinations and the party conducting cross-examination is not permitted to exceed the time spent on direct. The same rule would hold true for re-direct and re-cross examinations. Both of these approaches have proved successful in keeping a trial on track and on schedule.

## **III. A COMMON ISSUES TRIAL**

Class actions are premised on the existence of common issues of law and fact. It is expected that these common issues will be determined during a class action trial. By doing so, inconsistent or varying adjudications are avoided and, instead, the fair and efficient adjudication required by Rule 23 is obtained. This is a logical and reasonable approach in that, from the plaintiffs' standpoint, their claims are more expeditiously resolved and, from the defendants' point-of-view, closure is provided as to a multitude of claims. A defendant also benefits from the principles of *res judicata* and collateral estoppel.

Plaintiffs have identified a number of common issues that could be tried in this case, based upon and arising from the same body of evidence that would be presented during ten trial days. These common issues address the common policies, patterns and practices of the Diocese relevant to this particular case and applicable to the entirety of the plaintiffs' class. Although discovery has not been completed, and therefore some amendment or addition might ultimately be necessary, based upon the evidence to date, these are the common issues:

1. Whether the Diocese improperly allowed known pedophiles, sexual predators and physical abusers to continue to have contact with and to continue to have contact with minor children and/or tacitly approved the conduct of these individuals.
2. Whether the Diocese failed to report instances of sexual and physical abuse to the proper authorities as required by law.
3. Whether the Diocese failed to properly screen and/or supervise and/or discipline its priests.
4. Whether the Diocese concealed from the parents of victims and/or the public that children were being exposed to known pedophiles, sexual predators and physical abusers in its school and religious settings.
5. Whether the Diocese misrepresented to child sexual abuse victims that they had no legal recourse for their claims and/or that they had to submit to pastoral counseling monitored by the Diocese and psychological counseling monitored by the Diocese and/or improperly swore child sexual abuse victims to secrecy.

6. Whether the Diocese improperly withheld information regarding sexual abuse, physical abuse, and sexual misconduct by Diocesan priests against children from the appropriate law enforcement agencies.
7. Whether the Diocese failed to protect victims and potential victims from abuse, and further sexual abuse, physical abuse, and sexual misconduct.
8. Whether one or more of the foregoing acts or omissions of the Diocese constitute a breach of fiduciary duty.
9. Whether one or more of the foregoing acts or omissions of the Diocese were intentional and/or reckless and committed with the knowledge that severe emotional distress would be suffered by class members.
10. Whether one or more of the foregoing acts or omissions of the Diocese constitute an aiding and/or abetting of an assault and/or battery.
11. Whether one or more of the foregoing acts or omissions of the Diocese constitute fraudulent concealment.
12. Whether one or more of the foregoing acts or omissions of the Diocese constitute fraudulent misrepresentation.
13. Whether one or more of the foregoing acts or omissions of the Diocese constitutes ratification of the conduct of the pedophiles, sexual predators, and physical abusers.
14. Whether the pedophiles, sexual predators, and physical abusers are agents and/or employees and/or alter egos of the Diocese.

#### **IV. PUNITIVE DAMAGES**

Plaintiffs propose that the issue of an award of punitive damages to the entirety of the class (as opposed to multiple individual punitive damage awards) be determined during the common issues trial.

#### **V. BELLWETHER CASES**

During a class action trial, it is not uncommon for the claims of several individual class members to be tried contemporaneously with common issues. The claims are selected for trial upon the basis that they are representative of the claims of the class as a whole. The individuals who are selected are known as bellwether plaintiffs. While plaintiffs propose to present several bellwether plaintiff (class member) cases to be tried during the common issues trial in order to facilitate determination of such issues as proximate cause, injury and damages for the bellwether plaintiffs, the inclusion of bellwether cases is optional. It is suggested that approximately five bellwether plaintiffs be selected for this purpose. The primary benefit of including a limited number of bellwether cases is that the jury's findings as to proximate cause and damages of representative plaintiffs can provide the parties and the court with an indicator of potential exposure that can assist in the resolution of all claims.

#### **VI. SAMPLE JUROR INTERROGATORIES**

Well-framed, simple special juror interrogatories have proven in the past to be of great assistance to juries in common issues trials. Attached hereto as Exhibit "A" is an example of the type of special interrogatories that Class Counsel believe would assist a jury in this particular case. As to specific jury instructions, if the Court would

like Class Counsel to also provide sample, relevant jury instructions, Class Counsel will do so and supplement this Proposed Trial Plan.

## VII. CONCLUSION

Should the Court desire more specific information as to any aspect of this Proposed Trial Plan, such as citations to specific authority, actual jury instructions, or any additional explanation, Class Counsel will provide this.

Respectfully submitted,



Stanley M. Chesley (KY 11810)  
Robert Steinberg  
WAITE, SCHNEIDER, BAYLESS &  
CHESLEY  
1513 4<sup>th</sup> and Vine Tower  
1 West Fourth Street  
Cincinnati, Ohio 45202  
(513) 621-0267  
(513) 621-0262 (Facsimile)  
E Mail: [stanchesley@wsbclaw.cc](mailto:stanchesley@wsbclaw.cc)

Michael J. O'Hara (KY 52530)  
O'HARA, RUBERG, TAYLOR, SLOAN &  
SERGENT  
25 Crestview Hills Mall Road, Suite 201  
P.O. Box 17411  
Covington, KY 41017-0411  
(859) 331-2000  
E Mail: [mohara@ortlaw.com](mailto:mohara@ortlaw.com)

COUNSEL FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Plaintiffs' Proposed Trial Plan has been served by facsimile and by regular United States Mail, postage prepaid, upon Mark D. Guilfoyle, Deters, Benzinger & LaVelle, 2701 Turkeyfoot Road, Covington, KY 41017 and Carrie K. Huff, Mayer, Rowe & Maw, 190 South LaSalle Street, Chicago, IL 60603, this 25<sup>th</sup> day of February 2004.



A handwritten signature in cursive script is written over a horizontal line. The signature appears to be "J. D. [unclear]".

**EXHIBIT "A"**

**QUESTIONS FOR THE JURY**

1. Do you find the Diocese liable to the class members for negligence, as the Court has defined "negligence"?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. Do you find the Diocese liable to the class members for the tort of outrage, as the Court has defined the "tort of outrage"?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. Do you find the Diocese liable to the class members for aiding and abetting assault and battery, as the Court has defined "aiding and abetting assault and battery"?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. Do you find the Diocese liable to the class members for breach of fiduciary duty, as the Court has defined "breach of fiduciary duty"?

Yes \_\_\_\_\_ No \_\_\_\_\_

5. Do you find the Diocese liable to the abused class members for fraudulent concealment, as the Court has defined "fraudulent concealment"?

Yes \_\_\_\_\_ No \_\_\_\_\_

*If you answered "yes" to any of the previous questions, please answer the next questions. If you answered "no" to all of the previous questions, you should not answer Question 6 or Question 7.*

6. Do you find that the following Class Representatives have suffered and/or are suffering an injury that was proximately caused by the Diocese's conduct? If you answer "yes" for a particular Class Representative, please state what amount of damages, if any, will fully compensate that Class Representative for the injury that he/she has already suffered and will suffer in the future as a result of the Diocese's conduct. If you answer "no" for a particular Class Representative, please do not fill in any amount of damages for that Class Representative.

- |     |               |           |          |          |
|-----|---------------|-----------|----------|----------|
| (a) | [Insert name] | Yes _____ | No _____ | \$ _____ |
| (b) | [Insert name] | Yes _____ | No _____ | \$ _____ |
| (c) | [Insert name] | Yes _____ | No _____ | \$ _____ |
| (d) | [Insert name] | Yes _____ | No _____ | \$ _____ |



(e) [Insert name] Yes \_\_\_\_\_ No \_\_\_\_\_ \$ \_\_\_\_\_

7. Is the class entitled to an award of punitive damages against the Diocese?

Yes \_\_\_\_\_ No \_\_\_\_\_ If "yes," what amount? \$ \_\_\_\_\_