

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
CASE NO. 03-CI-00181

JOHN DOE, et al.

PLAINTIFFS

VS.

ROMAN CATHOLIC DIOCESE OF COVINGTON, et al.

DEFENDANTS

**ORDER
GRANTING PRELIMINARY APPROVAL
AUTHORIZING NOTICE OF PROPOSED SETTLEMENT
AND
SETTING FAIRNESS HEARING**

In this action ten individual plaintiffs (using pseudonyms), on behalf of themselves and others similarly situated, sue the Diocese of Covington for damages they sustained when, as minors, they were sexually abused by various priests. They allege the Diocese is liable because it was negligent in the hiring, supervision and retention of the abusive priests. No individual priest is named as a defendant. In addition to monetary damages, the complaint seeks injunctive relief. The Plaintiffs want the Diocese to institute specific procedures to minimize the likelihood of similar abuse in the future and insure that if abuse does occur it is reported. They also seek the public disclosure of records relating to past abuse.

In 2003 the case was certified (Judge Bamberger sitting) as a class action.¹ The class consisted of:

All persons who, while still minors at anytime during the period January 1, 1956 through [October 21, 2003], were subjected to acts of sexual abuse and sexual misconduct by priests or members of religious orders who, at the time of such abuse or misconduct, were assigned to or employed by the Diocese of Covington.

The parties have reached a settlement. They have filed with the Court a Memorandum of Understanding dated May 17, 2005 and have tendered a Supplement to May 17, 2005 Memorandum of Understanding, dated July 18, 2005 (a copy of which is attached) reflecting that settlement.

¹ The court did not consider certifying the class for injunctive relief pursuant to CR 23.02(b).

The case is now before the Court on the Joint Motion of Plaintiffs and Defendants for Preliminary Approval of Class Action Settlement. That motion moves the Court to approve a planned publication of a notice of the settlement under CR 23.05 and to schedule a fairness hearing for its final approval.

After reviewing the settlement as reflected in the Memorandum of Understanding, dated May 17, 2005, and the Supplement thereto, the Court finds that the settlement is within the range of settlements that could be approved and that it does not appear collusive or provide preferential treatment to the class representatives. Therefore, the Court preliminarily approves the settlement but reserves its final decision until after a fairness hearing, and will order that notice be given to the class of the proposed settlement.

In addition, the motion seeks to expand the present class to include persons abused by lay employees of the Diocese (in addition to those abused by priests) and those abused prior to 1956 (in addition to those abused after 1956).

In creating classes in a settlement situation a court may be less rigorous than in deciding how to structure a class in a case that does not have a pending settlement. If the class were properly designated for those abused after 1956 by religiously ordained employees of the church, the same logic would allow the inclusion of those abused prior to 1956 or by lay employees. Therefore, the Court will allow both proposed expansions of the class.

These expansions must be accompanied by the giving of notice complying with CR 23.03 for the creation of a class.

In addition, on June 9, 2005 this Court ordered a class census, which may be accomplished by the same publication program.

To summarize, the notice must do three things: it must comply with the requirements of CR. 23.05 regarding giving notice of the settlement; it must comply with the requirements of CR 23.03 regarding giving notice of class certification; it must perform a census.

After considering the motion and for the above reasons **IT IS HEREBY ORDERED:**

1. The Class is expanded so that after expansion it is composed of :

All persons who, while still minors at any time prior TO October 21 2003, were subjected to acts of sexual abuse and sexual misconduct by priests or other persons who at the time of such abuse or misconduct were assigned to or employed by the Diocese of Covington or any of its parishes or institutions.

2. The Court approves the proposed notice to be published (headed "If You Suffered Sexual Abuse ...") ("Short Form Notice") tendered with the motion provided it is amended to reflect the changes in class description and

- a. Describes the settlement as follows:

"The plaintiffs have reached a settlement agreement with the Roman Catholic Diocese of Covington, Kentucky under which the Diocese will advance \$40 million from its assets into a settlement fund. The Diocese is also pursuing a claim against its own insurance carriers in the Federal Court to compel them to both pay an additional \$80 million for the benefit of claimants into the settlement fund and to reimburse the Diocese for its \$40 million advance. The Diocese's claim against the insurance carriers is still pending and the outcome has not yet been determined.

"The parties have agreed on four categories of injury and specified the range of compensation to be paid in each category.

"The settlement fund will provide payments to claimants from the Diocese's \$40 million advance and from monies obtained from the Diocese's claim against its insurance companies. The maximum amount of monies in the settlement fund will be \$120 million. The Diocese will be reimbursed by the fund for any amounts recovered from its insurers that exceed \$80 million.

"The amount of the actual payment to a particular claimant will depend on (1) the total amount of the settlement fund, and (2) the number and nature of the total claims submitted and (3) the nature and extent of the individual claimant's injury. If any funds remain unused after all claims and expenses are paid in full, the remaining funds will be returned to the Diocese or its insurer.

"Under the agreement there will be no injunctive relief."

- b. Contain the following information regarding new class members:

"You have the right to exclude yourself from the class if (1) you were abused before 1956, (2) you were abused by someone other than a priest or member of a religious order, or (3) you were born after October 21, 1980. You may obtain an exclusion form from Class Counsel. Unless you exclude yourself by November 20, 2005, any judgment in this case, whether favorable or not, will include you and you may enter an appearance through counsel. To obtain addition information about your rights you may contact Class Counsel. Submitting a Census form does not prevent you from requesting exclusion or otherwise exercising the above rights. You must submit a timely Census form to participate in the settlement."

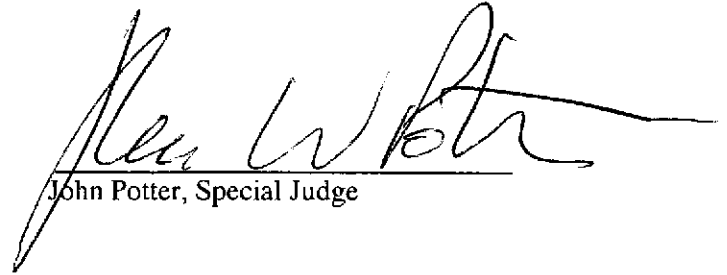
c. Regarding the Census, the following language:

“To preserve your rights to participate in the settlement or any other further proceeding, victims must take immediate action” and this must appear in bold type two times in the notice.

3. The Court approves the “Notice of proposed Class Action Settlement” (“Long Form Notice”) and it shall contain the language set out in sub paragraphs 2(a), 2(b) and 2(c) above.
4. The Short Form Notice shall be published:
 - a. In such newspapers and publications as described in Exhibit 3 to the Joint Motion filed on June 6, 2005.
 - b. (By agreement) the Diocese shall insure that the notices appear in all editions of the “Messenger” mailed before November 10, 2005 and use its best efforts to have it published at least once in other Catholic publications in the neighboring Roman Catholic Dioceses.
 - c. Through approximately 90 thirty-second advertisements over a two week period on local television stations played during popular television programs in four designated market areas: Cincinnati, Ohio; Louisville, Kentucky; Lexington, Kentucky and Bowling Green, Kentucky.
5. The Long form notice shall be mailed to every class member known to class Counsel.
6. Additional notice:
 - a. Every new class member who responds to the Census shall be given individual notice setting forth his opt-out rights and the procedure for opting-out.
 - b. Every class member who responds to the Census shall be sent a questionnaire to obtain information about his claim, which document shall plainly advise the member that it is a crime to knowingly submit a false claim.
7. Dates:
 - a. Except as set out in the supplement to the May 17, 2005 Memorandum of Understanding, class members are required to submit a Confidential Census Form on or before November 10, 2005 or be forever barred from asserting a claim against Diocese or otherwise participating in these proceedings.
 - b. New class members shall opt out on or before November 20, 2005.
 - c. The case is set for a status conference on November 21, 2005 at 10:00am

- d. Objections to the proposed settlement must be made in writing and filed with the Court on or before December 19, 2005.
- e. The Fairness Hearing is set for January 9, 2006 at 11:00am.

6. The Court retains jurisdiction over all further matters arising out of or connected with the settlement.




John Potter, Special Judge

cc: Stanley Chesley, Esq.
Robert Steinberg, Esq.
Mark Guilfoyle, Esq.
Carrie Huff, Esq.
Michael O'Hara, Esq.
Ann Oldfather, Esq.
Judge John Potter

CERTIFICATE

I, **PAT GUTZEIT**, Clerk of the Boone District/Circuit Court, hereby certify that I have mailed a copy of the foregoing order and notice to all parties hereto at their last known addresses or their counsel of record this 20 day of July, 2005.

PAT GUTZEIT
BOONE DISTRICT/CIRCUIT COURT
 D.C.