

**COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
CASE NO. 03-CI-00181
HON. JOHN W. POTTER**

JOHN DOE, et al.

PLAINTIFFS

vs.

ROMAN CATHOLIC DIOCESE OF COVINGTON, et al.

DEFENDANTS

DETAILED SUMMARY OF FINAL APPROVAL HEARING

I. INTRODUCTION OF ATTORNEYS & CLASS REPRESENTATIVES

- Stan Chesley - Waite, Schneider, Bayless & Chesley
- Bob Steinberg - Waite, Schneider, Bayless & Chesley
- Terry Goodman - Waite, Schneider, Bayless & Chesley
- Michael O'Hara - O'Hara, Ruberg, Taylor, Sloan & Sergent
- Ann Oldfather - Oldfather & Morris

9 of the 10 class representatives were present. Jane Doe was out of state on a long-planned trip for health reasons. Some of them wish to remain anonymous, but three of them would like to speak on behalf of the Class:

- Richard Roe
- Frieda Foe
- Gloria Goe

II. INTRODUCTION OF SPEAKERS TO BE CALLED LATER

- Professor Arthur Miller, a Harvard Law School professor who is a renowned legal expert on civil procedure
- Fr. Thomas Doyle, a priest who has been involved on behalf of victims in over 200 similar cases throughout the country and internationally and is familiar with settlements
- Alex Rose, a highly respected attorney from Louisville, Ky.
- Catholic Mutual Insurance Representative
- Carrie Huff, counsel for the Diocese

III. PURPOSE OF THE HEARING

To determine whether the settlement is fair, adequate, and reasonable.

Only 2 persons out of 382 filed objections to the settlement and those objections have been withdrawn. No new Class Member entitled to opt out of this case has decided to opt out. These facts alone demonstrate the fairness of the settlement.

IV. EVENTS THAT LED TO THE SETTLEMENT

PLAINTIFFS' CLAIMS:

The claims in this case are detailed in the Fourth Amended Complaint. Very briefly, the Plaintiffs allege that the Diocese engaged in an pattern or practice of negligent supervision of its priests, religious persons, and employees that lasted for decades and resulted in hundreds of minor children being subjected to varying degrees of sexual abuse.

HARD-FOUGHT CASE:

The settlement is the culmination of the hard-fought and contentious litigation in this case and in the consolidated case of Fischer v. Roman Catholic Diocese of Covington, which preceded this case.

DISCOVERY:

Class counsel engaged in extensive discovery before entering into settlement negotiations:

- investigation and document review that preceded the drafting the of the Complaint and the Amended Complaints;
- reviewing, cataloging and copying thousands of documents, including 16,886 documents of the Diocese of Covington and the Diocese of Lexington;
- imaging and optical coding thousands of additional documents, and creating searchable computer databases containing those documents;
- drafting extensive formal court document requests and formal questions (interrogatories) for the Diocese to respond to;
- reviewing the deposition testimony of Covington Diocese representatives in earlier cases;

- Reviewing the entire record of the 1993 Sector trial against the Diocese, including the testimony of all Diocesan officials
- legal research, briefing and drafting motions to compel the Diocese to produce information;
- legal research, briefing and drafting motions to issue Commissions for out-of-state depositions;
- retaining experienced investigators to dig out information. These included former FBI, Kentucky State police, and local police officers;
- retaining experts in the fields of Canon Law, church sexual abuse cases, insurance coverage issues, taxation of settlement proceeds, psychiatric issues affecting Class Members, statistical analysis, appraisal and valuation of real estate, and real estate title issues;
- issuing numerous subpoenas to individuals, organizations, and governmental agencies to assist in gathering the facts necessary to prosecute this case;
- conducting and videotaping numerous depositions of priests accused of child sexual abuse;
- Conducting over 700 interviews of witnesses, victims, and public officials
- Conducting over 500 detailed interviews of Class Members (most have been interviewed more than once). These interviews continue, and there are approximately 100 persons left to interview. All information contained in the interviews was entered into the confidential database for use in Claim Forms.
- Obtaining supporting documentation for Class Member's claims, where available, including school, church, orphanage, and medical records.

RESEARCH, BRIEFS AND ARGUMENTS:

Class counsel engaged in extensive legal research and briefed and argued complex legal issues, including Motions to Compel Discovery, Motion for Class Certification, Detailed Trial Briefs, and Responses to Potential Intervenors. All of these pleadings and memoranda are set forth in the docket of this case, which contains approximately 400 entries.

EXPERTS:

Class Counsel retained experts in the fields of Canon Law, insurance coverage, psychiatry, statistical analysis, appraisal and valuation of real estate, real estate title examination, and taxation of settlement proceeds.

COMMUNICATION WITH CLASS:

Class Counsel made a great effort to communicate with potential Class Members and to keep them informed:

PERSONAL CONTACT

Class Counsel, including Stan Chesley, Bob Steinberg, Mike O'Hara, and Ann Oldfather, have had over 500 personal lengthy meetings with Class Members, have conducted thousands of telephone conversations with Class Members, have exchanged hundreds of emails with Class Members, and have sent hundreds of letters to Class Members.

Beginning in January 2004 and continuing through December 3, 2005, Class Counsel have hosted eleven confidential meetings for Class Members and their families at private hotel facilities near the Airport in northern Kentucky. Class Counsel have also conducted confidential meetings with Class Members in the facilities of the Boone Circuit Court after hearings.

To the credit of our Class Members, none of them have breached the confidentiality of our meetings.

LITIGATION WEBSITE:

Class Counsel maintained a litigation website dedicated only to this case for the benefit of Class Members, which contained detailed information about the case, copies of pleadings, answers to questions, and updates on the latest events in the case; 31,288 individual visitor sessions were made to this website between December 19, 2003 and July 21, 2005, an average of 53 visitor sessions per day.

SETTLEMENT WEBSITE:

Class Counsel continue to maintain a settlement website that publishes questions and answers covering all subjects in the Long Form Notice, as well as Latest Updates on the case. It enabled a visitor to download a copy of the Court's Preliminary Approval Order, the Memorandum of Understanding, the Long Form Notice, and the Confidential Census Form. From July 22, 2005 to December 11, 2005, there were 7,333 individual visitor sessions on the website, an average of 51 visitor sessions per day.

TOLL FREE TELEPHONE SERVICE:

Beginning in July 2005, Class Counsel maintained and monitored a confidential toll-free telephone service dedicated only to this case. Class Counsel personally responded to all callers who identified themselves. Class Counsel sent them copies of the Long Form Notice advising them of their rights and a Census Form. In addition, there were numerous calls made directly to our switchboard.

IV. THE SETTLEMENT MEETS ALL STANDARDS FOR CLASS CERTIFICATION

NUMEROSITY

382 persons have filed Census Forms to date. Of these, 361 appear to meet the class definition. These Class Members reside in Kentucky and in 28 other states. Kentucky Courts have found that 74 class members creates numerosity (*Keeton v. City of Ashland*, 833 S.W.2d 894, 895 (1994)). Clearly numerosity is satisfied.

COMMONALITY

SINGLE COMMON ISSUE:

Kentucky Rule 23.02(b) requires that common issues exist. Only a single issue needs to be common to satisfy the rule.

B(3) CERTIFICATION (Ky. Rule 23.02)

In addition, in order to certify a class under Kentucky Rule 23.02(c), common issues must predominate over individual issues. The defendant's actions need not affect each class member in the same manner in order for those actions to form the basis of a common issue. In determining whether common questions predominate, the Court's inquiry should be directed primarily toward issues of liability, not damages. The existence of a common plan, pursuant to which a common course of conduct occurred, is a class issue.

COMMON ISSUES PREDOMINATE:

In this case, there is no question that there are common issues of liability and that these common issues predominate. Plaintiffs have submitted substantial evidence that the Diocese had a common course of conduct, detailed in the Fourth Amended Complaint and in Plaintiffs' Class Certification Reply Brief. The common course of conduct in this case is proven by the consistent actions of the diocese for the past 60 years and by the

admissions of its representatives in documents and depositions. For the purposes of class certification, however, this need not be proven. It is sufficient if the existence of the course of conduct alleged is a common issue.

TYPICALITY AND ADEQUACY OF REPRESENTATION

PLAINTIFFS' CLAIMS ARISE FROM SAME PATTERN OF CONDUCT AND ARE BASED ON THE SAME LEGAL THEORY:

Plaintiffs' claims are typical because they arise from the same practice or course of conduct that gives rise to the claims of other Class Members and because their claims are based on the same legal theory, despite substantial factual differences between class members' claims. The purpose of the typicality requirement is to align the representative's interests with those of the represented group, so that in pursuing his own claims, the representative will also advance the interests of the class.

DUPLICATION IF THERE WERE OVER 300 INDIVIDUAL ACTIONS:

If the class members in this case were to proceed individually in 360 parallel actions, they would argue legal and remedial theories identical to those advanced by the representatives. Each Plaintiff will have to prove essentially the same case.

EXPERIENCE OF CLASS COUNSEL:

Adequacy of representation is clearly established by the background of the Class Counsel in class action litigation, which is known to the Court, and by the committed efforts of the ten Class Representatives, who have diligently pursued this case on behalf of the class. The Court has observed the dedication of Class Counsel and the Class Representatives to this case.

CLASS CERTIFICATION IS SUPERIOR:

DUPLICATIVE LITIGATION:

Absent class certification, this Court and many other courts in other circuits of this commonwealth and around the country would have faced repetitive trials concerning the common factual and legal issues. The Diocese would also face these numerous trials. Without class certification, the Court could not have resolved over 300 time-consuming and expensive claims.

FIRST TO THE COURTHOUSE GETS ALL THE MONEY IN INDIVIDUAL CASES.

Class actions spread the benefit equally among all victims. This is especially important in this case, where psychological effects of abuse can prevent some victims from coming forward. In individual actions, the first persons to have their case heard can exhaust the funds of the Defendant and its insurers.

VICTIMS' FEAR OF INDIVIDUAL LITIGATION:

For many Class Members who insist on confidentiality for good reasons supported by the record of this case, being required to file individual actions would pose an insurmountable barrier to obtaining relief. A large portion of the Class would not have been compensated.

V. EXTENSIVE NOTICE AFTER CLASS CERTIFICATION

A very extensive notice was given of the class certification and of the right of Class Members to opt out by the deadline of Jan. 31, 2004. The notice was published numerous times nationally, regionally, and locally between October 31, 2003 and December 19, 2003. It was published in the major newspapers in Lexington, Ky., Louisville, Ky., Covington, Ky., and Cincinnati, Oh., as well as in USA Today. It was also published in 20 daily and 90 weekly Kentucky newspapers in all 118 counties in Kentucky. An opt out form was available in the newspaper notices as well as on the Class litigation website. Class counsel financed the cost of this publication notice, which was \$234,574.

VI. THE CLASS SETTLEMENT NOTICE WAS EVEN MORE EXTENSIVE

Following the Court's preliminary approval of the settlement, Class counsel followed and exceeded the Court's very specific notice requirements. The notice publications included:

- 141 separate publications of the newspaper notice nationally, regionally, and locally beginning July 22, 2005 and ending August 25, 2005;
- 213 publications of the television notice beginning August 15, 2005 and ending August 28, 2005 on major television stations in Bowling Green, Ky., Lexington, Ky., Louisville, Ky., and Cincinnati, Ohio;
- 523 publications of the radio notice beginning October 10, 2005 and ending October 30, 2005 on radio stations in Bowling Green, Ky., Lexington, Ky., Louisville, Ky., and Cincinnati, Ohio;

- Additional newspaper publications in the Sunday edition of eight regional newspapers on October 30, 2005.

Class counsel financed the cost of this settlement notice publication notice, which was \$244,018.

Class Counsel mailed Long Form Notices to every person who left contact information with the toll-free service and to every person who filed a Census Form. In addition, Class Counsel provided the Diocesan Chancellor with Long Form Notices and envelopes to mail to those calling the Diocese. The Long Form Notices, approved by the Court, provided all necessary information on this case. They also referred the recipient to the settlement website maintained by Class Counsel for the benefit of Class Members.

VII. THE SETTLEMENT MEETS ALL STANDARDS FOR FINAL APPROVAL

To qualify for approval, the plan of allocation of a settlement fund in a class action must be fair, reasonable and adequate and consistent with the public interest. (*United States v. Jones & Laughlin Steel Corp.*, 804 F.2d 348, 351 (6th Cir.1986); *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir.1983)).

Both the Kentucky and federal rules governing class actions require court approval of any proposed settlement of a class action case. (CR 23.05, see *also* FED. R. CIV. P. 23(e)). Settlement of class actions is favored because they consume substantial judicial resources and present unusually large risks for the litigants. Approval of a class action settlement is committed to the sound discretion of the trial court.

The procedure for granting Final Approval involves three steps:

1. The Court first determines whether the proposed settlement is to be given preliminary approval;
2. If the Court grants preliminary approval, notice is given to the members of the class advising of the terms of the proposed settlement and further advising that a Fairness Hearing will be held; and
3. Upon completion of the Fairness Hearing, the Court determines whether the proposed settlement is fair, reasonable and adequate.

The Court granted preliminary approval to the settlement on July 20, 2005. This Fairness Hearing is a forum for all Class Members to comment on the proposed decree.

In making the determination whether the settlement plan is fair, adequate and reasonable, the Court does not consider the merits of the controversy. Under applicable law, the Court must consider the following factors:

FIRST FACTOR: THE COURT MUST BALANCE THE PLAINTIFFS' LIKELIHOOD OF SUCCESS ON THE MERITS AGAINST THE AMOUNT AND FORM OF RELIEF IN THE SETTLEMENT:

Although Class Counsel are confident we could prevail at trial, the Class faced challenges on two primary fronts: liability and statute of limitations.

DIFFICULTY OF PROOF OF THE DIOCESE'S KNOWLEDGE OF THE ABUSERS:

One basis for holding the Diocese liable is our allegation that it knew, or should have known, that the perpetrator who abused a particular Plaintiff was a danger, and that the Church failed to protect that child by removing or supervising the abuser. During discovery, Class Counsel gathered evidence that the Diocese was aware that particular priests had abused one or more children. There was also circumstantial evidence that the Diocese should have known that a number of other priests were a risk to minors. However, as the discovery in the case has progressed, Class Counsel now have accusations made against more alleged abusers. There are now a number of accused abusers for whom there is no direct evidence of the Diocese's prior knowledge. This creates a risk that negligence-based claims could fail.

Moreover, a significant number of Class Members never told anyone that a priest had abused them *after* this litigation started. Thus, it is by no means certain that a jury would find in favor of every Class Member.

DIFFICULTY OF OVERCOMING THE STATUTE OF LIMITATIONS DEFENSE:

All Class Members share a common and potentially devastating obstacle: the statute of limitations. The Class relies on the 1998 Kentucky Court of Appeals decision against the Diocese in the

Secter case. The *Secter* court held that the Diocese's failure to report the prior abuse to authorities constituted an act of concealment triggering the tolling provision of KRS 413.190.

Three months after the *Secter* opinion, the Kentucky legislature enacted a statute of limitation for childhood sexual abuse claims (KRS 413.249). That statute lengthened the limitations period from one year to five years. This creates an issue as to the new statute of limitations modifies the *Secter* holding. If tolling does not apply, all Class Members claims might be barred. Throughout this case the Diocese relied upon the statute of limitations as a complete defense to all class claims.

CASES DISMISSED DUE TO STATUTE OF LIMITATIONS:

There are cases in 13 states and the District of Columbia, including Kentucky cases, where sexual abuse claims similar to the claims asserted by the Plaintiffs in this case have been unsuccessful. Nearly all of these cases involve claims that have been dismissed on the basis of the statute of limitations.

There have also been successful prosecutions and settlements of priest abuse claims against various Dioceses. Class Counsel believe we have developed a substantial record that would support successful litigation of the class claims in this case. However, the review of cases cited above, both within Kentucky and outside of this jurisdiction, make it clear that there is a substantial risk involved in any litigation asserting claims against a Diocese for sexual abuse injuries occurring a decade or more prior to institution of a lawsuit.

NEGATIVE AFFECTS OF LITIGATION ON THE VICTIMS:

The lengthy litigation process is having a negative and stressful affect on the victims. Most of the victims have been forced to confront an issue, on a daily basis, that they had attempted to avoid for decades. Many Class Members either resumed mental counseling they had ended years ago or entered into counseling for the first time to deal with the stress of this case

While Plaintiffs' Class Counsel was clearly negotiating the settlement value based on the relative strengths of the cases as a whole, defense counsel was just as clearly negotiating the value based on the argument that the majority of these cases would be dismissed on legal grounds.

To his great credit, Bishop Foys acknowledged past misconduct, apologized to the victims, and entered into this settlement, which provides very reasonable compensation to all victims.

SECOND FACTOR: THE COURT MUST CONSIDER THE COMPLEXITY, EXPENSE AND LIKELY DURATION OF THE LITIGATION, THE CURRENT STAGE OF THE PROCEEDINGS, AND THE AMOUNT OF DISCOVERY THAT HAS BEEN COMPLETED:

This is a complex, time-consuming case, which could involve over 100 witnesses, thousands of pages of documents, and a month-long trial. It could take an additional year or possibly two for the two-phase class action trial to be completed. If a class had not been certified, individual trials of even a small percentage of the Class Members could go on for a decade.

Appeal by the Diocese of any verdict against it was virtually certain, costing another two to four years or more after trial. These litigations would exhaust the funds available to compensate victims.

THIRD FACTOR: IF SIGNIFICANT DISCOVERY HAS BEEN COMPLETED, THE COURT SHOULD DEFER TO THE JUDGMENT OF EXPERIENCED TRIAL COUNSEL WHO HAVE EVALUATED THE CASE:

The case is mature and substantial discovery has been completed, enough so that they parties know very well the issues and risks in the case.

Trial counsel are very experienced in complex litigation and have evaluated the case at arm's length to produce the Settlement.

FOURTH FACTOR: THE COURT MUST CAREFULLY CONSIDER OBJECTIONS BY CLASS MEMBERS, BUT SHOULD NOT WITHHOLD APPROVAL MERELY BECAUSE SOME MEMBERS OBJECT, AND MAY NOT WITHHOLD APPROVAL SIMPLY BECAUSE THE BENEFITS FROM THE AGREEMENT ARE NOT WHAT A SUCCESSFUL PLAINTIFF WOULD HAVE RECEIVED IN A FULLY LITIGATED CASE:

At the time of the hearing, two objections that had been filed earlier were withdrawn. Thus, there are no objections to the settlement. The lack of objections demonstrates the validity of the settlement.

FIFTH FACTOR: THE COURT MUST DETERMINE WHETHER THE SETTLEMENT IS CONSISTENT WITH THE PUBLIC INTEREST

The class action provided the ability for victims to participate in recovery while still keeping their identity confidential, a very important consideration for most victims.

Class Counsel understand that this case is being used as a model for settlement of church abuse cases in other jurisdictions.

It is very much in the public interest to rectify the wrong done to the victims. The class action provided a forum to resolve these very sensitive claims.

Settlement of this case will reinforce the obligation of religious organizations and schools to encourage the reporting of incidents of sexual abuse of children entrusted to their care. The very public nature of the class action and the settlement approval process accomplishes this much better than private individual settlements.

The acknowledgement and apology of the Diocese to the victims and its dedication to rectifying the wrong is in the public interest.

The settlement gives the opportunity for all involved, the victims, the church, the families and the community to put an end to this tragic chapter in the history of the Diocese.

VIII. SUMMARY OF THE SETTLEMENT

EXPANDED CLASS:

The settlement provides substantial benefits to all persons who were minors and were abused at any time by any priest, religious person, or anyone else assigned to or employed by the Diocese or any of its parishes or institutions.

This is an expanded definition of the original class, and persons fitting the expanded definition were permitted a new opt out period.

BENEFIT FOR CURRENT AND RECENT MINORS:

The settlement gives specific attention to persons who are now minors or who were recently minors, because Class Counsel recognize these persons may be unable to come forward at this time. Class Members who were born after October 21, 1985 and failed to submit a timely Census Form will still be permitted to submit a claim at any time before the earlier of their 23rd birthday

or November 10, 2015. A Special Minors Fund is created consisting of 5% of the settlement proceeds for claims filed by these persons. The fund must be placed in escrow for a period of ten years following Final Approval of the settlement. All awards from the fund must be made in accordance with the settlement matrix categories.

SPECIAL COUNSELING BENEFIT:

Five percent of the settlement proceeds will be set aside in a Special Fund to pay for mental health treatment and related medications for any person who was sexually abused by a priest, religious person, seminarian, teacher, or anyone else employed by or under the supervision of the Diocese or any of its parishes or institutions. These funds are available regardless of whether the abused person is eligible to participate in the Settlement and regardless of whether the person has submitted a claim in this case.

SETTLEMENT MATRIX CATEGORIES:

The Settlement establishes four matrix categories, depending on the level of abuse suffered. Each category provides a range of monetary recovery. The compensation to be paid to a person within the monetary range in each category is determined by considering six factors:

1. The nature of the abuse;
2. The duration of the abuse, including the number of days, months, or years as well as the number of incidents of abuse;
3. The age of the child at the time of abuse - the younger the child, the higher the range level
4. Whether drugs, alcohol, or pornography was used to lessen the victims' resistance;
5. Particular heinous circumstances or behavior beyond the sexual act itself;
6. Whether the abused child was mentally retarded, a slow learner, or otherwise more frail and susceptible to abuse than the average child.

Category One provides payments from \$5,000 to \$45,000.

Category Two provides payments from \$15,000 to \$150,000.

Category Three provides payments from \$150,000 to \$350,000.

Category Four provides payments from \$300,000 to \$450,000.

In the two highest categories, Categories 3 and 4, the Class Member is eligible to apply for additional compensation from a Special Fund For Extraordinary Injuries. Eighteen percent of the Settlement is to be set aside to be placed in this Fund for persons whose injuries are determined to be Extraordinary as compared with other claims in Categories 3 and 4. The maximum amount that can be awarded to each person from this Special Fund is \$550,000. Persons who qualify for the Extraordinary Injury Fund may be entitled to up to \$900,000 compensation in Category 3 and up to \$1 million in compensation in Category 4.

Settlement Administrators, to be agreed to by the parties and approved by the Court, will review all claims and administer payments under the settlement.

ATTORNEYS FEES, EXPENSES, AND ENHANCEMENT AWARDS:

The Settlement provides an award of attorney's fees to Class Counsel of up to 30% of the settlement funds, subject to approval of the Court and reimbursement of reasonable expenses. This matter will be decided after the Court has ruled on Final Approval of the Settlement. Class Counsel also intend to request an enhancement of the award for the Class Representatives, who have worked very hard on behalf of the Class.

THE SETTLEMENT MATRIX CATEGORIES COMPARE FAVORABLY WITH SETTLEMENTS THROUGHOUT THE COUNTRY:

The proposed Settlement is the result of hard-fought litigation and was achieved only after extensive and vigorous arm's-length negotiations by highly experienced counsel on both sides.

The recoveries specified in the matrix categories compare very favorably to awards and settlements made in similar cases throughout the country.

Class Counsel believe that the funding of the settlement, based on the number of persons actually filing Census Forms, is sufficient to cover the anticipated payments in the matrix categories.

When the Memorandum of Understanding was reached, Class Counsel believed, and had informed the Court at various hearings, that the class would consist of far more individuals. After receipt of all Census Forms, Class Counsel find that the Class, while large, is far smaller than we originally estimated. This has actually been helpful, because there was a lack of insurance resources to fund a \$120 million settlement. Getting all

available funds without forcing the Defendants into bankruptcy benefits the class. If we proceeded to trial and the verdict forced the insurers into bankruptcy, the Class Members would have to stand in line with many other creditors and their recoveries would clearly be less than they are in this settlement.

Negotiations with the insurers were very hard fought and lengthy. Class Counsel reached an agreement with Fireman's Fund on Friday, January 6, 2006, and we reached an agreement with Catholic Mutual on Sunday evening, January 8, 2006. That agreement was signed at 9:45 a.m. on the morning of the Final Hearing, January 9, 2006.

Class Counsel have arrived at a settlement fund of \$85 million, which we believe is sufficient to cover the claims of all Class Members according to the matrix categories. All other terms of the settlement remain as stated in the parties' Memorandum of Understanding.

FUNDING OF THE SETTLEMENTS

The settlement is funded from 3 sources: \$40 million from the Diocese, \$40 million from Catholic Mutual Insurance Companies and coverage of the 48 claims within Fireman Fund's coverage period of 12 months, which is the equivalent of about \$5 million in coverage. All of these funds are to be placed in an interest-bearing escrow account for the benefit of the Class.

A portion of the Catholic Mutual contribution, \$25 million, consists of interest bearing notes, payable at \$5 million per year. Catholic Mutual is obligated to promptly seek reinsurance proceeds from its reinsurers once claims are filed and to promptly deposit these sums in the Escrow Account. The reinsurance proceeds will cancel the equivalent amount of notes; therefore, the funds should be available at an earlier time than the installment periods.

ANALYSIS OF THE SETTLEMENT

As of January 9, 2006, Class Counsel have received 382 Census Forms (13 were filed after the deadline imposed by the Court). At least 21 persons are not eligible to participate in this case because the abuse occurred elsewhere or because the claimant opted out of this case. A review of the information Class Counsel have received regarding the remaining claims indicates to us that there are some additional claims that will probably be rejected by the Settlement Administrator due to lack of credibility.

Assuming there will be about 340 valid claims in the various categories, a settlement fund of \$85 million produces an *average* settlement for the Class Members of \$250,000. This does not mean each person will receive \$250,000, but that is the average spread out among the class. Some people will receive far more, some will receive far less. This average payout compares very favorably with other settlements involving a significant number of claimants.

EXAMPLES OF OTHER SETTLEMENTS:

- 2002 settlement - Boston Archdiocese: 86 victims received \$10 million, an average of less than \$117,000.00 per victim.¹
- 2003 settlement - Boston Archdiocese: 552 victims received \$85 million, an average of about \$154,000.00 per victim.²
- Between 1994 and 2001, the Boston Archdiocese paid 149 victims \$21.2 million, an average of about \$142,000 per victim.³
- 2003 settlement - Manchester, New Hampshire Diocese paid \$6.5 million to 61 victims, an average of less than \$107,000.⁴
- 2004 settlement - Archdiocese of Cincinnati paid \$3 Million to an estimated 80 victims, an average compensation of less than \$38,000.00.⁵
- 2004 settlement - Altoona-Johnstown, PA Diocese paid \$3.71 million to 11 victims, an average of less than \$170,000.00 per victim.⁶

¹ *Baltimore Sun*, September 20, 2002.

² *King et al., v. Roman Catholic Diocese of Boston*, Superior Court of Massachusetts, Suffolk County, No. 02-2749, 2003 WL 22345247 (2003).

³ *Baltimore Sun*, August 13, 2003. The *Baltimore Sun* also reported in its September 10, 2003 edition that there had been awards of about 85 million dollars in more than 500 lawsuits against the Boston Archdiocese, or about \$170,000.00 per claimant.

⁴ *John Does 1-61. V. Diocese of Manchester*, Superior Court of New Hampshire, Hillsborough County, 2003 WL 22067835 (N.H.Super. 2003).

⁵ *Cincinnati Enquirer*, August 31, 2004.

⁶ *Brian J. Gergely, et Al. V. Diocese of Altoona-Johnstown, Bishop Joseph Adamec*, Court of Common Pleas, Blair County, Pennsylvania, No. 3003-GN-627, 2004 WL 1516336 (2004)

KENTUCKY SETTLEMENTS:

- The *Cincinnati Enquirer* reported in 2003 that, since 1989, the Covington Diocese paid 205 victims a total of \$14.3 million, an average of about \$70,000.⁷
- After this case was filed, the *Cincinnati Post* reported that the Covington Diocese settled 43 claims for \$8.59 million, an average of less than \$209,000.
- In Louisville, in 2003, 240 victims were paid \$25.7 million, an average of less than \$108,000.00 per victim.⁸

While there have been some priest abuse settlements yielding a larger average payment than the \$250,000.00 per victim, particularly in California where the statute of limitations was abrogated, the majority of settlements have produced a much lower average compensation.

WITNESSES TESTIFYING ON BEHALF OF THE SETTLEMENT:

Professor Arthur Miller of the Harvard Law School, Cambridge, MA, is a nationally renowned expert on the legal rules of procedure and class action lawsuits. He is the author of a 30-plus-volume work on Federal Civil Procedure, which is the standard reference for all attorneys. Professor Miller was appointed by the Supreme Court to be the Reporter for the Federal Rules of Civil Procedure at the time the class action rule was written. At the January 9, 2006 hearing, he explained why the settlement is very advantageous to victims and why it should be approved.

Professor Miller explained that the purpose of a class action is efficiency and equality. Where there is difficult, protracted and emotional litigation, it gives each person who otherwise would not file an individual lawsuit the right to his/her day in Court. He said that most Class Members in this case could not participate in individual cases due to emotional, financial, or privacy reasons. Most could not afford to hire top quality attorneys to handle their cases. The last thing victims want the justice system to do is inflict further pain on them through individual cases.

He said that the Class Action is the best method to fully and fairly compensate all victims, without favoring one victim over another. All persons will share in the settlement in an equal manner, according to the type of abuse they suffered. The matrix categories serve to make a fair class settlement even fairer, because they account for individual differences among

⁷ *Cincinnati Enquirer*, February 21, 2004.

⁸ *Turner v. Roman Catholic Bishop of Louisville*, Jefferson Circuit Court, No. 02-CI-2093, 2003 WL 22067896; and see, *Louisville Courier Journal*, June 11, 2003.

the Class Members. In individual litigation, the first persons to file suit can exhaust the assets of the Defendant, leaving nothing for those who come later.

In a Class Action, the Judge has a legal obligation to act as the guardian for the Class, to make sure the Settlement is fair. The Class Counsel also have a legal obligation to do the best job possible for each Class Member without favoring one over another. The duty of Class Counsel to the Class is a higher legal duty than individual attorneys have to their clients.

Professor Miller stated that the attorneys who represent the Class in a large case such as this one must have special legal skills and the ability to deal with and to communicate with large groups of people on an individual basis. In his opinion, the quality of the attorneys in this case is excellent - he stated the Class received "the best of the best." He felt that Class Counsel had the best interests of all victims at heart by setting up a process where all can share equally in an a fair settlement.

He stated that it was extremely unusual that, at the time of hearing, there were no objections to the settlement - that indicated it was fair. The settlement and the matrix categories are fair, reasonable, and adequate. He said the amounts paid to victims would be higher than paid in many other U.S. jurisdictions in similar cases. It gives many victims who would not have money to fight a high-profile court battle their day in court without new emotional scars from public testimony. He stated that, in a situation where many victims had not told even their spouses, parents or children about the abuse, many would be reluctant to come forward as individuals, and the Class Action let them pursue their claims and still maintain privacy.

He believed the risks of proceeding with litigation were great, including the risk of having all cases dismissed due to the statute of limitations. The Settlement avoids these risks for all Class Members.

Professor Miller said the use of notes to pay part of the settlement by Catholic Mutual Insurance Company was an acceptable device to obtain a large settlement fund. He said the problem in a case such as this is to provide fair compensation to the Class Members without bankrupting the Defendant and its insurers. If they were forced into bankruptcy, the Class would lose out - there would be little left for Class Members to recover after lawyers fees and all debts were paid. Bankruptcy also causes serious delay in receiving any payment. Requiring individual cases instead of allowing the Class Action would exhaust the funds of the Defendant and its insurers in paying their lawyers' fees and court costs, leaving less for the victims.

He believed that it was fair for Class Counsel's attorney's fees to be paid from the Class Members' awards. That is the only way the system could operate.

The contingency fee (in this case, 30% is requested) is based on the risk that highly skilled attorneys assume so that people who cannot afford attorneys can get excellent representation.

Professor Miller concluded by stating that the Settlement was fair, reasonable, and adequate, especially in view of the risks of proceeding with litigation. He felt it is very important for Class Members, the Church, and the northern Kentucky community to bring finality to this dispute.

Fr. Thomas Doyle is a Dominican Priest who is recognized nationally and internationally as an expert on church sexual abuse. He holds a PhD in Canon Law and five Masters Degrees. He has previously worked with the Vatican office in Washington, D.C., in Chicago and in Boston. In 1985, the Church assigned Fr. Doyle to do a study on sexual abuse of minors. The study revealed an enormous problem, and he warned the Church about the extent of the problem at that time. Since then, he has dedicated his career to the support of victims, both through legal processes and through pastoral processes. He has participated in over 200 cases in every state in the United States and in many foreign countries, including Ireland, Scotland, England, Canada, Australia, Mexico, Spain, and Israel. He recently testified before the Ohio legislature in favor of a law declaring a moratorium on the Ohio statute of limitations for church sexual abuse claims. He also testified before the Philadelphia, PA grand jury, which recently issued a detailed report on church sexual abuse in that jurisdiction.

He stated it was common for victims in cases such as this to avoid telling their parents, spouses, or children about their injuries. "We cannot begin to understand the horrendous nature of what this is all about," he said. "There is no amount of money - no amount - that can heal the spiritual damage."

He believed that many more victims will come forward due to the confidentiality that the Class Action provides. That is one reason he believes the Class Action is the best device to resolve these disputes. He said the Covington Diocese Class Action is the first of its kind in the nation. In answer to a question from the Judge, Fr. Doyle stated that despite the additional victims who have come forward due to the Class Action, they still are the minority of the number of victims that exist. He said many victims will never come forward due to fear, embarrassment, self-guilt, and other emotional reasons.

Fr. Doyle said the settlement of this case compares favorably to those with which he is familiar and it provides the addition benefit of bringing final resolution to a decades-long problem in this community.

Alex Rose, a highly respected attorney from Louisville, KY who specializes in personal injury cases, testified that the Settlement is an excellent result for Class Members, considering the values provided in the Settlement Matrix

Categories and the litigation risks that have been avoided. He said the fees requested by Class Counsel are less than contingency fees typically requested in smaller individual cases.

Douglas W. Yenzler, Chief Financial Officer of Catholic Mutual Insurance Company, testified about its \$40 million commitment to the settlement. It consists of \$15 million in cash and \$25 million in notes payable in \$5 million installments over 5 years. The cash will be deposited in an escrow fund for the benefit of the Class, where it will earn interest. The notes will be paid with interest.

This case is the largest settlement Catholic Mutual has ever made. He furnished financial statements for Class Counsel to review before agreeing to the settlement. Catholic Mutual was forced to liquidate investments. It has reinsurance, which is insurance with other insurance companies. It can apply for this reinsurance once claims are filed, reinsurance payments will promptly be deposited in the Class escrow fund, and the equivalent amount of notes will be cancelled. He believes the complete settlement amount will be funded more quickly by doing this.

Carrie Huff, attorney for the Diocese, testified in support of the settlement. She stated it was not a grudging settlement, but something Bishop Foys wanted to do for the victims. She compared it to other settlements the Diocese has made by providing various figures. She was also in favor of final resolution for the parties.

Three Class Representatives testified using their pseudonyms: Frieda Foe, Gloria Goe, and Richard Roe. Their testimony was extremely moving - there was complete silence in the Courtroom when they spoke. They supported the Settlement and the work done by Class Counsel, and one of them congratulated the Diocese for stepping up to do the right thing by settling this case.

WITNESSES TESTIFYING AGAINST THE SETTLEMENT

No witnesses testified against the settlement, and no objections to the settlement existed at the time of the hearing.

CONCLUSION

Judge John W. Potter stated he would carefully consider the entire matter and would issue a written decision in approximately three weeks.