DISCUSSION

I. RELEVANT EVIDENTIARY STANDARDS

In Massachusetts, all relevant evidence is admissible unless subject to an exclusionary rule. See Lentz v. Metropolitan Property and Cas. Ins. Co., 437 Mass. 23, 26 (2002); Poirier v. Plymouth, 374 Mass. 206, 210 (1978). Evidence is relevant if it renders the desired inference more probable than it would be without evidence, see e.g., Santos v. Chrysler Corp., 430 Mass. 198, 211 (1999); Poirier, 374 Mass. at 210; Tilton v. Union Oil Co. of California, 56 Mass. App. Ct. 901, 902(2002), or if it "'tends to establish or at least shed light'" on an issue. See e.g., Kobico, Inc. v. Pipe, 44 Mass. App. Ct. 103, 109 (1997) (quoting Adoption of Carla, 416 Mass. 510, 513 (1993)); Foreign Car Center, Inc. v. Salem Suede, Inc., 40 Mass. App. Ct. 15, 16 (1996). Relevance is a broad concept, see Foreign Car Center, Inc., 40 Mass. App. Ct. at 16, and need not bear directly on ultimate fact in a case; but rather, is sufficient if it constitutes a link in a chain of proof. See Liarikos v. Mello, 418 Mass. 669, 672 (1994).

II. EVIDENCE OF THE RCAB'S PRACTICES AND POLICIES CONCERNING SEXUALLY ABUSIVE PRIESTS OTHER THAN FATHER SHANLEY IS ADMISSIBLE TO REBUT THE DEFENDANTS' KEY DEFENSES

1. Section 85K.

Massachusetts General Laws Chapter 231, Section 85K provides, in relevant part:

> It shall not constitute a defense to any cause of action based on tort brought against a corporation, trustees of a trust, or members of an association that said corporation, trust, or, association is or at the time the cause of action arose was a charity; **provided, that if the tort was committed in the course of any activity carried on to accomplish directly the charitable purposes of such corporation, trust, or association, liability in any such cause of action shall not exceed the sum of twenty thousand dollars exclusive of interest and costs**.

MASS. GEN. LAWS Ch. 231, § 85K (emphasis supplied). Certainly, based on the statutory language of Section 85K itself, there is no charitable immunity under Massachusetts law. See id.; Conners v. Northeast Hosp. Corp. 439 Mass. 469, 478-79 (2003) (first clause of first sentence of Section 85K abolishes charitable immunity). In turn, whether a party's activity accomplishes directly a charitable purposes, and therefore falls within the qualified limitation of liability contained in the second clause of the first sentence of Section 85K, "is a question of fact," according to the SJC. See Conners, 439 Mass. at 478-79; Keene v. Brigham and Women's Hosp., Inc., 439 Mass. 223, 239 (2003). As a result, for the RCAB to benefit from the safe harbor provided by Section 85K, the RCAB must prove that the activity proximately causing the Plaintiffs' harm was carried on to "accomplish directly" the RCAB's charitable purposes. See Keene, 439 Mass. at 239 (explaining that Section 85K must be plead as an affirmative defense and stating that "the burden [is] on the defendant to prove both that it is a charitable

organization and that the tort complained of fell within the range of activities covered by the cap.").

For example, in McKay v. Morgan Memorial Coop. Indus. & Stores, Inc., the SJC reversed a directed verdict for the defendant (a charitable corporation) because the evidence did not warrant a ruling as a matter of law that the defendant's activities were carried on "to accomplish directly the charitable purposes of the corporation[.]" See 272 Mass. 121, 123-24 (1930); see also, Conners, 439 Mass. at 479 & n.7 (citing McKay as support for same). After juxtaposing activities "primarily commercial" in nature, where there was liability for negligence, with those activities carried on accomplish directly a charitable purpose with incidental revenue yielding benefits, where there was no liability for negligence, the SJC explained:

> On the evidence, however, the jury would have been warranted in finding that the activities of the defendant at the store in which the accident occurred were commercial in character, being carried on primarily to obtain money to be used for the general charitable purposes of the defendant and not to accomplish directly any specific charitable purpose to which the receipt of money was merely incidental, and, consequently, that the defendant was subject to the ordinary rules of liability.

See id. at 126 (internal quotations omitted). The protections afforded by Section 85K must be confined narrowly. See Conners, 439 Mass. at 473. The Legislature enacted Section 85K to balance the desirability to protect charitable corporations with the interest of persons harmed by the tortious acts of those charitable

corporations. See id. at 473 (citing and quoting 1971 House Doc. No. 5976 (Governor Francis W. Sargent's address to Legislature proposing Section 85K), which further quoted recommendations of the Forty-Sixth Annual Report of the Judicial Council, 1970 House Doc. No. 723). Section 85K "embodies the 'balance' sought by the Governor." See id.

In that regard, the underlying purpose of the abrogated doctrine of charitable immunity and, in turn, the charitable limitation of liability contained in Section 85K, **was and is to protect a charity's assets because, in essence, a charity holds those assets in trust for the benefit of the public**. See Conners, 439 Mass. at 473 (explaining that by enacting Section 85K, the Legislature pursued its objective of preserving charitable assets); Keene, 439 Mass. at 238 (describing Legislative purpose and explaining SJC "bound to give § 85K the scope intended by the Legislature.").[17] Consequently, the history, purpose, and judicial interpretations of Section 85K yield the following syllogism that the Court may use to determine the applicability of the charitable limitation of liability contained in Section 85K:

1. An activity that benefits the public is an activity carried on to "accomplish directly" a charitable purpose;

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[17] In Keene, the SJC reversed a Court-imposed (Connelly, J.) sanction striking Section 85K as an affirmative defense as a result of defendant's failure to produce discovery. See 439 Mass. at 224 and 239 (there was "no basis for striking the charitable cap as a sanction . . .," especially where "both parties agree that the alleged malpractice occurred when the defendant was performing its charitable activities.").

2. An activity carried on to "accomplish directly" a charitable purposes deserves protection under Section 85K;

3. Therefore, an activity that benefits the public deserves protection under Section 85K.

See Conners, 439 Mass. at 473 (describing purpose of Section 85K); Keene, 439 Mass. at 239[18] ("a charitable corporation must be engaged in its charitable purpose to enjoy the benefit of the cap, just as, at common law, the protection of charitable immunity only extended to negligence committed in the course of activities carried on to accomplish charitable activities); see also, Bob Jones Univ. v. U.S., 461 U.S. 574, 591 (1983) (historically, a charitable activity is one which provides public benefit and is neither illegal or violative of established public policy); Grueninger v. President and Fellows of Harvard College, 343 Mass. 338, 339-40 (1961) (charitable immunity is not available where the activities are not charitable or are not within the charitable purposes of the corporation); Heinrich v. Sweet, 118 F. Supp. 2d 73, 91-92 (2000) (finding that a doctor's acts of conducting human experiments on the terminally ill were not charitable, regardless of the good faith of the doctor and hospital), jury verdict vacated on other grounds, 308 F.3d 48 (2002).

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[18] In Keene, the SJC reversed a Court-imposed (Connelly, J.) sanction striking Section 85K as an affirmative defense as a result of defendant's failure to produce discovery. See 439 Mass. at 224 and 239 (there was "no basis for striking the charitable cap as a sanction . . .," especially where "both parties agree that the alleged malpractice occurred when the defendant was performing its charitable activities.").

It is under those benchmarks that the RCAB's affirmative defense will fail. Plainly, as outlined in detail above, the RCAB had a practice or policy to protect alleged child molesters and keep them in ministry where they would have continued, unsupervised access to children. See supra. That activity, which proximately caused the Plaintiffs' injuries, not only was and is contrary to asserted RCAB purposes, but also was and is antithetical to any known public benefit. See Gagne v. O'Donoghue, 1996 WL 1185145, * 7 (Mass. Sup. Ct., June 26, 1996). It would be extraordinarily inappropriate for the Defendants to receive the protections of Section 85K, particularly in light of evidence establishing that the Plaintiffs were never informed of the RCAB's unlawful policies and practices of allowing child molesters to have access to children. No matter in what capacity the Defendants claim they were acting, it seems incongruous to find that their actions were carried on directly to benefit the public, i.e., to "accomplish directly" the RCAB's charitable purposes, whatever those purposes may be. If the RCAB is allowed to allege Section 85K as an affirmative defense, the Plaintiffs are entitled to present evidence to rebut that affirmative defense in its totality.

2. Statute of Limitations and Proximate Causation

In Massachusetts, a tort action must be brought within three years after the cause of action accrues. See MASS. GEN. LAWS Ch. 260, § 2A. A cause of action "accrues" when a plaintiff has (1) knowledge or sufficient notice that he or

she suffered appreciable harm and (2) knowledge or sufficient notice of the cause of that harm. See Ross v. Garabedian, 433 Mass. 360, 365 (2001); Bowen v. Eli Lilly & Co., 408 Mass. 204, 208 (1990); Hendrickson v. Sears, 365 Mass. 83, 83-84 (1974) (adopting a common law "discovery rule" for tort actions); see also, MASS. GEN. LAWS Ch. 260, § 4C (incorporating the common-law discovery rule into the statute of limitations applied to actions for sexual assault and battery of a minor). In turn, a plaintiff invoking the discovery rule and claiming that the delay in filing suit stems from a failure to recognize an injury and/or its cause, "bears the burden of proving both an actual lack of knowledge and **the objective reasonableness** of that lack of knowledge." See Doe v. Creighton, 439 Mass. 281, 283 (2003) (emphasis added). In other words, the statute of limitations begins to run from "the point at which a reasonably prudent person in the plaintiff's position, 'reacting to any suspicious circumstances of which he might have been aware,' would have discovered that another party might be liable for [his] injury." See Bernier v. Upjohn Company, 144 F.3d 178, 180 (1st Cir. 1998) (quoting Malapanis v. Shirazi, 21 Mass. App. Ct. 378, 487 (1986)).

In the context of an action brought by a sexual abuse victim against a supervisor of the alleged abuser, however, the date the claim "accrues" against the supervisor may well be different from the date the claim "accrues" against the alleged abuser for statute of limitations purposes. See e.g., Armstrong v.

Lamy, 938 F. Supp 1018, 1032-33 (D. Mass. 1996); Doe v. Board of Educ. of Hononegah Community High School Dist. No. 207, 833 F. Supp. 1366 (N.D.Ill. 1993); Doe v. Paukstat, 863 F. Supp. 884 (E.D.Wis. 1994); Sowers v. Bradford Area School Dist., 694 F. Supp. 125 (W.D.Pa. 1988), aff'd, 869 F.2d 591 (3rd Cir. 1989), judgment vacated on other grounds, sub nom Smith v. Sowers, 490 U.S. 1002 (1989). Indeed, in Armstrong, the federal District Court expressly recognized that the act of fostering an environment of deliberate indifference, which allowed a teacher to sexually abuse the plaintiff, presented a valid claim for supervisor liability under 42 U.S.C. § 1983. See 938 F. Supp. 1032-35.[19] In addition, the District Court recognized that, with regard to supervisor liability claim, the accrual date for statute of limitations purposes against the supervisor was separate and apart from the accrual date against the alleged perpetrator, even if the plaintiff knew he had been harmed by the perpetrator earlier than discovering the supervisor's wrongful conduct.[20] See id.

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[19] The Armstrong court ultimately concluded that the plaintiffs had not proffered sufficient evidence that made the supervisors liable for the perpetrator's sexual abuse. See 938 Mass. at 1034-35. In particular, the Armstrong court commented that the plaintiffs had not shown that the supervisors received notice that the perpetrator was sexually abusing any students. See id.

[20] The two separate accrual dates make logical sense. Assume, for example, the following: (1) a teacher sexually abuses a student; (2) the next week, the student starts drinking heavily because he or she is traumatized by the abuse; and (3) the student immediately realizes that he or she is drinking because he or she has been harmed by the abuse, i.e., has made a causal connection between the abuse and the harm. Arguably, under Ross and Creighton, supra, the student's cause of action would accrue "the next week" and would expire three years thereafter unless the student brings an action against the teacher. Assume also, however, that the teacher had sexually abused four other students over the past three years and the school's principal knew about the abuse but was indifferent not only to the victims, but also to protecting others. Assume further

Much like the argument presented to the Armstrong court (and in the cases cited therein), the Plaintiffs allege that they were harmed by the Defendants' failure to adequately supervise Father Shanley or otherwise protect the Plaintiffs from Father Shanley. See generally, Third Amended Compl. In addition, as alleged in the Plaintiffs' complaint and as described in greater detail herein, the Plaintiffs claim that the Defendants created an environment of indifference and acquiescence that permitted Father Shanley to sexual molest Greg over a period of approximately six years. See id.; supra. Furthermore, the Defendants allege that the Plaintiffs failed to bring their action "within the times specified by the General Laws of the Commonwealth[,]" see e.g., Answer of the Defendant, Bernard Cardinal Law to Plaintiffs' Complaint, i.e., that the statute of limitations bars the Plaintiffs from any recovery. Because the Defendants concealed Father Shanley's and many other priests' sexual molestation of other parishioner's children, as well as their own wrongful conduct, before and after Father Shanley abused Gregory, it was not reasonable for the Plaintiffs to realize that the Defendants proximately caused their harm until recently. As a result,

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that the principal (1) concealed his wrongful conduct of failing to properly supervise the teacher or prevent him or her from having access to other students, and (2) concealed a school practice and policy that fostered the sexual abuse by the teacher, as well as other teachers, which allowed abuse to occur at the school. According to Armstrong and the cases cited therein, the cause of action against the principal would not accrue until the student became aware of the principal's wrongful conduct and the school's practices and policies, which could be many years after "the next week."

evidence of the RCAB's practices and policies will weigh heavily on the jury's assessment of reasonableness for statute of limitation purposes and, as a result, is highly probative in this action.

3. Other Key Defenses

The Defendants' normal business practices in dealing with complaints against priests also is admissible to test other key defenses raised by the Defendants. Specifically, negligence is the failure of a person to exercise the degree of care that a reasonable person would exercise under the circumstances. See Morgan v. Lalumiere, 22 Mass. App. Ct. 262, 267, rev. denied, 398 Mass. 1103 (1986). The attendant circumstances are an essential element of negligence in Massachusetts courts. See id. (instruction on negligence must refer to reasonable person standard and to attendant circumstances). On April 12, 2002, Cardinal Law issued a press release seeking to explain the conduct in "the case of Father Shanley." See Addendum, Press Release, dated April 12, 2002. In particular, Cardinal Law stated as follows:

> The case of Father Paul Shanley is particularly troubling for us. For me personally, it has brought home with painful clarity **how inadequate our record keeping has been. A continual institutional memory concerning allegations and cases of abuse of children was lacking.**

See id. (emphasis added). In addition, on May 20, 2002, Cardinal Law issued another press release about the Father Shanley case and stated "I assure you that

my first knowledge of an allegation of sexual abuse against this priest was in 1993. **It was immediately acted upon . . . I wish I had known in 1984, and I wish I had been aware of the 1966 report. It is only possible to act based on what is known, however.**" See Addendum, Press Release, dated May 20, 2002 (emphasis added). Furthermore, during his deposition, Cardinal Law described the general policy at the RCAB between 1984 and 1989 (years during which Gregory was sexually molested by Father Shanley) as follows:

> [W]hen such a complaint is made is to see the person, then see the priest. Once the determination is made that intervention is required, I told him how the priest's activity is restricted and how he's assisted along with any victims who we learn have been affected by him. That was in general our policy. And as you know from this case, Father Geoghan's case and other cases, we did put people back in ministry in those days. But it wasn't – it wasn't putting people back in ministry with the thought that, well, we're just going to move this person from A to B or this person is a risk but we're going to take a chance by putting him in a different environment. It was under – it was because we felt that we had reason to believe that this person, having had this brought to their attention, having gone through some treatment, was not a risk.

See Law Depo., October 11, 2002, p. 159.

Based on those statements, it is clear that Cardinal Law (and perhaps the other Defendants) will claim that he was not negligent when supervising Father Shanley because, under the circumstances, Cardinal Law would have acted differently if he had known all of the information. Proving that (1) sexual abuse was rampant within the RCAB, (2) the RCAB's record keeping system and

institutional memory were not faulty, and (3) the Defendants, as a matter of practice, return accused or admitted child molesters to ministry, see e.g., supra. directly undermines Cardinal Law's explanations for his conduct concerning Father Shanley. The way the Defendants handled other priests both prior to and subsequent to the time that Greg was molested contradicts the broad statements made by Cardinal Law that the RCAB lacked an institutional memory of "allegations and cases of sexual abuse against children" and that Cardinal Law would have acted on certain claims if he had known about them. Indeed, although the Defendants seemingly were well aware of the history and admissions of inappropriate conduct of various priests, they allowed them to continue in ministry having continued access to unsuspecting children. As the Court already has recognized:

> The actual discovery materials before the court include statements from Cardinal Law that between 1984 and 1989 some offending priests were returned to active ministry when, after treatment, archdiocesan personnel and the Cardinal determined they did not present risks of harm to children. **Despite this assertion**, other archdiocesan records obtained through discovery reveal that some offending priests may well have been assigned to parishes, youth groups and the like, even though the Cardinal or other archdiocesan personnel knew that the priests in question were at the least suspected of engaging in continuing sexual encounters with children. With respect to Father Lane, he was permitted in the late 1990s to publicly celebrate Sunday Masses at a parish in Natick. By this time, archdiocesan personnel were well aware from the institutions in question that Father Lane had a history of molesting adolescent boys at the Alpha Omega House during the 1970s and that an allegation of child sexual molestation was made against him

> in 1997. The RCAB records, produced by court order for purposes of this motion, **raise significant questions of whether the archdiocese was really exercising the care they claimed to use in assigning offending priests**.

See Addendum, Court Order, dated November 25, 2002 (emphasis added). Accordingly, evidence of the RCAB's practices and policies in dealing with other alleged child molesters is highly relevant to the Plaintiffs' ability to rebut other key defenses raised by the Defendants.

III. EVIDENCE OF THE RCAB'S PRACTICES AND POLICIES CONCERNING SEXUALLY ABUSIVE PRIESTS OTHER THAN FATHER SHANLEY IS ADMISSIBLE BASED ON THE PASSAGE OF TIME AND THE DEFENDANTS' FAILED MEMORIES

A routine act occurring in the context of a business custom practice is admissible to prove a particular act was performed.[21] See Commonwealth v. Carroll, 360 Mass. 580, 587 (1971); O'Conner v. Smithkline Bioscience Laboratories, Inc., 36 Mass. App. Ct. 360, 365 (1994); Elias v. Surran, 35 Mass. App. Ct. 7, 12-13 (1993); see generally, Hon. Paul J. Liacos, Mark S. Brodin & Michael Avery, Handbook of Massachusetts Evidence, § 4.4.8, pp. 172-73 (7th ed. 1999) (and cases cited therein).[22] In particular, according to the SJC, so-called

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[21] Business custom or practice should be contrasted with personal habit, which is inadmissible to prove a person performed an act in accordance with that habit. See generally, Palinkas v. Bennett, 416 Mass. 273 (1993); Figueiredo v. Hamill, 385 Mass. 1003 (1982).

[22] The fact that the act is performed by an individual does not render it inadmissible as evidence of a business habit. See Palinkas , 416 Mass. at 276 (and cases cited therein); cf. PROP. MASS. R. EVID. 406 (1980), which provides:

> (a) Admissibility. Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of

"business habit"[23] evidence is admissible when an person is not able to recall his or her actions or inactions based on lack of memory. See Palinkas v. Bennett, 416 Mass. 273, 275-78 (1993).

For example, in Palinkas, the Court (McHugh, J.) admitted the defendant's testimony regarding "instructions he would routinely furnish to parents when discharging a prematurely born infant on the issue of what instructions, if any," the defendant have given to the plaintiff when discharging her prematurely born infant, who suffered brain damage allegedly based on the defendant's negligent instructions. See 416 Mass. at 273-74. Justice McHugh admitted the evidence after the defendant testified he had no memory of discharging the infant and because there was a dispute as to whether the defendant had even discharged the infant and what instruction he had given the plaintiff upon discharge. See id. at 274-75.[24] The evidence was highly probative because the defendant, the plaintiff's experts, and the defendants' experts[25] conceded that the defendant

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> eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice, but such evidence is not admissible for the purpose of proving that a person or organization did or did not conform on a particular occasion to the prescribed standard of care.

[23] A "habit" is a regular response to a repeated situation with a specific type of conduct. See Palinkas , 416 Mass. at 277.

[24] Justice McHugh also had denied the plaintiff's motion in limine to exclude evidence of the defendant's normal routine when discharging both healthy and prematurely born infants. See 416 Mass. at 275.

[25] The plaintiff had sued two doctors; however, the disputed issue on appeal dealt only with business habit evidence concerning one doctor. See generally, Palinkas, 416 Mass. 273-75.

would have been negligent if he had not furnished the plaintiff with certain instructions when discharging the infant. See id. at 275. As a result, the SJC rejected the plaintiff's claim on appeal that the defendant's business habit in treating other patients was inadmissible and that Justice McHugh erred in admitting the evidence once he determined it was a business habit. See id. at 275-78. The SJC recognized that, considering the events at issue had taken place almost eleven years after the incident, the business habit evidence was in practicality the only way the defendant could refute the plaintiff's testimony. See id. at 278.

In the action before this Court, the Plaintiffs must show what the Defendants did or did not do with regard to Father Shanley. The Defendants' actions or inactions, however, took place over the past forty or so years. In addition, in many cases, the Defendants' memories about what they did or did not do in response to allegations against Father Shanley are not entirely clear and in some cases are inconsistent.

For example, at his deposition, Bishop Daily stated that he could not remember whether or not:

1. he had a significant file on Father Shanley concerning deviant activity;

2. he spoke with Cardinal Medeiros about the Sweeney Report he received in 1977, which alleged that Father Shanley endorsed publicly the propriety of sex between adults and children;

3. he spoke with reporters to verify what was reported in the Stevens Letter;

4. he spoke with Father Shanley about what was said in the Stevens Letter was true or false; and

5. he undertook any inquiry to determine what Sheila Burke's problem was with Father Shanley in 1982.

See Deposition of Bishop Thomas V. Daily ("Daily Depo.") dated August 21, 2002, pp. 121-22, 189-90; Daily Depo., August 22, 2002, pp. 232-34 and 297-298. In addition, at his deposition, Bishop McCormack stated that:

1. He has no specific recollection of receiving and reading the RCAB's confidential file on Father Shanley;

2. He does not recall seeing any documents that were contained in the RCAB's confidential file on Father Shanley, including the letters from Ms. Higgs, Mr. McGeady, and Ms. Sweeney;

3. He does not recall speaking with Dr. Cassem about Father Shanley;

4. He did not receive any assessment or any reports regarding Father Shanley's emotional, psychological, or physical health from the Institute for Living; and

5. He does not recall being involved with moving Father Shanley out to California, although a letter from the file indicates that he would be responsible for working out the details for Father Shanley's move.

See McCormack Depo, August 15, 2002, pp. 101-02; September 27, 2002 pp. 213-15; and October 1, 2002, pp. 100-02 and 133-36. Moreover, as described above, Cardinal Law waffled about whether or not he received the 1985 letter from Ms. Higgs, which accused Father Shanley of endorsing publicly the propriety of sex between adults and children. Compare Law Admissions, Response No. 1

(Cardinal Law "does not believe he read the 'Higgs Letter' in 1985. . . .") with Law Depo., June 5, 2002, pp. 222-25 (where Cardinal Law admitted that it was more probable than not that he did receive the letter from Ms. Higgs and amended his sworn answer to the Plaintiffs' request for admissions to: "**the defendant believes that he did read the Higgs letter in 1985**."); Law Depo., June 7, 2002, pp. 64-66 (where Cardinal Law, after admitting that he had discussed the subject with his counsel, again changed his sworn answer and stated that "The Defendant does not believe he read the 'Higgs Letter' in 1985."). In addition, at his deposition, Cardinal Law stated that he has no recollection of Bishop Daily telling him that the RCAB had received correspondence suggesting that Father Shanley had attended the founding conference of NAMBLA. See Law Depo., June 7, 2002, p. 115; Law Depo., October 11, 2002, pp. 77-80.

What the Defendants did or did not do in the circumstances above, as well in many other instances, speaks directly to whether they breached their respective duties owed to the Plaintiffs. See generally, Morgan, supra. (negligence is the failure of a person to exercise the degree of care that a reasonable person would exercise under the circumstances). As a practical matter, and considering the passage of time and the Defendants' failed or seemingly inconsistent memories, the Plaintiffs seek to introduce evidence about how the RCAB and its employees, including the Defendants, responded or failed

to respond to complaints against other accused child molesting priests as business habit and as circumstantial evidence of their responses to complaints made against Father Shanley. That evidence is clearly relevant to the Plaintiffs' negligence claims, as recognized already by the Court:

> The plaintiffs have presented the court with a firm foundation of documentary support that the practices and procedures of the RCAB with respect to the manner in which they responded to allegations of child sexual molestation made against members of the clergy assigned to the Boston archdiocese ***are clearly relevant*** to the plaintiffs' claim of negligence. The RCAB's practice of sending accused clergy to St. Luke's and the Institute of Living and then following or choosing not to follow their recommendations ***are directly at issue in the case at bar***.

See Addendum, Court Order, November 25, 2002. Moreover, evidence that the Defendants had knowledge and notice of complaints against other priests speaks directly to whether or not the Defendants should have left Father Shanley in a position where he would have continued, unsupervised access to children, considering the Defendants' potential knowledge of prevalence and recidivism of other accused child molesters within the RCAB over the past forty years.

CONCLUSION

For the foregoing reasons, the Court should grant the Plaintiffs' motion in limine in its entirety.

Respectfully submitted,

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