

STATE OF INDIANA  
COUNTY OF TIPPECANOE

) IN THE TIPPECANOE SUPERIOR COURT II  
)SS:  
)

CAUSE NO.: 79D02-  
79D02-1110-CT-00030

**FILED**

John Doe No. 85,

Plaintiff,

vs.

THE ROMAN CATHOLIC DIOCESE OF  
LAFAYETTE-IN-INDIANA, INC.  
and DOES 1-100, inclusive

Defendants.

OCT 20 2011

*Christa Coffey*  
Clerk Superior Court No. 2 Tippecanoe Co

RECEIVED BY CERTIFIED  
MAIL DATED OCT 14 2011

**COMPLAINT**

Comes now Plaintiff JOHN DOE NO. 85, and based upon information and belief available to Plaintiff at the time of the filing of this Complaint, Plaintiff makes the following allegations:

**PARTIES**

1. Plaintiff John Doe No. 85 (hereinafter "John Doe") is an adult male. Plaintiff was a minor at the time of the sexual abuse alleged herein. The name used by the Plaintiff in this Complaint is not the real name of the Plaintiff, but is a fictitious name used to protect the privacy of Plaintiff, a victim of childhood sexual abuse, who fears further psychological injury and harm if his identity is disclosed.<sup>1</sup> His identity will be made known to the Defendants upon agreement that it will remain confidential.
2. The Diocese of Lafayette-In-Indiana (hereinafter "Defendant Diocese") is an Indiana non-profit corporation authorized to conduct business and conducting business in

<sup>1</sup> The number 85 is derived from an internal record-keeping system in Plaintiff's counsels' office and is not meant to suggest that there have been 84 other lawsuits involving Father James Grear.

10-20-11

the State of Indiana, with its principal place of business in Lafayette, Indiana, located in Tippecanoe County. Defendant Diocese has responsibility for Roman Catholic Church operations in Tippecanoe and other counties, including Hamilton County, Indiana, where the sexual abuse alleged herein occurred. At all relevant times, Father James Grear (hereinafter "Grear") was an ordained priest of the Diocese and a practicing priest under the direct supervision, employ, and control of the Diocese at the time of the events alleged herein.

3. Defendant Does 1-100, inclusive, are individuals and/or business or corporate entities incorporated in and/or doing business in Indiana whose true names and capacities are unknown to Plaintiff who therefore sues such defendants by such fictitious names, and who will amend the Complaint to show the true names and capacities of each such Doe defendant when ascertained. Each such Defendant Doe is legally responsible in some manner for the events, happenings and/or tortious and unlawful conduct that caused the injuries and damages alleged in this Complaint.
4. Each Defendant is an agent, servant and/or employee of other Defendants, and each Defendant was acting within the course and scope of his, her or its authority as an agent, servant and/or employee of the other Defendants. Defendants, and each of them, are individuals, corporations, partnerships and other entities which engaged in, joined in and conspired with the other wrongdoers in carrying out the tortious and unlawful activities described in this Complaint, and Defendants, and each of them, ratified the acts of the other Defendants as described in this Complaint.

**BACKGROUND FACT APPLICABLE TO ALL COUNTS**

5. Plaintiff John Doe was born in May 1965. He was raised in a devout Catholic family. As a child, he attended mass and grammar school at Our Lady of Mount Carmel parish and school in Carmel, Indiana, which was owned and operated by Defendant Diocese.
6. Through this affiliation with Our Lady of Mount Carmel, John Doe and his family came to know Father James Gear, who quickly ingratiated himself with the Doe family as a result of his position as a Roman Catholic priest. At the time, Gear was the Dean of Students at Brebeuf Jesuit Preparatory School, a Catholic high school that John Doe's brother attended. Gear also celebrated mass at Our Lady of Mount Carmel parish on the weekends, and John Doe was his altar boy.
7. Beginning in 1975, Gear took a special interest in John Doe and began spending more one-on-one time with him. John Doe's parents were thrilled and honored that a revered priest took such an interest in their child. On approximately 3-5 occasions, Gear brought John Doe to his apartment, located near Brebeuf Jesuit Preparatory School. Upon information and belief, the apartment was provided to him by the Defendants as a result of his position at the Roman Catholic high school. While there, Gear forced John Doe to engage in sexual activity with him, including mutual fondling of their penises.
8. Upon information and belief, Father Gear sexually abused other boys before, during and after the time he abused John Doe. Upon information and belief, the Defendants knew that Father Gear was a sexual predator before, during and after the time he sexually abused John but failed to report this information to

John Doe, his family, the community of faith or to civil authorities, including law enforcement. Instead, it took steps to actively conceal its knowledge of Father Gear's dangerous propensities from John Doe, his family, and the general public, and misrepresented to John Doe and his family that Gear was a sexually-safe, celibate priest to whom their young child could be entrusted, and that the Diocese effectively and adequately supervised him.

9. The Diocese's campaign to conceal its true knowledge about Gear included, without limitation, (i) maintaining one or more secret files and destroying or removing incriminating documents within its files; (ii) covering up and concealing reports of sexual abuse of children by Father Gear; (iii) transferring and reassigning Father Gear to avoid discovery of his sexual abuse of boys; and (iv) failing to disclose facts pertaining to the Defendants' negligence despite a fiduciary duty to disclose this information. In this manner, the Defendants each prevented discovery of information that would have informed a reasonable person that acts and omissions of the Defendants were a proximate cause of Plaintiff's injuries, and, as a result, evaded civil liability for its conduct and remained a steadfast institution in the lives of its parishioners, including John Doe and his family.
10. The policies and practices of the Diocese designed to conceal sexual abuse by clergy, including Gear, and protect it from scandal and civil liability encompassed the following:
  - (a) transfer and reassignment of clergy known or suspected to abuse minors;
  - (b) concealing from parishioners and even other clergy that a priest posed a

- danger to children;
- (c) failing to alert parishioners from the priest's prior assignments and others with children exposed to the priest's outreach and related activities that their children were exposed to a known or suspected child molester.
  - (d) failing to report sexual abuse to criminal authorities as required by law; and
  - (e) otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the community, for the purpose of avoiding scandal and public scrutiny.
11. Upon information and belief, despite knowledge that Gear posed a danger to boys, the Diocese embarked on a plan and scheme to protect Gear from exposure as a pedophile and protect themselves from scandal and liability, in part by continuing to give him unrestricted access to boys in conjunction with his duties as a priest of the Diocese and holding him out to Plaintiff and the general public as a fit and safe priest, one who would never harm a child by engaging in sexual misconduct. By doing so, the Diocese affirmatively, knowingly, and fraudulently misrepresented to Plaintiff and his family that the Diocese was in no way derelict in the duties it owed to Plaintiff.
12. Despite its knowledge that Gear was a sexual deviant and pedophile who preyed on boys, the Defendants repeatedly assigned Gear to positions of honor, privilege and authority within the Diocese, including the position of pastor, as well as Dean of Students of a Catholic high school, giving him access to underage boys at the school. In this manner, the Diocese affirmatively misrepresented to

Plaintiff and the general public that Grear was not only a holy, celibate priest fit for ministry to youth, but that children were safe in his protection and control. Moreover, by doing so, the Diocese misrepresented to John Doe and his family that it was not negligent in its supervision and retention of Grear at any time prior to, during, or after his abuse. John Doe relied upon these representations to his detriment, and he was unable to discover his causes of action against the Diocese until recently.

13. Through its acts, conduct and affirmative misrepresentations regarding Grear, the Diocese deceived John Doe, his family, and the community of faith into the false belief that Grear was a fit, celibate priest with whom parents could trust their children. The Diocese also empowered Grear to make representations on its behalf. Grear used his position as an esteemed priest of the Diocese with holy and unquestionable authority to gain John Doe's trust and to represent to John Doe that he was acting in accordance with his priestly duties while he was engaging in sexual contact with John Doe. As a result of the foregoing, John had no reason to suspect or believe that the Diocese knew the Grear posed a danger to John Doe or otherwise failed to protect him. John Doe relied upon such representations to his detriment.
14. In addition to the specific acts of concealment and misrepresentation detailed above, at all relevant times, the Diocese had a policy of concealment in response to discovery of child sexual abuse or allegations of abuse. Among other things, a 1962 "confidential" policy document issued by the Vatican to all Catholic Bishops, including the Bishop of the Lafayette Diocese, instructed that

allegations or incidents of sexual abuse were to be maintained in the "strictest" secrecy, and threatened those who violated this policy with excommunication. The policy was intended to conceal sexual abuse by clergy and the Defendants' wrongful conduct which facilitated the sexual abuse by clergy. The 1962 policy document was derived from an earlier 1922 document, which, in turn, was based on politics and practices of the Catholic Church dating back to the Middle Ages. In 2001, Cardinal Joseph Ratzinger, now Pope Benedict XVI, authored a memo reaffirming the 1922 and 1962 policies. This memo refers to sexual abuse by a cleric with a minor under the age of 18, and instruct that cases involving such conduct "are subject to the pontifical secret", *i.e.* any inquiry is to be conducted in the strictest secrecy, for which a violation is subject to the penalty of excommunication. As instructed in Cardinal Ratzinger's memo, this secrecy is to be maintained for a period of 10 years after the child victim reaches the age of 18 - a period of time sufficiently long to encompass the expiration of any statute of limitations. In this manner, the Church entity's knowledge of abuse would be concealed until the threat of civil liability from John Doe and/or his family had passed.

15. At all relevant times, it was the Defendants' policy to document reports of child sexual abuse; investigate internally such claims; interview witnesses; prepare a report detailing its investigation and findings; and to document responsive action with regard to the accused clergy. Pursuant to the Vatican's confidentiality policy described above, the documentation for this investigation and report was to be placed in a special, separate file maintained in the "strictest" secrecy. All

persons involved in the investigation were likewise sworn to the strictest secrecy. Upon information and belief, the Defendants maintained one or more such secret files on Gear, which contained evidence and information regarding Gear's sexual abuse of young children and the wrongful conduct of the Diocese that facilitate Gear's sexual abuse of John Doe and prevented John Doe from discovering any cause of action against the Defendants arising from his sexual abuse by Gear.

16. The secrecy policy was subsequently clarified and modified by the National Catholic Conference of Bishops, which instructed bishops across the United States, including the Bishop of Lafayette, to destroy, conceal or hide incriminating documents if a risk were perceived that such documents could be discovered through, among other things, discovery rules or orders in civil or criminal proceedings. The purpose or intent of these instructions was to avoid scandal and evade civil liability for the Defendants' conduct in harboring sexual predators and placing children at risk. Upon information and belief, incriminating documents in files relating to the acts and conduct of Gear were destroyed, lost, concealed or hidden in accordance with this policy and practice. Pursuant to its policies, practices and procedures, the Defendants concealed and altered documents which disclosed that the Defendants' wrongful conduct was the proximate cause of the Plaintiff's injuries.
17. Pursuant to the above-described policies and procedures, the Defendants transferred Gear to various assignments to prevent Plaintiff, his family, the community of faith, and law enforcement from discovering his history of sexual



misconduct with children. Upon information and belief, Gear was transferred to a remote Native American reservation far from Indiana in an effort to conceal his and the Defendants' misconduct, while the Diocese continued to represent to Plaintiff, his family, and the general public that Gear was a priest in good standing with the Diocese. Those representations continue through today.

18. By placing Gear at Our Lady of Mount Carmel Parish in Carmel, Defendant Diocese affirmatively represented to minor children and their families at the parish, including Plaintiff and his family, that Gear did not have a history of molesting children, that Defendant Diocese did not know that Gear was a danger to children.
19. Defendant Diocese was in a specialized position where it had knowledge that Plaintiff did not. Defendant Diocese was in a position to have this knowledge because it was Gear's employer and because the Diocese was responsible for Gear. On the other hand, Plaintiff and his family did not have access to the information that Defendants had regarding Gear. Particularly, Defendant Diocese knew that Gear had molested numerous children and that he was a danger to children before he molested Plaintiff.
20. Because Defendant was in a position of superiority and influence over Plaintiff, Plaintiff believed and relied upon these misrepresentations by the Diocese.
21. Defendants were, at all relevant times, and continue to be, in a special, fiduciary relationship with Plaintiff. Defendant had a secular standard of fiduciary duty which they breached by failing to act upon, or insufficiently acting upon or responding to, information which they had obtained by virtue of their superior

status, known only or secretly to them, that was indicative or highly suggestive of a pattern of wrongful, unlawful or criminal behavior on their parts.

22. Defendant breached this duty, as well as other duties, through inaction, manipulation, intimidation, evasion, intended deception, undue influence, duress or otherwise, as more fully described and set forth elsewhere in this complaint, resulting in the negative consequences to the welfare and well-being of Plaintiff.
23. In reliance upon Defendant Diocese's misrepresentations, Plaintiff was sexually molested by Gear between 1975 and 1976, when Plaintiff was a minor. This abuse occurred while Plaintiff attended Our Lady of Mount Carmel parish and worked as Gear's altar boy.
24. Had Plaintiff and his family known what Defendant Diocese knew - that Gear, upon information and belief, had sexually molested numerous children before Plaintiff and that Gear was a danger to children - Plaintiff would not have been sexually molested.
25. Plaintiff did not discover nor with reasonable diligence could he have discovered until recently that Defendants knew or should have known, that Gear, upon information and belief, was a child molester and a danger to children before he molested Plaintiff, or that they actively and constructively misrepresented their knowledge of Gear's misconduct.
26. Defendants' actions were calculated to mislead and hinder Plaintiff from obtaining and prevent inquiry or elude investigation into information about Defendants' knowledge about Father Gear's history of sexually molesting children to avoid civil liability for Plaintiff's abuse.

27. As a direct result of the wrongful conduct alleged herein, Plaintiff has suffered, and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will continue to be prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of life; has sustained and continues to sustain loss of earnings and earning capacity; and/or has incurred and continues to incur expenses for medical and psychological treatment, therapy, and counseling.

**FIRST CAUSE OF ACTION**  
**ACTUAL FRAUD**

28. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count.
29. Defendants, including the Diocese, affirmatively and falsely represented to Plaintiff and his family that Father Gear did not have a history of molesting children, that Defendants did not know that Father Gear had a history of molesting children at any point, and that Defendants did not know that Gear was a danger to children at any point prior to, during, or after Plaintiff's abuse.
30. Upon information and belief, Father Gear did have a history of sexually molesting children. Defendants knew that Defendant Father Gear had a history of molesting children and that he was a danger to children prior to Plaintiff's abuse.
31. Plaintiff and his family justifiably relied upon Defendants' misrepresentations that

Father Grear was a well-qualified, sexually-safe Catholic priest, which proximately caused him to be sexually molested by Father Grear and suffer the other damages as described herein.

32. Defendants knew that its misrepresentations were false or at least were reckless without care of whether these representations were true or false.
33. Defendants made the misrepresentation with the intent to deceive Plaintiff and to induce him to act on their misrepresentations to his detriment.
34. As a result of the above-described conduct, Plaintiff has suffered, and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will continue to be prevented from performing Plaintiffs' daily activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

**SECOND CAUSE OF ACTION**  
**CONSTRUCTIVE FRAUD**

35. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count.
36. As a result of Plaintiff being a minor, and by Defendants undertaking the care and guidance of the then vulnerable minor Plaintiff, Defendants held a position of empowerment over Plaintiff.

37. Further, Defendants, by holding themselves out as shepherds and leaders of the Roman Catholic Parish, solicited and/or accepted this position of empowerment. This empowerment prevented the then minor Plaintiff from effectively protecting himself and Defendants thus entered into a fiduciary relationship with Plaintiff.
38. Defendants were in specialized positions where they had knowledge about Father Gear that Plaintiff did not. Defendants were in positions to have this knowledge because they were Father Gear's employer and because Defendants were responsible for Father Gear. Plaintiff, on the other hand, was a child. As a child and as a parishioner, he was not in the position to have sensitive information about Father Gear's molestation of other children.
39. As a fiduciary to Plaintiff, Defendants had a duty to obtain and disclose information relating to sexual misconduct and other inappropriate behavior of Father Gear, yet it remained silent as to what it knew.
40. Defendants affirmatively represented to Plaintiff and his family that Father Gear did not have a history of molesting children, that Defendants did not know that Father Gear had a history of molesting children and that Defendants did not know that Father Gear was a danger to children such as the Plaintiff.
41. Father Gear did have a history of sexually molesting children prior to the abuse of the Plaintiff. Defendants knew that Father Gear had a history of sexually molesting children and that he was a danger to children.
42. Plaintiff justifiably and reasonably relied upon Defendants' misrepresentations, which proximately caused him to be sexually molested by Father Gear and suffer the other damages described herein.

43. Defendants gained an advantage at the expense of Plaintiff, including that the Defendants were able to avoid scandal by concealing Father Gear, Defendants were able to protect its finances by representing to parents and children that Father Gear did not have a history of abusing children, and Defendants were able to keep its position of power and prestige in the community.
44. As a result of the above-described conduct, Plaintiff has suffered, and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will continue to be prevented from performing Plaintiffs' daily activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff prays for damages; costs; interest; statutory/civil penalties according to law; and such other relief as the court deems appropriate and just.

**JURY DEMAND**

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted,

THE KOCH LAW FIRM, P.C.

By:

  
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