

DIOCESE OF ORANGE



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HOW THE DIOCESE OF ORANGE CAME TO SETTLE THE SEXUAL ABUSE CIVIL CLAIMS

When Bishop Tod Brown said, "I am pleased to announce that that plaintiffs and the Diocese of Orange have reached a settlement that is both fair and compassionate" at the impromptu press conference held in the hallway of the Los Angeles Superior Court Building late at night on the 2nd of December, it was right that he should be the one to do so. The decision was his to make as the leader of more than a million Orange County Catholics, his responsibility under church law. But he did not act alone. Vatican II changed the way the Catholic Church works and Bishop Brown, a promoter of collaboration among clergy and laity, had brought together a large number of advisors to help him make his historic decision and this is the account of how it came about.

2002: Statute of Limitations Waived

Reacting to a number of high profile revelations of sexual abuse by clergy and the suspicion of a cover up by their bishops, the California civil code was amended, waiving the statute of limitations on civil claims in cases involving the sexual abuse of minors for the calendar year 2003. Since victims of childhood sexual abuse often take many years to come to grips with the harm that another had done to them, lawmakers felt that the previous limit unfairly kept some victims from seeking civil compensation.

Fall 2002: Prompt, Fair and Compassionate

Bishop Brown made it clear that he wanted these cases to be handled "in a prompt, fair and compassionate manner." He asked Peter Callahan, of Callahan, McCune and Willis, a respected lawyer with more than thirty years of experience, to begin to try to determine what the diocese might face. Callahan had served as a litigator for the diocese on earlier clergy abuse cases. From his firm, Thomas

Rutherford and Susan Steward joined the legal team, as did Paul Gaspari, of Tobin and Tobin, another respected and experienced litigator from San Francisco. Maria Schinderle, diocesan counsel, and Father Mike Heher, Vicar General, acted as his liaisons to the team. A weekly Monday morning meeting with the legal team took place with the Bishop and his Executive Committee (see below) so all could receive a status report.

Double Track Mediation Processes

Callahan discovered that a court mediation process was already in place that also involved the cases against the Archdiocese of Los Angeles; the process came to be known as Clergy One. The trial judge had already appointed a mediation judge, Peter D. Lichtman. When a group of plaintiff lawyers felt that efforts to mediate the cases against the Archdiocese of Los Angeles had stalled, they approached the Diocese of Orange to see if it would be interested in mediating their claims privately through the auspices of Judge Thomas Nuss. Nuss is a well-respected jurist with a well-earned reputation for mediation so Bishop Brown agreed. Thus, the diocese was working on double tracks: continuing a court-directed coordinated Clergy One action while joining the private effort with Judge Nuss.

Though the private settlement discussions with Judge Nuss did not lead to anything substantial, the diocese did learn three things: The monetary demands by the plaintiffs were enormously high; the plaintiff lawyers were well-organized and backed by significant financial resources; and the insurers for the diocese held unrealistically low evaluations of the reasonable settlement values of the cases.

In Clergy One, Judge Lichtman focused his attention on the Diocese of Orange cases when many complicating factors inhibited any substantial progress in mediating the cases against the Archdiocese of Los Angeles. In accordance with his order and with the approval of Bishop Brown, diocesan lawyers provided plaintiffs with diocesan documents in exchange for detailed written questionnaires from the plaintiffs. The diocese followed legally recognized privileges with respect to the exchange of documents. Reviewing the returned

questionnaires and DVDs recounting the victims' alleged abuse allowed the diocese to begin to assess the magnitude of the problem. It was clear that many of the victims had suffered horrific sexual abuse and that a number of offenders were serial pedophiles or efebophiles.

December 2003: End of the Filing Period

By December of 2003 lawyers for the diocese reviewed its numerous claims. They pored over diocesan documents and the questionnaires provided by the plaintiffs. They also conducted numerous interviews with witnesses in an attempt to gather as much factual information as possible. An extensive research effort was undertaken as well to learn what had been paid in similar settlements or trial judgments across the country. With all that information, the diocesan legal team was able to estimate, from their experience, what they thought the "reasonable settlement value" of each case would be. They also estimated what amount a jury might return against the diocese in the case of a trial judgment. This information was provided to the diocese's insurance carriers but the carriers still believed the cases were worth much less than the diocese did.

Legal Team Expanded

Accordingly, Bishop Brown added Andy Lundberg, from Latham and Watkins, a lawyer with a proven track-record in working with recalcitrant insurers and agreed to Peter Callahan's plan to assemble a legal advisory team, a mix of prominent trial lawyers and retired judges (see below). Working on their own with the same information that had been used by the diocesan lawyers and presented to the insurance carriers, the estimates of the all-volunteer Legal Advisory Team were nearly identical to those of the diocesan team and, in some cases, they judged cases to be worth substantially more.

Consultations, As Required by Canon Law

To be able to settle these cases in civil court, Bishop Brown had to meet the requirements of canon law; he needed the consent of both the College of Consultors (a body of twelve respected priests whose judgment the Bishop values) and the diocesan Finance Counsel (a body of lay and clergy), as well as permission from the Vatican. The

Bishop gathered the two diocesan groups together with his Executive Committee to bring all of them up to speed on the status of negotiations and to hear their views. He also wanted to know, going into negotiations, how much monetary authority (the amount that could go into a settlement) they would give him. The first meeting took place just before Christmas 2003 and numerous meetings followed to keep them up-to-date on developments and to educate them on the relevant aspects of civil and canon law. Over the many meetings, participants heard from retired Judge Nuss and retired Court of Appeals Justice John Trotter and other legal experts. They also viewed victims' DVDs. Often members of the Legal Advisory Team sat in on the meetings and answered questions put to them by the participants. Since the situation threatened to put the diocesan finances as a whole at risk, they also heard from experts in bankruptcy and how diocesan civil structures might appropriately be aligned in the future to better match the provisions of canon law.

These discussions were animated, and sometimes tense, as various views were expressed. Generally the members of the Finance Council worried over the financial ability of the diocese to carry out its mission into the future while the members of the College of Consultors focused on pastoral concerns: how the people of the diocese would be affected, whether the assets of parishes and schools would be included and how the negative articles in the press were weighing down parishioners.

How California Civil Law is Different

Like others earlier, some involved in these meetings believed that the diocese should not compensate claimants to the high degree that had been recommended by the bishop's legal experts, pointing to settlement numbers from other dioceses across the country. Others pointed out that these numbers were from states where there were significant limits on monetary awards against non-profit groups and punitive damages are disallowed against charities, as in Massachusetts, and so the comparisons were not valid. In the end, the College of Consultors and the Finance Council voted sufficient

monetary authority to the Bishop to continue negotiations in good faith. The necessary canonical permission was subsequently obtained from the appropriate Vatican dicastery.

January 2004

By January 2004, when the open Statute of Limitations had again closed, the diocese knew that there were slightly more than fifty claims with the potential to return devastating jury verdicts against the diocese. There were also numerous additional, less serious claims.

Global Settlement

Frustrated by the previous failed efforts at resolution, Bishop Brown directed the legal team to insist again on a global settlement, rather than trying to do it on a case-by-case basis, since he believed this negotiating strategy to be more likely to succeed. But the plaintiff's lawyers continued to demand a global settlement that was nearly three times what the diocese was ready to offer and what the insurers were willing to offer continued to be insufficient. It seemed efforts had reached an impasse.

April 2004: Working with Insurers

From January through April of 2004, the litigation team provided thousands of pages of documents to each insurance carrier; every piece of available information was in their possession so they could more completely evaluate their cases. Detailed written evaluations were prepared. At large group meetings held in Tustin in April, the carriers also received a verbal and visual presentation of each case. Still, the insurers for the Diocese were not, it was clear, evaluating the cases in a realistic fashion.

With his legal team, Bishop Brown went to Judge Lichtman and explained his dilemma. The judge said that he too was frustrated by the lack of progress. Through mediation that included Judge Nuss and through unprecedented "valuation hearings," Lichtman sought to determine for the insurance carriers what the "reasonable settlement value" for these cases was and, thus, restart negotiations.

Efforts Stall: Judge Kwong Appointed

When these efforts did not bring about the intended forward motion, Judge Fromholz, the trial judge, assigned the Diocese and its insurance carriers to court-mandated settlement hearings under the direction of Judge Own Lee Kwong, a no-nonsense jurist with an impressive record of reaching settlements in complex litigation. His first words to the group were, "Gentlemen, I've got this case settled. I'm only waiting for you to catch up with me." Judge Kwong spent many hours with both sides, including a personal meeting with Bishop Brown that Judge Lichtman also attended. When he felt he had made sufficient progress, Judge Kwong asked for permission to bring the plaintiff's lawyers into the negotiations. With the assistance of Judge Lichtman and, later, Judge Nuss, Judge Kwong conducted marathon negotiation sessions. Plaintiffs camped out in the hallways, waiting for word from their lawyers while, inside the court, the three groups—the diocesan team, the lawyers for the insurance companies, and the plaintiff's lawyers—negotiated back and forth with the judges trying to hammer out the details of a settlement. All three groups moved from their stated positions to a place where an agreement was within sight but many times during the talks the agreement seemed doomed as various sticking points came up. Since Judge Kwong is not a man who easily takes no for an answer, the parties continued to negotiate.

December 3: Bishop Brown Personally Joins the Negotiations

On Thursday afternoon the negotiations had reached a critical stage and the Judge asked Bishop Brown to join the effort and so he came to the court in Los Angeles with Fr. Doug Cook, his canonical advisor. He participated personally in the last six hours of detailed negotiations. By eleven that night, an agreement had been reached.

December 6: How To Pay for the Settlement

Bishop Brown again called together the College of Consultors, the diocesan Finance Council and his Executive Committee so they could hear first hand what had been agreed to and so that they could begin to advise him on how best to pay for the settlement while continuing the work of the Church. Earlier various options had been considered but now that an agreement had moved from a desired possibility to a

specific reality, a variety of strong opinions were exchanged and a number of approaches were given consideration.

The consensus of the group was to gather a group of select financial experts—something similar to the Legal Advisory Team—to review the various proposed options and to bring their evaluations and recommendations back to the College of Consultors and the Finance Council.

Dec. 13: Financial Advisors Meet

This Ad Hoc Financial Advisory Team met with Bishop Brown on the 13th of December at Marywood Center. The discussions were again lively and the group came to a consensus on the best financial approach in keeping with the Bishop's goals. The details remain to be researched and worked out; the specific and concrete proposal will be presented to the diocesan Finance Council and College of Consultors very early in the new year. The funds will be due sixty to ninety days from the signing of the agreement.

There is no doubt the Diocese of Orange WILL meet its very substantial monetary commitment to the settlement. Likewise, the Diocese will continue the comprehensive and precedent-setting program of activities that guarantee the safety of the young and vulnerable in our church and educates all to the problem in our society of the sexual abuse of minors. Similarly, the Diocese will follow the court-established protocol for the production of diocesan records; these protocols include the legally valid and required protection of personnel records that is the right of every citizen. Finally, the Bishop reiterates his commitment to an open relationship with the public on these matters.

DIOCESAN LEGAL TEAM

Paul Gaspari, *Tobin & Tobin, San Francisco*
Peter Callahan, *Callahan, McCune & Willis LLP*, lead
Rev. Mike Heher, *Vicar General/Moderator of the Curia*
Andrew Lundburg, *Latham & Watkins, Los Angeles*
Thomas Rutherford, *Callahan, McCune & Willis LLP*
Maria Schinderle, *Diocesan Counsel*
Susan Steward, *Callahan, McCune & Willis LLP*

LEGAL ADVISORY TEAM

Wylie A. Aitken, Esq., *Aitken, Aitken & Cohen*
Hon. James Alfano, *Ret.*
Hon. Richard Beacom, *Ret.*
Michael S. Feeley, Esq., *Latham & Watkins*
Michael P. Maguire, Esq., *Michael P. Maguire & Associates*
Alan Martin, Esq., *Sheppard Mullin et al*
Bruce D. May, Esq., *Stradling, Yocca, Carlson & Rauth*
Mark Robinson, Esq., *Robinson, Calcagnie & Robinson*
Melvin F. Seifert, Esq., *Seifert, Farricker & Gilman*
Hon. John "Jack" Trotter, *Ret., JAMS - Judicial Arbitration and
Mediation Services*
James A. Hayes, Esq., *Western State University College of Law*

EXECUTIVE COMMITTEE

Most. Rev. Dominic Luong, *Auxiliary Bishop*
Most Rev. Jaime Soto, *Auxiliary Bishop*
Rev. Mike Heher, *Vicar General/Moderator of the Curia*
Rev. Douglas Cook, *Judicial Vicar and Director of the Pope John Paul
II Polish Center*
Sr. Eymard Flood, *Vicar for Religious*
Shirl Giacomi, *Chancellor*
Rev. Gerald Horan, *Vicar for Faith Formation*
Rev. Michael McKiernan, *Secretary to the Bishop/Director of Clergy
Personnel*
Philip Ries, *Director of Finance*

COLLEGE OF CONSULTORS

Most. Rev. Dominic Luong, *Auxiliary Bishop*
Most Rev. Jaime Soto, *Auxiliary Bishop*
Rev. Kerry Beaulieu, *Pastor of Our Lady Queen of Angels and Chair,
Council of Priests*
Rev. Douglas Cook, *Judicial Vicar and Director of the Pope John Paul
II Polish Center*
Rev. Michael Harvey, *Pastor of Ss. Simon & Jude*
Rev. Mike Heher, *Vicar General/Moderator of the Curia*
Rev. Michael Hoan, *Director of Vietnamese Catholic Cultural Center*
Rev. Arthur Holquin, *Pastor of Mission Basilica of San Juan Capistrano*
Rev. Ted Olson, *Pastor of St. Angela Merici*
Rev. Edward Poettgen, *Pastor of Immaculate Heart of Mary*
Rev. Steve Sallot, *Pastor of St. Edward the Confessor*
Rev. Msgr. John Sammon, *Vicar for Pastoral & Community Affairs*

FINANCE COUNCIL

Rev. Msgr. Lawrence Baird, *Vicar for Development and Administrator of St. John Vianney Church*

Maureen Flanagan, *CFA*

Rev. Cirilo Flores, *Pastor of St. Anne's, Santa Ana*

Rev. Mike Heher, *Vicar General/Moderator of the Curia*

Roger Kirwan

Theresa Cagney Morrison

Julie Porter

Ralph Sabin

Paul Schloemer

Guy Wilson, *Chair*

FINANCIAL ADVISORY TEAM

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Fr. Ted Olson, *Pastor, St. Angela Merici Parish*

Guy Wilson, *Holy Family Cathedral*

Robert Fitzgerald, *Mission San Juan Capistrano*

Jim Skorheim, *St. Timothy Parish*