

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

ENTERED BOONE CIRCUIT/DISTRICT COURT	
OCT 21 2003	
BY: <u>PSD</u>	PAT GUTZEIT, CLERK
	DC

CARL COE (pseudonym), et al.

PLAINTIFFS

vs.

HON. JOS. F. BAMBERGER

ROMAN CATHOLIC DIOCESE OF COVINGTON,

DEFENDANT

ORDER CERTIFYING CLASS AND APPROVING CLASS NOTICE

Upon consideration of Plaintiffs' Motion For Class Certification, Defendant's response thereto, the parties' reply and sur-reply briefs, and the Court having heard extensive arguments of the parties and having considered all of the exhibits submitted, and being otherwise sufficiently advised;

IT IS HEREBY ORDERED AND ADJUDGED that pursuant to C.R. 23.03(1), (2) and (4), Plaintiffs Carl Coe, John Doe, Jane Doe, and Richard Roe are conditionally certified to be class representatives and that Stanley M. Chesley, Robert A. Steinberg, Michael J. O'Hara, and B. Dahlenburg Bonar are conditionally certified as class counsel and the following class is certified pursuant to C.R. 2302(a) and (c)¹:

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

¹ The Court will not consider the issue of injunctive relief pursuant to C.R. 23.02(b) at this time.

For events occurring during the period 1956 to 1988, the geographical area of the class covers the area of the Diocese of Covington as it existed prior to the creation of the Diocese of Lexington in 1988 and includes the following counties:

- | | | | |
|--------------|---------------|----------------|----------------|
| 1. Bath | 16. Fleming | 31. Laurel | 46. Owsley |
| 2. Bell | 17. Floyd | 32. Lawrence | 47. Pendleton |
| 3. Boone | 18. Franklin | 33. Lee | 48. Perry |
| 4. Bourbon | 19. Gallatin | 34. Leslie | 49. Pike |
| 5. Boyd | 20. Garrard | 35. Letcher | 50. Powell |
| 6. Bracken | 21. Grant | 36. Lewis | 51. Robertson |
| 7. Breathitt | 22. Greenup | 37. Madison | 52. Rockcastle |
| 8. Campbell | 23. Harlan | 38. Magoffin | 53. Rowan |
| 9. Carroll | 24. Harrison | 39. Martin | 54. Scott |
| 10. Carter | 25. Jackson | 40. Mason | 55. Whitley |
| 11. Clark | 26. Jessamine | 41. Menifee | 56. Wolfe |
| 12. Clay | 27. Johnson | 42. Montgomery | 57. Woodford |
| 13. Elliot | 28. Kenton | 43. Morgan | |
| 14. Estill | 29. Knott | 44. Nicholas | |
| 15. Fayette | 30. Knox | 45. Owen | |

For events occurring during the period 1988 to the present, the geographic area of the class covers the area of the Diocese of Covington as it existed after the creation of the Diocese of Lexington in 1988 and includes the following counties:

- | | | | |
|-------------|-------------|-----------|---------------|
| 1. Boone | 5. Fleming | 9. Kenton | 13. Pendleton |
| 2. Bracken | 6. Gallatin | 10. Lewis | 14. Robertson |
| 3. Campbell | 7. Grant | 11. Mason | |
| 4. Carroll | 8. Harrison | 12. Owen | |

Pursuant to C.R. 23.03(1), this certification order is conditional and may be altered or amended before the decision on the merits. This class proceeding shall go forward in two (2) phases. In the first phase, the jury will decide whether the Diocese of Covington violated its duty to minors within the Diocese through a course of conduct from 1956 to the present that exposed said minors to sexual abuse and sexual misconduct by Diocesan priests or members of religious orders who were employed by the Diocese. If the jury finds in favor of Plaintiffs on that issue, the jury will also determine in the first phase whether punitive damages should be awarded and the

amount. The second phase of the case will involve a determination for each class member whether the Diocese is legally responsible for that class member's personal injuries and, if so, the amount of damages to be awarded to each class member.

In making this determination, the Court finds that (a) the class is so numerous that joinder of all members is impracticable, (b) there are questions of law or fact common to the class, (c) the claims of the representative parties are typical of the claims of the class, and (d) the representative parties will fairly and adequately protect the interests of the class. See C.R. 23.01. The Court also finds that common issues predominate and that the class action is superior to other methods of adjudication. See C. R. 23.02.

IT IS FURTHER ORDERED AND ADJUDGED that the parties are to maintain the confidentiality of the identity of class members to the extent reasonably possible absent a Court finding of demonstrable need. See *Doe v. United States*, 44 Fed. Appx. 499 (Federal Circuit 2002). The parties have indicated in professional representations to the Court that they intend to maintain confidentiality of the identity of alleged victims of abuse.

IT IS FURTHER ORDERED AND ADJUDGED that class counsel are to distribute, at their expense, one time, on or before November 1, 2003, via first class United States mail, the attached class notice to all members of the class known to class counsel. The Diocese shall notify Class Counsel of the last known city or town in which each victim was last known to reside so that Class Counsel may notify said persons by appropriate geographical publication of their opt out rights. Class Counsel are further ordered to publish an approved summary of the attached notice in the *Cincinnati and*

Kentucky Enquirer, the *Cincinnati and Kentucky Post*, the *Lexington Herald Leader*, and, because class members may be located in other states, in *USA Today* and in other local publications Class Counsel determines is appropriate to provide adequate notice. Notice is to be published twice, no later than October 31, 2003 and November 10, 2003. Class Counsel shall submit to the Court on or before December 10, 2003, an Affidavit of Publication for all of the published notices. Class Counsel shall provide copies of Opt Out Forms submitted by any person receiving notice to counsel for the Diocese at 14-day intervals or as often as the parties otherwise agree.

I. FINDINGS IN SUPPORT OF DECISION

In order to certify a class action, the Court is required to make findings of fact on the elements of C.R. 23. See *Rose v. Council For Better Education, Inc.*, Ky., 790 S.W.2d 186, 202 (1989); *Brockman v. Jones*, Ky. App., 610 S.W.2d 943 (1980). Therefore, the Court enters the following findings.

Neither the history nor language of Rule 23 and its Kentucky counterpart, C.R. 23, gives the Court authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action. Rather, the only question presented is whether the class that Plaintiffs propose satisfies Rule 23 requirements. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974); *Weathers v. Peters Realty Corp.*, 499 F. 2d 1197, 1201 (6th Cir. 1974). *In re Catfish Antitrust Litig.*, 826 F. Supp. 1019, 1033 (N. D. Miss. 1993). In the instant case, Plaintiffs have presented to the Court evidence that supports their allegations, including admissions of Defendant's agents, documents maintained by Defendant, and affidavits of class

members.² While the Court does not make any finding on the merits of Plaintiff's claims, the Court is satisfied that there is a substantial basis for the allegations.

A. The Class Is So Numerous That Joinder of All Members Is Impracticable (C.R. 23.01(a))

No strict numerical test exists to determine when a class is so numerous that joinder is impracticable. *In re American Medical Systems*, 75 F.3d 1069, 1079 (6th Cir. 1996). "When class size reaches substantial proportions, however, the impracticability requirement is usually satisfied by the numbers alone." *Id.* As few as 23 class members satisfy the numerosity requirement. *Basile v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 105 F.R.D. 506 (S.D. Ohio 1985). Kentucky courts have found that 74 members are sufficient. *Keeton v. City of Ashland*, Ky. App., 833 S.W.2d 894, 895 (1994).

Defendant has admitted publicly that 158 victims of abuse exist (Exhibit 52), and Plaintiff has identified additional victims that are not included in Defendant's records. Based on the facts submitted to the Court, the Court finds that it is likely that more victims of abuse exist than have been identified to date. When class size reaches substantial proportions, the impracticability requirement is usually satisfied by the numbers alone. *In re American Medical Systems, Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996). Moreover, the number of class members who actually come forward is not determinative of the numerosity issue. *BreMiller v. Cleveland Psychiatric Inst.*, 195 F.R.D. 1, 20 (N.D. Ohio 2000). Joinder of the class members is not practicable, because the various acts of abuse have occurred in different jurisdictions in the

² All confidential documents have been submitted under seal pursuant to the protective order, and, although sealed, are a part of the record of this case.

Commonwealth, and class members reside in states other than Kentucky. Therefore, Plaintiffs have satisfied the requirements of C.R. 23.01(a).

B. There Are Questions Of Law Or Fact Common To The Class (C.R. 23.01(b))

Plaintiffs allege in their Second Amended Complaint that Defendant engaged in a common course of conduct; i.e., common policies, patterns or practices, as summarized in their reply brief:

- 1) tacitly approving known instances of sexual child abuse by its priests by enabling them to continue to abuse children by reassigning known pedophiles and sexual predators to contact with minor children;
- 2) failing to report its priests who were known pedophiles and sexual predators to a governmental agency as it was obligated to do by law;
- 3) failing to properly screen, supervise and discipline its priests to protect children in the Diocese, after becoming aware that pedophilia and sexual abuse by priests were serious problems within the Diocese;
- 4) granting pedophiles and sexual predators unsupervised access to minor children in its schools and Parishes;
- 5) actively concealing from the public, including parents of actual and potential victims, the fact that children in the Diocese were being exposed as a captive audience to pedophiles and sexual predators, thus depriving parents of the opportunity to take steps to protect their children from additional incidents of abuse;
- 6) convincing those child sexual abuse victims who did complain that they have no legal recourse and that they must accept small monetary settlements that have no relation to the abuse suffered, pastoral counseling and psychological counseling; and
- 7) swearing victims to secrecy.

Plaintiffs have submitted evidence, in the form of records maintained by Defendant, admissions of Defendant's agents, and affidavits of class members, to support these allegations. Therefore, Plaintiffs have met their burden of demonstrating that there are questions of law or fact common to the class.

Plaintiffs are not required to establish that all questions of law or fact be common. *Wiley v. Adkins*, Ky., 48 S.W.3d 20, 23 (2001). "It is not necessary that there be a complete identity of facts relating to all members as long as there is a common nucleus of operative facts." *Id.* There need be only a single issue common to all members of the class. *American Medical Systems*, 75 F.3d at 1080, citing Herbert B. Newberg & Alba Conte, *NEWBERG ON CLASS ACTIONS*, § 3.10 at 3-50. (Emphasis added). "The commonality test is met when there at least one issue whose resolution will affect all or a significant number of putative class members." *Fallick v. Nationwide Mutual Insurance Company*, 162 F.3d 401, 424 (6th Cir. 1998); *Sterling Velsicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir. 1988). (Emphasis added).

Where a common question exists, "the class action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23." *Califano v. Yamasaki*, 442 U.S. 682, 770-01 (1979). 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. *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448 (N.D. Cal. 1994); *Butler v. Home Depot, Inc.*, 1996 WL 421436, Slip Opinion, p. 2 (N.D.Cal.1996).

The Court finds that the following are common issues in this case:

a. Whether or not Defendant Diocese engaged in a continuing pattern or practice of concealment of sexual abuse and sexual misconduct of its priests in violation of Kentucky common law;

b. Whether or not Defendant Diocese engaged in a continuing pattern or practice of failing to report incidents of sexual abuse and sexual misconduct of its priests in violation of Kentucky common law;

c. Whether or not Defendant Diocese engaged in a continuing pattern or practice of tacitly tolerating sexual abuse and sexual misconduct of its priests in violation of Kentucky common law;

d. Whether or not Defendant Diocese engaged in a continuing pattern or practice of exposing children, parishioners, and employees to priests who were known sexual predators in violation of Kentucky common law;

e. Whether or not Defendant Diocese engaged in a continuing pattern or practice of failing to properly screen, supervise and discipline priests, especially those priests whom it had reason to believe were engaging in acts of sexual abuse and misconduct in violation of Kentucky common law;

f. Whether or not it has been the official policy of Defendant Diocese to keep all information regarding sexual abuse and sexual misconduct by Diocesan priests against children, parishioners, and employees of Defendant Diocese concealed from the priests, nuns, teachers and employees with whom the perpetrators worked and from law enforcement authorities so that these individuals would be unable to take action to protect other victims from further abuse in violation of Kentucky common law.

g. Whether or not Defendant's common policies, patterns or practices caused injury to class members.

C. The Claims Of The Representative Parties Are Typical Of The Claims Of The Class (C.R. 23.01(c))

"[A] plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory," despite substantial factual differences between class members' claims. *In re American Medical Systems*, 75 F.3d at 1082; *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983); *Senter v. General Motors Corp.*, 532 F.2d 511, 525 n. 31 (6th Cir. 1976) "A necessary consequence of the typicality requirement is that the representative's interests will be aligned with those of the represented group, and in pursuing his own claims, the named plaintiff will also advance the interests of the class members." 75 F.3d at 1082.

The test for typicality, like the test for commonality, is not demanding. Typicality focuses on the similarity between the named plaintiffs' legal and remedial theories and the legal and remedial theories of those whom they purport to represent. *Flanagan v. Ahearn (In re Asbestos Litig.)*, 90 F.3d 963, 976 (5th Cir.1996). Based on the allegations in the Second Amended Complaint and on the evidence submitted in support of Plaintiffs' class certification motion, the Court finds that Plaintiffs share a common interest with class members. They were all affected by the same alleged policies, patterns and practices and they all seek the same relief. In the event the class members in this case were to proceed individually in numerous parallel actions, they would advance legal and remedial theories identical to those advanced by the named Plaintiffs. Each Plaintiff will have to prove essentially the same case. Because all class members will obtain a direct benefit from the success of this lawsuit, the difference in the status or in the degree of abuse suffered by each class member is irrelevant. See *Fallick v. Nationwide Mutual Insurance Co.*, 162 F.3d 410, 423-24 (6th Cir. 1998); *Bittinger v. Tecumseh Products Company*, 123 F.3d 877 (6th Cir. 1997). Therefore, the requirements of C.R. 23.01(c) are met.

D. The Representative Parties Will Fairly And Adequately Protect The Interests Of The Class (C.R. 23.01(d))

There are two criteria for determining adequacy of representation: "1) the representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Senter v. General Motors Corp.*, 532 F.2d 511, 525 (6th Cir. 1976). The Court finds that class counsel are experienced in class action

litigation, including class action litigation before this Court in previous cases. They have aggressively and vigorously prosecuted the interest of the class in this case.

For the reasons set forth above in Section C, the Court finds Plaintiffs have common interests with unnamed members of the class. There is no conflict between the Plaintiffs and the class members. They all rely on the theory that the common policies, patterns and practices of the Diocese caused their injuries and they all seek common relief. Before a trial court may deny certification, it must find that an alleged conflict is more than merely speculative or hypothetical. *5 Moore's Federal Practice*, § 23.25[4][b][ii] at 23-119. *See also Rutherford v. City of Cleveland*, 137 F.3d 905, 909-10 (6th Cir. 1998). If for any reason a Plaintiff became an inadequate class representative, that person can be removed and a new Plaintiff substituted. The fact that a class member may chose to pursue his or her claim individually or chose not to pursue a claim at all is no basis for denying class certification. The Court will require issuance of appropriate notice and will permit prospective class members to opt out of this case in order to protect anyone who may choose not to be part of this class action.

E. The Prosecution Of Individual Actions By Class Members Would Create Risks Of Inconsistent Adjudications and Adjudications Dispositive Of Interests Of Non-Parties (C.R. 23.02(a)(i) and (ii))

Class actions are designed to avoid prejudice to the Defendant and to absent class members if individual actions were prosecuted in contrast to a class suit yielding a unitary adjudication. *Newberg*, § 4.01, p. 4-4. C.R. 23.02(a)(1) states that class certification is proper if separate actions "would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class. . ." CR 23.02(a)(1).

"The phrase 'incompatible standards of conduct' is thought to refer to the situation where different results in separate actions would impair the opposing party's ability to pursue a uniform continuing course of conduct." 7A Wright & Miller, *Federal Practice & Procedure: Civil 2d*, § 1773, p. 431 (citing cases).

The proof regarding liability through the alleged common course of conduct will be virtually identical for all class members. To avoid the risk of inconsistent or varying adjudications with respect to these issues, certification under Rule 23.02(a) is appropriate. See, *Mitchell v. Peoples Bank of Northern Kentucky, Inc., et al.*, Boone Circuit Court Case No., 02-CI-00691, Amended Conditional Class Certification Order, July 23, 2002. Therefore, the requirements of C.R. 23.02(a)(i) are met.

F. Common Liability Issues Predominate And The Class Action Is Superior To Other Available Methods For The Fair And Efficient Adjudication Of The Controversy (C.R. 23.02(c))

There is no question that there are common issues and that these common issues predominate. Plaintiffs contend, and have submitted evidence to support their contention, that the Diocese had common policies, patterns and practices, as specified in section B of this opinion. Defendant's only challenge to this allegation is that its policies were implemented by different priests and bishops over different periods of time. This claim neither negates the existence of a common policy followed by a succession of officials nor eliminates the common issue. Policies are created by organizations to be followed by various officials over periods of time. A common course of conduct can evidence the existence of a policy that is being followed by an organization, even if the policy is not put in writing or otherwise formalized.

For the purpose of class certification, Plaintiffs do not have the burden of proving the merits of their case. It is sufficient if the existence of the alleged course of conduct is a common issue that predominates over individual issues. The Court is convinced that the question whether there existed consistent policies, patterns, and practices as described by Plaintiffs is a common question of fact in this case, and that question “predominates” this class action litigation.

Given the number and extent of the common issues in this case, a class action certified under CR 23.02(c) is clearly superior to any other method and will advance the efficient and fair adjudication of this controversy. In addition, the costs of each individual pursuing the matter, along with the fact that each class member has undergone a traumatic experience that may make them fearful of public scrutiny, significantly impairs the ability of individual Plaintiffs to proceed on a case-by-case basis. Even if all individual cases could proceed in Boone County, it is highly impractical, if not impossible, to find sufficient qualified jurors to conduct over 100 individual trials in this county of about 90,000 residents. These trials would consume all of the Court's time and resources for many years. Courts typically certify class actions where such impediments to proceeding individually may discourage Plaintiffs from pursuing their claims. *Schoels v. Stone, McGuire & Benjamin*, 143 F.R.D. 181, 185 (N.D. Ill. 1992); *Wehner v. Syntex Corp.*, 117 F.R.D. 641, 645 (N.D. Cal. 1987). Accordingly, certification of this action to proceed as a class action pursuant to C.R. 23.02 (c) is appropriate. *Robinson v. Metro North Commuter Railroad Co.*, 267 F.3d 147, 168 (2nd Cir. 2001).

Defendant's argument that individual damages issues predominate over the common liability issues does not negate class certification. "No matter how individualized the issue of damages may be, these issues may be reserved for individual treatment with the question of liability tried as a class action. Consequently, the mere fact that questions peculiar to each individual member of the class remain after the common questions of the Defendant's liability have been resolved does not dictate the conclusion that a class action is impermissible." *In re American Medical Systems*, 75 F.3d 1069, 1084 (6th Cir. 1996), quoting *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1196-97 (6th Cir. 1988).

The Court finds that all parties have an interest in having liability issues resolved in a single forum. The costs of juries for individual trials alone is prohibitive, not to mention the duplication of motions and duplicate evidence. Defendant has not brought to light any other litigation on similar issues that would prohibit class certification. Plaintiffs in any pending individual cases will have the right to opt out of this case and pursue their claims individually. Because the Diocese of Covington was spread throughout many counties in Kentucky prior to 1988, it is very desirable to concentrate the litigation in this forum where the Diocese's headquarters is located and where certain acts of abuse have occurred. Courts in small localities may have difficulty in managing complex litigation involving multiple trials. A class action verdict or settlement will provide closure to the Diocese for all claims arising from the alleged course of conduct. The Court views this as a very beneficial result.

This Court does not perceive significant difficulty in managing this class action. The claims of class members can be managed much more efficiently in a class action

setting. Liability issues may be severed, or bifurcated, and tried separately. C.R. 23.04 provides that the Court may make appropriate orders determining the course of proceedings or prescribing measures to prevent undue repetition or complication. A class action should not be found unmanageable without first exploring the available procedural devices, such as bifurcating liability and damages issues. *Robinson*, 267 F.3d at 168 (Citations omitted). Litigating the common question issues in a first phase for the class as a whole reduces the range of issues in dispute and promotes judicial economy. If the Defendant succeeds at this phase and the jury finds no common policies, patterns, or practices that caused injury to class members, then the class action case ends. If the jury does find that the Diocese engaged in the alleged common course of conduct, the remaining issues and evidence relating to individual damages are substantially narrowed. *Id.*

In this case, liability issues and punitive damages issues will be tried in the first phase. Plaintiffs have represented that the Diocese's records and admissions may be sufficient to demonstrate that its common policies, patterns and practices caused children in the Diocese to be subjected to sexual abuse. The evidence submitted with Plaintiffs' reply brief supports this assertion. The United States Supreme Court and the United States Court of Appeals for the Sixth Circuit have endorsed the use of a first phase class action trial on allegations of a common pattern or practice, leaving individual damages issues to a second phase of the case. *See General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 159, n. 15 (1982); *Brotherhood of Teamsters v. United States*, 431 U.S. 324, 360 (1977); *Franks v. Bowman Transportation Co.*, 424 U.S. 747, 752-757 (1976); *In re American Medical Systems*, 75 F.3d 1069, 1084 (6th

Cir. 1996), *In re Bendectin Litigation*, 857 F.2d 290, 307-09 (6th Cir. 1988); *Sterling v. Velsicol Chem. Corp.*, 855 F.2d at 1196-97; *see also Day v. NLO*, 851 F. Supp. 869, 883 (S.D. Ohio 1994), *MANUAL FOR COMPLEX LITIGATION* (3rd Edition) § 33.54, p. 354 (1995) and cases cited therein. Issues involving the specific individual injuries suffered by each class member and the amount of compensatory damages to which each is entitled are to be resolved in the second phase of this case. Therefore, the Court finds that the requirements of C.R. 23.02(c) are met.


JUDGE JOSEPH BAMBERGER
BOONE COUNTY CIRCUIT COURT

Date: 10-20-03

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

CARL COE (pseudonym), et al.

PLAINTIFFS

vs.

HON. JOS. F. BAMBERGER

ROMAN CATHOLIC DIOCESE OF COVINGTON

DEFENDANT

**NOTICE TO ALL PERSONS WHO WERE SUBJECTED TO
ACTS OF SEXUAL ABUSE AND SEXUAL MISCONDUCT
BY PRIESTS OF THE ROMAN CATHOLIC DIOCESE OF COVINGTON, KENTUCKY
FROM JANUARY 1, 1956 TO THE PRESENT:**

This Notice affects your legal rights and is given to you pursuant to Rule 23.03(2) of the Kentucky Rules of Civil Procedure in the belief that you may be a member of a Class and that your rights may be affected by the proceedings described below. Please read carefully the definition below to determine if you are a member of the Class.

Five individuals filed a class action lawsuit against the Roman Catholic Diocese of Covington, Kentucky in 2003. The plaintiffs, on behalf of a class of individuals, seek, among other things, a determination by the Court that the Diocese of Covington violated its duty to minors within the Diocese through a course of conduct from 1956 to the present that exposed said persons to sexual abuse and sexual misconduct by Diocesan priests or members of religious orders who were employed by the Diocese. This notice explains:

- A. The Lawsuit And The Court's Rulings.
- B. The Class Members, i.e., Those Who Might Benefit From The Case.
- C. Confidentiality Of Class Members' Identities.
- D. There Has Been No Determination Of The Merits Of The Case.
- E. Your Right To Opt Out Of This Case And The Deadline For Doing So.
- F. Further Inquiry And Inspection Of Papers.

A. The Lawsuit and the Court's Rulings.

The class action complaint alleges that the Roman Catholic Diocese of Covington, Kentucky has engaged in a policy, pattern, or practice of concealing acts of sexual abuse by its priests or employees and negligently supervising its priests and employees.

Each of the named plaintiffs alleges that he or she was sexually abused by a priest or member of a religious order employed by the Diocese. The complaint alleges

that the Diocese's conduct was unlawful in that the Diocese was negligent, was grossly negligent, and that it committed the Kentucky common law tort of "outrage" through the course of conduct set forth above.

The Diocese generally denies the legal theories advanced by the class action complaint. The Diocese further asserts that some or all of Plaintiffs' claims are barred by the statute of limitations.

On October 1, 2003, the Court ruled that this case will proceed as a class action. The Court ordered that the case will proceed in two phases. In the first phase, a jury will determine whether the Diocese consistently engaged in a policy, pattern or practice of unlawfully concealing abuse claims and negligently supervising its priests and employees during the period 1956 to the present. If the jury finds in favor of the Plaintiffs on those issues, the jury will determine whether punitive damages should be awarded and the amount. The second phase of the case will involve a determination for each class member whether the Diocese is legally responsible for that class member's personal injuries and the amount of damages to be awarded to each class member. The trial date has not yet been scheduled.

B. The Class Members, i.e., Those Who May Benefit From the Case.

The class representatives have asked the Court to allow them to represent people who fit the following class definition:

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

For events occurring during the period 1956 to 1988, the geographical area of the class covers the area of the Diocese of Covington as it existed prior to the creation of the Diocese of Lexington in 1988 and includes the following counties:

- | | | | |
|--------------|---------------|----------------|----------------|
| 1. Bath | 16. Fleming | 31. Laurel | 46. Owsley |
| 2. Bell | 17. Floyd | 32. Lawrence | 47. Pendleton |
| 3. Boone | 18. Franklin | 33. Lee | 48. Perry |
| 4. Bourbon | 19. Gallatin | 34. Leslie | 49. Pike |
| 5. Boyd | 20. Garrard | 35. Letcher | 50. Powell |
| 6. Bracken | 21. Grant | 36. Lewis | 51. Robertson |
| 7. Breathitt | 22. Greenup | 37. Madison | 52. Rockcastle |
| 8. Campbell | 23. Harlan | 38. Magoffin | 53. Rowan |
| 9. Carroll | 24. Harrison | 39. Martin | 54. Scott |
| 10. Carter | 25. Jackson | 40. Mason | 55. Whitley |
| 11. Clark | 26. Jessamine | 41. Menifee | 56. Wolfe |
| 12. Clay | 27. Johnson | 42. Montgomery | 57. Woodford |
| 13. Elliot | 28. Kenton | 43. Morgan | |
| 14. Estill | 29. Knott | 44. Nicholas | |
| 15. Fayette | 30. Knox | 45. Owen | |

For events occurring during the period 1988 to the present, the geographic area of the class covers the area of the Diocese of Covington as it existed after the creation of the Diocese of Lexington in 1988 and includes the following counties:

- | | | | |
|-------------|-------------|-----------|---------------|
| 1. Boone | 5. Fleming | 9. Kenton | 13. Pendleton |
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| 3. Campbell | 7. Grant | 11. Mason | |
| 4. Carroll | 8. Harrison | 12. Owen | |

C. Confidentiality Of Class Members' Identities

The Court has ordered the parties to maintain the confidentiality of the identity of class members to the extent reasonably possible. Names of class members are not currently a matter of public record.

D. There Has Been No Determination Of The Merits Of This Case

The Court's order of class certification and this Notice are not intended to indicate and should not be construed to mean that the claims asserted are meritorious, that the Diocese is liable, or that class members will be entitled to recover any amount. This case involves contested factual and legal issues that have not been decided. This Notice is to advise you of (1) the pendency of this action, (2) the fact that the claims in this action will proceed as a class action for the purposes of litigating the disputed claims, and (3) your rights with respect to the foregoing. The claims described herein may not be settled without prior notice to the members of the Class and prior approval of the Court. However, class members have the right to opt out of this case.

E. Your Right To Opt Out of This Litigation And The Deadline For Doing So

All persons who meet the definition of the Class will be deemed members of the Class unless such persons request to opt out of this case (in other words, to be excluded from the class). Membership in the Class means that a person will be represented by Class Counsel and the Plaintiffs, who are Class Representatives. Membership in the Class means also that a person will be bound by the judgment of the Court.

IF YOU DO NOT WISH TO REMAIN IN THE CLASS, YOU MUST RESPOND TO THIS NOTICE NO LATER THAN JANUARY 31, 2004.

If you wish to opt out of this case, you must return the Opt Out Form attached to this Notice by first class United States mail postmarked on or before January 31, 2004. Send requests to Opt Out to the following address:

Stanley M. Chesley
Robert A. Steinberg
**WAITE, SCHNEIDER, BAYLESS
& CHESLEY CO., L.P.A.**
1513 Fourth and Vine Tower
Fourth & Vine Streets
Cincinnati, Ohio 45202
(513) 621-0267

Requests for exclusion sent to any other address or sent after January 31, 2004 will be deemed invalid and will not result in your exclusion from the Class.

If you DO request exclusion from the Class by opting out, (1) you will not share in a recovery, if any, by the Class through settlement or judgment; (2) you will not be bound by a judgment against the Class; and (3) you will not be precluded from otherwise prosecuting a timely individual claim. If you DO NOT opt out from the case, (1) you will share in any recovery received in this case; (2) you will be bound by a judgment against the Class; and (3) you cannot participate in any other class action as a class representative or class member where the allegations arise out of, or relate to, the same transactions and occurrences that are the subject of the complaint. Should you prosecute such claims in a separate class action, without opting out of the Class, your assertion of claims in such action shall be subject to preclusion by an injunction, stay, or other Court order.

If you want to be included in the Class, you do not need to do anything at this time, but you may, if you so desire, enter an appearance by counsel of your choice at your own individual expense.

If you believe that you are a member of the Class described herein and did not receive notice in the mail, please provide your correct name and current address by sending a confidential letter with that information to:

Robert A. Steinberg
**WAITE, SCHNEIDER, BAYLESS
& CHESLEY CO., L.P.A.**
1513 Fourth and Vine Tower
Fourth & Vine Streets
Cincinnati, Ohio 45202
(513) 621-0267


F. Further Inquiry and Inspection of Papers

This Notice provides a general description and does not cover all of the issues and proceedings to date. If you wish to learn more about this action, address your inquiry, in writing, to Class Counsel at the above-stated address or telephone number.

If you would like to see the complete court file, the pleadings and other papers filed in this action are public records, available for your inspection at the offices of the Clerk, Boone Circuit Court, 2950 Washington Street, Burlington, Kentucky 41005. The Clerk will make the files relating to this lawsuit available to you for inspection and copying at your own expense.

PLEASE DO NOT CALL OR WRITE TO JUDGE BAMBERGER OR THE CLERK OF THE COURT DIRECTLY. THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS ABOUT THIS CASE.

SO ORDERED, this 21 day of October 2003.


Hon. Jos. F. Bamberger
Circuit Court Judge

Stanley M. Chesley
Robert A. Steinberg
**WAITE, SCHNEIDER,
BAYLESS & CHESLEY
CO., L.P.A.**
1513 Central Trust Tower
Fourth & Vine Streets
Cincinnati, Ohio 45202
(513) 621-0267

and

Barbara D. Bonar (KY-
42213)
**B. DAHLENBURG BONAR,
P.S.C.**
118 W. Fifth Street
Covington, Kentucky 41011
859-431-3333

and

Michael J. O'Hara
**O'HARA, RUBERG,
TAYLOR, SLOAN &
SERGENT**
25 Crestview Hills Mall
Road, Suite 201
P.O. Box 17411
Covington, Kentucky
41017-0411
(859) 331-2000

COUNSEL FOR THE CLASS

Mark D. Guilfoyle
**DETERS, BENZINGER &
LAVELLE**
2701 Turkeyfoot Road
Covington, Kentucky 41017
(859) 341-1881

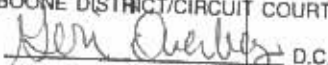
and

Carrie Huff
**MAYER, BROWN, ROWE &
MAW**
190 South LaSalle Street
Chicago, Illinois 60603
(312) 701-7037

COUNSEL FOR THE
DIOCESE

CERTIFICATE

I, PAT GUTZEIT, Clerk of the Boone District/Circuit Court, hereby certify that I have mailed a copy of the foregoing order and notice to all parties hereto at their last known addresses or their counsel of record this 21 day of Oct, 2003.

PAT GUTZEIT
BOONE DISTRICT/CIRCUIT COURT
 D.C.

OPT OUT FORM

Carl Coe (pseudonym) v. Roman Catholic Diocese Of Covington, Case No. 03-C1-0018,
pending in Boone Circuit Court (Judge Joseph F. Bamberger), Boone County, Kentucky

Please check the box below:

- I wish to opt out and be excluded from the Class. I understand that this decision means that I will not be bound by any judgment of the Court in this matter, whether favorable or unfavorable.

Signature: _____

Name:

Address:

Telephone No. (optional): _____

E-mail Address (optional): _____

To be excluded from the Class, you must send your completed form by first class mail no later than January 31, 2004 to:

Robert A. Steinberg
**WAITE, SCHNEIDER, BAYLESS
& CHESLEY CO., L.P.A.**
1513 Fourth and Vine Tower
Cincinnati, Ohio 45202
(513) 621-0267

Commonwealth Of Kentucky, Boone Circuit Court, Case No. 03-CI-00181
Carl Coe (pseudonym) v. Roman Catholic Diocese of Covington, Kentucky

CLASS ACTION NOTICE TO: ALL PERSONS WHO, WHILE MINORS, WERE SUBJECTED TO ACTS OF SEXUAL ABUSE AND SEXUAL MISCONDUCT BY PRIESTS OF THE ROMAN CATHOLIC DIOCESE OF COVINGTON, KENTUCKY FROM JANUARY 1, 1956 TO THE PRESENT

This Notice is given pursuant to Rule 23.03(2) of the Kentucky Rules of Civil Procedure. Your rights may be affected by the proceedings described below. If you are a member of the Class, you will be bound by the judgment of the Court unless you request exclusion from the Class by opting out. Members of the Class will be represented by Class Counsel and the Plaintiffs, who are Class Representatives. Any member of the Class who does not opt-out may, if he or she desires, enter an appearance through his or her counsel at his or her own expense. **If you want to be included in the Class, you do not need to do anything at this time.**

The Lawsuit

Five individuals filed a class action lawsuit against the Roman Catholic Diocese of Covington, Kentucky in 2003. The plaintiffs, on behalf of a class of individuals, seek, among other things, a determination by the Court that the Diocese of Covington violated its duty to minors within the Diocese through a course of conduct from 1956 to the present that exposed said persons to sexual abuse and sexual misconduct by Diocesan priests or members of religious orders who were employed by the Diocese. The class action complaint alleges that the Roman Catholic Diocese of Covington, Kentucky has engaged in a policy, pattern, or practice of concealing acts of sexual abuse by its priests or employees and negligently supervising its priests and employees. The complaint alleges that the Diocese's conduct was unlawful in that the Diocese was negligent, was grossly negligent, and that it committed the Kentucky common law tort of "outrage" through the course of conduct set forth above. The Diocese generally denies the legal theories advanced by the class action complaint. The Diocese further asserts that some or all of Plaintiffs' claims are barred by the statute of limitations. On October 1, 2003, the Court ruled that this case will proceed as a class action. The trial date has not yet been scheduled.

Who Is A Class Member

You are a member of the class if you fall within the following class definition:

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

For events occurring during the period 1956 to 1988, the geographic area of the class covers the area of the Diocese of Covington as it existed **prior** to the creation of the Diocese of Lexington in 1988 and includes the following counties: Bath, Bell, Boone, Bourbon, Boyd, Bracken, Breathitt, Campbell, Carroll, Carter, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Greenup, Harlan, Harrison, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Robertson, Rockcastle, Rowan, Scott, Whitley, Wolfe, Woodford.

For events occurring during the period 1988 to the present, the geographic area of the class covers the area of the Diocese of Covington as it existed **after** the creation of the Diocese of Lexington in 1988 and includes the following counties: Boone, Bracken, Campbell, Carroll, Fleming, Gallatin, Grant, Harrison, Kenton, Lewis, Mason, Owen, Pendleton, Robertson.

Confidentiality Of Class Members' Identities

The Court has ordered the parties to maintain the confidentiality of the identity of class members to the extent reasonably possible. Names of class members are not currently a matter of public record.

There Has Been No Determination Of The Merits Of This Case

This case involves factual and legal issues that have not been decided. This notice is not intended to indicate that the claims asserted are meritorious, that the Diocese is liable, or that class members will be entitled to recover any amount. The class claims may not be settled without prior notice to class members and prior approval of the Court.

Your Right To Opt Out of This Litigation

If you wish to opt out of this case, you must return the Opt Out Form attached to this Notice by first class United States mail postmarked on or before January 31, 2004 to the following address:

Stanley M. Chesley and Robert A. Steinberg, Class Counsel
Waite, Schneider, Bayless& Chesley Co., L.P.A.
1513 Fourth and Vine Tower
Fourth & Vine Streets
Cincinnati, Ohio 45202

Requests for exclusion sent to any other address or postmarked after January 31, 2004 will be deemed invalid and will not result in your exclusion from the Class.

Further Inquiry and Inspection of Papers

This Notice provides a general description and does not cover all of the issues and proceedings to date. If you wish to learn more about this action or determine whether you are a member of the class, address your inquiry, in writing, to Class Counsel at the above-stated address. All inquiries will remain confidential. If you would like to see the complete court file, the pleadings and other papers filed in this action are public records and are available for your inspection at the offices of the Clerk, Boone Circuit Court, 2950 Washington Street, Burlington, Kentucky 41005.

DO NOT CALL OR WRITE TO JUDGE BAMBERGER OR THE CLERK OF THE COURT.

SO ORDERED, this 20th day of October 2003.

Hon. Jos. F. Bamberger
Circuit Court Judge

.....
OPT OUT FORM

Carl Coe (pseudonym) v. Roman Catholic Diocese Of Covington, Case No. 03-C1-0018, pending in Boone Circuit Court (Judge Joseph F. Bamberger), Boone County, Kentucky

I wish to opt out and be excluded from the Class. I understand that this decision means that I will not be bound by any judgment of the Court in this matter, whether favorable or unfavorable.

Signature _____
Print Name: _____
Address: _____

To be excluded from the Class, you must return this completed form by first class mail postmarked no later than January 31, 2004 to:

Telephone No. (Optional): _____
Email Address (Optional): _____

Robert A. Steinberg
WAITE, SCHNEIDER, BAYLESS& CHESLEY CO., L.P.A.
1513 Fourth and Vine Tower
Cincinnati, Ohio 45202
(513) 621-0267