

Article – Diocesan attorney answers questions about recent settlement

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Editor's note: John J. Eagan is principal attorney for the Diocese of Springfield.

Q. Why did the Springfield Diocese sue its insurance companies?

A. In 2004, the diocese agreed to enter into a mediation to settle clergy sexual abuse claims pending at that time. The diocese was able to secure the commitment of all its then known insurance companies to participate in the mediation. However, some insurance carriers dropped out the week before the mediation was to start. Other insurance carriers came to the mediation, listened to the claimants' stories and the presentation of their attorney and expert witness, and then they dropped out.

At this point, Springfield Bishop Timothy A. McDonnell decided the diocese had an obligation to proceed to mediate with these claimants, even without the insurance companies, and then deal with the insurance carriers later.

In June of 2004, the diocese settled 46 claims by payment of \$7,750,000 in cash and real estate and agreeing to future counseling reimbursements for these individuals.

The diocese funded this settlement from its own insurance reserves and from its savings without any assistance from the insurance carriers.

The diocese next contacted all the insurance carriers and requested they enter into mediation with the diocese concerning the insurance carriers' obligations under the policies. The insurance carriers declined. Only then did Bishop McDonnell authorize litigation to resolve what the insurance carriers owed on the 2004 settlements and what their responsibility would be for future cases. That case was filed in June 14, 2005.

After the 2004 settlement was announced, new claimants came forward. The diocese was unable to proceed to resolve these claims until its dispute with the insurance carriers was resolved.

Q. How many claims were made, and how far back do they go?

A. There were over 130 individuals who asserted claims, including those previously settled and those still pending, and they went back as far as 1943.

Q. How many priests of the diocese were charged?

A. Claims were made against 68 individuals, of whom 56 were priests of the Diocese of Springfield. Since 1943, more than 1,500 priests were active in the Diocese of Springfield.

Q. How many of those priests are still in active ministry?

A. None.

Q. What was this lawsuit all about?

A. Many claims were asserted against the diocese or its supervisors saying that someone must have known about the acts of sexual abuse committed by priests, religious, or other employees of the diocese. Those claims alleged that supervisors of the diocese were negligent, because if they knew there was a risk of abuse, they should have taken more aggressive steps to prevent any future harm. The diocese always contended that was not the case.

From about 1968 to 1986 the diocese had insurance policies with several different companies that provided certain coverage for any negligent acts of its supervisors and/or employees. These insurance policies never covered the intentional acts of the individuals who inflicted the actual abuse. The insurance coverage for the diocese was implicated when negligent supervision claims were made against the supervisors.

Q. Why do you believe the insurance carriers initially refused to pay?

A. Some of the victims were abused over time periods covered by different insurance companies. Some of the abuse took place before the diocese first had insurance. The claims were 20-65 years old. The insurance carriers wanted a further investigation to determine the dates of abuse and which carriers were

providing coverage at that time; and to investigate the claims that the supervisors in the diocese knew or should have known of the abuse. If there was evidence the diocese knew, it would provide the insurance carriers with a legal defense which would relieve the insurance companies of their obligation to cover the diocese for any negligent supervision claims.

Q. What happened in the lawsuit?

A. The insurance carriers investigated all the pertinent records of the diocese (80,000 pages) and took sworn testimony of multiple diocesan officials and witnesses outside the diocese. The diocese took sworn testimony from representatives of each insurance carrier. This "discovery" process took several years. At the same time, a Hampden County Grand Jury was reviewing the same records and taking testimony under oath from officials of the diocese.

On Sept. 27, 2004, the District Attorney announced that the grand jury had completed its investigation and found no evidence of knowledge of sexual abuse, no evidence of destroyed records, or a cover-up on the part of the diocese. The investigation of the insurance carriers continued on for the next three and a half years.

In early 2008, the insurance carriers agreed to a mediation process to seek to resolve the claims of the diocese. On Feb. 11 in Boston, the mediation process began with the insurance carriers. The carriers had about 30 representatives from all across the country. The diocese was represented by its attorneys and John Shuman, its secretary for temporalities, and certified public accountant William LaBroad, its chief financial officer. The face-to-face meetings consumed three days and were suspended by Paul Finn, Esq., president, Commonwealth Mediation. Attorney Finn thereafter conducted further discussions with the respective parties which took place during March and April and culminated in the settlement.

Q. What are the terms of the settlement?

A. Collectively, the carriers will reimburse the diocese \$8,497,000.

Q. Does this reimburse the diocese in full?

A. No, the diocese has paid and will pay a total of about \$12,750,000 in settlements.

Q. Why did the diocese settle for less than it paid?

A. Of the total amounts paid and related expenses, approximately 25 percent involved cases for which there was no insurance policy covering the time of abuse. Further, one of our major carriers was insolvent. In the remaining 75 percent, the diocese, out of concern for the victims, agree to waive the charitable immunity cap of \$20,000 and not assert any statute of limitation or other legal defenses. This was a pastoral decision made by the bishop, and the insurance carriers were not bound by it. Finally, by settling now, the diocese was able to spare the claimants from undergoing depositions conducted by the insurance company lawyers.

Q. Where will the settlement proceeds go?

A. Of the \$8,497,000, approximately \$5 million will be set aside in a settlement fund. Claimants will be offered an arbitration process, which will permit recovering between \$5,000 and \$200,000 as determined by Commonwealth Mediation. The diocese will not contest any of the claims that it invites into the arbitration process. No lawyer or representative from either the diocese or any insurance carrier will participate in, or be present at any arbitration hearing. Claimants who elect not to go into arbitration will be free to pursue their legal claims in a court of law, and the diocese will defend those claims with any lawful defense.

The balance of the proceeds will go back to the diocese to partially replenish those savings that were used to fund the 2004 settlements.

Q. Why do you think the insurance carriers settled now?

A. The case was set for trial in November. The pressure always mounts to resolve disputes as the trial date approaches. Further, after extensive discovery, I believe there was no evidence any supervisors of the diocese knew of this misconduct. In my judgment, the carriers came to the same conclusion as the grand jury: that this terrible abuse was done in secret, and that the victims were coerced by their abusers to keep the abuse secret for years.

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