

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT  
CIVIL NO. 05-0602

ROMAN CATHOLIC BISHOP OF SPRINGFIELD,  
A CORPORATION SOLE

v

TRAVELERS CASUALTY AND SURETY COMPANY & others<sup>1</sup>

HAMPDEN COUNTY  
SUPERIOR COURT  
**FILED**  
FEB - 5 2007  
*Brian P. [Signature]*  
CLERK-MAGISTRATE

**MEMORANDUM OF DECISION AND ORDER AFTER IN CAMERA REVIEW  
ON DEFENDANTS' MOTION TO COMPEL**

Pursuant to my order dated January 3, 2007, the plaintiff sent to the Court for in camera review documents which it has withheld on grounds of what is known as the "priest penitent privilege."<sup>2</sup> General Laws c. 233, § 20A, provides in pertinent part:

"A priest, rabbi or ordained or licensed minister of any church . . . shall not, without the consent of the person making the confession, be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs; nor shall a priest, rabbi or ordained or licensed minister of any church . . . testify as to any communication made to him by any person in seeking religious or spiritual

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<sup>1</sup>Massachusetts Insurers Insolvency Fund, North Star Reinsurance Corporation, Underwriters at Lloyd's, London, Centennial Insurance Company, Interstate Fire & Casualty Company, and Colonial Penn Insurance Company

<sup>2</sup>The plaintiff does not claim that any other privilege applies to bar the disclosure of these documents. Accordingly, the sole issue before me is the applicability of G.L. c. 233, § 20A.

advice or comfort, or as to his advice given thereon in the course of his professional duties or in his professional character, without the consent of such person."

Whether the withheld communications are privileged under this statute is a factual question. See *Commonwealth v. Zezima*, 365 Mass. 238, 242 n.4 (1974).

I examined the documents sent by the plaintiff, and make the following findings as to which documents are protected from compelled discovery by G.L. c. 233, § 20A. The documents generally fall into two categories, each discussed in turn.

### **(1) Misconduct Commission Documents**

The Diocese's Commission to Investigate Improper Conduct of Personnel (the Misconduct Commission) received and investigated complaints about persons working or volunteering for the Diocese (priests, nuns, school teachers, and volunteers) alleged to have acted improperly. The Misconduct Commission is a group of lay persons invited by the bishop to undertake this work and to communicate with the diocesan officials about the status and procedures of the Misconduct Commission's work.

The documents relating to the Misconduct Commission contain complaints (on telephonic intake forms, letters, and emails), correspondence between the Misconduct Commission and/or diocesan officials and complainants, bills documenting therapy costs for alleged victims, documents (such as meeting minutes and memoranda) describing the Misconduct Commission's procedures, conclusions, and sometimes its recommendations to the bishop, and some complainants' correspondence with a bishop or other diocesan personnel regarding abuse allegations. The Misconduct Commission, as an independent body of laypersons, functions in an administrative rather than a spiritual advisory capacity. The Misconduct Commission's communications do not give or solicit spiritual

or religious advice. One document within its files, however, is an exception. It is a letter from a complainant to an unnamed "Father," in which the author complains about Father A. James Thompson. In the letter, the complaint writes, "Please accept this letter as my personal confession because my spirit and my loyalty to the church is [*sic*] being challenged." That document is Bates stamped with numbers G08001 through G 08013, and is protected from discovery as a confession. Apart from that one exception, I find that the remaining Misconduct Commission documents are not privileged under G.L. c. 233, § 20A.

## **(2) Correspondence Between Bishops and Priests Accused of Misconduct**

There are many files containing some priests' correspondence with the Springfield bishop at the time (Weldon, Maguire, Marshall, or Dupre). Each of these priests had experienced or been accused of having problems (such as with substance or sexual abuse) and, as is evident from the communications, was expected to maintain regular contact with his bishop to apprise him of his condition in or after treatment programs and any thoughts about future employment. Typically, the priest writing to his bishop would provide information about his progress in therapy, his support system (friends), plans for spiritual direction and retreats, his daily routines, and any changes in addresses or plans for temporary trips. Many priests expressed interest in future employment positions (i.e., some priests proposed working in a parish or diocesan office, to start a new program, or to seek a position in another diocese or state), and several longed to return to active public ministry. In some cases, the priests asked the bishop to pay certain bills for treatment. The bishops' responses addressed these issues and often updated the priests

about other events in the diocese. For the most part, the letters between priests and their bishops were administrative in nature rather than communications seeking or giving spiritual advice.

None of the priests' letters contain statements amounting to a confession. Most of these letters between the priests and their bishops contain some comments referring to prayer or spirituality, as each writer promises the other of his prayers, but not every reference to spirituality converts a letter to a communication seeking or giving spiritual advice or comfort, for purposes of G.L. c. 233, § 20A. In contrast to most of these letters, however, several letters from Richard Lavigne to Bishop Marshall and to Bishop Dupre contain spiritual or theological reflections which can be viewed as soliciting the bishops' spiritual advice or at least reflective response. On this basis, I find that Lavigne's letters which are shielded from disclosure by G.L. c. 233, § 20A, are the following: (1) letter dated Aug. 15, 1972, Bates stamped G 11033; (2) letter dated June 11, 1993, Bates stamped G11034; (3) letter dated November 17, 1993, Bates stamped G11062; (4) letter dated April 14, 1993, Bates stamped G11065; (5) letter dated April 7, 1993, Bates stamped G11070; (6) letter dated April 15, 1995, Bates stamped G11124; (7) letter dated December 1, 1994, Bates stamped G11128; and (8) letter dated January 15, 1994, Bates stamped G11145.

The bishops' responses to Lavigne largely remained at the administrative level apart from promises for continued prayers and inquiries about Lavigne's plans for spiritual direction and directed retreats, and did not usually offer spiritual advice or comfort as contemplated by G.L. c. 233, § 20A.<sup>3</sup> The exceptions to this are the following

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<sup>3</sup>These letters show that the bishops expected Lavigne to seek spiritual guidance from regular directed retreats and regular meetings with a spiritual director. Despite Lavigne's theological reflections in his

letters to Lavigne: (1) a letter by Bishop Marshall dated April 14, 1993, Bates stamped G11065; (2) a letter from Bishop Dupre dated June 30, 1997, Bates stamped G11090; and (3) a letter from Bishop Dupre dated April 8, 1996, and Bates stamped G11138.

**ORDER**

For the foregoing reasons, it is hereby **ORDERED** that the defendants' motion to compel is **DENIED** with respect to the documents bearing the following Bates stamp numbers: G08001 through G 08013, G 11033, G11034, G11062, G11065, G11070, G11124, G11128, G11145, G11065, G11090, and G11138.

It is further **ORDERED** that the defendants' motion to compel is **ALLOWED** with respect to the remaining documents provided to the Court for in camera review, as redacted by the Court to protect the privacy of persons alleged to have been sexually abused by diocesan personnel.<sup>4</sup>



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John A. Agostini  
Associate Justice, Superior Court

**Dated:** February 2, 2007

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letters, the bishops appeared not to be able to respond with spiritual advice or comfort. One bishop was limited in responding by his terminal illness, and another acknowledged to Lavigne that his time constraints prevented him from responding in kind to Lavigne's reflections.

<sup>4</sup>Several complainants and some of the accused individuals expressly asked that their communications remain confidential. Out of respect for the privacy of the complainants, the copy of documents to be produced to the defendants shall be redacted to protect the privacy of the complainants.