National Union Fire Ins. Co. of Pittsburgh, PA v Roman Catholic Diocese of Brooklyn
2017 NY Slip Op 30368(U)
February 27, 2017
Supreme Court, New York County
Docket Number: 653575/2014
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 55

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NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, ILLINOIS NATIONAL INSURANCE COMPANY,

Plaintiffs,

DECISION/ORDER
Index No. 653575/2014

-against-

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, CITY OF NEW YORK, A MUNICIPAL CORPORATION, ADMINISTRATION FOR CHILDREN'S SERVICES F/K/A CHILD WELFARE ADMINISTRATION, ST. JOSEPH SERVICES FOR CHILDREN, INC. F/K/A CATHOLIC CHILD CARE SOCIETY OF THE DIOCESE OF BROOKLYN, INC., HEART SHARE HUMAN SERVICES OF NEW YORK, ROMAN CATHOLIC DIOCESE OF BROOKLYN, INC. F/K/A CATHOLIC GUARDIAN SOCIETY OF THE DIOCESE OF BROOKLYN, INC., SCO FAMILY OF SERVICES, INC. F/K/A ST. CHRISTOPHER-OTTILE, WESTCHESTER FIRE INSURANCE COMPANY, IN ITS OWN CAPACITY AND AS SUCCESSOR-IN-INTEREST TO INTERNATIONAL INSURANCE COMPANY, THE NATIONAL CATHOLIC RISK RETENTION GROUP, INC.

Defendants.

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HON. CYNTHIA KERN, J.:

Plaintiffs National Union Fire Insurance Company of Pittsburgh, PA ("National Union") and Illinois National Insurance Company ("Illinois National") have commenced the present action to recover over $24 million they paid to defend and settle a lawsuit brought against the City of New York and three foster care agencies affiliated with The Roman Catholic Diocese of Brooklyn (the "Diocese"); St. Joseph Services for Children, Inc. f/k/a Catholic Child Care Society of the Diocese of Brooklyn, Inc. ("SJSC"); Heart Share Human Services of New York, Roman Catholic Diocese of Brooklyn, Inc. f/k/a Catholic Guardian Society of the Diocese of Brooklyn, Inc. ("HHS"); SCO Family of Services, Inc. f/k/a St. Christopher-Ottilie ("SCO") (collectively, the "agencies"). National Union and Illinois National have now brought the present motion for partial summary judgment seeking a declaration that the $24 million they paid to defend the City and defend and indemnify the agencies in the underlying lawsuit must be allocated *pro rata* to the twenty-

two annual periods of potential exposure between 1985 and 2007 -- the years in which the claimants allege that they were abused. They also seek a declaration that, after the required *pro rata* allocation, the Diocese must satisfy a $250,000 SIR for each occurrence that resulted in bodily injury to each claimant during a particular policy period.

The relevant background of this action is as follows. In 2009, ten individuals who had been placed as foster children in the home of Judith Leekin (the "claimants") filed a lawsuit alleging abuse in her home in the U.S. District Court for the Eastern District of New York. The lawsuit alleged that the City and the agencies negligently placed ten children in the foster care home of Judith Leekin, where they suffered years of abuse. SCO placed one foster child in 1986, the City placed two children in 1988, SJSC placed five children between 1989 and 1992, and HHS placed two children in 1994. S.B. was placed with Leekin by SCO on May 9, 1986; L.J. was placed with Leekin by the City on March 17, 1988; J.G. was placed with Leekin by the City on September 30, 1988; S.W. was placed with Leekin by SJSC on June 28, 1989; R.E. was placed with Leekin by SJSC on March 27, 1992; J.B. was placed with Leekin by SJSC on December 5, 1992; C.B. was placed with Leekin by SJSC on December 5, 1992; T.G. was placed with Leekin by SJSC on December 5, 1992; T.L. was placed with Leekin by HHS on July 15, 1994; and J.L. was placed with Leekin by HHS on July 15, 1994.

In the underlying lawsuit, the claimants allege that they each suffered horrific abuse and neglect while in Leekin's custody at each of the various locations where they resided and that they were abused by Leekin until they were removed from her custody in July 2007, or in J.B.'s case, escaped in 2004. The plaintiffs alleged that the agency defendants failed to properly screen Leekin as a potential foster parent, monitor plaintiffs while they were in Leekin's care or undertake their duties in connection with investigating Leekin prior to plaintiffs' adoptions and that the defendants' reckless indifference to their duties and to plaintiffs led to plaintiffs' fraudulent adoption and abuse by Leekin. *S.W. v. City of New York,* 46 F. Supp. 3d 176 (E.D.N.Y. 2014). Plaintiffs brought claims against the agency defendants for violation of 42 U.S.C. section 1983 (the "1983" claims) as well as for common law negligence. *Id.* The agency defendants made a motion for summary judgment in the lawsuit to dismiss all of the 1983 and negligence

claims. The federal court dismissed three of the eight claimant's negligence claims as untimely but held that the negligence claims of the remaining five claimants were timely. *Id.* The court also denied the motion for summary judgment dismissing the 1983 claims of the eight claimants who had been placed by the agency defendants. *Id.*

In the underlying lawsuit, the claimants filed a Rule 56.1 statement in opposition to the motion, which detailed the individual acts of abuse suffered by each of them over the years. The claimants alleged that they suffered abuse from the time of their placement in Leekin's custody until the time they were removed from her custody in July 2007, with the exception of J.B., who was abused until he allegedly escaped from Leekin in November 2004. According to their Rule 56.1 statement, each of the claimants was originally placed with Leekin at a residence she owned in Laurelton, Queens, New York. In 1998, Leekin moved the ten claimants from New York to Florida, where she relocated them in various houses over the following years. The claimants alleged they were beaten, handcuffed, zip-tied, humiliated, threatened, secreted from the public, locked up in a basement or garage, deprived of education, denied medical treatment and starved. While all claimants alleged this type of abuse, each claimant allegedly endured independent abusive acts that varied widely, was unique to each claimant, and occurred at different times and locations over many years.

National Union and Illinois National issued a series of sixteen commercial general liability policies to the Diocese for consecutive annual policy periods between September 1, 1985 and August 31, 2001 (the "policies"). The policies cover the insured's liability for bodily injury as long as it: (a) is caused by an "occurrence," (b) takes place during the policy period; and (c) is otherwise covered under the terms and conditions of the policies. NCRRG issued six policies to the Diocese that were in effect between September 1, 2001 and September 1, 2007. Each of the sixteen National Union and Illinois National policies contains a Self-Insured Retention (SIR) Endorsement (per occurrence) that states the insurance will apply "excess of a $250,000 Self-Insured Retention."

Subject to a reservation of their rights, National Union and Illinois National agreed to defend the agencies and the City against the underlying lawsuit. To date, National Union and Illinois National have paid $3,737,431 to defend the City and $3,558,198 to date to defend the agencies. National Union and

Illinois National began paying the City's and agencies' defense costs after the Diocese paid the first $250,000 of defense costs, representing the equivalent of a single SIR. The Diocese asserted that it need only pay one SIR in connection with the underlying lawsuit. National Union and Illinois National disputed that position and advised the Diocese and agencies that their SIR obligations would not be satisfied until at least one $250,000 SIR was exhausted for each claimant, per occurrence, under each relevant policy. National Union and Illinois National agreed to advance the costs of defending and settling the case. As a result, the Diocese, the agencies, National Union and Illinois National entered into an Interim Funding/Non-Waiver Agreement. Under that agreement, National Union and Illinois National agreed to advance money to the City and agencies to defend and/or settle the underlying lawsuit, subject to a mutual reservation of rights and National Union's and Illinois National's right to recoup from the Diocese and/or the agencies any amounts advanced if it was later determined that those amounts either fell within the Diocese's SIR obligations or otherwise were not owed by National Union or Illinois National. In June 2014, with the consent of the Diocese and the agencies, National Union and Illinois National agreed to advance, under a reservation of rights, a total of $17.5 million to settle the claims against the agencies by eight of the ten claimants, with payments allocated paying $2 million to each of the eight claimants. Plaintiffs then commenced the present action seeking a declaration with respect to the payments they have expended for defense and settlement costs and have brought the present motion for partial summary judgment with respect to these issues.

In a case involving the same parties as the present litigation, the Court of Appeals addressed many of the issues present in this litigation. *Roman Catholic Diocese of Brooklyn v. National Union Fire Insurance Company of Pittsburgh,* 21 N.Y.3d 139 (2013). The issue to be determined in that case was the apportionment of liability for a settlement between the Diocese and a minor plaintiff in an underlying civil action charging sexual molestation by a priest. The court there held that the incidents of sexual abuse by the same priest against the same plaintiff over a number of years constituted multiple occurrences and that any potential liability should be apportioned among the several insurance policies, pro rata. The complaint in that case, as amplified by the bill of particulars, alleged that the priest sexually abused the plaintiff on

several occasions from 1996 through 2002 and that the molestation took place in several locations. The Diocese settled the action brought against it for $2 million and then demanded reimbursement from its insurance company National Union for the cost of the settlement. National Union had provided primary insurance to the Diocese and issued three consecutive one-year commercial general liability insurance policies for August 31, 1995 to August 31, 1996; August 31, 1996 to August 31, 1997; and August 31, 1997 to August 31, 1998. Another insurance company provided insurance coverage for the next three years from August 31, 1998 to August 31, 2001. The policies issued by National Union provided coverage for damages resulting in bodily injury during the policy period and a $250,000 self-insured retention (SIR) applicable to each occurrence. National Union moved for partial summary judgment in that action,

> "seeking an order that the incidents of sexual abuse in the underlying action constituted a separate occurrence in each of the seven implicated policy periods, and required the exhaustion of a separate $250,000 SIR for each occurrence covered under a policy from which the Diocese sought coverage. National Union also sought a ruling requiring that the $2 million settlement be paid on a pro rata basis across each of the seven policies. In opposition, the Diocese argued that the sexual abuse constituted a single occurrence requiring the exhaustion of only one SIR, and that allocation of liability should be pursuant to a joint and several allocation methods, under which the entire settlement amount could be paid for with National Union's 1995-1996 and 1996-1997 policies."

Id. at 145.

The Court of Appeals granted the relief requested by National Union, holding that the several acts of sexual abuse constituted multiple occurrences, rather than a single occurrence. *Id.* at 147. According to the court, absent policy language indicating an intent to aggregate separate incidents into a single occurrence, the "unfortunate event" test should be applied to determine how occurrences are categorized for insurance coverage purposes. *Id.* at 148. The application of this test "requires consideration of 'whether there is a close temporal and spatial relationship between the incidents giving rise to injury or loss, and whether the incidents can be viewed as part of the same causal continuum, without intervening agents or factors.'" *Id.* at 149. Applying the unfortunate event test, the court found that the incidents of sexual abuse constituted multiple occurrences as they spanned a six-year period and occurred in multiple locations, thereby lacking the requisite temporal and spatial closeness to join the incidents. *Id.* The court specifically rejected the argument by the Diocese that the acts of sexual abuse were one occurrence because they constituted

"continuous or repeated exposure to substantially the same general harmful conditions", as defined in the policies. *Id.* at 150. As a result of the court's finding that the incidents of sexual abuse constituted separate occurrences, the court found that the Diocese was required to exhaust the SIR for each occurrence that transpired within an implicated policy from which it sought coverage. *Id.* at 153.

In *Int'l Flavors & Fragrances, Inc. v. Royal Insurance Company of America,* 46 A.D.3d 224 (1st Dept 2007), the First Department applied the unfortunate event test to a situation where there were multiple claimants who were injured as a result of exposure to a hazardous ingredient in the plaintiff's butter at the factory where they worked. The court there held, in the context of a summary judgment motion, that the insurance company was entitled to a declaration that each of the personal injury claims in the underlying action constituted a separate occurrence under the policy definition subject to a separate SIR. The court found that "'occurrence,' as defined in the policy as 'an accident, including continuous or repeated exposure to substantially the same general harmful conditions,' does not reflect the parties' intent to aggregate the individual claims for the purpose of subjecting them to a single policy deductible." *Id.* at 227. According to the court, the exposure of numerous persons to a hazardous condition cannot be deemed a single occurrence in the absence of any identifiable precipitating event or accident. *Id.* at 261.

In the present case, the court must initially determine whether to apply the unfortunate event test to determine how many occurrences there were. As the Court of Appeals held in *Diocese,* the unfortunate event test should be applied to determine how occurrences are categorized for insurance coverage purposes unless there is policy language indicating an intent to aggregate separate incidents into a single occurrence. *Diocese*, 21 N.Y.3d at 148. In the present case, there is no policy language indicating an intent to aggregate the separate incidents into a single occurrence. The argument by the Diocese that the language in the policy regarding "continuous or repeated exposures to conditions" constitutes such language is without basis. The Court of Appeals in *Diocese of Brooklyn* specifically rejected the argument by the Diocese that the acts of sexual abuse were one occurrence because they constituted "continuous or repeated exposure to substantially the same general harmful conditions", as defined in the policies. *Id.* at 150. The court considered the identical language that the Diocese is relying on here concerning "continued or repeated

exposure to conditions" and found that "nothing in the language of the policies, nor the definition of 'occurrence,' evinces an intent to aggregate the incidents of sexual abuse into a single occurrence." *Diocese of Brooklyn*, 21 N.Y.3d at 149. According to the court:

> ...[S]exual abuse does not fit neatly into the policies' definition of "continuous or repeated exposure" to "conditions." This "sounds like language designed to deal with asbestos fibers in the air, or lead-based paint on the walls, rather than with priests and choirboys. A priest is not a 'condition' but a sentient being.

Diocese of Brooklyn, 21 N.Y.3d at 151. *See also Int'l. Flavors & Fragrances, Inc. v. Royal Ins. Co. of Am.*, 46 A.D.3d 224, 232 (1st Dep't 2007) (holding that a definition incorporating the "continuous or repeated exposure to conditions" language did not reflect an intent "to aggregate [] individual underlying claims.")

Because the policies do not contain any provision that allows for the "grouping" of the underlying injuries, New York's "unfortunate event" test applies to determine the number of occurrences. *See Diocese*, 21 N.Y.3d at 148. Under the unfortunate event test, the inquiry is "whether there is a close temporal and spatial relationship between the incidents giving rise to injury or loss, and whether the incidents can be viewed as part of the same causal continuum, without intervening agents or factors." *Id.* The "unfortunate event" test focuses on "the nature of the incident[s] giving rise to damages" to the claimant, rather than other factors such as the theory of liability asserted. *Id.* at 150.

Applying the unfortunate event test, the court finds that the abuse suffered by each of the claimants in the underlying lawsuit do not share the "requisite temporal and spatial closeness to join the incidents" into a single occurrence under New York's unfortunate event test. *Diocese*, 21 N.Y.3d at 149. Rather, the incidents of abuse suffered by each of the claimants constituted multiple occurrences and there was at least one "occurrence" per claimant per policy period because the injuries suffered by each claimant were unique to that claimant in a given policy year and caused by separate incidents. Each of the claimants were abused individually through independent acts committed against the individual claimant. The abuse inflicted on each claimant, at different times and in different locations, caused an injury unique to each of them in each period during which they were abused. Just as the plurality found in *Diocese of Brooklyn* that the separate

acts of sexual abuse perpetrated in unique locations and interspersed over an extended period of time should not be grouped into one occurrence, the abuse of each of the individual claimants in this case, which was perpetrated in several locations, involved many different types of abuse and occurred over a very extended period of time, should also not be grouped into one occurrence. As a result, National Union and Illinois National are entitled to a declaration that the Diocese must satisfy a separate $250,000 SIR, per occurrence, in each policy period for each claimant who was abused during that period.

The decision relied upon by the Diocese and agency defendants to support their argument that there should be no more than one SIR per policy period despite the fact that there were multiple victims of abuse, is inapposite. *Nesmith v. Allstate Ins. Co.*, 24 N.Y.3d 520 (2014). In that case, the Court of Appeals held that in a situation where members of different families were successively exposed to lead paint in the same apartment, the insurer's maximum total liability is only one policy limit. The policy in that case, unlike the policy in the present case, specifically provided that "all bodily injury [resulting] from continuous or repeated exposure to the same general conditions is considered the result of one accidental loss." *Id.* at 523-524. Thus, there was specific policy language indicating an intent to aggregate separate incidents into a single occurrence, precluding the use of the unfortunate event test. In the instant case, however, there is no policy language indicating an intent to aggregate the separate acts of abuse into a single occurrence.

Based on this court's finding that there were multiple occurrences rather than a single occurrence, the court must next determine the issue of allocation of the defense and settlement costs among the various policies. This exact issue was addressed by the Court of Appeals in *Diocese of Brooklyn.* The court there found that the allocation of liability should be on a pro rata basis, thereby limiting "an insurer's liability to all sums incurred during the policy period." *Id.* at 153-154. According to the court, assuming that the plaintiff suffered bodily injury in each policy year, "it would be consistent to allocate liability across all implicated policies, rather than holding a single insurer liable for harm suffered in years covered by other successive policies." *Id.*

In the instant case, as in *Diocese of Brooklyn,* the court finds that the allocation of defense and settlement costs should be on a pro rata basis, allocated to the twenty-two annual periods of potential

exposure between 1985 and 2007, which is the years in which the claimants in the underlying action were allegedly abused and suffered bodily injury. During this twenty-two year period, there were sixteen National Union and Illinois National policy periods, plus the six one-year periods between 2001 and 2007. Initially, the total amount paid in settlement to each of the eight underlying claimants should be allocated pro rata to each annual period during which the claimant was injured, based on their date of placement until the time that they were removed. All of the costs paid to defend both the City and the agencies in the underlying lawsuit must be divided equally among all ten claimants and the one tenth share attributed to each claimant must be allocated for that claimant across all potentially triggered annual policy periods from the time that the claimant was placed until that claimant was removed or escaped.

The court next addresses the argument by the Diocese and the agency defendants that the policies in effect after 1996 should not be implicated for purposes of allocating the amounts paid by plaintiffs towards defense and settlement of the agencies' liability because the court in the underlying action found that there were no wrongful acts by the agency defendants after the claimants were adopted by Leekin. The court finds that there is no merit to this argument as the federal court denied the motion for summary judgment by the agency defendants which sought to dismiss that portion of the plaintiffs' claims to recover for post adoption abuse as time barred. *S.W. v. City of New York,* 46 F. Supp. 3d 176 (E.D.N.Y. 2014). The federal court specifically found that the claims of the eight plaintiffs placed by the agency defendants for post adoption abuse were timely under their 1983 cause of action and that five of the eight plaintiffs had timely interposed negligence claims for their post adoption abuse. *Id.* There is absolutely no indication in the decision of the federal court in the underlying action that the court was holding that the defendants were not legally responsible for any harm caused by post adoption abuse. When the court made the statement that there were no wrongful acts by the agency defendants post adoption, the court was merely determining when the common law negligence claim accrued for statute of limitations purposes for the purpose of analyzing whether there was a continuing wrong. *Id.* at 191-192. The court was not making any determination that the agency defendants were not legally responsible for the harm allegedly suffered by the plaintiffs after they were adopted by Leekin. Based on the foregoing, it is appropriate for this court to

allocate the settlement and defense costs to the post-adoption policies because there is a reasonable basis to conclude that the agencies might have been liable for those injuries which occurred post adoption as such injuries were a natural consequence of the alleged actions by the agency defendants in failing to properly screen Leekin as a potential foster parent, monitor plaintiffs while they were in Leekin's care or undertake their duties in connection with investigating Leekin prior to plaintiffs' adoptions.

With respect to this court's analysis of the decision by the Court of Appeals in *Diocese of Brooklyn*, the Diocese argues that the decision by the Court of Appeals should not be given any precedential value because it is based on a three judge plurality opinion of the Court of Appeals while National Union and Illinois National argue that the decision is binding because all five judges agreed that the language of the policies require pro rata allocation and a majority of the court agreed that bodily injuries arising from abuse to a claimant during separate policy periods were caused by at least one occurrence per policy period. The court finds that a majority of the court found that there was at least one occurrence per policy period as the plurality held that that injuries to a single claimant in a particular policy period were caused by more than one occurrence while the concurrence held that that only one occurrence per policy period caused the injuries. However, even if the court did not agree about whether a majority of the court found that there was at least one occurrence per policy period, the court would still follow the determination of the plurality.

The argument by the Diocese and the agencies that plaintiffs' motion must be denied on the ground that it fails to offer any admissible evidence in support of the facts asserted and instead relies solely on Federal Rule 56.1 statements filed in the underlying action is without basis. For purposes of the present action, plaintiffs are not required to prove that the abuse alleged in the underlying action actually occurred or that there were in fact multiple acts of abuse over many years. To the contrary, all that they need to establish is that the plaintiffs in the underlying action alleged that these events occurred and there was a settlement of the action, agreed to by all parties including the Diocese, based on the existence of these allegations. This is in fact exactly what occurred in the Court of Appeals case commenced by the Diocese against National Union and Illinois National. The decision by the Court of Appeals deciding that there were multiple occurrences occurring over the years of abuse was solely based on the complaint in the underlying

action as amplified by the bill of particulars. There was no proof before the court that the sexual abuse had actually occurred and no such determination had ever been made as the Diocese settled the underlying action before there was ever any determination of liability in that case. What was relevant in that case, and the present case between the same parties, was that all parties had agreed to settle the lawsuit based on the allegations in the complaint and that a determination had to be made whether the settlement amount represented a loss for one occurrence or multiple occurrences under the language of the insurance policies. Even assuming, *arguendo,* that proof of the abuse was required, the Federal Court Judge in the underlying lawsuit specifically noted in his decision determining the agency defendants' summary judgment motion that the agency defendants did not dispute plaintiffs' accounts of their experience in Leekin's custody. *S.W. v. City of New York,* 46 F. Supp. 3d 176, 185 ft. 5 (E.D.N.Y. 2014).

To the extent the Diocese and the agency defendants contends that summary judgment should be denied pursuant to CPLR § 3212(f) because discovery remains outstanding, such argument is unavailing. It is well settled that "a claimed need for discovery, without some evidentiary basis indicating that discovery may lead to relevant evidence, is insufficient to avoid an award of summary judgment." *Hariri v. Amper*, 51 A.D.3d 146, 152 (1st Dept 2008).

The Diocese and agency defendants argue that summary judgment is premature as they require discovery concerning the underwriting of the policies, the plaintiffs' handling of the Diocese's claim for coverage and claims involving other insureds under other policies. However, defendants have failed to establish that discovery of any of this information will lead to the relevant evidence as they cannot demonstrate any ambiguity in the policy language which would allow for the admission of any extrinsic evidence. Initially, the defendants do not require the underwriting information to oppose the motion because the policy language at issue is unambiguous, as a result of which extrinsic evidence is not admissible to interpret it. *See, e.g., W2001Z/15 CPW Realty, LLC v. Lexington Ins. Co.*, 127 A.D.3d 643, 643 (1st Dep't 2015) (holding that the court correctly excluded extrinsic evidence when the policies were unambiguous). The principal issues to be determined in this motion are whether certain policies are implicated because bodily injury took place "during the policy period," and the number of "occurrences"

under each policy for purposes of the Diocese's self-insured retentions. With respect to the interpretation of the language of the policies providing coverage for bodily injury "during the policy period', there is no ambiguity. Similarly, there is no ambiguity with respect to the term occurrence contained in the policies and the Court of Appeals interpreted the same exact definition of occurrence without resort to any extrinsic evidence. *See Diocese of Brooklyn,* 21 N.Y.3d at 144, note 1.

The decision relied upon by the Diocese to argue that additional discovery is required is inapposite. *See Mt. McKinley Ins. Co. v. Corning Inc.,* 96 A.D.3d 451 (1st Dep't 2012). Unlike the policies in the present case, the policies in that case contained language which specifically addressed the grouping of multiple claims arising out of exposures to asbestos into one occurrence. The policies specifically stated that bodily injury arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence. It was because of this specific grouping language in the policy that the court found discovery was required before the number of occurrences into which the underlying claims can be grouped may be determined. *Id.* at 453. Since the National Union and Illinois National policies do not contain any such language, the court is required to apply the unfortunate event test to determine the number of occurrences. *See Diocese of Brooklyn,* 21 N.Y.3d at 148.

There is also no basis for the claim by the Diocese and the agency defendants that they require discovery with respect to plaintiffs' claims handling information. Any information in the claims handling file would not be admissible to interpret the unambiguous provisions in the policy. The only dispute before the court is how many occurrences there were under the policies and how the expenses should be allocated and the claims handling file will not provide any information that will resolve the issue. Similarly, any discovery about the handling by plaintiffs of other claims which are not the subject of this lawsuit is not necessary to interpret the unambiguous provisions of the insurance policies.

Based on the foregoing, it is hereby declared and adjudged that that the $24 million plaintiffs National Union and Illinois National paid to defend the City and defend and indemnify the agencies in the underlying lawsuit must be allocated *pro rata* to the twenty-two annual periods of potential exposure between 1985 and 2007 -- the years in which the claimants allege that they were abused and that after the

required *pro rata* allocation, the Diocese must satisfy a $250,000 SIR for each occurrence that resulted in bodily injury to each claimant during a particular policy period. Settle order.

DATE: 2/27/17

KERN, CYNTHIA S., JSC

HON. CYNTHIA S. KERN
J.S.C.