IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

JOHN DOE III, Plaintiff, vs. FATHER JAMES JANSSEN, FATHER FRANCIS BASS, THEODORE ANTHONY GEERTS AND THE DIOCESE OF DAVENPORT, Defendants.	)	Law No. 101428 PLAINTIFF'S MEMORANDUM OF AUTHORITIES IN SUPPORT OF RESISTANCE TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

COMES NOW, Plaintiff, John Doe III, by and through his attorneys, Betty, Neuman & McMahon, L.L.P., and Jeff Anderson & Associates, P.A., and pursuant to Iowa Rule of Civil Procedure 1.981, hereby sets forth the following Memorandum of Authorities in Resistance to Defendants' Motions for Summary Judgment:

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INTRODUCTION

The Diocese of Davenport (the "Diocese"), Father James Janssen and Father Francis Bass, move this Court for summary judgment claiming that the statute of limitations had expired on Plaintiff's claims prior to him filing the current lawsuit. The Defendants incorrectly argue that the statute of limitations in the current matter expired by July 2000, at the very latest. However, the statute of limitations was immediately tolled due to Plaintiff's mental illness, the fraudulent concealment by the Diocese, Father Janssen, Father Bass and Father Geerts, and, further, the Defendants are equitably estopped from asserting the defense of statute of limitations because of their own conduct. Finally, Plaintiff's claims did not accrue November 17, 2003.

As a result, the Defendants' Motions for Summary Judgment must be denied.

STATEMENT OF CASE

From 1964 to 1967, Defendants Father Janssen, Father Bass and Father Geerts engaged in multiple and wrongful acts of sexual contact upon Plaintiff. (Exhibit 1, [hereafter references are to exhibits from this document]) At that time, Plaintiff was only 12 years old. (Exhibit 1, Paragraph 16) On many occasions, the priests engaged Plaintiff and other young boys in group sex. (Exhibit 1, Paragraphs 9-12) The abuse occurred at Janssen's office, the gym locker room at St. Joseph's School and in Janssen's restored Model A Ford. (Exhibit 1, Paragraph 18) The abuse also occurred at St. Boniface and Lampe's Cabin. (Exhibit 1, Paragraphs 9-12)

Plaintiff was not the only victim of Janssen, Bass and Geerts. The following facts detail a chilling 40-year history of Janssen, Bass and Geerts sexually abusing young boys, before the age of puberty. With Janssen as the ringleader, Bass and Geerts would engage these young boys in orgies and in other sexual situations. (Exhibit 1, Paragraphs 13-14)

A. Defendant Janssen's Abuse

Father Janssen was ordained in 1948. Janssen's first accusation of inappropriate behavior occurred in 1954, 10 years prior to Plaintiff's abuse. (Exhibit 6) Although the Diocese had notice of Janssen's dangerous propensities, his abuse of children continued and occurred at almost every assignment Janssen held in the Davenport Diocese. Warnings and complaints about Janssen's fitness as a priest and

his misconduct with children were recorded and placed in his personnel file and the secret archives kept by the Davenport Diocese. (Exhibits 3-34) The first warning letter was placed in Janssen's file very soon after his ordination in 1948. (Exhibit 3)

Despite receiving numerous reports of sexual impropriety, the then Bishop moved Janssen to St. Joseph's Parish in Fort Madison in 1961. While in Fort Madison, Janssen abused Plaintiff, John Robert Wagner, Mike Hitch, John Doe IV, John Doe V and John Doe VI. (Exhibits 1, 42, 43, 44) These boys witnessed the abuse of many other boys.

Janssen continued to abuse numerous boys when re-assigned to Sugar Creek from Fort Madison in 1967. (Exhibits 45, 46) The abuse continued on through his re-assignment to Grand Mound in 1990. (Exhibit 47)

B. Defendant Bass' Abuse

Defendant Bass also has a history of abuse that has been documented by the Diocese. In approximately 1957, Defendant Bass attempted to abuse Ed Thomas when he was only 14 years old. Thomas was one of many boys that Bass "befriended". Bass would "wrestle" with the boys and on one particular occasion, Bass took Thomas and some other boys to the Cook County Morgue in Chicago. It was then that Bass attempted to abuse Thomas when he was just a young boy, (Exhibit 48, 49). In 1992, Monsignor Morrissey received a call from Thomas, whom at that time was professor at Northern Illinois University in DeKalb, reporting that Father Bass attempted to abuse him. This was <u>not</u> the first time Thomas had reported

the abuse. Right after the incident in Chicago, Thomas told many people in Davenport what Bass had done, including one of the parish priests at St. Mary's, presumably Father Janssen. Janssen told Thomas his suspicions were incorrect, (Exhibit 49). Thomas reported the abuse again in 1974 to a Davenport Diocese representative. Thomas heard nothing and felt the representative was disinterested with what he had to say, (Exhibit 49).

Other victims of Bass have come forward to tell their history of abuse. Terry Webb was passed off between Father Janssen and Father Bass for sexual use, (Exhibit 39). Father Bass would take R.J. swimming at St. Ambrose Pool where R.J. would have to endure sexual advances by Bass, (Exhibit 41). Father Bass took Robert Wagner into the shower with him and forced Wagner to "finish him off", (Exhibit 42).

In 1964, John Doe IV was "pimped" by Janssen to Father Bass. Bass was visiting Janssen and led John Doe IV to Janssen's bedroom were he fondled John Doe IV and took a picture of him naked, (Exhibit 44). Finally, Janssen would take John Doe II to visit Bass, whereupon Bass would also sexually abuse John Doe II, (Exhibit 46).

C. Defendant Geerts' Abuse

Father Geerts also left a trail of victims. Father Geerts' improper activities were witnessed by Robert Wagner, Mike Hitch and John Doe IV, (Exhibits 42, 43, 44). The abuse occurred at St. Boniface Church in Farmington, Iowa, where Geerts was

pastor. Geerts supplied the boys and Janssen with alcohol and pornographic movies and magazines. While John Doe IV was there, he saw an older classmate playing cards without any clothes on, (Exhibit 44).

Because of the priests' abuse of Plaintiff and the concealment by the Diocese, Plaintiff suffers from mental illness and has developed symptoms of psychological distress. Plaintiff suffers from low self-esteem and depression. Because of the abuse and the misconduct by the Diocese, Plaintiff attempted suicide, has had problems with alcohol and with authority. (Exhibit 1)

In 1980, Plaintiff suffered a complete nervous breakdown. In 1998, Plaintiff received counseling at a sexual abuse counseling facility called "Standing Together Against Rape" ("STAR") for approximately seven to eight weeks. (Exhibit 1)

While receiving counseling at STAR, Plaintiff decided to write a letter to Bishop Franklin, informing him of Janssen, Bass and Geerts' abuse of him. The letter also reported that Plaintiff was not the only boy that was abused. (Exhibit 2) Bishop Franklin offered him sympathy but provided nothing else. Bishop Franklin mentioned nothing about any investigation that would be conducted nor did Franklin offer Plaintiff any financial assistance with treatment if Plaintiff deemed it was necessary, (Exhibit 1).

It was not until 2003 that Plaintiff learned for the first time that the Diocese had received complaints about Father Janssen engaging minors in inappropriate conduct prior to 1967. In addition, it was not until February 25, 2004, when Bishop

Franklin authored his public report that Plaintiff learned that there were also prior complaints against Bass, (Exhibit 61).

The Diocese's concealment of other earlier complaints of inappropriate activity by Father Janssen, Father Bass and Geerts prevented Plaintiff from attempting to vindicate any legal rights against the Diocese until Plaintiff filed his lawsuit in 2003.

On October 28, 2003, Plaintiff filed his Petition, alleging that from 1964 through 1967, Father Janssen, Father Bass and Father Geerts sexually abused Plaintiff (Petition). After learning of Janssen, Bass and Geerts' improper and illegal conduct, Defendant Diocese failed to take any action to ensure that such conduct would not occur again. (Petition, Paragraph 2). In addition, Plaintiff alleged that the Defendants had intentionally inflicted emotional distress and had breached their fiduciary duty to Plaintiff.

STANDARD OF REVIEW

Under Iowa Rule of Civil Procedure 1.981(2), "[a] party against whom a claim . . . is sought may, at any time, move with or without supporting affidavits for summary judgment in [its] favor as to all or any part thereof." I.R.C.P. 1.981(2). The judgment sought shall be rendered forthwith only if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Id. In determining whether the movant has met its burden under Iowa Rule of Civil Procedure 1.981(3), the Court should

review the record in a light most favorable to the party opposing summary judgment. De Koning v. Mellema, 534 N.W.2d 391, 394 (Iowa 1995).

ARGUMENT

In the Defendants' Motions for Summary Judgment, the Defendants argued that Plaintiff's claims asserted in his Petition accrued on or around July 1998 and are thus barred by the applicable Iowa statute of limitations. (See pp. 7-8, Diocese of Davenport's Brief in Support of Motions for Summary Judgment; Paragraph 2, Defendant Janssen's Motion for Summary Judgment; Paragraph 2, Defendant Bass' Motion for Summary Judgment). According to the Defendants, the applicable statute of limitations in the current matter is Iowa Code Section 614.1 which provides in part:

> Actions may be brought within the times herein limited, respectively, after their causes of action accrue, and not afterwards, except when otherwise specially declared:
>
> * * *
>
> 2. Injuries to person or reputation - - relative rights - - statute penalty. Those founded on injuries to the person or reputation, including injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years.

Plaintiff disputes that Iowa Code Section 614.1 is the appropriate statute of limitations to be used in the current matter. Instead, Plaintiff asserts that Iowa Code Section 614.8A is the proper statute of limitations in the current matter. Iowa Code Section 614.8A states as follows:

> An action for damages for injury suffered as a result of sexual abuse which occurred when the injured person was a child, but not discovered until after the injured person is of the age of majority, shall be brought

> within four years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the sexual abuse.

The basis for Plaintiff asserting that Iowa Code Section 614.8A is the proper statute of limitations is discussed below; however, it is not critical to the determination of whether Plaintiff filed the current matter within the statute of limitations to decide which statute of limitations applies. Nevertheless, a brief discussion of why Iowa Code Section 614.8A applies in the current matter is warranted. The effective date of Iowa Code Section 614.8A is July 1, 1990. Friederes v. Schiltz, 540 N.W.2d 261 (Iowa 1995). According to the Iowa Supreme Court in Friederes:

> Our common law discovery rule thus applies to claims filed prior to the enactment of Section 614.8A, and the statutory discovery rule of Section 614.8A applies to actions filed thereafter. Claims barred by preexisting statutes are not revived by either discovery rule. Whether sufficient discovery by a victim has occurred to initiate the running of a statute of limitations is a question of fact to be determined on a case-by-case basis.

Id. at 267.

Plaintiff did not file his Petition in this case until October 28, 2003, well after the enactment of Section 614.8A. Therefore, Section 614.8A applies to the present action as long as Plaintiff's claims were not barred by the pre-existing statutes of limitations. Id. As can be seen by the following, Plaintiff's claims were not barred by Iowa Code Section 614.8A because Plaintiff's claims did not accrue until after the effective date of Section 614.8A. Plaintiff's claims accrued on or around July 1998.

The effective date of Section 614.8A is July 1, 1990. Thus Plaintiff's claims were not barred by the pre-existing statute of limitations. Furthermore, the statute of limitations was tolled because the Defendants fraudulently concealed the causes of action from Plaintiff. In addition, the Defendants are equitably estopped from asserting the statute of limitations as a defense due to their own conduct. Each of these issues is fully discussed below. As a result, Plaintiff respectfully requests this Court to deny Defendants' Motions for Summary Judgment.

I. THE STATUTE OF LIMITATIONS WAS TOLLED BECAUSE JOHN DOE III WAS MENTALLY ILL UNDER IOWA CODE SECTION 614.8(1) AND SECTION 4.1(21A)

Regardless of whether this Court finds Section 614.8A applies to the present action or whether Section 614.1(2) controls, any statute of limitations is tolled under Section 614.8(1), which provides as follows:

> The times limited for actions in this chapter, except those brought for penalties and forfeitures, are extended in favor of persons with mental illness, so that they shall have one year from and after the termination of the disability within which to commence an action.

Iowa Code Section 614.8(1), (emphasis added).

"Persons with mental illness" as it appears in Iowa Code Section 614.8, is defined in Iowa Code Section 4.1(21A):

> The words "persons with mental illness" include persons with psychosis, persons who are severely depressed, and persons with any type of mental disease or disorder, except that mental illness does not refer to mental retardation as defined in Section 222.2, or to insanity, diminished responsibility, or mental incompetency as defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules, 3d ed. A person who is hospitalized or detained for treatment of mental illness shall not be deemed or presumed to be incompetent in the

absence of a finding of incompetence made pursuant to Section 229.27. Iowa Code Section 4.1(21A) (emphasis added).

Expert testimony establishes that John Doe III was at all relevant times suffering from post-traumatic stress disorder, a mental illness, (Exhibit 69, Affidavit of Dr. Mark Schwartz). At this time, John Doe III continues to manifest symptoms consistent with post-traumatic stress disorder, which is in fact attributable to the sexual trauma perpetrated by Janssen, Bass and Geerts, (Exhibit 69, Paragraphs 18-19). As a result, the statute of limitations - either under Section 614.1(2) or Section 614.8A is tolled.

Defendants have relied on Langner v. Simpson , 533 N.W.2d 511 (Iowa 1995), to state that a person's mental illness must rise to such a high level as to prevent them from filing a lawsuit, Langner, 533 N.W.2d at 523. However, post-Langner, the amendments, in 1996, to Iowa Code Section 614.8, coupled with the definition of mental illness found in Section 4.1(21A) dictate a different result. The Court decided Langner before the amendments were in effect.

Prior to the amendment, a "mentally ill person" included "mental retardates, psychotic persons, severely depressed persons and persons of unsound mind." Iowa Code Section 4.1(15) (1995). This definition also stated that one who was hospitalized or detained for treatment of mental illness could not be deemed or presumed to be incompetent absent a specific finding of incompetence made pursuant to Iowa Code Section 229.27, See Iowa Code Section 4.1(15) (1995).

In 1996, the legislature amended Iowa Code Section 614.8, replacing the words "mentally ill persons" with "persons with mental illness". By so doing, the legislature deleted "mental retardates" and those of "unsound mind" from the definition, but kept persons with a psychosis or severely depressed, Iowa Code Section 4.21A (2003). The legislature also added a new category of individuals to the definition - namely, any persons "with any type of mental disease or mental disorder", thus enlarging the definition of "person with mental illness" as defined by Sections 4.1(21A) and 614.8.

Section 614.8, read together with the definition of "persons with mental illness" in Iowa Code Section 4.1(21A), establishes that the legislature intended to include all types of mental disease or disorder in its tolling provision for the statute of limitations. The language of Iowa Code Section 4.1(21A) is clear, identifying: "persons with any type of mental illness or mental disorder". Iowa Code Section 4.1(21A).

In these amendments, the legislature materially modified the type of individuals covered by the law. A material modification of statutory language raises a presumption that a change in the law was intended. Midwest Automotive III v. Iowa Dep't of Transp., 646 N.W.2d 417 (Iowa 2002). As a result of these amendments, the legislature intended to include these expanded groups within the statutory protections offered by the Iowa Code.

In 1997, the Iowa legislature again modified Iowa Code Section 614.8 dividing

tolling for mental illness from minority tolling. (See Appendix A.) This time, the Iowa legislature explicitly made the provisions of Iowa Code Section 614.8 retroactive for any case filed after July1, 1999.[1] In Iowa, a statute may only apply retroactively if the legislature makes express provisions that the statute should be applied retroactively or when it appears by necessary implication that it was the legislative intent that the statute apply retroactively. Frideres v. Schiltz, 540 N.W.2d 261, 265 (Iowa 1995).

In the current matter it is abundantly clear that in 1997, the Iowa legislature intended that the provisions of Iowa Code Section 614.8 be applied retroactively. According to the legislature, the provisions of Section 614.8 shall be applied to all causes of action that accrued prior to July 1, 1997 and all causes of action that accrue after July 1, 1997. (pp. 3-4, Appendix A.) This is clearly intended to make Iowa Code Section 614.8 retroactive.

Similarly, it is also clear that the Iowa legislature intended to make the definition of Iowa Code Section 4.1(21A), which was adopted in 1996, retroactive as well. As discussed above, the 1997 Iowa Code Section 614.8 contained a tolling provision for "persons with mental illness". The definition of "persons with mental

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[1] The 1997 modification to Iowa Code Section 614.8 appeared Section 7 of 1997 Ia. Legis. Chapter 197 (1997) (the "Act")(Attached as Appendix A). According to the Section 16 of the Act, the effective dates for Section 7 of the Act is as follows: "Sections 6 and 7 of this Act shall apply to all causes of action accruing on or after July 1, 1997, and to all causes of action accruing before July 1, 1997, and filed after July 1, 1999." (p. 8, Appendix A.) *Thus, the Iowa legislature explicitly indicated that the provisions of Iowa Code Section 614.8 (1997) was to be applied retroactively.*

illness" at the time the 1997 Section 614.8 was adopted appeared as Iowa Code Section 4.1(21A). If the provisions of Iowa Code Section 614.8 is explicitly retroactive, then the applicable definition contained within the retroactive provision would similarly apply retroactively. Consequently, both Iowa Code Section 614.8 (tolling for persons with mental illness) and Iowa Code Section 4.1 (21A) (definition of persons with mental illness) explicitly apply retroactively.

Applying this legal analysis to the case at hand, John Doe III suffers from post-traumatic stress disorder, which is in fact attributable to the sexual trauma perpetrated by Janssen, Bass and Geerts, (Exhibit 69, Paragraphs 18-19). The Supreme Court has already recognized that post-traumatic stress disorder, the disability suffered by John Doe III, is an illness severe enough to extend the statute of limitations. Callahan v. State, 464 N.W.2d 268 (Iowa 1990).

John Doe III's manifested symptoms have included intrusive memories, numbing responses, flashback, problems concentrating, irritability, difficulty falling asleep and alcohol abuse. At this time, John Doe III continues to manifest symptoms consistent with post-traumatic stress disorder, which is in fact attributable to the sexual trauma perpetrated by Janssen, Bass and Geerts, (Exhibit 69, Paragraph 19). John Doe III has somatic complaints of chronic pain, stomach problems, shortness of breath and chest pains. At this time, John Doe III continues to manifest symptoms consistent with post-traumatic stress disorder, which is in fact attributable to the sexual trauma perpetrated by Janssen, Bass and Geerts, (Exhibit 69, Paragraph 19).

As the result of the post-traumatic stress disorder, John Doe III has suffered a significant psychological disability and impairment. At this time, John Doe III continues to manifest symptoms consistent with post-traumatic stress disorder, which is in fact attributable to the sexual trauma perpetrated by Janssen, Bass and Geerts, (Exhibit 69, Paragraphs 18-19).

Substantial evidence of the extent of Plaintiff's mental illness operates to toll the running of any statute of limitations under Section 614.8, because Plaintiff meets the Code's definition of a "person with mental illness". In determining when the statue of limitations can be tolled, the Court must look at when "any mental disease or disorder began" and, more importantly, when the disease or disorder ended. Plaintiff has yet to recover from his post-traumatic stress disorder, (Exhibit 69, Paragraphs 19-20). Therefore, the statute of limitations has not yet started to run and his claim is tolled.

Furthermore, the issue of whether a person is mentally ill for purposes of tolling the statute is indeed a fact question. Borchard v. Anderson, 542 N.W.2d 247 (Iowa 1996). Therefore, this issue is inappropriate for summary disposition. There is a factual issue as to whether Plaintiff had a mental disorder, thereby tolling the statute under Section 614.8. Even if this Court agrees with the Defendants' claim that Plaintiff's causes of action accrued on or around July 1998, the statute of limitation was immediately tolled due to Plaintiff's mental illness.

II. FRAUDULENT CONCEALMENT IN THIS CASE TOLLED THE STATUTE OF LIMITATIONS

The Iowa Supreme Court has adopted the doctrine of fraudulent concealment as a tolling mechanism for statutes of limitation, District Township of Boomer v. French, 40 Iowa 601, 603-04 (1875). The doctrine of fraudulent concealment is triggered as follows:

> where a party against whom a cause of action existed in favor of another, by fraud or actual fraudulent concealment prevented such other from obtaining knowledge thereof, the statute would only commence to run from the time the right of action was discovered, or might, by the use of diligence, have been discovered.

Id. at 603. To establish the doctrine of fraudulent concealment, the Plaintiff must establish that (1) the Defendant did some affirmative act to conceal the cause of action, and (2) the Plaintiff exercised reasonable diligence to discover the cause of action. Van Overbeke v. Youberg, 540 N.W.2d 273, 276 (Iowa 1995). The evidence is clear that the Diocese, Father Janssen, Father Bass and Father Geerts fraudulently concealed causes of action from Plaintiff.

A. The Defendants Concealed Causes of Action from Plaintiff by Concealing the Fact that Janssen, Bass and Geerts Were Known Child Molesters.

Until Bishop Franklin's news conference of February 25, 2004, the Defendants concealed Defendants Janssen, Bass and Geerts' sexual perversions from the children and adults of the Diocese. This horrible secret was kept hidden to avoid scandal and liability. The result was 50 years of systematic concealment by the Defendants, concealing Janssen, Bass and Geerts', and other priests', sexual abuse of children.

Father Janssen was ordained in 1948. That same year, the Diocese received its first warning about Janssen. (Exhibit 3) Just a few years later, in 1954, the Diocese received its first accusation that Janssen had engaged in sexual misconduct with a young boy. (Exhibit 6) Abuse occurred at almost every assignment Janssen held. In fact there were numerous warnings and complaints recorded and placed in Janssen's personnel and secret archive file concerning his fitness as a priest and his misconduct with children.

Regardless of receiving numerous reports, the Bishop continued to transfer Janssen from parish to parish. The abuse continued until 1990 and covered a 40-year time period.

The Diocese handled Bass and Geerts in almost the same manner. In 1992, Monsignor Morrissey received a call from Ed Thomas, then a professor at Northern Illinois University in DeKalb, reporting that Father Bass attempted to abuse him in 1964, when he was only 14 years old. This professor was among a number of boys Bass "befriended". Bass took these boys to the Cook County Morgue in Chicago and later that same evening attempted to abuse this professor when he was just a young boy, (Exhibits 48, 49). When Plaintiff reported his abuse by Janssen, Bass and Geerts later in 1998, the Diocese never mentioned to Plaintiff that there were any other victims by Bass or Geerts.

Furthermore, the Diocese had many indications that Geerts was likely engaging in inappropriate activity. Janssen and Geerts were good friends and had an extensive

history together. In 1969, Geerts inquired to Bishop O'Keefe of "the possibility of Father Janssen and I living in community and taking pastoral care of Charlotte, Sugar Creek, Villa Nova and as you suggested, perhaps Petersville... I would much prefer to share a pastorship with Father Janssen. I know we would be a good team." (Exhibit 50-A). This was after the Diocese had knowledge that Janssen was engaging in inappropriate activity with young boys and had suspended him from the priesthood. Geerts' comradery with Janssen continued through 1992 at which time Geerts was living in Las Vegas and wanted to concelebrate masses with another priest in Las Vegas. Father Janssen communicated with Bishop O'Keefe informing the Bishop of Geerts' wishes to perform some limited ministry, (Exhibit 50-B). It was during Geerts' time in Las Vegas that Geerts got into trouble with the law and was asked by the Bishop of Las Vegas to stop concelebrating mass, (Exhibits 51A-51B).

In the documents produced by the Diocese, it is clear that the Diocese had to have had some knowledge or warning that Geerts was engaging in inappropriate activity. In 1970, Father Geerts was allowed to go on a 20-year leave of absence. Geerts spent most of his leave in San Diego. Although the Diocese has not mentioned any reports of abuse by Geerts, in 1970, the Diocese felt it was necessary to warn the Bishop of San Diego that Father Geerts was in San Diego. In Bishop O'Keefe's letter, dated December 11, 1970, Bishop O'Keefe informs Bishop Maher of Father Geerts' address and states "I do not think he will cause any problem. He has been in California for some months now, although father north, I think. He, of

course, does not function as a priest and would not attempt to do so". (Exhibit 52) As of this date, the Diocese has yet to explain why Geerts was on a 20-year leave of absence and why he was not allowed to function as a priest.

To this day, Janssen and Bass have denied all allegations of the abuse. (Defendant Janssen's Motion for Summary Judgment, Paragraph 2; Defendant Bass' Motion of Summary Judgment, Paragraph 2.) They have denied all allegations despite the documentary evidence the Diocese has already produced. Geerts has chosen not to defend the lawsuit and a default has been entered against him.

Even after Plaintiff's abuse ended, the Defendants continued to conceal Janssen and Bass' patterns of sexual abuse until Bishop Franklin's report on February 25, 2004. However, the Defendants still, to this day, continue to conceal allegations of abuse by Geerts, including Plaintiff's allegations. Plaintiff reported his abuse in 1998. His report specifically stated that he was abused by Geerts. (Exhibit 2) However, Geerts' abuse was never mentioned in the Bishop's Report on February 25, 2004.

When Plaintiff made his report in 1998, the Diocese already had knowledge that both Janssen and Bass had dangerous propensities. But, the Diocese never informed Plaintiff of this information. Furthermore, Plaintiff's report about Geerts should have prompted the Diocese to conduct an investigation. Finally, if the Diocese had conducted a proper investigation in the 1950's or early 1960's, when it had received numerous complaints on Janssen, it would have then uncovered the horrific

sex ring that included not only Janssen, but Bass and Geerts as well. Moreover, it would have prevented many children from being later abused by these priests.

This evidence establishes that the Defendants acted fraudulently to conceal the accusations of child sexual abuse committed by Janssen, Bass and Geerts against Plaintiff. Plaintiff notified the Diocese in 1998 of the abuse, but did not learn until November 17, 2003 that there were previous complaints. Therefore, for over five (5) years, the information regarding other complaints against Father Janssen, Father Bass and Father Geerts were concealed from Plaintiff.

B. Father Janssen, Father Bass and Father Geerts Concealed Causes of Action from Plaintiff by Concealing the True Nature of the Sexual Contact

In addition to the above concealment, Father Janssen, Father Bass and Father Geerts concealed the true nature of the sexual contact from the child Plaintiff. Given the nature of the sexual abuse and the way that Janssen, Bass and Geerts represented the abuse as being normal, legal and acceptable sexual conduct, it is very common for victims of this type of sexual abuse to not be able to understand that the sexual contact caused any injuries. (Exhibit 70, p. 3) In fact, it is very common, given the covert nature of the sexual contact between an adult and a child that the child may not even recognize the sexual contact as injurious because the sexual contact is represented to the child as:

- Sex Education;
- An expression of love;

- Hygiene (e.g. "I'm just washing your genitals");
- Medical Procedure (e.g. "The doctor said I should examine your penis to make sure that it is growing properly.");
- A game;
- Payment of a debt;
- Punishment (e.g. "You have been bad, so strip so I can spank you while you lay over my lap."); or
- Rite of passage (e.g. "This is how you become a man or a member of the club".)

(Exhibit 70, p. 4)

Further, a child is socialized to trust members of the clergy leading the child to simply obey the clergy perpetrator because of their status. Specifically, children are taught to obey adults. (Exhibit 70, p. 4) This is especially true if the perpetrator is in a position of authority and respect, such as a priest. (Exhibit 70, p. 4) Once the adult perpetrator is in a position of authority with a reputation as someone who can be trusted around children, the perpetrator is able to begin the grooming process for the child to have sexual contact with him. (Exhibit 70, p. 4) The process of grooming involves exposing the child to non-sexual touch with increasing frequency to make the child be comfortable with the touch and also normalize it for the child. (Exhibit 70, p. 4-5) Once the child accepts non-sexual touch, then the perpetrator begins sexual touching. (Exhibit 70, p. 5) This gradual progression is hidden from the child to such an extent that the child does not even understand the nature of the

sexual touching. (Exhibit 70, p. 5) The sexual touching is camouflaged by implying it is for the good of the child and/or is being done for some legitimate reason. (See above) (Exhibit 70, p. 5) As a result, the true nature of and injury resulting from the sexual touching are truly concealed from the child by the perpetrator. This circumstance leaves the child unable to discover the fact that he or she was psychologically injured as a result of the sexual contact.

C. The Defendants Concealed Causes of Action from Plaintiff by Creating a Fiduciary Relationship and By Remaining Silent

Furthermore, the fraudulent concealment doctrine does not require proof of an affirmative act by the Defendant to conceal the cause of action if a fiduciary relationship exists between the parties. Kurtz v. Trepp, 375 N.W.2d 280, 283 (Iowa App. 1985). "The diligence requirement is also greatly relaxed when there is a fiduciary relationship between the parties." Id. at 284.

Although the Iowa Supreme Court has not ruled upon the specific issue of whether a priest has a fiduciary relationship with a child parishioner, other states have found such a relationship. In Koenig v. Father Lambert, 527 N.W.2d 903 (S.D. 1995), the Court found that as a Catholic parishioner and altar boy, the Plaintiff was taught to trust and respect the members of the Diocese. Koenig, 527 N.W.2d at 906. As a result, there existed such a confidential or trust relationship between the Diocese and the members of the faith that it purported to serve to constitute a fiduciary relationship. Id. In addition, the Supreme Court of South Dakota held that if a trust or confidential relationship existed between the parties which imposed a

duty to disclose, mere silence by the one under that duty constitutes fraudulent concealment. Id. at 906 (citing Glad v. Gunderson, 378 N.W.2d 680, 682 (S.D. 1985)). The applicable statute of limitations is then tolled. Koenig, 527 N.W.2d at 906; Glad, 378 N.W.2d at 683. See also Martinelli v. Bridgeport Roman Catholic Diocesan Corp., 196 F.3d 409, 429 (2d Cir. 1999) (Priest has sufficiently special relationship of trust and confidence with a child parishioner to support a finding of a fiduciary relationship.)

Although the Supreme Court of Iowa has not previously addressed this issue in the context of a priest-parishioner relationship, the Court has recognized in the context of a patient-physician relationship that "[t]he close relationship of trust and confidence between patient and physician gives rise to duties of disclosure which may obviate the need for a patient to prove an affirmative act of concealment." Langer v. Simpson, 533 N.W.2d 511, 522 (Iowa 1995) (citing Koppes v. Pearson, 384 N.W.2d 381, 386 (Iowa 1986)).

Similarly, in Kurtz v. Trapp, 375 N.W.2d at 283, the Court of Appeals found a fiduciary relationship between directors of a corporation was enough to obviate the requirement of an affirmative act. 375 N.W.2d at 283.

Likewise, the close relationship between the priest, the Diocese and the parishioner obviates the need for Plaintiff to prove an affirmative act of concealment. The Diocese was a spiritual advisor for Plaintiff. The fiduciary relationship between the parties created a duty on all of the Defendants to disclose information relating to

Father Janssen, Father Bass and Father Geerts' dangerous characteristics as child molesters to Plaintiff. Instead, the Diocese kept such evidence of other complaints, as well as Plaintiff's accusations, a secret. By applying the rule set forth in Koenig, which stated that mere silence, when under a duty, constitutes fraudulent concealment, there is evidence of a fraudulent concealment in the present case. Koenig, 527 N.W.2d at 906. When there is evidence of a fraudulent concealment, the applicable statute of limitations is tolled. Id (citing Glad, 378 N.W.2d at 683).

Other jurisdictions have recognized that the existence of a fiduciary or confidential relationship obviates the requirement of an active concealment. In Hildebrand v. Hildebrand, 736 F.Supp. 1512 (S.D. Ind. 1990), the Plaintiff daughter relied on a diagnosis of posttraumatic stress disorder to preclude the bar of the statute of limitations in her suit against her father based on intentional infliction of emotional distress. The concealment needed not be active if the defrauder had a duty to disclose material information to those with whom he or she has a fiduciary or confidential relationship. Id. at 1523. Affirmative acts of concealment must be calculated to mislead and hinder a Plaintiff from obtaining information by the use of reasonable diligence, or to prevent inquiry or investigation. Id. (citing Forth v. Forth, 409 N.E.2d 641 (Ind. App. 1980)). If the Defendants' fraudulent conduct involved false representations, the Plaintiff must have alleged reliance on those representations. Hildebrand, 736 F.Supp. at 1523-4, (citing Jackson v. Jackson, 149 Ind. 238 (Ind. 1897)). In Hildebrand, the District Court held there was an issue of

fact, precluding summary judgment, as to whether the accrual of the cause of action was delayed on ground of fraudulent concealment. Id. at 1524.

In the present case, genuine issues of material fact remain as to whether the accrual of Plaintiff's action was delayed on the grounds of fraudulent concealment. Plaintiff has presented facts establishing a fiduciary relationship between Plaintiff and the Defendants. Therefore, as a matter of law, the doctrine of fraudulent concealment precludes summary judgment on the issue of the statute of limitations. At a minimum, there remains a genuine issue of material fact as to the application of the doctrine of fraudulent concealment and therefore the summary judgment motion should be denied.

III. THE CONDUCT OF THE DEFENDANTS EQUITABLY ESTOPPED THE DEFENDANTS FROM RAISING THE STATUTE OF LIMITATIONS DEFENSE

Equitable estoppel also precludes a limitation of action defense under proper circumstances. Northwest Limestone Co., Inc. v. Iowa Dep't of Transp., 499 N.W.2d 8, 12 (Iowa 1993). Under Iowa law, the doctrine of equitable estoppel "prevent[s] a person from speaking against his or her act, representation, or commitments to the injury of the person to whom the act or representation was directed and who reasonably relied thereon". In re Marriage of Halvorsen, 521 N.W.2d 725, 728 (Iowa 1994) (citation omitted). The elements of equitable estoppel are as follows:

(1) A false representation or concealment of a material fact;

(2) A lack of knowledge of the true facts on the part of the actor;

(3) The intention that it be acted upon; and

(4) Reliance thereon by the party to whom made, to his or her prejudice and injury.

Id. (citations omitted).

As set forth in Argument II, the Defendants fraudulently concealed their conduct. At the time Plaintiff communicated with the Diocese in 1998, neither the Diocese nor the other Defendants communicated that there were other complaints about Janssen, Bass or Geerts. (Exhibit 1) To the contrary, Janssen and Bass have "steadfastly denied" all allegations of abuse. (Defendant Janssen's Motion for Summary Judgment, Paragraph 2; Defendant Bass' Motion of Summary Judgment, Paragraph 2.)

The existence of other abuse victims and complaints involving Janssen, Bass and Geerts are material to Plaintiff's legal rights against Janssen, Bass and Geerts. There is no evidence that Plaintiff ever had any knowledge of evidence involving other victims and complaints until 2003, at which time Plaintiff learned that other victims had admitted sexual abuse by Father Janssen, Father Bass and Father Geerts. (Exhibit 1) Therefore, Plaintiff did not have knowledge of the true facts.

The Defendants intended Plaintiff to rely upon the concealment of other complaints and other victims, as well as their outright denials. The Defendants' concealment of other complaints prevented Plaintiff from vindicating any legal rights against the Defendants. (Exhibit 1) The concealment of witnesses with knowledge of the abuse made it more difficult for Plaintiff to prove his claim. (Exhibit 1) Plaintiff

relied on the concealment by the Defendants to his detriment and in not bringing a cause of action against the Diocese.

IV. THERE IS A GENUINE ISSUE OF MATERIAL FACT AS TO WHEN PLAINTIFF DISCOVERED THE INJURY AND THE CAUSAL RELATIONSHIP BETWEEN THE INJURY AND THE SEXUAL ABUSE

The statute of limitations has not run on Plaintiff's claims because Plaintiff's claims did not accrue until 2003. Under the discovery rule, "a cause of action based on negligence does not accrue until Plaintiff has in fact discovered that he has suffered injury or by the exercise of reasonable diligence should have discovered it . . . ". Callahan v. State, 464 N.W.2d 268, 270 (Iowa 1990) (quoting Chrischelles v. Griswold, 260 Iowa 453, 463, 150 N.W.2d 94, 100 (1967)). The Supreme Court, in Callahan, recognized that even after a victim recognizes the wrong, that victim must be able to identify the type of wrong (i.e., moral, social, legal) in order to take appropriate legal action. Id. at 271. Because of the concealment by the Defendants, Plaintiff was not able to identify that he had a legal cause of action relating to his injury until 2003.

The Iowa Supreme Court has also extended the discovery rule because a Plaintiff may not be charged with knowledge that certain actions are inappropriate in instances of (sexual) abuse by an "authority figure", see Borchard vs. Anderson, 542 N.W.2d 247, 251 Footnote 1 (Iowa 1996). Here, Janssen's abuse of John Doe III is clearly that by an authority figure, and, therefore, a fact question is generated on the discovery rule.

The Defendants encourage this Court to find as a matter of law that all of Plaintiff's claims accrued in July 1998 when Plaintiff sent a letter to Bishop Franklin. By so encouraging, the Defendant also urges the Court to group all of Plaintiff's claims together for the purpose of accrual of the applicable statute of limitations. Such an approach is inappropriate in the current matter because the different claims accrue at different times. Each claim made in the Petition is discussed below.

In the current case, the claims against the Diocese accrued at a different time than the claims against Father Janssen, Father Bass and Father Geerts. For example, most of the claims against the Diocese (Count III: Intentional Infliction of Emotional Distress; Count IV: Breach of Fiduciary Duty; Count V: Fiduciary Fraud and Conspiracy to Commit Fiduciary Fraud; and VI: Negligent Hiring, Supervision, Warning, Documenting and Retaining) require the Diocese to either know or should have known that Father Janssen, Father Bass and Father Geerts were child molesters and a risk to the children with whom they came into contact. Due to the concealment by the Defendants, there was no way Plaintiff could have known that the Diocese knew that Janssen, Bass and Geerts were child molesters prior to 2003 when Plaintiff learned that there were other victims of Janssen, Bass and Geerts. Even after Plaintiff reported the abuse in 1998, the Diocese refused to disclose its knowledge of Janssen, Bass and Geerts' child molesting characteristics. We know now that the Diocese had knowledge that Father Janssen was a child molester and a danger to children as far back as the early 1950's. (Exhibit 6) Furthermore, it is

clear that the Diocese also had previous knowledge concerning Bass and Geerts. There was no way that Plaintiff could have known in Count III, IV, V and VI of the Petition against the Diocese had expired prior to 2003 when it was only in 2003 that Plaintiff learned that there were other victims of Janssen, Bass and Geerts.

When applying Iowa Code Section 614.8A, to the claims against Father Janssen, Father Bass and Father Geerts, there is a factual issue as to when Plaintiff discovered the causal relationship between the injury and the sexual abuse.

The critical inquiry in determining the application of Section 614.8A is based upon when the injured party discovered the causal relationship between the injury and the sexual abuse. Frideres vs. Schiltz, 540 N.W.2d 261, 267 (Iowa 1995). "Whether sufficient discovery by a victim has occurred to initiate the running of a statute of limitations is a question of fact to be determined on a case-by-case basis".

Plaintiff was not aware of the causal relationship between his injuries (a long-standing mental illness which include diagnosis of post traumatic stress disorder) until 2003, (Exhibit 1). Dr. Mark Schwartz, a licensed psychologist, evaluated John Doe III and reviewed his medical records, (Exhibit 69, Paragraph 8). As the result of his evaluation, Dr. Schwartz concluded that John Doe III has both manifested in the past and currently manifests symptoms consistent with post-traumatic stress disorder, which is attributable to the sexual trauma perpetrated by Father Janssen, (Exhibit 69, Paragraph 19).

As a result of the post-traumatic stress disorder, John Doe III has suffered

significant psychological disability and impairment, (Exhibit 69, Paragraph 10). The resulting symptoms manifested by John Doe III have prevented John Doe III from appreciating the nature and impact of the sexual abuse, (Exhibit 69, Paragraph 19). The passage of time to the age of majority alone would not bring about any greater ability to comprehend what happened and its impact, (Exhibit 69, Paragraph 20).

In Callahan v. State, 464 N.W.2d 268, 271 (Iowa 1990), the Supreme Court acknowledged the connection between post-traumatic stress disorder and the inability to perceive the wrong in order to take appropriate action. Regardless of whether Plaintiff's recollection of the abuse was ever repressed, it still was not until 2003 that Plaintiff was able to perceive the wrong and take appropriate action. In Callahan, the Supreme Court addressed the impact of post-traumatic stress disorder on a victim's ability to take appropriate legal action:

> The term "Post-Traumatic Stress Disorder" (PTSD) is used to describe the psychological impact of traumatic events on a person. The disorders resulting from these events may be either a combination of physical or mental disorders or solely a residual mental incapacity continuing after a physical injury has healed. . . .
> The child's damaged psyche and weakened ability to perceive right and wrong hinders the child from taking self-protective measures. It is fundamental that in order for a person to take action for a wrong, that person must receive it as a wrong. Even after she perceives the wrong, she [the sex abuse victim] must also distinguish what kind of wrong it is - a moral wrong, a social wrong, or a legal wrong - in order to take appropriate action. The sexually abused child's world is very often a confused one and thus she may be greatly disabled both in her ability to perceive wrongs and to take appropriate legal action. The people she normally should be able to trust for protection and moral guidance are often the ones hurting her.

Id. (quoting Comment, Not Enough Time?: The Constitutionality of Short Statutes of Limitations for Civil Child Sexual Abuse Litigation, 50 Ohio St.L.J. 753, 756-57 (1989)) (emphasis added).

Whether Plaintiff had sufficiently discovered the causal relationship between his injuries and the sexual abuse is a factual question. Expert testimony establishes that because of the diagnosis of post-traumatic stress disorder, Plaintiff developed coping mechanisms, preventing him from appreciating the nature and impact of the sexual abuse, (Exhibit 69, Paragraph 20). Not until 2003 did John Doe III become aware of the existence of other victims or that the Diocese had received complaints about Janssen, Bass and Geerts prior to 1967, (Exhibit 1, Affidavit of John Doe III). Although John Doe III is still not fully aware of the nature and extent of the abuse and his injuries, in 2003 John Doe III discovered, for the first time, the nature and extent of the abuse and the causal relationship between the extent of the sex abuse and his injuries. (Exhibit 1, Affidavit of John Doe III). Therefore, Plaintiff's Petition was timely filed under Section 614.8A

CONCLUSION

As stated above, the Defendants' Motions for Summary Judgment which claim the statute of limitations has expired on Plaintiff's claims must be denied because of Plaintiff's mental illness, the Defendants fraudulent concealment and that Defendants

are equitably estopped from asserting the statute of limitations as a defense due to their own misconduct. As a result, the Defendants' motions must be denied.

BETTY, NEUMAN & McMAHON, L.L.P.

By _____
Craig A. Levien
SC00003129
600 Union Arcade Building
111 E. Third Street
Davenport, IA 52801
(563) 326-4491
(563) 326-4498 - Fax

JEFF ANDERSON & ASSOCIATES

By Patrick Noaker
Patrick Noaker by CZ

E. 1000 First National Bank Building
332 Minnesota Street
St. Paul, MN 55101
(651) 227-9990
(651) 297-6543 – Fax

ATTORNEYS FOR PLAINTIFF
JOHN DOE III

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the United States Mail, postage prepaid, in envelopes addressed to each party at their respective address disclosed on the pleadings as follows:

Rand Wonio
LANE & WATERMAN
220 N. Main Street
Suite 600
Davenport, IA 52801

Michael J. McCarthy
McCARTHY, LAMMERS & HINES
701 Kahl Building
Davenport, IA 52801

Edward N. Wehr
WEHR, BERGER, LANE & STEVENS
326 W. Third Street
Suite 900
Davenport, IA 52801

On the 14th day of May, 2004.