

1 **ASSIGNED TO THE HONORABLE PARIS KALLAS**
2 **HEARING DATE: AUGUST 14, 2009 (W/OUT ORAL ARGUMENT)**

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5 **ASSIGNED TO THE HONORABLE PARIS KALLAS**

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7 **SUPERIOR COURT OF WASHINGTON**
8 **FOR KING COUNTY**

9 J.B., M.B., and D.L.,

10 Plaintiffs,

11 vs.

12 CORPORATION OF THE CATHOLIC
13 ARCHBISHOP OF SEATTLE, a sole
14 corporation, et al.,

15 Defendants.

NO. 08-2-02341-9 SEA

**PLAINTIFFS' MOTION TO
COMPEL DISCOVERY FROM
DEFENDANT CORPORATION OF
THE CATHOLIC ARCHBISHOP OF
SEATTLE**

16 **I. RELIEF REQUESTED**

17 Plaintiffs respectfully request that the Court order defendant Corporation of the
18 Catholic Archbishop of Seattle ("Seattle Archdiocese" or "the Archdiocese") to fully respond
19 to discovery requests that ask for the following information:

- 20 (1) Information and documents regarding individuals accused of engaging in
21 sexual misconduct with minors prior to 1986;
- 22 (2) Information and documents regarding the relationship between the Seattle
23 Archdiocese, the Christian Brothers, the Christian Brothers Institute and/or
24 O'Dea High School between 1972 and 1980;
- 25 (3) Documents from the files of individuals and entities who were likely
26 aware of Courtney's sexual abuse of children or his treatment for that
abuse; and,
- (4) Inventories, card catalogs, finding aids, or similar documents that show
what records the Archdiocese has in its possession.

1 The Archdiocese should be ordered to produce this information because it is relevant
2 and not protected by any privilege.
3

4 II. STATEMENT OF FACTS

5 A. Plaintiffs' Allegations

6 Since 2004, more than a half-dozen men, including Plaintiffs, have alleged that they
7 were sexually abused by Edward Courtney at O'Dea High School between 1974 and 1978.

8 The Plaintiffs allege that (1) the defendants knew that Courtney had sexually abused
9 students prior to being transferred to O'Dea, (2) the defendants knew that Courtney sexually
10 abused students at O'Dea, including their principal, John McGraw, (3) the defendants failed
11 to take reasonable steps to protect them from being sexually abused by Courtney, and (4) the
12 defendants covered-up Courtney's abuses in an effort to protect the name and reputation of
13 the Catholic Church. *See generally* First Amended Complaint for Damages.

14 The Archdiocese has denied all of these allegations. *See generally* Defendant
15 Corporation of the Catholic Archbishop of Seattle's Answer and Affirmative Defenses to
16 Plaintiff's Complaint for Damages.

17 B. Plaintiffs' Discovery Requests

18 In order to support their allegations and to rebut the Archdiocese's defenses, Plaintiffs
19 requested the following information:

- 20 (1) Information and documents regarding priests, Christian Brothers,
21 members of religious orders, and others who have been accused of
22 engaging in sexual misconduct with minors prior to 1986, including:
23 documents from the Priest Personnel Board, each individual's "secret
24 file," documents from the "secret archive," documents related to therapy
or similar treatment, and how the Seattle Archdiocese otherwise responded
to those accusations;¹

25 ¹ Plaintiffs' First Set of Interrogatories and Requests for Production to Defendant Corporation of the Catholic
26 Archbishop of Seattle and Objections and Responses Thereto, Declaration of Jason P. Amala in Support of
Plaintiffs' Motion to Compel Discovery from Defendant Corporation of the Catholic Archbishop of Seattle
("Amala Decl."), Ex. 1, at 7-13 (Interrogatory Nos. 1-3 and Request for Production Nos. 1-5).

- 1
- 2 (2) Information and documents regarding the relationship between the Seattle
- 3 Archdiocese, the Christian Brothers, the Christian Brothers Institute and/or
- 4 O’Dea High School between 1972 and 1980;²
- 5 (3) Documents from the files of individuals and entities who were likely
- 6 aware of Courtney's sexual abuse of children or his treatment for that
- 7 abuse;³ and,
- 8 (4) Inventories, card catalogs, finding aids, or similar documents that show
- 9 what records the Archdiocese has in its possession.⁴

10 As the Court can see from its responses, the Archdiocese failed to provide substantive

11 responses or documents in response to these requests.⁵

12 **C. The Defendants Have Produced One Document Regarding Courtney’s Abuse of**

13 **Children**

14 In more than five years since the first discovery requests were served on the

15 Archdiocese and the Christian Brothers defendants in cases involving Edward Courtney, the

16 defendants have produced exactly one record that actually discusses Courtney’s abuse of

17 children.⁶ That document provides a detailed account of Courtney’s sexual abuse of children,

18 beginning in 1968 and ending with his removal from O’Dea because of the abuse, and notes

19 that the O’Dea principal, John McGraw, was well aware of the abuse and complaints by

20 parents.⁷ No other documents have been produced regarding Courtney’s abuse of children.⁸

21 ² *Id.* at 21-23 (Interrogatory No. 6 and Request for Production Nos. 13 and 14)

22 ³ *Id.* at 13, 17-21 (Request for Production Nos. 6 and 12).

23 ⁴ Letter from Jason P. Amala to Karen Kalzer, dated July 17, 2009, Amala Decl., Ex. 2; *see also* Plaintiffs’ First

24 Set of Interrogatories and Requests for Production to Defendant Corporation of the Catholic Archbishop of

25 Seattle and Objections and Responses Thereto, Amala Decl., Ex. 1 (asserting a “general objection” on page six

26 that Plaintiffs’ requests “prejudice Defendant Archdiocese due to the passage of time,” and then objecting to

nearly every interrogatory and request for production as “overly broad” or “unduly burdensome” or just

“objection”).

⁵ Amala Decl., at ¶ 2.

⁶ Amala Decl., at ¶ 4.

⁷ Dispensation From Perpetual Vows or for Exclaustration, Amala Decl., Ex. 3 (noting “a problem with a couple

of boys the first year” that Courtney was at O’Dea, “nothing serious” the second year, “another incident” in

1976, and then “another confrontation of parents with the Principal telling of three incidents during the year” in

1978).

⁸ Amala Decl., at ¶ 4.

1 **D. The Parties Met and Conferred Regarding This Motion**

2 Plaintiffs requested a CR 26(i) conference with the Archdiocese to address their
3 responses and objections to the discovery requests outlined above.⁹

4 During that conference, the Archdiocese refused to withdraw its objections or
5 supplement its discovery responses, other than noting that a substantial volume of records
6 from its files on O’Dea High School will be produced on August 14, 2009.¹⁰

7 Regarding Plaintiffs’ request for information and documents on individuals accused of
8 engaging in sexual misconduct with minors prior to 1986, the parties discussed the
9 Archdiocese’s defense in the recent *Biteman* trial that (1) it was not aware in the 1970s that
10 sexual abuse of minors was a serious problem, (2) it believed an individual who had sexually
11 abused a minor could be cured or successfully treated, and (3) it acted reasonably in giving
12 such a person access to children so long as the person was in treatment.¹¹

13 Plaintiffs pointed-out that this case involves similar allegations of sexual abuse in the
14 1970s, and that the Archdiocese’s previous position in the *Biteman* trial makes the requested
15 information very relevant. The Archdiocese refused to withdraw its objections and refused to
16 produce any additional information.¹²

17 The parties also discussed the Archdiocese’s “general objection” that it cannot respond
18 to Plaintiffs’ discovery requests because of the passage of time, and its blanket objections that
19 Plaintiffs’ discovery requests are “overly broad” and “unduly burdensome.” Plaintiffs asked
20 the Archdiocese to explain what documents it has reviewed and what documents it has not
21 reviewed, or to produce the inventories, card catalogues, and similar finding aids that show
22 the records maintained by the Archdiocese.¹³

23 _____
24 ⁹ Letter from Jason P. Amala to Karen Kalzer, dated July 17, 2009, Amala Decl., Ex. 2.

25 ¹⁰ Amala Decl., at ¶ 5.

26 ¹¹ *Id.* at ¶ 6.

¹² *Id.* at ¶ 7.

¹³ *Id.*

1 The Archdiocese refused to do either. However, as discussed above, it did indicate
2 that a substantial volume of records from its files on O’Dea High School would be produced
3 on August 14, 2009.¹⁴

4 Pursuant to this conference, the parties have met and conferred in good faith but could
5 not resolve this dispute, as required by CR 26(i).¹⁵

6 **III. EVIDENCE RELIED UPON**

7 This motion relies upon the Declaration of Jason P. Amala in Support of
8 Plaintiffs’ Motion to Compel Discovery from Defendant Corporation of the
9 Catholic Archbishop of Seattle (“Amala Decl.”) and the pleadings and evidence
previously filed in this case.

10 **IV. ISSUE PRESENTED**

11 Should defendant Seattle Archdiocese be ordered to fully respond to discovery
12 requests that seek relevant and non-privileged information?

13 **V. LEGAL ARGUMENT**

14 The Court should enter an order requiring the Archdiocese to produce the requested
15 discovery because it is relevant and not privileged. CR 26(b)(1) (a party “may obtain
16 discovery regarding any matter, not privileged, which is relevant to the subject matter
17 involved in the pending action, whether it relates to the claim or defense of any other party ...
18 It is not grounds for objection that the information sought will be inadmissible at the trial if
19 the information sought appears reasonably calculated to lead to the discovery of admissible
20 evidence.”).

21 **First**, information and documents regarding priests, Christian Brothers, members of
22 religious orders, and others who have been accused of engaging in sexual misconduct with
23 minors prior to 1986, and how the Archdiocese responded to those accusations, is relevant to
24

25 ¹⁴ *Id.* at ¶ 8.

26 ¹⁵ *Id.* at ¶ 9.

1 show (1) notice that sexual abuse of children was a foreseeable harm, and (2) the Archdiocese
2 failed to take reasonable steps to protect Plaintiffs from that harm.

3
4 These are the threshold issues in this case, particularly where the Archdiocese has
5 denied all of Plaintiffs' allegations and recently tried to defend itself in the *Biteman* trial by
6 claiming that (1) it was not aware in the 1970s that sexual abuse of minors was a serious
7 problem, (2) it believed an individual who had sexually abused a minor could be cured or
8 successfully treated, and (3) it acted reasonably in giving such a person access to children so
9 long as the person was in treatment.

10 The requested discovery will show that the Archdiocese knew sexual abuse was a
11 foreseeable harm in the 1970s and early 1980s because priests and other religious figures had
12 sexually abused children, and it will show that the Archdiocese failed to exercise reasonable
13 care to protect Plaintiffs from Courtney because it was aware that sexual abusers were likely
14 to re-offend, even when in treatment.

15 **Second**, information and documents regarding the relationship between the Seattle
16 Archdiocese, the Christian Brothers, the Christian Brothers Institute, and O'Dea High School
17 between 1972 and 1980 is relevant because these entities are defendants in this case, the abuse
18 occurred at O'Dea High School, and Plaintiffs assert that these entities breached their duty to
19 protect them from Courtney.
20

21 For example, Plaintiffs asked the Archdiocese to provide a detailed description of the
22 organizational relationship between these entities and "any control that the Seattle
23 Archdiocese had over who served at the school, including John McGraw and any other
24
25
26

1 principal(s), and how the Christian Brothers who served at the school were hired, managed,
2 supervised and terminated.”¹⁶

3 While the Archdiocese provided some information regarding its involvement with
4 O’Dea, it mainly focused on describing the role of the Christian Brothers, and it failed to
5 answer whether it controlled or had any management authority over John McGraw, the
6 principals, or the other Christian Brothers at O’Dea.¹⁷ This lack of information is likely due
7 to the fact that Plaintiffs have alleged John McGraw, the principal, was well aware that
8 Courtney was sexually abusing students at O’Dea.
9

10 Plaintiffs are entitled to a detailed response regarding the Archdiocese’s role in the
11 operation of O’Dea High School between 1972-1980, including its role as to John McGraw
12 and facts related to whether it had a principal/agent relationship with O’Dea.

13 The Archdiocese also refused to provide any information or correspondence regarding
14 its relationship with the Christian Brothers Institute between 1972 and 1982.¹⁸ That
15 information must be produced.

16 **Third,** Plaintiffs asked the Archdiocese to produce responsive documents from the
17 files of individuals and entities that were likely aware of Courtney’s abuse of children or his
18 treatment for that abuse. By definition, these files are likely to contain information that is
19 reasonably calculated to lead to the discovery of admissible evidence regarding Courtney’s
20 abuse of children and how the Archdiocese responded to that abuse. This is particularly true
21 where the Archdiocese has objected to responding to Plaintiffs’ discovery requests “due to the
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24 ¹⁶ Plaintiffs’ First Set of Interrogatories and Requests for Production to Defendant Corporation of the Catholic
25 Archbishop of Seattle and Objections and Responses Thereto, Amala Decl., Ex. 1, at 21 (Interrogatory No. 6).

26 ¹⁷ *Id.* at 22-23 (Interrogatory No. 6).

¹⁸ *Id.* 21-24 (Interrogatory No. 6 and Request for Production Nos. 13-14).

1 passage of time” and has objected to the majority of Plaintiffs’ discovery requests as “overly
2 broad” or “unduly burdensome.”

3 If the Archdiocese genuinely believes that the requested discovery is “overly broad” or
4 “unduly burdensome,” then it bears the burden of seeking an appropriate protective order.
5 *Johnson v. Jones*, 91 Wn. App. 127, 133, 955 P.2d 826 (1998) ([i]f a party disagrees with the
6 scope of production, or wishes not to respond, it must move for a protective order and cannot
7 withhold discoverable materials”).

8
9 **Finally**, the Archdiocese’s inventories, card catalogs or similar finding aids are
10 reasonably calculated to lead to the discovery of admissible evidence because the Archdiocese
11 has objected to responding to Plaintiffs’ discovery requests “due to the passage of time” and
12 has objected to the majority of Plaintiffs’ discovery requests as “overly broad” or “unduly
13 burdensome.”

14 If the Archdiocese wants to assert that Plaintiffs’ requests are “overly broad” or
15 “unduly burdensome,” and if it wants to be excused for not looking through all of its records
16 because of the “passage of time,” then it needs to articulate what documents it has reviewed
17 and what documents it has not reviewed. If it is unwilling to do so, then it should be required
18 to produce documents that show what records are in its possession so that Plaintiffs can
19 ensure all likely sources of responsive documents have been reviewed.

20
21 The fact that the Archdiocese intends to produce responsive documents from its files
22 on O’Dea High School a week before the discovery cut-off date shows that this remedy is
23 needed. The first cases involving Courtney’s abuses at O’Dea were filed in February 2004 –
24 but the Archdiocese is just now producing records from its files on O’Dea?

25 The requested discovery is relevant and not privileged. It should be produced.

1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court grant
3 Plaintiffs' motion to compel.

4 Dated this 6th day of August, 2009.

5 PFAU COCHRAN VERTETIS KOSNOFF PLLC

6
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CERTIFICATE OF SERVICE

I, **Bernadette Lovell**, hereby declare under penalty of perjury under the laws of the State of Washington that I am employed at Pfau Cochran Vertetis Kosnoff PLLC, and that on this 6th day of August, 2009, I served Plaintiffs' Motion to Compel Discovery from Defendant Corporation of the Catholic Archbishop of Seattle, and the Declaration of Jason P. Amala in support thereof, via E-Service, Legal Messenger, and/or U.S. Mail as indicated below by directing delivery to the following individuals:

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ND: 4847-7387-4692, v. 1