

IN THE SUPREME COURT OF PENNSYLVANIA

Docket No. 3 WAP 2020

RENEE' A. RICE

Plaintiff-Appellee,

v.

DIOCESE OF ALTOONA-JOHNSTOWN, BISHOP JOSEPH ADAMEC (RETIRED),
MONSIGNOR MICHAEL E. SERVINSKY, EXECUTOR OF THE ESTATE OF BISHOP
JAMES HOGAN, DECEASED, AND REVEREND CHARLES F. BODZIAK,

Defendants-Appellees.

BRIEF OF AMICUS CURIAE CHILD USA

On appeal from a decision the Superior Court in 97 WDA 2018, dated June 11, 2019,
reversing an order entered on December 15, 2017, in the Blair County Court
of Common Pleas in 2016 GB 1919

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I. STATEMENT OF INTEREST OF AMICUS CURIAE

CHILD USA is a leading national nonprofit working to end child abuse and neglect in the United States. It does so by producing evidence-based solutions and information needed by courts, policymakers, organizations, the media, and society as a whole to increase child protection and the common good. A central question in tort litigation arising from child sexual abuse has been proper construction of the statute of limitations given the facts and circumstances of the individual case. In the context of this important matter, CHILD USA respectfully submits this amicus curiae brief to apprise the Court about research describing the impact of sex abuse on victims and about judicial decisions nationwide on related issues.

II. ARGUMENT

The legal issue before the Court involves whether plaintiff Renee' Rice knew or should have known—as a matter of law—that she suffered injury from child sexual abuse caused by the Diocese of Altoona-Johnstown more than two years before he filed suit in June 2016. A subsidiary issue is whether the statute of limitations applicable to Ms. Rice's claims against the Diocese was tolled until March 2016, when a Statewide Investigating Grand Jury issued a report stating that many priests or religious leaders within the Diocese were child predators, and that the Diocese had covered up child abuse rather than report it.

CHILD USA presents this amicus brief to address three related issues for the Court's consideration: (1) research shows that children often do not understand what

is happening to them when they are sexually abused; (2) research also shows that the effects of childhood sexual abuse challenge victims' ability to recognize their injuries later in life; and (3) while decisions beyond Pennsylvania do not bind this Court, many state courts have applied the discovery rule in cases in favor of adult survivors of child sexual abuse. CHILD USA offers these points within the context of the Court's observation in *Crouse v. Cyclops Industries, Inc.*, 745 A.2d 606 (Pa. 2000), that while reasonable diligence is an objective rather than subjective standard, "it is sufficiently flexible . . . to take into account the difference[s] between persons and their capacity to meet certain situations and the circumstances confronting them at the time in question." *Id.* at 611 (citation omitted). Here, Ms. Rice is a survivor of childhood sexual abuse. CHILD USA respectfully seeks to present the Court with information about the experiences and perceptions of sex abuse victims as it undertakes its discovery-rule analysis.

A. Research shows that children often do not recognize that they have been sexually abused until much later in life.

The science of child sex abuse and trauma has dramatically increased our understanding of the difficulties faced by survivors of childhood sexual abuse in realizing that they have been abused and that they have suffered harm. *See generally* BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* (Viking 2014) (hereinafter VAN DER KOLK); Trickett, P. et al., *The Impact of Sexual Abuse on Female Development: Lessons from a Multigenerational,*

Longitudinal Research Study, 23 DEV. & PSYCHOPATHOLOGY 453-76 (2011) (hereinafter Trickett); Berkowitz, S.J. et. al., *The Child and Family Traumatic Stress Intervention: Secondary Prevention for Youth at Risk Youth of Developing PTSD*, 52 J. CHILD PSYCHOL. PSYCHIATRY 676-85 (2011) (hereinafter Berkowitz).

As an initial matter, disclosure is a key challenge in forging the connection between child sex abuse and subsequent injury. Research show that the average age of disclosure is age 52. See CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf> (hereinafter CHILD USA) (citing Spröber, N., et. al., *Child sexual abuse in religiously affiliated and secular institutions: a retrospective descriptive analysis of data provided by victims in a government-sponsored reappraisal program in Germany*, BMC PUBLIC HEALTH, 14:282, doi: 10.1186/1471-2458-14-282 (2014)).

Research also shows that child victims often develop a variety of coping strategies to avoid recognizing or dealing with the abuse they suffered. These may include denial, dissociation, and repression. These techniques enable the victim to endure the emotional trauma they have experienced and continue to experience. Goodman, G.S., et. al., *A prospective study of memory for child sexual abuse: New findings relevant to the repressed-memory controversy*, 14(2) PSYCHOL. SCI. 113-118 (2003).

These coping mechanisms may persist well into the victim's adulthood. *Id.* Often it is not until years or decades after the sexual abuse that victims experience the

effects associated with the abuse. MIC HUNTER, *ABUSED BOYS: THE NEGLECTED VICTIMS OF SEXUAL ABUSE*, 31 (Random House, 1991) (noting that some of the effects of sexual abuse may not become apparent until the victim experiences a major life event such as marriage or the birth of a child) (hereinafter HUNTER). Because of this delayed reaction, a child who appeared unharmed by childhood sexual abuse can develop debilitating symptoms years later. This delayed onset of symptoms may make it difficult, if not impossible, for a victim to connect his or her problems to sexual abuse suffered decades before. *Id.* at 59.

Child victims face further barriers to disclosure. In particular, children may lack the ability to recognize sexual abuse. They also may be unable to articulate that they have been abused. CHILD USA at 2. Even if a child is aware of experiencing sexual contact, the child may not be able either to identify that sexual contact as abuse. The child also may lack the cognitive ability to appreciate the harmful nature of the acts being performed. *See* Kolko, D.J., et. al., *Children perceptions of their abusive experience: Measurement and preliminary findings*, 7(1) CHILD MALTREATMENT 42-55 (2002); Schönbacher, V., et. al., *Disclosure of child sexual abuse by adolescents: A qualitative in-depth study*, 27(17) J. OF INTERPERSONAL VIOLENCE 3486-3513 (2012); VAN DER KOLK (2014); Teicher, M.H., et. al., *The effects of childhood maltreatment on brain structure, function and connectivity*, 17(10) NAT. REV. NEUROSCIENCE 652-666 (2016). Some children are deeply confused by the physical sensations that accompany the sexual contact. The body releases feel chemicals such that it is even possible for a child to derive pleasure

from the abusive contact. See KENNETH V. LANNING, *Compliant Child Victims: Confronting an Uncomfortable Reality*, in VIEWING CHILD PORNOGRAPHY ON THE INTERNET Ch. 4 (Russell House Pub., 2005). Any pleasure that may be derived from sexual abuse may result in the child feeling confused and betrayed—by the abuser, by their bodies in responding, and even by themselves for their perceived compliance with the abuse. See SANDERSON, C., THE SEDUCTION OF CHILDREN: EMPOWERING PARENTS AND TEACHERS TO PROTECT CHILDREN FROM CHILD SEXUAL ABUSE 19-20 (Jessica Kingsley Pub., 2004); Deblinger, E., & Runyon, M., *Understanding and Treating Feelings of Shame in Children Who Have Experienced Maltreatment*, 10(4) CHILD MALTREATMENT 364-376 (2005). The child also may have confronted similar experiences before, during, or after the time of the abuse. As a result, it may be difficult for the child to realize that the abusive sexual acts themselves were themselves abuse. See Louise D. Sas & Alison H. Cunningham, *Tipping the Balance to Tell the Secret: Public Discovery of Child Sexual Abuse*, 1 NAT'L. CRIM. JUST. REF. SERV. 91-92 (1995).

The victim-perpetrator relationship further complicates the experience of child sexual abuse and may affect the timing of the disclosure. See Smith, D.W., et. al., *Delay in disclosure of childhood rape: results from a national survey*, 24(2) CHILD ABUSE & NEGLECT, 273-287 (2000); see also, Sjoberg, R.L. & Lindblad, F., *Limited disclosure of sexual abuse in children whose experiences were documented by videotape*, 159 AM. J. PSYCHIATRY 312-314 (2002). Sexual abuse is frequently committed by family members or other adults who occupy positions of trust and authority in relation to the child (such as occurred in this

case). Paine, M. & Hansen, D.J., *Factors influencing children to self-disclose sexual abuse*, 22 CLINICAL PSYCHOL. REV. 271-295, 276 (2002) (hereinafter Paine). Typically, the perpetrator will exploit the inherent power-imbalance to exert control over the child. *Id.* Because of these relational dynamics, victims often hold ambivalent and confusing feelings for their abusers. *Id.* (referencing a study by Berliner, L., & Conte, J.R., *The process of victimization: the victims' perspective*, 14 CHILD ABUSE AND NEGLECT 29-40, 32 (1990), wherein over half of victims said that they loved, liked, needed, or depended on their abuser). Some victims describe their relationship to the perpetrator as positive. They even express concern for the perpetrator's well-being should they disclose the abuse. *See* Paine at 277 (citing widely recognized clinical explanations offered to account for the phenomenon of victims protecting perpetrators including traumatic bonding and accommodation to abuse dynamics); *see also* Malloy, L.C., et. al., *Filial dependency and recantation of child sexual abuse allegations*, 46(2) J. AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY 162-170 (2007); McElvaney, R., et. al., *Containing the secret of child sexual abuse*, 27(6) J. INTERPERSONAL VIOLENCE 1155-1175 (2012).

Perpetrators also use their position of power and trust to “groom” their victims, a process that leaves children feeling deeply confused and out-of-control. *See* McAlinden, A., *‘Setting ‘Em Up’: Personal, Familial and Institutional Grooming in the Sexual Abuse of Children*, 15 SOC. & LEG. STUD. 339, 340 (2006) (Grooming “refers to the situation whereby a potential offender will set up opportunities to abuse by gaining the trust of the child in order to prepare them for abuse.”); *see also* U.S. Dep’t of Justice, *The*

National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress 21 JUSTICE.GOV (Aug. 2010) (“Grooming usually involves normalizing sexualized behavior in the offender-child relationship by introducing increasingly intimate physical contact by the offender toward the victim, very gradually sexualizing the contact, and sometimes using child pornography to break down the child’s barriers. This gradual process and the relationship of trust and authority that the offender usually holds over the child, along with the child’s immaturity and subservience, serves to break down the child’s resistance.”).

These grooming tactics further complicate the ability of children to identify themselves as involved in sexual conduct or otherwise in an inappropriate situation. Paine, at 277. The insidious nature of the grooming process lead many victims to perceive themselves as willing participants in a “relationship” with their perpetrator. *Id.* At the same time, the child’s feelings of complicity may be compounded by intense feelings shame. Hunter, S., *Disclosure of child sexual abuse as a life-long process: Implications for health professionals*, 32(2) AUSTRALIAN AND NEW ZEALAND J. OF FAM. THERAPY 159-172, 164 (2011) (feelings of fear, shame, and embarrassment may dwarf a child victims desire to disclose abuse).

B. Research shows the that the effects of childhood sexual abuse challenge victims’ ability to appreciate that they have suffered injury.

Not only is it hard for children to appreciate that they have been abused, such that recognition and disclosure may not occur until years or decades later, but research

also shows that victims suffer resulting harm in a wide variety of ways. In contrast to a case involving a drug or medical device that may cause particular injuries, no signature injury flows from childhood sexual abuse. Trickett at 458-60; Putnam, F., *Ten-Year Research Update Review: Child Sexual Abuse*, 42 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 269, 273 (2003). Research studies have shown that sexual abuse can alter a child's physical, emotional, cognitive, and social development and impact their physical and mental health in numerous ways throughout his or her lifetime. See, e.g., Elliot Nelson et. al., *Association Between Self-reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results From a Twin Study*, 59(2) ARCHIVES OF GEN. PSYCHIATRY 139, 139-45 (2002) (reaffirming earlier studies that established childhood sexual abuse has a profound negative impact throughout the victims lifetime). They show that childhood sexual abuse may generate a wide swath of potential psychological effects. See generally, Merricka, M., et. al, *Unpacking the impact of adverse childhood experiences on adult mental health*, CHILD ABUSE & NEGLECT (2017).

For example, survivors of childhood sexual abuse have a five times higher risk of developing posttraumatic stress disorder in adulthood. They also have a significantly greater risk of developing personality disorders, depression, and anxiety in addition to an increased risk of suicide attempts—none of which necessarily lead back to events of sexual abuse that may have occurred decades before. Angelakis I., et. al., *Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis*, PSYCHOL. MED. 1–22 (2019); Dovran, A., et. al., *Childhood Maltreatment and Adult Mental Health*,

70(2) NORDIC J. PSYCHIATRY 140-145 (2015); Rohde, P., et. al., *Associations of child sexual and physical abuse with obesity and depression in middle-aged women*. 32 CHILD ABUSE & NEGLECT 878–887 (2008); Dube, S.A., et. al., *Long-term consequences of childhood sexual abuse by gender of the victim*, 28 AM. J. PREV. MED. 430 – 437 (2005); Briere, J. & Elliott, D.M., *Prevalence and psychological sequelae of self-reported childhood physical and sexual abuse in a general population sample of men and women*, 27(10) CHILD ABUSE & NEGLECT 1205-1222 (2003); Jonas, S., et. al., *Sexual abuse and psychiatric disorder in England: Results from the 2007 adult psychiatric morbidity survey*, 41(4) PSYCHOL. MED. 709-719 (2011); Maniglio, R., *The impact of child sexual abuse on health: A systematic review of reviews*, 29(7) CLINICAL PSYCHOL. REV. 647-657 (2009).

Childhood sexual abuse also produces a wide variety of physical health outcomes. Adult survivors of child sexual abuse are twice as likely to smoke, be physically inactive, and to be severely obese. Felitti, et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14(4) AM. J. PREV. MED. 245-58 (1998). Adult survivors are thirty percent more likely to develop serious medical conditions such as cancer, diabetes, high blood pressure, stroke, and heart disease. Sachs-Ericsson, et al., *A Review of Childhood Abuse, Health, and Pain-Related Problems: The Role of Psychiatric Disorders and Current Life Stress*, 10(2) J. TRAUMA & DISSOCIATION 170-188 (2009).

Compounding the difficulty of associating mental or physician condition with earlier abuse, survivors often employ coping mechanisms that make it difficult to

confront the abuse until decades after the abuse has stopped. Self-medication through illegal drug use is a common feature of victims' attempts to detach themselves from the emotional aftermath of the abuse. Simpson, T.L. & Miller, W.R., *Concomitance between childhood sexual and physical abuse and substance use problems: A review*, 22 CLINICAL PSYCHOL. REV., 27-77 (2002) (adult survivors of child sexual abuse are nearly three times as likely to report substance abuse problems than their non-survivor peers). The severe stress associated with childhood sexual abuse even may cause changes in brain structure and function. These may manifest as difficulties in memory retrieval associated with the traumatic event or dissociative symptomology. Wlodarczyk, J., *Childhood Sexual Abuse and Its Effects in Adult Life: Executive Summary*, EMPOWERING CHILD. FOUND. (2016) available at http://fdds.pl/wp-content/uploads/2016/10/Wlodarczyk_J_2016_Childhood_Sexual_Abuse_and_Its_Effects.pdf.

Indeed, the traumatic repression of facts surrounding the abuse accounts for a significant percentage of delayed disclosures. David H. Gleaves, *The Evidence for "Repression": An Examination of Holmes (1990) and the Implications for the Recovered Memory Controversy*, 5 J. OF CHILD SEXUAL ABUSE 1 (1996) (highlighting a study that found that approximately 33% of survivors of child sexual abuse have reported or show signs of complete amnesia of the abuse at some point during their lives). It is only through a subsequent triggering event that a survivor typically may overcome repressive barriers

to appreciate the fact of his past abuse and its harmful impact on his life. HUNTER at 31, 59.

C. Many state courts have applied the discovery rule in cases involving adult survivors of child sexual abuse.

This Court considers this case against the backdrop of significant national developments regarding statutes of limitation in child sex abuse cases. Although by no means controlling, the Court may find these developments instructive.

Historically, the application of statutes of limitations led to overly harsh consequences for plaintiffs who were unable to discover their injuries within the statutory period. *See* CHILD USA, 2020 SOL Summary CHILDUSA.ORG (2020), available at <https://www.childusa.org/2020sol>. In response, states began crafting discovery rules extending the limitations periods for claims arising from childhood sexual abuse. *Id.*

By now, at least thirty-five states have incorporated the discovery rule into the language of the child sex abuse statute itself. *See* ALASKA STAT. ANN. § 09.10.140; ARIZ. REV. STAT. ANN. § 12-514; ARK. CODE ANN. § 16-56-130; CAL. CIV. PROC. CODE § 340.1; C.R.S. § 13-80-102; FLA. STAT. ANN. § 95.11(7); GA. CODE ANN. § 9-3-33.1(b)(2)(A)(ii); HAW. REV. STAT. § 657-1.8(a)(2); IDAHO CODE § 6-1704; IL ST CH 735 § 5/13-202.2(b)-(c); IND. CODE ANN. §34-11-2-4(b); IOWA CODE § 614.8A.; KAN. STAT. ANN. § 60-523(a), (c); MASS. GEN. LAWS ANN. ch. 260, § 4C 1/2; MICH. COMP. LAWS ANN. § 600.5851b; MO. REV. STAT. § 537.046(2); MONT. CODE. ANN. § 27-2-216;

NEV. REV. STAT. ANN. § 11.215(1)(b); N.H. REV. STAT. § 508:4-g(II); N.J. STAT. ANN. § 2A: 14-2a; N.M. STAT. ANN. 1978, § 37-1-30; N.C. GEN. STAT. ANN. § 1-52(16); N.D. CENT. CODE, § 28-01-25.1; OR. REV. STAT. § 12.117(1); R.I. GEN. LAWS ANN. § 9-1-51(a)(1)(ii); S.C. CODE ANN. § 15-3-555; S.D. CODIFIED LAWS § 26-10-25; TENN. CODE ANN. § 28-3-116; TEX. CIV. PRAC. & REM. CODE § 16.0045 (d); UTAH CODE ANN. § 78B-2-308 3(b); VA. CODE ANN. § 8.01-249 (6); WASH. REV. CODE ANN. § 4,16.340(1)(b)-(c); W. VA. CODE ANN. § 55-2-15(a); WYO. STAT. § 1-3-105(b); D.C. CODE § 12-301(11).

These statutes offer little guidance by way of determining when a plaintiff reasonably could have identified the injury and linked the injury to defendants' conduct. Courts have diverged on that how and when to apply the doctrine. However, many courts have embraced expanded use of the discovery rule in child sex abuse cases by permitting actions to proceed when (1) the plaintiff lacked awareness of an immediate injury; (2) the plaintiff was unable to understand or appreciate the extent of the injury or causal relationship between the injury and abuse; or (3) the plaintiff was delayed in filing an action as a result of the wrongful conduct by the defendant. *See* Russell G. Donaldson, J.D., 9 A.L.R.5th 321 (1993; Revised March 2020).

Cases of the first type, where plaintiff lacks awareness of an immediate injury, generally involve claims of "repressed memory." The argument follows that a victim plaintiff, who has forgotten all or critical aspects of the abuse as part of a traumatic response, should be treated as though they never had knowledge of the abuse until

plaintiff's awareness is restored by some "triggering" event. *See, e.g., Powel v. Chaminade Coll. Preparatory, Inc.*, 197 S.W.3d 576, 584 (Mo. 2006), *as modified on denial of reh'g* (Aug. 22, 2006) ("Only when [the victim] regained the repressed memories would the victim for the first time have 'reason to question' defendant's conduct and have information sufficient 'to place a reasonably prudent person on notice of a potentially actionable injury.'").

A number of courts have invoked the discovery rule to overcome summary judgment given allegations of repressed memory. The cases below are numerous but instructive:

- *Hearndon v. Graham*, 767 So.2d 1179, 1186 (Fla. 2000) (finding that the discovery doctrine postponed accrual of plaintiff's cause of action against her stepfather for injuries resulting from childhood sexual abuse where plaintiff alleged that she suffered from traumatic amnesia);
- *Moriarty v. Garden Sanctuary Church of God*, 534 S.E.2d 672, 682 (S.C. 2000) (holding the discovery rule may toll the statute of limitations during the period a victim psychologically represses her memory of sexual abuse);
- *Doe v. Roe*, 191 Ariz. 313, 322 (1998) (holding that the discovery rule delays the accrual of a cause of action based on childhood sexual abuse when the plaintiff retrieves repressed memories of the abuse);
- *Sellery v Cressey*, 48 Cal.App.4th 538, 547 (Cal. Ct. App. 1996) (holding that total repression of all memory of abuse was not necessary to toll statute where plaintiff had provided evidence that she repressed memory of most profound acts of abuse until she sought therapeutic treatment);

- *Phinney v. Morgan*, 39 Mass. App. Ct. 202, 205 (1995) (invoking the discovery rule to toll the statute of limitations out of “fundamental fairness” where, “because of the nature of the injury and the relationship of the parties, a child may repress all memory of the abuse, lack understanding of the wrongfulness of the conduct, or be unaware of any harm or its cause until years after the abuse.”).
- *Horn v. Goodman*, 60 N.E.3d 922, 927-29 (Ill. App.3d Dist. 2016) (holding former parishioner’s allegations that, as child, he was sexually abused by a Roman Catholic priest, that he repressed any memory of abuse prior to turning 18 years old, and that he did not remember abuse until 17 years after abuse ended, were sufficient to invoke discovery rule in parishioner’s cause of action against Roman Catholic priest, parish, and diocese); and
- *Bryson v. Diocese of Camden, N.J.*, 909 F. Supp.2d 364, 371-73 (D.N.J. 2012) (finding that plaintiff made plausible argument for tolling based on discovery rule on his negligence and breach of fiduciary duty actions against Roman Catholic diocese arising from abuse suffered more than 40 years earlier at the hands of a priest and where plaintiff contended that he no memory of the sexual abuse that had occurred when he was seven years old until sometime 40 years later when he sought therapy and the discovery rule was flexible.).

Cases of the second type, where the plaintiff was unable to understand or appreciate the extent of the injury or causal relationship between the injury and abuse, reflect the greatest number of claims. Many courts have tolled the statute of limitations for the period during which the plaintiff could not fully appreciate the impact of the abuse or had not made a connection between the abuse and the injury for which they seek redress. The below cases may be instructive:

- *See, e.g., R.L. v. Voytac*, 99 N.J. 285, 299-304 (2009) (While plaintiff had a conscious memory of the sexual abuse, plaintiff’s statutory cause of action for sexual abuse, did not accrue, until plaintiff should have

- reasonably discovered that the serious psychological and mental illness injuries from which he allegedly suffered were caused by that sexual abuse.);
- *Ross v. Garabedian*, 742 N.E.2d 1046, 1050-51 (Mass. 2001) (noting that the plaintiff knew his conduct was shameful and wrong does not “provide [him] with the modicum of knowledge required to trigger the statute of limitation[s]” where a jury could find the plaintiff, a teenager at the time, felt shame or a sense of wrong because his conduct was contrary to accepted church or family morals, but he was not aware that he had suffered any appreciable or legally recognizable harm.);
 - *B.R. v. Horsley*, 345 P.3d 836, 839 (Wash. Ct. App. 2015) (explaining that the statute of limitations for claims of childhood sexual abuse specifically focuses on when a victim of sexual abuse discovers causal link between abuse and injury for which suit is brought because legislature specifically anticipated that victims may know they are suffering emotional harm or damage but not be able to understand connection between those symptoms and abuse.);
 - *Kestel v. Kurzak*, 803 N.W.2d 870, 877 (Iowa Ct. App. 2011) (holding that the sexual abuse victim’s action against priests and Roman Catholic Diocese accrued, and two-year limitations period began to run, when the victim, who remembered the sexual acts perpetrated against him and considered them to be nonconsensual and abusive, realized he suffered an injury that manifested itself in the form of depression and anxiety.);
 - *Oostra v. Holstine*, 86 Wash. App. 536, 539-43 (Wash. Ct. App. 1997), *review denied*, 133 Wash.2d 1034 (Wash. 1998)_(holding that the statute of limitations for civil action based on childhood sexual abuse began to run when abuse victim discovered nexus between sexual abuse by her stepfather and her alcoholism and attempted suicide as teenager and her problems as an adult, which occurred when she started seeing therapist who diagnosed a tie between the abuse and her problems.);
 - *Lent v. Doe*, 40 Cal. App.4th 1177, 1185-87(Cal. Ct. App. 1995) (permitting plaintiff, who admitted he had never forgotten the sexual abuse he suffered as minor, to toll the statute of limitations until he

discovered, in the course of counseling, the connection between his psychological illness and the abuse); and

- *Osland v. Osland*, 442 N.W.2d 907, 909 (N.D. 1989) (holding that the discovery rule could toll the statute of limitations where plaintiff had suffered “severe emotional trauma” from the sexual abuse but “was not able to fully understand or discover her cause of action during the applicable statutory time period...”).

Courts have also invoked the discovery rule to toll the limitations period in cases of the third type, where the defendants’ own inequitable conduct may have unfairly delayed plaintiff’s filing of a claim. Illustrative cases include:

- *Doe v. St. Johns Episcopal Par. Day Sch., Inc.*, 997 F. Supp.2d 1279, 1287-89 (M.D. Fla. 2014) (discovery rule applied to claims against non-perpetrator for respondeat superior liability);
- *Doe v. Hartz*, 52 F.Supp.2d 1027, 1077 (N.D. Iowa 1999) (finding plaintiff’s argument that sexually abusive priest was acting within the scope of his employment since the abuse occurred during normal business hours in the course of his normal duties and was reasonably foreseeable given his known history of sexual misconduct, sufficient to overcome a motion to dismiss under a Respondeat Superior theory for the sexual misconduct of the priest);
- *Doe v. Bishop of Charleston*, 754 S.E.2d 494, 500-01 (S.C. 2014) (finding that the statute of limitations did not begin to run, with respect to action against diocese for negligent supervision of priests alleged to have committed sexual abuse, until the date plaintiffs knew or by the exercise of reasonable diligence should have known that negligent supervision had occurred);
- *Doe v. Redeemer Lutheran Church*, 531 N.W.2d 897, 901-02 (Minn. Ct. App. 1995) (holding that the statute of limitations may be tolled where there is evidence that a victim was not aware of injuries caused by abuse until 21 years after acts of abuse had stopped and where evidence existed that the church had negligently failed to address problem of ministers behavior); and

- *Doe v. Board of Educ. of Hononegah Community High School Dist. No. 207*, 833 F Supp 1366, 1375-76 (N.D. Ill. 1993) (holding that while plaintiff may have known she was abused, there was nothing to suggest that she knew or should have known of the alleged acts or omissions on the part of the defendants to conceal or cover-up teachers sexual — misconduct—under such circumstances the court held it is not at all reasonable to expect a minor student to have effectively discovered such efforts by defendants).

Likewise, courts have tolled the statute of limitations in adult claims arising from child sexual abuse under theories of equitable estoppel and fraudulent concealment until the applicable grounds ceased to operate as reason for delay. Illustrative cases include:

- *J.C. v. Society of Jesus*, 457 F. Supp.2d 1201 (W.D. Wash. 2006) (material issues of fact as to whether church was on notice of priest's criminal conduct and failed to disclose what it knew and whether equitable estoppel or fraudulent concealment prevented church's statute of limitations defense precluded grant of summary judgment to church on damages claim brought by victim, who alleged that priest sexually abused him when he was a minor.);
- *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 196 F.3d 409, 432 (2d Cir. 1999) (applying Connecticut's fraudulent concealment statute created factual issue as to whether defendant diocese's knowledge of priest's sexual misconduct with another teenage boy during the same time period he was abusing the plaintiff and under a fiduciary duty to the plaintiff was sufficient to create a duty on the part of diocese to warn the plaintiff and his family such that the failure to warn would toll the statute of limitations);
- *Hildebrand v Hildebrand*, 736 F. Supp 1512, 1524-25 (S.D. Ind. 1990) (accepting as sufficient to withstand a motion for summary judgment the plaintiff's contention, in a childhood sexual abuse case, that the defendant, her father, should be estopped from invoking the statute of limitations because of his intentional fraudulent conduct in informing

her, as a physician as well as her father, that the basis of her depression and other psychological difficulties was “a chemical imbalance in the brain” and noting that for such an allegation of estoppel by fraud to succeed, the defrauder must be in a confidential relationship with the victim and the concealment contemplated must be both active and intentional, the court declared that in the case at bar the relationship (parent-child) and alleged acts of concealment fulfilled those requirements);

- *Fortin v. The Roman Catholic Bishop of Portland*, 871 A.2d 1208, 1220 (Me. 2005) (finding plaintiff had a fiduciary relationship with diocese based upon his “prolonged and extensive involvement with the church as a student and altar boy,” such that plaintiff could proceed with his claim under the doctrine of fraudulent concealment.);
- *Wisniewski v. Diocese of Belleville*, 943 N.E.2d 43, 74-75 (Ill. App. Ct. 2011) (finding that the diocese failed to disclose material facts concerning alleged sexual abuse victim’s claim against it in light of the special relationship between the parties, for the purpose of applying the fraudulent concealment statute to extend the limitations period for filing a civil claim for sexual abuse against diocese);
- *Doe v. Bakersfield City School Dist.*, 136 Cal. App.4th 556, 566-70 (Cal. Ct. App. 2006) (holding that the defendant, a school guidance counselor alleged to have sexually abused plaintiff for eight years from puberty into adulthood, may be equitably estopped by his threats against plaintiff to raise statute of limitations defense);
- *Stratmeyer v. Stratmeyer*, 567 N.W.2d 220, 221 (S.D. 1997) (denying defendant's motion for summary judgment and allowing the Plaintiffs to proceed on the theory that the statute of limitation was tolled by defendant's fraudulent concealment of their cause of action); and
- *Doe v. Boy Scouts of Am.*, 66 N.E.3d 433, 453 (Ill. App. 1st Dist. 2016) (“we are unwilling to hold, as a matter of law, that a plaintiff's knowledge that he sustained a physical injury and that his abuser has been arrested and tried for child sexual abuse is sufficient to put him on notice of every other potential claim against every other potentially liable party, especially where the plaintiff alleges that he did not discover those claims because they were fraudulently concealed.”).

These cases obviously are not binding, but they suggest the existence of a well-accepted jurisprudential foundation for considering delayed victim responses to sexual abuse when evaluating the timeliness of suit. Taking these cases in combination with the scientific studies referenced earlier, the undersigned respectfully submit that courts considering the discovery rule question in the child sex abuse setting should be mindful of the psychological injuries inflicted by childhood sexual abuse, the diversity of symptoms that may manifest over a survivor's lifetime, and the difficulties experienced by survivors in recognizing their abuse and the resulting injuries. This approach is sensitive to the particular features of these cases. It also will promote much-needed change in substantive law, expose predators and those who enable them, and deter future abuse. It will offer survivors the opportunity to obtain justice under law.

III. CONCLUSION

The decision of the Superior Court should be affirmed.

Respectfully submitted,

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