

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

John Doe JS,

Plaintiff,

Court File No.:

11cv60 PAM/JSM

vs.

COMPLAINT

Fr. Francis Markey, Saint John of God Hospital,
Hospitaller Order of Saint John of God, Our Lady of Victory a/k/a
Our Lady of Victory Trust, Servants of the Paraclete
a/k/a Servants of the Paraclete Generalate: A
New Mexico Corporation a/k/a Servants of the Paraclete: A New
Mexico Corporation, Diocese of Clogher, and
Diocese of New Ulm,

Defendants.

Plaintiff, for his causes of action against Defendants, alleges that:

PARTIES

1. Plaintiff John Doe JS is an adult male resident of the State of Nevada whose identity is made known to Defendants by separate cover letter. Plaintiff was a minor at the time of all fraud and sexual abuse alleged herein.

2. At all times material, Fr. Francis Markey was a Roman Catholic priest who currently resides in the Country of Ireland.

3. At all times material, Defendant Saint John of God Hospital was a facility whose stated mission was to bring "healing care and wholeness to people who have mental illness or psychological and emotional problems" which was operated by Defendant Hospitaller Order of Saint John of God ("St. John of God Hospital"). The principal place of business of Defendant Saint John of God Hospital and Defendant Hospitaller Order of Saint John of God is Stillorgan, County Dublin, Ireland.

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4. At all times material, Defendant Our Lady of Victory a/k/a Our Lady of Victory Trust (“Our Lady of Victory”) was a sexual offender treatment facility located in Stroud, Gloucestershire, England that was operated by the Defendant Servants of the Paraclete.

5. At all times material, Defendant Servants of the Paraclete a/k/a Servants of the Paraclete Generalate: A New Mexico Corporation a/k/a Servants of the Paraclete: A New Mexico Corporation (“Servants of the Paraclete”) was and continues to be a non-profit corporation, authorized to conduct business and conducting business in the States of New Mexico and Missouri with its principal places of business located at P.O. Box 539, Cedar Hill, Missouri 63016 and P.O. Box 10, Jemez Springs, New Mexico 87025 U.S.A.

6. At all times material, Defendant Diocese of Clogher was and continues to be a Roman Catholic Diocese located in Monaghan, Ireland.

7. At all times material, the Defendant Diocese of New Ulm was and continues to be a Minnesota non-profit religious corporation, authorized to conduct business and conducting business in the State of Minnesota, U.S.A. with its principal place of business located at 1400 6th Street North, New Ulm, Minnesota, U.S.A. 56073-2099.

JURISDICTION

8. Plaintiff brings his complaint under federal diversity jurisdiction, 28 U.S.C. 1332, as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.

FACTS

9. In 1952, Fr. Markey was ordained as a Roman Catholic Priest and incardinated in the Defendant Diocese of Clogher.

10. At all times material, Fr. Francis Markey was an ordained Roman Catholic priest

employed by Defendants. At all times material, Fr. Markey remained under the direct supervision, employ and control of the Defendants.

11. Upon information and belief, in 1964, Fr. Markey was discovered to have sexually abused a child and Fr. Markey was suspended from ministry. At that time, Fr. Markey was then sent to treatment at Defendant St. John of God Hospital in Stillorgan, County Dublin, Ireland.

12. Upon information and belief, the Defendant Diocese of Clogher, Diocese of New Ulm and Defendant Markey knew that the Defendant St. John of God Hospital was not equipped to or capable of treating child sexual abusers.

13. Upon information and belief, Fr. Markey was at some time after 1964 and before 1973, reinstated as a priest to full ministerial responsibilities.

14. Upon information and belief, in 1973, there was another allegation of sexual abuse of a minor and Fr. Markey was again suspended from ministry. At that time, Fr. Markey was again sent to treatment at Defendant St. John of God Hospital.

15. Upon information and belief, in 1973, Fr. Markey was reinstated as a priest and to full ministerial responsibilities.

16. Upon information and belief, in 1974, there was another allegation of sexual abuse of a minor and Fr. Markey was again suspended from ministry. At that time, Fr. Markey was sent to the Defendant Our Lady of Victory treatment facility located in Stroud, Gloucestershire, England.

17. Upon information and belief, from 1976 through 1981, Fr. Markey was temporarily assigned to the Clifden Diocese in England, however Fr. Markey remained incardinated within the Diocese of Clogher.

18. Upon information and belief, in 1981, Fr. Markey was sent to the Servant of the Paraclete facility in Jemez Springs, New Mexico, where he received treatment as a sexual abuser.

19. The Defendant Our Lady of Victory, Defendant Servant of the Paraclete, Diocese of Clogher, Diocese of New Ulm and Defendant Markey knew that Our Lady of Victory in Stroud, England and the Servants of the Paraclete facilities in Jemez Springs, New Mexico were not equipped to or capable of treating child sexual abusers. This is evidenced by the following:

- a. In a letter from the founder of the Servants of the Paraclete, Fr. Gerald Fitzgerald to Cardinal Ottaviani dated April 11, 1962, Fr. Fitzgerald stated:

On the other hand, where a priest for many years has fallen into repeated sins which are considered, generally speaking, as abnormal (abuse of nature) such as homosexuality and most especially the abuse of children, we feel strongly that such unfortunate priests should be given the alternative of a retired life within the protection of monastery walls or complete laicization [defrocked as a priest].

- b. In a letter from Fr. Gerald Fitzgerald to Bishop Robert Dwyer, Bishop of the Diocese of Reno dated September 12, 1952, Fr. Fitzgerald stated:

Hence, leaving them on duty or wandering from diocese to diocese is contributing to scandal . . . we find it quite universal that they seem to be lacking in appreciation of the serious situation . . . I myself would be inclined to favor laicization for any priest, upon

objective evidence, for tampering with the virtue of the young . . .

- c. In a letter from Fr. Gerald Fitzgerald to Archbishop James Byrne, Archdiocese of Sante Fe dated September 18, 1957, Fr. Fitzgerald wrote:

May I beg your Excellency to concur and approve of what I consider a very vital decision on our part – that for the sake of preventing scandal that might endanger the good name of Via Coeli we will not offer hospitality to men who have seduced or attempted to seduce little boys or girls? These men Your Excellency are devils and the wrath of God is upon them and if I were a Bishop I would tremble when I failed to report them to Rome for involuntary layization [sic]. . . Experience has taught us these men are to dangerous to the children of the Parish and neighborhood for us to be justified in receiving them here. . . It is for this class of rattlesnake I have always wished the island retreat – but even an island is too good for these vipers . . .

- d. In a letter from Fr. Gerald Fitzgerald to Pope Paul VI dated August 27, 1963, Fr. Fitzgerald wrote:

Personally I am not sanguine of the return of priests to active duty who have been addicted to abnormal practices, especially sins with the young . . . Where there is indication of incorrigibility, because of the tremendous scandal given, I would most earnestly recommend total laicization.

20. In approximately 1982, Fr. Markey was assigned as a priest within the Diocese of

New Ulm.

21. Prior to allowing Fr. Markey to function as a priest within the Diocese of New Ulm, the Diocese of New Ulm, Diocese of Clogher and Fr. Francis Markey were aware that Fr. Markey had been accused of sexually abusing minors.

22. Prior to allowing Fr. Markey to function as a priest within the Diocese of New Ulm, the Diocese of New Ulm, Diocese of Clogher and Fr. Francis Markey were aware that Fr. Markey had received treatment as a sexual abuser at Defendant St. John of God Hospital, Defendant Our Lady of Victory and Defendant Servant of the Paraclete facility in New Mexico.

23. At no time, did the Defendants Diocese of New Ulm, the Diocese of Clogher, St. John of God Hospital, Our Lady of Victory, Servants of the Paraclete or Fr. Francis Markey inform children and parents within the Diocese of New Ulm, including Plaintiff, that Fr. Markey had sexually abused children prior to being assigned as a priest within the Diocese of New Ulm.

24. At no time, did the Defendants Diocese of New Ulm, the Diocese of Clogher, St. John of God Hospital, Our Lady of Victory, Servants of the Paraclete or Fr. Francis Markey inform children and parents within the Diocese of New Ulm, including Plaintiff, that Fr. Markey had been suspended as a result of reports of him sexually abusing children prior to Fr. Markey being assigned within the Diocese of New Ulm.

25. At no time, did the Defendants Diocese of New Ulm, the Diocese of Clogher, St. John of God Hospital, Our Lady of Victory, Servants of the Paraclete or Fr. Francis Markey inform children and parents within the Diocese of New Ulm, including Plaintiff, that Fr. Markey had received treatment as a sexual abuser prior to Fr. Markey being assigned within the Diocese of New Ulm.

26. In approximately 1982, when the Plaintiff was approximately 8 years of age and

in the second grade, Fr. Markey engaged in unpermitted, harmful and offensive sexual contact with the Plaintiff in and around St. Andrews parish in Granite Falls, Minnesota.

27. Beginning in at least 1982 and continuing forward thereafter, each Defendant, through their agents, including Bishop Joseph Duffy, Bishop Raymond Lucker and other agents of the Defendant Servants of the Paraclete, defrauded children and their parents and or entered into a conspiracy to defraud children and their parents, including Plaintiff, regarding Fr. Markey.

28. The Defendants knew that their representations to parents would be communicated to the children within the Diocese of New Ulm.

29. The Defendants knew that Fr. Markey would be in contact with minor children, and knew the identities of those children, including Plaintiff.

30. Plaintiff did not discover that he had been defrauded or have any reason to believe that Defendants had defrauded him until 2009.

31. Defendants' silence, intentional concealment and/or negligent and/or reckless failure to prevent or discover Fr. Markey's continuing acts of sexual misconduct, constitutes a fraud and also prevented Plaintiff from discovering or suing upon the wrongs done to him. Defendants are therefore equitably estopped from asserting the statute of limitations in this action.

32. In approximately 1984, Defendant Markey became a member of the Defendant Servants of the Paraclete.

33. As a direct result of the fraud, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation and psychological injuries, was prevented and will continue to be prevented from performing his normal daily activities and

obtaining the full enjoyment of life, has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity.

COUNT I: FRAUD (AFFIRMATIVE MISREPRESENTATION)
DEFENDANT DIOCESE OF NEW ULM

34. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

35. By assigning Fr. Markey as a priest who would have unsupervised access to children within the Diocese of New Ulm, Defendant Diocese of New Ulm affirmatively represented to Plaintiff and his family that Fr. Markey was safe around children.

36. By assigning Fr. Markey as a priest who would have unsupervised access to children within the Diocese of New Ulm, Defendant Diocese of New Ulm affirmatively represented to Plaintiff and his family that Fr. Markey did not have a history of molesting children.

37. By assigning Fr. Markey as a priest who would have unsupervised access to children within the Diocese of New Ulm, Defendant Diocese of New Ulm affirmatively represented to Plaintiff and his family that Defendant Diocese of New Ulm did not know that Fr. Markey had a history of molesting children.

38. By assigning Fr. Markey as a priest who would have unsupervised access to children within the Diocese of New Ulm, Defendant Diocese of New Ulm affirmatively represented to Plaintiff and his family that Defendant Diocese of New Ulm did not know that Fr. Markey was a danger to children.

39. Defendant Diocese of New Ulm knew that its representations to Plaintiff and his family were false because Defendant Diocese of New Ulm knew that Fr. Markey had a history of

sexually molesting children and was a danger to children.

40. Whether Fr. Markey had a history of molesting children, whether Defendant Diocese of New Ulm knew that Fr. Markey had a history of molesting children and whether Defendant Diocese of New Ulm knew that Fr. Markey was a danger to children were all material facts to Plaintiff.

41. Had Plaintiff known that Fr. Markey had a history of sexually molesting children and that Defendant Diocese of New Ulm knew that Fr. Markey had a history of sexually molesting children, Plaintiff would have acted differently.

42. Defendant Diocese of New Ulm made the misrepresentations with the intent to deceive Plaintiff and to induce him to act on the misrepresentations to his detriment.

43. Plaintiff justifiably relied upon Defendant Diocese of New Ulm's misrepresentations which caused him to be sexually molested by Fr. Markey and suffer the other damages described herein.

44. Defendant Diocese of New Ulm's misrepresentations were the proximate cause of Plaintiff's damages.

45. As a direct result of the fraud described herein, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation and psychological injuries, was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity.

COUNT II: FRAUD (FAILURE TO DISCLOSE)
DEFENDANT DIOCESE OF NEW ULM

46. Plaintiff incorporates all paragraphs of this complaint as if fully set forth in this count.

47. Plaintiff was raised in a devout Roman Catholic family, regularly celebrated mass, received the sacraments and participated in church-related activities. Plaintiff, therefore, developed great admiration, trust, reverence and respect for the Roman Catholic Church and its agents.

48. Fr. Markey was the Plaintiff's first communion teacher.

49. By holding Fr. Markey out as a qualified, safe and trustworthy adult leader and supervisor of children and by undertaking the education, instruction and emotional guidance of the minor Plaintiff, Defendant Diocese of New Ulm entered into a fiduciary relationship and/or other confidential relationship with the minor Plaintiff which gave rise to the duty for the Defendant Diocese of New Ulm to disclose material facts to Plaintiff.

50. By accepting custody of the minor Plaintiff as a student, Defendant Diocese of New Ulm took custody of the Plaintiff *in loco parentis* and by so doing, the Defendant Diocese of New Ulm owed the duty to Plaintiff to protect the Plaintiff from injury and the duty to disclose material facts to the Plaintiff.

51. As a result of Plaintiff being a minor and the relationships between the Plaintiff and Defendant Diocese of New Ulm described herein, and by Defendant Diocese of New Ulm undertaking the care and guidance of the then vulnerable Plaintiff, Defendant Diocese of New Ulm held a position of empowerment over Plaintiff to such an extent that the Plaintiff was prevented from effectively protecting himself from Fr. Markey absent the disclosure of the material facts described herein.

52. Defendant Diocese of New Ulm had special knowledge of the material facts that priests, despite their public vows of celibacy and chastity, regularly participated in sexual activity. Defendant Diocese of New Ulm also had knowledge of the material facts that priests, despite their vows of celibacy and chastity, participated in sexual activity with minors. Plaintiff did not have access to these material facts which prevented Plaintiff from effectively protecting himself from Fr. Markey.

53. Defendant Diocese of New Ulm had special knowledge of the material facts that Fr. Markey, despite his public vows of celibacy and chastity, participated in sexual activity with minors prior to Fr. Markey having sexual contact with Plaintiff. Plaintiff did not have access to these material facts which prevented Plaintiff from effectively protecting himself from Fr. Markey.

54. Defendant Diocese of New Ulm had a duty to disclose the material facts described herein to the Plaintiff.

55. Defendant Diocese of New Ulm failed to disclose the material facts described herein to Plaintiff.

56. Defendant Diocese of New Ulm's failure to disclose the material facts described herein to Plaintiff constitutes a misrepresentation.

57. Defendant Diocese of New Ulm made the misrepresentations with the intent to deceive Plaintiff and to induce him to act on the misrepresentations to his detriment.

58. Plaintiff justifiably relied upon Defendant Diocese of New Ulm's misrepresentations which caused him to be sexually assaulted by Fr. Markey and suffer the other damages described herein.

59. Defendant Diocese of New Ulm's misrepresentations were the proximate cause of

Plaintiff's damages.

60. As a direct result of the conspiracy and fraud described herein, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation and psychological injuries, was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity.

COUNT III: CONSPIRACY TO DEFRAUD
ALL DEFENDANTS

61. Plaintiff incorporates all paragraphs of this complaint as if fully set forth in this count.

62. Each Defendant, through their agents, including Bishop Joseph Duffy, Bishop Raymond Lucker and other agents of Our Lady of Victory and the Defendant Servants of the Paraclete, entered into a conspiracy to defraud the public, including Plaintiff, regarding Fr. Markey. Upon information and belief, the conspiracy consisted of an agreement to send Fr. Markey for "treatment" at the Defendant St. John of God Hospital, Defendant Our Lady of Victory facility in Stroud, Gloucestershire, England and the Defendant Servant of the Paraclete facilities in Jemez Springs, New Mexico, and then transfer Fr. Markey from the Diocese of Clogher to the Diocese of New Ulm, and allow Fr. Markey access to children when the Defendants knew that Fr. Markey had not been properly treated for his abuse of children and that he had a history of sexually abusing children and would in all likelihood offend again, and to misrepresent to the public, including Plaintiff, that Defendants thought that Fr. Markey was safe

and fit. Each Defendant knew that Fr. Markey had sexually abused in the past, even after psychological treatment. Each Defendant knew that parents had complained about Fr. Markey sexually abusing their children. Each Defendant knew that the Diocese of Clogher did not want Fr. Markey functioning as a priest within the Diocese, because of the number of times his sexual abuse problem had recurred.

63. All Defendants concealed their own actions and the actions of the other co-conspirators by failing to report known criminal conduct by Fr. Markey to law enforcement.

64. All Defendants actively concealed past criminal activity by Fr. Markey and future criminal activity, that each of the co-conspirators knew would occur, by concealing Fr. Markey's past sexual abuse of children and by continuing to assign Fr. Markey to positions where he necessarily had unsupervised access to children without warning the children or their families that Fr. Markey would likely sexually abuse those children.

65. All Defendants were aware that Fr. Markey had been to repeated treatment for sexual abusers prior to transferring Fr. Markey to the Diocese of New Ulm.

66. Each Defendant knew that the psychological treatment that Fr. Markey received at St. John of God Hospital, Our Lady of Victory and the Servants of the Paraclete facilities was ineffective treatment and that Fr. Markey remained a danger to children.

67. Defendants knew that upon transfer to the Diocese of New Ulm, it was almost predetermined that Fr. Markey, a predator always hunting for children to abuse, would continue to sexually abuse minors. By agreeing to transfer Fr. Markey to the Diocese of New Ulm, Defendants formed a conspiracy to commit fraud against Plaintiff, his parents and others.

68. Defendants agreed to allow Fr. Markey to work in parishes in the Diocese of New Ulm and affirmatively represented to Plaintiff that Fr. Markey was safe and did not have a

history of sexually abusing minors. In fact, they promised to parishioners, including Plaintiff, that Fr. Markey would be a safe and trustworthy counselor and mentor for parish children and their families.

69. By placing Fr. Markey in a parish within the Diocese of New Ulm, the Defendants also affirmatively represented to the Plaintiff that Fr. Markey was safe and did not have a history of sexually abusing minors.

70. Given the relationships and circumstances described herein, the Defendants had the duty to disclose the fact that Fr. Markey had sexually abused children at prior assignments and that Fr. Markey was not safe around children.

71. The placement of Fr. Markey where he had access to Plaintiff, as well as other children without disclosing Fr. Markey's abusive past, constitutes a deliberate wrongful act committed in furtherance of the conspiracy.

72. By their concerted action of transferring Fr. Markey to the Diocese of New Ulm and assigning Fr. Markey to a parish where he had access to children without disclosing Fr. Markey's abusive past, Defendants accomplished an unlawful purpose to commit fraud against Plaintiff and his parents.

73. The Defendants came to a meeting of the minds that they would place Fr. Markey at an assignment within the Diocese of New Ulm, where the people at those assignments, including children, had no idea that Fr. Markey had been accused of sexually abusing children, that Fr. Markey had received multiple courses of treatment for being a sexual abuser or that Fr. Markey had been suspended multiple times for sexually abusing children and that he was a repeat offender, without remorse. The Defendants decided that they would keep Fr. Markey's background a secret from the public, including Plaintiff and his parents.

74. Each Defendant engaged in wrongful acts pursuant to this conspiracy.

75. Plaintiff was defrauded and sexually abused as a result of this conspiracy.

76. Plaintiff could not with reasonable diligence have discovered the fraud or the conspiracy to commit fraud until after November 2009, when a news story was run about Fr. Markey that included a statement from Bishop Joseph Duffy that revealed the information involving Fr. Markey described herein.

77. As a direct result of the conspiracy and fraud described herein, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation and psychological injuries, was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity.

JURY TRIAL DEMAND

78. Plaintiff demands a jury trial on all counts of this Complaint.

WHEREFORE, Plaintiff demands judgment against Defendants individually, jointly and severally in an amount in excess of \$75,000 plus costs, disbursements, reasonable attorneys fees, interest, and whatever other relief the Court deems just and equitable.

Respectfully submitted,

Dated: January 10, 2011.

s/Patrick W. Noaker

Jeffrey R. Anderson, Minn. Bar #2057

Patrick W. Noaker, Minn. Bar #274951

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