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WEEKLY

Choosing morals and money

Sex abuse settlement gets promises of reform from KC diocese

BY SCOTT LAUCK AND ALLISON RETKA

scott.lauck@molawyersmedia.com,

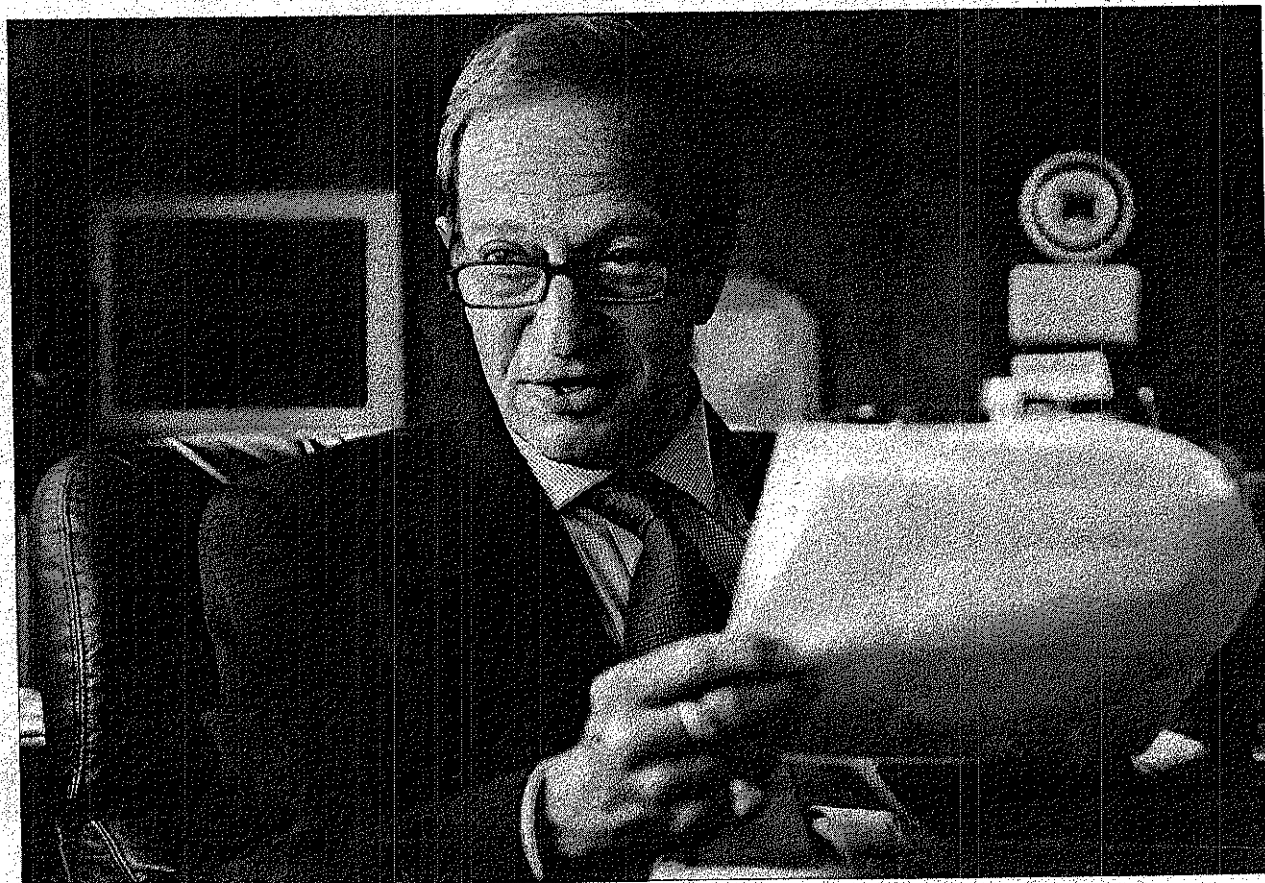
allison.retka@molawyersmedia.com

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But in lawsuits seeking redress for systematic abuse by Roman Catholic priests, it's not necessarily what the defendants promise to pay but rather what they promise to do.

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“ It's never been about money for any of our clients.”



▲ Lathrop & Gage attorney Mark Levison heads the 17-person committee that proposed more-stringent advertising rules for lawyers. He says lawyers need to make reforms before legislators do. Photo by Karen Eishout

THE RETURN OF THE

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“It’s never been about money for any of our clients.”

— Rebecca Randles, of Randles, Mata & Brown in Kansas City

But in lawsuits seeking redress for systematic abuse by Roman Catholic priests, it’s not necessarily what the defendants promise to pay but rather what they promise to do.

Such was the case last month in Kansas City, where 47 plaintiffs settled with the Diocese of Kansas City-St. Joseph for abuse by 12 priests. In strict monetary terms, the \$10 million settlement, which will bring individual payments of \$10,000 to \$225,000 for each plaintiff, sets no records in Missouri and is dwarfed by similar priest-abuse settlements elsewhere in the country.

But the agreement, signed by church officials on Aug. 21, also includes a lengthy list of nonmonetary damages that the plaintiffs’ lawyers say are far more significant to their clients.

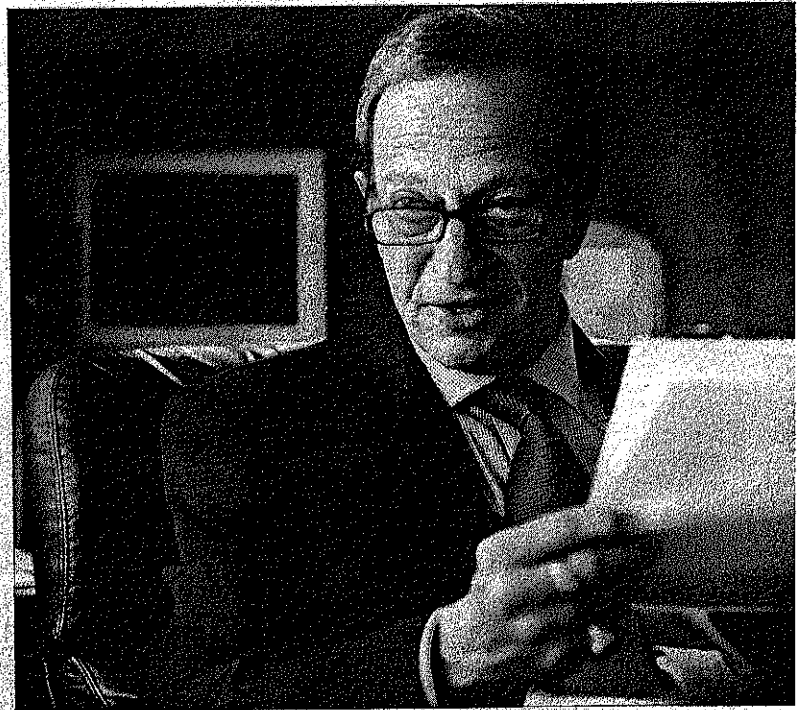
Among the 19 items are:

- a promised acknowledgment by the church that its own response to reports of abuse was wrong.
- victims and their families would be offered counseling at the diocese’s expense.

[SEE ABUSE ON PAGE 12]



▲ Attorneys Rebecca Randles and Stan Spero represented 47 plaintiffs against the Diocese of Kansas City-St. Joseph. Photo by Scott Lauck



▲ Lathrop & Gage attorney Mark Levison heads the 17-person committee that proposed more-stringent advertising rules. Photo by Karen Elshout

THE RETURN OF THE AD WARS

Proposed advertising rules called too restrictive by some, needed reform by others

BY HEATHER COLE
heather.cole@molawyersmedia.com

A Missouri Bar committee’s suggested tightening of attorney advertising rules has reignited a debate smoldering since the last changes to the rules took effect almost three years ago.

Among other changes, the Missouri Bar Special Committee on Lawyer Advertising is proposing setting size and television ad requirements for an already mandated disclaimer; making the Office of Chief Disciplinary Counsel a repository for ads, direct mail and affidavits, and banning some celebrity endorsements and references to past successes.

The Bar association also is considering creating a committee to monitor compliance with the rules, but few details on the composition of such a committee have been outlined.

The proposed rule changes have drawn the ire of personal injury attorneys and the Missouri Broadcasters Association, who say the rules are being pushed forward without any research showing they’re needed and could improperly discourage attorneys from advertising.

Changes to the rules could have an effect on Missouri attorneys — at least 158 firms or legal groups aired 87,000 television spots in the state’s three largest markets in 2007, according to a report by

[SEE AD WARS ON PAGE 14]

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Buffer Zone

A ruling over a planned hog farm near Arrow Rock may change agriculture throughout Missouri

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Promised reforms by churches can

(ABUSE FROM PAGE 1)

- church officials and lay members credibly accused of sexual abuse would not be provided letters of recommendation or references for other jobs.

- the church would acknowledge any lawsuits against the individuals to prospective employers.

- a pastoral statement that the rites and sacraments performed by the priests in question remain valid.

- letters of apology to victims and a pledge not to refer to them as "alleged" victims.

Although many of the items have been included in settlements elsewhere, lawyers on both sides said it appears to be the first time so many of them have been included in a single agreement. Rebecca Randles, of Randles, Mata & Brown in Kansas City, called it "far more comprehensive than any settlement that's taken place anywhere in the United States."

"It's never been about money for any of our clients," she said. "From our perspective, each and every victim deserves a whole lot more money than is being offered to them. The pain that we feel in this room every day is immense and unbelievable. There is no amount of money that could recompense the clients for what they've been through."

Marci Hamilton, a law professor at Yeshiva University's Benjamin N. Cardozo School of Law in New York and the author of "Justice Denied: What America Must Do to Protect Its Children," follows

priest-abuse cases. She said some of the provisions in Kansas City were new to her — in particular a requirement for the diocese to draft a letter to state licensing boards throughout the country, informing them that Thomas J. Reardon, who previously held a counseling degree in Missouri, had been sued for sexual abuse.

"The nonmonetary damages are things the survivors are increasingly vested in," Hamilton said. "They really do want their lawsuit to have made a difference in the world and not to have been just your typical settlement."

Jonathan Haden, an attorney for the diocese, downplayed the changes that the church would make, noting that many of the items of settlement were already being done

before the settlement was executed, and other dioceses have done many of them.

"I really don't think there's anything novel on this list," said Haden, of Lathrop & Gage in Kansas City. "Perhaps all of these things collectively are not things that one diocese has done."

The settlement in Kansas City was one of at least two announced while the parties negotiated this summer — a \$12.6 million settlement in August in Chicago and one for \$5.5 million in July in Denver.

"These kinds of settlements are gaining momentum nationally," he said.

Belleville, Ill., case

Settlements seem to be the rule because neither victims nor church officials are eager to litigate the matters in court.

"The measure of the trauma [during a trial] would just be immense," said Stan Spero, of S] Spero & Associates in Concord, Mass., who worked with Randles on the case. "I think we pushed the church as far as we could at this time."

A case in Belleville, Ill., indicated that abuse cases that go to trial can prove embarrassing for both plaintiffs and defendants.

An injury suit filed by former altar boy James Wisniewski went to trial primarily because the Diocese of Belleville refused to make any settlement offer, said Wisniewski's attorney, Mike Weilmuenster, of Belleville.

David Wells, the Thompson Coburn attorney for the diocese, did not return calls for comment.

The resulting eight-day trial forced church officials to admit they failed to investigate a priest who continued to abuse children.

Spectators, abuse advocates and media packed the St. Clair County courtroom

for each day of the proceeding. In the end, a high-ranking archbishop traveled from Atlanta to take the witness stand and the jury sided with Wisniewski, ordering the diocese to pay him \$5 million.

Of course, some litigated priest-abuse claims never make it to trial. Under Missouri law, victims must contend with a five-year statute of limitations.

The Supreme Court has made two major decisions the past few years on Missouri's statute of limitations. In its landmark *Powell*

“It's still a set of promises — legally enforceable promises, but promises nonetheless.”

— David Clohessy, national director of the Survivors Network of those Abused by Priests

HOW ST. LOUIS CASES HAVE SETTLED

The Archdiocese of St. Louis is continuing to settle with alleged victims of priest sex abuse.

Ken Chackes, a St. Louis attorney with Chackes, Carlson, Spritzer & Ghio has handled dozens of cases accusing St. Louis priests of sexual abuse. Since 1994, he has negotiated more than \$4.4 million in settlements with the archdiocese. The size of these individual settlements range from \$12,000 to \$575,000.

Most of these settlements have included nonmonetary elements, including letters of apology and posting the Missouri Child Abuse and Neglect Hotline in all archdiocese workplaces.

Chackes said the archdiocese has

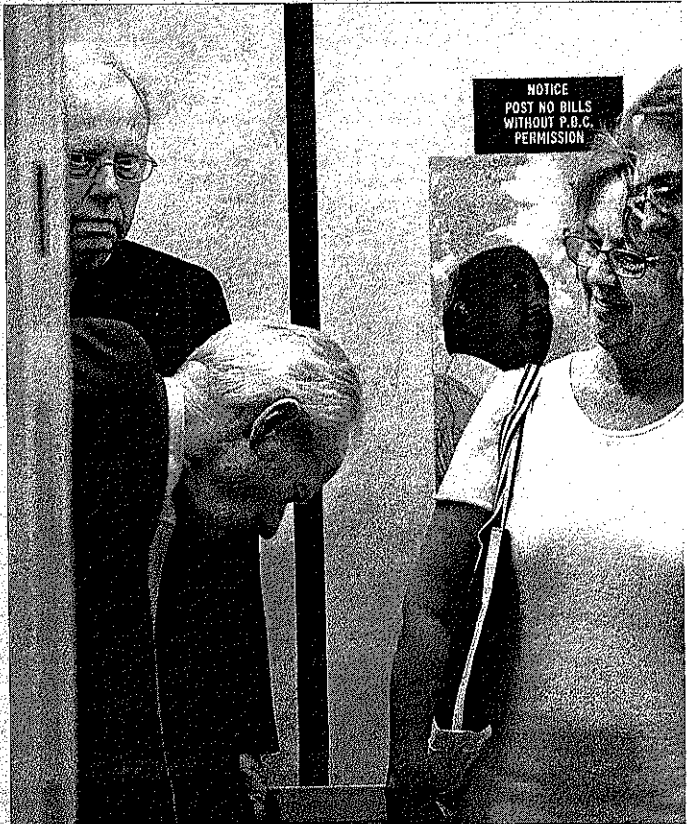
never failed to comply with nonmonetary elements of a settlement, although the church sometimes delayed in sending apology letters during the first year of settlements.

He said he's also pushed for options that the church has refused to consider, including the identification of all priests the archdiocese knew to be child abusers but whose names are not yet public.

The archdiocese also has not committed to placing a victim or victim's parent on the church committee that reviews all abuse complaints, Chackes said.

The committee does include several psychologists and a former police officer who worked on child abuse cases.

— Allison Retka



▲ After cross examinations in the courtroom Aug. 25, lawyers, witnesses and supporters representing both sides in the Wisniewski case. Center is SNAP national director David Wells, putting down his briefcase. To his right is attorney Cathie Schroeder. Photo: Karen Johnson

in *Chaminade College Preparatory* case, the court said a suit could be brought within five years of when "evidence was such to place a reasonably prudent person on notice of a potentially actionable injury." The objective test was hailed by plaintiffs' lawyers because it no longer meant the time limit began with the actual injury, although Haden, the Kansas City diocese lawyer, said defendants approved of its objective standards as well.

The specific facts of the case still defeat some litigation. In April, the court in *State ex rel. Marianist Province v. Hon. John A. Ross* — commonly called the Visnaw case, after its plaintiff — enforced summary judgment in a case in which the plaintiff remembered being physically threatened by a priest but didn't remember any sexual abuse until much later.

Randles said many of her plaintiffs might well have lost on summary judgment.

"These are some of the most courageous people I have ever met," she said. "From the very beginning, they knew that because of the law in Missouri that the chance of success was virtually none."

Some settlements across the country have included requirements for dioceses to seek legislative reform of statutes of limitations. Randles declined to say whether such a provision was sought in the Kansas City negotiations, but Michael Hunter, one of the 47 plaintiffs, said it was among a number of concessions that failed.

Hunter, who also serves as the Kansas City area's leader of the Survivors Network of those Abused by Priests, said survivors are waiting for the diocese's promises to be fulfilled.

Upon signing the agreement, Kansas City

Bishop Robert Finn issued a statement of apology for the "unacceptable behavior that prompted these lawsuits."

"With compassion for the victims of this behavior and with sadness over any failure by the diocese to serve as a proper steward of safety and security for our young people and our parishioners, I am here as an individual leader of the diocese to demonstrate institutional accountability for these sad events," Finn said in part. "I pray that with the settlement of this matter, the healing for all may truly begin."

Hunter said he has not heard an explicit apology for the diocese's lack of response to reports of abuse, as spelled out in the agreement.

"I don't think the diocese has taken responsibility for dragging this out and putting us through what we've had to go through," he said.

The diocese declined a request for an interview with Finn.

Promises but no action

As important as nonmonetary damages are in priest-abuse settlements, they come with a risk. A check can simply be cashed, but a promise of reform, change or action is more difficult to enforce.

"It's still a set of promises — legally enforceable promises but promises nonetheless," said David Clohessy, national director of SNAP. "I think we would all be wise to look skeptically on pledges by church officials to reform under any circumstances."

Attorneys across the country have been frustrated by efforts to get dioceses to meet the nonmonetary demands of the abuse settlements they hammered out.

Most church settlements do not include nonmonetary elements.

The Chicago settlement in August 2007 included a requirement for the diocese to draft a letter to state licensing boards throughout the country, informing them that Thomas J. Reardon, who previously held a counseling degree in Missouri, had been sued for sexual abuse.

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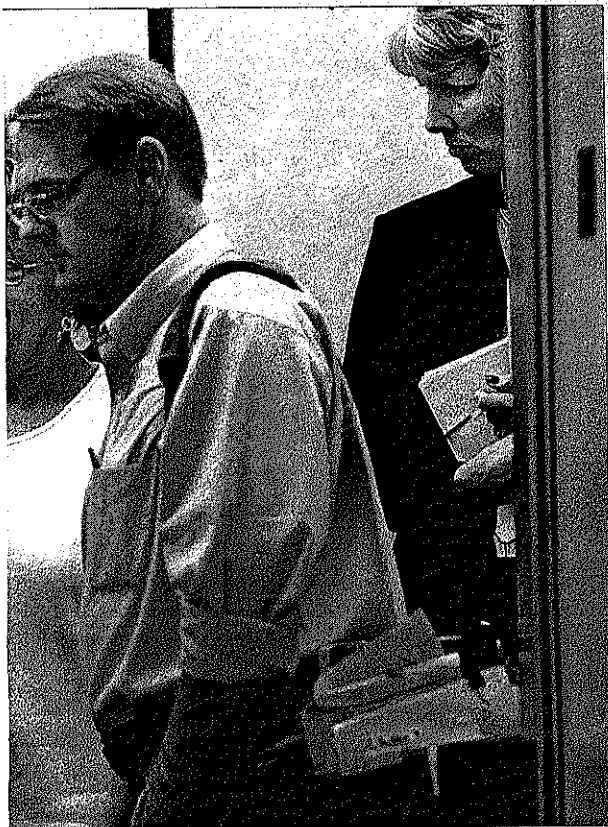
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It can be difficult to enforce



James Wisniewski v. Belleville Diocese case get on the elevator together in the Belleville courthouse. Far left are former SNAP representatives Judy Jones of Ohio and David Clohessy, SNAP president in St. Louis. Far right is Wells' associate Allison Retka.

U.S. CLERGY ABUSE SETTLEMENTS

ARCHDIOCESE OF BOSTON

• Date: up to July 2007
• Settlement: \$135.8 million
• Claimants: 1,015

ARCHDIOCESE OF PORTLAND

• Date: April 2007
• Settlement: \$75 million
• Claimants: 177

In accordance with the settlement, the archdiocese released 20,000 pages in church documents related to accused priests. Lawyers for the plaintiffs are calling for more complete records to be released.

ARCHDIOCESE OF LOS ANGELES

• Date: July 2007
• Settlement: \$660 million
• Claimants: 508

As part of the settlement, the archdiocese agreed to no longer fight the release of church files. A year later, no files have been disclosed.

DIOCESE OF SAN DIEGO

• Date: September 2007
• Settlement: \$198.1 million
• Claimants: 144

As a non-monetary concession, the church agreed to release documents on priest abuse. The documents have yet to be released and individual priests have filed a motion challenging the method of document release.

DIOCESE OF KANSAS CITY-ST. JOSEPH

• Date: August 2008
• Settlement: \$10 million
• Claimants: 47

Among 19 nonmonetary concessions, the diocese promised to apologize for its own response to reports of abuse was wrong, that victims and their families would be offered counseling at the diocese's expense, that church officials and lay members credibly accused of sexual abuse would not be provided letters of recommendation or references for other jobs and that the church would acknowledge any lawsuits against the individuals to prospective employers. Source: Media reports, attorney interviews

Most of these failures take the form of the church's resistance to handing over promised documentation on priests accused of abuse.

The Catholic Diocese of San Diego paid \$198.1 million to 144 abuse victims in September 2007. Every cent of the settlement amount has been sent to plaintiffs, said Irwin M. Zalkin, a San Diego attorney with Zalkin & Zimmer, who represents dozens of the plaintiffs in the case.

But a year later, the victims are still fighting for the most important part of their settlement: the release of the personnel files of any priest in the San Diego diocese accused of abuse.

Zalkin said individual priests, not the diocese, are fighting that portion of the settlement.

"Now I don't know if the diocese expected that would happen," he said. "But it was sort of an illusory agreement on their part."

Similar challenges are being raised in the \$660 million settlement the Archdiocese of Los Angeles reached with 508 victims.

Jeff Anderson, a St. Paul, Minn., attorney with Anderson & Associates, handled several cases in the Los Angeles settlement and said the church's refusal to turn over documents disappointed him.

Bishops and diocese across the country have promptly complied with some non-economic elements of settlements, he said, such as public apologies or masses to honor victims. But in other areas involving transparency or accountability, the church has fallen short, he said.

"They're always willing to make promises because talk is cheap and easy," Anderson said. "They've had a very spotty history in implementation."

Anderson is a colleague of Patrick

Noaker, one of the plaintiffs' attorneys in the case against the Diocese of Kansas City-St. Joseph.

The Archdiocese of Portland in Oregon also is fighting the release of certain personnel files of priests accused of abuse. The archdiocese settled 177 claims against the church in April 2007 for \$75 million. It also agreed to release all internal files related to priests accused of abuse.

"The agreement in principle was a good one: no more secrecy," said Portland attorney Kelly Clark, who handled 40 of the claims. "Whatever you know about these priests, it's going to be open for public scrutiny."

Earlier this year, the Portland Archdiocese released 20,000 pages of documents related to a dozen priests. But Clark said the church is still resisting the release of more documents.

The Portland Archdiocese was the first see in the nation to file for bankruptcy in response to clergy abuse litigation. Three years later, the archdiocese exited bankruptcy and announced the \$75 million settlement.

Clark said he has since noticed a stark change in the church's response to claims of abuse. The archdiocese unsuccessfully filed a motion last year that sought to require alleged victims to use their full names in court documents, he said, and has resisted the mediation of new abuse claims.

"All of the lofty words and promises made at the time of the bankruptcy were just them trying to get out of a jam," Clark said. "When the climate changed, the conduct changed."

A spokesman for the Portland Archdiocese said court rules require names to be included with initial complaints. From

there, parties can file requests asking the court to withhold their full names.

"All we've done is simply ask the court to follow those basic rules," said Bud Bunce, spokesman for the archdiocese.

Thomas V. Dulcich, a Portland attorney with Schwabe, Williamson & Wyatt, represents the Portland Diocese. Dulcich said that since the bankruptcy was resolved, new abuse cases have been dismissed or settled. Several more cases are slated for mediations this fall, he said.

Clark said the archdiocese has followed through on other nonmonetary parts of the Portland settlement. These include giving victims one-on-one meetings with the bishop and making plans for a monument at an Oregon seminary to honor abuse survivors.

Attorneys said these hurdles are particularly upsetting because often the nonmonetary portions of abuse settlements are the most important to victims.

"Everybody writes about the money, and it always captures the headlines," said Anderson, the Minnesota attorney who has handled abuse cases across the country. "Every survivor with whom I've worked ... wants one thing more than anything else, and that is that it not happen to others." ■

Former altar boy wins \$5M verdict

Belleville Diocese faced eight days of trial over clergy abuse

By Allison Retka

allison.retka@molawyersmedia.com

Six years after filing an injury suit against the Catholic Diocese of Belleville, former altar boy James Wisniewski had his day in court and won a \$5 million verdict from a St. Clair County jury.

While it was not easy to testify about the graphic details of his abuse at the hands of former Belleville priest the Rev. Raymond Kownacki, Wisniewski had little choice, said his attorney Mike Weilmuenster. Settlement was never an option. "They never offered us a dime," he said. "We asked for meeting even before we filed suit. All we heard from the diocese was the statute of repose, the statute of limitations."

David Wells, the Thompson Coburn attorney for the diocese, did not immediately return calls for comment after the verdict was handed out.

The verdict amounted to \$2.4 million in compensatory damages for future medical costs and pain and suffering and \$2.6 million in punitive damages against the church.

Wisniewski, 47, of Champaign, Ill., claimed he was sexually abused by Kownacki for several years, beginning when he was 12 years old.

The weeklong trial forced Wisniewski to testify about specific details of his abuse, much of which occurred on church property. Wisniewski's wife and elderly parents also took the stand to talk about his abuse.

On the side of the diocese, former Belleville Bishop Wilton Gregory, now the archbishop of Atlanta, testified about the church's 1993 policy to handle abuse complaints on priests. Gregory admitted that several important documents were missing from Kownacki's personnel file when it was reviewed in 1994.

Kownacki, who did not attend the trial, was removed from active ministry in 1995.

Other church officials testified that Kownacki was appointed to head several Southern Illinois parishes, even after complaints about his behavior with children started to roll in. In one instance, officials said they knew Kownacki had raped a 16-year-old girl and later aborted her fetus with his fingernails.

The trial, held later in St. Clair County Circuit Court, had a packed gallery every day. Members of the Survivors Network of those Abused by Priests attended the trial, as did several members of the media and Wisniewski's family.

In closing arguments on the case last week, Weilmuenster asked for \$2.1 million in compensatory damages.

For punitive damages, Weilmuenster pointed to \$3.2 million the Belleville Diocese earned last year from investments. He referred to the amount as "blood money" and suggested the jury use that figure as a starting point.

Wells, the attorney for the diocese, contended in his closing argument that the church's policy on fielding abuse complaints has worked. Fifteen priests have been removed from active ministry since 1993, he said.

"It was done publicly and it was painful," Wells said. "We dealt with the issue."

The Belleville Diocese did raise a statute of limitations defense in the case, pointing out that Wisniewski filed claim almost three decades after the alleged abuse occurred.

Wisniewski claims that although he remembered abuse, he did not consider the church's larger role until 2002 when news of widespread clergy abuse in Boston spread across the country.

"He never knew that these were the enablers," said plaintiffs' attorney Steve Wigginton in a closing rebuttal, pointing at Wells and former Belleville vicar general Monsignor James Margason. "They conspired among themselves to hide the truth from victims."

Because of an earlier ruling from St. Clair County Circuit Judge Lloyd Cueto, the jury first had to decide whether the diocese fraudulently concealed Kownacki's history of abuse before considering Wisniewski's claims and his quest for damages.

"Have you ever wanted to punch a child molester?" Wigginton asked the jury. "This is your chance to deliver that punch." ■