

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

JAMES N. WELLS,	)	
	)	
Plaintiff,	)	
	)	Law No. 101220
vs.	)	
	)	PLAINTIFF'S MEMORANDUM
FATHER JAMES JANSSEN	)	OF AUTHORITIES IN SUPPORT OF
AND THE DIOCESE OF DAVENPORT,	)	RESISTANCE TO DEFENDANTS'
	)	MOTIONS FOR SUMMARY
Defendants.	)	JUDGMENT

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

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**INTRODUCTION**

The Diocese of Davenport (the “Diocese”) and Father James Janssen move this Court for summary judgment claiming that the statute of limitations had expired on James Wells’ claims prior to him filing the current lawsuit. The Diocese and Father Janssen are in error because according to the Diocese and Father Janssen (which is disputed by James Wells), the statute of limitations in the current matter did not accrue until at the earliest on or around February 1987.

The statute of limitations was immediately tolled due to James Wells' mental illness and due to the fraudulent concealment of the Diocese and Father Janssen. Further, the Diocese and Father Janssen are equitably estopped from asserting the defense of statute of limitations because of their own conduct. Finally, James Wells' claims did not accrue until May 2003. As a result, the Diocese and Father Janssen's motions for summary judgment must be denied.

### **STATEMENT OF THE CASE**

From 1953 to 1962, Defendant Father Janssen engaged in multiple and wrongful acts of sexual contact upon Plaintiff James Wells. (See Exhibit 1, Paragraphs 1-18 of Plaintiff's Statement of Material Facts in Dispute, [hereafter references will be to exhibits from this document]). James Wells has been suffering from mental illness, and continues to suffer from mental illness, since he was a child, (Exhibit 1, Paragraph 23).

As early as March, 1948, shortly after Father Janssen's graduation from seminary, the Diocese of Davenport was aware of Janssen's "dangerous spirit of duplicity" and the need to place him under supervision because he did not grasp the "possible consequences of his actions", (Exhibit 2). The Diocese failed to heed this ominous warning and instead assigned him to an unsupervised parish early in his career (1953) at East Pleasant Plain. There he suffered a nervous condition and took a leave of absence after it was noted in his records "His primary interest he says, is youth. He wants to be with them; he wants them around. There must be something going on". (Exhibit 3) A year later, in

September 1954, the Bishop recorded his first documented solicitation to “acts of impurity” with a St. Ambrose Academy student, (Exhibit 5).

Following the first complaint in 1954 and continuing during the 8 years of abuse of Jim, the Davenport Diocese received numerous complaints about Janssen’s activities in Newton, Chicago, Holbrook and Davenport and also a confession by him to his Bishop.

On December 6, 1985, James Wells went to the Vera French Community Mental Health Center with mental health problems and mentioned that he had been sexually abused by his maternal uncle and priest, Father Janssen. (Exhibit 1, Paragraph 23). James Wells saw a psychiatric social worker again on January 28, 1986, and at that time was still suffering mental illness, (Exhibit 1, Paragraph 24). James Wells was concerned about hurting his mother if he shared information about the sexual misconduct of Father Janssen and James Wells was unable to formulate the mental intent as to what to do. (Exhibit 1, Paragraph 28).

James Wells underwent a psychiatric evaluation at the Vera French Community Mental Health Center on February 20, 1986. (Exhibit 1, Paragraph 25). On February 23, 1987, James Wells wrote a letter to Father Janssen describing how he was suffering from the mental illness of depression as a result of Father Janssen’s sexual abuse. (Exhibit 1, Paragraph 27)

On February 25, 1987, James Wells received a letter from Father Janssen’s attorney, Edward Wehr, stating that Father Janssen would “steadfastly deny” the abuse charges and further threatening to sue James Wells. (Exhibit 1, Paragraph 28). In addition, Mr. Wehr also threatened to sue James Wells’ widowed mother if

Wells took any legal action against Father Janssen. As a result of this duress and coercion and James Wells' mental illness, James Wells was unable to pursue the matter any further. (Exhibit 1, Paragraph 28)

On or about January 8, 1988, James Wells visited Monsignor Morrissey, the Vicar General of the Davenport Diocese, and requested that he investigate Father Janssen's activities. (Exhibit 1, Paragraph 29). James Wells' mother, Margie Wells, wrote a follow up letter on January 12, 1988 also asking that Monsignor Morrissey send the results of the investigation to James Wells while he was living in Arizona. (Exhibit 1, Paragraph 29). Monsignor Morrissey sent a letter with no substantive information to James Wells on January 13, 1988 and that was the last communication James Wells received from the Diocese regarding any investigation. (Exhibit 1, Paragraph 31). At all relevant times between 1985 and 1988, James Wells continued to suffer from a mental illness. The Diocese and Janssen knew this.

James Wells continued to treat his illness at the Vera French Community Health Center from 1990 to 1998, and continued to take daily psychiatric medication to address his mental illness. (Exhibit 1, Paragraph 34).

In February 2000, James Wells underwent another psychiatric evaluation which resulted in the diagnosis of mental illness, specifically bi-polar affective disorder and depression. (Exhibit 1, Paragraph 35). Because of the mental illness and Father Janssen's threats, James Wells was unaware of the causal connection between the sex abuse and his injury and further James Wells was unable to pursue his legal rights. From February 2000 to the present, James Wells has

continued to be under the care and treatment of a psychiatrist at the Vera French Community Health Center and take daily psychiatric medication. (Exhibit 1, Paragraph 36).

On or about May 20, 2003, James Wells read in the newspaper that other victims had reported sexual abuse by Father Janssen. (Exhibit 1, Paragraph 37). Prior to that time, both the Diocese and Father Janssen concealed the existence and extent of the abuse involving both James Wells and others. (Exhibit 1, Paragraph 37). Not until November 17, 2003, did James Wells learn that the Diocese had received complaints about Father Janssen of sexual contacts with minors prior to 1967. (Exhibit 1, Paragraph 38).

On September 16, 2003, James Wells filed his Petition, alleging that from 1953 to 1962 he was abused. After learning of Father Janssen's improper and illegal conduct, Defendant Diocese of Davenport (Diocese) failed to take any action to ensure that such conduct would not occur again. (Petition, paragraph 2). In addition, James Wells alleged that both Defendants had intentionally inflicted emotional distress and had breached their fiduciary duty to James Wells.

#### **STANDARD OF REVIEW**

Under Iowa Rule of Civil Procedure 1.981(2), "[a] party against whom a claim . . . is sought may, at any time, move with or without supporting affidavits for summary judgment in [its] favor as to all or any part thereof." Iowa R. Civ. P. 1.981(2). The judgment sought shall be rendered forthwith only if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any show that there is no genuine issue as to any material fact and

that the moving party is entitled to judgment as a matter of law. Id. In determining whether the movant has met its burden under Iowa Rule of Civil Procedure 1.981(3), the Court should review the record in a light most favorable to the party opposing summary judgment. De Koning v. Mellema, 534 N.W.2d 391, 394 (Iowa 1995).

### ARGUMENT

In both the Diocese's and Father Janssen's (collectively the "Defendants") Motions for Summary Judgment, the Defendants claim that James Wells' claims accrued in February 1987 and are barred by the applicable Iowa statute of limitations. (See p. 3, Diocese's Memorandum in Support of Motion for Summary Judgment and Request for Oral Argument; ¶ 3, Father Janssen's Statement of Undisputed Facts.) According to the Defendants, the applicable statute of limitations in the current matter is Iowa Code Section 614.1 which provides in part:

Actions may be brought within the times herein limited, respectively, after their causes of action accrue, and not afterwards, except when otherwise specially declared:

\* \* \*

2. Injuries to person or reputation - - relative rights - - statute penalty. Those founded on injuries to the person or reputation, including injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years.

Plaintiff James Wells disputes that Iowa Code Section 614.1 is the appropriate statute of limitations to be used in the current matter. Instead, James

Wells asserts that Iowa Code Section 614.8A is the proper statute of limitations in the current matter. Iowa Code Section 614.8A states as follows:

An action for damages for injury suffered as a result of sexual abuse which occurred when the injured person was a child, but not discovered until after the injured person is of the age of majority, shall be brought within four years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the sexual abuse.

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

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

Id. at 267.

James Wells did not file his Petition in this case until September 16, 2003, well after the enactment of Section 614.8A. Therefore, Section 614.8A applies to the present action as long as James Wells' claims were not barred by the pre-existing statute of limitations. Id. As can be seen by the following, James Wells'



claims were not barred by any statute of limitations as of the effective date of Iowa Code Section 614.8A of July 1, 1990 because even if James Wells' claims accrued on or about February 1987, as the Defendants encourage this Court to find, the common law statute of limitations (Iowa Code Section 614.1) was tolled until after July 1, 1990. The statute of limitations was tolled because (1) James Wells suffered from a mental illness and (2) the Defendants fraudulently concealed the causes of action from James Wells, and (3) the Defendants are equitably estopped from asserting the statute of limitations as a defense due to their own conduct. Each of these issues is fully discussed below. As a result, James Wells respectfully requests this Court to deny the Defendants respective motions for summary judgment.

I. **THE STATUTE OF LIMITATIONS WAS TOLLED BECAUSE JAMES WELLS WAS MENTALLY ILL UNDER IOWA CODE SECTION 614.8(1) AND SECTION 4.1(21A)**

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

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

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

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

The words "persons with mental illness" include persons with psychosis, persons who are severely depressed, and persons with any type of mental disease or disorder, except that mental illness does not refer to mental retardation as defined in Section 222.2, or to insanity, diminished responsibility, or mental incompetency as defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules, 3d ed. A person who is hospitalized or detained for treatment of mental illness shall not be deemed or presumed to be incompetent in the absence of a finding of incompetence made pursuant to Section 229.27.

Iowa Code Section 4.1(21A) (emphasis added).

Expert testimony establishes that James Wells was at all relevant times suffering from post-traumatic stress disorder, a mental illness. (Exhibit 65, Paragraph 18). At this time, James Wells continues to manifest symptoms consistent with post-traumatic stress disorder, which is attributable to the sexual trauma perpetrated by Father Janssen. (Exhibit 65, Paragraph 18). As a result, the statute of limitations – either under Section 614.1(2) or Section 614.8A is tolled.

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

Prior to the amendment, a "mentally ill person" included "mental retardates, psychotic persons, severely depressed persons and persons of unsound mind." Iowa Code Section 4.1(15) (1995). This definition also stated that one who was

hospitalized or detained for treatment of mental illness could not be deemed or presumed to be incompetent absent a *specific finding* of incompetence made pursuant to Iowa Code Section 229.27. See Iowa Code Section 4.1(15) (1995) (emphasis added).

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

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

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

amendments, the legislature intended to include these expanded groups within the statutory protections offered by the Iowa Code.

In 1997, the Iowa legislature again modified Iowa Code Section 614.8 dividing tolling for mental illness from minority tolling. (See attached Appendix A.) This time, the Iowa legislature explicitly made the provisions of Iowa Code Section 614.8 retroactive for any case filed after July 1, 1999.<sup>1</sup> In Iowa, a statute may only apply retroactively if the legislature makes express provisions that the statute should be applied retroactively or when it appears by necessary implication that it was the legislative intent that the statute apply retroactively. Frideres v. Schiltz, 540 N.W.2d 261, 265 (Iowa 1995).

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

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

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

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

Applying this legal analysis to the case at hand, James Wells suffers from post-traumatic stress disorder, which is in fact attributable to the sexual trauma perpetrated by Father Janssen. (Exhibit 65, Paragraphs 18-19). The Supreme Court has already recognized that post-traumatic stress disorder, the disability suffered by James Wells, is an illness severe enough to extend the statute of limitations. Callahan v. State, 464 N.W.2d 268 (Iowa 1990).

James Wells manifested symptoms have included intrusive memories, numbing responses, flashback, problems concentrating, irritability, difficulty falling asleep and alcohol abuse. At this time, James Wells continues to manifest symptoms consistent with post-traumatic stress disorder, which is in fact attributable to the sexual trauma perpetrated by Father Janssen. (Exhibit 65, Paragraph 17). James Wells has somatic complaints of chronic pain, stomach problems, shortness of breath and chest pains. At this time, James Wells continues to manifest symptoms consistent with post-traumatic stress disorder, which is in fact attributable to the sexual trauma perpetrated by Father Janssen. (Exhibit 65, Paragraph 17). As the result of the post-traumatic stress disorder,

James Wells has suffered a significant psychological disability and impairment. At this time, James Wells continues to manifest symptoms consistent with post-traumatic stress disorder, which is in fact attributable to the sexual trauma perpetrated by Father Janssen. (Exhibit 65, Paragraph 18).

Substantial evidence of the extent of James Wells' mental illness operates to toll the running of any statute of limitations under Section 614.8, as James Wells meets the Iowa Code's definition of a "person with mental illness." To make a determination as to the tolling of the statute of limitations, the Court determines when "any mental disease or disorder began" and, more importantly, when the disease or disorder ended. James Wells has yet to recover from his post-traumatic stress disorder. (Exhibit 65, Paragraph 20). Therefore, the statute of limitations has not yet started to run and his claim is tolled.

Furthermore, the issue of whether a person is mentally ill for purposes of tolling the statute is indeed a fact question. Borchard v. Anderson, 542 N.W.2d 247 (Iowa 1996). Therefore, this issue is inappropriate for summary disposition. There is a factual issue as to whether James Wells had a mental disorder, thereby tolling the statute under Section 614.8.

Even if this Court agrees with the Defendants' claim that James Wells' causes of action accrued on or around February of 1987, the statute of limitation was immediately tolled due to James Wells' mental illness. In fact, the letter upon which Defendants rely clearly supports tolling due to mental illness when it states, in part: "Last year my gir[sic] friend convinced me to see a psychologist [sic] because I was having some emotional problems. ***It was his diagnosis that I was***

*suffering from depression.*" (Emphasis added.) (Exhibit 1, Exhibit A) As a result, James Wells' causes of action are timely because the statute of limitations was tolled due to mental illness.

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

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

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

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

### **A. The Diocese and Father Janssen Concealed Causes of Action from James Wells by Concealing the Fact that Father Janssen Was a Known Child Molester**

The Diocese was aware as early as September, 1954, of a complaint that Janssen had "solicited to acts of impurity" with a minor age school child at St. Ambrose Academy. (Exhibit 5) The Diocese further documented complaints about

his sexual activities with minors in 1955 and 1956 in Newton (Exhibits 6, 7, 8), Hinsdale, Illinois in 1958 (Exhibits 16, 17, 18) and Davenport in 1959-1961 (Exhibits 23, 24, 25, 28, 30).

The evidence establishes complaints about Father Janssen and sexual contacts with minors before 1962, and that the Diocese and Father Janssen prevented James Wells in his attempts to vindicate any legal rights against the Defendants. (Exhibit 1, Paragraph 25). Despite James Wells asking the Diocese in 1988 to conduct an investigation of Father Janssen's sex abuse, the Diocese of Davenport concealed from James Wells any knowledge of complaints against Father Janssen regarding sexual contacts by Father Janssen with minor boys. (Exhibit 1, Paragraph 23). After the Diocese was put on notice of the abuse, namely by James Wells asking Monsignor Michael J. Morrissey to investigate his accusations of sexual abuse by Father Janssen, the last documentation from the Diocese to James Wells was in the form of a letter written by Monsignor Morrissey on January 13, 1988. (Exhibit 1, Paragraph 17). After that letter, there was no follow-up report ever made by Monsignor Morrissey, and no offer by the Diocese of any pastoral concern, assistance, or psychological assistance to help James Wells overcome his mental illness. (Exhibit 1, Paragraph 17). Eventually, on March 14, 1988, James Wells sent another letter to Monsignor Morrissey, asking for the assistance of the Diocese to help James Wells overcome his mental illness. (Exhibit 1, Paragraph 18). To date, no reply has been sent to James Wells. Finally, on November 17, 2003, James Wells learned for the first time that the Diocese of Davenport had received complaints about Father Janssen of sexual



contacts with minors before 1967 when the Diocese responded to a Request for Admission propounded to them by James Wells, (Exhibit 1, Paragraph 24).

This evidence establishes that both the Diocese and Father Janssen acted to fraudulently conceal the accusations of child sexual abuse committed by Father Janssen against James Wells. James Wells asked the Diocese to investigate possible complaints against Father Janssen in 1988, and he did not get an answer regarding this until November 17, 2003. Therefore, for over fifteen (15) years, the information regarding other complaints against Father Janssen was concealed from James Wells.

**B. Father Janssen Concealed Causes of Action from James Wells by Concealing the True Nature of the Sexual Contact**

In addition to the above concealment, Father Janssen concealed the true nature of the sexual contact from the child James Wells. Given the nature of the sexual abuse and the way that Father Janssen represented the abuse as being normal, legal and acceptable sexual conduct, it is very common for victims of this type of sexual abuse to not be able to understand that the sexual contact caused any injuries. (Exhibit 66, p. 3) In fact, it is very common, given the covert nature of the sexual contact between an adult and a child that the child may not even recognize the sexual contact as injurious because the sexual contact is represented to the child as:

- Sex Education;
- An expression of love;

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

(Exhibit 66, p. 4)

Further, a child is socialized to trust members of the clergy leading the child to simply obey the clergy perpetrator because of their status. Specifically, children are taught to obey adults. (Exhibit 66, p. 4) This is especially true if the perpetrator is in a position of authority and respect such as a priest. (Exhibit 66, p. 4) Once the adult perpetrator is in a position of authority with a reputation as someone who can be trusted around children, the perpetrator is able to begin the grooming process for the child to have sexual contact with him. (Exhibit 66, p. 4) The process of grooming involves exposing the child to non-sexual touch with increasing frequency to make the child be comfortable with the touch and also normalize it for the child. (Exhibit 66, p. 4-5) Once the child accepts non-sexual touch then the perpetrator begins sexual touching. (Exhibit 66, p. 5) This gradual progression is hidden from the child to such an extent that the child does not even understand the nature of the sexual touching. (Exhibit 66, p. 5) The sexual

touching is camouflaged by implying it is for the good of the child and/or is being done for some legitimate reason (see above). (Exhibit 66, p. 5) As a result, the true nature of and injury resulting from the sexual touching are truly concealed from the child by the perpetrator. This circumstance leaves the child unable to discover the fact that he or she was psychologically injured as a result of the sexual contact.

**C. The Diocese and Father Janssen Concealed Causes of Action from James Wells by Creating a Fiduciary Relationship and By Remaining Silent**

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

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

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

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

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

Likewise, the close relationship between the priest, the Diocese and the parishioner obviates the need for plaintiff to prove an affirmative act of concealment. Father Janssen and the Diocese were spiritual advisors for James Wells. Not only was Father Janssen the spiritual advisor in James Wells’ life, Father Janssen is additionally the uncle of James Wells. (Exhibit 1, Paragraph 1) The fiduciary relationship between the parties created a duty for both Father

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

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

whether the accrual of the cause of action was delayed on ground of fraudulent concealment. Id. at 1524.

In the present case, genuine issues of material fact remain as to whether the accrual of James Wells' action was delayed on the grounds of fraudulent concealment. James Wells has been diagnosed with Posttraumatic Stress Disorder, as was the plaintiff in Hildebrand. (Exhibit 65, Paragraph 18). An established fiduciary relationship existed between James Wells and Father Janssen and the Diocese. Father Janssen was James Wells' priest. (Exhibit 1, Paragraph 1)

As a matter of law, the doctrine of fraudulent concealment precludes summary judgment on the issue of the statute of limitations. At a minimum, there remains a genuine issue of material fact as to the application of the doctrine of fraudulent concealment and therefore the summary judgment motion should be denied.

### **III. THE CONDUCT OF THE DIOCESE AND JANSSEN EQUITABLY ESTOPPED DEFENDANTS FROM RAISING THE STATUTE OF LIMITATIONS DEFENSE**

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

N.W.2d 725, 728 (Iowa 1994) (citation omitted). The elements of equitable estoppel are as follows:

- (1) A false presentation or concealment of a material fact;
- (2) A lack of knowledge of the true facts on the part of the actor;
- (3) The intention that it be acted upon; and
- (4) Reliance thereon by the party to whom made, to his or her prejudice and injury.

Id. (citations omitted).

**A. Defendants' Fraudulent Concealment of their Conduct Equitably Estopped Defendants from Raising the Statute of Limitations Defense.**

As set forth in Argument II, the Defendants fraudulently concealed their conduct. At the time James Wells had last communicated with the Diocese in 1988, neither the Diocese nor Father Janssen reported other complaints about Father Janssen from other victims of his sexual abuse. (Exhibit 1, Paragraph 31). To the contrary, Father Janssen had "steadfastly denied" that he sexually abused James Wells, (Exhibit 1, Paragraph 28).

The existence of other abuse victims and complaints involving Father Janssen was material to James Wells' legal rights against Father Janssen. There is no evidence that James Wells ever had any knowledge of evidence involving other victims and complaints until May 2003, at which time James Wells learned that other victims had admitted sexual abuse by Father Janssen. (Exhibit 1, Paragraph 37). Therefore, James Wells did not have knowledge of the true facts.

The Defendants intended James Wells to rely upon the concealment of the extent of complaints and other victims, as well as the outright denials. The Diocese's and Father Janssen's concealment of other complaints about Father Janssen and sexual contacts with minors before 1967 prevented James Wells from vindicating any legal rights against the Diocese as well as Father Janssen. (Exhibit 1, Paragraph 39). The concealment of witnesses with knowledge of the abuse made it more difficult for James Wells to prove his claim. (Exhibit 1, Paragraph 39). James Wells relied on the concealment of Father Janssen and the Diocese in not bringing a cause of action against either the Diocese or Father Janssen.

**B. The Conduct of the Defendants Imposed Coercion and Duress on James Wells to Prevent Him from Asserting his Legal Rights.**

Equitable estoppel has also prevented the running of the statute of limitations on a sexual abuse case where the perpetrator of the abuse has imposed duress on the victim to prevent assertion of the victim's rights. Jones v. Jones, 576 A.2d 316 (N.J. 1990); Parks v. Kownacki, 305 Ill. App. 3d 449, 711 N.E.2d 1208, 238 Ill. Dec. 427 (Ill. App. 5 Dist. 1999).

On or about February 25, 1987, James Wells received a letter from Father Janssen's attorney, Edward Wehr, which stated that Father Janssen would steadfastly deny that he sexually abused James Wells, (Exhibit 1, Paragraph 14) Said letter also threatened that Father Janssen would sue James Wells for damages if James Wells further pursued the allegations. (Exhibit 1, Paragraph 14) James Wells' mother also received a letter where similar threats were made



against her. (Exhibit 1, Paragraph 14). Because of James Wells' mental illness coupled with concern about his mother's mental health, and as a result of the duress and coercion, James Wells could not pursue the matter further. (Exhibit 1, Paragraph 14). During this time, Father Janssen continued to work as a priest with the Diocese.

The conduct of Father Janssen, individually and as a priest of the Diocese, in making this direct threat against James Wells effectively prevented James Wells from taking any further action against either Defendant. After Father Janssen threatened to sue James Wells and/or his mother, James Wells was worried about his and his mother's mental health. (Exhibit 1, Paragraph 28)

In Parks, the Illinois appellate court recognized that religious beliefs could exert power over people who sincerely held those beliefs. 711 N.E.2d at 1214. Furthermore, "it is not only the power of religious belief that comes into play, it is also the effect of sexual abuse on the psychological condition of the victim." Id. (citing D. Finkelhor, A Sourcebook on Child Sexual Abuse 161-65 (186); McCleer, *Post-traumatic Stress Disorder in Sexually Abused Children*, J. 27(5) Am. Acad. Child & Adolescent Psychiatry 650-54 (1988) (Roth & Friedman, *Childhood Trauma Remembered: A Report on the Current Scientific Knowledge Base and Its Applications* J. 7(1) Child Sexual Abuse, 83-107 (1998)).

At the time Father Janssen threatened to sue James Wells for damages, James Wells was still suffering from a mental illness. (Exhibit 1, Paragraph 28) Father Janssen had also threatened to sue James Wells' mother. (Exhibit 1, Paragraph 28). James Wells had no money and his mother was a widow with

eight children. (Exhibit 1, Paragraph 28). The threats lodged against James Wells and his mother coerced James Wells into not pursuing the matter further. (Exhibit 1, Paragraph 28).

There is a genuine issue of material fact as to whether James Wells relied on the fraudulent concealment of the Defendants and was under duress and coercion in not earlier acting upon the abuse which had been perpetrated for many years. The extent of the fraudulent concealment is still undetermined. At a minimum, the application of the doctrine of equitable estoppel remains a factual issue precluding entry of summary judgment.

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

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

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

The Diocese and Father Janssen encourage this Court to find as a matter of law that all of James Wells' claims accrued in February 1987 when Wells sent a letter to Father Janssen. By so encouraging, the Defendants also urge the Court to group all of James Wells' claims together for the purpose of accrual of the applicable statute of limitations. Such an approach is inappropriate in the current matter because the different claims accrue at different times. Each claim made in the Petition is discussed below.

In the current case, the claims against the Diocese accrued at a different time than the claims against Father Janssen. For example, most of the claims against the Diocese (Count III: Intentional Infliction of Emotional Distress; Count IV: Breach of Fiduciary Duty; Count V: Fiduciary Fraud and Conspiracy to Commit Fiduciary Fraud; and VI: Negligent Hiring, Supervision, Warning, Documenting and Retaining) require the Diocese to either know or should have known that Father Janssen was a child molester and a risk to injure children with whom he came in contact. Due to the concealment by both the Diocese and Father Janssen, there was no way James Wells could have known that the Diocese knew that Father Janssen was a child molester prior to May 20, 2003 when James Wells learned

that there were other victims of Father Janssen. Even after James Wells asked the Diocese to investigate Father Janssen in 1988 and requesting the results of the investigation be provided to Wells, the Diocese refused to disclose its knowledge of Father Janssen's child molesting characteristics. We know now that the Diocese had knowledge that Father Janssen was a child molester and a danger to children as far back as the early 1950's (Exhibit 5). There is no way that James Wells could have known of his claims in Counts III, IV, V and VI of the Petition against the Diocese until May 2003 when Wells learned that there were other victims of Father Janssen.

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

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

James Wells was not aware of the causal relationship between his injuries (a long-standing mental illness which include diagnosis not only of post traumatic stress disorder, but also bipolar disorder) until 2003, (Exhibit 1, Paragraph 43). Dr. Mark Schwartz, a licensed psychologist, evaluated James Wells and reviewed his mental health records. (Exhibit 65, Paragraph 8). As the result of his

evaluation, Dr. Schwartz concluded that James Wells has both manifested in the past and currently manifests symptoms consistent with post-traumatic stress disorder, which is attributable to the sexual trauma perpetrated by Father Janssen. (Exhibit 65, Paragraph 18).

As a result of the post-traumatic stress disorder, James Wells has suffered significant psychological disability and impairment. (Exhibit 65, Paragraph 18). The resulting symptoms manifested by James Wells have prevented James Wells from appreciating the nature and impact of the sexual abuse. (Exhibit 65, Paragraph 19). The passage of time to the age of majority alone would not bring about any greater ability to comprehend what happened and its impact. (Exhibit 65, Paragraph 19)

In Callahan v. State, 464 N.W.2d 268, 271 (Iowa 1990), the Supreme Court acknowledged the connection between post-traumatic stress disorder and the inability to perceive the wrong in order to take appropriate action. Regardless of whether James Wells' recollection of the abuse was ever repressed, until 2003 James Wells was not able to perceive the wrong and take appropriate action. In Callahan, the Supreme Court, at Page 272, addressed the impact of post-traumatic stress disorder on a victim's ability to take appropriate legal action:

The term "Post-Traumatic Stress Disorder" (PTSD) is used to describe the psychological impact of traumatic events on a person. The disorders resulting from these events may be either a combination of physical or mental disorders or solely a residual mental incapacity continuing after a physical injury has healed. . . .The child's damaged psyche and weakened ability to perceive right and wrong hinders the child from taking self-protective measures. It is fundamental that in order for a person to take action for a wrong, that person must perceive it as a wrong. Even after she perceives the

wrong, she [the sex abuse victim] must also distinguish what kind of wrong it is – a moral wrong, a social wrong, or a legal wrong – in order to take appropriate action. The sexually abused child's world is very often a confused one and thus she may be greatly disabled both in her ability to perceive wrongs and to take appropriate legal action. The people she normally should be able to trust for protection and moral guidance are often the ones hurting her.

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

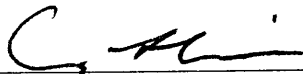
Whether James Wells had sufficiently discovered the causal relationship between his injuries and the sexual abuse is a factual question. Expert testimony establishes that because of the diagnosis of post-traumatic stress disorder, James Wells developed coping mechanisms, preventing him from appreciating the nature and impact of the sexual abuse. (Exhibit 65, Paragraph 19). Not until 2003 did James Wells become aware of the existence of other victims or that the Diocese had received complaints about Father Janssen prior to 1967. (Exhibit 1, Paragraph 38). Although James Wells is still not fully aware of the nature and extent of the abuse and his injuries, in 2003 James Wells discovered for the first time the nature and extent of the abuse and the causal relationship between the extent of the sex abuse and his injuries. (Exhibit 1, Paragraph 43 ). Therefore, James Wells' Petition was timely filed under Section 614.8A.

### **CONCLUSION**

As stated above, the Diocese's and Father Janssen's Motions for Summary Judgment which claim the statute of limitations has expired on James Wells' claims must be denied because (1) any statute of limitations was tolled due to James Wells' mental illness; (2) the Diocese and Father Janssen fraudulently

concealed causes of action from James Wells; (3) the Diocese and Father Janssen are equitably estopped from asserting the statute of limitations as a defense due to their own misconduct; and (4) James Wells' claims did not accrue until May 2003. As a result, the Diocese's and Father Janssen's motions must be denied.

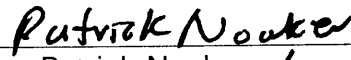
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PROOF OF SERVICE

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

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Suite 900  
Davenport, IA 52801

On the 14<sup>th</sup> day of May, 2004.

Saura Jensen