

**STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE**

KELLY L. KLOSE
39 W. Tupper Street
Buffalo, NY 14202

Plaintiff,

v.

**THE LUTHERAN CHURCH – MISSOURI
SYNOD EASTERN DISTRICT**
5111 Main Street
Williamsville, New York 14221

FIRST TRINITY LUTHERAN CHURCH
1570 Niagara Falls Blvd
Tonawanda, NY 14150

Defendants.

Index No. _____

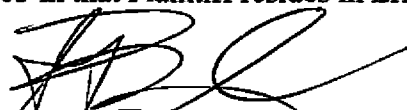
SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

Venue is proper pursuant to C.P.L.R. § 503 in that Plaintiff resides in Erie County.

Dated: December 12, 2019.



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**STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE**

KELLY L. KLOSE,

Plaintiff,

v.

THE LUTHERAN CHURCH – MISSOURI
SYNOD EASTERN DISTRICT and FIRST
TRINITY LUTHERAN CHURCH,

Defendants.

Index No. _____

COMPLAINT

DEMAND FOR JURY TRIAL¹

Plaintiff, by and through Plaintiff’s attorneys, states and alleges as follows:

PARTIES

1. At all times hereinafter mentioned, Plaintiff was and still is a resident of the City of Buffalo, County of Erie, and State of New York.

2. Upon information and belief, and at all times hereinafter mentioned, Defendant The Lutheran Church – Missouri Synod Eastern District (“Eastern District”) was and is a Domestic Not-for-profit Corporation with its principal place of business at 5111 Main Street, Williamsville, County of Erie, State of New York.

3. Upon information and belief, and at all relevant times hereinafter mentioned, Eastern District operated churches and schools including, First Trinity Lutheran Church (“First Trinity”) located at 1570 Niagara Falls Boulevard, Tonawanda, County of Erie, State of New York.

4. At all times material, Bruce Connolly (“Connolly”) was an employee and/or agent of Eastern District and/or First Trinity.

¹ Pursuant to §4 of the New York Child Victims Act, Plaintiff is entitled to a trial preference.

JURISDICTION

5. This Court has jurisdiction over Defendants pursuant to C.P.L.R. §§ 302(1) and 302(4).
6. Venue is proper pursuant to C.P.L.R. § 503 in that Plaintiff resides in Erie County.
7. This Complaint is brought under the Child Victims Act.

FACTS

8. At all times material, Connolly was employed by and/or an agent of Eastern District and/or First Trinity and remained under the direct supervision, employ, and control of Defendants.
9. Defendants placed Connolly in positions where he had access to and worked with children as an integral part of his work. Specifically, Defendants placed and retained Connolly at First Trinity as the Director of Christian Education.
10. At all times material, Plaintiff was a parishioner of First Trinity.
11. Plaintiff, as a minor and vulnerable child, was dependent on Defendants and Connolly. Defendants and Connolly had custody of Plaintiff and was entrusted with the safety of Plaintiff and, therefore, had responsibility for and authority over Plaintiff.
12. From approximately 1976 to 1979, when Plaintiff was approximately 11 to 14 years old, Connolly engaged in unpermitted sexual contact with Plaintiff.
13. Defendants knew or should have known that Connolly was a danger to children before Connolly sexually assaulted Plaintiff.

14. Prior to the sexual abuse of Plaintiff, Defendants learned or should have learned that Connolly was not fit to work with children. Defendants, by and through their agents, servants and/or employees, became aware, or should have become aware of Connolly's propensity to commit sexual abuse and of the risk to Plaintiff's safety. At the very least, the Defendants knew or should have known that they did not have sufficient information about whether or not its employees, more specifically, Connolly, were fit to work with children.

15. The Defendants knew or should have known that there was a risk of the sexual abuse of children attending First Trinity. At the very least, the Defendants knew or should have known that they did not have sufficient information about whether or not there was a risk of child sex abuse for children attending First Trinity.

16. Instead, Defendants negligently deemed that Connolly was fit to work with children and/or that any previous misconduct was fixed or cured and/or that Connolly would not sexually assault children and/or that Connolly would not injure children.

17. The Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risk that Connolly posed to Plaintiff, the risk of abuse in general in its facilities and/or the risks that its facilities posed to minor children.

18. The Defendants owed a duty to Plaintiff to protect Plaintiff from harm because the Defendants' actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child attending First Trinity, Plaintiff was a foreseeable victim. As a vulnerable child who Connolly had access to through Connolly's employment with the Defendants, Plaintiff was a foreseeable victim.

19. The Defendants also breached their duty to Plaintiff by actively maintaining and employing Connolly in a position of power and authority through which Connolly had access to children, including Plaintiff, and power and control over children, including Plaintiff.

20. The Defendants breached their duties to Plaintiff.

21. The Defendants failed to use ordinary care in determining whether their facilities were safe and/or determining whether they had sufficient information to represent their facilities as safe. The Defendants' breach of their duties includes, but is not limited to: failure to protect Plaintiff from a known danger, failure to have sufficient policies and procedures to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to make sure that policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child sex abuse, failure to have any outside agency test its safety procedures, failure to protect the children attending its programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the school and its employees as safe, failure to train its employees properly to identify signs of child sexual abuse by fellow employees, and failure to engage or timely engage certified mental health professionals.

22. The Defendants also breached their duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Connolly posed. The Defendants further failed to warn Plaintiff and Plaintiff's family of Defendants' knowledge of the occurrence of child sexual abuse.

23. The Defendants and/or their other agents violated their legal duty by failing to report known and/or suspected abuse of children by Connolly to law enforcement.

24. As a direct result of the Defendants' negligence, 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/or physical, personal and psychological injuries. Plaintiff was prevented, and will continue to be prevented, from performing normal daily activities and obtaining the full enjoyment of life; and/or has incurred and will continue to incur expenses for psychological treatment, therapy, and counseling, and, on information and belief has and/or will incur loss of income and/or loss of earning capacity.

AS AND FOR A FIRST CAUSE OF ACTION:
NEGLIGENCE

25. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "25" as though more fully set forth herein.

26. Connolly, as an agent, servant and/or employee of Defendants, was a religious figure and educator who had physical custody of Plaintiff before, during, and after the school day, before, during, and after school activities, and owed Plaintiff a duty of care.

27. Defendants were in *loco parentis* and owed Plaintiff a duty of care.

28. The Defendants breached their duty of care owed to Plaintiff when they allowed Plaintiff to be in contact with Connolly.

29. Defendants knew or should have known of the sexual abuse, sexual harassment, and violence occurring at First Trinity, and breached their duty owed to Plaintiff when they failed to report the sexual abuse, sexual harassment, and violence occurring at First Trinity and failed to remove Connolly.

30. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for her own physical safety.

31. As a result of Defendants' breach, Plaintiff has incurred and will incur medical costs to treat her past, present, and future psychological suffering as a result of being a victim of sexual abuse, sexual harassment, and violence while in Connolly's control at First Trinity.

32. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS:
FAILURE TO REPORT**

33. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "33" as though more fully set forth herein.

34. The Defendants, through their agents, servants, and employees, had reasonable cause to suspect that Plaintiff was being abused and/or maltreated by Connolly over the approximate three (3) year period of 1976 - 1979.

35. The Defendants, through their agents, servants, and employees, knowingly and willfully failed to report the suspected child abuse or maltreatment to anyone, including the police or Child Protective Services.

36. The Defendants did not provide their employees with written information on reporting requirements.

37. The Defendants failed to follow the policies of required reporting including, but not limited to, the policies listed in New York Consolidated Laws, Social Services Law – SOS § 413 and in the Defendants "Sexual Misconduct Policy".

38. The Defendants are liable for the failure to report pursuant to New York Consolidated Laws, Social Services Law – SOS § 420.

39. The knowing and willful failure of the Defendants, through the inaction of their agents, servants, and employees, to report the child abuse and maltreatment of Plaintiff was a proximate cause of Plaintiff's damages.

40. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

41. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "41" as though more fully set forth herein.

42. During the time period of approximately 1976 – 1979, the Defendants allowed Connolly unrestricted access to Plaintiff and willfully and/or intentionally ignored complaints against Connolly of sexual abuse, sexual harassment, and violence.

43. During the time period referenced above, the Defendants willfully and/or intentionally ignored Plaintiff's safety by requiring and allowing Connolly to watch Plaintiff without others present.

44. The Defendants were deliberately indifferent to the risk of sexual harassment and violence posed to Plaintiff by being alone with Connolly.

45. The Defendants willfully and/or intentionally created a hostile and unsafe religious and educational environment that no child would be able to tolerate.

46. The Defendants, in order to avoid embarrassment, scandal, and negative publicity, intended to cause Plaintiff shame, humiliation, and extreme emotional distress so she would stay silent, and not report the abuse.

47. The Defendants behaved in a manner toward Plaintiff that was so outrageous as to exceed all reasonable bounds of decency.

48. The Defendants knew with substantial certainty or should have known that their behavior would cause Plaintiff to be a victim of sexual abuse, sexual harassment, and violence.

49. The Defendants knew with substantial certainty or should have known that their behavior would cause severe emotional distress to Plaintiff.

50. The foregoing acts of the Defendants caused Plaintiff physical, mental and emotional distress.

51. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

52. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "52" as though more fully set forth herein.

53. The Defendants were negligent when they allowed Plaintiff to be exposed to sexual harassment, sexual abuse, and violence committed by Connolly.

54. The Defendants knew or should have known this inaction would subject Plaintiff to further sexual harassment, sexual abuse, and violence, and knew or should have known this would unreasonably endanger Plaintiff's safety, cause her to fear for her safety, and cause her severe emotional distress.

55. The Defendants owed a duty to Plaintiff to protect her from sexual harassment, sexual abuse, and violence from Connolly, including but not limited to when on the premises of First Trinity.

56. The Defendants breached the duty owed to Plaintiff to protect her from sexual harassment, sexual abuse, and violence from Connolly, including but not limited to when on the premises of First Trinity.

57. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for her own physical safety.

58. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENT HIRING**

59. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "59" as though more fully set forth herein.

60. Defendants owed Plaintiff a duty of care to supervise and protect Plaintiff.

61. Defendants were obligated to Plaintiff to ensure that personnel hired and/or assigned by them, including religious staff such as Connolly, would provide a safe educational and religious environment for children.

62. Defendants knew or should have known at the time of Connolly's assignment to First Trinity of his propensity for the conduct which caused the injury.

63. Defendants breached their duty of care to Plaintiff when they negligently hired Connolly.

64. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for her own physical safety.

65. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENT SUPERVISION AND RETENTION**

66. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "66" as though more fully set forth herein.

67. Defendants owed Plaintiff a duty of care to supervise and protect Plaintiff.

68. Defendants were obligated to Plaintiff to supervise the personnel assigned to watch Plaintiff, including but not limited to while on the premises of First Trinity, to ensure that Plaintiff was in a reasonably safe environment.

69. The Defendants had knowledge or should have had knowledge of the sexual harassment, sexual abuse, and violence by or at the direction of Connolly and negligently ignored the reports of the sexual harassment, sexual abuse, and violence by or at the direction of Connolly until approximately 2016.

70. The Defendants did not terminate the employment or suspend the religious duties of Connolly despite reports concerning the sexual harassment, sexual abuse, and violence committed by Connolly.

71. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for her own physical safety.

72. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS:
PUNITIVE DAMAGES**

73. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "73" as though more fully set forth herein.

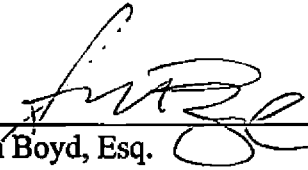
74. Defendants' knowledge of the violence, sexual harassment, and/or misconduct against Plaintiff by or at the direction of Connolly over an approximate three (3) year period of 1976-1979, including but not limited to while on the premises of First Trinity, is tantamount to a wanton and conscious disregard for the safety of Plaintiff and others, and warrants the imposition of punitive damages.

75. By reason of the malicious, intentional, willful, and/or negligent conduct of Defendants herein, and by such other acts that were morally reprehensible, Defendants' conduct evidenced a callous disregard for the safety of Plaintiff, and said acts constituted a wanton, reckless and/or malicious disregard for the rights of others and, as a result thereof, Plaintiff demands punitive damages.

76. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction, and for such other and further relief to Plaintiff as this Court deems just and proper.

DATED: December 12, 2019.



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