

In largest reported payout yet, Philadelphia Archdiocese settles abuse lawsuit

By Craig R. McCoy

The Archdiocese of Philadelphia has settled a claim of sex abuse brought by the family of a 26-year-old former student in a Northeast Philadelphia parish who died of a heroin overdose in 2013 shortly before he was to testify in a criminal case against a local priest.

The suit was filed by the parents of Sean McIlmail, who had said that the now-defrocked priest, Robert L. Brennan, molested him for four years, starting when he was 11, while Brennan served at Resurrection of Our Lord parish.

While the payment amount is secret, the family's lawyers say they understand it to be the largest yet paid by the archdiocese in an abuse case. It is only the sixth known sex-abuse settlement by the archdiocese — a remarkable fact given how extensive the priest abuse scandal proved to be here. The archdiocese has been the subject of two scathing grand jury reports that said its leaders had "enabled and excused" abuse by scores of priests for decades.

Elsewhere, some dioceses have faced myriad lawsuits with hundreds of millions of dollars in play. The Archdiocese of Los Angeles, for instance, in a single agreement paid \$660 million to 508 victims. The Philadelphia Archdiocese has been spared a greater financial burden largely because of Pennsylvania's more narrow statute of limitations for such crimes, which has left victims without legal authority to sue. So far, the church and other critics have successfully lobbied

in the legislature to block any major liberalization of those restrictions.

"The irony is that Philadelphia has been subject of the most searching and comprehensive grand jury investigations in the United States," said Marci Hamilton, a lawyer for the McIlmails. "We know more about clergy abuse here than in any other city, but that knowledge has not led to an opening up of the statute of limitations and more justice for the victims."

While the 2005 and 2011 grand jury reports in Philadelphia offered the most extensive accounting so far into clergy abuse locally, the state Attorney General's Office recently completed its own investigation into such abuse and alleged cover-ups in numerous other Pennsylvania Catholic dioceses. Legal challenges have delayed its release.

Advocates for change are hoping the attorney general's report will spur legislative support for an initiative to open a two-year window to permit now-banned lawsuits regardless of when the abuse took place. While the local church last week declined to comment on the legislation, Philadelphia Archbishop Charles J. Chaput, chair of the Pennsylvania Catholic Conference, has spoken out against previous proposed changes, arguing that they discriminate against Catholics and could do great financial harm to the church.

In a statement last week, the archdiocese declined to comment on the McIlmail case, saying only that it hoped the settlement would bring "closure and a path forward."

McIlmail, the son of a former Philadelphia police officer and a retired social-services administrator, said Brennan assaulted him between 1998 and 2001, molesting him in the Resurrection sacristy, Brennan's rectory bedroom, a parish storage area, and a movie theater.

In the 2005 grand jury report, city prosecutors painted Brennan as a repeat offender who kept striking anew as the church shuttled him from parish to parish, lying to parishioners about his stays in a church-run treatment facility in Chester County. The parishes were told that Brennan was "on retreat" or sick with Lyme disease.

In all, Brennan abused more than 20 youngsters in four parishes, including Resurrection, according to the grand jury report. Brennan, 80, was removed from active ministry soon after the report was released and defrocked last year. He has been living in Maryland for several years.

Sean McIlmail's case was not among those examined by either grand jury. He came forward in early 2013. Based on McIlmail's claim, the Philadelphia district attorney charged Brennan, who denied abusing the younger man. Prosecutors dropped the case after McIlmail was found dead. His parents filed suit on behalf of their son's estate.

The McIlmails and the church settled May 2, two days before jury selection for the civil trial and after more than four years of fierce pre-trial litigation. Philadelphia Common Pleas Court

Judge John Milton Younge agreed on June 11 that the settlement amount would be kept secret. The judge did so after the church filed a motion seeking confidentiality; the McIlmails did not oppose it.

Since the church abuse scandal broke nationwide about 15 years ago, no more than 30 victims have filed suit against the Philadelphia Archdiocese, according to Hamilton. Of these, most have had their cases dismissed, including 18 who had their suits tossed in a single ruling.

The roadblock has been Pennsylvania law regarding sexual abuse. Many victims are barred from suing because they are covered by a state law that said childhood victims must sue by age 20. In 2002, the legislature extended the age limit to 30, but the change was not retroactive.

Since the 2005 report, Hamilton and Daniel Monahan, another area lawyer who has counseled many abuse victims in recent years, said, they knew of only six suits against the Philadelphia Archdiocese that have ended with paid settlements. All of those cases that were viable because they were brought within the new statute of limitations. No suit has ever gone to trial. No settlement figures have been made public.

"The vast majority of the victims have been outside the statute and the Philadelphia Archdiocese is only dealing with people inside the statute while they fight statute-of-limitations reform," Hamilton said.

Unlike in other settlements, the McIlmails and their lawyers — Hamilton, joined by **David Inscho and Thomas Kline** — insisted that the details of their case remained public. Early on, the lawyers rebuffed a move by archdiocesan lawyers to keep evidence in the case secret.

After Sean McIlmail was found dead — and buried in a Bucks County cemetery — his parents, Michael and Deborah, and the family's legal team had to rely on his 2012 and 2013 statements to family members, therapists and police to underpin the civil suit. The lawyers

also dug into Brennan's history to accumulate evidence beyond that gathered by the grand jury.

In its defense, the church noted that Brennan had denied attacking anyone. The archdiocese's lawyers also pointed out that there were no eyewitnesses who could confirm McIlmail's accounts of abuse. Nor had McIlmail told anyone about the abuse while it was alleged to be happening.

The church hired two experts who dismissed McIlmail's allegations — Elizabeth Loftus, a professor of psychology at the University of California, Irvine, and James Hudson, a psychiatry professor at Harvard Medical School. They said he might have conjured up false memories of abuse under the influence of therapists and police, or from the grand jury reports. Both stressed that until 2012, McIlmail, in conversations with therapists, denied any abuse. Hudson was the most critical, writing that McIlmail's account of "putative sex abuse likely contains exaggerations or outright fabrications."

In an interview with the Inquirer and Daily News, retired Philadelphia Police Detective James Dougherty, who spoke with McIlmail at length while building the criminal case against Brennan, said he had no doubt he had been victimized.

"With the real victims, it's ungodly painful for them to talk about this stuff," said Dougherty, who has interviewed scores of abuse victims. "The emotions they go through — it's almost like they have to live through this horrible stuff again. In Sean's case, he would say he couldn't believe he had let this happen to him. I had to say to him, 'You were a little boy. This was a man.'"

Dougherty, a homicide detective for three decades, said McIlmail never altered his account in many retellings.

"I'm 100 percent sure that Sean McIlmail was telling the truth, regardless of what these hired guns say," he said.

In rebuttal, attorney Inscho found a witness who bolstered the now-dead McIlmail's claims of abuse.

In written statements, McIlmail said Brennan had molested him under the pretext that he was conducting an exam for testicular cancer, an illness that Brennan said he had beaten. It turned out the new witnesses, a victim of Brennan's from a parish miles away in another county, recounted exactly the same approach. This Brennan tactic had not been cited in the grand jury report.

Though the draining court battle is over, Michael and Deborah McIlmail say they will strive to change the law in Harrisburg to permit other families to bring suit. They have already spent many Sundays standing outside area churches, carrying a sign with a photograph of Sean and this message: "Think your son is safe in a Catholic school? We thought so. We were dead wrong."

"We feel that when the victims get their justice, the secrets will all come out," Michael McIlmail said. "The church doesn't want the secrets to be made known."

Deborah McIlmail said their activism is a way to remain true to Sean. "Since the day he died, we said we are going to continue his legacy," she said. "We know that this is what he would want."