

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT LEXINGTON
CIVIL ACTION NO. 98-431-WOB

KEITH RENE GUY, SR., *et al*

PLAINTIFFS

VS.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT, *et al*

DEFENDANTS

PLAINTIFFS' COMBINED SUR-REPLY

May it Please the Court:

The Reply [DE#345] filed herein by the LFUCG in support of its Motion for Summary Judgment on the Statute of Limitations [DE#341] contains three specific areas that must be addressed in order for the Court to have a complete picture of the positions previously asserted by the LFUCG. The Doe and Roe Plaintiffs therefore submit the following as their responsive Sur-reply:

I. The LFUCG's attempt to manufacture an accrual date is untenable.

The LFUCG's Reply argues long and hard that the "facts are the facts" and cannot be manipulated. Here are the facts:

In various previous filings with this Court and the Sixth Circuit Court of Appeals, the LFUCG has stated that the statute of limitations accrual period *began* in November 1997 at least 18 separate times. *See* Exhibit "A, §1" attached hereto. In addition to those 18

references, the LFUCG has referred to “November 1997” or “late 1997” or “the end of 1997” as the accrual period on another 18 occasions. *See* Exhibit “A, §2.” More significantly, it has mentioned the specific date of November 20, 1997 as being the starting date at least 6 separate times. *Id.* Never once (before now) has it mentioned the summer of 1997 or August 1997 as the triggering date. Instead, it has consistently claimed that the statute commenced in November 1997, or late 1997, or by the end of 1997. *See* Exhibit “A, §1-2.”

Moreover, contrary to the LFUCG’s current argument as stated in its Reply that it has always “qualified” its position by adding the phrase “at the latest,” to its identification of November 1997 as the accrual date, the documents prove otherwise. In *Doe II*, the LFUCG specifically argued that the statute expired either one year after November 20, 1997 – the date of the first publication about the investigation of irregularities at Micro-City, or one year after November 22, 1997 – the date of the first publication of the LFUCG’s knowledge:

Absent any tolling, the one-year statute of limitations would have run on or about November 20, 1998, one year after widespread publicity placed the Plaintiffs on constructive notice of their claims against LFUCG and its officials. Because *Guy* was filed as a class action on October 15, 1998, the statute of limitations ceased running until class certification was denied on April 4, 2000. However, even applying tolling under American Pipe & Constr. Co. v. Utah, 414 U.S. 538, 553-54 (1974), and Crown, Cork & Seal Co., Inc. v. Parker, 462 U.S. 345, 353-54 (1983), the statute of limitations on these claims ran 38 days later on March 14, 2000.

Doe II Defendants’ Motion for Summary Judgment on Statute of Limitations, p. 9. There was no mention of an earlier date; there was no qualification to the LFUCG’s admission as to the commencement of the running of the statute of limitations in November 1997. This

paragraph is fatal to the LFUCG's current claim that the accrual date for tolling took place prior to November 1997. First, the LFUCG admits that the deadline was one year after the publicity; Second, it has admitted that the first publication was November 20, 1997; Third, the filing of *Guy* on October 15, 1998 tolled the running of the statute of limitations; and Fourth, by stating that 38 days remained on the one-year statute of limitations at the time of the *Guy* Order on February 4, 2000, the LFUCG acknowledges that even the first publication on November 20, 1997 was insufficient to trigger the commencement of the statute of limitations and that the November 22, 1997 news article actually provided the first public notice of the LFUCG's potential involvement with the abuse of children at Micro-City **(October 16, 1998 until November 22, 1998 = 38 days)**.

Likewise, the LFUCG acknowledges that the accrual date was in November 1997 when it stated that "By November 20, 1997, at the latest, the statutes of limitation began to run on all claims. **Four years and ten months elapsed between this accrual date and the date *Doe II* was filed.**" *Doe II* Motion for Summary Judgment on Statute of Limitations, p. 3. *Doe II* was filed on September 25, 2002. Four years and ten months prior to this filing date would have been "this accrual date" of November 1997.

The LFUCG's current claim that the media coverage was so pervasive in the summer of 1997 that the Plaintiffs should certainly have been aware of their claims is belied by the LFUCG officials themselves. In response to *Doe I* Interrogatory No. 12, which requested various LFUCG officials to "Please give the first date that you ever heard allegations that

Ron Berry may be engaging in inappropriate conduct with children under the age of eighteen years,” Mayor James Amato, Police Chief John McFadden, Arnold Gaither (Director of the Mayor’s Training Center which oversaw the operations of Micro-City Government), Councilman Robert Jefferson, and Councilman Michael Wilson, each stated that “his first knowledge of allegations involving Ron Berry came from the news media in their reporting of the *criminal indictment* of Ron Berry.” [Emphasis added.] Importantly, Ron Berry was not indicted until in November, 1998.¹ Apparently these high-ranking LFUCG officials were not even aware of the allegations made in the *Guy* Complaint filed on October 15, 1998. According to Mayor Pam Miller, she first became aware of the allegations in a conversation with Gayle Slaughter that took place “at or near the time when a criminal investigation of Ron Berry had already been commenced which I believe was sometime in late 1997.”

As reflected by these sworn statements, even the LFUCG’s own officials – charged with the responsibility to the community to monitor such improper activities – were supposedly unaware of the “pervasive media coverage” that the LFUCG is now claiming commenced in the summer of 1997, and remained unaware of such coverage until November, 1998 – a month after *Guy* was filed. One would certainly expect such “pervasive media coverage” as is now conveniently alleged by the LFUCG would at least alert the public officials. The professed lack of any such knowledge by the public officials involved clearly undermines the LFUCG’s newly-manufactured timeline.

¹ Berry v. Commonwealth, 84 S.W.3d 82 (Ky.App. 2001)(indicating that the indictment of Berry was originally handed down in November, 1998).

II. The statute of limitations had not yet run as of the October 15, 1998 filing of *Guy*.

The LFUCG is estopped from claiming an earlier date that would extinguish the Plaintiffs' right to proceed with their claims when it has openly acknowledged in at least 16 separate statements that the filing of *Guy* tolled the running of the statute of limitations for putative class members. *See* Exhibit "A, §3." If the LFUCG truly believed that the accrual date was in August 1997 as now claimed, then the filing of *Guy* would have not tolled anything because the statute would have already run. Significantly, the LFUCG acknowledged its position that the statute of limitations had not yet run as of the October 15, 1998 date of filing of *Guy* when, in the appeal taken from this Court's Opinion & Order Denying Rule 60(b) Relief [DE#101], it assured the Sixth Circuit Court of Appeals that the settlement of *Guy* would work no hardship on the putative class members:

It was clear to everyone that the intervenors [Johnson and Jones] intended to take advantage of *Crown Cork* tolling and file a new class action if the district court approved the named plaintiffs' settlement and denied intervention.... After a thorough discussion of these issues – **including the concession by counsel for both LFUCG and the plaintiffs that approval of the settlement would not have any preclusive effect due to the application of *Crown Cork* to tolling to putative class members** ... – the district court indicated that it would 'deny [Johnson and Jones'] motion to intervene .. and fashion an order following the teachings of *Crown, Cork & Seal.*'"

LFUCG Consolidated Final Brief, (6th Cir. #03-6490 and 03-6517), at 8. [Emphasis added.]

The LFUCG is now claiming that its prior reliance on and reference to November 1997 should not be binding because the "pervasive media coverage" allegedly commenced in August instead of November 1997. Apparently, neither its past nor present counsel, nor the LFUCG officials, were aware of this "pervasive media coverage" since it was never

mentioned previously. Incredulously, the LFUCG now claims that the references to November and late 1997 were simply gratuitous references to an outside, or “at the latest” time period. It is incomprehensible that the LFUCG and its highly-skilled counsel would have overlooked or passed up the opportunity to challenge the November 1997 accrual date for the past 10 years if it could have barred the *Guy* plaintiffs’ claims by so much as one day – particularly when establishing this “earlier accrual date” back in 1999 would have saved the LFUCG millions of dollars that it paid out in “stale” claims. Surely, if the August 1997 coverage was so “severe and pervasive” as to put the Plaintiffs on notice, someone – an LFUCG official, an LFUCG Council member, someone in the LFUCG Law Department, at least one of the hundreds of defense attorneys in the various firms hired by the LFUCG in these matters, or even someone on their support staff – would have recalled this purportedly “severe and pervasive media coverage” in August and raised it as a defense to these claims at some point during the last decade.

II. Judicial Estoppel prevents the LFUCG from arguing statute of limitations.

On multiple occasions, the LFUCG has cited to Judge Forester’s Order of February 4, 2000 [DE#63], including quoting the provision that specifically states that the statute of limitations was tolled by the filing of *Guy* on October 15, 1998. That determination is the law of this case and cannot now be altered by the LFUCG. Similarly, in *Doe I*, the Court entered an Order that permitted John Doe #18's request to intervene in that litigation as late as 2002, holding:

The intervenor ... alleges that pursuant to Civil Rule 24 he should be allowed to intervene... John Does 1-17 ***and the defendants*** object to the motion to intervene. *** The Court ***having considered the matter*** is of the opinion that the issues presented differ markedly from issues presented in the Keith Guy case. The Court is obligated to protect scarce judicial resources and in so doing must insure that some degree of finality be presented.... the motion to intervene is well-taken under both Rule 24(a) and 24(b).

Doe I, June 24, 2002 Order at 1-2. [Emphasis added.]

Despite this clear language, the LFUCG, in its Reply, attempts to argue that they should not be judicially estopped from asserting the statute of limitations defense based upon this Order because, despite the fact that it had objected to the intervention on the basis that the statute of limitations had run, and despite the fact that the Court specifically indicated that objection in its Order, the Court did not actually address the issue because it did not specifically make mention of the statute of limitations in its Order. This argument is easily refuted by quoting from the LFUCG's own argument in *Doe II*:

Finally, the Plaintiffs suggest that Judge Forester's denial of class certification cannot be given preclusive effect because "the June 28, 2002 Order fails, in its entirety, to address any of the merits of class certification and therefore cannot be utilized to preclude the subsequent filing of a Class Action." In so arguing, the Plaintiffs misunderstand the elements of collateral estoppel. Whether or not the Court has issued a detailed written opinion on class certification is irrelevant. ***Collateral estoppel requires only that the issue be fully litigated and its determination necessary to the final judgment.*** Those requirements have been met in this case. [Citation omitted; emphasis added.]

Doe II, LFUCG's Reply in Support of Motion to Deny Class Certification Based on Collateral Estoppel, at 7-8. Apparently the LFUCG has either forgotten its previous position, or now conveniently "misunderstand[s] the elements of collateral estoppel," or does not believe that the rules regarding collateral estoppel apply equally when it is damaging to its

own position. As the LFUCG itself argued above, it is barred from attempting to relitigate the statute of limitations issue since that issue was fully litigated in *Doe II*.

As previously explained by the Plaintiffs in their Combined Response [DE#344], the LFUCG is judicially estopped on multiple fronts from arguing that the statute of limitations has run: Judge Forester's Order referenced above [DE#63]; the *Doe I* Order that permitted John Doe #18 to intervene; and, most importantly, the decision rendered by the Sixth Circuit Court of Appeals that re-opened the present litigation following the appeals of the dismissals of *Doe II* and *Doe III* on the sole basis of the statute of limitations having run. The Sixth Circuit's ruling was issued only after the statute of limitations issue was fully litigated by all parties, and after the LFUCG had assured the Appellate Panel that the statute of limitations had been tolled by the filing of *Guy*. Interestingly, the LFUCG repeatedly advised the Appellate Panel that it need not even reach the issue of class notice because the statute of limitations ran at the time of abuse, thereby mooting any issue pertaining to notice. Obviously, the Sixth Circuit did not buy that argument.

The LFUCG's efforts to have the Sixth Circuit's decision reversed by the United States Supreme Court failed, and the Sixth Circuit's ruling is now the law of this case. That ruling specifically indicated that the appeals of the dismissals of *Doe II* and *Doe III* on the basis of the statute of limitations having run was made moot by the re-opening of *Guy*. Obviously, the Sixth Circuit could not have reached the decision regarding class notice if, as the LFUCG asserted then and now, the issue was moot by the expiration of the statute of limitations. By rendering a decision on class notice, the Sixth Circuit has rejected the

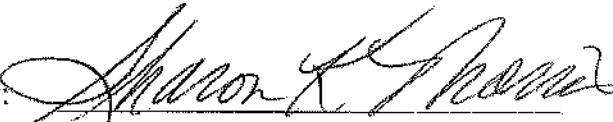
position that the statute of limitations ran prior to *Guy*, based, in large part, on the LFUCG’s repeated admissions that the triggering event was November 22, 1997 – within one year of the filing of *Guy*. By declaring that the arguments regarding the statute of limitations in *Doe II* and *Doe III* were moot, the Sixth Circuit certainly did not believe that the re-opening of *Guy* would be subject to another attack on this same, thoroughly-litigated, issue. To quote again from the LFUCG, a party simply cannot reargue the same issue over and over again because , “To permit them to do so would raise the spectre of endless relitigation Collateral estoppel is designed to prevent this unjust and wasteful result.” *Doe II*, Defendants’ Reply in Support of Motion to Deny Class Certification Based on Collateral Estoppel, at 3.

CONCLUSION

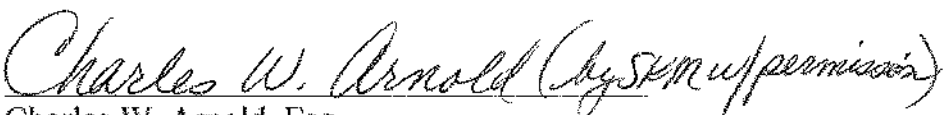
The LFUCG’s Reply argues vociferously that the accrual date for the “pervasive media coverage” began in mid-1997 – with two or three extraneous articles that make no mention of the LFUCG’s knowledge of Ronald Berry’s sexual abuse of the children at Micro-City – instead of in November, 1997 as it has claimed throughout the past 8-10 years. This transparent change of position is blatantly manufactured in direct response to the re-opening of *Guy*, and is an eleventh-hour attempt to deprive the Plaintiffs of the ability to pursue their claims– a right that was clearly granted to them by the Sixth Circuit when it reopened this litigation for that express purpose. Accordingly, as set forth herein and in their Combined Response, the Plaintiffs respectfully request that the Court DENY the LFUCG’s Motion for Summary Judgment on the basis of the statute of limitations.

RESPECTFULLY SUBMITTED,

MORRIS & MORRIS, P.S.C.

By: 
James M. Morris
Sharon K. Morris

217 North Upper Street; P.O. Box. 394
Lexington, KY 40588-0394
Telephone: (859) 281-6981
Facsimile: (859) 233-7876
ATTORNEYS FOR DOE IV PLAINTIFFS


Charles W. Arnold, Esq.
401 West Main Street, Suite 303
Lexington, KY 40507
859-381-9999; 859-389-6666

Christopher D. Miller, Esq.
RAMBICURE & MILLER, PSC
219 East High Street
Lexington, KY 40588-4188

Gayle E. Slaughter, Esq.
453 Ohio Street
Lexington, KY 40508
ATTORNEYS FOR ROE PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that the foregoing has been served this 6th day of November by electronic and/or first class mail, postage prepaid, addressed to the following:

Sheryl G. Snyder, Esq.
Susan Pope, Esq.
Keith Moorman, Esq.
FROST BROWN TODD, LLC
400 West Market Street, 32nd Floor
Louisville, Kentucky 40202-3363

William L. Huffman, Esq.
3332 Overbrook Drive
Lexington, KY 40502
ATTORNEY FOR ROE PLAINTIFFS

Logan Askew, Esq.
LFUCG Dept. of Law
200 East Main Street
Lexington, KY 40507

Donald L. Stepner, Esq.
ADAMS, STEPNER, WOLTERMANN &
DUSING
40 West Pike Street; P.O. Box 861
Covington, KY 41012-0861
ATTORNEYS FOR DEFENDANTS


ATTORNEY FOR DOE IV PLAINTIFFS

TABLE OF LFUCG QUOTES CONTRARY TO CURRENT POSITION

[Emphasis added]

1. QUOTES INDICATING THAT MEDIA COVERAGE BEGAN OR COMMENCED IN OR AFTER NOVEMBER 1997:		
Doe II S/J Motion	ii	The Plaintiffs were on notice of both their abuse and the Defendants’ potential knowledge or involvement in the abuse by November 1997, at the latest. <i>On that date</i> , the media <i>began</i> widely disseminating allegations that Lexington public officials may have been aware of Ronald Berry’s criminal behavior and allowed it to continue.
Doe II S/J Motion	2	“These November 1997 articles were the <i>first of many Herald-Leader</i> reports of the alleged knowledge and concealment of sexual abuse by LFUCG and its officials.”
Doe II S/J Motion	3	“By November 20, 1997, at the latest, the statutes of limitation <i>began</i> to run on all claims. <i>Four years and ten months elapsed between this accrual date and the date Doe II was filed</i> [i.e., September 25, 2002].”
Doe II S/J Motion	7	“The <i>commencement</i> of pervasive media coverage in November 1997 placed the Plaintiffs on notice on their claims against LFUCG officials.”
Doe II S/J Motion	8	“The Plaintiffs were on reasonable notice of their claims <i>when intense publicity began on November 20, 1997...</i> ”
Doe II S/J Motion	9	“Absent any tolling, <i>the one-year statute of limitations would have run on or about November 20, 1998</i> , one year after widespread publicity placed the Plaintiffs on constructive notice of their claims against LFUCG and its officials.”
Doe II S/J Reply	12-13	“The Plaintiffs cannot benefit from the doctrine of fraudulent concealment because the allegations against LFUCG and its public officials became public by November 1997, when the news media <i>began</i> reporting these allegations.”
Doe III S/J Motion	1	“These November 1997 articles were the <i>first of many Herald-Leader</i> reports of the alleged knowledge and concealment of sexual abuse by LFUCG and its officials.”

Doe III S/J Motion	4	“There was widespread publicity of allegations of wrongdoing by LFUCG and its employees, <i>starting in late 1997.</i> ”
Doe III S/J Motion	4-5	“By November 1997 at the latest, the statutes of limitation <i>began</i> to run on all claims.”
Doe III S/J Motion	8	“The <i>commencement</i> of pervasive media coverage in November 1997 placed the Plaintiffs on notice of their claims against LFUCG officials.”
Doe III S/J Motion	8	“The Plaintiffs were on reasonable notice of their claims when intense publicity <i>began on November 20, 1997</i> , publicity that was sustained through the pendency of the <i>Guy</i> case.”
Doe III S/L Motion	15	“Moreover, <i>beginning in November 1997</i> , media coverage regarding the Defendants’ alleged knowledge and concealment of Ronald Berry’s abuse was widely publicized. Had Plaintiffs exercised reasonable diligence, all of the Plaintiffs had the means to learn of their claims no later than November 1997.”
6 th Cir. Combined Brief	14	“On September 25, 2002, <i>almost</i> five years after the publicity about Berry and LFUCG began, the <i>Doe II</i> plaintiffs filed the third class action lawsuit against LFUCG.”
6 th Cir. Combined Brief	25	“The <i>commencement of pervasive media coverage in November 1997</i> placed the Does on notice of their claims against LFUCG officials.”
6 th Cir. Combined Brief	26	“The Does therefore were on reasonable notice of their claims when <i>intense publicity began on November 20, 1997</i> , publicity that was sustained through the pendency of the <i>Guy</i> case.”
6 th Cir. Combined Brief	34-35	“there still could be no tolling for concealment <i>after November 1997</i> , when the allegations against LFUCG and its public officials <i>became</i> public knowledge due to news media reports.”
6 th Cir. Combined Brief	36	“Moreover, <i>beginning in November 1997</i> , media coverage regarding the Defendants’ alleged knowledge and concealment of Ronald Berry’s abuse was widely publicized.”

2. QUOTES INDICATING AN ACCRUAL DATE OF NOVEMBER 1997, OR LATE 1997, OR END OF 1997:		
Doe II S/J Motion	ii	“all of the Plaintiffs’ claims accrued by <i>the end of 1997</i> at the latest.”
Doe II S/J Motion	3	“The Plaintiffs in this case have been on notice of their injuries since the dates of the alleged abuse ... and of allegations of wrongdoing against LFUCG and its employees <i>since late 1997.</i> ”
Doe II S/J Motion	18	“Plaintiffs cannot benefit from the fraudulent concealment doctrine because they should have discovered their claims in the exercise of reasonable diligence <i>by late 1997.</i> ”
Doe II S/J Motion	18	“fraudulent concealment was no longer possible <i>by November 1997</i> , when these allegations against the Defendants had become public knowledge through pervasive media coverage.”
Doe II S/J Motion	18-19	“Had the Plaintiffs exercised reasonable diligence, they would have learned of their claims no later than <i>November 1997.</i> ”
Doe III S/J Motion	ii	“there had been widespread knowledge of LFUCG’s potential knowledge or involvement in the abuse <i>by late 1997.</i> ”
Doe III S/J Motion	ii	“Therefore, <i>late 1997</i> is the latest possible timeframe within which any claim against the LFUCG or its public officials could have accrued.”
Doe III S/J Motion	ii	“Because all of the Plaintiffs’ claims accrued <i>by the end of 1997</i> at the latest...”
Doe III S/J Motion	9	“Absent any tolling, the one-year statute of limitations would have, at the latest, run <i>on or about November 20, 1998</i> , one year after widespread publicity placed the Plaintiffs on notice of their claims against LFUCG and its officials.”
Doe III S/J Motion	14	“The Plaintiffs cannot benefit from the doctrine of fraudulent concealment because they should have discovered their claims in the exercise of reasonable diligence when they were abused by Ronald Berry, or at the latest, <i>by late 1997</i> when LFUCG’s alleged role in the abuse had drawn publicity.”

Doe III S/J Reply	10	“The Plaintiffs cannot benefit from the doctrine of fraudulent concealment because the allegations against LFUCG and its public officials became public <i>by November, 1997</i> , when the news media began reporting those allegations. Moreover, the Plaintiffs have conceded that the allegations against the Defendants were public knowledge by October 15, 1998, at the latest, and, therefore, that the Plaintiffs were on notice from that time forward.”
6 th Cir. Combined Brief	4	“The Does had a duty to exercise due diligence in pursuing their claims <i>by late 1997</i> at the latest, when allegations about LFUCG’s knowledge of Berry’s actions had become public knowledge.”
6 th Cir. Combined Brief	8	“ <i>In late 1997</i> , long before the filing of either <i>Doe II</i> or <i>Doe III</i> , there was widespread publicity of LFUCG’s potential knowledge of Berry’s abuse.”
6 th Cir. Combined Brief	9	“Thus, <i>by late 1997</i> , there was pervasive media attention to LFUCG’s purported knowledge, which would have placed any potential plaintiff on notice that he or she had a cause of action against LFUCG.”
6 th Cir. Combined Brief	17	“Even if the Does were deemed not to be on notice of their claims until widespread publicity of allegations against LFUCG <i>in late 1997</i> , they were required at that time to exercise due diligence in pursuing their claims.”
6 th Cir. Combined Brief	53	“statutes of limitation began to run at the time the Does were allegedly abused by Berry or, at the latest, when allegations against LFUCG became public knowledge in <i>November of 1997</i> .”
Supreme Court Writ	18	“This revisionist view [i.e., that more victims would come forward], however, overlooks ... the fact that few victims had come forward despite the wide-spread coverage of <i>Berry’s conviction</i> [in 2002] and <i>the filing of the <u>Guy</u> suit itself</i> .”

Doe I Interrog. Answers	#12	<p>Councilman Robert Jefferson, Mayor James Amato, Mayor’s Training Center Director Arnold Gaither, Police Chief John McFadden, Councilman Michael Wilson, each admitted that “his first knowledge of allegations involving Ron Berry came from the news media in their reporting of the <i>criminal indictment of Ron Berry [in November, 1998].</i>” [Emphasis added.]</p> <p>Pam Miller admitted that her first knowledge occurring a conversation with Gayle Slaughter, which occurred “at or near the time when a criminal investigation of Ron Berry had already been commenced which I believe was sometime <i>in late 1997.</i>”</p>
-------------------------------	-----	--

3. QUOTES INDICATING THAT <i>GUY</i> TOLLED RUNNING OF STATUTE, WHICH COULD NOT OCCUR IF THE STATUTE HAD ALREADY EXPIRED:		
Doe II S/J Motion	3	“Moreover, the limitations period on the Plaintiffs’ claims <i>was tolled</i> only for the one year and five month period in which the <i>Guy</i> class action was pending.”
Doe II S/J Motion	9	“Because <i>Guy</i> was filed as a class action on October 15, 1998, the statute of limitations <i>ceased running</i> until that lawsuit was dismissed on February 4, 2000.”
Doe II S/J Motion	9	“even applying tolling under <i>American Pipe</i> ... and <i>Crown, Cork & Seal</i> ..., <i>the statute of limitations on these claims ran 38 days later on March 14, 2000.</i> ”
Doe II S/J Motion	16-17	“the statute of limitations <i>was tolled</i> for the putative class members during <i>Guy</i> , but not during <i>Doe I</i> . Because <i>Guy</i> was pending from October 15, 1998 until February 4, 2000, the statute of limitations on class members’ claims <i>was tolled</i> for the one year, three months, and 20 days until that case was dismissed as settled.”
Doe II S/J Reply	2	“ <i>Tolling</i> under the Supreme Court’s decision in <i>Crown, Cork & Seal</i> ... took place only during the first Micro-City class action [<i>Guy</i>] and <i>ceased when class certification was denied in that case on April 4, 2000.</i> ”
Doe II S/J Reply	2-3	“Under settled law, the limitations period <i>was tolled</i> during the pendency of that action [<i>Guy</i>] but began to run again as soon as class certification was denied on April 4, 2000.”
Doe II S/J Reply	7	“Under these precedents, the statute of limitations <i>was tolled</i> for the putative class members during <i>Guy</i> , but not during <i>Doe I</i> . This period of <i>tolling – from October 15, 1998 to April 4, 2000</i> – is plainly insufficient to save [the <i>Doe II</i>] Plaintiffs’ one-year claims.”
Doe III S/J Motion	9	“Because <i>Guy</i> was filed as a class action on October 15, 1998, the statute of limitations <i>ceased running</i> until that lawsuit was dismissed on February 4, 2000.”

Doe III S/J Motion	2	FN 13: “This Order of dismissal [in <i>Guy</i>] acknowledged that the pendency of the class action <i>had tolled the statute of limitations</i> with respect to the individual claims of putative class members. <i>See</i> Order, 2/4/00.”
Doe III S/J Motion	5	“the limitations period on the Plaintiffs’ claims <i>was tolled</i> only for the period during which <i>Guy</i> was pending prior to the denial of class certification.”
Doe III S/J Motion	13	“the statute of limitations <i>was tolled</i> for the putative class members during <i>Guy</i> , but not during <i>Doe I</i> . Because <i>Guy</i> was pending from October 15, 1998 until February 4, 2000, <i>the statute of limitations on class members’ claims was tolled for the one year, three months, and 20 days</i> until that case was dismissed as settled.”
Doe III S/J Motion	14	“the youngest Plaintiff, was born in 1981 and was 16 years old in 1997 when he was allegedly abused. He therefore received the benefit of <i>tolling for minority</i> until he reached the age of 18 on October 30, 1999. At that time, the <i>Guy</i> clas action was pending....[E]ven accounting for <i>Crown, Cork tolling</i> during <i>Guy</i> , the one-year statute of limitations expired on April 4, 2001, one year after class certification was denied in <i>Guy</i> .”
Doe III S/J Reply	5	“Under these precedents, the statute of limitations <i>was tolled</i> for the putative class members during <i>Guy</i> , but not during <i>Doe I</i> .” <u>Id.</u> at 5.
6 th Cir. Combined Brief	17	“Moreover, while the limitations period <i>was tolled</i> during the pendency of the first class action (<i>Guy</i>), no further tolling periods may be “piggy-backed” onto that one.”
6 th Cir. Combined Brief	31-32	“Under these precedents, <i>the statutes of limitation were tolled for the putative class members during Guy</i> , but not during <i>Doe I</i> . Because <i>Guy</i> was filed on October 15, 1998 and class certification was denied on April 4, 2000, <i>the limitations periods on class members’ claims were tolled only for the roughly one year and five months</i> until class certification was denied.”
Supreme Court Writ	13	“But the Sixth Circuit’s decision warrants review for the additional reason that it creates uncertainty in the class action context, calling into question old settlements and dismissals, <i>and reviving expired statutes of limitations.</i> ”