

|                               |   |                                  |
|-------------------------------|---|----------------------------------|
| THE EPISCOPAL CHURCH, et al., | ) | IN THE DISTRICT COURT OF         |
|                               | ) |                                  |
| VS.                           | ) | TARRANT COUNTY, TEXAS            |
|                               | ) |                                  |
| FRANKLIN SALAZAR, et al.      | ) | 141 <sup>ST</sup> DISTRICT COURT |

**EPISCOPAL PARTIES’ OBJECTIONS TO DEFENDANTS’ SUPPLEMENTAL  
APPENDIX AND EVIDENCE ATTACHED TO RESPONSE**

Now come the “Local Episcopal Parties”,<sup>1</sup> the “Local Episcopal Congregations,”<sup>2</sup> and The Episcopal Church (collectively, the “Episcopal Parties”) and file these objections to the

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<sup>1</sup> The term “Local Episcopal Parties” includes the Rt. Rev. C. Wallis Ohl, Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, Whit Smith, Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, the Rev. David Madison, Robert M. Bass, the Rev. James Hazel, Cherie Shipp, the Rev. John Stanley, Dr. Trace Worrell, the Rt. Rev. Edwin F. Gulick, Jr., and Kathleen Wells.

<sup>2</sup> The term “Local Episcopal Congregations” includes The Rev. Christopher Jambor and Stephanie Burk, individually and as representatives of All Saints’ Episcopal Church (Fort Worth); The Rev. ClayOla Gitane and Cynthia Eichenberger as representatives of All Saints’ Episcopal Church (Weatherford); The Rev. ClayOla Gitane and Harold Parkey as representatives of Christ the King Episcopal Church (Fort Worth); Bill McKay and Ian Moore as representatives of Episcopal Church of the Good Shepherd (Granbury); Ann Coleman as a representative of Episcopal Church of the Good Shepherd (Wichita Falls); Constant Roberts Marks, IV and William Davis as representatives of St. Alban’s Episcopal Church (Arlington); Vernon Gotcher and Ken Hood as representatives of St. Stephen’s Episcopal Church (Hurst); Sandra Shockley as a representative of St. Mary’s Episcopal Church (Hamilton); Sarah Walker as a representative of Episcopal Church of the Holy Apostles (Fort Worth); Linda Johnson as a representative of St. Anne’s Episcopal Church (Fort Worth); the Rev. Susan Slaughter and Larry Hathaway individually and as representatives of St. Luke-in-the-Meadow Episcopal Church (Fort Worth); David Skelton as a representative of St. Mary’s Episcopal Church (Hillsboro); All Saints’ Episcopal Church (Fort Worth); All Saints’ Episcopal Church (Wichita Falls); All Saints’ Episcopal Church (Weatherford); Christ the King Episcopal Church (Fort Worth); Episcopal Church of the Good Shepherd (Granbury); St. Alban’s Episcopal Church (Arlington); St. Simon of Cyrene Episcopal Church (Fort Worth); St. Stephen’s Episcopal Church (Hurst); St. Mary’s Episcopal Church (Hamilton); St. Anne’s Episcopal Church (Fort Worth); St. Luke-in-the-Meadow Episcopal Church (Fort Worth); St. Mary’s Episcopal Church (Hillsboro); Episcopal Church of the Ascension & St. Mark (Bridgeport); Episcopal Church of the Good Shepherd (Brownwood); Holy Comforter Episcopal Church (Cleburne); St. Elisabeth’s Episcopal Church (Fort Worth); Holy Spirit Episcopal Church (Graham); Holy Trinity Episcopal Church (Eastland); Our Lady of the Lake Episcopal Church (Laguna Park); Trinity Episcopal Church (Dublin); Trinity Episcopal Church (Henrietta); Iglesia San Juan Apostol (Fort Worth); Iglesia San Miguel (Fort Worth); St. Anthony of Padua Episcopal Church (Alvarado); St. Alban’s Episcopal Church (Hubbard); St. Andrew’s Episcopal Church (Fort Worth); St. Andrew’s Episcopal Church (Breckenridge); St. Andrew’s Episcopal Church (Grand Prairie); St. Barnabas the Apostle Episcopal Church (Keller); St. Gregory’s Episcopal Church (Mansfield); St. John’s Episcopal Church (Fort Worth); St. John’s Episcopal Church (Brownwood); St. John the Divine Episcopal Church (Burkburnett); St. Joseph’s Episcopal Church (Grand Prairie); St. Laurence’s Episcopal Church (Southlake); St. Luke’s Episcopal Church (Mineral Wells); St. Mark’s Episcopal Church (Arlington); St. Matthew’s Episcopal Church (Comanche); St. Michael’s Episcopal Church (Richland Hills); St. Paul’s Episcopal Church (Gainesville); St. Patrick’s Episcopal Church (Bowie); St. Peter-by-the-Lake Episcopal Church (Graford); St. Peter and St. Paul Episcopal Church (Arlington); St. Phillip the Apostle Episcopal Church (Arlington); St. Thomas the

summary judgment evidence filed by Defendants in Defendants' Supplemental Appendix, filed January 7, 2011, and attached to Defendants' Response to Plaintiff The Episcopal Church's Motion for Summary Judgment, filed January 7, 2011, and in support thereof would respectfully show the Court as follows:<sup>3</sup>

## **I. OBJECTIONS TO SECOND HOUGH AFFIDAVIT AND EXHIBITS**

### **A. Irrelevant Evidence**

Exhibits 2, 4, and 5 are irrelevant in their entirety. Each of these documents concerns the details of attorney Jon Nelson's representation of his client, the Episcopal Diocese of Fort Worth, in the Holy Apostles case. The details of this representation are not at issue in Local Episcopal Parties' Amended Motion for Partial Summary Judgment, Plaintiff The Episcopal Church's Motion for Summary Judgment, or Defendants' Motion for Partial Summary Judgment, and Defendants' pleadings say nothing about this representation, much less state sufficient facts to support any claim related thereto. As a result, this evidence has no "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."<sup>4</sup>

Specifically, with respect to Exhibit 2, whether similar or identical statements contained in affidavits signed by Defendant Iker, Charles Hough, and Billie Boyd in the Holy Apostles case were also contained in a memorandum written by Mr. Nelson changes nothing. Iker,

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Apostle Episcopal Church (Jacksboro); St. Timothy's Episcopal Church (Fort Worth); and St. Vincent's Episcopal Church (Bedford); St. Stephen's Episcopal Church (Wichita Falls); Holy Apostles (Fort Worth); and Episcopal Church of the Good Shepherd (Wichita Falls).

<sup>3</sup> The Episcopal Parties reserve the right to file supplemental or amended objections to Defendants' summary judgment evidence in advance of the Court's hearing on their Motions.

<sup>4</sup> See TEX. R. CIV. PRO. 401. While the Local Episcopal Parties' summary judgment evidence includes an affidavit from Mr. Nelson stating that he was counsel to the Diocese in the Holy Apostles case, and that the case was resolved favorably to the Diocese, these facts were limited to the issue of whether the positions in that case were "successfully maintained" for judicial estoppel purposes. Defendants do not offer Exhibits, 2, 4, and 5 to contest the successful maintenance of the positions in that case, and these Exhibits contain nothing to that end.

Hough, and Boyd personally attested to the statements in their affidavits, and it is irrelevant whether the words they used were borrowed or their own. Exhibit 4, a letter from Mr. Nelson to Bishop Iker regarding a settlement agreement, if anything, supports Mr. Nelson's affidavit testimony that the Holy Apostles litigation settled favorably, and Defendants have not introduced it as evidence to the contrary. Exhibit 5, containing invoices from Mr. Nelson's firm to the Corporation in 1994-1995, has nothing to do with anything at issue in the parties' summary judgment motions.<sup>5</sup>

The Court makes the following rulings with respect to these objections:

EXHIBIT 2:            \_\_\_\_\_SUSTAINED            \_\_\_\_\_OVERRULED

EXHIBIT 4:            \_\_\_\_\_SUSTAINED            \_\_\_\_\_OVERRULED

EXHIBIT 5:            \_\_\_\_\_SUSTAINED            \_\_\_\_\_OVERRULED

**B. Inadmissible Hearsay**

Exhibits 2, 4, and 5 to the Second Affidavit of Charles A. Hough, III also constitute inadmissible hearsay pursuant to Rules 801 and 802 of the Texas Rules of Evidence because they are offered to prove the truth of matters asserted in these documents, and the Second Hough Affidavit does not contain facts sufficient to establish the applicability of any exclusion or exception under Rules 801, 803, or 804.<sup>6</sup> Specifically, these documents do not qualify as records of regularly conducted activity pursuant to Rule 803(6) because Hough does not testify that these documents were "made at or near the time by, or from information transmitted by, a person with knowledge," that the documents were "kept in the course of a regularly conducted business

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<sup>5</sup> There is no claim in this case as to Mr. Nelson's attorney's fees, payment or non-payment thereof, or adequacy of representation in the Holy Apostles case.

<sup>6</sup> *See id.* Exhibits 1 and 3 to the Second Hough Affidavit are properly proved up in the Episcopal Parties' summary judgment evidence.

activity,” that “it was the regular practice of that business activity to make” these documents, or that the documents are exact duplicates of the originals.

The Court makes the following rulings with respect to these objections:

EXHIBIT 2:            \_\_\_\_\_SUSTAINED            \_\_\_\_\_OVERRULED

EXHIBIT 4:            \_\_\_\_\_SUSTAINED            \_\_\_\_\_OVERRULED

EXHIBIT 5:            \_\_\_\_\_SUSTAINED            \_\_\_\_\_OVERRULED

**II. OBJECTIONS TO SECOND VIRDEN AFFIDAVIT**

**A. Irrelevant Testimony**

Paragraph 4 of the Second Affidavit of Walter Virden, III is inadmissible as evidence pursuant to Rules 401 and 402 because it is irrelevant. This evidence has no “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence”<sup>7</sup> because the properties held by Trinity Episcopal Church, Fort Worth, St. Luke’s Episcopal Church, Stephenville, and St. Martin-in-the-Fields Episcopal Church, Southlake are not at issue in this lawsuit and it is of no consequence to any of the issues raised on summary judgment whether or why Virden and other Defendants purport to have conveyed these properties.

The Court makes the following ruling with respect to this objection:

\_\_\_\_\_SUSTAINED            \_\_\_\_\_OVERRULED

**B. Lack of Personal Knowledge**

The statements in paragraph 4 of the Second Affidavit of Walter Virden, III are inadmissible pursuant to Rule 602 of the Texas Rules of Evidence and Rule 166a(f) of the Texas Rules of Civil Procedure because Virden lacks personal knowledge of any acts of the

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<sup>7</sup> TEX. R. CIV. PRO. 401.

Corporation of the Diocese of Fort Worth after he left The Episcopal Church, its Diocese of Fort Worth, and his position in the Corporation in November 2008.

The Court makes the following ruling with respect to this objection:

\_\_\_\_\_SUSTAINED      \_\_\_\_\_OVERRULED

### **III. OBJECTIONS TO THE BONNER AFFIDAVITS AND ATTACHMENT**

#### **A. Improper Expert Testimony**

The Episcopal Parties object to the affidavits and attached statement of Jeremy Bonner, Ph.D. in their entirety because these documents do not demonstrate that Mr. Bonner is qualified as an expert to render any opinions relevant to the Court's determinations on summary judgment as required by Rule 702 of the Texas Rules of Evidence. While Mr. Bonner possesses advanced degrees in political science and American history, neither of his affidavits nor the resume attached to his second affidavit demonstrate that Mr. Bonner has any special "knowledge, skill, experience, training, or education" related to The Episcopal Church, its Fort Worth Diocese, or the governance or history of either entity that would qualify him to offer "scientific, technical, or other specialized knowledge" to assist the trier of fact in the understanding of competent evidence in this matter.<sup>8</sup>

The Court makes the following ruling with respect to this objection:

\_\_\_\_\_SUSTAINED      \_\_\_\_\_OVERRULED

#### **B. Conclusory Statements**

The statements in Bonner's Second Affidavit are conclusory and therefore inadmissible as summary judgment evidence. "Conclusory statements by an expert are insufficient to support or defeat summary judgment." *Wadewitz v. Montgomery*, 951 S.W.2d 464, 466 (Tex. 1997). In his Second Affidavit, despite his professed examination of and reliance on various documents

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<sup>8</sup> See TEX. R. EVID. 702.

and authorities, Bonner never cites or refers with any specificity to any such document or authority, rendering his statements conclusory and inadmissible.

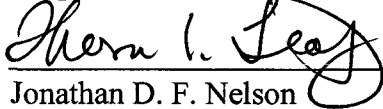
The Court makes the following ruling with respect to this objection:

\_\_\_\_\_SUSTAINED            \_\_\_\_\_OVERRULED

SIGNED this \_\_\_\_ day of January, 2011.

\_\_\_\_\_  
PRESIDING JUDGE

Respectfully submitted,



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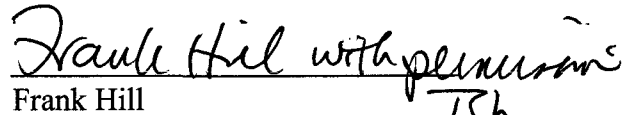
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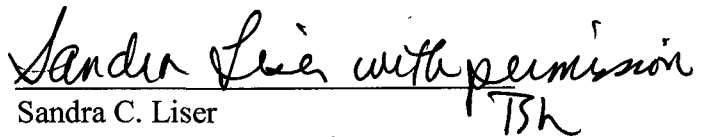
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**CERTIFICATE OF SERVICE**

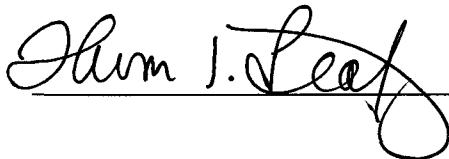
This is to certify that a true and correct copy of the foregoing document has been sent this 11th day of January, 2011, by Federal Express or hand delivery and email, to:

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