

Organization or any Subsidiary; and Defendant lacks standing to maintain the arbitration. As such, a dismissal of the arbitration proceeding pending before the American Arbitration Association brought by Defendant is necessary. PIIC further seeks a temporary restraining order and injunction staying the arbitration proceeding pending a decision on whether a dismissal of the pending arbitration should be granted.²

NATURE OF CASE

2. The Plaintiff seeks a declaration that Defendant is not an insured under the Policy contracted between PIIC and “The Episcopal Diocese of Fort Worth;” that Defendant took *ultra vires* actions beyond the scope of its roles as officers, employees or volunteers for the Named Insured, Parent organization or any Subsidiary; and that Defendant lacks standing to maintain the arbitration. As such, Defendant is unable to pursue arbitration under the terms of the Policy contract. The ability to arbitrate a claim requires that the parties to the arbitration be parties to the Policy. Defendant is not a party to the Policy (attached hereto as “Exhibit A”).

3. According to Judge Chupp of the 141st District Court of Tarrant County, Defendant has improperly continued to use the name and the assets of the Episcopal Diocese of Fort Worth (“EDFW”), the Parent Organization named as the insured under the Policy, which contains multiple coverage parts including Not-For-Profit Organization Directors & Officers Liability Insurance.

4. In an Amended Order, dated February 8, 2011, the 141st District Court of Tarrant County held that the Defendant has improperly been using the name and assets of the insured Parent Organization under the Policy, the Episcopal Diocese of Fort Worth. The Amended Order

² To be clear, PIIC is not waiving the arbitration clause of its Policy or seeking to litigate the question of coverage or the appropriateness of its denial in this court. PIIC merely seeks resolution of the threshold question of whether the Defendant is insured under the Policy and has any rights under the Policy, including the right to arbitrate.

required a return of the property to those churches and clergy sanctioned by the Episcopal Church of the United States of America (“ECUSA”) and the true EDFW. Judge Chupp’s Amended Order is attached hereto as Exhibit B. Therefore, the Defendant is not an insured under the Policy and has no right to coverage under the Policy.

PARTIES

5. PIIC is a company organized and existing under the laws of the State of Pennsylvania with its principal place of business in Pennsylvania.

6. Upon information and belief, Defendant is a non-profit unincorporated association that is a member of the Anglican Communion, consisting of those duly constituted, Dioceses, Provinces and regional churches with the See of Canterbury. The Defendant’s principle business address is 2900 Alameda St., Fort Worth, TX 76108-5960.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action based on 28 U.S.C. § 1332 due to the diversity of citizenship between PIIC and Defendant and the amount in controversy which exceeds the sum of \$75,000.00 exclusive of interest and costs.

8. Venue is properly maintained in this Court under 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to this action occurred in this district, and under 28 U.S.C. § 1391(c) because this is the district in which Defendant resides.

JUSTICIABLE CONTROVERSY

9. Based upon the facts alleged herein and the terms of the insurance Policy referred to above, PIIC asserts that it has no duty to defend or indemnify Defendant, who is a stranger to the insurance contract. Defendant has no coverage under the Policy and no standing to maintain an arbitration action against PIIC.

FACTUAL BACKGROUND

A. The Underlying Lawsuit

10. On April 14, 2009, an action was instituted by the “Episcopal Diocese of Fort Worth”, the “Corporation of the Episcopal Diocese of Fort Worth” and “The Episcopal Church” (“TEC”) in the District Court of Tarrant County, Texas under Case No. 141 237105 09 (the “Underlying Lawsuit”). The Petition named “Franklin Salazar, Joe Ann Patton, Walter Virden III, Rod Barber, Chad Bates, Jack Leo Iker and The Anglican Province of Southern Cone’s ‘Diocese of Fort Worth,’ holding itself out as ‘The Episcopal Diocese of Fort Worth’” (“ACDFW”) as Defendants (attached hereto as “Exhibit C”).

11. The Petition sets forth the background of how bishops are ordained by the ECUSA, the history of the local diocese, and the actions of ACDFW in disaffiliating from ECUSA. It points out that on or about September 5, 2006, in anticipation of the current dispute, ACDFW caused to be filed with the Secretary of State purported “amended and restated Articles of Incorporation for the Corporation of the Episcopal Diocese of Fort Worth.”

12. These changes included a deletion of articles describing the property held by the corporation as “acquired for the use of the Episcopal Diocese of Fort Worth”; stating that the aforesaid property “shall be administered in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth; inserting provisions purporting to give the trustees ‘sole authority’ to determine the identity and authority of the bishop and to appoint a Chairman of the Board for the Diocesan Corporation”; and provided for the election of trustees for the Board itself instead of by the Annual Diocesan Convention as required by the Diocesan Canon. It alleges that in November 2008, the majority of the delegates voted for the resolutions to remove references to the Episcopal Church and permit the Diocese to affiliate with the Anglican Church.

13. The first cause of action seeks the declaration returning control of the real and personal property of the Diocese to the new corporation named as the plaintiff in the Underlying Lawsuit. The second cause of action alleges that ACDFW converted real and personal property of the Diocese of Fort Worth, and the third alleges violation of state trade name, and trademark laws in the continued use by the ACDFW of the term “Diocese of Fort Worth.”

14. A Motion to Dismiss the Petition was made and ultimately denied by the Court. Thereafter, ACDFW filed a Petition for Writ of Mandamus in the Court of Appeals for the Second District of Texas on November 12, 2009.

15. The Texas Second Court of Appeals granted the Petition for Writ of Mandamus and instructed the 141st District Court to modify its ruling of Sept. 16, 2009, to the effect that there cannot be a second Episcopal Diocese of Fort Worth and a second Corporation of the diocese and remanded the matter to Judge Chupp for further proceedings.

16. On remand, The Tarrant County Court granted summary judgment in favor of ECUSA, holding that the ACDFW is prohibited from holding itself out as the EDFW. The Court further held that individuals who remain loyal to TEC, a hierarchical church, are entitled to the use and control of the church property and that the actions by ACDFW in retaining use of the property and trademarks of the true EDFW were *ultra vires* acts.

17. The Amended Order on Summary Judgment, a copy of which is attached hereto as Exhibit B, held that all property held by or for the Diocese may be used only for the mission of the true EDFW, subject to the Church’s Constitution and Canons. Paragraph 3 of the Amended Order provides that:

. . . a local faction of a hierarchal church may not avoid the local church’s obligations to the larger church by amending corporate documents or otherwise invoking nonprofit corporation law...[.]

[T]he court further declares that the changes made by Defendants to the articles and bylaws of the Diocesan Corporation are *ultra vires* and void. (Citations omitted.)

18. The Order requires ACDFW to surrender all Diocesan property, as well as control of the Diocesan Corporation, to the Diocesan plaintiffs 30 days after judgment becomes final.

19. Finally, the Court orders the ACDFW “to desist from holding themselves out as leaders of the Diocese when this Order becomes final and appealable.”

20. As set forth in this Order, the Defendant claiming coverage under PIIC’s Policy is not, in fact, the Named Insured EDFW. Instead, it is a group of clergy and lay leaders who disaffiliated from EDFW, forming their own group affiliated with a different hierarchical church, the Anglican Communion, the ACDFW. Attached as Exhibit D is the Defendant’s website, stating that it is a “constituent member of the Anglican Communion . . . in communion with the See of Canterbury.”

B. The Insurance Policy

21. Part 1 of the Policy, entitled “Not-For Profit Organization Directors & Officers Liability Insurance”, contains the following Insuring Agreements:

I. INSURING AGREEMENTS

A. The **Underwriter** will pay on behalf of the **Individual Insured**, Loss from **Claims** made against **Individual Insureds** during the **Policy Period** (or, if applicable, during the Extension Period), and reported to the **Underwriter** pursuant to the terms of this Policy, for **D&O Wrongful Acts**, except to the extent the **Organization** has indemnified the **Individual Insureds** for such **Loss**.

B. The **Underwriter** will pay on behalf of the **Organization**, Loss from **Claims** made against **Individual Insured** during the **Policy Period** (or, if applicable, during the Extension Period), and reported to the **Underwriter** pursuant to the terms of this

Policy, for **D&O Wrongful Acts**, if the **Organization** has indemnified such **Individual Insureds** for such **Loss**.

C. The **Underwriter** will pay on behalf of the **Organization**, **Loss** from **Claims** made against the **Organization** during the **Policy Period** (or, if applicable, during the Extension Period) and reported to the **Underwriter** pursuant to the terms of this Policy for a **D&O Wrongful Act**.

22. Section II(A)(1) of Part 1 of the Policy defines “D&O Wrongful Act” as an:

Act, error, omission, misstatement, misleading statement, neglect, breach of duty . . . committed or attempted by an Individual Insured in his/her capacity as an Individual Insured; or by the Organization.

23. Section (G) of Part 6 of the Policy defines the “Insured” as “the Organization and Individual Insured”.

24. The term “Organization” is defined in Section (J) of Part 6 as “the Parent Organization and any Subsidiary”. The Parent Organization is defined in Section (K) of Part 6 as the “first entity” named in Item 1 of the Declarations. That “first entity” is “The Episcopal Diocese of Fort Worth”.

25. The term Individual Insured is defined in Section (F) of Part 6 to include:

1. Any individual who has been, now is or shall become a director, officer, governor, trustee, equivalent executive, employee (whether salaried or not), volunteer, leased or temporary employee or committee member of the Organization. . . .”

26. Exclusion (M) in Part 7 of the Policy, however, excludes claims “[f]or service by the Individual Insured in any position or capacity in any entity other than the Organization”.

27. Upon information and belief, the entity seeking coverage under the Policy is not the Named Insured “Episcopal Diocese of Fort Worth.” Rather, it is a different entity formed by former clergy and members of the EDFW. This new entity is the Defendant, Episcopal Diocese

of Fort Worth, a constituent member of the Anglican Communion, the ACDFW. It is a matter of law that Defendant, which is affiliated with the Anglican Cone, is not the Named Insured “Episcopal Diocese of Fort Worth.” This new Diocese, the ACDFW, is not a Named Insured and cannot claim the benefits of the Policy.

28. Furthermore, the individual members of the ACDFW may have qualified as directors, trustees, officers, employees or volunteers of the EDFW, but their *ultra vires* actions of disaffiliating from the Organization on behalf of a new Diocese are not “D&O Wrongful Acts” covered in the Policy. Their acts taken against the interests of the Named Insured “Episcopal Diocese of Fort Worth” for the benefit of a new Diocese, mean that they are not insureds under the Policy and, as such, they cannot claim the benefits of the Policy.

29. Section XV of the Policy provides:

B. Any dispute relating to this Policy or the alleged breach, termination or invalidity thereof, which cannot be resolved through negotiations between any **Insured** and the **Underwriter**, shall be submitted to binding arbitration. The rules of the American Arbitration Association shall apply except with the respect to the selection of the arbitration panel. The panel shall consist of one arbitrator selected by such **Insured**, one arbitrator selected by the **Underwriter** and a third independent arbitrator selected by the first two arbitrators.

C. The Coverage Dispute and Arbitration

30. On or about November 29, 2007, ACDFW provided written notice to PIIC of a circumstance that could potentially given rise to a claim made against it.

31. On January 2, 2008, PIIC acknowledged the notice of potential claim and reserved its rights to deny coverage with respect to the noticed potential claim.

32. On April 14, 2009, the ECUSA brought the Underlying Lawsuit against ACDFW in the 141st District Court of Tarrant County as described above, alleging that ACDFW

disaffiliated from ECUSA and that the real and personal property of the disaffiliating diocese belonged to ECUSA for the use of its members who remained loyal to ECUSA. *See* Exhibit C. Both a Plaintiff and the Defendant in that litigation, which we now know was unauthorized to use the name, were denominated as “the Episcopal Diocese of Fort Worth”.

33. PIIC denied coverage for this claim on a number of grounds.

34. The Underlying Lawsuit proceeded and significant legal fees and costs were incurred by ACDFW.

35. ACDFW filed a Demand for Arbitration with the American Arbitration Association (“AAA”) office in Dallas, Texas (*see* Exhibit E) on or about December 15, 2010 under Case No. AAA No. 71 195 Y 00947 10, and an Answer was filed by PIIC (*see* Exhibit F) on or about January 7, 2011. The arbitration is brought by the Defendant herein in the name of “the Episcopal Diocese of Fort Worth”, the Parent Organization under the Policy, and seeks a declaration that it and its clergy and lay leaders named in the underlying Tarrant County litigation, as well as other lawsuits, are insured under the Policy.

36. Appointed arbitrators have been selected in the arbitration.

37. The invocation of the Arbitration Clause, quoted in paragraph 29 above, is limited to disputes between the Insurer and the Insured. The entity named as the Petitioner in the Arbitration is the “Episcopal Diocese of Fort Worth,” but it is the ACDFW bringing the arbitration, and not the Named Insured. Neither the Diocese now calling itself the “Episcopal Diocese of Fort Worth, a constituent member of the Anglican Communion”, nor the individuals who established it, have a right to proceed with the arbitration.

38. The Arbitration Proceeding must be dismissed or, at the very least, stayed pending an appeal of the Tarrant County Court’s February 8, 2011 Order in the Underlying Lawsuit.

COUNT I

DECLARATORY JUDGMENT

39. PIIC incorporates by reference and realleges its allegations in Paragraphs 1 through 37 as though fully set forth herein.

40. PIIC seeks a declaration that it has no duty to defend or indemnify the Defendant for the Underlying Lawsuit because the actions taken by the Defendant arise out of *ultra vires* Wrongful Acts that are beyond the scope of their roles as officers, employees or volunteers for the Named Insured, Parent Organization or any Subsidiary.

COUNT II

DECLARATORY JUDGMENT

41. PIIC incorporates by reference and realleges its allegations in Paragraphs 1 through 39 as though fully set forth herein.

42. PIIC seeks a declaration that it has no duty to defend or indemnify the Defendant for the Underlying Lawsuit because the disaffiliated Defendant is not the Named Insured Episcopal Diocese of Fort Worth.

COUNT III

DECLARATORY JUDGMENT

43. PIIC incorporates by reference and realleges its allegations in Paragraphs 1 through 41 as though fully set forth herein.

44. PIIC seeks a declaration that the Defendant lacks standing to pursue arbitration against the Plaintiff.

COUNT IV

INJUNCTION

45. PIIC incorporates by reference and realleges its allegations in Paragraphs 1 through 43 as though fully set forth herein.

46. Upon information and belief, the Defendant has taken or plans on taking steps to appeal The Tarrant County Court's February 8, 2011 Amended Order and contend that it is in fact the true Episcopal Diocese of Fort Worth and is entitled to retain the real and personal property. PIIC contends that ACDFW is not the Named Insured under the Policy, but recognizes that The Tarrant County Court's decision is subject to appeal. PIIC does not waive its rights to arbitration under the Policy; if a higher court should rule that ACDFW legally amended the Constitution and Canons of the EDFW and rightfully owns and control the Diocesan property and has the right to continue to use the name of the "Episcopal Diocese of Fort Worth," any coverage dispute must be arbitrated under the terms of the Policy. Thus, alternatively, the arbitration must be stayed pending the final outcome of any appeals. PIIC seeks a temporary and permanent injunction staying the arbitration pending the outcome of the request for a dismissal.

CONCLUSION

47. Because the Defendant cannot satisfy the conditions precedent to coverage under the Insuring Agreement, the Defendant is not covered for the Underlying Lawsuits. PIIC, therefore, seeks:

- a. A declaration from the Court that it has no duty to defend or indemnify the Defendant for the Underlying Lawsuit because the actions taken by the Defendant arise out of *ultra vires* Wrongful Acts that are beyond the scope of their roles as officers, employees or volunteers for the Named Insured, Parent organization or any Subsidiary; and
- b. A declaration from the Court that it has no duty to defend or indemnify the Defendant for the Underlying Lawsuit because the disaffiliated Defendant is not the Named Insured Episcopal Diocese of Fort Worth.

- c. A declaration from the Court that the Claimant in the Arbitration filed with the American Arbitration Association (“AAA”) office in Dallas, Texas on or about December 15, 2010 under Case No. AAA No. 71 195 Y 00947 10 lacks standing to maintain the arbitration.
- d. A dismissal of the Defendant’s Demand for Arbitration filed with the American Arbitration Association (“AAA”) office in Dallas, Texas under Case No. AAA No. 71 195 Y 00947 10 on or about December 15, 2010;
- e. In the alternative to a dismissal, a Stay of the Arbitration filed with the American Arbitration Association (“AAA”) office in Dallas, Texas on or about December 15, 2010;
- f. And such further or other relief this Court deems necessary and proper.

JURY DEMAND

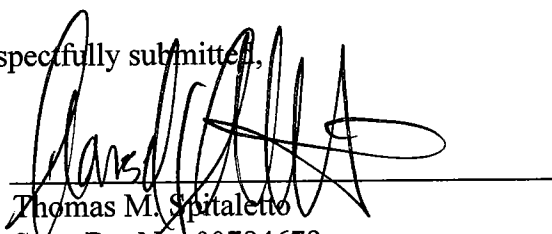
- 48. PIIC demands a jury trial on all claims in this case.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF PHILADELPHIA INDEMNITY INSURANCE COMPANY respectfully requests that this Court enter a declaratory judgment as requested above and that PIIC recover its attorneys’ fees and costs herein, and all other and further relief, at law or in equity, to which PIIC may show itself justly entitled.

Respectfully submitted,

By:



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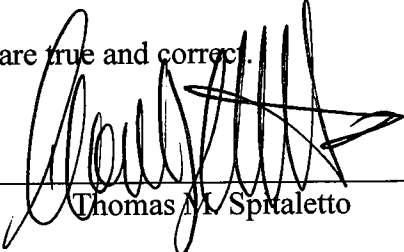
**ATTORNEY FOR PLAINTIFF
PHILADELPHIA INDEMNITY
INSURANCE COMPANY**

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

VERIFICATION

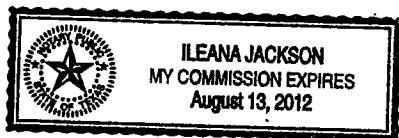
Before me the undersigned authority, personally appeared, THOMAS M. SPITALETTO, and being duly sworn and deposed stated:

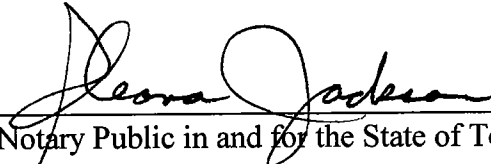
My name is Thomas M. Spitaletto, and I am over the age of 18 and competent to make this verification. I have reviewed the foregoing document and all of the factual statements therein are within my personal knowledge and are true and correct.



Thomas M. Spitaletto

SIGNED this 25 day of April 2011.





Notary Public in and for the State of Texas
My Commission Expires: 8/13/2012