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REPORTER'S RECORD

VOLUME 1 OF 1

Cause No. 141-237105-09

THE EPISCOPAL DIOCESE OF X IN THE DISTRICT COURT
FORT WORTH, THE X
CORPORATION OF THE X
EPISCOPAL DIOCESE OF X
FORT WORTH, and THE X
EPISCOPAL CHURCH, X

Plaintiffs, X

VS. X

FRANKLIN SALAZAR, JO ANN X
PATTON, WALTER VIRDEN, X
III, ROD BARBER, CHAD X
BATES, JACK LEO IKER, X
and THE ANGLICAN X

PROVINCE OF THE SOUTHERN X TARRANT COUNTY, TEXAS
CONE'S "DIOCESE OF FORT X
WORTH," holding itself X
out as "THE EPISCOPAL X
DIOCESE OF FORT WORTH," X

Defendants/Third-Party X
Plaintiff X

VS. X

EDWIN F. GULICK, JR., X
MARGARET MIEULI, WALT X
CABE, ANNE T. BASS, X
J. FREDERICK BARBER, X
CHRISTOPHER JAMBOR, X
DAVID MADISON and X
KATHLEEN WELLS X

Third-Party Defendants X 141ST JUDICIAL DISTRICT

Hearing

COPY

1 BE IT REMEMBERED that on the 8th day of
2 February, 2011, the following proceedings came on to
3 be heard in the above-entitled and -numbered cause
4 before the Honorable John P. Chupp, judge presiding,
5 held in Fort Worth, Tarrant County, Texas.

6 The proceedings were reported by machine
7 shorthand.

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A P P E A R A N C E S

1
2 APPEARING FOR PLAINTIFFS:

3 Mr. Frank Hill
State Bar No. 09632000
4 Mr. Jonathan D.F. Nelson
State Bar No. 14900700
5 HILL GILSTRAP, P.C.
1400 West Abram Street
6 Arlington, Texas 76013
Telephone: (817) 261-2222
7 Facsimile: (817) 274-9724

8 Mr. Thomas Leatherbury
State Bar No. 12095275
9 VINSON & ELKINS
2001 Ross Avenue
10 Suite 3700
Dallas, Texas 75201
11 Telephone: (214) 220-7792
Facsimile: (214) 999-7792
12

13 Ms. Sandra Liser
State Bar No. 17072250
14 NAMAN HOWELL SMITH & LEE
Fort Worth Club Building
15 306 West 7th Street, Suite 405
Fort Worth, Texas 76102
16 Telephone: (817) 509-2025
Facsimile: (817) 509-2060
17

18 APPEARING FOR DEFENDANTS:

19 Mr. Scott Brister
State Bar No. 00000024
20 ANDREWS KURTH, L.L.P.
111 Congress Avenue
21 Suite 1700
Austin, Texas 78701
22 Telephone: (512) 320-9220
Facsimile: (512) 542-5220
23
24
25

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25

A P P E A R A N C E S (Continued)

Mr. J. Shelby Sharpe
State Bar No. 18123000
SHARPE TILLMAN & MELTON
6100 Western Place
Suite 1000
Fort Worth, Texas 76107
Telephone: (817) 338-4900
Facsimile: (817) 332-6818

Mr. David Weaver
State Bar No. 21010875
WEAVER LAW FIRM
521 North Cooper Street
Suite 710
Arlington, Texas 76011
Telephone: (817) 460-5900
Facsimile: (817) 460-5908

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P R O C E E D I N G S

(Tuesday, February 8, 2011, 9:55 a.m.)

--*-*-*

THE COURT: All right. Go ahead.

MR. BRISTER: I gather from the amended orders -- and it's really three-fold. One, what do we do with this part of the case while we -- what do we do with the rest of the case as opposed to -- do we sever it out or, you know, temporary injunction.

Second, wanted to make sure that the Court was aware when this -- if, after all of the appeals are over, whenever this goes into effect, I think the problem is going to be a transfer of property to them, they've deposed all of our priests, rectors, vestries --

THE COURT: Let me ask you something real quick. The deeds have never changed, so what are you transferring?

MR. BRISTER: Oh, well, the -- you're transferring people.

THE COURT: Okay. You're not transferring property. The property still has the same deed records and everything.

MR. BRISTER: That's what -- that's what -- I don't think that --

1 THE COURT: Okay.

2 MR. BRISTER: I don't think the
3 property deeds would change. I think you're -- you
4 shift people in, but the first effect of that is going
5 to be our people aren't consecrated to be in -- in one
6 of their churches any longer. So when it comes to
7 their church, by order of the Court, they're going to
8 kick all our -- our priests out. And when the priests
9 go, a lot of people probably will.

10 That creates all kind of financial
11 problems. Some of -- and a majority of these
12 churches, it may be everybody. The church will be
13 completely abandoned. That's why we are asking for --
14 they say, "Well, we'll put all of that off until this
15 order is final on appeal."

16 We would ask for 60 days after final
17 appeal, because we need time to get our supersedeas
18 bond in place or seek a stay from the Court of Appeals
19 and that kind of thing. So that is -- that's our
20 concern, and then the concern is what to do with the
21 rest of the case.

22 And then a final concern, we were
23 talking about it beforehand, whether there is a
24 shortcut to get a ruling on the liability of this case
25 directly from the Supreme Court or not is direct

1 appeal, if there is a temporary or permanent
2 injunction, it can be a temporary injunction from this
3 Court, based on the constitutionality or
4 unconstitutionality of the statute.

5 I'm not a mind reader, but as I -- it's
6 interesting the you struck out and left in their
7 judgment, which suggests that the Court's theory is
8 that whatever the Trust Code and Nonprofit Corporation
9 Act, etcetera, may say, Brown versus Clark, Texas
10 Supreme Court, whatever the Second Court of Appeals
11 may say, Brown versus Clark, Supreme Court case, and
12 that overrides those statutes, which seems to me it
13 has to be a constitutional goal, and that's what they
14 argued. And their petition is based on the first
15 amendment. It doesn't matter whether you can revoke
16 it or not. You can't revoke it because it's a
17 hierarchical church, etcetera.

18 And I think the Court would take that.
19 I think the Court doesn't take many of those, but it
20 would save us probably a year and a half in the Second
21 Court. I would think that the opinion -- the judgment
22 would -- it would be better, from our perspective, for
23 getting the Court to take it if it's -- if the Court's
24 judgment said, we argue that the Trust Code and the
25 Nonprofit Corporation Act apply, but if so, those are

1 Brown versus Clark says those -- under the First
2 Amendment, those can apply, and so I'm bound by the
3 Brown versus Clark until the Court says otherwise that
4 those are unconstitutional as applied in this case
5 because it's a hierarchical church, etcetera.

6 I think the Court would take it on that
7 basis, no guarantees, but if they are likely to take
8 the case, this would probably it. So those are three
9 things we wanted to address today.

10 THE COURT: Okay. What do you want me
11 to do?

12 MR. BRISTER: Well, I don't -- I don't
13 know how to respond.

14 THE COURT: I -- I mean -- yeah. Well,
15 I'm just trying to figure out, I mean, what -- what is
16 still left in the case as we sit here right now
17 that's --

18 MR. BRISTER: A bunch of tort claims,
19 attorneys' fees claims --

20 THE COURT: I mean, the big claim is
21 what the summary judgment is on, though. Why don't we
22 just sever that out and let it go.

23 MR. BRISTER: We have no objection to
24 that.

25 MR. LEATHERBURY: Well, Your Honor, we

1 started visiting this morning about the direct appeal
2 proposal that Counsel sent us in an e-mail to consider
3 late last week, and we're still chewing on that, about
4 what -- what -- what's in our client's best interest
5 in -- in this regard.

6 We are also chewing on whether or not
7 we can agree to an appeal of an interlocutory order or
8 whether we should agree to the appeal of an
9 interlocutory order in the Fort Worth Court of
10 Appeals.

11 In the meantime, we've got the specific
12 property issues to deal with, and we've got the
13 defendant's continued control of the property,
14 continued spending of the property, continued use of
15 the property, encumbering of the property, so we --
16 we've got to sort those specific property issues out.
17 And I think we can get to a final judgment within six
18 months.

19 We talked about one of the other
20 matters that was on the Court's docket for today was
21 Bishop Ohl's motion to compel production of
22 property-related documents. And we visited about
23 that, and I think we agreed -- I think we -- I am
24 going to write something up for them, but I think
25 we've reached an agreement in terms of how to deal

1 with those property -- the deed issues, the -- the
2 loan issues, the lien issues on specific property, and
3 also on the income that's been generated by these
4 properties since the vote to leave the Episcopal
5 Church.

6 So we're working through those. We
7 don't think those are going to take very long at all.
8 We are considering this proposal, but -- well, the two
9 different proposals, I guess, that may be on the table
10 to take an issue up.

11 Simply put, the Episcopal Church's
12 amended order removes the temporary injunction from
13 the Court's summary judgment order. So if the court
14 signs the amended order, then it moots -- it, in
15 effect, grants the alternative relief that they're
16 asking for in their objections to the form of summary
17 judgment order, and it moots, really, all of these
18 other concerns. The Court doesn't need to address
19 supersedeas or anything like that until a more
20 appropriate time.

21 So the -- what we would urge, and
22 I'm -- I don't want to speak for Ms. Liser, I'm sure
23 she's -- it's her order that's objected to, but the
24 Court should sign the amended order on summary
25 judgment and let the parties continue to talk and

1 present the Court with a way to get this case to a
2 final judgment, or decide to present this Court with a
3 solution in terms of direct appeal or an interlocutory
4 appeal by agreement.

5 THE COURT: I mean, don't you think
6 it's in the best interest of your client to get this
7 done as quickly as possible?

8 MR. LEATHERBURY: Absolutely, Your
9 Honor.

10 THE COURT: And wouldn't severing it do
11 that?

12 And you can fight over the attorneys'
13 fees and whatever tort claims later. That's just
14 money. I mean, this is more important than the money.

15 MR. LEATHERBURY: Yeah. I'm not sure
16 that --

17 THE COURT: Go ahead.

18 MR. LEATHERBURY: I'm not sure that
19 severance is legally appropriate, Your Honor, but
20 that's why we're -- we've suggested to the other side
21 if -- and maybe this or other orders that the Court
22 enters can go up on interlocutory appeal by agreement.

23 THE COURT: If you all entered into an
24 agreement whereby you dismissed your claims and y'all
25 could refile them later on the torts and the

1 attorneys' fees, then everything is done, but --

2 MR. BRISTER: The fact of the matter is
3 that the tort and attorneys' fees claims, if we lose,
4 we are wasting time because our clients are all
5 judgment proof. So they can get a million dollars of
6 attorneys' fees, and who are they going to collect
7 that from.

8 On the other hand, if we win, we're
9 going to have to do it all over again. So, I mean, I
10 don't know why it wouldn't be severable.

11 And, again -- well, two -- two other
12 things. I'm sure the Court -- the Court has read the
13 orders the first time, so you'll read them -- and I
14 think the amend -- the local TEC amended order adds in
15 some of the stuff you struck out of the other ones, so
16 I'm sure the Court will read those carefully.

17 But it seems to me everybody is better
18 off the faster we can get a final answer from the
19 Texas Supreme Court. And I think we've got a -- as
20 good a chance as any case I've seen in the last ten
21 years on this case to do it.

22 But I do think that the order needs to
23 be as explicit as it can if you want to get a quick
24 ruling, which is that -- that those -- you know, that
25 this and that provision, a state statute is

1 unconstitutional because of what the Texas Supreme
2 Court said in Brown versus Clark. And that -- I don't
3 see how they can avoid it, if that's what the Court
4 order says.

5 And, technically, that can be -- if the
6 Court enters a temporary injunction, technically, we
7 can take that up, because the constitution would have
8 to say that can be a temporary or a permanent
9 injunction. But I think severance would be the
10 cleaner way to do it.

11 MR. LEATHERBURY: And there's no
12 question, Your Honor, that it -- it -- it would
13 benefit both sides to get an answer to some of these
14 core questions as soon as possible.

15 The rub is defining what questions are
16 going up and what questions remain behind, do you
17 sever, do you -- and -- and we started talking about
18 that. We were talking about that actively and want to
19 continue to talk about that and present this Court
20 with a way forward.

21 MR. NELSON: Your Honor, the -- the
22 order that we've proposed keeps the argument that
23 Mr. Brister would have to the Supreme Court. Amending
24 it would -- would make that order too narrow.

25 For instance, if -- if the Court -- if

1 the Supreme Court takes jurisdiction, it's going to be
2 able to rule on all of the issues, not just the narrow
3 constitutional issues. In other words, all of the
4 neutral principles, all of those things which we're
5 arguing here, the Supreme Court can take up. So it's
6 not necessary to have the order you sign so narrow
7 dealing with just the constitutional issue.

8 THE COURT: And I'll tell you why I
9 marked out the neutral principles is because I think
10 you don't get to it if you stop -- in the case law, I
11 never get there.

12 MR. NELSON: Your Honor, I'm not
13 questioning that at all.

14 THE COURT: Yeah.

15 MR. NELSON: What I'm saying is the --
16 the amended orders, if you'd like to have them
17 proposed, will take care of both Mr. Brister's
18 concerns and ours in the Supreme Court.

19 THE COURT: Because if I -- if I
20 didn't --

21 MR. NELSON: But I don't want to see an
22 order that's too narrow.

23 THE COURT: But if I did neutral
24 principles, I may rule the other way. I mean -- and
25 so, I mean, you could set it up both ways, I guess.

1 MR. BRISTER: The deal is -- and I have
2 some personal experience with this, the -- how much
3 you read into the order. This -- the way I was
4 reading your order, if it says it's unconstitutional
5 as applied, I'm bound by Brown versus Clark and that's
6 what Texas -- that's the last thing they said, and
7 that's constitutional grounds, and so that's
8 unconstitutional as applied. That falls directly
9 under the statute of the constitution, and they have
10 to take the case.

11 If their argument is -- and they can
12 make an argument when it goes up, as Mr. Nelson says,
13 but you -- even if that's wrong, we win on neutral
14 principles, and the Court can decide all of that.

15 The Court is going to be reticent.
16 They take one of these about every 10 years. Unless
17 the statute probably says unconstitutional as applied,
18 this statute is in this case, some of the Judges on
19 the Court are going to be reticent to exercise
20 jurisdiction and prefer that it go over to the Second
21 Court of Appeals.

22 And, you know, I'm -- my concern
23 is -- (inaudible) -- Court of Appeals, which has twice
24 said neutral principals must be applied, and they end
25 up saying, "Well, we haven't really thought about

1 Brown versus Clark, and now we're not so sure, and so
2 we're going to --

3 THE COURT: It doesn't matter what they
4 rule. It's still going to the Supreme Court.

5 MR. BRISTER: And that's why we would
6 prefer not to take the time.

7 THE COURT: Right.

8 MR. HILL: Your Honor, if --

9 THE COURT: Yeah. Go ahead.

10 MR. HILL: I just want to -- on a
11 cautionary note, and that is having heard the Court
12 just now articulate a little more specifically you're
13 thinking about it confirms what I had sort of assumed.
14 And I would urge a cautionary note about being perhaps
15 inadvertently led into signing any order that declares
16 something unconstitutional.

17 My understanding of the law is that
18 the -- this Court and the Supreme Court has -- walking
19 into that area and ruling if they can, and what this
20 Court has ruled so far, as I understand it, is
21 constant with what the Court remarked a moment ago
22 that you don't ever get there.

23 The -- it's not a ruling, and I can -- I
24 seriously question the wisdom of any order that
25 suggests that you are effectively declaring something

1 unconstitutional. I think that's simply not what the
2 Court has --

3 THE COURT: I don't --

4 MR. BRISTER: And that's exactly what
5 they said in all their motions. They said on first
6 amendment grounds, you can't follow on -- you -- what
7 was it they said, you can't pay attention to Private
8 Trust Law. Well, what can't you pay -- Texas Common
9 Law can't overrule Private Trust Law if it's in the
10 statute. There's only one way to -- around Private
11 Trust Law in a statute, and that's to declare it
12 unconstitutional.

13 THE COURT: I don't think it's saying
14 that it's unconstitutional. I think it's saying it
15 doesn't apply in this situation, because it's --

16 MR. BRISTER: Well, they're not going
17 to -- they're not going to take that.

18 THE COURT: Well, they -- and that's --
19 okay. But I still can't just craft something to make
20 it go to the Supreme Court. I mean, it -- my
21 understanding was that the -- the trust laws that you
22 were talking about don't apply in this situation
23 because of Brown, not because they're not
24 constitutional.

25 MR. BRISTER: Why would they not apply?

1 THE COURT: Because this is a
2 hierarchical church and --

3 MR. BRISTER: Let me -- let me quote
4 from the local TEC motion.

5 THE COURT: Okay.

6 MR. BRISTER: Texas Courts and Courts
7 around the country defer as a matter of constitutional
8 law to a hierarchical church's decision.

9 THE COURT: Yeah.

10 MR. BRISTER: It's all over the
11 motions.

12 THE COURT: Okay.

13 MR. BRISTER: Well, why are they
14 deferring as a matter of constitutional law? What
15 does that mean? That means it would be
16 unconstitutional to do anything else. There is --
17 there is only one way you avoid a statute. You have
18 to apply the statute.

19 Now, they -- they'll still have their
20 argument that even if you apply the statute, this
21 that, and the other. But if the Court's -- if the
22 Court's order is I just don't think -- I'm not saying
23 it's unconstitutional, I just think it's inapplicable,
24 then we're going to have to go to the Second Court.
25 We definitely have no choice.

1 THE COURT: I mean, I think that's what
2 I'm saying.

3 MR. HILL: And the decision from the
4 Fort Worth Court of Appeals is perfectly consistent
5 with that. When it -- when it says you don't look at
6 neutral principles, you don't ever get there. If this
7 is a hierarchical church and an ecclesiastical issue
8 must be decided first. And -- and I -- as I said, as
9 I have understood the Court, that's exactly what
10 you've ruled.

11 THE COURT: I mean, I would like to do
12 anything I can to expedite this process for all of the
13 people that are involved. I mean, because it is -- it
14 seems like it's going to be a bit of a waste of the
15 time to -- to have to appeal it twice, which I know
16 you're going to do anyway. But --

17 MS. LISER: My suggestion would be,
18 Your Honor, and I think everyone agrees that the
19 quickest we can get the fundamental issues on appeal,
20 the better off all of the parties are. Before you can
21 do that, we're going to have to have a record to
22 determine what to do about the supersedeas bond.

23 We've amended our order so that the --
24 anything that they characterized, "they" being the
25 defendant, to this interlocutory, that being returning

1 the property and not holding themselves out, is now
2 hinged on that judgment being final. So there is no
3 interlocutory.

4 The order does include your original
5 requirement for an accounting running from the date of
6 your first order, and that's one of the things that
7 we're going to need, Your Honor, to give you a
8 complete record on whether a bond is needed and
9 whether there should be a stay granted.

10 What we would suggest is that you sign
11 the amended judgment that I've submitted to you, which
12 took out the language that you've marked through on
13 the original judgment, and we all agree to discuss
14 this at greater length, because we just talked about
15 all of this for the first time 45 minutes ago, and be
16 back to you within 30 or 40 days on proposals on how
17 we can appropriately and cleanly appeal this as
18 quickly as possible.

19 THE COURT: I mean, are these churches
20 going to shut down? I mean, that's the concern I have.
21 is that -- I mean, are we going to have vacant
22 buildings sitting out there when those people would
23 like to --

24 MR. BRISTER: Unless we can get a stay,
25 they are going to exclude all of our priests and

1 pastors, and they won't say otherwise on the record.

2 THE COURT: Yeah. No, I --

3 MR. BRISTER: When the pastors and
4 priests leave, what are the -- all of the people going
5 to do.

6 THE COURT: I don't know.

7 MR. BRISTER: They're not going to hang
8 around.

9 MS. LISER: Well, I will say, Your
10 Honor --

11 THE COURT: Okay.

12 MR. HILL: I beg to differ about that,
13 because there's a large commitment to the buildings
14 themselves emotionally, and I think none of us in this
15 room can speculate with any accuracy whether the
16 people are going to go or stay.

17 THE COURT: What happened to all of the
18 priests that were there before all this happened? Did
19 all of them leave or did --

20 MS. LISER: The majority of them left
21 the church, Your Honor.

22 MR. WEAVER: Your Honor, I haven't had
23 a whole lot to say in this lawsuit up to this point.
24 In fact, the motions for summary judgment that the
25 Court has ruled upon and were filed by the other side

1 were not even directed to my clients, the 47 missions
2 and parishes that I represent today.

3 And so I don't know if I'm talking out
4 of school, but what I can say is that the impact of
5 whatever order that the Court may render may very well
6 severely and negatively impact my clients, who are
7 currently occupying some of the properties.

8 Now, I'm not going to speculate as to
9 who stays and who goes. And I don't think, as
10 Mr. Hill has indicated, if we get to that point,
11 that -- that anybody here can. And whether or not
12 individuals whose faith may be so superficial as to be
13 so tied up to a building or not, I don't know, and I
14 can't comment on that either.

15 But what I can say is that the priests
16 and the clergy who are now ministering in those
17 locations to a person have already received orders of
18 deposition from the provisional bishop of the Diocese
19 of Fort Worth, and in those circumstances, then
20 there's no question but that the very first thing is
21 that the -- that the minority and the local minority
22 faction who filed the claims in this lawsuit will do.
23 They will seek to remove those clergy from those
24 positions and from their ability to minister in those
25 congregations.

1 Now, whether or not there is a mass
2 exodus as a result of that, I can't tell you. I do
3 know that in most of these parishes and missions there
4 are contingency plans in place.

5 THE COURT: Well, how did -- when this
6 all went down, did y'all -- every church get a new
7 priest?

8 MR. WEAVER: No, these --

9 THE COURT: Okay.

10 MR. WEAVER: -- these are the
11 continuing ongoing clergy that were there for the most
12 part.

13 MR. NELSON: Your Honor --

14 THE COURT: Okay.

15 MR. WEAVER: And, secondly, Your Honor,
16 there is a -- there is a -- we're talking about
17 80 percent of the diocese. We're talking about
18 6,000 people that attend church on Sunday morning out
19 of 13,000 members of these parishes and missions.
20 And, you know, what they'll do, I can't speak for
21 13,000 people or 6,000 people, but I think that the
22 sense impression that we have received up to this
23 point is that there is going to be pretty much a mass
24 exodus.

25 MR. NELSON: Your Honor, if I may, the

1 speculation about what would happen, one can go back
2 to about 13 years ago when Holy Apostles Episcopal
3 Church broke away from the Episcopal Church and tried
4 to join the Eastern Antiochian Orthodox Church.
5 Father McCauley led that exodus. There was a lawsuit.
6 There was an agreement reached where the vestry that
7 was breaking away and Father McCauley left.

8 Is there a Holy Apostles today? Yes.
9 The rector is right here.

10 THE COURT: Well, let me ask you this:
11 I recall it saying somewhere that the diocese has to
12 hold the property in trust for the Episcopal Church.
13 Is there anywhere in there that says that they have to
14 follow or use your clergy or use your priest?

15 I mean, if -- if they keep the priest
16 they have, but they still use the property for the
17 benefit financially, is basically what it is, for the
18 church, the Episcopal Church, what's the difference?

19 I mean, if they're sending you all some
20 money during this time, then they can all stay here
21 and work.

22 MR. LEATHERBURY: Are you -- I mean,
23 are you talking, Your Honor, just during the pendency
24 of the litigation in the Court is final?

25 THE COURT: Yeah.

1 MR. LEATHERBURY: The -- the problem --
2 the problem, Your Honor, is it's premature to address
3 that right now. This is all speculative. We filed
4 objections to Canon Hough's affidavit. We don't think
5 affidavit evidence or -- or argument of counsel is
6 appropriate in this circumstance, and so I think we're
7 talking, really, about making a record after we get
8 some discovery on the property issues about what type
9 of supersedeas should occur upon final judgment.

10 So our -- our respectful request is
11 that the court sign the amended order proposed by the
12 Episcopal Church. Let us talk for 30 days. Get us
13 back here sooner if we can and give the Court a
14 proposal about how to move forward in the case as
15 quickly as possible.

16 And if -- if that involves going to
17 final judgment with the property issues, then the
18 Court can consider supersedeas at that time based on
19 real evidence and -- and a record and not just the
20 argument of counsel or hearsay affidavits.

21 THE COURT: Okay.

22 MR. WEAVER: Your Honor, we have
23 absolutely no problem with that so long as the
24 plaintiffs will stipulate that they will take no
25 action to interfere with the ongoing administrations

1 and the administrative services under the present
2 clergy at the -- at these parishes and missions. And
3 if they're willing to stipulate to that, I have no
4 problem with what Mr. Leatherbury is suggesting.

5 THE COURT: And when you're saying sit
6 down or get together, what are you -- are you talking
7 about a mediation or are you talking about just trying
8 to figure out to --

9 MR. LEATHERBURY: Just between
10 counsel --

11 THE COURT: Okay.

12 MR. LEATHERBURY: We started talking in
13 the conference room, Your Honor, about protections
14 that both sides would need going forward. If we do an
15 interlocutory, agreed interlocutory appeal, or if we
16 do anything other than go to final judgment with the
17 property, we have some things that we proposed to
18 them. I've just heard one thing from Mr. Weaver. I
19 said I would start trying to write these things up and
20 see if we can reach some kind of agreement on a mutual
21 standstill, a mutual status quo, so we can go forward,
22 get together on the deeds, eliminate the need for any
23 abstract of title, because we're probably claiming
24 under the same deeds. The most recent deed is the
25 judgment when the diocese was created out of the

1 Diocese of Dallas.

2 So I think there's a lot of room to
3 move the case along if the lawyers get together and
4 propose a Rule 11 agreement, engage in some -- some
5 pretty quick -- pretty efficient discovery related to
6 the property issues.

7 We get the accounting, and we come back
8 to the Court and say, "We've had time to consider it
9 now. Here's what we want to do. Here's what they
10 want to do. Let's move forward".

11 MR. WEAVER: And we are pleased to do
12 that, Your Honor.

13 MR. BRISTER: The problem is we've got
14 to file the notice of appeal by Thursday if we're
15 going to appeal from the temporary orders, it's
16 already set. We do object to the new order sign,
17 because, for one thing, the local TEC order puts in
18 some of the steps that Your Honor struck out of the
19 TEC order.

20 Second, there -- if I can approach the
21 bench and give you a couple of cases. The equitable
22 accounting, therefore -- you are not supposed to grant
23 one of those unless discovery won't work. They can --
24 we can do all the stuff and -- and I've got copies for
25 you -- we can do discovery with them and work out the

1 document production, but the other thing is that
2 you're not supposed to -- you can't execute on a
3 judgment until 30 days afterwards.

4 So in order to turn over property the
5 date the judgment becomes final doesn't leave you time
6 to supersede, doesn't leave you time to seek a stay,
7 and so that's why it needs to be not on, you know, the
8 day that it becomes final.

9 MS. LISER: It says 30 days, Your
10 Honor, Mr. Brister may not have seen that.

11 MR. BRISTER: Which one was that?

12 MS. LISER: It's the one that we sent,
13 I believe, on the 21st, and nothing is to be done
14 until 30 days after the judgment becomes final.

15 MR. BRISTER: No, I didn't get that
16 one.

17 MS. LISER: 30 days. I mean, the rules
18 say 30 days..

19 MR. BRISTER: Well, that's -- that's
20 why this order shouldn't say as soon as the order
21 becomes appealable.

22 But my point is unless this order --
23 we've got to -- unless this order that you've already
24 signed is withdrawn before then, we've got to file a
25 notice of appeal or lose that right.

1 THE COURT: What if I -- I mean, if I
2 do an amended order, will that not --

3 MR. BRISTER: It starts -- then it
4 restarts the time, Your Honor. But if we are going to
5 be talking about things we can do in the interim, that
6 may be stuff that needs to be in the order.

7 THE COURT: Okay. Do we want to do
8 another order?

9 MR. BRISTER: Well, my -- my
10 recommendation, for what it's worth, would be to set
11 aside that order. I mean, we're not thinking you're
12 going to change your mind or -- so that's not what
13 we're hoping or -- we're not going to file a motion
14 for a rehearing on the summary judgment or anything,
15 set aside that order so we don't have to file a notice
16 of appeal, and then give us 20 or 30 days to work --
17 see if we can work out the rest of the stuff. I know
18 we can work out with that on producing the documents.
19 Whether we can work out stuff on superseding or
20 staying, or what to do in the interim, or whether to
21 take -- that's going to -- that's going to take more
22 than a day or two.

23 MR. LEATHERBURY: Just so the Court is
24 clear, there were, of course, two orders, and the
25 order we are talking about amending, or that they have

1 asked for some changes in is the National Episcopal
2 Church order.

3 The local Episcopal parties order
4 hadn't been challenged. It was just granted with our
5 motion for summary judgment and denied theirs with
6 respect to our claims.

7 We have submitted a further declaratory
8 order for the Court's consideration, but that has not
9 been signed yet. And the further declaratory order
10 simply tracks the relief requested in our motion for
11 summary judgment. They're different declarations that
12 we asked for in the summary judgment, and there is no
13 injunction in those.

14 THE COURT: Well, what if I just --
15 what if I struck this order and do it again in three
16 weeks, and that way it will give y'all time to do
17 everything. I mean, that's what he's asking.

18 MR. NELSON: The problem -- Your Honor,
19 the problem with that is you're -- you're dealing with
20 two different things, you're dealing with the Court's
21 ruling on the summary judgment, and then you're
22 dealing with discovery, etcetera, etcetera. Those two
23 are separate.

24 And, honestly, if there is some sort of
25 direct appeal, etcetera, fine and dandy. It's going

1 to be on that issue and not on discovery. There ought
2 to be an order on the summary judgment signed, period,
3 without regard to whether or not we can agree on these
4 other things.

5 And, for instance, we would all like to
6 sever. Is it legally possible? Can we do it by
7 agreement? That shouldn't be in an order at all. So
8 what we -- what we would like to have is at least for
9 the -- the local Episcopal parties, for the Court to
10 sign the order that was submitted on declaratory
11 judgment because it's very simple, and all it does is
12 track. And then it gives us 20 days to make that
13 decision from today. What's the problem?

14 THE COURT: Here's part of the problem.
15 I'm going to be -- I'm going to be out until March 1st
16 starting tomorrow. And so if something comes up
17 between now and then, I mean, it's going to be
18 somebody coming here that doesn't know anything.

19 MR. BRISTER: Doesn't want to get
20 involved.

21 THE COURT: Yeah. And that's what --
22 that's one thing that concerns me, is -- I mean, I
23 guess you all could come see me.

24 MS. LISER: Perhaps Mr. Brister can
25 tell us what he doesn't like about the amended order I

1 submitted for the Episcopal Church and --

2 MR. BRISTER: Sure.

3 MS. LISER: -- And you could write
4 through it, and then at least if someone does have to
5 come in in the month that you're gone, they would at
6 least have an order that you signed instead of our
7 representations of what you're rulings were.

8 MR. BRISTER: We can certainly work
9 toward that, but I disagree with Mr. Nelson that these
10 are two separate things. I mean, on the one hand, I
11 don't mind an order that says their summary judgment
12 is granted and ours was not.

13 The problem is, you know, their summary
14 judgment asks for specific things. And somebody's
15 going to argue if everything goes south, and I have to
16 appeal this temporary injunction, it's going to say
17 the time limit is up, because they asked for that in
18 their motion and the Judge granted it.

19 And so I've got to treat it like it is
20 a temporary injunction until it's wiped out. But I'll
21 assure the Court, we're -- we don't want to reargue
22 the summary judgments here. We're going to be doing
23 that in several other courts.

24 But what the order says directly
25 affects whether we're going to get a right to appeal

1 or not. It directly affects how we're going to stay
2 things in the interim. That's why my suggestion is
3 that we set aside those orders with the understanding
4 that the -- theirs is going to be granted while we get
5 the order worked out, and ours is going to be denied.
6 And then after March 1st, we come back and see if we
7 can work out the other issues and get it done.

8 MR. HILL: If I may, Your Honor, I
9 think that leaving no order in place, given the fact
10 that the Court is going to be out for a while, would
11 be the very worst thing for some visiting or other
12 judge to inherit and step in and see an order was
13 granted and then vacated while this Honorable Court is
14 out, and I would urge the Court not to vacate the
15 order and leave that in a vacuum for some other judge
16 to inherit.

17 MR. BRISTER: I promise we won't sneak
18 in here and try to get somebody else to change it.

19 THE COURT: Cydney won't let you.

20 MR. LEATHERBURY: Your Honor, we're
21 happy to stick with the order that the Court signed on
22 January 21st. We can address this further declaratory
23 relief when the Court comes back after we have a
24 chance to visit about it.

25 THE COURT: I want to give him 20 more

1 days. And how can I do that, I mean, sign the amended
2 order?

3 MS. LISER: If you sign the amended
4 order, it's saying that essentially -- it says in its
5 language that it supercedes the order you signed on
6 the 15th, so then everything starts --

7 THE COURT: And that, at least, gives
8 you 20 more days.

9 MR. BRISTER: That gives me 20 more
10 days, which means I've got to file a temporary
11 injunction while you're gone.

12 THE COURT: Well, I might be able to
13 swing by.

14 MR. BRISTER: Well, I mean, you know,
15 I -- I appreciate the 20 days, and we won't have to do
16 anything on Thursday.

17 THE COURT: Yeah. I mean, that's what
18 I really want to --

19 MR. BRISTER: Maybe we can -- if we can
20 reach an agreement in 20 days, then we'll come in with
21 another -- another amended judgment. If we can't,
22 then we'll take our chances with whatever we've got.

23 Now, I would -- it is going to look
24 funny to the Court of Appeals if you struck out stuff
25 in one order and then --

1 THE COURT: No, I'm not going to that.
2 No, no, no, I'm not doing that.

3 MS. LISER: The order we submitted,
4 Your Honor, very carefully took out what you struck
5 out.

6 THE COURT: Let's say -- what do you
7 think is in here that I struck out?

8 MR. LEATHERBURY: I think -- I think --
9 as I understand counsel, he was talking about our
10 further declaratory order in which he said that we put
11 in some things that the Court struck out. We don't
12 think we did, but we're pleased to remain just with
13 the January 21st order that the Court signed for the
14 next 20 days while we try to visit about these things.

15 MS. LISER: And you --

16 THE COURT: No -- yeah, I got it right
17 here.

18 MS. LISER: Okay.

19 THE COURT: Yeah.

20 MR. BRISTER: I mean, the first one is
21 their first paragraph 1A says, "The local Episcopal
22 parties -- (reading inaudibly) -- and that's paragraph
23 2 of the TEC order that said Bishop Gulick and all --
24 and other leaders -- have been authorities and
25 representatives of the diocese. So that's --

1 MS. LISER: I think he's looking at my
2 order right now.

3 THE COURT: Okay. I'm sorry. I'm
4 looking at the amended order on summary judgment.

5 MR. BRISTER: Right. Well --

6 THE COURT: Okay.

7 MR. BRISTER: In the amended order, she
8 did drop the ones that you struck out. I'm looking at
9 the ones that you struck out, which are put back in on
10 the Local Episcopal Party's motion.

11 THE COURT: He said I don't have to
12 sign that. He didn't -- he's dropping that.

13 MR. BRISTER: Right.

14 THE COURT: So --

15 MR. LEATHERBURY: Without prejudice
16 to --

17 THE COURT: Yeah. Right. We can hear
18 that another day. But if I sign this one that
19 Ms. Liser gave me, does that --

20 MR. BRISTER: The problem is the
21 deadline for his one that you signed is Thursday. His
22 motion for summary judgment asks for various temporary
23 kind of relief. If you grant that, somebody is going
24 to argue that I have to file a notice of appeal this
25 Thursday if I want to complain about that.

1 I mean, I'm -- I'm just saying what his
2 motion -- yes, his order only says it's granted. But
3 if you look at the motion, it asks for all kinds of
4 relief.

5 THE COURT: I mean, Number 9 says,
6 "Nothing in this order is intended to grant any
7 injunctive relief".

8 MR. BRISTER: Well --

9 THE COURT: So you like that?

10 MR. BRISTER: If it's -- if it's -- I
11 mean, how -- let me -- let me pull up -- I don't have
12 the -- his motion with me.

13 MR. LEATHERBURY: Your Honor, I --

14 MR. BRISTER: -- pages of stuff that it
15 asks for.

16 MR. LEATHERBURY: Yeah. I -- I brought
17 my motion with me, Your Honor, and the -- the thing
18 that they objected to on the summary judgment was, I
19 think, in the prayer we had a requirement for turnover
20 like the Episcopal Church had in their -- in their
21 order. We did not put that in our further declaratory
22 order, and -- and we are not asking for that at this
23 time.

24 So if the Court needs to interline
25 something that -- that it's granted with respect to

1 the declaratory relief in our -- in our motion for
2 summary judgment, but not with respect at this time to
3 the injunctive relief, that should be fine with us. I
4 mean, we -- we certainly don't intend to -- I think
5 the worst thing that we can all -- that can happen is
6 to get involved in a temporary injunction appeal at
7 this -- at this stage on -- on this issue.

8 So if -- now, that wasn't in their
9 objections to the former summary judgment order,
10 that's why I'm a little bit surprised by them bringing
11 it up, because we didn't understand there was any
12 problem with our order. But we -- we would withdraw
13 without -- without prejudice any request for
14 injunctive relief that they think is in our motion for
15 summary judgment.

16 THE COURT: Well, shouldn't that be
17 what the amendment is on your summary judgment order,
18 then, is that it's not injunctive relief? And --

19 MR. LEATHERBURY: Yes. It's a
20 sentence -- a sentence just like the Court read that
21 we put in our further declaratory order would be --
22 would -- would be fine.

23 THE COURT: And on this -- I'm looking
24 at the amended order of summary judgment. The Court
25 hereby orders that the defendant provide an accounting

1 of all diocesan assets.

2 Is that something y'all are going to
3 try to agree on? Is that what y'all are saying, as
4 far as the way to handle that?

5 MR. BRISTER: We're -- we're saying
6 we -- we object to an equitable accounting. It's not
7 supposed to -- accounting as far as the judgment,
8 you're only supposed to give under -- if you've got a
9 contract that says one party shall account to the
10 other.

11 If they want to know what -- you know,
12 we're -- we're going to work out with them presenting
13 the documents and, you know, the bank records,
14 whatever they need to see, you know, where we have
15 been paying things from and where the money has gone,
16 that's for discovery. That's not a judgment.

17 THE COURT: Okay. Why don't we do
18 that?

19 MS. LISER: That would be fine, Your
20 Honor.

21 THE COURT: Okay. Is there anything
22 else in this order -- this amended order on summary
23 judgment that you have a problem with?

24 MR. BRISTER: Let me see.

25 THE COURT: Okay. Let's deal with that

1 one first.

2 And I think it's -- well, I'm not --
3 I'm taking out the whole March 22nd thing. And I
4 think we were going to change the second to the last
5 paragraph.

6 MR. BRISTER: Right. Thirty days after
7 final judgment is entered. And -- yeah, on the --
8 both -- on both of the last two, and drop the
9 accounting. I think that's -- I'm just looking
10 through the motion to make sure there is nothing else.

11 THE COURT: So I'm going to say -- no,
12 go ahead.

13 MR. BRISTER: I mean, I would -- the
14 problem with saying -- let's see. Well, I'm looking
15 at -- this is the local TEC order or the TEC order?

16 MS. LISER: The TEC order.

17 MR. BRISTER: The TEC order.

18 Okay. This order would be fine if we
19 say it's granted in part, because what they asked for
20 is things that you declared that this is the
21 continuing Episcopal Diocese and order the defendants
22 to turn over all property, order the defendants to
23 provide an accounting, and so --

24 THE COURT: Amended order on partial
25 summary judgment?

1 MR. BRISTER: This is their -- well,
2 TEC motion was -- was for total summary judgment.
3 Local TEC was a styled party. The TEC motion was a
4 full motion.

5 THE COURT: But my ruling was partial,
6 right?

7 MR. BRISTER: I think it was, but the
8 order doesn't say that.

9 THE COURT: What if I just strike
10 amended order on --

11 MR. BRISTER: But it was granted in --
12 granted in -- it was granted in part. The amended
13 motion was the local TEC. TEC's was just a full
14 motion, and it was not amended. So this would be --
15 their TEC motion, the amended order on summary
16 judgment, would be granted in part, ours is denied,
17 and declaratory judgment --

18 THE COURT: Okay. And then -- okay.
19 So I'll sign that. I mean, I'll let you -- the only
20 thing I changed, I marked out the third to the last
21 paragraph, put "in part," and then I guess the last
22 two paragraphs, I'm going to have to say, well --

23 MR. BRISTER: Thirty days after final
24 judgment.

25 THE COURT: Well, I think the last

1 paragraph if -- if I enter an order -- a final
2 judgment, I think they need to stop that day,
3 probably, holding themselves out, but this one -- so
4 to the --

5 MR. BRISTER: I mean, practically
6 speaking, if we can't get a stay or a supersedeas,
7 we're going to need 60 days to do all that, but I
8 don't mind the order saying 30 days, and we'll do our
9 best.

10 THE COURT: Okay. We have that one.
11 And now we have the further declaratory order on local
12 Episcopal party's amended motion for partial summary
13 judgment.

14 Now, what are your problems with this
15 order?

16 MR. BRISTER: 1-A, that they're the
17 leaders, that the individuals remain loyal, is the
18 same in substance with the portion from the
19 January 21st order that you struck out saying that
20 accordingly Bishop Gulick and Ohl and other leaders of
21 the Episcopal Diocese are and have been since the
22 authorities represented -- etcetera.

23 MR. LEATHERBURY: Your Honor, there is
24 a difference between the way the Episcopal Church's
25 order was phrased and the way ours is phrased, because

1 ours is phrased in accordance with the ecclesiastical
2 determination of the Episcopal church.

3 The Episcopal Church's order had the
4 Court declaring on its own, if you will, that these
5 are the bishops, these are the -- the standing
6 committee members, and we tried to track the Scofield
7 case to make clear that it's an ecclesiastical
8 determination that the Court is referring to rather
9 than jumping in there and declaring it yourself.

10 MR. BRISTER: But then in paragraph 7,
11 they say -- but if it's not ecclesiastical, the Court
12 declared it as a matter of law.

13 MR. LEATHERBURY: Then paragraph 4 --
14 I'm sorry -- is seeking to withdraw, is unauthorized
15 without effect. And I think the Court -- I'm not sure
16 if that was struck out or if the Court -- I just
17 wanted to point out to the Court that -- to make sure
18 you wanted to rule on the broader issue of whether an
19 Episcopal Diocese can withdraw or not, which our
20 argument was that Courts don't get involved in that.

21 And that's another reason for paragraph
22 7 saying that if it's ecclesiastical -- but again,
23 Your Honor, if it's easier and simpler at this stage
24 for the -- for us to submit an amended order that
25 grants our motion for summary -- partial summary

1 judgment as to the declaratory relief requested in the
2 motion and makes clear like -- with something like
3 paragraph 9 of our further order, that nothing in this
4 is intended to grant any injunctive relief, we can get
5 that over to the court today.

6 MR. BRISTER: But I assume from your
7 recently struck order that you weren't wanting to --
8 I mean, everything in the -- that you struck out was
9 also declaratory relief that they asked. I mean, I
10 lost, so you can declare what you want, but -- I'm
11 just trying to get a clear record here. If we -- and
12 the -- the other thing is why does it quote the same
13 thing as the TEC order?

14 THE COURT: I think the order that I
15 signed was simply saying that the diocese should be
16 holding this property in trust for the Episcopal
17 Church of the United States. And if people are doing
18 something contrary to that, then those actions are
19 void.

20 So, I mean, that's basically, I think,
21 what that -- I was saying in the order. I don't
22 think -- I don't think I'm making a ruling on who --

23 MR. BRISTER: Well, I mean, this is
24 summary judgment. You don't have to make findings of
25 fact.

1 THE COURT: No. I understand that,
2 but, I mean, I'm just trying to let you know where --
3 what I was thinking when I did that to a certain
4 extent.

5 MR. BRISTER: Why don't we make them
6 just both say the same thing so we don't have to argue
7 with that appeal that we're going to -- I mean, I
8 think the order on TEC makes it clear that we lose.

9 THE COURT: If I wrote in here the
10 Local Episcopal Party's motion for summary judgment is
11 granted in part on that order, the one Ms. Liser did,
12 would it be any different?

13 MR. LEATHERBURY: Well, Your Honor, the
14 relief we -- the relief we requested was a little bit
15 different. As long as it's clear between the parties
16 that anything that was not granted in this motion for
17 summary judgment is still -- you know, is without
18 prejudice to seek further declarations and so forth at
19 a later time, if that accomplishes the goal of getting
20 an order in place that the Court is comfortable with,
21 then that is -- that's agreeable to us at this time.

22 But we did ask for everything that's in
23 the further declaratory order, and we're not giving
24 any of it up. But if today is not the day to take all
25 of those things up rather that's a thing for final

1 judgment, that's fine.

2 MR. BRISTER: That's fine with us.

3 THE COURT: Okay. Yeah. And, I mean,
4 her -- this order that Ms. Liser drafted doesn't say
5 that our relief not granted is denied. So -- okay.

6 MR. BRISTER: I think we all agree that
7 neither of these are final -- would be final orders.
8 There are other issues.

9 Again, the other party seems -- I
10 think, as you say, the local congregations have
11 parties, and none of them are involved either way.

12 THE COURT: Okay. Why don't we do
13 this. Ms. Liser, is this on your computer, I guess?

14 MS. LISER: It is, Your Honor.

15 THE COURT: What if you -- what if you
16 took it back and you wrote in the Local Episcopal
17 Party's summary judgment is granted.

18 MS. LISER: Okay.

19 THE COURT: Mr. Hill, when you -- see
20 if -- you might share that with them to see if that's
21 doable.

22 MR. BRISTER: Okay. And we --

23 THE COURT: No. I understand. I know
24 you're -- you haven't conceded your case.

25 MR. BRISTER: Can't be too careful.

1 THE COURT: I know.

2 MS. LISER: Your Honor, I'll be able to
3 have this to all counsels in 20 minutes or 30 minutes,
4 by the time I get back to the office.

5 THE COURT: Okay.

6 MS. LISER: We were going to include
7 that this amended order supercedes the orders --

8 THE COURT: Yes. Okay.

9 MS. LISER: And Mr. Brister has the
10 additional time.

11 THE COURT: Okay. What else? Is that
12 it?

13 MR. BRISTER: That's it.

14 MR. LEATHERBURY: The one other thing
15 we did have set for this morning is a discovery matter
16 that we started talking about in the conference room,
17 so we'll get back with the Court promptly on that.

18 THE COURT: Okay. Yeah. And if
19 something comes up -- I mean, they're saying I'm going
20 to be out two or three weeks, but I mean, I can
21 probably -- oh, we don't have to put this on the
22 record necessarily.

23 (Off the record, 11:08 a.m.)

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C E R T I F I C A T E

THE STATE OF TEXAS X

COUNTY OF TARRANT X

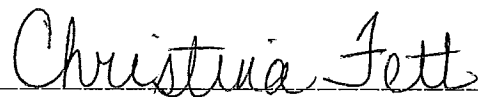
I, Christina Fett, Official Court Reporter in and for the 141st District Court, State of Texas, County of Tarrant, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the reporter's record in the aforementioned cause, all of which occurred in open court or in chambers and were reported by me.

I FURTHER CERTIFY that this reporter's record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I FURTHER CERTIFY that I have no financial interest in the matters shown herein, and that I am not related to any of the parties or their counsel.

I FURTHER CERTIFY that the total cost for the preparation of this reporter's record of the proceedings is \$300.00, and was paid by Plaintiffs.

WITNESS MY OFFICIAL HAND this the 2nd day of March, 2011.



Christina Fett, Texas CSR 4590
CSR Expires 12-31-11
Official Court Reporter, 141st District Court
Tarrant County Family Law Center
200 E. Weatherford, 4th Floor
Fort Worth, Texas 76196-0402
Telephone 817-884-1423
Facsimile 817-212-6837