CAUSE NO. 141-252083-11

THE EPISCOPAL CHURCH, et al.	)	IN THE DISTRICT COURT OF
	)	
VS.	)	TARRANT COUNTY, TEXAS
	)	
FRANKLIN SALAZAR, et al.	)	141ST DISTRICT COURT

RESPONSE TO DEFENDANTS' MOTION TO SET SUPERSEDEAS AT $0

The Local Episcopal Parties would respectfully show the Honorable Court as follows:

I. INTRODUCTION

This Court has ruled that Defendants have no right to Episcopal property. But Defendants want to keep using that property for a period of years, to the exclusion of its rightful congregants, secured by a bond of $0.

Defendants' fundamental claim — that no bond is necessary because they have not dissipated Church property — is false. At the court-ordered deposition, Defendants admitted numerous egregious acts, including transferring funds out-of-state during this litigation to escape their legal obligations:

> **Q. So you thought that that money would be harder for a court to reach out of state?**
>
> **A. That is not what I said, but that was the thought of the [Defendant] Diocese, not of me, but of the Diocese, that was the decision that was made.**

FILED
TARRANT COUNTY
2011 MAY 17 PM 4:38
THOMAS A. WILDER
DISTRICT CLERK

Defendants have no legal basis for a bond of $0. They have conceded that the real property has a fair market rental value, and their "substantial economic harm" position is conclusory and baseless. At deposition, their sole affiant on this point admitted that she ignored *61 of 62* defendants, millions of dollars in donations and separate property, and hundreds of thousands of dollars in voluntary payments to their new parent organization (past and future), all to claim falsely that Defendants had not a penny to use for a bond required by law.

Defendants have no factual basis either. Despite repeated, on-the-record protestations to the contrary, Defendants have dissipated over half a million dollars from the Church's bank accounts in just over two years, opened a new account in Louisiana with still undisclosed sums admittedly to avoid this Court's reach, saddled Church property with a $3.5 million lien during litigation (in favor of a single-purpose entity created by a named Defendant on the day of the transaction), tapped restricted Church funds to pay their lawyers, and on and on, as shown below.

In contrast to Defendants' wholly unreasonable request of $0, there are a range of reasonable bonds that the Court could set in this matter, consistent with the supersedeas statute, the case law, and the other Texas courts' bond settings in such cases. Under the basic statutory framework, Plaintiffs are entitled to a bond of well over $13,555,000, based on an analysis of the fair rental value of just *five* of the *dozens* of real properties at stake, plus Defendants' own insurance values for the personal property at risk. As a starting point, the following benchmarks are provided:

Benchmark	**Minimum Bond**
1% of the insured value of property at risk	$950,000[1]
San Angelo Bond (single parish case) x 47 parishes in this case (exclusive of other diocesan property)	$1,645,000
5% of the insured value of property at risk	$4,750,000
El Paso Bond (single parish case) x 47 parishes in this case (exclusive of other diocesan property)	$9,400,000
10% of the insured value of property at risk	$9,500,000
Minimum bond dictated by statute in this case (based on only 5 of dozens of real properties)	$13,555,000

[1] *See* Exhibit B, SC 4051-4056, listing total insured value of real and personal property as $95,017,205.

Defendants should not be allowed to further mislead this Court and the public or to continue to harm Church property. Every Texas court to consider these cases has imposed a meaningful bond or cash deposit plus post-judgment injunctions. This Court should do the same.

II. EVIDENCE OF DEFENDANTS' BAD ACTS

Defendants have repeatedly told this Court that no bond is necessary because they have not dissipated, transferred, or encumbered Church property. It is now clear that these statements are false. Defendants' representations to the Court include:

- "In this case, there is no evidence of dissipation or transfer…"[2]
- MR. SHARPE: "And, by the way, the accounts that [Plaintiffs are] talking about, they've got a bigger value today than they did at the time of separation. They haven't gone down, they've gone up."[3]
- "The bank accounts of the Diocese are maintained with Frost Bank."[4]
- MR. BRISTER: "We've given them the bank statements of what's there and what was there in November '08, so they know all that. And they can see that we haven't done that for two and a half years, almost three years now."[5]

Here is the reality:

- ***Defendants have transferred an undisclosed sum out-of-state during this case expressly to make it harder for this Court to reach***

  Q. So you thought that that money would be harder for a court to reach out of state?
  A. That is not what I said, but that was the thought of the Diocese, not of me, but of the Diocese, that was the decision that was made.[6]

  Q. Why didn't you tell the Court about the Louisiana bank account?
  A. Because at the time, it did not enter my mind. I forgot.[7]

  Q. Why wasn't [the Louisiana account] listed on the books?

[2] Defendants' Motion at 7.

[3] Reporter's Record, March 31 Hearing at 30.

[4] Defendants' Motion, Ex. B (Second Parrott Affidavit at 1).

[5] Reporter's Record, March 31 Hearing at 8.

[6] Parrott Dep. at 93:18-22. Excerpts of the Parrott Deposition are attached hereto as Exhibit A.

[7] Parrott Dep. at 88:3-6.

A. I don't have an answer to that. It just wasn't.
Q. Did you prepare these books?
A. Yes.[8]

Q. ...And in response to receiving this letter from a lawyer questioning the ownership of the accounts, your -- the [Defendant] Diocese's response was to transfer that money out of state?
A. Not immediately, no, sir, but after thought and discussion, that was what the Diocese decided to do.[9]

- ***More than $500,000 is missing from operating accounts of the Diocese despite Defendants' testimony that "the funds in these accounts generally roll over monthly as new contributions replace withdrawals."***

Q. [] So you have told the court in your affidavit under oath that money comes in, money comes out in the operating accounts and it about rolls over, breaks even?
A. Pretty much, yes, sir.[10]

Q. [W]e wouldn't expect hundreds of thousands of dollars to disappear from operating accounts, would we?
A. I would not, no, sir.
Q. Okay. We could call that dissipation, couldn't we?
A. Yes, sir.[11]

Q... So operating accounts . . . [have] a total of **<u>$547,030.13 gone</u>** between October 31st, 2008 and February 28th, 2011 from these 12 accounts; is that correct?
A. That's what it adds to, yes, sir.[12]

Q. [W]e established there was over half a million dollars missing from bank accounts, correct?
A. Yes, sir.[13]

- ***Defendants' representations to the Court that the accounts "haven't gone down, they've gone up" were based on only 6 of 18 Diocesan accounts.***

Q. You would want to see all of the accounts, wouldn't you?
A. Sure.
Q. So why did you only show the Court six accounts?

---

[8] Parrott Dep. at 98:3-7.

[9] Parrott Dep. at 93:6-12.

[10] Parrott Dep. at 54:14-18.

[11] Parrott Dep. at 55:5-15.

[12] Parrott Dep. at 63:12-64:4 (emphasis added).

[13] Parrott Dep. at 84:13-16.

A. Those were what I was asked to produce. These are -- this is what I was asked to produce at the time.
Q. Okay. Who asked you to produce that?
A. I was asked by the attorneys to produce that.[14]

- ***Defendants encumbered Church property with a $3.5 million off-the-books lien to a shell entity created by a named individual Defendant during litigation.***

Q. So if you testified about a $3.5 million line of credit or lien from Jude Funding, that would not be proper testimony because you -- that is not within your purview? Is that what you're saying?
A. I'm saying I don't have knowledge of it. That's right.
Q. Okay. Let's turn to your affidavit. This is your first affidavit, Exhibit A. [Reading extensive testimony about Jude Funding lien]. Did I read it correctly?
A. Yes, you did.
Q. So you've testified quite a bit about Jude Funding, haven't you?
A. And I apologize. I mean – I misrepresented myself . . .[15]

Q. In your history as the director of business and finance for the Diocese, how many $3.5 million liens has the Diocese taken out on church property?
A. How many?
Q. Uh-huh.
A. Other than this, none.[16]

Q. Did you put it on the books?
A. The -- no, sir, it is -- it's not on the books.[17]

- ***Despite claiming there were no other encumbrances,[18] Defendants have encumbered Church property with oil and gas leases since the litigation and kept the proceeds.***

Q. Okay. So here we have an example of a lease that was acquired after the schism; is that correct?
A. Yes, sir.
Q. And it says St. Elizabeth's at the top. What does that mean?
A. That means that evidently this property is -- this lease was acquired because of the St. Elizabeth's property there.[19]

[14] Parrott Dep. at 50:19-51:3.

[15] Parrott Dep. at 76:16-77:16.

[16] Parrott Dep. at 80:6-80:11.

[17] Parrott Dep. at 83:13-15.

[18] Parrott Dep. at 182:15-20.

[19] Parrott Dep. at 160:11-18.

Q. As of the signing of this lease, were they associated with you?
A. No, sir. I mean, they're -- they're one of our missions, but they don't -- they don't associate with us.
Q. And yet Chad Bates who is a trustee of the [Defendant] Diocese signed this lease?
A. Yes.
Q. And the money, $24,000 plus $5,000 -- or at $5,000 per net acre, is payable directly to the Corporation of the Episcopal Diocese of Fort Worth; is that correct?
A. Yes, sir.[20]

Q . . .Did this money here, the 24 -- $20,400, did it ever go to St. Elizabeth's?
A. No, it did not.
Q. So it stayed with the Diocese?
A. Yes, sir.[21]

Q. All right. You knew that -- that your office has received over $8,000 in mineral leases on All Saints property, didn't you?
A. We did receive some oil and gas lease.[22]

Q. And the lease was signed well after the split, wasn't it?
A. I don't remember when the lease was signed, but probably.[23]

Q. All right. I'm going to represent to you it was signed after the split. Now, then, what did y'all do with the money?
A. It went probably into the operating account of the Diocese of Fort Worth.
Q. Didn't go into the All Saints account?
A. No, sir, it did not.[24]

Defendants committed numerous other misrepresentations and misappropriations, including:

- Telling the Court that any withdrawals from Diocesan investment funds "since November 2008 were made in the usual and ordinary course of business of the Episcopal Diocese of Fort Worth,"[25] then admitting withdrawing ***12 times*** their averred ordinary course of business amount from the Diocesan Fund in 2011.[26]

[20] Parrott Dep. at 161:1-13.

[21] Parrott Dep. at 162:9-13.

[22] Parrott Dep. at 235:18-21.

[23] Parrott Dep. at 236:20-23.

[24] Parrott Dep. at 237:1-7.

[25] Defendants' Motion, Ex. A (Parrott Affidavit at 1).

[26] Parrott Dep. at 207:8-20.

- Telling the Court that the revolving fund is "set aside for emergency parish expenses that is not used by the Diocese,"[27] then admitting loaning $100,000 from the revolving fund to the Diocese for Diocesan attorney's fees.[28]

Defendants have no factual or legal basis to dispute the necessity of a bond to protect Church property during appeal.

III. SUMMARY OF ARGUMENT

1. **The Law.** There is a clear statutory framework for setting a supersedeas bond. The Court sets the bond based on the fair market rental value of the real property plus the fair market value of the personal property subject to the appeal. The Court then reduces the bond to an amount that will not cause the judgment-debtor substantial economic harm. The judgment-debtor bears the burden to prove any purported substantial economic harm.

2. **Fair Market Value.** Defendants have withdrawn their argument that the real property at the heart of this case has a fair market rental value of $0. But they have declined to stipulate to a minimum fair market rental value and have still failed to submit any evidence of value in support of their bond request. Plaintiffs submit expert evidence on the fair market rental value of the real property at stake. Looking only at five of the most valuable real properties (out of the dozens and dozens at issue) and the insured personal property amounts, fair market value in this case far exceeds $13,555,000.

3. **<u>No</u> Substantial Economic Harm.** Defendants rely entirely on the two affidavits of Ms. Parrott to claim that posting any bond above $0 would cause them "substantial economic harm." But Ms. Parrott's affidavits are conclusory, and her testimony reveals that these claims are based on no evidence. She admits no relevant knowledge concerning 61 of 62 Defendants. And she used an incorrect definition of "substantial economic harm" and failed to consider the legally-required factors before averring to her conclusory opinion. She ignored the fact that

---

[27] Defendants' Motion, Ex. B (Second Parrott Affidavit at 1).

[28] Parrott Dep. at 179:11-19; 180:1-13.

Defendants have consistently raised between 76% and 108% of their yearly litigation expenses from extraordinary, lawsuit-specific donations (over $1,163,268.59 in extraordinary donations to the Moncrief Legal Defense Fund in just over two years). She did not contact a single donor about a potential bond, which she admits is a litigation cost. She ignored the hundreds of thousands of dollars in past and future voluntary payments to their new parent entity, which she admitted they could postpone during appeal without any economic harm. In contrast, while it is not Plaintiffs' burden, Plaintiffs will present expert testimony at hearing from a forensic accountant with specific church accounting knowledge, who concluded that Defendants can bear a bond well above $1,000,000 without incurring anything resembling substantial economic harm – or even significantly affecting their operations.

4. **Conclusion on bond amount.** Defendants have dissipated massive amounts of Church property. Plaintiffs are entitled to a bond of well over $13,555,000. Defendants have provided no legally- or factually-sufficient evidence of substantial economic harm to lower this amount. Plaintiffs request a reasonable bond or cash deposit supported by the evidence, plus the protective injunctions requested below.

5. **Additional Post-Judgment Injunctions.** Because Defendants have dissipated massive amounts of Church property and misled the Court about it, there is clearly a risk of further dissipation. Plaintiffs are entitled to post-judgment injunctions, like the loyal Episcopalians in other ex-Episcopal breakaway faction cases in Texas received in addition to a meaningful bond or cash deposit that protects their property.

IV. ARGUMENTS AND AUTHORITIES

A. Legal standard for supersedeas

Because Defendants are appealing a "judgment for the recovery of an interest in real or personal property" (here, the Court ordered "Defendants to surrender all Diocesan property, as

well as control of the [property-holding] Diocesan Corporation, to the Diocesan plaintiffs"),[29] the Court must set the initial amount of supersedeas security pursuant to Texas Rule of Appellate Procedure 24.2(a)(2). That Rule provides:

> When the judgment is for the recovery of an interest in real or personal property, the trial court will determine the type of security that the judgment debtor must post. The amount of that security **must be at least**:
>
> (A) the value of the property interest's rent or revenue, if the property interest is real; or
>
> (B) the value of the property interest on the date when the court rendered judgment, if the property interest is personal.

Further, when determining the proper amount of supersedeas security based on the value of the real property's rent or revenue, trial courts are required to hear evidence regarding the value of that property interest's rent or revenue.[30]

However, if the Court finds, after a hearing, that posting supersedeas security in the amount required by Rule 24.2(a)(2) is "likely to cause the judgment debtor substantial economic harm," then "the trial court must lower the amount of security required by [Rule 24.2(a)(2)] to an amount that will not cause the judgment debtor substantial economic harm."[31] "As to the . . . determination of whether the Judgment Debtors are likely to suffer substantial economic harm, the Judgment Debtors have the burden of proof."[32]

Even though the "[t]he term 'substantial economic harm' is not defined by the statute . . . [i]t is clear, however, that it is something less than 'irreparable harm.'"[33] The court of appeals

---

[29] Amended Order on Summary Judgment at 2.

[30] *Reyes v. Credit Based Asset Servicing and Securitization*, 190 S.W.3d 736, 741 (Tex. App.—San Antonio 2005, no pet.) (Duncan, J., concurring) (citations omitted) (finding error harmless where movant failed to argue harm).

[31] Texas Rule of Appellate Procedure 24.2(b).

[32] *Ramco Oil & Gas, Ltd. v. Anglo Dutch (Tenge) L.L.C.*, 171 S.W.3d 905, 910 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

[33] *Id.* at 916.

has found that the "thrust of the inquiry under [the substantial harm prong] is whether the judgment debtor has the ability to meet the supersedeas requirement as determined in [the Rules for setting supersedeas security] and whether doing so is likely to result in substantial economic harm."[34] In conducting this inquiry, trial courts should "focus . . . on the judgment debtor's actual ability to post the security required."[35] "In other words, the court should be less concerned with what price the company might fetch in the marketplace if sold today and more concerned with the company's available resources and its ability to use them to post security."[36] "In conducting this analysis, the trial court has the flexibility to take into account a number of factors that could affect the judgment debtor's ability to post bond or other security based on the facts and circumstances specific to the case."[37] The "sort of inquiries that tend to reveal whether a judgment debtor is likely to suffer substantial economic harm" include:

> *How much cash or other resources would it take to post a supersedeas bond in the amount in question? Does the judgment debtor have sufficient cash or other assets on hand to post a supersedeas bond in this amount or to post a deposit in lieu of bond in this amount? Does the judgment debtor have any other source of funds available? Does the judgment debtor have the ability to borrow funds to post the requisite security? Does the judgment debtor have unencumbered assets to sell or pledge? What economic impact is such a transaction likely to have on the judgment debtor? Would requiring the judgment debtor to take certain action likely trigger liquidation or bankruptcy or have other harmful consequences?*[38]

The court of appeals has also held that "the drain on the judgment debtor's resources caused by the attorney's fees and other costs of appealing the judgment could also be a legitimate factor to

---

[34] *Id.* at 917.

[35] *Id.*

[36] *Id.*; see *also LMC Complete Automotive, Inc. v. Burke*, 229 S.W.3d 469, 487 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (adopting *Ramco* test); *EnviroPower, L.L.C. v. Bear, Stearns & Co., Inc.*, 265 S.W.3d 1 (Tex. App.—Houston [1st Dist.] 2008, pet. denied) (en banc) (same); *Anderton v. Cawley*, 326 S.W.3d 725 (Tex. App.—Dallas 2010, no pet. h.) (same).

[37] *Ramco Oil & Gas, Ltd.*, 171 S.W.3d at 917.

[38] *Id.* (emphasis in original).

consider in determining whether the judgment debtor is likely to suffer substantial economic harm."[39] Finally, the court of appeals has held that courts may consider the number of bonding agencies the Judgment Debtor contacted (here – 0), its past revenues, and its ability to otherwise secure funding for its operations.[40]

B. Defendants fail to provide adequate evidence of property value

Defendants, whose continued possession of the Diocesan and local church offices gives them control over and direct access to all of the Diocesan financial records, have chosen to forego providing the Court with any evidence regarding appropriate rents of the real properties or the value of the personal property at stake. Initially, Defendants glossed over the value of the personal property and incomprehensibly argued that the real properties, valued collectively at between $60 million and $100 million, have absolutely no rental value.[41] Defendants have since withdrawn this insupportable argument but still have failed entirely to present adequate evidence of the value of any property, real or personal, under their statutory burden.[42]

In contrast, Plaintiffs—while it is not their burden—set forth the following evidence of real and personal property values at stake in this case.

i. Personal property of the Diocese and its congregations

Defendants never so much as acknowledged that Rule 24.2(a)(2)(B) requires security at least in the amount of "the value of the property interest on the date when the court rendered judgment, if the property interest is personal." However, documents produced by Defendants

---

[39] *Id.*

[40] *LMC Complete Automotive v. Burke*, 229 S.W.3d 469, 486–88 (Tex.App.–Houston [1st Dist.] 2007, pet. denied).

[41] Defendants' Motion at 6-7.

[42] April 28, 2011 Hearing, Reporter's Record at 8 ("MR. BRISTER: Let me -- we decided we are going to drop that, so our argument about that property being zero is dropped.").

reflect that the personal property "contents" of the local church buildings and other real properties are insured for $10,618,390.[43] Defendants validated these figures at the deposition:

> Q. To the best of your knowledge, the information in this insured property value statement is true and accurate; is that correct?
> A. To the best of my knowledge.
> Q. And the Defendant Diocese has relied on the information in this in order to insure its property?
> A. Yes, sir.
> Q. And the Defendant Diocese has never contested or had issue with the values that are in this document?
> A. Not that -- to my knowledge, no, sir.[44]
>
> Q. So if it was necessary to estimate the value of the property that is subject to the court's judgment, would this document be a reasonable place to look?
> A. In my knowledge it would be the only place to look unless each entity was individually assessed or whatever. I mean, this is all that we would have.
> Q. And since the plaintiffs haven't to date had the opportunity to speak with those other entities, this is in fact the only document we have that tells us about the value of the properties; is that correct?
> A. Pretty much, yes, as far as I know.[45]

Even if it is assumed that this personal property is insured for more than twice its actual value (an unlikely proposition), the supersedeas bond based on this tangible personal property alone would still be more than $5 million pursuant to Rule 24.2(a)(2)(B).[46]

In addition to the tangible personal property that is reflected in the insured values, the personal property here also includes funds in bank accounts held by the Diocese, the Corporation, and the individual congregations of the Diocese. As of the date judgment was signed, based on documents produced by the Defendants, the diocesan accounts alone contained well over $2,000,000 in funds. If the funds now frozen by Frost Bank are excluded from the

---

[43] Exhibit B to Deposition of Ms. Parrott at SC 4051-4056, "Insured Property Values" spreadsheet. This amount was calculated by adding the values in the "$ Cnts" column. The values in this column are identical to amounts corresponding to the label "Contents" for each property and found in a document produced by Defendants entitled "Commercial Package Policy" from Philadelphia Indemnity Insurance. Relevant pages of Deposition Exhibit B are attached hereto as Exhibit B.

[44] Parrott Dep. at 151:13-23.

[45] Parrott Dep. at 152:16-153:2.

[46] As argued herein, Defendants have failed to demonstrate that this or any other amount would cause them substantial economic harm.

supersedeas calculation, these accounts still hold over $350,000. Finally, despite their representations to the contrary, Defendants have continued to refuse to provide any documents or information regarding accounts held by or for the 47 congregations, but money in these accounts should also be added to the supersedeas calculation.

Taken together, the personal property alone justifies a bond high in the range of possible bonds above, without even yet considering the valuable real property.

ii. The annual rental value of the real properties is at least $1.25 million.

Even though Defendants have put forth no evidence on rental value to meet their burden, Plaintiffs have retained real estate experts with special expertise in church property to estimate the rental value of just a small sample of the properties at issue here.

Analyzing just **five** of the dozens of real properties at issue in this case, these real estate experts have estimated the total fair market rental value of these five properties at approximately $105,000 per month.

Statistics regarding the time to disposition in the Texas Supreme Court indicate that the average time between filing of an appeal and issuance of an opinion in argued cases is 28 months, with the time period in individual cases ranging from 11 to 54 months.[47] And, as Defendants' counsel told this Court on the record:

> MR. BRISTER: They take one of these [direct appeals] about every 10 years . . . . they're not going to – they're not going to take that.
>
> STATE COURT: Well, they -- and that's -- okay. But I still can't just craft something to make it go to the Supreme Court.[48]

[47] *See* Pamela Stanton Baron, *The "Shadow Docket" of Long-Pending Petitions Or Where Your Case Goes When It Falls Off the Conveyer Belt*, a presentation during Practice Before the Supreme Court of Texas, a CLE course presented by TexasBarCLE and the Appellate Practice Section of the State Bar of Texas on April 17, 2009, at 2.

[48] February 8 Hearing, Reporter's Record at 16:1-18:24.

Defendants told this Court that the more likely intermediate appeal would add another 18 months.[49] On average, the parties face between 28 and 46 months on appeal through the Texas Supreme Court, and many months longer if the appeal goes to the United States Supreme Court.

Even if it is assumed that Defendants will successfully persuade the Texas Supreme Court to exercise jurisdiction over their direct appeal, and even if this appeal were decided at the *shortest* end of the spectrum (two giant assumptions), the fair market rental value on just these few properties would already exceed $1.15 million. Using more realistic numbers, a likely regular appeal would take 46 months, and for just these few properties, the bond would need to be more than $4.8 million to comply with Texas law. Using the average 28-month period for a direct appeal, plus the insured personal property amount, yields the useful benchmark of $13,555,000, which is of course far below the true fair market value of all property at stake in this case.

Notably, the Local Episcopal Congregations have been exiled from their lawfully-owned buildings and forced to rent worship space elsewhere since November 2008.[50] Thus, instead of using their own churches without paying rent, these congregations will have to continue to pay rent to worship in woefully inadequate locations during appeal. An appropriate supersedeas bond is not only legally required, but necessary.

C. Defendants provide no legally or factually sufficient evidence of substantial economic harm.

Defendants have attempted to argue that setting the amount of security necessary to supersede this Court's judgment over "$0, or some other nominal amount" is likely to cause

[49] February 8 Hearing , Reporter's Record at 8:19-21 (Defendant's counsel stating intermediate appeal would add 1.5 years).

[50] Affidavits from leaders of the Local Episcopal Congregations attesting to this fact were included in the Supplemental Appendix in Support of Local Episcopal Parties' and Local Episcopal Congregations' Supplemental Motion for Partial Summary Judgment, filed March 31, 2011 in Cause No. 141-237105-09, as Exhibits Q-Z and BB.

them substantial economic harm.[51] At deposition, Defendants clarified that "nominal amount" also means zero. To reduce the statutory amount of the bond from the fair market value of the property to a lesser amount, however, Defendants must prove what bond amounts would cause them substantial economic harm.[52] They have failed to do so as a matter of law.

i. Defendants failed to provide any evidence at all on substantial economic harm for 61 of 62 Defendants; Defendants' evidence on the remaining 1 of 62 Defendants is conclusory, biased, baseless, and wrong.

Defendants' only evidence that setting a bond above $0 would cause substantial economic harm is the two affidavits of Ms. Parrott.[53] Ms. Parrott conceded at deposition that she did not, and could not, provide any evidence for 61 of 62 Defendants in this case.

> Q. ...You don't mention substantial economic harm to the Defendant Congregations in your affidavit; is that correct?
> A. No, sir.
> Q. And you are not here today to testify about whether there would be substantial economic harm to any Defendant Congregations; is that true?
> A. That's true.
> Q. And if I asked you questions about substantial economic harm to Defendant Congregations, you wouldn't really have a basis to answer them, would you?
> A. Not really, no, sir.
> Q. Okay. Let's ask the same questions about the individual defendants. You don't make any statements in your affidavit about substantial economic harm to the individual defendants, do you?
> A. No, sir.
> Q. And you have told us that you're not here today to speak about substantial economic harm to any individual defendants; is that correct?
> A. That's correct.
> Q. Okay. And you've said earlier you have no personal involvement in the finances or financial affairs of the individual defendants; is that correct?
> A. That's correct.[54]

[51] Defendants' Motion to Set Supersedeas at 1, 5.

[52] *Ramco Oil & Gas, Ltd.*, 171 S.W.3d at 910.

[53] *See* Defendants' Motion to Set Supersedeas. There is also an affidavit from former Canon Hough, but that discusses (irrelevant to the legal standard) the speculative harms that would supposedly occur if the Court's February 8th order were enforced today – not purported harms based on posting a bond.

[54] Parrott Dep. at 107:16-108:25.

> Q. Are you also here today to speak about the Defendant Corporation and its business affairs?
> A. No, sir, not totally.
> Q. Okay. So there are 62 defendants in this case that have judgments against them and you are only prepared today to speak on one of those 62 defendants?
> A. Yes, sir.[55]

Defendants' evidence on the remaining 1 of 62 Defendants (the Diocese) is legally inadequate. Substantial economic harm claims must be supported by legally sufficient evidence:

> As to the . . . determination of whether the Judgment Debtors are likely to suffer substantial economic harm, the Judgment Debtors have the burden of proof . . . . **[W]e conclude that the testimony of interested witnesses Bertram and Moar does not satisfy the *Lofton* standard for conclusive evidence. Accordingly, the testimony of these witnesses did not conclusively prove that Ramco Energy will likely suffer substantial economic harm if it is required to post security in an amount greater than $200,000.**[56]

Here, Defendants have not produced conclusive evidence of substantial economic harm because they rely entirely on a wholly interested witness:

> Q. And you work for an entity that is affiliated with the Southern Cone; is that correct?
> A. Yes, sir, I do.
> Q. And you go to a local congregation that is ultimately affiliated with the Southern Cone?
> A. Yes, sir.
> Q. And you sit on the board of the Anglican Church of North America, the board of the provisional benefits and risk management committee; is that correct?
> A. I'm a member of that board, yes, sir....
> Q. So it's fair to say that all of your affiliations, both professional and religious congregational affiliation, are with the Southern Cone and not with the Episcopal Church of the United States?
> A. That would be a fair statement.[57]

Further, Defendants' evidence of substantial economic harm is legally insufficient because it ignores the relevant legal standard, is conclusory, and lacks foundation. While courts are directed to consider whether a bond amount would, for instance, "likely trigger **liquidation**

---

[55] Parrott Dep. at 35:17-23.

[56] *Ramco Oil & Gas, Ltd.*, 171 S.W.3d at 917 (emphasis added).

[57] Parrott Dep. at 30:21-31:18.

or bankruptcy or have other harmful consequences,"[58] Defendants' affiant employed a flawed and overbroad understanding of "substantial economic harm":

> Q. Is it your position that if the Defendant Diocese can't make every expenditure in its proposed 2011 budget, that constitutes substantial economic harm?
> A. Yes.[59]

The affidavit and deposition evidence are conclusory and without foundation:

> Q. So this is an organization that has about a $1.8 million a year operating budget with several line items and your entire analysis on whether or not the Diocese could post any bond at all was done in your head?
> A. Pretty much, yes, sir.
> Q. How long did it take you to do that analysis?
> A. It did not take long.[60]

While courts are directed to assess "Does the judgment debtor have any other source of funds available?"[61] (including a consideration of the debtor's "past revenues"),[62] Defendants excluded this wholly from their analysis:

> Q. ... So this entire statement that the Diocese cannot post a bond above zero was based entirely on looking at excess cash; is that correct?
> A. Looking at cash in general, yes, sir.
> Q. Okay. Did you look at any other sources of funding?
> A. No, sir. We had no other sources of funding that I know of.[63]

Defendants concede they were able to fund this litigation almost entirely through donations to the Moncrief Legal Defense Fund (totaling nearly $1,200,000 in just over two years), but the affiant did not contact a single donor to inquire about funds for a bond before averring that no such funds were possible or available.[64]

---

[58] *Ramco Oil & Gas, Ltd.*, 171 S.W.3d at 917 (emphasis added).

[59] Parrott Dep. at 132:23-133:2.

[60] Parrott Dep. at 111:23-112:5.

[61] *Ramco Oil & Gas, Ltd.*, 171 S.W.3d at 917.

[62] *LMC Complete Automotive*, 229 S.W.3d at 487-88.

[63] Parrott Dep. at 74:5-12.

[64] Parrott Dep. at 115:20-116:1.

Q. …[Y]ou were able to fund a truly large litigation mostly through extraordinary contributions from donors; is that correct?
A. Yes, sir.
Q. Why couldn't you do the same with a bond?
A. I don't -- I can't answer that.[65]

Nor did the affiant conduct any other substantive due diligence before telling the Court that no bond was possible.

Q. …[I]in 2009, the Defendant Congregations were able to raise somewhere over $10 million in donations, correct?
A. Correct.
Q. Do you know if a single defendant congregation has called a donor to say, hey, if we need -- if we want to supersede this judgment against us, we need to raise a bond, can you spare some amount of money for that?
A. I don't know. Not to my knowledge. I don't know.[66]

Q. Have you approached any of the individual defendants about funds to secure a bond?
A. No, sir, I have not.
Q. Have you approached Chad Bates, who was able to give a $3.5 million line of credit knowing the property was subject to litigation, about helping to fund a bond?
A. No.[67]

Q. Okay. Have you approached ACNA about any funds to put towards the bond?
A. No, sir.
Q. Has anyone that you know of?
A. I wouldn't know. Not that I know of.
Q. Have you approached any other Diocese within the Southern Cone or ACNA about funds to support a bond?
A. No, sir, I have not.
Q. Have you approached any other organizations about the availability of funds to post a bond?
A. I have not.[68]

[65] Parrott Dep. at 129:11-16.

[66] Parrott Dep. at 128:17-129:2.

[67] Parrott Dep. at 132:11-18.

[68] Parrott Dep. at 131:11-22.

In 2007, one court of appeals rejected a "substantial economic harm" argument where the debtors only presented evidence from one surety.[69] Here, Defendants presented no such evidence at all:

> Q. Have you contacted any potential sureties regarding a possible supersedeas bond in this lawsuit?
> A. No, sir.
> ....
> Q. So you didn't call up any surety and say, these are our assets, these are our donors, this is what we typically take in, this is what we take in in donations, what sort of a bond do you think we can get?
> A. No, sir, I did not.[70]

Courts are similarly directed to assess "Does the judgment debtor have unencumbered assets to sell or pledge?,"[71] but Defendants excluded this too from their analysis:

> Q. So you did not consider any property acquired after the split with separate funds to be unencumbered property that could be supported -- that could support a bond?
> A. Not at the time I was looking at this, no, sir, I did not.
> Q. Have you done it at any time?
> A. Not really, no.[72]
>
> Q. ... You have agreed that the property held by these ten new churches in your opinion is outside the scope of this lawsuit?
> A. Right.
> Q. Have you approached any of these new congregations about using that separate property to secure a bond?
> A. No.
> Q. To your knowledge, has anybody?
> A. Not to my knowledge.[73]
>
> Q. ... [I]n preparation of your affidavit looking to the subject of substantial economic harm, did you assess the real or personal property of any of these new churches?
> A. No, sir.[74]

---

[69] *LMC Complete Automotive*, 229 S.W.3d at 486-88 (affirming trial court's denial of debtor's argument that requiring it to post a supersedeas bond for half its net worth would be likely to cause it substantial economic harm, noting in part that the debtor had only applied for a bond with one bonding agency).

[70] Parrott Dep. at 67:4-16.

[71] *Ramco Oil & Gas, Ltd.*, 171 S.W.3d at 917.

[72] Parrott Dep. at 124:16-23.

[73] Parrott Dep. at 168:3-12.

[74] Parrott Dep. at 170:1-5.

Defendants' witness conceded ten new congregations had joined the Defendant Diocese since the schism.

ii. In reality, Defendants can support a meaningful bond without experiencing substantial economic harm, even considering only the limited evidence Defendants have provided to date.

As Plaintiffs will demonstrate at the May 19, 2011 hearing, through the testimony of Bill Shamburger, a CPA of 39 years experience who served for eight years on the business and audit committee of the Baptist General Convention of Texas, even based on their own limited financial document production and admissions, Defendants could post a significant bond without experiencing substantial economic harm or even minimal economic harm. Considering the *Ramco* factors, Defendants have consistent historic and projected sources of funding for a significant bond as shown below.

First, Defendant Diocese's past revenues demonstrate substantial donations of at least $1,163,268.59 specifically for litigation costs since 2008.[75] Since this dispute began on or around November 15, 2008, Defendants have paid $1,139,268.59 of their $1,348,207.06 in legal expenses, or 85%, through new donations, without using operating assets.[76] This pattern of giving matching need is fairly constant over the years of data available:

	2008	2009	2010	2/31/2011	Total
Needed	22,743.48	431,822.00	792,525.88	123,859.18	1,370,950.54
Donated	24,130.32	402,056.00	603,642.27	133,440.00	1,163,268.59
%	106%	93%	76%	108%	85%

[75] Parrott Dep. at 114:13-115:4; Deposition Exhibit B (SC3866; 3985; 3991; 3995).

[76] Deposition Exhibit B (SC3866; 3980; 3985; 3991; 3995).

As Ms. Parrott conceded, the cost of a supersedeas bond would be a litigation cost,[77] and historically, outside giving has largely met litigation costs.[78] For the past few years, Defendants have therefore borne at most 24% of their litigation expenses and twice gained money in those accounts per annum by bringing in more in donations than they spent. Even in the 24% year, 2010, Defendants exceeded their operating budget by $39,847.[79]

In addition to this dedicated stream of litigation cost contributions, Defendants have ordinary assets available to support a bond without causing anything resembling substantial economic harm. Defendant has budgeted $82,500 in voluntary donations to ACNA, which they classify in their budget under expenses to the "general church."[80] Over the past 2 years, Defendants have made similar payments under "general church" in amounts of $96,000 (2009)[81] and $75,000 (2010),[82] for an average donation of $84,500 per annum. Defendants were able to fund these payments out of their ordinary revenue stream while the litigation was underway. Defendants' 2011 voluntary payment of $82,500 is similarly expected in a zero-balance budget,[83] meaning that Defendant expects to be able to fund this donation out of operating funds, separate and apart from litigation costs, which are funded through special accounts.[84] Ms. Parrott testified in her deposition that these payments to ACNA were voluntary, and failure to make such donations would cause the diocese no economic harm,[85] much less substantial economic harm.

---

[77] Parrott Dep. at 131:3-10.

[78] Parrott Dep. at 129:3-14.

[79] Deposition Exhibit B (SC3911).

[80] Deposition Exhibit B (SC3917).

[81] Deposition Exhibit B (SC3913).

[82] Deposition Exhibit B (SC3917).

[83] Deposition Exhibit B (SC3919).

[84] Parrott Dep. at 149:9-150:13.

[85] Parrott Dep. at 137:17-138:16.

According to Ms. Parrott's deposition, Defendant Congregations bring in $10.5 million, largely from new donations, each year,[86] and Defendant Diocese assesses a percentage against these donations each year.[87] These assessments are budgeted to be $1,549,874 for 2011.[88] An estimated $112,500 of these anticipated assessments could support a bond. This amount is not required for current year operations given the 2010 budget surplus and voluntary donations to the Anglican Church of North America, and therefore would not cause substantial economic harm.

In addition, at deposition, Ms. Parrott, the Defendant Diocese's Business and Finance Director, noted at least ten churches that are part of the Defendant Diocese but hold separate property that, per that witness, is not encumbered by the judgment in this case.[89] These churches are St. Francis in Dallas, Christ the Redeemer in Fort Worth, St. Matthias' in Dallas, St. Gabriel in Springdale, Arkansas, Mission Santa Cruz in Houston, Cross of Christ in Glen Rose, Anglican Church in Waco, Holy Spirit in Tulsa, Oklahoma, St. Paul's in Midland, and All Saints' in Monroe, Louisiana.[90] The real and personal property of these new congregations includes buildings and contents. One can estimate the value of the separate assets for the St. Matthias' building alone at $2,875,570 based on county tax records. Assuming the building is otherwise unencumbered, the bond would result in a loan-to-value ratio of less than 35%. Generally churches should be able to borrow 60 to 80% of the value of the church building. With the maximum loan-to-value ratio, the Defendant should be able to obtain $1,700,000 to $2,300,000 by pledging this one asset alone.

Because only the surety fee would be required to be paid at the time of the bond's issuance, Defendants could, for example, secure a bond of $1,000,000 by drawing approximately

---

[86] Parrott Dep. at 128:9-20.

[87] Parrott Dep. at 105:24-106:9.

[88] Deposition Exhibit B (SC3916).

[89] Parrott Dep. at 162:19-171:20.

[90] Parrott Dep. at 163:5-164:7.

$30,000 (estimating a 3% surety fee for a bond of this size) from their internal funds, an amount that is less than their 2010 budget surplus. And, looking solely at Defendants' 2010 budget surplus plus their current year budget for voluntary donations to their new parent organization (which Defendant testified would cause them no economic harm to forgo), this total (approximately $112,500) would generally support the premium for a bond of $3,000,000 to $5,000,000 or more. Moreover, all of this assumes Defendants get zero donations toward a bond, which is unrealistic in light of their consistent historic pattern of significant legal donations matched to need. Extrapolating from this data, even using the most conservative year when Defendants bore 24% of their litigation costs, Defendants could afford to secure a bond over the statutorily-determined amount without incurring substantial economic harm. Of course, if donors met 93% to 100% of the bond, as they did for litigation expenses generally in three of the four years listed, a larger bond could be supported.

None of these actions in support of a bond is "*likely [to] trigger liquidation or bankruptcy or have other harmful consequences*" of that nature.

iii. Defendants have wrongly failed to provide evidence on the other 61 Defendants.

While it is not necessary, because Plaintiffs have already shown that Defendants can bear a substantial bond based on the current evidence, Defendants have wrongly withheld from the Court and from Plaintiffs evidence regarding the other 61 Defendants.

(1) The individual Defendants have no legal basis to hide behind their "official capacity" to claim no assets, when the judgment they wish to supersede says they have no official capacity.

As a matter of law, the Court should also take into account the assets of the Diocesan Defendants in their individual capacities when deciding the amount of supersedeas security that Defendants can post without experiencing likely "substantial economic harm." Defendants attempt to argue that the "Defendant individuals are present in this case only in their official

capacities, and have no net worth in that capacity."[91] They concede that Plaintiffs plead claims against the Defendant individuals in their individual capacities; however, they claim that all of those claims remain pending in the original case.[92] But this argument is baseless. **Plaintiffs specifically brought their declaratory summary judgment claims against the Defendants in their individual capacities in order to prevent them from making this precise argument.**[93]

Further, as a result of the Court's judgment, the individuals Defendants do not have an official capacity since they only claim to be officers in the Episcopal Diocese of Fort Worth and its subordinate Corporation, and this Court has ruled they are not. As Defendants' own insurer noted,[94] the substantive effect of the Court's judgment is that the Defendant individuals do not have the official capacities that they claim. Similarly, the individual Defendants cannot claim immunity for acts taken in their official capacities when this Court has ruled that they lack the only official capacities they claim to possess.[95] If the Individual Defendants want to supersede this judgment with a proper bond, they can. They cannot hide behind their alleged official capacities, which argument the Court has rejected.

---

[91] Defendants' Motion to Set Supersedeas at 4.

[92] *Id.*

[93] *See* Individual Plaintiffs' Sixth Amended Original Petition, ¶ 6-8; 72.

[94] *Philadelphia Indemnity Ins. Co. v. Episcopal Diocese of Fort Worth*, No. 3:11-cv-00853-D (N.D. Tex.), Plaintiff Philadelphia Indemnity Insurance Company's Complaint for Declaratory Judgment (Dkt. No. 1, filed Apr. 25, 2011) at ¶ 4..

[95] Further, the individual Defendants failed to preserve any affirmative defense they might have possessed under Texas Rev. Civil Stat. Art. 1396 by failing to plead any such defense under Texas Rule of Appellate Procedure 94. The individual Defendants only plead immunity under Chapter 84 of the Civil Practice & Remedies Code. *See* Defendants' Answer to First Amended Plea in Intervention of the Episcopal Congregations at ¶ 16, 17; Defendants' Answer to Individual Plaintiffs' Sixth Amended Original Petition at ¶ 12, 13. But the individual Defendants have also failed to properly preserve or establish a charitable immunity defense under Chapter 84. First, they have not established that they have taken any of their post-schism actions in the capacity of a volunteer or employee of a qualified charitable organization. Second, Bishop Iker cannot claim immunity under Chapter 84 because he only plead immunity as an employee of a charitable organization under Tex. Civ. Prac. & Rem. Code § 84.005; however, Iker is now ineligible for immunity under § 84.005 because his actions are not covered by a liability insurance policy. Tex. Civ. Prac. & Rem. Code § 84.007(g). Third, the individual trustee Defendants have not established that they are entitled to volunteer immunity because they have failed to show that all of their acts or omissions were not "intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others." Tex. Civ. Prac. & Rem Code § 84.007(a).

Each individual defendant must file a bond to supersede the part of the judgment against him or her, or they could jointly file a bond for the full amount.[96] Even for non-money judgments, an appellant cannot rely on a bond filed by another appellant.[97] Thus, the Court should consider the individual defendants' assets when setting the amount of supersedeas security and when deciding whether requiring a bond is likely to cause Defendants substantial economic harm.

(2) The Defendant Congregations are bound by the Court's judgment, based on their repeated promises to the Court, and they cannot perform a bait-and-switch now.

Second, the Court should consider the personal property of the Defendant Congregations when deciding whether a non-nominal amount of supersedeas security is likely to cause Defendants substantial economic harm. Defendants cannot perform a bait-and-switch on this Court. They have represented, multiple times, that Defendant Congregations are bound by the Court's final judgment. They have made these express representations to convince the Court to sever its February 8, 2011 Order and to deny Plaintiffs the opportunity to pursue further discovery against the Defendant Congregations and Plaintiffs' Supplemental Motion for Summary Judgment. As Defendants repeatedly stated:

- "**All parties will be bound by the summary judgment** [original emphasis]. The Local TEC Plaintiffs object that severance would split their claims against the Defendants from identical claims against the Intervening [Defendant] Congregations. But since the Motion to Sever was filed,

---

[96] *Fortune v. McElhenney*, 645 S.W.2d 934, 935 (Tex. App.—Austin 1983, no writ) (holding that each appellant who wants to suspend a judgment must file a bond to supersede the part of the judgment against it because "[i]f judgment were reversed with respect to one appellant, or if appellees should be unable to collect one-half of the judgment from one appellant, the other appellant would nevertheless be liable for the entire judgment, interest, and costs. The surety on the other appellant's bond would only be liable for the amount of the bond filed by that appellant, which, as we have stated, is only slightly more than half of the amount of the judgment.")

[97] *Valerio v. Laughlin*, 307 S.W.2d 352, 353 (Tex. App.—San Antonio 1957, orig. proceeding) (holding that every member of a County Commissioner's Court had to move to supersede in their individual capacities a judgment requiring them to allow the plaintiff to sit on the Court) ("The only one of the above named persons who attempted to file a supersedeas bond was Jose D. Ramos. The judgment being one other than for money, could only be superseded after the trial court had made an order setting the amount of such supersedeas bond. Rule 364(e), Texas Rules of Civil Procedure. Even if the bond filed by Ramos had been a legal one, it would not inure to the benefit of the other defendants who made no attempt to file a supersedeas bond.").

Defendants have repeatedly offered to stipulate that ***all*** parties affiliated with ***all*** sides should be bound by the Court's summary judgment Order [original emphasis]. As these claims will never have to be tried twice, they are not 'interwoven' as contemplated by Rule 41."[98]

- DEFENDANTS: "[Plaintiffs] think we should . . . make sure everybody is in one judgment . . . . If the summary judgment is right, none of that's necessary, because your order says turn it all over to them. So let's think for a second, if somebody is not named or some sofa is not listed, does that mean we can keep it? Your order said turn it over."[99]

- PLAINTIFFS: [A]s the Court recalls, we did not -- we did not move against the defendant congregations, we were trying to break it down and keep it at the diocesan level first and then move on to the defendant congregation . . . . So that's a big part of the supplemental motion for summary judgment . . . .

  THE COURT: Okay.

  DEFENDANTS: And as I told him for the last six weeks, and I'll do it right now on the record, we stipulate that the nonmoving congregations are bound by your summary judgment. They don't need to do -- they're going to send us hundreds of pages of more summary judgment stuff, it's not going to be over in 22 days, we're going to spend $30,000 trying to establish something I just stipulated to.[100]

- DEFENDANTS: "We're willing to stipulate to bind the congregations, and we've done it on the record, so that's that."[101]

In addition, Defendant Congregations' claim to possess a beneficial interest in real property held by or for their benefit by the Episcopal Diocese of Fort Worth and/or by the Diocesan Corporation is clearly a part of the severed cause because it was disposed of in this Court's judgment.[102] Further, the Defendant Congregations joined in the Diocesan Defendants' motion for summary judgment and their notice of appeal. Thus, by granting the Plaintiffs' motion for summary judgment and ordering the Defendants, including the Defendant Congregations, to turn over all "Diocesan property" to the Diocesan plaintiffs, the Court, in effect, granted summary

[98] Defendants' Reply in Support of Motion to Sever at 1.

[99] March 31 hearing, Reporter's Record at 6-7.

[100] March 31 hearing, Reporter's Record at 24-26.

[101] March 31 hearing, Reporter's Record at 36.

[102] *Id.* at 6 ("The local parishes either have paid for or are paying for the properties they occupy, and have a right to the use and benefit of those properties.").

judgment on the Plaintiffs' claims that the Defendant Congregations lack a beneficial interest in the real and personal property covered by the Dennis Canon.[103]

For all of these reasons, the assets of the Defendant Congregations are relevant to the Court's decision relating to the amount of supersedeas security it should require Defendants to post and should be considered when the Court decides whether a non-nominal supersedeas bond is likely to cause Defendants substantial economic harm; the Defendant Congregations cannot rely on the supersedeas efforts of another appellant to supersede the parts of the judgment that were entered against them.[104]

D. Defendants' net worth positions are legally-irrelevant.

Among the many misstatements of law in their motion, Defendants make the incorrect claim that this Court must apply a "net worth" cap on the supersedeas bond.[105] But as Defendants' own citations show, this statutory cap applies only to money judgments (TEX. R. APP. P. 24.2(a)(1)). It has no application under the statutory rules governing judgments to recover real and personal property (TEX. R. APP. P. 24.2(a)(2)). The Civil Practice and Remedies Code, Sec. 52.006, similarly applies this "net worth cap" only and expressly "when a judgment is for money." Defendants cannot invent statutory requirements out of whole cloth. As the Fourteenth Court of Appeals noted in a supersedeas case, failure to analyze or apply the law correctly is an abuse of discretion.[106]

E. Plaintiffs are also entitled to post-judgment injunctions, in addition to a monetary bond, to protect Church property.

Every Texas court considering an ex-Episcopal breakaway faction case has imposed both

---

[103] *Fortune*, 645 S.W.2d at 935.

[104] *Valerio v. Laughlin*, 307 S.W.2d at 353.

[105] Defendants' Motion at 3.

[106] *Ramco Oil & Gas, Ltd.*, 171 S.W.3d at 910 ("As to the … determination of whether the Judgment Debtors are likely to suffer substantial economic harm, the **Judgment Debtors have the burden of proof**") (emphasis added); (citing TEX. CIV. PRAC. & REM. CODE ANN. § 52.006(c); TEX. R. APP. P. 24.2(c)(3)).

a substantial monetary bond (or cash deposit) and post-judgment injunctions. Texas Rule of Appellate Procedure 24.2(d) states:

> *Injunction.* The trial court may enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

In light of the massive evidence of actual dissipation to date – including Defendants' specific acts designed to evade this Court's reach – injunctions are absolutely necessary in addition to a bond. These acts include:

Fraudulent conveyances. As shown, Defendants admit they have moved a still-undisclosed amount of funds out of state in an express attempt to avoid satisfaction of judgment. As shown, this account was omitted from Ms. Parrott's affidavit to the Court in support of Defendants' Motion to Set Supersedeas.

Numerous encumbrances. As shown, in addition to granting up to a $3.5 million lien on Church property during this case to a single-purpose shell entity created on the day of transaction by a named individual Defendant, these Defendants have also encumbered additional Church property with mineral and gas leases both before and after the split, taking the proceeds for themselves.

Dissipation of depository accounts. As shown, when Defendants told the Court that Church accounts had gone up, not down, this was based on a misleadingly selective analysis:

> Q. So you only looked at a third of the accounts in order to make claims about whether or not there had been dissipation; is that correct?
> A. I looked at the accounts I was asked to look at, those accounts. Those six accounts out of 18, yes; that can be one-third of the accounts, yes, sir.[107]
>
> Q. ...[T]he risk of dissipation isn't limited to these six accounts, is it?
> A. No, sir.[108]

[107] Parrott Dep. at 58:21-59:1.

[108] Parrott Dep. at 49:21-23.

The balances in the depository accounts held at Frost Bank decreased approximately $550,000 from October 31, 2008 to February 28, 2011.[109] Ms. Parrott attempted to explain this change during her deposition as related to loans made from the revolving account.[110] However, only three new loans totaling approximately $42,000 were made between these two dates.[111] In addition, only approximately $20,000 of these new loans remained outstanding as of February 28, 2011.[112] Furthermore, overall loan balances decreased approximately $35,000 during this period,[113] which would support an expected cash flow source from lending activities rather than a cash use as implied by Ms. Parrott. She also attempted to suggest that some of the decrease in the Frost depository accounts could be explained by the inclusion of the Business First depository account.[114] In addition to not disclosing this account in either of her affidavits, the Business First account is not listed on the general ledger balance sheets provided for the operating,[115] special,[116] revolving,[117] or Camp Crucis funds.[118] And at deposition, she testified that the funds are counted in the same general ledger accounts as the Frost checking account and would therefore not explain missing funds.[119] And even if Ms. Parrott's explanation were accurate, which it is not, it still would not explain massive dissipation:

> Q. Well, now, we know the First Business account -- I think the balance is something like $130,000?

---

[109] Parrott Dep. at 63:5-64:4.

[110] Parrott Dep. at 68:11-70:4.

[111] Deposition Exhibit B (SC4008).

[112] Deposition Exhibit B (SC4008); Parrott Dep. at 84:7-86:22.

[113] Deposition Exhibit B (SC4008).

[114] Parrott Dep. at 86:23-87:11.

[115] Deposition Exhibit B (SC3966).

[116] Deposition Exhibit B (SC3994).

[117] Deposition Exhibit B (SC4007).

[118] Deposition Exhibit B (SC4018).

[119] Parrott Dep. at 96:19-98:15.

> A. That's probably close, yeah.
> Q. Okay. So that doesn't explain over half a million dollars missing, does it?
> A. Well, those funds have been used.[120]

Changes in investment accounts. Even the six accounts that Ms. Parrott highlighted to show gains really do nothing of the sort. These are investment fund accounts, which, as Ms. Parrott conceded, not surprisingly increased in value between November 2008 (just after an epic market crash) and 2011, as the economy recovered. As Ms. Parrott conceded, this does little to disprove dissipation:

> Q. . . I'm asking just because the accounts got bigger doesn't mean nobody took money out of them, does it?
> A. No, it does not.
> Q. In fact, someone could have taken a lot of money out of them and all we know is that they're bigger, but we don't know if they're as big as they should be; is that right?
> A. You can assume that, yeah.
> Q. It's true, right? We have no documents to know whether that has happened?
> A. That's correct.[121]

At deposition, Ms. Parrott ultimately conceded that her earlier claim – that no funds had been withdrawn from these endowments outside the ordinary course of business[122] – was in fact false, for instance admitting that Defendants withdrew 12 times the claimed ordinary course of business amount from the Diocesan Fund in 2011.[123]

In reality, if one were to compare the changes in value for major stock indexes such as the S&P 500 and Dow Jones Industrial Average for this same period, the increase in value would be 37% and 31%, respectively. Based on analysis of the statements for the four months records which were provided, each of the portfolios appears to be heavily invested in equity based securities. Comparing Defendants' before-and-after bank statements (using October 31, 2008,

[120] Parrott Dep. at 87:14-20.

[121] Parrott Dep. at 197:8-20.

[122] Defendants' Motion, Ex. A (Parrott Affidavit at 1) (any withdrawals from investment funds "since November 2008 were made in the usual and ordinary course of business of the Episcopal Diocese of Fort Worth").

[123] Parrott Dep. at 207:8-20.

the last statement available prior to the split), the increase in value here is only about 20%.[124] The observed increase in market value is far less than the expected return during this period on a portfolio invested primarily in equity based investments.

In addition, Ms. Parrott only compared market values to make her claims.[125] An analysis of the statements provided illustrates that the tax basis in these investments decreased approximately $300,000.[126] This massive decrease in value again indicates the possibility that assets may have been sold and distributed or transferred from the accounts; Defendants have provided no documents to allow Plaintiffs to determine the source of this loss in value.

Given Defendants' documented actual and rampant dissipation from the depository accounts (done at times with *admitted* intent to escape this Court's authority), as well as the clear risk of dissipation in the remaining 6 investment funds (including documented actual dissipation in at least the Diocesan invested fund and likely others), post-judgment injunctions are obviously necessary, just as they were in the other ex-Episcopal breakaway cases in Texas.

Finally, Defendants have conceded that their litigation expenditures (funding the "extraordinary" retention of a "recently retired Texas Supreme Court Justice")[127] are not normal course of business expenses.

> Q. And litigation expenses are not listed in your books as part of operations on the budgets?
> A. No, sir.
> Q. They are instead part of what I believe are called special funds; is that correct?
> A. Yes, sir.
> Q. So we won't see a line item for litigation under ordinary operating expenses?

[124] Deposition Exhibit B (SC3826); Parrott Dep. at 189:15-190:13. Notably, simply correcting Defendants' misleading use of two dates after the split reverses almost $114,000 of Ms. Parrott's stated gain.

[125] Parrott Dep. at 200:15-23; *see, e.g.*, Deposition Exhibit B (SC3827).

[126] Deposition Exhibit B (SC3827-3850).

[127] Defendant's Response to Show Cause Seeking to Maintain Stay (Dkt. No. 40), at 8, in *Episcopal Diocese of Fort Worth v. The Rt. Rev. Jack Leo Iker*, Case No. 4:10-cv-00700-Y in the United States District Court for the Northern District of Texas, Fort Worth Division.

A. Not on this statement, no, sir.[128]

Q. And the special funds account is a separate reporting entity from operations; is that correct?
A. Yes, sir.[129]

A. You've used the phrase "ordinary course of business" a few times and I think we have a definition on the record, but I just want to clarify. You're using that phrase to mean ordinary operating costs; is that correct?
A. Yes, as defined by our budget.
Q. Yes. And the budget specifically for operations. That's the only budget you've told us?
A. Pretty much, yes.
Q. Okay. And litigation expenses are not part of that budget?
A. Not part of the operating budget, no, sir.
Q. Okay. These litigation costs are extraordinary, aren't they?
A. Uh-huh.
Q. They're not part of the ordinary course of business of the Diocese in its history since '83?
A. That's correct.
Q. In fact, the motion, which is Exhibit A, says, to date, defendants have paid litigation costs mostly from extraordinary gifts and contributions.
A. Yes, sir.
Q. … And that sentence cites to your affidavit which says, any appreciable bond would render defendants unable to meet the current operating expenses, much less the extraordinary expenses of this litigation on appeal?
A. That's right. Correct.[130]

While Defendants have consistently been able to raise substantial funds to cover their litigation costs and attorney's fees, they have nonetheless improperly opted to use Plaintiffs' own Church funds to pay their attorneys, including $94,500 on the Jude Funding loan secured by Church property,[131] a $100,000 inter-fund loan from Church property supposedly restricted for emergency *parish* use[132] for Defendant *Diocese's* attorney's fees,[133] and extraordinary

---

[128] Parrott Dep. at 148:14-22.

[129] Parrott Dep. at 150:3-5.

[130] Parrott Dep. at 171:21-172:23.

[131] Defendants' Motion, Ex. A (Parrott Affidavit at 2).

[132] Defendants' Motion, Ex. B (Second Parrott Affidavit at 1).

[133] Parrott Dep. at 179:11-19; 180:1-13.

disbursements from the Diocesan fund.[134] Defendants have no right to draw down Plaintiffs' assets for these expenses far outside the normal course of business. And as Defendants concede and the evidence demonstrates, Defendants are more than able to raise sufficient funds for a legal campaign. They cannot simply opt to spend Plaintiffs' money instead.

V. CONCLUSION AND PRAYER

Plaintiffs the Local Episcopal Parties[135] therefore request – as required by statute and motivated by Defendants' egregious conduct – a meaningful supersedeas bond or cash deposit and post-judgment injunctions.

Plaintiffs request that the Court set a reasonable supersedeas bond or cash deposit in the range set forth at p.2-3, *supra*. In addition and in the alternative, Plaintiffs request that the Court set the bond amount required by Texas Rule of Appellate Procedure 24.2(a)(2), in light of the fair market value of the property at issue and Defendants' failure to demonstrate any substantial economic harm, in an amount of at least $13,555,000.

In addition, Plaintiffs request the following post-judgment injunctions under Texas Rule of Appellate Procedure 24.2(d):

- Until further Order of this Court, all Defendants (as defined in Defendants' December 23, 2010 Motion for Partial Summary Judgment):

  a. **SHALL NOT** use, transfer, dissipate, encumber, convey, destroy, conceal, or dispose of any property made the subject of this lawsuit[136]

---

[134] Parrott Dep. at 207:8-20.

[135] Local Episcopal Parties are defined as 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.

[136] For the purposes of these injunctions, "property made the subject of this lawsuit" shall include all real and personal property, including funds, securities, and records, that was held as of November 15, 2008 by or for the Episcopal Diocese of Fort Worth, the Corporation of the Episcopal Diocese of Fort Worth, the Fund for the Endowment of the Episcopate of the Episcopal Diocese of Fort Worth, any of the parishes or missions of the Episcopal Diocese of Fort Worth, or any other constituent entity of the Episcopal Diocese of Fort Worth, as well as

other than in the normal course of business or in accordance with the terms of this Order;

b. **SHALL** keep the property made the subject of this lawsuit fully insured and maintain in force and good standing property and casualty insurance at least at the coverage levels effective in 2010;

c. **SHALL** keep any property made the subject of this lawsuit in good repair, normal wear and tear excepted, and keep current all indebtedness secured by any property made the subject of this lawsuit;

d. **SHALL** provide to Plaintiffs, through their counsel, a monthly summary, verified by affidavit, of the sources, amounts and payees of any and all expenditures claimed to have been made in the ordinary course of business or in accordance with the terms of this Order by Defendants;

e. **SHALL** notify the parties and after hearing obtain leave of Court or written agreement of the Local Episcopal Parties before using, transferring, dissipating, encumbering, or conveying any property made the subject of this lawsuit for attorney's fees or litigation expenses; and

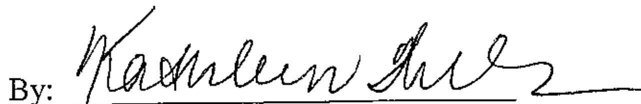
f. **SHALL** notify the parties and after hearing obtain leave of Court or written agreement of the Local Episcopal Parties before increasing the balance of indebtedness on the $3.5 million line of credit from Jude Funding, Inc. or on any other debt secured by property made the subject of this lawsuit.

---

any real and personal property obtained with other property made the subject of this lawsuit, such as income or royalties from such property or other assets purchased with such property.

The Local Episcopal Parties respectfully request any further relief to which they may be entitled.[137]

Respectfully submitted,

By: 

Jonathan D.F. Nelson
State Bar No. 14900700
JONATHAN D.F. NELSON, P.C.
1400 W. Abrams Street
Arlington, Texas 76013-1705
(817) 261-2222
(817) 861-4685 (fax)
jnelson@hillgilstrap.com

Kathleen Wells
State Bar No. 02317300
P.O. Box 101174
Fort Worth, Texas 76185-0174
(817) 332-2580 voice
(817) 332-4740 fax
chancellor@episcopaldiocesefortworth.org

William D. Sims, Jr.
State Bar No. 18429500
Thomas S. Leatherbury
State Bar No. 12095275
VINSON & ELKINS LLP
2001 Ross Avenue, Suite 3700
Dallas, Texas 75201-2975
(214) 220-7703
(214) 999-7703 (fax)

Attorneys for Plaintiffs the Local Episcopal Parties

[137] The Local Episcopal Parties also reserve their right to seek modification of the type or amount of security based on changed circumstances pursuant to TEX. R. APP. P. 24.3(a)(2).

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been sent this 17th day of May, 2011, by Federal Express and e-mail, to:

J. Shelby Sharpe, Esq.
Sharpe Tillman & Melton
6100 Western Place, Suite 1000
Fort Worth, TX 76107

R. David Weaver, Esq.
The Weaver Law Firm
1521 N. Cooper Street, Suite 710
Arlington, TX 76011

David Booth Beers, Esq.
Adam Chud
Goodwin Procter, LLP
901 New York Avenue, N.W.
Washington, D.C. 20001

Sandra Liser, Esq.
Naman Howell Smith & Lee, LLP
Fort Worth Club Building
306 West 7th Street, Suite 405
Fort Worth, TX 76102

Scott A. Brister, Esq.
Andrews Kurth L.L.P.
111 Congress Avenue, Suite 1700
Austin, TX 78701

Kendall M. Gray, Esq.
Andrew Kurth L.L.P.
600 Travis, Suite 4200
Houston, TX 77002

Mary E. Kostel, Esq.
c/o Goodwin Procter LLP
901 New York Avenue, N.W.
Washington, D.C. 20001

Frank Hill, Esq.
Hill Gilstrap, P.C.
1400 W. Abram Street
Arlington, TX 76013