

STATE OF INDIANA )  
 ) SS:  
COUNTY OF KOSCIUSKO )

IN THE KOSCIUSKO CIRCUIT COURT  
  
WARSAW, INDIANA

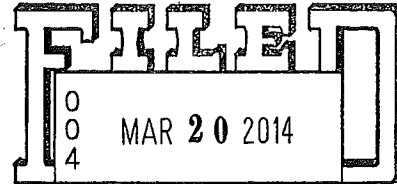
DOROTHY V. BARNES, )  
 )  
Plaintiff, )

CAUSE NO. 43C01-9109-CP-00732

vs. )

Honorable Michael Reed

NORTH INDIANA ANNUAL )  
CONFERENCE OF THE UNITED )  
METHODIST CHURCH, )  
FRED AND JOYCE PHANEUF, and )  
NUMEROUS INTERVENING )  
DEFENDANTS, )  
 )  
Defendants. )



CLERK KOSCIUSKO CIRCUIT COURT

**AGREED AMENDED CONTENTIONS  
FOR HEARING ON TRIAL RULE 60 MOTION SUBMITTED BY THE NORTH  
INDIANA CONFERENCE OF THE UNITED METHODIST CHURCH, CERTAIN ON-  
SHORE OWNERS, OFF-SHORE OWNERS, ET. AL.**

1. The North Indiana Conference of the United Methodist Church (the "Conference") pursuant to this Court's scheduling order submitted on December 12, 2013 a Witness List, Exhibit List and Contentions for the Trial Rule 60 Motion which was, in part, heard on January 14-15, 2014 and scheduled to be completed on March 20, 2014.
2. Pursuant to discussions subsequent to the 2 days of hearing on January 14-15, a number of parties which had originally opposed the Conference now wish to withdraw their opposition to the Trial Rule 60 Motion, subject to the Court's approval of the relief sought herein, amend their contentions and join the Conference in seeking relief that is described herein.
3. The following parties (the "Parties") have agreed to the amended and revised contentions that are contained herein:
  - a. Certain On-Shore Owners, represented by Rockhill Pinnock;
  - b. Off-Shore Owners, represented by Snyder Morgan;
  - c. Suetta M. Johnson, Trustee, Kevin W. & Beth A. Smith, William "Harold" & Peggy J. Smith, represented by James Butts.
  - d. Kevin Kelley, J. Richard & Rachel E Presser, Richard & Rosemary Sanderson, and Thomas & Mari Reis, represented by Carson Boxberger.

## **Amended and Revised Contentions:**

The Parties agree on the following contentions of fact and law:

1. The Conference is a religious organization comprised of 1180 churches led by a Bishop.
2. The mission of the Conference is to make disciples of Jesus Christ for the transformation of the world.
3. This Rule 60 Motion, subject to the Court's approval of the relief sought herein, concerns the relative rights of the parties related to an Easement reserved in the plat of Epworth Forest and interpreted by the Kosciusko Circuit Court in its 1994 Judgment.
4. A predecessor of the Conference, the Epworth League Institute of the North Indiana Conference of the Methodist Episcopal Church, is the original developer of the plat of Epworth Forest in Webster, Indiana.
5. Prior to its platting in 1923, the Conference's land on Lake Webster was unplatted, unsubdivided, and held by it in fee simple.
6. In 1923 and through a series of revisions, the Conference platted and subdivided portions of Epworth Forest into residential lots. It also reserved an Easement in the plat for shoreline access for those subdivided lots.
7. The unsubdivided lands in Epworth Forest have historically been used, and remain in use, as a conference and retreat center. The Conference operates a camp and conference center whose primary purposes are the religious education of children, evangelism, religious training, and discipleship.
8. The camp and conference center grounds are not situated on subdivided lots and the littoral in front of the camp and conference center is not subject to the Easement.
9. From the creation of the plat until the Court's 1994 Order, the Conference managed access to the shoreline of Lake Webster believing it was the fee simple owner of the littoral.
10. In 1994, the Court determined that onshore lot owners own the shoreline in fee simple and that an easement is held by offshore lot owners and by the Conference.
11. Since 1994, the Conference has been managing offshore and onshore owners' pier placement rights pursuant to the Court's 1994 Judgment.

12. Subsequent to the 1994 Judgment, the Conference prepared a Pier Administration Policy, originally filed with the Court on August 29, 1995 and later supplemented and approved by the Court on November 7, 1997.
13. Through the Pier Administration Policy, the Conference attempted to delegate pier administration to a Pier Administration Committee comprised off two onshore owners, two offshore owners and one representative of the Conference.
14. The Conference dedicated significant additional resources, in the form of paid staff time, to administer the easement.
15. In his capacity as Director of Administrative Services, Mr. Williams has worked with employees who are responsible for operations at Epworth Forest and the Conference's six other camp facilities, along with the Conference's other facilities. He estimates that upwards of 150 hours per year are spent by Conference personnel managing issues related to pier access at Epworth Forest. Activities by Conference personnel have included acting as the Conference's representative to homeowners, establishing the pier committee, working on regulatory and communication issues, working through disputes and litigation, and collecting and managing pier fees.
16. Beginning in the late 1990s, the Conference employed Tom Perzee, under Mr. Williams supervision, to represent the Conference at Epworth Forest, work with individual homeowners on pier issues, manage pier placement, and bring issues to the pier committee.
17. After Mr. Perzee, the Conference employed Richard Mann, a Conference Trustee, to represent the Conference at Epworth Forest. Mr. Mann dedicated countless hours working with residents on pier-related issues and by bringing larger issues to the Conference's attention.
18. Through the work of Mr. Williams, Mr. Perzee, and Mr. Mann, by 2008 the Conference realized that the increasing management attention, number of homeowner conflicts, and logistics of managing finite pier placements necessitated the retention of professional property managers. Messrs. Williams, Perzee and Mann masked the need for such management through their dedicated years of service, but when Mr. Mann retired, no other individual was willing or able to fill the void.
19. In addition, the demands of mediating property conflicts and managing pier access were increasingly in conflict with the Conference's core religious mission. The efforts of Mr. Williams, in particular, at Epworth Forest were in competition with mission-oriented efforts at other Conference locations and his work with the Trustees to carry out the mission.

20. Nick Yard, another Conference employee at Epworth Forest, has also dedicated significant time to Easement issues, including by serving as the Conference representative on the Pier Committee.
21. In 2008, the Conference determined that pier administration required an increased amount of attention and made the decision to hire a professional property management firm to act as its agent with respect to pier administration.
22. The Conference's agent, Bradley Property Management, is a professional property management company operating throughout northern Indiana. After it was retained, it determined that overcrowding on the shoreline was a serious issue that needed to be resolved. Thus, it imposed a moratorium on new pier assignments in order to assess and understand the pier situation.
23. Following a process of investigation and consultation with the community and the Conference, in late 2010 and early 2011 Bradley identified up to 50 additional pier spaces and begin making assignments to those spaces to alleviate overcrowding.
24. In early 2011, Bradley and the Pier Committee reassigned certain piers assignments into new spaces in order to alleviate crowding along the shoreline in the most populous areas. Numerous homeowners refused, however, to abide by the new assignments.
25. Following the reassignment, numerous onshore and offshore owners affected by the changes informed Bradley and /or the Conference that they would not comply with the pier reassignment program and challenged the Conference's authority to administer pier access. Some homeowners asserted that the Easement does not apply to them at all and threatened legal action.
26. Up to and continuing through 2011, the Conference and Bradley Property Management have experienced and dealt with ever increasing complaints and dissatisfaction from homeowners regarding pier space, pier crowding, pier assignments, pier fees, and conflicts between homeowners. As well, beginning in 2011 the Conference found itself faced with the extraordinary and untenable situation of being held hostage to both onshore and offshore homeowners' threats of litigation. Even if litigation costs could be fully recovered from pier fees, litigation represents an extraordinary burden which saps staff time and focus from the mission of the Conference.
27. The Conference does not use the Easement for pier placement and does not plan to do so in the future. It's current use of the Easement for promenade purposes and for fishing access is limited.
28. The Judgment did not impact the Conference's ownership of the littoral in areas where the camp and conference center are located. Indeed, as fee simple owner of

those lands, the Conference cannot hold an easement where it holds in fee simple as a matter of law.

29. The increased burden of administering the Easement; the refusal of numerous Epworth Forest residents to abide by or recognize the authority of the Conference to administer the Easement; and the increased costs associated with professional management and constant threat of, and actual, litigation all together and independently constitute changed circumstances.
30. It is no longer equitable that the Conference be subject to the prospective effect of the Judgment for each and all of the following reasons:
  - a. the increased burden of administering the Easement
  - b. the increased level of hostility and conflict among homeowners;
  - c. the refusal of numerous Epworth Forest residents to abide by or recognize the authority of the Conference to administer the Easement;
  - d. the constant threat of, and actual, litigation; and
  - e. the burden on the religious mission of the Conferences.
31. At the time the Judgment was entered, the Conference had asserted and believed it held the Easement as a servient estate, as the fee simple owner of the littoral. The Judgment assumed the Conference would continue to hold a property interest in the Easement for as long as it maintains its own property holdings at Epworth Forest. The management responsibilities imposed were therefore prospective in nature.
32. It was not nor could it have been reasonably anticipated in 1994 when the Judgment was entered that the Conference would be:
  - a. under constant threat of litigation from homeowners; and
  - b. that professional management and significant staff time would be required to fulfill the Judgment's mandate.
33. Pursuant to Indiana T.R. 60(B)(7), the Court should relieve the Conference from the 1994 Judgment because it is no longer equitable that it should have prospective application.
34. Pursuant to T.R. 60(D), the conference contends that it is entitled to equitable relief and contends that it would be equitable (both for the Conference and all owners in Epworth Forest) for the Court to "alter, amend [or] modify" the 1994 Judgment as follows:
  - a. Relieve the Conference of any financial, leadership, administrative or other duties, responsibilities and burdens associated with the management of the Easement, the Pier Committee, pier placements and/or all other functions performed by the Conference pursuant to the 1994 Judgment (the "94 Duties")

and release the Conference from any past, present and future liability for its administration of the '94 Duties;

- b. Explicitly delineate in an altered, amended or modified Judgment that the nature of the Easement is "Appurtenant" and not "In Gross" and specify that all owners of platted lots in Epworth Forest possess a dominant tenement in relation to the Easement (subject to any appeal of the June 7, 2012 Order or any subsequent determination of the issue following the submission of these contentions), following appeal, if any. Until such time as there is a final judgment that the Easement is appurtenant to the offshore owners' lots, the Conference shall take no action to divest itself of its interest in the Easement. It is expressly acknowledged and agreed that any rights of the Easement Termination Plaintiffs (as defined below) to appeal the appurtenant easement issue are preserved and their consent to these contentions shall in no way be deemed an admission, implicit or otherwise, that the Easement is appurtenant, and nothing in these contentions can be relied upon to oppose the Easement Termination Plaintiffs' contention that the Easement is in gross. It is understood by all parties that the Easement Termination Plaintiffs dispute any characterization of the Easement as appurtenant and that they intend to challenge any such characterization on appeal following the approval of these contentions;
- c. Appoint the Conference as a temporary trustee of any funds or property which belong to the Pier Committee for a reasonable period of time until the creation of a suitable replacement not-for-profit corporation can be established at which time the Conference will transfer such funds or property;
- d. Authorize the Conference to establish an independent not-for-profit corporation to be the successor to the '94 Duties (the "Epworth Forest Administration Committee") and assign all '94 Duties to the Epworth Forest Administration Committee;
- e. Order the Conference to produce whatever financial books and records may be needed by the Epworth Forest Administration Committee to conduct its business;
- f. For the 2014 season, prohibit any pier assignments on the following properties (collectively, the "Easement Termination Plaintiffs") and ensure that, commencing with the 2015 season, the owners of these properties must be given a 1 year written notice prior to any attempted assignment of any piers:
  - i. Lot or lots owned by Kevin Kelley (or any successor or assign);
  - ii. Lot or lots owned by J. Richard & Rachel E. Presser (or any successor or assign);

- iii. Lot or lots owned by Richard & Rosemary Sanderson (or any successor or assign);
  - iv. Lot or lots owned by Thomas & Mari Reis (or any successor or assign).
- g. Confirm that all property owners in Epworth Forest have been served and have either appeared or been defaulted. Confirm that the claims in Cause Number 43C01-1108-PL-83 (the "Easement Termination Litigation") will be dismissed, without prejudice, after the Court in this case enters an Order confirming the following tolling agreement. If any party appeals the portion of the Order imposing the tolling agreement, the dismissal shall be tolled until such time as that portion of the Order is affirmed.
- i. The status quo is preserved with respect to all claims alleged by the Easement Termination Plaintiffs in the Easement Termination Litigation (the "Claims"), as such Claims exist on the date of this Order. The status quo is further preserved with respect to the running of any applicable statute of limitations, statute of repose, contractual time limitation, the equitable defense of laches, and any other time related defense or bar (collectively and separately referred to as the "Time Defenses") for any and all Claims as such Time Defenses existed on the date the Easement Termination Litigation was filed, on August 24, 2011.
  - ii. In the event an Easement Termination Plaintiff commences an action relating to the Claims, the time that passes while this Agreement remains in effect as to that Easement Termination Plaintiff, and since the Easement Termination Litigation was originally filed, shall not be taken into account in determining the timeliness of the Claims asserted by that Easement Termination Plaintiff. If the Easement Termination Plaintiff's Claims would have been timely filed and not subject to any Time Defenses on the date this Agreement was executed, such Claims shall be deemed timely filed and not subject to any Time Defenses if timely filed within 90 days after the date of the termination or expiration of this Agreement as to that Easement Termination Plaintiff.
  - iii. The Easement Termination Plaintiffs agree that none of them will refile the Easement Termination Litigation or pursue the Claims prior to the expiration or termination of this Agreement as to them.
  - iv. Nothing contained in this Agreement, is intended to be, nor shall it be deemed to be, an admission by any of the Parties that any Claim or Time Defense previously existed or now exists, or that liability to the other or to any third party under any Claim or Time Defense previously existed or now exists.

- v. This Agreement shall terminate (as to an Easement Termination Plaintiff) at such time as an owner of another lot in Epworth Forest places a pier in the water of Webster Lake within the riparian zone of that Easement Termination Plaintiff, or at such time as an Easement Termination Plaintiff receives written notice of an intention for a pier to be placed by or on behalf of another lot owner.
  - vi. Any appeal of the validity of the appurtenant easement issue shall not impact the propriety of this tolling agreement.
- h. Order the Epworth Forest Administration Committee to create By-Laws, rules and regulations which state or establish the following principles and rules which can only be altered with Court approval:
- i. The purpose of the Epworth Forest Administration Committee will be to manage all rights, obligations and disputes related to the Easement created by the original Plat and defined by the '94 Order and subsequent rulings and to accept the assignment from the Conference of all the '94 Duties;
  - ii. The '94 Judgment as altered, amended or modified by subsequent Court Orders will continue to define the existing rights of the owners in Epworth Forest;
  - iii. The Epworth Forest Administration Committee will be managed by its Board of Directors which will be comprised of:
    - 1. 2 directors who are selected by the lot owners of Epworth Forest who own lots that are "on-shore"; and
    - 2. 2 directors who are selected by the lot owners of Epworth Forest who own lots that are "off-shore";
    - 3. 1 director whose initial appointment is to be made by the Court and thereafter will be made by the unanimous consent of the 4 elected directors and if unanimous vote of the Directors cannot be reached then by appointment by the Kosciusko Circuit Court on petition of any lot owner in Epworth Forest.
  - iv. The Epworth Forest Administration Committee's by-laws will specify that the owner of each parcel [parcel defined as a lot, or multiple lots used for a residential structure as a group, or any group of undeveloped/unimproved lots owned by the same owner] shall have one vote in any election of directors. The Conference shall have one vote for its collected ownership of undeveloped lots. An owner may be more than one individual, or a legal entity, or a trust, and the owner / owners shall designate in writing one representative to cast a vote for the parcel;



- v. The Epworth Forest Administration Committee will possess the right to collect reasonable attorney fees if it prevails in an enforcement action for failure to timely pay duly assessed pier fees, failure to comply with a pier assignment, or other material failure to comply with any duly enacted Court Order or rule or regulation; however, there shall be no right of the Epworth Forest Administration Committee to collect attorney's fees incurred in connection with the Easement Termination Litigation, to the extent it is refiled, or in connection with any refusal to comply with a pier assignment by an Easement Termination Plaintiff during the pendency of the Easement Termination Litigation if such litigation is refiled.
- vi. Order that all past-due fines or penalties relating to pier fees are waived if the underlying pier fees are fully paid by May 1, 2014;
- vii. The Epworth Forest Administration Committee will possess the authority to levy reasonable fines for violations of policies and pier assignments and to levy reasonable late fees for failure to pay pier fees all consistent with the Court's January 21, 2014 Order;
- viii. The Epworth Forest Administration Committee will possess the authority to place a lien on any lot in Epworth Forest to secure payment of any assessed fee and to secure a judgment obtained against a lot owner;
- ix. The by-laws of the Epworth Forest Administration Committee will ensure that onshore owners will not be overburdened, but will also recognize that strict equality in burdening owners is not possible;
- x. Onshore owners' pier assignments will continue from year to year and be presumed permanent. An offshore pier assignment / location, in accordance with the 1994 judgment, may be changed only for substantial change of circumstances making the prior assignment unreasonable under current facts and circumstances. An onshore pier assignment may be changed, in accordance with the 1994 judgment, only upon the request in writing of the onshore owner, however, the request may be denied and then reasonableness decided based upon the current facts and circumstances;
- xi. Every owner that seeks a pier must show proof to the Epworth Forest Administration Committee of adequate liability insurance in such reasonable amounts as determined by the Epworth Forest Administration Committee;

- xii. The Epworth Forest Administration Committee will establish a fair, timely appeal process for pier disputes that conforms with the January 21, 2014 order part 7(g);
  - xiii. Offshore owners are required to access pier locations over rights of way;
  - xiv. No motor vehicles will be allowed on the Easement except as allowed by January 21, 2014 order;
  - xv. A presumption will exist of one off-shore pier per onshore lot;
  - xvi. The Epworth Forest Administration Committee will develop, establish and maintain community piers where possible. The general pier fees assessed to all owners shall be for the administration of pier assignments and related matters, including administration of any community pier assignments and enforcement. However, the expenses of acquiring, maintaining, seasonal installation / removal of any community pier shall be paid for separately by a fee for that purpose charged to any user of a slip or place on a community pier and not from regular pier fees. The separate fee for use of a community pier shall be in addition to regular pier fees;
  - xvii. The Epworth Forest Administration Committee by-laws will ensure that the terms of Directors will be staggered and that no business shall be conducted without the presence of all 5 Directors.
- i. Grant such other and further alterations, amendments and modifications of the 1994 Judgment to assure an orderly and equitable transition.

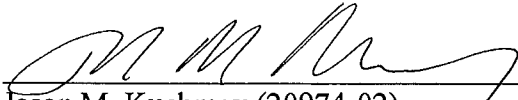
Respectfully submitted,



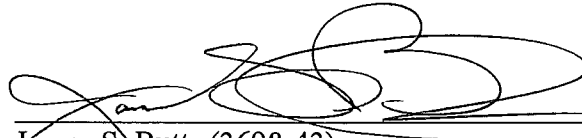
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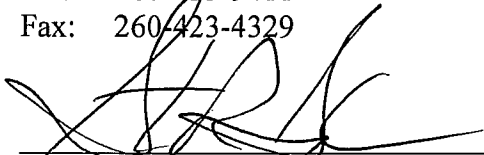
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## CERTIFICATE OF SERVICE

The undersigned certifies that on the 20th day of March 2014, a true copy of AGREED AMENDED CONTENTIONS FOR HEARING ON TRIAL RULE 60 MOTION SUBMITTED BY THE NORTH INDIANA CONFERENCE OF THE UNITED METHODIST CHURCH, CERTAIN ON-SHORE OWNERS, OFF-SHORE OWNERS, ET. AL. was served via electronic mail to the following counsel and parties of record who have supplied an email address pursuant to the Court's October 1, 2013 Order Concerning Service of Pleadings and Papers and Trial Rule 5(D). A copy of this filing is available on file with the Clerk's office for those parties who have not supplied an email address for service of process pursuant to the Court's Order.

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