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April 15, 2014

**Via Overnight Delivery**

Clerk, Kosciusko Circuit Court  
Kosciusko County Courts  
121 N. Lake Street  
Warsaw, IN 46580

Re: Barnes v. North Indiana Annual Conference of the United Methodist Church, et al.,  
Kosciusko Circuit Court, Cause No. 43C01-9109-CP-00732

Dear Clerk:

Enclosed for filing are the following filed on behalf of the Defendant North Indiana Annual Conference of the United Methodist Church:

1. Proposed form of Agreed Order Granting Relief Pursuant to T.R. 60 through Modified Judgment; and
2. Chronological Case Summary.

This filing is made via overnight delivery, pursuant to TR 5(F)(3) of the Indiana Rules of Trial Procedure and is complete upon mailing April 15, 2014. Please return a file-marked copy of the document in the enclosed self-addressed, postage prepaid envelope.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to call.

Very truly yours,

FAEGRE BAKER DANIELS LLP



Larry E. LaTarte

LEL/tjs  
Enclosures  
cc via Electronic Mail to Parties on Email Service List

STATE OF INDIANA )  
 ) SS:  
COUNTY OF KOSCIUSKO )

IN THE KOSCIUSKO CIRCUIT COURT  
WARSAW, INDIANA

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

CAUSE NO. 43C01-9109-CP-00732  
  
Honorable Michael Reed

**AGREED ORDER GRANTING RELIEF PURSUANT TO T.R. 60 THROUGH  
MODIFIED JUDGMENT**

1. Proceedings were held on the issues arising under T.R. 60 Motion filed by the North Indiana Conference of the United Methodist Church (the "Conference"). This Rule 60 Motion 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. The conference seeks to obtain relief from the 1994 Judgment and the subsequent orders and rulings of this Court (the "'94 Judgment").
2. The Court heard pertinent evidence on January 14-15, 2014 and on March 20, 2014, including the submission of the affidavit of Brent Williams by the Conference and the submission of Agreed Amended Contentions for Hearing on Trial Rule 60 Motion Submitted by the Conference, Certain On-Shore Owners, Certain Off-Shore Owners, et. al. All property owners in Epworth Forest have been duly served and have either appeared, have been defaulted or have indicated their acceptance of this Court's determination and this Order. All property owners in Epworth Forest are bound by this Order.
3. The court having reviewed the evidence, the arguments of those present, and being duly advised in the premises, now FINDS that it is no longer equitable that the Conference be subject to the prospective effect of the '94 Judgment and that pursuant to T.R. 60(D), it would be equitable (both for the Conference and all owners in Epworth Forest) for the Court to "alter, amend [or] modify" the '94 Judgment and, therefore, the Court now GRANTS the requested relief to the Conference and further ORDERS that this Court's prior Judgments and Orders are hereby ALTERED, AMENDED, MODIFIED OR CORRECTED as set out below.

4. 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.
5. The Conference is hereby relieved 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 '94 Judgment (the "94 Duties") and is further released from any past, present and future liability arising out of, related to, or connected with its administration of the '94 Duties.
6. Consistent with this Court's June 7, 2012 Order, the nature of the Easement is "Appurtenant" and not "In Gross" and 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, if any, by the Easement Termination Plaintiffs on the sole issue of the nature of the Easement as "Appurtenant."
7. Until such time as there is a final judgment following an appeal, if any, 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.
8. 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 that nothing in this Order, or the Agreed Amended Contentions, shall be construed as an admission, implicit or otherwise, by the Easement Termination Plaintiffs that the Easement is appurtenant, and nothing in this Order, or the Agreed Amended 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 that sole issue on appeal following the entry of this Order.
9. The Conference is hereby appointed as a temporary trustee of any funds or property which belong to the current Pier Committee (i.e., funds derived from and property purchased with pier fees) for a reasonable period of time (not to exceed 60 days from the entry of this Order) until the establishment of a suitable replacement not-for-profit corporation at which time the Conference will transfer such funds or property. The Conference is entitled to reimburse itself any funds loaned by the Conference for the administration of the Easement (for example, for payment of Bradley Management fees or other administrative expenses) prior to the Conference's release from its duties.
10. The Conference will establish an independent not-for-profit corporation to be the successor to the '94 Duties (the "Epworth Forest Administration Committee") and the Court hereby orders that '94 Duties are assigned to that corporation, consistent with the terms of this Order.

11. The Conference will produce financial books and records that may be needed by the Epworth Forest Administration Committee ("EFAC") to conduct its business.
12. For the 2014 season, there shall be no pier assignments on the properties set forth in this paragraph below (collectively, the "Easement Termination Plaintiffs") and 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:
  - a. Lot or lots owned by Kevin Kelley (or any successor or assign);
  - b. Lot or lots owned by J. Richard & Rachel E. Presser (or any successor or assign);
  - c. Lot or lots owned by Richard & Rosemary Sanderson (or any successor or assign);
  - d. Lot or lots owned by Thomas & Mari Reis (or any successor or assign).

The Easement Termination Plaintiffs are always free to place their own piers in the water extending from their respective properties.

13. The claims in Cause Number 43C01-1108-PL-83 (the "Easement Termination Litigation") will be dismissed, without prejudice, after the expiration of 30 days from the entry of this Order if there is no appeal of the tolling provision below. If any party appeals the portion of the this Order imposing the tolling provision below, the dismissal shall be tolled until such time as that portion of the Order is affirmed.
  - a. 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.
  - b. 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 as of the date the Easement Termination Litigation was originally filed, 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 the Tolling Period as to that Easement Termination Plaintiff.

- c. 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 the Tolling Period as to them.
- d. Nothing contained in this Order, 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.
- e. The Tolling Period 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.
- f. Any appeal of the validity of the appurtenant easement issue shall not impact the propriety of this tolling agreement.

14. The Conference shall set up the EFAC with By-Laws, rules and regulations which state or establish the following principles and rules which can only be altered with Court approval:

- a. The purpose of the EFAC 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.
- b. 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;
- c. The EFAC will be managed by its Board of Directors which will be comprised of:
  - i. 2 directors who are selected by the lot owners of Epworth Forest who own lots that are "on-shore"; and
  - ii. 2 directors who are selected by the lot owners of Epworth Forest who own lots that are "off-shore";
  - iii. 1 director whose initial appointment is to be made by this 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.
- d. The EFAC'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;

- e. The EFAC 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 EFAC 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.
- f. All past-due fines or penalties relating to pier fees are waived if the underlying pier fees are fully paid by May 1, 2014;
- g. The EFAC 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;
- h. The EFAC 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;
- i. The by-laws of the EFAC will ensure that onshore owners will not be overburdened, but will also recognize that strict equality in burdening owners is not possible;
- j. 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;
- k. Every owner that seeks a pier must show proof to the EFAC of adequate liability insurance in such reasonable amounts as determined by the EFAC;
- l. The EFAC will establish a fair, timely appeal process for pier disputes that conforms with the January 21, 2014 Order part 7(g);
- m. Offshore owners are required to access pier locations over rights of way;
- n. No motor vehicles will be allowed on the Easement except as allowed by January 21, 2014 Order;
- o. A presumption will exist of one off-shore pier per onshore lot;

- p. The EFAC 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;
- q. The EFAC 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.

**SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.**

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Michael W. Reed, Judge  
Kosciusko Circuit Court

STATE OF INDIANA )  
 ) SS:  
COUNTY OF KOSCIUSKO )

IN THE KOSCIUSKO CIRCUIT COURT  
CAUSE NO. 43C01-9109-CP-00732

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

Honorable Rex L. Reed

The decision of the Court should be summarized as follows in the Chronological Case Summary under this case number:

**The North Indiana Annual Conference of the United Methodist Church, by counsel, tenders the parties' unopposed proposed Agreed Order Granting Relief Pursuant to T.R. 60 Through Modified Judgment.**

**This filing is made via overnight delivery pursuant to Rule 5(F) of the Indiana Rules of Trial Procedure and is complete upon mailing on April 15, 2014.**

A full text order of this decision for the Record of Judgments and Orders is attached: Yes

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By:   
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APPROVED/DATE: \_\_\_\_\_

\_\_\_\_\_  
Judge, Kosciusko Circuit Court



## CERTIFICATE OF SERVICE

The undersigned certifies that on the 15th day of April 2014, a true copy foregoing CCS 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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