

DISTRICT COURT, EL PASO COUNTY, COLORADO
270 South Tejon Street
Colorado Springs, CO 80903
(719) 448-7700

Plaintiff and Counterclaim Defendant:
GRACE CHURCH & ST. STEPHEN'S, a Colorado nonprofit corporation,

Defendant and Counterclaimant:
THE BISHOP AND DIOCESE OF COLORADO, a Colorado nonprofit corporation,

Third Party Counterclaimants:
THE DIOCESE OF COLORADO IN THE EPISCOPAL CHURCH; GRACE AND ST. STEPHEN'S EPISCOPAL CHURCH; and GRACE CHURCH AND ST. STEPHEN'S, a Colorado religious society and corporation

Counterclaim Defendants:
REV. DONALD ARMSTRONG, III; CHARLES C. BROWN; DARELEEN SCHAFFER; JON WROBLEWSKI; MARGE GOSS; CRAIG WHITNEY; ROBERT C. BALINK; CHAD FRIESE; MICHAEL BARBER; KEITH STAMPER; JASON HUNTLEY; EMILY KLINE; RIP HOLLISTER; JACK GLORIOD; EDWIN J. MONTGOMERY, JR; KEVIN DIBBLE; SUSAN SPENCER; ALAN CRIPPEN II; ST. STEPHEN'S CLASSICAL ACADEMY, a Colorado nonprofit corporation; and GRACE CHURCH & ST. STEPHEN'S, a Colorado unincorporated nonprofit association;

Additional Counterclaim Defendant:
ROBERT J. O'NEILL

Additional Defendant Counterclaimant:
THE EPISCOPAL CHURCH

J. Gregory Walta (#1867)
J. Gregory Walta, P.C.
105 East Moreno, Suite 101
Colorado Springs, Colorado 80903
Telephone: (719) 578-8888
Facsimile: (719) 578-8931
Email: greg@waltalawfirm.com

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Case No. 2007CV1971

DIV. COM-5

REPLY BRIEF ON RIGHT TO JURY TRIAL

BY

GRACE CHURCH & ST. STEPHEN'S AND THIRD-PARTY DEFENDANTS

GRACE CHURCH & ST. STEPHEN'S and THE THIRD-PARTY DEFENDANTS submit the following Reply Brief on the right to a jury trial in this action:

DEFENDANTS' APPROACH WOULD BE A PRESCRIPTION FOR ERROR.

Plaintiff's approach is simple. All parties have demanded a jury trial in this case. Rule 38(a) requires a jury trial on all issues. This straight-forward approach would almost guarantee an error-free trial.

Defendants' approach would create an endless daisy-chain of arguments over numerous issues. This is not like the two phases of a death penalty case, where the jury and the judge first renders a verdict on guilt or innocence and then the same jury considers penalty. Defendant is proposing one decision-maker (the Court) in the first phase and another (the Jury) in the second phase. This would lead to endless problems, the most foreseeable of which are the following:

1. What matters go to the Court and what matters go to the jury?
2. What is a legal conclusion as opposed to a factual issue?
3. How do the two decision-makers decide a mixed question of both fact and law?
4. What interrogatories are needed on what issues and why?
5. How do you separate mixed issues of fact and law in the interrogatories?
6. What is the best way to phrase each interrogatory?
7. How many interrogatories are needed?
8. How much detail should be included?
9. What if the jury can't understand one or more of the interrogatories?

10. What if the jury is a “hung jury” on some of the interrogatories?
11. Can the Court disregard the Jury’s response to an interrogatory if it disagrees with it?
12. How do we reconcile inconsistent or unclear responses to interrogatories?
13. Is a Court ruling on property consistent or inconsistent with the overall Jury responses to interrogatories? If not, who prevails?
14. What if the Jury would have reached a different verdict on the property issues?
15. Would an advisory verdict be required?
16. How do you protect the Third-Party Individual’s right to a jury verdict on both liability and damages, if the second phase jury trial is limited to damages?
17. Do the Third-Party Individuals have the right to argue both liability and damages to the jury?
18. Do we voire dire the second-phase jury on whether they agree with the Court ruling?
19. How do we guarantee the Third-Party Individuals an unbiased jury?
20. How do we handle jury questions on bifurcated issues?
21. How do we handle jury questions on the interrogatories?
22. If the jury indicates a disagreement with the Court’s ruling in the first phase, do we disqualify the damages jury?
23. If the jury’s verdict is inconsistent with the Court’s ruling in the first phase, can the Court ruling stand?

24. How is Defendants' proposal different from an advisory jury?
25. Can the Defendants dilute the other parties' right to a jury trial over their objection?

These are just a few of the very foreseeable problems with a complex bifurcation of this very complex trial. Furthermore, under "Murphy's Law" – a law that governs all complex trials -- there will be many more unforeseeable and unmanageable problems that will arise and have to be solved "on the fly."

But the absolute certainty is that such a bifurcated trial – with two separate decision makers -- would not conform to Rule 38(a), which requires a binding jury verdict on all issues.

SUMMARY

This is already a complex case. There is no reason to order a convoluted bifurcation that violates Plaintiff/Third-Party Defendants' right to a jury trial and guarantees unsolvable problems.

All parties have demanded a jury trial. Thus, a jury trial on all issues avoids needless complexity and gives the parties what they asked for. Better yet, it avoids many pitfalls that almost certainly would lead to a needless reversal.

J. GREGORY WALTA, P.C.

/s/ J. Gregory Walta
Attorney for Grace Church

/s/ Dennis W. Hartley, Esq.
Attorney for Rev. Donald Armstrong, III

FLYNN WRIGHT & FREDMAN, LLC

/s/ Bruce M. Wright
Attorney for Remaining Counterclaim Defendants

CERTIFICATE OF SERVICE

I certify that on August 15th 2008, a true and correct copy of this document was sent via Justice Link to the following:

L. Martin Nussbaum, Esq.
Rothgerber Johnson & Lyons LLP
90 S. Cascade Avenue, #1100
Colorado Springs, CO 80903

Brent E. Rychener, Esq.
Holme Roberts & Owen, LLP
90 South Cascade Avenue, #1300
Colorado Springs, CO 80903

Geri O'Brien Williams, Esq.
Dworkin, Chambers, Williams, York, Benson & Evans, P.C.
3900 E. Mexico Ave., Suite 1300
Denver, CO 80210

s/Jane Thomsen

Jane Thomsen (Paralegal for Greg Walta)

In accordance with C.R.C.P. 121 § 1-26(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.