CARROLLTON PRESBYTERIAN CHURCH

VERSUS

THE PRESBYTERY OF SOUTH LOUISIANA
OF THE PRESBYTERIAN CHURCH (USA)

SUIT NO. 565482 SECTION: 26

19TH JUDICIAL DISTRICT COURT

EAST BATON ROUGE PARISH

STATE OF LOUISIANA

**EX PROPRIO MOTU ORDER**

**AFTER CAREFUL REVIEW** of the proposed written findings of fact and reasons for judgment on the issues of sanctions and the protective order submitted by the parties, the Court hereby adopted the proposed written findings and reasons drafted on behalf of Carrollton Presbyterian Church.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT** the "Written Findings and Reasons for Judgment Imposing Sanctions and for Rescinding Protective Order" submitted on behalf of Carrollton Presbyterian Church is hereby adopted by the Court.

Counsel for Carrollton Presbyterian Church is to prepare a judgment consistent with these written reasons, circulate it in accordance with Rule 9.5 and submit it to the Court for signature.

Judgment to be signed accordingly.

Baton Rouge, Louisiana, this 18th day of July, 2013.

Mary Bates

**JUDGE KAY BATES, SEC. 26**
**19TH JUDICIAL DISTRICT COURT**

FILED

JUL 25 2013

Donna Bourgeois

DY. CLERK OF COURT

19th JUDICIAL DISTRICT COURT

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EAST BATON ROUGE PARISH

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**WRITTEN FINDINGS AND REASONS FOR JUDGMENT IMPOSING SANCTIONS AND FOR RESCINDING PROTECTIVE ORDER**

## I. SANCTIONS

### A) INTRODUCTION AND OVERVIEW

In the underlying property litigation a Louisiana nonprofit corporation, Carrollton Presbyterian Church, sought to sell its real property, titled in its corporate name, to its contiguous neighbor, The Stuart Hall School for Boys. The Presbytery of South Louisiana, the national denomination's district governing body within whose geographic bounds Carrollton is located, blocked the sale. The PSL asserted that due to an express property trust clause in the denominational constitution in favor of the denomination, permission by the PSL was required before any sale by Carrollton. This court disagreed, granted summary judgment in favor of Carrollton, and now addresses Carrollton's motion for sanctions and to withdraw or rescind a discovery order that placed under seal certain documents filed and introduced in connection with Carrollton's motion for sanctions.

Concerning this court's December 4, 2009, discovery Order (which reiterated the court's Orders of September 22, 2009 and October 22, 2009, compelling the PSL to produce certain documents), the court previously denied

Carrollton's motion to rescind the protective order component but stated the court would revisit the matter and likely lift the protective order at the appropriate time. Because the documents that are the subject of the protective order pertain to Carrollton's motion for sanctions and the court is now ruling on that motion and providing Written Findings and Reasons for Judgment imposing sanctions, now is the appropriate time to also revisit the issue of the December 4, 2009, discovery (protective) Order. Carrollton's motion for sanctions came for hearing on May 17, 2010. The court has carefully considered the memoranda and argument of counsel and the exhibits and evidence introduced and now provides these Written Findings and Reasons for Judgment.

Prior to the time the PSL filed its first pleading, the PSL knew that the acts of conveyance, local church articles of incorporation, applicable state trust or property law, or any reasonable interpretation of the denomination's own governing documents offered no support for its assertion of an enforceable trust. All relevant documents were voluntarily furnished by Carrollton to the PSL on the date suit was filed. The PSL later stipulated to the authenticity of these documents and never introduced any documents contradicting the facts set forth in them.[1] At the time Carrollton filed suit on March 27, 2008, seeking a declaratory judgment the PSL had in place a written policy, which the PSL labeled a "definitive statement", that said that churches like Carrolton that had timely exercised the property exemption of G-8.0701 of the PCUSA Book of Order could "buy, sell, lease, mortgage or

[1] Both the PSL and Carrollton agree that neither well established principles of trust law in general nor the particular requirements of Louisiana trust law recognize as valid and self-executing any trust created by a would-be beneficiary over property owned by another. The PSL acknowledged:

> By 1979, when the Supreme Court issued its ruling in Jones v. Wolf, it was clear that, as a matter of state trust law, a settlor was required to manifest an intention to create the trust. Restatement (Second) of Trusts, § 23 (1959). Louisiana law is not peculiar in this regard. See La. Stat. Ann. § 9:1753 (1964).

June 14, 2010, PSL Post-Hearing Memorandum at p. 8, citing Kathryn Lorio, Louisiana Trusts: The Experience of a Civil Law Jurisdiction with Trusts, 42 La. L. Rev. 1721 (1982).

otherwise encumber any of their real property without further permission of the Presbytery." Prior to filing its first pleading the PSL was bluntly informed by the denomination's top in-house legal authority, Mr. Mark Tammen, Director of Constitutional Services with the PCUSA Office of the General Assembly, that he saw no way for the PSL to prevail. When the PSL's own corporate representatives were deposed they too acknowledged that Carrollton continued to have the right to sell the property at issue without PSL permission.

Nevertheless, despite all of this, the PSL opposed Carrollton and urged as the PSL's central argument in opposition that Jones v. Wolf, 443 U.S. 595 (1979), allows the PCUSA to impose a trust on local church property by amending the denominational constitution without the consent of the titleholder of record and without complying with either general principles of trust law or with the specifics of Louisiana trust law. In other words, PSL counsel argued that Wolf authorizes a religious exemption from general trust and property law. However, Wolf unequivocally states that when applying neutral principles of law to resolve church property disputes courts are to ascertain the mutual intentions of the parties and that the neutral principles of law method "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges". Wolf at 603. Wolf further states that any asserted trust must be in a "legally cognizable form". Id at 606. The PSL's core argument is thus directly contradicted by the very case on which it has relied—a case decided by the United States Supreme Court more than thirty years ago.

It makes no sense to this court to argue that the U.S. Supreme Court in Wolf said that the neutral principles of law method relies exclusively on "well-established concepts of trust and property law", Wolf at 603, and then nevertheless

argue that Wolf authorized a self-executing trust to be created in disregard of those well-established concepts simply by a would-be beneficiary unilaterally claiming that a trust exists in its favor over property owned by somebody else. The PSL's interpretation of Wolf is nonsensical and stands Wolf on its head in violation of La. C.C.P. art. 863.

The PSL cast aside the genuine consideration required by Wolf of the deeds, local articles of incorporation, state property and trust law and the denominational constitution and instead asked this court to give determining weight to a single factor — the denomination's decision to add trust language in its own constitution. This approach, however, would convert the neutral principles of law method advocated in Wolf into the functional equivalent of the deference method that the Louisiana Supreme Court unanimously rejected in Fluker v. Hitchens, 419 So.2d 445 (La. 1982), almost thirty years ago. The PSL's argument for a religious exemption rests on a manifestly false reading of Wolf that no court in the United States in over 40 years of neutral principles case law has ever adopted.

Despite the PSL's awareness that its position lacked legal or evidentiary support, the PSL erected a "Stalingrad-type" defense intended to financially force capitulation or to make victory by the small, twenty member Carrollton church as costly as possible. In a January 28, 2009, e-mail (PSL 83, 84), the PSL's lead New Orleans attorney confided to some of his collaborators, "One must wonder whether Carrollton is prepared to go to the expense of litigating this case." The PSL spent over $500,000 (exclusive of any expenditures during 2010 or 2011) in opposing Carrollton's effort to sell property valued at less than $1,000,000 (as determined by both the appraiser hired by Carrollton and the appraiser hired by the PSL when the existing, long term lease of Carrollton's property to The Stuart Hall School is

factored). Despite numerous efforts to mitigate its costs, as a result of the PSL's unreasonable intransigence Carrollton was forced to needlessly spend $336,000 in fees and expenses in pursuing recognition and enforcement of its property rights.[2]

What ensued during the course of this unfortunate litigation was a profoundly disturbing display of disdain for the rule of law and the judiciary. Multiple Orders of this court were knowingly and contumaciously violated. The PSL's lead New Orleans attorney had evident reason to know ahead of time that this court's February 13, 2009, TRO was going to be intentionally violated on Feb. 25, 2009. The PSL's New Orleans counsel and some of his co-conspirators[3] actually planned this intentional violation and lobbied for it—to manufacture a

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[2] The PSL stipulated to the reasonableness of the fees and expenses incurred by Carrollton, but disagrees that sanctions are warranted. The PSL's published financial statements (PSL meeting packet for its February 17, 2010, meeting) indicate that during 2008 (Carrollton filed suit on March 27, 2008), the PSL spent $99,858.00 in legal fees and expenses, and in 2009 spent an additional $438,754.25 in legal fees and expenses, for an aggregate sum of $538,612.25. Figures for 2010 have not been published by the PSL as of this writing. The overwhelming majority of these expenditures were spent by the PSL in opposing Carrollton's property claims. Prior to 2008, the PSL's annual line item budget for legal expense was between $500 and $5,000.

Carrollton has filed four (4) motions for sanctions. On July 17, 2009, Carrollton filed a motion for sanctions (which may be referred to as Carrollton's "main" sanctions motion). On July 20, 2009, and on August 20, 2009, Carrollton filed sanctions motions in response, respectively, to the PSL's First Set of Interrogatories, Requests for Production, and Requests for Admission, and to the PSL's deposition notice and subpoena duces tecum concerning the Stuart Hall School for Boys. Although the Court did not quash that discovery or issue protective orders (the PSL modified its interrogatories and requests), Carrollton did not withdraw its motions and the Court deferred ruling on sanctions, so that the PSL proceeded at its own risk. Carrollton's fourth sanctions motion was an October 2, 2009, motion for contempt, which the Court granted from the bench on October 22, 2009. The Court awarded Carrollton the costs and fees incurred in connection with its motion for contempt but no payment has been received by Carrollton.

Carrollton seeks sanctions for fees and expenses it has incurred from February 23, 2009 (the date of the PSL's first pleading filed in this case), to date. Suit was filed by Carrollton on March 27, 2008. The PSL filed a Memorandum in Opposition to Injunctive Relief and In Support of Dissolving the TRO on February 23, 2009, and an Answer on July 23, 2009. This figure sought by Carrollton totals approximately $390,000.00, and is comprised of approximately $15,000.00 in expenses and $375,000.00 in professional fees. These figures *exclude* fees and expenses incurred in connection with removal to and remand from federal court. They *include*, however, $6,000.00 in fees and expenses incurred in connection with Carrollton's Motion to Compel and *also include* $54,600.00 in fees and expenses incurred in connection with Carrollton's efforts to obtain compensatory sanctions (i.e., Carrollton incurred $336,000.00 in fees and expenses as a result of the PSL's sanctionable opposition, and then spent another 16%, or $54,000.00, seeking recovery). The May 17, 2010, Affidavit submitted by Carrollton's attorney lists Carrollton's efforts to mitigate its fees and expenses, including discounted hourly rates and donated time by its attorneys, voluntarily producing to the PSL all relevant documents on the date suit was filed, and thirteen (13) explanatory letters sent by Carrollton to the PSL or PSL counsel which gave notice and urged resolution.

[3] For purposes of brevity, the court will refer to the various La. Civil Code art. 2324 co-conspirators, answerable in solido, collectively as "the PSL".

false lack-of-subject-matter jurisdiction argument in an attempt to circumvent the facts and the law they knew were adverse to the PSL. As egregious as this discrete violation is, though, the violation of the TRO was not an isolated event. It was intended to facilitate an ongoing plan or scheme that is systemic to the PSL's opposition to Carrollton. Having been told by the PCUSA's foremost legal authority, Mr. Tammen, that the PSL could not win on the merits, PSL's New Orleans counsel and one of his collaborators, Mr. Finst, came up with a "plan" to circumvent the facts and the substantive law. In defiance of civil authority they advocated that the Synod administrative commission, acting on behalf of and "for" the PSL, intentionally and deliberately violate this court's February 13, 2009, TRO and dissolve Carrollton Presbyterian Church. Upon dissolution they believed the PSL would be able to step in and sell Carrollton's property and direct the sale proceeds as the PSL wished. The PSL thought it would be able to argue that in dissolving Carrollton the PSL and its collaborators were acting "ecclesiastically" and therefore this civil court would not have subject matter jurisdiction to do anything about the violation of its own TRO and the subsequent takeover by the PSL of Carrollton's property. The court is not speculating. The participants to this scheme astonishingly acknowledged all of this in their own words, described in Part I.C and Appendices A and B.

The PSL has violated professional norms, disdained civil authority, and engaged in sanctionable conduct in many ways other than the deliberate violation of the February 13, 2009, TRO: In memoranda filed and submitted to this court the PSL called the exercise of this court's subject matter jurisdiction, or a request by Carrollton that this court exercise its subject matter jurisdiction, "malevolent". The PSL said that U.S. District Judge Ralph Tyson, a respected African American

jurist, did not do his own work but instead merely "rubber stamped" the work of others, in effect characterizing him as lazy. PSL 2791. The PSL also said that he would be inclined to base his decision concerning remand on the skin color of the lawyers appearing before him. PSL 1695; The PSL said that the work of U. S. Magistrate Judge Stephen Riedlinger exemplified the "total depravity" of man. PSL 2446; The PSL said that the federal court in Baton Rouge was "compromised", which by definition is to accuse the federal court of being dishonorably corrupt. PSL 2446. The PSL flagrantly disobeyed this Court's September 22, 2009, Order to produce documents, claiming that it did not know that "all persons" meant all persons. The PSL grossly misrepresented case law holdings and rationale and turned cases on their heads, repeatedly urging frivolous legal arguments, including:

- Wolf authorized a religious exemption from trust and property law even though Wolf states that the neutral principles of law method "relies exclusively on objective, well-established concepts of trust and property law ..." Wolf at 603.
- Carrollton has no right under PCUS Section 6-8 to sell Carrollton's property without presbytery permission—even though the PSL's own corporate designees, *speaking as and for the PSL itself*, testified under oath that Carrollton does indeed have the right to sell Carrollton's property under § 6-8 without PSL permission and continues to have that right to this day;
- The purportedly hierarchical nature of the PCUSA is "critical" to the PSL's opposition to Carrollton even though the neutral principles of law method "obviates entirely" an examination of ecclesiastical polity and makes any inquiry into church polity "impermissible". Wolf, 443 U.S., 595 at 605 (1979);
- When Carrollton Presbyterian Church was founded in 1855, it gave its consent to an express trust clause—even though that purported trust clause did not come into existence until 1982, 127 years later;
- Carrollton had no right to injunctive relief because it would suffer no irreparable harm—even though the Synod administrative

commission, acting "for" the PSL, dissolved Carrollton and it's hard to imagine any harm that would be more irreparable.[4]

Ignoring the language in Wolf that directly contradicts its central argument, the PSL suggested, on page 8 of the PSL's June 14, 2010, Post-Hearing Memorandum, that a unilateral adoption of a trust clause by the would-be beneficiary comports with Wolf because it satisfies the definition of "cognizable" (because, the PSL says, the text of the denominational trust clause is "capable of being known or perceived"). This argument-by-dictionary, however, proves too much. Wolf doesn't predicate the enforceability of trust clauses recited in a denominational constitution simply on being "cognizable". Wolf says "legally cognizable". Id at 606. A trust clause inserted into a denominational constitution, to be enforceable, must be more than just capable of being perceived in a metaphysical sense. Wolf says the asserted trust must be in a form that the *law* recognizes. And whether one looks to the general principles of trust law set forth in the Restatement of Trusts or to the specific provisions of Louisiana trust law, the law does not recognize as valid and self-executing a trust simply on the basis of an assertion made by a non-owner, would-be beneficiary. Whether measured by the general principles of trust law or the specific requirements of Louisiana trust law, there is no writing creating a trust that reflects the mutual intentions of the parties that is in a "legally cognizable form", Id at 606. The PSL has known this from the outset, and has offered no good faith argument for the

[4] In memoranda submitted to this court the PSL characterized its disobedience to this court's September 22, 2009 Order, as a simple "misunderstanding". This court, however, did not hold the PSL in contempt of court simply because of a "misunderstanding". The PSL has trivialized its attorney's conflicting representations to this court about the relationship PSL counsel has with the Synod administrative commission as a mere "kerfuffle" (a trifling dustup), but contradictory, hide-the-ball representations to this court cannot be dismissively brushed aside as just a "kerfuffle". The PSL cavalierly wrote that the general counsel of the PCUSA "merely" asked if the local federal court was "compromised". Asking whether a court has been "compromised", though, is not something that one "merely" asks.

extension, modification or reversal of this well-established, axiomatic law. In fact, as this court has previously noted and as will be explained again below, there isn't a basis for the "enforcement of the asserted trust under any reasonable interpretation of the denomination's own governing documents". August 18, 2009, Written Reasons at p. 5.

In an effort to persuade this court that there is "the slightest justification" for its position, during the course of this litigation the PSL has misrepresented legal authorities to create the appearance of legitimate disagreement about the basic interpretation of Wolf. The PSL wrote, for example, that "courts around the nation have been and remain split in their interpretation of Jones v. Wolf". In support of this statement the PSL noted that when neutral principles of law are used some cases have resulted in favorable decisions for local churches and other cases have resulted in favorable decisions for dioceses and presbyteries. This, however, is a non sequiter. The differing outcomes are not because of any disagreement about the interpretation of Wolf but are due to the application of the neutral principles of law method to the particular facts of each case, and facts can vary widely.[5] The language in Wolf itself has been sufficiently clear for more than thirty years for state courts to understand all of the factors to be considered when applying the neutral principles of law method to the facts before them to ascertain the mutual intentions of the parties and determine the enforceability or unenforceability of a claimed property trust. According to the PSL, though, judicial inquiry starts and stops with just one factor, the insertion by the

[5] In this case, all of the facts held to be material in Jones v. Wolf were provided by Carrollton in documents furnished to the PSL at the outset of this suit, to which the PSL later stipulated authenticity. None of those facts, as furnished and documented by Carrollton, has been shown to be incorrect or even disputed by the PSL. The PSL's October 5, 2009, Statement of Disputed Facts, filed in opposition to Carrollton's motion for summary judgment, included assertions of law and argued materiality but did not genuinely dispute the facts.

denominational beneficiary of a trust clause in the denomination's own constitution. There is not the slightest justification for this position, which is directly contrary to the clear language in Wolf.[6]

Contrary to what the PSL has said, this is not a case of first impression. Over fifty (50) years ago the United States Supreme Court struck down as unconstitutional the departure-from-doctrine method that had permitted civil courts to resolve church property disputes based on the civil court's own opinion about which party most closely adhered to founding religious doctrines. Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969). Presbyterian Church reaffirmed, though, that civil courts do have subject matter jurisdiction to resolve church property disputes if they can do so without resort to deciding religious questions. The U.S. Supreme Court importantly observed, "Civil courts do not inhibit free exercise of religion merely by opening their door to disputes involving church property. And there are *neutral principles of law*, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded." Id at 449. Over forty (40) years ago the U.S. Supreme Court decided Jones v. Wolf, 443 U.S. 595 (1979), which reaffirmed Presbyterian Church's holding that the neutral principles of law method was constitutionally permissible for adoption by states. The neutral principles of law method involves no consideration of religious doctrine or the form of church government (ecclesiastical polity). Id at 605.

[6] When neutral principles of law are applied, church property disputes are to be resolved:

> [O]n the basis of the language of the deeds, the terms of the local church charters , the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property.

Wolf at 603, citing Presbyterian Church v. Hull Church, 393 U.S. 440 (1969); Maryland & Virginia Churches v. Sharpsburg Church, 396 U.S. 367 at 368 (1970), and; Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Instead, as already noted, it "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges". Id at 603. "[T]he neutral-principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties." Almost thirty years ago a unanimous Louisiana Supreme Court held that the use of the neutral principles of law method was constitutionally mandated in Louisiana. Fluker v. Hitchens, 419 So.2d 445, 447 (La. 1982).

For present sanctions purposes it is significant that Fluker held that failure by a civil court to exercise subject matter jurisdiction to resolve a church property dispute "simply because the litigants are religious organizations, may deny a local church recourse to an impartial body to resolve a just claim, thereby violating its members' rights under the free exercise provision, *and also constitute a judicial establishment of the hierarchy's religion*". Fluker at 447 (emphasis added). That, however, is what the PSL has asked this court to do. It has asked this court to ignore a fundamental constitutional guarantee and a unanimous Louisiana Supreme Court mandate—by effectively disregarding the deeds, articles of incorporation, and state property and trust law and instead "interpret" Wolf to authorize the imposition of an enforceable trust merely on the basis of the PCUSA's addition of a purported express trust clause in the early 1980's to its denominational constitution. The PSL urged this court to enforce the asserted trust against Carrollton Presbyterian Church's civil corporation, the owner of the property, solely on this basis even though Carrollton has existed since 1855, has been incorporated since 1894, and acquired or built all of its real property using its own funds prior to the addition of this purported trust clause.

The court concludes that sanctions are warranted by the exceptional circumstances presented. This is not simply a matter of counsel disagreeing about how to interpret cases, or PSL counsel simply advancing imaginative legal or factual approaches or making a good faith argument for a reconsideration of settled doctrine. Rather, the court regrettably but unavoidably concludes that the PSL has in bad faith advanced frivolous arguments in support of a claimed right it knew had no legal or evidentiary support. The PSL repeatedly ignored or misrepresented the facts and the law and has interposed meritless pleadings, defenses, and arguments to obfuscate, delay, and needlessly increase the cost of litigation in an effort to financially bleed the small Carrollton church into submission.

The court takes no satisfaction in imposing sanctions. This is a sad affair. A compensatory sanction is necessary, though, not only to deter the PSL but to preserve the authority of, and respect for, our system of civil justice and the rule of law. The circumstances presented are extraordinary. The ecclesiastical name of the PSL does not exempt it from the rule of law and cannot shield it from the consequences of its misconduct. Sanctions are warranted whether the defendant is named the Acme Company of South Louisiana or the Presbytery of South Louisiana. Before continuing with a more specific discussion of the PSL's sanctionable conduct in this case, the court will review the law pertaining to sanctions.

**B) LAW OF SANCTIONS**

For sanctions to be awarded there must be an adequate record for appellate review. Sanctions must be reasonably quantifiable. With sufficient cause, explanation, and example, sanctions may be imposed based on the "totality of the

record".[7] Conduct that violates one rule may not warrant the same type or amount of sanctions as conduct that violates a different rule. But the court has needed flexibility in exercising its discretion—particularly in cases such as this one where the sanctionable conduct is recurrent and intrinsic to the PSL's opposition.

This court's inherent power is set forth at La. C.C.P. art. 191, which provides:

> **A court possesses inherently all of the power necessary for the exercise of its jurisdiction even though not granted expressly by law.**

Included in the court's inherent power is the ability to sanction those who come before it for bad faith, abuse of the judicial process, and contempt of court. In pertinent part, C.C.P. art. 863[8] provides:

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[7] Ratcliff v. Boydell, 93-0362 (La. App. 4 Cir. 4/3/96), 674 So.2d 272, upheld an award of $98,000, consisting of $25,000 for a refund of attorneys fees wrongfully calculated, $43,000 for abuse of process, $12,000 for unethical practices, fraud and conversion, and $18,000 for intentional infliction of emotional distress. The appellate opinion did not correlate or further break down these figures to specific actions or pleadings but noted that the trial court had given 34 pages of reasons. The trial court also ordered an additional $30,000 in attorneys fees based on Louisiana Civil Code of Procedure article 863, based on "the totality of the record". The trial court and the appellate court tied sanctions to the "totality of the record", citing only a few specific pleadings as representative examples. In affirming, the appellate court did not itemize all of the pleadings that warranted sanctions nor correlate dollars and cents to specific pleadings, but cited "flagrant examples" and a particular filing as "the worst example". See also, Roccaforte v. Nintendo, 917 So.2d 1143, 05-239 (La. App. 5 Cir. 11/29/05) (upholding sanctions award of $181,620.86.)

[8] Sections B and D of CCP Art. 863 were amended, and Section G added, by Act. No. 540 of the 2010 Regular Session, to provide:

> B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleadings~~;~~**, and** that to the best of his knowledge, information and belief formed after reasonable inquiry, **he certifies all of the following:** ~~it is well grounded in fact; that it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.~~
>
> **(1) The pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.**
>
> **(2) Each claim, defense, or other legal assertion in the pleading is warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law.**
>
> **(3) Each allegation or other factual assertion in the pleading has evidentiary support or, for a specifically identified allegation or factual assertion, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.**

**A. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address.**

**B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact; that it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.**

* * *

**D. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.**

**E. A sanction authorized in Paragraph D shall be imposed only after a hearing at which any party or his counsel may present any evidence or argument relevant to the issue of imposition of the sanction.**

Louisiana C.C.P. art. 863 is derived from Rule 11 of the Federal Rules of Civil Procedure and Louisiana courts look to federal decisions applying Rule 11 for guidance. See e.g., Connelly v. Lee, 96-1213 (La. App. 1st Cir. 5/9/97), 699 So.2d

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**(4) Each denial in the pleading of a factual assertion is warranted by the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.**

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D. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party ~~or parties~~ the amount of the reasonable expenses incurred because of the filing of the pleading, including ~~a reasonable attorney's fee~~ **reasonable attorney fees.**

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**G. If the court imposes a sanction, it shall describe the conduct determined to constitute a violation of the provisions of this Article and explain the basis for the sanction imposed.**

411, 416; Sanchez v. Liberty Lloyds, 672 So.2d 268, 950956 (La. App. 1st Cir. 4/4/96). Important guidance can therefore be gleaned from major U.S. Fifth Circuit cases such as Thomas v. Capital Security Services, Inc., 836 F.2d 866 (5th Cir. 1988) and Topalian v. Ehrman, 3 F.3d 931 (5th Cir. 1993). The relationship between Rule 11 and Article 863 is relevant in determining the significance, if any, to be attached to the grammatical distinctions between Rule 11 and Article 863. Rule 11 pertains to "every pleading, written motion, and other paper ..." and the scope of certification encompasses "presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper ..." Rule 11(a) and (b). Article 863 pertains to "every pleading" and, as amended, to "each claim, defense, or other legal assertion in a pleading" and each allegation or other factual assertion" or "each denial" in the pleading.

In construing the scope of Article 863 and the obligations it imposes on parties and their counsel, the Louisiana First Circuit Court of Appeal acknowledged that Article 863 is derived from Rule 11 and said that "Both Rule 11 and Article 863 apply to the signing of pleadings, motions and other papers, imposing upon attorneys and litigants affirmative duties as of the date a document is signed." Sanchez at 271, citing Loyola v. A Touch of Class Transportation Service, 580 So.2d 506, 509 (La. App. 4th Cir. 1991), and First American Bank and Trust v. First Guaranty Bank, 615 So.2d 1060, 1063 (La. App. 1 Cir. 1993). This language in Sanchez has subsequently been cited or quoted with approval in other First Circuit decisions. See Tubbs v. Tubbs, 700 So.2d 941, 962095 (La. App. 1 Cir. 9/19/97); Williams v. Dunn, 2007 WL 2429339, 2006-1352 (La. App. 1 Cir. 8/29/07); Nodier v. Ungarino & Eckert, L.L.C., 2007 WL 13008505, 2006-1461 (La. App. 1 Cir. 5/4/07).

The certification required under Article 863 is multi-pronged, and the violation of any prong fatally flaws the entire pleading. Sanchez, 672 So. 2d at 272. To be valid, a certification requires (1) that the attorney (litigant) has read the pleading; (2) the pleading is well grounded in fact to the best of the attorney's knowledge, information, and belief formed after a reasonable inquiry; (3) the pleading is warranted by existing law or includes a good faith (nonfrivolous) argument for the extension, modification, or reversal of the law; and (4) the pleading was not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. La. C.C.P. art. 863; Id. As amended, article 863 also requires certification that each allegation, assertion or denial has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation or discovery.

Article 863 obliges litigants and their attorneys to make an objectively reasonable inquiry into the facts and law underlying a pleading before it is filed; subjective good faith will not satisfy this duty of reasonable inquiry. Stroscher v. Stroscher, 01-2769 (La. App. 1st Cir. 2/14/03), 845 So. 2d 518, 526. The Article has no express "bright line" requirements for the timeliness or the extent of investigation necessary for compliance. Brown v. Sanders, 06-1171 (La. App. 1st Cir. 3/23/97), 960 So. 2d 931, 934. Jurisprudence has, however, established certain factors that are appropriate to consider in determining whether there has been sufficient compliance with the requirements of Article 863. Id. at 935.

The factors to be considered in determining whether a factual inquiry has been made are: (1) the time available to the signor for investigation; (2) the extent of the attorney's reliance on his client for the factual support for the document; (3) the feasibility of the pre-filing investigation; (4) whether the signing attorney

accepted the case from another member of the bar or forwarding attorney; (5) the complexity of factual and legal issues; and (6) the extent to which the development of the factual circumstances underlying the claim require discovery. Sanchez, 672 So. 2d at 272. *See also* Loyola v. A Touch of Class Transportation Service, Inc., 580 So. 2d 506, 510 (La. App. 4th Cir. 1991) (establishing factors to be considered in determining whether a factual inquiry has been made).

Similarly, the factors to be considered in determining whether a reasonable legal inquiry was made are: (1) the time available to the attorney (litigant) to prepare the document; (2) the plausibility of the legal view contained in the document; (3) the pro se status of the litigant; and (4) the complexity of the legal and factual issues raised. Sanchez, 672 So. 2d at 272. *See also* Loyola v. A Touch of Class Transportation Service, Inc., 580 So. 2d 506, 510 (La. App. 4th Cir. 1991).

Article 863 is intended to be used only in exceptional circumstances. Strocher, 845 So. 2d at 526. Where there is even the slightest justification for the assertion of a legal right, sanctions are not warranted. Tubbs v. Tubbs, 96-2095 (La. App. 1st Cir. 9/19/97), 700 So. 2d 941, 945. Moreover, parties' disagreement as to the best resolution of a matter of litigation will not give rise to sanctions under Article 863. Sanctions are not appropriate simply because a particular argument or ground for relief is later found to be unjustified. Id. at 946. See also, State, DOTD v. August Christina & Bros., 716 So.2d 372 (La. App. 5 Cir. 1998). Article 863 was not enacted "to inhibit imaginative legal or factual approaches to applicable law or to unduly harness good faith calls for reconsideration of settled doctrine." Id. A violation of the Article is not to be determined by using the wisdom of hindsight. Whether sanctions are proper is based on what was reasonable for the signor to believe at the time of filing. Sanchez, 672 So. 2d at 272.

Article 863 is silent as to when a motion for sanctions should be filed. However, as noted, the Article is derived from Rule 11 of the Federal Rules of Civil Procedure, and thus, Louisiana courts look to the federal decisions applying to Rule 11 for guidance in this area. Connelly v. Lee, 96-1213 (La. App. 1st Cir. 5/9/97), 699 So. 2d 411, 416. In General Motors Acceptance Corp. v. Charlie Bates Chevrolet-Buick, Inc., the United States Court of Appeals for the Fifth Circuit held that when the primary purpose for imposing sanctions is to deter, "it is precept that sanctions be imposed within a time frame that has a nexus to the behavior sought to be deterred." Id. at 417. *See also* Topalian v Ehrman, 3 F. 3d 931 (5th Cir. 1993) (holding that in seeking sanctions for defending against a frivolous pleading, a party has a duty to mitigate subsequent expenses).

## C) THE SANCTIONABLE MISCONDUCT

### 1) The Permeating Scheme by the PSL and its Co-Conspirators

The PSL's sanctionable misconduct is not confined to isolated events, though multiple discrete violations have occurred. This case is characterized by intrinsic, knowing deficiencies at the root of the PSL's argument that are systemic to the PSL's opposition.

There is more that is sanctionable than just the knowing and willful violations of this court's February 13, 2009, and September 22, 2009, Orders. Because the PSL knew from the outset that it had no viable defense on the merits under the neutral principles of law method, it tried to circumvent the facts and the law by asserting self-contradictory arguments based on non-material facts and misrepresentations of the law in an effort to delay matters and prevent Carrollton from being able to afford to litigate. This court has already given an overview of the PSL's sanctionable conduct, and elaboration is here provided.

The neutral principles of law method requires the court to ascertain the mutual intentions of the parties by examination of: 1) the deeds; 2) the local church articles of incorporation; 3) applicable trust and property law, and; 4) the denominational constitution. Wolf at 603. For each of these four factors, the PSL knew from the outset that it had no evidentiary support to oppose Carrollton. This awareness led to the PSL embarking on a sanctionable course of conduct in an effort to circumvent the undisputed facts and applicable law. Before discussing the scheme the PSL and its co-conspirators pursued, it is appropriate to review the undisputed material facts the PSL knew it confronted.

1) The PSL knew what the acts of conveyance say. All of the relevant acts of conveyance were furnished to the PSL on the date suit was filed. March 2, 3, 2009, En globo Exhibit P-2; May 17, 2010, En globo Exhibit 5. At all times they have also been available in the public mortgage and conveyance records of Orleans Parish. Subsequent formal discovery disclosed no other acts of conveyance than those furnished by Carrollton to the PSL on the date suit was filed. The acts of conveyance contain no mention of the PCUSA, the PCUS, or of any denominational middle governing body, and contain no language pertaining to any reservations of rights, use restrictions, reversionary clauses or trusts.

2) The PSL knew what Carrollton's 1979 articles of incorporation say. Like the acts of conveyance, they were furnished to the PSL on the date suit was filed. March 2, 3, 2009, En globo Exhibit P-1; May 17, 2010, En globo Exhibit 5. They were already in the PSL's own records. As noted by the PSL in its own corporate deposition, they were initially drafted and adopted under the aegis of a former PSL commission and promoted by the PSL as a model for all churches within its jurisdiction. Although the general article pertaining to corporate objects and

purposes makes generic reference to the PCUS Book of Church Order as it may be amended from time to time, this necessarily includes the exemption of G-8.0701 and Section 6-8. That same general article also refers to the corporation operating pursuant to state law, which would include Louisiana's property and trust laws. Carrollton's articles of incorporation do not stop, though, with a general article about objects and purposes. As the PSL was aware, they contain a specific property article that grants full, sole and exclusive responsibility of the ownership and control of the local church property to the local corporate board of directors, subject only under specified circumstances to the authority of the corporate membership.

3) The PSL knew that its position and arguments in this case ignored all well-established, general concepts of trust and property law. See, e.g. Restatement of Trusts 3d, § 2. As the South Carolina Supreme Court recently said in a church property case decision in favor of a local church, "It is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another." All Saints Parish Waccamaw v. The Protestant Episcopal Church in The Diocese of South Carolina, 685 S.E.2d 163 at 174 (S.C. 2009). This basic point of law did not come as a revelation to the PSL only after decision by the South Carolina Supreme Court, but had long been established in Louisiana, as acknowledged by the PSL in memoranda it submitted to this court. Supra, n. 1. The PSL also knew that it was ignoring the specific (and particularly stringent) requirements of Louisiana trust law.

The PSL's response to the fact that its legal position is fundamentally contrary to general principles of trust law and to the specific provisions of

Louisiana trust law has been to assert that trust law is irrelevant. The PSL has said, "The Presbytery's pleadings merely assert that Jones v. Wolf and Fluker preclude application of the Louisiana Trust Code to invalidate trusts created by the church constitution". PSL's January 5, 2010, Memorandum in Support of Motion for Summary Judgment on Carrollton's Motion for Sanctions at p. 16. In other words, the PSL has argued that Wolf and Fluker created a special religious exemption. Citing Wolf, though, as authority for ignoring trust law is preposterous. Wolf expressly states that neutral principles of law "relies exclusively on well-established principles of trust and property law", and that any denominational trust clauses must, among other things, be in "legally cognizable form". Id at 603, 606. The Louisiana Supreme Court, rather than granting a religious exemption, emphasized that the application of neutral principles of law, which includes property and trust law, was constitutionally mandatory if the free exercise of religion was to be protected. Fluker at 445. See discussion infra at p. 21, 22.

4) The PSL knew the contents of the PCUSA's Book of Order and the 1982/1983 edition of the PCUS's Book of Church Order. Exhibit P-6; En globo Exhibit P-7. This court previously concluded, "Carrollton's timely, properly noticed decision to avail itself of Section 6-8 precludes enforcement of the asserted trust *under any reasonable interpretation* of the denomination's own governing documents." August 18, 2009, Written Reasons at p. 5. From the outset the PSL had in its custody its own minutes which document Carrollton's timely exercise of the exception provision of G-8.0701 of the PCUSA Book of Order and notification to the PSL, thereby making 6-8 of the PCUS Book of Church Order operable as to Carrollton (i.e., the provision preserving Carrollton's ability to sell its property without PSL permission). The argument by PSL counsel to the contrary is refuted

by the PSL itself. At the PSL's corporate deposition, its designated corporate representative, *speaking as and for the PSL*, testified under oath that Carrollton continues to this day to have the right under PCUS Section 6-8 to sell Carrollton property without PSL permission. Carrollton previously sold and leased property it owns without obtaining permission from the PSL. See PSL corporate deposition, Roeling at pp. 16, 17, 31, 79-81; Cutter at p. 21.

Every document, provision, or factor that the United States Supreme Court and the Louisiana Supreme Court have said are relevant to a resolution of this matter—all acts of conveyance, articles of incorporation, state trust and property law, and denominational governing documents—was either already known by the PSL or was voluntarily provided by Carrollton to the PSL on March 27, 2008, the date suit was filed. Despite the PSL's insistence on formal discovery, and the subsequent delay and expense, when the PSL finally filed its October 5, 2009, statement of "disputed" material facts, it didn't actually dispute anything. This pleading by the PSL is in fact the proverbial "Exhibit A" in support of imposing substantial sanctions against the PSL. The PSL admitted the relevance and correctness of all of the documents that Carrollton had voluntarily furnished to the PSL at the outset.[9] When Carrollton filed suit on March 27, 2008, the PSL even had in place a written policy, which the PSL called a "definitive statement", that said that churches like Carrollton that had timely exercised the property exemption of G-8.0701 of the PCUSA Book of Order could "buy, sell, lease, mortgage or otherwise encumber any of their real property without further permission of the Presbytery". Exhibit P-21, p. 36 (February 19, 2008, PSL meeting agenda). The

[9] In Ratcliff v. Boydell, 93-0362 (La. App. 4 Cir. 4/3/96), 674 So.2d 272, 283 a sanction award of $98,000.00 was affirmed, with the court noting that the "worst example of a sanctionable pleading" was the defendant's own affidavit of contested material facts that was unsupported by any evidence and only "served to thwart plaintiff's motion for summary judgment ..."

PSL never produced any document or other evidence that contradicted any of the material facts presented by Carrollton that are germane to a neutral principles of law analysis, and prior to the filing of its first pleading the PSL either knew or should have known it could not do so.

As already noted, on February 18, 2009, the PSL heard from Mr. Mark Tammen, the Director of Constitutional Services with the PCUSA Office of the General Assembly (the denomination's Louisville, Kentucky headquarters). Mr. Tammen is the PCUSA's foremost in-house legal authority. He is an attorney whose responsibilities include giving advisory opinions to PCUSA clergy and to legal counsel for synods and presbyteries concerning the meaning and application of the PCUSA constitution, the Book of Order. Mr. Tammen told the PSL at this early juncture that Carrollton had shown a substantial likelihood of prevailing at both the "preliminary level" *and* the "final determination". PSL 544. Regrettably, in response to this awareness the PSL nevertheless confected a "plan" or scheme to circumvent the facts and the law. This scheme can be traced through a number of e-mails the PSL was compelled by court order to produce (excerpted in Appendices A and B of these Written Findings and Reasons for Judgment).

On February 13, 2009, (the same day as this Court's TRO), the PCUSA's regional ecclesiastical authority, the Synod of the Sun, agreed to the request of its administrative commission to expand the commission's powers to additionally include dissolving churches, which the commission said it would do in an extreme situation. See PSL 114 (e-mail from commission moderator Gordon Edwards to commission members, PSL counsel, and PSL executive presbyter Alan Cutter).[10]

[10] The PCUSA is organized using four categories of governing bodies of increasingly wide geographic jurisdiction: the sessions of particular churches; (district) presbyteries; (regional) synods, and;

During the February 17, 2009, PSL meeting (at which the fact of the TRO was announced from the podium and copies distributed) several members of the Synod administrative commission were present along with PSL committee chair Lisa Easterling who argued for the Synod administrative commission to use its newly added power to dissolve churches "as a means to resolve things with Carrollton ..." PSL 158 (February 18, 2009, e-mail by Synod commission co-moderator Rupert Turner to commission members, copied to PSL counsel and PSL executive presbyter Alan Cutter).

In response to Mr. Tammen's February 18, 2009, e-mail (PSL 544) that expressed his legal opinion that the PSL had no defense on the merits, the PSL, through its New Orleans counsel, replied later on February 18, 2009. The PSL's New Orleans counsel expressed his pleasure over the Synod commission's newly added authority to dissolve churches, and expressed his frustration that the Synod commission had not yet seen this Court's TRO (which prohibited the dissolving of Carrollton Presbyterian Church) as a good enough reason to use that authority against Carrollton. Like Ms. Easterling before him, the PSL's New Orleans' counsel lobbied the Synod administrative commission to see this court's TRO itself as a sufficient reason to nevertheless dissolve Carrollton and in the process violate the clear language of this court's TRO itself. PSL 549.[11] Later that same day, at 11:11 p.m., Mr. Tammen responded to the PSL's New Orleans counsel and expressed his agreement that the Synod commission should go ahead and use its

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a (national) General Assembly. The synod within whose geographic bounds the PSL is located, the Synod of the Sun, had previously appointed an "administrative commission" to which any PSL property-related decisions had been made subject to approval. On February 13, 2009, this authority was expanded. For a more detailed chronology, see Appendix A of these Written Findings and Reasons for Judgment.

[11] The court's February 13, 2009, TRO expressly prohibited dissolving Carrollton Presbyterian Church and stated that the TRO "shall be effective against the Presbytery of South Louisiana, its officers, agents, employees, and counsel, and any persons in active concert or participation with it, on its behalf, or in its stead ..."

new authority to dissolve Carrollton if the TRO was not lifted. Mr. Tammen said that violating the TRO would "drive" a (purported) lack-of-subject-matter jurisdiction argument home. PSL 554.

The next day, February 19, 2009, Mr. Tammen followed up with another e-mail to the PSL's New Orleans counsel. He noted with approval that the PSL's New Orleans' counsel and another PCUSA lawyer (in San Francisco) had come up with "a plan". Mr. Tammen volunteered to work with the Synod commission to make sure they (the Synod commission) would perform "the role you (the PSL's New Orleans counsel) need for them to fill—like taking action to dissolve, etc." PSL 688.[12] The Synod commission did so by vote on February 25, 2009, then mailed a February 26, 2009, letter of notification to Carrollton in which it stated it had acted "for" the PSL, "in support of the PSL", and "in order to accomplish the stated ends of ... the PSL".

The PSL and its co-conspirators then came up with two arguments which were asserted in the alternative and which illuminate the reason behind the willful violation of this court's TRO and the plan it was designed to facilitate. The PSL hoped its plan would let it side-step the dilemma presented to it by the undisputed facts and the well-established law. The first argument was to assert that the facts and the law don't matter because this court was allegedly without subject matter jurisdiction. The second, alternative argument was to urge a de facto form of the deference method by nonsensibly arguing that Wolf and Fluker, instead of respectively authorizing and requiring the genuine use of neutral principles of law (particularly well-established trust and property law), granted a religious

[12] For further discussion of the TRO violation and the role the PSL, its New Orleans counsel, and other co-conspirators played, see pp. 33-35, infra, and Appendices A and B.

exemption by authorizing the non-owner PCUSA to unilaterally create a self-operating trust in its own favor over property owned by a Louisiana corporation — without regard to the mutual intentions of the parties (the consent of the titleholder) and without regard to the trust being "embodied in some legally cognizable form". Wolf at 606.

This two-pronged scheme by the PSL, which the knowing violation of this Court's TRO was designed to facilitate, permeates the PSL's opposition and makes the PSL solidarily liable with its co-conspirators for the sanction in the amount set forth below. If the PSL's arguments were merely incorrect they would not be sanctionable. But they are more than merely incorrect. The PSL has not simply engaged in creative advocacy. The PSL's first argument, pertaining to subject matter jurisdiction, has been forcefully rejected by the U.S. Supreme Court and by the Louisiana Supreme Court. Since Presbyterian Church and Wolf numerous state courts throughout the United States have commonly used neutral principles of law for forty years to resolve church property disputes — a method that has state court precedents dating to at least the 1840s . The PSL has known this, or should have known this, from the outset. The PSL's second argument nonsensically misrepresents controlling case law. Brief elaboration demonstrates why the court concludes that the imposition of sanctions is warranted by the exceptional circumstances presented.

**a) The First False PSL Argument in Support of its Permeating Scheme: The Civil Court Lacks Subject Matter Jurisdiction**

It is well-established that civil courts cannot intervene in doctrinal disputes within a church but can adjudicate church property disputes if they can be resolved without reliance on religious doctrine. The boundary line of civil court subject

matter jurisdiction is authoritatively set forth in Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) and in Presbyterian Church and Wolf, supra. The underlying property matter in this case did not present an ecclesiastical issue of religious doctrine that the court was asked to decide. The case presented a question of property rights whose resolution was not dependent upon an answer to a religious question but instead could be resolved using "objective, well-established concepts of trust and property law familiar to lawyers and judges". Wolf at 603. The PSL's jurisdictional argument, that the case before this court is ecclesiastical and, therefore, the First Amendment guarantee of religious freedom places this case beyond civil court authority, was expressly rejected by the U.S. Supreme Court in Jones v. Wolf, 443 U.S. 595 (1979). That case involved a member church of the PCUS (the PCUSA's legal predecessor). The denomination argued then, as the PSL did now, that its property-related internal processes were "ecclesiastical" in nature and therefore could not be interfered with by civil courts without violating the denomination's free exercise rights. A majority of the U.S. Supreme Court forcefully rejected this argument, explaining:

> The dissent also argues that a rule of compulsory deference is necessary in order to protect the free exercise rights "of those who have formed the association and submitted themselves to its authority". This argument assumes that the neutral-principles method would somehow frustrate the free-exercise rights of the members of a religious association. Nothing could be further from the truth. The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods."

Jones v. Wolf at 605, 606. The words of the U.S. Supreme Court are unequivocal. "Nothing could be further from the truth." What was true then remains so. The

PSL has not offered a good faith argument for the extension, modification, or reversal of existing law.

In Wolf the Augusta-Macon Presbytery had appointed an administrative commission just like the commissions appointed by the PSL and the Synod of the Sun. "In response to the schism within the Vineville congregation, the Augusta-Macon Presbytery appointed a commission to investigate the dispute and, if possible, to resolve it." Wolf at 598. The mere background existence of this "ecclesiastical process"[13] did not act as a bar in Wolf to the civil court exercise of subject matter jurisdiction to resolve the church property dispute using neutral principles of law. The PSL knew this, or should have known this, from a simple reading of Wolf. For over forty years civil courts throughout the United States have often exercised their subject matter jurisdiction to resolve church property disputes using neutral principles of law notwithstanding the invariable background presence of some form of denominational administrative machinery like administrative commissions.[14]

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[13] The PSL's "ecclesiastical processes" are described in trial Exhibit P-16. The second and third sections of P-16 are documents generated by the PCUSA that describe the procedures which the PCUSA's headquarters have recommended that local presbyteries follow in church property disputes. Page 12, section two, of P-16 instructs presbyteries to: "freeze the assets"; "file a *lis pendens*"; "Send letter to holder of bank and trust accounts"; "[C]hange the locks and secure the grounds if necessary." The third section of P-16 continues at pp. 3 and 4 to further instruct: "File an affidavit of property trust on the real estate ... on the public records"; "[S]end a letter to all banks and other institutions that hold accounts for the particular church"; "Put the presbytery and the local churches' insurance companies on notice"; "Determine the religious background of your judge."

[14] There are many Presbyterian examples, in addition to Wolf, readily available to the PSL, that illustrate civil court exercise of subject matter jurisdiction notwithstanding the existence of a denominationally-appointed administrative commission: Bethany Independent Church v. Stewart, 93-1252 (La. App. 3 Cir. 10/5/94), 645 So.2d 715, 719; Babcock Memorial Presbyterian Church v. Presbytery of Baltimore, 296 Md. 573, 575, 464 A.2d 1008, 1010 (1983); Calvary Presbyterian Church v. Presbytery of Lake Huron, 148 Mich. App. 105, 108, 109, 384 N.W.2d 92, 93, 94 (1986); Mills v. Baldwin, 362 So.2d 2, 3 (Fla. 1980); Presbytery of Hudson River v. Trustees of First Presbyterian Church of Ridgebury, 2010 NY Slip Op 00240 (2008-04618) at p. 8; Norton v. Green, 304 S.W.2d 420, 423 (Tex. App, Waco 1957); Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc., 552 S.W.2d 865, 869 (Tex. App, Texarkana 1977); and Schismatic and Purported Casa Linda Presbyterian Church in America v. Grace Union Presbytery, Inc., 710 S.W.2d 700, 702 (Tex. App, Dallas 1986).

In the present case the PSL and its collaborators sought to use the Synod's administrative commission to "take the law into one's own hands" to expropriate property and control the sale proceeds. PSL Council moderator Harry Brown acknowledged in a January 18, 2009, e-mail to top PCUSA attorney

More than twenty-five years ago, in Fluker v. Hitchens, 419 So.2d 445 (La. 1982), the Louisiana Supreme Court not only held that civil courts have subject matter jurisdiction to decide church property disputes but that they *must* exercise that jurisdiction when the resolution of the dispute can be decided without reliance on religious doctrines. Fluker specifically rejected the argument that denominational procedures concerning resolution of property disputes were necessarily of a spiritual realm into which civil courts could not intrude. To the contrary, the Louisiana Supreme Court said:

> Indeed, we think the safeguards against laws establishing religion and prohibiting the free exercise thereof contained in the First Amendment and in Article I, Section 8 of our state constitution necessitate our adoption of the "neutral principles" approach. Whatever authority a hierarchical organization may have over associated local churches is derived solely from the local church's consent. Refusal to adjudicate its feud over property rights or contractual obligations, even when no interpretation or evaluation of ecclesiastical doctrine or practice is called for, but simply because the litigants are religious organizations, may deny a local church recourse to an impartial body to resolve a just claim, thereby violating its members' rights under the free exercise provision, and also constituting a judicial establishment of the hierarchy's religion.

Fluker v. Hitchens at 445.

The PSL's position in this litigation is sanctionable not because the PSL simply interpreted Wolf and Fluker differently. The PSL has done something qualitatively different. The PSL has ignored the plain language of these cases. The PSL would distinguish this case from Wolf and Fluker on the basis that *this* case involves injunctive relief. The court notes, though, that Carrollton only amended its petition on February 13, 2009, to seek injunctive relief after Carrollton

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Mark Tammen (copied to PSL executive director Alan Cutter and Synod administrative co-moderator Rupert Turner). "What we (PSL Council) think would be the best course is to take original jurisdiction (by the Synod administrative commission) and replace the session, fire the attorney the church has hired, Lloyd Lunsford, and either proceed with the sale of the property, or there is a remote chance of redeveloping it". PSL 050 (parenthesis supplied).

had received notice on February 4, 2009, that the PSL had included on its agenda for the February 17, 2009, PSL meeting a recommendation that the PSL appoint an administrative commission. The purpose of that commission was to assume original jurisdiction over Carrollton and effect seizure and control of Carrollton's property. Under such circumstances seeking and obtaining injunctive relief to prevent a non-owner from interfering with the property status quo while the merits are under review by the civil court was necessary if there was even to be an opportunity for "recourse to an impartial body to resolve a just claim". Fluker at 445.

If the PSL really thought that this Court's February 13, 2009, TRO or September 14, 2009, Preliminary Injunction violated its constitutionally-protected religious liberties, it could have immediately filed an Application for Stay, Request for Expedited Consideration, and Petition for a Writ of Review or Certiorari variously with the First Circuit and the Louisiana Supreme Court concerning this alleged infringement. The PSL, however, did not take any of these steps. The court notes that the PSL only sought a writ of review when it was subsequently ordered by this court to produce the 441 so-called privilege log documents ("PSL documents") whose disclosure would shed additional light on sanctionable conduct.

In addition to pointing to Carrollton's obtaining injunctive relief (the need for which was prompted by PSL action), the PSL sought to avoid the law establishing subject matter jurisdiction by arguing that this case is distinguishable in a second way. The PSL argued that Carrollton, in trying to sell its remaining

real property, was allegedly in the process of trying to dissolve itself.[15] The PSL, however, has not offered a non-frivolous argument why this would remove subject matter jurisdiction.

As the PSL is aware from the pleadings, the plaintiff in this case is a civil corporation formed under the laws of the State of Louisiana. The plaintiff's corporate articles grant exclusive authority to the corporate Trustees to "hold title to and control the properties of the corporation ...". The PSL was also aware from the outset that this corporation is the title holder of record. It is axiomatic that the dissolution of this corporation is not governed by the PCUSA Book of Order but by the laws of the State of Louisiana, in particular, La. R.S. 12:249, et seq. The PSL at all times knew that Carrollton did not want to be dissolved and had not acted to become dissolved. Nor could the PSL usurp the authority of the state to dissolve a civil corporation that was created in the first place pursuant to the laws of the State of Louisiana. It is well-established that ceding such civil power to ecclesiastical authorities would constitute an unconstitutional state establishment[16]. Accordingly, when a presbytery acts under G-8.110301i of the PCUSA Book of Order "to divide, dismiss, or dissolve churches in consultation with their members", all the presbytery can do is either divide one PCUSA church into two PCUSA churches, dismiss a PCUSA church to membership in another Presbyterian denomination, or dissolve a church *as a member church of the PCUSA*. The local church still exists. It's just not a *PCUSA* church any longer. And the corporation

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[15] The only "dissolution" of Carrollton was by the PSL-requested Synod administrative commission, in knowing violation of this Court's February 13, 2009, TRO, which dissolution this Court subsequently held was without effect.

[16] "Vesting entanglement" occurs when the state cedes, lends, or delegates to the church some of the state's traditional governmental power. See, e.g., Larken v. Grendel's Den, Inc., 459 U.S. 116 (1982); Tribe, American Constitutional Law (2nd ed), § 14-11; Nowak and Rotunda, Constitutional Law, (6th ed) at § 13.8, 17.3 and 17.4.

continues to exist and own its property.[17] The PSL's argument concerning dissolution as a means of avoiding the ramifications of the clear language in Wolf and Fluker is not a good faith argument for the extension, reversal, or modification of existing law.

This failure by the PSL is underscored by the facts concerning the alleged effort to dissolve. For sanctions purposes, four undisputed facts, all known by the PSL from the outset, are pertinent:

> First, Carrollton has been talking with the PSL about the possibility of dissolving for over twenty years, in conversations that also included other possible futures for Carrollton such as the hiring of a "turn-around" pastor and revival. At no time, though, was any particular date ever decided upon for a final worship service. PSL/Roeling corporate deposition at pp. 91, 92 and PSL 11;
>
> Second, according to the PSL's admitted practice, in order for the local church to actually be dissolved, the session and congregation of Carrollton must vote for dissolution—and it is undisputed that no such vote has ever occurred;[18]
>
> Third, whatever Carrollton has or has not done or said concerning potential dissolving, it has at all times acted as a member of the successor denomination to the PCUS.[19] PSL corporate deposition, Rev. Roeling at p. 64. Thus by its terms § 6-8 of the PCUS Book of Church Order, which grants Carrollton the right to sell its property without PSL permission, applies, as the PSL has admitted. See, e.g., PSL corporate deposition, Sept. 23, 2009; Rev. Roeling at pp. 29-31, 75-81; Dr. Cutter at p. 21.
>
> Fourth, the PSL also admitted that property ownership is not a requirement to be a member church of the PCUSA, and that for many years another church had remained an active member of the PSL

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[17] Article VI of Carrollton's articles of incorporation defines the members of the corporation as consisting of various categories of members of "Carrollton Presbyterian Church" who are not defined in that article as necessarily members of a *PCUSA* church. From the time of its first incorporation in 1898 through its most recent 1979 articles the identity of the incorporated local Carrollton church has never been defined in its articles by specific denominational membership. The members of the corporation have never been defined as the member of a specifically identified denominational church—only as the members of "Carrollton Presbyterian Church".

[18] Although the Book of Order does not make a presbytery's action to dissolve a church contingent on a request by a local church to be dissolved, in its corporate deposition the PSL stated that its longstanding practice has always been to never dissolve a church unless the church wants to be dissolved and the local church actually decides to dissolve by first officially voting to dissolve or voting to ask the presbytery to dissolve it. See PSL/Roeling corporate deposition at pp. 102, 107, 110, 111.

[19] In opposing summary judgment the PSL pointed to certain statements made by Carrollton representatives that mentioned a dissolution in "due course". These statements, however, were made as Carrollton responded to the PSL's demand for dissolution as a condition of settlement and do not, according to the PSL's corporate representative Re. Roeling, render § 6-8 inapplicable.

despite having sold all its property. PSL/Roeling corporate deposition at p. 64.

The PSL has also ignored the language in Wolf and Fluker in another, fundamental way. Interwoven throughout almost every pleading and memoranda the PSL has filed or submitted to this court the PSL emphasized the form of ecclesiastical government (polity) said to characterize the PCUS and PCUSA. The PSL argued that because trust clauses are contained in the 1982/1983 edition of the PCUS Book of Church Order (§ 6-3) and the PCUSA Book of Order (G-8.0201) Carrollton was therefore necessarily bound by them due to the PCUSA's allegedly hierarchical polity. The PSL wrote, "Critically, the PCUSA is a connectional church that is *hierarchical* in nature, rather than congregational ..."[20] What the PSL has said is "critical", though, the U.S. Supreme Court has said is irrelevant. Comparing the neutral principles of law approach with the deference approach, the U.S. Supreme Court said, "The neutral-principles approach, in contrast, obviates entirely the need for an analysis or examination of ecclesiastical polity ..." Wolf at 605. The majority in Wolf said that, "[T]he suggested rule (by the minority, of compulsory deference) would appear to require a "searching and therefore impermissible inquiry into church polity"." Wolf at 605, citing Serbian Orthodox Diocese, 426 U.S. at 723. What Wolf said about polity, juxtaposed against what the PSL said about polity, cannot be reconciled.

**b) The Second False PSL Argument in Support of its Permeating Scheme: Notwithstanding Wolf's Clear Language About Trust Law Requirements And Consent, Wolf Authorized Enforceable Trusts By**

[20] Page 4 of its October 5, 2009, Memorandum in Opposition to Plaintiff's Motion for Summary Judgment. Because Wolf said that church polity, or form of government, is not to be considered when applying neutral principles of law, whether the PCUSA is or is not hierarchical is legally irrelevant in this case. The court observes, though, that the PSL has stated in the Record in this case that the PCUSA is not hierarchical. PSL corporate deposition (Dr. Cutter) at p. 18, 19.

**Unilateral Amendment To Denominational Constitutions**

The PSL ignored the clear language in Wolf to nonsensically argue that if this court does have subject matter jurisdiction then the neutral principles of law method, authorized in Wolf and mandated in Fluker, allow the PCUSA to create a trust over local church property simply by amendment to the denominational constitution without regard to consent or state law trust requirements. As this court noted, though, in over forty years of neutral principles case law no court in the United States has ever held that Wolf authorized this. In alleged support, of its argument, however, the PSL relied heavily on a 2009 decision by the California Supreme Court, Episcopal Church Cases, 45 Cal. 4th 467, 198 P.3d 66 (dec. Jan. 5, 2009; cert denied, Oct. 2, 2009). The PSL cited or referred to Episcopal Church Cases, eleven (11) times in its October 14, 2009, Memorandum in Opposition to Sanctions and cited or referred to this case fourteen (14) times in its January 5, 2010 Memorandum in Support of Motion for Summary Judgment on Carrollton's Motion for Sanctions. Episcopal Church Cases, however, does not come close to saying what the PSL claims it says. This is not simply a matter of opposing attorneys having a difference of opinion about how to interpret a case. The PSL has misrepresented Episcopal Church Cases and in the process has stood Wolf on its head. Because the PSL placed such reliance on Episcopal Church Cases discussion of this case is appropriate.

The decision in Episcopal Church Cases in favor of the diocese was specifically based on two readily identifiable factors that are obviously absent in the dispute between Carrollton and the PSL: 1) An implied trust under California law that arose from Episcopal canons that state the *opposite* of § 6-8 of the PCUS

Book of Church Order, and; 2) An express trust clause that was only made operable by a unique, one-of-a-kind California statute that has no Louisiana counterpart.

In ruling for the diocese Episcopal Church Cases did not say the Episcopal express trust clause (the 1979 Dennis canon), without more, controlled and then conclude its opinion on that note. Instead, the California Supreme Court addressed at length the issue of necessary local church consent—and found consent on the basis of a separate, *implied* trust arising from local church adherence to another canon (Sections 2 and 3 of canon II.G) that dated to 1868. This canon required the permission of the bishop and diocese before a local church could sell or encumber property.

The contrast between Episcopal Church Cases and this case could not be sharper. First, the PSL has not relied on the existence of an implied trust as a basis for opposing Carrollton. The PSL has relied exclusively on the express trust clause of G-8.0201 of the PCUSA Book of Order. See, PSL Answer and Exceptions To Petition As Amended. Moreover, the contrast between Sections 2 and 3 of Episcopal canon II.6 and Section 6-8 of the PCUS Book of Church Order is well-known to the PSL and could not be sharper. They are opposites.

Episcopal Church Cases also awarded the property to the diocese on a second basis, a unique, California statute that has no Louisiana counterpart.[21] The

[21] The California statute (§ 9142 of the California Corporations Code) was enacted in 1982 shortly after Wolf and states that assets of a religious corporation shall not be deemed to be impressed with a trust of any kind unless either the local articles or bylaws of the corporation or the denomination's governing documents expressly provide. If either so provides then a trust is thereby created under the statute and can only be amended or dissolved, according to the statute, by amendment to the document which gave rise to the trust. The Dennis canon, the California court ruled, was not self-operating but was only made enforceable by this California statute, and under the statute could thus only be rescinded by amendment to the denominational constitution.

The California Supreme Court said that this California statute "is consistent with" the language at pp. 606 in Wolf that refers to the general church's constitution being amended to recite a trust. Episcopal

PSL knows this. This statute is central to the rationale in Episcopal Church Cases. The California Supreme Court specifically cited or referred to this statute seventeen (17) times. Episcopal Church Cases, at pp. 293-296. These basic features of Episcopal Church Cases are evident upon a simple reading of that brief case. Neither Episcopal Church Cases nor Wolf provide the slightest justification for the PSL's opposition.[22]

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Church Cases at p. 293. This is true in one sense. The California statute by its terms is relevant or applicable only if the denomination's constitution recites a trust. Episcopal Church Cases did not say, however, that Wolf authorized the denomination to create a self-operating trust simply by unilateral amendment of the denominational constitution without further action by the legislature or the local church. Episcopal Church Cases did not say this because Wolf does not say this. As noted, the California Supreme Court devoted much of its opinion to finding local church consent. The California Supreme Court explained how § 9142 was "consistent with" Wolf. The Court said "This statute appears to be the type of statute the United States Supreme Court had in mind when it approved reliance on 'provisions of state statutory law governing the holding of property by religious corporations' ..." Episcopal Church Cases at 293, quoting Md. & Va. Churches v. Sharpsburg Ch., 396 U.S. at p. 367, 90 S. Ct. 499. The Court added, "Justice Brennan fleshed out the point in his concurring opinion in that case (Sharpsburg). He explained that one possible approach to resolving church property disputes is the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine." Episcopal Church Cases at 293.

[22] To justify its nonsensical interpretation of Wolf the PSL has cited a lone sentence excerpted from a fifty-two (52) page, 1987 Law Review article, 32 St. Louis U.L.J. 263. This article, though, does not indicate awareness of the exception of G-8.0701 of the PCUSA Book of Order and § 6-8 of the PCUS Book of Church Order, nor indicate awareness of the distinctive requirements for the establishment of enforceable Louisiana trusts. In the 40 years of reported case law since Wolf, the PSL has not pointed to any court decision in a neutral principles jurisdiction anywhere in the United States that has cited this Law Review article and adopted the view taken by the PSL. Given these circumstances this lone sentence is not a "safe harbor" that excuses the PSL from its obligations under La. C.C.P. arts. 191, 224, 371, 863, and 864.

To find "slight justification" to avoid sanctions the PSL also points to 62 Maine L. Rev. 23, 18 n. 168 (2010). The PSL quotes the author of this article as saying that California and New York decisions deemed the mere recitation of a trust in the denominational constitution as "dispositive". However, upon review of this article it is clear that the author used the word "dispositive" only with reference to a New York case, Episcopal Diocese of Rochester v. Harnisch, 899 N.E.2d 920, 924-25 (N.Y. 2008). When one reads the portion of Harnisch cited by the Maine author, however, the sense in which the author used the word "dispositive" becomes clear—and it is not the sense suggested by the PSL. Harnisch held that the trust clause was not self-executing or dispositive by itself but controlled in the case before it only because the local parish had given its consent to it. The local parish had expressly agreed to abide by it when the local parish previously signed a specific document in 1947 in which it expressly agreed "to abide by and conform to the national Episcopal constitution and the canons of the local diocese and all the canonical and legal enactments thereof". The Harnisch court found evidence of the owner's consent to the Dennis Canon from the fact that the local parish had never objected to the Dennis Canon for more than twenty (20) years since it was adopted. The court found this silence "significant". Harnisch at 925. These key facts are apparent from a reading of Harnisch and contrast sharply with the facts of this case.

2) **Repeatedly Asserting Frivolous Arguments**

The PSL has repeatedly asserted legal arguments that do not constitute a good faith argument for the extension, modification, or reversal of existing law. These frivolous arguments include:

- Wolf trumps state property and trust law (thus mooting need for mutual consent by the owner/settlor)—even though Wolf expressly states that neutral principles of law "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." Wolf at 603;

- The purportedly hierarchical nature of PCUSA polity (form of government) is "critical" to the PSL's opposition to Carrollton (Oct. 4, 2009, PSL Memorandum at p. 4)—even though the neutral principles of law method approved by Wolf and mandated in Fluker "obviates entirely" an examination of polity and makes inquiry into polity "impermissible". Wolf at 605;

- PSL contesting Carrollton's right under PCUS Section 6-8 to sell Carrollton's property without presbytery permission—even though the PSL's corporate designees, speaking as and for the PSL itself, testified that Carrollton has the right to sell Carrollton's property without PSL permission. PSL corporate deposition, Roeling at pp. 16, 17, 31, 79-81; Cutter at p. 21;

- Because there is no specific Louisiana church property trust statute, Louisiana's general property and trust statutes do not apply. See e.g. October 5, 2009, PSL Memorandum at p. 14;

- When Carrollton Presbyterian Church was founded in 1855 it gave its consent to an express trust clause that did not come into existence until 1982, 127 years later. See e.g., June 19, 2009, PSL Memorandum at p. 1-3 ff; October 5, 2009, PSL Memorandum at pp. 5-8, 12;

- Carrollton would suffer no irreparable harm even though the Synod administrative commission, acting "for" the PSL, dissolved Carrollton (in knowing violation of this Court's February 13, 2009, TRO). See, e.g., Feb. 23, 2009, PSL Memorandum at p. 10; June 19, 2009, PSL Memorandum at p. 14. By "dissolving" Carrollton the PSL and Synod intended to extinguish Carrollton's existence. One cannot imagine harm more irreparable;

- Carrollton's timely vote to use the exception of G-8.0701 (the act by which Carrollton fell back on § 6-8, which negates any trust)

evidenced Carrollton's intent to be bound by a trust. See e.g., June 19, 2009, PSL Memorandum at p. 11;

- The Articles of Agreement (forming the PCUSA) preclude Carrollton's property claims—even though Article 13.1 of the Articles of Agreement expressly states that the Articles in no way alter, abridge or nullify any civil law provisions concerning property ownership. See, e.g., PSL Fourth Defense, June 19, 2009, PSL Memorandum at p. 10; Oct. 5, 2009, PSL Memorandum at pp. 25 ff. Article 13 (the only Article that mentions property) expressly applies only to "dismissal", and it is undisputed that Carrollton has not sought dismissal from the PCUSA nor been dismissed from the PCUSA.

### 3) Misrepresenting the Facts about Carrollton's 1922 Acquisition

On October 13, 2009, during the hearing on Carrollton's Motion for Summary Judgment counsel for the PSL said in reference to the property acquired by Carrollton in 1922 on which its sanctuary sits, that "We (the PSL) don't know if they (Carrollton) paid full value. We just don't know. It happened too long ago." Transcript of PSL counsel's remarks at p. 10. However, on March 2, 2009, the PSL stipulated to the authenticity of the April 27, 1922, Resolution Adopted by the Presbyterian Board of Domestic Missions for the State of Louisiana and Elsewhere which states in reference to the 1922 act of conveyance that the grantor was reimbursed its full original purchase price by Carrollton.[23]

### 4) Calling This Court's Subject Matter Jurisdiction "Malevolent", And Otherwise Showing Disdain For The Judiciary

On page 22, n. 13 of the PSL's June 19, 2009, Post-Hearing Memorandum the PSL calls Carrollton "malevolent", that is, someone seeking to do evil by

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[23] **AND WHEREAS the amount paid for said property has been reimbursed by the PALMER PARK PRESBYTERIAN CHURCH and the CARROLLTON PRESBYTERIAN CHURCH OF NEW ORLEANS, which two Churches here agreed to consolidate under the name of THE CARROLLTON PRESBYTERIAN CHURCH OF NEW ORLEANS,**

**AND WHEREAS the Presbytery of Louisiana has directed the PRESBYTERIAN BOARD OF DOMESTIC MISSIONS FOR THE STATE OF LOUISIANA AND ELSEWHERE to transfer said above described property to THE CARROLLTON PRESBYTERIAN CHURCH OF NEW ORLEANS,**

**THEREFORE, BE IT RESOLVED, that JAMES J. MANSON, President of the PRESBYTERIAN BOARD OF DOMESTIC MISSIONS FOR THE STATE OF LOUISIANA AND ELSEWHERE be, and he is hereby authorized, in the name and on behalf of Board to transfer the property hereinabove described to THE CARROLLTON PRESBYTERIAN CHURCH OF NEW ORLEANS, and for that purpose and to that end said MANSON is authorized in his aforesaid capacity, to sign and execute the necessary Notarial Act of Transfer, and is further authorized to do and perform any other act or thing necessary to consummate the transfer of said above described property as authorized by this Resolution.**

Exh. P-2 (pp. 3, 4) introduced at the March 2-3, 2009, hearing on Carrollton's petition for preliminary injunction, and reintroduced at the October 13, 2009, hearing on Carrollton's Motion for Summary Judgment.

wicked ways. In explaining why Carrollton deserved this invective the PSL pointed to Carrollton's decision to come before this court for a determination of the disputed property rights instead of placing the fate of its property in the hands of the PSL, an adverse, interested party. In seeking civil adjudication rather than ecclesiastical resolution, though, Carrollton was merely seeking recourse to an "impartial body to resolve a just claim", as it was encouraged to do by a unanimous Louisiana Supreme Court in Fluker. Subsequently, on page 17 of its October 14, 2009, Memorandum and on page 19 of its January 5, 2010, Memorandum, the PSL sought again to justify its invective by explaining that it had not called Carrollton *itself* malevolent but only called Carrollton's decision to seek civil court adjudication malevolent. This is a distinction without a difference. If the PSL thinks that an entity that seeks civil court subject matter jurisdiction is "malevolent", it necessarily impugns the exercise of the court's subject matter jurisdiction.

Disrespectful contempt by the PSL and its collaborators for civil authority is sadly and disturbingly evident elsewhere. When the PSL's petition for removal was allotted to U.S. District Judge Ralph Tyson, a respected African American jurist, the Synod suggested, in a March 12, 2009, e-mail to the PSL, Mr. Tammen, and others, that Judge Tyson was inclined to rule based on the skin color of the lawyers involved in the case. The Synod noted that Preston Castille, an African American partner in Taylor Porter, had been one of the lawyers listed for Carrollton in the state court pleadings, and said that the PCUSA should start thinking about enrolling its own black lawyer now that the matter had been allotted to Judge Tyson. PSL 1695. The following day, March 13, 2009, one of the lawyers advising the PSL and the Office of the PCUSA General Assembly, Mr.

Finst, e-mailed the Synod, the PCUSA (Mr. Tammen) and the PSL, and asked if anyone knew whether Judge Tyson's home church, Wesley Methodist Church, was unhappy with its parent denomination. PSL 1702. The Synod replied by e-mail on March 13, 2009, and volunteered to secretly investigate whatever was going on in the pews of Judge Tyson's church. PSL 1707. When U.S. Magistrate Judge Stephen Riedlinger issued his Report and Recommendation that the matter be remanded back to state court, Mr. Tammen e-mailed the PSL and others on March 27, 2009, and said, "A central theological tenet in my world view is total depravity. I do not want to believe it, but could even the Federal Court in Baton Rouge be compromised?" PSL 2446. When Judge Tyson subsequently ordered the matter remanded back to state court, the PSL e-mailed Mr. Tammen and others on June 4, 2009, and characterized Judge Tyson as lazy by accusing him of not doing his own work. The PSL said that Judge Tyson had simply "rubber-stamped" U.S. Magistrate Riedlinger's Report and Recommendation. PSL 2791. In all these communications none of the recipients e-mailed in reply a single word of admonishment or disagreement.

**5) Recurring Misrepresentation of Case Law**

Words have meaning. Faithfully articulating the facts, rationale, and holding of a judicial opinion is fundamental to the responsibilities of officers of the court and to any honest use of case law. The PSL's heavy reliance on and distortion of Episcopal Church Cases, like its disregard of Wolf and Fluker, are examples of the PSL's sanctionable efforts to obfuscate and delay by interposing patently meritless arguments. The PSL's misrepresentation of case law, however, is not confined to Wolf, Fluker, and Episcopal Church Cases. This court adopts the analysis presented at pp. 36-41 of Carrollton's March 25, 2010, Supplemental Memorandum

in Support of Motions for Sanctions. In furtherance of frivolous arguments the PSL has exhibited a recurring pattern of misrepresenting case law, specifically: In Re: Church of St. James the Less, 585 Pa. 420 at (Pa. 2005); Babcock Memorial Presbyterian Church v. Presbytery of Baltimore, 464 A.2d 1008 (Md. 1983); Calvary Presbyterian Church v. Presbytery of Lake Huron, 384 N.W.2d 92 (Mich. App. 1986); Shirley v. Christian Methodist Episcopal Church, 748 So.2d 672, 676 (Ms. 1999); United Pentecostal Church International, Inc. v. Sanderson, 391 So.2d 1293 (La. App. 2nd Cir. 1980); Bethany Independent Church v. Stewart, 93-1252 (La. App. 3rd Cir. 10/5/94), 645 So.2d 715; Glass v. First United Pentecostal Church of Deridder, 95-1442 (La. App. 3rd Cir. 6/12/96), 676 So.2d 724, and; Mills v. Baldwin, 377 So.2d 971 (Fla. 1979).

**6) Prior PSL Knowledge of and Participation in the Plan to Willfully Violate this Court's TRO**

The willful violation on Feb. 25, 2009, of this Court's Feb. 13, 2009, TRO was not just a discrete event. It was part of a wider plan or scheme intended to facilitate a conspiracy that permeates and is systemic to the PSL's opposition. As previously discussed, this court's February 13, 2009, TRO was intentionally violated by the PSL and its co-conspirators to manufacture a false lack-of-subject-matter jurisdiction argument. To address culpability for this willful violation, review of the disturbing facts is necessary. They are collected chronology in Appendix A and are made a part of these Written Findings and Reasons for Judgment.

As recorded in the transcript of the March 2, 2009, hearing, at a time when he was trying to distance himself and his client from the violation of this court's TRO, the PSL's New Orleans counsel told this court that he did not represent the

Synod. He emphasized that his client was the PSL (the only party defendant in the case) and that he represented only the PSL. On September 14, 2009, however, when arguing for a "common interest" doctrine to apply to shield the so-called "privilege log" documents from disclosure, the PSL's New Orleans counsel told a different story that is directly contrary to what he said on March 2, 2009. The PSL's New Orleans attorney said that if asked, the Synod Commission would say that he was its lawyer at least to the time of the February 25, 2009, vote by the commission to dissolve Carrollton. (Counsel's September 14, 2009, representations are referred to in the transcript of Sept. 22, 2009, hearing on Carrollton's Motion to Compel, at pp. 19, 21, 22.)

This court is imposing sanctions in part due to the PSL's violation of this court's February 13, 2009, TRO. Sanctions are being imposed not just because of the duplicity of counsel's representations to the court. That is bad enough. The truth is worse. The evidence introduced indicates that the PSL had reason to know in advance that the Synod administrative commission, acting "for" the PSL, intended to violate this Court's TRO on February 25, 2009. The PSL documents (which the PSL has labeled "Privilege Log" or "common interest" documents), whose disclosure the PSL fought to prevent, reveal that the PSL actually lobbied for and planned the violation. Recognizing early on that there was no defense on the merits, the PSL came up with a "plan". It astonishingly decided to intentionally violate the TRO as a means to "drive" home a purported lack of subject matter jurisdiction. PSL 544. The relevant PSL documents (e-mails) are variously excerpted and synopsized in Appendices A and B and are made a part of these Written Findings and Reasons for Judgment. They illuminate words and deeds this court finds unconscionable. There is ample basis for imposing sanctions without

regard to these PSL documents, but they illustrate with particular force why sanctions are justified.[24]

The PSL argues that it has no responsibility for the violation of the TRO because its executive presbyter, Dr. Cutter, and its stated clerk, Mr. Bottomly, testified that they did not know that the Synod administrative commission had specifically voted to dissolve Carrollton until the day after it happened, when they both received a phone call. The court is not persuaded as to the PSL's lack of culpability. The PSL asked the Synod to appoint an administrative commission in the first place, knew the commission had been granted additional power to dissolve churches, and lobbied the commission to use its added power to dissolve Carrollton. The PSL cannot then disclaim responsibility. The PSL's New Orleans counsel by his own admission gave the Synod legal advice on how to assist the PSL in its opposition to Carrollton and on the basis of that advice the Synod acted knowingly to violate this Court's TRO—"for" the PSL. The PSL's New Orleans counsel knew about the planned violation ahead of time. He planned and lobbied for it.

The PSL is no innocent bystander. The PSL is not simply Dr. Cutter and Mr. Bottomley. Purposefully keeping those two individuals in the dark about the actual timing of the Synod commission's vote to dissolve Carrollton doesn't absolve the PSL of responsibility. At the same February 17, 2009, PSL meeting where copies of this Court's TRO were distributed, influential PSL committee chair Lisa Easterling urged the Synod commission to use its new power of

[24] The PSL's "privilege log" lists 441 items that had not previously been disclosed. The substantial majority of those items consist of the transmission of Carrollton's pleadings and memoranda as they were circulated between PSL counsel and PSL co-conspirators and the transmission of successive drafts of PSL pleadings and memoranda being circulated between PSL counsel and PSL co-conspirators, for coordinated review, edit, and finalization. Of these 441 PSL documents, approximately 110 of them, consisting of e-mails, were introduced into evidence and made part of the record.

dissolution "as a means to resolve things with Carrollton". The PSL executive presbyter, Alan Cutter, was aware of this and other communications where the idea of dissolving Carrollton in violation of this Court's TRO was raised and recommended. The commission was designed to act, and did act, as the PSL's surrogate. When acting to violate the TRO, the Synod administrative commission said it was acting "for the Presbytery of South Louisiana" and "in support of the PSL" and "in order to accomplish the stated ends of ... the PSL," as acknowledged by the commission's own February 26, 2009, letter. En globo Ex. No. 7 (introduced on May 17, 2010). The actions of the Synod administrative commission and the other participants in the broader conspiracy are properly imputed to the PSL. The PSL is solidarily liable for the February 25, 2009, violation of this court's February 13, 2009, TRO.

## II. THE SANCTION IMPOSED

Sanctions may be compensatory, punitive, rehabilitative, educational, or any combination thereof. The court is given wide latitude under C.C.P. art. 863D. The court is not required to impose the least severe sanction possible but is required to impose the least severe sanction adequate to deter. In some cases that may be punitive, in others rehabilitative, and so forth. In the present case the least severe sanction adequate to serve the purpose of article 863 is a compensatory sanction that will reimburse Carrollton for the legal cost it has incurred subsequent to February 23, 2009 (the date the PSL first filed opposing pleadings in this matter), less the fees and expenses that Carrollton incurred in successfully obtaining remand from federal court. This court has reviewed the invoices submitted to and owed by Carrollton and this amount totals $336,000.00 in needlessly incurred attorneys fees plus expenses as a direct result of sanctionable conduct that was

recurring and systemic to the PSL's opposition. Carrollton has also had to spend another 16%, or $54,000.00, to seek compensatory sanctions.[25] The party in this case, the PSL, may lawfully be held responsible and "answerable in solido" for its own acts but also for all of the acts of those who conspired with it, which acts are legally imputed to the PSL under Louisiana Civil Code Article 2324. The court can therefore impose a fully compensatory sanction against the PSL, the named defendant in this case, under Louisiana Code of Civil Procedure Article 863.[26]

Louisiana Civil Code Article 2324, amended in 1987, provides:

> Liability as solidary or joint and divisible obligation
>
> A. He who conspires with another person to commit an intentional or willful act is answerable, in solido, with that person, for the damage caused by such act.

The 1987 amendment rephrased the law in terms of "conspiracy."[27] Liability under Article 2325 cannot be imposed absent a conspiracy.[28] Older cases hold that those who commit a wrongful act or assist or encourage another are bound in solido for the damages occasioned by its commission.[29] More recent cases discuss the involvement in terms of a conspiracy. The burden of proof under article 2324 requires a showing of agreement between the parties for the purpose of

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[25] As noted supra, the PSL does not dispute the reasonableness of the amount incurred by Carrollton but has only disputed whether sanctions are warranted.

[26] Louisiana courts have authority to hold a non-party in contempt. See, State in Interest of R.J.S., 493 So. 2d 1199, 1202, 1203, n. 9 (La. 1986); Graham v. Jones, 200 La. 137, 7 So. 2d 688 (1942); In Re Succ. of Nobles, 2009 WL 1331349 (La. App. 1 Cir. 5/13/2009); In the Interest of M.A.A., 2004-1101, p. 9 (La. App. 1 Cir. 9/17/04), 897 So. 2d 42, 47-48; Billiot v. Billiot, 99-2356 (La. App. 1 Cir. 2/16/01), 808 So. 2d 423, 426; rev'd on other grounds, 2001-1298 (La. 1/25/02), 815 So. 2d 1170; Albritton v. Fidelity Nat'l Bank Trust, 619 So. 2d 1170, 1172 (La. App. 1st Cir.5/28/93). The remedies for contempt by nonparties require service of perhaps multiple Rules to Show Cause and contradictory evidentiary hearings and with them opportunity for the further multiplication of proceedings and costs. See, La. Code C.P. Art. 225A. In the present case the court is not holding a nonparty in contempt but is imputing to the PSL the actions of its co-conspirators pursuant to La. Civil Code Art. 2324.

[27] Stephens v. Bail Enforcement of Louisiana, 96 0809 (La. App. 1st Cir. 2/14/97), 690 So.2d 124 (citing La. C.C. art. 2324) (noting that the law changed from liability being triggered by an unlawful act to a conspiracy).

[28] Guidry v. Bank of LaPlace, 94-1758, p. 10 (La. App. 4th Cir. 9/15/95), 661 So.2d 1052.

[29] Knott v. Litton, 81 So.2d 124 (La. App. 2d Cir. 1955).

committing wrongdoing, but evidence sufficient to show that such an agreement is in place can take the form of *actual knowledge* (in the form of overt actions) or *proof of an inference* (drawn from the impropriety of the actions taken by the other conspirators). The actionable element of a conspiracy claim is not the conspiracy itself; rather, it is the wrongful act that the conspirators agree to perpetrate and actually commit in whole or in part.[30] Simply stated, the unlawful act is the wrongful conduct.[31] The "intentional or willful act" language in article 2324 has been extended to unethical conduct arising under Louisiana Code of Civil Procedure article 863. In *Ratcliff v. Boydell*,[32] the Louisiana Fourth Circuit held in part that a former client was entitled to recovery based on an attorney's unethical conduct premised on La. C.C.P. article 863 and La. C.C. article 2324. Under article 2324, the court found that one of the lawyers was the "principal actor" but found another lawyer in the firm solidarily liable because the other lawyer knew a dispute existed and did nothing to resolve it.[33]

In the present case, a conspiracy clearly existed. The PSL asserted on several occasions that it acted at all times in concert with the Synod administrative commission and others in a "coordinated litigation effort".[34] The PSL and Synod representatives were heavily conspiring with, among others, Mark Tammen, the PCUSA's Director of Constitutional Services in the Office of the General

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[30] Thomas v. North 40 Land Development, Inc., 2004-0610, 23 (La. App. 4 Cir. 1/26/05), 894 So.2d 1160, 1174 (citing Ross v. Conoco, Inc., 2002-0299, pp. 7-8 (La.10/15/02), 828 So.2d 546, 552; Butz v. Lynch, 97-2166, p. 6 (La. App. 1 Cir. 4/8/98), 710 So.2d 1171, 1174)).

[31] Chrysler Credit Corp. v. Whitney Nat'l Bank, 51 F.3d 553, 557 (5th Cir.1995).

[32] Ratcliff v. Boydell, 93-0362 (La. App. 4 Cir. 4/3/96), 674 So.2d 272.

[33] The solidarity imposed by article 2324 cannot be used, though, to assess punitive damages against a party based on the acts of co-conspirators. To be subject to punitive damages, each co-conspirator's individual conduct must fall within the scope of the applicable penal statute. Ross v. Conoco, Inc., 2002-0299 (La. 10/15/02), 828 So.2d 546. In the present case, however, Carrollton seeks compensatory, not punitive, sanctions.

[34] See, e.g., August 27, 2009, PSL Memorandum at p. 4; September 10, 2009, PSL Memorandum at p. 2; October 26, 2009, PSL Request to First Circuit For Stay and For Expedited Consideration at p. 14, and; November 13, 2009, PSL Writ Application to the Louisiana Supreme Court at p. 13.

Assembly at the denomination's Louisville, Kentucky headquarters. As indicated in the "Privilege Log" of the 441 PSL documents (e-mails) that the PSL eventually produced in response to this Court's September 22, 2009, and October 29, 2009, Orders, Mr. Tammen was a sender or recipient on approximately 398 of them. The relevant e-mails (PSL documents) have been excerpted and reproduced in Appendices A and B. They demonstrate with clarity a conspiracy not just to purposefully defy this court's February 13, 2009, TRO but also reveal that this violation of the TRO was simply a means to facilitate a wider scheme or plan. The PSL has funded the opposition to Carrollton and authorized its attorneys to act throughout on its behalf.

The PSL pleadings and memoranda not only contain multiple discrete offenses but also intrinsic deficiencies that are at the root of the PSL's arguments, that taint everything that springs from them and are systemic to the PSL's opposition. Because of this conspiracy the actions of all are legally imputed to the PSL under Article 2324. Accordingly, this court orders a compensatory sanction of $390,000.00.

## III. RESCINDING PROTECTIVE ORDER

This court is granting Carrollton's Motion to Modify and Rescind its prior December 4, 2009, Order which has kept the PSL documents under seal until now. Continued secrecy of these former discovery documents that subsequent to the court's December 4, 2009, Order were introduced into evidence and discussed in open court on May 17, 2010, is not warranted. The PSL never moved for closure of the May 17, 2010, hearing on Carrollton's motion for sanctions. Absent a motion for closure and closure order, anyone could have walked into the courtroom and heard everything as the PSL documents were discussed in detail. Those same

PSL documents have also been discussed with particularity in these Written Findings and Reasons for Judgment.[35] The court believes its Findings and Reasons should be public absent an overriding constitutional interest. Here the PSL has not alleged any constitutional interest but instead offered policy reasons for continued closure. If sanctions-related briefs are filed with the First Circuit and oral argument is held on appeal, the court cannot envision that appeal briefs would be filed under seal and the First Circuit courtroom cleared of all spectators for oral argument. Nor can this court envision similar secrecy concerning any sanctions-related writs of certiorari that might be filed with the Louisiana Supreme Court or related oral argument. Such is the logical extension, though, of the PSL's argument for continued secrecy at this juncture, after the documents have been filed into the suit record, introduced into evidence, and discussed in open court, all without objection.

In arguing for confidentiality, the PSL emphasized that the "mental impressions, conclusions, opinions, or theories of any attorney" are protected by the work product privilege and shall not be subject to production or inspection, citing La. C.C.P. art. 1424A. The PSL also noted the "well-accepted rule that work product protection is not waived by its disclosure to third parties." However, the protection afforded work product documents is not unlimited. In Hodges v. Southern Farm Bureau Cas. Ins. Co., 433 So.2d 125 (La. 1983), the Louisiana Supreme Court held that this privilege is "qualified." The Hodges court said, "The trial court has the discretion to order the production of a writing prepared in anticipation of trial if it is convinced that the denial of production 'will unfairly

[35] The PSL documents that were initially sealed were later submitted, filed, and introduced into evidence solely in connection with the May 17, 2010, hearing on Carrollton's motion for sanctions. The court was not privy to the contents of these PSL documents and did not rely on them when granting summary judgment on December 4, 2009, in favor of Carrollton in the underlying property case.

prejudice the party seeking the production or inspection in preparing his claim or defense or will cause him undue hardship or injustice.'" Hodges at 131. See also, Landis v. Moreau, 779 So.2d 619, 697 (La. 2001).

In Hodges, the Supreme Court held that the "work product" documents, even if they were prepared by a lawyer in "anticipation of litigation" or in "anticipation of trial," should be produced because "the non-production of the documents would unfairly prejudice Hodges in preparing his claim." 433 So.2d at 131. The Court then found that the second part of La. C.C.P. art. 1424A, which protects the opinions of counsel from disclosure, was inapplicable based on the evidence presented. Here, however, in both hearings held before this court, there was no evidence presented by the PSL to establish that any of the 441 withheld PSL documents listed in the Privilege Log came within the protection of the work product privilege.

The party seeking to avoid production under La. C.C.P. art. 1424 "bears the burden of proving" that the requirements to establish the privilege are met. Ogea v. Jacobs, 344 So.2d 953 (La. 1977); Turner v. Winn Dixie Louisiana, Inc., 527 So.2d 1070 (La. App. 1 Cir. 1988); Sasso v. National Union Fire Ins. Co., 689 So.2d 742 (La. App. 4 Cir. 1997); Cargill, Inc. v. Cementation Co. of America, 377 So.2d 1334 (La. App. 1 Cir. 1979). At no time, however, during the two hearings by this court did the PSL attempt to present any evidence that any of the 441 withheld PSL documents contained any "mental impressions, conclusions, opinions, or theories of an attorney." The PSL simply asked this court to accept at face value the assertion that every one of the 441 documents listed on the PSL's Privilege Log reflect the "mental impressions, conclusions, opinions, or theories of an attorney." The Privilege Log itself is not evidence that establishes the requirements of any

privilege. The 441 PSL documents do not qualify for protection under either the work product or attorney client privilege simply because the PSL typed those labels into a column on the far right of a Privilege Log.[36]

The court notes that most of the 441 PSL documents initially withheld by the PSL as allegedly privileged were authored by lawyers who represent clients other than the PSL and who are not "parties" to these proceedings. No one can question that the work product privilege belongs to the lawyer whose work product is at issue and/or his client and not to the lawyer/recipient of the document – but not one of the lawyers or their clients listed as the authors on most of the 441 PSL documents (other than the PSL and its lawyer, Mr. Dunlap) came forward to claim a privilege as to any of the documents.

The PSL also argued that the protection afforded by La. C.C.P. art. 1424A is not waived by disclosure to third parties, but this is not absolute. The law requires there to be some attempt and intention to maintain the confidentiality of the work product shared with others for the privilege to be maintained. Despite two separate hearings on the production of these PSL documents, at no time did the PSL attempt to establish that these communications were kept confidential by anyone – the PSL, its lawyers or their communicants.

Boyd v. St. Paul Fire & Marine Ins. Co., 775 So.2d 649 (La. App. 3 Cir. 2000) provides additional reasons why the PSL documents are not privileged. Boyd bears some similarity to Carrollton's claims for sanctions against the PSL for collaborating with others on a litigation strategy designed to test the 20+member congregation's financial ability to litigate this case against the combined financial

[36] The PSL's Privilege Log is exhibit no. 2 to Carrollton's October 12, 2009, Motion to Modify the September 22, 2009 Order.

resources of the PSL, Synod and PCUSA and their 10 lawyers[37]. In Boyd, the plaintiffs alleged that the defendants conspired to deprive them of a recovery from the Patient's Compensation Fund by agreeing with the medical malpractice insurer to offer less than its policy limits of $100,000. The plaintiffs alleged that documents the defendants claimed were protected by the work product privilege were needed to show dishonesty and a conspiracy to undermine the truth-seeking process. Boyd held that the person upon whom the work product privilege is conferred "may not invoke it for the purpose of committing a crime, fraud, or tort," citing United States v. Kelly, 569 F.2d 928 (U.S. 5th Cir. 1978). In the words of the Court, "Otherwise, a client could conceal his illegal (or tortuous) deed merely by disclosing it to his attorney or using the attorney as an emissary to perfect it." Boyd at 655.

Notwithstanding that no evidence was introduced to support a claim of privilege, the PSL argues that Carrollton initially stipulated to a protective order to keep the PSL documents under seal. In fact, though, no stipulation ever became operative. Counsel mutually agreed that any proposed stipulation would be subject to the concurrence of their clients. If both clients concurred, there would be an agreement stipulating confidentiality. If both clients did not concur, there would be no agreement. The PSL declined to concur.

The December 4, 2009, Order memorialized and reiterated this court's October 22, 2009, Order that kept in place this court's September 22, 2009 Protective Order. The several components of the court's multi-faceted, September 22, 2009, Order were intended to work in collective, complementary fashion to

[37] Noted on the Privilege Log.

resolve multiple pending discovery disputes. A major component of that September 22, 2009, Order was to require the PSL to produce all of the documents that Carrollton had subpoenaed "within six hours" (as agreed to by the PSL because the deposition to be taken by Carrollton of the PSL was scheduled to begin the following morning). The PSL did not object—but then it breached that Order. This court later held the PSL in contempt. The PSL can't breach one component of this court's multifaceted Order and expect the court to maintain all other components, such as sealing, when those components were designed to constitute a coordinated, compromise approach to facilitate the resolution of multiple discovery issues. The court further notes that the September 22, 2009, Order specifically said that its breach could result not only in a finding of contempt but in the imposition of penalties. Such a penalty can include the withdrawal of the protective order component. Carrollton has met the legal standard of good cause shown for the modification or withdrawal of the protective order.

Additionally, another legal standard applies that the PSL has not satisfied. Upon introduction into evidence, the burden shifted to the PSL to make a constitutionally-required showing why the protective order component of this court's December 4, 2009 Order should not be withdrawn. The PSL failed to make that showing. The PSL documents that have been introduced into evidence are no longer simply "discovery materials". The cases the PSL previously cited in support of continued secrecy pertained to discovery materials and, if previously apt, no longer are. On May 17, 2010, Carrollton introduced into evidence approximately 70 of the so-called Privilege Log documents (which the court is referring to as the "PSL documents", since the court ruled they are not privileged and do not qualify for a common interest doctrine recognized by Louisiana

courts).[38] The same day the PSL introduced into evidence another 40 of the PSL documents. Upon their introduction into evidence a First Amendment right of public access attached to all PSL documents that had been introduced. Because of the well-established, constitutionally required presumption of public access to court records, the court concludes that it cannot keep those documents sealed unless the PSL met a constitutionally-required burden of showing: 1) that interests of a constitutional weight would be jeopardized by disclosure; 2) alternatives to sealing have been considered by the court and found unavailing, and; 3) sealing would be effective to protect the constitutional interests that disclosure would otherwise jeopardize.

In opposing disclosure, though, the PSL did not allege a constitutional right that would be jeopardized by disclosure. The PSL instead offered a "policy consideration".[39] This court had not reviewed the 4,000 PSL documents when the Protective Order was initially issued on September 22, 2009, reiterated on October 22, 2009, and memorialized on December 4, 2009. Review by this court of the documents at issue only occurred well after the First Circuit's November 12, 2009, denial of the PSL's Writ Application and Carrollton and the PSL subsequently submitted 110 of the 441 PSL documents listed in the Privilege Log into evidence at the May 17, 2010, hearing on Carrollton's motion for sanctions. The court has now reviewed the 110 PSL documents introduced into evidence and concludes that

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[38] The court rejected the PSL's claimed attorney-client and work product designations of these documents and the PSL's "common interest" theory when the court denied the PSL's Motion to Quash Carrollton's subpoena duces tecum. The PSL, however, disregarded this court's decision when the PSL subsequently refused to produce the documents as ordered and instead listed 441 documents in a Privilege Log.

[39] The PSL argues that continuing the protective order under the circumstances presented would "encourage the efficiency and voluntary production of documents". In this case, however, the PSL has not acted with efficiency or dispatch to voluntarily produce documents. To the contrary, the documents at issue were part of the PSL's so-called "Privilege Log" that the PSL interposed in an effort not to voluntarily produce documents, in contempt of this Court's September 22, 2009, Order. Keeping the protective order in place under these circumstances would reward contemptuous behavior.

they present no interest of constitutional weight that would be jeopardized by disclosure. Rather, the reason the PSL wants to keep under seal the documents that have been filed with the clerk, introduced into evidence, and discussed in open court is because the PSL is concerned that unsealing may create opportunity for wider public dissemination which could put the PSL in a poor light. The PSL has so stated in memoranda it submitted to this court. Continued sealing, however, cannot be justified on the basis of speculative, anticipatory arguments. Nor is this a constitutional interest. There is no objectively reasonable expectation of privacy in communications that reveal a plan and scheme to engage in sanctionable conduct or to be protected from potentially negative public reaction to one's own words or deeds. Continued sealing would only cloak evidence of egregious misconduct by the PSL. See Appendices A and B.

The PSL's only rebuttal to the First Amendment presumption of public access has been to cite to a federal district court decision from North Carolina, Longman v. Food Lion, Inc., 186 FRD 331 (N.D. N.C. 1999). The facts in Longman are very different from the facts in this case, and the holding in Longman is closely tied to its facts. Longman recognizes the First Amendment right of access that attaches to documents that are part of the judicial record. Longman at 334. The court in Longman, though, declined to enforce that First Amendment right of access because, in the case before it, "the Plaintiff agreed to the Order (and) failed to object to confidentiality designations ..." Longman at 334. Under those circumstances the Longman court held that the plaintiff was estopped from raising access arguments that it had "bargained away". Longman at 334. In the present case, though, no operative stipulation was ever agreed to by the parties. Carrollton also timely objected to the PSL's confidentiality designations, as not

qualifying for the work product or attorney-client privilege that the PSL had asserted was a basis for confidentiality.

In the present case, none of the 110 PSL documents at issue pertain to the defendant's trade secrets, confidential business information, or communications that qualify by evidentiary support for attorney-client privilege or work product protection or otherwise qualify for a common-interest doctrine recognized by Louisiana courts.

At the October 22, 2009, hearing this court said it would likely lift the protective order at the conclusion of "the trial". October 22, 2009, Transcript at p. 56.[40] The court has now ruled on the merits of Carrollton's motion for sanctions and, having ruled, the court is now lifting the protective order as to the PSL documents introduced into evidence and to any documents that discuss them.

## IV. CONCLUSION

The PSL has acted with contemptuous disregard for civil authority and has violated La. C.C.P. art. 863. Despite the PSL's attempts to justify (even "slightly justify") its actions and arguments in this case, its actions are indefensible and its legal arguments are frivolous or directly contrary to the undisputed facts and to well-established law. The PSL has not offered good faith argument for the extension, modification, or reversal of existing law. The PSL had reasonable opportunity to make inquiry and knew or should have known that its opposition

[40] The PSL applied for expedited supervisory writs from this Court's September 22, 2009, and October 22, 2009, rulings that compelled production of the PSL documents. In denying that writ application on November 12, 2009, the First Circuit noted that the September 22nd and October 22nd rulings were, "prior interlocutory rulings that may be reurged by The Presbytery of South Louisiana in conjunction with any future appeal of a final judgment on the merits." Because the PSL documents were not relied on by this court in its December 4, 2009, grant of summary judgment to Carrollton but were only subsequently submitted, filed, and introduced into evidence in connection with the May 17, 2010, hearing on Carrollton's motion for sanctions, the First Circuit's reference to a "final judgment on the merits" necessarily refers to any Order by this court determining the merits of Carrollton's motion for sanctions.

was not well-grounded in fact and did not and would not have evidentiary support. All relevant documents were in the PSL's possession the day suit was filed. The PSL was told early on by the denomination's top legal authority that he saw no way for the PSL to prevail. The PSL instead chose intransigent opposition. There is ample evidence in the record to support a compensatory sanction even without reference to the PSL documents, but those PSL ("Privilege Log") documents confirm that the PSL's pleadings, defenses, and arguments were interposed to harass, cause unnecessary delay, and needlessly increase the cost of litigation. A fully compensatory sanction of $390,000.00 is justified by the truly exceptional circumstances.

The court is very mindful that parties have the right to their day in Court—to present papers and arguments that are well grounded in fact after reasonable inquiry and warranted by existing law or a good faith argument for the extension, modifications or reversal of existing law, and not interposed for an improper purpose such as harassment, delay or an increase in the cost of litigation. In this case, however, the pertinent facts were well known to all parties before the PSL filed its first paper or made its first argument in this case. In fact, they were never contested. The existing law governing this case is clear, determined by the highest courts in this state and this nation and settled for thirty years.

Based on the totality of the record in these proceedings, and for the reasons set forth herein, this Court finds that the PSL's defense of this case from its inception violates the provisions of La. C.C.P. art. 863. Accordingly, sanctions are imposed herein, in accordance with the evidence presented at the hearing on this Motion for Sanctions against the PSL, ordering payment to Carrollton in the amount of $390,000.00. Additionally, Carrollton's Motion to Modify or Withdraw

the September 22, 2009, Protective Order, previously deferred until a later time in this court's December 4, 2009, Order, is now granted. The court's prior sealing of the 110 PSL documents introduced into evidence and of any documents that discuss them is rescinded.

Signed in Baton Rouge, Louisiana this 18th day of July, 2013.

JUDGE KAY BATES
19TH JUDICIAL DISTRICT COURT

FILED
JUL 25 2013
DY. CLERK OF COURT

I hereby certify that on this day a copy of the written reasons for Judgment was mailed by me, with sufficient postage affixed to: Eugene Groves, E. Wade Shows, Loyd Lunceford, John Dunlap, Russell Foster and Harry Barton
Done and signed on July 25, 2013
Deputy Clerk of Court