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January 23, 2012

## BY HAND DELIVERY

Honorable John T Frey  
Fairfax County Circuit Court  
4110 Chain Bridge Road  
Fairfax, Virginia 22030

Re: *In Re: Multi-Circuit Episcopal Church Property Litigation (CL-2007-0248724)*  
(omnibus case number)

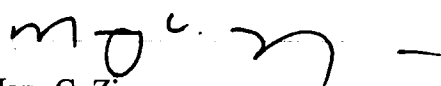
Dear Mr. Frey:

Enclosed please find the following:

1. Original and one copy of a Motion for Award of Pre-Judgment Interest and Memorandum in Support thereof, filed by The Episcopal Diocese of Virginia;
2. Original and seven copies of a cover sheet to the Motion for Award of Pre-Judgment Interest, and Memorandum in Support thereof, filed by The Episcopal Diocese of Virginia; and
3. Original and one copy of a Friday Motions Day – Praecipe/Notice, setting this matter for a hearing on Friday, February 10, 2012.

Please date-stamp the indicated copies of the Motion, cover sheet and Praecipe return them to our courier. If you have any questions, please do not hesitate to call me. Thank you for your assistance in this regard.

Sincerely,

  
Mary C. Zinsner

cc: Gregory Sagstetter, Esq. (via electronic mail, w/enclosure)  
All Counsel of Record (via electronic mail, w/enclosure)

**VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

In re Multi-Circuit Episcopal Church Litigation:

Plaintiff

vs.

Civil Action No. CL 2007-248724, et al.

Previous Chancery No. CH

Defendant

SERVE: All Counsel of Record

**FRIDAY MOTIONS DAY – PRAECIPE/NOTICE**

Moving Party:  Plaintiff  Defendant  Other

Title of Motion: Motion for Award of Prejudgment Interest Attached  Previously Filed

DATE TO BE HEARD: February 10, 2012 Time Estimate (combined no more than 30 minutes): 30

Time to be Heard:  9:00 a.m. with a Judge  9:00 a.m. without a Judge

10:00 a.m. (Civil Action Cases) Does this motion require 2 weeks notice?  Yes  No

11:30 a.m. (DOMESTIC/Family Law Cases) Does this motion require 2 weeks notice?  Yes  No

Case continued from: \_\_\_\_\_ continued to: \_\_\_\_\_  
(Date) (Date)

Moving party will use Court Call telephonic appearance:  Yes  No

Judge Honorable Randy I. Bellows must hear this motion because (check one reason below):

The matter is on the docket for presentation of an order reflecting a specific ruling previously made by that Judge.

This Judge has been assigned to this entire case by the Chief Judge; or,

The Judge has advised counsel that all future motions, or this specific motion, should be placed on this Judge's Docket; or,

This matter concerns a demurrer filed in a case where that Judge previously granted a demurrer in favor of demurrant.

PRAECIPE by: Mary C. Zinsner Troutman Sanders LLP  
Printed Attorney Name/ Moving Party Name Firm Name

1660 International Drive, Suite 600, McLean, VA 22102  
Address

703-734-4363 703-734-4340 31397 mary.zinsner@troutmansanders.com  
Tel. No. Fax No. VSB No. E-Mail Address (optional)

**CERTIFICATIONS**

I certify that I have in good faith conferred or attempted to confer with other affected parties in an effort to resolve the subject of the motion without Court action, pursuant to Rule 4:15(b) of the Rules of the Supreme Court of Virginia; and, I have read, and complied with, each of the Instructions for Moving Party on the reverse side of this form.

[Signature]  
Moving Party/Counsel of Record

**CERTIFICATE OF SERVICE**

I certify on the 23rd day of January, a true copy of the foregoing Praecipe was

Emailed  faxed  delivered to all counsel of record pursuant to the provisions of Rule 4:15(e) of the Rules of the Supreme Court of Virginia.

[Signature]  
Moving Party/Counsel of Record

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

<b>In re Multi-Circuit Episcopal Church</b>	)	<b>Case Nos.:</b> CL 2007-248724,
<b>Litigation:</b>	)	CL 2007-1235,
	)	CL 2007-1236,
	)	CL 2007-1238,
	)	CL 2007-1625,
	)	CL 2007-5250,
	)	CL 2007-5682,
	)	CL 2007-5683,
	)	CL 2007-5684, and
	)	CL 2007-5902

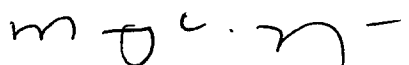
**COVER SHEET FOR MOTION FOR AWARD OF PRE-JUDGMENT INTEREST  
AND MEMORANDUM IN SUPPORT THEREOF**

This acts as a cover sheet/reference pleading to the complete filing, titled as indicated above, which was sent to be filed in CL-2007-248724 (the omnibus case file), with a courtesy copy sent by e-mail to Mr. Gregory J. Sagstetter, Law Clerk to The Honorable Randy I. Bellows. That filing and this reference pleading apply to the above-listed cases. For the complete filing, please see the omnibus case file, CL 2007-248724.

Respectfully submitted,

Dated: January 23, 2012

THE PROTESTANT EPISCOPAL CHURCH  
IN THE DIOCESE OF VIRGINIA

By:   
Of Counsel

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George A. Somerville (VSB # 22419)  
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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

<b>In re Multi-Circuit Episcopal Church</b>	)	<b>Case Nos.:</b> CL 2007-248724,
<b>Litigation:</b>	)	CL 2007-1235,
	)	CL 2007-1236,
	)	CL 2007-1238,
	)	CL 2007-1625,
	)	CL 2007-5250,
	)	CL 2007-5682,
	)	CL 2007-5683,
	)	CL 2007-5684, and
	)	CL 2007-5902

**MOTION FOR AWARD OF PRE-JUDGMENT INTEREST AND  
MEMORANDUM IN SUPPORT THEREOF**

The Protestant Episcopal Church in the Diocese of Virginia (the "Diocese"), by counsel, moves the Court for an award of pre-judgment interest pursuant to Va. Code § 8.01-302. In support of its motion, the Diocese submits the following memorandum.

1. On January 10, 2012, this Court issued a 113 page Letter Opinion setting forth three significant rulings in favor of the Diocese: (i) The Episcopal Church and the Diocese have contractual and proprietary interests in each of the seven Episcopal churches that are the subject of this litigation, and all real and personal property acquired by the churches up to the filing date of the declaratory judgment actions are to be conveyed promptly to the Diocese; (ii) the CANA Congregations do not possess either contractual or proprietary interests in the property of the seven Episcopal churches and are enjoined from further use or control of the property and must promptly relinquish them to the Diocese; and (iii) the vestry empowered to elect directors to the Falls Church Endowment Fund is the Episcopal vestry recognized by the Diocese. Op. at 14.

2. The Diocese is endeavoring to craft a Final Order which will encompass these rulings and has communicated with the CANA Congregations to obtain an accounting of real and personal property, including tangibles and intangibles such as bank deposit accounts, which have

been in their exclusive possession and control since the inception of the litigation. The parties are attempting to reach agreement as to the sums on deposit at various financial institutions as of the demarcation date identified by the Court, and the Diocese intends to identify such specific amounts in the Final Order and have such order decree that such sums be returned to it.

3. The Diocese seeks an award of pre-judgment interest as to the liquidated sums on deposit at various financial institutions as of the date of the Diocese's filing of the declaratory judgment actions. Va. Code § 8.01-382 allows a jury or a court to "provide for interest on any principal sum awarded . . . and [to] fix the period at which the interest shall commence." An award of pre-judgment interest is completely discretionary with the trial court. *Upper Occoquan Sewage Authority v. Blake Constr. Co.*, 275 Va. 41, 655 S.E.2d 10 (2008); *Dairyland Ins. Co. v. Douthat*, 248 Va. 627, 449 S.E.2d 799 (1994). The purpose of pre-judgment interest is to compensate a plaintiff for the loss sustained by not receiving the amount it was entitled to and restore the party to the position it would have occupied. *Blake*, 275 Va. at 63; *Marks v. Sanzo*, 231 Va. 350, 356 (1986). "[N]atural justice [requires] that he who has the use of another's money should pay interest for it." *Blake*, 275 Va. at 63 (citations omitted).

4. An award of pre-judgment interest is appropriate here "to make the Plaintiff whole." *Blake Constr. Co. v. Upper Occoquan Sewage Authority*, 71 Va. Cir. 248 (Fairfax 2006), *aff'd in part, rev'd in part*, 655 S.E.2d 10 (Va. 2008). For over five years, the Diocese has been deprived of access to and use of the real and personal property of the seven Episcopal churches at issue, including the amounts on deposit at various financial institutions and maintained in investment accounts. The financial sums are sizeable, ranging from several hundred thousand dollars in the case of smaller churches such as St. Paul's Church to several million dollars as to The Falls Church and Truro Church. In addition to taking exclusive control

of the real property, the CANA Congregations took possession of the financial accounts and claimed and maintained them as their own, precluding any use or application of such monies to the spiritual and other missions of the Diocese. An award of pre-judgment interest is necessary to make the Diocese whole and restore the Diocese to the position it was in at the time it filed the declaratory judgment actions.

5. In concluding that the CANA Congregations do not possess either contractual or proprietary interests in the property of the seven Episcopal Churches, the Court noted the “pervasive control” exercised by The Episcopal Church and the Diocese over the churches. Op. at 101. The Court emphasized the hierarchical structure of the Church and referenced “the undeniable fact that these seven churches were part of a hierarchical denomination for decades and, in some cases for centuries” and that the congregations’ claims of autonomy and independence were “contradicted by the overwhelming body of evidence before this Court.” Op. at 101. The Court said that applying neutral principles of law, as established by United States and Virginia Supreme Court precedents, it is “clear – indeed, to this Court, it is overwhelmingly evident – that TEC and the Diocese have contractual and proprietary interests in the real and personal property of each of these seven churches.” Op. at 104. The Court stressed that “while the CANA Congregations had an absolute right to depart from TEC and the Diocese, they had no right to take these seven *Episcopal* churches with them.” *Id.* (emphasis in original) Given the “compelling” evidence and “clear” law presented, the ultimate conclusion reached by the Court, while disappointing to the CANA Congregations, could not have come as any surprise; and they presumably segregated such sums and can readily turn the accounts over with the accrued interest. *See* Op. at 102, 104. Moreover, that the CANA Congregations may have believed there was a bona fide dispute as to ownership of the real and personal property has no bearing on the

decision whether to award pre-judgment interest. *See Gill v. Rollins Protective Servs. Co.*, 836 F.2d 194 (4th Cir. 1987) (neither Code § 8.01-382 nor Virginia case law makes an exception to the general discretionary rule on pre-judgment interest for bona fide legal disputes).

6. The amounts on deposit in various financial institutions by the seven Episcopal churches as of the demarcation date identified by the Court (the date of the filing by the Diocese of the various declaratory judgment actions) is easily discernible. This litigation has been pending for over five years and the duration of the case and overwhelming evidence in favor of the Diocese merit the award. *See Tauber v. Comm. of Va.*, 263 Va. 520, 562 S.E.2d 1818 (2002) (affirming decision to award prejudgment interest based on the “extended duration of this suit” and “the overwhelming evidence in the record”). Pre-judgment interest as to these liquidated sums can and should be calculated and decreed to restore the Diocese to its position as of the date of filing the declaratory judgment actions. *See Op. at 112.* Pursuant to Va. Code § 6.2-302, the rate of pre-judgment interest is six percent.

WHEREFORE, for the foregoing reasons, the Diocese respectfully requests that the Court order and decree that the Diocese’s request for an award of pre-judgment interest is granted and, following entry of the Final Order, interest shall accrue at the judgment rate until paid.

Respectfully submitted,

Dated: January 23, 2012

THE PROTESTANT EPISCOPAL CHURCH  
IN THE DIOCESE OF VIRGINIA

By:

  
Of Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing document were sent by electronic mail to all counsel, including those named below, on this 23rd day of January, 2012, pursuant to the Stipulated Amended Pretrial Scheduling Order and post-trial briefing/procedures Order:

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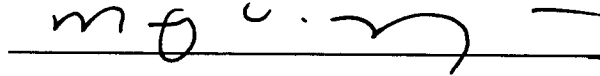
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A handwritten signature in black ink, appearing to read 'm e kostel', is written above a horizontal line.

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