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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND - BALTIMORE DIVISION

ALBERT SNYDER,
Plaintiff,
vs. Case No. 1:06-cv-1389-RDB

FRED W. PHELPS, SR.;
SHIRLEY L. PHELPS-ROPER;
REBEKAH A. PHELPS-DAVIS; and,
WESTBORO BAPTIST CHURCH, INC.,
Defendants.

REPLY OF DEFENDANTS WESTBORO BAPTIST CHURCH, INC. & PHELPS TO PLAINTIFF'S RESPONSE TO POST-TRIAL MOTION FOR STAY

Defendants Westboro Baptist Church, Inc. ("WBC") and Fred W. Phelps, Sr., by and through the undersigned counsel, hereby submit the following reply to plaintiff's response to their post-trial motion for stay.

1. In *Phelps-Roper v. Nixon*, ___ F.3d ___, 2007 WL 4258633 (8th Cir., 12/6/2007) (attached hereto) is a decision just issued by the Eighth Circuit reversing a trial court's denial of a motion for preliminary injunction regarding Missouri's soldier funeral picketing law. There are several parts of this opinion that are directly applicable to this case, calling into question the outcome herein.

   Further, specifically with respect to the motion for stay, *Phelps-Roper* spoke of the four elements to consider on a request for stay (or injunction). In the context of a First Amendment case involving picketing the Court said this:

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> Peaceful picketing is an expressive activity protected by the First Amendment. *Olmer v. Lincoln*, 192 F.3d 1176, 1179 (8th Cir. 1999). It is well-settled law that a "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod. v. Burns*, 427 U.S. 347, 373 (1976) (plurality). If Phelps-Roper can establish a substantial likelihood of success on the merits of her First Amendment claim, she will also have established irreparable harm as the result of the deprivation. [Citations omitted.] Likewise, the determination of where the public interest lies also is dependent on the determination of the likelihood of success on the merits of the First Amendment challenge because it is always in the public interest to protect constitutional rights. [Citations omitted.] The balance of equities, too, generally favors the constitutionally-protected freedom of expression. In a First Amendment case, therefore, the likelihood of success on the merits is often the determining factor in whether a preliminary injunction should issue. …

Phelps-Roper, 2007 WL 4258633 at 2.

Further, the Court noted that the Supreme Court has not addressed the question of whether the government has an interest in preserving and protecting the sanctity and dignity of memorial and funeral services, or protecting the privacy of family and friends of the deceased during a time of mourning and distress, *Phelps-Roper,* 2007 WL 4258633 at 3. Thus, to suggest that this is a closed question, and that it is appropriate to tag a small church, her pastor and two of her members to the tune of almost $11 million on an unsettled question is absolutely inconsistent with notions of fairness and due process.

Even though plaintiff has relied upon *McQueary* as authority for the proposition that funerals are *per se* private, the Court noted in *Phelps-Roper* that the *McQueary* Court *assumed without finding* an interest in the state in protecting funeral attendees from unwanted communications which would justify a three hundred foot limit, *Phelps-Roper,* 2007 WL 4258633. Setting aside the fact that defendants did not put forth an unwanted communication so obtrusive it was impractical to avoid, the *McQueary* Court did not hold that such could be prohibited. Further, the Supreme Court has not determined that a funeral is tantamount to a residence. There is no justification in the law for letting an $11 million verdict stand for what the Eighth Circuit has stated clearly is protected activity.

The Court further said in *Phelps-Roper*: "Because of our holding in *Olmer*, we conclude Phelps-Roper has a fair chance of proving any interest the state has in protecting funeral mourners from unwanted speech **is outweighed by the First Amendment right to free speech**." 2007 WL 4258633 at 4; emphasis added.

Phelps-Roper also said: "By analogy, Phelps-Roper presents a viable argument that those who protest or picket at or near a military funeral **wish to reach an audience which can only be addressed at such occasion and to convey to and through such an audience a particular message**. She has a fair chance of proving

section 578.501 fails to afford open, ample and adequate alternative channels for the dissemination of her particular message." 2007 WL 4258633 at 6; emphasis added. Thus, the "targeted plaintiff and his family" theory that went forward in this case – that led to an unjustified and excessive verdict -- treats what *Phelps-Roper* has called protected activity (reaching an audience with a message) as actionable in court.

Finally *Phelps-Roper* concluded: "Because we conclude Phelps-Roper has demonstrated a fair chance of prevailing on the merits of her claim, we find she will suffer irreparable injury if the preliminary injunction is not issued. The injunction will not cause substantial harm to others, and the public is served by the preservation of constitutional rights. The district court abused its discretion when it concluded the balance of harms weighed toward denying the motion for a preliminary injunction based on its erroneous determination as to Phelps-Roper being unlikely to succeed on the merits." *Phelps-Roper.* Note that the *Phelps-Roper* said this with full awareness that the pickets of military funerals are ongoing, see 2007 WL at 1 & footnote 2.

Phelps-Roper strongly supports that defendants have a strong likelihood of succeeding on appeal in this case. Thus a stay is appropriate pending appeal.

2. Plaintiff asserts there should be no stay because no bond has been posted.[1] It is important to note that defendants are not refusing to post a bond. The simple reality is that they cannot secure a bond in the amount of the jury verdict. Plaintiff suggesting or arguing defendants have more assets than they have told the Court doesn't change that fact. First, as discussed in detail below, there is just simply no basis for saying anyone is misrepresenting assets. Second, even if there was some basis to quarrel over a few dollars – which there is not – there is certainly no basis for suggesting that defendants have stashed away in secret places nearly $10 million, which is the gap between defendants' collective assets (including the many that are likely subject to exemption under Kansas law, see, e.g., K.S.A. 60-2301, *et seq.*) and the amount of the verdict.

Defendants have filed post-trial motions requesting a reduction in the award, which they believe the facts and law support; thus, it is premature to talk about a bond amount until a final judgment is determined by the Court. Once the post-trial motions are ruled on, if the Court believes some protective measure is required, defendants will obey the Court's orders.

[1] In making assertions about "good cause" plaintiff is referencing case law under 28 U.S.C. § 1963, which is a statute that permits a prevailing plaintiff to move the Court for an order allowing registration of a foreign judgment in another federal court district. That motion is not before the Court.

See, e.g., *Waffenschmidt v. Mackay*, 763 F.2d 711, 727 (5th Cir. 1985) (after reviewing judgment debtor's assets, the Court allowed him to pledge unencumbered items as collateral for the judgment pending appeal, rather than require supersedeas bond).

Further, defendants and their fellow church members have been open and notorious in their views and activities; they have been in the same place all of their lives and, for many years doing the same thing. No one is going anywhere; and no one's assets are going anywhere. Whatever may be recoverable on a judgment in this case will be the same in six months or a year as it is today. The Court clearly has discretion in this matter, as to whether to require a bond or other protective measures, and if so, the nature, amount or scope. The Court observed after the announcement of the verdict of compensatory damages that the amount of defendants' stated assets had already been surpassed; nothing has changed on that front, and that fact still remains true. Defendants believe at that point the punitive damages issue should not have been submitted to the jury, for many reasons, but including the fact that the compensatory damages award had already surpassed the assets of the defendants.

Finally, defendants believe there are substantial legal questions raised on appeal in this case, which may result in reversal of the verdict and judgment entirely. Defendants respectfully submit that these issues are so extensive and

substantial that a stay is warranted in this case while those issues are under review.

3. Plaintiff asserts a stay should not be allowed because allegedly defendants have lied about their assets, from which plaintiff alleges defendants will transfer, hide or squander assets. This is not so and not supported in the evidence.

   a. WBC assets. Plaintiff says the liabilities of the corporation are false because Timothy Phelps testified the real property was paid off; WBC's discovery response indicated no liabilities; and the bank account had a balance of $42,380.46 on June 29, 2007 (vs. $13,136 indicated in the financial statement submitted at the time of trial).

   As for the bank statements,

      i. On May 30, 2007, WBC submitted a response through counsel to a request for production of documents. Item 1 asked for bank statements from January 1, 2006. The response attached redacted bank statements for the period from 1/31/06 through 4/30/07, showing that the balance month-to-month was widely varied, like this:

Date	**Amount**
31-Jan	$ 2,471.42
27-Feb	$ 2,159.74
30-Mar	$ 4,176.56
28-Apr	$ 908.89
30-May	$ 2,269.34
28-Jun	$ 3,769.37

31-Jul	$ 4,336.68
28-Aug	$ 1,722.03
27-Sep	$ 1,854.97
30-Oct	$ (151.57)
29-Nov	$ 684.30
28-Dec	$ 6,427.88
31-Jan	$ 7,755.27
27-Feb	$ 18,748.80
30-Mar	$ 28,193.87
30-Apr	$ 37,527.70

Please see **Post Trial Motions Exhibit 1 of Phelps-Davis and Phelps-Roper.** The range in the balance extends from $-151.57 to $37,527.70.

Then in October 2007, ***expressly contrary to what plaintiff asserts***, defendants updated their discovery responses with updated financial records. Please see **Post Trial Motions Exhibit 2 of Phelps-Davis and Phelps-Roper.**[2] These records include updated redacted bank statements for the period from

[2] The letter from the undersigned counsel bears a date of April 30, 2007. This is a typographical error. The letter refers to updated redacted bank records (thus it had to have been sent *after* the original records response of May 30, 2007); and the records enclosed cover a period past April 30, 2007. Further, the letter refers to filming of the scene when plaintiff's counsel was present, which the record in this case reflects refers to video footage taken by Kramer & Associates on June 18, 2007. So the letter had to have been sent after June 18, 2007. Further, as noted in the body of this reply, plaintiff attached a copy of a redacted bank statement dated 6/29/07. Clearly this had to have been provided *after* May 30, 2007, showing again that updated discovery responses were made.

5/31/07 through 9/27/07. **<u>Clearly plaintiff's counsel received these updated redacted records, because they attached the 6/29/07 redacted bank statement to their response, and referred to that date in their response.</u>** So it is simply inaccurate for plaintiff to state that WBC did not provide updated bank records during discovery.[3]

The updated redacted bank records show the following balances from May through September of 2007:

Date	Amount
31-May	$ 34,692.41
29-Jun	$ 42,380.46
31-Jul	$ 11,057.59
31-Aug	$ 6,186.74
27-Sep	$ 815.87

Again, these records show a wide variance in the monthly balance, from $815.87 to $42,380.46. It is grossly misleading

[3] It is noteworthy that on 9/12/07, the Court held a telephone discovery hearing in this case, and during that hearing plaintiff moved to compel production of unredacted bank records. The fact that there had been such a delay by counsel in making the motion – which pertained to the May 30, 2007, discovery responses – caused the Court to deny the motion. Nothing prevented plaintiff's counsel from taking further depositions, asking more questions of the individual defendants during their depositions, or issuing records subpoenas if they felt they were entitled to more details about the financial condition of any of these parties. They knew they were making a punitive damages claim from the outset. They asked very few questions of any of the parties, and sought very few records, including not following up on Timothy Phelps' deposition after he identified the church treasurer and responded to preliminary questions about financial issues.

for plaintiff to present one month's balance – out of 21 months provided – and use that gesture to suggest falsehood by defendants. A balance at the time of trial of $13,136 is not at all out of line (and in fact in 16 out of the 21 months covered by the statements produced, the balance was less than this amount). The balance being at the lower end at the time of trial should not be surprising; considering it was coming at a time when the church's expenses were being tapped to defend this case in a protracted trial with numerous people housed and staying out-of-state, and lots of other expenses.

As to the liabilities of the church,

ii. In the original response by WBC, when plaintiff asked for documents showing liabilities over $500, as the response at Post Trial Motions Exhibit 1 of Phelps-Davis and Phelps-Roper reflects, there were none. The updated response at Post Trial Motions Exhibit 2 of Phelps-Davis and Phelps-Roper shows a note balance of $71,696.24 as of 9/28/07. Given the expenses of this case, an increase in the debt of the church should not come as any surprise to plaintiff. After all, costing defendants lots of money to pressure them to shut up was the precise goal of plaintiff. By the time the financial statements were required at trial, the debt was at

$105,984. That is the sworn testimony; there is not one scrap of evidence that it is false; it is completely consistent with the patterns shown in the records, and the realities that face the church.

iii. Further, what Timothy Phelps said in his deposition was this: "Q. Is there a mortgage on that property [that WBC sits on]? A. I don't believe so, but I know that they recently did some renovations and there may have been a loan. But I think it's paid off now, so I think it's owned outright." (Response Appendix, Exhibit C, p. 29 of Timothy Phelps deposition.) So it is no surprise that the church gets loans for renovations. A simple drive by the church over the summer months would have seen the replacement of the roof, which was 25-years-old and beginning to leak; the replacement of an oft-vandalized fence; and some extensive cement work that needed replacing. Maintaining the property and making capital improvements is not waste; it is responsible and it maintains the value of the property.

Defendant Westboro has been in the same place for over 50 years; improvements have been made on the property periodically to maintain it properly; there is not a hint of any fact to suggest

that the property is about to be sold, wasted, transferred or otherwise disposed of or misused. Defendants believe the Court erred in allowing this case to go to trial, and will assert that position in every place lawfully allowed. Defendants are not going anywhere; and there is absolutely zero risk to the assets of the corporation, unless you count plaintiff's design to bankrupt the church and its members.

b. Assets of defendant Phelps-Davis. This assertion of falsehood by Phelps-Davis is not supported by the evidence.

i. First is the claim that Phelps-Davis misrepresented the value of her homestead. Defendant Phelps-Davis is raising four children in a home that is valued at a modest $146,600.

The deed is in Phelps-Davis' name. She plainly stated this in her deposition. Plaintiff's counsel did *not* ask her if she *owned* the home, as they now assert. (*Response*, p. 4: "However, in her deposition, Phelps-Davis acknowledged that the property was owned by her and her alone." *Deposition*: "Q. Is the deed in you and your husbands [*sic*] name? A. No. Q. Whose name? A. Mine." See Response Appendix, Exhibit G, p. 165 of Rebekah Phelps-Davis Deposition.)

Whose name is on the deed, and what ownership there may be under all the applicable property laws are two entirely different things. Phelps-Davis properly said in her financial statement, that her husband has a right to claim a half interest in the homestead, see K.S.A. 60-2301, K.S.A. and 60-2302. Whether Phelps-Davis is correct on this view or not, a) does not make her a liar, and b) doesn't matter anyway because **the full value of the property was included in the figure in the financial statement and given to the jury**. (Compare at Response Appendix, Exhibit G, the figure of $146,600 for the real estate in Phelps-Davis' financial disclosure, to Exhibit H, the figure of $146,600 by the Shawnee County Appraiser.) If anything, the figure given to the jury was too high, because this is the family homestead, a fact which no one disputes. One of the things plaintiff made an issue of during this case about defendants was that they all lived close together; that is a well-established fact, and there is simply nothing suggesting that Phelps-Davis is about to change that arrangement by transferring or

otherwise disposing of her family's homestead property.

Without evidence, plaintiff claims Phelps-Davis is lying because her personal checking account balance at the time of her financial statement at the time of trial was $306. The only fact offered is that Phelps-Davis will not yield to the effort by plaintiff to make her be silent about what she believes. If anything, that fact *substantiates* a low checking account balance. There is no mystery about what is going on here. She testified to her beliefs and manner of life in detail, including that she spends her resources on traveling to picket. Further, again, at the time account balances were requested by the Court, Phelps-Davis was in the midst of a protracted trial that came at the end of protracted litigation, all halfway across the country from her home. It should be no surprise that she has a low balance in her checking account. There is no evidence she lied, because she didn't.

c. Possible homestead claim on some portion of the church property. Plaintiff suggests that defendants have

demonstrated an intent to "transfer, hide and squander assets" because they noted there may be a question of whether Pastor Phelps and/or his wife have a homestead claim in some part of the church property. This is not evidence of any intent to do anything, but instead is a simple statement of reality. Pastor Phelps and his wife have lived in the parish at the church for over 50 years; it is their home; they have invested equity in the living quarters. Given the state of the law, it should not come as a surprise to anyone to hear that they – or either of them (one of whom is not a party in this action) -- may have a right to claim a homestead interest. See K.S.A. 60-2301; K.S.A. 60-2302; Kan. Const. Art. 15, § 9; *Redmond v. Kester*, 284 Kan. 209, 216, 218, 159 P.3d 1004, 1009, 1010 (2007) ("Following the precedent established since the inception of the Kansas Constitution, we hold that debtors may claim the homestead exemption based on any interest in real estate, whether legal or equitable, as long as the debtors have not abandoned their occupation of or intent to occupy the real estate." "Defining the term 'owner' in K.S.A. 60-2301 broadly to include occupants of real estate who hold any type of interest, including an equitable interest, is consistent

with the public policy of protecting Kansas citizens from the hardships associated with losing the family home.")

Whether it ever comes to this question or not; and whether these defendants are correct in their understanding of the law on this matter or not; none of this is a reflection of any intent to change anything about current assets and property. Rather, it is to point out to the Court that if plaintiff is allowed to execute on the judgment in this case, before the issues are reviewed on appeal – particularly given that there is not another case we can find published anywhere of this kind, and given the indisputable fact that there are weighty First Amendment issues raised by this case – it may result in property being conveyed to someone who may ultimately not be able to keep the property, and/or there may be unnecessary spin-off litigation. Litigating these homestead questions prematurely does not seem wise.

Other allegations. In a flurry of words, plaintiff tries to suggest other alleged falsehoods that have *nothing* to do with financial statements or assets. These suggestions are unfounded and unfortunately distracting.

In this regard, for instance, not applicable to the issue at hand is the plaintiff's complaint on p.4 of its Opposition that defendant Fred Phelps claimed he "never

thought children would be at Matt Snyder's funeral." Undersigned counsel recalls that Defendant Fred Phelps actually conveyed that whether or not children would be present was unimportant to his decision to picket.

4. As to the four factors to consider when a stay is requested, in addition to the decision of the Eighth Circuit of December 6, 2007, in *Phelps-Roper v. Nixon*, as discussed in paragraph 1 above,

   a. The post-trial motions reflect significant issues, both as to the First Amendment rulings, the Court taking personal jurisdiction, and the nature and size of the punitive damages award. There are no cases like this case that defendants have found in published jurisprudence. The Court broke new ground, to say the very least, in how broad it set the time, place and manner limits. Setting aside visceral disagreement with the message, it must be recognized that there are substantial appellate issues in this case

   b. Will defendants suffer irreparable injury if the requested stay is denied? If the Court is wrong in its rulings about the First Amendment, or the massive punitive damages award is unjustified, pressuring defendants and other church members to stop engaging in First Amendment activity, and seizing their assets,

clearly would cause irreparable harm. That should not require further discussion. The Supreme Court has recognized the chilling effects of litigation aimed at stopping protected activity. See *Nike, Inc. v. Kasky*, 539 U.S. 654, 663, 123 S.Ct. 2554, 2558-2559, 156 L.Ed.2d 580 (2003); *Cloer v. Gynecology Clinic, Inc.*, 528 U.S. 1099, 120 S.Ct. 862, 145 L.Ed.2d 708 (2000), Scalia and Thomas, JJ dissenting. A chill on or loss of First Amendment activity or freedoms, even temporary, is irreparable injury.

In *Elrod v. Burns*, 427 U.S. 347, 373-374, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976), the Court said:

> The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. See *New York Times Co. v. United States*, 403 U.S. 713, 91 S.Ct. 2140, 29 L.Ed.2d 822 (1971). [FN29] **Since such injury was both threatened and occurring at the time of respondents' motion** and since respondents sufficiently demonstrated a probability of success on the merits, the Court of Appeals might properly have held that the District Court abused its discretion in denying preliminary injunctive relief. See *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67, 83 S.Ct. 631, 637, 9 L.Ed.2d 584 (1963).
>
> FN29. The timeliness of political speech is particularly important. See *Carroll v. Princess Anne*, 393 U.S. 175, 182, 89 S.Ct. 347, 352, 21 L.Ed.2d 325 (1968); *Wood v. Georgia*, 370 U.S. 375, 391-392, 82 S.Ct. 1364, 1373-1374, 8 L.Ed.2d 569 (1962).
>
> "(T)he purpose of the First Amendment includes the need . . . 'to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public

> measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them,' " *Id.*, at 392, 82 S.Ct., at 1374 (quoting 2 T. Cooley, Constitutional Limitations 885 (8th ed. 1927)). (Emphasis added.)

See also *Rossignol v. Voorhaar,* 316 F.2d 516, 522 (4th Cir. 2003).

c. Will there be injury to another party that denying the stay can address? Plaintiff suggests that he will incur further emotional or psychological injury if the stay is granted. First, the Court set a time period for words or actions by defendants for which plaintiff can recover. On October 15, 2007, the Court set this time period at several weeks after the funeral, to the date Phelps-Roper wrote her epic. While defendants believe that time is entirely too broad (and have preserved and raised that issue), nevertheless the time has been set, and we are well past it. Second, in the case plaintiff relies on, *Sisters of Mercy Health Sys. V. Kula*, 2006 WL 1090090 (W.D. Okl. 2006) – which involved allegations that a psychiatrist sexually abused the plaintiff, not allegations of harm caused by words -- the plaintiff testified to the fact that the pendency of the lawsuit was causing her emotional injury, as did her mental health provider. In sharp contrast, here plaintiff

testified in his deposition that the lawsuit did *not* cause him stress. "Q. But, hasn't this lawsuit added to your stress or troubles, relating to Matt's death? A. Not the lawsuit in itself. The people have. Q. Hasn't the lawsuit been a component of it? A. Maybe a small component of it. But mostly the whackos, the cult is the problem. …" (Please see **Post Trial Motions Exhibit 3 of Phelps-Davis and Phelps-Roper**, p. 122 of Albert Snyder's deposition.) (The fact that plaintiff believes defendants are whackos and a cult is not legally cognizable injury touching upon the decision whether to grant a stay.) Further, Dr. Mann, plaintiff's medical doctor, testified that in filing the lawsuit plaintiff has actually been able to better deal with the grieving that was allegedly interrupted by defendants. "So the process of filing a lawsuit is actually helping him to cope with this aspect of the interrupted grieving." (Please see Post Trial Motions Exhibit 3, of **Phelps-Davis and Phelps-Roper,** pp. 116-117 of Scott Russell Mann, M.D. deposition.)

d. Will the public interest be served by granting the stay? As previously noted in defendants' motion, if this activity is protected, than *a fortiori* the public interest is served by the stay. Plaintiff argues that

Maryland has a strong interest in protecting grieving families. According to the Maryland legislature, the interests of Maryland are protected by a 150-foot distance. That interest has already been protected to the degree the Maryland legislature deems it necessary. Over-protecting the grieving process, at the expense of public words in a public place on a public topic is not in the state's or citizens' interest. Otherwise the legislature would have placed such limits, and the Supreme Court would have defined public rights-of-way as something other than traditional public fora. What has *not* been balanced in this case is the right of defendants to speak. The public is not served by overbroad restrictions on speech based on disagreement with content.

5. Regarding K.S.A. 60-3004(a), in *Estate of Rains*, 249 Kan. 178, 184-185, 815 P.2d 61, 65-66 (1991), the Kansas Supreme Court said:

> In the Kansas Uniform Enforcement of Foreign Judgments Act (UEFJA), K.S.A. 60-3001 *et seq.*, **the enforceability of a judgment is affected by an appeal of the foreign judgment**. K.S.A. 60-3001 defines foreign judgments as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." Therefore, the judgment obtained by FDIC is enforceable under the UEFJA. The UEFJA provides:

"If the judgment debtor shows the district court that an appeal from the foreign judgment is pending or will be taken, **<u>or</u>** that a stay of execution has been granted, *the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires,* or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered." K.S.A. 60-3004(a). (Emphasis supplied.)

K.S.A. 60-3004(a) permits the filing of foreign judgments which have been appealed or are subject to appeal, **but stays enforcement thereof until the appeal is concluded, the time for appeal expires, <u>or</u> the stay of execution expires or is vacated**.

K.S.A. 60-3004(a) does not require that the foreign judgment be a "final judgment" **but stays enforcement until, in effect, it becomes final. Obviously, attempts to enforce a foreign judgment which is subject to modification would be a waste of everyone's time**. (Emboldened and underlined emphasis supplied; italicized emphasis in original.)

This case appears to say exactly what defendants said in their motion, to wit, under the Kansas statute, a foreign judgment is not enforced until the appeal is final *or* the stay of execution expires or is vacated.

In conclusion, defendants submit there is no evidence of any falsehood about the assets of any of the defendants; nor have any assets been misused or misrepresented. Requiring the posting of a bond the size of the verdict in this case would simply be an impossible requirement. Further, defendants have filed post-trial motions requesting that the Court reduce the award size, which they

believe is not supported by the evidence; thus, it is premature to talk about the size of a bond until a final figure is determined by the Court.

Given the significant legal issues raised by this case, and that many (if not most) of the assets appear to be impacted by homestead issues, and other exemptions under Kansas law – all of which would have to be addressed if the judgment was subject to execution; and given the Kansas statute about foreign judgments; defendants believe a stay in this case is proper. If the verdict is upheld, it will be for alleged harm that has already occurred, none that will occur hereinafter as to this plaintiff. Plaintiff does not have standing to force defendants to stop picketing anywhere else, so that issue is not properly before this Court.

WHEREFORE, for the foregoing reasons, Defendants move the court to grant their post-trial motions.

Respectfully submitted,

___/s/__________

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by the CM/ECF filing system on December 18, 2007, to:

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____/s/______________________________
Jonathan L. Katz