

February 27, 2008

Honorable Richard D. Bennett
United States District Judge
U.S. Courthouse – Chambers 5D
101 W. Lombard Street
Baltimore, MD 21201
Sent via e-mail to Ms. Susan Parker

Re: Snyder v. Phelps, et al.; Case No. 06-CV-1389

Dear Judge Bennett:

The purpose of this letter is to advise the Court of difficulties in obtaining the "certified financial statement" for each defendant as the Court has ordered; to request the Court withdraw that requirement; and to offer a plan to maintain the status quo of defendants' assets pending appeal to support defendants' motion for stay.

In a Letter Order of February 8, 2008, the Court ordered defendants to bring deeds, titles to property in which they have an interest, and bank account information to a March 6 hearing, so the Court could address a proposed plan in support of defendants' motion for stay pending appeal. In a Letter Order of February 21, 2008, following a conference call, the Court ordered defendants to also produce tax returns for the past five years, and a "certified financial statement prepared by an independent account," reflecting all assets and liabilities.

Immediately following that hearing, we set about to find a Certified Public Accountant that could assist us with this new requirement, within the two weeks allowed. The only CPA with which we have had any professional relationship, we learned, is in the hospital with pneumonia, following a long illness. We learned his office staff are struggling to keep up with his current workload during tax season.

Since none of the defendants have used a CPA in the past, thereafter we contacted or caused to be contacted all of the CPAs in Topeka listed in the yellow pages. After attempting contact with all 40 of them, and talking with representatives from 29 of them (two others are no longer in service), which represented a total of 87 individual CPAs, we have learned:

1. It is unclear to these accounting professionals what the Court is requiring. Some have suggested it sounds like the Court is requiring an audit; some said perhaps it was a type of review; but none were certain, and said they would need greater clarity about what the Court expects in order to do the work.
2. Assuming it is some kind of audit, all advised they can not do this work at all (they do not have the license/insurance required for such work, or have made the business decision not to do that type of work); or, they cannot do the work by March 6. One reported that if they did nothing else but this between now and March 6, they were not sure it could be done. Besides the time the project would take in general, they all have intense workloads now and through April 15, because it is tax season.

3. Assuming it is some kind of audit or similar requirement, the estimated cost will be in the range of \$12,000 - \$24,000, and the work time needed will be in the range of 3-6 months for a corporation and 2-4 weeks for each individual.

A table setting out the details of all the phone contacts made is enclosed. The names of the entities are included should the Court wish to verify any of the information we have provided. (The shaded boxes are places we have not gotten an answer from.) We also got a similar response from two instructors in accounting at Washburn University here in Topeka.

Given this information, we are asking that the Court reconsider this requirement as set forth in the Letter Order of February 21, 2008. This information suggests that the requirement, while unclear, appears to be excessive in terms of time and money in order to certify or attest to financial information the Court has already been provided by defendants, and which is included in the additional information the Court has ordered. Further, the value of our realty – which is the bulk of our assets – is found in public information on the Shawnee County Web page. There simply are no hidden assets, and spending thousands of dollars (to try to prove a negative, to wit, that no other assets exist) will not change that fact.

Defendants ask that the Court review the information previously produced, along with the tax returns and bank information defendants have been ordered to produce, and confirm in that manner that the financial worth already provided to the Court is accurate. Further, defendants request that the Court accept the plan by defendants to maintain the status quo of existing property as an adequate plan pending appeal. Defendants submit that given the unusual nature of this case, and the constitutional issues presented by the decisions and verdict in this case, a plan to preserve the status quo pending appeal is appropriate. Finally, if the Court still concludes that the “certified financial statement” should be required, defendants request that the Court clarify what this means to the Court; that the Court continue the March 6 hearing to 2-4 months after April 15; and that the Court find that defendants should not be required to bear the cost of these “certified financial statements” given there is no evidence of any hidden assets or inaccuracies in the financial information already provided.

Respectfully submitted,


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Enclosure – Excel file reflecting contacts with CPAs

cc Jon Katz, Esq. (by e-mail)
Sean Summers, Esq. (by e-mail)
Craig Trebilcock, Esq. (by e-mail)

<u>Entry #</u>	<u>Name from phone book (company or last name)</u>	<u>First name</u>	<u># of CPA per phone book</u>	<u>Same # as (other entry #)</u>	<u>Notes regarding outcome of call</u>	<u># CPAs here per call</u>
1	Knudtson & Co				No way to get it done within that time frame; sounds like an audit	4
2	Accounting Consulting & Tax			3	# no longer in service	
3	Act III			2	They are very busy now - tax season; this sounds like an audit, which does require CPA licensed to do; even if dropped everything else and did only this, not likely to be done by 3/6/08. Even a simple audit would cost estimated \$2,500-\$3,000 plus each. If only need a review (not an audit) - essentially making sure all documents are there (vs. independent verification), may be more doable in terms of timing (same cost), but would want to do after tax season.	1
4	Anderson & Eldridge		2			
5	Bailes	Randall				
6	Berberich Trahan & Co PA		5		This is not really possible - we are swamped	5
7	Cummins & Coffman CPAs PA		5			
8	Mayer Hoffman McCann PC				Timing is too short - we are too loaded down to take this on in this time frame	30
9	Douthett & Associates		2			
10	Holmes Associates Chtd		5		No - we don't handle the work it appears is needed	1

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11	Cavanaugh Porter & Holloman PA		3		No time; we're booked up to April 15. This is a 2-3 week process at least. Think this is an audit, to attest to financial statement, but would need to have it confirmed if that is what the court is seeking.	2
12	Clinkinbeard	Steve			No - not certified to do this kind of work (sounds like an audit); and people in our business are already working 60-70 hour weeks right now.	1
13	Cronin	Mary Ellen		26	With Allen Joy (person talked to); see that entry-#26	1
14	Culp	David			No - don't do attest functions or audits - mostly taxes	1
15	Demoret	Billy			No - not certified to do audits	1
16	Denny	Kay			No - too much on plate; don't have time	1
17	Ely	Gary			No - sounds like an audit; only do tax work; this time of year you'll "have a real hard time finding someone with time."	1
18	Ford	Tom			No - too busy right now	1
19	Freking	Donald				
20	Groff & Berty CPAs		2		No - we couldn't handle such a thing right now	2
21	Henderson	Curtis				
22	Herring Business Services				# no longer in service	
23	Honaker	Paul			He quit doing certified audits 3 yrs ago - not enough staff to handle; most small firms likely couldn't handle this work	1
24	Iliff	Stephen			Does not do certified audits for churches - only doctors/dentists	1
25	Janssen	Royce				

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26	Joy	Allen H.		13	No - we've chosen not to do certified statements; don't carry professional liability coverage to enable us to do this job.	1
27	Kennedy & Coe LLC				No - unable to do the job in this short period of time	4
28	Lindburg & Vogel (Topeka office)					
29	Mize Houser & Co PA		8		No - unable due to short time period and heavy case load right now	3
30	Myers and Stauffer				They do only contract-based work for governmental entities; no private work	3
31	Pardue	Wm L			No - only does tax work	1
32	Petty	V Russell				
33	Ramberg & Associates				Cannot do - notice too short; very busy due to tax season. Sounds like an audit, but the court should clarify its expectations - this is uncommon. If it is an audit (after the court clarifies), estimated cost and time requirement would be: 3-6 months for a corporation (and \$5,000-\$15,000); and, 2-4 weeks for each individual (and \$2,000-\$3,000 each).	3
34	Ridpath	Steven			No - not taking on any new clients at this time	1
35	Sittenauer	Curt A			No - only does tax work and is not taking on any new clients; very busy time of year for accountants	1
36	Sloop	Kem			No - only does tax work; too much liability for financial reporting work such as this	1

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37	Summers Spencer & Callison				No - we would not be able to handle something of this scope	3
38	Walker	John			No - too busy	1
39	Wendling Noe Nelson & Johnson LLC		10		No - too busy - if another time of year, might be able to do it, but no one available to do the work until after May	10
40	Huseth	Greg			Office advised he is in the hospital, and they too busy to do this work	1
						87