

Dispute between Criswell College & contractor to be settled out of court_120604

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By Ken Camp

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DALLAS—A dispute between Criswell College, the W.A. Criswell Foundation and a computer contractor will settled by an arbitrator rather than a jury.

Parties in what had been a multimillion-dollar lawsuit agreed to binding arbitration rather than proceed with a scheduled Dec. 6 trial.

They reached the agreement soon after a Nov. 19 summary judgment hearing. At that hearing, a district judge dismissed charges of libel and defamation stemming from a letter written by John Thomas, founder of International Data Systems, and mailed to more than 120 prominent Baptists, ranging from leaders of the Southern Baptist Convention's six seminaries and the Baptist General Convention of Texas to former President Jimmy Carter.

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Attorneys for the Criswell Foundation said the letter alleged self-dealing and other financial misdeeds. The foundation sought damages of at least \$2.5 million.

But Scott Hershman, lead attorney for Thomas, framed the letter as a plea for Christian mediation. He claimed a civil court lacked subject-matter jurisdiction to rule on what essentially was a religious dispute, and he moved that the defamation charges be dismissed.

"Religion permeates this case and cannot be excised from it, no matter how fine a scalpel you use," Hershman argued.

The dispute arose from an agreement Thomas reached in 1995 to digitize the tapes, transcripts and outlines of sermons by W.A. Criswell, longtime pastor of First Baptist Church in Dallas—an effort that came to be known as the Criswell Legacy Project. As a Baptist layman, Thomas claimed he agreed to donate his own time and charge only what it would cost him to complete the work.

Criswell College paid on invoices received for services and equipment

through October 1999, but in the months that followed, the relationship between the contractor and representatives of the Criswell Legacy Project broke down, and the Criswell entities stopped paying on invoices IDS presented. Since then, each party has accused the other of trying to change the terms of the earlier agreement.

Eventually, the Criswell entities ended any relationship with IDS and entered a contract with Chris Moreau, president of DIAWS Systems, to complete the project. Thomas maintains the sermon preservation project essentially was completed at that point, a matter the foundation disputes. Thomas also alleged financial conflict of interest involving the foundation's board.

Thomas stated his case and included his allegations in a March 12, 2003, letter he mailed to Criswell College trustees and former trustees and leaders at First Baptist Church in Dallas, as well other high-profile Baptists.

In the letter's opening paragraph, Thomas described what he called his “spiritual dilemma” and claimed he was seeking the help of “the church” at-large to settle the dispute, in keeping with New Testament passages such as 1 Corinthians 6 and Matthew 18.

Initially, the foundation identified more than two-dozen allegedly defamatory statements in the letter—including quoted references that included terms such as “heresy” and “apostasy,” which Thomas' lawyers emphasized.

Later, the foundation narrowed its focus, stressing passages where Thomas alleged foundation board members and their associates invested more than \$1 million in the companies that replaced IDS on the Criswell Legacy Project.

The foundation also pointed to a Baptist Standard article Thomas included with his letter. The article described a book by Houston pastor Chris Seay

titled "The Tao of Enron: Spiritual Lessons from a Fortune 500 Fallout." By insinuation, foundation attorneys claimed, Thomas was accusing the Criswell entities of "an Enron-style scandal."

Blake Beckham, lead attorney for the foundation, pointed out Thomas and his former attorney had drafted several versions of the letter before mailing the final version.

He characterized the letter as the work of "a skilled attorney with a sharp pencil" and a "calculating serial litigator," rather than a humble appeal by a Baptist layman to respected spiritual leaders. Thomas has been involved in 37 civil disputes in the last 21 years, he noted.

Beckham asserted the secular claims of financial misdealing could be segregated from the religious language in the letter.

But Hershman cited a 1996 fraud case involving televangelist Robert Tilton, saying, "The court cannot adjudicate the truth or falsity of religious matters or even let a jury hear evidence regarding those matters."

Matters of heresy and apostasy are "beyond the scope" of secular courts, he argued, saying, "The courts know no heresy."

Conceding the letter touched on secular issues, Hershman contended, "Secular issues are so entwined with religious issues, you cannot untangle them."

District Judge Karen Johnson granted the motion for summary judgment, dismissing the defamation claims "on multiple grounds."

In October, she had dismissed complaints by IDS against the Criswell entities filed under the Racketeering Influenced Corrupt Organizations Act. By finding no evidence of racketeering, she reduced the claim for damages from more than \$46 million to about \$15.5 million. Anti-racketeering

statutes allow recovery of three-fold damages.

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