April 13, 2007 (date in Brisbane, Queensland, Australia)

The Board Of Directors
AiG USA
PO Box 510
Hebron, KY 41048, United States
(sent by email)

Dear AiG-USA

"Without Prejudice" - URGENT

Last-ditch option to have a Christian arbitrator / judge hear the matter

We refer to the email and attachments we received a few days ago from the *Peacemakers* ministry/ICC in the USA, followed up by hard copy. We were surprised to find that you had 'commenced the process' unilaterally—even though we had explained to you in detail why it was totally inappropriate for us to agree to this. Or, in fact, to agree to anything which permitted you to potentially continue the pattern of purposive delaying tactics we believe have been demonstrated to date.

(We had previously explained to you why the clock was ticking to a point where we would no longer be able to hold you accountable at law under Romans 13—you ignored this, too, on top of all the previous pleas for meeting, talking, even binding Christian arbitration—all rejected.)

However, as you will see, there is an alternative way to meet the criteria of no more delays and having a Christian judge—if you are serious.

Claims deplorable

The claims made in your official statement to *Peacemakers* are, to us, frankly outrageous, given the documentary evidence of the case. Reading your claims has, if anything, firmed our resolve to hold you accountable before a judge. Many of these are claims and statements you have been repeatedly urged to support with evidence, in the light of day, but you have refused. (Unlike the 600+ pages of evidence provided to the eminent Briese committee, whose findings we have not released yet, pending the possibility of settlement negotiations, but also waiting for the very extensive separate 'Chairman's report' to be finalized.)

Your own words, and Peacemakers' own site, refute your previous claims re court

We also again firmly reject your statement that it is *never* biblically appropriate for a Christian corporation to invoke Romans 13 to hold another

ministry accountable for unlawful actions. *Peacemakers'* own website states (and we would agree):

24. Are there times when litigation is appropriate for a Christian?

Yes. God has given the civil courts jurisdiction to enforce the laws of the land and restrain crime (Rom. 13:1-7). Therefore, criminal violations, constitutional questions, and a variety of other disputes may legitimately be resolved through litigation. If one of these disputes includes personal differences between two Christians, however, they should usually try to resolve the problem in a personal way before looking to the courts for redress. Upon request, a conciliator will provide you with material that will help you to decide whether a particular dispute should be taken to court. (http://www.peacemaker.net/site/c.aqKFLTOBIpH/b.931479/k.8151/FAQs_Regarding_Christian_Conciliation.htm)

Furthermore, something we have not raised to date, your own management threatened us in writing with legal action, making it clear that you would not hesitate to take us to court under circumstances that suited you! This refers to correspondence to us (drafted by your management to be sent to your chairman Don Landis for him to see prior to sending to us, as it bore his name at the bottom, but sent to our office instead in error). In it, AiG-US actually indicated that *you would have no hesitation taking us to court*. The context was the (unauthorized, though as far as we know accurate) emails from Dr Jonathan Sarfati to his friends at AiG-USA about the 'exorbitant salaries' of some senior staff. Your message, addressed to us, stated (red bold font is our emphasis):

> "We will protect ourselves from this kind of slander physically (blocking e-mails), spiritually (asking for the Lords grace and guidance) and **legally** (if this does not immediately cease)."

When our chairman sent this document back to your Board, with his courteous responses to it, you did not subsequently repudiate or disown any comments in it.

The sad irony of course is that when, later and in a different context, we said we would protect ourselves legally if need be (from deceptive trade practices, e.g.), such a 'legal threat' (your words) was regarded as an excuse to label us as unChristian and 'factious'(!)

Please do not, therefore, waste anyone's time in giving pseudobiblical reasons for why we should not take you to court, when you were clearly prepared to do it when it suited you. Obviously, we can only presume that the reasons for these protestations were simply a consequence of our stating that you would now be held accountable before a judge.

Regardless of all that, here is the offer:

THE OFFER

Going straight to formal, binding Christian arbitration—without the delays.

We are not resiling at all from our determination to hold you accountable before a judge. But as indicated previously, we would greatly prefer a Christian to do the judging—provided that it did not give the opportunity for further delaying tactics to permit you to further disadvantage us.

Mediation/arbitration, as the literature from *Peacemakers* makes perfectly clear, has the potential to drag out and to permit you to evade the whole process before it gets to a binding stage. However, we have sought advice, and realize that there is a way to go for a Christian judgment *without* that potential for delay. Going **straight to binding Christian arbitration**, *bypassing any mediation step,* achieves a **Christian judgement on the legal issues** you have introduced, without that potential for delay.

(Relationship-restoring, a process which should be given all the time needed, and without legal swords of Damocles hanging over our heads, is something for which mediation *is* appropriate, and desirable. We are seriously interested in entering such a process with you *after* the legal issues are settled, regardless of the outcome.)

We therefore offer you a very detailed but, we believe, totally fair way to avoid a secular court if that is truly your desire.

Arbitration—some relevant facts

Arbitration in Australia is a formal process, and binds us all, leading to a definite outcome—including awards of damages if appropriate, awarding of portions of costs and the like, just like a court process. No party that signs up to it can evade being bound by it, because it is legally enforceable. (We each sign up to a contract amounting to a binding arbitration agreement, in effect, so that any legal enforcement would not be a retrial of the issues, but rather a simple enforcement issue).

Openness at last

Justice Debelle of the South Australian Supreme Court in *Santos Ltd v Pipelines Authority of South Australia (1996) 66 SASR 35* at 46-47 stated some critical features of arbitration which are important in this offer:

> "It is well established that an arbitration involves an inquiry in the nature of a judicial inquiry" and set out some indicia of such an inquiry:
> (a) the parties have the right to be heard if they so desire;
> (b) the parties are each entitled to see and hear the evidence advanced by their respective opponents;
> (c) the parties have the right to give evidence if they so desire;

(d) each party is entitled to test by cross-examination or by other appropriate means the opposing case and to answer the opposing case (see also *Age Old Builders Pty Ltd v Swintons Pty Ltd* [2003] VSC 307 at [63]).”

Part of our conditions is that these principles must be enshrined in the document binding each other. Representation by legal advisers, if desired, must be permitted for each party. An arbitrator’s decision may be appealed, just like a court decision, but only on the basis of errors of law—i.e. it does not involve a ‘retrial’ of the issues.

OTHER CONDITIONS

1. **The judge (arbitrator) must be trained in Australian law, and the judging be under the auspices of Australian law, and hence in Australia:**

Reasons:

It is only proper that the award be done under the auspices of Australian law, and thus in this country, because:

- The two legal documents that plunged us all into this legal chaos, drawn up by AiG-appointed solicitors at the instigation of Ken Ham, have only one country of legal jurisdiction mentioned—Australia.
- The only law firm mentioned in the documents is an Australian one—the Victorian firm appointed by you to draft one of the documents.
- The copyrights in question on the magazine articles were held by an Australian corporation. That is the very reason you chose Australian lawyers to prepare the document.
- The trademark issue most at stake is an Australian trademark.
- Your legal demand for us to hand over our trademark to you, which would enable deceptive ‘passing off’, came from your Australian solicitors.
- The articles at issue were largely produced by Australians.
- It is overwhelmingly Australian authors who have had their *moral rights* in their articles jeopardized.
- The magazine that was, in our view, replaced to consumers in an unethical and misleading fashion is an Australian magazine.
- Our ministry, thanks to the devastating attack on our income, and the fact that we are much smaller to begin with, is not the one that should have to deal with legal matters halfway across the globe.
- Having commenced the steps to a legal proceeding, which would if continued take place in Australia, this last-ditch offer in essence simply replaces that secular situation with a Christian judge—so we see no reason why our concessional offer to take this alternative Christian road should be permitted to disadvantage us through the extra expense of distance. (Quite apart from all the cogent reasons above for having it in Australia anyway). Note that should the arbitrator feel that AiG-US has been unfairly treated in this, he/she is free to

determine, as part of the judgment (for example, if it were determined that we were the guilty party in some respects) that we should contribute to an extra portion (or even all) of your costs in the matter—or vice versa.

Our 'Australian Christian court' requirement is thus not only reasonable, but we think that any fair-minded person will see that any attempt to say otherwise is an indication that your sudden conversion to 'peacemaking' was never serious.

2. The judge (arbitrator) will be one of *your* nominees

SUMMARY: YOU CHOOSE THREE NOMINEES: WE SELECT ONE OF THESE THAT YOU HAVE CHOSEN

We have attempted to make this procedure of determining the judge as acceptable and fair as possible to you, and it is also a procedure that is quite standard and not uncommon. You would nominate *three* parties, and we have to choose *one* of them, who becomes the arbitrator/judge. The criteria which each of your three nominees must fit ensure that this Christian arbitrator (private judge) will be both competent and independent of the parties. They are as follows:

- They must be a person professing to be a committed Christian
- They must have significant senior legal eminence, with full legal or judicial training and qualifications, and at least 10 years formal experience in legal and court matters in Australia, i.e. proficient in Australian law and an Australian resident. (There are substantial numbers of such Christian lawyers in this country; Christian law societies can provide names to you, as can, we are sure, your own lawyers in this country, i.e. members of the two law firms you have already used against us would certainly know of such and/or be able to quickly find out.)
- They must be totally uninvolved in the dispute to date, and completely at arms-length from the parties. That means *inter alia* that they must not have been approached by either of the parties or anyone associated with them at any time prior and up to the hearing itself, and must sign a declaration to that extent. In other words, they are chosen by you on the basis of their Christian/judicial/legal reputation, not any sort of prior sympathy to or connection with either party. The approach to them must be by letter, with wording acceptable to both parties (a sample which would be acceptable to use follows below). **All correspondence to and from the potential arbitrators must be openly copied to each of the two parties involved in the dispute. Unless the Arbitrator directs or each party consents, no correspondence or submissions between the parties and between the parties and the Arbitrator is to be provided to anyone outside the arbitration.**

- An approach by us to these potential arbitrators would also be precluded for the same reasons; though clearly we need to be able to ask questions of each one to determine that they meet the criteria, like a jury selection process. This would be via a face-to-face interview with our solicitors (only if we required it; we might waive this on the basis of the person's reputation).
- If any of the nominees do not fit the criteria, you must immediately nominate an additional one to replace that one.

We require the following procedural matters to be implemented in connection with the conduct of the arbitration:

A. The Arbitration should be conducted under the regime presented by the Commercial Arbitration Act 1990 (Queensland).
B. The Law of Queensland, Australia is to govern the arbitration.
C. The Arbitrator should convene a Preliminary Conference (or Directions Hearing) at which the Arbitrator can make directions concerning the procedures to be followed at the arbitration.
D. The Arbitrator must follow the rules of evidence.
E. The Arbitrator should make directions concerning the delivery of Points of Claim, Points of Defence and Points of Reply between the Parties.
F. The Arbitrator should make directions concerning the preparation of a Joint Bundle of Documents by the Parties.
G. The Arbitrator should make directions concerning Discovery and Inspection of Documents.
H. The Arbitrator should find out from the Parties whether they wish to cause subpoenas to be issued to any person.
I. The Arbitrator should make a direction concerning whether evidence in chief is to be oral or adduced by means of witness statements.
J. The Arbitrator should make a direction concerning the delivery and exchange of witness statements by the Parties.
K. The Arbitrator should make a direction concerning the date for delivery and exchange of Submissions by the Parties.
L. The Arbitrator should make a direction concerning the date for delivery and exchange of Submissions in Reply by the Parties.
M. The Arbitrator should make a direction concerning any further Preliminary Conference(s).
N. The Arbitrator should indicate a fixed Hearing Date.
O. A Hearing will be held at which the parties may call evidence from witnesses and witnesses are to be subject to cross-examination and to examination.
P. The Award of the Arbitrator is final and binding on both parties and except as provided by the Commercial Arbitration Act 1990 (Queensland), no appeal on the merits or procedures of the arbitration is to be made to any Court.

We hope it is obvious that this process satisfies your previously stated concern about independence from either party.

3. Costs

Initially at least, the costs of the arbitrator's time and outlays are to be met 50-50, shared between the parties—though, just as in an Australian court judgment, the arbitrator might determine that one of the parties should bear a greater portion of the other party's costs in the end. The 'default', that must be met in the interim, is a 50-50 sharing. Each party meets its own costs otherwise, subject only to the arbitrator's determination of awarding costs.

4. Timeframe

The time to end up with a binding commitment to the process is four (4) weeks (stepwise, as below) in all:

a) We will permit seven (7) days from the sending of this email to letting us know in writing that you accept or otherwise this offer.

b) We will permit a further fourteen (14) days from that point (i.e. two weeks in all) to finalize the process (which could have started days earlier) of you selecting the three nominees for arbitrator.

c) Then a further seven (7) days for us to finalize the selection of the arbitrator from your three nominees, and to finalize the process of drawing up the agreement, which is also something that should have started very early in the process. This means that if you are of a mind to go this way, all these things can be running in parallel. That is, by four weeks in total, the arbitration process will be ready to begin at the arbitrator's timing.

Because of the way we have put it, i.e. 'without prejudice', note that we ourselves are totally bound by this proposal if you only say 'yes' and then follow through. THIS SHOWS WE ARE SERIOUS ABOUT THE PROCESS. (The same was also the case with our previous offer, many months ago, of binding Christian arbitration, which you did not even deign to respond to.)

The writ against you may well be issued in the interim, since, for the reasons already given, we must continue to move forward with the legal proceedings, with time of the utmost essence; we will not halt them **until and unless** a binding arbitration agreement is in place.

In light of the crucial importance of this last-ditch offer, please do not ask for more time on the basis of 'getting the directors together'—a phone conference can be organized at very short notice.

The offer lapses if not agreed to within the timeframes stated. Thus, for example: if, at the end of the first seven-day period, you have not agreed in writing to all the conditions (so it is only a question of putting it together as per the next two timeframes of 14 and 7 days respectively) the offer expires. This letter is being sent by email during normal business hours on Friday 13 April (Brisbane time). For practical purposes, we will regard the

end of the first seven-day period as being 5 pm on Friday 20 April (Brisbane time), calibrating all other seven-day periods from then.

Of course, all of this could have been avoided if you had not rejected our continual pleading to meet *openly* and talk about sorting it out in peace, as brothers, face-to-face.

If you accept this offer, it constitutes a binding arbitration agreement for all purposes.

We look forward to your urgent response in the interests of finalizing the legal nightmare once and for all.

Sincerely,

- Kerry Boettcher (Chairman)
- Carolyn McPherson (Vice-Chairman)
- Dr Dave Christie
- Fang, Chang Sha
- Rev. Dr Don Hardgrave
- Dr Carl Wieland

The Board of Directors of CMI-Australia

ACCEPTABLE WORDING FOR LETTER OF APPROACH TO NOMINEES

John/Jane Doe
(address)

Date [to be inserted]

Dear Sir/Madam

Invitation to accept nomination as potential arbitrator of a dispute between Christian ministries

The parties: Creation Ministries International Ltd of Brisbane Australia (CMI-Aus) vs. ourselves, Answers in Genesis of Kentucky (AiG-US).

You have been recommended to us as a person of legal stature, having at least 10 years experience in Australian jurisprudence, and being a professing committed Christian. These are two of the criteria for an arbitrator for this dispute; the third is a total independence from either of the parties. That means we must not approach you or brief you in any way apart from this letter; any other clarification or communication needs to be between all the parties together, e.g. by conference call or open emails with open copies, or else you would be disqualified as a potential arbitrator.

The parties are engaged in a serious dispute. CMI-Aus has instructed its solicitors to commence legal proceedings against ourselves, but has offered to enter into binding Christian arbitration to settle the matter definitively.

The issues involved are complex; they involve the signing of a Memorandum of Agreement and associated Deed of Copyright Licence in October 2005 (by the directors of both organizations), an associated trademark issue, plus issues concerning our former distribution in the USA of two periodicals published by CMI-Aus, and more.

Attempts to solve the problem by discussion have been unsuccessful to date, and resolving the legal issues is of prime importance. This is to be a formal arbitration judging process, and not a mediation; the parties intend to explore mediation subsequent to the settling of the formal legal issues.

The process agreed to for choosing the (single) mediator is that we nominate three people (you are one) and CMI-Aus chooses one of those three. To select from the three, and to be able to ensure that the criteria have been followed, CMI-Aus is permitted to have one of its legal representatives have a brief personal or phone interview with you, to ask you questions restricted to your suitability to meet the criteria set out herein.

COSTS
If you are selected as the arbitrator, the parties will between them (shared 50-50) deposit into your firm's trust account the sum of $50,000, and as the

process proceeds and your invoices for time spent and outlays (including the cost, if any, of specialist legal advice at your discretion) are issued and paid out of this amount, will undertake to at all times top this up $10,000 at a time if it should dip below a credit of $10,000. Even if not selected, you would be able to bill for the time taken in the selection process.

This is to be a formal process, akin to a proper trial based on Australian jurisprudence, with the same rules in terms of legal representation, right to cross-examination, awarding of costs apportionment, damages, orders made, etc. It is intended to in effect be a court proceeding under Australian law, but with a Christian judge, and done privately out of the glare of media.

Prior to commencing the process, the parties will have entered into a formal agreement to be bound by the outcome, subject to the right of appeal at law, but only on matters of errors in law.

If accepting nomination, you will be required at the time of interview by CMI's legal representative to sign a formal written declaration that you are totally at arms-length from the parties, were not primed by either party or anyone else connected with either of them about the matters in dispute, and that if such occurs subsequent to your nomination or appointment, that you will immediately recuse yourself. Simply knowing of the parties or being familiar with the nature of their ministry does not preclude you.

Both parties would be honoured and grateful if you would accept this nomination to help solve these issues. Time is of the essence, so we would need to know your response by ….. [AiG-USA to complete]. The selection process will take place very rapidly (a matter of days) thereafter. In replying, please indicate your hourly billing rate.

Yours faithfully,

……etc.