

THE STATE OF NEW HAMPSHIRE
TRUST DOCKET, 6TH CIRCUIT – PROBATE DIVISION – CONCORD
TRUST U/W/O MARY BAKER EDDY – CLAUSE 6
TRUST U/W/O MARY BAKER EDDY – CLAUSE 8
CASE NO. 317-1910-TU-0001

**MOTION OF SECOND CHURCH OF CHRIST SCIENTIST, MELBOURNE
(AUSTRALIA), FOR APPOINTMENT OF INDEPENDENT TRUSTEE**

Second Church of Christ Scientist, Melbourne (Australia) (“**Second Church**”), through its undersigned counsel, hereby requests that the Court appoint an independent trustee to the trust formed under Clause 8 of the Will of Mary Baker Eddy (the “**Clause 8 Trust**”), partially to remedy an embedded conflict of interest among its Trustees that has persisted for decades to the detriment of the Clause 8 Trust and its beneficiaries. For the reasons set forth below, Second Church has special interest standing to seek this necessary relief.

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I. THE CLAUSE 8 TRUST

Mary Baker Eddy founded the religion of Christian Science, and a church and assembled congregation, The First Church of Christ Scientist, commonly referred to as “The Mother Church,” and, in official Church documents, as “Mary Baker Eddy’s Church.” In Clause 8 of her Will, Mrs. Eddy bequeathed the residue of her estate to The Mother Church, in trust, for the following purposes:

I desire that such portion of my residuary estate as may be necessary shall be used for the purpose of keeping in repair the church building and my former house at 385 Commonwealth [A]venue, in said Boston, which has been transferred to said Mother Church, and any building or buildings which may be, by necessity or convenience, substituted therefor; *** and I desire that the balance of said income, and such portion of the principal as may be deemed wise, shall be devoted and used by said residuary legatee for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me.

Clause 8 Trust.

The Clause 8 Trust was not a “gift” to The Mother Church, but rather, was established for the aforementioned charitable purposes. *See Glover v. Baker*, 76 N.H. 393, 83 A. 916 (1912); *Chase v. Dickey*, 212 Mass. 555 (1912). Thus, at the outset, the New Hampshire Supreme Court squarely rejected the Directors’ contention that the Clause 8 funds should be turned over to them.

See Fernald v. First Church of Christ, Scientist, in Boston, 77 N.H. 108 (1913). The *Fernald* Court observed that: “Mrs. Eddy did not intend to give this property to the church to administer as a part of its corporate assets, but to create a public trust to be administered by the church under the direct supervision of the court.” *Id.* at 109 (emphasis added). The *Fernald* Court went further, declaring that the Clause 8 Trust would not be administered by the Directors in Massachusetts, but here, in New Hampshire, by bonded trustees appointed by this Court. *See Fernald*, 77 N.H. at 110; *see also Glover*, 76 N.H. 393, 83 A. at 925 (“it would be the duty of the court to appoint [Clause 8 Trustees] should occasion rise”).

Thus, in 1913, this Court appointed six Trustees: the five Directors of The Mother Church (the “**Director-Trustees**”), as well as Josiah E. Fernald. Fernald was an independent Trustee—a banker from Concord, New Hampshire, who was not a Director of The Mother Church or even a Christian Scientist, but a former administrator of Mrs. Eddy’s probate estate and an adverse party to the Directors in the *Chase v. Dickey* and *Fernald* litigation. Fernald served as a Trustee of the Clause 8 Trust for 36 years, until his death in 1949. Since then, the Clause 8 Trust has not had an independent Trustee.

II. THE DIRECTOR-TRUSTEES’ EMBEDDED CONFLICT OF INTEREST HAS PLAUGED THE CLAUSE 8 TRUST

For the nearly 70 years following Fernald’s death, each Trustee of the Clause 8 Trust has been a Director of The Mother Church in contravention of the *Fernald* Court’s direction. We refer to the Trustees here as “Director-Trustees” to signify their dual agency—as fiduciaries of The Mother Church and separately as fiduciaries to the Clause 8 Trust. The Director of Charitable Trusts (the “**DCT**”) has correctly recognized the conflicting duties of the Director-Trustees as “embedded conflicting fiduciary obligations.” Director of Charitable Trusts’ Memorandum Concerning Standing of Second Church of Christ, Scientist, dated April 11, 2016

(the “**DCT April 2016 Memo**”) at 11. Indeed, the dual agency of the Director-Trustees leaves them embedded in a conflict between their fiduciary obligations as Trustees of the Clause 8 Trust and their demonstrably opposed interests as Directors of The Mother Church.

For the majority of the Clause 8 Trust’s existence, the Trustees directed the large majority, if not all, of distributions to promoting and extending Christian Science as taught by Mrs. Eddy, other than by making distributions to the Directors or The Mother Church. Early on, the Board of Directors assured the Massachusetts Supreme Judicial Court that *no* Clause 8 Trust assets or distributions were needed for repair and upkeep of The Mother Church and the Clause 8 Trust would be used solely for promoting and extending Christian Science as taught by Mrs. Eddy. *See Chase*, 212 Mass. at 566. As a result, branch churches and reading rooms (and other organizations) have historically been the primary beneficiaries of the Clause 8 Trust.

To Second Church’s knowledge, beginning in or about 1971, the Director-Trustees began to implement a systematic stripping of economic and intrinsic value of the corpus of the Clause 8 Trust, all following Fernald’s death and his legacy’s loss of control of the independent overseer of the Clause 8 Trust. In 1972, the Director-Trustees filed a motion seeking to sell Mrs. Eddy’s copyrights to the Directors, which they served upon no one but themselves, as Directors. The DCT also received notice, but voiced no objection to the request, having failed to appreciate the intention of Mrs. Eddy to keep the copyrights separate from the Directors. *See infra* § III.C. Having heard no objection, the Court granted the Director-Trustee’s motions permitting the sale of Mrs. Eddy’s copyrights to the Directors.

As explained further below, the Director-Trustees have repeatedly tried to pervert the intentions of Mrs. Eddy and divert Trust assets and distributions (Second Church believes that more than \$26 million may have been improperly distributed to the Directors) for their own advantage to feed their insatiable lust for the Clause 8 Trust assets to be under their exclusive

control in Massachusetts where the Directors account to no person or governmental authority. The Director-Trustees have improperly favored Directors when distributing Trust assets, improperly comingled Trust funds with The Mother Church or Directors' separate funds, repeatedly failed to have independent financial audits performed as required by this Court's order, and have even attempted to conceal the nature of their financial statements. *See infra* § III.A. All of these abuses occurred while the DCT was involved in the probate proceedings.

The remedy sought by Second Church here — appointment of an independent Trustee — is carefully tailored to remedy these injustices and ensure that the Clause 8 Trust is managed properly and in line with Mrs. Eddy's clear intent.¹ This remedy is within the power of the Court. *See, e.g., Glover*, 76 N.H. 393, 83 A. at 925 (observing that it “would be the duty of the court to appoint” trustees to the Clause 8 Trust “should occasion arise”). And, for the reasons discussed below, Second Church has special interest standing to make this request of the Court.

III. SECOND CHURCH HAS SPECIAL INTEREST STANDING

As this Court has noted, there is little, if any, precedent in New Hampshire regarding the doctrine of special interest standing. (Apr. 12, 2016 Hearing Tr. 16:8-16.) Special interest standing is, however, widely granted by courts across the country and has support in numerous treatises. *See, e.g., Seal Cove Auto Museum v. Spinnaker Trust*, No. CV-2016-333, 2017 Me. Super. LEXIS 105 at *9-11 (May 3, 2017) (noting persons with a special interest may have standing to enforce a charitable trust); *Marks v. Southcoast Hosps. Group, Inc.*, Dkt. No. PLCV02-01284, 2011 Mass. Super LEXIS 325 at 39 (Dec. 30, 2011) (citing *Trustees of Dartmouth College v. Quincy*, 331 Mass. 219 (1954)); *Robert Schalkenbach Found. v. Lincoln*

¹ The Trustees do not serve by appropriate appointment; all of them should be removed and the Court should appoint a new slate of Trustees including New Hampshire residents, members of the congregation of The Mother Church and others throughout the world involved first-hand in the promotion and extension of Christian Science as taught by Mrs. Eddy. Second Church does not, however, seek that relief here, recognizing both the breadth of such relief and the fact that the Clause 8 Trust appears to have been faithfully administered by the Director-Trustees and one independent set of eyes—Fernald.

Found., Inc., 208 Ariz. 176, 182 (2004) (“The ‘special interest test’ is the current, common-law view of standing to enforce charitable trusts....”) (citation and quotation omitted); *Trustees of Dartmouth College v. Quincy*, 331 Mass. 219, 225 (1954); RESTATEMENT (SECOND) OF TRUSTS § 391 (“A suit can be maintained for the enforcement of a charitable trust by ... a person who has a special interest in the enforcement of the charitable trust...”); REST. (THIRD) OF TRUSTS § 94(2) (same); 5 A.W. SCOTT & W.F. FRATCHER, SCOTT & ASCHER ON TRUSTS § 37.3.10 (5th ed. 2006) (same); R. CHESTER ET AL., THE LAW OF TRUSTS AND TRUSTEES § 414 [Standing Granted to Specially Interested Beneficiaries] (3d ed. & Supp. June 2017) (same).

Mary Grace Blasko *et al.*, in the leading article on standing to enforce charitable trusts, *Standing to Sue in the Charitable Sector*, 28 U.S.F. L. REV. 37 (1993), identified the following five factors typically relied on by courts in determining whether a party has standing to enforce a charitable trust (the “**Blasko factors**”): (1) the extraordinary nature of the acts complained of and the remedies sought; (2) the presence of bad faith; (3) the attorney general’s availability and effectiveness; (4) the nature of the benefitted class and its relationship to the charity; and (5) certain subjective factors and social desirability. Though Second Church satisfies each of the five *Blasko* factors, the presence of any single factor can and should serve as an adequate basis for a finding of standing. *See Blasko, supra*, at 47.

The DCT relied on these same *Blasko* factors in his April 2016 Memo addressing Second Church’s standing. Contrary to the DCT’s contention at that time, however, the factual record since the DCT’s submission of its April 2016 Memo and existing case law provide a clear basis for this Court to find that Second Church has special interest standing to seek the appointment of an independent Trustee.

A. The Bad Acts Committed By The Director-Trustees Are Extraordinary And The Remedies Sought Support A Finding Of Standing

Where the acts complained of are extraordinary and the remedies sought are directed towards remedying these bad acts, courts have granted standing. *See, e.g., Stern v. Lucy Webb Hayes Nat'l Training Sch. for Deaconesses & Missionaries*, 367 F. Supp. 536, 537 (D.D.C. 1973) (holding plaintiffs had standing to maintain an action to enjoin trustees' self-dealing and organizational mismanagement). In addition, courts grant standing to parties wishing to challenge trustee action that would materially change the nature of the trust. *See, e.g., Alco Gravure v. Knapp Found.*, 479 N.E.2d 752 (N.Y. 1985) (allowing challenge to amendment which enabled trustees to direct funds to other charitable organizations instead of the designated beneficiaries). Similarly, where a party has a "special interest" in and relationship to the trust and trustees have taken action that jeopardizes the existence and express charitable purpose of the trust, standing has been found. *See, e.g., Valley Forge Historical Soc'y v. Washington Memorial Chapel*, 426 A.2d 1123 (Pa. 1981). Moreover, when a party seeks to address major issues concerning the charitable trust and not merely day-to-day issues, standing will be more readily granted. *See Hooker v. Edes Homes*, 579 A.2d 608, 614-16 (D.C. 1990).

Here, the historical facts and current allegations made against the Director-Trustees are exactly of the sort that supports a finding of standing. Second Church is not quibbling about day-to-day, small scale mismanagement of the trusts or minor differences in opinion of how trust assets should be distributed. Rather, the Director-Trustees have, quite obviously, taken actions that constitute flagrant self-dealing and threaten to pervert the very purposes for which the Clause 8 Trust was established. *See Blasko, supra*, at 48 ("extraordinary acts" include acts that pervert the express nature of the charitable trust).

The history of bad acts committed by the Director-Trustees, including acts taken which resulted in a material change in the purpose or nature of the Clause 8 Trust as set out by Mrs. Eddy, has been detailed at length before this Court in numerous other filings,² and include:

1. The Directors' attempt to have the assets of the Clause 8 Trust distributed to The Mother Church in *Chase v. Dickey*.
2. A stark change in beneficiaries of Clause 8 Trust distributions occurred after the death of Josiah E. Fernald, the last independent trustee. The early years of the Trust saw distributions to branch churches and other entities in furtherance of Mrs. Eddy's wishes with no distributions to The Mother Church, the last thirty years has seen The Mother Church become the sole beneficiary of Trust distributions (for example the 2016 accounts show that all distributions that year went to The Mother Church). Significantly, based on a forensic review of accounts and other information made available to Second Church by the DCT, it appears that during the first 57 years of administration of the Clause 8 Trust, all distributions were made for the primary purpose of "promoting and extending the religion of Christian Science as taught by [Mary Baker Eddy]" and no distributions were made for necessary maintenance and repair of the buildings of The Mother Church.³ This changed as the remnant of independent monitoring provided through Fernald and his successors disappeared after 1970, and not surprisingly even more so in and after 1982.

² See generally Brief *Amicus Curiae* of The Second Church of Christ, Scientist, Melbourne (Australia), Ex. A to Motion for Leave to File Brief *Amicus Curiae*, dated Aug 4, 2017; Brief *Amicus Curiae* of The Second Church of Christ, Scientist, Melbourne (Australia), Ex. A to Motion for Leave to File Brief *Amicus Curiae*, dated Feb. 15, 2017; Reply in Support of Motion to Vacate, or in the Alternative to Reconsider, Orders of November 2, 2015, dated Dec. 14, 2015.

³ Second Church engaged a Certified Public Accountant and Certified Fraud Examiner, Steven Witten, to examine the Trusts' Accounts. Results of Mr. Witten's examination are summarized in charts attached hereto as Exhibit 1.

By 1988, after more than a decade of default in the administration of the Clause 8 Trust—with The Mother Church receiving all the distributions including prohibited principal distributions, the support for “promoting and extending the religion of Christian Science,” other than through distributions exclusively to the Directors, literally dropped off the charts. The evidence evaluated by Second Church and its forensic examiner suggests that the Director-Trustees began making distributions to The Mother Church (that is, to themselves) in the early 1970s and, as of March 31, 2015, had taken over **\$26 million** in principal and income for The Mother Church.⁴

3. The Directors-Trustees made an improper loan of \$5,000,000 of principal from the Clause 8 Trust to The Mother Church in or prior to 1992 (a loan which, at the time, represented 63% of Trust assets), which was only discovered through an independent audit. The 1993 Order of this Court that required The Mother Church to repay the loan is the same Order that “switched” the priority of distributions of the Clause 8 Trust to favor The Mother Church. The loan, in other words, was essentially repaid using Trust distributions, at least in part.
4. The Directors-Trustees continued to distribute income to The Mother Church under the 1993 Order after repayment of the improper loan; that is to say, they failed to restore the restrictions for and principal purposes of distributions under the Will.

⁴ During this same time, the evidence suggests, the distributions to others was something less than half that amount—or about \$10.5 million.

5. The Director-Trustees now seek a reprioritization of Clause 8 objectives, finally admitting, as the DCT now acknowledges, that prioritization of distributions to The Mother Church was improper. Second Church understands that the loan was repaid in or about 1996. But neither the Director-Trustees nor the DCT sought to restore the priorities of Clause 8 Trust distributions until now, as a result of the issues brought to the attention of the DCT by Second Church.
6. The Director-Trustees filed a motion in 2001 to pool Clause 8 Trust assets with those of The Mother Church and allow joint administration without adequate accounting but premised on representations of continued auditing of those assets. The funds were pooled in 2002. There has never been an audited accounting of the Trust's initial allocable share of the investment vehicle, and there has never been an audit of any changes from year to year based on expenditures and gifts out and into the pooled fund vehicles. Accordingly, no auditor could audit the 2017 report without knowledge of the starting point and the changes along the way.
7. The Director-Trustees breached their obligation under the Court's August 23, 2001 Order to "continue to have independent audits of each trust performed" and file those audits. Rather, the Director-Trustees filed accounts "audited" by their in-house, and therefore not independent, accounting manager. For example, the March 31, 2015 statements contain the disclaimer by the preparer: "I am *not independent* with respect to The Mother Church or the Trusts, and I am precluded from expressing an opinion or giving any assurance as to the fairness of the financial statements' presentation of the

Trusts' financial position as of March 31, 2015, or the results of its activities or their cash flows for the fiscal year then ended." (emphasis added.)

8. The Director-Trustees attempted, with the assent of the DCT, to eliminate the obligation to audit the accounts for the Clause 8 Trust, which this Court refused to approve.
9. Only in the first year following the entry of the 2001 Order did the Director-Trustees file an audited account.
10. The Director-Trustees tried to be excused from curing their failure to provide historical forensic audits for the last approximately 15 years and to permit The Mother Church investment committee to remain in place over the Trusts' assets and investments, despite the fact that The Mother Church and the Clause 8 Trust should not necessarily have the same investment objectives, especially as it appears that The Mother Church is akin to an endowment, whereas the Clause 8 Trust is not.

The above examples are just a selection of the numerous and extraordinary actions the Director-Trustees have taken or attempted to take, each of which has been characterized by self-dealing, gross mismanagement of Trust assets or both. The Director-Trustees have repeatedly taken actions to distort, if not destroy, the achievement by the Clause 8 Trust of the aims set out by Mrs. Eddy. As discussed by the courts in *Stern* and *Alco Gravure*, these are exactly the sorts of harms and misbehaviors that merit a finding of standing where a party is seeking to enforce a charitable trust.⁵

⁵ Second Church recognizes that some acts have been taken with Court approval. Second Church respectfully submits that, had the Court been apprised of all relevant information to its decision, it would have reached a different conclusion. The 1993 Order is one example. This is, however, no excuse for the Director-Trustees' defaults in the discharge of their duties.

While the DCT may again try to minimize these actions as merely “divided loyalty” (*see* DCT April 2016 Memo at 8), they are not. Indeed, the record of misconduct by the Director-Trustees shows acts that are more egregious than the bad acts numerous courts have found sufficient to confer standing. *See, e.g., Jones v. Grant*, 344 So.2d 1210, 1211-12 (Ala. 1977) (finding members of a charitable institution had standing to challenge misuse of funds) (superseded by state statute); *Family Fed’n for World Peace & Unification Int’l v. Hyun Jin Moon*, 129 A.3d 234, 244-45 (D.C. Ct. App. 2015) (finding plaintiffs had standing to challenge misuse of trust funds, noting “[t]he exponential expansion of charitable institutions justifies a reasonable relaxation of any rule limiting enforcement to a busy Attorney General.”).

B. The Director-Trustees Have Acted In Bad Faith

Blasko explains that while fraud or bad faith is not an explicit factor discussed by courts when analyzing special interest standing, its presence is nevertheless strongly positively associated with conferral of standing. That is, while courts may not expressly reference the presence of fraud or bad faith as a justification for finding standing, courts are much more likely to find standing where fraud or bad faith acts are present. *See Blasko, supra*, at 50-51.

The DCT cites *Weaver v. Wood*, 425 Mass. 270 (1997), in arguing that Second Church does not have standing. But *Weaver*, a Massachusetts opinion not binding on this Court, concerned facts much different than those present here. The *Weaver* plaintiffs objected to certain actions by trustees largely because they were unsuccessful. To begin, the plaintiffs in *Weaver*, unlike Second Church here, sought standing as *actual beneficiaries* of the public charitable Trusts, based on *their membership in The Mother Church*, unlike Second Church, which seeks special interest standing under the *Blasko* factors. Further, *Weaver* did not involve similar allegations of bad faith, self-dealing, or malfeasance that are prevalent here. Furthermore, the *Weaver* plaintiffs did not argue that Massachusetts Attorney General was incapable of

appropriately policing the trusts or trustees. As explained above and further explained below, the DCT has not been effective in policing the actions of the Director-Trustees. The bad acts of the Director-Trustees and the history of inadequate or non-enforcement by DCT distinguish the present case from *Weaver*.

Here, the evidence that the Director-Trustees have acted in bad faith is substantial, even though based on a limited record.⁶ For example, and without limitation, the Director-Trustees' took principal from the Clause 8 Trust representing 63% of the corpus of the Clause 8 Trust assets. Following the improper loan, the stipulated agreement to repay the improper \$5,000,000 loan was accompanied by a reversal of the priorities of the Clause 8 Trust, which the Director-Trustees and DCT *both only now*, and only through Second Church's efforts, agree was against the express purpose of the trust. These acts and omissions are compounded by the failure to call on the trustees' bond to restore the Clause 8 Trust, because, as it must, such an action would have resulted in the bonding company requiring the removal of the defaulting Trustees.⁷

Additionally, it is undisputed that, although the stated purpose of the Clause 8 Trust is to promote and *extend* Christian Science as taught by Mrs. Eddy, the Director-Trustees distributed Clause 8 funds solely to The Mother Church. A branch church or similar organization, largely the sole beneficiaries of the Trust initially, has not receive a single distribution for nearly thirty years. Moreover, though the Director-Trustees represented that they would, and this Court ordered the Director-Trustees to, continue to have independent audits performed on the accounts, the Director-Trustees instead submitted non-independently prepared unaudited financial statements. Such actions would represent mismanagement and misadministration of trust assets

⁶ The limited documents obtained by Second Church from DCT through its Right-to-Know requests reveal that many of Second Church's concerns about the Director-Trustees' actions have been admitted to by them.

⁷ As Second Church noted at the November 3, 2017 hearing, it has repeatedly sought confirmation that Clause 8 Trust bonds exist, but has received no response; the DCT and Director-Trustees remained silent on this issue at the hearing. *See* Nov. 3, 2017 Hearing Tr. at 44:6-14. This remains an open issue.

if they had been taken by a disinterested trustee. When, as here, such actions were taken by Director-Trustees with “embedded conflicting fiduciary obligations,” they represent clear examples of bad faith conduct. Each action was made to the detriment of the Clause 8 Trust and the wishes of Mrs. Eddy, and for the benefit of the Directors.

In re Green Charitable Trust, 431 N.W.2d 492 (Mich. Ct. App. 1988), is instructive. In *In re Green*, the court noted the “case concern[ed] the objections by the charitable trust beneficiaries” to an attorney’s role as trustee, legal representative of the trust and legal representative of the trust property. *Id.* at 495. The court allowed the beneficiaries to maintain an action to remove the attorney as trustee, and ultimately removed the attorney as trustee.⁸ This was despite the general Michigan rule that “the Attorney General has exclusive authority to enforce a charitable trust.” *Olesky v. Sisters of Mercy*, 253 N.W.2d 772, 774 (Mich. Ct. App. 1977). Similarly, in *Jones*, beneficiaries including students and staff were found to have standing to bring an action for misuse of funds where that misuse was steeped in the misconduct of the directors of the charitable institution. *See Jones*, 344 So.2d at 1211-12.

C. The Attorney General, Through The Director Of Charitable Trusts, Has Not Been Effective In Policing The Director-Trustees’ Misconduct

The Office of the Attorney General has played a role in the Clause 8 Trust for some time. *See, e.g.*, DCT April 2016 Memo at 8, Exs. 1, 2. Second Church’s request for the appointment of an independent Trustee of the Clause 8 Trust is not born out of complete inaction by the DCT, but rather by the objective fact that the DCT was spurred into action by Second Church, but has not done enough, and its actions have been insufficient to alleviate the Director-Trustees’ embedded conflict.

⁸ Here, the law firm of Upton & Hatfield is counsel for the Directors, counsel for the Trustees, and counsel for the Clause 8 Trust, as well as New Hampshire agent for the Clause 8 Trust, given that all Trustees are non-New Hampshire residents.

With respect to the relief requested here, the DCT is, by his own words, “reluctant” to seek the appointment of an independent Trustee, having expressed the (incorrect) view that to do so would be “problematic from a First Amendment standpoint.” Nov. 3, 2017 Hearing Tr. 20:7, 20-21. For the reasons stated by Second Church during the November 3, 2017 hearing, and as discussed in a memorandum filed separately herewith, the First Amendment imposes no impediment to the appointment of an independent Trustee. The DCT’s purposeful inaction in this regard underscores the importance of conferring standing on Second Church to request the appointment of an independent Trustee.

Further, the examples of the Director-Trustees’ bad acts discussed above in Section III.A magnify the failure of the Charitable Trusts Unit to appreciate the import of the structure of the Clause 8 Trust and its relationship with The Mother Church, congregation, and the Directors, as well as to monitor the administration of the Clause 8 Trust and compliance with the Orders of this Court. The DCT has acknowledged that the Charitable Trusts Unit has not consistently appropriately guarded the Clause 8 Trust. The issue of the 1993 Order of this Court, which the DCT now asks the Court to amend,⁹ is illustrative of the problem with sole reliance on the DCT for policing the Clause 8 Trust. The DCT acknowledges that the 1993 Order changed the priority of distributions from the Clause 8 Trust, and states that there is nothing in the record indicating why the parties — *including the DCT* — and Court approved this change.¹⁰ The current DCT now asks this Court to modify the 1993 Order to “restore” the original purpose of the Clause 8 Trust, but only in the context of the impermissible conversion and application of UPMIFA. Notably, for *decades after* the Directors-Trustees repaid the improper \$5,000,000

⁹ See Director of Charitable Trusts’ Memorandum in Support of Trustees’ Motion to Amend 1993 Order and to Convert Trusts to Unitrusts, dated Aug. 11, 2017.

¹⁰ *Id.* at 7.

loan to the Clause 8 Trust that led to the 1993 Order, the DCT took no step toward trying to realign the priority of distributions of the Clause 8 Trust with the Trust's principal purpose of promoting and extending the religion of Christian Science as taught by Mrs. Eddy. The DCT took no action as the Director-Trustees, year after year, failed to carry out the Clause 8 Trusts' purposes.

After Second Church brought the Director-Trustees' potential breaches of fiduciary duty to the attention of the DCT, the DCT promised to take certain actions, detailed at the end of its April 2016 Memo on standing, including, but not limited to, an investigation of a "process for determining the annual amount available for distributions," a "process for deciding between distributions to [T]he Mother church and 'for promoting and extending the religion of Christian Science,'" and the Director-Trustees' "resolution of their conflicting fiduciary obligations." April 2016 Memo at 11.

The DCT has filed no report with the Court, and has provided no explanation to Second Church, yet represents that his review is now closed. *See* Director of Charitable Trusts' Memo. In Support of Trustees' Motion to Amend 1993 Order and To Convert Trusts to Unitrusts, dated Aug. 11, 2017, at 6-7. To the best of Second Church's knowledge, the DCT has not sufficiently pursued its investigation. There is, by way of example, no evidence that the DCT has pursued a "resolution" of the Director-Trustees' embedded conflict, and meanwhile, the Director-Trustees are still plagued by their conflicting obligations. As a second example, the DCT has ignored the failure of the Director-Trustees to have the Clause 8 Trust independently audited in accordance with a 2001 representation by the Director-Trustees and Court Order that allowed the pooling of trust assets with those of The Mother Church. Indeed, the DCT has assented to the elimination of any audit requirement. Respectfully, that is illogical given the history of self-dealing by, and the embedded conflicts of interests on the part of, the Director-Trustees.

Further, Second Church alerted DCT by letter dated January 5, 2017, of potential mismanagement of Trust assets and of the dangers of comingling Trust and The Mother Church assets.¹¹ To the best of Second Church's knowledge, the DCT has not acted on the information contained in this letter.

Given the number of questionable acts taken by the Director-Trustees, it may be that there are simply too many aspects of the administration of the Clause 8 Trust for the DCT to effectively police and that the Director-Trustees' embedded conflicting fiduciary obligations are too numerous for the DCT to effectively monitor with its own resources. This is precisely the problem with relying solely on attorney general enforcement, as recognized by the court in *Family Fed'n for World Peace & Unification Int'l*, 129 A.3d at 244 (noting "[t]he exponential expansion of charitable institutions justifies a reasonable relaxation of any rule limiting enforcement to a busy Attorney General") and *Blasko, supra*, at 70 ("[i]f a court determines that the attorney general is substantially ineffective, the probability increases that a private party will be allowed to represent, in litigation, the public's beneficial interest in a charity."). Plainly put, viewing DCT's involvement in the greater context of the litany of abuses committed by the Director-Trustees favors a finding of standing, and/or sufficient support for the appointment of an independent trustee/administrator to review the issues raised and report back to the DCT or this Court as appropriate. The DCT has not, and apparently cannot, effectively police the continuing string of self-dealing and misuse of Trust assets.

The decision in *Holt v. College of Osteopathic Physicians & Surgeons*, 394 P.2d 932 (Cal. 1964), is instructive. In *Holt*, certain plaintiff trustees sued to enjoin actions from being taken with respect to certain funds held in trust for the purpose of furthering the practice of osteopathic medicine. Certain defendant trustees desired to take actions that would, at least in

¹¹ A true copy of the January 5, 2017 letter is attached hereto as Exhibit 2.

part, move the College of Osteopathic Physicians & Surgeons away from osteopathy and towards allopathy (the type of medicine taught at “typical” medical schools which grant students an M.D.). Defendant trustees moved to dismiss on the grounds that only the attorney general could bring suit to enforce the trust. The court rejected that argument, finding strong public policy reasons to give other parties standing to enforce the terms of the trust. Notably that court specifically rejected the argument that the actions complained of were not significant enough to support standing. *Id.* at 939. The court adopted the “prevailing view [that] the Attorney General does not have exclusive power to enforce a charitable trust and that ... other person[s] having a sufficient special interest may also bring an action for this purpose.” *Id.* at 934 (and collecting cases). The court reasoned that statutes authorizing enforcement by the attorney general are an assurance of a minimum level of oversight, typically enacted “in recognition of the problem of providing adequate supervision and enforcement of charitable trusts.” *Id.* at 935. The court recognized, however, the limitations of supervision solely by the attorney general: “[t]he Attorney General may not be in a position to become aware of wrongful conduct or to be sufficiently familiar with the situation to appreciate its impact, and the various responsibilities of his office may also tend to make it burdensome for him to institute legal actions except in situations of serious public detriment.” *Id.*

There are strong legal and policy reasons to allow Second Church standing to seek the appointment of an independent Trustee for the Clause 8 Trust, and further, to enforce the Trust. Second Church is extensively familiar with the Clause 8 Trust (and related deeds and other) instruments, and the (largely clandestine) workings of The Mother Church and relationships between and among The Mother Church, the Christian Science Publishing Society and the Clause 8 Trust, and is better able to evaluate the impact of actions taken by the Director-Trustees.

By way of example, as noted above, in or about 1971 the Director-Trustees filed a motion with the Court seeking to sell the copyrights over Mrs. Eddy's works owned by the Clause 8 Trust to the Directors. They supported the motion with an appraisal. The Court required that the Director-Trustees provide notice of the motion to beneficiaries and the only parties on whom notice was served were the Director-Trustees — they served themselves — and the DCT and no one else. Of course, there was no objection, and the Court approved the sale. The point here is not whether the sale was for fair value, but that the DCT did not then, and does not now, appreciate that the materials subject to the copyrights are central to the religion of Christian Science as taught by Mary Baker Eddy. It was not Mrs. Eddy's intent to convey the copyrights to the Director-Trustees or to The Mother Church. Rather, the reservation for the Clause 8 residual Trust of the copyrights and the rights reserved by the Pastor Emeritus under the Church Manual created a check and balance over the Directors and permitted the Clause 8 Trust use of the copyrights in the effectuation of its primary purpose of the Trust — to promote and extend the religion of Christian Science as taught by Mrs. Eddy (with the Christian Science Publishing Society, the only other entity (other than the Clause 8 Trust) charged with the goal of promoting and extending Christian Science as taught by Mrs. Eddy). By selling the copyrights, arguably, the Clause 8 Trust lost the ability effectively to promote and extend the religion as taught by Mrs. Eddy. It is clear that the DCT does not have the resources to oversee and appreciate the consequences of the actions taken by the Director-Trustees.

As the *Holt* court observed, “[t]he administration of charitable trusts stands only to benefit if in addition to the Attorney General other suitable means of enforcement are available.” Allowing Second Church to move for the appointment of an independent Trustee is the best, and perhaps only, way to protect the Trust assets, but more importantly, ensure the wishes of Mrs. Eddy are protected.

D. Second Church Is Part Of A Defined Class Of Entities That Bears A Special Relationship With The Trusts

Courts are more likely to find special interest standing where the class of entities is “sharply defined and its members are limited in number.” *Hooker*, 579 A.2d at 614. “Sharply defined” and “limited in number” are not restrictive tests. Similarly, the special interest in the charitable trust cannot be one shared by the public at large. *Y.M.C.A. of the City of Washington v. Covington*, 484 A.2d 589, 592 (D.C. 1984). Courts have found that the following groups satisfy those requirements:

- Members of a particular YMCA branch. *Y.M.C.A. of the City of Washington*, 484 A.2d at 592;
- “Elderly indigent [Georgetown] widows.” *Hooker*, 579 A.2d at 614;
- The employees of corporations in which defendant was involved and the employees of successors to such corporations. *Alco Gravure*, 479 N.E.2d at 755;
- In a suit regarding a church’s “series of coordinated and calculated illegal actions to usurp [a nonprofit corporation church] and its corporate assets and wrest control of [the church]” from another entity, the court found the following plaintiffs had standing: the entity that directed the church’s activities worldwide, the church’s primary donor, a “long-time major recipient of funding” from the church, and two ousted directors. *Family Fed’n*, 129 A.3d at 240.

Second Church fits a definition of “special interest” at least as constrained as in the above four cases. Second Church is a branch church, of which there are approximately 1,400 worldwide and the number is shrinking. That is a defined, set number of organizations that can only change with the blessing of The Mother Church. Any “parade of horrors” to which the Director-Trustees or DCT may allude (which appears to be limited to an unfounded fear that a multitude of parties would seek to intervene in the proceeding) is diminished significantly (if not outweighed) where, as here, the proceeding has been ongoing for over two years and Second Church is the only entity seeking to intervene, and, by virtue of its extensive knowledge of the

Trusts and its consistent efforts to protect both the Trusts and Mary Baker Eddy's intentions when she established them, Second Church is well-suited to and has demonstrated the resources to do so.

In addition, Second Church receives a benefit that the general public does not — a strong benefit from seeing Mrs. Eddy's wishes and intentions fulfilled faithfully. There are no general public benefits readily identifiable from the Trust, and as such Second Church, and other branch churches, are unique from the general public.

The Director-Trustees have argued that Second Church's status as a potential beneficiary does not confer standing. *See* Memorandum of the Trustees of the Trusts Under the Will of Mary Baker Eddy, Clauses 6 and 8 Concerning the Issue of Standing of the Second Church of Christ, Scientists, Melbourne (Australia), dated Nov. 1, 2017, at 11-15 (citing, *inter alia*, *St. John's-St. Luke Evangelical Church v. Nat'l Bank of Detroit*, 283 N.W.2d 852 (1979); *In re Jewish Secondary School Movement*, 174 N.Y.S.2d 560 (1958)). But Second Church is not relying on its mere status as a potential beneficiary. Second Church has a very different relationship to Christian Science, and the Trusts set up by Mrs. Eddy to further her teachings than, for example, a church that could potentially benefit from a charitable trust bearing no direct relation to that church. *See Rhone v. Adams*, 986 So. 2d 374 (Ala. 2007). Similarly, *Kania v. Chatham*, 297 N.C. 290 (1979), involved an unsuccessful applicant for a Morehead Scholarship suing the trust supporting that scholarship. The court, unsurprisingly, held that an *unsuccessful* scholarship applicant, who bore no relationship to the trust at all other than being not selected to receive the scholarship, could not maintain a suit.

Simply put, the fact that Second Church is a potential beneficiary of the Trusts is not the sole reason, or even the primary reason, Second Church has standing. Second Church is a member of a limited, defined class of entities that bear an unquestionable, long-standing

relationship and devotion to the religion of Christian Science and, correspondingly, to the Clause 8 Trust set up by Mrs. Eddy to promote and extend that religion.

E. It Is Socially Desirable To Hold That Second Church Has Standing

The Court may consider other factors than the above four in its standing analysis, including the socially desirable outcome. While Blasko finds that courts typically favor the first four factors, social desirability, too, weighs in favor of a finding of standing of Second Church. The Clause 8 Trust has a worldwide impact — branch churches, reading rooms, and other potential beneficiaries are located throughout the world. As discussed above, it is not possible or desirable for the DCT to police all instances of Director-Trustee misconduct. Branch churches, and in particular Second Church, are, however, well positioned to monitor and enforce the terms of the Clause 8 Trust due to their special relationship with The Mother Church and their detailed knowledge of the Church, its organization, and its history. It is certainly socially desirable to enforce the wishes of a testator, and allowing Second Church to do so here would further that goal. More importantly, there is certainly no socially undesirable outcome that would result by finding Second Church has standing to seek the appointment of an independent Trustee.

IV. THE COURT SHOULD APPOINT AN INDEPENDENT TRUSTEE

When, in 1913, the Court appointed Fernald as the sixth Trustee, it prevented the Director-Trustees from exercising unilateral control over the Clause 8 Trust. One may reasonably assume—and the background of the *Chase v. Dickey*, *Glover v. Baker* and finally, *Fernald* litigation support this inference—that Fernald was appointed as the sixth Trustee because the Court was familiar with the Directors’ thirst to control the corpus of the Clause 8 Trust, including the powers reserved for the Clause 8 Trust under the Manual of The Mother Church, and the admonitions, such as Lord Eldon’s, that “[i]f the court does not watch these transactions” in which a guardian/trustee benefits, “with a jealousy almost invincible, in a great

majority of cases it will lend its assistance to fraud.” *Sparhawk v. Allen*, 21 N.H. 9, 22 (1850) (quoting *Hatch v. Hatch*, 9 Ves. 292). This same appreciation of the perils of leaving the assets of a public trust in the hands of conflicted fiduciaries must have been in mind when New Hampshire Attorney General James P. Tuttle presaged the need for one or more independent Trustees in his brief filed in the *Fernald* case, in which he stated as follows:

It is possible that the Probate Court of Merrimack County may deem this Church, as represented by these five directors, suitable to execute the trust, but...it might become the duty of the court to appoint persons not in hostility to the belief she desired to promote other than these five directors. It may be premature to discuss this feature until the question is presented directly to the Probate Court, but the magnitude of the trust is such and the interests of the Christian Scientists in New Hampshire is such that it seems to be our plain duty to urge that the interests of all who may expect to reap the benefit of this charity may be as well protected and the interests of those of New Hampshire may be better protected by the appointment of one or more New Hampshire trustees who either profess, or are not hostile to, the belief she desired to promote, to act in conjunction with these five directors and their successors under such bonds to the Probate Court as may be determined to be reasonable.¹²

The necessity and effect of such rules—and the prescience of Attorney General Tuttle’s advice in *Fernald*—are born out in the actual experience of the administration of the Clause 8 Trust recounted above. An independent Trustee, although outnumbered by conflicted trustees, may provide adequate protections. For example, records maintained by DCT (obtained by Second Church through its RSA 91-A request) include correspondence between counsel for Fernald and counsel for the Director-Trustees showing that Fernald prevented the Director-Trustees from (improperly) using Clause 8 Trust funds to reimburse The Mother Church for building expenses.

¹² Brief for the State, *Josiah E. Fernald, Administrator of Mary Baker G. Eddy v. The First Church of Christ, Scientist, et al.*, Case No. 1122 (1913 Term), at 8 (emphasis added). Second Church has furnished the Court with a copy of this brief, as Exhibit 1 to its Brief *Amicus Curiae*, dated Aug. 4, 2017.

Simply put, the Director-Trustees cannot be trusted uphold their duty of impartiality in light of their breaches of fiduciary duty continuing over the last several decades. The Court should appoint an independent Trustee to investigate the Director-Trustees' distributions to The Mother Church, and the Court should not entertain any proposal by these conflicted Director-Trustees (*i.e.*, the Assented-To Motion to Amend the 1993 Order) until an independent Trustee is appointed, investigates, and reports to the Court.

Restoring the corpus and integrity of the Clause 8 Trust requires more than a change in distribution standards. The Second Church submits that before any decision of this magnitude is approved by this Court, an independent trustee should be permanently appointed and charged with considering anew and independently whether to pursue approval of the Assented-to Motion and ensuring the following institutional changes, personnel changes, independent investigations and reconciliations are conducted to appropriately address the long history of mismanagement and self-dealing by the Director-Trustees:

- A. A forensic audit at the expense of The Mother Church of the accounts from 1972 through 2016 in order to ascertain the correct beginning and current balance of the Trusts and the extent of the damages resulting from the Director-Trustees' various defalcations, among others, leading to the 1993 Order;
- B. All annual accounts filed with this Court should be supported by an independent audit of the books and records of the Clause 8 Trust conducted by outside independent auditors and such accounts and audits should detail distributions to The Mother Church and all non-Mother Church beneficiaries alike;
- C. The Clause 8 Trust is the residual trust under Mrs. Eddy's Will. As such the Clause 8 Trust is vested with all property, rights, interests, and powers of Mrs. Eddy's probate estate that were not expressly granted or devised to other parties or trusts. In that

spirit, the Independent Trustee should initially be charged to investigate the breadth of property rights and interests of the Clause 8 Trust and bring to the Court's attention the need to restore any such property rights and interests to the Clause 8 Trust, including, without limitation:

- i. The provisions of the 1892, December 1903, 1904 and 1907 Deeds, and the estoppel rights in the Church Manual and determining whether the Clause VIII Trust has the power to act in each instance;
- ii. Copyrights, including the obligation to restore in-house printing to publish Mrs. Eddy's teachings and writings;
- iii. Lands owned by Mrs. Eddy that were not permanently conveyed *inter vivos* or under her Will, including rights respecting the Christian Science Publishing Society realty interests;
- iv. Funds transferred to The Mother Church other than in accord with Clause 8 proper purposes;
- v. Any claims under any bond benefitting the Clause 8 Trust protecting it from acts or omissions of the Trustees and protecting the corpus of the Clause 8 Trust;
- vi. Ascertain the propriety of maintaining the Clause 6 Trust under the Will of Mary Baker Eddy or seek a *cy pres* ruling of this Court to change the purpose of Clause 6 or collapse Clause 6 Trust into the Clause 8 Trust; and
- vii. Appointment by the Probate Court of trustees adequately suited to serve as Trustees as required under the Church Manual Article 1:5 and RSA 564-B:7-704(e).

In the absence of such an investigation by an independent trustee, the stain of the embedded conflict and the corresponding damage to the Clause 8 Trust will remain as a cloud over it forever.¹³

V. CONCLUSION

For almost 70 years the Directors of The Mother Church have served as the sole Trustees of the Clause 8 Trust. Lost in the predominance of The Mother Church's influence over this Trust is the explicit intent of Mary Baker Eddy in Clause 8 of her Will to provide an income stream to further the global promotion and extension of the religion of Christian Science. As prophesized by Attorney General James Tuttle in 1913, forsaken are "all who may expect to reap the benefit of this charity"; namely, the multitude of branch churches throughout the world that historically utilized distributions from these Trusts to promote and extend the religion of Christian Science. The primary aim of the Second Church is to bring to light this unappreciated conflict of interest in the hope that this Honorable Court will restore the integrity, independence and objectivity that once endured during the initial roughly thirty-five (35) years of the Trusts, by appointing an independent trustee or administrator.

WHEREFORE, Second Church of Christ Scientist, Melbourne (Australia), respectfully prays that this Honorable Court enter an Order:

- A. Finding that Second Church has standing to request the appointment of an Independent Trustee to the Clause 8 Trust;
- B. Appointing an Independent Trustee permanently to the Clause 8 Trust;

¹³ In its Status Report and Nomination of Trustee, dated May 23, 2017, Second Church respectfully proposed that Mark Fernald would be an appropriate Independent Trustee.

- C. Directing the Independent Trustee to investigate Clause 8 Trust distributions to The Mother Church by way of a forensic audit, at the expense of The Mother Church, of the accounts from 1972 through 2016;
- D. Directing the Independent Trustee to investigate the breadth of property rights and interests of the Clause 8 Trust and bring to the Court's attention the need to restore any such property rights and interests to the Clause 8 Trust;
- E. Requiring all annual accounts to detail distributions and be supported by an independent audit of the books and records of the Clause 8 Trust conducted by outside independent auditors; and
- F. Granting such other and further relief as justice may require.

Respectfully submitted,

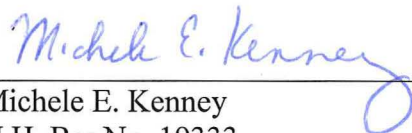
SECOND CHURCH OF CHRIST,
SCIENTIST, MELBOURNE,

By its attorneys,

PIERCE ATWOOD LLP

Dated: November 17, 2017

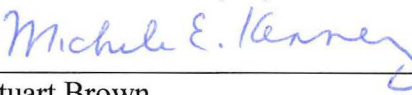
By:


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CERTIFICATE OF SERVICE

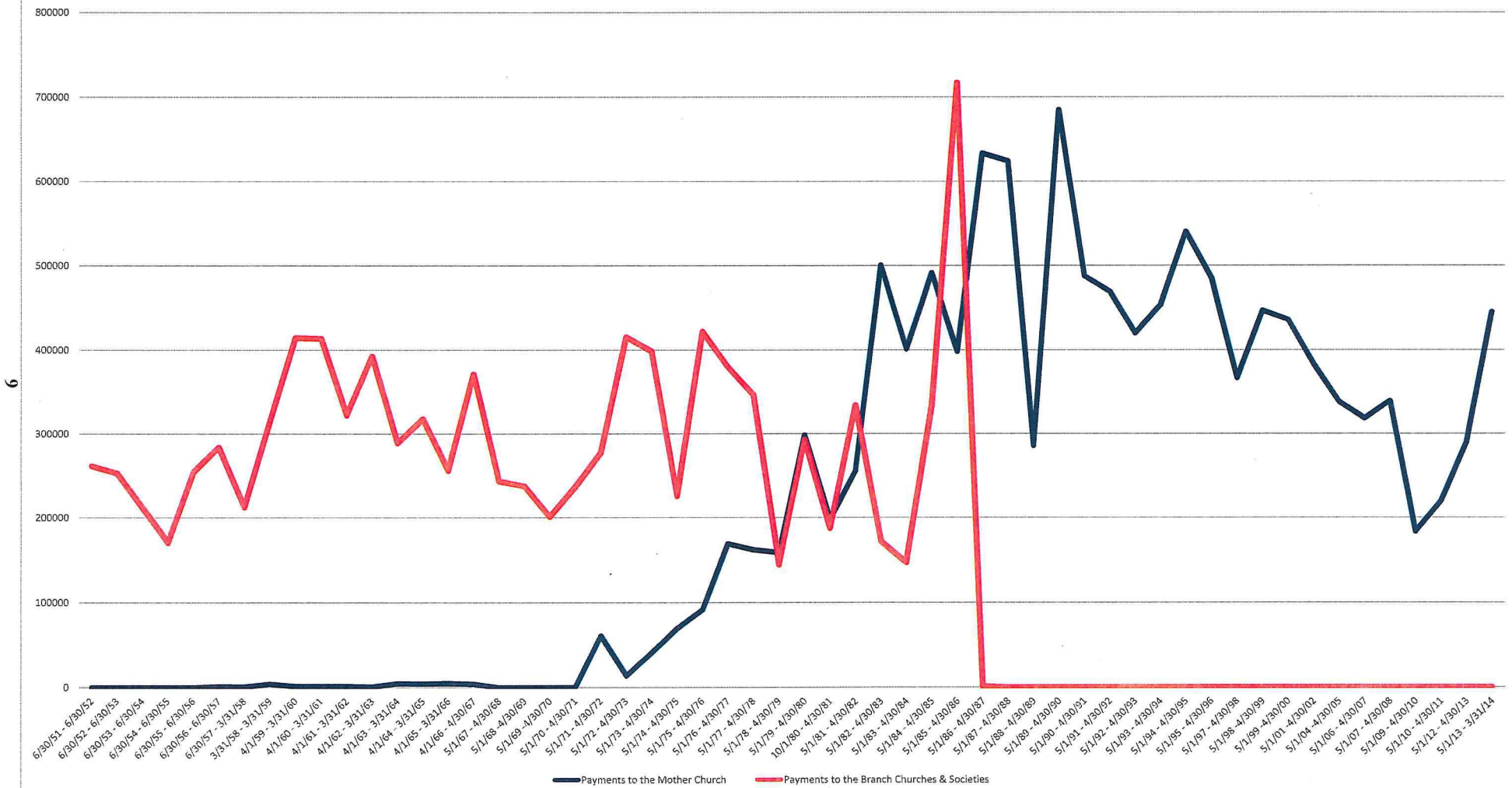
I hereby certify that I have on this 17th day of November, 2017, send a copy of the foregoing to the following by electronic mail and first class mail:

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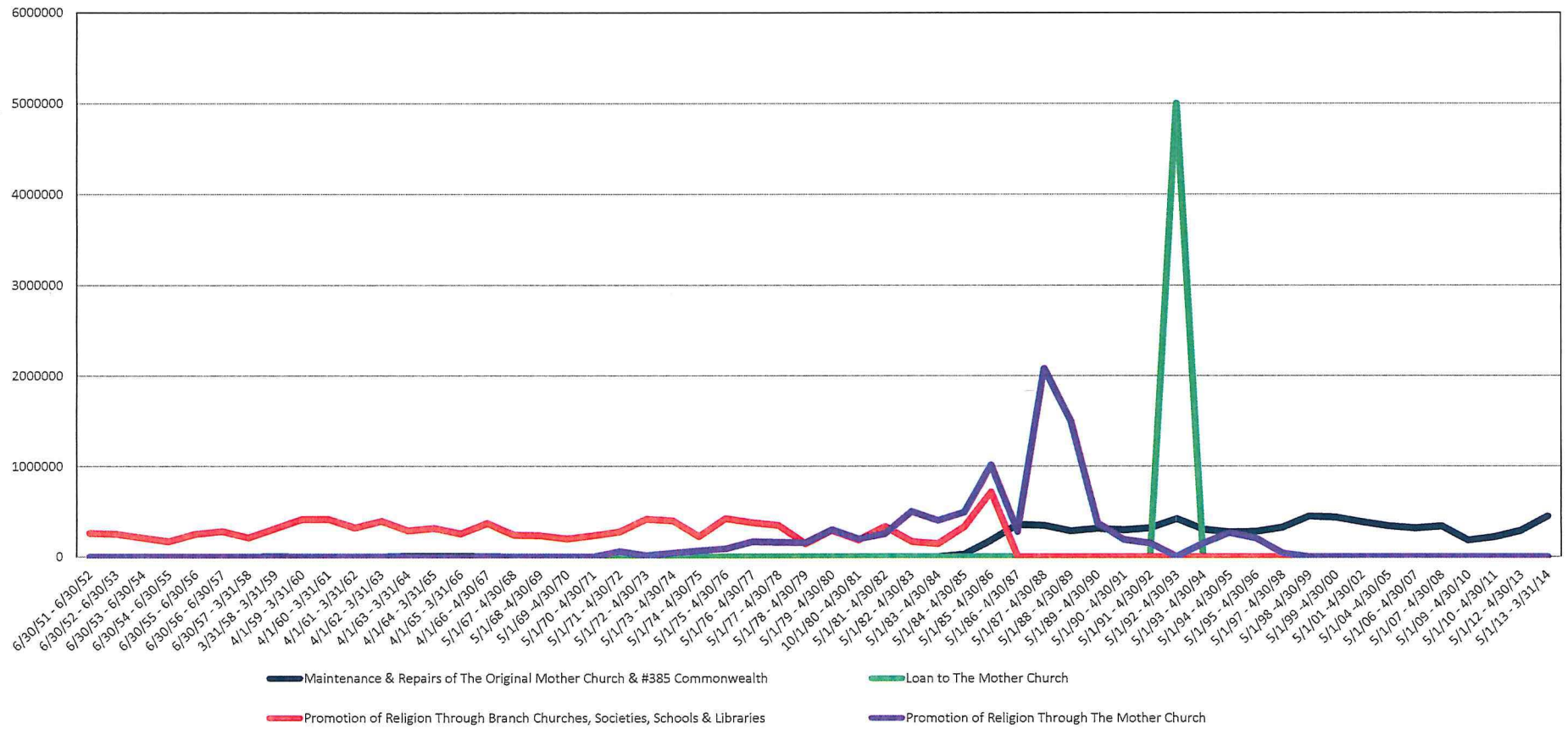
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CLAUSE 8 INCOME FUND - PAYMENTS TO BENEFICIARIES



CLAUSE 8 PRINCIPAL & INCOME FUND - PAYMENTS TO BENEFICIARIES

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January 5, 2017

VIA-E-MAIL THOMAS.DONOVAN@DOJ.NH.GOV

Thomas J. Donovan
Director of Charitable Trusts
Department of Justice
33 Capitol Street
Concord, NH 03301

Re: Mary Baker Eddy, Christian Science Publishing Society Trust

Dear Tom:

I hope this finds you having thoroughly enjoyed Christmas and looking forward to the new year in safety, health and joy.

I am writing to you to advise you of a series of transactions that appear at odds with trusts established under MBE's Will, clauses 7 and 8. The NH Trust that owns the Christian Science Publishing Society land and buildings transferred a portion of its assets last year and received \$65 million (contributing \$30 million to the underfunded pension plan) and again this year is transferring a portion of its assets to Northeastern University in consideration for the payment of \$56 million; yet, the assets of TMC reported at its last annual meeting are not increasing, despite the sale proceeds being contributed to TMC. These transactions and reports suggest that TMC's finances may not be sound, therefore, the commingling of the Clause 6 and 8 funds without a current independent audit and a forensic audit of prior years' financial statements leaves the Clause 6 and 8 trusts exposed.

On January 25, 1898, Mary Baker Eddy in Concord, NH executed a Deed of Trust establishing the Christian Science Publishing Society Trust (CSPS).¹ Through the deed "for the purpose of more effectually promoting and extending the religion of Christian Science as taught by [MBE]", MBE conveyed in perpetual and irrevocable trust to three trustees, none of whom was a member of the Board of Directors of TMC, the CSPS operating assets (excluding the copyrights). Preamble. The CSPS was the business that generate the vast sources of profits that supported TMC, Mrs. Eddy, and separately, the CSPS. Through this deed MBE expressed her concern about the temptations of the wealth of the CSPS by restricting access to the papers and monies of the CSPS Trust to a majority of the three CSPS trustees. Clause 4. Further, every six months the CSPS trustees shall account for and pay over to the treasurer of TMC the entire net profits of the business of the CSPS, who shall hold such money "subject to the order of 'The First Members' of [TMC], who are authorized to order its disposition only in

¹ Copies of the relevant deeds of trust were previously provided to your office under letter dated July 8, 2016.



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accordance with the rules and by-laws contained in the Manual of [TMC]", Clause 4; significantly, not under the direction or control of the Directors of TMC.

The CSPA Trust was created separate and apart from TMC. Indeed, the trustees of the CSPA Trust "shall have direction and supervision of the publication... using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause, reserving the right to make such changes as I may think important." Clause 8. Further to this point, successor trustees of the CSPA Trust are to be appointed by MBE or following her death by the remaining CSPA trustees; again, not the Directors of TMC. Further, "The First Members [later known as the Executive Members] together with the directors of [TMC] shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient." Clause 10. Finally, MBE clearly expressed her intention that the Christian Science Journal was to held separate and apart from TMC and conveyed the Journal to the CSPA Trust in trust forever. Clauses 11 and 12. The Directors of TMC were not intended by MBE to control the CSPA Trust.

Mrs. Eddy's intent to separate powers is further evidenced by the separate January 25, 1898 deed conveying the lands and buildings in which the CSPA conducted its business to the Directors of TMC. This separate deed was amended by MBE's Deed of Trust dated December 21, 1903 to correct the grantee to bring in accord with applicable law and to express that the property was "conveyed on the further trusts that no new tenet or By Law shall be adopted nor any tenet or By Law amended or annulled by the grantees unless the written consent of said Mary Baker G. Eddy, the author of the text book "Science and Health with Key to the Scriptures" be given therefor, or unless at the written request of Mrs. Eddy, the Executive Members of Mary Baker G. Eddy's Church, The First Church of Christ Scientist" (formerly called the 'First Members') by a two-thirds vote of all their number decide so to do."

In 1904, by Deed of Trust dated March 3, 1904, Mrs. Eddy reaffirmed the trusts of the CSPA land and buildings bestowed upon TMC Board of Directors as trustees under the deeds of trust and conditions in the foregoing two deeds and disavowed only any right of reversion. And she filed another confirming and conforming deed on December 19, 1906, respecting TMC edifice. And finally, in 1907 Mrs. Eddy filed yet another deed of trust, whereby she granted "all of my interest of every kind and description in and to any real estate wherever situated; also all my interests of every kind and description in and to any estate, personal and mixed, which I now own or possess, including stocks, bonds, interests in copyrights, contracts, actions and causes of action at law or in equity against any person." Preamble. The first clause of this deed speaks to interests in real estate and specifies that upon her death all such interests shall pass under her Will, the Clause 8 trust created under the Will. First Clause and Fourth Clause. Significantly, Mrs. Eddy expressed her desire to maintain control over the appointment of the trustees and in her absence any "new trustee shall be appointed by the chief justice of the Supreme Court of New



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Hampshire...", Sixth Clause, her lack of complete trust in the trustees by requiring them to post a bond, Eighth Clause, and requiring the trustees to account to her semi-annually. Tenth Clause.

To the best information of the Second Church the original CSPA Trust deed respecting the operating assets of CSPA was never modified prior to Mrs. Eddy's death. Therefore, such assets should remain in that New Hampshire trust, under the trusteeship of the trustees appointed by the Executive Members of TMC, which trust was ratified under Clause 7.2 of the Will, and which operating assets are to be used for the "purpose of more effectually promoting and extending the religion of Christian Science as taught by [MBE]." The CSPA trust that holds the CSPA operating assets and which is supposed to operate under the trusteeship of trustees that are other than the Directors is burdened by the dictate to extend and promote the religion.

The separate CSPA Trust respecting the land and buildings of the CSPA is one of the trusts that terminated upon her death and the rights flowed through the residual trust under Clause 8 under the Will. So too these assets are to be used "purpose of more effectually promoting and extending the religion of Christian Science as taught by [MBE]." Nevertheless, these assets are under the control of the Clause 8 trustees directed with the separate, yet parallel, duty to extend and promote the religion. Mrs. Eddy brilliantly charged at least two trusts with separate trustees to extend and promote the religion in an effort to guarantee its growth and perpetuation. This structure is similar to a research company setting up two labs charged with the same task to find a vaccine for typhoid. The teams may take the same path or they may take very different paths to find the vaccine and in the end there is a greater likelihood of success.

With this backdrop, we are now confronted with the challenge of investigating these CSPA transactions and the separate implications each may have on the Clause 7.2 CSPA trust of CSPA operating assets and the Clause 8 trust, directly and indirectly as such transactions may demonstrate the lack of controls over the Clauses and 6 and 8 trust funds that were commingled and invested. As the Probate Court suggested at the last hearing the commingling of the Clause 6 and 8 funds without a current independent audit and a forensic audit of prior years' financial



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statements leaves the Clause 6 and 8 trusts exposed and Second Church prays that your office follows through to demand that such current and historical forensic audits be prepared.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Stuart Brown', written over a horizontal line.

Stuart Brown
Partner

cc: Terry Knowles
Graeme Strang
Robert Eyre
Michele Kenney
Patrick Collins