

THE STATE OF NEW HAMPSHIRE

Merrimack County

6th Circuit — Probate Division
Concord

In re Trusts Under the Will of Mary Baker G. Eddy

Case No. 1910-001

MOTION TO AMEND SECOND CHURCH OF CHRIST SCIENTIST’S MOTION FOR LIMITED RECONSIDERATION AND CLARIFICATION

NOW COMES Second Church of Christ Scientist, Melbourne (Australia) (“**Second Church**”), through its undersigned counsel, and respectfully submits this Motion to Amend its Motion for Limited Reconsideration and Clarification (“**Motion for Reconsideration**”) of the Court’s Order on Motions, dated March 19, 2018 (the “**March 19 Order**”), stating as follows:

1. Pursuant to Probate Court Rule 135, Second Church seeks to amend its Motion for Limited Reconsideration in light of the discovery of new evidence that bears heavily upon Second Church’s right to be granted standing to request the appointment of an Independent Trustee of the Clause VI and Clause VIII Trusts under the Will of Mary Baker Eddy (collectively, the “**Trusts**”).

2. The Court indicated in the March 19 Order that Second Church did not provide sufficient evidence of outright fraud or bad faith to be granted special interest standing under the *Blasko* Test to pursue Second Church’s request for the appointment of an independent trustee.¹ The Court suggested that Second Church merely offered conclusory examples of bad faith on the part of the Director-Trustees, which lacked “sufficient factual underpinnings on which to support a finding of fraud or bad faith.”²

¹ March 19 Order at 16-18.

² March 19 Order at 19-20.

3. As set forth in Second Church's pending Motion for Reconsideration, Second Church submits it has provided ample support, without the benefit of discovery or an evidentiary hearing, for its claims of fraud and bad faith by the Director/Trustees.³ But Second Church has recently uncovered documentation that provides even more compelling evidence of such conduct by these conflicted Director/Trustees, further illustrating their incapacity for fair and honest administration of the Clause VIII Trust.

4. At the hearing on pending motions on November 3, 2017, the issue of the existence and status of the surety bonds was discussed in a colloquy with the Court. See Transcript of Hearing on Nov. 3, 2017, at 44, a copy of which is attached hereto as **Exhibit A**. None of the Director/Trustees were present to participate in that colloquy; they never appear, themselves, before this Court. They send counsel, accompanied by officers and employees of The Mother Church, to speak for them—none of whom answered the Court's request for information about the bonds or had anything to say at all about the status of the surety bonds. Nor did the DCT have anything to say about the bonds.

5. Second Church has discovered that this Court, in 1996, directed that the surety bond relating to the Clause VI Trust be increased from \$25,000 to \$100,000 and that the Clause VIII Trust bond be increased from \$500,000 to \$8,000,000. Attached hereto as **Exhibit B** are copies of letters from Patricia A. Fraser, Register of Probate, to James F. Raymond, Esq., dated April 16, 1996, directing that increased corporate surety bond riders be filed in the Clerk's Office within sixty (60) days thereof.

³ Motion for Reconsideration at 4-5.

6. In that correspondence, the Clerk of Probate Court wrote: “The Court will accept consents from **all interested parties** asking that the bond be continued at the present rate.”

Exhibit B (emphasis added).

7. The Director/Trustees responded to the Clerk of Probate Court on behalf of “all interested parties,” as follows:

The New Hampshire Supreme Court held in Fernald v. The First Church of Christ, Scientist, 77 N.H. 108 (1913), that it was Mrs. Eddy’s intent under her Will to create a trust to be administered by her Church for the benefit of her Church. ... Insofar as can be determined from the financial records of the [Clause VIII Trust], the funds heretofore disbursed under Clause VIII have been uniformly disbursed to the Church. Therefore, we respectfully submit that the undersigned represent all of the interested parties to the trust, in our dual capacities as The Christian Science Board of Directors and as Trustees Under the Will of Mary Baker Eddy, and that a higher bond amount for the Trustees is not necessary.

Letter from The Christian Science Board of Directors to Patricia A. Fraser, Register of Probate, dated May 29, 1996, attached hereto as **Exhibit C**.

8. By letter dated June 11, 1996, two weeks after the Director/Trustees signed a consent claiming to represent “all of the interested parties,” on the eve of the sixtieth (60th) day to comply with this Court’s order, Attorney James Raymond sent a letter the Clerk of the Probate Court transmitting the Director/Trustees’ consent and asserting that “the Trustees are also the Directors of the Christian Science Board of Directors of the First Church of Christ, Scientist, which is **the** beneficiary of the trusts.” Letter from James F. Raymond, Esq. to Patricia A. Fraser, Register of Probate Court, dated June 11, 1996, attached hereto as **Exhibit D** (emphasis added).

9. The Director/Trustees’ 1996 correspondence on this subject of the bonds bears some alarming inaccuracies.

10. First, they misrepresent the holding in *Fernald v. First Church of Christ, Scientist*, 77 N.H. 108 (1913). In *Fernald*, the New Hampshire Supreme Court restated the fundamental precept of *Glover v. Baker*, 76 N.H. 393 (1912), that the Clause VIII Trust was a gift to a charitable trust and not to The Mother Church:

The question of [Mrs. Eddy's] intention was considered at length in *Glover v. Baker*, 76 N.H. 393, and it was held that she did not intend to give this property to the church (p. 401), but to create a public trust for promoting and extending Christian Science as taught by her to all parts of the world (p. 425).

Fernald, 77 N.H. at 109. The *Fernald* Court went further, however, and declared that the Clause VIII Trust would not be administered by the Directors in Massachusetts, but here, in New Hampshire,⁴ by bonded trustees appointed by this Court.

11. Misrepresenting to this Court that *Fernald* stands for the proposition that the Clause VIII Trust is to be administered for the sole benefit of The Mother Church constitutes bad faith directly by the Director/Trustees and is further evidence of the fact that when left unchecked, these conflicted Director/Trustees misconstrue the intent of Mary Baker Eddy, misinterpret New Hampshire Supreme Court holdings, and misallocate Clause VIII Trust funds for their own self-interest as Directors of The Mother Church. It remains Second Church's position that absent the appointment of an Independent Trustee and the continuing vigilance of Second Church, these Trustees will find a way, as they have so clearly done in the past, to circumvent the dictates of the Trust and recent Court orders to usurp the Trust for its own benefit.

⁴ *Fernald*, 77 N.H. at 110 ("This trust being as much for the benefit of this state as for any place should be administered here, since this is the jurisdiction of its origin.").

12. Second, the Director/Trustees' correspondence misrepresents The Mother Church to be the sole beneficiary of the Clause VIII Trust. The *Fernald* decision does not say this. To the contrary, it expressly recognizes the Trust's primary purpose of "promoting and extending Christian Science" to be extended to a much broader, public and international class of beneficiaries. *Fernald*, 77 N.H. at 109 (citing *Glover*, 76 N.H. at 425). The point was made even clearer a year before by the Massachusetts Supreme Judicial Court, in *Chase v. Dickey*, 212 Mass. 555, 99 N.E. 410 (1912), which declared this public charitable purpose to be the dominant purpose, and the contingent benefit to The Mother Church—maintaining certain buildings (if "necessary")—to be a subordinate "charge on the main fund." *Chase*, 99 N.E. at 415-16.

13. Further, Second Church has provided extensive evidence that for the first 57 years of the Trust, Clause VIII Trust funds were distributed *only* to branch churches like Second Church, reading rooms and other non-Mother Church entities⁵—squarely contradicting the representation in Mr. Raymond's 1996 letter to the Clerk of this Court that "the funds heretofore disbursed under Clause VIII have been uniformly disbursed to the Church...."

14. Finally, in the 1996 letter from Attorney Raymond to this Court, there is no mention that the conflicted Director/Trustees consulted with the Director of Charitable Trusts or sought the Charitable Trust Office's consent to maintaining the bonds at the prior levels. Instead, the conflicted Director/Trustees falsely declared to this Court that they "the undersigned

⁵ See, e.g., Brief *Amicus Curiae* of The Second Church of Christ Scientist, Melbourne (Australia), dated Aug. 4, 2017, at 9-10 & n. 14. Through approximately 1971 and 1972, the years during which the Clause VIII Trust purportedly sold Mrs. Eddy's Copyrights to The Mother Church, the annual accounts reflect that all disbursements were made to beneficiaries other than The Mother Church. Beginning in 1972 through approximately 1986, the annual accounts reflect that disbursements were made both the third party beneficiaries, thereafter all distributions only benefitted The Mother Church. See attached Summary of Clause VIII Annual Accounts attached hereto as **Exhibit E** and incorporated herein. The Clause VIII annual accounts are part of the record of these proceedings and Second Church asks that this Court take judicial notice of the annual accounts and the attached Summary.

represent all of the interested parties to the trust, in our dual capacities as The Christian Science Board of Directors and as the Trustees Under the Will of Markey Baker Eddy and that a higher bond amount for the Trustees is not necessary.” **Exhibit C.**

15. New Hampshire was the first state in the Country to create a Charitable Trusts Unit in 1943 pursuant to RSA ch. 7. The Director of Charitable Trusts is charged with exercising “all the common law and statutory rights, duties, and powers of the attorney general in connection with the supervision, administration, and enforcement of charitable trusts, charitable solicitations, and charitable sales promotions.” RSA 7:20.

16. It is self-evident that the Director of Charitable Trusts is an interested party. Indeed, the Director/Trustees acknowledge that the Director of Charitable Trusts represents the interests of the public, including the interests of Second Church.⁶ Yet, when it suited the interests of The Mother Church, the Director/Trustees represented to the Court that they alone constituted “all of the interested parties.”⁷

17. While Second Church has, in prior pleadings with the Court, demonstrated the extent to which the Director/Trustees operated the Clause VIII Trust as an extension of The Mother Church, this new documentation constitutes an admission by the Director/Trustees, in a writing signed by them, that they administered the Trusts as if The Mother Church was the sole beneficiary and sole interested party. Their cavalier misrepresentations about the holding in *Fernald*, their ignoring the Director of Charitable Trusts as an interested party (notwithstanding that these events in 1996 fall on the heels of the 1993 Stipulated Order, which through the

⁶ See Trustees’ Objection to Second Church’s Limited Assent to Trustees’ Motion for Reconsideration ¶ 4, filed April 19, 2018.

⁷ Unlike the Director/Trustees, who treat this matter as though it were adversarial in nature, the Director of Charitable Trusts appears to discharge the duties of that office in a collaborative manner with the Director/Trustees, which, unfortunately, places his office at a disadvantage before this Court.

Director of Charitable Trusts involvement forced The Mother Church to repay to the Clause VIII Trust an unauthorized loan, which loan receivable held by the Trust represented approximately 67% of the Clause VIII Trust assets), and their claiming that The Mother Church was the sole beneficiary of the Clause VIII Trust, is further proof of their bad faith and that they cannot be trusted to continue to operate the Clause VIII Trust without the appointment of an independent trustee to supervise their conduct, as they were supervised from the outset with the appointment of Josiah Fernald.

18. By these misrepresentations, the Director/Trustees misled this Court to relax the bond requirements on both Trusts—a result that is all the more material in relation to the Clause VIII Trust where, it is now beyond question, the service of these same Director/Trustees was plagued by an imbedded conflict that has gone unchecked since their successful elimination of the sixth, and only, independent Clause VIII Trustee following the death of Josiah Fernald in 1949.⁸ As a further result, the approximately \$26 million in liquid (investment) assets of that Trust are now secured by a mere \$500,000 bond, and comingled with the assets of The Mother Church—an entity whose finances are held secret by these same Director/Trustees. Worse, the evidence submitted previously by Second Church (again, without discovery) suggests that the Director/Trustees hijacked the Clause VIII Trust for over \$26 million in self-interested distributions. This alone should disqualify the Director-Trustees from continuing to serve as Trustees of the Clause VIII Trust.

19. Ultimately, the Director/Trustees are hopelessly and irreconcilably conflicted in their discharge of fiduciary duties to The Mother Church, on the one hand, and the Clause VIII

⁸ There remains no showing by the Director/Trustees that Judge Lord's 1949 Letter was the result of any contested matter before the Court.

Trust , on the other hand. Similarly, counsel also is hopelessly and irreconcilably conflicted in its representation of The Mother Church on the first hand, the Directors on the second hand and the Trustees on the third, each of which has independent counsel at the inception of the Clause VIII Trust. This Court has an opportunity to exercise its broad general authority to appoint an Independent Trustee pursuant to RSA 564-B:7-704(e) (“whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust”), and should elect to do so.

WHEREFORE, Second Church of Christ, Scientist, Melbourne, respectfully requests that this Honorable Court enter an Order:

A. Allowing Second Church to Amend its Motion for Limited Reconsideration and Clarification to include the arguments herein and **Exhibits B through E** enclosed herewith.

B. Granting such other and further relief as justice so requires.

Respectfully submitted,

SECOND CHURCH OF CHRIST,
SCIENTIST, MELBOURNE,

By its attorneys,

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Dated: April 30, 2018

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 30th day of April, 2018, forwarded a copy of the foregoing Motion to Amended Motion for Limited Reconsideration and Clarification to the following by first class mail:

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