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By Courier

August 4, 2017

Sharon Richardson, Clerk
Attention: Trust Docket
6th Circuit- Probate Division- Concord
163 North Main Street
Concord, NH 03301

Re: In re Trust under the Will of Mary Baker G. Eddy[1]
Trust Docket Case No. 317-1910-TU-00001

Dear Ms. Richardson:

On behalf of Second Church of Christ, Scientist, Melbourne, Australia ("Second Church"), I have enclosed an original and two copies of the following for filing in the above-referenced matter:

1. Motion for Leave to File Brief *Amicus Curiae* of Second Church of Christ, Scientist, Melbourne (Australia); and a

2. Brief *Amicus Curiae* of the Second Church of Christ Scientist, Melbourne (Australia).

Thank you for your attention to this matter. Please contact me if you have any questions.

Very truly yours,

Michele E. Kenney

MEK/kmd
Enclosures

cc: James F. Raymond, Esquire
Thomas J. Donovan, Esquire

[1] This matter was reassigned to the Trust Docket from the docket of the 6th Circuit — Probate Division — Concord, pursuant to Administrative Order 2016-0005-TD (Kelly, J.), dated February 23, 2016.

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 FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF SECOND CHURCH OF CHRIST, SCIENTIST, MELBOURNE (AUSTRALIA)

NOW COMES the Second Church of Christ Scientist, Melbourne (Australia) ("**Second Church**"), through its undersigned counsel, and seeks leave to file a brief *amicus curiae*, attached hereto as Exhibit A ("***amicus* brief**"), in connection with the Assented-To Motion by the Trustees Under the Will of Mary Baker Eddy To Amend the 1993 Order, Convert Clause 6 And Clause 8 Trusts To Unitrusts, And Adopt For the Clause 8 Trust The Provisions of RSA 292-B, The Uniform Prudent Management Of Institutional Funds Act (the "**Motion**"). In support of this request, Second Church states as follows:

1. In its April 4, 2017 Order denying, without prejudice, Second Church's Motion for Leave to File Brief Amicus Curiae, the Court noted that it is not "adverse to accept future *amicus curiae* submissions should it decide that in light of the questions before it, the 'amicus curiae presentations assist the court by broadening its perspective on the issues raised and facilitate informed judicial consideration of that controversy.'" Order, dated April 4, 2017, at 10 (quoting 4 Am. Jur. 2d *Amicus Curiae* § 1 (Supp. 2017)). For the reasons set forth herein and in the attached brief, Second Church respectfully submits that its *amicus curiae* presentation will "facilitate informed judicial consideration" of the Trustees' Motion by furnishing important, relevant information not presented by the Trustees.

2. Since 1949, the Directors of the Mother Church have served as the sole Trustees of the Clause VI and VIII Trusts, and, as discussed in the attached *amicus* brief, these conflicted Trustees have historically favored the Mother Church over the interests of all other beneficiaries of the Trusts.

3. By omitting important facts and misstating the historical context of the Clause 6 and Clause 8 Trusts, the Motion fails to address the extent to which the embedded conflict has severely frustrated the original testamentary intent of Mary Baker Eddy and settles on a too narrow solution that falls far short of what is necessary to restore the independence and integrity of these Trusts.

4. Second Church respectfully submits the attached *amicus* brief to furnish the Court with this important history and contextual information so that it can appreciate the extent of the Trustees' breach and the resulting damage they caused in the hope that this Honorable Court will arrive at a more appropriate and just result than what is contemplated in the Motion.

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

A. Grant Second Church leave to file the brief *amicus curiae* attached hereto as Exhibit A; and

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

Respectfully submitted,

SECOND CHURCH OF CHRIST, SCIENTIST, MELBOURNE,

By its attorneys,

PIERCE ATWOOD LLP

Dated: August 4, 2017

By: Michele E. Kenney

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 4th day of August, 2017, forwarded a copy of the foregoing Motion for Leave to File Brief *Amicus Curiae* to the following by electronic mail and first class mail:

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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

BRIEF *AMICUS CURIAE* OF
THE SECOND CHURCH OF CHRIST SCIENTIST, MELBOURNE (AUSTRALIA)

Second Church of Christ Scientist, Melbourne (Australia) ("**Second Church**"), through its undersigned counsel, submits this brief *amicus curiae* in relation to the Assented-To Motion by the Trustees Under the Will of Mary Baker Eddy To Amend the 1993 Order, Convert Clause 6 And Clause 8 Trusts To Unitrusts, And Adopt For the Clause 8 Trust The Provisions of RSA 292-B, The Uniform Prudent Management Of Institutional Funds Act (the "**Motion**"); stating as follows:

INTRODUCTION

The Movants represent that they are all of the Trustees of two trusts formed under Clause VI and Clause VIII (collectively the "New Hampshire Trusts") of the Will ("Will") of Mary Baker G. Eddy. They also represent that they are the Directors[1] of the First Church of Christ, Scientist, in Boston Massachusetts, known as "The Mother Church." They are referred to herein as "Director-Trustees" to signify their dual agency—as fiduciaries of The Mother Church and separately as fiduciaries of these New Hampshire Trusts.

The dual agency of the Director-Trustees leaves them embedded in a conflict between their fiduciary obligations as Trustees of the New Hampshire Trusts and their demonstrably

[1] The Director-Trustees have advised that one among them is to resign, yet they have not indicated on which date or under what circumstances. Accordingly, Second Church cannot confirm the accuracy of the allegations concerning the existence of all Director-Trustees.

opposed interests as Directors of The Mother Church. The conflict is most conspicuous today because, beginning sometime in the 1970s, The Mother Church became a *de facto* beneficiary of Clause VIII Trust.[2] Since then, every decision these Director-Trustees made was one in which their pecuniary interests as Directors of The Mother Church conflicted with their fiduciary duty as Trustees of the Clause VIII Trust to act for others within the larger class of beneficiaries of the Trusts' dominant purpose "of more effectually promoting and extending the religion of Christian Science as taught by [Mary Baker Eddy]." (Will, Clause VIII.)

In the instant Motion, the Director-Trustees suggest they can solve the problem of their embedded conflict by restricting their authority to distribute funds to The Mother Church—that is, by stopping their improper self-dealing. They present this as an act of "restoration" of the Trusts "original purpose." It is that, to the extent it would stop their misuse of the Trust and resume distributions to a proper class of beneficiaries. But for these Director-Trustees to present this as an act of "restoration" is disingenuous. It is, for them, a mere *attempt* at compliance that comes only after others—Second Church, followed by the Director of Charitable Trusts (or "DCT")—exposed their conflicted role and persistent violation of the Trust's most fundamental purpose. That others had to bring these things to the Court's attention betrays not only the disingenuousness of their attempt at compliance, but is also evidence of the deeper conflict that plagues these Director-Trustees and the consequent insufficiency of their attempt at compliance.

These Director-Trustees would have this Court believe that the problem of the embedded conflict was thrust upon them by a 1993 Order of this Court that changed the priorities of the Trust by telling them to spend income only on repairs of The Mother Church and not allowing

[2] The reference to The Mother church as a "*de facto*" beneficiary is meant to emphasize the point discussed further below, that it was not intended to be a beneficiary of this Trust, and (based on the analysis of information made available to Second Church and analyzed in Exhibits 2 and 3 hereto) did not receive any distributions from the Trust for 60 years before the Director-Trustees unilaterally and without any proper authorization, began taking distributions, eventually becoming not only "a" beneficiary, but *the* only beneficiary of the Trust. This history is discussed in more detail below in part I of this Brief.

distributions for the true purpose of the Trust—promoting and extending religion. That tale obscures the fact that the reason for the 1993 Order was the Director-Trustees' breach of the Trust. They were caught making an improper $5 million loan from the principal of the Trust in 1992 and the Order was intended to require them to repay that loan and to cease and desist from such misuse of the Trust. While that purpose was fulfilled within five years—by 1998—these Director-Trustees used it to justify the continued use of Trust income for themselves, in violation of the declared purposes of the Trust. An independent trustee would not have done that. An independent trustee, acting in the best interests of the intended beneficiaries of that original purpose of promoting and extending the religion of Christian Science, would have come to this Court and sought to correct this problem. These conflicted Director-Trustees did not do that, but took advantage of the terms of that 1993 Order to perpetuate their improper benefit from the Trust. They caused and perpetuated the errant practice—a practice that meant none of the intended beneficiaries of the Trust would receive any distributions for now twenty years. The reason they did that must be because it was to the advantage of The Mother Church. They were not interested in seeing that the Trust's true purpose was fulfilled.

The Director-Trustees' Motion further obscures the depth of the embedded conflict, and the magnitude of their fiduciary misfeasance, by ignoring the evidence, presented previously by Second Church and again in part I of this Brief, that they initiated this errant practice of distributing money to themselves some twenty years before the improper $5 million loan—in the 1970s; and that the amount they distributed to themselves since that time may be over $21 million. Again, this embedded conflict was not thrust upon them by the 1993 Order, but was already there and causing them to act—not surprisingly—in ways that clearly benefitted The Mother Church first and foremost, eventually only, and to the detriment of the true, intended

beneficiaries. An independent Trustee, acting in good faith and in the best interests of the Trust and its beneficiaries, would not have done that.

Merely restricting the ability of these Director-Trustees from acting in their own pecuniary interest—the only solution offered in the Motion—is insufficient because the conflict is deeper than that. The conflict, we submit, is embedded in the institution and constitution of the Directors of The Mother Church—a body that craves autonomy, resists disclosure, and opposes accountability. These characteristics of the Directors as a body are manifest throughout the history of their relationship to the Clause VIII—as set forth below, in part I of this Brief. Their usurpation of the pecuniary benefits of the Trust is not cause but the product of that deeper, enduring conflict that existed from the beginning, when the Directors sought to invalidate the Trust and undermine its independent administration in New Hampshire. That same adversity to the independent administration of the Clause VIII Trust, and to Mary Baker Eddy's apparent intention that they NOT exercise exclusive control over this Trust,[3] is still seen in the lack of candor and limited remedy they propose in their Motion.

Put simply, these Trustee-Directors are not capable of acting independently and in the best interests of the Clause VIII Trust and beneficiaries because of who they are: They are, first and foremost, the Directors of The Mother Church. They have demonstrated their hostility to the independent administration of this Trust in New Hampshire, their desire to usurp control and benefit of the assets of the Trust and their resistance to accountability from the beginning. They should not now be trusted to propose sweeping changes to the administration of the Clause VIII Trust. The cure for such a conflict and historical defaults is the appointment of an independent

[3] As discussed in part I of this Brief, while the Clause VI Trust expressly names the "Directors of the First Church of Christ, Scientist" as the Trustee, Clause VIII does not do so. This can only be read to mean Mrs. Eddy did not intend the Directors as such to be the Trustees of the Trust, and explains why the this Court has retained the authority to appoint them individually, and at one time placed a non-Director and true independent—New Hampshire banker Josiah Fernald—as a sixth Trustee. That is what should, at a minimum, occur here and now. See discussion in part II of this Brief.

Trustee or administrator and not the proposal contemplated in the Motion, which is nothing more than an attempt to give the appearance of removing the embedded conflict, while maintaining exclusive, unsupervised control over the Trusts and all of their assets.

We begin this *amicus* Brief with a brief review of the most pertinent aspects of the history of these Trust, which both predicted and demonstrated the perils of leaving these conflicted Director-Trustees in control of the Clause VIII Trust (Part I, below), before presenting the particular concerns about the settlement proposed in the Motion (Part II, below).

I. History of The 1993 Order And The Damage Caused By The Director-Trustees' Breach of Trust

To understand the relevance of the 1993 Order in history of the Trusts, one must first be reminded of the history of the litigation over the Directors' contempt for the Trusts and their attempts to usurp control over the Trust assets soon after Mary Baker Eddy died in 1910. In 1912, the Directors of The Mother Church brought suit, in Massachusetts, against the administrators of Mrs. Eddy's New Hampshire probate estate seeking to invalidate the Clause VIII Trust and have the assets distributed immediately to The Mother Church. *See Chase v. Dickey*, 212 Mass. 555, 99 N.E. 410 (1912). They were rebuffed in a decision that would not only affirm the validity of the Clause VIII Trust, but articulate certain fundamental precepts governing the nature, purpose, and administration of the Clause VIII Trust, including:

- That the Clause VIII Trust was *not a gift to The Mother Church*, but a gift to a charitable trust, to be administered by court-appointed trustees.[4]
- That the primary restriction and purpose of the Clause VIII Trust was "promoting and extending the religion of Christian Science" as taught by Mrs. Eddy (*see* Will, Clause VIII);[5]

[4] *Chase*, 99 N.E. at 413-14.

- That the other purpose of Clause VIII—maintaining and repairing two Mother Church buildings in Massachusetts—was both distinct from and subordinate to the dominant purpose of "promoting and extending" the religion and did not benefit The Mother Church; but, rather, such restriction was construed as a charge on the Clause VIII Trust;[6]
- That the Directors of The Mother Church conceded that money from the Clause VIII Trust was not needed for the repair of the church building and that the Clause VIII Trust is to be used exclusively for promoting and extending the religion of Christian Science.[7]
- And that this dominant purpose of "promoting and extending the religion of Christian Science as taught by [Mary Baker Eddy]" was not void for vagueness, but capable of interpretation and enforcement by a court.[8]

Importantly, the Supreme Court of New Hampshire reached similar conclusions later that same year, in rejecting a challenge to the Will by one of Mrs. Eddy's sons and heirs at law. *See*

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[5] *Chase*, 99 N.E. at 415 ("The clause read as an entirety manifests a purpose to make this the dominating and real residuary purpose of the testatrix.").

[6] *Chase*, 99 N.E. at 415:

> The provision of the will is equivalent to making the repair of the Commonwealth Avenue house and of the church a charge on the main fund. The clause as a whole indicates care for the house and church as one purpose, but the final residuary purpose is the promotion and extension of the religion of Christian Science. The word "balance" in this connection is employed in the twofold sense, of indicating first the subsidiary nature of the repair of the church and house as compared with the other object, and, second, the essentially residuary character of the ultimate testamentary design.

[7] *Chase*, 99 N.E. at 416 (emphasis added):

> Moreover, we understand the petitioners to *concede* in their bill of complaint that the fund is not needed for the repair of the church building and the Commonwealth avenue house and is to be devoted '*exclusively* for more effectually promoting and extending the religion of Christian Science.'

[8] *Chase*, 99 N.E. at 416.

Glover v. Baker, 76 N.H. 393 (1912). Such holdings are law of the case presently before this Court.

Not to be deterred, the Directors of the Mother Church pressed on with their quest to collapse the Clause VIII Trust corpus into The Mother Church in litigation before this Court asking, again, that the residuary of Mrs. Eddy's estate be distributed to The Mother Church. The New Hampshire Supreme Court responded (in *Fernald v. First Church of Christ, Scientist*, 77 N.H. 108, 88 A. 705 (1913)) by restating the fundamental precept of *Glover v. Baker*, that Clause VIII 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,[9] by bonded trustees appointed by this Court.[10] This is also law of the case.

This Court responded by appointing *six Trustees* in 1913: the five Directors of The Mother Church (*i.e.*, "Director-Trustees") and Josiah Fernald. Fernald was an independent, New Hampshire Trustee—a banker from Concord, New Hampshire, who was neither a Director nor 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.

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[9] *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.").

[10] *Id.* Second Church believes that the bonds of the Trustees have lapsed or are of inadequate security as compared to the value of the corpus of the Clause VIII Trust. Despite having raised this issue previously before this Court, there has been no disclosure to this Court or Second Church respecting the status of such bonds and no disclosure that any claim against the bonds has been made despite the defaults of the Director-Trustees.

In appointing a sixth, independent New Hampshire Trustee, this Court prevented the Director-Trustees from exercising unilateral control over these New Hampshire Trusts. 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 VIII Trust, including the powers reserved for the Clause VIII Trust under the Manual,[11] 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 jealously 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

[11] The reference here is to certain provisions of "The Manual of The Mother Church, The First Church of Christ Scientist, in Boston, Massachusetts" (or "Manual") that Mrs. Eddy left as the definitive bylaws of The Mother Church. The Director-Trustees allude to this document in paragraph 1 of their Motion, but do not produce it. Second Church would welcome a review of this document by this Court, at some point, and the various Deeds of Trust that Mrs. Eddy used to fund and govern The Mother Church and its Directors. The Directors like to present this Manual as a religious document governing an autonomous church. But the Manual is not just a religious document, and the Directors are not themselves an autonomous "church." The Manual contains the equivalent of corporate bylaws that were meant to be binding on the Directors not merely as Directors of the Mother Church, but as Trustees under Deeds of Trust that incorporate the Bylaws as permanent restrictions on the Directors. Among those restrictions are provisions that reserve to the office of "Pastor Emeritus"—an office held only by Mrs. Eddy—certain powers over the appointment of Directors and their acts as such. Second Church believes these powers to oversee the appointment and actions of the Directors survived Mrs. Eddy's death and passed through a 1907 Deed of Trust appointing Josiah Fernald, among others, as Trustee of all her remaining rights and property, until she passed, at which time these powers became part of the residue of her estate to be administered as part of the Clause VIII Trust.

> 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 VIII Trust. Fernald served for 36 years, until his death in 1949. While he was not replaced with another independent Trustee, he was succeeded by other similarly independent (non-Director) New Hampshire residents, serving as Resident Agent and Treasurer, and participating, notably, in the annual accounts to this Court of the Director-Trustees. This last vestige of independence in the administration of the accounts was lost when, in about 1982, the attorneys representing the Director-Trustees became the Resident Agent for the Trustees in New Hampshire.[13]

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 VIII Trust, *all* distributions from the Clause VIII Trust 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

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[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). This brief is attached hereto as Exhibit 1. Tuttle's thesis is further borne out by the distinction one plainly draws between the granting clause in Clause VI and Clause VIII as clear evidence of Mrs. Eddy's different intentions between the two Trusts and her lack of trust of the Directors, for Mrs. Eddy very cleverly created a hierarchy as between the Clause VIII Trust/Trustees and The Mother Church/Directors expecting that the Trustees would step into the powers preserved under the Manual for the Pastor Emeritus.

[13] The Upton Hatfield firm wears three hats: counsel for the Directors, counsel for the Trustees and resident agent for the Trusts. Second Church has pointed out the conflict and apparent failure of The Mother Church, Directors and Trustees separately to give informed consent of any waiver of actual and potential conflicts of interest among current clients, but no conflict is as clear as those identified in the 1993 Order and the instant Motion.

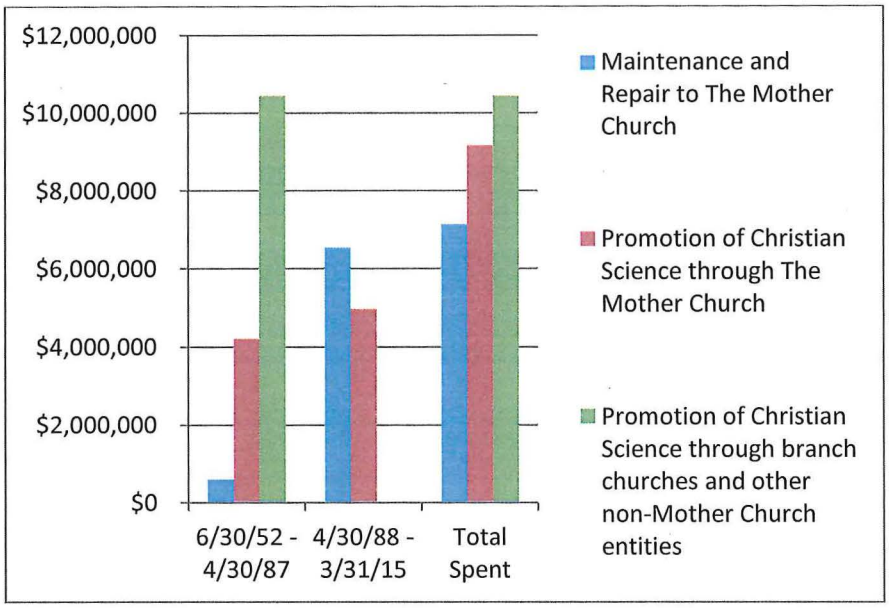
the buildings of The Mother Church.[14] This changes as the remnant of independent monitoring provided through Fernald and his successors disappeared after 1970, and not surprisingly even more so in and after 1982. By 1988, after more than a decade of default in the administration of the Clause VIII Trust—with The Mother Church receiving *all* the distributions including prohibited principal distributions the support for "promoting and extending the religion of Christian Science" literally dropped off the charts.

These Director-Trustees should be required to account for these distributions, or an independent trustee, administrator or auditor should be appointed to review and report on them because they did not start with the 1992 loan and are not limited to that $5 million act of self-dealing. The evidence evaluated by Second Church and its forensic examiner, Mr. Witten—and illustrated on the graphs attached hereto as Exhibit 2 and 3[15]—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 taken over **$26 million** in principal and income for The Mother Church. During this same time, the evidence suggests, the distributions to others was something less than half that amount—or about $10.5 million. Even more telling is the trend shown when you look at the reported distributions in three categories ((i) maintenance and repair to The

[14] Second Church engaged a Certified Public Accountant and Certified Fraud Examiner, Steven Witten, to examine the Trusts' Accounts. Mr. Witten summarized the results of his examination in two graphs, which Second Church furnishes here as Exhibits 2 and 3. The first graph, labeled "Clause 8 Income Fund —Payments to Beneficiaries" (herein, "Clause 8 Income Graph") illustrates trends in distributions of income. The second, labeled, "Clause 8 Principal & Income Fund — Payments to Beneficiaries" (herein, "Clause 8 P&I Graph") illustrates the trends for combined principal and income distributions for the same period. Both graphs begin with the year 1951—the first full accounting year following Fernald's passing in 1949. The information available for the period 1913 to 1950 is consistent with the trends shown on the two graphs for 1951 through approximately 1971: no distributions of principal and all income distributions were for "promoting and extending"—on information and belief, to branch churches and other beneficiaries, but not including The Mother Church. The presentation of this information involved some interpretation of the underlying Accounts. They are not presented here to prove the point, but as an offer of proof to illustrate the very real and substantial evidence of a dramatic shift in the beneficial objects of the Clause VIII Trust after the independent influence of Fernald and his successors disappeared and the influence of the Director-Trustees was no longer impeded by an independent, non-conflicted voice.

[15] See explanation in footnote 14, above.

Mother Church; (ii) promotion of Christian Science through The Mother Church; and (iii) promotion of Christian Science through branch churches and other non-Mother Church entities);[16] and two relevant time periods ((i) June 30, 1952 to April 30, 1987 and (ii) April 30, 1988 to March 31, 2015):



As indicated by this chart, the Director-Trustees began steering large sums of money from the Clause VIII Trust to The Mother Church long before the 1992 loan and not only to maintain and repair The Mother Church, but also some $9 million over approximately this 63 years, to promote Christian Science through The Mother Church. The expenditures in latter 27 years shows the most dramatic shift in favor of The Mother Church and away for other beneficiaries, as the Director-Trustees ramped expenditures on repair and maintenance of The Mother Church up to $6.5 million, together with $5 million to promote religion through The Mother Church, while zeroing out the distributions to others.

[16] As noted above in footnote 14, the categorization of these expenses required some interpretation of the limited financial information fond in the accountings by the Director Trustees, and it must also be stressed that Mr. Witten was relying on the descriptions provided by these demonstrably conflicted Trustee-Directors. What is needed is an independent audit with full access to the information appropriate to test the Director-Trustees' representations in these accounts. Mr. Witten's analysis is, however, believed to be the best—and to Second Church's knowledge, the only—analysis of these important issues.

Only a 1992 Ernst & Young audit revealed the grossly improper, self-serving loan. Not surprisingly, the Director-Trustees' own Accounts and accompanying financial statements did not refer to the transaction as a "loan" but, more vaguely, as an "Amount due from Mother Church."[17] Despite this disqualifying breach of trust, the self-interested Director-Trustees were able to insulate themselves from liability by submitting a Stipulation for Order (the "1993 Order"), similar to the Assented-To Motion before the Court today, merely requesting that The Mother Church repay the loan over a five-year period, that principal not be distributed unless authorized by the Court, and that the cost of keeping the Church building at 385 Commonwealth Avenue, Boston, Massachusetts be paid exclusively from income and any additional income be applied to promoting and extending the religion of Christian Science. The Court granted the 1993 Order changing the treatment of the necessary maintenance and repairs of The Mother Church buildings from a charge on the Trust to naming The Mother Church as a beneficiary and subordinating the express purpose of the Trust perverting the priority of distributions articulated in *Chase v. Dickey* and *Fernald* all in the name of allowing The Mother Church to repay the loan from distributions from the Trust itself. There was no inquiry, accounting or investigation of record of the extent of the Director-Trustees' defaults during the two decades from 1972 leading up to the 1993 Order and to Second Church's knowledge there was no claim on the bond.

The Director-Trustees feasted on this perversion for decades since the entry of the 1993 Order. After issuance of the 1993 Order until The Mother Church repaid the loan, the sole recipient of distributions from the Clause VIII Trust was The Mother Church. In other words, not only did the Director-Trustees suffer no sanction for defalcating 63% of the Clause VIII

[17] See Balance Sheet and Note C in Ernst & Young Audited Financial Statements for Trustees under Clauses 6 and 8 of Will of Mary Baker Eddy as of April 30, 1992, and compare Schedule G of Director-Trustees' Clause 8 Financial Report April 1, 1992-April 30, 1992. Relevant excerpts of these documents are attached hereto as Exhibit 4.[18] See Order dated April 4, 2017, at 7 ("Given the prior order relative to audits, and in light of the ongoing conflict caused by having the Trustees serving as Directors of The Mother Church, the Court determines that an outside audit of the next account is warranted.").

Trust assets, but they were able to manipulate the 1993 Order in such a way as to subsidize The Mother Church's repayment of the loan through distributions from the Clause VIII Trust. Even more distressing, no claim was ever made on the Director-Trustees' surety bonds, which are supposed to be in place to cure such brazen conduct.

Inexcusably still, the Director-Trustees continued to utilize the 1993 Order as judicial cover to continue to make self-interested distributions *exclusively* to The Mother Church *well after the $5 million loan was repaid.* Independent trustees would never have allowed this to happen. Instead, independent trustees would have interpreted the 1993 Order's curative provisions applicable only for so long as the loan was outstanding and then revert to Mrs. Eddy's original intent, or would have made a claim on the surety bonds, or would have sought this Court's guidance to restore the original intent immediately. Instead, The Mother Church reaped the benefit as the sole distributee of the Clause VIII Trust for over an additional twenty (20) years, while all other beneficiaries received nothing in breach of the Clause VIII Trustees' obligation to expend the interest and so much of the principal as is prudent to extend and promote the Christian Science religion as taught by Mary Baker Eddy.

Not to be outdone, in 2001, the Director-Trustees eroded the protections of the corpus of the Trusts by petitioning the Court to allow the assets of the Trusts to be pooled with the assets of The Mother Church's Gifts and Endowment Fund (the "G&E Fund"). The Court approved such comingling with the understanding, as stated in the 2001 Order, that the Trustees would continue to have their annual accounts independently audited. To rule otherwise would countenance the conduct of the Director-Trustees to collapse the Trusts into The Mother Church. Very shortly after the issuance of the 2001 Order, indeed only one (1) year later, the Trustees disregarded the Order of the Court, by submitting annual accounts that incorrectly indicated that they were

independently audited, when, in fact, they were not, and have not been since. This Court's most recent Order requires the Trustees to independently audit their accounts.[18]

This Court should deny the Assented-To Motion to Amend the 1993 Order. Rather, the Court should vacate the 1993 Order. The Assented-To Motion to Amend the 1993 Order is nothing more than an admission by the Director-Trustees that they have failed to safeguard the Clause VIII Trust for more than two decades. Just as the Director-Trustees attempted with the Assented-To Motion to Amend the 2016 accounts, the Director-Trustees continue to seek to control the corpus and administration of the Clause VIII Trust and avoid this Court's and the DCT's supervision. The instant Assented-To Motion is nothing more than an attempt to misdirect the DCT's and this Court's focus away from the central issue — the Director-Trustees refuse to act in accordance with Mary Baker Eddy's intentions — and now by seeking to convert the Trust to a unitrust, they seek to disregard Mary Baker Eddy's clear intention that the income and so much of the principal as deemed prudent of the Clause VIII trust be distributed annually to promote and extent Christian Science as taught by Mary Baker Eddy. Second Church reads the instant Assented-To Motion's request to convert the Trusts as an admission by the Director-Trustees that they cannot be trusted in the future, as they have defaulted for decades in the past, to honor the clear intent of Mary Baker Eddy.

II. The Proposed Restrictions on the Director-Trustees' Distributions of Clause VIII Income Are Both Insufficient to Address the Imbedded Conflict and Contrary to the Intentions of Mary Baker Eddy and Any Changes Should Be Reserved Until An Independent Trustee or Administrator Is Appointed

In light of the above-referenced admissions of and history of abuses engendered by the Director-Trustees, no proposal should be accepted by this Court that contemplates the Director-

[18] See Order dated April 4, 2017, at 7 ("Given the prior order relative to audits, and in light of the ongoing conflict caused by having the Trustees serving as Directors of The Mother Church, the Court determines that an outside audit of the next account is warranted.").

Trustees' continued service as Trustees without the appointment an independent trustee or administrator. *See* RSA 564-B:7-704(e) [Vacancy in Trusteeship; Appointment of Successor]. Predictably, the proposal submitted by the Director-Trustees not only seeks to maintain the Director-Trustees as the sole Trustees of the Trusts, but fails to account for the decades of defaults and suggests no remedy to compensate the Trusts for the Director-Trustees' numerous indefensible breaches of their fiduciary duty to all permissible beneficiaries of the Trusts and to the Trusts.

Specifically, the Motion avoids the most obvious solution to their imbedded conflict—the appointment of independent trustees—instead proposing a limited prospective restriction on their ability to distribute funds to The Mother Church that preserves their cloistered control as Director-Trustees even at the expense of violating the clear intent of the testatrix. This proposal falls well short of what is needed to restore the corpus, integrity and independence of the Trusts. For example, the Director-Trustees request that the Clause VI and Clause VIII Trusts be converted to unitrusts in accordance with RSA 564-C:106(b) and that the 1993 Order be amended such that distributions be made directly to "third party recipients," as chosen by the Director-Trustees, and not directly to The Mother Church or to specific programs administered by The Mother Church. Although this proposal removes the Director-Trustees' discretion in determining the "amount" of the annual distribution (in breach of the dictate to distribute annually "the balance of said income, and such portion of the principal as may be deemed wise . . . for the purpose of more effectually promoting and extending the religion of Christian Science as taught by [Mary Baker Eddy]," it leaves undefined and open-ended "who" is to receive such distributions and how such trust assets are to be invested. In addition, the proposal seeks to maintain the Director-Trustees' ability to make distributions of trust assets for the purpose of maintaining and repairing two Mother Church buildings in Massachusetts, in breach of the

direction that such disbursements be limited to "necessary" repairs and maintenance without proposing any guidance as to how this Court would review and determine any such claimed necessity, all despite the concession in *Chase v. Dickey* that the trust funds were not needed for such buildings and the representation that the Clause VIII Trust be devoted "exclusively for the more effectually promoting and extending the religion of Christian Science."[19] The Director-Trustees cannot be trusted uphold their duty of impartiality in light of their breaches continuing over the last several decades and this Court should not permit the proposed fundamental alterations to the Trusts until an independent trustee or administrator is appointed, investigates and reports to this Court.

Most importantly, the Director-Trustees' Motion fails to provide any accounting of or remedy for the Director-Trustees' long history of deleterious conduct and there is no mechanism proposed to ascertain the extent of the harm occasioned on the Clause VIII Trust. If this Motion is approved, the Director-Trustees' improper conduct will go unaddressed and the damage to the Clause VIII Trust without remedy. Restoring the corpus and integrity of the Clause VIII 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 or administrator needs to be permanently appointed and charged with 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 thru 2016 in order to ascertain the correct beginning and current balance of the Trusts and

[19] *Chase*, 99 N.E. at 416.

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 VIII 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. All branch churches, reading rooms and others that historically received disbursements from the Clause VIII Trust should have standing before this Court with respect to matters brought before the Court involving the Clause VIII Trust;

D. The Clause VIII Trust is the residual trust under Mrs. Eddy's Will. As such the Clause VIII 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 VIII Trust and bring to the Court's attention the need to restore any such property rights and interests to the Clause VIII 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 VIII proper purposes;

v. Any claims under any bond benefitting the Clause VIII Trust protecting it from acts or omissions of the Trustees and protecting the corpus of the Clause VIII Trust;

vi. Ascertain the propriety of maintaining the Clause VI Trust or seek a cy pres ruling of this Court to change the purpose of Clause VI or collapse Clause VI Trust into the Clause VIII 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 Trusts will remain as a cloud over these Trusts forever.

III. Conclusion

For almost seventy (70) years the Directors of The Mother Church have served as the sole Trustees of the Clause VI and Clause VIII Trusts. Lost in the predominance of The Mother Church's influence over these Trusts is the explicit intent of Mary Baker Eddy in Clause VIII 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 purpose of this Brief *Amicus Curiae* and 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.

Respectfully submitted,

SECOND CHURCH OF CHRIST, SCIENTIST, MELBOURNE,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 4th day of August, 2017, forwarded a copy of the foregoing Brief *Amicus Curiae* to the following by electronic mail and first class mail:

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EXHIBIT 1

SUPREME COURT.

NO. 1122

MERRIMACK, ss. 1913 TERM.

JOSIAH E. FERNALD, ADMINISTRATOR OF MARY BAKER G. EDDY.

v

THE FIRST CHURCH OF CHRIST, SCIENTIST, IN BOSTON, ET AL.

BRIEF FOR THE STATE.

STATEMENT OF FACTS.

The case presents a petition by the Administrator with the will annexed of the late Mary Baker G. Eddy for instructions as to whether he may safely and lawfully pay over and deliver to the five directors of The First Church of Christ, Scientist, the whole or any part of the residue of the funds and property now held by him in his trust capacity until such directors have duly qualified as trustees in the Probate Court in the County of Merrimack within whose jurisdiction the funds and property are now held.

The claim is made that such instructions to the Administrator have become necessary for the reason that the settlement of this estate has been nearly completed and that a demand has been made upon him by these directors for such payment and delivery. These directors claim authority to make the demand and to receive the funds and property under and by virtue of an Act of the Commonwealth of Massachusetts approved February 18, 1913, entitled

AN ACT

To Authorize the First Church of Christ, Scientist, in Boston, to Take and Hold Property under the Will of Mary Baker G. Eddy.

"Section 1. The First Church of Christ, Scientist, in Boston, is hereby authorized to take and hold real and personal estate devised and bequeathed to it by the will, duly admitted to probate, of its founder, Mary Baker G. Eddy, late of Concord, New Hampshire, deceased; to be held and administered by its board of directors, subject to the trusts created by said will.

"Section 2. This act shall take effect upon its passage."

The position of the State of New Hampshire is that however the Act in question may affect the standing and holding capacity of this Church and these directors as to the property forming a part of this estate in the Commonwealth of Massachusetts,—it in no wise affects or changes the standing of the parties or the conditions of the trust in question so far as the State of New Hampshire and the duties of its officers and courts are concerned.

STATEMENT OF THE LAW.

The testamentary domicile of the testatrix was New Hampshire. Her will was duly proven, allowed, and established in the Probate Court of Merrimack County. The validity of the residuary clause of this will has been tested in and sustained by the Supreme Court of New Hampshire. The trust as to all of the property in New Hampshire has been assumed by the courts of New Hampshire and they cannot, with any due regard for the wishes of this testatrix and a like regard for the true objects of her bounty, relieve themselves of the sacred obligation thus created. The trustees, whoever they may be, cannot escape the supervision of the New Hampshire courts—the New Hampshire courts cannot forsake this sacred trust.

But for the wisdom and the patient toil and research of this Court, this property might already have become scattered to the four winds of Heaven, and the beneficent wishes and plans of this queenly almoner have been forever blasted.

In *Glover v. Baker*, 76 N. H. 416 this Court said:

"While courts may not often be called upon to investigate the doctrines of a particular religion, if it becomes necessary to do so to see that a trust is administered according to the intention of its creator, they do not hesitate to undertake the task. If necessary, no reason occurs why the 'tenets' of Chris-

tian Science may not be as readily passed upon as the creed of Congregationalism or the faith of Unitarianism." *Dublin Case*, 38 N. H. 459; *Hale* v. *Everett*, 53 N. H. 9.

Counsel for the Church and these five directors in their brief seem to lay great stress upon the fact that they have obtained the passage of the Act above referred to, as though this accomplishment in some way changed or qualified the terms of this trust; as though an enactment of a Massachusetts Legislature could lay down a rule of action for this Court to follow in a matter where the rights of the the parties and the condition of a trust had already become fixed and perpetual.

A church, like any other corporation, can only act through its directors or other duly authorized and accredited representatives.

In discussing the power conferred by our New Hampshire church statute in *Gower* v. *Baker*, on page 411 *et seq.* this Court said further:

"Section 8 decares that the trustees, deacons, church wardens or other similar officers of all churches or religious societies, if citizens of the United States, shall be deemed bodies corporate for the purpose of taking and holding, in succession, all grants and donations, whether of real or personal estate, made either to them and their successors or to their respective churches, or to the poor of their churches." * * * * * "The act is comprehensive and complete and justifies the conclusion of Judge Smith in *Hennessey* v. *Walsh*, 55 N. H. 515, 531, that 'provision is made whereby defects in a church organization are supplied, so that the property donated for pious purposes cannot fail of reaching the objects intended by the donors.'"

In the face of these observations it is difficult to see how the situation or power of this board of directors is in any way changed by the Act referred to so far as the power and duty of this court is concerned with respect to the great charity in question.

The question for this Court is not what the language of this Massachusetts statute means, but what did the New Hampshire church statute mean to the Legislature which enacted it in 1842.

"Upon this question the history of legislation upon the subject, the circumstances under which the act was adopted, and the other provisions accompanying it are competent evidence." *Weed* v. *Wood*, 71 N. H. 581.

Again, in *Glover* v. *Baker*, on page 404, the Court said:

"But it is unnecessary to decide at this time whether under Massachusetts law an unincorporated religious society may not act as trustee for a purpose not

foreign to the objects of its association. The gift is not to the Church, but in trust, and unless it is sustainable as a charitable trust, it is invalid, and whether the Church could act as trustee if the trust were valid is immaterial; while if the will creates a valid trust, the refusal of the trustee named in the will to act because of incapacity under Massachusetts law, or otherwise, will not avoid the trust, which cannot fail merely because of disability of the trustee. 'It is a rule without exception that equity never allows a legal and valid trust to fail for want of a trustee.' *Campbell* v. *Clough* 71 N. H. 181, 184; *Chapin* v. *School District*, 35 N. H. 445; *Hubbard* v. *Art Museum*, 194 Mass. 280, 290; *Vidal* v. *Girard*, 2 How. 127, 180. The only limitation to the rule is, when it appears that the trustee intended a personal trust in the trustee named in the will (*Fountain* v. *Ravenel*, 17 How. 369, 382), a conclusion which cannot be reached here because no person has been named as trustee. The trustee named is an association, and the testatrix must have intended the trust to be executed by the persons (whoever they might be) who from time to time might constitute the association or be its managers. The trust may be permanent, because the use may be restricted to the income; and the testatrix had in mind, consequently, succession in the individuals in control and did not intend to limit the discretion conferred to any particular person. *Lorings* v. *Marsh*, 6 Wall. 33, 354; 2 Per. Tr. ss. 721, 722. The testatrix intended the trust to be administered by persons professing the belief she desired to promote. Such persons it would be the duty of the court to appoint should occasion arise, or at least none in hostility thereto should be permitted to undertake the execution of the trust."

"In this view the New Hampshire statute only is material, for Massachusetts cannot determine the extent to which New Hampshire permits or authorizes its citizens to dispose of property by will." *Glover* v. *Baker*, 76 N. H. 403.

In the brief for the Church it seems to be conceded that occasions may arise for the supervision of the trustees under this will, whoever they may be, for counsel say, on page 5,—

(a) "Here, therefore, we have a religious corporation holding the title to property which is managed by one set of men who may be *visited* by another set, and, consequently, we have an organization for the administration of a charitable trust which the law so far regards as complete in itself that it has hitherto imposed no restraints upon it other than the general equity jurisdiction of the courts to regulate and correct any abuses of the trust. This, however, is not done through the giving of bond and periodic accounting to the court, whether of probate or equity, but through the attorney-general."

Also, on page 5, —

(*b*) "The right and power of visitation, subject to the supervisory control of a court of equity, takes the place, in public charitable trusts of the power given to probate courts in private trusts. For example, should the directors, with the assent of the visiting body, see fit to invest the funds of the trust in hazardous or unproductive securities, or such as would not be approved as trust investments by a probate court in this state, neither the attorney-general nor the court itself would have any right to control their action or judgment. It is only when the directors invest such funds in illegal enterprises that the court can interfere."

Again, on page 7,—

(*c*) "The interposition of the court is properly referable to its general jurisdiction as a court of equity to prevent abuse of a trust, and not to any original right to direct the management of a charity or the conduct of a trustee."

And, lastly, on page 10,—

(*d*) "There are no parties interested other than the attorney-general either of this State (New Hampshire) or Massachusetts, an he has no *rights* in the funds other than as representing the public to restrain abuses."

The sum and substance of these presentations seems to be that, while admitting the possible occasion for action by the attorney-gecral "to restrain abuses," counsel seem to be groping for reasons why the Church and its directors should be permitted to escape the supervision of the courts of New Hampshire.

In *Haynes v. Carr* (70 N. H. 463), cited by counsel for the Church, it appeared that the testator left a portion of the residue of his estate to three trustees "to expend, in their discretion, in such sums, at such times, and in such manner as may seem to them advisable, the income of my said estate . . . . for the benefit of the poor and destitute in said State of New Hampshire." In considering this trust and the duty of the court in respect thereto, it was said,—

> "What he intended was that these trustees and their successors should expend this income for such of certain specified charitable objects as to them seemed most worthy. This was his thought, as evidenced by his act. This, and this, only, is the intent to be carried out. There is no practical difficulty in performing the judicial act of determining whether this intention is carried into effect, and the trust is not to be held invalid on this ground. 'There is a wide distinction between a gift to *charity* and a gift to a *trustee* to be by *him* applied to *charity*. In the first case the court has only to give the fund to charitable institu-

tions, which is a ministerial or prerogative act; in the second case, the court has jurisdiction over the *trustee*, as it has over all trustees, to see that he does not commit a breach of his trust, or apply the funds in bad faith, or to purposes that are not charitable.' "

In the case last cited it would appear that the court then considered that it (the court) has a duty to perform,—"to see that he (the trustee) does not commit a breach of his trust, or apply the funds in bad faith, or to purposes that are not charitable."

In this case (*Haynes* v. *Carr*, p. 482) this court also said,—

"If there is a breach of trust, the public can appear through its appointed officers. This rule is in force here to such an extent that no decree affecting such public right is effective unless the attorney-general is a party to the proceedings."

The trust in question is, in its legal aspects, not dissimilar from that dealt with in *Haynes* v. *Carr*. In that case (p. 484) the court said,—

"The object is the relief of the poor and destitute in the State of New Hampshire, and for educational and charitable purposes therein. The individual beneficiaries are uncertain, as they must always be in the case of a charitable trust; but the objects are clearly defined, and there can be no difficulty in determining whether a given purpose comes within the prescribed classes."

In this case the testatrix said,—

"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."

Of this provision of her will this court has said,—

"Mrs. Eddy had the constitutional right to entertain such opinions as she chose, and to make a religion of them, and to teach them to all others; and their rights of belief are as extensive as hers. Her legal right to teach was not ended with her death. She might dispose of her property by a gift to any public charity 'for any use that is not illegal.' " (*Glover* v. *Baker*, 76 N. H. p. 420).

The final conclusion of the court in that case is expressed in the following language (p. 425),—

"Upon the facts before the court the residuary clause creates a valid trust. Unless the plaintiff amends his bill, the executor should be advised to pay over the balance of the estate to trustees found duly qualified and appointed by the Probate Court."

The State claims that the real and vital conditions concerning this trust and its future conservation, management and application are the same today as they were on May 7, 1912, when the opinion in *Glover* v. *Baker* was rendered. The law of this State now in respect to the correct methods of procedure with respect to the due administration of trusts of this character is the same as then. Although it is true that this great religion from small beginnings has spread itself "from the Occident to the Orient and to all the islands of the sea," it is also true and is a matter of common knowledge that there are today, within the borders of New Hampshire, twenty Christian Science churches, more than twice that number of Christian Science practitioners, and several thousand devout believers and worshippers according to the "tenets" of the Christian Science faith.

It is understood that these five directors of the First Church are at the present time residents of the Commonwealth of Massachusetts. But is there any certainty that they, or their successors, will continue to be residents of that Commonwealth? Should the occasion for action ever arise and should it become the duty of the attorney-general, "as representing the public, to restrain abuses" in the administration of this trust, must he, perforce, become a "wanderer on the face of the earth" in a vain effort "to restrain abuses?" To ask this question plainly suggests what the answer ought to be. And if we rightly understand the meaning of the English language this court has already answered the question, not only *inferentially* in the recent case of *Glover* v. *Baker* (p. 425), but *directly* in the earlier case of *Carr* v. *Corning*, 73 N. H. 365, wherein the following rules were laid down,—

> . . . "It is the duty of the Probate Court to administer trusts created by wills. P. S., c. 198. This duty necessarily carries with it that of appointing the trustees needed to execute such trusts (P. S., c. 183, s. 2, cl. XII; Ib., c. 198, s. 6), and that of removing them if they become incapable or unfit to perform their duties. Ib., c. 198, s. 8. Since it is the duty of the court to remove trustees who are unfit to administer their trusts, it cannoot be the duty of the court to appoint a person to that position unless it appears that he is fit for it, notwithstanding he is named as trustee in the will which creates the trust; for it would be a manifest absurdity to say that it is the duty of the court to appoint a person trustee, when it would be its duty to remove him as soon as he was appointed. So it must always appear that the person named in the will is a fit person to execute the trust, for otherwise it would be the duty of the court to refuse to appoint him. In other words, it is the duty of the Probate Court to appoint trustees whenever they are needed to administer trusts created by wills: but its authority in that respect is limited to persons who are suitable to execute the trusts, both when the trustees are named in the will which creates the trust and when the will contains no provision for the appointment of the trustees. Therefore the suitability of the trustee is a fact that must be proved in every case, before the court

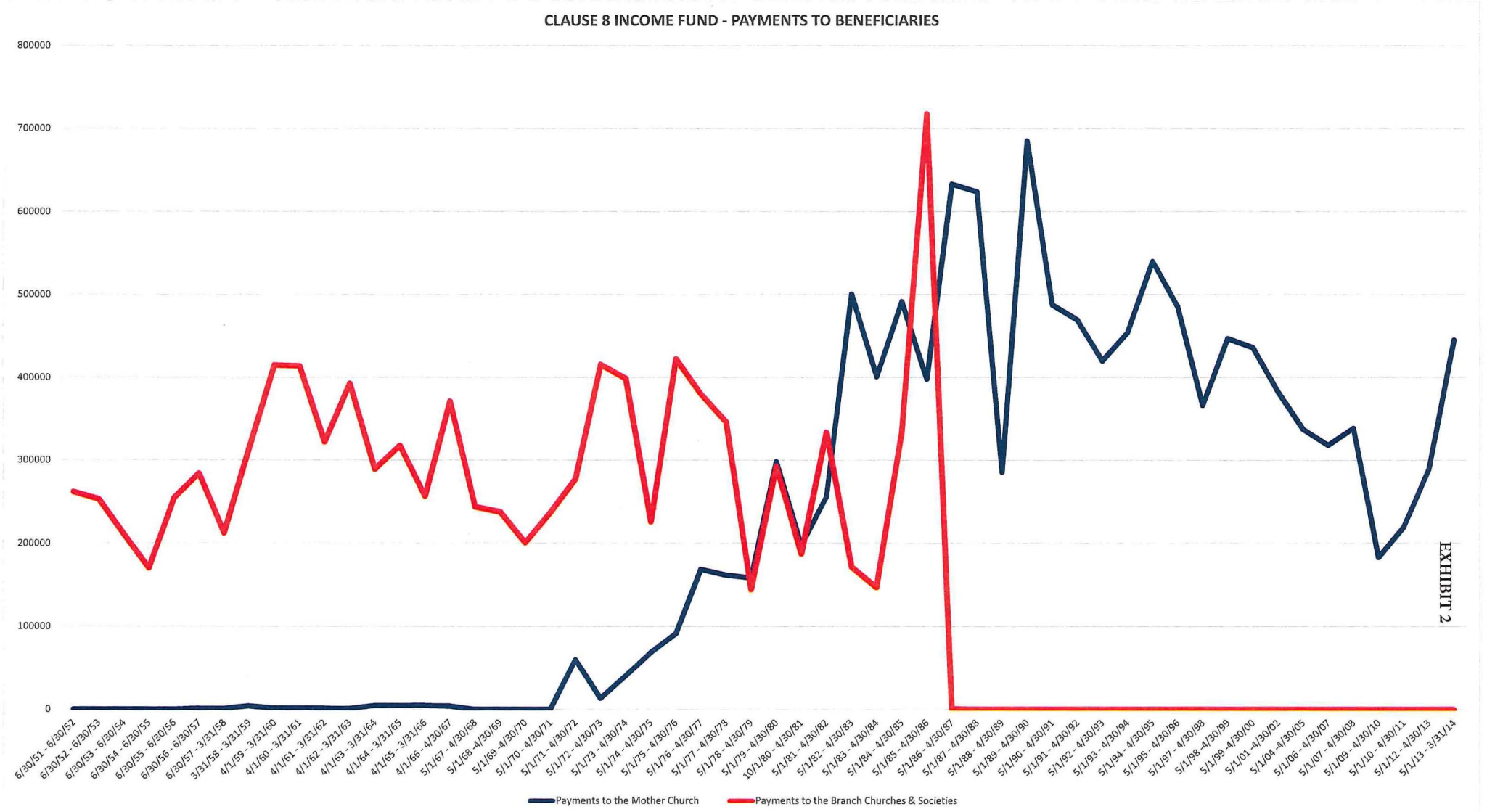
is authorized to make the appointment. In other words, the Probate Court must decide that the person named in the will is a suitable person to administer the trust before it can appoint him to that position. This is the statutory rule in respect to appointing the executors who are named in a will. P. S., c. 188, s. 2, cl. 1; Ib., c. 188, s. 3. There is no more reason for requiring the court to examine into the suitability of executors to administer a deceased person's estate than there is for requiring it to inquire into the suitability of trustees to administer a trust the deceased person created. The fact that the statute makes it the duty of the Probate Court to inquire as to the suitability of the person named as executor before appointing him to that position tends to prove that the legislature intended that the court should inquire as to the suitability of the person named as trustee before appointing him to that position."

Mrs. Eddy was a woman of remarkable business capacity. She provided, in her will that the executor therein named should be excused from giving any sureties on his official bond. She did not provide that those acting in behalf of the Church as trustees should be excused from giving a bond. Having in mind her remarkable intelligence and far-sightedness, this omission is strikingly significant. 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 this does not necessarily follow because counsel so state in their brief nor because the Massachusetts Legislature passed the enactment of February 18th, above quoted. This court fully considered in *Glover v. Baker, supra*, the residuary clause of Mrs. Eddy's will which creates this trust, and, as before quoted, said,—

"The testatrix intended the trust to be administered by persons professing the belief she desired to promote. Such persons it would be the duty of the court to appoint, should occasion arise, or at least none in hostility thereto should be permitted to undertake the execution of the trust."

This language plainly carries with it the implication that 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 in the Probate Court, but the magnitude of the trust is such and the interest 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.

STATE OF NEW HAMPSHIRE,
By JAMES P. TUTTLE,
Attorney-General.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5/1/89 - 4/30/90
5/1/90 - 4/30/91
5/1/91 - 4/30/92
5/1/92 - 4/30/93
5/1/93 - 4/30/94
5/1/94 - 4/30/95
5/1/95 - 4/30/96
5/1/97 - 4/30/98
5/1/98 - 4/30/99
5/1/99 - 4/30/00
5/1/01 - 4/30/02
5/1/04 - 4/30/05
5/1/06 - 4/30/07
5/1/07 - 4/30/08
5/1/09 - 4/30/10
5/1/10 - 4/30/11
5/1/12 - 4/30/13
5/1/13 - 3/31/14
Payments to the Mother Church
Payments to the Branch Churches & Societies

EXHIBIT 2

CLAUSE 8 PRINCIPAL & INCOME FUND - PAYMENTS TO BENEFICIARIES

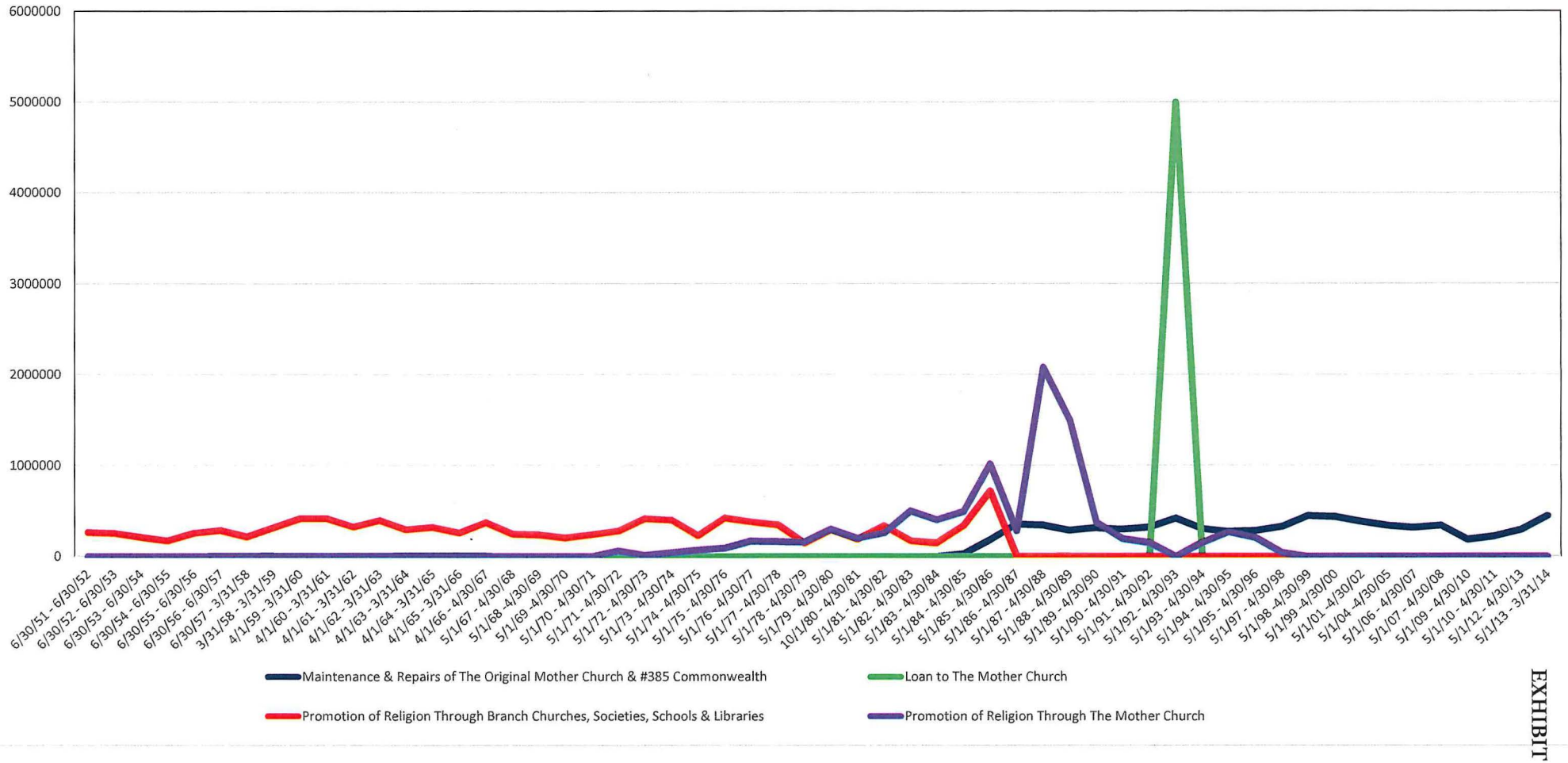

EXHIBIT 3

EXHIBIT 4

TRUSTEES UNDER THE WILL

of

MARY BAKER EDDY

Clause 8

Financial Report

April 1, 1992 - April 30, 1992

Clause 8
Balance of Principal
March 31, 1992

Name	Face value/ Shares	Cost since/ Market Value at 5/1/91	Market Value at 3/31/92
Stocks			
American Express	3,900	97,500.00	89,212.50
Burlington Northern	3,000	86,370.00	122,625.00
Burlington Res Inc.	2,300	86,250.00	85,100.00
Corestates Financial Corp.	2,400	91,497.00	107,100.00
Federal National Mtg. Assn.	1,400	63,700.00	89,775.00
Ford Motor Company	3,300	107,250.00	126,637.50
International Paper Co.	1,400	88,023.00	103,075.00
Phillips Pete Co.	4,000	109,490.00	93,000.00
Reynolds Metals Co.	1,600	94,998.00	91,400.00
Suntrust Banks Inc.	2,500	70,947.50	89,687.50
Westvaco Corp.	2,600	78,331.00	89,700.00
Total Stocks		974,356.50	1,087,312.50
Bonds			
US Treas. Nt. 7.625%, 12/31/93	1,000M	1,013,120.00	1,035,620.00
US Treas. Nt. 8.000%, 01/15/97	1,000M	1,009,370.00	1,041,560.00
Total Bonds		2,022,490.00	2,077,180.00

Market Value of Stocks	1,087,312.50
Market Value of Bonds	2,077,180.00
Cash Equivalents	109,456.60
Total Securites	3,273,949.10
Interest and Dividends Receivable	41,513.79
Amount Due from The Mother Church-Principal	5,000,000.00
Amount Due from The Mother Church-Interest	180,355.80
Amount Due from The Mother Church-Commission Costs	11,138.80
Amount Due to Income Fund	(426,296.73)
Balance of Principal March 31, 1992, Clause 8	8,080,660.76

Clause 8, Schedule G
Balance of Principal
April 30, 1992

Name	Face value/ Shares	Cost since/ Market Value at 4/1/92	Market Value at 4/30/92
Stocks			
American Express	3,900	89,212.50	87,750.00
Burlington Northern	3,000	122,625.00	135,750.00
Burlington Res Inc.	2,300	85,100.00	95,162.50
Corestates Financial Corp.	2,400	107,100.00	108,600.00
Federal National Mtg. Assn.	1,400	89,775.00	87,850.00
Ford Motor Company	3,300	126,637.50	149,737.50
International Paper Co.	1,400	103,075.00	104,300.00
Phillips Pete Co.	4,000	93,000.00	99,500.00
Reynolds Metals Co.	1,600	91,400.00	96,000.00
Suntrust Banks Inc.	2,500	89,687.50	94,375.00
Westvaco Corp.	2,600	89,700.00	95,550.00
Total Stocks		1,087,312.50	1,154,575.00
Bonds			
US Treas. Nt. 7.625%, 12/31/93	1,000M	1,035,620.00	1,039,690.00
US Treas. Nt. 8.000%, 01/15/97	1,000M	1,041,560.00	1,046,870.00
Total Bonds		2,077,180.00	2,086,560.00

Market Value of Stocks	1,154,575.00
Market Value of Bonds	2,086,560.00
Cash Equivalents	1,027.49
Total Securites	3,242,162.49
Interest and Dividends Receivable	52,213.06
Amount Due from The Mother Church-Principal	5,000,000.00
Amount Due to Income Fund	(137,072.29)
Balance of Principal April 30, 1992, Clause 8	8,157,303.26