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**By Courier**

February 15, 2017

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

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 for filing in the above-referenced matter an original and two copies of a Motion for Leave to File Brief *Amicus Curiae* of 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

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, in connection with the Assented-To Motion by the Trustees Under the Will of Mary Baker Eddy, Clauses VI and VIII To Approve Amended Account and Amend 2001 Order (the "Motion"). In support of this request, Second Church states as follows:

1. In their Motion, the Trustees under the Will of Mary Baker Eddy, Clauses VI and VIII (the "Trustees") seek to avoid filing independent audits with their annual accounts, as required by this Court's Order of August 23, 2001, despite the fact that the "embedded conflict" between their loyalties to the Trusts, and in their capacity as Directors, their loyalties to The First Church of Christ, Scientist (the "Mother Church"), continues to exist.

2. The Court should not consider the Motion in a vacuum, but in its historical context and in light of the Trustees/Directors' embedded conflict of interest.

3. For over 100 years, the Directors of the Mother Church have tried first to invalidate the Trusts, then when unsuccessful in those efforts, to wrest control over these Trusts' assets under their unilateral control in Massachusetts. 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.

4. Second Church respectfully submits the attached *amicus curiae* brief to furnish the Court with this important contextual information.

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: February 15, 2017

By: Michele E. Kenney

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 15th day of February, 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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Michele E. Kenney
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Exhibit A

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)**

NOW COMES the Second Church of Christ Scientist, Melbourne (Australia) ("**Second Church**"), through its undersigned counsel, and files this brief *amicus curiae* in connection with the Assented-To Motion by the Trustees Under the Will of Mary Baker Eddy, Clauses VI and VIII To Approve Amended Account And Amend 2001 Order, filed with the Court on or about February 7, 2017 ("**Motion**"), to assist the Court in its review and consideration of the Motion, stating as follows:

## INTRODUCTION

The Movants are all of the Trustees of two trusts formed under Clause VI and Clause VIII ("Clause VIII Trust" and collectively the "Trusts") of the Will ("Will") of Mary Baker G. Eddy. They are also all of the Directors of the First Church of Christ, Scientist, in Boston Massachusetts, known as "The Mother Church." They are referred to as "Director-Trustees" to signify their dual agency—as fiduciaries of The Mother Church and separately of these New Hampshire Trusts. This dual agency, particularly with respect to the Clause VIII Trust, is at the heart of the concerns addressed in this *amicus* brief, as the Directors have been and remain hostile to the Trusts. The same dual agency was cited by the Director of Charitable Trusts as an

"embedded conflict" in the current administration of the New Hampshire Trusts.[1] Rather than address that organic problem in the administration of these Trusts, the instant Motion of the Director-Trustees seeks to further insulate them from accountability to this Court and render the transactions between the Trusts and The Mother Church less transparent to beneficiaries of the Trusts, the Director of Charitable Trusts and this Court.

The thrust of this *amicus* brief is that the relief sought in the Motion should not be considered at this time. Rather, the Motion should be taken under advisement until resolution of this threshold issue of the embedded conflict that taints as presumptively invalid everything the Director-Trustees have done and will do (including their decisions on how to invest Trust assets, the tens of millions of dollars of distributions of principal and interest they have made and continue to make from the Clause VIII Trust to The Mother Church, the sale of the copyrights by the Clause VIII Trust to The Mother Church, the unaudited and unverified Accounts they file with this Court that fail to explain the purposes for which such distributions have been put, and the settlement proposed in the present Motion). *See* RSA 7:19-a; 564-B:8-801, *et seq.* and compare *Hollis v. Tilton*, 90 N.H. 119, 122 (1939) (quoting *French v. Currier*, 47 N.H. 88, 98 (1866) (A trustee "cannot act for his own benefit in any contract, or purchase, or sale, as to the subject of the trust.") and *Magruder v. Drury*, 235 U.S. 106, 119-20 (1914) ("The rule in such cases springs from his [the trustee's] duty to protect the interests of the estate, and not to permit his personal interest to in any wise conflict with his duty in that respect. The intention is to provide against any possible selfish interest exercising an influence which can interfere with the faithful discharge of the duty which is owing in a fiduciary capacity.")). See also *Sparhawk v. Allen*, 21 N.H. 9, 22-24 (1850) and cases cited therein supporting the presumption of invalidity

[1] See Director of Charitable Trusts' Memorandum Concerning Standing, at page 11, and this Court's Order on Hearing Held April 12, 2016.

of transactions where guardian/trustee benefits from a transaction with the trust, and quoting Lord Eldon in *Hatch v. Hatch*, 9 Ves. 292: "If the court does not watch these transactions with a jealousy almost invincible, in a great majority of cases it will lend its assistance to fraud."[2]

The wisdom of Lord Eldon's admonition is no mere abstraction in this case. It is borne out by the actual hundred-plus year history of these New Hampshire Trusts. We begin this *amicus* brief with a review of the most pertinent aspects of that history, that both predicted and demonstrated the perils of leaving these conflicted Director-Trustees in control of the Clause VIII Trust (Part I, below), before presenting some particular concerns about the settlement proposed in the Motion (Part II, below).

## I. The Demonstrated Adversity of the Director-Trustees to the Primary Objective of the Clause VIII Trust.

The consistent object of the Directors of The Mother Church for over one hundred (100) years has been to secure possession and control of these New Hampshire Trusts to themselves, to be administered by them, in Massachusetts, for the benefit of The Mother Church.

Their quest began in 1912, with litigation in Massachusetts against the administrators of Mrs. Eddy's New Hampshire probate estate in which the predecessors to the present Director-Trustees sought to invalidate the Clause VIII Trust and have the assets distributed immediately to them. *See Chase v. Dickey*, 212 Mass. 555, 99 N.E. 410 (1912). They were rebuffed in that case, 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.[3]

[2] Copies of the referenced cases are furnished in an Appendix ("App.") filed herewith.

- 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;[4]
- That the other purpose referred to in Clause VIII, of 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;[5]
- And that this dominant purpose of "...promoting and extending the religion so Christian Science as taught by [Mary Baker Eddy]" was not void for vagueness, but capable of interpretation and enforcement by a court.[6]

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 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 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, and requiring the New Hampshire Supreme Court (in *Fernald v. First Church of Christ, Scientist*, 77 N.H. 108, 88 A.

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

[4] *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.").

[5] *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.

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

705 (1913)) to restate the fundamental precept of *Glover v. Baker*, that Clause VIII was a gift to a 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,[7] by bonded trustees appointed by this Court.[8] 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.

No definitive record can be found of this Court's rationale for appointing a sixth, independent Trustee, but one must assume that the courts of that time were familiar with cases like *Hollis v. Tilton* and *Sparhawk v. Allen* (cited in the Introduction to this brief), and admonitions like Lord Eldon's, to "watch these transactions with a jealousy almost invincible" or risk lending assistance to fraud and self-dealing. *Hatch v. Hatch*, 9 Ves. 292 (quoted in *Sparhawk v. Allen*, *supra*, 21 N.H. at 24). This same appreciation of the perils of leaving the

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[7] *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.").

[8] *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.

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:

> 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.

(Brief of Attorney General, App. at 33) (emphasis added).

The hostility Attorney General Tuttle refers to was not merely abstract, but demonstrated by the predecessors to the present Director-Trustees, in their actions in *Chase v. Dickey*, to have the primary object of the Clause VIII Trust (to "promote and extend Christian Science as taught by me [Mary Baker Eddy]") declared invalid, and the assets distributed to them instead of the Clause VIII Trust; and this hostility was displayed in their second attempt to take unilateral control of the assets in the *Fernald* case in which the above-quoted argument was made. The law presumes that trustees, like the Director-Trustees, who have conflicting fiduciary loyalties act to benefit one of those loyalties at substantial risk of fraud or improper influence as to the other loyalty. *Sparhawk v. Allen*, *supra*. The same presumption is embodied in RSA 7:19-a, rendering "pecuniary interest transactions" voidable, and a necessary corollary to the trustee's duty of loyalty in trusts with more than one beneficiary. See RSA 564-B:8-803 and discussion in *Shelton v. Tamposi*, 164 N.H. 490, 505 (2013).

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 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.[9]

Significantly, based on a forensic review of accounts and other information made available to Second Church by the Director of Charitable Trusts, it appears that during the first 57 years of administration of the Clause VIII Trust, all distributions were for that primary purpose of "promoting and extending the religion of Christian Science as taught by [Mary Baker Eddy]"; and no distributions were made to The Mother Church for that other, subordinate purpose of maintaining and repairing the buildings of The Mother Church.[10] This changes, dramatically, as the remnant of independent monitoring provided through Fernald and his

[9] The Upton Hatfield firm wears three hats: counsel for the Directors, counsel for the Trustees and resident agent for the Trusts.

[10] The information presented in this paragraph is based on a summary of information found in the Trusts' Accounts reviewed and interpreted by Steven Witten, a Certified Public Accountant and Certified Fraud Examiner engaged by Second Church. The underlying information is too voluminous, so it has been summarized and presented by Mr. Witten in two graphs furnished in the Appendix at pages 9 and 10. 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.

successors disappeared after 1970, and even more dramatically in and after 1982. By 1988, the purposes of the Trust were turned upside down—with The Mother Church receiving all the benefits, and much of it in the form of income distributions purportedly to maintain and repair its buildings; and the support of other beneficiaries in "promoting and extending the religion of Christian Science" literally dropped off the charts.

This clear and consistent bias of the Director-Trustees in favor of supporting The Mother Church over other beneficiaries continues to this date—as evidenced by the present, 2016 Accounts that disclose that all distributions went to The Mother Church and nothing to any other beneficiary. This consistent preference of The Mother Church has been interspersed with more serious incidents of malfeasance since the 1990s, including:

- The improper loan of $5 million of principal from the Clause VIII Trust to The Mother Church in 1992, that led to the intervention of the New Hampshire Attorney General and this Court, and the 1993 Order (App. at 1) directing the Director-Trustees to repay that loan, ironically from the corpus of the Clause VIII Trust. The $5 million loan in 1993 remarkably represented 63% of the assets of the Clause VIII Trust. It must be noted, in reference to the Director-Trustees' present Motion requesting to be excused from their prior promise to continue to provide audits, that it was the Ernst & Young audit of the Clause VIII Trust that disclosed the improper (and self-serving) loan to the Mother Church in 1992 for what is was: a "loan." In contrast, the Director-Trustees' own

Accounts and accompanying financial statements, did not refer to it as a "loan" but, more vaguely, as an "Amount due from Mother Church." [11]

- The continued distribution of income to themselves under the 1993 Order for years—even to date—after that $5 million was repaid.[12]
- The 2001 Motion to pool the Clause VIII assets with the assets of The Mother Church—essentially allowing them to administer the Clause VIII Trust as if it were part of the assets of the Mother Church and actualizing the very thing that was so clearly prohibited by the terms of the Trust as interpreted in *Chase v. Dickey*, *Glover v. Baker* and *Fernald*.[13]
- The immediate and breach by the Director-Trustees of their promise in connection with that 2001 Motion to continue to audit the New Hampshire Trusts and file the audits as part of the annual Accounts, beginning with their 2003 Accounts that were accompanied by statements labeled "audited", but actually prepared by their in-house accounting manager.[14]
- And now, their efforts in the instant Motion to (i) further insulate themselves from accountability by seeking to be excused not only from the need to cure their failure to provide historical forensic audits for the last 15 or so years, but from the need to audit their conflicted Accounts going forward, (ii) permit The Mother Church's investment

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[11] 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 appear in the Appendix at pages 11, 16.
[12] *See* n.10, *supra*; 1993 Order (App. at 1).
[13] See also 2016 Account, where the Trusts are classified as "subsidiaries" of the Mother Church
[14] See excerpts of Financial Statements, Trusts Under Clauses 6 and 8 of the Will of Mary Baker Eddy, Year Ended April 30, 2003, included in the Appendix beginning at page 19. The Table of Contents (*see* App. at 20) represents them as "Audited Financial Statements;" the Management Letter (*see* App. at 21) indicates they are prepared by the "Audit and Tax services Manager" of the Mother Church, who discloses in the last line, "I am not independent with respect to The Mother Church or the Trusts."

committee to remain in place over the Trusts' assets and investments, despite that The Mother Church and the Trusts should have different investment objectives, and (iii) in the context of removing the commingling one can only wonder why they are not seeking to vacate the 2001 order altogether and restore the Trusts to their independent position prior to the pooling of the investments.

The Director-Trustees cannot be left to their own devices like this. Their breach of their loyalty to the Trusts, it is submitted, is well supported by the history of their consistent efforts—at first legal and, when the legal efforts failed, then by extra-legal means—to seize control and benefit of these Trusts exclusively for The Mother Church. But even in the absence of such historical actualization, the conflict in which they are embedded—recognized by the Director of Charitable Trusts—renders them inherently disloyal and conflicted as a matter of law. Unless that "embedded conflict" is to be ignored—which would be clear legal error—they cannot be trusted to act on anything other than the benefit of The Mother Church; and that disqualifies them from acting on anything—including the authorization of the fiduciary accounts they seek to "settle" on in the instant Motion.

## II. 2016 Accounts

1. Since 2003, The Director-Trustees Have Disregarded the 2001 Order By Failing to Have Their Annual Accounts Independently Audited

In 2001, the Director-Trustees eroded the protections of the corpus of the Trusts under New Hampshire law and Court supervision of the Clause VI and Clause VIII Trustees 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. They submitted unaudited accounts without obtaining relief from the explicit requirement for the same in the 2001 Order. Their justification for deliberately disobeying the 2001 Order, as stated in their most recent Motion, was "to reduce an unnecessary expense." See ¶ 14 of Trustees' Motion to Approve Amended Account and Amend 2001 Order. Unless there is no regard for the duty of loyalty and independence of the Trustees to the Trusts, so long as there is an embedded conflict, the expense is absolutely necessary; unfortunately, even with the Director of Charitable Trusts identifying their embedded conflict, the Director-Trustees refuse to recognize or acknowledge their conflicted posture. The expense might be unnecessary with independent trustees administering the Trusts, but more curious, however, is that listed on page 6 of the Notes to Financial Statements attached to the 2016 Account, under Section 4 "Expenses," it states that "The General Fund of the Mother Church absorbs certain expenses for which no allocation is made to the Trusts. These services include data processing, trust administration, audit and administration." (Emphasis added.) If audits are being performed and paid for, why not include the audit, as required in the 2001 Order, as an attachment to the Account? The 100-plus year history and 2001 Order makes clear the necessity of the independent audits. For the conflicted Director-Trustees casually to seek to remove this essential check on their control over the Trusts' funds demonstrates their blindness to the bright light now illuminating the issues arising from their embedded conflict.

2. The Director-Trustees Moved Trust Assets from the Christian Science Trustees for Gifts and Endowments to the Mother Church's General Investment Pool Without Court Authorization

Shortly thereafter, in 2006, in keeping with the Director-Trustees' historical contempt for the Court's role as the supervising authority of the Trusts, and taking advantage of the limited resources of the Court and the Director of Charitable Trusts to thoroughly review annual accounts, the Trustees unilaterally decided to transfer the Trusts' assets from the G&E Fund (which were "liquidated" without any explanation) to the Mother Church's General Investment Pool (the "GI Pool"). The GI Pool was supervised not by the Trustees of the Clause VI and Clause VIII Trusts, but by three (3) unnamed trustees of the G&E Fund and two (2) unnamed non-employee Mother Church members with "applicable expertise" (but without representation that the GI Pool investments were not with their firms). The Trustees suggest that they should be forgiven for such transgressions, because this change was "described" in the Notes to Financial Statements filed with the annual accounts for fiscal year ending 2008; notably two (2) years after the change was made and with no description of the GI Pool, the investment strategy, the identity of the investment committee or any representation respecting the required bonding of the investment committee or Trustees. While the change was not "caught" until now, the nonchalant attitude of the Director-Trustees to this egregious violation of the 2001 Order is remarkably consistent with how they treat the Trusts as "subsidiaries" of The Mother Church and their ambivalence to their separate duties as Trustees of the Trusts.

To address these issues, the Director-Trustees now propose to move the Trusts' corpus (without an audit or accounting of the opening balance of the corpus) out of the GI Pool and into a separate investment account covering both the Clause VI and Clause VIII Trust assets. While this may appear, on its face, to be a positive development in decoupling The Mother Church

from the Trusts, it should be highlighted that this separate investment account will be supervised by the same Investment Advisory Committee that oversees the GI Pool and without any assurance that such professional managers are bonded, have been given independent investment objectives by the Trustees unburdened by their embedded conflict. In other words, while the accounts will technically be separated, the players who make decisions regarding these accounts remain the same. Furthermore, the Trustees propose that the 2001 Order should be amended to remove the requirement of independent audited accounts and that any future decision to reinvest the Trust assets in the GI Pool be approved by the Director of Charitable Trusts, rather than this Court after notice and hearing. This stealthy proposed maneuver eviscerates the oversight of the Court, to which the Director-Trustees have historically demonstrated hostility and flagrantly disregarded, and permits The Mother Church's own employees to "audit" the annual Trust accounts, thereby perpetuating the embedded conflict of interest. If the Trusts' assets are now, again, to be segregated from the GI Pool, then the 2001 Order ought to be vacated, not amended, the Trustees (preferably independent trustees) restored to administration of the Trusts and any desired change in the future should be subject to motion, notice and hearing.

## 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 applied, and consistent with their embedded conflict of interest, the Directors of The Mother Church, in their conflicted and disloyal capacity as Trustees of the Clause VI and Clause VIII Trusts, have effectively created an annuity out of these Trusts

for the sole benefit of The Mother Church. 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 and reading rooms 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, when Josiah E. Fernald served as a disinterested Trustee.

Respectfully submitted,

SECOND CHURCH OF CHRIST, SCIENTIST, MELBOURNE,

By its attorneys,

PIERCE ATWOOD LLP

Dated: February 15, 2017

By: Michele E. Kenney

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 15th day of February, 2017, forwarded a copy of the foregoing Brief A*micus Curiae* to the following by electronic mail and first class mail:

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