Vermont Supreme Court
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IN THE SUPREME COURT OF THE STATE OF VERMONT

CASE NO. 25-AP-148

Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead
Plaintiff/Appellant

v.

The President & Fellows of Middlebury College
Defendant/Appellee

APPEALED FROM: Vermont Superior Court, Civil Division, Addison Unit
CASE NO. 23-CV-01214

APPELLANT'S PRINTED CASE

VOL. I

Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead, *Appellant*

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CIVIL DIVISION
Case No. 23-CV-01214

Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead v. The President and Fellows of Middlebury College

Ruling on Middlebury's Motion to Dismiss

In 1914, former Vermont Governor John Mead offered to give Middlebury College the financial resources to construct a chapel on its campus. Middlebury accepted, and the chapel soon was built and named the Mead Memorial Chapel. In 2021, Middlebury determined to remove the Mead name from the chapel and took down the sign so describing it.[1] Former Vermont Governor James Douglas, as the special administrator of Governor Mead's estate, then brought this action challenging the removal of the name from the chapel.[2] Governor Douglas claims that, in changing the chapel's name, Middlebury breached a contract with Governor Mead to the effect that the chapel would perpetually be known as the Mead Memorial Chapel. In the alternative, he claims that Middlebury breached the covenant of good faith and fair dealing inherent in that contract or has breached a perpetual condition as to naming rights that Governor Mead attached to the gift that funded the construction of the chapel.

Middlebury has filed a motion to dismiss. Based on the extensive allegations of the complaint and the documents incorporated by reference into it, Middlebury argues that there was no contract—there was a gift, and the gift was not burdened by any perpetual condition as to naming rights. Because there was no contract, it argues, there could be no breach of the covenant of good faith implicit in all contracts. It further argues that Governor Douglas, as special administrator, lacks "standing" to enforce any

[1] The circumstances that prompted Middlebury to do so are dwelled upon in great detail by the parties, and are deeply disputed, but are largely irrelevant to this decision. If only for context, the court briefly notes that by the time Middlebury made its decision, Governor Mead had become controversial, rightly or wrongly, due to perceptions about his role in the eugenics movement, and it was in the circumstances of that controversy that Middlebury made its decision.

[2] The Rutland probate court appointed Governor Douglas a special administrator specifically to bring this suit. The court presumes that Governor Mead's heirs assented to the appointment and this litigation.

perceived restriction on the gift as only the Attorney General is empowered to do so.[3] The parties are deeply divided on all these issues as well as the propriety of ruling on them as a matter of law in the current procedural posture of the case.

Donor standing

To the extent that the underlying transaction falls under gift law, the parties refer to the propriety of a special administrator, as opposed to the Attorney General, bringing a suit of this sort on behalf of a donor's estate as one of standing, which in turn appears to lead them to characterize the matter as affecting the court's subject matter jurisdiction. The court presumes, however, that they use the term standing euphemistically to refer to the real-party-in-interest rule or simply whether there can be a cause of action. As the Vermont Supreme Court recently has summarized,

> Vermont courts' subject-matter jurisdiction is limited to "actual cases or controversies." Standing is one of several prerequisites to satisfy the case-or-controversy requirement. It is thus "fundamentally rooted in respect for the separation of powers of the independent branches of government." "The gist of the question of standing is whether [the] plaintiff's stake in the outcome of the controversy is sufficient to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."

Ferry v. City of Montpelier, 2023 VT 4, ¶ 11 (citation omitted). Middlebury does not argue that this case presents these sorts of issues and somehow strikes at the heart of the separation of powers among the branches.

Rather, it argues that Governor Douglas is trying to do what only the Attorney General properly can. Rule 17(a) requires that "Every action shall be prosecuted in the name of the real party in interest." Standing is frequently confused, often harmlessly, for other doctrines, including the real-party-in-interest rule and basic cause of action principles. See 13A Wright & Miller, Federal Practice & Procedure: Civil 3d § 3531. However, such "conceptual confusions" can have unintended consequences. *Id*. ("But conceptual labels may carry real consequences. Lack of 'standing' to raise a federal claim may persuade a court that it lacks subject-matter jurisdiction and cannot exercise supplemental jurisdiction. A decision characterized in standing terms may not carry the claim-preclusion consequences that should flow from what in fact is a dismissal for failure to state a claim." (footnotes omitted)).

A real-party-in-interest defect or the mere lack of a cause of action does not affect the court's subject matter jurisdiction, and the matter may be raised under Rule 12(b)(6)

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[3] No party has indicated that anyone has attempted to involve Vermont's Attorney General in this case or the issues that prompted it.

(failure to state a claim upon which relief may be granted) rather than Rule 12(b)(1) (defect in subject matter jurisdiction).[4] 5B Wright & Miller, Federal Practice & Procedure: Civil 3d § 1357.

Middlebury raises this issue only to the extent that this case falls under gift law as opposed to contract law. Either way, the court is not persuaded that there is a real-party-in-interest defect or that the cause of action automatically fails because it is brought by an administrator on behalf of the donor's estate rather than by the Attorney General. Middlebury essentially argues that under the common law of Vermont, only the Attorney General can enforce a limitation on a completed gift in a charitable trust. It cites as authority only one Vermont case in which the Attorney General was involved in litigation over a charitable trust. This case does not involve a charitable trust.

More to the point, Middlebury has come forward with no concrete authority that would compel Vermont's Attorney General to take action in a case of this sort or require her to consider it. Nor has it convincingly explained why the Attorney General would have any interest at all in enforcing the disputed naming right "condition" in this case. While Middlebury points to out-of-state authority generally in support of its "standing" argument under the common law, that authority is not monolithic. See generally, e.g., *Smithers v. St. Luke's-Roosevelt Hosp. Ctr.*, 723 N.Y.S.2d 426 (2001) (permitting wife of deceased donor to sue to enforce terms of charitable gift). The law in Vermont on this matter is substantially undeveloped, and the Vermont Attorney General has not attempted to intervene in this action or otherwise assert any *exclusive* authority to bring suit. Nor is there any statute or case law clearly so providing. It is apparent that Middlebury is not concerned that it should be facing a different adversary so much as it is simply trying to get the case dismissed. Without more compelling authority that the Vermont attorney general has *exclusive* authority to sue, in these circumstances, the court declines to conclude that the special administrator of Governor Mead's estate is an improper party to do so.

The principal issues, then, are whether the transaction is subject to gift or contract law, and whether the disputed perpetual naming right exists at all. Middlebury raises these issues under Rule 12(b)(6).

Procedural standard

The Vermont Supreme Court has described the familiar standard for Rule 12(b)(6) motions to dismiss for failure to state a claim as follows:

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[4] Rule 17(a) expressly provides, however: "No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest."

> "A motion to dismiss . . . is not favored and rarely granted." This is especially true "when the asserted theory of liability is novel or extreme," as such cases "should be explored in the light of facts as developed by the evidence, and, generally, not dismissed before trial because of the mere novelty of the allegations." In reviewing a motion to dismiss, we consider whether, taking all of the nonmoving party's factual allegations as true, "'it appears beyond doubt' that there exist no facts or circumstances that would entitle the plaintiff to relief." We treat all reasonable inferences from the complaint as true, and we assume that the movant's contravening assertions are false.

Alger v. Dep't of Labor & Indus., 2006 VT 115, ¶ 12, 181 Vt. 309, 316–17 (citations omitted).

In applying this standard, the court notes that a complaint is supposed to be a "short and plain statement of the claim[s] showing that the pleader is entitled to relief." V.R.C.P. 8(a). The complaint in this case is neither short nor plain. Rather, it is extremely lengthy and outwardly appears to touch on all the evidence (however relevant) available at the time it was filed. At the July 27 hearing in this matter, Governor Douglas nevertheless asserted the need to engage in discovery in pursuit of additional relevant evidence, while Middlebury asserted that there is no material evidence left to unearth. The adequacy of the opportunity for discovery may come up if Governor Douglas resists summary judgment on that basis in response to a Rule 56 motion by Middlebury. Given the subtlety and nature of the issues and the procedural posture of the case, however, the court cannot now simply assume that the recitation of the evidence in the complaint, extensive though it may be, is fully exhaustive of what exists to be found and then attempt to rule as a matter of law based on that universe of facts. In short, the ordinary Rule 12(b)(6) standard applies in this case as it would in any other.

Whether the transaction sounds in contract or gift law

So far as the allegations of the complaint go, it is apparent that Governor Mead intended to give Middlebury the funds necessary to construct a chapel, and there is at least *some* evidence that he intended or requested that it be named the Mead Memorial Chapel. Governor Mead's initial written communication with Middlebury includes this: "I desire to erect a chapel to serve as a place of worship for the college, the same to be known as the Mead Memorial Chapel." Governor Douglas prefers to characterize the ensuing transaction as a contract in which Governor Mead gave Middlebury the funds to construct the chapel in exchange for the right to have that chapel perpetually named the Mead Memorial Chapel. In the alternative, he asserts that the funding was a gift subject to a perpetual condition subsequent as to naming rights. Putting aside for the moment the question of whether a perpetual naming right was contemplated at all, Middlebury argues that the transaction must be characterized as falling under gift law rather than contract law.

The court declines to rule on this issue at this time. The issue is potentially subtle and will be better addressed on a developed factual record. "To be a gift, a transfer must be made with donative intent. The requirement of donative intent is the essence of a gift." Restatement (Third) of Property (Wills & Don. Trans.) § 6.1 cmt. b. "Donative intent is to be distinguished from donative motive. The motive for making a gift is a complex matter and does not determine whether or not a gift was intended. The relevant criterion is intent to transfer an ownership interest gratuitously, as opposed to engaging in an exchange transaction or making an involuntary transfer." *Id.* Finally, "To be a gift, the transfer must be made without consideration." *Id.* cmt. e.

"[A] gift is not ordinarily treated as a bargain, and a promise to make a gift is not made a bargain by the promise of the prospective donee to accept the gift, or by his acceptance of part of it. *This may be true even though the terms of gift impose a burden on the donee as well as the donor. In such cases the distinction between bargain and gift may be a fine one, depending on the motives manifested by the parties*." Restatement (Second) of Contracts § 71 cmt. c (emphasis added); see also *id.* § 24 cmt. b ("[P]roposal of a gift is not an offer within the present definition [of offer]; there must be an element of exchange. Whether or not a proposal is a promise, it is not an offer unless it specifies a promise or performance by the offeree as the price or consideration to be given by him. It is not enough that there is a promise performable on a certain contingency."); John K. Eason, Private Motive and Perpetual Conditions in Charitable Naming Gifts: When Good Names Go Bad, 38 U.C. Davis L. Rev. 375, 409–12 (2005) (discussing the distinction in the context of naming rights).

Thus, the issue may well boil down to the parties' intentions at the time of the transaction and determining the character of those intentions from the available evidence may be a very subtle endeavor. Such an inquiry will be better undertaken on a developed factual record, not the mere allegations of the complaint.[5]

Either way, was a perpetual naming right contemplated at all?

Middlebury argues that no naming right, much less a perpetual one, was contemplated at all. Governor Douglas argues instead that the circumstances imply it, and he seeks the opportunity to develop more evidence in support of it.

The court notes that if the transaction is considered to be a contract, perpetual terms in contracts generally are disfavored. "Although a construction [of a contract] conferring a right in perpetuity will be avoided unless compelled by the unequivocal language of the contract, a perpetual contract will be enforced, if the terms are clear. A contract which purports to run in perpetuity must be adamantly clear that that is the

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[5] Because it is not yet clear that a contract exists at all, the court declines to address whether the name-change could have violated an implied covenant in that contract if not the terms of the contract itself.

parties' intent, in order to be enforceable. A contract will not be construed as imposing a perpetual obligation when to do so would be adverse to public interests." 17B C.J.S. Contracts § 608 (footnotes omitted); see also *CNH Indus. N.V. v. Reese*, 138 S.Ct. 761, 763–64 (2018) ("[C]ontracts that are silent as to their duration will ordinarily be treated not as 'operative in perpetuity' but as 'operative for a reasonable time.'" (citation omitted)); *Glacial Plains Coop. v. Chippewa Valley Ethanol Co., LLLP*, 912 N.W.2d 233, 236 (Minn. 2018) ("In general, contracts of perpetual duration are disfavored as a matter of public policy; thus, while we will enforce a contract that unambiguously expresses an intent to be of perpetual duration, we construe ambiguous language regarding duration against perpetual duration."); *Jespersen v. Minnesota Min. & Mfg. Co.*, 700 N.E.2d 1014, 1017 (Ill. 1998) ("[P]erpetual contracts are disfavored."); *Barton v. State*, 659 P.2d 92, 94 (1983) ("We are also unwilling to imply—as a matter of law—a term in the contract which would bind the State in perpetuity. In our view, such a term would violate public policy.); *City of Billings v. Pub. Serv. Comm'n of Montana*, 631 P.2d 1295, 1306 (Mont. 1981) ("Where a contract is not expressly made perpetual by its terms, construction of such contract as perpetual is disfavored."); *Thompson v. Miller*, 100 N.W.2d 410, 412 (Iowa 1960) ("A contract for life will be upheld only where the intention, that the contract's duration is for life, is clearly expressed in unequivocal terms.").

To the extent that the transaction is considered to be a gift with a perpetual condition subsequent, such conditions similarly are disfavored. "Because noncompliance with the conditions of a conditional gift results in a forfeiture of the gift, the conditions must be created by express terms or by clear implication and are construed strictly." 38A C.J.S. Gifts § 39. "The intention of the donor to create a condition subsequent must clearly be expressed, and, if it is doubtful whether a clause in a deed is a condition subsequent, courts will always lean against construing it as such. 14 C.J.S. Charities § 33. Vermont cases touching on these principles include *Wilbur v. University of Vt.*, 129 Vt. 33, 43 (1970) ("Beyond that, we do not interpret the restriction as imposing a true condition subsequent. Such a construction is disfavored." (so stating in the trust context)); *President & Fellows of Middlebury Coll. v. Cent. Power Corp. of Vt.*, 143 A. 384, 390 (Vt. 1928) ("Furthermore, conditions subsequent are not favored in the law, and if the language of an instrument can be otherwise construed, without violating the plain intent of the maker thereof, it will be done." (so stating in the will context)); see also *Mayor and Aldermen of City of Annapolis v. West Annapolis Fire and Improvement Co.*, 288 A.2d 151 (Md. 1972) ("Our prior decisions make it clear that when a gift is made to a charitable corporation, even though it be made for a particular purpose and it proves impossible or impractical for the donee to perform the donor's desires, no condition subsequent will be implied unless there is a clear expression of the grantor's intention that there be a gift over on default."); *Tennessee Div. of United Daughters of the Confederacy v. Vanderbilt University*, 174 S.W.3d 98, 115 (Tenn. Ct. App. 2005) ("Because noncompliance results in a forfeiture of the gift, the conditions must be created by express terms or by clear implication and are construed strictly.").

Whether framed under contract or gift law, proof that a perpetual naming right was intended ultimately will have to satisfy an elevated standard of clarity to be

enforceable. The court declines to catalog the evidence referred to in the complaint that currently may point in one direction or the other. For now, the question is simply whether Governor Douglas has alleged that such a naming right was intended. The complaint is fairly read to include such an allegation. See V.R.C.P. 8 ("All pleadings shall be so construed as to do substantial justice.").

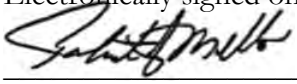
Order

For the foregoing reasons, Middlebury's motion to dismiss is denied.

Within two weeks counsel shall confer and agree upon a proposed scheduling order for the court's consideration this matter. Unless both parties agree otherwise, the proposed schedule shall include a mediation at the appropriate time.

SO ORDERED this 4th day of August, 2023.

Electronically signed on 8/4/2023 3:35 PM, pursuant to V.R.E.F. 9(d)



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CIVIL DIVISION
Case No. 23-CV-01214

Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead v. The President and Fellows of Middlebury College

Ruling on Middlebury's Motion for Summary Judgment
and Renewed Motion to Dismiss

In 1914, former Vermont Governor John Mead offered to give Middlebury College the financial resources to construct a chapel on its campus. Middlebury accepted, and the chapel, named the Mead Memorial Chapel, was completed within 2 years. He died in 1920, and his estate was promptly probated and closed. In 2021, Middlebury determined to remove the Mead name from the chapel and removed the signage so describing it. The Rutland Probate Division, on petition, then reopened Governor Mead's estate and appointed former Vermont Governor James Douglas its special administrator for the purpose of bringing this lawsuit. Here, Governor Douglas challenges Middlebury's decision to remove of the Mead name from the chapel. Governor Douglas claims that, in changing the chapel's name, Middlebury breached a term in an alleged contract between Governor Mead and Middlebury or, in the alternative, it breached a condition-subsequent burdening Governor Mead's gift to Middlebury to the effect that the chapel would be known perpetually as the Mead Memorial Chapel. He also claims that Middlebury breached the covenant of good faith and fair dealing inherent in the original contract or is liable for unjust enrichment.

In its August 4, 2023, decision denying Middlebury's motion to dismiss, the court rejected Middlebury's argument that Governor Douglas necessarily lacks "standing" to prosecute this action. It then concluded that it could not determine based on the allegations of the complaint alone whether the 1914 transaction sounds in contract or property (gift) law. The court summarized the law as to perpetual contract terms and conditions-subsequent binding gifts—both highly disfavored under the law—but made no final determinations as to those matters under Rule 12(b)(6), preferring to let the evidence develop first.

After document discovery was complete, Middlebury filed a motion for summary judgment and a renewed motion to dismiss for lack of standing.[1] It argues as follows: (1) Governor Mead's contribution in support of the chapel was a gift rather than a contract; (2) there is no perpetual naming condition-subsequent attached to that gift, and if there

[1] Depositions, which would not be anticipated to reflect on the issues addressed in this decision, are conditionally stayed under the court's July 23, 2024, order.

were, it is not enforceable by Governor Douglas because no reversionary right was retained by Governor Mead; (3) separately, Governor Douglas lacks "standing" to raise any rights related to the gift because such claims can only be prosecuted by Vermont's Attorney General; (4) even if the transaction is construed to be a contract, the evidence falls short of demonstrating that there is any naming condition running to perpetuity; (5) because there is no contract, there can be no breach of the covenant of good faith and fair dealing; and (6) the circumstances of this case cannot support an unjust enrichment claim.

The court notes that, excepting Middlebury's objection to the court's analysis of donor-standing law, the parties assert now no disagreement with the court's description of the law in the dismissal decision, which the court adopts for purposes of this decision. But for donor-standing, there is no fundamental disagreement as to the applicable legal principles. The controversy is how the law properly applies to the circumstances of this case.

Procedural standard

Summary judgment procedure is "an integral part of the . . . Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Morrisseau v. Fayette*, 164 Vt. 358, 363 (1995) (quoting C*elotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)). Summary judgment is appropriate if the evidence in the record, referred to in the statements required by Rule 56(c), shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. V.R.C.P. 56(a); *Gallipo v. City of Rutland*, 163 Vt. 83, 86 (1994) (summary judgment will be granted if, after adequate time for discovery, a party fails to make a showing sufficient to establish an essential element of the case on which the party will bear the burden of proof at trial). The court derives the undisputed facts from the parties' statements of fact and the supporting documents. *Boulton v. CLD Consulting Engineers, Inc.*, 2003 VT 72, ¶ 29, 175 Vt. 413. A party opposing summary judgment may not simply rely on allegations in the pleadings to establish a genuine issue of material fact. Instead, it must come forward with deposition excerpts, affidavits, or other evidence to establish such a dispute. *Murray v. White*, 155 Vt. 621, 628 (1991). Speculation is insufficient. *Palmer v. Furlan*, 2019 VT 42, ¶ 10, 210 Vt. 375.

The Facts

The parties take issue with certain of each other's characterizations of facts, and they draw different inferences, but the record is purely documentary, historical, and undisputed in all material respects. The parties, Governor Douglas in particular, have set forth the narrative at length. The court summarizes here.

John Abner Mead (1841–1920) was a physician, businessman, politician, and philanthropist who served as Vermont's Lieutenant Governor from 1908 to 1910 and as Vermont's Governor from 1910 to 1912. He graduated with the Class of 1864 from

Middlebury College, which was chartered in 1800. In 1914, he determined to give Middlebury the funds to construct a campus chapel. Accordingly, on May 11, 1914, he sent the following letter (the 1914 Letter) to Middlebury's President, the Rev. Dr. John M. Thomas:

> My Dear President Thomas:-
>
> In commemoration of the 50th anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel." I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.
>
> It was my great-great-grandfather, the first white settler of this valley, who brought the first copy of the Holy Bible into this unbroken wilderness and it was his wife, my great-great-grandmother, who gathered her large family about her in an indian wigwam for the first christian service of the Vermont pioneers of this immediate region.
>
> With this memory ever present, it has been my hope and prayer that I might be able and permitted to build for this college a suitable place for divine worship and that it might rise from the highest point on its campus as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth.
>
> I have in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure, and I hereby suggest that the Trustees of the College secure appropriate plans for its erection which shall meet with my approval, and that said board appoint a building committee at once, consisting of president Thomas, former President Brainerd and myself to make the necessary contracts for such a structure and to supervise the erection of the same, and I will then bind myself and my estate to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee.

President Thomas sent a copy of the 1914 Letter to the Trustees of Middlebury College requesting replies "as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests." The Trustees responded enthusiastically with approval.

On June 22, 1914, the Board of Trustees met and resolved as follows:

> The following resolution, introduced by Dr. Brainerd, on motion of Dr. Barton & Prof. Kellogg, was adopted by a rising vote:-
>
> > Whereas our esteemed colleague, the Honorable John Abner Mead of the Class of 1864, has signified to President Thomas his desire, in commemoration of the fiftieth anniversary of his graduation, to erect a Chapel for Middlebury College, and his readiness to furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice,
> >
> > Resolved that the President and Fellows of Middlebury College hereby accept of this magnificent benefaction with sincere gratitude to both Dr. & Mrs. Mead and their family for their deep interest in the religious welfare of the College, so impressively manifested by this provision of a suitable place for divine worship.
> >
> > Resolved that the Trustees through the Committee nominated by Dr. Mead will use their best endeavors to secure the erection of a dignified and substantial structure, in harmony with the other buildings of the college, and such as will meet the approval of the donor."
>
> Dr. Mead made fitting response to this resolution. His letter of presentation follows in full:-
>
> [A copy of the 1914 Letter then appears here, but it is unnecessary to repeat at length and is omitted.]
>
> On motion of Mr. Partridge, seconded by Dr. Abernathy, the Building Committee for the Mead Chapel was elected as above, Messrs. Thomas, Brainerd, Mead and Weeks.
>
> Mr. Collins of the architectural firm of Allen & Collins then appeared before the Board with tentative plans for the new Chapel, which were discussed at length.

A groundbreaking ceremony was held on June 23, 1914. In his remarks, Governor Mead said:

> On this date, I wish to break the ground and place the corner stone for this Memorial Chapel, with the hope and prayer that there shall be a sacred duty resting upon each, to make this Holy Temple, so soon to be erected, an instrument of great good to those of this generation and to those who may follow after.

The Rev. James Barton then delivered the Acceptance in Behalf of the Trustees, which included this:

> It is doubly gratifying to me, as it is to the Board of Trustees, that this building, as a memorial, will bear the name of one so long and so honorably connected with this institution and who in the state and nation has always upheld and promoted true piety and civic and national righteousness.
>
> This chapel will provide for the generations of students and faculties of this college that to which the other buildings cannot minister. To this place all will turn in order to experience the reality of the unseen, to satisfy the thirst of the soul for God.
>
> We then, the Trustees of this College, on behalf of ourselves and our successors, in the name of the generations of students it will serve, in full recognition of the supreme importance of such a religious center to the life of the institution, and in loving memory of him whose name this structure is to bear, gratefully accept at your hand this Chapel as we pledge ourselves to safeguard to the limit of our capacity the gift and the ideals it is intended to perpetuate.

Professor Charles Wright then gave an Address in Behalf of the Faculty, which included this:

> The Faculty thank you, Governor Mead, from profoundly grateful hearts. You have bodied forth our dream of years; you have given to an airy nothing a local habitation—and not the least of our pleasure is the thought that through all the days to be it will bear your honored name.

By December 1914, the ensuing planning had made clear that the expense of construction would exceed $60,000, the high end of the originally contemplated range. Middlebury agreed to complete construction if Governor Mead would contribute the full $60,000. Governor Mead in January 1915 agreed:

> In consideration of the contract of the Committee for the Erection of the Mead Memorial Chapel at Middlebury College with Thomas W. Rogers of Brandon, Vt., whereby the same is to be erected in accordance with plans and specifications of Allen & Collens, architects, at a cost of $51,945, I agree to furnish funds for the discharge of this contract and for the expenses connected with the erection of this chapel, to the amount of $60,000, as may be required during the construction and in accordance with the terms of the above contract, binding myself, my heirs and my assigns as above specified. It is agreed on the part of said Trustees that they are to complete said

> chapel, making it complete in every way, as to grounds, furnishings, etc., for the purposes of a college chapel, as voted at the meeting of the Trustees of said college held in New York City Dec. 18, 1914, and as defined in correspondence between the president of Middlebury College and myself.

By April 1915, Governor Mead had committed another $1,031 for certain windows and pilasters, and Middlebury had agreed to contribute another $5,000 for a pipe organ. In June 1915, Governor Mead agreed to contribute an additional $6,960 for a "chime of bells." Governor Mead eventually approved the final architectural plans, all reflecting that the chapel would bear the Mead Memorial Chapel name. While construction was underway, Governor Mead attended the Building Committee's meetings, met with architects, approved project designs, controlled the budget, and paid labor and materials expenses.

Construction of the Mead Memorial Chapel was complete in 1916. Governor Mead died in 1920. From inception to present, the chapel has been an important place on campus "where the College community comes together on occasions of significance."

In this history, Governor Douglas sees a contract between Governor Mead and Middlebury with a term requiring that the chapel remain named the Mead Memorial Chapel into perpetuity. Middlebury instead sees a gift from a generous benefactor not burdened by any such condition, much less a perpetual one.

Was it a gift or a contract?

Determining whether Governor Mead's contribution of funds for the construction of the chapel was a gift to or contract with Middlebury is to determine whether the claimed naming condition is properly analyzed under those property law concepts applicable to gifts or contract law. The court declined to resolve that issue at the dismissal stage, noting that the distinction is potentially subtle and would be better addressed on a developed factual record.

The parties have not disagreed with the applicable law as summarized in the dismissal decision, which the court briefly summarizes. "To be a gift, a transfer must be made with donative intent. The requirement of donative intent is the essence of a gift." Restatement (Third) of Property (Wills & Don. Trans.) § 6.1 cmt. b. "Donative intent is to be distinguished from donative motive. The motive for making a gift is a complex matter and does not determine whether or not a gift was intended. The relevant criterion is intent to transfer an ownership interest gratuitously, as opposed to engaging in an exchange transaction or making an involuntary transfer." *Id.* "[A] gift is not ordinarily treated as a bargain, and a promise to make a gift is not made a bargain by the promise of the prospective donee to accept the gift, or by his acceptance of part of it. *This may be true even though the terms of gift impose a burden on the donee as well as the donor. In such cases the distinction between bargain and gift may be a fine one, depending on the motives manifested by the parties*." Restatement (Second) of Contracts § 71 cmt. c

(emphasis added); see also *id*. § 24 cmt. b ("[P]roposal of a gift is not an offer within the present definition [of offer]; there must be an element of exchange. Whether or not a proposal is a promise, it is not an offer unless it specifies a promise or performance by the offeree as the price or consideration to be given by him. It is not enough that there is a promise performable on a certain contingency.").

Middlebury argues that the undisputed facts can support one inference only: that the transaction was a gift as a matter of law: Governor Mead's intentions were donative in nature, even if he imposed conditions precedent, and even if he contemplated a specific name for the chapel. Governor Douglas sees in those conditions the sort of bargained-for consideration that instead points in favor of a contract with an enduring condition.

As the Restatement (Second) of Contracts § 71 cmt. c says, the distinction the parties are asking the court draw can be "a fine one." The court does not believe the record is so one-sided as Middlebury does and declines to rule as a matter of law. The issue must be determined on the evidence at trial.

If it was a gift, is there an enforceable naming condition?

If it is assumed for present purposes that the transaction was a gift, and that the gift was burdened by some condition-subsequent as to the name of the chapel, the question then turns to whether the condition could be enforceable in a case such as this. See *Wilbur v. University of Vt.*, 129 Vt. 33, 43 (1970) ("Beyond that, we do not interpret the restriction as imposing a true condition subsequent. Such a construction is disfavored."); *President & Fellows of Middlebury Coll. v. Cent. Power Corp. of Vt.*, 143 A. 384, 390 (Vt. 1928) ("Furthermore, conditions subsequent are not favored in the law, and if the language of an instrument can be otherwise construed, without violating the plain intent of the maker thereof, it will be done.").

Generally, to work a forfeiture in the donee, the donor must have clearly retained a right of forfeiture or reverter. See *Wilbur,* 129 Vt. at 44 ("The absence of any provision for forfeiture or reverter is a strong indication that the donor did not contemplate a failure of the ultimate purpose of his gift."); Restatement (Second) of Property, Don. Trans. § 31.2; Iris J. Goodwin, Donor Standing to Enforce Charitable Gifts: Civil Society v. Donor Empowerment, 58 Vand. L. Rev. 1093, 1145 (2005) ("[N]early all the modern American authorities—decisions, model acts, statutes, and commentaries—deny a donor standing to enforce a restricted gift to [a] public charity absent express retention of a reversion in the donative instrument.").

The record reveals no such reversionary right retained by Governor Mead. In opposition to summary judgment, Governor Douglas argues at page 51 as follows:

> In the case at bar, if the court determines that there was no consideration, the gift was delivered and accepted by the donee. However, there were conditions on the gift which have now been breached. Removing

> the Mead sign violated Mead's approval of the plans and specification of the Chapel as well as the condition that the chapel "be known as" "Mead Memorial Chapel." The stripping of the name was a canceling of the College's performance of an essential condition of the gift. Whether the obligation was undone or never performed, the result is the same, the donor is entitled to restitution.

But he nowhere points to any evidence in the record documenting Governor Mead's retention of any reversionary rights triggered by such circumstances. Without any such right having been reserved, even if there were some condition placed on a gift of funds for construction purposes, it would be unenforceable in the manner urged by Governor Douglas in this case.

Middlebury thus is entitled to judgment as a matter of law to the effect that if the transaction is determined to have been a gift, any naming condition attached to that gift is not enforceable in this case. It is unnecessary to further resolve Middlebury's donor-standing argument vis-à-vis the attorney general's exclusive authority.

If it was a contract, is there a perpetual naming condition?

If it is assumed for present purposes that the transaction was a contract, the question turns to whether that contract includes a term requiring that the chapel retain the name Mead Memorial Chapel into perpetuity. As the court explained in the dismissal decision, perpetual terms in contracts are disfavored and must be shown with *adamant clarity*—ambiguity will be construed against perpetuity. See Ruling on Middlebury's Motion to Dismiss at 5–6 (filed Aug. 4, 2023); *McDonald v. Scitec, Inc.*, 79 A.3d 374, 379 (Me. 2013) ("'Forever' is a long time." (citation omitted)).

The record reveals no naming term with perpetual duration. Governor Douglas argues at pages 36–37 of his opposition filing as follows:

> It is the trust that Mead had with his fellow trustees and their shared understanding that a promise to name a building as a memorial to honor and remember ancestors, was a promise forever. Moreover, this was a religious chapel that was to memorialize the Mead ancestors who embodied and symbolized the "simplicity and character of the inhabitants" of the area and the removal of the Mead name is a breach of a sacred promise that was made through the prayers and dedications offered to the Mead Memorial Chapel and Governor Mead.
>
> And we can suppose it is that trust, that prevented the insertion of some sort of language such as "in perpetuity" with regard to the name Mead Memorial Chapel. However, there is no evidence to suggest that "in perpetuity" language was even being used at that time and place in history. Therefore, we have absolutely no evidence to suggest that it would have

> ever occurred to the parties, to specify that a name in quotation marks with the verbiage "the same to be known as", would have only temporary effect for some finite time period. A name is a name is a name.

And then at 42 he says this:

> The 2021 removal of Mead family name from the Mead Memorial Chapel was a breach of the contract's most essential term, the consideration expected by and bargained for by John Abner Mead, that the chapel he was erecting for the college would be a memorial to his ancestors, bearing his family name forever. Given the evidentiary record already assembled, could any reasonable person actually believe that the Trustees did not agree to name the chapel the "Mead Memorial Chapel" or that Mead would have built the chapel if his term or condition were denied?

In other words, there is no direct evidence of any such perpetual requirement, and Governor Douglas instead would have the court infer that such a requirement was intended by the parties based on the general circumstances of the transaction. The standard, however, is rigorous, and the evidence as extensively assembled by Governor Douglas does not satisfy it.

Nor can the matter be settled rhetorically by the hypothetical question as to what would have happened if Middlebury in 1914 responded to Governor Mead's offer by saying yes to the money but no to the name. Obviously, Governor Mead and Middlebury both contemplated at the time that the chapel as built would be named the Mead Memorial Chapel, and it in fact was. It is likely the case that neither contemplated in 1914 that Middlebury ever would be interested to switch course and change the name many generations later. But the legal question is whether there is adamantly clear evidence in the record of a naming condition running to perpetuity that binds Middlebury. The evidence is insufficient. There is no such *perpetual* condition.[2]

Assuming it was a contract, was there any naming condition at all?

Middlebury's argument that there was no naming condition whatsoever, however, is not persuasive. Here, Governor's Douglas's thought experiment is compelling. The record is express that both parties intended that the chapel would be named the Mead Memorial Chapel. There is no evidence of any negotiated duration attached to that name. However, the court has no doubt that if Middlebury had resisted placing the Mead name on the chapel at the time of the offer that the offer would have been retracted. That the chapel would be named the Mead Memorial Chapel was a condition to the offer. That so naming the as-built structure would satisfy that condition, as though Middlebury was free immediately thereafter the change the name, strains

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[2] Governor Douglas's speculation that the terms *perpetual* or *perpetuity* may not have been in common use in the early 1900s for these purposes is not the point. The question is not whether this or that special word was used but whether any words were clearly used to impose a durational term extending forever.

credulity.

Generally, "[w]hen the parties to a bargain sufficiently defined to be a contract have not agreed with respect to a term which is essential to a determination of their rights and duties, a term which is reasonable in the circumstances is supplied by the court." Restatement (Second) of Contracts § 204; *Gade v. Chittenden Solid Waste Dist.*, 2009 VT 107, ¶ 26 n.7, 187 Vt. 7 ("General principles of contract law . . . add further support for the implication of a reasonable time limit in a contract where no time limit is provided. When a contract lacks a term essential to its performance, the court may supply a reasonable term, based on the subject matter of the contract.").

No doubt, Governor Douglas's view is that a reasonable time is as long as the chapel is standing. But that is no different than imposing the perpetual durational term that the law disfavors, that the evidence does not support, and that maximizes the chance of a forfeiture.

The parties have not identified, and the court has not unearthed, any case in which a contract between a private person and a charity for the construction of a building that is burdened with a naming condition that lacks a durational term, and the court is left to say what length is reasonable. The most instructive case cited in the briefing and that the court has found is *St. Mary's Medical Center, Inc. v. McCarthy*, 829 N.E.2d 1068 (Ind. Ct. App. 2005). In that case, the terms of Ms. Cornelia Haney's will directed substantial funds to a bank in trust for the establishment of the Haney Memorial at St. Mary's Medical Center. Ms. Haney died shortly thereafter, and trust funds were used to construct a chapel at the hospital. Approximately 50 years later, the hospital determined that its expansion plans required demolition of the chapel. Daniel McCarthy, a distant relative of Ms. Haney, filed suit to enjoin the demolition. For appeal purposes, the Court assumed without deciding that Mr. McCarthy had standing to bring suit. *Id.* at 1072.

The Court first determined that the will did not contemplate the creation of a charitable trust. It then explained that the argument in support of a charitable trust amounted in the alternative to a claim of a defeasible condition-subsequent to the gift. *Id.* at 1075 ("That is, he seems to contend that the devise is revocable should St. Mary's want to destroy the chapel at any time before it collapses of its own accord after an indeterminate period of use."). From there, the Court analyzes the disfavored nature of conditions-subsequent and the reasonable duration of any such condition that lacks an express durational provision. The decision is worth quoting at length:

> Here, given the disfavor of conditions subsequent and the absence of clear reverter language or the required length of any Haney Memorial created by Haney's estate, the most that can be said of her devise to St. Mary's through her trust committee was that she and the committee expressed confidence in St. Mary's that it would "use the property so far as may be reasonable and practicable to effect the purpose of the grant." Indeed, the Chapel of Mary, Queen apparently was an integral part of St.

Mary's for nearly fifty years, until such time as the hospital's governance decided that it was no longer practicable for the chapel to remain and, in fact, was an impediment to expansion of the hospital. *We will not second-guess the reasonableness of St. Mary's determination on this point.* We also note that although charitable gifts should be encouraged so far as possible, charities themselves should not be bound to one particular use of bequeathed property for multiple generations unless they are on clear notice that such is a requirement of the bequest. [Fn. 4]

> [Fn. 4] There was evidence presented here that the Chapel of Mary, Queen could stand for another fifty to seventy-five years, if not longer. McCarthy essentially asserts that St. Mary's must allow the chapel to stand for at least that long; the wording of the trial court's order also would seem to require St. Mary's to do nothing that might hasten the chapel's demise and that it would have to wait until the chapel crumbled of its own accord before it could put the property on which it stands to another use. We decline to so hold in the absence of clear evidence that St. Mary's knew it was irrevocably tying up a substantial piece of its grounds for at least 100 to 125 years when it agreed to use the funds from Haney's estate to build the chapel.

In any event, there are Indiana cases suggesting that St. Mary's use of the chapel for nearly fifty years constituted substantial compliance with any charitable trust or condition subsequent imposed by Haney's will. For example, in [one case], the court considered the effect of a donation of real estate to a township with the condition that it be used for school purposes. The opinion holds that even if this represented a valid condition subsequent, which the court doubted, the township substantially complied with the condition by using the property for school purposes for thirty years and that it could then sell the property. . . . [In another case . . .,] the decedent bequeathed $2,000 and real estate to his brother, which pursuant to the will the brother promised to use to build a library and hall for the benefit of a church organization. Apparently, the brother died twenty years after the library and hall were built and his heirs sought to recover the property over the objections of the church organization. This court first expressed skepticism that the brother was intended to hold the property in trust for the church organization. We went on to hold that even if there had been a trust, "the purposes of the bequest were fully carried out by the erection of this building of which plaintiffs had the use and benefit for nearly 20 years, and it does not appear that they are still entitled to its use and benefit. . . .

. . . . [E]ven if there was a charitable trust or valid condition subsequent, St. Mary's use of the chapel for nearly fifty years represents substantial compliance with any such trust or condition.

Id. at 1076–1077 (citations omitted, emphasis added).

In short, at issue in St. Mary's was not merely the use of a memorial chapel but the very existence of it. The Court clearly determined that, even if there were a condition-subsequent binding the gift that paid for the chapel's construction, that condition was clearly satisfied by the passage of around 50 years, and the Court would "not second-guess the reasonableness" of the hospital's judgment as to demolition of the chapel.

By contrast, the use of the chapel in this case is not at issue, only its name, and the chapel retained its original name for well over 100 years, and approximately 100 years after Governor Mead's own death. Governor Mead contributed most of the funds supporting the initial construction of the chapel, but he did not provide funds for its indefinite maintenance, and Middlebury has determined that the time has come to change the name. In these circumstances, the court concludes that the reasonable duration of any contractual term as to the name of the chapel has been satisfied as a matter of law.

Governor Douglas's breach of contract claim fails as a matter of law.

Breach of the covenant of good faith and fair dealing

Assuming the transaction was a contract, Governor Douglas's claim based on the covenant of good faith and fair dealing remains in the case. The Vermont Supreme Court has described the implied covenant as follows:

> The covenant of good faith and fair dealing is implied in every contract; its boundaries, however, are contextual and fact-specific. It is an implied promise that protects against conduct which violates community standards of "'decency, fairness or reasonableness.'" "A cause of action for breach of the covenant of good faith can arise only upon a showing that there is an underlying contractual relationship between the parties. . . ." A breach for violation of the implied covenant may form a separate cause of action than for breach of contract, as long as the counts are based on different conduct.

Harsch Properties, Inc. v. Nicholas, 2007 VT 70, ¶ 14, 182 Vt. 196 (citations omitted). The court understands Governor Douglas's claim to address not the chapel's name-change per se but the manner by which Middlebury undertook it. In Governor Douglas's view, Middlebury unjustly tarnished Governor Mead's reputational interests in violation of the covenant.

Middlebury argues that there can be no viable claim predicated on the covenant insofar as there is no contract in which any such covenant is implied. As the court has not determined whether the transaction in this case was a gift or a contract, the court

cannot rule on that issue at this time. Otherwise, Middlebury has not sought judgment on the substance of the claim.

Unjust Enrichment

Middlebury argues that Mr. Douglas's unjust enrichment claim fails as a matter of law based on the circumstances of this case. Governor Douglas did not respond to that argument in his opposition filing. The court construes Governor Douglas's silence as a waiver and consent to judgment in Middlebury's favor on this claim.

In any event, the claim has no merit. In the complaint, Governor Douglas describes this claim as follows: "Under these facts and circumstances, it is unjust for the Defendant to strip the Mead Memorial Chapel of the Mead Family name, canceling the incredible accomplishments and altruism of a true philanthrope and important figure in Vermont history, all while retaining the many benefits that the Mead Memorial Chapel has provided to every student who has attended Middlebury College for the last century and will to the next, without commensurate compensation."

As a general matter, "Unjust enrichment is present only if: '(1) a benefit was conferred on defendant; (2) defendant accepted the benefit; and (3) defendant retained the benefit under such circumstances that it would be inequitable for defendant not to compensate plaintiff for its value.'" *Kellogg v. Shushereba*, 2013 VT 76, ¶ 31, 194 Vt. 446 (citation omitted).

As in most cases, the first two elements usually are satisfied: a benefit was conferred on Middlebury, and Middlebury accepted it. The real question is the equitable one as to whether Middlebury should retain the benefit. But Mr. Douglas nowhere explains why it would be inequitable for Middlebury to retain the benefit in the circumstances of this case. As the Restatement explains, "Unjustified enrichment is enrichment that lacks an adequate legal basis; it results from a transaction that the law treats as ineffective to work a conclusive alteration in ownership rights. Broadly speaking, an ineffective transaction for these purposes is one that is *nonconsensual*." Restatement (Third) of Restitution and Unjust Enrichment § 1 cmt. b.

Whatever the proper characterization of the underlying transaction, Governor Douglas's unjust enrichment theory does not fit the facts. If there was a contract, there can be no claim for unjust enrichment. See *id*. § 2 ("A valid contract defines the obligations of the parties as to matters within its scope, displacing to that extent any inquiry into unjust enrichment."). "Unjust enrichment . . . does not apply when the conferred benefit was a gift or voluntary payment." *Roberts v. Smith*, 801 S.E.2d 915, 921 (Ga. Ct. App. 2017).

Summary and Related Matters

Accordingly, the court is unable to determine at this time whether the underlying

transaction was a gift or a contract. Either way, Governor Douglas, on behalf of the Estate, would not be entitled to relief compelling Middlebury to retain the chapel's original name or monetary relief compensating the name change. The unjust enrichment claim has no merit. Because the transaction still could be determined to be a contract, the court cannot determine as a matter of law that there can be no claim on the covenant of good faith and fair dealing.

There thus remain two issues in this case to be resolved at trial: (1) is the transaction a gift or contract; and (2) if a contract, has Middlebury breached the covenant of good faith and fair dealing, the only claim remaining that could give rise to a remedy and, if so, what damages, if any, is the plaintiff entitled to recover.

Regarding further proceedings, the court understands that the evidence material to the first issue, though requiring a finding of fact, is essentially the same as described in this decision. Evidence material to the second issue, on the other hand, can be expected to explore deeply emotional and politicized matters, all of which will have been unnecessary to reach if the determination on the first issue is that the transaction was a gift and thus there can be no covenant claim. For that reason, any trial in this case will be bifurcated so that the first issue may be resolved before evidence necessary to the second may be presented. See V.R.C.P. 42(b).

Regarding the covenant claim, the briefing of both the dismissal and summary judgment motions has only summarily touched on the substance of the claim.[3] Because the court has determined that Middlebury is entitled to summary judgment on the breach of contract claim, contract damages will not be available in this case, even if the court ultimately determines that the parties intended a contract rather than a gift. Tort damages, however, are available to a party who proves a breach of the covenant of good faith and fair dealing. See *Monahan v. GMAC Mort. Corp.*, 2005 VT 110, ¶ 54 n. 5, 179 Vt. 167 ("cause of action for the breach of the implied covenant of good faith and fair dealing is one sounding in tort"); *Carmichael v. Adirondack Bottled Gas Corp. of Vermont*, 161 Vt. 200, 208 (1993) ("an action for [breach of the covenant of good faith and fair dealing] is really no different from a tort action"); but see *Harsch Properties, Inc. v. Nicholas*, 2007 VT 70, ¶ 17, 182 Vt. 196 ("Although claims for breach of the implied covenant take on many qualities of a tort action, these claims are not fully and exclusively torts."). Relevant examples might include damages for emotional distress or for harm to one's reputation. The court notes, however, that Governor Mead has been deceased for over a century and could not have been emotionally harmed by Middlebury's decision to remove the Mead name from the chapel. The court needs to know, therefore, what damages Governor Douglas claims to be entitled to recover in this case if he prevails on the breach of the covenant of good faith and fair dealing claim. The court will give Governor Douglas 30 days to file a brief listing the kinds of damages he intends to seek to recover and explaining the legal basis supporting the entitlement to recover such damages here. The court will give Middlebury 30 days to respond.

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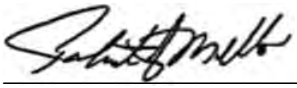
[3] Certain discovery bearing on the covenant claim is stayed at this point. See *supra* n.1 at 1.

Order

For the foregoing reasons: (1) Middlebury's motion for summary judgment is granted in part and denied in part; (2) Middlebury's renewed motion to dismiss is denied as moot; (3) the parties shall submit further briefing as set forth above; and (4) depositions will remain stayed under the July 23, 2024, order pending further order of the court.

SO ORDERED this 3rd day of October, 2024



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Superior Judge

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Filed 04/09/25
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CIVIL DIVISION
Case No. 23-CV-01214

Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead v. The President and Fellows of Middlebury College

Ruling on Middlebury's Second Motion for Summary Judgment and Governor Douglas's Rule 56(d) Motion

This case arises out of Defendant Middlebury College's decision in 2021 to remove the Mead family name from the Mead Memorial Chapel. Former Governor Mead, a Middlebury graduate himself, contributed most of the money used to construct the chapel on Middlebury's campus in the early 1900s. Following the name change, Gov. Mead's estate was reopened by the Rutland Probate Court, and former Governor Douglas was appointed special administrator, in which capacity he filed this suit claiming that the name change violates enforceable rights of the estate. Following a motion to dismiss, first summary judgment motion and renewed motion to dismiss, and amendment of the complaint, Middlebury now has filed a second summary judgment motion seeking to end this case, while Gov. Douglas argues (both in his opposition to summary judgment and in a later, separately filed Rule 56(d) "motion") that judgment would be premature, he should be permitted to engage in more discovery, and in any event the claims remaining at this point are viable.[1]

Procedural history

In his original March 24, 2023, complaint, Gov. Douglas asserted in substance four claims, as follows: (1) breach of contract; (2) beach of the implied covenant of good faith and fair dealing; (3) breach of conditional gift; and (4) unjust enrichment. The thrust of these claims was that Gov. Mead's substantial contribution of funds for the construction of the chapel came with strings attached, and Middlebury ran afoul of them by changing the name. On balance, Gov. Douglas wanted Middlebury's mind changed as to the name

[1] To be clear, Middlebury's summary judgment motion is the only one pending. In Gov. Douglas's opposition filing, in the opening paragraph, he confusingly asks the court to "DENY Defendants' motion and grant judgment as a matter of law as follows." That sentence implies that he is both opposing Middlebury's motion and requesting summary judgment in his own favor. However, the filing concludes: "WHEREFORE, Plaintiff respectfully requests that the Court Deny Defendant's Second Motion for Summary Judgment and allow Plaintiff to proceed with Discovery with regard to the claim for breach of the covenant of good faith and fair dealing and damages, which were bifurcated by the Court's prior ruling, so that Plaintiff may resume preparation for trial." No filings by anyone after this one exhibited any confusion as to whether Gov. Douglas actually intended to file a cross-motion for summary judgment. He did not.

of the chapel or, if it could not be compelled to do so, many millions of dollars as compensation.

Middlebury filed a motion to dismiss on April 28, 2023. Based on the extensive allegations of the complaint and the many documents incorporated by reference into it, Middlebury argued that there had never been any contract—the money was a gift, and the gift was not burdened by any perpetual condition as to the chapel's name. Because there was no contract, it argued, there could be no breach of the covenant of good faith in that contract. See *Carmichael v. Adirondack Bottled Gas Corp. of Vermont*, 161 Vt. 200, 208 (1993) (The covenant is an "underlying principle implied in every contract . . . that each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement."). It also argued that Gov. Douglas, as special administrator, lacked "standing" to enforce any perceived restriction on the gift as only the Attorney General would have been empowered to do so. The motion did not address the unjust enrichment claim.

The court denied Middlebury's motion to dismiss on August 4, 2023. See *Douglas v. The President and Fellows of Middlebury College*, No. 23-CV-1214, 2023 WL 11877867 (Vt. Super. Ct. Aug. 4, 2023), available at https://tinyurl.com/mr2sk5ne. It declined to resolve at that time whether the circumstances properly fall under gift or contract law, but it analyzed the issues in depth and concluded: "Whether framed under contract or gift law, proof that a perpetual naming right was intended ultimately will have to satisfy an elevated standard of clarity to be enforceable." The case then proceeded to document discovery.

On April 29, 2024, Middlebury filed its first motion for summary judgment, and it renewed its motion to dismiss on the "standing" issue. On June 3, 2024, it filed a motion for a protective order to stay depositions pending the outcome of the summary judgment motion. At this point, document discovery was complete. On July 3, 2024, the court stayed depositions on the condition that Middlebury would make its then-President (who at the time was soon to leave the College for employment elsewhere) available for a deposition if or when that time should come. See *Douglas v. The President and Fellows of Middlebury College*, No. 23-CV-1214, 2024 WL 3489548 (Vt. Super. Ct. July 3, 2024), available at https://tinyurl.com/yy2zbhtw. Middlebury readily agreed, and depositions were stayed.

In its October 3, 2024, summary judgment decision, the court again declined to decide the preliminary question of whether Gov. Mead's contribution should be analyzed under gift or contract law. See *Douglas v. The President and Fellows of Middlebury College*, No. 23-CV-1214, 2024 WL 4480091 (Vt. Super. Ct. Oct. 3, 2024), available at https://tinyurl.com/2hpjsmmv. However, the court rejected the gift law claim, explaining that, even if the transaction were treated as a gift with a perpetual condition as to the chapel's name, there would have had to be a reversionary interest expressly reserved to be enforceable now, and Gov. Douglas had not unearthed any. Middlebury's "standing" argument was premised on the transaction being a gift, so the court rejected that argument as moot. As for the principal contract claim, the court also rejected it, noting

that there was no evidence of any *perpetual* naming condition at all. It did conclude that there was a naming condition of undefined duration. However, it also determined that the condition was satisfied as a matter of law by the extreme passage of time. So, there could be no breach of any contract now. The court discussed the good faith and fair dealing claim, but did not rule on it because Middlebury had not argued the substance of that claim. The court considered the unjust enrichment claim withdrawn. The court ordered the stay on depositions to continue until further order of the court.

Following this decision, there remained three issues in the case: (1) was the transaction a gift or a contract; (2) if a contract, did Middlebury breach the covenant of good faith and fair dealing; and (3) if so, what damages, if any, could Gov. Douglas be entitled to recover if there was such a breach. The court requested further briefing on the damages question.

On October 17, 2024, Gov. Douglas filed a motion to amend the complaint, by which he proposed to withdraw the gift and unjust enrichment claims with prejudice and to add claims based on promissory estoppel and equitable estoppel. The court granted that motion on November 21, 2024. See *Douglas v. the President and Fellows of Middlebury College*, No. 23-CV-1214, 2024 WL 5104327 (Vt. Super. Ct. Nov. 21, 2024), available at https://tinyurl.com/2whkvr4y.

In the amended complaint, Gov. Douglas describes the covenant claim as follows:

> 193. Defendant has breached the covenant of good faith and fair dealing by removing the name "Mead" from the Chapel in direct defiance of its covenant and the expectation that the College will act honestly and reasonably in the faithful pursuit of the agreed common purpose of the contract.
>
> 194. Defendant has acted in bad faith with improper motive and with wanton disregard for the rights of the Plaintiff, scapegoating a man for the college's public relations purposes and destroying the Mead family name while erasing John Mead's lifetime of accomplishments and philanthropy that benefitted the State of Vermont and its people as well as generations of Middlebury College students.[2]

The promissory and equitable estoppel claims are asserted in a conclusory fashion. The thrust of the former appears to be that Middlebury promised that the chapel would be

[2] The "improper motive," as alleged by Gov. Douglas, is that Middlebury removed the Mead name from the chapel to distract attention from its historical involvement in the eugenics movement in favor drawing unwarranted attention to Gov. Mead's involvement in it, which was quite limited. Middlebury deeply disagrees with Gov. Douglas's characterizations of such facts. In prior decisions, the court has not needed to enter the fray as to that matter, and this decision is no different. Nor is there any need for the court to join any broader debate about the propriety of judging historical figures by contemporary standards. Those are weighty matters about which many people reasonably feel passionately. The court takes no position in this case.

named the Mead Memorial Chapel in perpetuity and Gov. Mead relied on that. The equitable estoppel claim appears to be the same.

Gov. Douglas submitted his further briefing as to damages on the covenant claim on November 4, 2024; Middlebury filed its on December 2, 2024. In his filing, Gov. Douglas asserts: "Plaintiff claims Compensatory Damages including, but not limited to, diminution in value of benefit of his bargained-for consideration, lost time and opportunities, litigation costs and expenses, and attorneys' fees under the 'bad faith' exception to the American Rule." See *DJ Painting, Inc. v. Baraw Enterprises*, Inc., 172 Vt. 239, 246 (2001) (The "American Rule," which has exceptions, is that the "parties must bear their own attorneys' fees."). He then says he also seeks punitive damages. The filing does little to explain how a breach of the covenant, if one were found, would properly lead to any of these damages.

Middlebury's pending summary judgment motion

On December 2, 2024, Middlebury filed its second motion for summary judgment, which addresses all remaining claims. As to the covenant claim, Middlebury suggests that Gov. Douglas is claiming as breaches of the covenant (1) that the name of the chapel was changed, and (2) that it disparaged the Mead family name in the course of changing the chapel's name (causing reputational harm). It argues that the first alleged breach is not viable because the covenant has to depend on facts that are not strictly a breach of the contract, and the asserted contract here was to maintain the Mead name on the chapel.

As to the second asserted breach, Middlebury argues that, as a general matter, there can be no recovery for defaming a dead person. Moreover, the parties never agreed to any sort of anti-disparagement agreement, and any voluntary waiver of First Amendment rights would have had to be clear and unequivocal, contentions that Gov. Douglas does not dispute.

More generally, Middlebury notes that the purpose of the covenant is to ensure that the parties to the contract do not "undermine or destroy the other's rights to receive the benefits of the agreement," rather than to impose new terms on the contract. Middlebury objects that the court already has ruled that by the time the name was removed from the building, Middlebury had satisfied any contractual obligations it had. There were no benefits of the agreement remaining that any perceived disparagement could have undermined. In sum, Middlebury argues that the covenant claim is inappropriately untethered to the agreement the parties allegedly actually had. Finally, to the extent that the breach is premised on "improper motivations," Middlebury argues that motivations alone are insufficient to establish a breach.

As to the promissory estoppel claim, Middlebury argues that the record that did not reveal evidence of a perpetual promise as to the name of the chapel for contract law purposes does not for promissory estoppel purposes either. Even if it somehow did, it argues, there would be no injustice in not enforcing it well over 100 years later. Finally,

it argues that promissory estoppel cannot be asserted in the context of a bargained-for gift or exchange.

As to equitable estoppel, Middlebury argues that Gov. Douglas is asserting it in an identical manner as his promissory estoppel claim. It further notes that equitable estoppel can only be asserted defensively and must refer to reliance on a past or present representation, not a promise as to something in the future.

In response to all this, Gov. Douglas argues in support of all the remaining claims. He also says this:

> As the Court will recall, it has bifurcated Discovery in this case such that no Discovery has been conducted on the claim for breach of good faith and fair dealing. Consequently, Plaintiff is completely "in the dark" with regard to the actions and decision of the Defendant to strip the Mead name from the Mead Memorial Chapel. Absurdly, Defense Counsel makes the argument that Plaintiff has no factual basis to allege bad faith conduct by the Defendant. That is because we have not had the opportunity to discovery [sic] those facts nor to ask the Defendant the most basic questions such as what information was gathered, considered, or discussed, and what information was not. How was the decision made and by whom. Was Mead blatantly and intentionally used as a scape goat to divert attention away from Middlebury College, which was "all in" on teaching Eugenics for the first half of the 20th century.
>
> All of these questions remain; thus, it would be patently unfair and a deprivation of due process for the Court to rule on a Summary Judgment motion on the claim of breach of good faith and fair dealing, when Plaintiff has been prevented from gathering any facts or evidence, from which to establish Defendant's bad faith conduct. Instead, Plaintiff is left to make inferences and hypothesize at the Defendant's actions and motivations, including ill will and bad motive, based upon one press release and the discovery of Middlebury College's shocking half-century of Eugenics teaching, before, during, and after the Holocaust. Therefore, Defendant's motion is premature and Plaintiff requests that the Court defer judgment on the Breach of Good Faith and Fair Dealing claim, until Plaintiff has a full and fair opportunity to conduct Discovery.

In other words, he is seeking to conduct more discovery—depositions, the only form of discovery that ever was stayed—before the court rules Middlebury's motion.[3]

Gov. Douglas does further articulate the nature of the covenant claim as follows:

> The ultimate issue regarding the breach of the covenant of good faith

[3] The stay never extended to interrogatories.

> and fair dealing is whether, in light of all of the facts and circumstances, Middlebury College acted in bad faith when it erroneously proclaimed that the Mead Memorial Chapel was named in honor of John Abner Mead and then engaged in its hypocritical public relations smear campaign to scapegoat Governor Mead and use him as a subterfuge to conceal the fact that Middlebury College was literally, a Eugenicist factory, for over 50 years, "espous[ing] inhumane policies that are uniformly condemned today," and teaching Eugenics principles until years after the atrocities of the Holocaust were fully known.
>
> Regardless of whether there was a breach of the express terms of the contract, Defendant breached the Covenant of Good Faith and Fair Dealing implicit in that contract, because Middlebury College's smear campaign against Governor Mead interfered with, completely frustrated, and caused the cancelation of Mead's essential purpose in erecting the Chapel: to memorialize his ancestors and honor them for their devotion to their Christian faith and as a symbol of the simplicity and strength of character of Vermonters. And furthermore, Defendant's breach was effectuated for a bad motive: to serve the selfish ends of the College's marketing team who used Governor Mead as a scapegoat, overemphasizing his role, and using him to create a smokescreen to obscure the vile history of Middlebury College as a racist and antisemitic institution.

He also now characterizes the contract as an agreement "to honor and symbolize the Mead ancestors who settled and brought Christianity to the valley."

As to promissory estoppel, Gov. Douglas appears to argue that this claim is supported by the same "promise" that gave rise to the contract claim, but then generally asserts that if the duration has been too long for contract law purposes, no such limit applies to the equitable formulation of the claim because the name was intended to be on the building "forever," and the court can use its equitable powers to make it so.

As to equitable estoppel, Gov. Douglas argues that it can be asserted affirmatively as a legal claim. He does not, however, clearly distinguish this claim from his promissory estoppel claim.

Middlebury then filed a reply, Gov. Douglas filed a sur-reply, and then he filed a "motion" pursuant to Rule 56(d), more formally requesting that the court resist ruling on Middlebury's summary judgment motion until he can conduct more discovery. In his sur-reply, he for the first time asserts clearly that his covenant claim is *not* based on reputational harm:

> Contrary to Defendant's repeated false assertions and "spin" which seeks to mischaracterize Plaintiff's claims, Plaintiff's Good Faith and Fair Dealing claim is premised not upon harm to John Abner Mead's reputation, but upon the Defendant's actions in unfairly, dishonestly, or without

reasonable grounds, removing the Mead name under false pretenses, thereby interfering with the essential purpose of the Mead Memorial Chapel contract: to symbolize, honor and MEMORIALIZE the Mead ancestors. Plaintiff is alleging that Defendant's actions were unfair, dishonest, or without reasonable grounds, and that such actions effectively destroyed and/or voided Defendant's performance of the Contract and adherence to Defendant's Good Faith and Fair Dealing obligations.

Gov. Douglas's request for relief under Rule 56(d)

Rule 56(d) provides as follows: "If [the party opposing summary judgment] shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or to take discovery; or (3) issue any other appropriate order." This rule is a safety valve if, for example, the motion is filed before crucial discovery has been undertaken. Gov. Douglas argued that is exactly the case here in his opposition filing, though he filed no affidavit documenting the need for more discovery. Once briefing was complete, he then filed a motion requesting the same relief and supported it with an affidavit.

The court declines to defer a ruling on Middlebury's motion in favor of more discovery. The Court never "bifurcated" discovery such that "no Discovery has been conducted on the claim for breach of good faith and fair dealing." The court stayed depositions only; document discovery long has been complete. For there to be any covenant claim, there first must be a contract, the terms of which inform the viability and breadth of any covenant claim. Establishing those contract terms is foundational to any covenant claim. If there is a contract in this case, all evidence of it would appear in records around the time of its formation over 100 years ago. There are no witnesses left to testify about the matter. As articulated by Gov. Douglas, his primary intention for depositions now is to explore the private motivations of those who may have been involved in some way in the decision to change the chapel's name or who made statements about it. He does little to explain how those private motivations, whatever they may be, are essential to any viable covenant claim, and as set forth below, the court concludes that they are not. A covenant claim cannot be predicated on bad faith in the abstract; it must be grounded in the terms of the contract from which it springs.

Procedural standard

Summary judgment procedure is "an integral part of the . . . Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Morrisseau v. Fayette*, 164 Vt. 358, 363 (1995) (citation omitted). Summary judgment is appropriate if the evidence in the record shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. V.R.C.P. 56(a); *Gallipo v. City of Rutland*, 163 Vt. 83, 86 (1994) (summary judgment will be granted if, after adequate time for discovery, a party fails to make a showing sufficient to establish an essential element of the case on which the party will bear the burden of

proof at trial). A party opposing summary judgment may not simply rely on allegations in the pleadings to establish a genuine issue of material fact. Instead, it must come forward with evidence to establish such a dispute. *Murray v. White*, 155 Vt. 621, 628 (1991). Speculation is insufficient. *Palmer v. Furlan*, 2019 VT 42, ¶ 10, 210 Vt. 375.

The facts material to Middlebury's motion are undisputed. As the court put it in the first summary judgment decision: "The parties take issue with certain of each other's characterizations of facts, and they draw different inferences, but the record is purely documentary, historical, and undisputed in all material respects." *Douglas v. The President and Fellows of Middlebury College*, No. 23-CV-1214, 2024 WL 4480091, at *2 (Vt. Super. Ct. Oct. 3, 2024), available at https://tinyurl.com/2hpjsmmv. The material facts are fundamentally the same now as they were for purposes of the first summary judgment decision. In that decision, the court exhaustively presented the core narrative leading to the controversy between the parties. There is no need to duplicate that narrative here. The reader is referred to the October 3 decision for a more specific description of the facts.

The covenant claim

The Vermont Supreme Court very recently summarized the covenant of good faith and fair dealing in Vermont as follows:

> "An underlying principle implied in every contract is that each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement." The implied covenant extends to "actions taken in fulfillment of a contract" and "actions taken in terminating a contract and winding up the contractual relationship between the parties." Good faith and fair dealing is "[c]ontextual and fact-specific," and accordingly "is ordinarily a question of fact."
>
> To the extent that [Plaintiff's] claim for breach of the implied covenant is duplicative of his breach-of-contract claim, it cannot be sustained as a matter of law. "Where a party alleges both breach of contract and breach of the implied covenant of good faith and fair dealing, dual causes of action are permitted only where the different actions are premised on different conduct." . . . Although [Plaintiff] adds that the negotiations were for a higher price, simply providing the motivations for [Defendant's] alleged breach [of contract] is insufficient to establish that the two causes of action are premised on different conduct.

Beldock v. VWSD, LLC, 2023 VT 35, ¶¶ 52–53, 218 Vt. 144 (citations omitted). "Generally, an implied duty of good faith and fair dealing 'is not understood to interpose new obligations about which the contract is silent, even if inclusion of the obligation is thought to be logical and wise.'" *Downtown Barre Development v. C & S Wholesale Grocers, Inc.*, 2004 VT 47, ¶ 18, 177 Vt. 70; see also 17A C.J.S. Contracts § 454 ("The implied covenant of good and fair dealing cannot contradict, modify, negate, or override

the express terms of a contract. Furthermore, the implied covenant or duty of good faith and fair dealing does not create rights or duties beyond those agreed to by the parties, does not supply terms to the contract the parties were free to negotiate, but did not, or interpose new obligations about which the contract is silent, even if the inclusion of the obligation is thought to be logical and wise." (footnotes omitted)).

The covenant claim is premised on removing the Mead name from the chapel and the alleged motivations behind doing that, along with any related statements that may be perceived to have "smeared" the Mead name. Assuming that this could be a viable claim, Gov. Douglas has failed to demonstrate that he could be entitled to any remedy for it. He mainly appears to seek impermissible compensation for reputational injuries, yet he expressly denies any such characterization of his claim. Otherwise, he seeks litigation costs to "right the wrong" (which would have to be something other than disparagement) perpetrated by Middlebury, damages for the "diminution in value of [the] benefit of his bargained-for consideration," and attorney fees either as damages for the covenant claim or to penalize Middlebury's asserted bad faith litigation conduct.

Other than disparagement—i.e., reputational harm—the only evident harm would appear to be the removal of the Mead name itself. It is entirely unclear how the removal of the name, at a point in time when the contract, if there was one, no longer required Middlebury to maintain it, could possibly lead to an award of litigation costs or other compensatory damages to "right the wrong." Damages for diminution in value of the benefit provided by the contract would appear to be a remedy for the breach of the contract, not the covenant. And, Gov. Douglas's claim for damages for "lost time and opportunities" goes completely unexplained.

As to attorney fees, though there can be exceptional circumstances, they generally are not awarded as part of a recovery for breach of the covenant of good faith and fair dealing absent an exception to the American Rule. See *Monahan v. GMAC Mortg. Corp.*, 2005 VT 110, ¶ 82, 179 Vt. 167; see also *Dahua Tech. USA, Inc. v. Feng Zhang*, No. CV 18-11147-RWZ, 2020 WL 829918, at *1 (D. Mass. Feb. 19, 2020); *In re New York Skyline, Inc.*, 471 B.R. 69, 89, 56 Bankr. Ct. Dec. 138, 2012 WL 1658355 (Bankr. S.D.N.Y. 2012); *TE Prods. Pipeline Co., LLC v. Rockford Homes, Inc.*, No. 2:07-CV-00673, 2009 WL 10679677, at *4 (S.D. Ohio Oct. 19, 2009); *Maestas v. Cardinal Health PTS, LLC*, No. CV 05-242 JH/ACT, 2005 WL 8163865, at *3 n.1 (D.N.M. July 18, 2005).

One exception to the American Rule applies to bad faith litigation conduct, which Gov. Douglas also relies on as a basis for an award of fees. As the Vermont Supreme Court has explained, a "court may use its equitable powers to award attorney's fees 'in exceptional cases based on the bad-faith conduct of litigants.' 'This power must be exercised with cautious restraint, however—only in those exceptional cases where justice demands an award of attorney's fees, such as where a party is unjustly forced to endure a second round of litigation.'" *O'Rourke v. Lunde*, 2014 VT 88, ¶ 33, 197 Vt. 360 (citation omitted). It is unclear what Gov. Douglas classifies as bad faith litigation conduct in this case as there is no indication of any whatsoever in the record. There is no viable path to an award of attorney fees in this case.

Apart from the failure to identify a viable remedy, the covenant claim lacks merit in substance. If there was a contract in this case, the asserted bargain struck was that Governor Mead would provide the funds used to construct the chapel in exchange for the right to have the chapel named the Mead Memorial Chapel for an indeterminate length of time. The court already has ruled that, if there was such a contract, Middlebury satisfied the naming condition at some point well before 2021, when the name was removed from the building. That is the law of the case.

To the extent that Gov. Douglas is claiming that removing the name in 2021 itself breached the covenant, that claim is duplicative of the breach of contract claim, and thus has no merit. *See Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 53, 218 Vt. 144 (2023) ("To the extent that Beldock's claim for breach of the implied covenant is duplicative of his breach-of-contract claim, it cannot be sustained as a matter of law. 'Where a party alleges both breach of contract and breach of the implied covenant of good faith and fair dealing, dual causes of action are permitted only where the different actions are premised on different conduct.'" (citation omitted)).

To the extent that he claims that the contract was breached with bad motivations, bad motivations alone are insufficient to demonstrate a separate covenant claim. See *id.* ("Although he adds that the negotiations were for a higher price, simply providing the motivations for VWSD's alleged breach [of contract] is insufficient to establish that the two causes of action [breach of contract and the covenant] are premised on different conduct."); *Ferrisburgh Realty Invs. v. Schumacher*, 2010 VT 6, ¶ 26, 187 Vt. 309 ("FRI identifies no conduct distinct from that supporting the breach of contract claim; it focuses solely on Schumacher's motivation for the breach [for purposes of the covenant claim].").

More importantly, to have a viable covenant claim, Gov. Douglas first must establish that Gov. Mead's estate remained entitled in 2021 to some benefit from the contract that Middlebury's conduct in 2021 undermined. That he cannot do because Gov. Mead (or his estate) had by then received all the benefit that he could have been entitled to—naming rights for an indeterminate but by then expired duration—before the name was removed. There was no benefit left to receive. To the extent that Middlebury retained the Mead name on the chapel longer than the alleged contract required, it did so gratuitously. Perceived disparagement at some later date could not have undermined any benefit of the bargain. As such, it is clear that Gov. Douglas is using the covenant claim argue bad faith purely in the abstract or to "interpose new obligations about which the contract is silent." There was no non-disparagement agreement. There was no agreement to waive free speech rights.

Gov. Douglas also appears to be treating the fact that the chapel was conceived as a "memorial" to double as an affirmative duty on Middlebury's part to never disparage the family name (or to always honor it, as he puts it). If that were the case, then Middlebury would have breached the covenant by disparaging the Mead name even if the name of the chapel had never been changed. It also would have breached the covenant by disparaging the Mead name even if everyone agreed that Gov. Mead truly deserved it.

This extrapolation has no basis in the record.

Regardless how one views removing the Mead name from the chapel or judgments about historical figures based on contemporary standards, the restriction on free speech at the heart of Gov. Douglas's covenant claim should have been agreed to by the parties if that in any way was the goal of the agreement. See *SKI, Ltd. v. Mountainside Properties, Inc.*, 2015 VT 33, ¶ 26, 198 Vt. 384 ("We will not rewrite the contract, nor graft conditions onto an unambiguous contractual provision merely because the passage of time and the course of development have led the parties to positions they had not anticipated."); see also *Kantor v. Kantor*, 379 P.3d 1080, 1090 (Idaho 2016) ("[C]ourts do not possess the roving power to rewrite contracts in order to make them more equitable." (citation omitted)); *Nationwide Emerging Managers, LLC v. Northpointe Holdings, LLC*, 112 A.3d 878, 897 (Del. 2015) ("An interpreting court cannot use an implied covenant to re-write the agreement between the parties, and 'should be most chary about implying a contractual protection when the contract could easily have been drafted to expressly provide for it.'" (citations omitted)). There is no evidence of any such agreement in the record.

As the court remarked earlier in the litigation, it remains highly likely that neither Gov. Mead nor Middlebury's representatives, leading up to the construction of the chapel, ever harbored any expectation whatsoever that the day might come 100 years later in which the College would decide to remove the Mead name from the chapel. No doubt, at the June 1914 ceremony—"Breaking Ground for the Mead Memorial Chapel and Presentation of the Corner Stone"— Gov. Mead's 3-year-old grandson placed his Bible and the family tree dating to the original settler Colonel James Mead into a box inside the Cornerstone. There can be little doubt that, apart from merely the name of the chapel, all involved closely identified the chapel with the Meads.

Nevertheless, the record contains no evidence that the parties ever agreed to any perpetual naming condition, any sort of non-disparagement agreement, or any contract at all that possibly could have remained in force in 2021 such that its implied covenant of good faith and fair dealing could then have been breached. Middlebury is entitled to summary judgment on this claim.

Promissory estoppel

Gov. Douglas's promissory and equitable estoppel claims are offered as alternatives to his contract and covenant claims. The promissory estoppel claim appears to be that—if there is no contract—there at least was a promise to keep the name on the building *forever* or as long as the building exists, and Gov. Mead relied on that promise to his detriment. "Establishment of promissory estoppel requires (1) a promise on which the promisor reasonably expects the promisee to take action or forbearance of a substantial character; (2) the promise induced a definite and substantial action or forbearance; and (3) injustice can be avoided only through the enforcement of the promise." *Green Mountain Inv. Corp. v. Flaim*, 174 Vt. 495, 497 (2002); see also *Dillon v. Champion Jogbra, Inc.*, 175 Vt. 1, 10 (2002) (noting that the claim requires "a promise of

a specific and definite nature."); accord *State Bank of Standish v. Curry*, 500 N.W.2d 104, 108 (Mich. 1993) ("[T]he sine qua non of the theory of promissory estoppel is that the promise be clear and definite."). "The doctrine of promissory estoppel applies 'where there is no contract, where the promise is gratuitous, and there is unbargained-for reliance.'" *Hayes v. Town of Manchester Water & Sewer Boards*, 2014 VT 126, ¶ 37, 198 Vt. 92 (2014).

The court already has ruled that if there was a promise binding Middlebury, it was for an unspecified duration, not forever or as long as the building exists, and that period expired prior to 2021. Gov. Douglas offers no cogent reason why reframing that claim under the rubric of promissory estoppel could lead to any different conclusion. The lack of any evidence of such a promise is determinative. This claim lacks merit. It is unnecessary to address the other elements.

Equitable estoppel

The court is unable to distinguish Gov. Douglas's equitable estoppel claim from his promissory estoppel claim; it appears to be entirely duplicative. Historically, the doctrine of promissory estoppel emerged out of the older doctrine of equitable estoppel. Promissory estoppel is equitable estoppel premised on a *promise* rather than on a *past or present representation*. 4 Williston on Contracts § 8:4 (4th ed.). One court has distinguished the doctrines as follows:

> Equitable estoppel is essentially a doctrine of waiver. . . . Promissory estoppel, in contrast with equitable estoppel, does not establish waiver but, rather, substitutes for consideration in a case where there are no mutual promises, enabling the promisee to assert a separate claim against the promisor, independent of any other claim he may have against the promisor (e. g., subrogation or misrepresentation) or another person (e. g., negligence) and, therefore, makes applicable the statute of limitations governing the time for bringing an action for breach of contract.

Huhtala v. Travelers Ins. Co., 257 N.W.2d 640, 647 (Mich. 1977) (footnote omitted). Another court explains:

> Equitable estoppel involves, generally speaking, an affirmative misrepresentation of a present fact or state of facts and detrimental reliance by another thereon.
>
> Promissory estoppel, on the other hand, generally does not involve a misrepresentation but a promise by one party upon which another relies to his detriment and which the promisor should reasonably have foreseen would cause the promisee to so rely. . . . . It operates not in regard to a past or presently existing state of facts, but rather to a situation which one party promises will be true in the future.

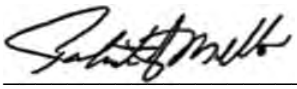
Tiffany Inc. v. W. M. K. Transit Mix, Inc., 493 P.2d 1220, 1224 (Ariz. Ct. App. 1972) (citations omitted). By asserting an equitable estoppel claim premised on a promise, Gov. Douglas has simply re-asserted promissory estoppel. Gov. Douglas's promissory estoppel claim, as set forth above, lacks merit.

Middlebury also argues that equitable estoppel, as a form of waiver, is not a legal claim; it is properly asserted defensively only. Gov. Douglas concedes that the doctrine normally is defensive in nature, but he cites one Vermont case in support of his argument that it can be asserted affirmatively as a claim: *In re Langlois/Novicki Variance Denial*, 2017 VT 76, 205 Vt. 340. In that case, a town zoning administrator told a landowner that specific development proposed by the landowner did not need a permit, the landowner relied on that representation, and the town later brought an enforcement action against the landowner for not having a permit in response to which the landowner asserted equitable estoppel based on the zoning administrator's representation that no permit was needed for his new pergola. That is the traditional defensive assertion of equitable estoppel, not an assertion of equitable estoppel itself as a legal claim for relief.

Order

For the foregoing reasons, Gov. Douglas's Rule 56(d) motion is denied, and Middlebury's motion for summary judgment is granted.

SO ORDERED this 9th day of April, 2025,



Robert A. Mello
Superior Judge

Vermont Superior Court
Filed 04/09/25
Addison Unit

VERMONT SUPERIOR COURT
Addison Unit
7 Mahady Court
Middlebury VT 05753
802-388-7741
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 23-CV-01214

Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead v. The President and Fellows of Middlebury College

ENTRY REGARDING MOTION

Title:	Defendant's Second Motion for Summary Judgment; Plaintiff's Rule 56(d) Motion (Motions: 19; 22)
Filer:	Justin B. Barnard; L. Brooke Dingledine
Filed Date:	December 02, 2024; February 14, 2025

For reasons explained in the Court's ruling of April 9, 2025, Plaintiff's Rule 56(d) motion is DENIED and Defendant's second motion for summary judgment is GRANTED.

Electronically signed on 4/9/2025 9:45 AM, pursuant to V.R.E.F. 9(d)

Robert A. Mello
Superior Judge

Vermont Superior Court
Filed 04/09/25
Addison Unit

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CIVIL DIVISION
Case No. 23-CV-01214

Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead v. The President and Fellows of Middlebury College

Final Judgment

Middlebury's second motion for summary judgment having been granted, the court hereby enters judgment on all claims in Middlebury's favor.

SO ORDERED this 9th day of April, 2025

Robert A. Mello
Superior Judge

Vermont Superior Court
Filed 05/08/25
Addison Unit

STATE OF VERMONT - CIVIL DIVISION

CASE SUMMARY

CASE NO. 23-CV-01214

Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead v. The President and Fellows of Middlebury College § § § §

Location: **Addison Unit**
Filed on: **03/24/2023**

CASE INFORMATION

File Date 03/24/2023

Case Type: **Contract - Other**

Filed By Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead

Filed Against The President and Fellows of Middlebury College

Case Status: **05/08/2025 Disposed - Appeal Pending**

Cause of Action
Claim

Description/Remedy
Action
The President and Fellows of Middlebury College

Related Cases
23-AP-362 (Appeal to Supreme Court)

Statistical Closures
04/09/2025 Non Trial Disposition

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	23-CV-01214
Court	Addison Unit
Date Assigned	03/24/2023

PARTY INFORMATION

		Attorneys
Plaintiff	**Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead**	**Dingledine, L. Brooke** *Retained* 802-476-4181(W) lbrooke@vdmlaw.com
Defendant	**The President and Fellows of Middlebury College**	**Barnard, Justin B.** *Retained* 802-864-5751(W) jbarnard@dinse.com
Interested Party	**Zavalidroga, Tomas** Removed: 10/06/2023 Removed	

DATE — EVENTS & ORDERS OF THE COURT — INDEX

03/24/2023 **Cause of Action** Claim (The President and Fellows of Middlebury College)

Filed By	Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead
Filed Against	The President and Fellows of Middlebury College
Action Type	Action

03/24/2023 Civil Complaint
Filed by: Attorney Dingledine, L. Brooke

03/24/2023 **Return of Service**
The President and Fellows of Middlebury College

Served: 03/24/2023

03/24/2023 Summons Filed
Filed by: Attorney Dingledine, L. Brooke
Summons & Self Rep form

03/24/2023 Initial Filing - Civil
Complaint

03/24/2023 Exhibit List
Filed by: Attorney Dingledine, L. Brooke
Plaintiff's Exhibit List

03/24/2023 Exhibits
Filed by: Attorney Dingledine, L. Brooke
Exhibit 1 - Offer-Acceptance

03/24/2023 Exhibits
Filed by: Attorney Dingledine, L. Brooke
Exhibit 2 - Groundbreaking Ceremony

03/24/2023 Exhibits
Filed by: Attorney Dingledine, L. Brooke
Exhibit 3 - Mead Chapel Construction & Costs

03/24/2023 Exhibits
Filed by: Attorney Dingledine, L. Brooke
Exhibit 4 - Dedication Ceremony

03/24/2023 Exhibits
Filed by: Attorney Dingledine, L. Brooke
Exhibit 5 - Fundraising, Marketing & Chapel Booklet

03/24/2023 Exhibits
Filed by: Attorney Dingledine, L. Brooke
Exhibit 6 - Mead Chapel

03/24/2023 Exhibits
Filed by: Attorney Dingledine, L. Brooke
Exhibit 7 - Removal of the Mead Chapel Name

03/24/2023 Exhibits
Filed by: Attorney Dingledine, L. Brooke
Exhibit 8 - Mead's Life

03/24/2023 Jury Trial Request - Civil
Filed by: Attorney Dingledine, L. Brooke
Jury Trial Request - Civil

03/24/2023 Certificate of Service
Filed by: Attorney Dingledine, L. Brooke
Party Srvd: Defendant The President and Fellows of Middlebury College

03/24/2023

	Return of Service - Complaint Filed by: Attorney Dingledine, L. Brooke Party Served: Defendant The President and Fellows of Middlebury College *for The President & Fellow of Middlebury College*	
03/31/2023	Notice of Attorney's Appearance Filed by: Attorney Barnard, Justin B. Representing: Defendant The President and Fellows of Middlebury College	
03/31/2023	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke *Notice of Attorney's Appearance*	
03/31/2023	Motion for Extension of Time Filed by: Attorney Barnard, Justin B. *to Respond to Complaint - Assented*	*Index # 1*
03/31/2023	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke *Motion for Extension of Time to Respond to Complaint - Assented*	
03/31/2023	Acceptance of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Defendant The President and Fellows of Middlebury College *by The President & Fellows of Middlebury College with Request for Jury Trial*	
04/03/2023	Summons Filed Filed by: Attorney Dingledine, L. Brooke *for The President & Fellows of Middlebury College - Executed*	
04/03/2023	Return of Service - Complaint Filed by: Attorney Dingledine, L. Brooke Party Served: Defendant The President and Fellows of Middlebury College *for The President & Fellows of Middlebury College*	
04/13/2023	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
04/13/2023	Judge Recused (Judicial Officer: Fenster, David R.)	
04/13/2023	Entry Regarding Motion - Granted (Judicial Officer: Zonay, Thomas A.) Motion #: 1	
04/13/2023	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Motion for Extension of Time (Granted)*	
04/28/2023	Motion to Dismiss Filed by: Attorney Barnard, Justin B. *Complaint*	*Index # 2*
04/28/2023	Exhibit List Filed by: Attorney Barnard, Justin B. *w/Exhibits*	

05/18/2023	Document(s) Filed *ASSIGNMENT AND DESIGNATION OF RETIRED JUDGE*	
05/19/2023	Motion for Extension of Time Filed by: Attorney Dingledine, L. Brooke *for Response to Motion to Dismiss - Assented*	*Index # 3*
05/19/2023	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B.	
05/22/2023	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
05/22/2023	Motion with Judge (Judicial Officer: Mello, Robert A.) Motion #: 3	
05/22/2023	Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.) Motion #: 3	
05/22/2023	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Motion for Extension of Time for Response to Motion to Dismiss*	
05/26/2023	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
05/26/2023	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Notice of Hearing 7/21/23, Webex Hearing Instructions*	
06/13/2023	Motion for Extension of Time Filed by: Attorney Dingledine, L. Brooke *to Respond to Motion to Dismiss- Second Assented to*	*Index # 4*
06/13/2023	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B.	
06/13/2023	Motion with Judge (Judicial Officer: Mello, Robert A.) Motion #: 4	
06/14/2023	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
06/14/2023	Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.) Motion #: 4	
06/14/2023	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Motion for Extension of Time to Respond to Motion #2*	
06/19/2023	Memorandum in Opposition Motion #: 2 Filed by: Attorney Dingledine, L. Brooke	

	to Motion to Dismiss	
06/19/2023	Exhibit List Filed by: Attorney Dingledine, L. Brooke *w/exhibit to Opposition to Motion to Dismiss (plaintiff)*	
06/19/2023	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B. *Memorandum in Opposition to Motion to Dismiss*	
06/20/2023	Exhibit List Filed by: Attorney Dingledine, L. Brooke *w/exhibits to Opposition to Motion to Dismiss*	
06/20/2023	Exhibits Filed by: Attorney Dingledine, L. Brooke *10 - 1908 Middlebury College Catalogue*	
06/20/2023	Exhibit List Filed by: Attorney Dingledine, L. Brooke *w/Exhibits 9,10 (entire doc - files reduced/optimzed) Opp to Mot to Dismiss*	
06/20/2023	Exhibit List Filed by: Attorney Dingledine, L. Brooke *w/Exhibits 11, 15 for Opp to Motion to Dismiss*	
06/20/2023	Exhibit List Filed by: Attorney Dingledine, L. Brooke *w/Exhibit 21 for Opp. to Motion to Dismiss*	
06/22/2023	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
06/22/2023	Motion for Extension of Time Filed by: Attorney Barnard, Justin B. *to File Reply in Support of Motion to Dismiss - Assented*	*Index # 5*
06/22/2023	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke *Motion to Extend Time to File Reply in Support of Motion to Dismiss - Assented (defendant)*	
06/22/2023	Motion with Judge (Judicial Officer: Mello, Robert A.) Motion #: 5	
06/22/2023	Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.) Motion #: 5	
06/22/2023	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Motion for Extension of Time to Reply*	
07/14/2023	Reply Number: 2	

	Filed by: Attorney Barnard, Justin B. *Middlebury College's Reply in Support of Motion to Dismiss*	
07/14/2023	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke	
07/21/2023	**Oral Argument** (9:00 AM) (Judicial Officer: Mello, Robert A. ;Location: Addison Superior Court Courtroom 1) Events: 04/28/2023 Motion to Dismiss **MINUTES** Hearing Held (Judicial Officer: Mello, Robert A.) *Hybrid* Hearing Held; *Hearing Held* *Parties Present: Attorney Dingledine, L. Brooke* *Attorney Barnard, Justin B.*	
07/21/2023	Hearing Held (Judicial Officer: Mello, Robert A.) *Hybrid*	
07/21/2023	Hearing Notes *The motion will be taken under advisement.*	
07/21/2023	Motion Under Advisement (Judicial Officer: Mello, Robert A.) Motion #: 2	
08/04/2023	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
08/04/2023	Entry Regarding Motion - Denied (Judicial Officer: Mello, Robert A.) Motion #: 2	
08/04/2023	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Motion to Dismiss*	
08/17/2023	Motion for Extension of Time to Answer Filed by: Attorney Barnard, Justin B. *, Assented-to*	*Index # 6*
08/17/2023	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke *Certificate of Service 8-17-23*	
08/18/2023	ADR Stip Filed by: Attorney Dingledine, L. Brooke *ADR Stipulation*	
08/21/2023	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
08/21/2023	Motion with Judge (Judicial Officer: Mello, Robert A.) Motion #: 6	
08/21/2023	Sent to Judge (Judicial Officer: Mello, Robert A.)	

08/21/2023	Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.) Motion #: 6	
08/21/2023	ADR Order Issued (Judicial Officer: Mello, Robert A.) *Mediation Due 6/14/24, Trial Ready 6/14/24, 2 Day Jury*	
08/21/2023	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Motion for Extension of Time to Answer - Assented, Order - ADR Stipulation*	
08/31/2023	Answer Filed by: Defendant The President and Fellows of Middlebury College *Answer to Complaint*	
08/31/2023	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke	
09/08/2023	Motion to Intervene Filed by: Interested Party Zavalidroga, Tomas	*Index # 7*
09/18/2023	Motion to Intervene Filed by: Interested Party Zavalidroga, Tomas *AMENDED*	*Index # 8*
09/18/2023	Exhibits Filed by: Interested Party Zavalidroga, Tomas *A - Document Titled "The Catholic Center at UVM"*	
09/19/2023	Memorandum in Opposition Motion #: 8 Filed by: Attorney Barnard, Justin B. *to Motion to Intervene*	
09/19/2023	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke; Interested Party Zavalidroga, Tomas *Memorandum in Opposition to Motion to Intervene #8*	
09/19/2023	Memorandum in Opposition Motion #: 8 Filed by: Attorney Dingledine, L. Brooke *to Motion to Intervene*	
09/19/2023	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B.; Interested Party Zavalidroga, Tomas *Memorandum in Opposition to Motion to Intervene #8*	
10/04/2023	Motion with Judge (Judicial Officer: Mello, Robert A.) Motion #: 8	
10/05/2023	Discovery Certificate	

	Filed by: Attorney Barnard, Justin B. *DEF's 1st Set of Interrogatories & Request for Production*	
10/06/2023	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
10/06/2023	Entry Regarding Motion - Denied (Judicial Officer: Mello, Robert A.) Motion #: 8	
10/06/2023	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Motion to Intervene*	
10/30/2023	Letter Sent Sent To: Interested Party Zavalidroga, Tomas *First Class Mail. Entry re: Motion 8.*	
10/30/2023	Note *Tomas Zavalidroga called to provide a mailing address to the court.*	
10/31/2023	Letter Sent Sent To: Interested Party Zavalidroga, Tomas *Entry re: Motion 8 sent to Tomas Zavalidroga per request/ emailed to: store2821@theupsstore.com*	
11/03/2023	Notice of Appeal to Supreme Court Appellant: Interested Party Zavalidroga, Tomas Appellee: Plaintiff Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead; Defendant The President and Fellows of Middlebury College	
11/07/2023	Letter Sent Sent To: Interested Party Zavalidroga, Tomas *Notice to Correct Filing, Blank Application to Waive Filing Fees and Costs/ Mailed To: 300 Seminary St Manchester, VT 05254*	
11/10/2023	Motion to Dismiss Filed by: Attorney Barnard, Justin B. *Appeal*	*Index # 9*
11/10/2023	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke *Motion to Dismiss Appeal*	
11/15/2023	Discovery Certificate Filed by: Attorney Dingledine, L. Brooke *Plaintiff's Answers to Written Discovery*	
11/28/2023	Motion with Judge (Judicial Officer: Mello, Robert A.) Motion #: 9	
12/05/2023	Document(s) Filed Filed by: Attorney Barnard, Justin B. *Middlebury College's Withdrawal of Motion to Dismiss Appeal*	
12/05/2023	Certificate of Service Filed by: Attorney Barnard, Justin B.	

	Party Srvd: Attorney Dingledine, L. Brooke; Interested Party Zavalidroga, Tomas	
12/05/2023	Motion Withdrawn Motion #: 9 Filed by: Attorney Barnard, Justin B.	
12/15/2023	Discovery Certificate Filed by: Attorney Dingledine, L. Brooke *PLF's 1st & 2nd Discovery Requests*	
12/29/2023	Note *Appeal Sent back-Appeal Dismissed for failure to comply with Court's order dated 12/12/23.*	
01/23/2024	Discovery Certificate Filed by: Attorney Dingledine, L. Brooke *Plaintiff's expert disclosures and Amended Answers to discovery*	
02/23/2024	Discovery Certificate Filed by: Attorney Barnard, Justin B. *Defendant's Responses to Plaintiff's First and Second Sets of Discovery Requests*	
04/03/2024	Returned Mail Party: Interested Party Zavalidroga, Tomas *Entry Regarding Motion to Intervene*	
04/03/2024	Returned Mail Party: Interested Party Zavalidroga, Tomas *Notice to Correct Filing*	
04/17/2024	ADR Stip Filed by: Attorney Barnard, Justin B. *Amended Discovery / Alternate Dispute Resolution Stipulation*	
04/17/2024	Motion to Amend Filed by: Attorney Barnard, Justin B. *Discovery Schedule, Joint*	*Index # 10*
04/17/2024	Motion with Judge (Judicial Officer: Mello, Robert A.) Motion #: 10	
04/18/2024	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
04/18/2024	Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.) Motion #: 10	
04/18/2024	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Joint Motion to Amend Discovery Schedule*	
04/29/2024	Exhibit List Filed by: Attorney Barnard, Justin B.	
04/29/2024	Motion for Summary Judgment Filed by: Attorney Barnard, Justin B.	*Index # 11*

04/29/2024	Statement of Material Facts Filed by: Attorney Barnard, Justin B. *Middlebury's Statement of Undisputed Material Facts*	
05/01/2024	Discovery Certificate Filed by: Attorney Dingledine, L. Brooke *Notice of Deposition Middlebury College President Laurie L. Patton*	
05/10/2024	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
05/10/2024	Motion for Extension of Time Filed by: Attorney Dingledine, L. Brooke *to respond to Summary Judgment Motion, Assented-To*	*Index # 12*
05/10/2024	Discovery Certificate Filed by: Attorney Dingledine, L. Brooke *Amended Discovery Certificate - Depo of Patton held in abeyance*	
05/10/2024	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B.	
05/10/2024	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B.	
05/10/2024	Motion with Judge (Judicial Officer: Mello, Robert A.) Motion #: 12	
05/10/2024	Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.) Motion #: 12	
05/10/2024	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Motion for Extension of Time to Respond to Motion for Summary Judgment*	
06/03/2024	Motion Filed by: Attorney Barnard, Justin B. *for Protective Order*	*Index # 13*
06/03/2024	Exhibits Filed by: Attorney Barnard, Justin B. *Exhibits A - C*	
06/13/2024	Motion for Extension of Time Filed by: Attorney Dingledine, L. Brooke *to Respond, Second Assented*	*Index # 14*
06/13/2024	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B.	
06/13/2024	Motion with Judge (Judicial Officer: Mello, Robert A.)	

	Motion #: 14	
06/18/2024	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
06/18/2024	Response Number: 13 Filed by: Attorney Dingledine, L. Brooke *to Motion for Protective Order*	
06/18/2024	Response Number: 13 Filed by: Attorney Dingledine, L. Brooke *to Motion for Protective Order*	
06/18/2024	Exhibits Filed by: Attorney Dingledine, L. Brooke *1 - DEF's Response & Objections to PLF's 2nd Set of Discovery Requests*	
06/18/2024	Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.) Motion #: 14	
06/18/2024	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Second Assented Motion for Extension of Time to Respond*	
06/21/2024	Reply to Motion Motion #: 13 Filed by: Attorney Barnard, Justin B. *Middlebury's Reply in Support of Motion for Protective Order*	
06/21/2024	Motion with Judge (Judicial Officer: Mello, Robert A.) Motion #: 13	
07/03/2024	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
07/03/2024	Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.) Motion #: 13	
07/03/2024	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Motion for Protective Order*	
07/03/2024	Response Filed by: Attorney Barnard, Justin B. *Middlebury's Response to July 2, 2024 Order*	
07/03/2024	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke	
07/15/2024	Motion for Extension of Time Filed by: Attorney Dingledine, L. Brooke *to File Summary Judgment/Motion to Dismiss Response / 3rd (for 1 business day)*	*Index # 15*

07/15/2024	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B. *Motion for Extension of Time to File Summary Judgment/Motion to Dismiss Response / 3rd (for 1 business day)*
07/16/2024	Motion with Judge (Judicial Officer: Mello, Robert A.) Motion #: 15
07/18/2024	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*
07/18/2024	Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.) Motion #: 15
07/18/2024	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Entry Regarding Motion for Extension of Time 3rd*
07/20/2024	Exhibits Filed by: Attorney Dingledine, L. Brooke *16 - Mead Chapel Plans - Misc. Group 1*
07/20/2024	Exhibits Filed by: Attorney Dingledine, L. Brooke *17 - Mead Chapel Plans - Misc. Group 2*
07/22/2024	Response to Statement of Material Facts Filed by: Attorney Dingledine, L. Brooke *Undisputed*
07/22/2024	Certificate of Service Filed by: Attorney Dingledine, L. Brooke *Response to Statement of Undisputed Material Facts*
07/22/2024	Exhibit List *for Summary Judgment & Motion to Dismiss*
07/22/2024	Exhibit List *for Summary Judgment & Motion to Dismiss*
07/22/2024	Exhibits Filed by: Attorney Dingledine, L. Brooke *1 - 15 & 18 - 54*
07/22/2024	Exhibits Filed by: Attorney Dingledine, L. Brooke *#55*
07/22/2024	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B. *Exhibit List w/Exhibits*
07/23/2024	Document(s) Filed

Filed by: Attorney Dingledine, L. Brooke
Plaintiff's Additional Statement of Undisputed Material Facts

07/23/2024 Motion for Extension of Time *Index # 16*
Filed by: Attorney Dingledine, L. Brooke
to Filed Summary Judgement/Motion to Dismiss / 4th

07/23/2024 Certificate of Service
Filed by: Attorney Dingledine, L. Brooke
Party Srvd: Attorney Barnard, Justin B.
Motion for Extension of Time to Filed Summary Judgement/Motion to Dismiss / 4th

07/24/2024 Memorandum in Opposition
Motion #: 11
Filed by: Attorney Dingledine, L. Brooke
to Motion for Summary Judgment and Dismiss

07/25/2024 Memorandum in Opposition
Motion #: 11
Filed by: Attorney Dingledine, L. Brooke
to Motion for Summary Judgment & Dismiss - AMENDED

07/25/2024 Exhibit List
Filed by: Attorney Dingledine, L. Brooke
Amended w/Exhibit Ex. 56

07/25/2024 Certificate of Service
Filed by: Attorney Dingledine, L. Brooke
Party Srvd: Attorney Barnard, Justin B.
Memorandum in Opposition to Motion for Summary Judgment & Dismiss - Amended

08/05/2024 Memorandum in Support
Motion #: 11
Filed by: Attorney Barnard, Justin B.
Middlebury College's Reply in Support of Summary Judgment

08/05/2024 Response to Statement of Material Facts
Filed by: Attorney Barnard, Justin B.
Middlebury College's Response to Plaintiff's Statement of Additional Undisputed Material Facts

08/05/2024 Motion with Judge (Judicial Officer: Mello, Robert A.)
Motion #: 11

08/12/2024 Sent to Case Parties
Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard

08/12/2024 Notice to Parties
Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B.
9/17 NOH and Webex info

09/17/2024 **Oral Argument** (11:00 AM) (Judicial Officer: Mello, Robert A. ;Location: Addison Superior Court Courtroom 2)
Events: 04/29/2024 Motion for Summary Judgment

MINUTES

	Hearing Held - Oral Argument (Judicial Officer: Mello, Robert A.) *Hybrid* Hearing Notes Hearing Held; *Hearing Held* *Parties Present: Attorney Dingledine, L. Brooke* *Attorney Barnard, Justin B.*	
09/17/2024	Hearing Held - Oral Argument (Judicial Officer: Mello, Robert A.) *Hybrid*	
09/17/2024	Hearing Notes	
10/03/2024	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
10/03/2024	Entry Regarding Motion - Granted in Part and Denied in Part (Judicial Officer: Mello, Robert A.)	
10/03/2024	Entry Regarding Motion - Moot (Judicial Officer: Mello, Robert A.) Motion #: 16	
10/03/2024	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Ruling on Middlebury's Motion for SummarRuling on Middlebury's Motion for Summary Judgment* *and Renewed Motion to Dismissy Judgment* *and Renewed Motion to Dismiss*	
10/17/2024	Motion to Amend Complaint Filed by: Attorney Dingledine, L. Brooke	*Index # 17*
10/17/2024	Motion for Interlocutory Appeal Filed by: Attorney Dingledine, L. Brooke	*Index # 18*
10/17/2024	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B. *Motion to Amend Complaint*	
10/17/2024	Document(s) Filed Filed by: Attorney Dingledine, L. Brooke *First Amended Complaint - REDLINE*	
10/17/2024	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B. *Motion for Interlocutory Appeal*	
10/31/2024	Memorandum in Opposition Motion #: 17 Filed by: Attorney Barnard, Justin B. *Middlebury College's Opposition to Plaintiff's Motion to Amend Complaint*	
10/31/2024	Memorandum in Opposition Motion #: 18	

Filed by: Attorney Barnard, Justin B.
Middlebury College's Opposition to Plaintiff's Motion for Interlocutory Appeal

10/31/2024 Affidavit
Filed by: Attorney Barnard, Justin B.
Declaration of Justin Barnard

10/31/2024 Certificate of Service
Filed by: Attorney Barnard, Justin B.
Party Srvd: Attorney Dingledine, L. Brooke

10/31/2024 Certificate of Service
Filed by: Attorney Barnard, Justin B.
Party Srvd: Attorney Dingledine, L. Brooke

11/04/2024 Document(s) Filed
Filed by: Attorney Dingledine, L. Brooke
Plaintiff's Brief Regarding Damages for Breach of the Covenant of Good Faith and Fair Dealing

11/04/2024 Certificate of Service
Filed by: Attorney Dingledine, L. Brooke
Party Srvd: Attorney Barnard, Justin B.
Plaintiff's Brief Regarding Damages for Breach of the Covenant of Good Faith and Fair Dealing

11/05/2024 Motion with Judge (Judicial Officer: Mello, Robert A.)
Motion #: 18

11/05/2024 Motion with Judge (Judicial Officer: Mello, Robert A.)
Motion #: 17

11/14/2024 Reply to Memo in Opposition
Motion #: 17
Filed by: Attorney Dingledine, L. Brooke
to Motion to Amend Complaint

11/14/2024 Certificate of Service
Filed by: Attorney Dingledine, L. Brooke
Party Srvd: Attorney Barnard, Justin B.
Reply to Memo in Opposition to Motion to Amend Complaint

11/14/2024 Exhibits
Filed by: Attorney Dingledine, L. Brooke
A & B

11/21/2024 Sent to Case Parties
Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard

11/21/2024 Notice to Parties
Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B.
Ruling on Governor Douglas's Motion to Amend and Motion for Interlocutory Review

11/21/2024 Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.)
Motion #: 17

11/21/2024	Entry Regarding Motion - Denied (Judicial Officer: Mello, Robert A.) Motion #: 18	
11/26/2024	Amended Complaint Filed by: Attorney Dingledine, L. Brooke *First Amended Complaint*	
11/27/2024	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B.	
12/02/2024	Motion for Summary Judgment Filed by: Attorney Barnard, Justin B. *Second*	*Index # 19*
12/02/2024	Statement of Material Facts Filed by: Attorney Barnard, Justin B. *Undisputed*	
12/02/2024	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke *Motion for Summary Judgment / Second*	
12/02/2024	Exhibit List Filed by: Attorney Barnard, Justin B. *with Exhibits A - N to SUMF*	
12/02/2024	Response Filed by: Attorney Barnard, Justin B. *to Plaintiff's Brief Re Damages for Breach of the Covenant of Good Faith*	
12/02/2024	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke *Response to Plaintiff's Brief Re Damages for Breach of the Covenant of Good Faith*	
12/03/2024	Answer Filed by: Defendant The President and Fellows of Middlebury College *by Defendant to First Amended Complaint*	
12/03/2024	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke *Answer by Defendant to First Amended Complaint*	
12/30/2024	Motion for Extension of Time Filed by: Attorney Dingledine, L. Brooke *for Response to 2nd Motion for Summary Judgment - Assented*	*Index # 20*
12/30/2024	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B. *Motion for Extension of Time for Response to 2nd Motion for Summary Judgment - Assented*	

12/31/2024	Motion with Judge (Judicial Officer: Barra, David A.) Motion #: 20	
01/03/2025	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
01/03/2025	Entry Regarding Motion - Granted (Judicial Officer: Barra, David A.) Motion #: 20 *Deadline for Motion 19 extended to January 9th 2025*	
01/03/2025	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Deadline to Reply to Motion 19 extended until January 9th*	
01/09/2025	Exhibit List Filed by: Attorney Dingledine, L. Brooke *for 2nd Motion for Summary Judgment w/Exhibits 1 - 16*	
01/09/2025	Exhibit List Filed by: Attorney Dingledine, L. Brooke *for 2nd Motion for Summary Judgment w/Exhibits 51-58*	
01/09/2025	Exhibit List Filed by: Attorney Dingledine, L. Brooke *for 2nd Motion for Summary Judgment w/Exhibits 17-50*	
01/09/2025	Exhibit List Filed by: Attorney Dingledine, L. Brooke *for 2nd Motion for Summary Judgment w/ Exhibits 59-68*	
01/09/2025	Exhibit List Filed by: Attorney Dingledine, L. Brooke *for 2nd Motion for Summary Judgment Exhibits 69-71*	
01/09/2025	Response to Statement of Material Facts Filed by: Attorney Dingledine, L. Brooke *Undisputed / 2nd Motion for Summary Judgment*	
01/09/2025	Statement of Material Facts Filed by: Attorney Dingledine, L. Brooke *Additional Undisputed / 2nd Motion for Summary Judgment*	
01/10/2025	Note	
01/10/2025	Memorandum in Opposition Motion #: 19 Filed by: Attorney Dingledine, L. Brooke *to 2nd Motion for Summary Judgment*	
01/10/2025	Statement of Material Facts Filed by: Attorney Dingledine, L. Brooke *Additional Undisputed*	
01/15/2025		*Index # 21*

	Motion Filed by: Attorney Barnard, Justin B. *to Extend Time to File Reply in Support of Motion for Summary Judgment, Assented-To*	
01/15/2025	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke	
01/17/2025	Sent to Case Parties *Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard*	
01/17/2025	Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.) Motion #: 21 *Motion for Extension of Time - Granted*	
01/17/2025	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B. *Motion to Extend time to File Reply - Granted*	
02/07/2025	Motion with Judge (Judicial Officer: Barra, David A.) Motion #: 19	
02/07/2025	Reply Number: 19 Filed by: Attorney Barnard, Justin B. *Middlebury College's Reply in Support of its Second Motion for Summary Judgment*	
02/07/2025	Response to Statement of Material Facts Filed by: Attorney Barnard, Justin B. *Response to Pltf's Statement of Additional Undisputed Material Facts*	
02/07/2025	Certificate of Service Filed by: Attorney Barnard, Justin B. Party Srvd: Attorney Dingledine, L. Brooke	
02/14/2025	Motion Filed by: Attorney Dingledine, L. Brooke *Rule 56(d) Motion re: Defendant's Motion for Summary Judgment*	*Index # 22*
02/14/2025	Sur Reply Number: 19 Filed by: Attorney Dingledine, L. Brooke *Plaintiff's Surreply to 2nd MSJ*	
02/14/2025	Affidavit Filed by: Attorney Dingledine, L. Brooke	
02/14/2025	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B.	
02/14/2025	Certificate of Service Filed by: Attorney Dingledine, L. Brooke Party Srvd: Attorney Barnard, Justin B.	

02/18/2025 Sent to Case Parties
Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard

02/18/2025 Notice to Parties
Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B.
NOH and Webex Info

02/28/2025 Memorandum in Opposition
Motion #: 22
Filed by: Attorney Barnard, Justin B.
to Plaintiff's Rule 56(d) Motion

02/28/2025 Certificate of Service
Filed by: Attorney Barnard, Justin B.
Party Srvd: Attorney Dingledine, L. Brooke
Memorandum in Opposition to Plaintiff's Rule 56(d) Motion

02/28/2025 Motion with Judge (Judicial Officer: Mello, Robert A.)
Motion #: 22
Added to Oral Arguements Summary Judgement Motion (19)

03/14/2025 Reply to Memo in Opposition
Motion #: 22
Filed by: Attorney Dingledine, L. Brooke
Plaintiff's Reply to Memo in Opposition to Rule 56(d) Motion

03/14/2025 Certificate of Service
Filed by: Attorney Dingledine, L. Brooke
Party Srvd: Attorney Barnard, Justin B.

03/17/2025 Motion Under Advisement (Judicial Officer: Mello, Robert A.)
Motion #: 22

03/21/2025 **Oral Argument** (10:00 AM) (Judicial Officer: Mello, Robert A. ;Location: Addison Superior Court Courtroom 1)
Events: 12/02/2024 Motion for Summary Judgment

MINUTES
Hearing Held (Judicial Officer: Mello, Robert A.)
Remote
Hearing Held;
Hearing Held
Parties Present: Attorney Dingledine, L. Brooke
Attorney Barnard, Justin B.

03/21/2025 Hearing Held (Judicial Officer: Mello, Robert A.)
Remote

03/24/2025 Motion Under Advisement (Judicial Officer: Mello, Robert A.)
Motion #: 19

04/09/2025 Sent to Case Parties
Automated by RIS for SOP processing - L. Brooke Dingledine, Justin B. Barnard

04/09/2025 **Statistical Closure**
Non Trial Disposition

04/09/2025	Entry Regarding Motion - Granted (Judicial Officer: Mello, Robert A.) Motion #: 19
04/09/2025	Entry Regarding Motion - Denied (Judicial Officer: Mello, Robert A.) Motion #: 22
04/09/2025	Order (Judicial Officer: Mello, Robert A.) *Ruling on Middlebury's Second Motion for Summary Judgment and Governor Douglas's Rule 56(d) Motion*
04/09/2025	Order (Judicial Officer: Mello, Robert A.) *Ruling on Middlebury's Second Motion for Summary Judgment and Governor Douglas's Rule 56(d) Motion*
04/09/2025	Final Judgment Order (Judicial Officer: Mello, Robert A.)
04/09/2025	**Judgment for Defendant** Claim : The President and Fellows of Middlebury College Judgment Awarded To: The President and Fellows of Middlebury College Awarded Against: Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead Total Judgment: $0.00 Current Judgment Status: Status: Judgment Approved
04/09/2025	Notice to Parties Recipients: Attorney Dingledine, L. Brooke; Attorney Barnard, Justin B.
04/09/2025	Case Closed
05/08/2025	Notice of Appeal to Supreme Court Appellant: Attorney Dingledine, L. Brooke *Notice of Appeal*

DATE	FINANCIAL INFORMATION	
	Interested Party Zavalidroga, Tomas	
	Total Charges	0.00
	Total Payments and Credits	0.00
	Balance Due as of 05/08/2025	**0.00**
	Plaintiff Hon. James H. Douglas, Special Administrator of the Estate of John Abner Mead	
	Total Charges	590.00
	Total Payments and Credits	590.00
	Balance Due as of 05/08/2025	**0.00**

FILED: 11/26/2024 4:28 PM
Vermont Superior Court
Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
Plaintiff	)
v.	)
	)
The President and Fellows of	)
Middlebury College	)
Defendant	)

FIRST AMENDED COMPLAINT

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and hereby complains against Defendant, The President and Fellows of Middlebury College alleging the following facts and causes of action regarding:

The "Mead Memorial Chapel" at Middlebury College (1916-2021)

"A scapegoat remains effective as long as we believe in its guilt." --Rene Girard

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I. Introduction

1. ln 1914, to commemorate the 50th Anniversary of his graduation from Middlebury College, Dr. John Abner Mead, former Governor of Vermont, wrote to the President of his alma mater, Middlebury College, offering:

> *. . . to erect a chapel to serve as a place of worship for the college,* ***the same to be known as the "Mead Memorial Chapel."*** I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, *and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.*
>
> Ex. 1-001 (*emphasis supplied*).

2. Mead then told of his great-great-grandfather, James Mead, Rutland's first settler, "who brought the first…Holy Bible into this unbroken wilderness," and of his great-great-grandmother, Mercy Holmes Mead, who gathered the pioneers of the immediate area for the first Christian service in the Otter Creek Valley and shared fellowship with the local Native Americans. Mead's Letter recounted their lives as embodying the simplicity, strength of character, and religious faith that Mead envisioned the Mead Memorial Chapel would symbolize:

> . . . ***With this memory ever present,*** it has been my hope and prayer that I might be able and permitted to build for this college a suitable place for divine worship and *that it might rise from the highest point on its campus as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth.*
>
> Ex. 1-001 (*emphasis supplied*).

3. The Middlebury College Trustees unreservedly and enthusiastically accepted Dr. Mead's offer, with the explicit understanding that the Chapel was to be known as the "Mead Memorial Chapel."

4. Built of finely dressed Vermont marble and placed on the highest point on campus as Dr. Mead directed, the "Mead Memorial Chapel" stands not only as the most dominant building on the campus, but has become an iconic feature of Middlebury's landscape, serving as the flagship for the College's identity, branding, marketing and merchandizing. Indeed, it is the face of Middlebury College for audiences to whom the College directs its promotional literature and videos:

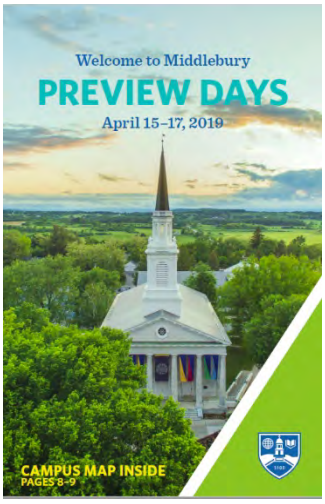
		
Exhibit 5 – 009.	Exhibit 5 – 009.	Exhibit 5 – 009.

Exhibit 5 – 009.	Exhibit 5 – 009.
Exhibit 5 – 009.	Exhibit 5 – 009.

5. For more than a century, the Mead Memorial Chapel has been home to student performances, guest lectures, religious services, weddings, baptisms, funerals, and annual events like Convocation and Baccalaureate. Over the years, it has welcomed Academy Award winners, Nobel laureates, and pillars of art, business, and science for discussions, readings, and panels.

Ex. 5 – 008 - vintage postcard:
"When Chapel is Over"
Midd. College, Middlebury Vt."

6. Despite this storied past, in the early morning hours of Monday, Sept. 27, 2021, Middlebury College removed the wooden "Mead Memorial Chapel" sign, which hung unobtrusively in a niche above the entrance of the Chapel, identifying the College's house of worship and "Meeting House" for community gatherings for the past 105 years.

Ex. 7 – 002.

Ex. 7 – 003.

7. The College issued no warning that the name would be removed, held no public discussion, and offered no hint that such a dramatic change would occur. Instead, the College issued a statement only after the deed was done, announcing that the Mead Memorial Chapel would "no longer bear the name John Mead, Vermont governor from 1910 to 1912 and Middlebury Class of 1864, due to [Governor Mead's] role in promoting eugenics policies in the state that led to the involuntary sterilization of an estimated 250 people." This language makes a grossly distorted claim of the type that has become all too common in the current "cancel culture" in which we live. Such a claim is not what one would expect from an internationally renowned liberal arts college.

8. Nor is the erroneous claim that the College was removing "the name John Mead" from the Mead Memorial Chapel. The Chapel was not named for John Mead, nor was it built to honor or memorialize John Mead. Instead, it was erected by John Mead and named the "Mead Memorial Chapel," in memory of the Mead family ancestors who embodied the values that were symbolized by the Chapel itself. It was with this understanding that the Trustees explicitly accepted a Chapel that would be known as the "Mead Memorial Chapel."

9. In removing the Mead name from the Chapel, the College has not only breached that agreement and promise, but has obliterated any memory of the selfless acts and the altruistic contributions John Mead made to his nation, state, county, town, church, and to Middlebury College itself. In short, Middlebury College has "canceled" John Abner Mead, forever disparaged and

vilified his family name, and replaced his legacy with a narrative that brands Governor Mead a eugenicist and proclaims him responsible for the tragic sterilization of Vermonters and Native peoples.

10. The unwarranted accusation conflates historical events that occurred two decades apart, declaring Mead responsible for legislation enacted 19 years after his Farewell Address and more than a decade after his death. Middlebury College's stripping of "John Mead's name" from the Mead Memorial Chapel makes Governor Mead a scapegoat and does a disservice to his memory, the good works he performed throughout his lifetime, and particularly the love and devotion he showed to Middlebury College.

11. The Mead Memorial Chapel was not a memorial <u>to</u> Governor John Abner Mead. Nor was the naming of the Mead Chapel some honor bestowed upon a big-money donor. Instead, Governor Mead built the Mead Memorial Chapel as a place for divine worship and a Meeting House for the Middlebury College Community.

12. He designed it to symbolize the simplicity and character of the people of the Otter Creek Valley and the State of Vermont and named it the "Mead Memorial Chapel" to memorialize *the Mead family ancestors*, who embodied that strength of character and who brought Christian faith, fellowship, and community to early Vermont.

13. The basis for the furtive removal of Mead's name was the Governor's support, in his Farewell Address of 1912, for proposals to restrict the issuance

of marriage licenses and to appoint a commission to study the use of a new operation called a vasectomy, which was a safer and more humane process of sterilization. However, the claim that Mead's 1912 comments caused sterilizations to happen two or three decades later is factually baseless and legally unjust.

14. Middlebury College has proclaimed that Governor Mead was a eugenicist and has implied, without evidence, that racism motivated his proposals. These charges are without merit and they belie everything we know about Mead's life, the medical, military, and public services he performed, as well as his generous philanthropy to his college, church, and the broader community.

15. This "culture cancellation" and the College's erasure of Governor Mead's good deeds and lifelong contributions contradict the very purpose of the College. A higher education institution exists to pursue truth and knowledge, not to erase history.

16. More importantly, Middlebury College has violated the sacred trust that Dr. Mead placed in the Trustees of his beloved alma mater, breaking the promises they made and depriving him and his family of the benefit of his bargain, the quid pro quo, and/or the conditions of his gift: that Mead would erect a chapel to be known forever as the "Mead Memorial Chapel."

II. Parties and Venue

17. On June 17, 2022, the Vermont Superior Court, Rutland Unit, Probate Division, in the matter of the *Estate of John Mead*, Case No. 22-PR-02895, appointed the Honorable James H. Douglas as Special Administrator of the Estate of John Abner Mead, granting him full authority to represent the Estate in this litigation.

18. Plaintiff, the Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, is a resident of the Town of Middlebury, County of Addison and State of Vermont.

19. Defendant, The President and Fellows of Middlebury College is a Vermont Non-profit Corporation chartered on November 1, 1800 and doing business as Middlebury College, with its principal place of business in the Town of Middlebury, County of Addison and State of Vermont.

20. The President and Fellows of Middlebury College, more familiarly known as the Board of Trustees, holds ultimate legal and fiduciary responsibility for all assets and operations of Middlebury College.

21. Venue is proper pursuant to 12 V.S.A. §402(a).

III. Defendant Middlebury College

22. Middlebury is a liberal arts college of the first rank, an achievement that is the result of a process of growth and change that began in 1800, when a few men of the town of Middlebury took upon themselves the challenge of

building a college in a small New England town, on what was then the American frontier.

23. Over the more than two centuries since it was established, Middlebury has developed from "the town's college" into an institution of international renown with a $1.518 billion endowment as of 2021.

24. Middlebury's original purpose was to train young men from Vermont and neighboring states for the ministry and other learned professions of the early 19th century. The College began modestly, with seven students enrolling in November 1800. These first students were expected "to read, translate, and parse Tully, Virgil, and the Greek Testament, and to write true Latin in prose, and shall have also learned the rules of Vulgar Arithmetic." The College's founding president, Jeremiah Atwater, who had come to Middlebury from Yale, taught the entire course of study.

25. Gamaliel Painter, one of the citizens of Middlebury to whom the College charter had been granted, left most of his estate to the College. Mr. Painter's gift was an early example of the philanthropic support for Middlebury College that has enabled the institution to prosper. In recognition of his gift, West College, a new building completed a few years prior to Painter's death in 1819, was renamed Painter Hall. Painter Hall is the oldest college building extant in Vermont.

26. Vermont was one of the first colonies to ban slavery and the first state to abolish slavery in its constitution. In 1823, Alexander Twilight graduated

from Middlebury, the first African American citizen to earn a baccalaureate degree at an American college.

27. Middlebury College continued to grow during the 19th century. The growth was sporadic, however, as the College was not immune to the social and political movements that were affecting northern New England generally. Rocked by evangelical upheaval and religious revival in the 1830s and the Civil War in the 1860s, Middlebury managed to keep its doors open during a period when many small colleges in America were forced to close. In large part, the College survived because of the support of its many friends, both in the town of Middlebury and in the surrounding region.

28. In 1883, the Trustees voted to accept women as students in the College, making Middlebury one of the first formerly all-male liberal arts colleges in New England to become coeducational. In the following years, Middlebury College began to change from an institution primarily oriented toward its community and its state to a college with larger regional aspirations. President Ezra Brainerd (who held that office from 1885 to 1908) prepared the College for this transformation, and spectacular change occurred under the administration of President John Thomas (1908 to 1921), who established the Language Schools and the Bread Loaf School of English during his presidency.

29. During the second decade of the 20th century, the College's enrollment more than doubled, and the number of buildings, the size of the

faculty, and the value of the endowment tripled. At the same time, the College adapted its curriculum to the needs of the new century.

30. During the 1930s, 1940s, and 1950s, Middlebury continued its development toward a position of prominence among liberal arts colleges in the United States. Continued growth in the faculty meant the addition of new subjects to the curriculum and an enhanced academic reputation for the College. New residence halls, academic buildings, and library facilities were added to the physical plant. Middlebury's expansion was coupled with increases in financial resources and the establishment of a tradition of prudent financial administration, including the cultivation of resources for the long term.

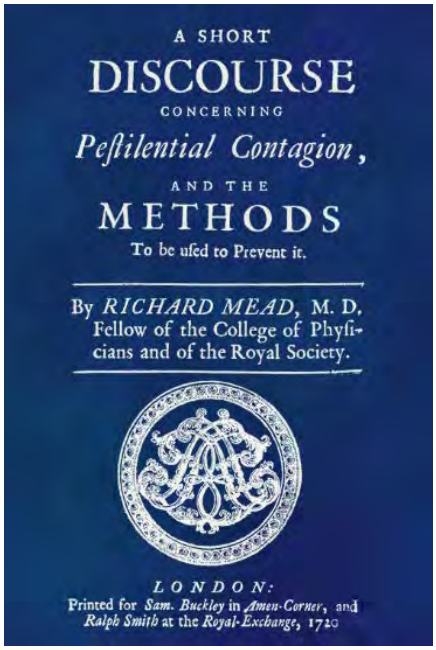
IV. Plaintiff's Decedent John Abner Mead

31. John Abner Mead (April 20, 1841 – January 12, 1920) was a Vermont physician, businessman, politician, and philanthropist who served as Vermont's 47th Lieutenant Governor from 1908 to 1910, and Vermont's 53rd Governor from 1910 to 1912.

32. Mead was a graduate of Middlebury College, Class of 1864. In 1914, on the 50th anniversary of his graduation, he offered to erect the "Mead Memorial Chapel," an offer the Trustees of the College eagerly and unequivocally accepted.

A. <u>The Mead Family Ancestry</u>

33. John Abner Mead was of English descent, with notable ancestry. Westminster Abbey houses a memorial to one of his ancestors, Richard Mead, M.D. (1673-1754) who was one of the leading physicians of his day, an expert on poisons, scurvy, smallpox and public health. Dr. Richard Mead attended Queen Anne, was physician to King George II, and treated Sir Isaac Newton and the French painter Antoine Watteau as patients. His work, *A Short Discourse concerning Pestilential Contagion, and the Method to be used to prevent it* (1720), was of historic importance in the understanding of transmissible diseases:


A SHORT
DISCOURSE
CONCERNING
Peſtilential Contagion,
AND THE
METHODS
To be uſed to Prevent it.

By *RICHARD MEAD*, M. D.
Fellow of the College of Phyſi-
cians and of the Royal Society.

LONDON:
Printed for *Sam. Buckley* in *Amen-Corner*, and
Ralph Smith at the *Royal-Exchange*, 1720

Ex. 8–038 to 053.

34. Another ancestor, Colonel Richard K. Mead was aide-de-camp to General Washington from 1777 to 1783 and was with the commander-in-chief

in all his principal battles. The Right Reverend William Mead, Bishop of Virginia, was of the same family.

35. John Abner Mead's great-great-grandfather, Colonel James Mead (1730-1804), was a notable pioneer and Rutland's first settler. He and his wife, Mercy Holmes Mead, were the parents of the first child of European descent born in the Otter Creek Valley. He served as the first Moderator and first Selectman of the Town of Rutland and first Representative from Rutland to the first Vermont Legislature. He was a distinguished patriot of his day, serving as a Colonel of the 3rd Regiment of Vermont Militia during the Revolutionary War.

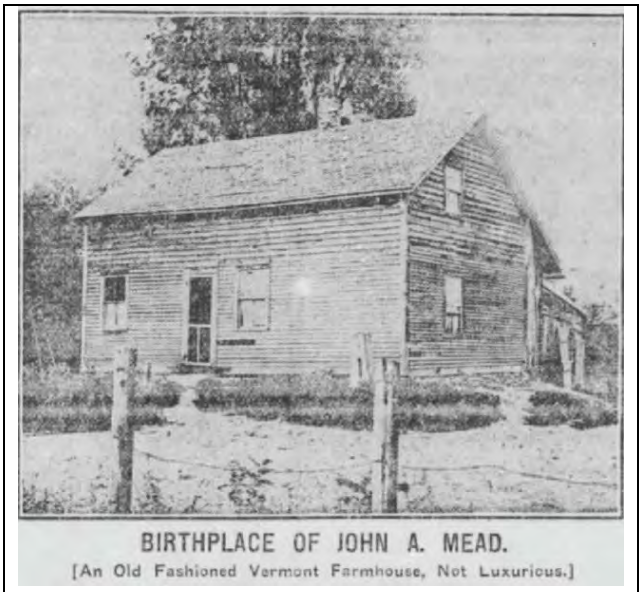
36. Colonel James Mead's historic contributions are memorialized by the Vermont Division for Historic Preservation's Historic Marker at Mead's Falls and in an 1848 landscape painting of Mead's Falls by Fredric Edwin Church, which hangs in the White House:

Ex. 8-009 - VT Div Historic Preservation Marker Mead's Falls	Ex. 8-010 - "Rutland (Mead's) Falls" (1848) By Fredric Edwin Church

B. John Mead's Early Life and Education

37. John Abner Mead's father, Rowley R. Mead (1818–1875), was born in West Rutland. In 1839, at age 21, Rowley Mead moved to Fair Haven and settled on a small farm there, marrying Lydia Ann Gorham (1818-1841).

38. John Abner Mead was born on April 20, 1841. His mother, Lydia Ann Gorham Mead, went into a decline soon after giving birth and died weeks later, on August 11, 1841, aged 23.



Ex. 8-014.

39. After Lydia's death, the infant son was left with a family in Fair Haven to be cared for, remaining with them for several years. Rowley Mead married again and had two other children, but John was virtually given to an aunt, Mrs. Blanchard, who cared for him during childhood. He lived with her much of the time until he was sixteen years old.

40. Young Mead attended the common schools at West Rutland, working odd jobs to earn money for his future education, which his father was too poor to support. In the years of 1857 and 1858, John Mead worked as a teacher at a district school, for which he received $15 per month and "boarded around," as the custom was. When he received the $45 for the final three months' service, he had accumulated $425. With this he started in life.

41. In Spring of 1858, at age 17, Mead wrote to his uncle, who lived in Malone, NY and who was the principal of what was then known as Franklin Academy. The uncle allowed John to attend school there and do "chores" about the house for his board and about the schoolhouse for tuition and books.

42. There Mead prepared himself for Middlebury College. He was accepted and, with his original $425, he was admitted in the fall of 1860.

C. Mead's Civil War Service

43. Interrupting his studies at Middlebury College to answer President Abraham Lincoln's call to arms, John Mead enlisted during the American Civil War in Company K, Twelfth Infantry Regiment, Vermont Volunteers, serving from 1862-1863. He participated in several skirmishes and important battles, including the Battle of Gettysburg, the bloodiest battle in American history, with more than 50,000 estimated casualties.

Ex. 8-005 - 12th Regiment Vermont Volunteers Flag	Ex. 8-005 - Middlebury College Vermont Volunteers. Mead is back row on left.

44. John Mead's Company K rifle has been passed down through the generations of the Mead family, the original full bayonet testifying to the brutal and primitive nature of the conflict:

Ex. 8-001.

45. Several other members of the Mead family contributed significantly to the war effort and to post-war Rutland and Vermont. All were descendants of James Mead, the first settler of Rutland. Brothers Charles and Carlos (Eugene) Mead, cousins to John A. Mead, also joined the Union Army, serving in the First U. S. Sharpshooters Regiment. Charles was killed at Petersburg, Virginia; Eugene was wounded twice and imprisoned once. Charles Mead was a prolific writer. His letters and diaries are a major source of information to Rutland Civil War historians.

46. Therefore, when the College Trustees removed the Mead family name from the Mead Memorial Chapel, they demeaned the sacrifices of not one, but three Civil War veterans who fought to free the African American slaves in the South and preserve the Union. One member made the ultimate sacrifice, and another was wounded twice and imprisoned.

D. Mead's Post-War Education

47. After Gettysburg, Mead returned to Middlebury College to complete his studies so he could graduate with his class in 1864. He studied hard to make up for lost time in school while working at haying in the summer and teaching school in the winter to support himself. Upon graduation he had to sell all his books, so he graduated from Middlebury College solvent but nearly penniless.

48. John Mead was chosen as a speaker for his 1864 Commencement ceremony and delivered a speech entitled "The Moral Effects of the War," having witnessed the horrors of Gettysburg just one year prior.

49. John Abner Mead's Middlebury College Class Photo:

Ex. 8-006. John Abner Mead's Middlebury College Class Photo

50. After graduation from Middlebury, Mead continued to teach high school for a term and then began to study medicine with Professor Joseph Perkins, M.D. of Castleton, paying most of his expenses by caring for the office and assisting the doctor.

51. Mead took a 10-month hiatus from his medical education to toil in the West Rutland quarries, enabling him to save enough money to complete his medical training.

52. Mead then returned to the study of medicine, attending the first course of lectures in the medical department of the University of Vermont, studying under his now Preceptor Joseph Perkins, M.D., Professor of Obstetrics and Diseases of Women and Children. Mead wrote his thesis on "Inversio-Uteri", a childbirth complication often resulting in death at that time, which perhaps was his own mother's cause of death shortly after his birth. Upon completing his studies and thesis at UVM, he was awarded a Master's Degree (A.M.) at Middlebury College in 1867.

53. Mead then went to New York to complete his medical degree at the College of Physicians and Surgeons of New York City, part of Columbia University, graduating with an M.D. degree in 1868.

E. Dr. Mead's Medical Practice

54. While working towards his medical degree in New York, Mead worked at Kings County Hospital's Lunatic Asylum in Brooklyn as a Second Assistant Physician. Upon graduation, he was promoted to First Assistant Physician and a year later, he was made the Assistant Physician of the Lunatic Asylum. Notably, the Asylum did not use physical restraints for patients, allowing them instead to freely mingle and take exercise at their leisure.

55. During Dr. Mead's tenure as resident physician, he demonstrated great compassion for his patients. "He did not treat them as though he thought them insane. He held that it always irritated a man, sane or insane, to be told

that he was mentally deranged. He listened patiently to their complaints and even humored their whims. I will not say that he believed in 'mind cure', for the phrase has acquired unfortunate associations. But he believed that a wise physician should always have a thought for the mental condition of his patients and in all his later medical practice he was guided by this rule." Ex. 8-034 to 8-035.

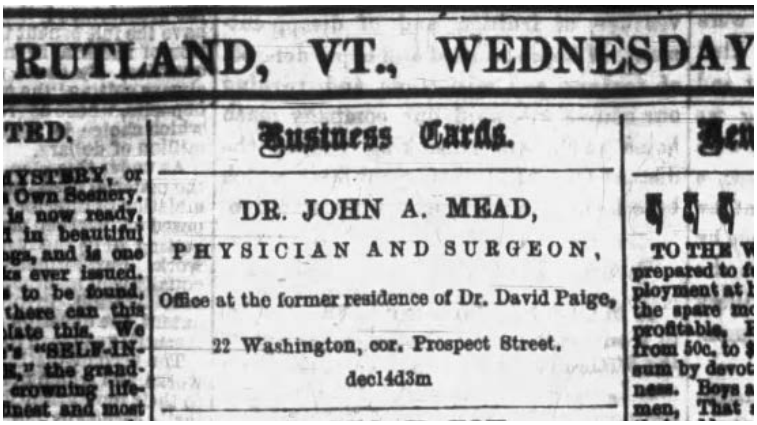
56. The Mead family still possesses Dr. Mead's Kings County Hospital Alumni Association medal:

Ex. 8-001.

57. In the fall of 1870, Dr. Mead resigned his position in the Kings County Hospital's Lunatic Asylum and returned to Vermont to practice medicine in Rutland for the next two decades.

58. Dr. Mead began his medical practice in Rutland in a small way with a single room and had only money enough to buy a horse and office furnishings, including a cloth lounge, on which he slept for almost two years.

59. This is a Business Card advertisement that Dr. Mead ran in the January 18, 1871 Rutland Daily Herald:


RUTLAND, VT., WEDNESDAY

Business Cards.

DR. JOHN A. MEAD,

PHYSICIAN AND SURGEON,

Office at the former residence of Dr. David Paige,

22 Washington, cor. Prospect Street.

dec14d3m

Ex. 8-011.

60. On October 30, 1872, John Mead married Mary M. Sherman. They had one child, Mary Sherman Mead Hinsman.

61. While practicing medicine in Rutland, Dr. Mead also served as the State of Vermont's Surgeon General under Governor Redfield Proctor from 1878 to 1880 and was a member of the staff of General Alger and General Veazey, commanders of the Grand Army of the Republic, a fraternal organization of veterans who had served in the Union Army during the Civil War.

62. Dr. Mead was also Medical Superintendent of the Vermont House of Correction and served as State Pension Examiner for eight years.

63. In 1888, Dr. Mead was offered a "Chair" in the Medical Department of the University of Vermont but declined it because he wished to retire from medicine and devote his time to his business interests.

64. In 1890, Dr. Mead was appointed Surgeon General of the Vermont State Encampment of the Grand Army of the Republic.

65. This photograph of Company K shows Civil War Veterans gathered at the Bennington Encampment the following year, in 1891, for their 30th reunion at the dedication of the Bennington Battle Monument Memorial which was attended by President Benjamin Harrison and thousands of spectators.

Ex. 8-007.

66. The Mead family possesses some of John Abner Mead's Grand Army of the Republic ("GAR") memorabilia:

Ex. 8-002.	Ex. 8-002.	Ex. 8-002.

F. Mead the Businessman/Industrialist

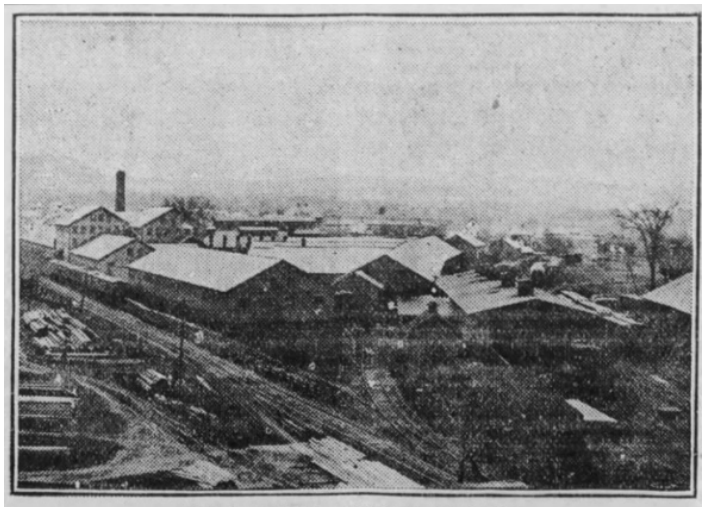
67. After retiring from the practice of medicine, Mead became a successful real estate investor, buying the Bates House block in 1880, which was the largest transfer of real estate that had ever taken place in the Town of Rutland up to that time.

68. This is a photo of the Mead Building in Rutland, cir. 1910:

Ex. 8-014.

69. From 1882 to 1888, Mead served as an executive or director of several enterprises, including banks, railroads, insurance, and manufacturing companies.

70. In 1888, he became president of and reorganized the Howe Scale Company, a corporation that had gone through bankruptcy three times. Much to Mead's credit, the company became one of the most important and successful enterprises in New England and manufacturers of a scale recognized as the standard the world over.



THE HOWE SCALE WORKS.
[These Buildings and Yards Cover Over Sixteen Acres of Ground.]

Ex. 8-014.

71. Dr. Mead exhibited rare executive ability. His watchful care of every detail and his keen judgment of human nature enabled him to select competent assistants in the varied departments. These skills, along with his perseverance, were largely responsible for the remarkable success of this industry, which created prosperity for many Vermont families.

72. In addition to his other business endeavors, Dr. Mead purchased the Hayward farm in West Rutland which he renamed the "Otter Creek Stock Farm," an estate of about 500 acres supporting 125 head of cattle and producing 300 tons of hay as well as three large silos of ensilage grown on one of the largest fields of ensilage corn in the state, reported to be "50 acres in extent and growing as level and perfect as it is possible to imagine." Ex. 8-014.

73. Mead's Otter Creek Stock Farm provided employment opportunities for local farm workers and was a model of its kind, having running water supplied from a spring on the hillside for all purposes, including fire protection.

Ex. 8-014 - Mead's Otter Creek Stock Farm	Ex. 8-003 - Photo of John Mead on his West Rutland farm.

74. Mead "has always shown a kindly interest in the welfare of his employees and of the workingmen, and has never hesitated to champion their cause whenever their demands were reasonable and in his judgement just, and they in turn evinced their appreciation of his efforts in electing him to the state

Senate in 1892 by a large majority, and again in 1893 by making him the first mayor of the city of Rutland by over three-fourths of the total vote cast for the candidates for this office." Ex. 8-014.

G. Mead's Government and Public Service

75. In 1892, Mead was elected to the State Senate as the GOP nominee and took an active part in the workings of that body, serving as chairman of several important committees. One of the beneficial results of his term in that capacity was the securing of a city charter for Rutland, and in 1893, Dr. Mead was elected its first mayor, "devoting to municipal interests that same sound judgment and careful attention to matters great or small which he gave to his own business."

76. A photo of John Abner Mead, Cir. 1890s:

Ex. 8-006

77. John Abner Mead served as Vermont's Lieutenant Governor from 1908 to 1910. The June 18, 1908 edition of the Rutland Weekly Herald reported:

"Dr. Mead is a worthy citizen of Vermont. He is public spirited, active in good works, and a promoter of the interests of the state, morally, materially and religiously. He has always cheerfully borne his share of the public duties in state, county, city, church and school - in all of which he has long been active. He is as democratic a citizen and as genial a comrade as anyone should wish to know. ...Dr. Mead conducts one of the great industries of the state; and has managed it successfully, to the advantage of the state, if also to his own profit. His passage from poverty to competency has been most honorable."
Ex. 8-012.

78. Elected Governor of Vermont in 1910, Mead presided over the state legislature's reapportionment of state senatorial districts. Legislation was enacted during his administration establishing Vermont Technical College, requiring the registration of nurses, and providing for a direct primary.

79. Mead was viewed as a progressive. He supported women's suffrage, toughened child labor laws, and strengthened campaign finance statutes. He doubled funding for highways and favored clean energy, urging the substitution of hydroelectric power for coal.

80. Dr. Mead was a Trustee of Middlebury College, UVM, and Norwich University. All three conferred the honorary degree of LL.D. upon him in 1911.

81. Governor Mead gave his Gubernatorial Farewell Address to the Joint General Assembly in October 1912. Ex. 18-017 to 18-031.

82. Mead was also a Vermont delegate to the Republican National Convention in 1912, supporting the incumbent Taft for the nomination:

Ex. 8-002.	Ex. 8-002.

83. Mead was seriously considered for the vice-presidential nomination on the national ticket in 1912 because of his progressive views. The Mead family inherited the campaign memorabilia from the possible run:

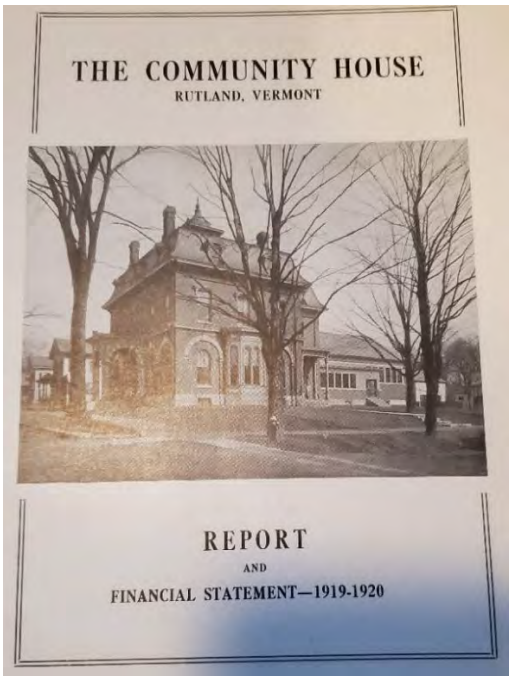
Ex. 8-002.

84. After his governorship, Mead resumed his business interests. He was president of Baxter National Bank, Howe Scale Company, and of John A. Mead Manufacturing Company. He was also a director of the Rutland Railroad.

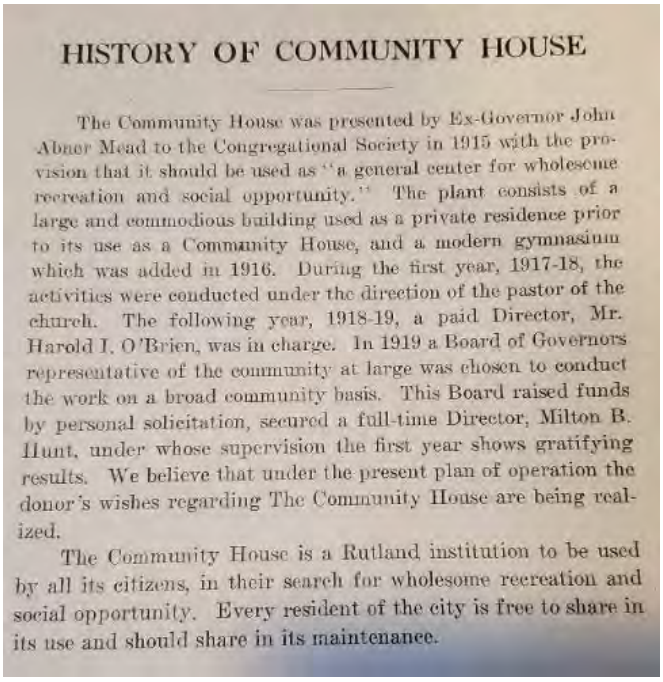
H. Mead's Philanthropy

85. John Abner Mead made substantial financial donations to Middlebury College during his lifetime, including his conditional gift of the "Mead Memorial Chapel" which he constructed from 1914 to 1916 at a cost of over $75,000.

86. In addition, Dr. Mead made substantial financial donations to other charitable causes during his lifetime, including in 1915, when he donated prime Rutland real estate located at the corner of Center and Court Streets to the Congregational Church of Rutland to be used by the young people of Rutland, of all faiths, as a community center with club rooms, gymnasium, tennis courts, etc. The center became known as "The Community House":



Ex. 8-004.



HISTORY OF COMMUNITY HOUSE

The Community House was presented by Ex-Governor John Abner Mead to the Congregational Society in 1915 with the provision that it should be used as "a general center for wholesome recreation and social opportunity." The plant consists of a large and commodious building used as a private residence prior to its use as a Community House, and a modern gymnasium which was added in 1916. During the first year, 1917-18, the activities were conducted under the direction of the pastor of the church. The following year, 1918-19, a paid Director, Mr. Harold I. O'Brien, was in charge. In 1919 a Board of Governors representative of the community at large was chosen to conduct the work on a broad community basis. This Board raised funds by personal solicitation, secured a full-time Director, Milton B. Hunt, under whose supervision the first year shows gratifying results. We believe that under the present plan of operation the donor's wishes regarding The Community House are being realized.

The Community House is a Rutland institution to be used by all its citizens, in their search for wholesome recreation and social opportunity. Every resident of the city is free to share in its use and should share in its maintenance.

Ex. 8-004.

87. Mead invested some $50,000 (worth $1,469,292.08 in current value) in 1915 to transform the property into an inclusive and welcoming community center for all the youth of Rutland "regardless of creed or church connection to make it of the widest scope." The real estate and improved buildings were deeded to the Congregational Church of Rutland, with the direct management of a nonsectarian board with liberal powers.

88. Mead's Last Will and Testament bequeathed an additional $50,000 to provide for the continued maintenance and support of The Community House after his death.

89. Mead's Last Will and Testament also bequeathed $50,000 to the Congregational Church of Rutland for the maintenance of other Congregational churches in Rutland County.

I. John Abner Mead's Death

90. Dr. John Abner Mead died of pneumonia at his home in Rutland on January 12, 1920. He was 78 years old. His wife, daughter, grandson, and son-in-law survived him.

91. Middlebury College President Thomas eulogized Governor Mead at his funeral, describing his good friend:

> "By his keenness of mind, his fixity of purpose, his unfailing judgment, his insatiable ambition, and his unconquerable will Dr. Mead ranged himself with those great creative spirits who have wrought the prosperity and wealth of this nation and accomplished the civilization of the modern world."

"He was no ordinary man and judgment upon him must be guided by no ordinary standards. He was one appointed of Providence a master builder in the industry of his generation, whose ambition and ability were made to serve the welfare of this city and the prosperity of our fair State beyond the measure of almost any other of his time, he did it almost alone." . . . "He was one of the most democratic and approachable of men. I have often thought that his extreme simplicity and cordiality in public relations blinded the eyes of those who saw him every day to some of his most remarkable qualities, Governor Mead was a very keen and shrewd observer and a man who preserved at all times independent and original judgement."
Ex. 8-034 to 8-035.

92. John Mead was buried at the Mead Family plot in Evergreen Cemetery in Rutland with his ancestors, including Colonel James Mead and Mercy Holmes Mead, whom John Abner Mead had reinterred there from the West Rutland Cemetery in 1895.

93. John Abner Mead's headstone records his service in the Union Army, his professional life as "a beloved physician in Rutland for 21 years," and his many offices held including his Governorship of course. His headstone reflects the essence of who he was and his lifetime of service and devotion to others with the final engraving:

"A CHRISTIAN AND PHILANTHROPIST"
Ex. 8-008.

94. Photos of the Mead Family Plot in Evergreen Cemetery in Rutland, Vermont:

Mead Family Plot Evergreen Cemetery, Rutland, VT	John Abner Mead (1841-1920) "A CHRISTIAN AND PHILANTHROPIST"
Ex. 8-008.	Ex. 8-008.

Colonel James Mead (1730-1804)	Mercy Holmes Mead (1731-1823)
Ex. 8-008.	Ex. 8-008.

V. MEAD MEMORIAL CHAPEL

A. John Abner Mead's Offer to Middlebury College

95. On May 11, 1914, John Abner Mead sent a Letter to Rev. Dr. John M. Thomas, President of Middlebury College, offering to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel." (hereinafter "Offer Letter"). Ex. 1-001 to 1-002.

96. The Offer Letter was also referred to as the "Letter of Gift." Ex. 1-001 to 1-002.

97. In the Offer Letter or Letter of Gift, Mead offered "to erect a chapel to serve as a place of worship for the college," pledging $50,000 - $60,000 and specifying the Terms of the Contract, *or, in the alternative*, the Conditions of the Gift, which were:

> A. Naming rights - the Chapel was to be known as the "Mead Memorial Chapel" to honor the Mead family ancestors who embodied the simplicity and strength of character, deep religious faith and connection to the Otter Creek Valley and Vermont that the Chapel was designed to symbolize.
>
> B. Design Approval – Mead described "a dignified and substantial structure in harmony with the other buildings of the college" and suggested the Board "secure appropriate plans for its erection which shall meet with my approval."
>
> C. Building Committee – Mead suggested the Board appoint a Building Committee and named the composition of the committee in order to control contracting and supervision of construction.
>
> D. Site Location – Mead specified the location of the building, "that it might rise from the highest point on its campus as a symbol."

Ex. 1-001 to 1-002.

98. Mead's hand-corrected and signed Offer Letter follows:

Rev, Dr. John M. Thomas, LL. D.,

President of Middlebury College.

My Dear President Thomas:-

In commemoration of the fiftieth anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly Father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel." I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.

It was my great-great-grandfather, the first white settler of this valley, who brought the first copy of the Holy Bible into this unbroken wilderness and it was his wife, my great-great-grandmother, who gathered her large family about her in an indian wigwam for the first christian service of the Vermont pioneers of this immediate region. With this memory ever present, it has been my hope and prayer that I might be able and permitted to build for this college a suitable place for divine worship and that it might rise from the highest point on its campus as a symbol of the position, most prominent in every respect, which christian character and religious faith should always maintain in its work for our youth.

I have in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure, and I hereby suggest that the Trustees of the College secure appropriate plans for its erection which shall meet with my approval, and that said Board appoint a Building Committee at once. consisting of President Thomas. former President Brainerd and

II

myself to make the necessary contracts for such a structure and to supervise the erection of the same, and I will then bind myself and my estate to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee.

Respectfully,

John Amos Mead

Rutland, Vt.
May 11, 1914.

Ex. 1-001 to 1-002.

99. On May 15, 1914, President Thomas sent a copy of John A. Mead's Offer Letter to the Trustees of Middlebury College announcing:

> Your associate, Governor John A. Mead, has made it possible for me to make an announcement which will bring you all great satisfaction and encouragement, as it gives me the keenest pleasure. I enclose a copy of his letter to be signed May 11th which assures the erection of an appropriate and beautiful chapel for Middlebury College.
>
> I have testified many times to the great need of such a building and the large possibilities for good in connection with it. We have all felt for many years that it was one of the most urgent needs of the college, and those who have been closest in touch with the daily life of the institution have felt the need most earnestly.
>
> . . .
>
> P.S. May I hear from you immediately as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests.

Ex. 1-003.

B. Middlebury College's Acceptance

100. On May 16, 1914, Trustee Frank C. Partridge wrote to President Thomas agreeing to accept the Offer and appoint of the Mead Memorial Chapel Building Committee as Mead had specified:

> Your good news is received and I am delighted that your dream of a new chapel is to be realized. ***It is a generous and beautiful thing for Governor Mead to do and of course I agree, as one of the Trustees, to the acceptance of his proposition and the appointment of the building committee which he suggests***.

Ex. 1-004 (emphasis supplied).

101. On May 17, 1914, Trustee John E. Weeks wrote to Mead with:

> [congratulations and thanks for] . . . the splendid gift to Middlebury College. This is a most worthy reminder of your great loyalty to this Institution and ***one that can and will be instrumental in great good to this student body <u>as long as time lasts</u>.*** . . Your honorable public career is certainly crowned by this act.
>
> Ex. 1-005 (emphasis supplied).

102. On May 18, 1914, Trustee A. Barton Hepburn wrote to Mead stating:

> It is a splendid, well-considered and generous action on your part. It shows you possess that love for Alma Mater, which is one of the greatest charms of college life, the essence of college spirit; ***it <u>shows your respect and reverence for your forebears</u>***, which is one of the highest qualifications a man may possess, and ***it shows, also, your disposition to do a good and useful act for the community in which you live and the State which you honor and which has bestowed its highest honor upon you***. Congratulations and thanks.
>
> Ex. 1-006 (emphasis supplied).

103. On May 19, 1914, Trustee James L. Barton wrote to Mead stating:

> I can hardly describe to you the thrill of satisfaction that I experienced when a letter from Dr. Thomas reported ***your magnificent gift to Middlebury College in the form of a Memorial Chapel. I know of nothing more fitting as a memorial – nothing that will be of greater value to the College in all the years to come.*** I know of no building that could be put up out from which will go more fundamental and permanent influences for social, civic and national righteousness, for our own country and for the world. I want to express my deep personal appreciation of this gift, as well as my appreciation as a member of the Board of Trustees. *I am sure you will get great satisfaction in seeing the walls of the building rise, as you realize what they mean to the College, the State, the country and the world,* ***<u>in all the years to come</u>.***

Ex. 1-007 (emphasis supplied).

104. On May 22, 1914, Trustee Brainerd Kellogg wrote to President Thomas, stating:

> I can't tell you how pleased I was and am at the news that Governor Mead wishes to build a Chapel on the College grounds. I had not thought that he dreamed of it.
>
> And how fitting that it should be at the semi-centennial of his graduation – showing that his love for his College has not waned but waxed during the 50 years. . . .
>
> *Convey to him, please, my personal thanks for his generous plans.* ***Of course the Trustees will allow him his ways, and will be everlastingly grateful to him in taking it.***

Ex. 1-008 (emphasis supplied).

105. On May 23, 1914, John A, Fletcher, Treasurer of Middlebury College, wrote to President Thomas stating:

> Replying formally to the welcome news contained in your message of the 15th, ***I wish to concur in the acceptance of the "Mead Memorial Chapel."***
>
> It is a splendid gift . . .
>
> ***I trust that the General Education Board will now look with favor upon your application for a grant toward a new fund, on contemplating this new evidence of the substantial and loyal support of our alumni.***

Ex. 1-009 (emphasis supplied).

106. On June 22, 1914, the President and Fellows of Middlebury College (Board of Trustees) met and recorded the following resolution, which Board action formally accepted Dr. Mead's Offer Letter to erect the "Mead Memorial

Chapel" and the terms of the contract or conditions of the gift without reservation:

The following resolution, introduced by Dr. Brainerd, on motion of Dr. Barton & Prof. Kellogg, was adopted by a rising vote:-

> "Whereas our esteemed colleague, the Honorable John Abner Mead of the Class of 1864, has signified to President Thomas his desire, in commemoration of the fiftieth anniversary of his graduation, to erect a Chapel for Middlebury College, and his readiness to furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice,
>
> ***Resolved that the President and Fellows of Middlebury College hereby accept of this magnificent benefaction with sincere gratitude to both Dr. & Mrs. Mead and their family for their deep interest in the religious welfare of the College, so impressively manifested by this provision of a suitable place for divine worship.***
>
> ***Resolved that the Trustees through the Committee nominated by Dr. Mead will use their best endeavors to secure the erection of a dignified and substantial structure, in harmony with the other buildings of the college, and such as will meet the approval of the donor.***"

Dr. Mead made fitting response to this resolution. His letter of presentation follows in full:-

[Letter of Gift copied by hand verbatim
with quotation marks around
"Mead Memorial Chapel"]

On motion of Mr. Partridge, seconded by Dr. Abernathy, ***the Building Committee for the Mead Chapel was elected*** as above, Messrs. Thomas, Brainerd, Mead and Weeks.

Mr. Collins of the architectural firm of Allen & Collins then appeared before the Board with tentative plans for the new Chapel, which were discussed at length.
Ex. 1-010 to 1-012 (emphasis supplied).

C. Press Coverage

107. The gift of the Mead Memorial Chapel was widely reported in the Vermont press and Dr. Mead's Offer Letter was reprinted in several news articles. See Exs. 1-013 to 018.

108. The Free Press had a special report from Middlebury, May 15, 1914:

EX-GOV MEAD GIVES COLLEGE A CHAPEL President Thomas of Middlebury Announces Offer of $60,000 for Memorial. TO BE OF WHITE MARBLE Former Vermont Chief Executive Commemorates 50th Anniversary of His Graduation. Middlebury, May 15 - President John M. Thomas announced this evening at a meeting at the gymnasium the gift of a $60,000 memorial chapel by ex-Governor John A. Mead of Rutland, to be called the Mead Memorial Chapel. The unexpected announcement was greeted with great enthusiasm. . . . Ex-Governor Mead was cheered by the gathering of 500 persons.
Ex. 1-013 to 1-014.

109. On May 16, 1914, the Rutland Herald reported on the gift:

DR. MEAD'S GIFT TO MIDDLEBURY COLLEGE

. . .

The gift of a chapel, in which the eternal Truth may be taught, and devoted to the sacred purposes of divine worship, is an admirable expression of active piety and reflects creditably upon its donor.

. . .

It is peculiarly fitting that Dr. Mead should thus recognize Middlebury College, an institution so peculiarly a part of his native state and his personal environment, *for the reason that, as he sets forth in his letter of gift*, his great-great-grandfather was the first white settler in the Otter Creek valley, and brought the Bible, in all its sublime and uplifting beauty, to the peaceful Indians of the wilderness.

The college, too, which has made for itself an enduring name and place in Vermont's institutions of education and uplift, must feel, through its faculty and student body, a peculiar pleasure in *accepting the Mead Memorial Chapel as an expression of native patriotism and appreciation* from a citizen who has been honored with the highest executive office in the gift of his state.

The Herald, for its readers, heartily joins in the sincere approbation and praise which this gift will justly inspire.

Ex. 1-017 (emphasis supplied).

110. On May 20, 1914, The Middlebury Campus' news article described the enthusiastic response by the faculty and students to the announcement of Dr. Mead's gift of the Mead Memorial Chapel. The article also reprinted Dr. Mead's Offer Letter in full and then reported in part:

A NEW CHAPEL

There could be no question of the hearty gratification which this letter evoked from all present. Cheer-leader Dade took the platform and the "long Middlebury" resounded for Middlebury's latest benefactor. Every one felt that a gift of great significance and importance had come at a most opportune moment, and as the donor spoke of his love for the college and feeling of gratitude towards her, of his early struggles to secure an education and his strong desire to see the work of the college perpetuated, the meaning of the gift became clearer to all.

Ex. 1-018.

111. The Vermont Tribune's May 21, 1914 edition also described Ex-Gov. Mead's gift to Middlebury College and reported:

The new chapel . . . will seat 700 persons. A bronze tablet in the building will contain the following inscription: ***Mead Memorial Chapel, Erected in 1914 by John Abner Mead of the class of 1864.***
Ex. 1-019. (Emphasis supplied)

112. President Thomas wrote an article that was published in the April 8, 1915 edition of the Boston Evening Transcript, entitled MIDDLEBURY'S 100 YEARS, Old Traditions Preserved in New Chapel" in which he explained:

The proposal of ex-Governor John A. Mead to erect a chapel for Middlebury in commemoration of the fiftieth anniversary of his graduation . . . in his letter of gift ex-Governor Mead had said, "I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished." ***He asked that the chapel to bear his name*** might "rise from the highest point of the campus, as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth." The chapel will occupy a commanding location on the grounds on the highest crest of the campus, from which point there is a wide panorama of the Green Mountains and the valley of Otter Creek. On the architrave over the colonnade will be appropriately inscribed "The Strength of the Hills is His Also."
Exhibit 43 (emphasis supplied).

D. 1914 Groundbreaking & Cornerstone Ceremony

113. On May 28, 1914, John Mead wrote to President Thomas regarding arrangements for the groundbreaking and laying of the cornerstone for the Chapel. Dr. Mead requested a piece of sod to place in the Evergreen Cemetery in his family's burial lot and indicated, "We will have the little box with the bible which little John is to place in the stone all properly arranged." Ex. 2-001 to 2-002.

114. On June 23, 1914, Middlebury College held a ceremony titled "Breaking Ground for the Mead Memorial Chapel and Presentation of the Corner Stone" during its commencement exercises. Ex. 2-003.

115. Ex-Governor John A. Mead, Class of 1864, gave the speech for the "Breaking Ground and Presentation of the Corner Stone," (See Ex. 2-004 to 2-026) which he concluded with:

> On this date, ***I wish to break the ground and place the corner stone for this Memorial Chapel, with the hope and prayer that there shall be a sacred duty resting upon each, to make this Holy Temple, so soon to be erected, an instrument of great good to those of this generation and to those who may follow after***, and that our Alma Mater may be favored by steadily increasing numbers and with ample means for the noble work which will devolve upon her, and all of which she will attempt so willingly, so courageously and so faithfully.
>
> Ex. 2-019 (emphasis supplied).

116. The Rev. James L. Barton, D.D., LL.D., Class of 1881 delivered the "Acceptance in Behalf of the Trustees" (Ex. 2-021 to 2-026) in which he stated:

I am honored in being permitted, ***upon behalf of the trustees of Middlebury College, to accept*** from the hands of one of their number, a graduate of the College and a revered citizen of this commonwealth, ***this corner stone and that for which it stands, namely, a fitting chapel to be erected upon this site to embody and represent and perpetuate the religious life of this College.***

It is doubly gratifying to me, as it is to the Board of Trustees, <u>that this building, as a memorial, will bear the name of one so long and so honorably connected with this institution</u> and who in the state and nation has always upheld and promoted true piety and civic and national righteousness.

. . . Today we see ***the religious ideals of our forefathers*** emancipated and exalted to this loftier position and ***embodied in a structure worthy the College and its resplendent history***. Here upon this hilltop it will, by the outlines and symmetry of its architecture, proclaim that this College believes in God, in the supremacy of righteousness, in the creation of a safe, sane and just society, the triumph of justice, the transcendent worth of character, the reality of the unseen, and in the immortality of the soul.

. . .

This chapel will provide for the generations of students and faculties of this college that to which the other buildings cannot minister. To this place all will turn in order to experience the reality of the unseen, to satisfy the thirst of the soul for God.

. . .

We then, the Trustees of this College, on behalf of ourselves and our successors, in the name of the generations of students it will serve, in full recognition of the supreme importance of such a religious center to the life of the institution, <u>and in loving memory of him whose name this structure is to bear, gratefully accept at your hand this Chapel</u> as we pledge ourselves to safeguard to the limit of our capacity the gift and the ideals it is intended to perpetuate.

Ex. 2-021 to 2-026 (emphasis supplied).

117. Prof. Charles B. Wright gave an "Address in Behalf of the Faculty" (Ex. 2-027 to 2-029) which he ended with the statement:

> Such an embodiment should this structure be…a chapel whose very lines, I trust, as they rise upon this summit, may prove for us all in the years to come a compelling call to goodness; whose very atmosphere, I trust, may dispose our hearts to praise – shall be but a fit expression, a symbol in stone, of the mingled strength and beauty of the Middlebury life.
>
> The Faculty thank you, Governor Mead, from profoundly grateful hearts. You have bodied forth our dream of years; you have given to an airy nothing a local habitation – ***and not the least of our pleasure is the thought that through all the days to be it will bear your honored name.***

Ex. 2-028 to 2-029 (emphasis supplied).

118. Among the guests of the College at the ceremony were Miss Katherine Lee Bates, Professor of English at Wellesley College. Bates was also a social activist interested in the struggles of women, workers, people of color, tenement residents, immigrants, and poor people. She helped organize the Denison House, a college women's settlement house, with other women friends and colleagues in 1892. She also wrote and spoke extensively about the need for social reform and was an avid advocate for the global peace movement that emerged after World War I.

119. The Cornerstone for the Mead Memorial Chapel was laid at the Groundbreaking Ceremony held on June 23, 1914, where John Abner Mead's namesake, his 3-year-old grandson John Abner Mead Hinsman ("Little John"),

placed his small Bible and family tree back to original settler Colonel James Mead into a box inside the Mead Memorial Chapel Cornerstone. The Ceremony was widely reported on in the press. Exs. 2-032 to 037.

120. Photographs of the Groundbreaking Ceremony still exist:

Ex. 2-030 – Carl B. Hinsman, John Abner Mead Hinsman ("Little John"), and Gov. John Mead "breaking ground" for Mead Memorial Chapel	Ex. 2-031– Pres. Thomas (left holding Mead Family Bible), Mead & "Little John" held by his father Carl B. Hinsman placing Bible in Cornerstone

121. The Mead Family Bible, held by President Thomas at the Groundbreaking ceremony photographed above, has been passed down through the generations of the Mead family and resides with Mead family members who live in Vermont:

Ex. 8-003.

E. Chapel Construction and Costs: 1914-1916

122. The construction of the Mead Memorial Chapel proceeded over the next two years, during which time Dr. Mead attended meetings of the Mead Memorial Chapel Building Committee in Middlebury, met with architects, approved project designs, controlled the budget, and provided credit and payment for all labor and materials. Ex. 3-001 to 3-053.

123. Besides the costs of the Chapel building itself, Dr. Mead contracted and paid for a $5,000 pipe organ, $1,031 for Pilasters, and $1,559.39 for pews. Ex. 3-005 to 3-006, Ex. 3-021, Ex. 3-040, Ex. 3-048 to 3-050.

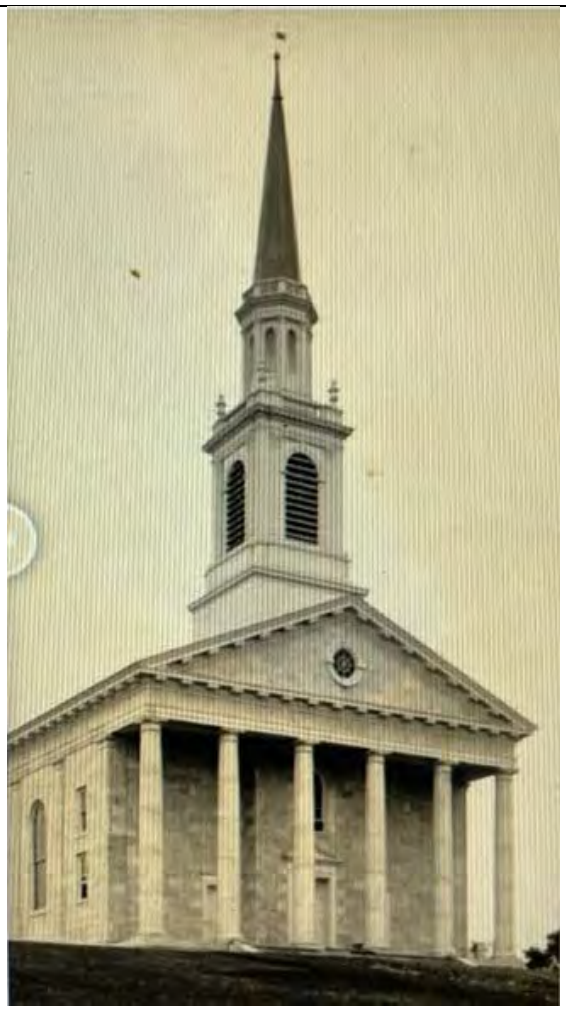
124. On June 21, 1915 Dr. Mead sent an additional Offer Letter to President Thomas pledging an additional $7,000 for a Chime of Bells stating: "If acceptable to the members of the Board of Trustees, Mrs. Mead and I would be pleased to add a chime of bells to our gift of the Mead Memorial Chapel." Ex. 3-034 to 3-036, Ex. 3-038, Ex. 3-039, Ex. 3-041 to 3-043.

125. Dr. and Mrs. Mead's addition gift of a Carillon of Bells was installed in the Chapel tower. There were eleven bells, the largest weighing 2500 pounds and the smallest 275 pounds. Each bell bears the inscription:

"Presented to Middlebury College by
John Abner and Mary Sherman Mead."

"Ring in the valiant man and free,
The larger heart, the kindlier hand;
Ring out the darkness of the land,
Ring in the Christ that is to be."

Ex. 3-041 & 3-042.

	
Ex. 6-012.	Ex. 6-012.

126. The Mead Chapel was the work of Allen and Collens of Boston. It draws freely upon the vocabularies of the American classical styles of the 18th and 19th centuries in its translation of the traditional New England meeting house into marble. Thus, one finds a Greek Revival temple front, Georgian doors and windows, and a Federal tower. Above the colonnade is inscribed a quotation from Psalm 95:4, "The strength of the hills is His also." Within the building is a beautiful Georgian-inspired paneled sanctuary:

Ex. 6-014 - Mead Memorial Chapel – interior view upon completion.	Ex. 6-014 - Mead Memorial Chapel – current interior view

127. Construction was completed in 1916 and the final cost paid by Dr. Mead to construct the Chapel was $75,373.34, present value of which is $2,237,058.12. Ex. 3-048 to 3-050.

128. However, the current value of the Mead Memorial Chapel, as well as the replacement costs to construct the Chapel, exponentially exceed and eclipse that number.

129. President Thomas would later recount while Eulogizing Governor Mead at his funeral in 1921:

> For a year and a half we worked together in the consideration of plans and details and ***the result was*** a structure which a professor of Yale College pronounced the other day ***one of the most beautiful buildings in North America.*** Stately, reverent, graceful, combining the classic beauty of ancient Greece, the chaste dignity of our Puritan fathers, and the mystic impressiveness of the early Christian builders, its daily assemblies make subtle impressions on the youth who gather there speaks to them without other voice of "the light that never was on land or sea."

Exhibit 8-034 to 8-035 (emphasis supplied).

130. As the College grew, changes were inevitable. The balconies were added in 1938, increasing the seating capacity to 715. An altar replaced the original armchairs at the back of the chancel in 1952. The little Sunderland Chapel was created at the right, and is used for small prayer meetings. The original organ was replaced in 1971 by the large Gress-Miles organ. The tower now holds a wonderful 48-bell carillon, cast and tuned in France from the original bells and other sets. It is played regularly in the late afternoon. See Ex. 6-001 to 6-005.

F. 1916 Dedication Ceremony & Presentation of the Keys

131. The Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916 during which Dr. Mead made a Presentation Speech, recalling his grandson's role in the Groundbreaking and Setting of the Cornerstone two years earlier, when at 3 years old, "Little John" placed his Bible and family tree in the cornerstone:

> With the labor of love and devotion all complete, it is with great pleasure and an honor that I, through him who assisted me some two years since "in removing the soil" for the "setting of the corner stone", and who placed under the same his token of love, - his Bible and a short history of his relation to those who made this Temple possible; as I state, it is with pleasure, that through him, I may present to you, Doctor Brainerd, former President of this College, the keys to the Mead Memorial Chapel, - and may the Kind Providence who governs all our efforts for the greatest good and happiness of his children, give you all strength and wisdom, - that your and our fondest and most extravagant anticipations of this day may be more than realized, in the years that are to come.

Ex. 4-007 to 4-008.

132. Mead's speech was followed by "Little John," now 5-years, presenting the Keys to the Mead Memorial Chapel to the College Trustees. Ex.4-011.

133. Dr. Brainerd, Former President of Middlebury College accepted the Keys on behalf of the Trustees and stated the following in his acceptance speech:

> Doctor Mead:-
>
> I esteem it a great privilege to appear in behalf of the President and Fellows of Middlebury College and accept publicly, your gift of this beautiful sanctuary, that we have this day met to dedicate to the service of Almighty God. For many years, especially since the old chapel proved too small to hold even the half of our students, it has been the fond hope and the earnest prayer of the friends of the College, that in God's providence there might appear a man of the religious fervor and the financial ability requisite to meet this urgent need for a larger and more suitable edifice. Today our ardent hopes are realized; our prayers are graciously answered. And to me it is especially gratifying that our benefactor is my beloved classmate, one to whom I am bound, now for fifty six years, by ties of the warmest friendship.
>
> During these many years (which have passed with us so swiftly) the Heavenly Father has been pleased to grant you strength of mind and body, and varied opportunities for doing great service to your fellowmen. How well I recall the patriotic zeal with which, while yet a student in college, you enlisted in the war to maintain the union of these United States. [Unreadable word] later, as a well-trained physician, you served in another war—against the diseases that distress mankind; and by sound judgement and kindly sympathy achieved an enviable reputation in his beneficent calling. Still later your executive talent enabled you to build up a great industry, whose products are now used in every civilized portion of the world. More recently you served the commonwealth of Vermont, in the highest public office, with business sagacity, with fidelity, and with honor. But the noblest deed of all---the one for which future generations will hold you most in grateful remembrance---is the erection of this spacious and attractive

chapel, where the religious life of the College may find fitting expression and the stimulus of hallowed associations.

With grateful hearts, dear brother, we accept your generous gift: and we assure you of our earnest purpose so to utilize its opportunities for religious culture, as to promote the growth of earnest Christian character in the students of Middlebury College.--***Here for generations yet to come the melodious bells of this Chapel shall sound out over the Campus and the Town*** the strains of Christian music, that from childhood have awakened in our souls the sentiments of faith and courage and earnest living.

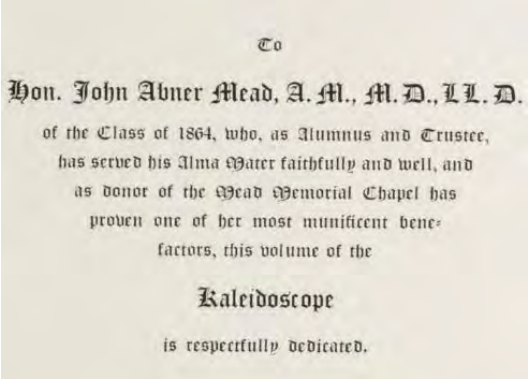
. . .

The lord reward you, dear friend, for all that you have done, or may yet do, for the good of others; and may the years of earthly life that still remain be your best years, filled with blessed memories and abiding peace.

Ex. 4-011 to 4-017.

134. The 1916 Kaleidoscope, the Middlebury College Annual was dedicated to Governor Mead:

Ex. 4-020.



To

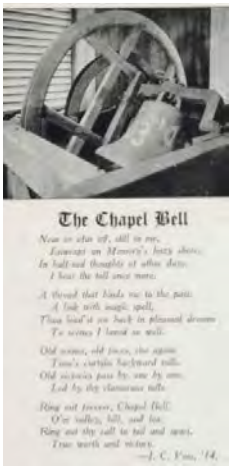
Hon. John Abner Mead, A. M., M. D., LL. D.

of the Class of 1864, who, as Alumnus and Trustee, has served his Alma Mater faithfully and well, and as donor of the Mead Memorial Chapel has proven one of her most munificent benefactors, this volume of the

Kaleidoscope

is respectfully dedicated.

Ex. 4-020 - 1916 Kaleidoscope



The Chapel Bell

Ex. 4-026.

135. On September 19, 1916, President Thomas sent invitation to Dr. Mead and his family to attend the first assembly of students at the Mead Memorial Chapel:

> We have our opening Thursday morning of this week at nine o'clock. All the faculty and students will be together in the new chapel and I am expected to make an opening address. I am sure it would do much to this first assembly of students in the Mead Memorial Chapel if you and Mrs. Mead could be present, especially if you could bring little John and his father and mother. I know you are very busy, and of course I would not impose it as a duty, but if you can run up we will all be very glad to see you.

Ex. 4-027.

136. President Thomas' Address to the first assembly of students in the Mead Memorial Chapel on September 19, 1916 began:

> At the opening of the 117th year of Middlebury College and at this first student assembly in this stately and beautiful chapel, whose dignity and impressiveness must move us all to serious and earnest thought, I wish to sound a note of progress in the things which make up the inner life of a college.
>
> . . . Surprise as well as admiration is expressed by every visitor to this Mead Memorial Chapel . . . They had not imagined that such structures had been erected for any college in Vermont.

Ex. 4-032.

137. At Governor Mead's funeral on January 16, 1920, Middlebury College President John M. Thomas gave the Eulogy which was published in its entirety in the Middlebury Register the next day and stated in part:

As to his gift of the Mead Memorial Chapel, I can not do better than to quote from the letter in which he announced his purpose.

[Full text of Mead's Offer Letter]

This afternoon, as we pay here our tribute of honor and affection, ***the chimes which bear his name on every bell are sounding out*** the hymns I loved and which he chose to hear the first time they were played, "Nearer my god to Thee", "Lead Kindly Light", "God be with you 'till we meet again". ***The dedication of the Chapel is complete – The Mead Memorial Chapel.***

So our friend built his empire in our midst. If another could have built it, another did not. He loved his work and he gave his all to it to the very last. ***He carved his name high in the marvelous roll of Vermont's men of achievement, and he earned his rest.***

Ex. 8-034 to 8-035.

G. The Mead Memorial Chapel - Historical Use, Value & Enrichment to the College

138. Middlebury College's website explains the import and significance of the Mead Memorial Chapel (now referred to as the "Middlebury Chapel"), which symbolizes the aspirations of the College, just as Governor Mead intended:

"This beautiful white marble structure rises on the highest point of the campus, its spire symbolizing the aspirations of the College."

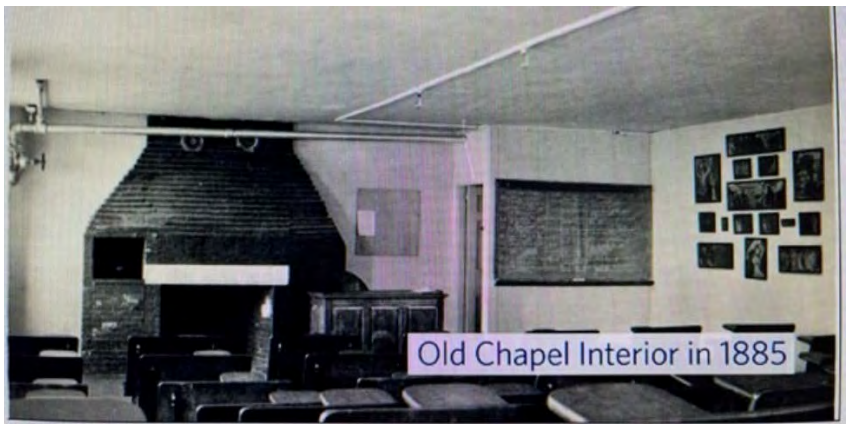
"The light which shines here nightly is seen in the entire valley. Over the portal are carved the words from Psalm 95:4, "The Strength of the Hills is His Also.'"

Ex. 6-001.

139. Middlebury College celebrated the Mead Memorial Chapel's Centennial in 2016 with a video production entitled "Mead Chapel Turns 100," featuring Middlebury College's Glenn Andres, Professor Emeritus, History of Art and Architecture, in which he details the history, symbolism and importance of the "Mead Memorial Chapel" to Middlebury College, stating as follows:

"We are here to celebrate Mead Chapel, which is marking its centennial year."

"This beautiful building was a key part of President Thomas' vision for Middlebury College. President Thomas noted that the Chapel room, when he became president, was merely a room and it only accommodated about ½ of the student body which at the time was 222 students."



"But then in May 1914, ex-Governor John Mead of Rutland pledged $60k to the college to construct a chapel."

"He expressed a desire that this Chapel be built on the highest point on the campus to catch the first rays of morning light and the last glow of the evening sun. He wanted it to be executed in Vermont marble. He wanted it also to 'be expressive of the simplicity and strength of character for which the inhabitants of this valley and the state of Vermont have always be distinguished.'"

"These references to strength and to place are probably the source of the quotation that we find on the portico on the Chapel, 'The strength of the hills is His also.' This is Psalm 95."

"The building was initiated in 1916 with a seating capacity of 674 at a time that the college had 222 students. The building was primarily used for daily Chapel services, it was a time for announcements, for hymns, for reading scriptures, and a five minute talk. This was delivered by visiting clergy and sometimes by faculty members."

"By 1950, with a student population of 1200, Chapel was required only every other day because they couldn't accommodate the whole campus. And then in the 1960's, compulsory Chapel ceased."

"But the Chapel has continued to function in accord with President Thomas' larger vision of it as the college's meeting house. Of course it remained a place for Sunday services, for weddings, but also for college ceremonies, convocation, baccalaureate and until the completion of the Center for the Arts, it was also the main venue for the college concert series."

"The monumental centerpiece and aesthetic keystone for the college for 100 years, Mead Chapel has remained an important symbolic and central venue for college activities and traditions."

Middlebury College Video: Mead Chapel Turns 100, June 15, 2016, Glenn Andres, Middlebury College Professor Emeritus, History of Art and Architecture, 2016, (emphasis supplied).

https://www.middlebury.edu/announcements/news/2016/06/video-mead-chapel-turns-100

Exhibit 6-012.

140. Middlebury College's website further confirms the vital role and significance that the Mead Memorial Chapel has played in the college's history:

"Mead Chapel, perhaps the most iconic building on the Middlebury College campus, has been part of every student's experience for the past century, providing a community gathering place for convocations, lectures, concerts, baccalaureates, and countless other events." "During the 1920's and 1930's, the Chapel added greatly to the cohesiveness of the College as 'I'll meet you on Chapel steps' served as a way of confirming an engagement." Beginning in 1937, a Chaplain was appointed to lead the Chapel services, organize the Sunday Vespers with their visiting clergymen, and encourage the religious life of the College. The Chapel currently has a Christian chaplain and two associate chaplains, one a rabbi and one a Muslim advisor.
Ex. 6-001 to 6-005.

141. In addition to the value of the building itself, the Mead Memorial Chapel was critical in establishing financial support from the State Board of Education as referenced by Treasurer John Fletcher's correspondence concurring with the acceptance of Mead's offer to build the Mead Memorial Chapel. See Ex. 1-009 ("I trust that the General Education Board will now look with favor upon your application for a grant toward a new fund, on contemplating this new evidence of the substantial and loyal support of our alumni.")

142. Even the Middlebury Campus newspaper reported on the importance of the gift of the Mead Memorial Chapel, recognizing its significance to the college's solvency, reputation and its impact in inspiring additional financial support and placing Middlebury College back on the road of progress:

. . . Every one felt that a gift of great significance and importance had come at a most opportune moment. . . And so Middlebury starts out on the road of progress once more, or rather continues steadily to advance despite discouragements and apparent setbacks. After the completion of the General Educafion [sic.] Board fund of $200,000 and the Carnegie report, it looked as if progress was at an end for a time, and that the college would be forced to battle to keep even. ***Governor Mead has changed all that. His gift will inspire every friend of Middlebury to courage and optimism, and everyone will believe that still other gifts and yet more notable advance are to be the order of the day.***
Ex. 1-018 (emphasis supplied).

143. Moreover, Governor Mead successfully encouraged others donors to support the College and used the Mead Memorial Chapel to inspire "our friend" to make a significant gift of a Boy's Dormitory. Ex. 5-001.

144. And apparently, that "friend," A. Barton Hepburn, Chairman of the Board of The Chase National Bank in New York, Middlebury College Alumnus (1871), Middlebury College Trustee from 1905-1922 and one of the Trustees who accepted the Mead Memorial Chapel offer in 1914 (See Ex. 1-006), personally provided the funds in 1915 to construct Hepburn Hall, the Boy's Dormitory, which is named for him.

145. After the Mead Memorial Chapel was built in 1916, Dr. Mead provided President Thomas with photos and other materials documenting the construction of the Chapel so President Thomas could create a booklet which, according to Mead, "might stimulate some of our friends to pattern after Mr.

Hepburn's example and give you an elegant dormitory for the girls or possibly something else which you might more desire at this time." Ex. 5-003 to 5-007.

146. Mead offered to pay the cost of publication of the booklet and wrote to President Thomas, "To be frank with you, I have special hopes that it may be productive of great good to our college, as I do feel that others can be made specially interested in our Alma Mater, and that the full history and description of the Chapel should induce others to lend a helping hand." Ex. 5-006 to 5-007.

147. The value and importance of the Mead Memorial Chapel to Middlebury College cannot be overstated. Erected as a place of divine worship and a meeting house for the college community, it is a structure of great beauty and stature that served as catalyst to encourage other significant private donations as well as public moneys to flow to the college.

148. But most importantly, the Mead Memorial Chapel became "[t]he monumental centerpiece and aesthetic keystone for the college for 100 years," (Ex. 6-006 to 6-007) not only standing as the most dominant building on the campus and an iconic feature of Middlebury's landscape, but also serving as the College's identity and brand, with "its spire symbolizing the aspirations of the College." Ex. 6-001 to 6-005.

149. It is that identity and iconic imagery, first publicized by President Thomas' 1915 article in the Boston Evening Transcript, that has succeeded as a brand and marketing tool to attract students and increase enrollment for more than a century.

H. Middlebury College's Removal of The Mead Family Name From The Mead Memorial Chapel

150. Governor Mead constructed and dedicated the Chapel, and the President and Trustees of Middlebury College accepted it to serve as a suitable place for divine worship at the College. An essential term, obligation, promise, and condition of their agreement was that the Chapel would be known as "The Mead Memorial Chapel" in honor of the Mead ancestors. Ex. 1-001.

151. The President and Trustees of Middlebury College honored their commitment to the essential term, obligation, promise and condition that the Chapel be known as the "Mead Memorial Chapel" for over 100 years.

152. Then on or about the summer of 2021, the Prudential Committee of the Board of Trustees of Middlebury College, voted to remove the Mead name from the Mead Memorial Chapel because, they claimed:

> In 1912, two years before the chapel gift was made, in his outgoing speech as governor, John Mead strongly urged the legislature to adopt policies and create legislation premised on eugenics theory. His call to action resulted in a movement, legislation, public policy, and the founding of a Vermont state institution that sterilized people—based on their race, sex, ethnicity, economic status, and their perceived physical conditions and cognitive disabilities.
>
> Ex. Ex. 7-005 to 7-010.

153. For reference, Governor Mead, received his medical degree in 1868, more than 153 years ago, which was 3 years after the end of the Civil War and 3 years before Charles Darwin published The Descent of Man in 1871.

154. In reality, Governor Mead's so-called "urgent call to action" was nothing more than the following:

> Let me, at this time, respectfully recommend to the legislature of 1912 that they at once take steps to safeguard and restrict the issuing of marriage licenses to persons convicted of rape, incest, open or gross lewdness, and cases where either of the parties are known to be suffering tuberculosis, syphilis, or epilepsy, and in cases where either party has been in confinement for habitual drunkenness, feeble-mindedness, or insanity.
>
> And, I further recommend that a commission be appointed to investigate and report upon the advisability of the adoption of the operation of vasectomy as a prevention for the spread of hereditary taints and diseases.

Ex. 8-022.

155. No legislation was signed into law in Vermont as a result of Governor Mead's Farewell Address.

156. In fact, not until almost two decades (19 years) later, on March 31, 1931, and more than a decade after Governor Mead's death, did the Vermont Legislature pass "An act for human betterment by voluntary sterilization." The aim of the legislation was to prevent, through sterilization, the procreation of individuals judged to be idiots, imbeciles, feebleminded, or insane.

157. The tragic result of the 1931 legislation was the eventual sterilization of 253 people in Vermont, most of whom were sterilized between 1931 and 1941.

158. Nonetheless, Middlebury College proclaimed Governor Mead a eugenicist, implying without evidence that his motivation was racism.

159. Middlebury College's removal of the Mead family name from the Mead Memorial Chapel and the denigration of Governor Mead sullies the reputation of a decent man, as well as a generous benefactor of the College. The College's September 27, 2021 Statement portrays Governor Mead as essentially a precursor of Hitler, rather than presenting him in the context of his time.

160. Support for eugenics was mainstream in the early 20th century, embraced by leaders in society, education and government, including Presidents, prime ministers, judges, and scientists and authors.

161. Helen Keller and the founder of Planned Parenthood supported the movement as did George Bernard Shaw, H. G. Wells, Henrik Ibsen, T. S. Eliot, Virginia Woolf, and John Maynard Keynes.

162. Moreover, the bulk of eugenics activity in Vermont occurred from 1931 to 1941, decades after the Governor's address and more than a decade after his death.

163. Therefore, the College vastly overstates Governor Mead's role in this matter, as if he were the mastermind of a movement instead of an outgoing Governor merely expressing his mainstream progressive views in his retiring message of 1912.

164. Vermont's native son, Calvin Coolidge, observed: "Education is to teach men not what to think but how to think." That requires hearing different ideas and acknowledging them in context. It means learning from history, not erasing it.

165. Purging the legacy of someone who revered Middlebury College and gave generously to support it, due to a single remark that we a century later deem unacceptable, hardly conforms to the purpose of the College. It certainly is no basis for breaching the essential term, obligation, promise and condition that the Chapel would be known as the "Mead Memorial Chapel" to memorialize the Mead family name and honor the Mead family ancestors who embodied the simplicity and strength of the Vermont character that the Mead Memorial Chapel was designed to symbolize.

I. "Cancel Culture" and the Erasure of History

166. Yale Professor Anthony Kronman, in his book "The Assault on American Excellence," urges against erasure of history. Rather, he writes, we should "contextualize" it.[1]

167. Historical context refers to the social, religious, economic, and political conditions that existed during a certain time and place; those details enable us to interpret and analyze events of the past, rather than to merely judge them by contemporary standards. In analyzing historical events, context can help us understand what motivates people to behave as they did. Without historical context, we are only seeing a piece of the

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[1] The Assault on American Excellence (New York: The Free Press, 2019) from https://www.thefreelibrary.com/ARISTOCRATIC+EXCELLENCE%2c+SECULAR+ECUMENISM%2c+AND+THE+LIFE+OF+THE...-a0661250331

scene and not fully understanding the influence of the time and place in which a situation occurred.[2]

168. However, instead of analyzing the remarks of Governor Mead from 1912, in the context of the social, religious, economic, and political conditions that existed in Vermont more than a century ago, Middlebury College has purged the good family name of a beloved and generous alumnus whose 100-year legacy it has erased, or, in contemporary parlance, "canceled."

169. Vermont legal scholar Paul Gillies, Esq. examined this current phenomenon, explaining in his 2020 *Vermont Bar Journal* article, "Limitations of Law and History," that:

> Lately, the statues of Confederate generals and of those who promoted slavery have come down hard, toppled by protesters. Columbus has been decapitated and thrown into the river. Military bases, sports teams, and even the UVM library are being renamed, as a way of condemning racism and other wrongs, as a form of expiation or atonement. These judgments altering our view of people and events know no time limit, and there is no due process, no appeal, no hearing beyond the chanting of slogans. The sins and crimes of men and women found to be lacking in lasting respect are unforgivable and swiftly punished, justified by revisionist historical thinking and the mores of the present. Time never runs out on them.
>
> . . .
>
> We need to sort out just how severe to be with the dead respondents we seek to hold liable for their sins and opinions. Washington was a slave-owner. He was more than that, of course, but should the slave-owning part of his biography outweigh his other accomplishments, enough to order the removal of the Washington Monument? What about people who believed

[2] Fleming, Grace. "The Importance of Historic Context in Analysis and Interpretation." ThoughtCo. https://www.thoughtco.com/what-is-historical-context-1857069

something now regarded with horror and then changed their minds? Suppose Guy Bailey later recanted his support of eugenics and persuaded the legislature to repeal the sterilization law. Could his name be retained on the [UVM] library wall?
Ex. 7-028.

170. John Abner Mead was a man of his time who did great good in the world. A mainstream progressive known to be a keen and shrewd observer, he was a man who preserved at all times independent and original judgment. That curiosity and analytical approach was reflected in Governor Mead's Farewell Address in which he proposed studying and gathering more information regarding a more humane procedure called the vasectomy. Had Mead lived twenty more years, who is to say that he would not have come to a different opinion and persuaded the legislature to repeal the sterilization law?

171. But that is not the time period in which John Abner Mead lived. The problem with imposing our 21st century world view on actors who lived over a century ago lies in judging and ostracizing them for mainstream views prevalent in the society of the time.

172. The removal of the Mead family name from Mead Memorial Chapel was unnecessary to right past wrongs. Instead of making amends for the racist remarks of its own President Paul Dwight Moody, who was at the helm of the College for over two decades from 1921-1942, directing its curriculum and its admissions for decades, Middlebury made a scapegoat of Governor Mead by disparaging his amazing legacy without any justification.

173. As a result, John Abner Mead's lifetime of accomplishments and devotion to the betterment of others has been erased: His risking of his life to fight in the Civil War, his two decades of service as a beloved physician to his community, his economic development of the region and state and the employment opportunities and prosperity he provided for Vermonters, his financial support of the goal of making Middlebury College a world-class institution, his sharing of his wealth with the Rutland churches, and his gift of "The Community Center" which he insisted serve and welcome people of all faiths, evidencing his commitment to diversity a century before it came into vogue.

174. Moreover, the Mead family name has been unfairly erased - canceled by Middlebury College for sins that John Abner Mead never committed. However, unlike the Dorothy Canfield Fisher Award or the naming of the Bailey Library at UVM, which were honors bestowed voluntarily and which freely can be revoked, the name "Mead Memorial Chapel" was accepted by Middlebury College as being the forever name of the Chapel, in memory of the Mead family pioneers who embodied the simplicity and strength of the Vermont character that the Chapel was designed to symbolize, and who shared fellowship and community with the Native Americans, all of which was reflected in the central purpose of this Chapel and community meeting house.

175. The name "Mead Memorial Chapel" was the essence of the deal, and it was the entire deal – forever. That was the intent of the parties when the

Mead Memorial Chapel was offered by John Abner Mead and accepted by the Middlebury College Board of Trustees as evidenced by:

a. Trustee John E. Weeks' letter, ("***This is a most worthy reminder of your great loyalty to this Institution*** and one that can and will be instrumental in great good to this student body ***as long as time lasts.***"). Ex. 1-005.

b. Trustee A. Barton Hepburn's letter, ("***it shows your respect and reverence for your forebears***"). Ex. 1-006.

c. Trustee James L. Barton's letter, ("your magnificent gift to Middlebury College in the form of a Memorial Chapel. ***I know of nothing more fitting as a memorial – nothing that will be of greater value to the College in all the years to come.*** I know of no building that could be put up out from which will go more fundamental and permanent influences for social, civic and national righteousness, for our own country and for the world. . . I am sure you will get great satisfaction in seeing the walls of the building rise, as you realize what they mean to the College, the State, the country and the world, ***in all the years to come***."). Ex. 1-007.

d. Trustee Brainerd Kellogg's letter, (Convey to him, please, my personal thanks for his generous plans. Of course, the Trustees will allow him his ways, and ***will be everlastingly grateful to him in taking it***.). Ex. 1-008.

e. 1914 Groundbreaking Ceremony - Rev. James L. Barton's Acceptance Speech on behalf of the Trustees, ("It is doubly gratifying to me, as it is to the Board of Trustees, ***that this building, as a memorial, will bear the name of one so long and so honorably connected with this institution and who in the state and nation has always upheld and promoted true piety and civic and national righteousness.*** . .We then, the Trustees of this College, on behalf of ourselves and our successors, in the name of the generations of students it will serve, in full recognition of the supreme importance of such a religious center to the life of the institution, ***and in loving memory of him whose name this structure is to bear***, gratefully accept at your hand this Chapel as we pledge ourselves to safeguard to the limit of our capacity the gift and the ideals it is intended to perpetuate."). Ex. 1-020 to 1-026.

f. 1914 Groundbreaking Ceremony - Prof. Charles B. Wright's Address on behalf of the Faculty, ("You have bodied forth our dream of years; you have given to an airy nothing a local habitation – ***and not the least of our pleasure is the thought that through all the days to be it will bear your honored name.***"). Ex. 1-027 to 1-029.

176. Middlebury College's removal of the name "Mead Memorial Chapel" was a breach of that agreement, a violation of that condition, the breaking of a promise.

177. Therefore, if Middlebury College is permitted to strip the Mead family name from the Chapel, it will have been unjustly enriched, having accepted Mead's offer to erect the "Mead Memorial Chapel" which added immense value to the real property of the College, and which established the college as an institution worthy of public financial support and private charitable giving.

178. The Mead Memorial Chapel provided Middlebury College with its iconic Flagship building and marketing identity, which set the College firmly on the path to future success and recognition as an internationally renowned institution of higher learning.

CAUSES OF ACTION

COUNT I
Breach of Contract - Specific Performance

179. Plaintiff hereby repeats and realleges paragraphs 1 through 178 as if fully set forth herein.

180. John Abner Mead made an offer to the President and Trustees of Middlebury College, to "erect a chapel to serve as a place of worship for the college, the same to be known as the 'Mead Memorial Chapel,'" to memorialize the Mead Family ancestors.

181. The President and Trustees of Middlebury College readily and enthusiastically accepted the offer of the Chapel with the agreement, understanding and intention that it would be forever known as the "Mead Memorial Chapel" in honor of the Mead Family ancestors.

182. The acceptance of the Mead Memorial Chapel name was provided by the Trustees at a time when they had full knowledge of the content of Governor Mead's Farewell Address in 1912, just two years earlier.

183. There was sufficient consideration exchanged to support the contract, the *quid pro quo*, to wit: the erection of the Chapel in exchange for the building being named the "Mead Memorial Chapel," and John Mead's control of the location, design and construction of the Chapel building so that his vision was realized.

184. The Chapel has been known as the Mead Memorial Chapel for over a century since it was completed and dedicated in 1916.

185. Middlebury College's removal of the name "Mead" from the Chapel is a breach of the Defendant's obligations under the Contract that the Chapel would be known as "Mead Memorial Chapel," which was an essential term and the central purpose of the contract.

186. As a direct and proximate consequence of Defendant's breach of contract, Plaintiff has suffered irreparable harm, for which money damages cannot fully compensate Plaintiff due to the unique nature of the intention and purpose for which the "Mead Memorial Chapel" was erected and named.

WHEREFORE, Plaintiff prays that the Court order Specific Performance to require and enjoin Defendant to restore the name "Mead Memorial Chapel" to the Chapel to effectuate the fundamental intention, purpose and essential terms of the Contract, which was to honor the Mead family ancestors, who were the living embodiment of the simplicity and character of the Vermont spirit that Mead designed the Chapel to express.

COUNT II
Breach of Contract – Damages

187. Plaintiff repeats and realleges paragraphs 1 through 186 as if fully set forth herein.

188. As a direct and proximate consequence of Defendant's breach of contract, Plaintiff has suffered monetary damages in an amount to be determined at trial.

WHEREFORE, Plaintiff prays that the Court order compensatory damages in an amount to be determined at trial, plus pre and post judgment interest at the statutory rate of 12% per annum.

COUNT III
Breach of Contract – Restitution

189. Plaintiff repeats and realleges paragraphs 1 through 188 as if fully set forth herein.

190. As a direct and proximate consequence of Defendant's breach of contract, Plaintiff has failed to obtain the benefit of the contractual bargain and is entitled to restitution of the consideration paid.

WHEREFORE, Plaintiff prays that the Court order Restitution of all sums paid to erect the "Mead Memorial Chapel" and the value Mead's services in managing and supervising the design and construction of the Chapel, plus pre and post judgment interest at the statutory rate of 12% per annum.

COUNT IV
Breach of the Implied Covenant of Good Faith and Fair Dealing

191. Plaintiff repeats and realleges paragraphs 1 through 190 as if fully set forth herein.

192. Implied in every contract is a covenant of good faith and fair dealing, which requires the parties to act honestly and reasonably with one another in the faithful pursuit of their common purpose.

193. Defendant has breached the covenant of good faith and fair dealing by removing the name "Mead" from the Chapel in direct defiance of its covenant and the expectation that the College will act honestly and reasonably in the faithful pursuit of the agreed common purpose of the contract.

194. Defendant has acted in bad faith with improper motive and with wanton disregard for the rights of the Plaintiff, scapegoating a man for the college's public relations purposes and destroying the Mead family name while erasing John Mead's lifetime of accomplishments and philanthropy that benefitted the State of Vermont and its people as well as generations of Middlebury College students.

195. Defendant's breach of the covenant of good faith and fair dealing is the direct and proximate cause of monetary damages to the Plaintiff.

WHEREFORE, Plaintiff prays that the Court award compensatory and punitive damages for Defendant's Breach of the Implied Covenant of Good Faith and Fair Dealing, plus pre and post judgment interest at the statutory rate of 12% per annum.

COUNT V
Breach of Conditional Gift – DISMISSED WITH PREJUDICE

COUNT VI
Unjust Enrichment – DISMISSED WITH PREJUDICE

COUNT VII
Promissory Estoppel

196. Plaintiff repeats and realleges paragraphs 1 through 195 as if fully set forth herein.

197. Defendant made a promise to John Mead, that the chapel he would erect for the college as a memorial to his ancestors, would always be known as the "Mead Memorial Chapel."

198. Defendant reasonably expected Mead to take action of a substantial character, (i.e. that Mead would erect the chapel), based upon the promise that it would always be known as the "Mead Memorial Chapel".

199. The promise induced a definite and substantial action: it caused John Mead to erect the "Mead Memorial Chapel."

200. John Mead reasonably relied on the promise to his substantial detriment, including spending funds on designing and constructing the chapel and Mead's own concerted efforts over 2 years: planning, designing, contracting, negotiating, and supervising the erection of the chapel. Mead was not just the donor and a Trustee on the building committee, Mead controlled and executed the entire project. He "erected" the chapel just as he offered to.

201. The Defendant received significant benefits from John Mead's erection of the Mead Memorial Chapel, not just the value of the labor and materials and Mead's supervision of the design and construction, but also the epic beauty, stature, and symbolism of the Chapel structure. The

Chapel provided not just a place for divine worship, but also meeting place to unite the entire community, greatly enhancing the reputation and stature of the school and encouraging private donations and public funding.

202. Most valuable of all, the Mead Memorial Chapel became Middlebury College's "monumental centerpiece and aesthetic keystone for the college" (Ex. 6-006 to 6-007) creating the College's identity and brand, with "its spire symbolizing the aspirations of the College." Ex. 6-001 to 6-005.

203. Such an iconic identity and branding established Middlebury College as an institution of significance and paved the way for the college to attain the level of success that it enjoys today, amassing a $1.518 billion endowment by 2021 all of which would not have been possible but for the construction of the Mead Memorial Chapel.

204. Under these facts and circumstances, it is unjust for the Defendant to strip the Mead Memorial Chapel of the Mead Family name, canceling the incredible accomplishments and altruism of a true philanthrope and important figure in Vermont history, all while retaining the many benefits that the Mead Memorial Chapel has provided to every student who has attended Middlebury College for the last century and will to the next, without commensurate compensation.

205. Given the totality of the circumstances, enforcement of the promise and restoration of the name "Mead Memorial Chapel" is the only way to

avoid the injustice of the Mead family name being stripped from the chapel and the family memorial being defaced.

WHEREFORE, Plaintiff prays that the Court enforce Defendant's promise that the chapel name "Mead Memorial Chapel" would be the name of the building as long as it existed, and order Defendant to restore the name "Mead Memorial Chapel" to the Chapel to effectuate the fundamental intention and purpose of the promise: to honor the Mead family ancestors, who symbolized the character of the Vermont spirit that Mead designed the chapel to express.

COUNT VIII
Equitable Estoppel

206. Plaintiff repeats and realleges paragraphs 1 through 205 as if fully set forth herein.

207. Defendant knew the content of Governor John Abner Mead's 1912 Farewell Address when, two years later in 1914, they promised to name the chapel the "Mead Memorial Chapel" for as long as the building existed.

208. Defendant intended that its promise to name the chapel the "Mead Memorial Chapel" to be acted upon, (i.e. that Mead would build the chapel).

209. John Abner Mead was ignorant of the fact that Middlebury College, his beloved alma mater, would ever hypocritically scapegoat him and remove his family's name from the "Mead Memorial Chapel," which is a blessed family memorial.

210. John Mead relied to his detriment and erected the Mead Memorial Chapel based upon Defendant's representations that the chapel would be known as the "Mead Memorial Chapel" as long as the building existed.

WHEREFORE, Plaintiff prays that the Court equitably estop Defendant's removal of the name "Mead Memorial Chapel" and order Defendant to restore the name "Mead Memorial Chapel" to the Chapel. In the alternative, Plaintiff prays that the Court award compensatory and punitive damages.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Honorable Court issue judgment in its favor and award the following relief:

A. Specific Performance or other Order enjoining the Defendant to restore the name "Mead Memorial Chapel" to the building;

B. Compensatory and punitive damages;

C. Restitution of all sums paid and the value of all benefits bestowed by the Mead Memorial Chapel from 1916 to present and into the future;

D. All costs and expenses of suit, including reasonable attorney fees;

E. All pre & post-judgment interest at 12% statutory rate per annum;

F. Such other relief as this Court deems just, equitable and proper.

DATED at Town of Randolph, County of Orange, and State of Vermont this 26th day of November, 2024.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead,
Plaintiff

By: /s/ L. Brooke Dingledine

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STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
Plaintiff	)
v.	)
	)
The President and Fellows of	)
Middlebury College	)
Defendant	)

JURY DEMAND

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and hereby respectfully demands trial by jury of all issues so triable pursuant to V.R.C.P. 38.

DATED at Town of Randolph, County of Orange, and State of Vermont this 24th day of March 2023.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead,
Plaintiff

By: /s/ L. Brooke Dingledine

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Vermont Superior Court
Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. _____**

Hon. James H. Douglas,)
Special Administrator of the)
Estate of John Abner Mead,)
Plaintiff)
v.)
)
President and Fellows of Middlebury)
College)
Defendant)

PLAINTIFF'S EXHIBIT LIST
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Ex. #	Exhibit	Date	
1-001	*Letter of Offer – of the "Mead Memorial Chapel"* John Abner Mead ("JAM") to Rev. Dr. John M. Thomas, President of Middlebury College ("Pres. Thomas")	5/11/1914	
1-003	Letter: Pres. Thomas to Trustees of Middlebury College Enclosing JAM's *Letter of Gift* and requesting immediate responses authorizing acceptance of the gift & appointment of building committee	5/15/1914	
1-004	Letter: Trustee Frank C. Partridge to Pres. Thomas Agreeing to acceptance of gift & appointment of building committee	5/16/1914	
1-005	Letter: Trustee John E. Weeks to JAM Congratulations & great good to student body	5/17/1914	
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7-011 To 7-016	News Article: Middlebury Campus "John Mead's name removed from chapel for role in eugenics"	12/13/2021	
7-017 To 7-020	News Article: NY Sun – Opinion "Why I'm Skipping My 50th Reunion at Middlebury College" by Gov. James Douglas	5/19/2022	
7-021 To 7-027	Letter from ACTA to George Lee Re: the imperative of building a stronger culture of free expression at Middlebury College	12/6/2022	
7-028 To 7-039	Limitations of Law and History Paul S. Gillies, Esq., 46 Fall Vt. BJ 16	Fall 2020	

8-001	Photographs of JAM's civil war rifle Photograph of Kings County Hospital Alumni Assoc medal		
8-002	Photographs of JAM's GAR and Political memorabilia		
8-003	Photograph of Mead Family Bible Photograph of JAM on his West Rutland farm Photograph of the Mead Memorial Chapel sign after removal		
8-004	The Community House Report and Financial Statement	1919-1920	
8-005	Photograph of Mead with Company K Middlebury College volunteers		
8-005	Photograph of 12th Regiment Vermont Volunteers Flag		
8-006	Photographs of Mead in college and cir. 1890's		
8-007	Photograph of Company K at the 1891 Bennington Encampment	1891	
8-008	Photographs of the Mead family plot and headstones		
8-009	Photograph of Mead's Falls historic marker sign		
8-010	Photograph of Mead's Falls painting	1848	
8-011	Newspaper ad: Rutland Daily Herald Business card ad for Dr. Mead	1/18/1871	
8-012	Newspaper Article: Rutland Weekly Herald Defending Mead for Lieutenant Governor	1/18/1908	

8-013	Newspaper Article: Middlebury Register Gov. Mead's Gift to Rutland ("The Community Center")	12/31/1915	
8-014	Newspaper Article: Fair Have Era John Abner Mead – A Dramatic Life	2/3/1910	
8-015 To 8-016	Columbia University - John Abner Mead's MD degree	1868	
8-017 To 8-031	Gov. Mead's Farewell Address to the Joint Assembly	1912	
8-032	Newspaper Article: Burlington Free Press "Ex. Gov. Mead Dies in his 79th Year"	1/13/1920	
8-033	Newspaper Article: Herald and News John A. Mead's death	1/15/1920	
8-034 To 8-035	Newspaper Article: Middlebury Register "Death of Two Noted Sons of Midd: Brainerd Kellogg and Ex-Gov. Mead"	1/16/1920	
8-036	Newspaper Article: Rutland Daily Herald Services are Held for Ex-Gov. Mean	1/16/1920	
8-037	Newspaper Article: Rutland Weekly Herald Memorial to Mead	1/16/1920	
8-038 To 8-058	A Short Discourse Concerning Pestilential Contagion By Richard Mead, M.D.	1720	

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Vermont Superior Court
Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
	)
Plaintiff,	)
v.	)
	)
THE PRESIDENT AND FELLOWS	)
OF MIDDLEBURY COLLEGE,	)
	)
Defendant.	)

ANSWER TO FIRST AMENDED COMPLAINT

Defendant President and Fellows of Middlebury College ("Middlebury" or the "College"), by and through counsel, answers the First Amended Complaint as follows:

1. Admitted that John Abner Mead ("Mead") wrote to the President of Middlebury in 1914 to propose a gift to commemorate the fiftieth anniversary of his graduation. The letter speaks for itself.

2. The allegations of this paragraph constitute selective quotation from Mead's May 11, 1914 letter, which speaks for itself.

3. Admitted that the Middlebury College Trustees accepted Mead's gift; denied that it was with the explicit understanding that Middlebury's chapel was to be known as the Mead Memorial Chapel.

4. Admitted that the Chapel is constructed of Vermont marble, placed on the highest point on campus, is an important and iconic building on the College's

campus, and has been featured in the College's promotional materials. The remaining allegations of this paragraph are argument to which no response is required; to the extent a response is required, denied.

5. Admitted.

6. Admitted that the College removed the wooden sign identifying its chapel as the "Mead Memorial Chapel" the morning of September 27, 2021, and that the sign previously hung in a niche above the door.

7. Admitted that the College did not issue a public statement in advance of the removal of the sign for "Mead Memorial Chapel." The remaining allegations of this paragraph are argument to which no response is required; to the extent a response is required, denied.

8. Denied.

9. Denied.

10. Denied.

11. To the extent the allegations of this paragraph are intended as legal interpretation of Mead's May 11, 1914 letter, the letter speaks for itself. Otherwise, the allegations of this paragraph are argument and speculation to which no response is required; to the extent a response is required, denied.

12. To the extent the allegations of this paragraph are intended as legal interpretation of Mead's May 11, 1914 letter, the letter speaks for itself. Otherwise, the allegations of this paragraph are argument and speculation to which no response is required; to the extent a response is required, denied.

13. Admitted that the reason for the removal of the Mead name from Middlebury's chapel was Mead's address to the Legislature calling for enactment of eugenics policies. Denied that the paragraph fully and accurately describes the basis for the decision. The remaining allegations of this paragraph are argument to which no response is required; to the extent a response is required, denied.

14. Denied that the allegations of this paragraph accurately state Middlebury's public statements on Mead's legacy. The remaining allegations of this paragraph are argument to which no response is required; to the extent a response is required, denied.

15. The allegations of this paragraph are argument to which no response is required; to the extent a response is required, denied.

16. Denied.

17. Admitted.

18. Admitted, on information and belief.

19. Admitted.

20. The allegations of this paragraph state a legal conclusion to which no response is required.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted, on information and belief.

26. Admitted.

27. Admitted, on information and belief.

28. Admitted.

29. Admitted, on information and belief.

30. Admitted.

31. Admitted.

32. Admitted that Mead graduated from Middlebury in the class of 1864, that he offered to supply funds for Middlebury to build a chapel in 1914 as a gift, and that Middlebury's Trustees accepted the gift. Otherwise, denied.

33. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

34. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

35. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

36. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

37. Middlebury lacks the knowledge or information sufficient to enable it

either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

38. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

39. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

40. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

41. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

42. Admitted that Mead was admitted to Middlebury in the fall of 1860. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the remaining allegations of this paragraph. To the extent that a response is required, denied.

43. Admitted, on information and belief, that Mead interrupted his studies at Middlebury to enlist in Company K, Twelfth Infantry Regiment, Vermont Volunteers during the United States Civil War. Denied, on information and belief, that Mead participated in the Battle of Gettysburg.

44. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

45. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

46. Denied.

47. Admitted that Mead completed his studies and graduated from Middlebury with the class of 1864. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the remaining allegations of this paragraph. To the extent that a response is required, denied.

48. Admitted that Mead was chosen as a speaker for his 1864 Commencement ceremony and delivered a speech entitled "The Moral Effects of the War." The remaining allegations of this paragraph are denied, on information and belief.

49. Admitted.

50. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

51. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

52. Admitted that Mead was awarded a Master's Degree at Middlebury in 1867. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the remaining allegations of this paragraph. To the extent that a response is required, denied.

53. Admitted, on information and belief.

54. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

55. Admitted that the paragraph quotes the cited article, reporting the recollections of an admirer of Mead upon Mead's death. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the remaining allegations of this paragraph. To the extent that a response is required, denied.

56. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

57. Admitted, on information and belief, that Mead returned to Vermont in or around 1870 and practiced medicine in the Rutland area.

58. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

59. Admitted.

60. Admitted, on information and belief.

61. Admitted, on information and belief.

62. Admitted, on information and belief.

63. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

64. Admitted, on information and belief.

65. Admitted, on information and belief.

66. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

67. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

68. Admitted, on information and belief.

69. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

70. Admitted that Mead became president of the Howe Scale Company in or around 1886, and that Howe was a well-known manufacturer of scales. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the remaining allegations of this paragraph. To the extent that a

response is required, denied.

71. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

72. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

73. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

74. Admitted that Mead was elected a State Senator and served as Mayor of Rutland. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the remaining allegations of this paragraph. To the extent that a response is required, denied.

75. Admitted.

76. Admitted, on information and belief.

77. Admitted that Mead served as Lieutenant Governor between 1908 and 1910, and that the paragraph quotes an excerpt from a piece published in the Rutland Weekly Herald.

78. Admitted.

79. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegation that Mead "was viewed as a progressive."

Otherwise, admitted.

80. Admitted, on information and belief.

81. Admitted.

82. Admitted, on information and belief.

83. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

84. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

85. Admitted that Mead made financial donations to Middlebury College during his lifetime, including funds donated toward the construction of Middlebury's chapel between 1914 and 1916. Denied that the gift for construction of the chapel was "conditional," except that it arguably may have been subject to two conditions precedent (procurement of plans that met Mead's approval and formation of a building committee).

86. Admitted, on information and belief.

87. Admitted, on information and belief, that Mead was involved in the creation of the Community House. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the remaining allegations of this paragraph. To the extent that a response is required, denied.

88. Admitted.

89. Admitted.

90. Admitted, on information and belief.

91. Admitted that this paragraph quotes President Thomas's eulogy of Mead.

92. Admitted, on information and belief.

93. Admitted as to the text appearing on Mead's headstone. The allegation that such text "reflects the essence of who he was" is argument to which no response is required; to the extent a response is required, denied.

94. Admitted.

95. Admitted that on May 11, 1914, Mead sent a Letter to President Thomas offering to donate funds for erection of a chapel to serve as a place of worship for the College, the text of which speaks for itself.

96. Admitted that Mead's May 11, 1914 was referred to as the "Letter of Gift." Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegation that the letter was also referred to as the "Offer Letter"; to the extent that a response is required, denied.

97. The May 11, 1914 Gift Letter speaks for itself; denied that the allegations of the paragraph fully and accurately summarize it. Further denied that the letter contained any "Terms of [a] Contract" or "Conditions of [a] Gift," except that it may arguably be read to set forth two conditions precedent to Mead's willingness to proceed with a gift: procurement of plans that met Mead's approval and formation of a building committee.

98. Admitted that this paragraph reproduces the text of the Gift Letter.

99. Admitted that this paragraph reproduces a portion of President Thomas's May 15, 1914 letter. The letter speaks for itself.

100. Admitted that this paragraph reproduces a portion of a May 16, 1914, letter from Frank C. Partridge. The text of that letter speaks for itself; denied that it constituted acceptance of an offer within the meaning of the law.

101. Admitted that this paragraph reproduces a portion of a May 17, 1914, letter from John E. Weeks. The letter speaks for itself.

102. Admitted that this paragraph reproduces a portion of a May 18, 1914, letter from A. Barton Hepburn. The letter speaks for itself.

103. Admitted that this paragraph reproduces a portion of a May 19, 1914, letter from James L. Barton. The letter speaks for itself.

104. Admitted that this paragraph reproduces a portion of a May 22, 1914, letter from Brainerd Kellogg. The letter speaks for itself.

105. Admitted that this paragraph reproduces a portion of a May 23, 1914, letter from John A. Fletcher. The letter speaks for itself.

106. Admitted that on June 22, 1914, the President and Fellows of Middlebury College adopted the resolution reproduced in this paragraph. Denied that this constituted the acceptance of "the terms of the contract or conditions of the gift without reservation."

107. Admitted.

108. Admitted that this paragraph reproduces a portion of a piece published

in the Burlington Free Press on May 15, 1914.

109. Admitted that this paragraph reproduces a portion of a piece published in the Rutland Herald on May 16, 1914.

110. Admitted that, on May 20, 1914, The Middlebury Campus reported on Mead's gift and reproduced the Gift Letter. Further admitted that this paragraph reproduces a portion of an article printed in The Middlebury Campus on that date.

111. Admitted that this paragraph reproduces a portion of a piece published in the Vermont Tribune on May 21, 1914.

112. Admitted that President Thomas wrote an article that was published in the April 8, 1915 edition of the Boston Evening Transcript, a portion of which is reproduced in this paragraph.

113. Admitted that on May 28, 1914, Mead wrote to President Thomas and that portion of that letter is reproduced in this paragraph. The letter speaks for itself.

114. Admitted.

115. Admitted.

116. Admitted that, at the groundbreaking ceremony, Rev. James L. Barton gave a speech entitled "Acceptance in Behalf of the Trustees," a portion of which is reproduced in this paragraph.

117. Admitted that, at the groundbreaking ceremony, Professor Charles B. Wright gave a speech entitled "Address in Behalf of the Faculty," a portion of which is reproduced in this paragraph.

118. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

119. Admitted, on information and belief.

120. Admitted.

121. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

122. Admitted, on information and belief.

123. Admitted.

124. Admitted that on June 21, 1915, Mead sent a letter to President Thomas, a portion of which is reproduced in this paragraph. The letter speaks for itself.

125. Admitted.

126. Admitted.

127. Admitted that construction of the chapel was completed as of 1916. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegation as to the total cost paid by Mead to construct the chapel (and the present value of such sum); to the extent a response is required, denied.

128. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a

response is required, denied.

129. Admitted that this paragraph reproduces a portion of President Thomas's eulogy of Mead.

130. Admitted.

131. Admitted.

132. Admitted, on information and belief.

133. Admitted that this paragraph reproduces a portion of former President Ezra Brainerd's speech at the dedication ceremony.

134. Admitted.

135. Admitted.

136. Admitted that this paragraph reproduces a portion of President Thomas's September 19, 1916 address to students at the chapel.

137. Admitted that this paragraph reproduces a portion of President Thomas's eulogy of Mead.

138. Admitted that this paragraph quotes from text that appeared on Middlebury's website referring to the chapel.

139. Admitted.

140. Admitted that this paragraph quotes from text that appeared on Middlebury's website referring to the chapel.

141. Admitted that Mr. Fletcher felt that the gift toward construction of the chapel would be helpful in securing financial support for Middlebury from the State Board of Education. Middlebury lacks the knowledge or information sufficient to

enable it either to admit or deny the allegation that the gift was in fact critical in securing such support; to the extent that a response is required, denied.

142. Admitted that this paragraph quotes a portion of an article that appeared in the Middlebury Campus newspaper. The remaining allegations of this paragraph are argument and speculation to which no response is required; to the extent a response is required, denied.

143. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

144. Admitted that A. Barton Hepburn was Chairman of the Board of The Chase National Bank in New York and an alumnus and trustee of Middlebury, and gifted funds toward the construction of the Hepburn Hall dormitory.

145. Admitted.

146. Admitted.

147. Admitted that the chapel is a structure of great beauty and is important to Middlebury. The remaining allegations of this paragraph are argument and speculation to which no response is required; to the extent a response is required, denied.

148. Admitted that the chapel is an iconic and prominent structure on the Middlebury campus; denied that it is the "College's identity and brand." The remaining allegations of this paragraph are argument to which no response is required; to the extent a response is required, denied.

149. The allegations of this paragraph are argument and speculation to which no response is required; to the extent a response is required, denied.

150. Denied.

151. Admitted that the chapel was referred to as the "Mead Memorial Chapel" for over one hundred years; otherwise, denied.

152. Admitted that in the summer of 2021, the Prudential Committee of the Board of Trustees of Middlebury voted to remove the Mead name from the chapel. Further admitted that this paragraph quotes from a letter to the Middlebury community from Trustee George Lee and President Laurie Patton announcing the removal of the Mead name.

153. Admitted.

154. Denied that this paragraph fully reproduces Mead's commentary on and advocacy for eugenics policy in his farewell address to the Vermont General Assembly; admitted that it reproduces a portion of his comments.

155. Denied that Mead's Farewell Address did not result in the passage of legislation adopting eugenics policies in Vermont; admitted only that no such legislation was "signed into law" by the Governor of Vermont immediately after Mead's Farewell Address.

156. Admitted that the Vermont Legislature passed a sterilization law in 1931, but denied that it was "not until" 1931 that Legislature passed such a measure; the Legislature passed an earlier sterilization law within months of Governor Mead's Farewell Address.

157. Admitted.

158. Denied that Middlebury has so stated.

159. Denied.

160. Admitted that there were other supporters of eugenics policies in the early twentieth century. The claim that support for eugenics was "mainstream" is argument to which no response is required; to the extent that a response is required, denied.

161. Admitted, upon information and belief, that these individuals took positions that were aligned with the eugenics movement.

162. Denied that actions carrying out eugenics policies in Vermont were limited to the period from 1931 to 1941. The allegation that the "bulk of eugenics activity" occurred within that period is argument to which no response is required; to the extent that response is required, denied.

163. Denied.

164. Admitted that this paragraph quotes a statement by Calvin Coolidge. The remaining allegations of this paragraph are argument to which no response is required.

165. Denied.

166. This paragraph is summary of arguments advanced in a book by Professor Anthony Kronman, which book speaks for itself.

167. The allegations of this paragraph are argument to which no response is required.

168. Denied.

169. Admitted that this paragraph quotes a portion of an article by Paul Gillies that was published in the Vermont Bar Journal in 2020. That article speaks for itself.

170. The allegations of this paragraph are argument and speculation to which no response is required; to the extent a response is required, denied.

171. The allegations of this paragraph are argument to which no response is required; to the extent a response is required, denied.

172. Denied.

173. Denied.

174. Denied.

175. Denied.

176. Denied.

177. Denied.

178. The allegations of this paragraph are argument and speculation to which no response is required; to the extent a response is required, denied.

Count I

179. Middlebury incorporates by reference its responses to Paragraphs 1 through 178.

180. Admitted only that Mead proposed to fund the construction of a chapel as a gift to Middlebury; denied that it was an "offer" within the meaning of the law. The remaining allegations of this paragraph are denied.

181. Denied.

182. Denied.

183. Denied.

184. Admitted that the chapel was known as the Mead Memorial Chapel for more than a hundred years following its completion.

185. Denied.

186. Denied.

Count II

187. Middlebury incorporates by reference its responses to Paragraphs 1 through 186.

188. Denied.

Count III

189. Middlebury incorporates by reference its responses to Paragraphs 1 through 188.

190. Denied.

Count IV

191. Middlebury incorporates by reference its responses to Paragraphs 1 through 190.

192. This paragraph states a legal conclusion to which no response is required.

193. Denied.

194. Denied.

195. Denied.

Count V

(Dismissed with Prejudice)

Count VI

(Dismissed with Prejudice)

Count VII

196. Middlebury incorporates by reference its responses to Paragraphs 1 through 195.

197. Denied.

198. Denied.

199. Denied.

200. Denied.

201. Admitted that Middlebury benefited from erection of the Chapel and that the Chapel provided a place for divine worship as well as a meeting place for the College. The remaining allegations of this paragraph are argument and speculation to which no response is required; to the extent a response is required, denied.

202. Admitted that the Chapel is a centerpiece and aesthetic keystone for the College; denied that it "create[ed] the College's identity and brand."

203. Denied.

204. Denied.

205. Denied.

Count VIII

206. Middlebury incorporates by reference its responses to Paragraphs 1 through 205.

207. Middlebury lacks the knowledge or information sufficient to enable it either to admit or deny the allegations of this paragraph. To the extent that a response is required, denied.

208. Denied.

209. The allegations of this paragraph are argument and speculation to which no response is required. To the extent a response is required, denied.

210. Denied.

AFFIRMATIVE DEFENSES

1. Failure to state a claim upon which relief can be granted.

2. Lack of standing.

3. Waiver/estoppel.

Dated at Burlington, Vermont, this 3rd day of December, 2024.

By: *\/s\/ Justin B. Barnard*
Justin B. Barnard, Esq.

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
	)
Plaintiff,	)
v.	)
	)
THE PRESIDENT AND FELLOWS	)
OF MIDDLEBURY COLLEGE,	)
	)
Defendant.	)

MIDDLEBURY COLLEGE'S MOTION FOR SUMMARY JUDGMENT AND RENEWED MOTION TO DISMISS FOR LACK OF STANDING

Defendant The President and Fellows of Middlebury College ("Middlebury" or the "College"), by and through counsel, moves for summary judgment pursuant to V.R.C.P. 56, and renews its motion to dismiss for lack of standing pursuant to V.R.C.P. 12(b)(1). In support, Middlebury submits this Memorandum of Law and an accompanying Statement of Undisputed Material Facts.

MEMORANDUM

The facts material to resolution of this action date back more than a century and are not contested. It is undisputed that when John Abner Mead generously offered to build a chapel for Middlebury College in 1914, Mead suggested that he envisioned the building being known as "Mead Memorial Chapel." However, it is also undisputed that Mead—an experienced businessman—did not ever explicitly impose or negotiate for a perpetual requirement that the building be so named as a condition

of his gift. That is both critical and dispositive.

Former Governor Mead certainly knew how to impose explicit conditions to ensure his wishes were carried out when he wanted to do so. In making a gift of real estate to establish a community center in Rutland around the same time, for example, Mead spelled out detailed conditions:

> This conveyance is made upon the *express condition* that the property herein described and conveyed shall be maintained as a general center for wholesome recreation and social opportunity, and that all of said buildings now on said property and those that may be built thereon shall be protected to a reasonable extent by fire insurance, and that all of said buildings shall be kept in good condition and repair, and should they be partially or wholly destroyed by fire, they shall be rebuilt at least so far as the insurance will permit and used only for the purposes above specified . . . . It is also a condition that the grounds and the buildings shall be kept open during such hours as the Board of Managers may dictate, and there shall always be a suitable person in charge of the same and whose duty it shall be to keep the buildings and the grounds in proper condition for the purposes which are specified in this deed. . . . *And in case of the failure to perform any of said conditions, then and in that case, this deed shall be null and void and the property herein conveyed shall revert to the said John A. Mead, [and] his heirs and assigns* . . . .

Exh. FF (emphasis added). No comparable language of condition appears in any of the documentation of Mead's gift to Middlebury. Rather, Mead was clear that he saw his donation of the Chapel as a gift "where no return can be expected," Exh. V, motivated by his desire to assist Middlebury by providing a place of worship for the community.

Reduced to its essence, then, the question at the center of this case is relatively straightforward: will the law imply into a charitable gift a binding, perpetual condition, enforceable by a donor's estate over a century after his death, absent

explicit, plain language on the face of the gift instrument imposing such a condition? The answer is no. To hold otherwise would upend well-settled law and expose schools, hospitals, and other charitable organizations to burdensome litigation seeking to enforce the inchoate preferences of donors who have long passed from this world.

For several reasons, Plaintiff's effort to have the Court to read into Mead's gift a condition that would obligate Middlebury to refer to the Chapel as "Mead Memorial Chapel" in perpetuity—and require the College to pay millions of dollars in restitution for a violation of this supposed condition when it renamed the Chapel in 2021—lacks any basis in the law. The primary theory advanced by Plaintiff, which would treat Mead's gift as a private contract, runs contrary to the law governing charitable gifts. The common law traditionally has viewed restrictions on gifts as a matter of charitable trust or conditional gift, both of which are aspects of property law, not contract. Even if contract law were to apply, Mead's failure to actually bargain for express perpetual naming rights would defeat Plaintiff's claims. The law disfavors perpetual terms and requires that they be clearly stated, and it is beyond dispute that Mead did not secure any explicit agreement to naming rights in perpetuity.

While Plaintiff's suit would perhaps more properly be viewed as an attempt to enforce a condition on a gift rather than a contract action, it fails there as well: the facts do not support a conditional gift claim. The law will recognize and enforce a conditional gift only where there is express language of condition together with a right of reverter, as conditional gifts (like perpetual terms in contracts) are strongly

disfavored. The language of Mead's 1916 gift of a community center in Rutland, quoted above, offers a paradigmatic example of a valid, enforceable conditional gift. His 1914 gift to Middlebury, on the other hand, contains none of the requisites that could make out a conditional gift—and, indeed, there is no indication that Mead envisioned or intended that his gift of the Chapel to Middlebury might fail and be subject to forfeiture at some point in the future based on violation of a condition. As there is no colorable claim that Mead's gift gave rise to an enforceable legal obligation to maintain the Mead name on the Chapel in perpetuity, Middlebury is entitled to judgment on all of Plaintiff's claims.

In the background of this lawsuit there lurks another issue, one of much greater significance to donation-supported institutions and organizations in Vermont: whether and under what circumstances a donor (or a donor's estate) may bring suit to enforce asserted restrictions on a charitable donation. The common law precluded donor standing to enforce charitable gift restrictions, on the rationale that a donor has given up any legal interest in property transferred to the donee institution. As charitable gifts are intended to benefit the common good, the Attorney General alone was responsible for enforcing the public's interest in compliance with the terms of charitable gifts. While the Court declined to dismiss this suit on standing grounds at the outset, Middlebury urges the Court to revisit the issue. Courts in most jurisdictions continue to conclude that donors and their estates lack legal standing to pursue enforcement of gift restrictions, and there is no reason to believe that Vermont would diverge from the common law on this point. As standing presents a question

of the Court's subject matter jurisdiction, the Court should dismiss the suit prior to trial.

BACKGROUND

A. John Abner Mead and the Special Administrator

John Abner Mead, an 1864 graduate of Middlebury College, served from 1910 to 1912 as Vermont's fifty-third governor. Statement of Undisputed Material Facts ("SUMF"), ¶ 1. Trained as a physician, Mead practiced medicine in Rutland for a period before pursuing political office, and later had a career as a businessperson and a real estate investor. *Id.*, ¶¶ 2-3. Mead also served on Middlebury's Board of Trustees. *Id.*, ¶ 4.

Mead died on January 12, 1920, and his estate was administered and closed as of 1923. *Id.*, ¶ 5. A century later, in May 2022, John L. Hinsman, a distant heir of Mead, filed a petition in the Probate Division of the Vermont Superior Court seeking to reopen Mead's estate for the purpose of investigating and presenting potential claims against Middlebury College for an alleged breach of the terms of Mead's gift of the Chapel. *Id.*, ¶ 7. The Probate Division, noting that it was not "passing judgment on the validity of any claims," granted the petition and appointed James Douglas as Special Administrator of Mead's estate in an order dated June 17, 2022. *Id.*, ¶ 8.

B. Mead's Gift to Middlebury

On May 11, 1914, former Governor Mead wrote to Middlebury President John Thomas and stated his intention to make a substantial gift to the College. Mead's

letter (the "Gift Letter") explained:

> In commemoration of the fiftieth anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly Father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel." I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.

Id., ¶¶ 9-10. Mead further stated that he "ha[d] in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure," to which he would "bind [himself] and [his] estate" upon satisfaction of two contingencies. The first of these was that the "Trustees of the College secure appropriate plans for its erection which shall meet with my approval." *Id.*, ¶ 11. The second was that the Trustees "appoint a Building Committee at once, consisting of President Thomas, former President Brainerd, and [himself] to make the necessary contracts for such a structure and to supervise the erection of the same." *Id.*

On May 15, 1914, President Thomas wrote to the College Trustees, enclosing the Gift Letter and noting with "the keenest pleasure" that it "assures the erection of an appropriate and beautiful chapel for Middlebury College." *Id.*, ¶ 14. President Thomas asked the Trustees to reply "immediately as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests." *Id.* The letter did not ask the Trustees to authorize any agreement to use the name "Mead Memorial Chapel," nor, indeed, did the letter contain any reference to the name at all. *Id.*, ¶¶ 15-16. President Thomas received

numerous responses from the College's Trustees accepting the gift and authorizing the appointment of a building committee. *Id.*, ¶ 17.

At a June 22, 1914 meeting, Middlebury's Trustees voted on and adopted a resolution formally accepting the gift. *Id.*, ¶ 20. The resolution, which was followed by a recitation of Mead's Gift Letter, stated in full:

> Whereas our esteemed colleague, the Honorable John Abner Mead of the Class of 1864, has signified to President Thomas his desire, in commemoration of the fiftieth anniversary of his graduation, to erect a Chapel for Middlebury College, and his readiness to furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice.
>
> Resolved that the President and Fellows of Middlebury College hereby accept of this magnificent benefaction with sincere gratitude to both Dr. & Mrs. Mead and their family for their deep interest in the religious welfare of the College, so impressively manifested by this provision of a suitable place for divine worship.
>
> Resolved that the Trustees through the Committee nominated by Dr. Mead will use their best endeavors to secure the erection of a dignified and substantial structure, in harmony with the other buildings of the college, and such as will meet the approval of the donor.

Id. The Trustees likewise voted to form a building committee to oversee the project, consisting of Mead, President Thomas, former President Brainerd, and Trustee John Weeks. *Id.*, ¶ 21.

On June 23, 1914, the College held a groundbreaking ceremony in connection with its commencement exercises (although the actual construction of the Chapel did not begin in earnest until 1915). *Id.*, ¶ 23. As the project proceeded, Mead was directly involved in many of the communications and discussions regarding the design and construction of the Chapel. *Id.*, ¶ 22. By December 1914, the College

secured plans for the Chapel and a contractor, and the Trustees formally voted at a December 18, 1914 meeting to "proceed with construction of the Chapel, with the understanding that $60,000 would be contributed by Dr. Mead; the balance estimated at about $1,000 to be contributed by the College." *Id.*, ¶ 25.

Mead wrote to the Trustees on January 13, 1915, confirming his agreement to contribute $60,000, stating:

> In consideration of the contract of the Committee for the Erection of the Mead Memorial Chapel at Middlebury College with Thomas W. Rogers of Brandon, Vt., whereby the same is to be erected in accordance with plans and specifications of Allen & Collens, architects, at a cost of $51,945, I agree to furnish funds for the discharge of this contract and for the expenses connected with the erection of this chapel, to the amount of $60,000, as may be required during the construction and in accordance with the terms of the above contract, binding myself, my heirs and my assigns as above specified. It is agreed on the part of said Trustees that they are to complete said chapel, making it complete in every way, as to grounds, furnishings, etc. for the purposes of a college chapel, as voted at the meeting of the Trustees of said College held in New York City Dec. 18, 1914, and as defined in correspondence between the President of Middlebury College and myself.

Id., ¶ 26. Mead subsequently agreed to increase his gift toward the Chapel by $1,031, which the Trustees voted to accept in April 1915. *Id.*, ¶ 27. He also pledged $7,000 to acquire eleven bells for the Chapel's tower, stating in a June 21, 1915 letter that, "[i]f acceptable to the members of the Board of Trustees, Mrs. Mead and I would be pleased to add a chime of bells to our gift of the Mead Memorial Chapel." *Id.*, ¶ 28. The Board of Trustees accepted this additional gift in a June 23, 1915 meeting. *Id.*

Construction of the Chapel was completed in 1916[1] and was memorialized in a dedication ceremony held on June 18, 1916. *Id.*, ¶ 29. The Chapel has served as an important role in the life of the College since that time. Middlebury has described it as a "place where the College community comes together on occasions of significance," offering a "community gathering place for convocations, lectures, concerts, baccalaureates, and countless other events." *Id.*, ¶ 32. Although initially conceived as an avowedly Christian (and Protestant) place of worship, the Chapel now welcomes students of all faiths and backgrounds, and it serves as a venue for secular as well as religious events.[2] *Id.*, ¶ 33.

C. Middlebury's Renaming of the Chapel and the Ensuing Lawsuit

In summer 2021, the Middlebury Board of Trustees' Prudential Committee decided on behalf of the Board to discontinue the use of the name "Mead Memorial Chapel." SUMF, ¶ 34. The impetus for the change, which related to Mead's advocacy of eugenics policies, is not relevant or material to the present Motion. The sign identifying the Chapel as "Mead Memorial Chapel" was removed from its location above the entrance to the Chapel in September 2021, *id.*, ¶ 35, and the Chapel is now known as "Middlebury Chapel." *Id.*, ¶ 36.

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[1] In the years since, the College made a number of significant changes to the Chapel. In 1938, the College added balconies to the interior, increasing the seating capacity to 715. SUMF, ¶ 31. A small ancillary chapel (the Sunderland Chapel) was also built on the right side of the building. *Id.* Additionally, the organ and bells donated by Mead have been updated: the organ was replaced with a large Gress-Miles organ in 1971, and the eleven bells donated by Mead have been succeeded by a forty-eight-bell carillon. *Id.*

[2] The College still has a chaplain who leads Sunday morning Chapel Services during special event weekends, and also employs a rabbi and a Muslim advisor as associate chaplains. SUMF, ¶ 33.

In March 2023, former Governor Douglas, in his role as Special Administrator of the Mead Estate, brought the present suit challenging Middlebury's renaming of the Chapel. The Complaint advances six causes of action: three claims for breach of a purported contractual obligation to preserve the name "Mead Memorial Chapel" in perpetuity (seeking specific performance, damages, and restitution, respectively); a claim for breach of the covenant of good faith and fair dealing; a claim for breach of a conditional gift; and, finally, a claim for unjust enrichment. Through this Motion, Middlebury seeks summary judgment on all six counts.

STANDARDS

A moving party is entitled to summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). The court will "consider the record evidence in the light most favorable to the nonmoving party." *Stone v. Town of Irasburg*, 2014 VT 43, ¶ 25, 196 Vt. 356, 98 A.3d 769. Accordingly, "the nonmoving party receives the benefit of all reasonable doubts and inferences." *Robertson v. Mylan Labs., Inc.*, 2004 VT 15, ¶ 15, 176 Vt. 356, 848 A.2d 310. If "the record shows that there is no genuine issue of material fact[,]" then the moving party "is entitled to judgment as a matter of law." *Bacon v. Lascelles*, 165 Vt. 214, 218, 678 A.2d 902, 905 (1996) (citation omitted). Where the nonmoving party bears the burden of proof on the underlying claim, the moving party may show there is no "genuine issue of material fact . . . by showing the nonexistence of evidence to support the nonmoving party's case." *Brown v. State*, 2013 VT 112, ¶ 12, 195 Vt. 342, 88 A.3d 402 (citing

Celotex Corp. v. Catrett, 477 U.S. 317, 323-25 (1986)).

Rule 12(b)(1) mandates dismissal of a complaint where the plaintiff lacks standing to pursue the claims at issue, as standing is a jurisdictional requirement. *See Severson v. City of Burlington*, 2019 VT 41, ¶ 9, 210 Vt. 365, 215 A.32 102. The plaintiff "must allege facts sufficient to confer standing on the face of the complaint." *Id.* (quoting *Parker v. Town of Milton*, 169 Vt. 74, 76, 726 A.2d 477, 479 (1998)). In ruling on a motion to dismiss for lack of standing, courts "accept 'all uncontroverted factual allegations . . . as true' and construe those facts 'in the light most favorable to the nonmoving party.'" *Id.* (quoting *In re Guardianship of C.H.*, 2018 VT 76, ¶ 6, 208 Vt. 55, 194 A.3d 1174). A motion to dismiss for lack of standing can be made at any point during the pendency of an action. *See* V.R.C.P. 12(h)(3).

ARGUMENT

I. The Undisputed Material Facts Entitle Middlebury to Judgment on All Counts of the Complaint.

Each of the six counts in this lawsuit rests on a common proposition: the assertion that, in making his gift to Middlebury, former Governor Mead imposed a legally binding obligation for the College to maintain the name "Mead Memorial Chapel" in perpetuity. As that proposition is not borne out by the facts, all six fail. The law requires clarity and specificity in imposing obligations of a lengthy or unlimited duration, including perpetual contract terms and conditions subsequent to a gift. The documents evidencing Mead's gift proposal and the College's acceptance

of the gift, the entirety of which are before the Court, fail to offer any evidence of an agreement about naming rights that could meet the law's requirements. For that reason and the others set forth below, the Court should grant Middlebury's Motion and enter judgment on all claims.

A. Mead Did Not Enter into a Contract with Middlebury for Perpetual Naming Rights to the Chapel.

Plaintiff's lead claim[3] posits that Middlebury breached a contract with former Governor Mead to name the chapel he gifted to the College "Mead Memorial Chapel" in perpetuity. The claim fails on two independent grounds. First, Mead's donation was not a matter of contract, but rather a charitable gift subject to the well-developed body of law governing restricted and conditional gifts. Second, even if one were to view Mead's gift through the lens of contract law, there is no evidence that Mead bargained for perpetual naming rights as a condition of his gift to Middlebury. The law disfavors perpetual contractual obligations and will only recognize a perpetual obligation where it is clear on the face of the contract—yet the documentation here does not establish any bargained-for naming rights, let alone support the claim that Middlebury was obligated to maintain the name "Mead Memorial Chapel" in perpetuity. Middlebury is entitled to judgment on those bases.

1. Mead's gift is not governed by the law of contract.

Plaintiff's contract claim raises two interrelated threshold questions: (a) was

[3] In the Complaint, Plaintiff styles his contract claim as three separate counts (Counts I through III), seeking, respectively, specific performance, damages, and restitution. *See* Compl. ¶¶ 179-190. Those counts all rest on the same contract theory and are subject to judgment on the same basis.

former Governor Mead's donation of the Chapel to Middlebury a charitable gift to the College or a bargained-for exchange, and (b) assuming the former, what law governs gifts in Vermont? As discussed below, the undisputed facts establish that Mead's donation of the Chapel was a charitable gift. As such, it is subject to the body of law governing charitable gifts in Vermont, which can include the law of conditional gift, trust law, and UPMIFA—but not contract law. Plaintiff's claim thus must fail.

a. Mead's donation of the Chapel was a gift.

The law defines a "gift" as a voluntary transfer of property to a donee "without consideration and with donative intent." Restatement (Third) of Property (Wills & Don. Trans.) § 6.1; *see also In re Baptist Fellowship of Randolph, Inc.*, 144 Vt. 636, 639, 481 A.2d 1274, 1276 (1984) ("[A] person cannot be required to give a donation in exchange for some consideration since by its very definition a gift is a voluntary transfer without consideration."). Gifts may be either absolute—where the donor "part[s] with all present and future dominion over it," *Williamson v. Johnson*, 62 Vt. 378, 20 A. 279, 280 (1890)—or they may be made subject to conditions or restrictions. *See* 38 Am. Jur. 2d Gifts § 68 (explaining that "[g]ift transfers with conditions attached are valid."). Thus, the fact that a donor might impose obligations on a donee in connection with a gift is not dispositive of whether the transaction is a gift. As the Restatement of Contracts explains:

> [A] gift is not ordinarily treated as a bargain, and a promise to make a gift is not made a bargain by the promise of the prospective donee to accept the gift, or by his acceptance of part of it. This may be true even though the terms of gift impose a burden on the donee as well as the donor.

Restatement (Second) of Contracts § 71 cmt. c (1981). The distinction between a gift subject to conditions and a bargained-for exchange depends "on the motives manifested by the parties." *Id.; see also* Restatement (Third) of Property (Wills & Don. Trans.) § 6.1 cmt. b (2003) ("[D]onative intent is the essence of a gift.").

Admittedly, the distinction between gift and bargained-for exchange is not always crystal clear. There are situations in which the circumstances of a donation to a school or other charitable institution might fairly lead the donation to be characterized as a bargained-for exchange. In *Lupton v. Leander Clark College*, 187 N.W. 496 (Iowa 1922), for example, a college seeking to establish a permanent endowment made a public solicitation offering "that the college would be given the name of any one who would donate $50,000 to said fund." *Id.* at 497. A wealthy local resident submitted a proposal to the college's board of trustees accepting the offer, subject to a number of detailed terms and conditions. These conditions included, among others, that the trustees make provision to change the college's name to "Leander Clark College" by proper amendment of its articles of incorporation upon receiving his payment of the $50,000; that the college raise an additional $100,000 by a certain date; and that the funds be protected and maintained as an endowment for the college "forever" and the interest used "only for payment of president and teachers" with "no part of it . . . diverted to any other use or purpose." *Id.* at 497-99. The donor's proposal directed the board to call a meeting as soon as practicable and "by proper action made of record, fully accept said donation of $50,000.00, with all the terms and conditions on which it is offered as herein expressed, and *solemnly*

pledge the college to the strictest compliance with such conditions forever." *Id.* at 499 (emphasis in original). The college's trustees duly accepted the offer with all terms and conditions, and succeeded in raising an additional $100,000 by the specified deadline. *Id.* at 501.

In 1919, nine years after the donor's death, Leander Clark College, unable to sustain itself as an independent institution, made plans to merge with and transfer its endowment to Coe College. *Id.* at 498. The executors of the donor's estate brought suit for breach of contract, seeking the reversion of the donated funds for violation of what they characterized as a contractual obligation to maintain the funds in perpetuity to support an educational institution under the name "Leander Clark." The trial court dismissed the suit on a demurrer by the college, and, on appeal, the Iowa Supreme Court split over the nature of the transaction. The dissenting justice agreed with the donor's estate that the transaction was properly viewed as contractual, and he would have reversed and allowed the claim to proceed. *Id.* at 501-04. The majority, however, affirmed dismissal, treating the donation as establishing a perpetual charitable trust rather than as a forming a contractual exchange. The court reasoned that "the provision of Leander Clark that the college should bear his name" was not the "dominant motive or purpose" of the gift but rather a "mere incident to a broader and more generous purpose, that of assisting to found and perpetuate a fund . . . to be used for the better education of young men and women . . ." *Id.* at 499-501.

This case presents no such close question: the undisputed facts from a century

ago conclusively establish that Mead's donation to Middlebury was a charitable gift. As noted above, the defining characteristic of a gift is donative intent. The Court need not engage in any speculation as to what motivated Mead's donation, for Mead himself expressly laid out his motives in a letter to the editor of the Middlebury Kaleidoscope in late 1914:

> It will be my pleasure . . . to express to the members of the Junior Class, to the Faculty, the Alumnae and Alumni of our beloved college, my high appreciation for the many kind words spoken and for the innumerable letters received commending *this gift* to our Alma Mater. I have realized for many years that the only enduring source of happiness springs not from selfish acts, but is only attained *by doing for others where no return is expected*, and the greater is the pleasure when you so govern your acts, that mankind may rise to a higher leve[l]—that other lives may be happier and more useful because you have lived and have seen and realized an opportunity. *It was this thought that inspired my desire to assist the students of Middlebury [C]ollege* in having a place of worship where they could all assemble in one auditorium for this inspiration, that the duties of each day might begin with a religious thought, which we all realize is the foundation of all true knowledge.

Exh. V (emphasis added); *see also* Exh. AA (letter from Mead offering to "add a chime of bells to **our gift** of the Mead Memorial Chapel"). Mead viewed and described the donation as a gift with no expectation of return, inspired by a desire to assist Middlebury and its students. The College's officers and trustees likewise understood and repeatedly referred to the donation of the Chapel as a "gift" or "benefaction"[4] and

[4] *See, e.g.,* Exh. M (letter from Trustee John Weeks congratulating Mead on his "splendid gift to Middlebury College"); Exh. N (letter from Trustee James Barton to Mead remarking on his "magnificent gift to Middlebury College"); Exh. O (letter from Treasurer John Fletcher to President Thomas referring to Mead's "splendid gift"); Exh. F (letter from Trustee J.B. McCullough assenting to gift and "congratulat[ing] heartily both the College and Governor Mead upon this gift of the Governor and its acceptance by the College"); Exh. K (letter from Trustee A. Barton Hepburn concurring in "accepting this gift"); Exh. P (dedication speech by Trustee and former President Ezra Brainerd accepting Mead's "gift of this beautiful sanctuary" and assuring him that his "generous gift" would be

reported Mead's donation among the College's charitable gifts[5]—and there is no evidence that Mead ever took exception to that characterization.

The subject matter of the transaction, helping build a place of worship for an educational institution, was also fundamentally charitable in nature. In offering the donation, Mead—a pious man whose tombstone memorializes him as a "Christian and a Philanthropist," SUMF, ¶ 6—emphasized the centrality of his Christian faith to his motivations, writing that it "has been my hope and prayer that I might be able and permitted to build for this college a suitable place for divine worship and that it might rise from the highest point on its campus as a symbol of the position, most prominent in every respect, which [C]hristian character and religious faith should always maintain in its work for our youth." Exh. D at 1. Mead also spoke on multiple occasions of a "sacred duty" to make the Chapel "an instrument of great good to those of this generation and to those of the distant future." SUMF, ¶ 30.

Nor is there any language in the Gift Letter or other correspondence that would suggest a negotiated exchange of naming rights as consideration for Mead's monetary contributions. *Id.*, ¶ 12. This is particularly notable in light of the fact that Mead was an experienced businessman who demonstrated an attention to detail and a keen understanding of contracts in his correspondence regarding the Chapel construction.

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used to "promote the growth of earnest [C]hristian character in the students of Middlebury College"); Exh. Q (Trustee resolution "accept[ing] this magnificent benefaction").

[5] *See* Exh. R at 11 (Middlebury Treasurer's Report for the year ending May 31, 1915); Exh. S at 7 (Middlebury Treasurer's Report for the year ending May 31, 1916); Exh. T at 7 (1916 Middlebury President's Report).

For example, in a July 6, 1914 letter to President Thomas addressing a contract proposed by the architect for the Chapel, Mead wrote:

> I have noted Mr. Collens' letter and the blank form of contract which he has submitted and it simply reminds me of the form of contract which the Government is very apt to insist upon being used if you were to sell anything to any of their departments. It is what we in business life call "a jug-handle" to the very limit—all on one side. . . . I have had a great deal of experience with contracts of this nature and I simply wish to state that if [you] sign the contract drawn after these lines, you are tied hand and foot. If you will read it over very carefully, you will see that there is not a hole for you to escape through, while they have got every condition protecting themselves. . . . I feel that we should be very very careful with these people or anybody else in the making of contracts. I have been bit once and I feel that is sufficient for me. I am strongly impressed that we should not tie ourselves to Mr. Collens until we have in black and white exactly how our plans are to be governed.

SUMF, ¶ 22. This punctiliousness was not limited to Mead's business affairs. As discussed above, Mead's donation of land for a community center in Rutland contained detailed conditions, the failure of which would trigger reversion of the gift. *See* SUMF, ¶ 40. The absence of any comparable language of condition or exchange in the Gift Letter (and other correspondence concerning the Chapel) reflects the fact that the donation was understood and intended as an absolute gift—not as a contract.

b. As a gift, Mead's donation is not governed by the law of contract.

What follows from the characterization of Governor Mead's donation as a charitable gift is the fact that any restrictions on that gift[6] would not be enforceable

[6] To be clear, while this discussion of the principles governing restricted gifts assumes the presence of an express, valid condition or restriction, Middlebury does not agree that Mead's gift was in fact restricted or subject to conditions, as discussed further below.

by his estate in contract. While this may seem self-evident, there has been some amount of jurisprudential confusion over the body of law governing restricted charitable gifts. As discussed below, there are good reasons why Vermont law has not viewed and should not view gifts as a form of contract, as to do so would be inconsistent with the legal framework governing charitable gifts in this state.

As one commentator has noted, there are theoretically "four ways to analyze a restricted gift—three under property law (charitable trust, conditional gift, restricted gift to corporate charity), and then contract law." Evelyn Brody, *From the Dead Hand to the Living Dead: The Conundrum of Charitable-Donor Standing*, 41 Ga. L. Rev. 1183, 1190-91 (2007). While there are occasional outlying cases,[7] the prevailing view has been "that a restricted gift is not a contract." *Id.* at 1225; *see also* Iris J. Goodwin, *Donor Standing to Enforce Charitable Gifts: Civil Society vs. Donor Empowerment*, 58 Vand. L. Rev. 1093, 1149 (2005) (noting that, while "[c]onceptually, a restricted gift hovers somewhere between a gift and a contract[,] . . . [t]raditional jurisprudence has seen it as a gift . . . and subsumed it under property law (which is also consistent with allowing restricted gifts to be governed by the law of trusts)"); John K. Eason, *Private Motive and Perpetual Conditions in Charitable Naming Gifts: When Good Names Go Bad*, 38 U. Cal. Davis L. Rev. 375, 405 (2005) (noting that "the parties'

[7] The leading case for application of contract principles to a restricted gift (cited by Plaintiff in opposing Middlebury's Motion to Dismiss) is *Stock v. Augsburg College*, No. C1-01-1673, 2002 WL 555944 (Minn. App. Ct. Apr. 16, 2002), an unpublished intermediate appeals court case that affirmed dismissal of the plaintiff donor's contract claim on statute of limitations grounds. Although the court suggested in dicta that the donor would have had a contract claim if the complaint had been timely filed, it appears likely that the court was actually analyzing the issue as a question of conditional gift.

relationship with regard to the contribution and enforcement of [a gift's] terms is typically addressed under property-based principles" rather than contract); 38 Am. Jur. 2d Gifts § 2 (because a gift is voluntary and without consideration, it lies outside "the legal definition of a contract").

This traditional treatment of restricted gifts as a species of property law—whether conditional gift or charitable trust—accords with Vermont's approach to gifts. Thus, for example, gifts made to a charitable or educational institution without any specific restrictions are deemed under Vermont law to be held in trust for use consistent with the charitable purposes of the institution. *See Cramton v. Cramton's Estate,* 88 Vt. 435, 92 A. 814, 815 (1915) (citing 2 Perry, Trusts (3d Ed.) § 733). Likewise, where Vermont courts have recognized a right by donors to sue over restrictions placed on gifts, they have done so only upon finding an express, conditional gift. *See Ball v. Hall*, 129 Vt. 200, 206, 274 A.2d 516, 520 (1970) (recognizing that a "gift may be conditioned upon the donee's performance of specified obligations or the happening of a certain event" and finding that failure of express condition required reversion to plaintiffs).[8] To the best knowledge of the undersigned, no Vermont court has ever allowed a donor to pursue an action for breach of contract for violation of a gift restriction.

Declining the application of contract law to charitable gifts makes sense for

[8] While the Vermont Supreme Court in *Ball* referred to the terms of one of the gifts at issue as the "contract of the parties," *id.*, it is clear from the text of the discussion that the Court viewed the cause of action as breach of a conditional gift, only recognizing a remedy of restitution (consistent with the law of conditional gifts). *See Williamson v. Johnson,* 62 Vt. 378, 20 A. 279, 281 (1890) (upon failure of condition to gift, cause of action for recovery of gift arises).

several reasons. First, to apply contract law to gifts would be inconsistent with Vermont's statutory regime for management and oversight of charitable funds. Under the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"), a charitable institution may modify or release a restriction on a charitable gift by petitioning the Probate Division (after notification of the Attorney General), consistent with the trust doctrine of *cy pres*; UPMIFA even allows, in the case of small gift funds in existence for more than twenty years, for institutions to unilaterally modify restrictions without judicial approval (although they are still required to provide notice to the Attorney General). *See* 14 V.S.A. § 3416(b)-(d). The requirement of notification of the Attorney General is consistent with the principle that "in all types of modification the attorney general continues to be the protector both of the donor's intent and of the public's interest in charitable funds." Uniform Prudent Management of Institutional Funds Act, Prefatory Note at 4. There is no requirement, however, that the donor be made a party to a modification proceeding or consulted in the case of unilateral modification. *See* 14 V.S.A. § 3416(b)-(d). If gift restrictions were independently enforceable in contract, a statutory scheme that allowed courts and charitable institutions to modify or eliminate restrictions without involving the donor would make no sense and very likely would run afoul of the Contracts Clause of the United States Constitution.

Second—and relatedly—because restrictions on charitable gifts often persist long after the donor's death, it is important that the law afford a mechanism for charitable institutions to seek relief from obligations that become impracticable or

outmoded due to changes in society or in the nature and operations of the donee institution. As the Massachusetts Supreme Judicial Court has observed, in many cases restrictions on a charitable gift "originally may have been imposed, not to facilitate the achievement of a general charitable purpose, but for the personal gratification of the donor in respects wholly irrelevant to any effective execution of a public purpose" and "there is strong ground for disregarding such subordinate details if changed circumstances render them obstructive of, or inappropriate to, the accomplishment of the principal charitable purpose." *Trs. of Dartmouth Coll. v. City of Quincy*, 258 N.E.2d 745, 753 (Mass. 1970). Such relief is available through the doctrine of *cy pres* and UPMIFA where gifts are treated under property law, whereas application of contract law would leave charitable institutions with no clear avenue for relief from outdated or burdensome restrictions.

Third, the donor's remedy (if any) for the violation of a gift restriction has traditionally been limited to restitution—i.e., reversion of the gift. *See Ball*, 129 Vt. at 207, 274 A.2d at 520; *see also Tennessee Div. of United Daughters of the Confederacy v. Vanderbilt Univ.,* 174 S.W.3d 98, 114 (Tenn. App. Ct. 2005) ("If the recipient fails or ceases to comply with the conditions, the donor's remedy is limited to recovery of the gift."). Asserting a claim in contract makes available a broader range of remedies, including specific performance and consequential damages. Allowing disappointed donors and their heirs to pursue such relief would fundamentally alter the traditional nature of the gift transaction, which, absent an express reservation of a right of reversion, traditionally contemplates that the donor

is voluntarily "part[ing] with all present and future dominion" over the gifted funds or property. *Williamson*, 62 Vt. 378, 20 A. at 280.

For all of these reasons, allowing a contract claim to proceed for violation of an alleged condition on a charitable gift would be inconsistent with Vermont's legal framework for charitable gifts. The Court should grant judgment to Middlebury on that basis.

2. <u>The undisputed facts do not make out a contract to grant Mead naming rights in perpetuity.</u>

Even if Plaintiff were entitled to pursue a remedy in contract for the alleged violation of the terms of former Governor Mead's gift, Middlebury would nonetheless be entitled to judgment on the claim. This is so for two reasons.

First, the undisputed facts do not and cannot support the contention that an enforceable contract as to naming of the Chapel was formed by the parties. It is a "basic tenet of the law of contracts that . . . there must be mutual manifestations of assent or a 'meeting of the minds' on all essential particulars." *Evarts v. Forte*, 135 Vt. 306, 309, 376 A.2d 766, 768 (1977) ("[I]f an instrument that purports to be a complete contract does not contain, or erroneously contains, the substantial terms of a complete contract, it is ineffective as a legal document."). That is manifestly absent here: the Gift Letter does not contain "all essential particulars" of a contract, either as to the gift itself or, certainly, as to any promise to maintain the name "Mead Memorial Chapel" for a period of time. Mead did not bind himself to make any specific donation in the Gift Letter, stating only that he "ha[d] in mind the furnishing of from

$50,000 to $60,000," to which he would bind himself and his estate once certain conditions were met "in accordance with the suggestions of this letter and with the contracts to be made by your committee." SUMF, ¶ 11.

The Gift Letter was, at most, a contract to make a contract, and a "mere agreement to agree at some future time is not enforceable." *Miller v. Flegenheimer*, 2016 VT 125, ¶ 12, 203 Vt. 620, 161 A.3d 524 (quoting *Wolvos v. Meyer*, 668 N.E.2d 671, 674 (Ind. 1996)); *see also Sinex v. Wurster*, No. 2010-407, 2011 WL 4977680, at *1 (Vt. June 1, 2011) (affirming ruling that there was no legally enforceable contract absent "agreement on the most essential term of the arrangement—the financial obligations of each party"). And indeed, it was only later—in his letter of January 13, 1915—that Mead actually agreed to bind himself and his heirs to a specific donation of $60,000 toward construction of the Chapel. SUMF, ¶ 26. That January 1915 letter reflects that the only obligation Mead expected the College Trustees to undertake was "to complete said chapel, making it complete in every way, as to grounds, furnishings, etc. for the purposes of a college chapel." *Id.*

Second, even if one were to treat Mead's Gift Letter as a contract, it cannot be construed as giving rise to an enforceable contractual obligation to maintain the Mead name on the Chapel in perpetuity. The law strongly disfavors perpetual terms, and thus courts broadly have refused to recognize and enforce a perpetual condition absent clear and unambiguous language in the contract expressing the parties' intent that the obligation run in perpetuity. *See* 17B C.J.S. Contracts § 608 ("[A] construction conferring a right in perpetuity will be avoided unless compelled by the

unequivocal language of the contract" and a "contract which purports to run in perpetuity must be adamantly clear that that is the parties' intent, in order to be enforceable.").[9] There are indeed cases in which donors have specified or negotiated for perpetual naming rights. In *Herron v. Stanton*, 147 N.E. 305, 306 (Ind. Ct. App. 1920), for example, a donor left a bequest for the purpose of establishing an art gallery and art school, requiring that the gallery and school be named in his honor and that "the use of such name or names shall be perpetual, or so long as said art gallery and art school are severally maintained." Here, neither the Gift Letter nor any of the correspondence with Mead clearly establishes *any* naming condition, and they certainly do not include clear language agreeing to maintain the "Mead" name on the Chapel in perpetuity. SUMF, ¶ 12. As the law disfavors implying such a term, Plaintiff's claim lacks a basis to proceed. Middlebury is entitled to judgment on that ground as well.

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[9] *See also, e.g.*, *Glacial Plains Coop. v. Chippewa Valley Ethanol Co., LLLP*, 912 N.W.2d 233, 236 (Minn. 2018) (collecting cases and stating that "[i]n general, contracts of perpetual duration are disfavored as a matter of public policy; thus, while we will enforce a contract that unambiguously expresses an intent to be of perpetual duration, we construe ambiguous language regarding duration against perpetual duration"); *Roberts Tech. Grp., Inc. v. Curwood, Inc.*, No. 14-5677, 2015 WL 5584498, at *5 (E.D. Pa. 2015) (law disfavors contracts with perpetual duration without "clear and unequivocal terms" as it would be unreasonable for parties to intend for contracts to last "forever" absent such terms); *Open Lake Sporting Club v. Lauderdale Haywood Angling Club*, 511 S.W.3d 494, 501-02 (Tenn. Ct. App. 2015) ("Under the law, perpetual obligations are disfavored" and "will not be construed to exist unless the parties plainly express their intent to establish them."); *Bell v. Leven*, 90 P.3d 1286, 1288 (Nev. 2004) ("[A]s a matter of public policy, courts should avoid construing contracts to impose a perpetual obligation."); *Jespersen v. Minnesota Min. & Mfg. Co.*, 700 N.E.2d 1014, 1017 (Ill. 1998) ("[P]erpetual contracts are disfavored."); *City of Billings v. Pub. Serv. Comm'n of Mont.*, 631 P.2d 1295, 1306 (Mont. 1981) ("Where a contract is not expressly made perpetual by its terms, construction of such contract as perpetual is disfavored."); *Borough of W. Caldwell v. Borough of Caldwell*, 138 A.2d 402, 412-13 (N.J. 1958) ("Perpetual contractual performance is not favored in the law[,] and a construction affirming a right in perpetuity is to be avoided unless given in clear and peremptory terms.").

B. **Plaintiff's Good Faith and Fair Dealing Claim Fails in the Absence of a Contract.**

Plaintiff's claim for violation of the covenant of good faith and fair dealing necessarily depends on the existence of a contractual obligation to maintain the name "Mead Memorial Chapel" in perpetuity—a contractual obligation that, as discussed above, was never formed. It is black-letter law that "[a] cause of action for breach of the covenant of good faith can arise only upon a showing that there is an underlying contractual relationship between the parties. . . . " *Monahan v. GMAC Mort. Corp.,* 2005 VT 110, ¶ 54 n.5, 179 Vt. 167, 893 A.2d 298. The essence of the covenant is a "promise[] not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement[;]" in other words, it "exists to ensure that parties to a contract act with faithfulness to an agreed common purpose and consistency with the justified expectations of the other party." *Carmichael v. Adirondack Bottled Gas Corp. of Vt.*, 161 Vt. 200, 208, 635 A.2d 1211, 1216 (1993). Where there was no contract to maintain Mead's name on the Chapel, Middlebury's removal of his name could not be said to interfere with any "justified expectations" arising out of contract. Plaintiff's claim fails on that basis. *See Johnson v. Smith Brothers Ins. LLC*, No. 2020-101, 2020 WL 5269927, at *5 (Vt. Sept. 4, 2020) (holding that, where plaintiffs failed to establish existence of contract, "their dependent claim of a breach of the covenant of good faith and fair dealing also fails").

C. **Plaintiff's Claim for Breach of a Conditional Gift Fails Because Mead's Gift Was Not Subject to Any Conditions Subsequent.**

Unlike the contract and implied covenant claims, Plaintiff's claim for breach of

a conditional gift falls within an established jurisprudential framework: Vermont and other jurisdictions have long recognized and allowed a cause of action for breach of a conditional gift, the remedy for which is reversion of the gift. Plaintiff's claim nonetheless fails. While donors and their estates may pursue claims for breach of a conditional gift under appropriate circumstances, the law looks with disfavor on conditional gifts and requires clear language establishing both the condition and the right of reversion. No such language is found in the Gift Letter or correspondence between Mead and the College's officers and trustees. As Mead's gift is not subject to any enforceable conditions subsequent, Middlebury is entitled to judgment.

It is well established that "a donor may limit a gift to a particular purpose and render it so conditioned and dependent upon an expected state of facts that, failing that state of facts, the gift should fail with it." 38 Am. Jur. 2d Gifts § 68. Consistent with this, Vermont's courts have recognized that a "gift may be conditioned upon the donee's performance of specified obligations or the happening of a certain event." *Ball*, 129 Vt. at 206, 274 A.2d at 520; *see also Univ. of Vt. v. Wilbur's Estate*, 105 Vt. 147, 163 A. 572, 575 (1933) (noting that a "gift, absolute in form, may be made subject to be defeated upon the happening of a subsequent event"). Where a condition attaches to a gift, the failure of the condition will either prevent title from vesting in the donee (in the case of a condition precedent) or will trigger a reversion of the donated property (in the case of a condition subsequent). *See In re Fogel's Will*, 156 N.Y.S.2d 739, 742 (N.Y. Sur. Ct. 1956) (explaining that "[a] condition is precedent when the performance thereof must of necessity precede the vesting of the gift" and

"[i]t is subsequent when the failure or non-performance works a forfeiture of an estate already vested").

As courts in Vermont and other jurisdictions have emphasized, "conditions subsequent are not favored in the law." *Pres. & Fellows of Middlebury Coll. v. Cent. Power Corp. of Vt.*, 101 Vt. 325, 143 A. 384, 390 (1928); *see also Wilbur v. Univ. of Vt.,* 129 Vt. 33, 43, 270 A.2d 889, 897 (1970) (same).[10] Courts are instructed to interpret gift instruments, whenever possible, to avoid a reading which will result in a conditional gift: "if the language of an instrument can be otherwise construed, without violating the plain intent of the maker thereof, it will be done." *Middlebury College,* 101 Vt. 325, 143 A. at 390; *see also* 38A C.J.S. Gifts § 39 ("Because noncompliance with the conditions of a conditional gift results in a forfeiture of the gift, the conditions must be created by express terms or by clear implication and are construed strictly."); *Wilbur*, 129 Vt. at 43-44, 270 A.2d at 897 (an instrument "will not be construed as creating a conditional estate where the intention of the donor, taken from the entire document, indicates a contrary purpose").[11]

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[10] *See also, e.g.*, *Anna H. Cardone Rev. Tr. v. Cardone*, 8 A.3d 1, 8 (N.H. 2010) (observing that "we have traditionally viewed conditions subsequent with disfavor" and "[t]he passage of time has failed to increase the social value of conditions subsequent"); *Gray v. Harriet Lane Home for Invalid Children*, 64 A.2d 102, 108 (Md. 1949) (noting that "[c]onditions subsequent or not favored in the law" and "this Court has gone to great lengths in refusing to imply a condition subsequent which would result in a forfeiture").

[11] *See also, e.g.*, 14 C.J.S. Charities § 33 ("The intention of the donor to create a condition subsequent must clearly be expressed, and, if it is doubtful whether a clause in a deed is a condition subsequent, courts will always lean against construing it as such."); *Tennessee Div. of United Daughters of the Confederacy v. Vanderbilt Univ.,* 174 S.W.3d 98, 115 (Tenn. App. Ct. 2005) ("Because noncompliance [with the terms of a conditional gift] results in a forfeiture of the gift, the conditions must be created by express terms or by clear implication and are construed strictly."); *Wesley Home, Inc. v. Mercantile-Safe Deposit & Tr. Co.,* 289 A.2d 337, 343 (Md. 1972) ("[T]o make estates contingent, there must be

To find an enforceable condition subsequent, courts have traditionally required not only clear language expressing the intended condition, but also explicit language calling for reverter or gift-over to another individual or institution in the event the condition is violated. In *Queen City Park Ass'n v. Gale*, 110 Vt. 110, 3 A.2d 529, 531 (1938)—a case involving a conveyance of real property—the Vermont Supreme Court held that the use of the language "'upon the following conditions and restrictions' in the instrument is not conclusive" as to the existence of a condition subsequent. In that case, notwithstanding clear language of condition, the Court declined to recognize a condition subsequent where there were "no words reserving to the grantor a right to reenter or to declare a forfeiture upon breach of the so-called conditions and restrictions, nor . . . any intent manifested to cause the estate to be defeated by reason of any act or omission on the part of the grantee." *Id.* Likewise, in the context of charitable gifts, Vermont's courts have viewed the absence of a provision for forfeiture or reversion as "a strong indication that the donor did not contemplate a failure of the ultimate purpose of his gift." *Wilbur*, 129 Vt. at 44, 270 A.2d at 897; *Ball*, 129 Vt. at 209, 274 A.2d at 522 (same).[12]

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plain expression to that effect, or such intent must be so plainly inferable from the terms used as to leave no room for construction."); *First Nat. Bank of Chicago v. King Edward's Hosp. Fund for London*, 117 N.E.2d 656, 669-70 (Ill. Ct. App. 1954) ("Since conditions subsequent, especially as applied to charities, are not favored by the law, the intention to create such a condition must clearly appear from the instrument, and in case of reasonable doubt the vested estate will not be divested.").

[12] *Accord Wesley Home.*, 289 A.2d at 343 ("Even in those cases where, unlike the present case, there are apparent conditions or contingencies attached to a gift, we have held that in the absence of a clear reservation of a reversion, what might otherwise be construed as a condition will be regarded merely as the testator's expression of confidence that the property will be used for the intended purpose, insofar as may be reasonable and practicable."); *St. Mary's Med. Ctr., Inc. v. McCarthy*, 829 N.E.2d 1068, 1076 (Ind. Ct. App. 2005) ("[G]iven the disfavor of conditions subsequent and the absence of clear

Applying these standards, the documents memorializing former Governor Mead's donation to Middlebury cannot be read to impose any binding condition subsequent with respect to naming rights. First, there is no clear language of condition. The Gift Letter's reference to the name "Mead Memorial Chapel" is a vague and indeterminate one: "In commemoration of the fiftieth anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly Father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, *the same to be known as the 'Mead Memorial Chapel*.'" SUMF, ¶ 10 (emphasis added). This is the only time in the Gift Letter that the name "Mead Memorial Chapel" is mentioned. The Letter does not present the right to name the Chapel as an express condition of the gift, nor does the Letter specify the length of the term for which the Chapel might bear the name "Mead."[13]

This stands in sharp contrast to the directness and specificity with which

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reverter language or the required length of any . . . Memorial created by [decedent's] estate, the most that can be said of her devise . . . was that she . . . expressed confidence . . . that [the donee] would 'use the property so far as may be reasonable and practicable to effect the purpose of the grant.'" (citation omitted)); *Application of Bd. of Ed. of Utica City Sch. Dist.,* 184 N.Y.S.2d 735, 741-42 (N.Y. Sup. Ct. 1959) ("It is well settled that . . . [a] charitable gift, once vested, will not revert to the heirs of the testators or grantors even in the event of nonuser or misuser of the fund or property unless the instrument itself expressly provides for reverter or gift over.").

[13] Indeed, the language in this initial section of the letter is plainly precatory, describing generally Mead's "desire" with respect to the Chapel—and the law has long distinguished between precatory language like this and imperative language imposing a condition or command. *See, e.g.*, *Sibley v. St. Albans Sch.*, 134 A.3d 789, 803 (D.C. App. Ct. 2016) (finding donor's use of the language "it is my wish" precatory and not mandatory). Notably, though the Gift Letter initially uses equally precatory language in describing the design of the building—"I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished"—Mead proceeds in the third paragraph of the Letter to expressly require, as a condition of his gift, that he have the right to approve the plans for the Chapel. He did not do the same with respect to naming rights.

Mead imposed conditions on other gifts and bequests. In his 1916 gift of real estate to establish a community center in Rutland, Mead set forth a series of "express condition[s]" requiring, among other things, that the property be used as a "center for wholesome recreation," that the buildings be kept in good condition and insurance maintained, and that there be a "suitable person in charge" of the building and its maintenance. *Id.*, ¶ 40. The instrument specified that "in case of failure of perform any of said conditions, . . . this deed shall be null and void and the property herein conveyed shall revert to the said John A. Mead, his heirs and assigns." *Id.* Likewise, in his will, Mead made a bequest of $50,000 "to be used wholly for the maintenance and support of the Mead Community House" on the "conditions . . . that said officials shall furnish an equal amount annually for the same purpose, and should said officials fail in this endeavor, this bequest of $50,000 shall revert to my heirs, as the title to the real estate does." *Id.*, ¶ 41.[14] *Compare also Herron*, 147 N.E. at 306 (addressing express naming rights condition requiring "perpetual" use of donor's name and calling for gift-over to other charitable entities in the event the donee "shall not see fit to comply with the . . . condition").

To the extent that the Gift Letter can be read to have stated any conditions on Mead's proposed gift, the only such conditions were conditions *precedent* to the making of the gift. Specifically, the Letter provided that Mead would "bind

[14] Mead's will also made a bequest of $50,000 in bonds to his grandson J.A.M. Hinsman on several enumerated "conditions," including that he attend "some well disciplined military school, and thereafter some technical school," and provided that "if at the age of twenty-five years he has wholly abstained from the use of all kinds of Tobacco and Liquor, and having lived an honorable and [C]hristian life, he shall be given the possession of said bonds." SUMF, ¶ 42.

[him]self and [his] estate" to provide the means for erection of the Chapel only upon satisfaction of two contingencies: the procurement of plans meeting his satisfaction and the formation of a building committee consisting of Mead, the College's president, and former College president Ezra Brainerd.[15] The Gift Letter does not make the gift contingent on satisfaction of any other conditions, whether precedent or subsequent.

Second, the Gift Letter does not contain any provision for the reversion or gift-over of Mead's donation in the event that any supposed condition to the gift were violated. SUMF, ¶ 13; *compare Ball,* 129 Vt. at 202-03, 274 A.2d at 518 (finding enforceable condition subsequent to gift where the instrument expressly "[p]rovided the [donee] *will obligate itself to refund said sum with interest thereon* . . . in case said income, or any part thereof shall ever be devoted to any use or purpose other than the" intended purpose of the gift (emphasis added)). Again, Mead himself included express, unambiguous language of reversion in his gift and bequest for the Community House in Rutland. SUMF, ¶¶ 40-41. In the absence of any comparable language in his gift to Middlebury, there is no basis to imply a condition subsequent.

Third, it is apparent from the Gift Letter and other statements from former

[15] Notably, when President Thomas wrote to the College's Trustees and asked them to authorize acceptance of the gift, he also expressly directed the Trustees to indicate their authorization of the "appointment of the building Committee which [Mead] suggests," which might suggest that he saw the formation of the Committee as a condition of the gift. SUMF, ¶ 14. President Thomas's letter made no mention of any naming rights condition, nor did it even refer to the name "Mead Memorial Chapel." *Id.*, ¶¶ 15-16.

Governor Mead that the primary motivation for his gift was the opportunity to create a prominent space for worship on the College's campus—not the veneration of the Mead family name. The Gift Letter emphasized Mead's "hope and prayer" that he would "be able and permitted to build for this college a suitable place for divine worship and that it might rise from the highest point on its campus," in light of his view that "[C]hristian character and religious faith" should maintain a "prominent" position in the College's educational work. Exh. D. And, as previously noted, Mead described the gift in a letter in late 1914 (with no mention of the Chapel's naming) as having been "inspired" by his "desire to assist the students of Middlebury college in having a place of worship where they could all assemble in one auditorium." SUMF, ¶ 24. There is no indication that Mead ever envisioned conditioning his gift such that the failure to maintain the Mead name would work a forfeiture of a donation that was, from every indication, born of a genuine and heartfelt desire to contribute to the spiritual life of the College community.

The Vermont Supreme Court's decision in the *Wilbur* case is instructive on this point. *See* 129 Vt. 33, 270 A.2d 889. The case arose from a gift in trust to the University of Vermont for the purpose of supporting Vermont students, made on the condition that the General Assembly enact legislation limiting the University's maximum enrollment. The trust further specified that if this condition was ever violated, the funds would pass in trust to the Library of Congress Trust Fund Board to be used for the same purpose. Several decades after the donor's death, the University exceeded the specified cap on enrollment, and the donor's heirs brought

suit seeking reversion of the gift for violation of the donor's conditions. The Vermont Supreme Court rejected the argument that the donor's intended restriction on student enrollment constituted a condition subsequent to the gift, reasoning that the donor's "desire to keep the college small is subordinate to his intention to aid its Vermont students" and, because the trust did not expressly call for reversion, there was "no indication that the donor intended the consequence of unlimited enrollment to be a failure of that purpose." *Wilbur,* 129 Vt. at 43, 270 A.2d at 896. Other courts have been similarly reluctant to find an enforceable condition triggering forfeiture of a gift where the asserted condition is subordinate to the donor's primary charitable intent.[16]

In sum, "although charitable gifts should be encouraged so far as possible, charities . . . should not be bound to one particular use of bequeathed property for multiple generations unless they are on clear notice that such is a requirement of the bequest." *St. Mary's Med. Ctr., Inc. v. McCarthy*, 829 N.E.2d 1068, 1076-77 (Ind. Ct. App. 2005) (declining to find gift used to construct memorial chapel was subject to condition subsequent absent "clear reverter language or the required length" for maintaining the memorial). There is no such clear notice to be found

[16] *See, e.g.*, *City of Quincy v. Atty. Gen.*, 35 N.E. 1066, 1068 (Mass. 1894) ("[I]t is plain . . . that the great thing in the testator's mind—his dominant intent—was to establish the female institute, and the general intent gathered from all the words must prevail over any small detail which interferes with it, unless clearly he makes exact compliance essential."); *Gray*, 64 A.2d at 103 (construing will provisions not to impose conditions subsequent where donor's overarching intent was "to promote the interest and well-being" of the donee institution and donor failed to include "a forfeiture clause or 'gift over' in the event the [donee] did not strictly comply with the will" or to "specifically [direct] that the stated purposes were mandatory").

here. The single, indeterminate reference to "Mead Memorial Chapel" in the Gift Letter cannot reasonably be read to suggest that Mead intended the perpetual use of his family name to be an absolute condition of his funding construction of a chapel for Middlebury, such that the failure to continue the name would require reversion of the gift. There is no question that Mead *could have* imposed an express naming condition and provided for reversion of his gift in the event Middlebury deviated from his wishes, as he did with his gift of the Community House. But he did not do so, and that is dispositive of the claim. Absent any enforceable condition, Middlebury is entitled to judgment.

D. <u>The Claim for Unjust Enrichment Fails Because Plaintiff Cannot Establish the Failure of an Enforceable Condition to Mead's Gift.</u>

It is well established that, as a general proposition, a "valid gift is not a source of unjust enrichment." Restatement (Third) of Restitution § 2, cmt. b. While some courts have recognized a claim for unjust enrichment upon failure of a conditional gift, Mead's gift to Middlebury was not subject to any conditions subsequent, as explained above. Accordingly, Plaintiff's unjust enrichment claim fails as a matter of law.

"The existence of unjust enrichment, given a certain set of facts, is a question of law . . . ." *Kellogg v. Shushereba*, 2013 VT 76, ¶ 32, 194 Vt. 446, 82 A.3d 1121; *see also DJ Painting, Inc. v. Baraw Enterprises, Inc.*, 172 Vt. 239, 243, 776 A.2d 413, 418 (2001) (affirming summary judgment on unjust enrichment on finding that circumstances did not warrant equitable relief). A claim may lie where it is

plausibly alleged that "(1) a benefit was conferred on defendant; (2) defendant accepted the benefit; and (3) defendant retained the benefit under such circumstances that it would be inequitable for defendant not to compensate plaintiff for its value." *Reed v. Zurn*, 2010 VT 14, ¶ 11, 187 Vt. 613, 992 A.2d 1061 (mem.) (quotation omitted).

By definition, a gift will satisfy the first of the two elements unjust enrichment, but typically not the third: a gift unquestionably involves a conferral and acceptance of a benefit, but there is nothing "inequitable" about the donee retaining the gift without compensating the donor for its value (except in rare circumstances involving gifts procured by fraud, coercion, or the like).[17] *See Cooper v. Smith*, 800 N.E.2d 372, 373 (Ohio Ct. App. 2003) ("[B]ecause enrichment of the donee is the intended purpose of a gift, there is nothing unjust about allowing [the donee] to retain the gifts she received from [the donor] in the absence of fraud, overreaching, or some other circumstance."). Thus, a claim for unjust enrichment generally will not lie to recover a gift. *See, e.g.*, *In re Estate of Hill,* 492 N.W.2d 288, 295 n.2 (N.D. 1992) ("A finding of a gift necessarily defeats a finding of unjust enrichment, absent circumstances of fraud, undue influence, and the like, for equity generally cannot force the repayment of a gift"); *Berenergy Corp. v. Zab, Inc.*, 94 P.3d 1232, 1238 (Colo. Ct. App. 2004) (same), *aff'd,* 136 P.3d 252 (Colo. 2006); *Buchignani v. White*, No. 2019-CA-001248-MR, 2020 WL 3027248, at *4 (Ky. Ct.

[17] *See, e.g.*, Restatement (Third) of Restitution §§ 11 (mistake), 13 (fraud or misrepresentation), 14 (duress).

App. June 5, 2020) (holding that "unjust enrichment claim fail[ed] due to the transaction being a completed gift," and noting that "where a gift is given without fraud, mistake, duress, or undue influence present, there is no inequity to allow recovery"); *cf. also McLaren v. Gabel*, 2020 VT 8, ¶¶ 18-34, 211 Vt. 591, 229 A.3d 422 (viability of plaintiff's claim in unjust enrichment to recover from defendant money he had contributed to the purchase and renovation of a property turned entirely on whether or not that contribution constituted a "gift" to defendant).

The necessary caveat to this general rule is that, if a donor makes a gift that is subject to a true condition subsequent—i.e., the donor reserves the right to reversion of the gift in the event that the condition fails—the donor will be entitled to restitution if the condition is violated. *See Ball*, 129 Vt. at 207, 274 A.2d at 520. Under such circumstances, a donee could rightfully be said to be unjustly enriched unless and until restitution is made. *See Camp St. Mary's Assn. v. Otterbein Homes*, 889 N.E.2d 1066, 1084 (Ohio App. Ct. 2008) (suggesting that, while unjust enrichment is inapplicable to absolute gifts, a claim might lie in the event the gift is made conditional and the gift fails). However, this proposition does nothing more than restate the remedy available upon failure of a conditional gift.

The gift at issue here was not subject to any enforceable condition subsequent. Accordingly, because the undisputed facts do not establish any colorable basis for a recovery in unjust enrichment, Middlebury requests that the Court grant it judgment on the claim.

II. The Court Should Dismiss the Case for Lack of Subject Matter Jurisdiction Because Plaintiff Lacks Standing to Pursue Enforcement of Gift Restrictions Under Well-Established Common Law Principles.

Middlebury also respectfully renews its motion to dismiss this case for lack of subject matter jurisdiction pursuant to V.R.C.P. 12(b)(1), on the ground that former Governor Mead's estate lacks standing to pursue enforcement of any supposed restrictions on his gift more than a century after it was completed. Middlebury is mindful of the fact that the Court previously declined to grant dismissal when standing was raised alongside the College's Rule's 12(b)(6) motion. However, the issue of donor standing is a central one—significant for purposes of this narrow case, and even more so for the large number of schools, hospitals, and other nonprofit organizations in Vermont that rely on charitable donations—and Middlebury submits that it merits further consideration.

A. The Court Should Exercise Its Discretion to Revisit the Issue of Subject Matter Jurisdiction.

In its August 4, 2023 Ruling on Middlebury's Motion to Dismiss, the Court addressed and declined to grant the College's Rule 12(b)(1) motion, viewing the issue as a question of a real-party-in-interest defect rather than a question of subject matter jurisdiction. *See* Aug. 4, 2023 Order at 2-3. Notwithstanding the fact that the Court has already made a preliminary ruling on standing, it can and should revisit the issue for a couple of reasons.

First, as explained below, the question of donor standing properly goes to the Court's subject matter jurisdiction. *See, e.g.*, *Carl J. Herzog Found., Inc. v. Univ. of*

Bridgeport, 699 A.2d 995 (Conn. 1997) (affirming dismissal of donor suit for lack of subject matter jurisdiction). The existence of subject matter jurisdiction may be raised and considered at any time during the pendency of a proceeding, as courts have an ongoing "obligation to ensure" that they act only in cases where they have jurisdiction. *Mullinnex v. Menard*, 2020 VT 33, ¶ 11, 212 Vt. 432, 236 A.3d 171; *see also* V.R.C.P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."). For this reason, courts will generally entertain a renewed motion to dismiss for lack of subject matter jurisdiction after denial of an initial motion at the pleadings stage, particularly—as here—after relevant discovery has taken place. *See, e.g.*, *Reed v. U.S.*, No. 3:18-CV-201, 2020 WL 13888385, at *3 (E.D. Tenn. Sept. 8, 2020) (agreeing that second motion to dismiss on subject matter jurisdiction grounds was "a Renewed Motion to Dismiss rather than a Motion to Reconsider," as "Defendant may bring motions regarding the Court's subject matter jurisdiction at any time"); *Pestube Sys., Inc. v. HomeTeam Pest Def., LLC,* No. CV 05-2832-PHX-MHM, 2008 WL 11448028, at *2 (D. Ariz. Mar. 31, 2008) ("[A] renewed motion for lack of subject matter jurisdiction at a different stage in the ligation does not constitute a motion for reconsideration."); *Baker & Taylor, Inc. v. AlphaCraze.com Corp.,* No. 3:07-CV-1851 CFD, 2011 WL 4891028, at *1 n.2 (D. Conn. Oct. 13, 2011) (same).

Second, the Court has broad discretion to revisit a prior interlocutory ruling under Rule 54(b). *See Myers v. LaCasse*, 2003 VT 86A, ¶ 11, 176 Vt. 29, 838 A.2d 50. While Vermont's courts may "generally to refuse to reopen what has been decided"

pursuant to the law-of-the-case doctrine, that is simply "a rule of practice from which the court may depart in a proper case." *Kneebinding, Inc. v. Howell*, 2018 VT 101, ¶¶ 30-31, 208 Vt. 578, 201 A.3d 326 (quotation marks and citation omitted). This would be a proper case, given the significance of the issue and the fact that "questions of subject matter jurisdiction are generally exempt from law of the case principles." *Walsh v. McGee*, 918 F. Supp. 107, 112-13 (S.D.N.Y. 1996).

In the time since the Court's initial ruling, discovery has developed the factual record on issues relevant to standing—specifically, the fact that Plaintiff has made no effort to engage with the Attorney General regarding the complaints raised in this lawsuit. Middlebury also submits that the Court's initial ruling misconstrued the thrust of the College's standing argument in addressing it as a real-party-in-interest defect, and that affording standing to a donor's estate (absent retention of a reversionary interest) is an error of law. Revisiting the issue of subject matter jurisdiction is therefore justified.

B. Under the Common Law, Donors and Their Estates Lack Standing to Enforce Charitable Gifts Absent Retention of a Reversionary Interest.

The Court's August 4, 2023 Order correctly noted that the only Vermont case cited by Middlebury on the question of donor standing—*Wilbur,* 129 Vt. 33, 270 A.2d 889—arose in the context of a charitable trust. However, *Wilbur*'s holding that a donor and his heirs lack the right to sue for breach of the terms of a charitable trust in the absence of an express "provision for forfeiture or reverter" is consistent with a well-developed body of common law governing standing in suits over charitable trusts

and gifts. *Id.*, 129 Vt. at 44, 270 A.2d at 897. It has long been established under the common law, as *Wilbur* noted, that the sole remedy for claims for violation of the terms of a charitable gift is "suit at the instance of the attorney general of the state to compel compliance." *Id.* While there may not be a wealth of case law on the subject in Vermont, *Wilbur* reflects accord with this traditional common-law limitation.

The attorney general's primacy in regulation and enforcement of matters related to charities has a lengthy history. As the United States Supreme Court recognized in *Vidal v. Girard's Ex'rs*, 43 U.S. 127, 195-97 (1844), the courts' equitable jurisdiction over charities, and the attorney general's *parens patriae* authority to initiate enforcement actions, predates the Statue of Elizabeth in England and has long been a fixture of the common law. *See also MacKenzie v. Trustees of Presbytery of Jersey City,* 61 A. 1027, 1040 (N.J. 1905) (noting that "[o]ur legal ancestors appear for a time to have felt a difficulty as to who was the proper person to bring a suit" in cases involving property donated to charity but "[a]t length . . . it came to be established that the Attorney General, as representing the crown, was the proper person"). As the common law developed in the United States, most jurisdictions have adhered to the principle that it is a state's attorney general, and not a donor or the donor's heirs, who has the right and standing to pursue claims to enforce restrictions on a charitable gift. *See, e.g.*, *id.* (donor's heirs had no standing to enforce restrictions); *Herzog Found.*, 699 A.2d at 998-99 (noting that "a donor who attaches conditions to his gift has a right to have his intention enforced" but the "donor's right . . . is enforceable only at the instance of the attorney general," and collecting cases

for that proposition (citations omitted)).

At least two justifications have been offered for the common law's limitation on standing to enforce charitable gift restrictions. The first derives from the nature of a charitable gift: in completing a gift, a donor surrenders dominion over the donated property and devotes it to an institution or purpose serving the public good. *See* 38 Am. Jur. 2d Gifts § 67 (unless subject to an express condition, a gift becomes "irrevocable once transferred to and accepted by the donee."). Thus, absent retention of a reversionary interest, the law has traditionally held that donors and their heirs do not have a legal interest in a completed gift that could confer standing. *See, e.g.*, *Smith v. Thompson*, 266 Ill. App. 165, 169 (Ill. Ct. App. 1932) ("Where the donor has effectually passed out of himself all interest in the fund devoted to a charity, neither he nor those claiming under him have any standing in a court of equity as to its disposition and control." (citation omitted)); *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. 518, 641 (1819) (donors "have parted with the property bestowed upon [the donee], and their representatives have no interest in that property"); Evelyn Brody, *From the Dead Hand to the Living Dead: The Conundrum of Charitable-Donor Standing*, 41 Ga. L. Rev. 1183, 1197 (2007) (noting that standing limitation "derives from a view of the transaction as a property interest—and donated property is simply no longer the settlor's").[18] And, because the class of beneficiaries of a charitable gift

[18] This is consistent with how the concept of a charitable gift is treated under the tax law, which generally requires a surrender of control to qualify for the tax benefits of making a gift. *See, e.g.*, *Macklem v. U.S.*, 757 F. Supp. 6, 8 (D. Conn. 1991) (noting that "[b]y definition, a 'completed gift' is a donation that is placed beyond the dominion and control of the donor" and finding that donor's exercise of "dominion and control over the [gift] funds . . . precludes a finding that there was a charitable gift").

or trust who might have an interest in the enforcement of the terms or restrictions on a gift is often indeterminate and shifting, the common law has designated the attorney general as the appropriate official to represent the public's interests.[19]

The second rationale on the limitation on standing has been to shield charitable institutions and trusts from vexatious litigation. *See, e.g.*, *Robert Schalkenbach Found. v. Lincoln Found., Inc.*, 91 P.3d 1019, 1025-26 (Ariz. Ct. App. 2004) (noting standing limitation's roots in concern with "vexatious litigation that would result from recognition of a cause of action by any and all of a large number of individuals who might benefit incidentally" from a charitable trust or gift); *Alco Gravure, Inc. v. Knapp Found.*, 479 N.E.2d 752, 756 (N.Y. 1985) (noting that "[n]ormally, standing to challenge actions by the trustees of a charitable trust or corporation is limited to the Attorney-General in order to prevent vexatious litigation and suits by irresponsible parties who do not have a tangible stake in the matter"). While this concern is most often raised in response to the prospect of opening up standing to a large class of public beneficiaries of a charitable gift or trust, it has force as well in contemplating the consequences of extending standing to distant heirs seeking to enforce claimed gift restrictions generations after the donor has died.

The paucity of case law in Vermont on donor standing should not give the Court pause in applying the established common law rule. The Vermont Supreme Court's

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[19] *See, e.g.*, *In re Nevil's Est.*, 199 A.2d 419, 422 (Pa. 1964) (as the "beneficiary of charitable trusts is the general public to whom the social and economic advantages of the trusts accrue," the state assumes the role of oversight, and "[t]he responsibility for public supervision traditionally has been delegated to the attorney general to be performed as an exercise of his *parens patriae* powers" (citation omitted)).

statement of the law in *Wilbur* on the enforcement rights of a donor and his heirs for gifts made in trust is fully consistent with the common law as it has developed in other jurisdictions—and, moreover, Vermont's courts routinely rely on case law from other states when determining the existence or extent of common law rules. *See Avery v. Avery*, 2018 VT 59, ¶ 13, 207 Vt. 570, 192 A.3d 1250 (noting reliance on Restatement and "other states' case law" where there is no Vermont law addressing an issue); *M. Ward & Co. v. Morrison*, 25 Vt. 593, 601 (1853) ("The presumption is, that upon a common law question, the common law of a sister State is the same as our own . . . ").

There is an extensive and well-developed body of common law on the question here: as a Utah court has observed, "the common-law donor-standing rule has been applied almost universally to prohibit the kinds of donative-intent claims" raised in this case. *Siebach v. Brigham Young Univ.*, 361 P.3d 130, 137 (Utah App. Ct. 2015) (affirming dismissal of claims by donors seeking to enforce terms of charitable gift); *see also* Iris J. Goodwin, *Donor Standing to Enforce Charitable Gifts: Civil Society v. Donor Empowerment*, 58 Vand. L. Rev. 1093, 1145 (2005) ("[N]early all the modern American authorities—decisions, model acts, statutes, and commentaries—deny a donor standing to enforce a restricted gift to [a] public charity absent express retention of a reversion in the donative instrument.").[20] This common law standing

[20] *See also, e.g.*, *Courtenay C. & Lucy Patten Davis Found. v. Colo. State Univ. Res. Found.*, 320 P.3d 1115 (Wyo. 2014) (affirming dismissal of donor suit on standing grounds); *Hardt v. Vitae Found., Inc.*, 302 S.W.3d 133 (Mo. App. Ct. 2009) (same); *Lindmark v. St. John's Univ.*, No. 18-cv-1577, 2019 WL 1102721 (D. Minn. Mar. 8, 2019) (dismissing donor suit on collateral estoppel grounds where court in parallel state court action had determined that "charitable gifts may be subject to conditions without

limitation has been applied to claims by donors and their heirs across a variety of causes of actions, not just those framed as actions for breach of a conditional gift.[21] *See, e.g., Siebach.*, 361 P.3d at 135-37 (affirming dismissal of claims for breach of contract, unjust enrichment, and revocation of gift on standing grounds); *Courtenay C. & Lucy Patten Davis Found. v. Colo. State Univ. Res. Found.*, 320 P.3d 1115 (Wyo. 2014) (affirming dismissal of donor claims for breach of contract, unjust enrichment, and breach of the covenant of good faith and fair dealing on standing grounds).

There is one prominent case in which a court has departed from the common law's limitation on donor standing, *Smithers v. St. Luke's-Roosevelt Hosp. Ctr.*, 723 N.Y.S.2d 426 (N.Y. App. Div. 2001), but that case has no application here. *Smithers* concerned a $10 million gift by R. Brinkley Smithers to St. Luke's–Roosevelt Hospital Center for establishment of a treatment center for alcoholism. After Mr. Smithers' death in 1994, his widow became concerned with the Hospital's management of the donated funds and pressed for disclosure of financial statements. The Hospital ultimately was forced to disclose that it had been misappropriating funds from Mr. Smithers' endowment and using them for other purposes. Upon being notified by Mrs. Smithers, the New York Attorney General investigated and entered into an

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becoming a contract, and . . . conditions on a charitable gift may be enforced only by the Minnesota Attorney General").

[21] The Court's August 4, 2023 Ruling noted that Middlebury raised standing "only to the extent this case falls under gift law as opposed to contract law." It is true that, if what were at issue were a purely private contract and not a gift, the common law limitations on standing would not apply. However, as demonstrated in the cases noted above, the fact that a donor or his heirs may seek to enforce gift restrictions in contract does not take the case out of the sweep of the common-law donor standing rule.

assurance of discontinuance with the Hospital. Mrs. Smithers, unsatisfied with the terms of the Hospital's resolution with the Attorney General, obtained appointment as Special Administrator of her husband's estate for purposes of enforcing the terms of his gift and thereafter brought suit.

After the trial court dismissed Mrs. Smithers' claims for lack of standing, the intermediate appeals court reversed in a 3-1 decision. Instrumental to the decision was the court's conclusion (based on a 1900 opinion from the New York Court of Appeals) that there was "longstanding recognition under New York law of standing for a donor such as Smithers." *Id.* at 435. The court acknowledged the existence of contrary precedent in other jurisdictions reflecting the traditional bar on donor standing, but distinguished those authorities as "not addressing the situation in which the donor was still living or his estate still existed." *Id.* The court also emphasized the fact that Mrs. Smithers had involved the Attorney General's Office, which had been less than zealous in its enforcement of the gift's terms. *Id.*

Here, unlike *Smithers*, there is no history of Vermont courts recognizing donor standing outside of cases involving express conditional gifts. Nor is Governor Mead's estate "still existing," as was the case in *Smithers*; rather, it was reopened more than a century after his death for the purpose of pursuing the present claims.[22] Even in New York, it is unlikely that courts would recognize standing for the estate of a donor

[22] The New York Appellate Division's emphasis on the fact that the donor's estate was "still existing" at the time of suit is congruent with the law governing express charitable trusts, which recognizes that a settlor's estate may have standing "during a reasonable period of estate administration." Restatement (Third) of Trusts § 94, cmt. g(3) (2012).

to sue for enforcement of gift restrictions so very long after the estate had been closed. Moreover, discovery has confirmed that the Plaintiff here made no effort to seek enforcement of the supposed restrictions on Mead's gift through the Vermont Attorney General, in contrast with *Smithers*. SUMF, ¶ 38.

Regardless, *Smithers* does not indicate any larger change in the common law on donor standing outside of New York. *See, e.g., Siebach,* 361 P.3d at 135 and n.4 (citing *Smithers* for proposition that "[a]t least one American jurisdiction has expanded the common-law rule to permit donor standing in some circumstances," but finding that the plaintiff donors lacked standing to enforce charitable gift restrictions and noting that the parties did "not argue that *Smithers* altered the general common-law rule that donors to charitable institutions lack standing to enforce their donative intent"); *Hardt v. Vitae Found., Inc.*, 302 S.W.3d 133, 139-140 (Mo. App. Ct. 2009) (rejecting argument for expansion of common law standing on the basis of *Smithers*); Restatement of the Law, Nonprofit Organizations § 6.03 cmt. b(1) (2017) (noting that "[l]ater courts have tended to limit *Smithers* to its facts," on the grounds "that the violation of the restriction took place while the original donor was still living and involved in the affairs of the charity, that the plaintiff was granted standing only as the executrix of the donor's estate, rather than personally, and that the donor was only recently deceased at the time of the action").

In sum, given Vermont's recognition of the common-law donor standing limitation in connection with charitable gifts given in trust, *see Wilbur*, 129 Vt. at 44, 270 A.2d at 897, it is very likely that the Vermont Supreme Court would follow the

mainstream of cases applying the donor standing rule to charitable gifts generally. Those cases would require dismissal of the suit here.

C. **The Bar on Donor Standing Presents a Question of Subject Matter Jurisdiction Requiring Dismissal.**

As discussed above, the doctrinal basis for the common law's bar to donor standing rests on the fact that, once a gift is completed, the donor no longer retains a legal interest in the gifted property. As such, neither a donor nor a donor's estate can claim an injury in fact sufficient to support standing, depriving the Court of subject matter jurisdiction to hear donor claims. Dismissal under V.R.C.P. 12(b)(1) is therefore appropriate.

It is well established that "Vermont courts' subject matter jurisdiction is limited to 'actual cases or controversies.'" *Ferry v. City of Montpelier*, 2023 VT 4, ¶ 11, 296 A.3d 749 (citation omitted). As standing "is one of several prerequisites to satisfy the case-or-controversy requirement," it presents "a jurisdictional question" for the courts. *Id.*, ¶¶ 10-11 (citations omitted). To establish standing, a plaintiff must demonstrate: (1) injury in fact; (2) causation; and (3) redressability. *Id.* ¶ 12; *see also Parker*, 169 Vt. at 78, 726 A.2d at 480 ("Stated another way, a plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct, which is likely to be redressed by the requested relief.").

Plaintiff's standing turns, as many questions of standing do, on the presence of an injury in fact. An injury in fact is "defined as the 'invasion of a legally protected interest.'" *Hinesburg Sand & Gravel Co., Inc. v. State*, 166 Vt. 337, 341, 693 A.2d

1045, 1048 (1997) (quoting *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 211 (1995)). "Determining whether plaintiff has suffered an invasion of a legally protected interest requires inquiry into the substance of plaintiff's claim," *id.*, and thus, although "[s]tanding is a substantive issue separate from the merits of a plaintiff's case," the two "are 'closely related.'" *Ferry*, 2023 VT 4, ¶ 13 (citation omitted).

Plaintiff's claims cannot make out an injury in fact. As discussed above, except in cases where a reversionary interest is retained, a gift transaction involves the surrender of all dominion over the gifted property.[23] While heirs (or even perhaps, as here, a donor's distant relatives acting through his estate) might have some personal desires relating to a gift given by a previous generation, the law does not grant them a *legal right* under the common law to pursue any claim for enforcement. For that reason, Plaintiff cannot be said to have suffered an "invasion of a legally protected interest," and the Court lacks subject matter jurisdiction to hear Plaintiff's claims. *See Hinesburg*, 166 Vt. at 341, 693 A.2d at 1048; *U.S. Bank Nat'l Ass'n v. Kimball*, 2011 VT 81, ¶ 12, 190 Vt. 210, 27 A.3d 1087 ("[A] party who is not injured has no standing to bring suit."); *Russell v. Yale Univ.*, 737 A.2d 941 (Conn. Ct. App. 1999) (affirming dismissal of suit by donors and donor's heir for lack of subject matter jurisdiction, relying on common law standing rule); *cf. Bolster v. Attorney General*, 28

[23] Indeed, modern tax law requires that a donor give up control in order to gain the attendant tax benefits. *See, e.g.*, *Fakiris v. Commr. of Internal Revenue,* 113 T.C.M. (CCH) 1555 (Tax Ct. 2017) (to qualify as a charitable gift, the "donor must completely relinquish 'dominion and control' over the contributed property; the donor may not retain any right to direct the disposition or manner of enjoyment of the subject of the gift").

N.E.2d 475, 476 (Mass. 1940) (potential beneficiary of gift had no standing because beneficiary lacked any "interest different in kind from that of the public generally, which is represented exclusively by the Attorney General" and thus "could not, legally speaking, be aggrieved").[24]

D. Affording Standing to a Donor's Estate More Than a Century After His Death Would Be Inconsistent with Recent Developments in Vermont Law Governing Charitable Gifts.

There have been significant changes to the body of law governing charitable trusts and institutions in Vermont over recent decades, foremost among them the enactment of the Uniform Prudent Management of Institutional Funds Act and the Uniform Trust Code. While introducing some liberalization of standing limitations in cases involving charitable trusts, none of these developments, if they applied to the gift at issue, would permit suit by a donor's estate under the circumstances here.

UPMIFA, enacted by Vermont in 2009, was promulgated by the Uniform Law Commission to govern the management of endowments and restricted gifts by

[24] The Court's August 4, 2023 Ruling noted that the Vermont Attorney General "has not attempted to intervene in this action or otherwise assert any *exclusive* authority to bring suit." (emphasis in original). While the absence of any attempt by the Attorney General to intervene might be relevant were donor standing a question of real party in interest—which is how the Court originally viewed the matter—it is not pertinent to the determination of the Court's subject matter jurisdiction. The fact that the Attorney General has not pursued action to vindicate the public's interests does not confer standing on private parties where it otherwise would be lacking. In *Hazen v. Perkins*, 92 Vt. 414, 105 A. 249 (1918), for example, the Vermont Supreme Court held that, although the defendant had "affect[ed] the common rights of all persons and produce[d] a common injury" by raising and lowering water levels on a public lake, such that "a remedy may be had in behalf of the state," private plaintiffs could not maintain a suit absent some "special and substantial injury, distinct and apart from the general injury to the public." *Id.*, 105 A. at 251. The fact that the Attorney General was absent from the suit *Hazen* was not considered.

charitable institutions. *See* 14 V.S.A. §§ 3411-3420. While UPMIFA would not apply to former Governor Mead's gift—the Act governs only "institutional funds," the definition of which excludes "program-related assets" like the Chapel, *see id.* § 3412(5)—it is significant in that it provides an explicit legal framework addressing what is likely the largest category of restricted gifts: gifts of funds subject to specific, donor-imposed restrictions on expenditure or management (e.g., a restricted gift for the support a specific department within a college).

In drafting UPMIFA, the Uniform Law Commission initially included a provision that would have granted a donor of a restricted gift (or their estate) the right to bring an action to "enforce the restriction on the gift," which right would terminate thirty years after the donation was completed. *See* Brody, 41 Ga. L. Rev. at 1216-17 (reproducing text of donor enforcement provision from 2002 draft of UPMIFA). However, the final version of the Act omitted the donor enforcement provision, and the notes affirm that, under UPMIFA's structure, "the attorney general continues to be the protector both of the donor's intent and of the public's interest in charitable funds." Uniform Prudent Management of Institutional Funds Act, Prefatory Note at 4.[25] Consistent with this, UPMIFA requires that an institution notify the Attorney General—but not the donor or their estate—when seeking court approval to modify an express restriction on a gift. *See* 14 V.S.A. §

[25] The full version of UPMIFA is available at: https://www.uniformlaws.org/viewdocument/final-act-109?CommunityKey=043b9067-bc2c-46b7-8436-07c9054064a3&tab=librarydocuments.

3416(b), (c). Several courts have had occasion to examine whether UPMIFA and its predecessor (UMIFA) impacted the common law principle that donors lack standing to enforce gift restrictions, and they have uniformly concluded that the Acts left the common law's donor standing rule intact. *See Hardt*, 302 S.W.3d at 138 (holding that UPMIFA did not displace donor standing rule); *Siebach,* 361 P.3d at 137 (same); *Herzog*, 699 A.2d 995 (holding that UMIFA did not affect donor standing rule).

The other significant development in Vermont's law governing charitable gifts came with the adoption of the Uniform Trust Code in 2009, which expanded standing for suits to enforce express charitable trusts. Under the Uniform Trust Code, the parties authorized to enforce a charitable trust now include "[t]he settlor of a charitable trust, the Attorney General, a cotrustee, or a person with a special interest in the charitable trust." 14A V.S.A. § 405(c). As with UPMIFA, the terms of the Uniform Trust Code do not apply to former Governor Mead's gift, as the UTC only governs "express trusts, charitable or noncharitable." *Id.* § 102(a). Courts in other jurisdictions have rejected the notion that adoption of the UTC abrogated the common-law prohibition on donor standing for gifts not made in trust. *See Courtenay C. & Lucy Patten Davis Found.*, 320 P.3d at 1126; *Hardt*, 302 S.W.3d at 137-40.

That said, even if the gift at issue here were held in an express charitable trust, former Governor Mead's estate would lack standing. While § 405(c) extends standing to the "settlor of a charitable trust," as the Restatement (Third) of Trusts

notes, "absent contrary provision or agreement, settlor standing is 'personal,' although exercisable by . . . a deceased settlor's personal representative *during a reasonable period of estate administration*." Restatement (Third) of Trusts § 94, cmt. g(3) (2012) (emphasis added); *cf. Pet. of U.S., on behalf of Smithsonian Instn.*, No. CV 13-MC-1454 (KBJ), 2019 WL 3451394, at *12 (D.D.C. July 31, 2019) (settlor's estate and heirs have no right of enforcement absent reversionary interest). There is nothing in Vermont's statutes to suggest that settlor standing survives the settlor's death—and, if it did, the Restatement suggests it could only survive during a reasonable period of estate administration. By any stretch of the imagination, the reasonable period for administration of former Governor Mead's estate expired long before this action was filed, over a century after his death.[26]

In sum, neither the most recent enactments pertaining to charitable gifts in Vermont nor the common law, as developed in Vermont and its sister jurisdictions, would recognize standing for former Governor Mead's estate to pursue enforcement of supposed restrictions on his gift more than a century after the gift was completed. The Court accordingly should dismiss this case for lack of subject matter jurisdiction.

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[26] While § 405(c) also provides for standing by a person with a "special interest," that category pertains to fiduciaries (trustees) and beneficiaries who can establish a sufficiently concrete right to receive trust benefits, *see* Bogert's The Law of Trusts and Trustees §§ 413, 414, not to the settlor or the settlor's heirs. *See, e.g.*, Restatement (Second) of Trust § 391 (distinguishing between persons with a "special interest in enforcement of the charitable trust," who had standing to seek enforcement, and "the settlor or his heirs," who lacked standing); *but see Herzog*, 699 A.2d at 999 n.5 (noting that "the settlor of the trust may bring himself and his heirs within the 'special interest' exception to the general rule" by "expressly reserving a property interest such as a right of reverter").

CONCLUSION

The law approaches the creation and enforcement of restricted gifts with caution, and rightly so. Charitable gifts reflect an inherent deal between a community and a donor: a community receives the benefit of funds devoted to a public purpose that otherwise might have gone to purely private ends, and in turn the donor benefits by special rules that allow a gift to be made with no identified beneficiary and for a period that may extend into perpetuity, allowing the donor's wishes to be carried out long after death. *See* Susan N. Gary, *Restricted Charitable Gifts: Public Benefit, Public Voice*, 81 Alb. L. Rev. 565, 591-94 (2018) (noting that donors also garner tax benefits and public prestige through donations). This tradeoff incentivizes great acts of public charity—but it also carries with it the risk that a donor's idiosyncratic restrictions may shackle and burden the gift recipient over time. The law has traditionally guarded against these burdens by demanding clarity from a donor who seeks to restrict a gift, and by entrusting enforcement not to the donor or their heirs, but to a public officer charged with pursuing the public good.

If there ever were a case that would invite consideration of changes to these basic tenets of charitable gift law, this would not be it. The facts here are extreme, and recognizing an enforcement right on such facts would profoundly unsettle the law. Plaintiff does not simply seek to open the door for donors to enforce restrictions on gifts during their lifetimes; he effectively asks the Court to recognize standing for a donor's estate in perpetuity. If Plaintiff can step into former Governor Mead's shoes to enforce a supposed gift restriction over a century after the administration of his

estate was completed, who is to say that a motivated third party cannot revive a donor's estate two or even three centuries postmortem to do the same? And to find an enforceable, perpetual gift condition on the basis of the documentation here would entirely vitiate the law's requirement of clarity in imposing conditions, thereby encouraging litigation over even the vaguest expressions of a donor's desires.

The Court should decline to work so radical a change in the law governing charitable gifts. To allow Plaintiff's claims to proceed any further would expose the schools and countless other nonprofits in Vermont that rely on charitable donations to great uncertainty and potentially expensive and distracting lawsuits like this one—a result directly at odds with the constitutional directive that schools and charitable organizations are to be "encouraged and protected." *See* Vt. Const. Ch. II, § 68; *see also Burr's Ex'rs v. Smith*, 7 Vt. 241, 280 (1835) ("It has always been the practice in this state, and may be considered as their settled policy, to encourage voluntary associations for public, pious and charitable purposes."). For all of the reasons set forth above, the undisputed facts confirm that former Governor Mead, in making his generous gift to the College, did not impose any legally binding obligation to maintain the Mead name on the Chapel in perpetuity. Middlebury is entitled to judgment on that basis, and independently on the ground that Mead's estate lacks standing to pursue the claims asserted here.

Dated at Burlington, Vermont, this 29th day of April, 2024.

By: *\/s\/ Justin B. Barnard*

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STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
	)
Plaintiff,	)
v.	)
	)
THE PRESIDENT AND FELLOWS	)
OF MIDDLEBURY COLLEGE,	)
	)
Defendant.	)

MIDDLEBURY COLLEGE'S
STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendant The President and Fellows of Middlebury College ("Middlebury" or the "College"), by and through counsel, submits this Statement of Undisputed Material Facts pursuant to V.R.C.P. 56(c) in support of its Motion for Summary Judgment and Renewed Motion to Dismiss for Lack of Standing.

A. John Abner Mead and the Special Administrator

1. John Abner Mead ("Mead") was an 1864 graduate of Middlebury College and served from 1910 to 1912 as Vermont's fifty-third governor.

See Compl. ¶¶ 31-32.

2. Mead was trained as a physician and practiced medicine in Rutland for a period before pursuing political office.

See id. ¶¶ 50, 52, 53, 57, 58.

3. Mead also had a career as a businessperson and a real estate investor.

See id. ¶¶ 67, 69, 73.

4. Mead served on Middlebury's Board of Trustees.

See id. ¶ 80.

5. Mead died on January 12, 1920, and his estate was administered and closed as of 1923.[1]

See Exh. A (May 3, 2022 Petition to Open Decedent's Estate, Docket No. 22-PR-02895, and Selected Attachments, hereafter "Probate Petition"); Exh. B (Final Account and Decree from 1923 in Mead Probate Proceeding).

6. Mead's tombstone memorializes him as a "Christian and a Philanthropist."

See Compl. ¶¶ 94-94; *id.* Exh. 8-008.

7. In May 2022, James L. Hinsman, a great-great-grandchild of Mead, filed a petition in the Probate Division of the Vermont Superior Court seeking to reopen Mead's estate for the purpose of investigating and presenting potential claims against Middlebury College for an alleged breach of the terms of Mead's gift of a chapel to the College.

See Exh. A (Probate Petition).

8. The Probate Division, noting that it was not "passing judgment on the validity of any claims," granted James Hinsman's petition and appointed former

[1] The Probate Division's June 17, 2022 Order appointing the Special Administrator (attached as Exh. C) indicates that the Estate was closed in 1921, but the final decree did not issue until 1923.

Governor James Douglas as Special Administrator of Mead's estate in an order dated June 17, 2022.

See Exh. C (June 17, 2022 Order and Appointment).

B. Mead's Gift of the Chapel to Middlebury

9. On May 11, 1914, former Governor Mead sent a letter to Middlebury President John Thomas (the "Gift Letter") and stated his intention to make a substantial gift to the College.

See Exh. D (Gift Letter).

10. Specifically, the Gift Letter stated:

> In commemoration of the fiftieth anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly Father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel." I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.

See id.

11. The Gift Letter further stated that Mead "ha[d] in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure," to which he would "bind [himself] and [his] estate" upon satisfaction of two contingencies: that the "Trustees of the College secure appropriate plans for its erection which shall meet with my approval," and that the Trustees "appoint a Building Committee at once, consisting of President Thomas, former President Brainerd, and [himself] to make

the necessary contracts for such a structure and to supervise the erection of the same."

See id.

12. The Gift Letter did not include any language explicitly requiring that Middlebury use the name "Mead Memorial Chapel" in perpetuity as a condition of the gift.

See id.

13. The Gift Letter did not contain any provision for the reversion or gift-over of Mead's gift in the event that a condition of the gift were not satisfied.

See id.

14. On May 15, 1914, President Thomas wrote to the College's Trustees, enclosing the Gift Letter and noting with "the keenest pleasure" that it "assures the erection of an appropriate and beautiful chapel for Middlebury College." President Thomas asked the Trustees to reply "immediately as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests."

See Exh. E (May 15, 1914 Letter from John Thomas).

15. President Thomas's May 15, 1914 letter did not ask the College's Trustees to authorize any agreement to use the name "Mead Memorial Chapel."

See id.

16. President Thomas's May 15, 1914 letter did not contain any reference to

the name "Mead Memorial Chapel."

See id.

17. President Thomas received numerous responses from the College's Trustees accepting the gift and authorizing the appointment of a building committee.

See, e.g., Exh. F (May 16, 1914 letter from Trustee J.B. McCullough); Exh. G (May 16, 1914 letter from Trustee Rufus Flagg); Exh. H (May 16, 1914 letter from Trustee Frank Partridge); Exh. I (May 18, 1914 letter from Trustee D.K. Simonds); Exh. J (May 22, 1914 letter from Trustee George Wright); Exh. K (May 18, 1914 letter from Trustee A. Barton Hepburn); Exh. L (May 19, 1914 letter from Trustee William H. Porter).

18. In their correspondence, the College's officers and Trustees referred to the donation of the Chapel as a "gift" or "benefaction."

See Exh M (May 17, 1914 letter from Trustee John Weeks congratulating Mead on his "splendid gift to Middlebury College"); Exh N (May 19, 1914 letter from Trustee James Barton to Mead remarking on his "magnificent gift to Middlebury College"); Exh O (May 23, 1914 letter from Treasurer John Fletcher to President Thomas referring to Mead's "splendid gift"); Exh. F (May 16, 1914 letter from Trustee J.B. McCullough assenting to gift and "congratulat[ing] heartily both the College and Governor Mead upon this gift of the Governor and its acceptance by the College"); Exh. J (May 22, 1914 letter from Trustee George Wright expressing gratitude at "the gift of Governor Mead to Middlebury of a chapel"); Exh. K (May 18, 1914 letter from Trustee A. Barton Hepburn concurring in "accepting this gift"); Exh P (dedication speech by Trustee and former President Ezra Brainerd accepting Mead's "gift of this beautiful sanctuary" and assuring him that his "generous gift" would be used to "promote the growth of earnest [C]hristian character in the students of Middlebury College"); Exh Q (June 22, 1914 Trustee resolution "accept[ing] this magnificent benefaction").

19. Mead's gift of the Chapel was reported in the annual reports of the College Treasurer and in the 1916 Middlebury President's Report as a charitable gift.

See Exh. R at 11 (Middlebury Treasurer's Report for the year ending May 31, 1915); Exh. S at 7 (Middlebury Treasurer's Report for the year ending May 31,

1916); Exh. T at 7 (1916 Middlebury President's Report).

20. At a June 22, 1914 meeting, Middlebury's Trustees voted on and adopted a resolution formally accepting the gift. The resolution, which was followed by a recitation of Mead's Gift Letter, stated in full:

> Whereas our esteemed colleague, the Honorable John Abner Mead of the Class of 1864, has signified to President Thomas his desire, in commemoration of the fiftieth anniversary of his graduation, to erect a Chapel for Middlebury College, and his readiness to furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice.
>
> Resolved that the President and Fellows of Middlebury College hereby accept of this magnificent benefaction with sincere gratitude to both Dr. & Mrs. Mead and their family for their deep interest in the religious welfare of the College, so impressively manifested by this provision of a suitable place for divine worship.
>
> Resolved that the Trustees through the Committee nominated by Dr. Mead will use their best endeavors to secure the erection of a dignified and substantial structure, in harmony with the other buildings of the college, and such as will meet the approval of the donor.

See Exh. Q (June 22, 1914 Trustee Minutes and Resolution).

21. At their June 22, 1914 meeting, Middlebury's Trustees voted to form a building committee to oversee the chapel project, consisting of Mead, President Thomas, former President Brainerd, and Trustee John Weeks.

See id.

22. Mead was directly involved in many of the communications and discussions regarding the design and construction of the Chapel. For example, in a July 6, 1914 letter to President Thomas addressing a contract proposed by the

architect for the Chapel, Mead wrote:

> I have noted Mr. Collens' letter and the blank form of contract which he has submitted and it simply reminds me of the form of contract which the Government is very apt to insist upon being used if you were to sell anything to any of their departments. It is what we in business life call "a jug-handle" to the very limit—all on one side. . . . I have had a great deal of experience with contracts of this nature and I simply wish to state that if [you] sign the contract drawn after these lines, you are tied hand and foot. If you will read it over very carefully, you will see that there is not a hole for you to escape through, while they have got every condition protecting themselves. . . . I feel that we should be very very careful with these people or anybody else in the making of contracts. I have been bit once and I feel that is sufficient for me. I am strongly impressed that we should not tie ourselves to Mr. Collens until we have in black and white exactly how our plans are to be governed.

See Exh. U (various correspondence with Mead relating to Chapel design and construction).

23. On June 23, 1914, the College held a groundbreaking ceremony for the Chapel in connection with its commencement exercises, although the actual construction of the Chapel did not begin in earnest until 1915.

See Compl. ¶ 114; Exh. W (December 18, 1914 Trustee Minutes, voting to approve contract with builder and proceed with construction of Chapel).

24. In a letter to the Middlebury Kaleidoscope dated December 11, 1914, Mead explained his motivations for the gift of the Chapel, writing:

> It will be my pleasure . . . through the Kaleidoscope to express to the members of the Junior Class, to the Faculty, the Alumnae and Alumni of our beloved college, my high appreciation for the many kind words spoken and for the innumerable letters received commending this gift to our Alma Mater. I have realized for many years that the only enduring source of happiness springs not from selfish acts, but is only attained by doing for others where no return is expected, and the greater is the pleasure when you so govern your acts, that mankind may rise to a higher leve[l]—that other lives may be happier and more useful because you have lived and have seen and realized an opportunity. It was this

> thought that inspired my desire to assist the students of Middlebury college in having a place of worship where they could all assemble in one auditorium for this inspiration, that the duties of each day might begin with a religious thought, which we all realize is the foundation of all true knowledge.

See Exh. V (1916 Kaleidoscope, Middlebury College Annual, at 4-22).

25. By December 1914, the College had secured plans for the Chapel and a contractor, and the Trustees formally voted at a December 18, 1914 meeting to "proceed with construction of the Chapel, with the understanding that $60,000 would be contributed by Dr. Mead; the balance estimated at about $1,000 to be contributed by the College."

See Exh. W (December 18, 1914 Trustee Minutes).

26. Mead wrote to the Trustees on January 13, 1915, confirming his agreement to contribute $60,000, stating:

> In consideration of the contract of the Committee for the Erection of the Mead Memorial Chapel at Middlebury College with Thomas W. Rogers of Brandon, Vt., whereby the same is to be erected in accordance with plans and specifications of Allen & Collens, architects, at a cost of $51,945, I agree to furnish funds for the discharge of this contract and for the expenses connected with the erection of this chapel, to the amount of $60,000, as may be required during the construction and in accordance with the terms of the above contract, binding myself, my heirs and my assigns as above specified. It is agreed on the part of said Trustees that they are to complete said chapel, making it complete in every way, as to grounds, furnishings, etc. for the purposes of a college chapel, as voted at the meeting of the Trustees of said College held in New York City Dec. 18, 1914, and as defined in correspondence between the President of Middlebury College and myself.

See Exh. X (Jan. 13, 1915 letter from Mead).

27. Mead subsequently agreed to increase his gift toward the Chapel by

$1,031, which the Trustees voted to accept in April 1915.

See Exh. Y (Feb. 27, 1915 Memorandum from Mead agreeing to increase); Exh. Z (April 1915 Trustee Minutes).

28. Mead also pledged $7,000 to acquire eleven bells for the Chapel's tower, stating in a June 21, 1915 letter that, "[i]f acceptable to the members of the Board of Trustees, Mrs. Mead and I would be pleased to add a chime of bells to our gift of the Mead Memorial Chapel." The Trustees voted on and accepted this gift on June 23, 1915.

See Exh. AA (June 21, 1915 letter from Mead); Exh. BB (June 23, 1915 Trustee Minutes).

29. Construction of the Chapel was completed in 1916, and it was memorialized in a dedication ceremony held on June 18, 1916.

See Compl. ¶¶ 127, 131.

30. In speeches delivered both at the groundbreaking and two years later at the dedication ceremony, Mead spoke of a "sacred duty" to make the Chapel "an instrument of great good to those of this generation and to those of the distant future."

See Exh. CC (draft remarks by Mead for groundbreaking ceremony); Exh. DD (draft remarks by Mead for dedication ceremony).

31. The College has made a number of significant changes to the Chapel since 1916. In 1938, the College added balconies to the interior, increasing the seating capacity to 715. A small ancillary chapel (the Sunderland Chapel) was also built on the right side of the building. Additionally, the organ and bells donated by Mead have been updated: the organ was replaced with a large Gress-Miles organ in

1971, and the eleven bells donated by Mead have been succeeded by a forty-eight-bell carillon.

See Compl. ¶ 130.

32. Middlebury has described the Chapel in its literature as a "place where the College community comes together on occasions of significance," offering a "community gathering place for convocations, lectures, concerts, baccalaureates, and countless other events."

See id. ¶ 140; *id.* Exh. 6-01–6-05.

33. Although initially conceived as an avowedly Christian (and Protestant) place of worship, the Chapel now welcomes students of all faiths and backgrounds, and it serves as a venue for secular as well as religious events. The College still has a chaplain who leads Sunday morning Chapel Services during special event weekends, and also employs a rabbi and a Muslim advisor as associate chaplains.

See id. Exh. 6-01–6-05, 6-20.

34. In summer 2021, the Middlebury Board of Trustees' Prudential Committee decided on behalf of the Board to discontinue the use of the name "Mead Memorial Chapel."

See id. ¶ 152; *id.* Exh. 7-05–7-10.

35. The sign identifying the Chapel as "Mead Memorial Chapel" was removed from its location above the entrance to the Chapel in September 2021.

See id. ¶ 6.

36. The Chapel is now known as "Middlebury Chapel."

See id. Exh. 7-09.

37. In March 2023, former Governor Douglas, in his role as Special Administrator of the Mead Estate, brought the present suit challenging Middlebury's renaming of the Chapel.

See generally Compl.

38. Former Governor Douglas did not communicate with the Vermont Attorney General's Office about the Mead gift or Middlebury's change in the name of the Chapel prior to filing suit.

See Exh. EE (Excerpt from Plaintiff's Responses to Defendant's First Set of Interrogatories and Requests to Produce).

C. Mead's Conditional Gifts

39. Mead also made other gifts and bequests that, unlike his gift of the Chapel, were explicitly conditional.

See Exh. FF (Community House Deed); Exh. GG (Mead Will).

40. In 1916, Mead made a gift of real estate to establish a community center in Rutland, Vermont. Mead's deed of the property imposed a number of express conditions, stating:

> This conveyance is made upon the express condition that the property herein described and conveyed shall be maintained as a general center for wholesome recreation and social opportunity, and that all of said buildings now on said property and those that may be built thereon shall be protected to a reasonable extent by fire insurance, and that all of said buildings shall be kept in good condition and repair, and should they be partially or wholly destroyed by fire, they shall be rebuilt at least so far

> as the insurance will permit and used only for the purposes above specified; otherwise, with the insurance specified and with the remainder of the property, it shall revert as further provided for in this deed.
>
> It is also a condition that the grounds and the buildings shall be kept open during such hours as the Board of Managers may dictate, and there shall always be a suitable person in charge of the same and whose duty it shall be to keep the buildings and the grounds in proper condition for the purposes which are specified in this deed. It is further conditioned that said property shall not be incumbered by a mortgage, or otherwise.
>
> And in case of the failure to perform any of said conditions, then and in that case, this deed shall be null and void and the property herein conveyed shall revert to the said John A. Mead, his heirs and assigns, otherwise to be of full force and effect.

See Exh. FF (Community House Deed).

41. In his will, Mead made a bequest of $50,000 "to be used wholly for the maintenance and support of the Mead Community House" in Rutland on the "conditions . . . that said officials shall furnish an equal amount annually for the same purpose, and should said officials fail in this endeavor, this bequest of $50,000 shall revert to my heirs, as the title to the real estate does."

See Exh. GG (Mead Will).

42. Mead's will also made a bequest of $50,000 in bonds to his grandson J.A.M. Hinsman on several enumerated "conditions," including that he attend "some well disciplined military school, and thereafter some technical school," and provided that "if at the age of twenty-five years he has wholly abstained from the use of all kinds of Tobacco and Liquor, and having lived an honorable and [C]hristian life, he shall be given the possession of said bonds."

See id.

Dated at Burlington, Vermont, this 29th day of April, 2024.

By: */s/ Justin B. Barnard*

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EXHIBIT LIST

EXHIBIT	DESCRIPTION
A	Hinsman Probate Petition and Excerpt of Attachments
B	Final Account and Decree, Estate of John A. Mead
C	Probate Order Appointing Administrator
D	May 11, 1914, Gift Letter from John A. Mead
E	May 15, 1914, Letter from President Thomas to College Trustees
F	May 16, 1914, Letter from Trustee J.B. McCullough
G	May 16, 1914 Letter from Trustee Rufus Flagg
H	May 16, 1914, Letter from Trustee Frank Partridge
I	May 18,1914, Letter from Trustee D.K. Simonds
J	May 22, 1914, Letter from Trustee George Wright
K	May 18, 1914, from Trustee A. Barton Hepburn
L	May 19, 1914, Letter from Trustee William H. Porter
M	May 17, 1914, Letter from Trustee John Weeks
N	May 19, 1914, Letter from Trustee James Barton
O	May 23, 1914, Letter from Treasurer John Fletcher
P	Ezra Brainerd Dedication Speech
Q	June 22, 1914, Trustee Minutes and Resolution
R	Middlebury College Treasurer's Report 5/31/1915
S	Middlebury College Treasurer's Report 5/31/1916
T	1916 Middlebury President's Report
U	John A. Mead Correspondence Regarding Chapel Design and Construction
V	1916 Middlebury Kaleidoscope Excerpt
W	December 18, 1914, Trustee Minutes and Resolution
X	Jan. 13, 1915, Letter from John A. Mead to College Trustees
Y	Feb. 27, 1915, Memorandum from Mead Agreeing to Increase in Gift
Z	1915 Trustee Minutes Approving Gift Increase
AA	June 21, 1915, Letter from John A. Mead to President Thomas
BB	June 23, 1915, Trustee Minutes
CC	John A. Mead Notes for Remarks at 1914 Chapel Groundbreaking
DD	John A. Mead Notes for Remarks at 1916 Chapel Dedication
EE	Excerpts from Plaintiff's Discovery Responses
FF	Warranty Deed for Mead Community House
GG	Last Will and Testament of John A. Mead

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,)
Special Administrator of the)
Estate of John Abner Mead,)
Plaintiff)
v.)
)
The President and Fellows of)
Middlebury College)
Defendant)

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AND MOTION TO DISMISS (AMENDED)

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and, pursuant to V.R.C.P. Rule 56, hereby opposes Defendants' Motion for Summary Judgment and Motion to Dismiss and submits the following Amended Memorandum of Law, supported by Plaintiff's Response to Defendant's Statement of Undisputed Material Facts, Plaintiff's Statement of Additional Undisputed Material Facts and Plaintiff's Exhibits 1-56 all filed and incorporated herein by reference, and respectfully requests that this Honorable Court DENY Defendants' motions and grant judgment as a matter of law in favor of Plaintiff as follows:

MEMORANDUM OF LAW

I. INTRODUCTION

The Court must determine whether the transaction is subject to gift or contract law, and whether the disputed perpetual naming right exists at all. Plaintiff submits that the overwhelming evidence is undisputed, that there was a promise made that the building would be known as the Mead Memorial Chapel as long as the building exists and that the removal of the Mead family name and the Mead Memorial Chapel sign from the building is a breach of contract or a breach of a conditional gift, requiring restitution in either case.

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II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. V.R.C.P. 56(c)(3); *Endres v. Endres,* 2008 VT 124, ¶ 10, 185 Vt. 63; *Wesco, Inc. v. Hay-Now, Inc.,* 159 Vt. 23, 26 (1992) ("[T]o prevail on a motion for summary judgment, the moving party must satisfy a stringent two-part test: first, there must be no genuine issues of material fact between the parties, and second, the moving party must be entitled to judgment as a matter of law." (Citation omitted)) *Griswold v. Barrows*, 2010 WL 8708026. The court must give "the benefit of all reasonable doubts and inferences to the non-moving party," the party opposing the motion may not rest of allegations in the pleadings. *Gettis v. Green Mountain Econ. Dev. Corp.*, 179 Vt. 117, 124 (2005); *Gore v. Green Mountain Lakes, Inc.*, 140 Vt. 262, 266 (1981).

III. THE PARTIES AND THEIR INTENTIONS

The existence of and interpretation of any contract is dependent on determining whether the requisite elements of a contract exist and what the parties' intentions were. That requires an understanding of who these parties were, what their relationship was and what their motivations were.

A. Governor John Abner Mead

John Abner Mead (April 20, 1841 – January 12, 1920) was a Vermont physician, businessman, politician, and philanthropist who served as Vermont's 47th Lieutenant Governor from 1908 to 1910, and Vermont's 53rd

Governor from 1910 to 1912. Plaintiff's Additional Statement of Undisputed Material Facts ("PSUMF") at ¶11. On October 30, 1872, John Mead married Mary M. Sherman. They had one child, Mary Sherman Mead Hinsman. P's SUMF at ¶12. Mead was a graduate of Middlebury College, Class of 1864.

In 1914, on the 50th anniversary of his graduation, Mead offered to erect a chapel "to be known as" the "Mead Memorial Chapel," which offer was accepted by the Trustees of the College. P's SUMF at ¶13.

Dr. John Abner Mead died of pneumonia at his home in Rutland on January 12, 1920. He was 78 years old. His wife Mary Medelia Sherman Mead, daughter Mary Sherman Mead Hinsman, grandson John Abner Mead Hinsman a/k/a "Little John," and son-in-law Carl B. Hinsman survived him. P's SUMF at ¶80, Ex. 56.

Middlebury College President John M. Thomas gave the Eulogy at Mead's funeral. When Thomas described Mead's gift of the Mead Memorial Chapel, he quoted from and read the full text of Dr. Mead's Letter of Offer, mentioning the Chime of Bells, "which bear his name on every bell" and then proclaimed: "The dedication of the Chapel is complete – The Mead Memorial Chapel":

> "This afternoon, as we pay here our tribute of honor and affection, ***the chimes which bear his name on every bell are sounding out*** the hymns I loved and which he chose to hear the first time they were played, "Nearer my god to Thee", "Lead Kindly Light", "God be with you 'till we meet again". ***The dedication of the Chapel is complete – The Mead Memorial Chapel.***
>
> So our friend built his empire in our midst. If another could have built it, another did not. He loved his work and he gave his all to it to the very last. ***He carved his name high in the marvelous roll of Vermont's men of achievement, and he earned his rest.***

P's SUMF at ¶81.

The Middlebury College's Board of Trustees paid tribute to Mead in their 1920 meeting minutes:

> "In the death of Ex-Governor John Abner Mead of the Class of 1864 *Middlebury College has lost one of its most distinguished alumni of the State of Vermont, and one of the most helpful of its Trustees and most generous of its benefactor**s.*** Governor Mead was a notable example of those successful men of our nation who have pushed their way upward against great obstacles and by force of mind and will and character succeeded to positions of great responsibility and usefulness in the industrial world and in public life. His career as a physician was honorable and highly useful. Turning to business he became one of the masters of industry in New England. ***In the gift of the Mead Memorial Chapel he endowed the college with one of the most beautiful buildings on any campus in America, which will speak to coming generations of his wisdom and foresight in benevolence and symbolize the strength of character of its donor.***"

P's SUMF at ¶82.

John Mead was buried at the Mead Family plot in Evergreen Cemetery in Rutland with his ancestors, including Colonel James Mead and Mercy Holmes Mead, whom John Abner Mead had reinterred there from the West Rutland Cemetery in 1895 and where he had replanted the sod from the Mead Memorial Chapel Groundbreaking Ceremony in June 1914. P's SUMF at ¶83.

John Abner Mead's headstone records his service in the Union Army, his professional life as "a beloved physician in Rutland for 21 years," and his many offices held including his Governorship of course. His headstone contains the final engraving: 'A CHRISTIAN AND PHILANTHROPIST". P's SUMF at ¶84.

B. John Abner Mead and the Special Administrator

Dr. Mead died on January 12th 1920 and his estate was administered and closed as of 1923. Defendant's Statement of Undisputed Material Facts ("SUMF") at ¶5. On June 17th 2022 the Rutland probate division granted a petition to appoint the Honorable James Douglas as Special Administrator of Mead's estate for the purposes of investigating and prosecuting potential claims against Middlebury College for an alleged breach of contract, conditional gift or equitable claim for the removal of the Mead name from the Mead Memorial Chapel. Therefore, Governor Douglas has been granted full authority to represent the Estate in this litigation. P's SUMF at ¶1, 3.

Contrary to Defendant's offensive assertion, John Abner Mead's estate was not reopened by a "distant heir." It was, with the full consent of all heirs, reopened by John Abner Mead's direct descendant, his great-great grandson James L. Hinsman. See Ex. 56 – Mead Family Tree.

The Mead Family Tree exhibit was provided to the Probate Court along with all of the Wills of the deceased heirs so that the Court could verify all of the interested persons, heirs or beneficiaries of every estate. See Ex. 56 – Mead Family Tree.

The descendants of John Abner Mead are as follows:

John Abner Mead had one child, Mary Sherman Mead Hinsman.

Mary Sherman Mead Hinsman had one child, John Abner Mead Hinsman who was referred to as Mead's grandson "Little John" who broke ground and placed his little Bible and family tree in the metal box inside the Cornerstone during the Mead

Memorial Chapel Groundbreaking and Cornerstone Presentation Ceremony in 1914 when he was 3 years old.

"Little John" had four children, three of whom are alive and one who is deceased, John Abner Mead Hinsman II ("JAMH II"), who passed in 2021. It is his son, James L. Hinsman who Petitioned the Rutland Probate Division, with the consent of all of the heirs (Little John's three surviving children: Mary Mead Hinsman Raymond, David C. Hinsman, and Carl B. Hinsman, as well as JAMH II's Estate, Trust, and surviving spouse, Glenda L. Hinsman), to reopen the Estate of John Abner Mead, for the primary purpose of restoring the name to the Chapel, hence the primary claim in this suit for specific performance for an Order requiring that the College restore the Mead name and the Mead Memorial Chapel sign over the main entrance under the Portico, as per the promise that the chapel would be known as the "Mead Memorial Chapel" and as per the building plans, which Mead had exclusive and explicit approval over. See Ex. 56 – Mead Family Tree.

It is only due to the College's obstinate refusal to live up to its promise and restore the Mead name and sign to the chapel, that has caused monetary claims to be pled. The College complains about being sued for millions of dollars when they could easily abandon their ill-conceived scapegoating of Mead and take responsibility for their half-century of contributions to the Eugenics movement, which continued for years after the Holocaust and the full extent of the Nazi's extermination of 6 million Jews was known world-wide.

Instead, the College chose to use Governor Mead as their scapegoat, and "throw him under the bus," while they buried their shocking and shameful 50+ year history operating as a Eugenics factory, educating future teachers, lawyers, politicians, and businessmen to sow the seeds of Eugenics from at least 1895 through and well beyond the Holocaust and the end of World War II, in its contribution to improve WASP breeding stock for the betterment of society.

Therefore, any inference advanced by Defendant, that this case is some kind of "money grab" by a "distant heir" is baseless and extremely offensive to Mr. Hinsman and the entire Mead family, who desire for the Mead name to be restored to the chapel that was built, blessed and dedicated as a memorial to the Mead ancestors and to symbolize the strength of their character. Admittedly, the Mead Memorial Chapel became immediately synonymous with Governor Mead himself, and was successfully marketed by the College on the back of Mead's name and reputation. And, in point of fact, President Reverend John Thomas, during his eulogy of Mead in 1920, declared, "The dedication of the chapel is complete – the Mead Memorial Chapel." Thus, it is understandable why the College itself came to believe that the chapel was a memorial to Governor Mead himself. Because, in reality, it was.

C. <u>Middlebury College</u>

The history of Middlebury College is vital to understanding the intentions between the parties and particularly their motivations at that time in their history

regarding the acceptance of the offer to erect of the Mead Memorial Chapel by Governor Mead.

While Middlebury College is currently a liberal arts college of the first rank, this is an achievement that is the result of a process of growth and change that began in 1800, when a few men of the town of Middlebury took upon themselves the challenge of building a college in a small New England town, on what was then the American frontier. P's SUMF at ¶3. Over the more than two centuries since it was established, Middlebury has developed from "the town's college" into an institution of international renown with a $1.518 billion endowment as of 2021. P's SUMF at ¶4. Middlebury's original purpose was to train young men from Vermont and neighboring states for the ministry and other learned professions of the early 19th century. The College began modestly, with seven students enrolling in November 1800. P's SUMF at ¶5.

Gamaliel Painter, one of the citizens of Middlebury to whom the College charter had been granted, left most of his estate to the College. Mr. Painter's gift was an early example of the philanthropic support for Middlebury College that has enabled the institution to prosper. In recognition of his gift, West College, a new building completed a few years prior to Painter's death in 1819, was renamed Painter Hall. Painter Hall is the oldest college building extant in Vermont. P's SUMF at ¶6.

Middlebury College continued to grow during the 19th century. The growth was sporadic, however, as the College was not immune to the social and political movements that were affecting northern New England generally. Rocked by

evangelical upheaval and religious revival in the 1830s, the Civil War in the 1860s (P's SUMF at ¶6) and then disciplinary problems which reduced the student body to a low of thirty-eight (38) by 1880. P's SUMF at ¶7.[1]

Such were the circumstances of the college when in 1885 Prof. Ezra Brainerd '64 accepted the challenge of the presidency and began to build for the institution new popularity, a liberalized curriculum (including the introduction of Eugenics), an expanded endowment, and new facilities.[2]

With the vote by the Trustee in 1883 to accept women as students in the College, Middlebury College began to change from an institution primarily oriented toward its community and its state to a college with larger regional aspirations. President Ezra Brainerd (who held that office from 1885 to 1908) prepared the College for this transformation, and spectacular change occurred under the administration of President John Thomas (1908 to 1921), who established the Language Schools and the Bread Loaf School of English during his presidency. P's SUMF at ¶7, 8.

During the second decade of the 20th century under Thomas's leadership, the College's enrollment more than doubled, and the number of buildings, the size of the faculty, and the value of the endowment tripled. New residence halls, academic buildings, and library facilities were added to the physical plant. P's SUMF at ¶9.

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[1] https://sites.middlebury.edu/walkingmiddlebury/the-college-campus-front-campus/
[2] https://sites.middlebury.edu/walkingmiddlebury/the-college-campus-front-campus/

In 1914, when Mead offered to erect a memorial chapel, "the same to be known as 'Mead Memorial Chapel'", the following buildings and others, were named to memorialize or honor donors or others who served the College as detailed in Middlebury College Bulletin 1913-1914, Vol. VII, December, 1913, No. 4 and on the Middlebury College website today:

> **Painter Hall** - in 1810 Colonel Seth Storres of Middlebury gave to the corporation 30 acres of land upon which the first building of the college was erected in 1814 it was called at first "West College" but in 1846 was named Painter Hall in honor of Gamaliel Painter, one of the most generous patrons of the college and who had bequeathed all his property to the institution. It has been in continuous use since its erection and it's the oldest college building in Vermont.
>
> **Starr Hall** - a large dormitory, was erected by the beneficence of Charles and Egbert Starr in 1861, and rebuilt in 1865, after a disastrous fire, by the same donors.
>
> **The Egbert Starr Library** - the beautiful and convenient marble library now occupied was erected with funds bequeathed by Mr. Egbert Starr, and dedicated during the Centennial exercises of the College in July 1900. The cost of the building was $50,000, to which was added $5000 for its decoration and $5000 for the purchase of books by the son of the donor, Dr. M Allen Starr.
>
> **The Warner Science Hall** - the large and convenient Warner Science Hall, was erected in 1901 through benefactions of the late Ezra J Warner, of the class of 1861. The building is a memorial of his father, Hon. Joseph Warner, formerly a resident of Middlebury, and a trustee of the college from 1850 to 1865. By the will of Mr. Warner the college has received a bequest of $25,000 for the care and maintenance of the hall, and for the purchase of supplies for the departments which it accommodates.
>
> **The McCullough Gymnasium** - in 1910 Hon. John G McCullough of Bennington offered to give $25,000 towards the erection of a gymnasium, and the alumni of the college completed a gymnasium fund of $50,000 at commencement of that year the building was dedicated at

> the commencement of 1912. It is now known as the McCullough Student Center.
>
> **Battell Cottage** – named for Hon. Joseph Battell of the Class of 1823, a large donor to the college, was enlarged in 1910.
> **Pearsons Hall** Beyond Adirondack House and beautifully placed on the ridge that Joseph Battell bought for its views, is Pearsons Hall, the first Middlebury structure built for women. It is named for D. K. Pearsons of Chicago, who encouraged and helped fund the project. Built in 1911, it is by the same architect (W. Nicholas Albertson) and in the same marble and the same -inspired vocabulary as its contemporaries Voter and McCullough.

P's SUMF at ¶109. Today, it appears that more than 70 buildings on campus bear the name of donors and others who are honored or memorialized by the naming of a building. P's SUMF at¶110.

D. President Thomas and the Marketing of Naming Rights as Inducement to Donors

It is also vitally important to understand how President Thomas achieved the phenomenal success of tripling the number of buildings on campus during his tenure as president of the college. In correspondence to very wealthy Trustees, he boldly asks for money to build dormitories, gymnasiums etc. and describes himself as a "good beggar." The notion that a building would be named for the donor was the entire selling point to the potential donors with whom he corresponded and became a pattern and practice that resulted in great success generating large funds for the building of sorely needed campus buildings that would put Middlebury College "on the map" and establish it as a leading educational institution.

For example, in 1908, Thomas wrote to Trustee D.K. Pearsons, pleading with him for $50,000 now, to meet the pressing need of a building for our girls to live in. . . Most importantly, Thomas then wrote: "Marble is cheap in Vermont, ***and for the sum named we will erect a building that will do you lasting honor***, and will be a blessing to hundreds of girls who otherwise would be without opportunity of higher education." P's SUMF at¶90. The College set up "The D.K. Pearsons Building and Endowment Fund. P's SUMF at¶91. In 1909, the Board of Trustees accepted Dr. Pearson's condition offer to give $25,000, provided that an additional $75,000 be raised. P's SUMF at¶92. Then on February 9, 1910, Thomas requested further moneys from Pearson for a Boys Dormitory and then stated: "***We want to call it Pearsons Hall, if you will let us***." P's SUMF at¶93. Which would certainly be viewed by most reasonable folks as an inducement to Dr. Pearson to have his name on a building. Despite being only a ¼ donor of the Girl's Dormitory, the building was named Pearsons Hall.

Similarly, in 1910, Thomas secured John G. McCullough's conditional gift of $25,000 if the College were able to raise $75,000. Despite being only a ¼ donor of the Gymnasium, the building was named McCullough Gymnasium. P's SUMF at¶94-97.

IV. Mead Memorial Chapel –

A. Mead's Offer Letter

On May 11, 1914, John Abner Mead sent a Letter to Rev. Dr. John M. Thomas, President of Middlebury College, offering "to erect a chapel to serve as a place of

worship for the college, the same to be known as the "Mead Memorial Chapel." PSUMF at ¶14. The letter is typed in its entirety as follows:

> Rev, Dr. John M. Thomas, LL.D.,
> President of Middlebury College.
>
> My Dear President Thomas:-
>
> In commemoration of the 50th anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, ***the same to be known as the "Mead Memorial Chapel."*** I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.
>
> It was my great-great-grandfather, the first white settler of this valley, who brought the first copy of the Holy Bible into this unbroken wilderness and it was his wife, my great-great-grandmother, who gathered her large family about her in an indian wigwam for the first christian service of the Vermont pioneers of this immediate region.
>
> With this memory ever present, it has been my hope and prayer that I might be able and permitted to build for this college a suitable place for divine worship and ***that it might rise from the highest point on its campus*** as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth.
>
> I have in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure, and I hereby suggest that ***the Trustees of the College secure appropriate plans for its erection which shall meet with my approval,*** *and that said board* ***appoint a building committee at once, consisting of president Thomas, former President Brainerd and myself to make the necessary contracts for such a structure and to supervise the erection of the same***, and ***I will then bind myself and my estate to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee."***

B. <u>The Name "Mead Memorial Chapel"</u>

Whether one calls Mead's offer an Offer Letter or Gift Letter, it is undisputed that the Letter contains quotation marks around the proposed name, "Mead Memorial Chapel" which were written in Mead's own hand. PSUMF at ¶ 14. The dispute between the parties is whether the name "Mead Memorial Chapel" was an essential term of the offer or whether it was an "afterthought" as suggested by the Defendant.

Frankly, the notion that the name "Mead Memorial Chapel" was an after-thought is utterly devoid of even a scintilla of evidence, defies logic and common sense, and flies directly in the face of the Defendant's claim that Mead was a highly sophisticated business person who tended to his contracts with careful precision. Instead, Defendant expects the Court to believe that it did not matter to Mead what the chapel was named? Such a suggestion is preposterous and strains, no, breaks the bounds of credulity. Defendant submitted Exhibit GG, Mead's Will. A mere glance at the document shows many changes that are hand-written including strike-out provisions such as the one: "Re: $50,000.00 to Middlebury College; to be determined at a later date." See Ex. GG at p. 5.

Clearly, from a review of Mead's hand-altered Will and the hundreds of pages of correspondence produced by Plaintiff and Defendant from the Middlebury College archives, it is more than reasonable to infer that Mead and Thomas reviewed and signed letters that were type-written by their secretaries, and on occasion, they inserted their handwritten corrections if necessary and then signed the document.

Bottom line is that the Offer Letter contains quotation marks around the name "Mead Memorial Chapel" and there does not exist, any other document or copy of the Offer Letter that does not contain the quotation marks around "Mead Memorial Chapel".

C. Other Terms of the Agreement

What other terms did Mead propose besides stating that the chapel he proposed building was "to be known as" the "Mead Memorial Chapel" that the parties do agree is undisputed?

1. Mead specified the location: "that it might rise from the highest point on its campus"
2. Mead retained exclusive approval of the plans: "that the Trustees of the College secure appropriate plans for its erection which shall meet with my approval;
3. Mead required the establishment of a building committee and specified the composition of the committee including himself to make contracts and supervise construction: "that said board appoint a building committee at once, consisting of president Thomas, former President Brainerd and myself to make the necessary contracts for such a structure and to supervise the erection of the same."

D. What was the Purpose of Mead's Offer?

Mead states his purpose in the very first sentence of the Offer Letter:

> "In commemoration of the 50th anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel."

The language of purpose is plain, clear, concise and unambiguous. Mead wanted to commemorate his 50th anniversary of graduating from Middlebury College. The term

"commemoration" is defined as "a service, celebration, etc., in memory of some person or event. A memorial."[3] The term "Commemorate" is defined as 1) to call to remembrance, to mark by some ceremony or observation, 2) to serve as a memorial of.[4]

Moreover, in the remainder of that first sentence, Mead ties in his desire to "commemorate" his 50th anniversary event with a name that "memorializes" his ancestors, the Mead name, and yes, himself, with the specific language: "the same to be known as the 'Mead Memorial Chapel.'"

Besides articulating the purpose of memorializing his graduation, and stating his name in quotes which would memorialize his name, he also articulates his two other purposes, "in recognition of the gracious kindness of my heavenly father to me throughout my life", (not unexpected language given the religious tradition that existed at that time in history for the institution and Mead's devotion to his faith), and his "desire to erect a chapel to serve as a place of worship for the college."

Mead's Letter then told of his ancestors, recounting their lives as embodying the simplicity, strength of character, and religious faith that Mead envisioned the Mead Memorial Chapel would symbolize and then specifying the location of the chapel.

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[3] https://www.dictionary.com/browse/commemoration

[4] https://www.merriam-webster.com/dictionary/commemorating

It is also critical to observe that the original offer stated that Mead had in mind, "the furnishing of from $50,000 to $60,000 for the erection of such a structure, but then indicated, if his terms were met, that he will bind himself and his estate "to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee."

Notably, the offer was not a donation or pledge of funds to the College with the hope that some building wing or scholarship fund would be named after Governor Mead. Instead, it was an offer to erect a building which would be named, as a commemoration of Mead's 50th anniversary of his graduation and a Mead family Memorial, and which would serve as a sacred place of worship and contemplation for the generations of students to come as well as providing the desperately needed meeting house space to accommodate the growing College community.

E. <u>Middlebury College's Acceptance</u>

On May 15, 1914, President Thomas sent a copy of John A. Mead's Offer Letter to the Trustees of Middlebury College requesting immediate replies from the Trustees "as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests." PSUMF at ¶ 18. Defendant attempts to make hay with the idea that Pres. Thomas did not repeat the "Mead Memorial Chapel" name in his letter, misleading one to surmise that the Trustees were unaware of Mead's requirement for the name to memorialize his family. However, it is clear from Thomas' letter that he enclosed a copy of Mead's

Offer Letter to the Trustees. It is also clear from the responses that the Trustees received Mead's Letter. Thus, Defendant's argument is a red-herring and of no moment.

The Trustees did respond enthusiastically with gratitude, congratulations, and approval. Plaintiff's SUMF pars. 19 through 27 outline all of the responses received from the Trustees, not just the selective few provided by the Defendant. The responses contained language that certainly demonstrates the expectation that they understood this was a memorial forever and a building that would do great good "as long at time lasts" (PSUMF ¶ 21); "shows respect and reverence for your forebears" (PSUMF ¶ 22); ***"a Memorial Chapel. I know of nothing more fitting as a memorial*** *– nothing that will be greater value to the College* ***in all the years to come"*** (PSUMF ¶ 23); "will be *everlastingly* grateful to him" (PSUMF at 24); "I wish to concur in the acceptance of the ***"Mead Memorial Chapel."***. (PSUMF ¶ 25); "*a beautiful memorial*. . . His most interesting letter with its details of early history should be framed and hung in the chapel – and also put in the box of the corner stone." (PSUMF ¶ 26); "it ought to be ***the most attractive memorial erected on the College Campus***." (PSUMF ¶ 27).

On June 22, 1914, the President and Fellows of Middlebury College (Board of Trustees) met and recorded the following resolution to officially accept Dr. Mead's Offer Letter to erect the "Mead Memorial Chapel":

The following resolution, introduced by Dr. Brainerd, on motion of Dr. Barton & Prof. Kellogg, was adopted by a rising vote:-

> "Whereas our esteemed colleague, the Honorable John Abner Mead of the Class of 1864, has signified to President Thomas his desire, in commemoration of the fiftieth anniversary of his graduation, to erect a Chapel for Middlebury College, and his readiness to furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice,
>
> Resolved that the President and Fellows of Middlebury College hereby accept of this magnificent benefaction with sincere gratitude to both Dr. & Mrs. Mead and their family for their deep interest in the religious welfare of the College, so impressively manifested by this provision of a suitable place for divine worship.
>
> Resolved that the Trustees through the Committee nominated by Dr. Mead will use their best endeavors to secure the erection of a dignified and substantial structure, in harmony with the other buildings of the college, and <u>such as will meet the approval of the donor.</u>"

Dr. Mead made fitting response to this resolution. His letter of presentation follows in full:-

[Letter of Gift copied by hand verbatim
with quotation marks around
"Mead Memorial Chapel"]

On motion of Mr. Partridge, seconded by Dr. Abernathy, the Building Committee for the Mead Chapel was elected as above, Messrs. Thomas, Brainerd, Mead and Weeks.

Mr. Collins of the architectural firm of Allen & Collins then appeared before the Board with tentative plans for the new Chapel, which were discussed at length.

PSUMF ¶ 28.

The Middlebury College Trustees unreservedly and enthusiastically accepted Dr. Mead's offer to erect a chapel, which offer contained the explicit language: "the

same to be known as the "Mead Memorial Chapel," The Trustee Minutes recorded the entire Offer Letter verbatim, including the "Mead Memorial Chapel" name in quotes. PSUMF at ¶ 29.

The gift of the Mead Memorial Chapel was widely reported in the Vermont press and Dr. Mead's offer letter was reprinted in several news articles. PSUMF at ¶ 30. The Burlington Free Press had a special report which specified that the Chapel was "to be called the Mead Memorial Chapel". PSUMF at ¶ 31. The Rutland Herald reported on the reason for the gift as set forth in Mead's Letter, indicating:

> "it is *peculiarly fitting* that Dr. Mead should thus recognized Middlebury College, an institution so peculiarly a part of his native state and his personal environment, *for the reason that, as he sets forth in his letter of gift*, his great-great-grandfather was the first white settler in the Otter Creek valley, and brought the Bible, in all its sublime and uplifting beauty, to the peaceful Indians of the wilderness."

PSUMF at ¶ 32.

President Thomas wrote a marketing article that was published in the April 8, 1915 edition of the Boston Evening Transcript, entitled MIDDLEBURY'S 100 YEARS, Old Traditions Preserved in New Chapel" in which he explained: "He [Mead] asked that <u>*the chapel to bear his name*</u> might 'rise from the highest point of the campus, as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth.'" PSUMF at ¶ 34.

F. <u>Ground Breaking Ceremony and Cornerstone Presentation</u>

The Ground Breaking Ceremony and the Presentation of the Cornerstone for the Mead Memorial Chapel was held on June 23, 1914 during the1914 Middlebury College Commencement Exercises, which coincided of course with Mead's 50th anniversary of his graduation. PSUMF at ¶ 36.

Mead and Thomas planned the Ceremony, having Mead's grandson and namesake, John Abner Mead Hinsman, known as "Little John" help him to break the ground and place a metal box into the Cornerstone, which would contain Little John's Bible and the Mead family tree showing his lineage back to the Mead ancestors who settled the valley, brought the first Bible to the unbroken wilderness, and who were being memorialized and whose strength of character and religious faith were symbolized in the structure. PSUMF at ¶ 35.

There were several speeches made all of which convey the understanding that the chapel was to be a memorial to and which would bear Mead's name.

First, Governor Mead gave his presentation speech in which he stated:

> "On this date, I wish to break the ground and place the corner stone ***<u>for this Memorial Chapel</u>,*** *with the hope and prayer that there shall be a sacred duty resting upon each, to make this Holy Temple, so soon to be erected,* an instrument of great good ***<u>to those of this generation and to those who may follow after</u>*** . . ."

PSUMF at ¶ 37

Then and most importantly, the Rev. James L. Barton, D.D., LL.D., Class of 1881 then delivered the "Acceptance in Behalf of the Trustees" during which he stated:

> It is doubly gratifying to me, as it is to the Board of Trustees***, that this building, as a memorial, will bear the name of one so long and so honorably connected with this institution*** and who in the state and nation has always upheld and promoted true piety and civic and national righteousness.
>
> ***This chapel will provide for the generations of students and faculties of this college that to which the other buildings cannot minister.*** To this place all will turn in order to experience the reality of the unseen, to satisfy the thirst of the soul for God.
>
> We then, the Trustees of this College, on behalf of ourselves and our successors, in the name of the generations of students it will serve, in full recognition of the supreme importance of such a religious center to the life of the institution***, and in loving memory of him whose name this structure is to bear, gratefully accept at your hand this Chapel*** as we pledge ourselves to safeguard to the limit of our capacity the gift and the ideals it is intended to perpetuate."

PSUMF at 37.

Last, Prof. Charles B. Wright gave an "Address in Behalf of the Faculty" which he ended with the statement:

> The Faculty thank you, Governor Mead, from profoundly grateful hearts. You have bodied forth our dream of years; you have given to an airy nothing a local habitation – ***and not the least of our pleasure is the thought that through all the days to be it will bear your honored name.***

PSUMF at ¶ 39.

The Cornerstone for the Mead Memorial Chapel was laid at the Groundbreaking Ceremony, in which Mead's grandson and namesake, 3-year-old John Abner Mead Hinsman ("Little John"), placed his small Bible and family tree (back to original settler Colonel James Mead) into a metal box inside the Mead Memorial Chapel Cornerstone. PSUMF at ¶40.

The photographs from the Ceremony show Little John holding a little shovel and being held over the Cornerstone to deposit the Bible box inside. Also photographed is Pres. Thomas holding the original Mead family Bible, which was the Bible that the Mead ancestor/settlers brought to the "unbroken wilderness". A Scripture Lesson was read from the Mead Family Bible during the Ceremony. PSUMF at ¶ 40, 41. The Mead family members who live in Vermont, still have possession of the Mead family Bible today. PSUMF at ¶ 42.

G. Modifications to the Agreement

1. First Amendment to Agreement: From June to December of 1914, Mead and Thomas and the Building Committee worked on getting plans, estimating costs, entering into contracts, and trying to figure out how to get the most for their money. Because the costs were definitely going to exceed $60,000, a modification to the agreement was reached whereby Mead would agree to pay the full $60,000 of the range he was contemplating, but instead of him agreeing to complete the Chapel, that obligation was shifted to the College. PSUMF at ¶ 43.

On December 18th, 1914, Middlebury College's Board of Trustees resolved to go forward with construction of the "Mead Memorial Chapel," "with the understanding that $60,000 – would be contributed by Dr. Mead, the balance estimated at about $1,000 – to be contributed by the College." PSUMF at ¶ 43.

On January 13th, 1915, John Abner Mead wrote an acceptance letter to the Trustees of Middlebury College agreeing to pay $60,000 if the College agreed to complete the chapel:

> **"I agree to furnish funds for the discharge of this contract and for the expenses connected with the erection of this chapel, <u>to the amount of $60,000,</u>** as may be required during the construction and in accordance with the terms of the above contract, binding myself, my heirs and my assigns as above specified. **<u>It is agreed on the part of said Trustees that they are to complete said chapel, making it complete in every way, as to grounds, furnishings, etc., for the purposes of a college chapel,</u>** as voted at the meeting of the Trustees of said college held in New York City Dec. 18, 1914, and as defined in correspondence between the president of Middlebury College and myself."

PSUMF at ¶ 44.

2. <u>Second Amendment to the Agreement</u> - was made in late February 1915, due to Mrs. Mead requesting a change in the plan regarding pilasters and windows which resulted in a higher cost.

On February 27th, 1915, John Abner Mead offered to pay an additional $1,031 to purchase and install the windows and pilasters if the Trustees agreed to finish the chapel as agreed and to install a $5,000 pipe organ. PSUMF at ¶ 45-47. On March 1, 1915 Thomas wrote to Trustee Partridge regarding approving Mead's offer and also on March 1, 1915, wrote to Rogers authorizing the $1,031 changes. PSUMF at ¶ 47.

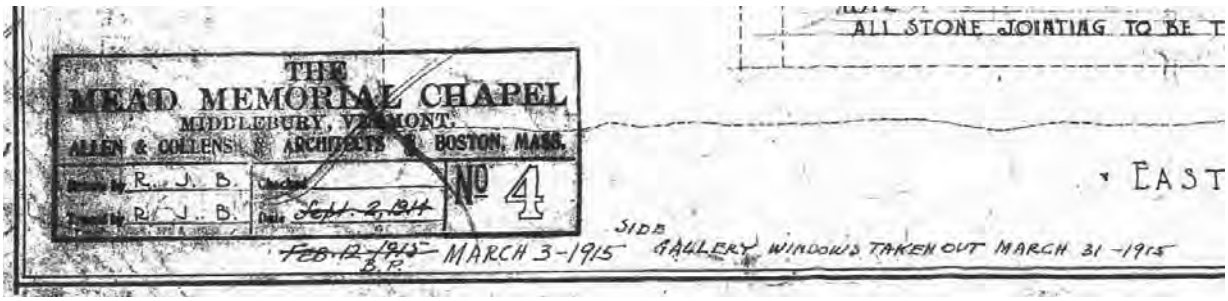
On April 14th, 1915, Middlebury College's Board of Trustees accepted John Abner Mead's offer to add $1,031 and the College will buy a $5,000 pipe organ, stating in the meeting minutes: "Voted, that the Trustees accept with gratitude Dr. Mead's

proposal to add $1,031 – to the gift of the Chapel, and agree to install therein a pipe organ to cost $5,000." PSUMF at ¶ 53.

H. <u>Building Plans approved by Mead</u>

The Mead Memorial Chapel architectural plans bearing final date of March 31, 1915 and which incorporated the final change of the windows and pilasters, are the "plans and specifications" which were approved by Mead. PSUMF at ¶ 49.

Each page of the Allen & Collens architectural plans, which are contained at Ex. 14, 15, 16, & 17, bears the label: "The Mead Memorial Chapel". PSUMF at 49. See for example Ex. 14:

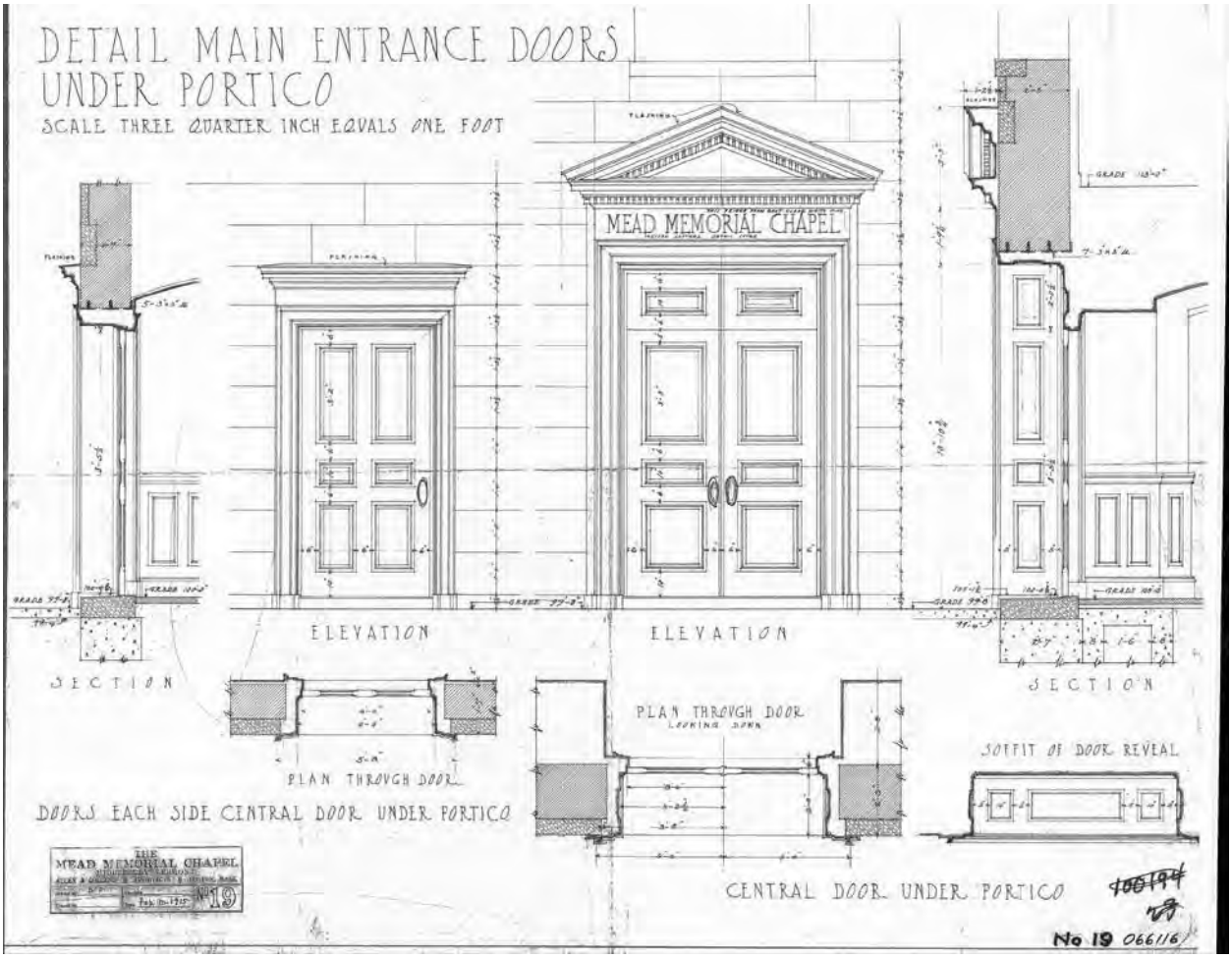


PSUMF at ¶ Ex. 49.

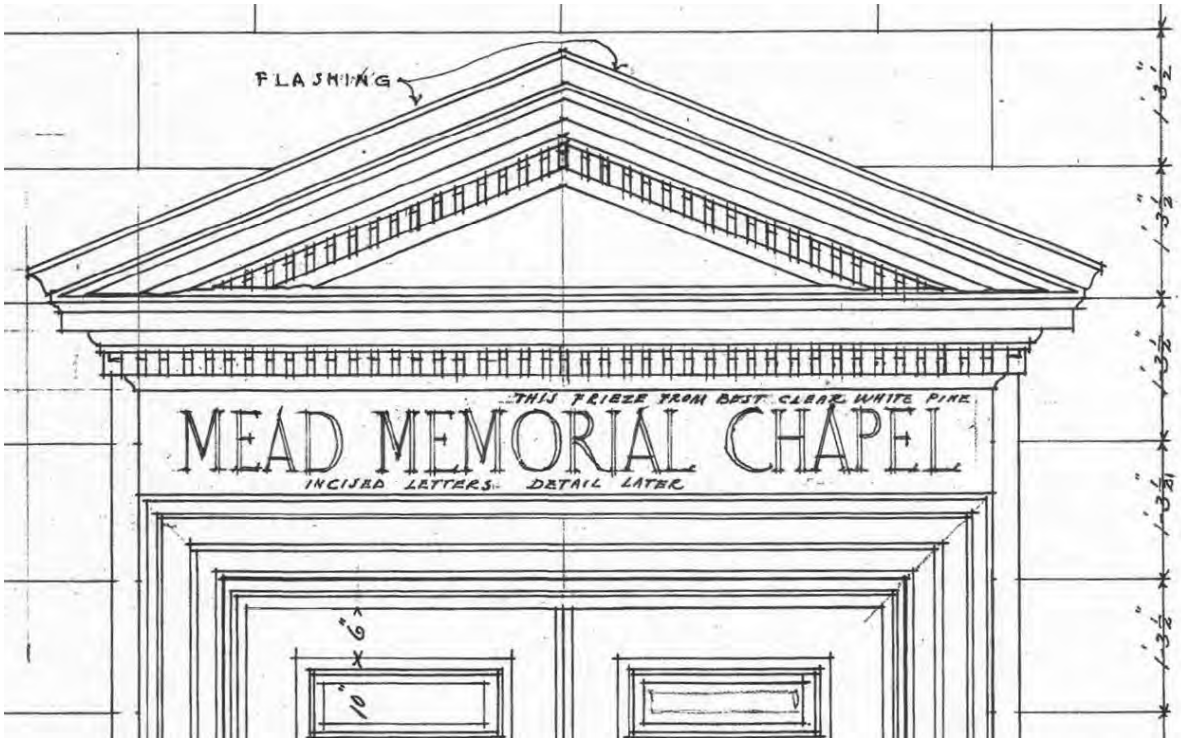
Exhibit 14 are the plans for the East Elevations – Main Entrance of the Chapel. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico:

Ex. 14.

Exhibit 15 are the plans for the Detail Main Entrance Doors under the Portico. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico. See Ex. 15 immediately below:



A closeup view of the detail of the Mead Memorial Sign on Exhibit 15 reveals the specifications of material: "THIS FRIEZE FROM BEST CLEAR WHITE PINE", the wording of the sign: "MEAD MEMORIAL CHAPEL", that they will be incised letters with detail to follow, and of course the exact measurements and specific location to affix the sign to:



Ex. 15.

I. The Chime of Bells

On June 21, 1915 Dr. Mead sent an additional offer letter to President Thomas stating: "If acceptable to the members of the Board of Trustees, Mrs. Mead and I would be pleased to add a chime of bells to our gift of the Mead Memorial Chapel." PSUMF at ¶ 54.

On June 23rd, 1915, Middlebury College's Board of Trustees gratefully accepted John Abner Mead's offer to add the Chime of Bells, evident in the following meeting minutes: "It was voted that the gift of Mr & Mrs Mead be gratefully accepted." PSUMF at ¶ 56. The entire cost of the Chime of Bells was paid directly by Mead to Meneely Bell Company in the amount of $6,960 in December 1915. PSUMF at ¶ 57.

Dr. and Mrs. Mead's addition gift of a Carillon of Bells was installed in the Chapel tower. There were eleven bells, the largest weighing 2500 pounds and the smallest 275 pounds. Each bell bears the inscription:

> "Presented to Middlebury College
> by
> John Abner and Mary Sherman
> Mead."
>
> "Ring in the valiant man and free,
> The larger heart, the kindlier
> hand;
> Ring out the darkness of the land,
> Ring in the Christ that is to be."

PSUMF at 55.

J. Chapel Construction

The construction of the Mead Memorial Chapel proceeded over the next two years, during which time Dr. Mead attended meetings of the Mead Memorial Chapel Building Committee in Middlebury, met with architects, approved project designs, controlled the budget, and provided credit and payment for all labor and materials. PSUMF at ¶ 58.

As the College grew, changes were inevitable. The balconies were added in 1938 (with the consent of Mead's daughter, Mrs. Carl Hinsman, see Exhibit 46), increasing the seating capacity to 715. The original organ was replaced in 1971 by the large Gress-Miles organ. The tower now holds a wonderful 48-bell carillon, cast and tuned in France from the original bells and other sets. It is played regularly. Seven of the original eleven bells were recast and reinscribed with Mr. and Mrs. Mead's presentation inscription and Bible verse so that each of the original eleven Bells remain as they were originally inscribed with Dr. & Mrs. Mead's name on each bell. See current day photos of Bells and Mead inscriptions at Ex. 23. PSUMF at 61.

K. 1916 Dedication Ceremony & Presentation of the Keys

The Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916 during which Dr. Mead made a Presentation Speech, recalling his grandson's role in the Groundbreaking and Setting of the Cornerstone two years earlier, when "Little John" was only 3 years old:

> With the labor of love and devotion all complete, it is with great pleasure and an honor that I, through him who assisted me some two years since "in removing the soil" for the "setting of the corner stone", and who placed under the same his token of love, - his Bible and a short history of his relation to those who made this Temple possible; as I state, it is with pleasure, that through him, I may present to you, Doctor Brainerd, former President of this College, the keys to the Mead Memorial Chapel, - and may the Kind Providence who governs all our efforts for the greatest good and happiness of his children, give you all strength and wisdom, - that your and our fondest and most extravagant anticipations of this day may be more than realized, in the years that are to come.

PSUMF at ¶ 63.

Mead's speech was followed by "Little John," now 5-years, presenting the Keys to the Mead Memorial Chapel to the College Trustees. PSUMF at ¶ 64.

Dr. Brainerd, Former President of Middlebury College accepted the Keys on behalf of the Trustees and stated the following in his acceptance speech:

> Doctor Mead:-
>
> I esteem it a great privilege to appear in behalf of the President and Fellows of Middlebury College and accept publicly, your gift of this beautiful sanctuary, that we have this day met to dedicate to the service of Almighty God. For many years, especially since the old chapel proved too small to hold even the half of our students, it has been the fond hope and the earnest prayer of the friends of the College, that in God's providence there might appear a man of the religious fervor and the financial ability requisite to meet this urgent need for a larger and more suitable edifice. Today our ardent hopes are realized; our prayers are graciously answered. ***And to me it is especially gratifying that our benefactor is my beloved classmate, one to whom I am bound, now for fifty six years, by ties of the warmest friendship.***
>
> During these many years (which have passed with us so swiftly) the Heavenly Father has been pleased to grant you strength of mind and body, and varied opportunities for doing great service to your fellowmen. How well I recall the patriotic zeal with which, while yet a student in college, you enlisted in the war to maintain the union of these United States. [Unreadable word] later, as a well-trained physician, you served in another war—against

> the diseases that distress mankind; and by sound judgement and kindly sympathy achieved an enviable reputation in his beneficent calling. Still later your executive talent enabled you to build up a great industry, whose products are now used in every civilized portion of the world. More recently you served the commonwealth of Vermont, in the highest public office, with business sagacity, with fidelity, and with honor. ***But the noblest deed of all---the one for which future generations will hold you most in grateful remembrance---***is the erection of this spacious and attractive chapel, where the religious life of the College may find fitting expression and the stimulus of hallowed associations.
>
> With grateful hearts, ***dear brother***, we accept your generous gift: and we assure you of our earnest purpose so to utilize its opportunities for religious culture, as to promote the growth of earnest Christian character in the students of Middlebury College.---***Here for generations yet to come the melodious bells of this Chapel shall sound out over the Campus and the Town*** the strains of Christian music, that from childhood have awakened in our souls the sentiments of faith and courage and earnest living.
>
> . . .
>
> The lord reward you, ***dear friend,*** for all that you have done, or may yet do, for the good of others; and may the years of earthly life that still remain be your best years, filled with blessed memories and abiding peace.

PSUMF at ¶ 65.

After the Dedication Ceremony, the 1916 Kaleidoscope, the Middlebury College Annual was dedicated to Governor Mead with a photo of the Chime of Bells and a poem, "The Chapel Bell." PSUMF at ¶ 66. The Mead family was invited to attend the first assembly of students in the Mead Memorial Chapel. PSUMF at ¶ 67.

L. The Importance of the Mead Memorial Chapel to the College

Middlebury College's website explains the import and significance of the Mead Memorial Chapel which symbolizes the aspirations of the College, just as Mead intended:

> "This beautiful white marble structure rises on the highest point of the campus, its spire symbolizing the aspirations of the College."
>
> "The light which shines here nightly is seen in the entire valley. Over the portal are carved the words from Psalm 95:4, "The Strength of the Hills is His Also.'"

PSUMF at ¶ 69.

Middlebury College's Professor Emeritus, History of Art and Architecture, Glenn Andres who detailed the history, symbolism and importance of the "Mead Memorial Chapel" to Middlebury College, stated: **"The monumental centerpiece and aesthetic keystone for the college for 100 years, Mead Chapel has remained an important symbolic and central venue for college activities and traditions."** PSUMF at ¶ 70.

In addition to the value of the building itself, Middlebury College Trustee and Treasurer John Fletcher felt that the gift toward construction of the chapel would be helpful in securing financial support for Middlebury from the State Board of Education, as referenced in his correspondence concurring with the acceptance of Mead's offer to build the Mead Memorial Chapel.

After the Mead Memorial Chapel was built in 1916, Dr. Mead provided President Thomas with photos and other materials documenting the construction of the Chapel so President Thomas could create a booklet which they used to "stimulate some of our friends to pattern after Mr. Hepburn's example and give you an elegant

dormitory for the girls or possibly something else which you might more desire at this time." PSUMF at ¶ 73.

In September of 1916, Pres. Thomas ordered 250 copies of the "Hymnal of Praise" with the inscriptions "MEAD MEMORIAL CHAPEL," stamped on the covers in gold.

In December of 1916, John Abner Mead agreed to pay additional amounts over and beyond the final agreement with the Trustee for Hymn Boards to be installed in the Mead Memorial Chapel at cost of $1,559.39. PSUMF at ¶ 76 and 59.

John Abner Mead made other financial contributions to Middlebury College during his lifetime in addition to erecting the Mead Memorial Chapel, i.e., $1,000 in 1918 to the Endowment Fund. He left no provision for Middlebury College in his Last Will and Testament. PSUMF at 77.

M. Mead's Charitable Gifts to others - Risk vs. Trust

It is true that Dr. Mead also made substantial financial donations to other charitable causes during his lifetime, including the establishment of a youth center facility open to all faiths which Mead named "The Community House." PSUMF at ¶ 78. The fact that Mead signed a reversionary deed that was obviously prepare by a real estate attorney has no bearing on his offer to Middlebury College two years earlier. Factually there is no relevance for the following reasons:

1) The deed was signed two years after Mead's offer to the college,

2) The deed was obviously prepared by a real estate attorney,

3) The deed was required in order to convey real estate,

4) The conveyance of real estate was for the purposes of setting up the youth center, a new, unknown, and undoubtedly risky venture that had some significant chance of failure which was appropriate to protect with such a deed.

Another fundamental difference relating to the risk that this comparison raises is the issue of trust. From the Trustees' Letters accepting Mead's offer, to Rev. Barton's Acceptance Speech at the Groundbreaking, to Dr. Brainerd's Acceptance Speech at the Dedication Ceremony, to Mead's Eulogy by President Thomas, to the Board's tribute to Mead in their 1920 Minutes, to the hundreds of letters between Thomas and Mead, we see that Mead was not only held in the highest esteem for his amazing accomplishments, but was a "beloved classmate bound together for 56 years by ties of the warmest friendship", and served on the Board with the other Trustees for decades, working in concert with one another to build a College of great importance, even if their "updated curriculum" included Eugenics.

It is the trust that Mead had with his fellow trustees and their shared understanding that a promise to name a building as a memorial to honor and remember ancestors, was a promise forever. Moreover, this was a religious chapel that was to memorialize the Mead ancestors who embodied and symbolized the "simplicity and character of the inhabitants" of the area and the removal of the Mead name is a breach of a sacred promise that was made through the prayers and dedications offered to the Mead Memorial Chapel and Governor Mead.

And we can suppose it is that trust, that prevented the insertion of some sort of language such as "in perpetuity" with regard to the name Mead Memorial Chapel. However, there is no evidence to suggest that "in perpetuity" language was even being used at that time and place in history. Therefore, we have absolutely no evidence to suggest that it would have ever occurred to the parties, to specify that a name in quotation marks with the verbiage "the same to be known as", would have only temporary effect for some finite time period. A name is a name is a name.

Middlebury was in the business of enticing donors to make massive donations towards needed buildings, offering naming rights to donor who were only providing 25% of the cost to construct buildings, not the 98 % that Mead paid. So, why would anyone think there would ever be a reason to expect that the name of one so revered, who was a giant of his time and a hero to Vermont and to Middlebury College, would ever be removed from a sacred chapel that was blessed and dedicated with a Scripture Lesson from the original Mead family Bible, which contains Little John's Bible and his family tree, and with the Chime of Bell inscriptions with the Mead names and Bible verse? It would have been inconceivable to the parties in 1914, that the Mead Memorial Chapel name would ever be removed, unless the building burned down and no longer existed. There was simply no need to insert the term "in perpetuity", because it was understood and repeatedly demonstrated by the many examples, that it was universally understood, by the parties, the faculty, the newspapers, and the public, that the Mead Memorial Chapel would bear the Mead name for as long as the

Chapel existed. Being made from Vermont marble, that was expected to be a very, very long time, lasting for the future generations referred to by the Trustees.

N. **Defendant's Pattern & Practice re: Alterations to Named Buildings**

There is other evidence that should be considered regarding the Defendant's pattern and practice of obtaining donor approval and consent to significant changes or alterations to buildings. In particular regarding the Mead Memorial Chapel:

On June 14th, 1920, about 6 months after John Mead's death, Pres. Thomas wrote to Mead's son-in-law, Carl B. Hinsman about "completing" the west end of the Chapel with marble, as it had been built of wood to save costs when the Chapel was erected by Mead and stating:

> "My thought is that it is something that ought to be borne in mind to be done at the proper time and ***that measures should be taken to insure that the Chapel will be preserved as a memorial to Dr. Mead***."

PSUMF at ¶ 85.

On April 29th, 1931, Carl B. Hinsman wrote to Pres. Moody about repairs to the spire, and expressed Mrs. Hinsman's (Mead's daughter) strong desire that it be restored stating, "[we] feel it quite a calamity if the spire was removed entirely. . . The Building occupies such a commanding position on the Campus and in the landscape surrounding it that it would be indeed regrettable if the spire should be abridged or done away with." On May 8th, 1931, Pres. Moody wrote to Carl B.

Hinsman saying the matter was settled, and that they were to proceed with repairs to the spire.

On July 20th, 1937, Pres. Moody wrote to Mrs. Carl Hinsman asking for consent to add the galleries as balcony seating, in which he stated:

> . . . And we did wish to have your consent to any change made in a building given to the college by your father.
>
> In exactly the same way, when we had outgrown the Starr Library, which has given the college by the Starr family, and had in hand money for its enlargement, we went to Dr. Starr for permission to make the enlargement. He not only consented to our plans, but refused to allow another donor to give anything toward the construction, saying that since it was a Starr Library, he did not wish any but star money to go into the building. The amount was more than he wanted to lay out in one payment so he spread it over several years, reimbursing the College in partial payments. We had contemplated a change in Hepburn hall, but there again I would not be willing to go ahead without the consent of Mrs. Hepburn.

PSUMF at ¶ 86.

Moreover, in 1985, when a donor offered a 36 bell carillon to add to the original 11 bells donated by the Meads, 7 of the original 11 bells were recast and were ordered to be re-engraved with Mead's gift and Bible verse:

> "Following our telephone conversation of March 28, 1985, I write to confirm that the following inscription should appear on the first eleven bells:
>
> GIFT OF GOVERNOR MEAD AND MARY SHERMAN MEAD
> PRESENTED TO MIDDLEBURY COLLEGE BY
> JOHN ABNER AND MARY SHERMAN MEAD
>
> A. D. 1915

RING IN THE VALIANT MAN AND FREE
THE LARGER HEART THE KINDLIER HAND
RING OUT THE DARKNESS OF THE LAND
RING IN THE CHRIST THAT IS TO BE"

PSUMF at ¶ 89.

O. Other Named Buildings

1. **Pearsons Hall** - On February 9, 1910, Pres. Thomas wrote to D. K. Pearson soliciting money and stating, "***We want to call it Pearsons Hall, if you will let us.***" PSUMF at ¶ 93.

2. **McCullough Gymnasium** – On February 9, 1910, Pres. Thomas wrote to John G. McCullough: "But if you could make the "McCullough Gymnasium Fund" $25,000, on condition that I secure a like sum from other sources, I believe I could get the balance for a "McCullough Gymnasium" before next commencement." PSUMF at ¶ 94.

3. **Gifford Memorial Hall** - On July 20, 1939, The President and Fellows of Middlebury College acknowledged Mrs. Giffords generous offer which contained the exact same verbiage as the Mead Offer Letter 25 years earlier:

> "…in receipt of your letter of July 20th 1939, in which you offer for yourself, your heirs, executors and administrators, to pay the cost of building and furnishing and equipping a hall for the use of the boys of Middlebury College, ***to be known as, "The James M. Gifford Memorial Hall for Boys"***, provided the college will permit the erection of the building on its land to the north of Mead Memorial Chapel in a situation corresponding to that of Hepburn Hall to the to the South of the Chapel.

PSUMF at ¶ 101.

But perhaps, the most important document which was discovered in the Gifford Building archives is the October 31, 1940 Board Acceptance of the "James M. Gifford Memorial Hall for Boys" reads:

> "The graciousness and hospitality of this building are a symbol of the generous nature of his whose name it bears. … ***It is a fitting memorial to a life which exemplified all these virtues, simple but massive, harmonious yet strong***. … We recognize that though only the name of James M. Gifford adorns this building, nevertheless into its stone and mortar has gone something more, - a lifetime's devotion, to one worthy of that devotion. ***This gift to the College which Mr. Gifford loved so greatly and served so long, so faithfully and so efficiently, is gratefully accepted, not only for its own sake, but for the sake of him in whose honor it stands and for your sake, Mrs. Gifford, who have so wonderfully preserved his name, along with the great names of the College, - Painter, Starr, McCullough, Mead, Hepburn, and now Gifford."***

PSUMF at ¶ 103.

This letter provides us with a definitive admission by the Defendant that Mead was absolutely considered one of "the great names of the College" and using his name and others, to entice Mrs. Gifford to donate $250,000 in funds to erect a memorial to her husband, with the promise that Gifford's name would be "preserved" forever, just like the other greats of the College. This is also proof of Middlebury College's use of naming rights as an enticement to donors and it is further proof that the 2021 actions of the Defendant in removing the Mead name, was in contravention of the promises,

understanding and agreement between the parties, which Defendant has breached with its erasure of John Abner Mead and the Mead family name.

P. Middlebury College's Breach of the Agreement & Broken Promise

In the early morning hours of Monday, Sept. 27, 2021, Middlebury College removed the wooden "Mead Memorial Chapel" sign, which hung in a niche above the entrance of the Chapel, identifying the College's house of worship and "Meeting House" for community gatherings for the past 105 years. Complaint/Answer ¶ 6. The College did not issue a public statement in advance of the removal of the sign for "Mead Memorial Chapel." PSUMF at ¶ 107. The College did not notify the Mead family nor seek their consent to alter the building, to remove the sign from the building or to remove the Mead name from the memorial chapel. PSUMF at ¶ 108.

The 2021 removal of Mead family name from the Mead Memorial Chapel was a breach of the contract's most essential term, the consideration expected by and bargained for by John Abner Mead, that the chapel he was erecting for the college would be a memorial to his ancestors, bearing his family name forever. Given the evidentiary record already assembled, could any reasonable person actually believe that the Trustees did not agree to name the chapel the "Mead Memorial Chapel" or that Mead would have built the chapel if his term or condition were denied?

V. <u>BREACH OF CONTRACT</u>

In the recent case of *Sutton v. Vermont Reg'l Ctr.*, the Vermont Supreme Court clearly articulated:

> The essential requirements for a contract as "a bargain in which there is a manifestation of mutual assent to the exchange and a consideration." Restatement (Second) of Contracts § 17(1) (1981). A unilateral contract will form where an offeror makes an offer that can be accepted by performance, and the offeree performs. *Ragosta v. Wilder*, 156 Vt. 390, 394, 592 A.2d 367, 370 (1991) (stating that "'under a unilateral contract ... the offeree must accept, if at all, by performance, and the contract then becomes executed' " (*quoting Multicare Med. Ctr. v. State Soc. & Health Servs.*, 114 Wash.2d 572, 790 P.2d 124, 131 (1990))). Consideration sufficient for contract formation can include a broad range of benefits: The **"definition of a benefit is extremely broad, and requires simply that [promisors] receive something desired for [their] own advantage."** *Kneebinding, Inc. v. Howell*, 2014 VT 51, ¶ 17, 196 Vt. 477, 99 A.3d 612 (quotation omitted).

Sutton v. Vermont Reg'l Ctr., 2019 VT 71A, ¶ 60, 212 Vt. 612, 238 A.3d 608, 631 (2020)

The Defendant's challenge to the Contract claims, is completely without merit. Defendant claims that the naming of the chapel was a "vague" reference and likely an "afterthought," and not an essential term of the contract.

The Trustee meeting minutes recorded a resolution to accept Mead's Offer, copying into the minutes by hand, Mead's Offer Letter in full and *verbatim*, including the quotation marks around "Mead Memorial Chapel" to ensure that the offer that was being accepted was adequately described. Thus, the minutes themselves recorded the very words "the same to be known as 'Mead Memorial Chapel,'" and to suggest otherwise is totally unsupported by the record evidence.

Next, Defendant claims that the naming of the chapel does not provide sufficient consideration to support a contract. Nothing could be further from the truth. As the Vermont Supreme Court has just recently explained:

> The existence of a contract or contracts between the parties is a question of fact subject to the latter standard of review. See Sweet v. St. Pierre, 2018 VT 122, ¶ 11, 209 Vt. 1, 201 A.3d 978. However, "[t]he existence of sufficient consideration for a contract is a question of law." Bergeron v. Boyle, 2003 VT 89, ¶ 19, 176 Vt. 78, 838 A.2d 918.

Theberge v. Theberge, 2020 VT 13, ¶ 7, 211 Vt. 535, 541, 228 A.3d 998, 1002 (2020).

The Theberge Court then went on to explain the concept of consideration in full:

> . . . consideration exists only where a promisee "giv[es] up something which the promisee was theretofore privileged to retain, or doing or refraining from doing something which the promisee was then privileged not to do, or not to refrain from doing." 3 R. Lord, Williston on Contracts § 7:4 (4th ed. 2019). A promise to refrain from doing something which the promisee was never legally empowered to do—like a promise to do what one is already legally bound to do—"creates no new duty and cannot support an action; nor does it afford a consideration for a promise by the other party." Manley v. Vt. Mut. Fire Ins. Co., 78 Vt. 331, 336, 62 A. 1020, 1021 (1906) (holding that "if one promises to do what he is already legally bound to do, the promise is nude").
>
> We first observe that mutual promises may provide the necessary consideration for contract formation. H.P. Hood & Sons v. Heins, 124 Vt. 331, 337, 205 A.2d 561, 565 (1964) (" 'Mutual promises, in each of which the promisor undertakes some act or forbearance that will be, or apparently may be, detrimental to the promisor or beneficial to the promisee, and neither of which is void, are sufficient consideration for one another.' " (quoting 1 Williston on Contracts § 103, at 395-96 (3d **1004 ed. 1957)); see also Bergeron, 2003 VT 89, ¶ 19, 176 Vt. 78, 838 A.2d 918 (finding "bargained for exchange of mutual promises was sufficient consideration to support the contract")…. .
>
> "Simply put," in order to satisfy the consideration requirement, "the promisor must receive something desired for his or her own advantage." Lloyd's Credit Corp. v. Marlin Mgmt. Servs., Inc., 158 Vt. 594, 599, 614

> A.2d 812, 815 (1992) (explaining that "a mere expectation or hope of benefit is sufficient to serve as consideration" (quotation omitted)).
>
> Nor does the fact that the benefits obtained in this agreement may flow largely to third parties preclude a determination of consideration. Restatement (Second) of Contracts § 71 cmt. e (1981) ("It matters not from whom the consideration moves *544 or to whom it goes. If it is bargained for and given in exchange for the promise, the promise is not gratuitous."); see also Kneebinding, Inc. v. Howell, 2014 VT 51, ¶ 17, 196 Vt. 477, 99 A.3d 612 (noting that "[t]he definition of a benefit is extremely broad" (quotation omitted)). See Lloyd's Credit Corp., 158 Vt. at 599, 614 A.2d at 815 ("[C]onsideration can exist without economic benefit or advantage; a benefit need not be measurable in money. The extent of a benefit is not important; a very slight advantage is sufficient to constitute consideration." (quotation and citation omitted)); see also Restatement (Second) of Contracts § 79 ("If the requirement of consideration is met, there is no additional requirement of ... equivalence in the values exchanged.").
> . . .
> Town of Rutland v. City of Rutland, 170 Vt. 87, 90, 743 A.2d 585, 587-88 (1999) (explaining that existence of contract "depends on facts as well as the reasonable inferences to be drawn from them, and is also influenced by the situation of the parties and the subject matter").

Id. at ¶ ¶11-14 & 21 (2020).

Turning to the case at bar, there are overwhelming undisputed facts to establish a contract by mutual consent to the contract term that the chapel would bear the name "Mead Memorial Chapel" which was supported by valid consideration: a benefit to John Mead to have a Memorial to his ancestors and his family name forever remembered, specification of the location of the chapel, complete control over the plans and specifications, and the establishment of a Building Committee with certain members and himself.

In addition to the naming of the chapel being a benefit to Mead and a detriment to Middlebury College, who had no obligation or duty to name the chapel after the Mead ancestors, there was other valid consideration, i.e., Mead's design control and complete approval of the plans, and his requirement of a building committee with certain members. However, most importantly, the College engaged in further negotiations with Mead to modify the agreement, twice. This is what is referred to as bargained-for consideration. The first modification of the agreement was that Mead agree to pay a full $60,000 if the College would agree to complete the chapel with all the furnishings, etc.. The second modification of the agreement that was further bargained for was when Mead agreed to pay an additional $1,031 over his $60,000 commitment, for the pilasters and windows, in exchange for the College agreeing to complete the chapel AND buy a $5,000 organ for the chapel.

These bargained for promises were a detriment to the College and a benefit to Mead. He negotiated with the College to complete the chapel and buy an organ so that his Mead Memorial Chapel would be completed, even though the cost was more than he was willing to spend. Therefore, because there is sufficient evidence of a bargained for exchange, the Court should deny the Defendant's Motion to Dismiss the Breach of Contract claim and grant judgment as a matter of law to Plaintiff.

Furthermore, if the court finds that there was no consideration or mutual consent, a unilateral contract still existed and was consummated when Middlebury College performed by affixing the name to the Chapel. Either way, a contract was formed, performed and thereby consummated during the lifetime of Governor Mead.

Also of recent vintage, the Vermont Federal District Court has explained that in interpreting any contract:

> . . . courts should "presume" that the parties' intent **"is reflected in the contract's language when [it] is clear."** *Kneebinding, Inc. v. Howell*, 2014 VT 51, ¶ 10, 196 Vt. 477, 99 A.3d 612; *see also Dumont*, 2012 WL 1599868, at *4. ("[I]f the terms of the contract are plain and unambiguous, 'they will be given effect and enforced in accordance with their language.") (alterations and internal quotation marks omitted). Courts must also "give effect to every part of the instrument and form a harmonious whole from the parts[,]" *In re Grievance of Verderber*, 795 A.2d 1157, 1161 (Vt. 2002), and **"assume that the parties included contract terms for a reason and [should] not embrace a construction that would render a provision meaningless."** *Kneebinding*, 2014 VT 51, ¶ 15 (citing *Southwick v. City of Rutland*, 2011 VT 53, ¶ 4, 190 Vt. 106, 35 A.3d 113).
>
> Where "**the scope of the release cannot be determined from the language alone, it must be 'resolved in the light of the surrounding facts and circumstances under which the parties acted**.' " *Inv. Props., Inc. v. Lyttle*, 739 A.2d 1222, 1229 (Vt. 1999) (quoting *Economou*, 399 A.2d at 500). As a result, "**when the language of the document is ambiguous and must be clarified by reference to external evidence, construction becomes a question of fact.**" *Id.* (citing *Housing Vt. v. Goldsmith & Morris*, 685 A.2d 1086, 1088 (1996)).

Dakers v. Bartow, No. 2:16-CV-00246, 2018 WL 8415310, at *4–5 (D. Vt. Sept. 10, 2018).

In the instant case, if the court determines that the contract is ambiguous with regard to whether the name was agreed to forever as an essential term of the contract, or what the timeframe that the name was to adorn the building, then such an ambiguity is easily resolved by the hefty extrinsic evidence that portrays the surrounding facts and circumstances under which the parties acted. Such evidence

is overwhelming: clearly there was an agreement to name the chapel "Mead Memorial Chapel" - forever.

While the court previously noted that if the transaction is considered to be a contract, perpetual terms in contracts generally are disfavored and that "Although a construction [of a contract] conferring a right in perpetuity will be avoided unless compelled by the unequivocal language of the contract, a perpetual contract will be enforced, if the terms are clear. Furthermore, a contract which purports to run in perpetuity must be adamantly clear that that is the parties' intent, in order to be enforceable." That is the very case here, from all of the correspondence, Board minutes, and acceptance speeches of the Board of Trustees, the name Mead Memorial Chapel was to adorn the Chapel forever. There simply is not other conclusion that can be reached.

And while "A contract will not be construed as imposing a perpetual obligation when to do so would be adverse to public interests." 17B C.J.S. Contracts § 608 (footnotes omitted), there is no adverse public interest implicated. First the College is a private institution and in fact, while not a state actor, it would not be in the public interest to enable the breach of a clear, unequivocal obligation that was willingly and enthusiastically accepted by the Trustees.

VI. BREACH OF COVENANT OF GOOD FAITH & FAIR DEALING

Parties in a contractual relationship have an obligation to treat each other in good faith and deal with each other fairly. This is known as the covenant of good faith and fair dealing and it is implied in every contract. The definition of the "covenant of good faith and fair dealing" is broad. See *Carmichael v. Adirondack Bottled Gas Corp.*,

161 Vt. 200, 208-09 (1993) (citing Restatement (Second) of Contracts § 205). It is an underlying principle implied in every contract that each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement. *Id.* (citing *Shaw v. E.I. DuPont de Nemours & Co.*, 126 Vt. 206, 209 (1966)). The implied covenant of good faith and fair dealing exists to ensure that parties to a contract act with faithfulness to an agreed common purpose and consistently with the justified expectations of the other party. *Id.* (quoting Restatement (Second) of Contracts § 205 comment a). The covenant of good faith and fair dealing protects against conduct that violates community standards of decency, fairness, or reasonableness. *Id.* (quoting Restatement (Second) of Contracts § 205 comment a).

A party asserting this claim does not need to demonstrate a breach of the underlying contract to succeed on their claim for breach of the implied covenant of good faith and fair dealing. *Id.* at 1216 (affirming jury award for breach of the implied contract of good faith and fair dealing even though no breach of express term in the underlying contract was alleged). However, the party must identify conduct separate from that which breached the underlying contract to form the basis for the breach of the implied covenant. See *Langlois v. Town of Proctor*, 2014 VT 130, ¶ 59; see also *Monahan v. GMAC Mortg. Corp.*, 2005 VT 110, ¶ 54 n.5. Stated differently, the party cannot argue that the conduct that breached the underlying contract is the same conduct that breached the implied covenant of good faith and fair dealing. *Langlois*, 2014 VT 130, ¶ 59.

The factual question in this case is whether each party acted in good faith and dealt fairly and consistently with the justified expectations of the other in the performance of their agreement. *Id.* Plaintiff asserts that Defendant stripped the Mead family name by erroneously recounting the Mead Memorial Chapel's own history, that the chapel was named in honor of Governor Mead, instead of his building of a memorial chapel to honor his ancestors. Defendant's removal of the name "Mead" from the Chapel in direct defiance of its covenant and the expectation that the College will act honestly and reasonably in the faithful pursuit of the agreed common purpose of the contract.

In addition, the College used Mead as a scapegoat, portraying itself as an innocent bystander which naively accepted money from an unknown bad guy who had fallen from grace. Middlebury College created a story to hide its staggering half-century of Eugenics teaching and advocacy, all at the expense of an honorable man who, no matter his limitations and context, spent his life caring for and serving his patients, neighbors, church, city, college, state and nation.

The 1914 Trustees of Middlebury College knew exactly who Governor Mead was, and regrettably, Mead helped to further Middlebury College's institutional Eugenics agenda, at least for a moment in time, in one speech, in 1912. Middlebury College's hypocritical gaslighting and framing of Mead for its crimes, was more than a breach of contract, it was for a bad motive, to lay blame elsewhere. Therefore Defendant has acted in bad faith with improper motive and with wanton disregard for the rights of the Plaintiff , and constitutes a breach of the covenant of good faith

a scapegoating a man for the college's public relations purposes while erasing John Mead's lifetime of accomplishments and philanthropy that benefitted the State of Vermont and its people as well as generations of Middlebury College students.

VII. BREACH of CONDITIONAL GIFT

The Plaintiff has also pled an alternate claim, Breach of a Conditional Gift. A valid gift generally requires three elements: donative intent (no consideration), delivery, and acceptance by the donee. *University of Vermont v. Wilbur's Estate*, 105 Vt. 147, 155, 163 A. 572. There must be acceptance of the gift by the donor, but acceptance may be implied. *Blanchard v. Sheldon*, 43 Vt. 512 (1871). A gift may be conditioned upon the donee's performance of specified obligations or the happening of a certain event.; *Id.*; *Hackett v. Moxley*, 65 Vt. 71, 75, 25 A. 898; *Blanchard v. Sheldon,* 43 Vt. 512, 514. If the obligation is not performed, the donor is entitled to restitution. *Williamson v. Johnson*, 62 Vt. 378, 384, 20 A. 279; Restatement, Restitution, Comment c; 28 Am.Jur.2d, Gifts s 61.

As the Court pointed out in its prior ruling, to the extent that the transaction is considered to be a gift with a perpetual condition subsequent, such conditions similarly are disfavored. "Because noncompliance with the conditions of a conditional gift results in a forfeiture of the gift, the conditions must be created by express terms or by clear implication and are construed strictly." 38A C.J.S. Gifts § 39. "The intention of the donor to create a condition subsequent must clearly be expressed, and, if it is doubtful whether a clause in a deed is a condition subsequent, courts will always lean against construing it as such. 14 C.J.S. Charities § 33.

In the case at bar, if the court determines that there was no consideration, the gift was delivered and accepted by the donee. However, there were conditions on the gift which have now been breached. Removing the Mead sign violated Mead's approval of the plans and specification of the Chapel as well as the condition that the chapel "be known as" "Mead Memorial Chapel." The stripping of the name was a canceling of the College's performance of an essential condition of the gift. Whether the obligation was undone or never performed, the result is the same, the donor is entitled to restitution.

VIII. SPECIAL ADMINISTRATOR'S STANDING TO SUE

Vermont law permits a special administrator to "commence, prosecute, or defend, in the right of the deceased, actions that survive to the executor or administrator and are necessary for the recovery and protection of the property or rights of the deceased," and to "prosecute or defend the actions commenced in the lifetime of the deceased." 14 V.S.A. § 1401; see also id. § 1451 (surviving actions include "actions that survive by common law"). A special administrator "may commence and maintain actions as an administrator." Id. § 963. *Maier v. Maier*, 2021 VT 88, ¶ 11, 216 Vt. 33, 39–40, 266 A.3d 778, 783 (2021).

Vermont law also permits a special administrator to "commence, prosecute, or defend, in the right of the deceased, actions that survive to the executor or administrator and are necessary for the recovery and protection of the property or rights of the deceased," and to "prosecute or defend the actions commenced in the

lifetime of the deceased." 14 V.S.A. § 1401; see also id. § 1451 (surviving actions include "actions that survive by common law").

A special administrator "may commence and maintain actions as an administrator." Id. § 963. *Maier v. Maier,* 2021 VT 88, ¶ 11, 216 Vt. 33, 39–40, 266 A.3d 778, 783 (2021). See also *State v. Therrien*, 1993, 161 Vt. 26, 633 A.2d 272, on subsequent appeal 175 Vt. 342, 830 A.2d 28, reargument denied. (Wife of developer, against whom state brought claim on behalf of buyers of lots with defective septic and well systems, was proper party for substitution after developer's death, both as executrix and distributee. Rules Civ.Proc., Rule 25(a)(1); 14 V.S.A. §§ 1401, 1417.); *Estate of Kuhling by Kuhling v. Glaze*, 2018, 196 A.3d 1125, 208 Vt. 273, reargument denied.)(An executor of an estate may commence, in the right of the deceased, actions which survive, and are necessary for the recovery and protection of the property or rights of the deceased.)

In the 2021 Vermont Supreme Court case *Maier v. Maier*, 2021 VT 88, the Court explained:

> ¶ 36. . . . Consistent with the civil division's role as the court of general civil jurisdiction, such suits by executors or administrators of an estate to enforce a contract of the decedent are typically brought in the civil division of the superior court. See, e.g., *Baldauf v. Vt. State Treasurer*, 2021 VT 29, —— Vt. ——, 255 A.3d 731 (involving suit filed in civil division by wife as administrator of deceased husband's estate alleging breach of contract); *Estate of Kuhling v. Glaze,* 2018 VT 75, 208 Vt. 273, 196 A.3d 1125 (involving suit filed in civil division by estate against decedent's surviving niece for breach of contract); *Benson v. MVP Health Plan, Inc.,* 2009 VT 57, 186 Vt. 97, 978 A.2d 33 (involving suit filed *49 in civil division by administrator of estate alleging breach of contract against health insurer).

> ¶ 37. Accordingly, the special administrator may seek to enforce the parties' agreement in the civil division of the superior court.[5]

Maier v. Maier, 2021 VT 88, ¶¶ 35-37, 216 Vt. 33, 48–49, 266 A.3d 778, 788–89 (2021).

In summary, Plaintiff has satisfied all of the elements of breach of contract which is supported by the record evidence, and is fully authorized, as a duly appointed Special Administrator by the Vermont Superior Court, Rutland Unit, Probate Division, under the laws of the State of Vermont, to bring suit on behalf of the Estate of John Abner Mead for breach of contract for a contract performed during his lifetime, and now breached after his death (or other gift or equitable claims).

WHEREFORE, Plaintiff respectfully requests that this Honorable Court Deny Defendant's Motion for Summary Judgment and Motion to Dismiss, and grant judgment as a matter of law to Plaintiff.

DATED at Town of Randolph, County of Orange, and State of Vermont this 25th day of July 2024.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead,
Plaintiff

By: /s/ L. Brooke Dingledine

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
Plaintiff	)
v.	)
	)
The President and Fellows of	)
Middlebury College	)
Defendant	)

PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and hereby responds to Defendant's Statement of Undisputed Material Facts as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Objection to the use of the term "Gift Letter" to the extent that it characterizes or defines the transaction. Objection to Defendant's

characterization of the contents of the letter as the Letter of Offer speaks for itself. The existence of the letter is admitted and that Exhibit D is a true and accurate copy of the Letter of Offer document; otherwise, the paragraph is denied.

10. Objection to the use of the term "Gift Letter" to the extent that it characterizes or defines the transaction. The quoted content of the letter is admitted; otherwise, the paragraph is denied.

11. Objection to the use of the term "Gift Letter" to the extent that it characterizes or defines the transaction. Objection to Defendant's characterization of the contents of the letter as the Letter of Offer speaks for itself. The quoted content of the letter is admitted and the mandatory requirement that the "Trustees of the College secure appropriate plans for its erection which shall meet with my approval" is admitted; otherwise, the paragraph is denied.

12. Objection to the use of the term "Gift Letter" to the extent that it characterizes or defines the transaction. Objection to Defendant's characterization of the contents of the letter as the Letter of Offer speaks for itself. The paragraph is denied as the Letter of Offer speaks for itself and because the Letter of Offer explicitly states, "the same to be known as 'Mead Memorial Chapel'".

13. Objection to the use of the term "Gift Letter" to the extent that it characterizes or defines the transaction. Objection to Defendant's

characterization of the contents of the Letter of Offer as it speaks for itself. It is admitted only that reversionary language does not appear in the Letter of Offer. The remainder of the paragraph is denied as the letter speaks for itself.

14. Objection to the use of the term "Gift Letter" to the extent that it characterizes or defines the transaction. The quoted content of the letter is admitted; otherwise, the paragraph is denied as the letter speaks for itself.

15. Denied. The Letter of Offer, which included the words, "the same to be known as the 'Mead Memorial Chapel'", was enclosed with President Thomas' Letter; therefore, the response requested from the Trustees was to the Letter of Offer, not President Thomas' cover letter.

16. Denied. The Letter of Offer, which included the words, "the same to be known as the 'Mead Memorial Chapel'", was enclosed with President Thomas' Letter; therefore, it was referenced therein.

17. Objection to Defendant's characterization of Mead's offer. It is admitted only that Defendant has selectively provided some, but not all of the College's Trustees' responses to President Thomas' May 15, 1914 Letter, all of which speak for themselves; otherwise the paragraph is denied.

18. Objection to Defendant's characterization of Mead's offer. It is admitted only that Defendant has selectively provided some, but not all of

the College's officers and Trustees' correspondence, all of which speak for themselves; otherwise the paragraph is denied.

19. Objection to Defendant's characterization of Mead's offer. The contents of Ex. R, S & T are admitted as the documents speak for themselves' otherwise, the paragraph is denied.

20. Objection to the use of the term "Gift Letter" to the extent that it characterizes or defines the transaction. Objection to Defendant's characterization of the transaction as the document speaks for itself. The quoted language from the Trustee's Minutes is admitted; otherwise, the paragraph is denied.

21. Admitted.

22. It is admitted that Mead was involved in every aspect of the design and construction of the Mead Memorial Chapel and that Ex. U is a tiny and limited representation of the hundreds of letters sent to and received by Mead regarding the architectural plans, construction bids, construction contracts, add-ons and changes to the plans and specifications for the erection of the "Mead Memorial Chapel."

23. Admitted.

24. Objection to Defendant's characterization of Mead's letter and his "motivations for the gift". The quoted content is admitted; otherwise the paragraph is denied.

25. It is admitted that the contract and/or the promise between the parties for the erection of Mead Memorial Chapel was amended to Mead promising to pay a full $60,000 in exchange for the College agreeing to pay the additional balance over $60,000 to complete the Chapel, which was estimated to be $1,000. It is admitted that the Trustees Minutes indicate that the construction should proceed. It is denied that by December, 1914, there were final plans that had been approved by Mead. The architectural plans for the Mead Memorial Chapel were originally dated September 2, 1914, but were subsequently amended three more times to comport with Mead's approval: February 12, 1915, March 3, 1915, and March 31, 1915. Therefore, the final plans and specifications for the Mead Memorial Chapel, which were approved by Mead, are the Plans which are dated March 31, 1915.

26. Admitted.

27. Objection to Defendant's characterization of Mead's Offer. Denied that there was a vote by the Trustees in April 1915, it was March 1915.

28. Denied. Mead never pledged any money towards the Chime of Bells, he offered a Chime of Bells, which cost was billed directly to him and paid directly by him to the manufacturer. The document speaks for itself.

29. Admitted.

30. Denied. The document speaks for itself and is misquoted by Defendant.

31. Admitted.

32. Admitted.

33. Admitted.

34. Admitted.

35. Admitted.

36. Admitted.

37. Admitted.

38. Objection to Defendant's characterization of Mead's Offer. The documents speak for themselves; therefore, denied.

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted

DATED at Town of Randolph, County of Orange, and State of Vermont this 22nd day of July 2024.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead,
Plaintiff

By: /s/ L. Brooke Dingledine

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Vermont Superior Court
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STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
Plaintiff	)
v.	)
	)
The President and Fellows of	)
Middlebury College	)
Defendant	)

PLAINTIFF'S STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and hereby submits the following statement of undisputed material facts for the court's consideration in support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment and in support of Plaintiff's cross motion for summary judgment as follows:

PARTIES

Plaintiff

1. On June 17, 2022, the Vermont Superior Court, Rutland Unit, Probate Division, in the matter of the *Estate of John Mead*, Case No. 22-PR-02895, appointed the Honorable James H. Douglas as Special Administrator of the Estate of John Abner Mead, granting him full authority to represent the Estate in this litigation. Complaint/Answer par 17.

Defendant

2. Defendant, The President and Fellows of Middlebury College is a Vermont Non-profit Corporation chartered on November 1, 1800 and doing business as Middlebury College,

with its principal place of business in the Town of Middlebury, County of Addison and State of Vermont. Complaint/Answer par 19.

3. Middlebury is a liberal arts college of the first rank, an achievement that is the result of a process of growth and change that began in 1800, when a few men of the town of Middlebury took upon themselves the challenge of building a college in a small New England town, on what was then the American frontier. Complaint/Answer par 29.

4. Over the more than two centuries since it was established, Middlebury has developed from "the town's college" into an institution of international renown with a $1.518 billion endowment as of 2021. Complaint/Answer par 23.

5. Middlebury's original purpose was to train young men from Vermont and neighboring states for the ministry and other learned professions of the early 19th century. The College began modestly, with seven students enrolling in November 1800. Complaint/Answer par 24.

6. Gamaliel Painter, one of the citizens of Middlebury to whom the College charter had been granted, left most of his estate to the College. Mr. Painter's gift was an early example of the philanthropic support for Middlebury College that has enabled the institution to prosper. In recognition of his gift, West College, a new building completed a few years prior to Painter's death in 1819, was renamed Painter Hall. Painter Hall is the oldest college building extant in Vermont. Complaint/Answer par 25.

7. Middlebury College continued to grow during the 19th century. The growth was sporadic, however, as the College was not immune to the social and political movements that were affecting northern New England generally. Rocked by evangelical upheaval and religious revival in the 1830s and the Civil War in the 1860s, Middlebury managed to keep its doors open during a

period when many small colleges in America were forced to close. In large part, the College survived because of the support of its many friends, both in the town of Middlebury and in the surrounding region. Complaint/Answer par 27.

8. In 1883, the Trustees voted to accept women as students in the College, making Middlebury one of the first formerly all-male liberal arts colleges in New England to become coeducational. In the following years, Middlebury College began to change from an institution primarily oriented toward its community and its state to a college with larger regional aspirations. President Ezra Brainerd (who held that office from 1885 to 1908) prepared the College for this transformation, and spectacular change occurred under the administration of President John Thomas (1908 to 1921), who established the Language Schools and the Bread Loaf School of English during his presidency. Complaint/Answer par 28.

9. During the second decade of the 20th century under President Thomas' direction, the College's enrollment more than doubled, and the number of buildings, the size of the faculty, and the value of the endowment all tripled. Complaint/Answer par 29.

10. During the 1930s, 1940s, and 1950s, Middlebury continued its development toward a position of prominence among liberal arts colleges in the United States. Continued growth in the faculty meant the addition of new subjects to the curriculum and an enhanced academic reputation for the College. New residence halls, academic buildings, and library facilities were added to the physical plant. Middlebury's expansion was coupled with increases in financial resources and the establishment of a tradition of prudent financial administration, including the cultivation of resources for the long term. Complaint/Answer par 30.

Governor John Abner Mead

11. John Abner Mead (April 20, 1841 – January 12, 1920) was a Vermont physician, businessman, politician, and philanthropist who served as Vermont's 47th Lieutenant Governor from 1908 to 1910, and Vermont's 53rd Governor from 1910 to 1912. Complaint/Answer par 3.

12. On October 30, 1872, John Mead married Mary M. Sherman. They had one child, Mary Sherman Mead Hinsman. Defendant's GG.

13. Mead was a graduate of Middlebury College, Class of 1864. In 1914, on the 50th anniversary of his graduation, he offered to erect the "Mead Memorial Chapel," which offer was accepted by the Trustees of the College. Complaint/Answer par 32.

MEAD MEMORIAL CHAPEL

Mead's Offer

14. On May 11, 1914, John Abner Mead sent a Letter to Rev. Dr. John M. Thomas, President of Middlebury College, offering "to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel." (hereinafter "Offer Letter"). Ex. 1. Complaint/Answer par 95.

. . . to erect a chapel to serve as a place of worship for the college, ***the same to be known as the "Mead Memorial Chapel."*** I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, *and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.*
Ex. 1 (*emphasis supplied*).

Complaint/Answer par. 1.

15. The quotation marks around the proposed name, "Mead Memorial Chapel" are written in Mead's own hand. Ex. 1.

16. Mead then told of his ancestors, recounting their lives as embodying the simplicity, strength of character, and religious faith that Mead envisioned the Mead Memorial Chapel would symbolize and specifying the location of the chapel:

> . . . ***With this memory ever present,*** it has been my hope and prayer that ***I might be able and permitted to build for this college a suitable place for divine worship and <u>that it might rise from the highest point on its campus</u> as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain*** *in its work for our youth.*
>
> Ex. 1 (*emphasis supplied*).

Complaint/Answer par. 2.

17. Mead's Offer Letter went on to state:

> "I have in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure, and I hereby suggest that the Trustees of the College ***secure <u>appropriate plans for its erection which shall meet with my approval</u>, and that said board <u>appoint a building committee</u> at once,*** consisting of president Thomas, former President Brainerd and myself to make the necessary contracts for such a structure and to supervise the erection of the same, and I will then bind myself and my estate to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee."

Ex. 1. Complaint/Answer par 98.

18. On May 15, 1914, President Thomas sent a copy of John A. Mead's Offer Letter to the Trustees of Middlebury College announcing:

> Your associate, Governor John A. Mead, has made it possible for me to make an announcement which will bring you all great satisfaction and encouragement, as it gives me the keenest pleasure. I enclose a copy of his letter to be signed May 11th which assures the erection of an appropriate and beautiful chapel for Middlebury College.
>
> I have testified many times to the great need of such a building and the large possibilities for good in connection with it. We have all felt for many years that it was one of the most urgent needs of the college, and those who have been closest in touch with the daily life of the institution have felt the need most earnestly.
>
> . . .
>
> P.S. May I hear from you immediately as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests.

Ex. 2. Complaint/Answer par 99.

Middlebury College's Acceptance

19. On May 16, 1914, Trustee Frank C. Partridge wrote to President Thomas agreeing as one of the Trustees, to accept the Offer and appoint of the Mead Memorial Chapel Building Committee as Mead had specified:

> Your good news is received and I am delighted that your dream of a new chapel is to be realized. ***It is a generous and beautiful thing for Governor Mead to do and of course I agree, as one of the Trustees, to the acceptance of his proposition and the appointment of the building committee which he suggests***.
>
> Ex. 3-1 (emphasis supplied).

Complaint/Answer par 100.

20. On May 16, 1914, Superior Court Judge (and future Middlebury College Trustee) Frank L. Fish wrote to Pres. Thomas:

"Hurrah for Dr. Mead! I have just written him thanking him and telling him ***he has become one of the immortals.***"
Ex. 3-4.

21. May 17, 1914, Trustee John E. Weeks wrote to Mead with:

[congratulations and thanks for] . . . the splendid gift to Middlebury College. This is a most worthy reminder of your great loyalty to this Institution and ***one that can and will be instrumental in great good to this student body as long as time lasts***. . . Your honorable public career is certainly crowned by this act.
Ex. 3-7 (emphasis supplied).

Complaint/Answer par 101.

22. On May 18, 1914, Trustee A. Barton Hepburn wrote to Mead stating:

It is a splendid, well-considered and generous action on your part. It shows you possess that love for Alma Mater, which is one of the greatest charms of college life, the essence of college spirit; ***it shows your respect and reverence for your forebears***, which is one of the highest qualifications a man may possess, and ***it shows, also, your disposition to do a good and useful act for the community in which you live and the State which you honor and which has bestowed its highest honor upon you***. Congratulations and thanks.
Ex. 3-10 (emphasis supplied).

Complaint/Answer par 102.

23. On May 19, 1914, Trustee James L. Barton wrote to Mead stating:

I can hardly describe to you the thrill of satisfaction that I experienced when a letter from Dr. Thomas reported ***your magnificent gift to Middlebury College in the form of a Memorial Chapel. I know of nothing more fitting as a memorial – nothing that will be of greater value to the College in all the years to come.***

I know of no building that could be put up out from which will go more fundamental and permanent influences for social, civic and national righteousness, for our own country and for the world. I want to express my deep personal appreciation of this gift, as well as my appreciation as a member of the Board of Trustees. ***I am sure you will get great satisfaction in seeing the walls of the building rise, as you realize what they mean to the College, the State, the country and the world, <u>in all the years to come</u>.***
Ex. 3-13 (emphasis supplied).

Complaint/Answer par 103.

24. On May 22, 1914, Trustee Brainerd Kellogg wrote to President Thomas, stating:

I can't tell you how pleased I was and am at the news that Governor Mead wishes to build a Chapel on the College grounds. I had not thought that he dreamed of it. And how fitting that it should be at the semi-centennial of his graduation – showing that his love for his College has not waned but waxed during the 50 years. . . . *Convey to him, please, my personal thanks for his generous plans.* ***Of course the Trustees will allow him his ways, <u>and will be everlastingly grateful</u> to him in taking it.***
Ex. 3-14 (emphasis supplied).

Complaint/Answer par 104.

25. On May 23, 1914, John A, Fletcher, Middlebury Trustee and Treasurer, wrote to President Thomas stating:

Replying formally to the welcome news contained in your message of the 15th, ***<u>I wish to concur in the acceptance of the "Mead Memorial Chapel."</u>*** It is a splendid gift . . . ***I trust that the General Education Board will now look with favor upon your application for a grant toward a new fund, on***

contemplating this new evidence of the substantial and loyal support of our alumni.
Ex. 3-16 (emphasis supplied).

Complaint/Answer par 105.

26. On June 6, 1914, Trustee M. Allen Starr wrote to Pres. Thomas:

"I congratulate you heartily on this fine gift which will be ***a beautiful memorial*** and a most needed and welcome addition to our building. … ***His most interesting letter with its details of early history should be framed and hung in the chapel – and also put in the box of the corner stone.***"
Ex. 3-19

27. On June 24, 1914, Trustee James M. Gifford wrote to Pres. Thomas:

"I have felt for years that the one building which the College most needed is that which Gov. Mead has undertaken to erect. ***I feel that it should be located on the most prominent site and that, architecturally, it should be the most attractive of all the buildings of the College.*** I believe that Gov. Mead will fully accord with this idea as ***I know that he feels, as I am sure we all do, that it ought to be the most attractive memorial erected on the College Campus***."
Ex. 3 -20

28. On June 22, 1914, the President and Fellows of Middlebury College (Board of Trustees) met and recorded the following resolution to accept Dr. Mead's Offer Letter to erect the "Mead Memorial Chapel":

The following resolution, introduced by Dr. Brainerd, on motion of Dr. Barton & Prof. Kellogg, was adopted by a rising vote:- "Whereas our esteemed colleague, the Honorable John Abner Mead of the Class of 1864, has signified to President Thomas his desire, in commemoration of the fiftieth

anniversary of his graduation, to erect a Chapel for Middlebury College, and his readiness to furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice,

Resolved that the President and Fellows of Middlebury College hereby accept of this magnificent benefaction with sincere gratitude to both Dr. & Mrs. Mead and their family for their deep interest in the religious welfare of the College, so impressively manifested by this provision of a suitable place for divine worship.

Resolved that the Trustees through the Committee nominated by Dr. Mead will use their best endeavors to secure the erection of a dignified and substantial structure, in harmony with the other buildings of the college, and such as will meet the approval of the donor."

Dr. Mead made fitting response to this resolution. His letter of presentation follows in full:-

[Letter of Gift copied by hand verbatim
with quotation marks around
"Mead Memorial Chapel"]

On motion of Mr. Partridge, seconded by Dr. Abernathy, ***the Building Committee for the Mead Chapel was elected*** as above, Messrs. Thomas, Brainerd, Mead and Weeks.

Mr. Collins of the architectural firm of Allen & Collins then appeared before the Board with tentative plans for the new Chapel, which were discussed at length.

Ex. 4 (emphasis supplied).

Complaint/Answer par 106.

29. The Middlebury College Trustees unreservedly and enthusiastically accepted Dr. Mead's offer to erect a chapel, which offer contained the explicit language: "the same to be known

as the "Mead Memorial Chapel," with the actual quotation marks added by Mead's own hand to specify precisely the name of the chapel, which was offered as a memorial to the Mead ancestors, and yes, would immediately become synonymous with Governor Mead himself. Ex. 1. Complaint/Answer par. 3.

30. The gift of the Mead Memorial Chapel was widely reported in the Vermont press and Dr. Mead's Offer Letter was reprinted in several news articles. Complaint Exs. 1-013 to 018. Complaint/Answer par 107.

31. The Free Press had a special report from Middlebury, May 15, 1914:

EX-GOV MEAD GIVES
COLLEGE A CHAPEL

President Thomas of Middlebury Announces
Offer of $60,000 ***for Memorial.***

TO BE OF WHITE MARBLE

Former Vermont Chief Executive Commemorates
50th Anniversary of His Graduation.

Middlebury, May 15 - President John M. Thomas announced this evening at a meeting at the gymnasium the gift of a $60,000 memorial chapel by ex-Governor John A. Mead of Rutland, ***to be called the Mead Memorial Chapel***. The unexpected announcement was greeted with great enthusiasm.

. . .

Ex-Governor Mead was cheered by the gathering of 500 persons.

Complaint Ex. 1-013 to 1-014 (emphasis supplied).

Complaint/Answer par 108.

32. On May 16, 1914, the Rutland Herald reported on the gift:

DR. MEAD'S GIFT TO MIDDLEBURY COLLEGE . . . The gift of a chapel, in which the eternal Truth may be taught, and devoted to the sacred purposes of divine worship, is an admirable expression of active piety and reflects creditably upon its donor. . . . *It is peculiarly fitting* that Dr. Mead should thus recognize Middlebury College, an institution so peculiarly a part of his native state and his personal environment, *for the reason that, as he sets forth in his letter of gift*, his great-great-grandfather was the first white settler in the Otter Creek valley, and brought the Bible, in all its sublime and uplifting beauty, to the peaceful Indians of the wilderness. The college, too, which has made for itself an enduring name and place in Vermont's institutions of education and uplift, must feel, through its faculty and student body, a peculiar pleasure in *accepting the Mead Memorial Chapel as an expression of native patriotism and appreciation* from a citizen who has been honored with the highest executive office in the gift of his state. The Herald, for its readers, heartily joins in the sincere approbation and praise which this gift will justly inspire.
Complaint Ex. 1-017 (emphasis supplied).

Complaint/Answer par. 109.

33. The Vermont Tribune's May 21, 1914 edition described Ex-Gov. Mead's gift to Middlebury College and reported:

The new chapel . . . will seat 700 persons. A bronze tablet in the building will contain the following inscription: ***Mead Memorial Chapel, Erected in 1914 by John Abner Mead of the class of 1864.***
Complaint Ex. 1-019. (Emphasis supplied)

Complaint/Answer par 111.

34. President Thomas wrote an article that was published in the April 8, 1915 edition of the Boston Evening Transcript, entitled MIDDLEBURY'S 100 YEARS, Old Traditions Preserved in New Chapel" in which he explained:

> The proposal of ex-Governor John A. Mead to erect a chapel for Middlebury in commemoration of the fiftieth anniversary of his graduation . . . in his letter of gift ex-Governor Mead had said, "I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished." ***He asked that the chapel to bear his name*** might "rise from the highest point of the campus, as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth."
>
> The chapel will occupy a commanding location on the grounds on the highest crest of the campus, from which point there is a wide panorama of the Green Mountains and the valley of Otter Creek. On the architrave over the colonnade will be appropriately inscribed "The Strength of the Hills is His Also."
>
> Ex. 31 (emphasis supplied).

Complaint/Answer par 112.

A. <u>1914 Groundbreaking & Cornerstone Ceremony</u>

35. On May 28, 1914, John Mead wrote to President Thomas regarding arrangements for the groundbreaking and laying of the cornerstone for the Chapel. Dr. Mead requested a piece of sod to place in the Evergreen Cemetery in his family's burial lot and indicated, "We will have the little box with the bible which little John is to place in the stone all properly arranged." Complaint Ex. 2-001 to 2-002. Ex. 24-2. Complaint/Answer par 113.

36. On June 23, 1914, Middlebury College held a ceremony titled "Breaking Ground for the Mead Memorial Chapel and Presentation of the Corner Stone" during its commencement exercises. Ex. 25

37. Ex-Governor John A. Mead, Class of 1864, gave the speech for the "Breaking Ground and Presentation of the Corner Stone," which he concluded with:

> On this date, ***I wish to break the ground and place the corner stone for this Memorial Chapel, with the hope and prayer that there shall be a sacred duty resting upon each, to make this Holy Temple, so soon to be erected, an instrument of great good to those of this generation and to those who may follow after***, and that our Alma Mater may be favored by steadily increasing numbers and with ample means for the noble work which will devolve upon her, and all of which she will attempt so willingly, so courageously and so faithfully.
>
> Ex. 27 (emphasis supplied).

Complaint/Answer par 115.

38. The Rev. James L. Barton, D.D., LL.D., Class of 1881 delivered the "Acceptance in Behalf of the Trustees" in which he stated:

> ***I am honored*** in being permitted, ***upon behalf of the trustees of Middlebury College, to accept*** from the hands of one of their number, a graduate of the College and a revered citizen of this commonwealth, ***this corner stone and that for which it stands, namely, a fitting chapel to be erected upon this site to embody and represent and perpetuate the religious life of this College.***
>
> ***It is doubly gratifying to me, as it is to the Board of Trustees, that this building, as a memorial, will bear the name of one so long and so honorably connected with this institution and who in the state and nation has always upheld and promoted true piety and civic and national righteousness.***
>
> . . . Today we see ***the religious ideals of our forefathers*** emancipated and exalted to this loftier position and ***embodied in a structure worthy the College and its resplendent history***. Here upon this hilltop it will, by the outlines and symmetry of its architecture, proclaim that this College believes in God, in the supremacy of righteousness, in the creation of a safe, sane and just

society, the triumph of justice, the transcendent worth of character, the reality of the unseen, and in the immortality of the soul.

. . .

This chapel will provide for the generations of students and faculties of this college that to which the other buildings cannot minister. To this place all will turn in order to experience the reality of the unseen, to satisfy the thirst of the soul for God.

. . .

We then, the Trustees of this College, on behalf of ourselves and our successors, in the name of the generations of students it will serve, in full recognition of the supreme importance of such a religious center to the life of the institution, and in loving memory of him whose name this structure is to bear, gratefully accept at your hand this Chapel as we pledge ourselves to safeguard to the limit of our capacity the gift and the ideals it is intended to perpetuate.

Ex. 28 (emphasis supplied).

Complaint/Answer par 116.

39. Prof. Charles B. Wright gave an "Address in Behalf of the Faculty" which he ended with the statement:

Such an embodiment should this structure be…a chapel whose very lines, I trust, as they rise upon this summit, may prove for us all in the years to come a compelling call to goodness; whose very atmosphere, I trust, may dispose our hearts to praise – shall be but a fit expression, a symbol in stone, of the mingled strength and beauty of the Middlebury life.

The Faculty thank you, Governor Mead, from profoundly grateful hearts. You have bodied forth our dream of years; you have given to an airy nothing a local habitation – ***and not the least of our pleasure is the thought that through all the days to be it will bear your honored name.***

Ex. 29 (emphasis supplied).

Complaint/Answer par 117.

40. The Cornerstone for the Mead Memorial Chapel was laid at the Groundbreaking Ceremony held on June 23, 1914, where John Abner Mead's namesake, his 3-year-old grandson John Abner Mead Hinsman ("Little John"), placed his small Bible and family tree back to original settler Colonel James Mead into a box inside the Mead Memorial Chapel Cornerstone. The Ceremony was widely reported on in the press. Ex. 30. Complaint/Answer, Complaint Exs. 2-032 to 037.

41. Exhibit 26 contains five photographs of the Groundbreaking Ceremony including photos of Mead's grandson "Little John." Ex. 26. Complaint/Answer par 120.

42. The Mead Family Bible, held by President Thomas at the Groundbreaking ceremony photographed above, has been passed down through the generations of the Mead family and resides with Mead family members who live in Vermont. Exs. 26 & 48.

Modifications of Agreement

43. On December 18th, 1914, Middlebury College's Board of Trustees resolved to go forward with construction of the "Mead Memorial Chapel," evident in the following meeting minutes:

"On motion, duly seconded, it was Resolved that the College forward with the construction of the Chapel with the understanding that $60,000 – would be contributed by Dr. Mead, the balance estimated at about $1,000 – to be contributed by the College."
Ex. 5.

44. On January 13th, 1915, John Abner Mead wrote an acceptance letter to the Trustees of Middlebury College agreeing to pay $60,000 if the College agrees to complete the chapel:

"I agree to furnish funds for the discharge of this contract and for the expenses connected with the erection of this chapel, to the amount of

$60,000, as may be required during the construction and in accordance with the terms of the above contract, binding myself, my heirs and my assigns as above specified. It is agreed on the part of said Trustees that they are to complete said chapel, making it complete in every way, as to grounds, furnishings, etc., for the purposes of a college chapel, as voted at the meeting of the Trustees of said college held in New York City Dec. 18, 1914, and as defined in correspondence between the president of Middlebury College and myself."
Ex. 6.

45. On 2/22/1915, Pres. Thomas sent a letter to Vermont Marble Co. to get a quote for the change to the plans requested by Mrs. Mead regarding pilasters and windows. Ex. 7.

46. On 2/24/1915, Rogers responded with a quote for $1,031 for the changes to add windows and pilasters per Mrs. Mead's request. Ex. 8.

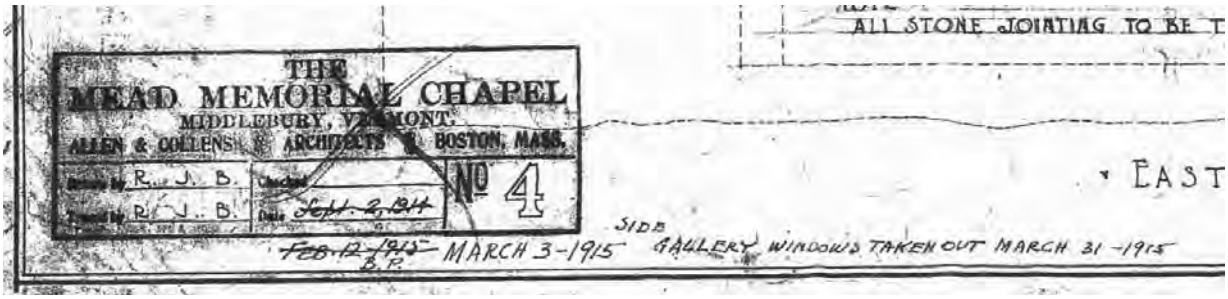
47. On February 27th, 1915, John Abner Mead offered to pay an additional $1,031 to purchase and install the windows and pilasters if the Trustees agreed to finish the chapel as agreed and to install a $5,000 pipe organ:

"Mrs. Mead and myself agree to have the windows in the chapel (two on either side) and to have the ten pilasters (five on either side), same to be built in accordance with the original plans shown in photo number 1 as to bases and caps and width, and we are to pay $1031 for the same in addition to the original gift of $60,000. The trustees agree to finish the chapel as agreed and to instal[l] a pipe organ to cost at least $5000."
Ex. 9.

48. On March 1, 1915 Thomas wrote to Trustee Partridge regarding approving Mead's offer and also on March 1, 1915, wrote to Rogers authorizing the $1,031 changes. Ex. 10 and 11.

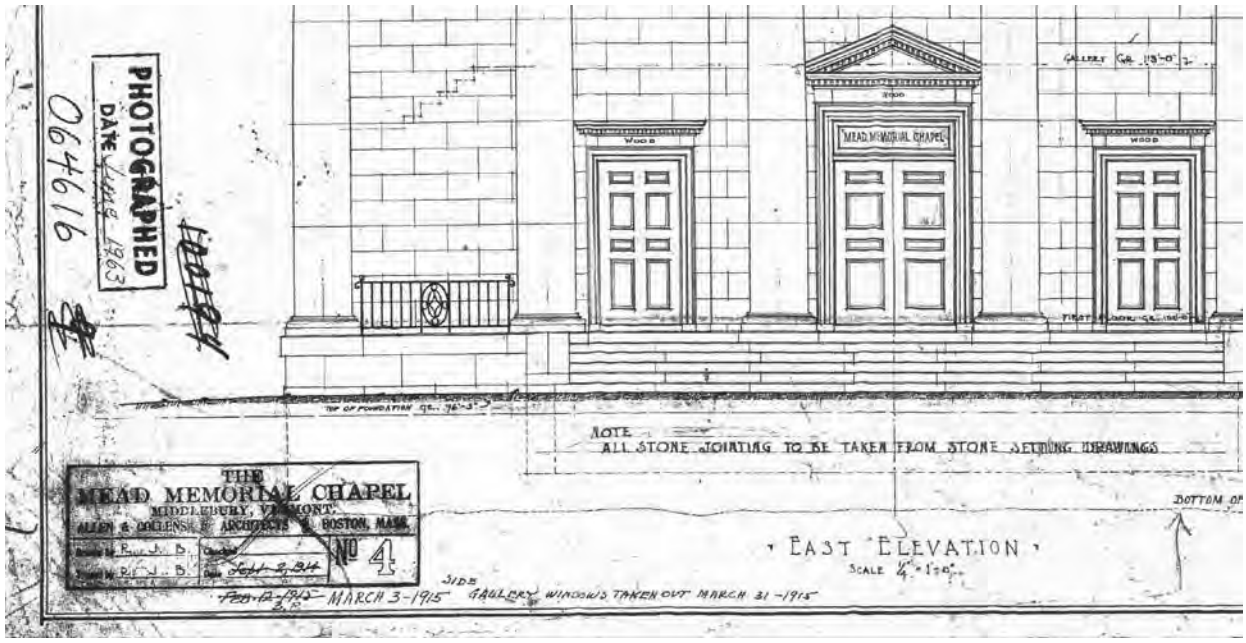
49. The Mead Memorial Chapel architectural plans bearing final date of March 31, 1915 which incorporated the final change of the windows and pilasters, are the "plans and

specifications" which were approved by Mead. Each page of the plans is labeled "The Mead Memorial Chapel" Ex. 14, 15, 16, 17. See for example Ex. 14:



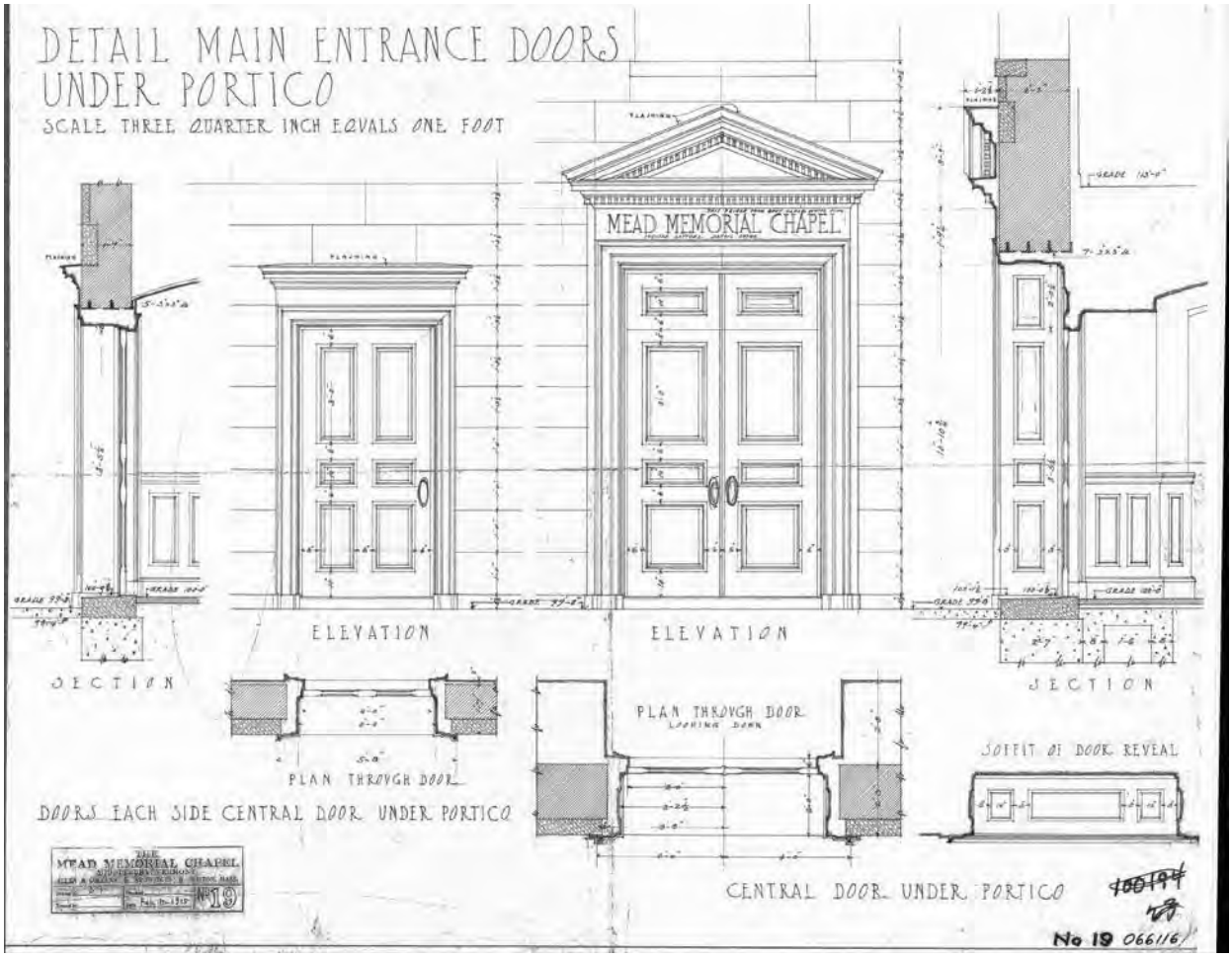
Ex. 14.

50. Exhibit 14 are the plans for the East Elevations – Main Entrance of the Chapel. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico:

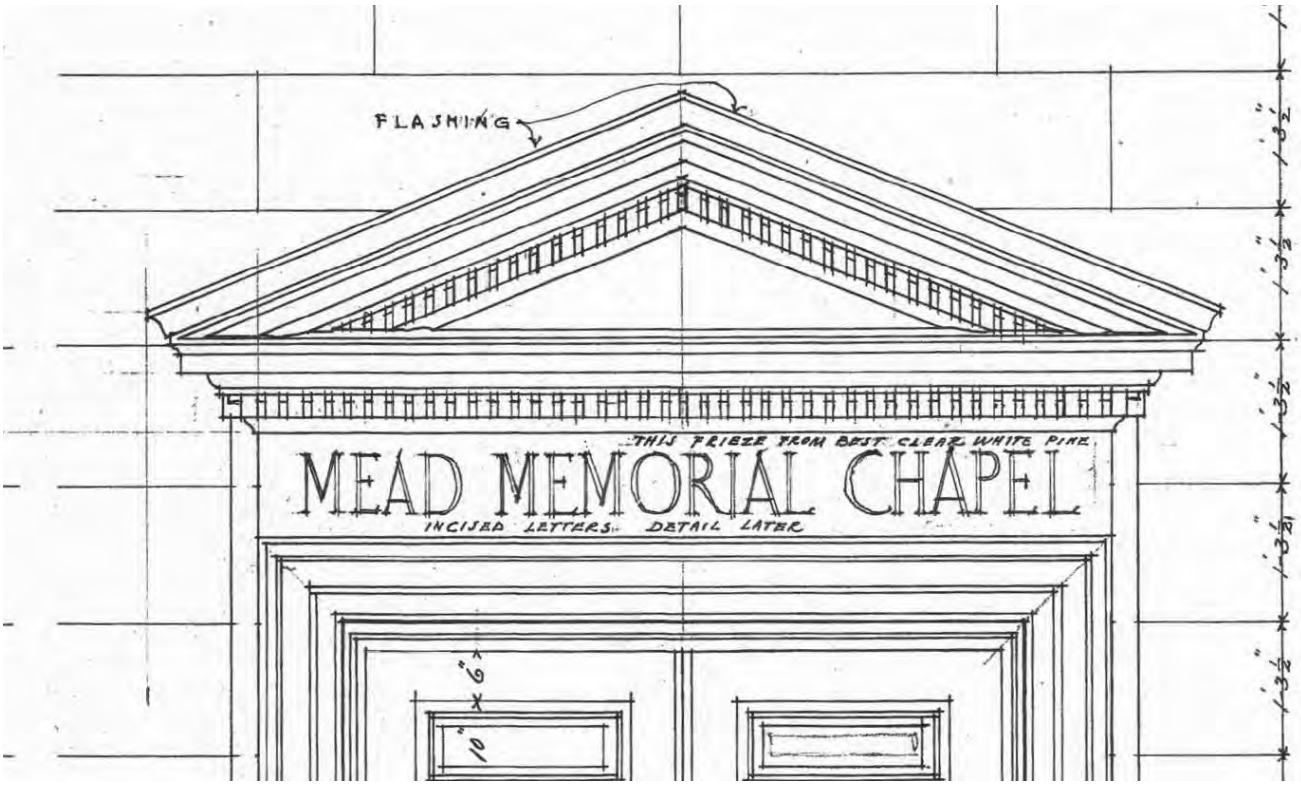


Ex. 14.

51. Exhibit 15 are the plans for the Detail Main Entrance Doors under the Portico. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico. See Ex. 15 immediately below:



52. A closeup view of the detail of the Mead Memorial Sign on Exhibit 15 reveals the specifications of material: "THIS FRIEZE FROM BEST CLEAR WHITE PINE", the wording of the sign: "MEAD MEMORIAL CHAPEL", that they will be incised letters with detail to follow, and of course the exact measurements and specific location to affix the sign to:



Ex. 15.

53. On April 14th, 1915, Middlebury College's Board of Trustees accepted John Abner Mead's offer to add $1,031 and the College will buy a $5,000 pipe organ, evident in the following meeting minutes:

"Voted, that the Trustees accept with gratitude Dr. Mead's proposal to add $1,031 – to the gift of the Chapel, and agree to install therein a pipe organ to cost $5,000 – "
Ex. 12.

Chime of Bells

54. On June 21, 1915 Dr. Mead sent an additional Offer Letter to President Thomas pledging an additional $7,000 for a Chime of Bells stating:

"If acceptable to the members of the Board of Trustees, Mrs. Mead and I would be pleased to add a chime of bells to our gift of the Mead Memorial Chapel."
Ex. 18.

55. Dr. and Mrs. Mead's addition gift of a Carillon of Bells was installed in the Chapel tower. There were eleven bells, the largest weighing 2500 pounds and the smallest 275 pounds. Each bell bears the inscription:

"Presented to Middlebury College by John Abner and Mary Sherman Mead." "Ring in the valiant man and free, The larger heart, the kindlier hand; Ring out the darkness of the land, Ring in the Christ that is to be."
Complaint/Answer par 125. Complaint Ex. 3-041 & 3-042. Ex. 23.

56. On June 23rd, 1915, Middlebury College's Board of Trustees gratefully accepted John Abner Mead's offer to add the Chime of Bells, evident in the following meeting minutes: "It was voted that the gift of Mr & Mrs Mead be gratefully accepted." Ex. 19.

57. The entire cost of the Chime of Bells was paid directly by Mead to Meneely Bell Company in the amount of $6,960 in December 1915. Ex. 22.

Chapel Construction

58. The construction of the Mead Memorial Chapel proceeded over the next two years, during which time Dr. Mead attended meetings of the Mead Memorial Chapel Building Committee

in Middlebury, met with architects, approved project designs, controlled the budget, and provided credit and payment for all labor and materials. Ex. 37. Complaint/Answer par 122.

59. Besides the costs of the Chapel building itself, Dr. Mead contracted and paid for a $5,000 pipe organ, $1,031 for Pilasters, and $1,559.39 for pews. Complaint/Answer par 123.

60. The Mead Chapel was the work of Allen and Collens of Boston. It draws freely upon the vocabularies of the American classical styles of the 18th and 19th centuries in its translation of the traditional New England meeting house into marble. Thus, one finds a Greek Revival temple front, Georgian doors and windows, and a Federal tower. Above the colonnade is inscribed a quotation from Psalm 95:4, "The strength of the hills is His also." Within the building is a beautiful Georgian-inspired paneled sanctuary. Complaint/Answer par 126.

61. As the College grew, changes were inevitable. The balconies were added in 1938 (with the consent of Mead's daughter, Mrs. Carl Hinsman, see Exhibit 46), increasing the seating capacity to 715. The original organ was replaced in 1971 by the large Gress-Miles organ. The tower now holds a wonderful 48-bell carillon, cast and tuned in France from the original bells and other sets. It is played regularly. Seven of the original eleven bells were recast and reinscribed with Mr. and Mrs. Mead's presentation inscription and Bible verse so that each of the original eleven Bells remain as they were originally inscribed with Dr. & Mrs. Mead's name on each bell. Ex. 23. Complaint/Answer 130.

62. President Thomas would later recount while Eulogizing Governor Mead at his funeral in 1921:

> For a year and a half we worked together in the consideration of plans and details and ***the result was*** a structure which a professor of Yale College pronounced the other day ***one of the most beautiful buildings in North America.*** Stately, reverent,

graceful, combining the classic beauty of ancient Greece, the chaste dignity of our Puritan fathers, and the mystic impressiveness of the early Christian builders, its daily assemblies make subtle impressions on the youth who gather there speaks to them without other voice of "the light that never was on land or sea."
Complaint Exhibit 8-034 to 8-035 (emphasis supplied).

Complaint/Answer par 129.

1916 Dedication Ceremony & Presentation of the Keys

63. The Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916 during which Dr. Mead made a Presentation Speech, recalling his grandson's role in the Groundbreaking and Setting of the Cornerstone two years earlier, when at 3 years old, "Little John" placed his Bible and family tree in the cornerstone:

With the labor of love and devotion all complete, it is with great pleasure and an honor that I, through him who assisted me some two years since "in removing the soil" for the "setting of the corner stone", and who placed under the same his token of love, - his Bible and a short history of his relation to those who made this Temple possible; as I state, it is with pleasure, that through him, I may present to you, Doctor Brainerd, former President of this College, the keys to the Mead Memorial Chapel, - and may the Kind Providence who governs all our efforts for the greatest good and happiness of his children, give you all strength and wisdom, - that your and our fondest and most extravagant anticipations of this day may be more than realized, in the years that are to come.
Ex. 33

Complaint/Answer par 131.

64. Mead's speech was followed by "Little John," now 5-years, presenting the Keys to the Mead Memorial Chapel to the College Trustees. Complaint Ex.4-011. Complaint/Answer par 132.

65. Dr. Brainerd, Former President of Middlebury College accepted the Keys on behalf of the Trustees and stated the following in his acceptance speech:

> Doctor Mead:-
>
> I esteem it a great privilege to appear in behalf of the President and Fellows of Middlebury College and accept publicly, your gift of this beautiful sanctuary, that we have this day met to dedicate to the service of Almighty God. For many years, especially since the old chapel proved too small to hold even the half of our students, it has been the fond hope and the earnest prayer of the friends of the College, that in God's providence there might appear a man of the religious fervor and the financial ability requisite to meet this urgent need for a larger and more suitable edifice. Today our ardent hopes are realized; our prayers are graciously answered. ***And to me it is especially gratifying that our benefactor is my beloved classmate, one to whom I am bound, now for fifty six years, by ties of the warmest friendship.***
>
> During these many years (which have passed with us so swiftly) the Heavenly Father has been pleased to grant you strength of mind and body, and varied opportunities for doing great service to your fellowmen. How well I recall the patriotic zeal with which, while yet a student in college, you enlisted in the war to maintain the union of these United States. [Unreadable word] later, as a well-trained physician, you served in another war—against the diseases that distress mankind; and by sound judgement and kindly sympathy achieved an enviable reputation in his beneficent calling. Still later your executive talent enabled you to build up a great industry, whose products are now used in every civilized portion of the world. More recently you served the commonwealth of Vermont, in the highest public office, with business sagacity, with fidelity, and with honor. ***But the noblest deed of all---the one for which future generations will hold you most in grateful remembrance---***is the erection of this spacious and attractive chapel, where the religious life of the College may find fitting expression and the stimulus of hallowed associations.
>
> With grateful hearts, ***dear brother,*** we accept your generous gift: and we assure you of our earnest purpose so to utilize its opportunities for religious culture, as to promote the growth of earnest Christian character in the students of Middlebury College.---***Here for generations yet to come the melodious bells of this Chapel shall sound out over the Campus and the Town*** the strains

of Christian music, that from childhood have awakened in our souls the sentiments of faith and courage and earnest living. . . . The lord reward you, dear friend, for all that you have done, or may yet do, for the good of others; and may the years of earthly life that still remain be your best years, filled with blessed memories and abiding peace.
Ex. 34.

Complaint/Answer par 133.

66. The 1916 Kaleidoscope, the Middlebury College Annual was dedicated to Governor Mead with a photo of the Chime of Bells and a poem "The Chapel Bell." Ex. 36.

67. On September 19, 1916, President Thomas sent invitation to Dr. Mead and his family to attend the first assembly of students at the Mead Memorial Chapel:

We have our opening Thursday morning of this week at nine o'clock. All the faculty and students will be together in the new chapel and I am expected to make an opening address. I am sure it would do much to this first assembly of students in the Mead Memorial Chapel if you and Mrs. Mead could be present, especially if you could bring little John and his father and mother. I know you are very busy, and of course I would not impose it as a duty, but if you can run up we will all be very glad to see you.
(Complaint Ex. 4-027).

Complaint/Answer par 135.

68. President Thomas' Address to the first assembly of students in the Mead Memorial Chapel on September 19, 1916 began:

At the opening of the 117th year of Middlebury College and at this first student assembly in this stately and beautiful chapel, whose dignity and impressiveness must move us all to serious and earnest

thought, I wish to sound a note of progress in the things which make up the inner life of a college. . . . Surprise as well as admiration is expressed by every visitor to this Mead Memorial Chapel . . . They had not imagined that such structures had been erected for any college in Vermont.
(Complaint Ex. 4-032).

Complaint/Answer par. 136.

69. Middlebury College's website explains the import and significance of the Mead Memorial Chapel (now referred to as the "Middlebury Chapel"), which symbolizes the aspirations of the College, just as Governor Mead intended:

"This beautiful white marble structure rises on the highest point of the campus, its spire symbolizing the aspirations of the College." "The light which shines here nightly is seen in the entire valley. Over the portal are carved the words from Psalm 95:4, "The Strength of the Hills is His Also.'"
(Complaint Ex. 6-001).

Complaint/Answer par. 138.

70. A Middlebury College Video which is contained on the college's website: Mead Chapel Turns 100, June 15, 2016 states:

Middlebury College celebrated the Mead Memorial Chapel's Centennial in 2016 with a video production entitled "Mead Chapel Turns 100," featuring Middlebury College's Glenn Andres, Professor Emeritus, History of Art and Architecture, in which he details the history, symbolism and importance of the "Mead Memorial Chapel" to Middlebury College, stating as follows:

"But the Chapel has continued to function in accord with President Thomas' larger vision of it as the college's meeting house. Of course it remained a place for Sunday services, for weddings, but also for college ceremonies, convocation, baccalaureate and until the completion of the Center for the Arts, it was also the main venue for the college concert series." **"The monumental centerpiece and aesthetic keystone for the college for 100 years, Mead Chapel has remained an important symbolic and central venue for college activities and traditions."**
Middlebury College Video: Mead Chapel Turns 100, June 15, 2016, Glenn Andres, Middlebury College Professor Emeritus, History of Art and Architecture, 2016, (emphasis supplied). https://www.middlebury.edu/announcements/news/2016/06/video-mead-chapel-turns-100
(Complaint Exhibit 6-012.)

Complaint/Answer par.139.

71. In addition to the value of the building itself, Middlebury College Trustee and Treasurer John Fletcher felt that the gift toward construction of the chapel would be helpful in securing financial support for Middlebury from the State Board of Education, as referenced in his correspondence concurring with the acceptance of Mead's offer to build the Mead Memorial Chapel. Complaint/Answer par 141.

72. Even the Middlebury Campus newspaper reported on the gift of the Mead Memorial Chapel:

> . . . Every one felt that a gift of great significance and importance had come at a most opportune moment. . .
> And so Middlebury starts out on the road of progress once more, or rather continues steadily to advance despite discouragements and

apparent setbacks. After the completion of the General Education [sic.] Board fund of $200,000 and the Carnegie report, it looked as if progress was at an end for a time, and that the college would be forced to battle to keep even. ***Governor Mead has changed all that. His gift will inspire every friend of Middlebury to courage and optimism, and everyone will believe that still other gifts and yet more notable advance are to be the order of the day.***
Ex. 1-018 (emphasis supplied).

73. After the Mead Memorial Chapel was built in 1916, Dr. Mead provided President Thomas with photos and other materials documenting the construction of the Chapel so President Thomas could create a booklet which, according to Mead, "might stimulate some of our friends to pattern after Mr. Hepburn's example and give you an elegant dormitory for the girls or possibly something else which you might more desire at this time." Complaint/Answer par.145.

74. Mead offered to pay the cost of publication of the booklet and wrote to President Thomas, "To be frank with you, I have special hopes that it may be productive of great good to our college, as I do feel that others can be made specially interested in our Alma Mater, and that the full history and description of the Chapel should induce others to lend a helping hand." Complaint/Answer par 146.

75. In September of 1916, Pres. Thomas ordered 250 copies of the "Hymnal of Praise" with the inscriptions "MEAD MEMORIAL CHAPEL," stamped on the covers in gold, as evident here:

"I wish now to order 250 copies of the Hymnal of Praise, cloth binding, with MEAD MEMORIAL CHAPEL stamped in gold on the covers."
Ex. 39.

76. In December of 1916, John Abner Mead agreed to pay for Hymn Boards to be installed in the Mead Memorial Chapel and delegated the choice of the design to Pres. Thomas:

I have read your letter with interest and should be more than willing to leave the judgement in this matter to yourself, though I must confess to you, as you state, that at the same money I should prefer the simpler board. … P. S. Kindly send bill when the same is obtained."
Ex. 40.

77. John Abner Mead made financial contributions to Middlebury College during his lifetime in addition to erecting the Mead Memorial Chapel. Ex. 40, 41 ($1,000 in 1918 to the Endowment Fund). He left no provision for Middlebury College in his Last Will and Testament. Defendant's Exhibit GG.

78. Dr. Mead also made substantial financial donations to other charitable causes during his lifetime, including the establishment of a youth center facility open to all faiths which Mead named "The Community House." Ex. 49. Complaint/Answer par 86, 87. Defendant's Ex. FF (Warranty Deed). Mead's Will provided d an additional $50,000for continued maintenance of the Center after his . Complaint/Answer par 88. Def's Ex. GG.

79. Mead's Last Will and Testament also bequeathed $50,000 to the Congregational Church of Rutland for the maintenance of other Congregational churches in Rutland County. Complaint/Answer par 89. Def's Ex. GG.

John Abner Mead's Death

80. Dr. John Abner Mead died of pneumonia at his home in Rutland on January 12, 1920. He was 78 years old. His wife, daughter, grandson, and son-in-law survived him. Complaint/Answer par 90. Def's Ex. GG.

81. At Governor Mead's funeral on January 16, 1920, Middlebury College President John M. Thomas gave the Eulogy which was published in its entirety in the Middlebury Register the next day and stated in part:

> ***As to his gift of the Mead Memorial Chapel, I can not do better than to quote from the letter in which he announced his purpose***.
>
> [Full text of Mead's Offer Letter]
>
> This afternoon, as we pay here our tribute of honor and affection, ***the chimes which bear his name on every bell are sounding out*** the hymns I loved and which he chose to hear the first time they were played, "Nearer my god to Thee", "Lead Kindly Light", "God be with you 'till we meet again". ***The dedication of the Chapel is complete – The Mead Memorial Chapel.***
>
> So our friend built his empire in our midst. If another could have built it, another did not. He loved his work and he gave his all to it to the very last. ***He carved his name high in the marvelous roll of Vermont's men of achievement, and he earned his rest.***
>
> Ex. 8-034 to 8-035.

Complaint/Answer par 137.

82. In 1920, Middlebury College's Board of Trustees paid tribute to Mead, evidenced in their meeting minutes:

> "In the death of Ex-Governor John Abner Mead of the Class of 1864 *Middlebury College has lost one of its most distinguished alumni of the State of Vermont, and one of the most helpful of its Trustees and most generous of its benefactors*. Governor Mead was a notable example of those successful men of our nation who have pushed their way upward against great obstacles and by force of mind and will and character succeeded to positions of great responsibility and usefulness in the industrial world and in public life. His career as a physician was honorable and highly useful. Turning to business he became one of the masters of industry in New England. ***In the gift of the Mead Memorial Chapel he endowed the college with one of the most beautiful buildings on any campus in America, which will speak to coming generations of his wisdom and foresight in benevolence and symbolize the strength of character of its donor.***"

Ex. 42

83. John Mead was buried at the Mead Family plot in Evergreen Cemetery in Rutland with his ancestors, including Colonel James Mead and Mercy Holmes Mead, whom John Abner Mead had reinterred there from the West Rutland Cemetery in 1895 and where he had replanted the sod from the Mead Memorial Chapel Groundbreaking Ceremony in June 1914. Complaint/Answer par 92. Ex. 24-2.

84. John Abner Mead's headstone records his service in the Union Army, his professional life as "a beloved physician in Rutland for 21 years," and his many offices held including his Governorship of course. His headstone contains the final engraving:

"A CHRISTIAN AND PHILANTHROPIST"
Complaint Ex. 8-008.

Complaint/Answer par 93.

85. On June 14th, 1920, Pres. Thomas wrote to Carl B. Hinsman about "completing" the west end of the Chapel with marble, as it had been built of wood to save costs when the Chapel was erected by Mead and stating:

"My thought is that it is something that ought to be borne in mind to be done at the proper time and ***that measures should be taken to insure that the Chapel will be preserved as a memorial to Dr. Mead***."
Ex. 43.

86. On April 29th, 1931, Carl B. Hinsman wrote to Pres. Moody about repairs to the spire, and expressed strong desire that it be restored:

"Mrs. Hinsman and I have studied these pictures very carefully and we would really feel it quite a calamity of the spire was removed entirely. On referring to the booklet which was gotten out and presented to Dr. Mead giving an account of the design, erection and dedication of the Building, considerable stress was laid from these several standpoints on the fitness and beauty of the spire as a part of the architectural scheme. The Building occupies such a commanding position on the Campus and in the landscape surrounding it that it would be indeed regrettable if the spire should be abridged or done away with. Mrs. Hinsman feels quite strongly that the spire should be restored to its original condition, and from your description of the situation, it would be less of a task to do that than it would be to remove it entirely. Thanking you for bringing the matter to our attention…"
Ex. 44.

87. On May 8th, 1931, Pres. Moody wrote to Carl B. Hinsman saying the matter was settled, and that they were to proceed with repairs to the spire:

"On receipt of your letter of April 29th, I told Mr. Fritz, our Business Manager, that we would look upon the matter of the spire of Mead Chapel as settled, and we are going to proceed with the repairing of the spire. … I feel that it is like talking of gilding a lily to talk of improving the Mead Chapel, for it is by all odds the most harmonious building we have on the campus and the most beautiful."
Ex. 45.

88. On July 20th, 1937, Pres. Moody wrote to Mrs. Carl Hinsman asking for consent to add the galleries as balcony seating, a copy of which is as follows:

My dear Mrs. Hinsman: Wednesday morning of last week we began the work of putting galleries in Mead Chapel, and the scaffolding is already up and active work on the walls has begun.

The final estimate as detailed is $11,038.59. It will cost rather more than we at first expected. I hope very much that you will feel that I am only sending this information because of your request for it, and even more strongly I hope you will not feel that we submitted the idea of galleries to you with any thought that it was in any way a suggestion or a plea for help. The gift of the Chapel was a very generous one and no one can estimate the contribution it has been over the years, both from the physical as well as the spiritual standpoint.

The only point was that the college had so outgrown all its quarters that something had to be done, and we were not willing to consider changing our practice in respect to Chapel attendance, so great has been its value. And we did wish to have your consent to any change made in a building given to the college by your father.

In exactly the same way, when we had outgrown the Starr Library, which has given the college by the Starr family, and had in hand money for its enlargement, we went to Dr. Starr for permission to make the enlargement. He not only consented to our plans, but refused to allow another donor to give anything toward the construction, saying that since it was a Starr Library, he did not wish any but star money to go into the building. The amount was more than he wanted to lay out in one payment so he spread it over several years, reimbursing the College in partial payments. We had contemplated a change in Hepburn hall, but there again I would not be willing to go ahead without the consent of Mrs. Hepburn.

Ex. 46.

89. On April 2nd, 1985, the re-inscription of 7 of the original 11 bells which were recast in 1985, were ordered with Mead's gift and verse:

"Following our telephone conversation of March 28, 1985, I write to confirm that the following inscription should appear on the first eleven bells:

GIFT OF GOVERNOR MEAD AND MARY SHERMAN MEAD
PRESENTED TO MIDDLEBURY COLLEGE BY
JOHN ABNER AND MARY SHERMAN MEAD

A. D. 1915

RING IN THE VALIANT MAN AND FREE THE LARGER HEART THE KINDLIER HAND RING OUT THE DARKNESS OF THE LAND RING IN THE CHRIST THAT IS TO BE"
Ex. 47.

"PEARSONS HALL"

90. On May 9th, 1908, Pres. Thomas wrote to D. K. Pearsons:

"I hope you will see your way to give for education in your native State. We should have at least $250,000.00 for a Woman's College, and if you will give me a start, I will set out to get it. But I plead with you for $50,000.00 now, to meet the pressing need of a building for our girls to live in, some central place to gather for their social life… Marble is cheap in Vermont, and for the sum named we will erect a building that will do you lasting honor, and will be a blessing to hundreds of girls who otherwise would be without opportunity of higher education."
Ex. 50, p.1-2.

91. In September 1908, the Middlebury College Bulletin volume III reads:

"THE D. K. PEARSONS *Pearsons Hall* BUILDING AND ENDOWMENT FUND
Ex. 50, p.5-7.

92. In 1909, Middlebury College Board of Trustees accepted Dr. Pearsons' offer, as seen in the following meeting minutes:

"Voted that the Board engage in an active effort to meet the conditions of the offer of D. K. Pearsons to give $25,000 – provided that

$75,000 – additional be raised, and that the matter be informed to the President-elect with favor."
Ex. 50, p.8.

93. On February 9, 1910, Pres. Thomas wrote to D. K. Pearsons:

"Will you give me $50,000 if I will raise $150,000 additional? I want it to build a dormitory for boys, and to provide more recitation rooms. If you will give me until July 1, 1911, I know I can get the money, and I can have the dormitory ready for that fall. I am in better shape to get $150,000 now than I was to get the $75,000 when you made the offer of $25,000. … ***We want to call it Pearsons Hall, if you will let us.***"
Ex. 50, p.12-13.

94. On February 9, 1910, Pres. Thomas wrote to John G. McCullough:

"But if you could make the "McCullough Gymnasium Fund" $25,000, on condition that I secure a like sum from other sources, I believe I could get the balance for a "McCullough Gymnasium" before next commencement."
Ex. 51, p.2-3.

95. On March 4, 1910, John G. McCullough wrote to Pres. Thomas:

"As to your second suggestion, you seem quite confident of being able to raise before Commencement from other sources the sum of $25,000. to enable you to erect a fitting Gymnasium for the College, provided I would give a like sum for that purpose, thus making your Gymnasium fund at least $50,000. You may count of me for the second $25,000. upon the conditions stated in your letter."

96. On June 25, 1910, Pres. Thomas wrote to John G. McCullough:

"I was able to announce that Alumni and friends have pledged $25,000. Thus meeting the conditions of your promise of an equal sum made on the…gymnasium fund of $60,000."
Ex. 51, p.4-5, Ex. 51, p.11.

97. On May 25, 1911, Pres. Thomas wrote to John G. McCullough referencing the "McCullough Gymnasium." Ex. 51, p.16.

"JAMES M. GIFFORD MEMORIAL HALL"

98. By undated letter, Mrs. James M Gifford wrote to The President and Fellows of Middlebury College indicating:

It is my intention to build a hall in honor of my beloved husband for the use of the boys of Middlebury College, to be known as "THE JAMES M. GIFFORD MEMORIAL HALL for BOYS", the construction of which shall according to his wishes follow the plan used by Mr. A. Barton Hepburn
Ex. 53, Page 1

99. On June 10, 1939, at the Board meeting, the Board read the offer letter from Mrs. Gifford reviewed its report and voted that President Moody be authorized to communicate the Board's acceptance. Ex. 53, p.6-7

100. On July 20, 1939, Mrs. Gifford wrote to the President and Fellow of Middlebury College, stating:

As I advised you in my letter of June 9th 1939 it is my intention to build a hall for the use of the boys of Middlebury College, to be known as quote the James M Gifford Memorial Hall for boys. UN quote I now desire to make a formal agreement with the college for the erection of this building I hereby request you to permit the erection of this building on the land belonging to Middlebury College north of Meade memorial

Chapel, in a situation corresponding to the location at Hepburn hall South of the Chapel, the building to be erected of native Vermont limestone and the plans to correspond generally with the plans of Hepburn hall but with such minor variations as may be directed by the college authorities and approved by me, or, may be desired by the college authorities and approved by me, or in the case of my death, my personal representative.
Ex. 53, page 8.

101. On July 20, 1939, The President and Fellows of Middlebury College acknowledged receipt of Mrs. Giffords offer:

"…in receipt of your letter of July 20th 1939, in which you offer for yourself, your heirs, executors and administrators, to pay the cost of building and furnishing and equipping a hall for the use of the boys of Middlebury College, ***to be known as, "The James M. Gifford Memorial Hall for Boys"***, provided the college will permit the erection of the building on its land to the north of Mead Memorial Chapel in a situation corresponding to that of Hepburn Hall to the to the South of the Chapel. I have been authorized by the president and fellows of Middlebury College to accept this generous offer and to advise that the college hereby agrees that the hall may be erected at the place requested by you and in accordance with the plans as stated by you
Ex. 53, p.10

102. On October 14, 1939, the Report of Middlebury College building committee of James M Gifford Memorial Hall for boys reads:

"JAMES M. GIFFORD MEMORIAL HALL FOR BOYS. … As Mrs. Gifford intends to sign the building contract herself and requires that the plans and specifications must meet with her approval,"
Ex. 53, p.11.

103. On October 31, 1940, the Board's Acceptance of the "James M. Gifford Memorial Hall for Boys" reads:

"The graciousness and hospitality of this building are a symbol of the generous nature of his whose name it bears. … ***It is a fitting memorial to a life which exemplified all these virtues, simple but massive, harmonious yet strong***. … We recognize that though only the name of James M. Gifford adorns this building, nevertheless into its stone and mortar has gone something more, - a lifetime's devotion, to one worthy of that devotion. ***This gift to the College which Mr. Gifford loved so greatly and served so long, so faithfully and so efficiently, is gratefully accepted, not only for its own sake, but for the sake of him in whose honor it stands and for your sake, Mrs. Gifford, who have so wonderfully preserved his name, along with the great names of the College, - Painter, Starr, McCullough, Mead, Hepburn, and now Gifford."***
Ex. 54.

Middlebury College's Breach of the Agreement and Broken Promise

104. Built of Vermont marble and placed on the highest point on campus as Dr. Mead directed, the "Mead Memorial Chapel" stands not only as the most dominant building on the campus, but has become an iconic feature of Middlebury's landscape, and has been featured in the College's promotional materials. Complaint/Answer par. 4.

105. For more than a century, the Mead Memorial Chapel has been home to student performances, guest lectures, religious services, weddings, baptisms, funerals, and annual events like Convocation and Baccalaureate. Over the years, it has welcomed Academy Award winners, Nobel laureates, and pillars of art, business, and science for discussions, readings, and panels. Complaint/Answer par. 5.

106. In the early morning hours of Monday, Sept. 27, 2021, Middlebury College removed the wooden "Mead Memorial Chapel" sign, which hung in a niche above the entrance of

the Chapel, identifying the College's house of worship and "Meeting House" for community gatherings for the past 105 years. Complaint/Answer par. 6.

107. The College did not issue a public statement in advance of the removal of the sign for "Mead Memorial Chapel." Complaint/Answer par. 7.

108. The College did not notify the Mead family nor seek their consent to alter the building, to remove the sign from the building or to remove the Mead name from the memorial chapel. Complaint/Answer par. 7.

109. In 1914, when Mead offered to erect a memorial chapel, the following named buildings existed to memorialize or honor donors or others who served the College as if detailed in Middlebury College Bulletin 1913-1914, Vol. VII, December, 1913, No. 4:

> **Painter Hall** - in 1810 Colonel Seth Storres of Middlebury gave to the corporation 30 acres of land upon which the first building of the college was erected in 1814 it was called at first "West College" but in 1846 was named Painter Hall in honor of Gamaliel Painter, one of the most generous patrons of the college and who had bequeathed all his property to the institution. It has been in continuous use since its erection and it's the oldest college building in Vermont. Id. at 99 & 117.
>
> **Starr Hall** - a large dormitory, was erected by the beneficence of Charles and Egbert Starr in 1861, and rebuilt in 1865, after a disastrous fire, by the same donors. Id. at 100 & 117.
>
> **The Egbert Starr Library** - the beautiful and convenient marble library now occupied was erected with funds bequeathed by Mr. Egbert Starr, and dedicated during the Centennial exercises of the College in July 1900. The cost of the building was $50,000, to which was added $5000 for its decoration and $5000 for the purchase of books by the son of the donor, Dr. M Allen Starr. Id. at 109.
>
> **The Warner Science Hall** - the large and convenient Warner Science Hall, was erected in 1901 through benefactions of the late Ezra J Warner, of the class of 1861. The building is a memorial of his father, Hon. Joseph Warner, formerly a resident of Middlebury, and a trustee of the college from 1850 to 1865. By the will of Mr. Warner the college has received a bequest of $25,000 for the care and maintenance of the hall, and for the purchase of supplies for the departments which it accommodates. Id. 111.

The McCullough Gymnasium - in 1910 Hon. John G McCullough of Bennington offered to give $25,000 towards the erection of a gymnasium, and the alumni of the college completed a gymnasium fund of $50,000 at commencement of that year the building was dedicated at the commencement of 1912. Id. at 114.

The Porter Athletic Field - the college has recently acquired a new athletic field, purchased and equipped at a cost of $10,000, the gift of a friend. Id. at 115.

Pearsons Hall - a new building for women, was opened at the beginning of the college year in 1911. Id. at 118.

Battell Cottage – named for Hon. Joseph Batell of the Class of 1823, a large donor to the college, was enlarged in 1910. Id. at 118.

Plaintiff's Opposition to Motion to Dismiss, Exhibit 11 (Middlebury College Bulletin 1913-1914, Vol. VII, December, 1913, No. 4).

110. It appears that currently, Middlebury College has named more than 70 buildings on its campus for proper family names. Ex. 55.

DATED at Town of Randolph, County of Orange, and State of Vermont this 23rd day of July 2024.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead,
Plaintiff

By: /s/ L. Brooke Dingledine

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,)
Special Administrator of the)
Estate of John Abner Mead,)
Plaintiff)
v.)
)
President and Fellows of Middlebury)
College)
Defendant)

PLAINTIFF'S EXHIBIT LIST
SUMMARY JUDGMENT & MOTION TO DISMISS

Ex. #	Exhibit	Date	
1	Mead's *Letter of Offer – of the "Mead Memorial Chapel"*	5/11/1914	
2	Letter: Thomas to Trustees w/ JAM's *Letter of Offer* and requesting immediate responses	5/15/1914	
3	Letters from Trustees to Thomas	May/Jun 1914	
4	MC Board Minutes: Accept the "Mead Memorial Chapel"	6/22/1914	
5	MC Board Meeting Minutes – Resolved to go forward with construction - $60,000 by Mead & bal. by College	12/18/1914	
6	Acceptance Letter: JAM to Trustees – Mead agrees to pay $60,000 if the College agrees to complete the chapel	1/13/1915	
7	Letter: Thomas to Vermont Marble Co. re quote for change to plans requested by Mrs. Mead re pilasters and windows.	2/22/1915	
8	Letter: Thomas Rogers to Thomas Quote for change	2/24/1915	
9	Offer Memorandum: JAM to Trustees – Mead offer to pay additional 1,031, if Trustees install $5,000 pipe organ	2/27/1915	
10	Letter: Thomas to Partridge re $1,031 approval	3/1/1915	
11	Letter: Thomas to Rogers - Authorizing $1,031 changes	3/1/1915	

12	MC Board Meeting Minutes- Acceptance of Mead's offer to add $1,031 and College will buy $5,000 pipe organ	4/14/1915	
13	News Article: Barre Daily Times - Fine Organ Ordered	August 1915	
14	Mead Memorial Chapel - Architectural Plans – Mead No. 4 – East Elevation (Front of Chapel)	3/31/1915	
15	Mead Memorial Chapel - Architectural Plans – Mead No. 19 – Main Entrance Doors under Portico	3/31/1915	
16	Mead Memorial Chapel - Architectural Plans – Misc. 1	3/31/1915	
17	Mead Memorial Chapel - Architectural Plans – Misc. 2	3/31/1915	
18	Letter: JAM to Thomas – Offer to add Chime of Bells to the Mead Memorial Chapel	6/21/1915	
19	MC Board Meeting Minutes - Gratefully accepting Bells	6/23/1915	
20	News Articles: Middlebury Register - Chime of Bells	1915	
21	News Article: Middlebury Register - "Bells Delight Many"	1/7/1916	
22	Letters/invoice re Chime of Bells - $6,960, pd by Mead	Dec. 1915	
23	Photos of the Chime of Bells – present day	2024	
24	Letter: Thomas to JAM – Cornerstone Box and sod	5/27/1914	
25	Program: "Breaking Ground for the Mead Memorial Chapel & Presentation of Corner Stone"	6/23/1914	
26	Photos – Ground Breaking & Cornerstone Ceremony	6/23/1914	
27	Speech: "Breaking Ground and Presentation of Corner Stone" by Ex-Governor John A. Mead, '64	6/23/1914	
28	Speech: "Acceptance in Behalf of the Trustees" by Rev. James L. Barton, D.D., LL.D., '81	6/23/1914	
29	Speech: "Address in Behalf of the Faculty" by Prof. Wright	6/23/1914	
30	News Articles - *Groundbreaking & Cornerstone Ceremony*	June 1914	
31	News Article: Boston Transcript Article on MMC	4/8/1915	

32	New Articles – Announcing *Dedication Ceremony*	June 1916	
33	Mead's Speech – Dedication & Presentation of Keys	6/18/1916	
34	Ezra Brainerd's Acceptance Speech obo the Turstees	6/18/1916	
35	New Articles – Reporting on *Dedication Ceremony*	June 1916	
36	1916 - Kaleidoscope dedicated to Mead	1916	
37	Correspondence re architects, plans, specs, construction, costs, contractors, contracts, building committee	1914-17	
38	Mead Memorial Chapel Booklet – correspondence between Thomas, Mead, & Mrs. Mead	11/14/1916 to 12/13/1916	
39	The Hymnal of Praise inscribed "Mead Memorial Chapel"	Sept. 1916	
40	Mead's additional agreement to pay for Hymn Boards	Dec. 1916	
41	Mead's gift of $1,000 to the College Endowment	June 1918	
42	Board Meeting Minutes making tribute to Mead.	1920	
43	Letter - Thomas to Carl B. Hinsman re completing the west end of the Chapel with marble	6/14/1920	
44	Letter – Carl B. Hinsman to Pres. Moody re repairs to spire, and expressing strong desire that it be restored	4/29/1931	
45	Letter - Pres. Moody to Carl B. Hinsman – matter settled, proceeding with the repairs to the spire.	5/8/1931	
46	Letter –Moody to Mrs. Carl Hinsman - asking for consent to add the galleries as balcony seating	7/20/1937	
47	Ordering re-inscription of 7 of the original 11 bells which were recast in 1985, with Mead's gift and verse	4/2/1985	
48	Photos of MMC and sign before & after removal. Photo of the original Mead Family Bible	2021 2021	
49	The Community House Report and Financial Statement	1919-20	
50	"Pearsons Hall"	1908-10	
51	"McCullough Gymnasium"	1910	

52	“Hepburn Dormitory”	1915	
53	“Gifford Memorial Hall for Boys”	1939	
54	Board Acceptance of Gifford Memorial Hall	1940	
55	Map and index of Middlebury Campus Buildings	2017	
56	Mead Family Tree filed with Probate Division	6/12/2022	

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STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
	)
Plaintiff,	)
v.	)
	)
THE PRESIDENT AND FELLOWS	)
OF MIDDLEBURY COLLEGE,	)
	)
Defendant.	)

MIDDLEBURY COLLEGE'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND RENEWED MOTION TO DISMISS FOR LACK OF STANDING

Plaintiff's Opposition leaves no serious question as to Middlebury's entitlement to judgment in its favor. On the central issue in this litigation—whether John Mead's 1914 gift gave rise to an enforceable condition that the College maintain the Mead name on its Chapel in perpetuity—Plaintiff acknowledges that the law requires an express and unequivocal statement of intent for the parties to a contract or conditional gift to be bound perpetually. *See* Opposition[1] at 48, 51. The Opposition concedes that the gift documents contain no such express language. *See id.* at 37 (suggesting that it was the parties' mutual trust "that prevented the insertion of some sort of language such as 'in perpetuity'

[1] All references and citations to the "Opposition" herein refer to the amended version of Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Motion to Dismiss filed on July 25, 2024.

with regard to the name Mead Memorial Chapel"). Plaintiff seeks to brush away this absence by arguing that "[t]here was simply no need to insert the term 'in perpetuity'" under the circumstances because, he asserts, it was "universally understood . . . that the . . . Chapel would bear the Mead name for as long as the Chapel existed." *Id.* at 37-38. Whether or not there actually existed such an unwritten understanding, the law required a clear statement; Plaintiff cannot evade the fact that the gift documentation lacks the explicit language that would be necessary to impose a perpetual obligation. That fact alone is dispositive of the suit.

Middlebury's Motion laid out a number of other reasons the Court should grant the College summary judgment, and the Opposition, the bulk of which is devoted to factual exegesis, fails to offer a cogent response to any of them. Among other things:

- The Opposition does not attempt to justify the application of contract law to the subject matter of restricted charitable gifts—contrary to the weight of authority—nor does it cite a single case in which a court applied contract principles to enforcement of gift restrictions.

- The Opposition fails to offer any argument supporting the treatment of Mead's donation of funds as a conditional gift where the gift documents contained no language of condition and reversion.

- The Opposition does not contest the fact that, absent an enforceable contract to maintain the Mead name on the Chapel in perpetuity, Plaintiff's claim for breach of the covenant of good faith and fair dealing fails.

- The Opposition does not respond at all to the arguments for dismissal of

Plaintiff's unjust enrichment claim.

For these reasons, Middlebury is entitled to summary judgment on all counts.

As to Middlebury's renewed motion to dismiss for lack of subject matter jurisdiction, the Opposition completely ignores the substance of the argument. In responding, the Opposition simply cites authority for the proposition that a special administrator is authorized to bring claims on behalf of the decedent—a point both undisputed and irrelevant. The question is not whether former Governor Douglas has authority to act on behalf of the Mead estate in pursuing available claims as a general matter, but rather whether the specific, gift-related claims asserted here are ones that a donor or the donor's estate has standing to pursue. The common law answers that question firmly in the negative—and Plaintiff does not address or dispute the substantial authority cited by Middlebury establishing that neither a donor nor a donor's heirs have an interest in a completed gift sufficient to confer standing. As Plaintiff has failed to proffer any support for the Court's exercise of subject matter jurisdiction over the Estate's claims, Middlebury respectfully requests that the Court dismiss the case on that ground as well.

A. Plaintiff's Opposition Does Not Provide a Colorable Basis upon Which His Contract Claims Could Proceed.

There is little in the Opposition that squarely responds to Middlebury's arguments for summary judgment on Plaintiff's contract claims—and the arguments advanced in the Opposition fail to supply Plaintiff a viable theory in contract law.

First, the Opposition does not acknowledge or attempt to address the fact that

the transaction at issue was a gift, a subject matter governed by property law principles rather than contract. *See* Motion at 18-23 (discussing legal framework for restricted gifts). Plaintiff simply assumes that contract law may apply to the asserted restrictions on Mead's gift, without making any attempt to marshal legal support for his position. For the reasons set forth at length in Middlebury's Motion, that assumption is incorrect. Indeed, it is telling that, throughout the entire Opposition, the only section in which Plaintiff himself cites any legal authority that pertains to a gift transaction is in his brief argument on his claim for breach of a conditional gift. *See* Opposition at 51-52. This is no surprise, for claims such as those Plaintiff seeks to bring here have long fallen under the law of conditional gift. Contract law has no application.

Second, even if contract law did apply, the law will avoid imposing a perpetual contractual term "unless compelled by the unequivocal language of the contract," as the Opposition correctly recognizes. *Id.* at 48. No such unequivocal language appears here. While Plaintiff may argue that express language was unnecessary because there was a universal understanding that the parties intended a perpetual contractual obligation to maintain the Mead name on the Chapel, supported by "hefty extrinsic evidence," *id.* at 37, 47, that argument fails on both the law and the facts.

To start with, Plaintiff is wrong in suggesting that, where the gift documentation omitted any terms regarding "the timeframe that the [Mead] name was to adorn the building," *id.* at 47, the Court would be entitled look to extrinsic evidence to evaluate whether a perpetual naming condition was imposed. That is not

how the law on perpetual contractual terms operates. Rather, because public policy disfavors perpetual contract obligations, *see Glacial Plains Coop. v. Chippewa Valley Ethanol Co., LLLP*, 912 N.W.2d 233, 236 (Minn. 2018), courts will not find and enforce such an obligation unless there is a clear statement of intent to impose a perpetual term in the contract itself. *See, e.g.*, *Compania Embotelladora Del Pacifico, S.A. v. Pepsi Cola Co.*, 976 F.3d 239, 246 (2d Cir. 2020) (absent "clear statement of perpetuity," contract terminable at will); *Parker v. Union Planters Corp.*, 203 F. Supp. 2d 888, 901 (W.D. Tenn. 2002) (where there was "no clear statement of indefinite duration," contract did not impose perpetual term); *Open Lake Sporting Club v. Lauderdale Haywood Angling Club*, 511 S.W.3d 494, 502–03 (Tenn. App. Ct. 2015) (collecting cases for proposition that perpetual rights will not be created absent clear language). Thus, where a contract lacks clear language expressly imposing a perpetual term, that does not open the door to extrinsic evidence; rather, it requires the conclusion that the contract term at issue was not intended to be perpetual. *See Glacial Plains Coop*, 912 N.W.2d at 236 ("[W]e construe ambiguous language regarding duration against perpetual duration.").

Moreover, the extrinsic evidence here, even were it considered, would not support the conclusion that the parties "unequivocally" intended Mead to have a perpetual naming right. The Opposition relies on a varied assortment of facts in an effort to establish an intent to create a perpetual obligation, none of which is compelling. For example, Plaintiff cites the existence of a number of other Middlebury buildings named after trustees and donors, as well as instances of

Middlebury consulting with donors or their families on occasion when making alterations to buildings, as evidence of a "pattern and practice" with respect to naming. *See* Opposition at 11-12, 38-42. The fact that Middlebury—like most well-established colleges—has a number of buildings named after trustees/donors and takes steps to maintain relations with donors and their families is unremarkable and has no bearing on the question before the Court. The evidence Plaintiff cites does not establish that Middlebury has a pattern and practice of granting contractually enforceable perpetual naming rights to donors—nor, certainly, that the grant of such rights was intended in connection with the specific gift at issue here.

Plaintiff also recounts various statements from Middlebury's Trustees and personnel lauding Mead and his gift in lofty terms. Many of these speak to the lasting impact the Middlebury community expected the gift to have, as in the following from the Board of Trustees upon the occasion of Mead's death: "In the gift of the Mead Memorial Chapel he endowed our college with one of the most beautiful buildings on any campus in America, which will speak to coming generations of his wisdom and foresight in benevolence and symbolize the strength of character of its donor." *See id.* at 5, Ex. 42; *see also, e.g.*, *id.* at 33, Ex. 34 ("[T]he noblest deed of all—the one for which future generations will hold you most in grateful remembrance—is the erection of his spacious and attractive chapel . . . ."). A couple also referenced the fact that the Chapel would bear Mead's name. *See, e.g.*, Opposition at 23, Ex. 28 (speech from James Barton noting that Chapel would "bear

the name of one so long and so honorably connected with this institution").

There is a clear difference between expressing gratitude to a generous donor and recognizing that the fruits of his donation would long benefit the College, and contractually committing to maintain his name on the Chapel forever. The references to the expectation that the Chapel would bear the Mead name are unremarkable, given that the building was in fact named the "Mead Memorial Chapel" at its outset—and for more than a century thereafter. The fact that Middlebury used the Mead name on the Chapel does not mean that it committed to preserve the name forever. None of the public statements Plaintiff cites unambiguously reflect an agreement to permanent naming rights (nor, again, could such extrinsic evidence be used to imply into the Gift Letter a perpetual term that was absent from its face).

Finally, Plaintiff also notes that the plans for the Chapel were marked "Mead Memorial Chapel" and contained a design detail depicting the sign for the Chapel over the main entrance door. Opposition at 26-29. To the extent that these plans were relevant to construing the supposed terms of Mead's gift—and Plaintiff offers no clear argument for how that would be so—they would only establish an understanding at the time of the design that the Chapel was going to be called "Mead Memorial Chapel" at the outset. Again, this is no surprise, as that is the name the Chapel bore for more than a century following its completion. What is absent is any indication that the parties specifically contemplated and agreed that Mead would have a contractual naming right—and that such right would be

permanent and irrevocable. Absent a clear statement that a permanent naming right was intended, Plaintiff's claim fails.

B. Plaintiff's Claim for Breach of the Implied Covenant Fails Absent a Contract to Maintain the Mead Name in Perpetuity.

The Opposition accurately lays out the basic contours of a claim for breach of the implied covenant of good faith and fair dealing, including the fact that the claimant need not show a breach of the underlying contract. However, Plaintiff dodges the critical point: a contract must, in fact, exist between the parties governing the subject matter in order for an implied covenant claim to arise. *See Monahan v. GMAC Mort. Corp.,* 2005 VT 110, ¶ 54 n.5, 179 Vt. 167, 893 A.2d 298. Plaintiff neither addresses nor disputes this core element of the claim—which, as laid out in Middlebury's Motion, is dispositive here. Plaintiff can indulge in all the scurrilous rhetoric he wants and accuse the College of "framing . . . Mead for its crimes," Opposition at 50, but in the absence of a contract that Mead's name would stay on the Chapel for time immemorial, Plaintiff has no implied covenant claim.

C. Plaintiff Has Not Made Out a Viable Conditional Gift Claim.

The Opposition admits that conditions subsequent on a gift "must clearly be expressed, and, if it is doubtful whether a clause in a deed is a condition subsequent, courts will always lean against construing it as such." Opposition at 51 (quoting 14 C.J.S. Charities § 33). Plaintiff nonetheless persists in contending that the removal of the Mead name from the Chapel represents the breach of a supposed condition on Mead's gift, triggering the failure and reversion of the gift—despite the absence of

any express language imposing a perpetual naming condition or any provision for reversion of the gift. Plaintiff makes two passing arguments in favor of this position, neither of which has merit.

First, Plaintiff suggests that the absence of the terms "in perpetuity" is not dispositive because "there is no evidence to suggest that 'in perpetuity' language was even being used at that time and place in history." Opposition at 37. This is nonsense. There is nothing magical about the term "in perpetuity"; other language indicating permanence could have been used, and, indeed, various phrases were being used to indicate a perpetual obligation at or around the time of Mead's gift. *See, e.g.*, *Dykeman v. Jenkines*, 101 N.E. 1013, 1015 (Ind. 1913) (bequest requiring that benefitted "hospital shall forever be named and designated 'Mary Dykeman Hospital'"); *Herron v. Stanton,* 147 N.E. 305, 308 (Ind. App. Ct. 1920) (1890s bequest imposing naming requirement for school and gallery and dictating that "the use of such name or names shall be perpetual, or so long as said gallery and school are severally maintained"); *Lupton v. Leander Coll.*, 187 N.W. 496, 499 (Iowa 1922) (1903 pledge by donor requiring "strictest compliance with [the] conditions [of the gift] forever," and requiring that donated funds be "forever held sacred"); *Univ. of Vt. v. Wilbur's Estate*, 105 Vt. 147, 163 A. 572, 578 (1933) (referring to 1929 gift pledge on various "terms and conditions," including that the University erect "a museum to be known and designated in perpetuity as the 'Robert Hull Fleming Museum'"). If former Governor Mead had wanted to assure the permanent use of his name on the Chapel, he could have expressed that condition in any number of ways—but he did

not.

Second, although Plaintiff does not dispute that Mead's Gift Letter lacks any provision for reversion, he suggests that such formality was unnecessary given the "trust" and "ties of warmest friendship" between Mead and Middlebury's Trustees and personnel. *See* Opposition at 35-38. Plaintiff attempts to distinguish on this ground Mead's 1916 gift to the Rutland Community House—which expressly provided for reversion in the event that any number of detailed conditions precedent were violated—noting that the Community House was a new project and an "undoubtedly risky venture."[2] *Id.* at 36. The nature of the ventures to which Mead was donating and his relationship with the donees have no relevance to the determination of whether his gifts were properly subject to conditions subsequent. As explained in Middlebury's Motion, the law disfavors conditional gifts and construes gift instruments to avoid finding a conditional gift wherever possible. *See Pres. & Fellows of Middlebury Coll. v. Cent. Power Corp. of Vt.*, 101 Vt. 325, 143 A. 384, 390 (1928). Plaintiff does not cite any authority—and the undersigned is unaware of any—for the proposition that the degree of "trust" between the donor and donee or the riskiness of the venture to which the donation is applied may relax the law's stringent requirements for establishing the existence of a conditional gift. As the documentary record for Mead's 1914 gift to Middlebury falls far short of meeting those requirements, Middlebury is entitled to judgment in its favor on the conditional

[2] Plaintiff also speculates, without evidence, that the Community House deed was "obviously prepare[d] by a real estate attorney." Opposition at 35.

gift claim.

D. The Traditional Bar on Donor Standing Applies to Plaintiff's Claims and Requires Dismissal.

The Opposition does not offer any substantive rebuttal to Middlebury's renewed motion for dismissal on standing grounds. Instead, Plaintiff merely emphasizes his statutory authority to "commence and maintain actions as an administrator." Opposition at 52 (quoting 14 V.S.A. § 963). This misses the point. Plaintiff's authority to pursue claims on behalf of former Governor Mead is uncontested here, but only extends so far as the decedent himself would have a right of action. *See* 14 V.S.A. § 1401 (administrator may commence and prosecute actions "in the right of the deceased"). The well-established and "almost universal[]" common law donor-standing rule bars donors from pursuing the types of claims advanced by Plaintiff here. *See Siebach v. Brigham Young Univ.*, 361 P.3d 130, 137 (Utah App. Ct. 2015). Because the common law would deny former Governor Mead himself standing to bring claims seeking to enforce alleged gift restrictions (whether in contract, the law of conditional gift, or otherwise), Plaintiff—who stands in Mead's shoes in this action—likewise lacks standing to proceed. Plaintiff's Opposition offers no argument to the contrary. Accordingly, Middlebury respectfully requests that the Court grant its Rule 12(b)(1) Motion to dismiss for lack of standing/subject matter jurisdiction.

CONCLUSION

For all of the foregoing reasons, as well as those set forth in Middlebury's

Motion, the Court should grant the Motion and enter judgment in Middlebury's favor on all claims.

Dated at Burlington, Vermont, this 5th day of August, 2024.

By: *\/s\/ Justin B. Barnard*

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STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
	)
Plaintiff,	)
v.	)
	)
THE PRESIDENT AND FELLOWS	)
OF MIDDLEBURY COLLEGE,	)
	)
Defendant.	)

MIDDLEBURY COLLEGE'S RESPONSE TO PLAINTIFF'S STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS

Defendant The President and Fellows of Middlebury College ("Middlebury" or the "College"), by and through counsel, submits this Response to Plaintiff's Statement of Additional Undisputed Material Facts.

1. On June 17, 2022, the Vermont Superior Court, Rutland Unit, Probate Division, in the matter of the Estate of John Mead, Case No. 22-PR-02895, appointed the Honorable James H. Douglas as Special Administrator of the Estate of John Abner Mead, granting him full authority to represent the Estate in this litigation. Complaint/Answer par 17.

Response: Undisputed.

2. Defendant, The President and Fellows of Middlebury College is a Vermont Non-profit Corporation chartered on November 1, 1800 and doing business as Middlebury College, with its principal place of business in the Town of Middlebury,

County of Addison and State of Vermont. Complaint/Answer par 19.

Response: Undisputed.

3. Middlebury is a liberal arts college of the first rank, an achievement that is the result of a process of growth and change that began in 1800, when a few men of the town of Middlebury took upon themselves the challenge of building a college in a small New England town, on what was then the American frontier. Complaint/Answer par 29.

Response: Immaterial.

4. Over the more than two centuries since it was established, Middlebury has developed from "the town's college" into an institution of international renown with a $1.518 billion endowment as of 2021. Complaint/Answer par 23.

Response: Immaterial.

5. Middlebury's original purpose was to train young men from Vermont and neighboring states for the ministry and other learned professions of the early 19th century. The College began modestly, with seven students enrolling in November 1800. Complaint/Answer par 24.

Response: Immaterial.

6. Gamaliel Painter, one of the citizens of Middlebury to whom the College charter had been granted, left most of his estate to the College. Mr. Painter's gift was an early example of the philanthropic support for Middlebury College that has enabled the institution to prosper. In recognition of his gift, West College, a new building completed a few years prior to Painter's death in 1819, was renamed Painter

Hall. Painter Hall is the oldest college building extant in Vermont. Complaint/Answer par 25.

Response: Immaterial.

7. Middlebury College continued to grow during the 19th century. The growth was sporadic, however, as the College was not immune to the social and political movements that were affecting northern New England generally. Rocked by evangelical upheaval and religious revival in the 1830s and the Civil War in the 1860s, Middlebury managed to keep its doors open during a period when many small colleges in America were forced to close. In large part, the College survived because of the support of its many friends, both in the town of Middlebury and in the surrounding region. Complaint/Answer par 27.

Response: Immaterial.

8. In 1883, the Trustees voted to accept women as students in the College, making Middlebury one of the first formerly all-male liberal arts colleges in New England to become coeducational. In the following years, Middlebury College began to change from an institution primarily oriented toward its community and its state to a college with larger regional aspirations. President Ezra Brainerd (who held that office from 1885 to 1908) prepared the College for this transformation, and spectacular change occurred under the administration of President John Thomas (1908 to 1921), who established the Language Schools and the Bread Loaf School of English during his presidency. Complaint/Answer par 28.

Response: Immaterial.

9. During the second decade of the 20th century under President Thomas' direction, the College's enrollment more than doubled, and the number of buildings, the size of the faculty, and the value of the endowment all tripled. Complaint/Answer par 29.

Response: Immaterial.

10. During the 1930s, 1940s, and 1950s, Middlebury continued its development toward a position of prominence among liberal arts colleges in the United States. Continued growth in the faculty meant the addition of new subjects to the curriculum and an enhanced academic reputation for the College. New residence halls, academic buildings, and library facilities were added to the physical plant. Middlebury's expansion was coupled with increases in financial resources and the establishment of a tradition of prudent financial administration, including the cultivation of resources for the long term. Complaint/Answer par 30.

Response: Immaterial.

11. John Abner Mead (April 20, 1841 – January 12, 1920) was a Vermont physician, businessman, politician, and philanthropist who served as Vermont's 47th Lieutenant Governor from 1908 to 1910, and Vermont's 53rd Governor from 1910 to 1912. Complaint/Answer par 3.

Response: Undisputed.

12. On October 30, 1872, John Mead married Mary M. Sherman. They had one child, Mary Sherman Mead Hinsman. Defendant's GG.

Response: Immaterial.

13. Mead was a graduate of Middlebury College, Class of 1864. In 1914, on the 50th anniversary of his graduation, he offered to erect the "Mead Memorial Chapel," which offer was accepted by the Trustees of the College. Complaint/Answer par 32.

Response: Undisputed that Mead was a graduate of Middlebury College, Class of 1864; that he offered to supply funds for Middlebury to build a chapel in 1914 as a gift; and that Middlebury's Trustees accepted the gift. Disputed to the extent the statement implies that the use of the name "Mead Memorial Chapel" was a condition of the gift.

14. On May 11, 1914, John Abner Mead sent a Letter to Rev. Dr. John M. Thomas, President of Middlebury College, offering "to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel." (hereinafter "Offer Letter"). Ex. 1. Complaint/Answer par 95.

> *. . . to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel."* I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, *and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.*

Ex. 1 (emphasis supplied)

Response: Undisputed that Mead sent the letter dated May 11, 1914, which is marked Ex. 1. The text of the letter, which is not fully reproduced, speaks for itself. Disputed that the actual substance of the gift offered to Middlebury was to "erect a chapel"; rather, Mead offered to furnish funds between $50,000 to $60,000 to be used for the erection of a chapel.

15. The quotation marks around the proposed name, "Mead Memorial Chapel" are written in Mead's own hand. Ex. 1.

Response: Disputed that the cited Exhibit provides competent support for this assertion. Undisputed that Ex. 1 contains handwritten quotation marks.

16. Mead then told of his ancestors, recounting their lives as embodying the simplicity, strength of character, and religious faith that Mead envisioned the Mead Memorial Chapel would symbolize and specifying the location of the chapel:

> *With this memory ever present,* it has been my hope and prayer that *I might be able and permitted to build for this college a suitable place for divine worship and that it might rise from the highest point on its campus as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth.*
>
> Ex. 1 (emphasis supplied). Complaint/Answer par. 2.

Response: Undisputed that the quoted text comes from Ex. 1, the full text of which speaks for itself.

17. Mead's Offer Letter went on to state:

> "I have in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure, and I hereby suggest that the Trustees of the College secure appropriate plans for its erection which shall meet with my approval, and that said board appoint a building committee at once, consisting of president Thomas, former President Brainerd and myself to make the necessary contracts for such a structure and to supervise the erection of the same, and I will then bind myself and my estate to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee."
>
> Ex. 1. Complaint/Answer par 98.

Response: Undisputed that the quoted text comes from Ex. 1, the full text of

which speaks for itself.

18. On May 15, 1914, President Thomas sent a copy of John A. Mead's Offer Letter to the Trustees of Middlebury College announcing:

> Your associate, Governor John A. Mead, has made it possible for me to make an announcement which will bring you all great satisfaction and encouragement, as it gives me the keenest pleasure. I enclose a copy of his letter to be signed May 11th which assures the erection of an appropriate and beautiful chapel for Middlebury College.
>
> I have testified many times to the great need of such a building and the large possibilities for good in connection with it. We have all felt for many years that it was one of the most urgent needs of the college, and those who have been closest in touch with the daily life of the institution have felt the need most earnestly.
>
> . . .
>
> P.S. May I hear from you immediately as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests.
>
> Ex. 2. Complaint/Answer par 99

Response: Disputed that Ex. 2 is accurately quoted above. Undisputed that Ex. 2, which is dated May 15, 1914, was sent to Middlebury's Trustees and enclosed a copy of Mead's May 11, 1914 gift letter.

19. On May 16, 1914, Trustee Frank C. Partridge wrote to President Thomas agreeing as one of the Trustees, to accept the Offer and appoint of the Mead Memorial Chapel Building Committee as Mead had specified:

> Your good news is received and I am delighted that your dream of a new chapel is to be realized. *It is a generous and beautiful thing for Governor Mead to do and of course I agree, as one of the Trustees, to the acceptance of his proposition and the appointment of the building committee which he suggests.*
>
> Ex. 3-1 (emphasis supplied). Complaint/Answer par 100.

Response: Disputed that Frank Partridge's letter made any reference to the "Mead Memorial Chapel." Undisputed that Ex. 1 is an unsigned letter dated May 16, 1914 from Partridge to President Thomas agreeing to the gift and appointment of a building committee, which he said would realize President Thomas's "dream of a new chapel."

20. On May 16, 1914, Superior Court Judge (and future Middlebury College Trustee) Frank L. Fish wrote to Pres. Thomas:

> "Hurrah for Dr. Mead! I have just written him thanking him and telling him he has become one of the immortals."
>
> Ex. 3-4.

Response: Undisputed that Ex. 3-4 is a May 16, 1914 letter from Frank L. Fish and contains the quoted text.

21. May 17, 1914, Trustee John E. Weeks wrote to Mead with:

> [congratulations and thanks for] . . . the splendid gift to Middlebury College. This is a most worthy reminder of your great loyalty to this Institution and *one that can and will be instrumental in great good to this student body as long as time lasts*. . . Your honorable public career is certainly crowned by this act.
>
> Ex. 3-7 (emphasis supplied). Complaint/Answer par 101.

Response: Undisputed that Ex. 3-7 is a May 17, 1914 letter from John Weeks to Mead and contains the quoted text.

22. On May 18, 1914, Trustee A. Barton Hepburn wrote to Mead stating:

> It is a splendid, well-considered and generous action on your part. It shows you possess that love for Alma Mater, which is one of the greatest charms of college life, the essence of college spirit; *it shows your respect and reverence for your forebears*, which is one of the highest qualifications a man may possess, and *it shows, also, your disposition to do a good and useful act for the*

community in which you live and the State which you honor and which has bestowed its highest honor upon you. Congratulations and thanks.

Ex. 3-10 (emphasis supplied). Complaint/Answer par 102.

Response: Undisputed that Ex. 3-10 is a May 18, 1914 letter from A. Barton Hepburn to Mead and contains the quoted text.

23. On May 19, 1914, Trustee James L. Barton wrote to Mead stating:

I can hardly describe to you the thrill of satisfaction that I experienced when a letter from Dr. Thomas reported *your magnificent gift to Middlebury College in the form of a Memorial Chapel. I know of nothing more fitting as a memorial – nothing that will be of greater value to the College in all the years to come.* I know of no building that could be put up out from which will go more fundamental and permanent influences for social, civic and national righteousness, for our own country and for the world. I want to express my deep personal appreciation of this gift, as well as my appreciation as a member of the Board of Trustees. *I am sure you will get great satisfaction in seeing the walls of the building rise, as you realize what they mean to the College, the State, the country and the world, in all the years to come.*

Ex. 3-13 (emphasis supplied). Complaint/Answer par 103.

Response: Undisputed that Ex. 3-13 is a May 19, 1914 letter from James L. Barton to Mead and contains the quoted text.

24. On May 22, 1914, Trustee Brainerd Kellogg wrote to President Thomas, stating:

I can't tell you how pleased I was and am at the news that Governor Mead wishes to build a Chapel on the College grounds. I had not thought that he dreamed of it.

And how fitting that it should be at the semi-centennial of his graduation – showing that his love for his College has not waned but waxed during the 50 years. . . .

Convey to him, please, my personal thanks for his generous plans. *Of course the Trustees will allow him his ways, and will be everlastingly grateful to him in taking it.*

Ex. 3-14 (emphasis supplied). Complaint/Answer par 104.

Response: Undisputed that Ex. 3-14 is an unsigned draft of a May 22, 1914 letter from Brainerd Kellogg to President Thomas and contains the quoted text.

25. On May 23, 1914, John A, Fletcher, Middlebury Trustee and Treasurer, wrote to President Thomas stating:

> Replying formally to the welcome news contained in your message of the 15th, *I wish to concur in the acceptance of the "Mead Memorial Chapel."*
>
> It is a splendid gift . . .
>
> *I trust that the General Education Board will now look with favor upon your application for a grant toward a new fund, on contemplating this new evidence of the substantial and loyal support of our alumni.*

Ex. 3-16 (emphasis supplied). Complaint/Answer par 105.

Response: Undisputed that Ex. 3-16 is an unsigned draft of a May 23, 1914 letter from John Fletcher to President Thomas and contains the quoted text.

26. On June 6, 1914, Trustee M. Allen Starr wrote to Pres. Thomas:

> "I congratulate you heartily on this fine gift which will be *a beautiful memorial* and a most needed and welcome addition to our building. … *His most interesting letter with its details of early history should be framed and hung in the chapel – and also put in the box of the corner stone."*

Ex. 3-19.

Response: Undisputed that Ex. 3-19 is an unsigned draft of a June 6, 1914 letter from M. Allen Starr to President Thomas and contains some of the quoted text; disputed that it is quoted with perfect accuracy and further disputed that it contains the emphasis provided in the foregoing excerpt.

27. On June 24, 1914, Trustee James M. Gifford wrote to Pres. Thomas:

> "I have felt for years that the one building which the College most needed is that which Gov. Mead has undertaken to erect. *I feel that it should be located on the most prominent site and that, architecturally, it should be the most attractive of all the buildings of the College.*
>
> I believe that Gov. Mead will fully accord with this idea as *I know that he feels, as I am sure we all do, that it ought to be the most attractive memorial erected on the College Campus."*
>
> Ex. 3 -20.

Response: Undisputed that Ex. 3-20 is a June 24, 1914 letter from James Gifford to President Thomas and contains some of the quoted text; disputed that it contains the emphasis provided in the foregoing excerpt.

28. On June 22, 1914, the President and Fellows of Middlebury College (Board of Trustees) met and recorded the following resolution to accept Dr. Mead's Offer Letter to erect the "Mead Memorial Chapel":

> The following resolution, introduced by Dr. Brainerd, on motion of Dr. Barton & Prof. Kellogg, was adopted by a rising vote:-
>
> "Whereas our esteemed colleague, the Honorable John Abner Mead of the Class of 1864, has signified to President Thomas his desire, in commemoration of the fiftieth anniversary of his graduation, to erect a Chapel for Middlebury College, and his readiness to furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice,
>
> Resolved that the President and Fellows of Middlebury College hereby accept of this magnificent benefaction with sincere gratitude to both Dr. & Mrs. Mead and their family for their deep interest in the religious welfare of the College, so impressively manifested by this provision of a suitable place for divine worship.
>
> Resolved that the Trustees through the Committee nominated by Dr. Mead will use their best endeavors to secure the erection of a dignified and substantial structure, in harmony with the other buildings of the college, and such as will meet the approval of the donor."

> Dr. Mead made fitting response to this resolution. His letter of presentation follows in full:-
>
> [Letter of Gift copied by hand verbatim with quotation marks around "Mead Memorial Chapel"]
>
> On motion of Mr. Partridge, seconded by Dr. Abernathy, the Building Committee for the Mead Chapel was elected as above, Messrs. Thomas, Brainerd, Mead and Weeks.
>
> Mr. Collins of the architectural firm of Allen & Collins then appeared before the Board with tentative plans for the new Chapel, which were discussed at length.
>
> Ex. 4 (emphasis supplied). Complaint/Answer par 106.

Response: Disputed as to the characterization that the Trustees "accept[ed] Dr. Mead's Offer Letter to erect the "Mead Memorial Chapel." Undisputed that the Trustees adopted the resolution reproduced above, with the exception of the bracketed text.

29. The Middlebury College Trustees unreservedly and enthusiastically accepted Dr. Mead's offer to erect a chapel, which offer contained the explicit language: "the same to be known as the 'Mead Memorial Chapel,' with the actual quotation marks added by Mead's own hand to specify precisely the name of the chapel, which was offered as a memorial to the Mead ancestors, and yes, would immediately become synonymous with Governor Mead himself.

Ex. 1. Complaint/Answer par. 3.

Response: Disputed as to the characterization the resolution adopted. Further disputed that the cited exhibit establishes that "quotation marks [were] added by Mead's own hand." Undisputed that the Trustees accepted

Mead's gift.

30. The gift of the Mead Memorial Chapel was widely reported in the Vermont press and Dr. Mead's Offer Letter was reprinted in several news articles. Complaint Exs. 1-013 to 018. Complaint/Answer par 107.

Response: Undisputed.

31. The Free Press had a special report from Middlebury, May 15, 1914:

> EX-GOV MEAD GIVES
> COLLEGE A CHAPEL
>
> President Thomas of Middlebury Announces
> Offer of $60,000 *for Memorial*.
> TO BE OF WHITE MARBLE
>
> Former Vermont Chief Executive Commemorates
> 50th Anniversary of His Graduation.
>
> Middlebury, May 15 - President John M. Thomas announced this evening at a meeting at the gymnasium the gift of a $60,000 memorial chapel by ex-Governor John A. Mead of Rutland, *to be called the Mead Memorial Chapel*. The unexpected announcement was greeted with great enthusiasm. . . . Ex-Governor Mead was cheered by the gathering of 500 persons.

Complaint Ex. 1-013 to 1-014 (emphasis supplied).

Response: Undisputed.

32. On May 16, 1914, the Rutland Herald reported on the gift:

> DR. MEAD'S GIFT TO MIDDLEBURY COLLEGE
>
> . . .
>
> The gift of a chapel, in which the eternal Truth may be taught, and
>
> devoted to the sacred purposes of divine worship, is an admirable expression of active piety and reflects creditably upon its donor.
>
> . . .

> *It is peculiarly fitting* that Dr. Mead should thus recognize Middlebury College, an institution so peculiarly a part of his native state and his personal environment, *for the reason that, as he sets forth in his letter of gift*, his great-great-grandfather was the first white settler in the Otter Creek valley, and brought the Bible, in all its sublime and uplifting beauty, to the peaceful Indians of the wilderness.
>
> The college, too, which has made for itself an enduring name and place in Vermont's institutions of education and uplift, must feel, through its faculty and student body, a peculiar pleasure in *accepting the Mead Memorial Chapel as an expression of native patriotism and appreciation* from a citizen who has been honored with the highest executive office in the gift of his state.
>
> The Herald, for its readers, heartily joins in the sincere approbation and praise which this gift will justly inspire.
>
> Complaint Ex. 1-017 (emphasis supplied). Complaint/Answer par. 109.

Response: Undisputed.

33. The Vermont Tribune's May 21, 1914 edition described Ex-Gov. Mead's gift to Middlebury College and reported:

> The new chapel . . . will seat 700 persons. A bronze tablet in the building will contain the following inscription: Mead Memorial Chapel, Erected in 1914 by John Abner Mead of the class of 1864.
>
> Complaint Ex. 1-019. (Emphasis supplied). Complaint/Answer par 111.

Response: Undisputed.

34. President Thomas wrote an article that was published in the April 8, 1915 edition of the Boston Evening Transcript, entitled MIDDLEBURY'S 100 YEARS, Old Traditions Preserved in New Chapel" in which he explained:

> The proposal of ex-Governor John A. Mead to erect a chapel for Middlebury in commemoration of the fiftieth anniversary of his graduation . . . in his letter of gift ex-Governor Mead had said, "I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this

> valley and the State of Vermont have always been distinguished." *He asked that the chapel to bear his name* might "rise from the highest point of the campus, as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth."
>
> The chapel will occupy a commanding location on the grounds on the highest crest of the campus, from which point there is a wide panorama of the Green Mountains and the valley of Otter Creek. On the architrave over the colonnade will be appropriately inscribed "The Strength of the Hills is His Also."
>
> Ex. 31 (emphasis supplied). Complaint/Answer par 112.

Response: Undisputed.

35. On May 28, 1914, John Mead wrote to President Thomas regarding arrangements for the groundbreaking and laying of the cornerstone for the Chapel. Dr. Mead requested a piece of sod to place in the Evergreen Cemetery in his family's burial lot and indicated, "We will have the little box with the bible which little John is to place in the stone all properly arranged." Complaint Ex. 2-001 to 2-002. Ex. 24-2. Complaint/Answer par 113.

Response: Undisputed.

36. On June 23, 1914, Middlebury College held a ceremony titled "Breaking Ground for the Mead Memorial Chapel and Presentation of the Corner Stone" during its commencement exercises. Ex. 25.

Response: Undisputed.

37. Ex-Governor John A. Mead, Class of 1864, gave the speech for the "Breaking Ground and Presentation of the Corner Stone," which he concluded with:

> On this date, *I wish to break the ground and place the corner stone for this Memorial Chapel, with the hope and prayer that there shall be a*

> *sacred duty resting upon each, to make this Holy Temple, so soon to be erected, an instrument of great good to those of this generation and to those who may follow after,* and that our Alma Mater may be favored by steadily increasing numbers and with ample means for the noble work which will devolve upon her, and all of which she will attempt so willingly, so courageously and so faithfully.
>
> Ex. 27 (emphasis supplied). Complaint/Answer par 115.

Response: Undisputed that Mead gave such a speech. Ex. 27 is a marked-up draft of written remarks by Mead for the event, the text of which speaks for itself.

38. The Rev. James L. Barton, D.D., LL.D., Class of 1881 delivered the "Acceptance in Behalf of the Trustees" in which he stated:

> *I am honored* in being permitted, *upon behalf of the trustees of Middlebury College, to accept* from the hands of one of their number, a graduate of the College and a revered citizen of this commonwealth, *this corner stone and that for which it stands, namely, a fitting chapel to be erected upon this site to embody and represent and perpetuate the religious life of this College.*
>
> *It is doubly gratifying to me, as it is to the Board of Trustees, that this building, as a memorial, will bear the name of one so long and so honorably connected with this institution and who in the state and nation has always upheld and promoted true piety and civic and national righteousness.*
>
> . . . Today we see the *religious ideals of our forefathers* emancipated and exalted to this loftier position and *embodied in a structure worthy the College and its resplendent history*. Here upon this hilltop it will, by the outlines and symmetry of its architecture, proclaim that this College believes in God, in the supremacy of righteousness, in the creation of a safe, sane and just society, the triumph of justice, the transcendent worth of character, the reality of the unseen, and in the immortality of the soul.
> . . .
> *This chapel will provide for the generations of students and faculties of this college that to which the other buildings cannot minister*. To this

> place all will turn in order to experience the reality of the unseen, to satisfy the thirst of the soul for God.
>
> . . .
> *We then, the Trustees of this College, on behalf of ourselves and our successors, in the name of the generations of students it will serve, in full recognition of the supreme importance of such a religious center to the life of the institution, and in loving memory of him whose name this structure is to bear, gratefully accept at your hand this Chapel as we pledge ourselves to safeguard to the limit of our capacity the gift and the ideals it is intended to perpetuate.*
>
> Ex. 28 (emphasis supplied). Complaint/Answer par 116.

Response: Undisputed that Barton gave such a speech. Ex. 28 is a marked-up draft of written remarks by Barton for the event, the text of which speaks for itself.

39. Prof. Charles B. Wright gave an "Address in Behalf of the Faculty" which he ended with the statement:

> Such an embodiment should this structure be…a chapel whose very lines, I trust, as they rise upon this summit, may prove for us all in the years to come a compelling call to goodness; whose very atmosphere, I trust, may dispose our hearts to praise – shall be but a fit expression, a symbol in stone, of the mingled strength and beauty of the Middlebury life.
>
> The Faculty thank you, Governor Mead, from profoundly grateful hearts. You have bodied forth our dream of years; you have given to an airy nothing a local habitation – and not the least of our pleasure is the thought that through all the days to be it will bear your honored name.
>
> Ex. 29 (emphasis supplied). Complaint/Answer par 117.

Response: Undisputed that Wright gave such a speech. Ex. 29 is a draft of written remarks by Wright for the event, the text of which speaks for itself.

40. The Cornerstone for the Mead Memorial Chapel was laid at the

Groundbreaking Ceremony held on June 23, 1914, where John Abner Mead's namesake, his 3-year-old grandson John Abner Mead Hinsman ("Little John"), placed his small Bible and family tree back to original settler Colonel James Mead into a box inside the Mead Memorial Chapel Cornerstone. The Ceremony was widely reported on in the press. Ex. 30. Complaint/Answer, Complaint Exs. 2-032 to 037.

Response: Immaterial.

41. Exhibit 26 contains five photographs of the Groundbreaking Ceremony including photos of Mead's grandson "Little John." Ex. 26. Complaint/Answer par 120.

Response: Immaterial.

42. The Mead Family Bible, held by President Thomas at the Groundbreaking ceremony photographed above, has been passed down through the generations of the Mead family and resides with Mead family members who live in Vermont. Exs. 26 & 48.

Response: Immaterial.

43. On December 18th, 1914, Middlebury College's Board of Trustees resolved to go forward with construction of the "Mead Memorial Chapel," evident in the following meeting minutes:

> "On motion, duly seconded, it was Resolved that the College forward with the construction of the Chapel with the understanding that $60,000 – would be contributed by Dr. Mead, the balance estimated at about $1,000 – to be contributed by the College."
>
> Ex. 5.

Response: Disputed that the Trustees resolved to construct the "Mead Memorial Chapel": undisputed that they resolved to proceed with "construction of the Chapel."

44. On January 13th, 1915, John Abner Mead wrote an acceptance letter to the Trustees of Middlebury College agreeing to pay $60,000 if the College agrees to complete the chapel:

> "I agree to furnish funds for the discharge of this contract and for the expenses connected with the erection of this chapel, to the amount of $60,000, as may be required during the construction and in accordance with the terms of the above contract, binding myself, my heirs and my assigns as above specified. It is agreed on the part of said Trustees that they are to complete said chapel, making it complete in every way, as to grounds, furnishings, etc., for the purposes of a college chapel, as voted at the meeting of the Trustees of said college held in New York City Dec. 18, 1914, and as defined in correspondence between the president of Middlebury College and myself."
>
> Ex. 6.

Response: Undisputed, except that the above reproduces only a portion of Ex. 6.

45. On 2/22/1915, Pres. Thomas sent a letter to Vermont Marble Co. to get a quote for the change to the plans requested by Mrs. Mead regarding pilasters and windows. Ex. 7.

Response: Undisputed.

46. On 2/24/1915, Rogers responded with a quote for $1,031 for the changes to add windows and pilasters per Mrs. Mead's request. Ex. 8.

Response: Undisputed.

47. On February 27th, 1915, John Abner Mead offered to pay an additional $1,031 to purchase and install the windows and pilasters if the Trustees agreed to finish the chapel as agreed and to install a $5,000 pipe organ:

> "Mrs. Mead and myself agree to have the windows in the chapel (two on either side) and to have the ten pilasters (five on either side), same to be built in accordance with the original plans shown in photo number 1 as to bases and caps and width, and we are to pay $1031 for the same in addition to the original gift of $60,000. The trustees agree to finish the chapel as agreed and to instal[l] a pipe organ to cost at least $5000."

Ex. 9.

Response: Undisputed.

48. On March 1, 1915 Thomas wrote to Trustee Partridge regarding approving Mead's offer and also on March 1, 1915, wrote to Rogers authorizing the $1,031 changes. Ex. 10 and 11.

Response: Undisputed.

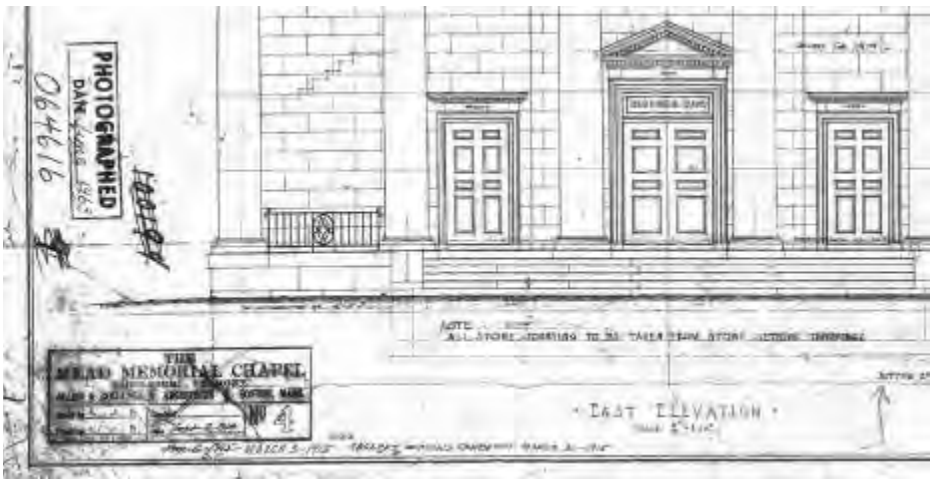
49. The Mead Memorial Chapel architectural plans bearing final date of March 31, 1915 which incorporated the final change of the windows and pilasters, are the "plans and specifications" which were approved by Mead. Each page of the plans is labeled "The Mead Memorial Chapel" Ex. 14, 15, 16, 17. See for example Ex. 14:

Ex. 14.

Response: Disputed that the March 31, 1915 plans are the "plans and

specifications" which were approved by Mead. Mead's May 1914 gift letter indicated that he would "bind [him]self and [his] estate" to provide funds toward the erection of a chapel upon the Trustees "secur[ing] appropriate plans for its erection which shall meet with my approval." Exh. D. Mead wrote to the Trustees and bound himself and his heirs to supply $60,000 on <u>January 13, 1915</u>, "[i]n consideration of the contract" with Thomas Rogers for erection of the chapel "in accordance with plans and specifications of Allen & Collens, architects." Exh. X. Any plans reviewed and approved by Mead before he bound himself would have been created prior to January 13, 1915. Otherwise, undisputed and immaterial.

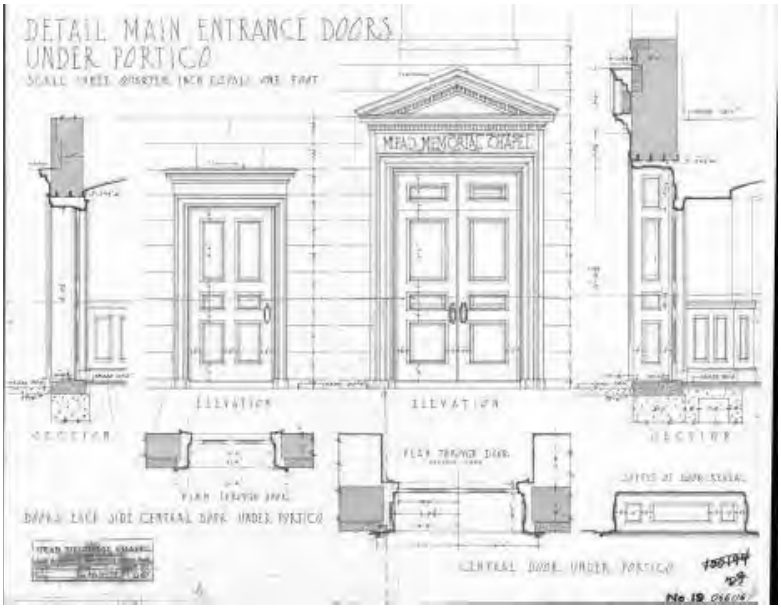
50. Exhibit 14 are the plans for the East Elevations – Main Entrance of the Chapel. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico:



Ex. 14.

Response: Undisputed and immaterial.

51. Exhibit 15 are the plans for the Detail Main Entrance Doors under the Portico. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico. See Ex. 15 immediately below:



Response: Undisputed and immaterial.

52. A closeup view of the detail of the Mead Memorial Sign on Exhibit 15 reveals the specifications of material: "THIS FRIEZE FROM BEST CLEAR WHITE PINE", the wording of the sign: "MEAD MEMORIAL CHAPEL", that they will be incised letters with detail to follow, and of course the exact measurements and specific location to affix the sign to:

Ex. 15.

Response: Undisputed and immaterial.

53. On April 14th, 1915, Middlebury College's Board of Trustees accepted John Abner Mead's offer to add $1,031 and the College will buy a $5,000 pipe organ, evident in the following meeting minutes:

> "Voted, that the Trustees accept with gratitude Dr. Mead's proposal to add $1,031 – to the gift of the Chapel, and agree to install therein a pipe organ to cost $5,000 – "

Ex. 12.

Response: Undisputed.

54. On June 21, 1915 Dr. Mead sent an additional Offer Letter to President Thomas pledging an additional $7,000 for a Chime of Bells stating:

> "If acceptable to the members of the Board of Trustees, Mrs. Mead and I would be pleased to add a chime of bells to our gift of the Mead Memorial Chapel."

Ex. 18.

Response: Undisputed.

55. Dr. and Mrs. Mead's addition gift of a Carillon of Bells was installed in the Chapel tower. There were eleven bells, the largest weighing 2500 pounds and the smallest 275 pounds. Each bell bears the inscription:

> "Presented to Middlebury College by John Abner and Mary Sherman Mead."
>
> "Ring in the valiant man and free, The larger heart, the kindlier hand; Ring out the darkness of the land, Ring in the Christ that is to be."
>
> Complaint/Answer par 125. Complaint Ex. 3-041 & 3-042. Ex. 23.

Response: Undisputed.

56. On June 23rd, 1915, Middlebury College's Board of Trustees gratefully accepted John Abner Mead's offer to add the Chime of Bells, evident in the following meeting minutes: "It was voted that the gift of Mr & Mrs Mead be gratefully accepted." Ex. 19.

Response: Undisputed.

57. The entire cost of the Chime of Bells was paid directly by Mead to Meneely Bell Company in the amount of $6,960 in December 1915. Ex. 22.

Response: Undisputed.

58. The construction of the Mead Memorial Chapel proceeded over the next two years, during which time Dr. Mead attended meetings of the Mead Memorial Chapel Building Committee in Middlebury, met with architects, approved project designs, controlled the budget, and provided credit and payment for all labor and materials. Ex. 37. Complaint/Answer par 122.

Response: Undisputed except as to the characterization of the Chapel as the "Mead Memorial Chapel"; disputed to the extent this statement suggests that the name was an essential element of the gift or building.

59. Besides the costs of the Chapel building itself, Dr. Mead contracted and paid for a $5,000 pipe organ, $1,031 for Pilasters, and $1,559.39 for pews. Complaint/Answer par 123.

Response: Immaterial.

60. The Mead Chapel was the work of Allen and Collens of Boston. It draws freely upon the vocabularies of the American classical styles of the 18th and 19th centuries in its translation of the traditional New England meeting house into marble. Thus, one finds a Greek Revival temple front, Georgian doors and windows, and a Federal tower. Above the colonnade is inscribed a quotation from Psalm 95:4, "The strength of the hills is His also." Within the building is a beautiful Georgian-inspired paneled sanctuary. Complaint/Answer par 126.

Response: Immaterial.

61. As the College grew, changes were inevitable. The balconies were added in 1938 (with the consent of Mead's daughter, Mrs. Carl Hinsman, see Exhibit 46), increasing the seating capacity to 715. The original organ was replaced in 1971 by the large Gress-Miles organ. The tower now holds a wonderful 48-bell carillon, cast and tuned in France from the original bells and other sets. It is played regularly. Seven of the original eleven bells were recast and reinscribed with Mr. and Mrs. Mead's presentation inscription and Bible verse so that each of the original eleven

Bells remain as they were originally inscribed with Dr. & Mrs. Mead's name on each bell. Ex. 23. Complaint/Answer 130.

Response: Undisputed.

62. President Thomas would later recount while Eulogizing Governor Mead at his funeral in 1921:

> For a year and a half we worked together in the consideration of plans and details and *the result was* a structure which a professor of Yale College pronounced the other day *one of the most beautiful buildings in North America*. Stately, reverent, graceful, combining the classic beauty of ancient Greece, the chaste dignity of our Puritan fathers, and the mystic impressiveness of the early Christian builders, its daily assemblies make subtle impressions on the youth who gather there speaks to them without other voice of "the light that never was on land or sea."
>
> Complaint Exhibit 8-034 to 8-035 (emphasis supplied). Complaint/Answer par 129.

Response: Undisputed.

63. The Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916 during which Dr. Mead made a Presentation Speech, recalling his grandson's role in the Groundbreaking and Setting of the Cornerstone two years earlier, when at 3 years old, "Little John" placed his Bible and family tree in the cornerstone:

> With the labor of love and devotion all complete, it is with great pleasure and an honor that I, through him who assisted me some two years since "in removing the soil" for the "setting of the corner stone", and who placed under the same his token of love, - his Bible and a short history of his relation to those who made this Temple possible; as I state, it is with pleasure, that through him, I may present to you, Doctor Brainerd, former President of this College, the keys to the Mead Memorial Chapel, - and may the Kind Providence who governs all our efforts for the greatest good and happiness of his children, give you all strength and wisdom, - that your and our fondest and most extravagant anticipations

of this day may be more than realized, in the years that are to come.

Ex. 33. Complaint/Answer par 131.

Response: Undisputed that the Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916, during which Dr. Mead made a presentation speech. Further undisputed that Ex. 33 is a marked-up draft of Mead's speech, and that the foregoing text appears in that draft.

64. Mead's speech was followed by "Little John," now 5-years, presenting the Keys to the Mead Memorial Chapel to the College Trustees. Complaint Ex.4-011. Complaint/Answer par 132.

Response: Immaterial.

65. Dr. Brainerd, Former President of Middlebury College accepted the Keys on behalf of the Trustees and stated the following in his acceptance speech:

> Doctor Mead:-
>
> I esteem it a great privilege to appear in behalf of the President and Fellows of Middlebury College and accept publicly, your gift of this beautiful sanctuary, that we have this day met to dedicate to the service of Almighty God. For many years, especially since the old chapel proved too small to hold even the half of our students, it has been the fond hope and the earnest prayer of the friends of the College, that in God's providence there might appear a man of the religious fervor and the financial ability requisite to meet this urgent need for a larger and more suitable edifice. Today our ardent hopes are realized; our prayers are graciously answered. *And to me it is especially gratifying that our benefactor is my beloved classmate, one to whom I am bound, now for fifty six years, by ties of the warmest friendship*.
>
> During these many years (which have passed with us so swiftly) the Heavenly Father has been pleased to grant you strength of mind and body, and varied opportunities for doing great service to your fellowmen. How well I recall the patriotic zeal with which, while yet a student in

> college, you enlisted in the war to maintain the union of these United States. [Unreadable word] later, as a well-trained physician, you served in another war—against the diseases that distress mankind; and by sound judgement and kindly sympathy achieved an enviable reputation in his beneficent calling. Still later your executive talent enabled you to build up a great industry, whose products are now used in every civilized portion of the world. More recently you served the commonwealth of Vermont, in the highest public office, with business sagacity, with fidelity, and with honor. *But the noblest deed of all---the one for which future generations will hold you most in grateful remembrance*---is the erection of this spacious and attractive chapel, where the religious life of the College may find fitting expression and the stimulus of hallowed associations.
>
> With grateful hearts, *dear brother*, we accept your generous gift: and we assure you of our earnest purpose so to utilize its opportunities for religious culture, as to promote the growth of earnest Christian character in the students of Middlebury College.---*Here for generations yet to come the melodious bells of this Chapel shall sound out over the Campus and the Town* the strains of Christian music, that from childhood have awakened in our souls the sentiments of faith and courage and earnest living.
> . . .
> The lord reward you, dear friend, for all that you have done, or may yet do, for the good of others; and may the years of earthly life that still remain be your best years, filled with blessed memories and abiding peace.
>
> Ex. 34. Complaint/Answer par 133.

Response: Undisputed that Brainerd delivered a speech at the Mead Memorial Chapel Dedication Ceremony. Further undisputed that Ex. 34 is a draft of Brainerd's speech, and that the foregoing text appears in that draft.

66. The 1916 Kaleidoscope, the Middlebury College Annual was dedicated to Governor Mead with a photo of the Chime of Bells and a poem "The Chapel Bell." Ex. 36.

Response: Undisputed.

67. On September 19, 1916, President Thomas sent invitation to Dr. Mead and his family to attend the first assembly of students at the Mead Memorial Chapel:

> We have our opening Thursday morning of this week at nine o'clock. All the faculty and students will be together in the new chapel and I am expected to make an opening address. I am sure it would do much to this first assembly of students in the Mead Memorial Chapel if you and Mrs. Mead could be present, especially if you could bring little John and his father and mother. I know you are very busy, and of course I would not impose it as a duty, but if you can run up we will all be very glad to see you.
>
> (Complaint Ex. 4-027). Complaint/Answer par 135.

Response: Undisputed.

68. President Thomas' Address to the first assembly of students in the Mead Memorial Chapel on September 19, 1916 began:

> At the opening of the 117th year of Middlebury College and at this first student assembly in this stately and beautiful chapel, whose dignity and impressiveness must move us all to serious and earnest thought, I wish to sound a note of progress in the things which make up the inner life of a college. . . . Surprise as well as admiration is expressed by every visitor to this Mead Memorial Chapel . . . They had not imagined that such structures had been erected for any college in Vermont.
>
> (Complaint Ex. 4-032). Complaint/Answer par. 136.

Response: Undisputed.

69. Middlebury College's website explains the import and significance of the Mead Memorial Chapel (now referred to as the "Middlebury Chapel"), which symbolizes the aspirations of the College, just as Governor Mead intended:

> "This beautiful white marble structure rises on the highest point of the campus, its spire symbolizing the aspirations of the College."
>
> "The light which shines here nightly is seen in the entire valley. Over the portal are carved the words from Psalm 95:4, "The Strength of the

Hills is His Also.'"

(Complaint Ex. 6-001). Complaint/Answer par. 138.

Response: Immaterial.

70. A Middlebury College Video which is contained on the college's website: Mead Chapel Turns 100, June 15, 2016 states:

> Middlebury College celebrated the Mead Memorial Chapel's Centennial in 2016 with a video production entitled "Mead Chapel Turns 100," featuring Middlebury College's Glenn Andres, Professor Emeritus, History of Art and Architecture, in which he details the history, symbolism and importance of the "Mead Memorial Chapel" to Middlebury College, stating as follows:
>
> *"But the Chapel has continued to function in accord with President Thomas' larger vision of it as the college's meeting house.* Of course it remained a place for Sunday services, for weddings, but also for college ceremonies, convocation, baccalaureate and until the completion of the Center for the Arts, it was also the main venue for the college concert series."
>
> *"The monumental centerpiece and aesthetic keystone for the college for 100 years, Mead Chapel has remained an important symbolic and central venue for college activities and traditions."*
>
> Middlebury College Video: Mead Chapel Turns 100, June 15, 2016, Glenn Andres, Middlebury College Professor Emeritus, History of Art and Architecture, 2016, (emphasis supplied). https://www.middlebury.edu/announcements/news/2016/06/video-mead-chapel-turns-100
>
> (Complaint Exhibit 6-012.) Complaint/Answer par.139.

Response: Immaterial.

71. In addition to the value of the building itself, Middlebury College Trustee and Treasurer John Fletcher felt that the gift toward construction of the chapel would be helpful in securing financial support for Middlebury from the State

Board of Education, as referenced in his correspondence concurring with the acceptance of Mead's offer to build the Mead Memorial Chapel. Complaint/Answer par 141.

Response: Immaterial.

72. Even the Middlebury Campus newspaper reported on the gift of the Mead Memorial Chapel:

> . . . Every one felt that a gift of great significance and importance had come at a most opportune moment. . .
>
> And so Middlebury starts out on the road of progress once more, or rather continues steadily to advance despite discouragements and apparent setbacks. After the completion of the General Education [sic.] Board fund of $200,000 and the Carnegie report, it looked as if progress was at an end for a time, and that the college would be forced to battle to keep even. *Governor Mead has changed all that. His gift will inspire every friend of Middlebury to courage and optimism, and everyone will believe that still other gifts and yet more notable advance are to be the order of the day.*
>
> Ex. 1-018 (emphasis supplied).

Response: Undisputed.

73. After the Mead Memorial Chapel was built in 1916, Dr. Mead provided President Thomas with photos and other materials documenting the construction of the Chapel so President Thomas could create a booklet which, according to Mead, "might stimulate some of our friends to pattern after Mr. Hepburn's example and give you an elegant dormitory for the girls or possibly something else which you might more desire at this time." Complaint/Answer par.145.

Response: Immaterial.

74. Mead offered to pay the cost of publication of the booklet and wrote to President Thomas, "To be frank with you, I have special hopes that it may be productive of great good to our college, as I do feel that others can be made specially interested in our Alma Mater, and that the full history and description of the Chapel should induce others to lend a helping hand." Complaint/Answer par 146.

Response: Immaterial.

75. In September of 1916, Pres. Thomas ordered 250 copies of the "Hymnal of Praise" with the inscriptions "MEAD MEMORIAL CHAPEL," stamped on the covers in gold, as evident here:

> "I wish now to order 250 copies of the Hymnal of Praise, cloth binding, with MEAD MEMORIAL CHAPEL stamped in gold on the covers."
>
> Ex. 39.

Response: Immaterial.

76. In December of 1916, John Abner Mead agreed to pay for Hymn Boards to be installed in the Mead Memorial Chapel and delegated the choice of the design to Pres. Thomas:

> I have read your letter with interest and should be more than willing to leave the judgement in this matter to yourself, though I must confess to you, as you state, that at the same money I should prefer the simpler board. . . . P. S. Kindly send bill when the same is obtained."
>
> Ex. 40.

Response: Immaterial.

77. John Abner Mead made financial contributions to Middlebury College during his lifetime in addition to erecting the Mead Memorial Chapel. Ex. 40, 41 (

$1,000 in 1918 to the Endowment Fund). He left no provision for Middlebury College in his Last Will and Testament. Defendant's Exhibit GG.

Response: Disputed that Mead "erect[ed] the Mead Memorial Chapel." Otherwise, immaterial.

78. Dr. Mead also made substantial financial donations to other charitable causes during his lifetime, including the establishment of a youth center facility open to all faiths which Mead named "The Community House." Ex. 49. Complaint/Answer par 86, 87. Defendant's Ex. FF (Warranty Deed). Mead's Will provided an additional $50,000 for continued maintenance of the Center after his [death]. Complaint/Answer par 88. Def's Ex. GG.

Response: Undisputed, except that the $50,000 bequest for the Mead Community House was conditioned upon officials of the Congregational Church "furnish[ing] an equal amount annually for the same purpose," with failure of such condition triggering reversion of the bequest to Mead's heirs.

79. Mead's Last Will and Testament also bequeathed $50,000 to the Congregational Church of Rutland for the maintenance of other Congregational churches in Rutland County. Complaint/Answer par 89. Def's Ex. GG.

Response: Undisputed.

80. Dr. John Abner Mead died of pneumonia at his home in Rutland on January 12, 1920. He was 78 years old. His wife, daughter, grandson, and son-in-law survived him. Complaint/Answer par 90. Def's Ex. GG.

Response: Undisputed.

81. At Governor Mead's funeral on January 16, 1920, Middlebury College President John M. Thomas gave the Eulogy which was published in its entirety in the Middlebury Register the next day and stated in part:

> *As to his gift of the Mead Memorial Chapel, I can not do better than to quote from the letter in which he announced his purpose.*
>
> [Full text of Mead's Offer Letter]
>
> *This afternoon, as we pay here our tribute of honor and affection, the chimes which bear his name on every bell are sounding out* the hymns I loved and which he chose to hear the first time they were played, "Nearer my god to Thee", "Lead Kindly Light", "God be with you 'till we meet again". *The dedication of the Chapel is complete – The Mead Memorial Chapel.*
>
> So our friend built his empire in our midst. If another could have built it, another did not. He loved his work and he gave his all to it to the very last. *He carved his name high in the marvelous roll of Vermont's men of achievement, and he earned his rest.*
>
> Ex. 8-034 to 8-035. Complaint/Answer par 137.

Response: Disputed that the foregoing text accurately reproduces the text of the cited exhibit, and that the "full text" of Mead's Gift Letter appears in that exhibit. Undisputed that the foregoing represents a portion of the text printed in the cited Middlebury Register article.

82. In 1920, Middlebury College's Board of Trustees paid tribute to Mead, evidenced in their meeting minutes:

> "*In the death of Ex-Governor John Abner Mead of the Class of 1864 Middlebury College has lost one of its most distinguished alumni of the State of Vermont, and one of the most helpful of its Trustees and most generous of its benefactors.* Governor Mead was a notable example of those successful men of our nation who have pushed their way upward against great obstacles and by force of mind and will and character succeeded to positions of great responsibility and usefulness in the

> industrial world and in public life. His career as a physician was honorable and highly useful. Turning to business he became one of the masters of industry in New England. *In the gift of the Mead Memorial Chapel he endowed the college with one of the most beautiful buildings on any campus in America, which will speak to coming generations of his wisdom and foresight in benevolence and symbolize the strength of character of its donor."*
>
> Ex. 42.

Response: Undisputed.

83. John Mead was buried at the Mead Family plot in Evergreen Cemetery in Rutland with his ancestors, including Colonel James Mead and Mercy Holmes Mead, whom John Abner Mead had reinterred there from the West Rutland Cemetery in 1895 and where he had replanted the sod from the Mead Memorial Chapel Groundbreaking Ceremony in June 1914. Complaint/Answer par 92. Ex. 24-2.

Response: Immaterial.

84. John Abner Mead's headstone records his service in the Union Army, his professional life as "a beloved physician in Rutland for 21 years," and his many offices held including his Governorship of course. His headstone contains the final engraving:

> "A CHRISTIAN AND PHILANTHROPIST"
>
> Complaint Ex. 8-008. Complaint/Answer par 93.

Response: Undisputed.

85. On June 14th, 1920, Pres. Thomas wrote to Carl B. Hinsman about "completing" the west end of the Chapel with marble, as it had been built of wood to save costs when the Chapel was erected by Mead and stating:

> "My thought is that it is something that ought to be borne in mind to be done at the proper time and that measures should be taken to insure that the Chapel will be preserved as a memorial to Dr. Mead."
>
> Ex. 43.

Response: Immaterial.

86. On April 29th, 1931, Carl B. Hinsman wrote to Pres. Moody about repairs to the spire, and expressed strong desire that it be restored:

> "Mrs. Hinsman and I have studied these pictures very carefully and we would really feel it quite a calamity of the spire was removed entirely. On referring to the booklet which was gotten out and presented to Dr. Mead giving an account of the design, erection and dedication of the Building, considerable stress was laid from these several standpoints on the fitness and beauty of the spire as a part of the architectural scheme. The Building occupies such a commanding position on the Campus and in the landscape surrounding it that it would be indeed regrettable if the spire should be abridged or done away with.
>
> Mrs. Hinsman feels quite strongly that the spire should be restored to its original condition, and from your description of the situation, it would be less of a task to do that than it would be to remove it entirely. Thanking you for bringing the matter to our attention…"
>
> Ex. 44.

Response: Immaterial.

87. On May 8th, 1931, Pres. Moody wrote to Carl B. Hinsman saying the matter was settled, and that they were to proceed with repairs to the spire:

> "On receipt of your letter of April 29th, I told Mr. Fritz, our Business Manager, that we would look upon the matter of the spire of Mead Chapel as settled, and we are going to proceed with the repairing of the spire. … I feel that it is like talking of gilding a lily to talk of improving the Mead Chapel, for it is by all odds the most harmonious building we have on the campus and the most beautiful."
>
> Ex. 45.

Response: Immaterial.

88. On July 20th, 1937, Pres. Moody wrote to Mrs. Carl Hinsman asking for consent to add the galleries as balcony seating, a copy of which is as follows:

> My dear Mrs. Hinsman:
>
> Wednesday morning of last week we began the work of putting galleries in Mead Chapel, and the scaffolding is already up and active work on the walls has begun.
>
> The final estimate as detailed is $11,038.59. It will cost rather more than we at first expected. I hope very much that you will feel that I am only sending this information because of your request for it, and even more strongly I hope you will not feel that we submitted the idea of galleries to you with any thought that it was in any way a suggestion or a plea for help. The gift of the Chapel was a very generous one and no one can estimate the contribution it has been over the years, both from the physical as well as the spiritual standpoint.
>
> The only point was that the college had so outgrown all its quarters that something had to be done, and we were not willing to consider changing our practice in respect to Chapel attendance, so great has been its value. And we did wish to have your consent to any change made in a building given to the college by your father.
>
> In exactly the same way, when we had outgrown the Starr Library, which has given the college by the Starr family, and had in hand money for its enlargement, we went to Dr. Starr for permission to make the enlargement. He not only consented to our plans, but refused to allow another donor to give anything toward the construction, saying that since it was a Starr Library, he did not wish any but star money to go into the building. The amount was more than he wanted to lay out in one payment so he spread it over several years, reimbursing the College in partial payments. We had contemplated a change in Hepburn hall, but there again I would not be willing to go ahead without the consent of Mrs. Hepburn.
>
> Ex. 46.

Response: Immaterial.

89. On April 2nd, 1985, the re-inscription of 7 of the original 11 bells which

were recast in 1985, were ordered with Mead's gift and verse:

> "Following our telephone conversation of March 28, 1985, I write to confirm that the following inscription should appear on the first eleven bells:
>
> GIFT OF GOVERNOR MEAD AND MARY SHERMAN MEAD PRESENTED TO MIDDLEBURY COLLEGE BY JOHN ABNER AND MARY SHERMAN MEAD
>
> A.D. 1915
>
> RING IN THE VALIANT MAN AND FREE THE LARGER HEART THE KINDLIER HAND RING OUT THE DARKNESS OF THE LAND RING IN THE CHRIST THAT IS TO BE"
>
> Ex. 47.

Response: Immaterial.

> 90. On May 9th, 1908, Pres. Thomas wrote to D. K. Pearsons:
>
> "I hope you will see your way to give for education in your native State. We should have at least $250,000.00 for a Woman's College, and if you will give me a start, I will set out to get it. But I plead with you for $50,000.00 now, to meet the pressing need of a building for our girls to live in, some central place to gather for their social life…
>
> Marble is cheap in Vermont, and for the sum named we will erect a building that will do you lasting honor, and will be a blessing to hundreds of girls who otherwise would be without opportunity of higher education."
>
> Ex. 50, p.1-2.

Response: Immaterial.

> 91. In September 1908, the Middlebury College Bulletin volume III reads:
>
> "THE D. K. PEARSONS *Pearsons Hall* BUILDING AND ENDOWMENT FUND
>
> Ex. 50, p.5-7.

Response: Immaterial.

92. In 1909, Middlebury College Board of Trustees accepted Dr. Pearsons' offer, as seen in the following meeting minutes:

> "Voted that the Board engage in an active effort to meet the conditions of the offer of D. K. Pearsons to give $25,000 – provided that $75,000 – additional be raised, and that the matter be informed to the President-elect with favor."
>
> Ex. 50, p.8.

Response: Immaterial.

93. On February 9, 1910, Pres. Thomas wrote to D. K. Pearsons:

> "Will you give me $50,000 if I will raise $150,000 additional? I want it to build a dormitory for boys, and to provide more recitation rooms. If you will give me until July 1, 1911, I know I can get the money, and I can have the dormitory ready for that fall. I am in better shape to get $150,000 now than I was to get the $75,000 when you made the offer of $25,000. … *We want to call it Pearsons Hall, if you will let us."*
>
> Ex. 50, p.12-13.

Response: Immaterial.

94. On February 9, 1910, Pres. Thomas wrote to John G. McCullough:

> "But if you could make the "McCullough Gymnasium Fund" $25,000, on condition that I secure a like sum from other sources, I believe I could get the balance for a "McCullough Gymnasium" before next commencement."
>
> Ex. 51, p.2-3.

Response: Immaterial.

95. On March 4, 1910, John G. McCullough wrote to Pres. Thomas:

> "As to your second suggestion, you seem quite confident of being able to raise before Commencement from other sources the sum of $25,000. to

> enable you to erect a fitting Gymnasium for the College, provided I would give a like sum for that purpose, thus making your Gymnasium fund at least $50,000. You may count of me for the second $25,000. upon the conditions stated in your letter."

Response: Immaterial.

96. On June 25, 1910, Pres. Thomas wrote to John G. McCullough:

> "I was able to announce that Alumni and friends have pledged $25,000. Thus meeting the conditions of your promise of an equal sum made on the…gymnasium fund of $60,000."
>
> Ex. 51, p.4-5, Ex. 51, p.11.

Response: Immaterial.

97. On May 25, 1911, Pres. Thomas wrote to John G. McCullough referencing the "McCullough Gymnasium." Ex. 51, p.16.

Response: Immaterial.

98. By undated letter, Mrs. James M Gifford wrote to The President and Fellows of Middlebury College indicating:

> It is my intention to build a hall in honor of my beloved husband for the use of the boys of Middlebury College, to be known as "THE JAMES M. GIFFORD MEMORIAL HALL for BOYS", the construction of which shall according to his wishes follow the plan used by Mr. A. Barton Hepburn
>
> Ex. 53, Page 1

Response: Immaterial.

99. On June 10, 1939, at the Board meeting, the Board read the offer letter from Mrs. Gifford reviewed its report and voted that President Moody be authorized to communicate the Board's acceptance. Ex. 53, p.6-7

Response: Immaterial.

100. On July 20, 1939, Mrs. Gifford wrote to the President and Fellow of Middlebury College, stating:

> As I advised you in my letter of June 9th 1939 it is my intention to build a hall for the use of the boys of Middlebury College, to be known as quote the James M Gifford Memorial Hall for boys. UN quote I now desire to make a formal agreement with the college for the erection of this building
>
> I hereby request you to permit the erection of this building on the land belonging to Middlebury College north of Meade memorial Chapel, in a situation corresponding to the location at Hepburn hall South of the Chapel, the building to be erected of native Vermont limestone and the plans to correspond generally with the plans of Hepburn hall but with such minor variations as may be directed by the college authorities and approved by me, or, may be desired by the college authorities and approved by me, or in the case of my death, my personal representative.
>
> Ex. 53, page 8.

Response: Immaterial.

101. On July 20, 1939, The President and Fellows of Middlebury College acknowledged receipt of Mrs. Giffords offer:

> "…in receipt of your letter of July 20th 1939, in which you offer for yourself, your heirs, executors and administrators, to pay the cost of building and furnishing and equipping a hall for the use of the boys of Middlebury College, to be known as, "The James M. Gifford Memorial Hall for Boys", provided the college will permit the erection of the building on its land to the north of Mead Memorial Chapel in a situation corresponding to that of Hepburn Hall to the to the South of the Chapel.
>
> I have been authorized by the president and fellows of Middlebury College to accept this generous offer and to advise that the college hereby agrees that the hall may be erected at the place requested by you and in accordance with the plans as stated by you
>
> Ex. 53, p.10

Response: Immaterial.

102. On October 14, 1939, the Report of Middlebury College building committee of James M Gifford Memorial Hall for boys reads:

> "JAMES M. GIFFORD MEMORIAL HALL FOR BOYS. … As Mrs. Gifford intends to sign the building contract herself and requires that the plans and specifications must meet with her approval,"
>
> Ex. 53, p.11.

Response: Immaterial.

103. On October 31, 1940, the Board's Acceptance of the "James M. Gifford Memorial Hall for Boys" reads:

> "The graciousness and hospitality of this building are a symbol of the generous nature of his whose name it bears. … It is a fitting memorial to a life which exemplified all these virtues, simple but massive, harmonious yet strong. … We recognize that though only the name of James M. Gifford adorns this building, nevertheless into its stone and mortar has gone something more, - a lifetime's devotion, to one worthy of that devotion. This gift to the College which Mr. Gifford loved so greatly and served so long, so faithfully and so efficiently, is gratefully accepted, not only for its own sake, but for the sake of him in whose honor it stands and for your sake, Mrs. Gifford, who have so wonderfully preserved his name, along with the great names of the College, - Painter, Starr, McCullough, Mead, Hepburn, and now Gifford."
>
> Ex. 54.

Response: Immaterial.

104. Built of Vermont marble and placed on the highest point on campus as Dr. Mead directed, the "Mead Memorial Chapel" stands not only as the most dominant building on the campus, but has become an iconic feature of Middlebury's landscape, and has been featured in the College's promotional materials.

Complaint/Answer par. 4.

Response: Immaterial.

105. For more than a century, the Mead Memorial Chapel has been home to student performances, guest lectures, religious services, weddings, baptisms, funerals, and annual events like Convocation and Baccalaureate. Over the years, it has welcomed Academy Award winners, Nobel laureates, and pillars of art, business, and science for discussions, readings, and panels. Complaint/Answer par. 5.

Response: Immaterial.

106. In the early morning hours of Monday, Sept. 27, 2021, Middlebury College removed the wooden "Mead Memorial Chapel" sign, which hung in a niche above the entrance of the Chapel, identifying the College's house of worship and "Meeting House" for community gatherings for the past 105 years. Complaint/Answer par. 6.

Response: Undisputed that Middlebury removed the wooden "Mead Memorial Chapel sign on September 27, 2021.

107. The College did not issue a public statement in advance of the removal of the sign for "Mead Memorial Chapel." Complaint/Answer par. 7.

Response: Immaterial.

108. The College did not notify the Mead family nor seek their consent to alter the building, to remove the sign from the building or to remove the Mead name from the memorial chapel. Complaint/Answer par. 7.

Response: Immaterial.

109. In 1914, when Mead offered to erect a memorial chapel, the following named buildings existed to memorialize or honor donors or others who served the College as if detailed in Middlebury College Bulletin 1913-1914, Vol. VII, December, 1913, No. 4:

> Painter Hall - in 1810 Colonel Seth Storres of Middlebury gave to the corporation 30 acres of land upon which the first building of the college was erected in 1814 it was called at first "West College" but in 1846 was named Painter Hall in honor of Gamaliel Painter, one of the most generous patrons of the college and who had bequeathed all his property to the institution. It has been in continuous use since its erection and it's the oldest college building in Vermont. Id. at 99 & 117.
>
> Starr Hall - a large dormitory, was erected by the beneficence of Charles and Egbert Starr in 1861, and rebuilt in 1865, after a disastrous fire, by the same donors. Id. at 100 & 117.
>
> The Egbert Starr Library - the beautiful and convenient marble library now occupied was erected with funds bequeathed by Mr. Egbert Starr, and dedicated during the Centennial exercises of the College in July 1900. The cost of the building was $50,000, to which was added $5000 for its decoration and $5000 for the purchase of books by the son of the donor, Dr. M Allen Starr. Id. at 109.
>
> The Warner Science Hall - the large and convenient Warner Science Hall, was erected in 1901 through benefactions of the late Ezra J Warner, of the class of 1861. The building is a memorial of his father, Hon. Joseph Warner, formerly a resident of Middlebury, and a trustee of the college from 1850 to 1865. By the will of Mr. Warner the college has received a bequest of $25,000 for the care and maintenance of the hall, and for the purchase of supplies for the departments which it accommodates. Id. 111.
>
> The McCullough Gymnasium - in 1910 Hon. John G McCullough of Bennington offered to give $25,000 towards the erection of a gymnasium, and the alumni of the college completed a gymnasium fund of $50,000 at commencement of that year the building was dedicated at the commencement of 1912. Id. at 114.
>
> The Porter Athletic Field - the college has recently acquired a new athletic field, purchased and equipped at a cost of $10,000, the gift of a

friend. Id. at 115.

Pearsons Hall - a new building for women, was opened at the beginning of the college year in 1911. Id. at 118.

Battell Cottage – named for Hon. Joseph Batell of the Class of 1823, a large donor to the college, was enlarged in 1910. Id. at 118.

Plaintiff's Opposition to Motion to Dismiss, Exhibit 11 (Middlebury College Bulletin 1913-1914, Vol. VII, December, 1913, No. 4).

Response: Immaterial.

110. It appears that currently, Middlebury College has named more than 70 buildings on its campus for proper family names. Ex. 55.

Response: Immaterial.

Dated at Burlington, Vermont, this 5th day of August, 2024.

By: *\/s\/ Justin B. Barnard*
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23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
Plaintiff	)
v.	)
	)
The President and Fellows of	)
Middlebury College	)
Defendant	)

PLAINTIFF'S BRIEF REGARDING DAMAGES FOR BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., hereby responds to the Court's directive to specify the kinds of damages he intends to seek to recover for Defendant's breach of the covenant of good faith and fair dealing, and explaining the legal basis supporting the entitlement to recover such damages here. Plaintiff's Brief also references some of Plaintiff's Exhibits which were filed in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss, and hereby incorporates the same by reference.

MEMORANDUM

I. INTRODUCTION

While, as the Court noted, Governor Mead has been deceased for just over a century and obviously cannot be emotionally harmed by Middlebury's decision to remove the Mead name from the chapel, that does not foreclose the existence of compensatory and punitive damages resulting from Defendant's breach of the covenant of good faith and fair dealing implied in the Mead Memorial Chapel contract between John Abner Mead and Middlebury College.

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II. THE FACTS & CIRCUMSTANCES

The ultimate issue regarding the breach of the covenant of good faith and fair dealing is whether, in light of all of the facts and circumstances, Middlebury College acted in bad faith when it erroneously proclaimed that the Mead Memorial Chapel was named in honor of John Abner Mead and then engaged in its hypocritical public relations smear campaign to scapegoat Governor Mead and use him as a subterfuge to conceal the fact that Middlebury College was literally, a Eugenicist factory, for over 50 years, "espous[ing] inhumane policies that are uniformly condemned today," and teaching Eugenics principles until years after the atrocities of the Holocaust were fully known.

Middlebury College's vast involvement in the Eugenics movement was exponentially more significant than Mead's single public statement on the topic, and, the circumstances surrounding who the parties were and what their inter-relationships were, as well as their actual roles in the Eugenics Movement, are indeed before this Court because that evidence is essential to the Court's determination of the intent of the parties to the contract, the purpose of that contract, as well as to the Defendant's bad motive in the removal of the Mead family name from its Memorial Chapel.

Regardless of whether there was a breach of the express terms of the contract, Defendant breached the Covenant of Good Faith and Fair Dealing implicit in that contract, because Middlebury College's smear campaign against Governor Mead interfered with, completely frustrated, and caused the cancelation of Mead's essential purpose in erecting the Chapel: to memorialize his ancestors and honor them for their devotion to their Christian faith and as a symbol of the simplicity and strength of character of Vermonters. And furthermore, Defendant's breach was effectuated for a bad motive: to serve the selfish ends of the College's marketing team who used Governor Mead as a scapegoat, overemphasizing his role, and using him to create a smokescreen to obscure the vile history of Middlebury College as a racist and antisemitic institution.

Contrary to the Court's imposition of a 100 year time limit on the Mead name, Middlebury

College did not remove the Mead name from the chapel when or because 100 years had elapsed or because the name had been there "long enough" and it was now time to take the Mead name off the building. Instead, Middlebury College removed the Mead name, with no public process or even advance notice to the family, claiming that the Mead Memorial Chapel had been named FOR John Abner Mead and his wife, and then offering up Governor Mead as a symbol of its contempt and condemnation of Eugenics, while failing to even acknowledge in any way whatsoever, no less apologize for Middlebury College's vast and significant role in the Eugenics Movement.

To this day, Middlebury College has made no public apology for its monumental role in the Eugenics Movement in Vermont and beyond, despite training generations of Eugenicists and promoting Eugenics policies for more than a half century. In short, Governor Mead, has been sacrificed on the altar of public relations and used as a pawn to divert attention away from Middlebury College's abhorrent history and to absolve it of 50 years of Eugenic Sin by claiming to severe its only apparent "connection" to Eugenics by throwing its "fall guy," Governor John Abner Mead "under the bus."

This was a breach of the covenant of good faith and fair dealing because it interfered with the purpose of the contract: to honor and symbolize the Mead ancestors who settled and brought Christianity to the valley. Instead, Middlebury College ignored the truth because they were either inexplicably utterly ignorant of their own vial Eugenics history, which is frankly inconceivable given Middlebury College's world-renowned reputation, or they knew full well that they were misrepresenting the truth and falsely casting Mead into the role of an evil mastermind who orchestrated the entire Eugenics movement in Vermont as a subterfuge to hide the real mastermind, Middlebury College.

A. Middlebury College's Eugenics Curriculum 1895-1946

Middlebury College's vast Eugenics curriculum began even before the turn of the 19th century. For example, the 1895 Middlebury College Course Catalogue described the "Sociology" course of study, referencing Race Characteristics, Heredity, Pauperism, Insanity, Crime and Punishment:

> *Sociology.* — This course includes a study of Race Characteristics, Heredity, Environment, Education, Pauperism, Insanity, Crime and its Punishment, Hospitals, Prisons, and Almshouses. Lectures and readings. Two hours a week. PROFESSOR HOWARD.

Ex. 9, 1895 Middlebury Course Catalogue, p. 30.

The 1895 Catalogue also offered "Zoology," explaining the purpose of the course was to prepare the student to read "current literature relating to variation, heredity and other biological problems." Ex. 9, p.43-44.

By 1908, Middlebury College's Sociology course of study was described using the terms "regeneration" and "defectives and degenerates" in addition to referencing hospitals, almshouses (poor farms) and prisons:

> 11. *Sociology*
>
> A study of race characteristics, heredity, environment, subjective and objective regeneration, education, pauperism, defectives and degenerates, crime and its punishment, hospitals, almshouses, and prisons. Lectures and readings.
>
> Second semester; three hours a week. Required for Seniors.

Ex. 10, 1908 Middlebury Course Catalogue.

<u>It is interesting to note that Sociology was a required course for Seniors at Middlebury College in 1908, so all Middlebury College students would learn about "defectives and degenerates," the identical labels that Defendant condemns Governor Mead for using four years later in his 1912 Farewell Address.</u>

The Social Science Department continued to expand its Eugenics offerings and by 1913, "Philanthropy" was added to the curriculum and described as: "Dependents, defectives, and delinquents; heredity and environment in relation to these abnormal classes; their private and public treatment" as was "Rural Life" a study of the economic, social, religious conditions affecting country dwellers:

Courses of Instruction 55

SOCIAL SCIENCE

12. SOCIOLOGY. A

Basis of society; social evolution; social institutions; demography; social progress.

13. PHILANTHROPY. B

Dependents, defectives, and delinquents; heredity and environment in relation to these abnormal classes; their private and public treatment. (Soc. Sci. 2 or Econ. 1.)

14. RURAL LIFE. C

The economic, social, and religious conditions affecting the country dwellers in America, with special emphasis on conditions in New England. To be given in 1914-15. (Soc. Sci. 13, or any B course in Econ.)

Ex. 11, 1913 Middlebury Court Catalogue, p. 55.

In July 1913, Middlebury College President Thomas hosted the "Rural Life Conference," a week-long Eugenics conference held in connection with the regular summer session of Middlebury College. The object of the conference was to promote the "increasingly important county life movement" and included a week-long course of lectures in Rural Sociology. Ex. 1, Addresses given at the Rural Life Conference Middlebury College Middlebury, Vermont July 7 to 13, 1913.[1]

The 1914 Journal *Heredity* listed Middlebury College as one of 44 colleges and universities

[1] https://www.uvm.edu/~Eugenics/primarydocs/orrlcmc070713.xml

who taught Eugenics in its curriculum.[2] Ex. 13. By 1918, the term "Eugenics" had been introduced into the Middlebury College Course Catalogue describing the Genetics course of study:

12 (II) GENETICS. C

Theories of organic evolution; the principles of variation, selection, and heredity; the material basis of heredity; Mendelian inheritance and the application of its principles in animal and plant breeding and eugenics. Lectures, recitations, and assigned readings. (Permission of instructor.)

Ex. 15, 1918 Middlebury Course Catalogue.

In 1925, freshmen were required to take a mandatory course which included a lecture on "What Has Civilization to Expect From Eugenics." Among the topics students were expected to study were "Eugenics" and "Galton's Experiments and Observations." (Francis Galton, who coined the term "Eugenics," was an early proponent of the notion that "undesirable" people should be discouraged or prevented from having children.)[3]

During the 1945-1946 academic year, with full knowledge of the atrocities of the Nazi's systematic genocide of 6 million Jews in Europe, Middlebury College continued teaching Eugenics to its students, as it had for the past 50 years. The 1945-46 Middlebury College Course Catalogue continued to offer Eugenics in its Sociology course "Population" and in its Biology course "Genetics":

42.1 GENETICS* *Fall term*

A study of genic action and the physical basis of heredity in plants and animals, including some aspects of eugenics. (Biol. 11.1 and 11.2) 3 hrs. lect., 6 hrs. lab.—5 credits. *Lab. fee*, $5 Miss WRIGHT

[2] It appeared in a similar list published by *The Eugenics Review* in 1925.
[3] https://www.bostonglobe.com/2023/06/18/opinion/jeff-jacoby-middlebury-hypocrisy-Eugenics/

34.1 POPULATION *Fall term*
Theories of population. World and American trends. Immigration, ethnic groups, and internal migration in the United States. Problems. Eugenics. (Soc. 21.1. Sophomores by permission) Mr. SHOLES

Ex. 21, 1945-46 Middlebury College Course Catalogue (Sociology & Biology).

As Middlebury College Associate Professor Daniel Silva explained in his December 9, 2021 article "Eugenics, Dispossession and Reparations at Middlebury, published in the Middlebury Campus:

> One only needs to browse the college's course catalogs of the first decades of the 20th century to see the emergence of Eugenics in the curriculum and across departments such as Pedagogy (later renamed Education and Psychology), Biology and Sociology. Looking at the 1931 course catalog alone, Eugenics and ideas of social progress and pathology based on heredity and environment can be found in the descriptions of courses such as "Genetics and Embryology," "Social Psychology" and "Educational Psychology," in addition to nearly the entire course offering of the Sociology department. In this regard, Middlebury's curriculum followed national and international trends of Europe and North America. **It is, therefore, not a stretch to consider that Eugenicists and Eugenics sympathizers, were, to some degree, trained at Middlebury.**[4]

In addition, Professor Silva notes the close relationship that Middlebury College had with "Eugenicists and Eugenics supporters, which included trustees, donors, professors and administrators." *Id.*

B. Middlebury College's Eugenicist Professors, Administrators and Trustees

Indeed, Middlebury College employed Eugenicists as Professors and Administrators and appointed Trustees, many of whom were active participants in the Eugenics Movement. For example, Middlebury College Professor A.E. Lambert, a Eugenicist who delivered a Eugenics lecture at the Rutland Woman's Club on January 4, 1916 stating: "We are living in an age of reason . . . when

[4] https://www.middleburycampus.com/article/2021/12/Eugenics-dispossession-and-reparations-at-middlebury (emphasis supplied).

science predominates. We must blot out the unfit in our race and to do this we must prevent marriages which are not eugenic." Ex.14.

Another notable Middlebury College Eugenicist was Owen Wesley Mills, Biology Professor who taught Eugenics in his Genetics course from 1918-1924. During his tenure at Middlebury College, Professor Mills was a Fellow for the American Association for the Advancement of Science and a Member of the Second International Congress of Eugenics.[5] Ex. 16.

Vermont Governor John E. Weeks, Middlebury College Trustee from 1909 to 1949, who hosted a Eugenics Conference at the Vermont Statehouse in 1927 titled the "Vermont Conference of Social Work" which was an open forum on "Social Legislation" with presentations by many notable Eugenicists including UVM Professor Henry F. Perkins, Director of the Eugenics Survey of Vermont. Ex. 19, Burlington Free Press, Jan 19, 1927, page 2.

C. The Eugenics Survey of Vermont and Middlebury College President Paul Moody

Paul Dwight Moody, Middlebury's president from 1921 to 1942, like so many other leading academics of the era, was "all in on Eugenics." In 1931, he was Chairman of the Committee on the Human Factor, part of the Eugenics Survey of Vermont working in concert with UVM's Professor Henry F. Perkins, the most influential eugenicist in Vermont at the time. President Moody's Committee on the Human Factor recommended a major public relations effort to promote Eugenics among the public. That recommendation appeared in the final report: "Rural Vermont: A Program for

[5] The 1921 Second International Congress of Eugenics, was a gathering that promoted humanity's control of its evolutionary future through selective breeding and reducing "unfit" populations. The history of nearly every major museum and scientific society in Western Europe and the United States is intertwined with the scientific, public, and political acceptance of this now-discredited movement. *Science* and the American Association for the Advancement of Science (AAAS, the publisher of *Science*) are no exception.

the Future," a manifesto replete with Eugenics content, including a "Chart of Defects Found Among 55 Degenerate Families Studied."[6]

President Moody was not only an active and influential Eugenicist, but he was a documented racist, infamous for the most abhorrent comments which were famously quoted by UVM Professor Henry F. Perkins in a 1932 interview. When Dr. Perkins asked Paul Moody of Middlebury College if he had had any students of French-Canadian descent who had made a name for themselves in any type of endeavor Mr. Moody immediately said no, and even on consideration said he thought a lot about it and checked up that not one Canadian had risen to a place of responsibility. When asked if they hadn't contributed much to the community of Middlebury itself, Mr. Moody added another vehement no, stating that the whole French Canadian population could be wiped out of Middlebury and no one would miss it. Vermont Eugenics: A Documentary History: *Ethnic Study of Burlington: Interview with Dr. Perkins re French Canadians* , Anderson, Elin L.. 1932 (emphasis supplied).[7]

Indeed, Middlebury College's vast connection to Eugenics spanned over half a century, continuing years after the world's knowledge of Hitler's death camps and the mass murder of 6 million Jews in Europe.[8] Even Defendant's cited article, "US Scientists' Role in the Eugenics Movement (1907-1939)" details that "by 1936 . . . both England and the U.S. genetic scientific communities finally condemned eugenical sterilization."[9] Yet, Middlebury College continued teaching Eugenics

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[6] See Jeff Jacoby, Hypocrisy at Middlebury College, 6/18/2023, https://www.bostonglobe.com/2023/06/18/opinion/jeff-jacoby-middlebury-hypocrisy-Eugenics/

[7] https://www.uvm.edu/~Eugenics/primarydocs/ofesbfc000032.xml.

[8] By 1942, the American press carried a number of reports about the ongoing mass murder of Jews. The US government confirmed this information in late 1942 . . . In January 1944, President Roosevelt created the War Refugee Board, which took significant measures to aid Jews and other victims. https://encyclopedia.ushmm.org/content/en/article/the-united-states-and-the-holocaust-1942-45.

[9] See Steven A. Farber, U.S. Scientists' Role in the Eugenics Movement (1907–1939): A Contemporary Biologist's Perspective, 5 Zebrafish 243, 244 (2008). https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2757926/

for another decade, until 1946.

Having discovered the evidence of Middlebury's early and prominent involvement in Eugenics, it seems far more likely that Mead was influenced BY the men that he knew at Middlebury College, and it is obvious that Middlebury College itself and its President Moody, were the architects who built the bridge spanning three decades after Mead's 1912 speech, acting as the catalyst of promotion, advocacy, and teaching of Eugenics which did, in fact, lead to the enactment of Eugenics sterilization legislation in Vermont.

D. <u>Scapegoating as Subterfuge</u>

Reviewing the long history of Eugenics at Middlebury College from 1895 to 1946, brings one to the inescapable conclusion that it was Middlebury College itself which contributed to the philosophical and scientific basis for the Nazi program of Eugenics, not one speech in 1912 by Governor Mead.

Remember that John Mead was a beloved family physician, an OB/Gyn and surgeon. His Medical School Dissertation was on the Treatment of Uterine Prolapse, a leading cause of death related to childbirth and the likely cause of his own mother's death at age 23, shortly after his birth. Thus, is was Dr. Mead, the physician who, seeing the tsunami of legislation sweeping the country in 1912, advocated as a physician, not for the sterilization of women, but to investigate instead, a new operation called the Vasectomy, which promised a vastly safer alternative which would have protected the health and lives of women in 1912, 16 years before the discovery of penicillin in 1928.

Furthermore, in point of fact, Mead did not support the legislation that was introduced after he left office in 1912 and vetoed by his successor. Thus, the suggestion that Mead was engaged in a Eugenics "Campaign" is pure speculation unsupported by any documentary evidence or sufficient scholarly research. Mead's only known comments relating to Eugenics are contained solely in his 1912 Farewell Address.

Yet, despite, or maybe because of, the state of all the available evidence, Governor Mead was used as a public relations diversion to cover up Middlebury College's dreadfully shocking history. Defendant embraced a false narrative, declaring the erasure of the Mead name, which they thought would instantly purify their unclean hands and sever Middlebury College's only perceived affiliation with Eugenics. Instead of taking responsibility for its own history and learning from it, and apologizing to the victims who were harmed by Middlebury College, a Eugenics Institution, they doubled-down and arrogantly asserted that the name "Mead Memorial Chapel" was a vague reference, an after-thought which was never agreed to by the College Trustees.[10] Such a callous and demeaning statement denigrates a sacred space dedicated as a holy temple, built to memorialize the deep religious faith of Mead's ancestors, and designed to honor and symbolize the strength of character of Vermonters. Thankfully the Court has recognized Defendant's position as straining credulity.

III. THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

A. Introduction

Parties in a contractual relationship have an obligation to treat each other in good faith and deal with each other fairly. This is known as the covenant of good faith and fair dealing and it is implied in every contract. The definition of the "covenant of good faith and fair dealing" is broad. See *Carmichael v. Adirondack Bottled Gas Corp.*, 161 Vt. 200, 208-09 (1993) (citing Restatement

[10] "In short, Eugenics was for decades entwined in the intellectual culture and public image of Middlebury College. Yet no one would have any inkling of that history from the college's current president and board of trustees. In their long document justifying the removal of Mead's name from the chapel, they made no mention of the school's extensive connection to the Eugenics movement. They condemned Mead for holding views that were considered progressive and scientific at the time without acknowledging that those views for many years were taught, promoted, and applauded by the faculty and administrators of Middlebury itself. It's hardly surprising that as a loyal and active Middlebury alumnus, Mead was influenced by the views of his alma mater and fellow alums." See Jeff Jacoby, Hypocrisy at Middlebury College, 6/18/2023. https://www.bostonglobe.com/2023/06/18/opinion/jeff-jacoby-middlebury-hypocrisy-Eugenics/

(Second) of Contracts § 205). It is an underlying principle implied in every contract that each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement. *Id.* (citing *Shaw v. E.I. DuPont de Nemours & Co.*, 126 Vt. 206, 209 (1966)). The implied covenant of good faith and fair dealing exists to ensure that parties to a contract act with faithfulness to an agreed common purpose and consistently with the justified expectations of the other party. *Id.* (quoting Restatement (Second) of Contracts § 205 comment a). The covenant of good faith and fair dealing protects against conduct that violates community standards of decency, fairness, or reasonableness. *Id.* (quoting Restatement (Second) of Contracts § 205 comment a).

A party asserting this claim does not need to demonstrate a breach of the underlying contract to succeed on their claim for breach of the implied covenant of good faith and fair dealing. *See Carmichael v. Adirondack Bottled Gas Corp.*, 161 Vt. 200, 208-09 (1993) at 1216 (affirming jury award for breach of the implied contract of good faith and fair dealing even though no breach of express term in the underlying contract was alleged). However, the party must identify conduct separate from that which breached the underlying contract to form the basis for the breach of the implied covenant. See *Langlois v. Town of Proctor*, 2014 VT 130, ¶ 59; see also *Monahan v. GMAC Mortg. Corp.*, 2005 VT 110, ¶ 54 n.5. Stated differently, the party cannot argue that the conduct that breached the underlying contract is the same conduct that breached the implied covenant of good faith and fair dealing. *Langlois*, 2014 VT 130, ¶ 59.

B. <u>The Development of Vermont's Duty of Good Faith and Fair Dealing</u>

The development of Vermont's Duty of Good Faith and Fair Dealing was comprehensively analyzed by Vermont Attorney W. Scott Fewell in his 2010 Vermont Bar Journal article, <u>Vermont's Implied Covenant of Good Faith and Fair Dealing in Commercial Contracts</u>, and provided the following description of Vermont's jurisprudence regarding the Implied Covenant of Good Fath and Fair Dealing:

Vermont law imposes a duty of good faith and fair dealing ("implied covenant" or "good faith") on all contracts. As explained in *Shaw v. DuPont*,[11] the crux of the duty is that neither party to a contract may do anything to interfere with the other party's right to enjoy the benefit of the contract.

While a claim for breach of contract addresses the breaking of express promises and obligations, a claim for breach of the covenant of good faith and fair dealing addresses the breaking of the implicit promises that make the contract possible in the first place.[12] The implied covenant claim, as applied in Vermont, is nothing short of a moral litmus test for what constitutes socially acceptable conduct between contracting parties and is intended to prevent any dichotomy between the spirit and letter of the agreement.

Since *Shaw*, the implied covenant has undergone a rather striking evolution. Initially treated as a mere aid in interpreting existing contract terms, the implied covenant has been transformed by the Vermont Supreme Court into a derivative but distinct tort action requiring an independent factual basis from that supporting a breach of contract action. The protections afforded by the implied covenant have been extended to a variety of contractual relationships, including employment and insurance law. However, the duties imposed in one substantive area of law does not neatly apply to other contractual relationships.

. . .

Contractual Good Faith in Vermont Jurisprudence

The concept of good faith as applied to contracts has existed in American jurisprudence for nearly two centuries and purportedly derives its origins from the Latin legal maxim *pecta sunt servanda*, or the "obligation to keep agreements."[13] Since its early formulation, the concept has been applied to a variety of contractual relationships, including insurance, employment, and arms-length commercial agreements. Both the Uniform Commercial Code and the Restatement (Second) of Contracts contain requirements for good faith performance of contracts, although their respective approaches differ.[14]

In Vermont, the idea of contractual good faith emerged during the early nineteenth century, but did not become well-established until the middle of the twentieth century.[15] The modern formulation of this duty, first articulated in *Shaw*, is that good faith attaches to all contracts as a matter of law and requires that the

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[11] Shaw v. DuPont, 126 Vt. 206, 209, 226 A.2d 903, 906 (1966).

[12] *See* Robert S. Summers, *The General Duty of Good Faith--Its Recognition and Conceptualization*, 67 Cornell L. Rev. 810, 826-27 (1981-82); E. Allan Farnsworth, *Good Faith Performance and Commercial Reasonableness Under the Uniform Commercial Code*, 30 U. Chi. L. Rev. 666, 667-71 (1962-63).

[13] Id., note 2, at 828.

[14] Farnsworth, *supra* note 2; Robert S. Adler & Richard A. Mann, *Good Faith: A New Look At An Old Doctrine*, 28 Akron. L. Rev. 31, 41-44 (Summer 1994).

[15] *See* Buck v. Kent, 3 Vt. 99, 102 (1830) (holding that it was a violation of good faith and the agreement to retain note and fraudulently convey to a third party).

contracting parties do nothing to destroy the rights of the other party to receive the benefit of the bargain.[16]

In the 1994 decision in *Carmichael v. Adirondack Bottled Gas of America*, the Supreme Court adopted the Second Restatement's formulation of the implied covenant.[17] Section 205 of the Second Restatement imposes a duty of good faith and fair dealing in the performance and enforcement of contracts, but not in contract formation.[18] Under the Second Restatement, "good faith performance or enforcement" requires that the parties adhere to an agreed-upon common purpose consistent with the justified expectations of the parties.[19]

The Second Restatement adopts the so-called "excluder" concept of good faith, advocated by Professor Robert S. Summers, which defines the contours of good faith by its opposite corollary bad faith, and is expressly concerned with the enforcement of fairness, justice, and community standards in the commercial area.[20] The excluder approach permits the courts to develop the outer boundaries of the duty based on the particular contract, transaction, and applicable community standards. However, this "negative" approach, while having the benefit of flexibility, provides little guidance as to what constitutes good faith performance and enforcement and creates unnecessary uncertainty.

In addition to adopting the Second Restatement approach, the Supreme Court has further tailored good faith claims in ways not required under the Second Restatement's approach. First, the Court has construed good faith as a tort under the rationale that the obligation of good faith is imposed on contracting parties as a matter of public policy rather than arising from the agreement of the parties.[21] Second, the Court permits good faith to be pled as a separate and distinct claim from breach of contract provided the claim has a distinct factual predicate.[22] These modifications have created a relatively unique cause of action in Vermont.

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[16] *Shaw*, 126 Vt. at 209.

[17] *Carmichael v. Adirondack Bottled Gas*, 161 Vt. 200, 208, 635 A.2d 1211 (1993).

[18] Restatement (Second) of Contracts § 205 (1981).

[19] *Id*., § 205(a).

[20] *See Summers*, *supra* note 2. In addition to the intruder concept, Professor Karl Llewellyn advocated an honesty in fact (so-called "pure heart, empty head") approach, which has been incorporated into the UCC. *See* E. Allan Farnsworth, *The Concept of Good Faith in American Law*, Saggi, Conferenze E Seminari 10, at p. 12 (April 1993). Professor Steven J. Burton has offered a competing interpretation of the role of good faith in the enforcement of contracts, describing a breach of good faith as an attempt by a contracting party to wrongfully "recapture opportunities forgone in contracting." *See* Steven J. Burton, *Breach of Contract and the Common Law Duty to Perform in Good Faith*, 94 Harv. L. Rev. 269 (1980).

[21] *Carmichael*, 161 Vt. at 208, 635 A.2d at 1216.

[22] *Monahan*, 2005 VT 110, ¶54 n.5, 893 A.2d 298, 316 n.5.

The Development and Application of the Implied Covenant in Vermont Case Law

The Vermont Supreme Court has used the implied covenant in a number of different commercial contexts. In *Shaw*, the Supreme Court used the implied covenant in a licensing dispute to infer missing terms that were "necessarily implied" from the expressed terms.[23] The Court observed that the "implication that the defendant is not to exceed the limits of his license ... is an inference which follows from the language of the parties and becomes spelled out in explicit terms."[24] As such, the Court appeared to use the implied covenant as an aid in interpreting the terms of the contract, and little more.

However, in *Sullivan v. Lochearn, Inc*., the Court applied the implied covenant to course of dealing conduct. In *Sullivan*, the Court examined the parties' course of dealing and inferred the absence of a contractual right to unilaterally terminate a contract, even though the contract was silent on this issue.[25] In *Carmichael v. Adirondack*, the Supreme Court relied upon the implied covenant to infer obligation arising from the parties' obligations in winding down the contract. The Court observed that the course of dealings between the parties in the winding down of the contract created obligations that, while not expressly stated, were enforceable when breached.[26] Thus, the Court reaffirmed that course of dealing *25 can create expectations that, while not contractual, nonetheless create obligations of good faith based on the expectations of the parties.

The Supreme Court has also applied the implied covenant to situations in which one of the contracting parties has interfered with the ability of a party to perform its part of the contract. In *Carter v. Sherburne Corp*., the Court applied the implied covenant to prevent a contracting party from obstructing contractual performance and then seeking damages for the delay caused by its own obstruction.[27] In *Century Partners, LP v. Lesser Goldsmith Enterprises, Ltd*., the Court found a breach of the implied covenant where the landlord created a continuing permit violation but failed to cooperate with tenant in remedying the situation.[28]

The Supreme Court has refused to find a breach of the implied covenant where a party has merely sought to exercise a contractual right that was merely adverse to the other contracting party. In *Southface Condominium Owners Assoc. v. Babcock*, the Court refused to find a breach of the implied covenant where proceeds from the sale of condominium units were applied to unpaid charges on a promissory note, as required by the note, rather than used to build additional amenities that had been promised to

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[23] *Shaw*, 126 Vt. at 209-10, 226 A.2d at 906-07.

[24] *Shaw*, 126 Vt. at 210, 226 A.2d at 906.

[25] *Sullivan v. Lochearn*, 143 Vt. at 153, 464 A.2d at 747.

[26] *Carmichael*, 161 Vt. at 208-09, 635 A.2d at 1216-17.

[27] *Carter v. Sherburne Corp.*, 132 Vt. 88, 93-94, 315 A.2d 870, 874 (1974).

[28] *Century Partners, LP v. Lesser Goldsmith Enterprises, Ltd*., 2008 Vt. 40, ¶¶16-24; 958 A.2d 627, 632-35 (2008).

the purchasers of the units.[29] In *Downtown Barre Development v. C&S Wholesale Grocers, Inc*., the Court observed that there may be instances in which a contracting party could act in bad faith while exercising a retained contractual right, but refused to find that defendant had acted in bad faith under the unique facts of that case, where defendant was seeking only to exercise a contractual right that was adverse to plaintiff.[30]

Two other anomalous but nonetheless significant cases dealing with the implied covenant are worth mentioning because their dicta has further shaped the current scope of the implied covenant. In *Greene v. Steven's Gas Service*,[31] the Supreme Court permitted the plaintiff to proceed, without explanation, under a contractual implied covenant claim notwithstanding the availability of the more narrowly applicable first-party insurance bad faith claim.[32] At issue in *Greene* was whether a claim for breach of the implied covenant was subject to a contractual limitations clause.[33] Plaintiff argued that since the implied covenant claim was grounded in tort it was not a claim "on the policy" and therefore not subject to the contractual limitations clause.[34] The Supreme Court, relying on an Iowa Supreme Court case,[35] held that since the implied covenant claim was based on the insurer's denial of coverage, such a claim was "a disguised attempt to resolve a dispute as to [defendant's] liability for his loss and is therefore subject to the policy limitations clause."[36] The implicit suggestion in *Greene*

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[29] *Southface Condominium Owners Assoc., Inc. v. Babcock*, 169 Vt. 243, 247, 733 A.2d 55, 58-59 (1999).

[30] *Downtown Barre Development v. C&S Wholesale Grocers, Inc.*, 204 VT 47, ¶18-19, 177 Vt. 70, 80, 857 A.2d 263, 270 (2004).

[31] *Greene v. Stevens Gas Service*, 2004 VT 67, 177 Vt. 90, 858 A.2d 238 (2004).

[32] The Vermont Supreme Court recognized a first-party insurance bad faith claim in *Bushey v. Allstate Ins. Co.*, 164 Vt. 399, 670 A.2d 807 (1995). To state a claim for first-party bad faith, plaintiff must show that the insurance company had no reasonable basis for denying coverage under the policy and the company knew or recklessly disregarded that absence of any reason to denying coverage. The *Bushey*-styled claim seems to be the proper fit in *Greene*, which was clearly a coverage case, but Court allowed plaintiff to bring the generic contractual claim without comment. The first-party bad faith claim was created for reasons peculiar to the insurer-insured relationship, including the superior bargaining position of the insurer and the public interest nature of the insurance industry. *See id*. at 403. In contrast, the contractual implied covenant is premised on the mutual obligation to honor promises set forth in the contract without regard to reasonableness. Unlike the traditional implied covenant claim, whose doctrinal origins are more clearly rooted in contract, the first-party claim has always been rooted in tort. *See Dolan v. Aid Ins. Co.,* 431 N.W.2d 790, 791 n.1 (Iowa 1988). Notwithstanding the doctrinal differences, the outcome in Greene with respect to the contractual limitations clause would have likely been the same under either type of claim. *See CBS Broad. v. Fireman's Fund Ins. Co.*, 70 Cal. App. 4th 1075, 1086 (Cal. App. 2d Dist. 1999) (Where denial of the claim in the first instance is the alleged bad faith and the insured seeks policy benefits, the bad faith action is on the policy and the limitations provision applies.) However, the Court's treatment of the two claims as practically identical raises real concerns about the duties incumbent on contracting parties in arms-length transactions, the measure of damages relative to each type of claim, and has caused confusing in subsequent cases.

[33] 2004 VT 67, ¶18, 177 Vt. at 98, 858 A.2d at 245.

[34] 2004 VT 67, ¶23, 177 Vt. at 100, 858 A.2d at 246.

[35] 2004 VT 67, ¶¶26-29, 177 Vt. at 101-103, 858 A.2d at 247-48.

[36] *Id*.

> was that tort claims for breach of implied covenant cannot rest on the same factual premises as breach of contract. In *Monahan v. GMAC*, the Supreme Court expressly affirmed that it would no longer recognize a separate cause of action for breach of the implied covenant when the plaintiff also pleads a breach of contract based on the same conduct.[37]
>
> Recently, in *Harsch Properties, Inc. v. Nicholas*,[38] the Supreme Court once again revisited the implied covenant and sought to clarify some of the broader language in its earlier cases. First, the Court clarified that the implied covenant would constitute a separate cause of action where it was based on different conduct from the breach of contract claim.[39] However, the Court's language left open the possibility of pleading breach of implied covenant as an element of breach of contract.
>
> Second, in *Harsch Properties* the Court seems to move away from characterizing the implied covenant as a tort observing that "[a]lthough claims for breach of the implied covenant take on many qualities of a tort action, these claims are not fully and exclusively torts. The implied covenant arises out of a contractual relationship between the parties, *id*., and creates duties under the contract ... Thus, although breach of the implied covenant may create an action in tort, the covenant arises from the contract and exists because of the contract."[40] There is some suggestion in *Harsch Properties* that the Court was aware of the dangers of an independent, tort-based implied covenant and sought to reconnect the duty of good faith with the performance of express contractual obligations rather than as a generalized duty of good faith in contract.

W. Scott Fewell, Esq., Vermont's Implied Covenant of Good Faith and Fair Dealing in Commercial Contracts, Vt. B.J., Summer 2010, at 24, 24–28.

C. The Vermont Supreme Court's Current Standard

In 2018, the Vermont Supreme Court decided *Tanzer v. MyWebGrocer, Inc.*, 2018 VT 124, 209 Vt. 244, 262–63, 203 A.3d 1186 (2018) which contains a very comprehensive explanation of the covenant as it has further developed in Vermont:

> ¶ 32. The covenant of good faith and fair dealing is implied in every contract. Carmichael v. Adirondack Bottled Gas Corp. of Vt., 161 Vt. 200, 208, 635 A.2d 1211, 1216 (1993). Thus, "[a] cause of action for breach of the covenant of good faith can arise only upon a showing that there is an underlying contractual relationship between the parties, but breach of that underlying contract is not necessary before bringing a tort action under the covenant." Monahan v. GMAC Mortg. Corp., 2005 VT 110, ¶ 54

[37] 2005 VT 110, ¶54 n.5, 179 Vt. at 187 n.5, 893 A.2d at 316 n.5.

[38] *Harsch Properties, Inc. v. Nicholas*, 2007 VT 70, 932 A.2d 1045.

[39] *Id*. at ¶13, 932 A.2d at 1050.

[40] *Id*. at ¶17.

n.5, 179 Vt. 167, 893 A.2d 298 (citation omitted). We have explained that the covenant acts to protect **1199 the parties to a contract, and to ensure that they "act with faithfulness to an agreed common purpose and consistency with the justified expectations of the other party." Carmichael, 161 Vt. at 208, 635 A.2d at 1216 (quotation omitted). The covenant's protection does not extend simply to actions taken in fulfillment of a contract, but also actions taken in terminating a contract and winding up the contractual relationship between the parties. Id. at 210, 635 A.2d at 1217. The covenant likewise "covers not only contract performance, but also contract enforcement," including "settlement and litigation of contract claims and defenses." Langlois v. Town of Proctor, 2014 VT 130, ¶ 61, 198 Vt. 137, 113 A.3d 44 (quotation omitted). The covenant of good faith and fair dealing "is violated by dishonest conduct such as conjuring up a pretended dispute, asserting an interpretation contrary to one's own understanding, or falsification of facts." Id.

¶ 33. A breach of the covenant may be shown by evidence that a party to a contract acted in such a way as to "violate[ ] community standards of decency, fairness or reasonableness, demonstrate[ ] an undue lack of diligence, or [take] advantage of [other parties'] necessitous circumstances." *263 Monahan, 2005 VT 110, ¶ 3, 179 Vt. 167, 893 A.2d 298. A party may collect punitive damages under the covenant where the party can show that the other party acted with actual malice. Id. ¶ 54 n.5. "Actual malice may be shown by conduct manifesting personal ill will, evidencing insult or oppression, or showing a reckless or wanton disregard of plaintiff's rights." Id. ¶ 4 (quotation omitted). Where a party alleges both breach of contract and breach of the implied covenant of good faith and fair dealing, dual causes of action are permitted only where the different actions are premised on different conduct—"we will not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing when the plaintiff also pleads a breach of contract based upon the same conduct." Id. ¶ 54 n.5 (emphasis in original); see Ferrisburgh Realty Inv'rs v. Schumacher, 2010 VT 6, ¶ 26, 187 Vt. 309, 992 A.2d 1042.

¶ 34. As we have explained, whether conduct breaches the covenant is a question of fact that depends heavily on the context of the conduct alleged to have breached the covenant. Carmichael, 161 Vt. at 209, 635 A.2d at 1217. So a jury instruction concerning a breach of the covenant will list few "precise analytical elements," but will instead ask the jury to determine whether, given the surrounding context of the alleged conduct, that conduct constitutes a breach. Id.

. . .

¶ 38. . . . The court also correctly instructed the jury regarding the implied covenant of good faith and fair dealing—"that MyWebGrocer made an implied promise not to do anything to destroy or impede Mr. Tanzer's ability to get the benefits of his agreement with MyWebGrocer under the phantom share plan" and that "bad faith implies an intention to mislead or deceive another, or a neglect or refusal to fulfill some duty or other contractual obligation not prompted by an honest mistake or disagreement." . . .

¶ 39. This is not to say that Tanzer may not be able to pursue a claim for breach of the covenant of good faith and fair dealing. Tanzer presented evidence beyond that relating to the breach of the contract between the parties, and the conduct

> alleged to underpin Tanzer's contract and covenant claims does not completely overlap.
>
> ¶ 40. As noted above, the covenant covers not just contract fulfillment, but also contract enforcement, including settlement and litigation. Langlois, 2014 VT 130, ¶ 61, 198 Vt. 137, 113 A.3d 44. Even so, there is a distinction between litigation conduct that violates the covenant and litigation conduct that is an aggressive prosecution or defense. Litigation conduct that reflects dishonesty—"such as conjuring up a pretended dispute, asserting an interpretation contrary to one's own understanding, or falsification of facts"—violates the covenant of good faith and fair dealing. Id. Litigation conduct falling below this high bar does not. . . .Nevertheless, we emphasize that any litigation conduct alleged to have breached *267 the covenant must fall within the narrow scope of dishonest conduct.

Tanzer v. MyWebGrocer, Inc., 2018 VT 124, ¶¶ 32-34 and 38-41, 209 Vt. 244, 262-263 and 265-267, 203 A.3d 1186, 1198-1199 and 1201–1202 (2018).

IV. APPLICATION OF THE LAW TO THE FACTS

Turning to the case at bar, the factual question is whether Middlebury College acted in good faith and dealt fairly and consistently with the justified expectations of John Mead in the performance of their agreement. *Langlois*, 2014 VT 130, ¶ 59. Plaintiff asserts that Defendant stripped the Mead family name off of the Memorial Chapel by erroneously recounting the Mead Memorial Chapel's own history, that the chapel was named in honor of Governor Mead and his wife, instead of Mead having built the Chapel as a memorial to honor his ancestors. This false narrative created the supposed rationale for Defendant's removal of the name "Mead" from the Chapel in the manner that it did, which was in direct defiance of its covenant and the expectation that the College will act honestly and reasonably in the faithful pursuit of the agreed common purpose of the contract.

Instead, the College used Mead as a scapegoat, portraying itself as an innocent bystander which naively accepted money from an unknown bad guy who had fallen from grace. Middlebury College created a story to hide its staggering half-century of Eugenics teaching and advocacy, all at the expense of an honorable man who, no matter his limitations and context, spent his life caring for and serving his patients, neighbors, church, city, college, state and nation.

The 1914 Trustees of Middlebury College knew exactly who Governor Mead was, and regrettably, Mead helped to further Middlebury College's institutional Eugenics agenda, at least for a moment in time, in a single speech, in 1912. However, Middlebury College's hypocritical gaslighting and framing of Mead for its crimes, was more than a breach of contract, it was for a bad motive, to lay blame elsewhere. Therefore, Defendant has acted in bad faith with improper motive and with wanton disregard for the rights of the Plaintiff , which constitutes a breach of the covenant of good faith and fair dealing to faithful pursue the agreed common purpose of the contract.

Faithfully pursuing the Mead Memorial Chapel's purpose of honoring and memorializing the Mead ancestors does not include scapegoating a man for the college's public relations purposes while erasing the Mead family name from its Memorial as well as John Mead's lifetime of accomplishments and philanthropy that benefitted the State of Vermont and its people as well as generations of Middlebury College students. Plaintiff submits that as bad faith conduct in light of the monumental contributions to Eugenics made by Middlebury College in educating its students with Eugenics curriculum from 1896 to 1946. For fifty years, Middlebury College was in the business of Eugenics programming of its students, who would become the teachers, doctors, lawyers, judges, legislators, clergy and business leaders of tomorrow. Yet, it was Mead who Middlebury College excised as a cancer on the College.

Consequently, Plaintiff must be allowed to pursue discovery to determine what Middlebury College knew about the true purpose of the naming of the Mead Memorial Chapel, what Middlebury College knew about its own Eugenics history, what information that they considered, what process that they followed. Did the College intentionally use Mead as a subterfuge or did they recklessly disregard Mead's rights to reasonably expect Middlebury College to faithfully pursue the agreed common purpose of the contract.

To prevail on a claim for breach of the implied duty of good faith and fair dealing, the plaintiff must prove the following:

- The defendant acted in bad faith
- The defendant's actions prevented the plaintiff from realizing the benefits of the contract
- The plaintiff suffered injury or loss as a result

The first element will require further discovery so that Plaintiff can determine in more detail, the motives and reasons for the Defendant's apparent intentional or reckless actions that Plaintiff believes is a bad faith breach of the covenant.

The second element, that Middlebury Colllege's actions prevented the plaintiff from realizing the benefits of the contract is satisfied because the College's removal of the Mead name through the creation of a false narrative, has highjacked the purpose of the contract, to honor and memorialize the Mead family ancestors who embodied the simplicity and strength of the Vermont character, thereby destroying the family legacy that Mead intended to preserve.

The third element, that Plaintiff suffered injury or loss as a result is present because the benefit of the bargain has been canceled and destroyed by the Defendant's false narrative to lay blame on Mead, the "fall guy", as a subterfuge to conceal its own sordid history. By eliminating Mead's benefit of the bargain, his estate has been damaged due to the diminution in value of the consideration received under the contract, his lost time and opportunities, fiduciary fees and expenses, litigation costs and expenses of suit, and attorneys fees under the Bad Faith exception to the American Rule.

V. DAMAGES AVAILABLE FOR BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

Attorney Fewell, in his Vermont Bar Journal article, also examined the damages that are available for breach of the Covenant of Good Faith and Fair Dealing, providing the following analysis:

> There has been little discussion of available damages for breach of the implied covenant in Vermont law. In light of the tort-like nature of the claim, the question arises whether a party is entitled to tort damages for breach of the implied covenant, and whether, in fact, the calculation of damages based on tort versus contract is materially different. The answer to both is yes.
>
> In *Monahan*, the use of the tort standard for punitive damages for breach of implied covenant suggests that the Court will look to tort law for the measure of damages under an implied covenant claim.[41] This observation is bolstered by the Court's implied covenant decisions. For example, in *Carmichael* the jury returned a verdict for $60,000 for compensatory damages and $100,000 in punitive damages related to the breach of implied warranty claim, notwithstanding a directed verdict on the breach of contract claim.[42] There was no discussion of the basis of damages but the existence of non-contractual damages is obvious.
>
> In *Harsch Properties*, the trial court distinguished between damages available for breach of contract and breach of good faith and fair dealing.[43] The trial court instructed the jury that breach of contract damages were comprised of the commission the broker would have earned under the broker agreement, and implied covenant damages should be the "value of the lost opportunity to effect a sale and thereby receive compensation under the contract."[44] On appeal the Supreme Court agreed with the trial court's characterization that good faith damages were distinct from contractual damages, and observed that the "lost opportunity" costs were undefined in the contract and supported by little evidence at trial.[45]
>
> What little anecdotal evidence is available would suggest that the implied covenant provides for tort-based damages, including physical damages otherwise foreclosed in a contract action by the economic loss doctrine.[46] The substantial benefit *28 of tort damages is the absence of the requirement of contractual foreseeability. While the outer limit of tort damages is determined by proximate cause, there is no requirement that proximate cause be limited to damages reasonably foreseeable to the parties.

W. Scott Fewell, Esq., Vermont's Implied Covenant of Good Faith and Fair Dealing in Commercial Contracts, Vt. B.J., Summer 2010, at 24, 24–28.

In 2017, the Vermont Federal District Court in Kindred Nursing Centers E., LLC v. Estate of Nyce, No. 5:16-CV-73, 2017 WL 2377876 (D. Vt. May 31, 2017) had occasion to consider a claim

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[41] *Monahan*, 2005 Vt. 110, 179 Vt. 167, 893 A.2d 298.

[42] *Carmichael*, 161 Vt. 200, 635 A.2d 1211.

[43] *Harsch Properties*, 2007 VT 70, 932 A.2d 1045 (2007).

[44] 2007 VT 70, ¶13-20, 932 A.2d at 1049-1051.

[45] *Id*.

[46] *See Gus Catering Inc. v. Menusoft Systems*, 171 Vt. 556, 558, 762 A.2d 804, 807 (2000).

for attorneys fees under the "bad faith" exception to the American Rule when the parties were in privity. The Court identified two "variants" of the bad-faith exception:

> But Vermont recognizes at least one other variant of the "bad faith" exception that does not depend on the presence of a third party.[4] In *In re Gadhue,* 149 Vt. 322, 544 A.2d 1151 (1987), the Vermont Supreme Court expanded the exception articulated in *Albright* to include "situations where the bad faith action of one person caused another person to incur litigation expenses in unnecessary judicial proceedings with the wrongful actor." *Brisson,* 2016 VT 56, ¶ 29. The Vermont Supreme Court has recently reaffirmed that it recognizes an exception to the American Rule, without saying that the exception depends on the presence of a third party. *See Depot Square Pizzeria, LLC v. Dep't of Taxes,* 2017 VT 29, ¶ 7 (citing *Gadhue*) ("[A]n exception to the American Rule may occur when one of the litigants has acted in bad faith.").
>
> Under both *Albright* and *Gadhue,* "the exception is triggered only by conduct that could be described as in bad faith, vexatious, wanton, oppressive, or unreasonably obstinate." *Id.* ¶ 30. "[T]he equitable power to award attorney's fees as an exception to the American Rule 'must be exercised with cautious restraint ... only in those exceptional cases where justice demands an award of attorney's fees.' " *Id.* ¶ 31 (quoting *Agency of Nat. Res. v. Lyndonville Sav. Bank & Trust Co.,* 174 Vt. 498, 501, 811 A.2d 1232, 1236 (2002) (mem.)). . . . For present purposes, it is sufficient to note that, while the presence of privity between the parties may preclude application of the *Albright* variant of the bad-faith exception, it does not preclude application of the *Gadhue* variant.

Kindred Nursing Centers E., LLC v. Estate of Nyce, No. 5:16-CV-73, 2017 WL 2377876, at *4–5 (D. Vt. May 31, 2017)

Then in 2018, the Vermont Supreme Court in *Tanzer*, further addressed the parties ability to pursue a damages claim for breach of the covenant, stating the following regarding punitive damages and the recovery of litigation expenses, including attorneys fees, which are recoverable upon a showing the wrongful act of one person has involved another in litigation ... or has made it necessary for that other person to incur expenses to protect his interests:

> ¶ 41. . . .It nonetheless bears repeating that a party may only pursue punitive damages on a breach of the covenant claim when the party has presented evidence **1202 that the other party acted with actual malice—as "shown by conduct manifesting personal ill will, evidencing insult or oppression, or showing a reckless or wanton disregard of plaintiff's rights." Monahan, 2005 VT 110, ¶ 4, 179 Vt. 167, 893 A.2d 298 (quotation omitted). Any request for attorney's fees will also need to be considered in light of the evidence presented in a new trial. Though here again, we

> emphasize that attorney's fees are only recoverable upon a showing of bad faith litigation conduct. See id. ¶¶ 76-80. As we explained in In re Gadhue, "where the wrongful act of one person has involved another in litigation ... or has made it necessary for that other person to incur expenses to protect his interests, litigation expenses, including attorney's fees, are recoverable." 149 Vt. 322, 327, 544 A.2d 1151, 1154 (1987) (quotation omitted).[2]

Tanzer v. MyWebGrocer, Inc., 2018 VT 124, ¶¶ 32-34 and 38-41, 209 Vt. 244, 262-263 and 265-267, 203 A.3d 1186, 1198-1199 and 1201–1202 (2018).

VI. DAMAGES SOUGHT

Plaintiff claims Compensatory Damages including, but not limited to, diminution in value of benefit of his bargained-for consideration, lost time and opportunities, litigation costs and expenses, and attorneys' fees under the "bad faith" exception to the American Rule. *See In re Appeal of Gadue*, 149 Vt. 322, 327 (Vt. 1987).

In addition, Plaintiff claims Punitive Damages for Defendant's bad faith conduct in scapegoating Governor Mead for their own ulterior bad motives, obfuscating the College's shameful past, by blaming a "fall guy". Such extraordinary circumstances, warrant an award of attorneys fees as well as punitive damages to punish Defendant's bad faith conduct and deter such actions in the future by Middlebury College or by other bad actors.

Lastly, because compensatory damages are inadequate, Plaintiff prays that the Court invoke its equity jurisdiction and provide injunctive relief ordering the restoration of name Mead Memorial Chapel to the building.

WHEREFORE, Plaintiff respectfully requests that he be permitted to proceed with Discovery with regard to the claim for breach of the covenant of good faith and fair dealing so that he may prepare for trial of the claim.

DATED at Randolph, County of Orange and State of Vermont, this 4th day of November 2024.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead, *Plaintiff*

By: /s/ L. Brooke Dingledine

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
	)
Plaintiff,	)
v.	)
	)
THE PRESIDENT AND FELLOWS	)
OF MIDDLEBURY COLLEGE,	)
	)
Defendant.	)

MIDDLEBURY COLLEGE'S RESPONSE TO PLAINTIFF'S BRIEF REGARDING DAMAGES FOR BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

Defendant The President and Fellows of Middlebury College ("Middlebury" or the "College"), by and through counsel, submits this response to Plaintiff's Brief Regarding Damages for Breach of the Covenant of Good Faith and Fair Dealing (the "Brief").

INTRODUCTION

Notwithstanding lengthy digressions on Middlebury College's "vile history" and wildly speculative assertions about the "selfish ends of the College's marketing team," Plaintiff's Brief fails to establish that the Estate has a viable claim for damages for any breach of the implied covenant of good faith and fair dealing. The only alleged harm that can be discerned from the discussion in Plaintiff's Brief is that Middlebury has supposedly "smeared" former Governor Mead and used him as

a "scapegoat" for the College's history with the eugenics movement. As discussed in Middlebury's Second Motion for Summary Judgment, filed contemporaneously with this memorandum, it is long settled that an estate cannot recover for defamatory statements about the decedent. While Plaintiff asserts that he intends to seek other categories of damages, including "diminution in value of [the] benefit of his bargained-for consideration, lost time and opportunities, litigation costs and expenses, and attorneys' fees under the 'bad faith' exception to the American Rule," Plf.'s Brief Regarding Damages at 25, he does not coherently explain how such damages could flow from his theory of harm in this case—nor, as discussed below, is there a plausible case for their recovery.

ARGUMENT

A. The Only Plausible Theory of Injury on the Facts Is Supposed Reputational Harm, Which Is Not Recoverable.

As set forth more fully in Middlebury's Second Motion for Summary Judgment, which Middlebury incorporates by reference here, Plaintiff's claim for breach of the implied covenant of good faith and fair dealing rests in its entirety on Middlebury's issuance of a September 27, 2021 statement explaining the rationale for removing the Mead name, which Plaintiff claims "smeared" former Governor Mead and his legacy. The actual removal of the Mead name from the Chapel was the subject of Plaintiff's contract claim and, as the covenant claim must arise from distinct conduct, cannot support the claim for breach of the implied covenant. *See Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 53, 307 A.3d 209. Thus, the damages that

Plaintiff claims can only be damages that were proximately caused by the words in the September 27, 2021 statement.

Various forms of damages can flow from a written statement. A statement may itself have independent and injurious legal effect, as in the repudiation of a contract, *see, e.g.*, *Lowe v. Beaty*, 145 Vt. 215, 218, 485 A.2d 1255, 1257 (1984) (statements indicating unequivocal refusal to perform constitute anticipatory breach), or it may induce tortious conduct by a third party that injures the claimant, *see* Restatement (Second) of Torts § 877(a) (liability for party who induces or orders tortious conduct). Words can also disrupt and interfere with a claimant's contractual relations or business expectancies in some circumstances. *See, e.g.*, *J.A. Morrissey, Inc. v. Smejkal*, 2010 VT 66, ¶ 24, 188 Vt. 245, 6 A.3d 701 (interference with business relationship based on, among other things, comments to customer blaming competitor for problems with project).

But the words at issue here can only be deemed to have caused injury in one narrow sense. Middlebury's statement did not interfere (and cannot have interfered) with John Mead's business relations or economic expectancies, for he has been dead for over a century, nor did Middlebury's statement have any independent legal effect causing injury to the Estate. The only plausible damage that the Estate can claim from Middlebury's words is the alleged damage to former Governor Mead's reputation: that the College "smear[ed]" him and "falsely cast[] Mead into the role of an evil mastermind who orchestrated the entire Eugenics movement in Vermont . . . ." Plf.'s Brief Regarding Damages at 3-4.

That category of damages is not available under the law. As laid out in Middlebury's Second Motion for Summary Judgment, the law has long barred claims seeking to recover for defamation of the reputation of the deceased—and, in any event, the covenant cannot be used to imply enforceable protections against allegedly disparaging speech where the parties did not expressly bargain for such.

B. Plaintiff's Other Asserted Compensatory Damages Could Not Have Been Caused by the Alleged Breach of the Covenant.

In what seems to be an implicit acknowledgment that the Estate could not directly recover for any claimed injury to former Governor Mead's reputation, Plaintiff's Brief does not identify reputational harm among the categories of damages he seeks. Rather, Plaintiff indicates that he intends to seek recovery of the "diminution in value of [the] benefit of [Mead's] bargained-for consideration [and] lost time and opportunities."[1] Plf.'s Brief Regarding Damages at 25. The problem with each of these categories of damages is that they do not logically flow from the conduct alleged to have breached the covenant.

In the notional contract Plaintiff contends John Mead negotiated with the College, the "bargained-for consideration" was the alleged promise to name the Chapel the "Mead Memorial Chapel." The Court has already held that, to the extent there existed a naming rights contract, "the reasonable duration of any contractual term as to the name of the chapel has been satisfied as a matter of law."

[1] He also indicates that he will be seeking "litigation costs and expenses, and attorneys' fees under the 'bad faith' exception to the American Rule." Plf.'s Brief Regarding Damages at 25. Those expenses are discussed further below.

Oct. 3, 2024 Ruling on Middlebury's Motion for Summary Judgment at 12. In other words, John Mead received the full consideration for which he bargained. The fact that Middlebury subsequently issued a statement calling attention to Mead's advocacy of eugenics policies cannot logically be said to have diminished the value of this consideration after Middlebury had fully performed; if the statement damaged Mead at all, it did so by working a separate injury to his reputation (which, again, is not a category of damages available to the Estate). There is no basis in law or logic to allow Plaintiff's damages claim to proceed on the theory that Middlebury's statement somehow diminished the value of the consideration the Estate received.

By the same token, Middlebury's issuance of a statement after full performance of any contractual obligations cannot be said to have cost the Mead Estate "lost time and opportunities." It is unclear—and Plaintiff does not explicate—what "time and opportunities" the Mead Estate could claim to have lost here, but, regardless, the concept does not have any logical application where the Estate received the full consideration for which former Governor Mead allegedly bargained. This case is thus unlike *Harsch Properties, Inc. v. Nicholas*, 2007 VT 70, 182 Vt. 196, 932 A.2d 1045, cited in Plaintiff's Brief. The plaintiff in *Harsch* was a real estate broker who entered into a listing agreement for the sale of the defendant's property but, because the defendant rejected various offers for the property, never succeeded in selling the property and earning a commission—and thus did not receive the consideration contemplated under the contract. The trial

court charged the jury to award damages for any breach of the implied covenant in the amount of "the value of the lost opportunity to effect a sale," and the jury's award for that lost opportunity was upheld on appeal. On the facts here, the Mead Estate cannot claim any comparable lost opportunity or seek damages for the loss of an opportunity—nor, certainly, establish that the College's 2021 statement, more than a century after Mead's death, *caused* John Mead to lose any opportunities.

C. Plaintiff's Claim for Attorney's Fees Based on "Bad Faith" Conduct Is Manifestly Frivolous.

Finally, Plaintiff's suggestion that the Estate intends to pursue an award of attorney's fees and costs based on a theory of bad faith litigation conduct is absurd and unserious. As explained in Middlebury's Second Motion for Summary Judgment, while a party's conduct in connection with enforcement and litigation of a contract dispute may support a claim under the implied covenant, *see Tanzer v. MyWebGrocer, Inc.*, 2018 VT 124, ¶ 40, 209 Vt. 244, 203 A.3d 1186, such claims are reserved for extreme cases involving *dishonest* conduct that interferes with the claimant's contract rights, *see Beldock*, 2023 VT 35, ¶ 55. The parties may sharply disagree on the law and the interpretation of the operative historical documents, but there has been no dishonest litigation conduct that would support a claim here—nor has Plaintiff pointed to any.

CONCLUSION

Plaintiff has failed to identify any category of damages the Estate could plausibly recover under the remaining claim for breach of the implied covenant of

good faith and fair dealing. For that reason, and for those set forth in Middlebury's Second Motion for Summary Judgment, the Court should enter judgment on the claim and bring this case to its end.

Dated at Burlington, Vermont, this 2nd day of December, 2024.

By: *\/s\/ Justin B. Barnard*

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
	)
Plaintiff,	)
v.	)
	)
THE PRESIDENT AND FELLOWS	)
OF MIDDLEBURY COLLEGE,	)
	)
Defendant.	)

MIDDLEBURY COLLEGE'S SECOND
MOTION FOR SUMMARY JUDGMENT

Defendant The President and Fellows of Middlebury College ("Middlebury" or the "College"), by and through counsel, submits this motion for summary judgment pursuant to V.R.C.P. 56. In support, Middlebury submits this Memorandum of Law and an accompanying Statement of Undisputed Material Facts.

INTRODUCTION

What remains of Plaintiff's suit at this point primarily consists of a defamation claim dressed up as an action for breach of the covenant of good faith and fair dealing. Unable to rely on the removal of the Mead name from Middlebury's Chapel as the basis for his claim—for that is the conduct that underpinned his contract claim—Plaintiff contends that Middlebury breached the covenant by engaging in a "smear campaign to scapegoat Governor Mead" for the College's own "public relations" purposes. *See* Pl.'s Brief Regarding Damages at 3,

21; Am. Compl. ¶ 194. To be clear, this is an absurd charge. The notion that the College has "smeared" former Governor Mead, a public figure, by referring to his own undisputed comments advocating eugenics policies is illogical—nor is there is a shred of truth to Plaintiff's conspiracy theory that the College's reckoning with Mead's legacy was a cynical public relations move to draw attention away from the College's other historical connections to the eugenics movement in Vermont. But, even if taken at face value, Plaintiff's contention that the College has breached the covenant by "smearing" Governor Mead's legacy fails on several grounds.

First, it is well established that an estate cannot recover for defamation of the decedent. Even if framed as a matter of the covenant of good faith and fair dealing, to allow a claim for damage to the reputation of a public figure to proceed to trial based on statements made over a century following his death would represent an extraordinary expansion of the law. Second, Plaintiff's claim effectively asks the Court to imply into the alleged contract between Mead and Middlebury an anti-disparagement agreement, and to do so would exceed the limited role of the covenant of good faith and fair dealing and raise serious First Amendment and public policy concerns. Third, to the extent that Plaintiff's claim relates to the *motivations* of the College in removing the Mead name from its Chapel—i.e., its alleged "public relations purposes"—such a claim is not actionable under the covenant.

The other pending, recently added claims have no more merit. Although the Court has allowed Plaintiff to amend his complaint to add claims for promissory

estoppel and equitable estoppel, the standards governing amendment are very liberal; scrutinized under summary judgment standards, the claims do not hold up as a matter of law. No action for promissory estoppel can lie on the facts here for a variety of reasons, including the absence of a definite and clear promise to maintain the Mead name on Middlebury's Chapel in perpetuity. And, as the Vermont Supreme Court and countless other courts have made clear, there is no such thing as an affirmative claim of "equitable estoppel"; it is only a defense. For these reasons and others discussed below, Middlebury is entitled to summary judgment in its favor on all remaining claims.

BACKGROUND FACTS

A. John Abner Mead's Proposal for Eugenics Policies in Vermont

John Abner Mead, an 1864 graduate of Middlebury College and later a Trustee of the College, served from 1910 to 1912 as Vermont's fifty-third governor. Statement of Undisputed Material Facts ("SUMF"), ¶¶ 1–3. Mead's public service left a complicated legacy for Vermont and Middlebury College. In his farewell address to the General Assembly delivered on October 3, 1912, Governor Mead gave prominent place to advocacy for eugenics policies, which he described researching in considerable detail during his tenure as Governor:[1]

> The heads of our criminal institutions tell us that among the inmates there is always a considerable class that are termed "degenerates" or "defectives," by which is meant a class of individuals in whose mental

[1] Mead explained that he had "endeavored during the last two years to inform [him]self thoroughly" on the subject, "having corresponded with the secretaries of twenty or more . . . states to learn what was being done with reference to this unfortunate class," "obtain[ing] copies of their laws and [making] a careful study of the same . . ." SUMF, ¶ 5.

> or nervous construction there is something lacking. Alienists, criminalogists [sic] and physicians tell us that individuals of this unfortunate class tend to marry those cursed with similar defects, and that this class is increasing out of all proportion to the normal growth of the population, and that most of the insane, the epileptics, the imbeciles, the idiots, the sexual perverts, together with many of the confirmed inebriates, prostitutes, tramps and criminals that fill our penitentiaries, jails, asylums and poor farms are the results of these intermarriages or the natural offspring of defective parents. In the cases of these unfortunates there is little or no hope of permanent recovery, and the great question that is now being considered by the lawmakers in many of our states is how best to restrain this defective class and how best to restrict the propagation of defective children.

Id., ¶ 4. Asking "[w]hat can be done to protect society from these unfortunates and what to protect them from themselves," Mead posed three alternatives for Vermont's legislature to consider enacting:

1. Laws regulating and limiting marriage for certain classes of undesirable individuals;

2. "Segregation" of "defectives"; and

3. Sterilization to limit procreation among these "degenerates."

Id., ¶ 6. With respect to the first option—restricting marriage with undesirables—Mead noted that he "heartily approve[d]," but "it does not and obviously cannot go far enough." *Id.*, ¶ 7. This was so because, "[w]hile by preventing marriages among defectives, it restricts the propagation of defective children born in lawful wedlock, it does not restrict the propagation of children in those cases where the taint of degeneracy is coupled with that of illegitimacy." *Id.* As to the second option, Mead was less sanguine about the prospects for segregation as a solution, cautioning that establishing colonies for "defectives" would "necessarily entail a very great expense" and "conditions would have to be safeguarded with the same care as an actual

penitentiary." *Id.*, ¶ 8.

This left the possibility of sterilization via vasectomy, of which Dr. and Governor Mead glowingly reported:

> This operation is simple, taking less than five minutes to perform. In the case of defectives and persons convicted of certain crimes it is strongly endorsed . . . Dr. H.C. Sharp, the physician of the Indiana reformatory, highly approves of this plan of restricting the propagation of defectives and abnormal criminals. . . . So far as any disturbance to the physical, mental or nervous system of the patient is concerned, his testimony, based upon observation, is that this operation is decidedly beneficial, rather than detrimental.

Id., ¶ 9. Mead concluded by "recommend[ing] to the legislature of 1912" that it immediately adopt restrictions on marriage for various classes of undesirables, including those who had been confined for "feeble-mindedness" or "insanity," and further recommended that the legislature investigate "adoption of the operation of vasectomy as a prevention for the spread of hereditary taints and diseases." *Id.*, ¶ 10.

The General Assembly promptly responded to Mead's call for action. Just over a month after Mead's speech (on November 8, 1912), the legislature took up S.79, "[a]n act to authorize and provide for the sterilization of imbeciles, feeble-minded, and insane persons, rapists, confirmed criminals and other defectives." *Id.*, ¶ 11. The bill called for the formation of a board of examiners authorized to evaluate "insane, feeble-minded, epileptic, criminal, and other defective" individuals in the care or custody of the State and, upon finding that "procreation by such person would produce children with an inherited tendency to crime, insanity, feeble-

mindedness, epilepsy, idiocy or imbecility," to "order . . . an operation to be performed on such person for the prevention of procreation." *Id.* Although the General Assembly passed the bill, then-Governor Allen Fletcher ultimately vetoed it, citing constitutional concerns raised by the Attorney General. *Id.*, ¶ 12. However, the eugenics movement was just gaining steam. After another failed attempt at legislation in 1927, the movement succeeded in 1931 in procuring the adoption of "An Act for Human Betterment by Voluntary Sterilization," a measure intended to "eliminate[] from the future Vermont genetic pool persons deemed mentally unfit to procreate." *Id.*, ¶ 13.

This period in Vermont's history has troubled the legislature as well as other institutions in the state, including the University of Vermont.[2] In 2021, the Vermont General Assembly formally apologized for the State's role in the eugenics movement in a Joint Resolution. *Id.*, ¶ 29. The General Assembly noted, among other things, that the State's agencies and institutions had "adopted policies and procedures to carry out the intent of the vetoed [1912] legislation and the beliefs of the eugenics movement," targeting "the poor and persons with mental and physical disabilities," as well as "individuals, families, and communities whose heritage was documented as French Canadian, French-Indian, or of other mixed ethnic or racial composition and persons whose extended families' successor generations now

[2] In 2018, the University of Vermont Board of Trustees voted to remove the name of former University President Guy Bailey from the Bailey-Howe Library due to President Bailey's involvement in the eugenics movement. SUMF, ¶ 28.

identify as Abenaki or as members of other indigenous bands or tribes." *Id.* While these policies post-dated Governor Mead's tenure in office, Mead leveraged his experience as a physician, his research into policies adopted by other states, and his position as the governor to propose specific eugenicist policies. *Id.*, ¶¶ 1–2, 4–12. He remains one of the earliest and most prominent advocates for eugenics in Vermont's history.

B. Mead's Gift to Middlebury

The circumstances and documentation of John Mead's donation of funds for the construction of a chapel at Middlebury between 1914 and 1916 were extensively discussed in Middlebury's initial Motion for Summary Judgment. Rather than burden the Court with duplicative briefing, Middlebury incorporates the discussion from its prior motion by reference here (and addresses the material facts in the SUMF accompanying this Motion). *See* SUMF, ¶¶ 14–27.

C. Middlebury's Renaming of the Chapel, the Issuance of the September 27 Statement, and the Ensuing Lawsuit

In summer 2021, the Middlebury Board of Trustees' Prudential Committee decided on behalf of the Board to discontinue the use of the name "Mead Memorial Chapel." SUMF, ¶ 30. The sign identifying the Chapel as "Mead Memorial Chapel" was removed from its location above the entrance to the Chapel in September 2021, *id.*, ¶ 31, and the Chapel is now known as "Middlebury Chapel," *id.*, ¶ 32.

The College's President and the Chair of its Board of Trustees sent out a message to the Middlebury community on September 27, 2021, advising of the

change and explaining the process that brought it about:

> This past spring, the Vermont Legislature made a public apology for its former legislation authorizing the forced sterilization of at least 250 Vermonters as part of the implementation of a eugenics policy in the first decades of the 20th century. The move had bipartisan support from legislators and followed the examples of other states in coming to terms with this painful part of our nation's history.
>
> That statement by the state legislature raised a question for us at Middlebury about the role played by Governor John A. Mead, Class of 1864, whose gift established Mead Memorial Chapel, in advocating and promoting eugenics policies in Vermont in the early 1900s. It compelled us to ask whether it is appropriate to have Mead's name so publicly and prominently displayed on the Middlebury campus, especially on the iconic chapel, a place of welcome for all.
>
> After a careful and deliberative process, Middlebury's Board of Trustees has made the decision to remove the Mead name from the chapel . . . . [¶] We want to stress up front that this was a process involving deep reflection and discussion. No issue like this should be undertaken lightly or often. . . .
>
> [I]t was important for Middlebury to follow its established process for these kinds of considerations and commission a working group to look into the question. Specifically, the president asked the group to examine the role that Governor Mead had in these policies, and what implications that had for us and for the iconic building named after him on campus. She asked the group to conduct its work with a generosity toward the historical context of the time, as well as rigor in historical analysis. . . .
>
> Following its review, citing his central role in advancing eugenics policies that resulted in harm to hundreds of Vermonters, the working group determined that "the name of former Governor Mead on an iconic building in the center of campus is not consistent with what Middlebury stands for in the 21st century." [¶] The group advised that "the President recommend to the Board of Trustees to remove 'Mead' as part of the building's name."

Id., ¶ 33. The statement advised that the President had forwarded the working group's recommendation to the Prudential Committee of the College's Board of

Trustees, which voted unanimously that Middlebury should remove the Mead name. *Id.*, ¶ 34.

The September 27 statement also provided some limited background on the eugenics movement and John Mead as context for the College's decision. It explained that eugenics policies arose from "early 20th-century notions of racial purity and 'human betterment,'" and "sought to isolate and prevent the procreation of so-called 'delinquents, dependents, and defectives' to bring about a more 'desirable' society." *Id.,* ¶ 35. The statement described John Mead's role in those policies as follows:

> In 1912, two years before the chapel gift was made, in his outgoing speech as governor, John Mead strongly urged the legislature to adopt policies and create legislation premised on eugenics theory. His call to action resulted in a movement, legislation, public policy, and the founding of a Vermont state institution that sterilized people—based on their race, sex, ethnicity, economic status, and their perceived physical conditions and cognitive disabilities. John Mead's documented actions in this regard are counter in every way to our values as an institution, and counter to the spiritual purpose of a chapel, a place to nurture human dignity and possibility, and to inspire, embrace, and comfort all people.

Id., ¶ 36.

In May 2022, over a century after former Governor Mead's death, an heir filed a petition in the Probate Division of the Vermont Superior Court seeking to reopen Mead's estate for the purpose of investigating and presenting potential claims against Middlebury College for an alleged breach of the terms of Mead's gift of the Chapel. *Id.*, ¶¶ 37–38. The Probate Division, noting that it was not "passing judgment on the validity of any claims," granted the petition and appointed James

Douglas as Special Administrator of Mead's estate in an order dated June 17, 2022. *Id.*, ¶ 39.

Former Governor Douglas filed the present suit in March 2023. In October 2024, the Court granted summary judgment on all of Plaintiff's claims except for his claim for breach of the covenant of good faith and fair dealing. The Court's ruling left for trial the question of whether former Governor Mead's gift was properly characterized as a gift transaction (which would negate the Estate's covenant claim) or a matter of private contract, and asked the parties to submit briefing on the putative damages that the Estate might seek for the alleged violation of the covenant of good faith and fair dealing. Middlebury is submitting briefing on that issue contemporaneously with this motion. On November 21, 2024, the Court issued a ruling allowing Plaintiff to amend his complaint to add new claims for promissory estoppel and equitable estoppel.

ARGUMENT

A. Middlebury Is Entitled to Summary Judgment on Plaintiff's Claim for Breach of the Covenant of Good Faith and Fair Dealing on Several Grounds.

Every contract in Vermont is subject to an implied covenant of good faith and fair dealing, by which "each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement." *Carmichael v. Adirondack Bottled Gas Corp. of Vt.*, 161 Vt. 200, 208, 635 A.2d 1211, 1216 (1993). Plaintiff has asserted two discrete actions by Middlebury that allegedly breached the implied covenant: (1) the removal of the Mead name from the College's Chapel,

see Am. Compl., ¶ 193, and (2) the College's issuance of the September 27, 2021 statement explaining the justification for its decision, which Plaintiff alleges "'canceled' John Abner Mead, forever disparaged and vilified his family name, and replaced his legacy with a narrative that brands Governor Mead a eugenicist . . . ," *id.*, ¶¶ 6–9, 159, 194. Plaintiff identifies no other actions by Middlebury that are alleged to have caused harm to the Estate; the case thus rests solely on the removal of the Mead name from the Chapel and the issuance of the September 27 statement.

The first of these two cannot support the covenant claim, because the removal of the Mead name from the Chapel was the basis for Plaintiff's contract claim. *See id.*, ¶ 185. The Vermont Supreme Court has made clear that where a "claim for breach of the implied covenant is duplicative of [a] breach-of-contract claim, it cannot be sustained as a matter of law." *Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 53, 307 A.3d 209; *see also Tanzer v. MyWebGrocer, Inc.*, 2018 VT 124, ¶ 33, 209 Vt. 244, 203 A.3d 1186 ("Where a party alleges both breach of contract and breach of the implied covenant of good faith and fair dealing, dual causes of action are permitted only where the different actions are premised on different conduct . . . ."). To be viable, a claim for breach of the covenant must be "based on different conduct" from a contract claim. *Harsch Props., Inc. v. Nicholas*, 2007 VT 70, ¶ 14, 182 Vt. 196, 932 A.2d 1045. Thus, where there is "overlap" between causes of action, courts must disregard the "duplicative conduct" in evaluating the basis for the covenant claim. *Beldock*, 2023 VT 35, ¶¶ 53, 54.

That leaves the College's public statement about Mead as the only potential

basis for a claim under the covenant, to the extent such a claim could exist at all.[3] Middlebury is entitled to summary judgment on the claim for several reasons. First, the nature of the alleged harm claimed is the defamation of Mead's legacy, and no claim lies for injury to the reputation of a deceased individual. Second, Plaintiff's claim necessarily asks for the Court to imply into the alleged contract between the parties protections against disparagement of Governor Mead, and the covenant cannot be used to add substantive terms to an agreement. Moreover, to imply and enforce a restriction on speech into a contractual relationship where no such language was expressly negotiated would violate First Amendment principles—particularly where the party that would be restrained is an academic institution. Third, any claimed breach that rests on the alleged motivations of the College in removing the Mead name cannot proceed, for allegations of impure motive alone will not support a covenant claim. Finally, to the extent Plaintiff seeks to pursue a claim for breach of the covenant based on litigation conduct, there is no plausible basis for the claim.

1. The Estate May Not Pursue a Claim for Injury to the Decedent's Reputation.

The harm Plaintiff alleges from the College's statement on the removal of the

[3] As laid out at length in the College's first summary judgment motion, the College submits that the undisputed facts and evidence confirm that former Governor Mead's gift was just that—a gift, not a private contract for naming rights—and thus there can be no claim under the implied covenant in the first place. *See Monahan v. GMAC Mort. Corp.,* 2005 VT 110, ¶ 54 n.5, 179 Vt. 167, 893 A.2d 298 ("A cause of action for breach of the covenant of good faith can arise only upon a showing that there is an underlying contractual relationship between the parties . . . ."). The Court has reserved that question for trial.

Mead name is unquestionably reputational: he claims that the College's words "disparaged and vilified [former Governor Mead's] family name, and replaced his legacy with a narrative that brands Governor Mead a eugenicist." Am. Compl., ¶ 9. As the common law has long precluded actions to recover for injury to the reputation of a deceased individual, Plaintiff's claim fails.

It is well established that "[o]ne who publishes defamatory matter concerning a deceased person is not liable either to the estate of the person or to his descendants or relatives." Restatement (Second) of Torts § 560 (1977); *see also* Restatement (First) of Torts § 560 (1938) (same); *accord* Rodney Smolla, 1 Law of Defamation § 4:73 ("There is no liability for defamation of the dead, either to the estate of the deceased or to the deceased's descendants or relatives."). This rule arises from the personal nature of the reputational interest and cause of action, as well as from public policy concerns—including, among others, the risk that "permitting the cause of action [on behalf of a deceased individual] would hamper historical research and writing." *Gugliuzza v. K.C.M.C., Inc.*, 606 So. 2d 790, 792 (La. 1992). It has been widely applied to preclude claims seeking to recover for damage to the reputation of a deceased, as here. *See, e.g.*, *Hughes v. New Eng. Newsp. Pub. Co.*, 43 N.E.2d 657, 658 (Mass. 1942) ("One who defames the memory of the dead, whatever his responsibility may be under the criminal law, is not liable civilly to the estate of the decedent or to his relatives" (citations omitted)).[4] The

[4] *See also, e.g.*, *Rich v. Fox News Network, LLC*, 939 F.3d 112, 125 (2d Cir. 2019) ("Because [decedent] is dead, no defamation claim can be brought in his name."); *Saari v. Gillett Commc'n. of*

rule extends not only to defamation, but also to other torts arising from injury to personal interests in reputation and privacy. *See* Restatement (Second) of Torts § 652I (1977) (action for invasion of privacy can only be brought by a living individual); *Mineer v. Williams*, 82 F. Supp. 2d 702, 705 (E.D. Ky. 2000) (false light claim could not be brought for injury to deceased); *Nicholas v. Nicholas,* 83 P.3d 214, 228–29 (Kan. 2004) (holding that an "invasion of privacy action . . . for intrusion upon seclusion does not survive the death of the alleged victim," in part "[b]ecause the alleged injuries are so personal, a jury would have to guess on the extent and nature of the decedent's emotional devastation, humiliation and ostracism without his presence and testimony" (citations and quotation marks omitted)).

Here, while Plaintiff may not formally have framed his claim as one for defamation, he unquestionably seeks to utilize the covenant of good faith and fair dealing as a cause of action to recover for a claimed injury to reputation. The entirety of the claimed breach is that Middlebury issued a statement that "proclaimed Governor Mead a eugenicist" and "scapegoat[ed]" him, "destroying the Mead family name[5] while erasing John Mead's lifetime of accomplishments and

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Atlanta, Inc., 393 S.E.2d 736, 737 (Ga. Ct. App. 1990) (no common law action exists to recover for defamation of the deceased); *Drake v. Park Newspapers of N.E. Oklahoma, Inc.*, 683 P.2d 1347, 1349 (Okla. 1984) (same); *Kelly v. Johnson Pub. Co.*, 325 P.2d 659, 664 (Cal. App. Ct. 1958) (same); *Fasching v. Kallinger*, 510 A.2d 694, 700–01 (N.J. Super. App. Div. 1986) (no right of action lay for defamatory statements published after decedent's death).

[5] While Plaintiff refers to injury to the "Mead family name," the plain language of the statement issued by Middlebury on September 27, 2021 addresses only Mead himself; there is nothing that could plausibly be read to reflect more broadly on the "Mead family." To be sure, Plaintiff may contend that, because a motivating factor for Mead's gift was to honor his family, the removal of the

philanthropy." *See* Am. Compl., ¶¶ 158, 194. Allowing Plaintiff to proceed with his claim and seek damages for a statement that is claimed to have injured the reputation of a public figure who has been dead for over a century would contravene the longstanding bar on actions for harm to the reputation of the deceased.[6] The Court should grant judgment to Middlebury on that basis.

2. The Covenant Cannot Be Used to Imply an Anti-Disparagement Clause into the Alleged Contract Between the Parties.

Even setting aside the bar on recovery for reputational harm to a deceased party, Plaintiff's claim, in seeking to exploit the covenant to imply protections against disparagement into the alleged contract between the parties, would stretch the covenant of good faith and fair dealing well past its limits. To imply into a contract terms restricting speech by an academic institution about a public figure

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Mead name from the Chapel reflects negatively on the entire Mead family. Even were that so—and Middlebury would dispute that this is a plausible inference—the harm to the Mead *family* would flow only from the removal of the Mead name from the Chapel, not from the College's statement (which addresses only Mead's own legacy as a public figure, and does not mention his family at all). As discussed above, the removal of the name from the Chapel is not a permissible basis for his covenant claim, hence any reputational harm to the "Mead family name" from the removal of that name is not actionable under the covenant.

[6] Moreover, Middlebury's statement would not be actionable in the first instance under normal defamation standards. The statement truthfully recounts the fact that "in his outgoing speech as governor, John Mead strongly urged the legislature to adopt policies and create legislation premised on eugenics theory," SUMF, ¶ 36, and one cannot be liable in defamation for a truthful statement. *See Lent v. Huntoon*, 143 Vt. 539, 548, 470 A.2d 1162, 1169 (1983) ("Truth . . . is a complete defense to defamation."). The portion of the statement with which Plaintiff appears to take issue is the assertion that this "call to action" by Mead "resulted in a movement, legislation, public policy, and the founding of a Vermont state institution that sterilized people." SUMF, ¶ 36. Drawing causal connections between historical events is inherently the realm of opinion, and as such is protected by the First Amendment and, like a truthful statement, cannot form the basis for a defamation claim. *See, e.g.*, *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339–40 (1974) ("Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas."); *Mr. Chow of New York v. Ste. Jour Azur S.A.*, 759 F.2d 219, 223 (2d Cir. 1985) ("[W]e have held that generally one cannot be liable simply for expressing an opinion.").

would also raise grave public policy concerns. The Court should decline to endorse such an extreme and problematic application of the covenant of good faith and fair dealing.

The primary function of the implied covenant is to protect the parties to a contract against conduct that would "undermine or destroy the other's rights to receive the benefits of the agreement" that the parties actually negotiated. *Carmichael*, 161 Vt. at 208, 635 A.2d at 1216. As the Vermont Supreme Court has emphasized, "[g]enerally, an implied duty of good faith and fair dealing is not understood to interpose new obligations about which the contract is silent, even if inclusion of the obligation is thought to be logical and wise." *Downtown Barre Dev. v. C & S Wholesale Grocers, Inc.*, 2004 VT 47, ¶ 18, 177 Vt. 70, 857 A.2d 263 (citation and quotation marks omitted).

Here, it is undisputed that the documents describing the gift transaction by which former Governor Mead made his donation to Middlebury do not contain any language or terms restraining Middlebury from making public statements about former Governor Mead. SUMF, ¶ 26. Plaintiff's theory therefore requires that the Court use the covenant to imply into the parties' alleged contract the equivalent of an anti-disparagement clause. However, "Vermont law does not permit the implied covenant to be used in this manner." *Knelman v. Middlebury College*, 898 F. Supp. 2d 697, 716–17 (D. Vt. 2012) (rejecting argument under covenant to "impose upon Middlebury contractual obligations that do not otherwise exist"), *aff'd*, 570 F. App'x 66 (2d Cir. 2014); *see also, e.g., Compania Embotelladora Del Pacifico, S.A. v. Pepsi*

Cola Co., 650 F.Supp.2d 314, 324 (S.D.N.Y. 2009) (implied covenant "cannot be used to impose 'obligations that were not explicitly part of the agreement'" (citation omitted)), *aff'd*, 976 F.3d 239 (2d Cir. 2020). This is so because:

> A duty of good faith must relate to performance of an express term of the contract and is not an abstract and independent term of a contract; the duty of good faith and fair dealing is not "free-floating" but exists only in relation to performance of a specific contract term. In other words, the implied covenant of good faith and fair dealing attaches to existing contractual obligations; it does not add new contractual duties, may not be invoked to create rights and duties not otherwise provided for in the existing contractual relationship, and cannot overrule or modify the express terms of a contract.

17A Am. Jur. 2d Contracts § 362. As Middlebury and former Governor Mead did not negotiate and agree to any restraint on Middlebury's speech regarding Mead, Vermont law would not allow Plaintiff to imply such a restraint into a contract between the parties (if such a contract existed).

The facts here warrant particular caution: to imply a term restricting Middlebury's speech regarding former Governor Mead's legacy—and enforce that term more than a century after his death—would present serious First Amendment and public policy concerns. To be sure, there is no question that parties can, through express contractual terms, bargain away their First Amendment rights to free speech. *See Kneebinding, Inc. v. Howell*, 2018 VT 101, ¶ 61, 208 Vt. 578, 201 A.3d 326 (holding stipulated restriction on defendant's speech enforceable, and noting that "[p]rivate parties are free to contractually waive their First Amendment rights"). However, for enforcement of such a contract to comply with the Constitution's safeguards, the contractual waiver of speech rights must be

"knowing, voluntary, clear, and unequivocal." *Id.*, ¶ 62. An *implied* restriction on speech would be none of the above. Enforcing an implied non-disparagement agreement under any circumstances would thus raise significant concerns under the First Amendment.

But these are not just any circumstances. Middlebury's September 27, 2021 statement concerned remarks made to the Vermont legislature by Vermont's fifty-third governor—plainly a public figure—who used the power of his position to gather information on eugenics policies while in office and advocated for the Vermont legislature to adopt such policies in his farewell speech. SUMF, ¶¶ 1–2, 4–11. The First Amendment extends particularly strong protections to speech about public figures and matters of public concern due to our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); *see also State v. VanBuren*, 2018 VT 95, ¶ 38, 210 Vt. 293, 214 A.3d 791 (recognizing that "speech on matters of public concern or relating to public figures" enjoys higher protection than speech on matters of private concern and nonpublic figures). There can be no question that Vermont's history of eugenics policies, and the role of its fifty-third governor in that history, are matters of public concern—and, indeed, have been expressly addressed by Vermont's legislature in recent years, *see* SUMF, ¶ 29—and therefore statements on those matters would be subject to strong First Amendment protections.

It is also significant that the party that would be subject to this implied restraint on speech concerning a public figure is a college. Traditionally, courts have been particularly solicitous of the free speech rights of academics and institutions of higher education, as "academic freedom and political expression" are "areas in which government should be extremely reticent to tread." *Sweezy v. State of N.H.*, 354 U.S. 234, 250 (1957). As the Supreme Court has stressed:

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Id. Implying a restraint on an academic institution's right to engage in speech and inquiry about the history of the eugenics movement and a public figure's role in that movement would run directly counter to these principles.

In sum, Middlebury College never negotiated nor agreed to any express, voluntary restriction on its constitutional right to speech about the public record of former Governor Mead. To imply such a restriction under the guise of the covenant of good faith and fair dealing would be inconsistent with Vermont law, *Downtown Barre Dev.*, 2004 VT 47, ¶ 18, and would represent an affront to constitutional values. The Court should to decline to countenance the claim.

3. Plaintiff's Covenant Claim Fails to the Extent It Rests on the College's Motivations for Removal of the Mead Name.

In his briefing on the covenant, Plaintiff has been equally if not more preoccupied with the question of *why* the College removed the Mead name than the removal itself. Plaintiff spins a fantastical story in which the College removed the Mead name from its Chapel to "scapegoat Governor Mead and use him as a subterfuge to conceal the fact that Middlebury College was, literally, a Eugenicist factory, for over 50 years . . . ." Plf.'s Brief Regarding Damages at 3. Plaintiff's theory, presented in over-the-top, sensationalist terms, lacks any basis in fact or logic—indeed, why would an institution allegedly seeking to *avoid* scrutiny of its history with the eugenics movement draw public attention to the role that an important alumnus, Trustee, and supporter played in that movement? But even were Plaintiff's wild accusations true, the College's motivations could not form a basis for liability under the covenant, and the claim fails on that ground as well.

The Vermont Supreme Court has made clear that allegations of a party's motivations for breaching obligations under a contract will not support a claim for breach of the implied covenant of good faith and fair dealing. *See Beldock*, 2023 VT 35, ¶ 54 ("[S]imply providing the motivations for [defendant's] alleged breach is insufficient to establish that the [contract and covenant] causes of action are premised on different conduct."). An illustration of this principle can be found in *Ferrisburgh Realty Investors v. Schumacher*, 2010 VT 6, 187 Vt. 309, 992 A.2d 1042. There, the defendant signed an agreement not to oppose the planned development

of neighboring properties but, after he was thwarted in his efforts to purchase portions of those properties from the plaintiff, he actively opposed the project in permitting proceedings. The plaintiff obtained a jury award for breach of the covenant of good faith and fair dealing on the theory that defendant breached his obligations out of spite, only after being denied the chance to purchase properties he desired. The trial court eliminated this award for lack of an evidentiary basis, and the Vermont Supreme Court affirmed, noting that the plaintiff's evidence "focuse[d] solely on [the defendant's] motivation for the breach." *Id.*, ¶ 26; *accord Dunkin' Donuts Inc. v. Liu*, 79 F. App'x 543, 547 (3d Cir. 2003) (holding that, even if claimants had produced evidence of an "ulterior motive," such "motivational analysis would have been irrelevant" to their claimed breach of the implied covenant); *Cent. 21 Real Est. LLC v. All Prof. Realty, Inc.*, 600 F. App'x 502, 506 (9th Cir. 2015) (rejecting implied covenant claim based on theory that party's terminations of agreements "were pre-textual" and the result of an "improper motive," as the allegedly breaching party's "motive is not relevant to the analysis").

Here, unlike *Ferrisburgh Realty Investors*, the College has not even breached any contractual obligation to the Estate. The Court ruled that Middlebury was entitled to discontinue use of the name "Mead" in connection with the Chapel after more than a century, and, as discussed above, there is nothing in the parties' communications that reflects any negotiated restriction on the College's speech about Mead. Thus, Plaintiff's claim boils down to the assertion that the College took actions it was otherwise entitled to take—removing the Mead name from the

Chapel and issuing a statement about a public figure's involvement in the eugenics movement—but did so with a supposed motive of "using [Mead] to create a smokescreen to obscure the vile history of Middlebury College as a racist and antisemitic institution." Plf.'s Brief Regarding Damages at 3. Plaintiff cannot make out a claim for breach of the implied covenant based on these speculative (and baseless) assertions regarding the College's motivations. *See Beldock*, 2023 VT 35, ¶ 54.

4. This Case Presents No Dishonest Litigation Conduct That Could Provide a Basis for Liability Under the Covenant.

In his recent briefing on damages, Plaintiff suggests that the Estate also intends to pursue a theory of breach of the implied covenant based on bad faith litigation conduct warranting an award of attorney's fees. *See* Plf.'s Brief Regarding Damages at 24–25. There is absolutely no basis for such a theory here.

It is true that a party's conduct in connection with enforcement and litigation of a contract dispute can support a claim under the covenant of good faith and fair dealing under extreme circumsrances. *See Tanzer*, 2018 VT 124, ¶ 40. However, the Vermont Supreme Court has cautioned that there is "a distinction between litigation conduct that violates the covenant and litigation conduct that is an aggressive prosecution or defense," and "any litigation conduct alleged to have breached the covenant must fall within the narrow scope of *dishonest* conduct." *Id.* (emphasis added); *see also Beldock*, 2023 VT 35, ¶ 55 (noting that "[l]itigation conduct may violate the implied covenant" but "a proponent faces a high bar"

(citation and quotation marks omitted)). Nor is the presence of dishonest conduct alone enough; the litigation conduct at issue itself must have interfered with the claimant's enjoyment or enforcement of their contract rights to be actionable. In *Beldock*, for example, the Court rejected a covenant claim based on the allegation that one of the defendant's principals had intentionally lied during testimony at a motion hearing, finding that the plaintiff had "not pointed to any evidence to show how this claimed lie undermined or destroyed his contract rights" or his "ability to assert his contract rights in court." *Id.*, ¶ 59.

Plaintiff cannot offer any support for liability on this theory, let alone meet the high bar necessary to pursue a claim. Middlebury College has not engaged in dishonest conduct in connection with this litigation; Plaintiff's suggestion that the College and its counsel have proceeded in bad faith is, to be blunt, offensive. The parties may disagree about the interpretation of the historical record, but that mere disagreement does not bespeak dishonesty on either party's part. Accordingly, the College is entitled to summary judgment to the extent Plaintiff seeks to ground his covenant claim in accusations of dishonest litigation conduct. *See id.*, ¶ 58 (affirming summary judgment on covenant claim where plaintiff "point[ed] to no evidence" that defendant engaged in litigation conduct "that undermined his rights and was dishonest").

B. Plaintiff's Promissory Estoppel Claim Fails on Multiple Grounds.

Plaintiff's claim for promissory estoppel is no more than a bid for a second bite at the apple after the Court granted summary judgment on his contract claim.

The Court has held that, to the extent a contract existed, any reasonable term for maintenance of the Mead name on the College Chapel has been satisfied by the College's use of the name for over a century. To suggest that, on the exact same facts, Plaintiff has a claim in promissory estoppel for enforcement of the same supposed, vague promise well beyond a term of 100 years is untenable—and unsupported by the law.

Courts generally "apply the doctrine of promissory estoppel cautiously and sparingly." 31 C.J.S. Estoppel and Waiver § 116. Vermont follows the Second Restatement's articulation of the cause of action for promissory estoppel, which "requires (1) a promise on which the promisor reasonably expects the promisee to take action or forbearance of a substantial character; (2) the promise induced a definite and substantial action or forbearance; and (3) injustice can be avoided only through the enforcement of the promise." *Island Indus., LLC v. Town of Grand Isle*, 2021 VT 49, ¶ 39, 215 Vt. 162,260 A.3d 372 (quoting *Green Mountain Inv. Corp. v. Flaim*, 174 Vt. 495, 497, 807 A.2d 461, 464 (2002) (mem.)). The first two elements of the claim are questions of fact, and the third is a question of law. *Id.*

Plaintiff's promissory estoppel claim rests on the allegations that Middlebury made a promise to former Governor Mead that the chapel "would always be known as the 'Mead Memorial Chapel'" and that Middlebury's promise induced Mead to make a gift of the chapel. Am. Compl., ¶¶ 197–205. The claim fails for several reasons. First, the undisputed facts—which the Court already held do not support a finding that Middlebury bound itself in perpetuity to maintain the Mead name on

its Chapel—do not show a clear and definite promise that the Chapel "would always be known" by its original name. Second, as a matter of law, justice does not require the continued enforcement of this supposed promise by the College for an indefinite period where the College already maintained the Mead name on the Chapel for over a century. Third, promissory estoppel cannot apply on the facts here given that, if any binding promise was made at all, it could only have occurred within the context of a bargained-for gift or contractual exchange.

1. The Undisputed Facts Do Not Make Out Any Clear and Definite Promise by Middlebury to Maintain the Name "Mead Memorial Chapel" in Perpetuity.

Plaintiff's claim fails in the first instance because no reasonable factfinder could find a clear and definite promise by Middlebury to maintain the Mead name on the College Chapel in perpetuity, as Plaintiff alleges.

Promissory estoppel requires "a promise of a specific and definite nature." *Dillon v. Champion Jogbra, Inc.*, 175 Vt. 1, 10, 819 A.2d 703, 710 (2002); *see also Norton v. McOsker*, 407 F.3d 501, 507 (1st Cir. 2005) (promissory estoppel necessitates "a clear, unambiguous and unconditional promise, the terms of which are certain"); 31 C.J.S. Estoppel and Waiver § 116 (same). As the "sine qua non of promissory estoppel is a promise that is definite and clear," *Willis v. New World Van Lines, Inc.*, 123 F.Supp.2d 380, 395 (E.D. Mich. 2000) (cited in *Dillon*), courts closely scrutinize the alleged promises and will reject claims where there is an insufficiently definite promise.

In *Dillon*, for example, the plaintiff claimed she was induced to take on a new

position with her employer by statements representing that she would be given time to adjust to her new responsibilities, including an assurance "that it would take four to six months to become comfortable with the position." 175 Vt. at 10, 819 A.2d at 710. The Vermont Supreme Court affirmed summary judgment for the plaintiff's employer on appeal, holding that the employer's statements did not constitute a sufficiently specific and definite promise that the plaintiff would be employed for any given period. *Id.*; *see also*, *e.g.*, *Woolaver v. State*, 175 Vt. 397, 412–13, 833 A.2d 849, 861 (2003) (affirming summary judgment on promissory estoppel claim based on conclusion that State's promises to plaintiff regarding parental leave could not be construed as promise "that her employment was guaranteed for any specific length of time"); *Nelson v. Town of Johnsbury Selectboard*, 2015 VT 5, ¶¶ 55–57, 198 Vt. 277, 115 A.3d 423 (affirming summary judgment on promissory estoppel claim and holding that representations by town attorney that plaintiff could be terminated only "with cause" and "that he would have to be guilty of gross abuse of municipal funds and official discretion before [he] could be fired" were an expression of legal opinion and not a definite promise that the selectboard would act in a specific way).

Here, there is no evidence that Middlebury College, acting through an agent authorized to bind the College, made any affirmative, independent promise to maintain the Mead name on the Chapel. The documents show only that *Mead* himself referred to the Chapel being "known as the 'Mead Memorial Chapel'" in his 1914 Gift Letter to the College, *see* SUMF ¶ 14, and that the Chapel was referred to as such in some correspondence and speeches thereafter. None of the references to

the "Mead Memorial Chapel" by College Trustees and personnel can plausibly be read to reflect that, through these individuals' mere references to the building's name, the College was binding itself in a promise to grant Mead naming rights. *See, e.g.*, SUMF ¶ 21, Exh. H (letter from Treasurer John Fletcher "concur[ing] in the acceptance of the 'Mead Memorial Chapel" and noting that it "is a splendid gift"). To be enforceable, a promise "must be more than 'a mere expression of intention, hope, desire, or opinion, which shows no real commitment.'" *Nelson*, 2015 VT 5, ¶ 56 (quoting *Escribano v. Greater Hartford Acad. of Arts*, 449 F. App'x 39, 43 (2d Cir. 2011)). At best, the use of the name "Mead Memorial Chapel" by College trustees and personnel in connection with the building could perhaps be construed as an "expression of intention" or a "vague assurance"—and even that is a stretch—but they do not meet the standards sufficient to show a binding commitment by the College. *Id.*

Moreover, even if the evidence here were construed to conjure up a promise of sufficient clarity and definition to meet the requirements of promissory estoppel, there is absolutely no support for the notion that the College made an express, binding promise to use the name "Mead Memorial Chapel" *in perpetuity*, as Plaintiff claims. This Court has already found, based on the undisputed material facts, that there is "no direct evidence of any . . . perpetual requirement" in contract for Middlebury to maintain the name "Mead Memorial Chapel." *See* Oct. 3, 2024 Ruling on Middlebury's Motion for Summary Judgment at 9. The standards for recognizing an obligation are no more lenient where one seeks to enforce a promise

based on reliance rather than in contract—if anything, they are more stringent, particularly as to the duration of the obligation. *See, e.g.*, *Iraola & CIA, S.A. v. Kimberly-Clark Corp.*, 325 F.3d 1274, 1281 (11th Cir. 2003) ("[P]romissory estoppel has no application where the promise relied upon is for an indefinite duration." (citation and quotation marks omitted)). In short, the undisputed facts do not and cannot make out a "specific and definite" promise to maintain the name "Mead Memorial Chapel" in perpetuity.

2. Compelling Middlebury to Maintain the Mead Name in Perpetuity Is Not Necessary to Avoid Injustice.

As the Vermont Supreme Court has emphasized, "[p]romissory estoppel is available only when it is necessary to avoid injustice," which "is a question of law." *In re Rosenberg*, 2010 VT 76, ¶ 16, 188 Vt. 598, 11 A.3d 651 (citation and quotation marks omitted). Here, Plaintiff cannot show that injustice requires ongoing enforcement of any alleged promise to maintain the Mead name on the College Chapel.

The Court has determined that, to the extent Middlebury had a contractual obligation to use the name "Mead Memorial Chapel," "the reasonable duration of any contractual term . . . has been satisfied as a matter of law" by Middlebury's use of the name for more than a century. Oct. 3, 2024 Ruling on Middlebury's Motion for Summary Judgment at 12. It would be nonsensical to hold that justice will require *more* in the enforcement of a promise based on reliance than it would if that exact same promise were an express, negotiated contractual term. Indeed, upon

finding a promise has been made binding by detrimental reliance, the promise is treated as a contract. *See* Restatement (Second) of Contracts § 90 (1981) ("A promise binding under this section is a contract."). Because both Plaintiff's contract claim and promissory estoppel claim are based on the same documents and terms, the Court must construe their duration consistently. There could be nothing unjust about determining that, the College having satisfied the reasonable duration of any requirement to use the Mead name, Plaintiff is not entitled to ongoing, perpetual enforcement of the alleged promise. Plaintiff's claim fails on that basis.

3. Promissory Estoppel Has No Application Where Plaintiff Alleges Bargained-for Reliance.

Lastly, Middlebury is entitled to summary judgment because promissory estoppel has no application where the alleged promise was made in a negotiated exchange. Promissory estoppel operates only where there is a gratuitous promise that induces "*unbargained-for* reliance" on the part of the claimant. *Chomicky v. Buttolph*, 147 Vt. 128, 131 n., 513 A.2d 1174, 1176 n. (1986) (emphasis added); *see also Overlock v. Cent. Vt. Pub. Serv. Corp.,* 126 Vt. 549, 553, 237 A.2d 356, 358 (1967) (same). For that reason, "[t]he doctrine is inapplicable '[i]f the promisee's performance was requested at the time the promisor made his promise and that performance was bargained for.'" *Andersen v. United Parcel Serv., Inc.*, No. EDCV 23-0027 JGB (SPX), 2024 WL 2104496, at *15 (C.D. Cal. Apr. 11, 2024); *see also Walker v. KFC Corp.,* 728 F.2d 1215, 1220 (9th Cir. 1984) ("[T]he promissory estoppel doctrine is limited to cases where no benefit flows to the promisor.").

Here, to the extent Middlebury made any promise to name the subject chapel "Mead Memorial Chapel,"[7] such promise was made within the gift transaction at issue, at the same time as (and in direct connection with) Mead's offer to make a donation to the College. As the First Amended Complaint alleges:

> Middlebury College has violated the sacred trust that Dr. Mead placed in the Trustees of his beloved alma mater, breaking the promises they made and depriving him and his family of the *benefit of his bargain*, the *quid pro quo*, and/or the *conditions of his gift*: that Mead would erect a chapel to be known forever as the "Mead Memorial Chapel."

Am. Compl. ¶ 16 (emphasis added); *see also id.*, ¶ 97 (referring to the naming of the Chapel as one of the "Terms of the Contract, *or, in the alternative,* the Conditions of the Gift" (emphasis in original)), ¶ 150 ("An essential term, obligation, promise, and condition of their agreement was that the Chapel would be known as 'The Mead Memorial Chapel' . . . ."). As alleged, this supposed promise was not a separate, gratuitous undertaking by the College upon which Mead relied; rather, it was a key, bargained-for condition to Mead's donation to the College. In Plaintiff's words, the "name 'Mead Memorial Chapel' was the essence of the deal, and it was the entire deal – forever." *Id.*, ¶ 175. Where what is alleged is the deprivation of a central, bargained-for benefit, promissory estoppel has no role to play. *See Chomicky*, 147 Vt. at 131 n., 513 A.2d at 1176 n.

Moreover, to allow Plaintiff to pursue enforcement of an alleged naming condition to a gift via promissory estoppel would be untenable as a matter of

[7] For reasons covered at length in prior briefing, Middlebury disputes that the documents can be read to reflect such an obligation.

doctrine. The Court has yet to decide whether the gift transaction at issue in this case may be properly characterized as gift or contract. If contract, the law is clear that a promissory estoppel claim cannot lie. *See LoPresti v. Rutland Reg'l Health Servs., Inc.*, 2004 VT 105, ¶ 47, 177 Vt. 316, 865 A.2d 1102 (recognizing the "well-established rule that promissory estoppel will not apply when the relationship of the parties is governed by a contract"); 31 C.J.S. Estoppel and Waiver § 116 ("[P]romissory estoppel is intended to enforce promises that are not supported by consideration . . . ; it is not intended to give a party to a negotiated commercial bargain a second bite at the apple in the event it fails to prove breach of contract."). If a gift, Plaintiff's recourse is to the law of conditional gifts—and the Court has already held that the facts here do not make out a conditional gift. Allowing Plaintiff to proceed to seek enforcement of a supposed condition to a gift on promissory estoppel grounds where the requisites for a conditional gift are not present would wholly undermine the law: every failed conditional gift claim could be transmuted into a promissory estoppel claim, unburdened by the stringent requirements the law will impose before it recognizes enforceable conditions to a gift.

In sum, the undisputed facts here simply cannot satisfy the requisites for promissory estoppel—and to recognize a claim here, where a promise was allegedly bargained for as a condition for the promisee to make a donation, would be inconsistent with the law of both promissory estoppel and conditional gifts. The Court should grant Middlebury summary judgment.

C. To the Extent Plaintiff's "Claim" for Equitable Estoppel Is Distinct from His Promissory Estoppel Claim, It Fails Because There Is No Such Cause of Action.

As the Court noted in its ruling on Plaintiff's Motion to Amend, it is unclear that Plaintiff's "claim" for equitable estoppel, as presented in the Amended Complaint, is distinct from his promissory estoppel claim. *See* Nov. 21, 2024 Ruling on Governor Douglas's Motion to Amend at 2. Regardless, Plaintiff's asserted cause of action for equitable estoppel fails as a matter of law.

While Plaintiff has pleaded his two estoppel claims as effectively interchangeable, they are doctrinally distinct. To start with, promissory estoppel is "forward-looking," applying to promises and dealing with questions of "future intent," whereas equitable estoppel "requires a misrepresentation as to a past or present fact." 28 Am. Jur. 2d Estoppel and Waiver § 34. Here, Plaintiff's claim rests explicitly on allegations of future action and intent: that the College supposedly "promised" and made "representations" that it would "name the chapel the 'Mead Memorial Chapel' for as long as the building existed." Am. Compl., ¶¶ 207, 210. Accordingly, Plaintiff has no basis to invoke equitable estoppel. *See, e.g.*, *Siesta Sol, LLC v. Brooks Pharm., Inc.*, 617 F. Supp. 2d 38, 56 (D.R.I. 2007) (holding doctrine of equitable estoppel inapplicable to a promise of future action).

But the "major distinction between equitable estoppel and promissory estoppel is that the former is available only as a defense while promissory estoppel can be used as the basis of a cause of action for damages." 28 Am. Jur. 2d Estoppel and Waiver § 34. Courts in Vermont and elsewhere have consistently rejected

efforts to deploy equitable estoppel as an affirmative cause of action, *see Vt. Nat'l Bank v. Dowrick*, 144 Vt. 504, 508, 481 A.2d 396, 398 (1984) ("Estoppel is not a cause of action in and of itself . . . ."); *Luke v. State*, No. 233-7-16 Frcv, 2017 WL 7052187, at *3 (Vt. Super. Ct. July 12, 2017) (holding that "equitable estoppel is not a cause of action" and granting motion to dismiss on that basis),[8] and have made clear that equitable estoppel is only a defensive theory, *see Fisher v. Poole*, 142 Vt. 162, 168, 453 A.2d 408, 411 (1982) ("[E]quitable estoppel works to *prevent one party from asserting rights* which may have existed against another party who in good faith has changed his or her position in reliance upon earlier representations." (emphasis added)); *Mellin v. Flood Brook Union Sch. Dist.*, 173 Vt. 202, 221, 790 A.2d 408, 424 (2001) ("[E]stoppel, waiver and laches are all affirmative defenses; they are not causes of action that provide a basis for a lawsuit"). There being no viable "claim" for equitable estoppel here, Middlebury is entitled to summary judgment.

CONCLUSION

It is time for this case to draw to a close. The Court has already entered judgment on Plaintiff's core claims for breach of contract and breach of a conditional

[8] *See also, e.g.*, *Jain v. T & C Holding Inc.*, No. 10 Civ. 1006(RMB), 2011 WL 814659, at *7 (S.D.N.Y. Mar. 3, 2011) ("[T]here is no distinct equitable estoppel cause of action under New York law; rather, it is an affirmative defense."); *Vasily v. MONY Life Ins. Co. of Am.*, 104 F. Supp. 3d 207, 221 (D. Conn. 2015) (same); *Behnke v. State Farm Gen. Ins. Co.,* 127 Cal. Rptr. 3d 372, 387–88 (Cal. App. Ct. 2011) (same); *Wheat Ridge Urb. Renewal Auth. v. Cornerstone Group XXII, LLC,* 176 P.3d 737, 741 (Colo. 2007) (same); *Kelly v. Rio Grande Computerland Grp.,* 128 S.W.3d 759, 769 (Tex. App. Ct. 2004) (same); *Van v. Zahorik*, 575 N.W.2d 566, 572 (Mich. App. Ct. 1997) (same), *aff'd*, 597 N.W.2d 15 (Mich. 1999); *Howell v. Oregonian Pub. Co.*, 728 P.2d 106, 109 (Or. App. Ct. 1986), *opinion modified on reconsideration*, 735 P.2d 659 (Or. App. Ct. 1987) (same).

gift. While Plaintiff has attempted to skirt the Court's ruling and revive his claims under a different label in his recent amendment of the complaint, neither the facts nor the law can establish a plausible entitlement to recovery on promissory or equitable estoppel principles here.

The only remaining claim, for breach of the covenant, is attenuated far past the point of viability, seeking to recover money for alleged damage to the reputation of a public figure caused by a statement made more than a hundred years after his death referencing his support of eugenics policies—policies he undisputedly and publicly endorsed. Reasonable minds can differ on the philosophical question of how to grapple with the legacy of such a public figure, who in his lifetime both performed acts of good and supported policies that are universally condemned today. However, there is no room for difference on the merits of Plaintiff's claim. As a matter of law, Plaintiff is not entitled to recover for alleged disparagement of the reputation of a dead man pursuant to implied contractual protections against disparagement that the parties never contemplated, much less negotiated.

For all of these reasons, the Court should grant the College's Motion and enter summary judgment for the College.

Dated at Burlington, Vermont, this 2nd day of December, 2024.

By: *\/s\/ Justin B. Barnard*

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STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,)
Special Administrator of the)
Estate of John Abner Mead,)
)
Plaintiff,)
v.)
)
THE PRESIDENT AND FELLOWS)
OF MIDDLEBURY COLLEGE,)
)
Defendant.)

MIDDLEBURY COLLEGE'S
STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendant The President and Fellows of Middlebury College ("Middlebury" or the "College"), by and through counsel, submits this Statement of Undisputed Material Facts pursuant to V.R.C.P. 56(c) in support of its Second Motion for Summary Judgment.

A. John Abner Mead's Proposal for Eugenics Policies in Vermont

1. John Abner Mead ("Mead") was an 1864 graduate of Middlebury College and served from 1910 to 1912 as Vermont's fifty-third governor.

See Am. Compl. ¶¶ 31–32.

2. Mead was trained as a physician and practiced medicine in Rutland for a period before pursuing political office.

See id. ¶¶ 50, 52, 53, 57, 58.

3. Mead served on Middlebury's Board of Trustees.

See id. ¶ 80.

4. In his farewell address to the Vermont General Assembly delivered on October 3, 1912, Governor Mead advocated for the adoption of eugenics policies in Vermont, stating:

> The heads of our criminal institutions tell us that among the inmates there is always a considerable class that are termed "degenerates" or "defectives," by which is meant a class of individuals in whose mental or nervous construction there is something lacking. Alienists, criminologists [sic] and physicians tell us that individuals of this unfortunate class tend to marry those cursed with similar defects, and that this class is increasing out of all proportion to the normal growth of the population, and that most of the insane, the epileptics, the imbeciles, the idiots, the sexual perverts, together with many of the confirmed inebriates, prostitutes, tramps and criminals that fill our penitentiaries, jails, asylums and poor farms are the results of these intermarriages or the natural offspring of defective parents. In the cases of these unfortunates there is little or no hope of permanent recovery, and the great question that is now being considered by the lawmakers in many of our states is how best to restrain this defective class and how best to restrict the propagation of defective children.

See Am. Compl., Exh. 8 at 8-017, 8-022.

5. Mead explained to the General Assembly that he had used his time in office to investigate the question of "how best to restrain this defective class and how best to restrict the propagation of defective children," stating that he had "endeavored during the last two years to inform [him]self thoroughly" on the subject, "having corresponded with the secretaries of twenty or more . . . states to learn what was being done with reference to this unfortunate class," "obtain[ing] copies of their laws and [making] a careful

study of the same . . ."

See id. at 8-022.

6. Asking "[w]hat can be done to protect society from these unfortunates and what to protect them from themselves," Mead posed three alternatives for Vermont's legislature to consider enacting:

> 1. Laws regulating and limiting marriage for certain classes of undesirable individuals;
>
> 2. "Segregation" of "defectives"; and
>
> 3. Sterilization to limit procreation among these "degenerates."

Id.

7. With respect to the option of restricting marriage with undesirables, Mead advised the General Assembly that he "heartily approve[d]," but "it does not and obviously cannot go far enough," because, "[w]hile by preventing marriages among defectives, it restricts the propagation of defective children born in lawful wedlock, it does not restrict the propagation of children in those cases where the taint of degeneracy is coupled with that of illegitimacy."

Id.

8. With regard to the possibility of segregating "defectives," Mead cautioned the General Assembly that establishing colonies for "defectives" would "necessarily entail a very great expense" and "conditions would have to be safeguarded with the same care as an actual penitentiary."

Id.

9. Mead was most supportive of the third option, sterilization, telling the General Assembly:

> This operation is simple, taking less than five minutes to perform. In the case of defectives and persons convicted of certain crimes it is strongly endorsed . . . Dr. H.C. Sharp, the physician of the Indiana reformatory, highly approves of this plan of restricting the propagation of defectives and abnormal criminals. . . . So far as any disturbance to the physical, mental or nervous system of the patient is concerned, his testimony, based upon observation, is that this operation is decidedly beneficial, rather than detrimental.

Id. at 8-023.

10. Mead "recommend[ed] to the legislature of 1912" that it immediately adopt restrictions on marriage for various classes of undesirables, including those who had been confined for "feeble-mindedness" or "insanity," and further recommended that the legislature investigate "adoption of the operation of vasectomy as a prevention for the spread of hereditary taints and diseases."

Id.

11. Just over a month after Mead's speech (on November 8, 1912), the legislature took up S.79, "[a]n act to authorize and provide for the sterilization of imbeciles, feeble-minded, and insane persons, rapists, confirmed criminals and other defectives." The bill called for the formation of a board of examiners authorized to evaluate "insane, feeble-minded, epileptic, criminal, and other defective" individuals in the care or custody of the State and, upon finding that "procreation by such person would produce children with an inherited tendency to crime, insanity, feeble-mindedness, epilepsy, idiocy or imbecility," to "order . . . an

operation to be performed on such person for the prevention of procreation."

See Exh. A (1912 Senate Journal Excerpt); Exh. B (Text of S.79).

12. Although the General Assembly passed S.79, then-Governor Allen Fletcher ultimately vetoed it, citing constitutional concerns raised by the Attorney General.

See Exh. C (1912 House Journal Excerpt).

13. After another failed attempt at legislation in 1927, Vermont's eugenics movement succeeded in 1931 in procuring the adoption of "An Act for Human Betterment by Voluntary Sterilization," a measure intended to "eliminate[] from the future Vermont genetic pool persons deemed mentally unfit to procreate."

See Exh. D (2021 Joint Resolution on Eugenics).

B. Mead's Gift of the Chapel to Middlebury

14. On May 11, 1914, former Governor Mead sent a letter to Middlebury President John Thomas (the "Gift Letter") and stated his intention to make a substantial gift to the College.

See Exh. E (Gift Letter).

15. Specifically, the Gift Letter stated:

> In commemoration of the fiftieth anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly Father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel." I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.

See id.

16. The Gift Letter further stated that Mead "ha[d] in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure," to which he would "bind [himself] and [his] estate" upon satisfaction of two contingencies: that the "Trustees of the College secure appropriate plans for its erection which shall meet with my approval," and that the Trustees "appoint a Building Committee at once, consisting of President Thomas, former President Brainerd and [himself] to make the necessary contracts for such a structure and to supervise the erection of the same."

See id.

17. The Gift Letter did not include any language explicitly requiring that Middlebury use the name "Mead Memorial Chapel" in perpetuity as a condition of the gift.

See id.

18. On May 15, 1914, President Thomas wrote to the College's Trustees, enclosing the Gift Letter and noting with "the keenest pleasure" that it "assures the erection of an appropriate and beautiful chapel for Middlebury College." President Thomas asked the Trustees to reply "immediately as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests."

See Exh. F (May 15, 1914 Letter from John Thomas).

19. President Thomas's May 15, 1914 letter did not ask the College's Trustees to authorize any agreement to use the name "Mead Memorial Chapel."

See id.

20. President Thomas's May 15, 1914 letter did not contain any reference to the name "Mead Memorial Chapel."

See id.

21. President Thomas received numerous responses from the College's Trustees and officers accepting the gift and authorizing the appointment of a building committee.

See, e.g., Exh. G (May 16, 1914 Letter from Trustee J.B. McCullough); Exh. H (May 23, 1914 letter from Treasurer John Fletcher).

22. At a June 22, 1914 meeting, Middlebury's Trustees voted on and adopted a resolution formally accepting the gift. The resolution, which was followed by a recitation of Mead's Gift Letter, stated in full:

> Whereas our esteemed colleague, the Honorable John Abner Mead of the Class of 1864, has signified to President Thomas his desire, in commemoration of the fiftieth anniversary of his graduation, to erect a Chapel for Middlebury College, and his readiness to furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice.
>
> Resolved that the President and Fellows of Middlebury College hereby accept of this magnificent benefaction with sincere gratitude to both Dr. & Mrs. Mead and their family for their deep interest in the religious welfare of the College, so impressively manifested by this provision of a suitable place for divine worship.
>
> Resolved that the Trustees through the Committee nominated by Dr. Mead will use their best endeavors to secure the erection of a dignified

> and substantial structure, in harmony with the other buildings of the College, and such as will meet the approval of the donor.

See Exh. I (June 22, 1914 Trustee Minutes and Resolution).

23. At their June 22, 1914 meeting, Middlebury's Trustees voted to form a building committee to oversee the chapel project, consisting of Mead, President Thomas, former President Brainerd, and Trustee John Weeks.

See id.

24. The College Trustees formally voted at a December 18, 1914 meeting to "proceed with construction of the Chapel, with the understanding that $60,000 would be contributed by Dr. Mead; the balance estimated at about $1,000 to be contributed by the College."

See Exh. J (December 18, 1914 Trustee Minutes).

25. Mead wrote to the Trustees on January 13, 1915, confirming his agreement to contribute $60,000, stating:

> In consideration of the contract of the Committee for the Erection of the Mead Memorial Chapel at Middlebury College with Thomas W. Rogers of Brandon, Vt., whereby the same is to be erected in accordance with plans and specifications of Allen & Collens, architects, at a cost of $51,945, I agree to furnish funds for the discharge of this contract and for the expenses connected with the erection of this chapel, to the amount of $60,000, as may be required during the construction and in accordance with the terms of the above contract, binding myself, my heirs and my assigns as above specified. It is agreed on the part of said Trustees that they are to complete said chapel, making it complete in every way, as to grounds, furnishings, etc., for the purposes of a college chapel, as voted at the meeting of the Trustees of said college held in New York City Dec. 18, 1914, and as defined in correspondence between the President of Middlebury College and myself.

See Exh. K (Jan. 13, 1915 Letter from Mead).

26. None of the documents describing former Governor Mead's gift to Middlebury contain any language or terms restraining Middlebury from making public statements about former Governor Mead.

See generally Exhs. E–K.

27. Construction of the Chapel was completed in 1916, and it was memorialized in a dedication ceremony held on June 18, 1916.

See Am. Compl. ¶¶ 127, 131.

C. Middlebury's Renaming of the Chapel and the Issuance of the September 27 Statement

28. In 2018, the University of Vermont Board of Trustees voted to remove the name of former University President Guy Bailey from the Bailey-Howe Library due to President Bailey's involvement in the eugenics movement.

See UVM Trustees Approve Removal of Bailey's Name from Bailey/Howe Library, the Univ. of Vt. Libraries (Oct. 29, 2018), *available at* https://library.uvm.edu/news/uvm_trustees_approve_removal_bailey%E2%80%99s_name_baileyhowe_library.

29. In May 2021, the Vermont General Assembly formally apologized for the State's role in the eugenics movement in a Joint Resolution. The General Assembly noted, among other things, that the State's agencies and institutions had "adopted policies and procedures to carry out the intent of the vetoed [1912] legislation and the beliefs of the eugenics movement," targeting "the poor and persons with mental and physical disabilities," as well as "individuals, families, and

communities whose heritage was documented as French Canadian, French-Indian, or of other mixed ethnic or racial composition and persons whose extended families' successor generations now identify as Abenaki or as members of other indigenous bands or tribes."

See Exh. D (2021 Joint Resolution on Eugenics).

30. In summer 2021, the Middlebury Board of Trustees' Prudential Committee decided on behalf of the Board to discontinue the use of the name "Mead Memorial Chapel."

See Am. Compl. ¶ 152; Am. Compl. Exh. 7-05–7-10.

31. The sign identifying the Chapel as "Mead Memorial Chapel" was removed from its location above the entrance to the Chapel in September 2021.

See Am. Compl. ¶ 6.

32. The Chapel is now known as "Middlebury Chapel."

See Am. Compl., Exh. 7 at 7-009.

33. The College's President and the Chair of its Board of Trustees sent out a message to the Middlebury community on September 27, 2021 (the "Statement"), advising of the change and explaining the process that brought it about:

> This past spring, the Vermont Legislature made a public apology for its former legislation authorizing the forced sterilization of at least 250 Vermonters as part of the implementation of a eugenics policy in the first decades of the 20th century. The move had bipartisan support from legislators and followed the examples of other states in coming to terms with this painful part of our nation's history.
>
> That statement by the state legislature raised a question for us at

> Middlebury about the role played by Governor John A. Mead, Class of 1864, whose gift established Mead Memorial Chapel, in advocating and promoting eugenics policies in Vermont in the early 1900s. It compelled us to ask whether it is appropriate to have Mead's name so publicly and prominently displayed on the Middlebury campus, especially on the iconic chapel, a place of welcome for all.
>
> After a careful and deliberative process, Middlebury's Board of Trustees has made the decision to remove the Mead name from the chapel . . . . [¶] We want to stress up front that this was a process involving deep reflection and discussion. No issue like this should be undertaken lightly or often. . . .
>
> [I]t was important for Middlebury to follow its established process for these kinds of considerations and commission a working group to look into the question. Specifically, the president asked the group to examine the role that Governor Mead had in these policies, and what implications that had for us and for the iconic building named after him on campus. She asked the group to conduct its work with a generosity toward the historical context of the time, as well as rigor in historical analysis. . . .
>
> Following its review, citing his central role in advancing eugenics policies that resulted in harm to hundreds of Vermonters, the working group determined that "the name of former Governor Mead on an iconic building in the center of campus is not consistent with what Middlebury stands for in the 21st century." [¶] The group advised that "the President recommend to the Board of Trustees to remove 'Mead' as part of the building's name."

See id. at 7-006–07.

34. The Statement advised that the President had forwarded the working group's recommendation to the Prudential Committee of the College's Board of Trustees, which voted unanimously that Middlebury should remove the Mead name.

See id. at 7-008.

35. The Statement also provided limited background on the eugenics

movement, explaining that eugenics policies arose from "early 20th-century notions of racial purity and 'human betterment,'" and "sought to isolate and prevent the procreation of so-called 'delinquents, dependents, and defectives' to bring about a more 'desirable' society."

See id. at 7-006.

36. The statement described John Mead's role in Vermont's eugenics policies as follows:

> In 1912, two years before the chapel gift was made, in his outgoing speech as governor, John Mead strongly urged the legislature to adopt policies and create legislation premised on eugenics theory. His call to action resulted in a movement, legislation, public policy, and the founding of a Vermont state institution that sterilized people—based on their race, sex, ethnicity, economic status, and their perceived physical conditions and cognitive disabilities. John Mead's documented actions in this regard are counter in every way to our values as an institution, and counter to the spiritual purpose of a chapel, a place to nurture human dignity and possibility, and to inspire, embrace, and comfort all people.

See id. at 7-008–09.

D. The Mead Estate and Its Claims

37. Mead died on January 12, 1920, and his estate was administered and closed as of 1923.[1]

See Exh. L (May 3, 2022 Petition to Open Decedent's Estate, Docket No. 22-PR-02895, and Selected Attachments, hereafter "Probate Petition"); Exh. M (Final Account and Decree from 1923 in Mead Probate Proceeding).

38. In May 2022, James L. Hinsman, a great-great-grandchild of Mead,

[1] The Probate Division's June 17, 2022 Order appointing the Special Administrator (attached as Exh. C) indicates that the Estate was closed in 1921, but the final decree did not issue until 1923.

filed a petition in the Probate Division of the Vermont Superior Court seeking to reopen Mead's estate for the purpose of investigating and presenting potential claims against Middlebury College for an alleged breach of the terms of Mead's gift of a chapel to the College.

See Exh. L (Probate Petition).

39. The Probate Division, noting that it was not "passing judgment on the validity of any claims," granted James Hinsman's petition and appointed former Governor James Douglas as Special Administrator of Mead's estate in an order dated June 17, 2022.

See Exh. N (June 17, 2022 Order and Appointment).

40. In March 2023, former Governor Douglas, in his role as Special Administrator of the Mead Estate, brought the present suit challenging Middlebury's renaming of the Chapel.

See generally Am. Compl.

Dated at Burlington, Vermont, this 2nd day of December, 2024.

By: *\/s\/ Justin B. Barnard*
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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,)
Special Administrator of the)
Estate of John Abner Mead,)
)
Plaintiff,)
v.)
)
THE PRESIDENT AND FELLOWS)
OF MIDDLEBURY COLLEGE,)
)
Defendant.)

Exhibit List

Number	Description
A	1912 Senate Journal Excerpt
B	Senate Bills Vermont 1912. S. 79.
C	1912 House Journal Excerpt
D	2021 Joint Resolution on Eugenics
E	May 11, 1914 Gift Letter
F	May 15, 1914, Letter from Thomas to Trustees
G	May 16, 1914, Letter from Trustee J.B. McCullough
H	May 23, 1914, Letter from John Fletcher
I	June 22, 1914, Trustee Minutes and Resolution
J	December 18, 1914, Trustee Minutes
K	January 13, 1915, Letter from Mead
L	Probate Petition and Excerpt of Attachments
M	Final Account and Decree
N	Probate Order Appointing Administrator

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
Plaintiff	)
v.	)
	)
The President and Fellows of	)
Middlebury College	)
Defendant	)

PLAINTIFF'S OPPOSITION TO DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and, pursuant to V.R.C.P. Rule 56, hereby opposes Defendants' Second Motion for Summary Judgment and submits the following Memorandum of Law, supported by Plaintiff's Response to Defendant's Statement of Undisputed Material Facts, Plaintiff's Statement of Additional Undisputed Material Facts ("P's 2nd SUMF") and Plaintiff's Exhibits 1-71, and hereby incorporates by reference his previous Additional Statement of Material Undisputed Facts from his Opposition to Defendant's First Motion for Summary Judgment ("P's SUMF") and respectfully requests that this Honorable Court DENY Defendants' motion and grant judgment as a matter of law as follows:

MEMORANDUM

I. INTRODUCTION

As the Court will recall, it has bifurcated Discovery in this case such that no Discovery has been conducted on the claim for breach of good faith and fair dealing. Consequently, Plaintiff is completely "in the dark" with regard to the actions and decision of the Defendant to strip the Mead name from the Mead Memorial Chapel. Absurdly, Defense Counsel makes the argument that Plaintiff

has no factual basis to allege bad faith conduct by the Defendant. That is because we have not had the opportunity to discovery those facts nor to ask the Defendant the most basic questions such as what information was gathered, considered, or discussed, and what information was not. How was the decision made and by whom. Was Mead blatantly and intentionally used as a scape goat to divert attention away from Middlebury College, which was "all in" on teaching Eugenics for the first half of the 20th century.

All of these questions remain; thus, it would be patently unfair and a deprivation of due process for the Court to rule on a Summary Judgment motion on the claim of breach of good faith and fair dealing, when Plaintiff has been prevented from gathering any facts or evidence, from which to establish Defendant's bad faith conduct. Instead, Plaintiff is left to make inferences and hypothesize at the Defendant's actions and motivations, including ill will and bad motive, based upon one press release and the discovery of Middlebury College's shocking half-century of Eugenics teaching, before, during, and after the Holocaust. Therefore, Defendant's motion is premature and Plaintiff requests that the Court defer judgment on the Breach of Good Faith and Fair Dealing claim, until Plaintiff has a full and fair opportunity to conduct Discovery.

Secondly, any arguments of the Defendant that refer to or argue "gift law" are irrelevant, superfluous and should be disregarded by the Court, due to the fact that Plaintiff's alternate claim for Breach of Conditional Gift was withdrawn and Defendant's Amended Answer failed to plead any affirmative defense related to gift law. Consequently, Defendant has waived any such affirmative defense, i.e. that the transaction is governed by Gift law. Because there no longer exists any claim or defense related to gift law before the Court; the sole remaining issue for the jury would be narrowed down and limited to simply whether there was a contract between the parties, i.e. whether all of the elements of contract formation are present, or not.

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VIII. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. V.R.C.P. 56(c)(3); *Endres v. Endres,* 2008 VT 124, ¶ 10, 185 Vt. 63; *Wesco, Inc. v. Hay-Now, Inc.,* 159 Vt. 23, 26 (1992) ("[T]o prevail on a motion for summary judgment, the moving party must satisfy a stringent two-part test: first, there must be no genuine issues of material fact between the parties, and second, the moving party must be entitled to judgment as a matter of law." (Citation omitted)) *Griswold v. Barrows*, 2010 WL 8708026. The court must give "the benefit of all reasonable doubts and inferences to the non-moving party," the party opposing the motion may not rest of allegations in the pleadings. *Gettis v. Green Mountain Econ. Dev. Corp.*, 179 Vt. 117, 124 (2005); *Gore v. Green Mountain Lakes, Inc.*, 140 Vt. 262, 266 (1981).

III. THE PARTIES AND THEIR EXPECTATIONS

A. Governor John Abner Mead

John Abner Mead (April 20, 1841 – January 12, 1920) was a Vermont physician, businessman, politician, and philanthropist who served as Vermont's 47th Lieutenant Governor from 1908 to 1910, and Vermont's 53rd Governor from 1910 to 1912. Plaintiff's On October 30, 1872, John Mead married Mary M. Sherman. They had one child, Mary Sherman Mead Hinsman. Mead was a graduate of Middlebury College, Class of 1864. Plaintiff's Additional Statement of Undisputed Material Facts ("P's 2nd SUMF") at par. 9.

In 1914, on the 50th anniversary of his graduation, Mead offered to erect a chapel "to be known as" the "Mead Memorial Chapel," which offer was accepted by the Trustees of the College. P's 2nd SUMF at par. 22 & 35.

Dr. John Abner Mead died of pneumonia at his home in Rutland on January 12, 1920. He was 78 years old. His wife Mary Medelia Sherman Mead, daughter Mary Sherman Mead Hinsman,

grandson John Abner Mead Hinsman a/k/a "Little John," and son-in-law Carl B. Hinsman survived him. P's 2nd SUMF at par. 21.

Middlebury College President John M. Thomas gave the Eulogy at Mead's funeral. When Thomas described Mead's gift of the Mead Memorial Chapel, he quoted from and read the full text of Dr. Mead's Letter of Offer, mentioning the Chime of Bells, "which bear his name on every bell" and then proclaimed: "The dedication of the Chapel is complete – The Mead Memorial Chapel":

> "This afternoon, as we pay here our tribute of honor and affection, ***the chimes which bear his name on every bell are sounding out*** the hymns I loved and which he chose to hear the first time they were played, "Nearer my god to Thee", "Lead Kindly Light", "God be with you 'till we meet again". ***The dedication of the Chapel is complete – The Mead Memorial Chapel.***
>
> So our friend built his empire in our midst. If another could have built it, another did not. He loved his work and he gave his all to it to the very last. ***He carved his name high in the marvelous roll of Vermont's men of achievement, and he earned his rest.***

P's 2nd SUMF at par.21.

The Middlebury College's Board of Trustees paid tribute to Mead in their 1920 meeting minutes:

> "In the death of Ex-Governor John Abner Mead of the Class of 1864 *Middlebury College has lost one of its most distinguished alumni of the State of Vermont, and one of the most helpful of its Trustees and most generous of its benefactors.* Governor Mead was a notable example of those successful men of our nation who have pushed their way upward against great obstacles and by force of mind and will and character succeeded to positions of great responsibility and usefulness in the industrial world and in public life. His career as a physician was honorable and highly useful. Turning to business he became one of the masters of industry in New England. ***In the gift of the Mead Memorial Chapel he endowed the college with one of the most beautiful buildings on any campus in America, which will speak to coming generations of his wisdom and foresight in benevolence and symbolize the strength of character of its donor.***"

P's 2nd SUMF at par. 35.

John Mead was buried at the Mead Family plot in Evergreen Cemetery in Rutland with his ancestors, including Colonel James Mead and Mercy Holmes Mead, whom John Abner Mead had

reinterred there from the West Rutland Cemetery in 1895 and where he had replanted the sod from the Mead Memorial Chapel Groundbreaking Ceremony in June 1914. P's SUMF at ¶83.

John Abner Mead's headstone records his service in the Union Army, his professional life as "a beloved physician in Rutland for 21 years," and his many offices held including his Governorship of course. His headstone contains the final engraving: 'A CHRISTIAN AND PHILANTHROPIST". P's SUMF at ¶84.

B. <u>Middlebury College</u>

The history of Middlebury College is vital to understanding the intentions between the parties and particularly their motivations at that time in their history regarding the acceptance of the offer to erect of the Mead Memorial Chapel by Governor Mead. While Middlebury College is currently a liberal arts college of the first rank, this is an achievement that is the result of a process of growth and change that began in 1800, when a few men of the town of Middlebury took upon themselves the challenge of building a college in a small New England town, on what was then the American frontier. Over the more than two centuries since it was established, Middlebury has developed from "the town's college" into an institution of international renown with a $1.518 billion endowment as of 2021. Middlebury's original purpose was to train young men from Vermont and neighboring states for the ministry and other learned professions of the early 19th century. The College began modestly, with seven students enrolling in November 1800. P's SUMF at ¶5.

Gamaliel Painter, one of the citizens of Middlebury to whom the College charter had been granted, left most of his estate to the College. Mr. Painter's gift was an early example of the philanthropic support for Middlebury College that has enabled the institution to prosper. In recognition of his gift, West College, a new building completed a few years prior to Painter's death in 1819, was renamed Painter Hall. Painter Hall is the oldest college building extant in Vermont.

Therefore, when Mead offered to erect the "Mead Memorial Chapel" in 1914, Gamaliel Painter's name had already adorned Painter Hall for 95 years with no plans whatsoever, to remove his name at the "100 year" mark. Thus, there would be no reason for Mead have ever expected that his family name was only agreed by the College to be on the "Mead Memorial Chapel" for 100 years. Had he known, he would not have erected the Chapel.

Middlebury College continued to grow during the 19th century. The growth was sporadic, however, as the College was not immune to the social and political movements that were affecting northern New England generally. Rocked by evangelical upheaval and religious revival in the 1830s, the Civil War in the 1860s and then disciplinary problems which reduced the student body to a low of thirty-eight (38) by 1880. P's 2nd SUMF at par. 6.

Such were the circumstances of the college when in 1885 Prof. Ezra Brainerd '64 accepted the challenge of the presidency and began to build for the institution new popularity, a liberalized curriculum (including the introduction of Eugenics), an expanded endowment, and new facilities.[1] Middlebury College began to change from an institution primarily oriented toward its community and its state to a college with larger regional aspirations. President Ezra Brainerd (who held that office from 1885 to 1908) prepared the College for this transformation, and spectacular change occurred under the administration of President John Thomas (1908 to 1921), who established the Language Schools and the Bread Loaf School of English during his presidency. P's 2nd SUMF at par. 7.

During the second decade of the 20th century under Thomas's leadership, the College's enrollment more than doubled, and the number of buildings, the size of the faculty, and the value of the endowment tripled. New residence halls, academic buildings, and library facilities were added to the physical plant. P's 2nd SUMF at par. 8.

[1] https://sites.middlebury.edu/walkingmiddlebury/the-college-campus-front-campus/

In 1914, when Mead offered to erect a memorial chapel, "the same to be known as 'Mead Memorial Chapel'", the following buildings and others, were named to memorialize or honor donors or others who served the College as detailed in Middlebury College Bulletin 1913-1914, Vol. VII, December, 1913, No. 4 and on the Middlebury College website today:

> **Painter Hall** - in 1810 Colonel Seth Storres of Middlebury gave to the corporation 30 acres of land upon which the first building of the college was erected in 1814 it was called at first "West College" but in 1846 was named Painter Hall in honor of Gamaliel Painter, one of the most generous patrons of the college and who had bequeathed all his property to the institution. It has been in continuous use since its erection and it's the oldest college building in Vermont.
>
> **Starr Hall** - a large dormitory, was erected by the beneficence of Charles and Egbert Starr in 1861, and rebuilt in 1865, after a disastrous fire, by the same donors.
>
> **The Egbert Starr Library** - the beautiful and convenient marble library now occupied was erected with funds bequeathed by Mr. Egbert Starr, and dedicated during the Centennial exercises of the College in July 1900. The cost of the building was $50,000, to which was added $5000 for its decoration and $5000 for the purchase of books by the son of the donor, Dr. M Allen Starr.
>
> **The Warner Science Hall** - the large and convenient Warner Science Hall, was erected in 1901 through benefactions of the late Ezra J Warner, of the class of 1861. The building is a memorial of his father, Hon. Joseph Warner, formerly a resident of Middlebury, and a trustee of the college from 1850 to 1865. By the will of Mr. Warner the college has received a bequest of $25,000 for the care and maintenance of the hall, and for the purchase of supplies for the departments which it accommodates.
>
> **The McCullough Gymnasium** - in 1910 Hon. John G McCullough of Bennington offered to give $25,000 towards the erection of a gymnasium, and the alumni of the college completed a gymnasium fund of $50,000 at commencement of that year the building was dedicated at the commencement of 1912. It is now known as the McCullough Student Center.
>
> **Battell Cottage** – named for Hon. Joseph Battell of the Class of 1823, a large donor to the college, was enlarged in 1910.
>
> **Pearsons Hall** Beyond Adirondack House and beautifully placed on the ridge that Joseph Battell bought for its views, is Pearsons Hall, the first Middlebury structure built for women. It is named for D. K. Pearsons of Chicago, who encouraged and helped fund the project. Built in 1911, it is by the same architect

> (W. Nicholas Albertson) and in the same marble and the same -inspired vocabulary as its contemporaries Voter and McCullough.

P's 2nd SUMF at par.111. Today, it appears that more than 70 buildings on campus bear the name of donors and others who are honored or memorialized by the naming of a building. P's 2nd SUMF at par. 112.

C. <u>President Thomas and the Marketing of Naming Rights as Inducement to Donors</u>

It is also vitally important to understand how President Thomas achieved the phenomenal success of tripling the number of buildings on campus during his tenure as president of the college. In correspondence to very wealthy Trustees, he boldly asks for money to build dormitories, gymnasiums etc. and describes himself as a "good beggar." The notion that a building would be named for the donor was the entire selling point to the potential donors with whom he corresponded and became a pattern and practice that resulted in great success generating large funds for the building of sorely needed campus buildings that would put Middlebury College "on the map" and establish it as a leading educational institution.

For example, in 1908, Thomas wrote to Trustee D.K. Pearsons, pleading with him for $50,000 now, to meet the pressing need of a building for our girls to live in. . . Most importantly, Thomas then wrote: "Marble is cheap in Vermont, ***<u>and for the sum named we will erect a building that will do you lasting honor</u>***, and will be a blessing to hundreds of girls who otherwise would be without opportunity of higher education." The College set up "The D.K. Pearsons Building and Endowment Fund. In 1909, the Board of Trustees accepted Dr. Pearson's condition offer to give $25,000, provided that an additional $75,000 be raised. Then on February 9, 1910, Thomas requested further moneys from Pearson for a Boys Dormitory and then stated: "***<u>We want to call it Pearsons Hall, if you will let us</u>***." P's 2nd SUMF at par. 96. Which would certainly be viewed by most reasonable folks as an

inducement to Dr. Pearson to have his name on a building. Despite being only a ¼ donor of the Girl's Dormitory, the building was named Pearsons Hall.

Similarly, in 1910, Thomas secured John G. McCullough's conditional gift of $25,000 if the College were able to raise $75,000. Despite being only a ¼ donor of the Gymnasium, the building was named McCullough Gymnasium. P's 2nd SUMF at par. 97.

D. <u>Middlebury College's Eugenics Curriculum 1895-1946</u>

Middlebury College's vast Eugenics curriculum began even before the turn of the 19th century. For example, the 1895 Middlebury College Course Catalogue described the "Sociology" course of study, referencing Race Characteristics, Heredity, Pauperism, Insanity, Crime and Punishment:

> *Sociology.* — This course includes a study of Race Characteristics, Heredity, Environment, Education, Pauperism, Insanity, Crime and its Punishment, Hospitals, Prisons, and Almshouses. Lectures and readings. Two hours a week. PROFESSOR HOWARD.

Ex. 57, 1895 Middlebury Course Catalogue, p. 30.

The 1895 Catalogue also offered "Zoology," explaining the purpose of the course was to prepare the student to read "current literature relating to variation, heredity and other biological problems." Ex. 57, p.43-44.

By 1908, Middlebury College's Sociology course of study was described using the terms "regeneration" and "defectives and degenerates" in addition to referencing hospitals, almshouses (poor farms) and prisons:

11. *Sociology*

A study of race characteristics, heredity, environment, subjective and objective regeneration, education, pauperism, defectives and degenerates, crime and its punishment, hospitals, almshouses, and prisons. Lectures and readings.

Second semester; three hours a week. Required for Seniors.

Ex. 58, 1908 Middlebury Course Catalogue.

It is interesting to note that Sociology was a required course for Seniors at Middlebury College in 1908, so all Middlebury College students would learn about "defectives and degenerates," the identical labels that Defendant condemns Governor Mead for using four years later in his 1912 Farewell Address.

The Social Science Department continued to expand its Eugenics offerings and by 1913, "Philanthropy" was added to the curriculum and described as: "Dependents, defectives, and delinquents; heredity and environment in relation to these abnormal classes; their private and public treatment" as was "Rural Life" a study of the economic, social, religious conditions affecting country dwellers:

Courses of Instruction 55

SOCIAL SCIENCE

12. SOCIOLOGY. A

Basis of society; social evolution; social institutions; demography; social progress.

13. PHILANTHROPY. B

Dependents, defectives, and delinquents; heredity and environment in relation to these abnormal classes; their private and public treatment. (Soc. Sci. 2 or Econ. 1.)

14. RURAL LIFE. C

The economic, social, and religious conditions affecting the country dwellers in America, with special emphasis on conditions in New England. To be given in 1914-15. (Soc. Sci. 13, or any B course in Econ.)

Ex. 59, 1913 Middlebury Court Catalogue, p. 55.

In July 1913, Middlebury College President Thomas hosted the "Rural Life Conference," a week-long Eugenics conference held in connection with the regular summer session of Middlebury College. The object of the conference was to promote the "increasingly important county life movement" and included a week-long course of lectures in Rural Sociology. Ex. 1, Addresses given at the Rural Life Conference Middlebury College Middlebury, Vermont July 7 to 13, 1913.[2]

The 1914 Journal *Heredity* listed Middlebury College as one of 44 colleges and universities who taught Eugenics in its curriculum.[3] Ex. 13. By 1918, the term "Eugenics" had been introduced into the Middlebury College Course Catalogue describing the Genetics course of study:

> 12 (II) GENETICS. C
>
> Theories of organic evolution; the principles of variation, selection, and heredity; the material basis of heredity; Mendelian inheritance and the application of its principles in animal and plant breeding and eugenics. Lectures, recitations, and assigned readings. (Permission of instructor.)

Ex. 63, 1918 Middlebury Course Catalogue.

In 1925, freshmen were required to take a mandatory course which included a lecture on "What Has Civilization to Expect From Eugenics." Among the topics students were expected to study were "Eugenics" and "Galton's Experiments and Observations." (Francis Galton, who coined the term "Eugenics," was an early proponent of the notion that "undesirable" people should be discouraged or prevented from having children.)[4] Ex. 65, 1918 Middlebury Course Catalogue.

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[2] https://www.uvm.edu/~Eugenics/primarydocs/orrlcmc070713.xml
[3] It appeared in a similar list published by *The Eugenics Review* in 1925.
[4] https://www.bostonglobe.com/2023/06/18/opinion/jeff-jacoby-middlebury-hypocrisy-Eugenics/

During the 1945-1946 academic year, with full knowledge of the atrocities of the Nazi's systematic genocide of 6 million Jews in Europe, Middlebury College continued teaching Eugenics to its students, as it had for the past 50 years. The 1945-46 Middlebury College Course Catalogue continued to offer Eugenics in its Sociology course "Population" and in its Biology course "Genetics":

> 42.1 GENETICS* *Fall term*
> A study of genic action and the physical basis of heredity in plants and animals, including some aspects of eugenics. (Biol. 11.1 and 11.2) 3 hrs. lect., 6 hrs. lab.—5 credits. *Lab. fee*, $5 Miss WRIGHT

> 34.1 POPULATION *Fall term*
> Theories of population. World and American trends. Immigration, ethnic groups, and internal migration in the United States. Problems. Eugenics. (Soc. 21.1. Sophomores by permission) Mr. SHOLES

Ex. 69, 1945-46 Middlebury College Course Catalogue (Sociology & Biology).

As Middlebury College Associate Professor Daniel Silva explained in his December 9, 2021 article "Eugenics, Dispossession and Reparations at Middlebury, published in the Middlebury Campus:

One only needs to browse the college's course catalogs of the first decades of the 20th century to see the emergence of Eugenics in the curriculum and across departments such as Pedagogy (later renamed Education and Psychology), Biology and Sociology. Looking at the 1931 course catalog alone, Eugenics and ideas of social progress and pathology based on heredity and environment can be found in the descriptions of courses such as "Genetics and Embryology," "Social Psychology" and "Educational Psychology," in addition to nearly the entire course offering of the Sociology department. In this regard, Middlebury's curriculum followed national and international trends of

Europe and North America. **It is, therefore, not a stretch to consider that Eugenicists and Eugenics sympathizers, were, to some degree, trained at Middlebury.**[5]

In addition, Professor Silva notes the close relationship that Middlebury College had with "Eugenicists and Eugenics supporters, which included trustees, donors, professors and administrators." *Id.*

E. Middlebury College's Eugenicist Professors, Administrators and Trustees

Indeed, Middlebury College employed Eugenicists as Professors and Administrators and appointed Trustees, many of whom were active participants in the Eugenics Movement. For example, Middlebury College Professor A.E. Lambert, a Eugenicist who delivered a Eugenics lecture at the Rutland Woman's Club on January 4, 1916 stating: "We are living in an age of reason . . . when science predominates. We must blot out the unfit in our race and to do this we must prevent marriages which are not eugenic." P's Opposition to Motion to Dismiss, Ex.14. Rutland Daily Herald 1.5.1916.

Another notable Middlebury College Eugenicist was Owen Wesley Mills, Biology Professor who taught Eugenics in his Genetics course from 1918-1924. During his tenure at Middlebury College, Professor Mills was a Fellow for the American Association for the Advancement of Science and a Member of the Second International Congress of Eugenics.[6] P's Opposition to Motion to Dismiss, Ex. 16, Barre Daily Times 12.8.1924 (Mills).

Vermont Governor John E. Weeks, Middlebury College Trustee from 1909 to 1949, who hosted a Eugenics Conference at the Vermont Statehouse in 1927 titled the "Vermont Conference of

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[5] https://www.middleburycampus.com/article/2021/12/Eugenics-dispossession-and-reparations-at-middlebury (emphasis supplied).

[6] The 1921 Second International Congress of Eugenics, was a gathering that promoted humanity's control of its evolutionary future through selective breeding and reducing "unfit" populations. The history of nearly every major museum and scientific society in Western Europe and the United States is intertwined with the scientific, public, and political acceptance of this now-discredited movement. *Science* and the American Association for the Advancement of Science (AAAS, the publisher of *Science*) are no exception.

Social Work" which was an open forum on "Social Legislation" with presentations by many notable Eugenicists including UVM Professor Henry F. Perkins, Director of the Eugenics Survey of Vermont. P's Opposition to Motion to Dismiss, Ex. 19, Burlington Free Press, Jan 19, 1927, page 2.

F. The Eugenics Survey of Vermont and Middlebury College President Paul Moody

Paul Dwight Moody, Middlebury's president from 1921 to 1942, like so many other leading academics of the era, was "all in on Eugenics." In 1931, he was Chairman of the Committee on the Human Factor, part of the Eugenics Survey of Vermont working in concert with UVM's Professor Henry F. Perkins, the most influential eugenicist in Vermont at the time. President Moody's Committee on the Human Factor recommended a major public relations effort to promote Eugenics among the public. That recommendation appeared in the final report: "Rural Vermont: A Program for the Future," a manifesto replete with Eugenics content, including a "Chart of Defects Found Among 55 Degenerate Families Studied."[7]

President Moody was not only an active and influential Eugenicist, but he was a documented racist, infamous for the most abhorrent comments which were famously quoted by UVM Professor Henry F. Perkins in a 1932 interview. When Dr. Perkins asked Paul Moody of Middlebury College if he had had any students of French-Canadian descent who had made a name for themselves in any type of endeavor Mr. Moody immediately said no, and even on consideration said he thought a lot about it and checked up that not one Canadian had risen to a place of responsibility. When asked if they hadn't contributed much to the community of Middlebury itself, Mr. Moody added another vehement no, stating that the whole French Canadian population could be wiped out of Middlebury

[7] See Jeff Jacoby, Hypocrisy at Middlebury College, 6/18/2023, https://www.bostonglobe.com/2023/06/18/opinion/jeff-jacoby-middlebury-hypocrisy-Eugenics/

and no one would miss it. Vermont Eugenics: A Documentary History: *Ethnic Study of Burlington: Interview with Dr. Perkins re French Canadians* , Anderson, Elin L.. 1932 (emphasis supplied).[8]

Indeed, Middlebury College's vast connection to Eugenics spanned over half a century, continuing years after the world's knowledge of Hitler's death camps and the mass murder of 6 million Jews in Europe.[9] Even Defendant's cited article, "US Scientists' Role in the Eugenics Movement (1907-1939)" details that "by 1936 . . . both England and the U.S. genetic scientific communities finally condemned eugenical sterilization."[10] Yet, Middlebury College continued teaching Eugenics for another decade, until 1946.

Having discovered the evidence of Middlebury's early and prominent involvement in Eugenics, it seems far more likely that Mead was influenced BY the men that he knew at Middlebury College, and it is obvious that Middlebury College itself and its President Moody, were the architects who built the bridge spanning three decades after Mead's 1912 speech, acting as the catalyst of promotion, advocacy, and teaching of Eugenics which did, in fact, lead to the enactment of Eugenics sterilization legislation in Vermont.

IV. "MEAD MEMORIAL CHAPEL" –

A. Mead's Offer Letter

On May 11, 1914, John Abner Mead sent a Letter to Rev. Dr. John M. Thomas, President of Middlebury College, offering "to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel" as follows:

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[8] https://www.uvm.edu/~Eugenics/primarydocs/ofesbfc000032.xml.

[9] By 1942, the American press carried a number of reports about the ongoing mass murder of Jews. The US government confirmed this information in late 1942 . . . In January 1944, President Roosevelt created the War Refugee Board, which took significant measures to aid Jews and other victims. https://encyclopedia.ushmm.org/content/en/article/the-united-states-and-the-holocaust-1942-45.

[10] See Steven A. Farber, U.S. Scientists' Role in the Eugenics Movement (1907–1939): A Contemporary Biologist's Perspective, 5 Zebrafish 243, 244 (2008). https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2757926/

Rev, Dr. John M. Thomas, LL.D.,
President of Middlebury College.

My Dear President Thomas:-

In commemoration of the 50th anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, ***the same to be known as the "Mead Memorial Chapel."*** I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.

It was my great-great-grandfather, the first white settler of this valley, who brought the first copy of the Holy Bible into this unbroken wilderness and it was his wife, my great-great-grandmother, who gathered her large family about her in an indian wigwam for the first christian service of the Vermont pioneers of this immediate region.

With this memory ever present, it has been my hope and prayer that I might be able and permitted to build for this college a suitable place for divine worship and ***that it might rise from the highest point on its campus*** as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth.

I have in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure, and I hereby suggest that ***the Trustees of the College secure appropriate plans for its erection which shall meet with my approval,*** *and that said board* ***appoint a building committee at once, consisting of president Thomas, former President Brainerd and myself to make the necessary contracts for such a structure and to supervise the erection of the same***, and ***I will then bind myself and my estate to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee."***

B. Other Terms or Promises

What other terms did Mead propose besides stating that the chapel he proposed building was "to be known as" the "Mead Memorial Chapel" that the parties do agree is undisputed?

a. Mead specified the location: "that it might rise from the highest point on its campus"

b. Mead retained exclusive approval of the plans: "that the Trustees of the College secure appropriate plans for its erection which shall meet with my approval;

c. Mead required the establishment of a building committee and specified the composition of the committee including himself to make contracts and supervise construction: "that said board appoint a building committee at once, consisting of president Thomas, former President Brainerd and myself to make the necessary contracts for such a structure and to supervise the erection of the same."

C. **What was the Purpose of Mead's Offer?**

Mead states his purpose in the very first sentence of the Offer Letter:

> "In commemoration of the 50th anniversary of my graduation from Middlebury College, and in recognition of the gracious kindness of my heavenly father to me throughout my life, I desire to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel."

The language of purpose is plain, clear, concise and unambiguous. Mead wanted to commemorate his 50th anniversary of graduating from Middlebury College. The term "commemoration" is defined as "a service, celebration, etc., in memory of some person or event. A memorial."[11] The term "Commemorate" is defined as 1) to call to remembrance, to mark by some ceremony or observation, 2) to serve as a memorial of.[12] Moreover, in the remainder of that first sentence, Mead ties in his desire to "commemorate" his 50th anniversary event with a name that "memorializes" his ancestors, the Mead name, and yes, himself, with the specific language: "the same to be known as the 'Mead Memorial Chapel.'"

Besides articulating the purpose of memorializing his graduation, and stating his name in quotes which would memorialize his name, he also articulates his two other purposes, "in recognition of the gracious kindness of my heavenly father to me throughout my life", (not unexpected language

[11] https://www.dictionary.com/browse/commemoration

[12] https://www.merriam-webster.com/dictionary/commemorating

given the religious tradition that existed at that time in history for the institution and Mead's devotion to his faith), and his "desire to erect a chapel to serve as a place of worship for the college."

Mead's Letter then told of his ancestors, recounting their lives as embodying the simplicity, strength of character, and religious faith that Mead envisioned the Mead Memorial Chapel would symbolize and then specifying the location of the chapel.

It is also critical to observe that the original offer stated that Mead had in mind, "the furnishing of from $50,000 to $60,000 for the erection of such a structure, but then indicated, if his terms were met, that he will bind himself and his estate "to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee."

G. <u>1914 Ground Breaking Ceremony and Cornerstone Presentation</u>

The Ground Breaking Ceremony and the Presentation of the Cornerstone for the Mead Memorial Chapel was held on June 23, 1914 during the1914 Middlebury College Commencement Exercises, which coincided of course with Mead's 50th anniversary of his graduation. PSUMF at ¶ 36.

Mead and Thomas planned the Ceremony, having Mead's grandson and namesake, John Abner Mead Hinsman, known as "Little John" help him to break the ground and place a metal box into the Cornerstone, which would contain Little John's Bible and the Mead family tree showing his lineage back to the Mead ancestors who settled the valley, brought the first Bible to the unbroken wilderness, and who were being memorialized and whose strength of character and religious faith were symbolized in the structure. PSUMF at ¶ 35.

There were several speeches made all of which convey the understanding that the chapel was to be a memorial to and which would bear Mead's name.

First, Governor Mead gave his presentation speech in which he stated:

> "On this date, I wish to break the ground and place the corner stone ***for this Memorial Chapel,*** *with the hope and prayer that there shall be a sacred duty resting upon each, to make this Holy Temple, so soon to be erected,* an instrument of great good ***to those of this generation and to those who may follow after*** . . ."

PSUMF at ¶ 37

Then and most importantly, the Rev. James L. Barton, D.D., LL.D., Class of 1881 then delivered the "Acceptance in Behalf of the Trustees" during which he stated:

> It is doubly gratifying to me, as it is to the Board of Trustees***, that this building, as a memorial, will bear the name of one so long and so honorably connected with this institution*** and who in the state and nation has always upheld and promoted true piety and civic and national righteousness.
>
> ***This chapel will provide for the generations of students and faculties of this college that to which the other buildings cannot minister.*** To this place all will turn in order to experience the reality of the unseen, to satisfy the thirst of the soul for God.
>
> We then, the Trustees of this College, on behalf of ourselves and our successors, in the name of the generations of students it will serve, in full recognition of the supreme importance of such a religious center to the life of the institution***, and in loving memory of him whose name this structure is to bear, gratefully accept at your hand this Chapel*** as we pledge ourselves to safeguard to the limit of our capacity the gift and the ideals it is intended to perpetuate."

PSUMF at 37.

Last, Prof. Charles B. Wright gave an "Address in Behalf of the Faculty" which he ended with the statement:

> The Faculty thank you, Governor Mead, from profoundly grateful hearts. You have bodied forth our dream of years; you have given to an airy nothing a local habitation – ***and not the least of our pleasure is the thought that through all the days to be it will bear your honored name.***

PSUMF at ¶ 39.

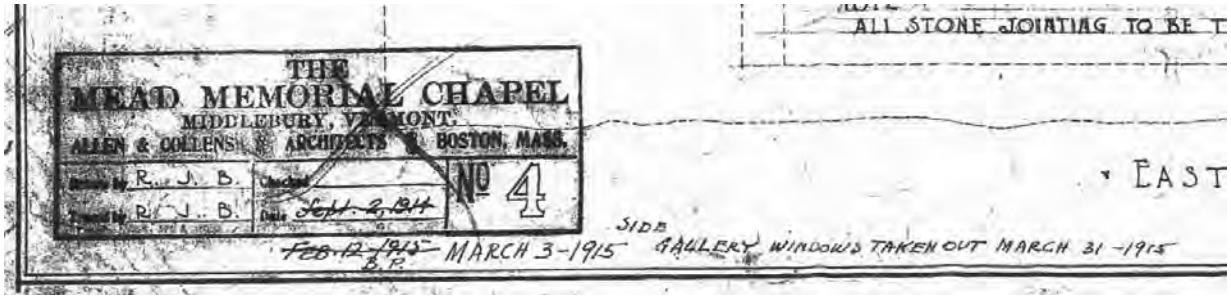
The Cornerstone for the Mead Memorial Chapel was laid at the Groundbreaking Ceremony, in which Mead's grandson and namesake, 3-year-old John Abner Mead Hinsman ("Little John"), placed his small Bible and family tree (back to original settler Colonel James Mead) into a metal box inside the Mead Memorial Chapel Cornerstone. PSUMF at ¶40.

The photographs from the Ceremony show Little John holding a little shovel and being held over the Cornerstone to deposit the Bible box inside. Also photographed is Pres. Thomas holding the original Mead family Bible, which was the Bible that the Mead ancestor/settlers brought to the "unbroken wilderness". A Scripture Lesson was read from the Mead Family Bible during the Ceremony. PSUMF at ¶ 40, 41. The Mead family members who live in Vermont, still have possession of the Mead family Bible today. PSUMF at ¶ 42.

H. <u>Building Plans approved by Mead</u>

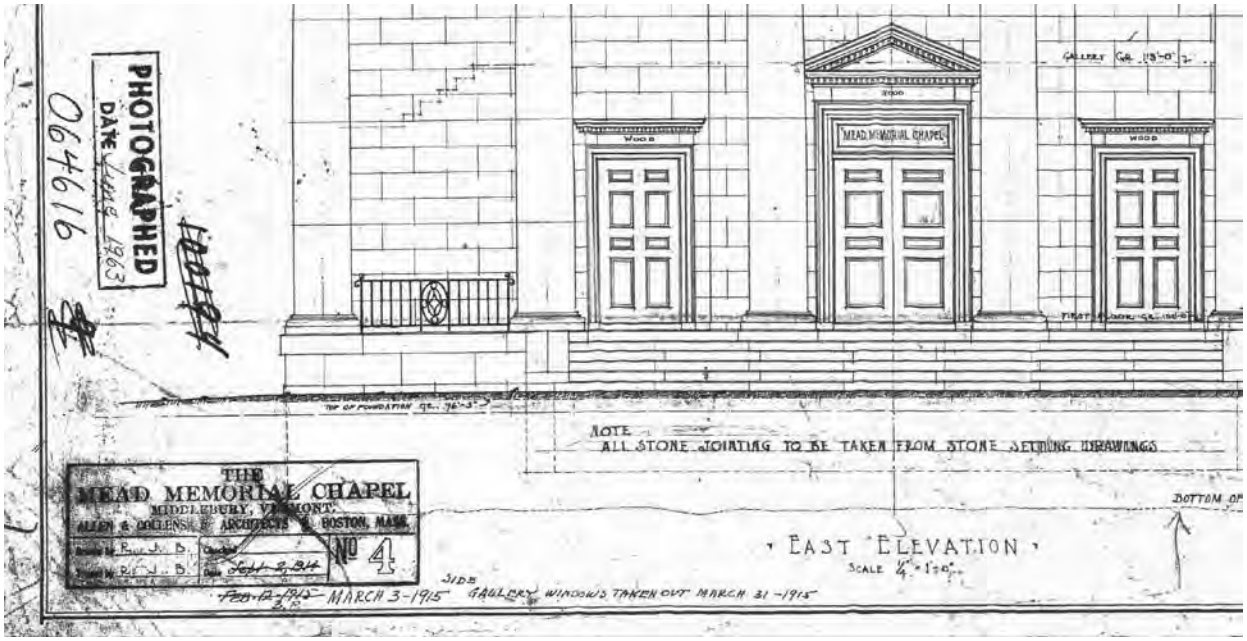
The Mead Memorial Chapel architectural plans bearing final date of March 31, 1915 and which incorporated the final change of the windows and pilasters, are the "plans and specifications" which were approved by Mead. PSUMF at ¶ 49.

Each page of the Allen & Collens architectural plans, which are contained at Ex. 14, 15, 16, & 17, bears the label: "The Mead Memorial Chapel". PSUMF at 49. See for example Ex. 14:



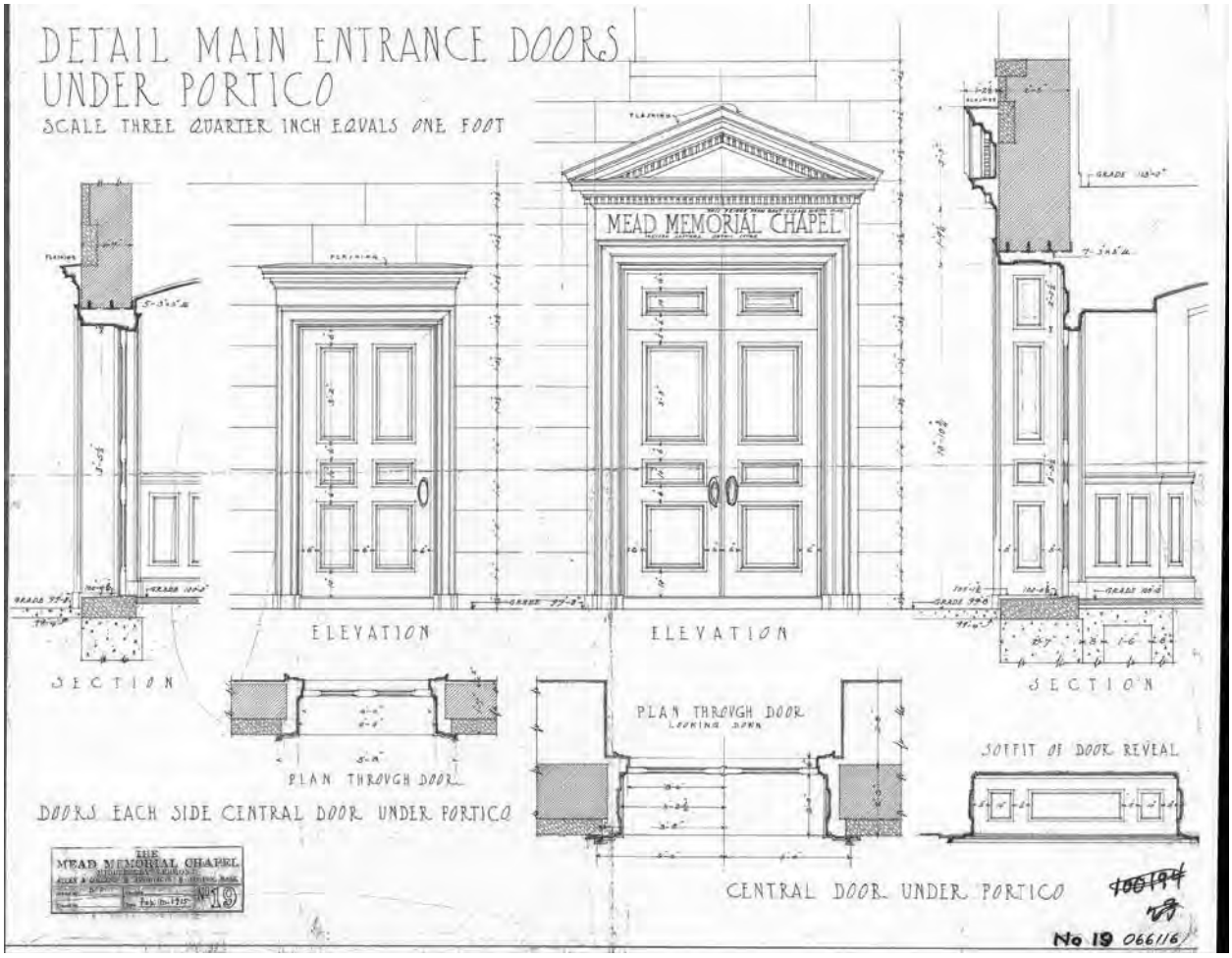
PSUMF at ¶ Ex. 49.

Exhibit 14 are the plans for the East Elevations – Main Entrance of the Chapel. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico:

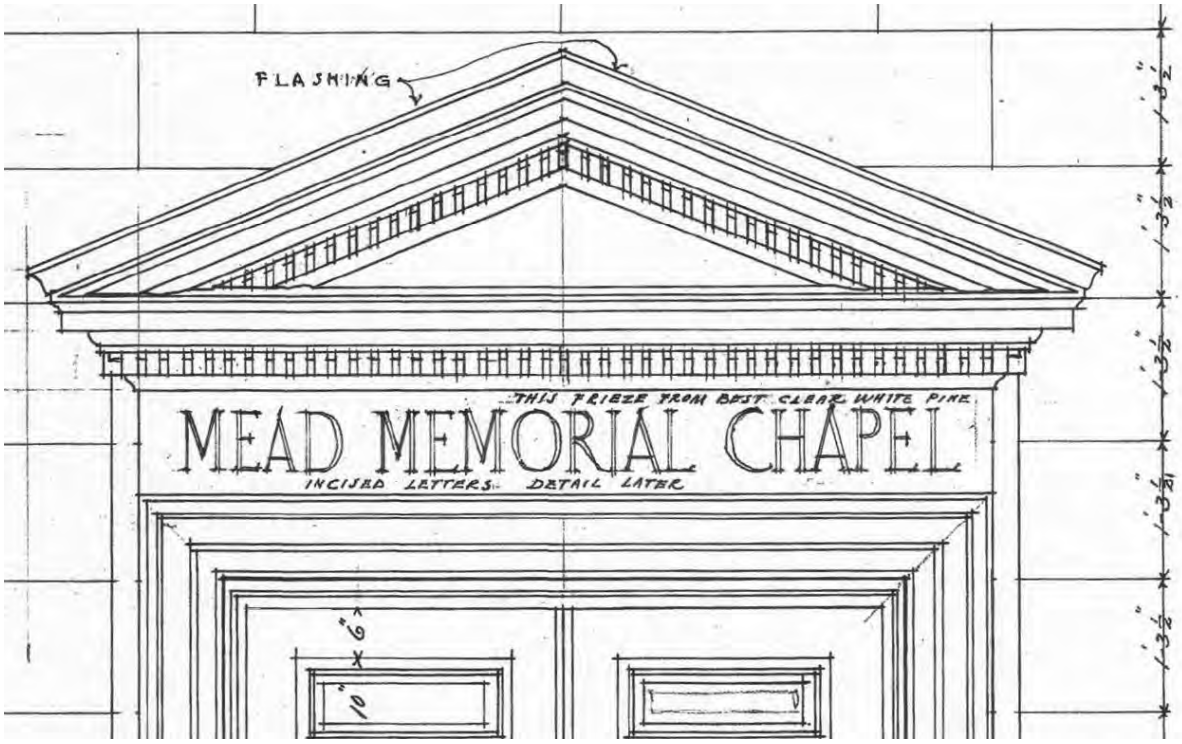


Ex. 14.

Exhibit 15 are the plans for the Detail Main Entrance Doors under the Portico. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico. See Ex. 15 immediately below:



A closeup view of the detail of the Mead Memorial Sign on Exhibit 15 reveals the specifications of material: “THIS FRIEZE FROM BEST CLEAR WHITE PINE”, the wording of the sign: “MEAD MEMORIAL CHAPEL”, that they will be incised letters with detail to follow, and of course the exact measurements and specific location to affix the sign to:



Ex. 15.

I. The Chime of Bells

On June 21, 1915 Dr. Mead sent an additional offer letter to President Thomas stating: "If acceptable to the members of the Board of Trustees, Mrs. Mead and I would be pleased to add a chime of bells to our gift of the Mead Memorial Chapel." PSUMF at ¶ 54.

On June 23rd, 1915, Middlebury College's Board of Trustees gratefully accepted John Abner Mead's offer to add the Chime of Bells, evident in the following meeting minutes: "It was voted that the gift of Mr & Mrs Mead be gratefully accepted." PSUMF at ¶ 56. The entire cost of the Chime of Bells was paid directly by Mead to Meneely Bell Company in the amount of $6,960 in December 1915. PSUMF at ¶ 57.
Dr. and Mrs. Mead's addition gift of a Carillon of Bells was installed in the Chapel tower. There were eleven bells, the largest weighing 2500 pounds and the smallest 275 pounds. Each bell bears the inscription:

> "Presented to Middlebury College by
> John Abner and Mary Sherman Mead."
>
> "Ring in the valiant man and free,
> The larger heart, the kindlier hand;
> Ring out the darkness of the land,
> Ring in the Christ that is to be."

PSUMF at 55.

J. Chapel Construction

The construction of the Mead Memorial Chapel proceeded over the next two years, during which time Dr. Mead attended meetings of the Mead Memorial Chapel Building Committee in Middlebury, met with architects, approved project designs, controlled the budget, and provided credit and payment for all labor and materials. PSUMF at ¶ 58.

As the College grew, changes were inevitable. The balconies were added in 1938 (with the consent of Mead's daughter, Mrs. Carl Hinsman, see Exhibit 46), increasing the seating capacity to 715. The original organ was replaced in 1971 by the large Gress-Miles organ. The tower now holds a wonderful 48-bell carillon, cast and tuned in France from the original bells and other sets. It is played

regularly. Seven of the original eleven bells were recast and reinscribed with Mr. and Mrs. Mead's presentation inscription and Bible verse so that each of the original eleven Bells remain as they were originally inscribed with Dr. & Mrs. Mead's name on each bell. See current day photos of Bells and Mead inscriptions at Ex. 23. PSUMF at 61.

K. 1916 Dedication Ceremony & Presentation of the Keys

The Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916 during which Dr. Mead made a Presentation Speech, recalling his grandson's role in the Groundbreaking and Setting of the Cornerstone two years earlier, when "Little John" was only 3 years old:

> With the labor of love and devotion all complete, it is with great pleasure and an honor that I, through him who assisted me some two years since "in removing the soil" for the "setting of the corner stone", and who placed under the same his token of love, - his Bible and a short history of his relation to those who made this Temple possible; as I state, it is with pleasure, that through him, I may present to you, Doctor Brainerd, former President of this College, the keys to the Mead Memorial Chapel, - and may the Kind Providence who governs all our efforts for the greatest good and happiness of his children, give you all strength and wisdom, - that your and our fondest and most extravagant anticipations of this day may be more than realized, in the years that are to come.

PSUMF at ¶ 63.

Mead's speech was followed by "Little John," now 5-years, presenting the Keys to the Mead Memorial Chapel to the College Trustees. PSUMF at ¶ 64.

Dr. Brainerd, Former President of Middlebury College accepted the Keys on behalf of the Trustees and stated the following in his acceptance speech:

> Doctor Mead:-
>
> I esteem it a great privilege to appear in behalf of the President and Fellows of Middlebury College and accept publicly, your gift of this beautiful sanctuary, that we have this day met to dedicate to the service of Almighty God. For many years, especially since the old chapel proved too small to hold even the half of our students, it has been the fond hope and the earnest prayer of the friends of the College, that in God's providence there might appear a man of the religious fervor and the financial ability requisite to meet this

> urgent need for a larger and more suitable edifice. Today our ardent hopes are realized; our prayers are graciously answered. ***And to me it is especially gratifying that our benefactor is my beloved classmate, one to whom I am bound, now for fifty six years, by ties of the warmest friendship.***
>
> During these many years (which have passed with us so swiftly) the Heavenly Father has been pleased to grant you strength of mind and body, and varied opportunities for doing great service to your fellowmen. How well I recall the patriotic zeal with which, while yet a student in college, you enlisted in the war to maintain the union of these United States. [Unreadable word] later, as a well-trained physician, you served in another war—against the diseases that distress mankind; and by sound judgement and kindly sympathy achieved an enviable reputation in his beneficent calling. Still later your executive talent enabled you to build up a great industry, whose products are now used in every civilized portion of the world. More recently you served the commonwealth of Vermont, in the highest public office, with business sagacity, with fidelity, and with honor. ***But the noblest deed of all---the one for which future generations will hold you most in grateful remembrance---***is the erection of this spacious and attractive chapel, where the religious life of the College may find fitting expression and the stimulus of hallowed associations.
>
> With grateful hearts, ***dear brother,*** we accept your generous gift: and we assure you of our earnest purpose so to utilize its opportunities for religious culture, as to promote the growth of earnest Christian character in the students of Middlebury College.---***Here for generations yet to come the melodious bells of this Chapel shall sound out over the Campus and the Town*** the strains of Christian music, that from childhood have awakened in our souls the sentiments of faith and courage and earnest living.
>
> . . .
>
> The lord reward you, ***dear friend,*** for all that you have done, or may yet do, for the good of others; and may the years of earthly life that still remain be your best years, filled with blessed memories and abiding peace.

PSUMF at ¶ 65.

Notably, the offer was not a donation or pledge of funds to the College with the hope that some building wing or scholarship fund would be named after Governor Mead. Instead, it was an offer to erect a building which would be named, as a commemoration of Mead's 50th anniversary of his graduation and a Mead family Memorial, and which would serve as a sacred place of worship and contemplation for the generations of students to come as well as providing the desperately needed meeting house space to accommodate the growing College community.

The Trustees did respond enthusiastically with gratitude, congratulations, and approval. Plaintiff's SUMF pars. 19 through 27 outline all of the responses received from the Trustees, not just

the selective few provided by the Defendant. The responses contained language that certainly demonstrates the expectation that they understood this was a memorial forever and a building that would do great good "as long at time lasts" (PSUMF ¶ 21); "shows respect and reverence for your forebears" (PSUMF ¶ 22); ***"a Memorial Chapel. I know of nothing more fitting as a memorial*** – *nothing that will be greater value to the College* ***in all the years to come"*** (PSUMF ¶ 23); "will be *everlastingly* grateful to him" (PSUMF at 24); "I wish to concur in the acceptance of the ***"Mead Memorial Chapel."***. (PSUMF ¶ 25); "*a beautiful memorial*. . . His most interesting letter with its details of early history should be framed and hung in the chapel – and also put in the box of the corner stone." (PSUMF ¶ 26); "it ought to be ***the most attractive memorial erected on the College Campus***." (PSUMF ¶ 27).

The Middlebury College Trustees unreservedly and enthusiastically accepted Dr. Mead's offer to erect a chapel, which offer contained the explicit language: "the same to be known as the "Mead Memorial Chapel," The Trustee Minutes recorded the entire Offer Letter verbatim, including the "Mead Memorial Chapel" name in quotes. PSUMF at ¶ 29.

From the Trustees' Letters accepting Mead's offer, to Rev. Barton's Acceptance Speech at the Groundbreaking, to Dr. Brainerd's Acceptance Speech at the Dedication Ceremony, to Mead's Eulogy by President Thomas, to the Board's tribute to Mead in their 1920 Minutes, to the hundreds of letters between Thomas and Mead, we see that Mead was not only held in the highest esteem for his amazing accomplishments, but was a "beloved classmate bound together for 56 years by ties of the warmest friendship", and served on the Board with the other Trustees for decades, working in concert with one another to build a College of great importance, even if their "updated curriculum" included Eugenics.

It is the trust that Mead had with his fellow trustees and their shared understanding that a promise to name a building as a memorial to honor and remember ancestors, was a promise forever. Moreover, this was a religious chapel that was to memorialize the Mead ancestors who embodied and

symbolized the "simplicity and character of the inhabitants" of the area and the removal of the Mead name is a breach of a sacred promise that was made through the prayers and dedications offered to the Mead Memorial Chapel and Governor Mead.

And we can suppose it is that trust, that prevented the insertion of some sort of language such as "in perpetuity" with regard to the name Mead Memorial Chapel. However, there is no evidence to suggest that "in perpetuity" language was even being used at that time and place in history. Therefore, we have absolutely no evidence to suggest that it would have ever occurred to the parties, to specify that a name in quotation marks with the verbiage "the same to be known as", would have only temporary effect for some finite time period. A name is a name is a name.

Middlebury was in the business of enticing donors to make massive donations towards needed buildings, offering naming rights to donor who were only providing 25% of the cost to construct buildings, not the 98 % that Mead paid. So, why would anyone think there would ever be a reason to expect that the name of one so revered, who was a giant of his time and a hero to Vermont and to Middlebury College, would ever be removed from a sacred chapel that was blessed and dedicated with a Scripture Lesson from the original Mead family Bible, which contains Little John's Bible and his family tree, and with the Chime of Bell inscriptions with the Mead names and Bible verse? It would have been inconceivable to the parties in 1914, that the Mead Memorial Chapel name would ever be removed, unless the building burned down and no longer existed. There was simply no need to insert the term "in perpetuity", because it was understood and repeatedly demonstrated by the many examples, that it was universally understood: by the parties, the faculty, the newspapers, and the public, that the Mead Memorial Chapel would bear the Mead name for as long as the Chapel existed. Being made from Vermont marble, that was expected to be a very, very long time, lasting for the future generations referred to by the Trustees.

L. **Defendant's Pattern & Practice re: Alterations to Named Buildings**

There is other evidence that should be considered regarding the Defendant's pattern and practice of obtaining donor approval and consent to significant changes or alterations to buildings. In particular regarding the Mead Memorial Chapel:

On June 14th, 1920, about 6 months after John Mead's death, Pres. Thomas wrote to Mead's son-in-law, Carl B. Hinsman about "completing" the west end of the Chapel with marble, as it had been built of wood to save costs when the Chapel was erected by Mead and stating:

> "My thought is that it is something that ought to be borne in mind to be done at the proper time and ***that measures should be taken to insure that the Chapel will be preserved as a memorial to Dr. Mead***."

PSUMF at ¶ 85.

On April 29th, 1931, Carl B. Hinsman wrote to Pres. Moody about repairs to the spire, and expressed Mrs. Hinsman's (Mead's daughter) strong desire that it be restored stating, "[we] feel it quite a calamity if the spire was removed entirely. . . The Building occupies such a commanding position on the Campus and in the landscape surrounding it that it would be indeed regrettable if the spire should be abridged or done away with." On May 8th, 1931, Pres. Moody wrote to Carl B. Hinsman saying the matter was settled, and that they were to proceed with repairs to the spire.

On July 20th, 1937, Pres. Moody wrote to Mrs. Carl Hinsman asking for consent to add the galleries as balcony seating, in which he stated:

> . . . And we did wish to have your consent to any change made in a building given to the college by your father.
>
> In exactly the same way, when we had outgrown the Starr Library, which has given the college by the Starr family, and had in hand money for its enlargement, we went to Dr. Starr for permission to make the enlargement. He not only consented to our plans, but refused to allow another donor to give anything toward the construction, saying that since

> it was a Starr Library, he did not wish any but star money to go into the building. The amount was more than he wanted to lay out in one payment so he spread it over several years, reimbursing the College in partial payments. We had contemplated a change in Hepburn hall, but there again I would not be willing to go ahead without the consent of Mrs. Hepburn.

PSUMF at ¶ 86.

Moreover, in 1985, when a donor offered a 36 bell carillon to add to the original 11 bells donated by the Meads, 7 of the original 11 bells were recast and were ordered to be re-engraved with Mead's gift and Bible verse:

> "Following our telephone conversation of March 28, 1985, I write to confirm that the following inscription should appear on the first eleven bells:
>
> GIFT OF GOVERNOR MEAD AND MARY SHERMAN MEAD
> PRESENTED TO MIDDLEBURY COLLEGE BY
> JOHN ABNER AND MARY SHERMAN MEAD
>
> A. D. 1915
>
> RING IN THE VALIANT MAN AND FREE
> THE LARGER HEART THE KINDLIER HAND
> RING OUT THE DARKNESS OF THE LAND
> RING IN THE CHRIST THAT IS TO BE"

PSUMF at ¶ 89.

M. <u>Other Named Buildings</u>

1. **<u>Pearsons Hall</u>** - On February 9, 1910, Pres. Thomas wrote to D. K. Pearson soliciting money and stating, "***<u>We want to call it Pearsons Hall, if you will let us.</u>***" PSUMF at ¶ 93.
2. **<u>McCullough Gymnasium</u>** – On February 9, 1910, Pres. Thomas wrote to John G. McCullough: "But if you could make the "McCullough Gymnasium Fund" $25,000, on condition that I secure a like sum from other sources, I believe I could get the balance for a "McCullough Gymnasium" before next commencement." PSUMF at ¶ 94.

3. **Gifford Memorial Hall** - On July 20, 1939, The President and Fellows of Middlebury College acknowledged Mrs. Giffords generous offer which contained the exact same verbiage as the Mead Offer Letter 25 years earlier:

> "…in receipt of your letter of July 20th 1939, in which you offer for yourself, your heirs, executors and administrators, to pay the cost of building and furnishing and equipping a hall for the use of the boys of Middlebury College, ***to be known as, "The James M. Gifford Memorial Hall for Boys"***, provided the college will permit the erection of the building on its land to the north of Mead Memorial Chapel in a situation corresponding to that of Hepburn Hall to the to the South of the Chapel.

PSUMF at ¶ 101.

But perhaps, the most important document which was discovered in the Gifford Building archives is the October 31, 1940 Board Acceptance of the "James M. Gifford Memorial Hall for Boys" reads:

> "The graciousness and hospitality of this building are a symbol of the generous nature of his whose name it bears. … ***It is a fitting memorial to a life which exemplified all these virtues, simple but massive, harmonious yet strong***. … We recognize that though only the name of James M. Gifford adorns this building, nevertheless into its stone and mortar has gone something more, - a lifetime's devotion, to one worthy of that devotion. ***This gift to the College which Mr. Gifford loved so greatly and served so long, so faithfully and so efficiently, is gratefully accepted, not only for its own sake, but for the sake of him in whose honor it stands and for your sake, Mrs. Gifford, who have so wonderfully preserved his name, along with the great names of the College, - Painter, Starr, McCullough, Mead, Hepburn, and now Gifford."***

PSUMF at ¶ 103.

This letter provides us with a definitive admission by the Defendant that Mead was absolutely considered one of "the great names of the College" and using his name and others, to entice Mrs. Gifford to donate $250,000 in funds to erect a memorial to her husband, with the promise that Gifford's name would be "preserved" forever, just like the other greats of the College. This is also proof of Middlebury College's use of naming rights as an enticement to donors and it is further proof

that the 2021 actions of the Defendant in removing the Mead name, was in contravention of the promises, understanding and agreement between the parties, which Defendant has breached with its erasure of John Abner Mead and the Mead family name.

N. Middlebury College's Breach of the Agreement & Broken Promise

In the early morning hours of Monday, Sept. 27, 2021, Middlebury College removed the wooden "Mead Memorial Chapel" sign, which hung in a niche above the entrance of the Chapel, identifying the College's house of worship and "Meeting House" for community gatherings for the past 105 years. Complaint/Answer ¶ 6. The College did not issue a public statement in advance of the removal of the sign for "Mead Memorial Chapel." PSUMF at ¶ 107. The College did not notify the Mead family nor seek their consent to alter the building, to remove the sign from the building or to remove the Mead name from the memorial chapel. PSUMF at ¶ 108.

The 2021 removal of Mead family name from the Mead Memorial Chapel was a breach of the contract's most essential promise, the reasonable expectation of the promise made that the chapel he was erecting for the college would be a memorial to his ancestors, bearing his family name forever. Given the evidentiary record already assembled, could any reasonable person actually believe that the Trustees did not agree to name the chapel the "Mead Memorial Chapel" or that Mead would have built the chapel if his term or condition or promise were denied?

V. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

A. Facts and Circumstances

The ultimate issue regarding the breach of the covenant of good faith and fair dealing is whether, in light of all of the facts and circumstances, Middlebury College acted in bad faith when it erroneously proclaimed that the Mead Memorial Chapel was named in honor of John Abner Mead and then engaged in its hypocritical public relations smear campaign to scapegoat Governor Mead and use him as a subterfuge to conceal the fact that Middlebury College was literally, a Eugenicist factory, for over 50 years, "espous[ing] inhumane policies that are uniformly condemned today," and teaching Eugenics principles until years after the atrocities of the Holocaust were fully known.

Middlebury College's vast involvement in the Eugenics movement was exponentially more significant than Mead's single public statement on the topic, and, the circumstances surrounding who the parties were and what their inter-relationships were, as well as their actual roles in the Eugenics Movement, are indeed before this Court because that evidence is essential to the Court's determination of the intent of the parties to the contract, the purpose of that contract, as well as to the Defendant's bad motive in the removal of the Mead family name from its Memorial Chapel.

Regardless of whether there was a breach of the express terms of the contract, Defendant breached the Covenant of Good Faith and Fair Dealing implicit in that contract, because Middlebury College's smear campaign against Governor Mead interfered with, completely frustrated, and caused the cancelation of Mead's essential purpose in erecting the Chapel: to memorialize his ancestors and honor them for their devotion to their Christian faith and as a symbol of the simplicity and strength of character of Vermonters. And furthermore, Defendant's breach was effectuated for a bad motive: to serve the selfish ends of the College's marketing team who used Governor Mead as a scapegoat, overemphasizing his role, and using him to create a smokescreen to obscure the vile history of Middlebury College as a racist and antisemitic institution.

Contrary to the Court's imposition of a 100 year time limit on the Mead name, Middlebury College did not remove the Mead name from the chapel when or because 100 years had elapsed or because the name had been there "long enough" and it was now time to take the Mead name off the building. Instead, Middlebury College removed the Mead name, with no public process or even advance notice to the family, claiming that the Mead Memorial Chapel had been named FOR John Abner Mead and his wife, and then offering up Governor Mead as a symbol of its contempt and condemnation of Eugenics, while failing to even acknowledge in any way whatsoever, no less apologize for Middlebury College's vast and significant role in the Eugenics Movement.

To this day, Middlebury College has made no public apology for its monumental role in the Eugenics Movement in Vermont and beyond, despite training generations of Eugenicists and promoting Eugenics policies for more than a half century. In short, Governor Mead, has been sacrificed on the altar of public relations and used as a pawn to divert attention away from Middlebury College's abhorrent history and to absolve it of 50 years of Eugenic Sin by claiming to severe its only apparent "connection" to Eugenics by throwing its "fall guy," Governor John Abner Mead "under the bus."

This was a breach of the covenant of good faith and fair dealing because it interfered with the purpose of the contract: to honor and symbolize the Mead ancestors who settled and brought Christianity to the valley. Instead, Middlebury College ignored the truth because they were either inexplicably utterly ignorant of their own vial Eugenics history, which is frankly inconceivable given Middlebury College's world-renowned reputation, or they knew full well that they were misrepresenting the truth and falsely casting Mead into the role of an evil mastermind who orchestrated the entire Eugenics movement in Vermont as a subterfuge to hide the real mastermind, Middlebury College.

B. The Use of Mead as Scapegoating for Subterfuge

Reviewing the long history of Eugenics at Middlebury College from 1895 to 1946, brings one to the inescapable conclusion that it was Middlebury College itself which contributed to the philosophical and scientific basis for the Nazi program of Eugenics, not one speech in 1912 by Governor Mead.

Remember that John Mead was a beloved family physician, an OB/Gyn and surgeon. His Medical School Dissertation was on the Treatment of Uterine Prolapse, a leading cause of death related to childbirth and the likely cause of his own mother's death at age 23, shortly after his birth. Thus, is was Dr. Mead, the physician who, seeing the tsunami of legislation sweeping the country in 1912, advocated as a physician, not for the sterilization of women, but to investigate instead, a new operation called the Vasectomy, which promised a vastly safer alternative which would have protected the health and lives of women in 1912, 16 years before the discovery of penicillin in 1928.

Furthermore, in point of fact, Mead did not support the legislation that was introduced after he left office in 1912 and vetoed by his successor. Thus, the suggestion that Mead was engaged in a Eugenics "Campaign" is pure speculation unsupported by any documentary evidence or sufficient scholarly research. Mead's only known comments relating to Eugenics are contained solely in his 1912 Farewell Address.

Yet, despite, or maybe because of, the state of all the available evidence, Governor Mead was used as a public relations diversion to cover up Middlebury College's dreadfully shocking history. Defendant embraced a false narrative, declaring the erasure of the Mead name, which they thought would instantly purify their unclean hands and sever Middlebury College's only perceived affiliation with Eugenics. Instead of taking responsibility for its own history and learning from it, and apologizing to the victims who were harmed by Middlebury College, a Eugenics Institution, they doubled-down and arrogantly asserted that the name "Mead Memorial Chapel" was a vague reference,

an after-thought which was never agreed to by the College Trustees.[13] Such a callous and demeaning statement denigrates a sacred space dedicated as a holy temple, built to memorialize the deep religious faith of Mead's ancestors, and designed to honor and symbolize the strength of character of Vermonters. Thankfully the Court has recognized Defendant's position as straining credulity.

C. <u>The Law of the Implied Covenant of GFFD</u>

Parties in a contractual relationship have an obligation to treat each other in good faith and deal with each other fairly. This is known as the covenant of good faith and fair dealing and it is implied in every contract. The definition of the "covenant of good faith and fair dealing" is broad. See *Carmichael v. Adirondack Bottled Gas Corp.*, 161 Vt. 200, 208-09 (1993) (citing Restatement (Second) of Contracts § 205). It is an underlying principle implied in every contract that each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement. *Id.* (citing *Shaw v. E.I. DuPont de Nemours & Co.*, 126 Vt. 206, 209 (1966)). The implied covenant of good faith and fair dealing exists to ensure that parties to a contract act with faithfulness to an agreed common purpose and consistently with the justified expectations of the other party. *Id.* (quoting Restatement (Second) of Contracts § 205 comment a). The covenant of good faith and fair dealing protects against conduct that violates community standards of decency, fairness, or reasonableness. *Id.* (quoting Restatement (Second) of Contracts § 205 comment a).

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[13] "In short, Eugenics was for decades entwined in the intellectual culture and public image of Middlebury College. Yet no one would have any inkling of that history from the college's current president and board of trustees. In their long document justifying the removal of Mead's name from the chapel, they made no mention of the school's extensive connection to the Eugenics movement. They condemned Mead for holding views that were considered progressive and scientific at the time without acknowledging that those views for many years were taught, promoted, and applauded by the faculty and administrators of Middlebury itself. It's hardly surprising that as a loyal and active Middlebury alumnus, Mead was influenced by the views of his alma mater and fellow alums." See Jeff Jacoby, Hypocrisy at Middlebury College, 6/18/2023. https://www.bostonglobe.com/2023/06/18/opinion/jeff-jacoby-middlebury-hypocrisy-Eugenics/

A party asserting this claim does not need to demonstrate a breach of the underlying contract to succeed on their claim for breach of the implied covenant of good faith and fair dealing. *See Carmichael v. Adirondack Bottled Gas Corp.*, 161 Vt. 200, 208-09 (1993) at 1216 (affirming jury award for breach of the implied contract of good faith and fair dealing even though no breach of express term in the underlying contract was alleged). However, the party must identify conduct separate from that which breached the underlying contract to form the basis for the breach of the implied covenant. See *Langlois v. Town of Proctor*, 2014 VT 130, ¶ 59; see also *Monahan v. GMAC Mortg. Corp.*, 2005 VT 110, ¶ 54 n.5. Stated differently, the party cannot argue that the conduct that breached the underlying contract is the same conduct that breached the implied covenant of good faith and fair dealing. *Langlois*, 2014 VT 130, ¶ 59.

D. The Development of Vermont's Duty of Good Faith and Fair Dealing

The development of Vermont's Duty of Good Faith and Fair Dealing was comprehensively analyzed by Vermont Attorney W. Scott Fewell in his 2010 Vermont Bar Journal article, Vermont's Implied Covenant of Good Faith and Fair Dealing in Commercial Contracts, and provided the following description of Vermont's jurisprudence regarding the Implied Covenant of Good Fath and Fair Dealing:

Vermont law imposes a duty of good faith and fair dealing ("implied covenant" or "good faith") on all contracts. As explained in *Shaw v. DuPont*,[14] the crux of the duty is that neither party to a contract may do anything to interfere with the other party's right to enjoy the benefit of the contract.

While a claim for breach of contract addresses the breaking of express promises and obligations, a claim for breach of the covenant of good faith and fair dealing addresses the breaking

[14] Shaw v. DuPont, 126 Vt. 206, 209, 226 A.2d 903, 906 (1966).

of the implicit promises that make the contract possible in the first place.[15] The implied covenant claim, as applied in Vermont, is nothing short of a moral litmus test for what constitutes socially acceptable conduct between contracting parties and is intended to prevent any dichotomy between the spirit and letter of the agreement.

Since *Shaw*, the implied covenant has undergone a rather striking evolution. Initially treated as a mere aid in interpreting existing contract terms, the implied covenant has been transformed by the Vermont Supreme Court into a derivative but distinct tort action requiring an independent factual basis from that supporting a breach of contract action. The protections afforded by the implied covenant have been extended to a variety of contractual relationships, including employment and insurance law. However, the duties imposed in one substantive area of law does not neatly apply to other contractual relationships.

E. **Contractual Good Faith in Vermont Jurisprudence**

The concept of good faith as applied to contracts has existed in American jurisprudence for nearly two centuries and purportedly derives its origins from the Latin legal maxim *pecta sunt servanda*, or the "obligation to keep agreements."[16] Since its early formulation, the concept has been applied to a variety of contractual relationships, including insurance, employment, and arms-length commercial agreements. Both the Uniform Commercial Code and the Restatement (Second) of Contracts contain requirements for good faith performance of contracts, although their respective approaches differ.[17]

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[15] *See* Robert S. Summers, *The General Duty of Good Faith--Its Recognition and Conceptualization*, 67 Cornell L. Rev. 810, 826-27 (1981-82); E. Allan Farnsworth, *Good Faith Performance and Commercial Reasonableness Under the Uniform Commercial Code*, 30 U. Chi. L. Rev. 666, 667-71 (1962-63).

[16] Id., note 2, at 828.

[17] Farnsworth, *supra* note 2; Robert S. Adler & Richard A. Mann, *Good Faith: A New Look At An Old Doctrine*, 28 Akron. L. Rev. 31, 41-44 (Summer 1994).

In Vermont, the idea of contractual good faith emerged during the early nineteenth century, but did not become well-established until the middle of the twentieth century.[18] The modern formulation of this duty, first articulated in *Shaw*, is that good faith attaches to all contracts as a matter of law and requires that the contracting parties do nothing to destroy the rights of the other party to receive the benefit of the bargain.[19]

In the 1994 decision in *Carmichael v. Adirondack Bottled Gas of America*, the Supreme Court adopted the Second Restatement's formulation of the implied covenant.[20] Section 205 of the Second Restatement imposes a duty of good faith and fair dealing in the performance and enforcement of contracts, but not in contract formation.[21] Under the Second Restatement, "good faith performance or enforcement" requires that the parties adhere to an agreed-upon common purpose consistent with the justified expectations of the parties.[22]

The Second Restatement adopts the so-called "excluder" concept of good faith, advocated by Professor Robert S. Summers, which defines the contours of good faith by its opposite corollary bad faith, and is expressly concerned with the enforcement of fairness, justice, and community standards in the commercial area.[23] The excluder approach permits the courts to develop the outer boundaries of the duty based on the particular contract, transaction, and applicable community standards.

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[18] *See* Buck v. Kent, 3 Vt. 99, 102 (1830) (holding that it was a violation of good faith and the agreement to retain note and fraudulently convey to a third party).

[19] *Shaw*, 126 Vt. at 209.

[20] *Carmichael v. Adirondack Bottled Gas*, 161 Vt. 200, 208, 635 A.2d 1211 (1993).

[21] Restatement (Second) of Contracts § 205 (1981).

[22] *Id*., § 205(a).

[23] *See Summers*, *supra* note 2. In addition to the intruder concept, Professor Karl Llewellyn advocated an honesty in fact (so-called "pure heart, empty head") approach, which has been incorporated into the UCC. *See* E. Allan Farnsworth, *The Concept of Good Faith in American Law*, Saggi, Conferenze E Seminari 10, at p. 12 (April 1993). Professor Steven J. Burton has offered a competing interpretation of the role of good faith in the enforcement of contracts, describing a breach of good faith as an attempt by a contracting party to wrongfully "recapture opportunities forgone in contracting." *See* Steven J. Burton, *Breach of Contract and the Common Law Duty to Perform in Good Faith*, 94 Harv. L. Rev. 269 (1980).

However, this "negative" approach, while having the benefit of flexibility, provides little guidance as to what constitutes good faith performance and enforcement and creates unnecessary uncertainty.

In addition to adopting the Second Restatement approach, the Supreme Court has further tailored good faith claims in ways not required under the Second Restatement's approach. First, the Court has construed good faith as a tort under the rationale that the obligation of good faith is imposed on contracting parties as a matter of public policy rather than arising from the agreement of the parties.[24] Second, the Court permits good faith to be pled as a separate and distinct claim from breach of contract provided the claim has a distinct factual predicate.[25] These modifications have created a relatively unique cause of action in Vermont.

F. **Application of the Implied Covenant in Vermont Case Law**

The Vermont Supreme Court has used the implied covenant in a number of different commercial contexts. In *Shaw*, the Supreme Court used the implied covenant in a licensing dispute to infer missing terms that were "necessarily implied" from the expressed terms.[26] The Court observed that the "implication that the defendant is not to exceed the limits of his license ... is an inference which follows from the language of the parties and becomes spelled out in explicit terms."[27] As such, the Court appeared to use the implied covenant as an aid in interpreting the terms of the contract, and little more.

However, in *Sullivan v. Lochearn, Inc.*, the Court applied the implied covenant to course of dealing conduct. In *Sullivan*, the Court examined the parties' course of dealing and inferred the absence of a contractual right to unilaterally terminate a contract, even though the contract was silent on this

[24] *Carmichael*, 161 Vt. at 208, 635 A.2d at 1216.

[25] *Monahan*, 2005 VT 110, ¶54 n.5, 893 A.2d 298, 316 n.5.

[26] *Shaw*, 126 Vt. at 209-10, 226 A.2d at 906-07.

[27] *Shaw*, 126 Vt. at 210, 226 A.2d at 906.

issue.[28] In *Carmichael v. Adirondack*, the Supreme Court relied upon the implied covenant to infer obligation arising from the parties' obligations in winding down the contract. The Court observed that the course of dealings between the parties in the winding down of the contract created obligations that, while not expressly stated, were enforceable when breached.[29] Thus, the Court reaffirmed that course of dealing *25 can create expectations that, while not contractual, nonetheless create obligations of good faith based on the expectations of the parties.

The Supreme Court has also applied the implied covenant to situations in which one of the contracting parties has interfered with the ability of a party to perform its part of the contract. In *Carter v. Sherburne Corp*., the Court applied the implied covenant to prevent a contracting party from obstructing contractual performance and then seeking damages for the delay caused by its own obstruction.[30] In *Century Partners, LP v. Lesser Goldsmith Enterprises, Ltd*., the Court found a breach of the implied covenant where the landlord created a continuing permit violation but failed to cooperate with tenant in remedying the situation.[31]

The Supreme Court has refused to find a breach of the implied covenant where a party has merely sought to exercise a contractual right that was merely adverse to the other contracting party. In *Southface Condominium Owners Assoc. v. Babcock*, the Court refused to find a breach of the implied covenant where proceeds from the sale of condominium units were applied to unpaid charges on a promissory note, as required by the note, rather than used to build additional amenities that had been promised to the purchasers of the units.[32] In *Downtown Barre Development v. C&S Wholesale*

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[28] *Sullivan v. Lochearn*, 143 Vt. at 153, 464 A.2d at 747.

[29] *Carmichael*, 161 Vt. at 208-09, 635 A.2d at 1216-17.

[30] *Carter v. Sherburne Corp.*, 132 Vt. 88, 93-94, 315 A.2d 870, 874 (1974).

[31] *Century Partners, LP v. Lesser Goldsmith Enterprises, Ltd*., 2008 Vt. 40, ¶¶16-24; 958 A.2d 627, 632-35 (2008).

[32] *Southface Condominium Owners Assoc., Inc. v. Babcock*, 169 Vt. 243, 247, 733 A.2d 55, 58-59 (1999).

Grocers, Inc., the Court observed that there may be instances in which a contracting party could act in bad faith while exercising a retained contractual right, but refused to find that defendant had acted in bad faith under the unique facts of that case, where defendant was seeking only to exercise a contractual right that was adverse to plaintiff.[33]

Two other anomalous but nonetheless significant cases dealing with the implied covenant are worth mentioning because their dicta has further shaped the current scope of the implied covenant. In *Greene v. Steven's Gas Service*,[34] the Supreme Court permitted the plaintiff to proceed, without explanation, under a contractual implied covenant claim notwithstanding the availability of the more narrowly applicable first-party insurance bad faith claim.[35] At issue in *Greene* was whether a claim for breach of the implied covenant was subject to a contractual limitations clause.[36] Plaintiff argued that since the implied covenant claim was grounded in tort it was not a claim "on the policy" and

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[33] *Downtown Barre Development v. C&S Wholesale Grocers, Inc.*, 204 VT 47, ¶18-19, 177 Vt. 70, 80, 857 A.2d 263, 270 (2004).

[34] *Greene v. Stevens Gas Service*, 2004 VT 67, 177 Vt. 90, 858 A.2d 238 (2004).

[35] The Vermont Supreme Court recognized a first-party insurance bad faith claim in *Bushey v. Allstate Ins. Co.*, 164 Vt. 399, 670 A.2d 807 (1995). To state a claim for first-party bad faith, plaintiff must show that the insurance company had no reasonable basis for denying coverage under the policy and the company knew or recklessly disregarded that absence of any reason to denying coverage. The *Bushey*-styled claim seems to be the proper fit in *Greene*, which was clearly a coverage case, but Court allowed plaintiff to bring the generic contractual claim without comment. The first-party bad faith claim was created for reasons peculiar to the insurer-insured relationship, including the superior bargaining position of the insurer and the public interest nature of the insurance industry. *See id*. at 403. In contrast, the contractual implied covenant is premised on the mutual obligation to honor promises set forth in the contract without regard to reasonableness. Unlike the traditional implied covenant claim, whose doctrinal origins are more clearly rooted in contract, the first-party claim has always been rooted in tort. *See Dolan v. Aid Ins. Co.,* 431 N.W.2d 790, 791 n.1 (Iowa 1988). Notwithstanding the doctrinal differences, the outcome in Greene with respect to the contractual limitations clause would have likely been the same under either type of claim. *See CBS Broad. v. Fireman's Fund Ins. Co.*, 70 Cal. App. 4th 1075, 1086 (Cal. App. 2d Dist. 1999) (Where denial of the claim in the first instance is the alleged bad faith and the insured seeks policy benefits, the bad faith action is on the policy and the limitations provision applies.) However, the Court's treatment of the two claims as practically identical raises real concerns about the duties incumbent on contracting parties in arms-length transactions, the measure of damages relative to each type of claim, and has caused confusing in subsequent cases.

[36] 2004 VT 67, ¶18, 177 Vt. at 98, 858 A.2d at 245.

therefore not subject to the contractual limitations clause.[37] The Supreme Court, relying on an Iowa Supreme Court case,[38] held that since the implied covenant claim was based on the insurer's denial of coverage, such a claim was "a disguised attempt to resolve a dispute as to [defendant's] liability for his loss and is therefore subject to the policy limitations clause."[39] The implicit suggestion in *Greene* was that tort claims for breach of implied covenant cannot rest on the same factual premises as breach of contract. In *Monahan v. GMAC*, the Supreme Court expressly affirmed that it would no longer recognize a separate cause of action for breach of the implied covenant when the plaintiff also pleads a breach of contract based on the same conduct.[40]

Recently, in *Harsch Properties, Inc. v. Nicholas*,[41] the Supreme Court once again revisited the implied covenant and sought to clarify some of the broader language in its earlier cases. First, the Court clarified that the implied covenant would constitute a separate cause of action where it was based on different conduct from the breach of contract claim.[42] However, the Court's language left open the possibility of pleading breach of implied covenant as an element of breach of contract.

Second, in *Harsch Properties* the Court seems to move away from characterizing the implied covenant as a tort observing that "[a]lthough claims for breach of the implied covenant take on many qualities of a tort action, these claims are not fully and exclusively torts. The implied covenant arises out of a contractual relationship between the parties, *id*., and creates duties under the contract ... Thus, although breach of the implied covenant may create an action in tort, the covenant arises from the

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[37] 2004 VT 67, ¶23, 177 Vt. at 100, 858 A.2d at 246.

[38] 2004 VT 67, ¶¶26-29, 177 Vt. at 101-103, 858 A.2d at 247-48.

[39] *Id*.

[40] 2005 VT 110, ¶54 n.5, 179 Vt. at 187 n.5, 893 A.2d at 316 n.5.

[41] *Harsch Properties, Inc. v. Nicholas*, 2007 VT 70, 932 A.2d 1045.

[42] *Id*. at ¶13, 932 A.2d at 1050.

contract and exists because of the contract."[43] There is some suggestion in *Harsch Properties* that the Court was aware of the dangers of an independent, tort-based implied covenant and sought to reconnect the duty of good faith with the performance of express contractual obligations rather than as a generalized duty of good faith in contract.

W. Scott Fewell, Esq., Vermont's Implied Covenant of Good Faith and Fair Dealing in Commercial Contracts, Vt. B.J., Summer 2010, at 24, 24–28.

G. The Vermont Supreme Court's Current Standard

In 2018, the Vermont Supreme Court decided *Tanzer v. MyWebGrocer, Inc.*, 2018 VT 124, 209 Vt. 244, 262–63, 203 A.3d 1186 (2018) which contains a very comprehensive explanation of the covenant as it has further developed in Vermont:

> ¶ 32. The covenant of good faith and fair dealing is implied in every contract. Carmichael v. Adirondack Bottled Gas Corp. of Vt., 161 Vt. 200, 208, 635 A.2d 1211, 1216 (1993). Thus, "[a] cause of action for breach of the covenant of good faith can arise only upon a showing that there is an underlying contractual relationship between the parties, but breach of that underlying contract is not necessary before bringing a tort action under the covenant." Monahan v. GMAC Mortg. Corp., 2005 VT 110, ¶ 54 n.5, 179 Vt. 167, 893 A.2d 298 (citation omitted). We have explained that the covenant acts to protect **1199 the parties to a contract, and to ensure that they "act with faithfulness to an agreed common purpose and consistency with the justified expectations of the other party." Carmichael, 161 Vt. at 208, 635 A.2d at 1216 (quotation omitted). The covenant's protection does not extend simply to actions taken in fulfillment of a contract, but also actions taken in terminating a contract and winding up the contractual relationship between the parties. Id. at 210, 635 A.2d at 1217. The covenant likewise "covers not only contract performance, but also contract enforcement," including "settlement and litigation of contract claims and defenses." Langlois v. Town of Proctor, 2014 VT 130, ¶ 61, 198 Vt. 137, 113 A.3d 44 (quotation omitted). The covenant of good faith and fair dealing "is violated by dishonest conduct such as conjuring up a pretended dispute, asserting an interpretation contrary to one's own understanding, or falsification of facts." Id.
>
> ¶ 33. A breach of the covenant may be shown by evidence that a party to a contract acted in such a way as to "violate[ ] community standards of decency, fairness or reasonableness, demonstrate[ ] an undue lack of diligence, or [take] advantage of [other parties'] necessitous circumstances." *263 Monahan, 2005 VT 110, ¶ 3, 179 Vt. 167, 893 A.2d 298. A party may collect punitive damages under the covenant where the party can show that the other party acted with actual malice. Id. ¶ 54 n.5. "Actual

[43] *Id*. at ¶17.

malice may be shown by conduct manifesting personal ill will, evidencing insult or oppression, or showing a reckless or wanton disregard of plaintiff's rights." Id. ¶ 4 (quotation omitted). Where a party alleges both breach of contract and breach of the implied covenant of good faith and fair dealing, dual causes of action are permitted only where the different actions are premised on different conduct—"we will not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing when the plaintiff also pleads a breach of contract based upon the same conduct." Id. ¶ 54 n.5 (emphasis in original); see Ferrisburgh Realty Inv'rs v. Schumacher, 2010 VT 6, ¶ 26, 187 Vt. 309, 992 A.2d 1042.

¶ 34. As we have explained, whether conduct breaches the covenant is a question of fact that depends heavily on the context of the conduct alleged to have breached the covenant. Carmichael, 161 Vt. at 209, 635 A.2d at 1217. So a jury instruction concerning a breach of the covenant will list few "precise analytical elements," but will instead ask the jury to determine whether, given the surrounding context of the alleged conduct, that conduct constitutes a breach. Id.

¶ 38. . . . The court also correctly instructed the jury regarding the implied covenant of good faith and fair dealing—"that MyWebGrocer made an implied promise not to do anything to destroy or impede Mr. Tanzer's ability to get the benefits of his agreement with MyWebGrocer under the phantom share plan" and that "bad faith implies an intention to mislead or deceive another, or a neglect or refusal to fulfill some duty or other contractual obligation not prompted by an honest mistake or disagreement." . . .

¶ 39. This is not to say that Tanzer may not be able to pursue a claim for breach of the covenant of good faith and fair dealing. Tanzer presented evidence beyond that relating to the breach of the contract between the parties, and the conduct alleged to underpin Tanzer's contract and covenant claims does not completely overlap.

¶ 40. As noted above, the covenant covers not just contract fulfillment, but also contract enforcement, including settlement and litigation. Langlois, 2014 VT 130, ¶ 61, 198 Vt. 137, 113 A.3d 44. Even so, there is a distinction between litigation conduct that violates the covenant and litigation conduct that is an aggressive prosecution or defense. Litigation conduct that reflects dishonesty—"such as conjuring up a pretended dispute, asserting an interpretation contrary to one's own understanding, or falsification of facts"—violates the covenant of good faith and fair dealing. Id. Litigation conduct falling below this high bar does not. . . .Nevertheless, we emphasize that any litigation conduct alleged to have breached *267 the covenant must fall within the narrow scope of dishonest conduct.

Tanzer v. MyWebGrocer, Inc., 2018 VT 124, ¶¶ 32-34 and 38-41, 209 Vt. 244, 262-263 and 265-267, 203 A.3d 1186, 1198-1199 and 1201–1202 (2018).

H. Application of the Law to the Facts of this case

Turning to the case at bar, the factual question is whether Middlebury College acted in good faith and dealt fairly and consistently with the justified expectations of John Mead in the performance of their agreement. (See *Langlois*, 2014 VT 130, ¶ 59). Plaintiff asserts that Defendant stripped the

Mead family name off of the Memorial Chapel by erroneously recounting the Mead Memorial Chapel's own history, that the chapel was named in honor of Governor Mead and his wife, instead of Mead having built the Chapel as a memorial to honor his ancestors. Then the role of Mead, who supposedly mounted a "Eugenics Campaign" which was nothing more than one speech as he was leaving the office of Governor. The scapegoating of the Governor to hide the real Eugenics' culprit – Middle College itself, was a false narrative which created the supposed rationale for Defendant's removal of the name "Mead" from the Chapel in the manner that it did, which was in direct defiance of its covenant and the expectation that the College will act honestly and reasonably in the faithful pursuit of the agreed common purpose of the contract in to serve the reasonable expectations of Mead for the Promise made to him when he relied to his detriment on that Promise and erected the chapel, believing that the Chapel would be, as it was intended, as a memorial to the Mead ancestors. No one, not Mead or any of the Trustees with whom he served, would have ever believed that a future Board of Middlebury College would strip the Mead name - of one of its greats, its giants - who made the institution what it is today. Such a thing would have been inconceivable. If they were alive today, they would fulfill their promise and restore the Mead name.

Instead, today's Board used Mead as a scapegoat, portraying itself as an innocent bystander which naively accepted money from an unknown bad guy who had fallen from grace. Middlebury College created a story to hide its staggering half-century of Eugenics teaching and advocacy, all at the expense of an honorable man who, no matter his limitations and context, spent his life caring for and serving his patients, neighbors, church, city, college, state and nation.

The 1914 Trustees of Middlebury College knew exactly who Governor Mead was, and regrettably, Mead helped to further Middlebury College's institutional Eugenics agenda, at least for a moment in time, in a single speech, in 1912. However, Middlebury College's hypocritical gaslighting and framing of Mead for its crimes, was more than a breach of contract, it was for a bad motive, to

lay blame elsewhere. Therefore, Defendant has acted in bad faith with improper motive and with wanton disregard for the rights of the Plaintiff to get his benefit of his bargain or to have the purpose of the contract fulfilled, and it is the failure to faithful pursue the agreed common purpose of the contract, which constitutes Middlebury College's breach of the covenant of good faith and fair dealing

Faithfully pursuing the Mead Memorial Chapel's purpose of honoring and memorializing the Mead ancestors does not include scapegoating a man for the college's public relations purposes while erasing the Mead family name from its Memorial as well as John Mead's lifetime of accomplishments and philanthropy that benefitted the State of Vermont and its people as well as generations of Middlebury College students. Plaintiff submits that as bad faith conduct in light of the monumental contributions to Eugenics made by Middlebury College in educating its students with Eugenics curriculum from 1896 to 1946. For fifty years, Middlebury College was in the business of Eugenics programming of its students, who would become the teachers, doctors, lawyers, judges, legislators, clergy and business leaders of tomorrow. Yet, it was Mead who Middlebury College excised as a cancer on the College.

Consequently, Plaintiff must be allowed to pursue discovery to determine what Middlebury College knew about the true purpose of the naming of the Mead Memorial Chapel, what Middlebury College knew about its own Eugenics history, what information that they considered, what process that they followed. Did the College intentionally use Mead as a subterfuge or did they recklessly disregard Mead's rights to reasonably expect Middlebury College to faithfully pursue the agreed common purpose of the contract.

To prevail on a claim for breach of the implied duty of good faith and fair dealing, the plaintiff must prove the following:

- The defendant acted in bad faith
- The defendant's actions prevented the plaintiff from realizing the benefits of the contract
- The plaintiff suffered injury or loss as a result

The first element will require further discovery so that Plaintiff can determine in more detail, the motives and reasons for the Defendant's apparent intentional or reckless actions that Plaintiff believes is a bad faith breach of the covenant.

The second element, that Middlebury College's actions prevented the plaintiff from realizing the benefits of the contract is satisfied because the College's removal of the Mead name through the creation of a false narrative, has highjacked the purpose of the contract, to honor and memorialize the Mead family ancestors who embodied the simplicity and strength of the Vermont character, thereby destroying the family legacy that Mead intended to preserve.

The third element, that Plaintiff suffered injury or loss as a result is present because the benefit of the bargain has been canceled and destroyed by the Defendant's false narrative to lay blame on Mead, the "fall guy", as a subterfuge to conceal its own sordid history. By eliminating Mead's benefit of the bargain, his estate has been damaged due to the diminution in value of the consideration received under the contract, his lost time and opportunities, fiduciary fees and expenses, litigation costs and expenses of suit, and attorneys fees under the Bad Faith exception to the American Rule.

I. <u>Damages for Breach of GFFD</u>

Attorney Fewell, in his Vermont Bar Journal article, also examined the damages that are available for breach of the Covenant of Good Faith and Fair Dealing, providing the following analysis:

> There has been little discussion of available damages for breach of the implied covenant in Vermont law. In light of the tort-like nature of the claim, the question arises whether a party is entitled to tort damages for breach of the implied covenant, and whether, in fact, the calculation of damages based on tort versus contract is materially different. The answer to both is yes.
>
> In *Monahan*, the use of the tort standard for punitive damages for breach of implied covenant suggests that the Court will look to tort law for the measure of damages under an implied covenant claim.[44] This observation is bolstered by the Court's implied covenant decisions. For example, in *Carmichael* the jury returned a verdict for $60,000 for compensatory damages and $100,000 in punitive damages related to the breach of implied warranty claim, notwithstanding a directed verdict on

[44] *Monahan*, 2005 Vt. 110, 179 Vt. 167, 893 A.2d 298.

> the breach of contract claim.[45] There was no discussion of the basis of damages but the existence of non-contractual damages is obvious.
>
> In *Harsch Properties*, the trial court distinguished between damages available for breach of contract and breach of good faith and fair dealing.[46] The trial court instructed the jury that breach of contract damages were comprised of the commission the broker would have earned under the broker agreement, and implied covenant damages should be the "value of the lost opportunity to effect a sale and thereby receive compensation under the contract."[47] On appeal the Supreme Court agreed with the trial court's characterization that good faith damages were distinct from contractual damages, and observed that the "lost opportunity" costs were undefined in the contract and supported by little evidence at trial.[48]
>
> What little anecdotal evidence is available would suggest that the implied covenant provides for tort-based damages, including physical damages otherwise foreclosed in a contract action by the economic loss doctrine.[49] The substantial benefit *28 of tort damages is the absence of the requirement of contractual foreseeability. While the outer limit of tort damages is determined by proximate cause, there is no requirement that proximate cause be limited to damages reasonably foreseeable to the parties.

W. Scott Fewell, Esq., Vermont's Implied Covenant of Good Faith and Fair Dealing in Commercial Contracts, Vt. B.J., Summer 2010, at 24, 24–28.

In 2017, the Vermont Federal District Court in Kindred Nursing Centers E., LLC v. Estate of Nyce, No. 5:16-CV-73, 2017 WL 2377876 (D. Vt. May 31, 2017) had occasion to consider a claim for attorneys fees under the "bad faith" exception to the American Rule when the parties were in privity. The Court identified two "variants" of the bad-faith exception:

> But Vermont recognizes at least one other variant of the "bad faith" exception that does not depend on the presence of a third party.[4] In *In re Gadhue,* 149 Vt. 322, 544 A.2d 1151 (1987), the Vermont Supreme Court expanded the exception articulated in *Albright* to include "situations where the bad faith action of one person caused another person to incur litigation expenses in unnecessary judicial proceedings with the wrongful actor." *Brisson,* 2016 VT 56, ¶ 29. The Vermont Supreme Court has recently reaffirmed that it recognizes an exception to the American Rule, without saying that the exception depends on the presence of a third party. *See Depot Square*

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[45] *Carmichael*, 161 Vt. 200, 635 A.2d 1211.

[46] *Harsch Properties*, 2007 VT 70, 932 A.2d 1045 (2007).

[47] 2007 VT 70, ¶13-20, 932 A.2d at 1049-1051.

[48] *Id*.

[49] *See Gus Catering Inc. v. Menusoft Systems*, 171 Vt. 556, 558, 762 A.2d 804, 807 (2000).

> *Pizzeria, LLC v. Dep't of Taxes,* 2017 VT 29, ¶ 7 (citing *Gadhue*) ("[A]n exception to the American Rule may occur when one of the litigants has acted in bad faith.").
>
> Under both *Albright* and *Gadhue,* "the exception is triggered only by conduct that could be described as in bad faith, vexatious, wanton, oppressive, or unreasonably obstinate." *Id.* ¶ 30. "[T]he equitable power to award attorney's fees as an exception to the American Rule 'must be exercised with cautious restraint ... only in those exceptional cases where justice demands an award of attorney's fees.' " *Id.* ¶ 31 (quoting *Agency of Nat. Res. v. Lyndonville Sav. Bank & Trust Co.,* 174 Vt. 498, 501, 811 A.2d 1232, 1236 (2002) (mem.)). . . . For present purposes, it is sufficient to note that, while the presence of privity between the parties may preclude application of the *Albright* variant of the bad-faith exception, it does not preclude application of the *Gadhue* variant.

Kindred Nursing Centers E., LLC v. Estate of Nyce, No. 5:16-CV-73, 2017 WL 2377876, at *4–5 (D. Vt. May 31, 2017)

Then in 2018, the Vermont Supreme Court in *Tanzer*, further addressed the parties ability to pursue a damages claim for breach of the covenant, stating the following regarding punitive damages and the recovery of litigation expenses, including attorneys fees, which are recoverable upon a showing the wrongful act of one person has involved another in litigation ... or has made it necessary for that other person to incur expenses to protect his interests:

> ¶ 41. . . .It nonetheless bears repeating that a party may only pursue punitive damages on a breach of the covenant claim when the party has presented evidence **1202 that the other party acted with actual malice—as "shown by conduct manifesting personal ill will, evidencing insult or oppression, or showing a reckless or wanton disregard of plaintiff's rights." Monahan, 2005 VT 110, ¶ 4, 179 Vt. 167, 893 A.2d 298 (quotation omitted). Any request for attorney's fees will also need to be considered in light of the evidence presented in a new trial. Though here again, we emphasize that attorney's fees are only recoverable upon a showing of bad faith litigation conduct. See id. ¶¶ 76-80. As we explained in In re Gadhue, "where the wrongful act of one person has involved another in litigation ... or has made it necessary for that other person to incur expenses to protect his interests, litigation expenses, including attorney's fees, are recoverable." 149 Vt. 322, 327, 544 A.2d 1151, 1154 (1987) (quotation omitted).[2]

Tanzer v. MyWebGrocer, Inc., 2018 VT 124, ¶¶ 32-34 and 38-41, 209 Vt. 244, 262-263 and 265-267, 203 A.3d 1186, 1198-1199 and 1201–1202 (2018).

J. Damages Sought

Plaintiff claims Compensatory Damages including, but not limited to, diminution in value of benefit of his bargained-for consideration, lost time and opportunities, litigation costs and expenses, and attorneys' fees under the "bad faith" exception to the American Rule. *See In re Appeal of Gadue*, 149 Vt. 322, 327 (Vt. 1987).

In addition, Plaintiff claims Punitive Damages for Defendant's bad faith conduct in scapegoating Governor Mead for their own ulterior bad motives, obfuscating the College's shameful past, by blaming a "fall guy". Such extraordinary circumstances, warrant an award of attorneys fees as well as punitive damages to punish Defendant's bad faith conduct and deter such actions in the future by Middlebury College or by other bad actors.

Lastly, because compensatory damages are inadequate, Plaintiff prays that the Court invoke its equity jurisdiction and provide injunctive relief ordering the restoration of name Mead Memorial Chapel to the building.

WHEREFORE, Plaintiff respectfully requests that he be permitted to proceed with Discovery with regard to the claim for breach of the covenant of good faith and fair dealing so that he may prepare for trial of the claim.

IX. PROMISSORY ESTOPPEL

A. Introduction

Promissory estoppel is a legal doctrine that enforces promises made without a formal contract when a party has reasonably relied on the promise to their detriment. In Vermont, as in many other states, the principle of promissory estoppel has developed through case law, and the Vermont Supreme Court has provided significant clarification on the application of promissory estoppel.

At its core, the doctrine of promissory estoppel seeks to prevent unjust outcomes when one party relies on a promise that is not supported by consideration (i.e., a bargained-for exchange). Promissory estoppel, while distinct from traditional contract law, shares some key similarities, particularly the notion that fairness requires enforcing promises under certain circumstances.

Promissory estoppel rests on several elements:

1. **A clear and definite promise** made by the promisor.
2. **Reasonable reliance** by the promisee on the promise.
3. **Detrimental reliance**, meaning the promisee took action or refrained from action based on the promise.
4. **Injustice**, where the failure to enforce the promise would result in an unfair or unjust outcome.

In Vermont, as elsewhere, courts apply these general principles to determine when promissory estoppel should be invoked.

Promissory estoppel is a highly flexible legal doctrine rooted in equitable principles. Courts have ruled that the question of detrimental reliance is a factual issue for the jury, while the question of whether injustice would result without enforcement is a legal issue for the judge.

B. <u>Facts and Circumstances of the Promise to Mead</u>

In the case before the Court, an examination of all of the facts and circumstances, the words and actions of the Trustees amount to an undeniable promise to name the Chapel the "Mead Memorial Chapel" and that promise was reasonably interpreted and relied upon by Governor Mead when he decided to erect the Chapel. That promise, that the Chapel would be named as a memorial to the Mead ancestors was expected by Mead to be forever, or as long as the Chapel existed, because that is what a memorial is and does. It memorializes people or events so that, just as repeatedly articulated, future generations will be made aware of history. It is the symbolism of history and the original settlers that was being embodied in the design of the Chapel and most importantly, it name. Mead was induced to act and erected the Chapel to his significant financial detriment, because he reasonably expected that a name was a name, and that it would remain on the building for as long as the building lasts. Lastly,

injustice can only be avoided by enforcement of the promise – requiring the name to be restored. As previously argued, the College did not remove the name because 100 years expired. They did so for a bad motive. They used Mead, a dead man who cannot defend himself, to throw under the bus. It is not right. And if the law does not provide a remedy, equity should.

The facts and circumstances which bear on the promise made by Defendant are many and demonstrate that there was no one, not Mead, not the Trustees, not the President, not the faculty, not the public, who would not have reasonably interpreted Middlebury College's words, acts and deeds to have conveyed a promise to Mead to name the chapel the "Mead Memorial Chapel" as long as the building existed. That promise is clearly reflected in Middlebury College's words, acts and deeds including:

- The Building Plans specifying the specifications for the signage "Mead Memorial Chapel" which were required to meet with Mead's approval
- Letters from Trustees in response to Mead's Offer Letter
- Placing the Mead Bible and Family Tree into the Cornerstone of the Chapel
- Providing Gov. Mead with turf to transplant to the Mead family cemetery plot where he had reinterred his ancestors to whom the Chapel was named for to memorialize
- Speeches made on behalf of the College at the 1914 Groundbreaking Ceremony
- Speech made on behalf of the College at the 1916 Presentation of Keys Ceremony
- Speeches made on behalf of the College at Mead's funeral
- Correspondence to the Mead family seeking permissions for changes or repairs to the Chapel after Mead's death
- Correspondence to other donors establishing a pattern and practice of promising to name buildings in exchange for donations
- Correspondence to another donor encouraging a donation in exchange for a "memorial"

naming of a building and using Mead's name as an example of how to memorialize her husband.

The Defendant's notion that the Promissory Estoppel claim fails because the Plaintiff alleges a breach of contract action, is just plain wrong. It is in the failure of consideration or the establishment of a contract, when Promissory Estoppel may be used to prevent injustice. Nor does a prior decision on summary judgment, regarding the four corners of the document and the limitation of the contract to specify perpetuity language satisfactory to the Court to establish the contract claim, defeat a claim for promissory estoppel, which takes all the facts and circumstances into account. It is a different inquiry, and not one defeated by the lack of a contract element such as consideration. Therefore, the claim is not frivolous and should not be prejudged based upon a determination of the contract claim. Plaintiff should be entitled to a decision on the merits and should not being foreclosed from having that decision rendered.

C. <u>Promissory Estoppel and Charities</u>

Promissory estoppel is an extremely flexible doctrine that is applied in the Charitable giving context. Cases hold that the detrimental reliance element is a question of fact for the jury, that the injustice element is a question of law, and that equitable principles apply. CHARITABLE PLEDGES: CONTRACTS OF CONFISION, 120 Penn St. L. Rev. 477, 516 (*citing Faimon v. Winona State Univ.*, 540 N.W.2d 879, 883 n.2 (Minn. Ct. App. 1996) ("We note a seeming contradiction between, on one hand, cases holding that the injustice prong... is a question of law, and on the other hand, [a case], holding that... reliance... is a question of fact to be decided by the jury.") and (*citing People v. Castillo*, 230 P.3d 1132, 1139 (Cal. 2010).

The three elements of a promissory estoppel cause of action reflect its flexibility: "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice

can be avoided only by enforcement of the promise." Id. (*citing* RESTATEMENT (SECOND) OF CONTRACTS § 90(1) (AM. LAW INST. 1981)). At its core, "promissory estoppel provides an additional tool for courts to reach what they consider to be equitable decisions." Id. The reliance element frequently depends on the promisee showing a "*definite and substantial* change of position which would not have occurred if the promise had not been made." Id. (citing RESTATEMENT (SECOND) OF CONTRACTS § 90, cmt. f (AM. LAW INST. 1981) (emphasis added)).

Promissory Estoppel has been used in the "charitable context" by charities using it to enforce pledges:

> It may be difficult for a charity to show that it acted reasonably if it substantially changed its position based on a pledge that was not substantial in amount.
> Nevertheless, promissory estoppel can help charities enforce truly significant pledges. For example, in *King v. Trustees of Boston University*, [*King v. Trs. of Boston Univ.*, 647 N.E.2d 1196 (Mass. 1995) Dr. Martin Luther King Jr. deposited many of his personal papers with the library of Boston University, one of his former schools. Boston University paid nothing for the papers. The King estate sued Boston University for conversion, arguing that Dr. King's estate was the rightful owner of the papers in the University's special collection section.
> At trial, the jury considered theories of contract, charitable pledge, statute of limitations, and laches. The jury concluded that Dr. King's promise was "enforceable as a charitable pledge supported by consideration or reliance," but "the jury also determined that [Dr. King's] letter promising the papers was not a contract."
> On appeal, the court emphasized that Boston University held a convocation in Dr. King's honor to commemorate receipt of the papers, indexed the papers, "made the papers available to researchers, and provided trained staff to care for the papers and assist researchers." The appeals court affirmed the trial court, stating that the case was properly submitted to the jury and that Dr. King's letter to Boston University about the collection could be read to contain a promise "supported by consideration or reliance."

Id. (citations omitted).

The case at bar involves using the doctrine of promissory estoppel in the same setting, and relates to similar promises. There is overwhelming evidence of repeated language used and actions taken that can be interpreted in no way other than that **the name "Mead Memorial Chapel" would adorn the chapel as a Memorial forever because that is what a memorial is.** Mead was totally reasonable in interpreting the promise forever, he relied to his massive financial detriment, and it

would be an injustice that can only be remedied by the Court's equitable powers. Thus, because the elements of promissory estoppel are present, if the contract claim should fail, Plaintiff requests alternate equitable relief from the Court under the doctrine of promissory estoppel.

X. EQUITABLE ESTOPPEL

A. Introduction

Equitable estoppel is a legal doctrine used in the United States to prevent a party from taking an inconsistent or contradictory position in litigation or legal proceedings, especially when doing so would unfairly disadvantage another party. In Vermont, as in other states, equitable estoppel is grounded in fairness and justice, and it operates to avoid harm caused by inconsistency and deceit in legal matters.

The Vermont Supreme Court has addressed equitable estoppel in several cases, providing critical insights into its application. The state's case law has established the key elements of equitable estoppel, the circumstances in which it may be invoked, and how the court has evolved its understanding of the doctrine over time.

At its core, equitable estoppel prevents a party from asserting a position that contradicts a prior representation, action, or assumption if doing so would harm another party who reasonably relied on the initial position. The reliance must generally be both reasonable and made in good faith. This doctrine is particularly relevant in situations where the strict application of legal rules would lead to an unjust or inequitable result.

B. Vermont Law

The Vermont Supreme Court has identified that for equitable estoppel to apply, several elements must typically be established:

> The elements of equitable estoppel are well established in our jurisprudence: (1) the party to be estopped must know the facts; (2) the party being estopped must intend that his conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must rely to his or her detriment on the estopped party's former conduct. *Jones v. Dep't of Forests, Parks & Recreation,* 2004 VT 49, ¶ 15, 177 Vt. 81, 857 A.2d 271.

In re Griffin, 2006 VT 75, ¶ 18, 180 Vt. 589, 594, 904 A.2d 1217, 1222 (2006).

The doctrine of equitable estoppel precludes a party from asserting rights which otherwise may have existed as against another party who has in good faith changed his [or her] position in reliance upon earlier representations." My Sister's Place v. City of Burlington, 139 Vt. 602, 609, 433 A.2d 275, 279 (1981). It is "based upon the grounds of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his [or her] own act, representations or commitments to the injury of one to whom they were directed and who reasonably relied thereon." Dutch Hill Inn, Inc. v. Patten, 131 Vt. 187, 193, 303 A.2d 811, 815 (1973).

C. Equitable Estoppel as a Defense in Vermont

Equitable estoppel is a legal principle that prevents a party from asserting a claim or defense that is inconsistent with their previous conduct, representations, or statements, particularly when the other party has relied upon such conduct to their detriment. In Vermont, as in many other jurisdictions, the application of equitable estoppel is nuanced, depending on whether it is used as a defense or an affirmative claim in a legal dispute.

In Vermont, equitable estoppel has traditionally been viewed as a defensive doctrine. That is, a party may raise equitable estoppel to prevent the other party from asserting a legal position that contradicts prior conduct or statements upon which the other party has relied. This defensive use prevents one party from asserting something that would be unjust or unfair given their earlier conduct, particularly if that conduct led the other party to take or refrain from taking some action.

D. Equitable Estoppel as an Affirmative Claim in Vermont

While equitable estoppel is predominantly viewed as a defense, it can also be used affirmatively in certain circumstances. An affirmative claim means that a party asserts equitable estoppel to obtain relief rather than to merely prevent the other party from asserting an inconsistent position. In Vermont, while cases where equitable estoppel is used as an affirmative claim are rarer, the possibility exists where the plaintiff is seeking affirmative relief based on reliance on prior conduct. For example, in the zoning context in In re Langlois/Novicki Variance Denial, 2017 VT 76, ¶ 12, 205 Vt. 340, 346, 175 A.3d 1222, 1227 (2017), where a citizen may be the respondent to an enforcement action, or they may seek affirmative relief. In essence, it is still an equitable claim for relief, regardless of who filed first and is considered the plaintiff or complainant.

In the Langlois case, the court used the same four elements to determine the claim:

> The equitable estoppel doctrine has four elements: (1) the party being estopped must know the relevant facts; (2) the party being estopped must intend that his or her conduct be acted upon; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must rely to his or her **1228 detriment on the estopped party's representations.

In conclusion, while equitable estoppel is most frequently used defensively in Vermont, it can also be employed affirmatively in situations where fairness requires that a party be prevented from departing from prior conduct that has been relied upon by another party to their detriment.

Equitable estoppel is an essential legal tool in Vermont, serving to prevent unfairness arising from inconsistency, misrepresentation, or changes in position that harm another party. The Vermont Supreme Court has applied this doctrine across various areas of law, including family law, property law, and contract law, demonstrating its flexibility and emphasis on fairness. It remains a vital tool in achieving just outcomes in legal disputes, safeguarding against inequities stemming from dishonesty or inconsistency in the civil arena.

WHEREFORE, Plaintiff respectfully requests that the Court Deny Defendant's Second Motion for Summary Judgment and allow Plaintiff to proceed with Discovery with regard to the claim for breach of the covenant of good faith and fair dealing and damages, which were bifurcated by the Court's prior ruling, so that Plaintiff may resume preparation for trial.

DATED at Randolph, County of Orange and State of Vermont, this 10th day of January 2025.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead, *Plaintiff*

By: /s/_ L. Brooke Dingledine

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,)
Special Administrator of the)
Estate of John Abner Mead,)
Plaintiff)
v.)
)
The President and Fellows of)
Middlebury College)
Defendant)

PLAINTIFF'S RESPONSE TO
DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

(SECOND MOTION FOR SUMMARY JUDGMENT)

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and hereby responds to Defendant's Statement of Undisputed Material Facts regarding Defendant's Second Motion for Summary Judgment as follows:

A. John Abner Mead's Proposal for Eugenics Policies in Vermont – Objection to the characterization that Mead had a "Proposal for Eugenics Policies in Vermont"; therefore, Denied.

1. Admitted.
2. Admitted.
3. Admitted.
4. Objection to Defense counsel's characterization; therefore, Denied. The document in its entirety, speaks for itself.

5. Objection to Defense counsel's characterizations and story-telling spin of a document, the entirety of which speaks for itself; therefore, Denied. In addition, objection is made to Defense counsel's implication that Mead coined the terms "defectives, imbeciles, feeble-minded, idiocy, insanity, etc." when those terms were the conventional medical terminology of medical diagnoses of the time; therefore, Denied.
6. Objection to Defense counsel's characterizations and story-telling spin of a document, the entirety of which speaks for itself; therefore, Denied. In addition, objection is made to Defense counsel's implication that Mead coined the terms "defectives, imbeciles, feeble-minded, idiocy, insanity, etc." when those terms were the conventional medical terminology of medical diagnoses of the time; therefore, Denied.
7. Objection to Defense counsel's characterizations and story-telling spin of a document, the entirety of which speaks for itself; therefore, Denied. In addition, objection is made to Defense counsel's implication that Mead coined the terms "defectives, imbeciles, feeble-minded, idiocy, insanity, etc." when those terms were the conventional medical terminology of medical diagnoses of the time; therefore, Denied.
8. Objection to Defense counsel's characterizations and story-telling spin of a document, the entirety of which speaks for itself; therefore, Denied. In addition, objection is made to Defense counsel's implication that Mead coined the terms "defectives, imbeciles, feeble-minded, idiocy, insanity, etc." when those terms were the conventional medical terminology of medical diagnoses of the time; therefore, Denied.
9. Objection to Defense counsel's characterizations and story-telling spin of a document, the entirety of which speaks for itself; therefore, Denied. In addition, objection is made to Defense counsel's implication that Mead coined the terms "defectives, imbeciles,

feeble-minded, idiocy, insanity, etc." when those terms were the conventional medical terminology of medical diagnoses of the time; therefore, Denied.

10. Objection to Defense counsel's characterizations and story-telling spin of a document, the entirety of which speaks for itself; therefore, Denied. In addition, objection is made to Defense counsel's implication that Mead coined the terms "defectives, imbeciles, feeble-minded, idiocy, insanity, etc." when those terms were the conventional medical terminology of medical diagnoses of the time; therefore, Denied.
11. Objection to Defense counsel's characterizations and story-telling spin of a document, the entirety of which speaks for itself; therefore, Denied. In addition, objection is made to Defense counsel's implication that Mead's Speech was reflected in S.79, the proposed legislation of 1912. That is utterly false. The 1912 bill known as S.79 was an outright rejection of Mead's comments made during his Farewell Address; therefore, Denied as the document speaks for itself. Lastly, objection is again made to Defense counsel's implication that Mead coined the terms "defectives, imbeciles, feeble-minded, idiocy, insanity, etc." when those terms were the conventional medical terminology of medical diagnoses of the time; therefore, Denied.
12. Objection is made to Defense counsel's implication that Mead's Speech was reflected in S.79, the proposed legislation of 1912. That is utterly false. The 1912 bill known as S.79 was an outright rejection of Mead's comments made during his Farewell Address; therefore, Denied as the document speaks for itself.
13. There is no evidence of "another failed attempt at legislation in 1927" in the record or presented with the instant motion; therefore, Denied. Objection to Defense counsel's

characterizations and story-telling spin without evidentiary basis and of a document, the entirety of which speaks for itself; therefore, Denied.

B. <u>Mead's Gift of the Chapel to Middlebury</u> - Objection to the characterization; therefore, Denied.

14. Objection to Defense counsel's characterizations and story-telling spin of a document, the entirety of which speaks for itself; therefore, Denied.
15. Denied. The document in its entirety speaks for itself.
16. Denied. The document in tis entirety speaks for itself.
17. Denied. In addition, objection to Defense counsel's characterizations; therefore Denied.
18. Objection to Defense counsel's characterizations and story-telling spin of a document, the entirety of which speaks for itself; therefore, Denied.
19. Denied. The letter referenced and enclosed Mead's Letter which contained the essential term: "the same to be known as the 'Mead Memorial Chapel'".
20. Denied. The letter referenced and enclosed Mead's Letter which contained the essential term: "the same to be known as the 'Mead Memorial Chapel'".
21. Objection to Defense counsel's characterizations and story-telling spin of documents, the entirety of which speaks for themselves; therefore, Denied.
22. Objection to Defense counsel's characterizations and story-telling spin of a document, the entirety of which speaks for itself; therefore, Denied. The Trustees accepted Mead's Offer at its June 22, 1914 Trustees' Meeting including copying verbatim, a

copy of Mead's Offer Letter into the Minutes, to record the precise Offer that was being accepted.

23. Admitted only that the Trustees accepted Mead's Offer and then performed one of the essential terms of the contract, that a building committee be formed consisting of Mead, President Thomas and former President Brainerd. Trustee John Weeks was added to the Committee with the approval of Mead. Otherwise, the paragraph is Denied.
24. Admitted only that the Trustees voted twice to modify the Mead Memorial Chapel Contract with Mead and that the first modification resulted from Mead's letter of January 13, 1915 in which he offered to increase his cost of erecting the Chapel to the maximum amount of the range that he indicated in his Offer Letter he was contemplating, and that he would bind his estate to that specific amount, $60,000, in exchange for the college agreeing "to complete the chapel in every way, as to grounds, furnishings, etc. . . ." which consideration was estimated to cost $1,000. Otherwise, the paragraph is Denied as the document speaks for itself.
25. Objection to Defense counsel's characterizations and story-telling spin of a document, the entirety of which speaks for itself; therefore, Denied. Admitted only that Mead wrote to the Trustees on January 13, 1915. In addition, objection is made to the false and misleading usage of the phrase "confirming his agreement to contribute $60,000."; which is specifically Denied.
26. Objection to the term "gift" which is Denied. Otherwise Admitted.
27. Admitted.

C. Middlebury's Renaming of the Chapel and the Issuance of the September 27 Statement

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. According to Middlebury College's website, the college now refers to the Mead Memorial Chapel as either "Middlebury Chapel" or "The Chapel".

33. Denied. The document, in its entirety, speaks for itself.

34. Denied. The document, in its entirety, speaks for itself.

35. Denied. The document, in its entirety, speaks for itself.

36. Denied. The document, in its entirety, speaks for itself.

D. The Mead Estate and Its Claims

37. Admitted.

38. Denied as Defense counsel misrepresents the Motion to Appoint Special Administrator, which document speaks for itself and states the purpose of the appointment: "To prosecute legal claims of the Decedent for breach of contract and/or for breach of the conditions of the conditional gift of the Mead Chapel to Middlebury College."

39. Denied as Defense counsel's selective allegation is misleading. The document speaks for itself and states: "You are granted full authority to collect and take charge of the following estate of the deceased for the following purpose: To represent the estate for the purpose of presenting and possibly prosecuting potential legal claims of the

Decedent for breach of contract and/or for breach of the conditions of the conditional gift of the Mead Chapel to Middlebury College."

40. Admitted.

DATED at Town of Randolph, County of Orange, and State of Vermont this 9th day of January 2025.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead,
Plaintiff

By: /s/ L. Brooke Dingledine

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23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
Plaintiff	)
v.	)
	)
The President and Fellows of	)
Middlebury College	)
Defendant	)

PLAINTIFF'S STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and hereby submits the following statement of undisputed material facts for the court's consideration in support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment and in support of Plaintiff's cross motion for summary judgment as follows:

PARTIES

Plaintiff

1. On June 17, 2022, the Vermont Superior Court, Rutland Unit, Probate Division, in the matter of the *Estate of John Mead*, Case No. 22-PR-02895, appointed the Honorable James H. Douglas as Special Administrator of the Estate of John Abner Mead, granting him full authority to represent the Estate in this litigation. Complaint/Answer par 17.

Defendant

2. Defendant, The President and Fellows of Middlebury College is a Vermont Non-profit Corporation chartered on November 1, 1800 and doing business as Middlebury College,

with its principal place of business in the Town of Middlebury, County of Addison and State of Vermont. Complaint/Answer par 19.

3. Middlebury is a liberal arts college of the first rank, an achievement that is the result of a process of growth and change that began in 1800, when a few men of the town of Middlebury took upon themselves the challenge of building a college in a small New England town, on what was then the American frontier. Complaint/Answer par 29.

4. Over the more than two centuries since it was established, Middlebury has developed from "the town's college" into an institution of international renown with a $1.518 billion endowment as of 2021. Complaint/Answer par 23.

5. Middlebury's original purpose was to train young men from Vermont and neighboring states for the ministry and other learned professions of the early 19th century. The College began modestly, with seven students enrolling in November 1800. Complaint/Answer par 24.

6. Gamaliel Painter, one of the citizens of Middlebury to whom the College charter had been granted, left most of his estate to the College. Mr. Painter's gift was an early example of the philanthropic support for Middlebury College that has enabled the institution to prosper. In recognition of his gift, West College, a new building completed a few years prior to Painter's death in 1819, was renamed Painter Hall. Painter Hall is the oldest college building extant in Vermont. Complaint/Answer par 25.

7. Middlebury College continued to grow during the 19th century. The growth was sporadic, however, as the College was not immune to the social and political movements that were affecting northern New England generally. Rocked by evangelical upheaval and religious revival in the 1830s and the Civil War in the 1860s, Middlebury managed to keep its doors open during a

period when many small colleges in America were forced to close. In large part, the College survived because of the support of its many friends, both in the town of Middlebury and in the surrounding region. Complaint/Answer par 27.

8. In 1883, the Trustees voted to accept women as students in the College, making Middlebury one of the first formerly all-male liberal arts colleges in New England to become coeducational. In the following years, Middlebury College began to change from an institution primarily oriented toward its community and its state to a college with larger regional aspirations. President Ezra Brainerd (who held that office from 1885 to 1908) prepared the College for this transformation, and spectacular change occurred under the administration of President John Thomas (1908 to 1921), who established the Language Schools and the Bread Loaf School of English during his presidency. Complaint/Answer par 28.

9. During the second decade of the 20th century under President Thomas' direction, the College's enrollment more than doubled, and the number of buildings, the size of the faculty, and the value of the endowment all tripled. Complaint/Answer par 29.

10. During the 1930s, 1940s, and 1950s, Middlebury continued its development toward a position of prominence among liberal arts colleges in the United States. Continued growth in the faculty meant the addition of new subjects to the curriculum and an enhanced academic reputation for the College. New residence halls, academic buildings, and library facilities were added to the physical plant. Middlebury's expansion was coupled with increases in financial resources and the establishment of a tradition of prudent financial administration, including the cultivation of resources for the long term. Complaint/Answer par 30.

Governor John Abner Mead

11. John Abner Mead (April 20, 1841 – January 12, 1920) was a Vermont physician, businessman, politician, and philanthropist who served as Vermont's 47th Lieutenant Governor from 1908 to 1910, and Vermont's 53rd Governor from 1910 to 1912. Complaint/Answer par 3.

12. On October 30, 1872, John Mead married Mary M. Sherman. They had one child, Mary Sherman Mead Hinsman. Defendant's GG.

13. Mead was a graduate of Middlebury College, Class of 1864. In 1914, on the 50th anniversary of his graduation, he offered to erect the "Mead Memorial Chapel," which offer was accepted by the Trustees of the College. Complaint/Answer par 32.

MEAD MEMORIAL CHAPEL

Mead's Offer

14. On May 11, 1914, John Abner Mead sent a Letter to Rev. Dr. John M. Thomas, President of Middlebury College, offering "to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel." (hereinafter "Offer Letter"). Ex. 1. Complaint/Answer par 95.

. . . to erect a chapel to serve as a place of worship for the college, ***the same to be known as the "Mead Memorial Chapel."*** I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, *and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.*
Ex. 1 (*emphasis supplied*).

Complaint/Answer par. 1.

15. The quotation marks around the proposed name, "Mead Memorial Chapel" are written in Mead's own hand. Ex. 1.

16. Mead then told of his ancestors, recounting their lives as embodying the simplicity, strength of character, and religious faith that Mead envisioned the Mead Memorial Chapel would symbolize and specifying the location of the chapel:

> . . . ***With this memory ever present,*** it has been my hope and prayer that ***I might be able and permitted to build for this college a suitable place for divine worship and <u>that it might rise from the highest point on its campus</u> as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain*** *in its work for our youth.*
>
> Ex. 1 (*emphasis supplied*).

Complaint/Answer par. 2.

17. Mead's Offer Letter went on to state:

> "I have in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure, and I hereby suggest that the Trustees of the College ***secure <u>appropriate plans for its erection which shall meet with my approval</u>, and that said board <u>appoint a building committee</u> at once,*** consisting of president Thomas, former President Brainerd and myself to make the necessary contracts for such a structure and to supervise the erection of the same, and I will then bind myself and my estate to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee."

Ex. 1. Complaint/Answer par 98.

18. On May 15, 1914, President Thomas sent a copy of John A. Mead's Offer Letter to the Trustees of Middlebury College announcing:

> Your associate, Governor John A. Mead, has made it possible for me to make an announcement which will bring you all great satisfaction and encouragement, as it gives me the keenest pleasure. I enclose a copy of his letter to be signed May 11th which assures the erection of an appropriate and beautiful chapel for Middlebury College.
>
> I have testified many times to the great need of such a building and the large possibilities for good in connection with it. We have all felt for many years that it was one of the most urgent needs of the college, and those who have been closest in touch with the daily life of the institution have felt the need most earnestly.
>
> . . .
>
> P.S. May I hear from you immediately as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the Building Committee which he suggests.

Ex. 2. Complaint/Answer par 99.

Middlebury College's Acceptance

19. On May 16, 1914, Trustee Frank C. Partridge wrote to President Thomas agreeing as one of the Trustees, to accept the Offer and appoint of the Mead Memorial Chapel Building Committee as Mead had specified:

> Your good news is received and I am delighted that your dream of a new chapel is to be realized. ***It is a generous and beautiful thing for Governor Mead to do and of course I agree, as one of the Trustees, to the acceptance of his proposition and the appointment of the building committee which he suggests***.
>
> Ex. 3-1 (emphasis supplied).

Complaint/Answer par 100.

20. On May 16, 1914, Superior Court Judge (and future Middlebury College Trustee) Frank L. Fish wrote to Pres. Thomas:

"Hurrah for Dr. Mead! I have just written him thanking him and telling him ***he has become one of the immortals.***"
Ex. 3-4.

21. May 17, 1914, Trustee John E. Weeks wrote to Mead with:

[congratulations and thanks for] . . . the splendid gift to Middlebury College. This is a most worthy reminder of your great loyalty to this Institution and ***one that can and will be instrumental in great good to this student body as long as time lasts***. . . Your honorable public career is certainly crowned by this act.
Ex. 3-7 (emphasis supplied).

Complaint/Answer par 101.

22. On May 18, 1914, Trustee A. Barton Hepburn wrote to Mead stating:

It is a splendid, well-considered and generous action on your part. It shows you possess that love for Alma Mater, which is one of the greatest charms of college life, the essence of college spirit; ***it shows your respect and reverence for your forebears***, which is one of the highest qualifications a man may possess, and ***it shows, also, your disposition to do a good and useful act for the community in which you live and the State which you honor and which has bestowed its highest honor upon you***. Congratulations and thanks.
Ex. 3-10 (emphasis supplied).

Complaint/Answer par 102.

23. On May 19, 1914, Trustee James L. Barton wrote to Mead stating:

I can hardly describe to you the thrill of satisfaction that I experienced when a letter from Dr. Thomas reported ***your magnificent gift to Middlebury College in the form of a Memorial Chapel. I know of nothing more fitting as a memorial – nothing that will be of greater value to the College in all the years to come.***

I know of no building that could be put up out from which will go more fundamental and permanent influences for social, civic and national righteousness, for our own country and for the world. I want to express my deep personal appreciation of this gift, as well as my appreciation as a member of the Board of Trustees. ***I am sure you will get great satisfaction in seeing the walls of the building rise, as you realize what they mean to the College, the State, the country and the world, <u>in all the years to come</u>.***
Ex. 3-13 (emphasis supplied).

Complaint/Answer par 103.

24. On May 22, 1914, Trustee Brainerd Kellogg wrote to President Thomas, stating:

I can't tell you how pleased I was and am at the news that Governor Mead wishes to build a Chapel on the College grounds. I had not thought that he dreamed of it. And how fitting that it should be at the semi-centennial of his graduation – showing that his love for his College has not waned but waxed during the 50 years. . . . *Convey to him, please, my personal thanks for his generous plans.* ***Of course the Trustees will allow him his ways, <u>and will be everlastingly grateful</u> to him in taking it.***
Ex. 3-14 (emphasis supplied).

Complaint/Answer par 104.

25. On May 23, 1914, John A, Fletcher, Middlebury Trustee and Treasurer, wrote to President Thomas stating:

Replying formally to the welcome news contained in your message of the 15th, ***<u>I wish to concur in the acceptance of the "Mead Memorial Chapel."</u>*** It is a splendid gift . . . ***I trust that the General Education Board will now look with favor upon your application for a grant toward a new fund, on***

contemplating this new evidence of the substantial and loyal support of our alumni.
Ex. 3-16 (emphasis supplied).

Complaint/Answer par 105.

26. On June 6, 1914, Trustee M. Allen Starr wrote to Pres. Thomas:

"I congratulate you heartily on this fine gift which will be ***a beautiful memorial*** and a most needed and welcome addition to our building. … ***His most interesting letter with its details of early history should be framed and hung in the chapel – and also put in the box of the corner stone.***"
Ex. 3-19

27. On June 24, 1914, Trustee James M. Gifford wrote to Pres. Thomas:

"I have felt for years that the one building which the College most needed is that which Gov. Mead has undertaken to erect. ***I feel that it should be located on the most prominent site and that, architecturally, it should be the most attractive of all the buildings of the College.*** I believe that Gov. Mead will fully accord with this idea as ***I know that he feels, as I am sure we all do, that it ought to be the most attractive memorial erected on the College Campus***."
Ex. 3 -20

28. On June 22, 1914, the President and Fellows of Middlebury College (Board of Trustees) met and recorded the following resolution to accept Dr. Mead's Offer Letter to erect the "Mead Memorial Chapel":

The following resolution, introduced by Dr. Brainerd, on motion of Dr. Barton & Prof. Kellogg, was adopted by a rising vote:- "Whereas our esteemed colleague, the Honorable John Abner Mead of the Class of 1864, has signified to President Thomas his desire, in commemoration of the fiftieth

anniversary of his graduation, to erect a Chapel for Middlebury College, and his readiness to furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice,

Resolved that the President and Fellows of Middlebury College hereby accept of this magnificent benefaction with sincere gratitude to both Dr. & Mrs. Mead and their family for their deep interest in the religious welfare of the College, so impressively manifested by this provision of a suitable place for divine worship.

Resolved that the Trustees through the Committee nominated by Dr. Mead will use their best endeavors to secure the erection of a dignified and substantial structure, in harmony with the other buildings of the college, and such as will meet the approval of the donor."

Dr. Mead made fitting response to this resolution. His letter of presentation follows in full:-

[Letter of Gift copied by hand verbatim
with quotation marks around
"Mead Memorial Chapel"]

On motion of Mr. Partridge, seconded by Dr. Abernathy, ***the Building Committee for the Mead Chapel was elected*** as above, Messrs. Thomas, Brainerd, Mead and Weeks.

Mr. Collins of the architectural firm of Allen & Collins then appeared before the Board with tentative plans for the new Chapel, which were discussed at length.

Ex. 4 (emphasis supplied).

Complaint/Answer par 106.

29. The Middlebury College Trustees unreservedly and enthusiastically accepted Dr. Mead's offer to erect a chapel, which offer contained the explicit language: "the same to be known

as the "Mead Memorial Chapel," with the actual quotation marks added by Mead's own hand to specify precisely the name of the chapel, which was offered as a memorial to the Mead ancestors, and yes, would immediately become synonymous with Governor Mead himself. Ex. 1. Complaint/Answer par. 3.

30. The gift of the Mead Memorial Chapel was widely reported in the Vermont press and Dr. Mead's Offer Letter was reprinted in several news articles. Complaint Exs. 1-013 to 018. Complaint/Answer par 107.

31. The Free Press had a special report from Middlebury, May 15, 1914:

EX-GOV MEAD GIVES
COLLEGE A CHAPEL

President Thomas of Middlebury Announces
Offer of $60,000 ***for Memorial.***

TO BE OF WHITE MARBLE

Former Vermont Chief Executive Commemorates
50th Anniversary of His Graduation.

Middlebury, May 15 - President John M. Thomas announced this evening at a meeting at the gymnasium the gift of a $60,000 memorial chapel by ex-Governor John A. Mead of Rutland, ***to be called the Mead Memorial Chapel***. The unexpected announcement was greeted with great enthusiasm.

. . .

Ex-Governor Mead was cheered by the gathering of 500 persons.

Complaint Ex. 1-013 to 1-014 (emphasis supplied).

Complaint/Answer par 108.

32. On May 16, 1914, the Rutland Herald reported on the gift:

DR. MEAD'S GIFT TO MIDDLEBURY COLLEGE . . . The gift of a chapel, in which the eternal Truth may be taught, and devoted to the sacred purposes of divine worship, is an admirable expression of active piety and reflects creditably upon its donor. . . . *It is peculiarly fitting* that Dr. Mead should thus recognize Middlebury College, an institution so peculiarly a part of his native state and his personal environment, *for the reason that, as he sets forth in his letter of gift*, his great-great-grandfather was the first white settler in the Otter Creek valley, and brought the Bible, in all its sublime and uplifting beauty, to the peaceful Indians of the wilderness. The college, too, which has made for itself an enduring name and place in Vermont's institutions of education and uplift, must feel, through its faculty and student body, a peculiar pleasure in *accepting the Mead Memorial Chapel as an expression of native patriotism and appreciation* from a citizen who has been honored with the highest executive office in the gift of his state. The Herald, for its readers, heartily joins in the sincere approbation and praise which this gift will justly inspire.
Complaint Ex. 1-017 (emphasis supplied).

Complaint/Answer par. 109.

33. The Vermont Tribune's May 21, 1914 edition described Ex-Gov. Mead's gift to Middlebury College and reported:

The new chapel . . . will seat 700 persons. A bronze tablet in the building will contain the following inscription: ***Mead Memorial Chapel, Erected in 1914 by John Abner Mead of the class of 1864.***
Complaint Ex. 1-019. (Emphasis supplied)

Complaint/Answer par 111.

34. President Thomas wrote an article that was published in the April 8, 1915 edition of the Boston Evening Transcript, entitled MIDDLEBURY'S 100 YEARS, Old Traditions Preserved in New Chapel" in which he explained:

> The proposal of ex-Governor John A. Mead to erect a chapel for Middlebury in commemoration of the fiftieth anniversary of his graduation . . . in his letter of gift ex-Governor Mead had said, "I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished." ***He asked that the chapel to bear his name*** might "rise from the highest point of the campus, as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth."
>
> The chapel will occupy a commanding location on the grounds on the highest crest of the campus, from which point there is a wide panorama of the Green Mountains and the valley of Otter Creek. On the architrave over the colonnade will be appropriately inscribed "The Strength of the Hills is His Also."
>
> Ex. 31 (emphasis supplied).

Complaint/Answer par 112.

A. <u>1914 Groundbreaking & Cornerstone Ceremony</u>

35. On May 28, 1914, John Mead wrote to President Thomas regarding arrangements for the groundbreaking and laying of the cornerstone for the Chapel. Dr. Mead requested a piece of sod to place in the Evergreen Cemetery in his family's burial lot and indicated, "We will have the little box with the bible which little John is to place in the stone all properly arranged." Complaint Ex. 2-001 to 2-002. Ex. 24-2. Complaint/Answer par 113.

36. On June 23, 1914, Middlebury College held a ceremony titled "Breaking Ground for the Mead Memorial Chapel and Presentation of the Corner Stone" during its commencement exercises. Ex. 25

37. Ex-Governor John A. Mead, Class of 1864, gave the speech for the "Breaking Ground and Presentation of the Corner Stone," which he concluded with:

> On this date, ***I wish to break the ground and place the corner stone for this Memorial Chapel, with the hope and prayer that there shall be a sacred duty resting upon each, to make this Holy Temple, so soon to be erected, an instrument of great good to those of this generation and to those who may follow after***, and that our Alma Mater may be favored by steadily increasing numbers and with ample means for the noble work which will devolve upon her, and all of which she will attempt so willingly, so courageously and so faithfully.
>
> Ex. 27 (emphasis supplied).

Complaint/Answer par 115.

38. The Rev. James L. Barton, D.D., LL.D., Class of 1881 delivered the "Acceptance in Behalf of the Trustees" in which he stated:

> ***I am honored*** in being permitted, ***upon behalf of the trustees of Middlebury College, to accept*** from the hands of one of their number, a graduate of the College and a revered citizen of this commonwealth, ***this corner stone and that for which it stands, namely, a fitting chapel to be erected upon this site to embody and represent and perpetuate the religious life of this College.***
>
> ***It is doubly gratifying to me, as it is to the Board of Trustees, that this building, as a memorial, will bear the name of one so long and so honorably connected with this institution and who in the state and nation has always upheld and promoted true piety and civic and national righteousness.***
>
> . . . Today we see ***the religious ideals of our forefathers*** emancipated and exalted to this loftier position and ***embodied in a structure worthy the College and its resplendent history***. Here upon this hilltop it will, by the outlines and symmetry of its architecture, proclaim that this College believes in God, in the supremacy of righteousness, in the creation of a safe, sane and just

society, the triumph of justice, the transcendent worth of character, the reality of the unseen, and in the immortality of the soul.

. . .

This chapel will provide for the generations of students and faculties of this college that to which the other buildings cannot minister. To this place all will turn in order to experience the reality of the unseen, to satisfy the thirst of the soul for God.

. . .

We then, the Trustees of this College, on behalf of ourselves and our successors, in the name of the generations of students it will serve, in full recognition of the supreme importance of such a religious center to the life of the institution, and in loving memory of him whose name this structure is to bear, gratefully accept at your hand this Chapel as we pledge ourselves to safeguard to the limit of our capacity the gift and the ideals it is intended to perpetuate.

Ex. 28 (emphasis supplied).

Complaint/Answer par 116.

39. Prof. Charles B. Wright gave an "Address in Behalf of the Faculty" which he ended with the statement:

Such an embodiment should this structure be…a chapel whose very lines, I trust, as they rise upon this summit, may prove for us all in the years to come a compelling call to goodness; whose very atmosphere, I trust, may dispose our hearts to praise – shall be but a fit expression, a symbol in stone, of the mingled strength and beauty of the Middlebury life.

The Faculty thank you, Governor Mead, from profoundly grateful hearts. You have bodied forth our dream of years; you have given to an airy nothing a local habitation – ***and not the least of our pleasure is the thought that through all the days to be it will bear your honored name.***

Ex. 29 (emphasis supplied).

Complaint/Answer par 117.

40. The Cornerstone for the Mead Memorial Chapel was laid at the Groundbreaking Ceremony held on June 23, 1914, where John Abner Mead's namesake, his 3-year-old grandson John Abner Mead Hinsman ("Little John"), placed his small Bible and family tree back to original settler Colonel James Mead into a box inside the Mead Memorial Chapel Cornerstone. The Ceremony was widely reported on in the press. Ex. 30. Complaint/Answer, Complaint Exs. 2-032 to 037.

41. Exhibit 26 contains five photographs of the Groundbreaking Ceremony including photos of Mead's grandson "Little John." Ex. 26. Complaint/Answer par 120.

42. The Mead Family Bible, held by President Thomas at the Groundbreaking ceremony photographed above, has been passed down through the generations of the Mead family and resides with Mead family members who live in Vermont. Exs. 26 & 48.

Modifications of Agreement

43. On December 18th, 1914, Middlebury College's Board of Trustees resolved to go forward with construction of the "Mead Memorial Chapel," evident in the following meeting minutes:

"On motion, duly seconded, it was Resolved that the College forward with the construction of the Chapel with the understanding that $60,000 – would be contributed by Dr. Mead, the balance estimated at about $1,000 – to be contributed by the College."
Ex. 5.

44. On January 13th, 1915, John Abner Mead wrote an acceptance letter to the Trustees of Middlebury College agreeing to pay $60,000 if the College agrees to complete the chapel:

"I agree to furnish funds for the discharge of this contract and for the expenses connected with the erection of this chapel, to the amount of

$60,000, as may be required during the construction and in accordance with the terms of the above contract, binding myself, my heirs and my assigns as above specified. It is agreed on the part of said Trustees that they are to complete said chapel, making it complete in every way, as to grounds, furnishings, etc., for the purposes of a college chapel, as voted at the meeting of the Trustees of said college held in New York City Dec. 18, 1914, and as defined in correspondence between the president of Middlebury College and myself."
Ex. 6.

45. On 2/22/1915, Pres. Thomas sent a letter to Vermont Marble Co. to get a quote for the change to the plans requested by Mrs. Mead regarding pilasters and windows. Ex. 7.

46. On 2/24/1915, Rogers responded with a quote for $1,031 for the changes to add windows and pilasters per Mrs. Mead's request. Ex. 8.

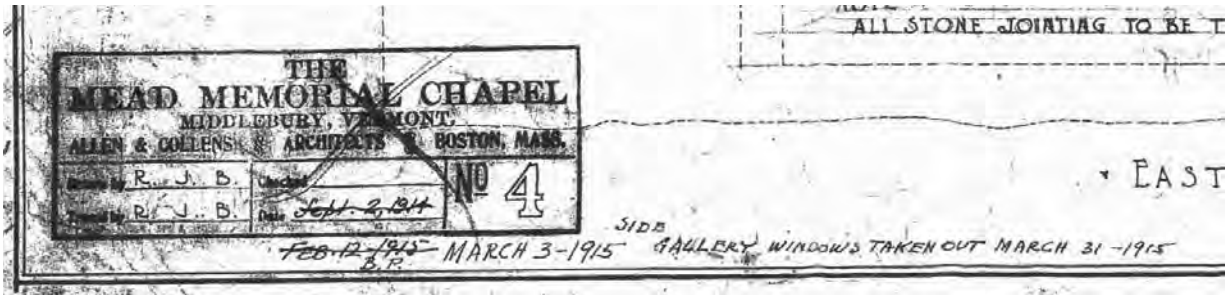
47. On February 27th, 1915, John Abner Mead offered to pay an additional $1,031 to purchase and install the windows and pilasters if the Trustees agreed to finish the chapel as agreed and to install a $5,000 pipe organ:

"Mrs. Mead and myself agree to have the windows in the chapel (two on either side) and to have the ten pilasters (five on either side), same to be built in accordance with the original plans shown in photo number 1 as to bases and caps and width, and we are to pay $1031 for the same in addition to the original gift of $60,000. The trustees agree to finish the chapel as agreed and to instal[l] a pipe organ to cost at least $5000."
Ex. 9.

48. On March 1, 1915 Thomas wrote to Trustee Partridge regarding approving Mead's offer and also on March 1, 1915, wrote to Rogers authorizing the $1,031 changes. Ex. 10 and 11.

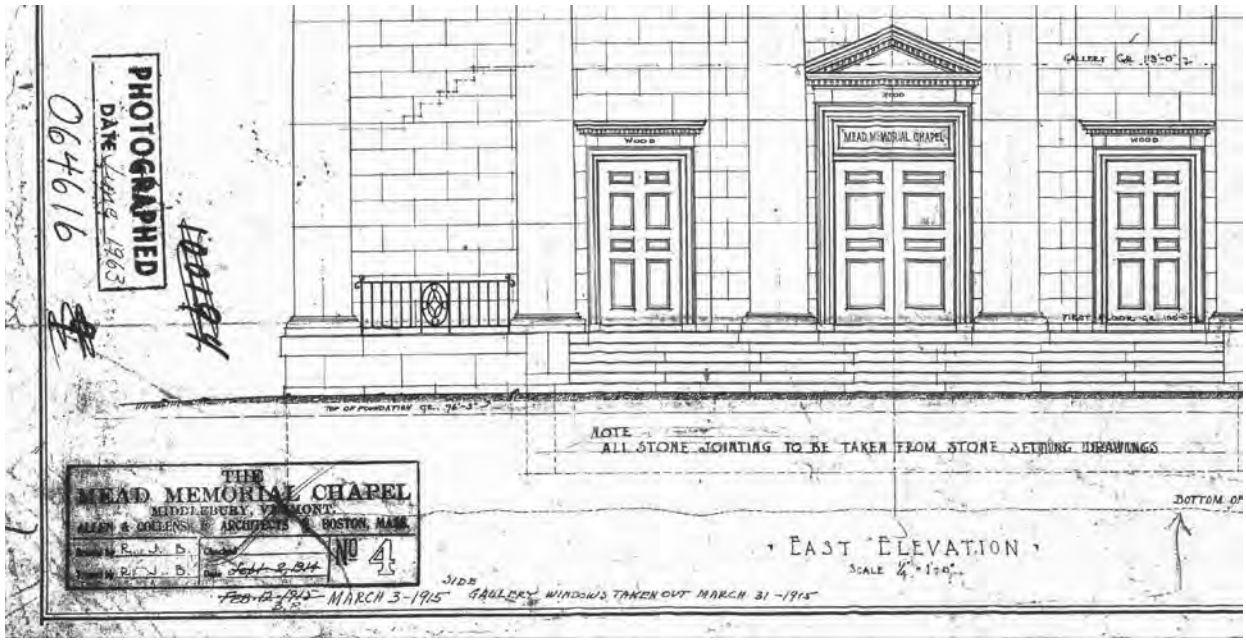
49. The Mead Memorial Chapel architectural plans bearing final date of March 31, 1915 which incorporated the final change of the windows and pilasters, are the "plans and

specifications" which were approved by Mead. Each page of the plans is labeled "The Mead Memorial Chapel" Ex. 14, 15, 16, 17. See for example Ex. 14:



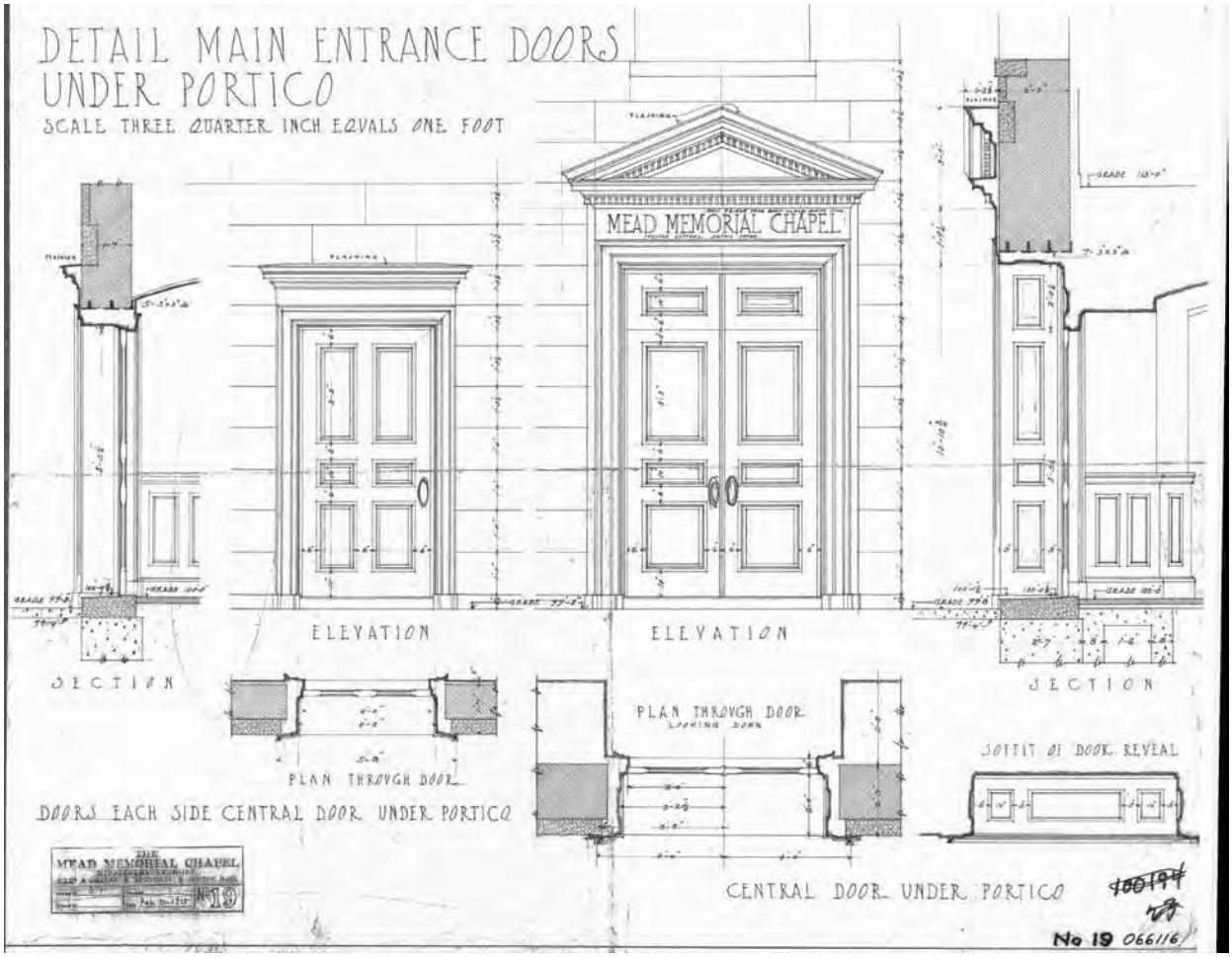
Ex. 14.

50. Exhibit 14 are the plans for the East Elevations – Main Entrance of the Chapel. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico:

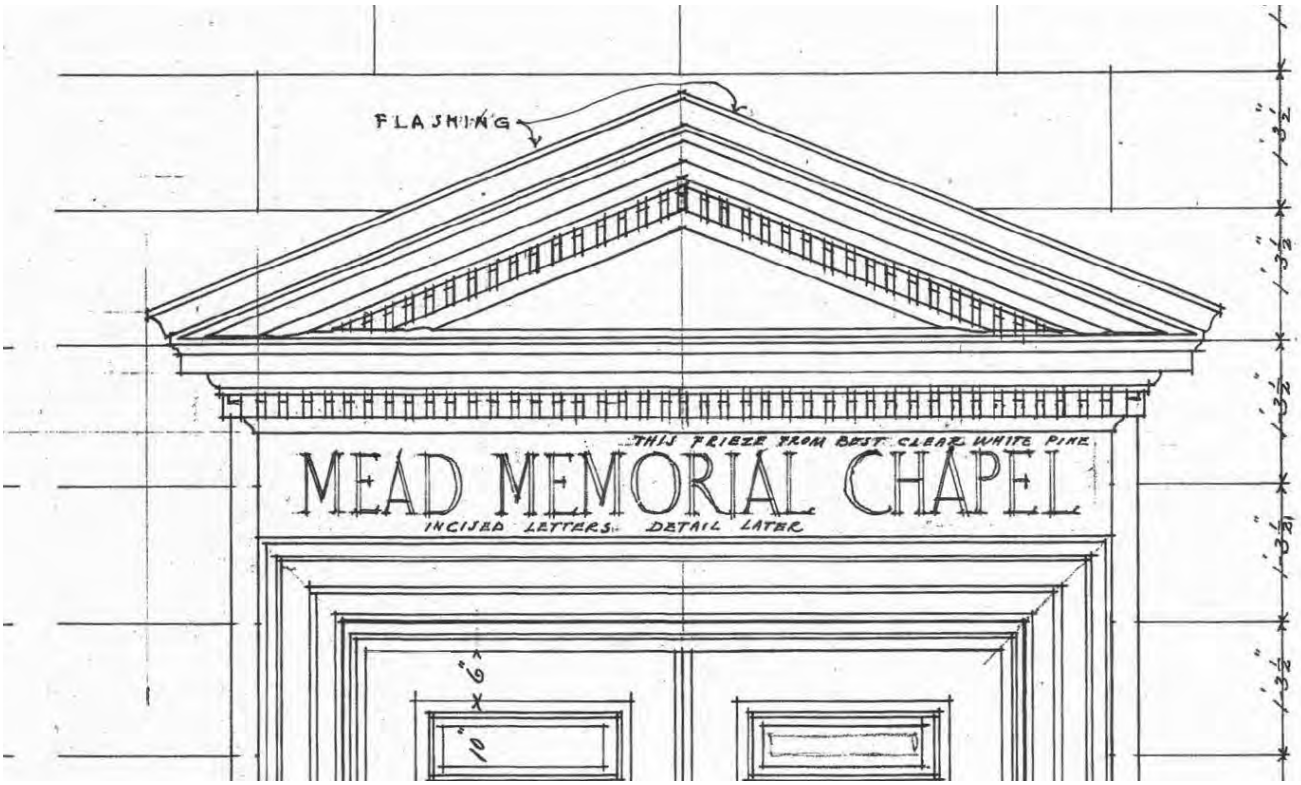


Ex. 14.

51. Exhibit 15 are the plans for the Detail Main Entrance Doors under the Portico. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico. See Ex. 15 immediately below:



52. A closeup view of the detail of the Mead Memorial Sign on Exhibit 15 reveals the specifications of material: "THIS FRIEZE FROM BEST CLEAR WHITE PINE", the wording of the sign: "MEAD MEMORIAL CHAPEL", that they will be incised letters with detail to follow, and of course the exact measurements and specific location to affix the sign to:



Ex. 15.

53. On April 14th, 1915, Middlebury College's Board of Trustees accepted John Abner Mead's offer to add $1,031 and the College will buy a $5,000 pipe organ, evident in the following meeting minutes:

"Voted, that the Trustees accept with gratitude Dr. Mead's proposal to add $1,031 – to the gift of the Chapel, and agree to install therein a pipe organ to cost $5,000 – "
Ex. 12.

Chime of Bells

54. On June 21, 1915 Dr. Mead sent an additional Offer Letter to President Thomas pledging an additional $7,000 for a Chime of Bells stating:

"If acceptable to the members of the Board of Trustees, Mrs. Mead and I would be pleased to add a chime of bells to our gift of the Mead Memorial Chapel."
Ex. 18.

55. Dr. and Mrs. Mead's addition gift of a Carillon of Bells was installed in the Chapel tower. There were eleven bells, the largest weighing 2500 pounds and the smallest 275 pounds. Each bell bears the inscription:

"Presented to Middlebury College by John Abner and Mary Sherman Mead." "Ring in the valiant man and free, The larger heart, the kindlier hand; Ring out the darkness of the land, Ring in the Christ that is to be."
Complaint/Answer par 125. Complaint Ex. 3-041 & 3-042. Ex. 23.

56. On June 23rd, 1915, Middlebury College's Board of Trustees gratefully accepted John Abner Mead's offer to add the Chime of Bells, evident in the following meeting minutes: "It was voted that the gift of Mr & Mrs Mead be gratefully accepted." Ex. 19.

57. The entire cost of the Chime of Bells was paid directly by Mead to Meneely Bell Company in the amount of $6,960 in December 1915. Ex. 22.

Chapel Construction

58. The construction of the Mead Memorial Chapel proceeded over the next two years, during which time Dr. Mead attended meetings of the Mead Memorial Chapel Building Committee

in Middlebury, met with architects, approved project designs, controlled the budget, and provided credit and payment for all labor and materials. Ex. 37. Complaint/Answer par 122.

59. Besides the costs of the Chapel building itself, Dr. Mead contracted and paid for a $5,000 pipe organ, $1,031 for Pilasters, and $1,559.39 for pews. Complaint/Answer par 123.

60. The Mead Chapel was the work of Allen and Collens of Boston. It draws freely upon the vocabularies of the American classical styles of the 18th and 19th centuries in its translation of the traditional New England meeting house into marble. Thus, one finds a Greek Revival temple front, Georgian doors and windows, and a Federal tower. Above the colonnade is inscribed a quotation from Psalm 95:4, "The strength of the hills is His also." Within the building is a beautiful Georgian-inspired paneled sanctuary. Complaint/Answer par 126.

61. As the College grew, changes were inevitable. The balconies were added in 1938 (with the consent of Mead's daughter, Mrs. Carl Hinsman, see Exhibit 46), increasing the seating capacity to 715. The original organ was replaced in 1971 by the large Gress-Miles organ. The tower now holds a wonderful 48-bell carillon, cast and tuned in France from the original bells and other sets. It is played regularly. Seven of the original eleven bells were recast and reinscribed with Mr. and Mrs. Mead's presentation inscription and Bible verse so that each of the original eleven Bells remain as they were originally inscribed with Dr. & Mrs. Mead's name on each bell. Ex. 23. Complaint/Answer 130.

62. President Thomas would later recount while Eulogizing Governor Mead at his funeral in 1921:

> For a year and a half we worked together in the consideration of plans and details and ***the result was*** a structure which a professor of Yale College pronounced the other day ***one of the most beautiful buildings in North America.*** Stately, reverent,

graceful, combining the classic beauty of ancient Greece, the chaste dignity of our Puritan fathers, and the mystic impressiveness of the early Christian builders, its daily assemblies make subtle impressions on the youth who gather there speaks to them without other voice of "the light that never was on land or sea."
Complaint Exhibit 8-034 to 8-035 (emphasis supplied).

Complaint/Answer par 129.

1916 Dedication Ceremony & Presentation of the Keys

63. The Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916 during which Dr. Mead made a Presentation Speech, recalling his grandson's role in the Groundbreaking and Setting of the Cornerstone two years earlier, when at 3 years old, "Little John" placed his Bible and family tree in the cornerstone:

With the labor of love and devotion all complete, it is with great pleasure and an honor that I, through him who assisted me some two years since "in removing the soil" for the "setting of the corner stone", and who placed under the same his token of love, - his Bible and a short history of his relation to those who made this Temple possible; as I state, it is with pleasure, that through him, I may present to you, Doctor Brainerd, former President of this College, the keys to the Mead Memorial Chapel, - and may the Kind Providence who governs all our efforts for the greatest good and happiness of his children, give you all strength and wisdom, - that your and our fondest and most extravagant anticipations of this day may be more than realized, in the years that are to come.
Ex. 33

Complaint/Answer par 131.

64. Mead's speech was followed by "Little John," now 5-years, presenting the Keys to the Mead Memorial Chapel to the College Trustees. Complaint Ex.4-011. Complaint/Answer par 132.

65. Dr. Brainerd, Former President of Middlebury College accepted the Keys on behalf of the Trustees and stated the following in his acceptance speech:

> Doctor Mead:-
>
> I esteem it a great privilege to appear in behalf of the President and Fellows of Middlebury College and accept publicly, your gift of this beautiful sanctuary, that we have this day met to dedicate to the service of Almighty God. For many years, especially since the old chapel proved too small to hold even the half of our students, it has been the fond hope and the earnest prayer of the friends of the College, that in God's providence there might appear a man of the religious fervor and the financial ability requisite to meet this urgent need for a larger and more suitable edifice. Today our ardent hopes are realized; our prayers are graciously answered. ***And to me it is especially gratifying that our benefactor is my beloved classmate, one to whom I am bound, now for fifty six years, by ties of the warmest friendship.***
>
> During these many years (which have passed with us so swiftly) the Heavenly Father has been pleased to grant you strength of mind and body, and varied opportunities for doing great service to your fellowmen. How well I recall the patriotic zeal with which, while yet a student in college, you enlisted in the war to maintain the union of these United States. [Unreadable word] later, as a well-trained physician, you served in another war—against the diseases that distress mankind; and by sound judgement and kindly sympathy achieved an enviable reputation in his beneficent calling. Still later your executive talent enabled you to build up a great industry, whose products are now used in every civilized portion of the world. More recently you served the commonwealth of Vermont, in the highest public office, with business sagacity, with fidelity, and with honor. ***But the noblest deed of all---the one for which future generations will hold you most in grateful remembrance---***is the erection of this spacious and attractive chapel, where the religious life of the College may find fitting expression and the stimulus of hallowed associations.
>
> With grateful hearts, ***dear brother,*** we accept your generous gift: and we assure you of our earnest purpose so to utilize its opportunities for religious culture, as to promote the growth of earnest Christian character in the students of Middlebury College.---***Here for generations yet to come the melodious bells of this Chapel shall sound out over the Campus and the Town*** the strains

of Christian music, that from childhood have awakened in our souls the sentiments of faith and courage and earnest living. . . . The lord reward you, dear friend, for all that you have done, or may yet do, for the good of others; and may the years of earthly life that still remain be your best years, filled with blessed memories and abiding peace.
Ex. 34.

Complaint/Answer par 133.

66. The 1916 Kaleidoscope, the Middlebury College Annual was dedicated to Governor Mead with a photo of the Chime of Bells and a poem "The Chapel Bell." Ex. 36.

67. On September 19, 1916, President Thomas sent invitation to Dr. Mead and his family to attend the first assembly of students at the Mead Memorial Chapel:

We have our opening Thursday morning of this week at nine o'clock. All the faculty and students will be together in the new chapel and I am expected to make an opening address. I am sure it would do much to this first assembly of students in the Mead Memorial Chapel if you and Mrs. Mead could be present, especially if you could bring little John and his father and mother. I know you are very busy, and of course I would not impose it as a duty, but if you can run up we will all be very glad to see you.
(Complaint Ex. 4-027).

Complaint/Answer par 135.

68. President Thomas' Address to the first assembly of students in the Mead Memorial Chapel on September 19, 1916 began:

At the opening of the 117th year of Middlebury College and at this first student assembly in this stately and beautiful chapel, whose dignity and impressiveness must move us all to serious and earnest

thought, I wish to sound a note of progress in the things which make up the inner life of a college. . . . Surprise as well as admiration is expressed by every visitor to this Mead Memorial Chapel . . . They had not imagined that such structures had been erected for any college in Vermont.
(Complaint Ex. 4-032).

Complaint/Answer par. 136.

69. Middlebury College's website explains the import and significance of the Mead Memorial Chapel (now referred to as the "Middlebury Chapel"), which symbolizes the aspirations of the College, just as Governor Mead intended:

"This beautiful white marble structure rises on the highest point of the campus, its spire symbolizing the aspirations of the College." "The light which shines here nightly is seen in the entire valley. Over the portal are carved the words from Psalm 95:4, "The Strength of the Hills is His Also.'"
(Complaint Ex. 6-001).

Complaint/Answer par. 138.

70. A Middlebury College Video which is contained on the college's website: Mead Chapel Turns 100, June 15, 2016 states:

Middlebury College celebrated the Mead Memorial Chapel's Centennial in 2016 with a video production entitled "Mead Chapel Turns 100," featuring Middlebury College's Glenn Andres, Professor Emeritus, History of Art and Architecture, in which he details the history, symbolism and importance of the "Mead Memorial Chapel" to Middlebury College, stating as follows:

"But the Chapel has continued to function in accord with President Thomas' larger vision of it as the college's meeting house. Of course it remained a place for Sunday services, for weddings, but also for college ceremonies, convocation, baccalaureate and until the completion of the Center for the Arts, it was also the main venue for the college concert series." **"The monumental centerpiece and aesthetic keystone for the college for 100 years, Mead Chapel has remained an important symbolic and central venue for college activities and traditions."**
Middlebury College Video: Mead Chapel Turns 100, June 15, 2016, Glenn Andres, Middlebury College Professor Emeritus, History of Art and Architecture, 2016, (emphasis supplied). https://www.middlebury.edu/announcements/news/2016/06/video-mead-chapel-turns-100
(Complaint Exhibit 6-012.)

Complaint/Answer par.139.

71. In addition to the value of the building itself, Middlebury College Trustee and Treasurer John Fletcher felt that the gift toward construction of the chapel would be helpful in securing financial support for Middlebury from the State Board of Education, as referenced in his correspondence concurring with the acceptance of Mead's offer to build the Mead Memorial Chapel. Complaint/Answer par 141.

72. Even the Middlebury Campus newspaper reported on the gift of the Mead Memorial Chapel:

> . . . Every one felt that a gift of great significance and importance had come at a most opportune moment. . .
> And so Middlebury starts out on the road of progress once more, or rather continues steadily to advance despite discouragements and

apparent setbacks. After the completion of the General Education [sic.] Board fund of $200,000 and the Carnegie report, it looked as if progress was at an end for a time, and that the college would be forced to battle to keep even. ***Governor Mead has changed all that. His gift will inspire every friend of Middlebury to courage and optimism, and everyone will believe that still other gifts and yet more notable advance are to be the order of the day.***
Ex. 1-018 (emphasis supplied).

73. After the Mead Memorial Chapel was built in 1916, Dr. Mead provided President Thomas with photos and other materials documenting the construction of the Chapel so President Thomas could create a booklet which, according to Mead, "might stimulate some of our friends to pattern after Mr. Hepburn's example and give you an elegant dormitory for the girls or possibly something else which you might more desire at this time." Complaint/Answer par.145.

74. Mead offered to pay the cost of publication of the booklet and wrote to President Thomas, "To be frank with you, I have special hopes that it may be productive of great good to our college, as I do feel that others can be made specially interested in our Alma Mater, and that the full history and description of the Chapel should induce others to lend a helping hand." Complaint/Answer par 146.

75. In September of 1916, Pres. Thomas ordered 250 copies of the "Hymnal of Praise" with the inscriptions "MEAD MEMORIAL CHAPEL," stamped on the covers in gold, as evident here:

"I wish now to order 250 copies of the Hymnal of Praise, cloth binding, with MEAD MEMORIAL CHAPEL stamped in gold on the covers."
Ex. 39.

76. In December of 1916, John Abner Mead agreed to pay for Hymn Boards to be installed in the Mead Memorial Chapel and delegated the choice of the design to Pres. Thomas:

I have read your letter with interest and should be more than willing to leave the judgement in this matter to yourself, though I must confess to you, as you state, that at the same money I should prefer the simpler board. … P. S. Kindly send bill when the same is obtained."
Ex. 40.

77. John Abner Mead made financial contributions to Middlebury College during his lifetime in addition to erecting the Mead Memorial Chapel. Ex. 40, 41 ($1,000 in 1918 to the Endowment Fund). He left no provision for Middlebury College in his Last Will and Testament. Defendant's Exhibit GG.

78. Dr. Mead also made substantial financial donations to other charitable causes during his lifetime, including the establishment of a youth center facility open to all faiths which Mead named "The Community House." Ex. 49. Complaint/Answer par 86, 87. Defendant's Ex. FF (Warranty Deed). Mead's Will provided d an additional $50,000for continued maintenance of the Center after his . Complaint/Answer par 88. Def's Ex. GG.

79. Mead's Last Will and Testament also bequeathed $50,000 to the Congregational Church of Rutland for the maintenance of other Congregational churches in Rutland County. Complaint/Answer par 89. Def's Ex. GG.

John Abner Mead's Death

80. Dr. John Abner Mead died of pneumonia at his home in Rutland on January 12, 1920. He was 78 years old. His wife, daughter, grandson, and son-in-law survived him. Complaint/Answer par 90. Def's Ex. GG.

81. At Governor Mead's funeral on January 16, 1920, Middlebury College President John M. Thomas gave the Eulogy which was published in its entirety in the Middlebury Register the next day and stated in part:

> ***As to his gift of the Mead Memorial Chapel, I can not do better than to quote from the letter in which he announced his purpose***.
>
> [Full text of Mead's Offer Letter]
>
> This afternoon, as we pay here our tribute of honor and affection, ***the chimes which bear his name on every bell are sounding out*** the hymns I loved and which he chose to hear the first time they were played, "Nearer my god to Thee", "Lead Kindly Light", "God be with you 'till we meet again". ***The dedication of the Chapel is complete – The Mead Memorial Chapel.***
>
> So our friend built his empire in our midst. If another could have built it, another did not. He loved his work and he gave his all to it to the very last. ***He carved his name high in the marvelous roll of Vermont's men of achievement, and he earned his rest.***
>
> Ex. 8-034 to 8-035.

Complaint/Answer par 137.

82. In 1920, Middlebury College's Board of Trustees paid tribute to Mead, evidenced in their meeting minutes:

> "In the death of Ex-Governor John Abner Mead of the Class of 1864 *Middlebury College has lost one of its most distinguished alumni of the State of Vermont, and one of the most helpful of its Trustees and most generous of its benefactors*. Governor Mead was a notable example of those successful men of our nation who have pushed their way upward against great obstacles and by force of mind and will and character succeeded to positions of great responsibility and usefulness in the industrial world and in public life. His career as a physician was honorable and highly useful. Turning to business he became one of the masters of industry in New England. ***In the gift of the Mead Memorial Chapel he endowed the college with one of the most beautiful buildings on any campus in America, which will speak to coming generations of his wisdom and foresight in benevolence and symbolize the strength of character of its donor.***"

Ex. 42

83. John Mead was buried at the Mead Family plot in Evergreen Cemetery in Rutland with his ancestors, including Colonel James Mead and Mercy Holmes Mead, whom John Abner Mead had reinterred there from the West Rutland Cemetery in 1895 and where he had replanted the sod from the Mead Memorial Chapel Groundbreaking Ceremony in June 1914. Complaint/Answer par 92. Ex. 24-2.

84. John Abner Mead's headstone records his service in the Union Army, his professional life as "a beloved physician in Rutland for 21 years," and his many offices held including his Governorship of course. His headstone contains the final engraving:

"A CHRISTIAN AND PHILANTHROPIST"
Complaint Ex. 8-008.

Complaint/Answer par 93.

85. On June 14th, 1920, Pres. Thomas wrote to Carl B. Hinsman about "completing" the west end of the Chapel with marble, as it had been built of wood to save costs when the Chapel was erected by Mead and stating:

"My thought is that it is something that ought to be borne in mind to be done at the proper time and ***that measures should be taken to insure that the Chapel will be preserved as a memorial to Dr. Mead***."
Ex. 43.

86. On April 29th, 1931, Carl B. Hinsman wrote to Pres. Moody about repairs to the spire, and expressed strong desire that it be restored:

"Mrs. Hinsman and I have studied these pictures very carefully and we would really feel it quite a calamity of the spire was removed entirely. On referring to the booklet which was gotten out and presented to Dr. Mead giving an account of the design, erection and dedication of the Building, considerable stress was laid from these several standpoints on the fitness and beauty of the spire as a part of the architectural scheme. The Building occupies such a commanding position on the Campus and in the landscape surrounding it that it would be indeed regrettable if the spire should be abridged or done away with. Mrs. Hinsman feels quite strongly that the spire should be restored to its original condition, and from your description of the situation, it would be less of a task to do that than it would be to remove it entirely. Thanking you for bringing the matter to our attention…"
Ex. 44.

87. On May 8th, 1931, Pres. Moody wrote to Carl B. Hinsman saying the matter was settled, and that they were to proceed with repairs to the spire:

"On receipt of your letter of April 29th, I told Mr. Fritz, our Business Manager, that we would look upon the matter of the spire of Mead Chapel as settled, and we are going to proceed with the repairing of the spire. … I feel that it is like talking of gilding a lily to talk of improving the Mead Chapel, for it is by all odds the most harmonious building we have on the campus and the most beautiful."
Ex. 45.

88. On July 20th, 1937, Pres. Moody wrote to Mrs. Carl Hinsman asking for consent to add the galleries as balcony seating, a copy of which is as follows:

My dear Mrs. Hinsman: Wednesday morning of last week we began the work of putting galleries in Mead Chapel, and the scaffolding is already up and active work on the walls has begun.

The final estimate as detailed is $11,038.59. It will cost rather more than we at first expected. I hope very much that you will feel that I am only sending this information because of your request for it, and even more strongly I hope you will not feel that we submitted the idea of galleries to you with any thought that it was in any way a suggestion or a plea for help. The gift of the Chapel was a very generous one and no one can estimate the contribution it has been over the years, both from the physical as well as the spiritual standpoint.

The only point was that the college had so outgrown all its quarters that something had to be done, and we were not willing to consider changing our practice in respect to Chapel attendance, so great has been its value. And we did wish to have your consent to any change made in a building given to the college by your father.

In exactly the same way, when we had outgrown the Starr Library, which has given the college by the Starr family, and had in hand money for its enlargement, we went to Dr. Starr for permission to make the enlargement. He not only consented to our plans, but refused to allow another donor to give anything toward the construction, saying that since it was a Starr Library, he did not wish any but star money to go into the building. The amount was more than he wanted to lay out in one payment so he spread it over several years, reimbursing the College in partial payments. We had contemplated a change in Hepburn hall, but there again I would not be willing to go ahead without the consent of Mrs. Hepburn.

Ex. 46.

89. On April 2nd, 1985, the re-inscription of 7 of the original 11 bells which were recast in 1985, were ordered with Mead's gift and verse:

"Following our telephone conversation of March 28, 1985, I write to confirm that the following inscription should appear on the first eleven bells:

GIFT OF GOVERNOR MEAD AND MARY SHERMAN MEAD
PRESENTED TO MIDDLEBURY COLLEGE BY
JOHN ABNER AND MARY SHERMAN MEAD

A. D. 1915

RING IN THE VALIANT MAN AND FREE THE LARGER HEART THE KINDLIER HAND RING OUT THE DARKNESS OF THE LAND RING IN THE CHRIST THAT IS TO BE"
Ex. 47.

"PEARSONS HALL"

90. On May 9th, 1908, Pres. Thomas wrote to D. K. Pearsons:

"I hope you will see your way to give for education in your native State. We should have at least $250,000.00 for a Woman's College, and if you will give me a start, I will set out to get it. But I plead with you for $50,000.00 now, to meet the pressing need of a building for our girls to live in, some central place to gather for their social life… Marble is cheap in Vermont, and for the sum named we will erect a building that will do you lasting honor, and will be a blessing to hundreds of girls who otherwise would be without opportunity of higher education."
Ex. 50, p.1-2.

91. In September 1908, the Middlebury College Bulletin volume III reads:

"THE D. K. PEARSONS *Pearsons Hall* BUILDING AND ENDOWMENT FUND
Ex. 50, p.5-7.

92. In 1909, Middlebury College Board of Trustees accepted Dr. Pearsons' offer, as seen in the following meeting minutes:

"Voted that the Board engage in an active effort to meet the conditions of the offer of D. K. Pearsons to give $25,000 – provided that

$75,000 – additional be raised, and that the matter be informed to the President-elect with favor."
Ex. 50, p.8.

93. On February 9, 1910, Pres. Thomas wrote to D. K. Pearsons:

"Will you give me $50,000 if I will raise $150,000 additional? I want it to build a dormitory for boys, and to provide more recitation rooms. If you will give me until July 1, 1911, I know I can get the money, and I can have the dormitory ready for that fall. I am in better shape to get $150,000 now than I was to get the $75,000 when you made the offer of $25,000. … ***We want to call it Pearsons Hall, if you will let us.***"
Ex. 50, p.12-13.

94. On February 9, 1910, Pres. Thomas wrote to John G. McCullough:

"But if you could make the "McCullough Gymnasium Fund" $25,000, on condition that I secure a like sum from other sources, I believe I could get the balance for a "McCullough Gymnasium" before next commencement."
Ex. 51, p.2-3.

95. On March 4, 1910, John G. McCullough wrote to Pres. Thomas:

"As to your second suggestion, you seem quite confident of being able to raise before Commencement from other sources the sum of $25,000. to enable you to erect a fitting Gymnasium for the College, provided I would give a like sum for that purpose, thus making your Gymnasium fund at least $50,000. You may count of me for the second $25,000. upon the conditions stated in your letter."

96. On June 25, 1910, Pres. Thomas wrote to John G. McCullough:

"I was able to announce that Alumni and friends have pledged $25,000. Thus meeting the conditions of your promise of an equal sum made on the…gymnasium fund of $60,000."
Ex. 51, p.4-5, Ex. 51, p.11.

97. On May 25, 1911, Pres. Thomas wrote to John G. McCullough referencing the "McCullough Gymnasium." Ex. 51, p.16.

"JAMES M. GIFFORD MEMORIAL HALL"

98. By undated letter, Mrs. James M Gifford wrote to The President and Fellows of Middlebury College indicating:

It is my intention to build a hall in honor of my beloved husband for the use of the boys of Middlebury College, to be known as "THE JAMES M. GIFFORD MEMORIAL HALL for BOYS", the construction of which shall according to his wishes follow the plan used by Mr. A. Barton Hepburn
Ex. 53, Page 1

99. On June 10, 1939, at the Board meeting, the Board read the offer letter from Mrs. Gifford reviewed its report and voted that President Moody be authorized to communicate the Board's acceptance. Ex. 53, p.6-7

100. On July 20, 1939, Mrs. Gifford wrote to the President and Fellow of Middlebury College, stating:

As I advised you in my letter of June 9th 1939 it is my intention to build a hall for the use of the boys of Middlebury College, to be known as quote the James M Gifford Memorial Hall for boys. UN quote I now desire to make a formal agreement with the college for the erection of this building I hereby request you to permit the erection of this building on the land belonging to Middlebury College north of Meade memorial

Chapel, in a situation corresponding to the location at Hepburn hall South of the Chapel, the building to be erected of native Vermont limestone and the plans to correspond generally with the plans of Hepburn hall but with such minor variations as may be directed by the college authorities and approved by me, or, may be desired by the college authorities and approved by me, or in the case of my death, my personal representative.
Ex. 53, page 8.

101. On July 20, 1939, The President and Fellows of Middlebury College acknowledged receipt of Mrs. Giffords offer:

"…in receipt of your letter of July 20th 1939, in which you offer for yourself, your heirs, executors and administrators, to pay the cost of building and furnishing and equipping a hall for the use of the boys of Middlebury College, ***to be known as, "The James M. Gifford Memorial Hall for Boys"***, provided the college will permit the erection of the building on its land to the north of Mead Memorial Chapel in a situation corresponding to that of Hepburn Hall to the to the South of the Chapel. I have been authorized by the president and fellows of Middlebury College to accept this generous offer and to advise that the college hereby agrees that the hall may be erected at the place requested by you and in accordance with the plans as stated by you
Ex. 53, p.10

102. On October 14, 1939, the Report of Middlebury College building committee of James M Gifford Memorial Hall for boys reads:

"JAMES M. GIFFORD MEMORIAL HALL FOR BOYS. … As Mrs. Gifford intends to sign the building contract herself and requires that the plans and specifications must meet with her approval,"
Ex. 53, p.11.

103. On October 31, 1940, the Board's Acceptance of the "James M. Gifford Memorial Hall for Boys" reads:

"The graciousness and hospitality of this building are a symbol of the generous nature of his whose name it bears. … ***It is a fitting memorial to a life which exemplified all these virtues, simple but massive, harmonious yet strong***. … We recognize that though only the name of James M. Gifford adorns this building, nevertheless into its stone and mortar has gone something more, - a lifetime's devotion, to one worthy of that devotion. ***This gift to the College which Mr. Gifford loved so greatly and served so long, so faithfully and so efficiently, is gratefully accepted, not only for its own sake, but for the sake of him in whose honor it stands and for your sake, Mrs. Gifford, who have so wonderfully preserved his name, along with the great names of the College, - Painter, Starr, McCullough, Mead, Hepburn, and now Gifford."***
Ex. 54.

Middlebury College's Breach of the Agreement and Broken Promise

104. Built of Vermont marble and placed on the highest point on campus as Dr. Mead directed, the "Mead Memorial Chapel" stands not only as the most dominant building on the campus, but has become an iconic feature of Middlebury's landscape, and has been featured in the College's promotional materials. Complaint/Answer par. 4.

105. For more than a century, the Mead Memorial Chapel has been home to student performances, guest lectures, religious services, weddings, baptisms, funerals, and annual events like Convocation and Baccalaureate. Over the years, it has welcomed Academy Award winners, Nobel laureates, and pillars of art, business, and science for discussions, readings, and panels. Complaint/Answer par. 5.

106. In the early morning hours of Monday, Sept. 27, 2021, Middlebury College removed the wooden "Mead Memorial Chapel" sign, which hung in a niche above the entrance of

the Chapel, identifying the College's house of worship and "Meeting House" for community gatherings for the past 105 years. Complaint/Answer par. 6.

107. The College did not issue a public statement in advance of the removal of the sign for "Mead Memorial Chapel." Complaint/Answer par. 7.

108. The College did not notify the Mead family nor seek their consent to alter the building, to remove the sign from the building or to remove the Mead name from the memorial chapel. Complaint/Answer par. 7.

109. In 1914, when Mead offered to erect a memorial chapel, the following named buildings existed to memorialize or honor donors or others who served the College as if detailed in Middlebury College Bulletin 1913-1914, Vol. VII, December, 1913, No. 4:

> **Painter Hall** - in 1810 Colonel Seth Storres of Middlebury gave to the corporation 30 acres of land upon which the first building of the college was erected in 1814 it was called at first "West College" but in 1846 was named Painter Hall in honor of Gamaliel Painter, one of the most generous patrons of the college and who had bequeathed all his property to the institution. It has been in continuous use since its erection and it's the oldest college building in Vermont. Id. at 99 & 117.
>
> **Starr Hall** - a large dormitory, was erected by the beneficence of Charles and Egbert Starr in 1861, and rebuilt in 1865, after a disastrous fire, by the same donors. Id. at 100 & 117.
>
> **The Egbert Starr Library** - the beautiful and convenient marble library now occupied was erected with funds bequeathed by Mr. Egbert Starr, and dedicated during the Centennial exercises of the College in July 1900. The cost of the building was $50,000, to which was added $5000 for its decoration and $5000 for the purchase of books by the son of the donor, Dr. M Allen Starr. Id. at 109.
>
> **The Warner Science Hall** - the large and convenient Warner Science Hall, was erected in 1901 through benefactions of the late Ezra J Warner, of the class of 1861. The building is a memorial of his father, Hon. Joseph Warner, formerly a resident of Middlebury, and a trustee of the college from 1850 to 1865. By the will of Mr. Warner the college has received a bequest of $25,000 for the care and maintenance of the hall, and for the purchase of supplies for the departments which it accommodates. Id. 111.

The McCullough Gymnasium - in 1910 Hon. John G McCullough of Bennington offered to give $25,000 towards the erection of a gymnasium, and the alumni of the college completed a gymnasium fund of $50,000 at commencement of that year the building was dedicated at the commencement of 1912. Id. at 114.

The Porter Athletic Field - the college has recently acquired a new athletic field, purchased and equipped at a cost of $10,000, the gift of a friend. Id. at 115.

Pearsons Hall - a new building for women, was opened at the beginning of the college year in 1911. Id. at 118.

Battell Cottage – named for Hon. Joseph Batell of the Class of 1823, a large donor to the college, was enlarged in 1910. Id. at 118.

Plaintiff's Opposition to Motion to Dismiss, Exhibit 11 (Middlebury College Bulletin 1913-1914, Vol. VII, December, 1913, No. 4).

110. It appears that currently, Middlebury College has named more than 70 buildings on its campus for proper family names. Ex. 55.

DATED at Town of Randolph, County of Orange, and State of Vermont this 23rd day of July 2024.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead,
Plaintiff

By: /s/ L. Brooke Dingledine

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT
Addison Unit

CIVIL DIVISION
Case No. 23-CV-01214

Hon. James H. Douglas,)
Special Administrator of the)
Estate of John Abner Mead,)
Plaintiff)
v.)
)
President and Fellows of Middlebury)
College)
Defendant)

PLAINTIFF'S EXHIBIT LIST

RE: DEFENDANT'S
SECOND MOTION FOR SUMMARY JUDGMENT

Ex. #	Exhibit	Date	
1	Mead's *Letter of Offer – of the "Mead Memorial Chapel"*	5/11/1914	
2	Letter: Thomas to Trustees w/ JAM's *Letter of Offer* and requesting immediate responses	5/15/1914	
3	Letters from Trustees to Thomas	May/Jun 1914	
4	MC Board Minutes: Accept the "Mead Memorial Chapel"	6/22/1914	
5	MC Board Meeting Minutes – Resolved to go forward with construction - $60,000 by Mead & bal. by College	12/18/1914	
6	Acceptance Letter: JAM to Trustees – Mead agrees to pay $60,000 if the College agrees to complete the chapel	1/13/1915	
7	Letter: Thomas to Vermont Marble Co. re quote for change to plans requested by Mrs. Mead re pilasters and windows.	2/22/1915	
8	Letter: Thomas Rogers to Thomas Quote for change	2/24/1915	
9	Offer Memorandum: JAM to Trustees – Mead offer to pay additional 1,031, if Trustees install $5,000 pipe organ	2/27/1915	

10	Letter: Thomas to Partridge re $1,031 approval	3/1/1915	
11	Letter: Thomas to Rogers - Authorizing $1,031 changes	3/1/1915	
12	MC Board Meeting Minutes- Acceptance of Mead's offer to add $1,031 and College will buy $5,000 pipe organ	4/14/1915	
13	News Article: Barre Daily Times - Fine Organ Ordered	August 1915	
14	Mead Memorial Chapel - Architectural Plans – Mead No. 4 – East Elevation (Front of Chapel)	3/31/1915	
15	Mead Memorial Chapel - Architectural Plans – Mead No. 19 – Main Entrance Doors under Portico	3/31/1915	
16	Mead Memorial Chapel - Architectural Plans – Misc. 1	3/31/1915	
17	Mead Memorial Chapel - Architectural Plans – Misc. 2	3/31/1915	
18	Letter: JAM to Thomas – Offer to add Chime of Bells to the Mead Memorial Chapel	6/21/1915	
19	MC Board Meeting Minutes - Gratefully accepting Bells	6/23/1915	
20	News Articles: Middlebury Register - Chime of Bells	1915	
21	News Article: Middlebury Register - "Bells Delight Many"	1/7/1916	
22	Letters/invoice re Chime of Bells - $6,960, pd by Mead	Dec. 1915	
23	Photos of the Chime of Bells – present day	2024	
24	Letter: Thomas to JAM – Cornerstone Box and sod	5/27/1914	
25	Program: "Breaking Ground for the Mead Memorial Chapel & Presentation of Corner Stone"	6/23/1914	
26	Photos – Ground Breaking & Cornerstone Ceremony	6/23/1914	
27	Speech: "Breaking Ground and Presentation of Corner Stone" by Ex-Governor John A. Mead, '64	6/23/1914	
28	Speech: "Acceptance in Behalf of the Trustees" by Rev. James L. Barton, D.D., LL.D., '81	6/23/1914	
29	Speech: "Address in Behalf of the Faculty" by Prof. Wright	6/23/1914	

30	News Articles - *Groundbreaking & Cornerstone Ceremony*	June 1914	
31	News Article: Boston Transcript Article on MMC	4/8/1915	
32	New Articles – Announcing *Dedication Ceremony*	June 1916	
33	Mead's Speech – Dedication & Presentation of Keys	6/18/1916	
34	Ezra Brainerd's Acceptance Speech obo the Turstees	6/18/1916	
35	New Articles – Reporting on *Dedication Ceremony*	June 1916	
36	1916 - Kaleidoscope dedicated to Mead	1916	
37	Correspondence re architects, plans, specs, construction, costs, contractors, contracts, building committee	1914-17	
38	Mead Memorial Chapel Booklet – correspondence between Thomas, Mead, & Mrs. Mead	11/14/1916 to 12/13/1916	
39	The Hymnal of Praise inscribed "Mead Memorial Chapel"	Sept. 1916	
40	Mead's additional agreement to pay for Hymn Boards	Dec. 1916	
41	Mead's gift of $1,000 to the College Endowment	June 1918	
42	Board Meeting Minutes making tribute to Mead.	1920	
43	Letter - Thomas to Carl B. Hinsman re completing the west end of the Chapel with marble	6/14/1920	
44	Letter – Carl B. Hinsman to Pres. Moody re repairs to spire, and expressing strong desire that it be restored	4/29/1931	
45	Letter - Pres. Moody to Carl B. Hinsman – matter settled, proceeding with the repairs to the spire.	5/8/1931	
46	Letter –Moody to Mrs. Carl Hinsman - asking for consent to add the galleries as balcony seating	7/20/1937	
47	Ordering re-inscription of 7 of the original 11 bells which were recast in 1985, with Mead's gift and verse	4/2/1985	
48	Photos of MMC and sign before & after removal. Photo of the original Mead Family Bible	2021 2021	
49	The Community House Report and Financial Statement	1919-20	

50	“Pearsons Hall”	1908-10	
51	“McCullough Gymnasium”	1910	
52	“Hepburn Dormitory”	1915	
53	“Gifford Memorial Hall for Boys”	1939	
54	Board Acceptance of Gifford Memorial Hall	1940	
55	Map and index of Middlebury Campus Buildings	2017	
56	Mead Family Tree filed with Probate Division	6/12/2022	
57	1895 Middlebury College Catalogue	1895	
58	1908 Middlebury College Catalogue	1908	
59	1913 Middlebury College Catalogue	1913	
60	1913 Rural Life Conference at Middlebury College	July 1913	
61	The Journal of Heredity 1913	1913	
62	Rutland Daily Herald 1.5.1916	1916	
63	1918 Middlebury College Catalogue	1918	
64	Barre Daily Times 12.8.1924 (Mills)	1924	
65	1925 Middlebury Freshman Course	1925	
66	Status of Eugenics Teaching in US 1925	1925	
67	The Burlington Free Press 1.19.1927	1927	
68	Rutland_Daily_Herald_1933_10_03_page_9	1933	
69	1945 Middlebury College Catalogue	1945	
70	Mead’s 1910 Inaugural Address	1910	
71	Mead’s 1912 Farewell Address	1912	

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
	)
Plaintiff,	)
v.	)
	)
THE PRESIDENT AND FELLOWS	)
OF MIDDLEBURY COLLEGE,	)
	)
Defendant.	)

MIDDLEBURY COLLEGE'S REPLY IN SUPPORT OF ITS
SECOND MOTION FOR SUMMARY JUDGMENT

There is relatively little in Plaintiff's sixty-page Opposition that has not appeared before, word-for-word, in Plaintiff's prior filings, and nothing that could ward off summary judgment. Plaintiff's primary argument appears to be that he needs additional discovery to justify his opposition to summary judgment, but he does not explain how *any* amount of additional information could render his claims viable. And, indeed, further discovery could not alter the outcome here. The Opposition confirms that Plaintiff's covenant claim rests solely on (a) reputational harm caused by the College's "public relations smear campaign" (consisting of a single press release) and (b) Plaintiff's speculative theory about the College's motivations in removing the Mead name from the Chapel. *See* Opposition at 34. As Middlebury explained in its Motion, neither theory presents an actionable breach of the covenant of good faith and fair dealing, and Plaintiff does not offer any contrary

authority or argument. Where the College's motives for removing the Mead name from the Chapel could not support a covenant claim even if Plaintiff's speculations were proven true, further discovery on the College's reason for the name change would serve only to increase costs and add delay in this already protracted dispute.

Nor has Plaintiff offered plausible grounds for his other two claims to proceed. Among other things, the Opposition fails to make any effort to explain how a claim for promissory estoppel, which functions to protect "unbargained-for reliance," could apply where the central theory of Plaintiff's case is that John Mead expressly bargained for naming rights as a condition to his donation to Middlebury. The Opposition also concedes, with respect to Plaintiff's equitable estoppel "claim," that Vermont law considers equitable estoppel a defensive theory; Plaintiff fails to cite a single case supporting the use of the theory as an affirmative cause of action. For all of these reasons, the Court should enter summary judgment for Middlebury and bring this case to a close.

ARGUMENT

A. Plaintiff Has Failed to Establish Any Viable Basis for His Covenant Claim.

The Opposition's briefing on the implied covenant of good faith and fair dealing is more notable for its omissions than what it actually covers. Much of the discussion consists of a general summary that was cut and pasted from a Vermont

Bar Journal article,[1] Plaintiff almost completely ignores and leaves unanswered the substance of Middlebury's arguments for judgment on the claim. Specifically:

- Plaintiff does not disagree with the characterization of his covenant claim as an action seeking recovery for reputational harm;
- Plaintiff does not contest the fact that the law denies the estate of a deceased individual a remedy for reputational harm;
- Plaintiff admits that the gift documents do not contain any language or terms restraining Middlebury from making public statements about former Governor Mead,[2] and he fails to address Middlebury's argument that *implying* such a restraint on the College's speech would exceed the role of the covenant and violate constitutional principles requiring that a waiver of First Amendment rights be knowing, clear, and unequivocal; and
- Plaintiff does not challenge the fact that a party's *motivations* for an alleged breach cannot give rise to a claim under the implied covenant.

In short, Plaintiff offers neither a rebuttal to Middlebury's arguments nor any basis that could sustain his claim under the law. While Plaintiff suggests that he should be allowed the opportunity to pursue discovery on the motivations underlying the removal of the Mead name from the College Chapel, he fails to explain how additional information on the College's motivations would render his claim viable. Moreover, any bid to stave off summary judgment for lack of information essential to justify the non-moving party's opposition must be made under Rule 56(d), and

---

[1] Pages 36 through 45 of the Opposition are a verbatim excerpt from former Dinse partner Scott Fewell's Summer 2010 Vermont Bar Journal article, *Vermont's Implied Covenant of Good Faith and Fair Dealing in Commercial Contracts.*

[2] *See* Middlebury College's Statement of Undisputed Material Facts ("SUMF"), ¶ 26 ("None of the documents describing former Governor Mead's gift to Middlebury contain any language or terms restraining Middlebury from making public statements about former Governor Mead."); Plaintiff's Response to Defendant's SUMF, ¶ 26 (objecting to the term "gift" but otherwise admitting).

Plaintiff has failed to satisfy the Rule's requirements. For all of these reasons, Middlebury is entitled to judgment in its favor.

1. The Theory Articulated in Plaintiff's Opposition Does Not Make Out a Colorable Claim.

As discussed in Middlebury's Motion, the Amended Complaint lays out two alternative bases for Plaintiff's covenant claim: (1) the removal of the Mead name from the College Chapel, and (2) the "scapegoating" of Mead and injury to his reputation. Plaintiff's Opposition does not discuss—and thus effectively abandons—the first theory, implicitly conceding that, because it is not "based on different conduct" from his contract claim, it is not viable. *Harsch Props., Inc. v. Nicholas*, 2007 VT 70, ¶ 14, 182 Vt. 196, 932 A.2d 1045. Plaintiff's current description of the basis for his covenant claim is consistent only with the second theory pleaded in the Complaint:

> The ultimate issue regarding the breach of the covenant of good faith and fair dealing is whether . . . Middlebury College acted in bad faith when it erroneously proclaimed that the Mead Memorial Chapel was named in honor of John Abner Mead and then engaged in its hypocritical public relations smear campaign to scapegoat Governor Mead and use him as a subterfuge to conceal the fact that Middlebury College was literally, a Eugenicist factory, for over 50 years, "espous[ing] inhumane policies that are uniformly condemned today," and teaching Eugenics principles until years after the atrocities of the Holocaust were fully known.

Opposition at 34 (alteration in original). There are two parts to this theory: (a) the alleged "smearing" or erroneous statements by the College, and (b) the notion that the College's actions were motivated by a desire to conceal or draw attention from other aspects of its history. Neither makes out a colorable claim under the

covenant.

a. The College's Alleged "Smear Campaign"

While Plaintiff might refer broadly to a "smear campaign" by the College, he does not contest the fact that the sole statement at issue in this lawsuit is the College's September 27, 2021, press release. Middlebury explained at length in its Motion why an implied covenant claim seeking to hold an academic institution liable for a statement made about a public figure more than a century after his death—based on remarks that public figure delivered in his official capacity to the State legislature—is neither viable nor consonant with First Amendment principles. Plaintiff offers no argument in response; indeed, there is no plausible basis for liability.

Nor, even were there a viable theory of recovery under the covenant, would the specific statements at issue support a claim. Plaintiff first objects that the College's September 2021 statement "erroneously proclaimed that the Mead Memorial Chapel was named in honor of John Abner Mead." Opposition at 34. It is true that the College's statement suggested that the Chapel "name honored [Mead] and his wife," *see* Amended Complaint, Exh. 7-008 (Sept. 27, 2021 Statement)—but that has always been the way in which many in the Middlebury community have understood the Chapel's naming, dating back to before construction even started on the building. At the 1914 groundbreaking ceremony for the Chapel, two of the speakers referred to the Chapel as bearing *Mead's* name, not the name of his family. *See* Plaintiff's Exh. 28 (speech of James Barton noting gratification that "this

building . . . will bear the name of one so long and so honorably connected with this institution"); Plaintiff's Exh. 29 (speech of Charles Wright describing Chapel as "bear[ing] your honored name"). Likewise, in a 1920 letter written after Mead's death, College president John Thomas wrote of wanting to "insure that the Chapel will be preserved as a memorial to *Dr. Mead*." Plaintiff's Exh. 43 (emphasis added).

Indeed, the association of the name "Mead Memorial Chapel" with John Mead is so widespread that Plaintiff himself has endorsed it multiple times in this litigation:

> Admittedly, the Mead Memorial Chapel became immediately synonymous with Governor Mead himself . . . . [I]t is understandable why the College itself came to believe that the chapel was a memorial to Governor Mead himself. *Because, in reality, it was*.

Plaintiff's Opposition to Middlebury's First Motion for Summary Judgment at 7–8 (emphasis added); *see also* Opposition at 19 (suggesting the Chapel "was to be a memorial to and which would bear Mead's name"); *id.* at 29 ("[W]hy would anyone think there would ever be a reason to expect that the *name of one so revered*, who was a giant of his time and a hero to Vermont and to Middlebury College, would ever be removed from a sacred chapel . . ." (emphasis added)). Plaintiff can hardly complain about a characterization of the use of the Mead name on the Chapel that is widely shared and in which Plaintiff himself repeatedly indulges.

Plaintiff's other complaint is that Middlebury has "smeared" Mead by overstating his significance in the eugenics movement in Vermont. Plaintiff argues that "the suggestion that Mead was engaged in a Eugenics 'Campaign' is pure

speculation unsupported by any documentary evidence or sufficient scholarly research." Opposition at 36; *see also id.* at 47 (referring to claim that Mead "supposedly mounted a 'Eugenics Campaign' which was nothing more than one speech as he was leaving the office of Governor"). But the actual statement by the College does not claim that Mead "engaged in" or "mounted" a "Eugenics 'Campaign.'" Rather, it suggests that Mead played an "instigating role" in the history of eugenics policies in Vermont by delivering a "call to action" in his outgoing speech as governor, "strongly urg[ing] the legislature to adopt policies and create legislation premised on eugenics theory." Amended Complaint, Exh. 7-008.

When one focuses on the actual statements at issue, rather than Plaintiff's characterizations of them, there is relatively little over which to quibble. It is beyond dispute that Mead did in fact deliver a speech to the Vermont legislature as he left office in which he addressed the question of "how best to restrain th[e] defective class and how best to restrict the propagation of defective children." *Id.* at 8-022. In that speech, citing his work during his tenure as governor to "inform [himself] thoroughly" on the question, Mead urged the legislature to take action to advance eugenics policies of restricting marriage and limiting procreation among "defective" individuals. *Id.* at 8-023 (recommending immediate legislation to restrict marriage licenses to certain groups, including those affected by "feeble-mindedness, or insanity," and calling for appointment of a commission "to investigate and report upon the advisability of the adoption of the operation of

vasectomy as a prevention for the spread of hereditary taints and diseases"[3]). The only debatable question, then, is the extent to which these remarks—on an issue which Mead acknowledged previously had "never received special attention by the legislature of our state," *id.* at 8-022—can be characterized as having played an instigating role in Vermont's pursuit of eugenics policies, including the sterilization legislation introduced roughly a month after Mead's speech. *See* SUMF, ¶ 11.

Attributing causation to historical events and movements is inherently a question of interpretation and opinion. Even the simplest, most discrete occurrence can generally be characterized as the result of a multitude of contributing factors and circumstances. And Middlebury's September 2021 statement did not claim that Mead was the cause or solely responsible for the eugenics movement in Vermont, but only that he played an "instigating role." To "instigate" means to "goad or urge forward." *See* Instigate, Merriam-Webster, *available at* https://www.merriam-webster.com/dictionary/instigate. Reasonable minds might differ, but Mead's 1912 remarks to the Vermont legislature can certainly be fairly characterized as "urging the legislature forward" to adopt eugenics policies. While Plaintiff may sharply disagree with the College's interpretation of the significance of Mead's part in the history of eugenics in Vermont, the question of whether Mead played an "instigating role" is ultimately not a factual question capable of being proven or

[3] Remarkably, Plaintiff appears to suggest—without a single shred of supporting evidence—that Mead's advocacy of vasectomy was not motivated by a desire to limit procreation among "defective" individuals, but rather to "protect[] the health and lives of women." Opposition at 36. The text of his actual remarks belies this claim. *See* Amended Complaint, Exh. 8-023.

disproven. As an expression of opinion, the College's statement could not form the basis for any liability to the Estate under First Amendment principles.[4] *See ONY, Inc. v. Cornerstone Therapeutics, Inc.*, 720 F.3d 490, 496 (2d Cir. 2013) ("Generally, statements of pure opinion—that is, statements incapable of being proven false—are protected under the First Amendment." (*citing Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19–20 (1990)).

b. The College's Motivations for Removing the Mead Name

The second aspect of Plaintiff's theory under the covenant fares no better. Plaintiff claims that the College removed the Mead name from the Chapel as a "public relations diversion" to distract attention from other aspects of the College's history. *See* Opposition at 36. This is plainly a question of motive: Plaintiff seeks to impose liability on the College not for *what* it did, but *why* the College did it. As Middlebury explained in its Motion, the motive for allegedly breaching a contractual obligation cannot form a basis for liability under the covenant, *see Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 54, 307 A.3d 209, nor can the motivation for taking an action otherwise allowed under contract, *see Stevens v. Foren,* 959 P.2d 1008, 1011 (Or. App. Ct. 1998) (an "unpleasantly motivated act" that is permissible under the contract does not violate the implied covenant). Plaintiff cites not a single case to the contrary. Because Plaintiff has failed to articulate or offer evidence of any

[4] Of course, even if the College's assertion were factual, the Estate would have no cause of action for any claimed reputational damage flowing from the statement. *See* Restatement (Second) of Torts § 560 (1977) (no cause of action lies for publication of defamatory matter relating to a deceased individual).

viable theory for recovery under the covenant of good faith and fair dealing, Middlebury is entitled to judgment.

2. Further Discovery Will Not Change the Basic Nature of Plaintiff's Claim, and, Regardless, Plaintiff Has Failed to Satisfy Rule 54(d).

Seeking to delay adjudication of the merits of his covenant claim, Plaintiff contends that Middlebury's Motion is premature and he "must be allowed to pursue discovery to determine what Middlebury College knew about the true purpose of the naming of the Mead Memorial Chapel," among other things. Opposition at 48. This argument fails for two reasons.

First, the Rules of Civil Procedure make available a procedure to raise the argument Plaintiff seeks to make here, but Plaintiff has failed to avail himself of it. Specifically, Rule 56(d) provides that a court may defer decision on a summary judgment motion, deny it, or issue any other appropriate order "[i]f a nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition." V.R.C.P. 56(d). Plaintiff neither cites Rule 56(d) in his Opposition nor furnishes an affidavit supporting the notion that he cannot "present facts essential to justify [his] opposition." As Plaintiff has not properly raised the issue under the Rules, he cannot rely on his supposed need for additional discovery as a basis to resist summary judgment.

Second, the discovery Plaintiff seeks—information on the basis and motivations underlying the removal of the Mead name from the College Chapel—would not alter the outcome on summary judgment. As the College has explained, a

party's motivations in breaching a contractual obligation cannot alone support a claim under the implied covenant. *See Beldock,* 2023 VT 35, ¶ 54. Moreover, the Court has already ruled that, to the extent there was any contract between Mead and the College to maintain the Mead name on the Chapel, that obligation was satisfied by the more than a century in which the name was used on the Chapel. In 2021, the College was not contractually bound to continue using the name—hence it was at liberty to remove the name for any reason or no reason at all. Even if discovery confirmed Plaintiff's outlandish suspicions that the removal of the name was animated by a plan to use Mead as a "scapegoat to divert attention away from Middlebury College," Opposition at 2, the College's reasons for removing the name could not make out a viable claim under the implied covenant. The discovery sought is thus immaterial to summary judgment and does not offer any basis to deny or defer Middlebury's Motion.

B. Plaintiff Fails to Offer a Colorable Basis upon Which the Promissory Estoppel Claim Could Proceed.

Plaintiff's arguments on promissory estoppel both misapprehend and fail to squarely respond to the grounds for judgment laid out in Middlebury's Motion.

First, Plaintiff does not address the fact that what he has alleged—the imposition of a naming condition as a "quid pro quo" for the making of a donation, Amended Complaint ¶ 16—falls outside the scope of promissory estoppel. As Middlebury has explained, promissory estoppel only applies where there is "unbargained-for reliance" on the part of the claimant. *Chomicky v. Buttolph*, 147

Vt. 128, 131 n., 513 A.2d 1174, 1176 n. (1986). Plaintiff does not make any attempt to distinguish the authorities Middlebury cited in its Motion or explain how the transaction at issue could be shoehorned into the concept of promissory estoppel.

While Plaintiff points out—correctly—that courts have sometimes applied promissory estoppel in the realm of charitable giving, they have done so in a very specific context: enforcement of charitable pledges. Charitable pledges generally take the form of a unilateral promise by a donor, and courts have invoked promissory estoppel to enforce such pledges where a donee institution can show reasonable reliance on a pledge. *See, e.g.*, *King v. Trustees of Boston Univ.*, 647 N.E.2d 1196, 1200 (Mass. 1995) (cited in Opposition, and holding that, where written promise by Martin Luther King Jr. to leave papers to university was not enforceable in contract "because there is no indication of a bargained for exchange which would have bound Dr. King to his promise," promise could be enforced as a charitable pledge based on donee's reliance). But that fact pattern—reliance on an unbargained-for pledge—is entirely distinct from the circumstances alleged here. Plaintiff does not suggest that Middlebury, on its own accord, made a gratuitous promise to name the Chapel the "Mead Memorial Chapel" and Mead haplessly relied to his detriment on that promise. Rather, Plaintiff has been clear that he deems the supposed exchange of naming right for donation to have been the "benefit of [the] bargain." Amended Complaint ¶ 16. That theory cannot proceed under the rubric of promissory estoppel.

Second, Plaintiff's argument that promissory estoppel has a role to play

where there is "failure of consideration" does not have any application on the facts here, as there has been no failure of consideration. *See* Opposition at 55. The Court has reserved for trial the question of whether Mead's donation—and any naming condition attached thereto—is governed by contract or by gift law,[5] an inquiry which turns on donative intent. *See* Oct. 3, 2024 Ruling on Middlebury's Motion for Summary Judgment at 6–7. If the gift transaction was contractual, Plaintiff's contract claim falters not because of the failure of consideration, but because any bargained-for contractual obligation was satisfied by the maintenance of the "Mead" name for more than a century. *Id.* at 12. No promissory estoppel claim could lie where there was a valid contract and the terms of that contract have been satisfied. *See, e.g.*, *Theberge v. Theberge*, 2020 VT 13, ¶ 22, 211 Vt. 535, 228 A.3d 998 (promissory estoppel only applicable where "the parties did <u>not</u> have a contract" (emphasis in original)). If the transaction was a gift, the enforcement of a supposed condition would be governed by the law of conditional gift, and the Court has already held that no viable conditional gift claim lies here. In short, it is apparent that Plaintiff offers promissory estoppel not as an alternative contract theory to overcome the failure of consideration, but instead as an attempted end-run around the limitations imposed by the law of conditional gift and of contract.

[5] Notwithstanding the fact that Plaintiff originally pursued a claim for breach of a conditional gift, Plaintiff now argues that, because he withdrew that claim after summary judgment was granted on it, any reference to "gift law" is "irrelevant" and "superfluous." Opposition at 2. Not so. Middlebury has contended throughout this proceeding, and continues to contend, that the Mead gift is controlled by the law of charitable gifts, not contract. Plaintiff cannot unilaterally banish the issue from this dispute simply because he has determined that framing the donation as a gift is not advantageous to his position.

Third, Plaintiff fails to offer a cogent explanation for why, in the absence of any clear and definite promise by the College to use the Mead name *in perpetuity*, the law would require the College to maintain the Mead name on the Chapel for a longer period under a promissory estoppel theory than it would in contract. As the parties and the Court have previously recognized, the law generally disfavors perpetual terms, whether imposed in contract or conditional gift. *See, e.g.*, *Open Lake Sporting Club v. Lauderdale Haywood Angling Club*, 511 S.W.3d 494, 501–02 (Tenn. Ct. App. 2015) ("Under the law, perpetual obligations are disfavored" and "will not be construed to exist unless the parties plainly express their intent to establish them."); 38A C.J.S. Gifts § 39 (perpetual conditions on gifts are strictly construed "[b]ecause noncompliance with the conditions of a conditional gift results in a forfeiture of the gift"). It would be at odds with this firmly established judicial policy—and with the law's requirement of "a promise of a specific and definite nature" to make out a promissory estoppel claim, *Dillon v. Champion Jogbra, Inc.*, 175 Vt. 1, 10, 819 A.2d 703, 710 (2002)—to find that a perpetual obligation may be implied under a theory of promissory estoppel where it could not be supported under contract standards.

For all of these reasons, the Court should enter judgment for Middlebury on Plaintiff's promissory estoppel claim.

C. Plaintiff Cannot Make Out a Viable "Claim" of Equitable Estoppel.

While Plaintiff acknowledges that equitable estoppel has been viewed as a defensive doctrine in Vermont, *see* Opposition at 58, the Opposition nonetheless

suggests that "it can also be used affirmatively in certain circumstances," *id.* at 59. There is no support for this position.

The lone case Plaintiff cites in support of the notion that equitable estoppel may be deployed as an affirmative claim, *In re Langlois/Novicki Variance Denial*, 2017 VT 76, 205 Vt. 340, 175 A.3d 1222, is a garden variety case involving a *defense* of equitable estoppel. There, a landowner built an unpermitted structure in reliance on representations by the town zoning administrator that no permit was needed; the town subsequently advised that a permit was necessary, denied the landowner's application for an after-the-fact zoning permit, and initiated an enforcement action. The landowner successfully raised equitable estoppel defensively in response to the town's enforcement action and in appealing the denial of a permit, and the Vermont Supreme Court affirmed. The case did not address or have anything to do with affirmative use of equitable estoppel as a "claim."

In its Motion, Middlebury cited cases from Vermont and elsewhere that, unlike *Langlois/Novicki*, squarely addressed—and rejected—efforts to raise equitable estoppel as a claim. Plaintiff does not discuss or make any attempt to distinguish those cases, which are controlling here and entitle Middlebury to judgment on the claim.

CONCLUSION

For the foregoing reasons, as well as those laid out in Middlebury's Motion, Middlebury requests that the Court enter summary judgment in its favor on all remaining claims.

Dated at Burlington, Vermont, this 7th day of February, 2025.

By: *\/s\/ Justin B. Barnard*
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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
	)
Plaintiff,	)
v.	)
	)
THE PRESIDENT AND FELLOWS	)
OF MIDDLEBURY COLLEGE,	)
	)
Defendant.	)

MIDDLEBURY COLLEGE'S RESPONSE TO PLAINTIFF'S STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS REGARDING DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT

Defendant The President and Fellows of Middlebury College ("Middlebury" or the "College"), by and through counsel, submits this Response to Plaintiff's Statement of Additional Undisputed Material Facts Regarding Defendant's Second Motion for Summary Judgment pursuant to V.R.C.P. 56(c).[1]

1. On June 17, 2022, the Vermont Superior Court, Rutland Unit, Probate Division, in the matter of the Estate of John Mead, Case No. 22-PR-02895, appointed the Honorable James H. Douglas as Special Administrator of the Estate of John Abner Mead, granting him full authority to represent the Estate in this litigation. Amended Complaint/Answer par 17.

Response: Undisputed.

[1] Plaintiff's Opposition to Defendant's Second Motion for Summary Judgment also refers to and cites his prior Statement of Additional Undisputed Material Facts, which he filed a second time with his Opposition. Middlebury incorporates its response to Plaintiff's first Statement by reference.

2. Defendant, The President and Fellows of Middlebury College is a Vermont Non-profit Corporation chartered on November 1, 1800 and doing business as Middlebury College, with its principal place of business in the Town of Middlebury, County of Addison and State of Vermont. Amended Complaint/Answer par 19.

Response: Undisputed.

3. Middlebury is a liberal arts college of the first rank, an achievement that is the result of a process of growth and change that began in 1800, when a few men of the town of Middlebury took upon themselves the challenge of building a college in a small New England town, on what was then the American frontier. Amended Complaint/Answer par 29.

Response: Immaterial.

4. Over the more than two centuries since it was established, Middlebury has developed from "the town's college" into an institution of international renown with a $1.518 billion endowment as of 2021. Amended Complaint/Answer par 23.

Response: Immaterial.

5. Gamaliel Painter, one of the citizens of Middlebury to whom the College charter had been granted, left most of his estate to the College. Mr. Painter's gift was an early example of the philanthropic support for Middlebury College that has enabled the institution to prosper. In recognition of his gift, West College, a new building completed a few years prior to Painter's death in 1819, was renamed Painter Hall. Painter Hall is the oldest college building extant in Vermont. Amended Complaint/Answer par 25.

Response: Immaterial.

6. Middlebury College continued to grow during the 19th century. The growth was sporadic, however, as the College was not immune to the social and political movements that were affecting northern New England generally. Rocked by evangelical upheaval and religious revival in the 1830s and the Civil War in the 1860s, Middlebury managed to keep its doors open during a period when many small colleges in America were forced to close. In large part, the College survived because of the support of its many friends, both in the town of Middlebury and in the surrounding region. Amended Complaint/Answer par 27.

Response: Immaterial.

7. Middlebury College began to change from an institution primarily oriented toward its community and its state to a college with larger regional aspirations. President Ezra Brainerd (who held that office from 1885 to 1908) prepared the College for this transformation, and spectacular change occurred under the administration of President John Thomas (1908 to 1921), who established the Language Schools and the Bread Loaf School of English during his presidency. Amended Complaint/Answer par 28.

Response: Immaterial.

8. During the second decade of the 20th century under President Thomas' direction, the College's enrollment more than doubled, and the number of buildings, the size of the faculty, and the value of the endowment all tripled. Amended Complaint/Answer par 29.

Response: Immaterial.

9. John Abner Mead (April 20, 1841 – January 12, 1920) was a Vermont physician, businessman, politician, and philanthropist who served as Vermont's 47th Lieutenant Governor from 1908 to 1910, and Vermont's 53rd Governor from 1910 to 1912. Amended Complaint/Answer par 3.

Response: Undisputed.

10. John Abner Mead's great-great-grandfather, Colonel James Mead (1730-1804), was a notable pioneer and Rutland's first settler. He and his wife, Mercy Holmes Mead, were the parents of the first child of European descent born in the Otter Creek Valley. He served as the first Moderator and first Selectman of the Town of Rutland and first Representative from Rutland to the first Vermont Legislature. He was a distinguished patriot of his day, serving as a Colonel of the 3rd Regiment of Vermont Militia during the Revolutionary War. Amended Complaint/Answer par 35.

Response: Immaterial. Moreover, the factual assertions are supported only by Plaintiff's allegations in the Amended Complaint, which are not admissible evidence where offered by Plaintiff. *See, e.g.*, *Tencza v. TAG Ct. Square, LLC*, No. 10 CIV. 3752 PAE, 2013 WL 2449178, at *8 (S.D.N.Y. June 6, 2013) ("Allegations in a complaint are not evidence, and a party cannot defeat a motion for summary judgment by relying on allegations in the pleading." (citation omitted)); *In re Blech Sec. Litig.*, No. 94 Civ. 7696(RWS), 2003 WL 1610775, at *11 (S.D.N.Y. Mar. 26, 2003) ("[A] complaint is not

admissible to prove the truth of its contents.”).

11. Colonel James Mead’s historic contributions are memorialized by the Vermont Division for Historic Preservation’s Historic Marker at Mead’s Falls and in an 1848 landscape painting of Mead’s Falls by Fredric Edwin Church, which hangs in the White House. Amended Complaint/Answer par 36.

Response: Immaterial. Moreover, the factual assertions are supported only by Plaintiff’s allegations in the Amended Complaint, which are not admissible evidence where offered by Plaintiff. *See, e.g.*, *Tencza*, 2013 WL 2449178, at *8; *In re Blech Sec. Litig.*, 2003 WL 1610775, at *11.

12. John Abner Mead, was born in Fair Haven, Vermont, April 20, 1841. His mother, Lydia Ann Gorham Mead, went into a decline soon after giving birth and died weeks later, on August 11, 1841, aged 23. As an infant, John Mead was virtually orphaned by his father and raised by others until he was 16 years old. Amended Complaint/Answer par 38-39.

Response: Undisputed that John Abner Mead was born in Fair Haven, Vermont on April 20, 1941. As to the remainder, immaterial, and the factual assertions are supported only by Plaintiff’s allegations in the Amended Complaint, which are not admissible evidence where offered by Plaintiff. *See, e.g.*, *Tencza*, 2013 WL 2449178, at *8; *In re Blech Sec. Litig.*, 2003 WL 1610775, at *11.

13. He was educated at the common school at West Rutland, and worked to save enough money to attend Middlebury College as a member of the Class of 1864.

Interrupting his studies at Middlebury College, John Mead enlisted during the American Civil War in Company K, Twelfth Infantry Regiment, Vermont Volunteers, serving from 1862-1863. After the Gettysburg campaign, Mead returned to Middlebury College to complete his studies and was graduated with his class in 1864. Amended Complaint/Answer par 40-43 & 47.

Response: Undisputed that Mead attended Middlebury, interrupted his studies at Middlebury to enlist in Company K, Twelfth Infantry Regiment, Vermont Volunteers during the United States Civil War, and graduated in 1864. As to the remainder, immaterial, and the factual assertions are supported only by Plaintiff's allegations in the Amended Complaint, which are not admissible evidence where offered by Plaintiff. *See, e.g.*, *Tencza*, 2013 WL 2449178, at *8; *In re Blech Sec. Litig.*, 2003 WL 1610775, at *11.

14. After graduation from Middlebury, Mead began to study medicine with Professor Joseph Perkins, M.D. of Castleton and attended the first course of lectures in the medical department of the University of Vermont, studying under his now Preceptor Joseph Perkins, M.D., Professor of Obstetrics and Diseases of Women and Children. Mead wrote his thesis on "Inversio-Uteri", a childbirth complication often resulting in death of the woman at or shortly after giving birth, which perhaps was Mead's mother's cause of death at age 23, shortly after his birth to him. Upon completing his studies and thesis at UVM, he was awarded a Master's Degree (A.M.) at Middlebury College in 1867. Amended Complaint/Answer par 50 & 52.

Response: Undisputed that Mead studied and was trained in medicine and

was awarded a Master's Degree at Middlebury College in 1867. The remaining factual assertions are supported only by Plaintiff's allegations in the Amended Complaint, which are not admissible evidence where offered by Plaintiff. *See, e.g.*, *Tencza*, 2013 WL 2449178, at *8; *In re Blech Sec. Litig.*, 2003 WL 1610775, at *11.

15. Mead then went to New York to complete his medical degree at the College of Physicians and Surgeons of New York City, part of Columbia University, graduating with an M.D. degree in 1868. While in medical school, Mead worked at Kings County Hospital's Lunatic Asylum in Brooklyn, New York as a Second Assistant Physician. Amended Complaint/Answer par 53 & 54.

Response: Undisputed that Mead completed his medical degree at the College of Physicians and Surgeons of New York City, part of Columbia University, graduating with an M.D. degree in 1868. The remaining factual assertions are supported only by Plaintiff's allegations in the Amended Complaint, which are not admissible evidence where offered by Plaintiff. *See, e.g.*, *Tencza*, 2013 WL 2449178, at *8; *In re Blech Sec. Litig.*, 2003 WL 1610775, at *11.

16. Upon graduation, he was promoted to First Assistant Physician and a year later, he was made the Assistant Physician of the Lunatic Asylum. Notably, the Asylum did not use physical restraints for patients, allowing them instead to freely mingle and take exercise at their leisure. During Dr. Mead's tenure as resident physician, he demonstrated great compassion for his patients:

> "He did not treat them as though he thought them insane. He held that it always irritated a man, sane or insane, to be told that he was mentally deranged. He listened patiently to their complaints and even humored their whims. I will not say that he believed in 'mind cure', for the phrase has acquired unfortunate associations. But he believed that a wise physician should always have a thought for the mental condition of his patients and in all his later medical practice he was guided by this rule." Ex. 8-034 to 8-035.

Amended Complaint/Answer par. 54 & 55. Ex. 63.

Response: Disputed that the cited evidence provides admissible support for these assertions. The quoted passage is hearsay statement from an individual describing events many decades prior and does not come within any exception. The remaining assertions in this paragraph are supported only by Plaintiff's allegations in the Amended Complaint, which are not admissible evidence where offered by Plaintiff. *See, e.g.*, *Tencza*, 2013 WL 2449178, at *8; *In re Blech Sec. Litig.*, 2003 WL 1610775, at *11. Moreover, these assertions are immaterial to the issues before the Court on summary judgment.

17. Dr. Mead then returned to Vermont to practice medicine in Rutland, where he was a beloved OB/Gyn, Pediatrician and Surgeon for 20 years. While practicing medicine in Rutland, Dr. Mead also served as the State of Vermont's Surgeon General, as Medical Superintendent of the House of Correction, and as Pension Examiner for eight years and was appointed Surgeon General of the Vermont State Encampment of the Grand Army of the Republic in 1890. Amended Complaint/Answer par 57, 61 & 64.

Response: Undisputed.

18. After retiring from the practice of medicine, Mead became a successful real estate investor, served as an executive or director of a number of banking firms, insurance companies, railroads, and manufacturing companies. Amended Complaint/Answer par 67.

Response: Undisputed that Mead invested in real estate. The remaining assertions are immaterial and are supported only by Plaintiff's allegations in the Amended Complaint, which are not admissible evidence where offered by Plaintiff. *See, e.g.*, *Tencza*, 2013 WL 2449178, at *8; *In re Blech Sec. Litig.*, 2003 WL 1610775, at *11.

19. In 1888, he became president of and re-organized the Howe Scale Company, manufacturers of a scale recognized as the standard the world over, and it was much to his credit that the company became one of the most important and successful enterprises in New England. Amended Complaint/Answer par 69 & 70.

Response: Undisputed and immaterial that Mead became president of the Howe Scale Company, and that Howe was a well-known manufacturer of scales. The remaining assertions are immaterial and are supported only by Plaintiff's allegations in the Amended Complaint, which are not admissible evidence where offered by Plaintiff. *See, e.g.*, *Tencza*, 2013 WL 2449178, at *8; *In re Blech Sec. Litig.*, 2003 WL 1610775, at *11.

20. Dr. Mead exhibited rare executive ability. His watchful care of every detail and his keen judgment of human nature enabled him to select competent

assistants in the varied departments. These skills, along with his perseverance, were largely responsible for the remarkable success of this industry, which created prosperity for many Vermont families. Amended Complaint/Answer par 71.

Response: These assertions are immaterial and are supported only by Plaintiff's allegations in the Amended Complaint, which are not admissible evidence where offered by Plaintiff. *See, e.g.*, *Tencza*, 2013 WL 2449178, at *8; *In re Blech Sec. Litig.*, 2003 WL 1610775, at *11.

21. In 1920, when Middlebury College President Thomas eulogized Governor Mead at his funeral, he described his good friend:

> "By his keenness of mind, his fixity of purpose, his unfailing judgment, his insatiable ambition, and his unconquerable will Dr. Mead ranged himself with those great creative spirits who have wrought the prosperity and wealth of this nation and accomplished the civilization of the modern world."
>
> "He was no ordinary man and judgment upon him must be guided by no ordinary standards. He was one appointed of Providence a master builder in the industry of his generation, whose ambition and ability were made to serve the welfare of this city and the prosperity of our fair State beyond the measure of almost any other of his time, he did it almost alone."
>
> "If every town in Vermont had this day a man of power like Dr. Mead, our good State would double its population and wealth in twenty years."
>
> "He was one of the most democratic and approachable of men. I have often thought that his extreme simplicity and cordiality in public relations blinded the eyes of those who saw him every day to some of his most remarkable qualities, Governor Mead was a very keen and shrewd observer and a man who preserved at all times independent and original judgement."

Ex. 63 - Obituary of John A. Mead - Middlebury Register, 1/16/1920.

Response: Undisputed and immaterial.

22. On May 11, 1914, John Abner Mead sent a Letter to Rev. Dr. John M. Thomas, President of Middlebury College, offering "to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel." (hereinafter "Offer Letter"). Ex. 1. Amended Complaint/Answer par 95.

> . . . *to erect a chapel to serve as a place of worship for the college, the same to be known as the "Mead Memorial Chapel."* I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, *and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished.*

Ex. 1 (emphasis supplied)

Response: Undisputed that Mead sent the letter dated May 11, 1914, which is marked Ex. 1. The text of the letter, which is not fully reproduced, speaks for itself. Disputed that the actual substance of the gift offered to Middlebury was to "erect a chapel"; rather, Mead offered to furnish funds between $50,000 to $60,000 to be used for the erection of a chapel, as reflected in Ex. 1.

23. Mead then told of his ancestors, Mead's great-great-grandfather, Colonel James Mead (1730-1804), notable pioneer and Rutland's first settler, and his wife Mercy Holmes Mead, recounting their lives as embodying the simplicity, strength of character, and religious faith that Mead envisioned the Mead Memorial Chapel would symbolize and specifying the location of the chapel:

> *With this memory ever present,* it has been my hope and prayer that *I might be able and permitted to build for this college a suitable place for divine worship and that it might rise from the highest point on its campus as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth.*

Ex. 1 (emphasis supplied). Amended Complaint/Answer par. 2.

Response: Undisputed that the quoted text comes from Ex. 1, the full text of which speaks for itself.

24. Mead's Offer Letter went on to state:

> "I have in mind the furnishing of from $50,000 to $60,000 for the erection of such a structure, and I hereby suggest that the Trustees of the *College secure appropriate plans for its erection which shall meet with my approval, and that said board appoint a building committee at once*, consisting of president Thomas, former President Brainerd and myself to make the necessary contracts for such a structure and to supervise the erection of the same, and I will then bind myself and my estate to provide the necessary means for its erection and completion in accordance with the suggestions of this letter and with the contracts to be made by your committee."

Ex. 1. (emphasis supplied). Amended Complaint/Answer par 98.

Response: Undisputed that the quoted text comes from Ex. 1, the full text of which speaks for itself.

25. On May 15, 1914, President Thomas sent a copy of John A. Mead's Offer Letter to the Trustees of Middlebury College announcing:

> Your associate, Governor John A. Mead, has made it possible for me to make an announcement which will bring you all great satisfaction and encouragement, as it gives me the keenest pleasure. I enclose a copy of his letter to be signed May 11th which assures the erection of an appropriate and beautiful chapel for Middlebury College.
>
> I have testified many times to the great need of such a building and the large possibilities for good in connection with it. We have all felt for many years that it was one of the most urgent needs of the college, and those who have been closest in touch with the daily life of the institution have felt the need most earnestly.
>
> . . .
>
> P.S. May I hear from you immediately as to whether you will authorize the acceptance of Governor Mead's proposition and the appointment of the

Building Committee which he suggests.

Ex. 2. Amended Complaint/Answer par 99

Response: Disputed that Ex. 2 is accurately quoted above. Undisputed that Ex. 2, which is dated May 15, 1914, was sent to Middlebury's Trustees and enclosed a copy of Mead's May 11, 1914 gift letter.

26. On May 16, 1914, Trustee Frank C. Partridge wrote to President Thomas agreeing as one of the Trustees, to accept the Offer and appoint of the Mead Memorial Chapel Building Committee as Mead had specified:

> Your good news is received and I am delighted that your dream of a new chapel is to be realized. *It is a generous and beautiful thing for Governor Mead to do and of course I agree, as one of the Trustees, to the acceptance of his proposition and the appointment of the building committee which he suggests.*

Ex. 3-1 (emphasis supplied). Amended Complaint/Answer par 100.

Response: Disputed that Frank Partridge's letter made any reference to the "Mead Memorial Chapel." Undisputed that Ex. 1 is an unsigned letter dated May 16, 1914 from Partridge to President Thomas agreeing to the gift and appointment of a building committee, which he said would realize President Thomas's "dream of a new chapel."

27. On May 16, 1914, Superior Court Judge (and future Middlebury College Trustee) Frank L. Fish wrote to Pres. Thomas:

> "Hurrah for Dr. Mead! I have just written him thanking him and telling him *he has become one of the immortals*."

Ex. 3-4 (emphasis supplied).

Response: Undisputed that Ex. 3-4 is a May 16, 1914 letter from Frank L. Fish

and contains the quoted text.

28. May 17, 1914, Trustee John E. Weeks wrote to Mead with:

> [congratulations and thanks for] . . . the splendid gift to Middlebury College. This is a most worthy reminder of your great loyalty to this Institution and *one that can and will be instrumental in great good to this student body as long as time lasts*. . . Your honorable public career is certainly crowned by this act.

Ex. 3-7 (emphasis supplied). Amended Complaint/Answer par 101.

Response: Undisputed that Ex. 3-7 is a May 17, 1914 letter from John Weeks to Mead and contains the quoted text.

29. On May 18, 1914, Trustee A. Barton Hepburn wrote to Mead stating:

> It is a splendid, well-considered and generous action on your part. It shows you possess that love for Alma Mater, which is one of the greatest charms of college life, the essence of college spirit; *it shows your respect and reverence for your forebears*, which is one of the highest qualifications a man may possess, and *it shows, also, your disposition to do a good and useful act for the community in which you live and the State which you honor and which has bestowed its highest honor upon you*. Congratulations and thanks.

Ex. 3-10 (emphasis supplied). Amended Complaint/Answer par 102.

Response: Undisputed that Ex. 3-10 is a May 18, 1914 letter from A. Barton Hepburn to Mead and contains the quoted text.

30. On May 19, 1914, Trustee James L. Barton wrote to Mead stating:

> I can hardly describe to you the thrill of satisfaction that I experienced when a letter from Dr. Thomas reported *your magnificent gift to Middlebury College in the form of a Memorial Chapel. I know of nothing more fitting as a memorial – nothing that will be of greater value to the College in all the years to come.* I know of no building that could be put up out from which will go more fundamental and permanent influences for social, civic and national righteousness, for our own country and for the world. I want to express my deep personal appreciation of this gift, as well as my appreciation as a member of the Board of Trustees. *I am sure you will get great satisfaction in seeing the walls of the building rise, as you realize what they mean to the College, the State, the country and the world, in all the years to come.*

Ex. 3-13 (emphasis supplied). Amended Complaint/Answer par 103.

Response: Undisputed that Ex. 3-13 is a May 19, 1914 letter from James L. Barton to Mead and contains the quoted text.

31. On May 22, 1914, Trustee Brainerd Kellogg wrote to President Thomas, stating:

> I can't tell you how pleased I was and am at the news that Governor Mead wishes to build a Chapel on the College grounds. I had not thought that he dreamed of it.
>
> And how fitting that it should be at the semi-centennial of his graduation – showing that his love for his College has not waned but waxed during the 50 years. . . .
>
> Convey to him, please, my personal thanks for his generous plans. *Of course the Trustees will allow him his ways, and will be everlastingly grateful to him in taking it.*

Ex. 3-14 (emphasis supplied). Amended Complaint/Answer par 104.

Response: Undisputed that Ex. 3-14 is an unsigned draft of a May 22, 1914 letter from Brainerd Kellogg to President Thomas and contains the quoted text.

32. On May 23, 1914, John A, Fletcher, Middlebury Trustee and Treasurer, wrote to President Thomas stating:

> Replying formally to the welcome news contained in your message of the 15th, *I wish to concur in the acceptance of the "Mead Memorial Chapel."*
>
> It is a splendid gift . . .
>
> *I trust that the General Education Board will now look with favor upon your application for a grant toward a new fund, on contemplating this new evidence of the substantial and loyal support of our alumni.*

Ex. 3-16 (emphasis supplied). Amended Complaint/Answer par 105.

Response: Undisputed that Ex. 3-16 is an unsigned draft of a May 23, 1914 letter from John Fletcher to President Thomas and contains the quoted text.

33. On June 6, 1914, Trustee M. Allen Starr wrote to Pres. Thomas:

> "I congratulate you heartily on this fine gift which will be *a beautiful memorial* and a most needed and welcome addition to our building. … *His most interesting letter with its details of early history should be framed and hung in the chapel – and also put in the box of the corner stone."*

Ex. 3-19.

Response: Undisputed that Ex. 3-19 is an unsigned draft of a June 6, 1914 letter from M. Allen Starr to President Thomas and contains the quoted text.

34. On June 24, 1914, Trustee James M. Gifford wrote to Pres. Thomas:

> "I have felt for years that the one building which the College most needed is that which Gov. Mead has undertaken to erect. *I feel that it should be located on the most prominent site and that, architecturally, it should be the most attractive of all the buildings of the College.*
>
> I believe that Gov. Mead will fully accord with this idea as *I know that he feels, as I am sure we all do, that it ought to be the most attractive memorial erected on the College Campus."*

Ex. 3 -20 (emphasis supplied).

Response: Undisputed that Ex. 3-20 is a June 24, 1914 letter from James Gifford to President Thomas and contains the quoted text.

35. On June 22, 1914, the President and Fellows of Middlebury College (Board of Trustees) met and recorded the following resolution to accept Dr. Mead's Offer Letter to erect the "Mead Memorial Chapel":

> The following resolution, introduced by Dr. Brainerd, on motion of Dr. Barton & Prof. Kellogg, was adopted by a rising vote:-
>
> "Whereas our esteemed colleague, the Honorable John Abner Mead of the

Class of 1864, has signified to President Thomas his desire, in commemoration of the fiftieth anniversary of his graduation, to erect a Chapel for Middlebury College, and his readiness to furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice,

Resolved that the President and Fellows of Middlebury College hereby accept of this magnificent benefaction with sincere gratitude to both Dr. & Mrs. Mead and their family for their deep interest in the religious welfare of the College, so impressively manifested by this provision of a suitable place for divine worship.

Resolved that the Trustees through the Committee nominated by Dr. Mead will use their best endeavors to secure the erection of a dignified and substantial structure, in harmony with the other buildings of the college, and such as will meet the approval of the donor."

Dr. Mead made fitting response to this resolution. His letter of presentation follows in full:-

[Letter of Gift copied by hand verbatim with quotation marks around "Mead Memorial Chapel"]

On motion of Mr. Partridge, seconded by Dr. Abernathy, *the Building Committee for the Mead Chapel was elected* as above, Messrs. Thomas, Brainerd, Mead and Weeks.

Mr. Collins of the architectural firm of Allen & Collins then appeared before the Board with tentative plans for the new Chapel, which were discussed at length.

Ex. 4 (emphasis supplied). Amended Complaint/Answer par 106.

Response: Disputed as to the characterization that the Trustees "accept[ed] Dr. Mead's Offer Letter to erect the "Mead Memorial Chapel," as the proposed gift was to "furnish the sum of from fifty thousand to sixty thousand dollars for the erection of such an edifice." Undisputed that the Trustees adopted the resolution reproduced above, with the exception of the bracketed text.

36. The Middlebury College Trustees unreservedly and enthusiastically

accepted Dr. Mead's offer to erect a chapel, which offer contained the explicit language: "the same to be known as the 'Mead Memorial Chapel,' with the actual quotation marks added by Mead's own hand to specify precisely the name of the chapel, which was offered as a memorial to the Mead ancestors, and yes, would immediately become synonymous with Governor Mead himself. Ex. 1. Amended Complaint/Answer par. 3.

Response: Disputed that the cited exhibit establishes via admissible evidence that "quotation marks [were] added by Mead's own hand." Undisputed that the Trustees accepted Mead's gift.

37. The gift of the Mead Memorial Chapel was widely reported in the Vermont press and Dr. Mead's Offer Letter was reprinted in several news articles. Complaint Exs. 1-013 to 018. Amended Complaint/Answer par 107.

Response: Undisputed.

38. On May 16, 1914, the Rutland Herald reported on the gift:

> DR. MEAD'S GIFT TO MIDDLEBURY COLLEGE
>
> . . .
>
> The gift of a chapel, in which the eternal Truth may be taught, and
>
> devoted to the sacred purposes of divine worship, is an admirable expression of active piety and reflects creditably upon its donor.
>
> . . .
>
> *It is peculiarly fitting* that Dr. Mead should thus recognize Middlebury College, an institution so peculiarly a part of his native state and his personal environment, *for the reason that, as he sets forth in his letter of gift*, his great-great-grandfather was the first white settler in the Otter Creek valley, and brought the Bible, in all its sublime and uplifting

> beauty, to the peaceful Indians of the wilderness.
>
> The college, too, which has made for itself an enduring name and place in Vermont's institutions of education and uplift, must feel, through its faculty and student body, a peculiar pleasure in *accepting the Mead Memorial Chapel as an expression of native patriotism and appreciation* from a citizen who has been honored with the highest executive office in the gift of his state.
>
> The Herald, for its readers, heartily joins in the sincere approbation and praise which this gift will justly inspire.

Amended Complaint Ex. 1-017 (emphasis supplied). Amended Complaint/Answer par. 109.

Response: Undisputed.

39. The Vermont Tribune's May 21, 1914 edition described Ex-Gov. Mead's gift to Middlebury College and reported:

> The new chapel . . . will seat 700 persons. A bronze tablet in the building will contain the following inscription: *Mead Memorial Chapel, Erected in 1914 by John Abner Mead of the class of 1864.*

Amended Complaint Ex. 1-019. (Emphasis supplied). Amended Complaint/Answer par 111.

Response: Undisputed.

40. President Thomas wrote an article that was published in the April 8, 1915 edition of the Boston Evening Transcript, entitled MIDDLEBURY'S 100 YEARS, Old Traditions Preserved in New Chapel" in which he explained:

> The proposal of ex-Governor John A. Mead to erect a chapel for Middlebury in commemoration of the fiftieth anniversary of his graduation . . . in his letter of gift ex-Governor Mead had said, "I have in mind a dignified and substantial structure, in harmony with the other buildings of the college, and expressive of the simplicity and strength of character for which the inhabitants of this valley and the State of Vermont have always been distinguished." *He asked*

> *that the chapel to bear his name* might "rise from the highest point of the campus, as a symbol of the position, most prominent in every respect, which Christian character and religious faith should always maintain in its work for our youth."
>
> The chapel will occupy a commanding location on the grounds on the highest crest of the campus, from which point there is a wide panorama of the Green Mountains and the valley of Otter Creek. On the architrave over the colonnade will be appropriately inscribed "The Strength of the Hills is His Also."
>
> Ex. 31 (emphasis supplied). Amended Complaint/Answer par 112.

Response: Undisputed.

41. On May 28, 1914, John Mead wrote to President Thomas regarding arrangements for the groundbreaking and laying of the cornerstone for the Chapel. Dr. Mead requested a piece of sod to place in the Evergreen Cemetery in his family's burial lot and indicated, "We will have the little box with the bible which little John is to place in the stone all properly arranged." Amended Complaint Ex. 2-001 to 2-002. Ex. 24-2. Amended Complaint/Answer par 113.

Response: Undisputed.

42. On June 23, 1914, Middlebury College held a ceremony titled "Breaking Ground for the Mead Memorial Chapel and Presentation of the Corner Stone" during its commencement exercises. Ex. 25.

Response: Undisputed.

43. Ex-Governor John A. Mead, Class of 1864, gave the speech for the "Breaking Ground and Presentation of the Corner Stone," which he concluded with:

> On this date, *I wish to break the ground and place the corner stone for this Memorial Chapel, with the hope and prayer that there shall be a sacred duty resting upon each, to make this Holy Temple, so soon to be*

> *erected, an instrument of great good to those of this generation and to those who may follow after,* and that our Alma Mater may be favored by steadily increasing numbers and with ample means for the noble work which will devolve upon her, and all of which she will attempt so willingly, so courageously and so faithfully.
>
> Ex. 27 (emphasis supplied). Amended Complaint/Answer par 115.

Response: Undisputed that Mead gave such a speech. Ex. 27 is a marked-up draft of written remarks by Mead for the event, the text of which speaks for itself.

44. The Rev. James L. Barton, D.D., LL.D., Class of 1881 delivered the "Acceptance in Behalf of the Trustees" in which he stated:

> *I am honored* in being permitted, *upon behalf of the trustees of Middlebury College, to accept* from the hands of one of their number, a graduate of the College and a revered citizen of this commonwealth, *this corner stone and that for which it stands, namely, a fitting chapel to be erected upon this site to embody and represent and perpetuate the religious life of this College.*
>
> *It is doubly gratifying to me, as it is to the Board of Trustees, that this building, as a memorial, will bear the name of one so long and so honorably connected with this institution and who in the state and nation has always upheld and promoted true piety and civic and national righteousness.*
>
> . . . Today we see the *religious ideals of our forefathers* emancipated and exalted to this loftier position and *embodied in a structure worthy the College and its resplendent history*. Here upon this hilltop it will, by the outlines and symmetry of its architecture, proclaim that this College believes in God, in the supremacy of righteousness, in the creation of a safe, sane and just society, the triumph of justice, the transcendent worth of character, the reality of the unseen, and in the immortality of the soul.
>
> . . .
>
> *This chapel will provide for the generations of students and faculties of this college that to which the other buildings cannot minister*. To this place all will turn in order to experience the reality of the unseen, to

satisfy the thirst of the soul for God.

. . .
We then, the Trustees of this College, on behalf of ourselves and our successors, in the name of the generations of students it will serve, in full recognition of the supreme importance of such a religious center to the life of the institution, and in loving memory of him whose name this structure is to bear, gratefully accept at your hand this Chapel as we pledge ourselves to safeguard to the limit of our capacity the gift and the ideals it is intended to perpetuate.

Ex. 28 (emphasis supplied). Amended Complaint/Answer par 116.

Response: Undisputed that Barton gave such a speech. Ex. 28 is a marked-up draft of written remarks by Barton for the event, the text of which speaks for itself.

45. Prof. Charles B. Wright gave an "Address in Behalf of the Faculty" which he ended with the statement:

Such an embodiment should this structure be…a chapel whose very lines, I trust, as they rise upon this summit, may prove for us all in the years to come a compelling call to goodness; whose very atmosphere, I trust, may dispose our hearts to praise – shall be but a fit expression, a symbol in stone, of the mingled strength and beauty of the Middlebury life.

The Faculty thank you, Governor Mead, from profoundly grateful hearts. You have bodied forth our dream of years; you have given to an airy nothing a local habitation – *and not the least of our pleasure is the thought that through all the days to be it will bear your honored name.*

Ex. 29 (emphasis supplied). Amended Complaint/Answer par 117.

Response: Undisputed that Wright gave such a speech. Ex. 29 is a draft of written remarks by Wright for the event, the text of which speaks for itself.

46. The Cornerstone for the Mead Memorial Chapel was laid at the Groundbreaking Ceremony held on June 23, 1914, where John Abner Mead's

namesake, his 3-year-old grandson John Abner Mead Hinsman ("Little John"), placed his small Bible and family tree back to original settler Colonel James Mead into a box inside the Mead Memorial Chapel Cornerstone. The Ceremony was widely reported on in the press. Ex. 30. Amended Complaint/Answer, Complaint Exs. 2-032 to 037.

Response: Immaterial.

47. Exhibit 26 contains five photographs of the Groundbreaking Ceremony including photos of Mead's grandson "Little John." Ex. 26. Amended Complaint/Answer par 120.

Response: Immaterial.

48. The Mead Family Bible, held by President Thomas at the Groundbreaking ceremony photographed above, has been passed down through the generations of the Mead family and resides with Mead family members who live in Vermont. Exs. 26 & 48.

Response: Immaterial.

49. On December 18th, 1914, Middlebury College's Board of Trustees resolved to go forward with construction of the "Mead Memorial Chapel," evident in the following meeting minutes:

> "On motion, duly seconded, it was Resolved that the College forward with the construction of the Chapel with the understanding that $60,000 – would be contributed by Dr. Mead, the balance estimated at about $1,000 – to be contributed by the College."
>
> Ex. 5.

Response: Disputed that the Trustees resolved to construct the "<u>Mead</u>

<u>Memorial</u> Chapel": undisputed that they resolved to proceed with "construction of the Chapel."

50. On January 13th, 1915, John Abner Mead wrote an acceptance letter to the Trustees of Middlebury College agreeing to pay $60,000 if the College agrees to complete the chapel:

> "I agree to furnish funds for the discharge of this contract and for the expenses connected with the erection of this chapel, to the amount of $60,000, as may be required during the construction and in accordance with the terms of the above contract, binding myself, my heirs and my assigns as above specified. It is agreed on the part of said Trustees that they are to complete said chapel, making it complete in every way, as to grounds, furnishings, etc., for the purposes of a college chapel, as voted at the meeting of the Trustees of said college held in New York City Dec. 18, 1914, and as defined in correspondence between the president of Middlebury College and myself."
>
> Ex. 6.

Response: Undisputed, except that the above reproduces only a portion of Ex. 6.

51. On 2/22/1915, Pres. Thomas sent a letter to Vermont Marble Co. to get a quote for the change to the plans requested by Mrs. Mead regarding pilasters and windows. Ex. 7.

Response: Undisputed.

52. On 2/24/1915, Rogers responded with a quote for $1,031 for the changes to add windows and pilasters per Mrs. Mead's request. Ex. 8.

Response: Undisputed.

53. On February 27th, 1915, John Abner Mead offered to pay an additional

$1,031 to purchase and install the windows and pilasters if the Trustees agreed to finish the chapel as agreed and to install a $5,000 pipe organ:

> "Mrs. Mead and myself agree to have the windows in the chapel (two on either side) and to have the ten pilasters (five on either side), same to be built in accordance with the original plans shown in photo number 1 as to bases and caps and width, and we are to pay $1031 for the same in addition to the original gift of $60,000. The trustees agree to finish the chapel as agreed and to instal[l] a pipe organ to cost at least $5000."

Ex. 9.

Response: Undisputed.

54. On March 1, 1915 Thomas wrote to Trustee Partridge regarding approving Mead's offer and also on March 1, 1915, wrote to Rogers authorizing the $1,031 changes. Ex. 10 and 11.

Response: Undisputed.

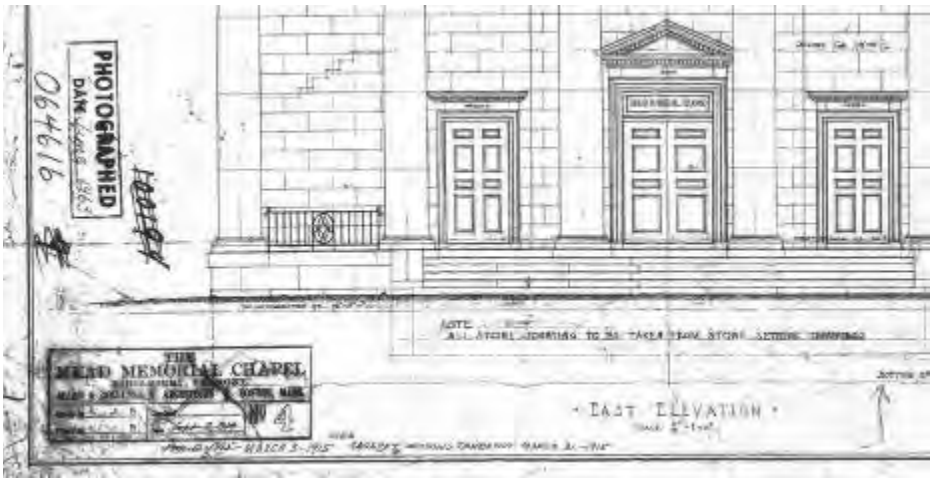
55. The Mead Memorial Chapel architectural plans bearing final date of March 31, 1915 which incorporated the final change of the windows and pilasters, are the "plans and specifications" which were approved by Mead. Each page of the plans is labeled "The Mead Memorial Chapel" Ex. 14, 15, 16, 17. See for example Ex. 14:

Ex. 14.

Response: Disputed that the March 31, 1915 plans are the "plans and specifications" which were approved by Mead. Mead's May 1914 gift letter

indicated that he would "bind [him]self and [his] estate" to provide funds toward the erection of a chapel upon the Trustees "secur[ing] appropriate plans for its erection which shall meet with my approval." Exh. D. Mead wrote to the Trustees and bound himself and his heirs to supply $60,000 on <u>January 13, 1915</u>, "[i]n consideration of the contract" with Thomas Rogers for erection of the chapel "in accordance with plans and specifications of Allen & Collens, architects." Exh. X. Any plans reviewed and approved by Mead before he bound himself would have been created prior to January 13, 1915. Otherwise, undisputed and immaterial.

56. Exhibit 14 are the plans for the East Elevations – Main Entrance of the Chapel. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico:

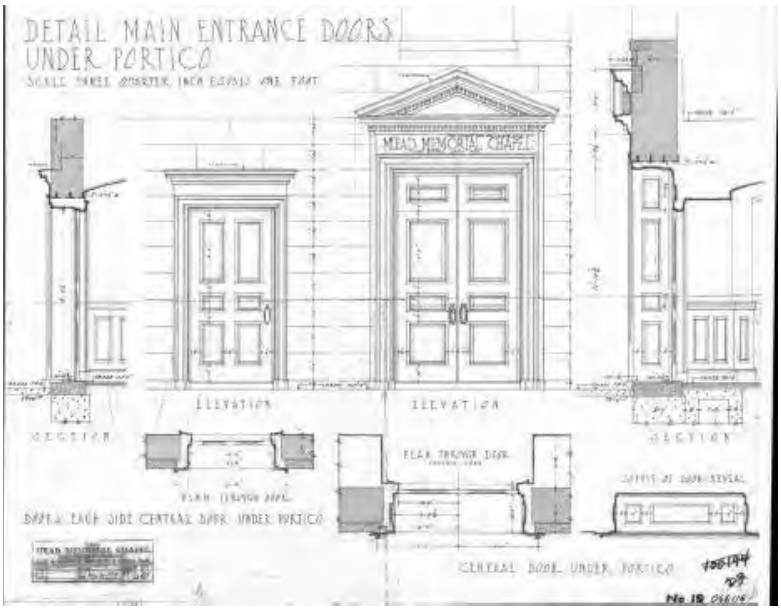


Ex. 14.

Response: Undisputed and immaterial.

57. Exhibit 15 are the plans for the Detail Main Entrance Doors under the

Portico. The Mead Memorial Chapel sign is detailed on the plans and appears over the main entrance door under the Portico. See Ex. 15 immediately below:



Response: Undisputed and immaterial.

58. A closeup view of the detail of the Mead Memorial Sign on Exhibit 15 reveals the specifications of material: "THIS FRIEZE FROM BEST CLEAR WHITE PINE", the wording of the sign: "MEAD MEMORIAL CHAPEL", that they will be incised letters with detail to follow, and of course the exact measurements and specific location to affix the sign to:

Ex. 15.

Response: Undisputed and immaterial.

59. On April 14th, 1915, Middlebury College's Board of Trustees accepted John Abner Mead's offer to add $1,031 and the College will buy a $5,000 pipe organ, evident in the following meeting minutes:

> "Voted, that the Trustees accept with gratitude Dr. Mead's proposal to add $1,031 – to the gift of the Chapel, and agree to install therein a pipe organ to cost $5,000 – "

Ex. 12.

Response: Undisputed.

60. On June 21, 1915 Dr. Mead sent an additional Offer Letter to President Thomas pledging an additional $7,000 for a Chime of Bells stating:

> "If acceptable to the members of the Board of Trustees, Mrs. Mead and I would be pleased to add a chime of bells to our gift of the Mead Memorial Chapel."

Ex. 18.

Response: Undisputed.

61. Dr. and Mrs. Mead's addition gift of a Carillon of Bells was installed in the Chapel tower. There were eleven bells, the largest weighing 2500 pounds and the smallest 275 pounds. Each bell bears the inscription:

> "Presented to Middlebury College by John Abner and Mary Sherman Mead."
>
> "Ring in the valiant man and free, The larger heart, the kindlier hand; Ring out the darkness of the land, Ring in the Christ that is to be."
>
> Amended Complaint/Answer par 125. Amended Complaint Ex. 3-041 & 3-042.
>
> Ex. 23.

Response: Undisputed.

62. On June 23rd, 1915, Middlebury College's Board of Trustees gratefully accepted John Abner Mead's offer to add the Chime of Bells, evident in the following meeting minutes: "It was voted that the gift of Mr & Mrs Mead be gratefully accepted." Ex. 19.

Response: Undisputed.

63. The entire cost of the Chime of Bells was paid directly by Mead to Meneely Bell Company in the amount of $6,960 in December 1915. Ex. 22.

Response: Undisputed.

64. The construction of the Mead Memorial Chapel proceeded over the next two years, during which time Dr. Mead attended meetings of the Mead Memorial Chapel Building Committee in Middlebury, met with architects, approved project designs, controlled the budget, and provided credit and payment for all labor and

materials. Ex. 37. Amended Complaint/Answer par 122.

Response: Undisputed except as to the characterization of the Chapel as the "Mead Memorial Chapel"; disputed to the extent this statement suggests that the name was an essential element of the gift or building.

65. Besides the costs of the Chapel building itself, Dr. Mead contracted and paid for a $5,000 pipe organ, $1,031 for Pilasters, and $1,559.39 for pews. Amended Complaint/Answer par 123.

Response: Immaterial.

66. As the College grew, changes were inevitable. The balconies were added in 1938 (with the consent of Mead's daughter, Mrs. Carl Hinsman, see Exhibit 46), increasing the seating capacity to 715. The original organ was replaced in 1971 by the large Gress-Miles organ. The tower now holds a wonderful 48-bell carillon, cast and tuned in France from the original bells and other sets. It is played regularly. Seven of the original eleven bells were recast and reinscribed with Mr. and Mrs. Mead's presentation inscription and Bible verse so that each of the original eleven Bells remain as they were originally inscribed with Dr. & Mrs. Mead's name on each bell. Ex. 23. Amended Complaint/Answer 130.

Response: Undisputed.

67. President Thomas would later recount while Eulogizing Governor Mead at his funeral in 1921:

> For a year and a half we worked together in the consideration of plans and details and *the result was* a structure which a professor of Yale College pronounced the other day *one of the most beautiful buildings in*

> *North America*. Stately, reverent, graceful, combining the classic beauty of ancient Greece, the chaste dignity of our Puritan fathers, and the mystic impressiveness of the early Christian builders, its daily assemblies make subtle impressions on the youth who gather there speaks to them without other voice of "the light that never was on land or sea."
>
> Complaint Exhibit 8-034 to 8-035 (emphasis supplied). Amended Complaint/Answer par 129.

Response: Undisputed.

68. The Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916 during which Dr. Mead made a Presentation Speech, recalling his grandson's role in the Groundbreaking and Setting of the Cornerstone two years earlier, when at 3 years old, "Little John" placed his Bible and family tree in the cornerstone:

> With the labor of love and devotion all complete, it is with great pleasure and an honor that I, through him who assisted me some two years since "in removing the soil" for the "setting of the corner stone", and who placed under the same his token of love, - his Bible and a short history of his relation to those who made this Temple possible; as I state, it is with pleasure, that through him, I may present to you, Doctor Brainerd, former President of this College, the keys to the Mead Memorial Chapel, - and may the Kind Providence who governs all our efforts for the greatest good and happiness of his children, give you all strength and wisdom, - that your and our fondest and most extravagant anticipations of this day may be more than realized, in the years that are to come.
>
> Ex. 33. Amended Complaint/Answer par 131.

Response: Undisputed that the Mead Memorial Chapel Dedication Ceremony was held on June 18, 1916, during which Dr. Mead made a presentation speech. Further undisputed that Ex. 33 is a marked-up draft of Mead's speech, and that the foregoing text appears in that draft.

69. Mead's speech was followed by "Little John," now 5-years, presenting

the Keys to the Mead Memorial Chapel to the College Trustees. Amended Complaint Ex.4-011. Amended Complaint/Answer par 132.

Response: Immaterial.

70. Dr. Brainerd, Former President of Middlebury College accepted the Keys on behalf of the Trustees and stated the following in his acceptance speech:

> Doctor Mead:-
>
> I esteem it a great privilege to appear in behalf of the President and Fellows of Middlebury College and accept publicly, your gift of this beautiful sanctuary, that we have this day met to dedicate to the service of Almighty God. For many years, especially since the old chapel proved too small to hold even the half of our students, it has been the fond hope and the earnest prayer of the friends of the College, that in God's providence there might appear a man of the religious fervor and the financial ability requisite to meet this urgent need for a larger and more suitable edifice. Today our ardent hopes are realized; our prayers are graciously answered. *And to me it is especially gratifying that our benefactor is my beloved classmate, one to whom I am bound, now for fifty six years, by ties of the warmest friendship*.
>
> During these many years (which have passed with us so swiftly) the Heavenly Father has been pleased to grant you strength of mind and body, and varied opportunities for doing great service to your fellowmen. How well I recall the patriotic zeal with which, while yet a student in college, you enlisted in the war to maintain the union of these United States. [Unreadable word] later, as a well-trained physician, you served in another war—against the diseases that distress mankind; and by sound judgement and kindly sympathy achieved an enviable reputation in his beneficent calling. Still later your executive talent enabled you to build up a great industry, whose products are now used in every civilized portion of the world. More recently you served the commonwealth of Vermont, in the highest public office, with business sagacity, with fidelity, and with honor. *But the noblest deed of all---the one for which future generations will hold you most in grateful remembrance*---is the erection of this spacious and attractive chapel, where the religious life of the College may find fitting expression and the stimulus of hallowed associations.

> With grateful hearts, *dear brother*, we accept your generous gift: and we assure you of our earnest purpose so to utilize its opportunities for religious culture, as to promote the growth of earnest Christian character in the students of Middlebury College.---*Here for generations yet to come the melodious bells of this Chapel shall sound out over the Campus and the Town* the strains of Christian music, that from childhood have awakened in our souls the sentiments of faith and courage and earnest living.
> . . .
> The lord reward you, dear friend, for all that you have done, or may yet do, for the good of others; and may the years of earthly life that still remain be your best years, filled with blessed memories and abiding peace.

Ex. 34. Amended Complaint/Answer par 133.

Response: Undisputed that Brainerd delivered a speech at the Mead Memorial Chapel Dedication Ceremony. Further undisputed that Ex. 34 is a draft of Brainerd's speech, and that the foregoing text appears in that draft.

71. The 1916 Kaleidoscope, the Middlebury College Annual was dedicated to Governor Mead with a photo of the Chime of Bells and a poem "The Chapel Bell." Ex. 36.

Response: Undisputed.

72. On September 19, 1916, President Thomas sent invitation to Dr. Mead and his family to attend the first assembly of students at the Mead Memorial Chapel:

> We have our opening Thursday morning of this week at nine o'clock. All the faculty and students will be together in the new chapel and I am expected to make an opening address. I am sure it would do much to this first assembly of students in the Mead Memorial Chapel if you and Mrs. Mead could be present, especially if you could bring little John and his father and mother. I know you are very busy, and of course I would not impose it as a duty, but if you can run up we will all be very glad to see you.

(Amended Complaint Ex. 4-027). Amended Complaint/Answer par 135.

Response: Undisputed.

73. President Thomas' Address to the first assembly of students in the Mead Memorial Chapel on September 19, 1916 began:

> At the opening of the 117th year of Middlebury College and at this first student assembly in this stately and beautiful chapel, whose dignity and impressiveness must move us all to serious and earnest thought, I wish to sound a note of progress in the things which make up the inner life of a college. . . . Surprise as well as admiration is expressed by every visitor to this Mead Memorial Chapel . . . They had not imagined that such structures had been erected for any college in Vermont.

(Amended Complaint Ex. 4-032). Amended Complaint/Answer par. 136.

Response: Undisputed.

74. Middlebury College's website explains the import and significance of the Mead Memorial Chapel (now referred to as the "Middlebury Chapel"), which symbolizes the aspirations of the College, just as Governor Mead intended:

> "This beautiful white marble structure rises on the highest point of the campus, its spire symbolizing the aspirations of the College."
>
> "The light which shines here nightly is seen in the entire valley. Over the portal are carved the words from Psalm 95:4, "The Strength of the Hills is His Also.'"

(Amended Complaint Ex. 6-001). Amended Complaint/Answer par. 138.

Response: Immaterial.

75. A Middlebury College Video which is contained on the college's website: Mead Chapel Turns 100, June 15, 2016 states:

> Middlebury College celebrated the Mead Memorial Chapel's Centennial in 2016 with a video production entitled "Mead Chapel Turns 100," featuring Middlebury College's Glenn Andres, Professor Emeritus,

History of Art and Architecture, in which he details the history, symbolism and importance of the "Mead Memorial Chapel" to Middlebury College, stating as follows:

"But the Chapel has continued to function in accord with President Thomas' larger vision of it as the college's meeting house. Of course it remained a place for Sunday services, for weddings, but also for college ceremonies, convocation, baccalaureate and until the completion of the Center for the Arts, it was also the main venue for the college concert series."

"The monumental centerpiece and aesthetic keystone for the college for 100 years, Mead Chapel has remained an important symbolic and central venue for college activities and traditions."

Middlebury College Video: Mead Chapel Turns 100, June 15, 2016, Glenn Andres, Middlebury College Professor Emeritus, History of Art and Architecture, 2016, (emphasis supplied). https://www.middlebury.edu/announcements/news/2016/06/video-mead-chapel-turns-100

(Complaint Exhibit 6-012.) Amended Complaint/Answer par.139.

Response: Immaterial.

76. In addition to the value of the building itself, Middlebury College Trustee and Treasurer John Fletcher felt that the gift toward construction of the chapel would be helpful in securing financial support for Middlebury from the State Board of Education, as referenced in his correspondence concurring with the acceptance of Mead's offer to build the Mead Memorial Chapel. Amended Complaint/Answer par 141.

Response: Immaterial.

77. Even the Middlebury Campus newspaper reported on the gift of the Mead Memorial Chapel:

. . . Every one felt that a gift of great significance and importance had

> come at a most opportune moment. . .
>
> And so Middlebury starts out on the road of progress once more, or rather continues steadily to advance despite discouragements and apparent setbacks. After the completion of the General Education [sic.] Board fund of $200,000 and the Carnegie report, it looked as if progress was at an end for a time, and that the college would be forced to battle to keep even. *Governor Mead has changed all that. His gift will inspire every friend of Middlebury to courage and optimism, and everyone will believe that still other gifts and yet more notable advance are to be the order of the day.*
>
> Ex. 1-018 (emphasis supplied).

Response: Undisputed.

78. After the Mead Memorial Chapel was built in 1916, Dr. Mead provided President Thomas with photos and other materials documenting the construction of the Chapel so President Thomas could create a booklet which, according to Mead, "might stimulate some of our friends to pattern after Mr. Hepburn's example and give you an elegant dormitory for the girls or possibly something else which you might more desire at this time." Amended Complaint/Answer par.145.

Response: Immaterial.

79. Mead offered to pay the cost of publication of the booklet and wrote to President Thomas, "To be frank with you, I have special hopes that it may be productive of great good to our college, as I do feel that others can be made specially interested in our Alma Mater, and that the full history and description of the Chapel should induce others to lend a helping hand." Amended Complaint/Answer par 146.

Response: Immaterial.

80. In September of 1916, Pres. Thomas ordered 250 copies of the "Hymnal

of Praise" with the inscriptions "MEAD MEMORIAL CHAPEL," stamped on the covers in gold, as evident here:

> "I wish now to order 250 copies of the Hymnal of Praise, cloth binding, with MEAD MEMORIAL CHAPEL stamped in gold on the covers."
>
> Ex. 39.

Response: Immaterial.

81. In December of 1916, John Abner Mead agreed to pay for Hymn Boards to be installed in the Mead Memorial Chapel and delegated the choice of the design to Pres. Thomas:

> I have read your letter with interest and should be more than willing to leave the judgement in this matter to yourself, though I must confess to you, as you state, that at the same money I should prefer the simpler board. . . . P. S. Kindly send bill when the same is obtained."
>
> Ex. 40.

Response: Immaterial.

82. John Abner Mead made financial contributions to Middlebury College during his lifetime in addition to erecting the Mead Memorial Chapel. Ex. 40, 41 ($1,000 in 1918 to the Endowment Fund). He left no provision for Middlebury College in his Last Will and Testament. Defendant's Exhibit GG.

Response: Disputed that Mead "erect[ed] the Mead Memorial Chapel." Otherwise immaterial.

83. Dr. John Abner Mead died of pneumonia at his home in Rutland on January 12, 1920. He was 78 years old. His wife, daughter, grandson, and son-in-law survived him. Amended Complaint/Answer par 90. Def's Ex. GG.

Response: Undisputed.

84. At Governor Mead's funeral on January 16, 1920, Middlebury College President John M. Thomas gave the Eulogy which was published in its entirety in the Middlebury Register the next day and stated in part:

> *As to his gift of the Mead Memorial Chapel, I can not do better than to quote from the letter in which he announced his purpose.*
>
> [Full text of Mead's Offer Letter]
>
> *This afternoon, as we pay here our tribute of honor and affection, the chimes which bear his name on every bell are sounding out* the hymns I loved and which he chose to hear the first time they were played, "Nearer my god to Thee", "Lead Kindly Light", "God be with you 'till we meet again". *The dedication of the Chapel is complete – The Mead Memorial Chapel.*
>
> So our friend built his empire in our midst. If another could have built it, another did not. He loved his work and he gave his all to it to the very last. *He carved his name high in the marvelous roll of Vermont's men of achievement, and he earned his rest.*
>
> Ex. 8-034 to 8-035. Amended Complaint/Answer par 137.

Response: Undisputed that the foregoing represents a portion of the text printed in the cited Middlebury Register article. Disputed that the "full text" of Mead's Gift Letter appears in the cited exhibit.

85. In 1920, Middlebury College's Board of Trustees paid tribute to Mead, evidenced in their meeting minutes:

> "*In the death of Ex-Governor John Abner Mead of the Class of 1864 Middlebury College has lost one of its most distinguished alumni of the State of Vermont, and one of the most helpful of its Trustees and most generous of its benefactors.* Governor Mead was a notable example of those successful men of our nation who have pushed their way upward against great obstacles and by force of mind and will and character succeeded to positions of great responsibility and usefulness in the

> industrial world and in public life. His career as a physician was honorable and highly useful. Turning to business he became one of the masters of industry in New England. *In the gift of the Mead Memorial Chapel he endowed the college with one of the most beautiful buildings on any campus in America, which will speak to coming generations of his wisdom and foresight in benevolence and symbolize the strength of character of its donor."*
>
> Ex. 42.

Response: Undisputed.

86. John Mead was buried at the Mead Family plot in Evergreen Cemetery in Rutland with his ancestors, including Colonel James Mead and Mercy Holmes Mead, whom John Abner Mead had reinterred there from the West Rutland Cemetery in 1895 and where he had replanted the sod from the Mead Memorial Chapel Groundbreaking Ceremony in June 1914. Amended Complaint/Answer par 92. Ex. 24-2.

Response: Immaterial.

87. John Abner Mead's headstone records his service in the Union Army, his professional life as "a beloved physician in Rutland for 21 years," and his many offices held including his Governorship of course. His headstone contains the final engraving:

> "A CHRISTIAN AND PHILANTHROPIST"
>
> Amended Complaint Ex. 8-008. Amended Complaint/Answer par 93.

Response: Undisputed.

88. On June 14th, 1920, Pres. Thomas wrote to Carl B. Hinsman about "completing" the west end of the Chapel with marble, as it had been built of wood to

save costs when the Chapel was erected by Mead and stating:

> "My thought is that it is something that ought to be borne in mind to be done at the proper time and that measures should be taken to insure that the Chapel will be preserved as a memorial to Dr. Mead."
>
> Ex. 43.

Response: Immaterial.

89. On April 29th, 1931, Carl B. Hinsman wrote to Pres. Moody about repairs to the spire, and expressed strong desire that it be restored:

> "Mrs. Hinsman and I have studied these pictures very carefully and we would really feel it quite a calamity of the spire was removed entirely. On referring to the booklet which was gotten out and presented to Dr. Mead giving an account of the design, erection and dedication of the Building, considerable stress was laid from these several standpoints on the fitness and beauty of the spire as a part of the architectural scheme. The Building occupies such a commanding position on the Campus and in the landscape surrounding it that it would be indeed regrettable if the spire should be abridged or done away with.
>
> Mrs. Hinsman feels quite strongly that the spire should be restored to its original condition, and from your description of the situation, it would be less of a task to do that than it would be to remove it entirely. Thanking you for bringing the matter to our attention…"
>
> Ex. 44.

Response: Immaterial.

90. On May 8th, 1931, Pres. Moody wrote to Carl B. Hinsman saying the matter was settled, and that they were to proceed with repairs to the spire:

> "On receipt of your letter of April 29th, I told Mr. Fritz, our Business Manager, that we would look upon the matter of the spire of Mead Chapel as settled, and we are going to proceed with the repairing of the spire. … I feel that it is like talking of gilding a lily to talk of improving the Mead Chapel, for it is by all odds the most harmonious building we have on the campus and the most beautiful."

Ex. 45.

Response: Immaterial.

91. On July 20th, 1937, Pres. Moody wrote to Mrs. Carl Hinsman asking for consent to add the galleries as balcony seating, a copy of which is as follows:

> My dear Mrs. Hinsman:
>
> Wednesday morning of last week we began the work of putting galleries in Mead Chapel, and the scaffolding is already up and active work on the walls has begun.
>
> The final estimate as detailed is $11,038.59. It will cost rather more than we at first expected. I hope very much that you will feel that I am only sending this information because of your request for it, and even more strongly I hope you will not feel that we submitted the idea of galleries to you with any thought that it was in any way a suggestion or a plea for help. The gift of the Chapel was a very generous one and no one can estimate the contribution it has been over the years, both from the physical as well as the spiritual standpoint.
>
> The only point was that the college had so outgrown all its quarters that something had to be done, and we were not willing to consider changing our practice in respect to Chapel attendance, so great has been its value. And we did wish to have your consent to any change made in a building given to the college by your father.
>
> In exactly the same way, when we had outgrown the Starr Library, which has given the college by the Starr family, and had in hand money for its enlargement, we went to Dr. Starr for permission to make the enlargement. He not only consented to our plans, but refused to allow another donor to give anything toward the construction, saying that since it was a Starr Library, he did not wish any but star money to go into the building. The amount was more than he wanted to lay out in one payment so he spread it over several years, reimbursing the College in partial payments. We had contemplated a change in Hepburn hall, but there again I would not be willing to go ahead without the consent of Mrs. Hepburn.

Ex. 46.

Response: Immaterial.

92. On April 2nd, 1985, the re-inscription of 7 of the original 11 bells which were recast in 1985, were ordered with Mead's gift and verse:

> "Following our telephone conversation of March 28, 1985, I write to confirm that the following inscription should appear on the first eleven bells:
>
> GIFT OF GOVERNOR MEAD AND MARY SHERMAN MEAD PRESENTED TO MIDDLEBURY COLLEGE BY JOHN ABNER AND MARY SHERMAN MEAD
>
> A.D. 1915
>
> RING IN THE VALIANT MAN AND FREE THE LARGER HEART THE KINDLIER HAND RING OUT THE DARKNESS OF THE LAND RING IN THE CHRIST THAT IS TO BE"
>
> Ex. 47.

Response: Immaterial.

93. On May 9th, 1908, Pres. Thomas wrote to D. K. Pearsons:

> "I hope you will see your way to give for education in your native State. We should have at least $250,000.00 for a Woman's College, and if you will give me a start, I will set out to get it. But I plead with you for $50,000.00 now, to meet the pressing need of a building for our girls to live in, some central place to gather for their social life…
>
> Marble is cheap in Vermont, and for the sum named we will erect a building that will do you lasting honor, and will be a blessing to hundreds of girls who otherwise would be without opportunity of higher education."
>
> Ex. 50, p.1-2.

Response: Immaterial.

94. In September 1908, the Middlebury College Bulletin volume III reads:

> "THE D. K. PEARSONS *Pearsons Hall* BUILDING AND ENDOWMENT FUND

Ex. 50, p.5-7.

Response: Immaterial.

95. In 1909, Middlebury College Board of Trustees accepted Dr. Pearsons' offer, as seen in the following meeting minutes:

> "Voted that the Board engage in an active effort to meet the conditions of the offer of D. K. Pearsons to give $25,000 – provided that $75,000 – additional be raised, and that the matter be informed to the President-elect with favor."

Ex. 50, p.8.

Response: Immaterial.

96. On February 9, 1910, Pres. Thomas wrote to D. K. Pearsons:

> "Will you give me $50,000 if I will raise $150,000 additional? I want it to build a dormitory for boys, and to provide more recitation rooms. If you will give me until July 1, 1911, I know I can get the money, and I can have the dormitory ready for that fall. I am in better shape to get $150,000 now than I was to get the $75,000 when you made the offer of $25,000. … *We want to call it Pearsons Hall, if you will let us."*

Ex. 50, p.12-13.

Response: Immaterial.

97. On February 9, 1910, Pres. Thomas wrote to John G. McCullough:

> "But if you could make the "McCullough Gymnasium Fund" $25,000, on condition that I secure a like sum from other sources, I believe I could get the balance for a "McCullough Gymnasium" before next commencement."

Ex. 51, p.2-3.

Response: Immaterial.

98. On March 4, 1910, John G. McCullough wrote to Pres. Thomas:

> "As to your second suggestion, you seem quite confident of being able to raise before Commencement from other sources the sum of $25,000. to enable you to erect a fitting Gymnasium for the College, provided I would give a like sum for that purpose, thus making your Gymnasium fund at least $50,000. You may count of me for the second $25,000. upon the conditions stated in your letter."

Response: Immaterial.

99. On June 25, 1910, Pres. Thomas wrote to John G. McCullough:

> "I was able to announce that Alumni and friends have pledged $25,000. Thus meeting the conditions of your promise of an equal sum made on the…gymnasium fund of $60,000."
>
> Ex. 51, p.4-5, Ex. 51, p.11.

Response: Immaterial.

100. On May 25, 1911, Pres. Thomas wrote to John G. McCullough referencing the "McCullough Gymnasium." Ex. 51, p.16.

Response: Immaterial.

101. By undated letter, Mrs. James M Gifford wrote to The President and Fellows of Middlebury College indicating:

> It is my intention to build a hall in honor of my beloved husband for the use of the boys of Middlebury College, to be known as "THE JAMES M. GIFFORD MEMORIAL HALL for BOYS", the construction of which shall according to his wishes follow the plan used by Mr. A. Barton Hepburn
>
> Ex. 53, Page 1.

Response: Immaterial.

102. On June 10, 1939, at the Board meeting, the Board read the offer letter from Mrs. Gifford reviewed its report and voted that President Moody be authorized

to communicate the Board's acceptance. Ex. 53, p.6-7

Response: Immaterial.

103. On July 20, 1939, Mrs. Gifford wrote to the President and Fellow of Middlebury College, stating:

> As I advised you in my letter of June 9th 1939 it is my intention to build a hall for the use of the boys of Middlebury College, to be known as quote the James M Gifford Memorial Hall for boys. UN quote I now desire to make a formal agreement with the college for the erection of this building
>
> I hereby request you to permit the erection of this building on the land belonging to Middlebury College north of Meade memorial Chapel, in a situation corresponding to the location at Hepburn hall South of the Chapel, the building to be erected of native Vermont limestone and the plans to correspond generally with the plans of Hepburn hall but with such minor variations as may be directed by the college authorities and approved by me, or, may be desired by the college authorities and approved by me, or in the case of my death, my personal representative.
>
> Ex. 53, page 8.

Response: Immaterial.

104. On July 20, 1939, The President and Fellows of Middlebury College acknowledged receipt of Mrs. Giffords offer:

> "…in receipt of your letter of July 20th 1939, in which you offer for yourself, your heirs, executors and administrators, to pay the cost of building and furnishing and equipping a hall for the use of the boys of Middlebury College, to be known as, "The James M. Gifford Memorial Hall for Boys", provided the college will permit the erection of the building on its land to the north of Mead Memorial Chapel in a situation corresponding to that of Hepburn Hall to the to the South of the Chapel.
>
> I have been authorized by the president and fellows of Middlebury College to accept this generous offer and to advise that the college hereby agrees that the hall may be erected at the place requested by you and in accordance with the plans as stated by you

Ex. 53, p.10.

Response: Immaterial.

105. On October 14, 1939, the Report of Middlebury College building committee of James M Gifford Memorial Hall for boys reads:

> "JAMES M. GIFFORD MEMORIAL HALL FOR BOYS. … As Mrs. Gifford intends to sign the building contract herself and requires that the plans and specifications must meet with her approval,"

Ex. 53, p.11.

Response: Immaterial.

106. On October 31, 1940, the Board's Acceptance of the "James M. Gifford Memorial Hall for Boys" reads:

> "The graciousness and hospitality of this building are a symbol of the generous nature of his whose name it bears. … *It is a fitting memorial to a life which exemplified all these virtues, simple but massive, harmonious yet strong.* … We recognize that though only the name of James M. Gifford adorns this building, nevertheless into its stone and mortar has gone something more, - a lifetime's devotion, to one worthy of that devotion. *This gift to the College which Mr. Gifford loved so greatly and served so long, so faithfully and so efficiently, is gratefully accepted, not only for its own sake, but for the sake of him in whose honor it stands and for your sake, Mrs. Gifford, who have so wonderfully preserved his name, along with the great names of the College, - Painter, Starr, McCullough, Mead, Hepburn, and now Gifford."*

Ex. 54 (emphasis supplied).

Response: Immaterial.

107. Built of Vermont marble and placed on the highest point on campus as Dr. Mead directed, the "Mead Memorial Chapel" stands not only as the most dominant building on the campus, but has become an iconic feature of Middlebury's

landscape, and has been featured in the College's promotional materials. Amended Complaint/Answer par. 4.

Response: Immaterial.

108. In the early morning hours of Monday, Sept. 27, 2021, Middlebury College removed the wooden "Mead Memorial Chapel" sign, which hung in a niche above the entrance of the Chapel, identifying the College's house of worship and "Meeting House" for community gatherings for the past 105 years. Amended Complaint/Answer par. 6.

Response: Undisputed that Middlebury removed the wooden "Mead Memorial Chapel sign on September 27, 2021.

109. The College did not issue a public statement in advance of the removal of the sign for "Mead Memorial Chapel." Amended Complaint/Answer par. 7.

Response: Undisputed.

110. The College did not notify the Mead family nor seek their consent to alter the building, to remove the sign from the building or to remove the Mead name from the memorial chapel. Amended Complaint/Answer par. 7.

Response: Immaterial.

111. In 1914, when Mead offered to erect a memorial chapel, the following named buildings existed to memorialize or honor donors or others who served the College as if detailed in Middlebury College Bulletin 1913-1914, Vol. VII, December, 1913, No. 4:

Painter Hall - in 1810 Colonel Seth Storres of Middlebury gave to the

corporation 30 acres of land upon which the first building of the college was erected in 1814 it was called at first "West College" but in 1846 was named Painter Hall in honor of Gamaliel Painter, one of the most generous patrons of the college and who had bequeathed all his property to the institution. It has been in continuous use since its erection and it's the oldest college building in Vermont. Id. at 99 & 117.

Starr Hall - a large dormitory, was erected by the beneficence of Charles and Egbert Starr in 1861, and rebuilt in 1865, after a disastrous fire, by the same donors. Id. at 100 & 117.

The Egbert Starr Library - the beautiful and convenient marble library now occupied was erected with funds bequeathed by Mr. Egbert Starr, and dedicated during the Centennial exercises of the College in July 1900. The cost of the building was $50,000, to which was added $5000 for its decoration and $5000 for the purchase of books by the son of the donor, Dr. M Allen Starr. Id. at 109.

The Warner Science Hall - the large and convenient Warner Science Hall, was erected in 1901 through benefactions of the late Ezra J Warner, of the class of 1861. The building is a memorial of his father, Hon. Joseph Warner, formerly a resident of Middlebury, and a trustee of the college from 1850 to 1865. By the will of Mr. Warner the college has received a bequest of $25,000 for the care and maintenance of the hall, and for the purchase of supplies for the departments which it accommodates. Id. 111.

The McCullough Gymnasium - in 1910 Hon. John G McCullough of Bennington offered to give $25,000 towards the erection of a gymnasium, and the alumni of the college completed a gymnasium fund of $50,000 at commencement of that year the building was dedicated at the commencement of 1912. Id. at 114.

The Porter Athletic Field - the college has recently acquired a new athletic field, purchased and equipped at a cost of $10,000, the gift of a friend. Id. at 115.

Pearsons Hall - a new building for women, was opened at the beginning of the college year in 1911. Id. at 118.

Battell Cottage – named for Hon. Joseph Batell of the Class of 1823, a large donor to the college, was enlarged in 1910. Id. at 118.

Plaintiff's Opposition to Motion to Dismiss, Exhibit 11 (Middlebury College

Bulletin 1913-1914, Vol. VII, December, 1913, No. 4).

Response: Immaterial.

112. It appears that currently, Middlebury College has named more than 70 buildings on its campus for proper family names. Ex. 55.

Response: Immaterial.

Dated at Burlington, Vermont, this 7th day of February, 2025.

By: *\/s\/ Justin B. Barnard*
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STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
Plaintiff	)
v.	)
	)
The President and Fellows of	)
Middlebury College	)
Defendant	)

PLAINTIFF'S SURREPLY TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT #2

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and hereby respectfully submits this Surreply to respond to Defendant's Reply related to its Motion for Summary Judgment #2 for the Court's consideration:

MEMORANDUM

I. PLAINTIFF DOES NOT SEEK RECOVERY FOR REPUTATIONAL HARM

Defendant Middlebury College's Motion for Summary Judgment #2 and its Reply Memorandum make the following repeated false representations:

- Plaintiff does not disagree with the characterization of his covenant claim as an action seeking recovery for reputational harm;
- Plaintiff does not contest the fact that the law denies the estate of a deceased individual a remedy for reputational harm;

See Defendant's Reply at p. 3.

Contrary to Defendant's repeated false assertions and "spin" which seeks to

mischaracterize Plaintiff's claims, Plaintiff's Good Faith and Fair Dealing claim is premised not upon harm to John Abner Mead's reputation, but upon the Defendant's actions in unfairly, dishonestly, or without reasonable grounds, removing the Mead name under false pretenses, thereby interfering with the essential purpose of the Mead Memorial Chapel contract: to symbolize, honor and MEMORIALIZE the Mead ancestors. Plaintiff is alleging that Defendant's actions were unfair, dishonest, or without reasonable grounds, and that such actions effectively destroyed and/or voided Defendant's performance of the Contract and adherence to Defendant's Good Faith and Fair Dealing obligations.

Defendant Middlebury College's Motion for Summary Judgment #2 and its Reply Memorandum make the additional following repeated false representations:

- Plaintiff admits that the gift documents do not contain any language or terms restraining Middlebury from making public statements about former Governor Mead,2 and he fails to address Middlebury's argument that *implying* such a restraint on the College's speech would exceed the role of the covenant and violate constitutional principles requiring that a waiver of First Amendment rights be knowing, clear, and unequivocal;

- Plaintiff does not challenge the fact that a party's motivations for an alleged breach cannot give rise to a claim under the implied covenant.

See Defendant's Reply at p. 3.

This is just another red herring thrown up by Defense Counsel who yet again seeks to pull us down a rabbit hole of inapplicable law that has no bearing on whether or not Middlebury College breached its Covenant of Good Faith and Fair Dealing when it removed the Mead name from the Chapel and falsely claimed that the Mead Memorial Chapel was named for John Abner Mead, not for his ancestors. In the process of removing the name, yes, of course they harmed the reputation of John Abner Mead. However, Plaintiff's claim is based upon the Contractual obligation to allow the building to be named as a memorial to the Mead ancestors that was the *quid pro quo* entered into by the 1914 Trustees.

In direct contrast to the purpose of the contract, the 2021 Trustees false claim that the Mead Memorial Chapel was named for John Abner Mead and then the Trustees' removal of the Mead name based upon that false claim, was a direct interference with and complete destruction of the purpose and essence of the Mead Memorial Chapel contract which was a breach of the covenant of good faith and fair dealing.

Furthermore, the motive of the Defendant is absolutely relevant to a finding of bad faith. How else would one know whether the ill will or improper purpose element of bad faith was present? The question needs to be answered whether Middlebury College's actions were done for an ulterior bad motive or with ill will or intent to harm. In the insurance context, an insurance company's motivation in falsely denying claims is for an improper purpose - so they don't have to perform the contract and pay the claims. In the Mead Chapel context, Middlebury College made up the false story of the Chapel being named for John Abner Mead so that they could use him as a scapegoat to pretend to cleanse the institution of its only visible connection to Eugenics. But that story was false. And telling that false story destroyed the essential purpose of the contract, to memorialize the Mead ancestors. That is the type of conduct that amounts to bad faith and determining the presence of ill will or improper purpose necessarily involves the breaching party's motives.

II. CONTRACT AND PROMISSORY ESTOPPEL ARE ALTERNATE THEORIES OF RECOVERY AND PLAINTIFF'S ALLEGATION THAT THERE WAS A QUID PRO QUO DOES NOT DEFEAT A PROMISSORY ESTOPPEL CLAIM

Defense Counsel's mischaracterizations continue on page 11 of Defendant's Reply, wherein he erroneously states the following:

> Plaintiff does not address the fact that what he has alleged—the imposition of a naming condition as a "quid pro quo" for the making of a donation, Amended Complaint ¶ 16—falls outside the scope of promissory estoppel. As Middlebury has explained, promissory estoppel only applies where there is "unbargained-for reliance" on the part of the claimant.

Defendant's Reply at p. 11.

At its core, the doctrine of promissory estoppel seeks to prevent unjust outcomes when one party relies on a promise that is not supported by consideration (i.e., a bargained-for exchange). Promissory estoppel, while distinct from traditional contract law, shares some key similarities, particularly the notion that fairness requires enforcing promises under certain circumstances.

Promissory estoppel rests on several elements:

1. **A clear and definite promise** made by the promisor.
2. **Reasonable reliance** by the promisee on the promise.
3. **Detrimental reliance**, meaning the promisee took action or refrained from action based on the promise.
4. **Injustice**, where the failure to enforce the promise would result in an unfair or unjust outcome.

In Vermont, as elsewhere, courts apply these general principles to determine when promissory estoppel should be invoked.

Promissory estoppel is a highly flexible legal doctrine rooted in equitable principles. Courts have ruled that the question of detrimental reliance is a factual issue for the jury, while the question of whether injustice would result without enforcement is a legal issue for the judge.

In the case before the Court, an examination of all of the facts and circumstances, the words and actions of the Trustees amount to an undeniable promise to name the Chapel the "Mead Memorial Chapel" and that promise was reasonably interpreted and relied upon by Governor Mead when he decided to erect the Chapel. That promise, that the Chapel would be named as a memorial to the Mead ancestors was expected by Mead to be forever, or as long as

the Chapel existed, because that is what a memorial is and does. It memorializes people or events so that, just as repeatedly articulated by Middlebury College's President, Trustees, and Faculty, future generations will be made aware of history.

The Mead contract claim of course alleges that there was a quid pro quo: the terms and conditions of the offer letter, including that the chapel be known as the "Mead Memorial Chapel" in exchange for Mead erecting a chapel, NOT to donate funds. In the event that the contract claim fails and there was no quid pro quo, the alternate claim of Promissory Estoppel is plead because Plaintiff can establish the elements of the claim: Mead was induced to act and erect the Chapel to his significant financial detriment, because he reasonably expected that Middlebury College made a clear and definite promise that the chapel would be forever known as "the Mead Memorial Chapel". After all, a name is a name and a memorial is forever or for as long as the memorial lasts.

Defense Counsel also criticizes that the materials submitted are duplicative to those submitted for the contract claim. While it is true that the many of the same evidentiary materials were submitted in opposition to Defendant's Motion for Summary Judgment, that is because:

1. Plaintiff's exhibit submissions in MSJ #1 were designed to provide the Court with context and evidence from which to resolve any ambiguities in the contract.
2. Plaintiff's exhibits in MSJ #2 are resubmitted because they are relevant evidence upon which the court will determine what Promise was made to Mead outside the four corners of the Offer Letter and Official Acceptance of the Trustees in the Minutes. Understanding the Promise and whether it was reasonable are factual determinations if the elements of promissory estoppel are established.

Lastly, Defense Counsel complains that Plaintiff has not explained why Promissory Estoppel would provide a longer period of time for the naming of the chapel than the contract would. That is quite simple. While the law may disfavor perpetual obligations, equity does not. Equity allows the totality of the circumstances to be considered to determine fairly, whether there was a promise, whether it induced Mead to act to his detriment, and whether Mead's reliance was reasonable. Such an analysis has nothing whatsoever to do with the court imposing what it believes to be a reasonable contract term of 100 years. That is the beauty of equity. It does what the law does not strictly permit, in order to serve the ends of justice.

WHEREFORE, Plaintiff requests that the Court protect Plaintiff's due process rights and allow time for Discovery on the Good Faith and Fair Dealing Claim before deciding the summary judgment motion and that the Court Deny Defendant's Motion for Summary Judgment on the Promissory Estoppel Claim as an alternate claim which should be submitted to the jury along with the question of the existence of a contract.

DATED at Town of Randolph, County of Orange, and State of Vermont this 14th day of February, 2025.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead,
Plaintiff

By: /s/ L. Brooke Dingledine

L. Brooke Dingledine, Esq., ERN 2387
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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
Plaintiff	)
v.	)
	)
The President and Fellows of	)
Middlebury College	)
Defendant	)

PLAINTIFF'S RULE 56(d) MOTION
REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
FOR THE
BREACH OF GOOD FAITH AND FAIR DEALING CLAIM

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and hereby moves this Honorable Court pursuant to VRCP Rule 56(d) for appropriate relief from Defendant's Motion for Summary Judgment #2 for the Breach of Good Faith and Fair Dealing Claim, and respectfully requests an Order from the Court as follows:

MEMORANDUM

Vermont Rules of Civil Procedure Rule 56(d) provides:

> (d) **When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
>
> (1) Defer considering the motion or deny it;
> (2) allow time to obtain affidavits or to take discovery; or
> (3) issue any other appropriate order.

VRCP Rule 56(d).

The Affidavit of L. Brooke Dingledine, Esq. is attached hereto and incorporated herein by reference. As the attorney of record for Plaintiff in the above entitled matter, the Affiant has provided the following specified reasons why Plaintiff cannot present facts essential to justify its Opposition to Defendant's Motion for Summary Judgment on Plaintiff's Breach of Good Faith and Fair Dealing claim ("GFFD") which include the following representations:

Discovery in this matter was bifurcated such that Plaintiff has yet to engage in discovery regarding Plaintiff's Breach of GFFD claim for the removal of the Mead name from the Mead Memorial Chapel. Such Discovery is necessary to establish the evidence required to prove that Defendant acted in bad faith with regard to the Contract between the parties (the existence of which is still subject to a jury determination).

Contrary to Defendant's repeated assertions and "spin" which seeks to mischaracterize Plaintiff's claims, Plaintiff's GFFD claim is premised not upon harm to John Abner Mead's reputation, but upon the Defendant's actions in unfairly, dishonestly, or without reasonable grounds, thereby interfering with the essential purpose of the Mead Memorial Chapel contract: to symbolize, honor and MEMORIALIZE the Mead ancestors. Plaintiff is alleging that Defendant's actions were unfair, dishonest, or without reasonable grounds, and that such actions effectively destroyed and/or voided Defendant's performance of the Contract and adherence to Defendant's GFFD obligations.

There are various ways in which a party can breach its obligations of good faith and fair dealing. In the context of contracts with insurance companies, breach of good faith and fair dealing can be based upon the **failure to conduct a proper investigation**. An insurance company, for example, may be considered acting in bad faith if they didn't adequately investigate a claim before denying it.

Misrepresentation of facts or policy terms is another application of bad faith in insurance contract. For example, an insurance company **i**ntentionally misinterprets information or misleads insureds about the contract to avoid paying a claim. In addition, i**ntentional misconduct** can be the basis of a bad faith claim. Evidence that the party acted with a deliberate intent to deceive or harm the other.

In this Mead Memorial Chapel case, there is a prima facie evidence of Defendant's **failure to properly investigate** based upon Middlebury College's incomprehensible lack of knowledge concerning the original naming of the chapel and that it was built as a memorial to the Mead ancestors, not to John Abner Mead himself. Therefore, Plaintiff should be entitled to inquire regarding **whether a proper investigation was conducted** relating to the purpose of the name Mead Memorial Chapel and the history of Middlebury College's 50 years of teaching Eugenics in its curriculum. For example: Was Defendant completely ignorant of the purpose of the Mead name as a memorial to and symbolic of the Mead ancestors? Did they even know that there was a written Offer Letter from Mead? Was Defendant completely ignorant of the Middlebury College's 50 years of teaching Eugenics in its curriculum? Was the removal of the Mead name a conscious and deliberate decision to deceive and cover up Middlebury College's vial Eugenics history?

There is also evidence of m**isrepresentation of facts or contract terms** based upon Middlebury College's refusal to acknowledge that it was under any obligation to name the chapel the Mead Memorial Chapel. Plaintiff should be entitled to inquire as to what information or lack thereof was this position based upon?

Lastly, Plaintiff should be entitled to inquire regarding whether there was intentional misconduct supporting the bad faith claim. Conducting Discovery to determine the Defendant's

actions or non-actions with regard to whether a proper investigation of facts was conducted, what was Defendant's knowledge or ignorance of those facts, and whether facts and information were disregarded or examined at all, will reveal whether there is evidence establishing intentional misconduct supporting Plaintiff's bad faith claim.

For all of these reasons, it is essential that Plaintiff be permitted to conduct Discovery to establish the facts that will bear on the determination of whether the Defendant acted in bad faith, breaching its covenant of Good Faith and Fair Dealing. Plaintiff earnestly and in good faith submits that Due Process requires no less.

WHEREFORE, Plaintiff prays for the following relief and Order from the Court with regard to Defendant's MSJ #2 for the GFFD Claim:

1. defer considering the motion;
2. allow time to take discovery; and
3. issue any other appropriate order that justice or equity require.

DATED at Town of Randolph, County of Orange, and State of Vermont this 14th day of February, 2025.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead,
Plaintiff

By: /s/ L. Brooke Dingledine

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STATE OF VERMONT

SUPERIOR COURT
Addison Unit

CIVIL DIVISION
Case No. 23-CV-01214

Hon. James H. Douglas,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
Plaintiff	)
v.	)
	)
The President and Fellows of	)
Middlebury College	)
Defendant	)

AFFIDAVIT OF L. BROOKE DINGLEDINE, ESQ.

I, L. Brooke Dingledine, Esq., hereby swear to the truth of the following to the best of my recollection, knowledge, opinion or belief:

1. My name is L. Brooke Dingledine. I am attorney of record for Plaintiff in the above entitled matter. For the following specified reasons, Plaintiff cannot present facts essential to justify its Opposition to Defendant's Motion for Summary Judgment on Plaintiff's Breach of Good Faith and Fair Dealing claim ("GFFD") as follows:

2. Discovery in this matter was bifurcated such that Plaintiff has yet to engage in discovery regarding Plaintiff's Breach of GFFD claim for the removal of the Mead name from the Mead Memorial Chapel. Such Discovery is necessary to establish the evidence required to prove that Defendant acted in bad faith with regard to the Contract between the parties (the existence of which is still subject to a jury determination).

3. Plaintiff's GFFD claim is premised not upon harm to John Abner Mead's reputation, but upon the Defendant's actions in unfairly, dishonestly, or without reasonable grounds, interfering with the essential purpose of the Mead Memorial Chapel contract: to symbolize, honor and MEMORIALIZE the Mead ancestors. Plaintiff is alleging that Defendant's actions were unfair, dishonest, or without reasonable grounds, and that such actions effectively destroyed and/or voided Defendant's performance of the Contract and adherence to Defendant's GFFD obligations.

4. In the context of contracts with insurance companies, breach of good faith and fair dealing can be based upon the **failure to conduct a proper investigation**. An insurance company, for example, may be considered acting in bad faith if they didn't adequately investigate a claim before denying it.

5. **Misrepresentation of facts or policy terms** is another application of bad faith in insurance contract. For example, an insurance company intentionally misinterpret information or mislead insureds about the contract to avoid paying a claim.

6. In addition, **intentional misconduct** can be the basis of a bad faith claim. Evidence that the party acted with a deliberate intent to deceive or harm the other.

7. In this Mead Memorial Chapel case, there is a prima facie evidence of Defendant's **failure to properly investigate** based upon Middlebury College's incomprehensible lack of knowledge concerning the original naming of the chapel and that it was built as a memorial to the Mead ancestors, not to John Abner Mead himself.

8. Plaintiff should be entitled to inquire regarding **whether a proper investigation was conducted** relating to the purpose of the name Mead Memorial Chapel and the history of Middlebury College's 50 years of teaching Eugenics in its curriculum. For example: Was Defendant completely ignorant of the purpose of the Mead name as a memorial to and symbolic of the Mead ancestors? Did they even know that there was a written Offer Letter from Mead? Was Defendant completely ignorant of the Middlebury College's 50 years of teaching Eugenics in its curriculum? Was the removal of the Mead name a conscious and deliberate decision to deceive and cover up Middlebury College's vial Eugenics history?

9. In this Mead Memorial Chapel case, there is evidence of m**isrepresentation of facts or contract terms** based upon Middlebury College's refusal to acknowledge that it was under any obligation to name the chapel the Mead Memorial Chapel. Plaintiff should be entitled to inquire as to what information or lack thereof was this position based upon?

10. Lastly, Plaintiff should be entitled to inquire regarding whether there was intentional misconduct supporting the bad faith claim. Conducting Discovery to determine the Defendant's actions or non-actions with regard to whether a proper investigation of facts was conducted, what was Defendant's knowledge or ignorance of those facts, and whether facts and information were disregarded or examined at all, will reveal whether there is evidence establishing intentional misconduct supporting Plaintiff's bad faith claim.

11. For all of these reasons, it is essential that Plaintiff be permitted to conduct Discovery to establish the facts that will bear on the determination of whether the Defendant acted in bad faith, breaching its covenant of Good Faith and Fair Dealing.

Further, the Affiant sayeth naught.

DATED at Town of Randolph, County of Orange, State of Vermont, this 14th day of February, 2025.

By: _____
L. Brooke Dingledine, Esq.

STATE OF VERMONT
COUNTY OF ORANGE, ss.

At Town of Randolph, in said County this 14th day of February, 2025, L. Brooke Dingledine personally appeared and made oath to the truth of the statements set forth herein.

Before me, _____
Notary Public #157.0009019

My Commission Expires:
January 31, 2027

LORI DIANE KEENE
NOTARY
PUBLIC
VERMONT

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

HON. JAMES H. DOUGLAS,	)
Special Administrator of the	)
Estate of John Abner Mead,	)
	)
Plaintiff,	)
v.	)
	)
THE PRESIDENT AND FELLOWS	)
OF MIDDLEBURY COLLEGE,	)
	)
Defendant.	)

MIDDLEBURY COLLEGE'S OPPOSITION TO
PLAINTIFF'S RULE 56(d) MOTION

Defendant The President and Fellows of Middlebury College ("Middlebury" or the "College"), by and through counsel, submits this memorandum in opposition to Plaintiff's Rule 56(d) Motion Regarding Defendant's Motion for Summary Judgment for the Breach of Good Faith and Fair Dealing Claim.

INTRODUCTION

Plaintiff is wasting the time and resources of both the Court and Defendant. Having ignored the requirements of Rule 56(d), Plaintiff now belatedly seeks to defer summary judgment to allow discovery on a thoroughly jumbled theory of liability that, to the extent any sense can be made of it, has no basis in the law. This has to stop. Plaintiff had ample opportunity to file a Rule 56(d) motion and did not do so until after briefing was complete.

More to the point, while Plaintiff's desire to pursue depositions might advance his interest in perpetuating a public dispute over the merits of and basis for removing the Mead name from Middlebury's Chapel, it will not and could not produce any evidence that would alter the course of this case. To the extent former Governor Mead's gift was construed as a contract, the Court has already ruled that the maintenance of the Mead name on the Chapel for over a century satisfied any contractual term. Middlebury was entitled to remove the name—and, indeed, no covenant claim can lie for its action in doing so, as that would overlap with the contract claim. The notion that, while Middlebury was not bound to continue using the Mead name, the covenant of good faith and fair dealing may be used to test the wholly irrelevant question of "whether a proper investigation" was conducted prior to removing the name is absurd. Plaintiff is simply seeking to delay judgment at this point; consistent with the mandate to facilitate the "just, speedy, and inexpensive determination of every action," V.R.C.P. 1, the Court should deny his bid.

ARGUMENT

A. Plaintiff's Rule 56(d) Motion Comes Too Late.

Plaintiff did not file his Rule 56(d) motion and supporting affidavit until one week after Middlebury submitted its summary judgment reply. As Plaintiff was required to file his motion at or before the time his opposition was due, the motion must be denied.

Rule 56(d) allows a court to defer or deny summary judgment where a

"nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition." It is derived from and substantively identical to Federal Rule of Civil Procedure 56(d) (the only difference being that the federal rule refers to an "affidavit *or declaration*"). *See* F.R.C.P. 56(d). Federal courts applying the rule "regularly hold that a Rule 56(d) motion or affidavit must be filed when the non-movant responds to the subject summary judgment motion." *Curtis v. Lever Up Inc.,* No. 20-CV-01873-DDD-NYW, 2022 WL 1015181, at *4 (D. Colo. Apr. 5, 2022) (collecting cases). The failure to file a Rule 56(d) motion at the time the opposition is due warrants denial. *See, e.g.*, *Mkrtchyan v. Sacramento Cnty.,* No. 217CV02366DADKJN, 2023 WL 6961889, at *3 (E.D. Cal. Oct. 20, 2023) (denying relief where "[p]laintiff did not file the pending Rule 56(d) request until more than two weeks after he filed his opposition to defendants' pending motion for summary judgment and four days after defendants had filed their reply brief" and collecting cases for proposition that "[c]ourts consistently deny Rule 56(d) requests in similar situations").

Here, Plaintiff requested and obtained an extension to oppose summary judgment without suggesting that he required additional discovery to present facts essential to his opposition. He then proceeded to file a sixty-page opposition memorandum that did not request relief under Rule 56(d) or attach an affidavit in compliance with the Rule. While Plaintiff's opposition did suggest that summary judgment was premature absent additional discovery, that is not enough to comply with Rule 56(d). *See Whelehan v. Bank of Am. Pension Plan for Legacy Companies-*

Fleet-Traditional Ben., 621 F. App'x 70, 73–74 (2d Cir. 2015) (affirming denial of request to defer summary judgment for additional discovery where plaintiff "did not submit an affidavit at all in responding to defendants' motion" but rather "merely asked for further discovery in her responsive filing," only later submitting an affidavit). Plaintiff only filed his Rule 56(d) motion after Middlebury submitted its reply brief. Under these circumstances, Plaintiff's belated motion must be denied.

B. Further Discovery Would Be Futile.

Even if Plaintiff had pursued the proper course and timely filed a motion under Rule 56(d) at or before the time to oppose summary judgment, his request to defer summary judgment to allow further discovery must be denied on futility grounds.

Rule 56(d) requires that a nonmovant show by affidavit that, "for specified reasons, it cannot present facts *essential to justify its opposition*." V.R.C.P. 56(d) (emphasis added). Inherent in this showing is a requirement that the nonmovant establish "how the facts sought are reasonably expected to create a genuine issue of material fact." *Whelehan*, 621 F. App'x at 73 (quoting *Paddington Partners v. Bouchard*, 34 F.3d 1132, 1138 (2d Cir. 1994)); *see also In re Mirapex Prods. Liability Litig.*, 912 F.3d 1129, 1135 (8th Cir. 2019) ("It is not enough to present a list of facts sought to be discovered. The nonmovant must articulate how those facts are relevant to rebut the movant's showing of the absence of a genuine issue of fact."). If the discovery sought will not change the outcome of summary judgment, Rule 56(d) offers no basis to defer ruling and allow discovery to occur. *See Advantageous*

Cmty. Servs., LLC v. King, 844 F. App'x 58, 64 (10th Cir. 2021) (affirming denial of Rule 56(d) request "because additional discovery would have been futile"); *Beckman Coulter, Inc. v. Sysmex Am., Inc.*, No. 18 C 06563, 2020 WL 918986, at *2 (N.D. Ill. Feb. 26, 2020) (denying Rule 56(d) request on grounds, among others, that discovery would be futile). Nor can a litigant use a Rule 56(d) motion to pursue a "fishing expedition" that is "based on speculation as to what potentially could be discovered." *Paddington Partners*, 34 F.3d at 1138 (citation and quotation marks omitted).

Illustrative of this principle is *Johnson v. Acuity Mut. Ins. Co.*, No. CV 18-5076-JLV, 2020 WL 1444962 (D.S.D. Mar. 25, 2020), a case involving a claim for bad faith denial of workers' compensation benefits by an insurance company. When the defendant sought summary judgment on all counts, the plaintiff responded on the merits but also sought additional discovery pursuant to Rule 56(d). The plaintiff, noting that no depositions had taken place, indicated his intent to depose the employees who had handled his claim to determine, among other things, "what attempts were made to reach out [to] the treating physician for an explanation regarding his . . . medical records." He contended that the depositions would "reveal [defendant's] malicious intent to deny Plaintiff's benefits" and might "produce evidence that [defendant] has an institutional pattern and practice of similar behavior" that would demonstrate "[i]nstitutional and systematic bad faith." *Id.* at *9. The court denied his request, granting summary judgment on the basis that the medical records at issue reflected a reasonable basis to terminate benefits, and holding that the plaintiff's suggestion that further discovery could uncover evidence

of "malicious intent" or "systemic bad faith" were wholly speculative and, in any event, would not alter the outcome on summary judgment. *Id.* at *10.

Plaintiff's Rule 56(d) motion fails for the same reasons here. Plaintiff loosely outlines several topics he wishes to pursue in discovery[1] to "establish the facts that will bear on the determination of whether the Defendant acted in bad faith." Motion at 4. As explained below, none of these would change the outcome on summary judgment, hence deferring judgment to allow discovery would be futile:

"Failure to Conduct a Proper Investigation": Plaintiff first indicates that he wants to "inquire regarding **whether a proper investigation was conducted** relating to the purpose of the name Mead Memorial Chapel and the history of Middlebury College's 50 years of teaching Eugenics in its curriculum." Motion at 3 (emphasis in original); *see also* Affidavit of L. Brooke Dingledine, Esq. ("Dingledine Aff."), ¶ 8 (same). There are several problems with this theory.

First, Plaintiff derives the idea of a good faith investigation from insurance cases, where the insurance company has a contractual duty to cover certain losses and handle claims—and thus an attendant duty to diligently investigate. Here, even if there were a contractual relationship, there are no terms that could be read to impose an analogous implied duty for Middlebury to conduct an investigation to a certain standard of diligence before removing the Mead name from its Chapel. This is particularly so given the Court's holding that the term of any obligation had been

[1] Plaintiff represents in his motion that discovery in this case was "bifurcated," Motion at 2, which is not accurate. The Court only stayed depositions in its July 2024 order.

satisfied by the time Middlebury removed the name. Imposing a requirement of a "diligent investigation" under these circumstances would be akin to requiring an insurer to conduct a diligent investigation of a claim that was outside of the policy's coverage period.

Second, Plaintiff's specific assertion that he should be permitted to take discovery on whether Middlebury investigated "the history . . . of teaching Eugenics in its curriculum" prior to removing Mead's name is baffling. At issue in this case is Middlebury's removal of the Mead name from its Chapel based on Mead's advocacy of eugenics policies in his farewell speech to the Vermont legislature. Even if Middlebury had some implied duty to investigate prior to removing the Mead name—which it did not—that investigation would not reasonably extend beyond Mead and the Chapel. Thus, even if Plaintiff established via deposition testimony that Middlebury failed to investigate the "history. . . of teaching Eugenics" at the College, that fact would not provide any support to Plaintiff's covenant claim or provide an "essential fact" that could justify opposition to summary judgment. It would be wholly irrelevant.

Nor would discovery on what Middlebury knew about the "purpose of the name Mead Memorial Chapel" yield any information that could support a covenant claim. Plaintiff's Motion once again criticizes "Middlebury College's incomprehensible lack of knowledge concerning the original naming of the chapel and that it was built as a memorial to the Mead ancestors, not to John Abner Mead himself." Motion at 3. As Middlebury explained in its summary judgment reply,

this is an absurd and legally irrelevant fixation. Both at the time of Mead's gift and thereafter, College officials have described the Chapel as memorializing John Mead—as Plaintiff himself has done so repeatedly and, in his words, "incomprehensibl[y,]" over the course of this litigation. *See* Reply at 5-6. The association between Mead and the Chapel name is no surprise. The gift was given by Mead and his wife; it is reasonable, even if arguably imprecise, to state that the Chapel's "name honored [Mead] and his wife," as the College did in its September 2021 statement. Regardless of what the original intent was, the building was inextricably *associated* with John Mead for over a century. There is no plausible bad faith here. *Cf. Murphy v. Patriot Ins. Co.,* 2014 VT 96, ¶ 17, 197 Vt. 438, 106 A.3d 911 ("Where a claim is 'fairly debatable,' the insurer is not guilty of bad faith even if it is ultimately determined to have been mistaken."). In short, this picayune complaint over the origin of the Chapel name cannot justify deferring summary judgment to allow depositions to take place.

"Intentional Misconduct": Plaintiff's vague request for discovery on "intentional misconduct" represents nothing more than a fishing expedition. Plaintiff states that "**intentional misconduct** can be the basis for a bad faith claim," Dingledine Aff. ¶ 6 (emphasis in original), and thus suggests that he "should be entitled to inquire regarding whether there was intentional misconduct supporting the bad faith claim," *id.* ¶ 10. The only specific "intentional misconduct" Plaintiff cites is the suggestion that the removal of the Mead name might be "a conscious and deliberate decision to deceive and cover up Middlebury College's vial

[sic] Eugenics history." Motion at 3; Dingledine Aff., ¶ 8. For two reasons, this does not and cannot support Plaintiff's Rule 56(d) request. First, even if Plaintiff proved that Middlebury had a "vile" motivation for removing the Mead name, it was fully entitled to remove the name without violating any contractual obligation—and bad motivation alone does not give rise to a covenant claim. *See Beldock v. VWSD, LLC,* 2023 VT 35, ¶ 53, 218 Vt. 144, 307 A.3d 209. Discovery on this issue would thus be futile.

Second, Plaintiff's suggestion that he might uncover evidence of "a conscious and deliberate decision to deceive and cover up Middlebury's" history by making John Mead a scapegoat is rank speculation—and grossly implausible and illogical speculation at that. As Middlebury has pointed out previously, if the College wanted to cover up its "Eugenics history," why would it very publicly call attention to a prominent tie between the College and the Eugenics movement? To put it bluntly, Rule 56(d) does not authorize delaying judgment to allow a party to explore wild-eyed conspiracy theories. *See Paddington Partners*, 34 F.3d at 1138; *see also Morris v. GEICO Ins. Agency, Inc.,* No. 220CV764JCMEJY, 2021 WL 4486327, at *4 (D. Nev. Sept. 30, 2021) (declining to defer judgment on covenant and bad faith claims to allow plaintiff to explore speculation that insurer's examining doctor was "so biased in favor of Geico that he fabricated the results of the IME," and noting that "[d]enial of a Rule [56(d)] application is proper where it is clear that the evidence sought is almost certainly nonexistent or is the object of pure speculation" (quoting *Terrel v. Brewer*, 935 F.2d 1015, 1018 (9th Cir. 1991)).

<u>"Misrepresentation of Facts or Contract Terms":</u> Lastly, Plaintiff seeks discovery based on a theory (again drawn from the insurance context) that there was "**misrepresentation of facts or contract terms** based on Middlebury College's refusal to acknowledge that it was under any obligation to name the chapel the Mead Memorial Chapel," claiming that he is "entitled to inquire as to what information or lack thereof was this position based upon." Motion at 3 (emphasis in original); Dingledine Aff. ¶ 9 (same). Again, this does not justify deferring summary judgment to allow discovery. To start with, the concept Plaintiff cites is inapposite here. Middlebury is not an insurance company misrepresenting its policy terms to try to deny coverage to an insured. The parties have a genuine dispute over the interpretation of the documents and historical record—indeed, Middlebury continues to believe that the documents here cannot be read to give rise to any contractual obligation, as to naming rights or otherwise. Any representations Middlebury has made regarding the existence or non-existence of a contractual naming obligation have been made through counsel in the context of this litigation, and litigation conduct would only violate the implied covenant if it rose to the level of "dishonest conduct" such as "conjuring up a pretend dispute." *Beldock*, 2023 VT 35, ¶ 55. The undersigned truly hopes that Plaintiff's counsel is not accusing him of dishonest conduct merely because they have a different view of the merits in this case.

Second, if the basis for Middlebury's litigation position on the non-existence of a contractual obligation were in fact relevant here, there would be no need for

discovery on the subject: Middlebury has laid out that basis in great detail twice, first in its Motion to Dismiss and then again in its first Motion for Summary Judgment. Plaintiff has, and has long had, everything he needs to advance any argument on this front. The argument is patently meritless, but, regardless, it does not require discovery.

CONCLUSION

To date, Plaintiff has not offered any coherent support for his ever-shifting claim under the implied covenant. His belated request for deferral of summary judgment to allow depositions to proceed is, transparently, a last-ditch effort to fish for a basis for his claim. For all of the reasons set forth above, the Court should deny Plaintiff's Motion and dispose of this case.

Dated at Burlington, Vermont, this 28th day of February, 2025.

By: *\/s\/ Justin B. Barnard*

Justin B. Barnard, Esq.

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Counsel for Defendant

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Addison Unit
23-CV-01214

STATE OF VERMONT

SUPERIOR COURT **CIVIL DIVISION**
Addison Unit **Case No. 23-CV-01214**

Hon. James H. Douglas,)
Special Administrator of the)
Estate of John Abner Mead,)
Plaintiff)
v.)
)
The President and Fellows of)
Middlebury College)
Defendant)

PLAINTIFF'S REPLY TO
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR DISCOVERY UNDER RULE 56(d)

NOW COMES Plaintiff, Honorable James H. Douglas, Special Administrator of the Estate of John Abner Mead, by and through his attorneys of the firm Valsangiacomo, Detora & McQuesten, P.C., and hereby replies to Defendant's Opposition to Plaintiff's Motion for Discovery under VRCP Rule 56(d) and requests that this Honorable Court allow Discovery, which was previously bifurcated by the Court, to proceed on Plaintiff's Breach of Good Faith and Fair Dealing ("GFFD") claim prior to rendering judgment as follows:

MEMORANDUM

I. PLAINTIFF'S BRIEF REGARDING DAMAGES FOR BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING REQUESTED DISCOVERY

On November 4, 2024, one month prior to the filing of Defendant's 2nd Motion for Summary Judgment, Plaintiff filed Plaintiff's Brief Regarding Damages for Breach of the Covenant of GFFD ("P's Brief GFFD") which requested Discovery on Plaintiff's Breach of GFFD Claim as follows:

> Consequently, Plaintiff must be allowed to pursue discovery to determine what Middlebury College knew about the true purpose of the naming of the Mead Memorial Chapel, what Middlebury College knew about its own Eugenics history, what information that they considered, what process that they followed. Did the College intentionally use Mead as a subterfuge or did they recklessly disregard Mead's rights to reasonably expect Middlebury College to faithfully pursue the agreed common purpose of the contract.
> . . .
> The first element will require further discovery so that Plaintiff can determine in more detail, the motives and reasons for the Defendant's apparent intentional or reckless actions that Plaintiff believes is a bad faith breach of the covenant.

P's Brief GFFD at p. 21-22.

Plaintiff's Brief also requested that Discovery on the Breach of GFFD claim be permitted to proceed:

> **WHEREFORE,** Plaintiff respectfully requests that he be permitted to proceed with Discovery with regard to the claim for breach of the covenant of GFFD so that he may prepare for trial of the claim.

P's Brief GFFD at p. 25.

II. PLAINTIFF'S OPPOSITION TO DEFENDANT'S 2ND MOTION FOR SUMMARY JUDGMENT REQUESTED DISCOVERY

Plaintiff's Opposition to Defendant's 2nd Motion for Summary Judgment ("P's Opp to 2nd MSJ") began its Introduction with the following:

> As the Court will recall, it has **bifurcated Discovery in this case such that no Discovery has been conducted on the claim for breach of GFFD**. Consequently, Plaintiff is completely "in the dark" with regard to the actions and decision of the Defendant to strip the Mead name from the Mead Memorial Chapel. Absurdly, Defense Counsel makes the argument that Plaintiff has no factual basis to allege bad faith conduct by the Defendant. That is because we have not had the opportunity to discovery those facts nor to ask the Defendant the most basic questions such as what information was gathered, considered, or discussed, and what information was not. How was the decision made and by whom. Was Mead blatantly and intentionally used as a scape goat to divert attention away from Middlebury College, which was "all in" on teaching Eugenics for the first half of the 20th century.

> All of these questions remain; thus, **it would be patently unfair and a deprivation of due process for the Court to rule on a Summary Judgment motion on the claim of breach of GFFD, when Plaintiff has been prevented from gathering any facts or evidence, from which to establish Defendant's bad faith conduct.** Instead, Plaintiff is left to make inferences and hypothesize at the Defendant's actions and motivations, including ill will and bad motive, based upon one press release and the discovery of Middlebury College's shocking half-century of Eugenics teaching, before, during, and after the Holocaust. **Therefore, Defendant's motion is premature and Plaintiff requests that the Court defer judgment on the Breach of GFFD claim, until Plaintiff has a full and fair opportunity to conduct Discovery.**

P's Opp to 2nd MSJ at p. 1-2 (**emphasis** supplied).

Later in the document, Plaintiff's Opposition also specifically explained the need for Discovery:

> . . . Defendant has acted in bad faith with improper motive and with wanton disregard for the rights of the Plaintiff to get his benefit of his bargain or to have the purpose of the contract fulfilled, and it is the failure to faithful pursue the agreed common purpose of the contract, which constitutes Middlebury College's breach of the covenant of GFFD
>
> Faithfully pursuing the Mead Memorial Chapel's purpose of honoring and memorializing the Mead ancestors does not include scapegoating a man for the college's public relations purposes while erasing the Mead family name from its Memorial as well as John Mead's lifetime of accomplishments and philanthropy that benefitted the State of Vermont and its people as well as generations of Middlebury College students. Plaintiff submits that as bad faith conduct in light of the monumental contributions to Eugenics made by Middlebury College in educating its students with Eugenics curriculum from 1896 to 1946. For fifty years, Middlebury College was in the business of Eugenics programming of its students, who would become the teachers, doctors, lawyers, judges, legislators, clergy and business leaders of tomorrow. Yet, it was Mead who Middlebury College excised as a cancer on the College.
>
> Consequently, **Plaintiff must be allowed to pursue discovery to determine** what Middlebury College knew about the true purpose of the naming of the Mead Memorial Chapel, what Middlebury College knew about its own Eugenics history, what information that they considered, what process that they followed. Did the College intentionally use Mead as a subterfuge or did they recklessly disregard Mead's rights to reasonably expect Middlebury College to faithfully pursue the agreed common purpose of the contract.

P's Opp to 2nd MSJ at p. 48 (**emphasis** supplied).

Moreover, Plaintiff's Opposition also clearly and explicitly requests that Discovery be allowed to proceed:

> **WHEREFORE,** Plaintiff respectfully requests that he be permitted to proceed with Discovery with regard to the claim for breach of the covenant of GFFD so that he may prepare for trial of the claim.

P's Opp to 2nd MSJ at p. 52. And in case there was any doubt, Plaintiff's Opposition specifically requests Discovery a second time:

> **WHEREFORE**, Plaintiff respectfully requests that the Court Deny Defendant's Second Motion for Summary Judgment and allow Plaintiff to proceed with Discovery with regard to the claim for breach of the covenant of GFFD and damages, which were bifurcated by the Court's prior ruling, so that Plaintiff may resume preparation for trial.

P's Opp to 2nd MSJ at p. 60.

III. PLAINTIFF'S SURREPLY TO DEFENDANT'S 2ND MOTION FOR SUMMARY JUDGMENT REQUESTED DISCOVERY

Plaintiff's Surreply to Defendant's 2nd Motion for Summary Judgment ("Plaintiff's Surreply") also specifically requests Discovery:

> **WHEREFORE**, Plaintiff respectfully requests that the Court Deny Defendant's Second Motion for Summary Judgment and allow Plaintiff to proceed with Discovery with regard to the claim for breach of the covenant of GFFD and damages, which were bifurcated by the Court's prior ruling, so that Plaintiff may resume preparation for trial.

Plaintiff's Surreply at p. 6.

IV. DEFENDANT'S MOTIVE AND CURRENT EVENTS

The current predicament in which Defendant finds itself with regard to its alleged failure to protect Jewish students elucidates Middlebury College's bad motive in this case: the scapegoating of Governor Mead was designed to conceal Middlebury College's 50-year history as a Eugenics factory, teaching Eugenics after the end of WWII and for 4 years after the horrors of the Holocaust were known worldwide. It was easier to demonize and throw a dead man under the bus than it was to confront the institution's Eugenics and antisemitic history. As a result, Mead was a convenient fall guy used by the Defendant to prevent the truth of Middlebury College's Eugenics programming from being known, a truth which they perceived as a threat of harm to Middlebury College's reputation.

Plaintiff should be entitled to Discover the facts to determine whether Middlebury College acted in bad faith. Was the College incompetent, reckless, did it act with complete disregard of the Contract's purpose and parties' rights, or did it intentionally use the Mead name to conceal its shameful past. Only Discovery will tell.

Perhaps if Defendant had acknowledged its role, learned from its mistakes, sincerely apologized in words and demonstrated commitment to remedy the wrongs of its past in deed, Middlebury College's legacy of its half-century of Eugenics programming could be confronted, examined and learned from, which is the purpose of a world-class educational institution . . . or should be.

WHEREFORE, Plaintiff requests that the Court protect Plaintiff's due process rights and allow time for Discovery on the GFFD Claim before deciding the summary judgment motion.

DATED at Randolph, County of Orange and State of Vermont, this 14th day of March 2025.

The Honorable James H. Douglas,
Special Administrator of the
Estate of John Abner Mead, *Plaintiff*

By: /s/ L. Brooke Dingledine

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