

*****HIS BANNER OVER ME **THE BANNER** WAS LOVE *****
A NEWSLETTER FOR CHRISTIAN SCIENTISTS

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NEW HAMPSHIRE PROCESS CONTINUES

The Banner will identify those who, heretofore, have been referred to in these pages as "unnamed members of The Mother Church" as Second Church of Christ, Scientist, Melbourne, Australia. Needless to say, this branch church, its officers, and members have been under tremendous pressure from Boston once their identities became known through the court actions initiated in New Hampshire. Excommunication and delisting have been frequent topics. The web site www.mbefund.net has been maintained to provide source material on this case which otherwise would have been unavailable to Christian Scientists worldwide.

RESERVATION OF RIGHTS FILED

On February 6, 2017, attorneys filed "Reservation of Rights of the Second Church of Christ, Scientist, Melbourne (Australia) Respecting Supplemental Report Filed by Trustees Under the Will of Mary Baker Eddy, Clauses VI and VIII." The above named Reservation notes that on or about April 11, 2016, the Director of Charitable Trusts of New Hampshire wrote that "[b]ecause the trustees of the Clause VIII Trust are also the Board of Directors of the Mother Church, they have *embedded conflicting fiduciary obligations*." Elsewhere the Reservation of Rights notes that: "the Director brought to the Court's attention the Trustees failure to adhere to prior orders of the Court or otherwise obtain prior Court authorization to modify the Trustees conduct or prior authorizations... In addition the Director identifies various incorrect representations of the Trustees and other aspects of the 2016 Accounts that are incorrect, in contravention of prior orders of this court and inconsistent with applicable law." Nevertheless, "counsel for the Trustees reported that a settlement had been reached with the Director regarding the 2016 Accounts and that it would be filed on February 7, 2017."

The attorneys for Second Church state, "This embedded conflict, it is submitted, taints every action and decision of the present Clause VIII Trustees because they also serve as Directors and fiduciaries of The Mother Church, a beneficiary of the Clause VIII Trust: The Mother Church is but one beneficiary of the Clause VIII Trust, which is also (indeed, primarily) intended to benefit a larger class of beneficiaries that 'promote Christian Science as taught by grantor [Mary Baker G.

Eddy].' (Will of Mary Baker G. Eddy, Clause VIII)."

"Second Church is deeply concerned about the proper administration of the Trusts and desires that through the efforts of the Director the Clause VIII Trustees' independence and conflict-free fiduciary duty be restored. [...]

"Second Church respectfully submits that the only way to eliminate the embedded conflict that taints every decision of the existing Clause VIII Trustees, and restore the necessary independence, objectivity and accountability to the administration of the Clause VIII Trust is either to remove the current Trustees and appoint new Trustees, who are not Directors or fiduciaries of The Mother Church, or to appoint an independent monitor or to seek advance authority for distributions and transactions from the Court..."

DIRECTORS / TRUSTEES RESPOND

On February 7, 2017, the attorneys for the Directors/Trustees submitted an "Assented-To Motion by the Trustees under the Will of Mary Baker Eddy, Clauses VI and VIII to approve amended [2016] account and amend 2001 Order." This was in response to the Director of Public Charities concerns described in the previous article.

In 2001, the Court had approved the Trustees petition to pool Trust assets with other funds held for The Mother Church. But then the Trust assets were moved from the approved account for "Gifts and Endowments" to the church's "General Investment Pool". Also the outside audits required by the Court were replaced -- without approval -- by "statements" prepared by the Church's financial department "in order to reduce unnecessary expenses."

The Assented-To Motion asked that the Court approve the amended account for 2016 and accept a proposed amendment to the Court's 2001 order which would dispense with outside audits and allow Trust assets to be pooled by decision of the Church's Investment Advisory Committee rather than the Court. The Motion notes, "The Director [of Charitable Trusts] assents to the requested relief." (Editor's note: Information suggests that it was apparently the *assistant* Director of Charitable Trusts who gave assent in the absence of the Director.)

AMICUS CURIAE BRIEF OF 2ND CHURCH

In response to this action, Second Church submitted its answer in the form of a Brief *Amicus Curiae* [friend of the court] on February 15, 2017. The attorneys for

Second Church noted the embedded conflict of the Trustees/Directors. Also: "For over 100 years, the Directors of the Mother Church have tried first to invalidate the Trusts, then when unsuccessful in those efforts, to wrest control over these Trusts' assets under their unilateral control in Massachusetts. Since 1949 [at the passing of Mrs. Eddy's trusted administrator for her Trusts, Josiah Fernald], the Directors of the Mother Church have served as the sole Trustees of the Clause VI and VIII Trusts, and, as discussed in the attached *amicus* brief, these conflicted Trustees have historically favored the Mother Church over the interest of all other beneficiaries of the Trusts."

"The thrust of this *amicus* brief is that the relief sought in the [above described February 7 Assented-To] Motion should not be considered at this time. Rather, the Motion should be taken under advisement until resolution of this threshold issue of the embedded conflict that taints as presumptively invalid everything the Director-Trustees have done and will do (including their decisions on how to invest Trust assets, the tens of millions of dollars of distributions of principal and interest they have made and continue to make from the Clause VIII Trust to The Mother Church, the sale of the [Mrs. Eddy's] copyrights by the Clause VIII Trust to The Mother Church, the unaudited and unverified Accounts they file with this Court that fail to explain the purposes for which such distributions have been put, and the settlement proposed in the present Motion). [...]

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

"Their quest began in 1912, with litigation in Massachusetts against the administrators of Mrs. Eddy's New Hampshire probate estate in which the predecessors to the present Director-Trustees sought to invalidate the Clause VIII Trust and have the assets distributed immediately to them. [*Chase v. Dickey*, 1912] They were rebuffed in that case..." It was decided, "That the Clause VIII Trust was not a gift to The Mother Church, but a gift to a charitable trust, to be administered by court-appointed trustees." Also: "That the primary restriction and purpose of the Clause VIII Trust was 'promoting and extending the religion of Christian Science' as taught by Mrs. Eddy." [...]

"The *Fernald* [v. *The First Church of Christ, Scientist* (1913)] Court went further, however, and declared that the Clause VIII Trust would not be administered by the Directors in Massachusetts, but here, in New Hampshire, by bonded trustees appointed by this Court. This is also the law of the case.

"This court responded by appointing six Trustees in

1913: the five Directors of The Mother Church (i.e., 'Director-Trustees') and Josiah Fernald. Fernald was an independent, New Hampshire Trustee -- a banker from Concord, New Hampshire, who was neither a Director nor a Christian Scientist, but a former administrator of Mrs. Eddy's probate estate and an adverse party to the Directors in the *Chase v. Dickey and Fernald* litigation." [...]

"By 1988, the purposes of the Trust were turned upside down -- with The Mother Church receiving all the benefits, and much of it in the form of income distributions purportedly to maintain and repair its buildings; and the support of other beneficiaries in 'promoting and extending the religion of Christian Science' literally dropped off the charts." [...]

"This consistent preference of The Mother Church has been interspersed with more serious incidents of malfeasance since the 1990s including:

"- The improper loan of \$5 million of principal from the Clause VIII Trust to The Mother Church in 1992, that led to the intervention of the New Hampshire Attorney General and this Court, and the 1993 Order...directing the Director-Trustees to repay that loan, ironically from the corpus of the Clause VIII Trust. The \$5 million loan in 1993 remarkably represented 63% of the assets of the Clause VIII Trust... [...]

"In 2001, the Director-Trustees eroded the protections of the corpus of the Trusts under New Hampshire law and Court supervision of the Clause VI and Clause VIII Trustees by petitioning the Court to allow the assets of the Trusts to be pooled with the assets of The Mother Church's Gifts and Endowment Fund (the 'G&E Fund'). The Court approved such commingling with the understanding, as stated in the 2001 Order, that the Trustees would continue to have their annual accounts independently audited. To rule otherwise would countenance the conduct of the Director-Trustees to collapse the Trusts into The Mother Church.

"Very shortly after the issuance of the 2001 Order, indeed only one (1) year later, the Trustees disregarded the Order of the Court, by submitting annual accounts that incorrectly indicated that they were independently audited, when, in fact, they were not, and have not been since... Their justification for deliberately disobeying the 2001 Order, as stated in their most recent Motion, was 'to reduce an unnecessary expense.' [...]

"Shortly thereafter, in 2006, in keeping with the Director-Trustees' historical contempt for the Court's role as the supervising authority of the Trusts, and taking advantage of the limited resources of the Court and the Director of Charitable Trust to thoroughly review annual accounts, the Trustees unilaterally decided to transfer the Trusts' assets from the G&E Fund (which

were 'liquidated' without any explanation) to the Mother Church's General Investment Pool (the 'GI Pool'). The GI Pool was supervised not by the Trustees of the Clause VI and Clause VIII Trusts, but by three (3) unnamed trustees of the G&E Fund and two (2) unnamed non-employee Mother Church members with 'applicable expertise' (but without representation that the GI Pool investments were not with their firms)...

"To address these issues, the Director-Trustees now propose to move the Trusts' corpus (without an audit or accounting of the opening balance of the corpus) out of the GI Pool and into a separate investment account covering both the Clause VI and Clause VIII Trust assets... Furthermore, the Trustees propose that the 2001 Order should be amended to remove the requirement of independent audited accounts and that any future decision to reinvest the Trust assets in the GI Pool be approved by the Director of Charitable Trusts, rather than this Court after notice and hearing..."

"Lost in the predominance of The Mother Church's influence over these Trusts is the explicit intent of Mary Baker Eddy in Clause VIII of her Will to provide an income stream to further the global promotion and extension of the religion of Christian Science. As applied, and consistent with their embedded conflict of interest, the Directors of The Mother Church, in their conflicted and disloyal capacity as Trustees of the Clause VI and Clause VIII Trusts, have effectively created an annuity out of these Trusts for the sole benefit of The Mother Church. As prophesied by Attorney General James Tuttle in 1913, forsaken are 'all who may expect to reap the benefit of this charity'; namely, the multitude of branch churches and reading rooms throughout the world that historically utilized distributions from these Trusts to promote and extend the religion of Christian Science. The purpose of this Brief *Amicus Curiae* and the primary aim of the Second Church is to bring to light this unappreciated conflict of interest in the hope that this Honorable Court will restore the integrity, independence and objectivity that once endured during the initial roughly thirty-five (35) years of the Trusts, when Josiah E. Fernald served as a disinterested Trustee."

THE DIRECTORS' REPLY

On February 22, 2017, the attorneys for the Christian Science Board of Directors filed, OBJECTION BY THE TRUSTEES OF THE TRUSTS UNDER THE WILL OF MARY BAKER EDDY, CLAUSES 6 AND 8, TO THE SECOND CHURCH OF CHRIST SCIENTIST MELBOURNE (AUSTRALIA), MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

This objection asked the Court to disallow the filing of the *Amicus Curiae* brief because Second Church "lacks standing in the matter." The objection also

reiterated the contention that all of the Director-Trustees' actions regarding Clause VIII funds since 2001 were justifiable: "This Court has routinely approved the Trustees' accounts, and, when prior Directors raised questions about the administration of the Trusts, the Trustees have addressed those questions to the Directors' (sic) satisfaction."

HEARING AND DECISION

On March 8, 2017, the judge scheduled a non-evidentiary hearing for March 20th "to entertain argument on issues raised in these pleadings as soon as possible.

On April 4, 2017, the judge issued his decision. "The Court declines to exercise its discretion to allow submission of the *amicus curiae* brief [of Second Church] at this juncture. The Court, however, does encourage the Second Church to share their information with the DCT [Director of Public Charities] who, by statute, represents their interests in this matter... Although it appreciates the effort expended by the Second Church in preparing its brief, it does not require the Second Church's insights and research to appropriately determine the issues presented by the Assented-to-Motion, in particular, whether circumstances warrant modification of the 2001 Order. It will, however, not be adverse to accept future *amicus curiae* submissions should it decide that in light of the questions before it, the '*amicus curiae* presentations assist the court by broadening its perspective on the issues raised and facilitate informed judicial consideration of that controversy..."

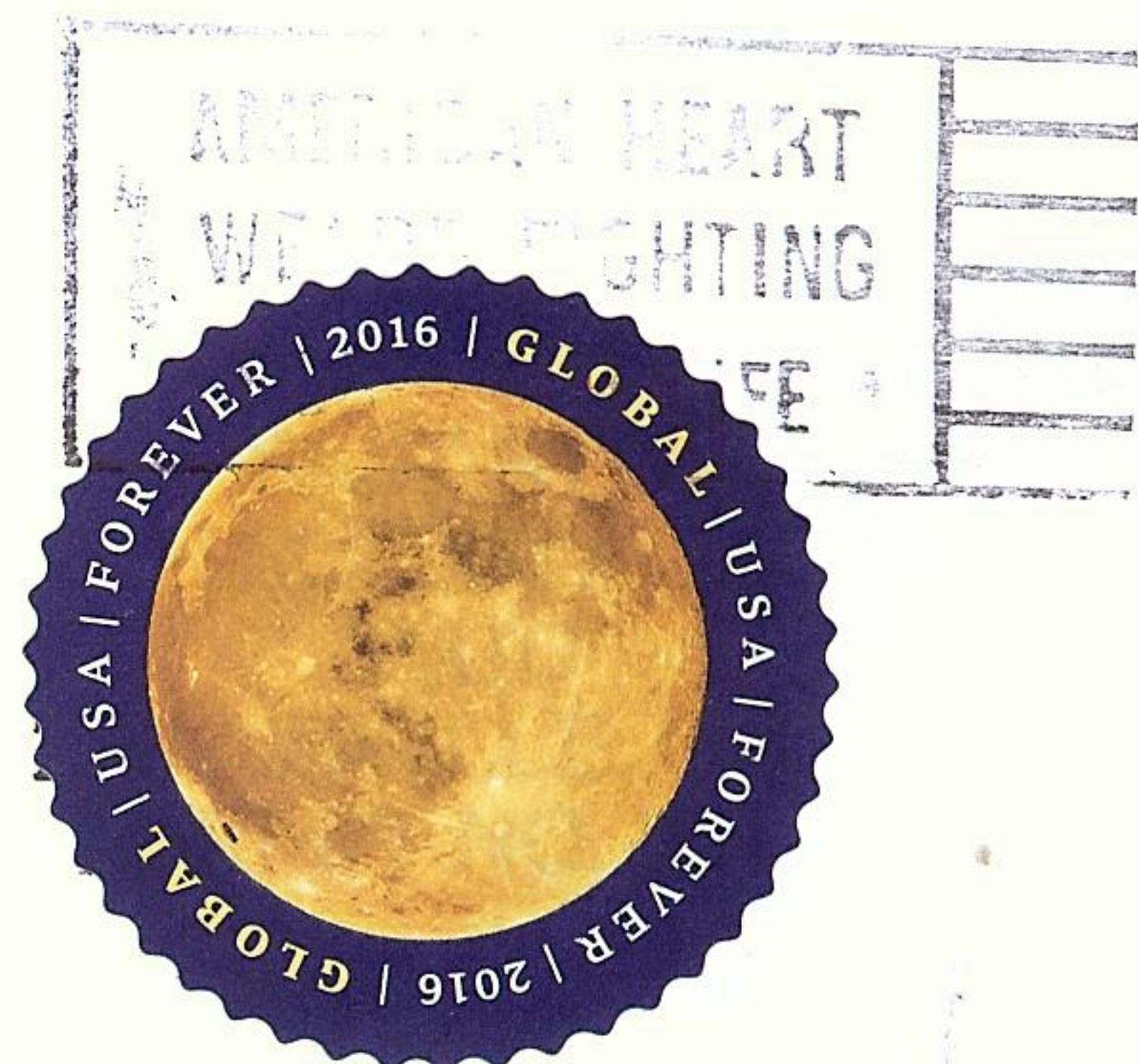
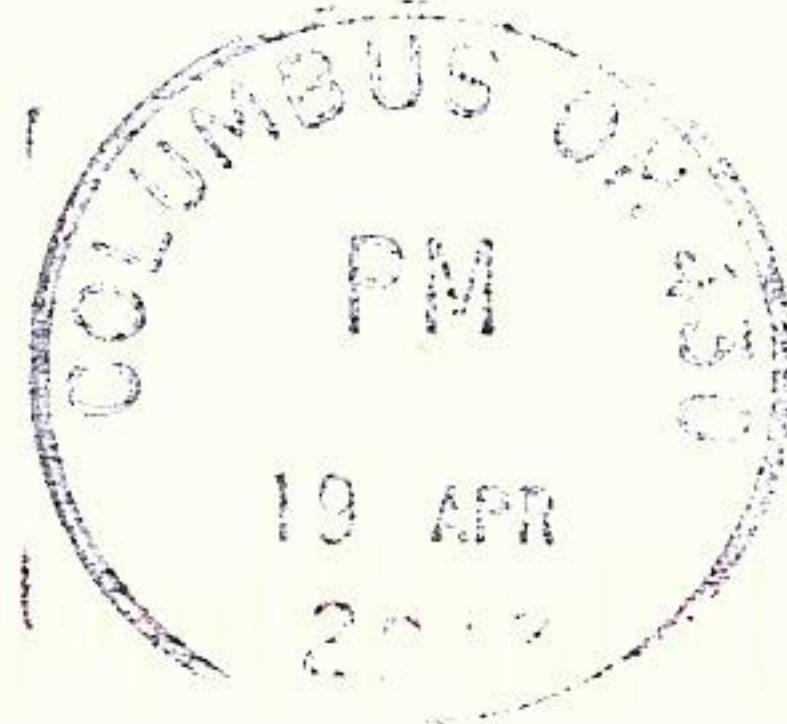
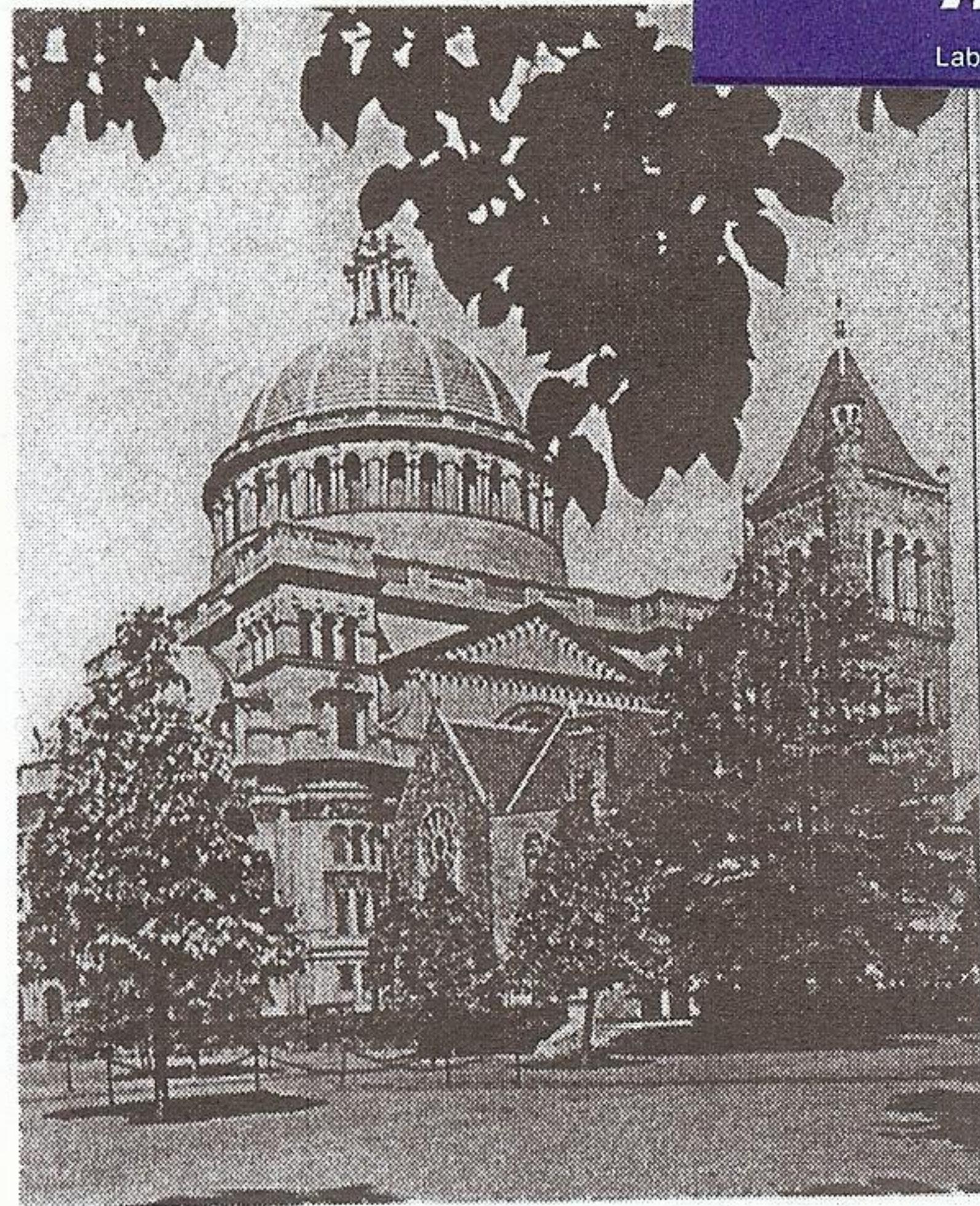
Elsewhere in the decision, the judge noted "the lack of independent audits, despite a court order, in 13 years..., movement of Trust(s) assets from segregated funds back into the general fund..., the continued existence of an inherent conflict, or to use terms propounded by the DCT 'embedded conflicting fiduciary obligations' arising from the fact that 'the [T]rustees... are also the Board of Directors of the Mother Church,' ...inherently pits the interests of the Board of the Mother Church against other churches seeking funding for their religious activities." In short, the judge largely confirmed the evidence presented in Second Church's *amicus curiae* brief, and ordered: "For the next accounting cycle, ending March 31, 2017, The Trustees are DIRECTED to submit an independent audit for each account, at the time the account is filed. Whether that requirement remains in place for all accounts moving forward will depend, in part, on whether a solution is found to the present conflict between the duties of the Trustees and their co-existing roles as directors of the Mother Church." [End of quotes] While this is not the end of the judicial process, a return to the standards established by Mrs. Eddy for her Trusts is underway.

04/05/2017

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RETURN SERVICE REQUESTED



04/19 [REDACTED]

4,800 WOOD PILES ARE DETERIORATING

A letter from the Christian Science Board of Directors dated July 2010, announced a plan to revitalize the Christian Science Plaza. (See: christianscienceplaza.com) One of the objectives was to "Protect the water table and improve water infiltration. The Mother Church sits on approximately 4,800 wood piles, and therefore the protection of groundwater on the site and in the surrounding area is of paramount concern... New development must be able to maintain the groundwater level so as to have no negative impacts on the Church Plaza and its surrounding neighborhoods." (pp. 19, 20)

Margaret Williamson in her book, *The Mother Church Extension* (1939) noted, "The site...was a difficult one because as was common in the Back Bay section of Boston, it was what was called 'filled land,' marshy and affected by tidewater. For this reason, it was necessary to drive a stout foundation of piles. In all more than four thousand wooden piles were driven, their heads twelve feet below the level of the sidewalk, their tips firmly embedded in solid ground." (p. 23)

The Revitalization report continues: "The Upper Aquifer is recharged by rainwater infiltration and possibly leakage from storm drains and sewers in the fill. The volume of recharge of rainwater in the Upper

Aquifer has decreased because of development and the decrease of pervious surface area allowing infiltration... The Lower Aquifer is recharged by gradual infiltration of water from the Upper Aquifer..." (p. 98) What the report does not explain is that before the construction of the Christian Science Plaza, the church property was a grassy park with trees which encouraged maximum infiltration of water from rain and snow. Since the construction of the plaza in 1972, almost the entire property was paved, and potential groundwater from the Upper Aquifer has been almost completely eliminated for forty-five years. The report does not explain that wooden piles must remain moist, or they will deteriorate and rot. With the foundation compromised, a building will begin to sink into the ground. It is reported that this has happened already to the Extension with cracks appearing internally and externally. It is said that the end of the Extension with the platform has settled noticeably. The report states, "The Church will consider installing new groundwater wells if it is determined that they will provide additional helpful data." (p. 98) Seven years after this report was issued, preparations are finally underway with water tanks and pipes now located at one side of the Extension. The deterioration cannot be reversed, it can only be slowed down.