

Superior Court of the District of Columbia
PROBATE DIVISION

THE GENERAL BOARD OF CHURCH	:	
AND SOCIETY OF THE UNITED	:	
METHODIST CHURCH,	:	
Petitioner	:	
	:	2007 TRP 4
v.	:	Judge Reid Winston
	:	
THE DISTRICT OF COLUMBIA,	:	
c/o The Acting Attorney General ¹	:	
Respondent	:	
	:	
and	:	
	:	
CLYDE PATRICK CURTIN, et al.	:	
<u>Respondent Intervenors.</u>	:	

ORDER

This matter came before the Court for trial in October, 2008, on 1) a Complaint filed by the General Board of Church and Society of the United Methodist Church (Petitioner) against the District of Columbia (Respondent) seeking reformation of a charitable trust, The Declaration of Trust (“the Declaration” or “the Trust”), which was signed by one of Petitioner’s predecessor corporations² on March 23, 1965 and which declared certain assets held by Petitioner known as the Methodist Building Endowment Fund (“Endowment Fund” or “trust assets”) held in trust for use in the areas of temperance and alcohol problems, and 2) a Counterclaim seeking a declaratory judgment

¹ The District of Columbia is now represented by The Office of the Attorney General, and not an Acting Attorney General.

² Petitioner is a District of Columbia non-profit corporation. It is the successor by merger of two earlier District of Columbia non-profit corporations – the Board of Temperance, Prohibition and Public Morals of the Methodist Episcopal Church (“the Old Board”), incorporated on May 23, 1917, and the Board of Temperance of the Methodist Church (“New Board”), incorporated on April 15, 1944. In 1960, pursuant to its “merger” with two other social action boards, the New Board became the Division of Temperance and General Welfare (“the Division”) of the Board of Christian Social Concerns of the Methodist Church (“BCSC”). After a series of name changes, the BCSC became the General Board of Church and Society of the United Methodist Church, Petitioner herein. In 1974, the Old Board was merged into the Division, and in 1980, the Division was merged into Petitioner. Thus, of the aforementioned entities, Petitioner is the only surviving entity with a corporate identity.

filed by a group of interested members of the United Methodist Church (Respondent-Intervenors) whom the Court permitted to intervene in this litigation as Respondents.³

Petitioner prays that the Court reform the trust to remove the language that appears to restrict the use of the assets and income of the Endowment Fund for use only in the fields of temperance and alcohol on a national and international level. Respondent-Intervenors seek a declaration that Petitioner's use of the assets in the Endowment Fund violates the Declaration of Trust and that the assets of the fund may be used only in the fields of temperance and alcohol on a national and international level.⁴

Petitioners seek reformation of the Declaration of Trust on two theories: 1) that, at the time the trust was established, its settlors mistakenly believed that the funds contributed to the Old Board of Temperance and the Division a) had been restricted for use in the fields of temperance and alcohol problems and b) had been impressed with a trust in fact for uses in those areas, and that they included the use restrictions in the trust based on their mistaken beliefs, and 2) that the Trust did not become effective until October, 1965, after the settlors agreed that they would revise its language, after the

³ For purposes of this Order, aside from its discussion of Respondent-Intervenors' Counterclaim, the Court will refer to Respondent the District of Columbia and Respondent-Intervenors collectively as "Respondents".

⁴ In addition to Count 2 seeking reformation of the Declaration of Trust, Petitioner's Complaint also included Count 1, seeking a declaratory judgment that Petitioner's "continued use of the income from [the trust] assets for purposes of alcohol, temperance, public morals and general welfare as determined by the trustees of the Petitioner as they have in the past, is and has been lawful uses [sic] of those funds and legally proper" and Count 3, seeking a declaratory judgment that, pursuant to the Uniform Management of Institutional Funds Act, D.C. Code §§44-1601-1609 (2001), prior releases by Petitioner of the restrictions imposed on the use of funds were proper. In an amendment to the Complaint dated July 5, 2007, Petitioner withdrew Count 3. In addition to Count 2 seeking a declaratory judgment, Respondent-Intervenors' Complaint included a claim for an accounting, Count 1. By Order dated January 18, 2008, the Court granted summary judgment against Petitioner and in favor of Respondent-Intervenors on Count 1 of the Complaint seeking declaratory judgment, and granted partial summary judgment in favor of Respondent-Intervenors, by declaring, based on its finding that "temperance" as used in the Declaration refers to abstinence from alcohol, that Petitioner's past use of the funds subject to the Declaration of Trust in areas other abstinence from alcohol and alcohol problems was improper under the Trust as currently written. The Court denied summary judgment on the remainder of Count 2 of the counterclaim by declining to hold that funds subject to the Trust are not controlled by its Trustees. By its Order dated July 13, 2007, denied Respondent-Intervenors' Complaint for Intervention as it related to Count 1 of their Counterclaim seeking an accounting.

fulfillment of certain conditions, to eliminate the restrictive language and to permit use of the Endowment Fund assets “for the exclusive use of the Division of Alcohol Problems and General Welfare”, but that the revised language was not incorporated into the document as intended. The failure to incorporate the changes into the Declaration of Trust, according to Petitioner, represents a mistake of expression, and provides a basis for reforming the Declaration.

The Respondents deny that the settlors included the restrictions on the use of the trust fund assets and income in the Declaration of Trust because they were mistaken about the purposes for which the contributions had been made or about the use of the trust funds prior to the date the Trust was settled. Respondents further maintain that, regardless of the intent of the donors of the funds, the Division had the legal authority to settle the Declaration of Trust holding the Endowment Fund in trust for use in the fields of temperance and alcohol problems; that they intended to do so; and that the settlors’ intent is determinative of the issue before the Court. Respondents contend that the Declaration could not legally be modified and that it was not modified. Moreover, they take the position that, even if the Trust was modified, Petitioner, in its complaint, did not request reformation of the modified document or raise the alleged modification as an affirmative defense to Respondent-Intervenors’ counterclaim, and therefore, Petitioner should be precluded from seeking that relief now.

APPLICABLE LAW

Reformation

D.C. Code § 19-1304.15, which is modeled after § 415 of the Uniform Trust Code,⁵ provides that “[t]he court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.”^{6,7} “A mistake in the inducement arises when a donative document includes a term that was intended to be included, but the intention to include the term was the product of a mistake of fact or law.”⁸

The purpose of trust reformation for a mistake is to ensure that the intent of the settlor is carried out. Thus, the mistake must be material and the party seeking reformation must establish that the trust, as written, does not reflect the settlor’s intent or that the settlor would have used different terms but for the mistake. See Restatement 2d. of Trusts § 333, comment.

Modification

“If a trust is created by a written instrument and the settlor intended to reserve a power to modify the trust, but by mistake omitted to insert in the instrument a provision

⁵ Although the Uniform Trust Code (“UTC”) did not become effective in the District of Columbia until 2004, section 1106 provides that the UTC applies to trusts created *before* its effective date unless the Court finds retroactive application to be inappropriate. Further, any rule of construction or presumption provided in the Code applies to trust instruments executed before the effective date of the Code unless there is a clear indication of a contrary intent in the terms of the trust.

The Restatement (Second) of Trusts was approved by the American Law Institute in 1957, before the effective date of the declaration of trust. The revisions of the Restatement (The Restatement (Third)) began after the effective date of the declaration of trust, in the late 1980’s and the portion relating to trust modification and termination was approved in 2001. Unlike the UTC, the Restatement is not a statute; however, it provides a wealth of background materials for interpreting the language of the UTC, which was drafted in close coordination with the revision of the Restatement. Accordingly, this Court is guided by the UTC, and looks to the Restatement (Second and Third) for interpretation.

⁶ D.C. Code § 19-1304.15 (2001).

⁷ *In re Durosko Marital Trust*, 862 A.2d 914, 924 (D.C. 2004) (citations omitted).

⁸ RESTATEMENT (THIRD) OF PROP.: Wills & Other Donative Transfers, §12.1 cmt i.

reserving such a power, he can have the instrument reformed and can modify the trust.”⁹

“A trust agreement is *typically* and properly amended by a separate written instrument, signed, dated, and acknowledged by the settlor, which, by its terms, revokes a clearly defined section of the original and sets forth new language to be substituted therefor.”¹⁰

Alternatively, however, if the method of modification is described in the trust instrument, modification can be achieved by unconventional means, as the settlor of an *inter vivos* trust has the power to modify the trust to the extent the *terms of the trust* so provide.¹¹

The extent of the power and method of its exercise is a question of construction.¹²

Section 103 (18) of the UTC defines “terms of a trust” as the manifestation of the settlor’s intent regarding the provisions of a trust as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding. “The terms of a trust are determined by the settlor's intention at the time of creation of the trust, and not by his subsequent intention.”¹³ If the manifestation of intent is proved by competent evidence, it is a term of the trust whether expressed by written or spoken words or by conduct.¹⁴ The comments to § 103 of the UTC explain that the wording of a written trust instrument is almost always the most important determinant of the terms of a trust. However, oral statements, the situation of the beneficiaries, the purposes of the trust, the circumstances under which the trust is to be administered, and,

⁹ RESTATEMENT (SECOND) OF TRUSTS: POWER OF REVOCATION OR MODIFICATION OMITTED BY MISTAKE § 332(2).

¹⁰ *Estate of Pozarny*, 177 Misc. 2d 752, 763 (Sur. Ct. 1998) (emphasis added); *see also* 76 AM. JUR. 2D TRUSTS: MODIFICATION OR AMENDMENT UNDER TERMS OF TRUST § 68.

¹¹ RESTATEMENT (THIRD) OF TRUSTS: POWER OF SETTLOR TO REVOKE OR MODIFY § 63 (1) (2003).

¹² *Parish v. Parish*, 29 Ill.2d 141, 149 (1963) (finding an attempt to modify the trust terms by oral agreement ineffective where such modification was contrary to the express provisions of the written trust agreement) (*citing* Bogert, Trusts and Trustees § 993); *see also* RESTATEMENT (SECOND) OF TRUSTS: REVOCATION OF TRUST BY SETTLOR §331 (1959).

¹³ *In re Durosko Marital Trust*, 862 A.2d 914, 925 (D.C. 2004).

¹⁴ RESTATEMENT (SECOND) OF TRUSTS: REVOCATION OF TRUST BY SETTLOR § 330 cmt. (a) (1959).

to the extent the settlor was otherwise silent, rules of construction, all may have a bearing on determining the meaning of a trust.¹⁵

In other words, by expressing, by spoken words or conduct, an intention to modify a trust at a later date, a settlor may manifest an intention at the time of the creation of the trust to reserve the power to modify, thereby making the power a “term of the trust.” Further, while the typical method of modification is a separate written document, if it is proved by competent evidence that the settlor intended for modification to occur upon the happening of a condition subsequent, that method of modification is a “term of the trust.”¹⁶

Issues Not Raised In the Pleadings

SCR Civil Rule 15(b) provides that “[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these issues.”

UNDISPUTED MATTERS

There are certain matters in this case about which there is no dispute. The Declaration of Trust was first signed by the Chairman of the Division on March 23, 1965, and was formally ratified by the Executive Committee of the Division on March 24,

¹⁵ Unif. Trust Code § 103 (*citing* RESTATEMENT (THIRD) OF TRUSTS: TERMS OF THE TRUST §4 cmt. a (Tentative Draft No. 1, approved 1996); RESTATEMENT (SECOND) OF TRUSTS: TERMS OF THE TRUST §4 cmt. a (1959).

¹⁶ A condition precedent or subsequent may be of such a character that it is or becomes impossible to determine whether it has been performed. It is a matter for interpretation whether the beneficial interest in question takes effect as if the condition had been satisfied, whether the trust is to be carried out without regard to that interest, or whether a resulting trust arises. RESTATEMENT (THIRD) OF TRUSTS: IMPOSSIBILITY AND INDEFINITENESS §30 cmt. b (2003).

1965. It was confirmed and ratified again by the Division on October 19, 1965, and ratified by the Board of Christian Social Concerns on October 20, 1965.

The Declaration of Trust, a copy of which is attached hereto as Exhibit A, in pertinent part, recites the following:

- 1) that “[s]ince about 1912, campaigns for funds through gifts, bequests, and contributions were instituted for the purpose of providing an endowment fund to support the work of the Methodist Church through [the Old Board] in the field of temperance and alcohol problems”; Decl. of Trust at 1.
- 2) that the Old Board continued to exist as a separate corporation despite the merger of the Methodist Episcopal Church, the Methodist Episcopal Church South, and the Methodist Protestant Church into the body called the Methodist Church to facilitate the ability “to receive bequests, hold assets, and receive donations made out in favor of the [Old Board] for work in the area of temperance and alcohol problems,” and that at the time of the signing of the Declaration, the Old Board still held “title to securities only, which [had] been given to it over the years through donations, contributions, and bequests to support its work in the field of temperance and alcohol problems”; Decl. of Trust at 1.
- 3) that “ ‘The Division’ was organized for the purpose of work in the area of temperance and alcohol problems”; Decl. of Trust at 1.
- 4) that, after 1912, “large sums [of money] were collected on a nationwide basis to further the work in the area of temperance and alcohol problems,” [including] “a

large bequest ... from the family of Bishop Matthew Simpson to be used for endowment purposes for work in temperance and alcohol problems, and also for a headquarters building in the Nation's capital [the Methodist Building] to include offices for the performance of such work as well as to provide an investment for the production of income through rental apartments"; Decl. of Trust at 2.

5) that, on October 24, 1944, the Old Board conveyed title of the Methodist Building to the Division; that, at the time the Declaration was signed, "the Division own[ed] securities and cash given to it over the years through donations, contributions, and bequests to support the work in the area of temperance and alcohol problems" and certain other real property purchased with Endowment Funds; that "[t]he assets of [the Old Board and the Division], including real, personal, and mixed property, ha[d] been impressed with a trust-in-fact for them to be used and applied for the purposes for which they were given – for work in the areas of temperance and alcohol problems"; and that "the purpose of [the] Declaration . . . [was to] formalize the existing situation and provide a method for the continued management, investment, reinvestment, and application of the principal and accumulated income for the purposes for which the funds were originally given . . . [to] work in the areas of temperance and alcohol problems"; and

6) that the property placed in trust, described in the Declaration and further identified in [an] attached schedule, was being "formally set aside as 'Trust Corpus' to be used and applied to work in the area of temperance and alcohol problems . . . under control of Trustees," and that the legal title to the property would not change and that the

properties were “declared to be equitably impressed with a trust for the purposes of work in the area of temperance and alcohol problems . . .”. Decl. of Trust at 2(a).

On March 24, 1965, the Declaration was the subject of discussion at a meeting of the Executive Committee of the full Board of Christian Social Concerns, (“BCSC”). As a result of disagreement about the meaning of Paragraph 1525 of the 1960 Discipline of the Methodist Church, the BCSC Executive Committee voted to refer to the Judicial Council of the United Methodist Church the issue of the meaning of the language in that paragraph. However, the Judicial Council did not ever rule on the matter.

THE TRIAL

The trial in this case lasted over six days. The Court heard testimony from several witnesses and received into evidence well over 300 exhibits. The testimony and other evidence at trial focused on the following issues: whether the donations given to the Old Board of Temperance and Division bore specific restrictions for use in the areas of temperance and alcohol problems at the time they were made; the historical work for which the Old Board of Temperance and the Division were known; the events within the Division leading up to the signing of the Trust, including the debate concerning its language; the use of income from the Methodist Building Endowment Fund after the Declaration of Trust was signed; communications within the Division and between the Division and the Board of Christian Social Concerns and actions by both organizations concerning the Trust after March 24, 1965, including actions taken by the Division and the BCSC in October, 1965, concerning proposed changes to the Declaration, the conditions precedent to such changes, and whether the conditions were fulfilled; and

later investigations by Petitioner and its predecessors concerning the permitted uses of the assets of the Methodist Building Endowment Fund.

The Parties' Contentions

Petitioner contends that the gifts made to the Old Board and the Division were not restricted to use in the areas of temperance and alcohol, but that the majority of donations were permitted to be used for the general purposes of the organizations. Petitioner's position is that the Court cannot assume that, simply because much of their work was in the fields of temperance and alcohol problems, donations were made to the Old Board and the Division ("the Boards") solely for those purposes. Petitioner maintains that the settlors of the Declaration of Trust mistakenly believed that the funds donated to the Boards had been given specifically for use in the areas of temperance and alcohol purposes. The Petitioner further argues that, even after the signing of the Declaration of Trust, monies given to the Boards were used for the general purposes of the Boards.

It is also Petitioner's contention that, although the Declaration was signed on March 23, 1965, and ratified by the Division the next day, it did not take effect until it was ratified by the Board of Christian Social Concerns on October 20, 1965, after the Division had agreed to modify the language upon the fulfillment of certain conditions, and Petitioner alleges that the conditions were satisfied.¹⁷ Finally, Petitioner contends that, in 1969 and subsequent years when it investigated the proper uses of the funds in the Methodist Building Endowment Fund, it determined that there were no restricted gifts

¹⁷ Although Petitioner pointed out numerous times during the trial that the 1960 Discipline of the Methodist Church granted the authority to establish funds to the Board of Christian Social Concerns, Petitioner clarified in closing argument that it was not seeking relief based on any lack of authority by the Division to settle the Declaration of Trust. *But see* Petitioner's Proposed Findings of Fact and Conclusions of Law, Conclusions of Law, Paragraph 3.

made to the Boards that were left unexpended for the purposes for which they were given.

Respondents counter Petitioner's arguments in several ways. First, they contend that the evidence shows that the funds contributed to the Boards were intended by their donors for use solely on alcohol and temperance issues. They argue that the documents introduced into evidence by Petitioner purporting to show unrestricted gifts cannot provide a sufficient basis for the Court to find that Petitioner has met its burden of proof because 1) the documents are few in number and 2) there was no evidence at trial about the system of filing and maintaining documents at the Methodist Archives, from which some of the documents were obtained.

Respondents further maintain that the Boards devoted their activities to alcohol and temperance issues and that the amount of time and resources spent on other programmatic areas was miniscule compared to that spent on temperance and alcohol issues. They suggest that, given the Boards' emphasis on temperance and alcohol issues, the Court may infer that the donations to the Boards were made for those purposes. Respondents aver that, regardless of the donors' intentions regarding the use of funds, the settlors had the authority to place them in trust for use in the areas of temperance and alcohol.

Respondents allege that, prior to the signing of the Declaration, the trust assets had been used solely for alcohol and temperance purposes, and that the settlors of the Declaration of Trust were not induced by any mistaken beliefs to establish the Trust. According to Respondents, the settlors established the Declaration of Trust for three reasons: 1) to ensure that the funds were maintained for use by the Division for temperance and alcohol purposes and were not available for use and possible depletion

by the Board of Christian Concerns or its other Divisions; 2) because they believed the funds had been donated for use in the areas of temperance and alcohol; and 3) because they believed that they were morally obligated to use the assets for the purposes for which they believed they had been given – for use in the areas of temperance and alcohol problem.

Respondents dispute Petitioner’s allegation that the trust did not become effective until October, 1965, and contend that it became effective immediately after it was signed. According to Respondents, there being no provision in the trust permitting modification, legally the trust could not be modified. According to them, from March 23, 1965 forward, the funds subject to the Declaration were required to be used exclusively for work in the areas of temperance and alcohol problems.

Finally, Respondents took the position that Petitioner is legally precluded from arguing an issue that they did not raise in their complaint – the reformation of the Declaration as modified.

Evidence at Trial

Testimony

At the trial in this case, Petitioner presented the testimony of James Winkler, its General Secretary; Wesley Paulson, its Chief Financial Officer; John Stumbo, one of the Respondent-Intervenors; and, by deposition, Bishop Dale White, a former Director of Program[sic] and later Associate General Secretary of the Division. The testimony of Mr. Winkler and Mr. Paulson focused, for the most part, on Petitioner’s efforts to locate documents evidencing donations to the Old Board of Temperance and Prohibition and the Division, and other historical documents, e.g. meeting minutes and publications of both

Boards. Their testimony was that Petitioner searched for and located these documents, many of which were introduced into evidence at trial, at several locations – the Methodist Archives at Drew University in Madison, New Jersey; its own offices at the Methodist Building in the District of Columbia, and Wesley Theological Seminary also in the District of Columbia.

Petitioner also called as a witness at trial John Stumbo, one of the Respondent-Intervenors and a party adverse to the Petitioner in this litigation. Mr. Stumbo became active in the Methodist Church in 1972. He became a member of the General Board of Church and Society in 1976, and served as Chair of the Methodist Building Endowment Fund until 1980. Mr. Stumbo testified that, in 1979, he explored the effect on the Methodist Building Endowment Fund of the coming merger between the Division and the General Board of Church and Society. He did not dispute the minutes of a meeting at which he expressed the opinion that, at that time, the funds from the Endowment fund could be used for “programmatic purposes” of the Department of General Welfare “as presently situated”¹⁸; that the Board was responsible for using the funds in the most effective ways according to instructions from the Board; and that the upcoming merger would not change the use of the funds. Mr. Stumbo explained that, at that time the programmatic areas were many, although he could not recall the specific areas. He also testified that he had no personal knowledge that any monetary gifts to the Old Board had been restricted to use for temperance and alcohol-related purposes.

Petitioner also read into the record excerpts from the deposition of Bishop Dale White. Bishop White was the Director of Program at the Division in March, 1965. Bishop White acknowledged that he was not present at any of the meetings or privy to the

¹⁸ Mr. Stumbo qualified his answer by saying that, when he offered his opinion at the meeting, he was not focusing on the permissible uses of the fund, but rather the programs within the areas of responsibility assigned to the Division.

communications concerning the Declaration of Trust before it was signed in 1965. However, his testimony was that, as Director of Program, he was not made aware of any restrictions on the use of the trust funds. He testified that, at the time he was Director of Program, the Division's programmatic activities were not limited to alcohol and temperance problems, but extended to gambling, narcotics, juvenile delinquency, prize fighting, and the other areas that were within the responsibility of the Division set forth in the 1960 Discipline of the Methodist Church.

Bishop White further testified that monies from the Endowment Fund were used, along with World Service Funds, to support these activities. In 1965, after the Declaration was signed, Bishop White testified, he was not told that he was to use the funds from the Methodist Building Endowment Fund differently than before. Finally, he testified that, even after he became Associate General Secretary of the BCSC in the fall of 1965, he was not ever required to restrict the uses of monies that came from the Methodist Building Endowment Fund for temperance and alcohol purposes.

Respondents' sole witness at trial was Roger Burgess, who was Associate General Secretary of the Division when the Declaration was signed. Mr. Burgess gave extensive testimony about the following: the publications of the Old Board and New Board; the historical work of both Boards prior to the 1960 merger and from the time of the merger until the Declaration of Trust was established; his understanding of the purposes for which funds had been donated to the Old Board and New Board, based on his investigation; his understanding of the purposes for which the Declaration of Trust was established; the events leading up to the signing of the trust – including a dispute with A. Dudley Ward, then General Secretary of the Board of Christian Social Concerns – over

the language of the trust and communications with others concerning the same; and his personal involvement in the drafting of the Declaration of Trust.

In brief, Mr. Burgess testified that donations, gifts, and bequests made over the years to the Old Board, and later the New Board, were made for use in the areas of temperance and alcohol problems. Although he had not seen any documents bearing restrictions, Mr. Burgess testified that his conclusion was based on his investigation of donations made to the Old Board. It was also Mr. Burgess's testimony that the work of the Old Board and the New Board, prior to the 1960 merger, was dedicated to temperance and alcohol problems, and that work in other areas was minimal.

In addition to testifying about the specific events leading up to the Declaration, Mr. Burgess testified that, prior to and after the merger of the Division into the Board of Christian Social Concerns, the Division was concerned that the Board would attempt to access Division funds for use by the BCSC and its other divisions and that one of the purposes of the Declaration was to prevent the raiding of the Division's funds. He testified that the Declaration was also settled because the funds in the Methodist Building Endowment Fund had been given for use in the areas of temperance and alcohol problems, and that the Division members felt a moral obligation to the donors to ensure that the funds were used for those purposes. Mr. Burgess also testified that from 1960 until the time of the Declaration, the Methodist Building Endowment funds were used solely for temperance and alcohol problems.

Petitioner and Respondents designated portions of the testimony of Dr. Lycurgus Starkey as exhibits at trial. Dr. Starkey was a member of the Executive Committee of the Division in March, 1965, when the Declaration of Trust was signed. He testified about the events surrounding the Declaration of Trust. He confirmed that the settlors intended

to impress the Methodist Building Endowment Fund with a trust to protect it from use by the BCSC and other divisions and to ensure its use for work in the areas of temperance and alcohol. He testified that he never saw any documents carrying restrictions on the uses intended by donors for their donations and that the only knowledge he had of any restrictions came from what he read in the Declaration of Trust, which he accepted.

In deciding the issues in this case, the Court must evaluate the testimony of these witnesses and the documentary evidence¹⁹ in light of the applicable law.

Restriction of Funds

At trial, Petitioner introduced into evidence documents it contends clearly show that the gifts to the Old Board and the Division were not restricted for use in the areas of temperance and alcohol. Four of those exhibits, Petitioner's Exhibits 128, 129, 267, and 268, all contained pledge cards evidencing pledges made to the Old Board. Petitioner's Exhibit 128 contains two pledge cards – an April 4, 1929 card signed by J.D. Custard, pledging \$400.00 and indicating that the pledge was made with the understanding that the Old Board would establish a memorial in memory of Rev. Jeremiah S. and Mary E. Kistler Custard, and another card dated August 22, 1928, pledging \$100.00 and signed by J. G. Custard. Both pledges were made on pre-printed cards bearing the text “In consideration of the imperative need of the work of our Board of Temperance, Prohibition and Public Morals, and in holding forth for the faith the traditions of our fathers, thus maintaining the ideals of the Church of Jesus Christ and the saving and protection of American Youth ...” Petitioner's Exhibit 129, a pledge card signed on December 17, 1928, by A. O. Fitzgerald, reflects a pledge of \$300.00 and indicates that

¹⁹ Because of the number of exhibits introduced into evidence, the Court cannot discuss each exhibit, but must limit its discussion to the exhibits that the Court finds most relevant to its decision. Some documents were introduced into evidence by both Petitioner and Respondents. For purposes of this Order, such documents will be identified only with one party's exhibit number.

the pledge was made in exchange for the Old Board's establishment of a memorial in memory of A. Ogden Fitzgerald and Harriet M. Fitzgerald. The pre-printed language on this card was slightly different in that the first clause reads "In consideration of our interest and interest of others in the Board of Temperance, Prohibition and Public Morals,"²⁰

Petitioner's Exhibits 267 and 268 are copies of pledge cards evidencing pledges by Maria C. Kline and Mrs. E. R. Galbraith, respectively, to the Old Board "for the erection of the new National Methodist Headquarters Building in Washington, D.C."²¹ Petitioner also introduced into evidence an application for an annuity bond made by Arthur Sapp dated December 18, 1926,²² and copies of two annuity bonds issued to John N. and Mary O. Marsh – one for \$14,000.00 and another for \$7,000.00.²³

In addition to pledge cards and the annuity bonds, Petitioner introduced into evidence several documents containing lists of pledges made to the Old Board. Petitioner's Exhibits 130 and 131, lists of cash and pledges made to Rev. E. L. Eaton in September, 1928 and November, 1928, respectively, are two such documents. Although the lists specify the purposes of several of the pledges – none related to temperance and alcohol problems – they do not identify specific purposes for most of the pledges.²⁴ One donor, identified on Petitioner's Exhibit 130, C. E. von Helfenstein, donated \$5000.00 "to be used on the building or in any other channel [the Old Board might] need it."²⁵

Petitioner also introduced lists of contributions received from Bishop W. E. Hammaker

²⁰ "Building Fund" is stamped on the front of this card.

²¹ Both exhibits were undated, but Exhibit 268 bears the notation "Ent Oct. 1923".

²² Petitioner's Exhibit 266. Based on the "x" written across the entire application, it appears that the application was denied.

²³ Petitioner's Exhibits 270 and 271, respectively. The \$7,000.00 bond was marked "cancelled."

²⁴ For instance, two pledges, one made by Mary and Emily Caskey, and another by Alice Housted were made to pay for furnishings in the Methodist Building. Another pledge, made by Eliza Ramey, was made with the "wish that the [pledge] go into some work in [her husband's] memory. Exhibit 131, IMG 00293, *Id.*, IMG 00294.

²⁵ Petitioner's Exhibit 131.

for the fiscal years June, 1948 – May, 1949 and June, 1952 – May, 1953.²⁶ There is no notation on any of these lists that any of the contributions were designated for specific purposes.

Petitioner also introduced Exhibit 120, the will of Ida Simpson and Exhibit 121, the will of Sarah Simpson, her sister, as relevant to whether donations and bequests made to the Old Board were given specifically for the purposes of temperance and alcohol problems. The exhibits show that Ida and Sarah Simpson were daughters of a prominent Methodist bishop in Pennsylvania. They executed reciprocal wills on April 28, 1933. Each testator made certain specific bequests, and provided that the residuary would go to her trustees, with the income to be paid to her sister for life. Each testator then provided that, after the surviving sister died (or after she died, if she were the survivor), the trustees were to pay sums certain to specific charities, including \$50,000.00 from her estate to the Old Board as a memorial to their parents.

The sisters directed that the \$50,000.00 principal be retained by the Old Board as a part of its “permanent endowment”, and they each directed that the income “be used for the purposes of the organization.” In each will, the surviving sister was given a limited power of appointment over the bequests to the charitable organizations. The only authority granted under the power was to readjust “amounts and/or proportions passing to each charity in a manner as she by her last Will and Testament may deem advisable...”.²⁷ Under each sister’s will, one-third of the residuary estate was also bequeathed to the Old Board to be added to the memorial funded by the \$50,000.00 bequest.

According to the exhibits, Ida Simpson died in October, 1933, and was survived by her sister, Sarah. Following Ida’s death, the Internal Revenue Service denied her estate

²⁶ Petitioner’s Exhibit 138. The Exhibit did not contain a report of pledges for the fiscal year June, 1949 – May, 1950. The Exhibit also contains an undated list of “Contributions to Bishop Hammaker”.

²⁷ Petitioner’s Exhibits 120 and 121, wills of Ida Simpson and Sarah Simpson, respectively.

a tax exemption for her gift to the Old Board. The United States Court of Appeals for the Third Circuit eventually ruled that the estate was entitled to the tax exemption.²⁸ However, that ruling came only after substantial litigation. Before the Third Circuit ruling, in order to ensure the tax exemption for her gift to the Old Board, Sarah Simpson executed a Fifth Codicil to her will,²⁹ in which she directed that the legacies left in her will to the Old Board be used for the “educational temperance program of the Board and ... not in any way for the purpose of carrying on propaganda or otherwise attempting to influence legislation, but ... exclusively for educational purposes.”³⁰ Neither Sarah Simpson’s will nor the codicils to it indicate that she exercised the limited power of attorney adjusting the portion of Ida Simpson’s gift to the Old Board.

Petitioner also introduced another exhibit, Exhibit 166, as relevant to the issue of the purposes for which funds were donated to the Old Board. The exhibit, a copy of a December 23, 1926 letter, is a solicitation to Clara Koons from Clarence True Wilson, General Secretary of the Old Board, to put her money or property “where it w[ould] do the most possible to curb the Catholic inroads on Government.” Mr. Wilson informed Ms. Koons of the impact that the Methodist presence in Washington had had on stopping the flow of Government money to Catholic institutions. He also informed her that “it w[ould] not be necessary for [her] to designate her gifts in [her] will if it c[ame] to the Board, for this work [was] being attended to by the Board without specifications.” He further informed her that the Board had “another group of causes for which money [could] be designated and” offered to send her a list of causes so that she could designate a cause if she chose to do so.

²⁸ The ruling is reported at *Girard Trust Co. v. Comm’r*, 122 F.2d 108 (3rd Cir. 1941). Girard Trust Co. was a trustee under Ida Simpson’s will.

²⁹ Petitioner’s Exhibit 121, Last Will and Testament of Sarah Elizabeth Simpson..

³⁰ *Id.* See also Respondents’ Exhibit 121.

To support their theory that the gifts made to the Old Board and the Division were intended specifically by their donors to be used for the purposes of temperance and alcohol problems, Respondents introduced into evidence several letters between an apparent regular donor, a Miss Mary Marsh, and members of the Old Board concerning gifts, pledges and donations that she had made or intended to make to the Old Board. These letters were contained in Respondents' exhibits 166, 167, and 169. In exhibit 169, a letter dated December 21, 1939, the Board wrote to Miss Marsh thanking her for her contribution of \$100.00 and informing her that the donation would be handled in "the same manner as your other contributions through the Temperance Education Fund." Two years later, on December 9, 1941, the Board wrote Miss Marsh another letter, Respondents' exhibit 167, thanking her for the work that she was doing "for the cause of Temperance,"³¹ and the next year on August 24, 1942, the Board wrote to Ms. Marsh thanking her for a contribution of United States savings bonds and for another pledge, and again informing her that the donations would be "used to further the cause of Temperance."

In addition to the Marsh letters, Respondents introduced the will and codicil of Thomas Sayre as Exhibit 120. In his will, Mr. Sayre bequeathed \$5000.00 to the Old Board "to be used by it in efforts to have the United States Government prohibit the exportation of intoxicating liquors beverages and dope of any kind to our Foreign Mission Fields, especially, China." However, in a later codicil that was also a part of the exhibit, he revoked the entire gift to the Old Board. Respondents also introduced as their Exhibit 163 an August 12, 1932 letter from the Office of the Secretary of the Old Board to Rev. I. S. & Florence Leavitt, confirming their pledge of \$5000.00 to be paid to the

³¹ The purpose of the letter was to clarify whether she wanted her payments on certain annuity bonds to be made semi-annually or monthly.

Board upon their deaths and inquiring about the manner in which the pledge would be paid, and Respondents' Exhibit 115, a similar letter to Rev. L. M. and Mary Dunton, asking for money in addition to the pledge they had already made.

Respondents' Exhibit 164 is a September 2, 1932 letter to Rev. I. S. Leavitt, discussing not only a pledge to the Old Board, but also a collection to be taken "for the cause of temperance" at an upcoming World Temperance Sunday. Respondents' Exhibit 116 is a June 29, 1931 letter from the World Service Commission of the Methodist Episcopal Church to the Treasurer of the Old Board transmitting a \$100.00 gift. According to the letter, the gift was made "through the Treasurer of the Newark Conference and designated for the [Old Board]," and "[n]o specific object [for the funds] was named." The writer speculated that the gift might have been intended to be a "Special Gift to the \$50,000.00 Fund for Temperance Education". Respondents' Exhibit 119 was a letter to Clara Koons from the General Secretary, soliciting a donation from Ms. Koons, advising her of the investment of another person, and touting the Board as a "place ... where one could put money... that would do as much toward forwarding the interests of the Kingdom and in preventing the liquor traffic getting back and the liquor power again getting into the saddle, and watching the machinations of the Roman Catholic Church ...". The letter alluded to a "reduction" in the Board's income. It also referred to the Methodist Building as the permanent home from which the work of striving for the betterment of mankind, a sober nation and sober nations, [was] carried on" and indicated that "hundred[sic] of friends, [including the addressee] had made possible [the Building]".

Respondents also point to Petitioner's Exhibit 138, the lists of contributions received by the Old Board from Bishop W. E. Hammaker over several fiscal years as

evidence that contributions made to the Old Board were intended to be used for temperance and alcohol problems.³² Their basis for this assertion is Roger Burgess's testimony that Bishop Hammaker was a noted speaker within the Methodist Church, and that after his speeches, those in attendance frequently made cash donations to the Old Board. To support their position that the gifts to the Old Board were made for temperance and alcohol purposes, Respondents also introduced the Fifth Codicil of the will of Sarah Simpson, their Exhibit 121,³³ which indicated that her bequest was to be used for educational temperance purposes.

Respondents elicited the testimony of Roger Burgess about whether gifts made to the Old Board were restricted. Mr. Burgess testified that large sums of money were raised during speaking campaigns by preachers like Bishop Hammaker and other leaders of the temperance cause within the Methodist Church. It was also Mr. Burgess's testimony that, early on, the Old Board received monies from local churches, which was funneled to the Board through regional temperance boards specifically for work in the area of temperance and alcohol problems. Finally, Mr. Burgess testified that, prior to the signing of the Declaration of Trust, he had conducted an investigation into the purposes for which pledges and other contributions were made to the Boards. He testified that he had reviewed minutes and other historical documents of the Boards, which he said indicated that the pledges and other contributions to the Boards had been intended by their donors for use in the areas of temperance and alcohol problems.³⁴

³² See n. 23, *supra*.

³³ Sarah Simpson's will and codicil were introduced by Petitioner and designated Petitioner's Exhibit 121 as well.

³⁴ October 9, 2010 trial testimony of Roger Burgess.

The Work of the Boards

The parties also introduced at trial scores of exhibits related to the work of the Boards – Petitioner to support its position that the responsibilities and activities of the Old Board and the Division were not limited to temperance and alcohol problems, and Respondents to show that the Boards did focus predominantly on those issues.

Both Petitioner and Respondents introduced into evidence the Certificates of Incorporation of the Old Board and New Board and the Amended Certificate of Incorporation of the New Board, the predecessor of the Division. Petitioner’s Exhibit 1, the May 23, 1917 Certificate of Incorporation of the Board of Temperance, Prohibition, and Public Morals of the Methodist Episcopal Church, described the “business and objectives for which [it] was organized” as “to promote the cause of temperance by every legitimate means; to prevent the improper use of drugs and narcotics; to render aid to such causes as in the judgment of the board of trustees, tend[ed] to advance the public welfare.”³⁵ According to Petitioner’s Exhibit 2, the New Board was formed “to make more effectual the efforts of the Methodist Church in the interest of a Christian way of life, by the promotion of temperance through intensive educational processes and by the crystallization of active opposition to violations of the moral law.”³⁶ The exhibits show that within five years of the formation of the New Board, its purposes had expanded, and its mission was

To make more effectual the efforts of the Methodist Church in the interest of the Christian way of life; in creating a Christian public sentiment; in crystallizing opposition to all public violations of moral law; to promote an intensive educational program relating to the evils growing out of the use and traffic in alcoholic beverages; to publish and distribute literature dealing therewith; to promote

³⁵ Petitioner’s Exhibit 1, Certificate of Incorporation of the Board of Temperance, Prohibition, and Public Morals of the Methodist Episcopal Church.

³⁶ Certificate of Incorporation of the Board of Temperance of the Methodist Church, April 15, 1944.

observance and enforcement of all [laws] which have for their purpose the suppression, regulation, or restriction of traffic in alcoholic liquors and narcotic drugs; to promote ...the ... enactment of such legislation throughout the world; to actively seek the suppression of salacious and corrupting literature, degrading amusements, lotteries, and other forms of gambling and to in every wise and lawful way, promote the public morals.³⁷

In addition to the incorporating documents for the Old and New Boards, the parties introduced into evidence volumes of the Discipline of the United Methodist Church for the time periods at issue in this case. The Discipline is the authoritative document setting forth the law and polity of the Methodist Church. According to Respondents' Exhibit 21, the 1936 Discipline of the Methodist Episcopal Church described the duties of the Board of Managers of the Board of Temperance as including, *inter alia*, the "promot[ion of] public policies which tend to the diminution of the use of narcotics; ... the [opposition of] corrupting literature and degrading amusements; ... [and the work of suppressing] lotteries and other forms of gambling . . ." ³⁸ The 1936 Discipline required the Board of Managers to "make use of the money that may be available for its purposes to the end that the moral interests of the nation may be promoted."³⁹ The Disciplines for the years between 1940 and 1956, introduced as Respondents' Exhibits 22 – 26,⁴⁰ each provided that "the object and duty of th[e] Board [included] actively seeking the suppression of salacious and corrupting literature and degrading amusements, lotteries, and other forms of gambling, and in every wise way ...

³⁷ Amended Certificate of Incorporation of the Board of Temperance of the Methodist Church, Petitioner's Exhibit 4, dated October 25, 1949.

³⁸ Respondents' Exhibit 21, the 1936 Discipline of the Methodist Episcopal Church, Chapter IX, Board of Temperance, Prohibition, and Public Morals, sec. 5. Article IV.

³⁹ *Id.*

⁴⁰ Discipline of the Methodist Episcopal Church for the years 1940 (Respondents' Exhibit 22), Chapter IV, Para. 1192; 1944 (Respondents' Exhibit 23), Chapter IV, Para. 1461; 1948 (Respondents' Exhibit 24), Chapter IX, Para. 1461; 1952 (Respondents' Exhibit 25) Chapter XI, Para. 1531; and 1956 (Respondents' Exhibit 26) Chapter XII, Para. 1522.

promoting the public morals.” The term “public morals” is defined in Resolutions found in volumes of The Discipline introduced into evidence at trial.⁴¹

In addition to the Articles of Incorporation of the Boards, Respondents introduced numerous editions of “The Voice”, a publication of the Old Board,⁴² Resolutions from the Book of Discipline for several quadrenniums,⁴³ volumes of the Discipline for several quadrenniums,⁴⁴ and quadrennial reports.⁴⁵ Petitioner also introduced several excerpts from “The Voice,” including an excerpt from the October, 1920 edition of “The Voice,” explaining that 1) the “platform of [the Board’s] principles [consisted of] all the enactments of the General Conference dealing on the moral situation and the application of the Gospel ... to the ethical life of nations.” and 2) the Board “[s]tood for the strict enforcement of Prohibition, a... program on total abstinence such as tobacco and drugs a pure ... home life ... the anti-gambling crusade, ... national censorship of moving picture films, [which it considered] one of the greatest business enterprises in the country with a very marked tendency to cater to the immoral and the low.”⁴⁶

⁴¹ The 1932 Book of Discipline, Respondents’ Exhibit 7, identifies under the topic “Public Morals”, the “distribution and sale of narcotic drugs”, gambling, and issues of “personal purity”, which can best be summarized as issues related to sexuality and pornography. It included a “pagan conception of life [that] puts a low estimate upon personality, fosters the vulgar and the obscene, develops the irreverent and the frivolous, encourages sensuality and vice, and ... tempts mankind to live on the plane of the animal. Under this topic, there is language protesting against “literature [on newsstands and bookshelves] ... that produces a[n] attitude toward life that is debasing and demoralizing” and labeling as “demoralizing the laxity of moral cleanness, and [the development of] suggestive relations between the sexes....” The 1936 Discipline added newspapers, crime, and cigarettes to the list of public morals issues. Respondents’ Exhibit 8 at 666 – 667. The list of public morals discussed in the 1952 Discipline, Respondents’ Exhibit 12 is shorter, focusing only on alcohol, illegal drugs, gambling, crime and public corruption, and tobacco. The 1956 Discipline, Respondents’ Exhibit 13, lists under the combined heading “Temperance and Public Morals”, alcohol and related issues, e.g. abstinence and rehabilitation, corruption in politics, narcotics, gambling, and tobacco, and, under the same heading, the 1960 Discipline, Respondents’ Exhibit 14, identifies alcohol-related issues, gambling, narcotics, tobacco, exploitation of sex – including the distribution of pornographic literature, films,... and Sunday observance.

⁴² Respondents’ Exhibit 62, Respondents’ Exhibit 74.

⁴³ Respondents’ Exhibit 4 – 14.

⁴⁴ Respondents’ Exhibit 18 – 26.

⁴⁵ Respondents’ Exhibit 56 – 58 and Respondents’ Exhibit 192.

⁴⁶ Petitioner’s Exhibit 162, “The Board’s Purpose and Need”.

Petitioner introduced exhibits showing that the Old Board conducted programs and was active in opposing “vices” other than alcohol and temperance. Petitioner’s Exhibit 302, the 1924 Methodist Yearbook, stated that the Old Board was not a “one issue board,” and that it had made “[s]trenuous efforts... to arouse sentiment against the return of prize-fighting, to protect ... public schools from the ... influence of dancing, to promote the safety of the ... Sabbath, [and] to secure the suppression of gambling and commercialized indecency.”⁴⁷ Other documents were also introduced into evidence to show that the Old Board and the Division were actively taking positions on issues other than temperance and alcohol problems. According to Petitioner’s Exhibit 160, the “Report of the [Old Board] to the General Conference” in May, 1920, the Board’s Program was planning extensions to include a “war on the demoralizing and widespread toleration of gambling, ... protection of the ... Sabbath, ... an educational campaign in regard to the cigarette, ... cooperation in prevention of drug addiction, ... and hostility to the toleration of vice and an educational campaign on personal purity.” Exhibits were introduced indicating that the Old Board took positions on anti-lynching legislation,⁴⁸ and that while the Division was somewhat resistant to efforts to greatly expand its program,⁴⁹ it nevertheless was concerned with issues such as gambling.⁵⁰

The documents show that, on Commitment Days, the Church sought commitments from members not only on alcohol-related issues, but also on abstinence from gambling, narcotics, and pornography and that the New Board was concerned with

⁴⁷ The Methodist Yearbook, 1924, at 181.

⁴⁸ See, e.g., Petitioner’s Exhibit 269, “Proceedings of the Annual Meeting of the Board of Temperance, Prohibition, and Public Morals, January 16, 1924”.

⁴⁹ Petitioner’s Exhibit 30, Minutes of New Board Meeting November 14 – 19, 1947, pp. 6 and 4; *see also* Petitioner’s Exhibit 40, Minutes of New Board Meeting, January 28 -30, 1956.

⁵⁰ *Id.*

and sought information about proposed legislation designed to address crime and juvenile delinquency and the Christian way of life.⁵¹

Some exhibits in evidence reflect that the General Secretary of the New Board, Dr. Carradine Hooten, advocated for the enactment of legislation on what was considered to be indecent literature,⁵² and, that in 1957, Dr. Hooten urged the staff of the Division Board to “launch a campaign for Christian living ...involv[ing] clean literature, cultural movies, and curbs on alcohol.” Hooten hoped to reach agreements on definitions of obscenity and other actions designed to assist the Division in its efforts to achieve passage of legislation on these issues. He viewed a campaign against indecent literature to be a “defense of young people against... exploitation.”⁵³

The exhibits show that the 1960 General Conference of the Methodist Church further expanded the scope of the work of the Division, requiring it to carry out a “program of research, education, and action [regarding not only alcohol and temperance problems, but also] addiction to injurious habits, ...[e.g.] tobacco and drugs; gambling, pornography, juvenile delinquency and crime; [the]penal system and rehabilitation, mental health and medical care; problems associated with aging, population, and planned parenthood; traffic safety, and such other concerns as the general board may specify.”⁵⁴

Documents in evidence reveal that, going forward into the 1960s, the staff of the Division prepared position papers⁵⁵ on topics ranging from medical care for the aging and

⁵¹ *Id.*, January 29, 1959 Morning and Evening Sessions.

⁵² Petitioner’s Exhibit 41, *The Voice*, February, 1953 “Dr. Hooten’s testimony before Gathings Committee.”

⁵³ May 7, 1957 “Memo to Staff from Carradine Hooten on “Stepped-up Emphasis on Moral Issues.”

⁵⁴ Petitioner’s Exhibit 186, “Report Number 4 of the Coordinating Council, Legislative Proposal for a Board of Christian Social Concerns,” p. 60, recommending proposed legislation in anticipation of the merger of the Board of Temperance, the Board of World Peace, and the Board of Social Economic Concerns, and Petitioner’s Exhibit 184, *The 1960 Discipline of the Methodist Church* at Para. 1535, incorporating the language of the Report.

⁵⁵ Position papers were determined by the Board to be “study papers serving as guidelines for program development with recommendations reflecting the decisions of the Board.” Petitioner’s Exhibit 51, Minutes

use of tobacco products to planned parenthood⁵⁶ and developed long range strategies for combating not only alcohol problems, but also gambling, narcotics, and tobacco use.

In a memorandum dated December 3, 1959, Respondents' witness Roger Burgess, then Associate General Secretary of the Division, outlined goals in the fields of alcohol, gambling, narcotics, exploitation of sex, tobacco use, and Sunday observances. The specific strategies proposed to implement the goals in the non-alcohol areas included development of literature for dissemination, advocating the enactment of legislation, cooperating with other organizations concerned with the specific behaviors, and creating community activities regarding the behavior.⁵⁷

In addition to the documentary evidence reflecting the work of the Old Board and the Division, the parties elicited testimony on the work of the Boards. Respondents presented the testimony of Roger Burgess about the work of the New Board and the Division and also introduced into evidence portions of the testimony of Lycurgus Starkey, Jr. about the work of those Boards. Mr. Burgess testified that the work of the New Board was predominantly in the areas of temperance and alcohol. He acknowledged that the Board did work in some other areas, but minimized the amount of Board time devoted to those areas, characterizing them as the "tail on the dog." At one point, Mr. Burgess testified that the Board's work in temperance and alcohol problems amounted to "no more than 80 per cent." On another occasion, he testified that 90 per cent of its work was temperance and alcohol related, implying that at most 10 per cent of the Board's work was devoted to other areas. Mr. Burgess testified that, even after the

of the meeting of the Division of Temperance and General Welfare of the General Board of Christian Social Concerns of the Methodist Church, January 29, 1963.

⁵⁶ Petitioner's Exhibit 51, Minutes of the meeting of the Division of Temperance and General Welfare of the General Board of Christian Social Concerns of the Methodist Church, January 29, 1963.

⁵⁷ Petitioner's Exhibit 183, "A Statement of Temperance Goals," attached to December 11, 1959 memorandum to Division staff from Roger Burgess.

expansion of the Division's duties in 1960, most of the work related to non-alcohol issues was in the form of preparing reports.⁵⁸ In his deposition, Dr. Starkey denied that, before the merger, the Division performed any work in the areas of gambling, narcotics, or pornography, and testified that its work was confined to the areas of temperance and alcohol problems.⁵⁹

Petitioner presented the testimony of Bishop Dale White about the work that the Board did during the early 1960s. Bishop White was the Director of Program of the Division from 1961 to 1965, and at the time of his deposition, he had retired from the Council of Bishops of the United Methodist Church. In a deposition, the transcript of which was introduced at trial, White testified that the Division conducted programs in all the expanded areas set forth in the 1960 Discipline. He testified that the work that he and his staff did in those areas included research, teaching, and advocacy throughout the church ... [m]ainly educational [work].” Some of the time this work included attending conferences, writing books and pamphlets and developing curricula for youth.⁶⁰

Whether the Funds Had Been Impressed With a Trust-in-Fact

The Declaration of Trust recited that the “assets [of the Methodist Building Endowment Fund] ha[d] been impressed with a trust-in-fact for them to be used and applied for the purposes for which they were given – for work in the areas of temperance and alcohol” and that the purpose of th[e] Declaration ... [was] to formalize the existing situation...” The accuracy of that recitation, specifically the meaning of “the existing situation” was a major focus at trial. Evidence presented on this issue consisted of the testimony and documents. Petitioner presented the deposition testimony of Bishop Dale White, and Respondents elicited testimony from Mr. Burgess on this issue as well. The

⁵⁸ Testimony of Roger Burgess, October 9, 2008.

⁵⁹ Respondents' Exhibit 198, Deposition of Dr. Lycurgus Starkey, p. 121, lines 12 – 22.

⁶⁰ Petitioner's Exhibit 282, Transcript of Dr. Dale White, p. 54, l. 23 – p. 56, l. 3.

parties also introduced as exhibits numerous proposed budgets of the Division and other documents relating to the financial affairs of the Division and the Methodist Building Endowment Fund.

Mr. Burgess testified at trial that, after the merger of the Division into the BCSC and prior to the establishment of the Declaration of Trust, the Endowment Fund monies were used exclusively in the areas of temperance and alcohol problems and that the reference to the “existing situation” in the Declaration was to the practice of using the funds in that way.⁶¹ He testified that, after the merger, the Division had established a Department of Alcohol Problems, which was the recipient of the funds.

The testimony of Bishop White, however, who was the Director of Program for the Division for the four years preceding the establishment of the trust, was that he had never been apprised that the funds from the Endowment Fund were to be restricted to use for temperance and alcohol problems.⁶² Before the Trust was established, he testified, he did not restrict the use of those Endowment Funds at his disposal to activities related to alcohol-related issues, but used them to support activities in all the areas within the Division’s responsibility. According to him, he was advised by Mr. Burgess and by the General Secretary of the BCSC that the funds could be used for all purposes of the Division.⁶³ After the Declaration of Trust was signed, he testified, he was never instructed to segregate the Endowment Funds for use solely on temperance and alcohol-related activities.⁶⁴ Further, he testified, after he became Associate General Secretary of

⁶¹ Testimony of Roger Burgess, October 8 – 9, 2008.

⁶² Petitioner’s Exhibit 298, Deposition Transcript of Bishop Dale White, p. 98, l. 25 – p. 99, l. 3.

⁶³ *Id.*, pp. 55 – 58.

⁶⁴ *Id.*, p. 99, lines 10 – 19.

the Division in 1965, with budgetary responsibilities, he did not restrict the use of the Endowment funds.⁶⁵

Numerous exhibits were introduced into evidence relevant to the use of the Endowment funds before and after the Declaration was signed. Petitioner's Exhibit 42 comprises the minutes of the December 13, 1960 meeting of the Division. Appendix C of the exhibit contains a proposed revised budget for the Division for Fiscal Years 1960 - 1961 and 1961 - 1962. The minutes show that the proposed budget for 1960 - 61 was adopted in principle by the Division at the meeting, and that the Division considered the 1960 - 61 budget to be the budget for 1961 - 1962 as well. The exhibit shows that the budget of \$252,760.00 for those fiscal years was allocated among several categories - General Board Expenses, Division Administration, Division Projects, the Department of Research and Program, the Department of Field Service and Training, and Bookkeeping. The proposed budget identifies no specific funds allocated to any particular department or for any particular area of work. In addition to income from World Service funds, investment income, literature sales, Commitment Day, and property investments, the "Anticipated Income" to fund the budget included \$16,000.00 from "Building Income."⁶⁶ The Division's "operating budget" for 1962 - 63 shows the budget allotment being allocated among essentially the same departments, and identifies no monies earmarked

⁶⁵ *Id.*, p. 101, lines 16 - 23.

⁶⁶ Petitioner's Exhibit 42, Appendix C, Revised Budget, Division of Temperance and General Welfare, 1960 - 61 and 1961 - 62, pp. 18 - 19; *see also* Petitioner's Exhibit 43, pp. 18 - 19. The evidence in this case suggests that monies from the "building fund" as used in the budget documents came from what eventually became the "Methodist Building Endowment Fund." No documents in evidence identify the date that the term "Methodist Building Endowment Fund" was first used by the Division. However, on May 2, 1962, the Executive Committee of the Division voted to establish an account to "related to the construction of the [a new] building," and the Division authorized transfers to that account from an account "known as 'The Methodist Building.'" ⁶⁶ On the same day, the Division voted "that the usual annual payment of \$16,000.00 for program be made to the operating budget of the Division from the ... "The Methodist Building".⁶⁶ The budget for the Methodist Building Endowment Fund for the 1964 - 65 fiscal year shows a payment in the same amount -- \$16,000.00 -- to the Division's Department of Alcohol Problems from the fund.

for temperance and alcohol problems or any other specific programs.⁶⁷ Included as anticipated income to fund this budget was \$16,000.00 from the Building Fund.

The exhibits show that no Department of Alcohol Problems was in existence until 1964 at the earliest. The minutes of the February 17, 1964, meeting of the Division show that, as of that date, the Division was still planning to establish a Department of Alcohol Problems.⁶⁸ The Division minutes from March 24, 1965, the day after the Declaration of Trust was first signed, indicate that the Department of Alcohol Problems was not fully budgeted until the Division's 1964 – 65 fiscal year.⁶⁹ A review of the same minutes shows that Division expenditures for the 1963 - 64 fiscal year for items in a “Department of Alcohol Problems” amounted to a total of \$20,281.00, but that income from “Endowment and Contributions” totaled \$28,401.00. In addition, the budget for the Department of Alcohol Problems for fiscal year 1964 – 65 was \$38,700.00, with anticipated income to the Division from the “Endowment and Contributions” in the amount of \$46,700.00. It shows that this \$8000.00 excess of Endowment Contributions over the amount needed to fund the Department of Alcohol Problems was budgeted to fund other activities of the Division.⁷⁰

⁶⁷ Petitioner's Exhibit 48, Minutes of the Division's Executive Committee meeting, May 2, 1962, Appendix B, IMG 4412 and IMG 4413. In the 1962 - 63 budget, the Department of Research and Programs had been changed to the Department of Program, and the Department of Field Service and Training had been changed to the Department of Leadership Development, and there were no funds allocated to bookkeeping.

⁶⁸ Petitioner's Exhibit 54, p. 2.

⁶⁹ Petitioner's Exhibit 56, Minutes of the March 24, 1965 meeting of the Executive Committee of the Division, Appendix A, IMG 4469.

⁷⁰ *Id.* Petitioner's Exhibit 56, Minutes of the March 24, 1965 meeting of the Executive Committee of the Division, Appendix A., IMG 4469. That appendix shows not only the proposed Division budget for 1965 – 1966, but also the budget for 1964-1965, the fiscal year in which the Declaration was signed. The budgets for all budget categories, except the Dept. of Alcohol Problems, were as follows: Administration -- \$42,000.00; Program & Field Service -- \$24,600; Dept. of Social Health -- \$24,900; Dept. of Social Welfare - \$25,650; and Research and Promotion Dept. -- \$10,050. Thus the total Division budget -- not including the Dept. of Alcohol Problems -- was \$127,200.00. The budget for the Department of Alcohol Problems for that year was \$38,700.00. The Division income for 1964 -1965 consisted of Endowment Fund Income in the amount of \$46,700.00 and World Service Funds in the amount of \$119,000.00. After \$38,700.00 of the \$46,700.00 in Endowment Funds was applied to the Department of Alcohol Problems, the Division had \$8000.00 in excess endowment funds. To balance the \$127,200.00 budget, the Division

The budget for the Methodist Building Endowment Fund, Appendix C to the March 23, 1965 minutes of the Executive Committee, for “12 months 63 - 64”, had total expenditures of \$81,735.36. The expenditures were for the buildings,⁷¹ the Department of Alcohol Problems, payments to temperance agencies, interest and annuity payments. In addition, expenditures were made from the fund during that twelve-month period to pay a pension and legal fees.⁷²

Another document in evidence, Petitioner’s Exhibit 143, a “Budget Statement for One-Year Period – June 1, 1964 – May 31, 1965 identifies budget allocations for Administration and Program and Field Services and a Department of Research, and thus appears to be a budget statement for the Division. In addition, the budget statement shows allocations for the Departments of Alcohol Problems, Social Health, and Social Welfare. The budget statement, although undated, appears to relate to a period after February, 1965, because it identifies not only budget amounts but also “February expenses” and “Nine Months Expenses.” The budget allocation for the Department of Alcohol Problems was \$38,700.00. The “Anticipated Income” from the Endowment Funds was \$44,700.00 – \$6,000.00 in excess of the \$38,700.00 one year budget for the Department of Alcohol Problems.⁷³

Another document, Respondents’ Exhibit 161, a “Report of the Board of Christian Social Concerns for the Fiscal Year 1965 – 1966, contains, *inter alia*, the proposed budget for the Division for the Fiscal Year 1965 - 1966. The proposed budget for the Department of Alcohol Problems for the fiscal year was \$49,000.00, and the anticipated

added the excess \$8000.00 in endowment funds to the \$119,200.00 in World Service funds, arriving at a total of \$127200.00, the exact amount of the Division budget for all its other programs.

⁷¹ By this time, the Division was planning the construction of a new building in Northwest Washington, D.C. which, according to Petitioner’s Exhibit 54, was originally to begin in 1964 and to be completed by 1966.

⁷² Id., Appendix C, IMG 4489.

⁷³ Petitioner’s Exhibit 143.

income for the Department was \$49,000.00 as well. In addition to showing the proposed budget amount, the document shows the budget and expenses for the previous fiscal year, 1964 - 65. It indicates that the budget for 1964 - 65 was \$49,000.00; that expenses for the Department of Alcohol for that fiscal year were \$46,864.51; and that Endowment Fund income that year was \$49,000.00.⁷⁴ The proposed budget for the Methodist Building Endowment Fund for 1965 – 66 shows that \$49,000.00 was to go to the Department of Alcohol Problems. The remaining monies from the \$115,000.00 expected expenditures were to be used for the buildings, including \$28,000.00 for a new building being planned, for interest and annuity payments, legal fees, and a pension.⁷⁵

Finally, Petitioner introduced a series of letters from Nelson West, attorney for Ida and Sarah Simpson, opining that it was permissible for the Old Board to use the sisters' bequests to pay down the mortgage on the Methodist Building.⁷⁶ Petitioner's Exhibit 171, a 1936 audit of the Old Board's Building Fund, shows that \$62,000.00 of the Simpson sisters' bequests was used to pay down the mortgage on the Methodist Building and the Methodist Building Annex,⁷⁷ which was consistent with the sisters' intent.⁷⁸

The Declaration of Trust

There is no substantial dispute among the parties about the events leading up to the March 23, 1965 signing of the Declaration of Trust. The exhibits in evidence, the testimony of Roger Burgess, and the deposition testimony of Lycurgus Starkey, are all

⁷⁴ The 1964 – 65 budget figures shown in this exhibit are in conflict with the 1964 – 65 budget figures as stated in Appendix A to Petitioner's Exhibit 56, the Minutes of the Division's Executive Committee from March 24, 1965, the day after the Declaration was signed.

⁷⁵ Petitioner's Exhibit 56, Exhibit C, IMG 4489.

⁷⁶ Petitioner's Exhibits 122, Letter from Nelson West to Clarence True Wilson, dated April 13, 1936; Petitioner's Exhibit 123, Letter from Nelson West to Clarence True Wilson, dated April 24, 1936; and Petitioner's Exhibit 124, Letter from Nelson West to Clarence True Wilson, dated June 11, 1936.

⁷⁷ Petitioner's Exhibit 171, a 1936 Audit of the Building Fund of the Old Board for the Fiscal year ending October 31, 1936, pp. 3 – 4.

⁷⁸ Petitioner's Exhibit 123, April 24, 1936, Letter from Nelson West, the attorney for both Simpson sisters, to Clarence True Wilson, Executive Secretary of the Old Board.

relevant on this point. As early as the 1956 General Conference, the Methodist Church was considering the merger of three Boards – the Boards of Temperance, Peace and World Order, and Human Relations and Economic Affairs -- under one umbrella organization of the Church.⁷⁹ The Board of Temperance was reluctant to support the merger. There were two reasons for its reluctance. Petitioner’s Exhibit 162 indicates that one concern was that the focus on the Division’s programs would be diminished as a result of the merger⁸⁰ and that another concern was that, because the Division was the wealthiest of the three boards, the funds over which it had control would be used to support the programs of the other two boards.⁸¹ The latter concern led the Board of Temperance – even before the merger was approved by the General Conference – to find ways to protect its funds if the merger occurred. The Board of Temperance took action to have two of its members “look into the law setting up the funds for the use of the Board, these funds having been placed in trust by individuals and the church at large for the work of promoting the Board of Temperance.”⁸² In another pre-emptive action, the members and staff of the Board of Temperance succeeded in their attempt to have language added to the 1960 Discipline providing that “funds vested in any of the predecessor boards shall be conserved for the exclusive use of the appropriate division of this board and for the specific purposes for which such funds have been given.”⁸³

At its 1960 General Conference, the Methodist Church did approve a “merger” of the aforementioned Boards under the umbrella of one new corporation, The Board of Christian Social Concerns. Each of the three Boards became Divisions of the BCSC,

⁷⁹ Petitioner’s Exhibit 177, p. 3, IMG1955.

⁸⁰ Petitioner’s Exhibit 182, “The Staff Report” for the General Board of Temperance, The Methodist Church, January 28 – 30, 1959 “To Merge or Not to Merge?”, pp. 25 – 28.

⁸¹ *Id.*, p. 26.

⁸² Petitioner’s Exhibit 38, p. 4.

⁸³ Respondents’ Exhibit 156, para. 1525, sec. 2, and October 9, 2008 trial testimony of Respondents’ witness Roger Burgess.

albeit with their own corporate structures.⁸⁴ After the “merger”, the Board of Temperance, now the Division of General Welfare of the BCSC, or the Division, began to believe that its fears of loss of control of its funds were coming true, as requests were being made to use money from the Division for other purposes.⁸⁵ These requests led the Division to take additional actions to protect its funds. At a February 16, 1964 meeting, the Executive Committee of the BCSC approved a policy that “[e]ndowment [f]unds and special campaign income [would] not prejudice Division shares of World Service funds.”⁸⁶

According to Respondents’ witness Roger Burgess, these concerns that the Division’s funds were being viewed as a source of funding for activities not related to temperance and alcohol problems led to the decision to settle the Declaration of Trust.⁸⁷

Prior to the March 23, 1965 meeting at which the Declaration of Trust was signed, the language of the proposed Declaration of Trust was the subject of a dispute, primarily between Roger Burgess, who, at the time, was the Associate General Secretary of the Division, and A. Dudley Ward, who, by then, was the General Secretary of the BCSC. Ward believed, *inter alia*, that the intent of the 1960 General Conference was that the funds should be owned by the entire Board of Christian Social Concerns and that their use should not be limited to use for temperance and alcohol problems. Burgess disagreed, and argued that imposing such limitations was consistent with the present uses

⁸⁴ Petitioner’s Exhibit 184, Paragraphs 1516 – 1524.

⁸⁵ At trial, Roger Burgess testified to several attempts by the BCSC to use “Division” funds for general purposes of the Board, and Petitioner’s Exhibit 53 corroborates his testimony. Exhibit 53 consists of the February 16, 1964 Minutes of the Executive Committee of the Division of Temperance and General Welfare of the BCSC. The Minutes reflect, *inter alia*, that the Division of Peace and World Order (Peace Division) was in debt in the amount of \$51,000.00; that the Division of Human Relations and Economic Affairs had pledged to loan \$10,000.00 to the Peace Division \$10,000.00; that the Temperance Division had already loaned the Peace Division \$10,000.00 and had been asked to forbear on demanding repayment for a certain period of time; and that the General Secretary of the BCSC had requested that the Temperance Division make a substantial loan toward the United Nations Building Account of the BCSC.

⁸⁶ Petitioner’s Exhibit 54, February 17, 1964 Minutes of the Division, Afternoon Session, at p. 2.

⁸⁷ October 9, 2008 trial testimony of Roger Burgess.

of the Endowment funds, or “existing situation”. Burgess also reported that his review of the history of the Boards (the Old Board and Board of Temperance, the Division’s predecessor) and minutes showed that the funds were specifically given for work in the field of alcohol problems, and that the Division would be “break[ing] faith” with the donors by not limiting their use.⁸⁸

As an alternative to the language in the draft of the Declaration of Trust circulated to the Committee, A. Dudley Ward proposed language that would 1) place the trust in the name of the Board of Christian Social Concerns; 2) explicitly state that the “assets and income therefrom [were] for the exclusive use of the Division of Alcohol Problems and General Welfare”; and 3) require that the “trustees be representative of the entire board, with a numerical majority being from the Division of Alcohol Problems and General Welfare.”⁸⁹ Roger Burgess disagreed with Ward’s proposal because of his concern that, over \$4,000,000.00 would be transferred from the control of the Division to the General Secretary of the BCSC, and also because of his concern about the effect Ward’s proposal would have on Burgess’s “own responsibilities.”⁹⁰

Thomas Raysor, legal counsel for the Division and the BCSC, drafted the Declaration of Trust, with input from Roger Burgess and the Chairman of the Executive Committee of the Division, Bishop Paul Hardin, Jr.⁹¹ Raysor expressed an opinion that it was legal for the Declaration of Trust to be drafted either way – with the funds in the control of the Division and their use being restricted to alcohol problems or with the funds in the control of the BCSC and being available for the use of the Division – and that the exact wording was a policy decision. Raysor added the caveat that, if the latter

⁸⁸ Petitioner’s Exhibit 244, January 22, 1965 Letter from Roger Burgess to Bishop Paul Hardin, Jr.

⁸⁹ Petitioner’s Exhibit 245, January 26, 1965 Letter from A. Dudley Ward to Bishop Paul Hardin, Jr.

⁹⁰ Petitioner’s Exhibit 254, January 27, 1965 Letter from Roger Burgess to Bishop Paul Hardin, Jr.

⁹¹ Petitioner’s Exhibit 242, January 19, 1965 Letter to Executive Committee of the Division of Alcohol Problems and General Welfare.

course were chosen, the trustees would have to account separately for funds that had been given with restrictions.⁹²

Both Roger Burgess and A. Dudley Ward appeared before the Executive Committee of the Division on March 23, 1965 to express their views on the Declaration. The Declaration was approved, on motion, on that day, and, on March 24, 1965, the Division's Executive Committee passed a resolution approving and ratifying the Declaration.⁹³

Roger Burgess testified at trial that the settlors signed the trust partially to ensure that the funds remained under the control of the Division, and to ensure that the funds be "used for the purposes to which they were given ..." and to "keep faith with the people who gave those funds over a period of time." According to Mr. Burgess, "these were individuals and organizations and people remembering the Board of Temperance in their wills, all of which it was understood was given to the cause of temperance."⁹⁴ Mr. Burgess acknowledged that he never saw any documents restricting donations to the Boards in the manner he described.⁹⁵

Lycurgus Starkey was a member of the Executive Committee of the Division when the Declaration of Trust was signed and remained so until the summer of 1965.⁹⁶ It was Starkey's understanding when the Declaration was drafted that the trust funds had not been used in areas beyond temperance and alcohol, although he never saw any documents restricting the use of funds. At trial, he testified that his only knowledge

⁹² Petitioner's Exhibit 252, February 23, 1965 Letter from Thomas M. Raysor to A. Dudley Ward.

⁹³ Petitioner's Exhibit 56, Minutes of the March 24, 1965 Minutes of the Executive Committee of the Division of Alcohol Problems and General Welfare of the General Board of Christian Social Concerns.

⁹⁴ October 9, 2008 trial testimony of Roger Burgess.

⁹⁵ October 9, 2009 trial testimony of Roger Burgess.

⁹⁶ Petitioner's Exhibit 286, Deposition Transcript of Lycurgus Starkey, p. 25, lines 6 – 9.

about the purposes and uses of the funds came from his reading of the Declaration itself, which he accepted as accurate.⁹⁷

When the Declaration was presented to the Executive Committee of the Board of Christian Social Concerns, the Executive Committee, on motion, agreed to refer the matter to the Judicial Council of the Methodist Church for clarification of the meaning of Paragraph 1525(2) of the 1964 Discipline, which, despite a disagreement over which part of the paragraph was controlling, both sides agreed controlled.⁹⁸ The evidence, including the testimony of Roger Burgess, shows that the Judicial Council never ruled on the matter.⁹⁹

The “October Compromise”

The evidence introduced at trial showed that, after the Declaration of Trust was signed on behalf of the Division on March 23, 1965, and ratified by it on March 24, 1965, the Division and Board of Christian Social Concerns, through its General Secretary, A. Dudley Ward, began discussions about modifying the trust. The discussions about a compromise began within weeks after the Declaration of Trust was signed, as evidenced by a letter from Roger Burgess, to Bishop Hardin seeking clarification of Hardin’s position about the Division’s “willingness to revise the trust” after the hiring of a comptroller.”¹⁰⁰

The Executive Committee of the Division considered proposals to revise the Declaration at its October 18, 1965 meeting, but the exhibits show that the first proposal

⁹⁷ Deposition testimony of Lycurgus Starkey, Petitioner’s Exhibit 286.

⁹⁸ Even members of the Judicial Council were unclear about the meaning of the paragraph. See Petitioner’s Exhibit 256, March 16, 1965 Letter from Leon Hickman, a Judicial Council member to Roger Burgess.

⁹⁹ Roger Burgess testified at trial on October 9, 2008 that “it was [his] understanding” “that there seemed to be [a] general agreement that it w[as] a fifty-fifty proposition [about what the Board would do] and that A. Dudley Ward “did not pursue [the matter] further.”

¹⁰⁰ Petitioner’s Exhibit 259, April 5, 1965 Letter from Roger Burgess to Bishop Paul Hardin, and Petitioner’s Exhibit 260, April 7, 1965 Letter from Paul Hardin to Roger Burgess responding to Burgess’s April 5, 1965 letter.

by Mr. Ward was not acceptable to the Division. Specifically, Bishop Paul Hardin, the Division Chair, was opposed to the compromise because it would give control of the endowment funds assets to the Board of Christian Social Concerns.¹⁰¹ However, after further discussion, the Division did agree to the compromise. The compromise included an agreement to revise the trust to incorporate language that the Endowment funds would be used “for the exclusive use of the Division of Alcohol Problems and General Welfare”, thereby removing the restrictions on usage for temperance and alcohol problems.

The commitment was contingent on the removal of the phrase “by the Board” from the proposed 1968 Discipline of the EUB¹⁰²-Methodist Church and the hiring of a staff treasurer, which were to be followed by an increase in the Division’s representation among the Endowment Trustees to eight of the twelve trustees, with each of the two other Divisions having two trustee representatives. The agreement was that the language of the trust would be revised after the aforementioned language had been removed from the Discipline and a staff treasurer had been hired.

According to the evidence, a staff treasurer, George Granger, was hired, effective July 1, 1966.¹⁰³ Evidence at trial showed that a proposed 1966 draft of the 1968 Discipline¹⁰⁴ and the 1968 Discipline itself¹⁰⁵ contain the phrase “by the Board” in several places. The 1968 Discipline permitted the General Board of Christian Social Concerns “[e]ither on behalf of its total work or on behalf of one or more of its divisions,

¹⁰¹ Petitioner’s Exhibit 262, Minutes of the Division’s Executive Committee, October 18, 1965.

¹⁰² The Evangelical United Brethren Church, with which the Methodist Church was planning to merge.

¹⁰³ Petitioner’s Exhibit 174, Minutes of March 8, 1966 BCSC Executive Committee meeting.

¹⁰⁴ Petitioner’s Exhibit 63, Minutes of the March 8, 1966 meeting of the Executive Committee of the BCSC, Appendix 14, “Report of Committee Fourteen Christian Social Concerns (Amended March 8, 1966), Section 10, “Board of Christian Social Concerns”.

¹⁰⁵ Petitioner’s Exhibit 281, “The Book of Discipline of the United Methodist Church 1968” Section V, Board of Christian Social Concerns,” Para. 990.2.

[to] solicit and create special funds, receive gifts and bequests, hold properties and securities in trust, and administer all these financial affairs in accordance with its own rules and the provisions of the Discipline...” It further provided that “[f]unds vested in any of the predecessor boards shall be conserved for the specific purposes for which such funds have been given.”¹⁰⁶ No evidence was presented showing the exact language in the proposed version of the 1968 Discipline, which was discussed at the October 18, 1965, meeting of the Executive Committee of the Division and which included the phrase “by the Board” to which Bishop Paul Hardin objected.

The evidence at trial also showed that, after 1965, eight of the trustees from the Endowment Fund were from the Division. The September 25, 1968 minutes of the meeting of the Division show that eight members of the Trustees of the Endowment Fund were required to be from the Division. However, those minutes indicated that the imposition of this requirement was reflected in the March 23, 1965 minutes – and not a subsequent agreement.¹⁰⁷ By March, 1969, the Endowment Trust Fund had two members from each of the other two divisions of the BCSC – the Division of World Peace and the Division of Human Relations. The March 18, 1969 minutes of the Endowment Fund Trustees indicate that an “organizational meeting of the Endowment Fund Trustees” occurred that day, and show that eight (8) of the members were from the Division of General Welfare and the other two Divisions comprising the BCSC each had two Trustee representatives.¹⁰⁸

¹⁰⁶ *Id.*

¹⁰⁷ Petitioner’s Exhibit 70, Minutes of the Division of General Welfare, General Board of Christian Concerns, p. 6, “Election – Trustees of Trust Fund.”

¹⁰⁸ Petitioner’s Exhibit 72, March 18, 1969 Minutes of the Endowment Fund Trustees, p. 1.

Post-Declaration Investigations

At the March 18, 1969 organizational meeting of the Endowment Fund Trustees, an Investment Committee of Trustees was formed and directed to “study ... the history of the Gifts [that had] been made in trust to the trust fund.” The study was to include a review of past minutes of the Trustees and “all predecessor Boards and Agencies relating to the Trust” and “all enabling legislation, resolutions and other actions constituting guidelines for [the] Trust.” The Trustees then authorized the Investment Committee to “manage a revolving loan fund [that was] to be ... available to the GBSC”.¹⁰⁹ The Investment Committee subsequently reported to the Trustees that it had reviewed the “documents held by the Board of Christian Social Concerns, Deeds, Articles of Incorporation, Minutes, etc., and had concluded that the language in the donative documents was not as restrictive as recited in the Declaration and that their “[i]nvestigation had revealed “that no significant designated gifts or bequests which c[ould] be traced [were] left unexpended for the purposes for which they were given.”¹¹⁰ The investigation further concluded that the funds in the Endowment funds were available for use for broader uses than alcohol and temperance.¹¹¹

In 1972, when the issue of the permissible use of the Endowment Funds arose again, Thomas Raysor, still counsel to the Division and to the BCSC, informed the Committee of Trustees that the “trust funds ha[d] been ... used been used not just for

¹⁰⁹ *Id.*

¹¹⁰ Petitioner’s Exhibit 73, Minutes of the Investment committee, The Endowment Fund Trustees, May15, 1969,” pp. 2 – 3.

¹¹¹ Specifically, the Committee believed that the broader purposes were the purposes for which, according to its Certificate of Incorporation, the Old Board was organized, the purposes for which the New Board was organized as set forth in its original and amended certificates of incorporations, and for the erection of the Methodist Building. Petitioner’s Exhibit 73, pp. 2-3.

temperance and alcohol problems but also for problems involving public morals, ... gambling, drug abuse and general welfare”.¹¹²

In 1976, John Stumbo, a Respondent Intervenor in this case, became Chair of the Trustees of the Endowment Fund. In his testimony at trial, Mr. Stumbo acknowledged that, at a meeting of the Division in May, 1979, he had opined that the Endowment funds could be used for the programmatic purposes of the Board as presently situated.” His trial testimony was that the term “as presently situated” referred to the programmatic areas assigned to [the] Division, and he characterized those areas as a “grocery list.”¹¹³ Mr. Stumbo also testified at trial that he had no personal knowledge of any restriction on any gifts, including the bequests to the Old Board by the Simpson sisters.¹¹⁴

ANALYSIS

Restriction of Funds

Based on the evidence presented at trial, the Court finds that there is clear and convincing evidence that the donations to the Boards were not restricted solely for use in temperance and alcohol problems. Two of the pledge cards introduced by Petitioner show no individual restrictions except the requirement that the Old Board establish memorials in memory of the donors. The printed language on the cards is general, and, in the view of the Court, indicates that the pledges were given for the general purposes of the Board. The language begins with the phrase “[i]n consideration ... need of the work of the [Old Board]” and identifies two other purposes – the maintaining of the ideals of the Church of Jesus Christ and the saving and protection of American Youth.¹¹⁵

¹¹² Petitioner’s Exhibit 114, redacted as directed by the Court at trial.

¹¹³ October 7, 2008 trial testimony of John Stumbo; *see also* Petitioner’s Exhibit 298, Minutes of the May 4-5, 1979 meeting of the Executive Committee of the Division, p. 2.

¹¹⁴ October 7, 2008 trial testimony of John Stumbo.

¹¹⁵ Petitioner’s Exhibit 128 and 129.

The Court finds that the latter two purposes are general as well. Although Respondents' witness, Roger Burgess, testified that "the saving and protection of American Youth" refers to protecting youth against the problems associated with alcohol, the Court is doubtful of this interpretation. Mr. Burgess offered no support for this testimony, and the evidence shows that the Old Board was also concerned about the effect of other "vices", e.g. pornography, on youth as well.¹¹⁶ In addition, the purposes are stated in the conjunctive. Therefore, even if Mr. Burgess's interpretation of the phrase is accurate, protecting youth from alcohol is only one of the purposes of the pledge.

Even some of Respondents' own exhibits show a lack of restrictions on gifts to the Old Board. For example, Respondents' Exhibit 116, a \$100.00 gift, according to a letter from the World Service Commission of the Methodist Episcopal Church, was sent to the Old Board with no specific purpose.¹¹⁷ Similarly, the donations received by the Old Board from W. E. Hammaker,¹¹⁸ bore no restrictions for alcohol and temperance purposes.

The exhibits make clear that some pledges made to the Old Board did carry restrictions with them. Some were for the erection of the Methodist Building, as is demonstrated by the pledge cards signed by Maria Kline and another donor, Mrs. E.R. Galbraith,¹¹⁹ as well as the annuity bond introduced into evidence.¹²⁰ Still other exhibits introduced show that some donors of very small gifts designated their gifts for other purposes. For instance, a pledge by a donor to Rev. E. L. Eaton was made specifically

¹¹⁶ See n. 50, *supra*.

¹¹⁷ The World Service Commission speculated that the gift might have been intended as a special gift to the fund for temperance education.

¹¹⁸ Petitioner's Exhibit 138.

¹¹⁹ Petitioner's Exhibit 267 and 268.

¹²⁰ Given the varied purposes of the Methodist Building, the Court cannot interpret a pledge for the erection of the building to be restricted solely for temperance and alcohol purposes.

for furnishings in the Methodist Building.¹²¹ The evidence further shows that, when donors did prefer that their donations be used for specific purposes, in some instances, they nevertheless allowed the Old Board the discretion to decide how best to use the funds. For example, the donation of \$5,000.00 from a Mr. von Helfenstein, shown in Petitioner's Exhibit 130, was a gift made to be used with the building *or* for other purposes for which the Board might need it.

With the exception of the bequest of Sarah Simpson, who did limit her bequest for use in the educational temperance effort, there is no evidence in the record showing that donations and pledges made to the Old Board were made by their donors for the limited uses of temperance and alcohol.¹²² However, it is not the lack of evidence in the record that is important to the Petitioner's ability to carry its burden, but rather evidence in the record showing that the language in the Declaration of Trust indicating that the donations to the Old Board and Division were made for temperance and alcohol purposes is mistaken. The Court is convinced that, with the evidence adduced at trial, Petitioner has carried that burden.

Petitioner has introduced into evidence exhibits showing numerous donations – large and small – consisting of not just pledge cards, but also individual donations made to Methodist preachers, annuity bonds and testamentary gifts, that convince the Court that most of the donations made to the Boards did not bear restrictions for use on temperance

¹²¹ See n. 19, *supra*.

¹²² Respondents relied on a series of communications between the Old Board and one of its donors, Mary Marsh. Miss Marsh made several contributions and pledges over the years. Respondents pointed to letters from the Old Board thanking her for her contributions and advising her that her contributions would be handled in the same way that previous ones were handled – for the cause of temperance. In the view of the Court, there is a distinction between a donor's request that a donation be used for a certain purpose and the recipient's providing her information on how the gift would be used. It might well be inferred that when a donor makes successive contributions and each time is told that the gift is being used for a purpose, the donor intends that the subsequent gifts be used for the same purposes. Another inference, however, might be that the donor was simply acquiescing to the Boards' use of the funds for a certain purpose. The point is that any inference that the donor gave the funds for a specific purpose – when no purpose was specified -- would be based on speculation.

and alcohol problems.¹²³ Perhaps the most telling evidence that the donations to the Old Board were not restricted to alcohol and temperance uses lies in the wills of Ida and Sarah Simpson. Ida Simpson's will was clear: "[t]he income [from the principal] [was to] be used for the purposes of the organization...."¹²⁴ Sarah Simpson originally made a similar unrestricted bequest in her will.

The Simpson wills show that these donors of very sizeable gifts to the Old Board intended to allow the Board to use the gifts for any of its purposes. The Simpson sisters were women of means; they were apparently intelligent; and more important, they were assisted by an attorney who was very familiar with their wishes. Had they wished to restrict the purposes for which their bequests were made, they could have done so. Albeit that Sarah Simpson later executed a Fifth Codicil to her will restricting the uses of her bequest, it is clear that the reason for the codicil was to avoid litigation over the tax exempt status of her bequest.

The importance of the Simpson sisters' original wills cannot be overstated. In addition to showing that the Simpsons wished to support the general work of the Old Board, their wills cast doubt on whether other contributors restricted their gifts. More important, the Simpson gifts appear to be among the largest individual gifts to the Old Board, and they were equal in size. Therefore, Ida Simpson's substantial bequest was available to the Old Board for any of its purposes. (Sarah Simpson's power of appointment over Ida's bequests to charitable organizations was limited to the power to

¹²³There may well have been some small donations made over the years specifically for temperance and alcohol purposes. Although it was later revoked, Respondents' Exhibit 120, a bequest of \$5000.00 made to support efforts to keep the United States from exporting liquor and narcotics to foreign missions, suggests that this is so. *See also* Petitioner's Exhibit 252, a letter from Thomas Raysor to A. Dudley Ward, indicating that the Declaration could be drafted to show ownership of Endowment Funds by the Division, but also advising him of the need to account for restricted funds separately. However, the Court credits the evidence that, as far back as 1969, only four years after the Declaration, the Trustees' Investment Committee could identify no gifts that remained unexpended for the purposes for which they had been given. *But see* n. 134, *infra*.

¹²⁴Petitioner's Exhibit 120, Last Will and Testament of Ida Simpson, Article III.B.3.

change the amount of the bequest to the Old Board, and she did not exercise it.) The Simpson sisters' wills, when considered with the other evidence of gifts, donations, and bequests to the Old Board, clearly show that the language in the Declaration that the gifts to the Board were restricted for use in the area of temperance and alcohol, is not accurate.

Finally, it is important to the Court's decision that the Old Board, when soliciting gifts and donations, in at least some instances, did not request that gifts be made solely for temperance and alcohol problems. Indeed, in some instances, its officers advised the potential donors that they need not specify the purposes for which their donations were to be used. One example is the letter to a potential donor in which Clarence True Wilson, then General Secretary to the Old Board, sought a donation for the Methodist Building, but also informed her that "it w[ould] not be necessary for [her] to designate her gift for th[e] work [was] being attended to ... without specifications."¹²⁵

The Court is mindful of Roger Burgess's testimony that the gifts to the Old Board were for temperance and alcohol problems. However, Mr. Burgess did not ever see a restricted gift. Further, despite the testimony of Mr. Burgess that individuals frequently made donations after hearing sermons by great Methodists like W.E. Hammaker, the lists of contributions themselves showed no restrictions and it would be improper for the Court to assume restrictions simply because the donations might have been made after hearing Bishop Hammaker preach. The Old Board's work was not limited to temperance and alcohol problems, and the Court cannot assume that Bishop Hammaker excluded from his sermons the other areas in which the Old Board worked.

At trial, Respondents argued that the Petitioner could not meet its burden of proof on the issue of restriction because 1) the exhibits showing unrestricted gifts were few in

¹²⁵ Petitioner's Exhibit 166, December 23, 1926 letter from Clarence True Wilson to Clara Koons.

number and 2) there was insufficient evidence in the record about the manner in which the records at the Methodist Archives are maintained. Neither of these arguments undermines the showing that Petitioner has made. That the pledge cards are few in number cannot be determinative of this issue in light of other evidence of large unrestricted donations – especially the unrestricted bequest of Ida Simpson.

Respondents argued at trial that Petitioner has attempted at trial to shift the burden of proof to them to show that the gifts to the Old Board were restricted for use in temperance and alcohol problems. The Court has taken note of Respondents concerns. However, this Court’s finding is based on evidence that Petitioner presented at trial – and not on Respondents’ failure to show that there were alcohol and temperance restrictions on the donations made to the Old Board. ¹²⁶

The Work of the Boards

Respondents suggest that, even if the gifts made to the Boards carried no specific restrictions, the Court may infer that they were given to further the Boards’ work in temperance and alcohol problems because the Boards concentrated their work in those areas and because those are the areas for which the Boards were known. Therefore, the parties devoted considerable time at trial to the issue of the work performed by the Old Board, the New Board, and later, the Division. In the Court’s view, the evidence is indisputable that the most of the work performed by the Old Board and New Board focused on temperance and alcohol problems. However, the exhibits clearly show that, throughout the years, the Boards were also authorized to, and did, perform substantial work on other “public morals” issues. This is especially true in the late 1950s.

¹²⁶ It is permissible, however, for the Court to consider whether Respondents rebutted Petitioner’s evidence, and the Court finds that they did not.

Moreover, in the 1960s, after the General Conference expanded the mission of the Division, the Division performed substantial work in all its new areas of responsibility.

The Court does not credit either the testimony of Mr. Burgess that the work performed in the expanded areas after 1960 amounted to little more than report preparation or the deposition testimony of Dr. Starkey that the Division did not perform work in the areas of narcotics, gambling, or pornography. The testimony of these two witnesses about the Division's work conflicts with that of Bishop White, who, for four years, had direct responsibility for the Division's programs.

Dr. Starkey had a clear memory about the events surrounding the Declaration itself, but on many of the other issues, exhibited poor memory. From some of the testimony, it appears that he had no memory independent of the documents shown to him at trial.

The Court finds that Mr. Burgess was a biased witness, and that, although he did accurately relate some of the events about the Boards and the Declaration of Trust, his bias influenced his trial testimony. From the time that the 1960 merger was contemplated, Mr. Burgess was territorial about the Division's funds and work areas and his own responsibilities, and the Court finds that his testimony about the work of the Boards and the use of the funds was influenced by the strong feelings he had about those matters dating back to pre-merger days. At trial, Mr. Burgess appeared to the Court to assume a partisan position during his testimony. The Court finds incredible his testimony that he could not recall – without being refreshed -- the October, 1965 meeting at which the Division's Executive Committee voted to recommend that the Division approve the compromise reached between the Division and the BCSC, and that leads the Court to

question his credibility about the other pivotal issues in this case.¹²⁷ In addition, documents authored by Mr. Burgess himself suggest that the amount of time and resources devoted to non-alcohol related activities was not as limited as he testified at trial.

One document authored by Mr. Burgess, the attachment to an August 26, 1963 memorandum that he wrote to Division members, demonstrates that, in 1963, the amount of staff time and money devoted to temperance and alcohol problems had decreased after the 1960 Discipline. He wrote that the expanded assignment given to the Division had resulted in “[l]ess than half the staff time and dollars being spent [on alcohol problems] as was available under the [O]ld Board....” and that, in the “past quadrennium”, after the 1960 Discipline, all staff members of the Division worked part-time on alcohol problems. While emphasizing the need to devote more staff time to efforts to educate youth about drinking, he also stressed the need to move forward with efforts in the areas of mental health, drug and tobacco abuse, and sexual issues, gambling, juvenile delinquency, and rehabilitation efforts.¹²⁸ He concluded his proposal for organizing the work of the Division into five departments¹²⁹ by saying that the organizational structure he proposed “demonstrate[d] to the world that the work of The Division [was] social problem

¹²⁷ Mr. Burgess was at front and center of the debate surrounding the language of the Declaration of Trust. He had input into the language, and he opposed the alternative language proposed by A. Dudley Ward in March, 1965 and again in October, 1965 – even after he had announced his resignation. The Court finds it unlikely that someone with such strong feelings about the language and such a good memory about other events surrounding the Trust could not remember -- without being refreshed -- the Division taking an action which he had so vehemently opposed.

¹²⁸ “Program 1964 – 68 Division of Temperance and General Welfare”, attached to Petitioner’s Exhibit 192, August 26, 1963 Memorandum from Roger Burgess to Members of the Division of Temperance and General Welfare, p. 3.

¹²⁹ Mr. Burgess wrote that “[d]uring the first quadrennium of its life, The Division ... ha[d] recognized the need to reorganize its work into issue-related departments ... [including the] follow[ing]: [a] Department of Alcohol Problems, ..., [a] Department of Social Health [which included] mental health, medical care, drug abuse, tobacco, sex and moral values, morality and mass media, planned parenthood, [and] population problems; [a] Department of Social Welfare [which included] crime and rehabilitation, juvenile delinquency, gambling, welfare agencies and policies, aging, [and] public safety; and Research and Administration.”

centered.”¹³⁰ Documents such as this also severely undermine Mr. Burgess’s credibility with the Court.

The bottom line is that, even an assumption that donors gave money to the Boards because of their missions does not lead to a conclusion that their gifts were intended to be used for temperance and alcohol problems since both Boards conducted significant activities in other areas.

Funds Impressed with Trust-In-Fact

Mr. Burgess’s statement in his August 26, 1963 memorandum that less than half the staff time and dollars were being spent on alcohol problems as under the Old Board also demonstrates the inaccuracy of the recitation in the Declaration of Trust that the monies in the Methodist Building Endowment Fund had been “impressed with a trust-in-fact” for them to be used and applied for the purposes for which they were given – for use in the areas of temperance and alcohol problems, and that the purpose of the Declaration was to finalize the “existing situation” with regard to the purposes for which the monies were used. Further, it causes the Court to question his own testimony that, after the merger, the assets in the Methodist Building Endowment Fund were used solely for temperance and alcohol problems. Mr. Burgess’s statement, however, is not the only evidence that the Court has considered when deciding whether the endowment fund assets had been impressed with a trust-in-fact prior to the Declaration of Trust. The Court finds the expenditures and proposed budgets of the Division and of the Endowment Fund probative of this issue, and in the Court’s view, they also show that the Endowment Fund assets were not used solely to fund temperance and alcohol-related activities.

¹³⁰ Petitioner’s Exhibit 192, *supra*, p. 2

First, it is undisputed that some of the Simpson bequests were used to pay down the mortgage on the Methodist Building. Further, the Division's budgets are instructive on this point. The budgets for the 1960 – 61 and 1961 – 62 fiscal years show that none of the monies set aside to fund the budget of the Division was earmarked for temperance and alcohol problems. There was no fully funded Department of Alcohol Problems until the 1963 – 64 fiscal year, and, as demonstrated by the Division's Expenditures for 1963 – 1964 and its budget for 1964 - 65, and what appears to be a budget statement through February, 1965, even after that Department was established, through the 1964 – 65 fiscal year, the contributions from the Endowment Fund to the Division exceeded the expenditures by the Department of Alcohol.

Respondents' Exhibit 161 shows the Department of Alcohol Problems as being fully funded by payments from the Endowment Fund for the fiscal year 1965 - 66. The exhibit shows a *proposed* budget for that fiscal year, which was to begin in June, 1965, and, except for minor changes in budget amounts, the proposed budget was essentially the same as that approved on March 24, 1965, the day after the Declaration was first signed. Moreover, the 1964 – 65 budget and the proposed 1965 – 66 budget for the Endowment Fund show that only a portion of the Endowment Fund budget was used to fund the Department of Alcohol Problems. Although most of the remaining expenditures were designated for temperance issues, a pension and legal fees were also paid from the Endowment Fund.¹³¹

Finally, the Court finds highly relevant the statements by Thomas Raysor, who was the attorney for the Division and the BCSC at the time the Declaration was signed and continuously through at least December, 1974, that the trust funds had not been

¹³¹ Petitioner's Exhibit 56, Exhibit C.

restricted to use in the areas of alcohol and temperance, but had been used for “gambling, drug abuse, [other] public morals issues, and general welfare.” As counsel, Mr. Raysor was a witness to all the events surrounding the Declaration of Trust, and, although it is hearsay, his factual statement about the uses of the Trust funds is worthy of the Court’s reliance. In addition, his statement, the budgets of the Division, and the testimony of Bishop Dale White are corroborative of one another.

In sum, the uses of the Simpson bequests, the budgets of the Division from Fiscal Year 1960 – 61 until the Declaration of Trust, the budgets of the Division and the Endowment Fund, the testimony of Mr. White, and Mr. Raysor’s statement convince the Court that, prior to the Declaration, the assets of the fund had not been impressed with a trust-in-fact for the cause of temperance and alcohol problems, and that the language in the Declaration suggesting otherwise is inaccurate.

The Declaration of Trust

There is no real dispute about the Division’s reluctance to be brought under the umbrella of the Board of Christian Social Concerns with the Divisions of World Peace and Human and Economic Relations. The Court finds the evidence indisputable that the Division was determined to take any and all steps necessary to protect its funds from diminution or depletion by the Board of Christian Social Concerns and its other divisions. The desire to protect its funds was clearly a purpose of the settlors in establishing the trust. However, that was not the only purpose.

The settlors mistakenly believed that the funds had been given for use in the areas of temperance and alcohol problems. Their mistaken beliefs were as important to their decision to establish the Trust as was their desire to protect the funds from access by the BCSC and other Divisions – if not more important than that desire. The Court credits the

testimony of Mr. Burgess that the settlors believed that the donations had been restricted for use in the areas of temperance and alcohol problems. The first-hand testimony of Dr. Starkey corroborates this. Mr. Burgess had represented to the Chair of the Executive Committee of the Board that his review of the history and minutes of the Boards indicated that the gifts were restricted,¹³² and he had input into the language of the Declaration. Dr. Starkey never saw any documents restricting the use of the funds. He relied on the representations in the Declaration and assumed their accuracy. Because Dr. Starkey was a member of the Division's Executive Committee (and in that sense, a settler) his testimony is strong evidence that the settlors, when signing the Declaration, relied on the mistaken information provided by the Division staff regarding the purposes for which funds had been given and the uses that had been made of the funds prior to the signing of the Declaration.

Although the settlors of the Declaration were aware that they were not legally bound to use the funds for temperance and alcohol problems, they also believed that they had a moral obligation to the donors of the funds to use the funds for those purposes. For those reasons also, they intended to create a trust restricting the use of the funds for temperance and alcohol problems. In the Court's view, the settlors' belief that they had a moral obligation to the donors of the funds is merely reflective of their belief that the gifts, bequests, and donations over the years had been made for the purposes of temperance and alcohol purposes.

The law is clear that the settlors' intent is the law of the trust. However, in an action for reformation, the Court is required to examine whether the settlors' intent was based on some mistake of law or fact. In this case, it clear that a major purpose for the

¹³² Note 57, *supra*.

trust was that the settlors believed the funds had been given by the donors for alcohol and temperance purposes. The clearest indication of that belief – and of its importance to the settlors’ motivations – is reflected in their recitation in the Declaration document in at least nine places before the Trust was actually declared. The Court has every reason to believe that these respected members of the clergy and members of the Methodist Church would not have stated in the Declaration that the funds were given for temperance and alcohol problems if they did not believe it or if that were not an important motivation for them to establish the Trust.

Unfortunately, as the Court views the evidence, the settlors were mistaken in their beliefs about the purposes for which the funds were given and were therefore mistakenly induced to limit the uses of the trust funds as they did. It may well be that there were some restricted gifts, but, there is clear and convincing evidence that the majority of the gifts were not made specifically for use in temperance and alcohol problems. Therefore, Petitioner has established a basis for reforming the trust based on a mistake in the inducement.

The “October Compromise”

Petitioner contends that, after the Declaration was ratified by the Executive Committee of the Division on March 24, 1965, the Declaration did not become effective. It maintains that the Division and the Board of Christian Social Concerns reached a compromise in October, 1965, which would allow the language of the Trust to be revised so that the Trust funds would not be restricted to use for alcohol and temperance purposes, but for the purposes of the Division generally. The Compromise alleged by Petitioner forms the basis for Petitioner’s “mistake in expression argument” – that the parties agreed to revise the language of the document upon the fulfillment of certain

conditions; that the conditions were fulfilled; that the revised language was never incorporated into the Trust as agreed, and that it should now be incorporated. Rather than directly addressing whether a compromise agreement was made, Respondents focus on what they contend was the lack of authority to revise the trust and the fact that no modification to the language of the Declaration was ever made.

Respondents are correct that the Declaration of Trust signed on March 23, 1965 contained no provision for modification. Likewise, Respondents are correct that a trust without such a provision cannot be modified. However, if the Declaration did not become effective until October, 1965, the lack of such a provision is not fatal. The terms of the trust at the time of its creation are determinative, and if the settlors agreed at the time of the effective date, that the Trust would be modified at a later date, the ability to modify – albeit not written into the document – became a provision of the Trust.

It is clear that, in October, 1965, both the Division and the BCSC believed that the Declaration of Trust could be modified. That is one factor that the Court finds important in deciding when the Declaration became effective. Several other facts are also relevant to this determination. First, the Executive Committee of the BCSC did not approve the Trust at its March 24, 1965 meeting because of the substantial question about the meaning of Paragraph 1525 of the 1960 Discipline. Instead, it decided to refer the matter to the Judicial Council of the Methodist Church, which was not scheduled to meet again until October.¹³³ In addition, several members of the Division, including Dr. Starkey, still had other questions about the meaning of the Trust even though the Division had ratified it.¹³⁴ Further, conversations concerning modification began almost immediately after the

¹³³ Petitioner's Exhibit 258, April 5, 1965 Letter from Leon Hickman to Roger Burgess.

¹³⁴ After the resolution concerning the Trust was presented to the BCSC, Dr. Starkey had questions about whether the Division was responsible for spending the trust proceeds. *See* Petitioner's Exhibit 56, Minutes

Declaration was signed, and the Division again ratified and confirmed the Declaration on October 19, 1965. These facts suggest to the Court that the Declaration did not go into effect in March.

Respondents argue that proof that the trust became effective in March, 1965 is found in their Exhibit 161, which shows a proposed budget for Division for the 1965 – 66 fiscal year devoting all its Endowment Fund contributions to the to the Department of Alcohol Problems. In the Court's view, however, the information contained in this exhibit is not an indication that the Trust became effective in March: but for minor adjustments, the budget was approved by the Division's Executive Committee at its meeting before the decision was made by the BCSC to refer Paragraph 1525 of the Discipline to the Judicial Council.

Considering all the facts on this issue, including Bishop White's testimony that, even after he became Associate General Secretary of the Division, he never restricted the use of the funds to temperance and alcohol problems and Thomas Raysor's statement about the use of the funds – all of which the Court credits -- the Court finds by clear and convincing evidence that the Declaration did not become effective in March, 1965, but instead became effective in October of that year. However, that finding does not end the Court's inquiry about whether Petitioner has proved a mistake in expression. The Court must still decide whether all the conditions precedent to the modification of the language were met, and the Court cannot make that determination by clear and convincing evidence.

The exhibits show that a staff treasurer was elected as required by the compromise agreement and that the Division's representation among the Endowment

of the Executive Committee of the Board of Christian Social Concerns, March 24, 1965, Afternoon Session.

Fund trustees was increased in relation to that of the other divisions of the BCSC. However, the Court cannot determine whether the “by the Board” language to which the Division objected was removed from the 1968 EUB Discipline. The phrase “by the Board” appears several times in that Discipline, and, despite the arguments of Petitioner’s Counsel, the Court cannot determine whether the phrase was deleted from the specific places in the draft of the proposed EUB Discipline opposed by the Division. The Court was not presented with any exhibit showing the exact language in the proposed EUB Discipline that the Division found objectionable.

The 1968 Discipline omits the provision of prior Disciplines that funds vested in any of the predecessor boards were to be conserved for the exclusive use of the appropriate division of the BCSC. To the extent that there ever was a basis for ownership of special funds by a particular division of the BCSC (as opposed to the BCSC itself), the 1968 Discipline clearly seems to eliminate it. That still does not provide the Court with clear and convincing evidence that all the conditions of the compromise agreement reached in October, 1965 – the only post-Declaration agreement about which the Court has evidence – were fulfilled, paving the way for revision of the Trust language pursuant to that particular compromise. The Court finds it more probable than not that the Division and BCSC reached some accommodation concerning the use of the trust funds, but the evidence presented to the Court does not permit the Court to make a finding by clear and convincing evidence.

Further, even if the Court were to find that the conditions precedent to revising the language of the trust were fulfilled, the Court still could not find that there was a mistake in expression in this case. Even according to Petitioner’s rationale, the Declaration became effective in October, 1965, and, at that time, despite an agreement to

revise the trust language in the future if certain conditions were fulfilled, both the Division and the Board of Christian Social Concerns intended that it become effective as written – including the restrictions to uses for temperance and alcohol purposes. There was no mistake about that the language of the trust at that time, and therefore no “mistake in expression” on its effective date. The language that currently appears in the Trust was what the settlors intended as of October, 1965.

Post Declaration Investigations

The Court is not bound by the results of the 1969 investigation of the Investment Committee of the Endowment Fund. Nonetheless, the Court finds the results of the investigation relevant to its decision because of the Committee’s determination that, as far back as 1969 – only four years after the Declaration was first signed -- the Committee was unable to find any unrestricted funds remaining.

Conclusions

Based on the foregoing, the Court concludes that the law permits a reformation of the language in the Declaration of Trust based on the mistakes of fact under which the settlors were laboring at the time the Trust was settled and on its finding that those mistakes induced the settlors to establish the Trust. The Court finds unpersuasive Respondents’ argument that Petitioner did not present any evidence of the settlors’ intentions and that reformation would therefore be inappropriate. It is clear that the settlors intended to comply with the donors’ wishes, and, the Court, having found that the gifts for the most part were unrestricted, at a minimum, can and does find that the donors gave monies for the purposes of the Boards.¹³⁵ Therefore, the Court has a basis for

¹³⁵ See Am. Jur. 2d Charities, § 77 (2008) (“A gift to a charitable corporation generally is regarded as a gift for the particular purposes authorized by its charter or articles of incorporation”); *Hillsborough County Tuberculosis & Health Ass’n v. Fla. Tuberculosis & Health Ass’n*, 196 So. 2d. 203, 205 (Fla. Dist. Ct. App. 1967) ([A] gift to a society organized for a charitable purpose, without a declaration of the use to which the

reforming the trust to allow use of the funds for any of the work that the Old Board and New Board were authorized by their charters to perform.

As for the few gifts that were designated for specific purposes, the Court is aware of and credits the testimony and findings of the Investment Committee regarding the inability to locate gifts that remain unexpended for the purposes for which they were made. However, if there remain any such gifts that are unexpended for the purposes for which they were made – to the extent that such gifts remain identifiable – Petitioner will be required to use such gifts for the purposes designated by the donors.¹³⁶

ACCORDINGLY, based on the foregoing, the Court makes the following

Findings of Fact

1. The Board of Temperance, Prohibition and Public Morals was organized by the General Conference of the Methodist Episcopal Church (“the Old Board”) and was incorporated in 1917.
2. The New Board of Temperance was incorporated in 1943, and became the successor-in-interest to the Old Board. Although the Old Board continued as a separate corporation until 1974, until then, the two corporations operated essentially as one board with the New Board taking actions, and the Old Board approving and ratifying those actions.
3. The Book of Discipline sets forth the law and polity of the Methodist Church and its agencies. The Discipline sets forth the Constitution of the Old Board and New Board of Temperance and the scope of work of each Board.

gift is to be put, is given in trust to carry out the objects for which the organization was created); and *In re Johnson's Estate*, 265, N.Y.S. 395, 400 (N.Y. Surr. Ct. 1933) ([A] bequest to a charitable corporation must be held to be for the purposes of the corporation.”).

¹³⁶ The Court remains unclear about whether any funds from the Sarah Simpson bequests -- which were restricted – remain under Petitioner’s control. The testimony and evidence show that a portion of the Simpson bequests was used to pay down the mortgage on the Methodist Building. However, the May 31, 1966 Balance Sheet for the Methodist Building Endowment Fund (Respondents’ Exhibit 161, p. 2) shows \$106,893.12 of the Simpson bequests remaining, and the Court notes that the Simpson sisters, by their wills required that their \$50,000.00 bequests be retained as a part of the permanent endowment of the Old Board and that only the income be used. If indeed some of the Simpson bequests remain a part of Petitioner’s permanent assets, the Court questions whether Petitioner can identify and isolate income from that portion of the income generated from the bequest of Sarah Simpson, as that income from Sarah Simpson’s bequest must be restricted to uses for temperance and alcohol purposes.

4. At the time of its incorporation the mission of the Old Board included “prevent[ing] the improper use of drugs and narcotics; ... render[ing] aid to such causes as in the judgment of the board of trustees, tend[ed] to advance the public welfare.”
5. By 1949, the mission of the Board of Temperance or “New Board” included “actively seek[ing] the suppression of salacious and corrupting literature, degrading amusements, lotteries, and other forms of gambling and ... in every wise and lawful way, promot[ing] the public morals.”
6. The Book of Discipline and Resolutions of the Methodist Church define the term “public morals,” which is a religious term. The 1960 Discipline defined the term as including issues related to gambling, narcotics, tobacco, exploitation of sex, including the elimination of pornographic literature, and Sunday observance laws.
7. In the 1920’s and 30’s the Old Board carried out campaigns seeking to raise funds for its purposes generally, to combat the problems associated with alcohol, for the Methodist Building in the District of Columbia – the erection of the Building itself, an annex later constructed, and to pay down the mortgage on the Building.
8. The Old Board viewed the Methodist Building as a means of demonstrating the influence of Methodism in the District of Columbia, as a means of limiting the influence of the Catholic Church on the United States Government, and as a vantage point from which to monitor and promote legislation in the nation’s capital.
9. The Methodist Building was dedicated in 1924. Its purposes included not only the enforcement of laws “to suppress the liquor traffic,” and promoting abstinence from liquor and illegal narcotics, but also crystalliz[ing] opposition to all public violations of the moral law.”¹³⁷
10. In some of its solicitations for funds, the Old Board requested gifts, bequests, and other donations for the purpose of the Methodist Building; in some, it requested funds for temperance and alcohol problems; and in some, it requested funds to assist with the needs of the Board. The Old Board did not require that donors specify that their donations be used for specific purposes, and, in some instances, advised them that they were not required to identify the purposes for which their donations were to be used.
11. In addition to funds raised by the Old Board – and later the Division -- through fundraising efforts, the Boards received funds from Temperance Sundays, and they were also funded by World Service Funds from the Methodist Church. Some of the donations, gifts, bequests, and other monies given to the Old Board carried restrictions with them. Some of the restricted gifts were for the purpose of erecting the Methodist Building. Some were given for other purposes, e.g. to furnish rooms in the building. Other gifts made to the Old Board carried no use restrictions.
12. The bequest made to the Old Board by Ida Simpson – one of the largest bequests to the Old Board -- was not restricted for use in the fields of temperance and alcohol

¹³⁷ Petitioner’s Exhibit 161.

problems, but was given for the general purposes of the Old Board. The purposes for which Ida Simpson's bequest could be used were unchanged by the Fifth Codicil to Sarah Simpson's will.

13. The bequest made to the Old Board by Sarah Simpson was restricted for use in the area of temperance education.
14. At least a portion of the bequests by Ida Simpson and Sarah Simpson was used to pay down the mortgage on the Methodist Building.
15. The New Board was one of three social action boards of the Methodist Church brought under one umbrella organization, The Board of Christian Social Concerns of the Methodist Church ("the BCSC"), in 1960, and it became the Division of Temperance and General Welfare of that organization or "the Division."
16. Prior to the 1960 merger, the Division was concerned that "merging" with the two other social action boards – which did not have the financial resources of the Division – would permit the Board of Christian Concerns and the other two social action boards to access its funds for use in areas not related to those of the Division. The Division resisted the merger.
17. Because of the aforementioned concerns by the Division, it worked successfully to have included in the 1960 Discipline the following language: "Funds vested in the predecessor boards shall be conserved for use of the appropriate division of [the BCSC] for the purposes for which they were given."
18. The 1960 General Conference of the Methodist Church expanded the work of the Division to require that the Division carry out a program of research, education, and action [on temperance and alcohol problems], addiction to injurious habits, tobacco and drugs, pornography, juvenile delinquency and crime; [the] penal system and rehabilitation, mental health and medical care; problems associated with aging, population, and planned parenthood; traffic safety, and such other concerns as the general board [might] specify." Work in these expanded areas was authorized by the charter of the New Board.
19. Between 1960 and March, 1965, when the Declaration of Trust was signed, the Division conducted activities in all its areas of its responsibilities, including the areas into which its work had been expanded. The activities included the preparation of position papers and the development of long-range strategies for addressing the problems. They also included research, teaching and advocacy and other educational work throughout the church, and the staff – including the Director of Program -- attended conferences, wrote books and pamphlets and developed curricula for youth in these areas.
20. Between the time of the merger of the Division (then the New Board) into the BCSC in 1960 and the signing of the Declaration of Trust in March, 1965, the Division's programs were supported with World Service funds from the Methodist Church and with funds in the Methodist Building Endowment Fund.

21. From 1960 until the Declaration of Trust was signed, the funds from the Endowment Fund were not impressed with a trust-in-fact for use in the areas of temperance and alcohol problems, but were used to support the entire program of the Division.
22. After the merger, the Division's fears that the BCSC would attempt to access its funds were heightened. As a result, the Division passed a resolution providing that the Division's endowment funds would not prejudice its allocation of World Service funds.
23. Prior to January, 1965, the Executive Committee of the Division began discussing means of preventing its funds from being used by the BCSC and the other boards under its umbrella. The Declaration of Trust was one of the means.
24. Thomas Raysor was the attorney for the BCSC and for the Division at the time the Declaration of Trust was signed and continued as their attorney at least through December, 1974. Mr. Raysor prepared the first draft of the Declaration. Before the final draft, Roger Burgess, then Associate General Secretary of the Division, had input into the language of the Trust as did Bishop Paul Hardin, Jr., the Chair of the Division. The draft of the Declaration was also circulated to other members of the Division's Executive Committee for comments.
25. In the months leading up to the signing of the Declaration of Trust, A. Dudley Ward was General Secretary of the BCSC. A copy of the draft of the Declaration was sent to Mr. Ward prior to the time that the Division acted on the Trust. Mr. Ward opposed the proposed language of the Trust, arguing that the intent of the 1960 General Conference and Section 1525 of the 1960 Discipline required that the funds be held in trust by the full Board of Christian Concerns, and he proposed alternate language, which included a provision that the Trust assets be held by the BCSC.
26. Roger Burgess and Bishop Paul Hardin opposed the alternative language proposed by Ward. He disagreed with Ward's interpretation of the intent of the 1960 General Conference and the meaning of Section 1525 of the 1960 Discipline. Mr. Burgess was not a member of the Division or its Executive Committee, but was a staff member of the Division.
27. Mr. Burgess reported to the Executive Committee of the Division that his research into the history of the Boards revealed that the donations given to the Old Board were given for use in the areas of temperance and alcohol problems, and he opined that "to keep faith" with the donors, the assets in the Methodist Building Endowment Fund must be restricted for use in the areas of temperance and alcohol problems. Mr. Burgess was also concerned with the effect of language broadening the permissible uses of trust funds on his responsibilities as Associate General Secretary of the Division.
28. Other than a few annuity bonds that he saw when he became Associate General Secretary of the Division, Mr. Burgess did not see any document evidencing a restricted gift, donation, or bequest to the Old Board.

29. The language of the Declaration of Trust was the subject of an intense dispute between the Division and the BCSC. Roger Burgess and A. Dudley Ward were the two individuals at the heart of the dispute.
30. Prior to the time the Declaration of Trust was signed, Thomas Raysor expressed an opinion to that the Division “could do anything it wanted” with the funds in the Methodist Building Endowment Fund. Thus, the Division was aware that it was not legally obligated to use the funds for use in the areas of temperance and alcohol problems.
31. Also, prior to the time the Declaration of Trust was signed, Mr. Raysor expressed in a letter to A. Dudley Ward that the language of the Trust could be drafted to permit the Methodist Building Endowment Fund assets to be held by the BCSC or by the Division, but that the “integrity” of Endowment funds that had been given for specific purposes would have to be protected.
32. Both Roger Burgess and A. Dudley Ward presented their views on the language of the Declaration of Trust to the Executive Committee of the Division on March 23, 1965. After hearing from both men, the Executive Committee voted to approve the Declaration of Trust. On March 24, 1965, at the suggestion of their attorney, Thomas Raysor, the Executive Committee formally ratified and approved the Declaration of Trust.
33. The settlors of the Declaration of Trust intended to place the assets in the Methodist Building Endowment Fund in trust to be used in the areas of temperance and alcohol problems. They intended to create the trust for those purposes because they believed that the gifts and donations in the form of cash, bequests, and securities had been given for work in the areas of temperance and alcohol problems; that, therefore, they had a moral obligation to the donors of the gifts to the Old Board to use the donations for the purposes for which they were given, and that the trust was necessary to prevent the assets of the Methodist Building Endowment Fund from being freely accessed by the Board of Christian Social Concerns and the other two social action boards under its umbrella.
34. The following recitations precede the language of the Declaration of Trust stating the purpose of the Declaration of Trust:

Since...1912 campaigns for funds were instituted to provide “an endowment fund to support the work of the Methodist church through [the Old Board] in the field of temperance and alcohol problems”;

That the Old Board continued to exist to facilitate its receipt of “bequests” and “donations”, and “to hold assets ... for work in the area of temperance and alcohol problems”;

That [at the time of the Declaration] the Board held title to securities only, which ha[d] been given to it over the years ... to support its work in the field of temperance and alcohol problems.

That the New Board “was organized for the purpose of work in the area of temperance and alcohol problems”;

That, “after 1912, sums were collected on a nationwide basis to further the work in the area of temperance and alcohol problems”;

That “a large bequest [was made by the family of Bishop Matthew] Simpson to be used for endowment purposes for work in temperance and alcohol problems;

That “the Division own[ed] securities and cash given to it over the years ... to support the work in the area of temperance and alcohol problems”; and

That “[t]he assets of the [Old Board and the Division] had been impressed with a trust-in-fact ... to be used in the areas of temperance and alcohol problems”.

35. Dr. Lycurgus Starkey was a member of the Executive Committee of the Division at the time the Declaration of Trust was signed and ratified by the Division on March 23, 1965 and March 24, 1965, respectively. Dr. Starkey did not ever see any documents purporting to restrict the use of any gift, bequest, or other donation to the Old Board. He relied on the accuracy of the language in the Declaration of Trust concerning the purposes for which funds had been given to the Old Board and the uses that had been made of the funds.
36. The sums collected after 1912 were not given solely to further the work in the area of temperance and alcohol problems, but the settlors of the Declaration of Trust believed that they had been given for those purposes. Only a portion of the Simpson bequest was given for work in temperance education; but the settlors of the Declaration of Trust believed that the bequests of both Simpson sisters believed that they had been given exclusively for that work. The securities and cash given to the Division over the years were not given solely for work in the area of temperance and alcohol problems, but the settlors of the Declaration of Trust believed that they had been given for those purposes. Thus, the settlors were mistaken about the purposes for which the assets in the Methodist Building Endowment Fund were given, and their mistaken beliefs induced them to establish the Declaration of Trust.
37. Prior to the signing of the Declaration of Trust, the funds that formed the trust corpus had not been impressed with a trust-in-fact for use in the areas of temperance and alcohol problems. The settlors were mistaken in their belief that the trust assets had been impressed with a trust-in-fact for use exclusively in those areas.
38. After the Division ratified the Declaration of Trust on March 24, 1965, the Declaration of Trust was considered by the Executive Committee of the Board of Christian Social Concerns at a meeting later the same day. The Board of Christian Social Concerns did not ratify the trust that day because of concerns about the meaning of the language of Paragraph 1525 of the 1960 Discipline of the Methodist Church. The BCSC voted to refer the matter to the Judicial Council of the

Methodist Church, whose next regular meeting was scheduled to occur in October, 1965.

39. The Judicial Council is the equivalent of the Supreme Court of the Methodist Church.
40. The Judicial Council did not rule on the matter.
41. After the Declaration of Trust, assets of the Endowment Fund, along with World Service funds, continued to be used to support all the programs of the Division.
42. Within days of the signing of the Declaration of Trust, A. Dudley Ward and Roger Burgess discussed the Division's willingness to revise the Trust, and, on April 5, 1965, less than two weeks after the signing of the Declaration of Trust, Bishop Paul Hardin, Chairman of the Committee, wrote that if a "satisfactory comptroller were hired, the Division would review its position regarding control of the trust funds.
43. On October 18, 1965, the Executive Committee of the Division met and discussed, *inter alia*, the Declaration of Trust, and A. Dudley Ward's proposal that the Methodist Building Endowment Fund be controlled by the Board of Christian Social Concerns and that the Endowment Fund be available for the use of the Division. Initially, in the morning session of the meeting, Bishop Paul Hardin, the Chairperson of the Division opposed Ward's proposal because of certain language "by the Board" in the proposed 1968 EUB Discipline.
44. In the evening session of the October 18, 1965 meeting, Bishop Hardin announced a compromise whereby Mr. Ward would recommend that the phrase "by the Board" be omitted from the proposed 1968 Discipline; the Board of Christian Social Concerns would hire a staff treasurer; trustees of the Endowment fund would consist of eight (8) members of the Division and two members each from the Divisions Human Relations and Economic Affairs and Peace and World Order; the trustees would be approved by the Board; and thereafter, the language of the Declaration would then be revised to provide that the "assets and income from the trust [are] to be for the exclusive use of the Division of Alcohol Problems and General Welfare."
45. The Executive Committee of the Division voted to recommend that the Division approve the Compromise. Roger Burgess, who was still Associate General Secretary, but who had announced his resignation, opposed the compromise agreement. On October 19, 1965, the full Board of the Division ratified and confirmed the execution of the Declaration of Trust. On October 20, 1965, the Board of Christian Social Concerns ratified the Declaration of Trust.
46. The compromise agreement reached in October, 1965, provided that that the language of the trust would be adopted and incorporated into the Declaration of Trust after a staff treasurer had been hired and the term "by the Board" had been deleted from the proposed 1968 Discipline.

47. A staff treasurer, George Granger, was hired by the Board of Christian Social Concerns, effective July 1, 1966.
48. The phrase “by the Board” appears in the 1968 Discipline in several places.
49. By September 25, 1968, eight of the trustees of the Endowment Fund were from the Division.
50. The language providing that “the assets and income from the trust [were] to be for the exclusive use of the Division of Alcohol Problems and General Welfare” has not been incorporated into the Declaration of Trust.
51. The Declaration of Trust took effect when the Division and Board of Christian Social Concerns ratified the Declaration of Trust on October 19, 1965 and October 20, 1965 respectively. Neither the Division nor the Board of Christian Social Concerns intended to incorporate the aforementioned language into the trust as of the effective date. Rather, they made an agreement to revise the language at a later date, and they did not. That the Trust could be modified was an unwritten term of the Trust.
52. The assets of the Declaration of Trust have been and continue to be controlled by its Trustees.
53. Petitioner has been unable to locate any gifts, donations, or bequests to the Boards that were given for specific purposes and that remain unexpended for the purposes for which they were given;¹³⁸

CONCLUSIONS OF LAW

1. Having established by clear and convincing evidence that the settlors of the Declaration of Trust were acting on mistakes of fact when they signed the Declaration of Trust and because of those mistakes, restricted the use of assets in the Methodist Building Endowment Funds to temperance and alcohol problems, Petitioner is entitled to have the trust reformed;
2. Petitioner is not precluded from seeking reformation of a modified Trust agreement since that issue was tried with the implied consent of the parties. However, Petitioner has failed to establish by clear and convincing evidence a mistake in expression entitling it to reformation of the Declaration of Trust; and

¹³⁸ *But see* n. 135, *supra*.

ORDER

1. That Judgment be and hereby is entered in favor of Petitioner and against Respondent-Intervenors on Count 2 of the Complaint;
2. That Judgment be and hereby is entered against Respondent-Intervenors and in favor of Petitioner on the remaining requests in Count 2 of the Counterclaim; and that
3. The Declaration of Trust be and hereby is **REFORMED** as set forth in Appendix A to this Order.

SO ORDERED.

Date: October 6, 2010


Rhonda Reid Winston
Associate Judge

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Appendix A

DECLARATION OF TRUST

Background and Purpose

The Board of Temperance, Prohibition, and Public Morals was organized in 1913 by order and authorization of the General Conference of The Methodist Episcopal Church, meeting in Quadrennial Session in Minneapolis, Minnesota, in the month of May 1912. Its function and mission were more fully stated in the General Conference of The Methodist Episcopal Church in its next quadrennial session held in Saratoga Springs, New York, in the month of May, 1916. On May 23, 1917, a certificate of incorporation of “The Board of Temperance, Prohibition and Public Morals of the Methodist Church,” hereinafter called the “Old Board of Temperance,” was recorded in the office of the superintendent of corporations, Washington, D.C. liber 33 folio 310, certificate No. 14, 600. Since about 1912, campaigns for funds through gifts, bequests, and contributions were instituted for the purpose of providing an endowment fund to support the work of the Methodist church.¹⁴¹ This corporation has continued and still continues to function with its work in this area. In 1939, the Methodist Episcopal Church, the Methodist Episcopal Church South, and the Methodist Protestant Church formed a union which was called “The Methodist Church.” At the United Conference the Old Board of Temperance was continued. The first General Conference of the new “Methodist Church” met in May 1940 in Atlantic City and reaffirmed Methodism’s historic concern in the area of life affected by temperance and alcohol problems, and commissioned the Old Board of Temperance “to carry on” in the name of and on behalf of the Methodist Church. The Old Board of Temperance has been continued in existence through annual meetings and

¹³⁹ Immaterial typographical errors contained in the document have been corrected.

¹⁴⁰ The language that has been added is ***bolded, italicized, and underlined*** for identification purposes. The language that has been omitted is set forth in the footnotes.

¹⁴¹ The following text was omitted: “through this agency in the field of temperance and alcohol problems.”

annual elections of officers in order to make it easy and uncomplicated to receive bequests, hold assets, and receive donations made out in favor of that Board.¹⁴² It holds, at the present time, title to securities, which have been given to it over the years through donations, contributions and bequests.¹⁴³

By certificate of incorporation reordered April 15, 1944 in liber 61 folio 122, certificate no. 28, 247, in the office of the Superintendent of Corporations, “The Board of Temperance of the Methodist Church,” hereinafter called “The Division,” was organized.¹⁴⁴ The original certificate of incorporation has been amended as follows: (1) October 25, 1949, certificate 3379, to expand the purposes; (2) April 26, 1950, to provide that this corporation “shall be the successor and successor in trust of the Board of Temperance, Prohibition and public morals of the Methodist Episcopal Church, a corporation organized and existing under the laws of the District of Columbia;” (3) April 6, 1961, to change the name to “The Division of Temperance and General Welfare of the Board of Christian Social Concerns of the Methodist Church,” and (4) October 13, 1964, to change the name to “Division of Alcohol Problems and General Welfare of the Board of Christian Social Concerns of the Methodist Church.”

In the early days in the years following 1912 large sums were collected on a nationwide basis.¹⁴⁵ Among those instrumental in the work at the time were Dr. Clarence True Wilson, Dr. Earnest Carrington, and others. A number of large bequests were obtained, for example, a large bequest came from the family of Bishop Matthew Simpson to be used for endowment purposes, *a portion of which was designated for temperance*

¹⁴² The following text was omitted: “for work in the area of temperance and alcohol problems.”

¹⁴³ The following text was omitted: “to support its work in the field of temperance and alcohol problems.”

¹⁴⁴ The following text was omitted: “for the purpose of work in the area of temperance and alcohol problems.”

¹⁴⁵ The following text was omitted: “to further the work in the area of temperance and alcohol problems.”

education,¹⁴⁶ and also for a headquarters building in the Nation's Capital to include offices for the performance of such work as well as to provide an investment for the production of income through rental apartments. This was the origin of the construction and use of the structure now known as the Methodist Building, 100-110 Maryland Avenue N.E., Washington D.C. which is also designated as lot 814, square 726. Since completion of the building, it has been used for the Simpson Memorial Chapel, Bishop's offices, and for the offices of various church-related agencies including the Board of Christian Social Concerns of the Methodist Church and the Division of Alcohol problems and General Welfare of the Board of the Christian Social Concerns of the division of the Methodist Church, which is the corporation referred to above as "The Division."

The Methodist Building was originally titled in the Old Board of Temperance corporation but in order to facilitate the operation of the building and for other purposes it was subsequently conveyed on October 24, 1944, to The Division corporation which now holds title to it free and clear. In addition, The Division owns securities and cash given to it over the years through donations, contributions, and bequests.¹⁴⁷ Further, the Division owns another piece of real estate consisting of approximately five acres of unimproved land free and clear of encumbrances, located near the junction of Massachusetts and Nebraska Avenues, N.W., in the District of Columbia, which was purchased from its endowment funds. This property is also designated as parcel 21, lot 46, on the real estate tax records of the District of Columbia.

The assets of both of these corporations including real, personal, and mixed property have been impressed with a trust-in-fact for them to be used and applied for the

¹⁴⁶ The following text was omitted: "for work in temperance and alcohol problems."

¹⁴⁷ The following text was omitted: "to support the work in the area of temperance and alcohol problems"

purposes for which they were given *if any*.¹⁴⁸ The assets have been so utilized to the present time. It is the purpose of this Declaration of Trust to formalize the existing situation and provide a method for the continued management, investment, reinvestment, and application of the principal and accumulated income for the purpose for which the funds were originally given *if any*.¹⁴⁹

It is the further purpose of this Declaration of Trust to implement the action of the 1960 General Conference of The Methodists Church. That Conference directed that The Board of Temperance of the Methodist Church incorporated April 15, 1944, become a Division of the Board of Christian Social Concerns of the Methodist Church. While the separate corporate identity of the Board of Temperance was maintained, its name was subsequently changed to the Division of Alcohol Problems and General Welfare of the Board of Christian Social Concerns of the Methodist Church. The Old Board of Temperance, Prohibition, and Public Morals of the Methodist Episcopal Church was also maintained as a separate corporation without a change of name.

As a part of its action, the General Conference of the Methodist Church ordered the following wording to be placed in that section of the 1960 Discipline of the Methodist Church which describes the Board of Christian Social Concerns and its Divisions (Paragraph 1525-2):

Either on behalf of its total work or on behalf of one or more of its divisions, the Board may solicit and create special funds, receive gifts and bequests, hold properties and securities in trust, and administer all these financial affairs in accordance with its own rules and the provisions of the Discipline (see Para. 743 and 748). Funds vested in any of the predecessor boards shall be conserved for the exclusive use of the appropriate division of this board and

¹⁴⁸ The following text was omitted: “for work in the area of temperance and alcohol problems

¹⁴⁹ The following text was omitted: “that is to say, work in the area of temperance and alcohol problems.”

for the specific purposes for which such funds have been given.

Property Involved

Both The Division and the Old Board of Temperance corporations hereby declare that the properties which are more fully identified and described in Schedule A attached hereto have been, are to be, and are hereby formally set aside as “Trust Corpus” to be used and applied to work¹⁵⁰ on a national and international basis under control of Trustees as hereinafter set forth. While the legal title to said real and personal properties will not now be changed, said properties are hereby declared to be equitably impressed with a trust for¹⁵¹ **all the charitable purposes set forth in the certificates of incorporation of the Old Board of Temperance and the Division.** It is the purpose and intent that the Trust Fund be invested and reinvested so as to produce an income to be applied and used for the Trust purposes.

Trustees

The Trustees shall consist of those persons who are quadrennials elected to the Executive Committee of the corporation known as The Division, or its successors by merger or otherwise. The members of the Executive Committee or their successors shall hold office while they are serving as members of the Executive Committee and they shall be succeeded as Trustees by the members of succeeding executive committees as elected in succeeding quadrennial sessions.

Powers, Duties, and Responsibilities of Trustees

The Trustees shall have full control of the Trust Corpus which hereinafter will be known as “The Methodist Building Endowment Fund.” There is hereby granted to the

¹⁵⁰ The following text was omitted: “in the area of temperance and alcohol problems.”

¹⁵¹ The following text was omitted: “the purpose of work in the area of temperance and alcohol problems as herein above set forth.”

Trustee full discretionary power to hold, preserve, manage, sell, resell, invest, reinvest, collect all rents revenues, issues, and profits arising from the Trust Estate, and pay all proper charges, costs, expenses; and taxes in connection therewith or such as may be necessary in the furtherance of this Trust as determined by the Trustees, and to accumulate, apply, pay, transfer, and distribute the net income as the Trustees may apportion and determine.¹⁵²

In addition to and not in derogation of the powers otherwise given to the Trustees, they are authorized with respect to the Trust Estate including any accumulated income, to act as follows:

1. To hold as corpus of the Trust Estate any securities or other property, real, personal or mixed, now owned by The Division and the Old Board of Temperance or hereafter acquired by them or either of them, without liability to said Trustees for any loss or depreciation occasioned by or resulting from holding or managing such property or from investment or reinvestment, or from the purchase of any other property as long as the Trustees act in good faith.
2. In the Trustees' sole discretion and on such terms and conditions and at such times as the Trustees may deem to be in the best interests of the Trust Estate, to sell and resell, convey, transfer, assign, lease, encumber by deed of trust, pledge or otherwise, all or any part of the Trust Estate without liability on the part of any purchaser, lender, or lessee to see to the application of the purchase money, money lent, or rents.
3. To take any action with reference to securities necessary and proper to enable the Trustees to obtain benefits of stock exchanges, stock splits, reorganizations, mergers, or consolidations or similar developments.
4. To make alterations, repairs, and improvements to any real estate owned by The Division and Board corporations or by the Trust Estate; and to employ real estate agents to rent, appraise, to sell any real estate owned by the corporations or the Trust Estate, paying to said real estate agents a commission for their services.
5. To settle and compromise any claims against the Trust Estate and to employ counsel.
6. To take all action necessary and proper to carry into execution the terms and provision of the Trust.
7. To decide all apportionments between principal and income.

¹⁵² The following text was omitted: "for work in the area of temperance and alcohol problems."

Investments involving said Trust assets shall be made for the purpose of obtaining a maximum return on the investment, with the income to be used for the Trust purposes. In the event that the present Methodist Building, 100-110 Maryland Avenue N.W., Washington, D.C. be taken by condemnation or eminent domain, the funds received from the condemnation award or from litigation or otherwise, shall be invested and reinvested as Trust Corpus with the income applied to Trust purposes. Likewise the net proceeds also may be used by said Trustees for construction and erection of a new Methodist Building on another site.

In general, the Trustees shall have all authorities necessary incidental, and proper to carry out the purposes established by this Trust.

Administrative details regarding the fund shall be handled by the Associate General Secretary responsible for The Division or its successor by merger or otherwise, under the authorization and direction of the Trustees.

The Trustees shall elect a chairman, secretary and such other officers as may be desired.

The investment of moneys and property, real, personal, and mixed, belonging to The Methodist Building Endowment Fund shall be limited to securities of the United States Government or its agencies, securities listed on the current list of "Legal Investments for Trust Funds in the District of Columbia" and so designated by the United States District Court for the District of Columbia and distributed by the Office of the Register of Wills of that Court; in improved and unimproved real estate approved by the Trustees; in deed of trust notes adequately secured on improved or unimproved real estate as determined by the Trustees; in federally insured building and loan association accounts; and in bank savings accounts. There shall be no

limitation as to the percentage or apportionment of assets in any one type or form of Investment Company. All investments made must have the approval of at least a majority of the Trustees of the Methodist Building Endowment Fund, acting upon recommendation of the investment by a bank or trust company or a duly licensed investment counselor competent with respect to the type of investment involved.

Whenever called upon, the Secretary of the Trustees duly elected by them shall certify by photocopy, if desired, any section of this Declaration of Trust or the whole thereof to authorized recipients of such information.

The Trustees are authorized to employ and compensate as required licensed investment advisers who in the discretion of the Trustees are competent to review the properties held in the Methodist Building Endowment Fund. Such investment Adviser shall make recommendations to the Trustees as needed from time to time regarding sales or exchanges of property; shall make investment recommendations for the employment of uninvested funds; and, in general, provide investment advice to the Trustees. The Trustees are authorized also to employ and compensate a bank or banks, trust company or trust companies, as they may deem necessary, under a contract to take possession of and assume full responsibility for the safe care and custody of securities constituting the Trust assets; to receive and collect income therefrom; to make remittances and disbursements of such income as directed by the Trustees; to manage, operate, and collect the rents from any real property held or hereafter acquired by The Methodist Building Endowment Fund; and in general, to perform all appropriate services in connection with the management and operation of the same with respect to The Methodist Building Endowment Fund. Such bank or trust company, if such assistance be desired, shall render accounts and reports of all

transactions as may be directed by the Trustees with regard to the assets of the Endowment Fund and may allow the Trustees to inspect the accounts and records of such company which relate to the assets of the Endowment Fund. In any contract entered into with a bank or trust company as custodian, The Trustees shall reserve specifically, the right to terminate such contract and withdraw the assets of the Endowment Fund from said bank or trust company by a majority vote of the Trustees. The Trustees annually shall report in detail the Trust assets in their possession; sales and exchange of said Trust assets, income received therefrom, and disbursements made to The Division or its successors by merger or otherwise.¹⁵³

¹⁵³ The remaining portion of the text shall remain unchanged.