

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

_____ x
The Presbytery of Hudson River of the Presbyterian Church:
(U.S.A.) and Rev. Richard M. Spierling as Chair of the
Administrative Commission appointed by the said :
Presbytery with respect to the First Presbyterian Church of :
Ridgebury, :

Plaintiffs,

- against -

The Trustees of the First Presbyterian Church and
Congregation of Ridgeberry a/k/a Ridgebury Church and/or:
The Church at Ridgebury, Trustees of the First Presbyterian
Church and Congregation of Ridgebury, Trustees of the :
Presbyterian Church of Ridgebury, New York and The :
Ridgebury Presbyterian Church; and Lori De Block, Les :
Kirby, Marie Knibbs, Dorothy Kwapong, Ronald Lyons, :
Theda Wolfe, the Rev. Robert W. Hoag, and Stanley :
Wayne, :

Defendants.

Index no. 2005/6144

**NOTICE OF CROSS-MOTION
FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that upon the affidavit of Richard A. Spierling sworn to on
January 23, 2006, the affidavit of Mark Tammen sworn to on January 20, 2006, the affidavit of
William Chapman sworn to on January 18, 2006, the complaint herein verified August 22, 2005,
Plaintiffs' Response to Defendants' Undisputed Statement of Facts and Plaintiffs' Statement of
Undisputed Facts dated January 26, 2006, and upon all the papers and proceedings herein the
undersigned will move this Court at the Orange County Supreme Court, Orange County
Government Center, 255 Main Street, Goshen, New York, on the 6th day of February, 2006 at
9:00 A.M. for an order pursuant to CPLR 3212 granting summary judgment in favor of plaintiffs

Notice

and against defendants with respect to all causes of action in the complaint on the ground that there are no defenses to any of such causes of action and according plaintiffs all relief as requested in the complaint in summary as follows:

(a) declaring and impressing an express trust and/or an implied trust on the real property as described in the complaint of the defendant Church (the "Real Property") and on the personal property on the defendant Church (the "Ridgebury Church");

(b) granting a permanent injunction prohibiting and restraining defendants and their agents from possessing, spending, wasting, selling, transferring, conveying or in any other manner whatsoever using or controlling any part of the Real Property and personal property of the Ridgebury Church;

(c) directing defendants to execute and deliver a deed establishing title to the Real Property in the plaintiff Presbytery (the "Presbytery");

(d) ordering possession in and return to the Presbytery by defendants of the personal property of the Ridgebury Church and awarding damages to the Presbytery from defendants (other than Rev. Robert W. Hoag) in an amount to be determined representing converted property not returned;

(e) ordering an accounting by defendants (other than Rev. Robert W. Hoag) of the Real Property and personal property of the Ridgebury Church;

(f) granting an order of possession of the Real Property in favor of the Presbytery; and

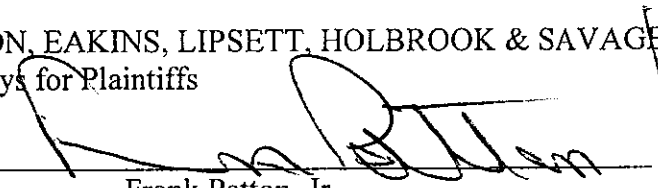
(g) granting plaintiffs such other and further relief as may be just and proper.

Dated: January 26, 2006

Yours, etc.

PATTON, EAKINS, LIPSETT, HOLBROOK & SAVAGE
Attorneys for Plaintiffs

By: _____


Frank Patton, Jr.

420 Lexington Avenue, Suite 2805
New York, New York 10170
(212) 867-8280

DICKOVER, DONNELLY, DONOVAN & BIAGI
Attorneys for Plaintiffs
28 Bruen Place
Goshen, New York 10924
Tel. 845-294-9447

TO: Jacobowitz & Gubits, LLP
Attorneys for Defendants
(except Rev. Robert W. Hoag)
158 Orange Avenue, P.O. Box 367
Walden, New York 12586-0367

Rev. Robert W. Hoag
44 Dundee Circle
Middletown, New York 10941

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COUNTY OF ORANGE

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Kirby, Marie Knibbs, Dorothy Kwapong, Ronald Lyons,
Theda Wolfe, the Rev. Robert W. Hoag, and Stanley
Wayne,

Defendants.

: Index no. 2005/6144
: **AFFIDAVIT IN SUPPORT OF**
: **PLAINTIFFS' CROSS-**
: **MOTION FOR SUMMARY**
: **JUDGMENT AND IN**
: **OPPOSITION TO**
: **DEFENDANTS' MOTION**
: **FOR SUMMARY JUDGMENT**

STATE OF NEW YORK)

: s.s.:

COUNTY OF ORANGE)

RICHARD M. SPIERLING, being duly sworn, deposes and says:

1. I am a plaintiff in the above entitled action in my capacity as Chair of the Administrative Commission appointed by the principal plaintiff herein, The Presbytery of Hudson River (the "Presbytery"), with respect to the First Presbyterian Church of Ridgebury. I reside at 507 Bayberry Court, New Windsor, New York 12553. I am the minister of Calvary Presbyterian Church, Newburgh, New York

S = Spierling

2. I make this affidavit in support of plaintiffs' cross-motion for summary judgment for the relief sought in the complaint. In this action plaintiffs assert five causes of action against defendants, including defendant The Trustees of The First Presbyterian Church of Ridgeberry (the "Ridgeberry church") and the members (or purported members) of its session. In the first and second causes of action plaintiffs seek to impress an express or implied trust upon the real and personal property of the Ridgeberry Church, and to restrain any affiliation by the Ridgeberry Church with any church other than the Presbyterian Church (U.S.A.) ("PCUSA"). In the third cause of action plaintiffs seek an order of possession of the personal property of the Ridgeberry Church. In the fourth cause of action plaintiffs seek an accounting of the real and personal property of the Ridgeberry Church. In the fifth cause of action plaintiffs seek an order of possession of the real property of the Ridgeberry Church.

Prior proceedings in this case

3. With the filing of the summons and complaint in this case plaintiffs filed a notice of lis pendens with respect to the real property of the Ridgeberry Church, and also filed a motion for a preliminary injunction to restrain defendants from attempting to transfer or alienate the real property of the Ridgeberry Church during the pendency of this action. Defendants, through their counsel, then agreed by stipulation dated September 14, 2005, not to transfer the Ridgeberry Church real property during the pendency of this action, and for that reason the motion for a preliminary injunction was withdrawn.

The parties:

4. (a) (i) Plaintiff, the Presbytery of Hudson River (“Presbytery”) is a regional presbytery of the national protestant denomination Presbyterian Church (U.S.A.) (“PCUSA”). The Presbytery includes 92 member Presbyterian congregations in the Hudson Valley region. PCUSA is a hierarchical structured church denomination, consisting of four levels: its local congregations, its 173 regional presbyteries, its 16 multistate synods, and the governing General Assembly. As a hierarchical church denomination, PCUSA and all its constituent entities are governed by the PCUSA Constitution, including its Book of Order. The Book of Order regulates the operations of each congregation, and includes a property trust clause providing that the property of each member congregation is held in trust for the Presbytery.

(ii) PCUSA is also described as a “connectional” church, emphasizing that Presbyterians are connected through their religious faith and through the structure established by the PCUSA Constitution. (As noted in the accompanying memorandum of law, page 8, the New York Court of Appeals has confirmed the “hierarchical or connectional form of church government” of PCUSA’s immediate predecessor denomination.) The “hierarchical” nature of PCUSA is expressed in Book of Order, “Principles of Presbyterian Government,” in G-4.0300i, stating “Governing bodies possess whatever administrative authority is necessary to give effect to duties and powers assigned by the Constitution of the church.” The “connectional” nature of PCUSA is expressed in the immediately following provision, G-4.0302, stating “The nature of Presbyterian order is such that it shares power and responsibility. The system of governing bodies, whether they have authority over one or many

churches, sustains such mutual relationships within the structures as to express the unity of the church.”

(b) Defendant “Trustees of the First Presbyterian Church and Congregation of Ridgeberry” (herein “Ridgebury Church”) is the original incorporated name of the Ridgebury Church. Since 1817 the Ridgebury Church has been a member congregation of the Presbytery or its predecessor presbyteries. The other named defendants are members or purported members of the session (governing board) of the Ridgebury Church.

Documents comprising this cross-motion.

5. Plaintiffs’ supporting motion papers include the following:

(i) This affidavit of Rev. Dr. Richard M. Spierling, with Exhibits A through P. A tabular list/description of those exhibits immediately follows this affidavit.

(ii) Affidavit of Rev. Mark Tammen, sworn to January 20, 2006, with Exhibits A through D. Rev. Tammen is Director of Constitutional Services with the Presbyterian Church (U.S.A.). Rev. Tammen’s affidavit is directed to the hierarchical structure of the national Presbyterian Church (U.S.A.), the 1981 and 1983 adoption of property trust clauses binding on local Presbyterian congregations, and the pre-existing property trust doctrine of the Presbyterian Church (U.S.A.).

(iii) Affidavit of Rev. Dr. William E. Chapman, sworn to January 18, 2006. Dr. Chapman is a professional historian of Presbyterian Church structure and governance (polity). His affidavit addresses the hierarchical and connectional structure of the Presbyterian Church (U.S.A.), the role of the Administrative Commission appointed by the plaintiff

Presbytery in this matter, and the historic property trust doctrine of the Presbyterian Church (U.S.A.).

(iv) Memorandum of law in support of plaintiff's cross-motion and in opposition to defendants' motion for summary judgment.

(v) Response to Defendants' Statement of Undisputed Facts and Plaintiffs' Statement of Undisputed Facts.

DISCUSSION

6. Outline of discussion below:

| | Paragraphs |
|--|------------|
| Summary of issues | 7 |
| Background of this dispute | 8-18 |
| Express property trust adopted by Presbyterian Church (U.S.A) | 19-27 |
| Implied property trust of Presbyterian Church (U.S.A) | 28-32 |
| Real property of Ridgebury Church | 33-35 |
| No basis for defendants' motion for summary judgment (Table of Exhibits – following p. 20) | 36 |

7. Summary of issues. As described below, the Ridgebury Church has purported to withdraw its congregation, real property and other assets from the Presbytery and the PCUSA.

The Presbytery asserts that such action is invalid for these reasons:

- - The Ridgebury Church is a member congregation of PCUSA and of the plaintiff Presbytery, a regional subdivision of PCUSA.

- - PCUSA is a "hierarchical" and "connectional" church denomination, governed by its Book of Order. The Book of Order governs and regulates the relationship of the congregations to PCUSA and to the Presbytery. The Ridgebury Church is fully subject to the

requirements of the Book of Order. The “connectional” aspect of PCUSA emphasizes the collegial relationships within PCUSA but in no way dilutes the authority of the Book of Order.

- - As shown below, the property of the Ridgebury Church is impressed with an express trust in favor of the PCUSA by the property trust provision of the Book of Order of the PCUSA, a part of the Constitution of the PCUSA. That property is also impressed with an implied trust in favor of the PCUSA by reason of the longstanding doctrine of the PCUSA and its predecessors existing throughout the period of the affiliation of the Ridgebury Church with the Presbytery from 1817 into 2005. That doctrine held that property of a member church is held for the benefit of the national church, a doctrine now formally incorporated in the Book of Order of the PCUSA. See the accompanying affidavits of the Rev. Mark Tammen, Director of Constitutional Services of PCUSA, and Dr. William Chapman, historical expert on Presbyterian polity, confirming the express trust provisions and the implied trust doctrine of PCUSA.

- - Through firmly established precedent New York State courts determine church property disputes through the “neutral principles” analysis, in order to avoid entangling the courts in religious doctrine. Defendant Ridgebury Church does not take issue with the property trust provisions of the Book of Order. It also does not take issue with the longstanding property trust doctrine referred to above and repeatedly reaffirmed by the General Assembly of the Church during the period of the affiliation of the Ridgebury Church with the Presbytery. However, the Ridgebury Church’s answer to the complaint and its motion papers on its motion for summary judgment seek to challenge the clear provisions of the Book of Order of PCUSA and the longstanding polity of PCUSA by references to Holy Scriptures and Confessions rather than to law. (“Confessions” refers to the “Book of Confessions” which contains statements of

religious doctrine of PCUSA and is a part of the PCUSA Constitution.) Defendants want this Court to decide this case on the basis of the defendants' theological interpretations. Plaintiffs respect defendants' religious views, but "neutral principles," not theological interpretations, must be the basis for the resolution of this dispute. If, as defendants urge, the validity of the governing instruments and actions of the governing body of a church must be subjected to theological tests, there will be little left in the way of neutral principles to decide church property disputes.

THE DISPUTE.

8. The dispute between the parties originated in January, 2005, when the session of the Ridgebury Church sent an undated letter to the Presbytery announcing its intention to disassociate itself from the PCUSA. The Presbytery objected to that action, in a letter dated January 27, 2005. Copies of those letters and a further letter in reply from the Ridgebury Church dated February 15, 2005, are attached hereto as Exhibit A.

The Presbytery's administration procedures concerning the Ridgebury Church.

9. Under the procedures of the Book of Order, the Presbytery then appointed a Special Committee of seven members to review the actions of the session of the Ridgebury Church, directing the Special Committee to report to the Presbytery whether the session of the Ridgebury Church was able and willing to manage wisely the affairs of the Church in accordance with the Book of Order.

10. The provisions of the Book of Order which are particularly relevant to this action, are attached hereto as Exhibit B, and include:

G-8.0201, G-8.0301, G-8.0501 and G-8.0601 - property trust provisions;
G-9.0501-a – right to appoint a committee to review;
G-0.0503-a – right to appoint a commission to act.
G-11.0103-s - authorizing the Presbytery to assume jurisdiction over a session which cannot exercise its authority.

11. In accordance with Book of Order mandated process, the Special Committee scheduled a hearing for April 3, 2005, which was adjourned at the request of the Ridgebury Church to April 21, 2005. Copies of the correspondence giving notice of the hearing and the replies of the Ridgebury Church are attached hereto as Exhibit C. In the interim between April 3 and 21, 2005, the Ridgebury Church filed a certificate of amendment with the Orange County Clerk changing its corporate name to "Ridgebury Church and/or The Church at Ridgebury." See Exhibit D attached.

12. The hearing on April 21, 2005, was attended by two members of the session of the Ridgebury Church, an individual purporting to be the moderator of the Ridgebury Church, and legal counsel for the Ridgebury Church. The parties reaffirmed the positions expressed in the correspondence between them in January and February, 2005, and the Special Committee further submitted documentation at the hearing in support of its position. Exhibits A, B, C and D attached hereto are part of such documentation as are most of Exhibits D-1 through D-12 attached hereto, referred to below.

13. The Special Committee issued a report to the Presbytery dated May 21, 2005, giving its findings and recommendations. A copy of the report is attached hereto as Exhibit E, along with a letter from the Ridgebury Church containing comments on the hearing. The report concluded with recommendations, among others, that the Presbytery determine that the session of the Ridgebury Church was unable to manage wisely the affairs of the Ridgebury

Church and that the Presbytery appoint an Administrative Commission to assume jurisdiction of the session of the Ridgebury Church.

14. The Presbytery by its resolution of May 21, 2005, made the recommended determinations, appointed an Administrative Commission and conferred upon it the necessary powers for carrying out its responsibilities. A copy of the resolution is attached hereto as Exhibit F. Under Book of Order, G-11.0103-s (Exhibit B) that Presbytery action fully empowered the Administrative Commission to assume jurisdiction over the session of the Ridgebury Church.

15. Thereafter, I, as Chair of that Administrative Commission, sent a letter dated May 26, 2005, to the Ridgebury Church inviting the Ridgebury Church session to meet with the Administrative Commission to resolve the dispute. The Ridgebury Church session by letter dated June 14, 2005, rejected the proposal. I then sent a letter to the Ridgebury session dated June 22, 2005, formally advising the session of the determination of the Presbytery and that the Administrative Commission had assumed original jurisdiction of the session and directing the session to turn over the property and other assets of the Ridgebury Church to the Presbytery. Copies of the correspondence referred to in this paragraph are attached hereto as Exhibit G. The Ridgebury Church did not reply to my letter. The Ridgebury Church has not taken any of the steps directed by the Administrative Commission in its above June 22, 2005, letter, and in particular has not turned over the property of the Ridgebury Church to the Administrative Commission.

16. All of the foregoing steps by the Presbytery were conducted in strict compliance with the governing procedures specified in the Book of Order. The Ridgebury Church has not claimed those procedures were non-compliant in any way. The foregoing

administrative procedures completed all administrative steps available to the Presbytery and the Administrative Commission, and left them with no remedy but to bring this suit to enforce their rights.

17. The Ridgebury Church had not sought any meeting with the Presbytery to discuss possible withdrawal by the Ridgebury Church congregation from the Presbytery. The Presbytery has full authority to negotiate the terms of such a withdrawal. The Book of Order explicitly vests the Presbytery with authority to “divide, dismiss, or dissolve churches in consultation with their members . . .” Book of Order G-11.0103i (Exhibit B). Ridgebury Church simply ignored these provisions, and unilaterally declared its separation from PCUSA with no advance communication to the Presbytery or PCUSA.

18. Purported change of name. On April 14, 2005, the Ridgebury Church filed an amendment to its certificate of incorporation changing its name to “Ridgebury Church and/or The Church at Ridgebury” without having made any request to do so to the Presbytery or having received approval to do so from the Presbytery. A name change by a church of the Presbyterian Church (U.S.A.) must be approved by the Presbytery.

EXPRESS PROPERTY TRUST.

19. The Ridgebury Church is bound by the express property trust clauses of the Book of Order for the reasons given in the paragraphs below and in the accompanying memorandum of law.

20. The Ridgebury Church was organized on July 10, 1792. Its certificate of incorporation is dated November 27, 1805 (see Exhibit D attached). At a meeting of the session

held on July 5, 1817, as reflected in a history of that church written in 1876 by the Rev. Theron Brittain, a Minister of the Church from 1875 to 1899, resolutions were adopted as follows (see Exhibit D-1 attached):

“1. Resolved that we adopt the Confession of Faith and the ‘Form of Government’ of the Presbyterian church of the United States of America.

2. That we put ourselves under the care, and connect ourselves with the Presbytery of Hudson.”

The Ridgebury Church was received under the care of the Presbytery of Hudson in September, 1817. Further details on the history of the church confirming the above are provided in an account written by the Rev. John M. Price, a Minister of the church installed in 1937 (see Exhibit D-2, p. 7, attached).

21. During the period after 1817 the Presbytery was one of the presbyteries of a succession of national Presbyterian denominations. At the time of the Civil War the Presbyterian Church divided into a northern branch, the Presbyterian Church in the United States of America (including the Presbytery of Hudson) and a southern branch, the Presbyterian Church in the United States. The northern branch merged in 1958 with the smaller Presbyterian Church of North America to become the United Presbyterian Church in the United States of America, which then merged with the Presbyterian Church in the United States in 1983 to form the PCUSA. The Presbytery of Hudson continued as such until 1961, when the Presbyteries of Hudson, North River and Westchester merged to form the Presbytery of Hudson River.

22. Under the historic doctrine of the Presbyterian Church the property of Presbyterian churches is held in trust for the denomination. See accompanying affidavit of Rev. Mark Tammen of PCUSA. In order to formalize this trust relationship the United Presbyterian

Church in the United States of America in 1981 adopted express trust provisions in its Book of Order, Chapter XLII. A copy of such Chapter XLII as adopted is attached as Exhibit H. Upon the 1983 merger which formed PCUSA, that property trust clause was carried over and incorporated in virtually identical terms in 1983 in the Book of Order of the present PCUSA as set forth in paragraph 10 above and Exhibit B.

23. At the time of the adoption of the express property trust provisions by the United Presbyterian Church in the United States of America in 1981, the Ridgebury Church had full knowledge of, and participated in, the proceedings leading to that adoption. The process began in 1980 when the 192nd General Assembly of the UPCUSA directed its Stated Clerk to send an overture (Overture A) to the various presbyteries for their affirmative or negative replies as to whether the Constitution should be amended to add the property trust clause. A copy of those proceedings is attached hereto as Exhibit I.

24. At a meeting of the plaintiff Presbytery held on March 10, 1981, it was recommended that the Presbytery respond in the affirmative to various overtures sent down by the 192nd (1980) General assembly, including Overture A (which included the property trust clause). A copy of the minutes of that meeting is attached hereto as Exhibit J. The Presbytery maintains attendance records for its meetings and that record shows that the then pastor of the Ridgebury Church, the Rev. William W. Wildeman, was present at the meeting on March 10, 1981. Rev. Wildeman, along with the other ministers in the district of the Presbytery, is a member of the Presbytery, as provided in Book of Order G-11.0101 (copy attached as Exhibit B). A copy of the record showing attendance at the meeting is attached as Exhibit K. The record thus confirms that, through its minister, the Ridgebury Church had full knowledge of the

Presbytery's vote approving the property trust amendment, and that by the attendance of its minister the Ridgebury Church participated in the amendment process. Within the polity of PCUSA each church is also entitled to elect one elder commissioner to each stated meeting of its presbytery (churches with membership of 500 or more are entitled to more than one). Such elected elder commissioner is entitled to full voice and vote at the meeting. The attendance record of the March 10, 1981 stated meeting of the Presbytery indicates that for whatever reason the Ridgebury Church did not avail itself of that right at this meeting and did not have an elder commissioner present.

25. At the next (193rd) General Assembly of the United Presbyterian Church in the United States of America it was reported that Overture A (with the property trust clause) had been adopted with the affirmative vote of 146 presbyteries and the negative vote of 4 presbyteries. A copy of those proceedings is attached as Exhibit L. (In accordance with the Book of Order, the property trust clause became an effective amendment in 1981 following approval by a majority of the presbyteries of PCUSA.)

Participation of Ridgebury Church in Presbytery following adoption of property trust clause.

26. Following the adoption of that property trust clause the Ridgebury Church and its session and officers continued to be full participants in the proceedings and actions of the Presbytery through 2004. Those proceedings include but are not limited to the following:

(a) Attendance of one or more of Ridgebury Church representatives at Presbytery meetings in 1982, 1984, 1985, 1986, 1987, 1988, 1989, 1993, 1994, 1995, 1996, 1997, 1999, 2000, 2001, 2002, 2003 and 2004. Attendance records for those years are attached

as Exhibit D-3. In those Exhibit D-3 records the Ridgebury Church is generally referred to as "Slate Hill" or "Ridgebury." The then pastor of the Ridgebury Church, Rev. William Wildeman, is identified by name on attached clergy attendance lists included in Exhibit D-3.

(b) Appointment by the Presbytery of moderators for the Ridgebury Church in 1986, 2001, 2002 and 2003 (see Exhibit D-4 attached);

(c) Approval by the Presbytery of pastoral calls to the Ridgebury Church in 1986 and 2002 (see Exhibit D-5 attached);

(d) Approval of contracts for a minister of the Ridgebury Church in 1985, 2000 and 2003 (see Exhibit D-6 attached);

(e) Appointment of ministers of the Ridgebury Church to Presbytery committees in various years from 1985 through 2002 (see Exhibit D-7 attached);

(f) Submission to the Presbytery by the Ridgebury church of a list of church officials of the Ridgebury Church from 1991 to 2004 (see Exhibit D-8 attached);

(g) Presbytery review of the session records of the Ridgebury Church (see Exhibit D-9 attached);

(h) Appointment of Ridgebury representative as one of two minutes readers at the stated meeting of the Presbytery held on November 30, 2004 (see Exhibit D-10 attached);

(i) Submission by the Ridgebury Church of membership records to the Presbytery for numerous years from 1989 to 2003 (see Exhibit D-11 attached);

(j) Extensive proceedings in 1999 with the Presbytery concerning a proposed merger of the Ridgebury Church and the nearby Denton Presbyterian Church.

Although approved by the Ridgebury Church, the merger ultimately was not approved by the Denton congregation, and did not take place (see Exhibit D-12 attached).

27. Commitment by session members to Book of Order. The governing board of the Ridgebury Church is its session, comprised of the persons elected as elders of the congregation. Elders are required by the Book of Order to be installed through a service of ordination and installation. That service requires each elder to stand before the congregation and affirm, among other matters, the following: "Will you be governed by our church's polity, and will you abide by its discipline?" Book of Order, G-14.0207e, attached as Exhibit M. Hence, duly elected members of the Ridgebury Church's governing board are committed to adherence to PCUSA polity, namely its form of government, which comprises Chapters I through XVIII of the Book of Order, and includes the property trust clause referred to above.

IMPLIED PROPERTY TRUST.

28. The Ridgebury Church property also belongs to the Presbytery by reason of an implied trust in favor of the Presbytery for the reasons given below.

29. As set forth above in paragraph 20, in 1817 the Ridgebury Church adopted the Confession and Form of Government of the Presbyterian Church in the United States of America and placed itself under the care of the Presbytery. At that time and thereafter presbyterian doctrine provided that the property of a presbyterian church was held in trust for the national denomination. This is clearly shown in the accompanying affidavits of Rev. Mark Tammen and Dr. William Chapman.

30. During the period from 1817 to 2004, the Ridgebury Church was a member congregation of the Presbytery and the Presbyterian Church (U.S.A.) and its predecessors and manifested its solidarity, union and support for its Presbyterian status through numerous actions and activities, including those set forth in paragraph 26 above and others which predated the adoption of the express property trust clause by the United Presbyterian Church in the United States of America in 1981. In a major such event, the merger of the Presbyteries of Hudson, North River and Westchester into the current Presbytery of Hudson River, the members of the Presbyteries, including the pastor of the Ridgebury Church, Rev. W. W. Wildeman, convened on January 9, 1961, at the Calvary Presbyterian Church, Newburgh, to approve the merger. In that meeting and subsequent meetings of the Presbytery in 1961 the Ridgebury Church was represented by Rev. Wildeman and church elders, Rev. Wildeman was appointed to a position on the Stewardship and Promotion Committee, and an elder of the Ridgebury Church was appointed a delegate to the Synod. See Exhibit N.

31. In another such instance occurring in 1979 and 1980 the Presbytery approved and then re-approved on different terms the sale of property of the Ridgebury Church. See correspondence and Minutes of the Presbytery attached as Exhibit O. Thus, the Ridgebury Church fully understood, even before the adoption of the express property trust clause, that any sale or transfer of property by Ridgebury Church had to be done in concert with, and with the permission of the Presbytery.

32. As shown in paragraphs 30 and 31 above, in years prior to the adoption of the express property trust clause in the Book of Order the Ridgebury Church clearly recognized the authority of the Presbytery and submitted to Presbyterian polity and doctrine. As shown in the

accompanying Tammen and Chapman affidavits, that doctrine has long included the principle that the property of a local congregation is held in trust for the Presbytery.

REAL PROPERTY OF THE RIDGEBURY CHURCH:

33. The Ridgebury Church holds property in five parcels at 671 Ridgebury Hill Road, Slate Hill, New York, section 16, block 1, lot 4 of the tax map of the County of Orange, conveyed to Ridgebury Church by the five deeds described at paragraph 30 of the complaint. Copies of and descriptions of those deeds are set forth in the title report of Land America Commonwealth attached hereto as Exhibit P. That real property includes contiguous parcels on which stand the church sanctuary and education building, a single family house (previously used as the pastor/s residence), and a building once used as a fellowship and community hall. The dates of those deeds, and the names into which title was conveyed, are as follows:

Parcel I: Deed dated April 1, 1833, conveyed to "Trustees of the First Presbyterian Church and Congregation of Ridgebury."

Parcel II: Deed dated April 1, 1921, conveyed to "Trustees of the First Presbyterian Church and Congregation of Ridgebury."

Parcel III - Deeds dated April 1, 1910, and July 2, 1923, conveyed to "Trustees of the First Presbyterian Church and Congregation of Ridgebury."

Parcel IV - Deed dated May 27, 1954, to "Donald Beaumont, Charles Kirby, Arland Kirby, Henry Haakmester, Russell Hagerty and John K. Quackenbush, all as Trustees of the Presbyterian Church of Ridgebury, New York."

Parcel V - Deed dated June 16, 1964, to "The Ridgebury Presbyterian Church."

Ridgebury Church acknowledges that the above are the properties owned by the Church - see Answer #15, and Answer Exhibit O.

34. Hence, all real property currently owned by the Ridgebury Church was conveyed to the corporate church entity over a 133 year period, from 1833 to 1964, a period ending 42 years ago, with all deeds identifying the recipient as a *Presbyterian* church, and all properties transferred to the Ridgebury Church after it had joined the Presbytery and accepted its form of government. Through that 133 year period of conveyances to the Ridgebury Church, the Ridgebury Church was a member of the Presbytery or its predecessor presbyteries and was a fully functioning *Presbyterian* church. The individual defendants were not members of the Ridgebury Church's session at the time of any of those property transfers, and those individual defendants obviously did not contribute to the cost of acquiring those properties. The church members who did contribute to the cost of acquiring the real property of Ridgebury Church and/or accepted the responsibility for maintaining the properties obviously understood the properties were being acquired and maintained for a *Presbyterian* church. The buildings on the Ridgebury Church property were constructed many years ago, and, similarly, those church members who did contribute to the cost of constructing and maintaining those buildings obviously understood their contributions were being used for a *Presbyterian* church.

35. At the Special Committee's hearing on April 21, 2005 (paragraph 12 above) plaintiffs were informed by defendants that the Ridgebury Church's normal current Sunday church service attendance was approximately twenty people. These twenty people now wish to take away this historic Presbyterian church property because of their religious views. The national Presbyterian Church (U.S.A.) includes congregations having a wide spectrum of religious views, from conservative to liberal, and neither PCUSA nor the Presbytery have attempted to impose particular religious interpretations on the members of the Ridgebury

Church. Ridgebury Church members are free to practice their religious beliefs at the Ridgebury Church, or are free to become members of other churches. They are not, however, free to take this church property with them or to unilaterally abrogate the affiliation of the Ridgebury Church with PCUSA and the Presbytery.

NO BASIS FOR DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

36. For the reasons discussed in the accompanying memorandum of law, defendants have offered no legal basis to support their claims under the governing "neutral principles" approach in resolving a church property dispute. Under "neutral principles" analysis the express and implied property trust provisions of the PCUSA apply to the Ridgebury Church, and entitle the Presbytery and its Administrative Commission to possession of the real and personal property of the Ridgebury Church. Accordingly, it is submitted that defendants' claims have no merit and that there are no defenses to plaintiffs' causes of action herein and that plaintiffs are entitled to the relief requested in the accompanying Notice of Motion and in the complaint herein.

37. No previous application has been made to this or any other Court for the relief requested herein.

WHEREFORE, plaintiffs request that this Court deny defendants' motion for summary judgment and grant plaintiff's cross-motion for summary judgment for the relief sought in the complaint, and that the Court grant such other and further relief as may be just.


RICHARD M. SPIERLING

Sworn to before me this 23rd
day of January, 2006



NOTARY PUBLIC

BARBARA R. VACCAI
NOTARY PUBLIC, STATE OF NY
REG. NO. 01VA6076889
QUALIFIED IN ORANGE CTY.
COMMISSION EXP. JULY 1, 2006

TABLE OF EXHIBITS

**AFFIDAVIT OF RICHARD M. SPIERLING SWORN TO JANUARY 23, 2006
- ALL OF THE FOLLOWING EXHIBITS ARE IN A SEPARATE BINDER -**

| Exhibit | Description |
|---------|--|
| A | Undated letter from Ridgebury Church to Rev. David Prince. Letter dated January 27, 2005, from Presbytery of Hudson River to Marie Knibbs. Letter dated February 15, 2005 from Ridgebury Church to Rev. David Prince |
| B | Provisions of Book of Order G-8.0201, G-8.0301 and G-8.0601 - the property trust provisions; G-9.0501-a - right to appoint a committee to review; G-0.0503-a - right to appoint a commission to act. G-11.0103-s - authorizing the Presbytery to assume jurisdiction over a session which cannot exercise its authority. |
| C | Notice of Hearing dated March 15, 2005, issued by Special Committee. Letter dated March 29, 2005, from Church at Ridgebury to Rev. Spierling. Notice of Re-scheduled Hearing, dated April 4, 2005, issued by Special Committee. Letter dated April 15, 2005, from the Church at Ridgebury to Rev. Spierling. |
| D | Certificate of Incorporation of "The Trustees of the First Presbyterian Church and Congregation in Ridgeberry." dated November 27, 1805. |
| D-1 | Extract from History of Ridgebury Presbyterian Church, by Rev. Theron Brittain, July 2, 1876. |
| D-2 | "One Hundred and Fifty Years of the First Presbyterian Church of Ridgebury, New York," 1792-1942, by Rev. John A. Price |
| D-3 | Presbytery meeting attendance records (extracts), 1982, 1984, 1985, 1986, 1987, 1988, 1989, 1993, 1994, 1995, 1996, 1997, 1999, 2000, 2001, 2001, 2002 2003 and 2004, covering attendance of Ridgebury Church representatives. |
| D-4 | Extracts records of Presbytery Committee on Ministry, showing appointment of moderators for the Ridgebury Church in 1986, 2001, 2002 and 2003. |
| D-5 | Extracts from Presbytery Committee on Ministry showing approval of pastoral calls to the Ridgebury Church in 1986 and 2002. |
| D-6 | Extracts from records of Presbytery Committee on Ministry, showing approval of contracts for a minister of the Ridgebury Church in 1985, 2000 and 2003 |

Table of Exhibits for Affidavit of Richard M. Spierling - Page -1-
(ALL OF ABOVE LISTED EXHIBITS ARE IN SEPARATE BINDER.)

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| D-7 | Extracts from records of Presbytery Committee on Nominations showing appointment of ministers of the Ridgebury Church to Presbytery committees in various years from 1985 through 2002 |
| D-8 | Submissions by the Ridgebury Church to the Presbytery of "Church Officials List," for years 1991 to 2004 |
| D-9 | Extracts from Presbytery records showing review of session records of Ridgebury Church. |
| D-10 | Minutes of Presbytery meeting, showing appointment of Ridgebury Church representative as one of two minutes readers at the stated meeting of the Presbytery held on November 30, 2004 |
| D-11 | Membership records submitted by Ridgebury Church to Presbytery, for numerous years from 1989 to 2003. |
| D-12 | Records of proceedings in 1999 with the Presbytery concerning a proposed merger of the Ridgebury Church and Denton Presbyterian Church. |
| E | Report of Special Committee of Presbytery dated May 21, 2005, re Ridgebury Church. Letter dated May 17, 2005, from The Church at Ridgebury to Presbytery. |
| F | Certified resolution of Presbytery adopted May 21, 2005 |
| G | Letter dated May 26, 2005, from Presbytery to Session, First Presbyterian Church of Ridgebury. Letter dated June 14, 2005, from The Church at Ridgebury, to Richard Spierling. Letter dated June 22, 2005, from Rev. Richard Spierling, Administrative Commission of Presbytery, to The Session, First Presbyterian Church of Ridgebury. |
| H | Extract from Book of Church Order, United Presbyterian Church in the United States of America, Chapter XLII, property trust provision adopted 1981. |
| I | Extract from Minutes of General Assembly of United Presbyterian Church in the United States, 1980, re Overture A (property trust clause). |
| J | Extract from minutes of meeting of Presbytery, March 10, 1981, re Presbytery response to Overture A. |
| K | Attendance record of Presbytery for meeting of March 190, 1981, with attached attendance roll showing presence of Rev. William Wildeman, pastor of Ridgebury Church, at meeting. |

**Table of Exhibits for Affidavit of Richard M. Spierling - Page -2-
(ALL OF ABOVE LISTED EXHIBITS ARE IN SEPARATE BINDER.)**

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| L | Extract from Minutes of General Assembly of United Presbyterian Church in the United States, 1981, showing adoption of Overture A. |
| M | PCUSA Book of Order, G-14.0207e. |
| N | Minutes, proceedings, of Presbytery of Hudson River, 1961, showing participation in Presbytery meetings of Rev. Wildeman, pastor of Ridgebury Church, and elders of Ridgebury Church. |
| O | Request (1979) to Presbytery by Ridgebury Church (and related documents), on application by Ridgebury Church for Presbytery approval for sale of real property. |
| P | Title report of Commonwealth Land Title Insurance Co., 2/11/05, on Ridgebury Church real property, with copies of deeds and related title documents. |

Table of Exhibits for Affidavit of Richard M. Spierling - Page -3-
(ALL OF ABOVE LISTED EXHIBITS ARE IN SEPARATE BINDER.)

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My credentials.

2. I have served as Associate Stated Clerk of the General Assembly since June, 2001.

3. Prior to becoming the Director of Constitutional Services, I was the Manager of Polity Guidance and Training with the Presbyterian Church (U.S.A.) Office of the General Assembly from March, 1994 to May, 2001. One of the functions of this position is to respond to polity questions under the Book of Order, Part II of the Constitution Presbyterian Church (U.S.A.).

4. I received a Master of Divinity degree from McCormick Theological Seminary in 1983 and my law degree (Juris Doctorate) from Loyola University in 1981.

5. I was ordained as a Presbyterian minister in 1983 by the Presbytery of Blackhawk. I am still a minister of the Word and Sacrament.

6. Pursuant to G.2.e of the Manual of the General Assembly, the Stated clerk, as the senior highest continuing officer of the Presbyterian Church (U.S.A.) General Assembly, must preserve and defend the Constitution of the Presbyterian Church (U.S.A.). In addition, the Stated Clerk is charged with the responsibility of giving advisory opinions concerning the meaning of the provisions of the Constitution of the Presbyterian Church (U.S.A.). The Stated Clerk is my supervisor, and has deputized me to fulfill that official function of providing those opinions.

Structure of PCUSA.

7. PCUSA has four levels of governing bodies - the session of the local church, the presbytery, the synod and General Assembly.(G-9.0101) The jurisdiction of

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each governing body is determined by the Book of Order, with powers not mentioned being reserved in the presbyteries,(G-9.0103). The acts of each governing body are subject to review by the next higher governing body (G-9.0103, G-9.0407). The nature of presbyterian order is a unified church, sharing power and responsibility (G-9.0103). As a corollary of such unity all property, real and personal, of any body, no matter how title is held, is held in trust for the PCUSA (G-8.0201).

Property trust doctrine.

8. From the days of their founders in Europe to the present, Presbyterian and Reformed theologians have emphasized the organic unity of the church. This unity is concretely manifested in the trust doctrine which has existed from the inception of the Presbyterian Church in the United States and has applied to all branches of the Presbyterian Church, including the United Presbyterian Church of the United States of America (“UPCUSA”), the branch to which the Presbytery of Hudson and successor Presbytery of Hudson River belonged until the merger of the UPCUSA with the Presbyterian Church in the United States in 1983 to form the PCUSA. The trust doctrine has been confirmed and acted upon by numerous actions of the General Assembly in governing the Presbyteries, including the following actions noted below:

(a) a statement of the General Assembly in 1793 setting forth that the several congregations constitute one church, with a hierarchical government, providing for matters in controversy to be appealed to and decided by higher judicatories, as contained in a 1979 Report of the Permanent Committee on Conservation of Property

of the General assembly of the United Presbyterian Church in the United States of America, p. 100, attached as Exhibit A.

(b) adoption of a report by the General Assembly in 1927 further establishing the unity of the Church, attached as Exhibit A, p. 101.

(c) a statement of the General Assembly in 1964, reaffirming that the United Presbyterian Church in American is one church and that the ownership of all property is shared by all members. See attached Exhibit A, p. 101.

(d) adoption of a report by the General Assembly in 1968 of its Permanent Committee on the Conservation of Property, again affirming the property trust doctrine and authorizing support for presbyteries seeking to enforce such doctrine. See Exhibit B attached hereto.

(e) adoption by the General Assembly of UPCUSA, following approval by the presbyteries, of express property trust provisions in the Book of Order of the UPCUSA in 1981. See the attached Exhibit C, which is prefaced by a statement that "This chapter is declaratory of principles to which the United Presbyterian Church in the United States of America and its antecedent church bodies have adhered from the inception of the presbyterian form of church government".

9. Accordingly, the express property trust clause was made a part of the UPCUSA Book of Order in 1981. The trust concept and language was included in the plan of union, (now contained in the Book of Order of PCUSA) on the merger formation of the PCUSA in 1983, and codified the long-standing property trust doctrine followed by this Church.

Role of the Presbytery.

10. The polity of the PCUSA assigns the Presbytery the primary role in enforcing the trust clause and makes it the contingent beneficiary for all property utilized and held by the sessions of local congregations. Presbyteries can receive congregations (with their property) into the PCUSA (G-11.0103h) and only presbyteries can dissolve or release congregations (G-11.0103i). The decision on whether to release a congregation with, or without, its property is to be made on the basis of the presbytery's strategy for mission. (G-11.0103a). The above provisions of the Book of Order are set forth in Exhibit D. There is no provision under the polity for a congregation to unilaterally leave the PCUSA, except as provided above.



The Rev. Mark Tammen, J.D.

Sworn to before me this

20th day of January, 2006

Joanne N. Green
Notary Public

Commission expires July 25, 2006.

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Provision for a National Emergency Strategy Commission was made by action of the 170th General Assembly (1958) as follows:

There shall be at all times a National Emergency Strategy Commission empowered to initiate any necessary measures pertaining to the program activities of the church and its agencies in the event of an emergency so critical as to make it impossible to assemble the General Assembly Mission Council. Any action shall be reported to the first General Assembly Mission Council and to the first General Assembly meeting after the emergency.

The Commission shall be composed of: The Moderator of the General Assembly, Chairperson; The Stated Clerk of the General Assembly; The Executive Director of the General Assembly Mission Council, Secretary; The Immediate Past Moderator; The Chairperson of the Budget and Finance Committee of the General Assembly Mission Council; The Presiding Officers and General Directors of the Program, Support, and Vocation Agencies; The Presiding Officer and Director of the United Presbyterian Foundation.

There being no business to come before the Commission, no meeting was held during the year.

REPORT OF THE PERMANENT COMMITTEE ON CONSERVATION OF PROPERTY

This report was referred to the Assembly Committee on Bills and Overtures and was designated Reference X-1. See page 35.

The Manual of the General Assembly provides for this committee as one of the permanent committees of the General Assembly as follows:

Committee on Conservation of Property

There shall be a Committee on Conservation of Property to advise the Stated Clerk and counsel the General Assembly as to the actions to be taken to retain and conserve property of The United Presbyterian Church in the United States of America held by any of the corporations of its judicatories and congregations.

This Committee shall consist of five persons appointed annually by the Moderator, with the Moderator, and the Stated Clerk serving *ex officio*. (Manual of the General Assembly, 1979, page C-5.)

The Rev. Howard L. Rice, Jr., Moderator of the 191st General Assembly (1979), appointed the following persons to the committee: Rev. James D. Brown, Santa Fe, New Mexico, Chairperson; Nellie M. Fergus, Esq., Pittsburgh, Pennsylvania; Duncan MacAffer, Esq., Albany, New York; Richard H. Miller, Esq., Milwaukee, Wisconsin; James H. Randolph, Esq., New York, New York; Rev. Howard L. Rice, Jr., Moderator of the 191st General Assembly (1979), *ex officio*; and William P. Thompson, Esq., Stated Clerk of the General Assembly, *ex officio*.

The committee met in New York City on July 11 and August 2, 1979. All members of the committee were present at each of its meetings. In addition, the following persons were present by invitation for all or part of the meetings: Mr. Otto K. Finkbeiner, Associate Stated Clerk and Treasurer of the General Assembly; Mrs. Juanita H. Granady, Executive Assistant to the Stated Clerk of the General Assembly; Kenneth W. Linsley, Esq., Manager, Legal Services Department, Support Agency; Rev. G. Daniel Little, Executive Director,

General Assembly Mission Council; Rev. William P. Lytle, Chairperson, General Assembly Mission Council; George W. McKeag, Esq., Solicitor of the General Assembly, Morgan, Lewis and Bockius, Philadelphia, Pennsylvania; Rev. Robert T. Newbold, Jr., Associate Stated Clerk of the General Assembly; Benjamin M. Quigg, Jr., Esq., Morgan, Lewis and Bockius, Philadelphia, Pennsylvania; Rev. Robert F. Stevenson, Associate Stated Clerk of the General Assembly; Rev. Robert R. Woods, Vice-Moderator of the 191st General Assembly (1979).

The meetings of this committee were occasioned by the decision of the Supreme Court of the United States, announced on July 2, 1979, in the case of *Jones v Wolf*.

JONES v. WOLF

This case involved the property of a particular church of the Presbyterian Church in the United States (PCUS), sometimes referred to as the "Southern Presbyterian Church." Although the Constitution of that church is not identical with the Constitution of The United Presbyterian Church in the United States of America (UPC-USA), the policies of the two are sufficiently similar and the language of the opinion is sufficiently far-reaching that this committee is convinced that the case causes confusion for United Presbyterians. This is evident when one recalls that in property matters both churches have relied upon the legal doctrine of "implied trust"—that all church property is held in trust for the whole church.

The Vinoville Presbyterian Church of Macon, Georgia, was organized as a constituent church of the Augusta-Macon Presbytery of the PCUS. In 1973, at a congregational meeting attended by a quorum of the members of the Vinoville Church, 164 of them voted to withdraw from the PCUS, while 94 voted against this. The majority subsequently united with the Presbyterian Church in America and has retained the church property.

The Augusta-Macon Presbytery appointed a commission to investigate the dispute. This commission eventually issued its decision holding that the minority, comprised of members still loyal to the PCUS, constituted the "true congregation" and removing from the majority "all authority to exercise office derived from the [PCUS]." This decision was never taken to a higher judicatory by complaint or appeal and was therefore the final determination of the issues made by any church body.

Representatives of the minority brought an action in the civil courts of Georgia seeking exclusive possession and use of the church property. The trial court denied them the relief sought, basing its decision in favor of the majority on the "neutral principles of law" concept applied by the courts of Georgia in recent years in disputes regarding church property. The Supreme Court of Georgia affirmed and the Supreme Court of the United States issued its Writ of Certiorari.

The Stated Clerk of the General Assembly, Mr. William P. Thompson, filed an *amicus curiae* brief supporting the position of the loyal minority. A number of other churches, including Presbyterian, Reformed, Lutheran, Orthodox, and Roman Catholic, filed their own briefs or joined in that of Mr. Thompson.

The Supreme Court held that a State may adopt a "neutral principles of law" approach to determining disputes regarding church property without contravening the First and Fourteenth Amendments to the United States Constitution. This approach was thought to permit a State court to avoid issues of doctrine and polity as determined by a succession of church judicatories and to limit its consideration to the deed to the property, the charter of the particular church, the statutes of the State pertaining to the holding of church property, and the constitution of the general church. The Court vacated the decision of the Supreme Court of Georgia and remanded the case to that court for further proceedings necessitated by its failure to identify the grounds upon which it based its decision awarding the property to the majority who had withdrawn from the PCUS.

Mr. Justice Blackmun delivered the opinion of the Court in which four other justices joined; Mr. Justice Powell filed a dissent in which the Chief Justice and two other justices joined.

Significance of the Decision

This decision has already prompted widespread discussion among churches the civil courts describe as "hierarchical"—Reformed, Lutheran, Methodist, Roman Catholic, and Orthodox, as well as Presbyterian. All of them have expressed concern about the confusion the decision has injected into the law regarding church property.

All agree that the decision does not affect church property received subject to limitations imposed upon its use or transfer by the grantor or donor in the conveyance. Such restrictions are meticulously observed by all of these churches. Their concern centers on church property received for the use of the church without such strictures. This type of property has become the subject of increasingly frequent litigation.

These churches are troubled not only because of the value of the church property involved in such cases, although that is often substantial. They are far more concerned about the use to which that property will be put by those given possession of it by the civil courts. The choice between rival claimants may appear to rest upon the application of "neutral principles" of property law with which lawyers and judges are quite familiar, but each such decision has the secondary result of determining the religious doctrines that will be taught there and the ecclesiastical authorities whose jurisdiction will be acknowledged. A decision regarding the possession and use of church property almost invariably determines issues of faith and order.

Jones v. Wolf has left the outcome of such cases in many states in doubt.

Present UPCUSA Policies

The result in *Jones v. Wolf* was made possible because the Constitution of the PCUS does not state explicitly that all property of each particular church is held in trust for the PCUS as a whole. Neither does the Constitution of the UPCUSA contain such an explicit provision. Both churches have relied upon the concept of "implied trust," a doctrine that in many states may no longer be relied upon with confidence following the recent decision.

Serious as this confusion regarding church property certainly is, the decision is considered by many to raise even deeper questions about the clarity with which the United Presbyterian Church has articulated its understanding of the nature of the church in its Constitution.

From the days of their founders in Europe to the present, Presbyterian and Reformed theologians have emphasized the organic unity of the church. Many see in this a reflection of the image developed in several of the Epistles of the New Testament that portrays the church as a body with members having different functions and of which Christ is the head. (See 1 Cor. 12: 12-31; Eph. 4: 11-16; Col. 1: 18.) One of the best known of these references is Romans 12: 4 and 5:

For as in one body we have many members, and all the members do not have the same function, so we, though many, are one body in Christ, and individually members one of another.

The earliest architects of Presbyterian polity sought to realize organic unity in their church order. They provided for representative governing bodies that relate to one another as follows: The particular church is governed by the session, consisting of the pastor of the church and the ruling elders elected by the people. The several churches in a district are governed by a presbytery, consisting of the ministers in the district and elder commissioners elected by the church sessions. Three or more presbyteries in a region are governed by a synod. And all of the synods, presbyteries, and particular churches are governed by one General Assembly. Synod and General Assembly are each comprised of commissioners, half ordained ministers and half ruling elders, elected by the presbyteries. Once described as "lower" and "higher" judicatories, more recent usage prefers "less inclusive" and "more inclusive." Whatever designation is used, decisions of the "lower" or "less inclusive" judicatory are subject to review and correction by the "higher" or "more inclusive." The latter may act upon its own initiative or in response to complaint or appeal. This pattern of church order has been described by the civil courts as a "hierarchy" of judicatories.

This understanding of church order is readily perceived in one of the earliest actions taken by the newly formed General Assembly of the Presbyterian Church, when Presbyterians had become sufficiently numerous in the New World to set up such a body:

The radical principle of Presbyterian Church government and discipline are, that the several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically the Church; that a larger part of the Church, or a representation of it, should govern a smaller, or determine matters of controversy which arise therein; that, in like manner, a representation of the whole should govern and determine in regard to every part, and to all the parts united; that is, that a majority shall govern; and consequently that appeals may be carried from lower to higher judicatories, till they be finally decided by the collected wisdom and united voice of the whole Church. For these principles and this procedure, the example of the apostles and the practice of the primitive Church are considered as authority.

This language is now included in the Constitution of the UPCUSA in Form of Government, Chapter V, Section 1 (35.01).

The text of this section was adopted circa 1793 by the General Assembly of the Presbyterian Church. In this quotation the word "radical" is used in its primary meaning of "fundamental and basic," and the word "appeal" is used in a general sense rather than with reference to a case involved in judicial process.

In 1927, the General Assembly of the Presbyterian Church in the United States of America (PCUSA, now the UPCUSA) adopted the report of the Swearingen Commission in the following words:

The Presbyterian Church is not a unity in the sense that it consists of an undivided oneness without distinguishable parts; neither is it a group of smaller bodies with common history and tradition which find it advantageous to work together in close harmony for the accomplishment of purposes common to all of them. Our Church is an organism. Its unity is not a unity of articulation, part touching part, like the bones of a skeleton, but the unity of life, the parts united by vital bonds, thus constituting a living whole and that whole imparting impulse and strength and order to the several parts, as the body to its members. (*Minutes*, 1927, Part 1, p. 59.)

More recently, the "organic relation of all congregations in the church" maintained by presbyterian polity was affirmed in the *Confession of 1967*. (The Book of Confessions, II, A, 2 (9.40).)

While it seems clear to the committee that in the context of Form of Government, Chapter V, Section 1 (35.01), quoted above, the term "majority" refers to a majority in the "highest" or "most inclusive" judicatory to which an issue is taken through administrative review or upon complaint or appeal, this may not be equally evident to all; and its application to issues regarding the possession and use of property may not be apparent to lawyers and judges unfamiliar with presbyterian polity when they are called upon to resolve property disputes.

The committee has found that whenever there is a controversy regarding the possession and use of church property, the issues in that dispute are invariably intertwined with issues regarding a doctrinal or other ecclesiastical matter. There is no neat dichotomy between "spiritual" issues on the one hand and "temporal" on the other. Under presbyterian polity, all of these issues must be determined through the decision-making of the "hierarchy" of judicatories. Property matters cannot be determined correctly apart from the resolution of related "ecclesiastical" issues.

Many property matters are decided without controversy. For example, the commitment of the UPCUSA to ecumenism in mission strategy sometimes leads to the formation of union or federated churches that may involve transfer of property. Less often, wise ecumenical strategy suggests that a particular town or area should be served, on behalf of all churches, by one church related solely to one denomination. This may require transfer of property to, or receipt of property from, another denomination. Sometimes through agreement with another denomination, a church is transferred from one to the other. The UPCUSA has in recent years dismissed churches to other denominations and received churches from others.

Whenever the transfer of church property is made without the receipt of adequate financial compensation, the presbytery must obtain the approval of the General Assembly for such transfer. The 176th General Assembly (1964) explained the reasons for this requirement:

The United Presbyterian Church in the United States of America is one Church with synods, presbyteries and congregations as parts thereof. We reaffirm the position that the ownership of all property in The United Presbyterian Church in the United States of America is shared by all of its members, despite the multiplicity of corporations among its parts. Title cannot be transferred without adequate financial compensation except by action of the General Assembly as the judicatory which represents the whole Church. (*Minutes*, 1964, Part 1, p. 271.)

This action clearly expresses the General Assembly's understanding of the organic unity of the church.

Occasionally members of a particular church may desire to leave the UPCUSA and retain possession and use of the church property. In a few such cases the presbytery may determine that the property is not needed in the mission strategy that it has adopted and permit the members to withdraw with the property, subject to the requirements mentioned above regarding adequate financial compensation.

On the other hand, the presbytery may determine that this property is needed in carrying out its mission strategy. Such a determination is likely if there is a viable minority of members in the church who remain loyal to the UPCUSA and could form the nucleus of a congregation in that place. However, the presbytery may determine that it wishes to retain the property even when there is no such loyal minority. If the presbytery determines to refuse the request of the dissident members wishing to withdraw with the church property, the dissidents may seek review of the decision by the synod and ultimately by the General Assembly.

This was the course followed by the pastors and most of the members of the Community Church of Palm Springs (Presbyterian), Palm Springs, California. The Presbytery of Riverside declined to permit them to withdraw with the church property; the Synod of Southern California sustained the presbytery; and on appeal the General Assembly sustained the synod. The 180th General Assembly (1968) quoted with approval the above action of the 176th General Assembly (1964). (*Minutes*, 1968, Part 1, p. 356.) The General Assembly then stated:

The constitutional provisions for the government of the denomination and of any particular church, as well as the provisions for future amendment of its governmental structure and its doctrinal statements, are accepted by a local church when it decides to become a part of the denomination (as Palm Springs Church did in 1917). It has been settled by decisions of the civil courts, as well as by frequent actions of the General Assembly, that a particular church holds legal title to its property as trustee for the benefit of the entire denomination . . .

One of the obligations of this trust relationship is that the trustee (namely, the local church) must use the property for the benefit of the denomination—that is, to serve the interests of the denomination by enhancing the witness of the denomination in that particular locality. The local church, as trustee, has no authority to act contrary to the purposes of the denomination as determined by the denomination as a whole. Presbyteries are given the authority and responsibility to supervise particular congregations to this end by such action as may be appropriate. (Form of Government, Chapter XII, Section 7.)

Furthermore it is neither legally nor factually accurate to assume (as Compliment apparently does) that the property in question was given by people who intended to limit the use of their property forever to any particular theological emphasis. The property held by Palm Springs Church, like that of most congregations, represents the accumulated stewardship over the years of countless individuals who worshipped there for a time, whether former residents, current residents, or transients. They did not condition their gifts on any specific uses; they simply gave to the church as part of The United Presbyterian Church in the United States of America. The present congregation holds no proxy from former members and past donors; nor, under Presbyterian government, can any individual be considered to have a severable equity in any property of the church. Rather, it all belongs to the total church.

Just as no individual member who decides to withdraw is entitled to take a part of the church property with him (or her), so also the congregation as a whole must respect the fact that the property belongs to and is held for the use of the whole denomination. (*Ibid.*, pp. 357-59.)

In the face of this decision by the highest judiciary of the church, this case was subsequently litigated in the civil courts of California and has been decided adversely to the interests of the UPCUSA on the basis of "neutral principles of law." Review of that decision will be sought by Petition for Writ of Certiorari filed in the Supreme Court of the United States.

Since the holding of all property is regulated by state law, cases in which the presbytery does not acquiesce in the withdrawal are almost invariably litigated in civil courts. Depending upon the circumstances, the presbytery or its commission, the minority of the membership loyal to the UPCUSA, or the majority who wish to withdraw may take the initiative to bring the case into the civil court.

In the history of civil litigation involving Presbyterian church property in this country, there have been three periods when the number of cases has increased dramatically. One of these followed the Civil War and related to the formation of the PCUSA. The second followed reunion of the larger part of the Cumberland Presbyterian Church with the Presbyterian Church in the United States of America (PCUSA) in 1906. The third resulted from the unrest following the Machen controversy, involving disagreements between "fundamentalists" and "modernists," in the 1920's and 1930's.

The most important decision of the period following the Civil War was *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872). That case involved the Walnut Street Church of Louisville, Kentucky, which attempted to withdraw from the PCUSA (now the UPCUSA) and take the church property. The Supreme Court found that the PCUSA, which was governed exactly as the UPCUSA is today, was a "hierarchical church" and held that:

the rule of action which should govern the civil courts... is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these [hierarchical] church judicatories to which the matter has been carried, the legal tribunals must accept such decision as final and be binding on them. . . . (*Ibid.*, at 727.)

The Court said in part:

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and of the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. This is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organization itself provides for.

Nor do we see that justice would be likely to be promoted by submitting these decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches) has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. (*Ibid.*, at 728-729.)

This case was recognized as the leading case in church property law for more than a century. It was followed in cases involving other "hierarchical" churches, including the Russian Orthodox Church. Although *Watson* was decided under "general law," the Supreme Court later reaffirmed that decision on Constitutional grounds after the protection of the First Amendment had been extended to state actions following adoption of the Fourteenth Amendment. In *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), the Court said:

Ours is a government which by the law of its being allows no statute, state or national, that prohibits the free exercise of religion. There are occasions when civil courts must draw lines between the responsibilities of Church and State for the disposition or use of property. Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion. (*Ibid.*, pp. 120-121.)

This principle controlled the cases following the Cumberland reunion in 1906. The most frequently quoted opinion from that period was delivered by District Judge Van Valkenburgh, in *Barkley v. Hayes*, 208 Fed. 319 (1913). The case was later affirmed by the Court of Appeals, *Duval v. Synod of Kansas*, 222 Fed. 669 (1915), and by the Supreme Court of the United States, *Shepard v. Barkley*, 247 U.S. 1 (1918). The district judge wrote:

Therefore, when the property held by a church is that purchased or conveyed for the general use of the religious congregation, not devoted forever by the instrument which conveyed it nor by any specific declaration of its owner to the support of any special religious dogmas, or any peculiar form of worship, it is and remains the property of the general church which exercises such general and ultimate power of control. It does not belong to the particular congregation which uses it, much less to the individual members of such congregation. It does not belong to the presbytery or the synod, nor in a strict sense, to the general assembly. It belongs to the church which is composed of its entire membership; that membership being governed and controlled by the organic law of the church, the administration of which is lodged in certain judicatories rising, in regular succession, to the general assembly or court of last resort, embracing in itself legislative, administrative, and judicial powers. The government of the Presbyterian Church is republican and representative in character. Its administration is vested not in the individual members, not in the congregations, but in the general assembly and the presbyteries; and the church as a whole, acting through its supreme governing bodies, exercises the ultimate rights of ownership and control over all of its properties. . . .

The Constitution of the United States and of the several states guarantees to the individual absolute independence of religious belief and worship. He need associate himself with no religious organization if he does not wish to do so, and he need remain identified with one no longer than he may desire; but when he does unite with a church, and becomes a member of that ecclesiastical body, he voluntarily surrenders his individual freedom to that extent . . . he has no personal or property rights which the civil courts can or should protect. Any other view would be entirely subversive of the very theory of organization. The church would be dissolved into a mere aggregation of individual views and theories. (*Ibid.*, pp. 222-23.)

The unrest occasioned by the theological conflict between the "fundamentalists" and the "modernists" in the 1920's and 1930's issued in a number of property disputes. Perhaps in anticipation of these cases, the General Council of the General Assembly proposed in 1929 that the section of the Constitution requiring "each particular church" to form and maintain "a corporation . . . to receive, hold, and transfer property . . ." be amended by the addition of the following sentence:

The charter or articles of incorporation shall declare that its property is held in trust under the Constitution of and for the Presbyterian Church in the United States of America. (*Minutes* 1929, Part I, p. 153.)

The General Assembly voted to send this overture to the presbyteries for their votes but the proposal failed in that arena. Although the larger number of the presbyteries voting favored the overture, their number did not constitute the majority of all the presbyteries required to amend the Constitution since a sizable number failed to vote. (*Minutes*, 1930, Part I, pp. 54 and 55.)

While we have no record of the reasons given by those who opposed this overture, doubtless the argument was made that the numerous decisions of the civil courts favorable to the general church made it unnecessary. This view was surely born out in the litigation that followed in the decade of the 1930's. Moreover, the opponents may well have argued that adoption of such an amendment could be held to have only prospective effect and might even cast doubt on the existence of the "implied trust" prior to its enactment.

In any event the UPCUSA continued to rely upon the "implied trust" in all church property for the benefit of the whole church. The principles stated in *Watson* and reaffirmed in *Kedroff* seemed settled.

Then just a decade ago, the Supreme Court of the United States, in its opinion in *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, suggested that:

... there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded. (393 U.S. 440, 449 (1969).)

The implications of this dictum were not fully apparent, although the case prompted widespread comment.

The Permanent Committee on Conservation of Property as then constituted had followed this case in the courts of the State of Georgia, and on recommendation of the committee, the General Assembly in 1968 had taken action to:

1. Affirm its continued adherence to the principle that all property owned by a local church of The United Presbyterian Church in the United States of America, whether used in programs of the local church or of a higher judicatory, or held for investment, is held in trust for The United Presbyterian Church in the United States of America.
2. Authorize and direct the Stated Clerk of the General Assembly and its other officers to continue to support any presbytery which determines to resist efforts by a local congregation attempting to withdraw from The United Presbyterian Church in the United States of America and to take church-owned property with it.
3. Recognize that such support of a presbytery may include the following actions by the Stated Clerk of the General Assembly: provide advice and counsel in the presbytery either personally, or by the solicitor of the General Assembly; appearance in legal proceedings on behalf of the General Assembly, either as *Amicus Curiae* or otherwise; provide monetary support of the presbytery in the expenses incurred in connection with such legal proceedings on a basis to be negotiated in each case, but accepting as a general guide the participation by the Office of the General Assembly in an amount up to 50 percent of such expenses. (*Minutes*, 1968, Part I, p. 635.)

The Stated Clerk reported the Supreme Court's decision in the *Hull* case to the General Assembly in 1969. (*Minutes*, 1969, Part I, p. 981.) Later that Court denied *certiorari* when on remand the Supreme Court of Georgia awarded the church property to the dissidents on the basis of "neutral principles of law." The Stated Clerk then observed: "Further litigation will probably be required to clarify the law regarding church property." (*Minutes*, 1970, Part I, p. 100.)

That further litigation has now culminated in *Jones v. Wolf* with its unsettling effect. Following its holding that adherence to the *Watson* rule is not required for a State to comply with the guarantees of the First Amendment, any State may now adopt the "neutral principles of law" approach with impunity. We cannot predict which States will do so; but we can state that wherever such a policy is followed, church property of most UPCUSA churches will be in jeopardy because the deeds, charters, and state laws in most places, and the constitution of the UPCUSA, do not state explicitly the trust for the benefit of the whole church.

What should the UPCUSA do?

Options

The committee has considered several alternative courses of action that the UPCUSA might choose to follow.

First, the church might determine that in the future it would permit any particular church that wishes to withdraw and retain the possession and use of the church property to do so. This is the practice of the churches with congregational polity. Such a policy would negate the presbyterian concept of the organic unity of the church, at least in decisions regarding church property. The committee does not recommend it.

Second, the church might determine that it would litigate cases as they arise, thus clarifying the laws of the several States of the Union. Then in any States in which the cases are decided adversely to the church, efforts could be made to secure modification of deeds, charters of particular churches, or statutes of those States to define explicitly the trust in all church property on behalf of the whole church. This course of action would be time-consuming and very costly in legal fees likely to be incurred and in property likely to be lost in trying out the developing legal concepts of the several States. Moreover, the ultimate success of this method of clarifying the rights of the whole church would depend upon the political processes in a number of States in which the outcome is by no means assured. The committee does not recommend this approach.

Third, the church might seek to amend the Constitution of the UPCUSA to state clearly what has been implied previously—that all church property is held in trust for the whole church. The Supreme Court of the United States identified this possibility in the following sentences:

... At any time before the dispute erupts, the parties can ensure, if they so desire, that the fraction loyal to the hierarchical church will retain the church property. ... [T]he constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties provided it is embodied in some legally cognizable form. (*Jones v. Wolf*, published in *111 Fed. 2d 775, 995, Ct. 3020 (1979)*.)

The committee has chosen to propose that the church follow this alternative:

After thorough deliberation, the committee agreed to recommend that the Constitution of The United Presbyterian Church in the United States of America should be amended as expeditiously as possible.

Recommendations

The committee has devoted major attention to the provisions of the amendment to the Constitution that it now proposes. The committee's comments will precede the text of the amendment.

The committee has elected to add a new chapter to the Form of Government, "Chapter XLII, Of Property." It is suggested that this chapter be placed at the end of the present Form of Government to make clear that this addition is prompted by, and in reliance upon, the decision of the Supreme Court of the United States in *Jones v. Wolf*. Moreover, this placement will obviate the renumbering of later chapters that would have been necessary had it been inserted earlier. Such renumbering should be avoided whenever possible to minimize confusion in references to successive editions of the Constitution.

The introductory paragraph is intended to make clear that this chapter does not state new policies but is simply "declaratory" of principles long held and followed.

The first section states unequivocally that decisions about property, like all doctrinal and ecclesiastical decisions, are to be made by judicatories of the church in accordance with other provisions of the Constitution of the church. The UPCUSA does not distinguish between matters of faith on the one hand and temporal matters on the other. All are essentially ecclesiastical and are determined in exactly the same way.

The second section states explicitly the principle that all church property is held in trust for the whole church. This is intended to reduce to writing, in the Constitution, the trust that has heretofore been implied.

The third section makes clear that a particular church may forfeit its privilege of possession and use of the church property by utilizing it in some manner not in accordance with the UPCUSA Constitution.

The fourth and fifth sections incorporate into this Chapter Sections 11 and 12 of the present Chapter XXXII of the Form of Government. (62.11, 62.12) The sections are unchanged except for two omissions from the present Section 11. That section now reads as follows:

Whenever [hereafter] a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have [both real and personal] shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America.

The words which we have omitted are indicated by square brackets [].

The word "hereafter" is omitted lest the reader be confused and think that this chapter and this section in particular are intended to have only prospective effect.

The words "both real and personal" are omitted because the word "property" as used throughout the chapter is intended to include both real and personal property.

The committee accordingly makes the following recommendation to the 192nd General Assembly (1980):

Whereas we, as members of The United Presbyterian Church in the United States of America, have confessed

that:

A. God binds us together as a people and has called us to be his children through faith in Jesus Christ and in a community of faith which is the church;

B. The church is the body of Jesus Christ and is one and the same in all ages;

C. The church is divided into particular churches organized by presbyteries; and

D. We, as members of particular churches, covenant and agree to work together in a church relationship according to the provisions of a Constitution which connects us to each other in a presbyterian system of authority and discipline and which regulates the use and disposition of the property of particular churches; and

Whereas we believe that property of our particular churches is held by them as stewards for The United Presbyterian Church in the United States of America; and

Whereas the United States Supreme Court on July 2, 1979, indicated that, in its opinion, where property is held by a particular church for the denominational church, such should be expressly stated in the constitution of the denominational church;

Now therefore be it resolved that the Stated Clerk be directed to send the following overture to the presbyteries for their affirmative or negative replies:

Shall the Form of Government be amended by adding Chapter XLII, "Of Property," Sections 1-5 (72.00-.05), as follows:

"This chapter is declaratory of principles to which The United Presbyterian Church in the United States of America and its antecedent church bodies have adhered from the inception of the presbyterian form of church government.

"1. The provisions of Form of Government, Chapter V, Section 1, and other provisions of this Constitution prescribing the manner in which decisions are made, reviewed, and corrected within this church are applicable to all matters pertaining to property.

"2. All property held by or for a particular church, a presbytery, a synod, the General Assembly, or The United Presbyterian Church in the United States of America, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or of a more inclusive judicatory or retained for the production of income, is held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.

"3. Whenever property of, or held for, a particular church of The United Presbyterian Church in the United States of America ceases to be used by that church as a particular church of The United Presbyterian Church in the United States of America in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery.

"4. Whenever ... a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have ... shall be held, used, and applied for such uses,

purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America.

"5. A particular church shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.

"A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church."

And shall Form of Government, Chapter XXXII, be amended by striking out Sections 11 and 12 (62.11 and 62.12).

[New material is in italics and ellipsis marks indicate omission as explained above.]

The committee further recommends that (1) the implementation of these amendments follow the established procedure for ratification as defined in Form of Government, Chapter XXXIV, Section 3 (64.03); (2) presbyteries provide study opportunities affirming the fundamental and basic principles of presbyterian government and discipline as provided in Chapter V of the Form of Government; (3) the Moderator send a pastoral letter to our particular churches interpreting the actions of the General Assembly on this issue; and (4) presbyteries exercise extreme pastoral concern and care for congregations that feel alienated and wish to withdraw from The United Presbyterian Church in the United States of America, and make every effort to seek reconciliation with them.

[New material is in italics and ellipsis marks indicate omission as explained above.]

PERMANENT COMMITTEE ON NOMINATIONS

This report was referred to the Assembly Committee on Review of Minutes and Reports II and was designated Reference X-7. See pages 79 and 80.

Membership and Responsibilities

The Permanent Committee on Nominations of the General Assembly is made up of one representative from within the bounds of each of the regional synods. Each year the Moderator of the General Assembly appoints three new members to the Permanent Committee on Nominations for a term of five years. The new appointments are made from the three synods in which reside the

three members whose terms of office expire with this General Assembly: namely, for this year, the Synods of the Piedmont, Lakes and Prairies, and Southwest.

For the year 1979-1980, the membership of this committee of nine men and six women included eight clergy, seven laypersons, nine Caucasian, three black, one Asian, and two Latino.

The Permanent Committee on Nominations holds two meetings per year. One in February or March is for a period of four to five days, in New York City usually. Opportunity is given for each of the agencies, boards, councils, and committees to be represented in a consultation concerning the needs of the agency related to expertise, the attendance of members of the boards, agencies, councils, and committees at regular meetings, and any information they wish to give to the Permanent Nominating Committee as it seeks to nominate adequate leadership to the agencies.

The second meeting is for four or five days at the time of the General Assembly when the final list of nominations is completed for presentation to the General Assembly. "Open-House Times" are held on at least two days of the General Assembly, when persons can come and meet with the committee to provide information, ask questions, register complaints, etc. Information as to the times and places will be announced at the General Assembly and everyone is encouraged to come and meet with the committee.

In order that the committee may work in the best possible relationship with the synods, each member of the committee serves as a liaison with his or her own synod and is encouraged to be in adequate communication with the synod office and the nominating committee of the synod to secure endorsement forms of qualified representatives to be nominated at large and also to be helpful in the process of the synod to choose those representatives for which they are responsible on designated agencies, councils, or committees.

Each of the members of the committee is also designated as a liaison to at least one of the agencies, boards, councils, or committees, with the responsibility of attending one meeting each year, in order to be aware of its needs for leadership and the contribution of those persons elected as representatives and to provide an open line of communication between the particular agency, board, council, or committee and the Permanent Committee on Nominations—so that the committee is very cognizant of its needs. It is important to realize that this is only a liaison relationship; in no way is the member of the Permanent Nominating Committee in any official relationship with the agency, board, council, or committee.

Nominating Process

Endorsement forms are available through the Office of the Stated Clerk, Room 1201, 475 Riverside Drive, New York, NY, 10115, or from members of the Permanent Committee on Nominations, as well as from synod offices. There is a space on each endorsement form for the names and addresses of three references. The endorsement forms may be initiated by any communicant member in our denomination; however, endorsement by

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ional Council of Churches, and the Executive Committee of the World Alliance of Reformed Churches. During the past year I have been a member of the Committee on Structure of the World Council of Churches and of a similar Committee of the World Alliance of Reformed Churches. I was designated Interim Delegate by the latter organization and represented the Alliance at the meeting of the Executive Committee of the Lutheran World Federation in the first change of such representatives by these two confessional bodies. The Executive Committee of the Consultation on Church Union has recently appointed me Chairman of its Committee on Interchurch Action at the World Level.

I regret to report that the representatives of The United Presbyterian Church in the United States of America, invited by the church sponsored preparatory committee to participate in the 450th anniversary of Protestant Reformation at Wittenberg, were unable to attend because of the failure of the government of the German Democratic Republic to issue visas.

During this year I was named to the Board of Directors of the Institute for Ecumenical and Cultural Research at St. Johns University, a Roman Catholic institution at Collegeville, Minnesota, and was subsequently elected by that Board to be its president. The institute will at its annual facilities for independent research by resident scholars of various faiths. Accommodations have been provided for housing the families of Protestant and Jewish scholars.

Two recent developments during the past year deserve special attention: (1) the increase in requests for secretarial service by committees of the General Assembly, and (2) the increase in litigation arising from attempts by congregations to withdraw from The United Presbyterian Church in the United States of America with their property.

As contemplated by Section 28 of the Manual of the General Assembly, my Office has been requested with increasing regularity to serve Committees of the General Assembly with secretarial service. I serve as Secretary of the Committee of Nine, representing our communion in the Consultation on Church Union. The Rev. Samuel W. Stevenson serves as Secretary of The United Presbyterian Foundation. The Rev. Robert F. Stevenson serves as Secretary of the Special Committee on Interchurch Action in Presbytery and Parish and of the Special Committee on Nominating Procedures. Clerical assistance is provided in the office for secretaries of many other committees elected from conference membership.

The work of several committees is of such continuity and complexity that full-time service by a secretary related to the Office of the General Assembly has been essential. The Rev. J. Douglas Clyde has been elected Secretary of the Temporary Commission on Continuing Education. Rev. Hugh H. Annelt has been elected Secretary of the Committee

on Regional Synods and Church Administration and of the Special Committee on Financing the Church's Mission. The Rev. George E. Has been elected Secretary of Presbyteries' Cooperative Committee on Examinations for Candidates. I wish to express appreciation for the excellent work and high competence of each of these men. I bring to the attention of the General Assembly because the imperatives which prompted their election are indicative of continuing emphasis upon the importance of the work of temporary and permanent commissions and committees of the General Assembly.

Efforts by congregations to withdraw from a connectional Church and take their property are not new. These have been successfully resisted in the past. Cases involving local churches of denominations which have now merged to form The United Presbyterian Church in the United States of America have been decided by courts of many jurisdictions, including the Supreme Court of the United States. When I took office one such case was pending. This case involved the First United Presbyterian Church of Indianapolis, Indiana, which attempted to withdraw in 1958 at the time of the merger of the United Presbyterian Church of North America and the Presbyterian Church in the United States of America. The church property was sold by agreement of the parties and the litigation which is still in the courts now concerns the disposition of the proceeds of that sale. Following the enactment of the constitutional change providing for the Book of Confessions by the 179th General Assembly (1967), several congregations indicated their intention to withdraw. These congregations were isolated geographically and did not apparently act in concert. Two cases involving such churches, the Laurelhurst Church, Seattle, Washington, and the Palm Springs Community Church, Palm Springs, California, are presently pending in the civil courts. The Office of the General Assembly has provided counsel upon request to presbyteries involved in such cases and in some instances has filed a *Brief Amicus Curiae*. I have been advised in connection with these cases by the solicitor of the General Assembly, George W. McKee, Esquire. Mr. McKee's professional competence and long experience in complex ecclesiastical and civil law problems has been invaluable.

Report of the Permanent Committee on the Conservation of Property

The Permanent Committee on the Conservation of Property met in Philadelphia on April 11, 1968.

The following members of the Committee were present: John H. Grosvenor, Jr., Esq., John N. Irwin, II, Esq., George W. McKee, Esq., James M. Tunnell, Jr., Esq., Chairman, and Mr. William P. Thompson, Stated Clerk of the General Assembly, *ex officio*. The Rev. Samuel W. Stone, Associate Stated Clerk of the General Assembly also met with the Committee by invitation.

The Manual of the General Assembly states:

"The purpose of this Committee is to advise the Stated Clerk and counsel the General Assembly as to the actions to be taken to hold and conserve property of The United Presbyterian Church in the United States of America held by any of the incorporations of its judicatories and congregations." (Chapter VII, Section 1, b. (1).)

The Committee reviewed pending litigation resulting from efforts of local congregations to leave The United Presbyterian Church in the United States of America and to retain ownership and use of church-owned property. These cases include the Presbytery of Indianapolis vs. the First United Presbyterian Church of Indianapolis, et al, involving the property of the named church; the Presbytery of Seattle, et al vs. James L. Rolubough, et al, involving the property of the Laurelhurst United Presbyterian Church; and the Rev. James H. Blackstone, Jr., et al vs. the Presbytery of Riverside, involving the property of the Community Church of Palu Springs (Presbyterian), California.

The Committee also studied the decision of the Supreme Court of Georgia in the cases of the Presbyterian Church in the United States, et al vs. Eastern Heights Presbyterian Church and the Mary Lewis Blue Georgia.

The Stated Clerk advised the Committee that he had taken steps to support the Presbyteries in the several pending cases and to support the petition filed in the Supreme Court of the United States by the Presbyterian Church in the United States for a writ of certiorari by an appearance and the filing of a Brief Amicus Curiae.

The actions already taken and contemplated were grounded on the long-standing adherence of The United Presbyterian Church in the United States of America to the principle that title to all property of the local church is held in trust for the benefit of the whole denomination. While there are particular instances in which the best mission strategy requires the merging of local churches of several denominations, or the closing of a local church by one denomination, decisions regarding such matters should be made by the Presbytery of jurisdiction after appropriate consultation. When a presbytery determines, in the furtherance of mission strategy, to resist the efforts of a local church to withdraw from the denomination and take church-owned property, such a decision may result in proceedings in ecclesiastical or civil courts, or both. In such cases unusual problems and extraordinary expenses are frequently encountered. Because of the interest of the denomination, the Office of the General Assembly has cooperated, when invited to do so, with presbyteries in such cases.

The Committee expressed the opinion that the 180th General Assembly (1968) should affirm its continued adherence to the principle

stated above, and its approval of the actions outlined above, already taken and contemplated by the Stated Clerk.

The Committee, therefore, recommends that the 180th General Assembly (1968):

1. Affirm its continued adherence to the principle that all property owned by a local church of The United Presbyterian Church in the United States of America, whether used in programs of the local church or of a higher judicatory, or held for investment, is held in trust for The United Presbyterian Church in the United States of America.
2. Authorize and direct the Stated Clerk of the General Assembly and its other officers to continue to support any presbytery which determines to resist efforts by a local congregation attempting to withdraw from The United Presbyterian Church in the United States of America and to take church-owned property with it.

3. Recognize that such support of a presbytery may include the following actions by the Stated Clerk of the General Assembly: provide advice and counsel to the presbytery either personally, or by the solicitor of the General Assembly; appearance in legal proceedings on behalf of the General Assembly, either as Amicus Curiae or otherwise; provide monetary support of the presbytery in the cases incurred in connection with such legal proceedings on a basis to be negotiated in each case, but accepting as a general guide the participation by the Office of the General Assembly in an amount up to 50 percent of such expenses.

[See pages 62-63 for the adoption of the report of the Permanent Committee on the Conservation of Property.]

D.—The Rev. Samuel W. Shane, was elected Associate Stated Clerk of the General Assembly for a term of five years beginning June 30, 1958, by the 170th General Assembly (1956), which merged the United Presbyterian Church of North America and the Presbyterian Church in the United States of America. He has continued in this office the distinguished record which he had begun in his prior service as Stated Clerk of the General Assembly of the United Presbyterian Church of North America. At the expiration of his first term, he was re-elected Associate Stated Clerk by the 175th General Assembly (1963), for an additional term of five years. This term will expire June 30, 1968.

The Rev. Mr. Shane has acted for me, as he did for my predecessor, in conducting a substantial part of the correspondence of the office related to legal problems and has devoted a major portion of his attention to editing the Blue Book, the Manual of the General Assembly, the Journal of the General Assembly, and to revising the Digest, Presbyterian Law for the Local Church and Presbyterian Law for the Presbytery. In these tasks he continues to demonstrate the highest level of competence.

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CHAPTER XLII

Of Property

This chapter is declaratory of principles to which The United Pres- 72.00
byterian Church in the United States of America and its antecedent
church bodies have adhered from the inception of the presbyterian
form of church government.

1. The provisions of Form of Government, Chapter V, Section 1, 72.01
and other provisions of this Constitution prescribing the manner in
which decisions are made, reviewed, and corrected within this Church are
applicable to all matters pertaining to property.

2. All property held by or for a particular church, a presbytery, a 72.02
synod, the General Assembly, or The United Presbyterian Church in
the United States of America, whether legal title is lodged in a cor-
poration, a trustee or trustees, or an unincorporated association, and
whether the property is used in programs of the particular church or
of a more inclusive judicatory or retained for the production of in-
come, is held in trust nevertheless for the use and benefit of The
United Presbyterian Church in the United States of America.

3. Whenever property of, or held for, a particular church of The 72.03
United Presbyterian Church in the United States of America ceases to
be used by that church as a particular church of The United Presby-
terian Church in the United States of America in accordance with this
Constitution, such property shall be held, used, applied, transferred,
or sold as provided by the presbytery.

4. Whenever a particular church is formally dissolved by the pres- 72.04
bytery, or has become extinct by reason of the dispersal of its members,
the abandonment of its work, or other cause, such property as it may
have shall be held, used, and applied for such uses, purposes, and trusts as
the presbytery may direct, limit, and appoint, or such property may be sold
or disposed of as the presbytery may direct, in conformity with the
Constitution of The United Presbyterian Church in the United States of
America.

5. A particular church shall not sell, mortgage, or otherwise en- 72.05
cumber any of its real property and it shall not acquire real property
subject to an encumbrance or condition without the written permission
of the presbytery transmitted through the session of the particular
church.

A particular church shall not lease its real property used for pur-
poses of worship, or lease for more than five years any of its other
real property, without the written permission of the presbytery trans-
mitted through the session of the particular church.

upon recommendation of the synod, the General Assembly may permit a presbytery to be organized with fewer than these minimums, provided that there shall be at least five ministers in each presbytery.

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Responsibilities

The presbytery is responsible for the mission and government of the church throughout its geographical district. It therefore has the responsibility and power

- a. to develop strategy for the mission of the church in its area consistent with G-3.0000;
- b. to coordinate the work of its member churches, guiding them and mobilizing their strength for the most effective witness to the broader community for which it has responsibility;
- c. to initiate mission through a variety of forms in light of the larger strategy of the synod and the General Assembly;
- d. to implement, consistent with G-9.0104, the principles of participation, inclusiveness, and affirmative action in employing its personnel and in establishing the membership of its committees, councils, boards, and other policy-making and policy-recommending bodies, in order to assure fair representation in its decision making and in the election of commissioners to synod and the General Assembly. Its committee on representation shall report directly to the presbytery, and shall be empowered to make recommendations to correct situations of unbalanced representation, including the recommendation that the nominating committee reconsider its nominations;
- e. to counsel with a particular church where the various constituencies of the congregation are not represented on a session;
- f. to provide encouragement, guidance, and resources to its member churches in the areas of leadership development, church officer training, worship, nurture, witness, service, stewardship, equitable compensation, personnel policies, and fair employment practices;
- g. to provide pastoral care for the churches^s and members of presbytery, visiting sessions and ministers on a regular basis (G-11.0502c);
- h. to organize new churches and to receive and unite churches in consultation with their members. When two or more churches of a presbytery unite, the pastor or pastors of the former churches may continue as or become pastor or pastors of the united church if the uniting churches agree and specify those relationships in the plan of union, with the concurrence of the presbytery;
- i. to divide, dismiss, or dissolve churches in consultation with their members;

- j. to control the location of new churches and of churches desiring to move;
- k. to take special oversight of churches without pastors, including the authority to select, train, examine, and commission lay pastors and may authorize them to administer the Lord's Supper (G-14.0516);
- l. to enter into covenant relationship with those preparing to become ministers of the Word and Sacrament by enrolling them as inquirers, to receive inquirers as candidates, and to certify candidates as ready for examination for ordination;^d
- m. to elect elder and minister readers of examinations for candidates for ordination at the request of the Presbyteries' Cooperative Committee on Examinations for Candidates;
- n. to ordain, receive, dismiss, install, remove, and discipline ministers,^e to plan for the integration of new ministers into the life and work of presbytery, to establish minimum compensation and benefit requirements for all pastoral calls (G-14.0506e) and for all calls to Certified Christian Educators and guidelines for compensation and benefits for Certified Associate Christian Educators employed by the churches of the presbytery (G-14.0705b(2)), to provide services of recognition for Certified Christian Educators and Certified Associate Christian Educators (G-14.0705b(1)), and to find in order, approve, and record in the presbytery minutes the full terms of all calls, and changes of calls approved by the presbytery;
- o. to establish the pastoral relationship and to dissolve it at the request of one or both of the parties, or when it finds that the church's mission under the Word imperatively demands it;
- p. to designate ministers to work as teachers, evangelists, administrators, chaplains, and in other forms of ministry recognized as appropriate by the presbytery. Such ministers may administer the Sacraments at times and places approved by a governing body, or in conformity to other conditions specified by a governing body. The applicable provisions of W-2.3000, W-2.4000, and W-3.3600 shall be followed;
- q. to receive under its care persons preparing for professional service in the church, and to commission them when appropriate (G-14.0102);
- r. to serve in judicial matters in accordance with the Rules of Discipline;
- s. to assume original jurisdiction in any case in which it determines that a session cannot exercise its authority. Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the

affairs of its church, the presbytery may appoint an administrative commission (G-9.0503) with the full power of a session. This commission shall assume original jurisdiction of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct:

t. to maintain regular and continuing relationship to the higher governing bodies of the church, including

(1) electing commissioners to the synod and to the General Assembly and receiving their reports,

(2) seeing that the orders of higher governing bodies are observed and carried out,

(3) proposing to the synod or the General Assembly such measures as may be of common concern to the mission of the whole church;

u. to establish and maintain those ecumenical relationships which will enlarge the life and mission of the church in its district;

v. to establish and superintend the agencies necessary for its work, including a presbytery council, providing for the regular review of the functional relationship between presbytery's structure and its mission. The presbytery may, by its own established rules, assign to its council responsibility for action between meetings of presbytery on such specific areas of its responsibilities as it shall deem appropriate, assign to its committee on ministry those powers specified in G-11.0502h, and assign to its committee on preparation for ministry authority to dismiss candidates, enroll inquirers, and certify candidates as ready for examination for ordination; with the provision that all such actions be reported to the next stated meeting of the presbytery (G-9.0403, G-14.0310a; G-14.0507);

w. to establish a nominating committee composed of equal numbers of ministers, laymen, and laywomen (i.e., one third each);

x. to review session minutes and records at least once each year;

y. to consider and act upon requests from congregations for permission to take the actions regarding real property as described in G-8.0000;

z. to authorize specific elders for periods not exceeding one year at a time, to administer or preside at the Lord's Supper in specific circumstances and with proper instruction by presbytery in the doctrine and administration of the Lord's Supper, when it deems it necessary to meet the needs for the

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

_____ x
The Presbytery of Hudson River of the Presbyterian Church:
(U.S.A.) and Rev. Richard M. Spierling as Chair of the
Administrative Commission appointed by the said :
Presbytery with respect to the First Presbyterian Church of :
Ridgebury, :

Index no. 2005/6144

AFFIDAVIT

Plaintiffs,

- against -

The Trustees of the First Presbyterian Church and
Congregation of Ridgeberry a/k/a Ridgebury Church and/or:
The Church at Ridgebury, Trustees of the First Presbyterian
Church and Congregation of Ridgebury, Trustees of the :
Presbyterian Church of Ridgebury, New York and The :
Ridgebury Presbyterian Church; and Lori De Block, Les :
Kirby, Marie Knibbs, Dorothy Kwapong, Ronald Lyons, :
Theda Wolfe, the Rev. Robert W. Hoag, and Stanley :
Wayne,

Defendants.

_____ x

STATE OF NEW JERSEY)

: s.s.:

COUNTY OF BERGEN)

WILLIAM E. CHAPMAN, being duly sworn, deposes and says:

1. I reside at 107 Ralph Avenue, Hillsdale, New Jersey 07642. My credentials described below confirm my professional expertise regarding the structure and polity (form of government) of the Presbyterian Church (U.S.A.) ("PCUSA"). I make this affidavit to provide information to this court concerning the structure and polity of PCUSA and concerning the "property trust" doctrine and rules of PCUSA as affecting the property of the defendant First Presbyterian Church of Ridgebury.

C

My professional background.

2. I graduated from the College of Wooster, B. A., in 1955, with a history major, including an independent study paper, "Ohio Presbyterians and Slavery, 1830-1860." I have earned three degrees from Princeton Theological Seminary: I received my B.D. (Bachelor of Divinity) in 1958; my M.R.E. (Masters of Religious Education) in 1962; and my Ph. D. in 1969.

3. I have served as an expert on Presbyterian polity for many years. From 1983-1990, I was the Executive Secretary of the Presbyteries Committee on Ordination Examinations. I was an Adjunct Professor in Presbyterian Polity for the Princeton Theological Seminary and New Brunswick Theological Seminary from 1991 - 2001. From 2001-2004, I was the Stated Clerk of Palisades Presbytery (a "Stated Clerk" is the equivalent of a corporate officer of a presbytery whose duties include ensuring that all actions are taken in accordance with the Presbyterian Church's official governing rules). My prior professional positions included various positions in higher education. I am currently a member of the Advisory Committee on the Constitution for the General Assembly of the Presbyterian Church (U.S.A.). I was a member of the PCUSA General Assembly Council from 1997-2000, including service on various committees. I was a member of the Permanent Judicial Commission of the Synod of Northeast from 1998-2004, including service as the Chair.

4. My recent publications include *History and Theology in the Book of Order* (Witherspoon Press, June, 1999); "Beyond Jiminy Cricket: Notes toward a Reformed View of Conscience, in *Register of the Company of Pastors*, Fall, 2001; *Finding Christ in the Book of Order* (Witherspoon Press, 2003); "Orderly Meditations: Roots of Presbyterian Order" in leadership materials from Congregational Ministries Unit, 2003; *Mission Symphony*

(Witherspoon Press, May, 2004). I am currently working on *Distinctively Presbyterian*, set to be published by Witherspoon Press in mid-2006.

5. In the scope of my professional and theological experience outlined above, I frequently provide advice and opinions on subjects including (a) the content and application of *The Constitution of the Presbyterian Church (U.S.A.)* (the “PCUSA Constitution”), (b) the authority of its constituent governing bodies, member churches, minister members, other ordained officers and lay members, to take certain actions, and (c) the determination of whether certain actions have been undertaken in accordance with required PCUSA polity.

Structure of the Presbyterian Church (U.S.A.) and its subsidiary organizations

6. As shown below, PCUSA is a hierarchical religious denomination, governed by its Constitution, which includes the Book of Order. As required by the Book of Order, every minister and church officer (elder and deacon) within PCUSA commits himself/herself to abide by the PCUSA Constitution, including the Book of Order. The Book of Order sets forth (1) mandatory procedural and structural rules describing the doctrine, government and organization of all levels within PCUSA, (2) standards for worship, and (3) internal ecclesiastical judicial processes for the resolution of church disputes. The PCUSA Constitution, through the Book of Order, sets out the following hierarchy and structure for governing bodies:

A. General Assembly. The most inclusive governing body is the General Assembly, for which PCUSA is the principal corporate entity. Its responsibilities are given in G-13.0103. Since 1797, one “radical principle” (G-1.0400) has been, “...that a larger part of the Church, or a representation of it, should govern a smaller, or determine matters of controversy

which arise therein....” This historic provision has led to judicial designation of the PCUSA as a hierarchical church.

B. Synod. The next tier of authority below PCUSA is comprised of the 16 regional synods. Each synod is responsible for the geographic area within its boundaries. Each synod has the responsibility and power to review the records of its presbyteries and to ensure that they function in accordance with the PCUSA Constitution (See G-12.0102 for specified powers and responsibilities).

C. Presbytery. Each synod is comprised of several geographic-defined presbyteries. The plaintiff Presbytery of Hudson River is a member presbytery of the Synod of the Northeast which includes the geographic presbyteries in the northeastern United States. In turn, each presbytery is comprised of the local congregations within the presbytery’s region. (A few presbyteries within PCUSA are defined, not geographically, but by the ethnic makeup of their constituent congregations, e.g., a presbytery comprised entirely of Korean churches). The specific responsibilities and powers are spelled out in G-11.0102. The “unity of governing bodies” (G-9.0103) further holds, “The jurisdiction of each governing body is limited by the express provisions of the Constitution, with powers not mentioned being reserved to the presbyteries, and with the acts of each subject to review by the next higher governing body.”

D. The local churches. The membership of a presbytery is made up of the presbytery’s local churches. The plaintiff Presbytery of Hudson River has 92 local churches as members. Each presbytery is responsible for its member churches and ministers, and has specified powers, under the Book of Order, to supervise compliance by local churches with the requirements of the Book of Order. Business of congregations is limited to the five matters specified in G-7.0304.

E. Session. Under the PCUSA Constitution, the governing board of a local church is the “session,” comprised of the elected elders of the church. In the case of the Ridgebury Church (and other “unicameral” Presbyterian congregations), the elders who comprise the session also serve as the board of trustees of the civil corporation of the church. Each elder of the church is “ordained” - that is, formally invested - as an elder. As an integral step in the ordination procedure each elder commits himself/herself (under Book of Order G-14.0207e) to uphold the provisions of the PCUSA Book of Order and Constitution. Under the Book of Order (G-10.0103), the Pastor of the local church serves as the Moderator of the session, and thereby is the chair of the session and the chief administrative officer for the local church. Under special circumstances the Presbytery may appoint a “lay” pastor as moderator of the session, to act under supervision. Under the Book of Order a local church is not permitted to appoint its own moderator. Under the Book of Order the moderator of a local church (as a pastor) is also committed to adhere to and uphold the Constitution and Book of Order of PCUSA (G-14.0405b(5)). The responsibilities and powers of the session are listed in G-10.0102.

F. Administrative Commission. Under the PCUSA Constitution, each higher governing body has the authority to establish an administrative commission for any governing body at the next lower level within the terms prescribed by the Book of Order. Pursuant to the Book of Order an administrative commission can be vested with a wide range of powers, including the power to act for the lower governing body for which it has been named. In the present case, following the procedures specifically laid out in the Book of Order the plaintiff Presbytery of Hudson River appointed an Administrative Commission to act in place of the session of the Ridgebury Church, after the Presbytery determined that the Ridgebury Church

session was unwilling or unable to act in accordance with the requirements of the PCUSA Constitution and Book of Order.

Appointment of Administrative Commission in this matter.

7. I have reviewed the procedures leading to the creation of an Administrative Commission to take over the governance of the Ridgebury Church, as described in the complaint herein. Based on my professional studies, knowledge and experience concerning the polity of PCUSA, I confirm to this court that the appointment by plaintiff Presbytery of that Administrative Commission fully conforms to the Book of Order of PCUSA and is thereby fully authorized and proper.

Historic property trust doctrine of PCUSA.

8. I understand that a substantive issue in the present case concerns whether the real property and other property of the Ridgebury Church is subject to the control of the Administrative Commission appointed by the Presbytery and thereby is under the control of the Presbytery of Hudson River. The underlying issue relates to property trust provisions of PCUSA. The balance of my affidavit addresses the historic property trust doctrine within the polity of PCUSA.

9. Under the historic doctrine of the Presbyterian Church the property of each Presbyterian congregation is held in trust for the denomination both under an express trust, and also under an historic doctrinal implied trust. First, as to the express trust, upon the adoption of Book of Order provisions in 1981 and 1983 the property trust doctrine has been explicitly embodied in an express trust provision in the Book of Order. Further, the Ridgebury Church

adopted the express property trust clause by its unambiguous continuing participation since 1981 and 1983 as a Presbyterian congregation in the proceedings, deliberations, processes and requirements of the Presbytery of Hudson River and of PCUSA under the Book of Order.

10. Regarding the pre-existing implied property trust, the Ridgebury Church placed itself under the care of the Presbytery in 1817. My historical studies of the records of national Presbyterian Church denominational bodies which preceded PCUSA and the actions of its/their General Assemblies and the constituent presbyteries, confirm that by 1817 and at all times thereafter presbyterian doctrine provided that the property of presbyterian churches was held in trust for the national denomination.

11. This doctrine has been clearly shown by actions of the General Assembly of the church which are reflected in the record of proceedings of the General Assembly and its committees. I have reviewed the accompanying affidavit (with exhibits) of Rev. Mark Tammen, which enumerates at paragraph 8 the historic actions of the General Assembly and Presbyterian bodies since 1793, confirming that presbyterian doctrine has long provided such a property trust. Rev. Tammen's affidavit accurately sets forth such historic actions, and I endorse his affidavit in its entirety.

Defendants' references to the Confessions and to Holy Scriptures.

12. I have reviewed defendant's answer to the complaint and their claims that the provisions of the Book of Order and actions of the General Assembly alleging that the property trust doctrine are invalid because they conflict with the Confessions of the Presbyterian Church or the Holy Scriptures. The eleven confessions are set forth in the Book of Confessions, forming a part of the Constitution of PCUSA. In these Confessions "the church declares to its members

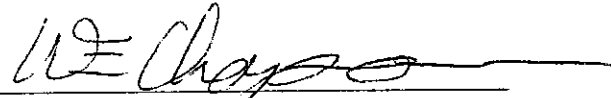
and to the world who and what it is, what it believes, and what it resolves to do. (G-2.0100) It has been described as the lens through which the PCUSA understands the implications of Scripture. The Confessions are drawn from different periods of the Church's long history and provide inspiration and guidance to its members, but are not directed toward conducting current activities and business of the Church.

13. My study of the Confessions and the Book of Order over the years has shown no inconsistencies between them, and in particular I find no inconsistencies in any examples given by defendants. The Book of Order is the product of much study and deliberation over the years by members of the Church both well versed in its principles and devout in their adherence to them, and it is unlikely that they would have produced a Book of Order that in any way undermines the Confessions of the Church or the Holy Scriptures. The Book of Order provides specific ways for amending and/or correcting both the Book of Confessions and the Book of Order (G-18.0000).

Conclusion.

14. Accordingly, it is my opinion as a professional historian in the area of Presbyterian polity that the express property clauses adopted in 1981 and again 1983 were declaratory of long established Presbyterian property trust doctrine, namely that the property of each Presbyterian congregation is held in trust for the national Presbyterian denomination.

GEORGIA ANGELIKAS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Oct. 24, 2006


WILLIAM E. CHAPMAN

Sworn to before me this

18 day of January, 2006

