

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

E. Kwan Choi,  
*individually and on behalf of*  
Urantia Foundation, *et al.*,  
*plaintiff,*

*v.*

K. Richard Keeler, *et al.*,  
*defendants.*

**No. 02 CH 4053**

**Hon. Sophia H. Hall**

**Suit for Injunction and Declaratory  
Judgment**

**RESPONSE TO DEFENDANT TRUSTEES' MOTION  
FOR SUMMARY JUDGMENT**

Now comes the plaintiff, E. Kwan Choi, by his attorneys, Michael D. Poulos, P.C., and in response to "Defendants' Motion for Summary Judgment," "Defendant's Memorandum in Support of Their Motion for Summary Judgment," and "Defendants' Statement of Uncontested Facts in Support of Their Motion for Summary Judgment" (referred to as "SOF"), states as follows:

**I. SUMMARY**

1. The defendant trustees seek summary judgment on the grounds that (a) the removal provisions in the By-Laws are invalid and may be disregarded, and (b) to the extent they failed to comply with the By-Laws, the purported removal of Dr. Choi was valid under the Declaration of Trust. The defendant trustees cite no relevant legal precedent whatsoever for this proposition.

2. The Declaration of Trust and the By-Laws as contemporaneous instruments written by the settlors must be read together, and together they reflect the intent of the settlors. The restrictions the settlors placed on themselves and their successors in the By-Laws cannot be disregarded without first amending the By-Laws as required by the Declaration of Trust.

3. The defendant trustees in fact undertook to remove Dr. Choi pursuant to ¶2.4 of the By-Laws, not ¶7.6 of the Declaration of Trust. Having failed to comply with the By-Laws, they cannot re-characterize their actions as having been undertaken pursuant to Declaration of Trust.

4. No proper notice was given for the September 7, 2001 meeting rendering the vote at that meeting void.

5. The November 16, 2001 meeting was not a quarterly meeting so the removal vote at that meeting was void.

6. All acts taken by the defendant trustees from and after September 7, 2001, including votes to remove Dr. Choi, were void due to the illegal exclusion of Dr. Choi from participation as a trustee.

7. The defendant trustees have abandoned the concept of a "suspended trustee" but now employ the made-up terms "controlling trustees" and "remaining trustees" to suggest a majority of trustees may lawfully exclude the minority from participation. This is not permitted by the Declaration of Trust, By-Laws, or law.

8. Many of the "uncontested facts" asserted by the defendant trustees are disputed or plainly wrong.

9. Public policy will not permit the removal of Dr. Choi in order to prevent him from investigating wrongdoing on the part of the defendant trustees. As a trustee Dr. Choi, not the Attorney General, has primary responsibility to investigate wrongdoing.

## **II. CROSS-MOTIONS BEFORE THE COURT**

1. Dr. Choi has filed a motion for partial summary judgment seeking a declaration that he is still a trustee of the Urantia Foundation. His motion is based only

on the failure of the defendant trustees to properly carry out the procedural requirements of the foundation's By-Laws. The defendant trustees seek summary judgment arguing: (a) they do not have to comply with the provisions of the By-Laws governing notice of meetings and removal of trustees, and (b) it is immaterial that they acted to remove Dr. Choi as a trustee to obstruct him from investigating the mismanagement and wrongdoing within the charitable organization.

2. The court cannot grant both motions. If Dr. Choi is correct in asserting that there is no material dispute regarding the failure of the defendants to follow the By-Laws governing notice and removal of trustees, then he remains a trustee because he has not been removed. The court would necessarily have to deny the defendant trustee's motion. If the defendant trustees are correct that the By-Laws may lawfully be dispensed with and that they may obstruct the performance of the co-trustee's fiduciary obligation, then the defendant trustees may be awarded judgment as a matter of law.

3. Even if the court is unable to grant Dr. Choi's motion for partial summary judgment, the defendant trustees have failed to establish their right to summary judgment because neither equity nor public policy will countenance a co-fiduciary's attempt to conceal the evidence of his breach of trust.

### **III. THE BY-LAWS DEMONSTRATE THE INTENT OF THE SETTLORS**

1. The defendant trustees base their motion on the assertion that the removal provisions in the By-Laws are invalid as contrary to the Declaration of Trust, even though they attempted unsuccessfully to follow the procedures in the By-Laws and did not proceed under the provision of the Declaration of Trust upon which they now rely. (April 2, 2002 affidavit of Kenneth Richard Keeler, ¶'s 6 and 7.)

2. A declaration of trust provides the more organic, general, and substantive

purposes of the trust. It is “the act by which the person who holds legal title to property or an estate acknowledges that the property is being held in trust for another person or for certain specified purposes.” *Black’s Law Dictionary*, 7<sup>th</sup> Edition (West Group, 1999) p. 415.

3. By-Laws provide the complete procedural framework within which the purposes of the trust will be carried out. They are “a rule or administrative provision adopted by an association or corporation for its internal governance. *Black’s Law Dictionary*, 7<sup>th</sup> Edition (West Group, 1999) p. 193.

4. The Declaration of Trust was signed on or about January 11, 1950 and recorded on January 26, 1950 in the office of the Cook County Recorder of Deeds. The declarants of the trust were the initial trustees named in the Declaration of Trust.

5. Paragraph 7.6 of the Declaration of Trust provides for the adoption of By-Laws:

7.6. BY-LAWS: The Trustees shall adopt by-laws, not inconsistent with the provisions of this Declaration of Trust, for the government of the Foundation and of the acts and procedures of the Trustees, which by-laws shall provide, among other things, (a) for officers consisting of a President, one or more Vice Presidents, a Secretary, and a Treasurer, the latter two of which need not be Trustees, (b) for the definition of the powers and duties of such officers, (c) for the election of such officers and for filling vacancies in such offices, (d) for the regular meetings of the Trustees, (e) for the adoption of a seal, and (f) for the amendment and change of such by-laws, from time to time, by the unanimous action of all the Trustees.

6. The defendant trustees in their Statement of Uncontested Facts omit most of ¶7.6 of the Declaration of Trust including the reference to the By-Laws providing for the “acts and procedures of the Trustees.” At issue in this case are the procedures adopted under this authority.

7. On February 11, 1950, thirty-one days after the execution of the Declaration of Trust and sixteen days after its recording, the initial trustees adopted the By-Laws

contemplated by the Declaration of Trust including the “procedures” of ¶2.4 which is at issue here.

8. In construing the trust documents, the intent of the settlors controls. *First National Bank of Chicago v. Campfire Girls*, 85 Ill. 2d 507, 426 N.E.2d 1198 (1981); *In re Estate of Seward*, 134 Ill. App.3d 412, 480 N.E.2d 201 (2d Dist. 1985).

9. The defendant trustees argue that the intent of the settlors can only be found in the Declaration of Trust, not in the By-Laws.

10. In claiming to know the intent of the settlors, the defendant trustees disregard the fact that these By-Laws were adopted by the settlors almost contemporaneously with the Declaration of Trust. (Affidavit of E. Kwan Choi in Support of Temporary Restraining Order, ¶6-7, previously filed with the Court, hereafter referred to as “TRO Affidavit.”) They also disregard the fact that ¶7.6 of the Declaration of Trust calls for adopting By-Laws to establish procedures. Finally, in signing the Declaration of Trust, the settlors set forth the offices they assumed under the By-Laws which is a further indication that the two documents must be construed as one.

11. Where a trust instrument explicitly references the provisions of a separate instrument, the provisions of the separate instrument are given full force and effect as though a part of the trust itself. In *Wynekoop v. Wynekoop*, 407 Ill. 219, 95 N.E.2d 457 (1950), the court held that in construing trusts, “unless a contrary intention is manifested, instruments executed at the same time, by the same parties, for the same purpose and in the course of the same transaction, are regarded as one instrument and will be construed together as if they were as much one in form as they are in substance.” *Wynekoop*, 407 Ill. at 226, 95 N.E.2d at 460.

12. Rules of construction of contracts apply generally to the construction of trust instruments. *Lambos v. Lambos*, 9 Ill. App. 3d 530, 292 N.E.2d 587 (1<sup>st</sup> Dist. 1972). In

construing contracts, documents which specifically incorporate other documents by reference are to be construed as a whole with those other documents. *Kirschenbaum v. Northwestern University*, 312 Ill. App. 3d 1017, 728 N.E.2d 752, 245 Ill. Dec. 670 (1<sup>st</sup> Dist. 1999). Under the doctrine of incorporation by reference the provisions of both writings become as much a part of the contract as if they were expressly written in it. *Wilson v. Wilson*, 217 Ill. App. 3d 844, 577 N.E.2d 1323, 1329, 160 Ill. Dec. 752, 758 (1<sup>st</sup> Dist. 1991) (apparent conflict in contract termination provisions resolved by reading provisions harmoniously).

13. The rule of statutory construction known as *in pari materia* is akin to these rules of contract and trust construction. In *Dundee Township v. Department of Revenue*, 325 Ill. App. 3d 218, 757 N.E.2d 982, 259 Ill. Dec. 119 (2<sup>nd</sup> Dist. 2001), the court held that when construing *in pari materia*, statutes governing the same subject matter are presumed to be governed by one spirit and a single policy; thus, in determining legislative intent an interpretation that gives effect to both provisions must be adopted. *See e.g., Schillerstrom Homes v. City of Naperville*, 198 Ill. 2d 281, 293, 762 N.E.2d 494, 501, 260 Ill. Dec. 835, 842 (2001) (home rule ordinance did not limit statutory provision governing same subject matter; it merely filled a gap, leaving statutory remedies intact and viable; therefore appellate court erred in finding ordinance superceded statute).

14. The By-Laws provide for the procedures and notice that must be followed to remove a co-trustee from his fiduciary office. The defendant trustees have not followed these procedures. Dr. Choi thus remains a trustee and his purported removal is a nullity. (See Dr. Choi's motion for partial summary judgment, incorporated by reference.)

15. The defendant trustees put misplaced reliance upon the unpublished opinion in *Myers v. Burns*, 1995 WL 29638 (N.D. Ill. 1995). In *Myers*, the plaintiff proposed an unwarranted construction of the By-Laws to require "a 'full due process hearing' replete with formal written charges, supported by specific, substantiated evidence" before

removal could occur. *Id.* at 4. Judge Williams rejected this argument because the construction was not warranted. *Id.* She added, clearly in dicta, that even if the By-Laws could be read in such a tortured fashion, that the construction would be inconsistent with the Declaration, and the Declaration controlled over the By-Laws.

16. While Judge Williams's opinion is instructive, it does not control the decision in this case because the issues are different. Trustee Myers attempted to add procedures not in the By-Laws, namely, a "full due process hearing." The case before Judge Williams did not involve a failure to follow those procedures already in the By-Laws. Judge Williams did not have opportunity to address the doctrine of incorporation by reference, nor was it brought to her attention that the By-Laws were adopted by the settlors themselves contemporaneously with the execution and recording of the Declaration of Trust. An unpublished District court opinion is not, in any event, legal precedent.

17. The Court of Appeals ruled the removal was proper because the procedures in the By-Laws were in fact properly followed. *Myers v. Burns*, 82 F.3d 420, 1996 WL 175066 (7<sup>th</sup> Cir., Ill.) Here, those procedures have not been properly followed.

18. As a concluding comment, it appears the settlors intended to place a very high bar for the removal of a trustee in order to avoid the hasty removal of trustees due to a momentary disagreement or policy differences. The By-Laws specify the circumstances under which removal may be initiated, and then provide a deliberately lengthy procedure to allow emotions to cool. By forcing the trustees to work together for six to nine months after removal is initiated, the settlors created an incentive for compromise and conciliation, one the defendant trustees here defeated by excluding Dr. Choi from participation.

19. The settlors did allow for these procedures to be changed, but only by

unanimous vote of the trustees. Thus, at a time when no removal is contemplated, the trustees could alter the procedures. The trustees have never chosen to do so, even after the issue arose in the Myers case. It is only now, when the By-Laws stand in the way of the defendant trustees' intent, that they seek to repudiate the procedures established by the founders of the Urantia Foundation.

20. There is no conflict between the Declaration of Trust and the By-Laws. The former allows for the removal of trustees, grants authority to establish procedures for the removal of trustees, and grants authority to change those procedures by a unanimous vote. Here the procedures have neither been followed nor changed. The removal of Dr. Choi is invalid.

#### **IV. THE DEFENDANT TRUSTEES ILLEGALLY CONVENED THE SEPTEMBER 7 MEETING**

1. The defendant trustees illegally convened the September 7, 2001 trustees' meeting without required notice to Dr. Choi.

2. In an effort to establish that notice was properly given, they offer the affidavit of Sherry Dickerson who claims to specifically recall mailing an "agenda" for the meeting to Dr. Choi on August 31, 2001. They wrongly assert as an "uncontested fact" that Sherry Dickerson mailed a notice of the September 7 meeting and an agenda to Dr. Choi on August 31, 2001. (SOF ¶'s 15, 16.) All Ms. Dickerson mailed, if anything, was an agenda (Affidavit of Sherry Dickerson). The mailing of that agenda on August 31, 2001 is disputed. (Affidavit of E. Kwan Choi in Support of Partial Summary Judgment, ¶17, hereafter referred to as "Dr. Choi's Summary Judgment Affidavit." This document has already been filed with the Court.)

3. The "agenda" mailed by Ms. Dickerson was not the notice for the September 7 meeting. The notice was sent by secretary Mo Siegel on July 30, 2001 (Dr. Choi's

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Summary Judgment Affidavit, ¶11). That notice was invalid because it was sent by e-mail and was sent more than ten days in advance of the meeting. (Bylaws ¶3.3.) In that notice Mo Siegel stated he would send the agenda in advance of the September 7 meeting. It is this agenda, not the "Notice for Meeting" Ms. Dickerson claims to have mailed.

4. If the "agenda" is intended to constitute a notice, there is an issue of material fact whether Ms. Dickerson actually mailed the agenda on August 31. Dr. Choi did not receive it in the mail until September 11, 2001, eleven days after it was supposedly mailed to him. (Dr. Choi's Summary Judgment Affidavit, ¶17.) This delay in delivery tends to establish that the notice was not mailed on August 31. The court should not accept as fact that Ms. Dickerson can recall such a mundane function performed so long ago without actual testimony subject to cross examination, or at least a deposition.

5. The defendant trustees wrongly assert as an "uncontested fact" that Sherry Dickerson mailed the notice of the September 7 meeting and an agenda to Dr. Choi. (SOF ¶'s 15, 16.) All Ms. Dickerson mailed was the agenda (Affidavit of Sherry Dickerson).

6. Paragraph 3.7 of the By-Laws requires the secretary to issue notices. It does not allow for this official duty to be delegated. Mo Siegel is the secretary. He admits he did not mail the agenda, nor did he send notice of the meeting by mail or telegraph within five to ten days of the meeting.

7. Richard Keeler has admitted that there has been no proper notice of meetings since the Martin Myers board. (Supplementary Affidavit of E. Kwan Choi in Opposition to Defendant Trustees' Motion for Summary Judgment, ¶16, hereafter referred to as "Supplemental Affidavit," attached to this memorandum.)

8. Whether the September 7, 2001 meeting was properly called is material. Under the removal provisions of the By-Laws in ¶2.4, an initial meeting must be held

where a majority of trustees vote to begin the removal process on the basis that the subject trustee: (a) failed to perform his duties; (b) acted in derogation of the *Urantia Book*; or (c) brought disrepute upon himself or the foundation. If the meeting was not properly called, there could be no legitimate vote taken to initiate the removal process.

9. The nature of the vote taken at that meeting is also material. Richard Keeler states in ¶6 of his affidavit: “[a] unanimous vote was then taken to begin the removal process of E. Kwan Choi by the remaining members of the Board of Trustees of the Foundation by voting to remove him as a Trustee, thereby suspending him as an active Trustee.” There is no evidence in the record that a majority of the trustees formed the required opinion that removal was necessitated for one of the causes enumerated in the By-Laws. A vote “to begin the removal process” does not comport with the By-Laws requiring a majority to decide that cause exists for removal or that cause was even discussed. In their Statement of Uncontested Facts the defendant trustees do not assert that they believed Dr. Choi was guilty of any of the enumerated actions, only that these were put forward as the pretext for removal.

10. No minutes of the September 7, 2001 meeting have been produced. Were they produced at this point they would be suspect. Mr. Keeler admits that he edits minutes, a function which is reserved to the Secretary under ¶4.8 of the By-Laws. Dr. Choi never received any such minutes. (Dr. Choi’s Summary Judgment Affidavit, ¶16.)

**V. THE FAILURE TO VOTE TO CONFIRM REMOVAL  
ON OCTOBER 20, 2001 TERMINATED THE REMOVAL PROCESS**

1. Paragraph 2.4 of the By-Laws requires a vote to confirm removal at the first regular quarterly following the initial vote. The By-Laws designate October 20, 2001 as the date for that meeting. No such meeting was held, and no such vote was taken.

2. A vote was instead taken at a meeting held on November 10, 2001, which

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constituted a *special meeting* of the trustees, not a regular quarterly meeting. As such, the vote was invalid under ¶2.4 of the By-Laws.

3. The defendant trustees claim the November 10, 2001 meeting was, in fact, the first regular quarterly meeting following the September 7 meeting. The By-Laws do not permit this date to be changed unless all trustees agree to change the date. (By-Laws, ¶3.1.) Dr. Choi did not agree to the change of the date and specifically objected to any change. (TRO Affidavit, ¶20.)

4. The defendants note that Dr. Choi was present and participated in this meeting. They fail to inform the court that Dr. Choi's participation occurred only after the defendant trustees signed a written agreement, reviewed and approved by their attorney, that Dr. Choi preserved his objections to the meeting. (Supplemental Affidavit, ¶19.) It states in full:

The trustees of the Urantia Foundation agree that the attendance and participation of Kwan Choi in the meeting of the trustees on November 10, 2001, shall not constitute a waiver of any of Kwan Choi's objections to the meeting or the decisions reached.

5. Having made this agreement the defendant trustees cannot now claim that Dr. Choi waived his objection or somehow agreed that the date of the regular quarterly meeting could be changed.

6. The defendant trustees claim that Dr. Choi's consent to change the meeting date was not required because, they claim, he had no right to vote. Dr. Choi asserts he did have a right to vote on all matters except removal because he had not yet been removed as a trustee. No removal takes effect until a certificate of removal is recorded (Declaration of Trust, ¶7.5, By-Laws, ¶2.4). The defendant trustees acknowledge that no certificate of removal was recorded until May 6, 2002 (SOF ¶28). Thus, they base the illegal deprivation of Dr. Choi's right to not agree to the rescheduling of a meeting on the illegal deprivation of Dr. Choi's right to vote. They claim the Declaration of Trust

and By-Laws permit this, but they cite to no provision because no such provision exists.

7. The total exclusion of Dr. Choi from acting as a trustee in every respect, from at least September 1, 2001 through April 20, 2002 renders all of the actions of the remaining trustees invalid during that time. In response to this problem the defendant trustees manufactured the concept that Dr. Choi was somehow a "suspended trustee." They since abandoned the use of "suspended trustee," but they now refer to themselves as the "controlling trustees" to imply Dr. Choi could be frozen out of his fiduciary office prior to compliance with the By-Laws governing removal. The By-Laws purposely ensure that removal will take more than six months to occur. The defendant trustees were without power or authority to oust Dr. Choi from his office prematurely.

**VI. THE DEFENDANT TRUSTEES CANNOT REMOVE DR. CHOI  
TO PREVENT HIS INVESTIGATION INTO THEIR MISCONDUCT**

**FINANCIAL REPORTS TO THE ATTORNEY GENERAL ARE INCOMPLETE**

1. The intent of the defendant trustees has always been to prevent Dr. Choi from investigating the mismanagement and wrongdoing of the defendant trustees.

2. As a noted economist, it is understandable how, over time, Dr. Choi became concerned about indications of financial mismanagement, self-dealing, and accounting irregularities. Today, with the collapse of Enron, the recent accounting disclosures at WorldCom, and the criminal conviction of the Urantia Foundation's former accountants, Arthur Anderson, it is self evident that transferring restricted funds without consent, large investments in highly speculative commodities funds, self-dealing by investing over \$1,000,000 in a fund controlled by the foundation's president, Richard Keeler, incomplete audits, late and still incomplete Attorney General filings, over \$1 million in legal fees spent on dubious litigation that could have been easily settled, accounting tricks, and similar concerns should be investigated by a conscientious trustee. It is

equally understandable, improper though it may be, that the defendant trustees who are engaging in or permitting this questionable conduct would prefer that the trustee asking inconvenient questions be removed.

3. In connection with the prior motion for a Temporary Restraining Order, Dr. Choi set forth in his affidavit the dysfunctional history of the foundation since his election. (TRO Affidavit, generally.) Among these many wrongful actions that took place at the board level was the deliberate exclusion of Mo Siegel and Gard Jameson from participating in the management of the foundation, despite their status as trustees from about August 1999 to at least May of 2000. (TRO Affidavit, ¶10 (i-q).) They even wrote a joint letter to the remaining trustees characterizing their exclusion as “illegal.” (TRO Affidavit, ¶10 (o)), an admission they now disregard.

4. During his entire tenure as a trustee, Dr. Choi has been deprived of regular, detailed, and complete information regarding the financial affairs of the foundation, including annual accountings, statements of donations received, budgets, and detailed expenditures. (TRO Affidavit, ¶11-13, Supplemental Affidavit, generally.) As a result of such specific information he did receive, Dr. Choi, by the summer of 2001, was concerned that the foundation was commingling segregated funds (Supplemental Affidavit, ¶6.), had been misstating legal fees incurred on its books and records, had run out of cash for printing, was violating restrictions on gifts, and had informally agreed among themselves to commit waste of the primary estate of the foundation, namely the *Urantia Book*, by licensing its text to be published in competition with the Urantia organizations by the Jesusonian Foundation, an organization controlled by the defendant trustee Mo Siegel’s wife. (TRO Affidavit, ¶9-11.) In 2001 the foundation fired Arthur Anderson as its auditor for the failure to make timely financial filings. The foundation filed a report with the Illinois Attorney General without the review or approval of Dr. Choi. (TRO Affidavit, ¶9(b).)

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5. The Urantia Foundation holds a 99% interest as a limited partner in a commodities trading fund *of which Richard Keeler, a Urantia trustee, is the general partner*. As of December 31, 1999, *this investment constituted over \$1,000,000 of Urantia Foundation assets*. (Supplemental Affidavit, ¶20.)

6. The Urantia Foundation has been spending the bulk of its money on administrative expenses and not on its primary mission. (Supplemental Affidavit, ¶6.)

7. The Urantia Foundation has invested over \$250,000 in a 17% stake in a highly speculative and risky commodities fund. (Supplemental Affidavit, ¶20.)

8. Financial statements for 1998 and 1999 have been consolidated into a single statement, suggesting underlying financial irregularities. (Supplemental Affidavit, ¶20.)

9. The president of the Urantia Foundation has been editing the minutes usurping the role of the secretary. (Supplemental Affidavit, ¶17.)

10. Neither the president nor treasurer nor any other trustee have signed recent Attorney General filings under oath as required by law. (Supplemental Affidavit, ¶21.) See 760 ILCS 55/17 requiring trustees to file written reports under oath.

11. See also 760 ILCS 55/15 prohibiting self dealing and conflicts of interest by trustees, requiring trustees to avoid wasting charitable assets, and requiring trustees to timely file financial reports with the Attorney General.

12. At last report, the Attorney General filing for the year 2000 was still incomplete due to an incomplete audit, and the year 2001 report had not been filed. (Supplemental Affidavit, ¶20.)

13. As a result of his lack of information and concern for the welfare of the foundation, Dr. Choi repeatedly made unsuccessful requests for information to the

president and executive director of the foundation. (See, Dr. Choi's Summary Judgment Affidavit, ¶18.) Finally, on September 1, 2001, Dr. Choi requested, in writing, copies of certain books and records of the Urantia organizations from Mrs. Tonia Baney, the executive director and Quin Frazer, the attorney for the Urantia organizations. (TRO Affidavit, ¶12.) Mr. Frazer never responded, but on September 5, 2001, Mrs. Baney denied Dr. Choi's request in writing. (TRO Affidavit, ¶13.) She further accused Dr. Choi of trying to harm the Urantia organizations by requesting the documentation, she urged him to resign as a trustee, and she urged him to return to his native South Korea "for the benefit of the Urantia organizations." Just two days later the September 7 meeting was held and Dr. Choi was completely excluded from the affairs of the foundation.

14. Every trustee is duty bound to protect the trust estate. *Grodsky v. Sipe*, 30 F. Supp. 656 (E.D. Ill. 1940). In *Grodsky* the court described the nature of a trustee's duty at length:

Among the obligations of any trustee...are those to use care and diligence in the discharge of his functions. For the failure to do so, he is liable even when no wrongful intent appears. He may be liable for neglect because answerable [sic.] for property actually lost through want of care and prudence and for moneys which he might have received if he had exercised due care, prudence, and judgment in his dealings with the trust estate. He is bound to protect the trust property in every reasonable manner during the continuation of the trust. He must with due diligence obtain possession thereof and retain it securely under his control and is liable for losses resulting from his neglect or unreasonable delay in this respect. *Pomeroy's Equity Jurisprudence*, §1066....Every violation by a trustee of a duty which equity lays upon him, whether willful or fraudulent or done through neglect or arising through oversight or forgetfulness, is a breach of trust.

*Grodsky v. Sipe*, 30 F. Supp. at 661.

15. Writing about the duty of a co-trustee in *Myers* Judge Williams echoes *Grodsky*:

Unlike the public at large, trustees have a duty to ensure the proper administration of their trusts, and can even be held liable for failing to prevent certain breaches....The co-trustee is also in the best position to learn about breaches of trust and to bring the relevant facts to a court's attention.

*Myers v. Burns*, 1995 WL 296938, *aff'd*, see table 82 F.3d 420 (1995) (unpublished).

16. The obligations of *Grodsky* and *Myers* are what Dr. Choi is attempting to fulfill and what the defendant trustees are attempting to obstruct. The chronology of the events set forth in Dr. Choi's TRO Affidavit and Supplemental Affidavit indicates there is merit to Dr. Choi's suspicions. The discovery of \$1,000,000 invested in Richard Keeler's commodities fund alone is grounds for investigation and possible removal of Richard Keeler from the Board. It is the duty of a trustee to watch for, investigate, and correct mismanagement. The other trustees seek to enlist this court's help in blocking such an investigation.

17. Illinois law does not condone retaliatory conduct designed to punish those who act in promotion of clear public policy. *Howard v. Zack Company*, 264 Ill. App. 3d 1012, 637 N.E.2d 1183, 202 Ill. Dec. 447 (1<sup>st</sup> Dist. 1994). Whistle-blower retaliatory discharge cases are an excellent example of the same public policy which applies here. The law will not permit superficially lawful activity committed in violation of public policy. In *Howard*, a former at-will employee was awarded over \$300,000 in compensatory and punitive damages when his employer fired him in retaliation for reporting violations of laws governing the operation of nuclear power plants, even though the firing of an at-will employee may normally be done for any reason or no reason at all. A superficially lawful termination is unlawful when it facilitates a cover-up of wrong-doing.

18. Thus, the removal of Dr. Choi in an attempt to silence him violates public policy.

19. The defendant trustees argue that there is no financial wrongdoing within the foundation. They offer several affidavits attesting, in the most general terms possible, that foundation staff "generate" financial statements and reports, that Gard Jameson, who claims to be treasurer, reviews these, presents these to the trustees and the trustees approve them. As noted above, this assertion is false.

20. The trustees have never approved financial statements at quarterly meetings as claimed. There are no minutes attesting to any such approval. (Supplemental Affidavit, ¶12.) Mr. Jameson was not the treasurer of the foundation, nor has he made financial presentations to the Board at quarterly meetings. (Supplemental Affidavit, ¶3.) Mr. Jameson himself was excluded from participation in the oversight of the foundation from at least September, 1999 to September, 2000. Thus he cannot have the knowledge he claims in his affidavit. (Supplemental Affidavit, ¶4.)

21. The repeated claim that all the finances are “audited” is disproven by the affidavit of Frank Schimmel. He is the CPA at the Attorney General’s Office responsible for reviewing financial documents filings from charitable trusts. He says that Urantia has not provided audited statements for years 2000 or 2001. (Supplemental Affidavit, ¶20.) A prior audit did not prevent the self-dealing and questionable investment policy described above. Enron was audited, WorldCom was audited. Audits do not replace trustees who ask hard questions and demand answers without fear of removal.

22. The defendant trustees claim that the foundation is in “good standing” with the Attorney General’s Office, and they cite to the Affidavit of Floyd Perkins for this claim. Mr. Perkin’s affidavit does not state that the foundation is in “good standing,” only that the office has not seen fit to “take corrective action.” (See, Affidavit of Perkins, ¶3). The power of the Attorney General to take action is discretionary. 760 ILCS 55/9.

23. There is no indication the Attorney General was actually aware of the indications of mismanagement raised by Dr. Choi, including the speculative commodities investments and self-dealing. The Attorney General cannot investigate and prosecute that about which they have no knowledge. As noted by Judge Williams, “The co-trustee is also in the best position to learn about breaches of trust and to bring the relevant facts to a court's attention.” *Myers v. Burns*, 1995 WL 296938, *aff'd*, see table 82 F.3d 420 (1995) (unpublished).

24. The defendant trustees suggest Dr. Choi is not to be believed because he did not file a complaint with the Attorney General. Dr. Choi has done more than that. He has filed a complaint in court and joined the Attorney General as a party. Dr. Choi had been preparing a complaint to file with the Illinois Attorney General, but his work was superceded by the filing of this case. (Supplemental Affidavit, ¶9.)

#### VII. REQUIREMENTS FOR AN INJUNCTION

1. The defendant trustees claim Dr. Choi has established none of the grounds for the granting of a permanent injunction.

2. They state Dr. Choi has failed to demonstrate a likelihood of success on the merits. This is a requirement for a temporary restraining order or preliminary injunction, not for a permanent injunction. A permanent injunction is a determination on the merits. In any event, the court already found on April 24, 2002, that Dr. Choi did have a likelihood of success on the merits as to the procedures for removing him as a trustee. (Supplemental Affidavit, Exhibit J (Court order of April 24, 2002).)

3. The defendant trustees assert Dr. Choi has no protectable interest. This has already been briefed and was decided in Dr. Choi's favor. (Supplemental Affidavit, Exhibit J (Court order of April 24, 2002).)

4. The defendant trustees assert Dr. Choi personally will suffer no irreparable harm. For purposes of establishing a right to injunctive relief, irreparable harm does not mean injury that is beyond repair or beyond compensation in damages. Rather, it denoted transgressions of a continuing nature. *Local 1894 v. Holsapple*, 201 Ill.App.3d 1040, 559 N.E.2d 577, 147 Ill. Dec. 404, (4<sup>th</sup> Dist., 1990).

For purposes of a permanent injunction, an inadequate remedy can be the threat of irreparable harm or other harm that cannot be adequately corrected by the payment of monetary damages. An injury is irreparable when the injured party cannot be adequately compensated in damages or

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when the damages cannot be measured by any certain pecuniary standard. However, an irreparable injury need not necessarily be such that it is beyond the possibility of compensation in damages or beyond the possibility of repair, nor need it necessarily be very great. The rule has been stated that in order to warrant the granting of an injunction an irreparable injury must be that species of injury, whether great or small, which ought not to be submitted to on the one hand or inflicted on the other hand, and that the fact that no actual damages can be shown, so that the jury could award nominal damages only, often furnishes the very best reason why a court should interfere by injunction.

ILP, Injunctions, §18.

5. It is self evident that a co-trustee may obtain an injunction to prevent another co-trustee from violating the trust instruments.

6. The defendant trustees claim there is a judicial admission on page 33 of a transcript that Dr. Choi can suffer no irreparable harm. (SOF ¶46.) No page 33 is attached to the document served on Dr. Choi. Counsel for Dr. Choi did comment in a hearing on a motion for a temporary restraining order that Dr. Choi was acting on behalf of the Urantia Foundation, and it was the Urantia Foundation that stood to suffer from the acts of the defendant trustees. However, Dr. Choi also stands to suffer should he be held vicariously liable for the misconduct of his fellow trustees. *Grodsky v. Sipe*, 30 F. Supp. at 661.

7. Dr. Choi stands as a fiduciary who has a duty to carry out. That duty cannot be measured in money to Dr. Choi who, by virtue of his position, may not profit from being a trustee. Section 6.15 of the Declaration of Trust states:

The Trustees shall have the power in their names, as Trustees, or in the name of URANTIA FOUNDATION, to sue in any court of law or equity to protect or enforce any rights or interests of the Trustees in or related to or in any way connected with any of the Trust Estate or any part thereof or interest therein, the same as if they were the private and individual owners thereof, and to protect and enforce their rights to any gift, devise, bequest, or legacy, and to defend any suit against them as Trustees or against the Foundation or against any of the Trust Estate.

8. A trustee of a charitable trust has standing to enforce the terms of the trust. "A suit for the enforcement of a charitable trust can be maintained by one or more of

several trustees against the other trustees.” Restatement (Second) of Trusts §391. Enforcement of a charitable trust is equitable relief and not necessarily measurable in dollars.

#### VIII.COMMENTS ON THE STATEMENT OF (ALLEGEDLY) UNCONTESTED FACTS

1. The defendant trustees did not vote to remove Dr. Choi on September 7, 2001 in the sense being argued in their motion. They voted only to initiate his removal as contemplated by ¶2.4 of the By-Laws. The defendant trustees cite to their answer to an allegation in the complaint. (SOF ¶21.) This allegation is clarified in paragraph 23 of Dr. Choi’s Supplemental Affidavit. In any case, the defendant trustees do not believe their own assertion. Concerning the September 7, 2001 meeting, Dr. Keeler states in ¶6 of his April 2, 2002 affidavit, “A unanimous vote was then taken to begin the removal process of E. Kwan Choi....”

2. The defendant trustees assert as an uncontested fact that they are the sole trustees of the Urantia Foundation. (SOF ¶3.) This is a legal conclusion. Dr. Choi contends his removal is a nullity and he remains a trustee.

3. The defendant trustees’ SOF ¶20 cites to their answer, but the language recited in SOF ¶20 is not what is in the complaint. The assertion of SOF ¶20 is not uncontested.

4. All references to “Controlling Trustees” in the SOF are disputed. There is no such thing.

5. The defendant trustees claim in SOF ¶29 the process followed with Dr. Choi was identical to that employed in the removal of Martin W. Myers. Dr. Choi disputes this. (Supplemental Affidavit, ¶24.) The Court of Appeals found that the correct procedures had in fact been followed, which is not the case here.

6. The defendant trustees suggest in their memorandum that the removal of Dr. Choi as a trustee effective with the September vote is an uncontested fact by citing to SOF ¶7. This is disingenuous and false. SOF ¶7 is a quote from the Declaration of Trust upon which they base their argument. It is a legal conclusion, not a fact.

7. The defendant trustees suggest the recording of the certificate of removal was postponed to provide an opportunity for possible reinstatement according to the procedures outlined in the By-Laws, again with a citation to their statement of uncontested facts. The citation is to a provision in the Declaration of Trust (SOF ¶4) and the May 6, 2002 filing of the certificate of removal (SOF ¶26). There is no allegation in any affidavit suggesting the defendant trustees delayed the recording of the certificate of removal to provide an opportunity for possible reinstatement. There is no authority for this in the By-Laws.

8. The defendant trustees claim as undisputed that all required reports have been submitted to the Illinois Attorney General in compliance with the Charitable Trusts Act. (SOF ¶41.) As demonstrated elsewhere, this is not true.

## **CONCLUSION**

Wherefore, the plaintiff, E. Kwan Choi, individually and on behalf of the Urantia Foundation, prays for the court to find in his favor and to deny the defendant trustees' motion for summary judgment.

Respectfully Submitted:

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Michael D. Poulos  
*Attorney for Dr. E. Kwan Choi*

### CERTIFICATE OF SERVICE

The undersigned under the penalties as provided by law pursuant to paragraph 1-109 of the Illinois Code of Civil Procedure states that he or she served the foregoing on each person on the following service list by depositing a copy in the U.S. Mail, properly addressed and postage prepaid, on August 1, 2002.

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Aine I. Ruane

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