

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 08 CVS 4948

FILED  
2009 MAR 11 PM 3:08  
BUNCOMBE COUNTY, N.C.

THE PRESBYTERY OF WESTERN NORTH CAROLINA  
INC. and THE MONTREAT PRESBYTERIAN CHURCH  
(Presbyterian Church U.S.A.), an unincorporated religious  
congregation organized and existing under NCGS Chapter 61,  
by and through its Trustees, R. James Henderson, Henry W.  
Neale and Arline J. Taylor, as Trustees of the Montreat  
Presbyterian Church (PCUSA),

Plaintiffs,

vs.

ANSWER  
(Jury Demand)

MONTREAT PRESBYTERIAN CHURCH, a North  
Carolina corporation d/b/a MONTREAT PRESBYTERIAN  
CHURCH, E.P.C. and E.A. ANDREWS, JR., JESSIE G.  
BARKER and NATALIE W. SCHERMERHORN, individually,  
and as Trustees of the Montreat Presbyterian Church, an  
unincorporated religious congregation organized and existing  
under NCGS Chapter 61,

Defendants.

NOW COME the Defendants, Montreat Presbyterian Church, a North Carolina nonprofit corporation d/b/a Montreat Presbyterian Church, E.P.C. and E. A. Andrews, Jr., Jessie G. Barker and Natalie W. Schermerhorn, individually, and as Trustees of the Montreat Presbyterian Church, an unincorporated religious congregation organized and existing under NCGS Chapter 61, and answer the Complaint as follows:

ANSWER TO INTRODUCTORY PARAGRAPH ENTITLED "ACTION"

To the extent that the characterization of the claims filed by the Plaintiffs is accurate, that characterization is admitted, although the Defendants specifically deny that the Plaintiffs are entitled to any relief in this action. Except as herein admitted, the allegations are denied. Due to the length, detail and complexity of the Complaint including allegations and characterizations relating to ecclesiastical and spiritual matters, rather than allegations related to property and trust law which can be resolved by neutral principles of property law, it has been difficult for the Defendants to be in a position to admit or deny the averments upon which the Plaintiffs rely and difficult to state in short and plain terms its defenses to the claims asserted by the Plaintiffs.

ANSWER

1. Based upon information and belief, it is admitted that the Presbyterian Church (USA) (hereinafter at times "PCUSA") is an unincorporated religious association based in Louisville, Kentucky. It is admitted that Montreat Presbyterian Church, a North Carolina nonprofit corporation d/b/a Montreat Presbyterian Church, E.P.C., (hereinafter at times the "Montreat Presbyterian Church," or the "Defendant church" or the "Defendant Montreat Presbyterian Church"), is located in the Town of Montreat, Buncombe County, North Carolina. It is further admitted, upon information and belief, that the new Montreat Presbyterian Church (PCUSA) (hereinafter at times the "Plaintiff church" or the "PCUSA church") is located in the town of Black Mountain, Buncombe County. Upon information and belief, it is admitted that the Presbytery of Western North Carolina of the Presbyterian Church (USA) includes Buncombe County within its geographic district. It is admitted that the Constitution of such unincorporated religious association is the Book of Confessions and the Book of Order. As to

any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as admitted herein, the Defendants lack sufficient information, knowledge and belief to answer the allegations, and the same are, therefore, denied.

2. It is admitted that the Book of Order speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is specifically denied that Plaintiff church is the true Montreat Presbyterian Church or the Montreat Presbyterian Church. It is further specifically denied that the Plaintiff church was organized on December 13, 1906 by a committee appointed by the then Presbytery of Asheville and enrolled in said Presbytery as a member church subject to governance and authority of the Constitution as it then existed. The Plaintiff church is an entirely new entity without legal connections to any of the Defendants. Based upon information, knowledge and belief, the Plaintiff church was formed for the purpose of the Presbytery in pursuing a claim on the property of the Defendant church. The Defendants lack sufficient information, knowledge and belief to answer the remaining allegations, and the same are, therefore, denied.

3. It is specifically denied that the Defendant, Montreat Presbyterian Church, a North Carolina nonprofit corporation d/b/a Montreat Presbyterian Church, E.P.C., is a "schismatic congregation" or a "schismatic Montreat Church." It is admitted that the Montreat Presbyterian Church is a North Carolina nonprofit corporation having been incorporated on July 18, 2007 as the successor by deed and by transfer of memberships from Montreat Presbyterian Church, an unincorporated religious congregation organized and existing under North Carolina General Statute Chapter 61 action (hereafter at times "former unincorporated Montreat Presbyterian Church" or "unincorporated Chapter 61 entity"), which is an entity legally separate and distinct from the Plaintiff church of the same name and not presently a party to this action. The Articles of Incorporation of the Montreat Presbyterian Church speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

4. It is admitted that the Defendant, E. A. Andrews, Jr., is a citizen and resident of Buncombe County, North Carolina and is a member of the Defendant Montreat Presbyterian Church and also of the former unincorporated Montreat Presbyterian Church and has at all times relevant to this action served as a trustee of the former unincorporated Montreat Presbyterian Church which formerly held legal title to certain real property and personal property described in Deed Book 4454 at Pages 1967 through 1993, Buncombe County Registry and which is not presently a party. It is further admitted that the real and personal property herein described was conveyed to the Defendant Montreat Presbyterian Church by deed on August 26, 2007 and that said conveyance was lawful, and the actions of this Defendant Trustee was compelled by the direction and authority of the congregation of the particular church upon an overwhelming majority vote of its members. It is specifically denied that the Defendant Trustee ever held title for the benefit of any of the Plaintiffs. It is admitted that any written instrument referred to speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

5. It is admitted that the Defendant, Jessie G. Barker, is a citizen and resident of Buncombe County, North Carolina and is a member of the Defendant Montreat Presbyterian Church and also of the former unincorporated Montreat Presbyterian Church and has at all times relevant to this action served as a trustee of the former unincorporated Montreat Presbyterian Church which formerly held legal title to certain real property and personal property described in Deed Book 4454 at Pages 1967 through 1993, Buncombe County Registry and which is not presently a party. It is further admitted that the real and personal property herein described was conveyed to the Defendant Montreat Presbyterian Church by deed on August 26, 2007 and that said conveyance was lawful, and the actions of this Defendant Trustee was compelled by the direction and authority of the congregation of the particular church upon an overwhelming majority vote of its members. It is specifically denied that the Defendant Trustee ever held title for the benefit of any of the Plaintiffs. It is admitted that any written instrument referred to speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

6. It is admitted that Defendant, Natalie W. Schermerhorn, is a citizen and resident of Buncombe County, North Carolina and is a member of the Defendant Montreat Presbyterian Church and also of the former unincorporated Montreat Presbyterian Church and has at all times relevant to this action served as a trustee of the former unincorporated Montreat Presbyterian Church which formerly held legal title to certain real property and personal property described in Deed Book 4454 at Pages 1967 through 1993, Buncombe County Registry and which

is not presently a party. It is further admitted that the real and personal property herein described was conveyed to the Defendant Montreat Presbyterian Church by deed on August 26, 2007 and that said conveyance was lawful, and the actions of this Defendant Trustee was compelled by the direction and authority of the congregation of the particular church upon an overwhelming majority vote of its members. It is specifically denied that the Defendant Trustee ever held title for the benefit of any of the Plaintiffs. It is admitted that any written instrument referred to speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

7. It is admitted that The Book of Order speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Based upon information and belief, it is admitted that the Presbyterian Church (USA) formed on or about June, 1983 as a result of the reunion of the Presbyterian Church in the United States (hereinafter at times "PCUS") and the northern branch known as the United Presbyterian Church in the United States of America (hereinafter at times "UPCUSA"). Except as specifically admitted herein, the Defendants lack sufficient information, knowledge and belief to answer the allegations, and the same are, therefore, denied.

8. It is admitted that prior to the 1983 reunion, both PCUS and UPCUSA were organized under their respective Constitutions which were in writing and speak for themselves with reference to matters of church governance. Except as herein admitted, the allegations in general and specifically with reference to property of local churches is denied. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as specifically admitted herein admitted, the Defendants lack sufficient information, knowledge and belief to answer the allegations, and the same are, therefore, denied.

9. It is specifically denied during any time relevant to the issues in this case that the PCUSA was a hierarchical church in its property ownership and representative form of governance at least as to the Defendants and the former unincorporated Montreat Presbyterian Church. The Book of Order speaks for itself, and the Constitution speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as specifically admitted herein admitted, the Defendants lack sufficient information, knowledge and belief to answer the allegations, and the same are, therefore, denied

10. The Book of Order speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

11. It is specifically denied that the PCUSA and/or the PCUS were or are hierarchical at least as to the Defendants and the former unincorporated Montreat Presbyterian Church. Any church polity enacted by PCUSA and/or PCUS that purports to determine that church property of a local congregation in held in trust for the benefit of PCUSA or PCUS has no application to the Defendant church, and the Defendant church is exempt from any such polity. Except as herein admitted, the allegations are denied.

12. It is admitted that the Book of Order speaks for itself. It is specifically denied that the Defendant Montreat Presbyterian Church, at any time relevant herein, was or is subject to the referenced trust clause in the Book of Order. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as admitted herein, the allegations are denied.

13. It is admitted that the Book of Order speaks for itself, although it is specifically denied that the Plaintiffs or any other entity has the authority or power to enforce a so-called trust clause as to the Defendant Montreat Presbyterian Church. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

14. It is admitted that the referenced Constitution speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is specifically denied that the Defendant Montreat Presbyterian Church was governed by and subject to the referenced trust provision or any trust provision on behalf of the Plaintiffs, PCUS, PCUSA, or any other entity. Except as herein admitted, the allegations are denied.

15. and 15. (1-9). The Book of Church Order (PCUS), the Book of Order (PCUSA), and any other document referred to speak for themselves. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

16. It is admitted that the former unincorporated Montreat Presbyterian Church, an entity legally separate and distinct from any named Plaintiff and not presently a party to this action, began a process for dismissal and disaffiliation from PCUSA which resulted in a congregational vote overwhelmingly in the affirmative for dismissal. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

17. ~~It is admitted that the Book of Order speaks for itself. It is specifically denied that the Defendant Montreat Presbyterian Church is schismatic. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.~~

18. It is specifically denied that the Plaintiff church is the continuing Montreat Presbyterian Church or the true Montreat Presbyterian Church or is legally entitled to assert any rights on behalf of the former unincorporated Montreat Presbyterian Church, predecessor in legal title to the Defendant Montreat Presbyterian Church, and not presently a party to this action. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. The Defendants lack sufficient information, knowledge and belief to answer the remaining allegations, and the same are, therefore, denied.

19. It is admitted that the Defendant Montreat Presbyterian Church held and holds legal title to its properties by deed, titles, documents of ownership, instruments and/or duly recorded instruments. It is further admitted that all such property has been and continues to be used for church, ministry and educational purposes on a regular basis by the Defendant Montreat Presbyterian Church. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is specifically denied that the Plaintiffs have any right, title or interest in and to the property of the Defendant Montreat Presbyterian Church as described on Exhibit C attached to the Complaint or otherwise. Except as herein admitted, the allegations are denied.

20. It is admitted that the Defendant Montreat Presbyterian Church owns the property described on Exhibit C attached to the Complaint as lawful successor in title by deed from the former unincorporated Montreat Presbyterian Church, itself an entity legally separate and distinct from any named Plaintiff and not presently a party to this action. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as specifically admitted herein, the Defendants lack sufficient information, knowledge and belief to answer the remaining allegations, and the same are, therefore, denied.

21. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is further admitted that communications were exchanged between representatives of several entities including the Presbytery and the former unincorporated Montreat Presbyterian Church and/or the Defendant Montreat Presbyterian Church. It is further admitted that the former unincorporated Montreat Presbyterian Church and the Defendant Montreat Presbyterian Church have consistently asserted and claimed their lawful right, title and interest in and to all property in dispute. Except as specifically admitted herein, the Defendants lack sufficient information, knowledge and belief to answer the remaining allegations, and the same are, therefore, denied.

22. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is specifically denied that the Defendant Montreat Presbyterian Church is schismatic. It is not denied that Presbytery representatives have unlawfully claimed an interest in the property of the Defendants as alleged. Except as herein admitted, the allegations are denied.

23. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is specifically denied that the Defendant Montreat Presbyterian Church is schismatic. It is not denied that the Defendants were aware that the Plaintiffs or PCUSA might assert a claim to the property of the former unincorporated Montreat Presbyterian Church and/or the Defendant Montreat Presbyterian Church, which said claim as asserted in the Complaint is and has been denied by the Defendants. The Defendants lack sufficient information, knowledge and belief as to what others knew or should have reasonably known, and the same are, therefore, denied. Except as herein admitted, the allegations are denied.

24. It is admitted that the case of Jones v. Wolf [443 US 595 (1979)] speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

25. It is admitted that The Book of Church Order speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

26. It is admitted that the Articles of Agreement speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is specifically denied that the Defendant Montreat Presbyterian Church continued as a PCUSA church subject to the Constitution and the trust clause. Except as herein admitted, the allegations are denied

27. It is admitted that the Articles of Agreement the Book of Order, and The Book of Church Order speak for themselves. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as specifically admitted herein, the Defendants lack sufficient information, knowledge and belief to answer the remaining allegations, and the same are, therefore, denied.

28. It is admitted that the letter attached as Exhibit D to the Complaint speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. The Defendants lack sufficient information, knowledge and belief to answer the remaining allegations, and the same are, therefore, denied.

29. To the extent that the allegations attempt to make a legal conclusion, no response is required of the Defendants. To the extent that a response is required, it is admitted that Exhibit D speaks for itself, and Exhibit B speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is specifically denied that Exhibit D is an acknowledgment and admission by the Defendant Montreat Presbyterian Church that its property is held in trust for PCUSA. It is specifically denied that the PCUSA or any other entity holds the property of the Defendant Montreat Presbyterian Church in trust. Except as herein admitted, the allegations are denied.

30. It is admitted that representatives of the former unincorporated Montreat Presbyterian Church and the Defendant Montreat Presbyterian Church have consistently informed representatives of the Presbytery that the Defendant Montreat Presbyterian Church asserts and claims all rights, title and interest in all property here in dispute and that no such property was or ever had been held in trust for PCUSA or any other entity. It is further admitted that the Defendant Montreat Presbyterian Church has refused to surrender its property to PCUSA or its affiliates. It is denied that the Defendant Montreat Presbyterian Church is the schismatic congregation. It is denied that that the Plaintiff church represented by Plaintiff trustees is the true church entitled to the property of the Defendant Montreat Presbyterian Church. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

31. It is specifically denied that the Defendant Montreat Presbyterian Church is schismatic. It is further specifically denied that any alleged property owned by the former unincorporated Montreat Presbyterian Church and/or by the Defendant Montreat Presbyterian Church is held, was held, or ever has been held in trust for the PCUSA or its affiliates. It is admitted that the Book of Order speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

32. It is admitted that by deed of conveyance dated August 26, 2007, the Defendant Trustees, pursuant to the direction of the congregation of the Defendant Montreat Presbyterian Church, conveyed the real and personal property as described in Exhibit C. It is further admitted that Exhibit C speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is admitted that the Defendant Montreat Presbyterian Church has at all times claimed ownership of all property here in dispute free of the alleged trust clause. It is specifically denied that the Defendant Montreat Presbyterian Church is schismatic. Except as herein admitted, the allegations are denied.

33. It is admitted that the Presbytery, acting on behalf of PCUSA, claimed return of the property of the Defendant Montreat Presbyterian Church. It is specifically denied that either the former unincorporated Montreat Presbyterian Church or the Defendant Montreat Presbyterian Church is the schismatic congregation. It is admitted that the Defendant Montreat Presbyterian Church has at all times rightfully claimed its property as its own. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

34. It is admitted that the document attached as Exhibit E is a document upon which the former unincorporated Montreat Presbyterian Church and the Defendant Montreat Presbyterian Church confirms its ownership of its property and its intention to continue to own its property. It is further admitted that Exhibit E attached to the Complaint speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. The Defendants lack sufficient information, knowledge and belief to answer the allegations as to when the Plaintiff Presbyterian claims it first had notice of Exhibit E. Except as herein admitted, the allegations are denied.

35. It is admitted that Exhibits B, D and E are attached to the Complaint and speak for themselves. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. The Defendants lack sufficient information, knowledge and belief as to when Exhibit E was received by the Presbytery. It is specifically denied that the church property of the Defendant Montreat Presbyterian Church is held in trust for PCUSA and/or FCUS. Except as herein admitted, the allegations are denied.

36. It is admitted that Mr. Steven T. Aceto, a member of the Defendant Montreat Presbyterian Church, prepared Exhibit E at the express direction of the then serving Session of the former unincorporated Montreat Presbyterian Church, who expressed their intent to Mr. Aceto that the property of the Montreat Presbyterian Church not be subjected to any denominational trust that would impair the ability of the particular church to freely own, hold and transfer its property and who prepared the recorded document accordingly. Except as herein admitted, the allegations are denied.

ANSWER TO FIRST CAUSE OF ACTION  
To Set Aside Deed of Conveyance of Real and Personal Property

37. The responses to paragraphs 1 through 36 are incorporated herein by reference as if herein fully set forth.

38. It is admitted that all or substantially all of the real and personal property of the Defendant Montreat Presbyterian Church was acquired after 1982. It is further admitted that Exhibit C attached to the Complaint speaks for itself. It is further admitted that the Book of Order speaks for itself, and The Book of Church Order speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

39. It is admitted that the Constitution speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is specifically denied that the property of the Defendant Montreat Presbyterian Church is held in trust by PCUSA or any other entity. Except as herein admitted, the allegations are denied.

40. It is admitted that Exhibit A speaks for itself and that Exhibit B speaks for itself and that Exhibits A and B were attached to the Complaint. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is specifically denied that any polity or terms of governance or any trust property clause of any entity has any effect upon the ownership of the property of the Defendant Montreat Presbyterian Church. Except as herein admitted, the allegations are denied.

41. Denied

42. Denied

43. Denied

ANSWER TO SECOND CAUSE OF ACTION  
Injunction and Order of Possession

44. The responses to paragraphs 1 through 43 are incorporated herein by reference as if herein fully set forth.

45. Denied.

46. Denied

ANSWER TO THIRD CAUSE OF ACTION  
Enjoin Illegal Use of Name

47. The responses to paragraphs 1 through 46 are incorporated herein by reference as if herein fully set forth.

48. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as specifically admitted herein, the Defendants lack sufficient information, knowledge and belief to answer the remaining allegations, and the same are, therefore, denied.

49. Based upon information and belief, it is admitted that the Town of Montreat is home to many retired ministers, missionaries and others of various faiths and denominational affiliation. Upon information and belief, it is denied that Montreat College is a PCUSA affiliated college. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as specifically admitted herein, the Defendants lack sufficient information, knowledge and belief to answer the remaining allegations, and the same are, therefore, denied.

50. It is admitted that the Town of Montreat is a municipality incorporated by act of the North Carolina State Legislature in 1967. It is expressly denied that the Town of Montreat is "hallowed" in the sense that there is any legal limitation of who might organize a church or what their denominational affiliation might be, or what that church might be called. It is expressly denied that the Plaintiff has any property interests in the name "Montreat" in connection with the name of any church or institution. Except as herein admitted, the allegations are denied.

51. To the extent that these allegations based on conjecture require a response, the Defendants lack sufficient information, knowledge and belief to answer the allegations, and the same are, therefore, denied.

52. It is admitted that the former unincorporated Montreat Presbyterian Church specifically conveyed to the Defendant Montreat Presbyterian Church the rights to the name "Montreat Presbyterian Church" by the Bill of Sale. Except as herein admitted, the allegations are denied.

53. Denied

ANSWER TO FOURTH CAUSE OF ACTION  
Breach of Fiduciary Duty

54. The responses to paragraphs 1 through 53 are incorporated herein by reference as if herein fully set forth.

55. It is admitted that at all times relevant to this action, the Defendant Trustees or their predecessors in office of the former unincorporated Montreat Presbyterian Church legally held title to the real and personal property of the particular Defendant Montreat Presbyterian Church and as Trustees had no discretion to act other than pursuant to the direction of the congregation of former unincorporated Montreat Presbyterian Church, an entity legally separate and distinct from any named Plaintiff and presently not a party to this action. Exhibit A, Exhibit B

and Exhibit C speak for themselves. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is expressly denied that any of the Defendant Trustees ever served as Trustee for the benefit of any named Plaintiff, whether express or implied, nor did any of their predecessors in office. Except as herein admitted, the allegations are denied.

56. The Book of Church Order (PCUS) speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. It is specifically denied that PCUS or any entity held or holds property of the Defendant Montreat Presbyterian Church in trust. Except as herein admitted, the allegations are denied.

57. Denied

58. NCGS Chapter 61 speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

59. It is admitted that Exhibit C speaks for itself. It is admitted that the Constitution of PCUS speaks for itself, that the Constitution of PCUSA speaks for itself, and that General Statutes Chapter 61 speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

60. Denied

61. Denied

62. Denied

63. Denied

64. Denied

ANSWER TO FIFTH CAUSE OF ACTION  
Actual or Constructive Fraud and Constructive Trust/Unjust Enrichment

65. The responses to paragraphs 1 through 64 are incorporated herein by reference as if herein fully set forth.

66. It is admitted that whatever services Mr. Steven Aceto rendered in connection with Exhibit E were rendered on behalf of the former unincorporated Montreat Presbyterian Church, not a party to this action, not on behalf of any named Plaintiff, and with no intent to deprive any named Plaintiff of their legal rights or property. It is admitted that Exhibit E speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as specifically admitted herein, the Defendants lack sufficient information, knowledge and belief to answer the allegations, and the same are, therefore, denied.

67. Denied

68. It is admitted that Exhibit D speaks for itself, and it is admitted that Exhibit B speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

69. Denied

70. It is admitted that Mr. Aceto as a member and/or elder of the Defendant Montreat Presbyterian Church and/or the former unincorporated Montreat Presbyterian Church has fully complied with his duties and responsibilities to the Defendant Montreat Presbyterian Church and the former unincorporated Montreat Presbyterian Church, and that Mr. Aceto has in all respects been fair and honest and has not personally benefited

from his actions on behalf of the Defendants or either of them or the former unincorporated Montreat Presbyterian Church. Except as herein admitted, the allegations are denied.

71. Denied

ANSWER TO SIXTH CAUSE OF ACTION  
Estoppel

72. The responses to paragraphs 1 through 71 are incorporated herein by reference as if herein fully set forth.

73. Denied

ANSWER TO SEVENTH CAUSE OF ACTION  
Declaratory Judgment

74. The responses to paragraphs 1 through 73 are incorporated herein by reference as if herein fully set forth.

75. It is not denied that the Plaintiffs purportedly claim an interest in the property of the Defendants. It is admitted that Exhibit E speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves. Except as herein admitted, the allegations are denied.

76. The allegation appears to state a legal conclusion, and as such, no response is required. To the extent that a response is required, if the Court determines that NCGS 1-253 applies to the issues in this case, the allegations are not denied. It is admitted that Exhibit E speaks for itself. As to any allegations which purportedly speak for or from written documents, such documents speak for themselves.

77. Denied

AND FOR A FURTHER ANSWER AND DEFENSE, the Defendants allege and say:

1. Montreat Presbyterian Church, a North Carolina nonprofit corporation, is the owner of its property.

a. Montreat Presbyterian Church, an unincorporated religious congregation organized and existing under Chapter 61 of North Carolina General Statutes by and through its trustees by deed dated the 26<sup>th</sup> day of August, 2007, recorded in Book 4454 at Page 1967, in the office of the Register of Deeds of Buncombe County, conveyed its real and personal property to Montreat Presbyterian Church, a North Carolina nonprofit corporation. Prior to the said transfer by the said deed, the duly selected trustees of the particular Montreat Presbyterian Church, an unincorporated religious congregation organized and existing under Chapter 61 of North Carolina General Statutes, were the owners of the real and personal property on behalf of the local congregation which is the subject of this action.

b. Neither the Defendant Montreat Presbyterian Church, the former unincorporated Montreat Presbyterian Church, nor any authorized person acting on their behalf at any time agreed that its property would be subjected to a trust on behalf of the Plaintiffs, the Presbyterian Church (USA), or any of them.

c. The real property and personal property of the Defendant Montreat Presbyterian Church is owned by the Defendant Montreat Presbyterian Church, free of any trust obligation to the Plaintiffs or the PCUSA.

d. Neither the Plaintiffs nor PCUSA nor anyone acting on their behalf paid for the real and personal property of the former Montreat Presbyterian Church or the Defendant Montreat Presbyterian Church.

e. There is a complete failure of any consideration for the alleged trust of the Plaintiffs or PCUSA or any of them as to the real and personal property of the Defendant Montreat Presbyterian Church.

f. The Defendant Montreat Presbyterian Church and the former unincorporated Montreat Presbyterian Church, this local church, paid for its property, and there is no valid or effective trust, expressed or implied, as to the property of the Montreat Presbyterian Church.

g. Neither the Plaintiffs nor PCUSA nor any other party can unilaterally impose a trust on the property of the Defendant Montreat Presbyterian Church, the former unincorporated Montreat Presbyterian Church, or the Defendants without their express agreement and consent thereto.

h. The congregation of the Defendant Montreat Presbyterian Church and the former unincorporated Montreat Presbyterian Church controls the disposition of its real and personal property.

i. The intent of the congregation of the former unincorporated Montreat Presbyterian Church and the Defendant Montreat Presbyterian Church has clearly been shown by the actions of the congregation, and at no time has there been any intent on behalf of the congregation of the former unincorporated Montreat Presbyterian Church and/or the Defendant Montreat Presbyterian Church to encumber its real and/or personal property in a trust relationship with the Presbyterian Church (USA), its predecessors, the Plaintiffs, or any other party other than its duly appointed trustees for the local congregation.

j. Chapter 61 of the North Carolina General Statutes provides for congregations within the state of North Carolina to appoint trustees for the local church or congregation to purchase, take and hold property, real and personal, in trust for such local church or congregation

k. North Carolina law provides that "The body appointing may remove such trustees or any of them and fill all vacancies caused by death or otherwise."

l. The property of the former unincorporated Montreat Presbyterian Church was held by trustees duly appointed by the local church or congregation and not by the denomination.

m. NCGS § 61-3 provides that the estate granted in properties used for churches or other houses of worship "shall be deemed and held to be absolutely vested, as between the parties thereto, in the trustees respectively of such churches...according to the intent expressed in the conveyance, gift grant or will. ..."

n. Prior to the establishment of the Presbyterian Church (USA), the former unincorporated Montreat Presbyterian Church was associated with the Presbyterian Church in the United States (PCUS), which provided for and allowed ownership of local church properties by the local churches, rather than the denomination.

o. Local church ownership of property of particular local churches was an issue at the time of and/or prior to the merger of the Presbyterian Church in the United States (PCUS) and the Presbyterian Church in the United States of America (UPCUSA). For that reason, an exception was provided which was drafted by the Joint Committee on Reunion in the Book of Order for the merged entity which made a permanent exception to the denomination ownership in Book of Order, Part 2, G-8-0700 and G-8-0701, which provided as follows:

*The provisions of this chapter shall apply to all particular churches of the Presbyterian Church (USA) except that any church which was not subject to a similar provision of the Constitution of the church of which it was a part, prior to the reunion of the Presbyterian Church in the United States and The United Presbyterian Church in the United States of America to form the Presbyterian Church (USA), shall be excused from the provision of this chapter if the congregation shall, within a period of eight years following the establishment of the Presbyterian Church (USA), vote to be exempt from such provision in a regularly called meeting and shall thereafter notify the presbytery of which it is a constituent church of such vote. The particular church voting to be so exempt shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the*

*establishment of the Presbyterian Church (USA). This paragraph may not be amended.*  
(emphasis added)

p. By way of explanation of the meaning of the foregoing exception provision, the Joint Committee on Presbyterian Union of both the PCUS (Southern church) and the UPCUSA (Northern church) provided information to the particular local churches such as Defendant's predecessor in connection with the merger. For instance, in "Highlights and Questions in Studying the Plan for Reunion," copyright date of 1982, the Joint Committee of both the PCUS and the UPCUSA which drafted the aforesaid exception provided at page 22 representations and guidance to the local churches as follows:

*Both denominations agree that congregations own their property, and that property must be used in a way that expresses the unity of the Church. But trust will be required not only while differing understandings are interpreted, but also for those former PCUS churches which elect to retain their traditional patterns of property ownership. Article 13 contains the provision that former PCUS Churches (including all churches in union Presbyteries,) may be dismissed with their property after they have experienced the fact of reunion and carried out their witness in the context of a reuniting Church. Chapter VIII of the reunion plan contains the provisions for PCUS churches which wish to remain in the reunited Church but hold title to their property according to traditional PCUS forms (G-8.0701). (emphasis added)*

q. Neither the former unincorporated Montreat Presbyterian Church nor the Defendant Montreat Presbyterian Church was ever subject to any trust clause in favor of the PCUS, the PCUSA, or any other entity prior to the reunion.

r. The explicit representations made on behalf of Plaintiffs and their predecessors by their authorizing denominations, the PCUSA and its predecessors, the PCUS and the UPCUSA, on behalf of themselves and their subordinate bodies herein set forth, are totally contrary to the trust and ownership claims now made by Plaintiffs, which representations were made with the intention that such representations and conduct be relied upon by Defendants and their predecessors in remaining a part of the reunited PCUSA. The Defendants and their predecessors did in fact rely upon such representations and conduct to remain affiliated and a part of the PCUSA, acquiring, improving and maintaining property at great cost and expense to the detriment and prejudice of Defendants and their predecessors. Further, Defendants had no means of ascertaining that the representations they relied upon were contrary to the position and claims Plaintiffs now make under the same documents until well after the detrimental actions taken by Defendants in reliance upon such representations.

s. The Presbyterian Church (USA) was established on or about June, 1983 with the reunion of PCUSA and UPCUSA pursuant to the aforesaid documents drafted by the Joint Committee on Reunion. Within the relevant eight years following the establishment of the Presbyterian Church (USA), the former unincorporated Montreat Presbyterian Church passed an appropriate resolution, which was recorded in the Office of the Register of Deeds of Buncombe County, North Carolina, in Deed Book 1611 at Page 156, June 1990, a copy of which is attached to the Complaint as Exhibit E.

t. The former unincorporated Montreat Presbyterian Church relying upon the aforesaid representations of the Plaintiffs and their predecessors adopted the following resolution to clearly express the intent to be free from ownership or control by the denomination with respect to its property in the following language appearing on the first page of Exhibit E:

*Further resolved, the effect of this action is that the Montreat Presbyterian Church, now and for the future, shall hold title to all of its property and reserve and affirm all of its rights to freely and fully exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the Presbyterian Church (USA).*

u. The deeds to the real property of the Montreat Presbyterian Church dated from 1995 through April 2005, show that the grantee for the church conveyances were to "Montreat Presbyterian Church, an unincorporated religious congregation, organized and existing pursuant to North Carolina General Statutes Chapter 61..." by and through its Trustees of the local congregation.

v. North Carolina law clearly provides for individual church ownership of property if such is the intent expressed by the church on the public records as provided in Chapter 61 of the North Carolina General Statutes. The former unincorporated Montreat Presbyterian Church by its resolution and attachments recorded in Deed Book 1611 at Page 156 in the Buncombe County Registry, clearly expressed such an intent. Each of the conveyances to the former unincorporated Montreat Presbyterian Church likewise express the intent that such conveyance was to the former unincorporated Montreat Presbyterian Church, acting by and through its Trustees appointed pursuant North Carolina law. The conveyance described in the deed attached as Exhibit C further shows the intent of the particular local congregation to own its own property. Further, the reference in the reported resolution to "all of its property" and the deed attached as Exhibit C to the Complaint includes all real and personal property as provided by North Carolina law. Further, the conveyance of the real and personal property of the former unincorporated Montreat Presbyterian Church to the Defendant Montreat Presbyterian Church further expresses the intent of the particular local congregation to own its own property, that it hold own its own property, and was able to convey its own property.

w. The real and personal property of the Defendant Montreat Presbyterian Church is owned and held by its congregation and not the denomination, PCUSA, or the Plaintiffs in trust, and the Plaintiffs and PCUSA have no ownership interest in the property of the Defendant Montreat Presbyterian Church. Likewise, the real and personal property of the former unincorporated Montreat Presbyterian Church was owned and held by its congregation through its duly elected Trustees and not by the denomination, PCUSA, or the Plaintiffs in trust. The Plaintiffs and the PCUSA had no ownership interest in the property of the former unincorporated Montreat Presbyterian Church and have no ownership interest in the property of the Defendant Montreat Presbyterian Church.

x. Neither the former unincorporated Montreat Presbyterian Church nor the Defendant Montreat Presbyterian Church was subject to any trust clause in favor of the Plaintiffs, the PCUSA, or any other entity. Prior to the merger of the PCUS and UPCUSA and after the merger, the denominations through their Joint Committee on Presbyterian Union and otherwise represented that the local congregations including the former unincorporated Montreat Presbyterian Church and the Defendant Montreat Presbyterian Church would continue to hold title to their property in the traditional PCUS forms and not subject to any trust.

y. By reason of the foregoing, the Plaintiffs are equitably estopped to now claim that Defendants and their predecessors are subject to the claims of ownership by the Plaintiffs in trust or otherwise.

2. The former unincorporated Montreat Presbyterian Church is legally distinct from the Plaintiff church of the same name and is legally distinct from the Defendant church of the same name, and the Plaintiff cannot prosecute a claim to the property of the Defendant Montreat Presbyterian Church as a successor in interest for reasons including the following:

a. There are two distinct legal entities in the succession of title to the property of the Defendant Montreat Presbyterian Church. One is an unincorporated Chapter 61 entity, and the other is an incorporated Chapter 55A entity, which said entities were formed pursuant to the provisions of the North Carolina General Statutes.

b. The original unincorporated Chapter 61 entity did not legally terminate, merge, dissolve or convert to any new entity.

c. The congregation of the former unincorporated Chapter 61 entity voted to compel its Trustees to convey the church property by deed and Bill of Sale to an entirely new Chapter 55A corporate entity in which all of the members of the unincorporated Chapter 61 entity automatically became members of the Chapter 55A entity, and all of the officers of the Chapter 61 entity automatically became the officers of the Chapter 55A entity because the organizing documents so provide.

d. The Plaintiffs were never members or Trustees of the unincorporated Chapter 61 entity, and the Plaintiffs were not Trustees of that entity.

e. There is no legal effect on the property of the Defendant Montreat Presbyterian Church merely because the Plaintiff church has decided to call itself the Montreat Presbyterian Church.

f. The Plaintiff church is not a continuing church, and the Plaintiffs cannot assert any rights as successors or beneficiaries of the original unincorporated Chapter 61 entity or as to the Trustees of the original unincorporated Chapter 61 entity. The Plaintiff church of the same name is a brand new entity, not capable of being a successor to anything because there is nothing in Chapter 61 that allows such a succession without an express conveyance from the Trustees authorized by the congregation, and no such authorization was given.

g. The property of the former unincorporated Chapter 61 entity was deeded with authority expressly provided to the Defendant Montreat Presbyterian Church which is a separate entity from the former unincorporated Chapter 61 entity.

h. The Plaintiffs have no ability to claim any rights through the former unincorporated Chapter 61 entity and certainly have no rights to claim through the Trustees of the unincorporated Chapter 61 entity who have no obligation whatsoever to the Plaintiffs.

i. The property of the former unincorporated Chapter 61 entity has been conveyed by deed and Bill of Sale, and the Plaintiffs have no ability to succeed to the rights of the former Chapter 61 entity.

3. If it is determined that there was an effective trust clause as to the property of the Defendant Montreat Presbyterian Church and/or the former unincorporated Montreat Presbyterian Church and the Plaintiffs and/or the PCUSA, which is specifically denied, any such purported trust was a revocable trust. Clearly, the Defendants and/or the former unincorporated Montreat Presbyterian Church had the right to revoke any such trust. If a party is said to have created a trust, that party can certainly revoke such a trust. Any such trust is not unilateral, and the Defendants and/or the former unincorporated Montreat Presbyterian Church as a party to any such trust has a right to revoke any such trust. The actions of the former unincorporated Montreat Presbyterian Church and/or the Defendants clearly show an intent to revoke any such purported trust and clearly demonstrate that the local congregation intended to own its own property subject to no trust relationship with the Plaintiffs, the PCUSA or any other entity.

4. The Plaintiff church is not the continuing church, and, in fact, the Plaintiff church is a new church.

5. It may be true that the former unincorporated Montreat Presbyterian Church previously had an ecclesiastical or spiritual relationship with the Presbytery of Western North Carolina, Inc. and with the Presbyterian Church (USA). However, this relationship was ecclesiastical or spiritual in nature, and neither the former unincorporated Montreat Presbyterian Church nor the Defendant Montreat Presbyterian Church had or has a property relationship with the Presbytery of Western North Carolina, Inc. and/or the Presbyterian Church (USA).

6. The Plaintiffs are requesting that this Court make decisions relating to religious, ecclesiastical or spiritual matters, and this Court should decline to become involved in such religious, ecclesiastical or spiritual matters, and the relief requested by the Plaintiffs should be denied.

7. The claims of the Plaintiffs are barred by the doctrine of laches. The Plaintiffs did not commence this action within a reasonable time and are guilty of unconscionable delay which has caused the Defendants and the former unincorporated Montreat Presbyterian Church to change their position and condition with regard to matters including property matters by expending substantial sums to purchase, improve and maintain their real and personal properties and otherwise have been injured and damaged.

8. The claims of the Plaintiffs are barred by the doctrine of unclean hands and inequitable conduct of the Plaintiffs and PCUSA and prevent the Plaintiffs from obtaining any recovery from the Defendants.

9. The Plaintiffs are estopped to assert the claims of trust and/or ownership of property alleged in the Complaint and are estopped from seeking the requested relief from the Defendants by the actions and conduct herein alleged.

a. The conduct on the part of the Plaintiffs, the PCUSA or its predecessors amounts representations and/or concealment of material facts which are reasonably calculated to convey the impression that the facts were in fact different and inconsistent with the position the Plaintiffs now attempt to assert.

b. There was an expectation and/or intention on the part of the Plaintiffs, the PCUSA or its predecessors that the Defendants and/or the former unincorporated Montreat Presbyterian Church would take action based upon such conduct, and such conduct was calculated to induce a reasonably prudent person to believe that such conduct was expected or intended to be relied upon and in fact acted upon.

c. The Defendants are advised, informed and believe that the Plaintiffs acting under the authority of the PCUSA and its predecessors had actual or constructive knowledge of the potential position now taken by the Plaintiffs.

d. The Defendants and the former unincorporated Montreat Presbyterian Church did not have knowledge and did not have the means of obtaining the knowledge of the position now asserted by the Plaintiffs and/or the PCUSA or its predecessors at any time before the detrimental reliance thereon by the Defendants. The Defendants and the former unincorporated Montreat Presbyterian Church relied upon the conduct of the Plaintiffs and the PCUSA or its predecessors and thereafter changed their position to the detriment of Defendants and the former unincorporated Montreat Presbyterian Church.

e. If there is a fiduciary relationship between the parties, then, clearly, the Plaintiff Presbytery and the PCUSA had a duty to the former unincorporated Montreat Presbyterian Church and the Defendants to be at all times relevant to this action open, truthful and honest. Therefore, due to the actions of the Plaintiff Presbytery and the PCUSA and its predecessors, the Plaintiffs are estopped to seek any relief from the Defendants.

10. The Plaintiffs and PCUSA by action and inaction have waived through their conduct or operation of law any claim they might have against the Defendants.

11. The claims of the Plaintiffs are barred by the applicable statute of limitations which is pled as a bar to the claims of the Plaintiffs.

12. The claims of the Plaintiffs are not supported by valid consideration, and the failure of consideration bars any recovery by the Plaintiffs.

13. Any and all claims of the Plaintiffs or PCUSA or any other entity for which the Plaintiffs seek relief are barred by the statute of frauds in that there is no document filed of record and in fact no document signed by the Defendants, the former unincorporated Montreat Presbyterian Church, or anyone on behalf of the Defendants or the former unincorporated Montreat Presbyterian Church agreeing that the PCUSA or the Plaintiffs have any interest in the property of the former unincorporated Montreat Presbyterian Church and/or the Defendants.

14. Neither the Defendants nor the former unincorporated Montreat Presbyterian Church have ever agreed in any legally cognizable form to allow the Plaintiffs, the denomination, the PCUSA to hold in trust any ownership interest in the property of the former unincorporated Montreat Presbyterian Church and/or the property of the Defendants.

15. The former unincorporated Montreat Presbyterian Church specifically conveyed to the Defendant Montreat Presbyterian Church the rights to the name "Montreat Presbyterian Church" pursuant to the Bill of Sale.

16. All services rendered by Mr. Steven Aceto in connection with Exhibit E and other matters alleged in the Complaint and otherwise were rendered on behalf of the former unincorporated Montreat Presbyterian Church, not a party to this action, and no such services were rendered by Mr. Steven Aceto on behalf of any named

Plaintiff. The services rendered by Mr. Steven Aceto were not with any intent to deprive any named Plaintiff of their legal rights or property.

17. There has been no reliance to their detriment by the Plaintiffs as to the actions of the former unincorporated Montreat Presbyterian Church or the Defendants, and the Plaintiffs are entitled to no relief from the Defendants.

18. If the Plaintiffs are allowed to take the property of the Defendant Montreat Presbyterian Church, the Plaintiffs would be unjustly enriched.

AND FOR A SECOND FURTHER ANSWER AND DEFENSE AS TO E.A. ANDREWS, JR., JESSIE G. BARKER AND NATALIE W. SCHERMERHORN, INDIVIDUALLY AND AS TRUSTEES OF THE MONTREAT PRESBYTERIAN CHURCH, AN UNINCORPORATED RELIGIOUS CONGREGATION ORGANIZED AND EXISTING UNDER NCGS CHAPTER 61, FOR IMMUNITY, the Defendants allege and say:

1. The trustees of the former unincorporated Montreat Presbyterian Church had no discretion as to decisions relating to property of the former unincorporated Montreat Presbyterian Church, and any actions taken by the trustees of the former unincorporated Montreat Presbyterian Church are those actions made by them in good faith as directed by and compelled by the congregation of the former unincorporated Montreat Presbyterian Church.

2. The Defendant Trustees had a duty to the former unincorporated Montreat Presbyterian Church and to its local congregation and had no duty to the Plaintiffs, the PCUSA, or any other entity.

3. The Trustees are entitled to immunity pursuant to NCGS § 61-1 and otherwise, and, therefore, the individual Defendants should not be parties to this action, and the Plaintiffs are not entitled to recovery from the individual Defendants, E.A. Andrews, Jr., Jessie G. Barker, and Natalie W. Schermerhorn, individually or as Trustees.

WHEREFORE, the Defendants, having answered the Complaint, respectfully pray as follows:

1. That E. A. Andrews, Jr. Jessie G. Barker and Natalie W. Schermerhorn, individually, and as Trustees of the Montreat Presbyterian Church, an unincorporated religious congregation organized and existing under NCGS Chapter 61, be declared immune to Plaintiffs' claims and dismissed as parties to this action.

2. That the Plaintiffs have and recover nothing of the Defendants.

3. For trial by jury.

4. That the Defendants recover their costs incurred herein, including reasonable attorney fees.

5. For such other and further relief as the Court may deem just and property.

This, the 11<sup>th</sup> day of March, 2009.

LONG, PARKER, WARREN, ANDERSON & PAYNE, P.A.  
P. O. Box 7216  
Asheville, NC 28802 828-258-2296

BY

  
ROBERT B. LONG, JR.

State Bar No. 2787

  
WILLIAM A. PARKER

State Bar No. 6322

STATE OF NORTH CAROLINA

CERTIFICATE OF SERVICE

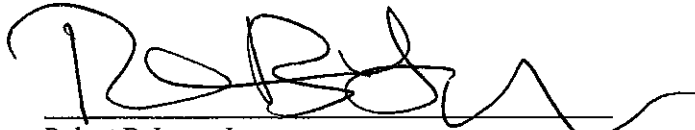
COUNTY OF BUNCOMBE

This is to certify that the undersigned has this day served counsel for the opposing party in the foregoing matter with a copy of the foregoing Answer by depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon, or by delivering a copy of same to the office of said counsel, at the following address:

John W. Mason, Esq.  
Roberts & Stevens, P.A.  
P. O. Box 7647  
Asheville, NC 28802

C. Frank Goldsmith, Esq.  
Goldsmith, Goldsmith and Dews, P.A.  
P. O. Box 1107  
Marion, NC 28752

This, the 11th day of March, 2009.



Robert B. Long, Jr.