

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
Court File No. C5-58-302795

In the Matter of the Trust Created by
Article VII of the Last Will and Testament
of CHARLES K. BLANDIN, Deceased.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER ALLOWING
ACCOUNTS AND OTHER RELIEF**

The above-titled matter came on for hearing, pursuant to notice duly given, before the undersigned, one of the Judges of this Court, on November 20, 2009, on the Petition of Wells Fargo Bank, N.A. ("Wells Fargo") and Bruce W. Stender dated November 5, 2009, for Allowance of Accounts and Other Relief.

Darlene M. Cobian and Neal T. Bueth of Briggs and Morgan, P.A., appeared for Petitioners. Julie L. Krieger of Wells Fargo, Bruce W. Stender, James Hoolihan, President of the Charles K. Blandin Foundation ("Blandin Foundation"), and Marian Barcus, Chair of the Foundation's Board of Directors, were present and testified in support of the Trustees' Petition. Gene Radecki, Chair of the Blandin Foundation Investment Committee and Cam Johnson, Lowry Hill Investment Advisor were also present.

Assistant Attorney General Shannon Harmon appeared on behalf of the State of Minnesota, Office of the Attorney General.

Special Master Peter Ulmen was present.

Upon the evidence adduced and all the files and proceedings herein, the Court makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. This Trust is subject to the *in rem* jurisdiction of the Court pursuant to Section 501B.24 of the Minnesota Statutes and this Petition is authorized by Section 501B.16 of the Minnesota Statutes.

2. This matter is brought on for hearing pursuant to Order for Hearing of this Court dated October 26, 2009. Notice of Hearing was published in the St. Paul Legal Ledger on October 29, 2009. Notice of Hearing was published in the Grand Rapids Herald-Review on November 3, 2009. Mailed notice was given to the Office of the Minnesota Attorney General, to the Charles K. Blandin Foundation and Special Master Peter Ulmen.

3. Petitioners are the duly qualified and acting trustees of this trust. The appointment of Petitioner, then known as Northwestern National Bank of St. Paul, was confirmed by Order of this Court dated April 23, 1958. Petitioner Bruce W. Stender was appointed a co-trustee to succeed James R. Oppenheimer by Order of this Court dated April 9, 1997.

4. Charles K. Blandin created this trust by his Last Will and Testament which consists of his Will dated January 18, 1949, and Codicils thereto dated December 17, 1951, October 1, 1952 and October 19, 1953. Charles K. Blandin died February 9, 1958, a resident of Ramsey County, Minnesota. His Will and Codicils were duly admitted to probate in Ramsey County. Probate Court File No. 97521. The Will and Codicils are sometimes referred to as the Trust or the trust instrument. Three trusts created under this trust instrument are subject to the jurisdiction of this Court:

- The Trust Created Under Article III of the Codicil dated October 19, 1953, of the Will, sometimes referred to as the Cemetery Trust (D. Ct. File No. CX-58-302792).
- The Trust Created Under Article VI of the Will, sometimes referred to as the Family Trust (D. Ct. File No. C3-58-302794).
- The Trust Created Under Article VII of the Will, sometimes referred to as the Residuary Trust and/or the Charitable Trust (D. Ct. File No. C5-58-302795).

Petitioners filed simultaneously with respect to all three trusts.

5. Article VII of the trust provides in pertinent part:

* * *

The net income shall be paid in quarter-yearly installments to the Charles K. Blandin Foundation, a charitable corporation organized under the laws of Minnesota, to be expended by said corporation solely within this State.

* * *

6. This Trust is a private foundation as described in Section 509 of the Internal Revenue Code of 1986, as amended, (the Code) and Section 501B.32 of the Minnesota Statutes. As such, the Trust is required by Section 4942 of the Code to make annual distributions based upon five percent (5%) of the value of its assets, less certain expenses. This is the Trust's minimum distribution amount and this distribution amount generally exceeds the net income of the Trust. By Order of this Court dated November 10, 1988, the Court directed the trustees to pay annually to the

Charles K. Blandin Foundation the Trust's "distributable amount" as determined in accordance with Section 4942 of the Code. To date, the trustees have done so.

7. The Charles K. Blandin Foundation (the Foundation) is also a private foundation as described in Section 509 of the Code and Section 501B.32 of the Minnesota Statutes. The Foundation uses the amounts received by this Trust to administer programs and make additional distributions to other charities. In this connection, Article X of the Will of Charles K. Blandin contains specific directions regarding the Charles K. Blandin Foundation, including its corporate governance and its grant-making policy. By Order of this Court dated October 25, 1990, this Court ruled:

That the provision of Article X of the Will of Charles K. Blandin that requires the income of the Trust to be "of a character beneficial to the residents of" Grand Rapids, Minnesota, and its vicinity does not restrict the Foundation to supporting activities and programs solely in the Grand Rapids geographical area, and the Foundation may expend funds received from the above named Trust in such manner as the Foundation Board of Trustees deems advisable in support of activities and programs within the State of Minnesota.

8. By Order of this Court dated December 21, 2000, the Court ruled as follows:

In keeping with the intent of Charles K. Blandin, the Blandin Foundation's perpetual and primary responsibility is to distribute its funds to meet the reasonable needs of the Grand Rapids area. The distribution of funds to meet the reasonable needs of the Grand Rapids area is in the discretion of the Trustees. The Court's Order of October 25, 1990 recognized the changed circumstances of the Trust during the past 50 years, including the increase in the Blandin Trust assets. Subject to its responsibility as described above, the Foundation may distribute funds to meet the needs, in the discretion of the Trustees, of the Minnesota communities outside the Grand Rapids area.

9. On December 17, 2003, this court entered a Stipulation and Order which provides at Paragraph III:

In keeping with the intent of Charles K. Blandin and the Court's December 21, 2000 Order, the Blandin Foundation's perpetual and primary responsibility is to distribute its funds to meet the reasonable needs of the Grand Rapids area. The parties and Objectors agree that the Foundation shall satisfy its "perpetual and primary responsibility ... to distribute its funds to meet the reasonable needs of the Grand Rapids area" by meeting the following criteria:

(a) The Grand Rapids area shall mean the area contained on [an] attached map and so labeled. The area on the map is Itasca County, Minnesota, and Hill City, Remer, Blackduck, and Northome, Minnesota.

(b) The Foundation shall distribute an average of at least fifty-five (55) percent of all grants to benefit the Grand Rapids area during rolling six year periods. The first rolling six year period begins January 1, 2003 and continues until December 31, 2008, the second begins January 1, 2004 and continues until December 31, 2009, and so on.

(c) For purposes of this Stipulation and Order, the grants shall be accounted for on a cash basis.

(d) Grants mean all distributions to persons and entities for the benefit of the Grand Rapids areas, including scholarships to students who have graduated from schools within the Grand Rapids area.

(e) Nothing herein shall prohibit the Foundation from making additional distributions or spending additional funds within the Grand Rapids area.

The court reserves the right to review whether the Foundation is still fulfilling its perpetual and primary responsibility to meet the reasonable needs of the Grand Rapids area under this Paragraph if there are significant changes to the Foundation's grantmaking and charitable distribution practices in the future.

10. Paragraph V of the Stipulation and Order dated December 17, 2003 states "that the Foundation does not object to and the Attorney General's Office recommends, that the Court appoint a special master, pursuant to Minn. R. Civ. P. 53.01, whose reasonable fees will be paid by the Residuary Trust, to monitor compliance with Paragraph III of [the] Stipulation and Order and any other resulting Orders." By Order dated January 19, 2004, this Court appointed a special master.

11. The funds paid to the Foundation are administered in accordance with the terms of the Trust and this Court's Orders dated October 25, 1990 and December 21, 2000, and Stipulation and Order dated December 17, 2003. Specifically, in fulfillment of Paragraph III(b) of the Stipulation and Order dated December 17, 2003, the Foundation has distributed an average of at least fifty-five percent (55%) of all grants to benefit the Grand Rapids area during the first rolling six-year period beginning January 1, 2003, and ending December 31, 2008.

12. Bruce W. Stender is a member of the Foundation's Board of Trustees. Wells Fargo is the fiscal agent for the separate assets of the Foundation and is compensated for such services.

13. The accounts of the trustees for the period from inception of the Trust through December 31, 2005 have previously been approved. Pursuant to Orders of this Court in previous proceedings herein, the trustees have invested portions of the Trust assets in separate funds or with specialized investments advisors who are paid investment advisory fees. The trustees have filed separate accounts for each such fund or segregated asset for each of the years 2006, 2007 and 2008. The account for the period ended December 31, 2008 shows the following assets:

<u>Wells Fargo Acct. No.</u>	<u>Fund Name</u>	<u>12/31/08 Value</u>
11596200	Large Cap Equities – Lowry Hill	\$55,407,329.52
11596201	Small Cap – Lowry Hill	\$10,862,571.19
11596202	Cash account	\$386,305.87
11596203	Tocqueville	\$9,660,106.91
11596204	Large Cap Value - Barclays Index	\$11,861,531.05
11596205	Alternative Investments	\$87,153,113.30
11596206	International - Sprucegrove	\$20,975,147.59
11596207	International - Lowry Hill	\$29,129,398.16
11596208	Large Cap Value - Pzena	\$7,754,537.95
11596209	Midcap	\$4,007,759.36
11596210	Fixed Income Investments	\$46,851,016.07
11596211	Reinhart & Mahoney	\$7,683,681.79
11596212	Time Square	\$2,441,773.20
TOTAL		<u>\$294,174,271.96</u>

Each of said accounts is full, true and correct.

14. As a private foundation under Internal Revenue Code Sections 501(c)(3) and 509(a), the Trust is subject to a two percent (2%) excise tax on its net investment income. Net investment income is the amount by which gross investment income and net capital gains exceed allowable investment deductions. This tax may be reduced to one percent (1%) if the Trust's current year distribution exceeds the 5 year historical average payout percentage.

15. In December of each year, the Trustees estimate and distribute the amount of increased qualifying distributions needed to obtain this reduced excise tax rate of one percent (1%). The calculation to determine whether the one percent (1%) rate applies requires the Trustees to average the adjusted qualified distributions for the five taxable years preceding the taxable year, plus the estimated excise tax or one percent (1%) of the estimated net investment income for the current taxable year.

16. During the years 2006, 2007, and 2008, the trustees made the required distribution payments to the Charles K. Blandin Foundation as follows:

<u>Distributions</u>	<u>5% Minimum</u>	<u>1% tax Minimum</u>	<u>Actual Distribution</u>
2006	\$17,275,943	\$18,527,822	\$18,886,921
2007	\$19,261,425	\$20,212,996	\$20,239,725
2008 (estimated)	\$17,535,739	\$17,683,563	\$17,727,822

17. The terms of the Trust provided in part in Article VIII of the Trust are that: "The trustees shall have reasonable compensation for services rendered as such, the same to be paid out of income or principal, [as said trustees,] in their discretion, deem proper and as may be approved by the court." By Order of this Court dated December 21, 2000, Wells Fargo Bank, N.A. is to be paid annual fees according to the following schedule until further Order of the Court:

- \$7.50 per \$1,000 on the first \$1,000,000;
- \$5.50 per \$1,000 on the next \$2,000,000;
- \$3.00 per \$1,000 on the balance in excess of \$3,000,000;
- such fees to be computed upon the average of the monthly market values of the trust assets over a twelve-month period.

The outside investment advisers and consultants are paid fees in addition to the corporate and individual trustee fees. The fees paid Wells Fargo Bank, N.A., as disclosed in the accounts for the years commencing January 1, 2006 through December 31, 2008, have been computed upon the foregoing basis. Any overcharge or undercharge as a result of the above calculations is determined at year end and is properly charged or refunded to the account in the following year.

18. The co-trustee, Bruce W. Stender, is paid an annual fee of \$36,000 authorized by Order of this Court dated December 20, 2000. Since his appointment in 1997, Mr. Stender's duties and responsibilities as a co-trustee continue to be substantial due to the complexity of the investment policies and guidelines implemented in managing the trust assets. Until further Order of this Court, the trustee's fee for his services continues to be \$36,000.

19. This Trust and the Charles K. Blandin Foundation are both "charitable trusts" described in Minnesota Statutes § 501B.35 and both are subject to the registration and reporting requirements of Minnesota Statutes § 501B.37 and § 501B.38. Both are in full compliance with such requirements. Notice of this proceeding is to be given to the Attorney General as required by Section 501B.41, subd. 2, of the Minnesota Statutes. Other than the Attorney General and the Trustees of the Trust, the only other party in interest is:

Charles K. Blandin Foundation
100 Pokegama Avenue North
Grand Rapids, Minnesota 55744

It further appearing to the Court as:

CONCLUSIONS OF LAW

That Petitioners are entitled to the Order set forth below,


NOW THEREFORE, upon motion of Briggs and Morgan, attorneys for Petitioners,

IT IS ORDERED:

- 1) The Trustees' accounts for period commencing January 1, 2006 and ending December 31, 2008 are settled, approved and allowed, and the annual payment of the Trust's distributable amount to the Charles K. Blandin Foundation and the Foundation's subsequent distribution of such payments pursuant to this Court's Orders. In fulfillment of Paragraph III(b) of the Stipulation and Order dated December 17, 2003, the Foundation has distributed an average of at least fifty-five percent (55%) of all grants to benefit the Grand Rapids area during the first rolling six-year period beginning January 1, 2003, and ending December 31, 2008.
- 2) The fee schedule for the fees of Wells Fargo Bank, N.A., for its custodial, supervisory and investment services as Trustee is continued until further order of this Court.
- 3) The annual fee of the individual trustee of \$36,000 per year, effective January 1, 2009, is continued until further order of this Court.

4) The Trustees are directed to pay to Briggs and Morgan, P.A., its attorneys, \$ 16,500 for legal services rendered to the trustees in this proceeding and \$ 650⁰⁰ for disbursements. These are to be charged one-half to income and one-half to principal of this trust.

Dated: 11.20, 2009



Judge Margaret M. Marrinan