

## Copyright Philadelphia Church of God

*The PCG now owns Mystery of the Ages and 18 other works of Herbert W. Armstrong. Here is a detailed account of how it all came about.*

By Stephen Flurry

Worldwide Church of God attorneys have asked us numerous times over the last six years, "Why didn't PCG just ask the Worldwide Church of God for permission to print *Mystery of the Ages* in 1996 before going ahead and doing it?" (In actuality, some of our members did try, *unsuccessfully*, to obtain permission from WCG to reproduce Mr. Armstrong's writings.)

Right after we started distributing *Mystery of the Ages*, WCG's in-house lawyer, Ralph Helge, threatened litigation in a letter to Gerald Flurry; he wrote, "We would appreciate you advising us by what authority you are, *without the permission of the Church*, copying and publishing [*Mystery of the Ages*]?" (Jan. 21, 1997). Three weeks later, on February 10, the WCG filed suit against PCG for what it felt to be copyright infringement.

Of course, anyone associated with the Church of God understood why few were willing to even make such a request for permission—*because any such attempt would have been hopelessly futile*. We in the PCG knew it—and so did WCG officials. But within the sphere of court proceedings, the WCG gave the impression before judges that it would have objectively considered, *and possibly granted*, any such request—even from the Philadelphia Church of God; a church started by a man who was *disfellowshipped and marked from the Worldwide Church of God by Joseph Tkach Jr.*

Indeed, on September 25, 1997, inside Judge Letts's chambers, Ralph Helge exclaimed, "We've never had any intention or decision to not publish [*Mystery of the Ages*]!" That summer, however, WCG's pastor general, Joseph Tkach Jr., had made this statement in his book *Transformed By Truth*: "In February 1997 we filed suit against the Philadelphia Church of God ... to block republication of *Mystery of the Ages* .... We feel it is our Christian duty to keep this book out of print ... because we believe Mr. Armstrong's doctrinal errors are better left out of circulation" (p. 203).

Tkach's statement put WCG in a difficult position from the start of the lawsuit. How could they convince a judge or jury that they weren't really using their copyrights to suppress Mr. Armstrong's writings when, in fact, their own pastor general—who happens to wield absolute power in the church—says it is his "Christian duty" to keep these works out of print?

In large part, this is why, in mid-1998, a federal district judge ruled in favor of PCG's distribution of *Mystery of the Ages*. That judge concluded that the PCG's dissemination of the work was a "fair use" under the copyright act. The book was, after all, out of print—and its owner had vowed to permanently keep its "doctrinal errors" out of circulation.

WCG protested this was wrong. It revealed, on the eve of the district judge's summary judgment ruling, that it just happened to have plans to distribute *Mystery of the Ages* after all. Apparently, there had been "discussions" about printing an "annotated version" of the book all along! It was to be a critique of the original text, exposing all of its doctrinal "errors."

In September 2000, the Ninth Circuit Court of Appeals reversed the lower court's fair use ruling—albeit in a 2-to-1 split decision. The court's reversal, in large part, rested on its conclusion that WCG "planned an annotation" of *Mystery of the Ages*.

In the meantime, PCG had included with its answer to WCG's complaint an affirmative claim for relief of its own. Specifically, PCG claimed that copyright's "fair use" doctrine and the Religious Freedom Restoration Act protected PCG's right to distribute free of charge 18 *other works* by Mr. Armstrong. After the Ninth Circuit decision, of course, WCG argued that the ruling should apply across the board to our counterclaim as well. But since WCG won the appeal on the strength of its annotation plans for *Mystery of the Ages*, we argued: Do you now also have annotation plans for *The Incredible Human Potential?* What about *The Missing Dimension in Sex?* *The United States and Britain in Prophecy?*

The WCG's request for summary judgment on the counterclaim was denied in November 2001.

What this meant was that, as the WCG pressed forward in its damages trial over our copyright "infringement" of *Mystery of the Ages*, we pressed forward with our counterclaim seeking the right to distribute these other 18 works by Mr. Armstrong.

### **First Talk of Settlement**

After the Ninth Circuit's decision, the PCG immediately appealed to the Supreme Court. On April 2, 2001, the highest court in the land opted not to hear our case and to let the Ninth Circuit's ruling stand. Even though the chances for getting the Supreme Court's attention are slim (they hear less than 1 percent of the petitions they receive), we still held out hope that they would reconsider our request once the damages trial concluded. (The Supreme Court generally does not hear cases that are not totally finished. In our lawsuit, while the Ninth Circuit had ruled in favor of WCG, the district court had yet to award them damages for copyright infringement and had not resolved our counterclaim.)

By mid-2001, on the surface, it seemed that we were backed into a corner—left with little choice but to vigorously fight against what we felt to be an unjust ruling. Yet, on the other side, the WCG was waking to the fact that, in order to prevail on all the merits of their case—whether in the damages trial or with respect to the counterclaim—THEY HAD TO, in some form, *make Mr. Armstrong's works available to the public*.

But, as Tkach's "Christian duty" comment made clear, they despised these teachings. They wanted nothing whatever to do with Mr. Armstrong's works. They had already asked their supporters to forgive them for the heretical views of years gone by. They had since come out of the "darkness" of Armstrongism and into the "glorious light of the gospel."

And now they had to make these works available?

By the end of summer 2001, the WCG stated in court filings that it would have objectively considered any offer we might have made to license the works of Mr. Armstrong prior to our printing them in 1997. They also suggested that they would—even then—seriously consider any bona fide offer from the PCG. Furthermore, they assured us (and the court) that when Tkach Jr. said he had a "Christian duty" to keep Mr. Armstrong's works out of print, he was *not* speaking for the WCG, but rather espousing his own "personal" views.

On October 19, 2001, matters took yet another turn when Matthew Morgan, secretary of WCG's Board of Directors, wrote to Gerald Flurry. In his letter Morgan explained that once the PCG began distributing MOA in 1997, WCG suspended all considerations regarding "how it could best utilize its copyright assets" (MOA was now an "asset"). But since the lawsuit had now been "resolved in favor" of WCG (with the Ninth Circuit's decision), WCG's Board had now decided what to do.

They moved forward with their annotated *Mystery* plans, right? Wrong—they now intended to turn to the never-before-utilized world of "e-publishing." And they were not going to e-publish *Mystery of the Ages*; they were not going to e-publish everything that Mr. Armstrong had ever written; they were just going to e-publish (shockingly) *the other 18 works on our counterclaim*—the only ones that had *not* been resolved in court!

Are you following these shenanigans? They told the courts they had grandiose plans for "annotating" or republishing *Mystery*. Then, to excuse the fact that these plans never materialized, they said they had been put "on hold" until litigation had been resolved in their favor. And once that resolution came (for *Mystery*), they told the courts about their grandiose plans, *not* for *Mystery*, but for *the 18 works* that happened to be the same exact titles we were seeking in our counterclaim! (They later added *Mystery of the Ages* to their e-publishing scheme.)

Getting back to Morgan's letter, initially the whole e-publishing scheme hinged on the following WCG proposal: that the PCG *would pay all of the WCG's costs* for publishing the works *and withdraw its counterclaim*. All the while, WCG would still be able to claim damages over the

*Mystery of the Ages* infringement. And because they were "publishing" the books on the Web, WCG could withdraw its consent and shelve the books again the moment the case ended.

It was an absurd "offer"—one they knew we would ignore.

On October 31, 2001, WCG attorney Allan Browne wrote to our lead attorney, "PCG contends that [WCG] is attempting to suppress the works and that it would be futile for PCG to request a license of the 18 works. We therefore must insist that all communications concerning WCG's offer be presented to the Court." He concluded by insisting that the PCG make a "direct, immediate, and unequivocal response to the WCG's solicitation."

### **Our First Offer**

By early spring 2002, PCG decided it was time to call WCG's bluff. After conducting our own investigation at headquarters to determine from others in the publishing industry what a fair offer would be, we put WCG to the test of their willingness to consider an offer from PCG "in good faith."

My dad drafted a letter to Matthew Morgan on March 14. In it, we made the long-awaited "request" to print and distribute *Mystery of the Ages* and the 18 works we were seeking in our counterclaim. He mentioned to Morgan that Tkach Jr. had vowed in 1997 to keep these works out of print because of his "Christian duty." And yet, he continued, the WCG had curiously made recent representations before the court indicating a willingness to license the works. He reminded Morgan of Mr. Armstrong's lifelong policy of giving away literature at no cost to the recipient. Nevertheless, "based on the WCG's recent representations to the court, we are making an offer in good faith to license these works."

We offered to pay the WCG a royalty of 10 cents for every booklet we distributed, 25 cents per book and 50 cents for each correspondence course sent out. My dad concluded the letter by saying, "WCG recently made an 'offer' to have PCG underwrite the expense of so-called 'e-publishing' most of these works. Aside from not being a license to PCG at all, this 'offer' suffered from numerous problems, among them that WCG apparently could withdraw the works from circulation immediately upon the conclusion of the court case between our two churches. WCG's previously announced 'plan' to produce an 'annotated' version of *Mystery of the Ages*—which by all appearances was created solely to gain a litigation advantage and (to our knowledge) has never been pursued—informs our concern in this regard. This concern is reinforced by, among other things, the facts that, outside the court case, neither Mr. Tkach nor anyone else has renounced WCG's avowed 'Christian duty' to keep Mr. Armstrong's works out of print; and that WCG does not (to our knowledge) 'e-publish' any other work in which it claims to hold a copyright. I look forward to receiving your response to PCG's offer to license these works."

In all the posturing WCG had made before the court—acting as if they were more than happy to license—they had actually *never even made an offer to license*. And NOW THE PCG HAD.

Not surprisingly, here is how Matthew Morgan responded on April 8: "As an initial matter, Mr. Flurry, with all due respect, I feel it is necessary to mention that your letter, after 12 years of silence, is belated and fraught with self-serving comments. Its obvious purpose is to gain some type of legal advantage. Nevertheless, we will afford the courtesy of a response regarding your inquiry about a license. So there is no misunderstanding, and although we do not address each one of your self-serving comments, they should be considered as denied."

The bottom line, however, is this: They are the ones who brought the subject of licensing before the Court, even though they technically never offered one. They are the ones who tried to gain the upper hand in litigation. And no matter how "belated" our offer might have been, it was, nevertheless, a reasonable offer. And they flatly rejected it out of hand.

Morgan went on to explain how "valuable" Mr. Armstrong's writings were to the WCG, which is why they were now moving forward on the e-publishing front. "Therefore," Morgan wrote, "no need exists to engage in complicated negotiations over the terms of a license. Your church will now be able to purchase as many legal copies of the 19 works as it desires and finds necessary to fulfill all its *alleged* spiritual needs."

He failed to mention what we later found out—that all of these "available" works would include an offensive preface prepared by WCG's Michael Feazell.

Morgan concluded by saying, "[T]he WCG is extremely pleased that its decision to publish, not only serves as the best means for the Church to capitalize on its literary copyrighted assets, but also has the additional benefit of fulfilling your church's alleged spiritual needs as well." Yet the preface to those 19 works concludes with this statement: "The material below is copyrighted and may not be reproduced in any form *without this entire preface* and without written permission from the Worldwide Church of God."

Due to the "additional benefit" of the WCG's "good faith" e-publishing offer, we could now direct prospective members, who might know nothing about Herbert Armstrong, to download a copy of *Mystery of the Ages* (at a substantial cost) with a 1,500-word preface denouncing the author as an uneducated hack who taught heretical doctrines and wielded dictatorial control over the Worldwide Church of God.

We failed to see how this would truly benefit the spiritual needs of our church.

### **Deposition Warfare**

As one would expect, WCG did not seriously consider our offer. We therefore pushed forward in the direction we had figured this would go all along—fighting to the bitter end. We always believed WCG feared going before a jury much more than we did, even though we were technically going into trial as the "loser" at the intermediate court (with respect to MOA). My dad believed something dramatic would happen, whether in court or out, that would eventually turn the tide in our favor. "If God is with us," he said, "we will win this. If He's been with us, He still is with us—that is, if we keep the faith."

The trial had been set for mid-October 2002, meaning discovery and depositions needed to be completed by the end of the summer. As we geared up for a busy summer of discovery and depositions, my dad instructed his entire staff at Edmond to make the court case top priority. More than a dozen people involved themselves in gathering information and helping to prepare for the depositions of the key witnesses among WCG's main cast of characters—Joseph Tkach, Michael Feazell, Greg Albrecht, Bernard Schnippert, Ronald Kelly and others.

The depositions proved to be very tense exchanges. Given that a key issue in the case was whether the WCG leaders who despised Mr. Armstrong's teachings actually intended to publish his works, the WCG leaders found themselves in the uncomfortable position of having to square their litigating position with all that they had said and done while dismantling all of Mr. Armstrong's teachings. This made for some heated exchanges with their attorneys over the summer as one WCG official after another found themselves in the hot seat, uncomfortably answering pointed questions that exposed what we had said all along was hypocrisy.

At first glance, one would think both sides in this dispute were growing further apart—becoming hardened by the grueling litigation warfare taking place almost daily. In truth, however, our commitment to fighting this thing through to the end was actually wearing the WCG down, though we didn't know it at the time. On the surface, they appeared to be getting angrier and more arrogant by the day.

### **Helge's Assault**

At the height of the August depositions, Ralph Helge wrote to Bob Ardis in an effort to give "accurate information" about the court case. Ardis, who was disfellowshipped from the PCG in 1997, copied Helge's letter and sent it to his entire mailing list, comprised mostly of PCG members.

In his letter, Helge explained how we initially won at the district court level. Judge Letts said we had a right to distribute MOA because, in Helge's own words, "*WCG was not publishing it at the time*, and because it was allegedly central to PCG's religion."

In the next paragraph, Helge explained that the three-judge panel at the Ninth Circuit reversed Judge Letts's ruling. What he failed to mention is that they overturned the ruling, in large part,

because of the WCG's "plans" to publish an annotated *Mystery of the Ages*—a project that had been in the "initial discussion phase" for over five years!

Helge's scathing letter accused Gerald Flurry of "pirating" *Mystery of the Ages*, of misinforming and misleading PCG members, of disobeying and disregarding the laws of the land, of using nearly every trick in the book to disrupt the legal process, among other things.

This paragraph, though, is of special significance: "Mr. Flurry has made representations to the PCG members, giving the misimpression that there is still the possibility in the case that the court is going to award PCG the right to pirate the MOA. This is simply, again, misinformation. The case has been finally decided and concluded regarding MOA, and Mr. Flurry, out of sheer desperation, has exhausted all legal remedies available to him. Any attempt of PCG to acquire any court ordered right to print the MOA is over, done, finished. Legally there is NO PLACE ELSE FOR HIM TO GO ON THIS ISSUE. I don't know how else I can say it. PCG's only 'right' is to stand before the bar of justice and have damages assessed against them and attorney's fees for the wrong that it has committed" (emphasis mine).

In quick response, our lead attorney drafted this letter to Helge on September 18: "Any competent lawyer knows that these statements are undeniably false, and you in particular know that they are. It is beyond any dispute that the Ninth Circuit's September 2000 decision did not constitute a final judgment."

Reading between the lines of Helge's arrogant assertion, there was actually another, more subtle message: *Why won't these guys just give up?* He just wanted all of this to be over, and he boiled over upon realizing that we intended to fight them—exhausting every possible legal option at our disposal. To Helge, though, exercising all *our* options was some kind of technical maneuvering intended to thwart the judicial process. He obviously felt much different about exercising all legal options if it benefited the WCG—like when they dismissed their lawsuit in California three weeks after filing in early 1997 because Judge Letts wouldn't grant their request for a temporary restraining order, hoping a lawsuit filed in Oklahoma would render better results. Or, in February 1999, after losing at the district level, when WCG immediately appealed the decision and perpetuated the idea that it was going to publish a phantom annotated MOA—which had all the earmarks of a technical maneuver intended to thwart the judicial process. And later, the e-publishing scheme established—not by WCG's publishing department or Plain Truth Ministries or anything having to do with literature—but *by Ralph Helge's legal department*, and for the admitted purpose of undermining our argument that Mr. Armstrong's works were unavailable.

All of this, spearheaded by a man who then lectured us about thwarting the judicial process.

### **Television Cuts**

Just days before Helge's letter landed in the mailboxes of many PCG members, my dad called for an Advisory Council of Elders meeting at our headquarters facility in Edmond on September 11. During this meeting with leading ministers of the Church, he announced that we would be cutting all of our television stations, except for the cable channel WGN, because of the court case. He said that we were now in the heat of the battle and that our time, energies and finances needed to flow in that direction. He reassured the ministry that if we had the faith of the Prophet Habakkuk, God would eventually give us Mr. Armstrong's material.

While the decision to cut television costs certainly helped increase the work's cash flow, it wasn't made strictly for that reason alone. As our television audience had grown through the years, we were being contacted by an increasing number of respondents who either knew very little or nothing about Herbert Armstrong—let alone his teachings. Without Mr. Armstrong's literature, we felt like these new contacts could not be spiritually nurtured until we had a breakthrough in the court case. It is difficult to grasp the full depth of our literature without the foundational teachings of Mr. Armstrong. The idea was, "Let's win the court battle first, and then concentrate on taking our message to the largest audience possible." My dad admonished us to educate our own members as to why we were involved in this legal battle. He said, "Maybe God wants to teach the whole Church how vital these works are." To win this battle, every member had to do his part.

A week and a half later, PCG members from all over the world convened at various locations to

celebrate our annual fall festival—the Feast of Tabernacles. During the Feast, my dad delivered two messages that were broadcast live, via satellite, to most of the PCG's worldwide membership. In his first message, on September 22, he said he didn't think he would ever give a more important message because of what was happening in the work. He went on to discuss the meaning of the court case—saying it was a test for us, but that if we had faith, God would revive this work and give us that literature somehow—some way. To obtain those works, though, he said we had to be willing to fight to the end—willing to do whatever God required of us.

He concluded the sermon by quoting from Helge's now infamous letter to Bob Ardis. Regarding Helge's comment that we had "pirated" Mr. Armstrong's works, my dad said it was WCG leaders who had in fact pirated an ENTIRE CHURCH.

In his second live sermon on September 27, my dad explained that one reason this trial might be dragging on is because God wants us to EXPOSE the WCG. He told the membership that we intended to press forward, fully intent on exposing them every step of the way.

At the end of the sermon, he announced the TV cuts he had made at the September 11 meeting. He told the membership that our message to the world could not be truly effective until we acquired the right to publish Mr. Armstrong's works. "We must go all out in this court case," he said.

### **About Face**

Two weeks after our fall festival ended, on October 14 (the trial had been pushed back to early December), there was a dramatic turn in events: WCG offered to sell us *Mystery of the Ages* outright. We were skeptical of WCG's offer, and thought the price they were asking was too high, but just the fact that WCG now wanted to sell it outright—no restrictive license with a gag order preventing us from criticizing them—left us in a virtual state of shock.

Why, after all the rhetoric about annotation and e-publishing, after Morgan's ridicule of our March offer to license, after Helge's scathing editorial about PCG's hopeless position—"the case has been finally decided and concluded"; "legally there is no place else for [the PCG] to go"; "PCG's only 'right' is to stand before the bar of justice and have damages assessed against them and attorney's fees for the wrong that it has committed"—would WCG now *ask us* to settle?

This was a HUGE breakthrough. In many ways, we felt like we had finally worn them down. Our first thought was on getting *all* the works—*Mystery of the Ages* and the 18 we were seeking in our counterclaim. Our second thought was about finances. At the time, we had about \$1 million cash on hand, in reserve.

### **Helge Lashes Out Again**

Meanwhile, Ralph Helge wouldn't stop spouting off. The *Journal*, a newspaper reporting on the news of WCG and its many splinter groups, interviewed Helge on October 29. (PCG respectfully turned down the newspaper's request for an interview.) The article that was published in the October 31 issue was loaded with Helgeisms: "In various court rulings over the years, the WCG's arguments ... have *overwhelmingly* prevailed" and WCG "seeks to recover costs for attorneys' fees plus damages from the PCG for *illegally* printing *Mystery*" (emphasis mine).

Helge informed the *Journal* that the WCG was now electronically publishing the very works we were seeking in this case. Even the *Journal* expressed skepticism about the sincerity of such a move, wondering if it was simply a strategy employed to undermine the PCG's position. "Mr. Helge insists the church's real motive is to make the works of Mr. Armstrong available to the public and that removing the PCG's legal claim that these works are unavailable is of only secondary importance."

Of course, we believed all the evidence showed that, both before and after this case started, WCG was determined never to make Mr. Armstrong's works available. But that Helge would even admit that removing our legal claim was at least of "secondary importance" was an astounding admission. They never hinted at this in the court proceedings. But again, the question is, why would WCG *even need* to make the works available if PCG was in such an indefensible position? Hadn't the courts been ruling "overwhelmingly" in WCG's favor? Were we not left with just one option in this litigation—standing before the bar of justice to have damages assessed against us for our "unlawful" and "illegal" distribution of *Mystery*?

Helge concluded his interview with another personal attack against Gerald Flurry. "Mr. Helge predicted that, whenever the final court hearing adjourns and the PCG is still not allowed to print Mr. Armstrong's books, 'I'll bet he says this is a famine of hearing the Word, that Satan did this ....'"

Helge did not mention anything about the WCG's offer to settle the case just two weeks before his interview with the *Journal*.

Meanwhile, my dad had called for a Church-wide fast within the PCG. Members were asked to beseech God for special deliverance in this struggle. The fast was scheduled for the weekend of November 23-24.

### **Denied Summary Judgment Again**

While negotiations for settlement continued off the record, preparations for the December trial had to move forward. In the *Journal* article, Helge had indicated that if the November 6 hearing came out in favor of WCG, then the next step would undoubtedly be a "trial to determine attorneys' fees and damages the PCG would have to pay the WCG."

The hearing he referred to did not come out in their favor. WCG had filed another motion for summary judgment regarding the other 18 works. The judge again denied their motion on the grounds of the Religious Freedom Restoration Act, a law enacted by Congress in 1993 designed to prevent the government from substantially burdening a person's free exercise of religion. We believed the copyright law unfairly and substantially burdened our religion because WCG was using it to suppress Mr. Armstrong's works.

This is why the WCG devised the e-publishing scheme. How can it be a "substantial burden" when these works are now available through e-publishing? At the hearing, the judge said they were "charging too much" for *Mystery of the Ages*. Our attorney pointed out that "although the Ninth Circuit did say that having to ask for a license and presumably having to pay for it couldn't be a substantial burden, they didn't say that the Worldwide Church could set the price wherever they wanted."

"And in fact," the judge said to WCG's lawyers, "they implicitly suggest that it *has to be available* on a *reasonable* basis." Three years after that ruling, *Mystery* was still unavailable. And we had made a "reasonable" offer to license the works, but WCG never responded.

### **Junk Science**

While formulating a defense against our counterclaim, WCG also had to prove how badly they had been "damaged" by our distribution of *Mystery*—a book that we gave away for free, that WCG had distributed for free during Mr. Armstrong's life, and that WCG had long since said it had a "Christian duty" to keep out of print. The bulk of evidence in this regard fell on the shoulders of a "forensic economist" named John Crissey, who had worked as an expert in numerous cases for Allan Browne's law firm. According to Crissey's September 18, 2002, expert report, WCG had been denied "profits" totaling \$3.84 million—\$4.3 million with interest—by the PCG's *free* distribution of 100,000 copies of MOA. He also calculated the *future* "losses" of WCG to be \$3.3 million. All totaled, WCG would be seeking \$7.63 million in damages at trial—just for *Mystery of the Ages*. (They would also be seeking millions of dollars in attorneys' fees.)

Crissey based his findings on the fact that *Mystery* recipients gave more money than non-recipients of the book—never mind the fact that *Mystery* recipients might just happen to agree with the PCG's message and its teachings. What Crissey ignored was that pre-1997 data showed that *Mystery* recipients had already been giving at a higher rate long before PCG even started its MOA distribution! He ignored this data (which we supplied him with) because it completely contradicted his "expert" analysis. Many of our own members and their children were the first ones to request copies of MOA once we began distribution. These people were already "pre-disposed" to giving more—they were already tithing members of the Church!

In PCG's motion to dismiss Crissey's report, our lawyer, Mark Helm, argued that the court should not admit Crissey's testimony, calling it bogus, fatally flawed and defective junk science, among other things. Judge Snyder seemed to agree. She wrote in her tentative order, a few days after a November 25 hearing, "[T]he methodology employed by Mr. Crissey has not been shown

to be sufficiently reliable to allow it to be presented to the trier of fact, and therefore his quantitative estimate of the amount of contributions that are attributable to distribution of MOA is not admissible."

Thus, on the eve of the damages trial, WCG was faced with the prospect of not having any real evidence to show how much PCG supposedly "profited" from and WCG was "damaged" by MOA distribution. Of course, WCG had much difficulty with this argument long before Crissey came along. The very first reason WCG gave in 1989 for discontinuing *Mystery* was the exorbitant cost of distributing such a big book! Now they were saying it was a huge money-maker for the PCG.

When we started distributing the work in 1997, we absorbed all the excessive printing and mailing cost, and then gave it away free of charge! Under any circumstances, it would be difficult to show how this was some sort of money-making scheme for PCG. But for WCG to then claim that our free distribution was actually stealing "profits" from them is the height of hypocrisy. Why would they now seek "profits" from a book they had been ridiculing for years and had vowed to keep out of circulation?

### **Gutting Their Case**

The November 25 hearing was a significant victory for us in ways other than Crissey's report. WCG had long been indicating, during depositions especially, that they intended to portray us as a cult before the jury. They would try to show how we were a racially bigoted, misogynistic fringe group, led by a self-proclaimed dictator with 25 Messianic titles. (Of course, WCG argued that *for us* to bring up anything about *their* religion or how they destroyed Mr. Armstrong's work—and did it in such an evil, deceitful way—was totally "irrelevant" to the case and would "unfairly" influence the jury.)

In her tentative order, Judge Snyder said she would not allow the trial to turn into an "attack on Flurry" because it would "distract the jury from the issues at trial" and "unfairly prejudice PCG." Later, the court concluded that "WCG should not be permitted to describe specific religious tenets—either its own, or PCG's—regarding racial issues because such evidence will be unfairly prejudicial and will confuse the issues at trial." In explaining why they discontinued *Mystery*, the judge said she would allow WCG to say that it considered its message to be "no longer *socially* acceptable." But so far as the judge was concerned, they couldn't even use the word "race."

This was huge. Added to the ruling on Crissey, we felt the tentative order would pretty much gut the WCG's case for damages.

Not only were they unable to prove damages, now they couldn't sling mud. Added to that, they still had to tackle our counterclaim, not to mention subject themselves to a rigorous PCG defense dead set on exposing their lies and deceit.

### **Sealing the Deal**

The damages trial had now been pushed back to March 4 because Allan Browne said he had another trial starting ahead of our case. This allowed both sides more time to argue over what evidence would be allowed at trial. Judge Snyder scheduled another hearing on December 18, as a follow-up to her tentative order. Having read everything, she said at the outset of the hearing that she wasn't inclined to change her tentative ruling.

Two days after that hearing, WCG seemed even more eager to settle. Sensing desperation, my dad was all the more inclined to be patient. On December 24, we put together a package offer for all the copyrights to the 19 works involved in the litigation.

We wouldn't hear back from WCG, despite their insistence to get things done quickly, until after their executives returned from their Christmas/ New Year's holiday celebration.

The first two weeks of January is when the negotiations finally got serious. The biggest obstacle, however, proved to be over licensing versus ownership, although money certainly factored in heavily. The WCG wanted to sell licenses. We wanted the advantage of OWNERSHIP, giving us full control of Mr. Armstrong's works and freeing us from any obligation to WCG.

But we hadn't totally ruled out the idea of licensing, so long as it gave us the control we needed. It had to be in perpetuity, royalty free, with no disclaimer at the front of the works and an inoffensive copyright notice, like "© Herbert W. Armstrong."

We made our final proposal on Monday, January 13—it was to buy perpetual licenses for all 19 works. Admittedly, we submitted the proposal with some reservation. Though we basically had the control we needed with perpetual licenses, we still wouldn't own them.

The next day, to our utter amazement and shock, the WCG asked us to submit an alternative offer for buying the copyrights outright. Thus, by the end of the 14th, they had two final offers on the table—one for licenses and one for full ownership.

On Thursday morning, January 16—*17 years to the day after Herbert W. Armstrong's death*—the WCG agreed to sell us *all* the copyrights. Apart from contributions from our insurance carrier, the total cost to PCG was an even \$2 million.

Later that day, Mark Helm and the WCG's attorney conference-called Judge Snyder to tell her that both sides had agreed to terms of settlement. Thus, for all intents and purposes, six years of litigation ended the afternoon of January 16, 2003.

In the weeks that followed, we haggled over the precise wording in the paperwork needed to finalize the deal. It was completed on Friday, March 7.

### **To the Victor Go the Spoils**

I can't imagine Helge being nearly as high-and-mighty as he was months ago during depositions, in his letter to Ardis or his interview with the *Journal*, but I'm sure he'll think of some kind of positive spin he can put on the final outcome of this case. "We finally made them pay the price for their thievery." Or, "See, we would have sold those works to them before all of this got started, if only they would have asked."

But the truth of the matter is, even Helge knows you only have to scratch beneath the surface to find out who really won in this case. What exactly did the WCG gain from six years of litigation? They settled to cover the legal costs they already spent on the case. They retrieved no "profits" or "damages" from PCG. And all of their supposed "overwhelming" victories were conditioned on them making Mr. Armstrong's works available—despite Tkach Jr.'s vow in 1997 to keep them "out of print."

On the other hand, what about us in the PCG? What did we gain by printing *Mystery of the Ages* in 1997 and by defending ourselves in this lawsuit? True, we had to endure through six years of grueling litigation same as WCG. But even they would have to admit that we derived much more pleasure and satisfaction from this battle than they did! Added to that, there were so many other benefits. Thousands of pages of evidence, released through discovery, exposed what we had long said had been happening—a small band of second-generation WCGers who never liked Mr. Armstrong's teachings had gained power and quickly proceeded to deliberately, methodically, deceitfully and forcefully "transform" that church into an Armstrong-bashing "Christian" denomination. (Of course, WCG members who resisted these monumental changes were summarily excommunicated.)

And despite Helge's rhetoric about "overwhelming" victories in court and, as he wrote to Ardis, that only "two judges decided for PCG and 35 judges decided in favor of WCG" (counting all the judges at the Ninth Circuit and in the Supreme Court who chose not to hear the case), the facts are these: *Four* out of the six years of litigation, we were able to freely distribute *Mystery of the Ages* to 100,000 recipients. For *two* years, we freely distributed five other works by Mr. Armstrong.

We also concluded the lawsuit with the satisfaction of making Joe Tkach Jr. eat his words: "We filed suit against the Philadelphia Church of God ... to block the republication of *Mystery of the Ages* .... We feel it is our Christian duty to keep this book out of print ... because we believe Mr. Armstrong's doctrinal errors are better left out of circulation." Had we not taken them to task on

this "duty," it is our firm belief that Mr. Armstrong's printed works would have never again seen the light of day.

Considering Tkach's comments above and the way the lawsuit ended, we also believe we exposed the "annotated version" and "e-publishing" for what they really were—a complete sham, concocted for no other reason but to gain an advantage in litigation.

Oh, and one other benefit we can claim as a result of this lawsuit: We now own the copyrights to 7 books, 11 booklets and a 58-lesson correspondence course—something that would not have been possible in 1996 and *not even possible if*, in fighting to the bitter end, THE SUPREMECOURT OVERTURNED THE NINTH CIRCUIT'S RULING!

To be sure, the final outcome of this case exceeded anything we ever could have imagined just a few years ago.

### **"Buy the Truth, and Sell it Not"**

Some few might question why we would ever give any money—even one dollar—to an organization we believe is motivated by the devil. But such criticism misses the whole point of this lawsuit. Satan's first goal in all of this was to destroy Mr. Armstrong's writings because those works expose him for what he is—the father of lies. *God simply would not allow that to happen.*

Again, just imagine what would have happened had we never decided to step out in faith to distribute what WCG was unlawfully trying to suppress. This case proves what good comes from a willingness to stand up for what is right and the determination to fight to the bitter end. James 4:7 says if we "resist the devil"—or stand up and fight against him—he will flee from us!

That is what happened in this case. Once the WCG realized they could not suppress these works, they eventually took the money and ran.

Giving up "mammon" for the truth of God does not violate our faith one bit. To the contrary, God's Word says, "Buy the truth, and sell it not" (Prov. 23:23). It's the WCG who ought to be ashamed that they "sold" the truth. Talk about a faith crisis! Like Esau, they gave up their spiritual inheritance for what amounts to a bowl of soup, comparatively speaking.

Jesus likened the Kingdom of God to finding a pearl of great price. Upon finding that "pearl," it says in Matthew 13, the merchant went and sold *everything* he had to obtain it.

Again, in Matthew 19, Jesus told a rich man who wanted to inherit the spiritual riches of God's Kingdom that he had to be willing to give up EVERYTHING of *physical* value.

You simply cannot affix a monetary value to spiritual truth. That is the precise reason Mr. Armstrong never sold his literature. And that's why, even after six years of litigation and spending millions of dollars, we will never sell Mr. Armstrong's literature.

Over the course of six years, including the \$2 million we paid at settlement, we spent about \$5 million on this lawsuit—*less than one tenth of our total income during this same period.*

And considering what we obtained in return—it's by far the best money we've ever spent.