REPORT OF THE INDEPENDENT COMMITTEE OF THE STARR FOUNDATION

Members of the Independent Committee:

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Hon. C. Raymond Radigan
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MARCH 1, 2007

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I. EXECUTIVE SUMMARY

On December 14, 2005, the Office of the New York State Attorney General issued a report entitled "*Report on Breaches of Fiduciary Duty by Executors of the Estate of Cornelius Vander Starr*." This report contends that The Starr Foundation has possible claims for breach of fiduciary duty against the surviving executors of the Estate of Cornelius Vander Starr either (i) in their capacity as executors for entering into certain alleged conflicted transactions, or (ii) in their capacity as directors of The Starr Foundation.

In response to this report and a recommendation made by the New York State Attorney General's Office in correspondence with The Starr Foundation, the Board of Directors of The Starr Foundation appointed an independent committee of disinterested persons on January 31, 2006, to investigate the issues identified in the NYAG's report. The Board of Directors authorized, empowered, and directed the Independent Committee of The Starr Foundation to: (i) conduct its investigation by taking all action determined by the Independent Committee to be appropriate, including, without limitation, reviewing documents and interviewing witnesses; (ii) provide the results of such investigation to The Starr Foundation's Board of Directors; and (iii) pursue all rights and remedies of The Starr Foundation, including pursuit of any litigation or other courses of action, which the

Independent Committee may determine exist and are, in the reasonable judgment of that committee, in the best interests of The Starr Foundation to pursue.

After completing its investigation, and carefully considering the issues raised by the report issued by the Office of the New York State Attorney General, the Independent Committee of The Starr Foundation has determined that the executors of the Estate of C.V. Starr acted in good faith and prudently performed their duties, and that there is no basis for the report's contention to the contrary. Accordingly, in the circumstances presented here, it would not be appropriate, nor would it be in the best interests of The Starr Foundation, to pursue any litigation or other course of action against the executors, whether in their capacity as executors or as directors of The Starr Foundation.

II. INTRODUCTION

The Independent Committee of The Starr Foundation (the "Independent Committee") has undertaken a comprehensive and thorough investigation of the factual and legal issues raised in the report issued by the Office of the New York State Attorney General (the "NYAG"), entitled "*Report on Breaches of Fiduciary Duty by Executors of the Estate of Cornelius Vander Starr*" (the "AG Report") (Tab 1). That report focuses on three transactions entered into by the executors of the estate of C.V. Starr (the "Executors" and the "Estate") in 1969 and 1970 -- almost forty years ago. The NYAG contends that, in each instance, the Executors breached their fiduciary duties to the Estate, and its residual beneficiary, The Starr Foundation (the "Foundation"), by selling assets of the Estate for far less than their actual value.

During the course of its twelve-month investigation, the Independent Committee and its counsel have collected over 650,000 pages of documents, interviewed or received written responses to its questions from nearly all of the surviving participants or witnesses to the matters alleged in the AG Report, and reviewed transcripts of interviews of key participants (many of whom are since deceased) conducted more than twenty years before the release of the AG Report.

Based upon this investigation and in view of the governing legal principles, the Independent Committee has concluded that the allegations against the Executors are unfounded and it would not be in the best interests of the Foundation to pursue any litigation or other course of action against the Executors of the Starr Estate, whether in their capacity as executors or as directors of the Foundation, nor would it be appropriate to do so. Specifically, the Independent Committee has determined that:

- The Executors acted in good faith in selling the Estate's 240 shares of C.V. Starr & Co., Inc. ("CVSCO") common stock back to CVSCO for the adjusted book value price of $4,500 per share;

- the Executors acted in good faith in selling the Estate's thirty shares of American International Underwriters Overseas, Inc. ("AIUO") voting stock back to AIUO for the subscription price of $100 per share; and

- the Executors acted in good faith and obtained a fair and reasonable price for Starr's minority interest in American International Underwriters Far East, Inc. ("AIU Far East") for $1,655 per share -- the same price paid for the majority interest in that company.

In reaching these conclusions, the Independent Committee has focused not only on the transactions themselves, but on the circumstances and events surrounding the evolution of the Starr business enterprise and the steps C.V. Starr ("Starr") took in the final years of his life to plan for the continuation of his enterprise. The remarkable story of the Starr enterprise and Starr's planning for its continuation informs the tasks he imposed on his Executors. This historical context -- which is missing from the AG Report -- is essential to understanding and evaluating the conduct of Starr's chosen executors in entering into each of the three transactions discussed in the AG Report.

This historical context begins in the port city of Shanghai where Starr moved in November 1919, at the age of twenty-seven to pursue his fortune. Starr had no particular connection to Shanghai (he had grown up in the small town of Fort Bragg, California) other than a "passion for enterprise." Nevertheless, within a few months, Starr had opened a small fire and marine insurance agency, and by 1931, had agencies throughout Southeast Asia. Starr's business continued to flourish in the years that followed, and by 1950, he had agencies and offices in over seventy countries.

As Starr aged, in the early 1960s, he devoted much of his efforts to developing a plan to ensure that his enterprise would remain independent and loyal to his vision in the years when he would no longer be at its helm. To this end, Starr decided to restructure the controlling and policy-making body in the enterprise, CVSCO, and replace its existing board with a group of individuals whom Starr felt were loyal to him, his vision, and his intentions. In choosing the members of this group, Starr selected individuals whom he believed were committed to his philosophy of management ownership and his desire to keep the enterprise independent. Indeed, when it became apparent that one of the individuals he selected, William Youngman, who was widely thought to be Starr's heir apparent, did not share Starr's vision for the enterprise, he took steps that ultimately resulted in Youngman's resignation.

Although Starr remained a dominant figure in the CVSCO Board room, he began to rely more on the CVSCO Board, as a group, to make strategic and tactical decisions for the organization. In addition to their position as members of the CVSCO Board of Directors ("CVSCO Board"), this group also controlled the other two principal companies in the Starr enterprise based upon their majority share of AIUO voting stock, and their holding of nearly 35% of American International Reinsurance Co., Inc. ("AIRCO") common stock.

In the final months of his life, Starr and the CVSCO Board became increasingly concerned about a possible hostile takeover of AIRCO. Unlike CVSCO and AIUO, which Starr had structured as closely held corporations with a limited group of actively participating shareholders who were required to sell their shares back to the companies if they were to leave, AIRCO's common stock was freely transferable and actively traded on an over-the-counter market which Starr had established in Bermuda. This concern was only heightened in August 1968, when Youngman informed Starr and the CVSCO Board that he intended to sell approximately one-half of his shares of AIRCO common stock (which represented nearly 5% of the outstanding stock of that company) to the chairman of a rival insurance company, who had made no secret of his interest in purchasing part or all of the Starr enterprise.

Although this threat never materialized (in part due to the efforts of the CVSCO Board following his death), Starr made it clear to the members of the CVSCO Board how important it was to him that they keep the enterprise independent. As one surviving Executor recalled during a 1985 interview, in 1968 Starr told him only a few weeks before his death: "You've got to stick together, otherwise, the damn thing will fall apart because there will be an awful lot of pulling and tugging and hauling, not by the inside, but by the outside, so you have to make sure that you all pull together."

Starr executed his final will on August 1, 1968. He named those persons serving as the CVSCO Board at the time of his death as the executors of his estate, thus assuring that his assets would be administered by the same group of individuals he had selected to carry on the enterprise he had spent most of his adult life developing. Starr granted his executors complete authority and discretion to administer his estate, and explicitly permitted them to continue to serve as officers and/or directors of any of the companies in which he held securities or other assets. He also named the Foundation as the residual beneficiary of his estate. As discussed in greater detail in the Report, when Starr established the Foundation in 1955, it was initially intended to serve as a tax planning vehicle. However, in or about 1965, Starr began to view the Foundation as an essential part of his business estate planning.

In administrating the Estate, the Executors followed Starr's intent, both expressed and implied. The Executors, for instance, sold Starr's 240 shares of CVSCO common stock back to CVSCO in accordance with a mandatory redemption provision that Starr, himself, had included in the company's original charter to prevent outsiders, including estates and heirs of deceased shareholders, from joining CVSCO's limited shareholding group. That group was supposed to be reserved for those actively engaged in the management of the company. The redemption price of those shares was determined pursuant to a formula that Starr, himself, and the CVSCO Board had adopted in October 1968, which was the same formula used for all other transactions involving CVSCO common stock both prior to and following Starr's death.

Starr's thirty shares of AIUO voting stock also were subject to stringent redemption and right-of-first refusal provisions that Starr, himself, included in the AIUO charter. Despite the allegations in the AG Report, the Executors could not have obtained any more than the subscription price of $100 per share for their thirty shares of AIUO voting stock. Not only was that price clearly specified in the applicable charter provisions, but pursuant to the charter that Starr designed, AIUO voting stock was not tied to either the equity or the economic value of the company. Those economic benefits were instead tied to AIUO's preferred stock.

Finally, the Executors sold Starr's minority interest in AIU Far East (an entity that Starr owned jointly with his long-time business associate and most trusted advisor, K.K. Tse) to AIUO pursuant to Starr's express instructions in the months preceding his death. Although the NYAG contends that the Executors sold Starr's interest for far less than its actual value, the record demonstrates that the Executors received the same price for Starr's minority interest that Tse negotiated for his majority interest in the company; and the price paid for Starr's minority interest was based upon an independent valuation conducted by Lowe Bingham & Matthews ("Lowe Bingham"), then one of the premier accounting firms in Hong Kong. The NYAG does not contest Lowe Bingham's professionalism, objectivity, or bona fides in rendering the valuation it did.

At the same time the Executors were carrying out the administration of the Estate, in their capacity as the CVSCO Board, they were also engaged in a series of transactions that would shift the emphasis of the organization from owning and operating insurance agencies to underwriting and insuring the risks themselves. The first part of this restructuring occurred while Starr was still alive, with the formation of American International Group, Inc. ("AIG"), and a series of exchange offers that resulted in AIG becoming a public company. Starr was actively involved in those transactions; in fact, when he learned that certain shareholders were opposed to the transactions, he personally met with them to explain the merits of the deal.

The second part of this restructuring occurred in June 1970, when AIG acquired most of CVSCO's and AIUO's insurance operations (the "June 1970 transaction"). The transaction was structured in a way that substantially reduced the threat that AIRCO or AIG could be subject to a third-party takeover, thus satisfying one of Starr's principal concerns before his death. In connection with that transaction, the CVSCO Board retained Morgan Stanley to prepare a fairness opinion, which was later referenced in the proxy statement sent to AIG shareholders and filed with the SEC. Morgan Stanley circulated to the CVSCO directors a preliminary version of that opinion on October 24, 1969.

As discussed in greater detail in the Report, the Independent Committee has uncovered no evidence that would suggest that Morgan Stanley's work in connection with the June 1970 transaction had any bearing on the fairness of the price obtained by the Executors in each of the three transactions the AG Report questions. To the contrary, the record and governing law demonstrate that:

- The Executors agreed to sell Starr's 240 shares of CVSCO common stock back to CVSCO, and his 30 shares of AIUO voting stock back to AIUO, more than six months before Morgan Stanley even started its work on the June 1970 transaction.

- The CVSCO Board was required by the terms of its charter to pay the Estate "fair value as determined by the Board of Directors" of Starr's shares at the time of his death -- which occurred more than 18 months before the completion of the June 1970 transaction.

- The Executors sold Starr's thirty shares of AIUO voting stock back to AIUO in accordance with the redemption provisions in the AIUO charter; the Executors could not have realized any value for those shares greater than the value permitted by those redemption provisions.

- Courts have consistently enforced redemption and right-of-first refusal provisions like those found in the AIUO and CVSCO charters that require a shareholder to sell his or her shares at a fixed price or formula -- even in the face of evidence that the shares are worth substantially more.

- Morgan Stanley's fairness opinion for the June 1970 transaction was not relevant to either the CVSCO or the AIUO stock redemptions.

- Morgan Stanley's fairness opinion for the June 1970 transaction also was conducted for a different purpose and involved different assets than the valuation prepared by Lowe Bingham in July 1969 for purposes of the sale of AIU Far East.

- The Independent Committee has uncovered no evidence that suggests the Executors were aware of Morgan Stanley's preliminary report when they accepted AIUO's offer of $1,655 per share for the Estate's 600 shares of AIU Far East common stock.

Indeed, when it became apparent to the CVSCO Board in November 1969 that the proposed transaction would substantially increase the net worth of CVSCO and AIUO, members of the CVSCO Board unanimously agreed, apparently as a testament to their loyalty to Starr and his philosophy, that this "windfall" should not be divided among themselves or any other group of shareholders. The Foundation has a remainder interest in the value that was set aside.

Starr's Will was probated in April 1969. The NYAG was involved in the proceedings and the administration of the Will from the start because of its statutory role on behalf of the ultimate charitable beneficiaries. As a result of an IRS audit and related tax proceedings, the Estate was not settled until 1978. Nevertheless, even before the Estate resolved its issues with the IRS in 1976, its counsel was having regular meetings with attorneys and accountants in the NYAG's Charities Bureau. During these meetings, counsel informed the NYAG of, among other things, each of the transactions discussed above, the redemption and right-of-first refusal provisions in the CVSCO and AIUO charters, the conflicts faced by the Executors in selling Starr's shares in various companies, and the June 1970 transaction and Morgan Stanley fairness opinion.

In November 1978, the Executors filed a Petition on Final Account of Executors ("Petition") and First and Final Accounting ("Accounting") with the Surrogate's Court seeking a judicial settlement of the Estate and requesting that they be "released and discharged from any and all liability with respect to all matters and things embraced" in the Accounting. The Petition contained a detailed account of each of the transactions discussed in the AG Report, and specifically identified both the Foundation and the NYAG as necessary parties to the final accounting proceedings.

The Executors' dialogue with the NYAG continued following the submission of the Petition and the Accounting. The Executors' counsel had a series of communications with representatives of the Charities Bureau -- in person, on the phone, and in writing -- regarding the Petition and the Accounting and the transactions detailed therein. Among other things, the NYAG discussed each of the transactions described in the Petition with the Executors' counsel, and requested and received the audited financial statements for AIU Far East for the year ended December 31, 1968, and the consolidated financial statements for CVSCO as of December 31, 1968.

The Surrogate's Court approved the final accounting, by Decree dated April 25, 1979. Thus, almost thirty years ago, the Surrogate's Court approved each of the transactions that the AG Report now challenges, and released and discharged the Executors from any liability for all things encompassed by the Accounting. The NYAG specifically approved the content of the Decree. Any claims, therefore, filed against the Executors based upon the allegations in the AG Report would be subject to such "door-stopping" defenses as res judicata and laches. Likewise, there would be no basis for the Foundation or any other plaintiff to reopen or vacate the Surrogate's Decree.

Although the details of Starr's life have been nearly lost to the annals of history, his legacy has remained secure as a result of the remarkable success the Foundation has enjoyed in the nearly thirty years that have passed since the settlement of the Estate. Due to the unprecedented growth of AIG's stock -- the Foundation's principal asset -- the Foundation's assets have soared from $1.2 million in 1968 when Starr died to over $3 billion today. During this same period of time, the Foundation has donated more than $2 billion to charities and organizations. In the past year, alone, the Foundation had made contributions to the following causes and organizations:

- A $100 million grant to create a consortium of five internationally renowned medical research institutions (four based in New York) to collaborate on finding a cure for cancer;

- a $25 million grant to expand the Harlem Children's Zone, a highly successful community development organization in Central Harlem focused on enhancing opportunities for disadvantaged children;

- a $15 million grant to renovate Alice Tully Hall, home of the Chamber Music Society at Lincoln Center and a $15 million grant for the New York Philharmonic;

- a $10 million grant to New York's Cooper Union to strengthen the education of engineers in America and provide scholarships for engineering students;

- a $50 million grant to Rockefeller University to support collaborative medical and scientific research; the Foundation already supports research programs at Rockefeller on Hepatitis C and on the genetics of obesity; and

- nearly $20 million in need-based scholarships for students attending colleges, universities, and secondary schools in the U.S. and abroad.

The Executors have achieved all that Starr could have hoped for and more. For the reasons described in detail in this Report, the Independent Committee has concluded that the Executors acted in good faith and prudently performed their duties, and that there is no basis for the AG Report's contention to the contrary. Accordingly, in the circumstances presented here, it would not be appropriate, nor would it be in the best interests of the Foundation, to pursue any litigation or other course of action against them.

III. THE NEW YORK ATTORNEY GENERAL'S REPORT

The AG Report focuses on three specific transactions entered into in 1969 and 1970 by the Executors which impacted the Estate's residual beneficiary, the Foundation. Those transactions are:

- the sale of Starr's 240 shares of CVSCO common stock back to CVSCO;
- the sale of Starr's thirty shares of AIUO voting stock back to AIUO;[1] and
- the sale of Starr's 48% minority interest in AIU Far East to AIUO.

AG Report at 6-8 (Tab 1).

The NYAG contends that the Executors had a "fundamental conflict of interest" in each transaction due to the fact they controlled the seller (the Estate), the buyer (CVSCO or AIUO), and the ultimate beneficiary (the Foundation). *See id.* at 8-9. According to the AG Report, the Executors resolved this conflict "in favor of their own personal pecuniary interest, selling the Estate's assets to CVSCO and [AIUO] for far less than the value the executors themselves were able to realize when CVSCO and [AIUO] sold the same assets to AIG in June 1970." *Id.*

In a letter to the Foundation dated December 14, 2005, the NYAG urged the Foundation to "consult with independent counsel about the Foundation's appropriate response," and "cause to be appointed an independent committee to evaluate remedies available to the Foundation, including not only the recovery of assets . . . but also a reconstitution of the Foundation's structure so as to guarantee it the independence needed

[1] In June 1970, AIUO changed its name to Starr International Company, Inc. ("SICO"). In order to avoid any confusion, this Report will refer to this entity as AIUO throughout.

to advance its charitable mission into the future."[2] Letter from Att'y Gen. Spitzer to Ms. Davis (Dec. 14, 2005) (Tab 2).

IV. THE INDEPENDENT COMMITTEE OF THE STARR FOUNDATION

In response to the AG Report and the recommendation in the NYAG's accompanying letter, the Board of Directors of the Foundation (the "Board of Directors") appointed an independent committee of disinterested persons (the "Independent Committee") on January 31, 2006, to investigate the issues identified in the AG Report. *See* Letter from Ms. Davis to Att'y Gen. Spitzer (Jan. 31, 2006) (Tab 3).

The Board of Directors authorized, empowered, and directed the Independent Committee to: (1) conduct its investigation by taking all action determined by the Independent Committee to be appropriate, including, without limitation, reviewing documents and interviewing witnesses; (2) provide the results of such investigation to the Board of Directors; and (3) pursue all rights and remedies of the Foundation, including pursuit of any litigation or other courses of action, which the Independent Committee may determine exist and are, in the reasonable judgment of the Independent Committee, in the best interests of the Foundation to pursue. *See* The Starr Foundation Board of Directors Resolutions Regarding the Independent Committee (Jan. 27, 2006) (Tab 4).

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[2] The letter from the NYAG suggested that one remedy the Independent Committee should consider is intervening in a pending litigation in federal court between AIUO (SICO) and AIG, so as to recover assets. *See* Letter from Att'y Gen. Spitzer to Ms. Davis (Dec. 14, 2005) (Tab 2) (referencing *Starr Int'l Co. v. American Int'l Group, Inc.*, 05-CIV-6283 (S.D.N.Y.) (BSJ)).

A. The Members of the Independent Committee

The Independent Committee consists of three members: Hon. William C. Thompson, a retired Justice of the Appellate Division of the Supreme Court of the State of New York, Second Department; Hon. C. Raymond Radigan, a former Surrogate of Nassau County; and Florence A. Davis, the current President of the Foundation and a member of its Board of Directors. *See id.* None of the Independent Committee members had any involvement in any of the transactions at issue in the AG Report, nor did any of them serve as Executors or as directors of the Foundation during any of the years in question.

A brief biographical sketch of each Independent Committee member is set forth below.

1. Justice William C. Thompson

Justice William C. Thompson served as an Associate Justice of the Appellate Division of the Supreme Court of the State of New York, Second Department from 1980 until 2000. He was a member of the New York State Commission on Judicial Conduct from 1990 to 1998. He graduated from Brooklyn College and Brooklyn Law School and was admitted to the bar in 1955.

A veteran of World War II, Justice Thompson served as a sergeant in the 92nd Infantry Division in Italy, and acquired three battle stars, a combat infantry badge, and the Purple Heart. He was elected to the New York State Senate in 1965, and served until 1968. He became Chairman of the Joint Legislative Committee on Child Care Needs, and sponsored over twenty-five bills that were signed into law. In 1969, he was elected to the New York City Council, where he served until 1973. Justice Thompson was elected to the Supreme Court of the State of New York, Second Judicial District, in 1974 and designated to serve in the Appellate Term of that court in 1976. In 1980, he was appointed by Governor Carey to the Appellate Division, Second Department, from which he retired. He is presently in private practice.

2. Judge C. Raymond Radigan

Judge Radigan served as Surrogate of Nassau County, New York from 1981 until 2001. Prior to his election to the Nassau County Surrogate's Court, Judge Radigan served as Chief Clerk and Deputy Clerk of that court, and as a Law Assistant to Surrogate John D. Bennett.

Since 2001, Judge Radigan has been counsel to the law firm of Ruskin Moscou Faltischek, P.C. in Uniondale, New York, where his practice focuses on estate and trust litigation, estate administration, and estate planning. As chair of the Advisory Committee to the New York State Legislature on the Estates Powers & Trust Law, and former chair of the Executive Committee of the Surrogates Association of the State of New York, Judge Radigan has been a driving force in the revision and update of Trusts and Estate law and practice in New York State. He is currently a Special Professor at Hofstra Law School and an Adjunct Professor at St. John's University School of Law. Judge Radigan is a graduate of Brooklyn College and Brooklyn Law School.

3. Florence A. Davis

Ms. Davis has served as President of the Foundation and a member of the Board of Directors since 1999. From 1979 until 1986, she was an associate at Sullivan &

Cromwell LLP. In 1986, Ms. Davis joined Morgan Stanley, where she held several positions, including Principal and director of Worldwide Regulatory Affairs. From 1995 until 1999, Ms. Davis was Vice President and General Counsel of AIG.

Ms. Davis is currently a trustee of New York University and New York University School of Law, and a director of The International Rescue Committee and the Eisenhower Fellowships. She is also a member of the Council on Foreign Relations and a Fellow of the Foreign Policy Institute. Ms. Davis is a graduate of Wellesley College, where she achieved highest honors and was named to Phi Beta Kappa, and New York University School of Law, where she was a Root-Tilden Scholar.

B. Counsel to the Independent Committee

Following its appointment, the Independent Committee retained John J. Barnosky, Esq., and his law firm, Farrell Fritz, P.C., to serve as Counsel to the Independent Committee, and Lawrence J. Zweifach, Esq., and his law firm, Heller Ehrman LLP to serve as Special Counsel (together "Counsel"). Brief biographical sketches of Mr. Barnosky and Mr. Zweifach are set forth below.

1. John J. Barnosky, Esq.

Mr. Barnosky has been a partner at Farrell Fritz, P.C. in Uniondale, New York since 1974.

Mr. Barnosky's practice includes estate planning, probate and administration of estates and trusts, elder law, estate litigation, and taxation. He provides estate planning and counseling advice to families, individuals, banks, foundations, and other institutions. Mr. Barnosky represents clients in litigated trust and estate matters, including will contests and disputes over the validity of trusts, before the Surrogate's Courts and other courts throughout New York State.

Mr. Barnosky is a former chair of the Trusts & Estates Section of the New York State Bar Association. He has been a member of the New York State Bar Association's Task Force on Court Reorganization, and has served for over fifteen years as a member of the EPTL/SCPA Advisory Committee established by the New York State Legislature to review and modernize statutes relating to trusts and estates. He is also a member of the American College of Probate Counsel. Mr. Barnosky received his L.L.M in Taxation in 1974 from New York University School of Law, his Juris Doctor in 1967 from St. John's University School of Law, and his A.B. Degree from Assumption College in 1964.

2. Lawrence J. Zweifach, Esq.

Mr. Zweifach is chair of the Litigation Department of the New York office of Heller Ehrman LLP. He has had extensive experience handling civil and criminal matters, including securities, antitrust, Securities and Exchange Commission enforcement investigations and litigation, matters of corporate governance, internal investigations, white collar criminal defense, and complex commercial litigation.

Mr. Zweifach has represented a broad spectrum of clients including public and private corporations, boards of directors, special committees, audit committees, corporate officers and directors, commercial and investment banks, public accounting firms, investment advisors, mutual funds, and broker-dealers.

Mr. Zweifach is a former chief of the Criminal Division of the United States Attorney's Office for the Eastern District of New York and a former law clerk to judges on the New York State Court of Appeals and the United States District Court for the Eastern District of New York. He received his law degree from George Washington University National Law Center, and his undergraduate degree from Lehigh University.

V. THE INDEPENDENT COMMITTEE'S INVESTIGATION

The Independent Committee has conducted a complete and thorough investigation of the factual and legal issues raised by the AG Report. The Independent Committee's investigation was made more difficult, and required greater effort, due to the fact that many of the events discussed in the AG Report occurred nearly forty years ago. Certain documents relating to those events, including the NYAG's own files regarding the Estate's proceedings in the Surrogate's Court, no longer exist, and many of the key participants have been deceased for many years. The Independent Committee faced the additional challenge of having to conduct its investigation without the ability to subpoena documents or witnesses.

Despite these challenges, Counsel began sending out document requests to the parties identified in the AG Report within a few weeks of the Independent Committee's appointment and undertook the creation of an electronic database so that relevant documents could be searched and reviewed. At the same time, the Independent Committee and Counsel began meeting with potential witnesses in order to interview them about the events at issue. As those interviews progressed, the Independent Committee continued to request and receive documents from parties and individuals who participated in, or had knowledge of, the matters alleged in the AG Report. In all, the Independent Committee amassed over 650,000 pages of documents for review and interviewed or received written responses to its questions from a total of thirteen individuals.

In conducting its investigation, the Independent Committee has focused on the following broad groups and subjects:

- the Executors;
- counsel and advisors to the Estate;
- the corporate parties to the transactions;
- other persons having relevant information; and
- the NYAG's participation in the proceedings that resulted in the Surrogate's Court's and NYAG's approval of the final accounting by the Executors in 1979.

What follows is an overview of the manner in which the Independent Committee conducted its investigation.

A. Executors

Starr appointed as his executors the individuals who were serving as members of the CVSCO Board of Directors at the time of his death. *See* Last Will and Testament of C.V. Starr (the "Will"), art. V (Aug. 1, 1968) (Tab 5). Of those nine individuals, each of whom had been hand-picked by Starr during the last years of his life, only four were still alive at the start of the Independent Committee's investigation (the "Surviving Executors"). The Independent Committee and its Counsel interviewed three of the four Surviving Executors: Messrs. Greenberg, Freeman, and Stempel. The fourth Surviving Executor, Mr. Roberts, was unable to meet due to health issues, but submitted written responses to a series of questions prepared by Counsel. More precisely, the availability of the Executors to the Independent Committee was as follows:

Executor	Status
John Ahlers	Deceased
Houghton Freeman	Interviewed
Maurice R. Greenberg	Interviewed
Edwin A.G. Manton	Deceased
Francis Mulderig	Deceased
John J. Roberts	Unable to be interviewed due to health reasons; Mr. Roberts sent the Committee written responses to a set of questions prepared by Counsel.
Ernest E. Stempel	Interviewed
K.K. Tse	Deceased
Gordon Tweedy	Deceased

Counsel also met with the attorneys for the Surviving Executors, Boies Schiller & Flexnor LLP ("Boies Schiller"), in response to their request for an opportunity to present evidence relating to certain allegations in the AG Report. As discussed below, Counsel thought it would be receiving a similar presentation from the NYAG, but the NYAG ultimately declined to provide such a presentation. *See infra* Part V.E.2.

Finally, the Independent Committee and Counsel have reviewed the transcripts of a series of interviews conducted in 1985 -- more than twenty years before the release of the AG Report -- by an historian engaged to compile a history of AIG and its predecessor, the Starr insurance enterprise. Those transcripts included interviews of the following Executors: Messrs. Ahlers, Freeman, Manton, Roberts, Stempel, and Tse. Those transcripts also included interviews of William S. Youngman, who until 1968 had been Starr's heir apparent; Edward Matthews, a former partner at Morgan Stanley, who had a key role in the formation of AIG and the June 1970 transaction; T.C. Hsu, a close confidant of Starr during the final years of his life, who later served as President of the

Foundation from 1969 until Ms. Davis's appointment in March 1999; and Mary Starr, who had been married to Starr from 1937 until 1959. Besides providing general background as to the matters alleged in the AG Report, these transcripts provide valuable insight into the evolution of Starr's business enterprise, his vision for the enterprise, and the steps he took in the final years of his life to ensure that his organization would be led by a group of individuals who were committed to his vision and business philosophy.

B. Parties to the Transactions

Counsel also sought information from the four companies that participated in the transactions in question and the June 1970 transaction. The Independent Committee's requests for information were broad, and included requests regarding topics such as:

- the corporate charters and by-laws for CVSCO, AIUO and AIU Far East;
- financial statements for each of those entities during the period of January 1, 1967 through December 31, 1969;
- records relating to each company's shareholders during the relevant period;
- documents relating to the valuation of each company's shares of common stock and voting stock;
- communications between the companies and the Executors during the relevant period;
- documents relating to Starr's Will; and
- documents relating to any opinion, preliminary or final, prepared by Morgan Stanley relating to the fairness of the June 1970 transaction.

The results of those document requests are set forth below:

Company	Status
CVSCO	Together with AIUO, have produced over 600,000 pages of documents in response to Counsel's document requests.
AIUO	Together with CVSCO, have produced over 600,000 pages of documents in response to Counsel's document requests.
AIU Far East	AIU Far East was not able to make a separate document presentation because its insurance operations were acquired by AIG in 1970 and it no longer has independent operations.
AIG	Committee received documents that AIG produced to NYAG pursuant to subpoena from NYAG.

1. CVSCO and AIUO

Counsel sent an initial set of document requests to CVSCO and AIUO on February 23, 2006. *See* Letter from Mr. Zweifach to Mr. Lundqvist (Feb. 23, 2006) (Tab 6) and Letter from Mr. Zweifach to Mr. Murphy (Feb. 23, 2006) (Tab 7). In response to these and other requests from Counsel, CVSCO and AIUO, through Boies Schiller, have produced over 600,000 pages of documents to the Independent Committee including documents produced to CVSCO and AIUO by AIG.

2. AIU Far East

AIU Far East was part of Starr's enterprise at the time of Starr's death, but was independently owned by his long-time business associate, K.K. Tse, who owned 52% of the company, and by Starr, himself, who owned the remaining 48% of the company. In January 1969, Tse agreed to sell his majority interest in AIU Far East to AIUO, and the Executors soon thereafter agreed to sell Starr's minority interest to AIUO at the same price. *See infra* at Part VIII.C. AIUO subsequently sold AIU Far East's insurance operations to AIG on June 30, 1970. *See infra* at Part IX.B.

As a result of those transactions, Counsel was unable to send a document request directly to AIU Far East. Counsel instead sent requests to AIUO and CVSCO on February 23, 2006, requesting documents from the files of AIU Far East. *See* Letter from Mr. Zweifach to Mr. Lundqvist (Feb. 23, 2006) (Tab 6); Letter from Mr. Zweifach to Mr. Murphy (Feb. 23, 2006) (Tab 7). In response to those requests, Boies Schiller informed Counsel that it could not locate AIU Far East's files, but noted that a number of responsive documents relating to AIU Far East were included in the CVSCO and AIUO document productions.

3. <u>AIG</u>

Counsel sent a document request to AIG on April 28, 2006. *See* Letter from Mr. Zweifach to Mr. Flumenbaum (Apr. 28, 2006) (Tab 8). AIG responded by informing Counsel that it had already produced documents responsive to the Independent Committee's requests to Boies Schiller in connection with ongoing litigation between AIG, CVSCO, and AIUO [SICO]. Thereafter, the NYAG produced to Counsel all of the documents that AIG had produced to the NYAG in connection with the latter's investigation of the events or transactions discussed in the AG Report. *See* Letter from Mr. Gaul to Messrs. Zweifach and Barnosky (May 5, 2006) (Tab 9).

C. Counsel and Other Professional Advisors to the Estate and the Foundation

The Independent Committee also sought information from the following entities and individuals who had advised the Executors on issues relating to the administration of the Estate and the Executors' final accounting of the Estate:

Name	Status
Sullivan & Cromwell LLP	Document requests sent on 2/16/06. Produced documents to the Independent Committee in late February 2006 and October 2006.
Caplin & Drysdale LLP	Document requests sent on 4/6/06. Made documents available to the Independent Committee for inspection on 4/7/06.
Lee, Mulderig, & Celentano	Firm no longer exists.
Roy Tarlow & Co.	Document requests sent on 3/24/06. Responsive documents were no longer available.
Frank Celentano	Deceased
Duncan Lee	Deceased
Angelo Mariani	Interviewed
Henry Christensen (S&C)	Interviewed
M. Bernard Aidinoff (S&C)	Interviewed
Thomas Troyer (C&D)	Interviewed
Frank Chapper (C&D)	Interviewed

1. Sullivan & Cromwell LLP

Counsel sent a document request to Sullivan & Cromwell LLP ("Sullivan & Cromwell") on February 16, 2006. *See* Letter from Mr. Zweifach to Mr. Graham (Feb. 16, 2006) (Tab 10). Sullivan & Cromwell represented the Estate in IRS proceedings and the Executors in the final accounting proceeding in the Surrogate's Court (where the firm also appeared for the Foundation). The firm also served as counsel to AIG in connection with the June 1970 transaction. On February 17, 2006, Sullivan & Cromwell produced approximately 4,800 pages of documents in response to the Independent Committee's requests. *See* Letter from Mr. Graham to Mr. Zweifach (Feb. 17, 2006) (Tab 11). Sullivan & Cromwell also provided the Independent Committee with its relevant time records.

The Independent Committee and Counsel also interviewed M. Bernard Aidinoff, a partner at Sullivan & Cromwell, who worked on the June 1970 transaction, the IRS proceedings involving the Estate, and, to a lesser extent, the final accounting proceeding; and Henry Christensen III, the Sullivan & Cromwell partner who had represented the Executors in the final accounting proceeding.

2. Caplin & Drysdale LLP

Counsel sent a document request to Caplin & Drysdale LLP ("Caplin & Drysdale") on April 6, 2006. *See* Letter from Mr. Cashman to Mr. Troyer (Apr. 6, 2006) (Tab 12). Caplin & Drysdale served as outside counsel for the Foundation beginning in June 1970. It provided tax advice and, among other things, also was asked by the Foundation to review and comment upon the Petition and the Accounting submitted by the Executors to the Surrogate's Court in connection with the Executors' final accounting. On April 7, 2006, Caplin & Drysdale made documents available for Counsel's inspection, from which Counsel selected 2,100 pages of documents relevant to the issues identified in the AG Report.

Counsel also interviewed the two principal Caplin & Drysdale attorneys who worked on the Foundation's engagements during the relevant years: Thomas Troyer, a partner at the firm, who had overall responsibility for the engagement; and Frank Chapper, a former counsel at the firm, who assisted Mr. Troyer in advising the Foundation generally and also reviewed the Executors' Petition and the Accounting.

3. Lee, Mulderig & Celentano

Lee, Mulderig & Celentano served as counsel for the Estate, CVSCO, AIUO, and AIG, and was a key participant in the events and transactions at issue in the AG Report. That firm, however, ceased to exist many years ago. Counsel learned that each of the partners in the firm who had been involved in the events in question has been deceased for many years.[3] Accordingly, aside from certain non-privileged documents included in the CVSCO, AIUO, and AIG productions, the Independent Committee was unable to obtain any information from the firm concerning the events in question.

4. David Tarlow & Co.

Counsel also sent a document request to Tarlow & Co. on March 24, 2006. *See* Letter from Mr. Cashman to Mr. Golden (Mar. 24, 2006) (Tab 13). Tarlow & Co. is the successor firm to David Tarlow & Co., which had provided accounting services to the Estate, both in connection with the Estate's administration and the IRS and Surrogate's Court proceedings. By letter dated March 27, 2006, the firm informed Counsel that it no longer had any records pertaining to C.V. Starr or the Foundation. *See* Letter from Mr. Golden to Mr. Cashman (Mar. 27, 2006) (Tab 14).

Counsel was also advised that Mr. Tarlow, who had provided a majority of the accounting services to the Estate, is deceased, and that none of the current employees of Tarlow & Co. had any involvement in the services provided to the Estate.

5. Internal Advisor

Counsel also interviewed Angelo Mariani, an attorney who worked for AIG from 1974 to 1976. During this period, Mr. Mariani was responsible for handling the Estate's

[3] Francis Mulderig had been both a partner in the firm, as well as an Executor, CVSCO Board member, and AIG officer. Duncan Lee had been both a partner of the firm and corporate secretary for CVSCO and AIUO. Frank Celentano had been a partner of the firm and had represented the Estate in connection with the AIUO and AIU Far East transactions. Each of these men, and the law firm itself, may have been able to provide helpful information.

probate proceedings and other matters related to the administration of the Estate. Mr. Mariani had regular monthly communications regarding the Estate and its administration with Irwin Liebowitz, a deputy in the Charities Bureau of the NYAG from the latter part of 1974 through the middle of 1976.

D. Other Relevant Parties, Entities and Individuals

Counsel also sought information from several other relevant parties, entities and individuals:

Name	Status
Morgan Stanley (investment advisor to AIG for the June 1970 transaction and earlier transactions)	The documents provided by NYAG included Morgan Stanley files, but none of those covered the 1970 and earlier transactions. Morgan Stanley was unable to locate any of those documents.
Lowe Bingham & Matthews (AIU Far East's auditors)	This firm ceased to exist as an independent entity in 1974 when it was acquired by Price Waterhouse.
Edward Matthews (Morgan Stanley)	Interviewed
C.O. Sethness (Morgan Stanley)	Interviewed
T.C. Hsu	Interviewed
Marion Breen	Interviewed

1. Morgan Stanley

Counsel sent a document request to Morgan Stanley on March 14, 2006. *See* Letter from Mr. Kudon to Mr. Mangan (Mar. 14, 2006) (Tab 15). As discussed above, the CVSCO Board retained Morgan Stanley to prepare an opinion as to the fairness of the price that AIG would agree to pay for the CVSCO and AIUO assets that it acquired in the June 1970 transaction. Morgan Stanley also provided general advice to Starr and the

CVSCO Board of Directors between 1967 and 1969 regarding the transactions leading up to the transformation of AIG into a publicly held entity.

On May 5, 2006, the NYAG produced to Counsel a CD containing documents that Morgan Stanley had previously produced to the NYAG. *See* Letter from Mr. Gaul to Messrs. Zweifach and Barnosky (May 5, 2006) (Tab 9). That production, however, did not include documents predating 1975, including (i) documents relating to work Morgan Stanley had performed in 1969 and 1970 in support of the February 19, 1970 fairness opinion, and (ii) a May 29, 1970 update the firm rendered in connection with the June 1970 transaction. Accordingly, Counsel requested that Morgan Stanley conduct a separate search for those documents; ultimately, however, Morgan Stanley reported that it was unable to locate the documents Counsel were requesting. *See* Letter from Mr. Kudon to Mr. Mangan (May 17, 2006) (Tab 16) and Letter from Mr. Cashman to Mr. Mangan (Sept. 28, 2006) (Tab 17).

Counsel was able to interview two members of the Morgan Stanley engagement team who had worked on the June 1970 transaction: Edward Matthews, the lead partner on the engagement; and Charles Sethness, the author of the memorandum and financial analysis that served as the basis for Morgan Stanley's fairness opinion.

2. <u>Lowe Bingham & Matthews</u>

Lowe Bingham & Matthews ("Lowe Bingham") was the independent auditor of AIU Far East during the years 1966 through 1970, and was responsible for conducting the independent valuation that was used to determine the price AIUO paid to acquire both Tse's majority interest and the Estate's minority interest in the company. *See infra* at

Part VIII.C. Lowe Bingham was acquired by Price Waterhouse in 1974, and ceased independent operations at that time. The Independent Committee was unable to obtain documents from Lowe Bingham or identify the Lowe Bingham partner responsible for the AIU Far East audit with whom it could speak.

3. The Foundation

Counsel also interviewed Marion Breen. Miss Breen served as personal secretary for Starr, and is his last surviving immediate relative. Miss Breen is also a former Vice President and director of the Foundation. The Independent Committee and Counsel also met with T.C. Hsu, who was a close confidant of Starr and served as President of the Foundation from 1969 until his retirement in March 1999.

E. The NYAG

The Independent Committee and Counsel sought information from the NYAG relating to (1) the NYAG's participation in the proceedings that resulted in the Surrogate's Court approval of the Executors' final accounting and the NYAG's consent to the entry of a judgment granting that approval; and (2) the evidence that the NYAG collected or relied upon in support of the allegations contained in the AG Report. The results of the Independent Committee's and Counsel's efforts are set forth below.

1. The NYAG's Participation in the Surrogate's Court Proceedings and Approval of the Final Accounting

As discussed in the AG Report, the NYAG represents the interests of the ultimate beneficiaries of private charitable foundations like the Foundation. As such, the NYAG was an indispensable participant in the proceedings that resulted in the approval of the Executors' final accounting.

Within a few weeks of the Independent Committee's appointment, Counsel asked the NYAG to produce all documents and files relating to the NYAG's participation in the above proceedings. *See* Letter from Mr. Barnosky to Mr. Rosenberg (Feb. 15, 2006) (Tab 18). In a letter dated March 7, 2006, the NYAG informed counsel that the NYAG's files and documents relating to the Surrogate's Court proceedings had been destroyed in conformity with the NYAG's regular document retention program. *See* Letter From Mr. Rosenberg to Messrs. Zweifach and Barnosky (Mar. 7, 2006) (Tab 19).

Based upon its review of the documents and interviews of other witnesses, the Independent Committee and Counsel identified three people at the NYAG who were substantial participants in the Surrogate's Court proceedings: Irwin Leibowitz, a deputy in the NYAG's Charities Bureau; Bernard Toomin, a staff attorney in the Charities Bureau; and Sidney Rubin, a staff accountant in the Charities Bureau. Of those three, Counsel only interviewed Mr. Toomin. Mr. Leibowitz died in 1991. Mr. Rubin was available, but counsel for the NYAG advised that it would be a hardship for Mr. Rubin to attend because of his advanced age. Counsel for the NYAG also represented that Mr. Rubin had no recollection of the Starr Estate matter and therefore would be unable to provide relevant information in any event. The Independent Committee therefore decided to accommodate Mr. Rubin and forego asking him to appear for an interview.

2. The NYAG's Investigation

On April 20, 2006, Counsel met with representatives of the NYAG. Counsel scheduled this meeting with the understanding, based on statements of the NYAG, that the NYAG would be providing an overview of "the evidence in support of the claims we [the NYAG] proposed that the Foundation assert," *see* E-mail from Mr. Rosenberg to Mr. Barnosky (Feb. 6, 2006) (Tab 20), or, at the very least, "a briefing on the legal issues presently facing the Foundation," *see* Letter from Mr. Rosenberg to Messrs. Zweifach and Barnosky (Mar. 7, 2006) (Tab 19). Instead, the NYAG chose to do neither. Consequently, the meeting was not helpful to the Independent Committee. *See* Letter from Mr. Rosenberg to Messrs. Zweifach and Barnosky (Apr. 24, 2006) (Tab 21) and Letter from Mr. Zweifach to Mr. Rosenberg (May 2, 2006) (Tab 22).

Given that the Independent Committee lacked the ability to subpoena witnesses or documents, it viewed obtaining documents from the NYAG as the most expeditious means by which to collect the vast majority of the relevant documents. Accordingly, in its February 15 letter to the NYAG, Counsel requested, *inter alia*, the following information: all documents the NYAG obtained pursuant to its investigation; and any memoranda or notes of interviews conducted by the NYAG in connection with its investigation. *See* Letter from Mr. Barnosky to Mr. Rosenberg (Feb. 15, 2006) (Tab 18).

a. Documents Relating to the NYAG's Investigation

The NYAG subsequently agreed to produce to Counsel the "relevant documents received from AIG, Morgan Stanley, and the Surrogate's Court." As to the documents it collected from CVSCO and AIUO, the NYAG suggested that the Independent Committee obtain those documents directly from Boies Schiller. *See* Letter from Mr. Rosenberg to Messrs. Zweifach and Barnosky (Mar. 7, 2006) (Tab 19).

On May 5, 2006, nearly three months after Counsel's initial request, the NYAG produced two CDs, five DVDs, and two videotapes to Counsel containing documents produced to the NYAG by AIG and Morgan Stanley in connection with the NYAG's investigation of the matters alleged in the AG Report. *See* Letter from Mr. Gaul to Mr. Zweifach and Mr. Barnosky (May 5, 2006) (Tab 9). While the NYAG continued to take the position that the Independent Committee could obtain the documents it collected from CVSCO and AIUO directly from Boies Schiller, it offered to make hard copies available in the event of delay or difficulty in obtaining those documents. *See id.*

b. Internal Memoranda, Notes and Interview Transcripts

In its March 7, 2006 letter, the NYAG informed Counsel that it would not produce any internal memoranda or notes from or relating to its own interviews of Messrs. Toomin, Christensen, and Matthews. *See* Letter from Mr. Rosenberg to Messrs. Zweifach and Barnosky (Mar. 7, 2006) (Tab 19).

On August 1, 2006, Counsel supplemented its document request to the NYAG by requesting all transcripts of witness depositions or interviews conducted pursuant to the NYAG investigation, after learning about the existence of at least one such transcript. *See* Letter from Mr. Zweifach to Mr. Rosenberg (Aug. 1, 2006) (Tab 23). In response, the NYAG notified Counsel that it would be willing to share the transcript of Edward Matthews's December 7, 2005 deposition so long as there were "appropriate safeguards" in place. *See* E-mail from Mr. Rosenberg to Messrs. Barnosky and Zweifach (Aug. 17,

2006) (Tab 24). Although Counsel twice offered to agree to implement such "safeguards," *see* Letter from Mr. Zweifach to Mr. Rosenberg (Aug. 28, 2006) (Tab 25) and Letter from Mr. Zweifach to Mr. Rosenberg (Sept. 29, 2006) (Tab 26), the NYAG never did provide the Matthews transcript.

VI. AN HISTORICAL OVERVIEW OF STARR'S BUSINESS ENTERPRISE

C.V. Starr personifies one of the great American success stories of the twentieth century.

His father having died when he was only two, Starr took odd jobs while still in grammar school in Fort Bragg, California. He was admitted to the University of California at Berkeley, but stayed only one year because he felt he could not afford to spend his time studying. Instead, Starr returned to his hometown and opened its first ice cream parlor, which he later sold for $1,000. He then went to work for a local realty company where he developed an interest in insurance. From there he moved to San Francisco. He sold automobile insurance during the day, read law while working in a law office at night, and earned admission to the Bar without having the benefit of a law school degree. He then opened an insurance brokerage agency, but left that to enlist in the army during World War I in the hope of traveling abroad.[4] When his service was over, he set out for Japan where he worked in the office of a steamship company for a short while. From there he moved to Shanghai in November 1919. He was a twenty-seven year old with a "passion for enterprise" but no other connection with that fabled

[4] He was not sent overseas, but he did manage to organize a laundry service for the troops which netted him more earnings than the major who was in charge of his unit.

city. *See* AIG, *A Short History of AIG: 1919 to the Present* at 3 (2001) ("AIG History") (Tab 27). Yet, it was in Shanghai that Starr was able to begin laying the foundation for what ultimately would become one of the most successful insurance enterprises in history with operations around the world.

As the years went by, Starr had to restructure and reorient his growing enterprise several times in the face of war, internal strife, and changing business circumstances. Each time he acted with a view to ensuring his enterprise's continuation under the control of himself and a core group at the center. He consistently selected associates he believed would share his commitment to the long term and the rewards of equity participation in an ongoing enterprise that demanded undivided loyalty. Starr limited membership in the control group to a select few.

Towards the end of his life, Starr became particularly concerned with planning for his succession. He wanted to be as certain as he could be that the enterprise to which he had devoted most of his life would continue under the stewardship of those he selected for the task. Starr executed his last will during this period. His planning for the continuation of his enterprise informed the tasks he imposed on his chosen executors and the role he intended the Foundation to play as part of his business estate plan. It is for that reason that we describe here the evolution of the Starr enterprise.

A. The Evolution of the Starr Enterprise

Starr opened a fire and marine insurance agency only a few months after arriving in Shanghai. *See* AIG History at 3-4 (Tab 27); Interview Transcript of K.K. Tse at 28-29 (Feb. 19, 1985) ("Tse Tr. at __") (Tab 28). The agency, which he named American

Asiatic Underwriters ("AAU"), initially wrote policies for larger insurance agents in the region. *See* AIG History at 3 (Tab 27). In 1921, however, Starr successfully convinced several American insurance companies, none of which had a presence in Asia, to appoint AAU as their exclusive representative in Shanghai. *See id*. That same year, Starr realized that the sale of life insurance directly to the Chinese could be profitable. *See id*. at 4 (explaining that Starr had noticed that "many [Asians] lived to a venerable age, and calculated that improving living standards would cause a further decline in the death rate."); *see also* Tse Tr. at 49-50 (Tab 28). Unable, however, to find a foreign insurer who was willing to sell life insurance in China, he decided to form his own company, which he named Asia Life Insurance Company. *See* AIG History at 4 (Tab 27).

By 1931, Starr had expanded his insurance operations throughout East Asia, opening agencies in such places as Hanoi, Saigon, Jakarta, Kuala Lumpur, and the Philippines. *See id.*; Tse Tr. at 141-42 (Tab 28); *see also* Interview Transcript of John Ahlers at 78-79, 155-57 (Feb. 12, 1985) ("Ahlers Tr. at __") (Tab 29) (crediting Starr's success to his innovative approach and ability to look past race or ethnicity in hiring and promoting employees and in writing policies in the native language and currency of the policyholder). During this period, Starr also started and acquired a number of businesses, including one of Shanghai's largest daily newspapers, *The Shanghai Evening Post and Mercury*, and two automobile dealers, Reliance Motors and Metropolitan Motors. *See* Tse Tr. at 62-63 (Tab 28); *see also* Interview Transcript of T. C. Hsu at 21-23 (Feb. 21, 1985) ("Hsu Tr. at __") (Tab 30). In the years leading up to World War II, Starr was recognized as one of Shanghai's most successful entrepreneurs. *See* AIG History at 4 (Tab 27).

Starr, however, did not limit his insurance business to the Far East. During a trip to New York in 1926, he organized a company named American International Underwriters Corporation ("AIUC") to write insurance for American risks that were located outside of the United States and Canada, so called "home-foreign" business. *See* AIG History at 5 (Tab 27); *see also* Interview Transcript of William Sterling Youngman at 87 (Feb. 20, 1985) ("Youngman Tr. at __") (Tab 31). Like AAU, this new entity did not insure any risks itself, but instead acted as a general agent for a group of insurance companies, many of which also were represented by AAU and other Starr agencies in the Far East. AIG History at 5 (Tab 27); *see also* Tse Tr. at 136-37 (Tab 28).

World War II disrupted Starr's operations in China, but he was able nonetheless to continue to expand his insurance agency business in the early 1940s by taking advantage of the sudden withdrawal of the once-dominant German and Italian insurance companies (and agents) from Latin America. *See* AIG History at 5 (Tab 27). After the war, the business continued to flourish as Starr expanded his agencies -- which operated under the AIU name -- into Europe and Japan, initially to service American occupation troops. *See id.* at 6. Also, in large part due to the remarkable efforts of his long-time associate, K.K. Tse, Starr was able to reassemble his operations in China. *See id.* Among other things, Tse had convinced the Japanese occupation forces to store AAU's records in a local bank, where they remained safe for the duration of the war. *See id*. Later, in January 1949, with Communist forces on the doorstep of Shanghai, Tse transferred the company's regional headquarters to Hong Kong by airlifting out key employees and records. *See* Tse Tr. at 92-98, 105-110 (Tab 28); Youngman Tr. at 153-54 (Tab 31). During this same period, Starr also formed the Philippine American Life Insurance Company ("PhilAm Life"), which quickly became the largest life insurer in the Philippines. *See* Tse Tr. at 153-56 (Tab 28).

B. The 1948 Consolidation of the Starr Enterprise

In the late 1930s, Starr formed a partnership named Starr, Park and Freeman, to serve as the "senior management" group for his rapidly growing organization. *See* Interview Transcript of Edwin A.G. Manton at 305-06 (Jan. 29, 1985) ("Manton Tr. at __") (Tab 32); Youngman Tr. at 76 (Tab 31); Interview Transcript of John J. Roberts at 271 (Aug. 27, 1985) ("Roberts Tr. at __") (Tab 33). By 1948, however, there were some in the group who had grown tired of Starr's relentless expansion of the organization's insurance business and what they regarded as an extravagant lifestyle. *See, e.g.*, Manton Tr. at 216-17 (Tab 32); Youngman Tr. at 57 (Tab 31); Ahlers Tr. at 148-49, 158 (Tab 29). In February of that year, while Starr was skiing with his wife and friends in the Alps, two of the senior members of the partnership -- Brock Park and Arthur Duff -- met with other members to discuss ousting Starr from his role as Chairman of Starr, Park and Freeman. *See* Manton Tr. at 216 (Tab 32); Interview Transcript of Mary Helen Malcolm Kluge (Former Mary Starr) at 120-26 (Feb. 19, 1985) ("Mary Starr Tr. at __") (Tab 34); Youngman Tr. at 56-59 (Tab 31). Starr learned of the meeting from his secretary, and immediately chartered a plane back to New York, where he persuaded the members of the group to keep him as Chairman. *See* Mary Starr Tr. at 121-22 (Tab 34). A few months later, Starr bought out Park's and Duff's interests in the partnership for a total of $1,000,000 and disbanded the group. *See* Youngman Tr. at 60-61 (Tab 31) (discussing terms of Starr's settlement agreements with Park and Duff).

1. The 1948 Restructuring

In the aftermath of this attempted coup, Starr began the process of "rationalizing" his far-flung organization, which, until then, had consisted of a myriad of loosely connected life insurance companies and insurance agencies. *See* AIG History at 8 (Tab 27); Youngman Tr. at 69-74 (Tab 31); Ahlers Tr. at 182-83 (Tab 29). In October 1948, he formed two companies under Panama law, and located them in Bermuda. *See* Manton Tr. at 307 (Tab 32); Ahlers Tr. at 180-81 (Tab 29). The first entity, AIRCO, served as the parent company for all of Starr's life insurance companies. *See* Manton Tr. at 298 (Tab 32); Ahlers Tr. at 181 (Tab 29). AIRCO was also responsible for managing its subsidiaries' investments, and served as the principal reinsurer for Starr's insurance companies. Youngman Tr. at 67-68 (Tab 31); AIG History at 8 (Tab 27). The second entity, AIUO, served as the parent company for the AIU agency companies that had been established outside of the United States. *See* Manton Tr. at 294-95, 307 (Tab 32); AIG History at 8 (Tab 27). As discussed in Part VIII.C below, Starr did not include a number of his Far East insurance agencies in AIUO. He retained those agencies under another entity that he owned jointly with K.K. Tse, named AIU Far East. *See* Tse Tr. at 183-84 (Tab 28); Ahlers Tr. at 72, 194-96 (Tab 29). Tse became the President of AIU Far East and ultimately became responsible for all of Starr's Southeast Asia operations. Tse Tr. at 45, 162, 183 (Tab 28).

Starr completed the "rationalization" of his organization in December 1950, with the formation of CVSCO. This company, which Starr formed under Delaware law and based in New York, was to serve as the controlling and policy-making body for all of the companies in the Starr enterprise. *See* Youngman Tr. at 75-76, 84 (Tab 31) ("Starr constantly reiterated in all the years, from the time it was founded to the time I retired, that [CVSCO] was the senior company, the management company, the boss."); Ahlers Tr. at 141 (Tab 29). For tax reasons, and to provide the company with a stream of revenue, CVSCO also served as the parent company for AIUC (*i.e.*, the home-foreign business) and a handful of other domestic insurance agencies it still owns today.[5] *See* Notes of Chairman's Remarks at Joint CVSCO and AIUO Voting Shareholders' Meetings held on Nov. 10, 1965 (Tab 35) ("CVSCO was [originally] conceived as the stateside opposite member of the AIUO offshore agency organization, plus, in general and somewhat vague terms, as the principal policy-making company of the combined groups, including AIRCO"); *see also* Youngman Tr. at 75 (Tab 31) ("It owned AIU Corp. because they were both domestic American companies and paid American taxes and [CVSCO] had to have some revenue, which it got from the profits, dividends from AIU Corp . . .").

Until 1965, when Starr decided it was necessary to reorganize yet again, AIUO and CVSCO were structured in the same ways. The two entities had nearly identical

[5] Starr also formed American International Underwriters Association ("AIUA") in 1949. *See* AIG History at 8 (Tab 27). The AIUA was an unincorporated association of the insurance companies represented by AIUO and AIUC, "which pooled business in agreed percentages and shared assets retained overseas to meet local requirements." *Id.*

equity classes, share redemption provisions, and shareholders. *See* Notes of Joint CVSCO and AIUO Voting Shareholders' Meetings held on Nov. 10, 1965 (Tab 35). Moreover, because the voting shareholders of those two companies also controlled the largest block -- if not a majority -- of the shares of AIRCO common stock, AIUO and CVSCO also had control over AIRCO.

2. The CVSCO and AIUO Corporate Charters

Starr designed a two-tiered equity structure for AIUO and CVSCO that principally consisted of voting stock and preferred stock.[6] *See* Art. of Incorp. of AIUO art. III, § 1(A) (Oct. 11, 1948) ("AIUO Charter art. __") (Tab 36); Cert. of Incorp. of CVSCO art. IV, § (A) (Dec. 26, 1950) ("CVSCO Charter art. __") (Tab 37). As described below, this structure was in line with Starr's philosophy that management should participate in the ownership and the profits of the business. *See* Manton Tr. at 303-04 (Tab 32) (explaining that Starr, who had no children, looked upon the organization "as his extended family" and "felt that the people that worked with him should have a piece of the action."); *cf.* Notes on Minutes of Meeting of CVSCO Held Oct. 24, 1968 (Tab 38) ("Starr announced that he has entered into an agreement with Mr. Tse for the sale of a substantial number of his own shares [of AIRCO] over a three-year period and he was willing to make sales to Messrs. Greenberg, Roberts, Stempel and Tweedy, *all in line with the philosophy that the*

[6] While CVSCO only offered a single type of preferred stock -- junior preferred -- AIUO had a junior preferred and first preferred stock. Holders of AIUO first preferred shares were entitled to cumulative dividends payable quarterly at the rate of $5 per share. AIUO Charter art. III, § 1(B) (Tab 36).

best way of holding the organization together is through management-ownership." (emphasis added)).

a. AIUO and CVSCO Voting Stock Accorded Control Over Those Companies

Because the voting stock of AIUO and CVSCO carried the exclusive right to vote, holders of this stock had, *as a group*, management control over the respective corporations. AIUO Charter art. III, § 1(C)(a) (Tab 36); CVSCO Charter art. IV, § (B)(1) (Tab 37). In allocating this stock, Starr initially retained 30% of the voting shares in each corporation for himself, and allocated the remaining shares in 10% increments to a small group of selected senior executives in the organization. *See* Manton Tr. at 309 (Tab 32) ("[There] were [100 voting shares] in number . . . Starr retained [30] and the rest of the other seven had [10] apiece. I, for example, was a voting shareholder . . . So you see, he didn't have control of [either] company.").

b. The Value of AIUO and CVSCO Voting Stock and Junior Preferred Stock

Although the voting stock of AIUO and CVSCO provided its shareholders as a group with control over each company, the voting stock did not have economic value tied to the shareholder's equity in the company or the net worth of the corporation. To the contrary, a holder of CVSCO voting stock was only entitled to a quarterly dividend of 5% of the $100 subscription price of the stock, while a holder of AIUO voting stock was entitled only to a quarterly dividend of $5 per share. *See* AIUO Charter art. III, § 1(C)(e) (Tab 36); CVSCO Charter art. IV, §(B)(5) (Tab 37); *see also* Manton Tr. at 309 (Tab 32) ("These voting shares were a nominal [$100] apiece. They paid [$5 per quarter] and that was it. They had no accumulation, nothing. *So it was simply a device for control*." (emphasis added)).

In comparison, the value of AIUO's and CVSCO's junior preferred stock was based directly on the net worth of each company and the results of its operations over a five-year period. (Each five-year period represented a single series of stock.) Manton Tr. at 310-11 (Tab 32); *see also* AIUO Charter art. III, § 1(D) (Tab 36); CVSCO Charter art. IV, § (C) (Tab 37). At the beginning of each five-year period, Starr and the other voting stockholders of AIUO and CVSCO chose the individuals who would receive shares (and the number of shares) for each series based on the individual's past performance and expected contribution to the organization during the upcoming five-year period. Interview of Maurice R. Greenberg (Oct. 17, 2006); Interview of Houghton Freeman (Sept. 20, 2006); Interview of Edward E. Matthews (July 25, 2006). In other words, Starr used the junior preferred stock of each company to both reward and motivate the senior members of his organization.

At the end of a five-year period, the voting stockholders of each company would value the preferred shares based on the then current net worth of the respective company, at which point the shares would have the right to receive a preferred quarterly dividend payable at the annual rate of 5% of that calculated net worth value. *See* Manton Tr. at 310 (Tab 32); *see also* AIUO Charter art. III, § 1(D) (Tab 36); CVSCO Charter art. IV, § (C) (Tab 37). Hence, if the voting stockholders valued a junior preferred series at $500 per share at the end of the five-year period, an individual who owned 100 shares of that series would have stock worth $50,000, and would have the right to receive a dividend of

$25 per share, payable quarterly. The AIUO and CVSCO junior preferred shares were not freely transferable; each company's charter included a right of first refusal provision that required the holder of a series of junior preferred stock to offer his or her shares to the company for a period of ninety days before the shares could be sold to another party. *See* AIUO Charter art. IV, § (D)(e) (Tab 36); CVSCO Charter art. IV, § (G)(5) (Tab 37).

c. The Redemption and Right of First Refusal Provisions in the AIUO and CVSCO Charters

A holder of CVSCO or AIUO voting stock was also restricted from selling or devising his or her shares to a third party. Like many closely held corporations, both companies' charters included stringent redemption and right of first refusal provisions that ensured that the voting stock would remain in the hands of the company, the other holders of the voting stock, and their chosen successors. *See* AIUO Charter art. III, § (C) (Tab 36); CVSCO Charter art. IV, § (B) (Tab 37). Starr designed each charter that way so as to prevent outsiders, including the estates and heirs of deceased shareholders, from joining the shareholding group. *See* Youngman Tr. at 72 (Tab 31) (quoting from Manton's history of company). He did this in the following ways:

- The AIUO and CVSCO charters required a holder of voting stock to offer his or her shares to the company at subscription price plus accumulated dividends before the shares could be sold to another person. AIUO Charter art. III, § (C)(b) (Tab 36); CVSCO Charter art. IV, § (B)(2) (Tab 37).
- Upon the death of a voting shareholder, AIUO and CVSCO were entitled and obligated to purchase the deceased shareholder's shares at the subscription price the deceased shareholder had paid plus accumulated dividends. AIUO Charter art. III, § (C)(c) (Tab 36); CVSCO Charter art. IV, § (B)(3) (Tab 37).
- AIUO or CVSCO also could repurchase any outstanding shares of voting stock at any time at "net worth" upon a resolution adopted by the registered holders

> of two-thirds of the outstanding voting stock. AIUO Charter art. III, § (C)(d) (Tab 36); CVSCO Charter art. IV, § (B)(4) (Tab 37); *see also* Letter from Mr. Lee to Mr. Seitz (Feb. 9, 1959) (Tab 39) (describing redemption provisions in AIUO charter).

There was no public market for the shares of the AIUO or CVSCO voting stock. Instead, all transactions in those shares after they were issued were conducted pursuant to the redemption provisions set forth above.

3. <u>The Corporate Structure of AIRCO</u>

AIRCO, in comparison to CVSCO and AIUO, only had a single class of common stock, which was not subject to any redemption or right of first refusal provision. According to Manton, "Starr believed that an AIUO type scheme was not practical for AIRCO" because:

> Insurance companies, as distinct from agencies, need substantial capital to support their premium writings. The growing premium volume requires growing capital resources. It must therefore retain indefinitely a substantial portion of its profits and is in no position to adopt a high payout dividend policy much less to redeem its own stock. An agency on the other hand has relatively modest capital needs since it assumes no insurance risks.

Youngman Tr. at 72-73 (Tab 31)(quoting historical overview prepared by Manton); *see also* Ahlers Tr. at 183-84 (Tab 29).

In order to enable his employees to profit from the ownership and growth of AIRCO, Starr facilitated the creation of an over-the-counter market for AIRCO common stock by organizing a bank in Bermuda that began to trade the stock. Tse Tr. at 231-32 (Tab 28). Until May 1969, AIRCO was the only company within the Starr enterprise whose stock was publicly traded.

C. The 1965 Reorganization

By 1964, Starr was suffering from several serious ailments, including heart disease, diabetes, and emphysema. *See* Youngman Tr. at 223 (Tab 31); Ahlers Tr. at 201-02 (Tab 29); Hsu Tr. at 78 (Tab 30); Interview Transcript of Ernest E. Stempel at 120 (Feb. 27, 1985) ("Stempel Tr. at __") (Tab 40). Perhaps recognizing that he only had a few years left to live, Starr focused increasingly on designing and implementing a plan that would ensure that his organization would not only remain independent, but would be in the hands of individuals who were loyal to the corporate culture he had spent nearly forty-five years developing. Tse Tr. at 219 (Tab 28) ("[Starr] realized something needed to be done. Then he start[ed] to think and plan how to reorganize -- put it this way -- he tried to work out a scheme how to conduct our future operations after he leaves."); Stempel Tr. at 323-26 (Tab 40) (discussing Starr's intent to restructure organization in 1960s and appoint a team "that he felt would carry on the organization's philosophy as he visualized it"); Written Responses of John J. Roberts. At the same time, Starr also understood that the organization was changing, and needed to transition from the old guard -- which consisted primarily of Starr's long-time business partners -- to a new generation of leadership.[7] Interview of Maurice R. Greenberg (Oct. 17, 2006).

[7] In particular, Starr recognized that the organization was beginning to shift its emphasis from owning and operating insurance agencies to underwriting and insuring the risks themselves. Interview of Maurice R. Greenberg (Oct. 20, 2006).

After soliciting recommendations from a number of sources,[8] Starr ultimately decided in November 1965 to restructure CVSCO and replace its existing management team with a group of individuals whom Starr felt were best suited to lead the organization following his death. *See* Written Responses of John J. Roberts. Starr unveiled his plan at a November 10, 1965, joint meeting of the voting stockholders of CVSCO and AIUO. *See* Notes of Chairman's Remarks at Joint CVSCO and AIUO Voting Stockholders' Meetings held on Nov. 10, 1965 (Tab 35). He informed the group that "modern needs point to the necessity of establishing a modern management organization with a limited group of shareholding partners." *Id.* (reiterating that "stock participation in this organization should be limited to the actively participating partners."). In order to accomplish this "proposed modernization of CVSCO," Starr proposed the following three steps:

1. CVSCO should "issue no further series of junior preferred shares," and should "make every effort to retire its presently outstanding series as soon as possible";

2. "[T]he present 10,000 authorized shares of Voting Stock should be renominated Common Stock with exclusive voting control of the corporation and with the sole right to the residual equity, both as to dividends and liquidation rights"; and

3. "[T]he Common Stock of CVSCO would be owned by the proposed management team," which would consist of J. Ahlers, M.R. Greenberg, C.V. Starr, E.A.G. Manton, J.J. Roberts, E.E. Stempel,

[8] S*ee* Notes of Chairman's Remarks at Joint CVSCO and AIUO Voting Shareholders' Meetings held on Nov. 10, 1965 (Tab 35) (noting that Starr had asked the voting shareholders of CVSCO and AIUO to submit recommendations to him on the future of CVSCO during a June 1964 meeting); *see also* Roberts Tr. at 254-57 (Tab 33).

> G. Tweedy, K.K. Tse, and W.S. Youngman, in proportions to be agreed."

Id. During this same meeting, Starr also announced that "he felt the time had come when the voting control of AIUO should be shifted to the emerging younger team." *Id.* Therefore, he and two other shareholders stated that they would transfer their voting shares as follows: Starr's shares would be divided equally between Youngman and Greenberg, and the other voting shares would go to Roberts and Manton. *Id.*

1. <u>The Selection of the CVSCO Board Members</u>

In choosing the members of the CVSCO management team, Starr "selected the people he thought had real integrity, [and who he thought] would try to keep the family feeling of AIU-C.V. Starr together." Stempel Tr. at 329 (Tab 40); *see also* Manton Tr. at 335 (Tab 32) (explaining that Starr had said that the restructuring was intended "to separate the sheep from the goats" and that he chose the eight people who he believed should be his successors). According to Stempel, Starr wanted to ensure that a "team" was in place that "he felt would carry on the organization's philosophy as he visualized it." Stempel Tr. at 324 (Tab 40).

Starr selected the following eight individuals in November 1965 to lead the organization following his death:

Name	**Role in Starr Organization as of Nov. 1965**
John Ahlers	Treasurer of CVSCO, and long-time employee who was widely known as the "Minister of Finance." Youngman Tr. at 90, 112-13 (Tab 31); Ahlers Tr. at 247-49 (Tab 29).
M.R. Greenberg	President of American Home; was hired by Starr in 1960 to develop CVSCO's accident and health insurance business. Appointed Vice Chairman of CVSCO in September 1967. Interview of Maurice R. Greenberg (Oct. 17, 2006)
E.A.G. Manton	President of AIUO. *See* Roberts Tr. at 252, 276 (Tab 33).

Name	**Role in Starr Organization as of Nov. 1965**
J.J. Roberts	President of AIU Europe. *See* AIG History at 11 (Tab 27).
Ernest Stempel	President of AIRCO. *See* AIG History at 9 (Tab 27).
K.K. Tse	Starr's oldest and most trusted associate, Tse was the C.E.O. of Starr's Asian operations, and President of AIU Far East – a separate company that he owned jointly with Starr. Youngman Tr. at 88 (Tab 31).
Gordon Tweedy	Lawyer by profession, served as Starr's personal secretary in the 1950s, and was widely considered the third-most powerful member of the management team – behind Starr and Youngman – in 1965. Tse Tr. at 134 (Tab 28).
William S. Youngman	Former Washington lawyer, who Starr hired in 1948 in the aftermath of the "Park rebellion," became President of CVSCO in 1949, and was widely considered Starr's likely successor. Roberts Tr. at 253-54 (Tab 33), 266; Tse Tr. at 134 (Tab 28).

These individuals -- by design -- owned a majority of the common stock of CVSCO and the voting stock of AIUO and, together with Starr, owned a controlling block of AIRCO common stock. *See* Notes of Chairman's Remarks at Joint CVSCO and AIUO Voting Stockholders' Meeting held on Nov. 10, 1965 (Tab 35); CVSCO Common Stock: List of Issues, Redemptions and Purchases from Fall 1965 (Feb. 18, 1972) (Tab 41); *see also* AIUO Annual Voting Stockholders Meeting, held Oct. 23, 1967 (Tab 42). The newly reconstituted CVSCO Board of Directors thus had direct control over each of the three principal entities in the Starr enterprise.

2. Starr's Increasing Reliance on the CVSCO Board

Prior to November 1965, most, if not all, of the strategic decisions relating to the organization and its companies were handled by Starr, Youngman, and Tweedy. *See* Roberts Tr. at 269 (Tab 33). Following the 1965 reorganization, however, Starr wanted to rely increasingly on the CVSCO Board as a whole to make those decisions. *See* Youngman Tr. at 224-30 (Tab 31) ("Well they were [the] people that [Starr] thought should meet frequently to discuss the affairs of the Company and make decisions about the Company"); Interview of Maurice R. Greenberg (Oct. 17, 2006). This shift is evident from Starr's comments at a CVSCO Board meeting held on February 20, 1968:

> The Chairman [Starr] opened the meeting with some preliminary remarks as to the high degree of mutual trust and faith which must at all times exist among the members of the Board. He expressed his view that, despite the corporate form of the company, the Board members in their capacities both as Directors and Common Stockholders are, in spirit, a partnership.

See Notes on Minutes of Directors' Meeting of CVSCO held Feb. 20, 1968 (Tab 43).

3. CVSCO's Amendment of the Valuation Formula for Its Common Stock

Less than two weeks after Starr announced his plans to restructure the organization, the CVSCO Board amended the company's Certificate of Incorporation to reflect the changes that Starr had proposed at the November 1965 joint stockholders' meeting. Cert. of Am. to Cert. of Incorp. of C.V. Starr & Co., Inc. (Nov. 24, 1965) ("Am. CVSCO Charter art. __") (Tab 44). In addition to converting "Voting Stock" into "Common Stock," the amendment also eliminated "subscription price plus accumulated dividends" as the amount the company was required to pay under the redemption and right of first refusal provisions of the charter in favor of "fair value as determined by the Board of Directors." *See id.* Thus, while shares of CVSCO common stock were still subject to the same restrictions on alienation that applied to the shares of AIUO voting stock, the CVSCO Board was given more flexibility in determining the price of those shares, whereas the AIUO voting stockholders were still bound by the original subscription price plus accumulated dividends formula.

Neither the CVSCO charter nor the amendment defined the term “fair value.” Instead, that term was defined in a series of letter agreements that Starr and the CVSCO Board entered into beginning in 1966. The first of those agreements was adopted on March 1, 1966 (the “March 1966 valuation agreement”), and defined “fair value” as follows:

> [T]he fair value of a share of Common Stock for the purposes of the foregoing paragraphs shall be deemed to be the highest of –
>
> (1) the price paid for such share;
>
> (2) the price paid for such share plus an annual simple uncompounded accretion of 10% of such price over the period the share was held by its holder less the amount of all cash dividends paid to such holder during such period;
>
> (3) ten times the annual adjusted earnings of the Company attributable to such share, taking the average of such earnings over the three full calendar years preceding the date of sale; or
>
> (4) the adjusted book value of such share as approved annually by the Board of Directors.

CVSCO Letter Agreement (March 1, 1966) (Tab 45). The March 1966 valuation agreement was designed to ensure that the shares were affordable for future directors and shareholders, and that the company would have sufficient funds (a significant problem at the time) to purchase the shares from a retiring or deceased shareholder. Interview of Maurice R. Greenberg (Oct. 17, 2006).

The March 1966 valuation agreement, however, did not end the discussion. The CVSCO Board engaged in an extended discussion of the matter at its October 6, 1967 meeting. *See* Informal Minutes of Directors’ Meeting of CVSCO held Oct. 6, 1967 (Tab 46). In or about September 1968, the CVSCO Board formed the Committee on Valuation of Common Stock (the "Valuation Committee") to examine the March 1966 valuation letter agreement and determine whether any revisions were necessary. *See* Notes on Minutes of Directors' Meeting of CVSCO Board held Sept. 26, 1968 (Tab 47). In a report dated October 15, 1968, the Valuation Committee recommended that the CVSCO Board eliminate the "ten times earnings test" as an option for valuing CVSCO's common stock. Memorandum from Valuation Committee on Valuation of Common Stock to CVSCO Directors (Oct. 15, 1968) (Tab 48); *see also* Memorandum from Mr. Mulderig to Mr. Tse (Sept. 11, 1968) (Tab 49) ("As we discussed, the following is a rewrite of the letter agreement eliminating the ten-times earning provision and adding in the underlined language a provision for delaying payment.").

Nine days later, at a CVSCO Board meeting held on October 24, 1968, Starr and the other members of the Board unanimously approved a revised letter agreement reflecting this proposed change to the definition of "fair value" (the "October 1968 valuation agreement"). *See* Notes on Minutes of Directors' Meeting of CVSCO held Oct. 24, 1968 (Tab 38); October 24, 1968 Valuation Agreement (Tab 50); *see also* Written Responses of John J. Roberts. The decision to eliminate the "ten times earnings" option from the definition of fair value was apparently based on the CVSCO Board's conclusion that adjusted book value was a more appropriate formula for determining the value of CVSCO common stock than a multiple of earnings approach. Interview of Maurice R. Greenberg (Oct. 17, 2006). Indeed, even before the approval of the October 1968 valuation agreement, the Board had consistently valued shares of CVSCO common stock at adjusted book value. *See, e.g.*, Informal Minutes of Discussion at the Special Meeting of the Common Stockholders of CVSCO, held Sept. 28, 1967 (Tab 51) (providing the estimated book value of CVSCO common stock for purpose of determining the price that Freeman would need to pay to purchase fifty shares of common stock).

Shortly following Starr's death in December 1968, the CVSCO Board considered additional revisions to the valuation agreement, which were ultimately approved on March 13, 1969. March 1969 Valuation Agreement (Tab 52). According to a March 24, 1969 memorandum from Duncan Lee to Houghton Freeman and K.K. Tse, the more recent revisions were meant:

> [T]o spell out in greater detail the elements to be considered in arriving at "adjusted book value" and also to make it clear that the shares will not be burdened with the cost of future improvements in the pension plan, including any increase in the past service liability resulting from such improvements. All such costs will be paid out of current earnings. It was felt that this point should be made clear in fairness to those who have and who will purchase the ex-Youngman shares at the price Bill Youngman received for them, since otherwise any substantial increase in past service liability could immediately bring the value of the shares below the price paid by such purchasers.

Memorandum from Mr. Lee to Messrs. Freeman and Tse (Mar. 24, 1969) (Tab 53); *see also* Memorandum from Mr. Manton to CVSCO Board of Directors re Valuation Formula (Feb. 20, 1969) (Tab 54); Notes on Minutes of Directors' Meeting of CVSCO held Feb. 28, 1969 (Tab 55). In other words, while the March 1969 valuation agreement made clear that certain pension liabilities should not be taken into account in calculating adjusted book value, the CVSCO Board did not materially alter the fair value definition that Starr and the Board approved on October 24, 1968, which had eliminated the ten times earnings test as an available alternative.

D. Starr's Final Restructuring of His Enterprise

When Starr announced his plan to restructure the organization in November 1965, it was widely thought that Youngman would succeed him as chairman of CVSCO. *See, e.g.*, Ahlers Tr. at 215 (Tab 29); Tse Tr. at 219 (Tab 28); Manton Tr. at 326 (Tab 32); Youngman Tr. at 80-81 (Tab 31). Youngman already owned three times the number of AIUO voting shares than that held by any other shareholder, and behind Starr, he owned the second largest block of AIRCO common stock. *See* AIUO Annual Voting Stockholders Meeting, held Oct. 23, 1967 (Tab 42). Moreover, in December 1965, Starr allocated an equal amount of CVSCO common stock to Youngman as he did to himself (*i.e.*, 200 shares), which at the time was more than twice the amount allocated to any other shareholder of the company. CVSCO Common Stock: List of Issues, Redemptions and Purchases from Fall 1965 (Feb. 18, 1972) (Tab 41).

By 1967, however, Starr's relationship with Youngman had changed. Manton Tr. at 339 (Tab 32). Some Executors believed that the change was due to Starr's realization that Youngman had failed to learn the insurance business, and therefore, in Starr's view, was not the best person to lead the organization in the future. *See* Tse Tr. at 224 (Tab 28); Ahlers Tr. at 215 (Tab 29); Roberts Tr. at 266-67 (Tab 33); Interview of Maurice R. Greenberg (Oct. 17, 2006). Other Executors have speculated that Starr recognized that Youngman did not share his vision for the organization, but instead looked at it merely as an investment rather than as a long-term enterprise. *See* Manton Tr. at 342 (Tab 32); Roberts Tr. at 310 (Tab 33) ("Basically, [Youngman] didn't understand the business or all the other emotionalism that went into it on the part of everybody that was working at it, and I think he just saw it as an object for gain."); Interview of Houghton Freeman (Sept. 20, 2006); Interview of Ernest E. Stempel (Jan. 9, 2007).

In any event, beginning in the summer of 1967, Starr began to ignore Youngman's advice on a number of important decisions that he was making for the organization. In August 1967, for instance, Starr named Greenberg Vice Chairman of AIRCO despite Youngman's vehement opposition to the appointment. *See* Youngman Tr. at 219-22 (Tab 31); Tse Tr. at 226-29 (Tab 28). The next month, again over the objection of Youngman, Starr recommended that the CVSCO Board issue fifty shares of CVSCO common stock to Houghton "Buck" Freeman. *See* Informal Notes of Minutes of CVSCO Common Stockholders Meeting held on Sept. 28, 1967 (Tab 51). At the same time, and as discussed above, Starr began to rely more upon the CVSCO Board, as opposed to Youngman, to make strategic and tactical decisions for the organization. *See* Youngman Tr. at 224-30 (Tab 31).

In October 1967, Starr purchased an additional forty shares of CVSCO common stock at their then adjusted book value of $2,240 per share. *See* Informal Minutes of Directors' Meeting held Oct. 12, 1967 (Tab 56); *see also* Youngman Tr. at 228-30 (Tab 31). As a result of the purchase, Starr owned forty more shares of CVSCO common stock than Youngman, and 140 more shares than any other shareholder of CVSCO common stock. Ten days later, the AIUO voting stockholders authorized Starr to purchase ten shares of AIUO voting stock from the Estate of Walter Weaver at the subscription price of $100 per share. *See* Minutes of AIUO's Annual Voting Stockholders' Meeting, held Oct. 23, 1967 (Tab 42); *see also* Memorandum re Estate of

C.V. Starr (Aug. 9, 1978) (Tab 57). Finally, at a CVSCO Board meeting held on April 9, 1968, Starr recommended that the AIUO voting stockholders issue the equivalent of twenty new AIUO voting shares to him at the subscription price of $100 per share. *See* Notes on Minutes of Directors' Meeting of CVSCO held Apr. 9, 1968 (Tab 58). As a result, Starr came to own thirty shares of AIUO voting stock, a number of shares equal to the number then held by Youngman. *See* AIUO's Annual Voting Stockholders' Meeting, held Aug. 27, 1968 (Tab 59). Significantly, it does not appear from the minutes of that meeting that Starr intended to hold those shares for his own benefit; instead, Starr apparently planned to speak with Youngman about transferring their additional twenty shares of AIUO voting stock to CVSCO. *See* Notes on Minutes of Directors' Meeting of CVSCO held Apr. 9, 1968 (Tab 58).

Youngman viewed Starr's April 1968 purchase of AIUO voting stock as the "final signal" that Starr did not intend to name him as his successor, and on July 10, 1968 he announced his intention to resign effective May 31, 1969. *See* Notes on Minutes of Directors' Meeting of CVSCO held July 10, 1968 (Tab 60); *see also* Youngman Tr. at 234 (Tab 31) ("There was a certain time, say it would be about May, 1968, I wrote Starr and said, 'Things seems to be a little prickly between us and no way am I going to fight with you. I think I better . . . I've made a fortune and I think I better retire.'"). Regardless of whether Starr intended this result or not, Youngman's resignation raised serious "control" issues for the organization. As noted above, Youngman owned a substantial amount of stock in the various Starr entities, and while his AIUO voting stock and CVSCO common stock were both subject to mandatory redemption provisions, Youngman's shares of AIRCO common stock were freely transferable.

1. Starr's Growing Concern About the Independence of AIRCO

At or about the same time that Youngman informed the CVSCO Board of his "early retirement" from the day-to-day management of the organization, Starr and the other CVSCO directors were examining the various methods by which they could prevent a hostile takeover of AIRCO. The CVSCO Board no longer controlled a majority of the outstanding shares of AIRCO common stock because of the market that had developed for those shares, and was concerned that AIRCO could fall victim to the rash of corporate acquisitions that had swept across America in 1967 and 1968. *See Nobody Tops AIG in Intricacy or Daring*, Fortune, May 22, 1978 (Tab 61); *cf. The Conglomerates' War to Reshape Industry*, Time Magazine, Mar. 7, 1969 (Tab 62). At the time of Youngman's resignation, the members of the CVSCO Board controlled, either directly or indirectly, approximately only 40% of the outstanding shares of AIRCO common stock. *See* AIRCO Voting Trust Agreement (Aug. 5, 1968) (Tab 63); *see also* Statement of Proxy Soliciting Votes of AIG Shareholders at 7 (May 28, 1970) (Tab 64). Nine percent of those shares, however, were controlled by Youngman -- who, as discussed below, seemed to be more interested in obtaining a high return on his investment than he was in maintaining the continued independence of the organization. Interview of Ernest E. Stempel (Jan. 9, 2007).

2. The AIRCO Voting Trust Agreement of August 1968

During the summer of 1968, the CVSCO Board considered a variety of preventive measures that the Board could take to ensure that it retained control of AIRCO. *See* CVSCO Control Memorandum (July 11, 1968) (Tab 65). Those measures included, among other things, a proposal to convert AIUO voting stock into freely transferable common stock and the creation of a new series of AIRCO preferred stock that could be given to the estates of deceased shareholders in exchange for AIRCO common stock. *Id.* Starr ultimately endorsed a proposal for a voting trust agreement, which was intended to give the CVSCO Board: the right to vote the shares of AIRCO common stock owned by the parties to the agreement; and a thirty-day option to purchase the shares of any party to the agreement at the same price they were being offered to a third party. *See* AIRCO Voting Trust Agreement (Aug. 5, 1968) (Tab 63).

On August 5, 1968, Starr and the other members of the CVSCO Board (with the exception of Youngman) entered into a voting trust agreement with the owners of an additional 15% of the outstanding shares of AIRCO common stock, promising that each would vote his or her shares in a manner consistent with maintaining AIRCO's independence in accordance with the instructions of the majority of the group. *See* AIRCO Voting Trust Agreement (Aug. 5, 1968) (Tab 63). While the agreement undoubtedly provided the Board with some comfort, it failed to provide it with control over a majority of AIRCO's outstanding shares (the agreement only covered 45% of the outstanding shares) and therefore did not eliminate the possibility of a third-party takeover of AIRCO.

3. Youngman's Decision to Sell His <u>Shares to Continental</u>

Despite the importance of Youngman's holdings of AIRCO common stock, neither Starr nor the Board was in a position in August 1968 to purchase those shares. Youngman Tr. at 239 (Tab 31). Likewise, CVSCO did not have the cash flow at the time to purchase Youngman's 200 shares of CVSCO common stock *and* his approximately 194,000 shares of AIRCO common stock. *See infra* Part VIII.A (discussing CVSCO's inability to redeem Starr's shares in 1969 due to a shortage of available cash).

Youngman was unwilling to hold the shares until either Starr or CVSCO was in a position to purchase his shares. Hence, he turned to Victor Herd, who was then chairman of Continental Insurance Company, which underwrote approximately 27% of the risks insured by AIUO and AIUC (second only to the 39% underwritten at the time by Starr owned companies) and agreed to sell Herd one-half of his AIRCO shares (or 5% of the outstanding shares of AIRCO common stock) at a price of $45 per share. *See* Youngman Tr. at 239 (Tab 31). The transaction was finalized on October 11, 1968. *See* Goldman Sachs Fairness Opinion re Fair Market Value of AIRCO Common Stock at 6 (Dec. 22, 1975) (Tab 66). Starr consented to the sale, but clearly had concerns over the control issues it posed. *See* Youngman Tr. at 239 (Tab 31).

4. The Appointment of Greenberg as <u>Starr's Successor</u>

On August 16, 1968, CVSCO issued a press release announcing that Gordon Tweedy would be named Chairman of the company, and Maurice Greenberg would be named President. *American International Insurance Groups Makes Top Management*

Changes, Aug. 16, 1968 (Tab 67); *C.V. Starr & Co. Elects Leaders*, N.Y. Times, Aug. 19, 1968 (Tab 68).

Two weeks later, on August 27, 1968, during AIRCO's annual shareholder meeting in Bermuda, Youngman had a "blow up" with Starr when he recommended that the CVSCO Board consider a merger with Continental. Manton Tr. at 340-42 (Tab 32); Interview of Ernest E. Stempel (Jan. 9, 2007). Starr was apparently outraged by Youngman's statements at the meeting, and if Youngman's resignation the preceding May had not cut all of his ties to Starr, this blow-up apparently did. Roberts Tr. at 259-62 (Tab 33); Interview of Ernest E. Stempel (Jan. 9, 2007).

That same day, the AIUO voting stockholders exercised their right under article III, § 1(C)(d) of the AIUO charter to redeem Youngman's thirty shares of AIUO voting stock for the subscription price of $100 per share upon a two-thirds vote. AIUO Annual Voting Stockholders' Meeting, held Aug. 27, 1968 (Tab 59). On October 14, 1968, three days after Youngman sold one-half of his AIRCO common stock to Continental, the CVSCO Board voted to purchase Youngman's 200 shares of CVSCO common stock at their then adjusted book value of $4,500 per share, again in accordance with the mandatory redemption provision in the CVSCO charter. *See* Memorandum to Mr. Lee re CVSCO – Common Stock (July 26, 1972) (Tab 69). Youngman did not contest either redemption. He recognized that he was required to sell his shares and that the purpose of the charter provisions had been to keep the shares within the active management group.

See Youngman Tr. at 238-39 (Tab 31); Interview of Maurice R. Greenberg (Oct. 17, 2006). Those redemptions were not a part of any severance arrangement.[9]

E. The Final Months of Starr's Life: The Formation of AIG

Starr remained engaged in his business until the end of his career, actively participating in CVSCO Board meetings through at least October 1968. *See, e.g.*, Ahlers Tr. at 232-33 (Tab 29). Starr also remained true during the final months of his life to his life-long business philosophy of management-ownership. For instance, at a CVSCO Board meeting held on October 24, 1968, less than two months before his death, Starr announced:

> [T]hat he has entered into an agreement with Mr. Tse for the sale of a substantial number of his own [AIRCO] shares over a three-year period and that he was willing to make sales to Messrs. Greenberg, Roberts, Stempel and Tweedy, all in line with the philosophy that the best way of holding the organization together is through management-ownership.

Notes on Minutes of Directors' Meeting of CVSCO Held Oct. 24, 1968 (Tab 38). Starr was also actively involved in the series of stock-for-stock exchange offers that resulted in American International Group, Inc. ("AIG") becoming a publicly-held company.[10] *See* Interview Transcript of Edward E. Matthews at 33-35 (July 1985) (Tab 70) ("Matthews Tr. at _"). Starr and the CVSCO Board formed AIG in 1967 to finance the acquisition of National Union Fire Insurance Co. of Pittsburgh, Pa ("National Union"), a small property

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[9] Youngman separately negotiated the terms of his departure with Starr, using Tse and Tweedy as intermediaries. *See* Tse Tr. at 228-29 (Tab 28); Youngman Tr. at 235-36 (Tab 31). It was not a contentious negotiation. *See* Roberts Tr. at 273 (Tab 33); *see also* Interview of Maurice R. Greenberg (Oct. 17, 2006).

[10] AIG was originally named American International Enterprises, Inc., s*ee* Matthews Tr. at 15, 30-31 (Tab 70), and until 1979, was a subsidiary of AIRCO.

and casualty insurer that was a member of the AIUA. *See id.* at 15. In November 1968, the members of the CVSCO Board, in their capacity as directors of AIG, authorized AIG to acquire the remaining shares of three publicly held U.S. insurance companies in which the Starr organization already held a majority interest: American Home, National Union, and New Hampshire Insurance Company. Notes on Minutes of Directors' Meeting of CVSCO, held Nov. 25, 1968 (Tab 71). According to Matthews, who advised AIG on the transactions, several of the directors of American Home were opposed to the transaction until Starr arrived at a board meeting (reportedly in his slippers) and made it clear to them that "[y]ou people just don't understand what's going to happen in the insurance business, you've got the most creative, imaginative management . . . if you don't do this, I wouldn't blame [Mr. Greenberg] if he quit." Matthews Tr. at 33 (Tab 70).

During the final weeks of his life, Starr spoke with several members of the CVSCO Board about the future of the organization. According to Roberts, Starr told him: "You've got to stick together, otherwise the damn thing will fall apart because there will be an awful lot of pulling and tugging and hauling, not by the inside, but by the outside, so you have to make sure that you all pull together." Roberts Tr. at 272 (Tab 33); *see also* Interview of Maurice R. Greenberg (Oct. 17, 2006).

C.V. Starr died on December 20, 1968, at the age of 76.

VII. STARR'S LAST WILL AND TESTAMENT

Starr executed his Will on August 1, 1968, only four days before the execution of the AIRCO Voting Trust Agreement and three weeks before his "blow up" with Youngman in Bermuda. *See* Will (Tab 5). As noted earlier, during the period in which he executed the Will, Starr was focused primarily on protecting AIRCO from a possible hostile takeover, and ensuring that his enterprise was in the hands of individuals who shared his commitment to management-ownership and the continued expansion of the business. *See* Part VI.C-D *supra*; *see also* Written Responses of John J. Roberts. As one Executor recalled in a 1985 interview:

> [I]n his parting with Youngman, [Starr] was afraid after his death there might be an effort on the part of the Continental and others to acquire his Empire, or that some people might be tempted to sell out, and he thought well, at least my own [AIRCO] shares I can put in the hands of [the Foundation] and at least I think my people that have been with C.V. Starr would not sell out. So I am going to give them the voting rights [of the AIRCO shares bequeathed to the Foundation] and their own shares, this will give at least a pretty good assurance that it won't be sold out.

Manton Tr. at 391 (Tab 32). Another Executor has a similar recollection:

> Now at this point in time, -- because when Starr's will was drawn up, which I had a voice in that will, he left – (he had no family, of course, because he had broken up with his wife then). So he left his [AIRCO] shares to the Starr Foundation which we helped form and of which I am a director -- six of us are directors of that. The vote on [the AIRCO shares] are in the directors of C.V. Starr & Company, so we can have control of the Starr International's "big bloc"; the Starr Foundation's bloc of shares, plus the shares that are owned by myself and Greenberg's and at that time, Tweedy's, Youngman's, Starr's and other individuals. So the control of the organization -- if anybody wants to buy us or do anything important C.V. Starr & Co. is it. We are the power. And that's where the policy decisions are made, whether we should go into a different kind of business, sell a certain business, go into a different big investment in a different territory, big personnel decisions. That's all done there.

Stempel Tr. at 326-27 (Tab 40).

Starr thus viewed his Will as part of his planning for the continuation of his enterprise under the control of those he had chosen to manage it.

A. The Executors

Starr did not name particular individuals to serve as his executors. Instead, evidencing the importance he attached to his enterprise, he appointed as the executors of his estate the individuals who were serving as members of CVSCO's Board of Directors at the time of his death. *See* Will art. VI (Tab 5); *see also supra* Part V.A (listing the Executors). As discussed in greater detail above, these individuals were all hand-selected by Starr (either as part of the 1965 restructuring or subsequently thereafter) based upon their loyalty to him, and because he viewed them as being the best people to carry on his management philosophy. *See* Stempel Tr. at 329 (Tab 40) (noting that Starr "selected the people he thought had real integrity, [and who he thought] would try to keep the family feeling of AIU-C.V. Starr together."); *see also* Roberts Tr. at 272 (Tab 33) (describing the "intense loyalty" the men Starr had selected all felt towards him). Perhaps most importantly, by appointing the members of the CVSCO Board as his executors, Starr ensured that his assets, including his shares of CVSCO common stock, AIUO voting stock, and his minority interest in AIU Far East, would be administered by a group of individuals who shared his desire to keep the enterprise together and independent. *See* discussion *supra* Part VI.D.

1. Starr Granted the Executors Complete <u>Authority and Discretion</u>

Starr granted his Executors "full and complete power" to manage and dispose of the assets of his estate. Will art. VII (Tab 5) ("I hereby grant to my executors all of the powers and authority which may generally be exercised by executors, and in addition I grant unto them full and complete power with respect to the property, real or personal, at any time constituting part of my estate …”). Specifically, the Will authorized the Executors, among other things, to engage in the following acts:

- “to continue, settle or discontinue any business or partnership in which [Starr] may be interested”, *id.* art. VII, § (e);
- “to participate in and consent to any corporate reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in any corporation or its financial structure, … and in general to exercise with respect to any securities the unrestricted rights of a personal owner, including voting in person and granting proxies, discretionary, general or otherwise”, *id.* art. VII, § (h);
- “to subscribe for any new stock which may be issued to any corporation in which I may be a stockholder . . . to organize or participate in the organization of corporations, and to transfer to them any and all of the property of my estate in exchange for securities thereof”, *id.* art. VII, § (h); and
- “to exercise broad and liberal powers to do any and every act which in the judgment of the executors may seem proper in connection with the administration of my estate, real as well as personal, and the enumeration of the powers expressly granted shall not be deemed a limitation of the broader powers which I grant unto them.” *Id.* art. VII, § (m).

Thus, Starr did not limit the Executors in any way from selling any of his assets, including his shares of AIUO voting stock, AIU Far East capital stock, and CVSCO and AIRCO common stock.

2. Starr Protected the Executors With Exculpatory <u>Provisions In His Will</u>

Starr also included “exculpatory” provisions in his Will to protect the Executors from incurring liability as a result of their exercise of the broad authority granted to them by the Will. Two of those provisions are particularly pertinent. *First,* Starr “direct[ed] that no executor . . . shall be liable on account of any act done in the administration of my estate, nor for any loss or injury to my estate, unless the same shall occur through gross neglect or willful misfeasance." *Second*, and perhaps more importantly, Starr authorized the Executors "to serve as officers or directors of any corporation of which I or my estate may be the sole or a partial stockholder . . . without personal liability to them as a result thereof . . ." Will art. VII § (j) (Tab 5). In other words, Starr expressly permitted his Executors to serve in positions that could result in a conflict of interest.

B. The Starr Foundation

Starr named The Starr Foundation, a private foundation he had established in 1955, as the sole residual beneficiary of his estate. *Id.* art. IV. According to a number of sources, Starr created the Foundation for tax and estate planning purposes in the aftermath of his painful separation from his wife Mary. Interview of Marion Breen (Apr. 11, 2006); Interview of T.C. Hsu (May 12, 2006); *see also* Youngman Tr. at 260 (Tab 31) (recalling that Starr created the Foundation, in part, because "[e]very rich person was starting foundations" due to the tax benefits). During most of the first fourteen years of its existence (*i.e.*, the period before Starr's death), the Foundation had less than $500,000 in assets, and many of its grants had been used to provide scholarships for students selected by Starr. *See, e.g.*, Hsu Tr. at 84-85, 100 (Tab 30); Interview of Ernest E. Stempel (Jan. 9, 2007).

1. The Foundation's Role in Starr's Reorganization of the Enterprise

At some point in the mid-1960s, Starr came to view the Foundation as a vehicle which he could use as part of his planning for the continuation of his enterprise. As one

CVSCO director and Surviving Executor recalled:

> [Starr] asked for a [memorandum in 1964] … on how we saw the organization of the [enterprise] and who should do what . . . I can remember . . . writing up a four or five page memorandum with charts, lines, names all this sort of thing. I had seen that the key to the holding operation was really the Foundation . . . I had that as the centerpiece in the holding – and who should become shareholders in order to manage the operations and the parallel and identical interests . . . anyway, he called me in … [and] said, "You know, you're one of the few that know where the seat of this thing is. I don't understand how you got on to it." So I said, "*Well you said one day that the Foundation was going to be the base and the Directors of the Foundation should be Directors of C.V. Starr*."

Roberts Tr. at 255-57 (Tab 33) (emphasis added).

The minutes of CVSCO Board meetings from 1968 show that Starr regularly deliberated over the Foundation's role in the organizational structure. In February 1968, for instance, Starr expressed the view that CVSCO would be a better vehicle than the Foundation to hold his block of AIRCO shares. *See* Notes on Minutes of Directors' Meeting of CVSCO held Feb. 20, 1968 (Tab 43). Two months later, however, Starr changed course and announced "his intention of making a present gift of substantially all of his AIRCO shares to the Starr Foundation." Notes on Minutes of Directors' Meeting of CVSCO held Apr. 9, 1968 (Tab 58). At the same time, he made it clear to the CVSCO Board that "it was his hope that in the course of time, that CVSCO or AIUO would acquire the AIRCO shares from the Foundation." *Id*.

The role of the Foundation in Starr's plans is also evident from the terms of the Will. As an initial matter, although he left his AIRCO shares to the Foundation as part of his residuary estate, he did not want the Foundation to be able to vote those shares. Starr wanted CVSCO to exercise the voting rights. Accordingly, he provided in his Will that, "for a period of twenty (20) years after my death the right to vote any shares of the capital stock of [AIRCO] forming a part of my residual estate shall be vested in and exercised by [CVSCO]." Will art. IV (Tab 5); *see also* Ahlers Tr. at 349-50 (Tab 29) (explaining that Starr had a "great concern about the future of the organization" remaining autonomous when he made out his will).[11]

VIII. THE RELEVANT TRANSACTIONS

The AG Report focuses on three specific transactions entered into by the Executors during the two years following Starr's death in December 1968. Those transactions are:

- the sale of Starr's 240 shares of CVSCO common stock back to CVSCO;
- the sale of Starr's thirty shares of AIUO voting stock back to AIUO; and
- the sale of Starr's 48% minority interest in AIU Far East to AIUO.

AG Report at 6-8 (Tab 1). What follows is a summary of each of those transactions.

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[11] Relying upon a sentence in a memorandum that Gordon Tweedy drafted in February 1969, the NYAG contends that the Executors ignored Starr's plan "to change drastically the nature of the Foundation, including its personnel, and to divorce it entirely from [CVSCO] affairs.'" AG Report at 5 (Tab 1) (quoting Memorandum from Mr. Tweedy to CVSCO Board (Feb. 18, 1969)). Based upon the Independent Committee's investigation, it appears that at some point during the relevant period, Mary Tweedy (Gordon Tweedy's wife) informed Starr of her interest in running the Foundation. Interview of Maurice R. Greenberg (Oct. 17, 2006); Interview of Henry Christensen III; Youngman Tr. at 261-62 (Tab 31) (referring to proposal to make Mary Tweedy head of the Foundation). Although it is unclear how seriously Starr considered this request, the record is clear that prior to his death Starr had concluded that (1) he did not want Mary Tweedy to head the Foundation, and (2) he had come to the view that the Foundation and CVSCO should remain "closely allied." *See* Hsu Tr. at 91 (Tab 30) (noting that Ms. Tweedy resigned from the Foundation while Starr was still alive); Memorandum from Messrs. Lee and Mulderig to Messrs. Greenberg and Tweedy (Jan. 17, 1969) (Tab 72); Interview of Maurice R. Greenberg (Oct. 17, 2006); *cf.* Youngman Tr. at 261 (Tab 31) (noting his opposition to any proposal to appoint Mary Tweedy as head of the Foundation). What the Tweedys thought or wanted notwithstanding, and, contrary to the allegations in the AG Report, it appears that the decision not to "divorce" the Foundation from the CVSCO Board was consistent with Starr's intent at the time of his death.

A. Sale of Estate's 240 Shares of CVSCO Common Stock Back to CVSCO

At the time of his death, Starr owned 240 shares of CVSCO common stock. Starr purchased the first 200 of those shares in December 1965 at a price of $500 per share soon after the CVSCO Certificate of Incorporation was amended as part of the 1965 restructuring. *See* CVSCO Common Stock: List of Issues, Redemptions and Purchases from Fall 1965 (Feb. 18, 1972) (Tab 41). Starr purchased the remaining forty shares in October 1967 at a price of $2,240 per share, which represented the adjusted book value as of that date. *See* Memorandum from Mr. Ahlers to CVSCO Board (Oct. 2, 1967) (Tab 73) (CVSCO common share valuation as of June 30, 1969). As discussed above, Starr apparently purchased those forty shares to ensure that Youngman, who had lost favor with Starr, would not own the largest single block of CVSCO common stock. *See* Part VI.D *infra*.

There was no public market for shares of CVSCO common stock, and the shares were not freely transferable. Instead, the shares were subject to a series of redemption provisions in the CVSCO Certificate of Incorporation -- all of which were included in the original CVSCO charter that Starr designed in 1950 and later amended in 1965. Among other things, those provisions entitled the company to repurchase the shares of a deceased shareholder within ninety days of the shareholder's death at "fair value as determined by the Board of Directors." Am. CVSCO Charter art. IV, § (B)(6) (Tab 44).[12] As noted

[12] When subscribing to his shares, Starr wrote letters to the company conditioning his subscriptions on a right to resell the shares to Youngman on mutually agreeable terms, to resell the shares to CVSCO at the established formula price for such resale, or to make a testamentary bequest of the

(Footnote continued)

above, Starr designed those provisions, and included them in the CVSCO charter, to prevent outsiders, including the estates and heirs of deceased shareholders, from joining the shareholding group. Youngman Tr. at 72 (Tab 31) (quoting historical overview prepared by Manton).

On February 13, 1969, less than two months after Starr's death, the CVSCO Board elected to exercise its right to purchase Starr's 240 common shares, and the Executors agreed to the repurchase at that time. Notes on Minutes of Directors' Meetings of CVSCO Held Feb.13, 1969 (Tab 76). As set forth in the minutes of the CVSCO Board meeting held that day:

> It was agreed that the corporation should exercise its right under Article IV(B)(6) of the Certificate of Incorporation to repurchase the 240 shares of its common stock owned by C.V. Starr at the time of his death. In their capacities as Executors [of the Estate], the Directors present noted and accepted this decision on the understanding that the fair value would be determined on the basis of the 1968 year-end figures when they become available, and that the Estate should, in addition, be paid interest thereon for any period beyond the expiration of 90 days from Mr. Starr's death before the purchase price is paid.

Id.

The decision to sell Starr's 240 shares of common stock back to CVSCO was viewed by the Executors as a straightforward application of the mandatory redemption

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shares to the Starr Foundation. *See* Letters from Mr. Starr to CVSCO Board of Directors (Nov. 10, 1965 and Sept. 15, 1967) (Tab 74). The Surviving Executors did not recall these letters, *see* Interview of Maurice R. Greenberg (Oct. 17, 2006); Interview of Ernest E. Stempel (Jan. 9, 2007), and the Independent Committee found no evidence that the subscription letters were approved by the CVSCO Board. The redemption provisions contained within the CVSCO charter, however, were duly inscribed on the share certificates themselves, *see* CVSCO Stock Certificate Nos. C1 and C10 (Tab 75). These redemption provisions therefore controlled the disposition of the shares. *See* N.Y. U.C.C. § 8-204 ("[Unless] noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.").

provision that Starr, himself, had included in CVSCO's original Certificate of Incorporation. Interview of Maurice R. Greenberg (Oct. 17, 2006). The sale was also consistent with Starr's intent that "stock participation in [CVSCO] be limited to the actively participating partners" as opposed to the relatives and heirs of deceased shareholders. Notes of Chairman's Remarks at Joint CVSCO and AIUO Voting Stockholders' Meeting held on Nov.10, 1965 (Tab 35); *see also* Youngman Tr. at 72 (Tab 31) (quoting historical summary prepared by Manton).

The CVSCO Board minutes did not refer to the transaction again until October 23, 1969. Apparently, there were two reasons for this lapse of time. *First*, as indicated in the informal minutes of the February 13 board meeting, the CVSCO Board could not determine the "fair value" of the Estate's 240 shares until it received CVSCO's audited financial statements for the year-ended December 31, 1968. Those financial statements were not finalized until August 1969. Minutes of Annual CVSCO Stockholders' Meeting Held on Aug.18, 1969 (Tab 77); *see also* Notice of Stockholders' Meeting of CVSCO (July 2, 1969) (Tab 78) (informing shareholders that financial statements for year ending December 31, 1968 would be approved at annual stockholder meeting); Memorandum from Mr. Ahlers to CVSCO Board re CVSCO Pro-Forma Consolidated Balance Sheet for Year Ended December 31, 1968 (June 23, 1969) (Tab 79) (noting that pro-forma value of CVSCO common stock was $4,459).

Second, CVSCO apparently did not have enough available cash to pay for the shares until October 1969, and even then, the CVSCO Board had to finance the transaction. Written Responses of John J. Roberts; *see also* Manton Tr. at 325 (Tab 32) (noting that CVSCO was known as the “overhead department” due to its lack of revenues); Notes on Minutes of CVSCO Board Meeting held July 31, 1969 (Tab 80) (“There was discussion of ways and means of increasing the profits of [CVSCO] and also of easing its chronic problem of cash-flow.”). Indeed, a draft of CVSCO’s financial worksheets for the period ended September 30, 1969 evidences that the company did not have the $1,000,000 in cash necessary to pay for Starr’s shares as of that date. *See* CVSCO Interim Financial Worksheets (Nov. 11, 1969) (Tab 81).

During a CVSCO board meeting held on October 23, 1969, Mr. Greenberg announced that “he felt the corporation should, as soon as possible, buy in the 240 outstanding shares of common stock now held in the Starr Estate.” According to the minutes of that meeting:

> After discussion, it was agreed that the formula valuation to be applied to this buy in should be as of December 31, 1968. It was further agreed that after the expiration of the 90 day period from Mr. Starr’s death, during which the corporation has the right to buy in the shares, interest at the prime rate should be paid to the Estate, or included in the purchase price of the Estate, until the date of actual purchase. When repurchased, the shares are to be held in the corporation’s treasury. Finally, it was noted that the repurchase will require bank financing, at least in part. This program was unanimously approved.

Certificate of Excerpt from Minutes of Meeting of CVSCO Board of Directors held on Oct. 23, 1969 (Nov. 11, 1969) (Tab 82).

Eight days later, on October 31, 1969, CVSCO issued the following statement to the Executors:

> This is to confirm our oral advice to you last February that this Corporation has elected to exercise its right under Article IV(B)(6) of its Certificate of

> Incorporation to repurchase the 240 shares of its Common Stock which were owned by Cornelius V. Starr at his death.

Letter from the CVSCO Board to the Executors of the Estate of C.V. Starr (Oct. 31, 1969) (Tab 83). The October 31 statement went on to explain that the Certificate of Incorporation required the purchase to be made at the fair value of the shares as determined by the CVSCO Board as of the date of Starr's death, and that the CVSCO Board had determined the fair value to be the adjusted book value of the shares as of December 31, 1968, or $4,500 per share. A majority of the Executors signed this statement, accepting the terms set forth. The $4,500 per share price was the same amount that Youngman contemporaneously received for his 200 shares of CVSCO common stock in October 1968.[13] *See* List of Issues, Redemptions, and Purchases from Fall 1965 (Feb. 18, 1972) (Tab 41).

On November 11, 1969, the CVSCO Board issued a check for $100,000 to the Estate as partial payment for Starr's 240 shares of CVSCO common stock. *See* Memorandum from Mr. Mulderig to Mr. Celentano (Nov. 11, 1969) (Tab 84). The CVSCO Board asked the Estate to send it a "demand note with interest at the [then] current prime rate" for the remaining $980,000. *Id.* Less than two months later, on December 31, 1969, CVSCO paid the Estate the balance of the purchase price. *See* Memorandum from Mr. Celentano to Mr. Redmond (Jan. 9, 1970) (Tab 85).

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[13] Instead of CVSCO itself purchasing all of Youngman's shares, Mulderig was allowed to purchase fifty of those shares, and Ahlers was allowed to purchase twenty of those shares. In each case, Youngman sold his shares for the same $4,500 per share price, which was their adjusted book value as determined by the CVSCO Board at that time. List of Issues, Redemptions, and Purchases from Fall 1965 (Feb. 18, 1972) (Tab 41).

Both the Estate and CVSCO treated CVSCO's purchase of the shares as having been made effective on the ninetieth day after Starr's death, March 20, 1969. For example, CVSCO declared a $50 per share dividend on June 26, 1970. On 240 shares, this came to $12,000. Although this dividend was originally paid to the Estate, the Estate later refunded it to CVSCO because the sale of the shares was deemed to have been made as of March 20, 1969.[14] *See* Memorandum from Mr. Gavora to Mr. Celentano (Jan. 8, 1970) (Tab 86); Note from Miss Breen to Mr. Celentano (Jan. 28, 1970) (Tab 87); Memorandum from Mr. Celentano to The Executors' Committee (Jan. 21, 1970) (Tab 88).

B. Sale of Estate's Thirty Shares of AIUO Voting Stock Back to AIUO

Upon his death, Starr owned thirty shares of AIUO voting stock. He purchased ten of those shares in October 1967, and the other twenty in July 1968. In each instance, Starr paid $100 per share, the same subscription price each of the other AIUO voting shareholders paid for their shares. *See* Minutes of AIUO's Annual Voting Stockholders' Meeting, held Oct. 23, 1967 (Tab 42); *see also* Memorandum re Estate of C.V. Starr (Aug. 9, 1978) (Tab 57). As discussed above, Starr apparently purchased the twenty additional shares in order to ensure that Mr. Youngman did not own the largest number of shares of AIUO voting stock. *See supra* Part VI.D.

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[14] It should be noted that this refund was not requested until January 8, 1970, after the purchase price had been paid to the Estate. The propriety of the refund was acknowledged by the Estate when it transferred the stock certificates to CVSCO. *See* Memorandum from Mr. Celentano to Mr. Redmond (Jan. 9, 1970) (Tab 85).

There was no public market for AIUO voting stock, and like CVSCO common stock, Starr's thirty shares were not freely transferable. To the contrary, all transactions involving shares of AIUO voting stock were conducted pursuant to the three redemption and right of first refusal provisions that Starr included in the AIUO charter to ensure that AIUO voting shares did not end up in the hands of relatives or heirs of deceased shareholders. As discussed in Part VI.B.2.c above, those provisions gave AIUO the following rights: (1) a holder of voting stock was required to offer his or her shares to the company at subscription price plus accumulated dividends for ninety days before the shares could be sold to another party; *see* AIUO Charter art. III, § (C)(b) (Tab 36); (2) upon the death of a voting shareholder, AIUO was entitled and obligated to purchase his or her shares at the subscription price the deceased shareholder had paid plus accumulated dividends; *id.* art. III, § (C)(c); and (3) AIUO was entitled to repurchase any outstanding shares of voting stock at any time at "net worth" upon a resolution to that effect adopted by the registered holders of two-thirds of the outstanding voting stock. *Id.* art. III, § (C)(d).[15] As a result of the above provisions, the most a shareholder of AIUO voting stock ever could obtain for his or her stock was the subscription price of $100 plus any accumulated dividends.

[15] AIUO's financial statements for the year ended December 31, 1968 indicate that the net worth of the AIUO voting shares was equal to the subscription price of $100 per share. *See* AIUO Financial Statements for Year Ending Dec. 31, 1968, Schedule A (Tab 89).

1. Communications Between the Estate and AIUO

On April 11, 1969, Frank Celentano, counsel for the Estate, sent a letter to Kevin O'Leary, counsel for AIUO, asking the company to reissue Starr's certificates in the name of the Estate.[16] *See* Letter from Mr. Celentano to Mr. O'Leary (Apr. 11, 1969) (Tab 90). Three days later, O'Leary responded to Celentano's April 11 letter by explaining that the right of first refusal provision in the AIUO charter was not applicable to Starr's shares since the "change of registration requested in [Celentano's] April 11 letter is not a 'transfer' but simply a change of ownership that occurred by operation of law, and that the more relevant provision in the AIUO charter was Article III, § 1(C)(c), which entitled and obligated the company to repurchase a deceased shareholder's shares at "subscription price plus accumulated dividends." Letter from Mr. O'Leary to Mr. Celentano (Apr. 14, 1969) (Tab 91). Celentano replied to O'Leary on April 21, 1969, asking that AIUO treat his April 11 letter as an application for repurchase of the shares by the corporation in accordance with its right to repurchase the shares under Article III, § 1(C)(c) of the AIUO charter. *See* Letter from Mr. Celentano to Mr. O'Leary (Apr. 21, 1969) (SC 001205) (Tab 92).

AIUO thereafter purchased the shares from the Estate, albeit not until September 1, 1970, when AIUO informed Celentano that "we have pleasure in enclosing our check

[16] O'Leary was an associate of Celentano's law firm at the time of this correspondence. Lee, Mulderig & Celentano essentially served as Starr's in-house counsel at that time. Interview of Ernest E. Stempel (Jan. 9, 2007); *see also* Youngman Tr. at 292-93 (Tab 31) (discussing role of Lee, Mulderig & Celentano). Its lawyers, therefore, simultaneously acted as counsel for the various components of Starr's enterprise.

for $3,000.00 in favor of the Estate of C.V. Starr. This is in respect of the repurchase of 30 shares of voting stock." Letter from Mr. Warwick to Mr. Celentano (Sept. 1, 1970) (Tab 93).

C. Sale of Estate's Minority Stake in AIU Far East to AIUO

AIU Far East was formed in 1951. It served as the parent company for Starr's insurance agency operations in Hong Kong, Taiwan, Thailand, Laos, Vietnam, Singapore, Malaysia and Indonesia.[17] Interview of Maurice R. Greenberg (Oct. 17, 2006); Interview of Ernest E. Stempel (Jan. 9, 2007). AIU Far East also held investments in various other companies and real estate, including a stake in Stowehoff -- a Vermont ski lodge that Starr had purchased only months before his death. *See* AIU Far East, Inc. and Subsidiaries Reserve for Fluctuation in Investments as at Dec. 31, 1968 (Tab 94).

Unlike the other foreign insurance agencies in the Starr enterprise, AIU Far East was not owned by or affiliated with AIUO. Instead, Tse owned 650 shares, or 52% of the shares of the company,[18] and at his death Starr owned the remaining 600 shares or 48%

[17] Those operations included Starr's first insurance agency in the Far East – AAU.

[18] Tse's majority interest was technically held by Overseas Underwriters, Inc. ("Overseas Underwriters"), a Panamanian company as to which Tse served as Chairman. *See* Overseas Underwriters' Panamanian Corporate Filings (Spanish language original and unofficial English translation) (Tab 95). Correspondence related to AIUO's purchase of AIU Far East indicates that Tse acted as trustee for Overseas Underwriters in selling its majority stake in AIU Far East. *See, e.g.*, Agreement between AIUO and K.K. Tse, as Trustee for Overseas Underwriters, Inc. (Jan. 15, 1969) (Tab 96). Due to the uncertainty related to the precise equity ownership of Overseas Underwriters, for clarity purposes, this Report refers to Tse as the majority owner of AIU Far East. Starr served as a director of Overseas Underwriters from August 1960 through July 1962, but does not appear to have had any involvement or ownership interest in Overseas Underwriters after that time. *See* Overseas Underwriters Panamanian Corporate Filings (Spanish language original and unofficial English translation) (Tab 95). In April 1970, not long after the AIU Far East transaction closed, Overseas Underwriters, Inc. was officially dissolved in Panama. *Id.*

of the total. Tse, was president of the company. Tse also ran AIU Far East's operations by himself, and was in charge of all of Starr's operations in Southeast Asia. Starr reposed great trust in Tse; he was viewed as being Starr's closest advisor. Tse Tr. at 45, 124, 162 (Tab 28); Youngman Tr. at 88, 300 (Tab 31).

During the final months of his life, Starr informed several members of the CVSCO Board that he wanted his interest in AIU Far East to be sold to AIUO upon his death. Interview of Maurice R. Greenberg (Oct. 17, 2006); *see also* Petition on Final Account at 14 (Nov. 30, 1978) (Tab 97) ("[Starr] had stated during his lifetime a desire that on his death his [AIU Far East] stock be sold to AIUO."). On January 13, 1969, less than four weeks after Starr's death , Tse negotiated and signed an agreement to sell his majority stake in AIU Far East to AIUO "at such price as may be determined by a valuation thereof made by Lowe, Bingham & Matthews ["Lowe Bingham"], independent auditors in Hong [Kong], which valuation has not yet been completed." Agreement between AIUO and K.K. Tse, as Trustee for Overseas Underwriters, Inc. (Jan. 15, 1969) (Tab 96).[19] At that time, Lowe Bingham was one of the premier accounting firms in Hong Kong, and served as the independent auditor for many, if not most, of the leading businesses in the area, including AIU Far East. *See* Hong Kong General Chamber of Commerce, *PricewaterhouseCoopers Celebrates 100 Years in HK*, http://www.chamber.org.hk/info/the_bulletin/june2002/pricewaterhouse.asp (June 2002)

[19] Tse signed the agreement on January 13, 1969. It was not fully executed until January 15, 1969, when it arrived in AIUO's Bermuda offices. Agreement between AIUO and K.K. Tse, as Trustee for Overseas Underwriters, Inc. (Jan. 15, 1969) (Tab 96).

(Tab 98) (noting that Lowe Bingham served as the local correspondent in Hong Kong for "six of the then 'big eight' accountancy firms"); Interview of Ernest E. Stempel (Jan. 9, 2007).

Three days later, on January 16, 1969, AIUO offered to purchase Starr's 600 shares from the Estate on the same terms. *See* Letter from Mr. Lindquist to Mr. Celentano (Jan. 16, 1969) (Tab 99). On February 3, 1969, the Executors, through Celentano, their counsel, responded that they would be interested in selling and would consider the matter further as soon as a definite purchase price was determined by Lowe Bingham. *See* Letter from Mr. Celentano to Mr. Lindquist (Feb. 3, 1969) (Tab 100); *see also* Letter from Mr. Tse to Mr. Celentano (Feb. 26, 1969) (Tab 101); Letter from Mr. Celentano to Mr. Tse (Mar. 5, 1969) (Tab 102) (agreeing that shares could be valued as of December 31, 1968 rather than December 20, 1968).

Lowe Bingham issued its valuation report on July 15, 1969. *See* Letter from Lowe, Bingham & Matthews to AIU Far East (July 15, 1969) (Tab 103). The firm concluded that the shares were worth $1,655 per share plus the value of some real estate owned by AIU Far East that was to be appraised separately. *Id.* In reaching this conclusion, Lowe Bingham determined that the valuation should be based on the net asset value of the company rather than on its dividends or earnings yield in view of the "marked fluctuations" in the company's profits and the then uncertain conditions in

Southeast Asia where AIU Far East conducted its business.[20] *Id.* ("Over the period of its operations, the Company's profits/losses have shown marked fluctuation and, owing to the uncertain conditions prevailing in areas in which the company operates, we do not consider a valuation based on dividend or earnings yield to be appropriate.").

AIU Far East sent the valuation report to the Estate on July 21, 1969, *see* Letter from Mr. Yuen to Mr. Celentano (July 21, 1969) (Tab 104), followed by AIUO on August 1, 1969. *See* Letter from Mr. Lindquist to Mr. Celentano (Aug. 1, 1969) (Tab 105). Based on Lowe Bingham's report, AIUO offered to purchase Starr's shares for $1,655 per share plus an additional payment to be made once the real estate appraisal was concluded. *Id.* ("Because of the passage of time and our mutual interest in concluding this transaction, we now offer to purchase the 600 shares . . . at a price of US$1,655 per share . . ."). As described below, the real estate to be appraised was an insignificant component of AIU Far East's value.

On September 10, 1969, Celentano informed the Executors of Lowe Bingham's valuation and AIUO's renewed offer to purchase the Estate's 600 shares at the $1,655 per share valuation. *See* Memorandum from Mr. Celentano to The Executors' Committee (Sept. 10, 1969) (Tab 106). Celentano also provided the Executors with a copy of AIU Far East's balance sheet. *See id.* A week later, Greenberg informed Celentano that he "agree[d] to the sale," *see* Note from Mr. Greenberg to Mr. Celentano (Sept. 17, 1969) (Tab 107), and on October 1, 1969, the Executors formally notified AIUO that they had

[20] The Vietnam War, of course, reached its height in 1968. Cambodia and Laos would soon be involved, Thailand was at risk, and the Red Guards were ascendant in China.

accepted its offer of $993,000 for Starr's 600 shares of AIU Far East, *see* Letter from Executors to Mr. Lindquist (Oct. 1, 1969) (Tab 108). This represented the same $1,655 price per share that Tse received for the 650 majority shares he controlled as trustee of Overseas Underwriters, Inc. Letter from Mr. Lindquist to Mr. Celentano (Jan. 16, 1969) (Tab 99). AIUO paid the $993,000 to the Estate on October 8, 1969; the shares were placed in escrow at that time pending the separate real estate appraisal. *See* Memorandum from Mr. Celentano to Mr. Lee (Oct. 22, 1969) (Tab 109); *see also see* Letter from Executors to Mr. Lindquist (Oct. 1, 1969) (Tab 108).

AIU Far East's real estate portfolio was subsequently appraised for a total of $41,800, which resulted in an additional payment to the Estate of $20,064.[21] Letter from Mr. Tse to Mr. Lindquist (Feb. 26, 1970) (Tab 111); *see also* Letter from Mr. Lindquist to Mr. Celentano (Mar. 6, 1970) (Tab 110). AIUO paid this additional amount on March 9, 1970, and the shares were delivered out of escrow. *See* Certificate of Stock Power (Mar. 4, 1970) (Tab 112).

IX. THE JUNE 1970 AIG TRANSACTION

In or around August 1969, Mr. Greenberg and other members of the CVSCO Board began to discuss the merits of selling the enterprise's insurance agency business (*i.e.*, AIUO and AIUC) to AIG. *See* Memorandum from Mr. Manton to Mr. Greenberg re AIUC and AIUO Five Year Figures (Aug. 25, 1969) (Tab 113) (referencing various alternatives for possible combination of AIUO, AIUC, and AIG); *see also* Outline of

[21] The appraisal was performed by an independent real estate appraiser. *See* Letter from Mr. Lindquist to Mr. Celentano (Mar. 6, 1970) (Tab 110).

Feasibility Study on Possible Reorganization AIU/AIG (undated) (Tab 114). Those discussions continued in September, and by October 1969, several members of the CVSCO Board were meeting on a regular basis with Morgan Stanley and Sullivan & Cromwell to discuss the structure and price of the proposed transaction. *See* Notes on Minutes of Directors' Meeting of CVSCO Held Oct. 23, 1969 (Tab 115) (referencing "preliminary discussions" with Sullivan & Cromwell and Morgan Stanley re combination of AIU and AIG on October 3 and October 17, 1969).

On October 24, 1969, Morgan Stanley provided the CVSCO Board with a preliminary report on the proposed transaction. *See* Notes on Minutes of Directors' Meeting of CVSCO held Nov. 5, 1969 (Tab 116). Although the Independent Committee has been unable to locate a copy of this report, the minutes of the CVSCO Board's November 5, 1969 meeting summarize Morgan Stanley's preliminary findings as follows:

> Mr. Greenberg referred to the preliminary Morgan Stanley report of October 24, 1969, copies of which had been circulated to all of the Directors, including those abroad, in which [Morgan Stanley] had reached the tentative conclusion that the value of AIUC should be 20 to 22 times earnings and AIUO 18 to 20 times earnings, subject, of course, to a final restatement of earnings. This represents a package of approximately $120,000,000 or 1,600,000 common shares of AIG . . . Mr. Greenberg said that the principal objectives which the acquisition of AIU by AIG would accomplish if carried out along the lines presently contemplated were as follows:
>
> <u>First</u>, the AIRCO group would increase its combined ownership of AIG by 10% plus of the total outstanding and thus would have this additional leverage for future acquisitions, such as American Re.
>
> <u>Second</u>, with the substantial AIRCO shares held in AIUO(1), plus the shares in the Foundation, those owned by the Directors of CVSCO, and

> those subject to the Voting Agreement, the problems of maintaining CVSCO control of AIRCO becomes easier and more manageable.
>
> Third, the earnings picture of AIG with its substantial minority of public shareholders should be enhanced. Mr. Greenberg emphasized the fact that unless the earnings of AIG can confidently be expected to improve as a result of the AIU acquisition, he will be against it.
>
> Fourth, expense savings up to $1,000,000 or more per annum should be possible in the combined AIU operation.

Id.; *see also* Outline of Reorganization AIU/AIG (Nov. 3, 1969) (Tab 117).

A. Morgan Stanley's Fairness Opinion

On February 19, 1970, Morgan Stanley issued an opinion to AIG's Board of Directors "as to what a fair and reasonable purchase price would be" for the assets AIG was proposing to purchase. *See* Morgan Stanley Fairness Opinion (Feb. 19, 1970) (Tab 118). The opinion states that "we are of the opinion that, from a financial point of view, an exchange of 1,700,000 shares of AIG for AIUO, 230,000 shares of AIG for AIUC and 52,000 shares of AIG for 102 Maiden Lane are fair and reasonable . . ." *Id*. at 3. The opinion also makes clear that the assets AIG was purchasing from CVSCO and AIUO were limited primarily to insurance agency operations (including the recently acquired agency business of AIU Far East) and therefore did not include any of the investments or real estate that AIUO had acquired as a result of its purchase of AIU Far East, nor any of AIU Far East's debt. *See id.*; *see also* Matthews Tr. at 45-46 (Tab 70) (recalling his conversation with Greenberg, in which the latter confirmed that the June 1970 transaction did not involve AIU Far East's non-insurance holdings).

The Independent Committee interviewed two members of the Morgan Stanley engagement team who worked on the fairness opinion for the June 1970 transaction: Edward Matthews, the lead partner on the engagement; and Charles Sethness, then a junior analyst on the engagement. Both of them stated that Morgan Stanley valued the assets that AIG was acquiring by looking at the entire transaction as a whole rather than the particular value of each component part. In other words, Morgan Stanley did not consider the value of any single component of the transaction in determining the fairness of the price that AIG would pay, but instead focused on what the earnings were projected to be for the combined operations. The firm subsequently allocated the value of the combined operations to the various component parts (*i.e.*, AIUO, AIUC, AIU Far East) based on each entity's relative historic earnings. Interview of Edward E. Matthews (July 25, 2006); Interview of Charles Sethness (Sept. 8, 2006).[22]

B. The Final Form of the Transaction

After Morgan Stanley submitted its fairness opinion in February 1970, work on the transaction focused on the preparation and filing of a proxy statement with the Securities & Exchange Commission ("SEC"). As part of those efforts, AIG's counsel, Sullivan & Cromwell, provided the SEC with several drafts of the proxy statement, and filed a copy of Morgan Stanley's February 19, 1970 fairness opinion. *See* Letter from

[22] Mr. Sethness also prepared an internal memorandum that provided supporting analysis for Morgan Stanley's fairness opinion. Internal Morgan Stanley Memorandum re Fairness Opinion (Feb. 19, 1970) (Tab 119). The memorandum included historical and estimated financial information relating to AIUO, AIUC, and AIU Far East, which Morgan Stanley apparently relied upon in rendering its opinion. *Id.*

Mr. Maynard to SEC (May 11, 1970) (Tab 120). Sullivan & Cromwell mailed a copy of the final proxy statement, which included an "updated" version of Morgan Stanley's fairness opinion, to AIG's shareholders on May 29, 1970. Statement of Proxy Soliciting Votes of AIG Shareholders at 7 (May 28, 1970) (Tab 64); *see also* Updated Morgan Stanley Fairness Opinion (May 29, 1970) (Tab 121). AIG's shareholders approved the transaction one month later, on June 29, 1970. AIG Minutes of Special Meeting of Board of Directors (June 29, 1970) (Tab 122).

Morgan Stanley structured the transaction in a way that would substantially lessen any vulnerability to a third-party takeover of AIRCO or AIG. Interview of Edward E. Matthews (July 25, 2006); Interview of Charles Sethness (Sept. 8, 2006). Specifically, the transaction consisted of three steps. *First*, AIG acquired AIUC from CVSCO in exchange for 283,200 shares of AIG common stock. *Second*, AIRCO acquired AIUO's insurance operations from AIUO in exchange for 1,058,224 shares of AIRCO common stock, thus providing the CVSCO Board, which controlled a majority of AIUO's voting shares, with control over a majority of AIRCO's common stock. The final step of the transaction consisted of AIRCO's sale of AIUO's insurance operations to AIG in exchange for 1.7 million shares of AIG common stock, which further increased AIRCO's majority stake in AIG. *See* Statement of Proxy Soliciting Votes of AIG Shareholders at 7 (May 28, 1970) (Tab 64).

C. The "Windfall" from the June 1970 Transaction

As early as November 1969, it had become apparent to the members of the CVSCO Board that the proposed sale of AIUO and AIUC to AIG would increase the net worth of the two companies. *See* Notes on Minutes of Directors' Meeting held Nov. 5, 1969 (Tab 116) ("[T]he result of CVSCO acquiring some 300,000 shares of AIG stock would be a notable increase in its net worth of between $25,000,000 to $35,000,000. The corresponding increase in AIUO would be $90,000,000 to $100,000,000."). According to the minutes of the November 5, 1969 CVSCO Board meeting:

> Mr. Greenberg expressed the strong view that these accretions should not be divided up as a windfall among any present or future groups of stockholders, but should be held in perpetuity to enable CVSCO and AIUO, through borrowing or otherwise, to undertake new projects. Specifically, his view was that the Valuation Agreement among the CVSCO common stockholders should now be changed to insure that this item of increased net worth is not taken into account in calculating the redemption price of common stock in the event of death, retirement or termination. The common stockholders would, of course, participate in the normal increase in the company's net worth resulting from its future operations and it should now be possible to add new common stockholders who would be able to buy in for a reasonable price, since that price would also disregard the $25,000,000 to $30,000,000 accretion. Any such new stockholders would, in turn, also look only to future operations for an increase in the value of their shares. There was unanimous concurrence in this philosophy.

Notes on Minutes of Directors' Meeting held Nov. 5, 1969 (Tab 116). As Stempel explained in a 1985 interview, many of the CVSCO directors viewed the decision to allocate the "excess" shares of AIG and AIRCO common stock as a testament to their loyalty to Starr and his philosophy that employees should be given an opportunity to participate in the profits and ownership of the company:

> [A]t one point after Starr died we could have all divided up maybe three hundred million apiece if we had taken it all – and we were entitled to it – taken all the shares that were in C.V. Starr & Company and put it in our own pockets. I can tell you Mr. Youngman would have done it if he had been around them. * * * The rest of us said that's not what the whole thing was set up for because if you do that it's a one time thing. Then the next generations of people that come along. They can be like General Electric

> employees but they're never going to be able to participate in this pot of shares that were really left behind by Starr because, really, they were all his shares at one time though they ended up in corporate places, they were really all his shares in the Company. He'd want us to perpetuate this by forming pools – every two years we have a series and the people we consider should be rewarded with a certain number of units in this series * * * [Starr] wanted people with that kind of a feeling that wanted to keep the group together, to keep the spirit that you are going to participate – if you are good – in the growth of the organization.

Stempel Tr. at 330-33 (Tab 40).

Accordingly, the Executors agreed not to keep for themselves, as they might have, the increase in book value resulting from the June 1970 transaction.

1. <u>The CVSCO Windfall</u>

Three weeks before the AIG shareholders approved the June 1970 transaction, the CVSCO Board revised the valuation agreement for CVSCO common stock to reflect Mr. Greenberg's recommended approach. *See* Letter Agreement re Valuation (June 11, 1970) (Tab 123). The agreement made clear that the calculation of adjusted book value for purposes of determining the "fair value" would not take into account the market value of AIG common stock received in the June 1970 transaction that was *in excess* of the adjusted book value of the exchanged CVSCO assets. *Id.* Instead, the calculation would be limited to the book value of the company's remaining assets, including the appreciation, if any, of the 70,083 shares of AIG common stock that the CVSCO Board deemed to be the equivalent of the exchanged assets. *Id.*; *see also* Valuation Agreement (Sept. 19, 1970) (Tab 124).

The CVSCO Board placed the remaining 213,117 shares of AIG common stock in a blocked account, which it set up as a trust. The Foundation was given a contingent remainder interest in the trust; the Foundation would be entitled to the corpus of the trust (*i.e.*, the remaining "excess" shares of AIG common stock) in the event (i) a third party attempted to invade the corpus of the trust, or (ii) upon the liquidation of the company. C.V. Starr & Co., Inc. Trust, art. 2(d) (July 1, 1977) (Tab 125).

2. The AIUO Windfall

The AIUO voting shareholders established a trust similar in purpose to the one established by CVSCO, and at their discretion used it initially to administer a program for employees of AIG and other entities in the Starr enterprise that was known as the "Deferred Compensation Profit Participation Plan." *See* Starr International Company, Inc. 1975 Deferred Compensation Profit Participation Plan (Apr. 25, 1975) (Tab 126). This plan, which replaced AIUO's junior preferred series, was set up in two-year increments and gave participants, who were selected by AIUO's voting shareholders, an allocated number of AIG shares based on the amount of growth in AIG earnings per share for those two years compared to the previous two-year period. Participants in the plan were required to remain with the organization until retirement, death, or termination; any other departure from the company resulted in the forfeiture of the participant's accumulated AIG shares.

X. PROBATE AND FINAL ACCOUNTING OF THE ESTATE

A. Probate of Will and Appointment of Executors

On January 15, 1969, less than one month after Starr's death, Greenberg and Tweedy filed a petition with the Surrogate's Court to probate the Will. *See* Probate Petition re Will of Cornelius Vander Starr (Jan. 15, 1969) (Tab 127). That same day, the two men, along with another CVSCO director, Francis Mulderig, filed a petition to be appointed preliminary executors of the Estate. *See* Petition for Issuance of Preliminary Letters Testamentary (Jan. 15, 1969) (Tab 128). In an affidavit filed in support of that petition, Celentano, as counsel for the Estate, stated that such appointment was necessary to preserve and maintain the millions of dollars of artwork and other personal property that Starr owned in his Manhattan apartment and at his home in Brewster, New York. *See* Affidavit of Frank Celentano ¶¶ 6-7 (Jan. 15, 1969) ("Celentano Aff.") (Tab 129). He also informed the Surrogate's Court that the petitioners "are executives of one or more of the companies founded or acquired as subsidiaries or affiliates by efforts of the decedent, both national and international . . ." *Id*. ¶ 5. On January 22, 1969, the court issued preliminary letters testamentary to Greenberg, Tweedy, and Mulderig, and permitted them to act as preliminary executors of the Estate. *See* Order Granting Preliminary Letters Testamentary (Jan. 22, 1969) (Tab 130).

On April 3, 1969, the Surrogate's Court admitted the Will to probate and appointed the members of the CVSCO Board, serving as such at the time of Starr's death. as executors of the Estate. *See* Decree Admitting Will and Revoking Preliminary Letters Testamentary (Apr. 3, 1969) (Tab 131). The following week, Celentano sent letters to CVSCO and AIUO requesting that those companies transfer Starr's 240 shares of CVSCO common stock and thirty shares of AIUO voting stock from Starr's name to the

Estate's name. *See* Stock Power (Apr. 10, 1969) (Tab 132); Letter from Mr. Celentano to Mr. O'Leary (April 11, 1969) (Tab 90).[23]

B. The IRS Tax Proceeding

Because Starr had left the residue of his Estate to the Foundation, the Executors and their counsel assumed the Estate would have "little or no" federal or state tax liability. Celentano Aff. ¶ 4 (Tab 129). Nevertheless, on July 12, 1972, the Estate received a "thirty-day letter"[24] from the Internal Revenue Service ("IRS") challenging, among other things, (1) the Estate's failure to separately value CVSCO's twenty-year right to vote the AIRCO shares bequeathed to the Foundation,[25] and (2) the Executors' sale of Starr's 240 shares of CVSCO common stock at a price of $4,500 per share as opposed to $6,410 per share (which the IRS thought the shares to have been worth). *See* Protest of Estate of Cornelius Vander Starr to Proposed Estate Tax Deficiency (Oct. 6, 1972) ("Protest") (Tab 134).

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[23] The Executors filed a petition with the Surrogate's Court in August 1970, seeking the advice and direction of the Court with respect to the sale of Starr's substantial estate in Brewster, New York. Upon his death, Starr was in the process of developing an 18-hole golf course and accommodations for large numbers of guests. Due to its limited marketability, the Executors sought to sell the property to an affiliated company within the Starr enterprise. On January 4, 1971, the Court approved the sale at a price of $2,500,000, and the sale was completed on June 22, 1971. *See* Order Authorizing Sale of Property (Jan. 4, 1971) (Tab 133). The Executors did not engage in any further proceedings before the Surrogate's Court until the filing of the final accounting in November 1978.

[24] This letter accompanies a report that provides the taxpayer, here, the Estate, with the IRS's proposed adjustments to the taxpayer's return. The taxpayer must appeal or protest the findings in the letter by submitting an affidavit to the IRS District Director within thirty days. After the taxpayer files its protest, an IRS Appeals Officer will make an independent review of the issues in dispute in the taxpayer's return. *See* Internal Revenue Service, "*Letters and Notices Offering an Appeal*" *at* http://www.irs.gov/individuals/article/0,,id=160744.00.html (Feb. 25, 2007).

[25] The IRS believed the right to vote the AIRCO shares had to be valued and was taxable because the voting rights were not bequeathed to a charitable foundation.

The Estate formally protested the IRS's proposed findings on October 16, 1972. *See* Letter from Ms. Malman to IRS District Director (Oct. 16, 1972) (Tab 135); *see also* Protest at 2 (Tab 134). As to the valuation of Starr's shares of CVSCO common stock, the Estate raised the following points:

- Any sale or purchase of CVSCO common stock was subject to the redemption and right-of-first refusal provisions contained within the CVSCO charter. Those provisions fixed the repurchase price of such shares at "fair value as determined by the Board of Directors." Protest at 60-61 (Tab 134).
- The company's Board of Directors determined fair value to be the adjusted book value of such shares. *Id.* at 61.
- All transactions involving CVSCO common stock were "effected at a price determined according to the above formula." *Id.* at 62 (discussing sales and purchases of CVSCO common stock during period of December 1965 through 1969).
- Courts in the Second Circuit have made clear that for estate tax purposes, a valuation based on a formula specified in a redemption or right-of-first refusal provision in a corporate charter is the sole index of fair market value. *Id.* at 65 (citing *Lomb v. Sugden*, 82 F.2d 166 (2d Cir. 1936); *May v. McGowan*, 194 F.2d 396 (2d Cir. 1952)).

Following receipt of the Estate's protest, the IRS met and negotiated with the Estate's counsel, Sullivan & Cromwell. *See* Letter from Ms. Malman to Mr. Bernstein (Mar. 7, 1973) (Tab 136). Thereafter, the Appellate Conference of the IRS accepted the Estate's valuation of Starr's 240 shares of CVSCO common stock at an adjusted book value of $4,500 per share as fair market value and this issue was dropped from further tax proceedings involving the Estate. Interview of Henry Christensen III (Mar. 6, 2006); Interview of M. Bernard Aidinoff (Sept. 7, 2006).

The parties did not resolve the other issues raised by the IRS until February 18, 1976, when the Estate agreed to pay a deficiency of approximately $700,000 for its federal estate and gift tax liability. *See* Letter from Mr. Mariani to Mr. Leibowitz (June 3, 1976) (Tab 137); Letter from Mr. Leibowitz to Mr. Mariani (June 3, 1976) (Tab 138).

C. The Estate's Dialogue with the NYAG

In late 1974, the Estate began to have regular communications with attorneys and accountants in the NYAG's Charities Bureau. The NYAG already had been cited and made a party to the Surrogate's Court proceeding in connection with the initial probate petition and the proceeding in which approval was sought for the disposition of the Brewster property. Under New York law, the NYAG represents the ultimate charitable beneficiaries of bequests and other dispositions to charities in all matters relating to the probate and administration of a will or other testamentary instrument. *See* EPTL § 8-1.1(f) ("The attorney general shall represent the beneficiaries of such dispositions for religious, charitable, educational or benevolent purposes and it shall be his duty to enforce the rights of such beneficiaries by appropriate proceedings in the courts."). Thus, the NYAG effectively represented the charitable beneficiaries of the Foundation in connection with the administration of Starr's Will. *Id.*; *see also* Interview of Angelo Mariani (Apr. 21, 2006).

Beginning in late 1974, Angelo Mariani, an in-house lawyer at AIG who was assigned to work on matters relating to the Estate, began having regular monthly meetings with Irwin Leibowitz, an attorney and deputy chief of the NYAG Charities Bureau, concerning the administration of the Estate. Interview of Angelo Mariani (Apr. 21, 2006). According to Mariani, Leibowitz was an experienced, careful, and meticulous attorney who watched closely over the administration of the Estate on behalf of the

Foundation's interests. *Id.* Mariani discussed, among other things, the following subjects with Leibowitz:

- The sale of Starr's shares of CVSCO common stock, AIUO voting stock, and his minority interest in AIU Far East to CVSCO and AIUO, *id.*;
- the redemption and right-of-first refusal provisions in the CVSCO and AIUO charters, and the IRS proceedings relating to the valuation of Starr's CVSCO common stock, *id.*;
- the conflicts faced by the Executors in selling Starr's shares in various entities arising from Starr's appointment of the CVSCO Board as executors of the Estate, *id.*; and
- the June 1970 transaction and the Morgan Stanley valuation assessing the fairness of that transaction from the perspective of AIG's shareholders. *Id.*

Also, Mariani sought and received the NYAG's approval to the settlement of the IRS's claims against the Estate. *See* Letter from Mr. Mariani to Mr. Leibowitz (June 3, 1976) (Tab 137); Letter from Mr. Leibowitz to Mr. Mariani (June 3, 1976) (Tab 138) ("[T]he Attorney General has no objection to the settlement of the various claims of the Internal Revenue Service against the . . . Estate . . .").

D. The Final Accounting Proceeding

The Executors retained Sullivan & Cromwell in late 1977 to prepare the final accounting (and related documents) and represent the Executors in the related proceedings before the Surrogate's Court. At the Foundation's request, the Executors agreed to delay the filing of their final accounting until after AIG completed its acquisition of AIRCO, which occurred in September 1978. Interview of Henry Christensen III (Mar. 6, 2006) (noting that a draft of the accounting had already been completed by the Estate's accountants, Roy Tarlow & Co.).

On November 30, 1978, Greenberg filed a petition on behalf of himself and the other Executors seeking a judicial settlement of the Estate and requesting that the Executors be "released and discharged from any and all liability with respect to all matters and things embraced" in the Accounting attached to the Petition. *See* Petition on Final Account (Tab 97). The Petition included a detailed summary of the three specific transactions questioned in the AG Report. For instance, it described the sale of Starr's 240 shares of CVSCO common stock as follows:

> C. V. Starr & Co., Inc., the firm of insurance consultants formed by Mr. Starr in 1950 and with which he was associated until his death, has always been involved in the business activities of AIG, AIRCO and other related companies, and has been referred to as the senior company in the group. Mr. Starr owned 240 shares of the common stock of the corporation. Under the terms of Article IV(B)(6) of the Certificate of Incorporation of C. V. Starr & Co., Inc., the corporation has the right, within 90 days of the death of an owner of common stock, to purchase the decedent's shares, at fair value as determined by the Board of Directors. In February of 1969 the corporation elected to exercise this right with respect to Mr. Starr's common stock, and completed the purchase on November 11, 1969. As C. V. Starr & Co., Inc. is a closely-held company, with no market for its stock, the fair market value determined and paid by the corporation was the stock's book value at December 31, 1968. This value was approved by the Internal Revenue Service on audit of the Federal estate tax return, a copy of which has previously been filed with this Court. Copies of the Certificate of Incorporation of C. V. Starr & Co., Inc. and the financial statements for the corporation at December 31, 1968 are attached hereto as Exhibit C.

Petition on Final Account at 12-13 (Tab 97). Likewise, the Petition described the AIUO and AIU Far East transactions as follows:

> *American International Underwriters Overseas, Inc.*: Under Sub-section (C) (c) of Article III of AIUO's Articles of Incorporation the estate of a deceased shareholder was obligated to sell his shares back to the corporation at subscription price plus accumulated dividends. The estate's shares were tendered to the corporation in compliance with this provision, and the estate received $3,000 for the shares, which was equal to the

> amount Mr. Starr had paid for the shares over the prior eighteen months (there were no accumulated dividends). This value was also approved by the Internal Revenue Service on audit of the Federal estate tax return. Copies of AIUO's certificate of incorporation and the financial statement for the corporation at June 30, 1970 are attached hereto as Exhibit F.
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> *American International Underwriters Far East, Inc.*: [AIU Far East] was one of the oldest companies in Mr. Starr's insurance company group, set up to manage the agency business in Hong Kong, Singapore, Thailand, Laos, Vietnam, Indonesia, Malaysia and Taiwan. It was a comparatively small company, as most area operations were conducted by a sister company, American International Underwriters Overseas, Inc. (hereinafter, (AIUO"), and during the latter part of the 1960's business activities in Southeast Asia were uncertain at best. Mr. Starr owned 48% of the company's outstanding stock . . . and had stated during his lifetime a desire that on his death his stock be sold to AIUO. In these circumstances, the Executors determined to sell the estate's shares of [AIU Far East] to AIUO, at their fair market value. That value was determined by independent appraisal of Lowe, Bingham & Matthews, chartered accountants in Hong Kong, to be $1,013,064, and the stock was sold to AIUO at that price on October 8, 1969. Because of the uncertain business prospects and erratic past earnings of the company, Lowe, Bingham & Matthews determined that net asset value was the best measurement of fair value. That value was approved on audit of the Federal estate tax return. A copy of the appraisal is attached as Exhibit E.

Id. at 14-18.

The Petition also specifically identified the Foundation, as the residual beneficiary of the Estate, and the NYAG as the representative of ultimate charitable beneficiaries, as necessary parties to the proceeding, *see id.* at 4, and both were served with a Citation directing them to show cause why the Executors "should not be released and discharged of and from any and all liability with respect to all matters and things embraced in [the Petition and the Accounting]." Citation for Final Account of Executors (Dec. 29, 1978) (Tab 139).

1. Dialogue with NYAG Regarding the Final Accounting

Although Mariani left AIG in 1977, Sullivan & Cromwell continued to have regular communications with attorneys and accountants in the Charities Bureau. Interview of Henry Christensen III (Mar. 6, 2006). Indeed, prior to filing the Petition and the Accounting with the Surrogate's Court, the firm sent drafts to Bernard Toomin, the staff attorney at the Charities Bureau who had replaced Irwin Leibowitz, as the NYAG's representative in matters relating to the Estate. *See also* Interview of Bernard Toomin (May 25, 2006). Like Leibowitz, Toomin had experience handling large estates, and was a careful and meticulous attorney. *See id*.

Shortly thereafter, Toomin had a telephone call with Christensen, the partner at Sullivan & Cromwell with primary responsibility for the final accounting, regarding the Estate and the issues raised in the Petition and the Accounting. *See* Interview of Henry Christensen III (Mar. 6, 2006). Following this call, Christensen participated in a three hour meeting with Toomin and Sidney Rubin, the chief accountant for the Charities Bureau. *Id.* During this meeting, the parties discussed the Petition, the Accounting, and the federal tax court proceeding, with particular emphasis placed on the three specific transactions in question. *Id.* Christensen also reiterated to Toomin that in each of those transactions, the Executors had a potential conflict of interest as a result of their positions as members of the CVSCO Board. *Id*.

The parties continued to discuss the Petition and the Accounting following this meeting. Christensen and another Sullivan & Cromwell attorney, Robert Edmonds, had a number of follow-up calls with Toomin and Rubin regarding the CVSCO and AIU Far East transactions. (Toomin was apparently satisfied with the AIUO transaction following the parties' meeting.) *Id.* On April 13, 1979, Sullivan & Cromwell sent Toomin the following materials in response to a request that Rubin had made during a conversation the previous day: the audited financial statement for AIU Far East for the year ended December 31, 1968; and the consolidated financial statements for CVSCO as of December 31, 1968. *See* Letter from Mr. Edmonds to Mr. Toomin (Apr. 13, 1979) (Tab 140); *see also* Letter from Mr. Christensen to Mr. Toomin (Apr. 13, 1979) (Tab 141) ("I believe that Scott Edmonds sent you earlier this morning the bulk of the materials which Mr. Rubin had requested in order to complete his review of the C.V. Starr accounting."). The firm also enclosed a stipulation extending the time for the NYAG to file papers in connection with the final accounting proceeding to April 20, 1979. *See* Letter from Mr. Edmonds to Mr. Toomin (Apr. 13, 1979) (Tab 140); Interview of Bernard Toomin (May 25, 2006) (confirming that based upon correspondence, it appeared that he had done a fairly extensive review of CVSCO's financials).

According to Toomin, it was his custom and practice when reviewing an accounting to check whether any transactions involved a conflict of interest between the executors and the estate, including circumstances where an executor purchased assets from an estate. Interview of Bernard Toomin (May 25, 2006). Toomin also had access to other departments in the NYAG, including the Real Estate Bureau and the Securities Bureau, which could have assisted him in finding any proxy or registration statements involving the securities at issue in the final accounting proceeding. *Id*. It was also

Toomin's custom and practice to place a significant amount of reliance on an IRS valuation of an asset, particularly where, as here, the IRS conducted an audit. *Id*. In addition, Toomin had the right under section 2211(2) of the Surrogate's Court Procedure Act to examine the Executors regarding the administration of the Estate, including any of the transactions discussed in the AG Report. SCPA § 2211(2). When interviewed, Toomin acknowledged he was aware of that right; however, the record demonstrates that he did not exercise it. Interview of Bernard Toomin (May 25, 2006).

2. Caplin & Drysdale's Review of the Final Accounting

The Washington, D.C. firm of Caplin & Drysdale served as outside counsel for the Foundation beginning in June 1970, usually providing tax advice. Among other things, it also was asked by the Foundation to review and comment upon the Petition and the Accounting submitted by the Executors to the Surrogate's Court.

Caplin & Drysdale reviewed the Petition and the Accounting and confirmed on behalf of the Foundation that the transactions they detailed complied with certain federal tax requirements. In addition to performing the particular tasks that were requested of them, the firm would have raised with the Foundation any transaction, of which they became aware, in which the Foundation did not, or was not about to, receive fair treatment. Caplin & Drysdale reported directly to the president of the Foundation, T.C. Hsu. Interview of Thomas A. Troyer (May 19, 2006); Interview of Frank Chapper (June 9, 2006); *see also* Memorandum from Mr. Chapper to Caplin & Drysdale files (Dec. 4, 1978) (Tab 142).

3. Surrogate's Court Decree

By Decree dated April 25, 1979 (the "Decree"), the Surrogate's Court approved the final accounting. Specifically, the court approved each of the transactions in question and released and discharged the Executors from any liability or accountability for all things encompassed by the Accounting. Decree (Apr. 25, 1979) (Tab 143). Sullivan & Cromwell filed a notice of appearance on behalf of the Foundation. However, when interviewed, the attorney who participated in the final accounting proceeding could not recall the circumstances surrounding the filing of the notice. Interview of Henry Christensen III (Mar. 6, 2006). In any event, the Foundation had already been separately cited in the Petition, and was already subject to the Court's jurisdiction as a party to the final accounting proceeding. In addition, and, as discussed earlier, the Foundation had the benefit of Caplin & Drysdale's advice and counsel. Moreover, the NYAG filed a notice of appearance in the final accounting proceeding, and appeared in its role as the representative of the ultimate charitable beneficiaries of the Foundation. Decree at 4 (Tab 143) (noting that the "Attorney General of the State of New York [had] reviewed all matters in the accounting and petition and [had] notified the Court that he has no objection to the relief sought.").

XI. THE STARR FOUNDATION: 1979 TO PRESENT

As discussed above, the Foundation was very small at its inception in 1955. In its earliest years, Starr funded the Foundation with modest annual contributions. Following his death, but before his estate was settled, the Foundation's assets grew slowly, and consisted mostly of an infusion from another estate of one of Starr's early associates, C.J. Smith. Hsu Tr. at 100 (Tab 30).

During the ten years that it took the Executors to resolve all of the complications of Starr's estate, AIG and the Starr entities grew steadily under the leadership of the Executors, in their capacities as corporate officers of those entities. The growth was so significant that, when the Foundation received Starr's shares of AIG stock in 1979, the Foundation's assets leaped to more than $143 million from $26.5 million in 1978.[26]

In the next 20 years, the assets soared from $143 million to more than $6 billion in 2000. From 1994 through 2000 alone, the assets grew from $1 billion to $6 billion and the Foundation's annual grant-making increased from $45 million to almost $167 million. In 2001, although the Foundation's assets declined with the stock market in general, the Foundation's contributions increased to more than $245 million, reflecting a special response to the 9/11 tragedy in New York City.

Virtually all of the growth in the Foundation's assets, which were almost entirely invested in AIG stock, was the result of the explosive growth of AIG under the corporate leadership of Greenberg and the other Executors. The Foundation grew at a rate well beyond the growth of broad stock market indices.

The Foundation is now one of the largest foundations in America, according to the annual studies published by The Foundation Center in New York. There have been years in which the Foundation has been among the top ten largest foundations as measured both

[26] At the end of 1968 when Starr died, the Foundation had assets totaling only $1.2 million.

by asset size and amounts given away to charity. By all accounts, Starr never would have dreamed that the Foundation would have succeeded to the extent it has.

The extraordinary growth in the Foundation's assets has permitted the Foundation to tackle issues in New York City on a large scale. It has invested more than $40 million in the emergency provision of food to the hungry, most of which has been awarded in New York City or which benefited the City. In 2003, the Foundation restructured its grant-making for New York City food programs. It consolidated small grants to local soup kitchens and emergency food pantries into one citywide initiative administered by America's Second Harvest, which is called the New York City Food Initiative. During the three years that it has been operating, this Starr-funded Initiative has awarded 302 grants to 173 community-based emergency food programs. These programs provided 16.8 million individuals with approximately 32.7 million meals and almost 12.4 million pantry bags/packages. The Initiative also includes $3.6 million for City Harvest and The Food Bank for their own citywide efforts to feed the hungry.

In 1980, the Foundation's Board designed a scholarship program in Starr's honor, and awarded small amounts to a handful of colleges and universities in the United States. With additional assets, the Foundation has endowed C.V. Starr scholarship funds at more than 130 schools in the United States and abroad. This includes an infusion of tens of millions of dollars into New York City schools including New York University, City University of New York (CUNY), Fordham University and St. John's University, as well as substantial grants to historically black public and private colleges and universities around the country.

The Foundation's medical and healthcare grants have grown similarly. By 2005, the Foundation had given more than $400 million to healthcare and medical research institutions in New York City and since then has made a $50 million commitment to stem cell research in New York City and a $100 million commitment to cancer research involving five major research institutions, four of which are based in New York.

In the area of culture the Foundation has donated more than $70 million to Lincoln Center and its constituent organizations such as the New York Philharmonic and the Metropolitan Opera, and millions more to the Metropolitan Museum and the Museum of Modern Art.

In total, the Foundation has given away more than $2 billion in a little more than fifty years, virtually all of that after Starr's death, and more than $1 billion has been donated in New York City itself.

Under its current management, the Foundation's administrative expenses have historically been lower than any major foundation in the United States. Foundations generally measure their administrative expenses as a percentage of grants made in any given year. Prior to the recent change in AIG management, the Foundation's annual administrative expenses were generally between $3 million to $3.5 million. Depending on the amount of money paid out in contributions, grants, or gifts, that dollar figure might translate to annual administrative expenses of approximately 2% or less.

The Foundation's administrative expenses have increased since the recent change in AIG management. The Foundation is now required to pay rent, whereas under previous management AIG provided the Foundation with office space in its building for free. Under previous management, AIG provided other services to the Foundation for free, including payroll, benefits management, and cash management. The largest increase in the Foundation's operating expenses over the last year has been its extraordinary legal and other expenses resulting from its cooperation with the NYAG in connection with the NYAG's investigation of the transactions that are the subject of the AG Report, and the Foundation's investigation of the allegations set forth in the AG Report.

XII. POSSIBLE CLAIMS BY THE FOUNDATION

The AG Report contends that the Foundation has possible claims for breach of fiduciary duty against the Surviving Executors either (i) in their capacity as the Executors of Starr's Estate for entering into the subject transactions to the detriment of the Foundation, or (ii) in their capacity as directors of the Foundation at the time of the transactions or final accounting for not objecting to those transactions. This Report analyzes the merits of the claims proposed by the NYAG and, as part of that analysis, discusses how the Independent Committee would expect a court to treat such claims if they were pursued.

The Independent Committee has determined that the Executors acted in good faith and prudently performed their duties, and that there is no basis for the AG Report's contention to the contrary. Accordingly, in the circumstances presented here, it would not be appropriate to bring any such claims.

A. The CVSCO Redemption

1. Standard of Liability

Executors of an estate owe a duty of undivided loyalty to those beneficiaries whose interests they are appointed to protect. *In re Estate of Rothko,* 43 N.Y.2d 305, 319, 401 N.Y.S.2d 449, 454 (1977). This rule of undivided loyalty is sometimes regarded as a "sensitive and 'inflexible' rule of fidelity, barring not only blatant self-dealing, but also requiring avoidance of situations in which a fiduciary's personal interest possibly conflicts with the interest of those owed a fiduciary duty." *Birnbaum v. Birnbaum*, 73 N.Y.2d 461, 466, 541 N.Y.S.2d 746, 748 (1989) (quoting *Matter of Ryan*, 291 N.Y. 376, 407 (1943)). Nonetheless, the rule of undivided loyalty is not absolute.

New York courts have identified various exceptions to the rule, permitting an executor, in certain circumstances, to enter into a conflicted transaction without breaching his or her duty of loyalty. One of those exceptions applies where a conflict of interest is expressly permitted by, or is inherent and unavoidable under, a testamentary instrument. *See, e.g.*, *Renz v. Beeman*, 589 F.2d 735, 744 (2d Cir. 1978) ("It is true that even a trustee's duty of 'utmost loyalty' can be reduced by means of language in the trust instrument permitting certain transactions involving self-interest…."); *In re Durston*, 297 N.Y. 64, 71-72 (1947) (same); *O'Hayer v. de St. Aubin*, 293 N.Y.S.2d 147, 30 A.D.2d 419, 423 (2d Dep't 1968) ("No doubt, the rule of undivided loyalty due from a trustee may be relaxed by a settlor by appropriate language in the trust instrument in which he, either expressly or by necessary implication, recognizes that the trustee may have interests potentially in conflict with the trust.") (citation omitted); *In re Balfe*, 245 A.D.

22, 24 (2d Dep't 1935) (trustee did not breach his duty of loyalty to the beneficiary, where the will expressly stated that "the trustee was authorized to act in respect of the securities in the estate without regard to whether or not the trustee had a personal interest in these same kinds of securities or the companies to which they related."); *Estate of Lawrence*, Dec. 14, 1990, N.Y.L.J., 22, col. 4 (Sur. Ct., N.Y. County) ("Unquestionably, testator's appointment of a fiduciary, which is intentional, explicit and unequivocal, must be honored even when the appointee has a fiduciary relationship with respect not only to the estate but also to a [business] in which he has a personal interest. Consequently, a conflict of interest, which is inherent and unavoidable under a testamentary disposition, does not of itself call for interference by the court, subject to the standard safeguards of good faith and fair dealing….") (citation omitted); *In re Farrell's Will*, 91 N.Y.S.2d 89, 92 (Sur. Ct., Westchester County 1949) (upholding bank trustee's sale of estate property for which it held the mortgage, because the fact trustee was knowingly placed in a position of "divided loyalty" by testator); *see also* 106 N.Y. Jur. 2d *Trusts* § 283 (2006) ("[W]hile a trustee may not put himself in a position where personal interest will conflict with the interests of the beneficiary, where a conflict of interest is created by the instrument creating the trust, the situation is different. A settlor has the right to determine who is to administer the trust res, and a trustee will not be removed from office on the ground of a conflict of interest if the trust instrument created the conflict.").[27]

[27] New York is far from unique in adopting the inherent authorization exception. *See, e.g., Goldman v. Rubin*, 292 Md. 693, 704-13, 441 A.2d 713, 720-24 (1982) (collecting cases and authorities and rejecting breach of loyalty claim against executors where testator's will appointed as executors four of the five directors of his company "and then caused the [executors] to deal with themselves, as directors

(Footnote continued)

The decision in *In re Kellogg's Trust*, 35 Misc.2d 541, 544-45, 230 N.Y.S.2d 836, 839-40 (Sup. Ct., Erie County 1962), illustrates this principle. There, the decedent's son was named as a trustee of a trust holding company stock. *See id.* at 542, 230 N.Y.S.2d at 838. The son was a highly compensated officer and significant shareholder of the same company. Alleging a conflict of interest, the trust beneficiaries sued him for retaining the company stock in the trust in the face of information he acquired in his capacity as a corporate officer suggesting that the value of the stock would decline over time. *See id*. at 544, 230 N.Y.S.2d at 839. The court rejected the challenge because "[i]t is quite clear from the trust instrument itself, as well as from the background of its creation, that it was the settlor's intent to put into effect a well-defined scheme of his own making," which included a conflict of interest by reason of the trustee's position as a corporate officer. *Id*. at 544-45, 230 N.Y.S.2d at 840; *see also Matter of Cohen*, 88 A.D.2d 290 (1st Dep't 1982) (concluding that "undivided duty of loyalty" did not apply where conflict of interest was unavoidable under terms of will); *In re Accounting of Guaranty Trust Co. of New York (Ryan's Will)*, 186 Misc. 688, 691 57 N.Y.S.2d 462, 465 (Sur. Ct., N.Y. County 1945) (concluding that rule against divided loyalty did not apply where testator

… as inexorably as if the will had expressly so directed."); *Rosencrans v. Fry*, 21 N.J. Super. (N.J. Super. Ct. Ch. Div. 1953) (concluding that there was no reason for multi-fiduciary executor to resign or refuse to enter into conflicted transactions, because the testator had "designed the situation."); *Boston Safe Deposit & Trust Co. v. Lewis*, 317 Mass. 137, 140, 57 N.E. 2d 638, 640-41 (1944) ([W]ill authorized sale of stock to co-executor at price to be fixed only by him. "[W]here the method selected by a testator for the accomplishment of the purpose and object of the trust cannot be adopted by a trustee without dealing with himself individually, it may fairly be assumed that such dealing was contemplated by the testator."); *accord Bogert's Trusts and Trustees* § 543 & n. 51 ("The most commonly recognized exception to the application of the [undivided loyalty] rule is … where the settlor has expressly or impliedly approved the self-dealing transaction or conflict of interest position.") (citing *Childs v. Nat'l Bank of Austin*, 658 F.2d 487 (7th Cir. 1981)).

selected president of company in which he held 16,000 shares of common stock as executor of his estate).

The Pennsylvania Supreme Court's decision in the case of *In re Flagg's Estate*, 365 Pa. 82, 73 A.2d 411 (1950), is also instructive. There, the principal asset of the estate was the testator's shares of preferred stock in a corporation he had operated with his son. *Id*. at 84, 73 A.2d at 412. The testator placed one-half of his shares in a trust for his daughter, and gave the remaining shares to his son, who he also named as trustee of his daughter's trust. *Id*. at 85, 73 A.2d at 413. After the corporation's board exercised its right to redeem a portion of the trust's shares, the daughter initiated a proceeding to set aside the sales based on the trustee's conflict of interest. *Id.*

In overruling the lower court's decision to set aside the redemption, the Pennsylvania Supreme Court held that a fiduciary who owes a duty to act in the best interests of two different beneficiaries (in that case a trust and a corporation) was not disqualified from acting in the absence of demonstrated bad faith. *Id.* at 88-89; 73 A.2d at 415. The court explained,

> [t]he will shows that the testator had the conflict in mind when he made it and left it to be one of the conditions of his testamentary dispositions to be dealt with during administration. He knew the preferred stock was issued subject to redemption (he had the business, theretofore conducted as a partnership composed of himself and his son, incorporated in 1922) and he knew that by his bequest he was giving unrestricted voting powers in the corporation to his son who had been his partner.

Id. at 89; 73 A.2d at 415. Significantly, the court rejected the notion that a testamentary instrument must expressly condone a self-dealing transaction in order to avoid the rule of undivided loyalty, explaining that "[t]here is no proper distinction between express and implied power; where the power, indeed duty, to engage in self-dealing is necessarily implied in the terms of the testator's will [and] the valid exercise of that power [therefore] will not be set aside by this court." *Id*. at 91-92, 73 A.2d at 416.

If this matter were ever the subject of litigation, the Executors would have a strong argument that they had express authorization from Starr to enter into a conflicted transaction. *See, e.g.*, *Renz v. Beeman*, 589 F.2d at 744 ("It is true that even a trustee's duty of 'utmost loyalty' can be reduced by means of language in the trust instrument permitting certain transactions involving self-interest"). At a minimum, a court should find that Starr knowingly created and authorized an inherent conflict of interest. *First*, Starr was unquestionably aware of the redemption and right-of-first refusal provisions in the CVSCO and AIUO charters. *Second*, Starr also was aware that his Executors, as members of the CVSCO Board, had the authority, and indeed the obligation, to exercise the redemption and right of first refusal provisions in the companies' charters. Indeed, as described above, Starr restructured his enterprise in November 1965 to ensure that the members of the CVSCO Board, whom he selected himself, would have this type of authority following his death. *See supra* at Parts VI.D & VII.A.1. *Third*, and perhaps most importantly, Starr authorized his executors in the Will "to serve as officers or directors of any corporation of which I or my estate may be the sole or a partial stockholder . . . without personal liability to them as a result thereof." Will art. VII § (m) (Tab 5). In other words, Starr expressly permitted his executors to remain in positions that -- due to provisions that Starr, himself, included in the AIUO and CVSCO charters -- would undoubtedly give rise to a conflict of interest.

Therefore, a court should find that the Estate's sale of Starr's shares of CVSCO common stock back to CVSCO and AIUO voting stock back to AIUO would not be subject to the rule of undivided loyalty. Instead, the Executors' conduct would be examined to see if they acted in good faith in entering into the respective transactions. *O'Hayer v. de St. Aubin*, 30 A.D.2d at 425, 293 N.Y.S.2d at 153; *Renz v. Beeman*, 589 F.2d at 744-45 (exculpatory clause reduced the standard of duty to one of good faith and permits a court to weigh the merits of the transaction) (citing *Matter of Balfe*, 245 A.D. 22, 24, 280 N.Y.S. 128, 130 (2d Dep't 1935)); *In re Dow's Will*, 32 Misc.2d 415, 419, 156 N.Y.S.2d 804, 808-09 (Sur. Ct., Chautauqua County 1955); *Estate of Lawrence*, Dec. 14, 1990 N.Y.L.J. 22, col. 4, (Sur. Ct., N.Y. County).

2. Starr's Shares Were Subject to a Valid and Enforceable Redemption Provision

The Executors sold Starr's 240 shares of CVSCO common stock back to the company pursuant to the mandatory redemption provision in the CVSCO Certificate of Incorporation entitling CVSCO to purchase Starr's shares within ninety days of his death at the share's "fair value as determined by the Board of Directors." *See* Notes on Minutes of Directors' Meetings of CVSCO held Feb. 13, 1969 (Tab 76); *see also* Am. CVSCO Charter art. IV, § (B)(6) (Tab 44). Starr designed this redemption provision to prevent outsiders, including the heirs and estates of deceased shareholders, from joining the shareholding group. *See* Youngman Tr. at 72 (Tab 31) (quoting historical overview prepared by Manton); *cf.* Notes of Chairman's Remarks at Joint CVSCO and AIUO Voting Stockholders' Meetings held on Nov. 10, 1965 (Tab 35) ("[M]odern needs point to the necessity of establishing a modern management organization [*i.e.*, CVSCO] with a limited group of shareholding partners.”).

A mandatory redemption or right-of-first refusal provision in a corporate charter or by-law is valid and enforceable under New York law. *Allen v. Biltmore Tissue Corp*., 2 N.Y.2d 534, 161 N.Y.S.2d 418 (1957) (holding that a first-option provision is reasonable regardless of the corporate purpose since it does not prevent transfer of shares, but merely delays transfer for a limited time); *Issacson v. Beau Label Corp.*, 93 A.D.2d 880, 461 N.Y.S.2d 420 (2d Dep’t 1983) (holding that a mandatory redemption provision in a corporation’s by-laws or certificate of incorporation is valid and enforceable). The New York Court of Appeals has recognized that such provisions are especially pertinent to closely held corporations, like CVSCO and AIUO, because they ensure “that ownership of all of the stock . . . stays within the control of the remaining corporate owners–employees.” *Gallagher v. Lambert*, 74 N.Y.2d 562, 567, 549 N.Y.S.2d 945, 946 (1989); *Biltmore Tissue*, 2 N.Y.2d at 543, 161 N.Y.S.2d at 424 (explaining that such restrictions are “part of the attempt to equate the corporate structure to a partnership by giving the original stockholders a sort of pre-emptive right through which they may, if they choose, veto the admission of a new participant”); *cf. Krebs v. McDonald’s Executrix*, 266 S.W.2d 87, 89 (Ky. Ct. App. 1953) (“The restrictive stock agreement is one of the devices evolved for assuring the succession in interest of persons most likely to act harmoniously with the other shareholders.").[28]

The NYAG does not take issue with the enforceability of the stock redemption provision, but nevertheless challenges the fairness of the price that the Executors, in their capacity as the CVSCO Board, fixed for the repurchase of Starr's shares. AG Report at 8-9, 12-15 (Tab 1). Specifically, the NYAG alleges that the Executors determined that the "fair value" of Starr's 240 shares of CVSCO common stock would be the adjusted book value price of $4,500 even though they knew this price was far lower than the multiple of earnings valuation that Morgan Stanley was using to price CVSCO's assets for the June 1970 transaction. *Id*. at 12.

This argument, however, suffers from the following legal and factual deficiencies, any of which should undermine a claim by the Foundation that the Executors acted in "bad faith," in selling Starr's 240 shares of CVSCO common stock back to CVSCO for the adjusted book value price of $4,500 per share.

a. Courts Regularly Uphold Mandatory Redemption Provisions That Fix the Repurchase Price or Formula

First, courts have regularly enforced corporate instruments that require a shareholder or estate to sell her or its shares back to the corporation at a fixed price or

[28] A redemption provision may not be enforceable against a shareholder who does not have actual notice of it. *See* N.Y. U.C.C. § 8-204 (2006) ("[Unless] noted conspicuously on the security a restriction on transfer imposed by the issuer even otherwise lawful is ineffective . . . against a person without knowledge of the restrictions"). The provisions of that statute were satisfied in this case because Starr obviously knew about the redemption provision, and, in any event, the provision in fact was printed in full on the back of his stock certificates. *See, e.g.*, CVSCO Stock Certificate No. C1 for C.V. Starr (Tab 75) (setting forth terms of redemption provisions and right-of-first refusal provisions on back of stock certificate).

valuation regardless of the difference between the stated price and the fair market value of the stock. *See, e.g.*, *Biltmore Tissue*, 2 N.Y.2d at 543, 161 N.Y.S.2d at 424 ("Since the parties have in effect agreed on a price formula which suited them . . . the restriction is reasonable and valid."); *Gallagher*, 74 N.Y.2d at 567, 549 N.Y.S.2d at 947 (emphasizing that a mandatory redemption provision in a corporate charter "should not be undone simply upon an allegation of unfairness"); *Rosiny v. Schmidt*, 185 A.D.2d 727, 587 N.Y.S.2d 727 (1st Dep't 1992) (rejecting challenge to validity of a first-option provision, and holding that "[w]hile the $200 per share buyout provision pertains to shares worth considerably more, 'the validity of the restriction on transfer does not rest on any abstract notion of intrinsic fairness of price'").

For example, in *Biltmore Tissue*, the Court of Appeals held that a provision entitling the company to purchase the shares of a deceased shareholder within 90 days of his or her death at "subscription price" (*i.e.*, the amount paid to purchase the originally issued stock) was valid and enforceable despite claims that the price was "unreasonable" or "unfair." 2 N.Y.2d at 538, 161 N.Y.S.2d at 419. The court reasoned that "such a rationale would permit, indeed, would encourage, expensive litigation in every case where the price specified in the restriction, or the formula for fixing the price, was other than a recognized and easily ascertainable fair market value." *Id*. at 542-543, 161 N.Y.S.2d at 423. The court further emphasized that the validity of a mandatory redemption or right-of-first refusal provision "*does not rest on any abstract notion of intrinsic fairness of price*," explaining that "[s]ince the *parties have in effect agreed on a price formula which suited them*, and provision is made freeing the stock for outside sale should the corporation not make, or provide for, the purchase, the restriction is reasonable and valid." *Id*. (emphasis added)

This principle applies equally to mandatory redemption and right-of-first refusal provisions that grant a board of directors or other shareholders the discretion to determine the price of the shares subject to repurchase. *See e.g.*, *In re Gusman*, 178 A.D.2d 597, 597, 577 N.Y.S.2d 664, 665-66 (2d Dep't 1991) (compelling estate executors to comply with the terms of a shareholders' agreement requiring the redemption of the stock by the corporation "at 100% of the amount stated in the 'last executed Certificate of Value'"); *In re Estate of Cetta*, 288 A.D.2d 814, 733 N.Y.S.2d 521 (3d Dep't 2001) (same); *cf. New England Trust Co. v. Abbot*, 38 N.E. 432, 432-34 (Mass. 1894) ("It is well settled that where one agrees that another may fix the price for certain property, or the sum to be paid for material or services, the decision of the party selected cannot be impeached by showing that he has committed an error of judgment, or failed to avail himself of all the information which he might have obtained, or has valued the property too high or too low."); *Burke v. Honkaken*, No. 945710B, 2000 WL 282370, at *2-*3 (Mass. Super. Ct. Feb. 14, 2000) (relying on *Abbott* and upholding an agreement providing that "a third party, such as the company accountant, shall make the valuation, his decision is binding in the absence of bad faith, fraud or collusion").

The decision in *Krebs v. McDonald's Executrix*, 266 S.W.2d 87 (Ky. App. 1953), upholding a provision that allowed surviving stockholders to repurchase a deceased stockholder's shares "at a reasonable price, to be fixed by the stockholders at a special annual meeting," is also instructive. *Id.* at 89. In reaching its decision, the court rejected the estate's argument that the valuation formula used to price the decedent's shares produced a value far less than the fair market value of the stock. *Id.* The court held that the "criteria [under the relevant provision] for evaluating the stock [were] so broad in their implications that [it] . . . amounted to a carte blanche grant of power to the shareholders to set the valuation at whatever they considered reasonable so long as they acted in good faith. *Id.* at 89-90. The court also noted that, like Starr, the decedent in that case was "one of the architects of the method of evaluating the stock," and was familiar with the valuation formula that would be used to calculate the price of his shares. *Id.* at 89 (emphasizing that in light of the breadth of the provision and the decedent's familiarity with the valuation formula, the Estate could not "now be heard to complain about [the] method of valuation").

These decisions, and the principle upon which they are based, would apply squarely to any claim brought by the Foundation against the Surviving Executors that is predicated on the alleged "unfairness" of the price CVSCO paid for Starr's 240 shares of CVSCO common stock. Thus, here, the mandatory redemption provisions would undermine any notion that the Executors acted in bad faith.

b. Starr and the CVSCO Board Adopted the Valuation Formula That Was Used to Determine the Price of His 240 Shares of CVSCO Common Stock Long Before the June 1970 Transaction

Second, despite the allegations in the AG Report, the formula used to determine the price of Starr's shares of CVSCO common stock was not established by the Executors in March 1969, after Starr died, but was instead adopted by Starr, himself, and the other members of the CVSCO Board on October 24, 1968 (the "October 1968 valuation agreement"). *See* AG Report at 13 (Tab 1) (alleging that "the executors, in their capacity as the CVSCO directors and shareholders, entered into a 'Letter Agreement re Valuation' committing themselves to use 'adjusted book value' as 'fair value' when CVSCO repurchased shares in the future.").

As described already in Part VI.C.3 above, following the 1965 Restructuring, Starr and the CVSCO Board amended the charter to convert "Voting Stock" into "Common Stock," and replace "subscription price plus accumulated dividends" as the amount the company was required to pay under the redemption and right-of-first refusal provisions in the charter with "fair value as determined by the Board of Directors." Am. CVSCO Charter (Tab 44).

The October 1968 valuation agreement defined "fair value" as the highest of three possible valuation formulas: (i) the price paid for a share of CVSCO common stock; (ii) the price paid for such share plus 10% of such price less any dividends paid to the holder of the share; and (iii) the adjusted book value of such share as approved annually by the Board. *See* October 1968 Valuation Agreement (Tab 50); *see also* Written Responses of John J. Roberts. Starr attended both of the CVSCO Board meetings during which the October 1968 agreement was discussed, and along with the other members of the CVSCO Board, joined in a unanimous vote to approve the agreement at a meeting held on October 24, 1968. *See* Notes on Minutes of Directors' Meeting of CVSCO held Oct. 17, 1968 (Tab 144) (discussing revised report of valuation committee and referring back to counsel to incorporate changes unrelated to pricing formula); Notes on Minutes of

Directors' Meeting of CVSCO held Oct. 24, 1968 (Tab 38) ("The revised letter agreement on valuation showing the changes suggested at the last directors' meeting was circulated and unanimously approved.").

Moreover, and of great importance, in adopting this definition of "fair value," Starr and the CVSCO Board eliminated an option included in an earlier valuation agreement that allowed them to price shares of CVSCO common stock based on the kind of "multiple of earnings" approach that Morgan Stanley later used in rendering its fairness opinion for the June 1970 transaction. As discussed in Part VI.C.3 above, the March 1966 valuation agreement included an option that allowed the CVSCO Board to define "fair value" as "ten times CVSCO's annual adjusted earnings attributable to such share over the prior three calendar years." *See* March 1966 valuation agreement (Tab 45). This formula was never used to value CVSCO common stock while Starr was alive, and by September 1968, the CVSCO Board had concluded that adjusted book value was a more appropriate formula for determining the repurchase price of CVSCO common stock under the charter's redemption and right-of-first refusal provisions. Interview of Maurice R. Greenberg (Oct. 17, 2006); *see also* Memorandum from Valuation Committee on Valuation of Common Stock to CVSCO Directors (Oct. 15, 1968) (Tab 48) (recommending elimination of "ten-times-earnings test" from valuation agreement).

Finally, despite the allegations in the AG Report, the Executors, in their capacity as the CVSCO Board, did not make any pertinent changes to the definition of "fair value" contained within the October 1968 valuation agreement following Starr's death. *See* AG Report at 13 (Tab 1) (alleging that executors, in their capacity as CVSCO Board, purchased Starr's common stock "using the book value formula that the directors, without independent consent by the Estate, had agreed to in March [1969]"). On the contrary, the March 1969 valuation agreement simply clarified the elements that would be considered in arriving at "adjusted book value" and made clear that "shares will not be burdened with the cost of future improvements in the pension plan." Memorandum from Mr. Lee to Messrs. Freeman and Tse (Mar. 24, 1969) (Tab 53); *see also* March 1969 Valuation Agreement (Tab 52); *see also supra* Part VI.C.3.

Based upon the provisions of these valuation agreements and the governing case law, a court should find that the Executors' sale of Starr's shares of CVSCO common stock back to CVSCO at the adjusted book value price of $4,500 per share was fair and reasonable. At bottom, the court would be hard pressed to distinguish the facts presented here from the facts presented in *Biltmore, Krebs,* or any other decision in which a court has upheld a mandatory redemption or right-of-first refusal provision despite the difference between the price specified in the provision and the fair market value of the stock. Like the shareholders in those cases, Starr was aware of, and had even approved, the valuation method that was used to determine the price of his 240 shares of CVSCO common stock. Accordingly, a court should find that the Executors acted in good faith in entering into this transaction.

c. The Estate Was Treated No Differently Than Any Other Holder of CVSCO Common Stock

In determining whether the Executors acted in bad faith, a court would also place significant weight on the fact that the Estate was treated no differently than any other holder of CVSCO common stock. Even before Starr's death, and afterwards, the CVSCO Board consistently valued shares of CVSCO common stock at adjusted book value when selling common shares or redeeming them from retired or deceased shareholders.

For instance, at a CVSCO Board meeting held on September 29, 1967, Starr recommended that fifty shares of common stock be issued to Houghton Freeman. *See* Informal Minutes of Discussion at the Special Meeting of the Common Stockholders of C.V. Starr & Co., Inc., held Sept. 28, 1967 (Tab 51). According to the minutes of that meeting:

> With reference to the price to be paid by Houghton Freeman [for the 50 shares of common stock], Mr. Ahlers presented a statement showing that at December 3, 1966, the book value of the Common Stock was $1,776.54 a share and that at June 30, 1967, the estimated book value was $2,380 per share.

Id.; *see also* Memorandum from Mr. Ahlers to CVSCO Board (Oct. 2, 1967) (Tab 73) (setting forth calculations for determination of estimated book value). Freeman ultimately purchased the fifty shares of CVSCO common stock for the final adjusted book value of $2,240 per share – the same price that Starr, himself, had paid for his purchase of forty shares of common stock on October 12, 1967. *See* Informal Minutes of Directors' Meeting Held Oct. 12, 1967 (Tab 56) ("Mr. Starr delivered his check for $89,600 for the purchase of 40 shares of the common stock of this company.").

Likewise, on October 14, 1968, while Starr was still alive, Youngman sold twenty of his CVSCO shares to Ahlers, fifty of his shares to Mulderig, and his remaining 130 shares back to CVSCO itself. Each of those sales was at the same $4,500 per share price at which the Estate later sold its shares to CVSCO.[29] Letter from Mr. Ahlers to Mr. Lee (Oct. 15, 1968) (Tab 145); Letter from Mr. Mulderig to Mr. Lee (Oct. 15, 1968) (Tab 146). Shortly after the repurchase of the Estate's shares in October 1969, Ahlers, an Executor and long-time member of the Starr enterprise sold fourteen shares back to CVSCO at the then adjusted book valuation of $6,870.34 per share.[30] As a member of the CVSCO Board and treasurer of the enterprise, Ahlers was obviously aware that this price was far below the amount CVSCO would receive when it sold the bulk of its assets to AIG. Nonetheless, Ahlers was subject to the same valuation agreement and formula as the other holders of CVSCO common stock and he proceeded accordingly.

The same pattern continued in subsequent years, long after the results of the June 1970 transaction were well known. For instance, during the period of 1989 through 1997, Roberts, an Executor, sold 2,000 shares of CVSCO common stock back to CVSCO. *See, e.g.*, Letter from Mr. Nitzsche to Mr. Roberts (Aug. 10, 1990) (Tab 149). The Company paid the then adjusted book valuation of $300 per share.[31] *Id.*; *see also*

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[29] The AG Report alleges that Youngman accepted the $4,500 per share price in consideration of some severance package awarded to him. AG Report at 13 n. 15 (Tab 1). However, the AG Report did not refer to any evidence in support of this allegation, and the Independent Committee has not found any such evidence. On the contrary, the redemption of Youngman's CVSCO common shares followed the terms of the charter provisions. *See* Youngman Tr. at 238-39 (Tab 31); Interview of Maurice Greenberg (Oct. 17, 2006); Interview of Ernest E. Stempel (Jan. 9, 2007).

[30] The increase in the amount paid to Ahlers was due primarily to the fact that the majority of Youngman's and Starr's shares had not been issued to new shareholders, thereby increasing the adjusted book value of each of the remaining shares. Memorandum from Mr. Redmond to CVSCO Board (May 12, 1970) (Tab 147).

[31] The adjusted book valuation had declined from prior levels because of a stock split. *See* Memorandum from Mr. Lee to Mr. Ahlers (Oct. 28, 1970) (Tab 148).

CVSCO Common Stock Valuation, Dec. 31, 1989 and Dec. 31, 1990 (Tab 150). Similarly, Manton, another Executor, sold 500 shares of CVSCO common stock back to the CVSCO for the adjusted book valuation of $300 per share. *See* Letter from Mr. Nitzsche to Mr. Manton (Aug. 10, 1990) (Tab 151).

d. Morgan Stanley's Preliminary Valuation Analysis Had No Bearing on the Amount Paid for Starr's CVSCO Common Stock

Notwithstanding the allegations in the AG Report, a court should find that Morgan Stanley's fairness opinion for the June 1970 transaction had no relevance to the price that CVSCO paid under Article IV, § (B)(6) of its charter for Starr's 240 shares of CVSCO common stock.

First, under the express terms of Article IV, § (B)(6) of the CVSCO Certificate of Incorporation, the CVSCO Board was required to pay the estate of a deceased shareholder the "fair value as determined by the Board of Directors of [the decedent's] shares *at the time of such death* . . ." Am. CVSCO Charter art. IV, § (B)(6) (Tab 44) (emphasis added); *see also* Notes on Minutes of Directors' Meetings of CVSCO held Feb. 13, 1969 (Tab 76) (agreeing to exercise right under Article IV(B)(6) of the CVSCO charter to repurchase Starr's shares on the "understanding that the fair value would be determined on the basis of the 1968 year-end figures when they become available . . ."). Thus, because Starr died more than eighteen months before the completion of the June 1970 transaction, the CVSCO Board would not have been authorized to consider the circumstances of the June 1970 transaction in calculating the "fair value" of Starr's shares.[32]

Second, the CVSCO Board informed the Executors of its intent to repurchase Starr's 240 shares of common stock on February 13, 1969 -- more than six months before Morgan Stanley even *started* its work on the June 1970 transaction, and eight months before Morgan Stanley circulated a copy of its preliminary report on the proposed transaction to the CVSCO Board. The Independent Committee has not uncovered any evidence that suggests the CVSCO Board was contemplating the sale of AIUO and AIUC to AIG at that time; nor has it located any documents suggesting that the CVSCO Board was aware in February 1969 of the amount AIG or another third party would pay for certain of CVSCO's assets.[33]

Third, even assuming the Executors were aware of the valuation method that Morgan Stanley would use in its preliminary analysis of the June 1970 transaction, it would not affect the validity of the mandatory redemption provision in the CVSCO charter or the applicability of the formula contained in the October 1968 valuation agreement adopted by Starr and the CVSCO Board. *Ryan v. J. Walter Thompson*

[32] Nor, as discussed above, was the CVSCO Board entitled to consider a "multiple of earnings" formula in calculating the amount the Estate was entitled under the governing valuation agreement.

[33] The AG Report suggests that the CVSCO Board's decision to repurchase Starr's 240 shares of common stock using the adjusted book value formula, and Greenberg's statement at the October 23, 1969 CVSCO Board meeting reiterating the need to complete this transaction, demonstrates that the repurchase was undertaken only because the CVSCO Board anticipated that Morgan Stanley's preliminary report would employ a different methodology. AG Report at 13-14. This suggestion ignores, however, as discussed above, that the CVSCO Board already had exercised its redemption right six months earlier, the fact that the redemption payment had to await preparation of the 1968 year-end financial statements so that adjusted book value could be determined, and that financing had to be arranged.

Company is directly on point. 322 F. Supp. 307 (S.D.N.Y), *aff'd*, 453 F.2d 444 (2d Cir. 1971). There, the court upheld a company's election under a mandatory redemption provision to exercise its right to repurchase a retired employee's stock despite the fact the company planned to conduct a public offering of the stock a few months later. The company in that case, J. Walter Thompson ("Thompson"), was a closely held corporation that limited stock ownership to its employees. *Id.* at 308-09. In accordance with its policy that the business should be wholly owned by its active employees, Thompson retained the option to purchase at net asset value, excluding goodwill, stock held by employees upon their retirement. *Id.* at 309. Plaintiff retired in January 1966, after which Thompson exercised its repurchase option. Five months after the company acquired plaintiff's shares at their net asset value of $276,200, Thompson went public, at which time plaintiff's shares would have been worth $970,656. *Id.*

According to plaintiff, Thompson had decided, subject to certain eventualities, to conduct a public offering of its shares more than three months before it exercised its option to repurchase his shares. *Id.* at 310. Plaintiff, however, was not advised by Thompson "at any time prior to its repurchase of his shares that a public offering was in contemplation." *Id.* The district court nonetheless dismissed plaintiff's statutory and common law claims on summary judgment, concluding that the potential public offering did not affect plaintiff's obligation to resell his shares under the first option provision in Thompson's certificate of incorporation. *Id.* at 313. The court also rejected any suggestion that Thompson could have waived its option to repurchase plaintiff's shares without seriously affecting the company's long standing policy of restricting the company's stockholders to its actively participating employees. *Id.* at 312. The court explained that the company's failure to exercise the option would have rendered plaintiff's shares freely transferable "at a time when there was no assurance that there would be a successful public offering." *Id.* at 312.

The *Ryan* decision would undermine any claim against the Surviving Executors predicated on the fairness of the price received by the Estate for Starr's 240 shares of CVSCO common stock. While the decision is merely another application of the principle set forth in *Biltmore Tissue*, *Ryan* makes clear that a court will enforce the price or formula specified in a mandatory redemption or right-of-first refusal provision even in the face of evidence that the company was aware that the stock was worth significantly more. Accordingly, a court should find that the Morgan Stanley fairness opinion for the June 1970 transaction had no bearing on whether the Executors acted in good faith in selling Starr's shares of CVSCO common stock back to CVSCO for $4,500 per share.

3. The Executors Did Not Have a Duty to Amend CVSCO's Certificate of Incorporation or Valuation Agreements

The NYAG also suggests, without citing any supporting legal authorities, that the Executors had an obligation to amend the CVSCO charter. *See* AG Report at 15 n.16 (Tab 1) ("There was nothing preventing the executors, who were the directors of CVSCO, from amending [CVSCO's] Certificate of Incorporation or any agreement purporting to prevent the Estate from receiving fair value for its assets.").[34]

[34] Although not discussed here, the AIUO Articles of Incorporation contained similar redemption provisions and, therefore, the analysis below would apply with equal force to AIUO.

The CVSCO Certificate of Incorporation could have been amended after Starr's death only by a resolution adopted by the holders of a majority of the common shares outstanding. CVSCO Charter art. XII (Tab 37). Because Starr did not own a majority of the outstanding common shares of CVSCO at his death, the Executors did not have the ability to amend CVSCO's corporate charter simply by voting the shares held by the Estate. Specifically, there were a total of 1,000 shares of CVSCO common stock outstanding when Starr died. Of those, he owned 240 shares. *See* CVSCO – Common Stock: List of Issues, Redemptions and Purchases from Fall 1965 (Tab 41). Accordingly, the Executors did not have the ability to amend the CVSCO repurchase provisions simply by voting Starr's shares. However, apart from Starr's 240 common shares, the Executors in combination personally owned 630 shares of CVSCO's common stock, or 63% of the total outstanding. Therefore, in combination with their personal holdings, and voting as a group, the Executors had sufficient votes to amend the CVSCO corporate charter.

The issue, therefore, is whether the Executors had a duty to vote their own shares in favor of a charter amendment that would have changed the redemption formula in favor of the Foundation. Research has disclosed no New York cases imposing such a duty. However, at least three courts outside of New York have specifically held that shareholders in closely held corporations do not have a fiduciary obligation to update or revise the terms of a share buyback provision absent an agreement to do so.

In *Estate of Meller v. Meller*, 554 A.2d 648, 651-52 (R.I. 1989), the Supreme Court of Rhode Island found that, even assuming that shareholders of a closely held family corporation had a fiduciary duty to deal fairly with one another, shareholders do not breach their fiduciary duty to another shareholder by failing to update or change the redemption price in a buyback provision in the absence of an agreement to do so, even in the face of discussions prior to the shareholder's death about amending the redemption price. "When an agreement for the redemption of the stock interest has been entered into without fraud, misleading, or overreaching, that agreement will prevail and there is no equitable duty on the part of the other shareholders to revise, update, or change the redemption price in the absence of an agreement to do so." *Id.* at 652. The court in *Meller* thought it significant that the deceased shareholder was a majority stockholder and sophisticated businessman who knowingly entered into the redemption agreement. *Id.*[35] The same observation, of course, could be made about Starr.

In *Miller Waste Mills, Inc. v. Mackay,* 520 N.W.2d 490, 497 (Minn. Ct. App. 1994), a Minnesota court held that the appellants (shareholders and company executives) did not breach their fiduciary duty to fellow shareholders when the appellants failed to amend "a lawful redemption provision." *Miller Waste* involved a family owned corporation whose shareholders had entered into a redemption provision that prevented the shareholders from transferring shares without the company's consent and granted the company the option to buy the shares at book value. *Id.* at 493. Upon the death of two of the three shareholders, the company notified the estates of the decedents that it intended to purchase their shares pursuant to the redemption clause and proposed a closing date.

[35] The *Meller* court also cited another decision in which it was held that the value of a shareholder's stock in a closely held corporation is "irrelevant" when there has been a clear and unambiguous agreement for the redemption of the shareholder's interest. *Greenwald v. Selya & Iannuccillo, Inc.*, 491 A.2d 988 (R.I. 1985).

Id. The daughters of one of the deceased shareholders who also held her own shares in the company claimed that the appellants breached their fiduciary duties because the appellants did not "negotiate a modification" of the redemption provision. *Id.* at 497.

The court held that the redemption provision was "a lawful redemption provision and therefore appellants were under no obligation to negotiate a modification of it." *Id.* The court also noted that "[i]n a closed corporation the logic of enforcing such redemption provisions is especially compelling." *Id.* at 494-95.

The daughters also claimed that the appellants breached their fiduciary duty to them because they had a conflict of interest they resolved in the company's favor. *Id.* at 497. Although the court does not spell out the specific allegations, the daughters appeared to argue that the appellants were conflicted in their duty to the company and to the daughters as shareholders. The court rejected this claim and upheld the lower court's finding that because appellants exercised the company's right under a lawful bylaw to purchase the shares of the deceased shareholders, the appellants did not breach their fiduciary duty to the daughters. *Id.*

Significantly, the court also limited the ability of the estates of the deceased shareholders to vote to amend the redemption provision. The daughters sought to vote the shares of the deceased shareholders to repeal the redemption agreement. *Id.* at 494. The court, however, held that the daughters could not vote these shares to repeal the redemption provision because "[w]hen a corporation exercises a valid contractual repurchase option, . . . the corporation becomes the equitable owner of the stock, and the shares can not then be voted contrary to the equitable owner's interests." *Id.* at 495. That also would have been true as to the Starr Estate once the CVSCO Board exercised the redemption right in February 1969.

Finally, in *Contractors Heating & Cooling, Inc. v. Devine*, Appeal No. 01A01-9602-CH-00086, 1996 WL 668341 (Tenn. Ct. App. Nov. 20, 1996), the court enforced a stock retirement agreement and held that the majority shareholder did not breach his fiduciary duty to a minority shareholder by failing to revalue the stock prior to purchasing the minority shareholder's shares. The stock retirement agreement provided that (i) the company had the right to purchase company shares held by a shareholder upon the shareholder's separation from the company; (ii) that the purchase price of each share was $6,200 per share; and (iii) that the price may be revised within a certain period after the end of each fiscal year. *Id.* at *1. The agreement also provided that if there were no such revision, the most recent value agreed upon by the shareholders would control. *Id.*

Although the shareholders never formally adjusted the value of the stock after the agreement was signed, the company purchased the shares of certain other shareholders at a value above $6,200. *Id.* at *2. After the minority shareholder resigned from the company, he challenged the validity of the agreement and alleged that the majority shareholder breached his fiduciary duty to him by failing to revalue the stock. *Id.*

Quoting *Meller*, the court rejected the minority shareholder's allegation that there was a breach of fiduciary duty. *Id.* at *3-*4. The court also explained that the plain language of the agreement was controlling and that the agreement did not indicate any intent or duty revalue the stock. *Id.* at *4. Finally, the court rejected the minority shareholder's argument that the company was equitably estopped from enforcing the terms of the agreement against him because the company had paid more than $6,200 per share to repurchase shares of other shareholders. *Id.* at *4. The court held that the minority shareholder failed to establish the elements of equitable estoppel because he could not show that the company's conduct had caused him to change his position. *Id*.

It is important to observe that the Executors were multi-capacity fiduciaries. They were the directors of CVSCO (and certain of them were directors of AIUO) at the same time they served as Executors of the Estate. They owed fiduciary obligations in each of those capacities. Cases from other jurisdictions suggest that, in measuring whether estate fiduciaries comply with their obligations, it is proper to take into account duties they also may owe as corporate directors.

For example, in *Rosencrans v. Fry*, 21 N.J. Super. 289, 91 A.2d 162 (N.J. Super. Ct. 1952), a testator left stock in a closely held corporation in trust for his wife and named as one of his trustees a business associate and friend, William Fry, who also served as president and a director of the corporation. The testator also bequeathed stock in the corporation to Fry and an option to buy additional shares at their par value, a value "unhinged to the true worth of the shares." *Id*. at 297, 91 A.2d at 166. The wife unsuccessfully disputed the exercise of that option. She also unsuccessfully claimed that Fry had breached his duties as trustee by not acting to increase the dividends paid on account of the stock prior to his exercise of the purchase option. Increased dividends would have benefited the wife but would have decreased the value of Fry's purchase option.

The court rejected the wife's claim that Fry breached his duties as trustee, in part because Fry also had a duty as a director to the corporation and its other shareholders, and the corporation's business required use of the funds the wife sought as dividends. In so ruling, the court noted that stock fiduciaries are under a duty to vote in such a way as to promote the interests of their beneficiaries, but that principle "does not embrace a duty to advance the interest of a beneficiary at the expense of the corporation and other outstanding stockholders' interests." *Id*. at 301, 91 A.2d at 168;[36] *see also Perry v. Perry*, 339 Mass. 470, 160 N.E.2d 97 (1959) (rejecting a petition to remove testamentary trustees who also were corporate directors even though they had authorized non-interest bearing corporate loans to family members, in part because the trustees had continued to carry on the family corporate business as it had been conducted by the testator during his lifetime and the corporation had prospered under their management).

None of these authorities suggests that the Executors were obligated to vote their own CVSCO shares so as to amend the pre-existing stock repurchase formulas included in the CVSCO corporate charter in order to benefit the Foundation. Accordingly, the fact that the Executors did not take such action would not constitute "bad faith."

[36] The court noted also that the testator had been an experienced businessman who had knowingly created the potential conflicts by appointing Fry his trustee while requesting in his will that Fry be elected president and by simultaneously bequeathing to Fry the favorable stock purchase option. The court therefore concluded that Fry could not be faulted for occupying all of those positions despite the conflicts of interest they posed. 21 N.J. Super. at 297-98, 91 A.2d at 166.

4. The Executors Were Not Bound by Precatory Language in Starr's Will

The NYAG further contends that the Executors did not comply with a provision in the Will expressing Starr's "earnest hope and wish" that his CVSCO and AIUO shares be offered back to the companies at "current market price." AG Report at 4 (Tab 1). Specifically, in article IV, the Will provided as follows:

> Without in any way limiting or restricting the powers and discretion vested in the Members, Directors and Officers *of the Foundation* pursuant to law and to its Certificate of Incorporation and By-Laws, I express my earnest hope and wish (1) that the Foundation shall retain and not sell, encumber or otherwise dispose of any shares of the capital stock of [AIRCO]; (2) that the first refusal of any shares of the capital stock of [CVSCO] or of [AIUO] which may at any time be owned by the Foundation shall be offered at the current market price, upon terms of reasonable convenience, to the company which issued such shares before they are offered for sale or other encumbrance to any other party; and (3) that the choicer items of my collection of paintings, sculpture and other works of art, to be selected by experts in those fields, be maintained as a permanent collection in furtherance of the stated aims of the Foundation.

Will art. IV (emphasis added) (Tab 5).

Two issues therefore need to be addressed: first, whether article IV of the Will is directed to the Executors or the Foundation; and second, whether the provision constitutes a mandatory directive or a mere precatory suggestion without binding legal effect.

a. Article IV of the Will Is Directed to the Foundation, Not the Executors

The NYAG's position is dependent upon its conclusion that article IV is directed to the Executors, as opposed to the Foundation. *See* AG Report at 6 (Tab 1). On its face, however, the provision appears to be directed to the Foundation, and not to the Executors as such.[37] The Will expresses Starr's "earnest hope and wish" that *the Foundation* "retain and not sell, encumber or otherwise dispose of any shares of the capital stock of [AIRCO]" and that "the first refusal of any shares of the capital stock of [CVSCO] or of [AIUO] which may at any time be owned *by the Foundation* shall be offered" at the current market price – presumably by the Foundation – to the issuing companies before they are offered for sale to any other party. Will art. IV (emphasis added) (Tab 5).

Accordingly, the language of the provision does not reasonably lend itself to an interpretation that it was intended to provide directions to the Executors as such; on its face the provision is directed to the Foundation. *See, e.g.*, *In re Gustafson*, 74 N.Y.2d 448, 548 N.Y.S.2d 625 (1989) (recognizing that in the absence of a contrary intention, the words of a disposing instrument shall be given their ordinary and usual meaning); *In re Walker*, 64 N.Y.2d 354, 486 N.Y.S.2d 899 (1985) (same); *see also In re Gioe's Will*, 204 Misc. 1092, 1095, 126 N.Y.S.2d 626, 628-29 (Sur. Ct., Kings County 1953) (holding that provision in will was directed to executors as opposed to trustees based, in part, on absence of any reference to trustees in relevant language).

[37] Although many of the Executors served as Directors of the Foundation, there was not a complete overlap between these groups, and thus no reason why Starr would have addressed a comment to one group if he meant it to apply to another.

b. The Language of Article IV Is Merely Precatory

Even if the provision at issue had been directed to the Executors, it would not have imposed any legal obligations on them because it was merely precatory, not mandatory. "[P]recatory language contained in a will is merely an expression of the testator's wish or desire and is not legally binding on the person to whom the wish or desire is directed." *In re Samuelson*, 110 A.D.2d 187, 193, 493 N.Y.S.2d 784, 789 (2d Dep't 1985) (citing *Lawrence v. Cooke*, 104 N.Y. 632 (1887); *Matter of Sparacio*, 61 A.D.2d 486, 402 N.Y.S.2d 857 (2d Dep't 1978), *aff'd*, 47 N.Y.2d 771 (1979); and *Matter of Lange*, 206 Misc. 81, 133 N.Y.S.2d 54 (Sur. Ct., Richmond County 1954)). Whether a provision in a will is mandatory or precatory depends on the language of the provision and the intent of the testator.

i. Language of the Provision

The language at issue, on its face, is precatory. The provision begins by stating "[w]ithout in any way limiting or restricting the powers and discretion" of the members, directors, and officers of the Foundation, and continues with an expression of an "earnest hope and wish" on the part of Starr. Will art. IV (Tab 5). As explained in a leading New York treatise:

> Normally words of wish or desire do not create an imperative charge nor limit a gift otherwise provided for in the will. In the absence of a clear expression that the testator intended the language to be dispositive, words indicating a wish or desire or request are ordinarily only words of entreaty that leave obedience, exercise, and performance to the sense of duty, gratitude, and discretion of the one to whom they are addressed. Such person can carry out the admonition of the testator or not as he sees fit. The court has no control over

> such person's actions and may not substitute its judgment for that of the person to whom such words are addressed.

11 Warren's Heaton on Surrogate's Court Practice § 187.02 (2005).

Moreover, deeming this provision to be a mandatory directive would create a conflict with the unconditional authority and discretion granted to the Executors in the sixth and seventh clauses of the Will. As discussed in Part VII.A.1 above, those clauses make clear that the Executors had "full and complete power with respect to the property, real or personal, at any time constituting part of [Starr's] estate," Will art. VII (Tab 5), and authorized them to exchange, grant options to lease or to buy, and to sell or dispose of, at public or private sale, "at such times and upon such conditions and such terms as to cash and credit as they deemed advisable, any of said property." *Id*. art. VII, §(b). It would not make sense for the Will to grant the Executors the authority to enter into any transaction upon such terms as they deemed advisable, but at the same time limit their authority to sell or exchange certain assets of the estate. *See, e.g.*, *In re Martin*, 255 N.Y. 248 (1931) (recognizing that a court must endeavor to give effect to each and every provision and word of a will); *Eidt v. Eidt*, 203 N.Y. 325 (1911) (same). Undoubtedly Starr was well aware that changing conditions in the marketplace, etc., might make it necessary for the Executors to have the discretion to take actions that did not fully comport with his wishes and desires.

Interpreting the provision at issue as a mandatory directive would also create a conflict with the buy-back provisions of the CVSCO and AIUO charters, provisions of which Starr was undoubtedly aware when he executed the Will. Article IV of the Will expresses Starr's wish that the CVSCO and AIUO stock be offered to the respective corporations pursuant to first-refusal rights at the “current market price” before any sale to a third party. As discussed above, however, the CVSCO and AIUO corporate charters specified different pricing methodologies for buying back stock from shareholders and, because the stocks could not be traded freely, there was no “current market price.” Both CVSCO and AIUO were closely held corporations whose shares were not available for purchase on an open market. Because it would have been impossible for the Foundation to sell CVSCO and AIUO stock back to the companies at the “current market price,” the language urging the directors of the Foundation to do so would likely be construed as precatory for this reason as well.

It is well settled in New York that when a provision in a will directs someone to do something that is legally and factually impossible to accomplish, or one that contradicts a superseding legal duty, the performance of that act is excused. *See In re Hatfield’s Will*, 93 Misc. 2d 472, 474, 403 N.Y.S.2d 172 (Sur. Ct., Dutchess County 1978) (holding that a restriction in a certificate of incorporation took precedence over conflicting provisions in decedent’s will); *In re Martin’s Will*, 58 Misc. 2d 851, 296 N.Y.S.2d 425 (Sur. Ct., Tioga County 1969) (when will directed one third of estate to the “Masonic Brotherhood Fund,” an entity that did not exist (by that name), executors were permitted to treat the instruction as precatory and distribute the funds to an alternate beneficiary specified in the will).

In the *Hatfield* case, the decedent’s will specified that his executor should offer a particular beneficiary the “option to purchase” 25% of the decedent’s shares in a corporation; however, the share certificates and the company's certificate of incorporation contained an explicit restriction forbidding their transfer to anyone except an existing corporate shareholder unless its shares were first offered to existing shareholders. 93 Misc. 2d at 473, 403 N.Y.S.2d at 173. Because the particular beneficiary specified in the will was not an existing shareholder, the Surrogate's Court held that "the provisions contained in the certificate of incorporation take precedence and control over the provisions in the decedent's will," and directed the executor to offer the shares in question to the existing corporate shareholders before offering them to the decedent's beneficiary. *Id.* at 474, 403 N.Y.S.2d at 173.

Similarly, sales of Starr's shares in both AIUO and CVSCO were subject to certain limitations, limitations which were inconsistent with Article IV of the Will. Because the Foundation, like any other CVSCO or AIUO shareholder, would have acquired its shares subject to these provisions, it would have been required to sell its shares back to the corporation in accordance with the pricing formulas provided by their charters, irrespective of any provision in the Will to the contrary.

Furthermore, cases from other jurisdictions have concluded that when certain clauses of a will use mandatory language and others use traditionally precatory language, this distinction should be given significance in interpreting the will. Thus, "[w]e have not overlooked the use of the word 'request' in the final sentence of article seventeenth. Elsewhere in the same article the testatrix used the phrases 'I authorize' and 'I specifically direct.' In other articles, the testatrix makes not infrequent use of the phrases 'I direct' or 'I hereby direct.' The contrast between the precatory 'request' and the mandatory 'direct' is properly taken into account in construing the will." *Diana v. Bentsen*, 677 So. 2d 1374, 1378 (Fla. Dist. Ct. App. 1996) (citing *Dwyer v. Allyn*, 596 N.E.2d 903, 906 n.2 (Ind. Dist. Ct. App. 1992)); *see also O'Brien v. McCarthy*, 285 F. 917, 920 (D.C. Cir. 1922) (noting that, unlike other clauses in the will, a clause leaving residue of estate to named individual "to be expended by him entirely in his judgment, in accordance, with [testator's] verbally expressed wishes to him" did not specify a definite sum for a specific use or impose a clear duty and thus holding that provision was not mandatory).

In these cases, courts have held that if a testator uses a command verb in one part of his will (such as "I direct") and a permissive verb in another part (such as "I request"), the permissive clause should be considered precatory. In Starr's Will, other clauses use mandatory language. *See, e.g.,* Will art. II (Tab 5) ("I direct my executors hereinafter named to pay my debts, funeral expenses, testamentary charges and administration expenses, as soon after my decease as may be practicable."). The only provision containing permissive language is the provision at issue here. According to this interpretive technique as well, the language in this clause should be viewed as precatory.

ii. Starr's Intent

Courts in New York have recognized that although words such as "request," "wish," and "desire" are ordinarily construed as precatory, "they will be taken to connote a hope or command depending on whether the author meant by them simply to advise or inform a discretion which is vested in somebody or to control or direct a certain disposition." *Spencer v. Childs,* 1 N.Y.2d 103, 107, 150 N.Y.S.2d 788, 790 (1956). It is well settled that in determining whether language is precatory or mandatory, "the testator's intent and meaning are to be gathered, not alone from the language and terms of the instrument itself, but also from the conditions and circumstances extrinsic to it." *Id.*; *see also In re Accounting of U.S. Trust Co. of N.Y. (Fabbri's Will),* 2 N.Y.2d 236, 240, 159 N.Y.S. 2d 184, 187-88 (1957) (ambiguous terms in a will must be construed in light of testator's dominant purpose).[38]

Construing the Will's language as precatory is consistent with the evidence relating to Starr's intent in drafting the Will. Two of the Executors, Edwin Manton and Ernest E. Stempel, have noted that Starr prepared the Will in response to growing concerns that a competitor would attempt to acquire control of AIRCO through purchases of AIRCO shares. *See infra* at Part VI.D.1. Moreover, within days of executing the Will, Starr entered into a Voting Trust Agreement (along with the Foundation) that required the signatories to vote all of their AIRCO shares, "in a manner consistent with the maintenance of the . . . independence of AIRCO and in accordance with any instructions given by that group of undersigned representing a majority of the shares [*i.e.*, the CVSCO directors]." *See* Voting Trust Agreement (Aug. 5, 1968) (Tab 63). These materials, in combination with the plain language of the Will, suggest that Starr had no intent to

[38] *See also In re Estate of Pearson*, 275 A.2d 336, 339 (Pa. 1971) (explaining that the enforceability of a precatory provision depends on testator intent which is to be determined by a) the language of the will, b) the distribution scheme, c) the circumstances when will was drafted, and d) existing facts; and that canons of construction will only be considered if the language of the will "is ambiguous or conflicting or the testator's intent is for any reason uncertain."); *Knisley v. Simpson*, 74 N.E.2d 695, 698 (Ill. 1947) ("In determining the intention of a testator, the words of the will are to be read in light of the circumstances under which the will was made, including the nature, extent and condition of the testator's property as well as his relations to his family and the beneficiaries named.").

restrict the Executors from entering into transactions that would further their control of AIRCO.

Accordingly, if a court were called upon to scrutinize Article IV of Starr's Will, it should conclude that the language "express[ing] [his] earnest hope and wish" that the Foundation offer any CVSCO or AIUO stock it owns back to the respective companies at the "current market price" did not impose any legally binding duty on the Executors.

B. The AIUO Voting Stock Redemption

1. Standard of Liability

For all the reasons discussed in Part XII.A.1, the Executors would have a strong argument that they had express authorization from Starr to sell his thirty shares of AIUO voting stock back to AIUO for the subscription price of $100 per share. At a minimum, and for the reasons set forth in Part XII.A.1, a court should find that Starr knowingly created an inherent authorization that would bring this case within the ambit of the exception. The analysis, therefore, again would be whether the Executors acted in good faith in engaging in this transaction.

2. The Executors Acted in Good Faith in Selling Starr's AIUO Voting Stock Back to AIUO

The NYAG contends that the Executors breached their fiduciary duties to the Estate by selling Starr's thirty shares of AIUO voting stock back to AIUO for the subscription price of $100 per share. AG Report at 16-17 (Tab 1). In particular, the NYAG alleges that on April 21, 1969, the Executors triggered a right of first refusal provision contained in the AIUO Articles of Incorporation, which provided that:

> No share of Voting Stock shall be sold, given away, transferred, encumbered or otherwise disposed of without consent given by resolution of the Voting Stockholders unless such share shall first be offered to the Corporation at subscription price plus accumulated dividends . . . and such offer shall have gone unaccepted for ninety (90) days.

AIUO Charter art. III, § 1(C)(b) (Tab 36); *see also* AG Report at 16-17 (Tab 1). The NYAG further alleges that because AIUO did not repurchase Starr's shares within 90 days, the shares therefore became freely transferable as of July 21, 1969. AG Report at 17 (Tab 1). Thus, according to the NYAG, the Executors' sale of those shares back to AIUO for the price of $100 per share on September 1, 1970 was "inexplicable," especially in light of the amount AIUO received from AIG for the sale of its assets in June 1970. *Id.*

For the reasons set forth below, a court should dismiss any claim predicated on the NYAG's theory, and conclude that the Executors acted in good faith in selling Starr's thirty shares of AIUO voting stock for the subscription price of $100 per share.

3. There Is No Evidence that the Estate Informed AIUO of Any Intent to Sell Starr's Shares to a Third Party

In order to succeed on a breach of fiduciary duty claim against the Executors based on the sale of Starr's AIUO voting stock, the Foundation would have to prove, at a minimum, that the Executors' letter of April 21, 1969 triggered the right-of-first refusal under Article III, § 1(C)(b) of the AIUO charter. Otherwise, the stock would not have been freely transferable, and would instead have been subject to the other redemption provisions that Starr included in the original AIUO charter.

The parties' correspondence would undermine any effort to prove that the April 21 letter triggered the right-of-first refusal provision. As set forth in Part VIII.B.1 above, the Executors' counsel, Celentano, first wrote to AIUO on April 11, 1969. The letter, which was directed to Kevin O'Leary, who in addition to serving as AIUO's counsel was also an associate at Celentano's law firm, stated:

> Enclosed are Certificates Nos. VS70 and VS71 in the name of C.V. Starr for 30 shares of voting stock of American International Underwriters Overseas, Inc., together with a stock power enabling you to transfer these shares to The Estate of Cornelius Vander Starr. Also enclosed is a tax waiver and a copy of Letters Testamentary. After the transfer has been made, the new certificate should be sent to me. Please acknowledge receipt of the above by signing and returning a copy of this letter to me.

Letter from Mr. Celentano to Mr. O'Leary (Apr. 11, 1969) (Tab 90).

O'Leary responded to Celentano's request in a letter dated April 14, 1969 as follows:

> As you know, there are provisions in AIUO's Articles which affect shares and share transactions. Article III, section 1, sub-section (C) (b), is not applicable to these shares if we conclude that the change of registration requested in your April 11 letter is not a "transfer" but merely the effecting on the books of the company of the change in ownership which occurred, by operation of law, on Mr. Starr's death or on the Grant of Letters Testamentary (however New York law handles that point). Please let me have your thoughts, however, on another section – Article III, section 1, sub-section (C) (c) – which seems relevant to these shares. I shall hold up the re-registration until I hear from you.

Letter from Mr. O'Leary to Mr. Celentano (Apr. 14, 1969) (Tab 91). In short, O'Leary informed Celentano that the transfer of Starr's shares to the Estate *did not* trigger the right-of-first refusal provision,[39] and that the more relevant provision in the AIUO charter, at least in O'Leary's opinion, was Article III, § 1(C)(c), which provided, in relevant part, that:

> [t]he death of a registered holder of Voting Stock shall entitle and obligate the Corporation to purchase, within ninety (90) days after his death or receipt of written notice thereof in the office of the Secretary of the Corporation, any or all shares of such stock held by said holder at the time of his death, at subscription price plus accumulated dividends . . .

AIUO Charter art. III, § 1(C)(c) (Tab 36). In response to this letter, Celentano wrote on April 21, 1969:

> You are correct in your citations of the provisions of AIUO's Article III sections concerning the disposition of shares on death. Under the circumstances, *please treat my submission of the shares on behalf of the executors as an application for repurchase by the corporation in accordance with Article III, Section 1, Subsection (C) (c)*. Of course, it will be up to the Board of Directors as to whether these shares will be retired or whether they will be held as "treasury shares" for repurchasing.

Letter from Mr. Celentano to Mr. O'Leary (Apr. 21, 1969) (emphasis added) (Tab 92).

Contrary to the assertion in the AG Report, this letter is explicitly directed to the company's mandatory redemption right in Article III, § 1(C)(c) of the AIUO Charter -- not the right-of-first refusal option in Article III, § 1(C)(b). There is no suggestion in the

[39] Celentano's advice on this issue is consistent with the well settled law in New York. The transfer of Starr's shares upon his death to the Executors occurred automatically by operation of law and therefore did not trigger the right-of-first refusal provision in the AIUO certificate of incorporation. *See, e.g., Globe Slicing Machine Co. v. Hasner*, 223 F. Supp. 589 (S.D.N.Y. 1963) (holding that a bylaw which jointly gave the corporation and its stockholders a thirty-day option to purchase the shares of a shareholder before that shareholder could otherwise sell or dispose of his shares did not apply to transfers or disposition consequent on the death of the shareholder), *aff'd*, 333 F.2d 413 (2d Cir. 1964); *In re Estate of Spaziani*, 125 Misc. 2d 901, 480 N.Y.S.2d 854 (Sur. Ct., Jefferson County 1984) (holding that a restriction concerning a "transfer" of stock does not include the passing of title by operation of law either to the personal representative of a deceased shareholder or from the personal representative to the distributees or beneficiaries).

letter, or any other document uncovered by the Independent Committee, that the Estate intended to sell, give away, or transfer Starr's shares to a third party. In fact, any such intent on the Estate's part would have been directly contrary to Starr's intent, which was, as discussed in Part VI.B.2 above, to keep AIUO voting stock in the hands of a limited group of those actively managing the Starr enterprise.

Rather, it appears that the parties were operating under the shared belief that the company's rights under the mandatory redemption provision contained in Article III, § 1(C)(c) -- a provision that Starr, himself, included in the charter -- were fully applicable to Starr's shares. Although that provision obligated AIUO to repurchase the shares within ninety days of Starr's death, courts have long recognized that an option period to repurchase stock from a deceased shareholder cannot begin until letters testamentary or letters of administration are issued and there is a legal representative from whom the corporation can purchase the stock. *See Biltmore Tissue*, 2 N.Y.2d at 544, 161 N.Y.S2d at 424-25 (rejecting argument that corporation waived its right to repurchase deceased shareholder's stock by failing to exercise its option within prescribed ninety days where corporation notified the legal representatives of the deceased shareholder within ninety days of their appointment). In the instant case, as discussed in Part X.A above, the Surrogate's Court issued preliminary letters of executorship to Greenberg, Tweedy, and Mulderig on January 22, 1969. Order Granting Preliminary Letters Testamentary (Jan. 22, 1969) (Tab 130). Thus, O'Leary's April 14 letter to Celentano, which can be read, as obviously was the intent, as an exercise of AIUO's option to repurchase Starr's voting stock under Article III, § (C)(c) of the AIUO charter, would fall well within the prescribed ninety day option period.

In any event, even assuming that AIUO's mandatory redemption rights had expired, AIUO's voting shareholders could have exercised their right to repurchase the shares at their "net worth" by a two-thirds vote at any time. *See* AIUO Charter art. III, § 1(C)(d) (Tab 36). As discussed above, AIUO voting shareholders exercised that right when they purchased Youngman's AIUO voting shares at $100 per share in August 1968. *See supra* at Part VI.D.3. As further discussed above, the "net worth" of the shares at the time of Starr's death was equal to the subscription price of $100 per share. *See supra* at Part VIII.B. Given the fact that the AIUO voting stock did not have any independent economic value (which was instead reserved for AIUO's junior preferred shares) and could not, under the AIUO charter, be sold for more than $100 per share under any alternative, a court should find that the Executors acted in good faith in selling Starr's thirty shares back to AIUO for $100 per share.[40]

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[40] For the reasons discussed in Part XII.A above, the NYAG is not correct in asserting that (1) the price fixed for the redemption of AIUO voting stock in the AIUO charter – *i.e.*, subscription price plus accumulated dividends – was unfair or unreasonable, *see, e.g.*, *Biltmore Tissue*, 2 N.Y.2d at 543, 161 N.Y.S.2d at 424 (enforcing corporate provision that entitled company to repurchase shares of company stock at subscription price); (2) that the Executors had a duty to amend the redemption formula in the AIUO charter in favor of the Foundation; or (3) the Executors, in their capacity as AIUO voting stockholders, should have valued Starr's 30 shares of AIUO voting stock based on the same "multiple of earnings" approach used by Morgan Stanley in valuing the June 1970 transaction. *See supra* at Parts XII.A.2-4.

4. Sales of AIUO Voting Stock Have Always <u>Been Based on Subscription Price</u>

The purchase price that AIUO paid for Starr's thirty shares of voting stock was also consistent with the price received by all other holders of AIUO voting stock. For instance, Starr purchased the first ten of his shares in October 1967 from the Estate of W.D. Weaver, who was the former president of AIUO, for the subscription price of $100 per share – or $1,000. *See* Minutes of AIUO's Annual Voting Stockholders' Meeting, held Oct. 23, 1967 (Tab 42). For his part, Youngman also sold thirty voting shares back to the corporation within this same time frame for $3,000 or, again, $100 per share. *See* Letter from Mr. Ahlers to Mr. Lindquist (Oct. 17, 1968) (Tab 152). Likewise, the following Executors allowed their voting shares to be redeemed at the $100 per share subscription price:

- Francis Mulderig: his ten voting shares were redeemed for $1,000 on March 4, 1975 in view of his resignation as a director. *See* Letter from Mr. Murphy to Mr. Mulderig (Feb. 18, 1975) (Tab 153) (requesting Mulderig return his ten shares of AIUO voting stock for $1,000 upon Mulderig's retirement from the company); *see also* Letter from Mr. Lindquist to Mr. Mulderig (Mar. 4, 1975) (Tab 154) (indicating payment of $1,000 for Mulderig's voting shares).
- John Ahlers: acquired ten voting shares on December 6, 1968 for a total of $1,000. *See* Letter from Mr. Ahlers to Mr. O'Leary (Dec. 6, 1968) (Tab 155). On his retirement, his stock was redeemed for $1,000 on July 6, 1972. *See* Letter from Mr. Ahlers to Mr. Lindquist (June 28, 1972) (Tab 156).
- Gordon Tweedy: his ten voting shares were redeemed for $1,000 on July 5, 1972 upon his retirement. *See* Letter From Ms. Peterson to Mr. Lindquist (June 28, 1972) (Tab 157).

Significantly, none of the above Executors sought more than the $100 per share subscription price for their shares, despite the fact that each of the above sales occurred after the June 1970 transaction and after these Executors knew about the values realized in that transaction. Other senior executives whose voting shares also were redeemed at subscription price include:

- Alfred Weber: he came into the business at about the same time as Manton in the 1930's. *See* Manton Tr. at 33, 51-52 (Tab 32). Ultimately he became a director of AIUO, although he was not among those chosen by Starr in 1965 to become a member of the CVSCO control group. *See Id*. at 336. Weber acquired ten voting shares of AIUO and paid a total of $1,000 for those shares on July 16, 1968. *See* Letter from Mr. Weber to Mr. Lindquist (July 16, 1968) (Tab 158). Weber tendered those shares for redemption in exchange for his subscription price plus accumulated dividends when he resigned in December 1979. *See* Letter from Mr. Weber to Mr. Murphy (Dec. 13, 1979) (Tab 159)
- Harold Lindquist: he was an AIUO director. He also had been president of AIUO. Lindquist was offered ten voting shares for $1,000 in November 1968. *See* Letter from Mr. O'Leary to Mr. Lindquist (Nov. 25, 1968) (Tab 160). Those shares were redeemed for $1,000 on December 22, 1975. *See* Letter from Mr. Murphy to Mr. Lindquist (Dec. 22, 1975) (Tab 161).

Indeed, every transaction involving AIUO voting stock over the past forty years has been priced at the subscription price of $100. In light of this evidence, a court should conclude that the Executors acted in "good faith" in deciding to sell Starr's shares for the same amount per share.

C. The AIU Far East Transaction

The NYAG also takes issue with the Executors' sale of Starr's minority interest in AIU Far East at the net asset valuation of $993,000 or $1,655 per share. The NYAG contends that the Executors breached their fiduciary duties by selling Starr's 600 shares for significantly less than what they allegedly knew to be fair value. *See* AG Report at 9-12, 20-22 (Tab 1). For the reasons that follow, a court should find that the Executors' sale of Starr's 48% interest for the same price per share as that received by the majority shareholder in AIU Far East was fair and reasonable to the Estate and its sole residual beneficiary, the Foundation.

Unlike the other two subject transactions, the Estate's sale of its shares of AIU Far East to AIUO was not required by a corporate charter redemption provision. It was similar to the other transactions in that the Executors acted subject to conflicted interests. However, as discussed above, the mere existence of a conflict, does not subject a fiduciary to *per se* liability, especially, when, as here, the testator purposely creates the conflict.[41] Instead, under New York law, a court should inquire whether the transaction was fair and served the best interests of the beneficiaries. *See In re Estate of Rothko*, 43 N.Y.2d 305, 318-19, 401 N.Y.S.2d 449, 454 (1977) (tacitly approving application of a fairness inquiry to a case which did not involve self-dealing by the executors). For example, in *Benedict v. Amaducci*, No. 92 Civ. 5239 (KMW), 1993 WL 87937, at *7 (S.D.N.Y. Mar. 22, 1993), the trustees of certain *inter vivos* trusts approved several high risk, low-interest loans from trust assets to entities in which the trustees served as directors, thus placing them in a position where the trustees occupied fiduciary roles for both the lender and the borrower. *Id*. at *5. After concluding that the trust instrument's broad discretionary grant of power did not lessen the trustee's undivided duty of loyalty, and that the trustees inappropriately considered the interests of the trust settlor in

[41] Here, Starr had appointed Tse as one of his Executors, knowing that Tse was the majority owner and president of AIU Far East. In addition, Starr had expressed his intent before he died to have his shares in AIU Far East sold to AIUO, a company in which he knew his Executors were interested but did not individually control. *See supra* Part VIII.C.

approving the loan, the court nevertheless allowed the defendant trustees the opportunity to demonstrate that the loan was fair and served the best interests of the beneficiaries. *Id*. at *6-*7; *see also Kellogg's Trust,* 35 Misc.2d at 544-45, 230 N.Y.S.2d at 839-840 (liability cannot be imposed solely by reason of trustee's position of conflicting interests).

1. Sale of Minority Interest at Same Valuation as <u>Majority Interest Is Inherently Fair and Reasonable</u>

The AIU Far East transaction has already been approved by the Surrogate's Court (as were the CVSCO and AIUO share redemptions) in its final decree in 1979 approving the Executors' final accounting. Decree at 6 (Tab 143). A previously approved final accounting constitutes "a conclusive adjudication precluding the imposition of liability upon the [executor] upon the sole basis of his theoretical conflict of interests." *In re Kellogg's Trust*, 35 Misc.2d at 545, 230 N.Y.S.2d at 841.

Even were the AIU Far East transaction to be reviewed again, in evaluating its fairness a court should place significant weight on the fact the Estate received the same per share price from AIUO (*i.e.*, $1,655 per share) for its 48% interest in the company as Tse received for his 52% majority interest in AIU Far East. As discussed in Part VIII.C above, Tse agreed to sell his 650 shares of AIU Far East common stock to AIUO on January 15, 1969 at "such price as may be determined by a valuation thereof made by Lowe, Bingham & Matthew." Agreement between AIUO and K.K. Tse, as Trustee for Overseas Underwriters, Inc. (Jan. 15, 1969) (Tab 96) On July 15, 1969, Lowe Bingham issued its valuation report. The firm concluded that AIU Far East's common stock was worth $1,655 per share plus the value of some relatively inconsequential real estate owned by the company that was to be appraised separately.

The Independent Committee has uncovered no evidence to suggest that Tse accepted this valuation believing that Lowe Bingham had undervalued AIU Far East's assets. To the contrary, the evidence is that Tse was a highly regarded businessman and capable negotiator who would not have sold for anything less than fair value. Those who knew him characterized Tse as not the type of person who would give away a profit he believed he deserved. *See* Youngman Tr. at 88, 300 (Tab 31); Interview of Maurice R. Greenberg (Oct. 17, 2006). Tse also had been responsible for overseeing all of Starr's operations in Southeast Asia, and, therefore, was in a better position to validate Lowe Bingham's valuation report than any of the other Executors. *See* Tse Tr. at 45, 124, 162 (Tab 28). Nor has the Independent Committee uncovered any evidence to suggest that Executors thought AIUO's offer was too low or that suggests the Executors thought they could have sold the Estate's minority interest in AIU Far East for more than the per share amount paid to Tse.[42] And nor has the Independent Committee uncovered any evidence to suggest that Lowe Bingham did not exercise its best, good faith professional judgment in performing its valuation of AIU Far East and in reaching the conclusion that it did.

[42] On the contrary, according to one Surviving Executor, AIUO did not need to purchase AIU Far East to establish a presence in Southeast Asia. Interview of Maurice R. Greenberg (Oct. 17, 2006). The company already owned several insurance agencies in the region, including AIU Hong Kong and AIU Vietnam, and represented many of the same insurers as AIU Far East, and thus could have sought to aquire AIU Far East's business even if AIUO had not decided to purchase the company. *See id.*

In the absence of such evidence, a court should conclude that the sale of Starr's shares to AIUO for the same per share amount paid to Tse, the majority shareholder, was fair and reasonable to the Estate. Indeed, the Independent Committee is not aware of any reported decision in which a court has found that the sale of a minority interest in a closely held corporation for the same price paid to the majority interest is not fair and reasonable.

2. It Was Reasonable for the Executors to Rely on Lowe Bingham's Independent Determination of the Value of AIU Far East's Common Stock as of December 31, 1968

A court should place substantial weight on the July 15, 1969 valuation report issued by Lowe Bingham. As discussed already in Part VIII.C above, at the time of the audit, Lowe Bingham was one of the premier accounting firms in Hong Kong, and served as the independent auditor for many of the leading businesses in the area, including AIU Far East.[43]

Lowe Bingham based its valuation of AIU Far East on the net asset value of the company. The firm explained this decision in its July 15, 1969 report as follows: "Over the period of its operations, the Company's profits/losses have shown marked fluctuation and, owing to the uncertain conditions prevailing in areas in which the company operates,

[43] Lowe Bingham's partners had also experienced many of the same events and hardships as Tse and other Starr employees endured in China during this period. For instance, like Tse, Lowe Bingham was required to hide many of its files prior to the Japanese occupation, which it was able to recover at the end of the war. In addition, a number of Lowe Bingham partners spent the war in Japanese internment camps. *See* Hong Kong General Chamber of Commerce, PricewaterhouseCoopers Celebrates 100 Years in HK, http://www.chamber.org.hk/info/the_bulletin/june2002/pricewaterhouse.asp (Jan. 20, 2007) (Tab 98).

we do not consider a valuation based on dividend or earnings yield to be appropriate." *See* Letter from Lowe, Bingham & Matthews to AIU Far East (July 15, 1969) (Tab 103).

Lowe Bingham's rationale for basing its valuation of AIU Far East's common stock on net asset value finds direct support in the historical record. That record indicates that at the same time Lowe Bingham was conducting its valuation of AIU Far East in the Summer of 1969, the Vietnam War was raging across Cambodia, Laos and Vietnam, Hong Kong was still reeling from the Red Guard crisis, and Indonesia and Singapore were in the midst of political uprisings that would ultimately result in the loss of hundreds of thousands of lives. Indeed, by the mid 1970s, Vietnam, Laos, and Cambodia had fallen to communist forces, making it nearly impossible for western businesses to continue conducting business in this region.

In sum, a court should find that the July 15, 1969 valuation report issued by Lowe Bingham constituted an unbiased, fair and reasonable appraisal of the price of the company's stock.

3. The Morgan Stanley Analysis Was Irrelevant to the Fairness of the Transaction

In any fairness inquiry, a court should find that Morgan Stanley's analysis for the June 1970 transaction did not have any relevance to the fairness of the price obtained by the Estate from AIUO for its 600 shares of AIU Far East common stock.

First, unlike Lowe Bingham, Morgan Stanley was not asked to determine the value of AIU Far East's common stock as of December 31, 1968. Rather, Morgan Stanley was engaged to consider the *earnings capacity* of certain assets owned by

CVSCO and AIUO. Interview of Edward E. Matthews (July 25, 2006); Interview of Charles Sethness (Sept. 8, 2006). As discussed in Part IX above, those assets consisted primarily of insurance agency operations, and, therefore, *did not include* (1) any of AIU Far East's various investments, including its recently acquired stake in Stowehoff – a risky start-up operation of a ski lodge that Starr had purchased only a few months before his death, or (2) any of AIU Far East's non-insurance liabilities, including a number of significant loans that Starr had extended to certain employees. *See, e.g.*, Matthews Tr. at 45-46 (Tab 70).

Because those assets and liabilities were an essential component of Lowe Bingham's valuation of AIU Far East's common stock, Morgan Stanley's fairness opinion for the June 1970 transaction would have no bearing on the fairness or reasonableness of the amount the Estate received from AIUO for its 600 shares of AIU Far East common stock. The two opinions dealt with different things and were conducted for different purposes.

Second, the Independent Committee has found no evidence that suggests the Executors were aware of Morgan Stanley's preliminary report relating to the June 1970 transaction when they accepted AIUO's offer of $1,655 per share for the Estate's 600 shares of AIU Far East common stock. As discussed in Part VIII.C above, Greenberg informed the Estate's counsel of the decision to accept AIUO's offer on September 17, 1969, more than two weeks before even his initial meeting with Morgan Stanley and Sullivan & Cromwell on October 3, 1969 to discuss AIG's proposed acquisition of certain assets owned by AIUO and CVSCO, and five weeks before Morgan Stanley issued its preliminary report on the June 1970 transaction. The Executors then formally notified AIUO that they had accepted its offer of $993,000 for Starr's 600 shares of AIU Far East on October 1, 1969, and *received payment for these shares on October 8, 1969*. *See* Memorandum from Mr. Celentano to Mr. Lee (Oct. 22, 1969) (Tab 109). The Executors could not, therefore, have gone back and attempted to unwind the deal based solely on the fact that another party subsequently may have placed a higher value on AIU Far East's agency operations as part of a combination of those operations with others.

* * * *

For the reasons set forth above, a court should conclude that the Executors acted in good faith in selling Starr's 240 shares of CVSCO common stock back to CVSCO for $4,500 per share, and his thirty shares of AIUO voting stock back to AIUO for $100 per share. A court should also find that the Executors' sale of Starr's minority interest in AIU Far East to AIUO for $1,655 per share was fair and reasonable to the Estate and its sole residual beneficiary, the Foundation.

XIII. LEGAL DEFENSES AVAILABLE TO THE EXECUTORS

As discussed above, the Independent Committee has determined that it would not be appropriate to bring an action against the Executors. However, even if the Foundation were to bring such an action, the Executors could raise several meritorious defenses, each of which should defeat the Foundation's lawsuit. Specifically, in their defense, the Executors should be able to demonstrate that: (1) there is an insufficient factual basis for vacating the final decree of the Surrogate's Court (the "Decree"); (2) the doctrine of res judicata precludes any claims against them, either in their capacity as executors or in their capacity as Foundation directors; and (3) the equitable defense of laches applies and bars recovery by the Foundation. The strength of these defenses provides additional support for the decision of the Independent Committee not to bring an action against the Executors.

A. Defenses to a Motion to Vacate the Decree under CPLR 5015(a)(3)

Both the AG Report, as well as the NYAG's December 14, 2005 cover letter to the Foundation's President enclosing the report, suggest that the Foundation attempt to have the Decree vacated under CPLR 5015(a)(3). *See* AG Report at 25-26 (Tab 1); Letter from Att'y Gen. Spitzer to Ms. Davis (Dec. 14, 2005) (Tab 2).

Section 5015(a)(3) permits relief from a judgment or order on the grounds of fraud, misrepresentation, or other misconduct of an adverse party. CPLR 5015(a)(3). Because no similar provision exists in the Surrogate's Court Procedure Act, CPLR 5015 is applicable to Surrogate's Court proceedings.[44] *See* SCPA § 102 ("The CPLR and other laws applicable to practice and procedure apply in the Surrogate's Court except where other procedure is provided by this act.").

[44] CPLR 5015(a) is a non-exhaustive list of grounds upon which relief from a final judgment or decree may be granted. Courts, including the Surrogate's Court, have inherent discretionary power to vacate judgments for good cause shown, or in the "interests of justice." *See In re Culberson*, 11 A.D.3d 859, 861, 784 N.Y.S.2d 167, 169 (3d Dep't 2004); *In re Masline*, 52 A.D.2d 739, 382 N.Y.S.2d 180, 180-81 (4th Dep't 1976). While there is no articulated or settled standard or rule for vacating a decree in the "interests of justice," it has been held that the discretion to do so should be exercised sparingly. *See In re Ziegler*, 161 Misc. 2d 203, 207, 613 N.Y.S.2d 316, 319 (Sur. Ct., N.Y. County 1994) (holding that "where the conventional grounds of fraud, clerical error, or short lived default are not present, the court should exercise its discretion to grant relief from a long standing decree only in a very strong case").

Final decrees of the Surrogate's Court may be reopened only in the rarest of circumstances. *See, e.g.*, *In re Andrasko*, 13 Misc. 3d 1245(A), 2006 N.Y. Slip Op. 52351U (Sur. Ct., Rockland County 2006) ("The decree should be vacated only in extraordinary cases."); *In re Levy*, 19 A.D.2d 413, 414, 244 N.Y.S.2d 22, 24 (1st Dep't 1963) ("It is very rare that circumstances suffice to permit the reopening of final decrees, especially when the decrees are supported by waivers of citation executed by a competent person."); *Estate of Stern*, July 20, 1994, N.Y.L.J., 26, col. 3 (Sur. Ct., N.Y. County) ("Because vacatur disrupts the orderly process of administration and creates a continual aura of uncertainty and non-finality, it is not readily granted and a substantial basis for contesting the will and a reasonable probability of success must be shown."). The party seeking to vacate a decree bears a heavy burden, *see In re Leeper*, 53 A.D.2d 1054, 1055, 385 N.Y.S.2d 887 (4th Dep't 1976); *In re Kauffman*, 54 A.D.2d 1067, 1067, 388 N.Y.S.2d 765, 766 (4th Dep't 1976), which includes demonstrating that it will have a "reasonable certainty of success" in the subsequent proceeding should the decree be vacated. *See, e.g.*, *Andrasko*, *supra*, 13 Misc. 3d 1245(A), 2006 NY Slip Op. 52351U; *In re Kalmowitz*, 134 Misc. 508, 510, 236 N.Y.S. 223, 225 (Sur. Ct., Bronx County 1929) (internal cites omitted). This heavy burden also requires a showing that any alleged new information upon which the application is based must have come to the attention of that party after the decree was issued, and that the moving party could not have learned of the new information by the exercise of reasonable diligence before the issuance of the decree.

In re Kalmowitz, 134 Misc. at 509-10, 236 N.Y.S. at 225; *In re Jones' Will*, 116 N.Y.S.2d 611, 614 (Sur. Ct., Steuben County 1952).[45]

As discussed below, the Independent Committee is not aware of any basis for having the Decree vacated under CPLR 5015(a)(3). Thus, if the Foundation were to file a motion to vacate the Decree, the Executors should be able to oppose such a motion successfully.

1. Lack of Fraud or Misrepresentation in the <u>Petition and the Accounting</u>

In a section of the AG Report entitled "Deceptive Statements to the Surrogate's Court," the NYAG alleges that the Executors' Petition included material omissions regarding the CVSCO common and AIUO voting stock redemptions and the AIU Far East stock sale. *See* AG Report at 18-24 (Tab 1). However, based on its investigation, the Independent Committee has determined that a court should find that the Executors did not make any deceptive statements or material omissions to the Surrogate's Court.

a. No Fraud or Material Misrepresentation or Omission Regarding the AIU Far East Transaction

As fully discussed in Part VIII.C above, the Executors sold the Estate's minority interest in AIU Far East to AIUO based on the independent valuation of one of Hong Kong's most reputable accounting firms, Lowe Bingham.[46] The owner of the majority

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[45] The AG Report does not suggest any other grounds for vacating the Decree, nor is the Independent Committee aware of any other such grounds.

[46] Notably, the AG Report suggests that one method the Executors could have employed to address the conflicts inherent in the three, subject transactions was to obtain an "objective third-party

(Footnote continued)

interest in AIU Far East sold his shares based on the same valuation. *See* Agreement between AIUO and K.K. Tse, as Trustee for Overseas Underwriters, Inc. (Jan. 15, 1969) (Tab 96). In their Petition, the Executors explicitly detailed the particulars of the sale, including the parties to the transaction, the reliance upon the independent appraisal, and the appraiser's conclusion that net asset value was the most appropriate measure of the fair value of AIU Far East at the time in question. The Executors attached a copy of the Lowe Bingham valuation to the Petition, and noted that the valuation had been approved on audit of the Estate's Federal tax return. Petition on Final Account at 13 (Tab 97). The Petition also states that the stock was sold to AIUO on October 8, 1969. *Id.*

The NYAG's principal allegation is that the Executors improperly failed to attach the February 19, 1970 Morgan Stanley fairness opinion to their Petition. *See* AG Report at 21 (Tab 1). However, as already discussed in Part XII.C.3, the Morgan Stanley fairness opinion is not relevant to the AIU Far East transaction.

First, the AIU Far East transaction was completed months before Morgan Stanley issued its opinion on February 19, 1970. The Estate actually accepted AIUO's offer to purchase the AIU Far East shares on October 1, 1969, and then obtained payment of the purchase price a week later on October 8, 1969. *See* Letter from Executors to Mr.

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appraisal as to the fair market value of the assets." AG Report at 9 n.10 (Tab 1). In this instance, that is precisely what the Executors did.

Lindquist (Oct. 1, 1969) (Tab 108). The AG Report is thus incorrect in stating that the AIU Far East sale did not close until March 6, 1970.[47] *See* AG Report at 11 (Tab 1).

Second, the Independent Committee has not uncovered any basis for challenging the bona fides of the Lowe Bingham valuation. The NYAG does not suggest that Lowe Bingham was biased or unprofessional. To the contrary, that firm, as we have noted above in Part VIII.C, was the leading accounting firm in the region, and it independently determined that a valuation based on net asset value, rather than on a dividend or earnings yield, was most apt in view of the "marked fluctuations" in AIU Far East's profits and the then uncertain conditions in the areas in which the company operated. Letter from Lowe Bingham to AIU Far East (July 15, 1969) (Tab 103). Additionally, the Lowe Bingham valuation was conducted solely for the purpose of ascertaining the value of the shares of AIU Far East. By contrast, the Morgan Stanley fairness opinion was generated for a completely separate and distinct transaction, in which AIU Far East's insurance operations were only one component. The Morgan Stanley fairness opinion's use of earnings for the AIUO/AIG transaction does not demonstrate, therefore, that the Lowe Bingham valuation was in any way improper.

The AG Report also alleges that the failure to disclose that AIU Far East's assets were included in the June 1970 Transaction was a material misrepresentation or omission. AG Report at 21 (Tab 1). The Independent Committee has found no support

[47] The only event that occurred in March 1970 was the Estate's receipt of the $20,064 it was entitled to receive based on the subsequent appraisal of the real estate held by AIU Far East, which Lowe Bingham had not appraised. The Estate sold, and received payment in full for, its stock in AIU Far East the preceding October, as reported in the Petition.

for this allegation. The fact that AIUO, which then included the insurance operations of AIU Far East, was sold in 1970 to AIG, has no bearing on the Estate's AIU Far East transaction with AIUO. Even if AIUO had been contemplating a sale to AIG in October 1969 when it purchased the shares of AIU Far East, there was no assurance that the later transaction would ever be completed.[48]

b. No Fraud or Material Misrepresentation or Omission Regarding the CVSCO Transaction

The AG Report also bases its allegation of fraud or misrepresentation in regard to the CVSCO transaction upon the Executors' failure to include the February 19, 1970 Morgan Stanley fairness opinion in their discussion of that transaction in the Petition. AG Report at 22 (Tab 1) ("The Petition failed to disclose that: (1) before the sale of the Estate's CVSCO shares, Morgan Stanley had issued its preliminary report finding that the value of assets CVSCO planned to sell to AIG was many times CVSCO's book value."). However, because the CVSCO transaction was concluded pursuant to valid and enforceable share redemption provisions, which relied on an equally valid and enforceable agreement on valuation approved by Starr, himself, the Estate was required

[48] The NYAG contends that the Executors failed to disclose at the time of their accounting that AIU Far East had annual operating profits from its agency operations which Morgan Stanley used in arriving at its fairness opinion for the June 1970 transaction, and that the Executors provided the NYAG instead with financial statements reporting that AIU Far East had incurred an operating loss for 1968. AG Report at 21. However, what the AG Report does not explain is that the financial statements the Executors provided were the official audited 1968 year-end financial statements of AIU Far East upon which Lowe Bingham based its July 1969 valuation. *See* Letter from Lowe, Bingham & Matthews to AIU Far East (July 15, 1969) (Tab 103); *see* Letter from Mr. Edmonds to Mr. Toomin (Apr. 13, 1979) (Tab 140). When preparing its fairness opinion Morgan Stanley did not analyze AIU Far East as a stand-alone corporate entity, but simply looked at certain of its operating results in combination with those of the other insurance operations AIG would be acquiring. Interview of Charles Sethness (Sept. 8, 2006).

to accept CVSCO's redemption at the price tendered. *See supra* Parts XII.A.2.a, b. Therefore, neither the Morgan Stanley fairness opinion, nor the price ultimately tendered by AIG for CVSCO shares, are relevant to the Estate's CVSCO share redemption. *See supra* Part XII.A.2.d.

c. No Fraud or Material Misrepresentation or Omission Regarding the AIUO Transaction

Finally, the AG Report alleges that the Executors' Petition misled the Surrogate's Court and the NYAG by stating that the Estate's AIUO voting shares were properly redeemed by the company pursuant to a provision in the corporate charter regarding redemption upon death of the shareholder, even though the corporation supposedly failed to comply with the express timing requirements of the provision. *See* AG Report at 23-24 (Tab 1). As addressed in detail above, the Independent Committee believes that the applicable provision was fully complied with when AIUO counsel notified the Estate's counsel that the provision applied to the Estate's shares on April 14, 1969, within ninety days of when three of the Executors received preliminary letters testamentary. *See supra* Part XII.B.2.

Even if AIUO technically had failed to comply with Article III, § (C)(c), the application of two other provisions of the AIUO charter would have foreclosed the Estate from receiving any more than the $3,000 it received for its shares. Before an AIUO voting shareholder could sell his shares to a third party, he was required by the AIUO charter to offer them first to AIUO at subscription price plus accumulated dividends. *See* AIUO Charter art. III, § (C)(b) (Tab 36). Based on Starr's unquestionable intent to keep control of the corporation within the limited group of actively participating executive management of the company, this option would surely have been exercised upon a notice by the Estate of any desire to sell its stock to a third party. *See supra* Part XII.B.3. Likewise, under Article III, § (C)(d), the Estate's AIUO voting shares were subject to redemption at any time by a two-thirds vote of the holders of the other voting shares. Because the Estate held less than one-third of the voting shares outstanding, the other shareholders could have voted for redemption of the Estate's shares at any time. In fact, as described above, the AIUO voting shareholders used this provision in August 1968 to redeem the shares held by Youngman at the $100 per share subscription price. There were no circumstances, therefore, under which the Estate would have been able to realize more for its voting shares than the amount it actually received from AIUO. The immateriality of which redemption provision applied also is reinforced by the fact that each and every sale and redemption of AIUO voting stock both before Starr's death, after Starr's death, and after the June 1970 transaction, was concluded at the subscription price of $100 per share. *See supra* Part XII.B.4. Accordingly, this was the only fair and reasonable price the Estate could have expected to receive for its shares.

2. The Information Allegedly Omitted Was <u>Available to the NYAG and the Foundation</u>

As discussed above, a motion to vacate a decree of the Surrogate's Court should be denied if it is based on facts of which the moving party was aware or could have learned by the exercise of reasonable diligence at the time the original decree was entered. *In re Kalmowitz*, 134 Misc. at 509-10, 236 N.Y.S. at 225. That is another reason a petition to vacate the Surrogate's Decree should fail, because the omitted information was all either provided to the NYAG and to the Foundation, or readily available prior to the Petition. *First*, as discussed above in Part X.D.1, the NYAG, as was its practice, was fully involved in the final accounting proceeding, which included attending meetings with counsel for the Executors as well as reviewing documents related to the transactions. *Second*, the NYAG had to have been aware of consolidation of the Starr enterprise into AIG, given that the final accounting was delayed in order to complete the AIRCO/AIG merger. *See* Part. X.D. As part of that consolidation, in 1970 AIG issued a proxy statement which referenced the Morgan Stanley fairness opinion. AIG also separately filed the Morgan Stanley fairness opinion with the SEC at that time. This publicly filed document was accessible to the NYAG in the exercise of reasonable diligence. Therefore, even assuming that the NYAG did not in fact review the Morgan Stanley fairness opinion at the time of the final accounting proceeding (a fact which can not be confirmed given the lapse of time and the destruction of the NYAG's files[49]), the allegedly omitted material would have been available for the NYAG's review in the exercise of reasonable diligence.[50]

[49] We note that Mr. Leibowitz of the NYAG had known about the 1970 transaction and the conflicting roles of the Executors prior to the final accounting proceeding. *See* Part X.C.

[50] The Foundation likewise knew about the 1970 transaction.

B. Res Judicata

1. Res Judicata Precludes a Claim Against the Surviving <u>Executors in Their Capacity as Executors</u>

A party may not litigate a claim when a judgment on the merits exists from a prior action or proceeding between the same parties involving the same subject matter. *In re Hunter*, 4 N.Y.3d at 269, 794 N.Y.S.2d at 291. Res judicata is designed to provide finality in the resolution of disputes recognizing that "considerations of judicial economy as well as fairness to the parties mandate, at some point, an end to litigation." *Id.* at 269-70, 794 N.Y.S.2d at 291-92 (quoting *Reilly v. Reid*, 45 N.Y.2d 24, 28 (1978)). It is well-established that res judicata applies with equal force to judicially settled accounting decrees. *Id.* at 270, 794 N.Y.S.2d at 292. The New York State Court of Appeals has explained that "this principle is so well settled that the drafters of the SCPA determined that it was unnecessary to include former section 274 of the Surrogate's Court Act which had codified this rule, noting that it was 'self-evident … that every decree whether upon an accounting or otherwise is binding upon all persons of whom jurisdiction was obtained.'" *Id.* (quoting *In re Ziegler*, 161 Misc. 2d at 205, 613 N.Y.S.2d at 317). Therefore, as to the matters determined in the Decree, the Surrogate's Decree is final and conclusive as to all matters decided among all parties over whom the Surrogate's Court had obtained jurisdiction.

The Petition sought the approval of the "first and final account of the proceedings of the Executors, and of certain other transactions which the Executors find necessary or desirable in order to close the estate …" Petition on Final Account at 4-5 (Tab 97).

Toward that end, it described the transactions undertaken to dispose of the property of the Estate including, *inter alia*, the redemptions of the Estate's CVSCO common stock and its AIUO voting stock, and the sale of its minority interest in AIU Far East. The Petition sets forth how the price for each of these redemptions and sales were determined, as well as the potential conflicts of interest related thereto. Petition on Final Account at 12-17 (Tab 97). Thus, the Petition sought the Surrogate's determination that the Estate received fair value for the securities in each transaction and requested that the Executors be released by and from any liability with respect to all matters embraced in their account. Petition on Final Account at 28 (Tab 97).

The Decree, issued on April 19, 1979, judicially settled and approved the Estate's transactions and specifically provides that the CVSCO redemption, the sale of the AIU Far East shares, and the redemption of the AIUO voting shares were approved by the Surrogate. Decree at 5-6 (Tab 143). The NYAG consented to the entry of the Decree, both as to its form and content, after discussing the matter in detail with counsel for the Executors and after reviewing all the materials provided by the Executors, including materials specially requested by the NYAG.

The Petition listed all the parties interested in the proceeding, including the Foundation and the NYAG, and requested that the court issue a citation to each. *See* Petition on Final Account at 3-4 (Tab 97). In turn, the Decree acknowledged that all parties, including the Foundation and the NYAG, were properly cited. Decree at 3-4. As such, the Surrogate's Court obtained jurisdiction over them. SCPA § 203. Therefore, the doctrine of res judicata should bar a breach of fiduciary duty claim, or any other claim, against the Surviving Executors based upon the CVSCO, AIUO, or AIU Far East transactions.

The AG Report contends that the Foundation had no independent advocate in the Surrogate's Court proceeding because it was represented by the same law firm that represented the Executors. *See* AG Report at 19, 22, 23, 24 (Tab 1). However, this argument by the NYAG seems to ignore its own importance in the statutory scheme. The Estates, Powers and Trusts Law ("EPTL") provides "that the attorney general shall represent the beneficiaries of such dispositions for religious, charitable, educational or benevolent purposes and it shall be his duty to enforce the rights of such beneficiaries by appropriate proceedings in the courts." EPTL § 8-1.1(f). As such, the NYAG was empowered to act in the interests of the ultimate charitable beneficiaries of the Foundation.

The record from the final accounting proceeding identifies the NYAG as a party. The Petition lists the NYAG as an interested party, *i.e.*, the "representative of ultimate charitable beneficiaries [the Foundation]." Petition on Final Account at 3-4 (Tab 97). The Decree reports the NYAG's appearance and states that the NYAG has "reviewed all matters in the accounting and petition and [ ] notified the Court that he has no objection to the relief sought." Decree at 4 (Tab 143). The NYAG executed an approval of the form and content of the Decree and a notice of settlement waiver on the face of the Decree. Decree at 8 (Tab 143). Moreover, as discussed in detail in Part X.D.1 above, the documentary record indicates that the Executors and the NYAG had regular communications and the NYAG requested and received all requested documentation related to the transactions prior to the entry of the final decree. *See, e.g.*, Letter from Mr. Edmonds to Mr. Toomin (Apr. 13, 1979) (Tab 140). Further, if it had believed it necessary, the NYAG had the ability to conduct an examination into the transactions covered by the Petition and the Accounting in line with the procedures provided by SCPA § 2211, but the record demonstrates that the NYAG never availed itself of that opportunity. Interview of Bernard Toomin (May 25, 2006).

Finally, the Foundation's own tax counsel, Caplin & Drysdale, reviewed the Petition and the Accounting and discussed them with the Foundation. *See* Part X.D.2.

In sum, given that the Decree constitutes a final judgment on the merits approving the AIUO, CVSCO, and AIU Far East transactions, res judicata should bar any subsequent claims against the Executors arising out of those transactions by those who were parties to the Surrogate's Court proceeding.[51]

2. Res Judicata Precludes a Claim Against the Surviving Executors in Their Capacity as Directors of the Foundation

The AG Report and the accompanying letter to the Foundation correctly state that the statutory limitations period for actions against a fiduciary does not begin to run until the date that the fiduciary leaves his position of trust. The fact that the Surviving Executors continue to be directors of the Foundation means that the statute of limitations

[51] The Independent Committee recognizes that judgments obtained by fraud may not serve as the basis for the application of res judicata. *See, e.g.*, *In re Shea*, 309 N.Y. 605, 616, 132 N.E.2d 864, 868 (1956) ("a judgment rendered jurisdictionally and unimpeached for fraud shall be conclusive, as to the questions litigated and decided, upon the parties thereto and their privies.") (internal citations omitted). However, for the reasons identified in Parts XIII.A.1.a-c above, the Independent Committee has found no evidence suggesting that the Executors conducted a fraud upon the Court or the Foundation.

has not began to run and that it therefore could not serve as a defense in an action against the Executors in their capacity as directors. *See* AG Report at 25-26 (Tab 1); Letter from Att'y Gen. to Ms. Davis (Dec. 14, 2005) (Tab 2). Accordingly, the Independent Committee has considered whether the Surviving Executors could successfully assert res judicata as a defense if a breach of fiduciary duty claim were brought against them in their capacity as directors of the Foundation. The Committee believes that res judicata should bar any such claim against the Surviving Executors.

New York courts use the "transactional" approach to res judicata. *O'Connell v. Corcoran*, 1 N.Y.3d 179, 184-85, 770 N.Y.S.2d 673, 677 (2003). This analysis bars the relitigation not only of those claims actually litigated in the prior action but also claims that could have been raised. Once a claim is brought to a final conclusion, "all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." *In re Hunter*, 4 N.Y.3d 260, 269, 794 N.Y.S.2d 286, 291 (2005) (quoting *O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 357, 445 N.Y.S.2d 687, 688 (1981)). Thus, as a general rule, an accounting decree is conclusive and binding with respect to all issues "actively presented and determined" as to all persons over whom the court obtained jurisdiction, and any claims which could have been raised regarding all matters set forth in the accounting. *Id.* at 270, 794 N.Y.S.2d at 291; *In re Ziegler*, 161 Misc. 2d at 204-05, 613 N.Y.S.2d at 317; *see also In re Weir*, 46 N.Y.S.2d 551, 554, 182 Misc. 845, 847 (Sur. Ct., Kings County 1943) (holding that "every issue actually or potentially tendered by the account, to which no objection is asserted, is rendered res judicata by the entry of a decree judicially settling such account").

In *In re Hunter*, 4 N.Y.3d 260, 794 N.Y.S.2d 286 (2005), the New York Court of Appeals recently applied this transactional approach to res judicata in the context of an accounting proceeding. In *Hunter*, the objectant was the beneficiary of a testamentary trust established by her grandmother, the decedent ("Trust B"). *Id.* at 265, 794 N.Y.S.2d at 288. She also eventually received the assets of a second trust originally created for the benefit of her sister ("Trust A"), upon her sister's death. *Id*. The same bank served as the decedent's executor as well as the trustee for both Trust A and Trust B. *Id*. Twice, once in a proceeding to settle the decedent's estate, and second in a proceeding to settle the accounts of Trust A, the bank served a petition on the objectant. *Id*. at 265-66, 794 N.Y.S.2d at 288-89. The objectant executed a waiver and filed no objections to the petition to settle the accounts of Trust A and objected only to attorneys fees on the account of the estate. *Id*. Both the account of Trust A and the account of the estate were judicially settled by decree. *Id*. In the subsequent judicial accounting proceeding with respect to Trust B, the objectant raised three sets of objections pertaining to the bank's activities as the trustee of Trust B: (1) the bank acted improperly by failing to diversify the high concentration of Trust B assets in Kodak stock; (2) the bank breached its duty to challenge its actions as executor in failing to diversify the holdings in the grandmother's estate; and (3) the bank breached its duty to object to its actions as trustee of Trust A in failing to diversify the stockholdings of Trust A. *Id*. at 266, 794 N.Y.S.2d at 289.

In affirming the Appellate Division and dismissing the second and third categories of claims, the Court of Appeals rejected the distinction between objections relating directly to the bank's activities as executor and as trustee of Trust A and the objections regarding the bank's duties as trustee of Trust B. *Id.* at 271, 794 N.Y.S.2d at 292. The Appellate Division had explained that, "[w]hatever semantic difference there might be between the two formulations noted above, it is beyond dispute that, under either formulation, the wrongful conduct sought to be redressed relates to the petitioner's alleged mismanagement of the decedent's estate, and of [Trust A]." *In re Hunter*, 6 A.D.3d 117, 126, 775 N.Y.S.2d 42, 49 (2d Dep't 2004). In affirming, the Court of Appeals reasoned that, "[n]othing in the SCPA provides beneficiaries with a 'second bite of the apple' where they have been afforded the opportunity to litigate the essence of their objections in a prior judicial settlement proceeding." 4 N.Y.3d at 271, 794 N.Y.S.2d at 293.

Based upon the transactional approach to res judicata followed in New York, a court should reject a claim against the Executors concerning their conduct as directors of the Foundation with respect to the CVSCO, AIUO, and AIU Far East transactions as merely an attempt to obtain a "second bite of the apple." Any attempt to impose liability on the same individuals arising out of the same transactions should be barred, even if based upon different theories of liability. *See O'Brien v. City of Syracuse*, 54 N.Y.2d at 357, 445 N.Y.S.2d at 688-89.[52]

C. Laches

Assuming for the sake of argument that the Foundation were to seek to vacate the Decree or bring an action or proceeding against the Executors concerning the challenged transactions, a court also should find that the equitable doctrine of laches bars any such claim.

Courts have held that a motion or proceeding to vacate a judgment, decree, or order must be made within a reasonable time from the date of the order from which relief is sought. *See Green Point Sav. Bank v. Arnold*, 260 A.D.2d 543, 543, 688 N.Y.S.2d 595, 596 (2d Dep't 1999) (holding that four year delay in bringing suit to vacate a default

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[52] Further, any claim predicated on the fairness of the price received by the Executors for the transactions in question should also be barred by collateral estoppel. That doctrine prohibits a party from relitigating an issue that was actually raised and necessarily decided in a prior proceeding, even if the court or the claims are not the same. *See, e.g., Choi v. New York*, 74 N.Y.2d 933, 936, 550 N.Y.S.2d 267, 269 (1989). Collateral estoppel has two essential elements: (1) the identical issue must have been decided in a prior action and be decisive of the present action, and (2) the other party must have had a full and fair opportunity to contest the prior determination. *Kaufman v. Eli Lilly & Co.*, 65 N.Y.2d 449, 455, 492 N.Y.S.2d 584, 588 (1985). A court should find that both of these elements are met in the present circumstances. First, as set forth in Part X.D above, the Petition and the Accounting plainly raised the issue of the fairness of the price received for each of the three transactions in question. Petition on Final Account at 12-17 (Tab 97). That issue was settled in the Decree, which approved each of the transactions in question, and "released and forever discharged of and from any and all liability and accountability as such Executors as to all matters and things embraced in their said First and Final Account as settled and determined by this decree." Decree at 8. Second, as made clear in the Decree, the NYAG – which by statute represented the ultimate charitable beneficiaries of the Foundation in the final accounting proceeding – and the Foundation itself, each had a full and fair opportunity to contest the fairness of the price obtained by the Executors for each of the transactions in question during the final accounting proceeding. *See* Decree at 5 ("and the Attorney General of the State of New York having reviewed all matters in the accounting and petition and having notified the Court that he has no objection to the relief sought"); *see also Choi*, 74 N.Y.2d at 936, 550 N.Y.S.2d at 269 (recognizing that a party challenging applicability of collateral estoppel has the "substantial burden" of establishing that it did not have a full and fair opportunity to litigate issue in prior action).

judgment allegedly procured by fraud, misrepresentation or misconduct was unreasonable); *see also City of Albany Indus. Dev. Agency v. Garg*, 250 A.D.2d 991, 993, 672 N.Y.S.2d 541, 543 (3d Dep't 1998) (holding that delay of over one year after entry of default judgment in bringing motion to vacate was unreasonable under CPLR 5015(a)(3)). Mere delay is not alone sufficient to establish laches, but unreasonable delay and resulting prejudice to other parties will result in a court denying relief against a judgment, order, or decree. *See Grossman v. Jenad, Inc.*, 198 N.Y.S.2d 218, 224 (Sup. Ct., Westchester County 1960) (internal citations omitted). The application of laches is to be determined on a case-by-case basis on the facts in each case, but there arrives in the course of time a date as of which the court may say that a party has delayed too long as a matter of law. *See In re Gude*, 150 Misc. 56, 59, 268 N.Y.S. 311, 315 (Sur. Ct., N.Y. County 1933). A strong case for application of the laches defense could be made under the present circumstances.

The passage of nearly thirty years would stand as a significant hurdle to maintaining a proceeding to vacate the Decree or otherwise challenge the Surviving Executors. New York courts have applied laches to much shorter time frames without significant discussion of the prejudice attached. For example, in *In re White*, 182 Misc. 223, 46 N.Y.S.2d 917 (Sur. Ct., N.Y. County 1943), the court held that the doctrine of laches barred an application to open a decree on the grounds of fraud or overreaching where the vacatur was sought four and one-half years after the decree was issued. *Id*. at 231, 46 N.Y.S.2d at 925. Similarly, in *In re Kauffman*, 54 A.D.2d 1067, 388 N.Y.S.2d 765 (4th Dep't 1976), the court held that an attorney's claim to open a decree on the basis of fraud or misconduct and to recover fees due from an estate was barred by the doctrine of laches because it was brought four years after the decree was issued. *Id*. at 1067, 388 N.Y.S.2d at 766.

Courts have also invoked laches to bar motions to vacate judgments, orders and decrees outside of estate matters. For example, in *Bigelow v. Bigelow*, 27 Misc. 2d 124, 213 N.Y.S.2d 179 (Sup. Ct., Albany County 1961), the court held that thirteen years was too long to wait to bring a motion to vacate a divorce decree on the grounds that the parties had co-habited before the decree became final despite representations to the court otherwise when the divorce had been granted. *Id*. at 125, 213 N.Y.S.2d at 180-81. Similarly, in *Weinstock v. Weinstock*, 250 A.D.2d 671, 672 N.Y.S.2d 908 (2d Dep't 1998), the plaintiff sought to have a court order vacated, alleging that it was the product of a fraud perpetrated upon the trial court by his former wife. *Id*. at 671, 672 N.Y.S.2d at 909. The motion was made five and one-half years after the order was affirmed by the Appellate Division and approximately two years after the alleged fraud had been revealed. *Id*. Without specifically invoking any legal doctrine, the court held that the motion to vacate the order was not made within a reasonable time. *Id*.

The Surviving Executors would have little difficulty establishing that the passage of almost thirty years would prejudice them in attempting to defend themselves. The Independent Committee, itself, was hampered by the unavailability of key witnesses and documents. By way of example only:

- Of the nine Executors, only four were still alive at the start of the Independent Committee's investigation, and only three were available for in-person interviews. The individuals interviewed, moreover, understandably had difficulty recalling the events at issue, events that took place, in large part, approximately forty years ago;

- the NYAG's own files relating to the Estate's proceedings in the Surrogate's Court have been destroyed;

- documents from the files of AIU Far East could not be located, although some responsive documents were included in the CVSCO and AIUO document productions;

- Lee, Mulderig and Celentano, the law firm which served as counsel for the Estate, CVSCO, AIUO, and AIG, and was a key participant in the events and transactions at issue in the AG Report, ceased to exist many years ago and each of the partners in the firm who had been involved in the events in question have been deceased for many years;

- Tarlow & Co., the successor firm to David Tarlow & Co., which had provided accounting services to the Estate, both in connection with the Estate's administration and the IRS and Surrogate's Court proceedings, no longer had any records pertaining to C.V. Starr or the Foundation, and Mr. Tarlow, who had provided a majority of the accounting services to the Estate, is deceased;

- neither the documents provided by the NYAG, which included Morgan Stanley files, nor those searched by Morgan Stanley, itself, covered the June 1970 Transaction or the three challenged transactions;

- Lowe Bingham, the independent auditor of AIU Far East during the years 1966 through 1970, and the entity responsible for conducting the valuation that was used to determine the price AIUO paid to acquire both Tse's majority interest and the Estate's minority interest, was acquired by Price Waterhouse in 1974, and ceased independent operations at that time; and finally

- one of the three key individuals who represented the NYAG in connection with the Estate is deceased, another is unavailable due to health-related issues, and the third has no direct recollection of the events at issue.

Therefore, a court should apply the equitable doctrine of laches to bar any claim against the Executors.

XIV. REMEDIES PROPOSED TO THE FOUNDATION BY THE NYAG

As previously noted, the NYAG has urged the Foundation to appoint an independent committee to evaluate remedies it might have based on the alleged breaches of fiduciary duty set forth in the AG Report. S*ee* Letter from Att'y Gen. Spitzer to Ms. Davis (Dec.14, 2005) (Tab 2). One remedy suggested by the NYAG is the recovery of assets, which "may require that the Foundation intervene in the federal litigation between SICO and AIG." *Id.*[53] The NYAG also has suggested that the Independent Committee consider "a reconstitution of the Foundation's structure so as to guarantee it the independence needed to advance its charitable mission into the future." *Id*.

Given the Independent Committee's conclusions, and the outstanding success the Foundation has enjoyed under its current management and leadership, the Independent Committee does not consider it appropriate to pursue the litigation remedies suggested or to reconstitute the Foundation's board of directors or structure.

[53] That action, which is currently pending in the United States District Court for the Southern District of New York, is S*tarr Int'l Co. v. American Int'l Group, Inc.*, 05-CIV-6283 (S.D.N.Y.) (BSJ).

XV. CONCLUSION

After completing its investigation, and carefully considering the issues raised by the report issued by the NYAG, the Independent Committee has concluded that the Executors acted in good faith and prudently performed their duties, and that there is no basis for the AG Report's contention to the contrary. Accordingly, in the circumstances presented here, it would not be appropriate, nor would it be in the best interests of The Starr Foundation, to pursue any litigation or other course of action against the Executors of the Estate of C.V. Starr, whether in their capacity as executors or as directors of the Foundation.

Dated: March 1, 2007

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