

To: Norman Brownstein[[@](#)]; Trustee[[@](#)]
Cc: Leon D. Black[[@](#)]
From: Ada Clapp

This memorandum is addressed to you as Trustee of The Leon D. Black 1999 Life Insurance Trust #1 ("Trust #1) and The Leon D. Black 1999 Life Insurance Trust #2 ("Trust #2). Trust #1 and Trust #2 referred to collectively as the "Trusts." It outlines proposals for your consideration regarding the termination of the split dollar agreements between the Trusts and AIF IV Management Inc. ("AIF").

A. Background.

To refresh your recollection, in 1999, Trust #1 purchased \$50 million of insurance on Leon's life (the "single life policies") and Trust #2 purchased \$100 million of insurance on the joint lives of Leon and Debra (the "joint life policies"). Thereafter, each trust entered into a split dollar agreement (the "Agreements") with AIF, as Leon's employer. The Trusts may terminate the Agreements at any time. AIF has no right to terminate.

Under the terms of the Agreements, each year, AIF must pay the premiums on all policies (the "Premiums"). Leon or the Trusts must repay AIF for the annual cost of current life insurance (the "Employee's Portion"). AIF has paid Premiums of roughly \$1.8 million each year. Each year the Employee Portion is taxed to Leon as both compensation income and a deemed gift to the Trusts. For 2012, the Employee Portion was \$104,132. When the policies mature by reason of the death of the insured(s), AIF is entitled to a refund of Premiums advanced. If, however, the Agreements terminate prior to the death of the insured(s) (e.g., because you, as Trustee, elect to terminate them), each Trust must repay AIF the lesser of Premiums advanced or the then cash surrender values of the policies held in such Trust. To secure the repayment obligation, the Trusts assigned their insurance policies to AIF as collateral.

B. Rationale for Terminating the Agreements.

As you will recall, the original rationale for implementing a split dollar insurance plan was to provide a tax efficient means by which funds could be available to satisfy a significant portion of the debts and estate taxes payable upon the death of the survivor of Leon and Debra. The original 1999 proposal by Roger Cammon of the Bryant Group anticipated retention of the policies until the death of the insured(s) and projected that the policies would be self-funding by 2011. However, the policies have not performed as projected. The single life policies owned by Trust #1 are now "under water" (Premium advances exceed net cash surrender value) and absent a substantial (taxable) gift from Leon to Trust #1, Roger projected that Premium payments would need to continue for at least 10 more years for these policies to be self-sustaining. Performance on the joint life policies owned by Trust #2 has improved but Premiums will still be required for a much longer period than originally projected. In addition, continuation of the Agreements requires Leon's continued payment of income and gift tax on the Employee's Portion, which amount will increase each year.

In addition to poor policy performance, the split dollar arrangements no longer achieve the original objective, and therefore, do not warrant the additional expense required to maintain them. The \$150 million death benefit will no longer come close to satisfying a substantial portion of the debts and estates taxes anticipated upon the death of the survivor of Leon and Debra. For the foregoing reasons, Leon's advisors suggest that you, as Trustee of the Trusts, consider terminating the Agreements. If you agree, they have outlined the below proposals for your consideration.

C. Proposals to Terminate the Agreements.

Because the Agreements were entered into prior to 2003, they are afforded special tax treatment under the Internal Revenue Code and IRS Regulations. Accordingly, Leon's advisors believe that, if done properly, the Agreements could be terminated (or "rolled-out") without any adverse income or gift tax consequences. The proposals outlined below are designed to preserve this favorable tax treatment. Under the Agreements, upon roll-out during the life of the insured(s), each of the Trusts must repay AIF the lesser of Premiums advanced or

the net cash surrender value of the policies held in such Trust.

With respect to Trust #1, you could simply surrender the single life policies (currently underwater) and turn over the net cash surrender proceeds to AIF (as described below). However, in the case of Trust #2, because net cash surrender value exceeds Premiums advanced, we are advised that AIF should be repaid with non-policy proceeds. The proposal outlined below depends upon the Trustees of another trust, having the same beneficiaries as Trust #2 (a "Donor Trust"), agreeing to distribute funds to Trust #2 to enable it to repay AIF for Premiums advanced. If you approve of the suggested proposal for Trust #2, we would ask the trustees of the Donor Trust to consider making the required distribution.

1. Roll-Out Proposal for Trust #1.

Roll-out of the Agreement between AIF and Trust #1 would be accomplished in the following manner:

Step 1: Trust #1 would notify AIF that it is terminating the Agreement and waiving its 90-day right to request release of the collateral assignment. You would inform AIF that Trust #1 intends to cancel the policies and repay AIF from cash surrender value.

Step 2: You, as Trustee of Trust #1, would cancel the single life policies.

Step 3: AIF would exercise its right (secured by collateral assignment) to be repaid the lesser of net cash surrender value (about \$8 million) or Premiums advanced (about \$10.5 million).

Step 4: The net cash surrender value of the single life policies is paid to AIF. Upon receipt by AIF of the repayment, the Agreement is terminated.

2. Roll-Out Proposal for Trust #2.

Roll-out of the Agreement between AIF and Trust #2 would be accomplished in the following manner:

Step 1: The Donor Trust would distribute sufficient assets to Trust #2 to enable it to repay AIF its Premium advances (about \$12.5 million).

Step 3: Trust #2 would notify AIF that it is terminating the Agreement and would repay AIF (with funds received from the Donor Trust) its Premium advances.

Step 4: Upon receipt by AIF of the repayment, the Agreement is terminated.

Step 5: Trust #2 would (within 90 days of notice of termination) request AIF to release its collateral assignment against the joint life policies and AIF would do so.

After the foregoing proposals are implemented, Trust #1 would own no assets and Trust #2 would own the joint life policies. If you wish, we could assist you in conducting a review of the joint life policies to determine whether they are an investment worth retaining and if so, in devising a plan for the payment of premiums going forward.

I am happy to walk you through the proposals and answer any questions you may have. I can be reached at [REDACTED] or at [REDACTED]

IRS Circular 230 Disclosure: Pursuant to IRS Regulations, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used by any person or entity for the purpose of (i) avoiding tax related penalties imposed by any governmental tax authority or agency, or (ii) promoting, marketing or recommending to another party any transaction or matter discussed herein. We advise you to consult with an independent tax advisor on your particular tax circumstances.