

Black Family Partners

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From: Ada Clapp
Date: September 10, 2013
Re: Summary of September 5, 2013 Black Family Meeting

Following is a summary of the meeting held at the Black's residence on September 5, 2013. In attendance were Leon, Debra, Ben, Josh, Alex and Victoria Black, Eileen Alexanderson, Ada Clapp and Jeffrey Epstein.

A. Meeting Purpose.

The meeting began with an introduction by Jeffrey of the purpose of the family meeting. Jeffrey noted that the meeting was intended to give the family an overview of Leon's estate planning to date and to outline his future planning. It was also intended as a forum for family members to express their views and raise any questions or concerns about the proposed plan.

B. Planning Overview.

Jeffrey then reviewed for the family Leon's prior estate planning and how a grantor retained annuity trust (a "GRAT") works. He explained that a GRAT is a trust that transfers future appreciation on property to family members in a tax efficient manner. With a GRAT, an individual (a "Grantor") transfers property to a trust and retains the right to receive annual payments for a number of years (the "Term"), after which the remaining GRAT property passes to remainder beneficiaries (usually, to or in trust for family members). A Grantor makes a taxable gift upon funding a GRAT. However, because the gift is equal to the value of the transferred property less the value of the retained annuity payments, a GRAT can be structured so the taxable gift is nominal. For a GRAT to be successful, the Grantor must outlive the Term, and the GRAT's investments must outperform the IRS assumed rate of return (the "Applicable Federal Rate", or "AFR") for such investments. If that happens, when the Term ends, appreciation in excess of the AFR will pass to or the remainder beneficiaries free of gift or estate tax.

Next Jeffrey explained that Leon created a series of GRATs in 2006 that transferred property to trusts for their collective benefit at little or no gift tax cost and that the value of this property has now grown to \$2.5 billion. This is the "non-taxable" portion of their inheritance that they will receive free of gift or estate tax (but not free of income tax following Leon's death). Leon pointed out that his intention has always been to transfer appreciation on his

Apollo interests to his children and to retain the dividend stream and tax liability (so trust assets can grow income tax-free during his lifetime). However, he noted that the plan implemented in 2006 was imperfect and raised certain concerns. For one, it did not appropriately align cash flow and the increasingly large income tax payments he must make on behalf of the family trusts, which over time became untenable. To address these concerns, Leon reminded the family that the 2006 planning was recently revised. Following that revision, the assets held in the family trusts (the non-taxable bucket) now consist of (i) a 20% interest in Black Family Partners, L.P. (“BFP”), valued at about \$500 million, (ii) \$700 million of art and other investments and (iii) a note for about \$1.5 billion from Leon issued in exchange for BFP interests.

C. Proposed Planning.

Regarding future planning, it was noted that there is still roughly \$2.7 billion of assets that will be subject to estate tax when Leon and Debra die and that additional planning is needed to move that property from the “taxable” bucket to the non-taxable bucket. The taxable bucket currently consists of an 80% interest in BFP (with an offsetting note of about \$1.5 billion), a large amount of art (with an offsetting loan of about \$440 million), personal residences and various other investments. Jeffrey indicated that the plan is for Leon to create a series of “rolling” 2-year GRATs (where each year the retained annuity payment received from one GRAT is used to create a new GRAT) to move more appreciation on BFP out of Leon’s estate and to the family trusts. He also suggested the use of a charitable trust that would transfer assets to the family trusts at a reduced transfer tax cost, following a term where distributions are made to charity (such as the family foundation).

1. Heritage Trust.

Jeffrey next explained that most of the assets in the non-taxable bucket will pour into a single “pot trust” called the Heritage Trust for the benefit of Debra and Debra and Leon’s descendants. In addition to the pot trust, the Trust Agreement will also create a separate sub-trust for each child, and his or her descendants, called a “Legacy Trust.” After Leon’s death, the Trustees of the Heritage Trust will distribute to each child’s Legacy Trust \$10 million when the child attains age 30 (to be used to buy a residence), \$50 million when the child attains age 35 and \$100 million when the child attains age 40. The plan also contemplates some portion of the taxable bucket passing to the Heritage Trust upon the death of Leon and Debra and for the balance to pass to the family foundation.

The focus of the meeting next shifted to soliciting feedback on three planning matters: (i) family investments in the Heritage Trust, (ii) disposition of Leon’s art collection and (iii) the family foundation.

2. Entrepreneurial Ventures.

Next, Jeffrey and Leon explained the plan regarding entrepreneurial ventures by Leon’s descendants (“Ventures”). Because Leon wishes to encourage descendants to align their fortunes with other family members so that they all become good stewards of the family’s fortune, the Heritage Trust authorizes the Trustees to invest trust assets in Ventures. A Venture must be a minimum 3-year career commitment for the descendant. There is a cap on the amount the

Trustees may invest in a Venture (up to 10% of the trust assets for a child's Venture and 5% for a grandchild's Venture), as well as a limit on the number of Ventures per descendant (no more than 3). Profits from a Venture would first be used to return invested capital to the Heritage Trust; the balance would be distributed (i) 50% to the Heritage Trust, (ii) 25.5% to the Legacy Trust for the descendant who initiated the Venture and (iii) 24.5% will be divided among the Legacy Trusts for the descendants who did not initiate the Venture.

Some family members expressed concern with the proposed arrangement. They fear that only a small number of descendants would have the drive to initiate Ventures. Because all descendants benefit from the efforts of a few, the concern is that the arrangement promotes "freeloading" by some descendants. The risk is that future generations have no motivation to start their own Ventures and instead come to rely on the hard work of a few to grow the trust. In addition, those descendants initiating Ventures may come to resent the passive descendants and decide instead to engage in such Ventures outside the Heritage Trust, where they can retain all profits for their own families. This is the opposite of the intended result and could cause the Heritage Trust to be depleted after only one or two generations. It was suggested that the manner in which Venture profits are distributed be altered so as to direct more of the profits to the initiating descendant and less to "passive" descendants. This would increase incentive to initiate Ventures and decrease the risk of freeloading.

There were differing views among family members as to whether there should be a cap on the amount the Trustees may invest in a Venture and on the number Ventures per descendant. Some family members agreed that there should be limits on descendants who's Ventures repeatedly fail but they did not want to cap a descendant's success (Leon agreed with this view). The question was raised as to how the cap on investing would apply in the case of two descendants entering into a single Venture together (*e.g.*, whether the cap on investing trust assets would be 10% or 20% in this case).

The hope was also expressed that the Trustees not define a Venture's success in a way that devalues artistic pursuits (*e.g.*, a critically acclaimed film that was not a box office success should not be viewed as a failed Venture).

3. Disposition of Art Collection.

The discussion next turned to Leon's art collection and what would happen to the art held in the taxable and non-taxable buckets. Leon stated that he had made a list specifying particular pieces of art that he would like held for the benefit of each child (about \$400 million in value per child). The plan is for art already held in family trusts (the non-taxable bucket) at Leon's death to be segregated out based on Leon's list and held in a separate trust for each child's benefit. The art in the taxable bucket would not be segregated until after both Leon and Debra had died, at which point, it would pass to the children's Legacy Trusts according to the list.

A general discussion followed where the children expressed their preferences for certain works of art and some questioned the desirability of allocating specific works to any one child. It was suggested that all the art remain in the Heritage Trust to allow each child an opportunity to keep a specific work of art in his or her home for a period of time. There were differing views on this topic with some children expressing strong feelings for certain works of art and the desire

to have exclusive possession of them and others feeling that the collection should be equally available to all of them. The suggestion was made that each child make a list of 10 works of art he or she would most wish to keep and 5 works of art he or she would not mind being sold. Presumably, this would permit a compromise whereby a small number of works would be allocated to a specific child's Legacy Trust while most remained in the Heritage Trust for all to share.

4. Family Foundation.

Leon noted that art might well have to be sold to pay estate taxes, depending upon how much of his estate passes to the family foundation. A discussion then ensued as to what portion of the estate should pass to the foundation and whether the foundation could be used to create a Black museum to honor Debra and Leon. Others opposed this idea, preferring to maintain an important private collection that might be compromised if it were made available to the public. Leon stated his view that his collection, as it currently existed, was not appropriately comprised for a museum and that he assumes the foundation will sell any pieces received after his and Debra's death.

The view was expressed that not more than 25-50% of Leon's estate should go to the foundation. Leon noted that what percentage of his estate should pass to the foundation would depend on the absolute dollars in each of the taxable and non-taxable buckets at his death. He explained that if the Heritage Trust (the non-taxable bucket) has grown significantly (due to good performance and planning that transferred more assets out of his estate) and his estate (the taxable bucket) is in fact a small portion of the overall wealth, it may make sense for 80% or all of his estate to pass to the foundation to avoid paying an estate tax in excess of 50%.

C. Wills for All.

As the meeting had lasted several hours, Leon concluded by telling all family members that it was very important for each of them to have a Will. For the same reason he created trusts for their benefit (among them to protect assets from future creditors, including spouses), they too needed to consider creating trusts for their future spouses and descendants. He instructed each of the children to reach out to Alan Halperin at Paul Weiss to prepare a Will for him or her. Ada offered to meet with each child in advance of their meeting with Alan to go over the decisions required for a Will.

The meeting was then concluded.