

MEMORANDUM

To: Eileen Alexanderson, Jeffrey Epstein, Alan Halperin
From: Ada Clapp
Date: April 3, 2013
Re: **Summary of April 3, 2013 Planning Meeting.**

Following is a summary of our meeting today with Debra and Leon Black.

The meeting began with a discussion of Leon's overall goals with respect to his wealth, as well as his specific goals regarding the disposition of his art and his charitable intentions. When we discussed Leon's wealth, we referred to the roughly \$4.7 billion of assets that comprise Leon's estate and the family trusts he has created to date.

Leon's primary goal regarding his wealth is to ensure that his children have access to sufficient wealth (toward what end was not discussed, *e.g.*, to provide them with the flexibility to choose careers, live where they wish, provide for their own families, be philanthropic, *etc.*). What constitutes "sufficient" wealth was at one point quantified as \$500 million per child (after income and estate tax) and alternatively as, when Leon's (probate?) estate exceeds \$5 billion. Until this is accomplished, Leon is not inclined to pass his estate to charity or to create a family museum to preserve his art collection (rather, he would prefer that most of the art be sold to achieve the primary goal).¹

Leon also expressed his desire to establish a permanent family legacy for his descendants, so that future generations would be provided for. He envisions a single trust in which most of his wealth would be concentrated. For ease of reference, I will refer to this trust as the "Heritage Trust". The Heritage Trust is discussed below. To accomplish this, it was noted that many of the existing family trusts would be decanted into the Heritage Trust.

Regarding the children's foundations, it was suggested that Leon contribute \$100,000 to each child's foundation now, so that each could begin to learn how to invest assets.

There followed a brief discussion of Leon's existing estate planning, including issues being addressed by Leon's advisors with respect to various trusts. Debra requested that any plans proposed regarding the existing trusts, the Heritage Trust or Leon's Will and Revocable Trust be "blessed" by an "independent" attorney (*i.e.*, someone other than an advisor involved in setting up either the original or the revised plan). We should discuss the timing of when such an attorney would be brought into the process.

We next discussed the Heritage Trust.

I. Heritage Trust.

- A. **Funding.** Our discussion assumed that Leon will create the Heritage Trust during his lifetime and that the assets of the Black 2006 Family Trust (\$2.264 billion) and the Non-exempt Black Family 1997 Trust (roughly \$546 million when the 2009 GRAT terminates in August) will be decanted into the Heritage Trust. Leon's residuary estate (if Debra predeceases him) or the remainder of the Marital Trust (if she survives him) would also pour into the Heritage Trust.

We did not discuss whether other family trusts would pour into the Heritage Trust. For example, it is assumed that the Black Family 2011 Trust (\$252 million), due to its mandatory income provisions, and the GST Exempt Black Family 1997 Trust (\$3 million), to preserve GST exemption, would not be decanted to the Heritage Trust. Nor did we discuss whether the assets of the Leon D. Black 1999 Life Insurance Trust Nos. 1 and 2 (\$150 million death benefit) and/or the

¹ Alan noted that he could include a "waterfall" provisions in Leon's Will/Revocable Trust that would have alternate dispositions of his estate depending upon its size.

1992 Debra and Leon Black Insurance Trust (\$20 million death benefit) should eventually pour into the Heritage Trust.

- B. Structure of Heritage Trust. There was considerable discussion regarding the structure and administration of the Heritage Trust. The proposed structure would divide the Heritage Trust into five components: a single “pot” trust or the “Main Heritage Trust” (into which Leon’s estate and the existing trusts would pour), and four sub-trusts, one for each child (each a “Legacy Trust”).

The Main Heritage Trust would be predominantly a discretionary trust for the benefit of Leon’s issue and Debra, but the Trustees would be required to make the following distributions:

- \$10 million to a child’s Legacy Trust when the child attains age 30 so that the child can purchase (and have assets to maintain) a residence. Presumably any portion of the \$10 million not used to acquire or maintain a residence would remain in the child’s Legacy Trust.
- \$50 million to a child’s Legacy Trust when the child attains age 35.
- \$100 million to a child’s Legacy Trust when the child attains age 40.

We need to clarify whether the above distributions are made only after the death of Leon and Debra, and/or only if the child is living. For example, if Ben died at age 36 with surviving children, would his Legacy Trust receive a \$100 million distribution four years later?

We did not discuss the terms of the Legacy Trusts and whether a child would have a power to appoint the trust property upon his or her death.

Under the foregoing structure, the bulk of the Black family fortune would be held in tact for the benefit of future generations, while still allowing Leon’s children some independence regarding their own family’s wealth. It was not clear from the discussion that Leon was 100 comfortable with this structure.

- C. Investments in the Heritage Trust. To further align each child’s financial interests with those of the entire Black clan, the Trustees of the Main Heritage Trust will be authorized to invest assets (we did not discuss a cap) of the Main Heritage Trust in financial ventures presented to them by Leon’s children. A child would be required to:

- Satisfy the Trustees that the venture is a good investment for the Main Heritage Trust; and
- Devote significant personal time to the venture such that the Trustees view it as a career commitment by the child.

If the venture is successful, the Trustees will distribute 51% of the proceeds to the child’s Legacy Trust and the other 49% evenly among his or her siblings’ Legacy Trusts. All family members would equally bear the burden of unsuccessful ventures.

We discussed the need for Leon to provide his Trustees with guidance regarding the approval process. For example, the Trustees may find an investment unsuitable for the Main Heritage Trust but could approve of it in the child’s Legacy Trust (where only that child’s family bears the economic risk).

- D. Trustees. Trustees for the Main Heritage Trust will be Barry Cohen and Richard Ressler, with John Hannan as successor to Barry and Allison Ressler as successor to Richard. We should confirm with Leon that Debra is to be a co-Trustee.

The Trustees for each Legacy Trust other than Alex's Legacy Trust will be the same as above but would include the child (once he or she attains a certain age). The Trustee provisions for Alex's Legacy Trust would be the same except that Tony Ressler will be successor to Richard instead of Allison.

II. Leon's Will/Revocable Trust.

The meeting continued by addressing specific decisions in connection with a new Will and Revocable Trust for Leon. We also discussed the advisability of Debra retaining a separate attorney to draft her Will and Revocable Trust, as this will permit Alan to maintain an attorney-client relationship solely with Leon. It is assumed that her estate attorney will be Jib Black at Sullivan and Cromwell as Debra has expressed her confidence in such firm.

A. Tangibles/Art.

1. If Leon and Debra died today, Leon would want his children to select specific works of art (having a value of between \$200 million and \$400 million) from his estate and for the balance to be sold. He noted that it would be the child's decision whether or not to sell art held in a separate trust for his or her benefit.
2. Leon has promised a few pieces of art (roughly 10 works of lower value) to institutions. He has a list of these works should we require it.
3. Debra has roughly \$50 million in jewelry (including pieces by Joel Arthur Rosenthal) that she wants to specifically bequeath to relatives. I will help her compile a list.

B. Cash Bequests. We covered the existing cash bequests under Leon's 1997 Will and Revocable Trust and explained that testamentary bequests to individuals other than a spouse will generate a larger transfer tax than would a lifetime gift (because of the tax inclusive nature of the estate tax). In light of this fact, Leon would like to do the following:

1. Remove any bequest to Marilyn Stewart.
2. Give \$3 million to Melanie Spinella on his death.
3. Give \$10 million to John Ressler on the death of the survivor of Debra and Leon.
4. Upon the death of the survivor of Debra and Leon, give \$25 million in trust for Leon's sister, Judy Black. Upon Judy's death, \$1 million will be paid to her husband and the balance of Judy's trust will be added to the Heritage Trust.

Since it is more tax efficient for Debra to make gifts to Judy than for Leon to bequeath \$25 million to Judy's trust on his death if Debra survives him, if Debra survives, Debra will provide Judy with funds to meet her living expenses. Leon thought Debra should give Judy \$1 million per year for the balance of Judy's lifetime.

- C. Charitable Pledges. We need to confirm the extent to which Leon has outstanding pledges to charitable organizations (particularly Dartmouth and Melanoma Research Alliance).
- D. Residences. We did not discuss whether Leon still wishes Debra to receive all residences outright.
- E. Residuary Estate. It was assumed from the discussion that if Debra survives, Leon's residuary estate would be held in a Marital Trust for Debra and that upon her death, the remaining principal of the Marital Trust would pass to the Heritage Trust. If Debra predeceases Leon, his residuary estate will pass to the Heritage Trust.

- F. Executors/Trustees. We discussed with Leon and Debra the various duties and obligations of Trustees and Executors and that the same individuals can serve both roles and can also serve as Trustees of other trusts, such as the Heritage Trust.

We should confirm with Leon but it is assumed that he wants the same individuals he named as Trustees for the Main Heritage Trust (*i.e.*, Barry Cohen and Richard Ressler) to act as Executors and Trustees of the Marital Trust. We should also confirm that Debra is to be a co-Executor and co-Trustee of the Marital Trust.

- G. Remote Takers. Leon wanted to consider who would inherit any property not disposed of under the terms of his Will, his Revocable Trust or the Heritage Trust.

III. Related Planning Documents.

- A. Power of Attorney. Leon wants to name Richard Ressler and John Hannan as joint attorneys-in-fact. Allison Ressler would be successor to Richard. Debra wishes to name Leon, with Allison Ressler as his successor attorney-in-fact.
- B. Health Care Proxy. Each of Debra and Leon will name the other as initial health care agent with Allison as successor.
- C. Living Wills. Debra wants a living Will. Leon is thinking about it. It was suggested that Alan send his form of living Will to Leon for his review.

IV. Additional Planning.

At this point in the meeting Debra needed to leave for a luncheon. The discussion continued with a review of various planning techniques to reduce Leon's taxable estate and also enable him to meet his cash flow needs. In addition, because of the low basis of the Black Family Partner ("BFP") interests, Leon wants to explore techniques that would take advantage of a basis step-up at his death.

- A. Freeze Partnership. We briefly discussed the proposed Freeze Partnership, which would provide Leon with an annual "coupon" of 7% (based on \$1.5 billion of art he would contribute, or roughly, \$105 million per year). It was noted that a strong advantage of the Freeze Partnership is the fact that it is a statutory planning technique and therefore defensible in the event of an IRS audit.

However, it was quickly pointed out that the coupon would likely only cover Leon's income tax liability in connection with BFP interests held in grantor trusts, providing him no cash flow for living and other expenses (about \$40 million per year). We discussed that the shortfall could be dealt with by three alternating approaches:

- The Trustees of grantor trusts could exercise their discretion to reimburse Leon for the income tax liability;
- Leon could borrow funds from the grantor trusts to be used to pay income taxes; and
- Trustees could exercise their discretion to distribute funds to Debra, which she would then gift to Leon to pay the taxes.

- B. Asset Swap. We next moved to a technique whereby Leon would exercise his power under the Black 2006 Family Trust to reacquire assets held in this trust by substituting assets of equal value. Leon would reacquire all of the trust's interests in BFP (a 72.2% interest valued at about \$1.9 billion) in exchange for a promissory Note.

There was extensive discussion of the viability of this technique given the size of the promissory Note and the necessity of structuring the arrangement so that the trust receives “equivalent” value to what Leon is reacquiring. Given Leon’s net worth and the significant income flow from the BFP interests, it was agreed that the technique could be used if structured properly. We discussed Leon giving the trust not only the Note but also a security interest in the BFP interests reacquired. He may also offer some of his art as collateral. We did not discuss the specifics of the Note, such as term, interest rate, whether interest can be accrued, *etc.* Nor did we discuss how Note payments might impact Leon’s cash flow or a plan for paying off the Note prior to Leon’s death.

The advantage of this technique is that it offers the opportunity of getting a basis step-up for the BFP on Leon’s death to the extent that the underlying Apollo interests are not sold. Leon noted that he would likely only monetize a small amount after reacquiring BFP. In addition, this approach provides Leon with significantly increased cash flow and the value of his estate will be reduced by repayment of the Note or inclusion of the debt.

We did not discuss the possible impact of this technique on a Marital Trust for Debra. For example, if the Note is not paid off during Leon’s lifetime and is payable in full on Leon’s death, Leon’s estate (and Debra’s Marital Trust) will be reduced by the outstanding balance. While these funds would still be available to Debra as a beneficiary of the Heritage Trust (the successor of the Black 2006 Family Trust), she would not be entitled to income from these assets.

- C. CLAT/Promissory Note. Another technique was noted for later consideration. This is the creation of a charitable lead annuity trust or “CLAT” combined with a promissory Note. Leon would create a CLAT that paid a specified percentage of the initial trust corpus (say 7% of \$1 billion, or \$70 million) to Leon’s family foundation each year during the trust term. At the end of the trust term, the remainder would pass to the Heritage Trust. Shortly after the CLAT is funded, the Heritage Trust would purchase the assets of the CLAT in exchange for a promissory Note with annual interest equal to the mandatory charitable payment (so in this example, 7% or \$70 million). Each year the Heritage Trust would make the interest payment to the CLAT and the CLAT would distribute the cash to Leon’s foundation. At the end of the term, the CLAT would distribute the Note to the Heritage Trust—which would simply cancel its own obligation.

The primary concern with the CLAT was the fact that significant assets would pour into Leon’s foundation, which would then be obliged, under IRS regulations applicable to private foundations, to make large charitable distributions. It was determined that the family was not yet at the point where they could devote the significant time and attention required for such an important task.

The meeting then concluded.

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