STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

REPORT ON BREACHES OF FIDUCIARY DUTY BY THE EXECUTORS OF THE ESTATE OF CORNELIUS VANDER STARR

Office of the New York State Attorney General
December 14, 2005

This Report sets out the facts discovered by the Office of the New York State Attorney General (the "Office" or the "Attorney General") in an investigation of breaches of fiduciary duties by Maurice R. Greenberg and the other executors of the estate of Mr. Cornelius Vander Starr (the "Estate") who were also directors of The Starr Foundation (the "Foundation"). Mr. Starr was the founder of a group of insurance businesses that have become American International Group, Inc. ("AIG"). The Report describes: (1) the discovery of documents evidencing breaches of fiduciary duty by the executors; (2) background relating to the Estate and the Foundation; (3) a series of self-dealing transactions through which the executors misappropriated assets from the Estate over a two-year period after Mr. Starr's death;[1] (4) Mr. Greenberg's failure to disclose critical facts about these transactions to the Surrogate's Court and this Office; and (5) why an action by the Foundation to redress the injuries described herein is not time-barred.

I. Discovery of Documents Related to the Breaches of Fiduciary Duty

In early 2005, the New York Attorney General, pursuant to his authority under Article 23-A of the General Business Law of the State of New York (the "Martin Act") and Section 63(12) of the Executive Law, issued subpoenas to AIG relating to potential misconduct in AIG's accounting and insurance practices. During the course of the ensuing investigation, the Attorney General and the Securities and Exchange Commission (the "SEC") requested information about AIG affiliates and subsidiaries located in Bermuda.[2] In response to this request, AIG counsel

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[1] This Report discusses three sales of securities by the Estate in 1969 and 1970. The Report does not constitute an exhaustive review or analysis of all transactions related to the Estate.

[2] The Attorney General filed an action based on that investigation: The People of the State of New York v. American International Group, Inc., et al., No. 401720/05 (Sup. Ct., N.Y. County 2005).

began reviewing documents in the company's Bermuda building. During the week of March 21, counsel acting on behalf of Mr. Greenberg arrived at AIG's Bermuda building and claimed that many of the documents being reviewed belonged to two privately-held companies that were controlled by Mr. Greenberg and shared offices with AIG. The two sides agreed that both groups of lawyers would review the documents but that no original documents would be removed from the AIG building.

On March 25, Good Friday – a business holiday in Bermuda – after the team of AIG lawyers had returned to the United States, Mr. Greenberg's lawyers, using the electronic card key of an AIG employee, entered the AIG building and removed approximately 80 boxes of documents. Upon learning of the removal, the Attorney General and the SEC issued subpoenas for documents removed from the AIG building. Among them were key confidential documents, including meeting minutes and correspondence, that raised questions about whether the Estate had been appropriately compensated for certain assets. The documents triggered further review by the Attorney General, and the ensuing investigation revealed that Mr. Greenberg and the other executors of Mr. Starr's Estate abdicated their fiduciary duties by selling certain assets of the Estate to companies the executors owned and controlled for unreasonably low prices in light of the value the executors themselves were able to realize when their companies sold the same or similar assets.

II. Background

Beginning in 1919, Mr. Starr founded a group of insurance businesses that eventually became AIG. In the 1960s, he began a process of consolidating his insurance businesses and chose Mr. Greenberg as his successor. Upon Mr. Starr's death in 1968, most of his insurance

businesses had been gathered into three companies that Mr. Greenberg and other associates of Mr. Starr controlled: (1) C.V. Starr & Co., Inc. ("CVSCO"), a private company that owned domestic insurance agencies; (2) Starr International Company, Inc. ("SICO")[3], a private company that owned foreign insurance agencies; and (3) American International Reinsurance Company, Inc. ("AIRCO"), a private company that owned shares in insurance companies.

Earlier in his career, Mr. Starr had established the Foundation under New York's Membership Corporations Law as a not-for-profit corporation dedicated to charitable, educational and cultural purposes. Starr supported The Starr Foundation during his life and upon his death left it virtually his entire Estate:

> It is my Will that THE STARR FOUNDATION shall acquire the remainder of my Estate, the income from which, and if need the principal also, shall be employed for worthy charitable, educational and cultural purposes as stated in the by-laws of THE STARR FOUNDATION.

Last Will and Testament of Cornelius Vander Starr, August 1, 1968 (the "Will"), attached as Exhibit 1.

Because of Starr's largess and because of the dramatic increase in the value of the AIG stock that is its main holding, The Starr Foundation is now one of America's largest private foundations, with assets worth more than $3.5 billion. The Foundation provides grants totaling hundreds of millions of dollars a year in a number of areas, including education, medicine and healthcare, human needs, public policy, culture and the environment, and sponsors numerous

[3] At the time SICO was known as American International Underwriters Overseas, Inc. There is pending litigation in the United States District Court for the Southern District of New York between AIG and SICO relating to the SICO assets at issue in this Report. Starr International Company, Inc. v. American International Group, Inc., 05-Civ-6283 (BSJ).

scholarship programs at selected secondary schools and more than 80 colleges and universities.[4]

In 1968, control of Mr. Starr's far-flung insurance enterprise resided with the board of CVSCO and Mr. Greenberg, president and a director of CVSCO. When Mr. Starr died on December 20, 1968, his Will named as executors all of the members of the CVSCO board at the time of his death.[5] CVSCO's directors beneficially owned or controlled a majority of the voting shares of CVSCO, SICO and AIRCO.[6] As president of CVSCO and Mr. Starr's hand-picked successor, Mr. Greenberg took a lead role in disposing of the assets of the Estate. On January 30, 1969, the New York County Surrogate's Court (the "Surrogate's Court" or the "Court") issued temporary letters of executorship to Messrs. Greenberg, Tweedy and Mulderig. The Will was admitted to probate on April 7, 1969, whereupon all of CVSCO directors became executors of the Estate. Nearly all of these men were also members and directors of The Starr Foundation,[7] to which they owed a direct fiduciary duty.

A recently discovered memorandum by Mr. Tweedy (one of the executors), however, states that shortly before his death Mr. Starr "was planning to change drastically the nature of the

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[4] Because the Foundation is a private foundation, it must make annual qualifying distributions in an amount equal to or greater than 5% of the aggregate fair market value of the Foundation's assets that are not used directly to carry out its exempt purposes. 26 U. S. C. § 4942 (imposing excise tax on foundations that do not satisfy the 5% payout requirement).

[5] Upon Mr. Starr's death on December 20, 1968, the directors of CVSCO were John Ahlers, Houghton Freeman, Mr. Greenberg, Edwin A.G. Manton, Francis J. Mulderig, John J. Roberts, Ernest E. Stempel, K.K. Tse and Gordon B. Tweedy. They therefore became the executors of Mr. Starr's Estate.

[6] The CVSCO directors owned a majority of the outstanding shares of CVSCO common stock, though the largest single block (240 shares) belonged to Mr. Starr. They also owned a majority of the outstanding SICO shares, again with Mr. Starr owning the largest single block (30 shares). Finally, the CVSCO directors had voting control over AIRCO.

[7] At the time of Mr. Starr's death, executors Messrs. Ahlers, Greenberg, Manton, Roberts, Stempel and Tweedy were members of the Foundation. Messrs. Greenberg, Manton, Roberts, Stempel and Tweedy also constituted a majority of the directors of the Foundation and therefore controlled its operations.

Foundation, including its personnel, and to divorce it entirely from [CVSCO] affairs." February 18, 1969 Internal Memorandum, attached as Exhibit 2. In fact, in apparent compliance with Mr. Starr's plan, certain of the directors of the Foundation tendered their resignations as Foundation members in September 1968 – three months before Mr. Starr's death. February 28, 1969 Notes on Minutes of Directors Meeting of CVSCO, attached as Exhibit 3. After Mr. Starr's death, however, the CVSCO board, exercising its control over the Foundation, "agreed that the resignation letters of September, 1968 should be released and returned to the various members of the Foundation who had given them, with the exception of [an individual who was leaving CVSCO]." Exhibit 3.

Thus, the Foundation was not "divorced" from CVSCO's affairs as Mr. Starr had planned. Instead, Mr. Greenberg and the other CVSCO directors continued in their roles as the Foundation's members and directors. Mr. Greenberg eventually became the Chairman of the board of directors of the Foundation in 1981 and continues in that role today. As of February 18, 2004, executors Greenberg, Manton, Roberts and Stempel remained members and directors of the Foundation and owed the Foundation an ongoing fiduciary duty to act in its best interest.

At the time of his death, Mr. Starr owned 24% of the voting shares of CVSCO, 20% of the voting shares of SICO and roughly 15% of the voting shares of AIRCO. He also owned approximately 48% of American International Underwriters Far East, Inc. ("Far East"), an important affiliate of SICO that ran insurance agencies in East Asia. Under Article Seventh of Mr. Starr's Will the executors had broad discretion to manage and dispose of the Estate's assets.[8]

[8] It is axiomatic that a fiduciary such as an executor has a duty of loyalty to the estate, meaning that the fiduciary may never profit at the expense of the estate or its beneficiaries. Indeed, an executor will not be granted letters testamentary until the executor takes an oath stating that the executor "will well, faithfully and honestly discharge the duties of Fiduciary of the goods, chattels and credits of [the] decedent according to law."

In his Will, Mr. Starr specified his preferred treatment of the AIRCO, CVSCO and SICO shares:

> 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 [SICO] 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 has issued such shares before they are offered for sale or other encumbrance to any other party . . . .

Will, pp. 2-3 (emphasis added). Over the ensuing two years, the other Estate's executors did not fulfill Mr. Starr's "earnest hope and wish" that his shares of CVSCO and SICO would be sold "at the current market price."[9] Instead, the executors sold those shares and others for a small fraction of their value to CVSCO and SICO, two entities that the executors themselves owned and controlled.

III. Self-Dealing Transactions

When they set out to dispose of the Estate's ownership interests in CVSCO, SICO and Far East in 1969, Mr. Greenberg and the other executors, in their role as the board of CVSCO, were in the midst of a major corporate restructuring of the insurance businesses that Mr. Starr had founded.

As a first step in this restructuring, AIG became a public company in early 1969 through stock-for-stock exchange offers with three publicly-held U.S. insurance companies. Through these exchange offers, the public shareholders of the three insurance companies became public shareholders in AIG, with AIG owning 100% of all three companies. After this step,

[9] The Will directed that all of the Estate's remaining assets, including Mr. Starr's holdings in Far East, would be left to the Foundation.

CVSCO maintained control over AIG through its voting control of AIRCO, which in turn owned a majority of the public stock of AIG.

The second step of the restructuring involved AIG acquiring a group of insurers and insurance agencies from CVSCO, SICO and Far East, entities controlled by Mr. Greenberg and the other executors, who also controlled AIG. The currency used in this acquisition was AIG stock exchanged for the CVSCO assets, and AIRCO stock exchanged for the SICO and Far East assets. AIG engaged the investment banking firm of Morgan Stanley & Co. ("Morgan Stanley") to issue an opinion as to the fairness of the transaction from the point of view of AIG's public shareholders. Work on analysis that supported the fairness opinion began not later than the summer of 1969. Morgan Stanley issued a "preliminary report" of its analysis on October 24, 1969 (November 5, 1969 Notes on Minutes of Directors Meeting, attached as Exhibit 4) and issued the final fairness opinion dated February 19, 1970 (attached as Exhibit 5). Morgan Stanley reiterated its opinion that the transaction was "fair and reasonable" on May 29, 1970 (Letter dated May 29, 1970, attached as Exhibit 6), and the transaction closed on June 30, 1970 (the "June 1970 Transaction"). Through the June 1970 Transaction, AIG acquired a world-wide network of insurance agencies founded by Mr. Starr. Furthermore, the CVSCO directors solidified their control over AIG through the receipt by CVSCO and SICO of large blocks of AIG and AIRCO stock.

At the time of his death, Mr. Starr owned a substantial portion of the assets that AIG ultimately acquired in the June 1970 Transaction. His ownership was reflected in shares of each of the entities involved – Far East, CVSCO and SICO. The major business assets of each of these entities were sold to AIG in the June 1970 Transaction. The Estate's disadvantageous sale

of its shares in each of these entities to CVSCO and SICO is the focus of this Report.

The executors were in a unique position to understand the value of the Estate's holdings in Far East, CVSCO and SICO for two reasons. First, as directors of CVSCO, they were responsible for coordinating and controlling Mr. Starr's worldwide insurance enterprise. Second, the executors – acting on behalf of AIG – had engaged Morgan Stanley to opine as to the fairness of the price to be paid by AIG for the CVSCO and SICO businesses in the June 1970 Transaction.

The executors sold the Estate's holdings in three entities to CVSCO and SICO: (1) a 48% interest in Far East; (2) a 24% interest in CVSCO; and (3) a 20% interest in SICO. In each case, the price was far below the value the executors themselves were able to realize when they sold the assets of the same entity to AIG. There was no public market for the Estate's shares in these three companies because they were closely-held corporations. Nonetheless, the executors had a sworn fiduciary duty to act in the best interest of the Estate in determining the best available price for the Estate's assets, especially when the executors themselves were buying these very assets on behalf of companies they owned and controlled.

The three transactions – which are described in more detail below – shared a common pattern. In each transaction, the executors had a fundamental conflict of interest because they controlled the seller, the buyer and the ultimate Estate beneficiary – the Foundation. On the one hand, they owed a fiduciary duty to the Estate and the Foundation to maximize the price for sales of the Estate's assets to CVSCO and SICO; on the other hand, they had a direct pecuniary interest, as owners of CVSCO and SICO, in minimizing the Estate sale price for these same

assets.[10] Based on the evidence revealed to date, in each transaction, the executors resolved this conflict in favor of their own personal pecuniary interest, selling the Estate's assets to CVSCO and SICO for far less than the value the executors themselves were able to realize when CVSCO and SICO sold the same assets to AIG in the June 1970 Transaction. This process enriched CVSCO, SICO and the executors at the expense of the Estate and the Foundation. Chronologies of the three transactions are attached as an Appendix to this Report.

Mr. Greenberg, for example, was and is one of the major shareholders in CVSCO and SICO; he continues to run both companies, which together hold AIG stock worth over $23 billion today. SICO has allocated over 3.6 million shares of AIG stock, currently worth approximately $243 million, to Mr. Greenberg in deferred compensation, and since 1970 he has received more compensation from CVSCO and SICO than anyone else.

A. The Far East Transaction

The first sale of Estate assets for an unreasonably low price involved the Estate's shares of Far East stock.

In January 1969, within a month of Mr. Starr's death, SICO (which the executors controlled) proposed purchasing the Estate's 48% ownership interest in Far East based on a valuation to be performed by Far East's auditors in Hong Kong. Letter dated January 16, 1969, attached as Exhibit 7. The president of Far East was K.K. Tse, one of the Estate's executors. In January 1969, SICO was already in the process of acquiring the other 52% of Far East from its other shareholders. By the summer of 1969 at the latest, Mr. Greenberg and the other executors

[10] The executors could have appropriately dealt with the conflict by (1) obtaining for the Estate the value that they themselves ultimately realized for the assets; (2) obtaining an objective third-party appraisal as to the fair market value of the assets; (3) petitioning the Surrogate's Court under SCPA 2707.1 for advice and direction as to the propriety, price, manner and time of the sales; or (4) resigning as executors and Foundation members and directors. They took none of these curative measures.

began valuing the assets that would ultimately be acquired by AIG in the June 1970 Transaction.

In July 1969, the Hong Kong auditors completed a preliminary valuation of Far East and opined as follows:

> Over the period of its operations, [Far East's] profits/losses have shown marked fluctuations 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. Consequently, our following valuation is based on the net asset value of the Company as at 31st December, 1968.

Letter dated July 15, 1969, attached as Exhibit 8. On August 1, SICO (which the executors controlled) offered to purchase the Estate's Far East shares for a price based on the "net asset value" (i.e., "book value")[11] set forth in the preliminary valuation. Letter dated August 1, 1969, attached as Exhibit 9.

Mr. Greenberg and the executors accepted this book value offer on October 1, 1969, specifying that delivery would "not be deemed complete until such time as a final valuation of the stock has been received . . . ." Letter dated October 1, 1969, attached as Exhibit 10. The sale was ultimately completed on or about March 6, 1970, at a final sale price just over $1 million based on net asset or book value. March 6, 1970 Letter, attached as Exhibit 11.

The executors, however, knew in October 1969 when they agreed to sell the Estate's Far East shares at book value that these shares were worth much more. First, one of the executors, K.K. Tse, was the president of Far East, and Far East had earned yearly business

[11] "Net asset value" or "book value" is simply the assets of a company minus its liabilities. The fair market value of a company that is a going concern is generally measured in terms of its net income or cash flows. Far East, CVSCO and SICO could and should have been valued for estate administration purposes by considering their net income or earnings, taking into account the years immediately leading up to and the years immediately following the sale.

profits of $849,000 in 1967 and $934,000 in 1968. February 19, 1970 Morgan Stanley Letter,[12] attached as Exhibit 5. Second, all of the executors knew in October 1969 that Morgan Stanley was in the process of determining the "fair and reasonable" value of a number of CVSCO and SICO businesses by analyzing past earnings and profitability – an analysis that the Hong Kong auditors did not undertake for Far East.

In any case, the Estate's sale of Far East shares did not close until March 6, 1970. At that point, the executors, in their role as the directors of AIG, had received the February 1970 Morgan Stanley fairness opinion. That opinion found that it was "fair and reasonable" for AIG's shareholders to exchange 1.7 million shares of AIG stock for the SICO assets (including those of Far East) based on the past earnings of SICO and Far East. Far East's earnings constituted approximately 11.5% of the total SICO earnings used in Morgan Stanley's calculations. Applying this percentage to the 1.7 million shares of AIG stock yields 195,000 shares which, at the prevailing price of $77.50 per share used by Morgan Stanley in February 1970, would have been worth approximately $15 million.

Thus, when the Far East sale took place, the executors knew they were selling stock worth approximately $7.2 million (or 48% of $15 million) for $1 million. If the Estate had received its proportional share of the stock ultimately received by SICO for Far East's business assets in the June 1970 Transaction, that stock would be worth almost $1.2 billion today after taking into account applicable stock splits and dividends.[13] Instead, the Estate received

[12] In its fairness opinion Morgan Stanley considered earnings of $849,000 for 1967, $934,000 for 1968 and estimated earnings of $827,000 for 1969. Far East's actual earnings for 1969 proved to be more than $1 million.

[13] SICO initially received AIRCO shares in the June 1970 transaction. Those shares were ultimately traded for AIG shares in 1978 when the two companies merged. If the Estate had received 48% of the AIRCO shares attributable to Far East, it would have received 58,469 shares of AIRCO. Those AIRCO shares, through splits and stock dividends, would have grown to 365,431 AIRCO shares by September 20, 1978. On September 20, 1978, the 365,431 AIRCO

approximately $1 million in cash worth about $17.6 million today.[14]

B. The CVSCO Transaction

The second sale of undervalued assets involved the Estate's shares of CVSCO stock. Upon his death, Mr. Starr owned 24% of the voting common stock of CVSCO, more than twice as much as the next largest shareholder. The CVSCO Certificate of Incorporation gave the company the right, upon the death of a shareholder, to repurchase the decedent's shares at "fair value as determined by the [CVSCO] Board of Directors of such shares at the time of such death . . . ." CVSCO Certificate of Incorporation, attached as Exhibit 12. Greenberg and the other executors had a clear conflict of interest in determining such "fair value": on the one hand, as owners and directors of CVSCO, they had every incentive to repurchase the shares at a low price; on the other hand, as sworn fiduciaries of the Estate, they were obligated to negotiate the best price possible. Indeed, Mr. Starr had made clear in his Will that the shares should be offered to CVSCO at their "fair market value."

The executors, acting in their capacity as the CVSCO board, determined that the "fair value" of the Estate's shares would be based upon their book value of approximately $4,500 per share, even though the executors knew that this share price was far lower than the value that they themselves would ultimately realize when CVSCO sold its assets to AIG in the June 1970 Transaction.

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shares would have been exchanged for 401,974 shares of AIG. Those AIG shares, through splits and stock dividends, would have grown to 17,885,685 shares of AIG today, which at close of business on December 9, 2005 would be worth $1,180,812,923. This calculation does not take into account any assets and liabilities that remained in Far East after the June 1970 Transaction.

[14] Calculated using a blended rate of the historical 30-year Treasury Note, 10-Year Treasury Note, and Prime Rates as provided by the Federal Reserve.

On February 13, 1969, the executors, acting in their capacity as the CVSCO board, decided to purchase the Estate's 240 shares (representing 24% of the outstanding 1,000 shares) of CVSCO and agreed that the "fair value would be determined on the basis of the 1968 year-end figures when they become available." February 13, 1969 Notes on Minutes of Directors Meeting, attached as Exhibit 13. After this decision had been made, 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.[15] Letter Agreement re Valuation dated March 13, 1969, attached as Exhibit 14. Although the agreement purported to be on behalf of "all of the Directors and all of the holders of the outstanding Common Stock" of CVSCO, the Estate (which had a 24% interest in CVSCO at the time) was not a party to this agreement.[16]

At an October 23, 1969 CVSCO directors meeting, Mr. Greenberg "said that he felt the corporation should, as soon as possible, buy in the 240 outstanding shares of [CVSCO] common stock now held in the Starr Estate," using the book value formula that the directors, without independent consent by the Estate, had agreed to in March. November 11, 1969 Certificate, attached as Exhibit 15.

The next day, Mr. Greenberg and the other executors received a "preliminary report" from Morgan Stanley, estimating that the value of the businesses CVSCO was planning to sell to AIG was $25-30 million. November 5, 1969 Notes on Minutes of Directors Meeting of CVSCO

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[15] It appears that both before and after Mr. Starr's death, CVSCO insiders exchanged their shares for prices based on adjusted book value. Most of these sales were among CVSCO insiders and do not appear to have been negotiated. The one exception involved an individual who resigned from CVSCO and who appears to have accepted book value payment as part of a carefully negotiated severance from the company.

[16] In any case, there was nothing preventing the executors, who were the directors of CVSCO, from amending the Certificate of Incorporation or any agreement purporting to prevent the Estate from receiving fair value for its assets.

attached as Exhibit 4. This estimate did not include substantial Starr businesses that were **not** part of the contemplated sale to AIG. The executors therefore knew that the company as a whole was worth more than $25-30 million.

Nevertheless, on or about October 31, 1969, the executors set the purchase price for the Estate's 24% interest in CVSCO at $1.08 million based on the estimated total adjusted book value of CVSCO as of December 31, 1968, which was about $4.5 million. October 31, 1969 Memorandum, attached as Exhibit 16. CVSCO ultimately paid the Estate interest accrued on the purchase price after March 20, 1969, in an apparent effort to make the sale effective as of that date.

On or about November 5, 1969, the executors met in their capacity as the board of CVSCO and discussed the preliminary Morgan Stanley report:

> Mr. Greenberg expressed the strong view that [the $25-30 million in AIG stock then expected to be received by CVSCO] 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 . . . through borrowing or otherwise, to undertake new projects.

Exhibit 4. In accordance with Mr. Greenberg's view, the "windfall" was withheld from the Estate.[17]

Indeed, there was no discussion at the meeting of the fact that, in addition to the CVSCO directors, the Estate had a 24% interest in the expected "windfall" and in any ongoing businesses retained by CVSCO. Nor was there any apparent consideration of Mr. Starr's "earnest hope and wish," expressed in his Will, that his 24% interest be offered to CVSCO "at

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[17] The "windfall" did not include significant assets that Mr. Greenberg and the other executors were planning to retain in CVSCO after the June 1970 Transaction. At the November 5, 1969 meeting, the executors also discussed the fact that the sale of CVSCO's assets to AIG would not include certain businesses that Mr. Greenberg expected would produce annual net income of between $550,000 and $800,000. Exhibit 4.

the current market price." Finally, it appears that there was no discussion of: (1) the fiduciary duties that Mr. Greenberg and each of the other CVSCO directors owed, as executors, to the Estate and, as Foundation directors and members, to the Foundation to obtain the best available sale price for the Estate's 24% interest, or (2) the conflict of interest that these duties created.

CVSCO ultimately completed its sale of assets to AIG in June 1970, receiving 283,200 shares of AIG stock worth approximately $20 million based on AIG's share price at the time, an amount that Morgan Stanley determined was "fair and reasonable" for AIG's shareholders. May 29, 1970 Morgan Stanley Letter, attached as Exhibit 6. Approximately a quarter of this value was attributable to the shares of CVSCO stock purchased from the Estate. If the Estate had received simply its 24% share of the AIG stock without any additional compensation for the assets CVSCO retained, those shares alone would have been worth approximately $5 million in 1970 and would be worth approximately $750 million today after taking into account applicable stock splits and dividends.[18] By contrast, the $1.08 million in cash that the Estate received for its CVSCO shares is only worth approximately $19 million today.[19]

C. The SICO Transaction

The third sale of undervalued assets involved the Estate's shares of SICO stock. Upon Mr. Starr's death, the Estate held a 20% interest in SICO. In contrast to the Far East and CVSCO shares, the Estate continued to hold an interest in SICO even after the June 1970 Transaction.

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[18] If the Estate had received its proportional share of the AIG shares paid to CVSCO in the June 1970 transaction, it would have received 67,968 AIG shares. Those AIG shares, through splits and stock dividends, would have grown to 11,345,328 shares of AIG today, which at close of business on December 9, 2005 would be worth $749,018,555. This calculation does not take into account any assets and liabilities that remained in CVSCO after the June 1970 Transaction.

[19] Calculated using a blended rate of the historical 30-year Treasury Note, 10-Year Treasury Note, and Prime Rates as provided by the Federal Reserve.

Upon completion of the Transaction, SICO held more than $100 million in stock. In September 1970, the executors sold the Estate's 20% interest in SICO back to SICO (which they owned and controlled) **for only $3,000**.

Mr. Starr acquired 10 shares of SICO in October 1967 and an additional 20 in July 1968, just days before he made his final Will. As discussed above, in that Will, Mr. Starr expressed his wish that his SICO shares would be offered back to SICO "at the current market price."

The SICO Articles of Incorporation include a 90-day window during which SICO had the right to purchase a deceased holder's shares at subscription price:

> The 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, payable against surrender at said office of the corresponding stock certificate or certificates duly assigned.

SICO Articles of Incorporation, attached as Exhibit 17, Article III, Sub-Section (C)(c). There is no evidence that the executors, acting in their capacity as SICO directors, took any action to repurchase the Estate's shares within 90 days of Mr. Starr's death. Indeed, the executors sought to register Mr. Starr's shares in the name of the Estate on April 11, 1969, after the 90-day period had run. April 11, 1969 Letter, attached as Exhibit 18. When SICO refused this request, citing Article III, Sub-Section(C)(c), counsel for the Estate offered to sell the shares back to SICO.[20]

[20] It is unclear why Article III, Sub-Section(C)(c) would be a basis for refusing to re-register the shares because the 90-day window after Mr. Starr's death already had passed. It bears mention that this exchange of letters was between two lawyers in the same law firm – one of them purported to represent the Estate, and the other purported to represent SICO. One of the executors, Robert Mulderig, was a name partner in that law firm.

April 21, 1969 Letter, attached as Exhibit 19. This offer apparently triggered a right-of-first-refusal provision contained in the SICO Articles of Incorporation:

> 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 have been offered to the Corporation at Subscription price plus accumulated dividends, payable against surrender of the corresponding stock certificate, duly assigned, at the offices of the Secretary of the Corporation, and such offer shall have gone unaccepted for ninety (90) days.

SICO Articles of Incorporation, attached as Exhibit 17, Article III, Sub-Section (C)(b).[21] SICO did not respond to this offer within 90 days. Therefore, the shares became freely transferrable by the Estate as of July 21, 1969. Of course, because the executors controlled SICO, they were free to amend any of the requirements in the Articles of Incorporation at any time and give the Estate its proportional share of the value they themselves received when SICO sold its assets to AIG in the June 1970 Transaction.

In any case, the shares remained a part of the Estate until after the June 1970 Transaction was completed. Then, in September 1970, the executors inexplicably sold the Estate's freely transferrable shares back to SICO for the subscription price of $3,000.

As a result of this transaction, the executors deprived the Estate, and therefore the Foundation, of the opportunity to receive any portion of the enormous "windfall" profit that the executors garnered for SICO in the June 1970 Transaction, even though the Estate held a 20%

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[21] The April 21 letter asks for SICO to buy back the Estate's shares at subscription price, as contemplated by Article III, Sub-Section (C)(b) above, but cites Sub-Section (C)(c).

interest in SICO at the time. Had the Estate received the Estate's proportional share of the stock paid to SICO for SICO's assets, that stock would be worth approximately $4.3 billion today.[22]

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In sum, the executors sold the Estate's holdings in Far East, CVSCO and SICO for a total of approximately $2 million at a time when the executors knew that they themselves could obtain over $30 million in stock for those same holdings from AIG. If the Estate had received that stock, it would now be worth more than $6 billion.

III. Deceptive Statements to the Surrogate's Court

The executors submitted a Petition on Final Account of Executors in the Surrogate's Court dated November 30, 1978 (the "Petition," attached as Exhibit 20) which was sworn to by Mr. Greenberg. In addition, Mr. Greenberg in his Affidavit of Accounting Party, made the sworn statement that he did not "know of any matter or thing relating to the estate of deceased omitted [from the accounting] to the prejudice of the rights of any creditors or of any person interested in the estate . . . ." November 30, 1978 Affidavit, attached as Exhibit 24. The Petition misrepresented – in part because of material omissions – the three transactions discussed above. The Surrogate's Court issued a Final Decree accepting Mr. Greenberg's accounting on April 19, 1979, and the Attorney General, who by statute represented the ultimate charitable beneficiaries of the Foundation, did not object.

[22] If the Estate had received its proportional share of the AIRCO shares paid to SICO in the June 1970 transaction, it would have received 211,645 AIRCO shares. Those AIRCO shares, through splits and stock dividends, would have grown to 1,322,780 shares by September 20, 1978. On September 20, 1978, those shares in turn would have been exchanged for 1,455,058 shares of AIG when those two companies merged. The 1,455,058 AIG shares, through splits and stock dividends, would have grown to 64,742,256 shares of AIG today, which at close of business on December 9, 2005 would be worth $4,274,283,715. This calculation does not take into account any assets and liabilities that remained in SICO after the June 1970 Transaction.

The law firm of Sullivan & Cromwell represented the executors in the final accounting proceeding and drafted the Petition. Sullivan & Cromwell also had represented AIG in the June 1970 Transaction, as well as the Estate in related tax proceedings. And although Sullivan & Cromwell filed a Notice of Appearance (attached as Exhibit 21) on behalf of the Foundation in the final accounting proceeding for the Estate, the law firm made no substantive submission to the Court on behalf of the Foundation.

Because the Foundation was dominated by the executors and was represented by the same law firm that represented the executors, the Foundation had no independent advocate in the Surrogate's Court proceedings. The Foundation raised no objections and made no filings during the proceedings.[23]

The Petition states that the executors believed that the sales of securities by the Estate met an Internal Revenue Service requirement that the Estate receive "fair market value." The Petition explained that Section 4941 of the Internal Revenue Code required that no asset held by an Estate and ultimately for the benefit of a charitable foundation could be sold to a "disqualified person" unless the Estate received "fair market value" for the asset and the transaction was "approved by the probate court having jurisdiction over the Estate." Exhibit 20, p.9. The Petition recognized that CVSCO and SICO were "disqualified persons" under the tax code

[23] A recent case illustrates circumstances where an estate or trust is bound by having failed to object to an accounting. In re Hunter, 4 N.Y.3d 260 (2005). In contrast to the situation in Hunter, however, here the executors failed to disclose material facts related to the accounting. Neither the executors' accounting nor Mr. Greenberg's petition seeking Surrogate's Court approval of the accounting disclosed the Morgan Stanley fairness opinion or the fact that around the time of the Estate's sale of Far East, CVSCO and SICO shares, CVSCO and SICO realized enormous "windfall" profits by selling their assets to AIG. These nondisclosures alone would be a sufficient basis to vacate the Surrogate's Court decree approving the accounting in the Starr Estate. Furthermore, from the time of Mr. Starr's death through the present day, The Starr Foundation has been under the domination and control of Mr. Greenberg and his business colleagues. The Foundation thus never enjoyed the ability, as an independent actor, to protect its interests, which were decidedly different from Mr. Greenberg's. Moreover, at the time of the settlement of the accounting in the Starr Estate, the Foundation did not have benefit of the advice of independent counsel.

because of the close relationship among Mr. Starr, CVSCO, SICO and the Foundation. Exhibit 20, p.8. The Petition went on to state that "the Executors believe[d] the transactions were necessary and in the best interests of the Foundation . . . ." Exhibit 20, pp. 9-10.

As discussed above, the Estate's sales of Far East, CVSCO and SICO shares occurred during 1969 and 1970 as CVSCO and SICO were in the process of selling their major business assets to AIG at an enormous profit. Mr. Greenberg and the other executors, however, prevented the Estate from participating in this profit by selling the Estate's Far East, CVSCO and SICO shares to CVSCO and SICO at prices that did not take into account the value that the executors themselves realized when CVSCO and SICO sold their assets to AIG in the June 1970 Transaction. Under these circumstances, the Petition's representations that the sales reflected "fair market value" and were made "in the best interests of the Estate and Foundation" were false and misleading.

The Petition contains a deceptive discussion of each of the Estate's sales of shares to CVSCO and SICO: (1) the sale of Far East shares for book value; (2) the sale of CVSCO shares for adjusted book value; and (3) the sale of SICO shares for the subscription price.

A. Deceptive Statements about the Far East Sale

The Petition stated that the executors decided to sell Mr. Starr's 48% stake in Far East to SICO because he "had stated during his lifetime a desire that on his death his stock be sold to [SICO]." Exhibit 20, p.14. The Petition further states that the executors decided to sell the Far East shares "at their fair market value" of just over $1 million on October 8, 1969, based on the preliminary appraisal conducted by the Hong Kong auditors who determined that "[b]ecause of

the uncertain business prospects and erratic past earnings of the company . . . net asset value [i.e., book value] was the best measurement of fair value." Exhibit 20, p.15.

The Petition failed to disclose to the Court and the Attorney General that Far East's insurance operations had earned yearly profits of $849,000 and $934,000 in 1967 and 1968 respectively, and that Morgan Stanley had used these earnings numbers and an estimate of $827,000 in earnings for 1969 in its analysis of SICO's value. Exhibit 5. In fact, on April 13, 1979, "in response to questions raised by [the Attorney General] concerning the accounting," the Estate's Sullivan & Cromwell lawyers sent the Attorney General "[t]he audited financial statement for [Far East] for the year ended December 31, 1968." In contrast to the figures used by Morgan Stanley in its February 1970 fairness opinion, the financial statement submitted by the Estate appears to show Far East's insurance operations **losing** approximately $112,000 in 1968. April 13, 1979 Letter, attached as Exhibit 22.

The Petition also failed to disclose to either the Court or the Attorney General that Far East's assets were included in the June 1970 Transaction. As discussed above, 11.5% of the stock received by SICO in that transaction was attributable to Far East; if the Estate had received its proportional share of that stock for Far East's business assets in the June 1970 Transaction, that stock would be worth almost $1.2 billion today after taking into account applicable stock splits and dividends.

In reviewing the Petition, the Surrogate's Court and the Attorney General were entitled to rely on Mr. Greenberg's sworn statements about the value of Far East. Mr. Greenberg failed to disclose that he and the other executors knew the value of Far East was many times its book value when the Estate's shares were sold to SICO. Mr. Greenberg also failed to disclose

that, at the time of the Estate's sale, he and the other executors planned to sell Far East's assets to AIG for many times Far East's "book value," and that they had completed the sale a few months later.

Finally, and most significantly for present purposes, the Foundation was not independently represented in the Surrogate's Court proceeding and effectively had no opportunity to object to the final accounting.

B. Deceptive Statements about the CVSCO Transaction

In discussing the sale of CVSCO, Mr. Greenberg cited CVSCO's Certificate of Incorporation:

> 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.

Petition, attached as Exhibit 20, p.12. Mr. Greenberg then swore that because CVSCO was 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." Exhibit 20. The "fair market value" listed for the Estate's 24% interest in CVSCO on Schedule B to the Petition is $1,080,000. Exhibit 23.

Although it is true that there was no public market for CVSCO's stock, the executors knew that the book value greatly understated the company's actual value as they had measured it. 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; (2) Morgan Stanley had provided that preliminary report to each of the executors, in their capacity as AIG directors, before the sale; and (3) that

CVSCO ultimately received AIG stock in the June 1970 Transaction worth approximately $20 million, based on AIG's share price at the time.

In reviewing the Petition, the Surrogate's Court and the Attorney General were entitled to rely on Mr. Greenberg's sworn statements about the value of the Estate's CVSCO shares. Mr. Greenberg, however, failed to disclose the critical facts discussed above to the Court and the Attorney General. Again, the Foundation was not independently represented in the Surrogate's Court proceeding and effectively had no opportunity to object to the final accounting.

C. Deceptive Statements about the SICO Sale

The Petition's discussion of the Estate's sale of its 20% interest in SICO for a mere $3,000 cited SICO's Articles of Incorporation: "Under Sub-section (C)(c) of Article III of [SICO's] Articles of Incorporation the estate of a deceased share-holder was obligated to sell his shares back to the corporation at subscription price . . . ." Exhibit 20, p.16. This sentence omits mention of the window of time during which such sales must take place. The actual language of the Articles of Incorporation, as discussed above, requires the corporation to purchase the shares within 90 days of the holder's death in order to get this low price:

> The 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, payable against surrender at said office of the corresponding stock certificate or certificates duly assigned.

SICO Articles of Incorporation, attached as Exhibit 17, Sub-Section(C)(c).[24]

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[24] A copy of the SICO Articles of Incorporation was attached to the Petition.

The Petition stated that the Estate's SICO 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." Exhibit 20, p.16. This statement creates the impression that SICO complied with its Articles of Incorporation and purchased, or at least offered to purchase, the shares within 90 days of Mr. Starr's death. Documents recently produced to the Attorney General, however, reveal that the statement in the Petition was misleading: SICO took no action whatsoever to repurchase the shares within 90 days of Mr. Starr's death.

In fact, it was not until April 21, 1969 – after the 90 days had run – that the Estate first offered its shares to SICO for repurchase. From that point (April 21), SICO had 90 days to repurchase the shares under the right-of-first-refusal provision, Sub-Section (C)(b) of its Articles of Incorporation. There is no evidence that SICO acted within this 90-day period either, and the shares apparently became freely transferrable on or about July 21, 1969. Thus, nothing required the Estate to sell its shares back to SICO at the $3,000 subscription price.

In reviewing the Petition, the Surrogate's Court and the Attorney General were entitled to rely on Mr. Greenberg's sworn statements about the sale of the Estate's SICO shares. Mr. Greenberg, however, failed to disclose the critical facts discussed above to the Court and the Attorney General.

Finally, as in the case of the Far East and CVSCO transactions, the Foundation was not independently represented in the Surrogate's Court proceeding and effectively had no opportunity to object to the final accounting.

IV. The Foundation's Claims Against the Executors Are Not Time-Barred

In a recent submission to this Office, counsel for CVSCO, SICO and the executors of the Estate have argued that statutes of limitations would bar any action based on the accounting rendered by the executors or on the underlying sales of estate property. This is contrary to applicable precedent, statutes and equitable principles.

In Westchester Religious Institute v. Kamerman et al., 262 A.D. 2d 131 (1st Dep't 1999), a not-for-profit corporation sued individuals who had been officers of the corporation for breach of fiduciary duty. The defendants had been officers until August 29, 1990; suit was commenced in January 1996, seeking recovery for actions occurring well before August 29, 1990. The court held that the statutory limitations period of six years did not begin to run until the defendants left their positions of trust and that the statutory period was tolled between the alleged fiduciary misconduct and the date the defendants left the corporation.

This holding was adopted and explained by the Second Circuit in Golden Pacific Bancorp v. FDIC, 273 F.3rd 509, 519 (2d Cir. 2001): "The reason for such a tolling rule is that the beneficiary should be entitled to rely upon a fiduciary's skill without the necessity of interrupting a continuous relationship of trust and confidence by instituting suit." Under this rule, the fact that Mr. Greenberg and the surviving executors have been members and directors of the Foundation since Mr. Starr's death in 1968 tolls any relevant statute of limitations.

In any case, motions to reopen a decree of the Surrogate's Court may be made at any time under CPLR 5015 (a)(3), "Relief from judgment or order." This section specifically contemplates the factual situation present here: "The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested party . . .

upon the ground of . . . fraud, misrepresentation, or other misconduct of an adverse party. . . ." No time limit applies to such a motion.

In addition, Section 201(3) of the Surrogate's Court Procedure Act specifically provides that the Surrogate's Court has the power "to exercise full and complete general jurisdiction in law and in equity to administer justice in all matters relating to estates and the affairs of decedents . . . ."

Finally, all equitable considerations favor the Foundation. The facts set forth above will support a motion by the Foundation to set aside the decree granted by the Surrogate's Court. The executors of an estate, the assets of which are dedicated to charity, should not be permitted to abdicate their responsibility to both the estate and the charitable beneficiaries and profit from their position as both buyers and sellers of estate property. Certainly the passage of time is no reason to allow the executors, CVSCO and SICO to retain misappropriated assets.

APPENDIX

Far East Transaction Chronology

December 20, 1968	Cornelius Vander Starr dies. Estate holds 48% of Far East.
January 16, 1969	SICO proposes to purchase Estate's 48% interest in Far East, based on a valuation being performed by Far East's auditors.
July 15, 1969	Far East's auditors issue a preliminary valuation recommending that the shares be valued based on "net asset value" as of 12/31/68.
August 1, 1969	SICO offers to purchase the Estate's 48% interest in Far East based on the "net asset value" set forth in the auditors' preliminary valuation.
October 1, 1969	Executors accept net asset value offer, specifying that delivery will not be deemed complete until final valuation is received.
October 24, 1969	Executors, in their capacity as CVSCO directors, receive preliminary report from Morgan Stanley indicating that SICO businesses should be valued based on past earnings and profitability, rather than "net asset value."
February 19, 1970	Executors, in their capacity as AIG directors, receive Morgan Stanley fairness opinion that SICO assets are worth 1.7 million shares of AIG, at $77.50 per share, or a total of more than $131 million. Because Far East accounts for 11.5% of SICO's earnings, Far East shares are worth approximately $15 million (11.5% of $131 million). Thus, the Estate's 48% interest in Far East is worth approximately $7.2 million (48% of $15 million).
March 6, 1970	Executors complete sale of the Estate's 48% interest in Far East to SICO for only $1 million, rather than $7.2 million.
June 30, 1970	AIG obtains SICO assets (including Far East's assets) in exchange for more than $100 million in stock, 11.5% of which is attributable to Far East.

CVSCO Transaction Chronology

December 20, 1968	Cornelius Vander Starr dies. Estate holds 24% of CVSCO, and Will expresses Starr's desire that shares be offered back to CVSCO at the "current market price."
February 13, 1969	Executors, in their capacity as CVSCO board members, decide to purchase Estate's 24% interest in CVSCO. Value is to be "determined on the basis of the 1968 year-end figures when they become available."
March 13, 1969	Executors, in their capacity as CVSCO board members, enter into a "Letter Agreement re Valuation" committing themselves to using "adjusted book value" as "fair value" for future transactions in CVSCO stock. Agreement purports to be on behalf of "all holders" of CVSCO stock, but the Estate is not a party to the agreement.
October 23, 1969	Greenberg states at CVSCO board meeting that CVSCO should purchase Estate's 24% interest in CVSCO "as soon as possible."
October 24, 1969	Executors, in their capacity as CVSCO board members, receive preliminary report from Morgan Stanley estimating that CVSCO businesses to be sold to AIG are worth $25-30 million. This estimate excludes CVSCO businesses that are not being sold. Thus, Estate's 24% interest in CVSCO is worth at least $6 million to $7.2 million (24% of $25-30 million).
October 31, 1969	Executors, in their capacity as CVSCO board members, set $1.08 million as the purchase price for the Estate's 24% interest in CVSCO.
November 5, 1969	Executors, in their capacity as CVSCO board members, decide that the expected "windfall" of $25-30 million in AIG stock should not be divided among present or future shareholders of CVSCO. Executors subsequently sell the Estate's 24% interest in CVSCO for $1.08 million plus interest from March 20, 1969.
June 30, 1970	CVSCO completes the sale of a portion of its assets to AIG, receiving 283,200 shares of AIG stock worth approximately $20 million. Estate's 24% interest would have been worth approximately $5 million.

SICO Transaction Chronology

December 20, 1968	Cornelius Vander Starr dies. Estate holds 20% of SICO, and Will expresses Starr's desire that shares be offered back to SICO at the "current market price."
	SICO Articles of Incorporation provide that SICO has the right, within 90 days after the death of a shareholder, to purchase the shareholder's shares "at the subscription price plus accumulated dividends."
March 20, 1969	SICO fails to exercise its repurchase rights prior to expiration of 90-day period.
April 11, 1969	Executors seek to register Estate's shares in the name of the Estate. SICO refuses this request.
April 21, 1969	Estate's counsel offers to sell Estate's 20% interest to SICO.
	SICO Articles of Incorporation prohibit sale of SICO shares without SICO's consent unless shares have first been offered to SICO and "such offer shall have gone unaccepted for ninety (90) days."
July 21, 1969	SICO fails to accept the Estate's offer to sell its SICO shares prior to the expiration of the 90-day period.
June 30, 1970	AIG obtains SICO assets in exchange for more than $100 million in stock.
September 1970	Executors sell the Estate's 20% interest in SICO to SICO for only $3,000.