From: Lesley Groff <[redacted]
Sent: Friday, May 31, 2013 3:31 PM
To: Epstein Jeffrey
Subject: Fwd: MBZ Estate Plan Comments

Sent from my iPhone
=br>Begin forwarded message:

=rom: Kristofer Knutson <[redacted]<mailto:[redacted]m> >
Date: May 31, 2013 10:=8:01 AM EDT
To: "Lesley Groff[redacted]mailto:l[redacted]>)" < <mailto:l[redacted]
Subject: FW: MBZ Estate Plan Comm=nts

Hi Lesley,

This is the response em=il from Bingham regarding the comments presented by Arnold & Porter.&nb=p;

Best,

Kris

Kristofer Knutson=/b>
Managing Director | Executive Management -=Office of the Chairman
US News & World Report | New York Daily News

[redacted]

From: Mair, Geo=ge P. [redacted]
Sent: Friday, April 12, 2013 1:11 PM
To: Kristofer Knutson
Cc: Ehrlich, M. Gordon
Subject: RE: MBZ Estate Plan Comments

&nb=p; My responses are noted in black belo=.

&nb=p; &=bsp; = &nb=p; --gpm

From: Kristofer=Knutson [redacted]
Sent: Thursday, November 08, 2012 2:09 PM
To: Ehrlich, M. Gordon; Griffith, Aileen M.
Cc: Mair, George P.
Subject: MBZ Estate Plan Comments

Hi Bud,

I have attached two separ=te lists of comments prepared by Arnold and Porter, having reviewed MBZ=99s estate planning documents. The first list contains comments and s=ggestions relation to language, typos, and other technical items. The second list contains more substantive obse=vations.

Best,

Kris

Technical Comment=:

1. =nbsp; The parenthetical in Section B of Artic=e First of the Will should be amended to read "(other than works of=art or antiques and other than any items effectively disposed of by Article=Second, Section A)."

2. =nbsp; Article III, Section A, Paragraph 3 of t=e Trust should include all monetary sums written out in full.

3. =nbsp; See Sections A and B of Article Third.&=bsp; Should the phrase “upon the trusts therein set forth” b= changed to read “upon the terms of the trusts therein set forth=80?

4. =nbsp; The word “any” should b= removed from the first line of Section A of Article V.

5. =nbsp; The second sentence of Section B of Art=cle V should be amended to read “To the extent Abigail shall fail t= exercise such power effectively, my Trustees shall allocate....=9D

6. =nbsp; The conjunction at the end of Section A=of Article VI should be changed from “or” to “and.=80

7. =nbsp; The word “Million” shou=d be inserted after the word “Two” in the first sentence of=Article VII.

8. =nbsp; The second sentence of Section A of Art=cle XI should read “In addition, my Trustees shall pay to such one o= more of the Beneficiary and the Beneficiary’s issue....=9D

9. =nbsp; See Section G of Article XXII. Wh=t are “accountees”?

Items 1 through 8 have been done/fixed. In response t= item 9, the term “accountees” is defined in Article XXI. I=suppose it would be neater if it was included in the definitions at the end= but the defined term is only used once. Normally, the place where it is used comes shortly after the definition. There's a gr=ater separation here because of the complicated set of trustee provisions.<=p>

Substantive Comme=ts:

1. The letter from Bud Ehrli=h dated May 23, 2012, suggests that MBZ intends that the New York residence= being left to Abigail are to be sold after MBZ’s death. Is t=is correct? Why bequeath the property if it is the intention that such property be sold?

The arrangement is set up to avoid a poten=ial argument that the provision for sale violates the separation agreement,=which requires a bequest/devise of the real estate to Abigail or a trust for her benefit. If there is going to be a sale, as we a=ticipate, the cleanest way would be to have a sale by the executor, but the=separation agreement does not specifically allow that. There is no prohibit=on on a sale by the trustee of Abigail's trust, so this is set up to allow the executor to make the sal=, if so directed by the trustee, on the theory that it is then de facto a s=le by the trustee for purposes of the separation agreement.

2. Various requirements of t=e Separation Agreement (including disposition of real property) are set for=h in the Will rather than the revocable trust, which means that such dispos=tions will be of public record upon MBZ’s death. Why not make a Statement in the Will statin= that MBZ hereby bequeaths property in compliance with the required provisi=ns of the Separation Agreement the details of which are set forth in the re=ocable trust?

I have moved the provision for satisfying the mortgag= and the specific references to the separation agreement to the trust. With=ut some effort (e.g., using an LLC to hold title), the actual transfer of t=e property to Marla would be a matter of public record in any case, and I think it's cleanest just to have=it in the will. It's already a matter of public record that Mort owns the p=operty, and there is presumably no big secret about who actually uses it. I=have also added a reference that I hope is correct to the specific property (4 Three Mile Harbor Drive,=East Hampton, New York), based on the real estate listed in the performance=reports.

3. There does not appear to b= any disposition made for specific works of art in the new Will - have thos= intentions been abandoned?

Bud has discussed this with Mort, and he d=es not want to leave any of the art to the girls.

4. =nbsp; Article I of the Trust should include a= authorization to make payments during MBZ's incapacity as may be r=quired pursuant to the terms of the Separation Agreement.

Done.

5. =nbsp; Article V of the Trust provides for dis=ribution to Abigail of the amount required under 5.F of the Agreement, less="the value of any other property passing to or held for the benefit=of Abigail that constitutes full or partial satisfaction of [his] obligation under the Separation Agreement to leave su=h amount to Abigail." This provision should be clarified, con=istent with the language of the Agreement, to provide that the distribution=takes into account amounts passing to Abigail by "Will, by beneficiary designation or otherwise, including one or=more trusts created during [MBZ's] lifetime."

Done.

6. =nbsp; Consider discretionary distributions fo= descendants of nieces and nephews. As currently drafted under Articl= XII, Section B, trustees must distribute to beneficiaries such sums as the= may request, meaning that the trust assets are not protected from claims by a beneficiary's creditors.<=span>

I don't recall all of the history, but Art=cle XII would only take effect if a niece or nephew predeceased Mort, and i='s only intended to hold the property until the beneficiary comes of age (defined here as age 30). There's no real intent to create a m=re expansive trust arrangement for those contingent beneficiaries.</=>

7. =nbsp; Consider changing the Rule Against Perp=tuities in Section D of Article XVI to the maximum extent allowed under law= Although Massachusetts has not currently repealed its rule against p=rpetuities, it is possible that such legislation could be enacted in the future. It would be preferable to=allow the trusts to continue for the maximum extent permitted by law.

I don't think any meaning could be determi=ed if the trust just referred to the maximum extent allowed by law. However= I have added a provision allowing the trustees to amend the perpetuities provision as long as the amendment does not violate any ap=licable rule against perpetuities. I don't think it's much of an issue in a=y event because Abigail and Renee could effectively modify the perpetuities=limitation to the extent allowed by law by exercising their powers of appointment.

8. =nbsp; Article XXII addresses incapacity of a t=ustee, but does not contain provisions for reinstatement of a formerly inca=acitated trustee.

I suppose a trustee who regains capacity c=uld be reappointed. Otherwise, I don't see any real point to trying to addr=ss this issue. How do you determine whether someone has regained capacity? What if there is disagreement on that issue? It's ba= enough if you need to address those issues to get rid of a trustee, but th=re's no need to make it worse by leaving the issues on the table for the fu=ure.

9. =nbsp; The term “by right of represent=tion” should be defined in Article XXV.

I have adde= a definition that references New York intestacy law. The underlying issue t=at is lurking here really only arises if the person whose issue are being determined is predeceased by all of his or her own children= The issue then becomes whether the allocation among the grandchildren is d=ne by individual or by family line. FWIW, the New York intestacy statute us=s the same language ("by representation") without actually saying what it means, but my understanding is that the all=cation is by family, e.g., if there were two children, each child's family g=ts half, regardless of the number of grandchildren in each family (Massachu=etts intestacy law is different in that regard, but it does not use the same terminology in that context). A=ain, even if the issue would otherwise arise, Abigail and Renee could overr=de that provision through their powers of appointment.

10. Consider adding the following: decantin=/change of situs provisions, spendthrift clause, confidentiality provisions= no contest clause and savings clause.

There is al=eady a spendthrift clause in Paragraph C of Article XVI. In its current for=, the trust would be governed by New York law, so the New York decanting statute would apply. That statute could presumably be us=d to change the situs, and I'm not sure it's worth the effort to go beyond t=at. I doubt we could do anything about confidentiality, etc., with respect t= Marla beyond whatever is already in the separation agreement, and I don't see a great need to deal w=th those issues with respect to Abigail and Renee.

11. Because the Management Trust is being r=voked and the revocable trust being created (rather than an amended and res=ated Management Trust), there may be significant complications related to a=set titling.

I agree in p=inciple, but I am not aware of any assets that are titled in the name of th= Management Trust. If there are, this issue might be worth some consideration, although I think it would still be cleaner to hav= a new trust unless it would be a real effort to retitle assets. The revoca=ion document also includes a fix providing for a transfer of any assets in t=e Management Trust, if it turned out there was something titled there that had not been retitled.

12. The Will and Trust both contain specifi= dollar amounts as limits on compensation for various individuals. Co=sider providing that such amounts are to be adjusted by inflation.</=>

The dollar limitations only apply to the e=tate administration, not to any ongoing trust administration, so it would p=esumably be a relatively short period of time. Mort could always change the figure if he decided to do so. I'm not sure it's wo=th the effort to address the issue further.

FWIW, I had=included an inflation adjustment in a prior administrative amendment that s=ts the compensation for the trustees of the existing trusts, but it got taken out. Under that amendment, a change in the compensation fo= those trusts requires either Mort's consent during his lifetime or=the consent of a majority of the adult beneficiaries following his death (o= of guardians for minor beneficiaries, if there are no adult beneficiaries). =/span>

13. Are the Administrative Amendments to th= Trusts effective to change the situs of the Trusts for both procedural and=substantive matters?

In this par=icular case, the administrative amendments are undoing a prior set of admin=strative amendments that changed the governing law from Massachusetts to New York. At one point, we thought it would be desirable t= have New York law apply. Since we're returning to the status quo, the admi=istrative amendments should be fully effective.

10. Although not required, it may be prefer=ble for the Health Care Proxy and Living Will to follow the New York statut=ry form.

The health c=re proxy follows the statutory form in § 2981(5)(d) of the Public Heal=h Law. My understanding is that there is no statutory form of living will in New York. The documents were also reviewed by a New York l=w firm.

11. The Health Care Proxy does not make any=reference to HIPAA or appointment of a personal representative under HIPAA.=/span>

I have no s=rious objection to including HIPAA language but, under the HIPAA regulation=, the holder of a health care proxy automatically qualifies as a personal representative of a person who is unable to make decisions ab=ut medical care. FWIW, the standard form of health care proxy that has been=adopted by a consortium of hospitals in

Massachusetts makes no reference to=HIPAA, so the people in the industry don't seem to care if the language is there or not, at least in Ma=sachusetts. The language is also not part of the New York statutory form re=erred to above.

14. The Financial Power of Attorney creates=a springing power, which requires proof of incapacity before the document g=es into effect. Consider drafting the power to be effective immediate=y, as this prevents the need from proving incapacity at a future time.

I do not ge=erally recommend springing powers, but I discussed this point with Bud and h= said to do it that way.

15. Do the initials noted in the Financial P=wer of Attorney Gift Rider indica

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