

Exhibit

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SURROGATE'S COURT
COUNTY OF NEW YORK

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In the Matter of the Settlement of
the First and Final Account of
Proceedings of _____ and
_____, as Executors,
and
_____, as Executors of the
Estate of
Deceased Executor, of the Estate of

File No.

REPORT OF
GUARDIAN AD LITEM

Deceased.

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TO THE SURROGATE'S COURT OF THE COUNTY OF NEW YORK:

_____, having by an order of the Honorable
Renee R. Roth entered August 5, 1985 been appointed the guardian ad
litem of _____ and
_____, all of whom are infants, for the purpose of
protecting their interests in this proceeding, respectfully reports:

FIRST: I duly qualified as guardian ad litem of the above
named infants as required by SCPA 404.

SECOND: Interest of my wards: My wards are the
grandnieces and grandnephews of decedent. Each of them is a
contingent remainderman of the trust of 50% of the residuary estate
established under Article Fifth of decedent's will and a permissive
recipient of income and principal and a presumptive remainderman of
the trust of 50% of the residuary estate established under Article
Sixth of the will.

THIRD: Jurisdiction: The respective dates of birth of my
wards are as follows: _____, October 3, 1982;
_____, December 2, 1977; _____ September 22, 1980;
and _____, February 18, 1985. Inasmuch as each of my

wards is under the age of 14 years, the proper method of service is upon the parent with whom each of them resides [SCPA 307(3)]. The affidavit of service of _____ sworn to July 15, 1985 indicates that my ward, _____, was duly served by mail on June 26, 1985, a true copy of the citation to her mother _____, with whom she resides at _____ Hoboken, N.J. 07030 and that my other wards were duly served by mail, on either June 26, 1985 or June 27, 1985 a true copy of the citation to their mother, _____, with whom they reside at _____, Marlboro, N.J. 07746. The affidavits of service of _____ sworn to July 12, 1985, _____ sworn to July 12, 1985,

_____ sworn to July 15, 1985 and the adoption of schedules and waiver and consent of the executors of the estate of _____ sworn to June 6, 1985 appear to indicate that all of the other necessary parties were duly served with process and jurisdiction has been obtained over all of the necessary parties.

FOURTH: Nature of the proceeding: This is a first and final accounting proceeding for the executors encompassing the period from the date of decedent's death, January 20, 1982 to December 31, 1984. However, in essence, there are three different accounting periods because one of the original executors died and a successor replaced him. Decedent's will was admitted to probate on March 2, 1982 and on the following day letters testamentary and letters of trusteeship issued to _____ and _____. They served as co-fiduciaries until the death of _____ on October 9, 1982. In accordance with the provisions of Article Fifteenth of the will, on November 9, 1982 _____ was appointed as a co-executor and a co-trustee in place and stead of the deceased

co-fiduciary. This "triple" accounting period is most significant from the point of view of the computation of commissions.

THE ACCOUNT

FIFTH: Schedule A: This schedule reflects that the executors collected assets which had an inventory value as of the date of decedent's death of \$1,137,783.72. Each of the assets except those which do pass by operation of law [\$95,190.96 in life insurance proceeds did pass by operation of law to designated beneficiaries and \$79,375.24 representing proceeds passing by operation of law to surviving joint tenant of bank account pursuant to Banking Law § 675] and was reported in the United States estate tax return (form 706) properly appear in Schedule A at the same value as they were listed in the 706. It is noted that this schedule reports modest refunds received for 1982 federal and state income taxes which do not appear in the 706 but it does not appear that it should be necessary for the executors to take any further action with regard to this item. Accordingly, it does not appear that there is any basis to interpose any objections relative to Schedule A.

SIXTH: Schedule A-1: This schedule reports the sale of four different securities, the proceeds of which exceeded the inventory value by \$51,732.79. The most significant item appearing in this schedule was the sale on November 5, 1982 of 25,277 shares of common for \$252,770.00 which represented an increase of \$43,286.86 over inventory value. Considering that between 20 and 25% of the total value of the estate was in this one asset it appeared prudent to expeditiously liquidate it and the price received was reasonable in light of the large number of shares

involved and the thin trading of the issue. Accordingly, it does not appear that there is any basis to interpose any objection to this schedule.

SEVENTH: Schedule B: This schedule reports a decrease of \$3,647.62 due to sales, liquidation, collection, distribution or uncollectibility of assets. Actually all of the items which are listed in this three page schedule, with the exception of the sale of 840 shares of AT&T for \$45,544.88 on May 12, 1982, represents a collection of an asset at neither a gain nor loss in principal. Inasmuch as investments are not to be judged with the wisdom of hindsight and it appears to have been within the perimeters of a prudent exercise of discretion to have expeditiously liquidated this asset, it does not appear appropriate to interpose an objection merely because the proceeds were \$3,647.62 less than the inventory value.

EIGHTH: Schedule C: This schedule reports funeral and administration expenses of \$513,944.81 chargeable to principal. The reported funeral expenses of \$4,943.00 appear reasonable and is the same amount as is reported in the 706. Similarly numerous modest administration expenses reported in the schedule appear reasonable and are in accord with the figures reported in the 706. The schedule reports a payment of \$55,681.88 to

for legal fees and disbursements, including a payment of \$1,850.00 on December 31, 1984 representing "balance of disbursements and amount estimated through the termination of the estate." Considering the criteria set forth in Matter of Freeman, 34 N Y 2d 1, 9, the legal fee paid appears to be reasonable for the services rendered and does not appear to be the appropriate subject matter for

an objection. The schedule also reports the principal portion of federal and state income taxes for 1982 and 1983 as well as the federal and state estate taxes paid. Basically, and if one is not to quibble over small items, all of the tax returns appear to have been properly prepared and the correct amount of taxes paid. As noted on the schedule, there is a refund of \$2,572.50 due to the estate from Internal Revenue Service as a result of an initial overpayment of federal estate taxes. This decrease in the tax flows from the executors' having increased the deduction for executors' commissions from \$75,000.00 to \$82,028.71 or by \$7,028.71.

NINTH: Schedule C-1: This schedule reports unpaid administration expenses totaling \$93,539.43, comprised of \$85,677.61 in principal commissions and \$7,861.82 in income commissions. It is my opinion that these commissions should be reduced by at least the sum of \$3,648.90. My reasons for this conclusion shall be set forth at length in paragraph TWENTIETH of this report relating to Schedule J of the account. Moreover, as noted in the Summary of the account, there will be expenses of this account which will be proper. Clearly, my fee for services rendered as guardian ad litem will be one of those expenses.

TENTH: Schedule D: This schedule reports creditors' claims totaling \$3,003.67. These payments were for services rendered by a medical laboratory and for gift taxes for the years 1977 - 1981 and they appear to be just obligations of the estate.

ELEVENTH: Schedule E: This schedule reports that distributions of principal totaling \$422,446.88 have been made. Decedent's tangible personal property has been distributed to his sisters as provided in Article Second of the will. Decedent's

sister, _____, is bequeathed \$100,000.00 under Article Third (A) of the will. However, Article Seventeenth of the will provides that any gift made in Article Third should be reduced by the amount such legatee receives as the surviving joint tenant of funds deposited in the name of decedent and such legatee as joint tenants with right of survivorship or which such legatee receives as the beneficiary of a totten trust bank account established by decedent.

_____ received \$79,375.24 as the surviving joint tenant of a joint account. Therefore, her bequest under Article Third(A) is reduced to \$20,624.76. This schedule reflects that the sum of \$18,207.26 has been paid in partial satisfaction of this bequest. The sum of \$88,278.66 has been paid to decedent's sister, _____ in partil satisfaction of her \$100,000.00 legacy under Article Third (B) of the will. Each of decedent's four nieces or nephews who receive a \$75,000.00 leagacy under Article Third of the will has been paid the sum of \$66,208.99 in partial satisfaction of his or her bequest. It is noted that a portion of each of the aforesaid partial payment of legacies consisted of an assignment of a portion of a promissory note of _____. Inasmuch as the note was assigned for its face value plus accrued interest thereon, no objection is being interposed to this partial payment in kind to the pre-residuary beneficiaries.

§ _____ A partial distribution of \$7,500.00 has been made to the trust established under Article Fifth of decedent's will and of \$42,000.00 to the trust established under Article Sixth. These two trusts each consist of 50% of the residuary estate. The income from the Article Fifth Trust is to be paid in equal shares to decedent's nieces and nephew and the trustees have discretion to pay principal

to decedent's sisters, nieces or nephew and upon the termination of the trust any remaining principal shall be paid to decedent's living nieces and nephew with the share of any predeceased niece or nephew to be paid to his or her then living issue (my wards). The trust shall terminate upon the earlier of the 15th anniversary of decedent's death or the death of decedent's last surviving niece or nephew. Accordingly, my wards interest in this trust is as a contingent remainderman, the contingency being that upon the termination of the trust such ward is living and his or her mother is then deceased. The trustees have the discretion to pay the income from the Article Sixth trust to any one or more of decedent's grandnieces or grandnephews [my wards] or to accumulate the income and add it to principal. The trustees have discretion to pay the principal of this trust to a class consisting of decedent's sisters, grandnieces and grandnephews. Upon the termination of the trust, any remaining principal is to be paid in equal shares to decedent's living grandnieces and grandnephews and in the event any such beneficiary should predecease leaving issue then living his or her share should be paid to such issue. This trust terminates upon the earlier of the twenty-first anniversary of decedent's death or the death of the last survivor of decedent's sisters and nieces and nephews. Consequently, in the exercise of the discretion of the trustees, my wards could presently receive either or both principal or income from this trust and are the presumptive remainderman of the trust. From the foregoing it is obvious that my wards have a greater expectancy from the Article Sixth Trust than the Article Fifth Trust. Therefore, as their guardian ad litem I have no objection that through the period that this schedule accounts for, the Article Sixth

Trust has received a partial distribution which is \$34,500.00 larger than the distribution to the Article Fifth trust.

TWELFTH: Schedule F: This schedule reports the new investments, exchanges and stock distributions. For the most part this schedule consists of a reconciliation of the funds the estate invested in a Dreyfus Money Market Account which appears to have been an appropriate vehicle to invest the cash received from the liquidation of other assets. The one new investment listed is a \$168,513.33 promissory note of . obtained on November 5, 1982 in conjunction with the sale of 25,277 shares of the stock of that corporation on the same date. The acquisition of this promissory note would be the subject of close scrutinization in this report if it appeared that my wards had suffered or could potentially suffer a loss from this acquisition. However, this does not appear to be the case inasmuch as the entire promissory note has been assigned in portions as a partial distribution to the adult beneficiaries of this estate and they have accepted the same at face value plus accrued interest.

THIRTEENTH: Schedule G: This schedule balances with the preceding schedules and reflects that, at the close of the accounting period, the estate had on hand principal assets having an inventory value of \$246,473.53 and a market value of \$279,496.23. It has been verified that these assets were in fact on hand as of December 31, 1984. ✓

FOURTEENTH: Schedule A-2: This schedule reports income collected of \$104,675.53. It appears that all of the income that should have been collected has been collected and considering the assets of the estate at its inception that the estate has earned a ✓

reasonable rate of return.

FIFTEENTH: Schedule C-2: This schedule reports administration expenses of \$10,819.22 chargeable to income. These expenses represent federal and state fiduciary income taxes for the year 1982 and 1983 and are proper charges against income.

SIXTEENTH: Schedule E-1: This schedule reports that distributions of income totaling \$34,769.11 were made to the income beneficiaries of the trust established under Article Fifth of the will. Actually this schedule only reflects income distributions totaling \$34,500.00, the other \$269.11 representing loss of interest to two of the beneficiaries flowing from a late distribution of principal to them. Inasmuch as the income payments from this trust are not discretionary and the total share of the income allocated to this trust for this accounting period exceeds the income distributed, it does not appear that these distributions in any way prejudiced my wards or would be the proper subject for the filing of objections on their behalf.

SEVENTEENTH: Schedule G-1: This schedule reflects income on hand as of the close of the accounting period totaling \$59,090.20 and it balances with the preceding schedules. It has been verified that this balance was actually on hand as of December 31, 1984.

EIGHTEENTH: Schedule H: This schedule appears to contain a complete and accurate statement as to the interested parties.

NINETEENTH: Schedule I: This schedule indicates that all estate taxes are charged against the residuary estate and this appears proper in light of the direction to that effect in Article Fourteenth of the will.

TWENTIETH: Schedule J: This 8 page schedule covers the

computation of commissions and requests a total of \$85,677.61 in principal commissions and a total of \$7,861.82 in income commissions making the combined total of the two \$93,539.43. The computation of commissions is complicated by the death of one of the original executors and a successor appointed in his place and stead which has resulted in the following three different periods upon which the commissions must be computed: the entire accounting period, January 20, 1982 to December 31, 1984 for _____ who served as an executor for this period; the period of January 20, 1982 to October 9, 1982, which represents the period the deceased executor, _____, served as executor to the extent that the compensation payable to his estate is to be governed by statutory commissions; and the period of November 9, 1982 to December 31, 1984 for _____ who served as a successor co-executor for this period.

With regard to the deceased executor, it is a misnomer to say he is entitled to commissions because the extensive authority cited by Surrogate Sobel in Matter of McGrath, 74 Misc 2d 92, clearly holds that a deceased fiduciary is not entitled to commissions as such but is instead entitled to reasonable compensation which may not exceed in any event the amount of commissions as fixed by statute for the period served. This schedule requests the payment of \$20,550.47 in principal commissions to the estate of the deceased fiduciary which is the maximum amount that could be awarded under the rule set forth in Matter of McGrath, supra. There are two reasons why allowing compensation in that amount might be too large in this estate. The deceased executor only served as an executor for seven months and if his estate were to be awarded the full compensation

requested he would be receiving more than one-half of the commissions payable to the executor who served more than three times as long. Secondly, it might be inappropriate to award the full amount of the principal commissions requested for the three different fiduciaries, to wit, the sum of \$85,677.61 inasmuch as in the 706 as amended a deduction of only \$82,028.71 was taken for principal commissions. For all of the above reasons it might be appropriate for the court to reduce the compensation payable to the estate of the deceased fiduciary by \$3,648.90 (\$85,677.61 - \$82,028.71).

It also appears that the computation of the principal receiving commissions of _____ might be slightly off inasmuch as the computation of unrealized gains as shown by Schedule G would have to be computed from November 9, 1982, the date of his appointment rather than January 20, 1982 and it is highly unlikely that his increase would be the same \$33,022.70 as was reported for _____ which was computed on the basis of the inventory value on January 20, 1982. If it is deemed warranted this one aspect of the commission should also be recomputed.

TWENTY FIRST: Schedule K: This schedule is a statement of other pertinent facts and of cash and security reconciliation. This schedule projects that the principal amount available for distribution will be \$140,115.74 and, if there is added to this sum, the \$49,500.00 of principal previously distributed to the two residuary trusts, the total distribution to the residuary trusts will be \$189,615.74. Of course, if principal commissions are reduced by \$3,648.90 as suggested herein, the principal available for distribution would be increased by that amount with one-half of that increased amount payable to each of the residuary trusts. Other than

the issue as to commissions, the account appears to be properly reconciled and the proper distribution of principal assets is evenly divided between the two residuary trusts other than for the sum of \$34,500.00 which is to be distributed to the Article 5 trust and represents the difference between the amount previously distributed to the two trusts.

CONCLUSIONS

The commissions should be reduced by at least \$3,648.90 for the reasons set forth in paragraph Twentieth hereof and in all other respects the account may be judicially settled as submitted.

November , 1985

Respectfully submitted,

Guardian ad Litem