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IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 2011-CA-010897

DIVISION: CV-F

HUGH M. DURDEN, et al., etc.,

Plaintiffs,

v.

ANGELA B. COREY, etc., et al.,

Defendants.

MATTHEW P. DENN, the Attorney General of the State of Delaware,

Counterclaim/Crossclaim Plaintiff,

v.

HUGH M. DURDEN, JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, and WINFRED L. THORNTON, as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased,

Counterclaim Defendants,

and

ANGELA B. COREY, State Attorney in and for the Fourth Judicial Circuit of the State of Florida, THE NEMOURS FOUNDATION, a not-for-profit corporation organized under the laws of Florida, and PAM BONDI, the Attorney General for the State of Florida,

Crossclaim Defendants.

FIRST AMENDED ANSWER, OBJECTIONS AND DEFENSES, AND COUNTERCLAIM AND CROSSCLAIM OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Intervenor/Defendant, Matthew P. Denn, the Attorney General of the State of Delaware (the "Attorney General"), hereby answers the Complaint to Sever and Modify Trust (the "Complaint") filed herein by Trustees, Hugh M. Durden, John S. Lord, Herbert H. Peyton, John F. Porter, III, William T. Thompson, III, and Winfred L. Thornton, as Trustees under the Last Will and Testament, and Codicils thereto, of Alfred I. duPont, Deceased (collectively, the "Trustees"), and says:

1. On information and belief, admitted.

2. Admitted that the Nemours Foundation is a not-for-profit corporation organized under the laws of Florida and receives funds from the Testamentary Trust for the purpose of providing care and treatment to the Testamentary Trust's ultimate beneficiaries, as specified in the Will. The remaining allegations are denied, as the Florida courts have held and the Trustees have agreed that the Delaware Attorney General is the representative of the Delaware beneficiaries of the Trust and is charged with protecting the rights of those beneficiaries.

3. On information and belief, admitted.

4. On information and belief, admitted.

As to Jurisdiction and Venue

5. Admitted that the Complaint purports to seek the severance and modification of an irrevocable trust.

6. On information and belief, admitted.

7. On information and belief, admitted.

As to Summary of the Complaint

8. Admitted.

9. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies those allegations.

10. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust, and that the expressed intent for such severance and modification is to permit the Charitable Trust to have the benefit of exemption from federal taxation, but the Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 10, and therefore denies those allegations.

11. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust, and that the Testamentary Trust has been modified and interpreted by the Stipulation and Agreement dated September 17, 1980, but the Attorney General otherwise denies the remaining allegations of paragraph 11.

12. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12, and therefore denies those allegations.

13. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13, and therefore denies those allegations.

14. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14, and therefore denies those allegations.

15. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 15, and therefore denies those allegations.

16. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 16, and therefore denies those allegations.

17. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 17, and therefore denies those allegations.

18. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 18, and therefore denies those allegations.

19. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 19, and therefore denies those allegations.

As to General Allegations

20. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies those allegations.

21. Admitted.

22. On information and belief, admitted.

23. The Attorney General denies that the property now known as the Nemours Mansion and Gardens is open to the public on a regular basis as intended by Mr. duPont, but the Attorney General, on information and belief, admits the remaining allegations of paragraph 23.

24. The Attorney General states that the content of Mr. duPont's Will speaks for itself and therefore denies the allegations of paragraph 24.

25. The Attorney General states that the content of Mr. duPont's Will speaks for itself and therefore denies the allegations of paragraph 25.

26. The Attorney General denies the allegations of paragraph 26.

27. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27, and therefore denies those allegations.

28. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 28, and therefore denies those allegations.

29. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies those allegations.

30. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 30, and therefore denies those allegations.

31. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies those allegations.

32. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 32, and therefore denies those allegations.

33. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust, but the Attorney General denies that the Testamentary Trust is limited in its obligation to pay out only three percent (3%) of its fair market value each year, and the Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 33, and therefore denies those allegations.

34. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 34, and therefore denies those allegations.

35. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 35, and therefore denies those allegations.

As to Legal Authority for Severance

36. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust, and that severance is permitted under Section 736.0417, Florida Statutes.

37. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 37, and therefore denies those allegations.

As to Legal Authority for Modification

38. The Attorney General admits that a court may modify a trust under applicable statutory and common law.

39. Admitted that Section 736.04113, Florida Statutes, permits a court to modify a trust under the terms set forth therein.

40. Admitted that Section 736.0416, Florida Statutes, permits a court to modify a trust under the terms set forth therein.

41. The Attorney General admits that a court may modify a trust under applicable common law, but states that such judicial modification is only permitted upon compliance with fundamental principles of due process and upon proper notice to all beneficiaries and other interested persons and affected parties.

42. The allegations of paragraph 42 allege no material fact, and therefore require no answer, but to the extent the allegations may be material, they are denied.

As to Count I – Severance of The Testamentary Trust

43. For his answer to the allegations of paragraph 43, the Attorney General restates and incorporates herein his answers to paragraphs 1 through 42 above.

44. Admitted.

45. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust, but the Attorney General denies that the proposed Charitable Trust will not impair the rights of any beneficiary or adversely affect achievement of the purposes of the Testamentary Trust.

46. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or

information sufficient to form a belief as to the truth of the remaining allegations of paragraph 46, and therefore denies those allegations.

47. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 47, and therefore denies those allegations.

48. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 48, and therefore denies those allegations.

As to Count II – Modification of the Annuitants' Trust

49. For his answer to paragraph 49, the Attorney General restates and incorporates his answers to paragraphs 1 through 48 above.

50. Admitted that the Complaint purports to seek to establish the Annuitants' Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 50, and therefore denies those allegations.

51. Admitted that the Complaint purports to seek to establish the Annuitants' Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 51, and therefore denies those allegations.

52. Admitted that Exhibit C attached to the Complaint purports to be a complete copy of the proposed Modified and Restated Trust Agreement for the Alfred I. duPont Annuitants' Trust.

53. Admitted that the Complaint purports to seek the severance and modification of the Testamentary Trust, but the Attorney General denies that the Testamentary Trust is limited in its obligation to pay out only three percent (3%) of its fair market value each year, and the Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 53, and therefore denies those allegations.

54. Admitted that the Complaint purports to seek to establish the Annuitants' Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 54, and therefore denies those allegations.

55. Admitted that the Complaint purports to seek to establish the Annuitants' Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 55, and therefore denies those allegations.

56. Admitted that the Complaint purports to seek to establish the Annuitants' Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 56, and therefore denies those allegations.

57. Admitted that the Complaint purports to seek to establish the Annuitants' Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 57, and therefore denies those allegations.

58. Admitted that the Complaint purports to seek to establish the Annuitants' Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 58, and therefore denies those allegations.

59. Admitted that the Complaint purports to seek to establish the Annuitants' Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 59, and therefore denies those allegations.

60. Admitted that the Complaint purports to seek to establish the Annuitants' Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 60, and therefore denies those allegations.

61. Admitted that the Complaint purports to seek to establish the Annuitants' Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 61, and therefore denies those allegations.

62. Admitted that the Complaint purports to seek to establish the Annuitants' Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 62, and therefore denies those allegations.

As to Count III – Modification of Charitable Trust

63. For his answer to paragraph 63, the Attorney General restates and incorporates herein his responses to paragraphs 1 through 49 above.

64. Admitted that the Complaint purports to seek to establish the Charitable Trust, and that what purports to be a complete copy of a Modified and Restated Trust Agreement for the Alfred I. duPont Charitable Trust as proposed by the Trustees is attached to the Complaint as Exhibit D, but the Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 64, and therefore denies those allegations.

65. The Attorney General states that Mr. duPont's Will and the "numerous court orders and stipulations" referenced in paragraph 65 speak for themselves and therefore denies the allegations of paragraph 65.

66. Admitted that the Complaint purports to seek to establish the Charitable Trust. The remaining allegations of paragraph 66 state a conclusion of law to which no response is required.

67. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67, and therefore denies those allegations.

68. Admitted that the Complaint purports to seek to establish the Charitable Trust, but the Attorney General specifically denies that the proposed "Purposes of the Trust" faithfully and accurately state the testamentary intent of Mr. duPont. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 68, and therefore denies those allegations.

69. Admitted that the Complaint purports to seek to establish the Charitable Trust. The Attorney General denies that the terms of the proposed Charitable Trust adequately reflect the testamentary intent of Mr. duPont or his charitable objectives, and the Attorney General therefore denies the remaining allegations of paragraph 69.

70. On information and belief, admitted.

71. The allegations of paragraph 71 state a conclusion of law to which no response is required.

72. The Attorney General denies that the Trustees represent the interests of the people of Delaware who are Mr. duPont's primary intended beneficiaries of the Trust, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 72, and therefore denies those allegations.

73. Admitted that the Complaint purports to seek to establish the Charitable Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 73, and therefore denies those allegations.

74. The allegations of paragraph 74 state a conclusion of law to which no response is required.

75. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 75, and therefore denies those allegations.

76. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 76, and therefore denies those allegations.

77. Admitted that the Complaint purports to seek to establish the Charitable Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 77, and therefore denies those allegations.

78. Admitted that the Complaint purports to seek to establish the Charitable Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a

belief as to the truth of the remaining allegations of paragraph 78, and therefore denies those allegations.

79. This paragraph sets forth no substantive allegations and therefore no response is required. To the extent a response is required, any allegations in paragraph 79 are denied.

80. The Attorney General states that the 2004 Final Judgment speaks for itself. and therefore denies the allegations of paragraph 80.

81. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 81, and therefore denies those allegations.

82. Admitted that the Complaint purports to seek to establish the Charitable Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 82, and therefore denies those allegations.

83. Admitted that the Complaint purports to seek to establish the Charitable Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 83, and therefore denies those allegations.

84. Admitted that the Complaint purports to seek to establish the Charitable Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 84, and therefore denies those allegations.

85. Admitted that the Complaint purports to seek to establish the Charitable Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a

belief as to the truth of the remaining allegations of paragraph 85, and therefore denies those allegations.

86. Admitted that the Complaint purports to seek to establish the Charitable Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 86, and therefore denies those allegations.

87. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 87, and therefore denies those allegations.

88. Admitted that the Complaint purports to seek to establish the Annuitants' Trust and the Charitable Trust. The Attorney General otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 88, and therefore denies those allegations.

89. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 89, and therefore denies those allegations.

90. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 90, and therefore denies those allegations.

91. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 91, and therefore denies those allegations.

92. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 92, and therefore denies those allegations.

93. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 93, and therefore denies those allegations.

94. Admitted that the Trustees request the specified relief, but the Attorney General denies that the Trustees are entitled to the relief in the form, detail, terms and provisions for the Annuitants' Trust and the Charitable Trust in the forms of those trusts as requested.

OBJECTION AND DEFENSES

The Attorney General does not object in concept to a severance of the Testamentary Trust into the Annuitants' Trust and the Charitable Trust, which the Trustees maintain will achieve significant tax savings, or to the amendment and restatement of the Annuitants' Trust and the Charitable Trust, which will be important to the proper administration of those trusts, particularly with respect to the public beneficiaries in the State of Delaware, as well as the parties charged with the administration, oversight, and enforcement of the Trusts.

However, the terms of any restated Charitable Trust *must* reflect, and thus must not be inconsistent with, the testamentary intent of Mr. duPont as expressed in his Will. Accordingly, the Attorney General, as the representative of the people of Delaware, who have a special interest in the enforcement of the Testamentary Trust and a special status not enjoyed by the public at large, objects to the judicial modifications proposed for the Proposed Charitable Trust following the severance, on the following grounds:

First Objection and Defense

Although the Attorney General does not object to the severance of the Testamentary Trust in order to permit more favorable tax treatment, the Attorney General asserts that numerous of the modifications proposed by the Trustees for the Annuitants' Trust and the Charitable Trust (the "Proposed Charitable Trust"), upon their severance, are contrary to the express testamentary intent of Mr. duPont as expressed in his Last Will and Testament, dated November 19, 1932, and Codicils thereto (collectively, the "Will"), including as modified and interpreted by the 1980 Settlement Agreement (as defined below), and are not necessary to avoid

the defeat or any substantial impairment of the accomplishment of any material purpose of the Testamentary Trust, and thus are not authorized under Section 736.04113, Florida Statutes.

Specifically, the Proposed Charitable Trust contradicts the express terms of the Will and the 1980 Settlement Agreement in the following ways, among others:

a. ITEM 9 of the Will provides that the Board of Managers shall "control" Nemours, and consist of five persons, at least three of whom are Delaware residents. However, contrary to the express testamentary intent of Mr. duPont, the Proposed Charitable Trust seeks to vest control of Nemours in a Board of Directors consisting of Trustees (known as "Member Directors") and/or "Non-Member Directors" appointed annually by the Trustees. *See* Article Five, Proposed Charitable Trust. Under the terms of the Proposed Charitable Trust, the Non-Member Directors can be removed by the Member Directors with or without cause at any time. For the Proposed Charitable Trust to qualify as a Type II supporting organization, as is proposed for the Proposed Charitable Trust, a majority of the governing body of the supporting organization (*i.e.*, the Proposed Charitable Trust) would also have to comprise a majority of the governing body of the supported organization (*i.e.*, Nemours). In addition, the Trustees, who as Member Directors of the Nemours Board of Directors exercise primary control of Nemours, are all non-Delaware residents, with the sole exception of Trustee John Porter, III, and a recently added trustee, Richard Christopher.

Such a governance structure would be contrary to Mr. duPont's clear intent in ITEM 9 of the Will that decisions about managing the Nemours Foundation (which Mr. duPont intended to be based in Delaware) would be made

by a Board of Managers consisting of five persons, at least three of whom (and thus a 60% majority) are Delaware residents. A Delaware-majority Board of Managers, with a majority of its members living and working in Delaware, is best situated to ensure that the Nemours Foundation maintains Mr. duPont's intended focus on the health needs of eligible Delawareans, including ensuring that the Trust and the Nemours Foundation properly discharge Mr. duPont's directive that "first consideration" be given to beneficiaries who are residents of Delaware (as stated in ITEM 9 of the Will), and his mandate that the people of Delaware be "properly provided for" before surplus Trust income is spent outside of Delaware (as stated in ITEM 10 of the Will). Accordingly, the governance of the Proposed Charitable Trust, together with the Trustees' prior actions in restructuring the governance of Nemours, will defeat Mr. duPont's testamentary intent. The Attorney General submits that qualification of the Proposed Charitable Trust as a Type II supporting organization in the form of the proposed governance structure is not necessary to achieve the beneficial tax treatment, which may be obtained through other structures not inconsistent with Mr. duPont's testamentary intent for the governance of Nemours.

Article Five of the Proposed Charitable Trust would thus inequitably deprive the public beneficiaries in the State of Delaware of the level of representation by Delaware residents mandated by Mr. duPont for the governance of Nemours unless a majority of the proposed Board of Directors were required to be Delaware residents.

b. ITEM 9 of the Will provides that "My [t]rustees are specifically instructed that it shall be their duty, first, to care of the mansion and grounds and gardens surrounding [the Mansion][….] ***Only after*** faithfully carrying out the above instructions shall my Trustees be warranted in using any portion of the capital or income of my estate for additional charitable purposes." (Emphasis added). ITEM 9 of the Will also directs the trustees to pursue the Testamentary Trust's charitable purposes, with "first consideration, in each instance, being given to beneficiaries who are residents of Delaware. . . [.]"

Contrary to the express testamentary intent of Mr. duPont, under the Proposed Charitable Trust maintenance of the Mansion and Gardens would be allocated *solely* to Delaware *after* calculation and distribution of the Proposed Charitable Trust's distributions, contrary to Mr. duPont's clear and unequivocally-expressed intent. *See* Article Two A (4), Proposed Charitable Trust.

This provision would have the effect of inequitably limiting the Charitable Trust's distributions in Delaware to the detriment of the public beneficiaries in the State of Delaware by diluting Delaware's share (but no other non-Delaware shares) with Mansion and Gardens expenses.

c. The Proposed Charitable Trust seeks to modify and inequitably limit the Trustees' duty to inform and account pursuant to Sections 736.0105(2)(s), 736.0105(2)(t), and 736.0813, Florida Statutes. Specifically, Article Two of the Proposed Charitable Trust contains a provision requiring the Charitable Trust to report annually to the Attorney General: the (i) fair market value of the Proposed

Charitable Trust; (ii) distributions to Nemours from the Proposed Charitable Trust; and (iii) the amount of distribution spent outside the State of Delaware, but it does not provide for or describe a level of specificity which would allow for the necessary level of review by the Attorney General, particularly with respect to non-health care related expenditures within the State of Delaware, as well as all other expenditures made outside the State of Delaware. Such detailed reporting is crucial to ensuring that Mr. duPont's testamentary intent is followed with respect to "first consideration" being given to Delaware beneficiaries, and is of utmost importance to the Attorney General given the special treatment afforded the public beneficiaries in the State of Delaware by Mr. duPont in his Will.

This provision of the Proposed Charitable Trust would unfairly prejudice the Attorney General's ability to protect the public beneficiaries in the State of Delaware.

d. The Proposed Charitable Trust seeks to enshrine the position that the Testamentary Trust shall distribute annually only three percent (3%) of the fair market value of the trust assets, without reference to the actual income of the Testamentary Trust, contrary to the express direction of Mr. duPont that all income of the Testamentary Trust be distributed and applied to his expressed charitable purposes, all contrary to the Will and the 1980 Settlement Agreement. Additionally, the proposed Charitable Trust seeks to modify the methodology for determining the net fair market value of the Charitable Trust in determining future distributions to Nemours, and ultimately to the public beneficiaries in the State of Delaware and elsewhere. By implementing a so-called "smoothing" methodology

which uses a three-year (twelve-quarter) rolling average of the fair market value of the Charitable Trust in order to establish future distribution amounts, the Trustees may potentially understate the principal value of the Proposed Charitable Trust by, among other things, relying on unobservable management assumptions for certain types of assets, and on lower-valued quarters, the effect of which may actually decrease the annual distribution amounts to Nemours, contrary to the testamentary intent of Mr. duPont.

e. The proposed Charitable Trust also contains provisions that contemplate the conversion of Nemours into a for-profit entity. Article Two C, Proposed Charitable Trust.

f. The Proposed Charitable Trust would exonerate the Trustees from liability except for willful default. Article Nine F, Proposed Charitable Trust. This provision would modify the 2004 Judgment (as defined below and to the extent it is effective), which provides that the Prudent Investor Rule is the standard of care required of the Trustees.

g. With respect to *future* amendments to the Charitable Trust, Article 12 of the Proposed Charitable Trust would allow for the Trustees to amend the Proposed Charitable Trust in their sole discretion, or with respect to certain provisions, with the approval of the Court, but in neither instance would require the Trustees to formally notify the Attorney General of any proposed amendments to the Proposed Charitable Trust. Formal, prior notification to the Attorney General is crucial given Mr. duPont's clear testamentary intent regarding the importance and prioritization of the public beneficiaries in the State of Delaware

with respect to the Testamentary Trust and its expenditures, and inasmuch as "the people of Delaware have a special interest in the enforcement of the duPont Trust," which gives "the people of Delaware a special status not enjoyed by the public at large," and the Delaware Attorney General, as the representative of the people of Delaware, "is the proper party to bring suit on their behalf." *State of Delaware ex rel. Gebelein v. Florida First Nat'l Bank of Jacksonville*, 381 So.2d 1075, 1078 (Fla. 1st DCA 1979). Such notice is crucial to the fulfillment of Mr. duPont's testamentary intent given the Trustees' conspicuous predisposition to discount his testamentary intent that "first consideration, in each instance, be given to beneficiaries who are residents of Delaware. . . [.]"

h. The Proposed Charitable Trust omits any requirement for the board of trustees of the Testamentary Trust at all times to include a corporate trustee, contrary to the unequivocally expressed intent of Mr. duPont.

i. The Proposed Charitable Trust would attempt to permit the removal of a trustee by the affirmative vote of the remaining trustees if the "offending" trustee created disharmony, the effect of which would stifle the free and appropriate exercise by each trustee of their independent fiduciary duties. *See* Article Ten (D)(1)(h), Proposed Charitable Trust.

j. The Proposed Charitable Trust purports to memorialize the definition of "crippled children" as being limited to children under the age of eighteen (18) years, which is contrary to the terms of the 1980 Settlement Agreement establishing the definition of "crippled children" to be limited to children under the age of twenty-one (21) years. Article Two (A)(2), Proposed Charitable Trust.

The Trustees also propose to make a major substantive change to the definition of "crippled children" that exempts from the definition any "exceptions approved by the Board of Directors of the Nemours Foundation. . . ." *Id.*

k. In addition to the representative examples listed above, the Attorney General has further concerns, but presently lacks information sufficient to determine whether other provisions of the proposed Charitable Trust comport or conflict with the testamentary intent of Mr. duPont, the Will, the 1980 Settlement Agreement, and Florida law, and the Attorney General reserves the right to amend or expand these objections to the proposed Charitable Trust after discovery is complete.

Second Objection and Defense

The Judgment entered by this Court on December 28, 2004 (the "2004 Order"), was entered upon proceedings to which the Attorney General was not a party nor of which it received timely notice. As recognized over 35 years ago, "the people of Delaware have a special interest in the enforcement of the duPont Trust," which gives "the people of Delaware a special status not enjoyed by the public at large," and the Delaware Attorney General, as the representative of the people of Delaware, "is the proper party to bring suit on their behalf." *State of Delaware ex rel. Gebelein v. Florida First Nat'l Bank of Jacksonville*, 381 So.2d 1075, 1078 (Fla. 1st DCA 1979). The Attorney General has no duty to monitor the affairs of the Testamentary Trust, either under applicable statutory or common law or under the 1980 Settlement Agreement, but instead the Attorney General is entitled to notice of actions to modify or permit deviation from the Testamentary Trust, where such actions affect the interests of the people of Delaware. To the extent the proposed Charitable Trust attempts to memorialize terms arising under the 2004 Order, such terms are void or voidable as they affect the interests of the people of Delaware.

COUNTERCLAIM AND CROSSCLAIM

Intervenor/Defendant and Counterclaim and Crossclaim Plaintiff Matthew P. Denn, Attorney General of the State of Delaware,[1] pursuant to Rule 1.170(a) and (g), Florida Rules of Civil Procedure, sues Counterclaim Defendants Hugh M. Durden, John S. Lord, Herbert H. Peyton, John F. Porter, III, Richard T. Christopher, and Winfred L. Thornton, as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, Deceased, and Crossclaim Defendants Angela B. Corey, State Attorney in and for the Fourth Judicial Circuit of the State of Florida, The Nemours Foundation, a not-for-profit corporation organized under the laws of the State of Florida, and Pamela J. Bondi, Attorney General of the State of Florida, and alleges:

INTRODUCTION

1. Alfred I. duPont was born and lived most of his life in Delaware. He loved the State and the people who call it home, and he demonstrated that care and concern for the people of Delaware throughout his life in ways both big and small. One well-known example of this care and concern was his decision in the 1920s to fund a pension plan for every indigent, elderly resident of Delaware after the Delaware General Assembly first rejected his exhortation of "the stern necessity" to provide for "those in Delaware who are in direct need."

2. But no single act better demonstrates Mr. duPont's care and concern for the people of Delaware, and his general conviction that it is "the duty of everyone in the world to do what is within his power to alleviate human suffering," than his establishment of the testamentary trust that gave rise to the creation of The Nemours Foundation ("Nemours"). In one of the greatest acts of charity of the twentieth century, he directed in his will that the entirety

[1] On January 6, 2015, Matthew P. Denn succeeded Joseph R. Biden, III, as the Attorney General of the State of Delaware. Pursuant to Rule 1.260(d)(1), Florida Rules of Civil Procedure, when a public officer is a party to an action in an official capacity and ceases to hold office during the pendency of the action, the officer's successor is automatically substituted as a party.

of his considerable estate, after making allowances for certain legacies and bequests, be placed into a trust, with the income from that trust paid over to Nemours for the purpose of providing for "the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration being given in each instance to beneficiaries who are residents of Delaware."[2] And to ensure that Nemours would keep its focus upon the people of the State in which he lived and worked for most of his life, Mr. duPont directed that Nemours be controlled by a Board of Managers, and mandated that this Board consist of a majority of Delaware residents.

3. Following Mr. duPont's death in 1935, his trustees dutifully established Nemours, but the trustees, none of whom were Delaware residents, never relinquished real control of Nemours to a majority-Delaware Board of Managers. At no point in the eighty years since Mr. duPont's death have the trustees followed Mr. duPont's instructions on this point. As a result of this failure, the clear focus upon beneficiaries who are residents of Delaware ("Delaware Beneficiaries") that Mr. duPont intended in his Will, and which he attempted to ensure through provisions such as the Delaware-majority Board membership requirement, has drifted dramatically out of focus.

4. Nemours did, consistent with Mr. duPont's instructions, construct a facility for the care of children near Mr. duPont's Delaware home (the home and its surrounding gardens, collectively, the "Mansion and Gardens"). First built in 1940, and expanded in 1984, the A.I. duPont Hospital for Children in Wilmington, Delaware ("Delaware Children's Hospital") plays an important role in providing pediatric health care in Delaware, including having Delaware's

[2] For purposes of this pleading, "crippled children, but not incurables" are referred to herein as "Eligible Children," and "old men or old women, and particularly old couples" are referred to herein as "Eligible Elderly."

only pediatric trauma center. But in more recent years, the trustees and Nemours have forsaken Mr. duPont's clear direction that the residents of Delaware be "properly provided for" before Trust income was spent in "any other state or states," and instead have built up an impressive network of clinics and hospitals in Florida and other states besides Delaware.

5. Through this action, Matthew P. Denn, the Attorney General of the State of Delaware, seeks the Court's assistance in returning the trustees and Nemours to the focus that Mr. duPont clearly directed, and that those closest to Mr. duPont understood he intended: giving true meaning to the concept of giving "first consideration" to, and "properly providing for," the residents of Delaware. Edward Ball, Mr. duPont's brother-in-law and most trusted advisor, one of Florida's most influential citizens, and Chairman of the Trust for 46 years (as well as President of Nemours for several years), correctly characterized it as a *spending preference*—in other words, so long as Eligible Children or Eligible Elderly in Delaware have unmet health care needs, Nemours must direct the net income it receives from the Trust to addressing the health care needs of Eligible Children or Eligible Elderly in Delaware before it can direct any of that money to address such needs outside of Delaware.

6. The Trustees of the Trust and the Directors of Nemours are both independently obligated to ensure that the funds coming from the Trust are used in a manner consistent with that spending preference, and that the mission of Nemours is true to that mandate, but they are failing Mr. duPont, and the people of Delaware, in that regard. And as the affirmative relief sought by the Trustees in this action, the proposed revised Charitable Trust, demonstrates, they will continue to fail Mr. duPont and the people of Delaware in that regard. The proposed revised Charitable Trust would control one of the nation's largest charitable institutions for decades to come, yet it is filled with provisions demonstrably at odds with Mr. duPont's clear instructions in

his Will. Approval of the proposed revised Charitable Trust as submitted by the Trustees would exacerbate the ongoing and serious problems with the administration of the Trust, and with it the functioning and focus of Nemours. It is flatly at odds with Mr. duPont's clear wishes, and should not be approved by this Court.

PARTIES

7. Counterclaim and Crossclaim Plaintiff Matthew P. Denn is the Attorney General of the State of Delaware, and brings this action in his capacity as the lawful representative of the citizens of the State of Delaware. As used herein, "Delaware Attorney General" refers to Matthew P. Denn, and those of his predecessors who held the office of Attorney General of the State of Delaware during a specified time period.

8. Counterclaim Defendants Hugh M. Durden, John S. Lord, Herbert H. Peyton, John F. Porter, III, Richard T. Christopher, and Winfred L. Thornton (collectively, "Trustees") are the present trustees of the Alfred I. duPont Testamentary Trust ("Trust"), which was created under the Last Will and Testament, dated November 19, 1932, and Codicils thereto, of Alfred I. duPont, Deceased.

9. Crossclaim Defendant Angela B. Corey is the State Attorney in and for the Fourth Judicial Circuit of the State of Florida ("Florida State Attorney"), and is named as a crossclaim defendant solely in her official capacity.

10. Crossclaim Defendant The Nemours Foundation is a not-for-profit corporation formed under the laws of the State of Florida.

11. Crossclaim Defendant Pamela J. Bondi is the Attorney General of the State of Florida ("Florida Attorney General"), and is named as a crossclaim defendant solely in her official capacity.

JURISDICTION AND VENUE

12. This action is a proceeding arising under the Florida Trust Code, for which the circuit courts of Florida have original jurisdiction pursuant to Section 736.0203, Florida Statutes (2015).

13. Venue is proper in Duval County, Florida, pursuant to Section 736.0204(3), Florida Statutes (2015), because the Trust's principal place of administration is located in this county.

14. This court may validly exercise personal jurisdiction over all of the Counterclaim and Crossclaim Defendants. The Trustees are subject to personal jurisdiction under Section 736.0202(2)(a), Florida Statutes (2015). Nemours is subject to personal jurisdiction under Section 48.193, Florida Statutes (2015). The Florida State Attorney and the Florida Attorney General are subject to personal jurisdiction under Section 736.0202(2)(b), Florida Statutes (2015).

FACTUAL BACKGROUND

Mr. duPont Provides Clear Direction To His Trustees And A Strong Delaware Focus

15. Mr. duPont executed his Last Will and Testament on November 19, 1932, and amended it twice before his death on April 29, 1935, via codicils dated March 4, 1933, and January 15, 1935 (collectively, "Will").[3]

16. Through his Will, Mr. duPont established the Trust and directed his Trustees to create a charitable institution to be named "The Nemours Foundation." Mr. duPont made clear that the needs of the people of the State of Delaware were to be the central focus of that charitable institution: all income from that corpus was to support the operations of Nemours,

[3] A copy of the Will is attached as Exhibit A.

with any excess funds available to Nemours being utilized to "properly provide for" the health care needs of Delawareans before such funds flowed to "any other state or states." (Ex. A, Will, Book 5 at 60).)

17. Mr. duPont imposed two key duties upon his Trustees: wisely invest the corpus of the Trust (*id.* at 46); and provide the income from that corpus to the new institution the Trustees were to create. That Foundation was to focus upon "the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware." (*Id.* at 56.)

18. Mr. duPont directed his Trustees to appoint a "Board of Managers," and directed that such Board of Managers would be the entity "controlling said institution." (*Id.* at 46.) Mr. duPont further directed that three-fifths of that Board consist of residents of Delaware. (*Id.* at 58.)

19. At the same time, the Will granted the Trustees "full charge of the management and policy of said Foundation. . . ." (*Id.* at 58.) However, this reservation to the Trustees of authority to replace the Board of Managers and to set the overall policies of Nemours did not deprive the Board of Managers of the role of actually controlling Nemours.

20. Mr. duPont directed that all income from the Trust was to be provided to Nemours, an entity that he anticipated would be entirely located in the State of Delaware (because he directed that Nemours' facilities be "located a reasonable and proper distance from the Mansion House.") (*Id.* at 58.) He further mandated that any income beyond what could be utilized at that one location in Delaware be used to address the needs of Delawareans before any funds were spent outside of the State. To effectuate this, he granted an essential power to his

Board of Managers to protect the health needs of Delawareans: that Board was to direct the "surplus income" from the Trust (*id.* at 60), should the income exceed what was required at the single Nemours location. The key guidance in making decisions about the use of surplus income was provided at Page 60 of the Will:

> such surplus income may from time to time be used by the Board of Managers of said "The Nemours Foundation," my Trustees concurring, in contributions to other worthy charitable institutions designated by said Board and approved by my Trustees as may be conducted for the care of, or the care and treatment of, or the care and education of crippled children, or the care of old men, or of old women, or of old couples, or any one of such purposes. *It is my wish that the people of Delaware needing the care of such institutions shall be properly provided for before any contributions are made to institutions of any other state or states.*

(*Id.* at 60 (emphasis added).)

21. It was both natural and logical that Mr. duPont would want a Delaware-majority Board of Managers to make decisions both about managing Nemours (which Mr. duPont intended to be based in Delaware) and also about surplus income beyond what could be employed by Nemours at that one location, because those individuals, living in Delaware, are best situated to focus upon the health needs of Delawareans.

22. The Will identified specific "rules and regulations" the Board of Managers would impose. These included establishing the Mansion and Gardens "for the reception of visitors and their entertainment," but "mainly for the purpose of providing a library and exhibiting to the public interesting and valuable literature, works of art and any articles of historic and artistic interest for the *advancement of education*, and maintained, as far as possible, in their present condition." (*Id.* at 16 (emphasis added)).

23. With respect to the Mansion and Gardens, Mr. duPont instructed his Trustees "it shall be their duty, first, to care for the mansion and grounds and gardens surrounding 'Nemours'

in order that they be maintained *for the pleasure and benefit of the public* in their present condition." He further specified "[o]nly after faithfully carrying out the above instructions shall my Trustees be warranted in using any portion of the capital or income of my estate for additional charitable purposes." (*Id.* at 16 (emphasis added)).

24. Mr. duPont died in Florida on April 29, 1935. His Will was admitted to probate in Duval County, Florida, by Order of Probate dated May 24, 1935, and the Trust was formed under Florida law, which governs the terms and administration of the Trust.

The Management Structure Of Nemours Evolves In A Manner Inconsistent With Mr. duPont's Direction In The Will

25. Unfortunately, the actual operations of the Trust and Nemours in the eight decades since Mr. duPont's death have deviated significantly from the strong Delaware focus that Mr. duPont intended, despite the clear direction in Mr. duPont's Will. The Trustees have never put in place the structural safeguards Mr. duPont developed to ensure Nemours' mission would be focused upon the needs of Delawareans, and let what safeguards they did implement wither away.

26. For example, the Trustees, most of whom have been Floridians, for decades never relinquished control over Nemours to any subsidiary board, despite the clear language of the Will, and instead designated themselves as "members" of Nemours, a concept not set forth in the Will, and used that member status to control Nemours' operations.

27. Similarly, the Trustees have never allowed Nemours' operations to be run by a Delaware-majority board, despite Mr. duPont's clear intent. Nemours itself has long been headquartered in Jacksonville, Florida, a decision at odds with Mr. duPont's direction that Nemours be located a "reasonable and proper" distance from his Mansion and Gardens in Delaware. And while Nemours' Board of Managers has existed throughout this time, it has

never "control[ed] said institution," and has had no power to direct surplus funds over and above what could be used at the first Nemours location towards the needs of Delawareans.

28. As a result of these structural failures by the Trustees, Trust dollars have increasingly come to be used to develop a larger and larger hospital and clinic infrastructure in Florida, and in states other than Delaware, rather than in Delaware. And to compound the injury to Delaware, some of this growth is made possible by positive cash flow from the Delaware Children's Hospital.

Delaware Attempts To Bring The Actions Of The Trust And Nemours In Line With Mr. duPont's Clear Intent

29. The long, slow drift away from Mr. duPont's testamentary intent has not gone unaddressed or unchallenged, as there have been attempts to clarify the meaning of Trust provisions through court proceedings. One of those attempts bears specific mention, a January 1980 court-approved settlement that recognized the special status of the people of Delaware regarding the Trust and again confirmed the obligation to give "first consideration" to Delaware residents.

30. In 1977, the Delaware Attorney General filed a complaint against the Trustees both in their capacity as Trustees of the Trust and as members, officers and directors of Nemours, asserting claims relating to the administration of the Trust with respect to the failure to afford special treatment to the people of Delaware under the Will. The complaint sought injunctive relief, the removal of some trustees, the appointment of a temporary trustee, surcharges, and other relief.

31. The trial court dismissed the complaint on the basis that the State of Delaware did not have standing to bring suit on behalf of the Delaware Beneficiaries. The Florida First District Court of Appeal reversed, holding that "the people of Delaware have a special interest in

the enforcement of the duPont Trust," which gives "the people of Delaware a special status not enjoyed by the public at large," and that the Delaware Attorney General, as the representative of the people of Delaware, "is the proper party to bring suit on their behalf." *State of Delaware ex rel. Gebelein v. Florida First Nat'l Bank of Jacksonville*, 381 So.2d 1075, 1078 (Fla. 1st DCA 1979). The Delaware Attorney General, as the lawful representative of the citizens of the State of Delaware, has, *ex officio*, exclusive authority under common law to bring actions to enforce charitable trusts on behalf of (and to protect) the beneficiaries who are residents of the State of Delaware. *Wier v. Howard Hughes Medical Inst.*, 407 A.2d 1051, 1057 (Del. Ch. 1979).

32. Following this recognition of the Delaware Beneficiaries' special interest, the parties to the litigation settled their dispute, and entered into a Stipulation and Agreement Between the State of Florida, the State of Delaware, the Trustees of the Alfred I. duPont Testamentary Trust and the Nemours Foundation ("1980 Settlement Agreement").[4] The 1980 Settlement Agreement was approved and adopted under a Final Judgment entered by this Court on January 18, 1980, in a related action.

33. The 1980 Settlement Agreement incorporated the *Gebelein* Court's holding that the "Attorney General of Delaware is the representative of the Delaware Charitable beneficiaries" of the Trust and "is charged with protecting the rights of the said Delaware beneficiaries." (Ex. B, 1980 Settlement Agreement at 1.) It also stated the "Trustees agree that at no time will more than fifty percent (50%) annually of the funds distributed by the Trust to Nemours be spent outside the State of Delaware" (*id.*, ¶ F(3) at 5), and further stated, consistent with Mr. duPont's intent, that "[f]irst consideration, in each instance, will be given to the beneficiaries who are residents in Delaware" (*id.*, ¶ F(4) at 5).

[4] A copy of the 1980 Settlement Agreement is attached as Exhibit B.

34. The 1980 Settlement Agreement also incorporated part of a 1972 Florida court judgment that construed and defined the term "crippled children" as used in the Will:

> The phrase "crippled children" as used in Mr. duPont's Will is defined to mean persons under 21 years of age, who by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, has been deprived of strength, activity or capability for service or use, in any part of the human body.

(*Id.*, ¶ F(1) at 5.)

35. The 1980 Settlement Agreement set forth specific provisions regarding the valuation of the Trust and, importantly, the payment of Trust income for the benefit of the Delaware Beneficiaries for years subsequent to 1979. Among other things, the agreement explicitly requires the Trustees to "pay over to Nemours" on or before April 15 each year "(1) the net income of the Trust, or (2) the statutory amount of three percent (3%) of the fair market valuation of the assets [of the Trust]." (*Id.*, ¶ C at 3.) As the Florida court would confirm a few years later, the parties understood and intended that the 3% figure was a *floor* for the net income payout obligation, not an independent alternative. *State of Delaware ex rel. Gebelein v. Belin*, 456 So. 2d 1237, 1239 (Fla. 1st DCA 1984).

36. The 1980 Settlement Agreement also obligated Nemours to:

> communicate to every hospital in the State of Delaware its willingness and intention to treat every crippled but not incurable child in the State of Delaware, without regard to the child's or the family's ability to pay, but in the expectation that those who can pay will do so and that the hospital will collect any third-party payments to which it might be entitled.

(*Id.*, ¶ F(5) at 5.) Although the primary focus of this paragraph is Nemours' promise to communicate something to every Delaware hospital, embedded within that promise is an important recognition by the Trust and Nemours, that the proper fulfillment of Nemours' mission means that Nemours will treat every Eligible Child in Delaware without regard to whether

Nemours will receive payment for such treatment—whether from the child, the family, or a third party. In other words, Nemours is reaffirming its historical obligation to treat every Eligible Child in Delaware without regard to whether treatment of that child is profitable to Nemours.

37. The 1980 Settlement Agreement obligated the Trustees to set aside funds, both for the benefit of the Delaware Children's Hospital, and for the benefit of the Eligible Elderly in Delaware. In particular, the Trustees agreed to establish a $25 million "contingency reserve" in Nemours "to insure that adequate funds will be available for the operation of" the Delaware Children's Hospital. (*Id.*, ¶ F(6)(a) at 5-6.) The Trustees and Nemours, moreover, agreed "to immediately formulate a plan for providing charitable benefits to residents of Delaware qualifying as 'old men or old women or particularly old couples.'" (*Id.*, ¶ F(6)(b) at 6.) The agreement also mandated "a commitment to expend a minimum of" $6 million during the initial two year period to end December 31, 1981, including "a permanent and continuing commitment to provide substantial funds for the elderly[,] which shall at a minimum equal the amount of earnings from the [$25 million] contingency reserve. . . ." (*Id.*)

38. The 1980 Settlement Agreement also identified specific commitments for medical facilities in Florida, but it did so with the stated understanding that the "amounts expended in such agreements shall be limited by the Delaware commitments set forth" in that agreement. (*Id.*, ¶ G at 7-8.)

39. Finally, the 1980 Settlement Agreement clarified the Will's pronouncement that Nemours would exist as a charitable institution "for the care and treatment of either crippled children, but not of incurables, or the care of old men or old women, and particularly old couples" and that "Mr. duPont intended for the Trustees to have the right to make such decision and/or decisions." (*Id.*, ¶ H(1) at 8.) However, the 1980 Settlement Agreement did not deviate

from Mr. duPont's clear direction that the Trustees, in exercising the discretion they possessed, must always give first consideration—or "preference," as Mr. Ball described it—to Delaware Beneficiaries.

Without Notice To Delaware, The Trustees Use A Court Action To Formally Shift Control Of Nemours Away From Delaware

40. Despite the clear language of the Will, and the commitments made in the 1980 Settlement Agreement to effectuate Mr. duPont's testamentary intent, the Trustees in 2004 sought and obtained amendments to the Trust—without notice to the State of Delaware—that made major, substantive alterations to key elements of the Will and its directives, particularly with respect to Trust governance and allocation of Trust funds.

41. On November 29, 2004, the Trustees filed a Complaint for Modification of Trust and Declaratory Judgment, resulting in significant substantive alterations to Mr. duPont's intent as expressed in the Will. The Final Judgment Granting Modification of Trust and Declaratory Judgment entered on December 28, 2004 ("2004 Order"),[5] while purporting to recognize the primacy of Delaware residents in Mr. duPont's charitable intent, codified changes to the fundamental precepts of the Trust, as set forth in the Will.

42. **Reducing the Length of Time Eligible Children Receive Care.** In 1972, a final judgment of the Florida courts was filed adopting a definition of "crippled children" as referring to "a person under twenty-one years of age who, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, has been deprived of strength, activity, or capability for service or use, in any part of the human body." Order and Final Judgment, *Ball v. Nichols*, Case No. 71-7001 (Dec. 31, 1971) ("1972 Final Judgment").[6] The

[5] A copy of the 2004 Order is attached as Exhibit C.

[6] A copy of the 1972 Final Judgment is attached as Exhibit D.

Trustees and Nemours endorsed this definition in 1980 when they entered into the 1980 Settlement Agreement. (Ex. B, 1980 Settlement Agreement, ¶ F(1) at 4.) But in 2004, claiming "[d]ramatic changes in medicine not anticipated by Mr. duPont," the Trustees sought and obtained language in the 2004 Order stating "[c]ompliance with the current terms of the Trust, which currently does not address the expenditure of funds for preventative care, defeats a material purpose of the Trust to provide for the health care needs of children." (Ex. C, 2004 Order, ¶ 5 at 4.) Accordingly, the 2004 Order modified Item 9 of the Will to change the age to which children could receive care, and to include preventative care:

> The general nature and purpose of the Corporation shall be the maintenance and support of, and the making of contributions to, charitable institutions operated for: (a) the care and treatment of children, but not of incurables, under eighteen (18) years of age, who by reason of physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, have been deprived of strength, activity, or capability for service or use, in any part of the human body; (b) the prevention of those conditions described in (a); and (c) the care of individuals over sixty-five (65) years of age who are in need of supportive or alleviating medical or paramedical care beyond mere food, clothing, and shelter, first consideration, in each instance, being given to beneficiaries who are residents of Delaware.

(*Id.*, ¶ A at 8.)

43. **Solidifying Trustees' Improper Domination Of Nemours.** Despite the Will's clarity on the governance structure of Nemours, in particular the role of the Board of Managers, the 2004 Order solidified the Trustees' control of Nemours by formalizing their role as Members of Nemours with defined powers, further emasculating the Board of Managers' role in "controlling" Nemours as directed by Mr. duPont.

44. Specifically, the 2004 Order granted the Trustees' request that the "Members of Nemours shall continue to consist of only those individuals then serving as Trustees of the Trust," and reserved to the Members specified powers, including establishing "Nemours'

purpose" and determining "the nature and scope of the services to be offered," and specifying "that the use of distributions from the Trust shall be consistent with the purpose of Nemours." (*Id.*, ¶ B at 8.) There was, of course, no real need for the Trustees to seek this in the 2004 Order, because Mr. duPont had clearly set forth Nemours' purpose in the Will seven decades earlier.

45. The 2004 Order also continued the Trustees' effort to minimize any influence that the Board of Managers has over Nemours' operations (despite Mr. duPont's clear instructions), by specifying that the Members would elect the Board of Managers and setting forth the following new responsibilities of the Board of Managers:

(a) determine the qualifications of professional staff of the facilities owned by the Nemours Foundation and located on the grounds of Nemours;

(b) approve the credentials of the physicians and associated staff of the facilities owned by the Nemours Foundation and located on the grounds of Nemours;

(c) review and determine, with the Board of Directors' concurrence, the appropriate contingency reserve and the appropriate provision required for operating the facilities owned by the Nemours Foundation and located on the grounds of Nemours;

(d) identify, with the Members' concurrence, other worthy charitable institutions to receive grants from Nemours, in the event that Nemours' income exceeds its needs; and

(e) such other matters as the Board of Directors may request.

(*Id.*, ¶ B at 9.) These enumerated responsibilities for the Board of Managers, which are non-substantive and permit the Board of Managers to act only at the behest of the Trustees, are inconsistent with Mr. duPont's directive that the Board of Managers "control[]" Nemours.

46. **Eliminating The Corporate Trustee.** In his Will, Mr. duPont stated in unequivocal language that "a reputable corporate Trustee shall always be one of my Trustees." (Ex. A, Will, Book 5 at 69.) The intended role of the corporate trustee, as set forth in the Will, but diluted in the 1980 Settlement Agreement, was to act as the deciding vote in the event of a Trustee impasse. The 2004 Order completely eliminated Mr. duPont's mandate. (Ex. C, 2004 Order, ¶ C at 9.)

47. **Capping The Trust's Payout Of Net Income At 3%.** Finally, the 2004 Order artificially limits the Trust's payout to Nemours to "three percent (3%) of the fair market value of the Trust" (*Id.*, ¶ E at 10-11), in defiance of both the Will's mandate that the Trust pay "net income" to Nemours and the 1980 Settlement Agreement's requirement that the Trust pay the *higher* of net income or 3% of fair market value.

48. Delaware did not receive notice of the action resulting in the 2004 Order. Accordingly, in 2012 the Delaware Attorney General filed a post-judgment motion to intervene and set aside the 2004 Order, arguing it was an indispensable party. The trial court denied the motion to intervene, concluding the Delaware Attorney General was not an indispensable party, and finding intervention would injure the original parties to the action and would not serve the interests of justice.

49. The Delaware Attorney General appealed the trial court's denial of the motion to intervene. The Florida First District Court of Appeal, in a July 16, 2014 opinion, affirmed the denial of the motion to intervene and the finding Delaware was not an indispensable party to the

2004 litigation. In a September 16, 2014 opinion, the Florida First District Court of Appeal rejected the Delaware Attorney General's efforts to have the matter reheard, and instead directed the Delaware Attorney General to this litigation: "*It would be more appropriate for the Delaware Attorney General to seek modification of the Trust in that proceeding rather than attempting to invalidate*" the 2004 Order.[7] The Delaware Attorney General appealed the Florida First District Court of Appeal's decision, and on February 13, 2015, the Florida Supreme Court declined to accept jurisdiction to hear the Delaware Attorney General's appeal.

Amendments To Nemours' Governing Documents Implement The Movement Away From Mr. duPont's Intent Permitted By The 2004 Order

50. Shortly after entry of the 2004 Order, Nemours revised its Articles of Incorporation ("Nemours Articles").[8] The Nemours Articles state that Nemours shall operate according to the Will's requirements, including the requirement to give "first consideration" to Delaware residents. (Ex. E, Nemours Articles, Art. III at 4.)

51. However, the Nemours Articles, consistent with the 2004 Order, also perpetuate control of Nemours' operations by non-Delawareans, contrary to Mr. duPont's clear testamentary intent, by creating a management structure where the Trustees also serve as Directors holding exclusive powers to control Nemours. The Nemours Articles provide Nemours "shall have one class of Members," who are "those individuals serving as Trustees." (*Id.*, Article VII at 5.) The Members (who are, of course, Trustees) appoint Nemours' Board of Directors, which includes both Member Directors and Non-Member Directors. (*Id.*, Article VIII at 7.)

[7] *Biden v. Lord*, 147 So. 3d 632, 636 (Fla. 1st DCA 2014).

[8] A copy of the Nemours Articles of Incorporation is attached as Exhibit E.

52. Despite the Will's mandate that a Board of Managers, comprised of three-fifths Delawareans, control Nemours, the Nemours Articles state the "affairs of [Nemours] shall be managed by a Board of Directors appointed by the Members," and this Board of Directors "shall have full charge of the management and operation of" Nemours. (*Id.*, Article VIII, § 8.1 at 6-7.)

53. Furthermore, the Members, who are Trustees, retain the "exclusive right to vote on and determine" the following matters, among others, which "shall be within [their] sole authority:" (1) "[e]stablish the Corporation's purpose and determine the nature and scope of the services to be offered;" (2) [a]ppoint Non-Member Directors of the Corporation and establish the total number of directors to be elected each year; (3) [r]emove any Non-Member Director with or without cause at any time; (4) [s]pecify that the use of distributions from the Trust shall be consistent with the purpose" of Nemours; and (5) "[a]mend the Articles of Incorporation and approve any changes to the Bylaws." (*Id.*, Article VII, § 7.3 at 6.) The Nemours Articles also grant the Members the power, "at their discretion," to "evaluate and audit the programs and services" of Nemours, "at any time." (*Id.*, Article VII, § 7.4 at 6.)

54. Thus, despite stating that Nemours shall operate according to the Will's requirements, including the requirement to give "first consideration" to Delaware residents, the Nemours Articles provide for a management structure that perpetuates the Trustees' continued control of Nemours. However, because the Nemours Articles incorporate the central elements and obligations of the Trust, all of the fiduciary obligations imposed upon the Trustees with respect to their distribution of Trust income to beneficiaries, in particular their duty to give proper effect to Mr. duPont's testamentary intent, are also duties owed by Nemours and its Board of Directors.

The Failure To Properly Implement Mr. duPont's Intent Continues To Have Pernicious Effects On Delaware

55. The changes to the operations of the Trust and Nemours discussed above, particularly those that came about as a result of the 2004 Order, have allowed the Trust and Nemours to drift far away from Mr. duPont's clear intent that Delawareans be given "first consideration" and "properly provided for," which continues to have pernicious effects on Delaware. They reveal an institutional failure to manage Nemours in a manner consistent with Mr. duPont's wishes as mandated in his Will, with the residents of Delaware neither receiving the "first consideration" to which they are entitled nor being "properly provided for" before programs in "other state or states" are funded.

The Trust And Nemours Fail To Address The Health Care Needs Of Delawareans

56. First, and perhaps foremost, among these pernicious (and tragically avoidable) effects is on the delivery of health care to Eligible Children in Delaware. As Mr. duPont clearly demonstrated in his Will, he intended for the Trust to provide for the healthcare needs of Delaware residents. Nonetheless, evidence of the failure to evaluate and address healthcare needs in Delaware is ever-present.

57. Were the Trust and Nemours to more faithfully fulfill Mr. duPont's intent and increase their focus upon Delaware's healthcare needs, that focus could make a real difference to a small state. As matters currently stand, Delaware's population on many measures presents only average or below-average indicators of overall health. Delaware ranks 31st in life expectancy at birth, 40th in adult current asthma prevalence, and 22nd in rate of immunizations for children between 19 and 35 months of age. Infant mortality, a widely accepted gauge for the overall health and well-being of a population, is higher in Delaware than any state other than

Alabama, Louisiana, Tennessee and Mississippi. The state ranks 35th in the rate of low birth weight babies.[9]

The Trustees And Nemours Have Focused On Funding Programs And Entities In Florida And States Surrounding Delaware

58. Additional evidence of this failure can be found by comparing funded programs and entities in Delaware with funded programs and entities in Florida and the states surrounding (but not including) Delaware ("Delaware Valley"), and the comparison belies any serious argument that Mr. duPont's intent is being fulfilled and that Delaware residents are receiving the "first consideration" to which they are entitled.

59. **Location Of Nemours Children's Clinics.** Nemours operates primary and specialty pediatric care clinics under a division it refers to as Nemours Children's Clinics ("Clinics"). The Clinics are located in Delaware, Florida, New Jersey, Pennsylvania, and Maryland. However, there are substantial differences in the size, scope and service offerings between the various clinical locations, with a notable lack of attention to the Clinics located in Delaware.

60. **Location Of Nemours Physicians.** Of the approximately 300 physicians identifying a Clinic as the primary location from which they work, only 44 physicians (approximately 15% of the total) are in Delaware. In contrast, 162 physicians (54%) identify a Clinic in Florida, 65 physicians (22%) identify a Clinic in Pennsylvania, 18 physicians (6%) identify a Clinic in New Jersey, and 4 physicians (1.3%) identify a Clinic in Maryland. On a combined basis, Clinics in Pennsylvania, New Jersey, and Maryland employ twice as many physicians as do Clinics in Delaware (29.3% versus 15%).

[9] *See* Kaiser Family Foundation State Health Facts, available at http://www.kff.org/statedata/.

61. **Massive Infrastructure Investments Outside Delaware.** Nemours recently broke ground on a new 65,000 square foot pediatric clinic in southern New Jersey that is expected to cost $45 million. Nemours has also stated its plans to expand into southeastern Pennsylvania, a region about which Nemours "has been thinking a lot," according to Dr. Roy Proujanksy, Chief Executive Officer of Nemours Delaware Valley operations.[10] This is a continuation of Nemours' four year (2008–2012) strategic development plan focused on expanding *outside* of Delaware. The forthcoming New Jersey facility and planned expansion in southeastern Pennsylvania will only exacerbate the diversion of Nemours resources away from Delaware, contrary to Mr. duPont's clearly expressed intent.

62. **Nemours Focuses Its Growth Strategy On Florida.** The continuing operational neglect of Delaware is also reflected in Nemours' articulation of its future growth plans, which focus on Florida. As Dr. David Bailey, President and Chief Executive Officer of Nemours, acknowledged in 2013, Nemours' "strategy" is to "provide more comprehensive care for more children in Florida's panhandle." NemoursUpdates, *Delivering on the Promise of One Nemours*, YouTube (Apr. 12, 2013).[11] Nemours' "long-term vision in Florida is to establish the most trusted children's healthcare system in the region, one that encompasses the points of a triangle of Orlando, Jacksonville, and Pensacola." *Id.*

63. **Treating Delaware As Part Of The Delaware Valley In Financial Reports And Needs Assessments.** Additional evidence of the neglect of Delaware arises from Nemours lumping Delaware in with its Delaware Valley operations in financial data and needs assessments. For example, when Nemours sponsored a "PRC Child & Adolescent Community

[10] Harold Brubaker, *Nemours Children's Health System Expanding In South Jersey*, PHILLY.COM (Apr. 24, 2015), http://articles.philly.com/2015-04-24/business/61462549_1_nemours-children-north-philadelphia-grand-view-hospital.

[11] Available online at https://www.youtube.com/watch?v=cX4oO9ejAIA.

Health Needs Assessment" in 2013, it requested that Chester County and Delaware County in Pennsylvania be included with Delaware's three counties in the survey. The estimated population of the Pennsylvania counties is 1.1 million on a combined basis, which in total exceeds Delaware's estimated population of 935,000. This focus upon the Delaware Valley region, as opposed to a focus directly upon Delaware, may make sense from the perspective of the profitable operation of the Delaware Children's Hospital, but it is inconsistent with Mr. duPont's mandate. A regional focus diminishes the survey's ability to assess Delaware's health care needs and develop plans to address those needs, because the survey's analysis focuses on the "total service area" and is "weighted in proportion to the actual population," and Delaware residents make up less than 50% of that population.

64. Similarly, Nemours' financial statements show that the share of the Trust's annual distribution of net income going to Delaware is subsidizing the operations and capital needs of Clinics in the Delaware Valley. In fact, the largest portions of Trust allocations have been required to subsidize the Clinics' negative cash flows from the Delaware Valley Clinics, the result of unprofitable operations and property and equipment purchases—$77 million in 2013 and $95 million in 2014, which represent 57% and 63% of total Trust distributions in those years.

65. **Using Profits From The Delaware Children's Hospital To Subsidize Other Operations.** Nemours also neglects Delaware in favor of its Florida and Delaware Valley operations by using the significant annual profits and positive cash flows from the Delaware Children's Hospital to subsidize the high operating losses and cash subsidies required to maintain the Clinics.

Trustees Improperly Allocate All Renovation And Annual Operating Expenses For The Nemours Mansion And Gardens To Delaware

66. Mr. duPont expressly provided in Item 9 of his Will that the care and maintenance of the Mansion and Gardens shall take priority over and precede all other charitable purposes. Specifically, Item 9 of the Will contains the following provision:

> My Trustees are specifically instructed that it should be ***their duty, first,*** to care for the mansion and the grounds and gardens surrounding "Nemours" in order that they be maintained for the pleasure and benefit of the public in their present condition and grounds improved from time to time, as their funds warrant; it being my particular desire that this memorial to my great great grandfather […] and to my father […] be not permitted to deteriorate, but that it should consistently become more beautiful and attractive to those who view it as time passes. ***Only after faithfully carrying out the above instructions shall my [t]rustees be warranted in using any portions of the capital or income of my estate for additional charitable purposes***.

(Ex. A, Will, Book 5 at 16 (emphasis added).)

67. As the foregoing language makes clear, Mr. duPont intended that expenses relating to care of the Mansion and Gardens, regardless of whether such expenses are characterized as renovations or routine care, and regardless of whether they are paid for out of Trust principal or income, must be paid for by the Trustees *before* any distribution for "additional charitable purposes" is made. In other words, such expenses are not supposed to be allocated to or charged against Delaware, or any other state for that matter—because Mr. duPont intended that the Trustees pay for those expenses *before* any distribution to Nemours is made, which is where any such allocation or charging occurs. And yet, despite Mr. duPont's clear intent, the Trustees and Nemours have improperly allocated expenses for renovating and maintaining the Mansion and Gardens to Delaware.

68. For example, in 2009 the Trust completed a multi-million dollar renovation of the Mansion and Gardens, which was paid for solely with funds that the Trustees and Nemours attributed to Delaware for purposes of Nemours' annual calculation under the 1980 Settlement Agreement. In fact, financial statements provided to the State of Delaware show that Nemours attributed to Delaware a total of more than $72 million of renovation expenses for the Mansion and Gardens between 2005 and 2010. On information and belief, attributing these costs to Delaware caused Delaware to receive less than 50% of the Trust's annual net income in each of those years, in violation of the 1980 Settlement Agreement.

69. The 1980 Settlement Agreement, properly understood in light of the Will, requires that at least 50% of the Trust's net income remaining *after* providing for the care and maintenance of the Mansion and Gardens be spent on charitable activities within Delaware. (Ex. B, 1980 Settlement Agreement, ¶ F(3) at 5 and Ex. A, and Will, Book 5 at 56-57.) No other construction of the 1980 Settlement Agreement is consistent with Mr. duPont's intent as expressed in the Will. The Will expresses a clear intent that net income remaining after providing for the care and maintenance of the Mansion and Gardens be expended in a manner such that Delaware Beneficiaries are properly provided for before Trust income is expended in any other state. Construing the 1980 Settlement Agreement to allow Nemours to spend more than half of the Trust income available for the care of Delaware Beneficiaries outside Delaware is contrary to the intent of the Will and the spirit and intent of the 1980 Settlement Agreement.

Trustees Fail To Maintain The Mansion And Gardens For The Pleasure And Benefit Of The Public And The Advancement Of Education

70. Mr. duPont directed in his Will that the "Mansion shall be used for the reception of visitors and their entertainment . . . mainly for the purpose of providing a library and exhibiting to the public interesting and valuable literature, works of art and any articles of

historic and artistic interest for the advancement of education," and directed the Trustees to "care for the mansion and grounds and gardens surrounding 'Nemours' in order that they be maintained for the pleasure and benefit of the public." (Ex. A, Will, Book 5 at 57.) Yet, notwithstanding $72 million spent on the Mansion and Gardens during recent renovations, neither the Mansion nor the Gardens is readily open and accessible to the general public: both are closed four months out of the year and always closed on Mondays; Mansion access is limited to guided tours of up to eight persons which are available only three times a day Tuesdays through Saturdays, and only twice on Sundays; there are no food or picnic facilities to encourage visitors; the Gardens are not ADA-compliant; and Nemours prohibits all motorized wheelchairs while also failing to make non-motorized wheelchairs available.

71. Perhaps most glaringly, despite Mr. duPont's intent that his estate be preserved "for the advancement of education," children under the age of 12 are not permitted admission to the Mansion and Gardens *at all*. This policy effectively prohibits families from visiting the Mansion and Gardens, with the result that many school-aged children are barred from the premises. The age restriction thus defeats Mr. duPont's intent that the Mansion and Gardens be used for educational purposes. Indeed, it strains credulity that Mr. duPont would direct that Nemours maintain a hospital for the care of children, while simultaneously intending that children under 12 years of age be denied the benefits of the educational experience offered by the Mansion and Gardens.

72. The Trustees' and Nemours' administration of the Mansion and Gardens—specifically, the limited hours, restrictive admission policies, prohibition of children, and lack of educational programs and activities—is contrary to Mr. duPont's intent that the estate be maintained "for the pleasure and benefit of the public."

Trustees Are Not Paying Out All Trust Income,
Despite Mr. duPont's Clear Direction In His Will

73. The Trustees' and Nemours' failure to implement Mr. duPont's testamentary intent harms Delaware residents in another, significant way: it reduces the amount of money available to address the health care needs of Delaware Beneficiaries below what Mr. duPont directed. As discussed above, Mr. duPont provided clear direction to his Trustees to pay out all income from the Trust to support Nemours and its charitable mission, and the 1980 Settlement Agreement captures this intent by obligating the Trust to pay out the higher of the net annual Trust income or the then-statutory minimum amount of 3% of the Trust assets, a figure that came from what was then the Florida underproductive property statute (Section 738.12, Florida Statutes). Instead of distributing all net income, which currently averages 7% of Trust assets, the Trustees have historically paid out only 3%, a figure they attempted to lock in with the 2004 Order.

74. In fact, one part of the litigation leading to the 1980 Settlement Agreement was an effort by the State of Delaware to establish valuations of certain assets in the corpus that were not income-producing and difficult to value, and to establish rules for the Trustees in paying out income from those assets. The underproductive property statute in Florida set 3% of the value of the principal of the Trust as the floor amount to be paid out to Nemours (Section 738.12, Florida Statutes (1979)). If the 1980 Settlement Agreement reflected an agreement to a continual 3% payout, the language could have simply said that, or simply pointed to Section 738.12. Instead, the parties agreed that 3% would be the new floor, in order to comply with the then-existing Florida unproductive property statute, and left untouched the Will's ongoing obligation to pay out "income." This reading of the 1980 Settlement Agreement was confirmed by the Florida

Circuit Court in *State of Delaware ex rel. Gebelein v. Belin*, 456 So.2d 1237 (Fla. Dist. Ct. App. 1984). In that decision, the Court found that:

> For years after 1979, *it was agreed* that the net income of the Trust or 3 percent of the fair market value of the Trust assets, *whichever was greater*, would be paid to Nemours. The Trustees would be bound to the prudent trustee's rule to try to raise the Trust income above 3 percent.

Id. at 1239 (emphasis added).

75. Despite this, the Trustees claimed in the court action leading to the 2004 Order that they were "uncertain" as to their distribution obligations in the wake of the repeal of Section 738.12, and asked for a confirmation that they are "required to distribute 3% of the fair market value of the Trust each year." They obtained that confirmation. Now, the Trustees seek to use the proposed Charitable Trust to enshrine the 3% figure as if it were a ceiling instead of a floor, with no reference whatsoever to payment of net income, contrary to the Will and the holding in *Gebelein v. Belin*. The Trustees should comply with Mr. duPont's original intent, which is to pay out actual Trust income.

The Trustees And Nemours Are Denying Delaware Children Access To Important Health Care Programs And Other Treatment By Putting Money Ahead Of Care

76. Finally, the inability of the Trustees and Nemours to come to terms with Mr. duPont's intent that Delaware residents receive "first consideration" and be "properly provided for" also harms Delaware by allowing the Trustees and Nemours to erroneously conclude (or so it appears) that they can refuse to implement valuable health care programs for Delaware residents solely because such programs are not profitable, or deny treatment to otherwise Eligible Children solely because their parents do not have the right kind of insurance, and yet still give effect to Mr. duPont's testamentary intent.

77. For example, in 2012, Nemours received a $3.6 million grant from the U.S. Department of Health and Human Services' Center for Medicare and Medicaid Innovation "to implement projects that focus on delivering better health, improved care, and lower costs to people enrolled in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), particularly those with the highest health care needs." Press Release, The Nemours Foundation, Optimizing Health Outcomes For Children With Asthma In Delaware (Jun. 18, 2012) ("Press Release").[12] The program targeted Delaware children with asthma who received Medicaid assistance, and achieved impressive results, with asthma-triggered emergency room visits and hospitalizations down by 40% and 33%, respectively, and school attendance up, during the program's first two years. *Id.* at 1. According to Nemours CEO Dr. David Bailey, the results of the program have been such that "[w]e now know we can truly improve the care of children." Danielle Paquette, *An Obamacare Program Helped Poor Kids And Saved Money*, WASH. POST, Nov. 19, 2014 ("WaPost Article").

78. These impressive results will be for naught, because Nemours has canceled or will soon be canceling the program. The reason why, according to Nemours, is that without government funding the program "will not meet the cost of care." Modern Healthcare, *Q&A: Nemours CEO Dr. David Bailey* (Jan. 10, 2015).[13] According to Nemours, "[k]eeping the asthma program afloat would require slashing budgets in other areas." WaPost Article. As Dr. Bailey describes it, he and Nemours have a dilemma: "As a doctor, I couldn't be happier. As a business person, how do I do it? How do I pay for that?" *Id.*

[12] Available online at http://www.nemours.org/about/mediaroom/press/dv/asthmaoutcomes.html.

[13] Available online at http://www.modernhealthcare.com/article/20150110/MAGAZINE/301109953.

79. But this purported dilemma is a false one. Missing from Dr. Bailey's statements, or any of Nemours' other public statements on the fate of the asthma program, is any recognition, let alone acknowledgment, that funding and maintaining health care efforts for residents of Delaware who are Eligible Children or Eligible Elderly, even if such efforts are not financially self-sustaining (*i.e.*, profitable), is precisely why Mr. duPont created and funded the Trust, and is precisely what the Trustees and Nemours recommitted to do in the 1980 Settlement Agreement. So the question Dr. Bailey raises has an obvious answer: Nemours can, and indeed should, direct Trust funds to sustain the asthma program and other similar Delaware health care initiatives. That the Trustees and Nemours have discretion in how they implement Mr. duPont's vision does not mean that they can ignore it entirely.

80. Nor is this unavailability of or reduction in care limited to Nemours terminating or refusing to fund entire programs solely on the grounds of profitability. In fact, Nemours' approach has also resulted in Eligible Children in Delaware being forced to travel out of state to obtain specialized medical care that is only available in-state at the Delaware Children's Hospital, solely because their parents do not have the right kind of insurance. Not only does such conduct violate Nemours' obligation under the 1980 Settlement Agreement to "communicate to every hospital in the State of Delaware its willingness and intention to treat every crippled but not incurable child in the State of Delaware, without regard to the child's or the family's ability to pay," it is contrary to Mr. duPont's clearly-expressed intent that eligible Delaware residents receive "first consideration" and be "properly provided for."

81. Mr. duPont—who believed in "the stern necessity" to provide for "those in Delaware who are in direct need" and "the duty of everyone in the world to do what is within his power to alleviate human suffering"—would be chagrined to learn that eligible Delaware

children are forced to go outside of Delaware to receive medical care they could otherwise obtain from Nemours, solely because of financial considerations. As would Mr. Ball, who was justifiably proud to tell others that the Delaware Children's Hospital had "never denied care" to Eligible Children "because of financial consideration[s]." (*See, e.g.*, Letter, dated Nov. 1, 1974, from Edward Ball to Clifford T. Foster ("1974 Ball Letter"), at 2.)[14]

The Inability Of The Trustees To Come To Terms With And Properly Implement Mr. duPont's Testamentary Intent

82. As the foregoing paragraphs have shown, Mr. duPont's testamentary intent with respect to meeting the health care needs of Delaware residents who are Eligible Children or Eligible Elderly is clear, as are the consistent and ongoing failures of the Trustees and Nemours to come to terms with and implement that intent and the detrimental effects that failure is having on Delaware residents. As for why they have allowed this to happen, the answer to that question is, sadly, also clear: the Trustees and Nemours do not appear to believe that they have any obligation to evaluate and address the actual health care needs of Delawareans or to ensure that the operations of the Trust and Nemours maintain Mr. duPont's intended Delaware focus.

83. As explained in the paragraphs above, a key component to the proper implementation of Mr. duPont's mandate is a proper understanding of what it means to give "first consideration" to Delaware Beneficiaries, and what it means to ensure that the residents of Delaware are "properly provided for" before Trust income is spent in "any other state or states." During the early years of the Trust's existence, it appears that the Trustees correctly understood that "first consideration" and "properly provided" meant that as long as Eligible Children or Eligible Elderly in Delaware have unmet health care needs, Trust income must be directed to addressing those needs first. As Edward Ball, Mr. duPont's brother-in-law and close confidante,

[14] A copy of the 1974 Ball Letter is attached as Exhibit F.

and Trust Chairman and Nemours President for 46 years, described it, Delaware Beneficiaries had a "preference" with respect to those Trust income expenditures. (Ex. F, 1974 Ball Letter at 2 ("His desires and purposes were to provide care and treatment to curable handicapped children, *with preference given to those handicapped children of Delaware*.") (emphasis added).)

84. However, in more recent years, it appears that the Trustees' understanding of "first consideration" and "properly provided for" has shifted. They appear to believe that they do not have any obligation to evaluate the actual health care needs of Delawareans before directing Trust income outside of Delaware; rather, they appear to believe that so long as new programs are implemented "first" within Delaware, they can thereafter expand those programs to other jurisdictions, most notably Florida, without considering whether Delawareans have other unmet needs. This belief is reflected in an opinion memorandum from the Trust's counsel, Holland & Knight LLP, dated August 23, 2007.

> Reading the provisions of the Trust as a whole, and giving effect to the phrases "first consideration" and "in each instance," requires that we interpret the Will to mean that Nemours must first introduce each new service to the people of Delaware first. Once that service has been sufficiently funded and properly administered in the State of Delaware, Nemours is free, at the discretion of the Trustees, to introduce such a program in other geographic areas.

(Opinion Memorandum from Holland & Knight LLP to Trustees of the Alfred I. duPont Testamentary Trust, dated Aug. 23, 2007 ("Holland & Knight Opinion"), at 6.)[15]

85. However, the term "first consideration" cannot reasonably be read to mean merely that programs need to be initiated "first" in Delaware. The Holland & Knight Memo ignores Mr. duPont's clear direction regarding "surplus income" (Ex. A, Will, Book 5 at 60), which makes it plain that Mr. duPont directed that the individuals running Nemours (three-fifths of whom were

[15] A copy of the Holland & Knight Opinion is attached as Exhibit G.

required to be Delawareans) were required to make sure that the people of Delaware are being "properly provided for" before they even considered giving funds out to "any other state or states."

86. Holland & Knight elides this issue by objecting that such a reading is "impossible," because "the Trustees are not obligated to solve all of Delaware's health care problems before any funds can be spent elsewhere." (Ex. G, Holland & Knight Opinion at 7.) But Holland & Knight's objection, such as it is, lacks any support in the clear language of the Will, where it is clear that Mr. duPont envisioned that the Board of Managers of Nemours would engage in a more meaningful evaluation of the needs of crippled children and elderly residents with respect to using any funds over and above what could be spent at the one (then-envisioned) Nemours location in Delaware: no funds were to flow to institutions of "any other state or states" before "the people of Delaware needing the care of such institutions" have been "properly provided for." (Ex. A, Will, Book 5 at 60.) Mr. duPont undoubtedly provided this guidance to ensure that Delawareans in fact received "first consideration" as he (and Mr. Ball and other early Trustees) understood the term—a preference in the expenditure of funds, something that goes well beyond just ensuring that programs are introduced in Delaware "first."

87. The Trustees also now appear to believe that the concept of "first consideration" applies only to the annual Trust payment to Nemours. Yet with respect to any other Nemours asset of any kind, including operational revenues in excess of costs at Delaware Children's Hospital or anywhere else, such funds are a general asset of Nemours, and thus subject to the "first consideration" obligation.

88. This becomes clear by returning again to the Will. Mr. duPont did not state that "first consideration" should be provided with respect to funds transferred from his Trust to

Nemours. Instead, he mandated that *the very purpose of Nemours itself* is to provide "first consideration" to Delawareans:

> my said Trustees are hereby directed to pay over, at convenient intervals, to said corporation [Nemours], the net income of my said estate, subject to the annuities and legacies hereinabove mentioned, *for the purpose of* maintaining the said Estate of "Nemours" as a charitable institution for the care and treatment of crippled children, but not incurables, or the care of old men or old women, and particularly old couples, *first consideration, in each instance, being given to beneficiaries who are residents of Delaware*. . . .

(Ex. A, Will, Book 5 at 46 (emphasis added).)

The Trustees' Serious Internal Disagreement As To Whether Their Treatment Of The People Of Delaware Is Consistent With Mr. duPont's Intent

89. Despite Holland & Knight's bland assurances in 2007 that the only reasonable construction of "first consideration" is "first tried," the Trustees knew then (and know now) that this is not true, because one of their own, Mr. Winfred L. Thornton, the longest-tenured Trustee by more than fifteen years, vigorously sought to persuade them otherwise.

90. This internal disagreement came to the attention of the Delaware Attorney General in August 2010, when Mr. Thornton sent a letter ("Thornton Letter")[16] describing in detail a serious disagreement among the Trustees regarding the proper interpretation of the Trust and, in particular, the Holland & Knight Opinion issued in 2007.

91. Mr. Thornton explained that "my concern is that the Opinion by Holland & Knight enables the Trust, and ultimately the Foundation, to deny the children of Delaware rights to which they are entitled in the prevention area." (Ex. H, Thornton Letter at 1.) He noted that "relatively little was being done" on prevention "notwithstanding the fact that many areas within the State of Delaware had multiple needs," and said that he had attempted to persuade his fellow

[16] A copy of the Thornton Letter, with its included exhibits, is attached as Exhibit H.

Trustees and Members of Nemours at a July 18, 2007 meeting of Nemours' Members (*i.e.*, the Trustees) "to pursue a preventive program in Delaware directed at a full array of health needs that confronted the children of that State." (*Id.* at 3.)

92. In support of his proposal, Mr. Thornton delivered a detailed, 46-page PowerPoint presentation on the meaning of "first consideration." (*Id.*, Ex. 4.) With extensive factual and legal support, Mr. Thornton demonstrated that the needs of Delaware residents were both *paramount* and *unmet*. He provided statistics showing Delaware with the second-highest infant mortality rate and the fifth-highest rate of low birth weight babies in the United States, and identified numerous "unmet health needs" of Delaware children, including obesity, mental health, lack of immunizations, and high rates of asthma. (*Id.*, Ex. 4 at 6-16.) And in his conclusion, Mr. Thornton made three points that drove home just how far the Trust and Nemours have drifted from Mr. duPont's intended mission:

> - Under the amended Will, we are not giving the additional children in Delaware the 'First Consideration' to which they are entitled.
>
> - We are using the "Delaware Valley" as the basis for calculating the spending that should be made inside the State of Delaware, as provided in the [1980 Settlement Agreement].
>
> - We are ignoring the very serious needs of the children in Delaware because we cannot receive reimbursement—decisions are being made for financial reasons[,] ignoring the needs of children.

(*Id.*, Ex. 4 at 16.)

93. Holland & Knight was present during Mr. Thornton's presentation and rendered an "oral opinion" on his proposal. (*Id.* at 3.) The other Trustees rejected the proposal, and Mr. Thornton then asked Holland & Knight to provide a formal written opinion. (*Id.*) Yet, despite the wealth of information presented in the Thornton Presentation, and its impassioned plea regarding the Trust's and Nemours' ongoing failure to properly implement Mr. duPont's

testamentary intent, and despite Holland & Knight being present during the presentation, the eight-page Holland & Knight Opinion only obliquely mentions Mr. Thornton's presentation and does not make any effort to incorporate into its analysis of "first consideration" any of the issues raised by Mr. Thornton.

94. The Thornton Letter then goes on to describe his 2009 effort to have the Trustees "seek a declaratory judgment on the interpretation of the Will," which failed because the other Trustees and Holland & Knight "have consistently rejected all attempts to seek any review of the 2004 Final Judgment." (*Id.* at 4.) After consulting with counsel and concluding that "the consequences of [Holland & Knight's] inaccurate Opinion have become painfully apparent"—reciting once again Delaware's lagging numbers in multiple areas of child health—Mr. Thornton concludes his letter by stating that the Holland & Knight Opinion "renders a legal interpretation of the [2004 Order that] effectively modifies Mr. duPont's Will" and allows "the responsibilities of the Trustees to appropriately address this situation [to be] ignored." (*Id.* at 5-6.)

The Final Straw: The Proposed Revised Charitable Trust Seeks To Rewrite The Trust In A Manner Utterly At Odds With Mr. duPont's Intent

95. On December 22, 2011, the Trustees filed the current action to sever the Trust into a proposed charitable trust ("Proposed Charitable Trust") and a proposed annuitants' trust ("Proposed Annuitants' Trust").[17] The purported justification for severing the Trust is to qualify the Proposed Charitable Trust as tax exempt, thus saving millions of dollars in tax payments it currently incurs. The Proposed Annuitants' Trust carves out into a separate trust document the continued annuity payments Mr. duPont set forth in his Will.

[17] Copies of the Proposed Annuitants' Trust and the Proposed Charitable Trust are attached as Exhibits I and J, respectively.

96. The Proposed Charitable Trust would, if approved, control all fiduciary obligations of the Trustees, and eliminate large sections of Mr. duPont's Will. The Proposed Charitable Trust states it "shall supersede completely all prior documents that otherwise might have stated, governed or controlled its terms." (Ex. J, Proposed Charitable Trust, Art. 14.B at 22.) However, while it purports to incorporate all prior court orders and agreements impacting the Trust, its proposed terms both adopt prior amendments inconsistent with Mr. duPont's stated intent and omit information fundamental to upholding grantor intent.

Provisions Of The Proposed Charitable Trust That Are Inconsistent With Mr. duPont's Intent

97. **Failure to Provide Key Language Relating to the Board of Managers.** As addressed above, the actual operations of Nemours over the years have deviated from the Delaware focus Mr. duPont directed, because the Trustees did not put in place the structural safeguards Mr. duPont developed to ensure the mission of Nemours was focused upon the needs of Delawareans. The Proposed Charitable Trust makes no mention of the Board of Managers, and contains no requirement for a majority representation on the controlling board of Nemours by Delawareans, and fails to provide clear direction as to the meaning of "first consideration" and what it would mean to "properly provide for" the people of Delaware.

98. The Proposed Charitable Trust also provides to the Trustees or to the Board of Directors powers that Mr. duPont delegated to the Board of Managers. The Trustees are granted the ability to "determine the nature and scope of the services to be offered by the Nemours Foundation. . . ." (Ex. J, Proposed Charitable Trust, Art. 5.A at 8.) To the extent that Nemours receives income from the Trust in excess of its needs in light of its existing programs, the Board of Directors of Nemours can direct such excess funds "to other charitable institutions. . . ." (*Id.*, Art. 2.A.(3) at 3.) Yet the Board of Directors would not need to be composed of three-fifths

Delawareans, and the language directing the use of this discretion makes no reference to requirement that such funds be directed to Delaware institutions. While these are all powers that the Trustees and Directors already have through the 2004 Order and the Nemours Articles of Incorporation, they are inconsistent with Mr. duPont's testamentary intent and the terms of the Trust he established. Moreover, the Proposed Charitable Trust would add to this inconsistency by giving the Board of Directors a new power, the unilateral ability to exclude from the definition of "crippled children" any "exceptions approved by the Board of Directors of the Nemours Foundation," something entirely inconsistent with Mr. duPont's testamentary intent, the 1972 Final Judgment, and the 1980 Settlement Agreement.

99. **Failure to Require the Trustees to Pay all Income from the Trust.** As discussed above, Mr. duPont directed his Trustees to pay out all income from the Trust to support Nemours, and directed Nemours to use any surplus funds to "properly provide" for Delawareans. The Proposed Charitable Trust limits that ongoing obligation to three percent. As discussed above, neither the Will nor the 1980 Settlement Agreement justify imposing this ongoing limitation upon the ability of the Trustees to pay out income permanently.

100. **Failure to Provide Guidance on the Use of the Mansion and Gardens.** The Proposed Charitable Trust accurately reflects the provisions of the Will that explain Mr. duPont wanted his ancestral home preserved and made available to the public. (*Id.*, Art. 2.A.(1) at 1-2.) Missing from the Proposed Charitable Trust is any suggestion as to what the Mansion and Gardens should be used for, other than being "viewed" by the public. The Proposed Charitable Trust does not answer this question but the Will clearly does provide a "main purpose" for the use of the Mansion and Gardens. It is to be used:

> mainly for the purpose of providing for a library and exhibiting to the public interesting and valuable literature, works of art and any

> articles of historic and artistic interest for the advancement of education. . . .

(Ex. A, Will, Book 5 at 57.) This direction has dropped out of the Proposed Charitable Trust. It should be restored, so that future Trustees will understand the main purpose of public access to the Mansion and Gardens.

101. **Provisions Improperly Contemplating that Nemours May Become a For-Profit Entity.** The Proposed Charitable Trust also includes provisions addressing Trustee rights and obligations in the event the Trust dissolves and Nemours becomes a for-profit entity. None of the language is proper. The central logic of the Trust is to form and support Nemours, and the central logic of Nemours is to operate a charitable institution that provides first consideration to the health needs of Delawareans. Notwithstanding that management of Nemours may be tempted to spin off some parts of its (potentially profitable) hospital network into a for-profit enterprise, there is no scenario in which Nemours could become a for-profit entity, so the Trust need not plan for that eventuality. Indeed, having such language in the central controlling Trust document risks confusing future trustees, who will assume that language addressing such a possibility was added because such an outcome might be consistent with Grantor intent.

Provisions Of The Proposed Charitable Trust Are Inconsistent With The Exercise of Trustee Fiduciary Duties

102. In addition to inclusion of provisions inconsistent with grantor intent, the Proposed Charitable Trust has provisions that run counter to basic fiduciary principles, and risk the development of an increasingly insular Board of Trustees, insulated from challenge even from other Trustees.

103. **Allowing Trustees To Vote Out Dissenting Trustees.** The Trustees propose to empower themselves with the ability to vote out a fellow trustee for many reasons, some of which are quite sensible (such as abandonment or inattention to the Trust). (Ex. J, Proposed

Charitable Trust, Art. 10.D. at 16.) However, one of those powers is the ability to vote out a fellow Trustee for "promoting or perpetuating a hostile or disharmonious relationship with the co-Trustees that substantially impairs the administration of the Trust. . . ." (*Id.*, Art. 10.D. at 16.) There is a long history of dissension amongst Trustees on this Trust. Yet each fiduciary is obligated to fulfill his or her fiduciary duties as they see fit, and if a fiduciary believes that to fulfill his or her fiduciary duty, they need to raise questions about the direction of a trust, such questioning should not be prevented in the name of policing a "harmonious relationship" with other trustees. This language would risk the development of an insular board of trustees and is fundamentally inconsistent with fiduciary obligations.

104. **Excusing A Trustee From Correcting An Ongoing Breach Of Trust.** The Proposed Charitable Trust suggests that trustees should be insulated from liability for a failure to redress any ongoing breach of trust. (*Id.*, Art. 9.F. at 15.) This unusual protection would excuse trustees from correcting the direction of a Trust that has drifted from grantor intent. The obligation of a fiduciary to act consistent with grantor intent cannot be excused because prior trustees have acted inconsistent with that intent.

105. **Allowing An Improper Delegation Of Power By Trustees To Other Trustees.** The Proposed Charitable Trust contemplates a highly unusual delegation of "non-voting powers" to other Trustees, and such delegation can, through successive renewals, go on indefinitely. (*Id.*, Art. 9.A. at 12-13.) The document appears to contemplate that this delegation can be "revoked at any time," but then goes on to suggest that the decision to delegate such powers can be forced upon a dissenting trustee: "A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of that exercise." (*Id.*, Art. 9.A. at 13.) If this

language is aimed at delegating operational management powers for various investments or Trust assets to a management team, it is not clear why it contemplates delegating such powers to another "Trustee," as opposed to an agent for the trustees collectively. Indeed, the next section (*Id.*, Art. 9.B. at 13) appears to address this more typical scenario, and so the delegation of powers amongst trustees appears simply aimed at consolidating total power within the hands of some subset of the trustees. How this would facilitate the operation of a true board of fiduciaries (each with an independent and co-equal fiduciary duty) is unclear.

106. **Insulating Trustees From Claims Of Personal Liability.** The Proposed Charitable Trust attempts to eliminate all liability for a trustee other than "willful default." (*Id.*, Art. 9.E. at 14-15.) Mr. duPont directed that his trustees shall have no liability to the beneficiaries of the Trust, so long as they act "honestly and in good faith." (Ex. A, Will, Book 5 at 21.)

107. **Allowing Trustee Emeritus Status After A Violation Of Trust Obligations.** The Trustee Emeritus position was established through the 2004 proceeding. It was justified at that time as a solution to the increasing size and complexity of the Trust, along with the fact that Mr. duPont provided no provision for the retirement of his trustees. The Proposed Charitable Trust enshrines this unusual benefit. (Ex. J, Proposed Charitable Trust, Art. 10.G. at 18-19.) Remarkably, the Proposed Charitable Trust contemplates emeritus status being an option even for a trustee found by unanimous vote of the other trustees to have committed fundamental breaches of duty. (*Id.*, Art. 10.D.(3)(d) at 17.) Any such outcome would be a clear waste of Trust assets, and there is no basis to incorporate an option to grant such an unusual benefit to a derelict trustee into the controlling trust document.

108. **Allowing Trustees To Unilaterally Modify Trust Terms.** The Proposed Charitable Trust includes a provision authorizing the trustees "in their sole discretion," with approval of 75% of the trustees, to "amend the Trust" without court approval for delineated purposes. (*Id.*, Art. 12 at 20-21.) The power is not applicable to all Trust provisions; Articles Two, Four, Five, Six, Ten, Eleven and Twelve require Court approval. Yet Article Seven, which regulates the powers of trustees, is left out; as is Article Eight, requiring the provision of accounts; Article Nine, addressing delegation of trustee powers; and Article Fourteen (Definitions, Miscellaneous).

109. In light of the deviation from Mr. duPont's intent over the years, and the diversion of control and assets from Delaware to Florida, the Trustees should not now be granted the ability to deviate even further from Mr. duPont's intent of their own accord, with no judicial oversight or approval.

110. The Delaware Attorney General has performed all conditions precedent to the commencement of this action, or such conditions have occurred or have been waived.

CLAIMS FOR RELIEF

COUNT ONE — DECLARATORY JUDGMENT
(Declaration That Delaware Beneficiaries Must Receive First Consideration Until The People Of Delaware Needing Care Are Properly Provided For)

111. This is an action against Counterclaim Defendants and Crossclaim Defendants for declaratory and supplemental relief, pursuant to Chapter 86 and Section 736.0201(4)(e)-(g), Florida Statutes (2015).

112. The Delaware Attorney General realleges and incorporates by reference the allegations in paragraphs 1 through 110 above.

113. The Delaware Beneficiaries have a "special interest in the enforcement of the duPont Trust," and "a special status not enjoyed by the public at large." *State of Delaware ex*

rel. Gebelein v. Fla. First Nat'l Bank of Jacksonville, 381 So.2d 1075, 1078 (Fla. 1st DCA 1979).

114. The Delaware Attorney General, as the acknowledged representative of the Delaware Beneficiaries, has standing to enforce the terms of the Trust, to represent the interests of the Delaware Beneficiaries, and to enforce the rights of the Delaware Beneficiaries under the Florida Trust Code, the common law, and principles of equity. Section 736.0405(3), Florida Statutes (2015); *State of Delaware ex rel. Gebelein*, 381 So.2d at 1078; *Milton v. Milligan*, 2013 WL 828607, *3-4 (N.D. Fla. Mar. 5, 2013).

115. The manner in which the Trustees have operated the Trust with respect to giving first consideration to Delaware Beneficiaries is fundamentally inconsistent with Mr. duPont's clearly expressed intent.

116. Under the Florida Declaratory Judgment Act, this Court has the jurisdiction "to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed," including determining the existence of "any immunity, power, privilege, duty, or right." Section 86.011, Florida Statutes (2015).

117. Similarly, under the Florida Trust Code, this Court has the power to determine "any question" concerning the construction of trust instruments, to determine the existence of "any immunity, power, privilege, duty, or right," and to determine "any other matter involving trustees and beneficiaries," and to allow a party to "obtain a declaration of rights." Section 736.0201(4)(e)-(g), Florida Statutes (2015).

118. There is a real and present dispute between the Delaware Attorney General, as the representative of the Delaware Beneficiaries, and the Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General, as their interests may appear, regarding the proper

interpretation and construction of the Trust with respect to the meaning of the term "first consideration." The Trust language must be interpreted and the operational structure of Nemours must be returned to a form that effectuates Mr. duPont's clearly manifested intent, consistent with the obligation under Florida law to follow and give effect to a grantor's true intent.

119. The Delaware Attorney General is in doubt and uncertain of his rights and the rights of the people of the State of Delaware with respect to this issue, and there is a bona fide, actual, present, and practical need for a judicial declaration as to the proper interpretation and construction of the term "first consideration."

120. The Delaware Attorney General is entitled to have his doubt and uncertainty resolved by a declaration of these rights by the Court.

121. The Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General are all of the other parties that have an interest in this declaration of rights sought by the Delaware Attorney General.

WHEREFORE, the Delaware Attorney General demands judgment against the Counterclaim Defendants and Crossclaim Defendants, declaring that Mr. duPont's intent as the grantor of the Trust was that all income provided from the Trust to Nemours, and all other assets available to Nemours, including operating revenues, would be used to address the needs of all Eligible Children or Eligible Elderly in Delaware before any of it could be used for such purposes outside Delaware.

COUNT TWO — DECLARATORY JUDGMENT
(Declaration That Delaware Residents Must Comprise At Least Three-Fifths Of The Controlling Board Of Nemours)

122. This is an action against Counterclaim Defendants and Crossclaim Defendants for declaratory and supplemental relief, pursuant to Chapter 86 and Section 736.0201(4)(e)-(g), Florida Statutes (2015).

123. The Delaware Attorney General realleges and incorporates by reference the allegations in paragraphs 1 through 110, 113 through 114, and 116 through 117 above.

124. As set forth above, Mr. duPont specifically directed in his Will that Delaware residents must comprise at least three-fifths of the controlling board of Nemours, and such direction should control irrespective of the specific name Nemours gives to the board that controls its operations. The Trustees have failed to comply with this direction, and deny that the manner in which they have caused Nemours to be organized is inconsistent with Mr. duPont's testamentary intent.

125. There is a real and present dispute between the Delaware Attorney General, as the representative of the Delaware Beneficiaries, and the Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General, as their interests may appear, regarding the proper interpretation and construction of the Trust with respect to whether Delaware residents must comprise at least three-fifths of the controlling board of Nemours. The Trust language must be interpreted and the operational structure of Nemours must be returned to a form that effectuates Mr. duPont's clearly manifested intent, consistent with the obligation under Florida law to follow and give effect to a grantor's true intent.

126. The Delaware Attorney General is in doubt and uncertain of his rights and the rights of the people of the State of Delaware with respect to this issue, and there is a bona fide, actual, present, and practical need for a judicial declaration as to the proper interpretation and construction of the Will as to this issue.

127. The Delaware Attorney General is entitled to have his doubt and uncertainty resolved by a declaration of these rights by the Court.

128. The Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General are all of the other parties that have an interest in this declaration of rights sought by the Delaware Attorney General.

WHEREFORE, the Delaware Attorney General demands judgment against the Counterclaim Defendants and Crossclaim Defendants, declaring that Delaware residents must comprise at least three-fifths of the membership of the board that exercises actual control over the operations of Nemours, irrespective of the name which the Trustees or Nemours choose to give to that board.

COUNT THREE — DECLARATORY JUDGMENT
(Declaration That The Mansion And Gardens Be Used For The Purpose Of Providing For A Library And Exhibitions To The Public)

129. This is an action against Counterclaim Defendants and Crossclaim Defendants for declaratory and supplemental relief, pursuant to Chapter 86 and Section 736.0201(4)(e)-(g), Florida Statutes (2015).

130. The Delaware Attorney General realleges and incorporates by reference the allegations in paragraphs 1 through 110, 113 through 114, and 116 through 117 above.

131. As set forth above, Mr. duPont provided specific instructions regarding how the Trustees and Nemours were to maintain and use the Mansion and Gardens for the public's benefit. By reason of the actions of the Trustees, and of the Board of Directors and Board of Managers of Nemours, acting at the direction and behest of the Trustees, the Mansion and Gardens are not being used for the benefit of the public or the advancement of education in the manner intended by Mr. duPont. The Trustees' and Nemours' administration of the Mansion and Gardens is another example of the Trustees' deviation, over time, from Mr. duPont's testamentary intent.

132. There is a real and present dispute between the Delaware Attorney General, as the representative of the Delaware Beneficiaries, and the Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General, as their interests may appear, regarding the proper interpretation and construction of the Trust with respect to the proper use and purpose of the Mansion and Gardens.

133. The Delaware Attorney General is in doubt and uncertain of his rights and the rights of the people of the State of Delaware with respect to this issue, and there is a bona fide, actual, present, and practical need for a judicial declaration as to the proper interpretation and construction of the Will as to this issue.

134. The Delaware Attorney General is entitled to have his doubt and uncertainty resolved by a declaration of these rights by the Court.

135. The Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General are all of the other parties that have an interest in this declaration of rights sought by the Delaware Attorney General.

WHEREFORE, the Delaware Attorney General demands judgment against the Counterclaim Defendants and Crossclaim Defendants, declaring that the Mansion and Gardens must be used "mainly for the purpose of providing for a library and exhibiting to the public interesting and valuable literature, works of art and any articles of historic and artistic interest for the advancement of education," as Mr. duPont clearly and unambiguously directed in his Will, and declaring that the manner in which the Mansion and Gardens are currently being made available to the public is inconsistent with the Will.

COUNT FOUR— DECLARATORY JUDGMENT
(Declaration That The Trustees And Nemours May Not Refuse To Fund Appropriate Programs For Or Provide Care To Eligible Delaware Residents Solely Due To Financial Consideration)

136. This is an action against Counterclaim Defendants and Crossclaim Defendants for declaratory and supplemental relief, pursuant to Chapter 86 and Section 736.0201(4)(e)-(g), Florida Statutes (2015).

137. The Delaware Attorney General realleges and incorporates by reference the allegations in paragraphs 1 through 110, 113 through 114, and 116 through 117 above.

138. Neither Mr. duPont's Will nor the 1980 Settlement Agreement allows the Trustees and Nemours to terminate or refuse to implement appropriate health care programs for Delaware Beneficiaries solely because such programs are not profitable, nor do they permit the Trustees and Nemours to deny otherwise available care to Delaware Beneficiaries solely because they are unable to pay or do not have acceptable insurance.

139. Despite this, the Trustees and Nemours are in fact terminating, threatening to terminate, or refusing to implement appropriate health care programs for Delaware Beneficiaries, or denying them access to otherwise available care, solely on those grounds.

140. There is a real and present dispute between the Delaware Attorney General, as the representative of the Delaware Beneficiaries, and the Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General, as their interests may appear, regarding the ability of the Trustees and Nemours, under Mr. duPont's Will and the 1980 Settlement Agreement, to terminate or refuse to implement appropriate health care programs for eligible Delaware residents solely on grounds of profitability to Nemours, or to deny otherwise available care to eligible Delaware residents solely because those residents are unable to pay or do not have acceptable insurance to pay for such care.

141. The Delaware Attorney General is in doubt and uncertain of his rights and the rights of the people of the State of Delaware with respect to this issue, and there is a bona fide, actual, present, and practical need for a judicial declaration as to the proper interpretation and construction of the Will and the 1980 Settlement Agreement as to this issue.

142. The Delaware Attorney General is entitled to have his doubt and uncertainty resolved by a declaration of these rights by the Court.

143. The Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General are all of the other parties that have an interest in this declaration of rights sought by the Delaware Attorney General.

WHEREFORE, the Delaware Attorney General demands judgment against Counterclaim Defendants and Crossclaim Defendants, declaring that neither the Will nor the 1980 Settlement Agreement authorizes Nemours or the Trustees, as Members or Directors of Nemours, to terminate or refuse to implement appropriate health care programs for eligible Delaware residents solely on the ground that the programs are not or will not be profitable for Nemours, or to deny otherwise available care to eligible Delaware residents solely because those residents are unable to pay or do not have acceptable insurance.

COUNT FIVE— DECLARATORY JUDGMENT
(Improper Calculation Of Distributable Trust Income And Failure To Spend At Least 50% Of Annual Distribution Of Trust Income In Delaware)

144. This is an action against Counterclaim Defendants and Crossclaim Defendants for declaratory and supplemental relief, pursuant to Chapter 86 and Section 736.0201(4)(e)-(g), Florida Statutes (2015).

145. The Delaware Attorney General realleges and incorporates by reference the allegations in paragraphs 1 through 110, 113 through 114, and 116 through 117 above.

146. As set forth above, when the Trustees entered into the 1980 Settlement Agreement, they agreed to pay out on annual basis the higher of the Trust's net income or 3% of the Trust's assets, in order to comply with both the Will and Florida's unproductive property statute. They have, however, consistently ignored the "higher of" part of their commitment and limited Trust payments to 3% of assets.

147. The Trustees and Nemours have improperly allocated to Delaware the renovation and operational expenses for the Mansion and Gardens, in violation of the Will, which has caused Nemours' expenditure of the Trust's annual distribution of income within Delaware to fall below 50% of the Trust's annual distribution amount, in violation of the 1980 Settlement Agreement.

148. The Trustees and Nemours have improperly allocated to Delaware the expenditures made by Nemours in the Delaware Valley—*e.g.*, expenditures for Clinics in Pennsylvania, New Jersey, and Maryland—which has caused Nemours' expenditure of the Trust's annual distribution of income within Delaware to fall below 50% of the Trust's annual distribution amount, in violation of the 1980 Settlement Agreement.

149. The Trustees and Nemours have improperly allocated to Delaware a disproportionate amount of "Corporate and Shared Services" expenses incurred by Nemours, which has caused Nemours' expenditure of the Trust's annual distribution of income within Delaware to fall below 50% of the Trust's annual distribution amount, in violation of the 1980 Settlement Agreement.

150. There is a real and present dispute between the Delaware Attorney General, as the representative of the Delaware Beneficiaries, and the Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General, as their interests may appear, regarding the

calculation and payment of Trust distributions and the allocation of the aforementioned expenditures by Nemours.

151. The Delaware Attorney General is in doubt and uncertain of his rights and the rights of the people of the State of Delaware with respect to this issue, and there is a bona fide, actual, present, and practical need for a judicial declaration as to the proper interpretation and construction of the 1980 Settlement Agreement as to this issue.

152. The Delaware Attorney General is entitled to have his doubt and uncertainty resolved by a declaration of these rights by the Court.

153. The Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General are all of the other parties that have an interest in this declaration of rights sought by the Delaware Attorney General.

WHEREFORE, the Delaware Attorney General demands judgment against Counterclaim Defendants and Crossclaim Defendants, declaring the following:

a. The 1980 Settlement Agreement requires the Trustees to distribute to Nemours, on an annual basis, the higher of the Trust's net income or 3% of the fair market value of the assets;

b. All expenses for renovating, maintaining, and operating the Mansion and Gardens must be paid out of Trust principal or income before any distribution of Trust income is made to Nemours, and those expenses cannot be allocated to or charged against Delaware or any other state;

c. Trust income spent by Nemours can only be allocated or charged to Delaware under the 1980 Settlement Agreement if the funds so allocated or charged are spent inside the borders of the State of Delaware;

d. Expenditures by Nemours for "Corporate and Shared Services" that are allocated to Delaware, or any other state, must be fairly, equitably, and proportionately allocated.

COUNT SIX — DECLARATORY JUDGMENT
(Declaration That The Terms Of The Proposed Charitable Trust Are Inconsistent With Mr. duPont's Clearly-Expressed Intent And With The Proper Functioning Of A Fiduciary Board)

154. This is an action against Counterclaim Defendants and Crossclaim Defendants for declaratory and supplemental relief, pursuant to Chapter 86 and Section 736.0201(4)(e)-(g), Florida Statutes (2015).

155. The Delaware Attorney General realleges and incorporates by reference the allegations in paragraphs 1 through 110, 113 through 114, 116 through 117, and 131 above.

156. The Delaware Attorney General does not object in concept to a severance of the Testamentary Trust into an annuitants' trust and a charitable trust, which will achieve significant tax savings, or to the amendment and restatement of an annuitants' trust and a charitable trust, which will be important to the proper administration of those trusts, particularly with respect to the Delaware Beneficiaries, as well as the parties charged with the administration, oversight, and enforcement of the trusts.

157. However, the terms of any restated charitable trust must reflect the testamentary intent of Mr. duPont as expressed in his Will, and they must be consistent with the proper exercise of a trustee's fiduciary duties. Accordingly, the Delaware Attorney General, as the representative of the Delaware Beneficiaries, objects to the judicial modifications proposed in the Proposed Charitable Trust following the severance, on the grounds set forth in paragraphs 95 through 109 above.

158. There is a real and present dispute between the Delaware Attorney General, as the representative of the Delaware Beneficiaries, and the Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General, as their interests may appear, regarding the propriety of the Proposed Charitable Trust and the relief sought by the Trustees in the Complaint. The Delaware Attorney General is in doubt and uncertain of his rights and the rights of the people of the State of Delaware with respect to this issue, and there is a bona fide, actual, present, and practical need for a judicial declaration as to this issue.

WHEREFORE, the Delaware Attorney General demands judgment against Counterclaim Defendants and Crossclaim Defendants, declaring that the terms of the proposed Charitable Trust are inconsistent with Mr. duPont's testamentary intent and with the proper functioning of a trustee's fiduciary duties, and denying the Trustees' the relief sought in their complaint.

COUNT SEVEN — DECLARATORY JUDGMENT
(Declaration That The Delaware Attorney General Is Entitled To Notice, Information, Accountings, And Reports Relating To The Trust)

159. This is an action against Counterclaim Defendants and Crossclaim Defendants for declaratory and supplemental relief, pursuant to Chapter 86 and Section 736.0201(4)(e)-(g), Florida Statutes (2015).

160. The Delaware Attorney General realleges and incorporates by reference the allegations in paragraphs 1 through 110, 115 through 117, and 146 through 149 above.

161. More than 35 years ago, the Florida First District Court of Appeal applied common law trust principles to rule that the people of Delaware—meaning the Delaware Beneficiaries—have "a special interest in the enforcement of the duPont Trust" and "a special status not enjoyed by the public at large." *State of Delaware ex rel. Gebelein v. Fla. First Nat'l Bank of Jacksonville*, 381 So.2d 1075, 1077-78 (Fla. Ct. App. 1979).

162. As a result, the Delaware Beneficiaries were—and are—entitled to bring suit to enforce the terms of the Trust and to protect their rights under the Florida Trust Code, the common law, and principles of equity. The Delaware Attorney General, as the acknowledged representative of the Delaware Beneficiaries, has standing to enforce the terms of the Trust, to represent the interests of the Delaware Beneficiaries, and to protect their rights. Section 736.0405(3), Florida Statutes (2015); *State of Delaware ex rel. Gebelein*, 381 So.2d at 1078; *Milton v. Milligan*, 2013 WL 828607, *3-4 (N.D. Fla. Mar. 5, 2013); *see also* Section 736.0106, Florida Statutes (2015) ("The common law of trusts and principles of equity supplement this code, except to the extent modified by this code or another law of this state.").

163. It has long been the case that the Florida law of trusts imposes on trustees fiduciary standards of openness and transparency in their administration of a trust, with resultant duties to provide notice and disclose information to beneficiaries, and to maintain and make available records of trust administration and assets, including for purposes of permitting an accounting. The reason for these requirements is that beneficiaries are entitled to have information about the trust provided to them—or to someone authorized to act on their behalf—so that appropriate action can be taken to protect their interests if circumstances warrant.

164. The Delaware Beneficiaries, who "have a special interest in the enforcement of the duPont Trust" and "a special status not enjoyed by the public at large," are entitled to notice, information, accountings, and reports regarding the Trust, and the Delaware Attorney General, as the acknowledged representative of the Delaware Beneficiaries, is entitled to assert these rights on behalf and for the benefit of the Delaware Beneficiaries.

165. Moreover, the Delaware Attorney General's ability to assert these rights on behalf and for the benefit of the Delaware Beneficiaries is consistent with the long-recognized principle

that trust beneficiaries are entitled to impartial, unconflicted representation from those who act on their behalf. The claims asserted by the Trustees in their Complaint, and those asserted by the Delaware Attorney General here, present clear conflicts between the interests of the Delaware Beneficiaries and those of potential Trust beneficiaries in states other than Delaware. Unless the Delaware Attorney General is able to act on behalf and for the benefit of the Delaware Beneficiaries, the Delaware Beneficiaries' special status, and their special interest in the Trust's enforcement, will not be fully protected with respect to such conflicts, because there is no one person or entity capable of providing impartial, unconflicted representation to all of the Trust's beneficiaries.

166. There is a real and present dispute between the Delaware Attorney General, the Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General as to whether the Delaware Beneficiaries, who "have a special interest in the enforcement of the duPont Trust" and "a special status not enjoyed by the public at large," are entitled to notice, information, accountings, and reports regarding the Trust, whether the Delaware Beneficiaries are required to be joined as a party in any proceeding seeking to amend, modify, deviate, reform, interpret or otherwise change or deviate from any term of the Trust, and whether the Delaware Attorney General, as the authorized representative of the Delaware Beneficiaries, is entitled to assert these rights on behalf of and for the benefit of the Delaware Beneficiaries.

167. The Delaware Attorney General is in doubt and uncertain of his rights and the rights of the Delaware Beneficiaries to notice and various information, and there is a bona fide, actual, present, and practical need for a judicial declaration as to the Delaware Attorney General's rights to notice, information, accountings, and reports relating to the Trust.

168. The Delaware Attorney General is entitled to have his doubt and uncertainty resolved by a declaration of these rights by the Court.

169. The Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General, are all of the other parties that have an interest in this declaration of rights sought by the Delaware Attorney General.

WHEREFORE, the Delaware Attorney General demands judgment against all Counterclaim Defendants and Crossclaim Defendants, declaring that the Delaware Attorney General, as the lawful and authorized representative of the Delaware Beneficiaries, is entitled to receive from the Trustees, on behalf and for the benefit of the Delaware Beneficiaries, each of the following:

a. Notice of any action to amend, modify, deviate, reform, interpret, or otherwise change or deviate from any term of the Trust;

b. Upon request made in writing to the Trustees, information regarding the Trust;

c. Upon request made in writing to the Trustees, any periodic or special accounting of the Trust as prepared by or for the Trustees; and

d. Upon request made in writing to the Trustees, reports regarding the administration, operation, and performance of the Trust.

COUNT EIGHT — DECLARATORY JUDGMENT
(Declaration That The Delaware Attorney General May Assert the Rights of a Qualified Beneficiary)

170. This is an action against Counterclaim Defendants and Crossclaim Defendants for declaratory and supplemental relief, pursuant to Chapter 86 and Section 736.0201(4)(e)-(g), Florida Statutes (2015).

171. The Delaware Attorney General realleges and incorporates by reference the allegations in paragraphs 1 through 110, 113 through 117, 146 through 149, and 162 through 165 above.

172. As detailed above, the Will expressly directs the Trustees to give "first consideration . . . in each instance to beneficiaries who are residents of Delaware" (Ex. A, Will, Book 5 at 56), and requires the Trustees and Nemours to ensure that the residents of Delaware are "properly provided for" before surplus Trust income can be spent in "any other state or states" (Ex. A, Will, Book 5 at 60).

173. As a consequence of the foregoing provisions, among others, within the Will, in 1979, the Florida First District Court of Appeal held that the Delaware Beneficiaries of *this specific Trust* have "a special interest in the enforcement of the duPont Trust." The Court continued: "The terms of the trust give the people of Delaware a special status not enjoyed by the public at large. The Attorney General of Delaware represents the people of Delaware and is the proper party to bring suit on their behalf." *State of Delaware ex rel. Gebelein*, 381 So. 2d at 1077-78.

174. In 2006, the Florida Legislature adopted the Florida Trust Code. The Florida Trust Code affords specific rights to "qualified beneficiaries," who are defined to include any "charitable organization expressly designated to receive distributions under the terms of a charitable trust if the charitable organization, on the date the charitable organization's qualification is being determined: (a) is a distributee or permissible distributee of trust income or principal; (b) would be a distributee or permissible distributee of trust income or principal on termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or (c) would be a distributee or permissible distributee of trust

income or principal if the trust terminated on that date." Section 736.0110(1), Florida Statutes (2015).

175. Additionally, the Florida Trust Code affords the Florida Attorney General the authority to assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in Florida. This authority recognizes the Florida Attorney General's responsibility to represent the interests of the public at large in the charitable trust. Section 736.0110(3), Florida Statutes (2015).

176. The 1980 Settlement Agreement, under which both the Florida Attorney General and the Delaware Attorney General were separate parties, demonstrates that as to the Trust, each official was representing separate and distinct interests. In fact, the 1980 Settlement Agreement states as much. The Florida Attorney General, representing the interests of the public at large, could not and cannot simultaneously represent the interests of the Delaware Beneficiaries, whose special status is not enjoyed by the public at large, on questions that relate to the particular rights of Delaware Beneficiaries.

177. Moreover, the 1980 Settlement Agreement confirms that the Delaware Beneficiaries are entitled under the Trust to specific treatment not enjoyed by the public at large. The 1980 Settlement Agreement echoes the Will's "first consideration" directive in stating "Trustees agree that at no time will more than fifty percent (50%) annually of the funds distributed by the Trust to Nemours be spent *outside* the State of Delaware." (Ex. B, 1980 Settlement Agreement, ¶ F(3) at 5 (emphasis added).) This minimum threshold requiring that no less than fifty percent (50%) annually of the funds distributed by the Trust to Nemours be spent *within* Delaware supplements but does not replace the overriding requirement that the Delaware Beneficiaries still receive "first consideration." (Ex. B, 1980 Settlement Agreement, ¶ F(4) at 5.)

178. By reason of the foregoing, each of the Florida Attorney General and the Delaware Attorney General have separate and distinct rights under the 1980 Settlement Agreement which each, as separate parties and separate signatories to the agreement, are entitled and obligated to enforce for their separate and distinct constituencies. This dynamic creates an inherent conflict which prevents the Florida Attorney General from representing at the same time the interests of the Delaware Beneficiaries and the public at large with respect to questions that relate to the rights of Delaware Beneficiaries, including how benefits from the Trust are intended to flow in light of the "first consideration" and "properly provided for" requirements, and in light of the provisions in the 1980 Settlement Agreement designed to protect Delaware interests.

179. The claims asserted by the Trustees in their Complaint, and those asserted by the Delaware Attorney General here, present clear conflicts between the interests of the Delaware Beneficiaries and the interests of the public at large, including potential Trust beneficiaries in states other than Delaware. Both sets of beneficiaries—those within Delaware and those without—are entitled to impartial, unconflicted representation of their interests with respect to the matters presented in this action, which is implied in the Florida Trust Code itself.

180. Here, with respect to *this specific Trust*, this divergence necessarily contemplates more than one person or entity being able to assert the rights of a qualified beneficiary for purposes of the Florida Trust Code. The Florida Attorney General, consistent with her common law status as the legal representative of the "public at large" with respect to charitable trusts, can assert the rights of qualified beneficiaries under the Florida Trust Code with respect to issues affecting the public at large, without regard to residence, as well as potential Trust beneficiaries residing in states other than Delaware. However, the Delaware Attorney General, consistent with the *Gebelein* Court's recognition of his status as the lawful representative of the Delaware

Beneficiaries, must be able to assert the rights of qualified beneficiaries under the Florida Trust Code with respect to the Delaware Beneficiaries.

181. Granting the Delaware Attorney General status to assert the rights of a qualified beneficiary would be in addition to, and not in substitution for, the parallel right of the Florida Attorney General to assert such rights.

182. There is a real and present dispute between the Delaware Attorney General, and the Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General, as to whether, solely for purposes of *this specific Trust*, the Delaware Attorney General, as the lawful, authorized representative of the Delaware Beneficiaries is entitled to assert the rights of a qualified beneficiary, as that term is defined in the Florida Trust Code.

183. The Delaware Attorney General is in doubt and uncertain of his right to assert the rights of a qualified beneficiary, and there is a bona fide, actual, present, and practical need for a declaration as to the Delaware Attorney General's right to assert the rights of a qualified beneficiary.

184. The Trustees, Nemours, the Florida State Attorney, and the Florida Attorney General are all of the other parties that have an interest in this declaration of rights sought by the Delaware Attorney General.

WHEREFORE, the Delaware Attorney General demands judgment against Counterclaim Defendants and Crossclaim Defendants, declaring, for the purposes of *this specific Trust*, that the Delaware Attorney General, as the lawful and authorized representative of the Delaware Beneficiaries, is entitled to assert the rights of a qualified beneficiary, as that term is defined in the Florida Trust Code.

COUNT NINE — BREACH OF TRUST
AND REQUEST FOR AN ACCOUNTING
(Failure To Provide Accurate And Timely Information
On And To Account For The Activities Of The Trust)

185. This is an action for relief against the Trustees, arising by reason of breaches of trust, seeking an accounting of the Trust and other supplemental relief based upon the equitable right of a beneficiary to an accounting, and Sections 736.0813 and 736.1001, Florida Statutes (2015).

186. The Delaware Attorney General realleges and incorporates by reference the allegations in paragraphs 1 through 110, 113 through 115, 117, 146 through 149, 162 through 165, and 172 through 181 above.

187. In their administration of the Trust the Trustees are bound by the following duties, among others:

a. The duty to administer the Trust in good faith and in accordance with its terms and purposes and the interests of the beneficiaries. Section 736.801, Florida Statutes (2015).

b. The duty to administer the Trust solely in the interests of the beneficiaries. Section 736.802, Florida Statutes (2015).

c. The duty of impartiality. Section 736.803, Florida Statutes (2015).

d. The duty of prudent administration. Section 736.804, Florida Statutes (2015).

188. The Trustees have breached the foregoing duties in their administration of the Trust, and by reason thereof, and pursuant to Sections 736.0105(2)(s), 736.0105(2)(t), and 736.0813, Florida Statutes (2015), the Trustees owe the Delaware Beneficiaries a duty to inform and account.

189. The Trustees' duty to inform and account includes the requirement to provide an annual trust accounting which sets forth, in writing, *inter alia*: all cash and property transactions; all significant transactions affecting administration during the accounting period, including compensation paid to the Trustees and the Trustees' agents; gains and losses realized during the accounting period; all receipts and disbursements; identification and valuation of trust assets; each known non-contingent liability; significant transactions that do not affect the amount for which the Trustees are accountable; and allocation of receipts, disbursements, accruals or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust. Section 736.08135(2)(a)-(f), Florida Statutes (2015).

190. Implicit in this duty to account and inform is the requirement that the Trustees provide accurate and timely accountings which are consistent with generally accepted accounting principles and other applicable financial reporting standards.

191. The Trustees have failed, *inter alia*, to account to the Delaware Attorney General, as the representative of the Delaware Beneficiaries, for the net income of the assets of the Trust as of December 31 for at least the years 2005 to the present, such that the Delaware Attorney General cannot determine whether the Trust has paid to Nemours, on or before April 15 of each year, the higher of (1) the net income of the Trust or (2) an amount equal to three percent (3%) of the fair market valuation of the assets as of December 31 of each consecutive year after 1979 pursuant to Section C of the 1980 Settlement Agreement (the "Proper Nemours Distribution").

192. The Trustees have failed to account properly for expenses incurred by the Trust to renovate, remodel, and operate the Mansion and Gardens by paying for those expenses out of Trust principal or Trust income *before* determining the amount of Trust income available for distribution to Nemours, and have instead improperly allocated those expenses to Delaware *after*

making the annual distribution of Trust income to Nemours. Financial statements provided to the Delaware Attorney General by the Trustees show that *all* expenses for the Mansion and Gardens have been allocated to Delaware, including more than $8.8 million in 2005, more than $10.5 million in 2006, more than $29 million in 2007, more than $14 million in 2008, and more than $4 million in 2009.

193. The Trustees have failed in their obligations to inform and account to the Delaware Attorney General, as the representative of the Delaware Beneficiaries, and they have been unwilling or unable to answer important questions regarding the Proper Nemours Distribution, the allocation of Mansion and Gardens expenditures, and other accounting matters pertaining to the Trust and Nemours.

194. The Trustees' failure constitutes a breach of the Trustees' duty to inform and account under Sections 736.0813(1)(d) and 736.08135(2), Florida Statutes (2015), which impairs the ability and authority of the Delaware Attorney General to effectively monitor and enforce the terms of the Trust on behalf of the Delaware Beneficiaries.

WHEREFORE, the Delaware Attorney General demands judgment against the Trustees and demands that the Court:

a. Order the Trustees to inform and account and to administer the Trust in good faith and impartially, pursuant to Sections 736.1001(2)(a) and (j), and to provide a full accounting to the Delaware Attorney General, pursuant to Sections 736.0813, 736.1001(2)(a) and 2(d), Florida Statutes (2015), as well as a beneficiary's equitable right to an accounting, of the net income and fair market value of the assets of the Trust as of December 31 of each calendar year from 2005 through the date upon which a judgment shall be entered hereon;

b. Order the Trustees to provide a full accounting to the Delaware Attorney General, pursuant to Sections 736.0813, 736.1001(2)(a) and 2(d), Florida Statutes (2015), as well as a beneficiary's equitable right to an accounting, of the income received by Nemours from the Trust for calendar years 2005 through the date upon which a judgment shall be entered hereon, with said accounting to include a clear enumeration of all disbursements for the renovation and operation of the Mansion and Gardens, and the allocation of and underlying detail for such disbursements, pursuant to Sections 736.813(d) and 736.08135(2), Florida Statutes (2015);

c. Order that such accounting be conducted by an accounting firm agreed upon by all parties to this action;

d. Order the Trustees to pay a corrective distribution to Nemours from the Trust, pursuant to Section 736.1001(3)(a), Florida Statutes (2015), together with interest, if and when such accounting confirms that the Trustees have failed to pay the Proper Nemours Distribution for each affected year, with said corrective distribution to be in the amount equal to the difference of what was paid from the Trust to Nemours for the years accounted for and the amount of the Proper Nemours Distribution, as determined by such accounting;

e. Order the Trustees to pay a corrective distribution for the benefit of Delaware Beneficiaries, pursuant to Section 736.1001(3)(a), Florida Statutes (2015), together with interest, if and when such accounting demonstrates that the Trustees improperly allocated to Delaware expenses incurred by the Trust to renovate, repair, and operate the Mansion and Gardens, with said corrective distribution to be in an amount

equal to the sum paid for Mansion and Gardens renovations which was allocated to Delaware each affected year; and

f. Order such other and further relief as this Court deems just and proper pursuant to Section 736.1001(2)(j), Florida Statutes (2015).

COUNT TEN — BREACH OF CONTRACT AND REQUEST FOR AN ACCOUNTING (Breach Of 1980 Settlement Agreement For Failure To Spend At Least 50% Of Annual Distribution Of Trust Income In Delaware And Request For An Accounting)

195. This is an action against the Trustees and Nemours for breach of the 1980 Settlement Agreement, seeking damages in an amount exceeding $15,000.00, exclusive of interest and costs, and for an accounting as a result of the Trustees' and Nemours' breach of the 1980 Settlement Agreement.

196. The Delaware Attorney General realleges and incorporates herein his allegations in paragraphs 1 through 110, 113 through 114, and 117 above.

197. Under the 1980 Settlement Agreement, the Trustees are obligated each year to "pay over to . . . Nemours" the higher of "the net income of the Trust, or the statutory amount of three percent (3%) of the fair market valuation of the assets [of the Trust]." (1980 Settlement Agreement, ¶ C at 3.) Nemours, as the recipient of those funds, owes an obligation to the Delaware Beneficiaries to see that at least 50% of the Trust's net income is expended within Delaware. (*Id.*, ¶ F(3)-(4) at 5.)

198. The Delaware Beneficiaries are dependent on the Trustees and Nemours to spend at least 50% of the Trust's annual distribution of net income within Delaware.

199. The Trustees and Nemours have breached the 1980 Settlement Agreement by failing to account properly for expenses incurred by the Trust to renovate, remodel, and operate the Mansion and Gardens, and by improperly allocating those expenses to Delaware after making

the annual distribution of Trust income to Nemours. Financial statements provided to the Delaware Attorney General by the Trustees show that *all* expenses for the Mansion and Gardens have been allocated to Delaware, including more than $8.8 million in 2005, more than $10.5 million in 2006, more than $29 million in 2007, more than $14 million in 2008, and more than $4 million in 2009. This has caused Nemours' expenditure of the Trust's annual distribution of income within Delaware to fall below 50% of the Trust's annual distribution amount, in violation of the 1980 Settlement Agreement.

200. The Trustees and Nemours have breached the 1980 Settlement Agreement by failing to account properly for expenditures made outside of Delaware, particularly expenditures made in New Jersey and Pennsylvania, by improperly allocating to Delaware expenditures made by Nemours in the Delaware Valley (*i.e.*, Pennsylvania, New Jersey, and Maryland) instead of separately allocating and reporting those expenditures on a state-by-state basis. This has caused Nemours' expenditure of the Trust's annual distribution of income within Delaware to fall below 50% of the Trust's annual distribution amount, in violation of the 1980 Settlement Agreement.

201. The Trustees and Nemours have breached the 1980 Settlement Agreement by failing to account properly for "Corporate and Shared Services" expenses incurred by Nemours, by having Nemours, in its financial statements, allocate to Delaware a disproportionate amount of those expenses. For example, financial statements provided by the Trustees to the Delaware Attorney General show that between 2005 and 2010 "Corporate and Shared Services" totaling more than $102 million were attributed to the State of Delaware's share of the annual distribution from the Trust, compared to just over $19 million allocated to Florida during the same period. No amounts appear to have been allocated to New Jersey or Pennsylvania in this timeframe. This has caused Nemours' expenditure of the Trust's annual distribution of income

within Delaware to fall below 50% of the Trust's annual distribution amount, in violation of the 1980 Settlement Agreement.

202. The Trustees and Nemours have also breached the 1980 Settlement Agreement by favoring charitable activities for the benefit of residents of Florida and other states while the needs of the Delaware Beneficiaries remain unmet and not fully addressed.

203. The Delaware Beneficiaries have been damaged by the Trustees' and Nemours' breaches.

WHEREFORE, the Delaware Attorney General demands judgment against the Trustees and Nemours and demands that the Court:

a. Order the Trustees and Nemours to provide a full accounting to the Delaware Attorney General of the disposition of all income received by Nemours from the Trust for calendar years 2005 through the date upon which a judgment shall be entered hereon, with said accounting to include a clear enumeration of (i) all disbursements for the renovation and operation of the Mansion and Gardens, and the allocation of and underlying detail for such disbursements; (ii) all disbursements expended within Delaware, Florida, New Jersey, Pennsylvania, and any other states, and the allocation of and underlying detail for such disbursements; and (iii) all disbursements for "Corporate and Shared Services" by Nemours, and the allocation and underlying detail for such disbursements;

b. Order that such accounting be conducted by an accounting firm agreed upon by all parties to this action;

c. Order the Trustees and Nemours, based on the results of such accounting, to pay to the Delaware Attorney General, for the benefit of the Delaware Beneficiaries, an amount equal to the aggregate of:

1. The expenses incurred by the Trust to renovate, repair, and operate the Mansion and Gardens that were allocated to Delaware each affected year;

2. The expenditures of Trust income made by Nemours outside of Delaware, including those made in New Jersey and Pennsylvania, that were allocated to Delaware each affected year; and

3. The difference between the amount of "Corporate and Shared Services" expenses actually allocated to Delaware and Delaware's proportionate share of such expenses; and

d. Order such other and further relief as this Court deems just and proper under the circumstances.

COUNT ELEVEN —REFORMATION OF THE TERMS OF THE TRUST TO CONFORM TO MR. DUPONT'S INTENT

204. This is an action to reform the Trust pursuant to the common law of trusts and principles of equity, or Section 736.0415, Florida Statutes (2015), or both.

205. The Delaware Attorney General realleges and incorporates by reference the allegations in paragraphs 1 through 110, 113 through 115, 117, 146 through 149, 162 through 165, and 172 through 181 above.

206. Section 736.0415, Florida Statutes (2015), provides that a trust may be reformed to conform the terms to the settlor's intent:

> **736.0415 Reformation to correct mistakes.** Upon application of a settlor or any interested person, the court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intent if it is proved by clear and convincing evidence that

> both the accomplishment of the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement. In determining the settlor's original intent, the court may consider evidence relevant to the settlor's intent even though the evidence contradicts an apparent plain meaning of the trust instrument.

207. The Delaware Beneficiaries, and the Delaware Attorney General on their behalf, as interested persons within the meaning of the Florida Trust Code, are entitled to seek reformation of the Trust in order to accomplish Mr. duPont's clear intent.

208. The Trust, as modified by the 2004 Order, fails to conform to and materially diverges from Mr. duPont's intent in the following material respects, as may be demonstrated by clear and convincing evidence:

a. The distribution to be made annually by the Trust to Nemours is stated to be three percent (3%) of the fair market value of the Trust as of January 1 of each year, as opposed to the actual income of the Trust, and thus the Trust does not unequivocally require that all income of the Trust be distributed for the fulfillment of the Trust's charitable purposes, subject to the requirements of Florida law.

b. The controlling board of Nemours is no longer comprised of members of which no less than three-fifths are residents of Delaware.

c. The Trust no longer requires that the trustees in all events include a corporate trustee.

209. Additionally, the definition of "crippled children," as set forth in the 1980 Settlement Agreement, now limits its application to children under the age of eighteen (18) years as opposed to children under the age of twenty-one (21) years.

210. To the extent that the terms of the Trust, within the meaning of the Florida Trust Code, no longer reflect Mr. duPont's intent—as reflected in the Will, or as established by the

1971 Final Judgment and the 1980 Settlement Agreement—with regard to any of the matters for which declaratory relief is sought in the preceding counts, whether as a result of the 2004 Order or otherwise, the terms of the Trust must be reformed in order to accomplish Mr. duPont's clearly-expressed intent.

WHEREFORE, the Delaware Attorney General demands judgment against all Counterclaim Defendants and Crossclaim Defendants, and demands that the Court reform the terms of the Trust to conform to Mr. duPont's clearly-expressed intent, to the extent it is necessary to do so in order to effectuate any request for declaratory relief herein regarding the meaning and interpretation of the Will.

Dated: September 1, 2015.

AKERMAN LLP

By: */s/ John B. Macdonald*

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September, 2015, I served a true and correct copy of the foregoing by email on:

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/s/ John B. Macdonald
Attorney

Exhibit A

IN RE THE ESTATE OF ALFRED I. DuPONT, DECEASED.

True and Correct Copy and Literal Transcript of the following:

Will and Testament dated November 19th, 1932.

Codicil dated March 4th, 1933.

Second Codicil dated January 15th, 1935.

Order of Probate dated May 24th, 1935.

Letters Testamentary dated May 24th, 1935.

As the Same Appear of Record and Among the Files of the Court of the County Judge, Duval County, Florida.

Certificates of Clerk and Judge of said Court.

ORDER ADMITTING TO PROBATE, ORDER FOR LETTERS, OATH OF EXECUTOR, LETTERS TESTAMENTARY BOOK 3, Page 21

IN THE COURT OF THE COUNTY JUDGE
IN AND FOR DUVAL COUNTY, FLORIDA.
IN PROBATE.

IN RE THE ESTATE OF
ALFRED I. DuPONT, Deceased.

LETTERS TESTAMENTARY

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, Alfred I. duPont, late of the County of Duval, State of Florida, died on the 29th day of April, 1935, leaving a Last Will and Testament and two Codicils which, having been satisfactorily proven, were on the 24th day of May, 1935, duly admitted to probate and record in this Court. And as by said Last Will and Testament and Codicils it appears that Jessie Ball duPont, Reginald S. Huidekoper, and Edward Ball were thereby nominated, constituted and appointed Executors of said Last Will and Testament and Codicils, and that the said Jessie Ball duPont, Reginald S. Huidekoper and Edward Ball having prayed the Court to grant Letters Testamentary thereon to them as such Executors and having in due form of law taken the prescribed oath and performed all other acts necessary to their legal qualification as such Executors,

NOW, THEREFORE, KNOW YE, that I, J. OLLIE EDMUNDS, County Judge in and for the County aforesaid, by virtue of the power and authority by law in me vested, do hereby declare the said Jessie Ball duPont, Reginald S. Huidekoper and Edward Ball duly qualified by the laws of said State to act as Executors of the said last Will and Testament and Codicils and with full power,

Exhibit A

by the provisions of law and by virtue of these presents, to administer all and singular the goods, chattels, rights, credits, lands, tenements, hereditaments and property of the said Alfred I. duPont; and to ask, demand, sue for, recover and receive the same; to pay the debts in which the said Alfred I. duPont stood bound so far as the assets shall extend and the law direct, and duly entitled to have and hold for the purposes directed in and by said last Will and Testament and Codicils all of the estate of the said Alfred I. duPont, during the legal continuance of said administration, until the same shall expire by virtue of the provisions of said last Will and Testament and Codicils, or until the power and authority hereby granted shall be duly revoked according to law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and fixed the seal of the Court of the County Judge of the County aforesaid, at Jacksonville, Duval County, Florida, this 24th day of May, 1935.

J. OLLIE EDMUNDS

County Judge of Duval County, Florida.

(SEAL)

STATE OF FLORIDA }
COUNTY OF DUVAL }

BE IT REMEMBERED, That on this 24th day of May, A. D. 1935, I duly recorded the foregoing Letters Testamentary in the public records of said County.

J. OLLIE EDMUNDS

County Judge of Duval County, Florida.

(SEAL)

I, ALFRED I. DuPONT, now of Duval County, near the City of Jacksonville, State of Florida, do make, publish and declare this my Last Will and Testament, hereby revoking any Will or Wills, Codicil or Codicils thereto, by me at any time heretofore made.

ITEM 1. It is my will and desire that all bequests, devises and legacies, including all annuities herein created and directed to be paid, shall be paid to the beneficiaries thereof free and clear of all taxes chargeable upon, or incident to the passing of my estate or the settlement thereof, generally known as inheritance or transfer taxes, whether assessable against my estate, or the beneficiary or beneficiaries, by any State, County or Municipality, or under the laws of the United States, not including, however, any tax or taxes which may be due by the beneficiary or beneficiaries receiving any bequest or devise as a tax on the income of such beneficiary or beneficiaries, and I direct that my Executors shall pay all such taxes and any other taxes which may be a charge against my estate at such times as shall be deemed by them most beneficial to my estate, within the time limited by law, and for that purpose I hereby direct and empower my said Executors to use any of my securities which may belong to my estate as collateral security for the purpose of borrowing money for the payment of said taxes, provided in the judgment of my said Executors it shall not be deemed expedient to sell or otherwise dispose of said securities, with the understanding that all other provisions of this my Will, and the vesting of any bequests, legacies or devises hereinafter provided for, shall be subject to the use by my Executors of the said securities as herein provided.

ITEM 2. I give and bequeath unto the persons hereinafter named in this Item, the following:

ALFRED I. DuPONT

(a) Unto Mrs. Madeline duPont Ruoff, now residing at Munich Germany, Five Thousand (5,000) shares of the common capital stock of Almours Securities, Inc.

(b) Unto Mrs. Bessie duPont Huidekoper, now residing at 1707 New Hampshire Avenue, Washington, D. C., Five Thousand (5,000) shares of the common capital stock of Almours Securities, Inc.

(c) Unto Victorine E. duPont Dent, now residing near Philadelphia, Pennsylvania, Five Thousand (5,000) shares of the common capital stock of Almours Securities, Inc.

(d) Unto Alfred Victor duPont, now residing near Wilmington, Delaware, Five Thousand (5,000) shares of the common capital stock of Almours Securities, Inc.

The four bequests in the foregoing paragraphs (a), (b), (c) and (d) are to the four children of my first marriage, and the bequests to each of them above set forth, together with such provisions as I have heretofore made for them, I consider ample.

I make no provision in this my Will for Alicia Amory Maddox Glendenning, the daughter of my former wife, Alicia Bradford, for the reason that I consider she is amply provided for under the Will of her mother.

ALFRED I. DUPONT

(e) Unto Isabelle Ball Baker, the wife of the Reverend N. Addison Baker, now residing in Richmond, Virginia, One Thousand (1,000) shares of the common capital stock of Almours Securities, Inc.

(f) Unto Mrs. Elsie Ball Bowley, the wife of Major-General Albert J. Bowley, now residing at Schofield Barracks, Hawaii, One Thousand (1,000) shares of the common capital stock of Almours Securities, Inc.

(g) Unto Thomas Ball, now residing in Los Angeles, California, the brother of my wife, One Thousand (1,000) shares of the common capital stock of Almours Securities, Inc.

(h) Unto Edward Ball, now residing in Jacksonville, Florida, the brother of my wife, Five Thousand (5,000) shares of the common capital stock of Almours Securities, Inc. This bequest is made in lieu of all fees and commissions which he should receive as Executor and/or Trustee under this Will or in connection with my Estate and is in full settlement of such fees and commissions.

Exhibit A

(i) The sum of One Thousand Dollars ($1,000.00) to each and every one of the employees who is in my employ and/or in the employ of Almours Securities, Inc. and/or in the employ of any of its subsidiaries at the time of my death and who at such time has been so employed continuously for a period of one year or more next preceding the date of my death in the Jacksonville or in the Wilmington office, and/or in connection with or on my yacht, and/or in connection with my former home, Nemours," either in the house or outside and/or in connection with my present home, Epping Forest, near Jacksonville, Florida, either in the house or outside, provided that this bequest shall not apply to any one who has otherwise been provided for under this my Will, and that no person taking under this paragraph shall take more than One Thousand Dollars ($1,000.00), even though employed both by me and by one or more of said corporations and in more than one of the capacities above stated.

ITEM 3. In addition to the contents of the Mansion House, and other buildings and structures known as "Nemours" which at the time of our marriage and since that time I gave to my beloved wife, Jessie Ball duPont, I give and bequeath unto my said wife, Jessie Ball dul'ont, absolutely, all of the household goods, household equipment and silver and plate of every description owned by me at the time of my demise, wheresoever located and situated; also all works of art owned by me at the time of my decease, whersoever located and situated; also all automobiles, yachts, horses, wagons, carriages, harness and all equipment, tools and fixtures used in connection therewith or in the upkeep, cultivation and maintenance of the places which I may own or maintain for my personal use, wheresoever located and situated, and also all my jewelry, clothing and articles of personal use, wheresoever located and situated at the time of my decease, it being my intention that my said wife shall have all such personal belongings as I may own at the time of my demise.

ITEM 4. The title to our home known as "Epping Forest," situate in Duval County, Florida, is vested in an estate by the entireties in my beloved wife, Jessie Ball duPont, and my-self, and therefore upon the death of either it will by operation of law pass to the survivor, but should my wife pre-decease me and the title to this property thereby become and be vested in me at the time of my death, then and in such event I give and devise the same, together with all tenements, hereditaments and appurtenances thereunto appertaining, unto Almours Securities, Inc., and its successors and assigns, in fee simple forever.

Exhibit A

ALFRED I. DUPONT

ITEM 5. Subject to the legacies and bequests hereinabove set forth, I give, devise and bequeath the entire rest, residue and remainder of my property and estate, real, personal or mixed, in esse and in futuro, wheresoever the same may be situated, of which I may die seized and possessed and which may belong to me at the time of my death, or which may be subject to my disposal by Will, unto The Florida National Bank of Jacksonville, a banking corporation organized and existing under the laws of the United States of America, with its principal place of business in Jacksonville, Florida, to my wife, Jessie Ball duPont, to John F. Lanigan, now of Miami, Florida, and to Edward Ball, now residing at Jacksonville, Florida, as Trustees, and unto their successors in trust, to have and to hold said Estate forever, but IN TRUST for the following uses and purposes. If the said John F. Lanigan is not living, or is for any reason unable to act as one of my said Trustees or should resign, then I nominate and appoint my son-in-law, Elbert Dent, of Philadelphia, Pennsylvania, to act as Trustee in the place and stead of the said John F. Lanigan, and if the said Edward Ball is not living or is for any reason unable to act as one of my said Trustees or should resign, then I nominate and appoint N. Addison Baker, of Miami, Florida, to act as Trustee in the place and stead of said Edward Ball. I direct that in case any individual Trustee of my estate shall die or cease to act, the survivors of my said Trustees shall have all the powers hereinabove given to my said Trustees, and such survivors shall at once select a Trustee in the place of the one so dying, or ceasing to act, and the person so selected shall exercise all the powers given herein to one of my Trustees, provided that a reputable corporate Trustee shall always be one of my Trustees.

In case The Florida National Bank of Jacksonville fails or refuses to accept and act under the Trust herein created upon the terms herein set forth, then the other three Trustees are hereby empowered and directed to select and appoint some other trust company or bank, either in the State of Florida or elsewhere, to act as Trustee under the provisions of this my Last Will in place of The Florida National Bank of Jacksonville; and such other

Exhibit A

trust company or bank to have all the powers and be charged with all the duties and responsibilities given to or placed upon The Florida National Bank of Jacksonville under this my Will, and to receive such compensation as may be determined by my individual Trustees.

It is my wish that in the event that the three individual Trustees, or their successors or substitute Trustees herein named, or the survivor or survivors of them, as distinguished from the corporate Trustee herein named or its corporate successor or any succeeding corporate successor or successors thereof, should at any time deem it expedient that the corporate Trustee be changed, then they shall have the power, from time to time and as often as they consider it advisable so to do, to select another trust company or bank, either in the State of Florida or elsewhere, as the corporate Trustee, whereupon the corporate Trustee as hereinabove indicated, namely, The Florida National Bank of Jacksonville or its corporate successor, or any succeeding corporate successor or successors thereof, shall relinquish and give over all rights as corporate Trustee to the newly selected bank or trust company, and all rights and duties given to The Florida National Bank of Jacksonville or its corporate successors or any succeeding corporate successor or successors thereof, shall cease and determine, and the same shall be taken over by the new corporate Trustee chosen by the individual Trustees as hereinabove set forth, the compensation of the new corporate Trustee in each instance to be determined by the individual Trustees.

ALFRED I. DUPONT

ITEM 6. It is my will and desire that my said Trustees and their successors shall take possession and shall have entire management and control of the corpus of my estate during such time as it is in their keeping and in the administration and management of my said trust estate my Trustees shall have the following powers, which may be exercised at their discretion, namely:

(a) To continue to hold any securities or other assets left by me, as well as investments made by them, so long as they shall deem it advisable so to do, without liability for any loss that may result therefrom.

Exhibit A

(b) To invest and reinvest the assets of my estate, or the proceeds of any sale or disposition thereof, in any corporate stocks, bonds, or other securities, or in any other investments, either real or personal, or both, from time to time, not confining such investment or reinvestments to what are defined by the laws of any State as legal trust fund investments, with power to buy stocks and bonds and other securities at a premium to be paid out of and charged against the principal of the trust estate, and with power in their discretion to cause the securities, which may, from time to time comprise the trust estate, or any part or parts thereof, to be registered in their names as Trustees, or in the individual name of their nominee, or to take and keep the same unregistered and retain them or any part or parts thereof in such condition that they will pass by delivery, without liability for any loss that may result therefrom.

(c) To borrow money from time to time, for any purpose in the administration or distribution of my estate or to continue and renew any loan made to me, or by me in my lifetime, or to, or by my said Executors or Trustee as in their judgment shall seem wise and expedient, and for that purpose to give, execute and deliver such assignments and transfers, obligations, notes, pledges, bonds and mortgages and renewals thereof, and other instruments or papers, from time to time, as they may deem necessary or proper, without liability on the part of any such purchaser, lender or mortgagee, to see to the application of the purchase moneys or of the moneys loaned.

(d) To sell, either at public or private sale and either clear of encumbrances or subject thereto, or upon ground rent or purchase money mortgage, and further to mortgage and re-mortgage, pledge, assign, and reassign, lease and re-lease, any or all of the assets, real or personal, of my estate, of which I shall die seized or possessed, or which may in any manner or way come into the possession of my said Executors or Trustees, or of which the title may be vested in them or to which they shall be entitled, at any time whatsoever, for such price or prices, sum or sums and upon such term or terms as my said Executors or Trustees as the case may be, sha"

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deem wise and expedient,and to give,execute,and deliver good and sufficient deeds, assignments, transfers, powers, bonds, mortgages, pledges, leases, authorities, and other assurances and instruments in the law as in their discretion may be deemed necessary or proper in the premises, and to re-execute any of their powers herein granted from time to time as may be found necessary or advisable in the administration of my estate, without any liability or responsibility upon the part of the purchaser or purchasers, mortgagee or mortgagees, pledgee or pledgees, obligee or obligees, assignee or assignees, lessee or lessees thereof to see to the application of the purchase moneys, or of the borrowed, bond, mortgage or pledge moneys.

(e) To take over properties in foreclosure and to buy in assets held as collateral in case of default upon any obligations held by my estate, and, in their discretion, to retain the same, and further to enter into and become a party to any concerted action or plan, reorganization or otherwise, and sign agreements in reference thereto, with the intention of liquidating, conserving, bettering or saving any of the assets of my estate, and for that purpose to make deposit and exchange of securities and other property and pay charges, assessments and expenses in connection therewith.

(f) To carry on any business enterprise in which I am interested in my lifetime, either individually or as a co-partner, or to enter into an incorporation of the same and accept corporate stock in lieu of any individual interest, at such valuation or valuations, or to sell out my said interest at such price or prices, as in the judgment of my said Executors or Trustees shall seem fair and adequate.

(g) To make such contributions and to pay such assessments upon any assets of my estate which they shall be called upon to meet, as in their judgment they may deem wise and expedient.

(h) To do every and all things that they may deem best for the conservation, protection and betterment of my estate, as fully and completely as I might do, personally, were I alive and able to act for myself.

(i) To pay all expenses incurred in the administration, conservation or protection of my estate, out of the principal or income, including

accounting, whether final or otherwise.

(j) To replace and rebuild, out of the proceeds of any insurance carried for protection against such destruction, any property destroyed by fire or other destructive elements, and further in their discretion to add to and augment such insurance fund out of the principal funds, real or personal, of my estate, should such further funds be necessary in the judgment of said Trustees.

(k) And further, to remodel and to rebuild any improved property that may be necessary in their judgment for the best interests of my estate,or to build upon and improve any unimproved property belonging to my estate, out of the principal of my estate. In the absence of sufficient extra funds needed in such instances, to borrow the required sums upon bond and mortgage, or other obligations, as above set forth, and to renew such loans and obligations as may be necessary from time to time.

(l) Upon the raising of the question as to whether an item of charge or discharge be principal or income, the decision of my said Trustees upon such point shall be final.

(m) In general to exercise the same powers in dealing with, and disposing of the real estate, securities and other property which shall at any time constitute a part of the principal of my estate, that an individual, owning the same absolutely, would have, except as herein otherwise expressly provided.

(n) To subscribe and pay for stock in corporations and hold the same as a part of my estate, and to vote any stock held by them at any meeting of the stockholders of said corporations.

(o) I further authorize my Executors and Trustees to compromise and settle all claims in favor of, or against my estate.

(p) I order and direct that there shall be paid from and by my estate to my Trustees for their services as such, the following:

1. To The Florida National Bank of Jacksonville the sum of Two Thousand Dollars ($2,000.00) per annum during the period of time that it is serving as my corporate Trustee.

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2. To each of the individual Trustees, or their successors, with the exception of Edward Ball who is elsewhere herein otherwise provided for and who therefore receives no cash, the sum of Five Thousand Dollars ($5,000.00) per annum for their services as Trustees.

(q) Should at any time a question arise in the minds of my Trustees concerning the propriety of doing, or refraining from doing, anything in the discharging of their duties as Trustees, then the decision of the majority of my Trustees must rule. Should a majority decision be impossible, then the ruling of the corporate Trustee must be final.

ITEM 7. I will and direct that my Trustees shall pay out of the net income of my Trust Estate to the persons hereinafter named in this Item, the annuities hereinafter mentioned upon the terms and conditions set forth in the separate paragraphs of this Item, said annuities to commence at the time of the date of my death and to be payable monthly by my Trustees (or by my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties), viz:

(a) Unto Adelaide Camille Denise duPont, being so known, the sum of Five Thousand Dollars ($5,000.00) per annum until she attains the age of twenty one years; and thereafter the sum of Ten Thousand Dollars ($10,000.00) per annum until she attains the age of twenty five years; and thereafter the sum of Twenty Thousand Dollars ($20,000.00) per annum until she attains the age of thirty years; and thereafter the sum of Thirty Thousand Dollars ($30,000.00) per annum for and during the term of her natural life; and upon her death, if she die before attaining the age of thirty years, to pay an annuity in the fixed sum of Twenty Thousand Dollars ($20,000.00) or upon her death after attaining the age of thirty years to pay the maximum annuity aforesaid, to-wit, the sum of Thirty Thousand Dollars ($30,000.00) to her child, if there be one child living at the time of her death, and to her children, share and share alike, if there be more than one child living at the time of her death, for and during the terms of their natural lives, or for and during the term of twenty one years, whichever period be the shorter, the annuity or share of said annuity payable to any child, however, to cease and terminate upon the death of said child and to revert to my residuary estate, it being my will and desire, however, that the said annuity shall not lapse in the event of said Adelaide Camille Denise duPont dying during my lifetime, but in the event that the said Adelaide Camille Denise duPont should die in my lifetime and leave to survive her a child, or children, then the entire annuity (that is Twenty Thousand Dollars or Thirty Thousand Dollars,as the case may be,depend-

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ing on whether or not her death occurs before or after she attains the age of thirty years) to be paid to her child, if there be one child, and to her children share and share alike, if there be more than one child, for and during the terms of their natural lives, the said annuity, however, or the share of said annuity payable to any child to cease and terminate at the death of said child entitled thereto hereunder and to revert to my residuary estate.

Only such portion of the said annuity of Five Thousand Dollars ($5,000.00) shall be paid to the said Adelaide Camille Denise duPont during her minority as is determined by my wife, Jessie Ball duPont, her guardian, or any subsequent legally appointed guardian. The unpaid balance of the annuity, if any, is, during her minority, to be set apart and held in trust by my Trustees herein appointed (or by my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties) in a separate trust, with all of the powers of investment and re-investment given to my Executors and Trustees herein as to the major estate, with the right to disburse to the said Adelaide Camille Denise duPont from time to time such portions thereof, if any, as may be designated by said guardian, and with the duty to distribute or pay to her when she attains the age of twenty one years all of the assets included in said separate trust. In case of her death before that time all assets included in this separate trust shall revert to my residuary estate.

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(b) Unto Maurice duPont Lee, now residing at Brookside Drive, Rockridge, Greenwich, Connecticut, the sum of Fifteen Thousand Dollars ($15,000.00) per annum for and during the term of his natural life, and after the death of the said Maurice duPont Lee one-half of the said annuity, to wit, the sum of Seven Thousand Five Hundred Dollars ($7,500.00), shall be paid to his wife Geraldine Shaw Lee, for and during the term of her natural life, and the other one-half, to-wit, the sum of Seven Thousand Five Hundred Dollars ($7,500.00), shall, if and while there be living issue of his body and of the body of his said wife, be paid to such issue or the survivor or survivors of such issue share and share alike, if there be more than one, for and during the life of the said Geraldine Shaw Lee and during the life or lives of such issue or the survivor or survivors of such issue. Should the said Maurice duPont Lee predecease his said wife and should there be no living issue of their bodies during any period thereafter during her lifetime, then, for that period, the $7,500.00 which would have been paid to such issue shall be paid to the said Geraldine Shaw Lee. After the death of the said Maurice duPont Lee and his said wife the said annuity of $15,000.00 shall be paid to their child, the issue of their bodies, if there be one child living at such time, and to their children share and share alike, if there be more than one child living at such time, for and during the terms of their natural lives or for and during the term of twenty-one years, whichever period be the shorter, the annuity or share of the said annuity payable after that time to any child, however, to cease and terminate upon the death of said child and to revert to my residuary estate, it being my will and desire, however, that said annuity shall not lapse in the event of the said Maurice duPont Lee dying during my lifetime, but in the event that the said Maurice duPont Lee should die during my lifetime leaving to survive him

his wife, the said Geraldine Shaw Lee, then and in that event the said $15,000.00 annuity, for and during the term of her natural life and if and while there is no living issue of said marriage, shall be payable to the said Geraldine Shaw Lee, but if there be issue the said annuity shall be payable one-half as aforesaid to the said Geraldine Shaw Lee for and during the term of her natural life and the other one-half as aforesaid to the child or children living during her lifetime, and should the said Geraldine Shaw Lee and the said Maurice duPont Lee both die during my lifetime, then and in that event the said annuity of $15,000.00 shall be paid for and during the terms of their natural lives to the said child or children of the said Maurice duPont Lee who shall survive him, the entire annuity to be paid to said child, if there be but one child, or share and share alike, if there be more than one child; the annuity, however, or the share of said annuity payable to any child after the death of both the said Maurice duPont Lee and his said wife shall cease and determine at the death of the child entitled thereto hereunder and revert to my residuary estate.

(c) Unto Ruth Brereton Silver, now residing at 904 West Eleventh Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

(d) Unto Mary E. Brereton, now residing at 904 West Eleventh Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,-200.00) per annum, for and during the term of her natural life.

(e) Unto S. Frank Mathewson, Route 5, Cambridge, Maryland, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life, and I further direct that my said Executors and Trustees permit the said S. Frank Mathewson, who is and has been the caretaker of my property in Dorchester County, Maryland, to occupy the house in which he has lived for several years, and to use the farm buildings, the same to be so occupied and used by him free of charge as a home during the term of his natural life, and if on the death of the said S. Frank Mathewson he is survived by his wife, Anna Evans Mathewson, to pay said annuity, to-wit, the sum of Twelve Hundred Dollars ($1,200.00) per annum, to his said wife for the term of her natural life, and to permit her to occupy said house and use the farm buildings, the same to be so occupied and used by her free of charge as a home during the term of her natural life.

(f) Unto Thomas Horncastle of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, during the term of his natural life.

(g) Unto James Dolan, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, during the term of his natural life.

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(h) Unto T. W. Mathewson, 190 Breck's Lane, Christiana Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

(i) Unto Andrew Fullarton, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

(j) Unto Robert Hardwick, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

(k) Unto Thomas Montgomery, now residing on Breck's Lane, Christiana Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

(l) Unto Walter Newman, caretaker of Nemours, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

(m) Unto Thomas Weber Jakes, now residing at 2901 West Sixth Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life, and after the death of the said Thomas Weber Jakes the said annuity, towit, the sum of Twelve Hundred Dollars ($1,200.00) per annum, shall be paid unto his present wife for and during the term of her natural life.

(n) Unto Miss Mary G. Shaw, now residing in Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

(o) Unto Mrs. Irene Walsh, of Jacksonville, Florida, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

(p) Unto Miss Margaret B. Hanby, daughter of Dr. Charles M. Hanby, of Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life. This annuity she is to have regardless of whether or not she receives anything under the contingent arrangement made for her benefit under the Trust Agreement entered into between Alfred I. duPont, Jessie Ball duPont and The Florida National Bank of Jacksonville.

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Should I, by virtue of an Instrument made subsequent to the date of the signing of this my Last Will and Testament, make provisions for those beneficiaries as cited under Item 2 relating to bequests, and under Item 7 relating to annuities, which provisions shall be equal to or greater than those hereinabove stipulated, then such bequests and such annuities as made in this my Last Will and Testament, and which have been duplicated or made in greater amount in said subsequent Instrument to this my Will, shall become void.

It is my will and desire that the legacies, bequests or annuities, as set forth in this Item, or any Item of this my said Will, shall be for the sole, separate and exclusive use and benefit of the person entitled thereto, so that the same shall not be in any manner pledged, appropriated, disposed of or parted with by anticipation or before the same shall have accrued and become payable; nor shall the same be subject to execution, attachment or sequestration for any debts or liabilities whatsoever of the person entitled thereto under this my Will, but each and every payment shall be made by my Executors or Trustees to the beneficiaries of the said legacies, bequests or annuities personally, and the receipt or other acknowledgement of the respective beneficiaries of the legacies, bequests or annuities as set forth in this Item or any other Item of this my said Will, when so paid, shall be the sufficient and only discharge of my Executors or Trustees for such payment.

It is also my will and desire, and I hereby direct, that if any person entitled to any legacy, bequest or annuity under the terms of this Will, shall directly or indirectly contest or dispute the probate of this Will or institute or become a party to instituting any proceedings or act in the interest of any person who shall institute any proceedings, suit, or action, for the purpose of abrogating, setting aside, breaking or changing the effect of this Will wholly or in part, then and in that event, the legacy, bequest, or annuity declared in favor of such person by this my Will, or provided for herein, shall immediately thereupon be revoked, cease and determine and become wholly void and of no effect.

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I make no provision in this my Will for my sister Mrs. Marguerite duPont Lee, of Washington, D. C., nor for my brother, Mr. Maurice duPont, now living in New York City, nor for any of his family, nor for my sister's two sons and their families, except such provision as has been made under Paragraph (b), Item 7 hereof, for the reason that ample provision has been made for them in a certain Trust Agreement entered into between Alfred I. duPont, Jessie Ball duPont and The Florida National Bank of Jacksonville. It is stated in said Trust Agreement that if any beneficiary entitled to take under the terms thereof, whether such beneficiary be an individual, partnership, association or corporation, and notwithstanding the fact that such beneficiary may or may not be named or designated in this Will as being entitled to any benefit or interest hereunder, shall directly or indirectly contest or dispute the probate of this Will, or institute or become a party to instituting any proceedings or act in the interest of any person who shall institute any proceedings, suit or action, for the purpose of abrogating, setting aside, breaking or changing the effect of this Will, wholly or in part, then and in such event any provision or beneficial interest of or for such beneficiary, created by or included in the terms of said Trust Agreement, shall immediately thereupon be revoked, cease and determine and become wholly void and of no effect.

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ITEM 8. I will and direct that my said Trustees (or my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties) shall, as aforesaid, collect and receive the rents, profits, issues, interests and income from my residuary estate, heretofore and hereinafter designated and referred to as "income," and after deducting any and all proper and reasonable expenses, and the annuities hereinbefore created, or such of them as shall not have terminated under the terms and conditions attached to each of them, shall pay over, in quarter-annual payments, the net "income" therefrom to my said wife, Jessie Ball duPont, for and during the term of her natural life, and upon the death of my said wife, then that my said Trustees shall proceed as follows:

ITEM 9. My Trustees shall cause to be incorporated a corporation for charitable purposes, to be designated and known as "The Nemours Foundation" (provided such a corporation shall not have been incorporated during my lifetime, and in the event that such corporation shall have been incorporated in my lifetime all the provisions of this Will concerning the said corporation shall apply to the corporation as incorporated), and my said Trustees shall by proper conveyance convey unto the said corporation, in fee simple forever, the entire property, together with the buildings and structures thereon situate in Brandywine Hundred, New Castle County, State of Delaware, known as "Nemours," if the title thereto stands at the time of my death in my name, and if the title to "Nemours" is held by a corporation, the stock of which is held by me or by a corporation which is controlled by me at the time of my death, then my said Trustees shall assign and transfer all the stock of such corporation to "The Nemours Foundation," or such corporation for charitable purposes as shall have been incorporated during my lifetime, and my said Trustees in their discretion may have the corporation holding the title to "Nemours" duly wound up and dissolved, and cause the legal title to "Nemours" to be conveyed to "The Nemours Foundation," or such other corporation as may, in lieu thereof, be incorporated in my lifetime, and my said Trustees are hereby directed to pay over, at convenient intervals, to the said corporation, the net income of my said estate, subject to the annuities and legacies hereinabove mentioned, for the purpose of maintaining the said Estate of "Nemours" as a charitable institution for the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware, the one or more of which said charitable purposes, however, being left to the decision of my said Trustees, with the understanding that the following rules and regulations shall be included among those imposed by the Board of Managers controlling said institution:

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"The Nemours Foundation" shall be created and maintained as a memorial to my great, great grandfather, Pierre Samuel duPont de Nemours, and to my father, Eleuthere Irénée duPont de Nemours, and a proper tablet shall be erected in the present mansion to so indicate.

The Mansion House on the Estate of "Nemours" shall not be used for housing or hospital purposes of said institution, but buildings may be erected at any point on the Estate of "Nemours" suitable for such purposes and as shall be selected by the Board of Managers.

The rooms of said Mansion shall be used for the reception of visitors and their entertainment; also for executive and administrative purposes, should my Trustees so decide, but mainly for the purpose of providing a library and exhibiting to the public interesting and valuable literature, works of art and any articles of historic and artistic interest for the advancement of education, and maintained, as far as possible, in their present condition.

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My Trustees are specifically instructed that it shall be their duty, first, to care for the mansion and grounds and gardens surrounding "Nemours" in order that they be maintained for the pleasure and benefit of the public in their present condition and the grounds improved from time to time, as their funds warrant; it being my particular desire that this memorial to my great, great grandfather, Pierre Samuel duPont de Nemours, and to my father, Eleuthere Irénée duPont de Nemours, be not permitted to deteriorate, but that it shall consistently become more beautiful and attractive to those who view it as time passes. Only after faithfully carrying out the above instructions shall my Trustees be warranted in using any portion of the capital or income of my estate for additional charitable purposes.

My Trustees shall arrange for the admission of the public to the Mansion and other buidings and the grounds at such times and under such rules and regulations as they may provide.

The Board of Managers hereinbefore referred to shall consist of five members, men or women, and shall be appointed by my said Trustees for terms of

Exhibit A

one, two, three, four and five years respectively, and at the expiration of the term of each Manager first appointed, a Manager shall be appointed by my said Trustees for a term of five years; three of said Managers shall be residents of the State of Delaware, and two of who may or may not be residents of the State of Delaware.

My said Trustees shall have full power to fill all vacancies, whether the same shall occur by death, resignation or otherwise, and shall have full charge of the management and policy of the said Foundation, and shall have full power to employ and discharge such superintendents, physicians, professional advisors or assistants, employees and agents as shall be required for the proper management and conduct of the said Foundation.

The said members of the Board of Managers shall be each entitled to a salary of One Thousand Dollars ($1,000.00) per annum, during their term of office, except for Resident Physician, who if a member of the Board of Managers, may receive more.

The said Trustees shall have the right, at any time, however, to remove any member of said Board of Managers, and shall not be required to specify the cause for such removal.

The said Trustees shall have power to take and set apart from the principal of my estate a fund not to exceed One Million Dollars ($1,000,000.00), or so much thereof as may be necessary, to be applied and expended in the erection and equipping of buildings for the purposes of said Foundation, which shall be located at a reasonable and proper distance from the Mansion House. Should it become necessary to erect any additional buildings for the purposes of said Foundation, such buildings must be erected, if deemed wise to do so, from the income from my estate or bequests or gifts from others, and not from the capital of my estate, so that in no event shall the capital of my estate be diminished by using any portion thereof for the erection and equipping of buildings upon the said estate, beyond the said sum of One Million Dollars ($1,000,000.00) herein appropriated for that object.

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(A) In case after my death my said wife, Jessie Ball duPont, shall desire to create a charitable corporation or institution for the purposes and objects covered by the directions herein given for the creation of the said "The Nemours Foundation," then my said Trustees shall pay over to the said "The Nemours Foundation," out of the principal of my said estate, any sum or sums not exceeding One Million Dollars ($1,000,000.00) which my said wife during her lifetime may direct, and transfer to said corporation said "Nemours" Estate or any portion thereof for the use of said corporation, if my said wife shall so direct, provided, however, that the principal of my estate transferred under the directions of my wife to "The Nemours Foundation," or used for the purposes of said Foundation during her lifetime, taken together with any amounts of principal transferred to "The Nemours Foundation," or used for the purposes of said Foundation by my Trustees after her death, shall not in any case exceed the aggregate maximum sum of One Million Dollars ($1,000,000.00) plus the said property itself known as "Nemours."

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(B) The trustees under this my Will shall annually, in January, make a full statement and report in writing to my wife, Jessie Ball duPont, during her lifetime, and shall also tri-ennially, in January, in the Court having jurisdiction thereof, file their accounts, showing a true and accurate condition of the estate and of the principal investments and income thereof.

(C) The Board of Managers of "The Nemours Foundation" shall annually, in January, make a full statement and report in writing to the Trustees appointed by this my Will of the receipts and expenditures of the said Board of Managers in conducting and managing the said Foundation.

ITEM 10. I further direct that, after the death of my beloved wife, Jessie Ball duPont, if the net income of my estate should in any year or years exceed the sum or sums sufficient to properly provide for the conduct and operation of said "The Nemours Foundation," and in particular in the care and maintenance of my old home "Nemours" which, under the terms of this Will, passes to "The Nemours Foundation," and for reserves for extensions, repairs,

replacements, alterations, additional equipment, additional buildings, additions to buildings or other necessary improvements and any and all future needs of such Foundation, such surplus income may from time to time be used by the Board of Managers of said "The Nemours Foundation," my Trustees concurring, in contributions to other worthy charitable institutions designated by said Board and approved by my Trustees as may be conducted for the care of, or the care and treatment of, or the care and education of crippled children, or the care of old men, or of old women, or of old couples, or any one of such purposes. It is my wish that the people of Delaware needing the care of such institutions shall be properly provided for before contributions are made to institutions of any other state or states, but said Board, my Trustees concurring, is hereby given full power to determine what constitutes the necessary reserves for "The Nemours Foundation" and what constitutes proper provision for the Delaware institutions. The decision of a majority of the Board in all cases where the Board under the provisions of this Will is given power to act shall constitute the decision of the Board, if all members are given an opportunity to be heard.

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ITEM 11. I hereby nominate, constitute and appoint my wife, Jessie Ball duPont, John F. Lanigan, now of Miami, Florida, and Edward Ball, now of Jacksonville, Florida, Executors of this my Will, but in the event that the said John F. Lanigan is not living, or should resign or is unable to act as Executor for any cause whatsoever, then in his place and stead I hereby nominate and appoint N. Addison Baker, of Miami, Florida, and in the event that the said Edward Ball is not living, or should resign or is unable to act as Executor for any cause whatsoever, then in his place and stead I hereby nominate and appoint my son-in-law, Elbert Dent, of Philadelphia, Pennsylvania, and it is my will and desire, and I hereby direct that they shall be permitted to qualify to serve as such Executors, as aforesaid, in any State of the United States, or in any foreign country, without either of them being required to give bond or security, in any manner whatsoever, for the proper performance of their duties as such

Executors. In case of the failure to qualify or death or resignation of any one or more of the aforesaid Executors and/or of the successor or successors designated to succeed any certain Executor, the surviving Executor or Executors and/or successor or successors designated to substitute for certain Executors who may not qualify or who may die or resign shall have all of the powers to act, alone or together, as the case may be, which are herein given to my three Executors jointly. During the period of their administration of my Estate my Executors shall have, and they are hereby given, all of the powers given anywhere in this Will to my Trustees.

It is also my will and desire, and I hereby direct, that my said Trustees hereinbefore named, or any successor, shall be permitted to qualify and serve as such Trustees, as aforesaid, in any State of the United States, or in any foreign country, without the said Trustees being required to give bond or security, in any manner whatsoever, for the proper performance of their duties as such Trustees.

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I authorize and direct that each of my Executors,—with the exception of Edward Ball, who, being herein otherwise provided for, shall receive no cash,—shall be paid for their services the sum of One Hundred Thousand Dollars ($100,000.00), payable one-half at the end of the first full year's service beginning at the time my Will is probated, one-fourth at the end of the next year, one-eighth at the end of the next year, one-sixteenth at the end of the next year, and so on in like decreasing proportion until my Executors are discharged, at which time the total unpaid balance shall be paid.

In the event that an Executor shall die or resign during any year he shall receive for his services the proportionate part of what he would have received for the whole year which the number of days that he served bears to three hundred sixty five. Any Executor succeeding another shall receive only that proportion of the One Hundred Thousand Dollars ($100,000.00) total base fee for the period during which he has served which would have been received by the Executor first appointed had he served over that period. Each Executor shall

receive the fee, or proportion thereof, herein provided to be received by him or her over the period that he or she serves, and no Executor shall receive any part of the fee herein provided to be paid to any other Executor except where he be the successor of such other executor and receive as such the proportionate share of the original Executor's fee which is herein provided to be paid to his successor. No successor of Edward Ball shall receive any part of his legacy, the same being an outright legacy to him covering also his services as Executor and Trustee, but any successor to Edward Ball shall receive the same proportion of the base fee of One Hundred Thousand Dollars ($100,000.00) which any other Executor would receive over the same period.

I hereby absolve my said Executors and Trustees from any liability to my estate, or to the beneficiaries hereunder, for any loss to them or to my said estate so long as they act honestly and in good faith.

ITEM 12. I hereby nominate and appoint my beloved wife, Jessie Ball duPont, as Guardian of Adelaide Camille Denise duPont, to be vested with all such powers and control as such guardianship confers. She shall serve without bond.

It is my will and desire, and I hereby direct, that my Last Will and Testament shall be probated and recorded in the City or County of my legal residence at the time of my death.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 19th day of November in the year of our Lord, one thousand nine hundred thirty two (1932).

Alfred I duPont (SEAL)

The foregoing instrument, consisting of twenty two pages, including this one, at the date hereof, to-wit: the 19th day of November, A. D. 1932, was signed, sealed and published by the said ALFRED I. DuPONT as, and declared to be, his Last Will and Testament in the presence of us, who at his request and in his presence, and in the presence of each other, have subscribed our names as witnesses hereto.

S. B. Jennings of Jacksonville Fla.

R. Pearce Markham of Jacksonville Fla.

Raymond D. Knight of Jacksonville, Fla.

STATE OF FLORIDA } BE IT REMEMBERED that
COUNTY OF DUVAL } on May 13-1935 I duly recorded the foregoing Last Will and Testament in the public records of Duval County, Florida.

J. OLLIE EDMUNDS, County Judge

By T. V. Cashen, Jr.,
Clerk County Judges Court

(Seal)

LAST WILLS AND TESTAMENTS BOOK 5, Page 64

CODICIL
TO
LAST WILL AND TESTAMENT OF
ALFRED I. DuPONT.

I, ALFRED I. DuPONT, now of Duval County, near the City of Jacksonville, State of Florida, do hereby make, publish and declare this Codicil to my Last Will and Testament dated the 19th day of November, A. D. 1932.

ITEM 1. Having become impressed, after a study of my said Will and deliberate consideration of world conditions, that I have not in my Will properly protected the interests of my wife, Jessie Ball duPont, against possible eventualities, and desiring that she shall receive, to commence at the time of the date of my death, an annuity of Two Hundred Thousand Dollars ($200,000.00), or such part thereof as shall be available each year out of current net income for the payment thereof, before any of the annuities mentioned in Item 7 and sub-paragraphs thereof lettered (a) to (p) inclusive are paid either in whole or in part, this regardless of the provisions in Item 7 of my Will that the annuities therein provided for shall be paid monthly, and desiring that such annuity to my wife should be paid to her first out of the net income from my residuary or trust estate and that the other annuities mentioned in said Item 7 and said sub-paragraphs thereof shall be conditional upon there being funds from the net income from my residuary or trust estate after paying the annuity of Two Hundred Thousand Dollars ($200,000.00) to my wife and that such other annuities should be second, subject and subordinate to the said annuity to her, and desiring that said annuity to her shall not be cumulative and that said other annuities likewise shall not be cumulative but that they shall be paid in full during each year as provided, if current net income, after she has been paid in full for the current year, is available for that purpose, and that if sufficient residue net income for that purpose is not available that then said other annuities shall be paid prorata out of the remainder of the

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current net income available for that purpose, I do hereby, to the ends aforesaid, revoke and annul Item 8 of my said Last Will and Testament and substitute therefor, the same to be taken as though originally included therein, an Item numbered "8" reading as follows:

"ITEM 8. I will and direct that my said Trustees (or my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties) shall, as aforesaid, collect and receive the rents, profits, issues, interest and income from my residuary or trust estate, heretofore and hereinafter referred to as 'income', and, after deducting any and all proper and reasonable expenses, pay over, in quarter-annual payments, unto my wife, Jessie Ball duPont, the sum of Two Hundred Thousand Dollars ($200,000.00) per annum, or such part thereof each year as shall be available in such year for payment thereon out of net income derived during the current year, for and during the term of her natural life. This annuity shall commence at the time of the date of my death. The said annuity shall be paid in full each year by my Trustees or Executors as aforesaid before any of the annuities mentioned in Item 7 and subparagraphs thereof lettered (a) to (p) inclusive are paid either in whole or in part, this regardless of the provision in Item 7 of my Will that the annuities therein provided for shall be paid monthly, and the other annuities mentioned in said Item 7 and the said sub-paragraphs thereof shall be conditional upon there being available funds from the net income, derived during the current year, from the residuary or trust estate, after paying the annuity of Two Hundred Thousand Dollars ($200,000.00) to my wife, and such other annuities shall be second, subject and subordinate to the said annuity to her. The said annuity to her shall not be cumulative and said other annuities also shall be non-cumulative and they shall be paid by my Trustees or Executors as aforesaid in full during each year as provided, only in the event that sufficient net income is available each year for that purpose after her

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annuity has been paid in full for the current year, and if sufficient residue for that purpose is not available then said other annuities shall be paid pro-rata, each year that there is a shortage, out of the remainder of the net income available in such year for that purpose, and each year, after deducting the said expenses and paying the said annuity of Two Hundred Thousand Dollars ($200,-000.00) in full, out of net income received during the current year as aforesaid for such purpose, and after paying the said other annuities, or such of them as have not been terminated under the terms and conditions attached to each of them, in full, out of the net income for the current year, they shall pay over the remainder, if any, of the net income from my said residuary or trust estate, to my said wife, Jessie Ball duPont, for and during the term of her natural life, and upon the death of my said wife then that my said Trustees or Executors as aforesaid, always first paying each year, in full or pro-rata, out of current net income as aforesaid, the said other annuities then accrued and thereafter accruing, or such of them as have not been terminated under the terms and conditions attached to each of them, shall proceed as follows:".

I hereby ratify and confirm my said Will in all other respects, except that I give my Executors and Trustees authority, in their absolute discretion and without liability for errors in judgment, to make, in whole or in part, in any year, the monthly payments on annuities provided for in Item 7 of my Will before the aforesaid Two Hundred Thousand Dollar ($200,000.00) annuity provided for my wife has actually been paid to her in any year, if in their judgment sufficient income will be available in the current year for payment to her in full of said annuity.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 4th day of March in the year of our Lord one thousand nine hundred and thirty three.

Alfred I. duPont (SEAL)

The foregoing instrument consisting of four pages, including this one, at the date hereof, to-wit: the 4th day of March, A. D. 1933, was signed, sealed, published and declared by the said ALFRED I. DuPONT as and for a Codicil to his Last Will and Testament dated the 19th day of November, A. D. 1932 in our presence as witnesses, who, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto at Jacksonville, Florida.

Raymond D. Knight of Jacksonville, Florida

S. B. Jennings of Jacksonville Fla

Chas Morant of Jacksonville Fla

STATE OF FLORIDA } BE IT REMEMBERED that
COUNTY OF DUVAL } on May 13-1935 I duly recorded the foregoing Codicil in the public records of Duval County, Florida.

J. OLLIE EDMUNDS, County Judge
By T. V. Cashen, Jr.,
Clerk County Judges Court

(Seal)

LAST WILLS AND TESTAMENTS BOOK 5, Page 68

SECOND CODICIL

TO

LAST WILL AND TESTAMENT OF

ALFRED I. DuPONT.

I, ALFRED I. DuPONT, now of Duval County, State of Florida, my home, known as "Epping Forest", being near the City of Jacksonville, do hereby make, publish and declare this Second Codicil to my Last Will and Testament dated the 19th day of November, A. D. 1932 as the same was amended by the first Codicil thereto dated the 4th day of March, 1933.

ITEM 1. I do hereby alter and amend Item 5 of my said Last Will and Testament by substituting for John F. Lanigan, therein named as one of my Trustees, my son-in-law, Reginald S. Huidekoper, of Washington, D. C., to serve in his place and stead; and I further alter and amend said Item by substituting for N. Addison Baker, who, under the conditions therein named, is designated as one of my Trustees, Dr. Francis P. Gaines, who is the President of Washington & Lee University, of Lexington, to serve in his place and stead, so that the said Item 5 of my said Last Will and Testament as hereby altered and amended, the same to be taken as though originally so written, shall read as follows:

"ITEM 5. Subject to the legacies and bequests hereinabove set forth, I give, devise and bequeath the entire rest, residue and remainder of my property and estate, real, personal or mixed, in esse and in futuro, wheresoever the same may be situated, of which I may die seized and possessed and which may belong to me at the time of my death, or which may be subject to my disposal by Will, unto The Florida National Bank of Jacksonville, a banking corporation organized and existing under the laws of the United States of America, with its principal place of business in Jacksonville, Florida, to my wife, Jessie Ball duPont, to my son-in-law, Reginald S. Huidekoper, now residing at Washington, D. C., and to Edward Ball, now residing in Jacksonville, Florida, as Trustees, and unto their successors in trust, to have and to hold said Estate forever, but IN TRUST for the following uses and purposes. If the said Reginald S. Huidekoper is not living, or is for any reason unable to

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act as one of my said Trustees or should resign, then I nominate and appoint my son-in-law, Elbert Dent, of Philadelphia, Pennsylvania, to act as Trustee in the place and stead of the said Reginald S. Huidekoper, and if the said Edward Ball is not living or is for any reason unable to act as one of my said Trustees or should resign, then I nominate and appoint Dr. Francis P. Gaines, who is the President of the Washington & Lee University, of Lexington, Virginia, to act as Trustee in the place and stead of said Edward Ball, I direct that in case any individual Trustee of my Estate, whether he be one of the Trustees named herein or a successor Trustee or a successor of a successor Trustee, appointed as herein provided, shall die or cease to act, the survivors from time to time of my Trustees shall have all the powers herein given to my said named Trustees, and such survivors shall, as soon as practicable, select a Trustee in the place of the one so dying or ceasing to act, and the person so selected shall exercise all the powers herein given to one of my Trustees, all successors and the successors from time to time of them so appointed having all the powers herein given to my said named Trustees; provided that a reputable corporate Trustee shall always be one of my Trustees.

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"In case The Florida National Bank of Jacksonville fails or refuses to accept and act under the Trust herein created upon the terms herein set forth, then the other three Trustees are hereby empowered and directed to select and appoint some other trust company or bank, either in the State of Florida or elsewhere, to act as Trustee under the provisions of this my Last Will in place of The Florida National Bank of Jacksonville; and such other trust company or bank to have all the powers and be charged with all the duties and responsibilities given to or placed upon The Florida National Bank of Jacksonville under this my Will, and to receve such compensation as may be determined by my individual Trustees.

"It is my wish that in the event that the three individual Trustees herein named, or their successors or substitute Trustees, or the survivor or survivors of them, as distinguished from the corporate Trustee herein named or its corporate successor or any succeeding corporate successor or successors thereof, should at any time deem it expedient that the corporate Trustee be changed, then they shall have the power, from time to time and as often as they consider it advisable so to do, to select another trust company or bank,

either in the State of Florida or elsewhere, as the corporate Trustee, whereupon the corporate Trustee as hereinabove indicated, namely, The Florida National Bank of Jacksonville or its corporate successor, or any succeeding corporate successor or successors thereof, shall relinquish and give over all rights as corporate Trustee to the newly selected bank or trust company, and all rights and duties given to The Florida National Bank of Jacksonville or its corporate successors or any succeeding corporate successor or successors thereof, shall cease and determine and the same shall be taken over by the new corporate Trustee chosen by the individual Trustees as hereinabove set forth, the compensation of the new corporate Trustee in each instance to be determined by the individual Trustees."

ITEM 2. I desire to alter and amend Item 7 of my Last Will and Testament by striking therefrom the annuities mentioned in sub-paragraphs thereof lettered (k) and (l) respectively, the annuity mentioned in sub-paragraph (k) because Thomas Montgomery therein named is dead and such sub-paragraph has therefore become a nullity, and the annuity mentioned in sub-paragraph (l) because Walter Newman therein named is no longer in my employ; and I desire, as hereinafter shown, to add to the annuities listed in the remaining sub-paragraphs of said Item 7 a number of additional annuities payable to others, and that will result in a re-arrangement of the sub-paragraphs which remain. I desire further to strike the first paragraph on the 13th page in the aforesaid Item 7. I do hereby alter and amend the said Item 7 of my said Last Will and Testament so that the whole of such Item, as altered and amended, shall read and be taken as though originally written as follows:

"ITEM 7. I will and direct that my Trustees shall pay out of the net income of my Trust Estate to the persons hereinafter named in this Item, the annuities hereinafter mentioned upon the terms and conditions set forth in the separate paragraphs of this Item, said annuities, except those designated in sub-paragraphs (c), (d), (e), (f), (g) and (h) hereof, to commence at the time of the date of my death and to be payable monthly by my Trustees (or by

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my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties), viz:

"(a) Unto Adelaide Camille Denise duPont, being so known, the sum of Five Thousand Dollars ($5,000.00) per annum until she attains the age of twenty one years; and thereafter the sum of Ten Thousand Dollars ($10,000.00) per annum until she attains the age of twenty five years; and thereafter the sum of Twenty Thousand Dollars ($20,000.00) per annum until she attains the age of thirty years; and thereafter the sum of Thirty Thousand Dollars ($30,000.00) per annum for and during the term of her natural life; and upon her death, if she die before attaining the age of thirty years, to pay an annuity in the fixed sum of Twenty Thousand Dollars ($20,000.00), or upon her death after attaining the age of thirty years to pay the maximum annuity aforesaid, to-wit, the sum of Thirty Thousand Dollars ($30,000.00) to her child, if there be one child living at the time of her death, and to her children, share and share alike, if there be more than one child living at the time of her death, for and during the terms of their natural lives, or for and during the term of twenty-one years, whichever period be the shorter, the annuity or share of said annuity payable to any child, however, to cease and terminate upon the death of said child and to revert to my residuary estate, it being my will and desire, however, that the said annuity shall not lapse in the event of said Adelaide Camille Denise duPont dying during my lifetime, but in the event that the said Adelaide Camille Denise duPont should die in my lifetime and leave to survive her a child, or children, then the entire annuity (that is Twenty Thousand Dollars or Thirty Thousand Dollars, as the case may be, depending on whether or not her death occurs before or after she attains the age of thirty years) to be paid to her child, if there be one child, and to her children share and share alike, if there be more than one child, for and during the terms of their natural lives, the said annuity, however, or the share of said annuity payable to any child to cease and terminate at the death of said child entitled thereto hereunder and to revert to my residuary estate.

"Only such portion of the said annuity of Five Thousand Dollars ($5,000.00) shall be paid to the said Adelaide Camille Denise duPont during her minority as is determined by my wife, Jessie Ball duPont, her guardian, or any subsequently legally appointed guardian. The unpaid balance of the annuity, if any, is, during her minority, to be set apart and held in trust by my Trustees herein appointed (or by my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties) in a separate trust, with all of the powers of investment and re-investment given to my Executors and Trustees herein as to the major estate, with the right to disburse to the said Adelaide Camille Denise duPont from time to time such portions thereof, if any, as may be designated by said guardian, and with the duty to distribute or pay to her when she attains the age of twenty one years all of the assets included in said separate trust. In case of her death before that time all assets included in this separate trust shall revert to my residuary estate.

"(b) Unto Maurice duPont Lee, now residing at Rockridge Avenue, Greenwich, Connecticut, the sum of Fifteen Thousand Dollars ($15,000.00) per annum for and during the term of his natural life, and after the death of the said Maurice duPont Lee one-half of the said annuity, to-wit, the sum of Seven Thousand Five Hundred Dollars ($7,500.00), shall be paid to his wife, Geraldine Shaw Lee, for and during the term of her natural life, and the other one-half, to-wit, the sum of Seven Thousand Five Hundred Dollars ($7,500.00), shall, if and while there be living issue of his body and of the body of his said wife, be paid to such issue or the survivor or survivors of such issue and divided among them share and share alike, if there be more than one, for and during the life of the said Geraldine Shaw Lee and during the life or lives of such issue or the survivor or survivors of such issue. Should the said Maurice duPont Lee predecease his said wife and should there be no living issue of their bodies during any period thereafter during her lifetime, then, for that period, the $7,500.00 which would have been paid to such issue shall be paid to the said Geraldine Shaw Lee. After the death of the said Maurice duPont Lee and his said wife the said annuity of $15,000.00 shall be paid to their child, the issue of their bodies, if there be one child living at such time, and to their children, to be divided among them share and share alike, if there be more than one child living at such time, for and during the terms of their natural lives or for and during the term of twenty-one years, whichever period be the shorter, the annuity or share of the said annuity payable after that time to any child, however, to cease and terminate upon the death of said child and to revert to my residuary estate, it being my will and desire, however, that said annuity shall not lapse in the event of the said Maurice duPont Lee dying during my lifetime, but in the event that the said Maurice duPont Lee should die during my lifetime leaving to survive him his wife, the said Geraldine Shaw Lee, then and in that event the said $15,000.00 annuity, for and during the term of her natural life and if and while there is no living issue of said marriage, shall be payable to the said Geraldine Shaw Lee, but if there be issue the said annuity shall be payable one-half as aforesaid to the said Geraldine Shaw Lee for and during the term of her natural life and the other one-half as aforesaid to the child or children living during her lifetime, and should the said Geraldine Shaw Lee and the said Maurice duPont Lee both die during my lifetime, then and in that event the said annuity of $15,000.00 shall be paid for and during the terms of their natural lives to the said child or children of the said Maurice duPont Lee who shall survive him, the entire annuity to be paid to said child, if there be but one child, or share and share alike, if there be more than one child; the annuity, however, or the share of said annuity payable to any child after the death of both the said Maurice duPont Lee and his said wife shall cease and determine at the death of the child entitled thereto hereunder and revert to my residuary estate.

"(c) Unto Marguerite duPont Lee, the daughter of my nephew, Casenove G. Lee, Jr., now residing at 3542 Newark Street, N. W., Washington, D. C., the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of her natural life, if she attains the age of twenty five years and only from and after such time.

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"(d) Unto Vandergrift Lee, the son of my nephew, Casenove G. Lee, Jr., now residing at 3542 Newark Street, N. W., Washington, D. C., the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of his natural life, if he attains the age of twenty five years and only from and after such time.

"(e) Unto Richard Henry Lee, the son of my nephew, Casenove G. Lee, Jr., now residing at 3542 Newark Street, N. W., Washington, D. C., the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of his natural life, if he attains the age of twenty five years and only from and after such time.

"(f) Unto Katherine Lee, the daughter of my nephew, Maurice duPont Lee, now residing at Rockridge Avenue, Greenwich, Connecticut, the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of her natural life, if she attains the age of twenty five years and only from and after such time.

"(g) Unto Charlotte Lee, the daughter of my nephew, Maurice duPont Lee, now residing at Rockridge Avenue, Greenwich, Connecticut, the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of her natural life, if she attains the age of twenty five years and only from and after such time.

"(h) Unto Maurice Lee, the son of my nephew, Maurice duPont Lee, now residing at Rockridge Avenue, Greenwich, Connecticut, the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of his natural life, if he attains the age of twenty five years and only from and after such time.

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"(i) Unto Ellen N. La Motte, now residing at 2806 "P" Street, N. W., Washington, D. C., the sum of Twenty Four Hundred Dollars ($2,400.00) per annum, for and during the term of her natural life.

"(j) Unto Catherine Cocke Gardner, now residing at Clover Lick, West Virginia, the sum of Eighteen Hundred Dollars ($1,800.00) per annum, for and during the term of her natural life; and after her death the said sum shall be paid to her children, William Casenove Gardner, Jr., Edmund Cocke Gardner, Harrison McKim Gardner, Harriet Rowland Gardner and Lucia Cary Gardner, or to the survivor or survivors of them, to be divided among them share and share alike, if there be more than one, for and during the life or lives of said children or the survivor or survivors of them. The said annuity shall not lapse in the event of the said Catherine Cocke Gardner dying during my lifetime, but in the event that she should predecease me leaving her surviving any of her said children, then such child or children shall take as aforesaid.

"(k) Unto Ruth Brereton Silver, now residing at 904 West Eleventh Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

"(l) Unto Mary E. Brereton, now residing at 904 West Eleventh Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

"(m) Unto S. Frank Mathewson, Route 5, Cambridge, Maryland, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life, and I further direct that my said Executors and trustees permit the said S. Frank Mathewson, who is and has been the caretaker of my property in Dorchester County, Maryland, to occupy the house in which he has lived for several

years, and to use the farm buildings, the same to be so occupied and used by him free of charge as a home during the term of his natural life, and if on the death of the said S. Frank Mathewson he is survived by his wife, Anna Evans Mathewson, to pay said annuity, to-wit, the sum of Twelve Hundred Dollars ($1,200.00) per annum to his said wife for the term of her natural life, and to permit her to occupy said house and use the farm buildings, the same to be so occupied and used by her free of charge as a home during the term of her natural life.

"(n) Unto Thomas Horncastle, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, during the term of his natural life.

"(o) Unto James Dolan, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, during the term of his natural life.

"(p) Unto T. W. Mathewson, 190 Breck's Lane, Christiana Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

"(q) Unto Andrew Fullarton, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

"(r) Unto Robert Hardwick, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

"(s) Unto Thomas Weber Jakes, now residing at 2901 West Sixth Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life, and after the death of the said Thomas Weber Jakes the said annuity, to-wit, the sum of Twelve Hundred Dollars ($1,200.00) per annum, shall be paid unto his present wife for and during the term of her natural life.

"(t) Unto Miss Mary G. Shaw, now residing in Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

"(u) Unto Mrs. Irene Walsh, of Jacksonville, Florida, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

"(v) Unto Miss Margaret B. Hanby, daughter of Dr. Charles M. Hanby, of Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

"(w) Unto Laura Calhoun Walls, now residing at Lincoln, Delaware, the sum of Nine Hundred Dollars ($900.00) per annum, for and during the term of her natural life.

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"(x) Unto Mrs. H. E. Crist, now residing at 179 Forest H Drive, Asheville, North Carolina, the sum of Eight Hundred Dollars ($800.00) per annum, for and during the term of her natural life.

"(y) Unto Miss Margaret W. Stetson, whose address now is Box 1083, Asheville, North Carolina, the sum of Eight Hundred Dollars ($800.00) per annum, for and during the term of her natural life.

"(z) Unto the Providence Institution for Savings, of Providence, Rhode Island, the sum of Six Hundred Dollars ($600.00) per annum, for and during the term of the natural lives of Mr. and Mrs. Charles Hoyle or the survivor of them, said sum to be paid to or used for them, or to or used for the survivor of them, by said institution, but the obligation of my Executors or Trustees shall cease upon making the aforesaid payments to said Institution, they not being required to look to the application of such payments.

"(z-1) Unto Edith E. Levett, now residing at 663 West 178th Street, New York City, the sum of Six Hundred Dollars ($600.00) per annum, for and during the term of her natural life.

"(z-2) Unto Olive W. Seiss, now residing at Stonington, Connecticut, the sum of Six Hundred Dollars ($600.00) per annum, for and during the term of her natural life.

"(z-3) Unto Frank Gorsuch, now residing at Martinsburg, Pennsylvania, the sum of Two Hundred Forty Dollars ($240.00) per annum, for and during the term of his natural life.

"(z-4) Unto George T. Maxwell, now residing at 505 West 29t... Street, Wilmington, Delaware, the sum of Fourteen Hundred Forty Dollars ($1,440.00) per annum, for a period of ten (10) years from the date of my death or for and during the term of his natural life, whichever period shall be the shorter.

ALFRED I. DUPONT

"It is my will and desire that the legacies, bequests or annuities, as set forth in this Item, or any Item of this my said Will, shall be for the sole, separate and exclusive use and benefit of the person entitled thereto, so that the same shall not be in any manner pledged, appropriated, disposed of or parted with by anticipation or before the same shall have accrued and become payable; nor shall the same be subject to execution, attachment or sequestration for any debts or liabilities whatsoever of the person entitled thereto under this my Will, but each and every payment shall be made by my Executors or Trustees to the beneficiaries of the said legacies, bequests or annuities personally, and the receipt or other acknowledgment of the respective beneficiaries of the legacies, bequests or annuities as set forth in this Item or any other Item of this my said Will, when so paid, shall be the sufficient and only discharge of my Executors or Trustees for such payment.

"It is also my will and desire, and I hereby direct, that if any person entitled to any legacy, bequest or annuity under the terms of this Will, shall directly or indirectly contest or dispute the probate of this Will or institute or become a party to instituting any proceedings or act in the interest of any person who shall institute any proceedings, suit, or action, for the purpose of abrogating, setting aside, breaking or changing the effect of this Will, wholly or in part, then and in that event, the legacy, bequest, or annuity declared in favor of such person by this my Will, or provided for herein, shall immediately thereupon be revoked, cease and determine and become wholly void and of no effect.

"I make no provision in this my Will for my sister, Mrs. Marguerite duPont Lee, of Washington, D. C., nor for my brother, Mr. Maurice duPont, now living in New York City, nor for any of his family, nor for my sister's two sons and their families, except such provision as has been made under paragraphs (b), (c), (d), (e), (f), (g) and (h), Item 7 hereof, for the reason that ample provision has been made for them in a certain Trust Agreement entered into between Alfred I. duPont, Jessie Ball duPont and The Florida National Bank of Jacksonville. It is stated in said Trust Agreement that if any beneficiary entitled to take under the terms thereof, whether such beneficiary be an individual, partnership, association or corporation, and notwithstanding the fact that such beneficiary may or may not be named or designated in this Will as being entitled to any benefit or interest hereunder, shall directly or indirectly contest or dispute the probate of this Will, or institute or become a party to instituting any proceedings or act in the interest of any person who shall institute any proceedings, suit or action, for the purpose of abrogating, setting aside, breaking or changing the effect of this Will, wholly or in part, then and in such event any provision or beneficial interest of or for such beneficiary, created by or included in the terms of said Trust Agreement, shall immediately thereupon be revoked, cease and determine and become wholly void and of no effect."

ITEM 3. I do hereby alter and amend Item 11 of my said Last Will and Testament by substituting for John F. Lanigan, therein named as one of my Executors, my son-in-law, Reginald S. Huidekoper, of Washington, D. C., to serve in his place and stead, so that the said Item 11 of my said Last Will and Testament, as hereby altered and amended, the same to be taken as though originally so written, shall read as follows:

"ITEM 11. I hereby nominate, constitute and appoint my wife, Jessie Ball duPont, Reginald S. Huidekoper, now of Washington, D. C., and Edward Ball, now of Jacksonville, Florida, Executors of this my Will, but in the event that the said Reginald S. Huidekoper is not living, or should resign or is unable to act as Executor for any cause whatsoever, then in his place and stead I hereby nominate and appoint N. Addison Baker, of Miami, Florida, and in the event that the said Edward Ball is not living, or should resign or is unable to act as Executor for any cause whatsoever, then in his place and stead I hereby nominate and appoint my son-in-law, Elbert Dent, of Philadelphia, Pennsylvania, and it is my will and desire, and I hereby direct that they shall be permitted to qualify to serve as such Executors, as aforesaid, in any State of the United States, or in any foreign country, without either of them being required to give bond or security, in any manner whatsoever, for the proper performance of their duties as such Executors. In case of the failure to qualify or death or resignation of any one or more of the aforesaid Executors and/or of the successor or successors designated to succeed any certain Executor, the surviving Executor or Executors and/or successor or successors designated to substitute for certain Executors who may not qualify or who may die or resign shall have all of the powers to act, alone or together, as the case may be, which are herein given to my three Executors jointly. During the period of their administration of my Estate my Executors shall have, and they are hereby given, all of the powers given anywhere in this Will to my Trustees.

"It is also my will and desire, and I hereby direct, that my said Trustees hereinbefore named, or any successor, shall be permitted to qualify and serve as such Trustees, as aforesaid, in any State of the United States, or in any foreign country, without the said Trustees being required to give

ALFRED I. DUPONT

bond or security, in any manner whatsoever, for the proper performance of their duties as such Trustees.

"I authorize and direct that each of my Executors,—with the exception of Edward Ball, who, being herein otherwise provided for, shall receive no cash,—shall be paid for their services the sum of One Hundred Thousand Dollars ($100,000.00), payable one-half at the end of the first full year's service beginning at the time my Will is probated, one-fourth at the end of the next year, one-eighth at the end of the next year, one-sixteenth at the end of the next year, and so on in like decreasing proportion until my Executors are discharged, at which time the total unpaid balance shall be paid.

"In the event that an Executor should die or resign during any year he shall receive for his services the proportionate part of what he would have received for the whole year which the number of days that he served bears to three hundred sixty five. Any Executor succeeding another shall receive only that proportion of the One Hundred Thousand Dollars ($100,000.00) total base fee for the period during which he has served which would have been received by the Executor first appointed had he served over that period. Each Executor shall receive the fee, or proportion thereof, herein provided to be received by him or her over the period that he or she serves, and no Executor shall receive any part of the fee herein provided to be paid to any other Executor except where he be the successor of such other Executor and receive as such the proportionate share of the original Executor's fee which is herein provided to be paid to his successor. No successor of Edward Ball shall receive any part of his legacy, the same being an outright legacy to him covering also his services as Executor and Trustee, but any successor to Edward Ball shall receive the same proportion of the base fee of One Hundred Thousand Dollars ($100,000.00) which any other Executor would receive over the same period.

"I hereby absolve my said Executors and Trustees from any liability to my estate, or to the beneficiaries hereunder, for any loss to them or to my said estate so long as they act honestly and in good faith."

ALFRED I. DUPONT

ITEM 4. My said Will, as amended by my said first Codicil thereto, provides that "The Nemours Foundation", a corporation to be organized for charitable purposes is ultimately, through my Trustees, to become one of my substantial beneficiaries. I had considered executing a new Will at this time which would immediately revoke the aforesaid Will and Codicil, changing the provisions thereof to the extent that they are changed by this Codicil, and making an additional change, the effect of which might have been to increase or which might have seemed to increase the existing provisions in favor of "The Nemours Foundation", but my attorneys have called my attention to Section 20 of Chapter 16103, Acts of 1933, Laws of Florida, relating to charitable devises and bequests and the provision therein contained rendering such devises and bequests invalid under certain circumstances unless the instrument making them was duly executed at least six months prior to the death of the testator. I therefore determined, instead of executing a new Will and revoking therein at this time the aforesaid Will and Codicil, to execute this Second Codicil, making thereby such changes only as will not by any chance jeopardize the interest which the proposed "The Nemours Foundation" will receive under my said Will of November 19, 1932, as amended by my said first Codicil of March 4, 1933 and by this Codicil. While I have by this Codicil, for the reasons stated, omitted two life annuities to individuals mentioned in Item 7 of my said Will, one for Twelve Hundred Dollars ($1,200.00) per annum, which by the death of the annuitant was already subject to lapse, and the other for Twelve Hundred Dollars ($1,200.00), I have nevertheless added life annuities to individuals aggregating Thirty Eight Thousand Seven Hundred Forty Dollars ($38,740.00) per annum and an additional life or ten year annuity of Fourteen Hundred Forty Dollars ($1,440.00) per annum, and therefore these alterations, if they should in any way affect the interest of "The Nemours Foundation" could affect that interest adversely only, by reducing it. I have, therefore, as will be seen, been very careful herein not to jeopardize the interest of said "Foundation" under my said Will as amended by said first Codicil and this Codicil, the said Will having been executed considerably more than six months

ALFRED I. DUPONT

prior to the time of the execution of this Codicil. This proposed "Foundation" has been substantially provided for in every Will I have executed for the last ten years, more or less. Its ultimate interest in my estate largely motivates my continued diligent attention to my financial affairs. There has never at any time been exerted upon me any undue influence in connection with the aforesaid charitable bequest. In fact the creation of this "Foundation" has been and is entirely my own idea, formulated many years ago, for the reason that it has been my firm conviction throughout life that it is the duty of every one in this world to do what is within his power to alleviate human suffering and I have sedulously striven to that end. It is, therefore, natural that I should desire, after having made proper provision for the immediate members of my family and the others whom I have seen fit to remember, that the remaining portion of my estate should be utilized for charitable needs. I am satisfied that it can never be said that I have not made proper provision by direct gift or otherwise for all persons in any need which the said Act of 1933 was designed to protect. At any rate I have done and am doing all that I considered and consider right and proper in that respect, this of my own volition and without influence exerted by any one.

I do hereby ratify and confirm in all respects my said Will of November 19, 1932, as amended by my said first Codicil of March 4th, 1933 and as further amended by this Second Codicil.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of January, in the year of our Lord one thousand nine hundred and thirty five.

Alfred I. duPont (SEAL)

The foregoing instrument, consisting of fourteen pages including this one, at the date hereof, to-wit: the 15th day of January, A. D. 1934, was signed, sealed, published and declared by the said ALFRED I. DuPONT as and for a Codicil to his Last Will and Testament dated the 19th day of November, A. D. 1932, as amended by his Codicil thereto dated the 4th day of March, A. D. 1933, in our presence as witnesses, who, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto, at Jacksonville, Florida.

ALFRED I. DuPONT

Raymond D. Knight, of Jacksonville, Florida.

H. P. Osborne, of Jacksonville, Fla

R. Pearce Markham, of Jacksonville, Fla

STATE OF FLORIDA } BE IT REMEMBERED that
COUNTY OF DUVAL } on May 13-1935 I duly recorded the foregoing Second Codicil in the public records of Duval County, Florida.

J. OLLIE EDMUNDS, County Judge
By T. V. Cashen, Jr.,
Clerk County Judges Court

(Seal)

Exhibit B

VOL 5040 PG 95
OFFICIAL RECORDS

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, DUVAL COUNTY FLORIDA.

CIVIL ACTION NO. 79-11534-CA

DIVISION "N"

EDWARD BALL, J.C. BELIN, T.S. COLDEWEY, W.L. THORNTON, and JACKSONVILLE NATIONAL BANK, Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased, and THE NEMOURS FOUNDATION, a corporation not for profit under the laws of Florida,

Plaintiffs,

vs.

JAMES C. SMITH, Attorney General of Florida, WILLIAM B. MILLS and ALFRED duPONT DENT, Trustees under the Last Will and Testament of Alfred I. duPont, deceased, and STATE OF DELAWARE, ex rel. RICHARD S. GEBELEIN, as Attorney General,

Defendants.

FILED
JAN 18 1980
CIRCUIT COURT

FINAL JUDGMENT

THIS CAUSE came on for hearing before the Court upon motion of all the parties for the entry of a Final Judgment and upon the Stipulation and Agreement referred to therein, and the Court having considered the pleadings, the issues, the Stipulation and Agreement between the parties, the presentation of evidence and argument of counsel, it is,

ORDERED AND ADJUDGED:

1. Motion for the entry of a Final Judgment filed on behalf of all the parties to the litigation is granted.

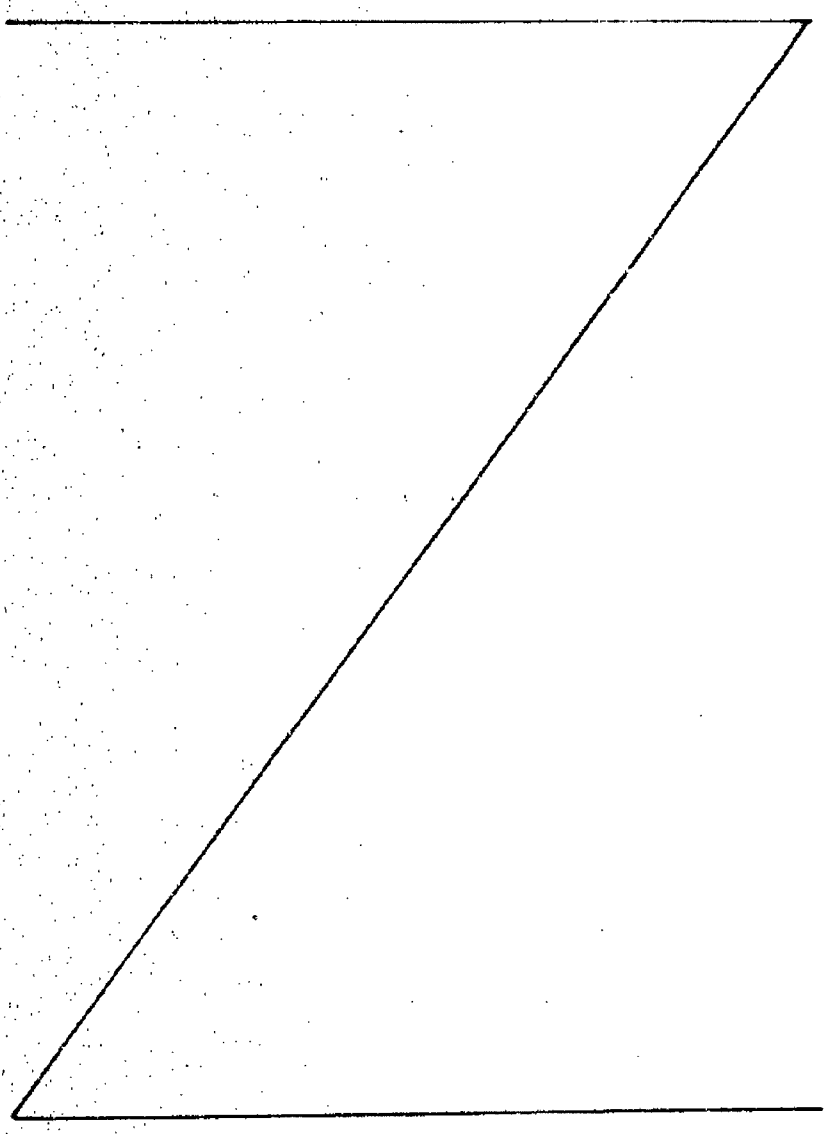
2. The Stipulation and Agreement between the State of Florida, the State of Delaware, the Trustees of the Alfred I. duPont Testamentary Trust, and The Nemours Foundation, is accepted and approved by the Court.

3. The parties are entitled to judicial declarations and relief upon the issues made by the pleadings and the Stipulation

Exhibit B

and Agreement between the parties heretofore referred to and hereafter incorporated in full herein.

4. The Court hereby adopts as the terms of its Final Judgment herein each and every one of the terms and conditions, constructions of law, and findings of fact set forth in the aforesaid Stipulation and Agreement as follows:



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FILED
JAN 18 1980

OFFICIAL RECORDS

STIPULATION AND AGREEMENT BETWEEN THE STATE OF FLORIDA, THE STATE OF DELAWARE, THE TRUSTEES OF THE ALFRED I. duPONT TESTAMENTARY TRUST AND THE NEMOURS FOUNDATION

The parties to this Agreement, which is made and executed this 17th day of January, 1980, are: EDWARD BALL, J. C. BELIN, T. S. COLDEWEY, W. L. THORNTON, ALFRED duPONT DENT and WILLIAM B. MILLS, as Trustees of the Alfred I. duPont Testamentary Trust; and JACKSONVILLE NATIONAL BANK, as corporate Trustee of the Alfred I. duPont Testamentary Trust; THE NEMOURS FOUNDATION (hereinafter "NEMOURS") a corporation not for profit; JIM SMITH as Attorney General of the State of Florida; RICHARD S. GEBELEIN as Attorney General of the State of Delaware; and ED AUSTIN as State Attorney of the Fourth Judicial Circuit of the State of Florida.

WHEREAS, the undersigned JIM SMITH, Attorney General of the State of Florida, is the representative of the ultimate charitable beneficiaries of the Alfred I. duPont Testamentary Trust and of The Nemours Foundation, and as head of the Department of Legal Affairs of the State of Florida is charged with the enforcement of the provisions of Section 738.12, Florida Statutes; and

WHEREAS, the undersigned RICHARD S. GEBELEIN, Attorney General of the State of Delaware, is the representative of the Delaware charitable beneficiaries of the Alfred I. duPont Testamentary Trust and of The Nemours Foundation, and as head of the Department of Justice of the State of Delaware is charged with protecting the rights of the said Delaware beneficiaries; and

WHEREAS, all the parties to this Agreement are desirous of effecting legal and good faith compliance with the provisions of said Trust and Florida law governing said Trust; and

WHEREAS, the parties have agreed to enter into this Settlement Agreement without any admission of liability

Exhibit B

on the part of any of the parties and without waiving any of their respective rights except as specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

A. Valuation of Trust Assets and Payment of Benefits for Calendar Year 1978.

(1) The valuation of the assets of the Trust for the calendar year 1978 is agreed to have been $719,669,170.00.

(2) In reaching that valuation, the valuation of the common stock of St. Joe Paper Company, an unlisted stock, was arrived at by using an average of the bid and asked price of that stock for the month of December, 1978.

(3) Application of that valuation to the provisions of Section 738.12(1)(a), Florida Statutes, required the payment by the Trust to the designated beneficiaries of $21,590,075.10.

(4) The net earned income of the Trust for the year 1978 is agreed to have been $18,681,634.01, which amount has heretofore been paid to the individual beneficiaries and annuitants designated in the Will and Nemours with $18,602,834.01 having been paid over to Nemours.

(5) As set forth in the resolution of the Executive Committee of the Trustees dated November 2, 1979, the additional sum of $2,908,441.01 has also been paid over to Nemours. That action of the Executive Committee was ratified and confirmed at a regular meeting of the Trustees held on November 15, 1979.

(6) The parties agree that payment to Nemours of the sums specified herein constitutes full and complete compliance for 1978 with the requirements of Section 738.12, Florida Statutes.

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B. Valuation of Trust Assets and Payment of Benefits for Calendar Year 1979.

(1) The controlling principal with respect to the valuation of Trust assets for the calendar year 1979 shall be the fair market value of each of such assets as of December 31, 1979, as required by Section 738.12, Florida Statutes.

(2) Those stocks which are assets of the Trust and which are listed on a major securities exchange shall be valued by their quoted price as of the close of business on December 31, 1979, and multiplying that value by the number of shares of said stock owned by the Trust on said date.

(3) The unlisted and over-the-counter stocks which are assets of the Trust shall be valued by taking an average of the bid and asked prices thereof quoted by securities brokers making a market in such stock during the month of December of 1979 and multiplying that value by the number of shares of said stock owned by the Trust on December 31, 1979.

(4) The value of real and personal property owned directly by the Trust shall be established by utilizing the fair market value of such assets as of December 31, 1979, as required by Section 738.12, Florida Statutes.

(5) The net income of the Trust or three percent (3%) of the value of the Trust, whichever shall be higher, shall be paid over to the annuitants and to Nemours on or before April 15, 1980.

C. Valuation of Trust Assets and Payment of Benefits for Years Subsequent to 1979.

For years subsequent to the calendar year 1979, the Trustees, subject to the terms of Section "D", infra of this Stipulation and Agreement, agree that they will pay over to the annuitants and to Nemours on or before April 15 of the following year: (1) the net income of the Trust, or (2) the statutory amount of three percent (3%) on the fair market valuation of the

Exhibit B

assets as of December 31 of each consecutive year after 1975, or on such other basis as may be required by statutory amendment or judicial construction of Section 738.13, Florida Statutes.

D. Application of Prudent Trustee Rule

The parties hereto agree that the Trustees are bound by the "prudent Trustee rule" with respect to investment of the Trust assets as well as Chapter 738, Florida Statutes, and the Trustees agree that they will exert their good-faith efforts to raising the income productivity of the Trust to levels higher than those set forth in the current provisions of Section 738.12, Florida Statutes, or by any amendment or modification thereof. The States of Florida and Delaware will rely on the sound business judgment and good-faith effort of the Trustees to raise the level of trust income beyond that required by Section 738.12, Florida Statutes, consistent with sound business judgment and conservation of the assets of the Trust.

E. Intervention of State of Delaware in Ball v. Smith

In compliance with the previous agreement of the parties, the Trustees have not objected to the entry of the State of Delaware in the case of Ball v. Smith, Duval County Circuit Court Case No. 79-11534, as an intervenor.

F. Agreements with Respect to State of Delaware

With respect to the rights of the State of Delaware, the parties agree as follows:

(1) Definition of Phrase "Crippled Children"--The definition of the phrase "crippled children" as used in the Last Will and Testament of Alfred I. duPont is construed and defined as set forth in decretal Provision 10 of the Final Judgment entered by Circuit Court Judge Marion W. Gooding in the case of Edward Ball, et al. v. Donald G. Nichols, State Attorney, Case No. 71-7001, under date of December 29, 1972, and recorded in Volume

3302, Page 476, of the Official Records of Duval County, Florida. That decree provides as follows:

> The phrase "crippled children" as used in Mr. duPont's Will is defined to mean persons under 21 years of age, who by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, has been deprived of strength, activity or capability for service or use, in any part of the human body.

(2) The Trustees agree that they will broaden the scope and nature of services presently being offered at the Alfred I. duPont Hospital at Wilmington, Delaware, contingent upon the availability of necessary funds.

(3) The Trustees agree that at no time will more than fifty percent (50%) annually of the funds distributed by the Trust to Nemours be spent outside the State of Delaware.

(4) First consideration, in each instance, will be given to the beneficiaries who are residents in Delaware.

(5) Nemours Foundation will communicate to every hospital in the State of Delaware its willingness and intention to treat every crippled but not incurable child in the State of Delaware, without regard to the child's or the family's ability to pay, but in the expectation that those who can pay will do so and that the hospital will collect any third-party payments to which it might be entitled.

(6) (a) It is contemplated by the Trustees that a contingency reserve of $25,000,000 should be maintained in the Foundation to insure that adequate funds will be available for the operation of the hospital facilities of the Foundation located on the Estate of Nemours in New Castle County, Delaware. A contingency reserve in that amount may be maintained in the future without violating the provisions of this agreement to expend all funds received by the Foundation for the benefit of beneficiaries. The parties hereto realize that it may

Exhibit B

be necessary for tax reasons for the Foundation to obtain approval and/or consent of the Internal Revenue Service of the United States to the establishing of such reserve fund. If the Foundation finds that such approval is necessary, in its opinion, all parties hereto will join at the Foundation's request in the petition or other papers filed by the Foundation with the Internal Revenue Service. A change in the amount of this reserve may become necessary by reason of changed economic conditions and operational requirements of the Foundation, and after a period of five years from the date of this agreement, the Board of Managers of the Foundation, with the trustees concurring, may review and determine that an increase in the amount of such reserve is necessary and proper for the continued operation of the facilities of the Foundation located on the Estate of Nemours. If the Attorneys General of Delaware or Florida do not agree to such recommended increase in reserves, the parties hereto will submit the matter to a court of competent jurisdiction for instructions and decision.

(b) The Trustees and the Foundation agree, in the exercise of their discretion to immediately formulate a plan for providing charitable benefits to residents of Delaware qualifying as "old men or old women or particularly old couples" under the definition of "the elderly" contained in the final judgment in the case of Ball v. Nichols, Civil Action No. 71-7001, dated January 3, 1972. This plan shall include a commitment to expend a minimum of $6,000,000 during the two-year period beginning on January 1, 1980, and ending on December 31, 1981, for the care and treatment of the elderly in Delaware. Likewise, the commitment shall include a permanent and continuing commitment to provide substantial funds for the elderly which shall be at a minimum an amount equal to the amount of earnings

from the contingency reserve created in Item 6(a), supra, which fund shall be invested in income-producing securities.

(7) (a) All parties hereto agree that the Trustees shall have the discretion to cause the Foundation to expend all funds received directly or indirectly by it from the duPont Trust, directly by the Foundation, or by paying such amounts to charitable institutions or organizations in Delaware providing such care to the elderly, which institutions or organizations in Delaware providing such care to the elderly, must be institutions or organizations designated by the Board of Managers of the Foundation and approved by the Trustees.

(b) The Attorney General of Delaware agrees that the Trustees have made the commitments described in this Agreement as an exercise of their sole discretion, and that the Trustees do have the sole discretion to expend additional funds for the elderly or solely for crippled children, but not incurable children, in any State in the United States.

G. Services to be Provided in State of Florida

The Trustees will agree to execute an agreement with one or more Florida hospitals to provide clinical facilities and medical and rehabilitative treatment for crippled but not incurable children.

(1) The amounts expended in such agreements shall be limited by the Delaware commitments set forth herein.

(2) The operation of such facilities shall continue until such time as there shall be no further need for such agreement or until a hospital of similar nature, but not necessarily size, to the Delaware facility is operational by Nemours in Florida.

(3) The Trustees will agree that within three years they will commission and pay for a study of the necessity of the construction of a facility as described in Paragraph G(2) above.

Exhibit B

(4) Should a need be shown by such study the Trustees agree to begin the process of acquiring permits for such a facility within one year of the delivery to the Trustees of the study report.

(5) Construction of the hospital, if needed, will commence at the earliest time after the income of the Trust is sufficient to meet the Trust's Delaware commitments and finance such construction.

(6) The Trustees, prior to January 31, 1980, shall submit a proposed budget for expenditures in Florida in 1980 and 1981, to the Attorney General of Florida and the State Attorney for the Fourth Judicial Circuit of Florida.

E. Implementation of Agreement

(1) The parties hereto agree that the terms of this agreement shall become the subject of a judicial order, or final judgment to be entered pursuant to the decision of Circuit Court Judge Thomas D. Oakley, as soon as is reasonably possible in the case of Ball v. Smith, Duval County Circuit Court Case No. 79-11534-CA, now pending before such judge. And the parties agree further that they will then and hereafter agree that they construe the underlined provisions of the following excerpt from Item 9 of Mr. duPont's Will: "...for the purpose of maintaining the said Estate of 'Nemours' as a charitable institution for the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware, the one or more of which said charitable purposes, however, being left to the decision of my said Trustees,...", as having the following meaning: "for the care and treatment of either crippled children, but not of incurables, or the care of old men or old women, and particularly old couples"; and further, that the provision therein: "the one or more of which said charitable purposes,

however, being left to the decision of my said Trustees" means that Mr. duPont intended for the Trustees to have the right to make such decision and/or decisions. The parties also agree that this stipulation and agreement will be filed in each of the other cases now pending before Judge Thomas D. Oakley, being Case Nos. Ball v. Austin, #71-7001; Mills v. Ball, #77-9521; and Florida First National Bank of Jacksonville v. Austin, #77-13033, for consideration and the determination of any issues pending therein.

(2) The Attorney General of Florida, the Attorney General of Delaware, and the State Attorney for the Fourth Judicial Circuit of Florida, while continuing to closely observe the operations and activities of the Trust will desist from filing any new litigation, relating to the subject matter of this agreement, as long as the Trustees comply with this Agreement.

I. Partial Termination of Litigation

The parties hereto agree that any and all other litigation pending in which all or any of them are parties with respect to the construction and implementation of the terms and provisions of the Last Will and Codicils thereto of Alfred I. duPont, which contain issues which have been settled by this Stipulation, will be compromised and partially settled, if possible, pursuant to the terms hereof and that appropriate stipulations will be filed in each of such cases accomplishing that end result.

Exhibit B

THE PARTIES agree to the above and foregoing this 17 day of January, 1980.

ALFRED I. duPONT TESTAMENTARY TRUST

By: _____
Edward Ball

_____
J. C. Belin

_____
T. S. Coldewey

_____
W. L. Thornton

_____
Alfred duPont Dent

_____
William S. Mills

JACKSONVILLE NATIONAL BANK

By: _____
John D. Uible

AS TRUSTEES OF THE ALFRED I. duPONT TESTAMENTARY TRUST

THE NEMOURS FOUNDATION

By: _____

ATTORNEY GENERAL
STATE OF FLORIDA

_____
Jam Smith

STATE ATTORNEY, STATE OF FLORIDA
FOURTH JUDICIAL CIRCUIT

_____
Ed Austin

ATTORNEY GENERAL
STATE OF DELAWARE

_____
Richard S. Gebelein

Exhibit B

5. Said Stipulation and Agreement and this Final Judgment shall not, however, constitute or be construed as a determination by this Court as to the validity of the election and appointment of any of the Trustees of the Alfred I. duPont Testamentary Trust or any issues relating thereto now pending in other cases in this Court and the appellate courts of the State of Florida, nor does the execution of such Stipulation and Agreement constitute a waiver of the right of any party herein to litigate such issues.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 18Th day of January, 1980.

Thomas A. Apkarian
Circuit Judge

Copies Furnished to:

Fred R. Kent
John F. Corrigan
James C. Smith
T. Edward Austin
Maurice S. Atwater
John H. Wilbur
E. Earle Zehmer

Exhibit B

Exhibit C

Doc # 2005019895, OR BK 12244 Page 332, 1 of 11 Filed & Recorded 01/17/2005 at 07:27 AM, JIM FULLER CLERK CIRCUIT COURT DUVAL COUNTY

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2004-CA-007960-XXXX-MA

DIVISION: CJ H

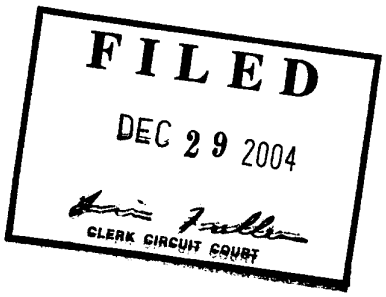
JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, WINFRED L. THORNTON, AND WACHOVIA BANK, N.A., as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased,

Plaintiffs,

v.

HARRY L. SHORSTEIN, State Attorney in and for the Fourth Judicial Circuit of the State of Florida, and THE NEMOURS FOUNDATION, a not-for-profit corporation organized under the laws of Florida,

Defendants.
_____/



FINAL JUDGMENT GRANTING MODIFICATION OF TRUST AND DECLARATORY JUDGMENT

THIS CAUSE came before the Court upon the Complaint of JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, WINFRED L. THORNTON, AND WACHOVIA BANK, N.A., as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased, (the "Trustees") for Modification of Trust and Declaratory Judgment. In the Complaint, the Trustees seek the following relief:

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a) Modification of the Trust's purpose to redefine the age of "crippled children" from 21 to 18 years of age, and to expand Nemours' charitable purpose to include prevention as well as treatment;

b) Modification of the provisions of the Trust regarding the governance and management of Nemours to: (i) clarify that the Members of Nemours will consist of only those individuals serving as Trustees of the Trust and reserve unto those Members certain powers; (ii) confirm that the responsibility for supervising the management of Nemours is that of the Board of Directors; and (iii) clarify the role of the Board of Managers of Nemours;

c) Modification of the Trustee provisions of the Trust to provide for the (i) elimination of the requirement that one of the six Trustees be a corporate Trustee, (ii) elimination of any restriction that certain Trustees may not serve on the Board of Nemours, and (iii) addition of a Trustee Emeritus status;

d) A declaratory judgment regarding the standard of care required of the Trustees, as a result of changes in Florida law; and

e) A declaratory judgment regarding the required distribution to be paid to Nemours, as a result of changes in Florida law.

This Court having reviewed the Complaint and legal authorities, and having held hearing on the matter, and being otherwise fully advised, finds and decides as follows:

FINDINGS OF FACT

1. The history of the trust established under the Last Will and Testament and Codicils thereto of Alfred I. duPont (the "Trust") and the prior proceedings held before this Court are provided in great detail in this Court's Final Judgment dated December 2, 1994, Amended Final Judgment dated January 30, 1996, and Second Amended Final Judgment dated August 28, 2002.

2. As noted in the Second Amended Final Judgment, at the time of Mr. duPont's death in 1939, the assets of the Trust were $72.5 million. In 1994, the assets of the Trust has increased in value to $1.8 billion, and, as of January 1, 2004 has further increased to approximately $3.2 billion.

3. The primary beneficiary of the Trust, the Nemours Foundation ("Nemours"), receives all of the Trust's income, with the exception of a few small annuities paid to named individuals. Item 9 of the Will currently provides that the purpose of Nemours shall be:

> *...a charitable institution for the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware, ...*

4. In furtherance of that purpose, Nemours currently owns and operates the Alfred I. duPont Hospital for Children, a full-service, research and educational hospital located in Wilmington, Delaware; the Nemours Health Clinic, an outpatient center for the elderly in Delaware; and the Nemours Children's Clinic, consisting of outpatient, pediatric subspecialty centers located in Wilmington, Delaware, and Jacksonville, Pensacola, and Orlando, Florida. In addition to

operating these health care facilities, Nemours also supports extensive medical research and educational programs in Delaware and Florida.

5. Dramatic changes in medicine not anticipated by Mr. duPont when he prepared his Will nearly 70 years ago now make the prevention of many childhood illnesses possible. Compliance with the current terms of the Trust, which currently does not address the expenditure of funds for preventative care, defeats a material purpose of the Trust to provide for the health care needs of children. Modification of the Trust's purpose to allow Nemours to offer preventative care services is necessary and highly convenient to the Trust, while also being consistent with the Trust's purpose and the intent of Mr. duPont.

6. Redefining the term "children" to include only those persons under the age of 18 is also highly convenient to the administration of the Trust in that the term would then conform with the age of majority in Florida and other states. This modification, however, should not adversely effect any of the current patients of Nemours who are between the ages of 18-21.

7. To achieve the Trust's purpose, organizational changes in the manner in which Nemours and the Trust operate also would help to ensure the effective and efficient delivery of health care services to children and the elderly. The 1932 Will requires clarification regarding the Trustees' role as Members of Nemours and the duties and responsibilities of both the Board of Directors and the Board of Managers of Nemours.

8. The provisions of the Will governing the appointment, retirement and governance of the Trustees also are in need of modification. Due to administrative changes in the way that the Trust's assets are invested, the services offered by the corporate trustee and the resulting expense are no longer needed by the Trust. Because of the Trust's size and complexity, it is desirable to continue to have six trustees administering the Trust.

9. This Court in its 1994 Final Judgment stated as follows:

> The three new individual Trustee positions shall be filled by individuals who, during their term as Trustees, shall not receive or be entitled to receive any compensation from any corporation or other entity owned by the Trust, including, but not limited to, St. Joe Paper Company, its successors or its subsidiaries; Florida East Coast Industries, its successors or its subsidiaries; *or the Nemours Foundation or any entities owned or controlled by the Nemours Foundation; and may not sit as a director, manager, employee, or consultant of any of the, above described entities.* FINAL JUDGMENT, DATED DECEMBER 2, 1994 AT PAGE 27, PARAGRAPH 2. *(emphasis added).*

10. Arguably, this provision can be read as a prohibiting certain Trustees from serving on the Board of Directors of Nemours. This was an unintended restriction that is in contradictory to the expressed intent of Mr. duPont. Accordingly, good cause exists for the clarification of this provision.

11. Currently, there are no provisions for an orderly transition between outgoing trustees and their successors. Instead, a Trustee will generally serve for his entire lifetime, unless he is removed from office or voluntarily resigns. The Trust would benefit from the addition of an emeritus status that would enable the Trustees to continue to access the experience and knowledge of a long serving,

senior trustees, while also allowing the Trust to recruit new trustees with fresh perspectives and differing areas of expertise.

12. The proposed modification to include a Trustee Emeritus status is highly convenient to the Trust, because it will enable the Trustees to better transition from their long serving Trustees to the next generation of trustees.

13. Further, all of the proposed changes to the trustee provisions are necessary to ensure the proper administration of the Trust, because Mr. duPont could not have anticipated the growth of the Trust and accompanying complexity when he originally designed the trustee provisions. Compliance with the current terms of the Trust would substantially impair the accomplishment of the material purpose of the Trust.

CONCLUSIONS OF LAW

14. This Court has jurisdiction pursuant to Florida Statutes Chapter 86, §§737.201, 737.202, 737.4031 and 737.507 (2003). Venue of this proceeding lies in Duval County, Florida, because the Trust has its principal place of administration in Duval County.

15. Notice of this action was given to Nemours and the State Attorney in and for the Fourth Judicial Circuit of the State of Florida. All parties and noticed entities have consented to the relief requested by the Trustees in their Complaint.

16. Pursuant to Florida Statute §§737.403 and 737.507 (2003), a trustee may be relieved from any restriction imposed by law or by a trust's governing documents upon a showing of "cause".

17. Further, Florida Statute §737.4031 (2003) permits judicial modification of a trust where, because of circumstances not known or anticipated by the grantor, compliance with the terms of the trust would substantially impair the accomplishment of a material purpose of the trust.

18. In addition to these statutory provisions, the common law on trusts also permits deviation from the terms of a trust when it is necessary or highly convenient to do so in order to enable a trustee to satisfy the trust's purpose. *See,* George G. Bogert and George T. Bogert, *The Law on Trust and Trustees*, §396 (Rev. 2d ed. 1991).

19. Good cause exists to justify the requested modifications. Further, because of circumstances that could not have been known or anticipated by Mr. duPont, compliance with certain terms of Mr. duPont's 1932 Will would defeat or substantially impair the accomplishment of a material purpose of the Trust, making modification both necessary and appropriate.

20. As a result of the repeal of Florida's underproductive property statute, from which originated the requirement that the Trust distribute 3% of the value of its assets each year to Nemours and the elimination of the Prudent Trustee Rule in Florida, a present, actual and justifiable controversy exists regarding the Trustees' rights and responsibilities to Nemours.

ORDER

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is ORDERED AND ADJUDGED as follows:

A. The relief sought in Count I of the Complaint is GRANTED. Nemours' purpose, as provided in Item 9 of the Will, shall be modified to read as follows:

> *The general nature and purpose of the Corporation shall be the maintenance and support of, and the making of contributions to, charitable institutions operated for: (a) the care and treatment of children, but not of incurables, under eighteen (18) years of age, who by reason of physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, have been deprived of strength, activity, or capability for service or use, in any part of the human body; (b) the prevention of those conditions described in (a); and (c) the care of individuals over sixty-five (65) years of age who are in need of supportive or alleviating medical or para-medical care beyond mere food, clothing, and shelter, first consideration, in each instance, being given to beneficiaries who are residents of Delaware.*

B. The relief sought in Count II of the Complaint is GRANTED. To the extent it represents a deviation or modification from the Trust, the Court approves and authorizes as follows:

1. The Members of Nemours shall continue to consist of only those individuals then serving as Trustees of the Trust, and the Members of Nemours shall have the following reserved powers, to:

   a) Establish Nemours' purpose and determine the nature and scope of the services to be offered;
   b) Appoint Non-Member Directors of Nemours and establish the total number of Directors to be elected each year;
   c) Remove any Non-Member Director, with or without cause, at any time;
   d) Approve any purchases or disposition of assets, issuance of debt, borrowing of funds, or change in affiliations, subject to such guidelines as the Members may establish from time to time;
   e) Specify that the use of distributions from the Trust shall be consistent with the purpose of Nemours; and
   f) Make amendments to the Articles of Incorporation and approve any changes to the By-laws.

2. The responsibility for supervising the management of Nemours shall reside with the Board of Directors of Nemours, who shall be elected by its Members.

3. The Board of Managers shall:

a) determine the qualifications of professional staff of the facilities owned by the Nemours Foundation and located on grounds of Nemours;
b) approve the credentials of the physicians and associated staff of the facilities owned by the Nemours Foundation and located on the grounds of Nemours;
c) review and determine, with the Board of Directors' concurrence, the appropriate contingency reserve and the appropriate provision required for operating the facilities owned by the Nemours Foundation and located on the grounds of Nemours;
d) identify, with the Members' concurrence, other worthy charitable institutions to receive grants from Nemours, in the event that Nemours' income exceeds its needs; and
e) such other matters as the Board of Directors may request.

C. The relief sought in Count III of the Complaint is GRANTED. The Trust is modified as follows:

1. The requirement that there always be a corporate Trustee is eliminated. The Trust shall, however, continue to have six trustees, all of whom shall be individual trustees. The sixth, individual Trustee, and his or her successors, shall be appointed by the majority vote of the then serving Trustees, in accordance with the Trustees' procedure for filling any vacancy in the office of Trustee.

2. No Trustee is prohibited from serving on the Board of Directors of Nemours, notwithstanding paragraph 2, on page 27 of the Court's Final Judgment, entered on December 2, 1994.

3. A Trustee Emeritus status shall be adopted by the Trustees. Any Trustee who has attained the age of 70, and has served for at least 10 years, may voluntarily become a Trustee Emeritus. A Trustee Emeritus will not have voting powers with respect to the administration of the Trust, but will be entitled to attend all meetings of the Trustees and participate in discussions regarding the administration of the Trust. A Trustee Emeritus will continue to be compensated at the rate he or she received at the time of his or her Trustee Emeritus election, but no increases in compensation will be received thereafter. In exchange for this compensation, a Trustee Emeritus shall provide reasonable consultation and advice to the then serving Trustees for as long as the Trustee Emeritus continues to receive compensation from the Trust.

D. The relief sought in Count IV of the Complaint is GRANTED. The standard of care required of the Trustees shall be governed by the Prudent Investor Rule, as set forth in Florida Statutes §§737.302 and 518.11, or as such statutes may be amended from time to time.

E. The relief sought in Count V of the Complaint is GRANTED. Notwithstanding the repeal of Florida Statute §738.12, the Trustee shall continue to distribute to Nemours three percent (3%) of the fair market value of the Trust on

January 1st of each year, even if that requires a distribution from the principal of the Trust.

F. This Final Judgment shall be effective as of January 1, 2005.

DONE and ORDERED in Duval County, Florida this 28 day of December, 2004.

Honorable Donald R. Moran, Jr.
Circuit Court Judge

Copies furnished to:
Edward F. Koren and Robert J. Beckham, Holland & Knight LLP, 50 North Laura Street, Suite 3900, Jacksonville, FL, 32202

Christine R. Milton, Esquire, McGuire Woods, 50 N. Laura Street, Suite 3300, Jacksonville, FL 32202

Harry L. Shorstein, Esquire, State Attorney's Office, 330 E. Bay Street, Jacksonville, FL 32202

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Exhibit D

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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CIVIL ACTION NO. 71-7001
DIVISION D

EDWARD BALL, J. C. BELIN, T. S. COLDEWEY, ALFRED duPONT DENT, WILLIAM B. MILLS, W. L. THORNTON and THE FLORIDA NATIONAL BANK OF JACKSONVILLE, as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, Deceased, and THE NEMOURS FOUNDATION, a corporation not for profit under the laws of Florida,

Petitioners,

vs.

DONALD G. NICHOLS, State Attorney in and for the Fourth Judicial Circuit of the State of Florida,

Defendant.

FILED
JAN - 3 1972
CLERK CIRCUIT COURT

FINAL JUDGMENT

This case is before the Court upon application of the parties for the entry of a final decree. The Court has considered the factual and legal issues raised by the pleadings, the oral testimony, the documentary evidence, memorandum briefs and arguments submitted by counsel. From such consideration, the Court has concluded that the equities of the case are with the Petitioners and that they are entitled to the relief prayed for in their petition.

I. INTRODUCTION

The action is brought under the provisions of the common law and further under the provisions of the Trust Accounting Law (Chapter 737, Florida Statutes,) and the Declaratory Judgments Act (Chapter 86, Florida Statutes) of the State of Florida, and the Florida Charitable Trust Act of 1971 (Chapter 71-256, Laws of Florida.)

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II. JURISDICTION AND VENUE

Jurisdiction of this Court is established by the common law and confirmed by the statutory law of the State of Florida. In Florida, equity has inherent jurisdiction to carry into effect and supervise the charitable bequests and devises of a testator. The Statute of Charitable Uses defined the subjects of charity, but the jurisdiction of the English courts of chancery over charitable trusts did not arise by reason of this statute, as such jurisdiction had existed long prior thereto. Consequently, if it becomes necessary to construe the terms of a will which has created a charitable trust or to supervise the trust in any manner, application for such construction or supervision may be made to equity. The validity of a charitable bequest is determined according to the law of the state of the testator's domicile. 1 Redfearn, Wills and Administration in Florida, 396.

The Trust Accounting Law, Chapter 737, Florida Statutes, provides that jurisdiction over testamentary trusts is vested in the circuit court in which the decedent was domiciled. The pleadings and evidence establish that Alfred I. duPont died on April 29, 1935, a resident and citizen of Duval County, Florida.

The Declaratory Judgments Act, Chapter 86, Florida Statutes, also grants exclusive jurisdiction to the circuit court.

The Florida Charitable Trust Act of 1971, Chapter 71-256, Laws of Florida, also grants exclusive jurisdiction to the circuit courts and sets venue in the circuit court having original jurisdiction of a trust if a proceeding under the Florida Trust Accounting Law has been instituted with respect to such trust.

The Trustees of Mr. duPont's estate have complied with the Trust Accounting Law by qualifying as Trustees and filing reports with this circuit court.

Therefore, the Court finds that it has jurisdiction over the subject matter of this suit and that venue is properly laid in Duval County, Florida.

III. PARTIES

The Petitioners are the present Trustees under the Trusts created by the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased

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and The Nemours Foundation, which is a corporation not for profit and is the charitable organization which will receive the entire residual income from the trust created by Mr. duPont's will. They are the proper parties-plaintiff in this action.

The defendant is the State Attorney in and for the Fourth Judicial Circuit of the State of Florida which circuit includes Duval County. Section 737.251, Florida Statutes, which is a part of the Trust Accounting Law, provides that in all proceedings under that Chapter involving charitable trusts with unknown or unascertainable beneficiaries, the State Attorney for the judicial circuit having original jurisdiction of said trust shall be deemed to be the representative of such beneficiaries for all purposes of such Chapter.

Section 2 of Chapter 71-256, Laws of Florida, known as The Charitable Trust Act of 1971, provides that responsibility for protection of the public interest in such a case shall rest with the State Attorney for the judicial circuit having original jurisdiction of the trust if a proceeding under the Florida Trust Accounting Law has been instituted with respect to such trust.

The State Attorney has admitted that he is the proper party-defendant and the Court so finds.

IV. PROVISIONS OF THE WILL AND CODICILS OF ALFRED I. duPONT AND CREATION OF THE NEMOURS FOUNDATION

In determining the intention of the testator the governing language is that used in the Will and Codicils executed by the maker of such documents. The Last Will and Codicils of Mr. duPont are composed of forty printed pages and are very explicit in their terms and meaning. The true intent of Mr. duPont is perhaps best expressed in Item 4 of his Second Codicil. It is there stated that:

> "My said Will. . .provides that 'The Nemours Foundation', a corporation to be organized for charitable purposes is ultimately, through my Trustees, to become one of my substantial beneficiaries . . . Its ultimate interest in my estate largely motivates my continued diligent attention to my financial affairs. . .the creation of this 'Foundation' has been and is entirely my own idea, formulated many years ago, for the reason that it has been my firm conviction

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throughout life that it is the duty of everyone in this world to do what is within his power to alleviate human suffering and I have sedulously striven to that end. It is, therefore, natural that I should desire, after having made proper provision for the immediate members of my family and the others whom I have seen fit to remember, that the remaining portion of my estate should be utilized for charitable needs."

The entire residuary Estate of Mr. duPont was placed in trust and Mrs. duPont was the sole life beneficiary of the income thereof. Upon his death, the Trustees were instructed to:

". . .cause to be incorporated a corporation for charitable purposes, to be designated and known as 'The Nemours Foundation'. . .and my Trustees are hereby directed to pay over, at convenient intervals, to the said corporation, the net income of my said estate, subject to the annuities and legacies hereinabove mentioned for the purpose of maintaining the said Estate of 'Nemours' as a charitable institution for the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware. . . ."

While neither the Trustees nor Mrs. duPont were required to utilize the following authority prior to the death of Mrs. duPont, Mr. duPont's Will further provided in Item 9 that:

"(A) In case after my death my said wife, Jessie Ball duPont, shall desire to create a charitable corporation or institution for the purposes and objects covered by the directions herein given for the creation of the said 'The Nemours Foundation,' then my said Trustees shall pay over to the said 'The Nemours Foundation,' out of the principal of my said estate, any sum or sums not exceeding One Million Dollars. . .which my said wife during her lifetime may direct, and transfer to said corporation said 'Nemours' Estate or any portion thereof for the use of said corporation, if my said wife shall so direct. . . ."

Following the death of Mr. duPont in April of 1935, Mrs. duPont and the other Trustees of his Estate did cause the creation and granting of a charter to The Nemours Foundation. Such charter was issued and granted by the Honorable DeWitt T. Gray, Judge of the Circuit Court for Duval County, Florida on February 25, 1936. (Plaintiff's Evidentiary Exhibit No. Two) Such charter provided that:

"The general nature of the object of the corporation shall be the maintenance and support of and the making of contributions to charitable institutions operated for the care and treatment of crippled children, but not of incurables, or the care of old men or of

old women, and particularly old couples, and for the construction and maintenance of the charitable institution authorized and directed by Alfred I. duPont, late of Duval County, Florida, now deceased, in and by his last Will and Testament and Codicils, now of probate and record in Duval County, Florida, to be established and maintained upon part or all of the property situate in Brandywine Hundred, New Castle County, Delaware, known as 'Nemours', and for the purpose and object of carrying out both during the lifetime of Jessie Ball duPont, the widow of said Alfred I. duPont and after her death, the terms and provisions of the said last Will and Testament and Codicils relating to such charitable institution. . . ."

Mrs. duPont and the other Trustees caused to be constructed, maintained and operated by the Nemours Foundation on the Estate of Nemours, the Alfred I. duPont Institute for the purpose of providing care and treatment of crippled children.

Subsequent to the organization of the Nemours Foundation and more than twenty years ago, Jessie Ball duPont, individually and irrevocably assigned to The Nemours Foundation an undivided twelve percent (12%) of the residuary income of the trust estate created by Mr. duPont's Will. Now that Mrs. duPont has died the entire income from the Estate of Mr. duPont is payable to The Nemours Foundation. It is because of the large additional sums that have become available to the Foundation that the Trustees have filed this action to obtain constructions of the Will of Mr. duPont and to receive instructions of the Court as to the authorized use and implementation of such additional funds.

From the admissions in the pleadings and from the evidence submitted, the Court finds that the Will of Mr. duPont and other conveyances established title to all of the real property contained within the Estate of Nemours in the Nemours Foundation subject to a reserved life estate in the Mansion property to Mrs. duPont. Mrs. duPont's death, on September 26, 1970, has terminated the life estate so that now title in its entirety is vested in The Nemours Foundation.

V. PROVISIONS OF THE WILL OF JESSIE BALL duPONT

Under the provisions of the Will of Mr. duPont and by prior conveyances, the contents, furniture and fixtures of the Mansion House and in all related buildings and structures on the Estate of Nemours belonged to Mrs. duPont.

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In Item 3 of her Will, she made the following provision with regard to such personal property located at Nemours:

> "I hereby give and bequeath to THE NEMOURS FOUNDATION, . . .in charge of the estate called Nemours. . .the former home of my late husband, Alfred I. duPont, and myself, all of my tangible personal property which at the time of my death is located in or about the part of Nemours generally called the Mansion House; . . . .I direct that this bequest of tangible personalty to THE NEMOURS FOUNDATION shall be upon the conditions that such property shall remain at the Mansion House and shall continue to be used as it was at the time of my husband's death, to remain so for the educational benefit of the public, and that the property be subject to all of the instructions set forth in Item 9 of the Last Will and Testament of my husband. . . ."

Therefore, all of the property, real, personal and mixed of the Estate of Nemours is now available for use and utilization to fulfill the purposes and intent of Mr. duPont as supplemented by the provisions of the Will of Mrs. duPont.

VI. EVIDENCE.

The parties, through their counsel, stipulated to most of the facts which are set forth in the complaint and the Petitioners offered oral testimony and documentary evidence to support those allegations to which the Defendant stated that he was without knowledge or which he denied.

The first witness to testify was William B. Mills. Mr. Mills is one of the present Trustees of the Trust created by the Last Will and Testament and Codicils of Alfred I. duPont, Deceased. He is also one of the Executors of the Estate of Jessie Ball duPont, Deceased. He is President of The Florida National Bank of Jacksonville, which is the corporate Trustee of the Trust created by Alfred I. duPont and which is also the corporate Executor of the Estate of Jessie Ball duPont, Deceased. He is also a member of the Nemours Foundation.

Mr. Mills testified as to the creation of the Nemours Foundation by Mrs. duPont and the other Trustees of the Estate of Alfred I. duPont, and the construction, operation and maintenance of the Alfred I. duPont Institute, which is located on the Estate of Nemours and which provides hospital care and treatment for crippled children.

Mr. Mills also testified as to the physical arrangement of the rooms on

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the various floors of the Mansion House and set forth in general terms the various plans that have been discussed by the Trustees as to the use and utilization of the Estate of Nemours and the Mansion House in accordance with the Will and directions of Mr. duPont. Mr. Mills also testified to the receipt and consideration by the Trustees of the additional medical care and treatment programs recommended by the staff of the Alfred I. duPont Institute and further testified to the employment of the architectural firm of Saxelbye, Powell & Roberts to prepare proposed plans for the utilization of the Estate of Nemours, including the Mansion House, and for the construction of additional facilities for the consideration of the Trustees in the event the Court construes the Will of Mr. duPont to permit utilization of the Mansion House for hospital purposes and further construes the Will to provide for the utilization of the entire Estate of Nemours for hospital purposes provided the grounds and certain portions of the Mansion House will be open for visitation by the public and provided further the Court gives a liberal and broadened construction to the phrase "crippled children" so as to permit utilization of the entire Estate of Nemours and the additional income from the Estate of Mr. duPont for such purposes.

The second witness to testify was G. Dean MacEwan, M.D. Dr. MacEwan is the Medical Director and Surgeon-In-Chief of the Alfred I. duPont Institute of the Nemours Foundation. Dr. MacEwan testified to projects proposed to carry out the intentions of Mr. duPont, provided the Court grants the construction of the Will prayed for and instructs the Trustees as to the use of the entire Estate of Nemours as a hospital and provided also the Court directs the use of the additional funds from the Estate of Mr. duPont for the care and treatment of crippled children in a broadened sense of the phrase.

Dr. MacEwan further testified to the presentation of proposals to the Trustees for their consideration and of his work with the architects in the preparation of alternative conceptual plans for the utilization of the Estate and for the construction of additional facilities thereon.

The next witness to testify was Dr. Herman Rosenblum of Wilmington,

Delaware. Dr. Rosenblum is a practicing pediatrician and is associated on the staff of the Alfred I. duPont Institute on a limited basis. Dr. Rosenblum testified to the need for the enlargement of services and facilities in accordance with the various plans proposed to the Trustees and under consideration by them subject to the terms and provisions of the Final Judgment of this Court. The next witnesses to testify were Harry C. Powell and Larry N. Ponder of the Saxelbye, Powell & Roberts architectural firm. Messrs. Powell and Ponder introduced into evidence aerial photographs of the Estate of Nemours, photographs of the present Alfred I. duPont Institute, photographs of the Mansion House and schematic architectural plans setting forth in three different concepts how and in what manner the Estate can be utilized for total hospital purposes and included within that testimony various alternative facilities for consideration of the Court and the Trustees.

The last witness to testify was George A. Mathews, Administrator of the Baptist Memorial Hospital of Jacksonville and who was qualified as an expert in the field of hospital administration. His education, experience, prior involvement in similar projects and his present capacity does qualify him as such an expert and the Court does find him to be one. The various architectural proposals and medical projects were reviewed with Mr. Mathews and he gave testimony that in his professional opinion the various alternatives proposed by the architectural and medical staff would constitute the entire Estate of Nemours including the Mansion House as a hospital and that the functions and programs recommended would constitute medical care and treatment ordinarily provided by a modern crippled children's hospital.

VII. CHARITABLE INSTITUTIONS

The provisions of Mr. duPont's Will which require the creation, establishment and operation of the Nemours Foundation as a charitable institution have heretofore been set out in this Judgment. It now becomes incumbent upon the Court to set forth the rules of law governing its interpretation and construction of the Will and the intent of Mr. duPont with regard to that institution. There are

various definitions and rules of construction which control and guide this Court in that determination.

> "A charitable trust is to be interpreted and administered so as to accomplish the intent of the creator thereof. . .the trust will be allowed to operate under the control of equity. It is the policy of the courts to make every intendment in favor of charitable trusts." 5 Fla.Jur., Charities, §§4-11, 568

> "In legal parlance the word 'charity' has a much more extended significance than in common speech. While a precise and complete definition is difficult to frame, the most comprehensive and carefully drawn definition is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life. . . ." 15 Am.Jr.2d, Charities, 8-9

> "Gifts or trusts for charitable purposes are favorities of the law and the courts." 15 Am.Jur.2d, Charities, 110-112

> "The law treats the charitable trust with very considerable favor." Bogert, Trusts and Trustees, §§361 and 374

> "The courts should be left free to apply the standards of the time--on the theory that what may be charitable in one generation may be non-charitable in a later age, and vice versa. Ideas regarding social benefits and public good change from century to century and vary in different communities. It must expand with the advancement of civilization and the daily increased needs of man." Porter v. Baynard, Supreme Court of Florida, 28 So.2d 890

Based upon the evidence and the law applicable thereto, the Court finds that the Last Will and Testament and Codicils thereto of Alfred I. duPont require the Trustees to establish, maintain and operate a charitable institution. The charitable institution which Mr. duPont's Trustees are required to establish does, in fact, require the construction, maintenance and operation of a hospital as the primary and dominant purpose of that institution. It is clear that it was the will and intent of Mr. duPont that the entire Estate of "Nemours" be utilized predominantly and primarily for the purpose of constructing thereon a hospital for the care and treatment of crippled children and old folks. There was testimony submitted to the Court by the Trustees, by the Director of the hospital, by the architects and by other expert witnesses as to alternative concepts that may be employed which would require and justify the use of the Estate for those

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purposes. From such testimony, it is the conclusion of the Court and the Court finds that the adoption and implementation of any one of such plans or reasonable modifications thereof would result in the construction and operation of a hospital clearly within the will and intent of Mr. duPont.

VIII. HOSPITAL

There were various definitions given to the Court by the expert witnesses and by law as to the meaning of the word "hospital." Mr. Mathews testified that the alternative plans as prepared by the architects would constitute a hospital within the generic and current meaning of that word. The Court was provided by brief with various Florida statutory provisions and definitions as well as quotations from dictionaries, legal authorities, and case law defining the meaning of the word hospital and from which the Court concludes that any and all facilities that are used predominantly and primarily for the fulfillment of a function which is a part of a completely modern hospital may be included within that definition.

A hospital is primarily a service organization. It serves three groups: the patients, their doctors and the public. A hospital furnishes a place where the patient, whether rich or poor, can be treated under near to ideal conditions. Such an institution makes available room accommodations, special diet, x-ray facilities, clinical laboratory facilities, surgery, nursing care, clinical and medical research, education of doctors and para-medical assistants, including nurses, a multitude of other medical services and equipment both for in-patient and out-patient care and treatment.

In determining the extent to which a hospital may devote its funds and services, its managing board is given primary responsibility for the first decision as to what is reasonably necessary for the fulfillment of all generally recognized functions of a complete, modern hospital and their determinations are to be given great weight in deciding what is a predominant and primary hospital purpose, even though there may be some incidental limitations, such as the availability for visitation purposes of part of the Mansion House and grounds as required by the Will of Mr. duPont.

Exhibit D

Such use must, of course, have a primary or predominant use as a hospital as distinguished from a mere secondary or incidental use, but it is clear that when the availability of a part of the Mansion House and grounds for public viewing is weighed against the entire intention of Mr. duPont as carried out with the substantial funds he made available for that purpose that such public purposes other than hospital will be at most incidental and would not in any manner whatsoever, interfere with the predominant use of the entire property including the Mansion House and grounds for hospital purposes.

Mr. duPont's Will does provide that:

> " 'The Nemours Foundation' shall be created and maintained as a memorial to my great, great grandfather, Pierre Samuel duPont de Nemours, and to my father, Eleuthere Irenee duPont de Nemours, and a proper tablet shall be erected in the present mansion to so indicate."

and

> "My Trustees shall arrange for the admission of the public to the Mansion and other buildings and the grounds at such times and under such rules and regulations as they may provide."

It should be noted that it is "The Nemours Foundation" and not just the Mansion House or the Estate that is to be the memorial. Furthermore, the Trustees may adopt rules and regulations controlling public visitation.

The Court finds no conflict between requiring parts of the Mansion House and the grounds to be available for public viewing and the operation of the Foundation and the entire Estate as a hospital. It would appear from the size of the funds that will become available that "Nemours" will not only continue to be a hospital, but will be a showplace of such institutions and certainly should be available for public visitation.

IX. CRIPPLED CHILDREN

Dr. MacEwen testified that the activities of the expanded hospital facilities could be utilized in three basic functions: (1) Hospital and medical care for crippled children; (2) Research related to cause and treatment of crippling deformities in children; and (3) Education program for the treatment of crippled children to

educate personnel involved in the ongoing programs of the hospital as well as education of those in other areas of the country and world. The first function would be the principal function of the expanded hospital facility with the latter two functions occupying a secondary and incidental roll.

The Court was provided with many authorities defining the phrase "crippled children" and it appears that in its original context, the word "cripple" applied only to those who were orthopedically damaged in one of their limbs. Through the development of the law, it appears that the word "cripple" has now been expanded to include the blind, the mentally incapacitated, and anyone whose physical functions are impaired, including loss of hearing, deafness, cystic fibrosis, harelip, cleft palate, congenital cataract, cerebral palsy, cardiac conditions and silicosis, or any other deformity regardless of whether or not such impaired physical functions or movements are due to an orthopedic condition. It would appear that there is not now any limitation to such definition provided, of course, there is compliance with the requirement of Mr. duPont that such condition be not incurable. The best definition of the phrase "crippled children" is contained in the case of In re Lane's Will, 119 N.Y.S.2d 17, where the Court stated:

> "As a result I elect to adopt the same and to define and to determine for the purposes of this proceeding that a crippled child means a person under twenty-one years of age who, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, has been deprived of strength, activity, or capability for service or use, in any part of the human body. (Emphasis supplied.)
>
> "This definition is very broad and may not be acceptable in all places. Still it springs from extensive research with the benefit of information from many sources, including the usage, speech, acts and mind of the average run of people. . .That such definition covers the intention of the testator and was the meaning he had in mind when using the words 'crippled children' in his last will and testament finds support in the circumstances surrounding him at the time of and immediately previous to the execution of the instrument."

In view of the language in the Second Codicil to Mr. duPont's Will that it had been his "firm conviction throughout life that it is the duty of everyone in this world to do what is within his power to alleviate human suffering. . ." the Court would be doing an injustice to construe the phrase "crippled children"

with any limitation whatever other than the one prescribed by Mr. duPont himself - that such condition not be incurable.

X. CARE OF OLD MEN OR OLD WOMEN AND PARTICULARLY OLD COUPLES

It is not the intention of the Trustees to implement that part of Mr. duPont's Will providing for the care of old men or old women and particularly old couples at this time, since their present intention is to devote their first attention to crippled children. Nevertheless, the Court has been provided with definitions of the phrase and it is the Court's conclusion that the phrase was intended to apply to those persons over sixty-five years of age who are in need of medical or paramedical care, however slight or great it may be and would not include those who need only food, clothing and shelter. The Court can do no better than to repeat again the language of Mr. duPont that his motivation and intent, or his duty, as he saw it, was to "alleviate human suffering."

XI. OTHER CHARITABLE INSTITUTIONS

While it is clear that Mr. duPont desired that first consideration be given to residents of Delaware, the Trustees were authorized to consider other worthy charitable institutions. Item 10 of the Will provides:

> "I further direct that, after the death of my beloved wife, Jessie Ball duPont, if the net income of my estate should in any year or years exceed the sum or sums sufficient to properly provide for the conduct and operation of said 'The Nemours Foundation,' . . .such surplus income may from time to time be used. . .in contributions to other worthy charitable institutions designated by said Board and approved by my Trustees as may be conducted for the care of, or the care and treatment of, or the care and education of crippled children, or the care of old men, or of old women, or of old couples, or any one of such purposes. It is my wish that the people of Delaware needing the care of such institutions shall be properly provided for before contributions are made to institutions of any other state or states, but said Board, my Trustees concurring, is hereby given full power to determine what constitutes the necessary reserves for 'The Nemours Foundation' and what constitutes proper provision for the Delaware institutions. . . ."

Therefore, it is apparent that excess funds may become available for similar charitable institutions outside the State of Delaware whenever there are

sufficient funds on hand for such purpose, provided such funds are used in accordance with the provisions and limitations of the Will.

XII. TAX CONSIDERATION AND CONSEQUENCES

In addition to the relief requested regarding the use of the Estate of "Nemours", including the Mansion House, for hospital purposes, the Petitioners requested the following relief:

> "To preserve the Foundation's federal tax exempt status and the deductibility of contributions and gifts to it in the event it becomes a private foundation under federal law, the Petitioners request that the governing instrument of the Foundation be amended to provide that for any taxable year in which it is a private foundation: (1) Its income for each taxable year be distributed at such time and in such manner as not to subject the Foundation to tax under §4942 of the Internal Revenue Code of 1954, (2) The Foundation be prohibited from engaging in any act of self-dealing so as to be subject to tax under §4941 of such Code, (3) The Foundation be prohibited from retaining any excess business holdings so as to be subject to tax under §4943 of such Code, (4) The Foundation be prohibited from making any investments in such manner as to be subject to tax under §4944 of such Code, and (5) The Foundation be prohibited from making any expenditures so as to be subject to tax under §4945 of such Code."

At the final hearing, the Court announced the ruling, confirmed in this Judgment, that based on the testimony, documentary evidence and law applicable to such facts, that the entire Estate of Nemours, including the Mansion House, is and would continue to be a hospital.

As a result of such ruling by the Court, the requested amendment of the governing instrument became moot and unnecessary. As a hospital, the Nemours Foundation is not a private foundation under §509(a)(1) of the Internal Revenue Code of 1954 and its governing instrument is not required to be amended.

Having considered the law and the evidence as discussed in the foregoing opinion, it is

ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over the parties and the subject matter of this action.

2. It was the intention of the Testator, Alfred I. duPont, to provide

for and to require the establishment of a "charitable institution" and that charitable institution was to be primarily and predominantly a hospital.

3. It was the intention of the Testator, Alfred I. duPont, that the entire Estate of "Nemours" be used for hospital purposes.

4. The predominant and primary purpose of the Estate of "Nemours" shall be for use as a hospital. The secondary and incidental use shall be to allow visitation by the public as specified herein.

5. It was the intention of the Testator, Alfred I. duPont, that all of the Estate of "Nemours," including the Mansion House, be made a part of, and be integrated and used for hospital purposes, and specifically, that the Mansion House be used for hospital administrative functions, clinical conferences, lectures, hospital meetings, maintenance of a medical library, storage and exhibition of relevant medical films, entertainment of distinguished members of the medical and hospital professions, meetings of state, national and international medical associations, especially those concerned with the care of children and the aged, and for any other related hospital purposes, except the actual housing of patients and providing of patient care therein.

6. Appropriate rooms of the Mansion House shall, in accordance with provisions of the Will, be used for the purpose of providing a library and exhibiting to the public interesting and valuable literature, works of art and any articles of historic and artistic interest for the advancement of education, and maintained as far as possible, in their present condition.

7. The Trustees are further required to arrange for the admission of the public to the Mansion and other buildings and the grounds at such times and under such rules and regulations as they may provide.

8. The use of property as a "hospital" or for "hospital purposes" includes any property or facility which is used predominantly or primarily for a purpose which is incidental to and reasonably necessary for the accomplishment of hospital purposes or which is reasonably necessary for the fulfillment of a generally recognized function of a complete, modern hospital.

9. As proposed by the Trustees, the medical and administrative staffs and by the architects the various concepts if carried out as proposed or as reaonably modified would in their entirety, constitute a hospital.

10. The phrase "crippled children" as used in Mr. duPont's Will is defined to mean persons under twenty-one years of age, who by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, has been deprived of strength, activity or capability for service or use, in any part of the human body.

11. The phrase "care of old men or old women, and particularly old couples" is meant to include those over sixty-five years of age who are in need of supportive or alleviating medical or para-medical care beyond mere food, clothing and shelter.

12. Since the Court has determined that the entire Estate of "Nemours", including the Mansion House, may be integrated and used for hospital purposes as described above, this Court finds that the relief requested by the Petitioners in paragraph (c) of the Petition relating to the amendment of the governing instrument of the Foundation, is moot and unnecessary and therefore does not grant such relief.

13. The Petitioners may make application for further definition or instructions to implement the construction and instructions contained herein.

DONE AND ORDERED in Chambers at Jacksonville, Florida, this 31st day of December, 1971.

Marion W. Gooding
MARION W. GOODING
Circuit Judge

Copies furnished to:

Charles T. Akre, Esquire
Messrs. Kent, Durden & Kent
Honorable Donald G. Nichols, State Attorney
Susan Harrell Black, Assistant State Attorney

Exhibit E

729461

Florida Department of State
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BASIC AMENDMENT

THE NEMOURS FOUNDATION

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Exhibit E

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AMENDED AND RESTATED ARTICLES OF INCORPORATION OF THE NEMOURS FOUNDATION

Pursuant to section 617.1007 of the Florida Statutes, The Nemours Foundation, a Florida not-for-profit corporation initially incorporated in Duval County, Florida on February 25, 1936 and reincorporated under Chapter 617 of the Florida Statutes on April 23, 1974 adopts the following Amended and Restated Articles of Incorporation.

ARTICLE I
NAME AND PRINCIPAL OFFICE

The name of the Corporation shall be "The Nemours Foundation", and its principal office shall be located at 4600 Touchton Road East, Building 200, Suite 500, in the City of Jacksonville, Duval County, Florida 32246. The operations of the Corporation shall extend to such other localities, both in and outside the State of Florida, as the Board of Directors of the Corporation shall determine, subject to the powers retained by the Members in Article VII.

ARTICLE II
DEFINITIONS

As used in these Articles of Incorporation, each of the following terms shall have the meaning indicated opposite the term:

"Bylaws" means the Bylaws of the Corporation as in effect from time to time;

"Corporation" means The Nemours Foundation;

"Florida Statutes" means the Florida Statutes (2003), as amended, and each reference to a chapter of the Florida Statutes means such chapter of the Florida Statutes or the corresponding provisions of any subsequent Florida law;

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, and each reference to a section of the Internal Revenue Code means such section of the Internal Revenue Code or the corresponding provisions of any subsequent federal tax law;

"Judgments" means collectively (a) the consent Final Judgment entered on December 2, 1994, in the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, Case Number 93-02502-CA, (b) the Amended Final Judgment entered on January 30, 1996, in the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, Case Number 93-02502-CA, (c) the Second Amended Final Judgment entered on August 28, 2002, in the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, Case Number 93-02502-CA, and (d) the Final Judgment entered on December 28, 2004, in the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, Case Number 16-2004-CA-007960-XXXX-MA;

"Members" means the Members of the Corporation, who shall be the Trustees serving from time to time under the Will and the Judgments;

"Member Directors" means those Members who have elected to serve as directors from time to time as provided in Article 8.2(a);

"Mr. duPont" means Alfred I. duPont, late of Duval County, Florida, now deceased;

"Nemours" means the property known by that name situate in Brandywine Hundred, New Castle County, Delaware;

"Non-Member Directors" means those individuals elected by the Members to serve as directors as provided in Article 8.2(b);

"Trust" means the Trust established under the Will, as modified by the Judgments, sometimes known as the Alfred I. duPont Testamentary Trust;

"Trustees" means those individuals serving as Trustees of the Trust from time to time under the Will and the Judgments;

"Will" means the Last Will and Testament of Mr. duPont, including all codicils, which Will is now of probate and record in Duval County, Florida, as it has been interpreted and/or modified by the Judgments.

ARTICLE III
GENERAL NATURE AND PURPOSE

The Corporation is organized and shall be operated exclusively for charitable, educational, and scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. More specifically, and as stated in the Will, the Corporation shall be operated for the purpose of maintaining, supporting, and making contributions to, charitable institutions operated for (a) the care and treatment of children, but not of incurables, under eighteen (18) years of age, who by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, have been deprived of strength, activity, or capability for service or use, in any part of the human body; (b) the

prevention of those conditions described in (a); and (c) the care of individuals over sixty-five (65) years of age who are in need of supportive or alleviating medical or para-medical care beyond mere food, clothing, and shelter, first consideration, in each instance, being given to beneficiaries who are residents of Delaware. The purpose of the Corporation shall also include the management and maintenance of Nemours, including the mansion house and the surrounding gardens and grounds, and the improvement of the said property as funds warrant, for the benefit of the public. The Corporation was created pursuant to the power vested by the Will in the Trustees, and shall function in accordance with the precepts set forth in the Will and the Judgments.

ARTICLE IV
RIGHTS AND RESTRICTIONS

No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its incorporator, Members, directors, officers, or other private persons except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE V
DURATION

The term of existence of the Corporation shall be perpetual.

ARTICLE VI
DISSOLUTION

Upon the dissolution of the Corporation, and after all of its liabilities and obligations have been paid, satisfied, and discharged, or adequate provisions made therefor, all of the Corporation's remaining assets shall be distributed to one or more charitable organizations engaged in the type of activities described in Article III and organized and operated exclusively for charitable, educational, and scientific purposes within the meaning of sections 501(c)(3) and 170(c)(2)(B) of the Internal Revenue Code.

ARTICLE VII
MEMBERS

7.1 Class of Members. The Corporation shall have one class of Members. The Members shall be those individuals serving as Trustees from time to time. The Trustees shall exclusively constitute the Members, and each Trustee shall continue as a Member so long as that person continues to serve as a Trustee. The appointment of any person as Trustee, as successor, proximate or remote, to any present Trustee, or as an additional Trustee, shall constitute the admission of that person to membership in the Corporation. The membership of any person who is from time to time a Member shall continue during and only during the person's tenure as a Trustee.

7.2 Meetings. The Members shall meet at such times and places as set forth in the Bylaws.

7.3 Retained Powers. The Members shall have the exclusive right to vote on and determine those matters specified below, which matters shall be within the sole authority of the Members:

(a) Establish the Corporation's purpose and determine the nature and scope of the services to be offered;

(b) Appoint Non-Member Directors of the Corporation and establish the total number of directors to be elected each year;

(c) Remove any Non-Member Director with or without cause at any time;

(d) Approve any purchase or disposition of assets, issuance of debt, borrowing of funds, or change in affiliations, subject to such guidelines as the Members may establish from time to time;

(e) Specify that the use of distributions from the Trust shall be consistent with the purpose of the Corporation; and

(f) Amend the Articles of Incorporation and approve any changes to the Bylaws.

7.4 Members' Oversight. Notwithstanding the foregoing, the Members may, at their discretion, evaluate and audit the programs and services of the Corporation, at any time.

ARTICLE VIII
DIRECTORS

8.1 General Powers. The affairs of the Corporation shall be managed by a Board of Directors appointed by the Members as set forth below. The Board of Directors shall have full charge of the management and operation of the

Corporation and shall have full power to (a) employ and discharge such officers, superintendents, physicians, professional advisors, assistants, employees, and agents, and (b) establish appropriate patient care practices and procedures, as shall be required for the proper management and conduct of the affairs of the Corporation, subject to certain powers retained by the Members as set forth in Article VII.

8.2 Class, Number and Manner of Election or Appointment. The Corporation shall have a minimum of seven (7) directors but no more than fifteen (15) directors. The Corporation's Board of Directors shall consist of two classes of directors, Member Directors and Non-Member Directors.

(a) Member Directors. The Corporation may have as many Member Directors as there are Members serving at that time. No individual shall be eligible to be a Member Director unless the individual is a Trustee. Any Member may, at the Member's option which may be exercised at any time, serve as a Member Director for a term of one year or until the next Annual Meeting of the Members. A Member Director may serve an unlimited number of consecutive terms.

(b) Non-Member Directors. The Corporation shall have no fewer than one (1) director and no more than nine (9) directors who are designated as Non-Member Directors. Non-Member Directors shall be appointed annually by the Members to serve for a term of one year or, in the case of appointments made to fill a vacancy or to increase the number of Directors, until the next Annual Meeting of the Members. No individual who is serving as a Trustee shall

be eligible to serve as a Non-Member Director. A Non-Member Director may serve a maximum of five (5) consecutive terms and thereafter shall not be eligible to serve as a Non-Member Director until the individual has not served as a Non-Member Director for a term of one (1) year or more. No individual shall be appointed as a Non-Member Director without the individual's prior consent.

8.3 Meetings. The directors shall meet at times and places as set forth in the Bylaws.

ARTICLE IX
INDEMNIFICATION

The Corporation shall indemnify its directors and officers to the fullest extent permitted by law.

ARTICLE X
BYLAWS

The Bylaws may be made, altered, or rescinded by the Board of Directors, subject to the approval of the Members.

ARTICLE XI
AMENDMENT

The Members reserve the right to amend, repeal, alter, or change any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by the Florida statutes or the Bylaws.

ARTICLE XII
REGISTERED AGENT AND OFFICE

The name of the registered agent of the Corporation is Steven R. Sparks. The street address of the registered office is 4600 Touchton Road East, Building 200, Suite 500, Jacksonville, Florida 32246, which address is identical to the street address of the registered agent.

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The foregoing Amended and Restated Articles of Incorporation, including all amendments contained therein, were adopted at a meeting of the Members of the Corporation in accordance with sections 617.1002(1), 617.1006(3), and 617.1007 of the Florida Statutes, on January 19, 2005. The Members voted unanimously in favor of the amendments.

THE NEMOURS FOUNDATION

By: _____ Dated January 19, 2005
Name: W. Jeff Wadsworth
Its: President & CEO
(Officer, Chairman or Vice Chairman of the Board)

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Exhibit E

Exhibit F

THE NEMOURS FOUNDATION
803 FLORIDA NATIONAL BANK BUILDING
P. O. BOX 1380
JACKSONVILLE, FLORIDA 32201

November 1, 1974.

Mr. Clifford T. Foster, Executive Director,
Health Planning Council, Inc.
2501 Silverside Road,
Wilmington, Delaware 19810.

Re: Certificate of Need Application
The Alfred I. duPont Institute
of The Nemours Foundation

Dear Mr. Foster:

Dr. G. Dean MacEwen, Medical Director and Chief Surgeon of "The Alfred I. duPont Institute", Wilmington, Delaware, and Mr. Larry N. Ponder, of Saxelbye, Powell, Roberts & Ponder, Architects and Planners, Jacksonville, Florida, have informed me, as well as the other Directors of "The Nemours Foundation", of your Council's request for supplemental data relating to the "Certificate of Need" pending your Planning Council's approval. I am informed that this additional data will be reviewed before a special ad hoc Committee representing your Council on November 5, 1974.

The Directors of "The Nemours Foundation" will meet here in Jacksonville, Florida, November 14 - 15, to consider further your request for additional data for your Committee's consideration; but because your ad hoc Committee will convene prior to the meeting of the Nemours Foundation's Directors, I shall, at the meeting of the Directors, place before them, and urge the adoption of, a Resolution relating to the Foundation's policy on the future role of qualified local physicians who will be attending to patients whom they have referred to "The Alfred I. duPont Institute" for care and treatment.

Dr. MacEwen and Mr. Ponder will attend the meetings here on November 14 and 15 and will be called upon to advise and recommend to the Directors policies and procedures relating to local qualified Wilmington physicians' privileges at the Institute. Suffice it to say that Dr. MacEwen's and Mr. Ponder's recommendations will be given most earnest, serious and careful consideration.

I believe that all of the Directors of "The Nemours Foundation" recognize that their goal of the highest possible quality care for the handicapped or chronically ill child is dependent in large measure on the continuity of care. Such continuity presupposes the involvement of the referring physicians. My judgment is that the Directors will consider favorably the measures that will encourage and provide for participation on the part of the highly qualified local interested physicians in the care of the patients they have referred to the Institute.

Exhibit F

Jacksonville, Florida
November 1, 1974.

Mr. Clifford T. Foster, Executive Director,
Health Planning Council, Inc.
Wilmington, Delaware 19810.

We will request your Committee to recommend to the Directors, for their review and approval, policies and procedures which will insure continuity of patient care, community involvement, education and research consistent with the Institute's past performance and future aims and goals.

The Directors of "The Nemours Foundation" are, of course, cognizant that questions have been raised regarding the continued support of "The Alfred I. duPont Institute of The Nemours Foundation", which was created by the Will of the late Alfred I. duPont. The Foundation currently has the funds available for the proposed construction program, and it anticipates sufficient income in subsequent years to provide for the required operating funds.

The Institute, as you know, has never denied care to the handicapped child, who is not an incurable, because of financial consideration. With the fruition of the proposed planning now before you the Institute will be able to serve a greater number of children with a wider range of handicapped problems in Delaware and the Nation.

The income of The Nemour's Foundation, based upon current income projections, will be able to finance annual operating deficits at a $7,500,000.00 minimum per year. The income from patient services, as always, and will continue to be applied to operational expenses and will not be used to finance the capital expansion. No community or governmental funds or resources are required now, nor is it anticipated that they will be in the future for the operation of the Institute. Neither is it expected that any will be required to finance capital construction.

The Trustees of "The Estate of Alfred I. duPont". who are also the Directors of "The Nemours Foundation", feel greatly the responsibility and the charge imposed upon them through Mr. duPont's Will. His desires and purposes were to provide care and treatment to curable handicapped children, with preference given to those handicapped children of Delaware.

Mr. duPont's Will stipulated that these facilities were to be constructed on the grounds of his former home, "Nemours".

Jacksonville, Florida.
November 1, 1974.

Mr. Clifford T. Foster, Executive Director,
Health Planning Council, Inc.
Wilmington, Delaware 19810.

Page No. 3.

The Directors of the Foundation feel that its pending application is in the spirit of the wishes of Mr. duPont.

I shall be happy to send your Committee Certified copies of Resolutions adopted at the meetings of November 14 and 15.

Sincerely yours,

Edward Ball

EB: IW

EDWARD BALL
President

THE NEMOURS FOUNDATION

Exhibit F

Exhibit G

MEMORANDUM

TO: Trustees of the Alfred I. duPont Testamentary Trust

FROM: Holland & Knight LLP

DATE: August 23, 2007

RE: Preference for residents of Delaware

This memorandum addresses the meaning of the term "first consideration" and its impact upon the Trustees' duties and obligations to the people of the State of Delaware, which was the subject of discussion at the meeting of the Trustees on July 18, 2007. We were subsequently asked to provide a written analysis and opinion to supplement our oral opinion rendered at the meeting.

Background

The Will of Mr. DuPont provided that Nemours was to use the income it received from the Trust for the "care and treatment of crippled children" or the "care of old men or old women and particularly old couples." On December 24, 2004, the Trustees obtained a Final Judgment from the Duval County Circuit Court (the "Final Judgment"), clarifying and expanding their mission to allow Nemours to offer additional services in the following three categories: a) the care and treatment of persons under 18 who have been deprived of the use or any part of their body due to accident, injury or disease; b) the prevention of one or more of the conditions described in a); and c) the care of individuals over the age 65.

Since the Final Judgment was entered, Nemours has begun to develop its prevention programs consistent with the revised mission. Such programs began in the State of Delaware, but have not yet expanded to the other geographic areas, such as the Delaware Valley or the State of Florida, where Nemours has other health care facilities and programs. These changes, according to the 2006

Stewardship Report to the Trustees, reflected a change from "largely a biomedical model of care to incorporating a multi-factorial view of health," that has lead to the establishment of Nemours Health and Prevention Services. The Stewardship Report indicates that it is already impacting tens of thousands of children in the State of Delaware, particularly in the area of childhood obesity. Indeed, this Stewardship Report further indicates that the intent is to focus on all aspects of the health of a child, whether it is one that has "acute care or preventative needs, or has one or more chronic conditions requiring active management."

At the urging of Win Thornton, the Trustees are considering a proposal for how Nemours could expand the prevention programs on a larger scale throughout Delaware. In considering this proposal, however, the Trustees have asked for a legal opinion of the nature of their mission, the meaning of the term "first consideration" and their duties to the people of the State of Delaware, particularly with regard to the preventative area set our in category b) above.

As the Trustees deal with the legal aspects, they should keep in mind the summary from the Stewardship Report, reflecting the broad focus of the mission of the Foundation, which requires the Trustees and the Foundation, of necessity, to make crucial choices for the expenditure of their significant, but nonetheless, limited resources. That summary indicates that, as of the close of last year:

> Nemours has created the necessary infrastructure and they are now successfully integrating its patient care, prevention, research, education, advocacy and business activities in order to achieve [the vision of care and services for children that has been adopted by the Foundation by Nemours]. We are committed to becoming a re-eminent voice for children and will continue to provide high-quality, cost-effective services to children through our multidisciplinary holistic and family-centered approach.

Governing Documents

The Trustees' duty to the people of the State of Delaware and the term "first consideration" are addressed in the following provisions of the Will, Stipulation and court judgments:

A. Will

1. Item 9 (as modified by the Final Judgment)- "The general nature and purpose of the Corporation shall be the maintenance and support of, and the making of contributions to, charitable institutions operated for: (a) the care and treatment of children, but not of incurables, under eighteen (18) years of age, who by reason physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, have been deprived of strength, activity or capability for services or use, in any part of the human body; (b) the prevention of those conditions described in (a); and (c) the care of individuals over sixty-five (65) years of age who are in need of supportive or alleviating medical or para-medical care beyond mere food, clothing, and shelter, *first consideration, **in each instance**, being given to beneficiaries who are residents of Delaware." (emphasis supplied)*

2. Item 9 – "The Board of Managers hereinbefore referred to shall consist of five members...three of said Managers shall be residents of the State of Delaware..."

3. Item 10 – "It is my wish that the people of Delaware needing the care of such institutions shall be properly provided for *before* contributions are made to institutions of any other state of states, *but said Board,* my Trustees concurring, is hereby given *full power to determine what constitutes the necessary reserves* for "the Nemours Foundation: and *what constitutes proper provisions for the Delaware institutions." (emphasis supplied)*

B. Stipulation dated 1/17/80 (1980 Stipulation)

1. Para F(3) – "the Trustees agree that at no time will more than fifty percent (50%) annually of the funds distributed by the Trust to Nemours be spent outside the State of Delaware."

2 Para F(4) – "First consideration, **in each instance,** will be given to the beneficiaries who are residents in Delaware." [Here referring to the two categories then existing].

3 Para G – "G. Services to be Provided in State of Florida: The Trustees will agree to execute an agreement with one or more Florida hospitals to provide clinical facilities and medical and rehabilitative treatment for crippled but not incurable children.

(1) The amounts expended in such agreements shall be limited by the Delaware commitments set forth herein."

C. Final Judgments

1. Final Judgment dated 12/31/71, section XI begins: "While it is clear that Mr. duPont desired first consideration be given to the residents of Delaware, the Trustees were authorized to consider other worthy charitable institutions...Therefore, it is apparent that excess funds may become available for similar charitable institutions outside the State of Delaware whenever there are sufficient funds on hand for such purpose..."

2. Final Judgment date 12/28/04 at ¶A,pg.8 – see A.1. above.

Discussion

There are at least three threshold issues to consider when deciding how to develop any prevention program: first, what Nemours and the Trustees are obligated to do under the terms of the 1980 Stipulation; second, what Mr. duPont intended; and third, what, if anything, is required under the 2004 Final Judgment. Each of these concerns is addressed below.

Obligations under the Stipulation

To begin, the Trustee and Nemours were parties to the 1980 Stipulation, and are therefore bound by its terms. The Stipulation, at paragraph G, provides that "The Trustees will agree to execute an agreement with one or more Florida hospitals to provide clinical facilities and medical and rehabilitative treatment for crippled but not incurable children... The amounts expended in such agreements shall be limited by the Delaware commitments set forth herein." Thus, it was clearly contemplated that Nemours would provide some child health care services within the State of Florida, although the extent of those services is limited by the requirement that at least fifty percent (50%) of the Trust's distribution to Nemours be spent in the State of Delaware. *See*, STIPULATION AT ¶F (3).

Thus, Nemours cannot, in good faith, reduce services in Florida in favor of funding new

programs in Delaware. Indeed, at a minimum, the Trustees and Nemours are obligated to perform at least those duties contained in the contracts it has entered into with certain Floirda hospitals. It is our understanding that Nemours is currently spending over 50% of the annual revenues in the State of Delaware, exclusive of the Delaware Valley generally. Thus,the obligations owed to Florida projects re not currently interfering with Nemours' obligations to the people of Delaware. Nevertheless, for the reasons set forth below, Nemours can and should delay the introduction of *any prevention services* to the State of Florida until the new prevention services have been appropriately established (in the Trustees' discretion) in the State of Delaware.

Interpreting the Will

Interpreting Mr. duPont's intent is critical to understanding what the term "first consideration" means and where Mr. duPont would have wanted Nemours to focus its efforts. "First consideration" is not a legal term used in estate planning and, not surprisingly, there is no case law that is helpful in interpreting this phase. Accordingly, we are forced to look to the terms of the entire Trust

agreement for guidance on the extent to which Mr. duPont intended to benefit the people of Delaware.

Without a doubt, the people of Delaware were intended to be the primary focus of Mr. duPont's philanthropy. Indeed, he ensured that the Trust remained focused on Delaware beneficiaries by requiring that the majority of the Board of Managers be from the State of Delaware. Nonetheless, he also clearly intended for Nemours to have a farther reach than just Delaware, and empowered the Trustees to determine "what constitutes proper provisions for the Delaware institutions." *See*, ITEM 10 OF THE WILL. Notwithstanding the obligations incurred under the Stipulation, the Trustees retain that discretionary power to determine Nemours' priorities today.

More importantly, however, we believe Mr. duPont intended to qualify the requirement that Delaware be given "first consideration" by including the clause "in each instance." We believe that this phrase is critical to understanding what Mr. duPont intended. As mentioned above, Mr. DuPont clearly wanted to benefit the people of Delaware first, but he also clearly contemplated that other geographic areas would benefit from this philanthropy. Reading the provisions of the Trust as a whole, and giving effect to the phrases "first consideration" and "in each instance," requires that we interpret the Will to mean that Nemours must introduce each new service to the people of Delaware first. Once that service has been sufficiently funded and properly administered in the State of Delaware, Nemours is free, at the discretion of the Trustees, to introduce such a program to other geographic areas. Thus, the people of Delaware are given the "first consideration" in determining the need and in obtaining sufficient funding for that need. Once that need (or "instance") is sufficiently addressed in Delaware (as determined by the Trustees), however, Nemours may address that need in other geographic areas.

Thus, if Nemours were to implement a program to prevent childhood obesity, it should introduce the program in the State of Delaware first. Once the childhood obesity prevention program is adequately funded and developed in

Delaware, Nemours could then launch similar initiatives in other states, like Florida. Under no circumstances, however, can less than 50% of Nemours' funds received from the Trust be spend on programs outside the State of Delaware.

Giving Effect to the 2004 Final Judgment

As noted above, the Trustees obtained the 2004 Final Judgment to, among other things, expand its mission to include a third category of services that could be offered by Nemours. The Trustees sought the addition of preventative care programs for children, in part, because improvements in medical sciences had reduced the impact of a number of the childhood diseases that Nemours formerly treated. It was not contemplated, however, that the addition of preventative services would reduce current service s or programs in Delaware or other geographic areas. Instead, it was intended to give Nemours more discretion in the services it offered to children as funds previously earmarked for treatment services became available.

Further, the addition of preventative care services was intended to expand Nemours' mission, but did not obligate Nemours to act. Instead, the Trustees retain the discretion to determine what services it offers and on what scale. It would be a mistake to interpret the 2004 Final Judgment as requiring Nemours to elevate preventative care to a priority status over or above the current services offered by Nemours. Indeed, that goes beyond what was contemplated by the Final Judgment. Instead, we believe that the expansion of the mission to include preventative care services should be implemented in the Trustees' discretion, and as funds permit. The Trustees should not feel obligated, however, to cut other services in Delaware or Florida in order to fund new prevention programs. Mr. duPont's use of the phrase "in each instance" makes clear that each program implemented by the Trustees should focus first on the people of Delaware, before looking elsewhere. But that does not necessarily require that all possible preventions programs be launched in Delaware first, before the Trustees can initiate or even continue other programs elsewhere.

Conclusion

Giving effect to the provisions of Mr. duPont's Will and fulfilling his mission compels us to interpret the Will to mean that the people of the State of Delaware are entitled to receive priority in health care services from Nemours. Nonetheless, the Trustees are not obligated to solve all of Delaware's health care problems before any funds can be spent elsewhere. Indeed, doing so would violate the terms of the 1980 Stipulation.

We believe Nemours should not reduce funding for Florida programs that are currently in place, or for which commitments have been made, especially if the reduction was made to favor new prevention programs in Delaware. Indeed, there is no obligation to initiate preventative care programs. The 2004 Final Judgment only added that as a class of services that could be offered if the Trustees, in their discretion, determined they were appropriate to the overall mission of Nemours.

The Trustees have the discretion to determine what programs are funded and what priorities Nemours should address. If the Trustees determine that it is necessary to obtain funds from other programs in order to adequately fund the new preventative programs, we believe that Nemours should first look to the Delaware Valley area before cutting programs in the States of Delaware or Florida. Unlike Delaware and Florida, there is nothing in the Trust, Stipulation or any of the final judgments that requires Nemours to fund programs in the greater Delaware Valley area. The people of the States of Pennsylvania or New Jersey do not share the same entitlement that Delaware has under the Will or that Florida has under the Stipulation. Thus, if the Trustees are persuaded to initiate new services in Delaware, it should be mindful of the obligations due to Florida if it seeks to do so by cutting services elsewhere outside of Delaware or Florida.

#4723968_v4

Exhibit H

ALFRED I. duPONT
TESTAMENTARY TRUST

RECEIVED
AUG 11 2010
CIVIL DIV.

Attorney General J.R. Biden III
820 N. French Street
Wilmington, Delaware

August 10. 2010

Dear Mr. Biden;

I would appreciate it if I could schedule a meeting with you to discuss an issue involving the Alfred I. duPont Trust. The issue involves a legal option issued by the firm of Holland & Knight, dated August 23, 2007, concerning the modification of Mr. duPont's Will. I believe this Option is inconsistent with the Final Judgment issued by Judge Moran, Circuit Judge of the Fourth Judicial Circuit, on December 28, 2004, which modified Mr. duPont's Will. I regret that the Trustees, of which I am one, have been unable to reconcile this matter internally.

When I first felt the Opinion in question was wrong I personally retained council to review the Opinion in question. The council I retained agreed with my concern and advised that I should first attempt to reconcile the differences we had in the interpretation of the Will and failing to reach that objective, initiate discussions with you.

In light of the fact that the State Attorney for the Fourth Judicial Circuit has jurisdiction over Trusts, and was a Defendant in the Complaint seeking modification, I felt it was appropriate to discuss the issue with her before approaching you. She has likewise suggested that I discuss it with you

From the outset I want you to understand that I feel the Trust and the Nemours Foundation have done a wonderful job in providing care and treatment for children with acute and chronic conditions. This has been acknowledged recently by Nemours being recognized in U.S News and Report. However, my concern is that the Opinion by Holland & Knight (H&K) enables the Trust, and ultimately the Foundation, to deny the children of Delaware rights to which they are entitled in the prevention arena. My position on this matter is well known by the Trustees and the Directors of the Foundation, and they are aware that I intended to discuss this matter with you. In short the question is; what is the proper interpretation of Mr. duPont's Will as modified by the 2004 Final Judgment by Judge Moran.

To describe the issues involved, allow me to chronologically walk you through the events leading to this presentation. First, in 2004 and

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perhaps even earlier the Trustees (who at that time were also the sole Directors of Nemours) felt that the two entities (the Trust and the Foundation) should be more separately organized, providing a structure wherein the governance thereof would give better checks and balances between the entities and at the same time provide an enlarged Board of Directors for the Foundation which would have greater diversity and areas of experience that would enhance the oversight of the Foundation's activities.

At that time the firm of McGuire Woods represented both organizations. As an initial step in this undertaking the Trust engaged the firm of Holland & Knight to represent the Trust, with McGuire Woods continuing to represent the Foundation. Consequently the first challenge was to obtain the Court's authority to change the organizational structure in such a way as to preserve the Trustees fiduciary responsibility and appropriate authority, while delegating to the new Board of Directors authority to supervise management and provide oversight of operational matters.

At the same time the Trustees desired to further modify Mr. duPont's Will to address several other matters which they felt would enable the Trust and the Foundation to better execute their responsibilities and to enlarge the vision as defined by Mr. duPont to "alleviate human suffering". Therefore, among other issues addressed to the Court were: 1) redefine the age of crippled children from 21 to 18 and to expand Nemours' charitable purpose to include "prevention" as well as treatment; 2) clarify that the Members of the Foundation would continue to be the individual Trustees of the Trust and reserve to those Members certain retained powers; 3) clarify the role of the Board of Managers; and 4) to eliminate the Corporate Trustee and substitute one additional individual Trustees in lieu thereof.

Therefore, on November 29, 2004 the Trustees filed with the Court their "COMPLAINT FOR MODIFICATION OF THE TRUST AND DECLARATORY JUDGMENT" {Exhibit No. 1} The Defendants (the State Attorney and the Nemours Foundation) raised no objections and the Court issued its Final Judgment on the pending Complaint on December 28, 2004. {Exhibit 2}.

Holland & Knight recommended to the Trustees that it was not necessary to name the Attorney General of Delaware as an additional party, in as much as they felt the issues were largely administration and

organizational affairs, and the Trustees assented to their recommendation.

As we moved away from the time when "prevention" was authorized, I noticed that relatively little was being done in that arena notwithstanding the fact that many areas within the State of Delaware had multiple needs. The Nemours Health and Prevention Services (NH&PS) had been established, however it was a single faceted program directed solely at children's obesity. There were no specific goals established and efforts were directed at influencing Policy and Practices, rather than utilizing our resources to directly reduce the BMI (Body Mass Index) of children. The concept was to work with the other organizations in the community to improve the situation rather than being involved on a first hand basis. At that time, 2 ½ years after prevention had been approved as a new purpose of the Foundation, less than 3% of the expenses (and manpower) of the Foundation were directed to prevention.

I concluded that it was primarily the responsibility of the Trustees / Members to properly interpret the modified Will to the new Directors. I, therefore, made a Power Point presentation to the Trustees / Members, entitled "FIRST CONSIDERATION", on July 18, 2007. (Exhibit 3) At the conclusion thereof, I moved that *"the Foundation should aggressively pursue a preventive program in Delaware directed at a full array of health needs that confronted the children of that State".*

Council from Holland & Knight, representing the Trust was present during my presentation and at the conclusion thereof discussed my motion and rendered an oral opinion. My motion was defeated 5 to 1. I subsequently requested that Holland & Knight provide a written opinion, which was furnished on August 23, 2007. (Exhibit 4) **It is this Opinion that is at the heart of our disagreement on the interpretation of Mr. duPont's Will as modified by the 2004 Final Judgment.** After reviewing this Opinion I was convinced that it did not properly interpret the 2004 modified Will of Mr. duPont, instead it was more of an argument to continue current programs even if they were not within the primary purposes of the Will.

Therefore, I personally retained council to advise me on dealing with this situation. The first attorney was former Circuit Judge W. L. Durden, who after serving on the Court, was a partner of the law firm that represented the Trust and the Foundation for almost 30 years, and in addition I retained Mr. John S. Grimsley, an attorney who specializes

in Florida Trust Law and is the author of "Florida Law of Trusts" and numerous Editions thereto to keep it current. Judge Durden responded for both attorneys with his letter of November 12, 2007 (Exhibit 5)

Since receiving the advice and recommendations from my council I have endeavored to follow their suggestions to reconcile my interpretation with that of the other Trustees. During my efforts I met with Mr. Koren, Council for the Trust. Following this meeting, which was not productive, I suggested binding arbitration. This was likewise rejected.

Therefore, in the Meeting of the Members on April 22. 2009, I made two motions; the first was a statement outlining my interpretation of the modified Will as I felt it should be extended to the Directors, and secondly, a motion for the Trustees to seek a declaratory Judgment on the interpretation of the Will. Both motions failed. (Exhibit 6). The Trustees and Council for the Trustees have consistently rejected all attempts to seek any review of the 2004 Final Judgment. Such rejections, I believe, have been unreasonable and arbitrary, resulting in a defeat of a main purpose of the Will. I believe that to fail to resolve this issue will cause irreparable harm to Delaware children.

Therefore, this has brought me to the point where I feel it is appropriate to initiate discussions with you. The Appellate Court noted that Delaware had a special interest in the Trust because it gave Delaware residents special status in receiving trust funds. It was also recognized that the Attorney General of Delaware is the representative of the Delaware charitable beneficiaries of the Alfred I. duPont Testamentary Trust and The Nemours Foundation, and is charged with protecting the rights of the said beneficiaries.

Before delving into the issues themselves I feel it is appropriate to address an argument made by Council for the Trust and by the Trustees themselves. It is the question of the authority of a majority vote. It has been asserted that a majority vote by the Trustees on the interpretation of the Will was prevailing, and should not, or could not be challenged. An example of this is the statement by Mr. Koren in the minutes of the Member's Meeting of April 22, 2009. When asked by the Chairman, if the meeting and discussion had been conducted appropriately, Mr Koren stated "*that the Will stated that a decision of a majority in all cases, if all members are given an opportunity to be heard, shall constitute the decision of the Board*". This actually is a miss-quotation from the Will. The "Board" just referred to was the Board of Managers. There is in fact

no "Board" of Trustees. The Trustees are individuals who are independently responsible to carry out the intent of the Will. A more appropriate quote from the Will could have been from Item 6 paragraph (q) which reads; *"Should at any time a question arise in the minds of my Trustees concerning the propriety of doing or refraining from doing anything in the discharging of their duties as Trustees, then the decision of the majority of my Trustees must rule."* The Appellant Court, however, has held that the powers outlined in Item 6, only applied to asset management. (Exhibit 7) ,

In another case, when Trustee Alfred Dent filed for a declaratory judgment to increase Trustees fees, there was a majority vote against his position by the other Trustees. The Circuit Judge, based upon this majority vote by the Trustees, dismissed his Petition. Mr. Dent appealed this decision and the District Court of Appeals reversed the Circuit Court and established standards for determining issues concerning rights of Trustees (Exhibit 8) The decision stated: *" Section 86.041 provides that <u>any person</u> interested as a Trustee in the administration of a trust may have a declaration of rights to determine <u>any question</u> arising in the administration of the Trust (emphasis supplied)....."*

And finally, in the "Procedures and Practices" adopted by the Trustees, in Section II, paragraph E there is a provision that provided a majority vote would be ruling. During debate on this item the provisions established by the Appellant Court in the Dent case were discussed. In resolution of that right, Mr. Koren suggested the addition of the concluding sentence which reads as follows: *"Nothing stated in this paragraph shall affect the rights or duties of each individual Trustee under applicable law."* He explained that that addition would protect the individual Trustee's rights to challenge a majority vote as occurred in the Dent case.

Despite the numerous assertions that majority votes prevail, there are no provisions that preclude any party, with appropriate standing before the Court, from seeking a declaratory Judgment to determine a proper interpretation of Mr. duPont's Will as established by Judge Moran's Final Judgment.

At this point in the process, the consequences of this inaccurate Opinion have become painfully apparent. Despite proven programs that have reduced Infant Mortality, Delaware continues to stand among those states with the highest infant death rate. (According to the 2009 KIDS COUNT, Data Books USA infant death rate [infant deaths per 1000

Exhibit H

live births] is 6.7, Delaware is 9.2 Wilmington is 12.4 and with black mothers the rate is 17.0 more than twice the national rate. In Infant Mortality, Delaware ranked nationally 44th out of 50) Thus enabled by the H&K Opinion, the responsibilities of the Trustees to appropriately address this situation, have been ignored, **This Opinion, which renders a legal interpretation of the Final Judgment of Judge Moran, effectively modifies Mr. duPont's Will. It is clearly inconsistent with Mr. duPont's intent and the 2004 Final Judgment.**

Now, 5 years after the time when "Prevention" was approved as a new "purpose" of the Foundation, I have concluded that all appropriate alternatives have been pursued and that I should approach the Attorney General of Delaware. However, Judge Durden has suggested, in order to clearly define the issues, that I draft a letter to the Court seeking guidance and instructions on the interpretation of the Modified Will and his 2004 Final Judgment. I have undertaken this task by drafting such a letter in the form of a Petition to the Court spelling out why the H&K Opinion is inconsistent with the Will and the Final Judgment of the Court.

This "Petition" is enclosed as an attachment. I will apologize in advance for using this format for I am an engineer, not a lawyer, however I found it to be a good way to set forth my position and the supporting documents/arguments relative thereto.

By means of this letter and the Petition I have undertaken to describe the issues so that you would have some familiarity with them when we meet. With respect to an appointment to meet with you, I would be pleased to come to Wilmington whenever it is convenient with you. I can be contacted at the below address or telephone.

Your truly,

W.L. Thornton

W.L. Thornton, Trustee

185 Towerview Drive. Apt. 1205
St. Augustine. FL 32092

Home Telephone 904-940-9090

PETITION

Petitioner; Winfred L. Thornton, Trustee of the Alfred I. duPont Testamentary Trust

Respondents; Hugh M. Durden, John S. Lord, Herbert H. Peyton, John F. Porter III. William T. Thompson III, Trustees of the Alfred I. duPont Testamentary Trust, Angela Corey, State Attorney, for the Fourth Judicial Circuit, The Nemours Foundation, a not for profit corporation, and the Attorney General of the State of Delaware, representing the people of Delaware

This is a petition to the Court to seek guidance and instructions on the interpretation of its December 28, 2004 Final Judgment entered in the case of John S. Lord et al v. Harry L. Shorstein, State Attorney et al (Case No. 16-2004-CA-007960-XXXX-MA)

The Petitioner, Winfred L. Thornton, is a Trustee of the Alfred I. duPont Testamentary Trust and was a Plaintiff in the above case. Since the issuance of the above Final Judgment there has arisen a disagreement on the interpretation of this Final Judgment with respect to Preventive Care.

This disagreement centers on the question of whether "Preventive Care" was authorized, in this Final Judgment, as an additional "Purpose" of Mr. duPont's Will. If so what are the obligations of the Trust to the people of Delaware, and specifically to the children who are in need of preventive care. Also in dispute is the interpretation of certain provisions of the original Will, The Stipulation and Agreement of 1980, and previous Final Judgments of this Court relevant to the issues affecting the interpretation of this Court's 2004 Final Judgment.

BACKGROUND AND SUMMARY OF PETITION

A. In vetting the Petitioner's concern over Preventive Care as a new Purpose of the Foundation, a Power Point presentation was made to the Trustees on July 18, 2007. Counsel for the Trust, Mr. Ed Koren of Holland & Knight (H&K) was present and extended an oral opinion with respect to this presentation and the motion

contained therein, which advocated that Nemours "aggressively pursue a preventive program in Delaware directed at a full array of health needs that confront the children of that State.". was denied by a 5 to 1 vote. Mr. Koren was subsequently asked to present his Opinion in writing, which he did on August 23, 2007.

B. The Petitioner believed the Opinion by H&K is inconsistent with the Court's 2004 Final Judgment as well as Mr. duPont intent, as expressed throughout his Will. In its totality, it enables the denial of benefits to the very people of Delaware that Mr. duPont felt should receive first consideration. The Petitioner therefore retained his own counsel to obtain advise on the issues in question. This advice subsequently confirmed the Petitioner's concern and supported this challenge to the H&K Opinion.
It is this Opinion, with respect to preventive care, that is at the heart of the dispute between the Petitioner and the other parties.

C. The 2004 Final Judgment also modified the governance of the Nemours Foundation by providing that the Board of Directors will have the responsibility to supervise the Management of The Nemours Foundation and will appoint the Members of the Board of Managers, who will report to the Board of Directors.

D. The significance of these changes in governance, aside from the desire to separate the legal entities of the Trust and the Foundation, is that the Board of Directors, rather than the Trustees, will oversee the operations of the Foundation, making crucial decisions, such as allocations of funds from the Trust distributions and what aspects of services will be offered. These decisions must, however, be made consistent with Mr. duPont's intent as manifested in his Will and any modifications thereto approved by the Court. Likewise these decisions must be consistent with the "Purpose" of the Foundation. Therefore, in order for these changes in governance to be appropriately and successfully executed, the Directors must have a correct and accurate interpretation of the Will, The 1980 Stipulation and Agreement, and the Final Judgments of the Court. An accurate interpretation is absolutely essential as it will dictate, not only the

parameters of the present operations, but will dictate the future direction of the Foundation for generations to come.

E. The Trustees / Members must thus extend to the Board of Directors a correct and accurate interpretation upon which the Directors must execute their responsibilities.

DISCUSSION

The Petitioner has proposed to the Trustees that they seek a declaratory judgment to resolve the disagreement in the interpretation of the 2004 Final Judgment, however the Trustees are unwilling to seek such a judgment. In light of the fact that a proper interpretation of the Will and the 2004 Final Judgment are essential to the appropriate administration of the Trust and Foundation, refusal on the part of the Trustees to seek a declaratory Judgment to resolve this dispute is unreasonable and arbitrary, and will result in the misappropriation of distributions from the Trust and irreparable harm to the children of Delaware. Therefore, the Petitioner feels compelled to demonstrate to the Court the unsupportable and inaccurate aspects of the H&K Opinion, and thus seek the Court's guidance and instructions.

To understand the parameters of this disagreement one needs only to compare the language of the COMPLAINT FOR MODIFICATION OF TRUST, (the Complaint), with the subsequent language of the H&K Opinion. **It must be kept in mind that the Complaint was unanimously submitted to the Court by all Trustees.**

THE FOLLOWING ARE THE QUOTATIONS FROM THE COMPLAINT RELATIVE TO COUNT I, THE SECTION DEALING WITH THE MODIFICATION OF THE WILL PERTAINING TO PREVENTIVE CARE:

Paragraph 6. *"Count I of the Complaint seeks modification of the Trust pursuant to Florida Statute 737.4031 and Florida's common law, to redefine the age of "crippled children" from 21 to 18 years of age, and to expand Nemours' charitable purpose to include prevention as well as treatment."* (emphases added)

Paragraph 17. *"The Nemours Foundation is an institution that excels at providing curative services to the most acute and chronically ill children. Plaintiffs believe, however, that Nemours can provide more expansive services than those currently offered."*

Paragraph 18. *"With that goal in mind, the Trustees hired the independent consulting firm, Boston Consulting Group ("BCG"), to determine the health care needs of children and how Nemours could better help meet those needs."*

Paragraph 19. *"After extensive study, BCG determined that Nemours could have a greater impact upon the health care needs of children by adding services that include the prevention of children's health conditions."*

Paragraph 35. *"Item 9 of the Will provides that the purpose of Nemours shall be:*

...a charitable institution for the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware,..."

Paragraph 39. *"Furthermore, because Mr. duPont has clearly stated in his Will that it is the duty of every one in the world to do what is within his power to alleviate human suffering, the Trustees undertook a review of the purpose set forth by his will."*

Paragraph 40. *"As indicated above, BCG concluded that the health care needs of children would be better served by providing both treatment and preventive care for children."*

Paragraph 41. *"Preventive health care is consistent with Mr. duPont's desire to provide for the medical needs of children."*

Paragraph 42. *"To this end, Plaintiffs seek authority to expand the purpose of the Nemours Foundation (the "Corporation") to include the following:*

The general nature and purpose of the Corporation shall be the maintenance and support of, and the making of contributions to, charitable institutions operated for: (a) the care and treatment of children, but not of incurables, under eighteen (18) years of age, who by reason of physical defects or infirmity, whether congenital or acquired by accident, injury, or disease, have been deprived of strength, activity, or capability for service or use, in any part of the human body; (b) the prevention of those conditions described in (a); and (c) the care of individuals over sixty-five (65) years of age who are in need of supportive or alleviating medical or para-medical care beyond mere food, clothing, and shelter, first consideration, in each instance, being given to beneficiaries who are residents of Delaware." (emphases added)

Paragraph 43. *"When Mr. duPont committed Trust funds to Nemours, he did not know or anticipate that dramatic changes in medicine would result in prevention of many childhood illnesses. Compliance with the current terms of the Trust, which currently does not address the expenditure of funds for preventive care, defeats a material purpose of the Trust to provide for the health care needs of children. Accordingly, this modification is necessary and consistent with the Trust's purpose and intent of Mr. duPont. "*

The Court in its 2004 Final Judgment granted the relief sought in Count I based solely upon the uncontested representations made by the Trustees in the above paragraphs. The Court specifically adopted extensive language from Paragraph 43 in its Findings of Fact and granted verbatim the modified language for Item 9 of the Will as requested in paragraph 42, after verifying that Nemours and the State Attorney consented to the relief requested.

Therefore to summarize: the Trustees, in the execution of their sole authority to "establish Nemours' purpose and determine the nature and scope of the services to be offered" petitioned the Court to expand Nemours' charitable purpose to include prevention as well as treatment. The reason the Trustees sought this expansion was their belief that Nemours could provide expanded services beyond those currently being offered. To determine how Nemours could better meet the health care needs of children; the Trustees hired an independent consultant to study the situation. At the conclusion of that study the consultants found that the health needs of children would be better served by providing both treatment and preventive care. The Court, therefore, authorized the expansion of the "Purpose" of the Nemours Foundation to include Prevention, based upon its belief that such an expansion was necessary and consistent with Mr. duPont's intent. Incorporated in the modification of Item 9 was the *"first consideration, in each instance,"* doctrine, which has been included in all documents issued relative to Mr. duPont's Trust.

In the face of this straightforward Complaint and Final Judgment, H&K Opinion draws a completely different conclusion, totally inconsistent with the actual petition quoted above. If it had been the intention of the Trustees to present the views expressed below, they would have been included in some fashion in the Complaint. **They were not!**

Under the heading: " GIVING EFFECT TO THE 2004 FINAL JUDGMENT" the H&K Opinion reads as follows:

"As noted above, the Trustees obtained the 2004 Final Judgment to, among other things expand its mission to include a third category of service that could be offered by Nemours. The Trustees sought the addition of preventive care programs for children, in part, because improvements in medical science had reduced the impact of a number of childhood diseases that Nemours formerly treated. It was not contemplated, however, that the addition of preventive services would reduce current services or programs in Delaware or other geographic areas. Instead, it was intended to give Nemours more discretion in the

services it offered to children as funds previously earmarked for treatment services became available.

Further, the addition of preventive care services was intended to expand Nemours' mission, but did not obligate Nemours to act. Instead, the Trustees retain the discretion to determine what services it offers and on what scale. It would be a mistake to interpret the 2004 Final Judgment as requiring Nemours to elevate preventive care to a priority status over or above the current services offered by Nemours. Indeed, that goes beyond what was contemplated by the Final Judgment. Instead, we believe that the expansion of the mission to include preventive care services should be implemented in the Trustees' discretion, and as funds permit. The Trustees should not feel obligated, however, to cut other services in Delaware or Florida in order to fund new prevention programs. Mr. duPont's use of the phrase "in each instance" makes clear that each program implemented by the Trustees should focus first on the people of Delaware, before looking elsewhere. But that does not necessarily require that all possible prevention programs be launched in Delaware first, before the Trustees can initiate or even continue other programs elsewhere."

It should be noted that the H&K Opinion was careful not to refer to "Preventive Care" as a new "Purpose" of the Foundation, but rather it was relegated to a "mission". It should also be noted that the reason for expanding the "Purpose" was not to better serve the children's needs but to give the Trustees more discretion. The H&K Opinion tries to categorize "Prevention" as a conditional mission that is subject to the discretion of the Trustees, rather than a "Purpose" of equal standing with that of "Care and Treatment".

The Court either **did** or **did not** established "Prevention" as a purpose of the Will. If it **did**, as the Petitioner believes, then those children needing preventive care are indeed beneficiaries under Mr. duPont's Will and have "rights". The H&K Opinion, however, ignores the "rights" of these children. In essence the Opinion says those children have rights whenever the Trustees, in their discretion, say they have "rights", but do not have any "rights" when the Trustees say they do not. The Court should not permit such discrimination between beneficiaries

as advocated by the H&K Opinion. Trustees discretion should not "trump" the purpose or intent of Mr. duPont's Will.

The H&K Opinion seems more interested in preserving existing programs than providing preventive services. The background to this preference has several aspects. The first is the commitment the Foundation has to build the new children's hospital in Orlando. The Petitioner supports and encourages this program. It is a great undertaking and will ultimately provide clinical services for the central part of Florida comparable to what Nemours is now providing in Wilmington, Delaware, and it specifically carries out the provision set forth in the 1980 Stipulation and Agreement with regard to Florida.

The funds needed for this program, however are not totally dependent upon funds from Mr. duPont's Estate. Mr. Ball, Mr. duPont's brother-in-law, was one of the original Trustees. Upon his death he left his Estate directly to Nemours rather than to the Trust, however, he specified that the funds from his Estate be spent for the care and treatment of handicapped children but only in the State of Florida. At the time of the Petitioner's presentation to the Trustees on July 18, 2007 there was sufficient funds on hand in Mr. Ball's Fund to build the Orlando Children's Hospital with some left over (the Fund was in excess of 530 million, against the estimate for building the hospital of 400 million). The current economic conditions have adversely affected this fund as well as the corpus of Mr. duPont's Estate, but there is no danger that the Orlando project will not go forward as planned. (As of this writing, the hospital is under construction with completion scheduled for 2012) The other programs which the H&K Opinion expressed concern about discontinuing were Research, Education, and Clinical Outpatient Facilities in the Greater Delaware Valley (Pennsylvania and New Jersey). The H&K Opinion acknowledges that expenditures in the Delaware Valley outside of Delaware itself were not programs within the parameters of the Will. In the concluding paragraph of the H&K Opinion it states: *"If the Trustees determine that it is necessary to obtain funds from other programs in order to adequately fund the new prevention programs, we believe that Nemours should first look to the Delaware Valley area before cutting programs in the States of Delaware or Florida. Unlike Delaware and Florida, there is nothing in the Trust,*

Stipulation or any of the final judgments that requires Nemours to fund programs in the Greater Delaware Valley area. The people of Pennsylvania and New Jersey do not share the same entitlements that Delaware has under the Will or that Florida has under the Stipulation."

Research and Education are two programs that the Court has designated as "secondary and incidental functions". Neither program is a program within the "purpose" of the Will. Again, the Petitioner is not opposed to these programs as they provide an important component to the activities of the foundation, provided, Nemours can fund them with third party grants. But if expenditures for these non-purpose programs are being used to deny preventive care, a specified "Purpose" of the Foundation, considerations should be given to reducing funding for these "secondary and incidental functions" if necessary to enable the Foundation to properly address the needs of children in Delaware in the preventive arena.

In order for the Court to recognize the grounds upon which the Petitioner claims that research and education are non-purpose programs, please refer to the Final judgment of Judge Gooding dated 12/31/71. The then Chief Medical Officer proposed that the expanded hospital, to be constructed after Mrs. duPont's death, should have three basic functions; 1) hospital and medical care; 2) research; and 3) education. The Court held that the first function, hospital and medical care, would be the principal function with the other two functions, research and education, occupying a secondary and incidental roll.

If the Trust and Nemours, enabled by the H&K Opinion, continues to fund "non-purpose" programs while denying "purpose centered" programs it will defeat the intent of Mr. duPont's Will and the Court's Final Judgment.

Non-purpose programs and secondary and incidental functions should not "trump" a primary purpose of the Foundation.

There are basic cornerstones to Mr. duPont's Will. The first is his consistent provision that the beneficiaries who are residents of Delaware should have first consideration in the use of the distributions from his Estate. The second is his desire that the "needs" of his beneficiaries be the criteria for judging the programs he wanted to support. These two principles are repeated throughout his Will and are

carried forward by the Stipulation and Agreement of 1980 and every Final Judgment issued in connection with his Estate.

The original Will stated in Item 9; ..."*for the purpose of maintaining the said Estate of "Nemours" as a charitable institution for the care and treatment of crippled children, but not incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware...*" (Emphases added)

In Item 10;... it provides ...."*. It is my wish that the people of Delaware needing the care of such institutions shall be properly provided for before contributions are made to institutions of any other state or states*....."(Emphases added) To properly insure that this doctrine was carried out he required that a majority of the Board of Managers, who would make the determination that there were excess funds, were residents of Delaware.

Of course the capstone to his intent is his statement..."***In fact the creation of this "Foundation" has been and is entirely my own idea, formulated many years ago, for the reason that it has been my firm conviction throughout life that it is the duty of every one in this world to do what is within his power to alleviate human suffering and I have sedulously striven to that end."***

The Petitioner has argued that the original Will and all subsequent Final Judgments, and the 1980 Stipulation and Agreement, all provided that the statement *"....first consideration, in each instance, being given to beneficiaries who are residents of Delaware,..."* meant what it said, that beneficiaries who were residents of Delaware should have first priority on the distributions of funds from Mr. duPont's Trust. (Also take note that the Court of Appeal in case Nos. JJ-388, KK-170 recognized that reference to "first consideration" gave Delaware residents special status in receiving Trust **funds.** Emphasis added)

The 1980 Stipulation and Agreement did have special relevance to this issue. The original Will stated in Item 9 that the beneficiaries would be ...crippled children... **OR** ...old men ,or old women...."*first consideration, in each instance, being given to beneficiaries who are residents of Delaware, the one or more of which said charitable purposes, however, being left to the decision of my said Trustees...*" Mr. duPont gave

his Trustees two alternatives, either the children OR the elderly, therefore to avoid any misunderstanding in his desire that Delaware residents receive first consideration, he added the phrase ***"in each instance",*** thus assuring the preference he intended was carried forward regardless of which group of beneficiaries the Trustees chose. The Trustees did chose, as a part of the Stipulation and Agreement, the children with a minimal commitment for the elderly. (Also see paragraph H of The Stipulation and Agreement of 1980)

The following is a quotation from the H&K Opinion, entitled INTERPRETING THE WILL which again demonstrates that the H&K Opinion endeavors to distort the meaning established by the Will and the 1980 Stipulation and Agreement.

"Interpreting Mr. duPont's intent is critical to understanding what the term "first consideration" means and where Mr. duPont would have wanted Nemours to focus its efforts. "First consideration" is not a legal term used in estate planning and, not surprisingly, there is no case law that is helpful in interpreting this phrase. Accordingly, we are forced to look to the terms of the entire Trust agreement for guidance on the extent to which Mr. duPont intended to benefit the people of Delaware.

Without a doubt, the people of Delaware were intended to be the primary focus of Mr. duPont's philanthropy. Indeed, he ensured that the Trust remain focused on Delaware beneficiaries by requiring that the majority of the Board of Managers be from the State of Delaware. Nonetheless, he also clearly intended for Nemours to have a farther reach than just Delaware and empowered the Trustees to determine "what constituted proper provisions for the Delaware institution." See, Item 10 of the Will. *Notwithstanding the obligations incurred under the Stipulation, the Trustees retain that discretionary power to determine Nemours' priority today.*

More importantly, however, we believe Mr. duPont intended to qualify the requirement that Delaware be given "first Consideration" by including the clause "in each instance". We believe that this phrase is critical to understanding what Mr. duPont intended. As mentioned above, Mr. duPont clearly wanted to benefit the people of Delaware first, but he also clearly contemplated that other geographic areas would benefit from this philanthropy. Reading the provisions of the Trust as a whole, and giving effect to the phrases "first consideration" and "in each instance" requires that we interpret the Will to mean that Nemours must introduce

each new service to the people of Delaware first. Once that service has been sufficiently funded and properly administered in the State of Delaware, Nemours is free, at the discretion of the Trustees, to introduce such a program to other geographic areas. Thus, the people of Delaware are given the "first consideration" in determining the need and in obtaining sufficient funding for that need. Once the need (or " instance") is sufficiently addressed in Delaware (as determined by the Trustees), however, Nemours may address that need in other geographic areas.

Thus, if Nemours were to implement a program to prevent childhood obesity, it should introduce the program in the State of Delaware first. Once the childhood obesity prevention program is adequately funded and developed in Delaware, Nemours could then launch similar initiatives in other states, like Florida...."

First, it should be recognized that the above portion of the H&K Opinion was written after the issuance of the 2004 Final Judgment and should therefore conform to the Order of that judgment. It however, overlooks several pertinent changes in Count II dealing with the governance of the Foundation. In paragraph B 2. the Court ruled; "*The responsibility for supervising the management of Nemours shall reside with the Board of Directors of Nemours, who shall be elected by the Members.*" The Court further ruled in B 3. c), that the Board of Managers shall: "*review and determine, with the Board of Directors' concurrence, the appropriate contingency reserve and the appropriate provision required for operating the facilities owned by the Nemours' Foundation and located on the grounds of Nemours.*"

Thus, under the new governance system, the Trustees are not empowered to determine what constitutes proper provisions for the Delaware institutions. It is now the responsibility of the Board of Managers with the concurrence of the Board of Directors If it is the purpose of the new governance system to put operational responsibilities on the Board of Directors, the Trustees cannot then overrule the Directors by retaining discretionary powers over the decisions of the Directors. It would defeat the purpose of empowering the Board of Director and would bring back to the Trustees any responsibility or liability associated with the direction and oversight of the operations of Nemours.

The Trustees do have the sole authority to establish and determine the nature and scope of the services to be offered. They have

properly exercised that authority by petitioning the Court to expand the Purpose of the Foundation and obtained the Court's permission.

It would be totally inappropriate and disruptive to think that the Trustees could, at will, have the authority or discretion to change the purpose, nature or scope of the Foundation without petitioning the Court for authority. The Board of Directors, the Board of Managers and Management itself does not have the authority to petition the Court, that power is reserved solely to the Members/Trustees.

The idea that Mr. duPont intended to qualify the requirement that Delaware be given "first consideration" by including the clause" in each instance", is totally without support. There is nothing, in any document, that would suggest Mr. duPont or the Court would or had changed their position on this concept. As the H&K Opinion points out the term "first consideration" is not a legal term nor is there case law that would be helpful in interpreting this term. The simple and straightforward answer to this is to recognize that Mr. duPont said exactly what he intended; he meant for the beneficiaries who are residents of Delaware to receive first consideration in each instance. It is the position of the Petitioner that Mr. duPont expected his Trustees to execute his Trust accordingly. This would include both the children who need clinical care and treatment as well as children who need preventive care.

The concept that Mr. duPont intended for Nemours to have a further reach than just Delaware and empowered the Trustees to determine "what constituted proper provisions for the Delaware institution" miss states the intent of Item 10 of Mr. duPont's Will.

Item 10 merely allowed reaching out to additional institutions and/or states, under certain prescribed conditions. Item 10 states...."*if the net income of my estate should in any year or years exceed the sum or sums sufficient to properly provide for the conduct and operation of said "Nemours Foundation".....and for the reserves for extensions, repairs, replacements alterations, addition equipment additional buildings, additions to buildings or other necessary improvements and any future needs of such Foundation, such surplus income may from time to time be used by the Board of Managers of said "The Nemours Foundation," my Trustees concurring, in contributions to other worthy charitable institutions designated by said Board and approved by my Trustees as may be conducted for the care of, or the care and treatment of, or the care and education of crippled children....*" It further provided, *"It is my wish*

that the people of Delaware needing the care of such institutions shall be properly provided for before contributions are made to institutions of any other state or states, but said Board , my Trustees concurring, is hereby given full power to determine what constitutes the necessary reserves for "The Nemours Foundation" and what constitutes proper provision for the Delaware institutions."

The above quoted section of the H&K Opinion concludes with a discussion about launching preventive programs in other states. It implies that once a program such as "obesity" is established in Delaware it could then be transported to other states. Caution must be exercised in adopting this position. The Petitioner believes that the obligation of the Trustees has a much broader responsibility, in fact, to address the full array of preventive services for the children in Delaware. If transporting one or more programs to another state would prevent the Foundation from developing other preventive programs in Delaware, it would deny benefits to the children who are residents of Delaware in violation of Mr. duPont's Will

This discourse challenging the H&K Opinion could go on in even more detail, but the issues being raised by H&K are in many respects irrelevant to the issues before the Court and are matters which should be addressed by the Board of Directors in fulfilling their responsibility, once they receive an actuate interpretation of the Final Judgment and the 2004 modified Will The relevant issues are: 1) Did the Court expand the "Purpose" of the Foundation to include "Prevention"? 2) Who are the beneficiaries under Mr. duPont's Will ? 3) What rights do these beneficiaries have in comparison with the rights enjoyed by those children entitled to "care and Treatment" 4) Does the expansion of the Purpose of the Foundation obligate the Foundation to act, or does it merely give the Trustees permission to act at their discretion ? 5) Are those children who are beneficiaries, and who need preventive care, entitle to "first consideration" from the Trust distribution over programs that fall into the "non-purpose" category? 6) Is it a part of the Trustees responsibility, under the new governance system, to develop an accurate interpretation of Will and Final Judgments for use by the Board of Directors

Mentioned earlier were the two cornerstones establishing Mr. duPont's intent: first, the priority (first consideration), to which the residents of Delaware were entitled and second, was the needs facing the children of Delaware.

These needs are serious and make obvious why the independent consulting firm, engaged by the Trust, recommended that the Trust add "Preventive Care" to the Purpose of the Foundation. To illustrate, one needs only to examine the Annie E. Casey Foundation's 2005/06 Survey. (This Survey is prepared annually on a nation-wide basis, rating all 50 states on critical health issues affecting children, on scale of: 1st best—50th worst) The following data reflects Delaware's standing on a national basis and compares Delaware with New Jersey, the state just across the Delaware River from Wilmington. Delaware's Overall National Standing- 33rd out of 50; [N.J.-6th]; Delaware's Light Birth Weight Babies- 43rd out of 50, [N.J.-14th]; Delaware's Infant Mortality - 46th out of 50, [N.J.-4th}; Delaware's Teen Birth Rate -36th out of 50, [N.J.-5th]. As these figures may suggest, in some respects the obligations of the Trustees may be greater in the preventive arena, in as much as there are alternative resources available to provide clinical care, where in the area of prevention there are few, if any, sustainable resources available to the children of Delaware.

Reflecting upon the "capstone" of Mr. duPont's intent..."***for the reason that it has been my firm conviction throughout life that it is the duty of every one in this world to do what is within his power to alleviate human suffering and I have sedulously striven to that end.***" the Petitioner believes that should the H&K Opinion be allowed to stand, the Trustees will turn their backs on the very essence of Mr. duPont's intent and lifetime conviction.

In interpreting the Will and the Final Judgments, one must look at the Will in its entirety, taking into consideration what Mr. duPont sought to accomplish with his Estate. There can be no doubt that he wanted, as his first priority, to meet the health care needs of the children in Delaware to the fullest extent possible. If the H&K Opinion leads to the defeat of or diminishes that goal it should be rejected.

Your Petitioner has endeavored to point out the inaccuracies of the H&K Opinion, which it feels has led to the disagreement between the trustees. However in a more positive vein the Petitioner would like to set forth what it believes the correct interpretation should be.

To that end, the following is that interpretation of the 2004 Final Judgment dealing specifically with "Preventive Care" and issues raised by the H&K Opinion:

A. The 2004 Final Judgment established "Preventive Care" as a new primary "purpose" of Mr. duPont's Will.

B. Based upon "Preventive Care" being a primary purpose of the Will, it therefore established a new universe of "Beneficiaries"; those children, but not incurables, which would benefit from preventive care. These new beneficiaries, those children needing preventive care, have the same "rights" and "standing" under Mr. duPont's Will as those children who needed care and treatment for clinical reasons.

C. In the same manner, the obligations of the Trustees to the new beneficiaries are the same as their obligations are to the other beneficiaries who need clinical care.

D. Since "preventive care" is a primary purpose of the Will, it is a mandatory responsibility of the Trustees to execute to the best of their abilities. The execution thereof is not at the discretion of the Trustees.

E. The children, if residents of Delaware, whether beneficiaries as those needing clinical care and treatment or as those needing preventive care, are entitled to first consideration, in each instance, to the benefits of Mr. duPont's Will.

F. The execution and funding of the primary purposes of Mr. duPont's Will should have precedence over any secondary or incidental programs or programs outside the purposes of the Will. It is the Trustees responsibility to see that Mr. duPont's intent and the purpose of his Will is not relegated to a subordinate status.

G. With respect to the discretionary authority of the Trustees; the Trustees should not undertake to exercise their discretionary powers in any manner where it would be inconsistent with Mr. duPont's intent or inconsistent with the purposes of the Will.

H. Finally, to make sure the new governance system carries forward the responsibilities delegated to the Board of Directors, the Trustees should take whatever steps necessary to see that the Directors are fully informed as to the correct and accurate interpretation of the Will, and all related documents. If in doubt, they should seek guidance from the Court.

It should be noted that the Attorney General of Delaware was not a party in the original petition to modify the Will that led to the Final Judgment of 2004, however he has been added as an additional Respondent in this petition. The Appellant Court had previously found that Delaware had a special interest in the Trust because it gave Delaware residents special status in receiving trust funds. The Attorney General of Delaware represents the beneficiaries in Delaware and should therefore be a party to these considerations. (See Nos. JJ-388, KK-170 Court of Appeal of Florida, First District, April 17, 1979)

Exhibit 1

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: _____

DIVISION: 16- 2004-CA-007960

DIVISION CJ

JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, WINFRED L. THORNTON, AND WACHOVIA BANK, N.A, as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased,

Plaintiffs,

v.

HARRY L. SHORSTEIN, State Attorney in and for the Fourth Judicial Circuit of the State of Florida, and THE NEMOURS FOUNDATION, a not-for-profit corporation organized under the laws of Florida,

Defendants.

FILED

NOV 2 9 2004

CLERK CIRCUIT COURT

COMPLAINT FOR MODIFICATION OF TRUST AND DECLARATORY JUDGMENT

Plaintiffs, John S. Lord, Herbert H. Peyton, John F. Porter III, William T. Thompson III, Winfred L. Thornton, and Wachovia Bank, N.A., as the current Trustees of the Testamentary Trust (the "Trust") created under the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased (the "Will"), petition the Court for a final judgment modifying the terms of the Trust and declaring the

rights of the Trustees with respect to the applicable standard of care and annual distribution requirement, and in support thereof allege:

PARTIES

1. Plaintiffs, John S. Lord, Herbert H. Peyton, John F. Porter III, William T. Thompson III, Winfred L. Thornton (the "individual Trustees"), and Wachovia Bank, N.A. (the "Corporate Trustee") (collectively, the "Trustees"), are all of the current Trustees of the Trust. A copy of Alfred I. duPont's Last Will and Testament and Codicils thereto is attached hereto as Exhibit A.

2. Defendants, Harry L. Shorstein, State Attorney in and for the Fourth Judicial Circuit Court of the State of Florida ("Shorstein") and The Nemours Foundation, a not-for-profit organization organized under the laws of Florida ("Nemours"), jointly represent the interests of the charitable beneficiary of the Trust.

JURISDICTION AND VENUE

3. This is an action for modification of a trust and declaratory judgment concerning a trust.

4. The court has jurisdiction pursuant to Florida Statutes Chapter 86, §§737.201, 737.202, 737.4031 and 737.507.

5. Venue is proper in this county because the principal place of trust administration is located in Duval County, Florida.

SUMMARY OF THE COMPLAINT

6. Count I of the Complaint seeks modification of the Trust pursuant to Florida Statute §737.4031 and Florida's common law, to redefine the age of "crippled children" from 21 to 18 years of age, and to expand Nemours' charitable purpose to include prevention as well as treatment.

7. Count II of the Complaint seeks modification of the provisions of the Trust, pursuant to Florida Statute §737.4031 and Florida's common law, regarding the governance and management of Nemours to: (a) clarify that the Members of Nemours will consist of only those individuals serving as Trustees of the Trust and reserve unto those Members certain powers; (b) confirm that the responsibility for supervising the management of Nemours is that of the Board of Directors; and (c) clarify the role of the Board of Managers of Nemours. These changes are consistent with typical corporate organizational structures.

8. Count III of the Complaint seeks modification of the Trustee provisions of the Trust, pursuant to Florida Statute §737.4031 and Florida's common law, to provide for the (a) elimination of the requirement that one of the six Trustees be a corporate Trustee, (b) elimination of this Court's restriction that certain Trustees may not serve on the Board of Nemours, and (c) addition of a Trustee Emeritus status.

9. Count IV of the Complaint seeks a declaratory judgment to determine the controlling standard of care governing the Trustees, due in part to a change in

Florida law that replaced the Prudent Trustee Rule with the Prudent Investor Rule.

10. Finally, Count V of the Complaint seeks a declaratory judgment confirming that the Trustees continue to be required to distribute 3% of the fair market value of the Trust annually, notwithstanding the repeal of Florida Statute §738.12, formerly referred to as Florida's Underproductive Property Statute.

GENERAL ALLEGATIONS

11. The History of the Trust and the Prior Proceedings are provided in great detail in the Final Judgment dated December 2, 1994, the Amended Final Judgment dated January 30, 1996, and the Second Amended Final Judgment dated August 28, 2002. (Attached hereto as composite Exhibit B). The facts as set forth in those Judgments remain true and correct, except as modified or supplemented in this Complaint.

The Nemours Foundation's Purpose

12. As found by the Court in its Second Amended Final Judgment, at paragraph 5, the assets of the Trust increased from their original value of $72.5 million in 1939, to $1.8 billion as of August 31, 1994. The value of these assets has now increased in value to approximately $3.2 billion as of January 1, 2004.

13. Although Nemours is the primary beneficiary of the Trust, there also are numerous individual beneficiaries who are entitled to receive small, fixed annuities for the next 16 years. None of these annuity recipients will be affected by the relief requested in this Complaint.

14. Pursuant to Florida Statute §738.12 (repealed 2002) and the Final Judgment of this Court entered March 7, 1983 ("1983 Judgment"), for a number of years the Trust has been paying to Nemours 3% of the value of the Trust's assets each year, enabling Nemours to greatly expand its facilities and services.

15. Nemours now owns and operates the Alfred I. duPont Hospital for Children, a full-service, research and educational hospital located in Wilmington, Delaware; the Nemours Health Clinic, an outpatient center for the elderly in Delaware; and the Nemours Children's Clinic, consisting of outpatient, pediatric subspecialty centers located in Wilmington, Delaware, and Jacksonville, Pensacola, and Orlando, Florida.

16. In addition to operating these health care facilities, Nemours also supports extensive medical research and educational programs in Delaware and Florida.

17. The Nemours Foundation is an institution that excels at providing curative services to the most acute and chronically ill children. Plaintiffs believe, however, that Nemours can provide more expansive services than those currently offered.

18. With that goal in mind, the Trustees hired the independent consulting firm, Boston Consulting Group ("BCG"), to determine the health care needs of children and how Nemours could better help meet those needs.

19. After extensive study, BCG determined that Nemours could have a greater impact upon the health care needs of children by adding services that include the prevention of children's health conditions.

The Current Governance of The Nemours Foundation

20. The Will, at Item 9, describes the roles of the Trustees with respect to Nemours. In summary, the Trustees are charged with, and accountable for, defining the charitable purpose of Nemours, the scope of services it offers, as well as determining the policies and procedures that govern Nemours.

21. Item 9 of the Will also provides that the day to day operations of the institution are designated to the Board of Managers, the members of which are appointed, and can be removed at will, by the Trustees. The Board of Managers is explicitly given the power, among other things, to determine the amount of Nemours' contingency reserve and to identify worthy charitable institutions to receive any surplus income of Nemours, subject to the Trustees' approval. *See* WILL AT ITEM 10.

22. The Trustees also requested that BCG review the management and operational practices and policies of the Trust and Nemours, to assist with long-range planning. BCG recommended, in part, that the size and composition of the Board of Directors of Nemours be expanded, so as to broaden the expertise of the Board. To ensure that the Trustees can fulfill their fiduciary responsibilities to the Trust and Nemours, however, certain powers must be reserved unto the Trustees.

23. After many months of study and consultation with BCG and counsel for the Trustees, the Trustees have concluded that the Board of Directors of Nemours, rather than the Trustees, should be responsible for supervising the management of Nemours, to ensure that Nemours operates efficiently and effectively as the wholly separate legal entity that it is.

24. Based upon these recommendations, and in view of the vast changes that have occurred in health care over the almost seventy years since Mr. duPont's death, the Trustees and Nemours believe that it is necessary to make the proposed organizational changes in order to more effectively and efficiently serve the health care needs of children and the elderly. These changes are consistent with the intent of Mr. duPont to ensure that Nemours serves the needs of children and the elderly into perpetuity.

Changes in Florida Trust Law

25. A number of changes have recently occurred in Florida law governing trust administration and fiduciary investment, necessitating the need for instruction from this Court. For example, in 2002, Florida's underproductive property statute, from which the requirement that the Trust distribute 3% of the value of its assets each year to Nemours originated, was repealed and replaced with the more modern and flexible provisions of Florida's new Principal and Income Act. *See,* CHAPTER 738, FLORIDA STATUTES.

26. In addition to this change, Florida has also eliminated the Prudent Trustee Rule, and instead requires fiduciaries to comply with the Prudent Investor Rule, found at §518.11 of the Florida Statutes. FLA. STAT. §737.302.

27. The Prudent Investor Rule requires that a trustee invest for total return by pursuing an investment strategy that is reasonably productive of income, while preserving capital for future beneficiaries. FLA. STAT. §518.11(1)(E); RESTATEMENT (THIRD) ON TRUSTS AT 27, COMMENT E. The Prudent Investor Rule also requires that a trustee act impartially in its investment strategy, balancing an income beneficiary's interests with the need to protect the principal value of the corpus against inflation erosion. RESTATEMENT (THIRD) ON TRUSTS: PRUDENT INVESTOR RULE, CHAPTER 7, TOPIC 5 INTRO (1992).

Legal Authority for Modifications

28. In Florida, a court is authorized to permit the modification or deviation from a trust under both statutory and common law.

29. Florida Statute §§737.403 and 507 permit the court to relieve a trustee from any restriction imposed by law or by the trust's governing documents upon a showing of "cause".

30. Further, Florida Statute §737.4031 permits judicial modification of a trust where, because of circumstances not known or anticipated by the grantor, compliance with the terms of the trust would substantially impair the accomplishment of a material purpose of the trust.

31. In addition to these statutory provisions, the common law on trusts also permits deviation from the terms of a trust when it is necessary or highly convenient to do so in order to enable a trustee to satisfy the trust's purpose. *See,* George G. Bogert and George T. Bogert, *The Law on Trust and Trustees*, §396 (Rev. 2d ed. 1991).

32. Counts I-III of this Complaint seek modification of the trust based upon one or more of these authorities.

COUNT I: MODIFICATION OF NEMOURS' PURPOSE

33. Plaintiffs reallege paragraphs 1 – 32, as if specifically set forth herein.

34. Plaintiffs seek modification of the Trust, pursuant to Florida Statute §737.4031 and Florida's common law, to redefine the age of "crippled children" from 21 to 18 years of age and to allow for the expansion of Nemours' purpose to include the prevention of children's health problems.

35. Item 9 of the Will provides that the purpose of Nemours shall be:

> *...a charitable institution for the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware, ...*

36. In interpreting the term "crippled children", this Court stated that the term shall include those "persons under twenty-one years of age". FINAL JUDGMENT DATED DECEMBER 31, 1971, AT ¶10 (the "1971 Final Judgment").

37. Although the age of majority was 21 at the time of the 1971 Final Judgment, the age of majority in Florida has since changed to age 18. Plaintiffs seek to redefine the Trust's purpose so that the term "children" is consistent with

the current age of majority in Florida, but Plaintiffs recognize that it is important for Nemours to remain committed to its current patients who might be affected by this change.

38. Accordingly, Plaintiffs seek to redefine the term "children" to mean those persons under the age of 18, provided that the current patients of Nemours who are between the ages of 18 and 21 shall not be affected by this revision.

39. Furthermore, because Mr. duPont has clearly stated in his Will that it is the duty of every one in this world to do what is within his power to alleviate human suffering, the Trustees undertook a review of the purpose set forth by his Will.

40. As indicated above, BCG concluded that the health care needs of children would be better served by providing both treatment and preventative care for children.

41. Preventative health care is consistent with Mr. duPont's desire to provide for the medical needs of children.

42. To this end, Plaintiffs seek authority to expand the purpose of the Nemours Foundation (the "Corporation") to include the following:

> *The general nature and purpose of the Corporation shall be the maintenance and support of, and the making of contributions to, charitable institutions operated for: (a) the care and treatment of children, but not of incurables, under eighteen (18) years of age, who by reason of physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, have been deprived of strength, activity, or capability for service or use, in any part of the human body; (b) the prevention of those conditions described in (a); and (c) the care of individuals over sixty-five (65) years of age who are in need of supportive or alleviating medical or para-medical care beyond mere*

food, clothing, and shelter, first consideration, in each instance, being given to beneficiaries who are residents of Delaware.

43. When Mr. duPont committed Trust funds to Nemours, he did not know or anticipate that dramatic changes in medicine would result in the prevention of many childhood illnesses. Compliance with the current terms of the Trust, which currently does not address the expenditure of funds for preventative care, defeats a material purpose of the Trust to provide for the health care needs of children. Accordingly, this modification is necessary and consistent with the Trust's purpose and the intent of Mr. duPont.

44. Further, redefining the term "children" to include only those persons under the age of 18 is highly convenient to the administration of the Trust in that the term will now conform with the age of majority in Florida and other states.

WHEREFORE, Plaintiffs request the entry of a final judgment, pursuant to Florida Statute §§737.403, 737.507 and 737.4031, and Florida's common law, modifying the purpose of Nemours as more fully set forth herein.

COUNT II: MODIFICATION OF NEMOURS' CORPORATE GOVERNANCE

45. Plaintiffs reallege paragraphs 1 – 32, as if specifically set forth herein.

46. Based upon the recommendations of both BCG and counsel for the Trustees, Plaintiffs also seek to modify the Trust's provisions regarding the governance and management of Nemours, to better enable Nemours to operate efficiently and effectively as the separate legal entity that it is.

47. Specifically, Plaintiffs seek modification to: (a) clarify the Trustees' status as Members of Nemours and reserve unto the Trustees (in their role as

Members) certain powers necessary to ensure that the governance of Nemours remains consistent with Mr. duPont's intent; (b) confirm that the responsibility for supervising the management of Nemours resides with the Board of Directors of Nemours, who are elected by its Members; and (c) clarify the role of the Board of Managers.

A. Clarify the Role of the Members of Nemours and Reserve Powers:

48. To ensure that Nemours carries out the wishes of Mr. duPont to the fullest extent possible and operates in an efficient and effective manner, the Trustees believe additional expertise should be added to the Board of Directors of Nemours, that the role of the Board of Managers needs to be clarified and that the day to day operations of Nemours need to be more independent from the Trust. It was clearly the intent of Mr. duPont, however, that the Trustees have a voice in the types of services offered by Nemours and that the Trustees ensure the proper governance of Nemours.

49. To achieve these goals, Plaintiffs seek clarification by this Court of the Trustees' role as the sole Members of Nemours.

50. Specifically, Plaintiffs propose that the Members continue to consist of only those individuals then serving as Trustees of the Trust, and that the Members of Nemours have the following reserved powers, to:

a) Establish Nemours' purpose and determine the nature and scope of the services to be offered;
b) Appoint Non-Member Directors of Nemours and establish the total number of Directors to be elected each year;
c) Remove any Non-Member Director, with or without cause, at any time;

d) Approve any purchases or disposition of assets, issuance of debt, borrowing of funds, or change in affiliations, subject to such guidelines as the Members may establish from time to time;
e) Specify that the use of distributions from the Trust shall be consistent with the purpose of Nemours; and
f) Make amendments to the Articles of Incorporation and approve any changes to the By-laws.

B. Clarify duties of the Board of Directors for Management of Nemours:

51. To implement the recommendations of BCG, as explained above, Plaintiffs also seek modification of the terms of the Trust to clarify that the Board of Directors is vested with the responsibility for supervising the management of Nemours.

52. Further, Plaintiffs seek clarification that the Board of Directors has the power to appoint and replace members of the Board of Managers.

53. Although one or more of the Trustees could eventually cease to serve as Directors, the Trustees, as Members of Nemours, will continue to have the fiduciary duty to see that Nemours is operated pursuant to the intent and purpose set forth in Mr. duPont's Will, so these changes will not compromise Mr. duPont's intentions.

C. Clarify the Role of Board of Managers:

54. Plaintiffs seek to clarify the role of the Board of Managers, such that the Board of Managers shall be supervised by the Board of Directors, instead of the Trustees.

55. Item 9 of the Will provides for a Board of Managers of Nemours, to which the Trustees would delegate certain governance and administrative duties with

respect to Nemours. Under the Will, the Board of Managers consists of five members who are appointed and serve at the pleasure of the Trustees for five year terms. The Board of Managers must have a minimum of three members who reside in the State of Delaware. Under the Will, the Board of Managers is directed to report to the Trustees once a year, in writing, regarding receipts and expenditures of the Board in conducting the affairs of the Foundation. Currently, no Trustee serves as a Manager.

56. Plaintiffs' proposed modifications provide that the provisions of the Will that govern the Board of Managers will remain substantially the same, although Plaintiffs seek clarification that the Board of Directors of Nemours will be responsible for electing the Managers and also may remove a Manager, with or without cause, at any time.

57. The Board of Managers shall be charged with the following duties, some of which are currently duties of the Managers, to:

a) determine the qualifications of professional staff of the facilities owned by the Nemours Foundation and located on grounds of Nemours;
b) approve the credentials of the physicians and associated staff of the facilities owned by the Nemours Foundation and located on the grounds of Nemours;
c) review and determine, with the Board of Directors' concurrence, the appropriate contingency reserve and the appropriate provision required for operating the facilities owned by the Nemours Foundation and located on the grounds of Nemours;
d) identify, with the Members' concurrence, other worthy charitable institutions to receive grants from Nemours, in the event that Nemours' income exceeds its needs; and
e) such other matters as the Board of Directors may request.

58. Plaintiffs believe the proposed modifications are highly convenient to the administration of the Trust and that good cause exists for these modifications in that they are consistent with the intent of Mr. duPont that these duties be charged to the Board of Managers.

59. Further, because of circumstances not known or anticipated by the grantor, compliance with current administrative terms of the Trust substantially impairs the accomplishment of a material purpose of the Trust by hindering the efficient and effective operation of Nemours.

WHEREFORE, Plaintiffs request the entry of a final judgment, pursuant to Florida Statute §§737.403, 737.507 and 737.4031, and Florida's common law, modifying the Trust's provisions regarding Nemours' corporate governance, as more fully set forth herein.

COUNT III: MODIFICATION OF TRUSTEE PROVISIONS

60. Plaintiffs reallege paragraphs 1 – 32, as if specifically set forth herein.

61. Item 5 of the Will, as modified by this Court, currently allows for six Trustees—five individuals and one corporate Trustee. Further, this Court's Final Judgment, dated December 2, 1994, which increased the individual Trustees from 3 to 5, precludes the two additional Trustees and their successors from serving on the Board of Directors of certain companies that were affiliated with the Trust or Nemours. This prohibition inadvertently raised a question regarding the two additional Trustees' service on the Nemours Board and the appropriateness of

treating those Trustees different from the rest of the Trustees with respect to service on the Nemours Board. *See* FINAL JUDGMENT AT PP. 26-27.

62. Moreover, significant administrative changes in the custody and management of the Trust's investments have now alleviated most of the duties typically reserved to the corporate trustee.

63. For these reasons, Plaintiffs seek the following modifications to the provisions of the Will and Final Judgment governing the Trustees:

a) elimination of the requirement that one of the six Trustees be a corporate Trustee;
b) clarification that all individual Trustees, and their successors, may serve on the board of Nemours; and
c) addition of a "trustee emeritus" status.

A. Elimination of the Requirement that One of the Six Trustees be a Corporate Trustee:

64. Originally, the Corporate Trustee was vested with a tie breaking vote in the event of a deadlock among the Trustees. That power was eliminated in the Final Judgment dated December 2, 1994.

65. In the past, the Corporate Trustees also served as custodian of the assets of the Trust, maintained all financial records of the Trust, and served as the Trust's financial advisor for investment decisions.

66. Because of the increase in Trust assets and the desire to diversify the Trust's investments, the Trustees have since appointed a Chief Investment Officer and an associated staff to professionally manage the investments of the Trust under the supervision of the Trustees. The Trustees also have engaged an

independent trust company to act as custodian and to maintain all financial records.

67. Based upon these changes, Plaintiffs believe that the purposes set forth in the Will for having a corporate Trustee of the Trust no longer exist and that the corporate Trustee's fee, which is more than that of an individual Trustee, is no longer justified. Because of increased size and complexity of both the Trust and Nemours, however, the Trustees' role (both to the Trust and as Members of Nemours) remains a demanding one. For this reason, the Trustees believe that the current number of trustees should continue at the current number of six.

68. Accordingly, Plaintiffs request the elimination of the requirement that there always be a corporate Trustee, and instead allow for the appointment of an individual in place of the corporate Trustee, so that the Trust will continue to have six Trustees.

69. Further, Plaintiffs request that the sixth, individual Trustee, and his or her successors, be appointed by the majority vote of the then serving, individual Trustees, in accordance with the Trustees' procedure for filling any vacancy in the office of Trustee.

B. Clarification that the Trustees may Serve on the Board of Nemours.

70. In connection with the above referenced changes to the Trustee provisions made by the Court in its 1994 Judgment, the Court held:

> The three new individual Trustee positions shall be filled by individuals who, during their term as Trustees, shall not receive or be entitled to receive any compensation from any corporation or other entity owned by the Trust, including, but not limited to,

> St. Joe Paper Company, its successors or its subsidiaries; Florida East Coast Industries, its successors or its subsidiaries; *or the Nemours Foundation or any entities owned or controlled by the Nemours Foundation; and may not sit as a director, manager, employee, or consultant of any of the, above described entities.* ORDER OF DECEMBER 2, 1994 AT PAGE 27, PARAGRAPH 2. *(emphasis added).*

71. The prohibition against certain Trustees serving on the Board of Nemours was clearly an unintended drafting error, for it prohibits those Trustees' participation on the Board of Nemours when, at that time, only Trustees were authorized to serve as Directors of Nemours. Plaintiffs affirm to the Court that, to the best of their knowledge, the parties only intended for there to be a prohibition against Trustees serving as members of the Board of Managers and such new Trustees serving as Directors of St. Joe and Florida East Coast Industries. Plaintiffs request that this Court clarify that no Trustee is prohibited from serving on the Board of Directors of Nemours. This will appropriately treat all Trustees equally with respect to service on the Board of Directors.

72. This clarification will not result in any increased fee to a Trustee, as no Trustee may accept a fee from Nemours for serving as a Member or Member-Director of Nemours.

73. Accordingly, Plaintiffs seek modification of the Trust to clarify that all Trustees, and their successors, may serve on the Board of Nemours should they elect to do so.

C. Addition of a Trustee Emeritus Position

74. Plaintiffs seek the addition of a Trustee Emeritus status in order to retain the experience and knowledge of a long serving, senior trustee, while

concurrently allowing the Trust to recruit an individual Trustee that would bring a new perspective and a different area of expertise to the Trust. This will broaden the scope of knowledge available to the Trustees and will enhance the effective administration of the Trust by facilitating a plan for the orderly transition of trustees.

75. Currently, service as a Trustee is time consuming and the appointment as Trustee continues until the Trustee's death or resignation. There is no mandatory retirement age for Trustees and one cannot be removed unless he has breached his duty or is no longer able to serve due to incapacity.

76. Currently, there are six trustees. The retirement of a trustee, especially one who has provided extensive services for the Trust, would leave a huge knowledge gap among the remaining Trustees. Plaintiffs believe it is in the best interest of the Trust to create a Trustee Emeritus status for those Trustees who have attained the age of 70 and have served for 10 or more years, but for their own reasons desire to reduce their involvement in the administration of the Trust.

77. As contemplated, a Trustee who has attained the age of 70, and has served for at least 10 years, would be able to voluntarily become a Trustee Emeritus. A Trustee Emeritus will not have voting powers with respect to the administration of the Trust, but will be entitled to attend all meetings of the Trustees and participate in discussions regarding the administration of the Trust.

78. A Trustee Emeritus will continue to be compensated at the rate he or she received at the time of his or her Trustee Emeritus election, but no increases in

compensation would be received thereafter. In exchange for this compensation, a Trustee Emeritus would be required provide reasonable consultation and advice to the then serving Trustees.

79. These modifications sought in this Count III are highly convenient to the Trust because they will enable the Trustees to better manage the Trust's assets.

80. Further, these changes are necessary to ensure the proper administration of the Trust because Mr. duPont could not have anticipated the growth of the Trust and accompanying complexity when he provided for only three individual Trustees and one Corporate Trustee, and made no provision for the retirement of a Trustee. Compliance with the current terms of the Trust would substantially impair the accomplishment of the material purpose of the Trust.

81. Further, good cause exists for these modifications in that they will enable the Trustees to better manage the Trust and facilitate a smooth transition between a retiring Trustee and his or her successor.

WHEREFORE, Plaintiffs request the entry of a final judgment, pursuant to Florida Statute §§737.403, 737.507 and 737.4031, and Florida's common law, modifying the Trustee provisions of the Trust, as more fully set forth herein.

COUNT IV: DECLARATORY JUDGMENT

82. Plaintiffs reallege paragraphs 1 – 27, as if specifically set forth herein.

83. At least one prior judgment of this Court measured the Trustees' performance by the Prudent Trustee and Prudent Man rules, as were the

standards of care expected of trustees at that time. *See e.g.*, FINAL JUDGMENT DATED MARCH 7, 1983.

84. The Florida Legislature has abandoned the Prudent Trustee and Prudent Man rules, in favor of the Prudent Investor Rule. FLA. STAT. §§737.302 AND 518.11.

85. Plaintiffs are uncertain as to which standard of care governs their actions today and therefore ask this Court for clarification that the Prudent Investor Rule now governs their actions.

86. A present, actual and justiciable controversy exists.

87. The declaratory relief sought is not merely for the giving of legal advice by the Court or for answers to questions propounded for mere curiosity.

88. Plaintiffs have complied with all conditions precedent to the bringing of this action.

WHEREFORE, Plaintiffs request the entry of a final judgment declaring that the Trustees' standard of care shall be governed by the Prudent Investor Rule, as set forth in Florida Statutes §§737.302 and 518.11.

COUNT V: DECLARATORY JUDGMENT

89. Plaintiffs reallege paragraphs 1 – 27, as if specifically set forth herein.

90. Although the Will, at Item 9, provides that the Trust shall distribute all income annually, the Court, in its 1983 Final Judgment, (affirmed on appeal at 456 So. 2d 1242 (Fla 1st DCA 1984), recognized the unique issues facing the

Trustees as a result of their obligation to also preserve the corpus of the Trust into perpetuity. *See*, 1983 FINAL JUDGMENT AT PP. 21-22.

91. To resolve these conflicting duties, the 1983 Final Judgment held that the Trustees are governed by Florida Statute §738.12, also known as Florida's underproductive property statute, and therefore must distribute to Nemours three percent (3%) of the fair market value of the Trust as of December 31st of each year. *See*, 1983 FINAL JUDGMENT AT ¶B[1]. In doing so, the Court noted the opinion of Dr. Peter Williamson, a Dartmouth Professor of Business Administration, who stated that the payment of more than three percent of the Trust annually might cause erosion of the Trust's corpus. *See*, 1983 FINAL JUDGMENT AT P. 22.

92. Since 1983, the Trustees have complied with the 1983 Final Judgment and Florida Statute §738.12 by distributing to Nemours three percent (3%) of the Trust's fair market value as of January 1st of each year, which is paid first from the available Trust income, and to the extent insufficient, next from the Trust principal.

93. In 2002, however, Florida's underproductive property statute was repealed, and the new provisions of Florida's Principal and Income Act do not provide an income beneficiary with the right to a specific, minimum percentage payout.

[1] Florida Statute §738.12 was subsequently revised, changing the valuation date from December 31 to January 1 of each year.

94. Given the repeal of §738.12, Plaintiffs are uncertain as to their distribution obligations to Nemours and therefore ask this Court for confirmation that the Trustees continue to be required to distribute 3% of the fair market value of the Trust each year, even if that requires a distribution from the principal of the Trust.

95. A present, actual and justiciable controversy exists.

96. The declaratory relief sought is not merely for the giving of legal advice by the Court or for answers to questions propounded for mere curiosity.

97. Plaintiffs have complied with all conditions precedent to the bringing of this action.

WHEREFORE, Plaintiffs request the entry of a final judgment declaring that the Trustees shall continue to distribute three percent (3%) of the annual fair market value of the Trust, even if that requires a distribution from the principal of the Trust, notwithstanding the repeal of Florida Statute §738.12.

Respectfully Submitted,

HOLLAND & KNIGHT LLP

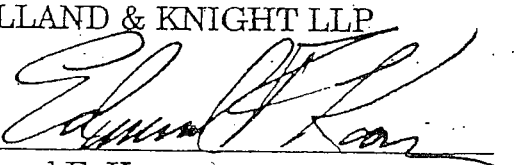
By: 

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Exhibit H

Exhibit 2

COPY

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2004-CA-007960-XXXX-MA

DIVISION: CJ

JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, WINFRED L. THORNTON, AND WACHOVIA BANK, N.A., as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased,

Plaintiffs,

v.

HARRY L. SHORSTEIN, State Attorney in and for the Fourth Judicial Circuit of the State of Florida, and THE NEMOURS FOUNDATION, a not-for-profit corporation organized under the laws of Florida,

Defendants.
_____/

FINAL JUDGMENT GRANTING MODIFICATION OF TRUST AND DECLARATORY JUDGMENT

THIS CAUSE came before the Court upon the Complaint of JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, WINFRED L. THORNTON, AND WACHOVIA BANK, N.A., as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased, (the "Trustees") for Modification of Trust and Declaratory Judgment. In the Complaint, the Trustees seek the following relief:

Exhibit H

a) Modification of the Trust's purpose to redefine the age of "crippled children" from 21 to 18 years of age, and to expand Nemours' charitable purpose to include prevention as well as treatment;

b) Modification of the provisions of the Trust regarding the governance and management of Nemours to: (i) clarify that the Members of Nemours will consist of only those individuals serving as Trustees of the Trust and reserve unto those Members certain powers; (ii) confirm that the responsibility for supervising the management of Nemours is that of the Board of Directors; and (iii) clarify the role of the Board of Managers of Nemours;

c) Modification of the Trustee provisions of the Trust to provide for the (i) elimination of the requirement that one of the six Trustees be a corporate Trustee, (ii) elimination of any restriction that certain Trustees may not serve on the Board of Nemours, and (iii) addition of a Trustee Emeritus status;

d) A declaratory judgment regarding the standard of care required of the Trustees, as a result of changes in Florida law; and

e) A declaratory judgment regarding the required distribution to be paid to Nemours, as a result of changes in Florida law.

This Court having reviewed the Complaint and legal authorities, and having held hearing on the matter, and being otherwise fully advised, finds and decides as follows:

FINDINGS OF FACT

1. The history of the trust established under the Last Will and Testament and Codicils thereto of Alfred I. duPont (the "Trust") and the prior proceedings held before this Court are provided in great detail in this Court's Final Judgment dated December 2, 1994, Amended Final Judgment dated January 30, 1996, and Second Amended Final Judgment dated August 28, 2002.

2. As noted in the Second Amended Final Judgment, at the time of Mr. duPont's death in 1939, the assets of the Trust were $72.5 million. In 1994, the assets of the Trust has increased in value to $1.8 billion, and, as of January 1, 2004 has further increased to approximately $3.2 billion.

3. The primary beneficiary of the Trust, the Nemours Foundation ("Nemours"), receives all of the Trust's income, with the exception of a few small annuities paid to named individuals. Item 9 of the Will currently provides that the purpose of Nemours shall be:

> *...a charitable institution for the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware, ...*

4. In furtherance of that purpose, Nemours currently owns and operates the Alfred I. duPont Hospital for Children, a full-service, research and educational hospital located in Wilmington, Delaware; the Nemours Health Clinic, an outpatient center for the elderly in Delaware; and the Nemours Children's Clinic, consisting of outpatient, pediatric subspecialty centers located in Wilmington, Delaware, and Jacksonville, Pensacola, and Orlando, Florida. In addition to

operating these health care facilities, Nemours also supports extensive medical research and educational programs in Delaware and Florida.

5. Dramatic changes in medicine not anticipated by Mr. duPont when he prepared his Will nearly 70 years ago now make the prevention of many childhood illnesses possible. Compliance with the current terms of the Trust, which currently does not address the expenditure of funds for preventative care, defeats a material purpose of the Trust to provide for the health care needs of children. Modification of the Trust's purpose to allow Nemours to offer preventative care services is necessary and highly convenient to the Trust, while also being consistent with the Trust's purpose and the intent of Mr. duPont.

6. Redefining the term "children" to include only those persons under the age of 18 is also highly convenient to the administration of the Trust in that the term would then conform with the age of majority in Florida and other states. This modification, however, should not adversely effect any of the current patients of Nemours who are between the ages of 18-21.

7. To achieve the Trust's purpose, organizational changes in the manner in which Nemours and the Trust operate also would help to ensure the effective and efficient delivery of health care services to children and the elderly. The 1932 Will requires clarification regarding the Trustees' role as Members of Nemours and the duties and responsibilities of both the Board of Directors and the Board of Managers of Nemours.

8. The provisions of the Will governing the appointment, retirement and governance of the Trustees also are in need of modification. Due to administrative changes in the way that the Trust's assets are invested, the services offered by the corporate trustee and the resulting expense are no longer needed by the Trust. Because of the Trust's size and complexity, it is desirable to continue to have six trustees administering the Trust.

9. This Court in its 1994 Final Judgment stated as follows:

> The three new individual Trustee positions shall be filled by individuals who, during their term as Trustees, shall not receive or be entitled to receive any compensation from any corporation or other entity owned by the Trust, including, but not limited to, St. Joe Paper Company, its successors or its subsidiaries; Florida East Coast Industries, its successors or its subsidiaries; *or the Nemours Foundation or any entities owned or controlled by the Nemours Foundation; and may not sit as a director, manager, employee, or consultant of any of the, above described entities.* FINAL JUDGMENT, DATED DECEMBER 2, 1994 AT PAGE 27, PARAGRAPH 2. (*emphasis added).*

10. Arguably, this provision can be read as a prohibiting certain Trustees from serving on the Board of Directors of Nemours. This was an unintended restriction that is in contradictory to the expressed intent of Mr. duPont. Accordingly, good cause exists for the clarification of this provision.

11. Currently, there are no provisions for an orderly transition between outgoing trustees and their successors. Instead, a Trustee will generally serve for his entire lifetime, unless he is removed from office or voluntarily resigns. The Trust would benefit from the addition of an emeritus status that would enable the Trustees to continue to access the experience and knowledge of a long serving,

senior trustees, while also allowing the Trust to recruit new trustees with fresh perspectives and differing areas of expertise.

12. The proposed modification to include a Trustee Emeritus status is highly convenient to the Trust, because it will enable the Trustees to better transition from their long serving Trustees to the next generation of trustees.

13. Further, all of the proposed changes to the trustee provisions are necessary to ensure the proper administration of the Trust, because Mr. duPont could not have anticipated the growth of the Trust and accompanying complexity when he originally designed the trustee provisions. Compliance with the current terms of the Trust would substantially impair the accomplishment of the material purpose of the Trust.

CONCLUSIONS OF LAW

14. This Court has jurisdiction pursuant to Florida Statutes Chapter 86, §§737.201, 737.202, 737.4031 and 737.507 (2003). Venue of this proceeding lies in Duval County, Florida, because the Trust has its principal place of administration in Duval County.

15. Notice of this action was given to Nemours and the State Attorney in and for the Fourth Judicial Circuit of the State of Florida. All parties and noticed entities have consented to the relief requested by the Trustees in their Complaint.

16. Pursuant to Florida Statute §§737.403 and 737.507 (2003), a trustee may be relieved from any restriction imposed by law or by a trust's governing documents upon a showing of "cause".

17. Further, Florida Statute §737.4031 (2003) permits judicial modification of a trust where, because of circumstances not known or anticipated by the grantor, compliance with the terms of the trust would substantially impair the accomplishment of a material purpose of the trust.

18. In addition to these statutory provisions, the common law on trusts also permits deviation from the terms of a trust when it is necessary or highly convenient to do so in order to enable a trustee to satisfy the trust's purpose. *See,* George G. Bogert and George T. Bogert, *The Law on Trust and Trustees*, §396 (Rev. 2d ed. 1991).

19. Good cause exists to justify the requested modifications. Further, because of circumstances that could not have been known or anticipated by Mr. duPont, compliance with certain terms of Mr. duPont's 1932 Will would defeat or substantially impair the accomplishment of a material purpose of the Trust, making modification both necessary and appropriate.

20. As a result of the repeal of Florida's underproductive property statute, from which originated the requirement that the Trust distribute 3% of the value of its assets each year to Nemours and the elimination of the Prudent Trustee Rule in Florida, a present, actual and justifiable controversy exists regarding the Trustees' rights and responsibilities to Nemours.

ORDER

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is ORDERED AND ADJUDGED as follows:

A. The relief sought in Count I of the Complaint is GRANTED. Nemours' purpose, as provided in Item 9 of the Will, shall be modified to read as follows:

> *The general nature and purpose of the Corporation shall be the maintenance and support of, and the making of contributions to, charitable institutions operated for: (a) the care and treatment of children, but not of incurables, under eighteen (18) years of age, who by reason of physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, have been deprived of strength, activity, or capability for service or use, in any part of the human body; (b) the prevention of those conditions described in (a); and (c) the care of individuals over sixty-five (65) years of age who are in need of supportive or alleviating medical or para-medical care beyond mere food, clothing, and shelter, first consideration, in each instance, being given to beneficiaries who are residents of Delaware.*

B. The relief sought in Count II of the Complaint is GRANTED. To the extent it represents a deviation or modification from the Trust, the Court approves and authorizes as follows:

1. The Members of Nemours shall continue to consist of only those individuals then serving as Trustees of the Trust, and the Members of Nemours shall have the following reserved powers, to:

   a) Establish Nemours' purpose and determine the nature and scope of the services to be offered;
   b) Appoint Non-Member Directors of Nemours and establish the total number of Directors to be elected each year;
   c) Remove any Non-Member Director, with or without cause, at any time;
   d) Approve any purchases or disposition of assets, issuance of debt, borrowing of funds, or change in affiliations, subject to such guidelines as the Members may establish from time to time;
   e) Specify that the use of distributions from the Trust shall be consistent with the purpose of Nemours; and
   f) Make amendments to the Articles of Incorporation and approve any changes to the By-laws.

2. The responsibility for supervising the management of Nemours shall reside with the Board of Directors of Nemours, who shall be elected by its Members.

3. The Board of Managers shall:

a) determine the qualifications of professional staff of the facilities owned by the Nemours Foundation and located on grounds of Nemours;
b) approve the credentials of the physicians and associated staff of the facilities owned by the Nemours Foundation and located on the grounds of Nemours;
c) review and determine, with the Board of Directors' concurrence, the appropriate contingency reserve and the appropriate provision required for operating the facilities owned by the Nemours Foundation and located on the grounds of Nemours;
d) identify, with the Members' concurrence, other worthy charitable institutions to receive grants from Nemours, in the event that Nemours' income exceeds its needs; and
e) such other matters as the Board of Directors may request.

C. The relief sought in Count III of the Complaint is GRANTED. The Trust is modified as follows:

1. The requirement that there always be a corporate Trustee is eliminated. The Trust shall, however, continue to have six trustees, all of whom shall be individual trustees. The sixth, individual Trustee, and his or her successors, shall be appointed by the majority vote of the then serving Trustees, in accordance with the Trustees' procedure for filling any vacancy in the office of Trustee.

2. No Trustee is prohibited from serving on the Board of Directors of Nemours, notwithstanding paragraph 2, on page 27 of the Court's Final Judgment, entered on December 2, 1994.

3. A Trustee Emeritus status shall be adopted by the Trustees. Any Trustee who has attained the age of 70, and has served for at least 10 years, may voluntarily become a Trustee Emeritus. A Trustee Emeritus will not have voting powers with respect to the administration of the Trust, but will be entitled to attend all meetings of the Trustees and participate in discussions regarding the administration of the Trust. A Trustee Emeritus will continue to be compensated at the rate he or she received at the time of his or her Trustee Emeritus election, but no increases in compensation will be received thereafter. In exchange for this compensation, a Trustee Emeritus shall provide reasonable consultation and advice to the then serving Trustees for as long as the Trustee Emeritus continues to receive compensation from the Trust.

D. The relief sought in Count IV of the Complaint is GRANTED. The standard of care required of the Trustees shall be governed by the Prudent Investor Rule, as set forth in Florida Statutes §§737.302 and 518.11, or as such statutes may be amended from time to time.

E. The relief sought in Count V of the Complaint is GRANTED. Notwithstanding the repeal of Florida Statute §738.12, the Trustee shall continue to distribute to Nemours three percent (3%) of the fair market value of the Trust on

January 1st of each year, even if that requires a distribution from the principal of the Trust.

F. This Final Judgment shall be effective as of January 1, 2005.

DONE and ORDERED in Duval County, Florida this 28 day of December, 2004.

Honorable Donald R. Moran, Jr.
Circuit Court Judge

Copies furnished to:
Edward F. Koren and Robert J. Beckham, Holland & Knight LLP, 50 North Laura Street, Suite 3900, Jacksonville, FL, 32202

Christine R. Milton, Esquire, McGuire Woods, 50 N. Laura Street, Suite 3300, Jacksonville, FL 32202

Harry L. Shorstein, Esquire, State Attorney's Office, 330 E. Bay Street, Jacksonville, FL 32202

2456228_v2

Exhibit 3

"FIRST CONSIDERATION"

MEMBER'S MEETING JULY 18, 2007

WHAT DOES THE WILL SAY ?

Mr. duPont's Will Says (as amended) :

The general nature and purpose of the Corporation shall be the maintenance and support of, and the making of contributions to, charitable institutions operated for: (a) the care and treatment of children, but not incurables, under eighteen (18) years of age, who by reason of physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, have been deprived of strength, activity, capability for service or use, in any part of the human body; **(b) the prevention of those conditions described in (a);** and (c) the care of individuals over sixty-five (65) years of age who are in need of supportive or alleviating medical or pare-medical care beyond mere food, clothing, and shelter, **first consideration, in each instance, being to beneficiaries who are residents of Delaware.**

Exhibit H

WHAT PRIORITIES DID Mr. duPONT ESTABLISH IN HIS WILL?

- .....first consideration in each instance being given to beneficiaries who are residents of Delaware. (Item 9 of Will)
- .....selection of the Board of Managers requires that a majority must come from the State of Delaware
- .....Surplus income...contributions to other worthy institutions designated by the Board of Managers and approved by my Trustees.... .....It is my wish that the people of Delaware needing the care of such institutions shall be properly provided for before contributions are made to ....any other state or states. (Item 10 of Will)
- Paragraph F(3)...The Trustees agree that at no time will more than fifty percent (50%) annually of funds distributed by the Trust to Nemours be spent outside the State of Delaware....(4) First consideration in each instance will be given to beneficiaries who are residents of Delaware. (Stipulation and Agreement between the State of Florida, the State of Delaware, the Trustees and the Nemours Foundation. ...January 17, 1980.)

The New Paradigm -- PREVENTION

- The Trustees, recognizing a new imperative for the 21st Century, petitioned the Court to expand the nature and scope of services being offered by the Foundation to include **prevention.**
- **However**, are we seriously taking action to implement this new paradigm?
- Are we ignoring the needs of the residents of Delaware?
- Are we giving them the "First Consideration" provided for in the Will?

WHAT IS OUR LEGAL OBLIGATION TO THE BENEFICIARIES OF MR. duPONT'S WILL ?

Initially Mrs. duPont was the principle beneficiary of the will. The Trustees had a **legal obligation** to see that she received the benefits provided by Mr. duPont's Will. After her death, The Nemours Foundation became the principle beneficiary of his Will, however the use of distributions from the Trust must be used in accordance with the purposes named by Mr. duPont in his Will.
When we amended the Will in 2004 we expanded the universe of children covered by the Will to include those children who would benefit from the prevention mandate as well as those who were currently benefiting from the clinical mandate.

We can not, legally or on a fiduciary bases, ignore the benefits these children are entitled to, any more than we could have denied Mrs. duPont the benefits to which she was entitled.

WHO ARE THESE NEW BENEFICIARIES ?
THE CHILDREN OF DELAWARE

Children under 18 (2005)

Delaware	201,692	
New Castle Co.	128,558	63.7%
Kent Co.	35,970	17.8%
Sussex	37,164	18.4%
Wilmington	**18,793**	
White	**2,939**	**16%**
Black	**12,586**	**67%**
Hispanic	**2,714**	**14%**
All Others	**554**	**3%**

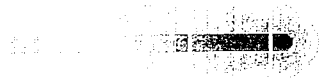
Exhibit H

Under the amended Will, the Foundation should be operating under the new paradigm to provide prevention.

BEFORE, we were operating primarily in a clinical environment – a **RE-ACTIVE MANDATE.**
We provided the facilities and staff and invited/solicited the children/parents to come to us for medical care and treatment.

NOW, we are operating in **both** a clinical and preventive environment -- a **PRO-ACTIVE MANDATE.**
Here we should uncover the needs, develop a plan to prevent the problem, and take it to the community, the parents and the children.

What are the needs of children in Delaware?

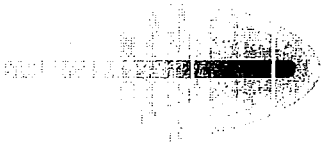


We are providing **the clinical needs** for the children in Delaware. We have Primary Care facilities, Out-Patient services, Emergency Room services and full In-Patient services with treatment for virtually all chronic and acute conditions, including cancer and cardiac problems.
The Alfred I. duPont Hospital for Children also has full surgical capabilities including organ transplants.

Unfortunately, we cannot say the same thing about the preventive services provided to meet their needs

BLUEPRINT FOR THE FUTURE

Nemours Strategic Plan 2008-2012



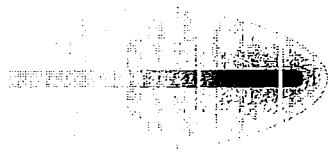
Dr. Bailey set forth a very detailed and well thought out process to execute his vision of where Nemours is going for the next five years. From a management perspective I can not find any fault, but from a Member's perspective it raises a fundamental question.

"The Nemours Strategy Management System (SMS) uses the Balanced Scorecard architecture to articulate the strategy and link key processes, behaviors, and personal accountability, enabling Nemours to close the gap between where it currently is ***and where it wishes to be."*** (page 10, 3rd paragraph)

The Key Phrase **"...and where it wishes to be."**

The **Blueprint for the Future** is a sound financial plan, providing for developing market share in the Delaware Valley, etc., but overlooks the basic purposes of the Foundation, the needs of children with "first consideration" for the children in Delaware. Delaware is a very wealthy state with above average resources, however notwithstanding its wealth, there are many needs of children existing statewide and in pockets of severe poverty. As Members of The Nemours Foundation, with our resources and the mandate from Mr. duPont, we must address the question...

"...and **WHERE IT WISHES TO BE?**



TAKE A GOOD LOOK AT
DELAWARE
AND ITS **NEEDS**

DEMOGRAPHICS

	DELAWARE	NEW CASTLE CO.	WILMINGTON	PERCENT
Total Population	**840,692**	523,852	**72,213**	**9%**
Total Children Under 18	**201,692**	128,558	**18,793**	**26%**
• **White-Non Hispanic------**			**2,939**	**16%**
• **Black-Non Hispanic------**			**12,586**	**67%**
• **Hispanic------**			**2,714**	**14%**
• **All Other-----**			**554**	**3%**

DEMOGRAPHICS - Continued

Median Household Income, Per Capita Income & Poverty Level

	DEL	NCC	WIL
•Median HH Income Families/Children	53,652	61,448	31,019
•Per Capita Income	23,305	25,413	20,236
•% of persons below poverty level	9.2%	8.4%	21.3%
•% of families/ children below poverty level	9.9%	8.4%	24.0%
•% of families / children below P.L. headed by female	66.8%	69.5%	76.3%
•% of children below P.L.	11.9%	10.2%	**30.4%**

DEMOGRAPHICS - Continued

WILMINGTON

FAMILIES	(NUMBER OF FAMILIES)
TOTAL HOUSEHOLDS	28,617
TOTAL FAMILY HOUSEHOLDS	15,881
TOTAL FAMILY HOUSEHOLDS/CHILDREN	7,758

	FAMILIES	PARENTS
Married Couples/ Children	3,110	6,220
Female headed HH/Children	4,007	4,007
Male headed HH/ Children	641	641
Total	**7,758**	**10,868**

Exhibit H

DEMOGRAPHICS - Continued

PUBLIC SCHOOL ENROLLMENT

	Delaware	Wilmington
White and Others	59.2%	7.0%
Black	32.3%	78.6%
Hispanic	8.5%	14.4%
Actual Numbers		
White	70,503	760
Black	38,434	8,522
Hispanic	10,503	1,557
	119,082	**10,839**

School Dropouts Delaware----------17.4%
Wilmington----------25.6%

DEMOGRAPHICS - Continued

PRIVATE SCHOOL ENROLLMENT

	Delaware
New Castle Co.	19,952
Kent Co.	2,999
Sussex Co.	1,989
Total	24,939

Exhibit H

DEMOGRAPHICS - Continued

Under Federal Poverty Level:

	Delaware	Wilmington
Persons	9.2%	21.3%
Families	9.9%	24.0%
Children	11.9%	30.4%

Percent Children under 18	Delaware	Wilmington
Below 100% US Poverty Level	12%	31%
Below 200% US Poverty Level	30 %	57%
% Families below Poverty Level headed by a female	66%	79%

SEXUALLY TRANSMITTED DISEASES (STD)

Delaware 2005 (Number of cases)

Chlamydia	1,315
Gonorrhea/Syphilis	155
All except HIV/AIDS	1,719

AREAS OF HIGH AIDS CASES

(TOP EIGHT ZIP CODES---APRIL 2002)

ZIP CODE	AREA	# AIDS CASES	
19802	**Wilmington**	**609**	
19801	**Wilmington**	**452**	
19805	**Wilmington**	**329**	**1390 69%**
19720	New Castle	261	
19901	Dover	148	
19977	Correction Center	109	
19702	Newark	108	
19971	Rehoboth	100	
		2016*	

* Total population-not just children

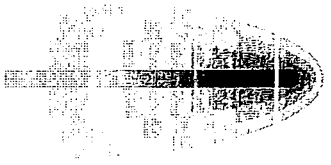
CHILDHOOD ASTHMA

DISCHARGE RATE PER 1000 CHILDREN 0-17

Delaware---------- 3.5
Wilmington---------- 9.3

Exhibit H

BIRTHS TO SINGLE MOTHERS



Percent of Births	**(99-03)**
U.S.	33.7 %
Delaware	39.8 %
Wilmington	69.0 %

Percent by Race	**Delaware**	**Wilmington**
White & Others	30.0%	42.7%
Black	71.1%	85.3%

BIRTHS TO TEENS AGED 15 to 17

(Live births per 1000 -- 15-17 year old females)

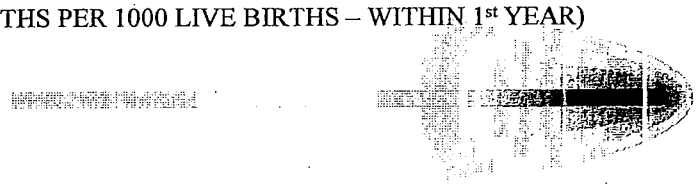
(5 years	1999-2003)
US	45.6
Delaware	46.9
NCC	41.9
Wilmington	103.4

<u>By Race</u>

Delaware	White	36.4
Delaware	Black	80.3
Wilmington	White	106.2
Wilmington	Black	114.4

INFANT MORTALITY

(DEATHS PER 1000 LIVE BIRTHS – WITHIN 1st YEAR)



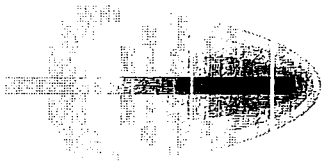
US Average		6.9
New Jersey		5.7
Pennsylvania		7.3
DELAWARE	**(49th in US)**	**9.4**
Wilmington		**13.5**
Wilmington	**(Black Mothers)**	**17.6**
New Hampshire	(1st- Best)	4.0
Mississippi	(50th Worst)	10.7
Cincinnati		13.0
"Every Child Succeeds"		2.8

CAUSES OF INFANT MORTALITY IN WILMINGTON

CAUSES (Five year total 99-03)	**PERCENT**
Diseases of respiratory system (2)	2.4%
Accidents (3)	3.6%
Infection & Parasitic (3)	3.6%
Birth Defects (5)	6.0%
Ill defined Symptoms (7)	8.4%
Conditions originating in Perinatal Period * (55)	**66.3%**
All Others (8)	9.6%

* Perinatal Period is defined as the period 5 months before birth and 1 month after birth

LOW BIRTH WEIGHT BABIES



DELAWARE	Less than 2500 g.	Percent
Total Births ---- 54,879	**5,053**	9.2%
(5 yr. Total 99-03)		
White---------- 38,636	**2,922**	7.6%
Black---------- 13,571	**1,914**	14.1%
Other---------- 2,672	**217**	7.0%

PERCENT LOW BIRTH WEIGHT BABIES

(Less than 2500 grams)

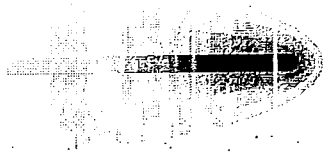
US Average---------- 7.9%
NJ---------- 8.1%
PA---------- 8.1%
Delaware (45th in US)----- 9.4%
Wilmington---------- 14.1%
Wilmington (Black)------ 17.1%
Alaska (1st)---------- 6.0%
Mississippi (50th)------ 11.4%

Exhibit H

Additional Risks for Low Birth Weight Babies

- Unfortunately, low birth weight babies (less than 5.5 lbs) and particularly very low birth weight babies (less than 3.3 lbs.) have a high probability of experiencing developmental problems.
- In 2002, low birth weight babies represented 7.8% of all births, and accounted for 68% of infant deaths.
- Low birth weight babies are at risk for respiratory distress syndrome, bleeding in the brain, mental retardation, cerebral palsy, as well as hearing and sight dysfunctions.
- Nemours has spent substantial funds to provide a new NICU facility, but what is Nemours doing to prevent low birth weight babies? (Continued)

Additional Risks - Discussion



- What is Nemours doing about the disabilities the babies have after leaving the NICU?
- Shouldn't Nemours commit itself to preventing the problems as well as treating the babies after the disaster has occurred?

This a case where we are reimbursed for care in the NICU but receive no reimbursement for prevention.

What was the basis for the Foundation's decision? Was it a financial or a Mission oriented decision?

ABORTIONS

TALK ABOUT A CONFLICT OF INTEREST!

Acknowledging that in the US abortions are legal and it is primarily a decision of the mother to abort or not to abort. This leaves the "mother-to-be" in a very conflicted position. She must make the decision between her personal desires and the life of her unborn child. If we are to be a **"pre-eminent voice for children"** there is no better forum than in the decision process of the "mother-to-be" to abort or not to abort. Nemours should be the champion for the child with over 3,000 lives per year at stake, but it will have to do more than just offer advice, it must offer alternative answers such as adoption opportunities or other supportive actions.

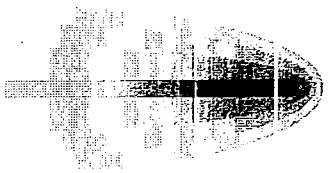
How big a problem is this in Delaware and Wilmington?

ABORTION Statistics

NUMBER OF ABORTIONS BY AGE GROUP

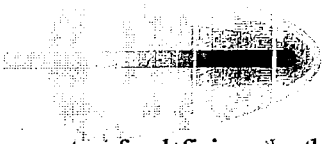
	US-2002	Delaware-2002
Total	765,493	**3,261**
Less than 15	4,764	**29**
15-19	133,236	**682**
20-24	253,616	**1,137**
25-29	171,199	**663**
30-34	111,053	**431**
35-39	63,688	**243**
40+yrs	22,632	**76**

ABORTION Statistics - Continued



- In Delaware, the ratio of the number of abortions per 1,000 live births throughout the teen years is higher than the National Average.
- In 2001 the overall abortion ratio for Delaware residents was 343 abortions per 1000 live births--a ratio 39% higher than the US ratio of 247 abortions per 1000 live births.
- In Delaware, during 2002, 22.6% of all pregnancies resulted in an abortion.
- In Delaware, single women comprised 85% of all abortions. Of that 85%, 55% were white and 41% were black.

CONCLUSIONS



- The Amendment to the Will in 2004 changed the parameters for defining who the current beneficiaries are.

- Under the amended Will, we are not giving the additional children in Delaware the "First Consideration"to which they are entitled.

- We are using the "Delaware Valley" as the basis for calculating the spending that should be made inside the State of Delaware, as provided in the Stipulation & Agreement.

- We are ignoring the very serious needs of the children in Delaware because we can not receive reimbursement - decisions are being made for financial reasons ignoring the needs of children.

TO ANSWER THE QUESTION ASKED EARLIER
"...and <u>WHERE IT WISHES TO BE ?</u>"

PERHAPS WE SHOULD RESTATE THE QUESTION TO:
".....and **<u>WHERE IT SHOULD BE ?</u>"**

THE ANSWER MUST BE :

<u>TO CARE FOR THE HEALTH NEEDS OF CHILDREN, BOTH CLINICAL AND PREVENTIVE, WITH FIRST CONSIDERATION FOR THE CHILDREN OF DELAWARE</u>"

What Are The <u>Unmet Health Needs</u> Of Children In Delaware?

<u>THEY ARE:</u>

Obesity
Infant mortality
Low birth weight babies
Low use of prenatal care
Sexually transmitted diseases
AIDS/HIV
Mental health
High asthma in children
Use of alcohol and tobacco
Use of Marijuana and drugs
Lack of Immunizations
Abortions

Setting aside the legal and fiduciary responsibilities for a Moment –
LOOK AT THE CHILDREN THEMSELVES

•Look at the unmet health needs faced by the children of Delaware, can we simply ignore them? We have the capability to substantially prevent these conditions and make a real difference in the lives of thousands of children in Delaware.

• A basic goal of Mr. duPont's was to enable children to compete in society. Looking at the unmet needs in Delaware, particularly in Wilmington, we can enable these children to compete in society if we are willing to take the initiative and commit ourselves to the task.

•"PREVENTION" should not be a program which is forced upon the Foundation. It should be a program totally embraced and espoused by the Foundation. In fact, it is **the only undertaking**, if aggressively pursued, that will distinguish Nemours from all other health provider organizations.

• No other organization is better equipped to solve the problems facing the children of Delaware and set an example for the nation than the Nemours Foundation.

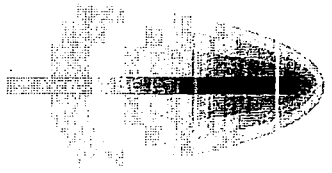
PREVENTION/CHILDREN'S NEEDS - Continued

•The reason that no one wants to undertake "Prevention" is that in most every situation there is no means of reimbursement, so most every not-for-profit organization, including Nemours, steers away from that arena. However, Nemours is a charitable organization which should look at the intent and priorities of the testator, and the needs of children in Delaware, rather than just at opportunities where it can make a profit. (or in more acceptable terms, "leverage" our dollars.)

• To be totally realistic, children's hospitals may have already "peaked out" in their primary importance to health care. Within the next decade, discoveries in new drugs, new non-evasive/outpatient procedures, new cures and immunizations may limit children's hospitals solely to the very acute condition. The market outreach for a children's hospital will have to expand to the point that they may only be economical on a regional basis.

• **The future of pediatric medicine today lies in Prevention. Nemours has the opportunity and the means to provide the leadership and set an example for the Nation.**

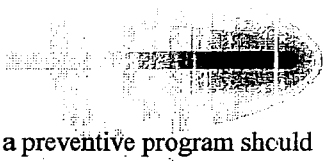
PREVENTION/CHILDREN'S NEEDS - Continued



Prevention is not a high tech operation calling for large capital expenditures. It is an operation calling for the "right" **commitment**, the "right" **people**, and the "right" **funding** that can be maintained on a sustainable basis.

If our goals is to: CARE FOR EACH CHILD AS IF THEY WERE OUR OWN — then we have a genuine challenge to do what is "right" for the children of Wilmington and Delaware.

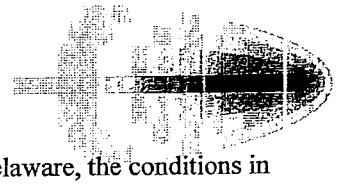
FUNDING SUGGESTIONS



The Foundation, as part of its strategy in developing a preventive program should include in the program a method to transfer a substantial part of the continuing cost to the "community", using both private and public funding sources. Nemours should create separate 501(c) 3 organizations to execute the prevention programs. This will enable the foundation to enlist community leaders and their resources to be a part of a coalition to address the needs of the community or state. Nemours is in a unique position to provide the **leadership**, the **startup funding**, and the **recruitment** of the right management to do this in Delaware. But in the preventive arena the Foundation needs to shift a substantial part of the long term sustainable cost to others.

After P&G started the "Every Child Succeeds" program in Cincinnati, (a 501(c)3 organization), they stepped out and converted it into a partnership in which the Children's Hospital of Cincinnati is the General Partner, and The United Way, Head Start and other agencies are Partners.

"THE WILMINGTON LABORATORY"
Where is the greatest concentration of needs in the State?



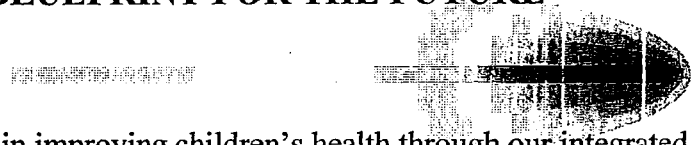
As you have noted, as bad as conditions are in Delaware, the conditions in Wilmington are exceedingly worse. In fact many conditions in Wilmington are even worse than in some third world countries. Rather than trying to address all of these conditions throughout the state at one time, we should initially concentrate in Wilmington. Use Wilmington as a laboratory to determine the best solutions to the broad array of problems facing the city. The city is big enough to be involved in all of the major problems, yet small enough to allow us to deal effectively with each problem. We can know the name of every child, the name of his/her parent/parents, their school situation, etc. We can develop baselines and set goals to prevent these serious conditions. It is my suggestion that we create a new 501(C)3 organization **"The Wilmington Health Initiative"** that would have as its sole mission addressing the serious pediatric health needs within the City. **It would be a great challenge, but an even greater opportunity to meet the needs of children in Delaware.**

THE WILMINGTON LABORTORY - Continued

Looking into how best to initiate these preventive programs in Wilmington I would further suggest that initially we concentrate just on the Infant Mortality/Low Birth Weight problems. It is in these two areas that Delaware is virtually at the bottom nationally (49th and 45th), and where the conditions are actually getting worst every year. Other programs can be implemented as we gain experience, staff and a reputation for solving problems.

It is my suggestion that we create a new 501(C)3 organization, **"Right Start"** that would have as its sole mission the defeat of Infant Mortality/Low Birth Weight Babies. Nemours can make great strides in this cause if we do nothing more than implement the same program that is in effect in Cincinnati, the "Every Child Succeeds" program. It is a program that has proven prevention can succeed if aggressively implemented. It has reduced the Infant Mortality rate to 2.8 for those mothers in the program compared to a rate almost as bad as those in Wilmington/Delaware.

THE FOUR KEY GOALS (from the) "BLUEPRINT FOR THE FUTURE"



- Be a leader in improving children's health through our integrated health system---become a pre-eminent voice for children.
- Care for each and every child as if they were our own.
- Be a great place to work.
- Be effective stewards of all our assets, continually improving them to advance our mission.

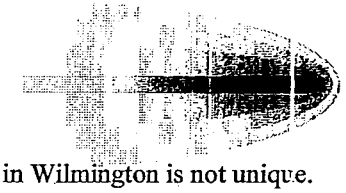
These goals were clearly applicable to the clinical programs - ***But they should be even more applicable to the preventive programs!*** *(with the exception of a "great place to work" where our people would be on the so called 'front line' amidst poverty and the disadvantaged.)*

The Nemours Commitment: I will do whatever it takes…

RECOMMENDATIONS

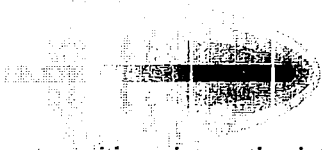
1) **Direct that the "Blueprint for the Future"-- Nemours' Strategic Plan 2008-2012, be amended to aggressively pursue a preventive program in Delaware directed at a full array of health needs that confront the children of that State.**
2) **Recommend that management and the Board of Directors consider the creation of the "Wilmington Health Initiative" and the "Right Start" programs as initial steps in pursuing the preventive mandate of the Foundation within the State of Delaware.**

THE HOPE COMMISSION



The idea to specifically address the serious needs in Wilmington is not unique. The Mayor of Wilmington announced the creation of the HOPE COMMISSION in June 2005. It included 24 members from virtually every civic, government, union, or other non-profit organizations (including Nemours) in Wilmington and the surrounding area. The Commission studied all of the issues facing the City and submitted its report in March 2006 which can be summarized in Nine Key Recommendations: 1)Expand the community policing philosophy as the department-wide approach to fighting and preventing crime, 2)Create a strong advocacy organization to improve the education of City children. 3)Establish Hope Zones. 4)Improve economic development opportunities for businesses to thrive and for residents Citywide. 5)Establish a network of community workers known as Hope Outreach Workers (youth and adult). 6) Coordinate the efforts of the faith-based community in education, youth outreach, violence prevention and ex-offender re-entry. --continued

HOPE COMMISSION----continued



7)Strengthen ex-offender re-entry programs that promote positive reintegration into the community. 8) Embark on a Campaign of Hope for the City of Wilmington. 9) Create a permanent Hope Commission to insure that the action plans in this report are implemented and sustained.

----**The sad aspect of this program is that the health needs of children are almost totally below the radar of the Hope Commission**. With few exceptions, nothing in the recommendations of the Commission addressed the un-met health needs of children. They are focusing on what they consider the most critical areas facing the City: shootings, murder, drugs, gangs, unemployment, re-entry of convicts into the community –the list goes on and on involving primarily social and economic issues.

----**This, however, emphasizes the need for Nemours to accept its responsibility to address the children's health needs in the city.**

THE GOVERNOR'S TASK FORCE ON INFANT MORTALITY

The Governor, recognizing the deplorable situation within the State of Delaware, appointed an Infant Mortality Task Force. The Task Force produced a report in May 2005 detailing 20 recommendations to improve maternal and infant health. The Legislature has made some small appropriations towards correcting this problem. The problem is, however, there is not a coordinated plan to solve the problem. No one is actually in charge of putting together a plan, creating a coalition of the essential parties and devising a plan to fund the project on a sustainable bases. This is the role that Nemours should volunteer to assume---that is to provide the **leadership,** the **start-up funding** and the **building of an organization** to permanently manage this problem into the future. That would be the Mission of **"Right Start".**

THE NEED IS GREAT
THE TIME TO ACT IS NOW

MANY THINGS CAN WAIT. THE CHILD CANNOT.

NOW IS THE TIME HIS BONES ARE BEING FORMED,

HIS BLOOD IS BEING MADE, HIS MIND IS BEING DEVELOPED.

FOR HIM THERE IS NO TOMORROW.

HIS NAME IS TODAY.

Gabriela Mistral 1889-1957

Exhibit 4

MEMORANDUM

TO: Trustees of the Alfred I. duPont Testamentary Trust

FROM: Holland & Knight LLP

DATE: August 23, 2007

RE: Preference for residents of Delaware

This memorandum addresses the meaning of the term "first consideration" and its impact upon the Trustees' duties and obligations to the people of the State of Delaware, which was the subject of discussion at the meeting of the Trustees on July 18, 2007. We were subsequently asked to provide a written analysis and opinion to supplement our oral opinion rendered at the meeting.

Background

The Will of Mr. DuPont provided that Nemours was to use the income it received from the Trust for the "care and treatment of crippled children" or the "care of old men or old women and particularly old couples." On December 24, 2004, the Trustees obtained a Final Judgment from the Duval County Circuit Court (the "Final Judgment"), clarifying and expanding their mission to allow Nemours to offer additional services in the following three categories: a) the care and treatment of persons under 18 who have been deprived of the use or any part of their body due to accident, injury or disease; b) the prevention of one or more of the conditions described in a); and c) the care of individuals over the age 65.

Since the Final Judgment was entered, Nemours has begun to develop its prevention programs consistent with the revised mission. Such programs began in the State of Delaware, but have not yet expanded to the other geographic areas, such as the Delaware Valley or the State of Florida, where Nemours has other health care facilities and programs. These changes, according to the 2006

Exhibit H

Stewardship Report to the Trustees, reflected a change from "largely a biomedical model of care to incorporating a multi-factorial view of health," that has lead to the establishment of Nemours Health and Prevention Services. The Stewardship Report indicates that it is already impacting tens of thousands of children in the State of Delaware, particularly in the area of childhood obesity. Indeed, this Stewardship Report further indicates that the intent is to focus on all aspects of the health of a child, whether it is one that has "acute care or preventative needs, or has one or more chronic conditions requiring active management."

At the urging of Win Thornton, the Trustees are considering a proposal for how Nemours could expand the prevention programs on a larger scale throughout Delaware. In considering this proposal, however, the Trustees have asked for a legal opinion of the nature of their mission, the meaning of the term "first consideration" and their duties to the people of the State of Delaware, particularly with regard to the preventative area set our in category b) above.

As the Trustees deal with the legal aspects, they should keep in mind the summary from the Stewardship Report, reflecting the broad focus of the mission of the Foundation, which requires the Trustees and the Foundation, of necessity, to make crucial choices for the expenditure of their significant, but nonetheless, limited resources. That summary indicates that, as of the close of last year:

> Nemours has created the necessary infrastructure and they are now successfully integrating its patient care, prevention, research, education, advocacy and business activities in order to achieve [the vision of care and services for children that has been adopted by the Foundation by Nemours]. We are committed to becoming a re-eminent voice for children and will continue to provide high-quality, cost-effective services to children through our multidisciplinary holistic and family-centered approach.

Governing Documents

The Trustees' duty to the people of the State of Delaware and the term "first consideration" are addressed in the following provisions of the Will, Stipulation and court judgments:

A. Will

1. Item 9 (as modified by the Final Judgment)- "The general nature and purpose of the Corporation shall be the maintenance and support of, and the making of contributions to, charitable institutions operated for: (a) the care and treatment of children, but not of incurables, under eighteen (18) years of age, who by reason physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, have been deprived of strength, activity or capability for services or use, in any part of the human body; (b) the prevention of those conditions described in (a); and (c) the care of individuals over sixty-five (65) years of age who are in need of supportive or alleviating medical or para-medical care beyond mere food, clothing, and shelter, *first consideration,* ***in each instance,*** *being given to beneficiaries who are residents of Delaware." (emphasis supplied)*

2. Item 9 – "The Board of Managers hereinbefore referred to shall consist of five members...three of said Managers shall be residents of the State of Delaware..."

3. Item 10 – "It is my wish that the people of Delaware needing the care of such institutions shall be properly provided for *before* contributions are made to institutions of any other state of states, *but said Board,* my Trustees concurring, is hereby given *full power to determine what constitutes the necessary reserves* for "the Nemours Foundation: and *what constitutes proper provisions for the Delaware institutions." (emphasis supplied)*

B. Stipulation dated 1/17/80 (1980 Stipulation)

1. Para F(3) – "the Trustees agree that at no time will more than fifty percent (50%) annually of the funds distributed by the Trust to Nemours be spent outside the State of Delaware."

2 Para F(4) – "First consideration, **in each instance,** will be given to the beneficiaries who are residents in Delaware." [Here referring to the two categories then existing].

3 Para G – "G. Services to be Provided in State of Florida: The Trustees will agree to execute an agreement with one or more Florida hospitals to provide clinical facilities and medical and rehabilitative treatment for crippled but not incurable children.

(1) The amounts expended in such agreements shall be limited by the Delaware commitments set forth herein."

C. Final Judgments

1. Final Judgment dated 12/31/71, section XI begins: "While it is clear that Mr. duPont desired first consideration be given to the residents of Delaware, the Trustees were authorized to consider other worthy charitable institutions...Therefore, it is apparent that excess funds may become available for similar charitable institutions outside the State of Delaware whenever there are sufficient funds on hand for such purpose..."

2. Final Judgment date 12/28/04 at ¶A,pg.8 – see A.1. above.

Discussion

There are at least three threshold issues to consider when deciding how to develop any prevention program: first, what Nemours and the Trustees are obligated to do under the terms of the 1980 Stipulation; second, what Mr. duPont intended; and third, what, if anything, is required under the 2004 Final Judgment. Each of these concerns is addressed below.

Obligations under the Stipulation

To begin, the Trustee and Nemours were parties to the 1980 Stipulation, and are therefore bound by its terms. The Stipulation, at paragraph G, provides that "The Trustees will agree to execute an agreement with one or more Florida hospitals to provide clinical facilities and medical and rehabilitative treatment for crippled but not incurable children... The amounts expended in such agreements shall be limited by the Delaware commitments set forth herein." Thus, it was clearly contemplated that Nemours would provide some child health care services within the State of Florida, although the extent of those services is limited by the requirement that at least fifty percent (50%) of the Trust's distribution to Nemours be spent in the State of Delaware. *See*, STIPULATION AT ¶F (3).

Thus, Nemours cannot, in good faith, reduce services in Florida in favor of funding new programs in Delaware. Indeed, at a minimum, the Trustees and Nemours are obligated to perform at least those duties contained in the contracts it has entered into with certain Floirda hospitals. It is our understanding that Nemours is currently spending over 50% of the annual revenues in the State of Delaware, exclusive of the Delaware Valley generally. Thus,the obligations owed to Florida projects re not currently interfering with Nemours' obligations to the people of Delaware. Nevertheless, for the reasons set forth below, Nemours can and should delay the introduction of *any prevention services* to the State of Florida until the new prevention services have been appropriately established (in the Trustees' discretion) in the State of Delaware.

Interpreting the Will

Interpreting Mr. duPont's intent is critical to understanding what the term "first consideration" means and where Mr. duPont would have wanted Nemours to focus its efforts. "First consideration" is not a legal term used in estate planning and, not surprisingly, there is no case law that is helpful in interpreting this phase. Accordingly, we are forced to look to the terms of the entire Trust

agreement for guidance on the extent to which Mr. duPont intended to benefit the people of Delaware.

Without a doubt, the people of Delaware were intended to be the primary focus of Mr. duPont's philanthropy. Indeed, he ensured that the Trust remained focused on Delaware beneficiaries by requiring that the majority of the Board of Managers be from the State of Delaware. Nonetheless, he also clearly intended for Nemours to have a farther reach than just Delaware, and empowered the Trustees to determine "what constitutes proper provisions for the Delaware institutions." *See*, ITEM 10 OF THE WILL. Notwithstanding the obligations incurred under the Stipulation, the Trustees retain that discretionary power to determine Nemours' priorities today.

More importantly, however, we believe Mr. duPont intended to qualify the requirement that Delaware be given "first consideration" by including the clause "in each instance." We believe that this phrase is critical to understanding what Mr. duPont intended. As mentioned above, Mr. DuPont clearly wanted to benefit the people of Delaware first, but he also clearly contemplated that other geographic areas would benefit from this philanthropy. Reading the provisions of the Trust as a whole, and giving effect to the phrases "first consideration" and "in each instance," requires that we interpret the Will to mean that Nemours must introduce each new service to the people of Delaware first. Once that service has been sufficiently funded and properly administered in the State of Delaware, Nemours is free, at the discretion of the Trustees, to introduce such a program to other geographic areas. Thus, the people of Delaware are given the "first consideration" in determining the need and in obtaining sufficient funding for that need. Once that need (or "instance") is sufficiently addressed in Delaware (as determined by the Trustees), however, Nemours may address that need in other geographic areas.

Thus, if Nemours were to implement a program to prevent childhood obesity, it should introduce the program in the State of Delaware first. Once the childhood obesity prevention program is adequately funded and developed in

Delaware, Nemours could then launch similar initiatives in other states, like Florida. Under no circumstances, however, can less than 50% of Nemours' funds received from the Trust be spend on programs outside the State of Delaware.

Giving Effect to the 2004 Final Judgment

As noted above, the Trustees obtained the 2004 Final Judgment to, among other things, expand its mission to include a third category of services that could be offered by Nemours. The Trustees sought the addition of preventative care programs for children, in part, because improvements in medical sciences had reduced the impact of a number of the childhood diseases that Nemours formerly treated. It was not contemplated, however, that the addition of preventative services would reduce current service s or programs in Delaware or other geographic areas. Instead, it was intended to give Nemours more discretion in the services it offered to children as funds previously earmarked for treatment services became available.

Further, the addition of preventative care services was intended to expand Nemours' mission, but did not obligate Nemours to act. Instead, the Trustees retain the discretion to determine what services it offers and on what scale. It would be a mistake to interpret the 2004 Final Judgment as requiring Nemours to elevate preventative care to a priority status over or above the current services offered by Nemours. Indeed, that goes beyond what was contemplated by the Final Judgment. Instead, we believe that the expansion of the mission to include preventative care services should be implemented in the Trustees' discretion, and as funds permit. The Trustees should not feel obligated, however, to cut other services in Delaware or Florida in order to fund new prevention programs. Mr. duPont's use of the phrase "in each instance" makes clear that each program implemented by the Trustees should focus first on the people of Delaware, before looking elsewhere. But that does not necessarily require that all possible preventions programs be launched in Delaware first, before the Trustees can initiate or even continue other programs elsewhere.

Conclusion

Giving effect to the provisions of Mr. duPont's Will and fulfilling his mission compels us to interpret the Will to mean that the people of the State of Delaware are entitled to receive priority in health care services from Nemours. Nonetheless, the Trustees are not obligated to solve all of Delaware's health care problems before any funds can be spent elsewhere. Indeed, doing so would violate the terms of the 1980 Stipulation.

We believe Nemours should not reduce funding for Florida programs that are currently in place, or for which commitments have been made, especially if the reduction was made to favor new prevention programs in Delaware. Indeed, there is no obligation to initiate preventative care programs. The 2004 Final Judgment only added that as a class of services that could be offered if the Trustees, in their discretion, determined they were appropriate to the overall mission of Nemours.

The Trustees have the discretion to determine what programs are funded and what priorities Nemours should address. If the Trustees determine that it is necessary to obtain funds from other programs in order to adequately fund the new preventative programs, we believe that Nemours should first look to the Delaware Valley area before cutting programs in the States of Delaware or Florida. Unlike Delaware and Florida, there is nothing in the Trust, Stipulation or any of the final judgments that requires Nemours to fund programs in the greater Delaware Valley area. The people of the States of Pennsylvania or New Jersey do not share the same entitlement that Delaware has under the Will or that Florida has under the Stipulation. Thus, if the Trustees are persuaded to initiate new services in Delaware, it should be mindful of the obligations due to Florida if it seeks to do so by cutting services elsewhere outside of Delaware or Florida.

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Exhibit 5

William L. Durden
Counselor at Law
1804 San Marco Place
Jacksonville, FL 32207

Paulene Showalter
Legal Assistant

Telephone (904) 353-0454
Fax (904) 425-0920

November 12, 2007

Mr. Winfred L. Thornton
Trustee of the Alfred I. duPont Trust
185 Towerview Drive, Apt. 1205
St. Augustine, FL 32092

Re: Responsibility of Trust and Trustees to Implement "Preventive Care" for Children, with First Consideration, in each instance, being given to Beneficiaries who are residents of Delaware.

Dear Mr. Thornton:

In keeping with the assignment you gave me, I have reviewed very carefully the documentation provided. I understand the PowerPoint presentation (Item 6 in the material), was presented to the Trustees/Members at a meeting on July 16, 2007. At the conclusion of the presentation you made a motion to approve the recommendations shown on slide 42 that directed the Board of Directors to amend the proposed budget to aggressively pursue a preventive program in Delaware directed at a full array of children's health needs in the State. I also understand that Mr. Ed Koren, Counsel for the Trust was present. Following the presentation the issues were discussed but your motion was rejected on a vote of 5 to 1.

Also in keeping with your directions I have worked extensively with Mr. John Grimsley. For the benefit of any party that may not know, John Grimsley has been the outstanding scholar and writer of the trust law in the State of Florida for many decades. I

have not spent time in legal research as it is not my intension to make this a legal brief, but rather my thoughts on the issues looking from almost 30 years representing the Trust and Nemours. Therefore the advice that I will be giving you will be based upon this experience and how I would expect the Court to react to this issue. It is my further understanding that your principle goal is to implement the "Preventive Care" that the Trustees/Members unanimously petitioned the Court to include in the purposes of the Foundation.

Your request for advice can be summarized in the following items:

- What is your responsibility, as a Trustee, to have the Trustee/Members carry out the terms and intent of the Will?
- Who are the beneficiaries of Mr. duPont's Will?
- Do all of the beneficiaries have equal rights under the Will?
- What is the interpretation of the term; "First Consideration, in each instance, being given to beneficiaries who are residents of Delaware"?
- In 2004 the Court approved the Trustee's petition to increase the services provided by the Foundation to include the "Preventive Care." Is this a mandatory provision or a permissive provision?
- Should funds from the Trust distribution be spent on initiatives outside of the "purposes" named in the Will instead of on purposes within the Will?
- Are there grounds to seek a Declaratory Judgment, if the Foundation arbitrarily ignores the need for Preventive Care in Delaware?
- What is your recommendation?

The answers to your questions are as follows:

- ***What is your responsibility, as a Trustee, to have the Trustee/Members carry out the terms and intent of the Will?***

The statutory and common law principles of trust law excuses a Trustee from liability when he makes his position known to the majority and on the record. However, I understand from your view that it is not a question of avoiding liability but, what you feel is your moral responsibility to do all possible to carry out the intent of Mr. duPont's Will. You have the right to petition the Court for a Declaratory Judgment, the question then is whether you should avail yourself of that right. More about this later in my recommendations.

- ***Who are the beneficiaries of Mr. duPont's Will?***

The Beneficiaries are children, but not incurable, who are in need of "Clinical Care" and those children, but not incurable, who would benefit from "Preventive Care" and the Elderly needing supportive care beyond mere food and shelter, First Consideration, in each instance, being given to beneficiaries who are residents of Delaware. The second group of children (those needing Preventive Care) were added in the Final Judgment of 2004.

- ***Do all of the beneficiaries have equal rights under the Will?***

Yes, but certain priorities are established. (The benefits for the Elderly were limited in the Stipulation Agreement of 1980). There should be no discrimination

between the children other than one would receive clinical care, the other would receive Preventive Care. The other distinction between beneficiaries is the point of residency. The residents of Delaware have "First Consideration, in each instance ...." The Holland & Knight opinion recognizes this also. They say "[w]ithout a doubt, the people of Delaware were intended to be the primary focus of Mr. duPont's philanthropy." The answer to the question is that Delaware residents, in each instance, has a priority to the benefits being offered by the Foundation.

- ***What is the interpretation of the term; "First Consideration, in each instance, being given to beneficiaries who are residents of Delaware"?***

This is one of the cornerstones of Mr. duPont's Will. It is the clearest statement of his intent that exists. This statement of intent was consistently provided in each document, the Stipulation Agreement and the in 2004 Final Judgment. This was the case even after he moved from Delaware to Florida and established residency in Jacksonville. The second phrase of that statement, "in each instance," merely affirms the seriousness of his intent. He wanted no misinterpretation when there might have been a question between two or more competing services.

- ***In 2004 the Court approved the Trustee's petition to increase the services provided by the Foundation to include the "Preventive Care." Is this a mandatory provision or a permissive provision?***

This is a mandatory provision. The new Item 9 of the 2004 Will states: "*The General nature and purpose of the Corporation* ***shall be*** *the maintenance and support of, and the making of contributions to, charitable institutions operated for (a) the care and treatment of children... (b) the prevention of those conditions ....*"

The term **"Shall be"** is clearly a mandatory verb requiring compliance; it is not permissive language allowing discretion on the part of the Trustees. The Trustees unanimously petitioned the Court to expand the services being offered to include "Preventive Care" after determining that such a change would improve the overall health care of children in line with Mr. duPont's vision to alleviate human suffering, and as stated in the petition to the Court, to do otherwise would defeat a material purpose of the Will.

- ***Should funds from the Trust distribution be spent on initiatives outside of the "purposes" named in the Will instead of on purposes within the Will?***

The opinion by Holland & Knight recognizes this. It states, "*If the Trustees determine that it is necessary to obtain funds from other programs in order to adequately fund the new prevention programs, we believe that Nemours should first look to the Delaware Valley area before cutting programs in the States of Delaware or Florida. Unlike Delaware and Florida there is nothing in the Trust, Stipulation or any of the final judgments that requires Nemours to fund programs in the greater Delaware Valley area.*" The same thing is true with respect to funds being spent on Research and Education. Nemours is not a "Research"

foundation or an academic "Educational" foundation. *There is nothing in the Trust, Stipulation or any of the final judgments that requires Nemours to fund* Research or Education. There should be adequate funds available in these three areas to fund the "Preventive Care" programs without adversely affecting programs in Delaware or Florida, particularly with Mr. Ball's funds available for Florida operations.

- ***Are there grounds to seek a Declaratory Judgment, if the Foundation arbitrarily ignores the need for Preventive Care in Delaware?***

You have the right to file for a Declaratory Judgment. The circumstances, facts and the language of the Final Judgment all support taking such action. However, Mr. Grimsley and I both discourage you from filing such a petition. There are two reasons for this recommendation. The first is I believe that Trustees should avoid court action if possible. Secondly, as Holland & Knight predicts, the prevailing attitude of the Court is to affirm the majority position when there are multiple Trustees. Nevertheless with the strong points you have there should be room for compromise. The Business Plan that you outlined to us appears to be a very reasonable plan, and would phase in the expenditures in such a way that there would be little effect, if any, to current commitments. I recommend submitting the Plan to the financial people asking them to estimate the cost of the plan and see if there are the real difficulties they predict or is it just an arbitrary decision to enable them to continue to spend large amounts outside the purposes of the Will. If you go to

Court I think it is imperative for you to consider naming the Attorney General of Delaware as Plaintiff or as a Defendant in such action. I am strongly of the opinion that the Attorney General is a necessary party.

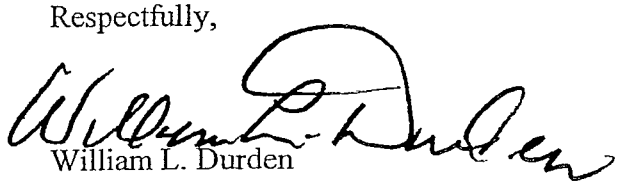
- ***What is your recommendation?***

My first recommendation is to seek a compromise as outlined above. If they approach this solution in good faith and find funds sufficient to carry the "Preventive Care" programs with a minimum impact on current commitments, then you have resolved the issue. If they are unwilling you will have done all possible within your power to protect the interest of the Delaware children. I would therefore suggest that you discuss it with the Attorney General in Delaware. The Courts have held that he has a special interest and in fact represents the interest of the residents of Delaware.

Both Mr. Grimsley and I were surprised to find that the last petition to the Court did not include the Delaware Attorney General as a party to the petition. It could be argued that the petition dealt with an administrative process that did not require Delaware participation. As pointed out above the Courts have held that the Delaware Attorney General has a special interest in that he represents the Delaware beneficiaries, therefore if the petition dealt with Delaware children the Attorney General may not accept this reasoning. This is particularly true when the benefits that ought to be accruing to Delaware children are being denied. This matter should be addressed at some point. It would appear to me that the sooner the better, but not in the context

that the Trust is trying to avoid granting services that would be of great importance to Delaware children. Should the Trustees agree to the compromise as suggested, I would make it a part of the agreement that the Delaware Attorney General be notified and agree to the terms accepted by the compromise.

Respectfully,



William L. Durden

WLD/ps

Exhibit 6

MINUTES OF THE MEETING OF THE MEMBERS OF
THE NEMOURS FOUNDATION,
A FLORIDA NOT-FOR-PROFITCORPORATION,
HELD IN THE BOARD ROOM,
510 ALFRED duPONT PLACE,
JACKSONVILLE, FLORIDA
ON WEDNESDAY, APRIL 22, 2009, AT 9:30 A.M.

The meeting of the Members of The Nemours Foundation was held at the place and date above stated pursuant to written notice given by Recording Secretary Kimberly D. Price.

The following Members participated:

H. M. Durden
J. S. Lord
H. H. Peyton
J. F. Porter III
W. T. Thompson III
W. L. Thornton

Also participating:

Kimberly D. Price, Recording Secretary

Holland & Knight
Edward F. Koren, Partner

Alfred I. duPont Testamentary Trust
David D. Gonino

Mr. Durden served as Chairman of the meeting and Mrs. Price acted as Recording Secretary.

The Chairman announced that there being a quorum, the meeting was open for the transaction of such business as might properly come before it.

The Chairman waived reading of Notice of the Meeting. A copy of the notice, together with a copy of the Agenda, is filed with these minutes.

On motion duly made and seconded, the reading of the minutes of the annual meeting held on January 22, 2009 was unanimously waived and the minutes were approved as submitted.

The Chairman stated the matter for discussion was a proposal to expand preventive care and reminded the members that Win Thornton first made a presentation to the Members entitled First Consideration some time ago and that the Members had continued to have discussion on that subject, the most recent iteration of which was a discussion between Win Thornton and Ed Koren concerning the Holland &Knight legal opinion on this subject.

Mr. Thornton stated that the First Consideration presentation had been in July 2007, that he disagreed with the legal opinion from Holland & Knight and had subsequently retained counsel to advise him on the subject. Mr. Thornton stated he had shared his counsel's response to the H&K opinion on the subject and had spent the last two years trying to reconcile the differences with the other Trustees, but has been unsuccessful.

Mr. Thornton stated he had drafted an amended Holland & Knight opinion and noted that this document had been disseminated to the Trustees prior to this meeting. Continuing, Mr. Thornton stated the differences between Holland & Knight's opinion and the amended opinion relate to his view on interpretation of the Will and subsequent court opinions.

Mr. Koren responded to Mr. Thornton's amended opinion, pointing out that the 1980 stipulation stated that the Trustees, and the Attorney General of Delaware, agree that all decisions made at that time were in the Trustees sole discretion. Additionally, the 1980 stipulation states that all parties agreed that Mr. duPont intended that his Trustees had the right to make all such decisions and that it was within to their discretion to make this decision.

Mr. Koren read the following passage directly from the 1980 Stipulation: "The Attorney General of Delaware agrees that the Trustees have made the commitments described in this agreement in the exercise of their sole discretion and that the Trustees do have the sole

discretion to expend additional funds for the elderly or solely for crippled children but not incurable children in any state in the United States?"

Mr. Koren stated that in fact Nemours is providing preventive care to the tune of $15 to 20 million dollars a year. Mr. Koren stated that until 2004 the choices under the Will were the elderly or the children and in 2004 the Trustees added preventative care, but that this addition does not mean that a specified level of preventive care is mandated or that the Trust must take funds from other programs to fund prevention at a higher level than at the present time.

Mr. Thornton argued that the 2004 decision restated the purposes of the Foundation and mandated that the children in Delaware that need preventive care are beneficiaries of the Will and that the Foundation is obligated to extend the same benefits as the children receiving clinical care.

The Chairman stated that no Trustee has ever disagreed with the mission of providing both clinical and preventive care as well as a certain level of elderly care, but had consistently disagreed that preventive care is mandatory or that the scale and content of such services must be established by the Members.

Mr. Thornton continued and made the following statement that in his opinion should be directed to the Board of Directors of The Nemours Foundation:

> Our conclusion, after reviewing the Will, the Stipulation and Agreement, and the 2004 Final Judgment, is that "Preventive Care" is a "Purpose" of the Foundation that should be treated on an equal basis with Clinical Care, that the "Beneficiaries ", those children needing preventive care, are of equal standing with the children needing clinical care, and the obligation of the trustees to provide services to the children needing preventive care is no less than the obligation it has to the children needing clinical care. With respect to the discretionary authority of the Trustees; the Trustees should not undertake exercising their discretionary powers in any manner where it would be inconsistent with Mr. duPont's intent or inconsistent with the purposes of the Foundation.

This interpretation is the interpretation that should be extended to the Directors, thus establishing the standards expected of them in the oversight of the Foundation with respect to the Preventive Care purpose."

Mr. Thornton moved that this interpretation of the Will and the judgments of the Court be put forth to the Board of Directors of Nemours by the Trustee/Members. The motion, seconded by John Lord, was followed by a lengthy discussion by the Trustees, with a review of the Will, past court judgments, as well as the Foundation's current financial situation. Additionally, the Trustees reviewed correspondence from Dr. David Bailey outlining the current state of Nemours and the substantial negative distraction that this argument was creating for the management team.

The Chairman stated the motion was to accept the interpretation of the Will and material supplied by Mr. Thornton, and called for a vote of the Trustees. The motion failed to achieve any vote other than Mr. Thornton's and was declined by a five to one majority vote.

The Chairman stated that it is his belief that an individual Member should not be permitted to impose their own agenda upon the management of Nemours.

Mr. Thornton stated his letter and recent conversation with Dr. Bailey were appropriate, and that a Director is entitled to discuss his or her personal views regarding the Foundation with Foundation management. Mr. Thornton also said that he agreed that no Director should mandate his or her will on any issue involving the Foundation.

Mr. Thornton then moved that the Trustees petition the court for a declaratory judgment on the interpretation of the Will, the 1980 Stipulation agreement and the 2004 Judgment of the Court with respect to preventive care and the dispute between Mr. Thornton's interpretation and the Holland & Knight legal opinion. The motion died for failure to receive a second.

The Chairman stated he would not call for a second to the earlier motion that it is not appropriate or permitted for Members to impose their own agendas upon the management of Nemours, but would rely on the fact that Mr. Thornton agreed that a Director should not

impose his own agenda on Nemours management. Mr. Lord thanked Mr. Thornton for his agreement with this motion.

The Chairman inquired of counsel if the meeting and discussion had been conducted appropriately. Mr. Koren stated that the Will stated that a decision of a majority in all cases, if all members are given an opportunity to be heard, shall constitute the decision of the Board.

The Chairman stated the meeting would now be in Executive Session and excused Mr. Gonino and Mrs. Price.

There being no further business to come before the Members, the meeting was adjourned at 10:03 a.m.

Recording Secretary

H. M. Durden, Chairman

J. S. Lord

H. H. Peyton

J. F. Porter III

W. T. Thompson III

W. L. Thornton

Exhibit 7

IN THE DISTRICT COURT OF APPEAL,

FIRST DISTRICT, STATE OF FLORIDA

WILLIAM B. MILLS, as Trustee) under the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased,

Appellant,

vs.

EDWARD BALL, J.C. BELIN, T.S. COLDEWEY, ALFRED duPONT DENT, W.L. THORNTON and FLORIDA FIRST NATIONAL BANK OF JACKSONVILLE, as Trustees) under the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased; T. EDWIN AUSTIN, JR., State Attorney in and for the Fourth Judicial Circuit of the State of Florida; and THE NEMOURS FOUNDATION, a corporation organized under the laws of Florida,

Appellees.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED.

CASE NOS. MM-261 and MM-282

OFFICE OF PRESIDENT

MAR 19 1980

Opinion filed March 17, 1980. WLT/JCB Declaratory Judgment Trustees

An Appeal from the Circuit Court of Duval County.
Thomas D. Oakley, Judge.

John H. Wilbur, Christine Rieger Milton, and James F. Valenti, Jr., of Milam & Wilbur for Appellant.

Fred H. Kent, William L. Durden and Fred H. Kent, Jr., of Kent, Watts, Durden, Kent & Mickler for Appellees Ball, et al; and E. Earle Zehmer, C. Warren Tripp, Jr., and William A. Bedell, Jr., of Bedell, Bedell, Dittmar & Zehmer for Appellee Dent.

McCORD, J.

These are consolidated appeals from a partial final judgment in a declaratory judgment action brought below by all of the trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, with the exception of

William B. Mills, who was made a party defendant since he was not in agreement with the contentions of the other trustees on the questions presented for adjudication. The Will and Codicils of Alfred I. duPont established a trust to be administered by four trustees named in the Will (the Will and Codicils named certain alternates in the event those named as trustees were not living at the time of his death and also provided for the surviving trustees to elect replacements to fill vacancies occurring among the trustees). In 1965 the trustees determined to elect additional trustees and Messrs. T.S. Coldewey and Alfred duPont Dent were elected. Subsequently, in 1967, the then six trustees determined to elect two additional trustees and Messrs. J.C. Belin and W.L. Thornton were elected. It is these additions to the trustees that are in controversy in this phase of the lawsuit. Trustee Mills contends they are invalid, and the remaining trustees contend otherwise. The trial court in the supplemental declaratory judgment which formed the basis for the partial final judgment here on appeal defined the issues tried and determined by that judgment as follows:

"I. Whether Messrs. Coldewey and Dent in 1965, and Messrs. Belin and Thornton in 1967, were validly elected as Trustees?

II. If the Will does not authorize the Trustees to increase the number of individual Trustees without Court authorization, in view of the facts and circumstances existing in 1965 1967, should the Court now expressly approve the actions of the Trustees in electing Coldewey and Dent in 1965, and Belin and Thornton in 1967?

III. Whether this Court has the power to appoint additional Trustees of the duPont Trust, and to confirm their prior actions as Trustees?

IV. Are Petitioners or Defendant Mills precluded from challenging the legal status of the additional Trustees?"

In relation to these issues the trial court made the following findings of fact:

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"Alfred I. duPont executed his Last Will & Testament on November 19, 1932. Subsequently, Mr. duPont executed Codicils thereto dated March 4, 1933, and January 15, 1935, respectively. Mr. duPont died a resident and citizen of Duval County, Florida on April 29, 1935. His Last Will & Testament and Codicils thereto were admitted to probate by Order of the County Judge of Duval County, Florida, dated May 25, 1935. The executors administered the Estate and distributed the remaining assets to the Trustees.

The entire residuary Estate of Mr. duPont was placed in the Testamentary Trust. Except for several small annuities, Mrs. duPont was the sole beneficiary of the Trust for life. During her lifetime therefore, and at all times material to the issues of fact and of law herein determined and the declarations announced herein, the Alfred I. duPont Testamentary Trust was entirely a private, as opposed to a charitable, trust. Upon her death, the Trustees were instructed to:

> '. . . cause to be incorporated a corporation for charitable purposes, to be designated and known as "The Nemours Foundation" . . . and my Trustees are hereby directed to pay over, at covenient intervals, to the said corporation, the net income of my estate, subject to the annuities and legacies hereinabove mentioned for the purpose of maintaining the said Estate of "Nemours" as a charitable institution . . . .'

Mrs. duPont and the other Trustees of the Estate caused the creation under the laws of Florida of The Nemours Foundation as a non-profit charitable corporation. They also caused to be constructed, maintained and operated by The Nemours Foundation on the grounds of Nemours in Wilmington, Delaware, the Alfred I. duPont Institute, a charitable hospital operated for the care and treatment of crippled children. After completion of the hospital, Mrs. duPont irrevocably assigned to The Nemours Foundation an undivided 12 percent of her income from the Trust, from which the cost of operating the hospital at Nemours was provided.

Upon Mrs. duPont's death, except for several small annuities still being paid out, the entire income from the Trust became payable to The Nemours Foundation. Because of the large additional sums that became available to the Foundation, the Trustees originally filed this action to obtain constructions of the Will of Mr. duPont and to receive instructions of the Court as to the authorized use of such additional funds, so as to properly implement Mr. duPont's testamentary instructions.

This Court, in the final judgment entered herein on December 31, 1971, declared that:

'Based upon the evidence and the law applicable thereto, the Court finds that the Last Will and Testament and Codicils thereto of Alfred I. duPont require the Trustees to establish, maintain and operate a charitable institution. The charitable institution which Mr. duPont's Trustees are required to establish does, in fact, require the construction, maintenance and operation of a hospital as the primary and dominant purpose of the institution. . .' (Emphasis supplied)

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Subsequent to the Final Judgment and in compliance therewith, the Trustees have commenced implementation of a plan to establish at 'Nemours' a modern hospital complex, which will cost in excess of sixty million dollars to construct and equip. Since the present Trustees would be required to enter into binding agreements for the expenditure of approximately sixty million dollars for the purposes hereinabove set forth, they, pursuant to this Court's Order dated December 31, 1971, made application to the Court to have their legal status as Trustees determined and declared.

The Will and Codicils thereto named three individual trustees: Mrs. Jessie Ball duPont (Mr. duPont's widow), Edward Ball (Mrs. duPont's brother), and Reginald D. Huidekoper (Mr. duPont's son-in-law), and a corporate trustee, The Florida National Bank of Jacksonville, Florida. Said trustees qualified and received distribution of the residuary estate from the executors in 1939. The principal assets received by such trustees and their inventory value totaled $54,666,061.

It is apparent from the Trustees' minutes and other evidence, oral and documentary, in the record herein, that from the very beginning the Trustees sought to implement the plans and purposes expressed by Mr. duPont during his lifetime. The trustees in 1965 still retained ownership of substantially all of the assets owned by Mr. duPont at the time of his death. They still owned the E.I. duPont Company stock, the stock in the Florida National Group of banks, and the stock in St. Joe Paper Company which had been acquired by merger of other corporations in which Mr. duPont owned stock into St. Joe Paper Company. The Trustees took an active part personally in the expansion and management of the banks owned or controlled by the trust, proceeded with the expansion of the paper mill at Port St. Joe, Florida, acquired more timberlands in West Florida and South Georgia, and continued the development and operation of the various other businesses owned by Mr. duPont, such as Apalachicola Northern Railroad Company and St. Joseph Telephone & Telegraph Company.

The Alfred I. duPont Trust in twenty-six years changed from a basically passive to a very active Trust. That fact is demonstrated by documents admitted into evidence and testimony of petitioner Trustees themselves, which show that the assets of the Trust changed and increased in size and complexity from 1939 to 1965 in the following ways:

1. St. Joe Paper Company, or its wholly-owned predecessor corporations, owned 372,533 acres of woodlands in 1939. By 1965, this figure had increased to 996,294 acres; by 1967, the acreage owned by St. Joe had increased to 1,003,137 acres of woodlands.

2. St. Joe's paper mill at Port St. Joe had been built, and had been enlarged substantially from a small mill costing $7,200,000 to a much larger mill, together with a corrugator, bleach plant, and 17 box plants, at a cost of more than $97,000,000.

3. St. Joe had acquired overseas operations in Ireland in 1964 and 1965.

4. St. Joe Telephone and Telegraph Company, which was owned by Mr. duPont prior to his death, had expanded its services from 167 telephones in 1930 to 8,996 telephones in 1965 and to 10,203 telephones in 1967.

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5. Apalachicola Northern Railroad, which was owned by Mr. duPont at the time of his death, had grown from $3.1 million in assets in 1934 to 8.5 million in 1965.

6. The Florida National Group of Banks had grown from eight banks, with a book value of $2,226,000 and deposits of $27.3 million in 1939 to thirty banks, with a book value of $79.3 million and deposits of $771 million, in 1965.

7. The Florida East Coast Railway, acquired since 1939, had become a major asset of the Trust. By 1967, the FEC had assets of $87.8 million. Operating revenues of the FEC were $24.3 million in 1965 and $23.6 million in 1967.

8. One of the measurements used by the lay and expert witnesses to indicate the growth in the corpus of the Trust was that of the dollar value of such assets. The stated book value or cost of the assets as reflected in the reports of the Trustees to this Court in 1939 was $54,666,061.02, and the stated value on December 31, 1965, was $103,277,768.64.

9. The only testimony submitted as to the market value of the assets in September of 1939 was that such assets were worth approximately $72,500,000.

10. The only testimony as to market value of the Trust as of December 31, 1965, was $655.6 million. This estimate utilized market value for the traded securities and attempted to evaluate the one million acres of land and other investment real estate owned by St. Joe Paper Company, but the value assigned ($254 million) to the one million acres of woodlands, the investment properties owned by St. Joe Paper Company and the standing timber is not relied upon by the Court.

The above-described growth in size, value and complexity of the assets of the Trust was made possible to a great extent by the investment practices followed by the Trustees. Mr. Edward Ball testified that Mrs. duPont, the recipient of all of the net income of the Trust during the time involved, had independent wealth which left her without need for these funds; that she preferred to have the Trusts' funds invested in developing properties with growth value, because she wanted to build up a large trust estate. The Trustees, with her consent and leadership, thus supported the purposes set out in her husband's Will, rather than invest in high-yield properties from which she personally would have received a much larger income. The documentary evidence herein tends to support Mr. Ball's testimony and no evidence to the contrary was offered.

Petitioners called two expert witnesses. One, Dr. George P. Baker, who testified as to the need to elect additional Trustees in 1965 and again in 1967, was particularly well qualified by experience to testify on that subject, having been Dean of the Harvard Graduate School of Business Administration, a director in numerous large corporations, including Mobil Oil, Lockheed Aircraft, and The First National Bank of Boston, and a member of several committees and commissions appointed by the President, including the President's Commission on Postal Organization and the President's Council on Executive Organization. As a Trustee of the

Penn Central Railroad, he had had the experience and responsibility of serving as a Trustee of a diversified operating business with several hundred million dollars of assets.

Dr. Baker testified, based on his investigation and examination of the documents offered in evidence by Petitioners and having heard all of the testimony put on by Petitioners at the trial, that in his opinion, an increase in the number of individual Trustees from three to six in May of 1965, and from six to seven in December of 1967, each, in his opinion, was necessary for the preservation, conservation and betterment of the Trust Estate. He went further, adding that 'actually failure to do so would have bordered on irresponsibility.'

The Court does not base its decision on that point on Dr. Baker's testimony but does consider it a respected source of support to the conclusions independently reached by it.

Mr. Huidekoper died in 1943. Mr. Elbert Dent succeeded him as a Trustee by virtue of his designation as such in a codicil to Mr. duPont's Will. He served as one of three individual Trustees, along with Mrs. duPont and Mr. Ball, until his sudden and unexpected death in May, 1965. During that time, the corporate Trustee had possession and custody of the trust assets, and performed the trust accounting functions, while the individual Trustees, Mrs. duPont, Mr. Ball and Mr. Elbert Dent, devoted substantially all of their time to the business activities of the trust and the management of its assets. They served as key officers and directors of the businesses controlled by the trust, and helped effectuate the considerable growth described above.

The death of Elbert Dent in May, 1965, left the two remaining individual Trustees in a serious predicament. Mr. Dent had been the youngest of the three individual Trustees and logically should have outlived the other Trustees and arranged for an orderly succession of Trustees. Mr. Ball then was 78 years old, and had suffered at least one serious heart attack, causing hospitalization of five or six weeks. Mrs. duPont was 82 years old and severely limited in her physical activities by reason of a broken hip. The evidence showed that she then was attended by nurses 'around the clock.' Advancing age and developing infirmities were substantially limiting the ability of these individual Trustees to continue management of the Trust assets and to oversee the operation of The Nemours Foundation. Both Mr. Ball and Mrs. duPont had lived long beyond the life expectancy which they had at the time of Mr. duPont's death.

Faced with those circumstances, the surviving Trustees, Mrs. duPont, Mr. Ball and a representative of the Florida National Bank, met at Nemours on May 10, 1965, two days after Elbert Dent died, elected William B. Mills to fill the vacancy created by the death of Mr. Elbert Dent and then elected three additional individual Trustees, Tom S. Coldewey, Alfred duPont Dent and A.L. Bargraves. All of the new Trustees, except Mr. Alfred Dent, were vice-presidents of St. Joe Paper Company. Mr. Mills had also been, for about a month, president of Florida National Bank of Jacksonville, the corporate trustee. Alfred duPont Dent, Mr. duPont's grandson, had been familiar with the estate's operations through the participation of his father and mother in

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(the estates activities and was experienced in the) the estate's activities and was experienced in the investment and stock brokerage business. (investment and stock brokerage business.)

Counsel for Mr. Dent read into the record statements from a deposition of Mr. Mills that Mr. Ball advised all of the Trustees at the meeting on May 10, 1965, when he and the three additional Trustees were elected, that the Trustees had been advised prior to that time by Mr. B.P. Adair, attorney for the Trust, that they had the power to add additional trustees under the express terms of the Will. The trustees, apparently for that reason, made no attempt to seek court approval of such additional trustees.

Mr. Edward Ball testified that the factors related above were discussed and taken into consideration by him, Mrs. duPont and Mr. Mills, who then was president of the corporate trustee, before the trustees decided to elect additional trustees on May 10, 1965. He also testified without objection from any party, that they then agreed that it was not only desirable but necessary to do so. He said that he agreed to do so because he deemed it best for the conservation, protection and betterment of the Estate to do so.

Defendant Trustee Mills was in the courtroom throughout Mr. Ball's testimony. Despite the fact that he had denied in his answer that such additional Trustees were legally elected, he never took the witness stand to support his position or to testify that any of the testimony given by Mr. Ball or that of the other Trustees regarding the decision to elect additional Trustees was or was not true.

Petitioners submitted testimony that the election of the three additional Trustees did not long meet the needs of the Trust Estate for several unanticipated and unforeseen reasons.

First, Mr. Haygraves resigned as a Trustee less than nine months after his election and his resignation was accepted at a special meeting of the Trustees on January 7, 1966. During the same nine-month period, Mr. Alfred Dent suffered serious injuries in an automobile accident, which kept him hospitalized for several weeks and disabled him from participating as an active Trustee for more than a year. Mr. Mills suffered serious problems with his hip which required special surgical techniques and lengthy convalescence. Mrs. duPont's health continued to worsen and she became even less active in the affairs of the Trust during 1966 and 1967. She never attended a Trustees' meeting after May 10, 1965. A second fall and serious injury to her other hip had all but totally disabled her.

An amendment to the Federal Bank Holding Company Act, which removed the Trust's exemption from its provision, was enacted into law. It required the Trust to sell either its bank stock or all of its other operating assets. Finally, the Florida East Coast Railway strike was still going on, and the plans and efforts to modernize and streamline the railroad's operation were moving forward. By reason of those circumstances, the Trustees recognized that it was necessary to the conservation, protection and betterment of the Trust Estate to add one or more additional trustees.

At a special meeting of the Trustees held on December 4, 1967, on motion by Defendant Mills and unanimously

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carried, it was 'RESOLVED that the increasing responsibilities and duties placed on the Trustees are such as to require an additional Trustee, with special qualifications to supervise certain interest areas of the Trust.' Messrs. W.L. Thornton and J.C. Belin then were elected, one apparently to fill the vacancy created by Mr. Hargraves' resignation and one to fill the newly created position."

Petitioners Ball, Belin, Coldewey, Thornton and Florida First National Bank of Jacksonville asked the trial court to construe the Last Will and Codicils as giving the trustees therein provided for the power, to be exercised at their discretion, to elect additional trustees of the estate if they deemed it best for the conservation, protection and betterment of the estate. They asserted that on May 10, 1965, and December 4, 1967, when the then incumbent trustees elected additional trustees, they deemed it best for the conservation, protection, and betterment of his estate to do so; that the evidence demonstrated that the election of additional trustees was in fact for the conservation, protection and betterment of the estate and that Coldewey, Dent, Belin and Thornton were validly elected trustees.

Petitioner Dent asked the court to decide that, even thou the language of the Will and Codicils does not expressly grant authority to add additional trustees, ample authority exists under the common law and applicable statutes for the court to authorize such additional trustees upon a showing of changed conditions and that such additional trustees appear to be conducive to the better administration of the trust; that the election of the additional trustees was required for the conservation, protection and betterment of the trust estate and was necessary to the continued management of the estate to accomplish the trust purposes; and that the election of the additional trustees was legally valid.

The State Attorney of the Fourth Judicial Circuit, defendant below, representing the unknown charitable beneficiaries of the trust, argued that the broad powers of the

Will gave the trustees authority to appoint additional trustees and that if it did not, that either under the statutory or common law provisions of deviation, the deviation should be approved in this instance.

Appellee, The Nemours Foundation, asked the court to rule that appellant Mills and appellees are precluded from challenging the legal status of the additional trustees under the doctrines of estoppel, laches, res judicata and waiver. The trial court, however, did not rule on that issue because it considered it would be premature to rule on such at this time in view of the restricted nature of the testimony permitted by its pretrial order and its declaratory judgments announced in its supplemental declaratory judgment.

Appellant Mills contended throughout that the elections of the additional trustees were invalid.

In construing the Will and Codicils, the trial court found that Alfred I. duPont conferred upon the trustees and vested in them the widest powers and the greatest discretion. It pointed to Item 6(h) which authorized them generally in the administration of his estate, "to do every and all things that they may deem best for the preservation, protection and betterment of my estate, as fully and completely as I might do, personally, were I alive and able to act for myself." The trial court found that the Will makes plain Mr. duPont's intent and purpose to leave to the discretion of his trustees the time and manner of doing the things which he charged them with doing; except where the Will made express provision otherwise, that there is no manifestation in his Will of an intent to limit the individual trustees thereunder to a maximum of three; that refusal by the court to allow the trustees the broad powers which Mr. duPont intended to vest in them would tend to defeat, and in 1965 and 1967 probably would have defeated, his paramount

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purpose in creating the trust estate. The court found that the Will and Codicils vested in the trustees the discretionary power to appoint additional trustees to those provided for in the Will, if they deemed it best for the conservation, protection, and betterment of the estate to do so; that the trustees at the times of election of additional trustees did deem it best for the conservation, protection and betterment of the estate to elect the additional trustees and that the additional trustees were validly elected.

In so ruling the trial court stated as follows:

> "7. Where there has been a change of circumstances after the creation of the Trust and it is possible to find a manifestation of intention by the settlor that the trustee may adjust his conduct to the change and act as he would not otherwise be intended to act, the trustee is not deviating from the terms of the trust in so acting. Scott on Trusts, 3rd Ed., Sec. 167, pp. 1268.
>
> 8. The jurisdiction of equity to enforce trusts should and does include power to vary the details of administration which the settlor has prescribed in order to secure the more important result, namely, obtaining for the beneficiaries the advantages which the settlor stated he wished them to have. Bogert, 2nd Ed., Sec. 561 p. 129.
>
> 9. It appears to the Court that Mr. duPont, when preparing his Will, anticipated that conditions such as those which confronted his Trustees in 1965 and 1967 would arise during the administration of his Estate, and that he intended to give his Trustees all powers necessary to enable them to solve such problems by including those expressly stated in Item 6(b) and Item 6(c).
>
> 10. This Court has the power to ratify acts of the Trustees in electing additional Trustees in 1965 and again in 1967 if it is of the opinion that such consent would have been forthcoming if it had been requested at that time. [Citations omitted.]
>
> 11. This Court has the power and, where facts and circumstances require, has the duty to ratify, by proper Order, the actions of the then incumbent Trustees in 1965 and 1967 in electing Coldewey, Dent, Belin and Thornton as of the date of their respective elections and to confirm the legal status of each named individual to act as a Trustee of the Estate from the date of his election."

In discussing the other alternative argued by appellee Dent, the court said:

> "14. The Court has the power to grant to a trustee a power which is highly convenient or necessary to the proper execution of the trust but which the settlor did

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(NOT expressly give to the trustee, BOGERT ON TRUSTS)

not expressly give to the trustee, Bogert on Trusts, Handbook Series, Fifth Edition, Sec. 38, p. 319, citing Wallace v. Jullier, 147 Fla. 420, 3 So.2d 171 (1940).

15. This Court on May 10, 1965, and December 4, 1967, had the power, under the common law and the then existing circumstances, to permit the then incumbent Trustees of the Alfred I. duPont Testamentary Trust to deviate from any restrictions and conditions then contained in Mr. duPont's Will and elect additional Trustees for cause shown.

16. Even if the provisions of the Will should be read so as to expressly restrict the power of trustees to add additional trustees, nevertheless this Court is authorized by Sections 737.403(1), 737.502, and 737.507, Florida Statutes (1977), to permit the trustees to deviate from such restriction for cause shown.

17. The language of that statute conditioning the power of deviation upon a showing of 'cause' means that the trial court may, in its discretion, approve the deviation upon a finding that it is reasonable and not arbitrary or capricious.

18. This Court has power to ratify and approve actions of the Trustees in changing the number of individual trustees, if the Court could have done so in 1965 and 1967 under the common law and its then inherent power."

The trial court found the election of the additional trustees to be valid under either or both of the alternatives stated above--(1) the broad powers of the Will gave the trustees power to amplify their number, and (2) even if the Will did not grant the trustees such power, the court, under the evidence presented, was authorized to approve and ratify, and did approve and ratify, the appointment of the additional trustees. While we disagree with the former, we agree with the latter.

Mr. duPont did give his trustees very broad powers in the administration of the trust under Item 6(h) of the Will, but we are unable to conclude from this, as did the trial judge, that the power to increase the number of trustees was included therein. Paragraph (h) is one of 17 powers granted to the trustees under Item 6 of the Will. Reading Item 6 in its entirety indicates that it deals only with the powers of the four trustees in asset management of the trust. Item 6 does not pertain to the internal structure of the trust administration. Under the doctrine of ejusdem generis, as applied to construction of this Will, this general powers

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clause is limited to matters similar to those enumerated within the particular portion of the Will containing the general clause. Compare Given v. Hilton, 95 U.S. 591, 24 L.Ed. 458 (1877), in which the United States Supreme Court held:

> "It is doubtless true that in the construction of wills, as well as of statutes, where certain things are enumerated, and a more general description is coupled with the enumeration, that description is commonly understood to cover only things ejusdem generis with the particular things mentioned. This is because it is presumed the testator had only things of that class in mind . . . "

There is nothing in the Will of Mr. duPont to indicate that the provisions of Item 6(h) were intended to reach beyond the management of the trust corpus. Item 5 of the Will is the item which deals with the trustees. It vests certain property in the trustees, appoints the original four trustees, and sets forth the details for their succession. It provides only for successors to the original four trustees. If Mr. duPont had intended to give the trustees authority in their discretion to add additional trustees, he would have certainly mentioned it specifically in his Will. It is not reasonable to conclude that he intended such authority to be included in the general powers of the trustees contained in the item dealing with asset management. We, therefore, disagree with and do not find competent substantial evidence to support the trial court's finding that Mr. duPont anticipated the conditions such as those confronting his trustees in 1965 and 1967 and intended to give them all powers necessary to enable them to solve such problems, including power to increase their number.

We agree with the trial court's ruling that if the trustees were not authorized to amplify their number, the trial court had authority to approve the appointment of the additional trustees and declare them to be valid trustees pursuant to the evidence presented in this case. As pointed out by the trial court, Florida courts are authorized by

statute to permit deviation by trustees from restrictions in statute to permit deviation by trustees from restrictions in trust instruments "for cause shown." §737.403(1) and §737.507, Florida Statutes (1977). §737.507 provides as follows:

> "Power of court to permit deviation.-- This part does not affect the power of a court to relieve a trustee from any restrictions on his powers and duties that are placed upon him by the governing instrument or applicable law for cause shown and upon complaint of the trustee, state attorney, or an affected beneficiary and notice to the affected parties." (Emphasis supplied.)

§737.403(1) as pertinent here is the same. Appellee Mills contends that the above statutes should be construed to require the restrictive rule stated in the Restatement (Second) of Trusts, §381:

> "The court will direct or permit the trustee of a charitable trust to deviate from a term of the trust if it appears to the court that compliance is impossible or illegal, or that owing to circumstances not known to the settlor and not anticipated by him compliance would defeat or substantially impair the accomplishment of the purposes of the trust."

In this respect appellee Mills quotes from 30 Fla.Jur., Statutes §112 as follows:

> "Statutes are to be construed with reference to appropriate principles of the common law. And, when possible, they should be so construed as to make them harmonize with existing law, and not conflict with long settled principles."

While this statement of the law is generally applied, a showing of good cause as mandated by the Florida statute is such a far cry from the strictures of §381 in the Restatement (Second) of Trusts that we are unable to find that the Legislature intended such a result. If the Legislature had intended to place such restrictions on the court, it would have been more restrictive in the language used in §§ 737.507 and 737.403(1).

In naming four trustees and providing for their succession, Mr. duPont neither directed that the trustees not be expanded in the future nor that they not be diminished in the future. We have no clear expression that Mr. duPont actually intended that there be no future change in the

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number of trustees. We have only the fact that he initially named four trustees to administer the trust. The record shows that the trustees' action in increasing their number was upon the advice of their counsel that they had the power under the Will to take such action. Its validity was not questioned until some years later. The trial court was entirely correct in its determination that, under the evidence presented in this case, the additional trustees were highly convenient or necessary to the proper administration of the trust; that their election was reasonable and not arbitrary or capricious and should be approved. The circumstances shown by the trial court's findings of fact established good cause and fully authorized the trial court's nunc pro tunc ratification and approval of the appointment of the additional trustees.

Appellant relies heavily upon the opinion of the Court of Civil Appeals of Texas, Houston, (14th Dist.) in Moody v. Haas, 493 S.W.2d 555 (1973). There the settlors of a very large charitable trust had provided for three trustees. The three subsequently expanded their number to seven. The trial court declined to enjoin the increase, and the Court of Civil Appeals reversed. There, unlike here, the evidence showed no need for an amplification of the number of trustees, the court pointing out:

> "As we have noted the 'size' of the Foundation, the value of its assets, is less than when it was established. Its 'functions' have been well within the boundaries of the stated purposes of its charity. Its 'complexity' is of less degree by virtue of the disposition of certain properties. There is no evidence of the existence of facts relevant to those facets of the Foundation which would authorize a departure from the settlors' expressed intent as to the structure by which their charity was to be administered."

Appellant Mills contends that an additional point which this Court should determine on this appeal is whether, even if the expansion of the board of trustees in 1965 or in 1967 had been appropriate, the trial court committed reversible error in approving the particular individuals elected at

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(those times. This was not one of the issues ruled upon by those times. This was not one of the issues ruled upon by the trial court in the partial final judgment here on appeal. The trial court severed that issue for a separate trial.

We have considered appellant's remaining point--whether appellant has been denied procedural due process throughout this litigation. We find no denial to appellant of procedural due process.

AFFIRMED.

SMITH, L., and WENTWORTH, JJ., CONCUR.

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Exhibit 8

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA.

ALFRED duPONT DENT,	:	NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND DISPOSITION THEREOF IF FILED.
Appellant,	:	
v.	:	CASE NO. BE-445
J. C. BELIN, F. S. COLDEWEY W. L. THORNTON, WILLIAM B. MILLS, and NCNB NATIONAL BANK, as Trustees of the Alfred I.duPont Testamentary Trust, and JIM SMITH, as Attorney General of the State of Florida,	:	
Appellees.	:	

Opinion filed January 30, 1986.

An Appeal from the Circuit Court for Duval County. Lawrence D. Fay, Judge.

M. S. Atwater, Jr. of Atwater & Fagan, Jacksonville, for Appellant.

Fred H. Kent, Jr. of Kent, Watts & Durden, Jacksonville, for Appellees; Walter M. Meginniss, Assistant Attorney General, Tallahassee, (for unnamed beneficiaries of trust).

McCORD, Guyte P. Jr. (Ret.), Associate Judge.

Alfred duPont Dent appeals from an order dismissing his petition for declaratory judgment with prejudice. We reverse.

Dent, one of six trustees of the Alfred I. duPont testamentary trust established in 1935, sought from the other trustees an increase in compensation set by the will at $5,000 per year. When this proposal was defeated, Dent filed a petition for declaratory judgment seeking a

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declaration of his right, as a single trustee, to apply to the circuit court for the deviation he desired.

The remaining trustees responded with a motion to dismiss the petition, alleging that the trial court had no jurisdiction under the declaratory judgment statutes to consider Dent's petition and, on the merits of the inquiry, that he alone could not seek deviation from the trust. The trial court, without explanation, dismissed the petition with prejudice.

The test of the sufficiency of a complaint in a declaratory judgment proceeding is not whether the complaint shows that the plaintiff will succeed in getting a declaration of rights in accordance with his theory and contention, but whether he is entitled to a declaration of rights at all. Durand v. Metropolitan Dade County, 472 So.2d 865 (Fla. 3d DCA 1985). See also Bartholf v. Bartholf, 108 So.2d 905 (Fla. 1st DCA 1959)(the fact that a declaration may or must be against the complainant does not destroy the right to apply for declaratory judgment). Therefore, appellees' arguments below as to the merits of Dent's inquiry were misplaced and the proper issue was his entitlement to a declaration of rights.

The declaratory judgment act is to be liberally administered and construed. Section 86.101, Florida Statutes (1983). Section 86.041 provides that <u>any person</u> interested as a trustee in the administration of a trust may have a declaration of rights to determine <u>any question</u> arising in the administration of the trust (emphasis supplied). The petition itself must show a bona fide, actual, present, practical need for the declaration, deal

with a present state of facts, show that a right of the complainant depends on the facts, involve a person with an actual, present, adverse and antagonistic interest in the subject matter, place the adverse interest before the court and seek more than advice or the satisfaction of curiosity. 19 Fla.Jur.2d Declaratory Judgments Section 9 (1980); May v. Holley, 59 So.2d 636, 639 (Fla. 1952). The circumstances of this case demonstrate fulfillment of these criteria.

The order granting the motion to dismiss the petition with prejudice is therefore reversed and the case remanded for consideration of the petition on its merits.

ERVIN and WIGGINTON, JJ., CONCUR.

Exhibit H

Exhibit 9

EXHIBIT 9

Miscellaneous documents

Exhibit 9 A	Final Judgment, Judge Gooding Dec 31, 1971
Exhibit 9 B	Stipulation and Agreement Jan. 17, 1980
Exhibit 9 C	Appellant Decision; JJ-388, KK-179
Exhibit 9 D	Final Judgment, Judge Beverly Dec. 2, 1994 (Good history of Trust litigation)
Exhibit 9 E	Procedures and Practices
Exhibit 9 F	Letter to Dr. Bailey concerning Preventive Care
Exhibit 9 G	Financial results since Prevention was approved
Exhibit 9 H	Mr. duPont's original Will

EXHIBIT 9 A

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

CIVIL ACTION NO. 71-7001
DIVISION D

EDWARD BALL, J. C. BELIN,
T. S. COLDEWEY, ALFRED duPONT DENT,
WILLIAM B. MILLS, W. L. THORNTON
and THE FLORIDA NATIONAL BANK OF
JACKSONVILLE, as Trustees under the
Last Will and Testament and Codicils
thereto of Alfred I. duPont, Deceased,
and THE NEMOURS FOUNDATION, a
corporation not for profit under the laws
of Florida,

Petitioners,

vs.

DONALD G. NICHOLS, State Attorney in
and for the Fourth Judicial Circuit of the
State of Florida,

Defendant.

FINAL JUDGMENT - Entered 12/31/71

This case is before the Court upon application of the parties for the entry of a final decree. The Court has considered the factual and legal issues raised by the pleadings, the oral testimony, the documentary evidence, memorandum briefs and arguments submitted by counsel. From such consideration, the Court has concluded that the equities of the case are with the Petitioners and that they are entitled to the relief prayed for in their petition.

I. INTRODUCTION

The action is brought under the provisions of the common law and further under the provisions of the Trust Accounting Law (Chapter 737, Florida Statutes,) and the Declaratory Judgments Act (Chapter 86, Florida Statutes) of the State of Florida, and the Florida Charitable Trust Act of 1971 (Chapter 71-256, Laws of Florida.)

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Such use must, of course, have a primary or predominant use as a hospital as distinguished from a mere secondary or incidental use, but it is clear that when the availability of a part of the Mansion House and grounds for public viewing is weighed against the entire intention of Mr. duPont as carried out with the substantial funds he made available for that purpose that such public purposes other than hospital will be at most incidental and would not in any manner whatsoever, interfere with the predominant use of the entire property including the Mansion House and grounds for hospital purposes.

Mr. duPont's Will does provide that:

> " 'The Nemours Foundation' shall be created and maintained as a memorial to my great, great grandfather, Pierre Samuel duPont de Nemours, and to my father, Eleuthere Irenee duPont de Nemours, and a proper tablet shall be erected in the present mansion to so indicate."

and

> "My Trustees shall arrange for the admission of the public to the Mansion and other buildings and the grounds at such times and under such rules and regulations as they may provide."

It should be noted that it is "The Nemours Foundation" and not just the Mansion House or the Estate that is to be the memorial. Furthermore, the Trustees may adopt rules and regulations controlling public visitation.

The Court finds no conflict between requiring parts of the Mansion House and the grounds to be available for public viewing and the operation of the Foundation and the entire Estate as a hospital. It would appear from the size of the funds that will become available that "Nemours" will not only continue to be a hospital, but will be a showplace of such institutions and certainly should be available for public visitation.

IX. CRIPPLED CHILDREN

Dr. MacEwen testified that the activities of the expanded hospital facilities could be utilized in three basic functions: (1) Hospital and medical care for crippled children; (2) Research related to cause and treatment of crippling deformities in children; and (3) Education program for the treatment of crippled children to

Exhibit H

educate personnel involved in the ongoing programs of the hospital as well as cation of those in other areas of the country and world. The first function would be the principal function of the expanded hospital facility with the latter two functions occupying a secondary and incidental roll.

The Court was provided with many authorities defining the phrase "crippled children" and it appears that in its original context, the word "cripple" applied only to those who were orthopedically damaged in one of their limbs. Through the development of the law, it appears that the word "cripple" has now been expanded to include the blind, the mentally incapacitated, and anyone whose physical functions are impaired, including loss of hearing, deafness, cystic fibrosis, harelip, cleft palate, congenital cataract, cerebral palsy, cardiac conditions and silicosis, or any other deformity regardless of whether or not such impaired physical functions or movements are due to an orthopedic condition. It would appear that there is not now any limitation to such definition provided, of course, there is compliance with the requirement of Mr. duPont that such condition not incurable. The best definition of the phrase "crippled children" is contained in the case of In re Lane's Will, 119 N.Y.S.2d 17, where the Court stated:

> "As a result I elect to adopt the same and to define and to determine for the purposes of this proceeding that a crippled child means a person under twenty-one years of age who, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, has been deprived of strength, activity, or capability for service or use, in any part of the human body. (Emphasis supplied.)
>
> "This definition is very broad and may not be acceptable in all places. Still it springs from extensive research with the benefit of information from many sources, including the usage, speech, acts and mind of the average run of people. . .That such definition covers the intention of the testator and was the meaning he had in mind when using the words 'crippled children' in his last will and testament finds support in the circumstances surrounding him at the time of and immediately previous to the execution of the instrument."

In view of the language in the Second Codicil to Mr. duPont's Will that it had been his "firm conviction throughout life that it is the duty of everyone this world to do what is within his power to alleviate human suffering. . ." Court would be doing an injustice to construe the phrase "crippled children"

with any limitation whatever other than the one prescribed by Mr. duPont himself - that such condition not be incurable.

X. CARE OF OLD MEN OR OLD WOMEN AND PARTICULARLY OLD COUPLES

It is not the intention of the Trustees to implement that part of Mr. duPont's Will providing for the care of old men or old women and particularly old couples at this time, since their present intention is to devote their first attention to crippled children. Nevertheless, the Court has been provided with definitions of the phrase and it is the Court's conclusion that the phrase was intended to apply to those persons over sixty-five years of age who are in need of medical or paramedical care, however slight or great it may be and would not include those who need only food, clothing and shelter. The Court can do no better than to repeat again the language of Mr. duPont that his motivation and intent, or his duty, as he saw it, was to "alleviate human suffering."

XI. OTHER CHARITABLE INSTITUTIONS

While it is clear that Mr. duPont desired that first consideration be given to residents of Delaware, the Trustees were authorized to consider other worthy charitable institutions. Item 10 of the Will provides:

> "I further direct that, after the death of my beloved wife, Jessie Ball duPont, if the net income of my estate should in any year or years exceed the sum or sums sufficient to properly provide for the conduct and operation of said 'The Nemours Foundation,'. . .such surplus income may from time to time be used. . .in contributions to other worthy charitable institutions designated by said Board and approved by my Trustees as may be conducted for the care of, or the care and treatment of, or the care and education of crippled children, or the care of old men, or of old women, or of old couples, or any one of such purposes. It is my wish that the people of Delaware needing the care of such institutions shall be properly provided for before contributions are made to institutions of any other state or states, but said Board, my Trustees concurring, is hereby given full power to determine what constitutes the necessary reserves for 'The Nemours Foundation' and what constitutes proper provision for the Delaware institutions. . . ."

Therefore, it is apparent that excess funds may become available for similar charitable institutions outside the State of Delaware whenever there are

sufficient funds on hand for such purpose, provided such funds are used in accordance with the provisions and limitations of the Will.

XII. TAX CONSIDERATION AND CONSEQUENCES

In addition to the relief requested regarding the use of the Estate of "Nemours", including the Mansion House, for hospital purposes, the Petitioners requested the following relief:

> "To preserve the Foundation's federal tax exempt status and the deductibility of contributions and gifts to it in the event it becomes a private foundation under federal law, the Petitioners request that the governing instrument of the Foundation be amended to provide that for any taxable year in which it is a private foundation: (1) Its income for each taxable year be distributed at such time and in such manner as not to subject the Foundation to tax under §4942 of the Internal Revenue Code of 1954, (2) The Foundation be prohibited from engaging in any act of self-dealing so as to be subject to tax under §4941 of such Code, (3) The Foundation be prohibited from retaining any excess business holdings so as to be subject to tax under §4943 of such Code, (4) The Foundation be prohibited from making any investments in such manner as to be subject to tax under §4944 of such Code, and (5) The Foundation be prohibited from making any expenditures so as to be subject to tax under §4945 of such Code."

At the final hearing, the Court announced the ruling, confirmed in this judgment, that based on the testimony, documentary evidence and law applicable to such facts, that the entire Estate of Nemours, including the Mansion House, is and would continue to be a hospital.

As a result of such ruling by the Court, the requested amendment of the governing instrument became moot and unnecessary. As a hospital, the Nemours Foundation is not a private foundation under §509(a)(1) of the Internal Revenue Code of 1954 and its governing instrument is not required to be amended.

Having considered the law and the evidence as discussed in the foregoing opinion, it is

ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over the parties and the subject matter this action.

2. It was the intention of the Testator, Alfred I. duPont, to provide

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for and to require the establishment of a "charitable institution" and that charitable institution was to be primarily and predominantly a hospital.

3. It was the intention of the Testator, Alfred I. duPont, that the entire Estate of "Nemours" be used for hospital purposes.

4. The predominant and primary purpose of the Estate of "Nemours" shall be for use as a hospital. The secondary and incidental use shall be to allow visitation by the public as specified herein.

5. It was the intention of the Testator, Alfred I. duPont, that all of the Estate of "Nemours," including the Mansion House, be made a part of, and be integrated and used for hospital purposes, and specifically, that the Mansion House be used for hospital administrative functions, clinical conferences, lectures, hospital meetings, maintenance of a medical library, storage and exhibition of relevant medical films, entertainment of distinguished members of the medical and hospital professions, meetings of state, national and international medical associations, especially those concerned with the care of children and the aged, and for any other related hospital purposes, except the actual housing of patients and providing of patient care therein.

6. Appropriate rooms of the Mansion House shall, in accordance with provisions of the Will, be used for the purpose of providing a library and exhibiting to the public interesting and valuable literature, works of art and any articles of historic and artistic interest for the advancement of education, and maintained as far as possible, in their present condition.

7. The Trustees are further required to arrange for the admission of the public to the Mansion and other buildings and the grounds at such times and under such rules and regulations as they may provide.

8. The use of property as a "hospital" or for "hospital purposes" includes any property or facility which is used predominantly or primarily for a purpose which is incidental to and reasonably necessary for the accomplishment of hospital purposes or which is reasonably necessary for the fulfillment of a generally recognized function of a complete, modern hospital.

9. As proposed by the Trustees, the medical and administrative staffs d by the architects the various concepts if carried out as proposed or as reasonably modified would in their entirety, constitute a hospital.

10. The phrase "crippled children" as used in Mr. duPont's Will is defined to mean persons under twenty-one years of age, who by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, has been deprived of strength, activity or capability for service or use, in any part of the human body.

11. The phrase "care of old men or old women, and particularly old couples" is meant to include those over sixty-five years of age who are in need of supportive or alleviating medical or para-medical care beyond mere food, clothing and shelter.

12. Since the Court has determined that the entire Estate of "Nemours", including the Mansion House, may be integrated and used for hospital purposes as described above, this Court finds that the relief requested by the Petitioners paragraph (c) of the Petition relating to the amendment of the governing instrument of the Foundation, is moot and unnecessary and therefore does not grant such relief.

13. The Petitioners may make application for further definition or instructions to implement the construction and instructions contained herein.

DONE AND ORDERED in Chambers at Jacksonville, Florida, this 31st day of December, 1971.

/s/ Marion W. Gooding
MARION W. GOODING
Circuit Judge

Copies furnished to:

Charles T. Akre, Esquire
Messrs. Kent, Durden & Kent
Honorable Donald G. Nichols, State Attorney
Susan Harrell Black, Assistant State Attorney

Exhibit H

EXHIBIT 9 B

STIPULATION AND AGREEMENT BETWEEN THE STATE OF FLORIDA, THE STATE OF DELAWARE, THE TRUSTEES OF THE ALFRED I. duPONT TESTAMENTARY TRUST AND THE NEMOURS FOUNDATION

The parties to this Agreement, which is made and executed this 17th day of January, 1980, are: EDWARD BALL, J. C. BELIN, T. S. COLDEWEY, W. L. THORNTON, ALFRED duPONT DENT and WILLIAM B. MILLS, as Trustees of the Alfred I. duPont Testamentary Trust; and JACKSONVILLE NATIONAL BANK, as corporate Trustee of the Alfred I. duPont Testamentary Trust; THE NEMOURS FOUNDATION (hereinafter "NEMOURS") a corporation not for profit; JIM SMITH as Attorney General of the State of Florida; RICHARD S. GEBELEIN as Attorney General of the State of Delaware; and ED AUSTIN as State Attorney of the Fourth Judicial Circuit of the State of Florida.

WHEREAS, the undersigned JIM SMITH, Attorney General of the State of Florida, is the representative of the ultimate charitable beneficiaries of the Alfred I. duPont Testamentary Trust and of The Nemours Foundation, and as head of the Department of Legal Affairs of the State of Florida is charged with the enforcement of the provisions of Section 738.12, Florida Statutes; and

WHEREAS, the undersigned RICHARD S. GEBELEIN, Attorney General of the State of Delaware, is the representative of the Delaware charitable beneficiaries of the Alfred I. duPont Testamentary Trust and of The Nemours Foundation, and as head of the Department of Justice of the State of Delaware is charged with protecting the rights of the said Delaware beneficiaries; and

WHEREAS, all the parties to this Agreement are desirous of effecting legal and good faith compliance with the provisions of said Trust and Florida law governing said Trust; and

WHEREAS, the parties have agreed to enter into this Settlement Agreement without any admission of liability

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on the part of any of the parties and without waiving any of their respective rights except as specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

A. Valuation of Trust Assets and Payment of Benefits for Calendar Year 1978.

(1) The valuation of the assets of the Trust for the calendar year 1978 is agreed to have been $719,669,170.00.

(2) In reaching that valuation, the valuation of the common stock of St. Joe Paper Company, an unlisted stock, was arrived at by using an average of the bid and asked price of that stock for the month of December, 1978.

(3) Application of that valuation to the provisions of Section 738.12(1)(a), Florida Statutes, required the payment by the Trust to the designated beneficiaries of $21,590,075.10.

(4) The net earned income of the Trust for the year 1978 is agreed to have been $18,681,634.01, which amount has heretofore been paid to the individual beneficiaries and annuitants designated in the Will and Nemours with $18,602,834.01 having been paid over to Nemours.

(5) As set forth in the resolution of the Executive Committee of the Trustees dated November 2, 1979, the additional sum of $2,908,441.01 has also been paid over to Nemours. That action of the Executive Committee was ratified and confirmed at a regular meeting of the Trustees held on November 15, 1979.

(6) The parties agree that payment to Nemours of the sums specified herein constitutes full and complete compliance for 1978 with the requirements of Section 738.12, Florida Statutes.

B. Valuation of Trust Assets and Payment of Benefits for Calendar Year 1979.

(1) The controlling principal with respect to the valuation of Trust assets for the calendar year 1979 shall be the fair market value of each of such assets as of December 31, 1979, as required by Section 738.12, Florida Statutes.

(2) Those stocks which are assets of the Trust and which are listed on a major securities exchange shall be valued by their quoted price as of the close of business on December 31, 1979, and multiplying that value by the number of shares of said stock owned by the Trust on said date.

(3) The unlisted and over-the-counter stocks which are assets of the Trust shall be valued by taking an average of the bid and asked prices thereof quoted by securities brokers making a market in such stock during the month of December of 1979 and multiplying that value by the number of shares of said stock owned by the Trust on December 31, 1979.

(4) The value of real and personal property owned directly by the Trust shall be established by utilizing the fair market value of such assets as of December 31, 1979, as required by Section 738.12, Florida Statutes.

(5) The net income of the Trust or three percent (3%) of the value of the Trust, whichever shall be higher, shall be paid over to the annuitants and to Nemours on or before April 15, 1980.

C. Valuation of Trust Assets and Payment of Benefits for Years Subsequent to 1979.

For years subsequent to the calendar year 1979, the Trustees, subject to the terms of Section "D", infra of this Stipulation and Agreement, agree that they will pay over to the annuitants and to Nemours on or before April 15 of the following year: (1) the net income of the Trust, or (2) the statutory amount of three percent (3%) on the fair market valuation of the

Exhibit H

assets as of December 31 of each consecutive year after 1979, or on such other basis as may be required by statutory amendment or judicial construction of Section 738.12, Florida Statutes.

D. Application of Prudent Trustee Rule

The parties hereto agree that the Trustees are bound by the "prudent Trustee rule" with respect to investment of the Trust assets as well as Chapter 738, Florida Statutes, and the Trustees agree that they will exert their good-faith efforts to raising the income productivity of the Trust to levels higher than those set forth in the current provisions of Section 738.12, Florida Statutes, or by any amendment or modification thereof. The States of Florida and Delaware will rely on the sound business judgment and good-faith effort of the Trustees to raise the level of trust income beyond that required by Section 738.12, Florida Statutes, consistent with sound business judgment and conservation of the assets of the Trust.

E. Intervention of State of Delaware in Ball v. Smith

In compliance with the previous agreement of the parties, the Trustees have not objected to the entry of the State of Delaware in the case of Ball v. Smith, Duval County Circuit Court Case No. 79-11534, as an intervenor.

F. Agreements with Respect to State of Delaware

With respect to the rights of the State of Delaware, the parties agree as follows:

(1) Definition of Phrase "Crippled Children"--The definition of the phrase "crippled children" as used in the Last Will and Testament of Alfred I. duPont is construed and defined as set forth in decretal Provision 10 of the Final Judgment entered by Circuit Court Judge Marion W. Gooding in the case of Edward Ball, et al. v. Donald G. Nichols, State Attorney, Case No. 71-7001, under date of December 29, 1972, and recorded in Volume

December 31 1977

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3302, Page 476, of the Official Records of Duval County, Florida. That decree provides as follows:

> The phrase "crippled children" as used in Mr. duPont's Will is defined to mean persons under 21 years of age, who by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, has been deprived of strength, activity or capability for service or use, in any part of the human body.

(2) The Trustees agree that they will broaden the scope and nature of services presently being offered at the Alfred I. duPont Hospital at Wilmington, Delaware, contingent upon the availability of necessary funds.

(3) The Trustees agree that at no time will more than fifty percent (50%) annually of the funds distributed by the Trust to Nemours be spent outside the State of Delaware.

(4) First consideration, in each instance, will be given to the beneficiaries who are residents in Delaware.

(5) Nemours Foundation will communicate to every hospital in the State of Delaware its willingness and intention to treat every crippled but not incurable child in the State of Delaware, without regard to the child's or the family's ability to pay, but in the expectation that those who can pay will do so and that the hospital will collect any third-party payments to which it might be entitled.

(6) (a) It is contemplated by the Trustees that a contingency reserve of $25,000,000 should be maintained in the Foundation to insure that adequate funds will be available for the operation of the hospital facilities of the Foundation located on the Estate of Nemours in New Castle County, Delaware. A contingency reserve in that amount may be maintained in the future without violating the provisions of this agreement to expend all funds received by the Foundation for the benefit of beneficiaries. The parties hereto realize that it may

Exhibit H

be necessary for tax reasons for the Foundation to obtain approval and/or consent of the Internal Revenue Service of the United States to the establishing of such reserve fund. If the Foundation finds that such approval is necessary, in its opinion, all parties hereto will join at the Foundation's request in the petition or other papers filed by the Foundation with the Internal Revenue Service. A change in the amount of this reserve may become necessary by reason of changed economic conditions and operational requirements of the Foundation, and after a period of five years from the date of this agreement, the Board of Managers of the Foundation, with the trustees concurring, may review and determine that an increase in the amount of such reserve is necessary and proper for the continued operation of the facilities of the Foundation located on the Estate of Nemours. If the Attorneys General of Delaware or Florida do not agree to such recommended increase in reserves, the parties hereto will submit the matter to a court of competent jurisdiction for instructions and decision.

(b) The Trustees and the Foundation agree, in the exercise of their discretion to immediately formulate a plan for providing charitable benefits to residents of Delaware qualifying as "old men or old women or particularly old couples" under the definition of "the elderly" contained in the final judgment (Judge Gooding's 12/31/71 filed) dated January 3, 1972. This plan shall include a commitment to expend a minimum of $6,000,000 during the two-year period beginning on January 1, 1980, and ending on December 31, 1981, for the care and treatment of the elderly in Delaware. Likewise, the commitment shall include a permanent and continuing commitment to provide substantial funds for the elderly which shall be at a minimum an amount equal to the amount of earnings

Exhibit H

from the contingency reserve created in Item 6(a), supra, which fund shall be invested in income-producing securities.

(7) (a) All parties hereto agree that the Trustees shall have the discretion to cause the Foundation to expend all funds received directly or indirectly by it from the duPont Trust, directly by the Foundation, or by paying such amounts to charitable institutions or organizations in Delaware providing such care to the elderly, which institutions or organizations in Delaware providing such care to the elderly, must be institutions or organizations designated by the Board of Managers of the Foundation and approved by the Trustees.

(b) The Attorney General of Delaware agrees that the Trustees have made the commitments described in this Agreement as an exercise of their sole discretion, and that the Trustees do have the sole discretion to expend additional funds for the elderly or solely for crippled children, but not incurable children, in any State in the United States.

G. Services to be Provided in State of Florida

The Trustees will agree to execute an agreement with one or more Florida hospitals to provide clinical facilities and medical and rehabilitative treatment for crippled but not incurable children.

(1) The amounts expended in such agreements shall be limited by the Delaware commitments set forth herein.

(2) The operation of such facilities shall continue until such time as there shall be no further need for such agreement or until a hospital of similar nature, but not necessarily size, to the Delaware facility is operational by Nemours in Florida.

(3) The Trustees will agree that within three years they will commission and pay for a study of the necessity of the construction of a facility as described in Paragraph G(2) above.

(4) Should a need be shown by such study the Trustees agree to begin the process of acquiring permits for such a facility within one year of the delivery to the Trustees of the study report.

(5) Construction of the hospital, if needed, will commence at the earliest time after the income of the Trust is sufficient to meet the Trust's Delaware commitments and finance such construction.

(6) The Trustees, prior to January 31, 1980, shall submit a proposed budget for expenditures in Florida in 1980 and 1981, to the Attorney General of Florida and the State Attorney for the Fourth Judicial Circuit of Florida.

H. Implementation of Agreement

(1) The parties hereto agree that the terms of this agreement shall become the subject of a judicial order, or final judgment to be entered pursuant to the decision of Circuit Court Judge Thomas D. Oakley, as soon as is reasonably possible in the case of Ball v. Smith, Duval County Circuit Court Case No. 79-11534-CA, now pending before such judge. And the parties agree further that they will then and hereafter agree that they construe the underlined provisions of the following excerpt from Item 9 of Mr. duPont's Will: "...for the purpose of maintaining the said Estate of 'Nemours' as a charitable institution for the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware, the one or more of which said charitable purposes, however, being left to the decision of my said Trustees,...", as having the following meaning: "for the care and treatment of either crippled children, but not of incurables, or the care of old men or old women, and particularly old couples"; and further, that the provision therein: "the one or more of which said charitable purposes,

Exhibit H

however, being left to the decision of my said Trustees" means that Mr. duPont intended for the Trustees to have the right to make such decision and/or decisions. The parties also agree that this stipulation and agreement will be filed in each of the other cases now pending before Judge Thomas D. Oakley, being Case Nos. Ball v. Austin, #71-7001; Mills v. Ball, #77-9521; and Florida First National Bank of Jacksonville v. Austin, #77-13033, for consideration and the determination of any issues pending therein.

(2) The Attorney General of Florida, the Attorney General of Delaware, and the State Attorney for the Fourth Judicial Circuit of Florida, while continuing to closely observe the operations and activities of the Trust will desist from filing any new litigation, relating to the subject matter of this agreement, as long as the Trustees comply with this Agreement.

I. Partial Termination of Litigation

The parties hereto agree that any and all other litigation pending in which all or any of them are parties with respect to the construction and implementation of the terms and provisions of the Last Will and Codicils thereto of Alfred I. duPont, which contain issues which have been settled by this Stipulation, will be compromised and partially settled, if possible, pursuant to the terms hereof and that appropriate stipulations will be filed in each of such cases accomplishing that end result.

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THE PARTIES agree to the above and foregoing this 17 day of January, 1980.

ALFRED I. duPONT TESTAMENTARY TRUST

By: Edward Ball

J. C. Belin

T. S. Coldewey

W. L. Thornton

Alfred duPont Dent

William B. Mills

JACKSONVILLE NATIONAL BANK

By: John D. Uible

AS TRUSTEES OF THE ALFRED I. duPONT TESTAMENTARY TRUST

THE NEMOURS FOUNDATION

By: Edward Ball

ATTORNEY GENERAL
STATE OF FLORIDA

Jim Smith

STATE ATTORNEY, STATE OF FLORIDA
FOURTH JUDICIAL CIRCUIT

Ed Austin

ATTORNEY GENERAL
STATE OF DELAWARE

Richard S. Gebelein

Exhibit H

EXHIBIT 9 C

LEXSEE 381 SO.2D. 1075

Caution
As of: May 09, 2008

STATE OF DELAWARE ex rel. Richard S. GEBELEIN, the Attorney General, Appellant, v. FLORIDA FIRST NATIONAL BANK OF JACKSONVILLE, Edward Ball, J. C. Belin, T. S. Coldewey, W. L. Thornton, Jacksonville National Bank, T. Edward Austin, Jr., as State Attorney for the Fourth Judicial Circuit of the State of Florida, Alfred duPont Dent, William B. Mills, and the Nemours Foundation, Appellees; STATE OF DELAWARE ex rel. Richard S. GEBELEIN, the Attorney General, Appellant, v. Edward BALL, J. C. Belin, T. S. Coldewey, W. L. Thornton, William B. Mills, Alfred duPont Dent, Florida First National Bank of Jacksonville, the Nemours Foundation, a non-profit Florida corporation, and Jacksonville National Bank, Appellees

Nos. JJ-388, KK-170

Court of Appeal of Florida, First District

381 So. 2d 1075*; *1979 Fla. App. LEXIS 16350

April 17, 1979

SUBSEQUENT HISTORY: [**1] Rehearing Denied May 21, 1979.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant State of Delaware sought review of orders from the trial court (Florida), which dismissed its amended complaint against appellee trustees, with prejudice, and denied appellant's motion to intervene in a separate suit involving appellees' trust.

OVERVIEW: Appellant State of Delaware filed a claim against appellee trustees for general mismanagement of a trust and statutory violations. Appellees moved to dismiss the complaint for failure to state a cause of action, which was granted. Appellant filed an amended complaint, and the lower court dismissed the complaint, with prejudice, based on its holding that appellant did not have standing to bring the suit, and that the same issues were raised in the amended pleading. Appellant sought review, and the court reversed, holding that the attorney general could enforce the charitable trust for the benefit of the public, who were the beneficiaries. The court noted that Delaware had a special interest in the trust because it gave Delaware residents special status in receiving trust funds. The court also held that the complaint stated a cause of action for violations of Fla. Stat. ch. 736.12. The court further affirmed, without elaboration, the denial of appellant's motion to intervene in another case, holding that there was no abuse of discretion by the lower court. The matter was remanded for further consistent proceedings.

OUTCOME: The court reversed the dismissal of appellant State of Delaware's complaint, holding that it had standing to enforce the charitable trust where the beneficiaries were the public at large, and special status had been given to Delaware citizens. The court also held that the complaint stated a valid cause of action, and remanded the matter for further proceedings. The court affirmed the denial of appellant's motion to intervene without comment.

LexisNexis(R) Headnotes

Estate, Gift & Trust Law > Trusts > Beneficiaries > Single Beneficiaries
Estate, Gift & Trust Law > Trusts > Charitable Trusts

[HN1] The state attorney general may enforce a charitable trust. Unlike a private trust, where there are identifiable beneficiaries who are the equitable owners of the trust property, the beneficiaries of a charitable trust are the public at large. Whereas beneficiaries of a private trust have the power to maintain a suit to enforce the trust, the public must act through some public official to maintain such a suit.

Civil Procedure > Justiciability > Standing > General Overview
Estate, Gift & Trust Law > Trusts > Charitable Trusts
[HN2] An entity other than the attorney general can be a proper party to bring suit to enforce a charitable trust. Trustees have been permitted to bring suit against cotrustees, and persons or organizations having a special interest in a trust or a special status under a trust instrument are considered to have standing to enforce the trust. In other areas Florida courts have recognized that a party alleging a special interest, an interest beyond that general interest possessed by the public at large, has standing to bring suit.

Civil Procedure > Parties > Intervention > Motions to Intervene
Civil Procedure > Appeals > Standards of Review > Abuse of Discretion
[HN3] A determination by a trial judge on a motion to intervene should not be disturbed unless it clearly appears that the trial court abused its discretion.

COUNSEL: John F. Corrigan, of Corrigan, Werber & Moore, Jacksonville, Richard S. Gebelein, Atty. Gen., Vincent J. Poppiti, State Sol., State of Delaware, Wilmington, Del., for appellant.

Fred H. Kent and William L. Durden, of Kent, Sears, Durden & Kent, E. Earl Zehmer, of Bedell, Bedell, Dittmar & Zehmer, T. Edward Austin, Jr., A. August Quesada, Jr., of Wildt, Quesada, Brock & Skinner, Claude Ogilvie, Jacksonville, for appellees.

Robert L. Shevin, Atty. Gen., Randy Schwartz, Asst. Atty. Gen., amicus curiae.

JUDGES: Before MILLS, Acting Chief Judge. ERVIN, J., and MASON, ERNEST E., Associate Judge, concur.

OPINION BY: MILLS

OPINION

[*1076] MILLS, Acting chief Judge.

The Attorney General of Delaware (Delaware) appeals from an order of the trial court dismissing his amended complaint against the trustees of the duPont Trust with prejudice and from an order denying Delaware's motion to intervene in a separate suit involving the duPont Trust. The appeals were consolidated for review.

Alfred I. duPont died testate on 29 April 1935, and his will created the duPont Trust. Under the terms of the trust, after Mrs. duPont's death, the net income of the trust was to be paid over "at convenient [**2] intervals" to the Nemours Foundation "for the purpose of maintaining 'Nemours' as a charitable institution for the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware. . . ." It was further provided that:

> ". . . if the net income of my estate should in any year exceed the sum or sums sufficient to properly provide for the conduct and operation of said "The Nemours Foundation', . . . such surplus income may from time to time be used . . . in contributions to other worthy charitable institutions as may be conducted for the care of, or the care and treatment of, or the care and education of crippled children, or the care of old men, or of old women, or of old couples, or any one of such purposes. It is my wish that the people of Delaware needing the care of such institutions shall be properly provided for before contributions are made to institutions of any other state or states. . . ."

Delaware filed a complaint against the trustees of the duPont Trust as trustees and as members, officers and [**3] directors of the Nemours Foundation, and against certain of the trustees individually. The complaint sought injunctive relief, the removal of some of the trustees, the appointment of a temporary trustee, surcharges and other relief. The complaint was dismissed without prejudice for failure to state a cause of action.

Delaware filed an amended complaint. Count I of the amended complaint seeks judicial construction of the trust provisions pursuant to *Section 737.201, Florida Statutes* (1977), and asks the court to declare among other things that the charitable purpose of the duPont Trust has been defeated. Count II alleges continuing

violations of Section 738.12, Florida Statutes (1977), from 1970 to the present by the trustees holding unproductive assets, specifically the [*1077] stock in St. Joe Paper Company and shares of Florida National Bank of Florida, Inc. Count III alleges the Trustees' failure to administer the trust diligently for the benefit of the beneficiaries. Count IV alleges conflicts of interest in violation of *Section 737.403, Florida Statutes* (1977). Count V charges the trustees with willfully subverting the intent of the duPont Trust by refusing the Board [**4] of Managers of Nemours' requests for funds when the money is available. Count VI alleges additional wrongful acts of the trustees in order to obtain control of the trust. Count VII alleges that the beneficiaries are suffering irreparable harm as a result of the alleged mismanagement of the trust.

The trial court dismissed the amended complaint with prejudice, holding that Delaware did not have standing to bring the suit. The trial court also pointed out that the amended complaint raised substantially the same questions of law as were raised in the original complaint which was dismissed for failure to state a cause of action.

The first question to be resolved by this appeal is whether Delaware has standing to maintain a suit against the duPont trustees.

Delaware contends that the Attorney General of Delaware, as the lawful representative of Delaware beneficiaries, has standing to maintain a suit to enforce a charitable trust where the trust specifies that the primary beneficiaries are to be residents of Delaware. The Trustees [1] argue that the beneficiaries of a charitable trust have no standing to bring an action to enforce the trust and that only the Attorney General of Florida [**5] or a trustee of the trust has the right to enforce charitable trusts being administered in Florida, unless the trust instrument or the Florida Legislature provides otherwise.

1 The term "Trustee" refers to Trustees Ball, Belin, Coldewey, Thornton, Florida First National Bank of Jacksonville, Jacksonville National Bank, and The Nemours Foundation. Trustee Dent filed a separate brief supporting Delaware's standing to bring suit.

As a general rule, [HN1] only the Attorney General may enforce a charitable trust. Unlike a private trust, where there are identifiable beneficiaries who are the equitable owners of the trust property, the beneficiaries of a charitable trust are the public at large. Whereas beneficiaries of a private trust have the power to maintain a suit to enforce the trust, the public must act through some public official to maintain such a suit.

> "The purpose of vesting in some public official such as the Attorney General the exclusive power to begin proceedings to enforce charitable trusts [**6] is obvious. The persons affected by such trusts are usually some or all of the members of a large and shifting class of the public. If any member of this class who deemed himself qualified might begin suit, the trustee would frequently be subjected to unreasonable and vexatious litigation. Often no given individual can prove that he will necessarily benefit from the charity. All may be prospective or possible beneficiaries, but no one can be said to be a certain recipient of aid. In ultimate analysis it is the public at large which benefits, and not merely the individuals directly assisted. Obviously, there is good reason for vesting in a single authority the discretion and power incident to the enforcement of such trusts, rather than in leaving the matter to the numerous, changing, and uncertain members of the group directly to be aided." Bogart, Trusts and Trustees, 2d Ed. Revised § 411 (1977).

However, it has been recognized that [HN2] an entity other than the Attorney General can be a proper party to bring suit to enforce a charitable trust. Trustees have been permitted to bring suit against co-trustees, persons or organizations having a special interest in a trust [**7] or a special status under a trust instrument are considered to have standing to enforce the trust. Bogart, Trusts and Trustees, 2d Ed. Revised, §§ 412, 413, 414 (1977), Fisch, Freed, Schlachter, Charities and Charitable Foundations, §§ 713, 718, 719 (1974); Scott on Trusts, 3d Ed. § 391 (1967). In other areas Florida courts have recognized that a party alleging a special interest, an interest beyond that general interest possessed by [*1078] the public at large, has standing to bring suit. *See United States Steel Corp. v. Save Sand Key, 303 So.2d 9 (Fla. 1974)*. The reason for requiring a special interest is the same reason for the general rule that only the Attorney General may bring suit to enforce a charitable trust:

> "If it were otherwise there would be no end to potential litigation against a given

> defendant, whether he be a public official or otherwise, brought by individuals or residents, all possessed by the same general interest . . . ." *Askew v. Hold the Bulkhead-Save our Bays, 269 So.2d 696 (Fla. 2d DCA 1972).*

We believe that the people of Delaware have a special interest in the enforcement of the duPont Trust. The terms of the trust give the people [**8] of Delaware a special status not enjoyed by the public at large. The Attorney General of Delaware represents the people of Delaware and is the proper party to bring suit on their behalf. We therefore reverse the trial court and hold that the Attorney General of Delaware has standing to maintain this action.

We also hold that the amended complaint states a cause of action. Generally, the complaint alleges activities which indicate that the trustees have violated Section 738.12, that they have failed to administer the trust for the benefit of the beneficiaries and have failed to treat the trust assets as would a prudent trustee, and that Trustees Ball, Belin, Coldewey and Thornton have conflicts of interest which prevent them from acting in the best interest of the trust.

We affirm the trial court's order denying Delaware's motion to intervene in the *Florida First National Bank of Jacksonville v. Austin case.* [HN3] A determination by a trial judge on a motion to intervene should not be disturbed unless it clearly appears that the trial court abused its discretion. *Wogisch v. Tiger, 193 So.2d 187 (Fla. 4th DCA 1966).*

We remand the *State of Delaware v. Ball, et al.* case to the trial [**9] court for further action consistent with this opinion.

ERVIN, J., and MASON, ERNEST E., Associate Judge, concur.

EXHIBIT 9 D

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.

CASE NO.: 93-02502-CA

DIVISION: CV-I

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J.C. BELIN and NATIONSBANK, N.A., as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, deceased,

Plaintiffs,

vs.

HARRY L. SHORSTEIN, State Attorney in and for the Fourth Judicial Circuit of the State of Florida; **W.L. THORNTON** and **ALFRED DUPONT DENT,** as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. dupont, deceased; **THE NEMOURS FOUNDATION,** a not for profit corporation organized under the laws of Florida; and **ROBERT A. BUTTERWORTH,** as Attorney General of the State of Florida,

Defendants.

FINAL JUDGMENT

This cause is before the Court upon the application of all the parties for the entry of final judgment.

In support of such application, the parties have submitted a Stipulation of Facts and proposed Conclusions of Law executed by all parties and their counsel of record. Also submitted, in

support of their application for final judgment, is an Agreement of the Parties reached during Court ordered mediation which sets forth the deviation from the Will sought by the parties, and for which Court approval is requested, together with specified actions to be taken by the Trustees to implement such agreement.

The Court has reviewed the Stipulation of Facts and Conclusions of Law and finds that the representations set forth therein are reasonable and, therefore, adopts them as its own.

Accordingly, and on the basis of the Stipulation of Facts and Conclusions of Law, the Court finds and concludes as follows:

STATEMENT OF FACTS

HISTORY OF THE TRUST

1. Alfred I. duPont, a resident of Duval County, Florida, died on April 29, 1935, leaving a Last Will and Testament and two codicils thereto (collectively, the "Will"), which were admitted to probate by the County Judge of Duval County, Florida, by order dated May 24, 1935.

2. The Executors of the Estate of Alfred I. duPont (the "Estate") administered that Estate, paid the debts of the Estate, made distribution of the assets of the Estate in accordance with the provisions of the Will and Codicils, and were discharged as

executors by order of the County Judge of Duval County, Florida, dated December 30, 1939.

3. The Will, in Item 5, provided for the creation of the Alfred I. duPont Testamentary Trust (the "Trust"), which Trust was to receive the entire residuary estate. It appointed three individual Trustees of the Trust, Mrs. Jessie Ball duPont, Mr. duPont's widow; Mr. Edward Ball, Mr. duPont's brother-in-law; and Mr. Reginald Huidekoper, Mr. duPont's son-in-law. The corporate Trustee was the Florida National Bank of Jacksonville. Mr. duPont was the primary shareholder in The Florida National Bank of Florida and, therefore, controlled the management and operation of that bank. Except for the specific annuities set out in the Will, Mrs. duPont was the sole beneficiary of the Trust during her lifetime.

4. The Trustees of the Trust received the residuary estate from the executors under the Will in 1939.

5. The individuals and the bank designated under the Will to serve as Trustees caused the creation of The Nemours Foundation ("Nemours") as a non-profit, charitable corporation under the laws of Florida. The Trustees were named to serve as directors on the Board of Directors of Nemours.

6. The individual Trustees received, under the provisions of Item 6 of the Will, compensation in the amount of $5,000 per annum, and the corporate Trustee received $2,000 per annum. Also under the provisions of Item 9 of the Will, each member of the Board of Managers of Nemours received compensation of $1,000 per annum. The

Trustees and the members of the Board of Managers still receive only that compensation provided for in the Will.

7. The Trustees, as Directors of Nemours, caused to be constructed, maintained, and operated by Nemours on the grounds of Nemours in Wilmington, Delaware, the Alfred I. duPont Institute, a charitable hospital operated for the care and treatment of crippled children. Mrs. duPont, after completion of the hospital, irrevocably assigned to Nemours an undivided 12 percent of her income from the Trust, from which the cost of operating the hospital at Nemours was provided.

8. Reginald S. Huidekoper died in 1943, and Elbert Dent, a son-in-law of Alfred I. duPont, pursuant to the provisions of Item 1 of the Second Codicil to Mr. duPont's Will, succeeded Mr. Huidekoper as a Trustee of the Trust.

9. Mr. Elbert Dent died in May, 1965, leaving three Trustees, Jessie Ball duPont; Edward Ball; and The Florida National Bank of Jacksonville, the corporate Trustee. The death of Mr. Dent left the two remaining individual Trustees in a serious predicament. Mr. Dent had been the youngest individual Trustee. Mr. Ball was 78 years old, and Mrs. duPont was 82 years old.

10. At a special meeting of the Trustees of the Trust held on May 10, 1965, at which all of the Trustees were present, the vacancy created by the death of Elbert Dent was filled by the election of William B. Mills, as Trustee, by a vote of all the surviving Trustees.

11. The ages and infirmities of the surviving individual Trustees substantially limited their ability to continue management of the Trust assets and to oversee the operation of Nemours. Both Mr. Ball and Mrs. duPont had lived long beyond the life expectancy which they had at the time of Mr. duPont's death. Therefore, the Trustees, at the meeting of May 10, 1965, upon advice of counsel, also elected three additional individual Trustees: Tom S. Coldewey, Alfred d. Dent, and A.L. Hargraves. Mr. Hargraves resigned as a Trustee, and his resignation was accepted in 1966.

12. The resignation of Mr. Hargraves, the declining health of Mrs. duPont, and health problems of two of the other individual Trustees, together with business problems and challenges facing the Trust and its corporate assets, caused concern to the Trustees. Thus, in December of 1967 two additional individual Trustees were elected: J.C. Belin and W.L. Thornton. This election increased the number of Trustees to seven individual Trustees and the corporate Trustee.

PRIOR PROCEEDINGS

13. The Will provides in Item 8, et. seq., that upon the death of Mrs. duPont, the Trustees will pay all of the income of the Trust, after the payment of the specific annuities, to Nemours. The Trustees, upon the death of Mrs. duPont, filed Case No.71-7001 in the Circuit Court of Duval County, Florida, to receive

instructions as to the authorized use of the substantial additional funds previously paid to Mrs. duPont.

14. The Court issued its Final Judgment on December 31, 1971, in which it defined the phrase "crippled children," as used in the Will, as meaning "persons under twenty-one years of age, who by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, has been deprived of strength, activity, or capability for service or use, in any part of the human body" and found that the intention of Mr. duPont in his Will was to provide for and to require the establishment of a "charitable institution," which was to be primarily and predominantly a hospital. The phrase "care of old men or old women and particularly old couples" was defined to include those over sixty five years of age who are in need of supportive or alleviating medical or para-medical care beyond mere food, clothing and shelter.

15. Trustee Mills, prior to June, 1976, had raised the issue regarding the legality of the elections of Messrs. Tubin, Coldewey, Dent, and Thornton. The concern as to the legality of the elections was compounded by the fact that a very substantial new hospital was being constructed at Nemours in Wilmington, Delaware, and contracts in excess of $60 million dollars for the construction of that hospital were being negotiated by the Trustees. Therefore, on June 15, 1976, the Trustees filed under

the continuing supervision of the court, a Petition for Further Definition and for Instructions to Implement Instructions.

16. The Petition for Further Definition asked the Court to confirm that Mr. duPont's Will provides that the Trustees have the power to increase the number of individual Trustees to a number greater than three (3), or, in the alternative, to find that the Court, sitting as a Court of equity, has the power to ratify the election of those Trustees for the conservation, protection, and betterment of the Trust. In its opinion in Mills v. Ball, 380 So.2d 1134 (Fla. 1st DCA 1980), the District Court held at page 1141:

> "The trial court found the election of the additional trustees to be valid under either or both of the alternatives stated above -- (1) the broad powers of the Will gave the Trustees power to amplify their number, and (2) even if the Will did not grant the trustees such power, the court, under the evidence presented, was authorized to approve and ratify, and did approve and ratify, the appointment of the additional trustees. While we disagree with the former, we agree with the latter."

The Court ratified the election of the four specific Trustees elected by the two surviving original Trustees, the corporate Trustee, and Trustee William Mills; however, the Court did not provide that the number of Trustees would otherwise be increased beyond the original three individual Trustees and the corporate Trustee provided for under the Will.

17. The trial Court in its Supplemental Declaratory Judgment in Ball v. Austin, which was affirmed by the District Court in

Mills v. Ball, supra, at page 1143, found that based upon the evidence presented at trial:

> "...the additional trustees were highly convenient or necessary to the proper administration of the trust;...."

18. In Delaware ex rel. Gebelein v. Belin, 456 So.2d 1237 (Fla. 1st DCA 1984), aff'd Delaware ex rel. Gebelein v. Belin, Case No 77-11817-CA (Fla. 4th Cir. Ct. 1983), the Court determined, inter alia, that "St. Joe Paper Company can be regarded as the proper vehicle to carry out Mr. duPont's intent and the terms of the Trust."

HISTORY OF THESE PROCEEDINGS

19. This cause of action was originally filed in May, 1993, by J.C. Belin, T.S. Coldewey, Alfred duPont Dent, and NationsBank, N.A. ("NationsBank"), as Trustees of the Alfred I. duPont Testamentary Trust ("Trust"), against W.L. Thornton, as Trustee of the Alfred I. duPont Testamentary Trust, The Nemours Foundation, and Harry L. Shorstein, State Attorney for the Fourth Judicial Circuit of Florida, seeking a declaratory judgment with respect to, and to authorize deviation from, terms of the Last Will and Testament, and Codicils thereto, of Alfred I. duPont.

20. At the time of filing, Plaintiffs Belin, Coldewey, and Dent and Defendant Thornton were individual Trustees, and NationsBank was the corporate Trustee of the Trust.

21. The Complaint requested deviation from the terms of the Will so as to permit an increase in the number of individual Trustees from the three originally set by the Will to six and an increase in their compensation from $5,000 to $100,000 annually.

22. Robert A. Butterworth, Attorney General for the State of Florida, moved to intervene as a Defendant on July 2, 1993, and his motion was granted on August 10, 1993.

23. On May 17, 1994, Plaintiffs moved to amend their complaint seeking an increase in the annual compensation of the individual Trustees by modifying their request by the addition of the language "up to" $100,000.

24. Trustee T. S. Coldewey died on May 19, 1994, and shortly thereafter Trustee Alfred duPont Dent elected to remove himself as a plaintiff and become a defendant.

25. After Mr. Coldewey's death, Mr. Thornton and Mr. Dent sought to replace the corporate Trustee with another banking institution, and NationsBank and Mr. Belin sought to elect a fourth individual Trustee to fill the vacancy left by Mr. Coldewey's death.

26. Both sides sought injunctive relief, Trustees Thornton and Dent arguing that there was no current vacancy under the Will, and Trustees Belin and NationsBank arguing that a unanimous vote of the individual Trustees was required to replace the corporate Trustee.

27. The Court enjoined Trustees Belin and NationsBank from electing another individual Trustee, and Trustees Thornton and Dent withdrew their attempt to replace NationsBank. Each side agreed that they would not raise such issues again until final termination of the litigation.

28. Defendants answered the Amended Complaint generally admitting or denying various factual allegations, denying conclusions of fact and of law and denying Plaintiffs' right to deviations and the relief requested.

29. Mr. Belin and NationsBank again moved to amend their Complaint on July 29, 1994, to provide that the increase in annual compensation being sought would take effect only if the Court first permitted a deviation from the Will to provide for three additional individual Trustees. Absent an increase in the number of individual Trustees, the fees were to remain at $5,000 annually.

30. During the pendency of the lawsuit, the parties deposed all of the Trustees as well as several non-party individuals and most of the experts tendered by each side. The testimony of the individual trustees outlined in detail their respective positions surrounding the need, or absence thereof, for change. The testimony of the numerous experts set forth their opinions surrounding corporate and trust governance, comparisons between national and international social and economic conditions existing as of the date of execution of the Will and Codicils and the current date and the need to increase Trustees' fees to keep up

with inflationary trends. Interrogatories and Requests for Admissions were propounded and responses were made. The totality of this extensive discovery focused on the need to increase the number of individual Trustees; the appropriate compensation for the individual Trustees, the corporate Trustee, and Nemours' Board of Managers; the voting powers of the corporate Trustee; and the replacement of the corporate Trustee by a majority as opposed to a unanimous vote of the individual Trustees.

31. Trial was set for October 24, 1994, and a pre-trial conference was set for September 30, 1994.

32. The Court ordered mediation, and after almost three days of effort, a settlement among all of the parties was agreed to and an agreement was executed by all parties and their counsel.

TRUST'S CURRENT ASSETS

33. The Trust, due to the deaths of Mrs. duPont, Mr. Ball, Mr. Mills, and Mr. Coldewey, now has only three individual Trustees and the Corporate Trustee, who are parties to these proceedings. The number of Trustees has decreased from eight to four Trustees. The size and complexity of the operations of both the Trust's business entities and investments which generate the income for the Trust, has increased substantially since 1965 and 1967.

34. The Trust's assets have increased in value from approximately $72,500,000 in 1939 to $655,600,000 in 1965 and to a

value in excess of One Billion, Eight Hundred Million Dollars ($1,800,000,000) as of August 31, 1994. The Trust today owns approximately 69 percent of St.Joe Paper Company, which, in turn, owns, either directly or indirectly, the following, significant operating subsidiaries.

Florida East Coast Railway Company St. Augustine, Florida	(54% owned)
Apalachicola Northern Railroad Company Port St. Joe, Florida	(100% owned)
Gran Central Corporation Jacksonville, Florida	(54% owned)
St. Joe Forest Products Company Port St. Joe, Florida	(100% owned)
St. Joe Container Company Jacksonville, Florida	(100% owned)
St. Joseph Land and Development Company Port St. Joe, Florida	(100% owned)
St. Joseph Telephone & Telegraph Company Port St. Joe, Florida	(100% owned)
Gulf Telephone Company Perry, Florida	(100% owned)
Talisman Sugar Corporation Belle Glade, Florida	(100% owned)
Florala Telephone Company Florala, Alabama	(100% owned)

35. The corpus of the Trust consists of its holdings in St. Joe Paper Company, which comprise about 70.5 percent of the corpus, and passive investments in stocks, bonds, and other securities, which comprise 29.5 percent of that total amount.

36. St. Joe Paper Company, the major asset, is a holding company which has subsidiaries in five different segments: forest products, transportation, sugar, communications, and real estate. Each of these segments either was not in existence in 1965 (sugar and real estate) or has expanded substantially since that time.

37. St. Joe Paper Company's forest products segment has continued since 1965 to produce liner board. It consists of timberland (St. Joseph Land and Development Company), the mill at Port St. Joe, fifteen box plants, and one sheet plant (St. Joe Container Company). The box plants are located throughout the eastern United States.

38. The timberlands are one of St. Joe Paper Company's primary assets. There has been an increase of 50,000 acres from the 1,003,000 acres of timberland owned by St. Joseph Land and Development Company in 1967. Land use restrictions imposed by law and regulations present issues that must be considered in the future. The result of these statutes and rules is to impose on every parcel of land in Florida, restrictions as to the owner's ability to use that land.

39. St. Joe's communications segment has grown substantially since 1965. In 1965 the communications segment consisted solely of St. Joseph Telephone & Telegraph Company, with 7,117 telephone lines in service. Since that time, St. Joe Paper Company has acquired Gulf Telephone Company and Florala Telephone Company and has established St. Joe Communications, Inc. As of July 31, 1994,

the communications segment has a total of 37,950 telephone lines in service.

40. St. Joe Communications acts as the parent company for the telephone operations and also handles the resale of long distance services, the sale and maintenance of telephone equipment; participates in cellular telephone partnerships covering sixteen counties in Florida and additional counties in Alabama; and serves as a subcontractor for installation and repair services for the North American Air Defense Command for the area extending from northern Virginia to southern Texas. The communications segment's business has increased from assets of approximately $6,000,000 in 1965 to total assets of $65,674,000 in 1993. Net sales have grown from $1,190,000 in 1965 to $29,153,000 in 1993, and operating profits have grown from $257,000 in 1965 to $5,130,000 in 1993. Deregulation legislation now being considered in the Florida Legislature and Congress could present, if passed, significant issues to be addressed in the future.

41. The real estate segment of St. Joe Paper Company was not in existence in 1965. It formally came into being after 1984 and is comprised of Gran Central Corporation, a subsidiary of Florida East Coast Industries, and Southwood Properties, a division of St. Joe Paper Company. The former develops industrial and commercial properties along the east coast of Florida and the latter develops commercial and residential property in West Florida.

42. The real estate segment has added additional income to St. Joe's total income, and has created new challenges. In 1993 the real estate segment had assets of $230,334,000, which generated net sales and revenues of $28,405,000, and an operating profit of $10,950,000.

43. The real estate segment, as well as the forest products segment, is facing growth management issues imposed by Florida statutes, and regulations which affect the value of its developable land and an increase in the cost of development.

44. The sugar segment also did not exist in 1965. Talisman Sugar Corporation, which owns approximately 42,000 acres of land south of Lake Okeechobee, was acquired during the 1970's. Today (1993) the assets of Talisman Sugar are valued at $96,925,000. Net sales of Talisman for 1993 were $49,138,000, which yielded an operating profit of $5,058,000.

45. The Florida sugar growers are involved in continuing controversies between the sugar growers in South Florida, on the one hand, and the United States environmental agencies, the Army Corps of Engineers, and the State of Florida's environmental agencies, on the other hand. These controversies involve issues raised by conducting agricultural operations adjacent to or near the Everglades.

46. The railroad segment also has grown in size, as have the challenges associated with increased size. Florida East Coast Railway Company (now Florida East Coast Industries) in 1965 had

been operating only four years after emerging from Trusteeship in 1961. The assets of the railroad in 1965 were $90.7 million, and operating revenues were $24.4 million. By 1993, the total assets of Florida East Coast Industries had grown to $692 million, and operating revenues have grown to $181 million.

47. The Apalachicola Northern Railroad Company also has grown substantially since 1965. This short line railroad has increased its tonnage from approximately 148,000 tons in 1967 to 392,000 tons in 1993. Total revenues have grown from $2.8 million in 1967 to $14.6 million in 1993. Net income also has increased five times: from $556,000 in 1967 to $2,675,000 in 1993.

NEMOURS FOUNDATION

48. There has been dramatic growth since 1967 in the beneficiary of the Trust, The Nemours Foundation. The Trustees are instructed by Item 9 of the Will to: incorporate Nemours Foundation for charitable purposes; to determine which of said enumerated charitable purposes are to be served; to maintain the mansion and grounds at Nemours and to regulate the admission of the public to the Nemours grounds and mansion; to utilize excess funds for additional charitable purposes; and to "have full charge of the management and policy of the said foundation".

49. Mrs. duPont, prior to her death in 1970, was the sole residuary beneficiary of the Trust and the sole support of Nemours. In 1965 Nemours owned the Alfred I. duPont Institute, which owned the mansion, the grounds, and a small pediatric hospital for crippled children, but not incurables. The hospital was primarily a pediatric orthopedic hospital. The expenditures for the hospital for 1965 totalled approximately $449,000.

50. The Nemours Foundation presents one of the primary challenges to the Trustees. Nemours now consists of the Alfred I. duPont Institute, Nemours Health Clinic in Delaware, and Nemours Children's Clinic in Florida.

51. The Alfred I. duPont Institute now is comprised of the Children's Hospital in Wilmington, which is a 1.6 million square foot (including mechanical spaces) facility, and seven primary care satellite facilities in the State of Delaware. The services provided by the Institute have experienced dramatic growth. By 1993 the Institute had become a full-service pediatric hospital.

52. The Institute in 1966 employed 2 full-time physicians, approximately 12 part-time contract consultants, and 94 full-time employees. In 1993, the number of physicians employed had grown to 84, and the number of full-time employees had grown to 1,250 persons. In 1993 patient days had increased substantially and there also were over 81,000 outpatient visits which did not include visits to ancillary departments such as laboratory and x-ray.

53. Each of the seven satellite primary care facilities is staffed by one or more pediatricians. If hospital or specialty physician services are required, they are referred to the

Institute's hospital at Nemours. Six more facilities are planned and awaiting the recruitment of pediatricians.

54. Nemours Health Clinic was established in 1980 to provide certain health care services to the elderly of Delaware. started receiving patients in 1981. At the present time the Health Clinic provides dental, eye care, audiological, and pharmacy services for the elderly who have met income qualifications utilizing its primary facility in Wilmington and a satellite facility in Milford, Delaware. Nemours Health Clinic has contracts with approximately 75 doctors in various specialties to provide services to its outpatients. In 1993 the Health Clinic had 64 employees and expenditures of approximately $8 million.

55. Nemours Children's Clinic in Florida is an outgrowth of Nemours Children's Hospital, which was purchased from Hope Haven Children's Hospital by The Nemours Foundation in 1980. In 1989 construction had begun on Nemours Children's Clinic, a 200,000 square foot facility which opened in 1990. In addition, Nemours Children's Clinic operated 12 primary care satellites throughout the State of Florida in 1993.

56. The Children's Clinic in Jacksonville operates in cooperation with the Baptist Medical Center. The satellite primary care centers are located in primarily rural areas of Florida where pediatric care is difficult to obtain. These satellites are located across much of the State of Florida. In 1993 the total visits to the Children's Clinic's physicians were 92,870. The total outpatient visits to all Nemours facilities were 320,163.

57. The Nemours Foundation, itself, has become one of the larger foundations in the United States. The Nemours Foundation had assets of $5,225,000 in 1965 and $7,840,000 in 1970, the year of Mrs. duPont's death. The Nemours Foundation's combined balance sheet for 1993 shows assets of $309,980,000. Together with the assets bequeathed to The Nemours Foundation by Edward Ball in the amount of $194,378,000, total assets of The Nemours Foundation as of December 31, 1993, were in excess of $504.3 million dollars.

58. There is concern among the Trustees (who also are Directors of The Nemours Foundation) about possible health care legislation and its impact on Nemours and its programs.

COMPENSATION

59. A study was made by Arthur Andersen on the appropriate amount of compensation for a Trustee of this Trust. In addition, other experts determined that compensation based upon the Consumer Price Index for the Trustees and the Board of Managers should be about ten times the existing compensation. The Arthur Andersen study concluded that the appropriate level of compensation for a Trustee would be in the range of $54,000 to $84,000. The parties agree with the methodology used and results of those studies.

60. The Trustees find themselves in a situation similar to that faced by Mrs. duPont and Mr. Ball in 1965. Mr. Belin is 80 years old; Mr. Thornton is 66 years old, and Mr. Dent is 61 years old. As in 1965, the size and complexity of the corporate assets

owned by the Trust has increased; and today The Nemours Foundation, alone, is almost the size of the entire Trust in 1965.

61. The Trustees seek permission from the Court to deviate from the Will in order to provide adequately for continuity of the management of the Trust. The Trustees, in order to ensure continuity, ask the Court to add two permanent Trustees and a third Trustee for a period of five years in lieu of periodically seeking additional Trustees from time to time in the future. The requested increase in the number of Trustees will resolve any problems of continuity, whether caused by the advancing age or infirmities of the Trustees, or otherwise.

62. The Will gives to the individual Trustees the control of the Trust and its destiny. The original corporate Trustee was owned and controlled by Mr. duPont during his lifetime; then by the Trustees after his death. The corporate Trustee did not have the status of the individual Trustees, who serve until they die or shall cease to act. The corporate Trustee could be changed at the pleasure of the individual Trustees. Item 6(q) of the Will provides:

> "(q) Should at any time a question arise in the minds of my Trustees concerning the propriety of doing, or refraining from doing, anything in the discharging of their duties as Trustees, then the decision of the majority of my Trustees must rule. Should a majority decision be impossible, then the ruling of the corporate Trustee must be final."

The corporate Trustee no longer is owned and controlled by the individual Trustees. Under the last sentence of subparagraph (q)

above, if a majority decision of the Trustees be impossible, then the ruling of the corporate Trustee must be final.

63. The Trustees of the Trust have agreed that it is highly convenient or necessary to the proper administration of the Trust, both today and in the future, to deviate from the terms of the Will as to all of the following provisions together:

a) to enlarge permanently the number of individual Trustees from three to five permanent Trustees to serve until they die or until they cease to act and are succeeded under the provisions of Item 5 of the Will, and a sixth individual Trustee to serve for five years who will not be succeeded after that five-year term;

b) to increase the compensation of the individual Trustees in order to attract additional independent, outside Trustees; the Trustees have agreed that annual compensation of $54,000, plus health insurance, would be an appropriate amount to accomplish that purpose;

c) to increase the compensation payable to each of the members of the Board of Managers from $1,000 to $10,000 per annum in order to properly compensate each of them for the additional time and responsibility involved with that position; and, finally

d) to permit deviation from the terms of Item 6(q) of the Will, by eliminating the corporate Trustee's right to the final decision in the event a majority decision of the Trustees is impossible. This provision presently permits the corporate Trustee, when there is an odd

number of individual Trustees voting, to cast the deciding or double vote.

64. The parties also agree that the section of Item 5 of the Will relating to changing the corporate Trustee requires clarification. Item 5 of the Will provides:

> "It is my wish that in the event that the three individual Trustees, or their successors or substitute Trustees herein named, or the survivor or survivors of them, as distinguished from the corporate Trustee herein named or its corporate successor or any succeeding corporate successor or successors thereof, should at any time deem it expedient that the corporate Trustee be changed, then they shall have the power, from time to time and as often as they consider it advisable so to do, to select another trust company or bank, either in the State of Florida or elsewhere, as the corporate Trustee ... and the same shall be taken over by the new corporate Trustee chosen by the individual Trustees as hereinabove set forth ..."

Questions have arisen as to whether or not this provision of the Will requires unanimity of all three individual Trustees or a majority of the individual Trustees to effectuate a change in the corporate Trustee.

65. The interpretation agreed upon by the present Trustees is that a vote of the majority of the individual Trustees authorized to serve is required to change the corporate Trustee. Thus, when there are six individual Trustees authorized to serve, a vote of four of the Trustees is required to change the corporate Trustee. If there are only five Trustees authorized to serve, then a vote of only three is required.

CONCLUSIONS OF LAW

66. This Court has jurisdiction over the parties to these proceedings and this cause of action. Mills v. Ball, 344 So.2d 635 (Fla. 1st DCA 1977), and Mills v. Ball, 380 So.2d 1134 (Fla. 1st DCA 1980).

67. All of the parties to these proceedings, as stated above, have stipulated and agreed to seek deviation from the terms of the Will of Alfred I. duPont in three instances and further state that the stipulated facts show that the deviation, as requested, is highly convenient or necessary to the proper administration of the Trust.

68. The duties, power, and liabilities of Trustees are ordinarily fixed by the terms of the Trust instrument. The Trust instrument, itself, constitutes the charter of the Trustees' powers and duties. Jones v. First National Bank in Fort Lauderdale, 226 So.2d 834, 835 (Fla. 4th DCA 1969).

69. In the construction of a will or trust document, the entire instrument will be considered for the purpose of determining the intent of the testator, and, if such intent so ascertained is not contrary to law or public policy and is capable of being made effective to carry out the intent and objects of the Will, it becomes the duty of the court, in the absence of a showing to the contrary, to carry out the intent of the testator. Howe v. Sands, 194 So. 798, 800 (Fla. 1940); Roberts v. Mosely, 129 So. 835, 836 (Fla. 1930).

70. A Trustee is vested with the powers which are specifically conferred by the terms of the Trust, and also those which are reasonably necessary and appropriate for the carrying out of the purposes of the Trust and which are not forbidden by it. Crutcher v. Joyce, 134 F.2d 809, 816 (10th Cir. 1943); Chase National Bank v. Citizens Gas Co., 113 F.2d 217, 227 (7th Cir. 1940); Penn v. Pennsylvania Co. for Insurances, etc., 171 S.W. 1d 437 (Ky. 1943); Girard Trust Company v. Cheeseman, 93 N.J. Eq. 266; 155 A. 745.

71. The Trustees were not given the power under the Will of Alfred I. duPont to elect additional Trustees. The language in Item 6(h) of the Will provides that the Trustees have the power:

> "To do every and all things that they may deem best for the conservation, protection and betterment of my estate, as fully and completely as I might do, personally, were I alive and able to act for myself."

These powers given to the Trustees in Item 6 apply to the management of the Trust corpus only. Mills v. Ball, supra, at 1142.

72. Item 5 of the Will deals with the Trustees and provides only for the four Trustees described in Item 5. Mills v. Ball, supra, at 1142. However, there also is no clear expression that Mr. duPont intended that there be no further change in the number of Trustees. Mills v. Ball, supra, at 1143.

73. The provisions of the Will should be read so as to expressly restrict the power of Trustees to add additional

Trustees; however, this Court is authorized by Sections 737.403(1), 737.502, and 737.507, Florida Statutes, 1993, to permit the Trustees to deviate from such restriction for cause shown. Mills v. Ball, supra at 1142.

74. "Cause" under Section 737.403(1) and Section 737.507, Florida Statutes, means that any deviation from the terms of a will must be highly convenient or necessary to the proper administration of the Trust and that any action taken in connection with that deviation must be reasonable and not arbitrary or capricious. Mills v. Ball, supra, at 1143.

75. The Court in Mills v. Ball, supra, found that the evidence presented was a sufficient showing of cause and ratified the election of the four additional Trustees in 1965 and 1967.

76. The Court in Mills v. Ball, supra, did not create new, permanent Trustee positions when it approved the increase of the individual Trustees from three to seven in 1965 and 1967.

77. The Court has the power to permit deviation for cause shown from the terms of the Will of Alfred I. duPont under the authority of Section 737.403(1) and Section 737.507, Florida Statutes, today, as it did in 1978.

78. The Court has the power for cause shown to enlarge permanently the Trustee positions provided for under Item 5 of the Will from three individual Trustees and one corporate Trustee to five permanent individual Trustee positions, one temporary individual Trustee position for a term of five years, and the corporate Trustee position.

79. Item 6(q) of the Will provides: "...Should a majority decision be impossible, then the ruling of the corporate Trustee must be final." This provision presently permits the corporate Trustee, when there is a tie vote of the Trustees, to have its vote counted as a double vote in order to break the tie. The Court has the power for cause shown to permit deviation from Item 6(q) of the Will to provide that the corporate Trustee shall have only one vote.

80. The Court has the power for cause shown to deviate from the provisions of Item 6(p) of the Will to permit an increase in the fees paid annually to the Trustees from $5,000 to $54,000 and to provide them with health insurance.

81. The Court has the power for cause shown to deviate from the provision of item 9 of the Will to permit an increase in the annual fee paid to members of the Board of Managers from $1,000 to $10,000.

82. The Court can, under Section 86.021, Florida Statutes, construe the rights of any person who may be in doubt about his rights under a will; therefore, the Court can construe the provisions in Item 5 providing for the method of changing the corporate Trustee.

Accordingly and based upon the above and foregoing Findings of Fact and Conclusions of Law, it is;

ADJUDGED, as follows:

1. The Court approves, authorizes, and permits deviation from the provisions of Item 5 of the Will so as to provide that the

number of the individual Trustees shall be increased to five permanent individual Trustee positions and to authorize and permit a sixth individual Trustee position for a term of five years only.

2. The three new individual Trustee positions shall be filled by individuals who, during their term as Trustees, shall not receive or be entitled to receive any compensation from any corporation or other entity owned by the Trust, including, but not limited to, St. Joe Paper Company, its successors or its subsidiaries; Florida East Coast Industries, its successors or its subsidiaries; or The Nemours Foundation or any entities owned or controlled by The Nemours Foundation; and may not sit as a director, manager, employee, or consultant of any of the above described entities. The foregoing prohibition on compensation does not extend to dividends paid to shareholders.

3. The Court approves the selection by the current Trustees of Mr. W. Taliaferro Thompson, III, and Mr. John F. Porter, III, to fill the two new permanent individual Trustee positions. Notwithstanding the selection of Mr. John Porter, this Agreement shall not apply to, or otherwise affect, the present banking relationship, as it currently exists, between The Nemours Foundation and the Delaware Trust Company.

4. The individual Trustee designated to serve for a period of five years only shall be selected by a majority vote of the current individual Trustees and the corporate Trustee from a group of candidates selected and recommended by the Attorney General of Florida and the State Attorney of the Fourth Judicial Circuit, Duval County, Florida. Any subsequent vacancy in the temporary

Trustee position during the five-year term shall be filled by the then existing Trustees in the same manner.

5. The three additional new Trustees shall be seated simultaneously.

6. Any person holding the Trustee position limited to the five-year term may be considered to fill any vacant permanent Trustee position if a vacancy occurs.

7. That portion of Item 5 of the Will which relates to changing the corporate Trustee is hereby clarified to provide that the corporate Trustee only may be replaced by vote of a majority of the number of individual Trustees then authorized to serve; for example, if there are six authorized individual Trustees, then a vote of four individual Trustees is required to change the corporate Trustee. If there are only five authorized individual Trustees, a vote of only three individual Trustees will be required.

8. The Court approves deviation from the provision of Item 6(q) of the Will to provide that the corporate Trustee shall no longer exercise a final or deciding vote in the event that the Trustees, including the corporate Trustee, should reach a tie vote. This deviation is effective immediately; however, during that period between the date of this Final Judgment and the simultaneous seating of all additional Trustees as contemplated by paragraph 5, the Trustees will take no action which in any way adversely affects the status of NationsBank as corporate Trustee.

9. Deviation from the terms of Item 6 of the Will is hereby permitted and the Will is amended to provide that compensation

shall be set: for individual Trustees at $54,000 per annum; for the corporate Trustee at $22,000 per annum; and Item 9 for each of the members of the Board of Managers of The Nemours Foundation at $10,000 per annum. Individual Trustees also shall receive health insurance coverage consistent with coverage available to officers and employees of St. Joe Paper Company, Florida East Coast Industries, or The Nemours Foundation.

10. During the period of time between entry of this Final Judgment and the seating of the three additional individual Trustees the current Trustees are to take no action detrimental to one another.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida this 2nd day of December, 1994.

Virginia L. Beverly
CIRCUIT JUDGE

Copies To:

Fred H. Kent, Jr., Esquire
Jon M. Wilson, Esquire
John J. Mullenholz, Esquire
William L. Durden, Esquire
Rutledge R. Liles, Esquire
Mattox S. Hair, Esquire
Lance M. Day, Assistant State Attorney
Harry L. Shorstein, State Attorney
Edwin Bayo, Assistant Attorney General

EXHIBIT 9 E

PROCEDURES AND PRACTICES OF THE TRUSTEES OF THE ALFRED I. duPONT TESTAMENTARY TRUST

The following Procedures and Practices are adopted on this 18th day of January, 2005, by the Trustees of the Alfred I. duPont Testamentary Trust (the "Trust"), for the purpose of providing procedures, practices and guidelines to be applied in administering and maintaining the Trust, and in discharging the responsibilities of the Trustees.

I. TRUSTEES

A. Powers and Duties. The powers and duties of the Trustees are derived from the Last Will and Testament of Alfred I. duPont dated November 19, 1932 (the "Will") and the Codicils thereto (collectively referred to as the "Codicils"), as interpreted and modified by the Final Judgments entered on December 2, 1994, and amended on January 30, 1996, August 28, 2002, in Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, Case number 93-02502-CA, and the Final Judgment entered on December 28, 2004 in Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, Case number 16-2004-CA-007960-XXXX-MA (such judgments to be collectively referred to hereinafter as "the Judgments"), and by the Stipulation and Agreement between the State of Florida, the State of Delaware, the Trustees of the Alfred I. duPont Testamentary Trust, and The Nemours Foundation, dated January 17, 1980 (the "Stipulation and Agreement").

The Will, the Codicils, the Judgments and the Stipulation and Agreement are collectively sometimes referred to herein as the "Governing Documents". The Nemours Foundation, a Florida not-for-profit corporation created pursuant to the Will, is sometimes referred to herein as "Nemours" or as the "Nemours Foundation". The Trustees shall exercise their powers and perform their duties in the manner provided for in and by the Governing Documents. Copies of the Governing Documents are attached hereto as Exhibit A.

B. Number. There shall be six trustees, all of whom shall be individuals.

C. Election of Trustees. At the time of adopting these Procedures and Practices, the following five individuals serve as Trustees: John S. Lord, Herbert H. Peyton, John F. Porter III, W. T. Thompson III, and Winfred L. Thornton. Effective upon the adoption of these Procedures and Practices, the Trustees shall elect a sixth individual Trustee. Whenever a vacancy shall occur in any Trustee position, either because of an increase in the number of Trustees or because of the occurrence of an event described in Paragraph D below, it shall be filled in the following manner: The Trustees' Nominating and Governance Committee shall nominate and present one or more candidates to the Trustees for their consideration and election to fill the vacancy. Any Trustee then serving may also nominate a candidate for election to fill the vacancy. A successor Trustee shall be elected by vote of a majority of the Trustees then serving, at a regular or special meeting of the Trustees, or by vote of all of the Trustees then serving by unanimous written consent.

D. Term. A Trustee shall serve until the Trustee dies, resigns, otherwise

ceases to act, or transfers to the status of Trustee Emeritus pursuant to Paragraph E below.

E. Trustee Emeritus. A Trustee who has served in that capacity for at least ten (10) consecutive years and who has attained the age of seventy (70) may, at the Trustee's election, transfer to the status of Trustee Emeritus. A Trustee Emeritus shall continue to receive the same amount of compensation and the same or comparable benefits as the Trustee was receiving at the time of the transfer of status, but shall not be entitled to increases in compensation or in the level of benefits thereafter. In exchange for this compensation, a Trustee Emeritus shall provide reasonable consultation and advice to the then-serving Trustees. A Trustee Emeritus shall have no voting power, but shall be entitled to receive all information provided to Trustees, and shall be entitled to participate in all meetings of Trustees and in discussions regarding the administration of the Trust as a non-voting participant.

II. MEETINGS

A. Regular Meetings. The Trustees shall hold their annual meeting on the ~~Tuesday preceding the fourth Wednesday~~ last Tuesday in January of each year ~~at 1:30 p.m.,~~ beginning at 8:30 a.m. in the office of the Trust in the City of Jacksonville, Florida. Regular meetings also shall be held at the same time and place on the Tuesday preceding the fourth Wednesday in such months as determined at the annual meeting each year. The time or place or both of any regular meeting may be changed to a different Tuesday in the same month, or to

another location, by the Chairman. The Secretary shall provide written notice to the Trustees of any change in time or place of a regular meeting, and shall deliver such notice at least five (5) days before the initially scheduled date or the rescheduled date of the affected meeting, whichever is earlier. No notice need be given of regular meetings held at the regularly scheduled date, time and place.

B. Special Meetings. Special meetings will be held and called by the Chairman or the Secretary upon the written request of any one Trustee. The Secretary shall provide written notice to the Trustees of any special meeting, and shall deliver such notice at least five (5) days before the date of the meeting. A special meeting shall be held in the office of the Trust in the City of Jacksonville, Florida. Provided, however, that a special meeting may be held at any time and place without notice, by unanimous written consent of all the Trustees or by the presence of all Trustees at such meeting.

C. Quorum. A majority of the Trustees then serving shall constitute a quorum for the transaction of business.

D. Attendance at Meeting by Electronic Means. Trustees may participate in any regular or special meeting by means of conference telephone or similar communications equipment which allows all persons participating in the meeting to hear each other at the same time. Participation by a Trustee by such electronic means shall constitute presence at a meeting.

E. Vote Required for Action of Trustees. The approval of a majority of the Trustees then serving shall be required to take action at a meeting on any matter

requiring Trustee action, including but not limited to the election of successor Trustees, or to decide any question that may come before the meeting, including but not limited to questions concerning the structure, powers, rights or obligations of the Trust and/or of the Trustees pursuant to the Governing Documents. If at any meeting a quorum is not present, a majority of the Trustees present may adjourn the meeting to another time and/or place. Trustees may also act without a meeting by unanimous written consent. Nothing stated in this paragraph shall affect the rights or duties of each individual Trustee under applicable law.

F. Minutes. The Secretary shall transcribe the proceedings at all meetings of the Trustees, and shall prepare and retain minutes to serve as the record of the meetings of the Trustees. The Secretary shall also prepare and retain all records of actions taken by unanimous written consent.

III. OFFICERS

A. Election of Officers. The Trustees at their regularly scheduled annual meeting each calendar year shall conduct elections for those offices as to which the incumbent's term is then expiring or the position is vacant, or for newly created officer or assistant officer positions. The Trustees shall elect from their members a Chairman, Vice Chairman, and a Secretary, each of whom shall hold the office to which the individual is elected for one year and until the officer's successor is elected and qualified. ~~An individual who has held any office (including the office of Chairman, Vice Chairman or Secretary) for three consecutive one-year terms (or for three consecutive years, in the case of an individual who served as Chairman, Vice-~~

~~Chairman, or Secretary before January 1, 2005 when the terms of those offices were longer) shall not be eligible for re-election to that office until the individual has been out of that office for a period of at least one year.~~ The Trustees shall elect at their regularly scheduled annual meeting each calendar year a Secretary, who may or may not be a Trustee, and who shall hold the office to which the individual is elected for one year and until a successor Secretary is elected and qualified. In addition, the Trustees may elect or appoint at any such meeting other officers or agents, who may or may not be Trustees; all Trustee officers shall be subject to the term duration and limits herein prescribed, and agents shall serve for such period or periods of time as the Trustees shall designate.

B. Chairman. The Chairman shall preside at all meetings of the Trustees and shall supervise the carrying out of the policies adopted or approved by the Trustees. The Chairman shall have general administrative powers, as well as the specific powers conferred on the Chairman by these Procedures and Practices. The Chairman also shall have, and may exercise at the Chairman's discretion, such further administrative powers and duties as from time to time may be conferred upon, or assigned to, the Chairman by the Trustees.

C. Vice Chairman. The Vice Chairman shall exercise all of the duties and powers of the Chairman in the Chairman's absence or disability to serve.

D. Secretary. The Secretary shall keep accurate minutes of all meetings and of the correspondence by the Chairman and Vice Chairman of the Trustees, and shall be the custodian of both. The Secretary shall attend to the giving of all notices

required by these Procedures and Practices, and shall be custodian of the records, documents and papers of the Trustees, except as otherwise provided for herein. The Trustees may appoint one or more Assistant Secretaries, and in the absence, disqualification or disability of the Secretary, any such Assistant Secretary shall exercise the functions of the Secretary.

E. Chief Investment Officer. The Chief Investment Officer shall coordinate, conduct, and document financial analysis of all investment assets of the Trust. The Chief Investment Officer shall serve as the financial contact with all parties involved in the management of those assets including the financial custodian, the investment managers, the investment consultants, and the Trustees. The Chief Investment Officer reports to the Chairman of the Trust concerning administrative matters, and to the Trustees concerning investments and their administration and management. To assist the Trustees in their capacity as Members of Nemours, the Trustees may, at their discretion and with the concurrence of the Chairman of Nemours, request the Chief Investment Officer to perform similar services for Nemours. In such event, the Trust and Nemours shall enter into an agreement setting forth the terms and conditions under which the Chief Investment Officer shall perform services for Nemours as well as for the Trust. The Chief Investment Officer shall serve at the pleasure of the Trustees, or until a successor Chief Investment Officer is elected and qualified.

F. Other Officers or Agents. The Chairman may appoint, or the Trustees may elect, such additional officers, assistant officers or agents as deemed

appropriate, with such duties and powers as shall be approved by the Trustees.

G. Compensation of Officers. Salaries or other compensation of the officers of the Trust may be fixed from time to time by the Trustees, provided that such salaries and other compensation shall not be excessive in amount and shall be for services which are reasonable and necessary for performance of the Trust's purposes. In the case of Trustees who also serve as officers, their salaries or other compensation for services rendered as officers shall be in addition to the salary or other compensation paid for services rendered as a Trustee. Provided, however, that all compensation of officers shall be subject to any applicable restrictions or limitations provided in the Governing Documents.

IV. COMMITTEES

A. Standing Committees. The Trustees shall have the following Standing Committees:

1. Audit and Investment Committee
2. Nemours Evaluation Committee
3. Trustees' Nominating and Governance Committee

Each committee shall be composed of all of the Trustees of the Trust, acting as a committee of the whole. The Trustees' Nominating and Governance Committee shall nominate the chairman of each committee to be elected by the Trustees at their regularly scheduled annual meeting in the calendar year in which the incumbent's term is expiring or the position is vacant. The Trustees may establish Charters for each of its Standing Committees or other committees to provide

additional terms relating to the committee's purposes, composition, authority and operations.

B. Audit and Investment Committee. The Audit and Investment Committee shall provide oversight of the financial condition of the Trust, its investments and its internal controls of financial, accounting and asset management, including oversight of the Chief Investment Officer and his staff and the Financial Custodian. The Committee will be responsible for recommending to the Trustees financial policies for the management and investment of Trust assets. The Committee shall provide for an audit by a Certified Public Accountant of the assets and financial records of the Trust Estate at least once during each calendar year. Such audit shall include an opinion on the financial condition of the Trust and on the adequacy of its internal audit controls and procedures. The Committee shall also have the authority to engage Certified Public Accountants or other professional consultants to perform such other review of the Trust's financial records, or of the reports and performance of the Trust's Financial Custodian and Investment Managers, as the Committee shall deem necessary or appropriate. The Committee shall monitor the performance of the financial custodian and its relationship with the Trust personnel who manage investments. The Committee shall meet with, and shall require regular reports from, the Chief Investment Officer of the Trust, and shall keep apprised of investment issues affecting the Trust's portfolio, the expected returns and the performance of money managers engaged by the Trust. The Committee shall recommend to the Trustees any

changes in the manner of doing business or conducting the financial affairs of the Trust that the Committee shall deem advisable with respect to the management and investment of Trust assets.

C. Nemours Evaluation Committee. The Nemours Evaluation Committee shall evaluate the performance of the Nemours Foundation in carrying out its mission and its intended purposes as set forth in the Governing Documents. To assist the Trustees in their capacity as Members of Nemours, the Nemours Evaluation Committee shall be empowered to evaluate or audit any of the programs and services of Nemours at any time. The Committee's areas of evaluation shall focus on the performance and effectiveness of the Board of Directors of Nemours in providing appropriate oversight of management and the operations of Nemours. The Committee shall also evaluate the use of the distributions made from the Trust to Nemours. The Committee shall evaluate the performance of each Director of Nemours as well as the overall performance of the Board of Directors, and the Trustees in their capacity as Members of Nemours shall take those individual evaluations into account for purposes of making decisions as to the appointment of Non-Member Directors of Nemours. The Committee, based on its assessment of the performance of the Board, and the experience and/or expertise embodied in the current Board, will make recommendations to the Trustees in their capacity as Members of Nemours as to the number of Directors to be elected each year, and as to any proposed changes in the make up of the Board. Any conclusions of the Nemours Evaluation Committee that are to be communicated to the Nemours

Foundation shall be made to the Chairman of the Board of Directors of the Nemours Foundation.

D. Trustees' Nominating and Governance Committee.

1. The Trustees' Nominating and Governance Committee shall, after consultation with all Trustees, nominate individuals to fill vacancies when they occur in any individual Trustee position, either because of an increase in the number of Trustees or because an incumbent Trustee ceases to serve or transfers to the status of a Trustee Emeritus. Provided, however, that while the Committee is expected to be the principal source of nomination and recommendation of candidates to fill any vacancies among the Trustees, nothing herein shall preclude the Trustees from considering other candidates as well.

2. The Trustees' Nominating and Governance Committee shall nominate individuals to serve as officers of the Trust and Chairmen of the Standing Committees of the Trust when the incumbent's term is expiring (which shall occur annually in each case), when the position otherwise becomes vacant, or when such a position is newly created.

3.. The Trustees' Nominating and Governance Committee shall evaluate, at least annually, the system of governance established within the Trust organization, the Trust Committee Structure, and the effectiveness of the Trustees in executing their responsibilities under the Governing Documents. If needed, the Committee shall make recommendations on improving the system of governance. Further, the Committee shall prepare and recommend any changes the Committee

believes to be appropriate or necessary to these Procedures and Practices or to other internal governing documents of the Trust, and shall draft and/or review any such changes or additions as may be proposed or requested by any of the Trustees.

4. The Committee shall have the authority to engage consultants and/or professional search organizations to assist the Committee in its responsibility to identify, recruit and select highly qualified nominees for the positions specified in subparagraphs 1 and 2.

E. Special Committees; Other Committees. The Chairman may appoint from time to time other committees of two or more Trustees for such purposes and with such powers as the Trustees may determine. With approval of the Trustees, the Chairman may also appoint one or more persons who are not Trustees to serve on a committee.

F. Quorum. A majority of the members of any committee shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting, from time to time, and the meeting may be held as adjourned without further notice.

G. Attendance at Meeting by Electronic Means. Committee members may participate in any meeting by means of conference telephone or similar communications equipment which allows all persons participating in the meeting to hear each other at the same time. Participation by a committee member by such electronic means shall constitute presence at a meeting.

V. MANAGEMENT OF TRUST ASSETS

A. Trustee Responsibility. The Trustees shall be responsible for adopting financial policies relating to the management and investment of Trust assets, and in doing so, shall consult with the Audit and Investment Committee and the Chief Investment Officer of the Trust.

B. Financial Custodian. The Trustees shall retain a trust company or other fiduciary to serve as a financial custodian. A financial custodian shall be a bank, trust company, or other entity which (i) is authorized to serve as a fiduciary or as a trustee under the laws of the United States or any state thereof, (ii) is not related or subordinate to the Trust or to any of the Trustees within the meaning of Section 672(c) of the Internal Revenue Code, and (iii) has capital reserves of at least One Hundred Million Dollars ($100,000,000). A bank, trust company or other fiduciary that does not meet these requirements may not serve as financial custodian to the Trust. The financial custodian shall be custodian of the financial records, documents and papers of the Trust, except as otherwise provided for herein. It shall be responsible for keeping of proper financial records of all transactions of the Trust. It shall have and may exercise those powers and duties required of a financial custodian by law, and such other powers and duties as may be provided by regulation or practice, or imposed by these practices and procedures. It shall also perform such other duties as may be assigned to it from time to time by the Chief Investment Officer of the Trust, or by the Trustees.

VI. CONFLICTS OF INTEREST

The Trustees will perform their responsibilities and duties in accordance with the highest ethical and business standards. A Trustee shall have an affirmative duty to disclose a conflict, or potential conflict of interest, to the other Trustees and to the Chairman. If it is determined that a Trustee has a conflict of interest with regard to a specific issue or matter relating to the Trust or its administration, any decisions relating to such issue or matter shall be made by Trustees who are not subject to that conflict. A conflict of interest may occur in any of the following situations, among others:

A. Financial Conflict. A conflict of interest occurs when a Trustee or a member of his immediate family has a direct or indirect financial interest in a party that has, or is negotiating to have, a transaction or other financial arrangement with the Trust or with Nemours. A financial interest may include, but is not limited to, (i) an ownership or investment interest in such a party, (ii) a compensation arrangement with such a party, (iii) a potential ownership in, investment interest in, or compensation arrangement with, such a party, or (iv) any such arrangement with a person who is an officer, director, trustee or substantial owner of such a party.

B. Conflict of Loyalties. A conflict of interest may occur when a Trustee or a member of his immediate family has conflicting loyalties, i.e., a duty of loyalty to a party that has, or is negotiating to have, a transaction or other financial arrangement with the Trust or with Nemours. For example, a conflicting loyalty will generally occur when a Trustee or a member of his immediate family serves as

a director or officer of a party that has, or is negotiating to have, a transaction or other financial arrangement with the Trust or with Nemours, even if that person has no ownership or other financial interest in that party.

C. Other Circumstances. In some circumstances a potential conflict of loyalties may occur between a Trustee's role as a Trustee or Member and his concurrent role as Director of Nemours. If any Trustee believes that he or another Trustee may have such a conflict, or if the financial or relational conflicts described in the previous two paragraphs are unclear, the Trustees may review the information and circumstances presented (or may delegate such review to a committee) and determine whether a conflict exists.

VII. ORDER OF BUSINESS

The Trustees at each meeting, regular or special, shall follow the following order of business, unless waived or changed by the Trustees:

1. Notice of call.
2. Call to order and determine presence of a quorum.
3. Approval of minutes of previous meeting.
4. Reports of Standing Committees.
5. Reports of Special Committees.
6. Unfinished Business.
7. New Business.
8. Adjournment.

VIII. PARLIAMENTARY PROCEDURE

Parliamentary procedure at all regular and special meetings shall be that

stated in the most recent available issue of *Robert's Revised Rules of Order,* except as may be otherwise provided by procedures and practices adopted by the Trustees.

IX. ATTORNEYS

A. Attorneys for Trustees as a Unit. The legal principle of unit control shall govern in the selection of attorneys to represent the Trustees in the administration of the Trust Estate[1]. The Trustees therefore shall be represented as a unit in the conduct of their regular business, by an attorney or attorneys chosen by a majority vote of the Trustees. The Trustees may retain separate or additional counsel to represent them as a unit, or require their general counsel to associate additional counsel with them, with regard to legal matters.

B. Attorneys of Individual Trustees. Each Trustee shall have the right to retain counsel to represent that Trustee individually, on matters including but not limited to the Trustee's performance of that Trustee's duties as Trustee. The Trust shall not be liable for the fees of any attorney representing an individual Trustee unless the payment of such fees by the Trust is approved by a majority vote of the Trustees, or ordered by a Court with jurisdiction over the Trust.

X. INDEMNIFICATION

The Trust shall indemnify and hold harmless any Trustee, whether serving currently or in the future, in accordance with the Indemnification Agreement then

[1] In re Estate of Maxey, 240 So.2d 93,95 (2 DCA Fla. 1970)

in effect, and to the extent permitted by the law and the public policy of the State of Florida.

XI. REPEAL OF CONFLICTING PROVISIONS

Any resolution, motion, regulation or other action heretofore taken by the Trustees at any regular or special meeting, which conflicts with or provides for action contrary to that herein provided for, shall be and it hereby is revoked and repealed as of the date of the adoption of these Procedures and Practices.

XII. NOTICE

Whenever a notice is required to be delivered under these Procedures and Practices, such notice may be given either (i) by first-class, certified or registered mail, with postage prepaid, (ii) by overnight delivery through the use of a generally recognized delivery service, (iii) by personal delivery, (iv) by facsimile transmission, or (v) by E-mail to an address provided by the person to whom delivery is required. If a notice is sent by mail, it shall be deemed delivered three (3) days after it is mailed. If a notice is provided by personal delivery, it shall be deemed delivered when actually delivered. If a notice is sent by overnight delivery, facsimile or E-mail, it shall be deemed delivered on the day after it was sent.

XIII. AMENDMENTS

These Procedures and Practices may be amended at any regular meeting, or at any special meeting called for that expressed purpose, provided that written notice that such an amendment will be presented to such meeting is provided to

each Trustee, and that such notice is delivered at least fifteen (15) days prior to the meeting. Such notice must be accompanied by a copy of the amendment to be proposed. These Procedures and Practices may also be amended by unanimous written consent of the Trustees.

Adopted 11/18/76
Amended 1/18/95
Amended 10/11/95
Amended 1/22/97
Amended 1/27/99
Amended 7/28/99
Amended 1/25/00
Amended 7/20/04
Amended 1/18/05

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EXHIBIT 9 F

Nemours
FOUNDATION

August 15, 2007

David J. Bailey, MD, MBA
President and CEO
The Nemours Foundation
4600 Touchton Road, East
Building 200, Suite 500
Jacksonville, FL 32246

Dear Dr. Bailey:

There are many and diverse health care needs involving children in Delaware, most of which are in need of preventive action, which I believe Nemours could provide. Infant Mortality and its related problems present one of the most urgent needs in the State of Delaware, and I hope you will consider including them in the 2008 budget.

Alfred I. duPont
Hospital for Children
Wilmington, Delaware

Nemours Center for
Children's Health Media

Nemours Children's Clinic
Jacksonville, Florida
Orlando, Florida
Pensacola, Florida
Wilmington, Delaware

Nemours Health &
Prevention Services

Nemours Health Clinic
Wilmington, Delaware

Nemours Mansion & Gardens

Nemours.org

KidsHealth.org

PedsEducation.org

To put this issue in perspective, Infant Mortality (IM) and its related problems such as low birth weight babies, prenatal care, maternal health, and maternal depression leading to abuse and neglect is a very serious problem in Delaware. It is even a greater problem in the City of Wilmington. The figures that I have indicate that Delaware is 49th in the Nation with 9.4 deaths per 1000 live births. This compares to an average of 6.9 for the U.S. (36% higher). In the City of Wilmington, the rate is 13.5 (96% higher than the U.S. average) and among the black mothers the rate is 17.6 (155% higher than the U.S. average). Similar figures are reflected in the low birth weight babies. Delaware is 45th in the Nation with the percent of low birth weights babies at 9.4%, which compares to 7.9% for the U.S. Average (19% higher). In the City of Wilmington the percent is 14.1% (78% higher), and for black mothers 17.1% (116% higher than the U.S. average). Births to teens aged 15 to 17 per 1,000 15 to 17 aged females in Delaware is 46.9 compared to 45.6 nationally. However, in Wilmington the number is 106.2 (whites) and 114.4 (blacks). In 2003 there were 11,337 total births in the State. There were 1,219 births (11%) in Wilmington (477 White, 728 Black, 221 Hispanic, and 14 other).

To further put IM into perspective, we need to understand the demographics of Delaware and the City of Wilmington. There are 201,692 children under the age of 18 in the state of Delaware. (24% of the total population) in Wilmington there are 18,793 children (9% of the children in the State). By race, in Wilmington,

16% are white, 67% are black, 14% are Hispanic, and 3% include all other—(these are the latest numbers I have and there may be more recent numbers, but the proportions would probably be the same.) Looking only at Wilmington, there are 7,758 families with children, with an estimated total number of parents at 10,868. Significant is the fact that 24.0% of families with children are below the federal poverty level, with females heading 76.3% of those families, and finally 30.4% of all children in Wilmington are below the federal poverty level.

Recognizing that Wilmington is the largest city in the state and that it has all of the problems facing the state, I would like to suggest that Nemours make Wilmington a "laboratory" to address all of the preventive pediatric health needs of children, starting with Infant Mortality. Nemours would be operating in the most troubled environment in the state where there are the greatest needs, yet the magnitude of the children, mothers, and parents that we would have to deal with would be manageable. I believe that Nemours could develop and refine programs addressing most of the major pediatric health problems facing the State in this "Laboratory". The solutions would not only benefit the State of Delaware and the City of Wilmington but could be effective on a national basis.

To initiate this approach, the Foundation should create separate 501 c 3 organizations for each o its "prevention" undertakings. There are several reasons that I am suggesting this approach. First, I do not believe that Nemours can fund all of the different initiatives necessary to address the "preventive" needs in Delaware. The public to a large extent must ultimately fund these initiatives. **Nemours' role should be to organize the initiative, design a plan, fund the start-up of operations, recruit the management, and build a coalition.** When the initiative is functioning well with sustainable results and with appropriate outside funding from both private and public sources, then Nemours could pass the organization over to the Board of Directors and officers of the separate 501 c 3 organization. This does not mean that Nemours would not continue to be represented on the Board and participate in the private funding of the organization. It would mean the organization has matured sufficiently to stand alone. The bottom line is the Nemours must not (cannot) assume the total funding of "prevention initiatives". I believe it would be important that all concerned understand this from the outset. Equally important, separate 501 c 3 organizations can be held more accountable for the results, and solicitation of private and public funds can be more effectively managed.

If Nemours could adopt this model of operations/funding I believe we could, over time, address virtually all of the pediatric preventive needs in Delaware, even if it would mean taking them on one or two at a time. It would establish healthy and sustainable organizations for the City of Wilmington and the State of Delaware, and it would also recognize the priority Mr. duPont designated for the residents of Delaware in his Will. (Mr. duPont set an example for this model in 1928 when he urged the state to have a "social security" type program for the elderly. The program failed in the State Senate but Mr.duPont personally funded the start-up of the program statewide, for two years until the State legislature finally passed the authorizing statue.)

With the above concept in mind, I recommend the creation of a new 501 c 3 organization with the Members initially being "Nemours" people. I would name this organization "Right Start", appoint a Board of Directors, again initially of Nemours people, but to be gradually replaced, until a majority would consist of members of the coalition, contributors and people from the community interested in Infant Mortality. The sole mission of this particular 501 c 3 organization would be to defeat Infant Mortality and its related problems. Nemours would recruit the President and CEO of the organization, fund the start-up and manage the program as out-lined above until it is mature enough to stand-alone.

In this initial undertaking involving Infant Mortality I would strongly recommend that we follow the pioneering work done by the "Every Child Succeeds" (ECS) organization in Cincinnati. **They have been able to reduce infant deaths from 13 per 1000 live births to 2.8 deaths per 1000 live births in the Cincinnati area for those mothers who are in their program.** There is currently a waiting list for mothers to join the program. The funding is 30% private and 70% public, principally from the United Way and Head Start. Their program is for first time mothers only and will include any first time mother up to four months after the birth of the baby. (I would like to see our program include all mothers, not just first time mothers) Their program continues through the third year after birth.

The program is on a volunteer basis where the mother must meet certain financial qualifications. The program is a visiting nurse/social worker program with visits beginning as soon after conception as possible with monthly visits all the way through the first year, and as often as necessary during the second and third years. (The customer being the mother/parent.) This program is perhaps 180 degrees different than the Social Marketing approach being used in our obesity program. The difference is that the obesity program is designed to change **policy and practices** throughout the State by trying to reach large numbers (the customer being community organizations and governmental agencies) whereas the "Every Child Succeeds" approach is virtually a one-on-one approach.

This latter approach also allows for dealing with a multitude of problems facing the mothers/parents that can help deal with the many problems of raising healthy children. I am not suggesting that we change the current Social Marketing approach, but this will allow us to evaluate the respective benefits of each.

I have been in contact with Dr. Judith Van Ginkel, President of "Every Child Succeeds" and several of her associates and they have all been very helpful in explaining their program and the research that is associated with the program. (I understand there have been two NIH Grants made thought the Cincinnati Children's Hospital, which is the managing partner of the organization) I cannot fully or adequately explain all of the aspects of the program; however I believe it would warrant a trip to Cincinnati for you, or your representative, to meet with the

people at "Every Child Succeeds" and see the potential it has for a Wilmington "Laboratory" undertaking. The population served by their organization is approximately 1.5 million or almost twice the size of Delaware (the City of Cincinnati, two counties in Ohio and three counties in northern Kentucky across the river from Cincinnati.) Their budget is approximately 7.5 million. Dr. Van Ginkel estimates that it currently costs approximately $2,800 per family per year. Their program is strictly on a volunteer basis; with over 2,000 families being served at any one time, however, only 20% of their needs are currently being funded. They have approximately 110 visiting nurses/social workers employed; most have BS degrees with many having masters degrees as well. They have a supervisor for every six visiting nurses. Their goal is for each visiting nurse to make 12 calls per week. Salary for visiting nurses I understand is approximate $40,000 per year plus benefits. They are employees of the Cincinnati Children's Hospital but the hospital is reimbursed through the "ECS" organization.

Using ECS cost figures for rough budgeting purposes, and assuming that all 1,219 mothers (not just first time mothers) were to volunteer for this program the cost would be $3,413,200 ($2800 x 1219) for the first year. This would probably be near the upper limit, as I doubt that we could get 100% participation or that all the mothers would meet the financial qualifications. (It may also be wise to start with only the first time mothers to get experience in the program before expanding to include all mothers.) The second and third years will require additional funds to accommodat the continuing visits of the mothers through the third year. The ECS people would be able to give you some realistic guidance in this area; however it should be kept in mind that outside public and private funding should

be solicited as early as possible and much would depend on how successful these solicitations might be. It should be our goal to achieve the same ratio of 30% private and 70% public funding as achieved in Cincinnati. It may take several years to achieve this ratio, as we will have to prove that our approach to IM is working and warrants public and private support

I am aware of the efforts of the Hope Commission in Wilmington and the Infant Mortality Task Force established by the Governor. The Hope Commission is overwhelmed with urgent safety issues (shootings, drugs) and IM is way down their list. The Task Force has provided some assistance, but it is too little and unorganized. The problem is there is not a coordinated system-wide plan to solve the problem nor is there any single organization willing to take the initiative to make it work.

I am enclosing material I have received from ECS and from their web site. I hope you will find it helpful in studying this program. If I can answer any questions about the programs I am suggesting, please give me a call. Dr. Bailey, I hope that you will give the "prevention" side of our obligations to Delaware children the same attention as we are giving the clinical side. Both sides (preventive and clinical) need to be pursued if we are really going to meet the needs of children in Delaware. This is the role I believe Nemours could/should fill. I respectfully request that you give this special area of need your careful consideration.

Sincerely,

W. L. Thornton
Director

Cc: Mr. John Lord
Chairman of the Board

EXHIBIT 9 G

NEMOURS FOUNDATION
Financial results since 1/1/2005

YEAR	Total Rev, & Support	Operating Exp.	Operating Income	Trust Distribution
2005	546,372,000.00	523,324,000.00	23,048,000.00	111,664,000.00
2006	582,729,000.00	553,532,000.00	29,197,000.00	119,014,000.00
2007	635,046,000.00	570,936,000.00	64,110,000.00	132,420,000.00
2008	664,332,000.00	634,620,000.00	29,712,000.00	137,820,000.00
2009	706,573,000.00	641,821,000.00	64,752,000.00	94,334,000.00
1st half 2010	358,974,000.00	328,607,000.00	30,366,000.00	55,288,000.00
TOTALS			**241,185,000.00**	**650,540,000.00**

Exhibit H

EXHIBIT 9 H

IN RE THE ESTATE OF ALFRED I. DuPONT, DECEASED.

True and Correct Copy and Literal Transcript of the following:

Will and Testament dated November 19th, 1932.

Codicil dated March 4th, 1933.

Second Codicil dated January 15th, 1935.

Order of Probate dated May 24th, 1935.

Letters Testamentary dated May 24th, 1935.

As the Same Appear of Record and Among the Files of the Court of the County Judge, Duval County, Florida.

Certificates of Clerk and Judge of said Court.

ORDER ADMITTING TO PROBATE, ORDER FOR LETTERS, OATH OF EXECUTOR, LETTERS TESTAMENTARY BOOK 3, Page 21

IN THE COURT OF THE COUNTY JUDGE
IN AND FOR DUVAL COUNTY, FLORIDA.
IN PROBATE.

IN RE THE ESTATE OF
ALFRED I. DuPONT, Deceased.

LETTERS TESTAMENTARY

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, Alfred I. duPont, late of the County of Duval, State of Florida, died on the 29th day of April, 1935, leaving a Last Will and Testament and two Codicils which, having been satisfactorily proven, were on the 24th day of May, 1935, duly admitted to probate and record in this Court. And as by said Last Will and Testament and Codicils it appears that Jessie Ball duPont, Reginald S. Huidekoper, and Edward Ball were thereby nominated, constituted and appointed Executors of said Last Will and Testament and Codicils, and that the said Jessie Ball duPont, Reginald S. Huidekoper and Edward Ball having prayed the Court to grant Letters Testamentary thereon to them as such Executors and having in due form of law taken the prescribed oath and performed all other acts necessary to their legal qualification as such Executors,

NOW, THEREFORE, KNOW YE, that I, J. OLLIE EDMUNDS, County Judge in and for the County aforesaid, by virtue of the power and authority by law in me vested, do hereby declare the said Jessie Ball duPont, Reginald S. Huidekoper and Edward Ball duly qualified by the laws of said State to act as Executors of the said last Will and Testament and Codicils and with full power,

Exhibit H

by the provisions of law and by virtue of these presents, to administer all and singular the goods, chattels, rights, credits, lands, tenements, hereditaments and property of the said Alfred I. duPont; and to ask, demand, sue for, recover and receive the same; to pay the debts in which the said Alfred I. duPont stood bound so far as the assets shall extend and the law direct, and duly entitled to have and hold for the purposes directed in and by said last Will and Testament and Codicils all of the estate of the said Alfred I. duPont, during the legal continuance of said administration, until the same shall expire by virtue of the provisions of said last Will and Testament and Codicils, or until the power and authority hereby granted shall be duly revoked according to law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and fixed the seal of the Court of the County Judge of the County aforesaid, at Jacksonville, Duval County, Florida, this 24th day of May, 1935.

J. OLLIE EDMUNDS

County Judge of Duval County, Florida.

(SEAL)

STATE OF FLORIDA }
COUNTY OF DUVAL }

BE IT REMEMBERED, That on this 24th day of May, A. D. 1935, I duly recorded the foregoing Letters Testamentary in the public records of said County.

J. OLLIE EDMUNDS

County Judge of Duval County, Florida.

(SEAL)

I, ALFRED I. DuPONT, now of Duval County, near the City of Jacksonville, State of Florida, do make, publish and declare this my Last Will and Testament, hereby revoking any Will or Wills, Codicil or Codicils thereto, by me at any time heretofore made.

ITEM 1. It is my will and desire that all bequests, devises and legacies, including all annuities herein created and directed to be paid, shall be paid to the beneficiaries thereof free and clear of all taxes chargeable upon, or incident to the passing of my estate or the settlement thereof, generally known as inheritance or transfer taxes, whether assessable against my estate, or the beneficiary or beneficiaries, by any State, County or Municipality, or under the laws of the United States, not including, however, any tax or taxes which may be due by the beneficiary or beneficiaries receiving any bequest or devise as a tax on the income of such beneficiary or beneficiaries, and I direct that my Executors shall pay all such taxes and any other taxes which may be a charge against my estate at such times as shall be deemed by them most beneficial to my estate, within the time limited by law, and for that purpose I hereby direct and empower my said Executors to use any of my securities which may belong to my estate as collateral security for the purpose of borrowing money for the payment of said taxes, provided in the judgment of my said Executors it shall not be deemed expedient to sell or otherwise dispose of said securities, with the understanding that all other provisions of this my Will, and the vesting of any bequests, legacies or devises hereinafter provided for, shall be subject to the use by my Executors of the said securities as herein provided.

ALFRED I. DuPONT

ITEM 2. I give and bequeath unto the persons hereinafter named in this Item, the following:

(a) Unto Mrs. Madeline duPont Ruoff, now residing at Munich Germany, Five Thousand (5,000) shares of the common capital stock of Almours Securities, Inc.

(b) Unto Mrs. Bessie duPont Huidekoper, now residing at 1707 New Hampshire Avenue, Washington, D. C., Five Thousand (5,000) shares of the common capital stock of Almours Securities, Inc.

(c) Unto Victorine E. duPont Dent, now residing near Philadelphia, Pennsylvania, Five Thousand (5,000) shares of the common capital stock of Almours Securities, Inc.

(d) Unto Alfred Victor duPont, now residing near Wilmington, Delaware, Five Thousand (5,000) shares of the common capital stock of Almours Securities, Inc.

The four bequests in the foregoing paragraphs (a), (b), (c) and (d) are to the four children of my first marriage, and the bequests to each of them above set forth, together with such provisions as I have heretofore made for them, I consider ample.

I make no provision in this my Will for Alicia Amory Maddox Glendenning, the daughter of my former wife, Alicia Bradford, for the reason that I consider she is amply provided for under the Will of her mother.

ALFRED I. DUPONT

(e) Unto Isabelle Ball Baker, the wife of the Reverend N. Addison Baker, now residing in Richmond, Virginia, One Thousand (1,000) shares of the common capital stock of Almours Securities, Inc.

(f) Unto Mrs. Elsie Ball Bowley, the wife of Major-General Albert J. Bowley, now residing at Schofield Barracks, Hawaii, One Thousand (1,000) shares of the common capital stock of Almours Securities, Inc.

(g) Unto Thomas Ball, now residing in Los Angeles, California, the brother of my wife, One Thousand (1,000) shares of the common capital stock of Almours Securities, Inc.

(h) Unto Edward Ball, now residing in Jacksonville, Florida, the brother of my wife, Five Thousand (5,000) shares of the common capital stock of Almours Securities, Inc. This bequest is made in lieu of all fees and commissions which he should receive as Executor and/or Trustee under this Will or in connection with my Estate and is in full settlement of such fees and commissions.

(i) The sum of One Thousand Dollars ($1,000.00) to each and every one of the employees who is in my employ and/or in the employ of Almours Securities, Inc. and/or in the employ of any of its subsidiaries at the time of my death and who at such time has been so employed continuously for a period of one year or more next preceding the date of my death in the Jacksonville or in the Wilmington office, and/or in connection with or on my yacht, and/or in connection with my former home, Nemours," either in the house or outside and/or in connection with my present home, Epping Forest, near Jacksonville, Florida, either in the house or outside, provided that this bequest shall not apply to any one who has otherwise been provided for under this my Will, and that no person taking under this paragraph shall take more than One Thousand Dollars ($1,000.00), even though employed both by me and by one or more of said corporations and in more than one of the capacities above stated.

ITEM 3. In addition to the contents of the Mansion House, and other buildings and structures known as "Nemours" which at the time of our marriage and since that time I gave to my beloved wife, Jessie Ball duPont, I give and bequeath unto my said wife, Jessie Ball dul'ont, absolutely, all of the household goods, household equipment and silver and plate of every description owned by me at the time of my demise, wheresoever located and situated; also all works of art owned by me at the time of my decease, whersoever located and situated; also all automobiles, yachts, horses, wagons, carriages, harness and all equipment, tools and fixtures used in connection therewith or in the upkeep, cultivation and maintenance of the places which I may own or maintain for my personal use, wheresoever located and situated, and also all my jewelry, clothing and articles of personal use, wheresoever located and situated at the time of my decease, it being my intention that my said wife shall have all such personal belongings as I may own at the time of my demise.

ITEM 4. The title to our home known as "Epping Forest," situate in Duval County, Florida, is vested in an estate by the entireties in my beloved wife, Jessie Ball duPont, and my-self, and therefore upon the death of either it will by operation of law pass to the survivor, but should my wife pre-decease me and the title to this property thereby become and be vested in me at the time of my death, then and in such event I give and devise the same, together with all tenements, hereditaments and appurtenances thereunto appertaining, unto Almours Securities, Inc., and its successors and assigns, in fee simple forever.

Exhibit H

ITEM 5. Subject to the legacies and bequests hereinabove set forth, I give, devise and bequeath the entire rest, residue and remainder of my property and estate, real, personal or mixed, in esse and in futuro, wheresoever the same may be situated, of which I may die seized and possessed and which may belong to me at the time of my death, or which may be subject to my disposal by Will, unto The Florida National Bank of Jacksonville, a banking corporation organized and existing under the laws of the United States of America, with its principal place of business in Jacksonville, Florida, to my wife, Jessie Ball duPont, to John F. Lanigan, now of Miami, Florida, and to Edward Ball, now residing at Jacksonville, Florida, as Trustees, and unto their successors in trust, to have and to hold said Estate forever, but IN TRUST for the following uses and purposes. If the said John F. Lanigan is not living, or is for any reason unable to act as one of my said Trustees or should resign, then I nominate and appoint my son-in-law, Elbert Dent, of Philadelphia, Pennsylvania, to act as Trustee in the place and stead of the said John F. Lanigan, and if the said Edward Ball is not living or is for any reason unable to act as one of my said Trustees or should resign, then I nominate and appoint N. Addison Baker, of Miami, Florida, to act as Trustee in the place and stead of said Edward Ball. I direct that in case any individual Trustee of my estate shall die or cease to act, the survivors of my said Trustees shall have all the powers hereinabove given to my said Trustees, and such survivors shall at once select a Trustee in the place of the one so dying, or ceasing to act, and the person so selected shall exercise all the powers given herein to one of my Trustees, provided that a reputable corporate Trustee shall always be one of my Trustees.

In case The Florida National Bank of Jacksonville fails or refuses to accept and act under the Trust herein created upon the terms herein set forth, then the other three Trustees are hereby empowered and directed to select and appoint some other trust company or bank, either in the State of Florida or elsewhere, to act as Trustee under the provisions of this my Last Will in place of The Florida National Bank of Jacksonville; and such other

ALFRED I. DUPONT

trust company or bank to have all the powers and be charged with all the duties and responsibilities given to or placed upon The Florida National Bank of Jacksonville under this my Will, and to receive such compensation as may be determined by my individual Trustees.

It is my wish that in the event that the three individual Trustees, or their successors or substitute Trustees herein named, or the survivor or survivors of them, as distinguished from the corporate Trustee herein named or its corporate successor or any succeeding corporate successor or successors thereof, should at any time deem it expedient that the corporate Trustee be changed, then they shall have the power, from time to time and as often as they consider it advisable so to do, to select another trust company or bank, either in the State of Florida or elsewhere, as the corporate Trustee, whereupon the corporate Trustee as hereinabove indicated, namely, The Florida National Bank of Jacksonville or its corporate successor, or any succeeding corporate successor or successors thereof, shall relinquish and give over all rights as corporate Trustee to the newly selected bank or trust company, and all rights and duties given to The Florida National Bank of Jacksonville or its corporate successors or any succeeding corporate successor or successors thereof, shall cease and determine, and the same shall be taken over by the new corporate Trustee chosen by the individual Trustees as hereinabove set forth, the compensation of the new corporate Trustee in each instance to be determined by the individual Trustees.

ALFRED I. DUPONT

ITEM 6. It is my will and desire that my said Trustees and their successors shall take possession and shall have entire management and control of the corpus of my estate during such time as it is in their keeping and in the administration and management of my said trust estate my Trustees shall have the following powers, which may be exercised at their discretion, namely:

(a) To continue to hold any securities or other assets left by me, as well as investments made by them, so long as they shall deem it advisable so to do, without liability for any loss that may result therefrom.

(b) To invest and reinvest the assets of my estate, or the proceeds of any sale or disposition thereof, in any corporate stocks, bonds, or other securities, or in any other investments, either real or personal, or both, from time to time, not confining such investment or reinvestments to what are defined by the laws of any State as legal trust fund investments, with power to buy stocks and bonds and other securities at a premium to be paid out of and charged against the principal of the trust estate, and with power in their discretion to cause the securities, which may, from time to time comprise the trust estate, or any part or parts thereof, to be registered in their names as Trustees, or in the individual name of their nominee, or to take and keep the same unregistered and retain them or any part or parts thereof in such condition that they will pass by delivery, without liability for any loss that may result therefrom.

(c) To borrow money from time to time, for any purpose in the administration or distribution of my estate or to continue and renew any loan made to me, or by me in my lifetime, or to, or by my said Executors or Trustee as in their judgment shall seem wise and expedient, and for that purpose to give, execute and deliver such assignments and transfers, obligations, notes, pledges, bonds and mortgages and renewals thereof, and other instruments or papers, from time to time, as they may deem necessary or proper, without liability on the part of any such purchaser, lender or mortgagee, to see to the application of the purchase moneys or of the moneys loaned.

(d) To sell, either at public or private sale and either clear of encumbrances or subject thereto, or upon ground rent or purchase money mortgage, and further to mortgage and re-mortgage, pledge, assign, and reassign, lease and re-lease, any or all of the assets, real or personal, of my estate, of which I shall die seized or possessed, or which may in any manner or way come into the possession of my said Executors or Trustees, or of which the title may be vested in them or to which they shall be entitled, at any time whatsoever, for such price or prices, sum or sums and upon such term or terms as my said Executors or Trustees as the case may be, sha"

ALFRED I. DUPONT

deem wise and expedient,and to give,execute,and deliver good and sufficient deeds, assignments, transfers, powers, bonds, mortgages, pledges, leases, authorities, and other assurances and instruments in the law as in their discretion may be deemed necessary or proper in the premises, and to re-execute any of their powers herein granted from time to time as may be found necessary or advisable in the administration of my estate, without any liability or responsibility upon the part of the purchaser or purchasers, mortgagee or mortgagees, pledgee or pledgees, obligee or obligees, assignee or assignees, lessee or lessees thereof to see to the application of the purchase moneys, or of the borrowed, bond, mortgage or pledge moneys.

(e) To take over properties in foreclosure and to buy in assets held as collateral in case of default upon any obligations held by my estate, and, in their discretion, to retain the same, and further to enter into and become a party to any concerted action or plan, reorganization or otherwise, and sign agreements in reference thereto, with the intention of liquidating, conserving, bettering or saving any of the assets of my estate, and for that purpose to make deposit and exchange of securities and other property and pay charges, assessments and expenses in connection therewith.

(f) To carry on any business enterprise in which I am interested in my lifetime, either individually or as a co-partner, or to enter into an incorporation of the same and accept corporate stock in lieu of any individual interest, at such valuation or valuations, or to sell out my said interest at such price or prices, as in the judgment of my said Executors or Trustees shall seem fair and adequate.

(g) To make such contributions and to pay such assessments upon any assets of my estate which they shall be called upon to meet, as in their judgment they may deem wise and expedient.

(h) To do every and all things that they may deem best for the conservation, protection and betterment of my estate, as fully and completely as I might do, personally, were I alive and able to act for myself.

(i) To pay all expenses incurred in the administration, conservation or protection of my estate, out of the principal or income, including

accounting, whether final or otherwise.

(j) To replace and rebuild, out of the proceeds of any insurance carried for protection against such destruction, any property destroyed by fire or other destructive elements, and further in their discretion to add to and augment such insurance fund out of the principal funds, real or personal, of my estate, should such further funds be necessary in the judgment of said Trustees.

(k) And further, to remodel and to rebuild any improved property that may be necessary in their judgment for the best interests of my estate,or to build upon and improve any unimproved property belonging to my estate, out of the principal of my estate. In the absence of sufficient extra funds needed in such instances, to borrow the required sums upon bond and mortgage, or other obligations, as above set forth, and to renew such loans and obligations as may be necessary from time to time.

(l) Upon the raising of the question as to whether an item of charge or discharge be principal or income, the decision of my said Trustees upon such point shall be final.

(m) In general to exercise the same powers in dealing with, and disposing of the real estate, securities and other property which shall at any time constitute a part of the principal of my estate, that an individual, owning the same absolutely, would have, except as herein otherwise expressly provided.

(n) To subscribe and pay for stock in corporations and hold the same as a part of my estate, and to vote any stock held by them at any meeting of the stockholders of said corporations.

(o) I further authorize my Executors and Trustees to compromise and settle all claims in favor of, or against my estate.

(p) I order and direct that there shall be paid from and by my estate to my Trustees for their services as such, the following:

1. To The Florida National Bank of Jacksonville the sum of Two Thousand Dollars ($2,000.00) per annum during the period of time that it is serving as my corporate Trustee.

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2. To each of the individual Trustees, or their successors, with the exception of Edward Ball who is elsewhere herein otherwise provided for and who therefore receives no cash, the sum of Five Thousand Dollars ($5,000.00) per annum for their services as Trustees.

(q) Should at any time a question arise in the minds of my Trustees concerning the propriety of doing, or refraining from doing, anything in the discharging of their duties as Trustees, then the decision of the majority of my Trustees must rule. Should a majority decision be impossible, then the ruling of the corporate Trustee must be final.

ITEM 7. I will and direct that my Trustees shall pay out of the net income of my Trust Estate to the persons hereinafter named in this Item, the annuities hereinafter mentioned upon the terms and conditions set forth in the separate paragraphs of this Item, said annuities to commence at the time of the date of my death and to be payable monthly by my Trustees (or by my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties), viz:

(a) Unto Adelaide Camille Denise duPont, being so known, the sum of Five Thousand Dollars ($5,000.00) per annum until she attains the age of twenty one years; and thereafter the sum of Ten Thousand Dollars ($10,000.00) per annum until she attains the age of twenty five years; and thereafter the sum of Twenty Thousand Dollars ($20,000.00) per annum until she attains the age of thirty years; and thereafter the sum of Thirty Thousand Dollars ($30,000.00) per annum for and during the term of her natural life; and upon her death, if she die before attaining the age of thirty years, to pay an annuity in the fixed sum of Twenty Thousand Dollars ($20,000.00) or upon her death after attaining the age of thirty years to pay the maximum annuity aforesaid, to-wit, the sum of Thirty Thousand Dollars ($30,000.00) to her child, if there be one child living at the time of her death, and to her children, share and share alike, if there be more than one child living at the time of her death, for and during the terms of their natural lives, or for and during the term of twenty one years, whichever period be the shorter, the annuity or share of said annuity payable to any child, however, to cease and terminate upon the death of said child and to revert to my residuary estate, it being my will and desire, however, that the said annuity shall not lapse in the event of said Adelaide Camille Denise duPont dying during my lifetime, but in the event that the said Adelaide Camille Denise duPont should die in my lifetime and leave to survive her a child, or children, then the entire annuity (that is Twenty Thousand Dollars or Thirty Thousand Dollars,as the case may be,depend-

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ing on whether or not her death occurs before or after she attains the age of thirty years) to be paid to her child, if there be one child, and to her children share and share alike, if there be more than one child, for and during the terms of their natural lives, the said annuity, however, or the share of said annuity payable to any child to cease and terminate at the death of said child entitled thereto hereunder and to revert to my residuary estate.

Only such portion of the said annuity of Five Thousand Dollars ($5,000.00) shall be paid to the said Adelaide Camille Denise duPont during her minority as is determined by my wife, Jessie Ball duPont, her guardian, or any subsequent legally appointed guardian. The unpaid balance of the annuity, if any, is, during her minority, to be set apart and held in trust by my Trustees herein appointed (or by my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties) in a separate trust, with all of the powers of investment and re-investment given to my Executors and Trustees herein as to the major estate, with the right to disburse to the said Adelaide Camille Denise duPont from time to time such portions thereof, if any, as may be designated by said guardian, and with the duty to distribute or pay to her when she attains the age of twenty one years all of the assets included in said separate trust. In case of her death before that time all assets included in this separate trust shall revert to my residuary estate.

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(b) Unto Maurice duPont Lee, now residing at Brookside Drive, Rockridge, Greenwich, Connecticut, the sum of Fifteen Thousand Dollars ($15,000.00) per annum for and during the term of his natural life, and after the death of the said Maurice duPont Lee one-half of the said annuity, to wit, the sum of Seven Thousand Five Hundred Dollars ($7,500.00), shall be paid to his wife Geraldine Shaw Lee, for and during the term of her natural life, and the other one-half, to-wit, the sum of Seven Thousand Five Hundred Dollars ($7,500.00), shall, if and while there be living issue of his body and of the body of his said wife, be paid to such issue or the survivor or survivors of such issue share and share alike, if there be more than one, for and during the life of the said Geraldine Shaw Lee and during the life or lives of such issue or the survivor or survivors of such issue. Should the said Maurice duPont Lee predecease his said wife and should there be no living issue of their bodies during any period thereafter during her lifetime, then, for that period, the $7,500.00 which would have been paid to such issue shall be paid to the said Geraldine Shaw Lee. After the death of the said Maurice duPont Lee and his said wife the said annuity of $15,000.00 shall be paid to their child, the issue of their bodies, if there be one child living at such time, and to their children share and share alike, if there be more than one child living at such time, for and during the terms of their natural lives or for and during the term of twenty-one years, whichever period be the shorter, the annuity or share of the said annuity payable after that time to any child, however, to cease and terminate upon the death of said child and to revert to my residuary estate, it being my will and desire, however, that said annuity shall not lapse in the event of the said Maurice duPont Lee dying during my lifetime, but in the event that the said Maurice duPont Lee should die during my lifetime leaving to survive him

his wife, the said Geraldine Shaw Lee, then and in that event the said $15,000.00 annuity, for and during the term of her natural life and if and while there is no living issue of said marriage, shall be payable to the said Geraldine Shaw Lee, but if there be issue the said annuity shall be payable one-half as aforesaid to the said Geraldine Shaw Lee for and during the term of her natural life and the other one-half as aforesaid to the child or children living during her lifetime, and should the said Geraldine Shaw Lee and the said Maurice duPont Lee both die during my lifetime, then and in that event the said annuity of $15,000.00 shall be paid for and during the terms of their natural lives to the said child or children of the said Maurice duPont Lee who shall survive him, the entire annuity to be paid to said child, if there be but one child, or share and share alike, if there be more than one child; the annuity, however, or the share of said annuity payable to any child after the death of both the said Maurice duPont Lee and his said wife shall cease and determine at the death of the child entitled thereto hereunder and revert to my residuary estate.

(c) Unto Ruth Brereton Silver, now residing at 904 West Eleventh Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

(d) Unto Mary E. Brereton, now residing at 904 West Eleventh Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,-200.00) per annum, for and during the term of her natural life.

(e) Unto S. Frank Mathewson, Route 5, Cambridge, Maryland, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life, and I further direct that my said Executors and Trustees permit the said S. Frank Mathewson, who is and has been the caretaker of my property in Dorchester County, Maryland, to occupy the house in which he has lived for several years, and to use the farm buildings, the same to be so occupied and used by him free of charge as a home during the term of his natural life, and if on the death of the said S. Frank Mathewson he is survived by his wife, Anna Evans Mathewson, to pay said annuity, to-wit, the sum of Twelve Hundred Dollars ($1,200.00) per annum, to his said wife for the term of her natural life, and to permit her to occupy said house and use the farm buildings, the same to be so occupied and used by her free of charge as a home during the term of her natural life.

(f) Unto Thomas Horncastle of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, during the term of his natural life.

(g) Unto James Dolan, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, during the term of his natural life.

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(h) Unto T. W. Mathewson, 190 Breck's Lane, Christiana Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

(i) Unto Andrew Fullarton, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

(j) Unto Robert Hardwick, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

(k) Unto Thomas Montgomery, now residing on Breck's Lane, Christiana Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

(l) Unto Walter Newman, caretaker of Nemours, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

(m) Unto Thomas Weber Jakes, now residing at 2901 West Sixth Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life, and after the death of the said Thomas Weber Jakes the said annuity, towit, the sum of Twelve Hundred Dollars ($1,200.00) per annum, shall be paid unto his present wife for and during the term of her natural life.

(n) Unto Miss Mary G. Shaw, now residing in Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

(o) Unto Mrs. Irene Walsh, of Jacksonville, Florida, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

(p) Unto Miss Margaret B. Hanby, daughter of Dr. Charles M. Hanby, of Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life. This annuity she is to have regardless of whether or not she receives anything under the contingent arrangement made for her benefit under the Trust Agreement entered into between Alfred I. duPont, Jessie Ball duPont and The Florida National Bank of Jacksonville.

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Should I, by virtue of an Instrument made subsequent to the date of the signing of this my Last Will and Testament, make provisions for those beneficiaries as cited under Item 2 relating to bequests, and under Item 7 relating to annuities, which provisions shall be equal to or greater than those hereinabove stipulated, then such bequests and such annuities as made in this my Last Will and Testament, and which have been duplicated or made in greater amount in said subsequent Instrument to this my Will, shall become void.

It is my will and desire that the legacies, bequests or annuities, as set forth in this Item, or any Item of this my said Will, shall be for the sole, separate and exclusive use and benefit of the person entitled thereto, so that the same shall not be in any manner pledged, appropriated, disposed of or parted with by anticipation or before the same shall have accrued and become payable; nor shall the same be subject to execution, attachment or sequestration for any debts or liabilities whatsoever of the person entitled thereto under this my Will, but each and every payment shall be made by my Executors or Trustees to the beneficiaries of the said legacies, bequests or annuities personally, and the receipt or other acknowledgement of the respective beneficiaries of the legacies, bequests or annuities as set forth in this Item or any other Item of this my said Will, when so paid, shall be the sufficient and only discharge of my Executors or Trustees for such payment.

It is also my will and desire, and I hereby direct, that if any person entitled to any legacy, bequest or annuity under the terms of this Will, shall directly or indirectly contest or dispute the probate of this Will or institute or become a party to instituting any proceedings or act in the interest of any person who shall institute any proceedings, suit, or action, for the purpose of abrogating, setting aside, breaking or changing the effect of this Will wholly or in part, then and in that event, the legacy, bequest, or annuity declared in favor of such person by this my Will, or provided for herein, shall immediately thereupon be revoked, cease and determine and become wholly void and of no effect.

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I make no provision in this my Will for my sister Mrs. Marguerite duPont Lee, of Washington, D. C., nor for my brother, Mr. Maurice duPont, now living in New York City, nor for any of his family, nor for my sister's two sons and their families, except such provision as has been made under Paragraph (b), Item 7 hereof, for the reason that ample provision has been made for them in a certain Trust Agreement entered into between Alfred I. duPont, Jessie Ball duPont and The Florida National Bank of Jacksonville. It is stated in said Trust Agreement that if any beneficiary entitled to take under the terms thereof, whether such beneficiary be an individual, partnership, association or corporation, and notwithstanding the fact that such beneficiary may or may not be named or designated in this Will as being entitled to any benefit or interest hereunder, shall directly or indirectly contest or dispute the probate of this Will, or institute or become a party to instituting any proceedings or act in the interest of any person who shall institute any proceedings, suit or action, for the purpose of abrogating, setting aside, breaking or changing the effect of this Will, wholly or in part, then and in such event any provision or beneficial interest of or for such beneficiary, created by or included in the terms of said Trust Agreement, shall immediately thereupon be revoked, cease and determine and become wholly void and of no effect.

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ITEM 8. I will and direct that my said Trustees (or my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties) shall, as aforesaid, collect and receive the rents, profits, issues, interests and income from my residuary estate, heretofore and hereinafter designated and referred to as "income," and after deducting any and all proper and reasonable expenses, and the annuities hereinbefore created, or such of them as shall not have terminated under the terms and conditions attached to each of them, shall pay over, in quarter-annual payments, the net "income" therefrom to my said wife, Jessie Ball duPont, for and during the term of her natural life, and upon the death of my said wife, then that my said Trustees shall proceed as follows:

ITEM 9. My Trustees shall cause to be incorporated a corporation for charitable purposes, to be designated and known as "The Nemours Foundation" (provided such a corporation shall not have been incorporated during my lifetime, and in the event that such corporation shall have been incorporated in my lifetime all the provisions of this Will concerning the said corporation shall apply to the corporation as incorporated), and my said Trustees shall by proper conveyance convey unto the said corporation, in fee simple forever, the entire property, together with the buildings and structures thereon situate in Brandywine Hundred, New Castle County, State of Delaware, known as "Nemours," if the title thereto stands at the time of my death in my name, and if the title to "Nemours" is held by a corporation, the stock of which is held by me or by a corporation which is controlled by me at the time of my death, then my said Trustees shall assign and transfer all the stock of such corporation to "The Nemours Foundation," or such corporation for charitable purposes as shall have been incorporated during my lifetime, and my said Trustees in their discretion may have the corporation holding the title to "Nemours" duly wound up and dissolved, and cause the legal title to "Nemours" to be conveyed to "The Nemours Foundation," or such other corporation as may, in lieu thereof, be incorporated in my lifetime, and my said Trustees are hereby directed to pay over, at convenient intervals, to the said corporation, the net income of my said estate, subject to the annuities and legacies hereinabove mentioned, for the purpose of maintaining the said Estate of "Nemours" as a charitable institution for the care and treatment of crippled children, but not of incurables, or the care of old men or old women, and particularly old couples, first consideration, in each instance, being given to beneficiaries who are residents of Delaware, the one or more of which said charitable purposes, however, being left to the decision of my said Trustees, with the understanding that the following rules and regulations shall be included among those imposed by the Board of Managers controlling said institution:

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"The Nemours Foundation" shall be created and maintained as a memorial to my great, great grandfather, Pierre Samuel duPont de Nemours, and to my father, Eleuthere Irénée duPont de Nemours, and a proper tablet shall be erected in the present mansion to so indicate.

The Mansion House on the Estate of "Nemours" shall not be used for housing or hospital purposes of said institution, but buildings may be erected at any point on the Estate of "Nemours" suitable for such purposes and as shall be selected by the Board of Managers.

The rooms of said Mansion shall be used for the reception of visitors and their entertainment; also for executive and administrative purposes, should my Trustees so decide, but mainly for the purpose of providing a library and exhibiting to the public interesting and valuable literature, works of art and any articles of historic and artistic interest for the advancement of education, and maintained, as far as possible, in their present condition.

ALFRED I. DUPONT

My Trustees are specifically instructed that it shall be their duty, first, to care for the mansion and grounds and gardens surrounding "Nemours" in order that they be maintained for the pleasure and benefit of the public in their present condition and the grounds improved from time to time, as their funds warrant; it being my particular desire that this memorial to my great, great grandfather, Pierre Samuel duPont de Nemours, and to my father, Eleuthere Irénée duPont de Nemours, be not permitted to deteriorate, but that it shall consistently become more beautiful and attractive to those who view it as time passes. Only after faithfully carrying out the above instructions shall my Trustees be warranted in using any portion of the capital or income of my estate for additional charitable purposes.

My Trustees shall arrange for the admission of the public to the Mansion and other buidings and the grounds at such times and under such rules and regulations as they may provide.

The Board of Managers hereinbefore referred to shall consist of five members, men or women, and shall be appointed by my said Trustees for terms of

one, two, three, four and five years respectively, and at the expiration of the term of each Manager first appointed, a Manager shall be appointed by my said Trustees for a term of five years; three of said Managers shall be residents of the State of Delaware, and two of who may or may not be residents of the State of Delaware.

My said Trustees shall have full power to fill all vacancies, whether the same shall occur by death, resignation or otherwise, and shall have full charge of the management and policy of the said Foundation, and shall have full power to employ and discharge such superintendents, physicians, professional advisors or assistants, employees and agents as shall be required for the proper management and conduct of the said Foundation.

The said members of the Board of Managers shall be each entitled to a salary of One Thousand Dollars ($1,000.00) per annum, during their term of office, except for Resident Physician, who if a member of the Board of Managers, may receive more.

The said Trustees shall have the right, at any time, however, to remove any member of said Board of Managers, and shall not be required to specify the cause for such removal.

The said Trustees shall have power to take and set apart from the principal of my estate a fund not to exceed One Million Dollars ($1,000,000.00), or so much thereof as may be necessary, to be applied and expended in the erection and equipping of buildings for the purposes of said Foundation, which shall be located at a reasonable and proper distance from the Mansion House. Should it become necessary to erect any additional buildings for the purposes of said Foundation, such buildings must be erected, if deemed wise to do so, from the income from my estate or bequests or gifts from others, and not from the capital of my estate, so that in no event shall the capital of my estate be diminished by using any portion thereof for the erection and equipping of buildings upon the said estate, beyond the said sum of One Million Dollars ($1,000,000.00) herein appropriated for that object.

ALFRED I. DUPONT

(A) In case after my death my said wife, Jessie Ball duPont, shall desire to create a charitable corporation or institution for the purposes and objects covered by the directions herein given for the creation of the said "The Nemours Foundation," then my said Trustees shall pay over to the said "The Nemours Foundation," out of the principal of my said estate, any sum or sums not exceeding One Million Dollars ($1,000,000.00) which my said wife during her lifetime may direct, and transfer to said corporation said "Nemours" Estate or any portion thereof for the use of said corporation, if my said wife shall so direct, provided, however, that the principal of my estate transferred under the directions of my wife to "The Nemours Foundation," or used for the purposes of said Foundation during her lifetime, taken together with any amounts of principal transferred to "The Nemours Foundation," or used for the purposes of said Foundation by my Trustees after her death, shall not in any case exceed the aggregate maximum sum of One Million Dollars ($1,000,000.00) plus the said property itself known as "Nemours."

ALFRED I. DUPONT

(B) The trustees under this my Will shall annually, in January, make a full statement and report in writing to my wife, Jessie Ball duPont, during her lifetime, and shall also tri-ennially, in January, in the Court having jurisdiction thereof, file their accounts, showing a true and accurate condition of the estate and of the principal investments and income thereof.

(C) The Board of Managers of "The Nemours Foundation" shall annually, in January, make a full statement and report in writing to the Trustees appointed by this my Will of the receipts and expenditures of the said Board of Managers in conducting and managing the said Foundation.

ITEM 10. I further direct that, after the death of my beloved wife, Jessie Ball duPont, if the net income of my estate should in any year or years exceed the sum or sums sufficient to properly provide for the conduct and operation of said "The Nemours Foundation," and in particular in the care and maintenance of my old home "Nemours" which, under the terms of this Will, passes to "The Nemours Foundation," and for reserves for extensions, repairs,

replacements, alterations, additional equipment, additional buildings, additions to buildings or other necessary improvements and any and all future needs of such Foundation, such surplus income may from time to time be used by the Board of Managers of said "The Nemours Foundation," my Trustees concurring, in contributions to other worthy charitable institutions designated by said Board and approved by my Trustees as may be conducted for the care of, or the care and treatment of, or the care and education of crippled children, or the care of old men, or of old women, or of old couples, or any one of such purposes. It is my wish that the people of Delaware needing the care of such institutions shall be properly provided for before contributions are made to institutions of any other state or states, but said Board, my Trustees concurring, is hereby given full power to determine what constitutes the necessary reserves for "The Nemours Foundation" and what constitutes proper provision for the Delaware institutions. The decision of a majority of the Board in all cases where the Board under the provisions of this Will is given power to act shall constitute the decision of the Board, if all members are given an opportunity to be heard.

ALFRED I. DUPONT

ITEM 11. I hereby nominate, constitute and appoint my wife, Jessie Ball duPont, John F. Lanigan, now of Miami, Florida, and Edward Ball, now of Jacksonville, Florida, Executors of this my Will, but in the event that the said John F. Lanigan is not living, or should resign or is unable to act as Executor for any cause whatsoever, then in his place and stead I hereby nominate and appoint N. Addison Baker, of Miami, Florida, and in the event that the said Edward Ball is not living, or should resign or is unable to act as Executor for any cause whatsoever, then in his place and stead I hereby nominate and appoint my son-in-law, Elbert Dent, of Philadelphia, Pennsylvania, and it is my will and desire, and I hereby direct that they shall be permitted to qualify to serve as such Executors, as aforesaid, in any State of the United States, or in any foreign country, without either of them being required to give bond or security, in any manner whatsoever, for the proper performance of their duties as such

Executors. In case of the failure to qualify or death or resignation of any one or more of the aforesaid Executors and/or of the successor or successors designated to succeed any certain Executor, the surviving Executor or Executors and/or successor or successors designated to substitute for certain Executors who may not qualify or who may die or resign shall have all of the powers to act, alone or together, as the case may be, which are herein given to my three Executors jointly. During the period of their administration of my Estate my Executors shall have, and they are hereby given, all of the powers given anywhere in this Will to my Trustees.

It is also my will and desire, and I hereby direct, that my said Trustees hereinbefore named, or any successor, shall be permitted to qualify and serve as such Trustees, as aforesaid, in any State of the United States, or in any foreign country, without the said Trustees being required to give bond or security, in any manner whatsoever, for the proper performance of their duties as such Trustees.

ALFRED I. DUPONT

I authorize and direct that each of my Executors,—with the exception of Edward Ball, who, being herein otherwise provided for, shall receive no cash,—shall be paid for their services the sum of One Hundred Thousand Dollars ($100,000.00), payable one-half at the end of the first full year's service beginning at the time my Will is probated, one-fourth at the end of the next year, one-eighth at the end of the next year, one-sixteenth at the end of the next year, and so on in like decreasing proportion until my Executors are discharged, at which time the total unpaid balance shall be paid.

In the event that an Executor shall die or resign during any year he shall receive for his services the proportionate part of what he would have received for the whole year which the number of days that he served bears to three hundred sixty five. Any Executor succeeding another shall receive only that proportion of the One Hundred Thousand Dollars ($100,000.00) total base fee for the period during which he has served which would have been received by the Executor first appointed had he served over that period. Each Executor shall

receive the fee, or proportion thereof, herein provided to be received by him or her over the period that he or she serves, and no Executor shall receive any part of the fee herein provided to be paid to any other Executor except where he be the successor of such other executor and receive as such the proportionate share of the original Executor's fee which is herein provided to be paid to his successor. No successor of Edward Ball shall receive any part of his legacy, the same being an outright legacy to him covering also his services as Executor and Trustee, but any successor to Edward Ball shall receive the same proportion of the base fee of One Hundred Thousand Dollars ($100,000.00) which any other Executor would receive over the same period.

I hereby absolve my said Executors and Trustees from any liability to my estate, or to the beneficiaries hereunder, for any loss to them or to my said estate so long as they act honestly and in good faith.

ITEM 12. I hereby nominate and appoint my beloved wife, Jessie Ball duPont, as Guardian of Adelaide Camille Denise duPont, to be vested with all such powers and control as such guardianship confers. She shall serve without bond.

It is my will and desire, and I hereby direct, that my Last Will and Testament shall be probated and recorded in the City or County of my legal residence at the time of my death.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 19th day of November in the year of our Lord, one thousand nine hundred thirty two (1932).

Alfred I duPont (SEAL)

The foregoing instrument, consisting of twenty two pages, including this one, at the date hereof, to-wit: the 19th day of November, A. D. 1932, was signed, sealed and published by the said ALFRED I. DuPONT as, and declared to be, his Last Will and Testament in the presence of us, who at his request and in his presence, and in the presence of each other, have subscribed our names as witnesses hereto.

S. B. Jennings of Jacksonville Fla.

R. Pearce Markham of Jacksonville Fla.

Raymond D. Knight of Jacksonville, Fla.

STATE OF FLORIDA } BE IT REMEMBERED that
COUNTY OF DUVAL } on May 13-1935 I duly recorded the foregoing Last Will and Testament in the public records of Duval County, Florida.

J. OLLIE EDMUNDS, County Judge

By T. V. Cashen, Jr.,
Clerk County Judges Court

(Seal)

LAST WILLS AND TESTAMENTS BOOK 5, Page 64

CODICIL
TO
LAST WILL AND TESTAMENT OF
ALFRED I. DuPONT.

I, ALFRED I. DuPONT, now of Duval County, near the City of Jacksonville, State of Florida, do hereby make, publish and declare this Codicil to my Last Will and Testament dated the 19th day of November, A. D. 1932.

ITEM 1. Having become impressed, after a study of my said Will and deliberate consideration of world conditions, that I have not in my Will properly protected the interests of my wife, Jessie Ball duPont, against possible eventualities, and desiring that she shall receive, to commence at the time of the date of my death, an annuity of Two Hundred Thousand Dollars ($200,000.00), or such part thereof as shall be available each year out of current net income for the payment thereof, before any of the annuities mentioned in Item 7 and sub-paragraphs thereof lettered (a) to (p) inclusive are paid either in whole or in part, this regardless of the provisions in Item 7 of my Will that the annuities therein provided for shall be paid monthly, and desiring that such annuity to my wife should be paid to her first out of the net income from my residuary or trust estate and that the other annuities mentioned in said Item 7 and said sub-paragraphs thereof shall be conditional upon there being funds from the net income from my residuary or trust estate after paying the annuity of Two Hundred Thousand Dollars ($200,000.00) to my wife and that such other annuities should be second, subject and subordinate to the said annuity to her, and desiring that said annuity to her shall not be cumulative and that said other annuities likewise shall not be cumulative but that they shall be paid in full during each year as provided, if current net income, after she has been paid in full for the current year, is available for that purpose, and that if sufficient residue net income for that purpose is not available that then said other annuities shall be paid prorata out of the remainder of the

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current net income available for that purpose, I do hereby, to the ends aforesaid, revoke and annul Item 8 of my said Last Will and Testament and substitute therefor, the same to be taken as though originally included therein, an Item numbered "8" reading as follows:

"ITEM 8. I will and direct that my said Trustees (or my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties) shall, as aforesaid, collect and receive the rents, profits, issues, interest and income from my residuary or trust estate, heretofore and hereinafter referred to as 'income', and, after deducting any and all proper and reasonable expenses, pay over, in quarter-annual payments, unto my wife, Jessie Ball duPont, the sum of Two Hundred Thousand Dollars ($200,000.00) per annum, or such part thereof each year as shall be available in such year for payment thereon out of net income derived during the current year, for and during the term of her natural life. This annuity shall commence at the time of the date of my death. The said annuity shall be paid in full each year by my Trustees or Executors as aforesaid before any of the annuities mentioned in Item 7 and subparagraphs thereof lettered (a) to (p) inclusive are paid either in whole or in part, this regardless of the provision in Item 7 of my Will that the annuities therein provided for shall be paid monthly, and the other annuities mentioned in said Item 7 and the said sub-paragraphs thereof shall be conditional upon there being available funds from the net income, derived during the current year, from the residuary or trust estate, after paying the annuity of Two Hundred Thousand Dollars ($200,000.00) to my wife, and such other annuities shall be second, subject and subordinate to the said annuity to her. The said annuity to her shall not be cumulative and said other annuities also shall be non-cumulative and they shall be paid by my Trustees or Executors as aforesaid in full during each year as provided, only in the event that sufficient net income is available each year for that purpose after her

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annuity has been paid in full for the current year, and if sufficient residue for that purpose is not available then said other annuities shall be paid pro-rata, each year that there is a shortage, out of the remainder of the net income available in such year for that purpose, and each year, after deducting the said expenses and paying the said annuity of Two Hundred Thousand Dollars ($200,-000.00) in full, out of net income received during the current year as aforesaid for such purpose, and after paying the said other annuities, or such of them as have not been terminated under the terms and conditions attached to each of them, in full, out of the net income for the current year, they shall pay over the remainder, if any, of the net income from my said residuary or trust estate, to my said wife, Jessie Ball duPont, for and during the term of her natural life, and upon the death of my said wife then that my said Trustees or Executors as aforesaid, always first paying each year, in full or pro-rata, out of current net income as aforesaid, the said other annuities then accrued and thereafter accruing, or such of them as have not been terminated under the terms and conditions attached to each of them, shall proceed as follows:".

I hereby ratify and confirm my said Will in all other respects, except that I give my Executors and Trustees authority, in their absolute discretion and without liability for errors in judgment, to make, in whole or in part, in any year, the monthly payments on annuities provided for in Item 7 of my Will before the aforesaid Two Hundred Thousand Dollar ($200,000.00) annuity provided for my wife has actually been paid to her in any year, if in their judgment sufficient income will be available in the current year for payment to her in full of said annuity.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 4th day of March in the year of our Lord one thousand nine hundred and thirty three.

Alfred I. duPont (SEAL)

The foregoing instrument consisting of four pages, including this one, at the date hereof, to-wit: the 4th day of March, A. D. 1933, was signed, sealed, published and declared by the said ALFRED I. DuPONT as and for a Codicil to his Last Will and Testament dated the 19th day of November, A. D. 1932 in our presence as witnesses, who, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto at Jacksonville, Florida.

Raymond D. Knight of Jacksonville, Florida

S. B. Jennings of Jacksonville Fla

Chas Morant of Jacksonville Fla

STATE OF FLORIDA } BE IT REMEMBERED that
COUNTY OF DUVAL } on May 13-1935 I duly recorded the foregoing Codicil in the public records of Duval County, Florida.

J. OLLIE EDMUNDS, County Judge
By T. V. Cashen, Jr.,
Clerk County Judges Court

(Seal)

LAST WILLS AND TESTAMENTS BOOK 5, Page 68

SECOND CODICIL

TO

LAST WILL AND TESTAMENT OF

ALFRED I. DuPONT.

I, ALFRED I. DuPONT, now of Duval County, State of Florida, my home, known as "Epping Forest", being near the City of Jacksonville, do hereby make, publish and declare this Second Codicil to my Last Will and Testament dated the 19th day of November, A. D. 1932 as the same was amended by the first Codicil thereto dated the 4th day of March, 1933.

ITEM 1. I do hereby alter and amend Item 5 of my said Last Will and Testament by substituting for John F. Lanigan, therein named as one of my Trustees, my son-in-law, Reginald S. Huidekoper, of Washington, D. C., to serve in his place and stead; and I further alter and amend said Item by substituting for N. Addison Baker, who, under the conditions therein named, is designated as one of my Trustees, Dr. Francis P. Gaines, who is the President of Washington & Lee University, of Lexington, to serve in his place and stead, so that the said Item 5 of my said Last Will and Testament as hereby altered and amended, the same to be taken as though originally so written, shall read as follows:

"ITEM 5. Subject to the legacies and bequests hereinabove set forth, I give, devise and bequeath the entire rest, residue and remainder of my property and estate, real, personal or mixed, in esse and in futuro, wheresoever the same may be situated, of which I may die seized and possessed and which may belong to me at the time of my death, or which may be subject to my disposal by Will, unto The Florida National Bank of Jacksonville, a banking corporation organized and existing under the laws of the United States of America, with its principal place of business in Jacksonville, Florida, to my wife, Jessie Ball duPont, to my son-in-law, Reginald S. Huidekoper, now residing at Washington, D. C., and to Edward Ball, now residing in Jacksonville, Florida, as Trustees, and unto their successors in trust, to have and to hold said Estate forever, but IN TRUST for the following uses and purposes. If the said Reginald S. Huidekoper is not living, or is for any reason unable to

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act as one of my said Trustees or should resign, then I nominate and appoint my son-in-law, Elbert Dent, of Philadelphia, Pennsylvania, to act as Trustee in the place and stead of the said Reginald S. Huidekoper, and if the said Edward Ball is not living or is for any reason unable to act as one of my said Trustees or should resign, then I nominate and appoint Dr. Francis P. Gaines, who is the President of the Washington & Lee University, of Lexington, Virginia, to act as Trustee in the place and stead of said Edward Ball, I direct that in case any individual Trustee of my Estate, whether he be one of the Trustees named herein or a successor Trustee or a successor of a successor Trustee, appointed as herein provided, shall die or cease to act, the survivors from time to time of my Trustees shall have all the powers herein given to my said named Trustees, and such survivors shall, as soon as practicable, select a Trustee in the place of the one so dying or ceasing to act, and the person so selected shall exercise all the powers herein given to one of my Trustees, all successors and the successors from time to time of them so appointed having all the powers herein given to my said named Trustees; provided that a reputable corporate Trustee shall always be one of my Trustees.

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"In case The Florida National Bank of Jacksonville fails or refuses to accept and act under the Trust herein created upon the terms herein set forth, then the other three Trustees are hereby empowered and directed to select and appoint some other trust company or bank, either in the State of Florida or elsewhere, to act as Trustee under the provisions of this my Last Will in place of The Florida National Bank of Jacksonville; and such other trust company or bank to have all the powers and be charged with all the duties and responsibilities given to or placed upon The Florida National Bank of Jacksonville under this my Will, and to receve such compensation as may be determined by my individual Trustees.

"It is my wish that in the event that the three individual Trustees herein named, or their successors or substitute Trustees, or the survivor or survivors of them, as distinguished from the corporate Trustee herein named or its corporate successor or any succeeding corporate successor or successors thereof, should at any time deem it expedient that the corporate Trustee be changed, then they shall have the power, from time to time and as often as they consider it advisable so to do, to select another trust company or bank,

either in the State of Florida or elsewhere, as the corporate Trustee, whereupon the corporate Trustee as hereinabove indicated, namely, The Florida National Bank of Jacksonville or its corporate successor, or any succeeding corporate successor or successors thereof, shall relinquish and give over all rights as corporate Trustee to the newly selected bank or trust company, and all rights and duties given to The Florida National Bank of Jacksonville or its corporate successors or any succeeding corporate successor or successors thereof, shall cease and determine and the same shall be taken over by the new corporate Trustee chosen by the individual Trustees as hereinabove set forth, the compensation of the new corporate Trustee in each instance to be determined by the individual Trustees."

ITEM 2. I desire to alter and amend Item 7 of my Last Will and Testament by striking therefrom the annuities mentioned in sub-paragraphs thereof lettered (k) and (l) respectively, the annuity mentioned in sub-paragraph (k) because Thomas Montgomery therein named is dead and such sub-paragraph has therefore become a nullity, and the annuity mentioned in sub-paragraph (l) because Walter Newman therein named is no longer in my employ; and I desire, as hereinafter shown, to add to the annuities listed in the remaining sub-paragraphs of said Item 7 a number of additional annuities payable to others, and that will result in a re-arrangement of the sub-paragraphs which remain. I desire further to strike the first paragraph on the 13th page in the aforesaid Item 7. I do hereby alter and amend the said Item 7 of my said Last Will and Testament so that the whole of such Item, as altered and amended, shall read and be taken as though originally written as follows:

"ITEM 7. I will and direct that my Trustees shall pay out of the net income of my Trust Estate to the persons hereinafter named in this Item, the annuities hereinafter mentioned upon the terms and conditions set forth in the separate paragraphs of this Item, said annuities, except those designated in sub-paragraphs (c), (d), (e), (f), (g) and (h) hereof, to commence at the time of the date of my death and to be payable monthly by my Trustees (or by

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my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties), viz:

"(a) Unto Adelaide Camille Denise duPont, being so known, the sum of Five Thousand Dollars ($5,000.00) per annum until she attains the age of twenty one years; and thereafter the sum of Ten Thousand Dollars ($10,000.00) per annum until she attains the age of twenty five years; and thereafter the sum of Twenty Thousand Dollars ($20,000.00) per annum until she attains the age of thirty years; and thereafter the sum of Thirty Thousand Dollars ($30,000.00) per annum for and during the term of her natural life; and upon her death, if she die before attaining the age of thirty years, to pay an annuity in the fixed sum of Twenty Thousand Dollars ($20,000.00), or upon her death after attaining the age of thirty years to pay the maximum annuity aforesaid, to-wit, the sum of Thirty Thousand Dollars ($30,000.00) to her child, if there be one child living at the time of her death, and to her children, share and share alike, if there be more than one child living at the time of her death, for and during the terms of their natural lives, or for and during the term of twenty-one years, whichever period be the shorter, the annuity or share of said annuity payable to any child, however, to cease and terminate upon the death of said child and to revert to my residuary estate, it being my will and desire, however, that the said annuity shall not lapse in the event of said Adelaide Camille Denise duPont dying during my lifetime, but in the event that the said Adelaide Camille Denise duPont should die in my lifetime and leave to survive her a child, or children, then the entire annuity (that is Twenty Thousand Dollars or Thirty Thousand Dollars, as the case may be, depending on whether or not her death occurs before or after she attains the age of thirty years) to be paid to her child, if there be one child, and to her children share and share alike, if there be more than one child, for and during the terms of their natural lives, the said annuity, however, or the share of said annuity payable to any child to cease and terminate at the death of said child entitled thereto hereunder and to revert to my residuary estate.

"Only such portion of the said annuity of Five Thousand Dollars ($5,000.00) shall be paid to the said Adelaide Camille Denise duPont during her minority as is determined by my wife, Jessie Ball duPont, her guardian, or any subsequently legally appointed guardian. The unpaid balance of the annuity, if any, is, during her minority, to be set apart and held in trust by my Trustees herein appointed (or by my Executors during the period between the date of my decease and the time of the discharge of my Executors and the assumption by my Trustees of their duties) in a separate trust, with all of the powers of investment and re-investment given to my Executors and Trustees herein as to the major estate, with the right to disburse to the said Adelaide Camille Denise duPont from time to time such portions thereof, if any, as may be designated by said guardian, and with the duty to distribute or pay to her when she attains the age of twenty one years all of the assets included in said separate trust. In case of her death before that time all assets included in this separate trust shall revert to my residuary estate.

"(b) Unto Maurice duPont Lee, now residing at Rockridge Avenue, Greenwich, Connecticut, the sum of Fifteen Thousand Dollars ($15,000.00) per annum for and during the term of his natural life, and after the death of the said Maurice duPont Lee one-half of the said annuity, to-wit, the sum of Seven Thousand Five Hundred Dollars ($7,500.00), shall be paid to his wife, Geraldine Shaw Lee, for and during the term of her natural life, and the other one-half, to-wit, the sum of Seven Thousand Five Hundred Dollars ($7,500.00), shall, if and while there be living issue of his body and of the body of his said wife, be paid to such issue or the survivor or survivors of such issue and divided among them share and share alike, if there be more than one, for and during the life of the said Geraldine Shaw Lee and during the life or lives of such issue or the survivor or survivors of such issue. Should the said Maurice duPont Lee predecease his said wife and should there be no living issue of their bodies during any period thereafter during her lifetime, then, for that period, the $7,500.00 which would have been paid to such issue shall be paid to the said Geraldine Shaw Lee. After the death of the said Maurice duPont Lee and his said wife the said annuity of $15,000.00 shall be paid to their child, the issue of their bodies, if there be one child living at such time, and to their children, to be divided among them share and share alike, if there be more than one child living at such time, for and during the terms of their natural lives or for and during the term of twenty-one years, whichever period be the shorter, the annuity or share of the said annuity payable after that time to any child, however, to cease and terminate upon the death of said child and to revert to my residuary estate, it being my will and desire, however, that said annuity shall not lapse in the event of the said Maurice duPont Lee dying during my lifetime, but in the event that the said Maurice duPont Lee should die during my lifetime leaving to survive him his wife, the said Geraldine Shaw Lee, then and in that event the said $15,000.00 annuity, for and during the term of her natural life and if and while there is no living issue of said marriage, shall be payable to the said Geraldine Shaw Lee, but if there be issue the said annuity shall be payable one-half as aforesaid to the said Geraldine Shaw Lee for and during the term of her natural life and the other one-half as aforesaid to the child or children living during her lifetime, and should the said Geraldine Shaw Lee and the said Maurice duPont Lee both die during my lifetime, then and in that event the said annuity of $15,000.00 shall be paid for and during the terms of their natural lives to the said child or children of the said Maurice duPont Lee who shall survive him, the entire annuity to be paid to said child, if there be but one child, or share and share alike, if there be more than one child; the annuity, however, or the share of said annuity payable to any child after the death of both the said Maurice duPont Lee and his said wife shall cease and determine at the death of the child entitled thereto hereunder and revert to my residuary estate.

"(c) Unto Marguerite duPont Lee, the daughter of my nephew, Casenove G. Lee, Jr., now residing at 3542 Newark Street, N. W., Washington, D. C., the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of her natural life, if she attains the age of twenty five years and only from and after such time.

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"(d) Unto Vandergrift Lee, the son of my nephew, Casenove G. Lee, Jr., now residing at 3542 Newark Street, N. W., Washington, D. C., the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of his natural life, if he attains the age of twenty five years and only from and after such time.

"(e) Unto Richard Henry Lee, the son of my nephew, Casenove G. Lee, Jr., now residing at 3542 Newark Street, N. W., Washington, D. C., the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of his natural life, if he attains the age of twenty five years and only from and after such time.

"(f) Unto Katherine Lee, the daughter of my nephew, Maurice duPont Lee, now residing at Rockridge Avenue, Greenwich, Connecticut, the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of her natural life, if she attains the age of twenty five years and only from and after such time.

"(g) Unto Charlotte Lee, the daughter of my nephew, Maurice duPont Lee, now residing at Rockridge Avenue, Greenwich, Connecticut, the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of her natural life, if she attains the age of twenty five years and only from and after such time.

"(h) Unto Maurice Lee, the son of my nephew, Maurice duPont Lee, now residing at Rockridge Avenue, Greenwich, Connecticut, the sum of Five Thousand Dollars ($5,000.00) per annum, for and during the term of his natural life, if he attains the age of twenty five years and only from and after such time.

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"(i) Unto Ellen N. La Motte, now residing at 2806 "P" Street, N. W., Washington, D. C., the sum of Twenty Four Hundred Dollars ($2,400.00) per annum, for and during the term of her natural life.

"(j) Unto Catherine Cocke Gardner, now residing at Clover Lick, West Virginia, the sum of Eighteen Hundred Dollars ($1,800.00) per annum, for and during the term of her natural life; and after her death the said sum shall be paid to her children, William Casenove Gardner, Jr., Edmund Cocke Gardner, Harrison McKim Gardner, Harriet Rowland Gardner and Lucia Cary Gardner, or to the survivor or survivors of them, to be divided among them share and share alike, if there be more than one, for and during the life or lives of said children or the survivor or survivors of them. The said annuity shall not lapse in the event of the said Catherine Cocke Gardner dying during my lifetime, but in the event that she should predecease me leaving her surviving any of her said children, then such child or children shall take as aforesaid.

"(k) Unto Ruth Brereton Silver, now residing at 904 West Eleventh Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

"(l) Unto Mary E. Brereton, now residing at 904 West Eleventh Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

"(m) Unto S. Frank Mathewson, Route 5, Cambridge, Maryland, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life, and I further direct that my said Executors and trustees permit the said S. Frank Mathewson, who is and has been the caretaker of my property in Dorchester County, Maryland, to occupy the house in which he has lived for several

years, and to use the farm buildings, the same to be so occupied and used by him free of charge as a home during the term of his natural life, and if on the death of the said S. Frank Mathewson he is survived by his wife, Anna Evans Mathewson, to pay said annuity, to-wit, the sum of Twelve Hundred Dollars ($1,200.00) per annum to his said wife for the term of her natural life, and to permit her to occupy said house and use the farm buildings, the same to be so occupied and used by her free of charge as a home during the term of her natural life.

"(n) Unto Thomas Horncastle, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, during the term of his natural life.

"(o) Unto James Dolan, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, during the term of his natural life.

"(p) Unto T. W. Mathewson, 190 Breck's Lane, Christiana Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

"(q) Unto Andrew Fullarton, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

"(r) Unto Robert Hardwick, of the Estate of Nemours, Brandywine Hundred, New Castle County, and State of Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life.

"(s) Unto Thomas Weber Jakes, now residing at 2901 West Sixth Street, Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of his natural life, and after the death of the said Thomas Weber Jakes the said annuity, to-wit, the sum of Twelve Hundred Dollars ($1,200.00) per annum, shall be paid unto his present wife for and during the term of her natural life.

"(t) Unto Miss Mary G. Shaw, now residing in Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

"(u) Unto Mrs. Irene Walsh, of Jacksonville, Florida, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

"(v) Unto Miss Margaret B. Hanby, daughter of Dr. Charles M. Hanby, of Wilmington, Delaware, the sum of Twelve Hundred Dollars ($1,200.00) per annum, for and during the term of her natural life.

"(w) Unto Laura Calhoun Walls, now residing at Lincoln, Delaware, the sum of Nine Hundred Dollars ($900.00) per annum, for and during the term of her natural life.

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"(x) Unto Mrs. H. E. Crist, now residing at 179 Forest H Drive, Asheville, North Carolina, the sum of Eight Hundred Dollars ($800.00) per annum, for and during the term of her natural life.

"(y) Unto Miss Margaret W. Stetson, whose address now is Box 1083, Asheville, North Carolina, the sum of Eight Hundred Dollars ($800.00) per annum, for and during the term of her natural life.

"(z) Unto the Providence Institution for Savings, of Providence, Rhode Island, the sum of Six Hundred Dollars ($600.00) per annum, for and during the term of the natural lives of Mr. and Mrs. Charles Hoyle or the survivor of them, said sum to be paid to or used for them, or to or used for the survivor of them, by said institution, but the obligation of my Executors or Trustees shall cease upon making the aforesaid payments to said Institution, they not being required to look to the application of such payments.

"(z-1) Unto Edith E. Levett, now residing at 663 West 178th Street, New York City, the sum of Six Hundred Dollars ($600.00) per annum, for and during the term of her natural life.

"(z-2) Unto Olive W. Seiss, now residing at Stonington, Connecticut, the sum of Six Hundred Dollars ($600.00) per annum, for and during the term of her natural life.

"(z-3) Unto Frank Gorsuch, now residing at Martinsburg, Pennsylvania, the sum of Two Hundred Forty Dollars ($240.00) per annum, for and during the term of his natural life.

"(z-4) Unto George T. Maxwell, now residing at 505 West 29t... Street, Wilmington, Delaware, the sum of Fourteen Hundred Forty Dollars ($1,440.00) per annum, for a period of ten (10) years from the date of my death or for and during the term of his natural life, whichever period shall be the shorter.

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"It is my will and desire that the legacies, bequests or annuities, as set forth in this Item, or any Item of this my said Will, shall be for the sole, separate and exclusive use and benefit of the person entitled thereto, so that the same shall not be in any manner pledged, appropriated, disposed of or parted with by anticipation or before the same shall have accrued and become payable; nor shall the same be subject to execution, attachment or sequestration for any debts or liabilities whatsoever of the person entitled thereto under this my Will, but each and every payment shall be made by my Executors or Trustees to the beneficiaries of the said legacies, bequests or annuities personally, and the receipt or other acknowledgment of the respective beneficiaries of the legacies, bequests or annuities as set forth in this Item or any other Item of this my said Will, when so paid, shall be the sufficient and only discharge of my Executors or Trustees for such payment.

"It is also my will and desire, and I hereby direct, that if any person entitled to any legacy, bequest or annuity under the terms of this Will, shall directly or indirectly contest or dispute the probate of this Will or institute or become a party to instituting any proceedings or act in the interest of any person who shall institute any proceedings, suit, or action, for the purpose of abrogating, setting aside, breaking or changing the effect of this Will, wholly or in part, then and in that event, the legacy, bequest, or annuity declared in favor of such person by this my Will, or provided for herein, shall immediately thereupon be revoked, cease and determine and become wholly void and of no effect.

"I make no provision in this my Will for my sister, Mrs. Marguerite duPont Lee, of Washington, D. C., nor for my brother, Mr. Maurice duPont, now living in New York City, nor for any of his family, nor for my sister's two sons and their families, except such provision as has been made under paragraphs (b), (c), (d), (e), (f), (g) and (h), Item 7 hereof, for the reason that ample provision has been made for them in a certain Trust Agreement entered into between Alfred I. duPont, Jessie Ball duPont and The Florida National Bank of Jacksonville. It is stated in said Trust Agreement that if any beneficiary entitled to take under the terms thereof, whether such beneficiary be an individual, partnership, association or corporation, and notwithstanding the fact that such beneficiary may or may not be named or designated in this Will as being entitled to any benefit or interest hereunder, shall directly or indirectly contest or dispute the probate of this Will, or institute or become a party to instituting any proceedings or act in the interest of any person who shall institute any proceedings, suit or action, for the purpose of abrogating, setting aside, breaking or changing the effect of this Will, wholly or in part, then and in such event any provision or beneficial interest of or for such beneficiary, created by or included in the terms of said Trust Agreement, shall immediately thereupon be revoked, cease and determine and become wholly void and of no effect."

ITEM 3. I do hereby alter and amend Item 11 of my said Last Will and Testament by substituting for John F. Lanigan, therein named as one of my Executors, my son-in-law, Reginald S. Huidekoper, of Washington, D. C., to serve in his place and stead, so that the said Item 11 of my said Last Will and Testament, as hereby altered and amended, the same to be taken as though originally so written, shall read as follows:

"ITEM 11. I hereby nominate, constitute and appoint my wife, Jessie Ball duPont, Reginald S. Huidekoper, now of Washington, D. C., and Edward Ball, now of Jacksonville, Florida, Executors of this my Will, but in the event that the said Reginald S. Huidekoper is not living, or should resign or is unable to act as Executor for any cause whatsoever, then in his place and stead I hereby nominate and appoint N. Addison Baker, of Miami, Florida, and in the event that the said Edward Ball is not living, or should resign or is unable to act as Executor for any cause whatsoever, then in his place and stead I hereby nominate and appoint my son-in-law, Elbert Dent, of Philadelphia, Pennsylvania, and it is my will and desire, and I hereby direct that they shall be permitted to qualify to serve as such Executors, as aforesaid, in any State of the United States, or in any foreign country, without either of them being required to give bond or security, in any manner whatsoever, for the proper performance of their duties as such Executors. In case of the failure to qualify or death or resignation of any one or more of the aforesaid Executors and/or of the successor or successors designated to succeed any certain Executor, the surviving Executor or Executors and/or successor or successors designated to substitute for certain Executors who may not qualify or who may die or resign shall have all of the powers to act, alone or together, as the case may be, which are herein given to my three Executors jointly. During the period of their administration of my Estate my Executors shall have, and they are hereby given, all of the powers given anywhere in this Will to my Trustees.

"It is also my will and desire, and I hereby direct, that my said Trustees hereinbefore named, or any successor, shall be permitted to qualify and serve as such Trustees, as aforesaid, in any State of the United States, or in any foreign country, without the said Trustees being required to give

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bond or security, in any manner whatsoever, for the proper performance of their duties as such Trustees.

"I authorize and direct that each of my Executors,—with the exception of Edward Ball, who, being herein otherwise provided for, shall receive no cash,—shall be paid for their services the sum of One Hundred Thousand Dollars ($100,000.00), payable one-half at the end of the first full year's service beginning at the time my Will is probated, one-fourth at the end of the next year, one-eighth at the end of the next year, one-sixteenth at the end of the next year, and so on in like decreasing proportion until my Executors are discharged, at which time the total unpaid balance shall be paid.

"In the event that an Executor should die or resign during any year he shall receive for his services the proportionate part of what he would have received for the whole year which the number of days that he served bears to three hundred sixty five. Any Executor succeeding another shall receive only that proportion of the One Hundred Thousand Dollars ($100,000.00) total base fee for the period during which he has served which would have been received by the Executor first appointed had he served over that period. Each Executor shall receive the fee, or proportion thereof, herein provided to be received by him or her over the period that he or she serves, and no Executor shall receive any part of the fee herein provided to be paid to any other Executor except where he be the successor of such other Executor and receive as such the proportionate share of the original Executor's fee which is herein provided to be paid to his successor. No successor of Edward Ball shall receive any part of his legacy, the same being an outright legacy to him covering also his services as Executor and Trustee, but any successor to Edward Ball shall receive the same proportion of the base fee of One Hundred Thousand Dollars ($100,000.00) which any other Executor would receive over the same period.

"I hereby absolve my said Executors and Trustees from any liability to my estate, or to the beneficiaries hereunder, for any loss to them or to my said estate so long as they act honestly and in good faith."

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ITEM 4. My said Will, as amended by my said first Codicil thereto, provides that "The Nemours Foundation", a corporation to be organized for charitable purposes is ultimately, through my Trustees, to become one of my substantial beneficiaries. I had considered executing a new Will at this time which would immediately revoke the aforesaid Will and Codicil, changing the provisions thereof to the extent that they are changed by this Codicil, and making an additional change, the effect of which might have been to increase or which might have seemed to increase the existing provisions in favor of "The Nemours Foundation", but my attorneys have called my attention to Section 20 of Chapter 16103, Acts of 1933, Laws of Florida, relating to charitable devises and bequests and the provision therein contained rendering such devises and bequests invalid under certain circumstances unless the instrument making them was duly executed at least six months prior to the death of the testator. I therefore determined, instead of executing a new Will and revoking therein at this time the aforesaid Will and Codicil, to execute this Second Codicil, making thereby such changes only as will not by any chance jeopardize the interest which the proposed "The Nemours Foundation" will receive under my said Will of November 19, 1932, as amended by my said first Codicil of March 4, 1933 and by this Codicil. While I have by this Codicil, for the reasons stated, omitted two life annuities to individuals mentioned in Item 7 of my said Will, one for Twelve Hundred Dollars ($1,200.00) per annum, which by the death of the annuitant was already subject to lapse, and the other for Twelve Hundred Dollars ($1,200.00), I have nevertheless added life annuities to individuals aggregating Thirty Eight Thousand Seven Hundred Forty Dollars ($38,740.00) per annum and an additional life or ten year annuity of Fourteen Hundred Forty Dollars ($1,440.00) per annum, and therefore these alterations, if they should in any way affect the interest of "The Nemours Foundation" could affect that interest adversely only, by reducing it. I have, therefore, as will be seen, been very careful herein not to jeopardize the interest of said "Foundation" under my said Will as amended by said first Codicil and this Codicil, the said Will having been executed considerably more than six months

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prior to the time of the execution of this Codicil. This proposed "Foundation" has been substantially provided for in every Will I have executed for the last ten years, more or less. Its ultimate interest in my estate largely motivates my continued diligent attention to my financial affairs. There has never at any time been exerted upon me any undue influence in connection with the aforesaid charitable bequest. In fact the creation of this "Foundation" has been and is entirely my own idea, formulated many years ago, for the reason that it has been my firm conviction throughout life that it is the duty of every one in this world to do what is within his power to alleviate human suffering and I have sedulously striven to that end. It is, therefore, natural that I should desire, after having made proper provision for the immediate members of my family and the others whom I have seen fit to remember, that the remaining portion of my estate should be utilized for charitable needs. I am satisfied that it can never be said that I have not made proper provision by direct gift or otherwise for all persons in any need which the said Act of 1933 was designed to protect. At any rate I have done and am doing all that I considered and consider right and proper in that respect, this of my own volition and without influence exerted by any one.

I do hereby ratify and confirm in all respects my said Will of November 19, 1932, as amended by my said first Codicil of March 4th, 1933 and as further amended by this Second Codicil.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of January, in the year of our Lord one thousand nine hundred and thirty five.

Alfred I. duPont (SEAL)

The foregoing instrument, consisting of fourteen pages including this one, at the date hereof, to-wit: the 15th day of January, A. D. 1934, was signed, sealed, published and declared by the said ALFRED I. DuPONT as and for a Codicil to his Last Will and Testament dated the 19th day of November, A. D. 1932, as amended by his Codicil thereto dated the 4th day of March, A. D. 1933, in our presence as witnesses, who, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto, at Jacksonville, Florida.

ALFRED I. DuPONT

Raymond D. Knight, of Jacksonville, Florida.

H. P. Osborne, of Jacksonville, Fla

R. Pearce Markham, of Jacksonville, Fla

STATE OF FLORIDA } BE IT REMEMBERED that
COUNTY OF DUVAL } on May 13-1935 I duly recorded the foregoing Second Codicil in the public records of Duval County, Florida.

J. OLLIE EDMUNDS, County Judge
By T. V. Cashen, Jr.,
Clerk County Judges Court

(Seal)

Exhibit I

Modified and Restated Trust Agreement

Alfred I. duPont Annuitants' Trust

This Trust, to be known as the Alfred I. duPont Annuitants' Trust (referred to herein as the "Annuitants' Trust", or the "Trust") is established by the severance of the Alfred I. duPont Testamentary Trust (the "Testamentary Trust"), which was created under the Last Will and Testament of Alfred I. duPont ("Mr. duPont's Will"). Alfred I. duPont ("Mr. duPont") died on April 29, 1935, a resident of Duval County, Florida.

ARTICLE ONE: Name; Irrevocable Trust.

This Trust will be known as the Alfred I. duPont Annuitants' Trust and is irrevocable. This Modified and Restated Trust Agreement is effective as of _____, 2012.

ARTICLE TWO: Purposes of the Trust.

A. This Trust will be operated exclusively for the purposes of paying the annuities due to the individuals listed in Article Four below (the "Annuity Payments"), and making the charitable distributions described in Article Five below.

B. With the exception of the Annuity Payments, no part of the net earnings of the Trust will inure to the benefit of, or be distributable to, any private person or individual. The foregoing restriction will not impede the ability to pay reasonable compensation for services rendered to the Trust, nor will it affect the Trust's ability to make payments and distributions in furtherance of its charitable purposes.

C. No substantial part of the activities of the Trust will be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Trust will not participate in,

nor intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

D. With the exception of the Annuity Payments, notwithstanding any other provision hereof, this Trust will not conduct nor carry on any activities not permitted to be conducted or carried on by a Tax-Exempt Charitable Organization.

ARTICLE THREE: Trust Fund.

The Trustees shall hold the assets received by this Trust from the Testamentary Trust, together with the income thereon, and may invest and re-invest the assets pursuant to the powers herein granted. The Trustees shall hold all assets of this Trust for the purposes stated herein, including but not limited to the required distributions provided in Articles Four and Five.

ARTICLE FOUR: Annuity Payments.

The Trustees shall make the annuity payments set forth in Paragraphs A, B, and C below:

A. 2021 Annuitants. The Trustees shall pay the sum of Three Thousand, Seven Hundred and Fifty Dollars ($3,750) annually to each of the following beneficiaries, until the death of that beneficiary or until April 5, 2021, whichever occurs earlier in each case:

(1) Christina Z. Anderson

(2) Augusta C. Z. Thompson

(3) Denise Z. Park

(4) Carlotta K. Tutor

(5) Barbara Z. Vielma

(6) Carl M. Zapffe

(7) Elsie I. Zapffe-Verdeja

(8) Jessie G. B. Zapffe

Payments shall be pro-rated on a per-diem basis for the year of a beneficiary's death, and for the year 2021 if any beneficiary survives to that year.

B. Lifetime Annuitants. The Trustees shall pay annually to each of the following beneficiaries the sum of money set forth next to his or her name, until the death of that beneficiary:

(1) Charlotte Lee Cannon, Ten Thousand Dollars ($10,000)

(2) Maurice duPont Lee, Jr., Ten Thousand Dollars ($10,000)

(3) Richard Henry Lee, Five Thousand Dollars ($5,000)

Payments shall be pro-rated on a per-diem basis for the year of any beneficiary's death.

C. Lifetime Annuitants With Inter-Dependent Benefits. The Trustees shall pay Eighteen Hundred Dollars ($1,800) annually to the following beneficiaries, in equal shares, during their joint lives, and upon the death of a beneficiary to the surviving beneficiary or beneficiaries:

(1) Harrison M. Gardner

(2) Harriett Gardner Meadows

(3) Lucia Gardner Phillips

Payments shall be pro-rated on a per-diem basis for the year of any beneficiary's death.

ARTICLE FIVE: Charitable Distributions.

A. Distributions to The Nemours Foundation. During each calendar year, the Trustees shall distribute to The Nemours Foundation an amount that equals three percent (3%) of the average net fair market value of the Trust (the "Annual Payment Amount"). For this purpose, the average net fair market value is defined as the average fair market values (as defined in Article Five, Paragraph B) of the trust at the end of each of the twelve calendar quarters

immediately preceding January 1 of that year. For example, the Annual Payment Amount in 2015 will be the average of the net fair market values of the Trust as of March 31st, June 30th, September 30th, and December 31st of 2012, 2013, and 2014, multiplied by 3%. The Annual Payment Amount will be paid in four quarterly payments, and will be paid first from the net income of the Trust, but to the extent the net income is insufficient, it will be paid from the principal of the Trust.

B. Method for Determining Net Fair Market Value. The "net fair market value" of the Trust as of any date is the current fair market value of all of the assets of the Trust as of that date, reduced by all of the liabilities of the Trust as of that date. This computation shall be made without regard to whether particular items are taken into account (or are treated differently) in determining the net income of the Trust, or in preparing the balance sheet of the Trust for accounting purposes. The net fair market value will be adjusted as follows:

(1) The net fair market value of this Trust as of any date that precedes the severance of the Testamentary Trust shall be deemed to be Ten Million Dollars ($10,000,000).

(2) All determinations of the net fair market value of assets of the Trust will be made on an asset-by-asset basis, reasonably and in good faith, in accordance with the provisions of Section 738.202(5) of the Florida Statutes, and otherwise in accordance with generally accepted fiduciary accounting principles; provided, however, that the fair market value of real property (including any improvements thereon) may be determined on a five-year basis. The fair market value of real property must be determined by means of a certified, independent appraisal made in writing by a qualified person who is neither an employee of the Trust, an officer or Trustee of the Trust, nor a family member of any such person. The appraisal shall contain a statement at the end thereof to the effect that, in the opinion of the appraiser, the value placed on

the assets appraised were determined in accordance with valuation principles regularly employed in making appraisals of such property, using all reasonable valuation methods. Any valuation of real property made pursuant to this provision may be replaced during the five-year period by a subsequent appraisal meeting the criteria stated herein, which may in turn be used for up to five years.

C. Excluded Assets. No assets of the Trust are to be excluded in determining the net fair market value of the Trust.

D. Additions to Principal. All net income of the Trust for a calendar year that exceeds the Annual Payment Amount for that year will be added to the principal of the Trust at the end of that year.

E. Purposes of Charitable Distributions. All of the distributions made to The Nemours Foundation from this Trust shall be used for the same charitable purposes as are described in Article Two, Paragraph A of the Alfred I. duPont Charitable Trust (referred to herein as the "Charitable Trust").

F. Contingent Beneficiaries. Notwithstanding any other provision hereof, the Trust's obligation to make distributions to The Nemours Foundation is subject to the condition that The Nemours Foundation continues to qualify as an organization described in Section 501(c)(3) of the Code, exempt from income tax under Section 501(a) of the Code, contributions to which are deductible under Sections 170(c)(2) and 2055(a) of the Code (hereinafter referred to as a "Tax-Exempt Charitable Organization"). In the unlikely event that The Nemours Foundation either ceases to exist, or ceases to be a Tax-Exempt Charitable Organization, then the Trustees, in their sole discretion, shall select one or more other organizations that are Tax-Exempt Charitable Organizations (referred to individually as a "Contingent Beneficiary" or

collectively as "Contingent Beneficiaries"), the purposes of which are consistent with the charitable intentions of Mr. DuPont, as expressed in the Charitable Trust, insofar as is practicable at the time. In the event payments are made to one or more Contingent Beneficiaries rather than to The Nemours Foundation, the Trustees may, in their sole discretion, designate different Contingent Beneficiaries from one year to the next, and may change their choice of Contingent Beneficiaries at any time and from time to time, and shall have the sole discretion to determine from year to year in what proportions or percentages the Contingent Beneficiaries (if there be more than one at a particular time) will share in the total distribution made with respect to any year. In that event, (i) the Trust shall distribute the Annual Payment Amount to the Contingent Beneficiaries at the same time or times that it would otherwise be payable to The Nemours Foundation hereunder; and (ii) all references herein to payments to The Nemours Foundation are to be construed instead as payments to the Contingent Beneficiary or Beneficiaries as determined by the Trustees from time to time.

ARTICLE SIX: Dissolution of Trust.

Upon the later to occur of April 5, 2021, the death of the last surviving one of the Annuitants named in Paragraph A of Article Four, or the death of the last surviving one of the Annuitants named in Paragraphs B and C of Article Four, this Trust will terminate and, as soon as practicable, the Trustees shall pay the remainder of the Trust estate to the then serving Trustees of the Charitable Trust; provided, however, that in the event that the Charitable Trust does not exist at the time of termination of this Trust, the Trustees shall distribute the remaining Trust estate to The Nemours Foundation if The Nemours Foundation is then a Tax Exempt Charitable Organization. In the event that both the Charitable Trust is not in existence and The Nemours Foundation is not then a Tax Exempt Charitable Organization at the time for

termination of this Trust, the Trustees shall distribute the remaining Trust estate to one or more Tax-Exempt Charitable Organizations, selected by the Trustees in their sole discretion, to be used exclusively for those charitable purposes as set forth in the Charitable Trust. The Trustees shall make efforts to select beneficiaries and to specify charitable purposes that are consistent with carrying out Mr. duPont's charitable objectives, insofar as may be practicable at the time. With the exception of the Annuity Payments directed under Article Four, none of the assets will be distributed to any private person or to a Trustee of this Trust. The foregoing restriction will not impede the ability to pay reasonable compensation for services rendered to the Trust, nor will it affect the Trust's ability to make payments and distributions in furtherance of its charitable purpose.

ARTICLE SEVEN: Powers of Trustees.

In the administration of this Trust, the Trustees shall, without court approval, have all powers and authority necessary or available to carry out the purposes of this Trust and, subject to the provisions of Article Nine, to delegate such authority, including, without limitation, the following powers and authority, all subject, however, to the condition that all powers and authorities are to be exercised by the Trustees in good faith and in a manner appropriate for a fiduciary under Florida law:

A. Types of Investments. Except as otherwise provided to the contrary, to hold funds uninvested for such periods deemed advisable, and to invest in any assets even though they are not technically recognized or specifically listed in so-called "legal lists," without responsibility for depreciation or loss on account of those investments, or because those investments are non-productive.

B. Financial Accounts. To deposit trust money in one or more accounts in financial service institutions, including without limitation, banks, savings institutions, and brokerage houses, and to draw checks, drafts, or other forms of withdrawal, including electronic transfers, from those accounts.

C. **Specific Securities.** To invest in assets, securities, or interests in securities of any nature, whether obtained in domestic or foreign markets, including (without limit) commodities, options, futures, precious metals, and currencies; to invest in mutual or investment funds, and, without limiting the foregoing, specifically to invest in the instruments described in Section 736.0802(5) of the Florida Statutes (including assets other than qualified investment instruments) without notice to or consent from any beneficiary; to trade on credit or margin accounts (whether secured or unsecured); and to pledge assets of the Trust for that purpose.

D. **Property Transactions**. To buy, sell, pledge, exchange, or lease any real or personal property, publicly or privately, for cash or credit, without court approval; to execute deeds, leases, contracts, bills of sale, notes, mortgages, security instruments, and other written instruments; to grant, acquire, or exercise options; to abandon or dispose of any real or personal property in the Trust that has little or no monetary or useful value; to improve, repair, insure, subdivide and vacate any property; to erect, alter or demolish buildings; to adjust boundaries; and to impose easements, including conservation easements, restrictions, and covenants.

E. **Maintain Assets.** To expend whatever funds it deems proper for the preservation, maintenance, or improvement of assets and to elect any options or settlements or exercise any rights under all insurance policies that it holds.

F. **Advisors and Employees.** To retain on behalf of the Trust and to compensate from the Trust's funds, whether as employees or as independent contractors, accountants, advisors, financial consultants, managers, agents, and assistants for the Trust, including but not limited to persons who provide investment advisory or management services, or who furnish professional assistance in making investments for the Trust.

G. **Attorneys.** To retain attorneys to represent the Trustees in the administration of the Trust. Such attorneys may be compensated from the Trust's funds, without liability for any act of those persons, if they are selected and retained with reasonable care.

H. **Nominee.** Except as prohibited by law, to hold any assets in the name of a nominee without disclosing the fiduciary relationship; to hold the property unregistered, without affecting its liability; and to hold securities endorsed in blank, in street certificates, at a depository trust company, or in a book entry system.

I. **Custodian.** To employ a custodian or agent ("the Custodian"), at the expense of the Trust; to register securities in the name of the Custodian or a nominee thereof without designation of fiduciary capacity; and to appoint the Custodian to perform such other ministerial functions as directed.

J. **Administer Claims.** To contest, compromise, arbitrate, or otherwise adjust claims in favor of or against the Trust, including paying those claims in full; to agree to any rescission or modification of any contract or agreement; and to refrain from instituting any suit or action unless indemnified for reasonable costs and expenses.

K. **Corporate Rights.** To vote and exercise any option, right, or privilege to purchase or to convert bonds, notes, stock, securities, or other property; to borrow money for the

purpose of exercising any such option, right, or privilege; to delegate those rights to an agent; to enter into voting trusts and other agreements or subscriptions; to participate in any type of liquidation or reorganization of any enterprise; and to buy and sell covered call options, puts, calls, straddles, or other methods of buying or selling securities, as well as all related transactions.

L. Business Interests. To hold interests in all types of domestic and foreign forms of organizations, including but not limited to corporations, sole proprietorships, general or limited partnerships, joint ventures, business trusts, land trusts, and limited liability companies; and to exercise all rights in connection with such interests, including any powers applicable to a non-admitted transferee of any such interest.

M. Expenses. To pay all expenses of administration for the Trust, including all taxes, assessments, compensation of the Trustees and the employees and agents of the Trust, and reimbursements for expenses advanced (with interest as appropriate).

N. Loans; Advances. To make cash advances or loans to The Nemours Foundation at the Trustees' discretion, with or without security and/or liens for repayment. The Trustees may retain a lien on future distributions to The Nemours Foundation to repay those loans.

O. Investment Manager. To employ any investment management service, financial institution, or similar organization for advice and to handle all investments of the Trust and to render all accountings of funds held on its behalf under custodial, agency, or other agreements. These costs may be paid as an expense of administration in addition to fees and commissions.

ARTICLE EIGHT: Accounts.

The Trustees shall each year prepare an account of their administration of the Trust. Such accounts shall be available for inspection as provided by the laws of the State of Florida, and as may be required by the Code.

ARTICLE NINE: Delegation of Powers; Evidence of Authority, Liability of Trustees.

A. Any Trustee may, from time to time by written power of attorney, delegate all or any of his non-voting powers to any other Trustee or Trustees for a period of not more than six months at a time. Any such delegation may be renewed by successive powers of attorney and may be revoked at any time. A Trustee who consents to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the

consenting Trustee had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

B. In accordance with Florida law, including Section 736.0807 of the Florida Statutes, as amended from time to time, the Trustees may delegate any duties and powers to a non-trustee that may be delegated under Florida law (except for those specifically reserved to the Trustees in Paragraph C, of this Article Nine), including, but not limited to: investment, management, and administrative decisions; and on all other matters incidental to the foregoing powers, as specified from time to time in a resolution or certificate that is adopted or renewed by the Trustees. Without limiting the foregoing, the Trustees may establish one or more entities to perform such services, so long as such entities are wholly owned and controlled by the Trust.

C. Notwithstanding any delegation hereunder, a delegation of power does not excuse a Trustee from his duty of loyalty to the Trust. The Trustees may not delegate to a non-trustee any decisions related to the determination of (1) the Trust's investment policies, asset allocations and benchmarks; (2) the Trust's organizational structure, human resource policies, or its general Policies and Procedures; (3) compensation of the Trust employees; (4) the Trust's budget; or (5) any decisions or authority that the Trustees may not delegate under Florida law. Further, the Trustees may not delegate to a non-trustee any powers of the Trustees in their capacities as Members of The Nemours Foundation.

D. In addition, the following limitations and conditions are applicable with respect to certain of the powers that may be exercised on behalf of the Trust:

(1) Employees, independent contractors, accountants, advisors, financial consultants, managers, agents, and assistants for the Trust, including but not limited to persons who provide investment advisory or management services, or who furnish professional assistance in making investments for the Trust, shall (a) be selected and retained with reasonable care and (b) the delegations of power to them shall be consistent with customary and prudent fiduciary practices.

(2) Attorneys for the Trust shall be selected and retained with reasonable care and be chosen by a majority vote of the Trustees, and such attorneys may be compensated from the Trust's funds, without liability for any act of those persons. Each Trustee may retain separate legal counsel at their discretion, but such separate counsel will not be paid from the Trust, unless approved by a majority vote of the Trustees or by order of a Court of proper jurisdiction

(3) While any securities are in the custody of a custodian, the Trustees will be under no obligation to inspect or verify such securities nor will the Trustees be responsible for any loss by a custodian.

E. No third party engaged in any transaction with this Trust shall be required to determine whether any action, power, or authority exercised on behalf of this Trust is authorized or is within the purposes of this Trust set forth in Article Two or permitted to an organization that is a Tax-Exempt Charitable Organization, so long as such third party is engaging any such transaction with the Trust in good faith and has been presented with a copy of a Resolution or Certificate described in Article Thirteen. This provision does not relieve any person acting on

behalf of this Trust without authority from any liability for such actions to the extent that such action is not authorized or is negligent or otherwise improper.

F. A Trustee shall be liable only for his own willful default and shall not be liable for amending or failing to amend the Trust pursuant to Article Twelve, for the acts or omissions of any predecessor or other Trustee, for failing to redress any breach of trust, for leaving property in the hands of any other Trustee or for any error of judgment or law on his own part.

ARTICLE TEN: Trustees.

A. Current Trustees. The current Trustees of the Trust are HUGH M. DURDEN, JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, and WINFRED L. THORNTON.

B. Successor Trustees. The Trustees of the Trust will be those individuals then serving as the Trustees of the Charitable Trust. Accordingly, should one of the Trustees of the Charitable Trust cease to serve as a Trustee of that Trust, he or she shall cease to serve as a Trustee of this Trust at the same time, without any action or notification required. If a successor Trustee, or additional Trustees, should be elected to the Charitable Trust, that Trustee or Trustees shall automatically become Trustees of this Trust at the same time.

C. Waiver of Bond. No Trustee, whether original, additional or successor, shall be required to give any bond except as specifically required by law, and then only in the lowest permissible amount and without sureties if permitted by law.

D. Indemnity. Any Trustee who ceases to serve for any reason will be entitled to receive (and the continuing Trustees shall make suitable arrangements to provide) reasonable indemnification and security to protect and hold that Trustee harmless from any damage or liability of any nature that may be imposed because of his or her actions or omissions while

serving as Trustee. This protection, however, does not extend to a Trustee who has acted in bad faith, and whose own negligent actions or omissions have clearly and demonstrably resulted in damage or liability to the Trust. A prior Trustee may enforce these provisions against the then serving Trustees or against any assets held in the Trust, or against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right will extend to the estate, personal representatives, legal successors, and assigns of a Trustee.

E. Majority Action. Unless specifically provided otherwise, all powers, authorities, and discretions of the Trustees may be exercised by a majority of the Trustees in office at the time.

ARTICLE ELEVEN: Prohibited Transactions.

A. Notwithstanding any other provision of this Trust, but with the exception of the Annuity Payments provided in Article Four, the Trustees shall not have nor exercise any power or authority that is inconsistent with the operation of a Tax-Exempt Charitable Organization.

B. Notwithstanding any other provisions of this Trust to the contrary, if at any time the Trust is determined to be a Tax-Exempt Charitable Organization and a private foundation within the meaning of Section 509(a) of the Code, and only in that event, and only for so long as such determination remains in effect, then --

(1) The Trustees shall make distributions at such times and in such manner as not to subject the Trust to tax under Section 4942 of the Code.

(2) The Trustees shall refrain from: engaging in any act of self-dealing as defined in Section 4941(d) of the Code; retaining any excess business holdings as defined in Section 4943(c) of the Code; making investments which would subject the Trust to tax under

Section 4944 of the Code; and making any taxable expenditures as defined in Section 4945(d) of the Code.

ARTICLE TWELVE: Amendment.

Notwithstanding the fact that the Trust is irrevocable, the Trustees are authorized and empowered in their sole discretion at any time and from time to time by an instrument in writing approved by at least seventy-five percent (75%) of the Trustees then serving, to amend the Trust for any of the following reasons, except that that no amendment may be made, unless approved by the Court, that alters the terms set forth in Articles Two, Four, Five, Six, Ten, Eleven and Twelve:

A. To comply with any provisions of applicable state law, or any applicable provision of the Federal tax law, as the same may be amended from time to time in the future.

B. To permit the Trust to be administered in furtherance of the purposes described herein in an efficient and appropriate manner.

C. To modify, amend or delete any provision relating to the administration or governance of the Trust, or to add any additional provision relating thereto, if the Trustees believe such modification serves the best interests of the Trust.

D. To adopt policies consistent with national standards of good governance for entities similar to the Trust.

E. To make any other modification to the terms hereof as may be approved by a Court having jurisdiction over the Trust, and/or by a government official whose powers include the power to authorize non-judicial modification of trusts, if the Trustees believe such modification serves the best interests of the Trust.

ARTICLE THIRTEEN: Resolution or Certificate of Trustee.

The Trustees shall periodically adopt a resolution or certificate memorializing the delegation of any powers as provided in Article Nine. A resolution or certificate signed by a Trustee, or by an officer or assistant officer to whom that power is delegated by the Trustees, shall be conclusive evidence to all persons and for all purposes of the facts stated in the resolution or certificate respecting the terms of this Trust and of any amendments hereto pursuant to Article Twelve hereof; the incumbency and identity of the Trustees; or any other decision made or action taken by the Trustees, including the nature and extent of any delegation under Article Ten..

ARTICLE FOURTEEN: Protection of Interest

The interest of any beneficiary under this Trust, in either income or principal, may not be anticipated, alienated, or in any other manner assigned by the beneficiary and will not be subject to any legal process, bankruptcy proceedings, or the interference or control of the beneficiary's creditors or others.

ARTICLE FIFTEEN: Definitions; Miscellaneous.

A. As used herein: (1) the term "Trustees" means, wherever the context so permits, the Trustees then serving, whether original or successor; (2) the term "property" means any property, whether real, personal or mixed; and (3) references herein to the Code shall include not only the provisions of the Internal Revenue Code of 1986, as amended, as it exists at the time of execution of this instrument, but also the corresponding provision as it may be amended hereafter, the corresponding provision of any future internal revenue law, and the applicable Treasury regulations as they now exist or may hereafter be amended.

B. This Modified and Restated Trust Agreement was prepared with the intention of following the directions of Mr. duPont's Will, and reflecting the provisions of prior court orders

and stipulations previously entered, except for modifications necessary or appropriate (i) to obtain tax or other economic advantages for the benefit of the Trust's charitable beneficiary, (ii) to conform to current tax laws and standards of good governance, and (iii) to provide for administrative convenience, including but not limited to the objective of containing within a single document all of the terms governing the Trust. Accordingly, with respect to the terms of the Annuitants' Trust, this Modified and Restated Trust Agreement shall supersede completely all prior documents that otherwise might have stated, governed or controlled its terms.

C. When the context so indicates, the masculine gender shall be deemed to denote the feminine or neuter, the singular to denote the plural, and the plural to denote the singular.

D. The validity, interpretation, construction, and administration of the Trust hereby created will, in all respects, be governed by the laws of the State of Florida.

[The remainder of this page is intentionally left blank.]

ACCEPTED this _____ day of _____, 2012, effective as of _____, 2012.

Hugh M. Durden, Trustee	John F. Porter III, Trustee
John S. Lord, Trustee	William T. Thompson III, Trustee
Herbert H. Peyton, Trustee	Winfred L. Thornton, Trustee

This instrument was signed, sealed, published, and declared by HUGH M. DURDEN, JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III and

WINFRED L. THORNTON, as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, and as Trustees of this Trust, as their Trust Agreement in our joint presence, and at their request we have signed our names as attesting witnesses in their presence and in the presence of each other on the date first written above.

Name	Address
_____	_____
_____	_____

EXHIBIT A
FORM OF CERTIFICATE OF AUTHORITY
Initial Transfers of Trust

CERTIFICATION OF RESOLUTION

I, _____ do hereby certify that I am the duly elected, qualified and acting _____ of the Alfred I. duPont Annuitants' Trust, a trust established under the laws of the State of Florida, and as such, have custody of the records of the Trust, including the minutes of the meetings of the Trustees of the Trust; and I do further certify that at a meeting of the Trustees of the Trust held on _____, at which a quorum was present and acting throughout, the following Resolution was adopted:

Resolution to Specify and Authorize Individuals to Transact Business

for the Alfred I. duPont Annuitants' Trust

RESOLVED, that after approval of the Trustees of a contract or agreement for the conduct of Trust business, including investment management and custodial relationships, any [number] of the primary signatories listed below are authorized and empowered to execute the [type of agreement or contract].

_____

_____

_____

Dated this _____ day of _____, 20___.

_____

[name and title of Trustee, officer or assistant office signing]

Tax Identification Number: ___-_____

STATE OF FLORIDA
COUNTY OF DUVAL

We, HUGH M. DURDEN, JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, and WINFRED L. THORNTON, as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, and _____ and _____, the witnesses, respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the Trustees, in the presence of the witnesses, signed the instrument as their Trust Agreement, that they signed, and that each of the witnesses, in the presence of the Trustees and in the presence of each other, signed the Trust Agreement as a witness.

_____
Hugh M. Durden, Trustee

_____
John F. Porter III, Trustee

_____
John S. Lord, Trustee

_____
William T. Thompson III, Trustee

_____
Herbert H. Peyton, Trustee

_____
Winfred L. Thornton, Trustee

_____
Witness

_____
Witness

[NOTARIAL ACKNOWLEDGMENT CONTINUES ON FOLLOWING PAGE]

The foregoing instrument was acknowledged, subscribed, and sworn to before me by the Trustees, HUGH M. DURDEN, JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, and WINFRED L. THORNTON, who are personally known to me, and by _____ and _____ _____who are personally known to me, the witnesses, on _____, 2012.

_____
Notary Public--State of Florida
Print Notary Name: _____
My Commission Number is: _____
My Commission Expires: _____

#10610564_v11

Exhibit J

Modified and Restated Trust Agreement

Alfred I. duPont Charitable Trust

This Trust, to be known as the Alfred I. duPont Charitable Trust (referred to herein as the "Charitable Trust", or the "Trust") is established by the severance of the Alfred I. duPont Testamentary Trust (the "Testamentary Trust"), which was created under the Last Will and Testament of Alfred I. duPont ("Mr. duPont's Will"). Alfred I. duPont ("Mr. duPont") died on April 29, 1935, a resident of Duval County, Florida.

ARTICLE ONE: Name; Irrevocable Trust.

This Trust will be known as the Alfred I. duPont Charitable Trust and is irrevocable. This Modified and Restated Trust Agreement is effective as of _____, 2012.

ARTICLE TWO: Purposes of the Trust.

A. It was Mr. duPont's firm conviction throughout life that it is the duty of everyone in this world to do what is within his power to alleviate human suffering. This Trust is organized and will be operated exclusively for charitable purposes and is a supporting organization to The Nemours Foundation, in accordance with the terms of this Modified and Restated Trust Agreement. The Trustees shall fulfill their obligations as Members of The Nemours Foundation in order to assure that the funds distributed from the Trust to The Nemours Foundation are used for the following charitable purposes:

(1) **Mansion House.** In accordance with Mr. duPont's Will, the Trustees have previously conveyed to The Nemours Foundation the property known as "Nemours". In

distributing funds to The Nemours Foundation, it is the Trustees' duty to ensure that The Nemours Foundation first cares for the mansion and grounds and gardens surrounding Nemours in order that they be maintained for the pleasure and benefit of the public in their present condition and improved from time to time, as their funds warrant; for it was the particular desire of Mr. duPont that this memorial to his great, great grandfather, Pierre Samuel duPont de Nemours, and to his father, Eleuthere Irénée duPont de Nemours, not be permitted to deteriorate, but that it will consistently become more beautiful and attractive to those who view it as time passes. Only after faithfully carrying out the above instructions may the Trustees be warranted in using any portion of the capital or income of the Trust for additional charitable purposes. The Trustees shall ensure that The Nemours Foundation arranges for the admission of the public to the Mansion and other buildings and the grounds at such times and under such rules and regulations as The Nemours Foundation may provide.

(2) **Care for Children and the Elderly**. After ensuring that the charitable purpose set forth in Article Two A.(1) has been met, The Nemours Foundation (or its wholly-owned affiliates) shall use the remainder of the funds distributed from the Trust for the following purposes, each of which are entitled to primary consideration and each of which must be weighed and addressed: (a) the care and treatment of children, but not of incurables, who are under the age of 18, subject to exceptions approved by the Board of Directors for The Nemours Foundation, all of whom, by reason of physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, have been deprived of strength, activity, or capability for service or use, in any part of the human body; (b) the prevention of those conditions described in (a); and (c) the care of individuals over sixty-five (65) years of age who are in need of supportive or alleviating medical or para-medical care beyond mere food, clothing, and shelter, first

consideration, in each instance, be given to beneficiaries who are residents of Delaware, the one or more of which said charitable purposes, however, being left to the discretion of the Trustees. The Trustees, in their capacity as the Members of The Nemours Foundation, have the discretion to determine by majority vote how, and to what extent, each of these purposes is to be funded and fulfilled. The Trustees, in their capacity as Members of The Nemours Foundation, will ensure that its Board of Directors are fully informed on these matters, that The Nemours Foundation will in good faith fulfill its duties as it relates to the purposes of the Trust as described herein, and that the Board of Directors will make a full statement and report to the Trustees no later than March 31st of each year of its receipts and expenditures in managing The Nemours Foundation.

(3) **Other charitable contributions**. To the extent that The Nemours Foundation may, from time to time, receive income in excess of that needed to satisfy the charitable purposes listed in Article Two A.(1) and (2) above, its Board of Directors may, after taking into consideration necessary reserves for extensions, repairs, replacements, alterations, additional equipment, additional buildings, additions to buildings or other necessary improvements and any and all future needs of The Nemours Foundation, and with the Trustees' concurrence, make contributions to other worthy charitable institutions for the same purposes as set forth in Article Two A.(2) above.

(4) **Expenditures in Delaware.** Mr. duPont expressed the wish that the people of Delaware needing care be properly provided for before contributions are made to institutions or persons of any other state or states. To that end, at no time will The Nemours Foundation spend more than fifty percent (50%) of the annual distributions from the Trust outside the State of Delaware for the charitable purposes listed in Articles Two A.(1), (2) and (3)

above. The Trustees shall report annually to the Delaware Attorney General (i) the fair market value of the Trust assets, (ii) the distribution from the Trust to The Nemours Foundation, and (iii) the amount of the Trust distribution spent outside of Delaware for that year.

B. This Trust is intended to qualify as: (1) an organization described in Section 501(c)(3) of the Code, exempt from income tax under Section 501(a) of the Code, contributions to which are deductible under Sections 170(c)(2), 2055(a), and 2522(a) of the Code (hereinafter referred to as a "Tax-Exempt Charitable Organization"); and (2) a Type II supporting organization as defined in Section 509(a)(3)(B)(ii) of the Code and the regulations thereunder (hereinafter referred to as a "Type II Supporting Organization").

C. The Trust's obligation to support The Nemours Foundation will be subject to the condition that The Nemours Foundation continues to be a Tax-Exempt Charitable Organization. In the unlikely event that The Nemours Foundation either ceases to exist or ceases to be a Tax-Exempt Charitable Organization, the Trustees, in their sole discretion, shall select one or more other organizations that are Tax-Exempt Charitable Organizations (referred to individually as a "Contingent Beneficiary" or collectively as "Contingent Beneficiaries"), the purposes of which are consistent with the intentions of Mr. duPont, as set forth in this Article Two, insofar as is practicable at the time. In the event payments are made to one or more Contingent Beneficiaries rather than to The Nemours Foundation, the Trustees may, in their sole discretion, designate different Contingent Beneficiaries from one year to the next and may change their choice of Contingent Beneficiaries at any time and from time to time, and shall have the sole discretion to determine from year to year in what proportions or percentages the Contingent Beneficiaries (if there is more than one at a particular time) will share in the total distribution made with respect to any year.

D. No part of the net earnings of the Trust will inure to the benefit of, or be distributable to, its Trustees or any private shareholder or persons. The foregoing restriction will not impede the ability to pay reasonable compensation for services rendered to the Trust, nor will it affect the Trust's ability to make payments and distributions in furtherance of its charitable purposes.

E. No substantial part of the activities of the Trust will be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Trust will not participate in, nor intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

F. Notwithstanding any other provision hereof, this Trust will not conduct nor carry on any activities not permitted to be conducted or carried on by a Tax-Exempt Charitable Organization.

ARTICLE THREE: Future Transfers to the Trust.

The Trustees are expected to receive the residue of the other trust established by the severance of the Testamentary Trust, known as the Alfred I. duPont Annuitants' Trust (the "Annuitants' Trust"), upon the termination of that trust. This future addition, together with the income, herein referred to as the "trust fund," will be held, managed, and administered by the Trustees pursuant to the terms of this Trust, including but not limited to the required distributions provided in Article Four.

ARTICLE FOUR: Distributions to The Nemours Foundation.

The Trustees shall make the following distributions to The Nemours Foundation, to be used by The Nemours Foundation for the purposes and in the manner specified in Article Two and in furtherance of the Trust's Charitable Purposes.

A. Annual Payment Amount. During each calendar year, the Trustees shall distribute to The Nemours Foundation an amount that equals three percent (3%) of the average net fair market value of the Trust (the "Annual Payment Amount"). For this purpose, average net fair market value is defined as an average of the net fair market values (as defined in Article Four, Paragraph B.) of the Trust at the end of each of the twelve calendar quarters immediately preceding January 1 of that year. For example, the Annual Payment Amount in 2015 will be the average of the net fair market values of the Trust as of March 31st, June 30th , September 30th, and December 31st of 2012, 2013, and 2014, multiplied by 3%. The Annual Payment Amount will be paid in four quarterly payments, and will be paid first from the net income of the Trust, but to the extent the net income is insufficient, it will be paid from the principal of the Trust.

B. Method for Determining Net Fair Market Value. The "net fair market value" of the Trust as of any date is the current fair market value of all of the assets of the Trust as of that date, reduced by all of the liabilities of the Trust as of that date. This computation shall be made without regard to whether particular items are taken into account (or are treated differently) in determining the net income of the Trust, or in preparing the balance sheet of the Trust for accounting purposes. The net fair market value will be adjusted as follows:

(1) All determinations of the net fair market value of assets of the Trust will be made on an asset-by-asset basis, reasonably and in good faith, in accordance with the provisions of Section 738.202(5) of the Florida Statutes, and otherwise in accordance with generally accepted fiduciary accounting principles; provided, however, that the fair market value of real property (including any improvements thereon) may be determined on a five-year basis. The fair market value of real property must be determined by means of a certified, independent appraisal made in writing by a qualified person who is neither an employee of the Trust, an

officer or Trustee of the Trust, nor a family member of any such person. The appraisal shall contain a statement at the end thereof to the effect that, in the opinion of the appraiser, the value placed on the assets appraised were determined in accordance with valuation principles regularly employed in making appraisals of such property, using all reasonable valuation methods. Any valuation of real property made pursuant to this provision may be replaced during the five-year period by a subsequent appraisal meeting the criteria stated herein, which may in turn be used for up to five years.

(2) In determining the average net fair market value of this Trust for the first three (3) years' Annual Payment Amount, the Trustees may use the quarterly values for the Testamentary Trust, as it existed and was valued before the severance, provided however, that the sum of Ten Million Dollars ($10,000,000) will be deducted from the value of each such pre-severance quarter, which is the amount with which the Annuitants' Trust was funded upon the severance.

C. Excluded Assets. No assets of the Trust are to be excluded in determining the net fair market value of the Trust.

D. Additions to Principal. All net income of the Trust for a calendar year that exceeds the Annual Payment Amount for that year will be added to the principal of the Trust at the end of that year.

E. Contingent Beneficiaries. In the event the Trustees are required to select one or more Contingent Beneficiaries pursuant to Paragraph B of Article Two, the Annual Payment Amount shall be distributed to one or more Contingent Beneficiaries each year in the same amount and at the same time or times that it would otherwise be payable to The Nemours Foundation hereunder. In that event, all references herein to payments to The Nemours

Foundation are to be construed instead as payments to the Contingent Beneficiary or Beneficiaries as determined by the Trustees.

ARTICLE FIVE: Management of The Nemours Foundation.

To ensure that The Nemours Foundation is using the funds distributed to it in accordance with the charitable purposes defined in Article Two, Paragraph A, each Trustee shall also serve as a Member of The Nemours Foundation (collectively referred to as the "Members"). The Members shall, to the exclusion of all other persons, have the following powers with respect to the management of The Nemours Foundation:

A. To establish The Nemours Foundation's purposes consistent with the charitable purposes set forth in Article Two and determine the nature and scope of the services to be offered by The Nemours Foundation;

B. To elect the Non-Member Directors of The Nemours Foundation and establish the total number of Directors to be elected each year;

C. To remove any Non-Member Director, with or without cause, at any time;

D. To approve any purchases or disposition of assets, issuance of debt, borrowing of funds, or change in affiliations, subject to such guidelines as the Members may establish from time to time;

E. To specify that the use of distributions from this Trust shall be consistent with the purposes of The Nemours Foundation; and

F. To make amendments to the Articles of Incorporation of The Nemours Foundation and approve any changes to its By-laws.

In addition to serving as a Member of The Nemours Foundation, each Trustee, at his or her option, may, but is not required to, serve as a member of the Board of Directors of The Nemours Foundation.

ARTICLE SIX: Dissolution of Trust.

It is anticipated that the Trust will continue in perpetuity; provided, however, that in the event of the dissolution of the Trust for any reason, the Trustees shall distribute the remaining Trust estate to The Nemours Foundation if The Nemours Foundation is then a Tax-Exempt Charitable Organization. If The Nemours Foundation is not then a Tax Exempt Charitable Organization, the Trustees, in their sole discretion, shall distribute the remaining Trust estate to one or more Tax-Exempt Charitable Organizations, to be used exclusively for the charitable purposes set forth in Article Two. None of the assets will be distributed to any private person or to a Trustee of this Trust. The foregoing restriction will not impede the ability to pay reasonable compensation for services rendered to the Trust, nor will it affect the Trust's ability to make payments and distributions in furtherance of its charitable purposes.

ARTICLE SEVEN: Powers of Trustees.

In the administration of this Trust, the Trustees shall, without court approval, have all powers and authority necessary or available to carry out the purposes of this Trust and, subject to the provisions of Article Nine, to delegate such authority, including, without limitation, the following powers and authority, all subject, however, to the condition that all powers and authorities are to be exercised by the Trustees in good faith and in a manner, and for the purposes, that would be permitted for an organization that is a Tax-Exempt Charitable Organization:

A. **Types of Investments.** Except as otherwise provided to the contrary, to hold funds uninvested for such periods deemed advisable, and to invest in any assets even though they

are not technically recognized or specifically listed in so-called "legal lists," without responsibility for depreciation or loss on account of those investments, or because those investments are non-productive.

B. Tangible Personal Property. To receive and hold tangible personal property; to pay or refrain from paying storage and insurance charges for such property; and to permit any beneficiaries to use such property without incurring any liability for wear, tear, and/or the obsolescence of such property.

C. Financial Accounts. To deposit trust money in one or more accounts in financial service institutions, including without limitation, banks, savings institutions, and brokerage houses, and to draw checks, drafts, or other forms of withdrawal, including electronic transfers, from those accounts.

D. Specific Securities. To invest in assets, securities, or interests in securities of any nature, whether obtained in domestic or foreign markets, including (without limit) commodities, options, futures, precious metals, and currencies; to invest in mutual or investment funds, and, without limiting the foregoing, specifically to invest in the instruments described in Section 736.0802(5) of the Florida Statutes (including assets other than qualified investment instruments) without notice to or consent from any beneficiary; to trade on credit or margin accounts (whether secured or unsecured); and to pledge assets of the Trust for that purpose.

E. Property Transactions. To buy, sell, pledge, exchange, or lease any real or personal property, publicly or privately, for cash or credit, without court approval; to execute deeds, leases, contracts, bills of sale, notes, mortgages, security instruments, and other written instruments; to grant, acquire, or exercise options; to abandon or dispose of any real or personal property in the Trust that has little or no monetary or useful value; to improve, repair, insure, subdivide and vacate any property; to erect, alter or demolish buildings; to adjust boundaries; and to impose easements, including conservation easements, restrictions, and covenants.

F. Borrow Money. To borrow money from any source, to guarantee indebtedness, and to secure the loan or guaranty by mortgage or other security interest.

G. Maintain Assets. To expend whatever funds it deems proper for the preservation, maintenance, or improvement of assets and to elect any options or settlements or exercise any rights under all insurance policies that it holds.

H. Insurance. To obtain property, casualty, liability, or any other insurance for the Trust, including insurance for the Trustees and their agents against damage or liability arising from administration of the Trust.

I. Advisors and Employees. To retain on behalf of the Trust and to compensate from the Trust's funds, whether as employees or as independent contractors, accountants, advisors, financial consultants, managers, agents, and assistants for the Trust, including but not limited to persons who provide investment advisory or management services, or who furnish professional assistance in making investments for the Trust.

J. **Attorneys.** To retain attorneys to represent the Trustees in the administration of the Trust. Such attorneys may be compensated from the Trust's funds, without liability for any act of those persons, if they are selected and retained with reasonable care.

K. **Nominee.** Except as prohibited by law, to hold any assets in the name of a nominee without disclosing the fiduciary relationship; to hold the property unregistered, without affecting its liability; and to hold securities endorsed in blank, in street certificates, at a depository trust company, or in a book entry system.

L. **Custodian.** To employ a custodian or agent (the "Custodian"), at the expense of the Trust; to register securities in the name of the Custodian or a nominee thereof without designation of fiduciary capacity; and to appoint the Custodian to perform such other ministerial functions as directed.

M. **Administer Claims.** To contest, compromise, arbitrate, or otherwise adjust claims in favor of or against the Trust, including paying those claims in full; to agree to any rescission or modification of any contract or agreement; and to refrain from instituting any suit or action unless indemnified for reasonable costs and expenses.

N. **Corporate Rights.** To vote and exercise any option, right, or privilege to purchase or to convert bonds, notes, stock, securities, or other property; to borrow money for the purpose of exercising any such option, right, or privilege; to delegate those rights to an agent; to enter into voting trusts and other agreements or subscriptions; to participate in any type of liquidation or reorganization of any enterprise; and to buy and sell covered call options, puts, calls, straddles, or other methods of buying or selling securities, as well as all related transactions.

O. **Business Interests.** To hold interests in all types of domestic and foreign forms of organizations, including but not limited to corporations, sole proprietorships, general or limited partnerships, joint ventures, business trusts, land trusts, and limited liability companies; and to exercise all rights in connection with such interests, including any powers applicable to a non-admitted transferee of any such interest.

P. **Expenses.** To pay all expenses of administration for the Trust, including all taxes, assessments, compensation of the Trustees and the employees and agents of the Trust, and reimbursements for expenses advanced (with interest as appropriate).

Q. **Loans; Advances.** To make cash advances or loans to The Nemours Foundation at the Trustees' discretion, with or without security and/or liens for repayment. The Trustees may retain a lien on future distributions to The Nemours Foundation to repay those loans.

R. **Investment Manager.** To employ any investment management service, financial institution, or similar organization for advice and to handle all investments of the Trust and to render all accountings of funds held on its behalf under custodial, agency, or other agreements. These costs may be paid as an expense of administration in addition to fees and commissions.

S. **Incorporation**. To incorporate or dissolve any business, LLC, partnership, or venture, and to continue or discontinue any unincorporated business.

T. **Additional Powers for Income-Producing Real Estate.** In addition to the other powers set forth above or otherwise conferred by law, with respect to any income-producing real property which is or may become a part of the Trust Estate, all powers conferred by Florida law upon owners of income-producing real estate, including but not limited to the following powers:

1. To retain and operate the property for as long as it deems advisable;

2. To control, direct, and manage the property, determining the manner and extent of their active participation in these operations, and to delegate all or any part of their supervisory powers to other persons that they select;

3. To hire and discharge employees and agents, fix their compensation, and define their duties;

4. To invest funds in land holdings and to use those funds for all improvements, operations, or other similar purposes;

5. Except as otherwise provided with respect to mandatory income distributions, to retain any amount of the net earnings for working capital and other purposes deemed advisable in conformity with sound and efficient management; and

6. To purchase and sell machinery, equipment, and supplies of all kinds as needed for the operation and maintenance of the land holdings.

ARTICLE EIGHT: Accounts.

The Trustees shall each year prepare an account of their administration of the Trust. Such accounts shall be available for inspection as provided by the laws of the State of Florida and as may be required by the Code.

ARTICLE NINE: Delegation of Powers; Evidence of Authority; Liability of Trustees.

A. Any Trustee may, from time to time by written power of attorney, delegate all or any of his non-voting powers to any other Trustee or Trustees for a period of not more than six months at a time. Any such delegation may be renewed by successive powers of attorney and may be revoked at any time. A Trustee who consents to the delegation of authority to other

Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustee had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

B. In accordance with Florida law, including Section 736.0807 of the Florida Statutes as amended from time to time, the Trustees may delegate any duties and powers to a non-trustee that may be delegated under Florida law (except for those specifically reserved to the Trustees in Paragraph C of this Article Nine), including, but not limited to investment, management, and administrative decisions, and on all other matters incidental to the foregoing powers, as specified from time to time in a resolution or certificate that is adopted or renewed by the Trustees. Without limiting the foregoing, the Trustees may establish one or more entities to perform such services, so long as such entities are wholly owned and controlled by the Trust.

C. Notwithstanding any delegation hereunder, a delegation of power does not excuse a Trustee from his duty of loyalty to the Trust. The Trustees may not delegate to a non-trustee any decisions related to the determination of (1) the Trust's investment policies, asset allocations and benchmarks; (2) the Trust's organizational structure, human resource policies, or its general Policies and Procedures; (3) compensation of the Trustees or employees; (4) the Trust's budget; or (5) any decisions or authority that the Trustees may not delegate under Florida law. Further, the Trustees may not delegate to a non-trustee any powers of the Trustees in their capacities as Members of The Nemours Foundation.

D. In addition, the following limitations and conditions are applicable with respect to certain of the powers that may be exercised on behalf of the Trust:

(1) Employees, independent contractors, accountants, advisors, financial consultants, managers, agents, and assistants for the Trust, including but not limited to persons who provide investment advisory or management services, or who furnish professional assistance in making investments for the Trust, shall (a) be selected and retained with reasonable care and (b) the delegations of power to them shall be consistent with customary and prudent fiduciary practices.

(2) Attorneys for the Trust shall be selected and retained with reasonable care and be chosen by a majority vote of the Trustees, and such attorneys may be compensated from the Trust's funds, without liability for any act of those persons. Each Trustee may retain separate legal counsel at their discretion, but such separate counsel will not be paid from the Trust, unless approved by a majority vote of the Trustees or by order of a Court of proper jurisdiction

(3) While any securities are in the custody of a custodian, the Trustees will be under no obligation to inspect or verify such securities nor will the Trustees be responsible for any loss by the custodian.

E. No third party engaged in any transaction with this Trust shall be required to determine whether any action, power, or authority exercised on behalf of this Trust is authorized or is within the purposes of this Trust set forth in Article Two or permitted to an organization that is a Tax-Exempt Charitable Organization, so long as such third party is engaging any such transaction with the Trust in good faith and has been presented with a copy of a Resolution or Certificate described in Article Thirteen. This provision does not relieve any person acting on

behalf of this Trust without authority from any liability for such actions to the extent that such action is not authorized or is negligent or otherwise improper.

F. A Trustee shall be liable only for his own willful default and shall not be liable for amending or failing to amend the Trust pursuant to Article Twelve, for the acts or omissions or any predecessor or other Trustee, for failing to redress any breach of trust, for leaving property in the hands of any other Trustee or for any error of judgment or law on his own part.

ARTICLE TEN: Trustees.

A. Current Trustees. The current Trustees of the Trust are HUGH M. DURDEN, JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, and WINFRED L. THORNTON (herein, the "Current Trustees").

B. Number of Trustees. At all times there should be six (6) Trustees serving hereunder, all of whom will be individuals. Any vacancy in the office of Trustee will be filled as provided in Paragraph E of this Article Ten. When there are fewer than the requisite number of Trustees of the Trust, because of vacancies or otherwise, the Trustees in office shall have full power to act in all matters, discretionary or otherwise, pending the election of another Trustee or Trustees.

C. Resignation of Trustee. Any Trustee may resign at any time from the Trust by a writing signed by him or her. The resigning Trustee shall promptly provide a copy of the written notice of resignation to the remaining Trustees. Any individual serving as a Trustee shall cease to serve as Trustee upon the receipt by his co-Trustees of a certificate signed by a physician attending the Trustee and stating that the Trustee is suffering from an impairment that is likely to adversely affect his or her judgment with respect to business affairs.

D. Removal of Trustee. A Trustee may be removed in accordance with the following provisions:

(1) Grounds for Removal: A Trustee may be removed at the discretion of the then serving Trustees for cause, and only for one or more of the following reasons:

(a) the commission of a felony or the commission of a misdemeanor involving an act of theft, dishonesty, fraud, embezzlement, or moral turpitude by the Trustee;

(b) committing waste or other maladministration of Trust assets that results in a material breach of trust or damage to the Trust;

(c) the willful or negligent mismanagement of the Trust assets that results in a material breach of trust or damage to the Trust;

(d) the abandonment of, or inattention to, the Trust;

(e) a mental or physical incapacity, or the use of illegal narcotics or excessive use of alcohol, but in any of these instances, only if it materially impairs the mental or physical ability of the Trustee to perform his or her duties as a Trustee;

(f) conflicting or adverse interest to the Trust that results in a material breach of trust or damage to the Trust;

(g) material breach of any fiduciary duty, including the duty of loyalty, impartiality, and good faith; or

(h) promoting or perpetuating a hostile or disharmonious relationship with the co-Trustees that substantially impairs the administration of the Trust or unnecessarily depletes the Trust's assets.

(2) Vote Required: The then serving Trustees may remove an existing trustee for the grounds listed in Article Ten D (1) only by unanimous vote, except the Trustee whose removal is being voted upon may not participate in that vote.

(3) Process for Removal: The following procedure is to be followed in order to remove a Trustee by vote in accordance with Article Ten D (2):

(a) Advance notice of the Trustees' intent to vote on the removal of a Trustee must be given at the quarterly meeting of the Board of Trustees immediately preceding the quarterly meeting at which the vote will occur. In addition, the Trustee proposed to be removed also must be given written notice of the proposed removal, and the facts supporting the basis for removal, at least 60 days prior to the quarterly meeting at which the vote will occur.

(b) The Trustee proposed to be removed will be afforded an opportunity to speak at the quarterly meeting at which the vote will occur, prior to the vote and shall be entitled to have counsel present at the portion of the meeting dealing with removal.

(c) Removal will become effective immediately upon the unanimous vote of all of the Trustees other than the Trustee being removed, and that decision will be conclusive and binding for all purposes. A Trustee may petition a Court of competent jurisdiction for review of the grounds for removal within 30 days after receiving notice of the vote to remove that Trustee, and such review shall be conducted by the Court de novo. The failure to file a petition within 30 days shall be deemed a waiver of the right to challenge the removal.

(d) If eligible, any Current Trustee can elect emeritus status and avoid a removal vote unless the expressed cause for removal was one or more of the grounds listed in subparagraphs (a) or (b) of Paragraph D (1) of this Article Ten.

E. Term Limits. This Paragraph E does not apply to any Current Trustee, who may continue to serve for the remainder of his lifetime, unless such Trustee is removed, resigns, or elects to become a Trustee Emeritus, as more fully set forth herein. Each additional or subsequent Trustee (a "Future Trustee") will be elected by a majority vote of the then serving Trustees for a term that ends fifteen (15) years from the last day of the calendar year in which his

service commences, subject to the age restriction stated below. Upon written acceptance of the office of Trustee by a Future Trustee, the title to the Trust property will vest in such successor trustee, jointly with any other Trustee or Trustees then acting, subject, however, to the terms of this Trust. Each Future Trustee's service as a Trustee shall end on the earliest of (a) the last day of the calendar year that includes the 15-year anniversary of that Trustee's commencement of service as a Trustee; (b) the last day of the calendar year in which that Trustee attains the age of seventy-five (75); or (c) that Trustee's death, disability, resignation or removal.

F. Compensation of Trustees. The compensation for each Trustee will be $119,070.00 per annum, pro rata for any partial year of service as a Trustee, and such compensation will automatically increase on January 1, 2017 and then again every five (5) years thereafter, at the rate of 5% of the then current year per adjustment. The Chairperson of the Trustees and the Chairperson of the Board of Directors of The Nemours Foundation (if he or she is a Trustee) will receive an additional 10% in compensation over his or her ordinary Trustee compensation. As additional compensation, Current Trustees will continue to receive, at no cost to the Current Trustee, their health care benefits comparable to that which they are receiving currently. All Future Trustees shall receive health care benefits for that Trustee, at no cost to the Trustee, but no health care benefits will be provided for family members of the Trustee.

G. Trustee Emeritus. Any Current Trustee who has attained the age of seventy (70), and has served for at least ten (10) years, may voluntarily elect to become a Trustee Emeritus. A Trustee Emeritus will not have voting powers with respect to the administration of the Trust, but will be entitled to attend all meetings of the Trustees and participate in discussions regarding the administration of the Trust. A Trustee Emeritus shall provide reasonable consultation and advice to the then serving Trustees. In consideration for such present and future

services, and in consideration of the substantial past services rendered as an active Trustee, a Trustee Emeritus will continue to receive compensation at the rate he received at the time of his Trustee Emeritus election, but no increases in compensation will be received thereafter. A Trustee Emeritus will continue to receive health care benefits for the remainder of his life that are equal to those being received at the time he becomes an Emeritus.

H. Waiver of Bond. No Current or Future Trustee shall be required to give any bond except as specifically required by law, and then only in the lowest permissible amount and without sureties if permitted by law.

I. Indemnity. Any Trustee who ceases to serve for any reason will be entitled to receive (and the continuing Trustees shall make suitable arrangements to provide) reasonable indemnification and security to protect and hold that Trustee harmless from any damage or liability of any nature that may be imposed because of his or her actions or omissions while serving as Trustee. This protection, however, does not extend to a Trustee who has acted in bad faith, and whose own negligent actions or omissions have clearly and demonstrably resulted in damage or liability to the Trust. A prior Trustee may enforce these provisions against the then serving Trustees or against any assets held in the Trust, or against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right will extend to the estate, personal representatives, legal successors, and assigns of a Trustee.

J. Majority Action. Unless specifically provided otherwise, all powers, authorities, and discretions of the Trustees may be exercised by a majority of the Trustees in office at the time.

ARTICLE ELEVEN: Prohibited Transactions.

A. Notwithstanding any other provision of the Trust, the Trustees (1) shall not have nor exercise any power or authority for any purpose whatsoever that may jeopardize the status of the Trust as a Tax-Exempt Charitable Organization, and (2) shall not authorize any action or expenditure that gives rise to an excess benefit transaction as defined in Section 4958(c) of the Code.

B. Notwithstanding any other provisions of this Trust to the contrary, if at any time the Trust is determined to be a private foundation within the meaning of Section 509(a) of the Code, and only in that event, and only for so long as such determination remains in effect, then --

(1) The Trustees shall make distributions at such times and in such manner as not to subject the Trust to tax under Section 4942 of the Code.

(2) The Trustees shall refrain from: engaging in any act of self-dealing as defined in Section 4941(d) of the Code; retaining any excess business holdings as defined in Section 4943(c) of the Code; making investments which would subject the Trust to tax under Section 4944 of the Code; and making any taxable expenditures as defined in Section 4945(d) of the Code.

ARTICLE TWELVE: Amendment.

Notwithstanding the fact that this Trust is irrevocable, the Trustees are authorized and empowered in their sole discretion, at any time and from time to time, by an instrument in writing approved by at least seventy-five percent (75%) of the Trustees then serving, to amend the Trust for any of the following reasons, except that no amendment may be made that is inconsistent with the Trust's status as a Tax-Exempt Charitable Organization, nor, unless approved by the Court, that alters the terms set forth in Articles Two, Four, Five, Six, Ten, Eleven and Twelve:

A. To comply with the requirements for charitable exemptions and deductions now and in the future provided for under the tax laws of the United States of America or of any state, and to assure that the Trust will continue to be a Tax-Exempt Charitable Organization and a Type II Supporting Organization.

B. To comply with any provision of applicable state law, or any applicable provision of the Federal tax law, as the same may be amended from time to time in the future, including any amendment that is necessary or helpful to enable the Trust to preserve, or to qualify for, the most favorable tax classification available.

C. To permit the Trust to be administered in furtherance of the purposes described herein in an efficient and appropriate manner.

D. To adopt policies consistent with national standards of good governance for not-for-profit entities similar to the Trust.

E. To make any other modification to the terms hereof as may be approved by a Court having jurisdiction over the Trust, and/or by a government official whose powers include the power to authorize non-judicial modification of trusts, if the Trustees believe such modification serves the best interests of the Trust.

ARTICLE THIRTEEN: Resolution or Certificate of Trustee.

The Trustees shall periodically adopt a resolution or certificate memorializing the delegation of any powers as provided in Article Nine. A resolution or certificate signed by a Trustee, or by an officer or assistant officer to whom that power is delegated by the Trustees, shall be conclusive evidence to all persons and for all purposes of the facts stated in the resolution or certificate respecting: the terms of this Trust and of any amendments hereto pursuant to Article Twelve hereof; the incumbency and identity of the Trustees; or any other

decision made or action taken by the Trustees, including the nature and extent of any delegation under Article Ten.

ARTICLE FOURTEEN: Definitions; Miscellaneous.

A. As used herein: (1) the term "Trustees" means, wherever the context so permits, the Trustees then serving, whether Current or Future Trustees; (2) the term "property" means any property, whether real, personal or mixed; and (3) references herein to the Code shall include not only the provisions of the Internal Revenue Code of 1986, as amended, as it exists at the time of execution of this instrument, but also the corresponding provision as it may be amended hereafter, the corresponding provision of any future internal revenue law, and the applicable Treasury regulations as they now exist or may hereafter be amended.

B. This Modified and Restated Trust Agreement was prepared with the intention of following the directions of Mr. duPont's Will, and reflecting the provisions of prior court orders and stipulations previously entered, except for modifications necessary or appropriate (i) to obtain tax or other economic advantages for the benefit of the Trust's charitable beneficiary, (ii) to conform to current tax laws and standards of good governance, and (iii) to provide for administrative convenience, including but not limited to the objective of containing within a single document all of the terms governing the Trust. Accordingly, with respect to the terms of the Charitable Trust, this Modified and Restated Trust Agreement shall supersede completely all prior documents that otherwise might have stated, governed or controlled its terms.

C. When the context so indicates, the masculine gender shall be deemed to denote the feminine or neuter, the singular to denote the plural, and the plural to denote the singular.

D. The validity, interpretation, construction, and administration of the Trust hereby created will, in all respects, be governed by the laws of the State of Florida.

[The remainder of this page is intentionally left blank.]

ACCEPTED this _____ day of _____, 2012, effective as of _____, 2012.

_____
Hugh M. Durden, Trustee

_____
John F. Porter III, Trustee

_____
John S. Lord, Trustee

_____
William T. Thompson III, Trustee

_____
Herbert H. Peyton, Trustee

_____
Winfred L. Thornton, Trustee

This instrument was signed, sealed, published, and declared by HUGH M. DURDEN, JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III and WINFRED L. THORNTON, as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, and as Trustees of this Trust, as their Trust Agreement in our joint presence, and at their request we have signed our names as attesting witnesses in their presence and in the presence of each other on the date first written above.

Name	Address
_____	_____
_____	_____

EXHIBIT A
FORM OF CERTIFICATE OF AUTHORITY

CERTIFICATION OF RESOLUTION

I, _____, do hereby certify that I am the duly elected, qualified and acting _____ of Alfred I. duPont Charitable Trust, a trust established under the laws of the State of Florida, and as such, have custody of the records of the Trust, including the minutes of the meetings of the Trustees of the Trust; and I do further certify that at a meeting of the Trustees of the Trust held on _____, at which a quorum was present and acting throughout, the following Resolution was adopted:

Resolution to Specify and Authorize Individuals to Transact Business
for the Alfred I. duPont Charitable Trust

RESOLVED, That after approval by the Trustees of a contract or agreement for the conduct of Trust business, including investment management and custodial relationships, any [*number*] of the primary signatories listed below is authorized and empowered to execute the [*type of agreement or contract*]

_____

_____

_____

Dated this ___ day of _____20___.

_____
[*name and title of Trustee, officer or assistant office signing*]

STATE OF FLORIDA
COUNTY OF DUVAL

We, HUGH M. DURDEN, JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, and WINFRED L. THORNTON, as Trustees under the Last Will and Testament and Codicils thereto of Alfred I. duPont, and _____ and _____, the witnesses, respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the Trustees, in the presence of the witnesses, signed the instrument as their Trust Agreement, that they signed, and that each of the witnesses, in the presence of the Trustees and in the presence of each other, signed the Trust Agreement as a witness.

_____	_____
Hugh M. Durden, Trustee	John F. Porter III, Trustee
_____	_____
John S. Lord, Trustee	William T. Thompson III, Trustee
_____	_____
Herbert H. Peyton, Trustee	Winfred L. Thornton, Trustee
_____	_____
Witness	Witness

[NOTARIAL ACKNOWLEDGMENT CONTINUES ON FOLLOWING PAGE]

The foregoing instrument was acknowledged, subscribed, and sworn to before me by the Trustees, HUGH M. DURDEN, JOHN S. LORD, HERBERT H. PEYTON, JOHN F. PORTER III, WILLIAM T. THOMPSON III, and WINFRED L. THORNTON, who are personally known to me, and by _____ and _____ _____who are personally known to me, the witnesses, on _____, 2012.

_____
Notary Public--State of Florida
Print Notary Name: _____
My Commission Number is: _____
My Commission Expires: _____

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