

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:

TRUST UNDER DEED OF TRUST OF  
SARAH MELLON SCAIFE, SETTLOR,  
DATED DECEMBER 30, 1935

ORPHANS' COURT DIVISION

No. 6469 of 2014

**ANSWER AND NEW MATTER OF  
RESPONDENT, H. YALE GUTNICK,  
TO DAVID N. SCAIFE'S PETITION  
FOR CITATION TO SHOW CAUSE  
WHY AN ACCOUNT SHOULD NOT BE  
FILED**


Filed on behalf of Respondent,  
H. Yale Gutnick

Counsel of Record for this Party

E. J. Strassburger, Esquire  
PA I.D. #10231

**To: Petitioner:**

**You are hereby notified to file  
a written response to the within  
New Matter within Twenty (20) days  
from service or a judgment may be  
entered against you.**

  
E. J. Strassburger, Esquire

David A. Strassburger, Esquire  
PA I.D. #76027

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**ANSWER AND NEW MATTER OF RESPONDENT, H. YALE GUTNICK,  
TO DAVID N. SCAIFE'S PETITION FOR  
CITATION TO SHOW CAUSE WHY AN ACCOUNT SHOULD NOT BE FILED**

Respondent, H. Yale Gutnick ("Respondent"), by his undersigned counsel, files the following Answer And New Matter to the Petition For Citation To Show Cause Why An Account Should Not Be Filed ("Petition") filed by Petitioner, David N. Scaife ("David" or "Petitioner"):

**Answer**

1. Admitted.
2. Admitted.
3. Respondent denies that David and his sister, Jennie Scaife ("Jennie") (collectively David and Jennie will be referred to as "Petitioners") are the "current beneficiaries" of the 1935 Trust. To the contrary, there are no current beneficiaries because all of the assets of the 1935 Trust have been distributed. The remaining averment set forth in Paragraph 3 of the Petition is admitted.
4. The averments set forth in Paragraph 4 of the Petition are denied as stated. Specifically, Respondent denies that the Trustees of the 1935 Trust breached any fiduciary duty, including but not limited to the duties of loyalty and impartiality, to exercise their powers in good faith and pursuant to the provisions of the 1935 Trust, and/or that the Trustees at any time abused their discretion. Respondent also denies that David only learned after the death of his

father (hereinafter “Mr. Scaife”) that the entire 1935 Trust corpus had been distributed because the means of proof of that fact are within the exclusive control of David. In any event, as set forth in the answers to Paragraphs 21, 23 and 27 and the New Matter below, and incorporated herein by reference as if set forth at length, both Petitioners had been aware for many years that substantial principal distributions were being made from the 1935 Trust to be used in support of Mr. Scaife’s media properties.<sup>1</sup> With respect to the Petition’s purporting to recite the terms of the 1935 Deed of Trust, Respondent avers that the Deed being a writing, its terms will speak for themselves. Finally, Respondent incorporates herein by reference as if set forth at length, the New Matter set forth below.

5. Paragraph 5 of the Petition sets forth a legal conclusion to which no answer is required.

6. Paragraph 6 of the Petition sets forth a legal conclusion to which no answer is required. Respondent admits, however, that all of the current Trustees reside in and/or have places of business in Allegheny County.

7. Paragraph 7 of the Petition sets forth a legal conclusion to which no answer is required.

8. Admitted.

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<sup>1</sup>References herein to “media properties” or “Tribune-Review” shall include, *inter alia*, the following which at one time were owned by Mr. Scaife: Trib Total Media, Inc.; Tribune-Review Publishing Company; Trib Real Estate Company; NewsMax Media, Inc.; Calvary, Inc.; Gateway Press, Inc.; The Daily News Publishing Company; The Daily News Real Estate Company; Westminster Holdings, Inc.; Sacramento Union Publishing Co.; The Lebanon News Publishing Company; Pennysaver Publications of Pa., Inc.; Trib Holding Company; and RMS Holding Company.

9. Paragraph 9 of the Petition sets forth a legal conclusion to which no answer is required.

10. Admitted.

11. Paragraph 11 of the Petition is denied as stated. Specifically, Respondent denies that the Trust was to continue for the maximum period permitted by the Rule Against Perpetuities, that it was to ultimately pass its assets to Mr. Scaife's descendants, and/or that it was to continue for 21 years after Mr. Scaife's death. To the contrary, these were only possibilities under the 1935 Trust, but another possibility provided for by the 1935 Trust, and the one that actually occurred, was that the entire principal of the Trust would be distributed to Mr. Scaife prior to his death. Paragraph 8(c) of the Deed of Trust provided that the Trustees could:

distribute to my said son, as his absolute property, all or such portion of the corpus of the Trust Estate as the Trustees shall deem to be for his best interests, and if, as and when the entire corpus of the Trust estate may be so distributed to my said son, this trust shall terminate notwithstanding that the time of termination specified in Article 3 hereof may not yet have arrived.

12. Respondent denies the averments set forth in Paragraph 12 of the Petition, because the Deed of Trust is a writing, the terms of which will speak for themselves.

13. Respondent denies the averments set forth in Paragraph 13 of the Petition, because the Deed of Trust is a writing, the terms of which will speak for themselves.

14. Admitted.

15. The averments in the first sentence of Paragraph 15 of the Petition are admitted. The last two sentences set forth legal conclusions to which no answer is required, but, in any event, are denied for the reasons set forth in Respondent's answers to Paragraphs 3, 11 and 13 above and his New Matter below, and incorporated by reference herein as if set forth at length.

16. Respondent admits that Petitioner has accurately quoted a small portion from the first sentence of Paragraph 8 of the 1935 Deed of Trust, the terms of which will speak for themselves. In further answer, Respondent incorporates herein by reference, as if set forth at length, his answer above to Paragraph 11 and his New Matter below.

17. Respondent denies the averments set forth in Paragraph 17 of the Petition, because the 1935 Deed of Trust and particularly its Paragraph 8(c), is a writing, the terms of which will speak for themselves.

18. As a whole, Paragraph 18 of the Petition sets forth a legal conclusion to which no answer is required. With respect to the selective quoting of Paragraph 8 of the 1935 Deed of Trust, the terms of that writing will speak for themselves.

19. Paragraph 19 of the Petition sets forth a legal conclusion to which no response is required.

20. Paragraph 20 of the Petition sets forth a legal conclusion to which no answer is required.

21. The averments set forth in Paragraph 21 of the Petition are admitted in part and denied in part. Respondent admits that: (a) the Post-Gazette in September of 2007 publicly revealed the existence of the 1935 Trust and its use for funding the Tribune-Review; and (b) Petitioner's counsel in December, 2007 requested information regarding the 1935 Trust. Respondent denies, however, that Petitioner first learned of the 1935 Trust from the newspaper account. To the contrary, both Petitioners knew of the 1935 Trust and its use to fund the newspaper from their parents' earlier divorce, from discussions with their mother and father, from David's location in the family office, from their step-mother, from their attorney, from each other, and doubtlessly from other sources as well. Moreover, Petitioner's request under the

Pennsylvania Uniform Trust Act only ripened in November 2006 when that Act became effective. Finally, Respondent incorporates by reference herein as if set forth at length his New Matter below.

22. Admitted.

23. Paragraph 23 of the Petition is denied, because the 2007 PNC account statement is a writing, the contents of which will speak for themselves. Respondent admits that Exhibit B to the Petition is a true and correct copy of the 2007 PNC Statement for the 1935 Trust.

24. Respondent admits that one but not the only use of principal distributions from the 1935 Trust was to fund operating losses of the Tribune Review. Other uses included, but were not limited to funding other media property acquisitions and maintenance, and building a new printing plant.

25. The averments set forth in Paragraph 25 of the Petition are denied as stated. Specifically, Respondent denies that Waiver, Release, Discharge and Indemnification agreements are not either common and/or sound business practice. To the contrary, Respondent believes and, therefore, avers that when PNC is a Trustee or Co-Trustee, it regularly insists on such agreements, particularly when distributions are sizeable, as were those from the 1935 Trust. The agreements in this matter being in writing, their terms will speak for themselves. In further answer, Respondent incorporates herein by reference as if set forth at length the averments of Paragraph 84 of the New Matter below.

26. Admitted.

27. The averments set forth in Paragraph 27 of the Petition are denied. Specifically, Respondent denies that he made the alleged statements at the February 25, 2008 meeting, which are attributed to him. To the contrary, the participants of that meeting (Ferguson, Gutnick,

Strassburger) agreed following the meeting that Gutnick's statements had been "elliptical", and in no way represented either a promise that a specific amount would remain in the 1935 Trust at Mr. Scaife's death and/or a commitment that an "alternative funding mechanism had been put in place to fund the post-2008 losses." In further answer, Respondent avers that: (a) the reason for the February 25<sup>th</sup> meeting was that one week earlier David had made a written request to the Trustees of Family Trust Nos. 1 and 2 for a \$2.5 million principal distribution from those trusts ("February 18<sup>th</sup> letter"); (b) David was a possible though not primary beneficiary of Nos. 1 and 2, over which his father held a testamentary power of appointment which was likely to be exercised in favor of charity; (c) although Mr. Scaife did not have a power of appointment in the 1935 Trust, David knew that the Trustees could distribute all of the corpus prior to Mr. Scaife's death; and (d) in essence, David wanted his father to support his media properties with funds which would eventually go to charity (i.e. the Family Trusts) rather than to him and Jennie (i.e. the 1935 Trust.) At the meeting, Ferguson indicated that David could be "mollified" if (a) he could be satisfied with his father's estate plan; and (b) he could be assured that the 1935 Trust would not be distributed. Respondent replied that David was "currently" Mr. Scaife's "primary beneficiary" and the 1935 Trust was not "envisioned" to fund the Tribune-Review after 2008. Respondent further stated that what he could say was limited by the attorney-client relationship between him and Mr. Scaife; because of improving relations between David and his father, as well as his father's impending divorce, David's February 18<sup>th</sup> letter was ill-timed; Respondent had not yet advised Mr. Scaife of the February 18<sup>th</sup> letter for those reasons; and to build on the improving father-son relationship, David was urged to have a frank estate planning discussion with his father. The meeting concluded with Ferguson's saying to hold the February 18<sup>th</sup> letter (i.e. don't show it to Mr. Scaife) and the ball's in his court (i.e. he would talk to David and

respond.) The response came the very next day via email from Ferguson to Strassburger, a copy of which is attached hereto as Exhibit 1, and which stated in its entirety as follows:

My thanks to you and Yale for taking the time to meet yesterday regarding various issues arising incident to David Scaife.

I am uneasy with the thought of simply putting David's concerns on hold for the next couple of years.

It would be meaningful to David if further funding of TR losses (or other of Dick's funding needs) were accomplished in some way other than through principal distributions from the '35 trust, except on a "last resort" basis. If David could become comfortable that that would no longer happen, that would go a long way to mitigate the current situation.

Ferguson clearly understood that Respondent had not made any commitments on behalf of Mr. Scaife relating to future principal distributions from the 1935 Trust. Consistent with that view, in a March 11, 2008 email to Strassburger, with a copy to David, Ferguson wrote:

[I]n the absence of a way to move beyond what you referred to previously as "Yale's elliptical comments" to something in which David could have some confidence with regard to the further funding of the TR losses (or other of Dick's funding needs) so that they were accomplished in some way other than through principal distributions from the '35 trust, except on a "last resort" basis, David wishes to proceed with his funding made [in the February 18<sup>th</sup> letter.]

28. The averments sets forth in Paragraph 28 of the Petition are denied as stated. While it is admitted that Mr. Scaife did not provide for Petitioners in his Will or revocable trust, it is denied that the bulk of his personal wealth was placed in trust for the future benefit of the Tribune-Review. To the contrary, over half a billion dollars was appointed to the Allegheny and Sarah Scaife Foundations. In further answer, and as set forth in the New Matter below and incorporated herein by reference as if set forth at length, although not provided for in Mr. Scaife's estate plan, at Mr. Scaife's urging, Petitioners were generously provided for by their grandmother, Sarah Mellon Scaife, who settled in 1963 what is known as the "Grandchildren's Trust", which has a current value of approximately \$560 million, and which distributes over \$12



million annually to each of the Petitioners. To put that amount of money in perspective, it is as if Petitioners hit the million dollar lottery every month of their lives, the only difference being that if Petitioners spend all their winnings, they will still have a few hundred million dollars in reserve.

29. Admitted.

30. In answer to Paragraph 30 of the Petition, Respondent admits that among the 1935 Trust and the Family Trusts (referred to chronologically as the 1958 Family Trust, the 1961 Family Trust, and the 1965 Family Trust), only the disposition of the 1935 Trust was beyond Mr. Scaife's control through a testamentary power of appointment. However, David and Jennie are beneficiaries of the Grandchildren's Trust, over which Mr. Scaife exercised control only as one of six Trustees until his retirement from that position in 2004, after which he had no control. In further answer, Respondent incorporates herein by reference as if set forth at length the answer to Paragraph 28 above and the New Matter below.

31. In answer to Paragraph 31 of the Petition, Respondent denies the characterization of the expert's testimony from the divorce proceeding. Respondent specifically denies the implication that the only reason for distributing principal from the 1935 Trust was Mr. Scaife's "estate planning purposes." To the contrary, support of Mr. Scaife's media properties, his charitable activities, and his estate planning were separate and distinct considerations, all of which qualify as being in his "best interests."

32. Respondent admits that Exhibit C is a copy of the August 6, 2014 letter Petitioner's counsel wrote to Respondent's counsel. Being a writing, the terms of that letter will speak for themselves.

33. Respondent admits that Exhibit D is a copy of the August 19, 2014 letter Respondent's counsel wrote to Petitioner's counsel. Being a writing, the terms of that letter will speak for themselves.

34. Paragraph 34 of the Petition sets forth legal conclusions to which no answer is required. Nevertheless, Respondent avers that the principal distributions to Mr. Scaife from the 1935 Trust were authorized by the language of the Trust instrument to be in the beneficiary's "best interests", were made in good faith, comported with the law, and were based upon the advice of counsel. In further response, Respondent incorporates by reference herein as if set forth at length his answer to Paragraph 4 above and the New Matter below.

35. The averments set forth in Paragraph 35 of the Petition are denied. Specifically, Respondent denies that the principal distributions from the 1935 Trust were not in Mr. Scaife's "best interests." To the contrary, because Respondents and Mr. Scaife believed that they benefited the media properties he owned, they were in his "best interests." Moreover, because those distributions freed up other assets to be given to charities, i.e. the referenced estate planning tool, they were also in his "best interests." In further answer, Respondent incorporates herein by reference as if set forth at length the New Matter below.

36. The averments set forth in Paragraph 36 of the Petition are denied. Specifically, Respondent denies that Mr. Scaife's disposition plan was substituted for the Settlor's, i.e. his mother's stated intention as set forth in the 1935 Trust. To the contrary, the principal distributions from the 1935 Trust for Mr. Scaife's media properties,, for charity and for Mr. Scaife's estate planning purposes implemented rather than substituted for Settlor's clearly expressed intention to provide for the "best interests" of her son.

37. The averments set forth in Paragraph 37 of the Petition are denied for the reasons set forth in the answers above to Paragraphs 4, 34, 35 and 36 and in the New Matter below, all of which are incorporated herein by reference as if set forth at length.

38. The averments set forth in Paragraph 38 of the Petition are denied. Specifically, the averment that the distribution standards set forth in the Family Trusts were broader than those in the 1935 Trust sets forth a legal conclusion to which no answer is required. Moreover, the averment that the Trustees of the Family and 1935 Trusts were the same is denied. To the contrary, while some Trustees were the same, the lineup was far from identical. Moreover, with respect to the averment that the overlapping Trustees were conflicted, the same is a legal conclusion to which no answer is required but, in any event, is denied. Finally, with respect to the averment that unidentified Trustees should have made principal distributions from the Family Trusts instead of from the 1935 Trust, the same is denied. To the contrary, the Trustees of the various Trusts - Family and 1935 - could only properly consider specific requests made by Mr. Scaife, which is what they did.

39. The averments set forth in Paragraph 39 of the Petition are denied for the reason set forth in the answers above to Paragraphs 4, 34, 35, 36, 37, and 38 and in the New Matter below, all of which are incorporated herein by reference as if set forth at length.

40. The averment set forth in Paragraph 40 of the Petition that the funding of Tribune Review Publishing Company losses was a waste of Trust assets is a conclusion of law to which no answer is required, but in any event, is denied. To the contrary, funding of Mr. Scaife's media properties was clearly in Mr. Scaife's "best interests" and, therefore, was in satisfaction of the Settlor's intentions. In further answer, Respondent incorporates herein by reference as if set forth at length the New Matter below.

41. The averments set forth in Paragraph 41 of the Petition are conclusions of law to which no answer is required.

42. The averment set forth in Paragraph 42 of the Petition is a conclusion of law to which no answer is required.

43. Respondent admits that PNC assumed its role as successor co-Trustee effective January 1, 1994.

44. Respondent believes that no answer is required to the averments set forth in Paragraph 44 of the Petition.

#### **New Matter**

45. Mr. Scaife was born in 1932 into one of the country's wealthiest families.

46. He was the second child of Alan Magee Scaife and Sarah Mellon Scaife ("Mrs. Scaife" or "his mother"). His mother was the daughter of Richard Beatty Mellon, sister of Richard King ("R.K.") Mellon, and the niece of Andrew Mellon.

47. Mr. Scaife's sister, Cordelia Mellon Scaife ("Cordelia"), was four years his senior, twice married, once divorced, once widowed, and childless when she died in 2005.

48. In addition to being extremely wealthy, the Mellon/Scaife family has been extraordinarily charitable. Just among the family members mentioned, foundations established by Mrs. Scaife, R.K. Mellon, and Cordelia have given away hundreds of millions of dollars, if not more, to support civic, cultural and other charitable causes, primarily in Western Pennsylvania.

49. In 1935, when Mr. Scaife was 3 years old, his mother settled what has been referred to in the Petition as the 1935 Trust. The Deed of Trust states (Paragraph 2) that:

This trust is for the benefit of my son, RICHARD MELLON SCAIFE. For convenience, this trust shall be designated and known as the "Richard Mellon Scaife Trust."

50. Broadly, the 1935 Trust provided for a 20-year charitable lead term, followed by income distributions to Mr. Scaife for life, then to his issue. Corpus, either partially or in its entirety, could be distributed to Mr. Scaife during his life. At Mr. Scaife's death, any remaining interest and corpus was distributable to Mr. Scaife's issue but, if none, according to Pennsylvania's intestate laws.

51. On the same date that she settled the 1935 Trust for her son, Mrs. Scaife settled what is believed was a virtually identical trust for her daughter, known as the "Cordelia Mellon Scaife Trust."

52. Subsequently, in 1958, 1961, and 1965, Mrs. Scaife settled three additional "Family Trusts" for the primary benefit of her son, Richard. These are known as the Richard Mellon Scaife Family Trust Nos. 1, No. 2, and No. 3. Nos. 1 and 2 are virtually identical and No. 3 very similar. It is believed the same trusts were settled for Cordelia's benefit.

53. The major provisions of Family Trust No. 1 (1958) are as follows:

- There were to be four (4) Individual Trustees and One Corporate Trustee.
- During a 20-year charitable lead term, all income was to be distributed to charity.
- After the charitable period, income was to be distributed to Income Beneficiaries (Mr. Scaife, his Spouse, Issue, Spouses of Issue and Charity) in such proportions and amounts as the Independent Trustees determined.
- Unless previously terminated, the 1958 Trust would terminate at the earliest of: Mr. Scaife's dying without a spouse or issue; his and his spouse's dying without issue; his, his spouse's and his

issue's dying; and 21 years following the death of the survivor of various specified persons.

- When terminated according to the above-stated provisions, the Trust would be distributed to Mr. Scaife's issue or, if none, to Cordelia or her issue (or her Family Trust) or, if none, to Charity.
- Mr. Scaife was given a testamentary power of appointment, exercisable in favor of his spouse, his issue, his sister, her spouse or Charity.

54. The 1961 and 1965 Trusts are similar to the 1958 Trust, including but not limited to containing testamentary powers of appointment.

55. On or about May 9, 1963, two years before her death, Mrs. Scaife settled what is commonly referred to as the "Grandchildren's Trust." At the time, Mr. Scaife's wife, Frances Gilmore Scaife, was pregnant with the couple's first child, Petitioner Jennie, who was born on July 8, 1963. The Grandchildren's Trust was created by Mrs. Scaife in anticipation of this event and at the urging of her son, Mr. Scaife. David, the second and only other grandchild of Mrs. Scaife, was born on February 5, 1966, never having known his grandmother who died on December 28, 1965.

56. With respect to the Grandchildren's Trust, after a charitable lead term of 11 years, income was to be accumulated until the grandchildren reached majority and then income and principal were to be distributed to Settlor's grandchildren (Petitioners, Jennie and David), their spouses, their issue, and spouses of their issue at the discretion of the six Trustees (PNC and five individuals).

57. Conspicuously absent from both David's and Jennie's Petitions is any mention of the Grandchildren's Trust, the current value of which is approximately \$560 million.

58. David and Jennie each receives in excess of \$12 million of income annually from the Grandchildren's Trust.

59. Including one-half of the principal of the Grandchildren's Trust (\$275 million), Respondent estimates that David and Jennie each has a net worth of \$350-500 million.

60. During the relevant time period (1996-2014), the Trustees of the 1935 Trust, the Family Trusts, and the Grandchildren's Trust have been the following:

1935 Trust	PNC Bank James M. Walton H. Yale Gutnick
Family Trust No. 1	PNC Bank (1996-2005) Fifth Third Bank (2005-2014) Donald A. Collins James M. Walton H. Yale Gutnick Richard M. Scaife
Family Trust No. 2	Richard M. Scaife Donald A. Collins James M. Walton H. Yale Gutnick PNC Bank
Family Trust No. 3	Richard M. Scaife (1996-2014) Laura B. Gutnick (2007-2014) H. Yale Gutnick (1996-2007)
Grandchildren's Trust	Cordelia Scaife May (1996-1998) James M. Ferguson III (2004-2013) James M. Walton(1993-2000) Matthew A. Groll (2004-Present) H. Yale Gutnick (1993-2012) Laura B. Gutnick (2004-Present) Corbin P. Miller (2011-Present) Donald A. Collins (1996-2002) PNC Bank (1996-Present) E. J. Strassburger (2012-Present) Blaine Aiken (2013-Present) W. McCook Miller (2004-2011) Richard M. Scaife (1996-2002)

61. By virtue of overlapping appointments, as well as family relationships, the Trustees of the 1935 Trust at all relevant times (i.e. 1996 to 2014) were aware that Petitioners had substantial incomes, assets and net worth.

62. Throughout his adult life, Mr. Scaife had two passions and motivations, which were charity and media properties, particularly newspapers.

63. When he was growing up in a sheltered environment at Penguin Court in Ligonier, Pennsylvania, Mr. Scaife's window into the bigger world was newspapers, which he devoured ravenously and in bulk.

64. It was a natural progression for him, when the opportunity arose in 1970 to purchase the *Greensburg Tribune-Review*. Then, late in 1992, when the *Pittsburgh Press* employees went on strike, he seized that opportunity to expand the reach of his newspaper enterprise into the Pittsburgh market. For the remainder of his life, Mr. Scaife continued to acquire media properties.

65. Mr. Scaife, a committed Libertarian, believed that the First Amendment was the cornerstone of democracy and that publication of competing views was an essential ingredient to preserving liberty.

66. Mr. Scaife was equally as committed to charity as he was to publishing. When asked what his occupation was, he would reply: "publisher and philanthropist."

67. During his lifetime, Mr. Scaife gave over a quarter of a billion dollars to charity. At his death, he exercised powers of appointment to direct the entire principal of the three Family Trusts to charity, which also benefited from the Charitable Remainder Unitrust ("CRUT"), which he had created in 1995.

68. Although best known for his support of conservative and libertarian causes, Mr. Scaife quietly and frequently contributed many millions of dollars to organizations such as: Pittsburgh Community Food Bank, Carnegie Institute, Westmoreland Museum, Catholic Diocese of Pittsburgh, United Jewish Federation, Pittsburgh History and Landmarks, Western



Pennsylvania Conservancy, Brandywine Conservancy, Pittsburgh Parks Conservancy, Phipps Conservatory, The Aviary, Planned Parenthood, Operation Santa Claus, Boys and Girls Club of W. Pa., Cancer Support Network, Extra Mile Foundation, Imani Christian Academy, Pittsburgh AIDS Task Force, William J. Clinton Foundation, Goodwill, Salvation Army, Pittsburgh Symphony Society, and many others.

69. From 1996 to 2014, the Trustees of the 1935 Trust distributed the entire principal of that trust to Mr. Scaife for his best interests. Those interests included support of his media properties and/or maximizing his gifts to charity.

70. At all times material to these proceedings, Respondents, as Trustees of the 1935 Trust, acted in compliance with the law; pursuant to the expressed directives of the Settlor of the Trust as set forth in her Deed of Trust; in good faith; and in reliance upon numerous and consistent, oral and written, opinions of counsel.

71. The very first such opinion was provided to the Trustees by Attorney Charles J. Avalli who, unbelievably to say the least, is the current attorney for Jennie.

72. In these proceedings, Mr. Avalli is challenging the very advice that he gave to the Trustees in 1996 and 1997.

73. At a June 13, 1996 Trustees meeting of the 1935 Trust, the minutes of which are attached hereto as Exhibit "2," Respondent advised the other Trustees that:

"Richard M. Scaife is considering making a request of the Trustees for a principal distribution to him. It is anticipated that the distribution would be used in part, to fund the expansion of the newspaper and publishing business. The requested funds would likely be used for the purchase of commercial property, construction if a printing facility, the purchase of state of the art printing equipment, and/or related expenses for the expansion of his newspaper and publishing businesses."

74. Charles J. Avalli, at the time a partner in the law firm of Strassburger McKenna Gutnick & Potter, attended the June 13, 1996 meeting as Trust counsel, a position he had held for a number of years and which he continued to hold until February of 1997, when he left the Strassburger firm.

75. The minutes of the June 13, 1996 meeting reflect that:

Mr. Avalli reviewed the terms of the Trust noting the broad powers of the Trustees to distribute principal to Mr. Scaife and the great breadth of the standard to do so.

76. The minutes also reflect: (a) further discussion; (b) Mr. Avalli's indication that he would be able to discuss the terms of the 1935 Trust in greater detail at the next Trustees' meeting; and (c) deferral of dispositive discussion until Mr. Scaife made a formal request for a principal distribution.

77. Following the June 13, 1996 meeting, Mr. Avalli requested an associate attorney in the Strassburger firm, Richard M. Albert, to research and to prepare a legal memorandum analyzing the Trustees' powers to make principal distributions to Mr. Scaife. A copy of Mr. Albert's Memorandum to Mr. Avalli dated June 27, 1996, is attached hereto as Exhibit "3."

78. At a Trustees' meeting a week later, on July 3, 1996, Mr. Scaife's request for a \$30 million principal distribution to build a new printing plant was discussed. Mr. Avalli delivered the following opinion, as reflected in the minutes, a copy of which is attached hereto as Exhibit "4":

Mr. Avalli stated that the Deed of Trust mandates all income be distributed to Richard M. Scaife. Article 2 states that "...this Trust is for the benefit of my son, Richard Mellon Scaife." Article 8 states Sarah M. Scaife's "...desire to make adequate provision for any eventuality affecting the welfare of my son, Richard Mellon Scaife, which may occur during his life..."

Mr. Avalli informed the Trustees that Article 8.(c) provides distribution to Richard M. Scaife "...as his absolute property, all or such portion of the Corpus of the Trust Estate as the Trustees shall deem to be for his best interests." Mr.

Avalli stated that the Trustees have no specific standards to consider before making a principal distribution other than what they perceive to be the best interests of Richard M. Scaife. Article 11 provides the Trustees with sole discretion for such distributions and states the Trustees' decisions are final and binding upon all parties having an interest in the Trust corpus. Mr. Avalli summarized by stating that the standards for the distribution of principal within the Deed of Trust are unusually broad by both 1935 and current standards.

79. At their next meeting, held on February 13, 1997, the Trustees of the 1935 Trust considered a request for a \$28 million principal distribution to Mr. Scaife to purchase three local newspapers from the Thomson Newspapers organization. The \$28 million would be split between the 1935 Trust and the 1958 Family Trust No. 1. A copy of the minutes of that meeting is attached hereto as Exhibit "5."

80. At the February 13, 1997 meeting, Mr. Avalli provided the Trustees with his written opinion, in Memorandum form, of the same date, which justified the requested distribution. Mr. Avalli's opinion, which is attached to the meeting minutes as Exhibit "B," states, inter alia, that:

- Under the 1935 Trust, "the Trustees are given the broadest possible discretion to make corpus distributions.
- Mrs. Scaife, the Settlor had "dispensed" with the normal discretionary test of "reasonableness" and replaced it with "a different and broader standard" by which the Trustees' discretionary acts are proper so long as those acts are consistent with what Mrs. Scaife "contemplated."

81. According to Mr. Avalli, the Trustees, when addressing Mr. Scaife's principal distribution request, should consider, the following, inter alia:

[T]he purpose of the trust is to provide for Richard M. Scaife, he is the primary beneficiary of the Trust, it is his preference to maintain a maximum financial flexibility for future needs, the Trustees are permitted to terminate the trust, the nature of Richard M. Scaife's request and his anticipated use of the funds.

82. Relying on Mr. Avalli's legal opinion and "after a lengthy discussion of all family, financial and other circumstances determined to be relevant," the Trustees unanimously approved Mr. Scaife's request for a \$14 million principal distribution.

83. Following the February 13, 1997 meeting, Mr. Avalli, who was leaving the Strassburger law firm and being replaced by E. J. Strassburger as Trust counsel, suggested that Mr. Strassburger prepare a formal opinion letter for the Trustees, as they had asked for and as reflected in the minutes. Mr. Avalli's request to Mr. Strassburger was documented in a memo dated March 3, 1997, a copy of which is attached hereto as Exhibit "6." Besides providing copies of Mr. Albert's memo of June 27, 1996 and his own of February 3, 1997, Mr. Avalli observed that:

- (a) Paragraph 8 indicates that Sarah Mellon Scaife desires to "make adequate provision for any eventuality affecting the welfare of my son, Richard Mellon Scaife" and toward that end she permits the Trustees, whenever and as often as they shall deem that the best interests of my son shall require or make advisable further distribution be made for him, they shall have the power and authority...to distribute to my said son as his absolute property, all or such portion of the corpus of the Trust as the Trustee shall deem to be for his best interest[s]. That person [sic: provision] goes on to give them the right to invade the entire corpus.
- (b) At Paragraph 11, the Trustees are given the power to exercise their judgment in "absolute and uncontrolled discretion." This is the broadest possible discretion that can be given to a Trustee.

Mr. Avalli concludes that "Ultimately, it is up to each Trustee to determine what is in the best interest of Richard M. Scaife."

84. By letters dated March 14, 1997 and April 19, 2005, addressed to the Trustees of the 1935 Trust, copies of which are attached hereto as Exhibits "7" and "8", respectively, Mr. Strassburger confirmed the advice given by Mr. Avalli. In the latter letter, Mr. Strassburger opined that "The 'absolute and uncontrolled discretion' given to the Trustees reflect the Settlor's

intent that, at the least, the decision of the Trustees be given the most deferential review possible.

. . [which] would consider only if the Trustees acted dishonestly or with ulterior motive.”

85. It was also with Mr. Avalli’s imprimatur as counsel to the various Scaife trusts that the Trustees first utilized the vehicle of a Waiver, Release, Discharge and Indemnification in connection with principal distributions. On December 7, 1995, the Trustees of the 1958 Family Trust No. 1 approved the distribution of approximately \$140 million to fund the creation of Mr. Scaife’s CRUT, together with a Waiver, Release, etc. from Mr. Scaife in connection with that transaction.

86. In 2000, Trustee PNC asked highly respected Philadelphia-area trust attorney, Martin A. Heckscher, to review the 1935 Deed of Trust and provide his opinion whether it authorized the Trustees to distribute a large part or all of the principal to Mr. Scaife. By 8-page letter, dated October 4, 2000, a copy of which is attached hereto as Exhibit “9,” Mr. Heckscher responded in the affirmative. Following are some of the significant conclusions of the Heckscher letter, quoted verbatim:

- “The Settlor’s clear intent was that the trustee should be free to distribute significant amounts of principal to Mr. Scaife, based on a low standard, with little regard for other potential beneficiaries of the trust.”
- “The Settlor did not intend to limit the flexibility of the trustees to distribute principal. She wanted the trustees to be able to respond to ‘any eventuality’ that might affect Mr. Scaife’s ‘welfare.’ By authorizing the trustees to make distributions for Mr. Scaife for his ‘best interests,’ rather than an ascertainable objective standard. . . , Settlor provided the best restrictive standard by which the trustees must evaluate distribution requests.”
- “The Settlor specifically provided that the trustees may distribute ‘all’ of the principal . . . and provided in Article 8(c) that if the ‘entire corpus’ of the trust were so distributed the trust would terminate at that time notwithstanding that the termination date had not been reached.”

- “Finally, the trust does not require that the Trustees consider Mr. Scaife’s other resources before distributing principal . . . . This is especially significant given the wealth of the Settlor’s family the Settlor would have known that her son would likely be very wealthy, and had she wished the trustees of the 1935 Trust to consider other resources she would have done so.”
- “A trustee generally has a duty to treat the successive beneficiaries of a trust impartially. However, where the deed of trust so provides, the trustee may favor one beneficiary over another. See Restatement of Trusts (Second) § 183 com.a. . . . Therefore, the trustees do not need to consider the needs of the remainder beneficiaries in their analysis. The remainder beneficiaries are entitled to benefit from the trust only to the extent principal has not been distributed from the trust for Mr. Scaife’s ‘best interests’ during his lifetime.”
- “Settlor provides in the 1935 Trust that the trustees shall above ‘absolute and uncontrolled’ discretion, shall be the ‘sole judges’; and that their decisions shall be ‘final and conclusive,’ ‘binding upon all parties,’ and shall ‘not be open to question in any manner.’ These phrases indicate Settlor’s clear intent that the decisions of the trustees shall not be subject to review by any court, or at least subject to the most deferential review possible under the law.”

87. The overall conclusion of the Heckscher opinion letter, set forth on the last page, was that:

“It is our conclusion that Settlor, in creating the 1935 Trust, intended the trust to be primarily for the benefit of her son, Richard Mellon Scaife so long as he is living. The Settlor gave the trustees full discretion to distribute principal for Mr. Scaife’s ‘best interests,’ and anticipated that these distributions might, over a period of time, result in all of the principal being distributed to Mr. Scaife. The Settlor further provided that the trustee’s discretion to make principal distributions would be absolute and not subject to review. Therefore, we conclude that the trustees may distribute principal of the 1935 Trust for any purpose that the trustees determine is in Mr. Scaife’s best interests.

88. Mr. Scaife’s sister, Cordelia Scaife May (“Cordelia”), died on January 26, 2005, with an estate estimated at \$800 million.

89. By the time of her death, the Trustees of her 1935 Trust, the terms of which were identical to Mr. Scaife's 1935 Trust, had distributed the entire corpus to Cordelia.

90. The Trustees of Cordelia's 1935 Trust, which are believed to have included Mellon Bank and two individual Trustees, whose identities are not known to Respondents, independently (i.e. without consulting with anyone connected to Mr. Scaife's 1935 Trust) interpreted the Deed of Trust language in the identical fashion.

91. All of the distributions to Mr. Scaife were in his "best interests."

92. Petitioners were aware, as early as 2004 and probably earlier, that they were potential beneficiaries of the 1935 Trust and that their father was receiving large distributions to be used for his media properties.

93. Petitioners were aware of these circumstances from their parents' earlier divorce, from discussions with their mother and father, from Petitioner David's location in the family office, from their step-mother, from their attorney, from each other, and doubtlessly from other sources as well.

94. On April 29, 2004, Jeff Lehman and John Martin from PNC met with Petitioner. In that meeting, David indicated to the PNC representatives that his counsel, Sanford Ferguson, was reviewing both the Family Trusts and the 1935 Trust. David also expressed in that meeting, which took place over 10 years ago, the view that "financial support of the newspaper is wasteful" and he "may complain about the distributions to his father for use in support of the newspaper."

95. In a September 16, 2007 article on the Mr. Scaife's then pending divorce case, the Pittsburgh Post-Gazette wrote:

While most of Mr. Scaife's papers turn a profit, the Pittsburgh Tribune-Review, according to financial data filed in his court

pleadings, had drained anywhere from \$19 million to \$21 million per year in subsidies from one of Mr. Scaife's trust funds....Repeatedly, Mr. Scaife has dipped into the principal of that fund, the 1935 Sarah Mellon Scaife Trust for Richard Mellon Scaife, eventually pouring \$140 million from it into the R.M. Scaife Capital Contribution Revocable Trust which, in turn, forwards the money to Tribune-Review Publishing.

96. By letter dated December 13, 2007, 1935 Trust counsel (E. J. Strassburger), supplied Petitioners' counsel, Sanford Ferguson, with a copy of the 1935 Trust Deed of Trust. A copy of the letter (without enclosures) is attached hereto as Exhibit "10."

97. By letter dated January 18, 2008, directed to Ferguson's partner, Chad Pociernicki, 1935 Trust counsel (E. J. Strassburger) furnished a copy of a 2007 statement for the 1935 Trust. That statement reflected in 2007 a total of \$37.75 million in principal distributions to Mr. Scaife to support his media properties.

98. By email to Strassburger, dated June 17, 2008, a copy of which is attached hereto as Exhibit "11," Petitioners' attorney Ferguson wrote:

While it is the case that both David and Jennie are both aware that they are not income beneficiaries under the '35 trust, and therefore have no right to current distributions from that trust, they are also aware that they each have a residuary interest in the trust and as such are concerned that the trustees balance their interests and those of the income beneficiary.

99. Despite their knowledge of the terms of the 1935 Trust and that large principal distributions to Mr. Scaife were being made as early as 2004, but in any event no later than January of 2008, Petitioners never acted to challenge those distributions until the filing of their instant Petitions in November, 2014.

100. As a result of Petitioners' delay of at least 7-11 years in challenging the principal distributions to Mr. Scaife, the Trustees distributed many millions of dollars to Mr. Scaife,

101. In addition, during this period of unreasonable delay, Mr. Scaife died and, therefore, is no longer available as a witness.



102. Petitioners' claims are barred by laches.

103. Petitioners have waived and/or are estopped from challenging the principal distributions to Mr. Scaife from the 1935 Trust.

104. Petitioners have failed to set forth viable causes of action upon which relief can be granted.

105. This court of equity should decline to exercise jurisdiction over Petitioners' claims.

WHEREFORE, Respondent prays that the Citation to compel the filing of an account should be dismissed, with prejudice, because the existing record is clear that: (a) the principal distributions to Mr. Scaife from the 1935 Trust were authorized by the carefully chosen language of the Trust instrument to be in the beneficiary's "best interests", comported with the law, were based upon the advice of counsel, and were made in good faith; or (b) Petitioners are guilty of laches because they were aware of Respondents' actions complained of for many years but did nothing until the Trust was completely distributed and Mr. Scaife had died.

Respectfully submitted,

STRASSBURGER McKENNA  
GUTNICK & GEFSKY

By: 

E. J. Strassburger, Esquire  
David A. Strassburger, Esquire

Four Gateway Center, Suite 2200  
444 Liberty Avenue  
Pittsburgh, PA 15222  
412-281-5423  
412-281-8264 – fax

Attorneys for Respondent

Date: December 12, 2014

# **EXHIBIT**

**1**

**Strassburger, E. J.**

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**To:** Ferguson, Sandy  
**Subject:** RE: Scaife

Thanks for the follow up. I'll get back to you.

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**From:** Ferguson, Sandy [<mailto:Sandy.Ferguson@klgates.com>]  
**Sent:** Tuesday, February 26, 2008 4:18 PM  
**To:** Strassburger, E. J.  
**Subject:** Scaife

E.J.,

My thanks to you and Yale for taking the time to meet yesterday regarding various issues arising incident to David Scaife and his father.

I am uneasy with the thought of simply putting David's concerns on hold for the next couple of years.

It would be meaningful to David if further funding of the TR losses (or other of Dick's funding needs) were accomplished in some way other than through principal distributions from the 35 trust, except on a "last resort" basis. If David could become comfortable that that would no longer happen, that would go a long way to mitigate the current situation.

Sandy

---

**Sanford B. Ferguson**  
**K&L Gates**  
535 Smithfield Street  
Pittsburgh, PA 15222-2312

412.355.6494

Cell: 412.418.7581  
Pittsburgh Fax: 412.355.6501  
Palo Alto Phone: 650.798.6770  
Palo Alto Fax: 650.798.6701

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# **EXHIBIT**

**2**

THE TRUST UNDER DEED OF SARAH M. SCAIFE  
DATED DECEMBER 30, 1935

MINUTES OF THE MEETING OF TRUSTEES  
THURSDAY, JUNE 13, 1996

The Meeting of Trustees of the Trust Under Deed of Sarah M. Scaife dated December 30, 1935 was held Thursday, June 13, 1996, at PNC Bank, N.A., One PNC Plaza, 30th Floor, Pittsburgh, Pennsylvania.

The following Trustees were present throughout the meeting:

Mr. James M. Walton  
Mr. H. Yale Gutnick

Ms. Alice C. Cory	}	Representing PNC
Mr. Jeffrey S. Lehman	}	Bank, N.A., Corporate
Mr. John A. Martin	}	Trustee

constituting all of the Trustees. Donald A. Collins attended as a guest. Charles J. Avalli attended as trust legal counsel.

H. Yale Gutnick, serving as Chairman, called the meeting to order. Jeffrey S. Lehman served as Secretary.

The Minutes of the Trustees' Meeting of February 20, 1996 were made available to the Trustees prior to the meeting for review and comment. After discussion and upon motion duly made by James M. Walton, seconded by H. Yale Gutnick and unanimously carried, it was

RESOLVED: That the Minutes of the Trustees' Meeting of February 20, 1996 be approved as prepared.

A list of the income distributions processed by PNC Bank, N.A., from February 7, 1996 through June 4, 1996, as well as a summary of the invoices, fees, and compensation paid for the same period were made available to the Trustees and are included as Exhibit "A." It was noted that all investment activity is set forth in the Trust's monthly statements furnished to the Trustees by PNC Bank, N.A.. After discussion and upon motion duly made by James M. Walton, seconded by Alice C. Cory and unanimously carried, it was

RESOLVED: Whereas the investments, disbursements, distributions and other transactions of the Trust have been presented on the periodic statements prepared by PNC Bank, N.A. as Corporate Trustee and provided to the Trustees, the Trustees hereby expressly ratify all such transactions.

The Chairman then informed the Trustees that Richard M. Scaife is considering making a request of the Trustees for a principal distribution to him. It is anticipated that the distribution would be used in part, to fund the expansion of his newspaper and publishing businesses. The requested funds would likely be used for the purchase of commercial property, construction of a printing facility, the purchase of state of the art printing equipment, and/or related expenses for the expansion of his newspaper and publishing businesses.

The Chairman then called on Charles J. Avalli, trust legal counsel, to describe the Trustees' authority to make principal distributions and to review any applicable discretionary standards for such distributions. Mr. Avalli reviewed the terms of the Trust noting the broad powers of the Trustees to distribute principal to Mr. Scaife and the great breadth of the standard to do so.

James M. Walton raised some further questions related to the Trust document and the potential beneficiaries thereunder. Mr. Avalli indicated that he will be prepared to discuss fully the terms of the Trust of Sarah M. Scaife for Richard M. Scaife dated December 30, 1935 at the next Trustees' Meeting. Mr. Walton stated that he would review his copy of the Trust and discuss his thoughts with the Chairman at a later time. The principal distribution having been raised for preliminary discussion purposes was then set aside until such a request is formally made.

The Chairman then called for a review of the investment markets. Mr. Martin, speaking on behalf of the Corporate Trustee, referred the Trustees to the Investment Market Outlook, a copy of which is attached hereto as Exhibit "B." Mr. Martin noted the volatility of the economy of the former Soviet Union in his discussion of the international markets, commented on the pace of the initial public offerings relative to the opportunities for investment in the stock of small companies and discussed the cyclical nature of the bond markets, noting the possible effects the fear of inflation may play.

The Chairman called for recommendations regarding the Trust's investment plan and performance. Mr. Martin, speaking on behalf of PNC Bank, N.A. referred the Trustees to the Asset Summary as of June 7, 1996, Investment Comments/Plan and Investment Performance as of May, 1996, attached to these Minutes as Exhibit "C."

Pursuant to Mr. Martin's Investment Plan approved at the Trustees' Meeting of February 20, 1996, Mr. Martin has reduced the cash position by \$5 million by purchasing stocks and has sold 50,000 shares of General Re Corp. common stock in May of 1996 generating approximately \$7.1 million in taxable capital gains. The General Re Corp. common stock holding currently represents 78% (seventy eight percent) of the stock portfolio and 70% (seventy percent) of the total Trust portfolio. Mr. Martin stated that the Trust portfolio was generally within the investment guidelines set by the Trustees. There was a discussion regarding the capital gains tax liabilities generated year to date. It was decided that there will be no more capital gains generated other than for cause.

Mr. Martin recommended an increase in the international equity investments to gradually move toward the target allocation of 5% (five percent). He based this recommendation on investment research that indicates projected improvement in the international markets. Messrs. Gutnick and Walton voiced their approval of Mr. Martin's recommendation to invest internationally, requested that Mr. Martin speak with Mr. Scaife as the primary beneficiary about the outlook for international

markets and recommended that any addition to the international equity position be postponed until the next Trustees' Meeting when the matter might be considered again.

Mr. Martin then reviewed the investment performance of the Trust noting that the domestic equity performance lagged the industry index due to the large position in General Re Corp. common stock and the dissimilarity in the sector allocation of the Trust portfolio with the sector allocation of the Standard and Poors 500 Index. An unwillingness to incur the additional tax cost incident to the sale of assets that would be necessary to realign the Trust portfolio inhibits Mr. Martin's ability to track the performance of the Standard and Poors 500 Index. The Trustees were provided with a list of stock purchases and sales for review, a copy of which is attached as Exhibit "D."

After discussion and upon motion made by James M. Walton, seconded by Alice C. Cory and unanimously carried, it was

RESOLVED: That, until the next meeting of the Trustees, PNC Bank, N.A. is directed

(i) in general, to implement the Investment plan attached as Exhibit "C" and

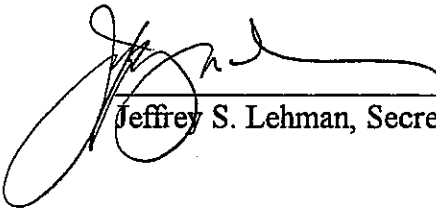
(ii) in particular, to purchase and sell short term securities as PNC Bank, N.A. determines appropriate and to purchase and sell other securities -- including but not limited to mutual funds affiliated with PNC Bank, N.A. and common trust funds of PNC Bank, N.A. -- at such times and in such amounts and proportions as PNC Bank, N.A. determines based on market conditions; provided that, such other securities are either:

(a) equities of a nature and character as represented in Exhibit "C"; or

(b) debt obligations with major rating agency quality ratings of A or better.

There being no further business, upon motion duly made by H. Yale Gutnick, seconded by James M. Walton and unanimously carried, the meeting was adjourned.

Respectfully submitted,



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Jeffrey S. Lehman, Secretary

**EXHIBIT**

**3**



# Memorandum

**To:** CJA

**CC:**

**From:** Richard M. Albert

**Date:** June 27, 1996

**Subject:** 1935 Trust Distribution

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In preparation for the upcoming trustee meeting regarding a lump sum distribution of principal from the 1935 Trust, you inquire as to the propriety of such distribution in light of the broad discretion granted the trustees under that instrument. The relevant case law and commentary dictate that such a distribution will not be disturbed absent an abuse of discretion by the trustee in exercising an express or implied discretionary distributive power.

Generally speaking, the standard of review regarding a trustee's exercise of discretion is quite narrow: "Where discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to control by the court, except to prevent an abuse by the trustee of his discretion." Restatement of Trusts, Second, § 187 (comment I). Pennsylvania case law

has indicated that a proper utilization of discretion necessitates “good faith [conduct] within the bounds of a reasonable judgement.”<sup>1</sup> *In re Brown*, 345 Pa. 373, 29 A.2d 52 (1942). Indeed, a trustee will not be held personally liable for an honest exercise of a discretionary power in the absence of supine negligence or willful default. *In re Heyl’s Estate*, 331 Pa. 202, 200 A. 617 (1938).

A trustee does not, of course, operate in a vacuum. A trustee’s exercise of discretion, and, indeed, its limitations, is dictated by the terms of the trust itself. Specifically, it is the intent of the settlor, evidenced through the language of the trust, which must guide the trustee in his application of the powers granted therein.<sup>2</sup> This constraint extends, of course, to the discretion to invade the corpus of a trust: only upon a showing of a clear direction in the trust instrument will such an invasion be permitted. *See, e.g. Security-Peoples Trust Company v. United States*, 238 F.Supp. 40 (W.D. Pa. 1965)<sup>3</sup> *See also* Restatement of Trusts 2d, § 128, comment I: “Whether and under what circumstances and to what extent a beneficiary who is entitled to receive the whole or a part of the income from the trust estate is entitled also to receive a part or whole of the principal depends upon the terms of the trust.”

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<sup>1</sup> A trustee’s failure to use any judgement due to a mistaken view of fact or law regarding the extent of his or her powers or duties is beyond the “bounds of reasonable judgement”. *In re Brown*.

<sup>2</sup> “The intent of the settlor, if not contrary to law, must prevail.” *In re Tracey*, 464 Pa. 300, 346 A.2d 750 (1975).

<sup>3</sup> In *Security Peoples Trust Co.*, the court, based upon a survey of Pennsylvania case law, included a requirement of “necessity” as well as trust direction, however that case, and the cases upon which it relies, were interpreting trusts for “maintenance”, “health”, “education”, etc., i.e., trusts that were created with a specific and limited purpose. As commented upon, *infra*, the 1935 Trust contains no such limitations.

As we have discussed, the 1935 Trust grants an extremely broad degree of power upon the trustee in carrying out its ultimate purpose, i.e., providing for “the benefit of . . . Richard Mellon Scaife.”<sup>4</sup> Specific Trust language would appear to create unbridled discretion in achieving that end:

[I]t being my intention that as respects this trust and the Trust Estate in the administration and management thereof, the Trustees shall have full and complete power, authority and discretion as if they were the actual owners of the Trust Estate and every part thereof.”

1935 Trust, ¶ 1. Paragraph 11 further provides that:

The power and authority which, by the provisions of Articles 8 and 9 hereof, I give to the Trustees respecting the distribution of income and/or corpus of the Trust Estate, shall be exercisable by them in their absolute and uncontrolled discretion, and I expressly direct that the Trustees shall be the sole judges as to the necessity, advisability, propriety and amount of such distribution, whether of accumulated or current income or of corpus, and that their decision in regard thereto shall be final and conclusive, shall be binding upon all parties having any interest in the corpus or income of the Trust Estate, and shall not be open or subject to question in any manner of for any reason whatsoever.

The discretion granted the trustee is thus expressly directed to corpus invasion and, in that regard, and without further commentary, immoderately broad.

Indeed, as the trustee was granted extremely broad discretion regarding the administration and management of the Trust, as well as the distribution of Trust assets, the purpose for which

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<sup>4</sup> Paragraph 2 of the Trust provides: “This trust is for the benefit of my son, RICHARD MELLON SCAIFE. For convenience, this trust shall be designated and known as the ‘Richard Mellon Scaife Trust’.”

Trust corpus may be invaded, as set forth in paragraph 8 of the Trust, further broadens the allowable range of discretion:

I desire to make adequate provision for any eventuality affecting the welfare of my son, . . . which may occur during his life and, therefore, I direct that, notwithstanding any of the other provisions of this instrument, the Trustees, if, as, whenever and as often as they shall deem that the best interests of my said son shall require or make advisable further or additional provision to be made for him, shall have the power and authority -

. . .

(c) To distribute to my said son, as his absolute property, all or such portion of the corpus of the Trust Estate as the Trustees shall deem to be for his best interests, and if, as and when the entire corpus of the Trust Estate may be so distributed to my said son, this trust shall terminate notwithstanding that the time of termination specified in Article 3 hereof may not yet have arrived.

Thus, the trustee has the power to distribute corpus to satisfy “any eventuality affecting the welfare of” Richard Mellon Scaife. In that regard, the trustee was granted express authority to distribute any and all portions of the corpus which the trustee may deem to be for Richard Mellon Scaife’s “best interests.” Key to a distribution of corpus is the subjective standard “best interests.”

While Pennsylvania case law has not had the opportunity to pass on the limits of the term “best interests”, more restrictive terms have been interpreted by the federal courts as providing a general power of appointment for federal estate tax purposes.<sup>5</sup> Invasion of principal

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<sup>5</sup> Under section 2041(b)(1)(A) of the Internal Revenue Code, a power “to consume, invade, or appropriate property for the benefit of a decedent” is not a general power of appointment if such power is “limited by an

for “comfort and care”, “support, maintenance, comfort, and welfare”, “proper maintenance, support, medical care, hospitalization, or other expenses incidental to her comfort and well-being”, “not only for her support and maintenance but also for her comfort and pleasure”, and “use, benefit and enjoyment during his lifetime”, have all been interpreted, absent further limiting language, to imply unlimited powers of disposition. *Estate of Vissering v. C.I.R.*, 990 F.2d 578 (10th Cir 1993) (citations omitted). Comparatively speaking, the term “best interests” would intuitively appear to create a standard that is so broad as to be incapable of being reasonable confined within any ascertainable limit. Keeping that in mind, it would be nonsensical to conclude that the discretionary power to invade the corpus in the 1935 Trust is so broad as to impose a general power of appointment for estate tax purposes, yet so narrow as to preclude a corpus distribution for what the Trustee, through a reasonable and good faith exercise of judgement, may subjectively deem to be in the beneficiary’s best interests.

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ascertainable standard relating to . . . health, education, support, or maintenance” (emphasis added).

Although the Pennsylvania courts have premised the distribution of trust corpus upon a finding of “necessity”,<sup>6</sup> that requirement should not be construed in the instant matter as a challenge of the sufficiency of the beneficiary’s personal estate, but rather “need” or “necessity” as subjectively provided for under the trust instrument itself. To be sure, other assets of a beneficiary are immaterial where a trust is expressly created for the beneficiary seeking corpus distribution. *Minich v. People’s Trust*, 29 Pa. Super. 334, \_\_\_\_\_ A.2d \_\_\_\_\_ (1905). As stated, the 1935 Trust was expressly created for the benefit of Richard Mellon Scaife.

Moreover, the requirement of need or necessity, as those terms relate to the self sufficiency of the beneficiary, will be ignored completely should there exist an “absolute mandate” or “discretionary Power” to invade principal within the trust instrument. *Security Peoples Trust Co. v. U.S.*, 238 F.Supp. 40 (W.D. Pa. 1965) citing *Hill v. Hill*, 227 Pa. 165, 120 A. 775 (1923); *In re Brown*, 345 Pa. 373, 29 A.2d 52 (1942); *In re Estate of Demitz*, 417 Pa. 316, 202 A.2d 280 (1965). Again, the 1935 Trust expressly contains such discretionary power. Furthermore, the appointed trustees under the 1935 Trust are not “limited” with regard to principal distribution, whereas the discretion in *Security-Peoples Trust* was limited to “the specific purposes of promoting their health, comfort, maintenance or welfare.” *Security-Peoples Trust* at 46.

Finally, the fact that the settlor envisioned complete depletion of the trust through distribution of corpus to Richard Mellon Scaife, and its resultant termination, without regard to

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<sup>6</sup> See note 3.

an interest any remainder beneficiary may have, would further evidence an intent by the settlor that Richard Mellon Scaife was the main object of the settlor's bounty. Based upon the existence of "several successive beneficiaries", as well as the existence of "detailed powers and limitations" regarding trust assets, the court In *Security-Peoples Trust* concluded that the initial beneficiary was not the "primary object of [the settlor's] bounty." However, while the 1935 Trust also enumerates successive beneficiaries, such beneficiaries would be relevant only in the event that the trust is not terminated due to corpus depletion. In that vein, the 1935 Trust only provides for corpus invasion, absent complete distribution upon trust termination, vis-a-vis the best interests of Richard Mellon Scaife.

In conclusion, the extremely broad degree of discretion granted the Trustee, specifically directed to the invasion of Trust corpus, in conjunction with a broad, unascertainable standard for which to invade, further constricts an already narrow standard of review. In light of those factors, a corpus distribution which would provide a financial (or, for that matter, welfare, spiritual or whimsical) benefit to Richard Mellon Scaife must, to carry out the intent of the settlor, be permitted.

# **EXHIBIT**

**4**



**AGENDA**  
**MEETING OF TRUSTEES**  
**THE TRUST UNDER DEED OF SARAH M. SCAIFE**  
**DATED DECEMBER 30, 1935**  
**WEDNESDAY, JULY 3, 1996 - 11:00 A.M.**  
**ONE OLIVER PLAZA, 29TH FLOOR, BOARD ROOM**

**TELEPHONE DIAL ACCESS FOR MEETING:**

- 1-800-809-0095
- Inform Operator that you are accessing call arranged by Alice Cory

Trustees:

James M. Walton  
H. Yale Gutnick  
PNC Bank, N.A.

- I. Call meeting to order
- II. Discuss principal distributions and authority under the Trust Agreement.
- III. Review of investment issues.
- IV. Meeting adjournment
  - Date and location of next meeting to be selected after consultation with Trustees

THE TRUST UNDER DEED OF SARAH M. SCAIFE  
DATED DECEMBER 30, 1935

MINUTES OF THE MEETING OF TRUSTEES  
WEDNESDAY, JULY 3, 1996

The Meeting of Trustees of the Trust Under Deed of Sarah M. Scaife Dated December 30, 1935 was held on Wednesday, July 3, 1996, at PNC Bank, N.A., One Oliver Plaza, 29th Floor, Pittsburgh, Pennsylvania.

The following Trustees were present throughout the meeting:

Mr. James M. Walton  
Mr. H. Yale Gutnick

Ms. Alice C. Cory	} Representing PNC
Mr. Dick Barton	} Bank, N.A., Corporate
Mr. John A. Martin	} Trustee

constituting all of the Trustees. Mr. Richard M. Scaife attended telephonically as a guest. James M. Walton attended the meeting telephonically. Charles J. Avalli attended as trust legal counsel.

H. Yale Gutnick, serving as Chairman, called the meeting to order. Alice C. Cory served as Secretary.

The Chairman called for a review and discussion of a request made by Richard M. Scaife for a principal distribution in the amount of \$30,000,000. It is Richard M. Scaife's intention to apply this distribution toward expenses incurred in connection with building and equipping a state-of-the-art printing plant.

Upon request by Chairman, Charles J. Avalli, counsel for the Trustees, reviewed the powers of the Trustees and provisions pertaining to income and principal distributions as set forth in the 1935 Deed of Trust.

Mr. Avalli stated that the Deed of Trust mandates all income be distributed to Richard M. Scaife. Article 2 states that "... this Trust is for the benefit of my son, Richard Mellon Scaife." Article 8 states Sarah M. Scaife's "... desire to make adequate provision for any eventuality affecting the welfare of my son, Richard Mellon Scaife, which may occur during his life ... "

Mr. Avalli informed the Trustees that Article 8.(c) provides distribution to Richard M. Scaife "...as his absolute property, all or such portion of the Corpus of the Trust Estate as the Trustees shall deem to be for his best interests". Mr. Avalli stated that the Trustees have no specific standards to consider before making a principal distribution other than what they perceive to be the best interests of Richard M. Scaife. Article 11 provides the Trustees with sole discretion for such distributions and states that Trustees' decisions are final and binding upon all parties having an interest in the Trust corpus. Mr.

Avalli summarized by stating that the standards for the distribution of principal contained within the Deed of Trust are unusually broad by both 1935 and current standards.

The Chairman then requested Mr. Martin, investment manager for the Trust, to review the Trust's investment performance and level of liquidity. Mr. Gutnick also directed Mr. Martin to discuss the effect that a \$30,000,000 principal distribution would have on the investment plan. Mr. Martin, speaking on behalf of the Corporate Trustee, referred the Trustees to the Account Summary dated as of July 1, 1996, a listing of Stocks at Loss as of 6/30/96, and the Sector Holdings as of July 3, 1996, a copy of which is attached to these Minutes as Exhibits "A", "B", and "C", respectively.

Mr. Martin indicated that the current cash balance is in excess of \$30,000,000 and represents 10.1% of total trust assets. He indicated that, due to the Trust's \$30,319,500 cash balance, a \$30,000,000 principal distribution would not result in capital gains to the Trust. Mr. Martin stated that cash flow is sufficient for current income distributions to Richard M. Scaife, estimated tax payments, and the principal distribution under consideration.

Mr. Martin reminded the Trustees that common stocks comprise 89.1% of the investment portfolio, 70% of which is General Re Corp. This concentration in General Re Corp., does not allow flexibility in the investment plan. The Trustees requested that Mr. Martin provide performance compared with the S&P 500 as well as alternative investment approaches for optimizing capital gain.

Mr. Martin directed the Trustees' attention to the Stocks at Loss report (Exhibit "B"). Mr. Martin recommended the sale of the stocks set forth in this report for a loss to the portfolio in the amount of \$318,850. These losses will help offset gains resulting from the earlier sale of General Re Corp. stock. The sale proceeds will also increase liquidity.

After additional discussion and upon motion duly made by H. Yale Gutnick, seconded by James M. Walton and unanimously carried, it was

RESOLVED: That PNC Bank, N.A., as Corporate Co-Trustee, is directed to implement the sale of stocks set forth in Exhibit "B" attached hereto.

There ensued a lengthy discussion of all family, financial and other circumstances determined to be relevant to Richard M. Scaife's request for principal distribution. After discussion and upon motion made by James M. Walton, seconded by Alice C. Cory and unanimously carried, it was

RESOLVED: That for the best interest of Richard M. Scaife a distribution of \$30,000,000 in cash from the corpus of the trust shall be made to Richard M. Scaife according to the following schedule:

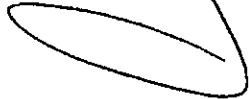
\$5,000,000 on July 12, 1996  
\$5,000,000 on August 1, 1996  
\$10,000,000 on September 16, 1996  
\$10,000,000 on November 1, 1996

Mr. Avalli stated that a Ratification of Action reflecting the above resolution will be sent to Trustees for signatory purposes.

There being no further business, upon motion duly made by James M. Walton, seconded by H. Yale Gutnick and unanimously carried, the meeting was adjourned.

Respectfully submitted,

Alice C. Cory  
Alice C. Cory, Secretary

A large, stylized handwritten signature, likely of Alice C. Cory, written in ink. The signature is cursive and loops around, ending with a long horizontal stroke.