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December 2, 2010

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Re: *Air Products & Chemicals, Inc. v. Airgas, Inc., et al.*
Civil Action No. 5249-CC
In re Airgas, Inc. S'holder Litig.
Civil Action No. 5256-CC

Dear Counsel:

I write today for three reasons. First, in light of the Supreme Court's decision in *Airgas, Inc., et al. v. Air Products & Chemicals, Inc.*, No. 649, 2010 (Del. Nov. 23, 2010), and the fact that Airgas's 2011 annual meeting will now, under Delaware law, take place "approximately" in September 2011, eight months later than it would have taken place had the January annual meeting bylaw been upheld, please advise the Court of the following: What implications, if any, do counsel believe the Supreme Court's bylaw decision may have on the issues pending in this lawsuit? More specifically, do counsel believe that this ruling has

any effect on the fundamental question raised at trial—that is, whether Airgas's shareholder rights plan should remain in place or not?

In addition, I ask counsel to provide additional briefing on the following questions:

(1) Is $65.50 per share the price that Air Products wants this Court to rely upon in addressing the "threat" analysis under *Unocal*?[1]

(2) If the Court finds credible evidence supporting Airgas's contention that Airgas is worth $78 or more per share, why isn't the $65.50 offer a cognizable threat under *Unocal*?[2]

(3) Does Airgas intend to hold a special meeting of stockholders in June 2011? If not, when will Airgas's 2011 annual meeting be held?

(4) Given the current ownership profile of Airgas, why isn't the power of stockholders to call a special meeting for purposes of replacing incumbent directors a viable method for removing the rights plan as an obstacle to those stockholders interested in tendering into the Air Products offer?[3]

(5) In light of the Supreme Court's decision in the bylaw case that Airgas stockholders have no right to vote on the continued terms of office of Airgas directors at an annual meeting until sometime approximately in September 2011 and in light of Supreme Court dicta implying that target corporations with staggered boards may reasonably deploy and maintain a rights plan for two election cycles,[4] under what theory (and based precisely on what Supreme Court precedent) are plaintiffs in this litigation entitled to

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[1] I understand that Air Products' position is that the $65.50 offer is a "floor" and could be increased subject to negotiation. Air Products' Reply Br. 27. But the Court is now forced to consider the threat aspect of the *Unocal* analysis against a specific price point. The Court cannot base a decision on an abstract possible price point.

[2] Does the fact that Air Products' nominees were elected to the board and have now joined their colleagues in the view that the Air Products offer is "grossly inadequate" give even more reason to believe that the Airgas shareholders will not "mistakenly" tender into a grossly inadequate offer?

[3] Especially given that the voting assumptions in footnote 30 of Air Products' reply brief do not appear unreasonable.

[4] *See Versata Enters. v. Selectica, Inc.*, 5 A.3d 586 (Del. 2010).

mandatory relief compelling redemption of the Airgas rights plan *before* the second election cycle?

(6) Airgas has offered no financial alternative to the Air Products tender offer. Instead, Airgas insists that it is worth far more than the Air Products tender offer and it characterizes the Air Products tender offer as "grossly inadequate." Given that this dispute appears to be about price and price alone, under what principle of Delaware corporate law should the Airgas stockholders be required to endure all of the risk that the Airgas board's valuation judgment is correct?

(7) Please identify specific evidence in the record bearing upon the Airgas stockholder profile that suggests that the Airgas stockholders are unable to make a decision for themselves or that suggests that Airgas stockholders are vulnerable to mistakenly rejecting the Airgas board's advice about the firm's alleged higher intrinsic value. In other words, what evidence in the record developed during the trial in this case indicates or suggests that Airgas stockholders are likely to accept an inadequate offer? I recognize that the Delaware Supreme Court apparently has concluded that stockholders may be simultaneously intelligent enough to decide whether to oust directors from office but not intelligent enough to decide whether an offer to purchase their property is in their best economic interest,[5] but exactly what is it about the Airgas stockholders (or about the Airgas business strategy, or about the Air Products tender offer) that would make the Airgas stockholders uniquely incapable of properly making an economic judgment in their own self-interest?

(8) Following the Supreme Court's ruling on the bylaw, the market price of Airgas's stock has fallen below the tender offer price. What significance, if any, does this have for this case?

(9) A decision by the Court of Chancery to enjoin implementation of a poison pill would require, at least in part, a balancing of the relative equities of the moving parties and the enjoined party. Explain precisely how the equities in the circumstances of this case would tilt either in favor of plaintiffs or defendants if an injunction were issued or denied.

[5] *See, e.g., Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361 (Del. 1995).

I ask that you submit simultaneous supplemental briefs addressing the foregoing questions on or before December 10 and I ask that such briefs not exceed twenty-five pages in length (although they need not be that long).

Second, I also am ruling on defendants' second and third motions to supplement the record. Defendants' second motion to supplement the record is granted, and defendants' third motion to supplement the record is granted in part and denied in part. I have already granted defendants' first motion to supplement the record on November 1, 2010. Air Products and the shareholder plaintiffs did not object to defendants' second motion to supplement the record, so I hereby grant the motion and will give those exhibits whatever weight they deserve. As for Airgas's third motion to supplement, I grant it in part with respect to Exhibit A (Mr. van Roden's Nov. 11, 2010 letter) which is admitted into evidence and made a part of the record. I deny the third motion with respect to Exhibits B-D and to the extent such "evidence" is referred to in the post-trial briefs, it is hereby stricken and I will ignore it. The so-called supplemental "evidence" in Exhibits B-D is subject to multiple objections under the Delaware Rules of Evidence, and is irrelevant to the core issues pending before me. Accordingly, I deny the third motion in part by excluding Exhibits B-D.

Third, with respect to the joint exhibit list, I am striking Exhibit 901 because this exhibit was properly excluded pursuant to my ruling on the motion *in limine*. All other exhibits on the joint exhibit list (as reflected under Mr. Stottmann's November 10, 2010 cover letter) are hereby admitted for purposes of the record in this trial. I intend to consider exhibits that are subject to hearsay objections only for purposes that have nothing to do with the truth of the matter asserted therein. Exhibits that are subject to relevance and completeness objections are admitted, but will only be given such weight as I determine to accord them.

I believe this resolves all outstanding issues regarding the record before the Court in this matter. I appreciate counsel's cooperation and assistance in providing the Court with supplemental briefing as outlined above.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

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