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**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

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December 23, 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:

After considering your most recent submissions,[1] as well as Airgas's latest SEC filings regarding Air Products' $70 per share offer,[2] I have concluded that the core issues to be decided are ripe and not moot, for reasons that I will more fully

[1] Air Products' and Shareholder Plaintiffs' December 21, 2010 letter responses to my December 14, 2010 letter order to the parties, and defendants' December 21, 2010 Supplemental Post-Trial Brief (and exhibits) in response to the same December 14 letter order.
[2] On December 22, 2010, Airgas filed a Schedule 14D-9 announcing that the Airgas board had met to consider Air Products' revised $70 per share offer and unanimously recommends that Airgas stockholders reject the offer.

develop in the final opinion in this matter. I have also concluded, however, that a supplemental evidentiary hearing is necessary before this Court can rule with respect to the $70 offer.

In short, on the mootness issue, the underlying dispute—fundamentally, whether Airgas can continue to maintain its poison pill in the face of an all-cash, structurally noncoercive offer—is as live a controversy today as it ever was. In considering the "threat" analysis under *Unocal*, the price point has moved from $65.50 to $70 per share. The core question before me, however, remains essentially unchanged, and any alleged change in the underlying facts can be remedied by supplementing the record such that both defendants and plaintiffs have had "the opportunity to develop and present a full record" as to the $70 offer.[3] And as far as ripeness, the Airgas board has now responded to Air Products' $70 offer.[4] Specifically, "the Board unanimously concluded that the $70 per share offer is clearly inadequate and that the value of Airgas in a sale, at this time, is at least $78.00 per share, in light of the Board's view of relevant valuation metrics."[5] In support of its recommendation that Airgas stockholders reject Air Products' current offer, the Airgas board consulted with its financial and legal advisors, and obtained "the written opinions of Bank of America Merrill Lynch, Credit Suisse Securities (USA) LLC and Goldman, Sachs & Co., as of December 21, 2010, regarding the inadequacy, from a financial point of view, of the price offered by Air Products."[6]

In light of the above, I will allow the parties to take limited discovery on both sides regarding the $70 offer (i.e., both Air Products' position that $70 is their "best and final" offer and the Airgas board's position that $70 is inadequate), the financial advisors' reports on that offer, and any other issues the parties believe should be considered.

More specifically, in light of the Airgas board's determination and recommendation to reject the $70 offer, the parties will now have the opportunity to supplement the record so as to provide the Court with the necessary "factual record concerning the Airgas Board's consideration of the $70 offer,"[7] and subsequent determination of inadequacy, including, for example, "whether the

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[3] Defs.' Dec. 21, 2010 Supp. Post-Trial Br. 3.
[4] Yesterday morning, the Airgas board unanimously rejected Air Products' $70 offer. *See* Airgas, Inc.'s Dec. 22, 2010 Schedule 14D-9; Airgas Press Release (Dec. 22, 2010).
[5] *Id.*
[6] *Id.*
[7] Defs.' Dec. 21, 2010 Supp. Post-Trial Br. 2.

Board acted in good faith on a fully informed basis and in reasonable reliance on its advisors in evaluating the new offer and whether the directors reasonably concluded that Air Products' offer [continues to represent] a threat."[8] This discovery shall be limited to (1) the documents presented to the board and considered by the board in connection with its response to the increased $70 per share offer, and (2) limited depositions of the particular individuals involved in making the decision whether to recommend or reject the increased offer.

Second, Air Products has stated that its current $70 per share offer is its "best and final" offer.[9] Air Products explicitly affirmed this position in its supplemental letter to the Court: "Air Products has made its best and final offer. If Airgas does not accept that offer, then the process is at an end."[10] To bring the message home, Air Products' chairman, president, and CEO John McGlade said yesterday that Air Products has "made clear that $70 per share is its best and final offer for Airgas."[11] Thus, the parties shall undertake limited discovery with respect to Air Products' position that $70 per share is in fact its "best and final" offer. Such discovery shall be limited to (1) documents relating to the decision to make the final offer, and (2) limited depositions of individuals directly involved with the decision. Counsel should advise the Court if there are other issues they believe should be the subject of discovery and the evidentiary hearing.

This additional discovery shall be completed by Friday, January 21, 2011. In addition, please advise me whether all counsel and witnesses are available for the supplemental evidentiary hearing to commence on Tuesday, January 25, 2011, in Georgetown, Delaware, at 9:00 a.m. At the conclusion of the evidentiary hearing (which I envision, subject to counsel's input, to last no longer than two or three days), I will ask for closing arguments. It would be my intention to provide the parties with a final decision very promptly after concluding the evidentiary hearing.

With respect to the record, Airgas has requested that Airgas's November 26, 2010 Presentation, which was referred to in an earlier submission and was publicly filed on November 29, 2010,[12] be formally made part of the record. In addition, Airgas has asked that the transcript of a December 16, 2010 presentation by Paul

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[8] *Id.*

[9] Air Products Press Release (Dec. 9, 2010) ("This is Air Products' best and final offer for Airgas and will not be further increased.").

[10] Letter from William M. Lafferty to Court (Dec. 21, 2010), at 5.

[11] Air Products Press Release (Dec. 22, 2010).

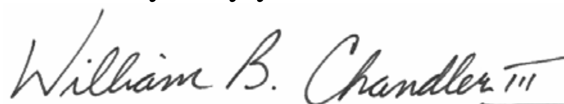
[12] *See* Defs.' Dec. 10, 2010 Supp. Post-Trial Br. 21.

Huck, Air Products' Chief Financial Officer and Senior Vice President, from the Bay Crest Partners Conference be added to the record. Both of these requests are granted. Exhibits A and B to Airgas's December 21, 2010 Supplemental Post-Trial Brief are admitted to the record, although the Court concurs with Air Products' objection that defendants' "misleading use of ellipses" in their "selective quotation" from Exhibit A (the Huck transcript) was a mischaracterization of Mr. Huck's statements. The transcript, nonetheless, is admitted *in toto*.

Finally, Air Products has moved to strike Exhibits C through G to defendants' December 21, 2010 Supplemental Post-Trial Brief, and any reference to those exhibits, including footnote 3 of that brief. The motion is granted. Exhibits C-G are analyst reports on Airgas that have been published since the time the parties submitted their post-trial briefs. Air Products argues that the reports are blatant hearsay, and in any event, defendants have not formally requested the Court to make them part of the record. In an earlier letter order in this matter, I sustained defendants' objections to adding two letters from Airgas stockholders to the Airgas board to the record because those letters were hearsay and irrelevant to the issues before me. Air Products now presses that "[i]f letters from Airgas shareholders to the Airgas Board . . . are hearsay and of no probative value, then certainly reports from various third-party analyst firms are also irrelevant and constitute hearsay."[13] This is certainly correct. The analyst reports (Exhibits C-G) are irrelevant and they do contain inadmissible hearsay. Any reference to these reports in briefing or other submissions is therefore stricken. As no motion was ever made to have the exhibits made a part of the trial record, there is no need to formally exclude them from the record.

IT IS SO ORDERED.

Very truly yours,



William B. Chandler III

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[13] Air Products' Mot. to Strike 3.