MacArthur back in court over assets

By Kathleen Behof and Maurice Possley

The fight over the sale of assets controlled by the John D. and Catherine T. MacArthur Foundation broke out again Tuesday when a California firm filed a lawsuit in federal court, claiming the foundation had ignored a top bid for valuable New York property.

Leslie Kemmerer, doing business as Sun Belt Industries, went to court Tuesday seeking a temporary restraining order to block the sale to First Winthrop Corp., a privately held Boston real estate investment banking firm.

Sun Belt Industries acted as broker for Harbor Management Corp. The suit said Harbor offered $440 million for the 19 commercial buildings in New York, topping Winthrop's offer of $400 million, but the Harbor offer was ignored.

Completion of the sale to Winthrop, announced in December, was scheduled for Wednesday.

The lawsuit said the foundation board conspired to avoid selling the property to the highest bidder and conducted exclusive negotiations with Winthrop, excluding all other buyers.

The suit said the foundation, as trustee of a charitable organization, has an obligation to sell the property to the highest bidder.

To comply with federal law that prohibits a philanthropic foundation from holding more than 20 percent of a for-profit business, the foundation is trying to sell assets held by Bankers Life & Casualty Co., a privately held insurance company with extensive real estate holdings.

Other defendants are: Attorney General Neil T. Hartigan, A. G. Becker Paribas, First Winthrop, Foundation President John E. Corbally, William T. Kirby, a foundation director, and David Murdoch, named in the lawsuit as financial vice president for the foundation and former employee of Becker.

Hartigan apparently was included because his office has jurisdication over foundations in the state.

Foundation Sells 19 Buildings For $400 Million in Divestiture

By KATHLEEN TELTSCH

Nineteen prime commercial properties in New York City, including the 42-story Gulf & Western tower at Columbus Circle, were sold yesterday by the MacArthur Foundation of Chicago for more than $400 million.

The properties, which included a number of office buildings on Park and Fifth Avenues, were purchased by the First Winthrop Corporation, a Boston investment concern.

The properties are only a part of the vast insurance and real-estate holdings of the John D. and Catherine MacArthur Foundation, one of the country's 10 wealthiest private philanthropies.

More than a year ago, the foundation initiated the sale of its insurance and real-estate assets to comply with a 1969 Federal law requiring divestiture of excess business holdings.

The law was designed to prevent abuses by foundations of their tax-exempt status. It restricts their ownership to no more than 20 percent of any company's stock. The foundation owns all stock in Bankers Life and Casualty Company, one of the largest health and accident insurance companies as well as 50 subsidiaries, which own the properties.

Board Members Assailed

The divestiture move touched off a controversy in which J. Roderick MacArthur, the son of the philanthropy's founder, accused other board directors of mismanaging assets and agreeing to sell off the properties at a "give-away price."

In November, First Winthrop reached a tentative agreement to buy both the insurance and real-estate properties for a reported $780 to $800 million. But the foundation dropped its plans after an independent concern evaluated the financial terms and concluded it could not issue a favorable opinion. Over objections from Mr. MacArthur, other board members agreed to continue negotiating with the Boston company for the real estate alone.

A last-minute effort to block yesterday's purchase was made by Leslie Kemmerer, a California broker of businesses and real estate. Mr. Kemmerer tried unsuccessfully to get the Federal Court in Chicago to issue a temporary restraining order to stop the sale. He argued that the foundation had received and ignored higher-priced offers for the properties.

Another Offer Cited

Mr. Kemmerer was acting for Harbor Management, a New York-based real-estate company, which had offered an equivalent of $440 million on Dec. 6, according to Robert M. Grossman, a lawyer for Mr. Kemmerer.

Mr. Grossman said the foundation board on Dec. 8 accepted the offer of Winthrop, with whom they had been negotiating for four months, saying that the Harbor Management offer that they had explored only two days earlier was "too tenuous."

In the course of the divestiture procedure, Dr. John E. Corbally, president of the MacArthur Foundation, told a Congressional subcommittee in June that hundreds of offers were received and active discussions were conducted with more than 100 prospective purchasers.

3/14/84 Chgo Trib

$1.5 billion at stake in MacArthur Foundation feud

THIS MAY BE Super Tuesday for Gary, Walter, Jesse, John and George, but before the day is done it will also feature a super confrontation in one of the most bitter, high-stakes legal battles here in years. At issue: control of the $1.5 billion Chicago-based MacArthur Foundation, the nation's second-largest charitable foundation, which annually gives away more than $50 million.

Chancery Court Judge Richard Curry may rule by day's end on whether to allow J. Roderick MacArthur, son of the late, frugal insurance billionaire John D. MacArthur, to go ahead with a suit seeking to dissolve the foundation set up in his father's will, or at least junk its board. Arguing the case for MacArthur will be Frank Cicero, one of Kirkland & Ellis' top litigators. On the other side will be former U.S. Atty. Thomas Sullivan of Jenner & Block and former Illinois Atty. Gen. Tyrone Fahner of Mayer Brown & Platt.

At issue is a tough legal question of whether a state court has the right to intervene in the affairs of a private foundation—in effect, can the court substitute its judgment for that of a legitimately constituted board of directors. But after that, there are ample juicy accusations stemming from Rod MacArthur's charges that most of the foundation's directors are bleeding the enormous cash cow for their own ends and badly mismanaging its principal asset, the Bankers Life and Casualty Co. MacArthur claims that,

Warren, Kelly & Tybor

On the law

among other misdeeds, the lawyers involved with the foundation are raking off piles of legal fees, averaging $100,000 a month last year.

THE CHARGES, and the evolving high-priced litigation, recall a similar controversy, the recent battle for control of the $90 million Rice Foundation where dozens of lawyers carted off a substantial portion of the money intended for the public good.

But in addition to trying to stop what he says is the squandering of funds his father intended for the public, MacArthur is also trying to save his own seat on the board. He fears—with obvious justification—that his fellow directors are poised to vote him off at the May annual meeting.

The directors—who include two of the nation's most prominent scientists, polio vaccine discoverer Jonas Salk and Nobel Prize-winning physicist Murray Gell-Mann, and radio commentator Paul Harvey—have screamed slander, claiming MacArthur has maligned what has been responsible management of the foundation's assets. They cite the recent sale of 19 prime Manhattan office buildings for $350 million, more than twice their appraised value, as evidence of astute management.

Oddly, no one argues with how the foundation doles out its grants. "From the philanthropic side, I think overall we've done a damn good job," MacArthur said. "We've made some mistakes and we could have been more daring sometimes, but we've become a very important foundation."

WILLIAM KIRBY, the father's longtime Chicago lawyer who has little good to say about the son, agrees with his assessment of the foundation. "This fight is over control of the assets. We're all very pleased with the work the foundation is doing."

Among the areas in which the foundation has made a mark are extensive funding of mental health research and the innovative MacArthur Scholars program, which gives no-strings grants to "great minds," allowing them to pursue projects of their choosing for five years.

But it's Kirby that MacArthur singles out as the worst case of conflict of interest. Along with four other

Continued on page 7

From First Business Page

On the Law

Continued from first Business page

foundation directors, Kirby sits on the boards of both the foundation and the insurance company. Under the tax laws, Bankers, once valued at $700 million, was supposed to be sold by the end of last year. MacArthur contends that Kirby and the others have deliberately blown the deadline in order to keep paying themselves hefty salaries and director's fees.

The relationship MacArthur portrays does seem more cozy than, say, at the Ford Foundation, the nation's largest, where the directors are a disparate group of outsiders. In addition to Kirby, Bankers president Robert Ewing and Bankers former chairman, Paul Doolen, serve on both boards, as do Gaylord Freeman, former chairman of First National Bank of Chicago, and John Corbally, the foundation's president and former head honcho at the University of Illinois.

MOST OF THE legal business MacArthur complains about has gone to the firm of Burke Griffen Chomicz & Wienke, a firm MacArthur says was formed at the same time as the foundation and of which Kirby is counsel. The firm has billed the foundation and the insurance company well over $2 million in the last four years, and Kirby himself has taken in another $250,000. MacArthur also charges that Nancy Ewing, wife of Robert, has been getting $55,000 a year as "part-time associate legal counsel."

In seeking to have the suit dismissed, the defendants don't mention the fee issue. They focus on the sale of the real estate and note that they backed out of an unfavorable offer to buy the insurance company—something MacArthur says he forced them into.

Much of their defense is based on correspondence from John D. MacArthur to his son and tries to make the point that Rod wasn't trusted by his father.

"Most of your life has been wasted," one 1975 letter says. "You will be 55 years old next December. You were born with a good intellect but never learned the meaning of teamwork." Commenting on an interview the son gave, the loving father wrote in another letter, "I concluded that you must have started drinking again or were smoking pot."

"THIS FIGHT IS over control," Kirby said in an interview. "Rod didn't get to run the foundation, and that hurts him."

Kirby says the legal fees are justified by the extensive work the foundation has required. The reason the insurance company wasn't sold, he said, was that it has recently fared poorly in a bad market. There is a bill in Congress to grant an extension of the deadline.

But MacArthur resists any attempt to portray the battle as a feud between a rich man's heirs and his advisers. "This isn't a scrap between directors of a private corporation," he said. "This is the public's money, and everyone should care what happens."

going through the motions." Except for a fe large firms that have tried to oversee their own continuing legal education, very little has been done to improve CLE training, according to Henning.

Part of the competence problem, Henning suggested, is based on changing perceptions brought about by changing times. For example, he said, in olden days, most lawyers were held in awe and "surrounded by a cloak of mysticism." Now they are exposed to publicity, advertising and competition.

"These new phenomena have been covered relentlessly, along with the foibles and follies of individual lawyers and law firms in three new, commercial trade papers which have brought the aura of "Women's Wear Daily" and the show biz paper, "Variety," to the law biz," Henning said.

He also said he thought it was "astounding" that the nation's law schools spend most of their time teaching about cases that reach the appellate courts — a minute fraction of the cases filed.

"American lawyers learn hardly anything about how to resolve 99 percent of the nation's social conflicts. And virtually nothing is taught about negotiating, structuring and making deals ... It is no accident, therefore, that virtually all the recent breakthroughs in legal thought have come from practitioners, not legal scholars," he said.

MacArthur suit fizzles. Circuit Judge **Richard L. Curry** struck all the derivative action claims filed by **J. Roderick MacArthur,** son of the late insurance magnate John D. MacArthur, against the MacArthur Foundation, which annually doles out millions to various projects.

Curry accepted arguments by Jay Erens of Levy & Erens that MacArthur's claims should be stricken because he had not made a demand on the Foundation's board of directors to sue.

In his derivative action claims, MacArthur alleged the Foundation management is ridden with waste and self-dealing activities such as paying themselves large salaries and excessive legal fees. Curry ruled that the well-established demand requirement of shareholder derivative suits exist to "stay the judicial role" until the board of directors had decided if a suit was worthwhile.

Arguing for MacArthur was Frank Cicero or Kirkland & Ellis. Cicero has 30 days to amend his complaint on the claim seeking liquidation of the Foundation. *MacArthur v. Corbally,* No. 84 CH 1435.

Greylord trial sidebars. As Judge John A. Nordberg and the attorneys involved in the first Greylord trial left the courtroom for one the their many sidebars, Chicago Tribune reporter Joseph Tybor asked if he could sit in. Nordberg first consented, but when Sun-Times reporter Adrienne Drell attempted to attend the next sidebar, Nordberg barred the press from the back room proceedings.

Fortunately, the transcript of part of the second sidebar was quickly made available. Herewith is part of that transcript.

Nordberg: "I knew that this [several reporters attempting to sit in] was going to happen. I am going to bar it and I will tell you why: My understanding ot the law is we are able, on strictly legal matters which relate to admissibility of evidence . . . to not have all of the press standing around taking notes as to the arguments.

"It is intimidating to the lawyers, it is intimidating to the Judge."

After further explanation by the judge, Tybor, who is also an attorney, said: "Your honor, as a member of the press and in accordance with some decisions on this point, may I make an objection on the record and make a statement for the record."

Nordberg: "Oh, Lord!"

One of the prosecutors objected to a reporter putting something on the record, but Nordberg let both Tybor and Drell object on the record.

— Bulletin board —

MARCH 14 — CHICAGO-KENT COLLEGE OF LAW Black American Law Student Association will hold a cocktail reception for its alumni and current Kent student members in Room 304 of the law school from 5:30 to 7 p.m. Call 567-5766.

... OF LAWYERS will

nim in 1981 by bending the rules.

But White House Counsel Fred Fielding said Monday he was unaware then that Meese would keep a promotion to colonel and an accompanying 18 percent boost in pension benefits even after he gave up the military post.

Responding in writing to questions from Sen. Howard Metzenbaum, D-Ohio, Fielding said he advised Meese to give up the Army job "so that the subject ... would be less of an issue" at the Senate Judiciary Committee's hearings on Meese's nomintion.

Meese, 52, announced at the hearings he has asked the Army to rescind his transfer to the Army Ready Reserve and a job with the Selective Service, forc-

critic of Meese's nomina... attorney general, has ... tioned whether the top ... aide received special tre... not only in his Army pro... which was tainted with ... larities, but also in his ... finances.

According to an aid... enbaum is meeting wi...

4/15/84

Judge Rejects Suit Filed by MacArthur Over Liquidation

* * *

Ouster of Eight Directors Of Foundation Sought; Court Permits Refiling

By HARLAN S. BYRNE
Staff Reporter of THE WALL STREET JOURNAL

CHICAGO—A state Circuit Court judge threw out a suit seeking to liquidate the MacArthur Foundation and oust eight of its directors, but left the door open for further litigation.

Judge Richard L. Curry ruled as improper parts of the suit that sought on behalf of the foundation an accounting of allegedly misspent money. He sided with the foundation's argument that J. Roderick MacArthur, who filed the suit, didn't properly demand action by the board on his allegations before taking the charges into court.

Judge Curry said, however, that other parts of the suit seeking liquidation of the foundation for alleged waste and misapplication of funds could be refiled without prejudice.

Mr. MacArthur's suit seeks to have the foundation liquidated and then reformed without the eight directors, who include Jonas Salk, developer of the polio vaccine; Murray Gell-Mann, a Nobel Prize winner in Physics and Paul Harvey, the radio commentator.

Mr. MacArthur said he hoped to have his suit refiled within a few days, but declined other comment. Mr. MacArthur is one of the 11 directors, and is the son of the late John D. MacArthur, who created the foundation. He has been at odds with other directors since the foundation began operation in 1978.

The foundation has $1 billion in assets and is best known for granting no-strings-attached money to talented people in arts and sciences.

Much of the argument at the hearing turned on the degree to which Mr. MacArthur had sought action by the board on his charges.

Mr. MacArthur claimed he had raised questions about improper actions of the board and had requested changes. Mr. MacArthur also argued it would be futile to make demands of directors who had opposed him so often.

But Judge Curry said that Mr. MacArthur hadn't presented enough evidence to support his claim that his demands were futile. The judge also noted that none of the individual charges involved a majority of the directors.

Most of Mr. MacArthur's charges were directed at John E. Corbally, who is also president of the foundation; Robert P. Ewing, president of Bankers Life & Casualty Co., the foundation's principal asset; and William T. Kirby, a lawyer.

Mr. MacArthur's suit charged that Mr. Corbally received excessive compensation and perquisites, including use of a condominium in a fashionable Chicago neighborhood. The suit charged Mr. Ewing with mismanaging Bankers Life and Mr. Kirby with directing foundation legal work to a law firm with which he is connected. Several directors are charged with conflicts of interest in serving as directors of Bankers Life.

Mr. MacArthur also has attacked directors over handling of efforts to sell the insurance and real estate operations of Bankers Life.

Judge Curry granted a request by Mr. MacArthur's attorney to file an amended complaint within four weeks on the issue of Mr. MacArthur making demands of other directors.

Suit Against Fund Seen as Continuing

NYT 6/3/84

By KATHLEEN TELTSCH

Special to The New York Times

CHICAGO — After months of dispute, the 11-member board of the John D. and Catherine T. MacArthur Foundation agreed unanimously recently to sell an insurance company it owns for $382 million. But the harmony was fleeting.

Dr. John E. Corbally, president of the foundation, said he hoped the agreement on the sale of the Bankers Life and Casualty Company would "help us to get together." But J. Roderick MacArthur, son of John MacArthur, the philanthropy's founder, said in a recent interview that he intended to press ahead with a suit against eight other directors he has charged with mismanaging the foundation's assets and paying themselves excessive fees.

The 63-year-old Mr. MacArthur recently learned that he was suffering from a swiftly progressing cancer, but he said this would not weaken his drive for changes in the foundation, which, with $1.5 billion in assets, is one of the wealthiest in the country. His suit asks the courts to dissolve the foundation so that a new board can be appointed.

"If my time is limited, I will have to work faster," Mr. MacArthur said. If he fails in his suit, filed in March in Cook County Circuit Court, he will fight the case in higher courts, he said. An earlier suit was dismissed.

Board Election Postponed

Mr. MacArthur said he would like to see his son, John R. MacArthur, 27, added to the foundation's board. Since last November the son has been serving without salary as publisher of Harper's magazine, which was on the verge of folding in 1980 when the MacArthur and Atlantic Richfield Foundations rescued it.

Mindful of Roderick MacArthur's deteriorating health, the directors postponed for a month an election that could have led to his removal from the board of the foundation, which has attracted national attention in part because of its large "no strings attached" grants to "exceptionally gifted individuals." That program was primarily initiated by Mr. MacArthur.

"It surprised me," he said of the postponement, but he added it had not altered his drive for what he saw as badly needed reforms. He did, however, drop from the suit one director, Paul D. Doolen, a past president of the foundation, after learning that he, too, was in bad health. Two other directors, Edward H. Levi, former United States Attorney General, and Prof. Jerome B. Wiesner of the Massachusetts Institute of Technology, had not been included in the suit.

In countering the earlier legal action, the eight board members named in the suit accused Mr. MacArthur of trying to grab control of the foundation. They say that MacArthur board members spend more time on foundation business than directors of similar philanthropies and thus merit higher salaries and benefits.

Objection to Earlier Offer

Mr. MacArthur said he would like to see substantial changes in the foundation's management before he would consider dropping his lawsuit. The interview was held in the atrium of a building in the Chicago suburb of Niles that houses his Bradford Exchange, a multimillion-dollar business in trading limited-edition decorative plates.

The quarrel between Mr. MacArthur and the foundation directors sharpened in the period leading up to the divestiture of Bankers Life, required by a 1969 Federal law restricting private foundations to owning no more than 20 percent of the stock of any for-profit business. The dispute continues as Congress is considering relaxing some restrictions in that law.

Last September, over Mr. MacArthur's objections, the board agreed to sell much of the foundation's business assets, including Bankers Life, to the First Winthrop Corporation of Boston. Mr. MacArthur charged that the price was too low and that the financing terms were unacceptable.

The charges were disputed by other board members, but outside analysts did not give a favorable appraisal of the terms. First Winthrop later bought 19 commercial properties the foundation owned in New York City for $400 million, but did not buy the insurance company, which the foundation agreed in early May to sell to the I.C.H. Corporation of Louisville.

Mr. MacArthur's suit emphasizes that five of the Foundation's board members also serve as directors of Bankers Life. He said excessive fees, salaries and fringe benefits were paid to them: Dr. Corbally, the foundation president; Robert Ewing, who headed Bankers Life; Gaylord Freeman, former chairman of the First National Bank of Chicago, and William T. Kirby, general counsel to the foundation. (Mr. Doolen, who has been dropped as a defendant to the lawsuit, is also a director of both the foundation and the insurance company.)

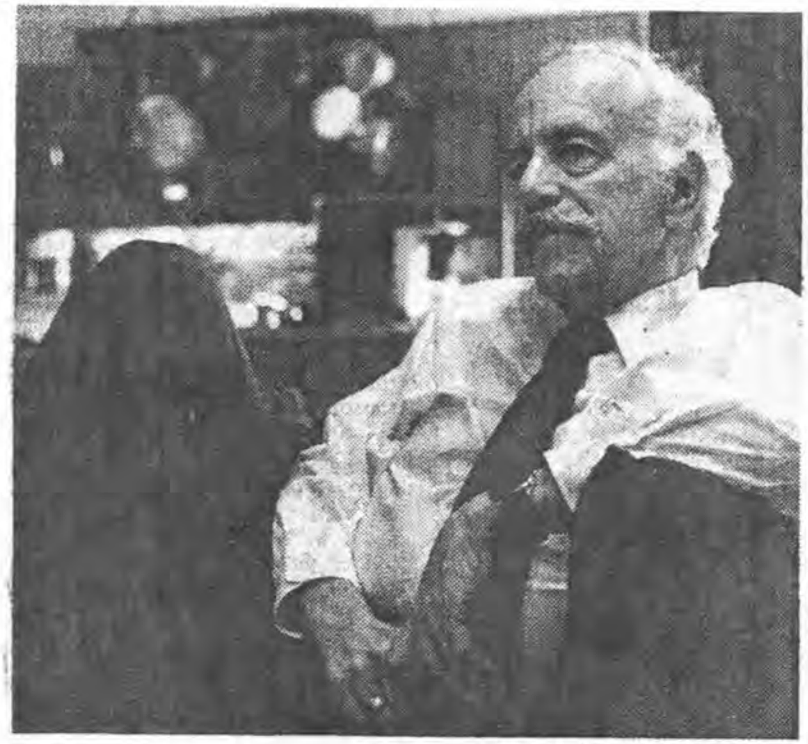
Directors Meet Monthly

Mr. MacArthur said excessive fees were paid to three other directors: Paul Harvey, the radio broadcaster, Murray Gell-Mann, a Nobel-prize winning physicist, and Jonas Salk, the developer of the polio vaccine.

According to the suit, Dr. Corbally received $632,000 in salary, benefits and expenses from the foundation from Jan. 1, 1980, to September 1983, as well as $65,000 from Bankers Life.

Dr. Corbally has said that MacArthur directors spend considerably more time on foundation business than directors of other philanthropies, meeting once a month and also serving on committees. Trustees at the Ford Foundation, for example, meet four times a year and are paid $12,000 to $13,000, depending on time spent.

THE NEW YORK TIMES, SUNDAY, JUNE 3, 1984



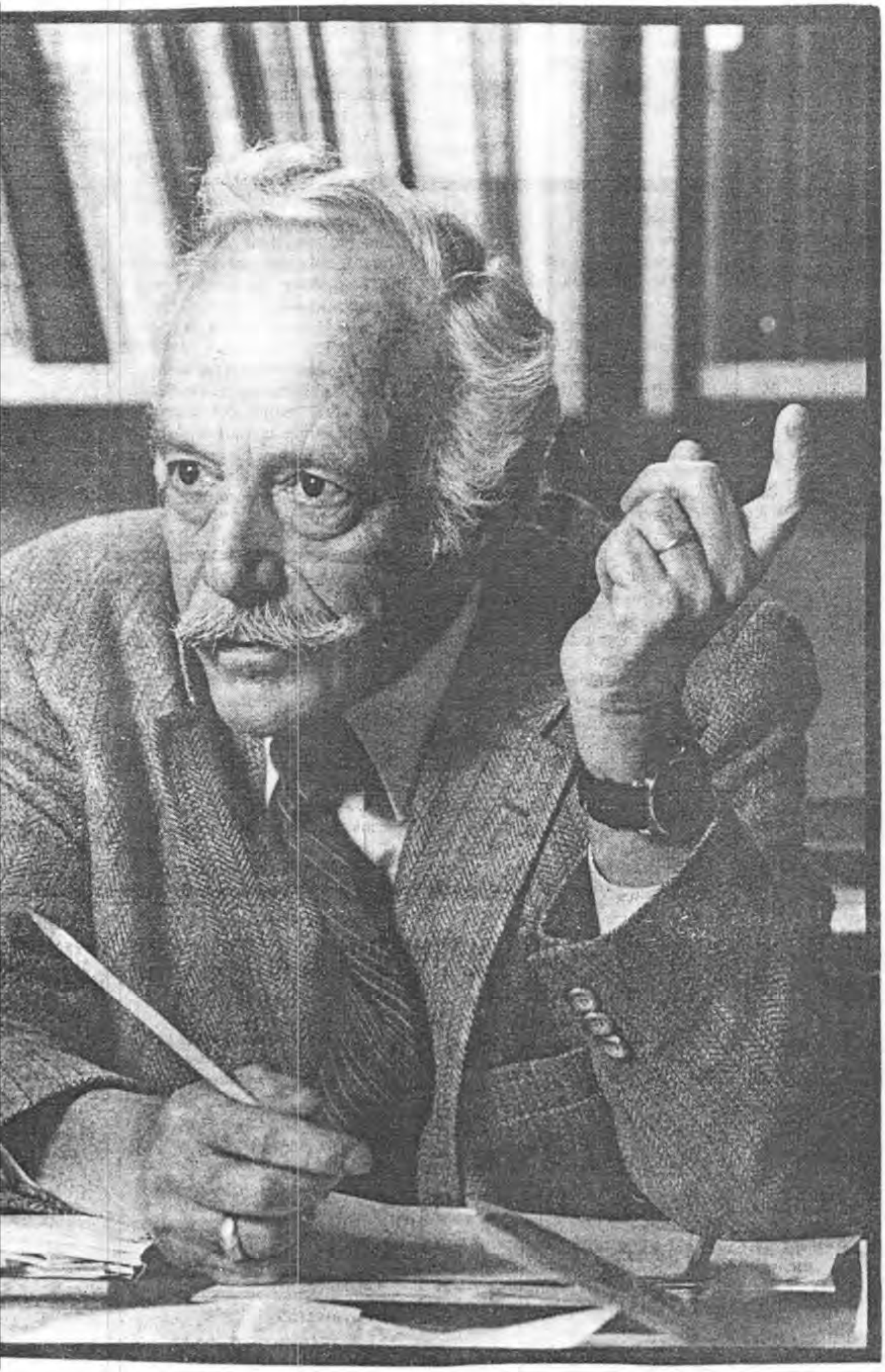
The New York Times/Mark J. Pokempner

J. Roderick MacArthur, who has said he intends to press ahead with suit against eight fellow directors of the John D. and Catherine T. MacArthur Foundation, charging them with mismanaging the foundation's assets.

READER

Friday, July 6, 1984 Volume 13, No. 40

CHICAGO'S FREE WEEKLY



Making money has always come naturally to J. Roderick MacArthu:. Giving it away has been a little more difficult.

Photographs by Marc PoKempner

Oddball Force

By Robert McClory

Observing the white-haired, mustachioed, elfin-looking little man in the neat tuxedo as he moves around the store greeting guests, one might conclude that here is the embodiment of the easy, pampered life. The man is J. Roderick MacArthur, the millionaire son of billionaire John D. MacArthur, the nephew of legendary Chicago newspaper reporter and playwright Charles MacArthur, the only family member on the board of the prestigious MacArthur Foundation. The occasion is the grand opening (in late May) of the first Chicago outlet for Hammacher Schlemmer, the famous New York retailer of newfangled household items and gaudy gizmos for the discriminating (and wealthy) shopper. The store, at 620 N. Michigan, is crowded with newspeople and associates of Rod's who have come to sip wine, nibble on miniature lamb chops and other hors d'oeuvres, and check out the bewildering stock: an electric kitty litter box for $47.50, the prenatal-sound teddy bear ($69.50), the talking bathroom scale ($149.50), the invisible dog fence ($675), "the world's best" portable computer ($7,850), and hundreds of other exotic inventions.

Hammacher Schlemmer has expanded to Chicago because Rod bought the Manhattan store lock, stock, and barrel (for $4.7 million) in 1980 and decided New Yorkers should not have a monopoly on gadgetry. As he chats, Rod dons one of the store's newer items—a solar-powered pith helmet with a tiny fan built into the

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MacArthur

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crown to ensure that the wearer keeps a cool head ($90). Parked outside on Michigan Avenue and undisturbed by the police are Rod's Rolls-Royce Silver Shadow and his 1937 Cord convertible (not for sale), which have just ferried in from O'Hare Airport a contingent of international visitors.

It is the perfect scene for *Chicago* magazine columnist Henry Hanson, who is—sure enough—mingling with the crowd, taking notes, and nibbling on the tiny lamb chops. Here surely is a display of self-indulgent opulence in the most basic sense: Rod MacArthur, the aging but never quite grown-up little rich kid playing with his new toys.

Yet appearances in this case are somewhat deceiving, because the man has not exactly had the world presented on a silver platter. Despite the family fortune, he has fought and scrapped for what he has achieved. Rod MacArthur, in fact, comes from a family of fighters, and though his exploits may be less well-known than those of his father and uncle, he is nevertheless a remarkable warrior in his own right: a shrewd business entrepreneur, a visionary humanitarian with a passion for human rights, a jealous steward over the millions his father left not to him but to humanity. And on everything he touches he leaves his inimitable, somewhat offbeat stamp. That too is a family characteristic.

It should be noted that not everyone holds J. Roderick MacArthur in high esteem—his penchant for conflict having earned him a few enemies. Earlier this year he was publicly castigated by most of his colleagues on the MacArthur Foundation board as a dissident, disruptive loner, a spoiled, power-hungry man "who is acting and has always acted for himself and no one else." Those unflattering remarks came in response to a lawsuit Rod filed against eight of his codirectors, including such high-powered notables as Gaylord Freeman, retired chairman of the board of First National Bank; Dr. Jonas Salk, developer of the Salk vaccine; Dr. John Corbally, former president of the University of Illinois; and Paul Harvey, the veteran radio commentator. Rod had accused these dignitaries of incompetence and of feathering their own nests with other people's money. He had even asked the court to kick them off the foundation board.

The ugly charges and countercharges, which will probably continue for months or years, reveal the rancor and resentment long simmering at the core of the MacArthur Foundation. And even though a substantial bone of contention among the principals was settled recently through the sale of foundation assets, Rod says he will continue his battle against the directors. "When people have been so terribly unbusinesslike," he says, "they shouldn't get off scot-free. There's no presumption they know what they're doing."

Their claim that he is a power-hungry loner who has to control everything is patently absurd, adds Rod, "given the state of my health." For at the age of 63, the man is involved in a more profound battle than any of his present or former skirmishes. He has been diagnosed as having inoperable pancreatic cancer, which is already spreading through his body. His doctors give him only a year or two to live. That sobering news has not dimmed his energy, only whetted his appetite to finish what he has begun. "There's life and there's death," says Rod, a confirmed atheist. "We all get

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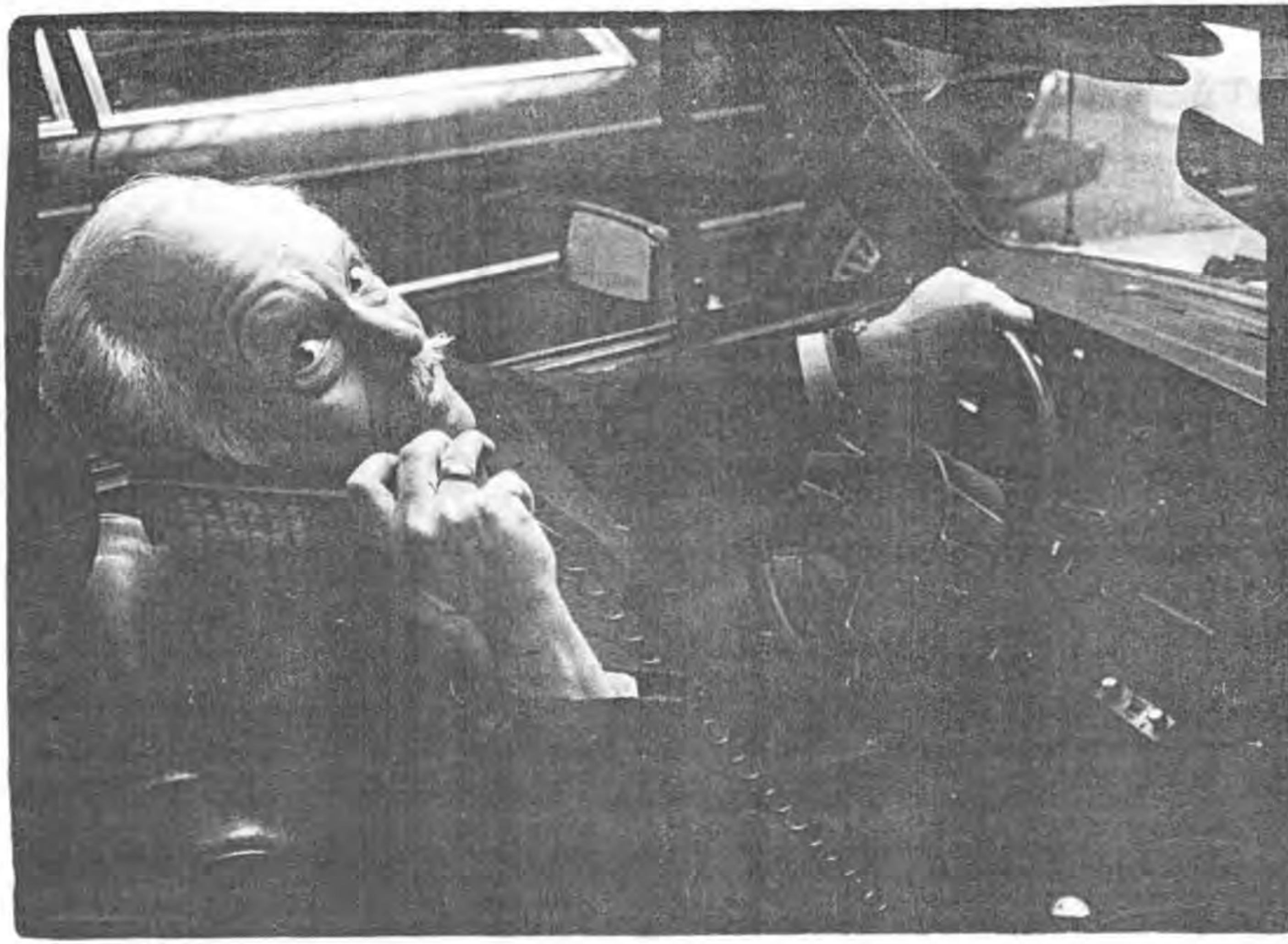
one crack at it, and we do the best we can with what we've got."

* * *

On North Milwaukee Avenue in Niles near the Golf Mill shopping center is a sprawling one-story building. Inside under a glass roof is a garden area with a sunken pool amid well-cared-for trees, shrubs, and other foliage. To the left as far as the eye can determine is a sea of neat little partitioned cubicles, each occupied by a staff worker and each serviced by a hoselike tube descending from the ceiling. The effect is like something out of *Star Wars*, although the tubes do not carry oxygen but electric and telephone lines. Even more fascinating is the scene beyond the garden. Sitting in a semicircle before individual computer terminals are ten red-coated women, most of whom appear to be working at a frantic pace, checking figures and talking on telephones. Overhead a big electronic screen glitters with a running display of prices and bids. Only when one eyes the big board closely does it become clear that this is not a stock market or grain exchange—no Gulf Oil, Chrysler, or U.S. Steel shares here, no summer wheat or sowbelly futures either. The items for trade have peculiar titles such as "Seven Swans A'Swimming," "Dog and Children," "Cinderella," "Windsor Castle," and "Pick's Wild Eagle."



This is the trading floor of the Bradford Exchange and Museum, the world's largest trading center for collector's plates, those limited-edition pieces of decorated china or porcelain that grandma has been buying for years. The most popular plate subjects include reproductions of Norman Rockwell paintings, Christmas scenes, religious art, and birds. But collector's plates, one learns, can depict everything from the 12 days of Christmas or Murillo's Madonna to a smiling Captain Spock, the entire cast from *Love Boat*, and a kid sitting on a toilet.

The women are Bradford brokers who are arranging the buying and selling of plates and providing up-to-date information for small-time collectors like grandma and bigger ones who dabble in the market on a daily basis. There are more than 1,100 plates listed on the Bradford Exchange, which handles some 11,000 transactions every business day.

The collector's plate phenomenon is a relatively new thing, having its origin in a blue-and-white plate produced in 1895 by the Denmark porcelain manufacturer Bing & Grondahl and depicting the skyline of Copenhagen. That plate, which sold for 50 cents, is now worth $4,000. And dozens of other crystal, china, and porcelain producers have since got into the business. In the museum area of the Bradford Exchange hang large acrylic panels displaying hundreds of the plates traded regularly all over the world, with information on their price at issue and their current value. And while some old and rare items have skyrocketed, others show no increase or are worth less than when issued. Like everything else, the plate market has its risks.

Bradford officials estimate that there are 7.5 million collectors throughout the world, with about 75 percent of them in the United States. To provide service outside the country, Bradford operates branches in Canada, England, West Germany, Denmark, Switzerland, and Australia. Every plate sold through the exchange is shipped by the seller to the Bradford clearinghouse, where it is inspected and sent on to the buyer – with Bradford extracting a 4 percent commission from the buyer and a 30 percent commission from the seller. To be sure, most individual sales do not involve any big killing for the exchange, since the average price of a plate is about $75. However, 11,000 such little deals every day do add up and help explain why the Bradford operation is a $90-million-a-year business.

The Bradford Exchange was conceived, produced, directed, and is owned entirely by Rod MacArthur, who also designed the interior of its Niles headquarters. His unpretentious office is found in the midst of the partitioned alcoves where Bradford employees tend to their specialties. He is often in shirt-sleeves, and rather than keep to a rigid schedule, he tends to make decisions and see people as they come along. Sometimes a little string of visitors will be lined up outside his office, like penitents waiting to go to confession.

Rod came on the idea of the exchange almost by chance back in 1972. Both he and his aging father, John D., were concerned about one of the faltering segments in the otherwise fantastically successful financial empire. It was a mail-order operation called Macmart, and it had lost $500,000 through various unfortunate projects. Although not a collector himself, Rod began talking to plate dealers and manufacturers. He determined that here was an expanding market ripe for some sort of organization and consolidation. Selling prices for identical items tended to vary widely, and there

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was no central information service with daily quotations and no coordinating agency. Thus, with $80,000 in start-up money from his father, Rod transformed Macmart into the Bradford operation. (The name Bradford, he says, has no significance.)

The project was an immediate hit. Whatever misgivings dealers had about this unexpected intrusion were apparently alleviated by the publicity they got through the exchange and the overall simplification in marketing. With relative ease, Rod soon had a virtual stranglehold on the collector's plate industry. And thanks to his publication of the *Bradford Book of Collector's Plates* each year and the "Bradford Exchange Current Quotations" every two months, there has been a steady increase of new collectors and dabblers.

The whole operation was housed in John D.'s corporate headquarters in Northbrook, and Rod was enjoying the satisfaction of building—as his father had done before him—something from almost nothing. In 1975, however, severe problems developed when, as Rod puts it, "my father realized I was slipping out of his control." John D., then 77 and more commonly referred to as "the old man," had agreed that Bradford would be totally owned by Rod after it had replenished the half-million dollars lost through Macmart. But just as that moment neared, the old man "misremembered the deal," says Rod, and claimed the Bradford Exchange as one more profitable diamond in his crown.

Father and son fought bitterly over the disagreement, and John D. became so irate that he literally snatched Bradford out of Rod's hands. He ordered all Bradford employees, with the exception of Rod and his private secretary, transferred to his payroll, seized all customer lists and bank accounts, and placed Bradford's stock of 250,000 plates under lock and key every night. Not to be outdone, Rod organized a group of employees still loyal to him, hired eight trucks, and staged a daring daylight raid. The conspirators marched into the Northbrook headquarters and began hauling out cartons of plates and piling them in the trucks parked outside. Stunned, John D.'s aides phoned the old man, who was in Florida, and he ordered an immediate halt to the hijacking. But nothing could deter Rod and his henchmen. When power was cut off to the elevator, they carried the cartons up from the basement one by one. When the old man's people argued or stood in the way, they were pushed aside. The entire heist lasted several hours. Then the trucks roared off to deposit the loot in a nearby warehouse rented for the occasion. Meanwhile, Rod went about the task of recovering lists by stealth, opening new bank accounts, and persuading old customers that he was back in control.

Needless to say, relations with his father were badly strained after that. The old man did not easily accept defiance from any quarter. From his only son, it was especially galling. Bitter words and letters were exchanged. Eventually, and with grudging admiration, says Rod, his father admitted that the coup had taken a considerable amount of coordination and a lot of nerve. With his half-million and his original investment in Bradford paid back, John D. withdrew his claim, leaving the operation in Rod's hands, where it has remained and expanded since. And every year Rod hosts a party to commemorate that symbolic declaration of independence.

Before John D. died in 1980, says Rod, there was a deep reconciliation between the two. "All my life the relationship blew hot and cold," he adds. "I never felt he paid me what I was worth, but I really think he was proud of me and admired my business ability."

His precarious state of health notwithstanding, Rod has grand plans for the Bradford Exchange. Construction work is under way at the present site on a massive expansion, which will have an interior design more imaginative than anything hitherto seen on Milwaukee Avenue. The building inside and out will convey the image of large tents—an idea that appeals to Rod for no other reason than that he has never seen it done before.

In that respect, Rod is more like the old man than he would probably admit. The original MacArthur millions were generated out of a determination to do things in an imaginative, unorthodox style. If Rod were more of a conformist he would not be John D.'s son, and if John D. had followed the normal rules for success there wouldn't be a MacArthur Foundation today with $1.5 billion in assets.

* * *

The elder MacArthur's life is the

stuff out of which a great television mini-series could be made. He was one of seven children of a Pennsylvania minister whose zeal for the Lord was so strong that it seems to have turned the whole family against organized religion and religious piety in any form. Instead, his children sublimated that zeal into a thirst for adventure and other worldly pursuits. After the family settled in Chicago around 1900, Alfred, the oldest son, started his own successful insurance business. Telfer published a string of Chicago suburban newspapers. Charles co-authored the play *The Front Page*, based on his experiences with the *Chicago Herald and Examiner*, and later became a Hollywood screenwriter and husband of actress Helen Hayes.

John D. joined the U.S. Navy during World War I, then switched to the Canadian air force in hopes of seeing action sooner. He became a capable pilot, only to suffer a back injury in a crash that prevented him from being assigned overseas. He stowed away on a liner bound for Europe but was apprehended and dumped onshore before the boat got out of New York harbor.

After the war, John D. discovered his true calling: selling insurance to a mass market. In 1928 he purchased the Marquette Life Insurance Company, and kept it alive during the Great Depression while bigger, better-established firms were going under. In 1935 he rescued the Bankers Life and Casualty Company of Chicago just as it was about to go down for the third time. The cost was $2,500.

Five years later Bankers claimed assets of $1 million, and 40 years after that, when he died, the company's assets had passed the $1 billion mark. MacArthur knew how to package insurance for the little guy. Breaking all traditions, he offered a $1,000 death benefit for a $1-a-month premium. And he promoted his innovative policies with a pioneering direct-mail approach and an unheard of money-back guarantee.

As profits grew, John D. traveled widely, energizing his salespeople all over the country with his infectious W. Clement Stone-like enthusiasm. And in the course of these journeys, he invested the company profits with incredible foresight: acquiring 19 apartment and office buildings in New York City including the 43-story Gulf & Western Building, six paper and pulp companies, 82,000 acres of undeveloped land near Palm Beach, Florida, numerous radio and television stations, and a gaggle of small insurance companies. He even acquired the Frontier Hotel in Las Vegas for $6 million and sold it soon after to Howard Hughes (for $9 million) after Hughes complained that the hotel's all-night neon sign kept him awake.

John D. was not just another acquisitive tycoon. In the 1960s and 1970s he and his second wife, Catherine, spent most of their time in the Palm Beach area, where he financed the draining of swamp land for the new communities he founded, North Palm Beach and Palm Beach Gardens. He was praised as a conservationist, as he transplanted thousands of trees to save them from the bulldozer, nursed ailing birds in his own aviary, and organized groups to push beached whales back into the ocean. He even sponsored seminars for scientists who were just starting to probe environmental issues.

In his youth, son Rod did not know John D. very well. His parents separated when he was nine, and he and his one sister (who now lives in Mexico and has no connection with the foundation) were raised by their mother.

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Nevertheless, Rod always displayed the same kind of restless energy that stirred his father. He attended schools in the Chicago area, in Florida, and in Mexico. Then during World War II, after being rated 4F by the Selective Service Board, Rod joined the ambulance corps of the American Field Service, which assigned him to serve with the French army. His bravery after the 1944 invasion of southern France earned him the Croix de Guerre, France's top military honor. When the war ended, he tried his hand as a correspondent for United Press in Paris and as a free-lance writer and photographer. It was in Paris that he married his wife, Christiane. They have been together now for 37 years and have three children, all grown.

In 1952 Rod returned to the United States to begin his sometimes turbulent yet often productive relationship with the old man. He briefly edited *Theatre Arts* magazine, which was owned by John D. in New York, then supervised new business for the Citizens Bank and Trust Company in Park Ridge, one of the smaller ships in the MacArthur fleet. During these early days his father carefully taught him the techniques of direct-mail advertising, and the student quickly became almost as adept as the teacher.

Rod devised a savings account that doubled as an interest-paying checking account—a forerunner of the NOW account, some 20 years before it became generally popular. This innovation soon brought in almost $100 million in new bank accounts, although it also embroiled Rod in a long-running duel with the Federal Reserve Board, as he tried to establish there was nothing illegal about the concept.

Impressed with his son's ingenuity, John D. made Rod president of the Marquette Life Insurance Company, the little firm that had started him on his whirlwind of acquisition. There Rod came up with another ingenious idea: a Medicare supplement that would eliminate virtually every exception and all the small print in conventional policies. This too proved to be a boon to the MacArthur establishment, attracting 1.5 million new enrollees in a few years. It was especially helpful to Bankers Life, the perennial flagship.

It has been noted that despite these achievements, the old man never offered Rod the top position at Bankers. Rod insists this was not a snub. "I never had the slightest interest in ordinary corporate management," he says. "I was interested in sales, in mass marketing, not in having some fancy office."

In any case, it cannot be argued that the Bradford Exchange hassle persuaded John D. to put his money into a philanthropic foundation instead of passing it on to his son. Because back in 1970, five years before the Bradford revolt, John D. had created a trust providing that on his death all his assets should pass into a foundation. The directors were to include three of his old business associates, Paul T. Doolen, William Kirby, and Robert Fiel; his friend Paul Harvey (whose show was sponsored by Bankers Life); his wife, Catherine; and Rod. The old man didn't even tell anybody what to do with the accumulated wealth. "I do what I know best: making money," he told an associate. "You fellows will have to learn how to spend it."

In his last years, the assets just kept multiplying, and as long as he had breath, John D. kept figuring out how to get more. He spent long hours in the coffee shop at the Colonnades Beach Hotel (which he owned) in Palm Beach (much of which he owned) drinking up to 30 cups of coffee a day—his only reported weakness—and driving hard bargains with the people who came to cut a deal. His manner and dress were so unpretentious that hotel guests sometimes mistook him for an elderly bellboy or maintenance man. And he was not above responding to their summons and carrying bags out to a waiting cab.

* * *

In 1978, at the age of 80, the old man died of inoperable cancer of the pancreas, the same disease Rod has been stricken with. The John D. and Catherine T. MacArthur Foundation became immediately operative with more than $1 billion in assets, including ten million shares of Bankers Life, its subsidiaries, and the large real estate holdings. During its six years of operation, the foundation has doled out about $50 million annually and gained a reputation as a maverick operation that does eccentric things like handing out surprise grants to geniuses who haven't asked for anything, buying bullet-proof vests for Chicago police officers, and pouring $5.4 million into an emergency rescue of *Harper's* magazine.

The only restriction in the founding charter is that the foundation should operate "for charitable, religious, scientific, literary, and educational purposes" and seek "to prevent waste in government expenditures at federal, state, and local levels." The original board has gone through alterations, the most important coming in 1979 when the addition of seven new members including Corbally, now president of the foundation, Salk, Freeman, and Dr. Murray Gell-Mann, a Nobel Prize-winning physicist from the California Institute of Technology. John D.'s widow died in 1981, leaving Rod the lone family representative.

Unlike some large foundations that depend on a huge staff to sift through mountains of grant applications, the MacArthur Foundation maintains a relatively small staff of 30 who occupy two floors in the old Marquette Building at 140 S. Dearborn. The directors themselves, explains Corbally, are unusually active in initiating projects, selecting grantees, and making other decisions. As a result, he adds, demands are made on their time and talents far beyond those made on other foundation directors. They accordingly receive a substantial remuneration for their work.

The most active initiator on the board is Rod, the instigator of the well-publicized MacArthur Fellows Program, whose aim is "to reward proven genius" and to "liberate highly creative people to pursue work in accordance with their own directi[on] and inclination." To date, 115 fellows have been named. The amount given is based on a sliding age scale, with $24,000 per year for five years going to anyone 21 or younger, up to $60,000 per year for the five-year period going to someone 66 or older. No one may propose himself (few women have been selected), nor may mere mortals submit someone else's name. The selection is handled by a national network of foundation-appointed, secret talent scouts under the direction of Rod.

Thus far, the awardees tend to be concentrated in scholarly or scientific disciplines such as microbiology, archaeology, and linguistics, although this year's recipients also included Ernest Cortes, a community organizer of the Saul Alinsky school working in the southwest U.S., and the Reverend Bryan Hehir, an adviser to the National Conference of Catholic Bishops and the man largely responsible for the strong tone of the bishops' controversial pastoral letter on war and peace. This year's class also included the youngest person ever named, 18-year-old David Stuart, an expert at deciphering Mayan inscriptions. (The oldest ever was Dov Goitein, an 82-year-old Princeton historian.) Chicago has its contingent of MacArthur fellows—among them Michael Silverstein, chairman of the Anthropology Department at the University of Chicago, and R. Stephen Berry, a University of Chicago chemist. The MacArthur Fellows grant is nontaxable and can be used by the recipient for absolutely anything—from funding research to buying a summer home to blowing it all on wine, women, and song.

Of all the projects with which he has been associated, Rod is proudest of the Fellows Program. "It seemed to me nobody was funding promising individuals and freeing them to do what they do best," he says, "not the government, not the universities, not the corporations. Now there's something special about a foundation: freedom from the necessity of pleasing a constituency. It can therefore break new ground, take chances, make mistakes. That's what we're trying to do here; we're betting on the promise of an individual."

No scientist can ever write a grant application so he can make a specific discovery, Rod observes, because he cannot predict where his research will lead him. The unique MacArthur grant is intended to give the fellows that absolute freedom necessary to produce something, anything, great.

Rod sees the genius program as a tribute to his father: "He liked the idea of an oddball force in the world—coming at things from the side to keep people on their toes."

The Fellows Program was resisted at first by some of Rod's peers on the board, and it still gets slammed once in a while in the press. *Washington Post* columnist Jonathan Yardley recently called it a clever stunt, a "rather gaudy . . . business smacking as it does of *The Millionaire* and *This Is Your Life*." The program is sometimes faulted too for playing it too safe, giving awards to people already well established in their fields. Rod says there is some merit in that charge, and he hopes future recipients will include at least a few long shots and unproven gambles.

The decision to assist *Harper's* magazine also originated with Rod. Through a one-time grant, the venerable old publication was put on its feet, and it is making it so far—with Rod's son, John R. (Rick) MacArthur, a former *Chicago Sun-Times* newsman, serving as unsalaried publisher.

Most MacArthur Foundation grants are more orthodox: to universities for research in mental health and criminal justice, to community organizations and museums and hospitals and animal shelters and self-help groups and small theaters, many in the Chicago area. Besides, the foundation has long-range commitments—the creation of several health-research networks, the development of a global approach to environmental hazards, and a comprehensive study of parasitic diseases. Corbally says the foundation is still in the formative stages. "We're young," he says, "only six years old and we're still shaping ourselves."

Rod concurs with that, but it is one of the few subjects on which he and Corbally agree.

* * *

When the MacArthur Foundation became operative in 1978, everyone connected with it knew a lot of work lay ahead. The biggest headache was the Tax Reform Act of 1969, by which Congress, in an effort to prevent philanthropic foundations from becoming tax shelters for big businesses, required that directors divest such foundations of 80 percent of their assets in for-profit enterprises within a reasonable period of time. That meant Bankers Life and the bulk of John D.'s real estate would have to be sold and the money invested elsewhere. The deadline for the divestiture was set at November 30, 1983, and failure to meet it would leave the foundation open to severe financial penalties from the Internal Revenue Service—the loss of up to 100 percent of its undivested for-profit holdings.

During the next five years Corbally, Rod, and their associates had extreme difficulty finding prospective buyers. In June 1983 Corbally even appeared before a congressional subcommittee in Washington and begged for an extension of the deadline, arguing that any deal would have to be on a "distress sale" basis and the foundation would probably not get a decent price. No extension was granted.

Then in August a rescue seemed imminent when First Winthrop Corporation, a Boston investment house, was granted by the directors (with Rod dissenting) "exclusive rights" to negotiate for Bankers Life and MacArthur's New York office buildings. It was the "exclusive" part that bothered Rod, who had been disagreeing with his fellow directors on many issues. He did not like the way they had been running Bankers Life since the death of his father, he objected to the large sums they paid themselves, and he resented what appeared to be a cozy sweetheart arrangement with First Winthrop. Rod's motions on all these matters were regularly rejected by ten-to-one votes.

So he went to the press and for the first time the public became aware of what was bubbling beneath the surface. "When a foundation's assets are mismanaged or wasted, there is an obligation to do something about it," he told the *New York Times*. But his colleagues continued to surge ahead with a deal by which First Winthrop would purchase the insurance com-

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pany, its subsidiaries, and most of the real estate at an apparent bargain price of $800 million. Not only that, but First Winthrop would have to pay only $44 million up front—the rest being financed with notes over the next 20 years, with the foundation agreeing to loan First Winthrop up to $88 million if they could not generate enough capital through their management of Bankers Life to pay off the notes!

Rod hit the ceiling, calling the deal a "giveaway" and threatening to file a lawsuit. The sale would have gone through anyway except for the fact that the directors had made the final go-ahead contingent on approval from Morgan Stanley & Company, a New York investment house. After studying the fine print, Morgan Stanley agreed essentially with Rod. There was no way, they said, for them to tell if the terms were fair, since the whole deal depended on so many cloudy uncertainties. So the sale fell through, and Rod was vindicated for the moment.

By then the November 30 deadline had passed and the foundation was in jeopardy from the federal government. Corbally and his colleagues tried to show good faith by working out a new, less extensive deal with First Winthrop. Rod was again the lone objector. "The foundation can't soberly consider the sale of anything," he thundered in a press release, "because all of the people involved in the divestiture process have been discredited."

The revised deal went through in January after Morgan Stanley gave their blessing: First Winthrop purchased 19 New York buildings for $400 million—with $328 million coming up front in cash. One month later, on February 14, Rod hit eight of the other ten directors with a sweeping, 51-page lawsuit. He asked that the MacArthur Foundation be dissolved and liquidated, that its assets be "conveyed to a new corporation having the same charitable purposes," and that the board of directors of this new foundation "be constituted to include plaintiff [Rod] and exclude defendants."

Amid the heavy artillery barrage he leveled at the directors were these charges: that their mismanagement has resulted in a $200 million erosion of Bankers Life assets; that through incompetence they failed to meet the divestiture deadline after being foiled in a "last-minute giveaway" sale; that they paid themselves excessive fees, salaries, and fringe benefits; and that several directors gave millions of dollars of legal and banking business to firms with which they had been associated. For example, from January 1980 through September 1983, charged Rod, Corbally alone had been paid between $632,804 and $698,931 in salary, benefits, and expenses (more than $180,000 a year) and had had the use of the foundation condominium, valued at more than $325,000. Paul Harvey, he said, received $100,000 in fees while he was also being paid indirectly by Bankers Life as sponsor of his radio program. And Gell-Mann, Salk, Freeman, and Kirby, he claimed, received fees of more than $200,000 for part-time service with the foundation. The overall picture he painted was of a group of crafty conspirators bent mainly on their own enrichment.

With that, Corbally and associates decided they too could play hardball in public. Without going into detail, their 31-page response flatly denied any incompetence, mismanagement, or overpayment. They then characterized Rod MacArthur as a vindictive, self-centered malcontent who could not get along with his father or anyone else. "In his complaint," they wrote, "plaintiff postures himself as the hand-picked protector of the assets of his father placed in the foundation. Nothing could be further from the truth. John D. MacArthur . . . had little regard for plaintiff's business judgment or character. Plaintiff was named to the foundation board simply because he was John's only son, despite the low esteem in which John held plaintiff. These are the harsh but true realities of their relationship."

To bolster their case, the directors included excerpts from letters John D. sent his son. For example, he reportedly wrote Rod on April 14, 1975, "Most of your life has been wasted. You will be 55 years old next December. You were born with a good intellect but never learned the meaning of team work." On October 12, 1976, he reportedly wrote, "Even in friendly arguments you could only se one side of the story. You were not a team man and never will be." John D.'s widow, Catherine, even got into the act. In a 1981 letter to Corbally, she reportedly wrote, "Is it possible not to elect Rod when the next annual meeting is held? Is it possible to remove him as director now, before he destroys the foundation?"

It is noteworthy that the men who prepared this response to Rod's charges include some of the old man's most trusted friends—men such as William Kirby and Robert Ewing. If they could not correctly assess the relationship of father and son, one wonders, who could? On the other hand, the scathing quotes attributed to the old man were all written at or just after the time when Rod was wresting control of the Bradford Exchange, amid so much interfamily rancor.

Rod insists the selected letters are not typical and could be easily countered with dozens of laudatory ones. Rod and his stepmother Catherine apparently never hit it off, and he threatened to sue her when the foundation was in its formative stages.

All this tension eased a bit in mid-May with the announcement that a very satisfactory deal had been worked out to sell Bankers Life to the ICH Corporation of Louisville for $382 million. For once the vote was unanimous; Rod approved and so did Morgan Stanley. However, lest it seem peace was about to descend on MacArthurville, Rod issued a statement the next day, saying he was "both pleased and unhappy" with the arrangement: pleased because the selling price "is at least $116 million more than the price the foundation would have received last November if I had not opposed the 'distress sale' to First Winthrop"; unhappy because "I believe an even higher price could have been received if the divestiture process had been handled properly and if Bankers management had worked to maintain the company's salability instead of transforming it for their own reasons."

Rod's original suit was dismissed by Cook County Circuit Court Judge Richard Curry for technical reasons, but he has since filed a revised version (dropping his charges against Doolen after learning the man is in ill health). Again he asks that the foundation be put in more responsible hands. The other directors have played "loosey-goosey" with the money so far, he says, and there's no reason to think they will tighten up now just because the assets are going into not-for-profit enterprises. In addition, he argues, the foundation is still in jeopardy of being hit with a $75 million federal penalty for failure to divest on schedule. On top of all that, he amended the suit on June 20 with the additional charge that the foundation filed false tax returns for five years (1978-82) by understating the value of its assets. As a result, Rod says, penalties as high as $500 million could be imposed by the federal government.

Just how substantial these charges are will no doubt be decided in court, and that battle could be an interesting confrontation. The directors are represented by former U.S. attorney Thomas Sullivan and former Illinois attorney general Tyrone Fahner, while Rod's attack will be under the direction of Kirkland & Ellis attorney Frank Cicero, whose brilliant 1976 representation of Renault Robinson led to the conviction of the Chicago Police Department for racial discrimination.

At this point, it seems clear that MacArthur Foundation directors are paid handsomely, even if they do work extra hard. Corbally's alleged $180,000-a-year take is certainly in a different league from the $12,000 paid yearly to Ford Foundation directors. It is also clear that Bankers Life earnings have been sinking in recent years; whether

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that is due to mismanagement or a general distress in the health insurance industry is open to argument.

Speaking for his fellow directors, Corbally says the foundation will continue its work and is now in a much stronger financial position following the major divestitures. He expresses the hope that the principals can overcome their differences and get together, although he does not appear overly optimistic. "There's a rift here that goes a way, way back," he says.

Rod too says he would like an end to the dispute, but he feels a genuine obligation to leave the foundation in better hands than it is in now. "If my time is limited," he says, "I will just have to work faster."

* * *

In 1976 Rod launched a separate foundation to do something constructive with *his* millions. The J. Roderick MacArthur Foundation (better known as "the Little Mac") has a mere $25 million in assets, about one-sixtieth as many as the Big Mac, and its grants are therefore in the relatively modest $1,000-to-$20,000 range. The Little Mac, which was enlarged recently with a substantial transfusion from Rod's lucrative Bradford Exchange overseas profits, probably reveals more than anything else what the man values above all.

Its aim, according to the founding charter, is "to foster democracy" by aiding those "who are inequitably treated by established institutions" and by encouraging "needed changes in these institutions." The American Civil Liberties Union and many of its associated organizations have been regular beneficiaries. So also have Amnesty International, the American Friends Service Committee, and the Committee to Protect Journalists. This month the Little Mac gave grants to several groups concerned with human rights in El Salvador and the role of the U.S. government in suppressing those rights. Another grant—to the Christic Institute—went "to defend the constitutional, human, and legal rights of alleged Salvadoran political refugees and the people arrested for helping move them to church-sponsored sanctuaries in the U.S." Last year Rod visited Central America to observe conditions and returned convinced intolerable abuse is occurring there. "I've always been concerned about First Amendment rights," he says. "It's important to support these things, to defend freedoms."

His experiences have molded him, and although he has known material comfort all his life, Rod seems to side instinctively with the outsider, the underdog, the victim of oppressive institutions. And that may help explain his failure to get along with his establishment-oriented peers on the MacArthur Foundation board or even to view reality from their perspective.

"Rod is a nonlinear thinker," says Lance Lindbloom, president of the Little Mac and one of Rod's closest advisers. "He can have 30 projects percolating in his head at once. He moves back and forth from one to another. The thing to remember is that in the end it all fits together. No matter what, he perseveres. In his own way he is a very objective person."

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The Money Mountain

J. Roderick MacArthur, son of a billiona

Loren Santow

William T. Kirby, foundation director and attorney

By Rob Warden

J. Roderick MacArthur is dying.

He is threatening to take $1.5 billion with him.

The $1.5 billion is the approximate current value of what is referred to with reverence, in the hallowed halls of the John D. and Catherine T. MacArthur Foundation, as "the asset."

J. Roderick, or Rod, MacArthur is one of eleven directors of the foundation, which is the second or third largest in America. He also is the only son of the late John D. MacArthur, the man who made "the asset."

In a deathbed lawsuit filed in Cook County Circuit Court, Rod MacArthur has accused eight of his fellow foundation directors of lining their pockets through illegal self-dealing which, he says, has exposed the foundation to at least $575 million in federal tax liabilities.

MacArthur claims, for example, that John E. Corbally has been "unjustly enriched" for his part-time job as director and president of the foundation. Corbally received more than $630,000 in salary, benefits, and expenses from January 1980 through September 1983, plus free use of a $325,000 foundation-owned condominium on the Chicago lakefront since April 1982.

While foundation assets were being "misapplied and wasted" on Corbally's condo and "excessive compensation" for him and six other directors, according to the suit, the foundation failed to comply with an Internal Revenue Code requirement that foundations give away at least 5 percent of the fair market value of their assets each year.

To cover up its violations of the minimum distribution requirement, the foundation substantially undervalued its assets in reports filed with the Internal Revenue Service from 1978 through 1982, the suit charges. As a result of the fraudulent valuations, it is alleged, the foundation could lose its tax-exempt status and face a federal tax liability of at least $500 million.

That possible liability, according to the suit, is in addition to some $75 million in tax penalties that the foundation may have incurred when it failed to comply with another Internal Revenue Code provision requiring foundations to divest themselves of at least 80 percent of their interest in any active business within five years of receiving it.

Under John D. MacArthur's will, the MacArthur Foundation inherited 100 percent of the stock of Chicago-based Bankers Life & Casualty Company on December 1, 1978. The divestiture deadline passed eight months ago, but divestiture still has not been accomplished.

The suit claims that the $575 million in tax liabilities from the understatement of value of assets and from the failure to divest on time can be avoided only by drastic action—by liquidating the foundation and scattering "the asset" over the philanthropic landscape.

That's what the suit asks. MacArthur wants Circuit Court Judge Richard L. Curry to put the foundation into receivership while "the asset" is cut up

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Loren Santow

John E. Corbally, ...ndation president

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and distributed among existing foundations with purposes similar to those of the MacArthur Foundation.

As drastic as this proposed remedy sounds, MacArthur says he has no alternative if, before he dies, he is to see the restoration of his father's funds to their original charitable purpose.

Corbally responds that the suit, which was prepared by the Chicago firm of Kirkland & Ellis, is baseless, defamatory, and frivolous. Another foundation director, Chicago attorney William T. Kirby, says that MacArthur "is a little man with a gun," that the allegations are "indecent," and that it is "a tragedy" that one of the country's top law firms would lend its name to the suit.

The elder MacArthur had two sayings that may be apropos to the present situation. One was, "Don't be a hog. You can be a pig—pigs get fed. But hogs get slaughtered." The other was, "The further up the slimy pole the monkey goes, the more his ass shows."

Rod MacArthur places Corbally, Kirby, and their six allied directors squarely into the hog category. They, in turn, look upon him as someone who has gone some distance up the slimy pole.

The suit is the latest battle in an old war between Rod MacArthur and the establishment that holds and controls the MacArthur fortune. In all likelihood, it will be MacArthur's last battle. At 63, he has cancer of the pancreas and, barring a spontaneous remission or unexpected medical breakthrough, his doctors say he will be dead in less than two years.

If he gets what he asks in the suit, the $1.5 billion MacArthur Foundation will be no more—the son of the billionaire having taken it with him.

As the drama unfolds before Judge Curry, it is like a game of king of the mountain—a colossal mountain of money. The mountain is all the wealth of Bankers Life, the accident and health insurance company that, throughout one of the most remarkable careers in the history of capitalism, John D. MacArthur used as a tax-sheltering receptacle for office buildings, residential developments, hotels, country clubs, golf courses, beaches, and vast wilderness areas.

When the 80-year-old tycoon died in January 1978, of the same malady that now afflicts his son, he willed the financial mountain to the foundation he had previously established in his name and that of his second wife, his son's stepmother, Catherine T. MacArthur. But he intentionally left no instructions on how the foundation was to spend the money. Says Kirby: "John didn't want to try to run things from the grave."

The chore of spending the money was left to a group of Damon Runyon characters in search of an author. They are tough, crusty, able, and combat-ready. They carry big sticks, but don't talk softly. The decibel level of their rhetoric, in fact, can be deafening. Yet a certain respect, the kind a military leader has for a worthy adversary, occasionally seethes through the rage.

On top of the money mountain and, in Rod MacArthur's view, ready for rendering are Corbally, 59, president emeritus of the University of Illinois, and Kirby, 73, the elder MacArthur's personal lawyer and general counsel of Bankers Life. In addition to serving as directors of the foundation, Corbally and Kirby are directors of Bankers Life and commanders, so to speak, of the small platoon of fellow directors named as defendants when MacArthur marched into Circuit Court on February 14, 1984.

The others directors who were named as defendants in February are Robert P. Ewing, chairman, director, and chief executive officer of Bankers Life; Paul D. Doolen, retired vice chairman and present director of Bankers; Gaylord Freeman, retired chief executive officer of the First National Bank of Chicago and now a director and member of the executive committee of Bankers; Paul Harvey, the conservative news commentator whose radio commentaries are sponsored by Bankers; Dr. Jonas Salk, inventor of the Salk polio vaccine; and Murray Gell-Mann, California Institute of Technology theoretical physicist and Nobel laureate.

Two other directors were not named as defendants because, according to MacArthur, they had not abused their positions with the foundation. They are Edward H. Levi, former U.S. attorney general and president emeritus of the University of Chicago, and Jerome B. Wiesner, president emeritus of the Massachusetts Institute of Technology.

The suit asserted derivative claims on behalf of the foundation, seeking restitution, money damages, and removal of the eight directors for their alleged conflicts of interest and receipt of excessive compensation. On February 22, the complaint was amended to join the foundation as a defendant and to assert non-derivative claims for its liquidation and dissolution under the Illinois General Not-for-Profit Corporation Act.

On March 13, Curry dismissed the suit. He held that MacArthur had neither requested that the defendant directors bring the derivative claims themselves nor alleged that such a request would have been futile—a normal prerequisite for a derivative action—and that because the non-derivative claims were inseparable from the derivative claims they also had to be struck.

Curry granted MacArthur's lawyers

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Money Mountain

(from page 6)

leave to amend the complaint to allege that asking the directors to sue themselves would be futile, but they chose instead to return to the drawing boards and recast the whole opus.

Two weeks and two days later, they filed a second amended complaint containing essentially the same factual allegations but purporting to rely on them only [illegible]basis for seeking liquidation and d[illegible]ution of the foundation. Although this version purported to drop any derivative claims, it nonetheless did specifically allege that at various times in the past MacArthur had suggested investigations into the conduct of the defendants and that the foundation board rebuffed these suggestions. This version of the complaint asked that the foundation's assets be conveyed to a new foundation with a board "constituted to exclude defendants."

On April 5, perhaps eying a subsequent amendment of the complaint to reinstitute derivative claims, MacArthur formally demande[illegible] writing that the foundation board [illegible]ate actions against Corbally and Kirby to recover certain compensation they allegedly improperly received.

In his demand concerning Corbally, MacArthur stated that in March 1980, the board approved an annual salary of $125,000 for Corbally, based on Corbally's representation that he would accept only half of the salary because he would "be doing other things" besides working for the foundation. In May 1982, according to MacArthur, Corbally said he would then work full-time, and was authorized to receive the full $125,000. About the same time, the foundation also agreed to purchase the $325,000 condo, with the understanding that Corbally would be living there full-time. However, MacArthur claimed, Corbally spent at least 18 weeks in the next 19 months at his home on Whidbey Island, Washington, and an unknown amount of time elsewhere not on foundation business.

According to MacArthur, Corbally paid himself more than authorized by the board: In 1981, when he was authorized to be paid $62,500, he paid himself at least $76,875, and in 1982, when he was authorized to be paid $104,167, he paid himself at least $131,042. MacArthur asked that the board to act to recover the alleged unauthorized over-compensation.

In his demand concerning Kirby, MacArthur alleged that Kriby had a conflict of interest when he was both general counsel for the foundation and a target of the investigations purportedly suggested by MacArthur. Because of the alleged conflict, according to MacArthur, Kirby should have advised his fellow directors to seek outside counsel concerning the investigations sought by MacArthur. Because Kirby did not so advise, MacArthur now asks the board to act to recover all compensation Kirby received as general counsel.

In response, the board retained outside counsel, Peer Pedersen of Pedersen & Houpt, for the expressed purpose of investigating the merits of MacArthur's two formal demands.

On May 25, MacArthur presented a new written demand that the board seek a declaratory judgment that Corbally, Kirby and five of the defendant directors—he dropped Doolen, who was in ill health—misapplied and wasted the foundation assets. The complaint, MacArthur told the board, should request an accounting, restitution, and removal of the named directors.

On June 14, the board approved a resolution acknowledging that MacArthur's demand had been received and that the directors would subsequently appoint a committee of directors to investigate and act definitively in regard to the demand.

Meanwhile, the defendants filed a motion to strike the second amended complaint, contending that it did not truly seek liquidation of the foundation but merely that its assets be conveyed to a foundation whose board excluded them but, implicitly, included MacArthur.

Such relief, argued the defendants, could be properly sought only through a derivative action and, in keeping with Curry's ruling on the first amended complaint, only after a proper demand had been made on the defendants to sue themselves.

Without responding to the motion to strike, MacArthur's lawyers on July 6 amended their complaint yet again. The third amended complaint eliminated all of the individual directors as defendants and sought only liquidation of the foundation and appointment of an interim receiver.

"J. Roderick MacArthur is dying," Kirkland & Ellis said in a memorandum of law. "The question is no longer whether, but when. Time does not permit Mr. MacArthur to litigate procedural questions like whether individual directors are proper defendants or whether certain ancillary relief is authorized by the Not-for-Profit Corporation Act."

The act gives Illinois courts the power to liquidate a foundation if it appears that acts of its directors "are illegal, oppressive, or fraudulent," or that its assets are being misapplied or wasted, or that it is unable to carry out its purposes. The third amended complaint alleges all of those things and makes, for the first time, the startling allegation that the foundation fraudulently understated the value of its assets to conceal violations of the federal minimum distribution requirement. The complaint said, "The misconduct which is the subject of this complaint strikes at the heart of charitable foundations."

Estimates of the foundation's actual worth have gone up steadily since the Bankers stock was conveyed to it in 1978. Original estimates of the total were something less than $1 billion, compared with the current estimate of about $1.5 billion.

There is no question that the foundation's tax returns for 1978 through 1982 gave values for the assets far below the actual values. The dispute rather is over whether the reported values were proper for purposes of determining the minimum distribution requirement. The foundation's position, of course, is that they were proper.

MacArthur alleges, however, that: "By understating the value of its assets, the foundation was able to distribute less than the required amount. Based on the false values reported by the foundation to the IRS, its aggregate distribution requirement for 1978 through 1982 was $181,065,647. Based on the real valuations given to the foundation by its financial advisors, the foundation's aggregate distribution requirement was between $245,599,074 and $254,756,876. The foundation's actual distributions through the end of 1983 (1983 distributions count against the 1982 requirement) aggregated $201,263,886. Thus, the foundation's shortfall of required versus actual disbursements from 1978 through 1982 was a staggering $44 million to $53 million."

The foundation, in memorandum prepared by its counsel, Levy and Erens, in support of a motion to strike the third amended complaint, contends that the asset values reported to the IRS were prepared by a qualified independent firm, Warburg Paribas Becker Inc., and that the reported values "fall well within the range indicated by the proper approach to value."

In an affidavit appended to the motion to dismiss, the foundation's chief financial officer, Joseph A. Diana, says that the Becker firm provided the foundation with the figures referred to as "actual values" by MacArthur but advised the foundation that it was "legitimate to value the common stock of Bankers [for purposes of determining the foundation's minimum distribution requirement] at values considerably below" these figures.

Diana's affidavit says that, after receiving these figures and this advice from Becker, the foundation was advised to obtain a bona fide appraisal of the fair market value of the Bankers stock to form the basis for computation of the minimum distribution. The advice came from the foundation's outside tax counsel, the firm of Burke Griffin Chomicz & Wienke—of which, incidentally, director Kirby was "of counsel" while the firm collected $1,964,512 in legal fees from the foundation from 1980 through 1983.

Based on this advice, Diana's affidavit continues, the Becker firm was retained "separate and apart from the engagement referred to above" to make such appraisals, and it subsequently

(see page 10)

Despite their fiduciary duty to obtain a maximum price for Bankers, MacArthur alleges, the dual directors instead "radically transformed" the company "from a predictable, successful, and marketable concern into an unpredictable and less valuable company." They allegedly did this by de-emphasizing its proven specialties and leading it into unproven areas that could not produce results until long after the divestiture deadline, and the effect was to reduce the interest of prospective purchasers of the company.

"The dual directors knew, or should have known, that these sweeping changes would have a profound negative impact not only on the profitability of the operations but also on potential purchasers," the suit says. "This decline in income and market value was a result of an intentional departure from the proven marketing strategy followed over the decades by Bankers Life and was directly contrary to foundation policy and common sense."

MacArthur says he first learned the extent of the mismanagement of bankers in June 1983 when the foundation's actuarial consultant, Milliman & Robertson, issued a report saying that the company had "materially revised the way it markets insurance" and that these changes introduced "significant risks as to future values" and discouraged prospective purchasers. In fact, MacArthur alleges, numerous prospective purchasers who visited the company "abandoned interest specifically because of the dual directors' fundamental transformation of it."

As an example of the dual directors' attitudes toward their fiduciary duty to the foundation, MacArthur says that at a recent foundation board meeting Ewing opposed a major business transaction on the grounds that it was "a completely one-sided arrangement for the benefit of only the foundation and none to Bankers and/or its subsequent owner."

While the foundation certainly does not admit any of the allegations concerning conflicts, neither is it in a position presently to deny them. The board has, after all, retained counsel to investigate the same alleged conflicts in response to MacArthur's formal demands. Thus, it has countered only that the allegations in the third amended complaint are improper because they in effect constitute an effort to press ahead with the disallowed derivative claims.

"As to each demand," says the foundation memorandum in support of its motion to dismiss,"either the foundation will file the suit requested by plaintiff or take other affirmative action, or the demand will be refused. In the latter event, plaintiff would no doubt seek to reassert the claims derivatively in this court. . . . In the meantime, however, it would be inappropriate and unnecessary to litigate the very allegations which are being considered by the board."

If the third amended complaint survives the motion to strike, it would no doubt signal the beginning of serious settlement negotiations.

While MacArthur insists that he would rather see the foundation dissolved than left in the control of his fellow directors, he undoubtedly would prefer something short of taking $1.5 billion with him. But what?

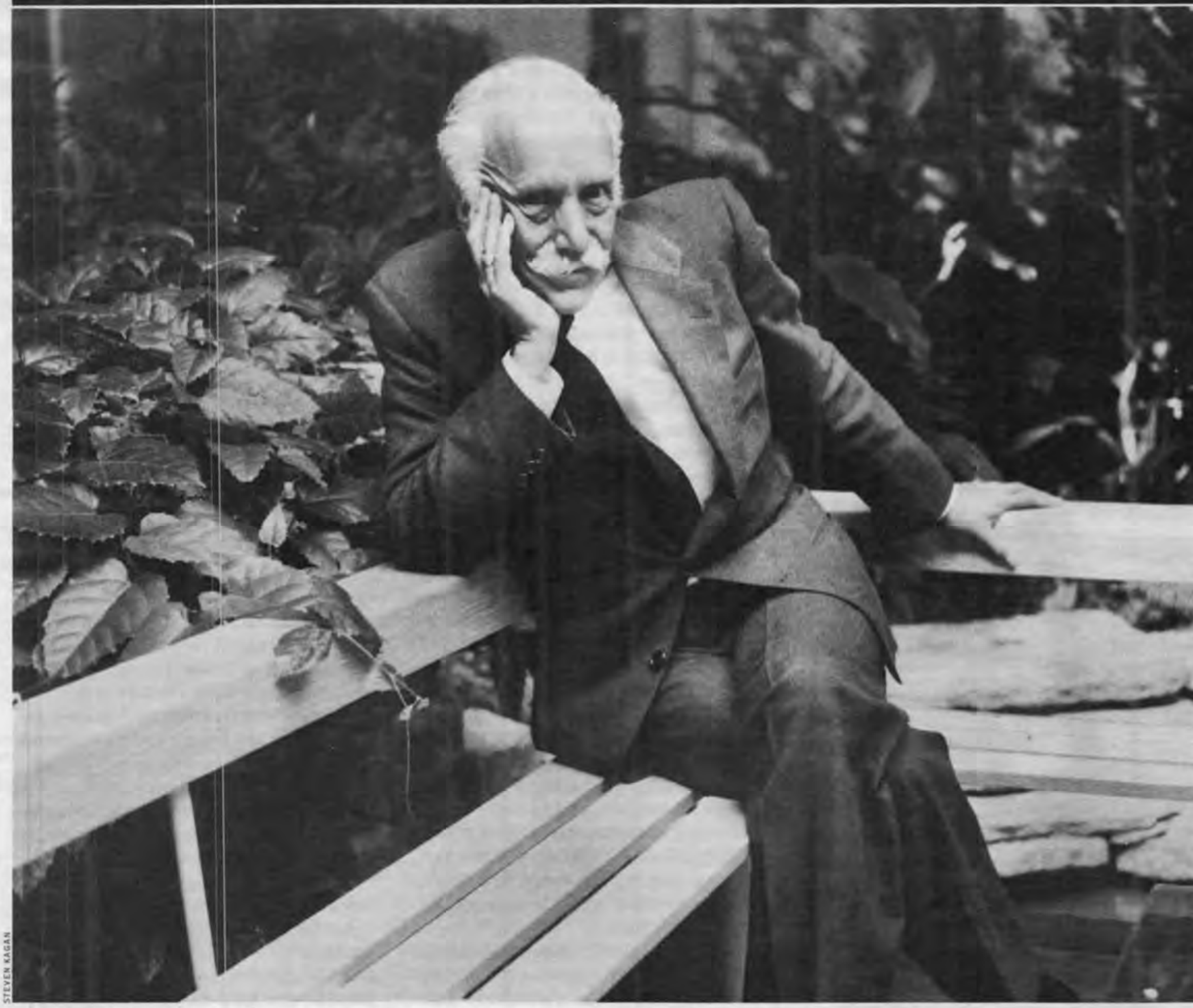
Neither side, of course, will comment on what might be acceptable terms. But several of the directors are old, and MacArthur might like to have a say in who succeeds them, and he has made it no secret that he would like to see a MacArthur on the board.

Give him that, give him a firm commitment to his favorite program, the Prize Fellows, reduce the potential for conflicts, and J. Roderick MacArthur would die a happier man. ☐

THE MACARTHUR 'GENIUS' AWARDS ARE JEOPARDIZED AS THE DYING PATRON ATTACKS THE FOUNDATION

People 9/10/84

Trouble



STEVEN KAGAN

"There's no presumption they know what they're doing," says MacArthur of the directors, whom he accuses of financial incompetence.

In the past five years the John D. and Catherine T. MacArthur Foundation has become the wellspring for one of the most fascinating talent hunts in America: the MacArthur Fellows Program, which seeks out creative minds and gives them six-figure, no-strings stipends designed to encourage "discoveries or other significant contributions to society." The winners of these so-called "Genius Awards" have ranged from an 18-year-old expert in Mayan hieroglyphics ($122,000) to an opthalmologist who works to prevent blindness in rural Kenya ($220,000). Says J. Roderick MacArthur, prime mover behind the grant program since its inception in 1979 and a director of the $1.5 billion foundation established by his eccentric billionaire father, "I know the program will produce something and somebody great, a new art form or a wonderful novel."

Maybe not. This year both the MacArthur Foundation—which also gives away up to $50 million a year to charitable and educational programs—and its central figure are in desperate trouble. In April, J. Roderick, 63, learned he will soon die of pancreatic cancer. Doctors gave him six to 24 months to live. Moreover, in the months that his illness was developing, he became convinced the foundation was being seriously mismanaged by the board—including such luminaries as Dr. Jonas

CONTINUED

J. Roderick MacArthur Is Dead; Encouraged Awards for 'Genius'

NYT 12/16/84

By KATHLEEN TELTSCH

J. Roderick MacArthur, a Chicago businessman and philanthropist who sought to encourage the spark of genius through no-strings cash awards to "exceptionally gifted individuals," died yesterday at Northwestern Memorial Hospital in Chicago. Mr. MacArthur, who suffered from cancer of the pancreas, was 63 years old.

The funds for the "Prize Fellows Program" came from his father, who amassed a fortune from insurance and real estate and left the money to the John D. and Catherine T. MacArthur Foundation.

The younger Mr. MacArthur, as a foundation director, was the prime force behind the innovative program freqently called the "search for geniuses," because anonymous scouts around the country nominate candidates for awards. The Foundation in 4 years has made awards to 141 individuals and allocated $43 million for prizes.

Mr. MacArthur was the only son of John D. MacArthur, who lived frugally and died in 1978, leaving the Foundation with assets of at least $1 billion, making it one of the wealthiest in the country.

The son built his own business, an international market for limited-edition collectors' plates, such as commemorative Christmas plates. A computerized systems operating on the trading floor enables buyers to place orders and receive immediate confirmation. The concern operates exchanges in Canada, four European cities and in Australia.

The younger Mr. MacArthur also established his own private philanthropy, the J. Roderick MacArthur Foundation, which supports various human rights and civil liberties causes.

Mr. MacArthur influenced the larger foundation to join the Atlantic Richfield Foundation in purchasing Harper's Magazine when the 130-year-old publication was on the verge of folding in 1980. His son, John R. MacArthur, known as Rick, became Harper's publisher in Nov. 1983, serving without salary.

But Mr. MacArthur's activity in the larger Foundation, particularly in the past year, was marred by frequent and bitter quarrels with the other directors, some of them internationally known scientists and scholars or prominent Chicago business leaders. He disagreed vehemently with them on plans for the divestiture of the Foundation's insurance and property holdings to comply with a Federal law limiting business holdings by foundations.

Privately, some board members attributed his often-quarrelsome behavior to the strained relationship maintained for many years with his father. Father and son had clashed frequently during the period when the younger MacArthur worked for the father's bank and insurance company, Bankers Life and Casualty Company.

The two ended their businss relationship in 1975 after what the son characterized as "a major dispute" but eventally achieved a reconciliation.

Wartime Service in France

John Roderick MacArthur — he preferred to be called "Rod" — was born in San Francisco on Dec. 21, 1920, attended Rollins College in Winter Park, Fla., and also the University of Mexico.

During World War II, he joined the civilian ambulance corps of the American Field Service and served with the French Army and in a French resistance unit. At the war's end, he remained in Paris as a correspondent for the United Press, and worked also as a free-lance writer. Many years later, he would say his interest in newspapers and in rescuing Harper's was influenced by his father's brother, the late dramatist Charles MacArthur, who was co-author of the play "The Front Page."

He returned to the United States in 1952 and worked as a freelance writer until he came to Chicago to supervise new business for his father's Citizens Bank and Trust Company.

In 1980, Mr MacArthur purchased Hammacher Schlemmer and revamped the retail store's inventory. It expects a modest profit this year for the first season in many.

In July, the American Civil Liberties Union of Illinois gave him its Roger Baldwin award for his support of human rights causes.

Besides his son Rick, Mr. MacArthur is survived by his wife the former Christiane L'Entendart, whom he married in Paris in 1947; a son, Gregorie, a journalist; and a daughter, Solange, a medical student.

The New York Times/Fred R. Conrad

J. Roderick MacArthur

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MacArthur Foundation

Easy to Come Cash Proves Hard to Go

By BARRY BEARAK,
Times Staff Writer

CHICAGO—Old man MacArthur was a skinflint of a billionaire, a late-blooming Midas with an uncanny knack for making money and an unbending contempt for spending it.

In his final years, he lived in one of his Florida hotels, commanding a real estate and insurance empire from a small Formica table near the dirty dish station in the coffee shop. Gravel-voiced and tobacco-stained, he barked orders into the phone and occasionally jotted a deal onto a paper place mat. Hotel guests sometimes mistook the casually dressed geezer for a bellman and ordered him to carry their bags. This he sportingly did.

John D. MacArthur's lawyers often reminded him of the inevitability of death, a fate that the billionaire apparently hoped to avoid by sheer adhesion of will. In any case, he didn't want his wealth left to his family because he believed that families should make their own money. And he didn't want it to go to the government, which he considered a bottomless well of bureaucratic waste.

Left Fortune to Charity

So in an irony born of necessity, he left the bulk of his fortune to charity. Don't ask me to think about it, he had ordered his lawyers; just set up a foundation and give it away when I'm gone. "I made the money," he once bellowed at his chief attorney. "You fellows will have to figure out how to spend it."

But now, six years after cancer of the pancreas killed the 80-year-old MacArthur, the fortune he built is proving more troublesome to give away than it was to earn. The guardians of MacArthur's wealth, eminent men on the grandest of missions, are pitted in a public bloodletting.

J. Roderick MacArthur, 63, the old man's only son and one of those appointed guardians, has sued the charitable foundation that bears his father's name—a $2-billion philanthropy, second in size only to the Ford Foundation.

The suit alleges that some of the other directors are mismanaging the fortune and scooping away extravagant salaries. At least $200 million has been lost, it charges, a squandering that will forever leave worthy errands undone.

'A Public Trust'

"These men act as if the money was theirs and not a public trust," said MacArthur, himself a late-blooming Midas, a self-made multimillionaire. "My father would be absolutely horrified."

The solution that his lawsuit seeks is liquidation—actually closing the doors, parceling his father's money to other foundations, literally loosing the fortune to the philanthropic winds.

"That would certainly be dramatic and historic," said James Joseph, president of the Council on Foundations, a national association of philanthropies in Washington D.C. "There's no precedent for such a thing."

But MacArthur's adversaries on the board are resisting stiffly. Several insist that he is just a stubborn

Please see CHARITY, Page 12

CHARITY

Continued from Page 1

grumbler, ever upset that his father didn't leave him control of the fortune.

"This is a well-managed foundation, and John would be proud of it," said William T. Kirby, the old man's longtime attorney and one of the foundation's directors.

Old man MacArthur's empire is no longer run from a single Formica table, but from headquarters in a landmark building in downtown Chicago. By law, a tax-protected foundation must give away 5% of its assets each year. That means the John D. and Catherine T. MacArthur Foundation, named for the tycoon and his late wife, must give away about $100 million annually.

Previously, the MacArthur Foundation was known best for its Prize Fellows program, a whimsical, if intriguing, scheme to secretly ferret out unsung creative talents and free them from their humdrum jobs with a swell of cash. No taxes, no strings. Winners can pursue great ideas or dream vacations.

But now what is somberly called "the lawsuit" rivals the foundation's generosity for the public's attention, and the directors' as well.

Famous Directors

Those 13 directors include some of the old man's handpicked associates, insiders like Paul Harvey, the radio commentator who for years pitched low-cost health insurance for the MacArthur empire's linchpin, Banker's Life & Casualty Co. Others are a brain trust of outsiders who were brought aboard later, including Dr. Jonas Salk, renowned inventor of the polio vaccine; Edward H. Levi, former U.S. attorney general; Murray Gell-Mann, a Nobel Prize-winning physicist; and Jerome B. Wiesner, noted engineer and educator.

"The flash of minds is almost visible" at the monthly board meetings, director Kirby said.

But the once-freewheeling give-and-take has taken on a tepid air of caution, even paranoia, as a result of the lawsuit.

"We now have meetings filled with lawyers hovering around, whispering in the directors' ears," said James M. Furman, the foundation's executive vice president. "Everything is taken down by a court reporter."

Billionaire's Legacy Proves Troublesome to Donate

ty—was permitted to veer away from proven methods of mass-mail marketing and depend more on agents and referrals. The new strategies cost the company $200 million in lost revenues, he contends.

Beyond that, he charges, the foundation missed a five-year federal deadline to divest itself of the insurance company. By law, a foundation cannot control more than 20% of a corporation's stock. Banker's was not sold until Oct. 30, missing the deadline by five months, and now there is the possibility of severe tax penalties.

Robert P. Ewing, a director of the foundation and Banker's president, said the company has in fact changed marketing strategy but denied any adverse impact. "We needed to prepare for the future, and '84 will be the most profitable year in the company's history," he said.

Tax Penalty Issue

As to the tax penalties, Congress recently passed a law permitting some extensions on the divestiture requirements. The IRS is considering such an extension for the MacArthur Foundation—and no penalties may be assessed.

But, though charges of incompetent management are nettlesome enough, they do not peeve other board members as much as the allegation that some directors have been too well rewarded for their work. The lawsuit names four examples: Kirby, Ewing, foundation President John Corbally and Gaylord Freeman, the retired chairman of the First National Bank of Chicago.

The suit states, for instance, that in four years Kirby collected more than $340,000 as a director and $97,000 as part-time legal counsel; in three years, Corbally collected more than $630,000 in his dual roles as director and president.

Associated Press

John D. MacArthur

Corbally, formerly president of the University of Illinois, said: "I do think Rod was disappointed—and maybe I'm being an amateur psychologist—that his father's estate was left in the hands of people unsympathetic to him. . . ."

John and Rod MacArthur did have their differences.

The old man was a mass-marketing genius who got rich selling low-cost health insurance to people with nothing but change to spare. Rod, too, had a flair for marketing gimmicks and applied some to the family businesses. But no one, including a son, became wealthy working for the old man.

In 1972, with a loan of $80,000

Whenever a plate changes hands, the company earns a commission. This year it will do a business of more than $100 million.

But at one point the old man literally snatched the booming enterprise from his son's hands, seizing the customer lists and securing the decorative plates every night under lock and key. In a storied counterattack, the son and employees loyal to him staged a surprise daylight raid, hauling away the cartons of plates in eight trucks. The old man—sitting at his Formica table in Florida—could not figure out a way to stymie the raid in time.

Eventually, the rival profiteers reached a cash settlement, though bad blood persisted.

Psychiatric Help Urged

Around that time, the father wrote to the son that "I was shocked when Louis told me this morning that you wanted him to give me 'your regards.' I think you should go back to your psychiatrist and get some more treatments. . . . This time at your own expense."

In a recent interview, Rod MacArthur reminisced about the old man, telling of a final reconciliation.

But frequently he lost track of the point of his stories, lost track of the memories themselves.

"It's the methadone," he apologized. "I need it for the pain."

In February, doctors determined that MacArthur has pancreatic cancer, the same kind that killed his father. He is still a sprightly man with a brigadier's mustache. But he has lost 30 or 40 pounds. His white hair now seems almost

back on the right track," MacArthur said wanly.

Yet it is difficult to tell if the foundation is actually off track or merely in the pains of its philanthropic infancy.

By all accounts the wide-open, even mischievous, mandate left by the old man is a staggering challenge: Just give it all away!

After six years, the directors are still trolling among mankind's art forms, diseases and emergencies, searching for the right places to dispense their plenty.

"With resources like this, we can influence the course of human evolution," Salk said.

But who gets the money? And how much?

About $43 million—or about 20% of the authorized grants—has gone into the Prize Fellows program. Most of the rest has gone scattershot to causes and culture: $5.4 million to rescue failing Harper's Magazine, $500,000 to the Chicago Police Department for bulletproof vests, $75,000 to the Chicago Symphony, $25,000 to Save-A-Pet Inc. in Highland Park, Ill.

Last year, the foundation gave $20 million for the study of parasitic diseases and $9.6 million to promote sharing of information among mental health researchers. Now, it is looking to tackle the question of international security—to find some way to keep the bombs in their silos.

"First things first, so you have to avoid the destruction of civilization," director Freeman said. "Then other things come along."

Of course, there is some irony in

these polarized board members trying to save the world.

Privately, MacArthur has said he does not really want to scotch the whole thing. He just wants changes—sound management and good sense.

In a July memo to the directors, MacArthur recommended these principles: that a member of the MacArthur family serve on the board whenever possible, that salaries be drastically chopped, that employees of the foundation not be affiliated in anyway with directors. Between the lines, the reforms aim at the dual roles played by Kirby and Corbally and the fees paid all around.

"Some of the principles have an accusatory tone," Corbally said, although he adds that he finds some of the suggestions reasonable and that he would like to find a way to compromise with MacArthur.

Hurt Feelings

Many of the board members will not even do things they approve of—just because they were MacArthur's ideas first, Corbally said; hurt feelings have hindered efforts to settle the lawsuit out of court.

"You get to a certain point, with all these strong egos on the board, you get people's backs up," Corbally said.

And so the squabbling goes on.

In some ways it seems almost ordained, the inevitable difficulties of charity the old man foresaw years ago.

"I made the money," is what he said. "You fellows will have to figure out how to spend it."