

Delaware Battles Hughes Institute

For the past several years, the Howard Hughes Medical Institute has portioned out a sizable amount of money for biomedical research and supported some 125 scientists at more than a dozen universities. Last year alone, the Hughes institute spent \$40 million. All this has been carried out under the authority of the institute's executive committee, its governing body since Hughes died in 1976. But if the state of Delaware has its way, the current members of the committee could be stripped of their power.

In a suit against the institute, which is a nonprofit corporation registered in Delaware, the state claims that the committee took control of the institute without proper authority and has asked a state judge to appoint the rightful trustee. The suit, which was filed in 1978, recently moved forward and a decision is expected as early as September.

The stakes of the case are high. The winner will gain control of the medical institute and also Hughes Aircraft Company, which last year grossed \$4.4 billion in sales. The institute is the sole stockholder. A change in leadership could affect the direction of the institute's biomedical research and Hughes Aircraft, which makes sophisticated electronic systems for military and commercial use. But for now, it is difficult to predict.

Some speculate that the suit is really a power play between two men who have been vying for control over one part or another of the Hughes estate for years. William Lummis, a cousin of Hughes, is the court-appointed trustee of Summa Corporation, a conglomerate comprising most of Hughes' estate, excluding Hughes Aircraft. Frank William Gay, a member of the institute's executive committee, is a former chauffeur to Hughes who rose to power in the industrialist's empire and has been influential for more than 20 years. It was Lummis who persuaded Delaware to file suit against the institute in 1978. Lummis asked to be named the successor to Hughes as trustee. But the court barred him from the case, saying that he had no standing to file the suit. The state is still pursuing the case. Delaware assistant attorney general Bartholomew Dalton says, "It's a very, very important issue. There are billions of dollars at stake." He says that the state does not stand to gain any revenue, either from inheritance or business taxes.

The heart of the lawsuit is a straightforward question: who did Hughes intend to be his successor as trustee of the institute? The legal arguments between the state and the institute focus mainly on the sudden appearance in 1971 of a sentence in the institute's bylaws. It stated, "In the absence of a trustee, the executive committee shall also have and may exercise the powers of the trustee." The new bylaw became known as the Davis sentence because it was drafted by Chester Davis, the former counsel to Summa Corporation, who became a member of the institute's executive committee along with Gay. Just how the Davis sentence came to appear in the bylaws is the key issue because there is only circumstantial evidence available to clarify the matter. Hughes failed to write down anything concerning the adoption of the sentence.

The Delaware attorney general has challenged the institute's contention that Hughes actually approved the bylaw. "Hughes never named any successor Trustee nor did he

designate the manner in which any successor Trustee would be named," the state said in pretrial briefs recently submitted to the state's chancery court.

In 1971, Hughes lived in seclusion at his Nassau estate and depended heavily on a handful of personal aides to carry out his commands and to maintain contact with the outside world. In March, he signed a one-page resolution that adopted bylaws concerning the institute. In early April, Hughes' personal secretary, Nadine Henley, who had worked for him for almost 25 years, received the documents in the mail but, as the state and the institute agree, there was no language included that assigned a successor. Davis then advised Hughes that he adopt language granting authority to the executive committee. In July, Henley sent the bylaws to the secretary of the institute. In them was the Davis sentence.

The institute asserts that Davis and Hughes had discussed the provision by telephone. It argues that Davis was "asked to submit a memorandum to Hughes" with the specific language. The institute's brief states that "the record strongly suggests that Ms. Henley then awaited Hughes' response. . . ." But there is no documentation of Hughes' alleged instructions.

Henley testifies that she cannot remember who conveyed Hughes' orders to her, but the institute's brief tries to assure the court that Henley would not have included the Davis sentence "unless someone she believed knew what Hughes had authorized had told her he had authorized it."

Richard Sutton, a lawyer who formerly represented Lummis, says, "That's just extraordinary that no one can remember exactly what happened. That's not the way people make long-term decisions of vital importance."

Gay is now the only remaining member of the committee who was a close aide to Hughes. Davis died in May. In 1978 George Thorn, emeritus professor at Harvard Medical School, joined the committee after serving as the institute's director of medical research since 1956. (Four others were recently appointed but their positions are pending the outcome of the lawsuit. They are Irving Shapiro, former chairman of DuPont; Donald S. Fredrickson, former director of the National Institutes of Health; Lawrence Fouraker, former dean of Harvard Business School; and William Graham, chairman of Baxter Travenol Corporation.)

Over the years the institute has acquired a reputation as a good source of funds for leading researchers. Between 1976 and 1981, the institute spent from \$15 million to \$18 million on research. In 1982, the expenditures more than doubled. Next year, the institute plans to begin neuroscience programs at Johns Hopkins, Harvard, and the University of California at San Francisco.

Few, if any, businessmen or scientists closely affiliated with the institute will openly speculate how the upcoming ruling will affect its research, let alone which way the court might decide. The unfortunate part of the battle over successorship of the institute is that Hughes, for all his mysterious ways, made it clear that he strongly supported biomedical research. But without signing any document, Hughes has left the matter in limbo.—MARJORIE SUN