



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

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**EXECUTIVE APPROVAL CIVIL LITIGATION MEMORANDUM**

<b>To:</b>	Jeffrey C. Mateer First Assistant Attorney General	Approved and Final: Date:	<div style="border: 1px solid black; padding: 2px; display: inline-block;">DS SCM</div> <u>6/11/2020   4:21 PM CDT</u>
	Darren L. McCarty <i>Approved and submitted to First Assistant:</i> Deputy Attorney General for Civil Litigation	Approved and Final: Date:	<div style="border: 1px solid black; padding: 2px; display: inline-block;">DS DM</div> <u>6/11/2020   4:14 PM CDT</u>
<b>Through:</b>	Joshua R. Godbey Chief <i>Approved and submitted to Deputy A.G:</i> Lesli Ginn, Deputy Chief Financial Litigation and Charitable Trusts	Approved and Final: Date:	<div style="border: 1px solid black; padding: 2px; display: inline-block;">DS JG</div> <u>6/9/2020   10:38 PM CDT</u>
<b>From:</b>	Mary T. Henderson, Senior Attorney Cat Day, Assistant Attorney General	Approved: Date:	<div style="border: 1px solid black; padding: 2px; display: inline-block;">DS MH</div> <u>6/9/2020   4:59 PM CDT</u>
<b>Date:</b>	June 9, 2020		
<b>Re:</b>	<i>Expedited Request to Investigate</i> The Roy F. & Joann Cole Mitte Foundation		

**Synopsis:**

Charitable Trusts (“CT”) requests approval to open an investigation into the Roy F. & Joann Cole Mitte Foundation (“Mitte”), a Texas nonprofit corporation and 501(c)(3) exempt private foundation. Mitte distributes private grants to nonprofit organizations and scholarships for qualified students to Texas higher education institutions.

The Attorney General received a memorandum alleging misconduct of Mitte’s counsel and leadership.

**Please note: Expedited approval is requested by June 9, 2020.**

**Background:**

Mitte is a registered Texas non-profit and 501(c)(3) organization. Since its inception in 1994, Mitte has been operating and making distributions, primarily through private grants to nonprofit



organizations and scholarships for qualified students to Texas higher education institutions. Presently, Mitte has approximately \$13,000,000 in assets.<sup>1</sup> In 2017, the Mitte Foundation distributed approximately \$700,000 in charitable grants.

Mitte invested a portion of its assets with two subsidiaries of World Class Capital Group, LLC: (i) WC 1st and Trinity, LP; and (ii) WC 3rd and Congress LP (collectively “World Class”). Mitte and World Class have been involved litigation over World Class’s various breaches of duty since December 2018.<sup>2</sup>

In June 2020, Maryann Norwood, World Class Capital Group, LLC’s internal counsel, provided this office with a memorandum that alleges misconduct of both Mitte’s counsel and leadership.

World Class’s allegations include:

- Former Chairman of the Mitte Foundation, Dilum Chandrasoma, attempted to conjure sale of the investment properties in a self-dealing transaction;
- World Class has been willing to purchase the Mitte Foundation’s interest at fair market value. The Mitte Foundation refused to engage in Fair Market Valuation of its interests;
- When Mr. Chandrasoma was removed as President of the Mitte Foundation last summer, Mitte Foundation’s lack of leadership allowed its counsel to engage in “protracted litigation rather than equitable decoupling” to gain maximum amount of attorney’s fees;
- The Mitte Foundation’s 2017 IRS Form 990 details a negative cash flow of -\$440,794. Further, administration expenses were high at \$771,273;
- Mitte Foundation’s counsel has not disclosed a fee agreement;
- Collusion between Mitte Foundation’s counsel and the Receiver for excessive fees;
- The Mitte Foundation agreed to advance \$150,000 of public charitable funds to the Receiver; and
- The Receiver’s counsel also refused to disclose its fee agreement.

If true, these allegations are concerning and show a lack of leadership from Mitte’s Board of Directors. Further, any excessive legal fees resulting in the use of charitable funds in excessive litigation is not in the best interest of the charity.

Mitte’s 2017 990-PF, the most recent on file, shows annual operating expenses of \$1,278,778, of which only about half went to charitable grants and charitable contributions.

### **Legal Authority:**

Pursuant to the Texas Business Organizations Code §§12.151-12.156, the Attorney General is authorized to examine a Texas corporation’s books and records by issuing a request to examine. The Attorney General’s authority to investigate also stems from its role as the protector of the

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<sup>1</sup> This amount excludes the \$3,000,000 invested with World Class Holdings, LLC that is subject to current litigation in arbitration (American Arbitration Association Cause No. 01-19-0000-5347) and Travis County District Court (Cause No. D-1-GN-18-007636; *The Roy F. & Joann Cole Mitte Foundation v. WC 1st and Trinity, LP, WC 1st and Trinity GP, LLC, WC 3rd and Congress, LP and World Class Capital Group, LLC*; In the 126<sup>th</sup> Judicial District Court of Travis County, Texas).

<sup>2</sup> The Attorney General filed a Petition in Intervention in the Travis County District Court matter on June 8, 2020.

public interest in charity pursuant to the common law and the Texas Constitution. As stated by the Texas Supreme Court, “the power of the Attorney General in matters dealing with charitable trust have deep roots in our common law.” *Coffee v. William Marsh Rice University*, 403 S.W.2d 340, 343. *See also Powers v. First National Bank of Corsicana*, 161 S.W.2d 273, 284 (Tex. 1942) (“in the case of any public charity trust it is not only [the Attorney General’s] right but his duty to sue to protect and enforce it wherever proper and necessary.”)

This investigation could reveal violations of the standards of care and breaches of fiduciary duty of directors and officers of a nonprofit charitable corporation under the Texas Business Organizations Code and the common law.

**Budget:**

No costs are anticipated other than the ordinary use of agency resources.

**Other Relevant Information/Considerations:**

World Class’s counsel wrote the memorandum alleging misconduct at Mitte.

The Attorney General filed suit against the Mitte Foundation in 2008. Among other things, Scott Mitte, son of the Mitte Foundation’s settlors, improperly used the Mitte Foundation’s credit cards for personal benefit, authorized excessive compensation for himself, and improperly used Mitte Foundation property. As a result of the suit, Scott Mitte resigned from his position as Chairman and CEO of the Mitte Foundation and has a lifetime prohibition from working with the Mitte Foundation.

**Recommendation:**

CT recommends opening an investigation of Mitte to gather information about the non-profit corporation’s activities, to independently verify the allegations in the memorandum, and to identify the potential wrongdoing. We plan to issue a Request to Examine (“RTE”) to Mitte pursuant to Texas Business Organizations Code § 12.152, to obtain copies of board minutes, board resolutions, financial records, and other documents that may assist us in our review. If we determine that a pre-suit deposition will facilitate our investigation, we will seek additional approval to file petitions under Rule 202 to take depositions.

**Due to current pending litigation, expedited approval is requested by June 9, 2020.**

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[N/A] All necessary draft pleadings and documents are included for submission with this Memorandum.

CONTACT/ RETURN TO: Laura Edwards, (67866); Ellen Hoopes (54392)