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Thx

7/6/2020 5:23:47 PM


20-062220 Letter to Chester.pdf

House Managers
EX. 096



June 22, 2020

VIA EMAIL

Ray Chester

Mike Shaunessy

McGinnis Lochridge & Kilgore

600 Congress Avenue, Suite 2100

Austin, Texas 78701

**Re: The Mitte Foundation v. WC 1st and Trinity, LP et al.:
Confidential Rule 408 Settlement Offer**

Ray and Mike:

This communication is a confidential settlement offer pursuant to Texas Rule of Civil Procedure 408. In no circumstances may this settlement offer be admitted into evidence or otherwise referenced in the ongoing disputes between the parties.

As you are aware, the trial court has determined that the fair market value of your client's limited partnership interests is as follows:

- \$2,883,840 - WC 1st and Trinity, LP,
- \$991,465 - WC 3rd and Congress LP

For nearly twenty months the Partnerships have been attempting to propose terms for a business divorce, with the crux of the matter being that your client receives the fair market value of its interests.

The Partnerships have requested the relevant attorney fee arrangements relating to both the Mitte Foundation, and the appointment of a Receiver, as well as any fee sharing arrangements or documents relating to financial benefits among the Mitte Foundation, counsel for Mitte, the receiver and counsel for the receiver. Despite repeated requests, and a pending motion to compel regarding the same, this information has not been produced to date.

Based upon the limited billing records and information that has been provided, we understand that the Mitte Foundation was incurring approximately \$25-30,000 per month in legal fees with your firm between March and May 2019; importantly, these fees are paid with public funds intended for charitable use and benefits associated with such use. That monthly estimate was

prior to the reactivation of the district court and the initiation of the appellate proceedings that ensued in the fall of 2019, which undoubtedly increased expenses to the Foundation. In addition, the Foundation has posted two \$100,000 bonds, advanced fees to the receiver of at least the \$40,000 initial retainer (who bills at \$450.00 per hour) and is obligated up to another \$110,000 for additional expenses of receiver's counsel, and the costs of appraisals - all of which are also paid with public funds intended for charitable use and the benefits associated with such use. Even on a conservative estimate, the sum of the Mitte Foundation's expenses in this litigation totals nearly \$1,000,000, assuming the only expense to the Mitte Foundation is your discounted hourly rate.

One million dollars in expenses is an **enormous** burden relative to the \$3,875,305 of investments at issue in this litigation. Further, given the amended claims filed by both parties within the arbitration, and the damage that the receivership is causing to the Partnerships, via loan default, default interest, receivership expense and otherwise, there is no chance that legal fees will stop in the foreseeable future. For Mitte to continue this litigation, it will certainly require another significant commitment to expend the charitable funds it is entrusted with to steward.

Additionally, the receivership that the Mitte Foundation has pursued also seeks to make additional payment for the receiver's services of 1.5% of amounts paid to debt holders, and 3% of amounts paid to equity holders. This is an egregious amount of additional expense, which would ultimately be borne in part by the Mitte Foundation's public funds, should the receivership continue.

In light of all of the foregoing, we are presenting a good faith offer in an effort to completely resolve the disputes between the parties, and to ensure the Mitte Foundation exits this investment at its fair market value. In spite of the significant costs that the Mitte Foundation has caused the Partnerships to bear, my clients will agree to a settlement on the below terms:

1. The parties will execute a settlement agreement, that will provide as follows:
 - a. Immediate abatement of all pending proceedings and matters, including but not limited to the restriction on the General Partners to conduct business for the Partnerships (so this transaction can be consummated);
 - b. The settlement agreement will provide for the purchase of Mitte's partnership interests in WC 1st and Trinity, LP and WC 3rd and Congress, LP for an aggregate amount of \$3,875,305 ("Settlement Payment") as follows:
 - i. The settlement agreement will include as exhibits (a) the previously agreed assignments and releases to be updated only for relevant dates and (b) forms of the dismissals and orders required in 1.e. and 1.f. below.
 - ii. The settlement agreement will include Gregory S. Milligan ("Receiver") as a party, in which he will (a) affirm certain obligations under the settlement agreement more fully set forth in 1.f. below, (b) indicate that if any expenses or fees are due to Receiver, only Mitte shall be responsible for payment of any and all fees, expenses or any other costs owed to Receiver pursuant to

- his appointment under either the AAA or the district court proceedings and (c) warrant and represent that as of the Escrow Date, he will provide full cooperation to the Partnerships and general partners as necessary to notify third parties of his discharge and otherwise transition the control and possession of all property back to the Partnerships.
- iii. The settlement agreement will include Fidelity National (“Escrow Agent”) as a party and will provide that so long as the conditions in section 1.e. and 1.f. below are timely satisfied, Mitte will have an irrevocable right to the Settlement Payment
 - iv. The parties will tender the fully executed copy of the settlement agreement to the Escrow Agent who will administer the consummation of the settlement agreement as set forth below.
- c. Within two (2) business days of Escrow Agent’s receipt of the fully executed settlement agreement, my clients will tender an escrow deposit of \$100,000 towards the Settlement Payment to the Escrow Agent (“Escrow Date”).
 - d. Within forty-five (45) days of Escrow Agent’s receipt of the fully executed settlement agreement, the remaining balance of the Settlement Payment will be funded in full to the Escrow Agent (“Payment Date”).
 - e. No later than five (5) business days from Escrow Agent’s confirmation of receipt of the Settlement Payment, Mitte will tender to the Escrow Agent:
 - i. an entered order providing all matters in the AAA Arbitration (AAA CASE NO. 01-19-0000-5347) are dismissed with prejudice between the Parties and any receivership appointment is discharged;
 - ii. an entered order providing that all matters in Travis County District Court (Cause No. D-1-GN-18-007636) are dismissed with prejudice between the Parties and any receivership appointment is discharged;
 - iii. entered orders for each of the three cases pending before the Third Court of Appeals (Cause No. 03-19-00798; Cause No. 03-19-00799 and Cause No. 03-19-00905) providing that all matters are dismissed with prejudice and any stay orders are vacated (in furtherance of the foregoing, the parties will submit a joint motion supporting this order on the Escrow Date);
 - f. No later than five (5) business days from Escrow Agent’s confirmation of receipt of the Settlement Payment, the Receiver will:
 - i. file with the Travis County District Court a nonsuit of the lawsuit allegedly brought on behalf of WC 1st and Trinity, LP (Cause No. D-1-G-19-008609) and tender such filed copy to the Escrow Agent;

Brickman 00149

- ii. tender to the Escrow Agent a sworn final receivership report indicating all actions it has taken under any receivership appointment, all parties he has contacted along with contact information and an inventory of all property of the Claimants in his possession;
- g. Upon timely receipt of all of the documents as required in 1.e. and 1.f., the Escrow Agent will immediately release the Assignment Payments to Mitte and release the fully executed Settlement Agreement to the parties.

The purpose of this proposal is to offer your client a final resolution of all matters between the parties at the fair market value of their interests, which was established by the District Court chosen by the Mitte Foundation for enforcement of its motions.

To our knowledge, the Mitte Foundation has failed to file updated Form 990s with the IRS that would indicate the total assets of the Foundation. To the extent that you believe your client's interests are worth greater than the trial court's determination, your client is obligated to accurately report the same and begin distributing the increased appropriate amount of assets necessary to maintain its charitable status.

This offer is for settlement purposes only, and it should not be considered as an admission or waiver of any of my client's rights and remedies.

Please advise if you wish to engage in discussion of this settlement offer by 5:00 p.m. central time on June 23, 2020.

Sincerely yours,


Terry L. Scarborough

Cc: Josh Godbey, joshua.godbey@oag.texas.gov
Cat Day, cathleen.day@aog.texas.gov

iMessage
7/7/2020 11:57:50 AM

Wrapping up a call and will call back ASAP

7/7/2020 2:40:35 PM

Please call

Just tried you. Went to voice mail

Please call before 3 if you can. Thanks

7/8/2020 7:55:37 PM

I was mistaken. The motion for stay was filed yesterday but no hearing has been set yet

See you tomorrow at 8:30

CAUSE NO. D-1-GN-18-007636

THE ROY F & JOANN COLE MITTE § IN THE DISTRICT COURT OF
FOUNDATION, §
Plaintiff, §
v. §
WC 1st AND TRINITY, LP, WC 1st AND § TRAVIS COUNTY, TEXAS
TRINITY GP, LLC, WC 3rd AND §
CONGRESS, LP AND WORLD CLASS §
CAPITAL GROUP, LLC §
Defendants. §§ 126TH JUDICIAL DISTRICT

MOTION TO STAY PROCEEDING

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES KEN PAXTON, Attorney General of Texas, on behalf of the public interest in charity, (“Attorney General”) and files this Motion to Stay Proceeding in the above-referenced cause, and would respectfully show the Court the following:

I.

On June 8, 2020, for and on behalf of the interest of the general public of this state in charitable trusts, the Attorney General filed a Petition in Intervention in this proceeding, pursuant to §123.002 of the Texas Property Code and Rule 60 of the Texas Rules of Civil Procedure.

II.

The Attorney General asks the court for a brief stay in all proceedings, including deadlines, discovery, and hearing dispositive motions, pending the Attorney General’s attempt to work with all parties to set a mediation and hopefully reach a just and equitable resolution to the dispute. The Attorney General requests this brief stay to preserve the resources of Plaintiffs Mitte Foundation pending mediation, which will accrue to the benefit of the public’s interest in charity.

PRAYER

WHEREFORE, the Attorney General prays for such relief above to which he may be entitled on behalf of the public interest in charity.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy First Assistant Attorney General

DARREN L. McCARTY
Deputy Attorney General for Civil Litigation

/s/ Joshua R. Godbey
Joshua R. Godbey, Division Chief
State Bar No. 24049996
Financial Litigation and Charitable Trusts Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 475-4207 Phone
(512) 477-2348 Fax
joshua.godbey@oag.texas.gov

On Behalf of the Public Interest in Charity

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Attorney General's Motion to State Proceeding* was served by e-service on July 7, 2020, to the following:

Ray C. Chester
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mshaunessy@mcginnislaw.com

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V. Blayre Peña
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bpena@hslawmail.com

Stephen W. Lemmon
Rhonda B. Mates
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LEMMON, LLP
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lemmon@slollp.com
mates@slollp.com

Wallace B. Jefferson
Nicholas Bacarisse
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Austin, Texas 78701
wjjefferson@adjtlaw.com
nbacarisse@adjtlaw.com

/s/ Joshua R. Godbey
Joshua R. Godbey

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Sharron Lee on behalf of Joshua Godbey
Bar No. 24049996
sharron.lee@oag.texas.gov
Envelope ID: 44323985
Status as of 07/08/2020 09:44:10 AM -05:00

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Andrew MEdge		aedge@mcginnislaw.com	7/7/2020 4:27:55 PM	SENT
Dennis Roossien		droossien@munsch.com	7/7/2020 4:27:55 PM	SENT
James Ray		jray@munsch.com	7/7/2020 4:27:55 PM	SENT
Angela Mays		amays@munsch.com	7/7/2020 4:27:55 PM	SENT
Lisa Garrett		lgarrett@munsch.com	7/7/2020 4:27:55 PM	SENT
Michael A. Shaunessy	18134550	mshaunessy@mcginnislaw.com	7/7/2020 4:27:55 PM	SENT
Joshua Godbey	24049996	Joshua.Godbey@oag.texas.gov	7/7/2020 4:27:55 PM	SENT
Jason Snell	24013540	firm@snellfirm.com	7/7/2020 4:27:55 PM	SENT
Kim McBride		kmcbride@mcginnislaw.com	7/7/2020 4:27:55 PM	SENT
Ray Chester	4189065	rchester@mcginnislaw.com	7/7/2020 4:27:55 PM	SENT
Katherine Stein	24083980	kstein@kslaw.com	7/7/2020 4:27:55 PM	SENT
Annette Bittick		abittick@mcginnislaw.com	7/7/2020 4:27:55 PM	SENT
Jason Augustine		jason@reeveaugustine.com	7/7/2020 4:27:55 PM	SENT
Jack Simms		jack@wittliffcutter.com	7/7/2020 4:27:55 PM	SENT
Maria AmeliaCalaf		mac@wittliffcutter.com	7/7/2020 4:27:55 PM	SENT
John Saba		john@wittliffcutter.com	7/7/2020 4:27:55 PM	SENT
Julie Doss		jdoss@mcginnislaw.com	7/7/2020 4:27:55 PM	SENT

Associated Case Party: WC 1st and Trinity, LP

Name
Kevin Orellana
Terry Lane Scarborough
Viola Pena

Brickman 00155

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Sharron Lee on behalf of Joshua Godbey
Bar No. 24049996
sharron.lee@oag.texas.gov
Envelope ID: 44323985
Status as of 07/08/2020 09:44:10 AM -05:00

Associated Case Party: WC 1st and Trinity, LP

Wallace Jefferson	19	wjefferson@adjtlaw.com	7/7/2020 4:27:55 PM	SENT
Nicholas Bacarisse	24073872	nbacarisse@adjtlaw.com	7/7/2020 4:27:55 PM	SENT
Kate Stein		kstein@kslaw.com	7/7/2020 4:27:55 PM	SENT
Edward FFernandes		efernandes@kslaw.com	7/7/2020 4:27:55 PM	SENT
Adam Gray	24087616	agray@kslaw.com	7/7/2020 4:27:55 PM	SENT

Associated Case Party: GregoryS.Milligan

Name	BarNumber	Email	TimestampSubmitted	Status
Rhonda Bear Mates	24040491	Mates@slollp.com	7/7/2020 4:27:55 PM	SENT
Stephen W. Lemmon		lemmon@slollp.com	7/7/2020 4:27:55 PM	SENT

Associated Case Party: WC 1st and Trinity GP, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Edward FFernandes		efernandes@kslaw.com	7/7/2020 4:27:55 PM	SENT
Kate Stein		kstein@kslaw.com	7/7/2020 4:27:55 PM	SENT

Associated Case Party: WC 3rd and Congress, LP

Name	BarNumber	Email	TimestampSubmitted	Status
Edward FFernandes		efernandes@kslaw.com	7/7/2020 4:27:55 PM	SENT
Kate Stein		kstein@kslaw.com	7/7/2020 4:27:55 PM	SENT

Associated Case Party: World Class Capital Group, LLC

Brickman 00156

Automated Certificate of eService

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Sharron Lee on behalf of Joshua Godbey
Bar No. 24049996
sharron.lee@oag.texas.gov
Envelope ID: 44323985
Status as of 07/08/2020 09:44:10 AM -05:00

Associated Case Party: World Class Capital Group, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Edward FFernandes		efernandes@kslaw.com	7/7/2020 4:27:55 PM	SENT
Kate Stein		kstein@kslaw.com	7/7/2020 4:27:55 PM	SENT

Associated Case Party: Ken Paxton on Behalf of the Public Interest in Charity

Name	BarNumber	Email	TimestampSubmitted	Status
Cathleen Day	24105783	cathleen.day@oag.texas.gov	7/7/2020 4:27:55 PM	SENT

Brickman 00157

CAUSE NO. D-1-GN-18-007636

THE ROY F & JOANN COLE MITTE
FOUNDATION,
Plaintiff,

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

WC 1st AND TRINITY, LP, WC 1st AND
TRINITY GP, LLC, WC 3rd AND
CONGRESS, LP AND WORLD CLASS
CAPITAL GROUP, LLC

Defendants.

126TH JUDICIAL DISTRICT

ORDER GRANTING MOTION TO STAY PROCEEDING

On this day, came to be heard Ken Paxton, Attorney General of the State of Texas, on behalf of the public interest in charity (the “Attorney General”), on his Motion to Stay Proceeding.

Having considered the pleadings on file, and the arguments and information before it, the Court FINDS that the interests of justice and judicial economy favor an equitable and just resolution to the dispute.

IT IS THEREFORE ORDERED that:

- (a) The Attorney General’s Motion to Stay Proceeding is GRANTED;

SIGNED this _____ day of _____ 2020.

The Honorable Jan Soifer, Judge Presiding

CAUSE NO. D-1-GN-18-007636

THE ROY F. & JOANN COLE MITTE
FOUNDATION,

Plaintiff,

v.

WC 1ST AND TRINITY, LP,
WC 1ST AND TRINITY GP, LLC,
WC 3RD AND CONGRESS, LP AND
WC 3RD AND CONGRESS GP, LLC

Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126TH JUDICIAL DISTRICT

**PLAINTIFF’S OPPOSITION TO ATTORNEY GENERAL’S
MOTION TO STAY PROCEEDING**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES The Roy F. & Joann Cole Mitte Foundation (“Mitte”), and files this Opposition to Attorney General’s Motion to Stay Proceeding and would show the Court as follows:

I. INTRODUCTION

The Attorney General’s Motion does not establish that a stay is necessary for Mitte’s benefit or to protect the public interest. On the other hand, a stay in this case has the potential to not only prejudice Mitte’s interests but to frustrate the Court-appointed receiver in his duties. The parties have discussed the possibility of a third mediation in this case, but there is no present agreement and certainly no reason to stay this case pending such a mediation. Staying a lawsuit pending mediation is not the norm, and there has been no showing that a stay should be entered here.

II. BACKGROUND OF AG INTERVENTION

Because Mitte is a charitable organization, Plaintiff provided notice of this suit to the Financial Litigation and Charitable Trust Division of the Attorney General's office on December 9, 2019. (Ex A, attached). Ms. Cathleen Day of the AG's office responded on December 18, asking the district clerk to provide notice of any hearings. (Ex. B, attached). On January 22, 2020, Ms. Day emailed the undersigned counsel for Mitte posing the following questions:

Ray,

I am the attorney assigned to the above referenced matter. I have reviewed the file, and I have a few follow up questions for you regarding the Mitte Foundation's assets:

- What percentage of the Foundation's assets were invested with the Defendants?
- Why did the Foundation invest in real estate?
- How are the Foundation's remaining assets invested?
- What is the value of the remaining assets?

(Ex. C, attached). Thereafter, the undersigned and Ms. Day had a telephone conversation in which all her questions were answered. The AG then filed a Waiver of Intervention on January 31, 2020.

(Ex. D attached). The Waiver contained the following admonition:

If any pleading is filed herein that adds additional parties or causes of action, such pleading would constitute a new or additional proceeding involving a charitable trust, which will require additional notice to the Attorney General pursuant to §123.003 of the Property Code.

(Ex. D at 1). After Defendants were unable to post a supersedeas bond, there were apparently ex parte communications between Defendant's and the AG's office. Mitte's counsel was copied on an email from Ms. Day to Maryanne Norwood, in-house counsel for World Class, in which she stated among other things "I appreciate you giving this office notice of the new cause of action filed on April 29, 2020 in Plaintiff's Application for Enforcement of Arbitrator's Order Compelling Production." (Ex. E, attached). Soon thereafter, the Attorney General's office

intervened in the case by and through the head of the Financial Litigation and Charitable Trust Division, Mr. Joshua Godbey. (Ex. F, attached). The petition in intervention said, among other things, “[t]he Attorney General recently received notice of a new cause of action filed in this matter.” (Ex. F at 1). It is obvious to anyone who read either the title or the content of Plaintiff’s Application for Enforcement of Arbitrator’s Order Compelling Production that it did not constitute a “new cause of action,” and neither that filing nor any other changed the basic facts that caused the AG’s office to file a Waiver on January 31, 2020.

III. THE REQUEST FOR STAY IS NOT WELL TAKEN

The timing of the AG’s stay motion is most curious. There does not appear to be anything singular about the present moment in this litigation that makes the public interest require a stay—especially as repeated stays due to World Class’ various mandamus and appeals to the Third Circuit have severely hampered the receiver and delayed resolution of this dispute.

On the other hand, the reasons that Defendants might desire a stay are clear.¹ Defendants have been unable to file a supersedeas bond, and their efforts to shield their unscrupulous business practices from the eyes of the receiver and the Court are failing. Defendants recently produced certain financial documents for the first time, and there are many financial irregularities that have come to light as a result of that production. For example, Mitte’s interest in 3rd & Congress was diluted from 11.65% to 6.83% on the basis of a 2016 capital call. Documents in the June 25, 2020 production demonstrate that this capital call was a sham, because none of the World Class entities contributed any capital, and their ownership was not diluted, but rather increased at the expense of

¹ There is no legitimate reason that the AG office would have to intercede in this case to protect *Defendants’* interests, but nevertheless, Defendants apparently expect its protection and assistance. Counsel for Defendants has trumpeted the AG’s intervention at every opportunity, including in filings with the Third Court of Appeals and as a justification for delaying proceedings in the related arbitration.

Mitte and other limited partners. Additionally, the receiver is currently seeking to depose Ms. Barbie Lee regarding the whereabouts of missing receivership property.

The receivership has already been stayed several times as a result of Defendant's efforts, and the Court is well aware of the detrimental effect these delays have had on the receiver being able to carry out his duties. Defendants have a legitimate avenue to stay the case—the posting of a supersedeas bond in the amount they requested—but they have failed to follow legitimate means but instead have lobbied the AG's office for a stay of execution using the public's interest as a pretext. Mitte would argue that the best way to protect the public's interest in charity is to allow the receiver to continue to do his job.

In support of its request for a stay, the AG's office offers only a single sentence of justification, "to preserve the resources of Plaintiffs Mitte Foundation pending mediation, which will accrue to the benefit of the public's interest in charity." Mot. at 1. The motion cites no authority or precedent in support of its request. The Motion fails to offer a sufficient basis to disrupt Mitte's ability to move this litigation forward to resolution. Further, the Motion does not even mention, much less justify, its intrusion on the activities of the receiver.

IV. PRAYER

For the reasons set forth herein, Plaintiff respectfully requests the Motion to Stay Proceeding be denied.

Respectfully submitted,

MCGINNIS LOCHRIDGE LLP

Ray Chester

State Bar No. 04189065

Michael A. Shaunessy

State Bar No. 18134550

Andrew Edge

State Bar No. 24071446

600 Congress Avenue, Suite 2100

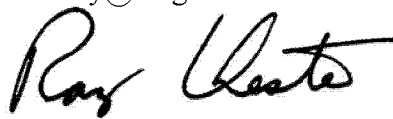
Austin, Texas 78701

(512) 495-6000

(512) 495-6361 Fax

rchester@mcginnislaw.com

mshaunessy@mcginnislaw.com

By:  _____
Ray Chester

**ATTORNEYS FOR PLAINTIFF THE ROY F.
& JOANN COLE MITTE FOUNDATION**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been sent via email and on this the 9th day of July, 2020, to the following counsel of record:

Terry L. Scarborough, LLP
V. Blayre Pena
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bpena@hslawmail.com

Wallace B. Jefferson
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Nicholas Bacarisse
State Bar No. 24073872
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Telephone: (512) 482-9300
Facsimile: (512) 482-9303

ATTORNEYS FOR DEFENDANTS

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Rhonda B. Mates
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Telephone: (512) 236-9900
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ATTORNEYS FOR RECEIVER

Cathleen M. Day, Assistant Attorney General
State Bar No. 24105783
Joshua R. Godbey, Division Chief
State Bar No. 24049996
Office of the Attorney General of Texas

Financial Litigation and Charitable Trusts Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-9507 Phone
(512) 477-2348 Fax
joshua.godbey@oag.texas.gov
cathleen.day@oag.texas.gov

ATTORNEYS FOR INTERVENOR KEN PAXTON,
ATTORNEY GENERAL OF TEXAS

A handwritten signature in black ink that reads "Ray Chester". The signature is written in a cursive style with a long horizontal stroke at the end of the word "Chester".

Ray Chester

McGINNIS LOCHRIDGE

Ray Chester
rchester@mcginnislaw.com
(512) 495-6051 o
(512) 505-6351 f

December 9, 2019

Financial Litigation and Charitable Trusts Division *Via Certified Mail,*
Office of the Attorney General *Return Receipt Requested*
P. O. Box 12548
Austin, Texas 78711-2548

Re: 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 WC 3rd and Congress GP, LLC*

Dear Sirs:

I represent the Roy F. & Joann Cole Mitte Foundation (“Mitte Foundation”), which is a charitable organization meeting the definition of Charitable Trust under §123 of the Texas Property Code. I write pursuant to Texas Property Code §123.003 to give you notice of a lawsuit that was initiated by the Mitte Foundation.

We are enclosing the original petition as well as the current live pleadings. I apologize for the delay in providing this notice. Section 123 was only recently brought to my attention.

If you need additional information, please do not hesitate to contact me.

Sincerely,



Ray Chester

RCC/klm
Enclosures



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 18, 2019

Velva L. Price
Travis County District Clerk
P.O. Box 1748
Austin, TX 78767

RE: 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 126th Judicial District Court of Travis County, Texas

Dear Ms. Price:

This office has been given notice of the above-referenced proceeding involving a charitable trust pursuant to Chapter 123 of the Texas Property Code. The Attorney General is a proper party to such action and may intervene on behalf of the public's interest in charity. I am currently reviewing the documents provided in the proceeding to determine if Attorney General participation is warranted.

Please provide reasonable notice of any hearings that are or may be scheduled in this matter and contact me if there is any particular need for an expedited decision on the part of the Attorney General.

Please add the undersigned to distribution and certificate of service lists.

Sincerely,

/s/ Cathleen M. Day

Cathleen M. Day
Assistant Attorney General
State Bar No. 24105783
Financial Litigation and Charitable Trusts Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-9507 - Direct Line
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cathleen.day@oag.texas.gov

CMD/did

Velva L. Price
Cause No. D-1-GN-18-007636
December 18, 2019
Page 2 of 2

cc: Ray C. Chester
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Brickman 00168

McBride, Kim

From: Day, Cat <Cathleen.Day@oag.texas.gov>
Sent: Wednesday, January 22, 2020 1:34 PM
To: Chester, Ray
Cc: Diaz, Denise; Estrada, Carmen; Shaunessy, Michael A.
Subject: Cause No. D-1-GN-18-007636; The Roy F. & Joann Cole Mitte Foundation v. WC 1st and Trinity, LP, et. al; In the 126th Judicial District Court of Travis County, Texas

Ray,

I am the attorney assigned to the above referenced matter. I have reviewed the file, and I have a few follow up questions for you regarding the Mitte Foundation's assets:

- What percentage of the Foundation's assets were invested with the Defendants?
- Why did the Foundation invest in real estate?
- How are the Foundation's remaining assets invested?
- What is the value of the remaining assets?

If you would prefer to discuss over the phone, my schedule is relatively open next Monday, 1/27/20, and Tuesday, 1/28/20.

Best regards,
Cat



Cathleen M. Day
Assistant Attorney General
Financial Litigation and Charitable Trusts Division
Street address: 300 West 15th Street, 7th Floor, Austin, Texas 78701
Mailing address: Mail: MC-017-07, P. O. Box 12548, Austin, Texas 78711-2548
Phone: (512) 463-9507 | Fax: (512) 477-2348 | e-mail: cathleen.day@oag.texas.gov

PRIVILEGED AND CONFIDENTIAL: This communication may be confidential and/or privileged pursuant to Government Code sections 552.101, 552.103, 552.107 and 552.111, and should not be disclosed without the express authorization of the Attorney General.

CAUSE NO. D-1-GN-18-007636

THE ROY F & JOANN COLE MITTE	§	IN THE DISTRICT COURT OF
FOUNDATION,	§	
Plaintiff,	§	
	§	
V.	§	
	§	TRAVIS COUNTY, TEXAS
WC 1st AND TRINITY, LP, WC 1st AND	§	
TRINITY GP, LLC, WC 3rd AND	§	
CONGRESS, LP AND WORLD CLASS	§	
CAPITAL GROUP, LLC	§	126 TH JUDICIAL DISTRICT

ATTORNEY GENERAL’S WAIVER

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Ken Paxton, Attorney General for the State of Texas (referred to herein as the “Attorney General”), and files this Waiver in the above-referenced cause of action and respectfully shows the Court as follows:

I.

Pursuant to §123.002 of the Texas Property Code and the common law, the Attorney General is a proper party and may intervene in a proceeding involving a charitable trust on behalf of the interest of the general public.

II.

Based upon the pleadings that have been provided to him to date, the Attorney General has determined not to intervene and by this Waiver declines in writing to be a party to the proceeding in its current state, pursuant to §123.004(b)(1) of the Property Code. Accordingly, the Attorney General waives further notice of the proceedings in this case as it is currently constituted.

III.

If any pleading is filed herein that adds additional parties or causes of action, such pleading would constitute a new or additional proceeding involving a charitable trust, which will require additional notice to the Attorney General pursuant to §123.003 of the Property Code. This Waiver

Brickman 00170

is not intended to constitute a declination in writing to be a party to any such new proceeding.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

DARREN L. McCARTY
Deputy Attorney General for Civil Litigation

JOSHUA R. GODBEY
Division Chief
Financial Litigation and Charitable Trusts Division

/s/ Cathleen M. Day
Cathleen M. Day
Assistant Attorney General
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cathleen.day@oag.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Attorney General's Waiver* was served on January 31, 2020, via e-service to the following:

Ray C. Chester
Michael A. Shaunessy
MCGINNIS LOCHRIDGE, LLP
600 Congress Ave., Ste. 2100
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rchester@mcginnislaw.com
mshaunessy@mcginnislaw.com

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efernandes@kslaw.com
kstein@kslaw.com

/s/ Cathleen M. Day
Cathleen M. Day



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2020

Velva L. Price
Travis County District Clerk
P.O. Box 1748
Austin, TX 78767

Re: 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 126th Judicial District Court of Travis County, Texas; ***Attorney General's Waiver***

Dear Ms. Price:

The following pleadings have been received by this office relating to the above-referenced cause:

- *Plaintiff's Original Petition*;
- *Plaintiff's Third Amended Original Petition*;
- *Defendants' Memorandum on Remand for Determination of Adequacy of Supersedeas or Other Order under Tex. R. App. P.24*;
- *Order Appointing Receiver*;
- *Applicant's Notice of Filing of Applicant's Bond*;
- *Bond Securing Appointment of Receiver*;
- *Receiver's Interim Report*; and
- *Receiver's Quarterly Report for the Period December 10, 2019 to December 31, 2019*.

This *Waiver* is a waiver of the right to intervene in this case only as it is currently constituted. If any pleading is filed herein that adds additional parties or causes of action, such pleading will constitute a new or additional proceeding involving a charitable trust, which will require additional notice to the Attorney General pursuant to §123.003 of the Property Code. This Waiver is not intended to constitute a declination in writing to be a party to any such new proceeding.

Sincerely,

/s/ Cathleen M. Day

Cathleen M. Day
Assistant Attorney General
State Bar No. 24105783
Financial Litigation and Charitable Trusts Division
P.O. Box 12548

Velva L. Price
Cause No. D-1-GN-18-007636
January 31, 2020
Page 2 of 2

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Enclosure

cc: Ray C. Chester
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Brickman 00173

McBride, Kim

From: Day, Cat <Cathleen.Day@oag.texas.gov>
Sent: Tuesday, June 2, 2020 1:24 PM
To: Maryann Norwood
Cc: Diaz, Denise; Estrada, Carmen; Sheena Paul; Chester, Ray; McBride, Kim
Subject: The Roy F. & Joann Cole Mitte Foundation

Ms. Norwood,

I am in receipt of your emails and supporting documents regarding notice to the Office of the Attorney General (“OAG”) of a proceeding involving a charitable trust in American Arbitration Association Cause No. 01-19-0000-5347 and Travis County District Court Case No. D-1-GN-18-007636.

The OAG was originally given notice of these matters on December 11, 2019. After reviewing the pleadings, including details regarding the arbitration matter, the OAG filed a waiver of intervention on January 31, 2019 in the Travis County District Court.

I appreciate you giving this office notice of the new cause of action filed on April 29, 2020 in Plaintiff’s Application for Enforcement of Arbitrator’s Order Compelling Production. The OAG will file a new Notify Letter with the court, and I will monitor this matter to determine whether there is a risk to the public interest in charity.

Best regards,
Cat

Cathleen M. Day
Assistant Attorney General
Financial Litigation and Charitable Trusts Division
Street address: 300 West 15th Street, 7th Floor, Austin, Texas 78701
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PRIVILEGED AND CONFIDENTIAL: This communication may be confidential and/or privileged pursuant to Government Code sections 552.101, 552.103, 552.107 and 552.111, and should not be disclosed without the express authorization of the Attorney General.

CAUSE NO. D-1-GN-18-007636

THE ROY F & JOANN COLE MITTE	§	IN THE DISTRICT COURT OF
FOUNDATION,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
WC 1st AND TRINITY, LP, WC 1st AND	§	
TRINITY GP, LLC, WC 3rd AND	§	
CONGRESS, LP AND WORLD CLASS	§	
CAPITAL GROUP, LLC	§	126 TH JUDICIAL DISTRICT
	§	
<i>Defendants.</i>	§	
	§	

ATTORNEY GENERAL'S PETITION IN INTERVENTION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES KEN PAXTON, Attorney General of Texas, on behalf of the public interest in charity, (“Attorney General”) and files this Petition in Intervention in the above-referenced cause, and would respectfully show the Court the following:

I.

Pursuant to §123.002 of the Texas Property Code, the Attorney General is a proper party and may intervene in a "proceeding involving a charitable trust." On December 11, 2019, The Attorney General received notice of the above-captioned case pursuant to §123.003 of the Texas Property Code, and subsequently filed the Attorney General’s Waiver of Intervention. The Attorney General recently received notice of a new cause of action filed in this matter. For and on behalf of the interest of the general public of this state in charitable trusts, the Attorney General hereby files this Petition in Intervention in this proceeding, pursuant to §123.002 of the Texas Property Code and Rule 60 of the Texas Rules of Civil Procedure.

II.

The Attorney General’s presence in this matter is warranted to protect the interests of the public in the event that the public’s interest and the parties’ interests diverge. In addition, this litigation affects a substantial sum of charitable funds and involves the expenditure of these funds.

Brickman 00175

The Attorney General specifically asserts his right to amend this Petition in Intervention as necessary to assert additional affirmative relief following his review of the complete pleadings and the development of further information.

III.

The Attorney General has found it necessary to intervene in this proceeding to protect the public interest in charity. He requests that the Court award reasonable and necessary attorney's fees and costs as are equitable and just for services rendered by the Attorney General in accordance with §123.006(b) of the Texas Property Code.

PRAYER

WHEREFORE, the Attorney General prays for such relief to which he may be entitled on behalf of the public interest in charity.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy First Assistant Attorney General

DARREN L. MCCARTY
Deputy Attorney General for Civil Litigation

/s/ Cathleen M. Day
Joshua R. Godbey, Division Chief
State Bar No. 24049996
Cathleen M. Day, Assistant Attorney General
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cathleen.day@oag.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Attorney General's Petition in Intervention* was served by e-service on June 8, 2020, to the following:

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/s/ Cathleen M. Day _____
Cathleen M. Day

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Kim McBride on behalf of Ray Chester
Bar No. 04189065
kmcbride@mcginnislaw.com
Envelope ID: 44374472
Status as of 07/10/2020 08:15:56 AM -05:00

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Andrew MEdge		aedge@mcginnislaw.com	7/9/2020 9:31:26 AM	SENT
Michael A. Shaunessy	18134550	mshaunessy@mcginnislaw.com	7/9/2020 9:31:26 AM	SENT
Kim McBride		kmcbride@mcginnislaw.com	7/9/2020 9:31:26 AM	SENT
Joshua Godbey	24049996	Joshua.Godbey@oag.texas.gov	7/9/2020 9:31:26 AM	SENT
Ray Chester	4189065	rchester@mcginnislaw.com	7/9/2020 9:31:26 AM	SENT
Julie Doss		jdoss@mcginnislaw.com	7/9/2020 9:31:26 AM	SENT
Annette Bittick		abittick@mcginnislaw.com	7/9/2020 9:31:26 AM	SENT

Associated Case Party: WC 1st and Trinity, LP

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Kevin Orellana		paralegal@hslawmail.com	7/9/2020 9:31:26 AM	SENT
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Associated Case Party: Gregory S. Milligan

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Stephen W. Lemmon		lemmon@slollp.com	7/9/2020 9:31:26 AM	SENT

Associated Case Party: Ken Paxton on Behalf of the Public Interest in Charity

Brickman 00178

Automated Certificate of eService

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Kim McBride on behalf of Ray Chester
Bar No. 04189065
kmcbride@mcginnislaw.com
Envelope ID: 44374472
Status as of 07/10/2020 08:15:56 AM -05:00

Associated Case Party: Ken Paxton on Behalf of the Public Interest in Charity

Name	BarNumber	Email	TimestampSubmitted	Status
Cathleen Day	24105783	cathleen.day@oag.texas.gov	7/9/2020 9:31:26 AM	SENT

Brickman 00179