

RE: Memo of issues related to proceedings involving charitable foundation: The Roy F and JoAnn Cole Mitte Foundation

Date: June 3, 2020

WC 1st and Trinity, LP, WC 1st and Trinity, GP, LLC, WC 3rd and Congress, LP and WC 3rd and Congress GP, LLC (together, the “Claimants” or Partnerships”) have been involved since January 2019 in litigation with The Roy F and Joann Cole Mitte Foundation (the “Respondents” or “Mitte Foundation”) in American Arbitration Association Cause No. 01-19-0000-5347 and Travis County District Court Case No. D-1-GN-18-007636 (together, the “Proceedings”).

The Mitte Foundation is the owner of a 6% and 16% (approximately) minority interest in the Partnerships, which minority interest is valued by expert appraisal testimony at approximately \$3,850,000. The Claimants, by contrast, own 92% and 84% (approximately) super majority interests in the limited partnerships, which super majority interest is valued by expert appraisal at approximately \$80,000,000 (Exhibit J).

The limited partnership agreements, as is very common, do not afford minority partners the right to effectuate a sale or liquidation. Prior to the Proceedings, the former Chairman of the Mitte Foundation, Dilum Chandrasoma, attempted to conjure a sale of the investment properties, in contravention of their obligation not to participate in the management and affairs of the Partnerships, and contrary to their 501(c)3 charter which requires them not to take a controlling position in investments. The disputes and then the Proceedings then ensued.

Understanding that a decoupling was necessary between the Partnerships and the Mitte Foundation, the Partnerships have been and remain willing to, purchase the minority partner’s interest in the partnerships at the fair market value of their interests. Nonetheless, the Mitte Foundation, at the direction first of Mr. Chandrasoma, who was removed following his arrest in 2019¹, and now, at the direction of their attorney Ray Chester of McGinnis Lochridge LLP, who has insisted on a long and protracted litigation rather than equitable decoupling to effectuate the Foundation’s articulated goal: a buyout at their fair market value.

Dilum Chandrasoma served as Chairman of the Mitte Foundation from 2009 until approximately September 2019. Mr. Chandrasoma assumed the Chairman role from Scott Mitte who was forced out of the role in April 2009 by the Office of the Attorney General of Texas (“OAG”) following Scott Mitte’s arrest on charges of cocaine possession. The Mitte Foundation consented to an Agreed Judgement with the OAG in April 2009 (Exhibit A) which included new

¹ Mr. Chandrasoma was arrested and booked on July 21, 2019, during the pendency of the Proceedings, for assault causing bodily injury to a family member, his wife and child, and was subsequently placed on leave with the Mitte Foundation. Booking Number: 1921267; Booking on: 7/21/2019; County: Travis.

requirements of the Foundation based on problems with directors receiving excessive compensation and self-dealing. This included a lifetime prohibition of Scott Mitte being involved with the Foundation.

Claimants were unaware of Mr. Chandrasoma's checkered past until the relationship soured because of Claimants concerns about Mr. Chandrasoma's intention to engage in self-dealing transactions with the Foundation. Claimants discovered Mr. Chandrasoma had multiple criminal charges from 1982 to 1991 in Travis County for credit card fraud and issuance of bad checks. Mr. Chandrasoma had full control of the Board during his term and became adversarial to Claimants after they declined to do further business with him or the Foundation after learning of his intentions. This led Claimants to commence arbitration to decouple the relationship.

Given this posture over the course of the Proceedings, the Partnerships have become concerned about Chester's refusal to disclose information regarding his fee arrangement with the Mitte Foundation, as well as the structuring of certain excessive fee arrangements that will be paid through the use of public charitable funds held by the Mitte Foundation. Those issues are set forth in greater detail below.

I. Financial Status of the Mitte Foundation: Preliminary Issues

As a preliminary matter, the financial position of the Mitte Foundation that can be understood by publicly available documents is as follows:

- According to Guidestar, the Mitte Foundation in 2017 had administrative expenses of \$771,273. In contrast, it only made grants of \$627,118. According to its filed 2017 Form 990, it had negative cash flow of -\$440,794. Decreased from \$1.3 million to \$797,900. Cash remained constant at about \$150,000.
- The 2017 balance sheet in the Form 990 reflects grants payable of \$480,000. Coupled with an administrative burn approaching \$800,000, the Mitte Foundation was poised by the end of 2017 to burn through its cash. These figures show that the Mitte Foundation in 2017 was spending more in administrative expenses than it was providing in donations. Whether that actually occurred in 2018 as well is not clear as the Mitte Foundation's 2018 Form 990 does not appear to have been filed based upon the searches performed seeking that filing.
- The cash position and spend on administrative overhead is particularly troubling given previous issues at the Mitte Foundation in which former chairmen (Roy Mitte, and then later, his son, Scott Mitte) were on two occasions accused of siphoning funds from the charitable foundation. Those previous issues led to an agreed judgement in CASE No. D-1-GV -09-000624 in a dispute with the Office of the Attorney General in 2009 (Exhibit A).
- For context, the total assets of the Mitte Foundation are estimated to be approximately \$15 million currently. This can't be verified since they have not filed their required filings, which puts their tax-exempt status at risk. As of 2017, their total assets were

~\$19 million. The percentage of funds being spent on administrative expenses are excessively high when looking at the small size of the Foundation. Further, this is exacerbated by their litigation strategy where they are spending tremendous amounts on legal expenses which runs afoul of the intended use of charitable funds.

The forgoing is doubly troubling given that the Mitte Foundation has been engaged in a long and protracted and undoubtedly expensive litigation in which, as mentioned above, it has repeated opportunity to settle, generate significant profit, exit its investments, and curtail significant legal expense. During the course of the Proceedings and related negotiations, it has become clear that the strategy to protract the litigation at the direction of Chester, who has refused to disclose his fee arrangement with the Mitte Foundation, including any billings to date.

II. Mitte Foundation and Chester Refusal to disclose fee arrangement

The Partnerships have requested on multiple occasion, including in the course of formal discovery, Chester's fee arrangement and billing, dating back as early to May 10, 2019, and most recently in a motion to compel production dated May 27, 2020. Exhibit B (paragraph D.28). To date, no information at all has been produced regarding Chester's fee arrangement or the legal expenses incurred by the Mitte Foundation to date in the Proceedings.

By way of reference, Claimants have incurred over \$1.5 million in legal fees in the Proceedings, which fees are to be paid by the Partnerships which will further reduce any profits to the Mitte Foundation.

Not only has Chester refused to produce this information, he has also made false representations in Court that he and the Mitte Foundation have complied with their production obligations, including the disclosure of fees, in a hearing held January 6, 2020 (Exhibit C).

Further, in the course of informal negotiations, Chester has communicated to counsel for the Partnerships that he is fully transparent that his strategy in this litigation is to continue to protract and harass for as long as needed to attempt to obtain a "litigation premium" through any settlement.

The above circumstances seriously put into question Chester's motivations and opportunity for personal financial gain, either through a protracted litigation at an hourly rate, or a contingent fee of a settlement.

Chester's background is in Personal Injury law and it has been clear that his intentions are to enrich himself by engaging in a legal strategy that is putting the Foundation's tax-exempt status at risk. His actions have put the Foundation's assets at risk due to his gross negligence in following required procedures for a non-profit organization. This has been made clear by his failure to provide proper timely notification to the Office of the Attorney General of Texas for proceedings and causes of action under Chapter 123 of the Texas Property Code, engaging in legal positions that jeopardize their tax-exempt status, and his brazen attempts at self-dealing in using protracted litigation strategies that generate substantial legal fees for himself and diverts funds from the Foundation away from their intended purpose.

III. Collusion between Chester and Stephen Lemmon (“Lemmon”) and Gregory Milligan (“Milligan”) for excessive fee structure to Foundation and Partnerships

Chester directed the Mitte Foundation to seek the appointment of a receiver in the AAA proceeding on the basis of an FBI search occurred at the offices of the Claimants. Chester argued and has continued to argue, that due to this search, the real estate owned by the Partnerships is at risk of imminent loss or harm.

Chester proffered Gregory S. Milligan (“Milligan”) as receiver, represented by Stephen Lemmon (“Lemmon”) as his counsel. Chester, Lemmon and Milligan all knew that the appointment of a receiver was not a remedy available to the Mitte Foundation through arbitration, but proceeded to pursue the strategy anyway, again at the expense of the Mitte Foundation. For example, in early September 2019 Mr. Lemmon broached the idea that the appointment of a receiver in a private arbitration might not be plausible. Exhibit D.

The arbitrator, finding no other risk of imminent loss or harm, was convinced by Chester’s allegations that the FBI search created the need for a receivership. She then wrongfully appointed a receiver, which in and of itself was outside of her jurisdiction, and her order was then stayed by the Court of Appeals on mandamus. In executing this strategy, Mitte incurred the expense of seeking the appointment in the arbitration, attempted to enforce the appointment in district court, and which was subsequently stayed on mandamus.

After the mandamus stay, Chester, Lemmon and Milligan then colluded and collaborated to see how they could get around the Court of Appeals and related arbitrator’s stay pending mandamus (Exhibit E), and sought the appointment of a receiver directly in the district court.

During the course of the district court application, as it became clear that Chester, Lemmon and Milligan were working together, the Partnerships sought discovery from Lemmon and Milligan regarding any communications with Chester and the Mitte Foundation. This discovery was withheld from the Partnerships, and ultimately required the filing of a subpoena ducus tenum in order to retrieve the information. Exhibit F.

It became clear upon receipt of this discovery why Chester, Lemmon and Milligan went to such great lengths to obfuscate these communications, as detailed below.

The discovery showed that:

- Lemmon, Milligan and Chester began working together on a “strategy” and handsome fee structure for a receivership as early as September 2019, which conflict of interest was not disclosed to the arbitrator in seeking the appointment of Milligan.
- Chester and the Mitte Foundation presented Milligan as a “neutral third party” to the Arbitrator, when in fact he was colluding with Chester long before he was presented to the Arbitrator.

- The colluding parties worked together to establish a fee structure that allowed for wildly excessive fees to be charged by Milligan, should he effectuate a sale of the properties, getting paid at the hourly rate of \$450, and a commission based fee on both the equity and the debt in the case of a refinancing or sale:
 - 3.5% due to all equity holders (the aggregate equity for all holders is approximately \$84M, which would result in an **\$3,000,000 fee**)
 - 1.5% due to all debt holders (the aggregate debt is approximately \$20M, which would result in a **\$300,000 fee**)
- Most egregiously, even if Milligan did not effectuate a sale, refinancing or other transaction, under the orders he is still entitled to compensation based upon the appraised fair-market value of all property retained by equity holders at the conclusion of the matter. This provision results **in \$3,850,000 in fees to Milligan (and possibly Lemmon and Chester) simply to act as a receiver. That fee alone is nearly equal to the Mitte Foundation's \$3.85 million of interests.**
- Mitte also agreed to advance an additional \$150,000 of public charitable funds to the receiver under this structure.
- Milligan, Lemmon and Chester considered alternate ways Milligan could be paid a fee to enrich himself under this appointment: "I have a real estate license and might be able to negotiate a referral fee from the listing broker that comes out of their side at no additional cost to the estate/equity, which would be credited to the commissions calculated above. It's not something that is known or quantifiable at this point, but something to hold in reserve for later consideration."
(Exhibits. G and H.)

IV. Lemmon and Milligan refusal to disclose fee arrangement

In addition to the aforementioned issues related to fees being charged to the Mitte Foundation, we note that the Lemmon and Milligan have also refused to disclose the terms of the fee engagement for Lemmon's services that will be charged to the Partnerships, and therefore the Mitte Foundation. The request for information regarding these arrangements was originally sent on January 27, 2020 (Exhibit I), and has still not been produced as of the date of this correspondence.

Given that Milligan a fiduciary to the Partnerships, and all of its equity holders, there are no applicable privileges that allow for the withholding of this information from the Partnerships or the Mitte Foundation.

V. Refusal to engage in Fair Market Valuation, and Fair Market Valuation of Mitte's Interests by the District Court

Over the course of the Proceedings, Chester has repeatedly refused to engage in the retaining of experts to determine the fair market value of the Mitte Foundation's interest in the

Partnerships – the key piece of information necessary to effectuate an equitable decoupling for the Mitte Foundation.

As early as January 2019, the offer was made to engage an expert appraiser, to no conceivable rationale other than to effectuate Chester's strategy to prolong the litigation to his financial benefit. The offers continued through the course of the calendar year 2019, and at each turn Chester refused to allow for a fair market valuation.

Eventually, in February of 2020, the Third Court of Appeals remanded the matter of the fair market valuation to the trial court, and in March of 2020, an evidentiary hearing was held. At that hearing, expert testimony was proffered, and the trial court subsequently determined that the fair market value of the Mitte Foundation's interests as of December 2019 was: \$2,883,840 in WC 1st and Trinity, LP and \$991,465 in WC 3rd and Congress, LP.

Notably, Chester and Mitte did not offer expert appraisal testimony at this hearing, given that to do would be to concede that the Chester's prolonged litigation strategy and the fees incurred in connection therewith, were to the significant detriment of the public's charitable funds.

Claimants have remained steadfast in their desire to resolve this dispute by providing the Mitte Foundation with an exit at fair market value. The sole reason this has not been completed is due to the egregious conflicts of interest, self-dealing, and excessive payments being sought by the Foundation's legal counsel, Ray Chester, and his allies Stephen Lemmon and Gregory S. Milligan. They continue to siphon funds to pay their excessive fees as this litigation continues to the detriment of the public interest in charity.

EXHIBIT “A”

No. D-1-GV-09-000624

ATTORNEY GENERAL GREG
ABBOTT,
ON BEHALF OF THE PUBLIC
INTEREST IN CHARITY,

Plaintiff

v.

THE ROY F. AND JOANN COLE MITTE
FOUNDATION, A NONPROFIT
CORPORATION

Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

301 ST JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JL APR 24 2009
AL 9:17 AM
M.
Amalia Rodriguez-Mendoza, Clerk

AGREED JUDGMENT

COMES NOW, Plaintiff, Attorney General Greg Abbott, ("Attorney General"), on behalf of the public interest in charity, and Defendant, the Roy F. and Joann Cole Mitte Foundation, a Texas nonprofit corporation, and consent to the entry of the following AGREED JUDGMENT, and would show as follows:

The Office of the Attorney General of Texas ("OAG") on behalf of the public interest in charity and as the enforcement authority over charitable nonprofit corporations, filed this action against the Roy F. and Joann Cole Mitte Foundation ("Mitte Foundation") to address certain issues related to the performance and breaches of duty by Scott Mitte in his role as the sole member and CEO of the Foundation. The Mitte Foundation has fully cooperated with the Attorney General in reviewing and revising its articles of incorporation, bylaws, corporate policies and corporate procedures, to address the Attorney General's concerns.

Specifically, the Mitte Foundation has voluntarily made the following changes and agrees to maintain these changes in the future:



1. Amendment of the Articles of Incorporation of the Mitte Foundation, to eliminate the member class from the corporation;
2. Amendment of the Articles of Incorporation of the Mitte Foundation to change the corporation from a member managed and controlled nonprofit corporation, to a nonprofit corporation managed and controlled by its board of directors;
3. Acceptance of the resignation of Chief Executive Officer, Lifetime Chairman of the Board of Directors, and Lifetime Board of Directors member, Michael Scott Mitte ("Scott Mitte");
3. Amendment of the Articles of Incorporation and Bylaws to remove all provisions specifically related to Scott Mitte;
4. Amendment of the Bylaws to raise the age at which Roy F. Mitte III and Lacieanne Cole Carriere shall become lifetime directors from age eighteen to twenty-one;

Mitte Foundation further agrees to:

1. Maintain a lifetime prohibition on Scott Mitte serving as:
 - (a) a member of the Mitte Foundation Board of Directors;
 - (b) a Mitte Foundation corporate officer;
 - (c) a Mitte Foundation employee;
 - (d) an honorary director of the Mitte Foundation Board of Directors; or
 - (e) a member of a committee or a committee chair;
2. The Mitte Foundation agrees to pay to Scott Mitte no more than \$8,837.32 for the purpose of reimbursement of continuing medical insurance benefits as a final settlement of any potential claims. The Board further agrees that Scott Mitte will not be the recipient of any Mitte Foundation funds now or in the future;

3. The Mitte Foundation agrees to expand the board of directors from four directors to seven directors with the addition of three additional directors to be selected within one year from the date this Judgment is signed;

4. The Mitte Foundation agrees to use its best efforts in seeking qualified outside directors to serve on the Mitte Foundation board;

5. The Mitte Foundation shall maintain no less than eight board directors at such time as all three of the lifetime directors of the Mitte Foundation have assumed their positions on the board, at the age of 21. At all times for the duration of the Mitte Foundation, the number of directors shall not be less than eight;

6. The Mitte Foundation agrees that its lifetime directors Roy F. Mitte III and Lacianna Cole Carriere shall obtain training in foundation and nonprofit management, prior to joining the board;

7. The Mitte Foundation agrees to pay the Attorney General's office \$25,000 for its Attorney's fees and costs of investigation.

All other relief sought by the CAG is dismissed with prejudice. Each party is to bear its own taxable costs.

Signed this 24th day of April, 2009.

Heidi D. Mann - Poyal
PRESIDING JUDGE

Agreed and Accepted by:

Office of the Attorney General of Texas

By: Robert J. Blech
Robert J. Blech
State Bar No. 00790320
Assistant Attorney General
Charitable Trusts Section
Consumer Protection Division
Office of the Attorney General of Texas
P.O. Box 12548
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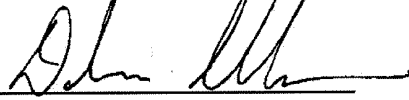
Agreed as to Form:

Attorneys for the Roy F. and Joann Cole Mitte Foundation

By: Shane W. Hudson
Shane W. Hudson
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Agreed and Accepted:

The Roy F. and Joann Cole Mitte Foundation

By: 

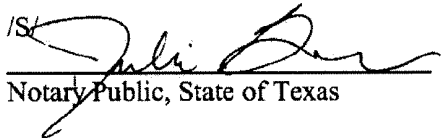
Dilum Chandrasoma
President, the Roy F. And Joann Cole Mitte Foundation

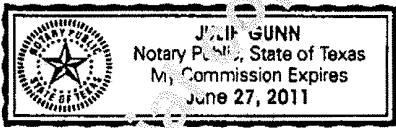
Authorized Agent for the Roy f. and Joann Cole Mitte Foundation

THE STATE OF TEXAS §
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COUNTY OF §

On this 21st day of April 2009, before me, the undersigned authority, personally appeared Dilum Chandrasoma, who is personally known to me and acknowledged himself/herself to be an authorized agent for the Roy F. And Joann Cole Mitte Foundation, and he, as such an agent, being authorized to do so, executed the foregoing Agreed Judgment for the purpose and consideration therein contained by signing for the Roy F. And Joann Cole Mitte Foundation by himself as an agent for such.

In witness whereof I hereunto set my hand and official seal.


Notary Public, State of Texas



My Commission Expires: 6/27/11

EXHIBIT “B”

**WC 1st and Trinity, LP; WC 1st and Trinity
GP, LLC; WC 3rd and Congress, LP; and
WC 3rd and Congress GP, LLC**

Claimants,

-against-

The Roy F. & Joann Cole Mitte Foundation

Respondent.

American Arbitration Association

Case No.: 01-19-0000-5347

**CLAIMANTS' MOTION TO COMPEL RESPONDENT'S DOCUMENT
PRODUCTION**

COME NOW WC 1st and Trinity, LP, WC 1st and Trinity GP, LLC, WC 3rd and Congress, LP, and WC 3rd and Congress GP, LLC (collectively, "Claimants") in the above-captioned arbitration and file this Motion to Compel Respondent's Document Production (the "Motion"). In support of this Motion, Claimants respectfully state the following:

A. On April 25, 2019, the Arbitrator entered Preliminary Hearing Scheduling Order #1 (the "Scheduling Order"), which provided:

Each party will exchange initial document requests by 5/10/2019....
Each party will produce (or make available for inspection, when appropriate) any requested documents in their possession within 30 days from receipt of the request, unless the party receiving the requests provides written objections to the requesting party within 10 days. After the parties have attempted to resolve the objections, the requesting party may seek a ruling from the Arbitrator(s) as to whether the requested documents should be produced. The request must be specific as to the documents sought.

B. On May 10, 2019, Claimants' counsel of record served a proper request for production of documents pursuant to the Scheduling Order, AAA Rule R-22, and Tex. R. Civ. P. 196. A true and correct copy of the request is attached hereto as Exhibit 1, incorporated herein for all purposes.

C. On May 31, 2019, Respondent served its Objections to Claimants' Initial Requests for Production, a copy of which is attached hereto as Exhibit 2. Specifically, Respondent objected

to Claimants' definitions and instructions and Request Nos. 13 (for allegedly calling for work product), 14 (allegedly irrelevant), 16 (allegedly "nonsensical and call[ing] for marshaling of evidence"), 17 (allegedly "nonsensical and call[ing] for marshaling of evidence"), 18 (allegedly "nonsensical and call[ing] for marshaling of evidence"), 24 (allegedly overbroad), 25 (allegedly overbroad), 26 (allegedly overbroad), and 27 (allegedly calls for work product). Respondents did not assert objections to any other Request.

D. On June 10, 2019, Respondent served its Responses to Claimants' Initial Requests for Production, attached hereto as Exhibit 3. In response to each Request, Respondent stated, "Responsive documents are attached." However, in reviewing the document production, Respondent has failed to provide responsive documents to multiple Requests as set forth in more detail below. Each Request and the status of documents is outlined below, and the only ones for which Respondent objected to are italicized:

1. All documents, communications and/or information referring to, relating to or otherwise concerning the Claimants or the properties owned by the Partnerships for the period January 1, 2012 to present.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

2. All documents, communications and/or information referring to, relating to or otherwise concerning Mitte's investments in the Partnerships and the properties owned by the Partnerships. Your response should include, but not be limited to communications made by You or by Mr. Chandrasoma to any person including your donors, board, investors, contributors or others regarding Mitte's specific investment positions (*e.g.* projected rate of return, return on investment, valuation, *etc.*) in the Partnerships and any comparison of the performance of Mitte's investment position in the Partnerships measured against any other of Mitte's investments.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist. For example, the Mitte Board regularly meets to review investments, but only one set of meeting minutes has been produced (Mitte 3229). There are multiple other emails which reference draft minutes or formal minutes (Mitte 3631, 3746, 3748, 8245, and 8263); however, no such meeting minutes have been

produced. Mitte should produce all meeting minutes and agendas, along with any other documents responsive to this request.

3. All communications by or to Claimants or its officers, employees or agents for the period January 1, 2012 to present in any way relevant to the Partnerships or the properties owned by the Partnerships.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

4. All documents and/or communications referring to, relating to or otherwise concerning Mr. Craig Brockman and/or VRA Commercial Real Estate for the period January 1, 2012 to present in any way relevant to the Partnerships or the properties owned by the Partnerships.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

5. All documents and/or communications referring to, relating to or otherwise concerning David Ott and/or The Hanover Company for the period January 1, 2012 to present in any way relevant to the Partnerships or the properties owned by the Partnerships.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

6. All communications by You or Mr. Chandrasoma to any Third Party that refer to, relate to or otherwise concern Claimants and their officers, employees or agents, the properties owned by the Partnerships, or this Arbitration or the Litigation. This request includes communications from those acting on behalf of You or Mr. Chandrasoma, including any communications between You or Mr. Chandrasoma's counsel or counsel of record for Mitte to Third Parties.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

7. All documents and/or communications referring to, relating to or otherwise concerning Mr. Chandrasoma's investment and involvement in what Respondents refer to in their pleadings as the "F1 Deal" for the period January 1, 2012 to present.

Status: No documents responsive to this request have been produced.

8. All documents and/or communications that relate to, refer to or otherwise concern Mitte's conflict of interest rules, policies or processes, including with respect to disclosure

of such conflicts of interest, with respect to its officers', board members', family members' or executives' investments.

Status: Some documents that could be deemed responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist. Although Mitte produced some communications related to conflict of interest rules, the rules themselves (or document containing those rules) has not been produced.

9. All documents and/or communications referring to, relating to or otherwise concerning any actual or potential conflicts of interest between Mr. Chandrasoma's personal investments and/or related businesses that could cause a conflict of interest with Mitte or could create the appearance of a conflict of interest, whether or not disclosed to Mitte. Your response to this request should include all documents and/or communications that refer to, reference, or otherwise concern the disclosure (or non-disclosure) of any of Mr. Chandrasoma's personal investments or investments through related or affiliated companies that were disclosed to Mitte, including in the context of addressing potential or actual conflicts of interest, or where Mr. Chandrasoma requested approval from Mitte before consummating any transaction.

Status: Some documents that could be deemed responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

10. All communications by or to any other limited partner in the Partnerships for the period January 1, 2012 to present.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

11. All communications by or to any Third Party in any way relevant to the Claimants, Partnerships or the properties owned by the Partnerships, including the properties held in the Partnerships.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

12. All documents and/or communications referring to, relating to or otherwise concerning the performance, management or mismanagement Mitte's investments for the period January 1, 2012 to present, as that relates in any way to the Partnerships or the properties owned by the Partnerships.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

13. All documents and/or communications referring to, relating to, or otherwise concerning your claims for damages in this Arbitration. Your response should include all documents or communications that refer, relate to, support or otherwise concern the allegations at Page 12 of Your Responsive Pleading that: “The Mitte Foundation’s damages include, but are not limited to, profits that could have been realized had World Class sold the properties at fair market value when valid offers to purchase were received from third-parties; monies lost through World Class’s purported dilution of the Mitte Foundation’s ownership interest in WC 3rd and Congress; and lost profits from other investment opportunities that the Mitte Foundation has been unable to take advantage of as a result of having a substantial part of its endowment tied up in World Class investments for much longer than was originally promised. The Mitte Foundation therefore seeks damages in this arbitration in the amount of the fair-market value of its pre-dilution ownership position in both WC 1st and Trinity and WC 3rd and Congress.”

Status: No documents responsive to this request have been produced.

14. All documents and/or communications between You and any Third Party that refer to, relate to or otherwise concern any aspect of this Arbitration. Your response should include any documents or communications between You (including your counsel of record), Mr. Chandrasoma and/or any Third Party that discloses any information contained in Claimants’ Statement of Claims or May 2, 2019 Motion for Protective Order or attaches those documents in whole or in part. Your response should also include any documents and/or communications between You (including your counsel of record) that refer to, relate to or otherwise concern the “other litigation and arbitration filed by limited partners along these same lines” and the other “limited partners and other litigants” that you refer to in your May 2, 2019 Letter Brief at page 2. In addition, your response should include any agreement between You, Mr. Chandrasoma and/or any Third Party that concerns the subject matter of this Arbitration or the Litigation.

Status: No documents responsive to this request have been produced.

15. All documents and/or communications that refer to, relate to, support or otherwise concern Your contentions as stated in the May 2, 2019 Mitte Letter Brief at p. 2, which include the following:

- a. “Unsurprisingly, there has been other litigation and arbitration [sic] filed by limited partners along these same lines.”
- b. Claimants “make it a pattern and practice to prolong what are supposed to be short-term investments, misrepresent the actual value of the property, withhold key financial information including offers to purchase by third parties, and buy out their limited partners at below market prices.”

Your response should include all pleadings, filings and material concerning those alleged “litigation” and “arbitration” matters.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

16. All documents and/or communications that refer to, relate, support or otherwise concern your statements contained in Your Responsive Pleading that:

- a. "World Class has used and continues to use these same tactics to defraud and intimidate other investors in World Class projects." *See* Respondent's Responsive Pleading at p. 11
- b. Concerning what Respondent's refer to in their pleadings as the "F1 deal" statement that "Mr. Chandrasoma is also involved in that deal through a family business but the Mitte Foundation is not." *See id.* at p. 6.
- c. "The fact that Mr. Garlick was frustrated by Mr. Paul's delay in providing a return on investment (as is his custom and practice)." *See id.* at p. 7.
- d. "The fact of the matter is that Nate Paul uses arbitration clauses and confidentiality requirements to compartmentalize and conceal his pattern of taking advantage of limited partners." *See id.* at p. 11
- e. Any and all documents and/or communications that refer to, relate to, support or otherwise concern the specific "promise" You allege to exist. *See id.* at p. 12

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

17. *Any and all documents and/or communications that refer to, relate to, support, or concern Your contentions that Claimants breached their fiduciary duties to Respondent. Your response should include any and all documents and/or communications concerning the five specific allegations enumerated at the top of Page 12 of Respondent's Responsive Pleading:*

- a. *"Refusing to acknowledge or respond to valid letters of intent (LOIs) from third parties wishing to purchase the property of WC 1st and Trinity, LP"*
- b. *"Delaying the sale of the properties for years, contrary to the representations made initially, thereby tying up investors' funds and creating pressure to sell out at below market prices."*
- c. *"Requiring capital calls on WC 3rd and Congress without stating a valid business reason."*
- d. *"Purporting to dilute the ownership interest of the Mitte Foundation after unwarranted capital calls; and"*

e. "Refusing to allow access to the books and records of the Partnerships as required by statute and the Partnership Agreements."

Your response should also include any and all documents and/or communications that refer to, relate to, support or otherwise concern any other claim that Claimants breached their fiduciary duties to Respondent.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

18. Any and all documents and/or communications that refer to, relate, support or otherwise concern Your contentions that Claimants breached the Operating Agreements. Your response should include any and all documents and/or communications concerning the allegations enumerated on page 13 of Respondent's Responsive Pleadings where you have claimed that access to "books and records" will enable you to discover "other breaches of the partnership agreements" and identify the following "potential breaches":

a. "Section 1.8.: if, as suspected, World Class used one or both of these properties as collateral for loans to benefit World Class;"

b. "Section 2.4: not following the appropriate procedure and process for capital calls"

c. "Article 3: improper allocations of profit and loss;"

d. "Article 4: failing to make appropriate distributions;"

e. "Sections 5.4(a) and (c): improper commingling of funds; and"

f. "Sections 5.6(a) and (b): improper charging of management fees and expense reimbursements."

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

23. All documents and/or communications that refer to, relate to, support or otherwise concern any appraisal, analysis, study, valuation or examination of the Properties or Mitte's investment in the Partnerships.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

24. All documents and/or communications by, between or involving Respondent and/or Mr. Chandrasoma and any Third Party where the document or communication refers to, relates to or otherwise concerns the Partnerships, the properties owned by the Partnerships,

the Operating Agreements, or the dispute with Claimants that is now embodied in the Litigation or the Arbitration, regardless of whether the Litigation or Arbitration were formally filed at the time the dispute arose.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

25. To the extent not already produced based on another Request, please produce true and correct copies of all documents and communications that support, reflect, and/or relate to the facts and claims identified by You in Respondent's Responsive Pleading.

Status: Some documents responsive to this category have been produced; however, given the limited nature of Mitte's production, Claimants Seek confirmation that no other documents exist.

26. To the extent not already produced based on another Request, please produce all non-duplicative documents you intend to use in this Arbitration whether at any deposition preparing any witness, in motion practice, in connection with any expert report, or in any hearing in this matter, including the final hearing.

Status: No documents responsive to this request have been produced

27. To the extent not already produced based on another Request, please produce true and correct copies of all documents and communications that you reviewed and/or relied on in preparing Respondent's Responsive Pleading.

Status: No documents responsive to this request have been produced.

28. Because of Your request for attorneys' fees under Texas Civil Practice & Remedies Code § 38.001(a), produce a copy of the representation agreement between Respondent and Respondent's counsel in this Arbitration, along with any and all billing statements for work performed on this matter.

Status: No billing statements or engagement letters responsive to this request have been produced.

E. Because Respondent has not objected to the vast majority of Claimants' Requests, there is no excuse for Respondent's failure to produce responsive documents. Further, the weak objections asserted by Respondent do not support any withholding of documents.

F. Under AAA Rule R-23, the Arbitrator has the authority to issue any orders necessary to enforce the provisions of Rules R-21 and R-22 and to otherwise achieve a fair, efficient and economical resolution of the case, including without limitation issuing any

enforcement orders which the arbitrator is empowered to issue under applicable law, and in the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance.

G. On May 4, 2020, Claimants filed a status report requesting that the Arbitrator hold a status conference and that a new scheduling order be entered. Respondent filed a status report the following day, and although it also sought a status conference and new scheduling order, Respondent unnecessarily went to District Court to seek enforcement of Arbitrator's prior order on production. Claimants objected to that motion because the proper forum for discovery questions is before this Court, and because the order Respondent sought to enforce was effectively stale given that all Parties to this arbitration had agreed to the need for a new scheduling order, and none of the Parties had taken any action in this matter since late 2019. The fact that Respondent is now attempting to enforce an order that is over 237 days old, while Claimants have more appropriately brought the matter and the request for scheduling before your Honor, creates both inequity as well as inefficiency and parallel proceedings, which frustrate what should be a fair, efficient, and economical resolution of the case.

H. Claimants request that as part of that status conference, the Arbitrator set this Motion for hearing and at the conclusion of said hearing compel Respondent to comply with its discovery obligations, immediately produce all responsive documents, and award Claimants their costs and expenses in having to file this Motion. Further, in an effort to achieve a fair proceeding, the Arbitrator should require Respondent's production of documents by June 5, 2020, which is the same deadline imposed on Claimants to produce documents, or modify her prior order related to

Claimants' production of documents so that the Parties have the same timeline to comply with their discovery obligations.

WHEREFORE, PREMISES CONSIDERED, Claimants request that (i) Respondent be ordered to produce to Claimants on or before June 5, 2020, each and every document in compliance with the above Requests for Production, (ii) Respondent be ordered to certify that either (1) all responsive documents have been previously produced to Claimants, (2) all responsive documents not previously produced to Claimants are attached, or (3) there are no responsive documents in Respondent's possession, custody, or control, and (iii) Claimants be awarded their attorneys' fee for having to file and prosecute this Motion. Claimants respectfully request such other relief to which they may be entitled to at law or in equity.

Respectfully submitted,

HANCE SCARBOROUGH, LLP
400 W. 15th Street, Suite 950
Austin, Texas 78701
Telephone: (512) 479-8888
Facsimile: (512) 482-6891

By: /s/ Terry L. Scarborough
Terry L. Scarborough
State Bar No. 17716000
tscarborough@hslawmail.com
V. Blayre Peña
State Bar No. 24050372
bpena@hslawmail.com

ATTORNEYS FOR CLAIMANTS

CERTIFICATE OF CONFERENCE

On the ____ day of May 2020, the undersigned conferred with attorney for Respondent to discuss the relief sought in this Motion. After good faith efforts, the Parties could not resolve their dispute.

/s/ Terry L. Scarborough
Terry L. Scarborough

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been sent via email on May 27, 2020, to the following counsel of record:

MCGINNIS LOCHRIDGE LLP

Ray C. Chester
rchester@mcginnislaw.com
Michael A. Shaunessy
mshaunessy@mcginnislaw.com
600 Congress Avenue, Suite 2100
Austin, Texas 78701
Telephone: (512) 495-6000
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STREUSAND, LANDON, OZBURN &

LEMMON, LLP
Stephen W. Lemmon
lemmon@slollp.com
Rhonda B. Mates
mates@slollp.com
1801 South Mopac, Ste. 320
Austin, Texas 78746
Telephone: (512) 236-9900
Facsimile: (512) 236-9904

/s/ Terry L. Scarborough

Terry L. Scarborough

EXHIBIT “C”

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

THE ROY F. & JOANN COLE)	IN THE DISTRICT COURT
MITTE FOUNDATION,)	
Plaintiff,)	
)	
vs.)	TRAVIS COUNTY, TEXAS
)	
WC 1ST AND TRINITY, L.P.,)	
WC 1ST AND TRINITY GP,)	
LLC, WC 3RD AND CONGRESS,)	
LP and WORLD CLASS CAPITAL))	
GROUP, LLC,)	
Defendants.)	126TH JUDICIAL DISTRICT

HEARING

On the 6th day of January, 2020, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Jan Soifer, Judge Presiding, held in Austin, Travis County, Texas.

Proceedings reported by computerized machine shorthand.

APPEARANCES

APPEARING FOR THE PLAINTIFF:

MR. RAY C. CHESTER
SBOT NO. 04189065
MR. MICHAEL A. SHAUNESSY
SBOT NO. 18134550
McGinnis Lochridge, LLP
600 Congress Avenue, Suite 2100
Austin, Texas 78701
Telephone: (512) 495-6051
E-mail: rchester@mcginnislaw.com

APPEARING FOR THE DEFENDANTS:

MR. EDWARD F. FERNANDES
SBOT NO. 06932700
MS. KATHERINE STEIN
SBOT NO. 24083980
King & Spalding LLP
500 W. 2nd Street
Suite 1800
Austin, Texas 78701
Telephone: (512) 457-2000
E-mail: efernandes@kslaw.com

APPEARING FOR THE RECEIVER:

MR. STEPHEN LEMMON
SBOT NO. 12194500
Streusand | Landon | Ozburn | Lemmon LLP
1801 S. MoPac Expressway, Suite 320
Austin, Texas 78746
Telephone: (512) 220-2688
E-mail: lemmon@slollp.com

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I N D E X
HEARING
January 6, 2020

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1 MR. CHESTER: We did that.

2 MR. FERNANDES: -- everything they're
3 supposed to get.

4 Well, there's certainly a lot of stuff
5 that we don't have that haven't been produced to us,
6 too, that we would -- we need.

7 MR. CHESTER: That's not true. We -- we
8 did full production.

9 I'm sorry. I just can't let you say stuff
10 like that.

11 MR. FERNANDES: Okay.

12 THE COURT: Well -- and I understand,
13 Mr. Fernandes, that you're --

14 MR. FERNANDES: I'll give you an example.

15 All of those e-mails that we got last time
16 from the receiver were never produced by Mitte. They
17 weren't produced by Mitte prior to the hearing in
18 connection with appointing the receiver, and they were
19 specifically relating to all the discussions in advance
20 and were pertinent to that hearing. Not any of those
21 were produced, and it was hundreds of e-mails prior to
22 the subpoena and them being produced by the receiver.
23 So to suggest that everything's been produced is simply
24 not accurate.

25 THE COURT: My understanding, what will

1 you were complaining about, is that they didn't produce
2 back to you what the receiver gathered from the banks
3 and -- I don't know what e-mails. Do you know what
4 e-mails --

5 MR. FERNANDES: No.

6 MR. SHAUNESSY: Your Honor, just so you
7 know -- and I don't know that Mr. Fernandes is actually
8 familiar with the document request that they sent out
9 because they were three lawyers ago. They did ask for a
10 set of e-mails. Okay? And we went through, did a full
11 analysis and production. Okay? There was no
12 contemplation at that time of someone asking for a
13 receiver. Okay?

14 So, no, we didn't produce any documents in
15 response to their request for production related to our
16 discussions with a receiver because we weren't -- there
17 wasn't a receiver contemplated at the time. Okay?

18 MR. CHESTER: Also, they didn't send us a
19 document request for those.

20 MR. SHAUNESSY: No. And I don't believe
21 any of their document requests relate to them.

22 But to the extent that they sent us a
23 broad document request that said anything related to the
24 properties, we did object to some of their requests and
25 we said they're overly broad. Okay?

1 Just, Judge Soifer, you've been very
2 patient with us, and I appreciate that. Okay? A prior
3 order from this district court told them to turn over
4 documents. They didn't do it. We went to
5 Judge Covington I believe on three time -- three
6 different occasions. Judge Covington literally has said
7 "There is nothing further I can do to compel them to
8 produce." Lawyers from this firm, King & Spalding,
9 represented to Judge Covington, "We are about to begin
10 production, and it's going to be a rolling production.
11 They're going to get everything they want." That's just
12 never been the case.

13 MR. FERNANDES: And that's because we did
14 ask what hadn't been produced, and they never told us.

15 MR. CHESTER: Everything hasn't been
16 produced.

17 MR. FERNANDES: That's not --

18 MR. CHESTER: Read --

19 MR. FERNANDES: -- true.

20 MR. CHESTER: -- the order.

21 MR. FERNANDES: That's simply not true.

22 MR. SHAUNESSY: Your Honor, I've got to
23 respond.

24 THE COURT: So I see an agreed order on
25 Plaintiff's Motion to Compel and For Sanctions signed by

1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

3

4 I, Michelle Williamson, Official Court Reporter in
5 and for the 345th District Court of Travis, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all
8 portions of evidence and other proceedings requested in
9 writing by counsel for the parties to be included in
10 this volume of the Reporter's Record in the above-styled
11 and numbered cause, all of which occurred in open court
12 or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits,
15 if any, offered by the respective parties.

16 WITNESS MY OFFICIAL HAND this 8th day of January,
17 2020.

18

19

20

/s/ Michelle Williamson

21

Michelle Williamson, CSR
Texas CSR #4471
Expiration Date: 01/31/2022
Official Court Reporter
345th District Court
Travis County, Texas
P.O. Box 1748
Austin, Texas 78767
Telephone: (512) 854-9373

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EXHIBIT “D”

From: [Stephen Lemmon](#)
To: [Chester, Ray](#); [Gregory S. Milligan](#)
Cc: [Escobar, Manuel](#); [Rhonda Mates](#)
Subject: RE: World Class
Date: Wednesday, September 4, 2019 10:00:16 AM

We are generally available this afternoon and tomorrow. My general thoughts re this:

- I think there is no question that the arbitrator can create remedies, including a receivership
- My only concern is regarding the effect of the receivership on third parties, like the mortgage holder:
 - The general doctrine of *custodia legis* protects receivership property from acts by any person or party without court approval.
 - I am simply not sure whether that same protection applies if the receivership is imposed by an arbitrator as opposed to a court.
- Query: Would Tx Civ Prac and Rem. Code section 171.086(b) allow a parallel application in district court for appointment of a receiver? If so that would solve the potential problem.

Stephen Lemmon

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From: Chester, Ray <rchester@mcginnislaw.com>
Sent: Wednesday, September 4, 2019 9:47 AM
To: Gregory S. Milligan <gmilligan@harneypartners.com>
Cc: Escobar, Manuel <mescobar@mcginnislaw.com>; Stephen Lemmon <Lemmon@slollp.com>; Rhonda Mates <Mates@slollp.com>
Subject: Re: World Class

If you guys have time to get on a call this week to discuss this issue, please let me know. I can make myself available, and I think it would be productive.

Sent from my iPad

On Sep 4, 2019, at 9:43 AM, Gregory S. Milligan <gmilligan@harneypartners.com> wrote:

Manuel:

Thanks for the summary. I've also added Steve and Rhonda to this thread so

they can similarly help with that strategy, as we work on a first draft of the order.

Gregory S. Milligan, CTP
Executive Vice President
Cell: (512) 626-1818

<image004.png>

Austin Chicago Dallas Houston Madison

From: Escobar, Manuel <mescobar@mcginnislaw.com>
Sent: Wednesday, September 4, 2019 9:38 AM
To: Gregory S. Milligan <gmilligan@harneypartners.com>
Cc: Chester, Ray <rchester@mcginnislaw.com>
Subject: RE: World Class

Greg,

I'm looping in Ray to ensure I do not give you incorrect information, but my understanding is that there has been no order in the lawsuit impacting the arbitration. The original resolution to the lawsuit was an agreed protective order (which included an order to produce records), which specifically stated that the order did not affect the arbitration.

The arbitration initiated solely from World Class' arbitration demand made pursuant to the partnership agreement.

We filed a motion to vacate that agreed protective order in the run up to reaching the settlement agreement, but pulled down the hearing once it became clear we were going to reach a settlement.

I'm sure Ray will want to discuss further with you strategy on ensuring the enforceability of the arbitrator's order pending next week's hearing.

Thanks,
Manuel

From: Gregory S. Milligan [<mailto:gmilligan@harneypartners.com>]
Sent: Tuesday, September 03, 2019 8:30 PM
To: Escobar, Manuel <mescobar@mcginnislaw.com>
Subject: RE: World Class

So the current arbitration isn't court-ordered because you dismissed it voluntarily in return for some production?

We're thinking about the ability to enforce a receivership order entered in a private arbitration. We might need to file something in the District Court to

Rhonda Mates

From: Rhonda Mates
Sent: Thursday, November 7, 2019 12:05 PM
To: Ray Chester
Subject: Fwd: Receivership Statute -- Texas Business Organizations Code
Attachments: Spiritas v Davidoff.doc; ATTP00001.htm

The general receivership statute (Tex. Civ. Prac. & Rem. Code ch. 64), which provides that the court may appoint a receiver when the applicant has a probable interest or right to the property and the property is in danger of being lost, removed, or materially injured. TRCP § 64.001(b). However, Tex. Bus. Org. Code § 11.401 provides: "A receiver may be appointed for a domestic entity or for a domestic entity's property or business **only** as provided for and on the conditions set forth in this code." (emphasis added) The bases for which a receiver can be appointed for a domestic entity under the TBOC are more strict those set forth under the general receivership statute.

Under the TBOC, a court may appoint a receiver (1) for specific property of a domestic entity located in Texas that is involved in litigation; (2) over the property and business of a domestic entity for the purpose of rehabilitating the entity; or (3) to effect a liquidation of the property and business of a domestic entity. TBOC § 11.402. A receiver can only be appointed under (1) by a court that subject matter jurisdiction of the specific property. § 11.402(a). A receiver can only be appointed under (2) and (3) by a "district court in the county in which the registered office or principal place of business of the domestic entity is located." § 11.402(b).

Receiver for Specific Property TBOC § 11.403.

A court with jurisdiction over specific property may appoint a receiver in an action "between partners or other jointly owning or interested in the property or fund." § 11.403(a)(3). It must be shown that (i) the property is in danger of being lost, removed, or materially injured, (ii) the court considers that appointment of a receiver is necessary to "conserve the property or fund and avoid damage to interested parties," (iii) all other requirements of law are complied with, and (iv) "the court determines that other available legal and equitable remedies are inadequate." § 11.403(b). This last requirement is the key difference between the TBOC and TRCP.

Receiver to Rehabilitate a Domestic Entity § 11.404

The district court in the county in which the entity has its registered office or principal place of business may appoint a receiver for the entity's property and business in an action by an owner or member of the entity if it is established (i) the entity is insolvent or in imminent danger of insolvency, (ii) the governing

person of the entity are deadlocked in the management of the entity and irreparable injury to the entity is being suffered or is threatened because of the deadlock, (iii) the actions of the governing person are illegal, oppressive, or fraudulent, or (iv) the property of the entity is being misapplied or wasted. § 11.404(a)(1). The court may appoint a receiver under this section only if (i) circumstances exist that are considered by the court to necessitate the appointment of receiver to conserve the property and business of the entity and avoid damage to interested parties, (ii) all other requirements of law are complied with, and (iii) **the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity under § 11.402(a), are inadequate.**

Receiver to Liquidate Domestic Entity § 11.405

This provision does not apply to the circumstances of this case so I will not address them here.

TBOC provides that that "if the condition necessitating the appointment of a receiver is remedied, the receivership shall be terminated immediately..." §§ 11.403(d), 11.404(c).

Rhonda Mates

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mates@slolp.com | www.slolp.com

From: Stephen Lemmon
To: Chester, Ray; Gregory S. Milligan; Rhonda Mates
Subject: RE: Mitte v WC
Date: Thursday, November 7, 2019 9:00:53 AM

Works for me.

Stephen Lemmon

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From: Chester, Ray <rchester@mcginnislaw.com>
Sent: Thursday, November 7, 2019 8:49 AM
To: Gregory Milligan <gmilligan@harneypartners.com>; Stephen Lemmon <Lemmon@slollp.com>; Rhonda Mates <Mates@slollp.com>
Subject: Mitte v WC

Are you guys (especially Greg) available Monday Nov 25 for a receivership hearing?

The distant second and third choices are Dec 16 and Dec 2, in that order.

Please let me know ASAP.

Ray

Ray Chester
Board Certified Civil Trial Law and Personal Injury Trial Law
McGINNIS LOCHRIDGE
600 Congress Avenue, Suite 2100
Austin, TX 78701
o 512-495-6051 f 512-505-6351



MCGINNIS LOCHRIDGE

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HBOM00028515

AG Exhibit 0033

Stephen Lemmon

From: Chester, Ray <rchester@mcginnislaw.com>
Sent: Thursday, November 14, 2019 1:18 PM
To: Stephen Lemmon
Subject: RE: Proposed Order

It would be a stretch, but yeah, they are capable of any argument. I like your compromise, "state courts."

From: Stephen Lemmon [mailto:Lemmon@slollp.com]
Sent: Thursday, November 14, 2019 1:13 PM
To: Chester, Ray <rchester@mcginnislaw.com>
Cc: Rhonda Mates <Mates@slollp.com>
Subject: RE: Proposed Order

I agree. But read his latest. I think he is going to try to somehow argue that you cannot go forward on your new application.

Stephen Lemmon

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From: Chester, Ray <rchester@mcginnislaw.com>
Sent: Thursday, November 14, 2019 1:12 PM
To: Stephen Lemmon <Lemmon@slollp.com>
Subject: RE: Proposed Order

Just between you and me, I don't think it matters because if the district court appoints a receiver it will be under a new order, not Covington's.

Ray Chester
Board Certified Civil Trial Law and Personal Injury Trial Law
McGINNIS LOCHRIDGE
600 Congress Avenue, Suite 2100
Austin, TX 78701
o 512-495-6051 f 512-505-6351



McGINNIS LOCHRIDGE



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From: Stephen Lemmon [<mailto:Lemmon@slollp.com>]
Sent: Thursday, November 14, 2019 1:02 PM
To: Fernandes, Ed <efernandes@kslaw.com>; Chester, Ray <rchester@mcginnislaw.com>
Cc: Gray, Adam <AGray@KSLAW.com>; Stein, Kate <KStein@kslaw.com>; Rhonda Mates <Mates@slollp.com>; Gregory S. Milligan <gmilligan@harneypartners.com>
Subject: RE: Proposed Order

Well I disagree. Mitte has filed a new application so there might be an order from a district court that would change things. How about simply "state courts"?

Stephen Lemmon

STREUSAND | LANDON | OZBURN | LEMMON LLP
Spyglass Point | 1801 South MoPac Expressway | Suite 320 | Austin, Texas 78746
(d) (512) 220-2688 | (o) (512) 236-9900 | (f) (512) 236-9904
lemmon@slollp.com | www.slollp.com

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From: Fernandes, Ed <efernandes@kslaw.com>
Sent: Thursday, November 14, 2019 11:31 AM
To: Stephen Lemmon <Lemmon@slollp.com>; Chester, Ray <rchester@mcginnislaw.com>
Cc: Gray, Adam <AGray@KSLAW.com>; Stein, Kate <KStein@kslaw.com>
Subject: Proposed Order

Attached are our proposed revisions.

As you can see we accepted all of your proposed revisions except the reference to the "State District" court.

As you may recall, the purpose of the hearing was so that Judge Covington could determine "if anything the Receiver is requesting falls outside of the [court of appeals] stay".

Please let us know if this is acceptable.

Thanks.

Edward Fernandes (Ed)
Partner

T: +1 512 457 2030 | E: efernandes@kslaw.com | www.kslaw.com

King & Spalding LLP
500 West 2nd Street
Suite 1800
Austin, Texas 78701

1100 Louisiana Street
Suite 4000
Houston, TX 77002-5213

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Stephen Lemmon

From: Chester, Ray <rchester@mcginnislaw.com>
Sent: Thursday, November 14, 2019 1:12 PM
To: Stephen Lemmon
Subject: RE: Proposed Order

Just between you and me, I don't think it matters because if the district court appoints a receiver it will be under a new order, not Covington's.

Ray Chester
Board Certified Civil Trial Law and Personal Injury Trial Law
McGINNIS LOCHRIDGE
600 Congress Avenue, Suite 2100
Austin, TX 78701
o 512-495-6051 f 512-505-6351



MCGINNIS LOCHRIDGE

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From: Stephen Lemmon [mailto:Lemmon@slollp.com]
Sent: Thursday, November 14, 2019 1:02 PM
To: Fernandes, Ed <efernandes@kslaw.com>; Chester, Ray <rchester@mcginnislaw.com>
Cc: Gray, Adam <AGray@KSLAW.com>; Stein, Kate <KStein@kslaw.com>; Rhonda Mateş <Mates@slollp.com>; Gregory S. Milligan <gmilligan@harneypartners.com>
Subject: RE: Proposed Order

Well I disagree. Mitte has filed a new application so there might be an order from a district court that would change things. How about simply "state courts"?

Stephen Lemmon

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Spyglass Point | 1801 South MoPac Expressway | Suite 320 | Austin, Texas 78746
(d) (512) 220-2688 | (o) (512) 236-9900 | (f) (512) 236-9904
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Subject: Proposed Order

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Please let us know if this is acceptable.

Thanks.

Edward Fernandes (Ed)
Partner

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Stephen Lemmon

From: Chester, Ray <rchester@mcginnislaw.com>
Sent: Wednesday, November 13, 2019 10:43 AM
To: Gregory S. Milligan
Cc: Stephen Lemmon; Rhonda Mates; Shaunessy, Michael A.
Subject: Re: Application for receiver

Yes to both.

Ray

On Nov 13, 2019, at 10:20 AM, Gregory S. Milligan <gmilligan@harneypartners.com> wrote:

Starting at 9:00a?

Will you send a copy of what you filed?

Thanks,

Gregory S. Milligan, CTP
Executive Vice President
Cell: (512) 626-1818

<image004.png>

Austin | Chicago | Dallas | Houston | Madison

From: Chester, Ray <rchester@mcginnislaw.com>
Sent: Wednesday, November 13, 2019 10:19 AM
To: Stephen Lemmon <Lemmon@slollp.com>
Cc: Gregory S. Milligan <gmilligan@harneypartners.com>; Rhonda Mates <Mates@slollp.com>; Shaunessy, Michael A. <MShaunessy@mcginnislaw.com>
Subject: Application for receiver

The court decided to cancel all hearings thanksgiving week so the hearing will now be Dec 2.

Ray

Ray Chester
Board Certified Civil Trial Law and Personal Injury Trial Law
McGINNIS LOCHRIDGE
600 Congress Avenue, Suite 2100
Austin, TX 78701
o 512-495-6051 f 512-505-6351

<image002.gif> <image003.gif>

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EXHIBIT “F”

“THE STATE OF TEXAS”
SUBPOENA

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

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

SUBPOENA FOR HEARING ATTENDANCE
AND PRODUCTION OF DOCUMENTS

To any Sheriff or Constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.

You are commanded to subpoena and summon:

Gregory S. Milligan, HMP Advisory Holdings, LLC, d/b/a Harney Partners by and through his attorney of record, Stephen Lemmon, Streusand, Landon Ozburn Lemmon, LLP, 1801 South MoPac Expressway, Suite 320, Austin, Texas 78746, to appear at the Travis County District Courthouse, 1000 Guadalupe, Austin, Texas 78701 on December 2, 2019 at 9:00 a.m. (CT) before the 126th Judicial District Court, to attend, give testimony and to produce and permit for inspection and copying of the following documents or tangible things that must be produced as described in Exhibit A attached hereto at the hearing in this case on behalf of the Defendants and to remain in attendance from day to day until lawfully discharged.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

This subpoena was issued at the request of Defendants, whose attorneys of record are Edward F. Fernandes and Katherine Stein, King & Spalding LLP, 500 W. 2nd Street, Suite 1800, Austin, Texas 78701. You may contact Defendants' attorneys to arrange another time and date.

ISSUED this 25th day of November, 2019.

Respectfully submitted,

/s/ Edward F. Fernandes

Edward F. Fernandes
Texas Bar No. 06932700
efernandes@kslaw.com

Katherine Stein
Texas Bar No. 24083980
kstein@kslaw.com
KING & SPALDING LLP
500 W. 2nd Street, Suite 1800
Austin, Texas 78701
(512) 457-2000

Counsel for Defendants

EXHIBIT A

DEFINITIONS AND INSTRUCTIONS

1. You are instructed to produce the documents identified in this Exhibit A on or before 9:00 am on December 2, 2019.
2. “You” or “Your” refers to Gregory S. Milligan and includes his agents, attorneys, representatives, and employees, and all other persons acting on behalf of him.
3. “Document” or “Documents” mean or refer to all “documents,” “electronically stored information,” and “tangible things” to the broadest extent described the Texas Rules of Civil Procedure. The term is intended to include information stored on paper, audio tape, videotape, film, disk or any other form of electronic or magnetic storage. A draft or nonidentical document is a separate document within the meaning of this term. For the avoidance of doubt, the term “Communication” is included in the definition of “Document.”
4. “Communication” or “Communications” mean or refer to any document, oral statement, meeting, or conference, formal or informal, at any time or place, and under any circumstances whatsoever, whereby information of any kind was transmitted or received in any manner whatsoever.
5. “Partnerships” refers to WC 1st and Trinity, L.P. and WC 3rd and Congress, L.P.
6. “Properties” refers to the real property owned by WC 1st and Trinity, L.P. and WC 3rd and Congress, L.P.
7. “Plaintiff” refers to the Roy F. & Joann Cole Mitte Foundation and includes its agents, attorneys, representatives, and employees, and all other persons acting on behalf of it.
8. “Defendants” refers to WC 1st and Trinity, L.P., WC 1st and Trinity GP, LLC, WC 3rd and Congress, L.P., and WC 3rd and Congress GP, LLC and includes their agents, attorneys, representatives, and employees, and all other persons acting on behalf of them.

DOCUMENTS TO BE PRODUCED

1. All Documents that You have provided to Plaintiff.
2. All Documents reflecting Communications between You and Plaintiff.
3. All Documents reflecting Communications between You and Defendants.
4. All Documents obtained and created by You pursuant to the Order Appointing Receiver issued by Judge Covington, including but not limited to all bank statements, itemizations of transactions, communications, notices, inquiries, and letters of intent.
5. All Documents reflecting the identities of all persons and entities with whom You have communicated regarding the Partnerships or the Properties.

EXHIBIT “G”

WC 1st and Trinity, LP; WC 1st and Trinity, GP, LLC; WC 3rd and Congress, LP; and WC 3rd and Congress GP, LLC

Claimants,

-against-

The Roy F. & Joann Cole Mitte Foundation

Respondent.

American Arbitration Association

Case No.: 01-19-0000-5347

[PROPOSED] ORDER APPOINTING TEMPORARY RECEIVER

WHEREAS this matter has come before this Arbitration Tribunal upon Respondent Mitte Foundation's Motion for a Temporary Restraining Order Freezing Assets, Appointing a Temporary Receiver, and Granting Other Emergency Relief [is this the correct name of the motion or should it be First Amended Motion to Appoint Receiver?];

Commented [HK1]: (RCC) Change this to "Arbitrator"

WHEREAS Claimants WC 1st and Trinity, LP and WC 3rd and Trinity, LP (the "Partnership Claimants") possess significant assets—the full nature and extent of which are not currently known to this Arbitration Tribunal, and the value of which should be preserved during the pendency of this litigation;

Commented [HK2]: (RCC) The latter.

WHEREAS this Arbitration Tribunal finds that, based on the record in these proceedings, the appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets of the Partnership Claimants, and the affiliate entities of Partnership Claimants [what does this mean? Talking about the GP entities? If so, should say: "...the Partnership Claimants and WC 1st and Trinity GP, LLC and WC 3rd and Congress GP, LLC (the "GP Claimants")], as described below;

Commented [SMA3]: I would delete this as we do know the assets

Commented [HK4]: (RCC) Agree

WHEREAS this Arbitration Tribunal has subject matter jurisdiction over this action and personal jurisdiction over the Parties;

Commented [SMA5]: Not sure its significant but by parties are we saying Mitte as well as GP Claimants and Partnership Claimants. We have not defined the term "Parties" and that is concerning.

{01472/0002/00240920.1}

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED

THAT:

1. This Arbitration Tribunal hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the Partnership Claimants and GP Claimants (collectively, the "Receivership Parties").

2. Until further Order of this Arbitration Tribunal, Gregory S. Milligan, of the firm HMP Advisory Holdings, LLC, dba Harney Partners, is hereby appointed to serve without bond as the Arbitrator's appointment receiver (the "Receiver") for the estates of the Receivership Parties.

I. Asset Freeze

3. Except as otherwise specified herein, all assets of Receivership Parties ("Receivership Assets") are frozen and may not be conveyed, transferred or in any way hypothecated until further order of this Arbitration Tribunal. "Receivership Assets" means assets of any and every kind whatsoever, including without limitation all assets described in this Order, that are: (a) owned, controlled, or held, in whole or in part, by or for the benefit of any of the Receivership Parties; (b) in the actual or constructive possession of any of the Receivership Parties, or other individual or entity acting in concert with or behalf of any of the Receivership Parties; (c) held by an agent of any of the Receivership Parties, including as a retainer for the agent's provision of services; or (d) owned, controlled, or held, in whole or in part, by, or in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, trust, or other entity directly or indirectly owned, controlled, or held, in whole or in part, by any of the Receivership Parties, including assets that have been transferred to other persons or entities but as to which assets such persons or entities do not have a legitimate claim. Accordingly, all persons, institutions, and entities with direct or indirect control over any {01472/0002/00240920.1} Page 2 of 20

Receivership Assets— other than the Receiver or law enforcement officials acting within the course and scope of their official duties—are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such Receivership Assets. This freeze shall include, but not be limited to, Receivership Assets that are on deposit with financial institutions such as banks, brokerage firms, and mutual funds, or other institutions.

II. General Powers and Duties of Receiver

4. Except as limited herein, the Receiver shall have all powers, authorities, rights, and privileges heretofore possessed by the officers, directors, managers, and general and limited partners of the Receivership Parties under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of the Texas or Federal Rules of Civil Procedure, and this Order.

5. The trustees, directors, officers, managers, investment advisors, accountants, attorneys, and other agents of the Receivership Parties are hereby ~~removed and dismissed~~; and all ~~the~~ powers of any partners, directors, officers, and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the Receivership Parties' operations or assets, except to the extent as hereafter may be expressly granted by the Receiver.

6. The Receiver shall assume and control the operation of the Receivership Parties and shall preserve all of their claims or interests using the powers set forth in this Order. The Receiver shall have the power to bring suits in law or in equity without further Order of this Arbitration Tribunal. The Receiver may continue and conduct the business of the Receivership Parties in such manner, to such extent and for such duration as the Receiver may deem to be necessary or appropriate, if at all.

{01472/0002/00240920.1}

Page 3 of 20

7. No person holding or claiming any position of any sort with any of the Receivership Parties shall possess any authority to act by or on behalf of any of the Receivership Parties, unless expressly authorized, in writing, by the Receiver.

8. Subject to the specific provisions in Sections III through XIII, below, the Receiver shall have the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location, and value of all property interests of the Receivership Parties, including, but not limited to, monies, funds, securities, credits, investments, savings, options, shares, cash, currencies, checks, accounts, vehicles, boats, equipment, fixtures, effects, goods, chattels, lands, premises, leases, claims, notes, membership interests in any limited liability company, partnership interests, contracts, certificates of title, instruments, inheritances, interests in any trust, art, collectibles, furnishings, jewelry, personal effects, digital currencies, virtual currencies, cryptocurrencies, digital or electronic property, casino accounts, deposits, or chips, rights, and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Parties own, possess, have a beneficial interest in, or control directly or indirectly (the foregoing, together with all assets described in this Order collectively may be referred to as the "Receivership Assets" or the "Receivership Estates");
- B. To take custody, control, and possession of all Receivership Assets and records relevant thereto from the Receivership Parties;
- C. To manage, control, operate, and maintain the Receivership Estate and hold in his possession, custody, and control all Receivership Assets, pending further Order of this Arbitration Tribunal;
- D. To use Receivership Assets for the benefit of the Receivership Estate, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;
- E. To take any action that, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees, and agents of the Receivership Parties, except as limited by this Order;
- F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders, or auctioneers;

- G. To take such action as necessary and appropriate for the preservation of Receivership Assets¹ or to prevent the dissipation or concealment of Receivership Assets;
- H. To the extent necessary to locate and identify assets, the Receiver is authorized to issue subpoenas for documents and testimony consistent with the Texas or Federal Rules of Civil Procedure;
- I. To resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estate; and,
- J. To take such other action as may be approved by this Arbitration Tribunal.

Commented [SMA6]: Perhaps its elsewhere but the Receiver should have the right to bring suits and/or initiate arbitrations as necessary to carry out his responsibilities.

9. Unless otherwise limited by this Order, the Receiver is authorized to exercise all equitable powers under applicable law.

10. The Receiver may delegate to his agents any of the powers of the Receiver granted to him by this Order.

11. The Receiver may seek further Orders of this Arbitration Tribunal regarding standing powers of the Receiver, operations of Receivership Parties, and administration of Receivership Assets as may be deemed necessary to conserve the Receivership Assets, secure the best interests of creditors, investors, and other stakeholders of the Receivership Parties, and protect the interests of the Receiver.

III. Access to Information

12. The past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants, and employees of the Receivership Parties, as well as those acting in their place, are hereby enjoined, ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Parties and/or all Receivership Assets; such information shall include but not be limited to books, records, documents, accounts, all financial and accounting records, balance sheets, income

statements, bank records (including monthly statements, canceled checks, records of wire transfers, details of items deposited, and check registers), investor lists, title documents, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, computer files, databases and other data compilations, including any information stored by third parties or using cloud-based services, access codes, security codes, passwords, safe deposit keys, combinations, and all other instruments, papers, and electronic data or records of any kind or nature.

13. Within five (5) days of the entry of this Order, the Receivership Parties shall file with the Arbitration Tribunal and serve upon the Receiver a sworn statement, listing: (a) the identity, location and estimated value of all Receivership Assets, including contact information for the party in possession of all assets of such Receivership Party, held jointly or singly, including without limitation all assets held outside the territory of the United States; (b) all employees (and job titles thereof), other personnel, attorneys, accountants, and any other agents or contractors of the Receivership Parties; and (c) the amount and nature of all liabilities of such Receivership Party, including without limitation the names, addresses, and amounts of claims of all known creditors of the Receivership Parties. Such sworn statement shall include the names, addresses, telephone numbers, facsimile numbers, and e-mail addresses of the holders of any legal, equitable, or beneficial interests in such assets and the names, addresses, telephone numbers, facsimile numbers, and e-mail addresses of any financial institutions or other persons or entities holding such assets, along with the account numbers and balances. The sworn statements shall be accurate as of the date of this Order, shall be signed and verified as true and complete under penalty of perjury.

Commented [SMA7]: This does not make sense to me. The Receivership Parties are defined as the Partnership Claimants and GP Claimants (see para 1 above) and the Receiver has been appointed to control them (see para 2 above). How can the Receivership Parties file anything unless the Receiver does it for them—because they are in receivership. Moreover if the Receiver is going to do this then shouldn't the Receiver be directed to file it?

14. Within thirty (30) days of the entry of this Order, the Receivership Parties shall file with the Arbitration Tribunal and serve upon the Receiver a sworn statement and accounting, with {01472/0002/00240920.1}

Commented [SMA8]: Same issue as with para 13 a

Page 6 of 20

complete documentation, covering the period from date of formation of the Receivership Parties to the present:

- A. Of all Receivership Assets, wherever located, held by or in the name of the Receivership Parties, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains and/or exercised or exercises control, including, but not limited to: (a) all securities, investments, funds, real estate, automobiles, jewelry, digital assets, including but not limited to any assets contained in digital assets held at cryptocurrency exchanges, and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any bank, brokerage, or other financial institution, or any other institution, including but not limited to casinos, held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage, or other financial institution;
- B. Identifying every account at every bank, brokerage, or other financial institution: (a) over which Receivership Parties have signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, the Receivership Parties;
- C. Identifying all credit, bank, charge, debit or other deferred payment card issued to or used by each Receivership Parties, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve months;
- D. Of all assets received by any of Receivership Parties from any person or entity, including the value, location, and disposition of any assets so received;
- E. Of all funds received by the Receivership Parties, and each of them, in any way related, directly or indirectly, to the Partnership Claimants. The submission must clearly identify, among other things, all investors, lenders or partners, the interests they purchased or loans made, the date and amount of their investments or loans, and the current location of such funds;
- F. Of all expenditures exceeding \$1,000 made by any of Receivership Parties, including those made on their behalf by any person or entity in the preceding 12 month period; and
- G. Of all transfers of assets made by any of Receivership Parties.

15. Within five (5) days of the entry of this Order, the Receivership Parties shall provide to the Receiver copies of the Receivership Parties' federal income tax returns from formation through 2018 with all relevant and necessary underlying documentation.

Commented [SMA9]: Same question as para 13 above.

16. The Receivership Parties' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Parties, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Parties. The Receiver ~~holds maintains~~ and controls the attorney-client privilege and all other privileged of and for all Receivership Parties, and no information may be withheld from the Receiver on the basis that the information or communication was a privilege communication of or to the Receivership Entities. The Receiver has the exclusive right to determine if, when and under what circumstances to waive any privilege of any Receivership Entity.

17. The Receivership Parties and the persons or entities listed in the preceding paragraph are required to assist the Receiver in fulfilling his duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Receiver. This cooperation and assistance shall include, but not be limited to: (a) providing any information or documents that the Receiver deems necessary or appropriate to the exercise of the Receiver's authority and the discharge of the Receiver's responsibilities under this Order; (b) providing any keys, including but not limited to physical, digital, and cryptographic keys, codes, device PINs, and passwords, including but not limited to account, encryption, email account, and computer passwords required to access any computer, electronic file, or telephonic data in any medium; (c) immediately advising all persons who owe money or currency of any kind to the {01472/0002/00240920.1}

Page 8 of 20

Receivership Parties that all debts should be paid directly to the Receiver; (d) providing full access to all Receivership Assets; and (e) maintaining and not wasting, damaging, disposing of, or transferring in any manner any Receivership Assets.

IV. Access to Books, Records and Accounts

18. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books, and records and all other documents or instruments relating to the Receivership Parties. All persons and entities having control, custody, or possession of any Receivership Assets, including any financial institutions, are hereby directed to turn such property, including but not limited to all accounts, over to the Receiver.

19. The Receivership Parties, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Parties, and any persons receiving notice of this Order by personal service, facsimile transmission, or otherwise, having possession of the property, business, books, records, accounts, or assets of the Receivership Parties are hereby directed to deliver the same to the Receiver, his agents, and/or employees.

20. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody, or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, the Receivership Parties that receive actual notice of this Order by personal service, facsimile transmission, or otherwise shall:

- A. Not liquidate, transfer, sell, convey, or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Parties except upon instructions from the Receiver;
- B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Arbitration Tribunal;
- C. Within five (5) business days of receipt of that notice, file with this Arbitration Tribunal and serve on the Receiver and his counsel a certified statement setting forth, with respect to each such account or other asset, the balance in the account

or description of the assets as of the close of business on the date of receipt of the notice; and,

- D. Cooperate expeditiously in providing information and transferring funds, assets, and accounts to the Receiver or at the direction of the Receiver.

V. Access to Real and Personal Property

21. The Receiver is authorized but not directed to take immediate possession of all personal property of the Receivership Parties, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies, and equipment.

22. The Receiver is authorized but not directed to take immediate possession of all real property of the Receivership Parties, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission, or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing, or erasing anything on such premises.

23. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to any premises. The Receivership Parties, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys in their possession during the term of the receivership.

24. The Receiver is authorized to open all mail, other than mail directed to the Receivership Parties or their general partners, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

25. The Receiver is authorized to request similar assistance from any other federal, state, county, or civil law enforcement officer(s) or constable(s) of any jurisdiction.

VI. Notice to Third Parties

26. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of the Receivership Parties, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

27. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Party shall, until further ordered by this arbitration, pay all such obligations in accordance with the terms thereof to the Receiver, and its receipt for such payments shall have the same force and effect as if the Receivership Defendant had received such payment.

28. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity, or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estate. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver.

29. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations, or activities of any
{01472/0002/00240920.1} Page 11 of 20

of the Receivership Parties (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Parties. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Parties shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business or service, or mail courier or delivery service, hired, rented, or used by the Receivership Parties. No one other than Receiver shall open a new mailbox regarding the Receivership Parties, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository, or courier service.

30. Subject to payment for services provided, any entity furnishing any utilities or related services to the Receivership Parties shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

VII. Injunction Against Interference with Receiver

31. The Receivership Parties and all persons receiving notice of this Order by personal service, facsimile, or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

- A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Assets; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Assets;

Commented [RM10]: I think we should include this because if it is not part of this Order, the state court will have to enter a separate order making it applicable to third parties. We want the state court to just confirm this Order in its entirety. See para 33.

Commented [GM11]: Per Ray's suggestion, do we only make this applicable to World Class in this order and not third parties for now? Then we have this order confirmed by the District Court to make it enforceable against third parties with these same provisions?

Commented [HK12]: (RCC) Agree with Rhonda.

- B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include but are not limited to, concealing, destroying, or altering records or information;
- C. Dissipate or otherwise diminish the value of any Receivership Assets; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Assets, enforcing judgments, assessments or claims against any Receivership Assets or any Receivership Defendant, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Defendant or which otherwise affects any Receivership Assets; or;
- D. Transact any of the business of the Receivership Parties or transferring any Receivership Assets to anyone other than the Receiver;
- E. Destroy, secret, deface, transfer, or otherwise alter or dispose of any documents of or pertaining to the Receivership Parties and to the extent any such documents are no longer in existence, fail to disclose the nature and contents of such documents and how, when, and by whom such documents were caused to no longer be in existence;
- F. Fail to notify the Receiver of any Receivership Assets, including accounts constituting Receivership Assets held in any name other than the name of a Receivership Defendant, or by any person other than the Receivership Parties, or fail to provide any assistance or information requested by the Receiver in connection with obtaining possession, custody, or control of such Receivership Assets;
- G. Refuse to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their powers, duties, or authority under any order of this Arbitration Tribunal;
- H. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Arbitration Tribunal over the Receivership Estate; or
- I. Take any action to file bankruptcy proceedings under Title II of the U.S. Code. The right to file a bankruptcy proceeding or any other litigation involving the Receivership Parties is expressly and solely delegated to the Receiver.

32. Either The Receiver or Respondent the Mittle Foundation, or both, are authorized, but not required, to seek confirmation of this Order in the District Court of Travis

County, Texas. Notwithstanding confirmation of this Order by any other tribunal, this Arbitration Tribunal shall retain exclusive jurisdiction to enforce the terms of this Order.

33. The Receivership Parties shall cooperate with and assist the Receiver in the performance of his duties.

VIII. Managing Assets

34. The Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Assets (the "Receivership Funds").

35. The Receiver's deposit account shall be entitled "Receiver's Account, Estate of [Name of Receivership Defendant]" together with the name of the action, or a title to that effect.

36. Without further Order of this Arbitration Tribunal, the Receiver may not liquidate or otherwise dispose of Receivership Assets, including real estate, other than in the ordinary course of business if the fair market value is less than \$25,000.

37. The Receiver is authorized to use the Receivership Assets and proceeds thereof to pay debts and expenses of Receivership Parties that (i) have accrued prior to or during the receivership and (ii) in the sole discretion of the Receiver are essential or necessary to the operations of the Receivership Parties.

38. The Receiver's duties shall include, using reasonable efforts, identifying, marshaling, taking custody of, and preserving the value of the Receivership Assets and identifying appropriate dispositions of the same.

39. Upon further Order, pursuant to such procedures as may be required by this Arbitration Tribunal and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estate.

40. The Receiver is authorized to take all actions he deems necessary in his sole judgment to manage or maintain business operations of the Receivership Estate, including making

payments to creditors, employees, and agents of the Receivership Estate and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

IX. Bankruptcy Filing

41. The Receiver is granted the sole and exclusive right to file voluntary petitions for relief under Title II of the United States Code (the "Bankruptcy Code") for the Receivership Parties, or any of them. If a Receivership Party is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estate as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity.

Commented [SMA13]: This is not enforceable. You cannot deny another party who has the right to seek protection of the bankruptcy court the ability to file for protection.

42. The provisions of this Section IX bar any person or entity, other than the Receiver, from placing any of the Receivership Parties in bankruptcy proceedings.

Commented [GM14]: Include even though we don't think it's enforceable?

Commented [HK15]: (RCC) Sure

X. Liability of Receiver

43. Until further Order, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

44. The Receiver may choose, engage and employ attorneys, accountants, appraisers, and any other independent contractors and technical specialists, including, but not limited to, real estate agents, forensic experts, property managers, and auctioneers (collectively, "Retained Personnel") as the Receiver deems advisable or necessary in the performance of the Receiver's duties and responsibilities under the authority granted by this Order. The Receiver and his Retained Personnel, acting within scope of such agency, are entitled to rely on all outstanding rules of law and Orders of this Arbitration Tribunal and shall not be liable to anyone for their own good-faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good-faith compliance with their duties and responsibilities as Receiver or Retained Personnel, including compliance with {01472/0002/00240920.1}

"Preservation/Liquidation during the pendency of this litigation (the "Preservation Plan") [Is this applicable in this matter?]

Commented [HK16]: (RCC) I'm not sure. The plan is going to be to sell the property as soon as reasonably practicable.

53. Within 60 days of the entry date of this Order the Receiver shall file the Preservation/Liquidation Plan in the above-captioned action, with service copies to counsel of record, to allow this Arbitration Tribunal to evaluate the best course of action for the preservation and liquidation of assets.

54. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the report) the existence, value, and location of all Receivership Assets, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estate.

55. The Quarterly Status Report shall contain the following:

- A. A summary of the operations of the Receiver;
- B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
- C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;
- D. A description of all known Receivership Assets, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
- E. A list of all known creditors with their addresses and the amounts of their claims;
- F. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.
- F-G. Expenses incurred by the Receiver, including his own fees and all professional fees, during that quarter.

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XIII. Fees, Expenses and Accountings

56. The Receiver need not obtain approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior approval is not required for payments of applicable federal, state, or local taxes.

57. The Receiver is authorized to solicit and retain persons and entities ("Retained Personnel") to assist him in carrying out the duties and responsibilities described in this Order. The Receiver is specifically authorized to retain Streusand, Landon, Ozburn & Lemmon, LLP to serve as his counsel.

58. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement on a monthly basis from the Receivership Estate without prior approval, but with full quarterly disclosure to the parties to the Arbitration.

59. Receiver shall be entitled to an initial minimum guaranteed fee of \$40,000.00 (the "Guaranteed Fee"). Further compensation will be commission-based, as follows:

- (a) Receiver shall be due 1.5% of all amounts paid to debt holders; and
- (b) Receiver shall be due 3.0% of all amounts paid to equity holders.

Such compensation will be due and payable upon the closing of any sale or refinancing, and if no sale, refinancing or other transaction occurs, Receiver shall be due compensation based upon the appraised fair-market value of all property retained by equity holders at the conclusion of the matter.

60. Mitte has agreed to advance up to a total amount of \$150,000.00 to cover the Guaranteed Fee to the Receiver and the cost of Receiver's counsel. Mitte will also pay for, in addition to the \$150,000.00 sum referenced above, (a) an updated appraisal for each of the subje

Commented [HK17]: (RCC) This needs to be as incurred, not the entire \$150K up front.

real properties as directed by the Receiver, and (b) the premium costs for the bond ordered by this Arbitration Tribunal, if any.

Commented [HK18]: (RCC) I don't have authorization for this.

61. In return for advancing such funds to preserve, protect, investigate, value and otherwise administer assets of the Receivership Parties, for the benefit of all stakeholders, Mitte shall have an administrative priority claim in the Receivership Estate for repayment of such amounts after payment to the Receiver and Retained Personnel, and before distributions to any equity holders.

62. At the close of the Receivership, the Receiver shall submit a Final Accounting, as well as the Receiver's final application for compensation and expense reimbursement.

63. All such fees and expenses of the Receiver, including all amounts due to the Receiver or Retained Personnel, shall be accorded priority to the maximum extent provided by applicable law.

64. Further, this Order shall constitute a subordinate lien upon the Receivership Assets including, but not limited to, any real property owned by the Receivership Parties to secure the compensation of Receiver in accordance with this Order. Receiver is authorized to provide notice of and perfect such lien as required by applicable law.

Commented [HK19]: (RCC) If we're going to do this, we need to include Mitte's advances. YES we do.

IT IS SO ORDERED, this ___ day of _____, 2019.

EXHIBIT “H”

From: Chester, Ray <rchester@mcginnislaw.com>
Sent: Friday, September 27, 2019 1:46 PM
To: Gregory S. Milligan <gmilligan@harneypartners.com>
Cc: Stephen Lemmon <Lemmon@slollp.com>; Rhonda B. Mates (mates@slollp.com)
<mates@slollp.com>
Subject: Re: World Class

Yes, that is what I proposed, and I will now take it to the board.

Ray

On Sep 27, 2019, at 1:23 PM, Gregory S. Milligan <gmilligan@harneypartners.com> wrote:

Ray:

Thanks for the voicemail last evening and the additional consideration provided around the cost structure of the receivership estate. I was able to have a 3-minute conversation with Steve and Rhonda to relay my understanding of your suggestion as they were preparing for another matter, and they're in agreement – assuming I properly conveyed your intentions.

I understood you to say the suggested two-tiered commission structure is acceptable for my comp, and Mitte would fund up to \$150K for both the Receiver's retainer and cost of counsel. For today, we don't have to define that split, just the total amount for Mitte's consideration. In addition, Mitte will fund a fresh appraisal for each property, since that's something they'd have to do anyway.

Do I have that right?

Thanks,

Gregory S. Milligan, CTP
Executive Vice President
Cell: (512) 626-1818

<image002.png>

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From: Chester, Ray <rchester@mcginnislaw.com>
Sent: Wednesday, September 25, 2019 4:22 PM
To: Gregory S. Milligan <gmilligan@harneypartners.com>
Subject: RE: World Class

Greg,

Thanks for getting back to me so quick. I will take this to the client, but based on our previous discussion, I anticipate pushback in one area. I think they would be willing to do the 40k retainer plus appraisals but not your attorneys' fees. Alternatively, they would do no retainer but advance expenses (including attorneys' fees) capped at 40k plus appraisals.

Let me know if that would work. If you want to tweak one of the contingency percentages to compensate for this change, I would understand.

Ray

Ray Chester
Board Certified Civil Trial Law and Personal Injury Trial Law
McGINNIS LOCHRIDGE
600 Congress Avenue, Suite 2100
Austin, TX 78701
o 512-495-6051 f 512-505-6351

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From: Gregory S. Milligan [<mailto:gmilligan@harneypartners.com>]
Sent: Wednesday, September 25, 2019 3:32 PM
To: Chester, Ray <rchester@mcginnislaw.com>
Cc: Escobar, Manuel <mescobar@mcginnislaw.com>; Stephen Lemmon <Lemmon@slolip.com>; Rhonda B. Mates (<mates@slolip.com> <mates@slolip.com>)
Subject: World Class

Ray:

After our call yesterday, I visited internally and with Steve/Rhonda, and have the following proposal.

1. \$40K retainer to the Receiver as a minimum secured fee; all other compensation will be commission-based, as follows:
 - (a) Receiver will be due 1.5% of all amounts paid to debt holders
 - (b) Receiver will be due 3.0% of all amounts paid to equity holders upon a sale and/or the appraised FMV of all property retained by equity holders

2. Expenses of the receivership estate (currently anticipated to be Receiver's counsel and appraisal costs) will be advanced by Mitte on a current basis.

(a) Mitte will receive an administrative claim in the receivership estate for repayment before distributions to equity for these costs, as well as retainer.

There is also an option that might be available later, depending upon our ultimate venue and posture of the case, that could save equity holders some money. I have a real estate license and might be able to negotiate a referral fee from the listing broker that comes out of their side at no additional cost to the estate/equity, which would be credited to the commissions calculated above. It's not something that is known or quantifiable at this point, but something to hold in reserve for later consideration.

Thanks,

Gregory S. Milligan, CTP
Executive Vice President

<image010.png>

<image011.jpg> [512.464.1139](tel:512.464.1139)

<image012.jpg> [512.626.1818](tel:512.626.1818)

<image013.jpg> gmilligan@harneypartners.com

<image014.jpg> www.HarneyPartners.com

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EXHIBIT “I”

Nate Paul

From: Maryann Norwood
Sent: Tuesday, January 28, 2020 1:05 PM
To: Gregory S. Milligan
Cc: Stephen Lemmon; Fernandes, Ed; Stein, Kate; Rhonda Mates
Subject: Re: documents ordered to be produced

Mr. Milligan:

Thank you for confirming your availability. Our offices are currently under renovation, and at this time there is no meeting area available. I will plan to meet at your office at 3:30pm.

Also, please advise as to whether you have addressed the pressing issues regarding the payment of utilities and property taxes (which you aware are due on Friday), as my numerous inquiries in this regard have not received any response.

Thank you and I look forward to meeting with you in person tomorrow.

Maryann

Maryann Norwood | Corporate Counsel

World Class

814 Lavaca Street | Austin, TX 78701

T 512.420.4144 | F 512.597.0612 | M 512.962.3528

mnorwood@world-class.com | www.world-class.com

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On Jan 28, 2020, at 8:36 AM, Gregory S. Milligan <gmilligan@harneypartners.com> wrote:

Maryann:

We can do it tomorrow at your office at 3:30p.

Please confirm.

Greg Milligan

Executive Vice President
Harney Partners

Sent from my iPhone.

On Jan 27, 2020, at 5:21 PM, Maryann Norwood <mnorwood@world-class.com> wrote:

Mr. Milligan: I appreciate that you have reached out to facilitate a meeting regarding an orderly transition of these matters. However, it becomes a bit more complicated because you have instituted suit against World Class Capital Group. Thus, I cannot in good faith advise that any employee of World Class Capital Group meet with you, and certainly not without counsel. However, in an effort to resolve these issues, I would propose a meeting between counsel and yourself on Wednesday at the time of your choosing (I will be out of the office tomorrow afternoon for a dental procedure).

To be clear I will continue to move forward with gathering the information requested so that it can be timely provided and our meeting on Wednesday would not slow that process. I would request that you similarly address the questions posed below regarding the partnership operations so that we may have a productive meeting on Wednesday.

Thank you for reaching out to arrange an orderly transition, and an orderly resolution to the open questions. It is greatly appreciated.

Maryann Norwood

Maryann Norwood | Corporate Counsel
WORLD CLASS
814 Lavaca Street | Austin, TX 78701
T 512.420.4144 | F 512.597.0612 | M 512.962.3528
mnorwood@world-class.com | www.world-class.com

From: Gregory S. Milligan <gmilligan@harneypartners.com>

Sent: Monday, January 27, 2020 4:38 PM

To: Maryann Norwood <mnorwood@world-class.com>; Stephen Lemmon <Lemmon@slollp.com>

Cc: Fernandes, Ed <efernandes@kslaw.com>; Stein, Kate <KStein@kslaw.com>; Rhonda Mates <Mates@slollp.com>

Subject: RE: documents ordered to be produced

Maryann:

Who is the World Class business person I can meet with about an orderly transition? Would that be Barbie Lee?

I'm available to meet as early as 3:30p tomorrow. Please advise.

Thanks in advance,

Gregory S. Milligan, CTP

Executive Vice President

Cell: (512) 626-1818

<image002.png>

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From: Maryann Norwood <mnorwood@world-class.com>

Sent: Monday, January 27, 2020 1:36 PM

To: Stephen Lemmon <Lemmon@slollp.com>

Cc: Fernandes, Ed <efernandes@kslaw.com>; Stein, Kate <KStein@kslaw.com>; Rhonda Mates <Mates@slollp.com>; Gregory S. Milligan <gmilligan@harneypartners.com>

Subject: RE: documents ordered to be produced

Mr. Lemmon:

First, I want to take a moment to attempt to recast these conversations as it seems the goal and purpose of the receivership has become lost. The Receiver, as exhibited by his own testimony, is to be an impartial third-party purposed with preserving the property in his control. I am sure you would agree that this specific receivership has taken a wrong-turn whereby the Receiver seems to be acting at the behest of the minority partner who sought the appointment of the Receiver, rather than in furtherance of the Partnerships. This is further informed by the fact that you failed to respond to any of my questions outlined in the prior email in which I was attempting to understand the actions being taken by the Receiver to uphold his obligation to preserve the partnership property.

I would suggest that in an effort to move this matter forward, the parties attempt a new footing, as my clients have no intention of doing anything to harm the partnerships or their assets. It is obviously no secret that my clients believe that the Receivership is incorrectly appointed, but that matter will be addressed by the appeal and in the meantime, we intend to work with you in an amicable fashion that requires mutual respect. We also need to resolve the issues that I have outlined in my previous correspondence, which as noted you wholly ignored to address in your response to me or to our counsel of record. For your convenience they are outlined again below, with additional questions:

1. Please provide detail as to any and all agents, contractors or service providers that have been engaged by the Receiver, as well as the terms of payment for the foregoing, including copy of the fee arrangement entered into by your firm with Mr. Milligan and/or his related company.
2. What actions are being taken to oversee normal course operations of the assets?
3. Have you met or contacted to the supermajority partners to understand their position on the preservation of the assets and their investment? If yes, when, how many times?
4. Have you met with the Mitte Foundation to understand their position on the preservation of the assets and their investment? If yes, when, how many times?
5. Have you made arrangements for upcoming tax payments?
6. Have you contacted utilities to make payment arrangements?

Regarding your requests, you seem to indicate a willingness to resolve these issues, or at least to narrow them, prior to Court intervention – and I agree with that approach. Thus, let me try to address the issues I believe were put forth in your various correspondence:

1. *Your factual assertions are not correct. Unfortunately this is not the first time you personally have said you are gathering documents.* Personal attacks on me will not do anything to move this matter forward. The fact is that certain conversations that took place with your associate, Ms. Mates have been mischaracterized and while I will not cast mud on your firm and its work, and despite your lack of professionalism when speaking about me, I will simply say that your recitation indicates either that certain facts have been misrepresented to you, or that you are misrepresenting them to the Court.
2. *The receiver is ordered to take possession of the partnership books and records. Agents of the general partners are ordered to give the books and records to the receiver. Anyone who impedes the receiver is in contempt of the Order.* I have addressed this concern in my correspondence last Friday and here today – no one on is looking to impede an impartial receiver.
3. *Counsel represented, among other things, that World Class has taken steps to transfer the partnership realty. Send those documents.* This statement contained factual assertions that are not correct; and indeed, tend to show you and your client’s bias toward the partnerships (which again, is contrary to your Court-appointed role). “World Class” has taken no steps to transfer the partnership realty. I believe a basic review of the documents already produced would confirm for you which parties were involved in this transaction. Nevertheless, as was established on the record, and supported by the partnerships’ representation to the Court of Appeals, there has been and will be no transfer of any realty property. Thus, the documents you refer to are drafts and thus, attorney work product under the applicable order:

<image003.png>

Again, I am not looking to promulgate discord, merely to protect the privileges of counsel and remain in compliance with the Receivership Order, so if you have any insight as to why these documents are not covered by the above provision, please provide.

4. *Send the ledger.* Complete ledgers are being gathered, and I will inform you within the next 48 hours if I am able to send electronically or if I need to arrange a thumb drive for drop off to your office.
5. *And then send the other documents.* As previously stated, I believe a number of the documents outlined in the order have already been provided. With regard to your email requests, I believe that we need to

work together to determine the what you are requesting so that information may be gathered and provided.

Also, to be clear – in my previous email to you I only addressed those documents I had questions about – which is why the general ledger and proposed sale transaction documents were not specifically addressed. It seems that in your rush to personally attack me, you managed to miss a number of details. And in order to clear up the record with regard to my statements, I simply did not see your response last week in which you provided times you were available for a call on Friday morning and for that, I apologize. It didn't seem worthy of an entire paragraph in your Court filing, but in case it helps, that was a mistake on my part.

Finally, this response comes to you on Monday, January 27, 2020, which is exactly when I indicated I would be responding to you in my email on Friday, January 24, 2020, and there is therefore no emergency pending in this matter. Contrary to your assertions, I am working in good faith to ensure compliance with the receivership order and facilitate your requests, even in the face of unprofessional and personal attacks by you in this correspondence and before the Court.

Thank you for your assistance in this matter.

Sincerely,
Maryann Norwood

Maryann Norwood | Corporate Counsel
WORLD CLASS
814 Lavaca Street | Austin, TX 78701
T 512.420.4144 | F 512.597.0612 | M 512.962.3528
mnorwood@world-class.com | www.world-class.com

From: Stephen Lemmon <Lemmon@slollp.com>
Sent: Friday, January 24, 2020 6:20 PM
To: Maryann Norwood <mnorwood@world-class.com>
Cc: Fernandes, Ed <efernandes@kslaw.com>; Stein, Kate <KStein@kslaw.com>; Rhonda Mates <Mates@slollp.com>; Gregory S. Milligan <gmilligan@harneypartners.com>
Subject: Re: documents ordered to be produced

Your factual assertions are not correct.

Unfortunately this is not the first time you personally have said you are gathering documents.

The receiver is ordered to take possession of the partnership books and records. Agents of the general partners are ordered to give the books and records to the receiver. Anyone who impedes the receiver is in contempt of the Order.

Counsel represented, among other things, that World Class has taken steps to transfer the partnership realty. Send those documents.

Send the ledger.

And then send the other documents.

We have filed the motion but may not have to forward if you comply with the prior orders and do not obstruct.

Sent from my iPhone

On Jan 24, 2020, at 5:08 PM, Maryann Norwood <mnorwood@world-class.com> wrote:

Mr. Lemmon:

As per my earlier email, today was the first day you outlined specific requests of your client. I am gathering the information you clarified today, so that it may be delivered to you. Your continued harassing and threatening emails are entirely unproductive and further indicative of you and your client's lack of neutrality and fair dealing. My client has no intention of withholding "property" of the receivership, as you call it.

Further, there are certain categories of documents you have requested which are subject to the attorney-client privilege and therefore carved out from the receivership order. It is necessary that I ensure compliance with that as well.

I have additional questions for your client, who we have yet to hear from directly since his appointment, which is altogether troubling since he is the receiver, and not you.

- What actions are being taken to oversee normal course operations of the assets?
- Have you met or reached out to the supermajority partners? If yes, when, how many times?
- Have you met with the Mitte Foundation? If yes, when, how many times?
- Have you made arrangements for upcoming tax payments?
- Have you contacted utilities to make payment arrangements?

I will be in touch with you on Monday with information responsive to your requests.

Sincerely,
Maryann Norwood

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From: Stephen Lemmon <Lemmon@slollp.com>
Sent: Friday, January 24, 2020 3:34 PM
To: Maryann Norwood <mnorwood@world-class.com>
Cc: Fernandes, Ed <efernandes@kslaw.com>; Stein, Kate <KStein@kslaw.com>; Rhonda Mates <Mates@slollp.com>; Gregory S. Milligan <gmilligan@harneypartners.com>
Subject: RE: documents ordered to be produced

I have received no reply, no call, and you have not provided even an explanation regarding the ledgers and the transfer documents. The receivership order clearly provides that these are part of the receivership. This is not a document production in a lawsuit. Rather, the documents are the "property" of the receivership and should be in the custody of the receiver.

We will file a motion to hold all responsible persons in contempt if the documents are not turned over immediately.

Stephen Lemmon

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IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. Federal tax advice contained in this communication, (including any attachments) is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

From: Stephen Lemmon
Sent: Friday, January 24, 2020 1:36 PM
To: 'Maryann Norwood' <mnorwood@world-class.com>
Cc: Fernandes, Ed <efernandes@kslaw.com>; Stein, Kate <KStein@kslaw.com>; Rhonda Mates <Mates@slollp.com>; Gregory S. Milligan <gmilligan@harneypartners.com>
Subject: RE: documents ordered to be produced

Ms. Norwood: I am available until 3:30 and you can call me. But you need to give the Receiver Nos. 2 and 3 from my list:

- The ledgers
- The documents concerning the transfers (referenced in outside counsel's letter to Judge Covington)

If we don't receive those right away, we will be forced to seek enforcement of the earlier orders.

Stephen Lemmon

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From: Maryann Norwood <mnorwood@world-class.com>
Sent: Friday, January 24, 2020 1:21 PM
To: Stephen Lemmon <Lemmon@slollp.com>
Cc: Fernandes, Ed <efernandes@kslaw.com>; Stein, Kate <KStein@kslaw.com>; Rhonda Mates <Mates@slollp.com>; Gregory S. Milligan <gmilligan@harneypartners.com>
Subject: RE: documents ordered to be produced

Mr. Lemmon:

I had asked for times that you were available to speak, and you did not respond. Thus, your attempt to characterize this immediate issue as a lack of response this morning by an email at 9:42 a.m. is disingenuous. Furthermore, my client and our counsel have asked for clarification as to what documents are outstanding numerous times, and have offered to meet and confer with you as to these issues at numerous times, which have all been rejected. The only communications to date that have come from you make vague reference to "documents." I do appreciate that you finally have taken the step of outlining what you believe your client is missing.

The paragraph that you refer to, and attach for my "convenience" is, as you are likely aware, very poorly drafted and severely repetitive of documents previously provided. This is precisely why I asked to speak to you; however, you seem intent on creating exhibits for a motion to compel, rather than actually resolving your requests. To that end, and so that this issue is very clear if you decide to proceed with an unnecessary motion, let me respond specifically to the categories where I seek additional clarification, or where I believe your client is already in possession of the requested information:

1. Any "file" you have on each partnership
 - **Response: If you can provide more detail on this request I can determine if there are documents responsive.**
2. All bank statements (full copies) and the log in info for each bank account

- **Response: Your client already has the full bank statements as well as full control of the bank accounts, per Wells Fargo. Indeed, the Partnerships had to ask for the production and confirmation regarding these records numerous times, as our requests were ignored on multiple occasions. Further, in researching the status of the bank accounts, it has come to my attention that your client is blocking the regular ACH of utilities from the WC 1st and Trinity bank account which needs to be lifted and addressed as soon as possible.**
3. Insurance certificates
 - **Response: Please see attached.**
 4. All offers received and any counters
 - **Response: The production provided by your client indicates these offers are already in his possession.**
 5. All emails with lenders and prospective lenders
 - **Response: This request vague and broad; I request we confer on this item to understand what you seek including, as an example, which email custodians you are seeking.**
 6. A list of all counsel who have been retained to represent the partnerships
 - **Response: This was outlined in the statement previously provided to you. Please be advised that the receivership order prevents the disclosure of any attorney-client privileged information.**

I remain available to discuss the forgoing matters with you and facilitate the other outstanding document requests and issues regarding specificity. However, if you deem it necessary to file a motion on this issue, I would remind you of the obligation of Local Rule 2.2 and confer with counsel and myself for a mutually convenient time, especially given my involvement in responding to your requests and gathering the relevant information. I would further note that your frivolous statements will be met with actual facts, and perhaps a cross-motion regarding the steps your client took to gain control of the Partnerships before actually fulfilling the requirements itemized by the Court. For example, your client's misrepresentations to various third-parties, including lenders, when he had not taken the appropriate steps to commence the receivership, both under the arbitrator's order, which was stayed, and the later district court order which has been stayed in part. Your claim of "months" of delay is again, a dramatic misstatement and professionally irresponsible, and should you attempt to file a motion to compel on this basis, it will be met with a full recitation of facts that do not comport with your alleged victimization and half-truths.

I look forward to hearing from you regarding additional materials, given that the order governing this matter, and drafted by your client, is largely impossible to navigate.

Thank you,
Maryann Norwood

Maryann Norwood | Corporate Counsel
WORLD CLASS
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mnorwood@world-class.com | www.world-class.com

From: Stephen Lemmon <Lemmon@slollp.com>
Sent: Friday, January 24, 2020 9:42 AM
To: Maryann Norwood <mnorwood@world-class.com>
Cc: Fernandes, Ed <efernandes@kslaw.com>; Stein, Kate <KStein@kslaw.com>; Rhonda Mates <Mates@slollp.com>; Gregory S. Milligan <gmilligan@harneypartners.com>
Subject: documents ordered to be produced

Ms. Norwood: I have not heard from you this am. We will need the following by 2 pm:

1. Any "file" you have on each partnership
2. All ledgers
3. All documents regarding the potential transfer of the partnership assets to affiliated companies
4. All bank statements (full copies) and the log in info for each bank account
5. Insurance certificates
6. All offers received and any counters
7. All emails with lenders and prospective lenders
8. A list of all counsel who have been retained to represent the partnerships

We can review those and then let you know what else will need to be turned over.

For your reference, par 10 of the receivership order is attached:

<[image001.jpg](#)>

<[image002.png](#)>

As you know, these documents have been ordered to be produced for several months. I believe you personally promised to send documents months ago, then did not do so. You reached out last night only after I contacted counsel of record Mr. Fernandes (copied here) and asked if he was opposed to the motion to compel. If there is a logistical problem preventing your sending any particular category of the documents by 2 pm, please indicate what that problem is.

I can be at your offices with a thumb drive at 2 to download the documents if you wish.

Stephen Lemmon

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EXHIBIT “J”

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

126TH JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**DEFENDANTS' MOTION ON INADEQUACY OF
PLAINTIFF AND RECEIVER'S BONDS**

TO THE HONORABLE JUDGE OF THIS COURT:

COME NOW WC 1st and Trinity, LP, WC 1st and Trinity GP, LLC, WC 3rd and Congress, LP, and WC 3rd and Congress GP, LLC, (collectively referred to as the "Partnerships" or "Defendants") and file this Motion on Inadequacy of Plaintiff and Receiver's Bonds (the "Motion"), and in support hereof would respectfully show unto the Court the following:

I. INTRODUCTION

1. Defendants respectfully request that this Court increase the amount of the bonds required to be posted by Plaintiff and the receiver as such increase is necessary to protect the interests at risk under the receivership.

2. By way of background, this Court entered the Order Appointing Receiver on December 10, 2019 (the "Receivership Order"). The Receivership Order divested WC 1st and Trinity GP, LLC and WC 3rd and Congress GP, LLC (together, the "General Partners" and each individually a "General Partner") of their ability to manage WC 1st and Trinity, LP and WC 3rd and Congress, LP (together, the "Limited Partnerships" and each individually a "Limited

Partnership”), and required in paragraph 40 that (i) the receiver post a \$10,000 bond and (ii) Plaintiff post a \$100,000 bond to protect the “Receivership Parties” for all damages and costs in case it should be decided the receiver was wrongfully appointed.

3. This Court’s Receivership Order has placed the Limited Partnerships in default of their loan agreements, as was set forth in WC 3rd and Congress, LP’s Motion to Vacate, which is incorporate herein by reference. These defaults mean that the real property owned by the Limited Partnerships are at risk for foreclosure. In the specific case of WC 3rd and Congress, LP, there would be **no** risk of foreclosure through December 31, 2021 if the Receivership Order was stayed or vacated. A foreclosure of the real property owned by the Limited Partnerships could result in the loss of up to \$47,132,805 in value for WC 1st and Trinity, LP, and a loss of up to \$38,888,549 for WC 3rd and Congress, LP—a total wipe out of all of the Limited Partnerships’ equity (including Mitte’s) if the lenders foreclosed on the assets.

4. On May 29, 2020, the Court of Appeals lifted its February 3 stay of the Receivership Order as well as its prior stay prohibiting the receiver from selling the real property owned by the Limited Partnerships. Were this Court to give the receiver the authorization to sell the real estate held by the Limited Partnerships under the Receivership Order, the Limited Partnerships are concerned that the receiver, encouraged by Mitte and its own fee structure, would seek to sell the real estate assets as quickly as possible. Given market conditions caused by the COVID-19 pandemic, this would likely result in a sale far below the fair-market value of the properties that this Court recently found. The soundest strategy financially, and the one supported by the supermajority Limited Partners, whose consent is necessary for a sale of the real estate under the limited partnership agreements, would be to continue to hold the assets.

5. A foreclosure by the lenders or a fire sale by the receiver would deprive the Defendants of their substantial equity in the real estate owned by the Limited Partnerships, which is valued at over \$80,000,000. As such, the Plaintiff's bond of \$100,000 and the Receiver's bond of \$10,000 are wholly insufficient to protect Defendants in the event the Receivership Order is reversed, as set forth more fully below.

6. For these reasons, Defendants ask the Court to increase the amount of the bond required for Plaintiff and the receiver to post prior to the Receivership Order becoming effective.

II. ARGUMENT AND AUTHORITY

7. In their February 3, 2020 Order and Opinion, the Court of Appeals held:

The trial court abused its discretion by concluding that the \$100,000 counter-supersedeas bond posted by Mitte secures appellants "against any loss or damage caused by" the receivership order "if an appellate court determines, on final disposition, that that relief was improper." Tex. R. App. P. 24.2(a)(3). The receivership order grants the receiver all powers to manage the receivership assets that were granted to the general partners under the Partnership agreements. A party's management rights are "unique, irreplaceable, and 'cannot be measured by any certain pecuniary standard.'" *Cheniere Energy, Inc. v. Parallax Enterprises LLC*, 585 S.W.3d 70, 83 (Tex. App.—Houston [14th Dist.] 2019, pet. filed) (affirming temporary injunction maintaining status quo pending litigation of parties' claims on merits related to control over limited liability corporation).

In addition, Mitte provided no evidence to support its assertion that this amount would be sufficient to protect appellants. Appellants, on the other hand, presented evidence of the risk of foreclosure on Partnership assets created by the appointment of a receiver, which could put their loans in default and removes their ability to negotiate with the lenders. Under the circumstances of this case, in which the Partnerships' assets are worth millions of dollars (even if the precise value is currently disputed), a \$100,000 bond is inadequate to protect appellants from the loss of their management rights ***and the danger of foreclosure presented by the receivership, if this Court determines on appeal that the receivership was improper.*** (emphasis added)

8. Thus, it has already been determined that the Receivership Order's \$100,000 Plaintiff's bond is incapable of protecting Defendants. *See Harmon v. Schoelpple*, 730 S.W.2d 376, (Tex. App.—Houston [14th Dist.] 1987, no writ) (holding that a \$100 bond was insufficient “in relation to a business grossing approximately \$70,000 monthly). Accordingly, the Court needs to determine the correct amount of the counter-supersedeas bond to be posted by Plaintiff and/or the receiver—one that is reflective of the more than \$80,000,000 in equity that the receivership puts at risk.

9. Defendants have already presented uncontroverted expert appraiser testimony establishing the value of the Limited Partnerships that should allow this Court the ability to make such determination. Accordingly, Defendants request that the Court revise its Receivership Order to reflect that Plaintiff be required to post the following bonds in order to make the Receivership Order effective:

- a. WC 1st and Trinity, LP = \$47,132,805 (calculated by subtracting the total value of the partnership interest [\$50,016,64] from Plaintiff's partnership interest [\$2,883,840]) pursuant to the expert appraiser testimony; and
- b. WC 3rd and Congress, LP = \$38,888,549 (calculated by subtracting the total value of the partnership interest [\$39,880,014] from Plaintiff's partnership interest [\$991,465]) pursuant to the expert appraiser testimony.

III. CONCLUSION

For all the reasons above, Defendants WC 1st and Trinity, LP, WC 1st and Trinity GP, LLC, WC 3rd and Congress, LP, and WC 3rd and Congress GP, LLC respectfully request that after considering this Motion on Inadequacy of Plaintiff and Receiver's Bonds, the Court increase the amount of the bonds required to be posted by Plaintiff and the receiver in order to make the

Receivership Order effective and grant Defendants all other and further relief to which they may be entitled to at law or in equity.

Respectfully submitted,

HANCE SCARBOROUGH, LLP
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2020 a true and correct copy of this motion, including any and all attachments, is served via electronic service through eFile.TXCourts.gov on parties through counsel of record, listed below:

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/s/ V. Blayre Peña
V. Blayre Peña