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ATTORNEY GENERAL OF TEXAS

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EXECUTIVE APPROVAL CIVIL LITIGATION MEMORANDUM

To:	Jeffrey C. Mateer First Assistant Attorney General	Approved and Final: Date:	<div style="border: 1px solid black; border-radius: 50%; padding: 2px; display: inline-block;">DS JCM</div> <u>6/8/2020 3:00 PM CDT</u>
	Darren L. McCarty <i>Approved and submitted to First Assistant:</i> Deputy Attorney General for Civil Litigation	Approved and Final: Date:	<div style="border: 1px solid black; border-radius: 50%; padding: 2px; display: inline-block;">DS DM</div> <u>6/8/2020 1:12 PM CDT</u>
Through:	Joshua R. Godbey Chief <i>Approved and submitted to Deputy A.G:</i> Lesli Ginn, Deputy Chief Financial Litigation and Charitable Trusts	Approved and Final: Date:	<div style="border: 1px solid black; border-radius: 50%; padding: 2px; display: inline-block;">DS JG</div> <u>6/8/2020 12:04 PM CDT</u>
From:	Mary T. Henderson, Senior Attorney Cat Day, Assistant Attorney General	Approved: Date:	<div style="border: 1px solid black; border-radius: 50%; padding: 2px; display: inline-block;">DS MH</div> <u>6/8/2020 11:59 AM CDT</u>

Date: June 8, 2020

Re: *Expedited Request to Intervene on Behalf of the Public Interest in Charity*
Cause No. D-1-GN-18-007636; *The Roy F. & Joann Cole Mitte Foundation v. WC 1st and Trinity, LP, WC 1st and Trinity GP, LLC, WC 3rd and Congress, LP and World Class Capital Group, LLC*; In the 126th Judicial District Court of Travis County, Texas.

Synopsis:

Financial Litigation and Charitable Trusts (“CT”) requests approval to intervene on behalf of the public interest in charity in the above-referenced case, which is a proceeding involving a charitable trust. The Attorney General is the only party with standing to represent the public interest in charity.

Please note: Expedited approval is requested by June 8, 2020.

Background:

The Roy F. and Joann Cole Mitte Foundation (“Mitte Foundation”) was created in 1994. The Mitte Foundation has been operating and making distributions since its inception, primarily through

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

World Class Capital Group, LLC is a privately-owned investment firm in Austin, Texas that focuses on commercial real estate. The Mitte Foundation invested a portion of its assets with two subsidiaries of World Class Capital Group, LLC: (i) WC 1st and Trinity, LP; and (ii) WC 3rd and Congress LP (collectively “World Class”).

The Mitte Foundation filed suit against World Class in Travis County District Court to gain access to World Class’s books and records. The Mitte Foundation alleged, *inter alia*, that World Class had not provided its annual reports or quarterly reports regarding operations.

The matter was transferred to arbitration.² The parties came to an arbitrated settlement agreement in July 2019. In August 2019, the FBI raided World Class Capital Group, LLC and the home of its owner, Nate Paul. As a result, World Class breached the arbitrated settlement agreement; the Mitte Foundation gained a higher percentage of interest in the partnerships due to a break clause in the settlement agreement.

The arbitration is ongoing in this matter. However, the Travis County District Court suit is also ongoing. The Mitte Foundation has repeatedly returned to the District Court to enforce various orders from the Arbitrator which World Class has violated.³

Appointment of Receiver

The key dispute here regards the appointment of a receiver for World Class’s properties.

World Class maintains that a receiver was wrongfully appointed because there is no risk of imminent loss or harm due to forbearance agreements.

The Mitte Foundation argues that the FBI raid left the real estate owned by World Class at risk of imminent loss or harm. The Arbitrator appointed a receiver. The Travis County District Court confirmed the appointment of the receiver. The 3rd Court of Appeals removed a stay of the receiver and removed a stay on the alienation of World Class’s property.

Relevant procedural history includes:

- On October 31, 2019, the Arbitrator appointed Greg Milligan as receiver (“Receiver”) for World Class’s properties;
- On November 4, 2019, World Class filed an interlocutory appeal in the 3rd Court of Appeals;

¹ This amount excludes the \$3,000,000 invested with World Class.

² American Arbitration Association Cause No. 01-19-0000-5347.

³ Plaintiff’s Motion to Compel Sanctions; Plaintiff’s Motion to Confirm Arbitration Award; Plaintiff’s Emergency Application for Appointment of Receiver; Receiver’s Motion to Compel Turnover of Partnership Property; Plaintiff’s Application for Enforcement of Arbitrator’s Order Compelling Production; Receiver’s Motion to Supplement Receivership Order.

- On November 6, 2019, the Third Court of Appeals granted World Class's temporary stay of the appointment of a receiver and granted a stay of the alienation of real property;
- On November 13, 2019, the Mitte Foundation filed an Emergency Application for Appointment of Receiver in Travis County;
- On December 10, 2019, the Travis County filed an Order Appointing Receiver, which confirmed the Arbitrator's appoint of Greg Milligan as Receiver;
- On December 12, 2019, World Class filed another interlocutory appeal with the 3rd Court of Appeals;
- On December 19, 2019, the Third Court of Appeals granted World Class's appeal in part. The Court's order prohibited the receiver from filing bankruptcy and prohibited the alienation of real property;
- On February 3, 2020, the Third Court of Appeals stayed the Order Appointing Receiver until the supersedeas bond amount is determined. The Third Court of Appeals determined World Class's supersedeas bond should be at a minimum \$10,500,000 in order to protect rights of Mitte Foundation. The Court also noted that the Mitte Foundation posted a \$100,000 counter supersedeas bond;
- On February 7, 2020, the Mitte Foundation filed a Motion to Set Supersedeas Bond;
- On March 31, 2020, World Class filed a Motion for Extension of Time to File Supersedeas Bond.
- On May 29, 2020, as a result of World Class's failure to file supersedeas bond, even with a deadline extension, the Third Court of Appeals lifted a previous stay on the receiver and lifted a stay that prohibited the alienation of real property owned by World Class.

First Notice and Attorney General's Waiver of Intervention

On December 11, 2019, the Attorney General was given notice of the Travis County District Court matter and constructive notice of the arbitration, nearly a year after the case was originally filed in Travis County District Court.

On January 31, 2020, the Attorney General filed a Waiver of Intervention in the Travis County District Court. At that time, CT determined that there was little risk to the public interest in charity. First, the Mitte Foundation is zealously represented in this matter. The Mitte Foundation invested \$3 million in the World Class properties. Ray Chester, Mitte Foundation's counsel, negotiated for a \$10.5 million settlement on a \$3 million investment; while the settlement fell through due to World Class's breach, Mr. Chester still expected a high return on the Mitte Foundation's investment when the receiver eventually sold the properties. Mr. Chester also told CT that only 18% of the Mitte Foundation's assets were invested in World Class's properties; the other \$13 million is located in publicly traded securities. Mr. Chester further assured CT that the litigation will not impact the Mitte Foundation's ability to make charitable distributions. While our office was not timely noticed, CT determined there was little risk to the public interest in charity.

New Allegations and Reason for the Intervention:

In June 2020, Maryann Norwood, World Class Holdings, LLC's internal counsel, provided this office notice of the Travis County District Court matter and notice of the arbitration. Ms. Norwood

further provided this office with a memorandum that alleges misconduct of both the Mitte Foundation's counsel and leadership.

World Class's allegations include:

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

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

Legal Authority:

Intervention

Pursuant to §123.002, Tex. Property Code, the Attorney General is a proper party and may intervene in a proceeding involving a charitable trust. A "charitable trust" is defined as "a charitable entity, a trust the stated purpose of which, is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity." Tex. Prop. Code § 123.001. Pursuant to Texas Property Code § 123 a charitable entity is defined as "a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3))".

Attorneys' Fees

Pursuant to Section 123.006 of the Texas Property Code, the Attorney General may recover reasonable attorneys' fees and costs as a result of bringing this proceeding involving a charitable trust.

Budget:

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

Other Relevant Information/Considerations:

CT also intends to request to open an investigation of the Mitte Foundation.

The appointed receiver, Greg Milligan, has worked with the Attorney General's Office, including with the Financial Litigation and Charitable Trust Division, as receiver in other matters.

One of the counsel for the Mitte Foundation, Michael Shaunessy, has worked with the Attorney General's Office as counsel to receivership instigated by the State and in other capacities.

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

Recommendation:

CT recommends immediately filing the attached Attorney General's Petition in Intervention for the reasons states above.

Due to the current pending litigation, expedited approval is requested by June 8, 2020.

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