June 13, 2025

By E-Filing/E-Service

Deborah M. Young, Clerk of Court
First Court of Appeals
301 Fannin Street, Room 208
Houston, Texas 77002

Re: Case No. 01-23-00618-CV (*Great Value Storage, LLC and World Class Capital Group, LLC v. Princeton Capital Corporation*); in the First Court of Appeals, Houston, Texas.

Appellants' Response to Receiver's Notices of Supplemental Authority

To the Honorable Court:

Defendant Appellants and Intervenor Appellants[1] respectfully submit this joint response to the Receiver's two notices of supplemental authority filed on May 29, 2025, and June 2, 2025:

I. The Receiver's constructive possession argument fails.

A. The Receiver's constructive possession theory lacks legal foundation.

The Receiver attempts to expand the concepts of *custodia legis* and constructive possession beyond their established meanings. His fundamental error is claiming that the $11.37 million settlement between Princeton and third parties (who were not judgment debtors) fell within his "constructive possession" or the court's *custodia legis*. This is legally incorrect for several reasons:

1. The Receiver's cases undermine his position.

The cases cited by the Receiver confirm that property in *custodia legis* is limited to property within the scope of the receivership order:

- *M&E Endeavours*:[2] Property in *custodia legis* is specifically "the judgment debtor's non-exempt property," not the property of third parties.

[1] The Receiver dismissively refers to Defendant Appellants and Intervenor Appellants in his supplement as "defunct" and "insolvent" "shell companies." The Receiver provides no record cites in support of these claims. Moreover, he ignores that *he himself stripped certain Appellants of their assets* in his Ahab-like pursuit of Nate Paul, who is not even a judgment debtor in the underlying action.

[2] *M&E Endeavours LLC v. Air Voice Wireless LLC*, No. 01-18-00852-CV, 2020 WL 5047902, at *5 (Tex. App.—Houston [1st Dist.] Aug. 27, 2020, no pet.).

- *First Southern Properties*[3] and *Neel v. Fuller*:[4] Both cases establish that the scope of *custodia legis* equals the scope of the receivership order.

Mitchell,[5] *Gillet*,[6] and *Klinek*:[7] All refer to taking possession of "defendant's" property in defendant's "actual or constructive possession."

2. The Receiver conflates different uses of "constructive possession."

The Receiver conflates several distinct legal concepts. In some cases—*M&E Endeavours*,[8] *Riesner*[9]—"constructive possession" refers to property being in the court's constructive possession because it falls within the receivership order's scope; in others—*Mitchell*,[10] *Gillet*[11]—it refers to the judgment debtor's constructive possession; in another—*Beaumont Bank*[12]—it refers to the concept that a judgment debtor (or its representative) presumptively possesses assets traced to it. None of these uses of "constructive possession" reaches third-party settlement proceeds that never belonged to the judgment debtors and were never within the receivership order's scope.

3. The scope of the Receivership Order did not include funds paid to Princeton by non-debtors.

The Receivership Order authorized collection of non-exempt property of the judgment debtors. It did not—and could not lawfully—encompass settlement proceeds paid by non-debtors to Princeton. The Receiver's theory would essentially give him a fee entitlement based on any transaction that occurred anywhere in the world while his receivership was pending, so long as he could claim his work "pressured" someone to do something. This exceeds any reasonable or legally recognized interpretation of receivership authority.

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[3] *First S. Properties, Inc. v. Vallone*, 533 S.W.2d 339, 343 (Tex. 1976).

[4] *Neel v. Fuller*, 557 S.W.2d 73, 75-76 (Tex. 1977).

[5] *Mitchell v. Turbine Res. Unlimited, Inc*., 523 S.W.3d 189, 192 (Tex. App.—Houston [14th Dist.] 2017, pet. denied).

[6] *Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 755 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

[7] *Klinek v. LuxeYard, Inc*., 672 S.W.3d 830, 835 (Tex. App.—Houston [14th Dist.] 2023, no pet.).

[8] 2020 WL 5047902, at *2.

[9] *Riesner v. Gulf, C. & S.F. Ry. Co*., 36 S.W. 53, 54 (Tex. 1896).

[10] *Mitchell*, 523 S.W.3d at 192.

[11] *Gillet*, 523 S.W.3d at 755.

[12] *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991).

B. The Roberts *case does not support the receiver's position.*

The Receiver's reliance on *Roberts*[13] is also misplaced. As the Receiver notes, the relevant fee language in *Roberts* was materially identical to the language used here—*i.e.*, 25% "of all gross proceeds coming into [the Receiver's] possession" (ROA.69)—but the Receiver glosses over the crucial factual distinction that undermines his entire argument.

In *Roberts*, "Abraham Watkins subsequently turned the money over to the receiver."[14] Indeed, even the Receiver himself candidly acknowledged this key difference in his March 25, 2024, brief, stating: "The only difference between *Roberts* and here is that 'Abraham Watkins subsequently turned the money over to the receiver.' " But this is a significant difference, not a minor one. In *Roberts*, the money ultimately came into the receiver's actual possession, even if briefly. Here, the $11.37 million that Princeton received from third parties in the bankruptcy settlement never touched the Receiver's hands at all.

* * *

In short, the money at issue never belonged to the judgment debtors, was never within the scope of the receivership order, and never was subject to the receiver's control or possession—actual or constructive.

II. The *Grassroots Leadership* decision does not defeat jurisdiction.

A. The Intervenor Appellants did not disclaim seeking a judgment against the Receiver.

The Receiver mischaracterizes the position of the Intervenor Appellants. The Intervenor Appellant did not disclaim seeking a judgment against the Receiver. Rather, they acknowledged that ***if*** a formal damages judgment were sought against the Receiver personally, service of process rules might apply. Reply Brief of Intervenor Appellants at 27-28. But the Intervenor Appellants already had established that those rules ***had been satisfied*** by one or more of the Receiver's general appearances during the proceedings. *Id*. at 25-26. As such, the Intervenor Appellants' additional discussion was not a disclaimer of seeking any judgment against the Receiver; rather, they were merely making the *additional* point that, irrespective of any service of process rules, the Receiver remained subject to the trial court's continuing jurisdiction as its appointed officer. *Id*. at 27-28. And in the present case, this would include the power to review and modify any fee award (as the Defendant Appellant have argued), as well as issue declarations and other orders concerning the Receiver's past actions, production of materials and information, and return of funds and property (as the Intervenor Appellants have argued). All of this represents proper exercises of a trial court's supervisory jurisdiction over its officer's conduct, which is independent

[13] *Roberts v. Abraham, Watkins, Nichols, Sorrels, Agosto & Friend*, No. 01-19-00622-CV, 2020 WL 7502052 (Tex. App.—Houston [1st Dist.] Dec. 22, 2020, no pet.) (mem. op.).

[14] 2020 WL 7502052, at *2 n.2.

of its jurisdiction over the original judgment.

B. The Supreme Court's dismissal of the prior appeal as moot does not change this.

The Receiver misinterprets the Supreme Court's March 26, 2024, mandate. While the mandate dismissed the case before the Supreme Court as moot, that dismissal must be understood in the context of those proceedings. Specifically, the dismissal occurred in the context of a petition for review that solely sought review of the Defendant Appellants' *interlocutory* appeal of the trial court's original post-judgment receivership order. In turn, the dismissal of that interlocutory appeal as moot (and associated vacatur of the court of appeals' judgment and opinion) only meant the original trial court judgment was final.

But the trial court necessarily retained its separate and ongoing jurisdiction over its appointed receiver and associated receivership proceedings. *E.g.*, Intervenor Appellants' Opening Brief (Corrected) at 41-43. Indeed, as mentioned at oral argument, even the Receiver would not say the trial court had lost all jurisdiction, as there then would be no jurisdiction for the trial court to consider, let alone issue, any fee award to him.

In short, the trial court's supervisory authority over its receiver remains unaffected and continues until the receivership is formally terminated, at a minimum.

C. The Defendant Appellants retain a live interest in the fee order.

Contrary to the Receiver's assertion, the Defendant Appellants have a concrete interest in the fee determination and made no "judicial admission" in connection with the bankruptcy court settlement. The Receiver argued that a lawyer representing a different party in a separate bankruptcy proceeding made a binding admission that his fee should be "25% of $11.3 million." This is false.

The full context of counsel's statement, which the Receiver elides, makes clear that counsel was referring only to a *potential* recovery that would be determined by the trial court. The actual transcript reads:

> The receiver's fee is 25% of what's recovered. What *will be* recovered is $11.3 million. ***We don't know in this court, and it will be determined by another court, what the receiver is entitled to recover and what it has recovered***. In addition, the receiver is fully empowered by Judge Hall to do the work that it needs to do to recover its fees and it has been doing that work.[15]

Exhibit 6 to Receiver's Sep. 10, 2023 Motion to Dismiss Appeal, Aug. 29, 2022 Tr. at 50

[15] This quote appears on page 38 of the Receiver's Response Brief to Great Value Storage, LLC and World Class Capital Group, LLC – but the Receiver omits the words highlighted here in bold italics.

(emphasis added). That is the *opposite* of a judicial admission. It is a statement of uncertainty and deference to a future adjudication of the Receiver's proper fee.

Moreover, under the trial court's original receivership order the Defendant Appellants remain liable for the Receiver's fees. ROA.69 ("All Receiver's fees will be taxes as costs against the Debtor."). That obligation has never been vacated or discharged. While the order under appeal identifies a *potential* other source of payment – the bankruptcy reserve – that source is contingent on approval by the bankruptcy court which is not guaranteed. That uncertainty is heightened by the fact that the Receiver seeks compensation for conduct that multiple courts have since found to be unlawful.

It also leaves open the possibility of *future* fee claims by the Receiver that may be borne by Defendant Appellants. The Defendant Appellants thus have a direct financial stake in the fee award's amount and propriety, and they have properly challenged that award on multiple grounds, including the trial court's failure to conduct the required reasonableness analysis under *Bergeron*,[16] as well as the trial court's abuse of discretion in awarding fees on funds that never came into the Receiver's possession. This represents a live controversy with concrete relief available to the Defendant Appellants.

III. The *Grassroots Leadership* decision supports Appellants' position.

Ironically, the *Grassroots Leadership*[17] decision cited by the Receiver supports rather than undermines the Appellants' jurisdictional arguments. The Supreme Court of Texas's emphasis on requiring "actual, non-collusive legal disputes brought by adverse parties who have a genuine legal interest and a live stake in the outcome"[18] favors the Appellants:

Adversity: The Appellants and Receiver are genuinely adverse. The Defendant Appellants seek to reduce or eliminate the Receiver's fee award, while the Receiver seeks to preserve it. And the Intervenor Appellants seek a variety of judicial relief relating to the Receiver's seizure of their property, funds, and legal rights, all of which the Receiver has actively contested. This represents genuine adversity as required under *Grassroots Leadership*.

The Receiver's Party Status: While receivers are court officers, they also may be treated as parties or quasi-parties depending on the circumstances, as previously briefed by the Appellants. *E.g.*, Defendant Appellants' Opening Brief at 31-33; Intervenor Appellants' Opening Brief (Corrected) at 41-42. And in this Court, through his own briefing and arguments, the Receiver has actively defended both the district court's fee

[16] *Bergeron v. Boehringer Ingelheim Pharms., Inc.*, 284 S.W.3d 863 (Tex. 2009).

[17] *Tex. Dep't of Family & Protective Services v. Grassroots Leadership, Inc.*, No. 23-0192, 2024 WL 5705524 (Tex. May 30, 2025).

[18] 2024 WL 5705524, at *7.

award and the district court's denial of intervention, both of which represent legal positions directly adverse to the Appellants. The Receiver's extensive participation in this appeal demonstrates that he is functioning as a party with interests to protect rather than merely as a neutral court officer.

Genuine Legal Interest: The parties' controversies are live. All Appellants have current and concrete financial interests at stake, while the Receiver has been awarded $2.84 million in fees that remains unpaid and subject to appellate review.

Enforceable Appellate Judgment: This Court can render an enforceable judgment. For Defendant Appellants, the Court can vacate the fee award and remand with instructions for the district court to award the Receiver nothing or, in the alternative, order appropriate discovery from the Receiver and undertake the reasonableness analysis required by Texas law. *See* Defendant Appellants' Opening Brief at 36-37. For the Intervenor Appellants, the Court can reverse the trial court's denial of intervention, vacate the trial court's denial of their associated requests for relief, and remand for further proceedings, ultimately permitting the Intervenor Appellants to protect their property interests and seek return of wrongfully seized assets. *See* Intervenor Appellants' Opening Brief (Corrected) at 55. Such relief from this Court would result in a concrete judgment that would directly affect the parties' legal rights and interests—precisely what *Grassroots Leadership* requires for justiciability.

IV. Conclusion

The Receiver's notices of supplemental authority fail to establish any grounds for either dismissal of this appeal or affirmance of the trial court's order that was appealed. His constructive possession theory lacks legal support and would improperly expand receivership authority beyond legal limits, while the *Grassroots Leadership* decision, properly understood, supports rather than undermines this Court's jurisdiction over this live controversy between genuinely adverse parties. This Court should reject the Receiver's jurisdictional arguments and address the merits of this appeal.

Respectfully submitted,

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