

January 12, 2016

Probate Clerk
Travis County Probate Court
Travis County Court House
Austin, TX

Re: *In Re Tel Offshore Trust*; Cause No. C-1-PB-14-001245; In the Probate Court of
Travis County, Texas.

Dear Clerk:

On behalf of The Bank of New York Mellon Trust Company, N.A., as Corporate Trustee,
and Gary C. Evans, Jeffrey S. Swanson, and Thomas H. Owen, Jr., as Individual Trustees, I am
this date e-filing with the Court the following:

- (1) Response In Opposition To Attorney Ad Litem's Second Motion For Court To
Direct Method Of Service Of Documents; and
- (2) proposed Order.

I am also paying the \$2.00 fee for the signature for the Order.

Thank you for your assistance with this filing.

Very truly yours,

/s/ Georgia L. Lucier

Georgia L. Lucier

10677:219287:dlr

ORDERED that each Notice of Filing contain, at minimum, the following information: the title of the document filed, a summary of the relief sought, the time and date of any related hearing, a link to the full text of the filed document at www.andrewskurth.com/teloffshoretrust, and an address and phone number of the filing party so that a unit holder may request a full copy of the filed document be sent to them.

SIGNED on this the _____ day of _____, 2016.

PRESIDING JUDGE

through the electronic filing manager or by email will be deemed to be served when the document is e-filed in this proceeding,” is constitutionally impermissible. As such, Trustees respectfully request that the Court deny Ad Litem’s Second Motion for Court to Direct Method of Service of Documents to the extent it requests that the Court eliminate the parties’ obligation to serve those parties that cannot be served by electronic means.

II. ARGUMENT AND AUTHORITIES

While Rule 21a(a)(2) permits service “by such other manner as the court in its discretion may direct,” it does not permit the Court to simply eliminate the requirement that [e]very pleading, plea, motion or application to the court for an order...be served on all other parties.” TEX. R. CIV. P. 21(a). This is because the right to service of pleadings, pleas, motions, and applications is a constitutionally protected due process right. *Caudle v. Oak Forest Apartments*, NO. 02-14-00308-CV, 2015 WL 9244874, at *4 (Tex. App.—Fort Worth Dec. 17, 2015) (citing *Peralta*, 485 U.S. at 84). Indeed, when determining the “adequacy [of service] so far as due process is concerned,” the Court must determine whether or not the form of substituted service requested “is reasonably calculated to give [an individual] notice of the proceedings and an opportunity to be heard.” *Milliken v. Meyer*, 311 U.S. 457, 463 (1940). Ad Litem’s request that “persons who are not being served through the electronic filing manager or by email ... be deemed to be served when the document is e-filed in this proceeding” misses the due process mark. Because Ad Litem’s suggested form of alternative service is in no way

calculated to reasonably ensure that these unit holders receive notice of the filings made in this case, as is constitutionally required, the Motion must be denied to the extent it seeks to waive the requirement of actual service on these individuals.

III. SUBSTITUTED SERVICE

Despite Trustees opposition to the request that “persons who are not being served through the electronic filing manager or by email ... be deemed to be served when the document is e-filed in this proceeding,” Trustees are not opposed to Ad Litem’s request that the Court “otherwise direct the service of documents in a manner that does not require copying and mailing documents to parties.” Trustees propose that the Court permit the parties the option to effect service by permitting the filing party to send a single page Notice of Filing to the 131 unit holders who receive service by mail in lieu of mailing the filed document in its entirety. Such a notice would necessarily contain the title of the document filed, a summary of the relief sought, the time and date of any related hearing, a link to the full text of the filed document at www.andrewskurth.com/teloffshoretrust, and an address and phone number of the filing party so that a unit holder could request a full copy of the filed document be sent to them. While this method would not eliminate all service-related costs to the Trust, mailing a single page document is substantially less expensive and labor intensive than mailing each filing in its entirety, and “is reasonably calculated to give [an individual] notice of the proceedings and an opportunity to be heard.”

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, The Bank of New York Mellon Trust Company, N.A., as Corporate Trustee, and Gary C. Evans, Jeffrey S. Swanson, and Thomas H. Owen, Jr., as Individual Trustees of the TEL Offshore Trust respectfully request that the Court deny Ad Litem's Second Motion for Court to Direct Method of Service of Documents to the extent it asks that the Court eliminate the parties' obligation to serve those parties that cannot be served by electronic means. Trustees further request that the Court grant Ad Litem's Motion to the extent it requests the Court permit alternative service, to be completed as herein described. Trustees ask the Court for such other and further relief as they may be justly entitled.

Respectfully submitted,

ANDREWS KURTH LLP

By: /s/ Georgia L. Lucier

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon counsel of record pursuant to the Texas Rules of Civil Procedure on this the 12th day of January 2016

The following were served by efile:

Party	Name	Attorney
Ad Litem	Attorney Ad Litem	Glenn Karish
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Defendant	Foran, Nancy	James Truss
Defendant	Lutz, Matt	Sara Clark
Defendant	O'Neil, Nancy - Trustee	Pro Se
Defendant	Piazza, Pascal	Pascal Piazza
Defendant	Robertson, Benjamin	Nancy Foran
Defendant	RNR Production Land and Cattle	Shannon Ratliff
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