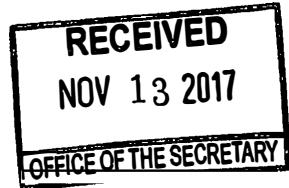


HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17621



In the Matter of

ANDREW STITT,
Respondent.

DIVISION OF ENFORCEMENT'S MOTION
FOR LEAVE TO USE ALTERNATIVE MEANS
OF SERVICE AS TO RESPONDENT ANDREW
STITT

Pursuant to SEC Rule of Practice 141(a)(2)(iv) ("Rule 141(a)(2)(iv)'), the Division of Enforcement ("DOE") requests leave to use alternative means to serve Respondent Andrew Stitt. The DOE proposes to effect service by two methods: (1) by publication—which is the same method already approved by the District Court in the underlying civil action that gave rise to this proceeding; and (2) by registered email at an email address known to be used by him. Each of these methods comports with Rule 141(a)(2)(iv)—which provides for service by "any other method calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country."¹

I. Background

This proceeding was instituted on October 6, 2016. As detailed in the DOE's prior filings, since that time the DOE has worked diligently to serve Stitt. *See generally* the DOE's

¹ These methods comport with the Jamaican Rules of Civil Procedure, which both allow for alternative methods of service and empower the Court to direct an alternative method. *See Supreme Court of Jamaica Civ. Proc. Rules 2002* at R. 5.13-5.14. These rules are available online at <http://moj.gov.jm/sites/default/files/pdf/JAMAICA.Civil%20Procedure%20Rules.2006.pdf>. In addition to reviewing the Jamaican Rules of Civil Procedure, the DOE has conferred with the Office of International Affairs which agrees that the proposed methods of service are not prohibited by Jamaican law.

September 27, 2017 Motion for Default Judgement and the accompanying Declaration of Chris Davis (detailing our efforts to serve Stitt); *see also* the DOE's Status Reports.² And while Stitt has verbally confirmed the receipt of the service package at his house, the DOE has been unable to obtain a proof of service from the process server or a delivery confirmation from the postal service. *Id.* As a result, in its October 31, 2017 Order, the Court held that the DOE has not adequately served Stitt in accordance with 17 C.F.R. § 201.141(a)(2)(i), (iv).

II. Relief Requested and Argument

In light of its diligent but unsuccessful efforts to serve Stitt, the DOE requests leave to effect service by alternative means. The DOE asks that the Court approve service by two methods: (1) by publication—which is the same method already approved by the District Court in the civil action that gave rise to this proceeding; and (2) by sending Stitt a registered email at an email address known to be used by him. Each of these methods comports with the Rule 141(a)(2)(iv), which provides for service by "any other method calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country."

Because Stitt is known to still be living in Jamaica, service by publication in two widely-read Jamaican publications—*The Gleaner* and the *Jamaica Observer*—is appropriate. As an additional layer of notice, the DOE also proposes to publish a notice in the *International New York Times*. *The Gleaner* has been in existence for 180 years and is printed island-wide.³ *The*

² The Status Reports were filed on: December 1, 2016; January 30, 2017; March 30, 2017; June 1, 2017; July 31, 2017; and September 27, 2017.

³ See <http://old.jamaica-gleaner.com/gleaner/about/pdf/AnnualReportCovers2014.pdf> at 3, 9.

Jamaica Observer is also distributed throughout Jamaica, including Negril—where Stitt lives.⁴ The *International New York Times* is a widely circulated international publication that, as discussed below, has previously been held to provide adequate notice in similar circumstances. The notices will run once a week for four weeks—identifying this Court, the names of the parties, and a summary of the DOE's claims and the relief requested.

The notices will direct Stitt to contact DOE counsel within 10 days to arrange to receive the service package by mail, delivery service, or email. The notices will further state that if Stitt fails to answer within the required period, DOE counsel will ask the Court to enter a default against him pursuant to SEC Rule of Practice 155.

The DOE also proposes that the Court allow service by registered email.⁵ This method is appropriate now that the DOE has been able to confirm a valid email address for Stitt—something it had not been able to do in the civil case. Using registered email, the DOE can send the service packet to Stitt electronically via email and then receive a confirmation showing that the service package was electronically delivered to Stitt's email inbox. Service will be effected using Stitt's "andystitt@hotmail.com" email address. He has been using this email address since early on in this proceeding, and continues to use it as of October 12, 2017. *See Exhibit 1.*

Each of these proposed methods of service comports with Rule 141(a)(2)(iv)—which

⁴ See <http://www.jamaicaobserver.com/advertising/>.

⁵ This will be accomplished through RMail's RPost technology—which is licensed by the DOE. This technology allows the sender of the registered email to legally track the email to the recipient's email inbox. *See* <http://www.rmail.com/support/what-is-a-registered-email-message/>. RPost technology provides proof that the email was delivered to the recipient "just like standard postal registered mail." *Id.*

allows for service on a foreign respondent by "any other method calculated to give notice."⁶

These methods also comport with constitutional notions of due process—which require that any means of service be "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

Service by publication is adequately calculated to give notice to Stitt. Under virtually identical circumstances, the Court in the civil case that gave rise to this proceeding held that service by publication on Stitt was appropriate.⁷ See Exhibit 2 (Dec. 1, 2015 Order Granting Motion to Authorize Alternative Service of Process on Defendant Andrew Stitt). Thus, it is likewise appropriate in this follow-on proceeding against him.

Service by registered email is likewise adequately calculated to give notice to Stitt. Here, the DOE has "successfully and repeatedly" reached Stitt via email. *RPost Holdings, Inc. v.*

⁶ Rule 141(a)(2)(iv) tracks Federal Rule of Civil Procedure 4(f). That rule specifies that when, as here, there is no internationally agreed means of service (since Jamaica is not a signatory to the Hague Service Convention), service may be effected by any method reasonably calculated to give notice—including "by other means not prohibited by international agreement, as the court orders." Fed. R. Civ. Proc. 4(f)(3)(iii). Rule 4(f)(3) was "adopted in order to provide flexibility and discretion to the federal courts in dealing with questions of alternative methods of service of process in foreign countries." *In re International Telemedia Assoc., Inc.*, 245 B.R. 713, 719 (N.D. Ga. 2000).

⁷ "Service by publication to a defendant in a foreign country is an acceptable alternative means under [Federal Rule of Civil Procedure] 4(f)(3), so long as diligent attempts have been made to locate the defendant and serve process by traditional means, and the publication is one that likely would reach the defendant." *BP Prods. North America, Inc. v. Dagra*, 236 F.R.D. 270, 272 (E.D. Va. 2006). As detailed above and in the DOE's other filings, the SEC has diligently attempted to locate Stitt and to serve process by traditional means. In addition, service by publication in widely-read publications once a week for four weeks has been found to satisfy the requirements of due process for service on a foreign defendant. *SEC v. Tome*, 833 F.2d 1086, 1091-93 (2d Cir. 1987). Further, publication in the *International New York Times* specifically—previously called the *International Herald Tribune*—has been held to provide adequate due process. *Id.* The *International Tribune Herald* was rebranded as the *International New York Times* in October 2013. See <http://www.nytimes.com/2013/10/15/business/media/introducing-the-international-new-york-times.html?ref=global-home&r=1>.

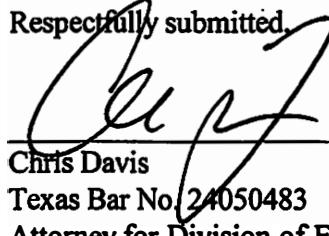
KaganEyeglasses, 2012 WL 194388, *2 (E.D. Tex. Jan. 23, 2012). And using the RPost registered email technology, the DOE will be able to confirm that its email to Stitt containing the service packet is successfully delivered. *Id.* Thus, in this case, service via registered email "will comport with constitutional notions of due process" and is "an appropriate means for notifying [him] of this action." *Id.*

IV. Conclusion

As shown above, the DOE has diligently sought to personally serve Stitt at his address in Jamaica—but despite its efforts has been unable to obtain adequate proof of service. It is thus appropriate to allow the SEC to serve Stitt by publication and by registered email. Consequently, the SEC respectfully asks the Court to grant this motion.

Dated: November 9, 2017.

Respectfully submitted,



Chris Davis
Texas Bar No 24050483
Attorney for Division of Enforcement
Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, Texas 76102-6882
E-mail: DavisCa@sec.gov
Telephone: (817) 900-2638
Facsimile: (817) 978-4927

SERVICE LIST

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing **DIVISION OF ENFORCEMENT'S MOTION FOR LEAVE TO USE ALTERNATIVE MEANS OF SERVICE AS TO STITT** was served on the persons listed below on the 9th day of November, 2017, via certified mail, return-receipt requested:

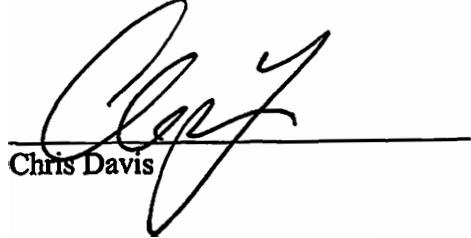
Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Chris Davis, Esq.
Fort Worth Regional Office
Securities and Exchange Commission
801 Cherry Street, Suite 1900
Fort Worth, TX 76102

Mr. Andrew Stitt
[REDACTED]

Westmoreland, (Negril) Jamaica [REDACTED]



Chris Davis

EXHIBIT 1

From: [Davis, Christopher A.](#)
To: ["andystitt@hotmail.com"](mailto:andystitt@hotmail.com)
Cc: [Stewart, Angelia L.](#)
Subject: Phone call follow-up
Date: Thursday, February 02, 2017 12:47:00 PM

Mr Stitt –

Thanks for the time on the phone a few minutes ago. To confirm our conversation:

1. You have received the service package from the SEC that included the Order Instituting Proceedings and related documents.
2. You are ok with serving documents via email going forward—using this email address.
3. Your phone number is 876-450-4540.
4. Your address is 9 Tigress Lane, Westmoreland (Negril) Jamaica JMDWD14.

Please confirm that 1-4 are accurate. As discussed, I will follow up with a document that we can use to settle the administrative proceeding—assuming that is what you want to do. It will come from either me or my colleague Angelia Stewart, who is copied on this email. Please let us know if you have any questions. You can reach us via email or phone (my # is below—the same # you called earlier; Angelia's is 817-978-0525). Thanks again.

Chris

Chris Davis
Senior Trial Counsel
U.S. Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, TX 76102
(817) 900-2638
davisca@sec.gov

From: a S
To: [Davis, Christopher A.](#)
Cc: [Stewart, Angelia L.](#); [Stewart, Angelia L.; Davis, Christopher A.](#)
Subject: Re: Phone call follow-up
Date: Thursday, March 09, 2017 11:52:58 AM

Ok thanks for the prompt reply.
But snail mail from Jamaica makes the USPS look like meth mail.
Just a heads up letting you know the mail here can take a month or 2 to arrive, but I will send it by tomorrow. I'll have to find a JP that'll take a day or 2 as well. They are rather elusive.

Andy

Sent from [TypeApp](#)

On Mar 9, 2017, at 12:47 PM, "Davis, Christopher A." <DavisCa@SEC.GOV> wrote:

Sig page with the JP signature should be fine. Email that back and please also send the original signature page via snail mail. Thanks.

From: a S
Sent: Thursday, March 9, 2017 11:44 AM
To: Davis, Christopher A.
Cc: Stewart, Angelia L.
Subject: RE: Phone call follow-up

Hi Mr Davis

Sorry for the delay my wife is [REDACTED] and I've been busy dealing with it and shoving everything else to the backburner

I'm going to deal with this now thanks for your patience

One question... Can I email you back the signed signature page alone or do I need to print and scan the entire file?

The Jamaican equivalent to a notary is a " justice of the peace" they have a stamp etc... is that sufficient?

Sent from [TypeApp](#)

On Feb 13, 2017, at 3:50 PM, "Davis, Christopher A." <DavisCa@SEC.GOV> wrote:

Andy –

Two things. First, can you please confirm items 1-4 from my earlier email below. I never got a response. Second, I've attached the offer of settlement that we discussed. This will settle the SEC's administrative proceedings against you. It's on a no-admit, no-deny basis—except that you admit that a civil injunction had been entered against you (but not any of the underlying

allegations). As discussed, the effect of the settlement is that you will be consenting to various industry bars and to a penny stock bar. See paragraph IV of the attached for the details. To execute the settlement, please print it, sign it, have it notarized, and email it back to me.

Thanks again for reaching out to me by phone. And please let me know if you have any questions.

Chris

From: Davis, Christopher A.
Sent: Thursday, February 02, 2017 12:47 PM
To: [REDACTED]@hotmail.com'
Cc: Stewart, Angelia L.
Subject: Phone call follow-up

Mr Stitt –

Thanks for the time on the phone a few minutes ago. To confirm our conversation:

- 1.
- 2.
- 3.
- 4.

Please confirm that 1-4 are accurate. As discussed, I will follow up with a document that we can use to settle the administrative proceeding—assuming that is what you want to do. It will come from either me or my colleague Angelia Stewart, who is copied on this email. Please let us know if you have any questions. You can reach us via email or phone (my # is below—the same # you called earlier; Angelia's is 817-978-0525). Thanks again.

Chris

Chris Davis

Senior Trial Counsel

U.S. Securities and Exchange Commission

Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, TX 76102

(817) 900-2638

davisca@sec.gov

From: a S
To: [Davis, Christopher A.](#)
Subject: Re[2]: Andy stitt
Date: Friday, September 29, 2017 9:18:24 PM

OK cool so I'll do. It Monday when the JP is available

--
Sent from Hotmail Email App for Android

Thursday, 28 September 2017, 07:07AM -05:00 from Davis, Christopher A.
[DavisCa@SEC.GOV](#):

Yes please

On Sep 27, 2017, at 8:43 PM, a S [REDACTED]@hotmail.com> wrote:

Okay Chris thanks for the effort

I'm 52 never been arrested in my life so I'm kinda freaked by all this..

I'll take care of it tomorrow

Do u need me to have a justice of the peace stamp it... I can do that easily here

--
Sent from Hotmail Email App for Android

Wednesday, 27 September 2017, 01:44PM -05:00 from Davis, Christopher A.
[DavisCa@SEC.GOV](#):

Here you go. In light of the ongoing communication issues we've been having and of the difficulties with the Jamaican mail, please send me the scanned signature page via email as soon as you've signed it. And then please also send the original copy via the mail—along with a tracking number. Once I have your signature, I will notify the Court. Thanks.

Chris

From: a S [<mailto:andystitt@hotmail.com>]
Sent: Wednesday, September 27, 2017 1:32 PM
To: Davis, Christopher A.
Subject: Andy stitt

OK I just heard your voice mail sorry this whole thing makes me act very nervous but just resend me the correct docs I'll sign and send them back next day

I promise and I'm sorry I'm stressed and Have been avoiding it.

--
Sent from Hotmail Email App for Android

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS
DIVISION

**SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,**

vs.

**TEAM RESOURCES, INC.,
FOSSIL ENERGY CORPORATION,
KEVIN A. BOYLES,
PHILIP A. DRESSNER,
MICHAEL EPPY,
ANDREW STITT, AND
JOHN OLIVIA,**

Defendants.

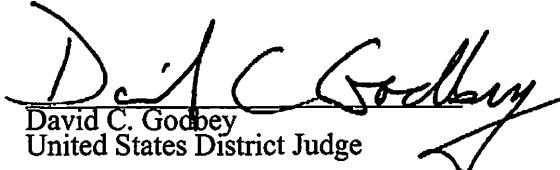
**CIVIL ACTION NO.:
3:15-CV-1045-N**

**ORDER GRANTING MOTION TO AUTHORIZE ALTERNATIVE
SERVICE OF PROCESS ON DEFENDANT ANDREW STITT**

The Court, having reviewed Plaintiff Securities and Exchange Commission's Motion to Authorize Alternative Service of Process on Defendant Andrew Stitt, is of the opinion that the motion should be GRANTED. Accordingly,

1. Time for the Commission to effect service of process on defendant is extended under Fed. R. Civ. P. 4(m) until March 31, 2016.
2. For good cause shown, it is ORDERED that Plaintiff is authorized to effect service of process on Defendant Andrew Stitt by publication. The SEC will publish a notice about the pendency of this action in two Jamaican newspapers: *The Gleaner* and the *Jamaica Observer*. The SEC will also publish the notice in the *International New York Times*. The notices will run once a week for four weeks, identifying this Court, the names of the parties, and a summary of the SEC's claims and the relief requested.

Signed this 1st day of December, 2015.



David C. Godbey
United States District Judge