

No. 21-1027

In the Supreme Court of Texas

OFFICE OF THE ATTORNEY GENERAL OF TEXAS,
Petitioner,

v.

JAMES BLAKE BRICKMAN, ET AL.,
Respondents.

On Petition for Review
from the Third Court of Appeals, Austin

**JOINT MOTION TO ABATE BY PETITIONER OFFICE OF
THE ATTORNEY GENERAL AND RESPONDENTS J. MARK
PENLEY, DAVID MAXWELL, AND RYAN M. VASSAR**

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

JUDD E. STONE II
State Bar No. 24076720
Solicitor General
Judd.Stone@oag.texas.gov

LANORA C. PETTIT
Principal Deputy Solicitor General

WILLIAM F. COLE
Assistant Solicitor General

Counsel for Petitioner

TO THE HONORABLE SUPREME COURT OF TEXAS:

Petitioner and the three above-captioned respondents jointly move the Court to defer consideration of the petition for review pending the outcome of their ongoing settlement negotiations.

Petitioner filed the petition for review on January 5, 2022. The Court requested a response on February 18 and briefs on the merits on May 27. Petitioner's brief on the merits was filed on July 27, respondents' brief on the merits was filed on September 15, and petitioner's reply was filed on September 30. The petition for review remains under consideration by the Court.

Petitioners and three of the four respondents are actively engaged in settlement discussions, with mediation tentatively planned for February 1, 2023. Uncertainty regarding whether this Court will grant the petition for review is a material factor in the parties' negotiations, so abatement will facilitate settlement of the underlying matter. Should the parties reach a settlement, they anticipate moving for disposition of the case pursuant to Texas Rule of Appellate Procedure 56.3. The parties therefore respectfully ask this Court to abate consideration of the petition until February 9, 2023 at 5:00 p.m. Should negotiations appear fruitful but require additional time, the above-captioned parties may jointly request an additional limited abatement. Should negotiations prove unsuccessful, the parties will move to lift the abatement order for the Court to recommence consideration of the petition for review.

PRAYER

The Court should abate the petition for review until February 9, 2023, at 5:00 p.m.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

/s/ Judd E. Stone II
JUDD E. STONE II
Solicitor General
State Bar No. 24076720
Judd.Stone@oag.texas.gov

LANORA C. PETTIT
Principal Deputy Solicitor General

WILLIAM F. COLE
Assistant Solicitor General

Counsel for Petitioner

CERTIFICATE OF CONFERENCE

On January 26, 2023, I conferred with Thomas A. Nesbitt, lead counsel for plaintiff James Blake Brickman, via tnesbitt@dnaustin.com; Don Tittle, counsel for plaintiff J. Mark Penley, via don@dontittlelaw.com; T.J. Turner, counsel for plaintiff David Maxwell, via tturner@cstrial.com; and Joseph R. Knight, counsel for plaintiff Ryan M. Vassar, via jknight@ebbklaw.com. Respondents Penley, Maxwell, and Vassar agree with the relief requested and join the motion. Respondent Brickman opposes the relief requested.

/s/ Judd E. Stone II
JUDD E. STONE II

CERTIFICATE OF SERVICE

On January 26, 2023, this document was served electronically on Thomas A. Nesbitt, lead counsel for plaintiff James Blake Brickman, via tnesbitt@dnaustin.com; Don Tittle, counsel for plaintiff J. Mark Penley, via don@dontittlelaw.com; T.J. Turner, counsel for plaintiff David Maxwell, via tturner@cstrial.com; and Joseph R. Knight, counsel for plaintiff Ryan M. Vassar, via jknight@ebbklaw.com.

/s/ Judd E. Stone II
JUDD E. STONE II

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 246 words, excluding emptied text.

/s/ Judd E. Stone II
JUDD E. STONE II

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Sylvia Rosales on behalf of Judd Stone
Bar No. 24076720
sylvia.rosales@oag.texas.gov
Envelope ID: 72198520
Status as of 1/27/2023 7:42 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Joseph R. Knight	11601275	jknight@ebbklaw.com	1/26/2023 7:37:38 PM	SENT
Don A. Tittle	20080200	don@dontittlelaw.com	1/26/2023 7:37:38 PM	SENT
Thomas Andrew Nesbitt	24007738	tnesbitt@dnaustin.com	1/26/2023 7:37:38 PM	SENT
Carlos Ramon Soltero	791702	csoltero@maynardcooper.com	1/26/2023 7:37:38 PM	SENT
Judd Stone	24076720	judd.stone@oag.texas.gov	1/26/2023 7:37:38 PM	SENT
Lanora Pettit	24115221	lanora.pettit@oag.texas.gov	1/26/2023 7:37:38 PM	SENT
William FCole		William.Cole@oag.texas.gov	1/26/2023 7:37:38 PM	SENT
Carrie Patino		carrie.patino@oag.texas.gov	1/26/2023 7:37:38 PM	SENT
Kiara Dial		kdial@cstrial.com	1/26/2023 7:37:38 PM	SENT

Associated Case Party: James BlakeBrickman

Name	BarNumber	Email	TimestampSubmitted	Status
TJ Turner		tturner@cstrial.com	1/26/2023 7:37:38 PM	SENT
Thomas ANesbitt		tnesbitt@dnaustin.com	1/26/2023 7:37:38 PM	SENT

Associated Case Party: Ryan M. Vassar

Name	BarNumber	Email	TimestampSubmitted	Status
Joseph RKnight		jknight@ebbklaw.com	1/26/2023 7:37:38 PM	SENT

Associated Case Party: J. MarkPenley

Name	BarNumber	Email	TimestampSubmitted	Status
Don ATittle		don@dontittlelaw.com	1/26/2023 7:37:38 PM	SENT

Associated Case Party: David Maxwell

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Name	BarNumber	Email	TimestampSubmitted	Status
Carlos RSoltero		carlos@ssmlawyers.com	1/26/2023 7:37:38 PM	SENT