

CAUSE NO. 417-04885-2016

CALCO LAND DEVELOPMENT, L.L.C.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	IN THE DISTRICT COURT
	§	
UNITY RESOURCES, L.L.C.;	§	
MARK THOMAS MERSMAN;	§	COLLIN COUNTY, TEXAS
MARK JOSEPH SOLOMON, JR.;	§	
TRADE RARE, L.L.C.;	§	
BYRON CURTIS COOK;	§	417th JUDICIAL DISTRICT
and JOEL HOCHBERG,	§	
	§	
<i>Defendants.</i>	§	

**DEFENDANT BYRON COOK’S APPLICATION
FOR LEGISLATIVE CONTINUANCE**

To the Honorable Court:

Pursuant to Section 30.003 of the Texas Civil Practice and Remedies Code, Defendant Byron Curtis Cook (“Cook”) files this Application for Legislative Continuance, and would respectfully show as follows:

I. FACTUAL BACKGROUND

1. In this lawsuit, Plaintiff Calco Land Development, LLC asserts claims against Cook for conspiracy, breach of fiduciary duty, aiding and abetting breaches of fiduciary duty, and violations of the Texas Securities Act.

2. First elected in 2002, Cook is a member of the Texas House of Representatives, representing House District 8, which includes Anderson, Freestone, Hill, and Navarro counties. In 2016, Cook was re-elected as a member of the legislature for the seventh time, and in that capacity will be attending the upcoming 85th Texas legislative session that will begin on

January 10, 2017, and is scheduled to end on May 29, 2017. The Affidavit of Byron Cook is attached as Exhibit A to this application, and fully incorporated herein.

II. LEGAL STANDARD

3. Section 30.003 of the Texas Civil Practice and Remedies Code provides that a court “shall continue a case in which a party applying for the continuance or the attorney for that party is a member or member-elect of the legislature and will be or is attending a legislative action. TEX. CIV. PRAC. & REM. CODE § 30.003(b). The application can be filed at any time within 30 days of the date when the legislature is to be in session. *Id.* In addition, the legislative continuance applies to “any criminal or civil suit, including matters of probate, and to any matters ancillary to the suit that require action by or the attendance of an attorney, including appeals but excluding temporary restraining orders.” *Id.* at § 30.003(a).

4. Unless Plaintiff alleges and establishes its entitlement to one of the narrow exceptions to the statute that are inapplicable here, the trial court lacks discretion to deny the application for legislative continuance. *See In re Ford Motor Co.*, 165 S.W.3d 315, 319-22 (Tex. 2005) (“To give full effect to the Legislature’s policy decision regarding legislative continuances, we conclude that a party has no adequate remedy by appeal when a trial court abuses its discretion by denying a motion for legislative continuance.”); *In re Starr Produce Co.*, 988 S.W.2d 808, 811 (Tex. App.—San Antonio 1999, original proceeding) (“If properly requested, a legislative continuance is mandatory. The trial court lacks any discretion in such a circumstance; instead, it serves a merely ministerial function.”); *Amoco Production Co. v. Salyer*, 814 S.W.2d 211, 213 (Tex. App.—Corpus Christi 1991, orig. proceeding) (“The statute is mandatory if a party or its attorney is a member of the legislature while it is in session.”); TEX. CIV. PRAC. & REM. CODE § 30.003(b).

5. The continuance begins on the day the motion is filed and lasts “until 30 days after the date on which the legislature adjourns.” TEX. CIV. PRAC. & REM. CODE § 30.003(b). And the scope of the continuance extends to all “matters ancillary to the suit.” *Id.* at 30.003(a). The Texas Supreme Court has, understandably in keeping with the intent of the statute, interpreted this “matters ancillary” language broadly to include “depositions and other ancillary proceedings in pending suits.” *Schwartz v. Jefferson*, 520 S.W.2d 881, 886 (Tex. 1975).

III. APPLICATION TO THIS ACTION

6. The Affidavit of Byron Cook establishes that Cook, a defendant in this civil suit, is a member of the legislature and will be attending the legislative session that will begin in less than 30 days. Accordingly, by statute, Cook is entitled to a continuance of this case, including all ancillary matters such as written discovery, depositions, and hearings, until 30 days after the date on which the legislature adjourns. Cook’s Affidavit is proof of the necessity of the continuance, and need not be corroborated. TEX. CIV. PRAC. & REM. CODE § 30.003(d).

IV. CONCLUSION

For these reasons, Defendant Byron Cook respectfully requests that the Court grant this application for legislative continuance and continue this case, including all ancillary matters, until 30 days after the date on which the upcoming session of the Texas legislature adjourns.

Respectfully submitted,

/s/ Neal J. Suit

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and Joel Hochberg*

Certificate of Service

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record in the above cause in accordance with the Texas Rules of Civil Procedure via electronic service on this 12th day of December, 2016:

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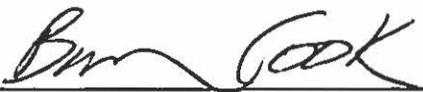
Neal J. Suit

EXHIBIT A

and is scheduled to end on May 29, 2017. In my capacity as an elected member of the House of Representatives, I will be attending the upcoming legislative session until it is complete.

While I am serving in the legislature, representing my constituents, it would be very difficult for me to assist my attorneys in the defense of this lawsuit. I will not be able to actively assist in responding to discovery requests or be able to participate in the planning for or taking of depositions without hampering my involvement with legislative obligations. In addition, my ability to actively participate in the preparation or presentation of any matter set for hearing will be greatly diminished, if feasible at all.

These facts are true and correct.”


Byron Cook

SWORN AND SUBSCRIBED before me, Notary Public, this the 12th day of December, 2016.


Notary Public

