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December 11, 2019

Via U.S. Mail and Email: riplev.rand@wbd-us.com

Ripley Rand

555 Fayetteville Street, Suite 1100

Raleigh, NC 27602

***Re: North Carolina Division Sons of Confederate Veterans, Inc. v. UNC
and UNC Board of Governors, 19 CVS 1579***

Dear Mr. Rand:

On behalf of our University of North Carolina Chapel Hill student and faculty clients, we write to raise concerns about the Consent Judgment, Declaratory Judgment and Order (“Consent Order”) entered in the above-captioned matter, and to ask that the University of North Carolina (“UNC”), and the UNC Board of Governors (“BOG”) act immediately to take any actions necessary to protect UNC’s interests and to recover the 2.5 million dollars dedicated to paying that judgement.

As set out below, it appears that the Consent Order won court approval only because the parties concealed the plaintiff’s lack of standing from the court and failed to advise the court of the frivolousness of the legal claims on which the Consent Order is based. It is apparent that in pursuing this Consent Order, the BOG sought to use the court system to circumvent laws that would otherwise prohibit the actions that the Consent Judgment requires—the transfer of the Confederate monument and UNC’s payment of \$2.5 million. These circumstances, along with the amount of the settlement payment, cause us to question whether the Board acted consistent with its fiduciary duties in approving this Consent Order.

We urge the BOG to carefully consider this information and to take all necessary action to meet its fiduciary obligations to protect UNC’s interests and to recover the 2.5 million dollars to be paid to support a white supremacist organization whose values are antithetical to UNC’s mission.

Our concerns are informed significantly by statements made by the president of the North Carolina Division of the Sons of Confederate Veterans (SCV), Kevin Stone, shortly after the Consent Order was filed. Mr. Stone made the statements in a letter to SCV’s members explaining the negotiations with the BOG. See attached Exhibit 1, “Letter to the Men of the North Carolina Division.” In the letter, Kevin Stone, who signed the Consent Order on the Plaintiff’s behalf, explained how the parties secretly worked together to craft a meritless lawsuit in order to convey possession of the Confederate monument and 2.5 million dollars to a custodial trust for its care.

The below italicized excerpts from Exhibit 1 show that the SCV admitted to the following:

1. SCV's objective was

to accomplish one of two things: either to have the memorial restored to its place of honour on campus while being properly protected; or to gain possession of the memorial and make an equally prominent public display for it at UNC's expense.

2. SCV knew before filing the Verified Complaint and the Consent Order that it had no standing to bring a lawsuit to achieve its objective, and that any law suit it wanted to bring would be meritless.

As we have mentioned dozens of times, despite consulting every known legal source, including those parties who have had success with SCV suits in Virginia and Tennessee, we could not get past the issue in North Carolina law of legal standing in the Silent Sam case so to bring a suit. Even if we had filed suit, our complaint would have been challenged and dismissed immediately without result. After extensive consultation (with judges, retired judges, etc.), we were 100% certain that this would be the outcome.

3. SCV was given hope that it could obtain its objective in spite of the its lack of legal standing or ownership interest after it was approached by the BOG offering to negotiate.

We were given some hope earlier this year when the Board of Governors approached us through Mr. Sturges and wanted to open negotiations. Our biggest advantage was the extremely adverse publicity they were receiving. They heard we were preparing to file a suit and wanted to avoid fighting with an organization represented by high-profile attorney Sturges. While they were not at all worried about losing, the prospect of another media circus on campus really had them worried, especially given that they have a hostile faculty at UNC and a very nervous donor pool that shies away from any controversy.

4. SCV then decided to file a lawsuit it knew was meritless.

At that point this summer, we were despondent and thought that despite the exorbitant expense and almost certain waste of money and zero chance of winning, we were going to have to instruct our attorney to sue just so we could say we tried honourably.

Thus, our attorney began work on a lawsuit and informed the Board of Governors that we would be launching major legal action. Because of that, we now announce that today we have indeed filed that legal suit against the Board of Governors and University, and our legal action has immediately met with an offer from them to settle.

5. SCV settled the case in a way to intentionally avoid the problem created by its conflicting positions regarding its lack of standing and made false allegations in the Complaint concerning its legal relationship to the Monument.

Further, we have not allowed the issue of standing to be mentioned in any way in the settlement so as not to hamper any future suits we may have to file regarding other

memorials.

In addition, the settlement terms specify that we are not setting an automatic judicial precedent for other memorials across the state – this is a special case where the University chose to work uniquely with the SCV and create a carved out exception to the Monument Protection Act that would give us what we want while at the same time preventing any further damage to the law that has yet to be enforced by the state.

6. The BOG and SCV worked together on a legal theory that would allow disposition of the Monument without implicating N.C. Gen. Stat. 100-2.1 (the “Monument Protection Act”) and avoid negative precedents interpreting that law, and intentionally kept their negotiations secret from the public.

Prior to this point, we could not mention ANY of this to you at meetings or over the Tar Heel email list because all negotiations were required to be 100% confidential. For their part, knowledge by the media, the leftists, UNC faculty, and even other members of the Board not privy to the negotiations that their leadership was working with the SCV would have torpedoed the whole thing....

There have been those who say we’ve ‘lost the respect’ of the BOG, etc. while during this whole time, we were working directly with them and for the honour of our ancestors. What we have accomplished is something that I never dreamed we could accomplish in a thousand years and all at the expense of the University itself. This is a major strategic victory, and I look forward to continuing to move the Division forward.

The apparent misrepresentations to the court relating to SCV’s standing to bring the lawsuit are particularly disturbing. Mr. Stone signed a verified complaint alleging under oath that the SCV had standing to bring the suit and then sent a letter to his members admitting not only that that claim had no merit, but also that the standing issue was being intentionally concealed from the court. It further appears that the BOG collaborated in concealing the standing deficiency from the court because the BOG needed this agreement to be in the form of a court-ordered agreement so it could circumvent the Monument Act, and other countervailing laws. If the court knew SCV lacked standing, the court would have to dismiss the case for lack of jurisdiction. If the court dismissed the case, the BOG would have no legal means of transferring the monument to SCV along with the \$2.5 million for its maintenance.

Also troubling is that the parties asked the court to approve a Consent Order based on exceedingly faulty legal foundations—legal arguments that would be exposed as frivolous if they were tested through actual adversarial litigation. The legal theory underpinning the Consent Order is that the Monument was a “conditional gift” to non-party UDC. Consent Order, Conclusions of Law, ¶¶9, 11, 12. This legal conclusion is based upon statements made by a UDC member at the unveiling of the Monument, saying “may it stand forever as a perpetual memorial to those sons of the University who suffered and sacrificed so much at the call of duty.” Consent Order, Finding of Fact, ¶32. The Consent Order concludes that UNC’s failure to return the monument to its place after its removal violated that condition and therefore ownership interest in the Monument reverted to the UDC. Consent Order, Conclusion of Law, ¶12.

These conclusions of law are fundamentally flawed in several ways. First, the

allegations in the Complaint fail to establish that the UDC actually owned the monument in the first place. The UDC raised money for the Monument, but it was always intended for UNC, and it was UNC officials who contracted with the sculptor for its creation. Consent Order, Findings of Fact, ¶¶22-3112.

Second, if the UDC did own the Monument, it transferred ownership to UNC when it made the gift, and the allegations in the Complaint fail to establish any legal restriction on that gift. The Complaint cites only the UDC representative's aspirational statement during ceremonial remarks that the Monument "stand forever," but such statements could not have created a legal restriction on the donation. As a matter of law, a donor cannot restrict or condition a gift after it has been delivered. Any condition on a gift must be clearly stated prior to its delivery and cannot be made after the fact. *Courts v. Annie Penn Mem'l Hosp., Inc.*, 111 N.C. App. 134, 139, 431 S.E.2d 864, 866 (1993) (a gift inter vivos is absolute and takes effect at the time delivery is completed, provided there are no conditions attached). According to the Complaint, the Monument was already annexed to real property and the statements were made at the unveiling ceremony after it was already delivered.

Third, conditions subsequent are disfavored and must be clearly stated. *Ange v. Ange*, 235 N.C. 506, 508, 71 S.E.2d 19, 20 (1952) ("A clause in a conveyance will not be construed as a condition subsequent unless it expresses, in apt and appropriate language, the intention of the parties to this effect and a mere statement of the purpose for which the property is to be used is not sufficient to create such condition."); *Town of Belhaven, NC v. Pantego Creek, LLC*, 793 S.E.2d 711, 717 (N.C. Ct. App. 2016) (quoting *Prelaz v. Town of Canton*, 235 N.C.App. 147, 155, 760 S.E.2d 389, 394 (2014)) ("For a reversionary interest to be recognized, the deed must contain express and unambiguous language of reversion or termination upon condition broken. A mere expression of the purpose for which the property is to be used without provision for forfeiture or re-entry is insufficient to create an estate on condition."). The statement at the unveiling ceremony, "may it stand forever as a perpetual memorial to those sons of the University who suffered and sacrificed so much at the call of duty," does not satisfy the legal requirement to retain a reversionary interest. It is not a legally enforceable restriction on the gift but a statement of the purpose of the gift.

Finally, SCV bases its claim to the Monument not on the legal interest of the UDC that raised funds for the monument, but on the legal interest—whatever it might be—of the modern-day UDC, incorporated in 1992. This organization is not the same entity as the 19th Century UDC that helped raise funds for the Monument, and the Complaint fails to include any allegations that the modern UDC somehow inherited the property interests of the 19th century UDC. Thus, the modern-day UDC could have no legal interest in the Monument to assign to SCV.

Another serious concern raised by the Consent Order, and one that calls into question the BOG's compliance with its fiduciary duties, is that the amount of the monetary settlement far exceeds the damage award sought in SCV's Complaint. The relief requested in the Complaint is for "actual damages ... in an amount sufficient to compensate for damage to the Confederate Monument." Complaint, Request for Relief, ¶J. Ordinarily this would amount to the cost of repair for damaged property. The most recent (2006) appraisal for the value of the monument according to the University is \$125,000. Monument Appraisal, Exhibit 2. There is no legal basis for an award of \$2.5 million based upon the legal claims and allegations set forth in the Complaint, even if those claims and allegations were true. This raises substantial

concerns about the BOG’s compliance with its fiduciary duties and the unlawful disbursement of public funds.

Lastly, N.C.G.S. § 114-2.4 requires that the Attorney General review all proposed settlement agreements of more than \$75,000, and “submit . . . a written opinion regarding the terms of the proposed agreement and the advisability of entering into the agreement, prior to entering into the agreement.” It is unclear whether this necessary review by the Attorney General took place before the Consent Order was signed. Notably, while Chancellor Guskiewicz’s written statement on December 6 asserts that the settlement agreement was “reviewed and authorized by the Attorney General,” at a faculty meeting that same day when asked specifically if the AG’s office had approved the settlement, he characterized the AG’s involvement differently, stating: “as was indicated in the FAQ that went out today, this went through the UNC system office but the attorney general of North Carolina reviewed and approved the authority for the system office and the board of governors to enter into a settlement agreement.”

This is matter of grave public interest, particularly as it concerns the dubious transfer of \$2.5 million in public funds to support the work of a white supremacist organization, apparent improprieties in securing the court’s approval of the Consent Order, and serious questions about the BOG’s fidelity to its legal, ethical, and fiduciary duties. We therefore respectfully request that you act immediately to take any actions necessary to protect the interests of UNC and to recover the 2.5 million dollars of public funds allocated to expand and perpetuate the racist and destructive “Lost Cause” ideology.

Sincerely,



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Elizabeth Haddix
Mark Dorosin
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Encl. Exhibits 1 and 2

Cc w/encl: C. Boyd Sturges III, Attorney for Plaintiff
Josh Stein, North Carolina Attorney General