

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION,

CLASS REPRESENTATION

CASE NO: 2021-015089-CA-01

COMPLEX BUSINESS
LITIGATION DIVISION

**8701 COLLINS DEVELOPMENT, LLC'S UNOPPOSED MOTION FOR
MODIFICATION OF THE COURT'S MARCH 11, 2022 ORDER REQUIRING
MEDIATION AND STAYING DISCOVERY AS TO MEDIATING DEFENDANTS**

Defendant 8701 Collins Development, LLC ("8701"), through undersigned counsel, respectfully moves this Court for an order modifying its March 11, 2022 Order Requiring Mediation and Staying Discovery as to Mediating Defendants (the "Mediation Order") as follows:

1. On March 11, 2022, the Court entered the Mediation Order, requiring that Defendants 8701, Terra Group, LLC, Terra World Investments, LLC and John Moriarty & Associates of Florida, Inc. (the "Mediating Defendants") participate in a mediation with the Receiver and the putative Plaintiffs' class, in a joint session with Mediator Bruce Greer, on April 27 and 28, 2022. A copy of the Mediation Order is attached as Exhibit A.

2. The Court further ordered that any insurer that has received a request to defend or indemnify as to any claim asserted against any Mediating Defendant to have at least one representative with full authority to tender policy limits personally present at the mediation, regardless of whether the insurer has denied coverage or assumed a defense under a reservation of rights.

3. The Order, however, omitted any requirement that the interested insurers of the other mediating parties, *i.e.*, the putative Plaintiffs' class and the Champlain Towers South Condominium Association, Inc. (the "Association"), attend and participate in the mediation.

4. As the Court is aware, approximately \$30 million in insurance proceeds have been tendered by the Association's property insurer, Great American Insurance Group ("Great American"), and another \$18 million in insurance proceeds have been tendered by the Association's liability insurers, Arch Insurance Company ("Arch"), Endurance American Specialty Insurance Company ("Endurance"), James River Insurance Co. ("James River"), Philadelphia Indemnity Insurance Company ("PIIC"), QBE, and Fireman's Fund Insurance Company ("Fireman's Fund"). *See* Order Preliminarily Approving "Allocation Settlement Agreement" at page 4. Additionally, we understand that some of the owners of units in Champlain Towers South may have received insurance proceeds from one or more insurance companies for loss of personalty and/or their units. For example, Universal Property & Casualty Insurance Company ("Universal") has filed a subrogation action seeking \$6,043,536.33 from the Association and the Mediating Defendants for payments made to its insured(s).

5. Accordingly, the Association's property insurer, Great American, and the Association's liability insurers, Arch, Endurance, James River, PIIC, QBE, Fireman's Fund, Universal and other similarly situated insurers, should be required to attend and participate in the April 27th and 28th mediation between the putative Plaintiffs' class, the Association and the Mediating Defendants as at least one of them - Universal - has asserted a subrogation claim against the Mediating Defendants, and the others may advance similar claims.

6. The participation of these insurers will promote the interests of all parties seeking a mediated settlement capable of bringing finality to the mediating parties.

7. A proposed Modified Order Requiring Mediation and Staying Discovery as to the Mediating Defendants requiring the Association's Great American, Arch, Endurance, James River, PIIC, QBE, Fireman's Fund, as well as Universal and any insurer that has paid at least

\$250,000.00, in the aggregate, of insurance proceeds to any owner (or owners), or tenant (or tenants), of any unit (or units) at Champlain Towers South for loss of personalty or damage to a unit, to attend and participate in the April 27th and 28th mediation is attached hereto as Exhibit “B” (the “Proposed Modified Order”).

8. 8701 has conferred with counsel for the Mediating Claimants and the other Mediating Defendants and all counsel have agreed to the relief requested, including the entry of the Proposed Modified Order.

WHEREFORE, 8701 Collins Development, LLC respectfully requests that the Court (i) require the Association’s property insurer, Great American, and the Association’s liability insurers, Arch, Endurance, James River, PIIC, QBE, and Fireman’s Fund, to attend the April 27th and 28th mediation, (ii) require Universal and any property insurer that has paid at least \$250,000.00, in the aggregate, of insurance proceeds to any owner (or owners), or tenant (or tenants), of a unit (or units) at Champlain Towers South for loss of personalty or damage to the unit to attend the April 27th and 28th mediation, (iii) enter an order substantially in the form and substance of the Proposed Modified Order and (iv) grant such additional relief that the Curt deems just and appropriate.

Dated: April 1, 2022

Respectfully submitted,

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By: /s/ Michael J. Thomas
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished, either via transmission of Notices of Service of Court Document generated by the E-Portal or in some other authorized manner for those counsel or parties who are excused from e-mail service on this 1st day of April, 2022.

 /s/ Michael J. Thomas
MICHAEL J. THOMAS

EXHIBIT “A”

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-015089-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

In Re: Champlain Towers South Collapse Litigation

Plaintiff(s)

vs.

N/A

Defendant(s)

**ORDER REQUIRING MEDIATION AND STAYING DISCOVERY AS TO MEDIATING
DEFENDANTS**

This action came before the Court on March 9, 2022, on the *ore tenus* request of the Receiver for an order requiring Defendants 8701 Collins Development, LLC, Terra Group, LLC, Terra World Investments, LLC, and John Moriarty & Associates of Florida, Inc., to mediate with the Plaintiffs and the Receiver on April 27 and 28, 2022. The Court has been advised of the agreement of counsel regarding this mediation and is otherwise duly advised in the premises. Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendants 8701 Collins Development, LLC, Terra Group, LLC, Terra World Investments, LLC, John Moriarty & Associates of Florida, Inc. (the “Mediating Defendants”), shall mediate with the Receiver and the putative Plaintiffs’ class, in a joint session with Mediator Bruce Greer, on April 27 and 28, 2022. At least one representative from each party must attend the mediation.

2. All discovery directed at the Mediating Defendants is stayed pending the completion of the mediation, except that each Mediating Defendant must complete its currently ongoing

document production to the Plaintiffs. Inspections, testing, and sampling of evidence, whether located at the Champlain Towers South site or the Miami-Dade County (*i.e.*, NIST) warehouse is not subject to this stay and therefor may proceed. All discovery not directed at a Mediating Defendant is not subject to this stay and may proceed as well.

3. Any insurer that has received a request to defend or indemnify as to any claim asserted against any Mediating Defendant shall ensure that a representative attends the mediation, regardless of whether the insurer has denied coverage or assumed a defense under a reservation of rights. Each insurer shall have at least one representative personally present at the mediation with full authority to tender policy limits. Unless it has already done so, each Mediating Defendant shall disclose to the Plaintiffs its potentially relevant insurance policies no later than Wednesday, April 13, 2022.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 11th day of March, 2022.



2021-015089-CA-01 03-11-2022 7:25 PM

Hon. Michael Hanzman

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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Physically Served:

EXHIBIT “B”

Exhibit “B”
Proposed Modified Order

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION,

CLASS REPRESENTATION

CBL DIVISION

CASE NO: 2021-015089-CA-01

**MODIFIED ORDER REQUIRING MEDIATION AND
STAYING DISCOVERY AS TO MEDIATING DEFENDANTS**

This action came before the Court on March 9, 2022, on the *ore tenus* request of the Receiver for an order requiring Defendants 8701 Collins Development, LLC (“8701”), Terra Group, LLC, Terra World Investments, LLC, and John Moriarty & Associates of Florida, Inc., to mediate with the Plaintiffs and the Receiver on April 27 and 28, 2022 and upon 8701’s Motion for Modification of the Court’s March 11, 2002 Order Requiring Mediation and Staying Discovery as to Mediating Defendants. The Court has been advised of the agreement of counsel regarding this mediation and is otherwise duly advised in the premises. Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendants 8701 Collins Development, LLC, Terra Group, LLC, Terra World Investments, LLC, John Moriarty & Associates of Florida, Inc. (the “Mediating Defendants”), shall mediate with the Champlain Towers South Condominium Association, Inc. (the “Association”) and the putative Plaintiffs’ class, in a joint session with Mediator Bruce Greer, on April 27 and 28, 2022. At least one representative from each mediating party must attend the mediation.

2. All discovery directed at the Mediating Defendants is stayed pending the completion of the mediation, except that each Mediating Defendant must complete its currently ongoing document production to the Plaintiffs. Inspections, testing, and sampling of evidence, whether located at the Champlain Towers South site or the Miami-Dade County (*i.e.*, NIST) warehouse is not subject to this stay and therefor may proceed. All discovery not directed at a Mediating Defendant is not subject to this stay and may proceed as well.

3. Any insurer that has received a request to defend or indemnify as to any claim asserted against any Mediating Defendant shall ensure that a representative attends the mediation, regardless of whether the insurer has denied coverage or assumed a defense under a reservation of rights. Each insurer shall have at least one representative personally present at the mediation with full authority to tender policy limits. Unless it has already done so, each Mediating Defendant shall disclose to the Plaintiffs its potentially relevant insurance policies no later than Wednesday, April 13, 2022.

4. Additionally, the Association's property insurer, Great American Insurance Group, and the Association's liability insurers, Arch Insurance Company, Endurance American Specialty Insurance Company, James River Insurance Co., Philadelphia Indemnity Insurance Company, QBE, and Fireman's Fund Insurance Company, must attend the mediation and each such insurer shall have at least one representative personally present at the mediation. Additionally, Universal Property & Casualty Insurance Company and any property insurer that has paid at least \$250,000.00, in the aggregate, of insurance proceeds to any owner (or owners), or tenant (or tenants), of any unit (or units) at Champlain Towers South for loss of personalty or damage to a unit must also attend the mediation and each such insurer shall have at least one representative personally present at the mediation.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this ____ day of
March, 2022.

Hon. Michael Hanzman
CIRCUIT COURT JUDGE