

Trustees of the Corcoran Gallery of Art v. The District of Columbia:

Intervenors' Opposition to Petitioners' Petition For Cy Pres Determination

August 6, 2014

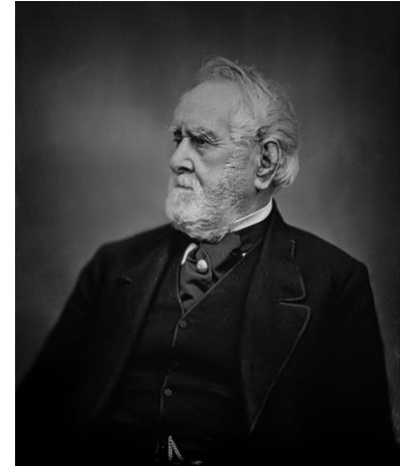
GIBSON DUNN

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Mr. Corcoran's Trust

- Mr. Corcoran desired to “establish an institution in Washington City, to be ‘dedicated to Art’ and used solely for the purpose of encouraging American genius, in the production and preservation of works pertaining to the ‘Fine Arts.’” Cy Pres Pet., Stack Decl. Ex. 1 at 1.
- The trust funds must be used “for the perpetual establishment and maintenance of a Public Gallery and Museum for the promotion and encouragement of the arts of painting and sculpture, and the fine arts generally.” *Id.* at 6.
- “[A]ll legal rights and titles in the premises shall be taken and held in such manner, and with such legal forms, as shall serve the trusts, intent, uses and purposes declared or plainly indicated or implied in and by the terms of this instrument.” *Id.*



Mr. Corcoran's Trust

I have just come from a visit to Mr. Corcoran and was much pleased with my reception. If he was aware of how all true artists regard him and his noble charity in the cause of art he could not fail to be gratified to know how all the votaries of art in this country and in Europe feel toward Mr. Corcoran as a generous patron and worthy of the days of the Medici.

I think I speak the minds of all when I say that the greatest living painters would take great pride in being represented in the Corcoran Institution by the best work they can produce and at a cost far less than, to any private person or dealer for they would refer their friends to that gallery as representing their best efforts. Mr. Corcoran and the true artists of the world are allies or friends at heart.¹⁸

Corcoran wished the collection to have exemplary works of art, European as well as American. Casts of major pieces of sculpture seemed most desirable. The Smithsonian Institution agreed to assist the Corcoran Gallery and in 1874 Joseph Henry, first Secretary of the Smithsonian and a member of the Board of Trustees of the Corcoran, was asked to make arrangements for securing casts from the British Museum, the Vatican, and other European collections.

William T. Walters, a friend of Corcoran's for many years, was sent to Europe in 1873 to acquire European art, and was given full power to purchase by

his fellow Trustees. His name, James Watson, signed from the Board of Trustees, was sent to open time to open and as a result Corcoran played

Corcoran's plan to establish a repository of contemporary American art which would utilize the Gallery's permanent collection to perfect their own style.

The idea of a Gallery had long been in the air. In 1873, for them was being formed seven artists a studio space understood the of a more general tastes of the ought to:

... go one direct step further in this direction by the erection of a Studio Building in the neighborhood of the Gallery. The more powerful influence well as in art m

Corcoran's plans for the Gallery were two-fold: to establish a repository in the nation's capital for portraits of American heroes and outstanding examples of contemporary American art and to found a school of art which would allow future American artists to utilize the Gallery's permanent collection to perfect their own styles.

In his will, Corcoran gave \$100,000, which, according to an accompanying letter, was to be used for the creation of an art school.

Mr. Corcoran's Trust

In 1972 the Board of Governors was dissolved and many Governors were absorbed in the enlarged Board of Trustees, presently comprising nine life and twenty-six elected Trustees.

In January, 1974, the American Collection was chronologically installed allowing a unique opportunity to view the development of American art over 200 years. The installation was made possible by a grant from the National Endowment for the Arts, a Federal agency, in Washington, D.C. The Corcoran American Collection is comprised of almost 5,000 works of art, including paintings, sculpture, drawings, watercolors, prints and photographs. Reinstallation of the American Collection marked publication of the second volume of *The Catalogue of the Collection of American Paintings in The Corcoran Gallery of Art*. Volume 1 covers "Painters Born Before 1850" and was published in 1966. The second volume documents the work of painters born from 1850 to 1910 represented in the Gallery collection.

In the last decade many changes have taken place in the Gallery, particularly in the administrative structure and personnel, with varying influences on programs and policy. The Gallery became more involved in the avant-garde, with large and innovative exhibitions and increased events and activities, advancing the tradition and reputation of the Corcoran in the promotion of American art.

The Corcoran School of Art



The Corcoran School of Art was founded near the end of the last century. Establishment of an art school was first considered by the Board of Trustees in 1872. In 1875, the Gallery allowed students to loan and paint works in the collection, and the first rules governing the work of copyists was adopted. From December, 1877, free informal instruction in painting and drawing was given to students by a talented local painter, E. F. Andrews, who provided criticism and instruction. In 1878 Mr. Corcoran presented to the Board of Trustees a check in the amount of \$2,123.27 for the specific purpose of aiding in the establishing of a school of design, in connection with the Gallery.

Provisions for education were frequently considered and discussed by Corcoran Trustees. In 1884, W. W. Corcoran wrote saying "how greatly such an education would conduce to the economical prosperity of our country as well as to the national reputation."

"In 1878, Mr. Corcoran presented to the Board of Trustees a check in the amount of \$2,123.27 'for the specific purpose of aiding in the establishment of a school of design in connection with the Gallery.'"

Int. Ex. 13 at 44

“[T]he greatest 19th century American Art collection in the world.” Tr. 543:4-6.



Albert Bierstad, The Last of the Buffalo, 1888.

- Over 17,000 works of art, including 9,000 prints and drawings and 6,500 photographs and new media works.
- Because Mr. Corcoran dealt directly with artists, he amassed an unprecedented collection of post-Civil War American art.
- The Corcoran Gallery was a truly national gallery dedicated to showcasing American genius. Tr. 547:3-8. Over the decades, the Corcoran remained a hub for contemporary American art, as artists reinvented American genius by studying the Corcoran collection.



SUBSTANTIVE STANDARD OF REVIEW

Clear And Convincing Evidence

No Deference Afforded Under Business Judgment Rule

The Burden Of Proof Must Be Clear And Convincing Evidence

- The Uniform Trust Code is supplemented by the common law of trusts, including principles of equity. Unif. Trust Code § 106.
- Under principles of trust law, any effort to rewrite the terms of a trust requires proof by clear and convincing evidence.
 - “[A]ppellant has the burden of proving the settlor’s intent by **clear and convincing evidence** for purposes of trust reformation.” *Estate of Tuthill*, 754 A.2d 272, 275 (D.C. 2000)
 - *In re Ingersoll Trust*, 950 A.2d 672, 693 (D.C. App. 2008)
- Clear and convincing evidence is required to justify equitable deviation from administrative terms of a trust, a lesser deviation from the settlor’s intent than cy pres.
 - *Barnes Found.*, No. 58,788, 2004 WL 1960204, *11 (Pa. Com. Pl. Jan. 29, 2004) required clear and convincing evidence for equitable deviation because “in exercising its jurisdiction to modify or alter, the court should be **exceedingly cautious**. Courts will exercise such power only when it clearly appears to be necessary and only in extreme cases.”
 - Equitable deviation does not alter the purpose or objective of the trust. Cy pres authorizes a court to “modify or terminate” the trust. D.C. Code § 19-1303.13.
 - A court’s equitable “jurisdiction merely to vary the details of the administration of a trust is more liberally exercised . . . than the cy pres power of the court.” *Craft v. Shroyer*, 74 N.E.2d 589, 598 (Ohio Ct. App. 1947), cited in *In re Estate of Craig*, 848 P.2d 313, 321 (Az. App. Div. 1992).
- It follows that a party desiring to break the deed of trust, divert the trust proceeds, and alter the vision of the settlor’s ideals and vision must come forward with clear and convincing evidence.

The Court Should Review *de novo*

- In this *cy pres* proceeding, Petitioners seek a very specific kind of relief under D.C. Code governing trusts, D.C. Code § 19-1304.13.
- The decision as to whether to apply *cy pres* rests in the sole discretion of the Court.
 - The Trustees cannot depart from the Trust’s direction merely because they have made a policy choice to do so. *Connecticut College v. United States*, 276 F.2d 491, 497 (D.C. Cir. 1960); *see also* Bogert, *Trusts* (2d ed.) § 439; 4 *Scott Trusts* (3d ed. 1967) § 399.4.
 - The Court “must exercise his or her independent power of review.” *In re Barnes Found.*, 683 A.3d 894, 899 (Pa. Com. Pl. 1996).

Business Judgment Does Not Apply Even Under Nonprofit Code

- The doctrine of *ultra vires* precludes application of the business judgment rule.
 - “To the extent a director knowingly . . . violat[ed] the company’s charter, that director’s action is *ultra vires* and is not the product of a valid business judgment.” *Melzer v. CNET Networks, Inc.*, 934 A.2d 912, 914 (Del. Ch. 2007).

Trust—Not Corporate—Law Applies

- In any event, where charitable corporations have their genesis in a trust, even where the trust results in a non-profit corporation, the more stringent requirements of trust law—not corporate law—apply.
- The Restatement (Second) of Trusts, which has been embraced by the D.C. Court of Appeals, reaffirms that trust law applies: “Ordinarily the principles and rules applicable to charitable trusts are applicable to charitable corporations.” Restatement (Second) of Trusts § 348 cmt. f.
 - *See also Board of Directors, Wash. City Orphan Asylum v. Board of Trustees*, 798 A.2d 1068, 1075 n. 6 (D.C. 2002).



IMPRACTICABILITY OR IMPOSSIBILITY

Trustees Have Failed To Meet Their Burden Of Proof

Standard For Impracticability

- 1) Although no precise definition of “impracticability” exists, courts have described impracticability as occurring when a trust is:
 - Am. Jur. 2d § 151 (“whether a donor’s intentions can beneficially be carried into effect”); Am. Jur. 2d § 157 (“An impractical restriction is one that is not capable of being carried out in practice.”)
 - “doomed to failure” – *Levings v. Danforth*, 512 S.W.2d 207, 210 (Mo. App. 1974)
 - “no longer feasible” – *Hinckley v. Caldwell*, 182 N.E.2d 230, 235 (Ill. App. 1962)
 - “unreasonable to effectuate” – *In re Lucas*, 261 P.3d 800, 807 (Haw. Ct. App. 2011); *see also* Restatement on Trusts (Third) § 67.
- 2) Courts will deny cy pres relief so long as there is some reasonable way to fulfill the trust’s purposes.
 - *Oshkosh Found.*, 213 N.W.2d 54, 57 (Wis. 1973)
 - *Britton v. Killian*, 245 A.2d 289, 294 (Conn. Super. 1968)
- 3) The trustees bear the burden of proving that other possible alternatives would be “futile.”
 - *Museum of Fine Arts v. Beland*, 735 N.E.2d 1248, 1252 (Mass. 2000)

Petitioner Has Failed To Establish Impracticability

- Petitioner has failed to adduce adequate (or any) evidence, establishing that the trust, as it stands today, is financially impracticable.
- Instead, petitioner relies upon a vague timeline, referencing the Mapplethorpe exhibit and the end of the Gehry campaign in 2005, without hard data to establish impracticability.
- The closest person to a financial professional introduced by petitioner was Lauren Stack, the COO of the Corcoran, who noted at trial that she is not a CPA, not qualified to offer opinion on financial statements, is not an accounting professional, and has no license or professional restriction as an accountant. Trial Tr: 104:3-104:17 (Stack).
- The only piece of financial data attached to the petition for cy pres was a spreadsheet in Ms. Stack's declaration. That declaration itself proves that the Corcoran is not financially impracticable.

Petitioner's Evidence Indicates Financial Practicability

- 6 Years of Surplus

Restricted and Unrestricted	Actual per Audited Financial Statements												
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Revenues													
Total Revenues per audited financial statements	\$ 19,047,915	\$ 24,586,713	\$ 19,579,783	\$ 22,894,297	\$ 22,460,073	\$ 22,866,693	\$ 33,088,567	\$ 25,690,355	\$ 19,517,148	\$ 26,401,383	\$ 20,298,881	\$ 19,349,146	\$ 26,214,615
Total expenses per audited financial statements	\$ 19,445,952	\$ 21,598,434	\$ 20,268,858	\$ 22,847,213	\$ 24,338,276	\$ 22,599,738	\$ 25,085,364	\$ 25,370,759	\$ 23,444,429	\$ 25,063,766	\$ 27,435,461	\$ 28,668,075	\$ 28,285,744
Change in net assets from operations	(398,037)	2,988,279	(689,075)	47,084	(1,878,203)	266,955	8,003,203	319,596	(3,927,281)	1,337,617	(7,136,580)	(9,318,929)	(2,071,129)
Total Other Changes	21,011,559	438,757	(2,070,339)	113,019	(25,363,449)	822,501	1,765,625	(2,987,381)	(4,297,969)	(146,752)	(2,052,456)	17,985,337	38,445,902
Change in Net Assets Per Audited Financials	\$ 20,613,522	\$ 3,427,036	\$ (2,759,414)	\$ 160,103	\$ (27,241,652)	\$ 1,089,456	\$ 9,768,828	\$ (2,667,785)	\$ (8,225,250)	\$ 1,190,865	\$ (9,189,036)	\$ 8,666,408	\$ 36,374,773
Change in net assets from operations	(398,037)	2,988,279	(689,075)	47,084	(1,878,203)	266,955	8,003,203	319,596	(3,927,281)	1,337,617	(7,136,580)	(9,318,929)	(2,071,129)
Less: investment income													
True change in net assets		2,988,279		47,084		266,955	8,003,203	319,596		1,337,617			

Petitioner's Evidence Indicates Financial Practicability

Stack - X

1 correct?

2 A Actually, yes. The budget was set before I

3 arrived.

4 Q Oh, I'm not suggesting this had anything to do

5 with you at this point. I wouldn't want to suggest that.

6 So in 2012-2013, you were the COO and Mr. Bollerer

7 was the director. Right?

8 A Yes.

9 Q And we've gone over how much museum operations and

10 school governance experience the two of you have. We've

11 talked a lot about that. Correct?

12 A You have.

13 Q And in 2010, just a few years ago, there was a

14 million dollar surplus. Correct?

15 A Correct.

16 Q And if we go back to just 2007 there was an eight

17 million dollar surplus. Correct?

18 A Correct.

19 Q So the notion that there's a rolling 10 million

20 dollar deficit is not borne out by this spread sheet that

21 you have submitted to the Court, is it?

22 A I'm just taking my time here because you're really

23 mixing apples and oranges here. This spread sheet does not

24 show a rolling 10 million dollar deficit. Correct.

25 Q Correct. And in fact there is not a single year

SUSAN G. WALKER, CSR, RPR, FCRR
Superior Court, District of Columbia
202-879-4629

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- Q. So the notion that there's a rolling 10 million dollar deficit is not borne out by this spread sheet that you have submitted to the Court, is it?
- A. I'm just taking my time here because you're really mixing apples and oranges here. **This spread sheet does not show a rolling 10 million dollar deficit. Correct.**

Trial Tr. 103:19-103:24 (Stack)

Petitioner's Evidence Indicates Financial Practicability

Figure 4. Schedule 2.6(c): Alternative Reconciliation of Corcoran "Cash in Bank," as of 5/2/2014

Cash in bank as of 5/2/14

a	JP Morgan	\$ 40,792,552.00
b	PNC operating account	\$ 9,905,408.48
c	PNC Pittman account	\$ 2,407,501.00
d=a...c	Total Cash	\$ 53,105,461.48
e	Permanently restricted endowment funds	\$ 12,478,699.00
f	Temp restricted funds	\$ 1,571,818.00
g	Temp restricted - Pittman	\$ 2,357,501.00
h	Cash for operations May-June 30	\$ 4,684,000.00
i	Cash for operations July 1-August 19	\$ 5,171,000.00
j=e...i	Total Expenses (now through close)	\$ 26,263,018.00
k=d-j	Cash as of Aug 19 (not including endowment)	\$ 26,842,443.48
l	Funds owed GW at closing	\$ 35,000,000.00
m	Corcoran transition budget (Aug 19-Sept 30)	\$ 1,732,000.00
n=k-l-m	Difference	\$ (9,889,556.52)
o	Clark Settlement (Date TBD)	\$ 11,250,000.00
p	Pay GW note	\$ (9,889,556.52)
q=o-p	Difference after paying GW \$35MM	\$ 1,360,443.48
r	Payment to Corcoran ongoing entity	\$ 1,360,443.48
s=q-r	Remainder to be split 50/50 GW and Corcoran	\$ -

A	JP Morgan	\$ 40,792,552.00
B	PNC operating account	\$ 9,905,408.48
C	PNC Pittman account	\$ 2,407,501.00
D=A...C	Total Cash Available as of 5/2/14	\$ 53,105,461.48
E	Less: Cash for Operations (May- June 30)	\$ 4,684,000.00
F	Less: Cash for Operations (July 1-August 19)	\$ 5,171,000.00
G=E+F	Subtotal	\$ 9,855,000.00
H=D-G	Adjusted Cash Available as of August 2014	\$ 43,250,461.48
I	Less: Permanently restricted endowment funds	\$ 12,478,699.00
J=H-I	Adjusted Cash Available	\$ 30,771,762.48
K	Plus: Clark Settlement (Date TBD)	\$ 11,250,000.00
L=J+K	Adjusted Cash Available	\$ 42,021,762.48
M=J-K-L	Less: Temp Restricted Funds	\$ 1,571,818.00
N	Less: Temp Restricted Pittman	\$ 2,357,501.00
O=L-M-N	Adjusted Cash Available	\$ 38,092,443.48
P	Less: Funds Owed GW at Closing	\$ 35,000,000.00
Q	Less: Corcoran Transition Budget	\$ 1,732,000.00
R=O-P-Q	Net Balance (Payment to Ongoing Entity)	\$ 1,360,443.48

Petitioner's Evidence Indicates Financial Practicability

Stack - X

1 cash on hand at the Corcoran right now, or at least expected
2 to be available as of right now, would be at least 42
3 million dollars. Am I right?

4 A The cash expected on hand at the Corcoran right
5 now would be, if you take the 53 that's total cash and you
6 back out the operations money, would be approximately 40
7 million. Correct.

8 Q All right. And the plan is for the 40 million
9 dollars to be disbursed to GW and the National Gallery. Is
10 that right?

11 A The plan is, after we have our total cash we have
12 expense cash for operations from May to June 30th, which was
13 approximately 4.6 million dollars. And then estimated cash
14 from July 1st through whenever the transaction would take
15 place, and we have it estimated at August 19th. And after
16 that point, whatever was remaining would go to GW and NGA.

17 Q Okay. And the amounts that we have here that are
18 listed here as of May 2nd, does that include the 10 million
19 that the Corcoran received from the Clark Estate?

20 A No.

21 Q So that's another 10 million in cash that has been
22 received. Correct?

23 A It has not been received, and if you look down
24 further on this page it says Clark settlement 11.2 million,
25 date TBD.


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A. The cash expected on hand at the Corcoran right now would be, if you take the 53 that's total cash and you back out the operations money, would be approximately 40 million. Correct.

Trial Tr. 114:4-114:7 (Stack)

Petitioners' Have Overstated Renovation Costs

 **The Corcoran**
Gallery of Art - College of Art and Design
Washington, DC 20007
Master Plan Estimate
Executive Summary

180 Varick Street, Suite 1202
New York, NY 10014
Tel 212-209-1180
Fax 212-209-1195

PROJECT GRAND TOTAL	\$102,180,000
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Note: This is the total cost of the building renovations. It includes all three priorities and all construction related markups.

PROJECT GRAND TOTAL	\$102,180,000
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Note: GSF areas are measured from exterior face of structure in accordance with American Institute of Architects. This is the total area of the building including all floors and roofs.

CUMULATIVE MARK-UPS	49%
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0359-EST-MP-11May10-R1 Printed5/11/2011 2 of 29

Pet. Ex. 4 at 2

Petitioners' Have Overstated Renovation Costs

Stack - D

1 A It's the direct cost of renovating the building.
2 The does not include architectural and engineering fees,
3 which are about 15 percent. It doesn't include soft costs,
4 which I've learned in the museum business, when you're
5 renovating a building, are quite expensive.

6 Q Was the theory of this report that the building
7 would close?

8 A No.

9 Q Or the renovations would be accomplished?

10 A No. The scope of this report was that the
11 building would remain open and operational. The renovations
12 would happen around it. It would be over a four-year
13 period, starting in 2012.

14 Q Did the document include any escalation for the
15 costs of inflation as they would rise over the period of
16 time subsequent to 2012?

17 A No. So if you were to start this today and at
18 three percent escalation a year, you'd be at 115 million to
19 do this part of it.

20 Q Showing you now a document which has been marked
21 Petitioner's 5 for identification.

22 Again, Your Honor, a copy has been provided to
23 counsel.

24 THE COURT: Thank you.
25

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Superior Court, District of Columbia
202-879-4629

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A. It's the direct cost of renovating the building. The does not include architectural and engineering fees, which are about 15 percent. It doesn't include soft costs, which I've learned in the museum business, when you're renovating a building, are quite expensive.

Trial Tr. 62:1-62:5 (Stack)

Petitioners' Have Overstated Renovation Costs

Stack - D

1 A It's the direct cost of renovating the building.
2 The does not include architectural and engineering fees,
3 which are about 15 percent. It doesn't include soft costs,
4 which I've learned in the museum business, when you're
5 renovating a building, are quite expensive.

6 Q Was the theory of this report that the building
7 would close?

8 A No.

9 Q Or the renovations would be accomplished?

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11 building would remain open and operational. The renovations
12 would happen around it. It would be over a four-year
13 period, starting in 2012.

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15 costs of inflation as they would rise over the period of
16 time subsequent to 2012?

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18 three percent escalation a year, you'd be at 115 million to
19 do this part of it.

20 Q Showing you now a document which has been marked
21 Petitioner's 5 for identification.

22 Again, Your Honor, a copy has been provided to
23 counsel.

24 THE COURT: Thank you.
25

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Superior Court, District of Columbia
202-879-4629

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Q. Did the document include any escalation for the costs of inflation as they would rise over the period of time subsequent to 2012?

A. No. So if you were to start this today and at three percent escalation a year, you'd be at 115 million to do this part of it.

Trial Tr. 62:14-62:19 (Stack)

Corcoran Mark-Ups

MARK-UPS: (See definitions at the end of the Scope Summary)

Mark up is cumulative total of 48.9%

Design Contingency of 12% of the subtotal of direct trades cost of \$68,635,269.

General Conditions (Including Division 1 work) of 10% of the subtotal of direct trades cost of \$68,635,269 plus the Design Contingency.

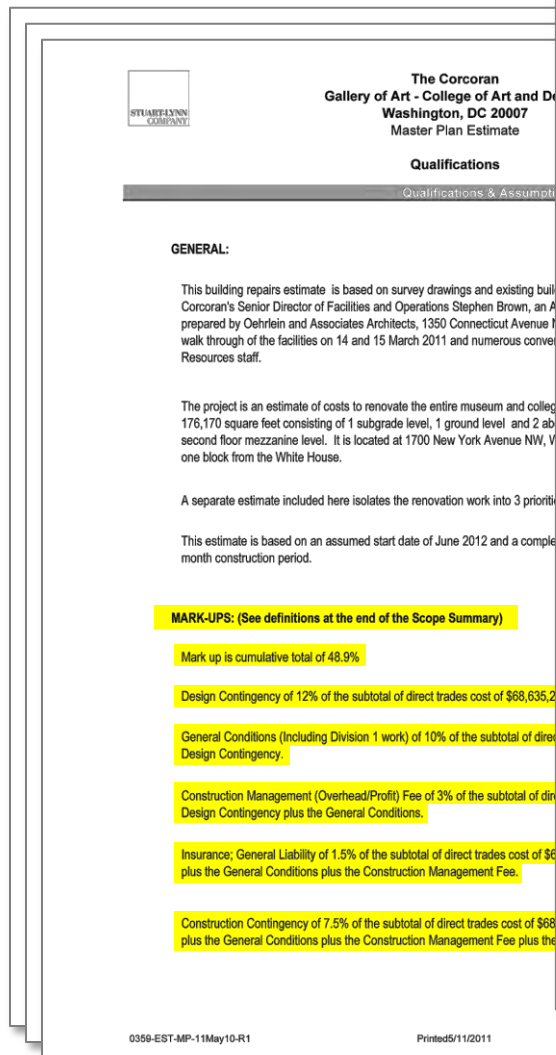
Construction Management (Overhead/Profit) Fee of 3% of the subtotal of direct trades cost of \$68,635,269 plus the Design Contingency plus the General Conditions.

Insurance; General Liability of 1.5% of the subtotal of direct trades cost of \$68,635,269 plus the Design Contingency plus the General Conditions plus the Construction Management Fee.

Construction Contingency of 7.5% of the subtotal of direct trades cost of \$68,635,269 plus the Design Contingency plus the General Conditions plus the Construction Management Fee plus the Insurance Fee.


Construction phasing of 5% of the subtotal of direct trades cost of \$68,635,269 plus the Design Contingency plus the General Conditions plus the Construction Management Fee plus the Insurance Fee plus the Construction Contingency.

Cost escalation of 2.4% of the subtotal of direct trades cost of \$68,635,269 plus the Design Contingency plus the General Conditions plus the Construction Management Fee plus the Insurance Fee plus the Construction Contingency plus the Construction Phasing.



Pet. Ex. 4, Pg. 3-4

Subtotal and Grand Total Reflecting Mark-Ups

 <p>The Corcoran Gallery of Art - College of Art and Design Washington, DC 20007 Master Plan Estimate Scope Summary</p>		<p>180 Varick Street, Suite 1002 New York, NY 10014 Tel 212-208-1180 Fax 212-208-1185</p>	
		GSF AREA	175,170
	DESCRIPTION	NEW COST	OLD COST
ADA	NEW ADA LIFT FROM THE SECOND FLOOR LEVEL TO THE ROTUNDA MEZZANINE LEVEL	\$1.61	\$283,000
ADA	NEW INTERIOR LIFT FROM 17TH STREET ENTRANCE TO THE FIRST FLOOR LEVEL	\$0.79	\$140,000
ADA	NEW ADA LIFT FROM THE FIRST FLOOR LEVEL TO THE SECOND FLOOR LEVEL	\$2.93	\$516,000
ADA	NEW LIFT AT 3 RISER STAIRS NEAR BATHROOMS AND INTO THE BATHROOMS ON FIRST FLOOR LEVEL	\$0.33	\$59,000
ADA	NEW RAMP AT THE 17TH STREET TO THE FRONT DOOR IN THE LIGHT WELL	\$2.36	\$415,000
ELEVATORS		\$8.78	\$1,649,300

SUBTOTAL (direct trades)

\$389.60

\$68,635,269

INTER	PAINT RESTORATION	\$1.28	\$225,965
INTER	MODERNIZE ELECTRICS AND LIGHTING INCLUDING LOW VOLTAGE WORKS	\$13.57	\$2,390,440

GRAND TOTAL

48.9%

\$580.00

\$102,178,269

INSURANCE: GENERAL LIABILITY	1.00%	\$7.42	\$1,306,400
BIDDING/CONSTRUCTION CONTINGENCY	7.5%	\$37.63	\$6,630,100
PHASING	5.0%	\$26.97	\$4,761,600
ESCALATION (June 2016)	2.4%	\$13.59	\$2,394,800
GRAND TOTAL	48.9%	\$580.00	\$102,178,269

DEFINITION OF TERMS:

The markups/fees listed above are cumulative: The total markup of 48.9% is derived from difference between the Subtotal(direct trades) and the Grand Total divided by the Subtotal.

DESIGN CONTINGENCY: This fee is to account for unforeseen hidden conditions found during the building renovations and for undefined scope of work.

GENERAL CONDITIONS (INCLUDING DIVISION 1 WORK): This fee relates to the general contractor expenses that are directly attributable to the management of a specific project. These costs generally occur at the jobsite. They include such items as project management, site supervision, on-site project office (job trailer), temporary utilities, waste receptacles and removal, site IT requirements, and communications.

CONSTRUCTION MANAGEMENT FEES (OVERHEAD AND PROFIT): This fee is for a firm to manage and coordinate the renovation construction. The CM simply "helps" the owner execute the project, and is not for their role of financial oversight.

INSURANCE: GENERAL LIABILITY: This fee covers the insurance cost during the construction period.

BIDDING/CONSTRUCTION CONTINGENCY: The construction contingency is a set percentage of the construction contract amount budgeted for unforeseen emergencies or design shortfalls identified after a construction project commences.

PHASING: This fee is to complete the renovation in smaller separate stages that will reduce the impact on visitors and staff.

ESCALATION (June 2016): This fee accounts for material and labor cost increase over the term of the project.

Pet. Ex. 4, Pg. 9

GW's Renovation Estimate

1 MS. JACKSON: No objection.
2 THE COURT: It will be admitted without
3 objection.
4 (Petitioners' 8 admitted)
5 BY MR. PATRIZIA:
6 Q. Doctor, there's been discussion in these
7 proceedings of the requirement to renovate the 17th Street
8 building currently owned by the Trustees.
9 What is your understanding of how GW arrived at
10 its own understanding of the needs of that building?
11 A. Well, since -- under our plan, while there will
12 still be substantial exhibition space in the building, the
13 primary function of the building will be educational --
14 which is a change from its current use.
15 We took a fresh look at its renovation
16 requirements and engaged I think some very reputable and
17 skillful consultants in that process -- in particular, two
18 major construction firms, Whiting-Turner and Clark
19 Construction. Each provided separate and independent
20 estimates that led us to the conclusion that we were
21 looking at approximately 80 million dollars over time in
22 renovation.
23 And that within that 80 million dollars, there was
24 an initial requirement of 25 million dollars to assure the
25 integrity of the building. That's things like roofing to

159

We took a fresh look at its renovation requirements and engaged I think some very reputable and skillful consultants in that process – in particular, two major construction firms, Whiting-Turner and Clark Construction. Each provided separate and independent estimates that led us to the conclusion that we were looking at approximately 80 million dollars over time in renovation.

Trial Tr. 159:15-159:22 (Knapp)

GW's Renovation Estimate

1 is the amount that you intend, the university intends to
2 spend on renovations in Phase 1, correct?
3 A. Well, I would say it's the initial amount
4 required for securing the viability of the building,
5 roofing, projects of that kind. And I would not
6 necessarily characterize it -- I understand that could be
7 characterized as Phase 1. But I think it's more accurately
8 characterized as what is necessary for the integrity of the
9 building as a portion of the larger 80 million dollar
10 estimate.
11 Q. All right. But that's the first, the first part
12 of the renovation plan --
13 A. Correct.
14 Q. -- is to spend the 25 million, correct?
15 A. Yes.
16 Q. All right. That would leave a 10 million-dollar
17 surplus, correct?
18 A. I'm not --
19 Q. 10 million dollars would be left in the
20 renovation transfer account, correct?
21 A. Correct, yes.
22 Q. All right. And then for any renovations above 35
23 million, you said that the university would do fundraising.
24 Did I understand that correctly?
25 A. I said a combination of fundraising and the

185

Q All right. But that's the first, the first part of the renovation plan --

A. Correct.

Q. --is to spend the 25 million, correct?

A. Yes.

Q. All right. That would leave a 10 million-dollar surplus, correct?

A. I'm not --

Q. 10 million dollars would be left in the renovation transfer account, correct?

A. Correct, yes.

Q. All right. And then for any renovations above 35 million, you said that the university would do fundraising. Did I understand that correctly?

A. I said a combination of fundraising and the results of university operations.

Trial Tr. 185:11-186:1 (Knapp)

UMD's Renovation Estimate

644

1 consultant that did the study for the renovations. They
2 specialize in museum restorations. We also met with
3 Slocum contracting which developed the plan to implement
4 the renovations.

5 So we worked through it with them. We were
6 able to narrow the plan to 71 million dollars as to most
7 essential renovations, spread it out over several years.
8 After all, you know, we have 900 million dollars worth
9 of deferred maintenance. So we're not phased by a 71
10 million dollar deferred maintenance bill. So we were
11 working partnership with them.

12 And let me give you a personal example. I
13 was in China at a meeting of the top 20 art school
14 directors from around the world. And I sort of invited
15 myself. And they said, oh, well, this is the first time
16 we've ever had a university president to join us. Why
17 are you coming here? I said, well, I just want to learn
18 more about professional art schools.

19 And what I found was amazing. Here are some
20 of the leading art schools in Europe and United States
21 present. They were all there to recruit students. And
22 some of them were telling me, Chicago Art School, they
23 recruit 20 to 25 school from China every year. The
24 Corcoran has virtually no international students. And
25 these are students who pay full freight.

So we worked through it with them. We were able to narrow the plan to 71 million dollars as to most essential renovations, spread it out over several years. After all, you know, we have 900 million dollars worth of deferred maintenance. So we're not phased by a 71 million dollar deferred maintenance bill. So we were working partnership with them.

Trial Tr. 644:5-644:11 (Loh)

UMD's Renovation Estimate

684

1 it. So if those proceeds are not available, then we
2 will have to rework the numbers.

3 But I think it's very important that to know
4 that of that 46 million, our calculations as of six
5 months ago is that to turn around, to stabilize the
6 operating budget of the college and the gallery is
7 somewhere in the vicinity of 20 million dollars. And
8 then the 71 million for renovations, we broke it down
9 into five phases.

10 The first phase, which is absolutely
11 essential and critical is 15 million dollars for life
12 safety measures. We would do that instantly. I don't
13 care whether Corcoran has money or not. If we're
14 involved, we will pay for it and we'll do it for the
15 safety of the students and everybody else. So the
16 second phase -- so that's stage one, 15.

17 The next phase, 20 million dollars for the
18 first two floors of the Clark wing. The roof, the
19 skylights and so forth. The third phase is 20 million
20 dollars for other -- the conservation of the environment
21 at the Flagg Building. And finally about 16 million or
22 so for the basement, the subbasement and the auditorium.

23 The reason it has to be done in phases is
24 not only because it gives us time to fundraise, it's
25 also that you have to shut down the building for at

A. The first phase, which is absolutely essential and critical is 15 million dollars for life safety measures. We would do that instantly. I don't care whether Corcoran has money or not. If we're involved, we will pay for it and we'll do it for the safety of the students and everybody else. So the second phase -- so that's stage one, 15.

Trial Tr., 684:10-686:16 (Loh)

AAM/AAMD Accreditation

734

1 Q. Um-hum.

2 A. I would argue that perhaps there could be a
3 scenario by which the Corcoran could borrow funds from
4 this 33 million dollar, quote, unquote, pot. Use them
5 for, you know, the necessary capital improvements or
6 other means to sort of put the Corcoran back in the
7 right position. And then have a very transparent
8 process by which those funds would be paid back.

9 And that would probably be through some sort
10 of, you know, campaign or what not. But money is
11 fungible in this. And I think that having a
12 conversation about the fungibility of this money would
13 be appropriate.

14 Q. Were you in the courtroom for the testimony of
15 Harry Hopper?

16 A. No. I was for a little bit. And then I read the
17 testimony.

18 Q. Either from the part that you viewed and/or from
19 the transcript that you reviewed, do you recall him
20 testifying several times to the, quote, third rail?

21 A. Yes. And it was quoted in the paper this
22 morning. You know, I don't think this is the third
23 rail. I think this whole idea of AAMD censure is a bit
24 of a -- or censure is a bit of a red herring. And I
25 think that's proven in the example of the National

A. I think this whole idea of AAMD censure is a bit of a -- or censure is a bit of a red herring.

July 31, 2014 AM Trial Tr. Pg. 734, Ln. 23-24 (Johnson)

AAM/AAMD Accreditation

726

1 A. So the AAMD actually has the -- authority is a
2 strong word. The AAMD can censure institutions, meaning
3 that they ask their membership, the 236 other art museum
4 directors, to essentially cut off relationships with
5 that institution.

6 So they do not provide loans of art to them.
7 They do not collaborate with them on exhibitions. They
8 sort of put them in a box or put them in prison. So the
9 AAMD has the censures as a body of the AAMD censures.
10 However, there is always a caveat in the censure that
11 the individual members of AAMD should use their
12 discretion as to whether or not they want to follow the
13 censure. So you know, it's a little squishy.

14 Q. So that's a legal term of art?

15 A. Squishy? Yes.

16 Q. So as I understand it, the AAMD has discretion on
17 whether to censure and then the member institutions have
18 discretion as to whether to --

19 A. Honor the censure, yes. Exactly.

20 Q. And how about AAM?

21 A. So AAM, what -- one of the most important things
22 that AAM does is the AAM accreditation process. And the
23 accreditation is a process that happens for museums
24 every ten years. It takes between six and eighteen
25 months to complete the accreditation process.

A. So the AAMD actually has the -- authority is a strong word. The AAMD can censure institutions, meaning that they ask their membership, the 236 other art museum directors, to essentially cut off relationships with that institution. ... So the AAMD has the censures as a body of the AAMD censures. However, there is always a caveat in the censure that the individual members of AAMD should use their discretion as to whether or not they want to follow the censure. So you know, it's a little squishy.

July 31, 2014 AM Trial Tr. Pg. 726, Ln. 1-5, 9-13 (Johnson)

AAM/AAMD Accreditation

Smith - D

1 A Yes.

2 Q And can you tell the Court what AAM is.

3 A It's a professional organization and I would say
4 a benign governing body of museums across the U.S.

5 Q What was your participation -- what did your
6 participation in AAM involve?

7 A Going to conferences, and, you know, the
8 conferences would have panel discussions of topical things;
9 best practices, et cetera.

10 Q Is it your understanding that both individuals and
11 institutions can be members of AAM?

12 A Yes.

13 Q In these proceedings the trustees are claiming in
14 part that this deal, proposed deal, is necessary because
15 they may lose AAM accreditation otherwise. Do you think
16 that is a legitimate argument, in your view?

17 A I think the AAM is important certainly, and plays
18 a very valuable role in the museum community. I don't
19 believe that AAM accreditation for the Corcoran at this
20 moment in time is anything -- I don't think it's -- no.

21 I don't think that AAM accreditation ultimately
22 matters certainly to individual donors. I've never heard
23 trustees talk about AAM accreditation. It's something that
24 I think museum staff and museum officials talk about and
25 know about. But, no, I don't think it would be tragic.

SUSAN G. WALKER, CSR, RPR, FCRR
Superior Court, District of Columbia
202-879-4629

996

Q. In these proceedings the trustees are claiming in part that this deal, proposed deal, is necessary because they may lose AAM accreditation otherwise. Do you think that is a legitimate argument, in your view?

A. I think the AAM is important certainly, and plays a very valuable role in the museum community. I don't believe that AAM accreditation for the Corcoran at this moment in time is anything -- I don't think it's -- no.

I don't think that AAM accreditation ultimately matters certainly to individual donors. I've never heard trustees talk about AAM accreditation. It's something that I think museum staff and museum officials talk about and know about. But, no, I don't think it would be tragic.

AAM/AAMD Accreditation

Smith - D

1 Q I think you used the phrase, at this point in
2 time.

3 A Yes.

4 Q Can you explain why at this point in time that
5 reinforces your view that loss of AAM accreditation is not
6 tragic?

7 A Certainly. I think -- unfortunately, I think the
8 Corcoran already has suffered probably a great loss of face
9 in the museum community. I don't think anyone thinks of the
10 Corcoran as any sort of example that other museums should
11 follow. I don't think it's a sterling, well thought of
12 museum at the moment, in the U.S. anyways. I think if the
13 option were to save the museum with some sales of art versus
14 not doing that, ultimately, my view is that most people in
15 the community want a whole museum. They want a stable,
16 self-sufficient institution.

17 Q Are you aware of other major art museums in the
18 Washington, D.C., area that don't belong to the AAM?

19 A I don't think the Hirshhorn has AAM accredita-
20 tion. I don't believe, outside of Washington, I don't
21 believe the New Museum in New York has AAM accreditation.
22 I don't think AAM accreditation is exhaustive in the U.S.
23 I don't believe that all visual arts museums seek AAM
24 accreditation. It's just -- again, it's not -- it's a trade
25 organization. It's a professional organization. It's not

SUSAN G. WALKER, CSR, RPR, FCRR
Superior Court, District of Columbia
202-879-4629

997

Q Can you explain why at this point in time that reinforces your view that loss of AAM accreditation is not tragic?

A. I think if the option were to save the museum with some sales of art versus not doing that, ultimately, my view is that most people in the community want a whole museum. They want a stable, self-sufficient institution.

August 5, 2014 Trial Tr. Pg. 997, Ln. 4-6, 12-16 (Smith)

AAM/AAMD Accreditation

Smith - D

1 -- you know, it's not like you're licensed to practice
2 medicine. It's just -- it's a different thing.

3 I'm sorry I can't be more articulate.

4 Q Can you describe a little bit for the Court -- you
5 mentioned the Hirshhorn. Can you describe for the Court
6 what the Hirshhorn is?

7 A Sure. The Hirshhorn is a beautiful museum of
8 contemporary and sculpture, contemporary and sculpture in
9 Washington, D.C., very well known, well regarded.

10 Q There's also been some discussion here that if the
11 proceeds from the sales of rug money are used to stand up
12 the Corcoran, as opposed to being handed over to GW, that
13 the AAMD will sanction the Corcoran and that this would be
14 catastrophic and a death knell.

15 In your view, is that a legitimate argument?

16 A No. I mean, the AAMD, I think, is very important
17 and, again, is listened to and taken seriously in the art
18 community, but the AAMD advises its members, the American
19 Alliance of Museum Directors, the directors advise their
20 members to follow sanctions against a museum. Museum
21 directors individually make the call, whether they adhere
22 to the sanctions, as I understand it. Sanctions aren't in
23 place -- aren't imposed on activities that are already in
24 place. So, for example, most museums have exhibition
25 calendars that are planned three years and some -- or many

SUSAN G. WALKER, CSR, RPR, FCRR
Superior Court, District of Columbia
202-879-4629

998

Q. There's also been some discussion here that, in the proceeds from the sales of something money are used to stand up the Corcoran, as opposed to being handed over to GW, that the AAMD will sanction the Corcoran and that this would be catastrophic, and a death knell. In your view, is that a legitimate argument?

A. No. I mean, the AAMD, I think, is very important and, again, is listened to and taken seriously in the art community, but the AAMD advises its members, the American Alliance of Museum Directors, the directors advise their members to follow sanctions against a museum, museum directors individually make the call, whether they adhere to the sanctions, as I understand it. Sanctions aren't in place – aren't imposed on activities that are already in place. So, for example, most museums have exhibition calendars that are planned three years or many years in advance. So those sanctions wouldn't necessarily affect ongoing activities.

AAM/AAMD Accreditation – Other Museums

- Johnson testified regarding the National Academy Museum, which was censured for selling paintings to keep the doors open, but was reinstated 18 months later when it was “on the right path for fiscal health.” (Tr. at 731:10-732:6).
- Smith testified that when the Delaware Art Museum was censured, that sanction did not affect their foundation or grant giving. (Tr. at 998:9-21).

AAM/AAMD Accreditation

1 right?

2 A. The Board is operating under the AAM and AAMD
3 standards. And so the deaccessioning funds are not
4 available for operations.

5 Q. Okay. And so how do you justify the fact that
6 the Corcoran did spend deaccessioning funds in 2012?

7 A. The Corcoran has not spent deaccessioning funds.
8 The Corcoran -- you're saying that the Corcoran spent
9 deaccessioning funds?

10 Q. Well, let me ask you -- has the Corcoran spent
11 deaccessioning funds for operational purposes?

12 A. The Corcoran has borrowed against its restricted
13 accounts with a designated source of repayment.

14 Q. Okay. Okay. And so borrowing against a, the
15 deaccessioning funds with the designated source of
16 repayment, in your view that would be a permissible way of
17 moving forward, correct?

18 A. It's not necessarily in my view. I believe it
19 is. However, we have been advised by legal counsel and by
20 -- I mean yes, my understanding is that's permissible
21 because you're not spending it. You have a direct source
22 of repayment for it. So it's not --

23 Q. Okay. Of course, if the cy pres goes forward,
24 that pot of funds is not going to be repaid to the Corcoran
25 Board, correct?

230

Q. Well, let me ask you -- has the Corcoran spent deaccessioning funds for operational purposes?

A. The Corcoran has borrowed against its restricted accounts with a designated source of repayment.

* * *

Q. -- if the cy pres proposal goes forward, that's money that's being broken up and sent to GW and sent to the National Gallery, correct?

A. The funds that are being sent to the National Gallery are the restricted endowments that are related to the art. And the remainder of the funds that are going to GW, part of them are the deaccessioning funds and part of them are restricted endowment funds.

Q. And I think there's no dispute that funds from those proceeds will be used to, when they go to GW, to help renovate the building, correct?

A. There's 35 million dollars that goes into the renovation.

Trial Tr. Pg. 230, Ln. 10-13; Pg. 231, Ln. 5-17 (Stack)



Petitioner Has Failed To Establish Impracticability

- Petitioner’s remaining “evidence” is the Lord consulting report, from 2011, referencing 40 years of deficits. (Pet. Ex. 1).
- This evidence is belied by the declaration submitted in support of the petition, which shows surpluses in 6 of the last 13 years. (Int. Ex. 2).

The Trust Is Practicable

Corcoran Financial Performance: Fiscal Year 2009 - 2013

per Audited Financial Statements, Trustees of the Corcoran Gallery of Art, See also Figures 1, 2, 3 & 11

- **Revenues:** Notwithstanding variable performance, the Corcoran evidences a modest overall upward trend in total annual revenues since 2009.
 - The proportion of unrestricted revenues attributable to contributions, grants and membership has declined 28 percent since 2009, resulting in less flexibility to fund the organization's operating activities.
- **Expenses:** The Corcoran evidences an upward trend in total annual expenses since 2009. Total supporting service expense has increased by 27 percent since 2009 as compared to total program services expense which has increased by 18 percent.
 - Reported administration expense in 2013 was 17 percent higher than the average administration expense between 2009 and 2012.
 - In 2010, wherein total revenue and support are comparable to 2013, administration expense in 2013 was 41 percent higher than in 2010.
- **Change in Net Assets from Operations:** In 2013, the Corcoran realized a net loss of \$2.1 million, as compared to 2010 wherein the organization realized a positive net change in assets of \$1.3 million.

The Trust Is Practicable

Corcoran Cash Availability, 2014

per Schedule 2.6(c) - Illustrative Schedule of Adjustments to Renovation Transfer Amount, see also Figure 4

- **“Cash in Bank.”** The Corcoran had \$53,105,461.48 in total cash, as of May 2, 2014.
- If taken at face value that:
 - The organization’s estimated ‘cash for operations’ needs between May 1 through August 19, 2014 are \$9,855,000;
 - The set asides listed for the Corcoran’s endowment are \$12,478,699;
 - The proceeds from the “Clark Settlement” are \$11,250,000; and
 - The set asides listed for temporarily restricted accounts are \$1,571,818 and \$2,357,501, respectively
- Then, in August 2014, adjusted cash available will be **\$38,092,443.48.**

The Trust Is Practicable

Corcoran Financing Options: Endowment Analysis

per Schedule 2.6(c) - Illustrative Schedule of Adjustments to Renovation Transfer Amount, see also Figure 4

- Assuming such funds are available, “cash in the bank” of \$38,092,443 affords the organization financial flexibility.
- Rather than inevitable dissolution, the organization has the opportunity to re-seed its endowment.
- Changes to fiscal and operational management must be enacted to realize maximum financial benefits from the funds available.
 - Action is needed to close the performance gap with AAMD Peers in terms of unrestricted contributions, grants and membership revenue.
 - Action is needed to bring fixed administrative expense back in line with prior fiscal years (2010).
- Depending on the design and structure selected, the Corcoran could seed varying degrees of its first year operating budget, as well as near-term building renovations, while at the same time growing its endowment.
- Simply stated, the Corcoran has options.

The Trust Is Practicable

Financing Options: Endowment Analysis

for organizations and AAMD peer benchmarks, as identified by Real Change Strategies see CGT001494, see also Figures 5 & 11

- **Option 1(Baseline). Assumes business as usual, based on 2013 audited financial.**
 - Notwithstanding operating investment income of \$3,456,179, the organization realizes a change in net assets of negative \$2,071,129.
 - Operating investment income necessary to financially break even is \$5,527,308.
- **Options 2 & 4. Assumes the Corcoran is able to close the performance gap relative to its lowest AAMD peer group benchmark.**
 - Increase annual contributions, grants and membership by \$1.6 million through improved operations/development over FY2013 actuals. Operating investment income necessary to financially break even is \$2,803,041 million
- **Option 3 & 5. Assumes the Corcoran is able to close the performance gap relative to its second lowest AAMD peer group benchmark.**
 - Increase annual contributions, grants and membership by \$3.4 million through improved operations/development over FY2013 actuals. Operating investment income necessary to financially break even is \$1,003,041 million
- **Options 2 through 5 assume targeted donor campaigns to seed the endowment, in addition to annual improvements in revenue streams and streamlined administration costs.**

The Trust Is Practicable

Options to Finance the Future of The Corcoran (\$M)

See also Figures 6 through 10, and Figures 12 through 16

Option	Operating Budget Characteristics	Endowment Assets [Principal] Needed to Break-Even	Forecasted Donor Contributions to Endowment	Year When Endowment Principal Achieves Full Funding	Forecasted No. of Periods Over Which Donors Contribute to Endowment	Base Year Cash Advance to Support Annual Operating Budget	Cash Set-Aside for Near-Term Renovations [Inclusive of Annual Shortfall]
1	Baseline, No Change to 2013 Audited Data Revenues: \$26.2 Expenses: \$28.3 <i>Operating Investment Income to Break-Even: \$5.5</i>	\$116.1	\$77.9 [\$9.7/year]	2022 Year 8	8 Years	\$0	\$0
2	Modest Improvement over Baseline: Revenues: \$27.2 Increase Contributions, Grants, Membership by \$1.6 Expenses: \$27.2 Decrease Fixed Administration Expenses by \$1.1 <i>Operating Investment Income to Break-Even: \$2.8</i>	\$58.9	\$27.7 [\$2.5/year]	2025 Year 11	11 Years	\$15.2	\$0
3	Accelerated Improvement over Baseline: Revenues: \$27.2 Increase Contributions, Grants, Membership by \$3.4 Total Expenses: \$27.2 Decrease Fixed Administration Expenses by \$1.1 <i>Operating Investment Income to Break-Even: \$1.0</i>	\$0	\$0	2015 Year 1	NA	\$15.2	\$0
4	Modest Improvement over Baseline: Revenues: \$27.2 Increase Contributions, Grants, Membership by \$1.6 Expenses: \$27.2 Decrease Fixed Administration Expenses by \$1.1 <i>Operating Investment Income to Break-Even: \$2.8</i>	\$58.9	\$42.9 [\$21.4/year]	2016 Year 2	2 Years	\$15.2	\$25 Year 2
5	Accelerated Improvement over Baseline: Revenues: \$27.2 Increase Contributions, Grants, Membership by \$3.4 Total Expenses: \$27.2 Decrease Fixed Administration Expenses by \$1.1 <i>Operating Investment Income to Break-Even: \$1.0</i>	\$21.1	\$31.0 [\$3.9/year]	2016 Year 2	8 Years	\$15.2	\$25 Year 2

Expert Opinions of Chiara Trabucchi

4 August 2014 | 7

The Trust Is Practicable

Summary Opinion

- In my professional opinion, from a financial perspective, continued operation of the Trustees of the Corcoran Gallery of Art is neither:
 - Impracticable, nor
 - Impossible.

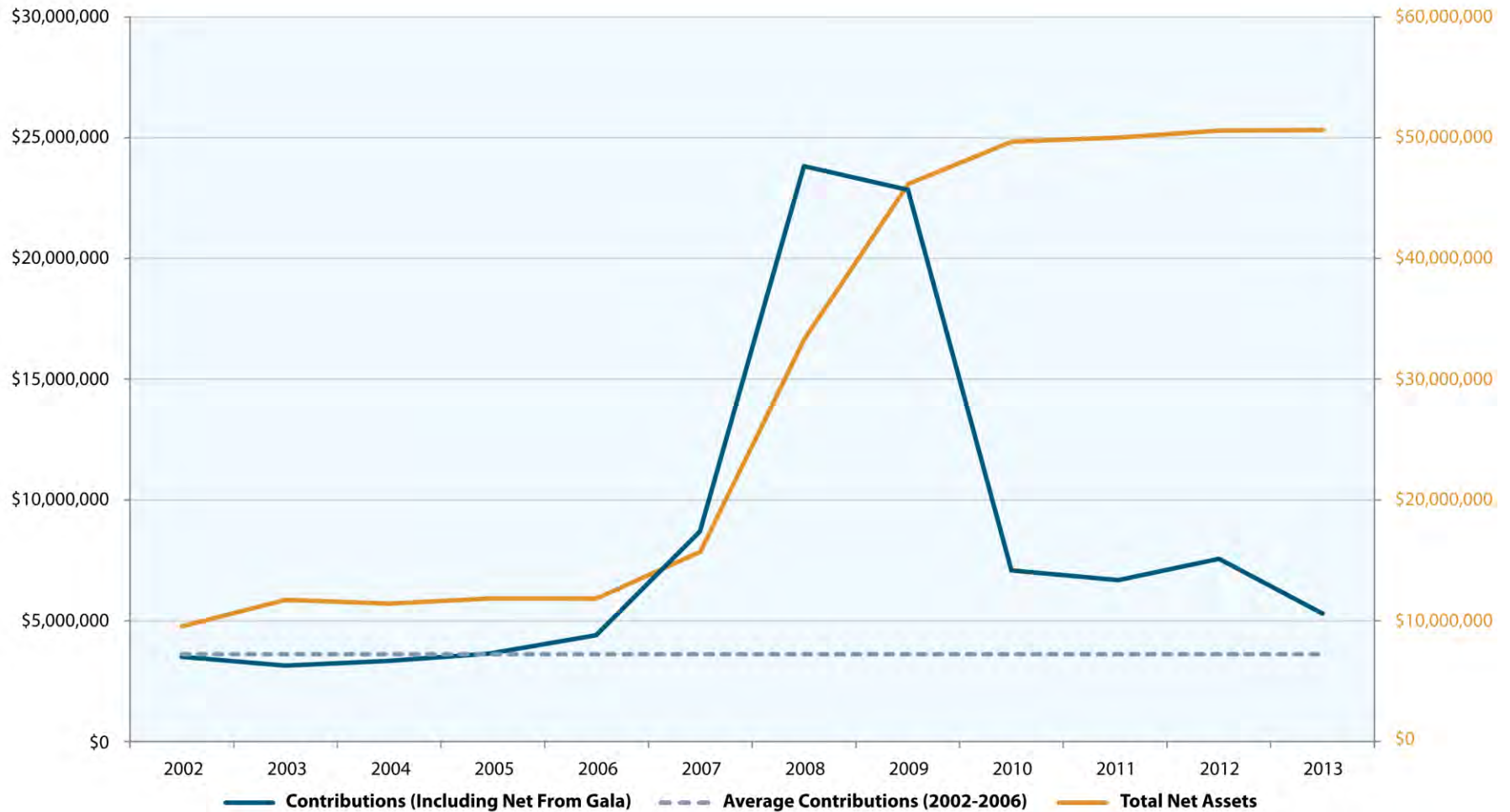
Ford's Theatre Contributions And Net Assets Analysis

Fiscal Years 2002 to 2013 (Year Ending August 31)

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Contributions (Including Net From Gala)	\$3,497,102	\$3,133,764	\$3,333,785	\$3,647,266	\$4,403,759	\$8,730,550	\$23,815,690	\$22,818,992	\$7,066,690	\$6,675,521	\$7,560,300	\$5,282,198
Fundraising Expenses	\$231,674	\$729,338	\$671,744	\$371,427	\$354,959	\$1,308,136	\$1,835,830	\$1,753,201	\$943,033	\$1,355,144	\$1,340,404	\$722,771
Annual Increase in Contributions		-10%	6%	9%	21%	98%	173%	-4%	-69%	-6%	13%	-30%
Change in Net Assets	\$1,138,605	\$2,166,954	(\$296,850)	\$445,774	(\$43,421)	\$3,917,705	\$17,548,141	\$12,819,970	\$3,536,037	\$311,074	\$643,180	\$47,869
Fundraising Efficiency (Fundraising Cost per Dollar Raised)	\$0.07	\$0.23	\$0.20	\$0.10	\$0.08	\$0.15	\$0.08	\$0.08	\$0.13	\$0.20	\$0.18	\$0.14
Net Assets:												
Unrestricted	\$4,583,429	\$6,083,133	\$5,291,105	\$5,728,688	\$5,641,767	\$7,268,077	\$10,659,151	\$14,343,764	\$27,624,567	\$36,659,518	\$39,000,558	\$38,236,608
Temporarily Restricted	\$5,000	\$570,000	\$855,000	\$762,191	\$804,691	\$3,095,086	\$17,251,153	\$26,386,510	\$16,657,981	\$7,934,104	\$6,236,244	\$7,048,063
Permanently Restricted	\$4,949,973	\$5,052,223	\$5,262,401	\$5,363,401	\$5,364,401	\$5,365,401	\$5,366,401	\$5,366,401	\$5,350,164	\$5,350,164	\$5,350,164	\$5,350,164
Total Net Assets	\$9,538,402	\$11,705,356	\$11,408,506	\$11,854,280	\$11,810,859	\$15,728,564	\$33,276,705	\$46,096,675	\$49,632,712	\$49,943,786	\$50,586,966	\$50,634,835
Annual Increase in Total Net Assets		23%	-3%	4%	0%	33%	112%	39%	8%	1%	1%	0%

Note: Wayne Reynolds is chair from FY 2006 – FY 2011. Calculation of fundraising efficiency is made in accordance with the accreditation standards of the BBB Wise Giving Alliance (give.org). Data taken from IRS form 990s.

Ford's Theatre Contributions And Net Assets History





ROOM FOR IMPROVEMENT

The Trust Is More Than Sustainable With Proper Changes



Room For Improvement

- Board building
- Board giving
- Development staff
- Development programming
- Hire and retain qualified staff
- Director with arts expertise
- Reduced operating expenses (lawyers, consultants, etc.)
- Arts Institute of Chicago model
- Ford's Theatre model

Room For Improvement

From: David Julyan <julandjul@aol.com>
Subject: Re: Corcoran
Date: November 18, 2012 3:27:52 PM EST
To: Wayne Reynolds <wreynolds@aol.com>

1 Attachment, 7.1 MB

The Trustees know that the Corcoran can't continue on its present course (deferred maintenance of current facility >\$100M, collapsed development, operating deficits, mid-level management issues, etc.).

They are pursuing various options including repairing the building and re-locating the college, selling the building and relocating both college and gallery in new location, explore "collaborative" agreements with other institutions (e.g., NGA, GWU).

While "all options are on the table," unless there's an identified source or group of substantial leadership and financial support all the other options will become some sort of acquisition(s).

Key assets include:
Corcoran brand and history
Iconic building and its location
Collection
Accredited art college and its reputation
Successfully engaging with the Washington community, e.g., programs with DC public schools, a presence at THE ARC in Ward 8, and other existing outreach activities.

Missing:
Visionary and disciplined leadership
Fundraising, both from Trustee and Development efforts

As we discussed, truly exciting art

It is, however, a

The best news

I'm sure you be

Attached is a h

Corcoran.H...

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Key assets include:

Corcoran brand and history

Iconic building and its location

Collection

Accredited art college and its reputation

Successfully engaging with the Washington community, e.g., programs with DC public schools, a presence at THE ARC in Ward 8, and other existing outreach activities.

Missing:

Visionary and disciplined leadership

Fundraising, both from Trustee and Development efforts

Int. Ex. 13 at 1

Corcoran's Witness Acknowledges Board Failure

- With respect to the board never being built to full capacity O'Connor acknowledges that is “not a responsible way for a board to maximize its fundraising potential” because “there’s vacancies on the board that can be filled.” (Trial Tr. 305:3-305:16.)
- Agrees that “board giving in 2010, 2011, and 2012 was lower than it had been in 2009 and that, “in those three years, the board giving was lower than any year listed on” the chart in the Development Guild report. (Trial Tr. 306:19-307:1.)
- He agrees that the years 2010, 2011, 2012, and 2013 were “certainly” important in the context of needing “donations and contributions and leadership from its board.” (Trial Tr. 307:15-307:20.)
- “The capacity of the board needed to be increased.” (Trial Tr. 308:19-308:20.)
- Acknowledged that he “found that there was not a sufficiently robust or built out infrastructure for fundraising development.” (Trial Tr. 309:1-309:6.)
- “It’s unusual for a board chair to give zero in a year. Absolutely.” (Trial Tr. 313:11-313:12.)
- The “board chair” is “ultimately responsible for ensuring that an institution has a robust philanthropic and development infrastructure.” (Trial Tr. 314:10-314:17.)

Schultz & Williams Report (June 27, 2008)

I. Introduction

Schultz & Williams appreciates the opportunity to work with the Corcoran Gallery and College of Art + Design to examine its development programs and to prepare recommendations surrounding the next phase of fundraising at the Corcoran. In 2006, the Corcoran determined that its ambitious capital campaign to expand gallery space and create new space for the College through a signature wing designed by Frank Gehry was untenable. With the arrival of the Corcoran's new President, Paul Greenhalgh, the Corcoran is now entering a dynamic new phase in its organizational life as it plans to restore much of the original Gallery space in its magnificent beaux arts structure as well as establish additional facilities at the Randall School in Southwest Washington, D.C. This two-pronged approach will be implemented in an attainable and sustainable sequence, achieving what the original plan for the Gehry wing intended to do.

We extend our special thanks to Paul Greenhalgh, President and CEO of the Corcoran; to Sam Sweet, Chief Operating Officer; Janice Marks, Director of Corporate and Foundation Relations; and Susan Ross, Director of Individual Giving, who provided extensive background materials, coordinated our interaction with staff and arranged for the interviews, which provided valuable insights for our study.

Schultz & Williams' key recommendations stem from the realities of the Corcoran's recent

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initiative that will allow less dependence on earned revenue and annual contributed income over time. In addition, the Corcoran's potential for sustained public sector funding and national foundation capacity-building support will need to be explored in a consistent multi-year approach.

Based on this rationale, our recommendations are as follows:

- ***Expand and strengthen the Board of Trustees in order to create the highest level fundraising activity for the Corcoran over the next five years.*** As a result of the resignations of Board members following the Gehry Campaign, the Corcoran must make Board-building the number one priority for the institution. The most important factor in development success is leadership and the Corcoran must endeavor to attract the highest level leadership to its Board.
 - Working with the Board Governance Committee, define key resource needs at the Board level and conduct ongoing prospect review for Board leadership.

Expand and strengthen the Board of Trustees in order to create the highest level fundraising activity for the Corcoran over the next five years.

Int. Ex. 6. at CGT001531

Schultz & Williams Report (June 27, 2008)

- Conduct ongoing identification of Board prospects through a review of philanthropic, cultural and corporate leadership in the region, as well as alumni and faculty connections.
- Institute the highest level of engagement in the organization's core mission through programs including a distinguished speakers series and travel for the Board.
- Institutionalize the calendar for the Governance Committee to ensure ongoing identification and recruitment of new Trustees.

The CEO and the Chairman of the Board need to ensure that Board management and relationship-building are institutional priorities. The recruitment of Board members should focus on fundraising as a primary Board responsibility and the criteria for Board selection must include high-net-worth individuals capable of seven-figure gifts and who have experience as lead donors and fundraisers.

The recruitment of Board members should focus on fundraising as a primary Board responsibility and the criteria for Board selection must include high-net-worth individuals capable of seven-figure gifts and who have experience as lead donors and fundraisers.

- There is also an opportunity for the Corcoran to continue to engage corporate supporters across the country with interests in Washington through sponsorships and project-specific support.
- Create an endowment initiative to raise significant capital and programmatic funds in support of the Corcoran's prioritized strategic plan. The new momentum created by Paul Greenhalgh and his team, coupled with the excitement generated by the exhibitions program and the College's plan to relocate to the Randall School, make this an ideal time to begin such a program.

While we do not recommend that this endowment fundraising effort be called a "campaign" since there is concern about public perception of another such effort, the magnitude of the endeavor demands a similar type of organizational structure and recognition that befits seven-figure gifts. We recommend a three-year timeframe for the planning and start-up of this effort to allow time for a feasibility study, cultivation of leadership gifts and the

Schultz & Williams Report (June 27, 2008)

Walter A. Bloedorn Foundation

Weissberg Foundation

S&W also recommends that the Corcoran launch an intensive public funding initiative to support programs and long-term sustainable projects. A Board task force should be established to review the likelihood of the Corcoran's success of securing federal and city dollars and to recommend appropriate counsel for this undertaking. The Randall School renovations and subsequent programming may be an ideal candidate for this type of support.

Endowment

Following the establishment of the Major Gift Program, S&W recommends that the Corcoran

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The Corcoran must engage its Board in fundraising as its number one priority and should also recruit the highest level volunteers for special fundraising committees.

THE ROLE OF VOLUNTEER LEADERSHIP

Schultz & Williams recommends that the Corcoran commit itself to strengthening its Board to develop fundraising and strategic leadership. The Corcoran must engage its Board in fundraising as its number one priority and should also recruit the highest level volunteers for special fundraising committees.

Steps for Board Building:

- Conduct ongoing prospect review for Board leadership. Working with the Board Governance Committee, staff should evolve a Board job description and a list of key resource needs at the Board level, i.e., philanthropist, fundraiser, lead donor, collector, connector, developer. Staff should generate a top 50 list of Board prospects by examining: individuals who are known by current Board members; leadership of and donors to other regional and national cultural organizations including leading educational organizations; collectors; corporate officers of regionally based corporations; and boards of national foundations targeted for capacity building grants. Staff should also conduct interviews with all key Corcoran stakeholders to identify new leadership for the Board; this would include past major donors, college alumni, visiting artists and faculty patrons/connections.
- Institute the highest level of engagement in the Corcoran's core mission through distinctive programming, including a "great thinkers" speaker series for the Board. Such a program could also include travel, exclusive availability to the President and Curatorial staff, ongoing small dinners, exclusive access to collections and exhibitions and related collections and exhibitions worldwide. Board hosted small dinners should also be used to introduce high-level leadership of the region to the new Corcoran.

*The Corcoran Gallery and College of Art + Design
Schultz & Williams*

*Development Planning Study
Page 11*

Int. Ex. 6. at CGT001541

Confidential - Financial

CGT 001541

Importance Of Board Building

O'Connor (Trial Tr. 294:21-294:22)

- Q. Why would a consultant recommend to a nonprofit to engage in board building? What's the purpose, what's the benefit of saying build out the board?
- A. The purpose of recommending board building to any nonprofit is to help the nonprofit raise more money.

Johnson (Trial Tr. 708:7-708:21)

- Q. That's where I'd like to begin. First, why is it important to have a larger board rather than a smaller board?
- A. I think there are a couple of reasons for that. One, you want to have enough voices around the table to be advising and guiding the staff. Secondly, more people on your board means you have a greater ability to raise money. And you have a greater ability to leverage money within the community. So you want to have as wide a band width on that as you possibly can.
- Q. And why – once you get your number of board seats up, why would you then want to fill them?
- A. Why would you want to fill them?
- Q. Yes.
- A. To help raise more money.

Smith (Trial Tr. 987:17-987:23)

- A. [T]here didn't seem to be an accompanying track to raise money or to increase the size of the board, which I think I was nervous about from the very beginning.
- Q. And let's talk about that issue of the size of the board. Why were you concerned about the size of the board?
- A. I didn't feel it was large enough to address the fundraising needs of the institution.

Board Building

305

1 looks like for fiscal year '13, I count 13.
2 A. Okay.
3 Q. So if my math is correct, assuming it's correct,
4 that would mean the board had never been built out to
5 full capacity, correct?
6 A. Correct.
7 Q. And in your view, is that a responsible way for a
8 board to maximize its fundraising potential?
9 A. I'm not sure. I'm not sure. Maybe rephrase the
10 question, please.
11 Q. Is that a responsible way for a board to maximize
12 its fundraising potential?
13 A. No.
14 Q. And why is that?
15 A. Because there's vacancies on the board that can
16 be filled.
17 Q. And if those vacancies were filled, what would
18 the members who fill those vacancies be able to do?
19 A. Well, they could make a gift.
20 Q. Now, let's go back to your report which -- in
21 which you analyzed -- I'm sorry, in which counsel for
22 the trustees asked you about. And one page that you
23 were not asked about is page 13. This is the
24 Development Guild report.
25 A. Yes.

Q. So if my math is correct, assuming it's correct, that would mean the board had never built out to full capacity, correct?

A. Correct.

Q. And in your view, is that a responsible way for a board to maximize its fundraising potential?

A. I'm not sure. I'm not sure. Maybe rephrase the question, please.

Q. Is that a responsible way for a board to maximize its fundraising potential?

A. No.

Trial Tr. 305:3-313 (O'Connor)

Board Building

FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Sarah E. Chapoton	Sarah E. Chapoton	Sarah E. Chapoton	Sarah E. Chapoton	Sarah E. Chapoton	Carolyn S. Alper	Carolyn S. Alper	Carolyn S. Alper
Cherrie W. Doggett	Cherrie W. Doggett	Carl Colby	Josephine S. Cooper	Josephine S. Cooper	Sarah E. Chapoton	Sarah E. Chapoton	Sarah E. Chapoton
Anne N. Edwards	Anne N. Edwards	Josephine S. Cooper	Cherrie W. Doggett	Cherrie W. Doggett	Josephine S. Cooper	Anne N. Edwards	Anne N. Edwards
Emanuel J. Friedman	Michael N. Harreld	Cherrie W. Doggett	Anne N. Edwards	Anne N. Edwards	Cherrie W. Doggett	Michela A. English	Michela A. English
Michael N. Harreld	Harry F. Hopper	Anne N. Edwards	Harry F. Hopper	Harry F. Hopper	Anne N. Edwards	Shannon J. Finley	Shannon J. Finley
Harry F. Hopper	Julie J. Jensen	Michael N. Harreld	Julie J. Jensen	Julie J. Jensen	Michela A. English	Kathryn L. Gleason	Kathryn L. Gleason
Julie J. Jensen	Franco Nuschese	Harry F. Hopper	Frederick W. Knops	Frederick W. Knops	Shannon J. Finley	Eleanor F. Hedden	Eleanor F. Hedden
William A. Roberts	William A. Roberts	Julie J. Jensen	Christopher M. Niemczewski	Christopher M. Niemczewski	Kathryn L. Gleason	Harry F. Hopper	Harry F. Hopper
Jeanne W. Ruesch		Frederick W. Knops			Eleanor F. Hedden	Julie J. Jensen	Julie J. Jensen
Helen C. Smith		Christopher M. Niemczewski	Franco Nuschese	Franco Nuschese	Harry F. Hopper	Frederick W. Knops	Frederick W. Knops
		Franco Nuschese	William A. Roberts		Julie J. Jensen	Frank G. LaPrade	Frank G. LaPrade
		William A. Roberts			Frederick W. Knops	Harvey L. Pitt	Harvey L. Pitt
					Frank G. LaPrade	Henry L. Thaggert	Ann Stock
					Harvey L. Pitt		Henry L. Thaggert
					Henry L. Thaggert		

Stephen G. Stein joined the Board on September 26, 2011 and resigned on January 3, 2012. Harry F. Hopper, Julie J. Jensen, and Franco Nuschese gave \$0 during FY 2011.

Board Building

knowledge and responsibility by The George Washington University for the renovations.

Interrogatory # 9: Identify the amounts donated by each individual board member from 2007 to present.

Response: Subject to and without in any way waiving the foregoing objections, Defendants' responds as follows: Attachment 5 is a list of the names and contributions of those individuals carrying the title "Executive Board member." "Ex Officio" refers to a person who is an ex officio member of the Board for purposes of quorum or board action, and have no vote. Attachment "Sustaining" refers to a person who is an ex officio member of the Board. Persons who have in the past served on the board, but are no longer serving, are designated as sustaining trustees by the Board in the Corcoran bylaws and are not eligible to continue as active trustees. Sustaining trustees are asked to provide advice. Sustaining trustees' meetings, are not counted for quorum purposes, and are not counted for purposes of attachment, "Executive" refers to trustees who are active during the year in question. Executive Board members have the power to vote on any matter on the board action, and have the power to vote on any matter on the board action.

Interrogatory # 10: Identify all individuals considered for Board membership from 2009 to present, including all individuals who accepted offers to join the board and all individuals who declined to join the Board.

Interrogatory # 10: Identify all individuals considered for Board membership from 2009 to present, including all individuals who accepted offers to join the board and all individuals who declined to join the Board.

Response: Subject to and without in any way waiving the foregoing objections, Petitioner-Defendants' responds as follows: The following individuals were considered for membership in the Corcoran Board of Trustees ("Board") and each accepted the offer to join the Board: In 2010, Saree Pitt accepted the offer to join the Board. In 2012, Michela A. English, Shannon J. Finley, Kathryn Gleason, Frank LaPrade, Nancy Smith, Stephen G. Stein, and Henry L. Thaggert each accepted offers to join the Board. In 2014, Molly Rolandi and Ann Stock accepted offers to join the Board. In 2009, 2011, and 2013 no new members were considered for inclusion on the Board.

Int. Ex. 7 at 6-7

Board Giving

283

1 having the prior commitment of several of these donors
2 ready to give so that when you announce it, it's there?

3 A. Yeah. Usually the best solicitors are those who
4 are giving money. Because when you're in the act of
5 asking someone for money, they will ask what did you
6 give? And so that's important to have that group. And
7 I think before you announce a campaign, strategically it
8 makes sense to have a plan to either have most of the
9 money raised or certainly a plan to raise the rest of
10 the money to help ensure success.

11 Q. What is your understanding of the amount that the
12 Corcoran would be able to raise currently given the
13 implementation of the plans that you have put in place?

14 A. Could you clarify the question?

15 Q. Yeah. You've had a campaign for fiscal 2013.

16 A. Correct.

17 Q. That was successful.

18 A. Right.

19 Q. A little bit more than what your goal was. You
20 think you could do the same for 2014?

21 A. I think we would need a compelling story, a case.
22 I think we have the donors. But we -- I think we could
23 do it, but we have -- it's a hard question to answer, I
24 expose. Yeah, I think we would probably need a
25 refresher in terms of what the strategy is for FY 14.

A. Yeah. Usually the best solicitors are those who are giving money. Because when you're in the act of asking someone for money, they will ask what did you give? And so that's important to have the group. And I think before you announce a campaign, strategically it makes sense to have a plan to either have most of the money raised or certainly a plan to raise the rest of the money to help ensure success.

Trial Tr. 283:3-283:10 (O'Connor)

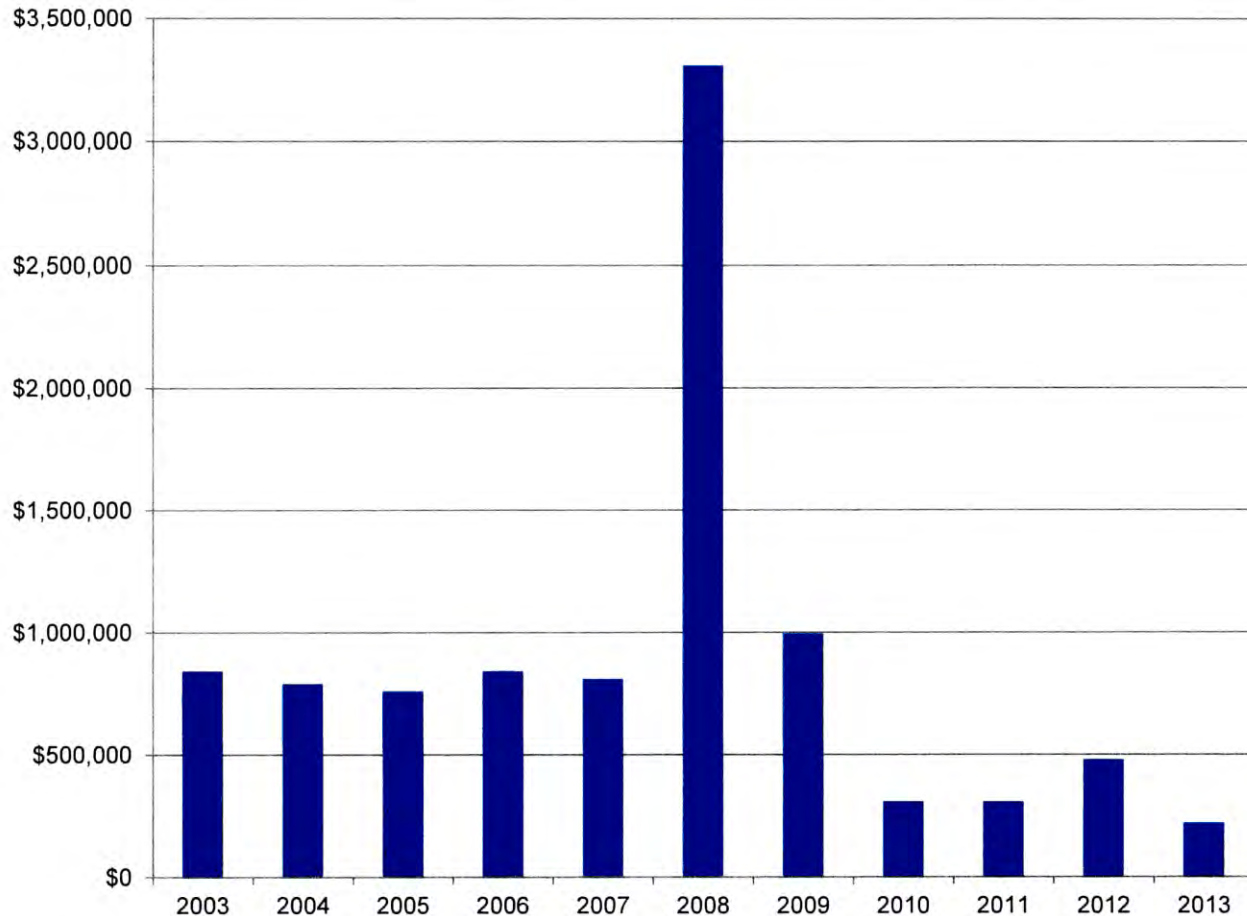
Board Giving

	TOTAL	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Carolyn S. Alper	\$120,500.00	--	--	--	--	--	\$60,500.00	\$60,000.00	\$0.00
Sarah E. Chapoton	\$227,607.48	\$25,000.00	\$27,625.00	\$28,350.00	\$26,300.00	\$26,000.00	\$27,363.00	\$41,569.48	\$25,400.00
Carl Colby	\$3,000.00	--	--	\$3,000.00	--	--	--	--	--
Josephine S. Cooper	\$94,000.00	--	--	\$63,000.00	\$30,000.00	\$0.00	\$1,000.00	--	--
Cherrie W. Doggett	\$234,750.00	\$40,000.00	\$50,000.00	\$35,000.00	\$66,000.00	\$40,000.00	\$3,750.00	--	--
Anne N. Edwards	\$338,954.72	\$50,148.19	\$26,000.00	\$43,756.84	\$43,869.15	\$41,618.50	\$28,855.17	\$71,766.68	\$32,940.19
Michela A. English	\$9,740.00	--	--	--	--	--	\$2,340.00	\$6,400.00	\$1,000.00
Shannon J. Finley	\$81,300.00	--	--	--	--	--	\$25,300.00	\$31,000.00	\$25,000.00
Emanuel J. Friedman	\$25,000.00	\$25,000.00	--	--	--	--	--	--	--
Kathryn L. Gleason	\$67,268.46	--	--	--	--	--	\$15,000.00	\$27,268.46	\$25,000.00
Michael N. Harreld	\$181,256.26	\$22,500.00	\$22,500.00	\$136,256.26	--	--	--	--	--
Eleanor F. Hedden	\$109,450.00	--	--	--	--	--	\$17,150.00	\$62,300.00	\$30,000.00
Harry F. Hopper	\$375,717.35	\$35,000.00	\$0.00	\$101,700.00	\$3,000.00	\$51,500.00	\$40,000.00	\$119,250.00	\$25,267.35
Julie J. Jensen	\$152,425.33	\$75,425.33	\$25,000.00	\$0.00	\$25,000.00	\$0.00	\$2,000.00	\$25,000.00	\$0.00
Frederick W. Knops	\$89,650.00	--	--	\$15,500.00	\$15,000.00	\$10,000.00	\$13,000.00	\$36,150.00	\$0.00
Frank G. LaPrade	\$110,000.00	--	--	--	--	--	\$35,000.00	\$50,000.00	\$25,000.00
Christopher M. Niemczewski	\$95,000.00	--	--	\$35,000.00	\$25,000.00	\$35,000.00	--	--	--
Franco Nuschese	\$0.00	--	\$0.00	\$0.00	\$0.00	\$0.00	--	--	--
Harvey L. Pitt	\$123,615.16	--	--	--	--	--	\$37,272.00	\$61,343.16	\$25,000.00
William A. Roberts	\$52,408.27	\$21,548.27	\$1,480.00	\$25,000.00	\$4,380.00	--	--	--	--
Jeanne W. Ruesch	\$110,000.00	\$110,000.00	--	--	--	--	--	--	--
Helen C. Smith	\$25,000.00	\$25,000.00	--	--	--	--	--	--	--
Ann Stock	\$25,000.00	--	--	--	--	--	--	--	\$25,000.00
Henry L. Thaggert	\$9,545.00	--	--	--	--	--	\$5,870.00	\$2,300.00	\$1,375.00

Entries designated with "--" indicate that the individual was not an Executive member of the Board of Trustees during that fiscal year.

Stephen G. Stein joined the Board on September 26, 2011 and resigned on January 3, 2012. He donated \$1,300 to the Corcoran in FY 2012.

Board Giving History



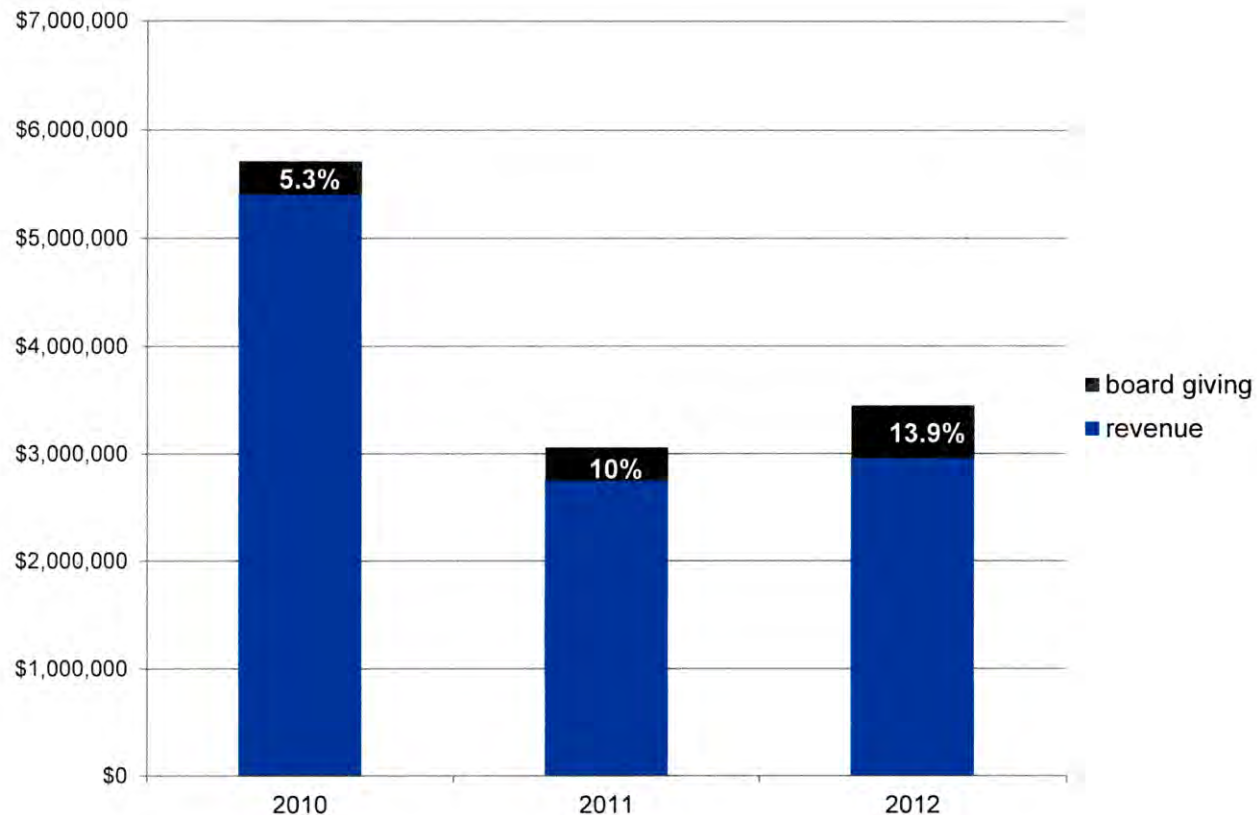
DEVELOPMENT GUILD/DDI

Corcoran Gallery of Art and College of Art + Design
Initial Findings and Direction

GIBSON DUNN

Pet. Ex. 9 at CGT 001803

Board Giving Against Philanthropy FY '10, '11, '12

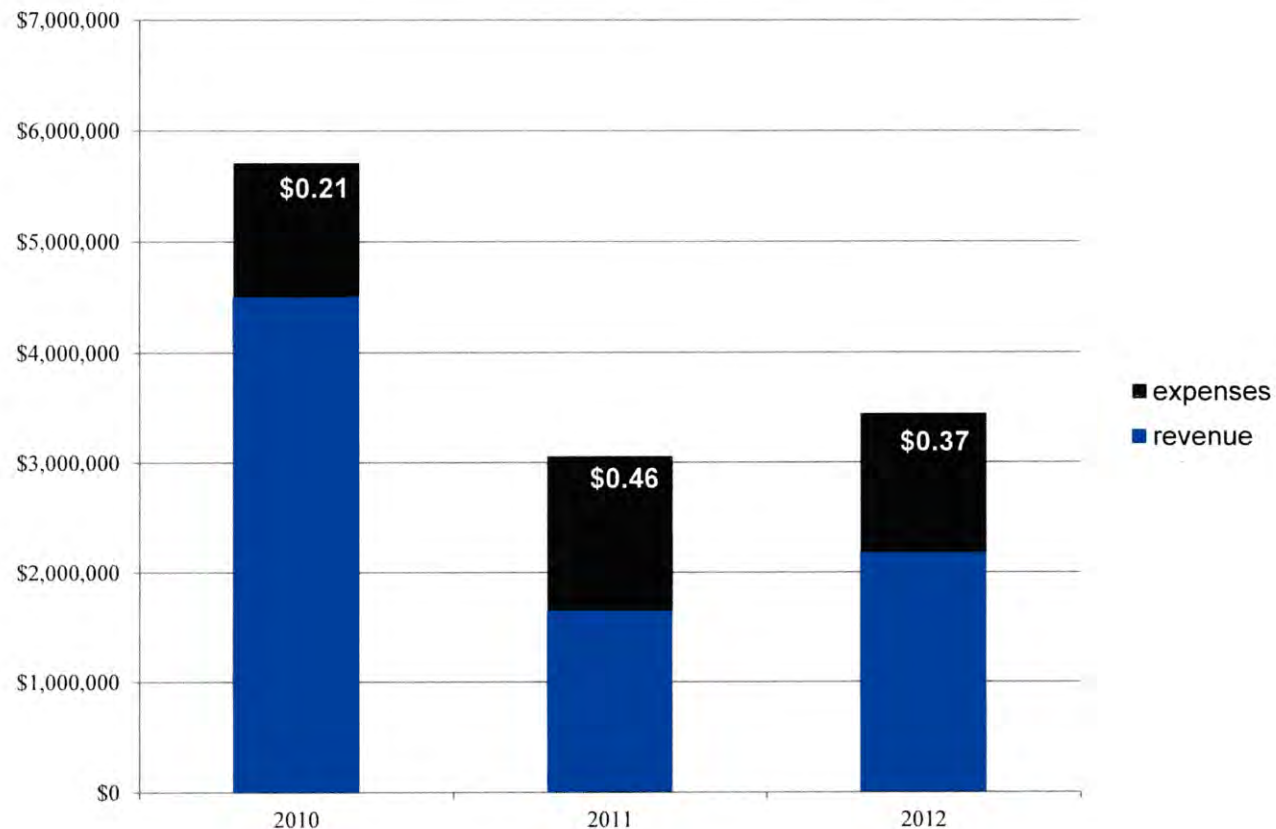


DEVELOPMENT GUILD/DDI

Corcoran Gallery of Art and College of Art + Design
Initial Findings and Direction

GIBSON DUNN

Fundraising: Cost per Dollar Raised FY '10-'12.



DEVELOPMENT GUILD/DDI

GIBSON DUNN

Corcoran Gallery of Art and College of Art + Design
Initial Findings and Direction

Pet. Ex. 9 at CGT 001801

Comparative Analysis Of Museums

	Corcoran	Washington D.C.-Metro Museums			National Museum + Schools			National Museums in Major Metropolitan Areas		
Organization	Corcoran	National Museum of Women in the Arts [^]	Phillips Collection ^{*-}	Virginia Museum of Fine Arts [*]	Cleveland Institute of Art [*]	Boston Museum of Fine Arts [*]	Art Institute of Chicago ^{*^}	LA County Museum of Art ^{-^}	Philadelphia Museum of Art [^]	Guggenheim Foundation ^{-^}
For the Year Ending*	6/30/2012	6/30/2013	7/31/2013	6/30/2013	6/30/2012	6/30/2012	6/30/2013	6/30/2012	6/30/2012	12/31/2012
Total Contributions (Pg. 9, Part VIII, Ln. 1h)	\$3,172,444	\$5,020,017	\$5,014,077	\$11,986,671	\$9,252,720	\$53,736,302	\$51,730,267	\$40,644,892	\$56,421,946	\$30,858,995
Net Income From Fundraising Events (Pg. 9, Part VIII, Ln. 8c)	(\$194,729)	(\$132,318)	(\$132,005)	—	—	(\$33,486)	(\$1,281,714)	—	—	\$909,034
Total Contributions Revenue	\$2,977,715	\$4,887,699	\$4,882,072	\$11,986,671	\$9,252,720	\$53,702,816	\$50,448,553	\$40,644,892	\$56,421,946	\$31,768,029
Total Functional Expenses (Pg. 10, Part IX, Ln. 25A)	\$32,251,291	\$6,807,186	\$12,710,548	\$17,560,004	\$24,846,152	\$149,185,619	\$270,250,707	\$112,030,725	\$63,126,032	\$74,249,962
Fundraising Expenses (Pg. 10, Part IX, Ln. 25D)	\$1,516,035	\$528,253	\$1,685,690	\$825,020	\$840,487	\$4,435,885	\$7,477,173	\$3,877,199	\$4,588,132	\$3,750,514
Fundraising Efficiency (Fundraising Cost per Dollar Raised)	\$0.51	\$0.11	\$0.35	\$0.07	\$0.09	\$0.08	\$0.15	\$0.10	\$0.08	\$0.12
Fundraising Multiplier (Dollars Raised per Dollar Spent)	\$1.96	\$9.25	\$2.90	\$14.53	\$11.01	\$12.11	\$6.75	\$10.48	\$12.30	\$8.47
Contributions Relative to Expenses	9.23%	71.80%	38.41%	68.26%	37.24%	36.00%	18.67%	36.28%	89.38%	42.79%

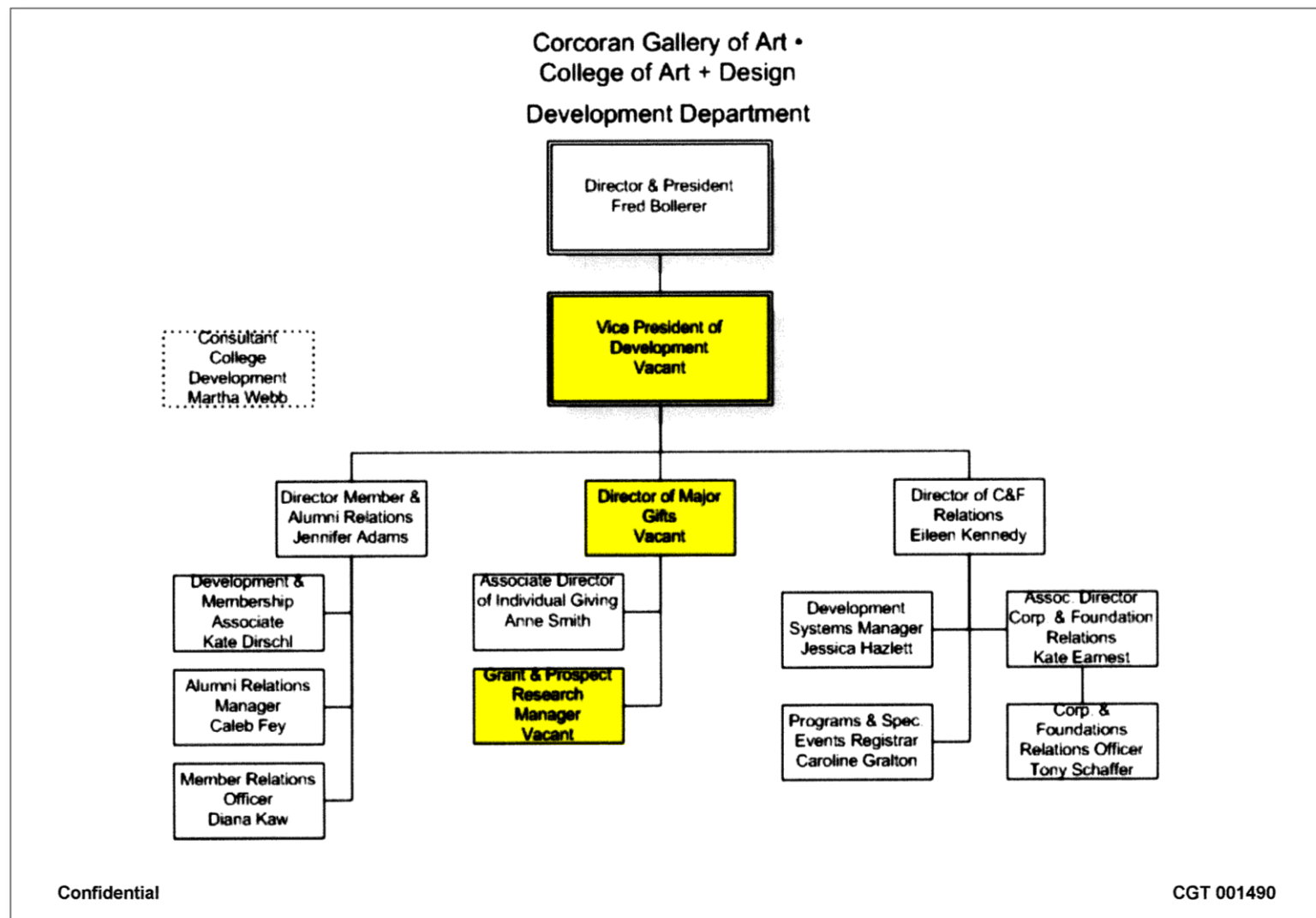
Note: Calculation of fundraising efficiency is made in accordance with the accreditation standards of the BBB Wise Giving Alliance (give.org).
Data taken from IRS form 990s.

* Organization identified by Real Change Strategies as an AAMD peer.

- Organization identified by Arthur Anderson Consulting as a comparable in 2001.

^ Organization accredited by the American Alliance of Museums.

Fundraising: Development Staff Deficiencies



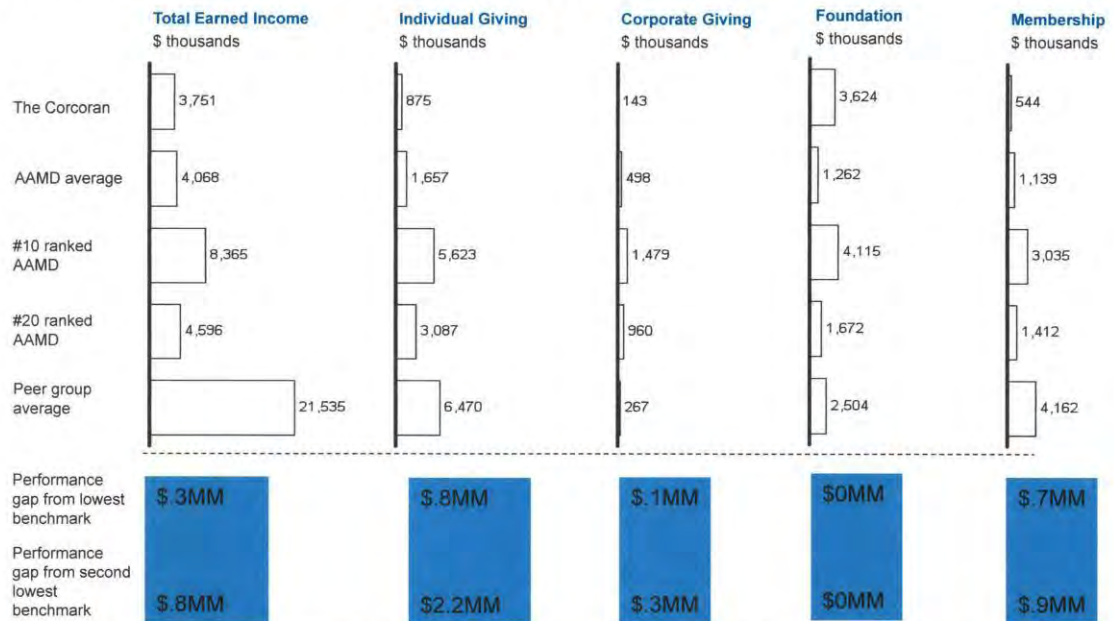
Fundraising Lag



Development Opportunities

Confidential - Financial

Corcoran development also lags behind museum peers, by \$2-4M



* Source: AAMD 2008 Data: Peer group includes Phillips Collection, Virginia Museum of Fine Arts, Boston Museum of Fine Arts, Art Institute of Chicago



strategy + implementation = real change

Confidential - Financial

CGT 001494

Fundraising Deficiencies

1 BY THE COURT:

2 Q. There's been a lot of talk about the Gehry
3 campaign. I was just wondering timing-wise, when did the
4 Gehry campaign end?

5 A. The Gehry campaign ended in 2005.

6 Q. There was some testimony before about the Board
7 acquiring the Randall School. I was wondering when did the
8 Corcoran acquire the Randall School? And there was some
9 talk about a Randall School project. What was that
10 project?

11 A. It was acquired -- I don't have the exact date.
12 I know it was part of the Gehry campaign. So I think it
13 was a lot of contracting and negotiating but I think it was
14 probably 2005 or 6.

15 Q. Okay.

16 A. And --

17 Q. What was the project, the Randall School project?

18 A. Well, the Randall School project -- I mean the
19 property was optioned and the City approved it years and
20 years before. And the Randall School project that was
21 contemplated and the commitments were made to acquire it
22 was a larger mixed-use development on the Randall School
23 property that would have contained in it a classroom and
24 study space for the Corcoran College that aggregated about
25 85,000 square feet I believe.

519

Q. There's been a lot of talk about the Gehry campaign. I was just wondering timing-wise, when did the Gehry campaign end?

A. The Gehry campaign ended in 2005.

Trial Tr. 519:2-519:5 (Smith)

Fundraising Deficiencies

Smith - D

1 Corcoran where you also thought it would make sense to have
2 a capital campaign?

3 A Yes. I think, you know, when I arrived at the
4 Corcoran, before I officially began my tenure at the
5 Corcoran, I was very excited. And I think even after --
6 certainly it didn't take long in my role to learn about the
7 financial challenges of the institution. But even knowing,
8 I think, that, in my view the institution did need a capital
9 campaign, I was very excited by that. I had just come from
10 a successful 400 million dollar campaign. I had seen the
11 dedication of trustees, the transforming power of a building
12 expansion like that, the support of the city, the support of
13 the mayor. And so my attitude was, let's do it, let's have
14 a campaign, get the people, raise the money, and go forth.

15 Q Were you aware at that time that the Corcoran had
16 had a capital campaign to build a Gehry wing that was not
17 successful several years before?

18 A Yes. Yeah, I was. And I don't -- you know,
19 again, my attitude is that stewards of an institution like
20 the Corcoran are often lifetime stewards, and even multi-
21 generational stewards in their families. I didn't feel
22 that, you know, while -- I don't think anyone can argue that
23 was a very significant setback for the institution. I
24 didn't think that meant that people wouldn't ultimately want
25 to support the Corcoran again. And the attitude that I

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Superior Court, District of Columbia
202-879-4629

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Q. Were you aware at that time that the Corcoran had had a capital campaign to build a Gehry wing that was not successful several years before?

* * *

A. I didn't think that meant that people wouldn't ultimately want to support the Corcoran again. And the attitude that I encountered was, you know, we can't talk to those people, those people are very angry at us. My attitude was, if they're angry with us, why aren't we talking to them?

Trial Tr. 991:15-992:3 (Smith)

Fundraising Deficiencies

Smith - D

1 Q Okay. So when you arrived at the Corcoran, can
2 you tell us what your initial impressions were of the
3 development effort.

4 A I was -- yes. When I arrived, there was no one
5 else, there was no peer in individual or major giving. I
6 wouldn't say it was a complete development office. There
7 were, to my mind, several open positions. But it was also,
8 you know, even at that time a struggling institution. So
9 certainly there were perhaps reasons there were unfilled
10 positions in development. There had been quite a lot of
11 turnover, it seemed, particularly in the highest level
12 positions in development. There didn't seem to be a lot
13 of institutional memory. There didn't really seem to be
14 perhaps a lot of the more professional systems that are in
15 place in development offices in other institutions.

16 Q Was there a planned giving program?

17 A No.

18 Q Was there a professional fundraising staff
19 dedicated to individual donor giving?

20 A No.

21 Q Can you speak just a little bit more about the
22 absence of development systems, what you meant by that.

23 A Sure. You know, development is probably boringly
24 but most importantly about letters of tax receipting,
25 database systems, donor tracking, all of those sort of

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Q. Okay. So when you arrived at the Corcoran, can you tell us what your initial impressions were of the development effort.

A. I was -- yes. When I arrived, there was no one else, there was no peer in individual or major giving. I wouldn't say it was a complete development office.

* * *

Q. And during the course of your work at the Corcoran, did you form a view about the role of the trustees in fundraising and development?

A. Yes. I think over time I felt that the trustees were not engaged in fundraising, certainly to the extent that they should have been, given the financial need of the organization.

Chair Recognizes Board's Fundraising Deficiency

Hopper - D

1 that there weren't conversations is incorrect.

2 Q Is it correct that you didn't solicit major
3 donations during this period?

4 A Technically, yes, because solicit is make the ask.
5 But as the document that you keep referring to talks about,
6 there's usually a long cultivation period before you make
7 the ask.

8 Q The article then makes the statement, boards of
9 trustees are critical fundraising engines for arts
10 organizations.

11 Do you agree with that statement?

12 A Could you repeat that, please?

13 Q Boards of trustees are critical fundraising ----

14 A And who made this?

15 Q No, this is just a statement in the article. And
16 I'm just going to ask you if you agree with it. Boards of
17 trustees are critical fundraising engines for arts organiza-
18 tions.

19 A Yeah, I think that's accurate.

20 Q The next sentence says, most of the Corcoran's
21 trustees are relatively obscure to members of Washington's
22 more established social and philanthropic circles.

23 A Again, that's a symptom, not a cause, but I think
24 that's a fair statement with respect to some trustees and
25 not to others.

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Q. The next sentence says, most of the Corcoran's trustees are relatively obscure to members of Washington's more established social and philanthropic circles.

A. Again, that's a symptom, not a cause, but I think that's a fair statement with respect to some trustees and not to others.

Trial Tr. Pg. 432, Ln. 20-25 (Hopper)

Impracticability and Hiring Practices – Fred Bollerer

- The Board hired individuals to senior positions who lacked appropriate backgrounds.
- Fred Bollerer was hired in 2009 as COO, and named President and CEO in 2010. Mr. Hopper confirmed that Mr. Bollerer had never been a museum director, university president, and worked for a management consulting firm that the Corcoran had hired before becoming COO. Trial Tr: 408:14-408:23 (Hopper).
- “My understanding is that Mr. Bollerer was a banker and had no experience with museums or with the art world.” Trial Tr: 785:6-785:7 (Johnson).

Impracticability and Hiring Practices – Lauren Stack

- Lauren Stack was hired as COO in 2011 even though she had no museum experience, no education experience, no employment experience in non-profits, no curatorial experience, and no professional fundraising experience. Trial Tr: 73:3-74:8 (Stack).
- Ms. Stack even expressed concerns about her lack of experience and was assured that she “wasn’t being asked to help in those areas.” Trial Tr: 30:7-30:8 (Stack).
- It is uncontested that Ms. Stack is Mr. Hopper’s next door neighbor and has served on various non-profits with Mr. Hopper.

Benefits Of Director With Art Background

Sean O'Connor:

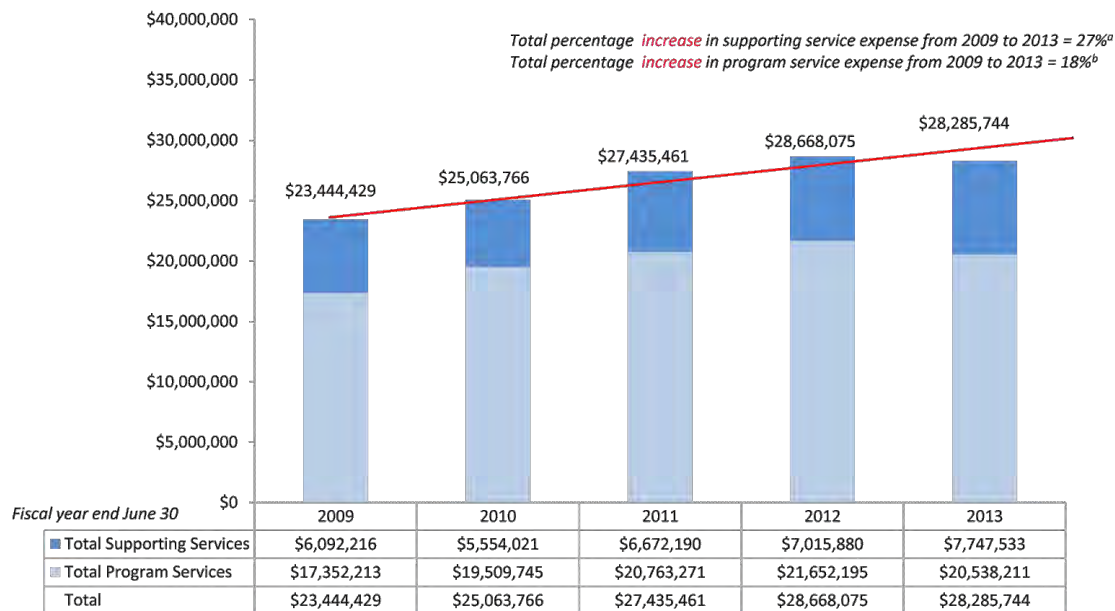
- “I think [having a director with] a background in the arts is helpful. ...It’s helpful because you understand the challenges and the opportunities that leading an arts organization has. And are able to communicate that to audiences.” (Trial Tr. at 315:15-316:1.)

Anne Smith:

- Background in the arts affects a director’s ability to “attract high caliber staff or high caliber donors....I think museums are like anything else; experience is valuable. It’s valued by your community, it’s valued by your donors, by your trustees. And...It’s a very high level position, it’s a very visible position, and I think they’re very serious scholars and experts in their fields.” (Trial Tr. at 1026:3-22.)

Benefits of Reducing Expenses

Figure 3. Corcoran Total Expenses



Administration Expense	\$4,858,226	\$3,997,797	\$4,881,437	\$5,408,259	\$5,621,333
------------------------	-------------	-------------	-------------	-------------	-------------

- Administration expense was **17% higher** than the average administration expense between 2009 and 2012 ^c
- Administration expense was **41% higher** in 2013 than in 2010 ^d

Source: Audited Financial Statements. Trustees of the Corcoran Gallery of Art. Fiscal Year End June 30, 2009 through June 30, 2013. See CGT000044, CGT000070, CGT000096, CGT000123, and CGT000151. Revenue and supporting data reflect audited financial statement data for the year in which such data are initially reported.

Supporting Calculations, see also Figure 11:

^a $(\$7,747,533 - \$6,092,216) / \$6,092,216 = 0.27$

^b $(\$20,538,211 - \$17,352,213) / \$17,352,213 = 0.18$

^c $(\$5,621,333 - \$4,786,430) / \$4,786,430 = 0.17$, where $\$4,786,430 = (\$4,858,226 + \$3,997,797 + \$4,881,437 + \$5,408,259) / 4$.

^d $(\$5,621,333 - \$3,997,797) / \$3,997,797 = 0.41$

Expert Opinions of Chiara Trabucchi

Art Institute Of Chicago

Smith - D

1 beautiful collections of impressionist art in the world.
2 It's over a million square feet. Like the Corcoran, it's
3 a museum and a college of art. The school of the Art
4 Institute of Chicago is under the same non-profit 501(c)(3).
5 It's, also like the Corcoran, over a 100-year old arts
6 institution.

7 Q And what were your positions at the Art Institute
8 of Chicago?

9 A I held four positions of increasing responsibility
10 in development at the Art Institute. I started as assistant
11 director of the auxiliary board, which is fundraising and
12 support group of the institution. And from that position I
13 moved into the capital campaign for the modern wing. The
14 modern wing was a 265,000 square foot addition to the Art
15 Institute of Chicago that came as a result of a 400 million
16 dollar capital campaign.

17 I held two positions within the campaign. After
18 the campaign ended and the building opened in 2009, I served
19 as director of donor initiatives, also within development.
20 And in that role I stewarded donors of \$100,000 and above.

21 Q So let's go back. You were promoted multiple
22 times at the Art Institute of Chicago. Is that right?

23 A That's correct.

24 Q And you played a role during the Art Institute of
25 Chicago's capital campaign.

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202-879-4629

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A. It's over a million square feet. Like the Corcoran, it's a museum and a college of art. The school of the Art Institute of Chicago is under the same non-profit 501(c)(3). It's, also like the Corcoran, over a 100-year old arts institution.

* * *

A. When there's a problem, when there's not enough money in the operating budget, you have a couple of options. Obviously you can dip into the endowment principal, you can cut programming, you can cut jobs. The Art Institute really didn't really want to do any of those things, and sought to fund-raise for the gap in that year. So the two donor groups I oversaw, the exhibitions trust, which was \$250,000 and above, and the directors council, which was \$100,000 and above, were created to bolster operating dollars for that purpose.

* * *

A. The trustees were wholly engaged in fundraising. The two groups I just mentioned, the exhibitions trust and the directors council, were comprised solely of trustees. As an example, of the 400 million dollars that was raised for the modern wing, 250 million of that came directly from trustees. And if you included in that number solicitations that were made directly by the trustees to other members of the community, the number would have been well over 300 million dollars and probably approaching the total of the campaign.

Ford's Theatre Model

- Added 40 new board members. (Tr. 527:11)
- Raised over \$50 million in a capital campaign for renovations. (Tr. 828:11-828:22)
- Saw “significantly larger” annual contributions—for an annual increase of \$3 million—after the capital campaign. (Tr. 830:4-830:8)
- Capital campaign increased asset base by \$41 million, which provided “stronger financial condition for the organization.” (Tr. 830:19-830:22, 831:19-831:20)

Ford's Theatre reopened on Lincoln's 200th birthday. (Tr. 527:13-527:16)
In 5 years, it will be the 150th anniversary of Mr. Corcoran's gift.

Election Of Board Members

June 27, 2011

Henry L. Thaggert III

Shannon Finley

September 26, 2011

Carolyn S. Alper

Michela English

Kathryn L. Gleason

Eleanor F. Hedden

Frank LaPrade

Saree Pitt

Stephen G. Stein

The Board Abandons Independence

CORCORAN
GALLERY OF ART - COLLEGE OF ART + DESIGN

MINUTES OF THE BOARD OF TRUSTEES MEETING- EXECUTIVE SESSION

JANUARY 30, 2012

RUESCH CONFERENCE ROOM

ATTENDANCE - MEMBERS

Harry Hopper, III *Chair*
Sally Chapoton, *Secretary*
Fred Knops, *Treasurer*
Carolyn Alper
Josephine Cooper
Anne Edwards
Michela English

ATTENDANCE - STAFF

Fred Bollinger, President and Director
Lauren Garcia, Chief Operating Officer
David Julyan, General Counsel
Remy Kauffmann, Managing Administrator

ATTENDANCE - GUESTS

Lisa Karlisch, Real Change Strategies
Chuck Patrizia, Paul Hastings

CORCORAN FUTURES

The Board discussed the current status of the Futures Project and after deliberation and on a motion properly made by Frank LaPrade and seconded by Fred Knops, the Board passed the following resolutions by a unanimous vote:

BE IT RESOLVED, the Board of Trustees of the Corcoran Gallery of Art and College of Art and Design directs the staff to explore two options as a framework for moving forward: A strategic path for leaving its current building and a viable partnership with another museum or college.

The Board then adjourned the Executive Session.

Respectfully submitted by Sally Chapoton, Secretary.

Transcribed by Remy Kauffmann, Managing Administrator to the COO.

Board of Trustees Meeting | January 30, 2012

Confidential

CGT000367

The Board discussed the current status of the Futures Project and after deliberation and on a motion properly made by Frank LaPrade and seconded by Fred Knops, the Board passed the following resolutions by a unanimous vote:

BE IT RESOLVED, the Board of Trustees of the Corcoran Gallery of Art and College of Art and Design directs the staff to explore two options as a framework for moving forward: A strategic path for leaving its current building and a viable partnership with another museum or college.

Int. Ex. 8 at CGT000367

The Board Abandons Independence

Hopper - D

1 Is that a statement that you made to Mr. Montgomery?

2 A Yeah. I'm not sure it was in context, but yes.

3 Q If a funding alternative reveals itself that takes

4 us on a path to stay in the building, we would love that.

5 A Yes.

6 Q Is that a statement you made to Mr. Montgomery?

7 A Yes.

8 Q I'm going to read you a paragraph from the

9 article. Hopper said this, quote, quiet period when

10 fundraising and public engagement have faltered, quote, has

11 been an unfortunate consequence of taking the time to put

12 together a credible plan, closed quote.

13 Did you make that statement to Mr. Montgomery?

14 A I'm not sure that's a completely accurate quote,

15 but I'd say the substance of it is directionally correct.

16 Q Then the article says that Hopper said he hasn't

17 solicited major donations during this period. And it has a

18 quote from you: If you're going to go to serious people and

19 serious foundations for serious amounts of money, seven

20 digit figures, you have to make your case for the cultural

21 position of the institution, but you also have to show in

22 the bigger picture the viability question is answered,

23 Hopper said.

24 Is that a statement you made to Mr. Montgomery?

25 A Yes. That's correct. Although the implication

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Superior Court, District of Columbia
202-879-4629

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Q. I'm going to read you a paragraph from the article. Hopper said this, quote, quiet period when fundraising and public engagement have faltered, quote, has been an unfortunate consequence of taking the time to put together a credible plan, closed quote. Did you make that statement to Mr. Montgomery?

A. I'm not sure that's a completely accurate quote, but I'd say the substance of it is directionally correct.

Q. Then the article says that Hopper said **he hasn't solicited major donations during this period.** And it has a quote from you: If you're going to go to serious people and serious foundations for serious amounts of money, seven digit figures, you have to make your case for the cultural position of the institution, but you also have to show in the bigger picture the viability question is answered, Hopper said.

Is that a statement you made to Mr. Montgomery?

A. Yes. That's correct.

Trial Tr. 431:8-431:25 (Hopper)

The Board Abandons Independence

736

1 the Corcoran, we'd not be sitting in this courtroom.

2 Q. You mentioned a moment ago that you had the
3 opportunity to review or read the transcript of Mr.
4 Hopper's testimony?

5 A. Uh-huh.

6 Q. What are your thoughts regarding his vision for
7 the Corcoran?

8 A. His vision of the Corcoran is to destroy the
9 Corcoran. So my thoughts about that are that, you know,
10 this board has given up. And they -- that's his vision
11 for the Corcoran.

12 Q. Did you have the opportunity to view any of Mr.
13 Reynolds's testimony?

14 A. I did. I sat in yesterday and this morning.

15 Q. Large personality?

16 A. Yes. But you know what, you need that in a
17 potential board chair. You need someone who's going to
18 be that sort of expansive and aggressive. You want that
19 kind of energy on a board.

20 Q. Did you hear anything about Mr. Reynolds'
21 fundraising at the Ford's Theatre?

22 A. Yes.

23 Q. Is that something that would be helpful if that
24 could be replicated here?

25 A. Yeah. It makes it clear to me that he's not

So my thoughts about that are that, you know, this board has given up. And they -- that's his vision for the Corcoran.

Trial Tr. 736:9-736:11 (Johnson)

MSCHE Accreditation



MIDDLE STATES COMMISSION ON HIGHER EDUCATION
3634 Market Street, Philadelphia, PA 19104-2680, Tel: 267-284-5000, Fax: 215-662-5501
www.msche.org

STATEMENT OF ACCREDITATION STATUS

CORCORAN COLLEGE OF ART AND DESIGN
500 17th Street, N. W.
Washington, DC 20006-4804
Phone: (202) 639-1800; Fax: (202) 639-1802
www.corcoran.edu

Chief Executive Officer: Dr. Peggy Loar, Interim Director

INSTITUTIONAL INFORMATION

Enrollment (Headcount): 323 Undergraduate; 225 Graduate
Control: Private (Non-Profit)
Affiliation: None
Carnegie Classification: Special Focus - Schools of Art, Music and Design
Approved Degree Levels: Postsecondary Certificate (< 1 year), Associate's, Bachelor's, Master's;
Distance Education Programs: Not Approved
Accreditors Recognized by U.S. Secretary of Education: National Association of Schools of Art and Design, Commission on Accreditation

Instructional Locations

To postpone a decision on accreditation and to request a supplemental information report due by September 1, 2014

Most Recent Commission Action:

June 26, 2014:

To postpone a decision on accreditation and to request a supplemental information report due by September 1, 2014, documenting (1) steps taken to improve the institution's short- and long-term financial viability, including updated cash and financial projections for the next five years, and multi-year budget projections aligned with the institution's mission, goals, and strategic plan and development and implementation of a comprehensive facilities master plan (Standard 3); (2) steps taken to assure continuity and stability of institutional administration (Standard 5); (3) information on institution-wide assessments available to prospective students, including graduation, retention, and other outcomes as appropriate to the programs offered (Standard 6); (4) development and implementation of a comprehensive, organized, and sustained process for the assessment of institutional effectiveness with evidence that assessment information is used in budgeting, planning and allocating resources (Standard 7); (5) development and implementation of a comprehensive enrollment management plan (Standard 8); (6) steps taken to strengthen student services, including student advising procedures and processes (Standard 9); (7) course syllabi that consistently incorporate

[https://www.msche.org/documents/sas/102/Statement%20of%20Accreditation%20Status.htm\(7/29/2014 6:50:42 AM\)](https://www.msche.org/documents/sas/102/Statement%20of%20Accreditation%20Status.htm(7/29/2014%206:50:42%20AM))

Pet. Ex. 2 at 1.



Cy Pres: NEXT BEST ALTERNATIVE

Intervenors Have Presented Two Alternatives That Are Both
Superior To The Trustees' Proposal

Next Best Alternative

- “The term ‘*cy pres*’ is derived from the Norman French expression *cy pres comme possible*, which means ‘as near as possible.’ The *cy pres* doctrine is a rule of construction used to preserve testamentary charitable gifts that otherwise would fail. When it becomes impossible to carry out the charitable gift as the testator intended, the doctrine allows the ‘next best’ use of the funds to satisfy the testator’s intent ‘as near as possible.’” *Dem. Cent. Comm. v. Washington Metropolitan Area Transit Com’n*, 84 F.3d 451 n.1 (D.C. Cir. 1996).
- The Trustees acknowledge that under the *cy pres* statute, “the revised conditions must seek ‘as nearly as possible’ to adhere to the original donor’s intent.” Memorandum of Law in Support of the Trustees’ Motion for Entry of a Proposed Form of Order Granting *Cy Pres* Determination, at 10 (citing D.C. Code § 19-1304.134).
- Although courts make this determination on a case-by-case basis, the grantor’s intent is often the main focus of the analysis. *Roberds v. Markham*, 81 F. Supp. 38, 1948 (D.D.C. 1948) (quotations omitted); *Obermeyer v. Bank of America*, 140 S.W. 3d 18, 25 (Mo. 2004); *In re Estate of Elkins*, 888 A.2d 815, 823-24 (Pa. Super. 2005).

GW Receives

- \$116 million Flagg Building
- \$45 million cash
- College of Art & Design
- \$18.3 million tuition annually
- All curriculum and academic materials
- \$10 million Fillmore Building
- Salon Dore, Mantel, Canova Lions
- Rights to the Corcoran name
- *NGA receives ability to retain title to Corcoran art at its discretion.*

Corcoran Receives

Dispersing the Corcoran Collection

627

1 Q. -- and perpetuity.

2 A. That's my understanding.

3 Q. And is it your understanding that that is a

4 reason why under the contemplated proposal here the

5 National Gallery gets to pick and choose which pieces of

6 the collection it wants.

7 A. Exactly. That's why Dodge was telling would like

8 the contemporary art collection from the Corcoran. You

9 know, I was once with Dodge at the National Portrait

10 Gallery because we were walking through it within the

11 last, you know, six weeks or so. And his phone rings.

12 And I see it's from Peggy Loar.

13 So he looks at me. I look at him. You

14 know, and so he goes -- you know, he takes the phone

15 call. And they're practically giddy talking about where

16 all the art of the Corcoran will be going. The Frist

17 Museum in Nashville wanted it and their friends over

18 here wanted it. And I thought I was just really upset

19 because this isn't their art to divvy up.

20 Q. And it's your understanding that there have

21 already been discussions involving Mr. Thompson, Ms.

22 Loar, and other museum institutions about how to carve

23 up the Corcoran collection?

24 A. Yes. I witnessed it firsthand. As a matter of

25 fact, I also met with new director of the National

The Corcoran and National Gallery were
“practically giddy talking about where all the
art of the Corcoran will be going.”

Trial Tr. 627:15-627:16 (Reynolds)

Next Best Alternative

Knapp

Q. Yes. The deed of trust for the Corcoran – what we're here to, what the Trustees are seeking here to break. Have you read that document?
A. I have not read the deed of trust, no.

Trial Tr. 208:5-208:8 (Knapp)

Reynolds

A. The main reason I'm interested in this as a philanthropist is I read the deed. And, you know, he's not around anymore so we only have these words that he wrote so we 150 years later can understand what he wanted to do with his money and his legacy....

Trial Tr. 551:17-551:21 (Reynolds)

Reynolds

A. Well, you know, I'm such a pathetic case, frankly, that the first page of the deed of Mr. Corcoran I've been carrying around in my pocket for a year and a half.

Trial Tr. 562:7-562:10 (Reynolds)

Intent of Mr. Reynolds

1 unproductive session --

2 A. Well, first of all, I must say, I must interrupt
3 here, I must say I have never approached a board or a group
4 and offered to be helpful and raise them millions of
5 dollars, solve their problem and basically were told we've
6 got to run for our lives from this person.

7 And so I was -- I'm still very upset about this.
8 I don't know what the agenda was but I am not pleased with
9 it.

10 Q. And your view and vision is that the Corcoran
11 should remain independent, correct?

12 A. You know, let's put it this way, this is the best
13 I can say -- Mr. Corcoran was a great philanthropist. He
14 was actually the Chairman of the Board of George Washington
15 University.

16 Being a philanthropist myself, I understand
17 wanting to do your own thing, create your own institutions,
18 not to be ruled by other academics but having the latitude
19 and the joy of forming your own institution.

20 So my belief is, yes, he wanted an independent
21 institution and his trust agreement should be upheld.

22 Q. And we've heard -- there's obviously been a lot
23 of debate over the last several years about the need for
24 development, the need for substantial renovations on the
25 Flagg building, all kinds of issues and difficulties and

559

A. You know, let's put it this way, this is the best I can say -- Mr. Corcoran was a great philanthropist. He was actually the Chairman of the Board of George Washington University. Being a philanthropist myself, I understand wanting to do your own thing, create your own institutions, not to be ruled by other academics but having the latitude and the joy of forming your own institution. So my belief is, yes, he wanted an independent institution and his trust agreement should be upheld.

Trial Tr. 559:12-559:21 (Reynolds)

Reynolds Receives

- Chairman seat on the Board of Directors

Corcoran Receives

- Vision and Purpose – Center for Creativity
- 23 new, active board members with resources and fundraising ability
- Reynolds's experience turning around Ford's Theatre
- Expanded college
- Corporate interest from technology companies in Silicon Valley
- Support from Washington, D.C., as with Ford's
- Substantial donation from Reynolds

Corcoran Retains

- College and Gallery remain independent
- Collection remains intact
- Independent Board of Trustees
- Full ownership of Flagg and Fillmore Buildings

Alternative Trustees of the Corcoran Gallery of Art

Wayne Reynolds

Board Chairman & CEO, Academy of Achievement, former Chairman of Ford's Theatre Society

Wayne Berman

Senior Advisor, Blackstone Group

Lea Berman

Former White House Social Secretary

Abigail Blunt

Director, U.S. Government Relations, Altria Group

Marcus Brauchli

Chairman, The Arthur F. Burns Fellowship, Consultant to Graham Holdings, and former Executive Editor of The Washington Post

Buffy Cafritz

Philanthropist, Buffy and William Cafritz Foundation

Frank "Rusty" Conner III

Partner, Covington & Burling LLP

Linda Daschle

President, LHD and Associates

Kenneth Duberstein

Chairman and CEO, Duberstein & Associates, White House Chief of Staff for President Ronald Reagan, and Lead Director of The Boeing Company

Elizabeth Dubin

Philanthropist

Adrian Fenty

Former Mayor of Washington, D.C., and special advisor at venture capital firm Andreessen Horowitz

Rhoda Glickman

Senior Vice President for Arts, Culture and Film Development, New York State Governor's Office for Motion Picture and Television Development

Sven Holmes

Vice Chairman, Legal, Risk and Regulatory, and Chief Legal Officer for KPMG LLP, and former U.S. District Court Judge

Ivy Howells

Former student, Corcoran College of Art + Design, and 2014 Co-Chair Corcoran Ball

Irene Hirano Inouye

President, U.S. Japan Council, and Chair of the Ford Foundation Board of Trustees

Marlene Malek

Philanthropist, Friends of Cancer Research

William R. "Billy" Martin

Founder and Senior Partner, Martin & Gitner Law Firm

Thomas "Mack" McLarty

President, McLarty Associates, and the White House Chief of Staff for President Bill Clinton

Catherine Merrill Williams

President and Publisher, Washingtonian Media

Susan Molinari

Vice President of Public Policy, Google, Inc.

Melissa Moss

Co-Founder, MLH Strategies, LLC

Tony Podesta

Chairman, Podesta Group

Julianna Smoot

Co-Founder, Smoot Tewes Group, and former Deputy Campaign Manager for President Obama's 2012 Presidential Campaign

Intent of UMD

635

1 premise of the Corcoran.

2 Q. And did discussions progress with the Corcoran
3 Board of Trustees?

4 A. Well, I was very excited after that conversation.
5 I was very impressed with the people who were there. It
6 was a small group of I forget how many, six or seven.
7 They were called the collaboration committee that were
8 exploring this collaboration.

9 They were obviously very, very dedicated.
10 They were passionate about the Corcoran. So yes, I then
11 checked with my superiors who says by all means, you
12 know, explore this. So come around I think it was
13 around mid-April of 2013, we had a very short MOU, which
14 basically said here are the fundamental principles and
15 we hope to reach -- we would like to reach an agreement
16 before the end of the summer.

17 Q. Can you tell us a little bit about how the MOU
18 was prepared?

19 A. Well, I sat down with Mr. Hopper who was the
20 chair of the board. We recited the starting principle,
21 which by the way was taken from their 2013 strategic
22 framework. A magnificent document that the board worke
23 on that I thought incapsulated the basic intention of
24 William Corcoran.

25 Because in the language of the Corcoran, the

Because in the language of the Corcoran, the core philosophy, quote, unquote, and the guiding principle As an integrated whole, integrated whole referring to the integration of the Gallery and the college, keeping them together. And keeping them together also means, of course, keeping the art in Washington and the college in Washington.

Trial Tr. 635:25-636:6 (Loh)

Intent of the Board

653

1 full-time frontline development officers supported by
2 another 200 back office people for events, for planning,
3 keeping records, and so on.

4 We raise 140 million dollars a year. So are
5 we -- so as part of the plan, which I didn't mention, is
6 that we would jointly raise about 25 million dollars for
7 renovation. I think that's a conservative number. I
8 think we can reach that number and we set over three to
9 four years. When I say joint, most of the heavy lifting
10 is going to be done by the University of Maryland.

11 Q. And so let me -- so we're following the terms of
12 the best and final. Eliminated the walkaway provision,
13 correct?

14 A. Yep.

15 Q. You accelerated the cash infusion --

16 A. And it's not capped.

17 Q. And it's not capped. And the vision was to then
18 stand up the Corcoran as an independent institution
19 which would be run by a board with duties to the
20 Corcoran and which would then jointly fundraise with
21 University of Maryland?

22 A. That's correct. And as to the third item that
23 Mr. Hopper was concerned that we take over the college,
24 we explained why this was not a good idea. In fact, we
25 didn't quite understand what immediately take over the

A. That's correct. And as to the third item that Mr. Hopper was concerned that we take over the college, we explained why this was not a good idea. In fact, we didn't quite understand what immediately take over the college means.

Trial Tr. 653:22-654:1 (Loh)

Maryland Receives

- Access to study Corcoran art in storage and to display that art in Maryland as if on loan to another museum
- Collaborative opportunities with Corcoran
- Ability to provide nominees to Corcoran Board, outside of UMD officials or trustees
- Shared interest in Flagg Building not to exceed 50%

Corcoran Receives

- \$46 million up-front capital infusion (more funds possible after 5 years)
- No obligation to repay unless Corcoran walks away from the deal
- Fundraising assistance
- Collaborative opportunities with Maryland
- Permanence: 99-year partnership, with no UMD unilateral opt-out

Corcoran Retains

- College and Gallery remain independent
- Collection remains intact
- Independent Board of Trustees with fiduciary duties only to the Corcoran
- Flagg Building, subject to UMD security interest
- Fillmore Building

Maryland's Last and Final Offer Does Not Require *Cy Pres*

The terms of the Maryland proposal conform to the Corcoran Deed:

- **UMD's nomination of Board members** (Tr. 636:7-20 (Loh)) would require amendment of the By-Laws, not the Trust. The Board still would retain “its discretion at all times” to determine the criteria of membership and to select “officers, agents and servants of the board.” Stack Decl. Ex. 1 at 5.
- **Corcoran's \$10 million expenses on capital improvements in first 5 years** (Tr. 678:5-26 (Loh)) would only enhance the Corcoran's ability to provide “perpetual . . . maintenance” of the Gallery. Stack Decl. Ex.1 at 4. UMD would cover this cost now. Tr. 686:1-4 (Loh).
- **UMD's shared ownership of the Flagg Building** (Tr. 675:8-677:25 (Loh)) is consistent with the requirement that “all legal rights and titles in the premises . . . serve the trusts, intents, uses, and purposes” of the Trust. Stack Decl. Ex.1 at 4.
- **Display of art in Maryland (Tr. 675:8-677:25 (Loh))** is consistent with the Deed's requirement to “establish an institution in Washington City.” Stack Decl. Ex.1 at 1. This would be a “rotating exhibit” (Tr. 668:19-22 (Loh)), “just like when Corcoran would loan its art to another museum,” (Tr. 668:14-15 (Loh)).

Importance of Independence

Lacey - X

1 kind of like, I'm not sure where this is going. He said, do
2 you know how you women are always trying to lose weight.
3 Yeah. Right? And I just kind of looked at him. And he
4 said, well, my wife loves the feeling of being hungry. It
5 means that she's losing weight. So you have to think of the
6 board's silence like those hunger pains. When you don't
7 hear from us, we're working harder to make you better.

8 Q Ms. Lacey, now is your time to talk to the Court
9 and say anything else you'd like to say. Is there anything
10 you'd like to say?

11 A I guess I just want to express how important the
12 Corcoran is. You know, they said graduate school would be
13 the biggest gift that I ever give to myself. And so far it
14 really has been. It's an amazing independent institution.
15 And the currency really isn't -- we just work on a different
16 currency than George Washington University. We -- yeah.

17 MR. CHESLEY: No further questions, Your Honor.

18 THE COURT: Okay. Cross examination.

19 Mr. Evans?

20 MR. EVANS: Yes.

21 THE COURT: Okay.

22

23 CROSS EXAMINATION

24 BY MR. EVANS:


25 Q Good morning, Ms. Lacey. How are you?

SUSAN G. WALKER, CSR, RPR, FCRR
Superior Court, District of Columbia
202-879-4629

1050

A. I guess I just want to express how important the Corcoran is. You know, they said graduate school would be the biggest gift that I ever give to myself. And so far it really has been. It's an amazing independent institution. And the currency really isn't -- we just work on a different currency than George Washington University.

Trial Tr. 1050:11-1050:16 (Lacey)



Relief Sought by Intervenor

- Deny the Trustees' Petition for *Cy Pres*.
- Require Trustees to continue administering the Trust, and to forge a plan that will:
 - Keep the Corcoran art collection together; and
 - Maintain the College of Art + Design's independence.
- Order Trustees to return in 60 days to provide the Court with a status update.

Replacement of Trustees

- **Trust law governs** who can remove trustee directors of a charitable corporation. *Family Fed’n v. Moon*, 2012 WL 3070965, at *11-12 (D.C. Sup. 2012).
- Under D.C. Code § 19-1307.06(b), “[T]he court may remove a trustee if:
 - (3) Because of the unfitness, unwillingness, or **persistent failure of the trustee to administer the trust effectively**, the court determines that removal of the trustee bestserves the interests of the beneficiaries.”
- No need to find bad faith. *See Weldon Trust v. Weldon*, 231 S.W.3d 158, 180 (Mo. App. 2007).
- The Court also “**may appoint an additional trustee** or special fiduciary whenever the court considers the appointment **necessary for the administration of the trust.**” D.C. Code, § 19-1307.04(e).

Mr. Corcoran's Trust



Matthew B. Brady Mr. William Wilson Corcoran
photograph, 1883

*A newspaper account dated February 25, 1888,
Washington D.C., presumably the Evening Star.*

William Wilson Corcoran, Washington's most distinguished and best-loved citizen, has closed a long life that was full of good works. He was so much to Washington, and Washington so much to him, that the man and the city seemed indissolubly associated; and in one sense—the best sense—that seeming was a reality. No other name except that which the Capital bears, no other memory except that of the Father of our Republic, are so dear to the hearts of the people of this city.

It is hard for Washingtonians to think or speak of Mr. Corcoran in the past tense. Surrounded by monuments of his munificence, by tangible results of his life work; seeing on every side the public benefactions which his brain planned, his hand wrought and over which his great heart rejoiced, it is not easy to disassociate the living source of all this from the benefactions themselves.

Mr. Corcoran lived for others, and in so living he made a perpetuity of fame more sure than he could have done if the chief end of his existence had been to win renown. It is only in a narrow sense that such a life as his may be said to end with the cessation of the vital functions. The good influences that he set in motion, the institutions that he founded and endowed, will all move on as if his mind were still directly and controlling them.

The Corcoran Art Gallery, the great national educational establishment on which he bestowed so much thought, will influence the taste, the character and lives of thousands in every year of all the centuries to come. Who can estimate the grand aggregate of such influences? How many lives will be brighter and better; how many homes will be happier; how much of the increasing exaltation and embellishment of American social life, as the years go on, will be due to Mr. Corcoran's wise benevolence in establishing a great temple of art where the poor as well as the rich may study the works of the masters?