

CAUSE No. D-1-GN-14-005114

JAMES STEELE, et al.	§	IN THE DISTRICT COURT OF
<i>Plaintiffs,</i>	§	
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
GTECH CORPORATION,	§	
<i>Defendant.</i>	§	201 ST JUDICIAL DISTRICT
	§	

DEFENDANT’S PETITION FOR PERMISSION TO APPEAL

Defendant GTECH Corporation (“GTECH”) has filed a Notice of Accelerated Appeal to appeal from the Court’s February 25, 2016 Order Overruling Defendant GTECH Corporation’s First Amended Plea to the Jurisdiction (“Order”).

While GTECH believes that it has a statutory right to appeal from the Court’s Order, out of an abundance of caution GTECH files this Petition for Permission to Appeal pursuant to Rule 168 of the TEXAS RULES OF CIVIL PROCEDURE. GTECH requests the court’s permission to take an accelerated appeal to the Third Court of Appeals in Austin, Texas.

Without waiving any of its objections to the Order and without waiving its statutory right to appeal therefrom, GTECH requests that the Court amend the Order to include language granting GTECH’s requested permission to appeal. A copy of a proposed Amended Order Overruling Defendant GTECH Corporation’s First Amended Plea to the Jurisdiction (“Amended Order”) is attached to this petition as Exhibit A.

**I.
ARGUMENT**

1. Under Texas law, “[o]n a party’s motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if: (1) the order to be appealed involves a controlling question of law as to which

there is a substantial ground for difference of opinion; and (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.” Tex. Civ. Prac. & Rem. Code § 51.014(d). Under Rule 168, “[a]n order previously issued may be amended to include [the trial court’s] permission” to appeal. Tex. R. Civ. P. 168.

2. A “controlling question of law” for purposes of permissive appeals “(1) is one that deeply affects the ongoing process of litigation, (2) the resolution of which will considerably shorten the time, effort, and expense of fully litigating the case, and (3) the viability of the claim depends on the court’s determination of the question of law.” *Undavia v. Avant Medical Group, P.A.*, 468 S.W.3d 629, 633 (Tex. App.—Houston [14th Dist.] 2015). There is no doubt that the existence of derivative governmental immunity is a “controlling question of law” which would deeply affect – and put an end to – the ongoing litigation.

3. Moreover, it is unquestionable that there is a substantial ground for difference in opinion as to the existence of derivative governmental immunity. Indeed, trial courts in Dallas and in Austin have come to diametrically opposed conclusions on the very question to be appealed. *Cf.* December 15, 2015 Order entered in *Nettles v. GTECH Corporation*, Cause No. DC-14-1438, In the District Court of Dallas County, Texas, 160th Judicial District; February 25, 2016 Order entered in *Steele et al. v. GTECH Corporation*, Cause No. D-1-GN-14-00511, In the District Court of Travis County, Texas, 201st Judicial District.

4. Finally, immediate appeal from the Court’s Order would materially advance the ultimate termination of the litigation by potentially making further litigation unnecessary. It would not advance the interest of judicial economy to allow a sprawling litigation involving hundreds of individual plaintiffs to go forward only to find that none of plaintiffs’ claims are viable because GTECH is entitled to derivative governmental immunity. The prudent course is

to allow the courts of appeals to determine the threshold question of immunity before significant additional resources are committed to this case.

**II.
PRAYER**

Defendant GTECH Corporation respectfully requests that the Court grant this Petition for Permission to Appeal and amend its February 25, 2016 Order Overruling Defendant GTECH Corporation's First Amended Plea to the Jurisdiction to include language granting GTECH's requested permission to appeal and for such other and further relief at law or equity to which it is justly entitled.

Respectfully submitted,

REED SMITH LLP

/s/ Kenneth E. Broughton

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing pleading has been served by electronic transmission via the Court's ECF system on this the 11th day of March, 2016, to the following counsel of record:

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**AMENDED ORDER OVERRULING DEFENDANT GTECH CORPORATION'S
FIRST AMENDED PLEA TO THE JURISDICTION**

After considering Defendant GTECH Corporation's First Amended Plea to the Jurisdiction, Plaintiffs' response thereto and other evidence on file, the Court OVERRULES Defendant GTECH Corporation's First Amended Plea to the Jurisdiction.

Pursuant to Tex. Civ. Prac. & Rem. Code § 51.014(d) and Tex. R. Civ. P. 168, the Court hereby GRANTS permission to appeal this Amended Order Overruling Defendant GTECH Corporation's First Amended Plea to the Jurisdiction ("Amended Order").

The Court finds that GTECH Corporation's entitlement to derivative governmental immunity is a controlling question of law as to which there is a substantial ground for difference of opinion and finds that an immediate appeal from this Amended Order may materially advance the ultimate termination of the litigation. More specifically, GTECH Corporation's entitlement to derivative governmental immunity is a threshold question of law upon which all of Plaintiffs' claims depend. Its resolution would thus deeply affect and could significantly shorten the time, effort, and expense of litigating this case.

IT IS HEREBY ORDERED that Defendant GTECH Corporation's First Amended Plea to the Jurisdiction is OVERRULED and that GTECH Corporation's Petition for Permission to Appeal this Amended Order is GRANTED.

SIGNED on this ____ day of March, 2016

Presiding Judge