

Petitioners: Milton Hershey School and School Trust and Robert Reese, as
representative of the Milton Hershey School and School Trust
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**In the Matter of the Trust : In the Court of Common Pleas
under Deed of Milton S.
Hershey and Catherine S. : Dauphin County, Pennsylvania
Hershey
Dated November 15, 1909 : Orphans' Court Division No. 712,
Year of 1963**

**Petition for Citation for Rule to Show Cause Why (A) Breaches
of Trust of the Duty of Loyalty Should Not be Redressed and
(B) Breaches of Trust of the Duty of Exercise of Prudence and
Due Care, the Duty of Impartiality, the Duty to Administer,
the Duty to Use Due Care in Investment Decisions and the
Duty to Inform Should Not Be Redressed Pursuant to the
Pennsylvania Uniform Trust Act, the Pennsylvania Probate,
Estates and Fiduciaries Code and Pennsylvania Common Law**

FILED

FEB -8 2011

SANDRA C. SNYDER
REGISTER OF WILLS AND
CLERK OF THE ORPHANS' COURT

JURISDICTION

This honorable Court has jurisdiction over the matters set out herein pursuant to § 711(3) of the Pennsylvania Probate, Estates and Fiduciaries Code (“PEF” Code”), 20 P. C. S. § 711(3) and the Rules of Judicial Administration No. 2156(1).

VENUE

Venue lies within this Court pursuant to § 722 of the PEF Code, 20 P. C. S. § 722 and Pa R C § 1503.

AUTHORITY TO GRANT RELIEF

This Court has broad plenary authority to grant relief for breaches of trust involving a charitable trust, including Subchapter I of the Pennsylvania Uniform Trust Code (“PUTA”).

PARTIES

The parties are Milton Hershey School and School Trust, Petitioner, as represented by Robert Reese, also a Petitioner, who has standing as a member of the Board of Managers of Milton Hershey School, the Board

of Directors of Hershey Trust Company, and President of Hershey Trust Company, more specifically set out in paragraph 1 below, and the Office of Attorney-General for the Commonwealth of Pennsylvania under said Office's *parens patriae* and other authority.

PETITION – PART A: DUTY OF LOYALTY. Upon information and belief:

1. The Petitioner Milton Hershey School and School Trust (the Charity), represented by Petitioner Robert Reese who is a member of the Board of Directors (“Director, Directors or Trust Board”) and President of Hershey Trust Company (the “Company”), Trustee of the Milton Hershey School Trust under Deed of Trust (the “Deed”) dated November 15, 1909 (the “School Trust”) by Milton S. Hershey and Catherine S. Hershey (the “Settlers”), and a member of the Board of Managers (“Manager, Managers or School Board”) of Milton Hershey School (the “School” or “Beneficiary”). Milton Hershey School and School Trust (the “Charity”) is a single, unified educational institution, that files one Form 990 with the Internal Revenue Service. Despite widespread perceptions that the School Trust is

separate from the School or that the Trust and the School are separate entities, they are not: **all of the assets of the School Trust fund¹, are an integral part of one Charity, pursuant to official documents of Milton Hershey School and Hershey Trust Company and pursuant to rulings from the Internal Revenue Service, which classifies Milton Hershey School and School Trust as one Internal Revenue Code § 501 (c)(3) entity. Any breaches of the trust duties of Loyalty, Exercise of Prudence and Due Care, Impartiality, to Administer, to Use Due Care in Investment Decisions, and to Inform are breaches involving the Charity -- a School and the Trust set up for it.**

2. Each Director and Manager of the Charity is subject to the standards and provisions of the Pennsylvania Uniform Trust Act, 20 Pa. C. S. Chapter 77 (“PUTA”).

3. § 7763(g) of PUTA, 20 Pa. C. S. §7763(g) provides:

“(g) Reasonable care.--Each trustee **shall** exercise reasonable care to:

(1) prevent a cotrustee from committing a breach of trust involving ... self-dealing; and

(2) **compel a cotrustee to redress a breach of trust involving ... self-dealing.** [emphases added]

¹ The School Trust consists of controlling interests in the Hershey Company (formerly Hershey Foods Corporation), Hershey Entertainment & Resorts Company, real estate, and other investments (equities, bonds, commodities, and non-marketable alternative assets).

Under § 7763(g) of PUTA, 20 Pa. C. S. §7763(g), Petitioners are thus required (“shall”) “exercise reasonable care to compel a co-trustee to redress a breach of trust involving ... self-dealing.”

4. *Petitioner Reese was not a Director or on the Trust Board and was not a Manager or on the School Board when the actions constituting breaches of trust referred to hereinafter occurred, with limited exceptions.*

5. Petitioner Milton Hershey School and School Trust and Petitioner Reese (together “Petitioners”) on their or his own cannot *compel* a trustee to redress such a breach of trust. Petitioners thus respectfully requests this honorable Court to compel certain current co-trustees and former trustees to, in an appropriate manner, redress breaches of trust involving self-dealing, as follows:

a. upon information and belief, the making of a profit by a trustee in the sale of his monetary interest in Wren Dale Golf Course to the Charity in 2006. § 7783 of PUTA provides: “(a) Profit.--A trustee is accountable to an affected beneficiary for any profit, excluding reasonable compensation, made by the trustee arising from the administration of the trust, *even absent a breach of trust.*” 20 Pa. C. S. §7783(a). [Emphasis added] This trustee did not disclose his conflict-of-interest and attended the

Trust Board and School Board meeting at which the Wren Dale Golf Course (of which he was an equity holder) purchase was discussed and approved. §7783(a) of PUTA is essentially a strict liability provision requiring any profit made by a trustee in dealings between the trust and his or her own personal assets to be paid back to the charity. The “*even absent a breach of trust*” language means there are no defenses to taking advantage of dealings with a charity by making a personal profit. As noted above, there was no disclosure by the trustee’s conflict-of-interest, but based upon the information and belief provided by the Director of Real Estate for the School Trust, other trustees may have been aware of the profiting trustee’s ownership interest in Wren Dale prior to the transaction with the Charity. Wren Dale, now known as Hershey Links, is directly owned by the Charity, a K-12 school for needy children, who are not allowed on the golf course.

b. upon information and belief, the decision by co-trustees in 2005-2006 to spend \$12 million of the Charity’s money to purchase Wren Dale Golf Course. Wren Dale Golf Course is reputedly one of the best in the region. At the time of the Charity’s purchase of Wren Dale for three to four times its appraised value, hundreds of free passes to play were given to certain trustees. Upon information provided by and the belief of the

Director of Real Estate for the School Trust, certain trustees were determined that the Charity would own the course. Wren Dale prior to the purchase by the Charity was \$9 million in debt. The price needed by the Wren Dale owners to avoid a loss on their investment (and in fact make some profit) was \$12 million. The Wren Dale owners requested \$15 million for the course; the Charity's trustees/officers countered at \$10 million, and it was agreed to "split the difference at \$12 million. Apart from the appraisal (\$4 million as a golf course and \$6 million as a housing development), there was no financial analysis done by the trustees and its officers to support the \$12 million price, and it was stated by the Charity's trustee/officer that the Charity wanted to continue Wren Dale as a golf course and not let it go fallow as buffer land. The putative rationale for purchasing Wren Dale was to serve as buffer land for the School's North Campus. Continuing to run the golf course next to student homes ran the risk of individuals playing golf easy access to the student homes, of golf balls being hit into student homes, and since alcohol is served at the club house built for \$ 5 million after Wren Dale was purchased, there is the risk of inebriated golfers or individuals on land abutting student homes. Finally, the Charity retains direct full ownership of the golf course and receives no rent but only a token amount from the management fee paid

by the Charity's 100% owned-subsiary running the golf course. The golf course is part of the subsidiary's "Golf Collection" and marketed to any and all from a wide geographic area – also not the best for student safety), and the subsidiary does not make a profit from the total Wren Dale operation (it makes a profit only on food and drinks). This is purely operating income an expenses and does not even take into account the need for the Charity to have a return on invested capital of \$17 million in purchasing Wren Dale.

c. upon information and belief, the receipt of benefits from the Charity by certain trustees for which no adequate consideration was given and which were not part of the compensation plan for trustees, including, but not limited to:

(i) the free passes given to trustees noted *supra* and free rounds of golf at Wren Dale Golf Course (an asset directly owned by Charity) and at other golf courses owned and operated by a 100% wholly-owned subsidiary of the School Trust²;

² § 7772 of PUTA, 20 Pa. C. S. § 7772 provides: "If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or business enterprise in the best interests of the beneficiaries.") In this case the beneficiary is Milton Hershey School and School Trust.

(2) the staying by these trustees and spouses at Hotel Hershey in luxury accommodations (believed to be \$500 per night) and free amenities (e.g., frequent use of the luxury spa at the Hotel) at the times (usually two nights, in some cases, more) of regular Trust Board and School Board meetings (which lasted one and one-half days) and at the times of Special Meetings. Staying two nights at the Hotel Hershey in “cottages” at Board meeting times is the case even for trustees living within relatively short driving distances of High Point Mansion and Founders Hall in Hershey, PA where almost all the Charity’s Boards’ meetings take place.

Petitioner Reese is and was the only trustee who has not stayed at Hotel Hershey or received the amenities therefrom during Board meeting times.

(3) the provision to trustees and spouses of limousine services (one even to take a trustee to Maine for a vacation) and first-class air travel in unexceptional circumstances.

d. upon information and belief, the decision in 2004 (**before Petitioner Reese was on the Board**) by a trustee and officer, and ratified by the Chairman of the Audit Committee in 2006, to have the Hershey Trust’s for-profit business allow Individual Retirement Accounts (IRAs) in its Common Funds (the Charity had monies invested in the Common

Funds as well). This action financially and personally benefited the trustee/officer materially in his compensation. The trustee/officer was previously advised by counsel in 1999 this was not legally permissible, and the trustee/officer and the Audit Committee Chairman were advised at the time that allowing IRAs into the Common Trust Funds involved the sale of unregistered securities (the CTF/IRA Issue”) was counter to the strong policy and legal position of the U.S. Securities and Exchange Commission (the “SEC”). In three written reports by the Pennsylvania Banking Department, the Banking Department questioned the CTF/IRA issue taken and advised the Trust Board the SEC disapproved such action. In a separate business review undertaken in 2008, the CTF/IRA Issue with the possibility of rescission rights was discovered, a complete legal review undertaken. As a result of the review, the Hershey Trust turned itself into the SEC. As part of an understanding reached with the SEC, remedial action was taken -- the CTFs were closed in mid-2009 – and numerous other actions were taken to achieve legal compliance. Remediating the CTF/IRA Issue and other compliance issues has cost at least \$11 million of moneys that are indirectly owned by the Charity. The Hershey Trust’s future has been put at risk and at least \$11 million spent because of a decision that personally financially benefited a trustee.

e. upon information and belief, the use of Mr. Hershey's High Point Mansion, an asset of the Charity, by a trustee to host a major state political party fundraising event, which was catered for for-free by the Charity's 100% owned subsidiary. Not only did the political party not pay for the use of Mr. Hershey's home as a fundraiser, but submitted an *invoice* for \$15,000 to the Charity with the notation "per [the trustee's] request, please find an invoice for the fundraiser hosted by [the trustee] on behalf of the [political party] State Committee on [date] at High Point Mansion". Instead of the political party or an individual paying for use of the Charity's facility, the political party invoiced the Charity, and this invoice was paid to the state political party by the 100% owned-sub subsidiary (or its political action fund at the direction of the subsidiary's top management, which depleted the fund).

f. upon information and belief, the direction by certain trustees to the 100% owned subsidiary to invest up to \$70 million to upgrade Hotel Hershey so the trustees could enjoy their stays and experiences there. The \$70 million investment was opposed by financial management of the 100% owned subsidiary because the investment would never have a pay-back to justify it. Even with the huge investment, Hotel Hershey loses money. In fact, the 100% owned subsidiary as a whole has a net loss, did

not pay any dividends to the Charity, its sole shareowner, for several years and even when it did pay a “token” \$2 million dividend to the Charity in 2010, it had to borrow the money to pay the dividend.

Increasing its borrowings to pay a “dividend” when the company is losing money, i.e., its “net income” is negative, is not in the best interest of its owner, the Charity. As noted above, § 7772 of PUTA, 20 Pa. C. S. § 7772, provides: “If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or business enterprise in the best interests of the beneficiaries.”) In this case the beneficiary is Milton Hershey School and School Trust.

h. upon information and belief, the compensation of trustees was set by the trustees themselves in 2006 (**before Petitioner was on the Boards**), and was based on a Towers Perin study that used comparables that are inapplicable and not relevant to the point of raising questions. Following is the history of the compensation of Trust Board members:

1909 - 1940: \$ 0
1941 - 1984: under \$1,000 and up to 2,000
1985 - 1990: \$ 12,500
1990 - 1993: \$ 20,000
1993 - 1996: \$ 30,000
1997- 2002: \$ 35,000
2003: \$ 49,000
2004: \$ 65,000
2005: \$ 85,000
2006- 2010: \$ 100,000 to 130,000

Compensation since 2002 has nearly tripled. The average hours worked per week by Board members as reported in the most recent Form 990 filed with the Internal Revenue Service is approximately 5 (excluding the Petitioner, whose are 55). Under rules of the Internal Revenue Service, compensation paid above services rendered is considered “private inurement” or “excess benefits”, which would correlate to the principles of self-dealing under Pennsylvania law, i.e., receiving a personal benefit well in excess of the consideration rendered (in this case, the work done). The reasonableness of compensation is determined at the time it is set (e.g., 2006) and not by any subsequent reviews.

i. upon information and belief, the payment by the Charity directly or through wholly-owned affiliates of the Charity to a government relations consulting company, one of whose principals is the son-in-law of a trustee. These payments average \$100,000 per year over several years, and there is not substantial evidence that equal consideration was received by the Charity and

its affiliates. These payments for many years were not included in the Form 990. The company involved and at least one of its principals (**not the trustee's son-in-law**) has been indicted by the Pennsylvania Attorney-General's Office. The Company and individual involved have denied and are contesting the Attorney-General's charges.

WHEREFORE, Petitioners respectfully request this honorable Court to take the appropriate actions and make the appropriate orders to redress the breaches of trust involving the Duty of Loyalty as set out above.

PETITION – PART B OTHER DUTIES: Upon information and belief:

6. Each of the above paragraphs 1 through 5 is hereby incorporated and restated in this paragraph 6.

7. The actions, decisions and activities enumerated in paragraphs numbered “3” through “5” also constitute breaches of Trust Involving the Duty of Exercise of Prudence and Due Care, the Duty of Impartiality,

the Duty to Administer, the Duty to Use Due Care in Investment Decisions, and the Duty to Inform under the Pennsylvania Uniform Trust Act (“PUTA”), the Pennsylvania Probate, Estates and Fiduciaries (“PEF”) Code and the common law of trusts in Pennsylvania.

WHEREFORE, Petitioners respectfully request this honorable Court to take the appropriate actions and make the appropriate orders to redress the breaches of trust involving the duty of care, the duty to inform as set out above and any other relevant duties.

PETITION – PART C DUTY UNDER § 7203(c) OF THE PEF

CODE, 20 P. C. S. § 7203(c): Upon information and belief:

8. Each of the above paragraphs 1 through 5 is hereby incorporated and restated in this paragraph 8.

9. § 7203(c)(6) of the PEF Code states: “In making investment and management decisions, a fiduciary **shall** consider, among other things, to the extent relevant to the decision or action:

(6) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries, including, **in the case of a charitable trust, the special relationship of the asset and its economic impact as a principal business enterprise on the community in which the beneficiary of the trust is located and the special value of the integration of the beneficiary's activities with the community where that asset is located; ...** “ [Emphasis Added]

10. Three of the trustees are on the Board of Directors of a controlled company, The Hershey Company, located in Derry Township. Being aware of this provision of Pennsylvania law that was adopted to apply to the Hershey Trust, these trustees took no action to oppose, and, in fact, supported the closing of the Main Hershey Chocolate Plant built by Milton Hershey, and other manufacturing and supply chain actions, resulting in the loss of 3,000 jobs in Derry Township, Pennsylvania and the consequent “economic impact”. These actions were not necessitated by the performance of the manufacturing facilities in Derry Township. The practical effect of these actions is, to a substantial degree, to

undermine this Court's decision in 2002 enjoining the sale by the Trust of the then Hershey Foods Corporation.

WHEREFORE, Petitioners respectfully request this honorable Court to take the appropriate actions and make the appropriate orders to redress the breach of trust involving the duty under § 7203(c)(6) of the PEF Code.

Respectfully submitted,

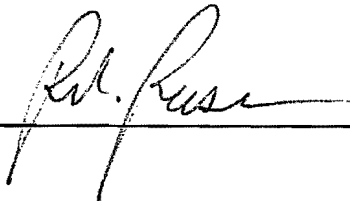
*R.M. Fess, Petitioner and Trustee, Name of
Milton Hershey School and School Trust
February 8, 2011*

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under Deed of Milton S.
Hershey and Catherine S. : Dauphin County, Pennsylvania
Hershey
Dated November 15, 1909 : Orphans' Court Division No. 712,
Year of 1963

Verification of Petitioner

The undersigned, as representative of the Milton Hershey School and School Trust, and for himself, verifies that any knowingly false statements made herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

February 8, 2010



PRELIMINARY DECREE AWARDING CITATION

AND NOW, this ____ day of _____, 2011, upon consideration of the Petition of Milton Hershey School and School Trust and its Representative, it is hereby ORDERED, ADJUDGED, and DECREED that a Citation is awarded and directed to the trustees designated by this Court, to appear and show cause:

a. Why they should not be assessed monetary damages surcharged AND PAYABLE ONLY TO MILTON HERSHEY SCHOOL AND SCHOOL TRUST for violations of the Duty of Loyalty, Duty of Exercise of Prudence and Due Care, the Duty of Impartiality, the Duty to Administer, the Duty to Use Due Care in Investment Decisions, and the Duty to Inform under the Pennsylvania Uniform Trust Act (“PUTA”), the Pennsylvania Probate, Estates and Fiduciaries (“PEF”) Code and the common law of trusts in Pennsylvania, of at least \$22 million (\$11 million for the excess of the purchase price and price for improvements of Wren Golf Course, and \$11 million for the cost of

remediating the Common Trust Fund/IRA Issue) plus amounts for “excess benefits”, and private inurnment; and

b. the removal of said trustees as deemed appropriate by the Court; and

c. the entry by this Court of an order to the Milton Hershey School and School Trust to take the actions necessary to comply with § 7203(c)(6) of the PEF Code.

This Citation shall be returnable on the ___ day of _____, 2011.

BY THE COURT:

J.