

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY, FLORIDA

P&S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership; S&P ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership; Philip von Kahle as
Conservator of P&S ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership, and S&P
ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership,

Case No. 12-34121 (07)
Complex Litigation Unit

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE
TRUST, a charitable trust, et al.,

Defendants.

**DEFENDANT, CONGREGATION OF THE HOLY GHOST - WESTERN PROVINCE'S
MOTION FOR SUMMARY JUDGMENT AS TO THE PLAINTIFFS' THIRD
AMENDED COMPLAINT AND INCORPORATED MEMORANDUM OF LAW**

Defendant, Congregation of the Holy Ghost - Western Province ("Congregation"), by and through undersigned counsel, and pursuant to Fla. R. Civ. P. 1.510, hereby moves this Court for an order of summary judgment against the Plaintiffs and to grant dismissal of the Plaintiffs' claims as being barred by the relevant statutes of limitation and by the Congregation's status as dissociated from the partnership. In support of this Motion, the Congregation states as follows:¹

¹ The Congregation has not filed a separate statement of facts due to the multitude of parties who will be filing Motions for Summary Judgment. The Statement of Facts are incorporated in the Motion so that they do not get separated from the Motion.

INTRODUCTION

On or about June 27, 2013, the Plaintiffs filed a multi-count Complaint in this Court against multiple parties, including the Congregation. On or about October 29, 2013, the Plaintiffs filed an Amended Complaint. Later, on or about January 17, 2014, the Plaintiffs filed a motion for leave to file a Second Amended Complaint. On February 13, 2014, less than one month following the filing of the Second Amended Complaint, the Plaintiffs moved for leave to file a Third Amended Complaint, which was granted by the Court.

In the Third Amended Complaint, the Plaintiffs assert that the Congregation received improper distributions that were not made from the Partnerships' profits but were made from the principal contributions of other Partners. As such, the Plaintiffs allege that the Congregation "reaped profits" from its investment in the Partnership in direct contravention of the plain terms of the Partnership Agreement. These claims relating to the Partnership Agreement are barred as the Plaintiffs failed to bring a lawsuit within the time required under the applicable statutes of limitations for each count. Moreover, Plaintiffs' claims relating to the settlement of partners' accounts and the breach of the fiduciary duty of loyalty pursuant to Fla. Stat. §§ 620.8807 and 620.8404 are barred as the Congregation dissociated from the partnership long before the commencement of the winding down of the Partnership's business and the corresponding demand for settlement and contribution.

The Third Amended Complaint contains seven counts against the Congregation: Count I for Breach of Statutory Duty (Negligence), Count II for Breach of Fla. Stat. § 620.8807, Count III for Breach of Contract, Count IV for Unjust Enrichment, Count V for Money Had and Received, Count VI for Avoidance of Fraudulent Transfers Pursuant to Section 726.105(1)(a) of the Florida Statutes, and Count VII for Breach of Fiduciary Duty. For the reasons stated below, there exist no issues of material fact as the claims were not brought within the time required by the applicable statutes of

limitations and because the Congregation dissociated from the Partnership long before the Plaintiffs' winding down of the Partnership and corresponding demand for contribution.

FACTUAL BACKGROUND

Plaintiffs allege that P&S Associates, General Partnership and S&P Associates, General Partnership (collectively the "Partnerships") were formed for the purpose of engaging in the business of investing. (Third Amended Compl., ¶ 36). Each of the Partnerships is governed by a corresponding Partnership Agreement. (Third Amended Compl., ¶ 35). As a partner, the Congregation is alleged to have invested money in one of the Partnerships. (Third Amended Compl., ¶ 37). Specifically, the Congregation invested \$200,000 into the P&S Associates, General Partnership. (Third Amended Compl., ¶ 29). In return, it is alleged that the Congregation received \$382,532.35 in Partnership distributions. (Third Amended Compl., ¶ 29). Plaintiffs seek recovery of the difference between the original investment and the distributions received.

Pursuant to the governing Partnership Agreements, the profits and losses attributable to the Partnerships were to be allocated in equal proportion among the Partners in accordance with each Partner's capital contribution relative to the aggregate total capital contribution of all of the Partners. (Third Amended Compl., ¶ 40). Partnership distributions, if any, were to be made at least once per year. (Third Amended Compl., ¶ 41). The Partnerships' investments were to be overseen by the Managing General Partners of the Partnerships, Michael D. Sullivan and Greg Powell, the "S" and "P" of the partnerships. (Third Amended Compl., ¶ 39). On August 29, 2012, an Agreed Order² was entered whereby the Plaintiff, Margaret Smith, was named sole Managing General Partner. (Third Amended Compl., ¶ 46). The Plaintiffs allege that the former Managing General Partners breached

² The Congregation did not consent to the Order. The Congregation was not a party to the litigation that resulted in the Agreed Order.

their fiduciary duties of loyalty and care to the Partners and the Partnerships by making improper distributions to the Congregation, among others, that were made from the principal contributions of other Partners rather than from the Partnerships' profits. (Third Amended Compl., ¶ 48). There is no allegation in the Third Amended Complaint that the Congregation had knowledge of the wrongfulness of the distributions that it allegedly received following dissociation from the Partnership. The Plaintiffs are now attempting to hold the Congregation liable for the alleged intentional wrongdoings of the former Managing General Partners.

On November 13, 2012, sixteen years after the Congregation last contributed any amount to the Partnership, and nearly ten years after the last distribution was received, the Congregation received a demand letter from the new Managing Partner of the Partnerships, Margaret Smith. (Third Amended Compl., ¶ 50). The demand letter informed each Partner who received an improper distribution of that fact and requested a return of those funds within 10 days of receipt of the letter. (Third Amended Compl., ¶ 51). Accordingly, the Congregation was informed that it had received alleged improper distributions in an amount totaling \$182,532.35. Attached to this demand letter was a General Partner Statement detailing the funds contributed and disbursed from the Congregation's capital account from December 1992 through December 2008. Although the statement details the account through December 2008, the statement definitively shows that the last distribution was received by the Congregation on January 31, 2003. A copy of the demand letter and General Partner Statement is attached hereto as Exhibit "A." Plaintiffs have also admitted that they received a letter from the Congregation "expressing his desire to 'terminate the Congregation of the Holy Ghost account...'" (Exhibit "B" ¶ 21).

On or about January 17, 2013, Philip J. Von Kahle was appointed as Conservator of the Partnerships. (Third Amended Compl., ¶ 57). The Conservator was ordered to take possession of all

Partnership property and was provided with certain powers in order to do so. (Third Amended Compl., ¶ 59-60). Among these powers, the Conservator was granted authority to wind down the affairs of the Partnerships and to distribute the assets of the Partnerships. (Third Amended Compl., ¶ 61).

In an attempt to avoid the statute of limitations for its claims, the Plaintiffs allege that under Fla. Stat. § 620.8807, the Congregation is required to return the money that was received in excess of its capital contribution, as a liability to be paid to the Partnerships. (Third Amended Compl., ¶ 67). The Plaintiffs allege that because the Partnerships are now in the process of winding down, the Conservator sent out demand letters to certain net winners. (Third Amended Compl., ¶ 68). On October 18, 2013, the Congregation received a demand letter that requested that it return to the Conservator all distributions that were received in excess of contributions. (Third Amended Compl., ¶ 68).

However, the Congregation does not have a duty to contribute to the winding down of a Partnership from which it dissociated over a decade prior. The Congregation dissociated from the P&S Associates, General Partnership in 2002. Specifically, on June 30, 2002, Father Philip D. Evanstock, as Provincial Treasurer of the Congregation, sent a letter to the Partnership specifically requesting that the Partnership liquidate its assets and terminate its capital account. A copy of the letter is attached hereto as Exhibit “C.” In the letter to the Partnership, the Congregation requested the following:

“At this time, I would like to **liquidate our assets** with your firm. I appreciate your excellent work in dealing with our funds. However, I am modifying our objectives and adjusting our finances in a new direction. Therefore, would you please take all steps necessary to **terminate the Congregation of the Holy Ghost account** and transfer the funds to us by check to the Provincialate Office located at 1700 West Alabama Street, Houston, Texas 77098-2808.” (Emphasis added)

In accordance with the Congregation's request, the Partnership subsequently closed out the capital account and made three final distributions to the Congregation. The last of these distributions was received by the Congregation in January 2003. The Congregation also received its last Schedule K-1 from the Partnership in 2003. A copy of the Congregation's Final Schedule K-1 is attached hereto as Exhibit "D." On the last Schedule K-1, the Partnership very clearly checked the box in Line I indicating that this was the Congregation's **Final** K-1. Further, the K-1 indicated that the Congregation's capital account balance with the Partnership was \$0. Thus, the Partnership itself expressly acknowledged the Congregation's dissociation in 2002-2003. At this time, the Congregation was no longer a partner of the P&S Associates, General Partnership. It had dissociated.

LEGAL STANDARD

Summary judgment is a mechanism used to expedite litigation and lower expense to the parties. *Page v. Staley*, 226 So. 2d 129, 130 (Fla. 4th DCA 1969). When the basic facts of the case are clear and undisputed, and there is only a question of law to be determined, the court shall grant a Motion for Summary Judgment. *Duprey v. United States Automobile Association*, 254 So. 2d 57, 58 (Fla. 1st DCA 1971).

"Entry of summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials as would be admissible in evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Ginsberg v. Northwest Medical Center, Inc.*, 14 So. 3d 1250 (Fla. 4th DCA 2009) (quoting Fla. R. Civ. P. 1.510(c)). "The moving party has the burden to show the absence of any material issue of fact and the court must draw every inference in favor of the non-moving party." *Hollywood Towers Condo. v. Hampton*, 993 So. 2d 174, 176 (Fla. 4th DCA 2008).

Once the moving party has met its burden, the non-moving party must show evidence that would reveal a factual issue. *Page*, 226 So. 2d at 131. Summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law. *Shaffran v. Holness*, 93 So. 2d 94 (Fla. 1957). Although the moving party faces a heavy burden, when determination of a lawsuit is dependent upon written instruments of the parties, the question at issue is generally one of law and can be determined by the entry of summary judgment by the Court. *Kochan v. American Fire and Casualty Co.*, 200 So. 2d 213, 220 (Fla. 3d DCA 1967).

The Congregation now moves for the entry of summary judgment on all of the claims relating to the alleged improper distributions received by the Congregation, pursuant to Fla. R. Civ. P. 1.510, as all of Plaintiffs' claims are time-barred. Additionally, all claims relating to the winding down of the Partnerships are barred as the Congregation dissociated from the Partnership in 2002 and was not a partner at the time any demand was made by the Managing General Partner. There is no dispute that the Congregation received its last distribution in January 2003. Also not in dispute is the fact that the Congregation unequivocally terminated its interest and dissociated from the Partnership in 2002. Having demonstrated that there are no material issues of fact in dispute, the burden shifts to the Plaintiffs. However, the Plaintiffs will be unable to demonstrate the existence of any disputed factual issue. As a result, there are no genuine issues as to any material fact and the Congregation is entitled to a judgment as a matter of law. Based upon the Third Amended Complaint, as well as the Exhibits attached hereto, the Congregation is entitled to the entry of Summary Judgment against the Plaintiffs.

ARGUMENT

I. The Statute of Limitations Bars Plaintiffs' Claims

The Complaint was initially filed on December 10, 2012. However, the Congregation was not properly served until June 27, 2013. Plaintiffs moved for leave to file the Third Amended Complaint on or around February 13, 2014 and leave was granted. The General Partner Statement referenced above demonstrates that the first distribution was received by the Congregation on January 6, 1997. The final distribution was received on January 31, 2003. The Plaintiffs admit that a distribution from the P&S Partnership has not been received by the Congregation since January 31, 2003. (Exhibit "B", ¶ 2) Because the Congregation received the last of the allegedly improper distributions when it dissociated from the Partnership nearly 10 years prior to the filing of the Complaint in this case, all of the Plaintiffs' claims are time-barred as a matter of law.

The Congregation has created a summary chart of all the claims, limitations period and expiration dates below:

Claim	Limitations period (years)	Expiration
Count I - Breach of Statutory Duty (Negligence)	4	January 2007
Count II - Breach of Fla. Stat. § 620.8807	4	January 2007
Count III - Breach of Contract	5	January 2008
Count IV - Unjust Enrichment	4	January 2007
Count V - Money Had and Received	4	January 2007
Count VI - Avoidance of Fraudulent Transfers	1 or 4	January 2010 or January 2007
Count VII - Breach of Fiduciary Duty	4	January 2007

a. Count I - Breach of Statutory Duty (Negligence)

Count I is a claim for Breach of the Statutory Duty of Negligence. The Plaintiffs are alleging that the Congregation breached Fla. Stat. § 620.8807 (Titled - “Settlement of accounts and contributions among *partners*.” [emphasis added]) because it failed to contribute to the “winding down” of the Partnerships. The Plaintiffs contend that the Congregation’s capital account with P&S Associates, General Partnership has an excess of charges over credits because it received distributions in excess of contributions. The Plaintiffs allege that this constitutes a debt to the Partnerships. Accordingly, the Plaintiffs argue that the Congregation is under a statutory duty, *as a partner*, to contribute an amount equal to any excess of the charges over the credits in its capital account. The Plaintiffs allege that, by refusing to return the amount equal to the excess of the charges over credits in its capital account, the Congregation breached its duty, *as a partner*, to reconcile its debts owed to the Partnership pursuant to Fla. Stat. § 620.8807.

First, there is no independent statutory right of action pursuant to Fla. Stat. § 620.8807. Moreover, as will be discussed below, Fla. Stat. § 620.8807 only applies to partners, not parties who previously dissociated from the Partnership, and are not partners at the time of winding up, such as the Congregation. Even if there were an independent statutory cause of action created within Fla. Stat. § 620.8807, any such cause of action is barred by the statute of limitations. Count I for breach of the statutory duty of negligence is barred by a four-year statute of limitations. *See* Fla. Stat. § 95.11(3) (providing a four-year limitation period for an action founded on statutory liability). The Congregation dissociated from the Partnership, and was *not a partner*, prior to both the “winding up” of the Partnerships and the Plaintiffs’ October 2013 demand for contribution. Pursuant to the Congregation’s dissociation, it received its last distribution in January 2003. (Exhibit “B” ¶ 4).

Plaintiffs were required to file a claim no later than 2007. This clearly did not occur. Therefore, the claim for breach of statutory duty of Fla. Stat. § 620.8807 is not only time-barred, it flies in the face of the clear language of the statute.

b. Count II - Breach of Fla. Stat. § 620.8807

Count II is another cause of action for Breach of Fla. Stat. § 620.8807. The Plaintiffs allege that the Congregation's capital account has an excess of charges over credits because it received distributions in excess of contributions. The Plaintiffs contend that this constitutes a debt owed by the Congregation to the Partnership. It is argued that since the Partnerships are in the process of winding down, the Congregation is obligated, *as a partner* and pursuant to Fla. Stat. § 620.8807, to reconcile their debt owed to the Partnership and must contribute an amount equal to any excess of the charges over credits in its capital account. By refusing to return the amount equal to any excess of the charges over the credits in its capital account, the Plaintiffs allege that the Congregation breached its obligations, *as a partner*, under Fla. Stat. § 620.8807.

First, there is no independent statutory right of action pursuant to Fla. Stat. § 620.8807. Moreover, as will be discussed below, Fla. Stat. § 620.8807 does not apply to parties who dissociated from the Partnership, such as the Congregation. Even if there were an independent statutory cause of action created within Fla. Stat. § 620.8807, any such cause of action is barred by the statute of limitations. Count II for Breach of Fla. Stat. § 620.8807 is barred by a four-year statute of limitations. *See* Fla. Stat. § 95.11(3) (providing a four-year limitation period for an action founded on statutory liability). As will be discussed more fully below, the Congregation dissociated from the Partnership in 2002 and was not a partner when the demand was made in 2012. Thus, when the Congregation dissociated from the Partnership, it terminated its capital account. The Plaintiffs filed suit nearly ten

years after the last distribution was received by the Congregation. Any claim with respect to the Congregation's duty upon dissociation from the Partnership must have been initiated within four years of its dissociation. Even if Fla. Stat. § 620.8807 did provide an independent cause of action for the settlement of a Partner's account, and even if Fla. Stat. § 620.8807 did apply to former partners such as the Congregation (which it clearly does not), the Plaintiffs were required to file a claim no later than 2007.

c. Count III - Breach of Contract

Count III is a claim for Breach of Contract. The Plaintiffs contend that the Congregation breached the Partnership Agreement because it received and retained distributions based upon the capital contributions of other Partners rather than the Partnerships' profits. Thus, the Plaintiffs necessarily argue that the act of receiving the distributions resulted in the Congregation's breach of the Partnership Agreement. According to the Plaintiffs, the first breach occurred in 1997 when the Congregation received its first distribution. That is, the Congregation allegedly breached the Partnership Agreement more than 16 years ago. The Congregation last received a distribution from the Partnership in 2003, more than 10 years ago.

Count III for Breach of Contract is barred by a five-year statute of limitations. *See* Fla. Stat. § 95.11(2)(b) (providing a five-year limitation period for a legal or equitable action on a contract, obligation, or liability founded on a written instrument). Therefore, the claim for breach of contract was required to be filed within five years of the breach in order for this claim to be viable. As noted above, the last distribution was received by the Congregation in January 2003. The alleged breach of contract occurred, and the Plaintiffs' cause of action accrued, no later than 2003. The deadline for filing a claim with the Court was, at the latest, January 2008.

d. Count IV - Unjust Enrichment

Count IV is a claim for Unjust Enrichment. Plaintiffs allege that the Congregation voluntarily accepted these allegedly improper distributions and that it would be inequitable and unjust for the Congregation to retain them. Thus, the Plaintiffs contend that the Partnership conferred a benefit on the Congregation by making distributions from the capital contributions of other Partners.

Plaintiffs' claim for Unjust Enrichment is barred by a four-year statute of limitations. *Swafford v. Schweitzer*, 906 So. 2d 1194, 1195 (Fla. 4th DCA 2005); *see also*, Fla. Stat. § 95.11(3)(k). An unjust enrichment claim accrues at the time the defendant receives the improper enrichment. Because the Congregation received the last of its allegedly improper distributions more than 10 years ago, in 2003, that is the latest that the Partnership could have conferred a benefit on the Congregation. Accordingly, Plaintiffs' claim for unjust enrichment was required to be filed no later than January 2007. The claim was filed well after the expiration of the four year limitations period and, as a result, the claim for unjust enrichment is time-barred.

e. Count V - Money Had and Received

Count V is a claim for Money Had and Received. Plaintiffs allege that the Partnership conferred a benefit on the Congregation by making distributions from the capital contributions of other Partners rather than from the Partnership's profits. Plaintiffs allege that the Congregation voluntarily accepted those distributions and that it would be inequitable and unjust to retain the improper distributions.

Plaintiffs' claim for Money Had and Received is barred by a four-year statute of limitations. *See* Fla. Stat. § 95.11(3). Because the Congregation received the last of its allegedly improper distributions more than 10 years ago, in 2003, that is the latest that the Partnership could have

conferred a benefit on the Congregation. Accordingly, Plaintiffs' claim for money had and received was required to be filed no later than January 2007. The claim was filed well after the expiration of the four year limitations period and, as a result, the claim for money had and received is time-barred.

f. Count VI - Avoidance of Fraudulent Transfers

Count VI is a claim for Avoidance of Fraudulent Transfers Pursuant to Section 726.105(1)(a) of the Florida Statutes. The Plaintiffs allege that the distributions received by the Congregation are transfers that could have been applicable to the payment of the distributions and obligations due to the remaining Partners under the Partnership Agreements. It is alleged that the Partnership did not receive reasonably equivalent value in exchange for the distributions made to the Congregation. The Plaintiffs contend that these transfers were made to the Congregation, a religious institution, with the actual intent to hinder, delay or defraud certain of the Partners, who were creditors of the Partnership, and that the transfers may be avoided under Fla. Stat. § 726.105(1)(a). The Third Amended Complaint contains no allegations of fraud on the part of the Congregation. Rather, the Plaintiffs are attempting to hold the Congregation liable for the alleged intentional wrongdoings of the Partnerships' former Managing General Partners.

Section 726.105(1)(a), Fla. Stat., states that a transfer made by a debtor is fraudulent if the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor of the debtor. The applicable limitations period for fraudulent transfer claims is contained in Fla. Stat. § 726.110(1). A cause of action with respect to a fraudulent transfer or obligation under Fla. Stat. § 726.105(1)(a) is extinguished unless action is brought within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant. *See* Fla. Stat. § 726.110(1).

Since the last of the allegedly fraudulent transfers to the Congregation occurred in 2003, any action with respect to this transfer must have been brought by 2007. This clearly did not occur. Even with the one year savings clause the claim is time-barred. The one year savings clause provides that if suit is brought after the 4 year limitation period, it must still be brought within 1 year after the transfer or obligation was or could reasonably have been discovered. As described in the Third Amended Complaint, the Partnerships ultimately lost money due to the defalcation of Bernard Madoff and the fraud committed by Mr. Madoff and others. (Third Amended Compl., ¶ 38). This disclosure was made in December 2008. Upon hearing news of this fraud, the Partnerships, as well as the Partners of those Partnerships, had reasonable notice that the Partnerships' investments were potentially impacted as P&S Associates invested most of its money with Madoff. Further, after news of the Madoff scheme became public, the Partnerships organized and held a meeting of the Partners in January 2009 whereby the Partners were informed of a number of issues surrounding this fraud. (See affidavit of Chad Pugatch attached as Exhibit "E.") Thus, even under the 1 year savings clause, the claim to avoid a fraudulent transfer under Fla. Stat. § 726.105(1)(a), must have been brought by January 2010. This clearly did not occur.

Moreover, the other Partners, for whom this action is actually being brought, could have reasonably discovered the transfers at any time during the previous 16 years from when the Congregation received its first distribution. Even if the Plaintiffs did not review the books and records of the Partnerships until a later date, it is unreasonable that a claim could be made for allegedly improper distributions made more than 16 years. Section 7.03 of the Partnership Agreement provides that each Partner shall have access to, and the right to audit and/or review, the books and records of the Partnership at all reasonable times during business hours. The other

Partners of P&S Associates could have reasonably discovered the transfers to each Partner at any time because the Partnership Agreement allows them to do so. At any time, a Partner could have requested to inspect the books and records. Upon doing so, the Partner would have discovered the distributions made by the Partnership. As a result, Plaintiffs' claim for the avoidance of the fraudulent transfers is barred by the applicable limitations period.

g. Count VII - Breach of Fiduciary Duty

Count VII is a claim for Breach of Fiduciary Duty. The Plaintiffs allege that the Congregation owes the Partnership a fiduciary duty of loyalty pursuant to Fla. Stat. § 620.8404. Specifically, the Plaintiffs allege that this fiduciary duty of loyalty requires the Congregation to account to the Partnership and hold as trustee for the Partnership any property, profit or benefit derived in the conduct and winding down of the Partnership's business. The Plaintiffs further contend that the Congregation's refusal to remit payment and to contribute to the winding up of the Partnership constitutes a breach of its fiduciary duty of loyalty.

Count VII for Breach of Fiduciary Duty is barred by a four-year statute of limitations. *See* Fla. Stat. § 95.11(3) (providing a four-year limitation period for an action founded on statutory liability). As will be discussed more fully below, the Congregation dissociated from the partnership no later than 2003. When the Congregation dissociated from the Partnership, it terminated its capital account. Thus, the Congregation does not owe any fiduciary duty as a former partner to account to the Partnership in the winding down of the Partnership's business and it has not breached any fiduciary duty to account to the Partnership. The Plaintiffs filed suit nearly ten years after the last distribution was received by the Congregation. Any claim with respect to the Congregation's duty to account to the Partnership upon dissociation must have been filed within four years of its dissociation.

Therefore, the Plaintiffs were required to bring suit no later than 2007. This clearly did not occur. As a result, Count VII for breach of fiduciary duty is barred by the applicable statute of limitations.

II. The Congregation of the Holy Ghost dissociated from the Partnership in 2002

Plaintiffs' claims are barred because the Congregation dissociated from the P&S Associates, General Partnership. As noted above, the Congregation has not contributed to the Partnership or received a distribution from the Partnership since January 2003. Composite Exhibit A to the Third Amended Complaint demonstrates that the Congregation withdrew and dissociated from the Partnership more than 10 years ago in accordance with Fla. Stat. § 620.8701.

a. Dissociation by withdrawal

The Congregation withdrew from the Partnership in June 2002 when the then Provincial Treasurer, Father Philip D. Evanstock, definitively requested that the Partnership liquidate and terminate the Congregation's Partnership account. (Exhibit "B" ¶ 21) There can be no dispute that the Congregation wished to close its capital account and withdraw from the Partnership. As demonstrated by the then Provincial Treasurer's 2002 letter to the Partnership, the Congregation advised the Partnership that it wished to liquidate the Partnership assets due to the Congregation's decision to modify its objectives and adjust its finances in a new direction. The Congregation further requested that the Partnership terminate the Congregation of the Holy Ghost's capital account. This request to liquidate the assets and terminate the account constituted the Congregation's withdrawal from the Partnership. In following the Congregation's instructions to dissociate from the Partnership, the Partnership closed out its capital account and made the final distribution to the Congregation in January 2003. The distributions were received in good faith upon the Congregation's dissociation from the Partnership, which occurred roughly ten years prior to the commencement of this lawsuit.

It is clear that the Congregation withdrew from the Partnership when it requested a liquidation of its capital account and subsequently received its last distribution in January 2003. Thus, the Congregation successfully dissociated from the Partnership. The Amended and Restated Partnership Agreement, which is attached to the Third Amended Complaint as Exhibit C, specifically allows for such a withdrawal in Section 9.03. Section 9.03 provides, in pertinent part: “Any Partner may withdraw from the Partnership at any given time; provided, however, that the withdrawing Partner shall give at least thirty (30) days written notice.” The Congregation’s June 2002 written correspondence directing the Partnership to liquidate and terminate its capital account was sufficient to give the Partnership notice of the Congregation’s withdrawal. Roughly six months after receiving the letter, the Partnership closed the Congregation’s account and provided one last distribution.

Plaintiffs contend that, pursuant to Section 620.8404, Florida Statutes, the Congregation owes the Partnership a fiduciary duty of loyalty. Contrary to Florida law, however, the Plaintiffs are attempting to indefinitely extend a partner’s fiduciary duty of loyalty onto former partners. Upon a partner’s dissociation from a partnership, the partner’s duty of loyalty under Fla. Stat. § 620.8404(2)(c) terminates. Fla. Stat. § 620.8603(2)(a). Further, a partner’s duty of loyalty to account to the partnership under Fla. Stat. § 620.8404(2)(a) and (b) continues only with regard to matters arising and events occurring prior to the partner’s dissociation, unless the partner participates in winding up the partnership’s business pursuant to Fla. Stat. § 620.8803; Fla. Stat. § 620.8603(2)(c). Since the Congregation dissociated from the Partnership in 2002, it had no reason to participate in the winding down of the Partnership’s business pursuant to Fla. Stat. § 620.8803. As such, the Congregation’s fiduciary duty of loyalty to account to the Partnership and to hold as trustee for the Partnership any property, profit, or benefit derived in the conduct and winding down

of the partnership business was terminated upon the Congregation's dissociation. Thus, Count VII for Breach of Fiduciary Duty must fail as a matter of law as the Congregation's duty of loyalty to account to the Partnership ended in or around June 2002.

Fla. Stat. § 620.8601 details the events which cause a partner's dissociation from a partnership. Under Florida law, a partner is dissociated from a partnership upon the partnership's having **notice of the partner's express will to immediately withdraw as a partner** or withdraw on a later date specified by the partner. Fla. Stat. § 620.8601(1). As noted above, the Congregation, in no uncertain terms, notified the Partnership in June 2002 that it wished to liquidate its partnership assets and terminate its capital account. Stated another way, in requesting that its capital account be terminated, the Congregation expressed its desire to withdraw from the Partnership. Thus, in accordance with Fla. Stat. § 620.8601(1) the Congregation dissociated from the Partnership upon the Partnership's receipt of the June 2002 letter requesting termination. That the Partnership subsequently made the final distribution to the Congregation six months later, in January 2003, and provided it with a Final Schedule K-1 for 2003, further demonstrates the Partnership's acknowledgment of the Congregation's dissociation.

Accordingly, as a matter of law, once the Congregation terminated its capital account and withdrew from the Partnership, it was no longer a Partner in the Partnership and it no longer held any interest in the Partnership. Thus, contrary to the allegations in the Plaintiffs' Third Amended Complaint, after the Congregation dissociated from the Partnership it no longer owed any duty to reconcile its debts or to account to the Partnership and to hold as trustee any property, profit, or benefit derived in the conduct and winding up of the partnership business. This is the case because the Congregation's dissociation did not cause dissolution of the Partnership. The duty to account to

the Partnership in the winding down of the Partnership's business, as alleged by the Plaintiffs, applies only if a dissociation results in dissolution of the Partnership.

Count II of the Third Amended Complaint contends that the Congregation breached Fla. Stat. § 620.8807 in not contributing to the winding down of the Partnership. However, Fla. Stat. § 620.8807 does not apply to the Congregation. Rather, Fla. Stat. § 620.8807 only applies to Partners who dissociate from the Partnership when such dissociation causes dissolution and winding up of the Partnership assets. Fla. Stat. § 620.8603(1). The statute provides that "if a partner's dissociation results in a dissolution and winding up of the partnership business, ss. 620.8801-620.8807 apply; otherwise, ss. 620.8701-620.8705 apply." Fla. Stat. § 620.8603(1). The Plaintiffs have alleged that the Partnerships are currently in the process of winding down. Thus, it is clear that the dissociation of the Congregation in 2002 did not result in the dissolution and winding down of the Partnership business at that time. Moreover, as is discussed more fully below, the Congregation's dissociation from the Partnership was not wrongful. Accordingly, the Partnership proceeded to liquidate and close out the Congregation's capital account. The Congregation is a former partner as it withdrew and dissociated from the Partnership in 2002. Therefore, the Congregation's duty to settle its account upon the winding up of the Partnership's business expired when it dissociated from the Partnership without causing dissolution.

b. Dissociation by merger

Further, even if it could be argued that the Congregation did not effectively dissociate from the Partnership in 2002, which is counter to the evidence produced in this case, the Congregation dissociated from the Partnership as a matter of law in 2009 when it merged with another entity. The entity known as the Congregation of the Holy Ghost, Western Province was a partner in the P&S

Associates, General Partnership. The Congregation was a non-profit corporation. This corporate entity, however, no longer exists as it merged with the Congregation of the Holy Spirit under the Protection of the Immaculate Heart of Mary, USA - East. Following the merger, the resulting corporation became the Congregation of the Holy Spirit Province of the United States, a nonprofit corporation organized under the nonprofit law of the Commonwealth of Pennsylvania. A true and correct copy of the Articles of Merger is attached hereto as Exhibit "F." (Also see, Fr. Gaglione tr. p. 16, lines 8-17)³

In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because the partner willfully dissolved or terminated. Fla. Stat. § 620.8602 (2)(b)(4). The Congregation was not an individual, trust, or estate. Rather, the Congregation was a nonprofit corporation. When the Congregation merged with the Congregation of the Holy Spirit under the Protection of the Immaculate Heart of Mary, USA - East, it willfully dissolved. According to the articles of merger, the Congregation was not the surviving corporation. The surviving corporation was the Congregation of the Holy Spirit Province of the United States. Plaintiffs admit that the Congregation of the Holy Spirit Province of the United States is not a partner and has never contributed to nor received distributions from the Partnerships. (Exhibit "B", ¶¶ 18-20)

³ 16:8 A. There is no longer a Holy Ghost Western
16:9 Province, it's only the Congregation of the Holy
16:10 Spirit U.S.A. Province.
16:11 Q. Okay.
16:12 A. Let me explain.
16:13 Q. Yes.
16:14 A. In 2009, there was a merger between the U.S.
16:15 Eastern Province of the Congregation of the Holy
16:16 Spirit and the U.S. Western Province into one
16:17 province, into one province, order.

Under Florida law, when a merger becomes effective, every other corporate party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases. Fla. Stat. § 617.1106(1). The corporate entity known as the Congregation of the Holy Ghost, Western Province was terminated when it willfully merged into another non-profit corporation. As such, the Congregation of the Holy Ghost was expelled or otherwise dissociated from the Partnership upon this merger. Therefore, the Congregation did not breach any duty under Fla. Stat. §§ 620.8807 or 620.8404 because it was no longer a partner in the P&S Associates, General Partnership when the winding up of the Partnership commenced.

Further, the Congregation's dissociation was not wrongful because the Partnership was not a term partnership. A partner's dissociation is wrongful only if, in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking, the partner who is not an individual, trust, or estate, is expelled or otherwise dissociated because the partner willfully dissolved or terminated. Fla. Stat. § 620.8602(2)(b)(4). According to Article 3.1 of the Partnership Agreements, the Partnerships were organized for an indefinite period of time. Specifically, the Partnerships began on or around January 1, 1993, and were to continue until they dissolved as specifically provided for in the Partnership Agreements. Moreover, the Partnerships were created generally for the purpose of investing in different types of securities. They were not created for any one particular undertaking that could be completed. Thus, because the Partnerships were not organized for a definite term or a particular undertaking, the Congregation's termination pursuant to the merger does not render the dissociation wrongful under Fla. Stat. § 620.8602(2)(b)(4).

CONCLUSION

The Congregation is not currently a partner in the P&S Associates, General Partnership. The Congregation unequivocally dissociated from the Partnership in June 2002 when its Provincial Treasurer requested, in no uncertain terms, that the Congregation wished to withdraw from the Partnership and have its account terminated. As such, the Congregation is not obligated to contribute to the Partnership or reconcile any debt owed to the Partnership pursuant to Fla. Stat. § 620.8807. The Partnership acted on this request to terminate and closed out the Congregation's capital account in 2003. Plaintiffs' October 2013 demand letter attempts to avoid the statute of limitations by arguing that the causes of action have only just accrued upon the winding down of the Partnership. However, once dissociated, a former partner has no duty to contribute to the Partnership. The October 2013 demand letter regarding the winding down of the Partnership, therefore, is inconsequential because the Congregation was not a partner at the time of the demand.

The common law claims fail because the applicable limitations periods expired long before the initial Complaint in this matter was filed.

WHEREFORE, the Congregation respectfully moves this Court for an Order granting Summary Judgment on Plaintiffs' Third Amended Complaint as against the Congregation in its entirety and with prejudice and that the Court award the Congregation its costs and such other relief as this Court deems just and proper.

I HEREBY CERTIFY that a true copy of the foregoing was served via the e-filing portal on all registered parties this ____ day of March, 2014.

/s/ Marc S. Dobin
Marc S. Dobin
Florida Bar No. 997803

P&S Associates, General Partnership, et als. v.
Hooker Charitable Trust, et als.
Case No. 12-34121
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Western Province



GLASSRATNER

November 13, 2012

Congregation of the Holy Ghost - Western Providence
1700 West Alabama Street
Houston, TX 77087

Re: **P&S Associates, General Partnership**
Case No.: 12-24051

Dear Sir or Madam:

Please be advised that on August 29, 2012, Michael D. Sullivan resigned and Margaret J. Smith was appointed as Managing General Partner of P&S Associates, General Partnership ("P&S" or the "Partnership"). Pursuant to ¶8.02 of the Amended and Restated Partnership Agreement dated December 1994, "the Managing General Partner [is] authorized and empowered to carry out and implement any and all purposes of the Partnership" including but not limited to (d) "to take any actions and to incur any expense on behalf of the Partnership that may be necessary or advisable in connection with the conduct of the Partnership's affairs".

Review of the Partnership books and records as of December 31, 2008 indicates you received funds in excess of contributions totaling **\$182,532.35**. Enclosed for your reference as **Exhibit A** is the detail of the funds contributed and funds disbursed from your capital account from December 1992 through December 2008. The immediate return of funds totaling **\$182,532.35** to P&S is hereby requested.

To encourage a speedy and effective resolution of this matter prior to the commencement of litigation against you, we will accept **\$164,279.12** in full satisfaction of the amount claimed, if paid within 10 calendar days of the date of this letter. This represents a 10% discount of the amount which the Partnership may sue you for if this matter is not resolved as set forth above.

Accordingly, we demand payment of **\$164,279.12** in immediately available U.S. funds within 10 calendar days of the date of this letter, payable to:

Berger Singerman, LLP Trust Account
Attn: Etan Mark, Esq.
1450 Brickell Avenue
Suite 1900
Miami, FL 33131

In the absence of a timely, conforming payment, Berger Singerman, on behalf of P&S, will take appropriate action, including the filing of a Complaint seeking recovery of all sums due, plus interest and costs of collection.

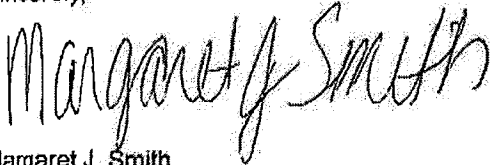
Exhibit "A"

November 13, 2012

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Be assured that we want to treat everyone fairly and to minimize the cost of responding to this demand letter for return of funds. Should you wish to do so, we are willing to schedule a call or meeting with you to discuss this matter. However, because time is of the essence, and to avoid litigation, we must receive either payment, a request for a timely call or meeting or an explanation (including copies of all cancelled checks, wire transfer advices and relevant agreements) of why you do not owe the sum demanded within 10 calendar days of this letter. If we elect to forbear from the commencement of litigation, entry into an acceptable tolling agreement may be required. To discuss this matter further, you may contact me via email at msmith@glassratner.com or by phone at 305-358-6092.

Sincerely,



Margaret J. Smith
msmith@glassratner.com

Exhibit A

P & S Associates, General Partnership**General Partner Statement - Cash Basis**

Bank	Account	Transferor/ Transferee	Statement Clearing Date	Check #	General Partner	Funds Received	Funds Disbursed	Net Funds Received (Disbursed)
S.O.A.	3-907867-3		12/20/95		Congregation of the Holy Ghost - Western Providence	\$ 100,000.00	\$ -	
S.O.A.	3-907867-14		10/22/96		Congregation of the Holy Ghost - Western Providence	100,000.00	-	
S.O.A.	3-907867-3		01/08/97	1418	Congregation of the Holy Ghost - Western Providence	-	5,539.53	
S.O.A.	3-907867-3		04/04/97	1431	Congregation of the Holy Ghost - Western Providence	-	6,258.76	
S.O.A.	3-907867-3		07/03/97	1445	Congregation of the Holy Ghost - Western Providence	-	6,446.46	
S.O.A.	3-907867-17		10/08/97	1483	Congregation of the Holy Ghost - Western Providence	-	6,672.05	
S.O.A.	3-907867-3		01/05/98	1474	Congregation of the Holy Ghost - Western Providence	-	6,657.59	
S.O.A.	3-907867-3		04/06/98	1492	Congregation of the Holy Ghost - Western Providence	-	6,508.72	
S.O.A.	3-907867-3		07/08/98	1504	Congregation of the Holy Ghost - Western Providence	-	6,656.37	
SouthTrust	39-078-673		10/07/98	1606	Congregation of the Holy Ghost - Western Providence	-	6,808.00	
SouthTrust	39-078-673		01/14/99	1617	Congregation of the Holy Ghost - Western Providence	-	6,745.43	
SouthTrust	39-078-673		04/21/99	1630	Congregation of the Holy Ghost - Western Providence	-	6,689.29	
SouthTrust	39-078-673		07/19/99	1649	Congregation of the Holy Ghost - Western Providence	-	6,838.82	
SouthTrust	39-078-673		10/22/99	1664	Congregation of the Holy Ghost - Western Providence	-	7,102.15	
SouthTrust	39-078-673		01/18/00	1679	Congregation of the Holy Ghost - Western Providence	-	7,074.41	
SouthTrust	39-078-673		04/17/00	1692	Congregation of the Holy Ghost - Western Providence	-	6,990.49	
SouthTrust	39-078-673		07/17/00	1710	Congregation of the Holy Ghost - Western Providence	-	7,096.08	
SouthTrust	39-078-673		10/18/00	1727	Congregation of the Holy Ghost - Western Providence	-	7,156.58	
SouthTrust	39-078-673		01/11/01	1740	Congregation of the Holy Ghost - Western Providence	-	7,071.83	
SouthTrust	39-078-673		04/11/01	1758	Congregation of the Holy Ghost - Western Providence	-	6,838.46	
SouthTrust	39-078-673		07/13/01	1778	Congregation of the Holy Ghost - Western Providence	-	6,975.46	
SouthTrust	39-078-673		10/29/01	1794	Congregation of the Holy Ghost - Western Providence	-	7,007.58	
SouthTrust	39-078-673		01/24/02	1813	Congregation of the Holy Ghost - Western Providence	-	6,896.61	
SouthTrust	39-078-673		04/23/02	1836	Congregation of the Holy Ghost - Western Providence	-	6,821.75	
SouthTrust	39-078-673		07/16/02	1854	Congregation of the Holy Ghost - Western Providence	-	6,686.72	
SouthTrust	39-078-673		07/16/02	1863	Congregation of the Holy Ghost - Western Providence	-	217,000.00	
SouthTrust	39-078-673		01/23/03	1909	Congregation of the Holy Ghost - Western Providence	-	9,477.41	
SouthTrust	39-078-673		01/31/03	1913	Congregation of the Holy Ghost - Western Providence	-	516.00	
Congregation of the Holy Ghost - Western Providence Total						\$ 200,000.00	\$ 382,532.35	\$ (182,532.35)

DRAFT
Privileged and Confidential

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY,
FLORIDA

Case No. 12-34121(07)
Complex Litigation Unit

P&S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership; and S&P ASSOCIATES,
GENERAL PARTNERSHIP, a Florida
limited partnership, et al.,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE
TRUST, a charitable trust, et al,

Defendants.

**PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANT, CONGREGATION
OF THE HOLY GHOST, WESTERN PROVINCE'S FIRST REQUEST FOR
ADMISSIONS TO PLAINTIFFS**

Pursuant to Florida Rule of Civil Procedure 1.370, Plaintiffs, by and through their undersigned counsel, hereby respond and object to Defendant, Congregation of the Holy Ghost, Western Province's ("Congregation of the Holy Ghost") First Request for Admissions to Plaintiffs as follows:

SPECIFIC RESPONSES AND OBJECTIONS

1. The Congregation of the Holy Ghost received a distribution from P&S partnership on January 31, 2003.

Response: Plaintiffs deny that the Congregation of the Holy Ghost received a distribution from P&S partnership on January 31, 2003.



2. The Congregation of the Holy Ghost has not received a distribution from the P&S partnership since January 31, 2003.

Response: Plaintiffs admit that the Congregation of the Holy Ghost has not received a distribution from the P&S partnership since January 31, 2003.

3. The Congregation of the Holy Ghost has not contributed any money to the P&S partnership since October 22, 1996.

Response: Plaintiffs admit that the Congregation of the Holy Ghost has not contributed any money to the P&S partnership since October 22, 1996.

4. There has been no activity in the capital account of the Congregation of the Holy Ghost since January 31, 2003.

Response: Plaintiffs admit that there has been no activity in the capital account of the Congregation of the Holy Ghost since January 31, 2003.

5. The P&S partnership provided the Congregation of the Holy Ghost with annual partnership records for 2003.

Response: Plaintiffs object to Request for Admission Number 5 because the undefined term “annual partnership records” is vague and unclear.

6. The P&S partnership provided the Congregation of the Holy Ghost with annual partnership records for 2004.

Response: Plaintiffs object to Request for Admission Number 6 because the undefined term “annual partnership records” is vague and unclear.

7. The P&S partnership provided the Congregation of the Holy Ghost with annual partnership records for 2005.

Response: Plaintiffs object to Request for Admission Number 7 because the undefined term “annual partnership records” is vague and unclear.

8. The P&S partnership provided the Congregation of the Holy Ghost with annual partnership records for 2006.

Response: Plaintiffs object to Request for Admission Number 8 because the undefined term “annual partnership records” is vague and unclear.

9. The P&S partnership provided the Congregation of the Holy Ghost with annual partnership records for 2007.

Response: Plaintiffs object to Request for Admission Number 9 because the undefined term “annual partnership records” is vague and unclear.

10. The P&S partnership provided the Congregation of the Holy Ghost with annual partnership records for 2008.

Response: Plaintiffs object to Request for Admission Number 10 because the undefined term “annual partnership records” is vague and unclear.

11. The P&S partnership provided the Congregation of the Holy Ghost with annual partnership records for 2009.

Response: Plaintiffs object to Request for Admission Number 11 because the undefined term “annual partnership records” is vague and unclear.

12. The P&S partnership provided the Congregation of the Holy Ghost with annual partnership records for 2010.

Response: Plaintiffs object to Request for Admission Number 12 because the undefined term “annual partnership records” is vague and unclear.

13. The P&S partnership provided the Congregation of the Holy Ghost with annual partnership records for 2011.

Response: Plaintiffs object to Request for Admission Number 13 because the undefined term “annual partnership records” is vague and unclear.

14. The P&S partnership provided the Congregation of the Holy Ghost with annual partnership records for 2012.

Response: Plaintiffs object to Request for Admission Number 14 because the undefined term “annual partnership records” is vague and unclear.

15. The P&S partnership provided the Congregation of the Holy Ghost with annual partnership records for 2013.

Response: Plaintiffs object to Request for Admission Number 15 because the undefined term “annual partnership records” is vague and unclear.

16. Beginning in 2009, the P&S partnership did not provide the Congregation of the Holy Ghost with partnership records.

Response: Plaintiffs object to Request for Admission Number 16 because the undefined term “partnership records” is vague and unclear.

17. The P&S partnership never provided the Congregation of the Holy Spirit Province of the United States with partnership records.

Response: Plaintiffs object to Request for Admission Number 17 because the undefined term “partnership records” is vague and unclear. Additionally, Plaintiffs have made a reasonably inquiry but because Plaintiffs are in the process of reviewing and obtaining all of the documents in relation to P&S Associates, including without limitation waiting for Congregation

of the Holy Ghost's responses to Plaintiffs' discovery requests, Plaintiffs lack sufficient knowledge to admit or deny the Request for Admission Number 17.

18. The P&S partnership never received any contribution from the Congregation of the Holy Spirit Province of the United States.

Response: Plaintiffs admit that the P&S partnership never received any contribution directly from the Congregation of the Holy Spirit Province of the United States.

19. The P&S partnership never made any distributions to the Congregation of the Holy Spirit Province of the United States.

Response: Plaintiffs admit that the P&S partnership never made any distributions directly to the Congregation of the Holy Spirit Province of the United States.

20. The Congregation of the Holy Spirit Province of the United States is not a partner in P&S partnership.

Response: Plaintiffs admit that the Congregation of the Holy Spirit Province of the United States is not a partner in P&S partnership.

21. The Congregation of the Holy Ghost is dissociated from the P&S partnership.

Response: Plaintiffs have made a reasonably inquiry but because Plaintiffs are in the process of reviewing and obtaining all of the documents in relation to P&S Associates, including without limitation waiting for Congregation of the Holy Ghost's responses to Plaintiffs' discovery requests, Plaintiffs lack sufficient knowledge to admit or deny the Request for Admission Number 21. However, Plaintiffs admit that on June 30, 2002 Philip D. Evanstock wrote a letter to P&S Associates expressing his desire to "terminate the Congregation of the Holy Ghost account and transfer the funds to us by check [,]" and that despite the letter,

Congregation of the Holy Ghost received distributions from P&S Associates on January 1, 2003 and January 23, 2003.

22. The Congregation of the Holy Ghost was dissociated from the P&S partnership in 2003.

Response: Plaintiffs have made a reasonably inquiry but because Plaintiffs are in the process of reviewing and obtaining all of the documents in relation to P&S Associates, including without limitation waiting for Congregation of the Holy Ghost's responses to Plaintiffs' discovery requests, Plaintiffs lack sufficient knowledge to admit or deny the Request for Admission Number 22. However, Plaintiffs admit that on June 30, 2002 Philip D. Evanstock wrote a letter to P&S Associates expressing his desire to "terminate the Congregation of the Holy Ghost account and transfer the funds to us by check [,]" and that despite the letter, Congregation of the Holy Ghost received distributions from P&S Associates on January 1, 2003 and January 23, 2003.

23. The Congregation of the Holy Ghost was dissociated from the P&S partnership in 2004.

Response: Plaintiffs have made a reasonably inquiry but because Plaintiffs are in the process of reviewing and obtaining all of the documents in relation to P&S Associates, including without limitation waiting for Congregation of the Holy Ghost's responses to Plaintiffs' discovery requests, Plaintiffs lack sufficient knowledge to admit or deny the Request for Admission Number 23. However, Plaintiffs admit that on June 30, 2002 Philip D. Evanstock wrote a letter to P&S Associates expressing his desire to "terminate the Congregation of the Holy Ghost account and transfer the funds to us by check [,]" and that despite the letter,

Congregation of the Holy Ghost received distributions from P&S Associates on January 1, 2003 and January 23, 2003.

24. The Congregation of the Holy Ghost was dissociated from the P&S partnership in 2005.

Response: Plaintiffs have made a reasonably inquiry but because Plaintiffs are in the process of reviewing and obtaining all of the documents in relation to P&S Associates, including without limitation waiting for Congregation of the Holy Ghost's responses to Plaintiffs' discovery requests, Plaintiffs lack sufficient knowledge to admit or deny the Request for Admission Number 24. However, Plaintiffs admit that on June 30, 2002 Philip D. Evanstock wrote a letter to P&S Associates expressing his desire to "terminate the Congregation of the Holy Ghost account and transfer the funds to us by check [,]" and that despite the letter, Congregation of the Holy Ghost received distributions from P&S Associates on January 1, 2003 and January 23, 2003.

25. The Congregation of the Holy Ghost was dissociated from the P&S partnership in 2006.

Response: Plaintiffs have made a reasonably inquiry but because Plaintiffs are in the process of reviewing and obtaining all of the documents in relation to P&S Associates, including without limitation waiting for Congregation of the Holy Ghost's responses to Plaintiffs' discovery requests, Plaintiffs lack sufficient knowledge to admit or deny the Request for Admission Number 25. However, Plaintiffs admit that on June 30, 2002 Philip D. Evanstock wrote a letter to P&S Associates expressing his desire to "terminate the Congregation of the Holy Ghost account and transfer the funds to us by check [,]" and that despite the letter,

Congregation of the Holy Ghost received distributions from P&S Associates on January 1, 2003 and January 23, 2003.

26. The Congregation of the Holy Ghost was dissociated from the P&S partnership in 2007.

Response: Plaintiffs have made a reasonably inquiry but because Plaintiffs are in the process of reviewing and obtaining all of the documents in relation to P&S Associates, including without limitation waiting for Congregation of the Holy Ghost's responses to Plaintiffs' discovery requests, Plaintiffs lack sufficient knowledge to admit or deny the Request for Admission Number 26. However, Plaintiffs admit that on June 30, 2002 Philip D. Evanstock wrote a letter to P&S Associates expressing his desire to "terminate the Congregation of the Holy Ghost account and transfer the funds to us by check [,]" and that despite the letter, Congregation of the Holy Ghost received distributions from P&S Associates on January 1, 2003 and January 23, 2003.

27. The Congregation of the Holy Ghost was dissociated from the P&S partnership in 2008.

Response: Plaintiffs have made a reasonably inquiry but because Plaintiffs are in the process of reviewing and obtaining all of the documents in relation to P&S Associates, including without limitation waiting for Congregation of the Holy Ghost's responses to Plaintiffs' discovery requests, Plaintiffs lack sufficient knowledge to admit or deny the Request for Admission Number 27. However, Plaintiffs admit that on June 30, 2002 Philip D. Evanstock wrote a letter to P&S Associates expressing his desire to "terminate the Congregation of the Holy Ghost account and transfer the funds to us by check [,]" and that despite the letter,

Congregation of the Holy Ghost received distributions from P&S Associates on January 1, 2003 and January 23, 2003.

28. The Congregation of the Holy Ghost was dissociated from the P&S partnership in 2009.

Response: Plaintiffs have made a reasonably inquiry but because Plaintiffs are in the process of reviewing and obtaining all of the documents in relation to P&S Associates, including without limitation waiting for Congregation of the Holy Ghost's responses to Plaintiffs' discovery requests, Plaintiffs lack sufficient knowledge to admit or deny the Request for Admission Number 28. However, Plaintiffs admit that on June 30, 2002 Philip D. Evanstock wrote a letter to P&S Associates expressing his desire to "terminate the Congregation of the Holy Ghost account and transfer the funds to us by check [,]" and that despite the letter, Congregation of the Holy Ghost received distributions from P&S Associates on January 1, 2003 and January 23, 2003.

29. The Congregation of the Holy Ghost was dissociated from the P&S partnership in 2010.

Response: Plaintiffs have made a reasonably inquiry but because Plaintiffs are in the process of reviewing and obtaining all of the documents in relation to P&S Associates, including without limitation waiting for Congregation of the Holy Ghost's responses to Plaintiffs' discovery requests, Plaintiffs lack sufficient knowledge to admit or deny the Request for Admission Number 29. However, Plaintiffs admit that on June 30, 2002 Philip D. Evanstock wrote a letter to P&S Associates expressing his desire to "terminate the Congregation of the Holy Ghost account and transfer the funds to us by check [,]" and that despite the letter,

Congregation of the Holy Ghost received distributions from P&S Associates on January 1, 2003 and January 23, 2003.

30. The Congregation of the Holy Ghost was dissociated from the P&S partnership in 2011.

Response: Plaintiffs have made a reasonably inquiry but because Plaintiffs are in the process of reviewing and obtaining all of the documents in relation to P&S Associates, including without limitation waiting for Congregation of the Holy Ghost's responses to Plaintiffs' discovery requests, Plaintiffs lack sufficient knowledge to admit or deny the Request for Admission Number 30. However, Plaintiffs admit that on June 30, 2002 Philip D. Evanstock wrote a letter to P&S Associates expressing his desire to "terminate the Congregation of the Holy Ghost account and transfer the funds to us by check [,]" and that despite the letter, Congregation of the Holy Ghost received distributions from P&S Associates on January 1, 2003 and January 23, 2003.

31. The Congregation of the Holy Ghost was dissociated from the P&S partnership in 2012.

Response: Plaintiffs object to Request for Admission Number 31 because Congregation of the Holy Ghost has exceeded the amount of requests permitted by Fla. R. Civ. P. 1.370. Plaintiffs reserve their right to serve an additional written answer or objection to this Request if necessary.

32. The Congregation of the Holy Ghost was dissociated from the P&S partnership in 2013.

Response: Plaintiffs object to Request for Admission Number 32 because Congregation of the Holy Ghost has exceeded the amount of requests permitted by Fla. R. Civ. P. 1.370.

Plaintiffs reserve their right to serve an additional written answer or objection to this Request if necessary.

33. The Congregation of the Holy Ghost did not participate in the affairs of the P&S partnership after December 31, 2004.

Response: Plaintiffs object to Request for Admission Number 33 because Congregation of the Holy Ghost has exceeded the amount of requests permitted by Fla. R. Civ. P. 1.370. Plaintiffs reserve their right to serve an additional written answer or objection to this Request if necessary.

34. The Congregation of the Holy Ghost was never a partner in the co-plaintiff, S&P ASSOCIATES, GENERAL PARTNERSHIP, a Florida limited partnership.

Response: Plaintiffs object to Request for Admission Number 34 because Congregation of the Holy Ghost has exceeded the amount of requests permitted by Fla. R. Civ. P. 1.370. Plaintiffs reserve their right to serve an additional written answer or objection to this Request if necessary.

BERGER SINGERMANN LLP
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail upon counsel identified below registered to receive electronic notifications and regular U.S. mail upon *Pro Se* parties this 10th day of January, 2014 upon the following:

Notice has been electronically mailed to:

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Thomas M. Messana, Esq.	tmessana@messana-law.com ; tmessana@bellsouth.net ; mwslawfirm@gmail.com
Zachary P Hyman, Esq.	zhyman@bergersingerman.com ; DRT@bergersingerman.com ; clamb@bergersingerman.com

By: s/Leonard K. Samuels
Leonard K. Samuels

5398878-1



350 EAST LAS OLAS BLVD. | SUITE 1000 | FORT LAUDERDALE, FLORIDA 33301
t: 954-525-9900 | f: 954-523-2872 | WWW.BERGERSINGERMAN.COM

Congregation of the Holy Spirit



Holy Ghost Fathers and Brothers

1700 West Alabama Street
Houston, Texas 77098-2808
713-522-2882
FAX 713-522-8063
E-MAIL spiritans@aol.com

June 30, 2002

P & S Associates, General Partnership
Mr. Gregg Powell, Sullivan and Powell
Port Royale Financial Center
6550 North Federal Highway, Suite 210
Ft. Lauderdale, Florida 33308

Dear Mr. Powell:

At this time, I would like to liquidate our assets with your firm. I appreciate your excellent work in dealing with our funds. However, I am modifying our objectives and adjusting our finances in a new direction. Therefore, would you please take all steps necessary to terminate the Congregation of the Holy Ghost account and transfer the funds to us by check to the Provincialate Office located at 1700 West Alabama Street, Houston, Texas 77098-2808.

Sincerely,

Fr. Phil Evanstock, C.S.Sp.

Philip D. Evanstock, C.S.Sp.
Provincial Treasurer

**SCHEDULE K-1
(Form 1065)**Department of the Treasury
Internal Revenue Service**Partner's Share of Income, Credits, Deductions, etc.**

For calendar year 2003 or tax year

OMB No. 1545-0099

2003

Partner's identifying number ▶ 84-0534151		Partnership's identifying number ▶ 65-0371258	
Partner's name, address, and ZIP code CONGREGATION OF THE HOLY GHOST- WESTERN PROVINCE C/O FR GAGLIONE, 1700 WEST ALABAMA ST HOUSTON, TX 77087-2808		Partnership's name, address, and ZIP code P & S ASSOCIATES, GENERAL PARTNERSHIP MICHAEL SULLIVAN, GENERAL PARTNER 6550 N. FEDERAL HWY., SUITE 210 FORT LAUDERDALE, FL 33308-1404	
A This partner is a <input checked="" type="checkbox"/> general partner <input type="checkbox"/> limited partner <input type="checkbox"/> limited liability company member		F Partner's share of liabilities: Nonrecourse \$ Qualified nonrecourse financing \$ Other \$ 0.	
B What type of entity is this partner? ▶ EXEMPT ORG.		G Tax shelter registration number ▶	
C Is this partner a <input checked="" type="checkbox"/> domestic or a <input type="checkbox"/> foreign partner?		H Check here if this partnership is a publicly traded partnership as defined in section 469(k)(2) <input type="checkbox"/>	
D Enter partner's percentage of: (i) Before change or termination (ii) End of year Profit sharing VARIOUS% VARIOUS% Loss sharing VARIOUS% VARIOUS% Ownership of capital VARIOUS% VARIOUS%		I Check applicable boxes: (1) <input checked="" type="checkbox"/> Final K-1 (2) <input type="checkbox"/> Amended K-1	
E IRS Center where partnership filed return: OGDEN, UT			

J Analysis of partner's capital account:

(a) Capital account at beginning of year	(b) Capital contributed during year	(c) Partner's share of lines 3, 4, and 7, Form 1065, Schedule M-2	(d) Withdrawals and distributions	(e) Capital account at end of year (combine columns (a) through (d))
9993.		0.	9993.	0.

	(a) Distributive share item	(b) Amount	(c) 1040 filers enter the amount in column (b) on:
Income (Loss)	1 Ordinary income (loss) from trade or business activities	0.	See page 6 of Partner's Instructions for Schedule K-1 (Form 1065)
	2 Net income (loss) from rental real estate activities		
	3 Net income (loss) from other rental activities		
	4 Portfolio income (loss): a Interest		
	b (1) Qualified dividends		Form 1040, line 8a
	(2) Total ordinary dividends		Form 1040, line 9b
	c Royalties		Form 1040, line 9a
	d (1) Net short-term capital gain (loss) (post-May 5, 2003)		Sch. E, Part I, line 4
	(2) Net short-term capital gain (loss) (entire year)		Sch. D, line 5, col. (g)
	e (1) Net long-term capital gain (loss) (post-May 5, 2003)		Sch. D, line 5, col. (f)
	(2) Net long-term capital gain (loss) (entire year)		Sch. D, line 12, col. (g)
Deductions	f Other portfolio income (loss) (attach schedule)		Sch. D, line 12 col. (f)
	5 Guaranteed payments to partner		See pages 6 and 7 of Partner's Instructions for Schedule K-1 (Form 1065)
	6 (a) Net section 1231 gain (loss) (post-May 5, 2003)		
	(b) Net section 1231 (loss) (entire year)		
	7 Other income (loss) (attach schedule)		
Credits, Investment Interest & S.E.	8 Charitable contributions (attach schedule)		Sch. A, line 15 or 16
	9 Section 179 expense deduction		See page 8 of Partner's Instructions for Schedule K-1 (Form 1065)
	10 Deductions related to portfolio income (attach schedule)		
	11 Other deductions (attach schedule)		
	13 Other credits		(Enter on applicable lines of your return)
Adjustments and tax preference	14 a Interest expense on investment debts		Form 4952, line 1
	b(1) Investment income included on lines 4a, 4b(2), 4c, and 4f above		See page 9 of Partner's Instructions for Schedule K-1 (Form 1065)
	(2) Investment expenses included on line 10 above		
	15 a Net earnings (loss) from self-employment		Sch. SE, Section A or B
Other	c Gross nonfarm income		See page 9 of Partner's Instructions for Schedule K-1 (Form 1065)
	16 a Depreciation adjustment on property placed in service after 1986		See pages 9 and 10 of Partner's Instructions for Schedule K-1 (Form 1065) and Instructions for Form 6251
	b Adjusted gain or loss		
	e Other adjustments and tax preference items (attach schedule)		
Other	19 Tax-exempt interest income		Form 1040, line 8b
	20 Other tax-exempt income		See page 10 of Partner's Instructions for Schedule K-1 (Form 1065)
	21 Nondeductible expenses		
	22 Distributions of money (cash and marketable securities)	9993.	
	23 Distributions of property other than money		

AFFIDAVIT OF CHAD PUGATCH

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

I, CHAD PUGATCH, being first duly sworn, deposes and states as follows:

1. I have personal knowledge of the matters set forth in this affidavit.
2. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein.
3. Prior to January 2009, my firm, Rice Pugatch Robinson & Schiller, P.A. was retained by the S&P Associates, General Partnership and the P&S Associates, General Partnership (the "Partnerships").
4. On January 16, 2009, a Memorandum titled "Notice of Meeting" with an agenda for a meeting to take place on Friday, January 30, 2009, along with additional documents regarding the Bernard Madoff Ponzi scheme, was provided to the partners in the Partnerships. Attached as **Exhibit "A"** is a true and correct copy of the documents (totaling 23 pages) which have been kept by me in the regular and ordinary course of my business.
5. On January 30, 2009, I, as counsel for the Partnerships, attended the partners meeting (the "Meeting").
6. An audio tape recording (the "Recording") was made in conjunction with the Meeting by a firm we hired to provide a call in link for out of town partners to participate in the Meeting.
7. The Recording was made at the time of the Meeting.
8. I have a copy of this Recording and this Recording is an accurate representation of the matters that were discussed at the Meeting.

9. I have kept this Recording, in the ordinary and regular course of my business on behalf of the Partnerships, who were my clients at the time of the Recording.

10. The Recording has been kept in mp3 format as part of the file my law firm has maintained for the matters I handled for the Partnerships and was burned to a CD under my supervision by my staff.

FURTHER AFFIANT SAYETH NAUGHT.


CHAD PUGATCH

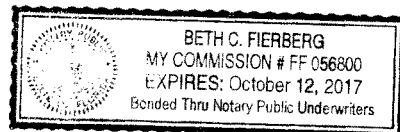
STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

SWORN TO (OR AFFIRMED) AND SUBSCRIBED before me on this 24 day of February, 2014 by CHAD PUGATCH, who [] is personally known to me or [] who has produced _____ as identification.


Print name: Beth C. Fierberg

(Seal) Notary Public, State of Florida

My Commission Expires: _____



RICE PUGATCH ROBINSON & SCHILLER, P.A.

101 N.E. THIRD AVENUE, SUITE 1800
FT. LAUDERDALE, FLORIDA 33301
TELEPHONE: (954) 462-8000
TELEPHONE (305)-379-3121
FACSIMILE: (954) 462-4300
FACSIMILE (305) 379-4119

www.rprslaw.com

MEMORANDUM

TO: All Partners of P&S Associates, General Partnership
FROM: Chad Pugatch, Esq.
DATE: January 16, 2009
RE: P&S Associates, General Partnership – Notice of Meeting

Please be advised that my firm has been retained by P&S Associates, General Partnership (P&S) with regard to the unfortunate circumstances created by the arrest of Bernard Madoff and ultimate receivership and bankruptcy filing for Bernard L. Madoff Investment Securities, LLC.

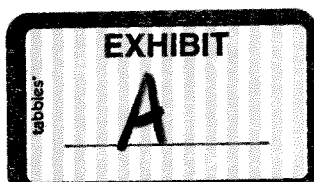
As a result of the above filings and resulting freeze of assets it is imperative that P&S take appropriate actions to protect its interests and therefore all partners' interests. Some of you are aware of our firm's involvement by virtue of initial communication from Michael Sullivan. In fact we have already been receiving requests for information and have done our best to communicate as these requests have arisen. Nevertheless, it is in the best interest of the Partnership and all partners that the Partnership conduct a meeting of all partners where all of these issues and the course of conduct of the Partnership can be determined giving full attention to the input of all partners.

Pursuant to paragraph 8.04 of the Partnership Agreement, a meeting has therefore been scheduled and will take place on **Friday, January 30, 2009** commencing at **2:00 p.m.** eastern time at **Westin Cypress Creek Hotel, 400 Corporate Drive, Fort Lauderdale, Florida 33334.**

At this meeting the managing partners and professionals retained by the Partnership will be prepared to answer questions and deal with all the significant pending issues resulting from the Madoff catastrophe and will attempt to establish based upon the wishes of the partners and appropriate vote the course of conduct of the Partnership in protecting its interests and the interests of the partners.

It is anticipated that certain actions to be undertaken may require a vote. Any partner may attend in person or may attend by participating in a dial in conference call. Appropriate information will be established as to the method for dialing into this call once technical arrangements have been finalized with appropriate audio and conferencing facilities through the hotel. A subsequent notice will provide this information to you. Partners participating in person or by telephone will be entitled to speak and vote.

To the extent any partner is unable to participate either in person or by telephone the provisions of the Partnership Agreement provide in paragraph 8.04 that any partner may execute a signed, written consent to representation by another partner or representative. For your convenience we are



MEMORANDUM

January 16, 2009

Page 2

attaching an appropriate form to be utilized if you decide to be represented by another partner or professional. This form should be **executed; notarized and returned to me prior to the date of the meeting**. The Partnership cannot allow for participation or voting other than by partners or authorized representatives.

Should you have any questions concerning the above please feel free to call upon me and I will attempt as best I can to clarify any of these matters. Please also be patient as to requests for information which have been made in advance of this meeting as the best method of disseminating answers to all questions is to have them answered for the benefit of all partners at the meeting.

Yours very truly,



Chad P. Pugatch, Esq.

CPP:be

AGENDA FOR PARTNERS' MEETING – S&P ASSOCIATES, P&S ASSOCIATES, SPJ INVESTMENTS, LTD. INCLUDING MEMBERS OF GUARDIAN ANGEL TRUST, LLC

ATTORNEY/CLIENT PRIVILEGE/WORK PRODUCT

I. INTRODUCTION

This meeting is open to Partners of S&P Associates, P&S Associates, SPJ Investments, LTD as well as members of Guardian Angel Trust, LLC and/or their authorized representatives. It is not open to the public or the press. This meeting is confidential and may include discussion of attorney/client privileged matters. It is not the intention of the Partnerships to waive any such confidentiality or privilege by the unknown presence of unauthorized individuals. PLEASE respect the privacy of this meeting and your Partners.

We have established the following agenda of items to be discussed at the Partners' meeting called pursuant to the notice of January 16, 2009. The purpose of this meeting is first and foremost to provide information to the Partners as to what has transpired since the arrest of Bernard Madoff (Madoff) and subsequent receivership and insolvency proceeding for Bernard L. Madoff Investment Securities, LLC (Madoff Securities). It is also the purpose of the meeting to commence the process of determination by the Partners as to how the Partnerships will react to this crisis and to determine the future course of action of the Partnerships.

You must first come to the realization that to some extent you are all in this together. These are general partnerships and each and every one of you have or will suffer losses due to the unfortunate circumstances which have transpired. You all have potential joint and several liability with regard to the Partnerships as well. The Managing Partners and their families stand alongside you in this regard. They have invested and suffered losses just as you have. They have been working full time since this crisis developed in order to protect the interests of the Partnerships and consequently to protect the interest of each individual Partner. With that in mind please respect the process. We will do our best to get everyone's questions answered and give everyone a thorough opportunity to speak and discuss the matters relevant to the Partnerships.

While we know everyone needs information and we will attempt to answer all relevant and appropriate questions it must be understood that we are, including the professionals retained to represent the Partnerships, still new to the situation and there is an ongoing learning curve as to the facts and legal principles applicable to the facts.

PLEASE BE PATIENT. To the extent we cannot provide you with answers (or satisfactory answers) we will endeavor to do so in future meetings or by future communications. It is unlikely we will conduct any actual voting at this meeting. We have determined that it would be more appropriate, fair and accurate to conduct such voting by subsequent written

ballot in order to allow each Partner to properly consider the issues and to assure proper tabulation of ballots in accordance with each Partner's percentage interest.

Again, after discussion of the Agenda items we will allow adequate time for questions and discussion.

II. INTRODUCTION OF PROFESSIONALS AND ROLE OF PROFESSIONALS

III. BACKGROUND – HOW HAVE WE GOTTEN HERE

A) The Madoff Scandal Evolves

B) The Madoff Securities Insolvency Proceedings

IV. AGENDA ITEMS (Please note we may deviate in order if appropriate)

A) Current Status of Partnerships

B) Filing of Claims

1) Partnerships

2) Individual Rights

C) Deadlines



D) Tax Issues Including Potential for Amending Returns

! won't the actions of
the P/S affect what
partner can do?

E) The Insolvency Proceedings

1) Monitoring

2) Deadlines and Hearings

3) Defensive Measures which May Become Necessary

a) Claim Objections

b) Avoidance Actions ("Clawback")

4) Affirmative Claims Against Third Parties

5) Prospective Recovery

F) The \$800,000.00 Repayment to P&S Associates

1) Risk of Avoidance

2) Who has Rights in Funds

G) Future Operations of the Partnerships

1) Management

2) Costs and Professional Fees

3) Wind Down

H) Future Meetings and Communications

I) General Questions and Discussion

Attorney Contact Information

Insolvency Counsel

Rice Pugatch Robinson & Schiller P.A.

Chad P. Pugatch , Esq. (cpugatch@rprslaw.com)

Kenneth B. Robinson, Esq. (krobinson@rprslaw.com)

Travis L. Vaughan, Esq. (tvaughan@rprslaw.com)

101 NE 3rd Ave, Ste 1800

Fort Lauderdale, FL 33301

Telephone: (954) 462-8000

Facsimile: (954) 462-4300

For more information please visit our website at www.rprslaw.com.

Securities Counsel

Sallah & Cox, LLC

James D. Sallah, Esq. (jds@sallahcox.com)

Jeffrey Cox, Esq. (jcox@sallahcox.com)

2101 NW Corporate Blvd Ste 218

Boca Raton, Florida 33431

Telephone: (561)989-9080

Facsimile: (561)989-9020

For more information please visit our website at www.sallahcox.com

Timeline and Dates:

Summary of Events

- I. **On December 11, 2008** the SEC filed a complaint against Bernard L. Madoff Investment Securities, LLC in US District Court for the Southern district of NY, the same day the case was referred to the Bankruptcy Court for the Southern District of NY. [DE # 1]
 - a. Lee S. Richards is Appointed as Receiver: (presently to recover international possessions of Madoff Entities)
- II. **On December 15, 2008** the Distinct Judge found SIPC protections necessary for Madoff Entities.
 - a. The Securities and Investor Protection Corporation is a private corporation which most brokerages must belong to, much like the FDIC, to insure securities investments, and is governed by the Securities Investor Protection Act. The goal of SIPC is to return the actual customer securities and cash to investors when possible, and to advance money to customers when there are insufficient securities or funds held by the debtor to cover responsibilities to customers. However, there are limits to coverage.
 - b. Irving Picard is appointed SPIC Trustee and supersedes Receiver
- III. **On December 23, 2008**, the Bankruptcy Court Approved the Trustee's Notice of procedures and claims forms. [See Exhibits A-E]
- IV. **On January 2, 2009**, Claims Forms/Info Mailed Out.
- V. **On January 12, 2009**, Bankruptcy Court approved Trustee's request for authority to subpoena documents and examine witnesses.
- VI. **On January 21, 2009**, Trustee filed his motion to extend time to assume or reject leases. (hearing set for February 4, 2009).
- VII. **On January 29, 2008** Bankruptcy Court approved stipulation of Trustee with JP Morgan and Bank of New York Mellon for the Transfer or ≈\$534,900,000.00 from accounts held in the Debtor's Name

Important Deadlines/Dates:

January 12, 2009	Deadline for open Broker Claims
February 20, 2009 at 10:00 am	341 Meeting of Creditors will be held
March 4, 2009 (January 2 + 60days)	Deadline for customer claims to be <i>received</i> and retain greatest SIPA protections
July 2, 2009 (January 2, + 6 months)	Claims Bar Date: customer claims and creditor Claims must be <i>received</i> by this date for allowance

**** Deadlines are when the Trustee must *receive* claims.**

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

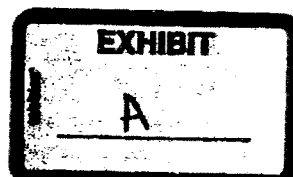
Adversary Proceeding

No. 08-01789-BRL

**NOTICE TO CUSTOMERS AND CREDITORS OF BERNARD L. MADOFF
INVESTMENT SECURITIES LLC AND TO ALL OTHER PARTIES IN INTEREST**

COMMENCEMENT OF LIQUIDATION PROCEEDING

NOTICE IS HEREBY GIVEN that on December 15, 2008, the Honorable Louis A. Stanton of the United States District Court for the Southern District of New York, entered an Order granting the application of the Securities Investor Protection Corporation ("SIPC") for issuance of a Protective Decree adjudicating that the customers of Bernard L. Madoff Investment Securities LLC (the "Debtor"), are in need of the protection afforded by the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"). Irving H. Picard, Esq. ("Trustee") was appointed Trustee for the liquidation of the business of the Debtor, and Baker & Hostetler LLP was appointed as counsel to the Trustee. Customers of the Debtor who wish to avail themselves of the protection afforded to them under SIPA are required to file their claims with the Trustee within sixty (60) days after the date of this Notice. Customers may file their claims up to six months after the date of this Notice; however, the filing of claims after the sixty (60) day period but within the six month period may result in less protection for the customer. Such claims should be filed with the Trustee at Irving



H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC, Claims Processing Center, 2100 McKinney Ave., Suite 800, Dallas, TX 75201. **Customer claims will be deemed filed only when received by the Trustee.**

Forms for the filing of customers' claims are being mailed to customers of the Debtor as their name and addresses appear on the Debtor's books and records. Customers who do not receive such forms within seven (7) days from the date of this Notice may obtain them by writing to the Trustee at the address shown above.

Claims by broker-dealers for the completion of open contractual commitments must be filed with the Trustee at the above address within thirty (30) calendar days after December 11, 2008, that is January 12, 2009, as provided by 17 C.F.R. 300.303. **Broker-dealer claims will be deemed to be filed only when received by the Trustee.** Claim forms may be obtained by writing to the Trustee at the address shown above.

All other creditors of the Debtor must file formal proofs of claim with the Trustee at the address shown above within six (6) months after the date of this Notice. **All such claims will be deemed filed only when received by the Trustee.**

No claim of any kind will be allowed unless received by the trustee within six (6) months after the date of this Notice.

AUTOMATIC STAY OF ACTIONS AGAINST THE DEBTOR

NOTICE IS HEREBY GIVEN that as a result of the issuance of the Protective Decree, certain acts and proceedings against the Debtor and its property are stayed as provided in 11 U.S.C. § 362 and by order of the United States District Court for the Southern District of New York entered on December 15, 2008 by the Honorable Louis A. Stanton.

MEETING OF CREDITORS

NOTICE IS HEREBY GIVEN that the first meeting of customers and creditors will be held on February 20, 2009, at 10:00 a.m., at the Auditorium at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004, at which time and place customers and creditors may attend, examine the Debtor, and transact such other business as may properly come before said meeting.

HEARING ON DISINTERESTEDNESS OF TRUSTEE AND COUNSEL TO THE TRUSTEE

NOTICE IS HEREBY GIVEN that on February 4, 2009, at 10:00 a.m., at Courtroom 601 of the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004, has been set as the time and place for the hearing before the Honorable Burton R. Lifland, United States Bankruptcy Judge, of objections, if any, to the retention in office of Irving H. Picard, Esq., as Trustee, and Baker & Hostetler LLP, as counsel to the Trustee, upon the ground that they are not qualified or not disinterested as provided in SIPA § 78eee(b)(6). Objections, if any, must be filed not less than five (5) days prior to such hearing, with a copy to be served on counsel for the Trustee at Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, New York 10111, attn: Douglas E. Spelfogel, Esq., so to be received no fewer than five (5) days before the hearing.

NOTICE IS HEREBY GIVEN that copies of this Notice, the letter to customers, the customer claim form, and instructions as well as the SIPC brochure may be found on SIPC's

website at www.sipc.org under Proceedings/Liquidations and on the Trustee's website, www.madofftrustee.com. From time to time in the future, other updated information and notices concerning this proceeding may also be posted at SIPC's and/or the Trustee's website.

Dated: January 2, 2009
New York, New York

Irving H. Picard, Esq.
Trustee for the Liquidation of the
Business of Bernard L. Madoff Investment
Securities LLC

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

TO ALL CUSTOMERS OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC:

Enclosed are the following documents concerning the liquidation of the business of Bernard L. Madoff Investment Securities LLC (the "Debtor"):

1. A Notice;
2. A Customer Claim Form with Instructions; and
3. A brochure entitled "How SIPC Protects You."

You are urged to read the enclosed documents carefully. They explain the steps you must take to protect any rights and claims you may have in this liquidation proceeding.

The Customer Claim form should be filled out by you and mailed to Irving H. Picard, Esq., Trustee for the Liquidation of the Business of Bernard L. Madoff Investment Securities LLC at: Irving H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC, Claims Processing Center, 2100 McKinney Ave., Suite 800, Dallas, TX 75201. A return envelope for the completed Customer Claim form is enclosed. Please make a copy of the completed Customer Claim form for your own records.

Your Customer Claim form will not be deemed to be filed until received by the Trustee. It is strongly recommended your claim be mailed certified mail, return receipt requested. Your return receipt will be the only document you will receive that shows your claim has been received by the Trustee.

If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received. It is also important that you provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of any cash amounts and any securities given to the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

While your claim is being processed, you may be requested to file additional information or documents with the Trustee to support the validity of your claim.

It is your responsibility to report accurately all securities positions and money balances in connection with your account with the Debtor. A false claim or the retention of property to which



you are not entitled may make you liable for damages and criminal penalties. If you cannot precisely calculate the amount of your claim, however, you may file an estimated claim.

One of the purposes of the liquidation is to return securities and cash due to customers as promptly as practicable. In that connection, funds of the Securities Investor Protection Corporation may be utilized to pay valid customer claims relating to securities and cash up to a maximum amount of \$500,000.00 for each customer, including up to \$100,000.00 for claims for cash, as provided in the Securities Investor Protection Act of 1970, as amended ("SIPA"). The enclosed brochure provides information concerning the protection afforded by SIPA.

Customers' telephone inquiries delay the liquidation. The time of personnel who would otherwise be at work to speed the satisfaction of customers' claims is required for such calls.

Your cooperation in promptly returning the completed Customer Claim form with all supporting documentation to the Trustee is in your best interest as it will help speed the administration of the liquidation proceeding.

Dated: January 2, 2009
New York, New York

Irving H. Picard, Esq.
Trustee for the Liquidation of the
Business of Bernard L. Madoff Investment
Securities LLC

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

READ CAREFULLY

INSTRUCTIONS FOR COMPLETING CUSTOMER CLAIM FORM

These instructions are to help you complete the customer claim form enclosed. If Bernard L. Madoff Investment Securities LLC ("Broker") owes you cash or securities and you wish to claim them, the trustee must **receive** your claim on or before the date specified on the claim form. An improperly completed claim form will not be processed but will be returned to you and, consequently, will cause a delay in the satisfaction of your claim.

Item 1 is to be completed if on the date shown, the Broker owed you cash or if you owed the Broker cash.

If the Broker owes money to you, please indicate the amount in the space provided [Item 1a]. If you owe the Broker money, please so indicate in the space provided [Item 1b]. If the Broker owes you securities and you wish to receive those securities without deduction, then you must enclose your check for the amount shown in Item 1c payable to "Irving H. Picard, Esq., Trustee for the Broker." **Payments not enclosed with this claim form will not be accepted by the trustee for purposes of determining what securities are to be distributed to you.**

Item 2 deals with securities (including any options) held for you. If the Broker is holding securities for you or has failed to deliver securities to you, please indicate by checking the appropriate box under Item 2 and set forth in detail the information required with respect to the date of the transaction, the name of the security and the number of shares or face value of bonds. With respect to options, set forth number and type of options, the exercise price and expiration date, e.g., 3 options [call] or [put] Xerox at 70 2x October 81. **PLEASE DO NOT CLAIM ANY SECURITIES YOU ALREADY HAVE IN YOUR POSSESSION.**

It would expedite satisfaction of your claim if you enclose copies of:

1. Your last account statement;



2. An explanation of any differences between cash balances and securities on your last account statement and cash balances and securities you claim;
3. Purchase and sale confirmations and canceled checks covering the items referred to on your customer claim form; and
4. Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.
5. Any other documentation which may assist the processing of your claim, such as correspondence, receipts, etc. In particular, if, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

Items 3 through 9 must each be marked and details supplied where appropriate.

A claim form must be filed for each account.

When To File

There are two deadlines for filing customer claims. One is set by the bankruptcy court for customer claims and one is set by the law for all claims.

The bankruptcy court has set March 4, 2009 as the final day for filing customer claims. If your claim is received by the Trustee after March 4, 2009 but on or before July 2, 2009, your claim is subject to delayed processing and to being satisfied on terms less favorable to you.

The law governing this proceeding absolutely bars the allowance of any claim, including a customer claim, not actually received by the trustee on or before July 2, 2009. Neither the Trustee nor SIPC has authority to grant extensions of time for filing of claims, regardless of the reason. If your claim is received even one day late, it will be disallowed.

Please file well in advance so that there will be time to re-file if, for instance, your claim is lost in the mail.

Where To File

The completed and signed claim form, together with supporting documents should be mailed **promptly** in the enclosed envelope to:

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

***** PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - ***
RETURN RECEIPT REQUESTED**

Your claim is not filed until received by the Trustee. If the Trustee does not receive your claim, although timely mailed, you could lose all your rights against the Broker. Your return receipt will be the only document you will receive that shows your claim has been received by the Trustee.

**THIS INSTRUCTION SHEET IS FOR YOUR FILE - DO NOT RETURN
YOU SHOULD RETAIN A COPY OF THE COMPLETED CLAIM FORM FOR
YOUR RECORDS.**

CUSTOMER CLAIM

Claim Number _____

Date Received _____

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

(Please print or type)

Name of Customer: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

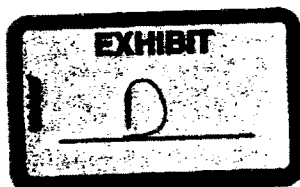
Account No.: _____

Taxpayer I.D. Number (Social Security No.): _____

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

1. Claim for money balances as of **December 11, 2008**:

- a. The Broker owes me a Credit (Cr.) Balance of \$ _____
- b. I owe the Broker a Debit (Dr.) Balance of \$ _____
- c. If you wish to repay the Debit Balance,
please insert the amount you wish to repay and
attach a check payable to "Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC."
If you wish to make a payment, it **must be enclosed**
with this claim form. \$ _____
- d. If balance is zero, insert "None." _____



2. Claim for securities as of **December 11, 2008**:

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.

- | | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| a. The Broker owes me securities | _____ | _____ |
| b. I owe the Broker securities | _____ | _____ |
| c. If yes to either, please list below: | | |

		<u>Number of Shares or Face Amount of Bonds</u>	
<u>Date of Transaction (trade date)</u>	<u>Name of Security</u>	<u>The Broker Owes Me (Long)</u>	<u>I Owe the Broker (Short)</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

	<u>YES</u>	<u>NO</u>
3. Has there been any change in your account since December 11, 2008? If so, please explain.	_____	_____
4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker?	_____	_____
5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker?	_____	_____
6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s)	_____	_____
7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming.	_____	_____
8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers.	_____	_____
9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? if so, give name of that broker.	_____	_____

Please list the full name and address of anyone assisting you in the preparation of this claim form: _____

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.

THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.

Date _____ Signature _____

Date _____ Signature _____

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, *e.g.*, corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

**This customer claim form must be completed and mailed promptly,
together with supporting documentation, etc. to:**

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201





SIPC

Securities Investor Protection Corporation
805 15th Street, N.W. Suite 800
Washington, D.C. 20005-2215
Tel: 202.371.8300 | Fax: 202.371.6728
Email: asksip@sipc.org




SIPC

What is SIPC?

Brokerage firms that experience serious financial difficulties and must be shut down undergo what are called "liquidation" proceedings. The good news is that such closures do not happen very often. Thanks to the combined efforts of securities regulators (the U.S. Securities and Exchange Commission and state securities regulators), and securities industry self-regulatory organizations (the NASD and stock exchanges), brokerage firm failures are a rare event in the United States. Even when a brokerage firm encounters financial difficulty, it usually has all of the assets owed to its customers, and can efficiently transfer those assets to another brokerage without a liquidation proceeding.



However, a small handful of brokerage firms do encounter more severe financial difficulties, including customer assets that may be missing due to theft. These are the instances where the Securities Investor Protection Corporation (SIPC) steps in to recover or replace customer cash and securities, within certain limits set by law. SIPC was created in 1970 by Congress under the Securities Investor Protection Act (SIPA) to protect the interests of investors and to help bolster confidence in the integrity of the American securities markets. Nearly all brokerage firms registered with the U.S. Securities and Exchange Commission are required by law to be members of SIPC.

You can find SIPC on the Web at <http://www.sipc.org>.

EXHIBIT

E



It is possible that you may not be aware that your brokerage firm has closed. SIPC has initiated a liquidation proceeding for the defunct brokerage firm. It is important that you act immediately to do the following:

1. Notify the trustee in the liquidation proceeding of your account information. Notify the trustee in writing immediately and by certified mail, return receipt requested, of the location of your assets and the location of all documents that you have in connection with the account. If you are unable to determine the location of the account, you should notify the trustee in writing.

2. Notify the trustee in writing of your desire for an audit of your account. If you desire an audit, you must do so within 90 days of the date of the liquidation proceeding. If you do not desire an audit, you must notify the trustee in writing within 90 days of the date of the liquidation proceeding. If you do not desire an audit, you must notify the trustee in writing within 90 days of the date of the liquidation proceeding. If you do not desire an audit, you must notify the trustee in writing within 90 days of the date of the liquidation proceeding.

THE INVESTOR'S GUIDE TO BROKERAGE FIRM LIQUIDATIONS: WHAT YOU NEED TO KNOW

the brokerage firm about any discrepancy between your records and those of the firm. If you have not already done so and your brokerage firm is facing a liquidation proceeding, make sure to carefully review your account statements in the way that is described here.

3. Make sure the trustee in the liquidation proceeding has your correct address. Have you moved to a different residence recently? Are your transaction documents not arriving in the mail? The trustee will mail a claim form to every customer at the address listed in the brokerage firm's records. If the brokerage firm records relied upon by a trustee aren't up to date, you may not receive a claim form, and that could leave you at a serious disadvantage in the liquidation proceeding. If you don't get a notification from the trustee, in a week or two after the liquidation proceeding is announced publicly, go to the SIPC Web site (<http://www.sipc.org>), find the information about your firm, and then contact the trustee as indicated with your current contact information. You may also want to print out the form from the SIPC Web site. (See "Frequently Asked Questions" below.)

4. Obtain, fill out and submit the claim form in a timely way. The burden is on you to complete the claim form and then return it to the trustee on time. Make sure that you fill out the form in full and make a copy for your records. Send the copy of the form (and any necessary documents) – not the original! – Submit the claim form by certified mail with return receipt requested. It is important that you can prove the trustee received your claim form. If the claim form is not received, while at risk of not getting back your assets, pay strict attention to the time limits set forth in the notice and claim form. Under federal law, once a claim is filed, it is in the court – make the submission of your claim in that are filed late.

1. I AM NOT SURE MY ACCOUNT QUALIFIES FOR SIPC

- Q: I didn't get a claim form. What should I do?
- A: Go to SIPC's Web site at <http://www.sipc.org>. Shortly after a liquidation proceeding starts, SIPC will post a copy of the claim form on its Web site. While you cannot file a claim electronically, you can print out the claim form on the Web site and send it in. You also can consult the SIPC Web site to find the address to use to write to the trustee and request a claim form.

2. I think I was a victim of fraud. My broker convinced me to buy securities that went down sharply. Can SIPC return the amount of my initial investment?

No. SIPC returns the current value of your eligible holdings at a brokerage firm. If your securities have gone down in value, that is just part of the normal risk involved in being an investor. On the other hand, if your securities have gone up in value since you purchased them, SIPC will endeavor to return those securities to you at their current value. You may have a "general creditor claim" for your market losses, but that is not something that falls within the scope of SIPC. Funds from SIPC cannot be used to pay damage claims based on fraud.

3. How long will it take for me to get control of my account again?

- A: Every liquidation proceeding is different. In some instances, a trustee has been able to transfer accounts in as little as one to three weeks. However, if the records of the defunct brokerage firm are in disarray, or if for any other reason it is not possible to transfer your

account to a financially healthy brokerage firm, the process may take more time. You can cut down on the delays by filing your claim promptly, correctly and with all required documentation.

4. After the liquidation proceeding involving my "old" brokerage firm started, I received a notice that my account was transferred to another brokerage firm. Does that mean I don't have to bother with the claim form?

No. You should still complete the claim form anyway and return it to the trustee. There are a number of things which might go wrong with a transfer of your assets to the new brokerage firm. Your account may be rejected by the new firm, or returned to the trustee for some other reason. If anything does in fact go wrong with the transfer of your account, the claim form will be the only way you will be able to receive your assets. Fill out the claim form and return it, even if you have been told your account has been transferred.

5. I don't understand how to fill in the claim form. Where can I get help?

- A: You can find a step-by-step guide to filling out your claim form on the SIPC Web site at (<http://www.sipc.org>). Keep in mind that your claim form cannot be filed electronically. However, you can use the "SIPC Claim Form Online Center" to fill out your form. If you do so, you must still print out and mail the completed form and all required attachments to the court-appointed trustee. Remember, your claim form is considered to be filed only when it is received in total by the trustee in the matter. Make sure to copy the print-out of your claim form (and related documents) and then send in the copies by certified mail with return receipt requested. Be sure to observe the deadlines for timely submission of your claims.

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF STATE

JUNE 8, 2009

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

CONGREGATION OF THE HOLY SPIRIT PROVINCE OF THE UNITED
STATES

I, Pedro A. Cortés, Secretary of the Commonwealth of Pennsylvania

do hereby certify that the foregoing and annexed is a true and correct
copy of

ARTICLES OF MERGER-NONPROFIT filed on June 3, 2009

which appear of record in this department.



IN TESTIMONY WHEREOF, I have
hereunto set my hand and caused
the Seal of the Secretary's Office to
be affixed, the day and year above
written.

Pedro A. Cortés

Secretary of the Commonwealth

Exhibit "F"

Corporation Service Company

024670-005 Kcl

Entry #: 0001000
Date Filed: 06/03/2009
Effective Date: 06/16/2009
Pedro A. Cortés
Secretary of the Commonwealth

ARTICLES OF MERGER

MERGING

CONGREGATION OF THE HOLY GHOST, WESTERN PROVINCE

(a nonprofit corporation organized under
Texas Nonprofit Corporation Law)

and

**CONGREGATION OF THE HOLY SPIRIT UNDER THE PROTECTION OF THE
IMMACULATE HEART OF MARY, USA - EAST**

(a nonprofit corporation organized under
Pennsylvania Nonprofit Corporation Law)

INTO

**CONGREGATION OF THE HOLY SPIRIT
PROVINCE OF THE UNITED STATES**

(a nonprofit corporation organized under
Pennsylvania Nonprofit Corporation Law)

Commonwealth of Pennsylvania
ARTICLES OF MERGER-BUSINESS 11 Page(s)



T0915464112

Pursuant to the provisions of the Pennsylvania Nonprofit Corporation Law and the Texas Nonprofit Corporation Act, the undersigned corporations hereby agree to merge and adopt the following Articles of Merger:

1. Congregation of the Holy Ghost, Western Province, a Texas nonprofit corporation ("Transferor Corporation-1"), which is not qualified as a foreign corporation in Pennsylvania, shall merge into Congregation of the Holy Spirit Province of the United States, a Pennsylvania nonprofit corporation ("Surviving Corporation").
2. Congregation of the Holy Spirit Under the Protection of the Immaculate Heart of Mary, USA – East, a Pennsylvania nonprofit corporation ("Transferor Corporation-2") shall merge into the Surviving Corporation.
3. Transferor Corporation-1 has corporate members. At a meeting of the corporate members held on May 22, 2009 at which a quorum was in attendance, the Articles of Merger and Plan of Merger were approved by a majority of the corporate members in attendance. There are six (6) Directors of Transferor Corporation-1 who are entitled to vote on the merger of Transferor-1 Corporation into the Surviving Corporation. Effective as of May 22, 2009, all six (6) Directors of Transferor Corporation-1 voted by unanimous written consent to approve the merger as set forth in the Plan of Merger, attached as Exhibit A.
4. Transferor Corporation-2 has no corporate members. There are six (6) Directors of Transferor Corporation-2 who are entitled to vote on the Merger of Transferor Corporation-2 into the Surviving Corporation. Effective as of June 2, 2009, all six (6) Directors of Transferor Corporation-2 voted by unanimous written consent to approve the Merger as set forth in the Plan of Merger attached as Exhibit A.

5. The Surviving Corporation has no corporate members. The Surviving Corporation was organized May 13, 2009, pursuant to the Pennsylvania Nonprofit Corporation Law and does not have power to issue stock. There are two (2) Directors of the Surviving Corporation who are entitled to vote on the merger of both Transferor Corporation-1 and Transferor Corporation-2 into the Surviving Corporation. Effective as of May 28, 2009, all two (2) Directors voted by unanimous written consent to approve the merger as set forth in the Plan of Merger as set forth on Exhibit A.

6. The Surviving Corporation's principal office is located at 6230 Bush Run Rd., Bethel Park, Pennsylvania 15102-2214.

7. The laws of Pennsylvania and Texas, as well as the organizational documents (the respective Articles, and Bylaws) of Transferor Corporation-1 and Transferor Corporation-2 and the Surviving Corporation, authorize and permit the merger of both corporations into the Surviving Corporation.

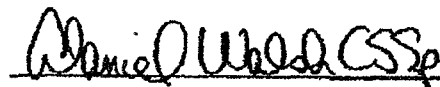
8. The Plan of Merger, attached hereto as Exhibit A, has been approved, adopted and authorized by Transferor Corporation-1 and Transferor Corporation-2 and the Surviving Corporation in the manner required by the law of the state in which each respective corporation is organized; and (ii) as required by each one's respective Articles and Bylaws, and the persons executing these Articles of Merger on behalf of the Transferor Corporation-1 and Transferor Corporation-2 and the Surviving Corporation are duly authorized to do so.

9. The Surviving Corporation is authorized to transact business in Texas.

10. The merger will not result in any change in the Articles of Incorporation of the Surviving Corporation.

11. The effective date of the merger shall be June 16, 2009.

In affirmation of the facts stated above in the Articles of Merger which are true and correct, these Articles of Merger have been executed by the officers of the aforementioned corporations as of the dates set forth next to their signatures.



Authorized Signature

Daniel L. Walsh, C.S.Sp., President
Congregation of the Holy
Ghost, Western Province

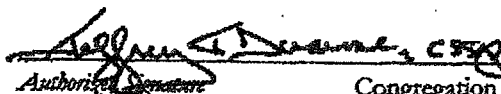
6/1/09
Date



Authorized Signature

Michael E. Suazo, C.S.Sp., Secretary
Congregation of the Holy
Ghost, Western Province

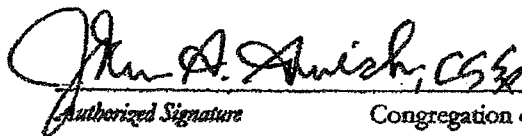
6/1/09
Date



Authorized Signature

Jeffrey T. Duaine, C.S.Sp., President
Congregation of the Holy Spirit
Under the Protection of the
Immaculate Heart of Mary,
USA - East

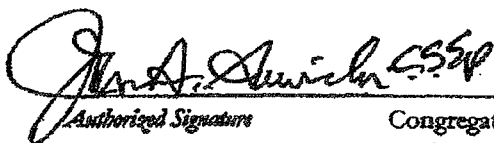
6/1/09
Date



Authorized Signature

John A. Sawicki, C.S.Sp., Secretary
Congregation of the Holy Spirit
Under the Protection of the
Immaculate Heart of Mary,
USA - East

5/28/09
Date



Authorized Signature

John A. Sawicki, C.S.Sp., President
Congregation of the Holy
Spirit Province of the
United States

5/28/09
Date



Authorized Signature

Daniel L. Walsh, C.S.Sp., Secretary
Congregation of the Holy
Spirit Province of the
United States

6/1/09
Date

PLAN OF MERGER

MERGING

CONGREGATION OF THE HOLY GHOST, WESTERN PROVINCE

(a nonprofit corporation organized under
Texas Nonprofit Corporation Law)

and

**CONGREGATION OF THE HOLY SPIRIT UNDER THE PROTECTION OF THE
IMMACULATE HEART OF MARY, USA – EAST**

(a nonprofit corporation organized under
Pennsylvania Nonprofit Corporation Law)

INTO

**CONGREGATION OF THE HOLY SPIRIT
PROVINCE OF THE UNITED STATES**

(a nonprofit corporation organized under
Pennsylvania Nonprofit Corporation Law)

1. Congregation of the Holy Ghost, Western Province ("Transferor Corporation-1") and Congregation of the Holy Spirit Under the Protection of the Immaculate Heart of Mary, USA – East ("Transferor Corporation-2") shall merge into:

Congregation of the Holy Spirit Province of the United States, the ("Surviving Corporation").

Transferor Corporation-1, Transferor Corporation-2 and the Surviving Corporation are all public benefit corporations qualified under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("Code"). The exempt activity of all three corporations is to carry out the religious and charitable purposes and activities of an order of Roman Catholic priests.

2. Transferor Corporation-1 has corporate members. At a meeting of the corporate members held on May 22, 2009 at which a quorum was in attendance, the Articles of Merger and Plan of Merger were approved by a majority of the corporate members. Transferor Corporation-2 has no corporate members. The Surviving Corporation has no corporate members.

3. All of the assets, including by way of example but not by way of limitation, all property, rights, corporate governance reserved powers, privileges, leases, patents, trademarks of the Transferor Corporation-1 and Transferor Corporation-2 as well as future and inchoate rights to gifts, grants, contributions, transfers, or bequests to Transferor Corporation-1 or to Transferor Corporation-2 shall be transferred to and become the property of the Surviving Corporation on the effective date of the merger, June 16, 2009. All of the liabilities of Transferor Corporation-1 and Transferor Corporation-2 shall be assumed by the Surviving Corporation on such effective date. The officers of Transferor Corporation-1 and of Transferor Corporation-2 and the Surviving Corporation are authorized to execute all deeds, assignments, transfers and documents of every nature which may be required or are convenient to effectuate and implement a full and complete

transfer of ownership of the aforesaid assets to and assumption of liabilities by the Surviving Corporation.

4. The term of office of the officers and members of the Board of Directors of Transferor Corporation-1 and of Transferor Corporation-2 shall terminate on June 15, 2009, the date prior to the effective date of the merger, which date is June 16, 2009.

5. No membership interests in either Transferor Corporation-1 or Transferor Corporation-2 shall be converted into a membership interest in the Surviving Corporation. No cash or other consideration shall be paid by the Surviving Corporation for any interest in either Transferor Corporation-1 or Transferor Corporation-2.

6. The merger will not result in any change in the Articles of Incorporation of the Surviving Corporation.

7. It is agreed that upon and after the issuance of a Certificate of Merger by the Secretary of State of Texas.

a. The Surviving Corporation may be served with process in Texas in any proceeding for enforcement of any obligation of Transferor Corporation-2, as well as for enforcement of any obligation of the Surviving Corporation arising from the merger.

b. The Texas Secretary of State is irrevocably appointed as the agent of the Surviving Corporation to accept service of process in any such case or other proceedings; the address to which a copy of such process shall be mailed by the Secretary of State is President, Congregation of the Holy Spirit Province of the United States, 6230 Brush Run Road, Bethel Park, PA 15102-2214.

8. The effective date of the merger shall be June 16, 2009.

In affirmation of the facts stated above, this Plan of Merger has been executed by the
aforementioned Corporations as of the dates indicated.

ARTICLES OF INCORPORATION
OF
CONGREGATION OF THE HOLY SPIRIT PROVINCE OF THE UNITED STATES

A Pennsylvania Nonprofit Corporation

The undersigned, being natural persons each of the age of eighteen years or more and a citizen of the United States, for the purpose of forming a corporation under the Pennsylvania Nonprofit Corporation Law of 1988 ("NCL"), hereby adopts the following Articles of Incorporation:

1. The name of the corporation is Congregation of the Holy Spirit Province of the United States.
2. The period of duration of the corporation is perpetual.
3. The corporation is organized on a nonstock basis. The corporation does not contemplate pecuniary gain or profit, incidental or otherwise.
4. The address of the corporation's initial registered office in Pennsylvania is 6230 Brush Run Road, Bethel Park, PA 15102, Allegheny County.
5. The name and address of the incorporator is Nathan M. Boyce, 211 N. Broadway, Suite 3600, St. Louis, MO 63102-2750.
6. The affairs of the corporation shall be managed by its Board of Directors. The number of directors, their terms and manner of election shall be as provided in the Bylaws, provided that there shall not be more than seven (7) nor fewer than two (2) directors. The initial directors shall be:

Commonwealth of Pennsylvania
ARTICLES OF INCORPORATION 5 Page(s)



T0913411031

2009 MAY 13 PM 4: 33

PA DEL- OF STATE

Fr. Daniel Walsh, C.S.Sp.
Holy Spirit Provincialate
1700 W. Alabama St.
Houston, TX 77098

Fr. John Sawicki, C.S.Sp.
Holy Spirit Provincialate
6230 Brush Run Road
Bethel Park, PA 15102

7. The corporation is organized, and shall be operated, exclusively for religious, charitable, scientific, literary and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law) (the "Code"). No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its directors, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in this Article. The corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office. Except to the extent permitted by section 501(h) of the Code, no substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation. Any other provision of these Articles to the contrary notwithstanding, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from the Federal income tax under section 501(c)(3) of the Code, (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Code, and (c) by a corporation organized under the NCL as now existing or hereafter amended.

8. The corporation shall have Members as set forth in the Bylaws.

9. The corporation shall have all the powers permitted a corporation that is both a nonprofit corporation under the NCL and an exempt organization described in section 501(c)(3) of the Code.

10. Bylaws of the corporation, consistent with these Articles, shall be adopted by the Board of Directors. The Bylaws shall be amended in the manner provided in the Bylaws.

11. These Articles may be amended by the directors in the manner provided by Sections 5911 et. seq. of the NCL, as amended from time to time.

12. Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation and returning, transferring or conveying any assets requiring return, transfer or conveyance upon dissolution, distribute any assets (received and held subject to limitations permitting their use only for charitable, religious, or similar purposes, but not held upon a condition requiring return, transfer or conveyance upon dissolution) to a nonprofit organization which is (i) qualified under section 501(c)(3) of the Code, and (ii) engaged in substantially similar activities to those of the corporation at the time of its dissolution. Any assets not so disposed of shall be disposed of by the circuit court of the city or county in which the principal office of the corporation is then located to such organization or organizations as said court shall determine and as are then qualified as exempt under section 501(c)(3) of the Code.

13. The Corporation shall hold harmless, indemnify and defend any person who is or was a director or officer of the corporation to the fullest extent authorized or permitted by the NCL, as amended, or any other or additional statutory provisions which are hereafter adopted authorizing or permitting such indemnification, except that the corporation may, but need not, purchase indemnification insurance.

14. The effective date of this document shall be the date it is filed in the office of the Pennsylvania Department of State.

[Remainder of this page intentionally left blank.]

IN TESTIMONY WHEREOF, the incorporator has signed these Articles of
Incorporation this 12th day of May, 2009.


Nathan M. Boyce, Incorporator