

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 12-24051 (07)
COMPLEX LITIGATION UNIT

MATTHEW CARONE, as Trustee for the Carone
Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc.
Pension Trust, Carone Family Trust, Carone Marital
Trust #1 UTD 1/26/00 and Matthew D. Carone
Revocable Trust, JAMES JORDAN, as Trustee for
the James A. Jordan Living Trust, ELAINE ZIFFER,
an individual, and FESTUS AND HELEN STACY
FOUNDATION, INC., a Florida Corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

**CONSERVATOR'S MOTION TO RETAIN AND COMPENSATE
BERGER SINGERMAN, LLP AS SPECIAL LITIGATION COUNSEL
IN THE 'JANET A. HOOKER CHARITABLE TRUST, ET AL.' MATTER AND
APPROVING THE CONTINGENCY FEE COMPENSATION AGREEMENT**

Philip J. Von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships"), files this application (the "Motion") to retain and compensate Berger Singerman, LLP ("Berger") as the Conservator's special litigation counsel in that certain matter styled *Margaret Smith, et. al., v. Janet A. Hooker Charitable Trust, et. al.* (the "Net Winner Matter") and in support thereof states as follows:

1. On December 10, 2012, the Partnership commenced the Net Winner Matter against certain of their general partners on principles of partnership, contract, and fraudulent transfer law and principles of equity.¹

¹ The Net Winner Matter was originally commenced by Berger who filed the original complaint on the Partnerships'

2. On January 17, 2013, this Court entered its Order Appointing Conservator (the “Order of Appointment”). Among other things, the Order of Appointment directed the Conservator to review, prosecute, dismiss, initiate and investigate any and all potential claims that may be brought or have been brought on behalf of the Partnerships (the “Claims”).

3. In order to facilitate and support the Conservator in carrying out his duties, consistent with applicable Florida law, the Order of Appointment authorizes the Conservator to retain and compensate necessary professionals.

4. After review of the available records within the time allowed, the Conservator has determined that the Claims asserted in the Net Winner Matter require further inquiry and advancement. The Conservator believes that it is necessary and appropriate to employ Berger to represent the Partnerships in evaluating and possibly pursuing some or all of the Claims because pursuit of such Claims could result in an additional distribution to the general partners of the Partnerships.

5. Berger is a Florida based business law firm. Berger boasts offices in Miami, Fort Lauderdale, Boca Raton and in the state capital of Tallahassee. Berger serves a diverse client base with respect to matters involving Florida issues.

6. The attorneys with Berger are widely recognized as among the best in their respective fields by independent third parties, and many have held prestigious positions in industry, the legal community and public service.

7. The Conservator believes that Berger is well-qualified to represent the Conservator in advancing the Claims.

behalf.

8. The Conservator seeks to, in his discretion, hire and employ Berger to serve as the Conservator's special litigation legal counsel for, among other things, advancing the Net Winner Matter.

9. Berger's engagement will in no way be duplicative of any other professional retained by the Conservator.

10. Berger holds no known interest adverse to the Conservator or the Partnerships. Moreover, Berger does not currently and will not represent any person or entity other than the Partnerships, regarding the Net Winner Matter, regardless of any direct or indirect affiliation with the Partnerships, unless it is expressly agreed in writing.

11. In connection with, among other things, certain events leading up to the commencement of the appointment of the Conservator, Berger represented certain of the general partners of the Partnerships. Berger no longer represents such parties in any capacity.²

12. Berger will undertake the Net Winner Matter on a standard contingency fee basis with all costs to be borne by the Partnerships and reimbursable upon application to the Conservator. Berger's reimbursable costs shall be capped at \$50,000 in the Net Winner Matter absent specific authority from this Court.

13. Berger shall invoice the Partnerships on a monthly basis with respect to costs incurred. So long as the total costs do not exceed \$50,000, the Conservator is authorized to pay such reasonable and necessary costs, within the discretion of the Conservator, out of the Partnerships' assets on a monthly basis without notice, application or a further court order.³

² On April 17, 2013, this Court entered its Order Approving Stipulation for Substitution of Counsel for Plaintiffs. The law firm of Stuart & Walker, P.A. has substituted Berger as counsel for the plaintiffs.

³ To the extent granting authority to the Conservator to pay reasonable and necessary costs without further court order conflicts with the Order of Appointment, the order emanating from the instant Motion shall control and be deemed to modify the Order of Appointment solely to allow the Conservator to pay such reasonable and necessary costs on a monthly basis without requiring a further court order.

14. The Conservator deems the employment of Berger necessary for the efficient administration of the Net Winner Matter. The Conservator further believes that a Court Order authorizing the retention and the proposed compensation arrangement is necessary for Berger to effectively serve the Conservator.

WHEREFORE, the Conservator requests that the Court enter an Order: (i) authorizing the retention of Berger; (ii) authorizing the Conservator to pay Berger a standard contingency fee of any recovery; (iii) authorizing the Conservator to, in his reasonable business judgment, reimburse Berger its reasonable and necessary expenses on a monthly basis as provided in this Motion; and (iv) granting such other relief as the Court deems just and proper.

Dated: April 24, 2013

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