

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 AND MESSANA, P.A., AS SPECIAL LITIGATION
COUNSEL IN THE 'MICHAEL D. SULLIVAN, 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") and Messana, P.A. ("Messana") (together, "Special Counsel") as the Conservator's special litigation counsel in that certain matter styled *Margaret Smith, et. al., v. Michael D. Sullivan, et. al.* (the "Insider Matter") on a contingency fee basis and in support thereof states as follows:

1. On December 10, 2012, the Partnerships commenced the Insider Matter against, among others, certain of the Partnerships' principals, affiliates, related parties, and recipients of purported 'management' and 'referral' fees.¹

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. On March 1, 2013, this Court entered an Order permitting the Conservator to engage Messina to act as general counsel on an hourly fee basis in connection with, among other things, the administration of the conservatorship.

5. After review of the available records within the time allowed, the Conservator has determined that the Claims asserted in the Insider Matter require further inquiry and advancement. The Conservator believes that it is necessary and appropriate to employ Special Counsel 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.

6. The law firms of Messina and Berger have considerable experience in the areas of insolvency litigation, avoidance and fraudulent transfer litigation.

¹ The Insider Matter was originally commenced by Berger who filed the original complaint on the Partnerships' behalf.

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

8. The Conservator seeks to, in his discretion, hire and employ both Messina and Berger as Special Counsel to serve as litigation co-legal counsel for, among other things, the Insider Matter. The Conservator believes that it would be in the best interests of all parties-in-interest for these firms to co-counsel the Insider Matter. The attorneys at Messina and Berger have agreed to a division of responsibilities and will not duplicate their efforts in this matter.²

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

10. 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.³

11. Special Counsel will undertake the Insider Matter on a standard contingency fee basis (to be allocated between the two firms by separate agreement) with all costs to be borne by the Partnerships and reimbursable upon application to the Conservator. Special Counsel's reimbursable costs shall be capped at \$50,000 in the Insider Matter absent specific authority from this Court.

² Additionally, the costs and services provided by Messina as special litigation counsel to the Conservator of or in connection with the Insider Matter will be separately recorded and will in no way be duplicative of any costs or services provided to the Conservator as general counsel.

³ 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.

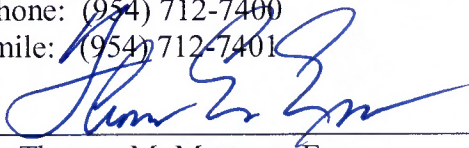
12. Special Counsel shall invoice the Partnerships on a monthly basis with respect to costs incurred. So long as the total costs do not exceed \$50,000, the Conservator is authorized to pay such reasonable and necessary costs, within the discretion of the Conservator, out of the Partnerships' assets on a monthly basis without notice, application or a further court order.⁴

13. The Conservator deems the employment of Special Counsel necessary for the efficient administration of the Insider Matter. The Conservator further believes that a Court Order authorizing the retention and the proposed contingency fee compensation arrangement is necessary for Special Counsel to effectively serve the Conservator.

WHEREFORE, the Conservator requests that the Court enter an Order: (i) authorizing the retention of Special Counsel as special litigation co-counsel for the Insider Matter; (ii) authorizing the Conservator to pay Special Counsel a standard collective contingency fee as set forth above; (iii) authorizing the Conservator to, in his reasonable business judgment, reimburse Special Counsel their 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

MESSANA, P.A.
General Counsel for the Conservator
401 East Las Olas Boulevard, Suite 1400
Ft. Lauderdale, FL 33301
Telephone: (954) 712-7400
Facsimile: (954) 712-7401

By: 
Thomas M. Messana, Esq.
Florida Bar No. 991422
Brett D. Lieberman, Esq.
Florida Bar No. 69583

⁴ 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.